

# Ethanol Manufacturing Process: Minnesota Appellate Court Addresses Whether Contractor was Entitled to Mechanics Lien



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The Court of Appeals of Minnesota addressed in a recent opinion whether removal of thin stillage constituted an improvement to real property such that it would entitle a contractor to a mechanic's lien. See *M & G Servs., Inc., v. Buffalo Lake Advanced Biofuels, LLC*, 895 N.W.2d 277 (Minn. Ct. App. 2017).

The removal and distribution of excess thin stillage was being undertaken in the operation of a facility manufacturing ethanol.

In *M & G*, a plant-owner (Purified Renewable Energy LLC) and a mortgagee purchased an ethanol plant located in Renville, Minnesota. The plant-owner hired various contractors. M & G Services was hired to clean and repair the facility.

Ideally, ethanol plants produce only a small amount of watery byproduct known as thin stillage. However, Renville plant had a number of structural and mechanical problems that made ethanol production difficult. Significant thin stillage was produced. The plant-owner approached a cattle company, negotiating an arrangement under which M & G would bring the excess thin stillage to the farm as cattle feed.

The purchase of the plant was subsequently consummated. On the same day M & G was paid a mechanic's lien. However, M & G continued its work at both the plant and the farm, eventually demanding additional payment (nearly \$180,000 by the time of trial) under an amended mechanic's lien.

A Minnesota district court awarded foreclosure and attorney's fees, and the mortgagee, along with a new plant-owner, appealed.

The Court of Appeals reversed, finding neither the removal of thin stillage itself nor the labor and materials used to do so were covered by Minnesota's mechanic's lien statute.

Both parties agreed that removal of excess thin stillage was necessary for the plant's operations. However, the court held this did not constitute an "improvement of real estate" as required by the statute. The plain language of the statute did not include the removal of byproduct, and the removal of waste was not considered an "alteration" or "repair" that improves the real estate.

The Court analogized that it was no different than a hospital or a restaurant removing its waste. Similarly, M & G's labor and materials furnished to haul the byproduct were not in pursuit of the purposes explicitly mentioned in the statute and did not improve the construction of the plant itself.

The Court of Appeals therefore held that the district court erred in awarding the contractor its amended mechanic's lien under Minnesota law.

[A copy of the opinion can be downloaded here.](#)