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MIND OF A LAWYER. HEART OF A CONTRACTOR.

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## **Litigation Sucks!! Get Out Of It**

As a lawyer (and a client), the legal system has caused me significant frustration. Why? Because judges can make terrible decisions, opposing parties and attorneys can abuse the process, the costs can be enormous, and at the end of the day the case comes down to a decision-maker who can decide against you.

One thing I frequently tell clients is this: The litigation process is designed to keep people out of it. I wrote about this issue in the past here: [Why Compromise Is Sometimes Better Than A Construction Dispute.](#)

Our friend Alan Haley recently published two blog posts related to this topic on this Louisiana Construction Law Blog. I discuss them both here:

### **The 20% Rule**

What is the 20% Rule? It is the principal that you can have bulletproof evidence, the best argument and facts, and a "perfect case," but still face at least a 20% risk of losing. How? Check out the quote from [John Watkins who explains the rule in his article](#) about the same:

Why is the twenty percent rule true? Because unforeseeable things happen in litigation. Star witnesses blow up in depositions or on the witness stand, even if they are well prepared. There may be a document or email out there that you (and your lawyer) did not know about when the case was filed.

But, most importantly, cases are resolved by judges and juries. Judges and juries are human beings, and, given that fact, may not see things your way. Judges and juries may seize upon facts and issues that you know are irrelevant to the dispute, but which become highly relevant, because they get to decide the case, not you.

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Judges and juries may simply like the other side better than you. Maybe your confidence will be perceived as arrogance. Maybe the other side has an explanation that resonates.

### [Mediation As Dispute Resolution Mechanism in Construction Industry](#)

If litigation is so unpredictable, what do you do with your disputes? Just walk away from them? The answer to that, of course, is usually no. A separate post from Alan discusses the possibility of mediation taking a larger role in construction disputes.

When mediation works, it's great. After all, it takes away absolutely all of the risk and leaves the result of the dispute in the parties' complete control. It's why Alan predicts that mediation will become more and more popular as time goes on:

Probably because of the problems currently plaguing arbitration (see what folks have to say about that [here](#), [here](#), [here](#), [here](#), and [here](#)). Finally, mediation is a more pure alternative dispute resolution mechanism because the participants share in deciding the outcome as opposed to dealing with a decision or award. Further, mediation is usually cheaper and faster than arbitration.

Check out both of Alan's posts, as they're great for folks who might be neck-deep in litigation and thinking....this sucks.

Also, after writing this blog post, I stumbled on another post out there from Melissa Brumback. Posted on her Construction Law in North Carolina Blog, Melissa updated her "[Should I Stay or Should I Go Now? \(Court v. Arbitration\)](#)" post. Another good read on the topic.

### **Related articles**

- [How To Make Arbitration "Worth It" Again](#) (constructionlawmonitor.com)
- [Mandatory Arbitration Isn't All Bad, if. . .](#) (constructionlawva.com)
- [Settling business disputes in court is not always the best way](#) (usatoday.com)