

ALERTS AND UPDATES

Massachusetts Appeals Court Rules on Burden of Proof for Lien Claimants

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Similar to many other states, the Massachusetts lien law has what may be considered a "cram-down" provision, which restricts the value of a lien in certain circumstances. A subcontractor or vendor lien claimant cannot obtain a lien for an amount greater than what is owed to the party above it in the contract line-up, at the time notice of its lien is given to the owner.¹ If no money is due from the owner to the prime contractor when the subcontractor files a lien notice, the subcontractor's lien is effectively capped at the amount due, which may be zero.

But who has to prove how much was owed at the key point in time? That was the issue decided this week by the Massachusetts Appeals Court in *National Lumber v. Inman*.² Did a homeowner who terminated the prime contract owe nothing on the date the vendor gave notice of its lien claim? What if the evidence—as apparently happened in this case—was inconclusive? Did the homeowner have to prove that *no* money was due, or did the vendor have to prove that *some* money was due? The decision is likely to affect the extent and cost of pursuing a lien claim where one party in the middle has defaulted.

The court held that the lien claimant has the burden of proving the amount due to the upper tier. While this may seem illogical to some, the court reasoned that statutory language called for this outcome. Per chapter 254, section 4, of the Massachusetts General Laws, the lien "shall not exceed the amount due or to become due [to the upper tier]." Based on this language, the court held that the vendor had the burden of proof "on all matters necessary to establish its compliance with the statute and entitlement to the lien, including the amounts due or to become due."

Analysis

This decision is likely to have a significant impact on lower-tier lien claims in circumstances where a contractor or upper-tier subcontractor has defaulted. It may compel the lien claimant to seek discovery in order to determine what may have been owed at the time of the lien notice, in order to prove that fact at trial or in a dispositive motion.

It remains to be seen whether National Lumber will seek further appellate review. For now, it is important to note that the courts continue to place a heavy burden on lien claimants to fully comply with the lien statute, even on what must be proven at trial.

For Further Information

If you have any questions regarding this *Alert* or would like more information about Massachusetts' lien law, please contact [Stanley A. Martin](#), any [member](#) of the [Construction Group](#) or the attorney in the firm with whom you are regularly in contact.

Notes

1. An exception is when the lower-tier claimant has provided the general contractor with a "notice of identification" earlier in the project.

2. *National Lumber Company v. Inman*, 2010 Mass. App. LEXIS 1217 (Mass. App. Ct. Sept. 13, 2010).