

Why Settlement is Often Worth Fighting For

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Well, I'm back after what was several weeks of fun, depositions and settlement negotiations. Between a great family holiday trip and work, the month of January and some of February flew by and I didn't have the time to keep up with my usual Monday posting schedule. Thank you to those that keep coming back. I hope to get back to a more regular schedule in the coming weeks.

One thing that my busy January in particular highlighted is the fact that a busy month for me is [an expensive one for my construction clients](#). As a [construction lawyer](#), when I'm extremely busy, as opposed to just busy, it means that my clients have me in court, in depositions, or performing other litigation related activities.

While this is great for my bottom line because I have [great clients that appreciate my representation](#), litigation is not a good way for construction companies to make money. Quite honestly, the litigation process is a zero sum game in most cases where money spent on court related activities is money taken from the bottom line.

While some of the hard costs: attorney fees, expert expenses, court costs and the like, can be made part of a judgment on the back end [if your construction contract is properly drafted](#), these costs are hard expenditures that are made on the front end with hopes of recovery at the end. Add these to the "soft" costs of lack of productivity and focus on the past instead of advancing the business and making money and litigation is not a winning proposition, even when you win.

In short, by the time you as a construction company are in court, you are not going to make money on that project. At best you are in triage mode and should be looking, from a financial, if not a legal, perspective at trying to limit the damage and move forward. You didn't (and shouldn't have) made your bid or priced your work with an eye toward having to sue for your money.

This fact of construction life is why, in *almost* every case, I recommend trying to settle the matter early, even if it is not a 100% dollar for dollar payment of what you could get at the end of the long, winding and potentially risk filled road to a judgment. Should you be paid 100% for your hard work? Yep. Is it difficult to accept less just because the other side didn't pay? Absolutely. Unfortunately, once construction attorneys get involved, you won't net 100% regardless of the outcome of the court process. You are more likely to net a better result *monetarily and business wise* from accepting a portion of what you feel you are owed than to go forward to trial. Of course every case is different and that portion will be bigger or smaller based on those factors and the advice from your construction attorney and others relating to risk, reward, etc.

After years of construction litigation and advising of my great construction clients, I am a firm believer that putting resources toward settlement early in a dispute will go a lot further toward a better resolution for you business than flying headlong through the litigation process. As I've stated before, [mediation](#) is near and dear to my heart. So much so that I [became a Virginia general district court certified mediator](#). As a mediator (and a lawyer representing clients in these mediation), I fight for a good and proper *business* resolution of a dispute. While sometimes the best way to get to the best result is to play out the litigation or arbitration process (and I can and do so in the proper circumstances) I find that more often than not informal direct settlement of a claim or resolution through the more structured mediation process is more than worth the time and effort.

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