

Think Twice About Heading to Court with a Construction Claim

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Here at [Construction Law Musings](#), I have discussed many areas of the law relating to construction claims. Most of this discussion has focuses on the claim itself, whether made by breach of contract lawsuit, [payment bond claim](#) or [mechanic's lien](#). The latter two of these types of claims can and should lead to collection, either by settlement check or judgement/foreclosure because either the bond or the property lien provides security for collection.

This post is not about those types of construction claims.

This post is about the claims that you, as a contractor, may have against either a company or individual and for which a successful claim ends in a judgment. This post is about those construction claims that result in unsecured rights to collect. In short, this post is about claims for payment that end up in a piece of paper giving you the right to collect money from the other guy, but that require more action to turn that paper into money.



1976 Little Construction Vehicles (Photo credit: JD Hancock)

Why is the distinction important? Because you need to think twice about whether to even file a claim or how to pursue it when the end result is a judgment without a definite avenue of collection and you need to make this analysis [early in the process](#), preferably with the help of an [experienced construction attorney](#). [Litigation is expensive](#) and time consuming. Aside from the attorney fees that you will have to pay, you and your office staff will spend time on collecting paperwork, attending depositions, dealing with stress, and other activities that won't advance your business or bottom line and you want to make sure that the end of the rainbow contains a pot of gold.

Among [the many reasons for a construction business](#) to incorporate is asset protection and separation of the owners' liability from that of their company. If you as a subcontractor or supplier have a contract with a company (as opposed to an individual), that company could go out of business or just close its doors. Add in the risk of bankruptcy and even a judgment against an individual can become essentially worthless. In either event you would be left with with attorney fees and the "satisfaction" of a hard earned judgment that is worth the paper on which it is printed.

In short, prior to going to court, you will need to ask yourself two questions? The first: Is the claim one we can win? and the second, and often under-analyzed: Will the claim be collectible? If you can't answer yes to *both* with at least a reasonable degree of certainty then you will need to think twice prior to charging into battle.

Of course, this analysis is dependent on your particular claim, the contract involved and the facts of your construction case which could change some of the actions you would take.

As always, I welcome your comments below. Please [subscribe](#) to keep up with this and other Construction Law Musings.

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