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RECOUPMENT: AN OVERLOOKED DOCTRINE THAT CAN RESHAPE LIEN AND BOND DISPUTES

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Introduction

We are operating in a volatile construction market. Volatility creates pressure, and that pressure often shows up first in payment disputes. When projects costs tighten, the strain is felt not only by owners, but by everyone downstream, including general contractors, subcontractors, material suppliers, equipment lessors, and others whose work and cash flow depend on timely payment.

In that environment, downstream parties are understandably more willing to assert the legal rights available to them when payment disputes arise. Those rights include filing mechanic's liens, asserting payment bond claims, and taking other steps designed to secure payment and preserve leverage.

Those tools exist for a reason. But when lien and payment bond disputes arise, they frequently create a second set of problems that extend far beyond the original payment issue. Attorney's fees escalate quickly. Interest continues to accrue. Positions harden. And instead of pushing the parties toward resolution, the structure of these disputes often drives them further apart. In the worst-case scenario, these disputes can be project and company killers.

This article explains why mechanic's lien and payment bond disputes so often spiral, why the standard responses frequently fall short, and how a less commonly used doctrine under Minnesota law, recoupment, can in the right case offer a more effective path forward.

Why Lien and Bond Disputes Escalate

Mechanic's liens and payment bonds are different legal tools, but they function in similar ways. Both are designed to secure payment by increasing the consequences of nonpayment.

A mechanic's lien attaches to the property and creates immediate business problems. It clouds title, complicates refinancing, and can interfere with sales or project completion. Just as important, and often more damaging in practice, a lien also opens the door to attorney's fee recovery. Under Minnesota law, a lien claimant may be entitled to recover its reasonable attorney's fees, at the discretion of the court, if it prevails in a foreclosure action.[i]

That fee-shifting dynamic is often the single biggest source of conflict in lien cases. Once a lien is filed, the dispute is no longer just about the amount allegedly owed; it becomes about how long the case will last, how much will be spent on lawyers, and who will ultimately bear those costs.

Because lien claimants are often told that their fees are recoverable, fee discipline erodes. The longer the dispute lasts, the harder it becomes to settle—especially when you have multiple lien claimants who are each incurring their legal fees and costs.

Payment bond claims create similar pressure through a different mechanism. A bond claim does not attach to the property, but it brings a surety into the dispute. That alone increases leverage. Once a surety becomes involved, the dispute often becomes more rigid, more expensive, and harder to resolve. A bond claim can also create other problems, particularly on public projects.

In both lien and bond cases, particularly on projects involving multiple claimants, the dispute quickly shifts away from the underlying payment issue. It becomes about leverage, sunk costs, and litigation posture. Risk no longer pulls the parties together. It pushes them apart.

The Standard Responses and Their Limits

Owners typically respond in one of two ways.

The first is to fight the lien or bond claim on the merits and hope to prevail. While sometimes that may be the right approach, it often comes with a predictable downside. As the dispute drags on, attorney's fees, costs, and interest continue to grow. Instead of creating pressure to resolve the case, time increases the cost of compromise.

The second is to bond off the lien or deposit funds with the court to clear title and keep the project moving.[ii] This can be necessary to preserve financing, allow unit sales, or complete construction. But clearing title does not necessarily eliminate the forces driving escalation. In many cases, the dispute continues, and the fee and interest pressure remains.

Payment bond disputes raise additional concerns. Once a surety takes a formal position, it is important to remember that the surety is probably less focused on preserving business relationships or keeping projects alive. The surety's primary interest is protecting and enforcing its indemnity rights. That often means identifying an at-fault party and recovering as much money as possible from that party.

In some cases, that focus can be destructive. A surety-driven dispute can harden positions, prolong litigation, and in extreme situations contribute to the collapse of a project or even a company.

As a result, the standard responses to lien and bond disputes often address surface-level problems, such as title or payment pressure, without addressing the deeper economic dynamics that make these disputes so difficult to resolve.

What Recoupment Is and the Legal Concepts That Make It Work

Recoupment offers a fundamentally different approach.

Recoupment allows a party to pay a disputed claim now to stop ongoing harm, while preserving the right to later recover the portion of that payment it believes should not have been paid.

In the lien and bond context, recoupment typically works like this:[iii] An owner is facing a lien or payment bond claim that is actively harming the project by clouding title, threatening financing, delaying completion, or increasing downstream risk. Rather than litigating while fees and interest escalate, the owner pays the claim under protest, makes clear that the payment is disputed, and removes the lien or bond claim as a source of leverage. The owner then pursues recovery of amounts it contends were overstated or offset by defective work, incomplete performance, back charges, or other contractual defenses.

Although recoupment is fact-specific, courts tend to focus on a few core concepts.

First, the payment must be genuinely disputed. Recoupment is not available when a party knowingly pays an undisputed obligation.[iv]

Second, the payment must be made to avoid real and immediate harm, not merely for convenience or strategy.[v] Courts look at practical realities, not labels. Clouded title, threatened financing, project delays, work stoppages, or similar pressures often satisfy this requirement.

Third, the payer must clearly communicate at the time of payment that the payment is made under protest and that the right to seek recovery is being preserved.[vi] This is not about magic words, but clarity matters.

Fourth, there must be a legitimate basis to seek recovery, such as overstatement, defective or incomplete work, or contractual offsets.[vii]

Why Recoupment Can Change the Economics and When It Makes Sense

When recoupment works, its effects are often immediate.

In lien cases, paying the lien extinguishes it by statute.[viii] If the lien is extinguished, there is nothing to foreclose. As a practical matter, that should also shut down the statutory attorney's fee engine that drives many lien disputes.

In payment bond disputes, timing is critical. Recoupment is often most effective when considered early, before the surety has taken a hard position. Once the surety is fully engaged, and especially once it makes a claim determination and/or issues payment, its indemnity focus adds complexity and reduces flexibility. Addressing the dispute early and communicating clearly with both the claimant and the surety can, if done properly, extinguish the bond claim and remove the surety from the process.

In both contexts, recoupment lowers the temperature. Claimants are paid. Owners regain control of the project. The dispute narrows to a business disagreement about dollars, rather than an existential fight over leverage.

That said, recoupment is not a cure-all. It works best when there is a legitimate dispute over the amount owed, such as overstatement, defective or incomplete work, or contractual offsets. It is not well suited to situations where payment is simply overdue and undisputed.

Voluntary Payments and the Central Risk of Recoupment

This is where recoupment becomes both powerful and dangerous.

Minnesota courts generally do not allow parties to recover voluntary payments.[ix] A voluntary payment is one made with full knowledge of the facts, without compulsion, and without immediate necessity.[x] If a court concludes that a payment was voluntary, the payer is typically stuck with it.

That distinction is critical. If an owner pays a lien or bond claim simply to clean things up, improve leverage, or avoid inconvenience, a court may later conclude the payment was voluntary. This shows that the difference between recoupment and a voluntary payment often turns on compulsion. Courts tend to ask practical questions: Was there a real cloud on title? Was financing at risk? Was the project facing delay or shutdown? Were there reasonable alternatives to payment. Was the payment clearly disputed? These are just some of the examples Courts will consider.

Recoupment is strongest when the payment is made to avoid immediate, concrete consequences that cannot reasonably be postponed. If a lien or bond claim is paid and these risks are not clearly present, the payor may be making a voluntary payment, and some or all of that payment may not be recoverable later.

Conclusion

Mechanic's liens and payment bond claims exist for a reason, and in volatile markets they are used more frequently. But the structure of these disputes often rewards escalation and makes resolution harder than it needs to be.

Recoupment is a less commonly used doctrine that, in the right case, allows parties to stop the compounding harm caused by lien and bond disputes without surrendering their substantive defenses. The tradeoff is risk. If handled casually, recoupment can backfire. If evaluated early and executed carefully, it can be one of the most effective tools available for keeping projects moving and preserving business relationships.

But, the bottom line is this: recoupment should be considered by all parties to a payment dispute early on in the dispute process.

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2/5/2026

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[i] Minn. Stat. § 514.14; See also *Schmoll v. Lucht*, 106 Minn. 188, 118 N.W. 555 (1908).
[ii] Minn. Stat. § 514.10.
[iii] See, e.g. *EnComm Midwest, Inc. v. Larson*, A07-2337, 2009 WL 173318 (Minn. Ct. App. Jan. 27, 2009) (citations omitted); *Peters v. Mut. Ben. Life Ins. Co.*, 420 N.W.2d 908, 915 (Minn. App. 1988); *Tap House Real Estate, LLC v. City of Rochester*, No. 22-cv-492 (ECT/DTS), 2024 WL 3470824, at *3 (D. Minn. July 19, 2024); *Joannin v. Ogilvie*, 52 N.W. 217, 218 (Minn. 1892); *Best Buy Stores, L.P. v. Dev. Diversified Realty Corp.*, No. 05–2310 (DSD/JJG), 2010 WL 4628548, at *2 (D. Minn. Nov. 4, 2010).
[iv] *Id.*
[v] *Id.*
[vi] *Id.*
[vii] *Id.*
[viii] Minn. Stat. § 514.07.
[ix] *Smith v. Schroeder*, 15 Minn. 35, 40 (1870)
[x] *Id.*