



## Client Advisory

April 10, 2026 | by Alex King, Partner and Rachel Broyles, Of Counsel with Dallin Warnick, Law Clerk, drafting assistance

# Colorado Construction Industry Wins: Supreme Court and Legislature Protect Contractors' Verified Statement of Claim and Lien Rights

The past week brought huge wins for the Colorado construction industry. In a rare one-two punch, the Colorado Supreme Court and Colorado's General Assembly have decisively clarified and strengthened contractors' and subcontractors' rights to payment security on both public and private projects.

First, in *Ralph L. Wadsworth Construction Co., LLC v. Regional Rail Partners*, 2026 CO 19, the Colorado Supreme Court reversed the Court of Appeals and confirmed that contractors may include disputed or unliquidated amounts, including delay and disruption damages, in Verified Statements of Claim ("VSCs") on public works projects—and that the penalty for filing a statutorily excessive VSC is limited to loss of statutory remedies. The Court's reasoning will likely apply to mechanics' liens on private projects as well.

Second, the General Assembly enacted Senate Bill 26-074 (signed April 8, 2026), which prospectively amends both the Colorado Public Works Act and the Mechanics' Lien Act to codify these principles and eliminate any uncertainty and should reduce the prevalence of unfounded, aggressive defenses based on "excessive claim" arguments.

Together, these developments protect contractors' payment remedies and significantly reduce the risk associated with asserting disputed claims.

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## I. The *Wadsworth* Decision: Clarifying the Scope and Consequences of Verified Statements of Claim Under the Public Works Act

### A. Disputed or Unliquidated Amounts, Including Delay or Disruption Damages, Are Permissible in VSCs and Likely Mechanics' Liens

In *Wadsworth*, the Colorado Supreme Court held that a VSC under the Colorado Public Works Act, §§ 38-26-101 to -110, C.R.S., may lawfully include disputed or unliquidated

amounts, so long as such amounts are expressly recoverable under the statute. Under C.R.S. § 38-26-107, a contractor may include any unpaid costs for “labor, materials, sustenance, or other supplies” or the costs of providing “laborers, rental machinery, tools, or equipment . . . .” According to *Wadsworth*, therefore, delay and disruption costs may be included in a VSC so long as they “fall within these categories” and were used in the prosecution of the work. *Wadsworth*, ¶ 26. The Court clarified, however, that there must still be a “reasonable possibility at the time of filing that the amount claimed was due or the claimant did not know at the time of filing that the amount claimed was greater than the amount due.” *Wadsworth*, ¶ 29. Lost profits or idle time related to delays or disruptions may not be included.

The Court also rejected the argument that the statutory term “amounts due” necessarily excludes disputed claims, explaining that amounts may be disputed or undetermined and still have a reasonable possibility of being due. In doing so, the Court emphasized the remedial purpose of the Public Works Act—to protect those furnishing labor and materials on public projects where mechanics’ liens are unavailable.

Finally, *Wadsworth* distinguished the excessive mechanics’ lien holding in *Byerly v. Bank of Colorado*, 2013 COA 35, upon which the Court of Appeals relied heavily. This indicates the reasoning behind the *Wadsworth* decision will likely be applied to mechanics’ lien cases going forward in Colorado, giving clarity and security to lien claimants with disputed claims.

## **B. Excessive Claim Penalty Is Limited to Statutory Remedies Only**

Also important, the Supreme Court held that even if a VSC is ultimately found to be excessive, the statutory penalty under § 38-26-110 requires only the forfeiture of statutory rights and remedies under the Public Works Act—not the forfeiture of all legal claims, such as breach of contract.

The Court relied heavily on the parallel structure and purpose of the Mechanics’ Lien Act, under which an excessive lien forfeits lien rights only, not breach of contract or other common-law remedies. This interpretation aligns the Public Works Act with the Mechanics’ Lien Act and clarifies that an excessive claim does not result in forfeiture of all available legal remedies.

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## **II. Senate Bill 26-074: Codifying and Expanding Lien and VSC Rights on Public and Private Projects**

Effective August 12, 2026 (absent a referendum), SB 26-074 amends both the Public Works Act and the Mechanics’ Lien Act to expressly confirm and expand on the principles recently articulated in *Wadsworth*.

### **A. Disputed and Unliquidated Amounts, Including Delay, Lost Productivity, and Disruption Costs, Are Expressly Allowed**

SB 26-074 amends § 38-26-107(1), C.R.S. (Public Works VSCs) and § 38-22-101(1), C.R.S. (Mechanics’ Liens) to provide that claims may include amounts “whether disputed or undisputed.” The bill further defines an amount as “due” if the claimant reasonably believes, in good faith, that it represents the value of labor, services, equipment, or materials furnished—even if the amount is unliquidated or disputed. §§ 38-26-110(3); 38-22-128(3).

Further, SB 26-074 eliminates any ambiguity by expressly authorizing inclusion of delay costs, lost productivity, and other disruption-related costs in both VSCs and mechanics' liens, as long as such costs are otherwise allowable under the contract.

#### **D. Excessive Claim Penalty Is Narrowed**

Most critically, SB 26-074 confirms that filing an excessive VSC or lien results in the loss of the security interest itself, not the forfeiture of *all* claims or remedies. This aligns public and private project remedies and eliminates the disproportionate risk contractors previously faced based on the now-overturned Court of Appeals holding in *Wadsworth*.

The revised statute further provides that a lien or VSC is not deemed excessive merely because a court ultimately awards an amount less than that stated in the lien or claim, so long as the claimant had a good faith basis at the time of filing to believe the amount was due. Accordingly, a claimant's inability to prove every dollar of the amount claimed does not automatically render the lien or VSC excessive. Instead, a court will perform an analysis of the claimant's knowledge at the time of filing.

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### **III. Practical Takeaways for Owners, Contractors, and Sureties**

- Contractors and subcontractors can assert payment claims for disputed lienable work without fearing that subsequent judicial findings will annihilate any chance of recovery.
- Delay and disruption damages may be included in statutory payment claims on both public and private projects.
- Owners and sureties retain protections against bad-faith exaggeration—but not against legitimate disputes.

These developments remove the uncertainty injected into the construction industry by the Court of Appeals and reassert the legislature's stated desire to protect those building Colorado's future.

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*If you have questions about how these changes may affect pending or future projects, claims, or bond disputes, please contact BBG Construction Law.*

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