

# *The Contractors Critic*

*Reporting on Safety, Productivity, and Honesty in the Construction Industry.*

ATLAS MECHANICAL, INC.

## CONSTRUCTION OR LIENS & LITIGATION

### Buyer beware: Atlas files liens against its customers

In the brutally competitive world of construction, some contractors genuinely attempt to “partner” with their clients and fellow contractors. Some construction companies can honestly state that they have never taken legal action against any of their construction customers. They try to settle contract disputes informally. They have always resolved disputes by compromise, discussion, and in the toughest situations, by a mutual agreement for arbitration.

Yet some contractors are still playing hardball. They submit low-ball bids and then insist on change orders. And when the customer or another contractor is late with payments, some promptly slap a lien on the customers’ properties and ask courts to begin foreclosures and auction off the property.

One clue to a contractor’s approach is to review their record on filing liens against the construction customer, even when the actual dispute is with another contractor. All too often filing of a lien means that a court suit will swiftly follow. A contractor’s litigation history is another clue to their business practices.

Atlas cannot honestly state it has never taken legal action against its customers. Although Atlas promises “complete customer satisfaction” on their web site, to the contrary, Atlas has filed over \$1.3 million worth of liens and numerous court suits against multitudes of its own customers.



### Atlas change orders add over \$169K to job

This court suit was preceded by over \$400,000 in liens Atlas filed against the property of the Kona Kai hotel on Shelter Island Drive in San Diego. Koll construction originally subcontracted \$626,427 in HVAC and other mechanical work to Atlas for this hotel renovation project.

After the series of change orders, which are often the bane of the construction industry and a curse to construction customers, the situation soon turned ugly. Atlas claimed they were owed another \$61,819 for change orders, some of which were allegedly orally authorized.

Not surprisingly, Koll refused to pay for the change orders. Atlas claimed that because of \$61,000 in change orders, they were subsequently owed over \$169,000.

Koll and others responded that they had their own causes of action against Atlas. The case was later dismissed.

## Atlas charged with faulty HVAC install in San Diego lawsuit

*Douglas Barnhart v. Atlas Mechanical, Inc, et al*

As mentioned in the list of liens, Atlas filed a lien against Douglas Barnhart for over \$9,000 on a construction job. In this suit, Barnhart sought monetary damages, and perhaps a little revenge, against Atlas and others.

*Barnhart's complaint charges Atlas with defective and improper installation of HVAC equipment.*

Barnhart agreed to provide construction services for the Battle Mountain Company to build an apartment complex and subcontracted the HVAC work to Atlas.

When the job was finished, Battle Mountain charged that the HVAC system was undersized and incompatible. It's easy to imagine how an undersized air conditioning system during a San Diego summer could cause tenants to complain.

Barnhart's court complaint charges that Atlas performed defective and improper work in connection with the installation of the undersized and inappropriate HVAC equipment.

# Atlas has problem choosing a subcontractor to meet job goals

*Atlas Mechanical v. Sunel Corporation, et al*

This 2009 case stemmed from Atlas getting hired for a public work construction job at Cal Poly Tech in San Luis Obispo. Atlas then subcontracted \$1.32 million of work to Sunel, to install a solar water heating system in 618 apartments and 40 common areas.

Atlas chose its subcontractor poorly. According to the Atlas

complaint, Sunel was unable to meet its production goals and asked for another \$540,000 to cover additional expenses. When Atlas refused to pay, Sunel stopped work and left.

Atlas sued Sunel for \$281,304 and other costs.

To the construction customer, the real issue may be why Atlas failed to properly supervise the subcontractor.

*One clue to a contractor's approach is to review their record on filing liens against the construction customer, even when the actual dispute is with another contractor.*

### INSIDE THIS ISSUE

#### Cover stories

Buyer beware: Atlas files liens against customers

Atlas change orders add over \$169K to job

2 Problem Subcontractor Faulty HVAC

3 Lien number list

4 Countersued for \$50K

5 \$1.8M Settlement

7 Atlas litigation chart

8 Job balloons to \$938K  
In Brief  
Atlas Corporate Information

## Atlas has filed liens against many of its customers

When a construction company files a lien against their own construction customers' properties, it can turn into a nightmare. An active lien could encumber a property, preventing the owner from selling or leasing it, financing loans and using the lien property as collateral. In some instances banks can terminate loans when liens are filed against the subject property. Often hard-nosed construction contractors follow up on their liens by suing the construction customer.

It's especially aggravating when construction customers face liens that are filed through no fault of their own, but because of a dispute between contractors. That's the case in many of the following Atlas liens:

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**Carlsbad Beach Hilton Garden Inn, Carlsbad, Calif.:** Atlas filed a lien for \$56,318 against the Carlsbad Beach Hilton Garden Inn in August 2000, even though Atlas' dispute was apparently with Haskell Constructors (fka MBK Construction).

**Rancho Carillo Apartments, Carlsbad, Calif.:** Atlas filed a lien for \$27,853 against this apartment complex in May 2000, even though the dispute was apparently with Roel Construction.

**Sunrise LaCosta Assisted Living, Carlsbad, Calif.:** Atlas filed a lien for \$59,578.16 against the Sunrise LaCosta Assisted Living facility in August 1998, even though Atlas' dispute was apparently with Koll Construction.

**Marriot Residence Inn, San Diego Calif:** Atlas filed a lien for \$40,983 against the Marriot Residence Inn in July 1999 even though the dispute was apparently with Roel Construction.

**Little Italy Family Housing, San Diego, Calif.:** Atlas filed a lien for \$24,506 against this facility in August 2000, even though Atlas' dispute was apparently with Roel Construction.

**Marriot Brighton Garden, Carlsbad, Calif.** Atlas filed a lien for \$133,364 against the Marriot Brighton Garden hotel in December 1998, even though Atlas' dispute was apparently with Koll Construction.

**Sony San Diego Warehouse:** Atlas filed a lien for \$9,655 against this distribution center in August 1997, even though Atlas' dispute was apparently with

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**Atlas Liens**  
cont'd on page 4

## Lien document numbers

**Carlsbad Beach Hilton Garden Inn; Carlsbad, Calif.**  
#2000-0511572

**Rancho Carillo Apts Carlsbad, Calif.**  
#2000-0277201

**Sunrise Lacosta Assisted Living; Carlsbad, Calif.**  
#1999-0643953  
#1999-0591876

**Marriot Residence Inn San Diego Calif.**  
#1999-0499842

**Little Italy Family Housing, San Diego, Calif.**  
#1999-0499841

**Marriot Brighton Garden, Carlsbad, Calif.**  
#1998-0816415

**Sony San Diego Warehouse**  
#1997-0394270

**Logan Avenue Housing Dev. San Diego, Calif.**  
#1997-0046791

**CMR Courtyard San Diego, Calif.**  
#1996-0169274

**Mission Turner/Centex Golden; San Diego, Calif.**  
#1996-0145708

**Eastlake Development Co. San Diego, Calif.**  
#1996-0115313.

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**LIEN NUMBERS**  
cont'd on page 4

## LIEN NUMBERS

CONT'D FROM PAGE 3

### Kona Kai Club & Inn

San Diego, Calif.

#1995-0597049

#1995-0104225

#1995-0120297

#1995-0178147

#1995-0182702

### Coronado Cays Yacht Club

Coronado, Calif.

#1994-0359535

### Junior Seau

La Jolla, Calif.

#1994-0359535

### City Front Terrace

San Diego, Calif.

#1994-0082797

### Oliver Mcmillan

San Diego, Calif.

#1994-078550

### Sammy's Pizza

San Diego, Calif.

#1994-0738549

### Q-tron

San Diego, Calif.

#1994-0177998

### The Park At Little Italy

San Diego, Calif.

#2003-0154601

### Aldea Homes

San Diego, Calif.

#1994-0247854

### K & K Development

San Diego, Calif.

## LIEN NUMBERS

cont'd on page 5

## ATLAS LIENS CONT'D FROM PAGE 3

Nielson Dillingham Builders.

**Logan Avenue Housing Development, San Diego, Calif.:** Atlas filed a lien for \$25,689 against this project in February 1997 even though Atlas' dispute was apparently with the Golden Cab Joint Venture.

**CMR Courtyard, San Diego, Calif.:** Atlas filed a lien for \$7,230 against the CMR Courtyard in 1996, even though Atlas' dispute was apparently with Nielson Dillingham Builders.

**Mission Turner/Centex Golden, San Diego, Calif.:** Atlas filed a lien for \$3,030 against this facility in 1996, even though Atlas' dispute was apparently with construction giant Centex Golden, one of the largest commercial and residential builders in the United States.

**Eastlake Development Company, San Diego, Calif.:** Atlas filed a lien for \$12.036 against this developer in 1996 regarding a Chula Vista project, even though Atlas' dispute was apparently with Collins General Contractors.

**Kona Kai Club & Inn, San Diego, Calif.:** Atlas filed three liens totaling over \$400,000 against this hotel in 1995, even though Atlas' dispute was apparently with Koll Construction. Atlas followed up on this lien with a potentially ruinous court suit against the hotel and Koll.

### Atlas Liens

cont'd on page 5

## Atlas countersued for \$50K on a federal job

*Atlas v. Metcalf Construction, et al; Case #07-cv-00288*

Atlas was the air conditioning subcontractor on a \$43 million construction job at the Kaneohe Marine Corps base in Hawaii. When the job went poorly, Atlas sued for \$386,317 in 2007.

Atlas claimed there were delays and other problems that did not involve them, but cost the company money. At one

point Atlas had to cut out framing, also at no fault of their own. Metcalf and the other defendants responded with a counterclaim for \$50,000 against Atlas for failing to perform work. The counterclaim argues that Atlas failed to fulfill all conditions, breached the contract, failed to mitigate damages, and had "unclean hands" in this matter.

This suit was ultimately dismissed by the judge.



**Coronado Cays Yacht Club, Coronado, Calif.:** Atlas filed a lien for \$6,597 against this club in 1994, even though Atlas' dispute was apparently with Douglas Barnhart. Barnhart would eventually sue Atlas and others in a court suit.

**Junior Seau, La Jolla, Calif.:** Atlas filed a lien for \$500 against this property owner in 1994, even though Atlas' dispute was apparently with Bill Smith of Escondido, California.

**City Front Terrace, San Diego, Calif.:** Atlas filed a lien for \$45,191 against this facility in 1994, even though Atlas' dispute was apparently with Koll Construction.

**Oliver Mcmillan, San Diego, Calif.:** Atlas filed a lien for \$56,318 against this entity's property in 1994, even though the dispute was apparently with Neilson Construction.

**Sammy's Pizza, San Diego, Calif.:** Atlas filed a lien for \$2,427 against this pizza place in 1994, even though Atlas' dispute was apparently with Neilson Construction.

**Q-tron San Diego, Calif.:** Atlas filed a lien for \$110,067 against this entity's property in 1994, even though Atlas' dispute was apparently with Neilson Construction.

**The Park At Little Italy, San Diego, Calif.:** Atlas filed a lien for \$243,523 against this entity's property in 1993, even though Atlas' dispute was

**Atlas Liens**  
cont'd on page 6

## *Atlas and others pay \$1.8M settlement over defective construction charges*

*Coronado Pointe v. Atlas Mechanical, et al*

It seemed like a tidy construction project. Build 80 residential condo units with airy, landscaped common areas in sunny San Diego. Instead, it turned into a mess of substandard housing and a morass of liens, cross-complaints, and court suits involving defective construction allegations against Atlas and 20 other defendants. Atlas eventually ended the cases by sharing in a settlement payment of almost \$2 million, ten years after construction originally started.

## LIEN NUMBERS

CONT'D FROM PAGE 4

#19930161732

**La Costa Brava.  
San Diego, Calif.**  
#1993-0188723

**Keithy, Kiethy, & Moses  
San Diego, Calif.**  
#1993-0527183

**Coronado Point Condo Corp.  
San Diego, Calif.**  
#1993-0336063  
#1993-0045515  
#1993-0049091  
#1993-0156763

**615 West Del Norte  
Partnership  
Escondido, Calif.**  
#1993-0589271

**GR Smith Development  
San Diego, Calif.**  
#1993-0045516

**Coronado Beach Resort  
San Diego, Calif.**  
#1992-0783952

**Fir Lofts  
San Diego, Calif.**  
#1992-0801700

**Home Town Buffet  
San Diego, Calif.**  
#1992-0801701

**Peninsula Development  
San Diego, Calif.**  
#1992-0034473

**\*Rick Gaunt d.b.a  
San Diego, Calif.**  
#1992-0034474

## Atlas Lawsuit Case Numbers

**Atlas v. Bre Properties,  
Others**

Orange County, Calif.  
#02cc13070

**Comley v. Bre Properties**  
#02cc01689

**Atlas v. Wr Chavez  
Construction**  
#02-cv-01021

**Atlas v. Landmark  
Organization, Others**  
#02cv915xr

**Atlas v. Metcalf  
Construction, Others**  
# 07-cv-00288

**Douglas Barnhart v. Atlas,  
Others**  
#679886

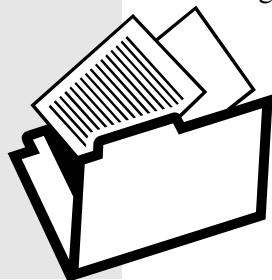
**Atlas v. Kona Kai, Koll  
Construction, And Others**  
#686701

**Atlas v. Camden  
Development, Others**  
#Gic805508  
#Gic811142

**Atlas V Sunel Corporation,  
Others**  
#37200900083587cubcctl

**Coronado Pointe V Atlas,  
Others**  
#724308

**Atlas v. Mk-ferguson**  
#9835053  
#9736024



apparently with Camden Development.

**Aldea Homes, San Diego, Calif.:** Atlas filed a lien for \$3,538 against this entity's properties in 1994, even though Atlas' dispute was apparently with Comport Construction.

**K & K Development, San Diego, Calif.:** Atlas filed a lien for \$11,873 against this entity's properties in 1993, even though Atlas' dispute was apparently with Team General Contractors.

**La Costa Brava, San Diego, Calif.:** Atlas filed a lien for \$49,869 against this entity's property in 1992, even though Atlas' dispute was apparently with GSC Associates.

**Keithy, Kiethy, & Moses, San Diego, Calif.:** Atlas filed a lien for \$6,221 against this entity in 1994, even though Atlas' dispute was apparently with Douglas Barnhart.

**Coronado Point Condo Corporation, San Diego, Calif.:** Atlas filed a lien for \$105,936 against this entity's property in 1993, although their dispute was apparently with Neilson Construction.

**615 West Del Norte Partnership, Escondido, Calif.:** Atlas filed a lien for \$5,195 against this entity's property in 1993.

**Gr Smith Development, San Diego, Calif.:** Atlas filed a lien for \$3,253 against this entity's property in 1992.

**Coronado Beach Resort, San Diego, Calif.:** Atlas filed a lien for \$86,936 against this entity's property in 1993

**Fir Lofts, San Diego, Calif.:** Atlas filed a lien for \$9,207 against this entity's property in 1992, although the dispute was apparently with Comfort Construction.

**Home Town Buffet, San Diego, Calif.:** Atlas filed a lien for \$8,131 against Home Town Buffet in 1992, although the dispute was apparently with Harper Construction.

**Peninsula Development, San Diego, Calif.:** Atlas filed a lien for \$5,651 against Peninsula Development in 1992, although the dispute was apparently with Rick Gaunt Construction.

# Atlas Mechanical's litigation history

The following list is only a partial record of litigation involving Atlas Mechanical and its related companies.

The next issue of the Contractors Critic will feature a more complete record of the company's extensive legal history.

File Date	Case #	Case Name	Courthouse Location
02/18/2009	37-0983587CU-BC-CTL	Atlas Mechanical v Sunel Corp.	San Diego, CA
05/30/2007	1:07cv00288HGKSC	Atlas Mechanical v Metcalf Const. Co.	US Dist. Court, HI
12/22/2003	GIC823195	Atlas Mechanical v City Front Terrace HO Assoc.	San Diego, CA
10/21/2003	GIC819814	Atlas Mechanical v Pauline J. Parrent	San Diego, CA
05/20/2003	GIC811142	Atlas Mechanical v Camden Development	San Diego, CA
05/13/2003	GIC805508	Atlas Mechanical v Camden Development	San Diego, CA
09/26/2002	GIC806166	Morada Maint Corp v Battle Mountain	San Diego, CA
09/16/2002	5:02cv--915XR	Atlas Mechanical v Landmark Organization	US Dist. Court, TX
08/06/2002	02CC13070	Atlas Mechanical v Bre Builders, Inc.	California
07/08/2002	GIC791960	Magellan Morada Prop. V Douglas E. Barnhart, Inc.	San Diego, CA
05/24/2002	3:02cv01021KPOR	Atlas Mechanical v Insurance Co of West	San Diego, CA
03/29/2002	SC126980	Air Treatment Corp. v Atlas Mechanical	San Diego - Kearney Mesa
02/04/2002	GIC782580	Atlas Mechanical v Dunham-Bush, Inc.	San Diego, CA
01/17/2002	O2CC01689	Comley v Bre Properties	Orange, CA
11/21/2001	GIC778582	Atlas Mechanical v York International Corp	San Diego, CA
07/20/2001	ON006641	Atlas Mechanical, Inc v Roel Construction CO	San Diego - Vista, CA
05/26/2000	GIC74889	Sunstone Hotel Investors v BGA Development, Inc.	San Diego, CA
09/29/1999	GIC736180	Atlas Mechanical v Roel Construction Co.	San Diego, CA
06/11/1999	731612	Atlas Mechanical v Rio Del Oro Condo Assoc.	San Diego Appellate Court, CA
09/21/1998	724308	Coronado Pointe Homeowners Assoc. v Coronado Point	San Diego, CA
12/28/1995	695856	Condos	San Diego, CA
03/22/1995	686701	Carriage Rd Townhouse HO v Carriage Rd TH Ltd	San Diego, CA
08/16/1994	679886	Atlas Mechanical v Dunham-Bush, Inc.	San Diego, CA
10/22/1993	L565143	Douglas E. Barnhart, Inc. v Merrick & Assoc.	San Diego, CA
06/10/1993	665410	California Cooling Co.	San Diego, CA
		Alpine General, Inc. v Nielson Const. Co.	

## Atlas job balloons from \$699K to \$938K

*Atlas Mechanical v. Camden Development, et al*

Atlas was hired for \$699,500 in construction work on The Park in Little Italy. Apparently, that was not enough money, because over \$17,000 in change orders were later “orally” approved. When Camden Development, the general contractor, declined to pay the orally approved change orders, Atlas sued everyone in sight for \$242,523 and alternately claimed they were owed a total of \$938,143. Atlas also filed liens against the property of the construction customer, even though the dispute was between Atlas and Camden.

*How would you feel if your bank received threatening correspondence from one of your contractors?*

Atlas even served a stop notice to the customer’s lender. How would you feel if your bank received threatening correspondence from one of your contractors?

## In Brief: Litigious Atlas

*Atlas Mechanical v. Bre Properties, et al; Case #02cc13070; Filed 2002; Orange County, Calif.* Atlas sued several parties in this court suit.

*Comley v. Bre Properties; Case #02cc01689.* Atlas was countersued.

*Atlas Mechanical v. WR Chavez Construction; Case #02-cv-01021.*

Atlas was a heating, venting and air conditioning (HVAC) subcontractor to WR Chavez Construction on a big, \$40 million job at the Navy Reserve Training Center in Pasadena. WR Chavez agreed to pay Atlas \$412,809 for their work, but Atlas ultimately billed for \$488,545. Not surprisingly, WR Chavez balked at the inflated amount and Atlas made a federal court case out of it. Atlas claimed that job delays that were no fault of their own caused the extra \$86,056 in charges. Just two months later, Atlas dismissed the suit.

*Atlas Mechanical v. Landmark Organization, et al.* Atlas sued for non-payment on a federal job and Landmark and their insurance company, Safeco, filed a counterclaim against Atlas. The case was later settled, with Atlas covering their own court costs.

## Atlas Mechanical Corporate Information

8260b Camino Santa Fe

San Diego, CA 92121

Tel (858)554-0700

[www.atlasmechanical.com](http://www.atlasmechanical.com)

**Sam Shekhter** - President/CEO

**Jim Clarke** - VP, Construction

**Sergey V. Levinson** - VP, Pre-Construction



# LASER, INC.

LEGAL AND SAFETY EMPLOYER RESEARCH

654 Kentucky Street, Gridley, California 95948 Ph. 530-846-6352

*The information contained in The Contractor's Critic does not reflect a complete history of the business practice of Atlas Mechanical and/or its related companies. LASER is publishing information that contractors do not and will not publish about themselves. LASER has relied on the public record to present this information to the public in an effort to promote safety, productivity, honesty, and environmental compliance in the construction industry.*

*Atlas Mechanical has been given the opportunity to review this material for errors and inaccuracies. As of publication, Atlas Mechanical has not made any specific suggestions or refuted any of the specific information in this publication.*

*LASER, Inc. will continue to seek and publish additional data. For more information, please contact James Wilson at (530) 846-6352 or online at [laserinc@laser-inc.com](mailto:laserinc@laser-inc.com). For past issues of The Contractor's Critic on this company and others, please visit LASER's website at [www.laser-inc.com](http://www.laser-inc.com)*