



Construction Claims: Should I Sue?

Whether you are a project owner, contractor, subcontractor, supplier, design professional or engineer in the construction industry, you expect to get paid for your work. What happens when there is a dispute or you do not get paid? You can pursue litigation, but before taking your claim to court, there are many factors to consider.

Q: I finished constructing a homeowner’s porch and received no complaints – and no payment. Won’t the court automatically rule in my favor and make the homeowner pay me?

A: No. The law does not automatically award damages to the filing party if another breaches a contract, even if the breach is intentional. In more complicated cases, “legally recoverable damages” may not be enough to make you “whole” again. If, for example, the homeowner has no money, you may not be able to recover what is owed to you, even if you are in the right.

Q: I’m a subcontractor. If a project owner or company fails to pay me and I sue, can I expect to get paid if I win my lawsuit?

A: Not necessarily. Project owners and companies often protect themselves against any form of liability. They may put property in trust or in the name of a limited liability company. For example, if you agree to do subcontract work on a building owned by a limited liability company, that company may purposely operate with minimal assets to avoid being forced by a court to pay you.

Q: A small company hired me to remodel its office space. Before I was completely finished, the company went out of business. I want to get paid for time and materials. Should I sue?

A: You must fully satisfy the contractual duties in the project. You may also be legally responsible for other parties such as a subcontractor, so make sure those parties also complied with the terms of the construction project. If not, you may not win your suit. Even if you have been wronged, anything you may have done wrong will affect the outcome of your suit.

Q: How do I know whether or not I should sue?

A: Ask yourself why you want to pursue your case. Is it a business decision, or do you feel you have to stand up and make a point in the industry? Also, you must determine whether enough money is in dispute to make it worth paying your lawyer to pursue litigation. Will the potential award outweigh the emotional burdens and resources spent on litigation and a possible wait of one or more years for a trial verdict or settlement?

Q: How can I prove my case?

A: Consider these questions: Is there documentation to back up your story? Are witnesses available who will testify in your favor? Do you know who and where all of the potential defendants are? What causes of action can you pursue in court? Even if you are sure you have been wronged, you still have to prove your claims before you can recover any damages through the court system.

Q: Could I be risking my business if I sue?

A: If you intend to have a future business relationship with the potential business(es) you want to sue, ask yourself if it's worth risking future loss of business for this one lawsuit. You may also be risking future business from affiliates of the business you want to sue.

Q: Is there an alternative to bringing suit?

A: Arbitration and mediation are two forms of dispute resolution to consider in place of litigation. Check your construction contract. Some contracts require the parties to pursue mediation or arbitration before any suit can be filed.

Mediation is a voluntary dispute resolution process, meaning all participants must consent and work toward a mutually agreeable resolution. Mediation is not binding.

In arbitration, a neutral party (i.e., the arbitrator) hears a dispute between the parties, and after considering all relevant information renders a final decision in favor of one of the parties. Arbitration decisions may be either binding or non-binding.

Q: Do I need an attorney?

A: When considering whether or not to sue, you should know as much as you can so you can make the best decisions, and protect and defend your rights. It is a good idea to contact an attorney who has knowledge of and experience in construction law matters.

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