

Why Contractors Should Notify Bonding Companies Quickly



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With the rise in federal and state construction projects, and the need for contractors and other construction professionals to seek out these projects in the present economy, focus on the [Miller Act](#) and your state's "Little Miller Act" is key. As a quick reminder, the Miller Act essentially requires that a general contractor carry a payment and performance bond on any project it constructs valued at over \$100,000. Such bonds assure payment to subcontractors and suppliers and assure completion to the owner (in this case a federal agency or

In order to claim on such a bond, a subcontractor or construction material supplier must give notice to the general contractor (and preferably the surety) within 90 days of the last date of work or material delivery. After that the subcontractor or supplier has a year to file suit should suit become necessary.

As always, a construction contract is involved and that contract likely provides for prejudgment interest on any amounts left unpaid. The interaction between the Miller Act and such a provision was recently examined by the Eastern District of Virginia Federal District Court. In [Attard Industries Inc. v. U.S. Fire Ins. Co.](#) the Court faced the question of when prejudgment interest begins to accrue against a surety. The short version of the facts is the following: after judgment, the surety, U. S. Fire, challenged the judgment and argued that the jury awarded prejudgment interest from too early a date when it awarded interest beginning at the date of breach as opposed to the date of the first notice by the subcontractor to the surety.

The Court agreed with U. S. Fire, reasoning that the purpose of the notice is to give the surety a chance to resolve the claim and that a surety has no obligation or ability to control when a demand on its bond is made. Therefore, the Court concluded (along with several jurisdictions cited in the opinion) that prejudgment interest can only be awarded beginning with the date of the first demand and sliced a bit over two years worth of interest from the verdict amount.

The takeaway? If you are a subcontractor or supplier on a federal construction project, notify the surety promptly and demand that it make payment pursuant to the bond. The

earlier the better. As this case illustrates, you could lose a significant amount of money on your claim if you don't.

If you are worried that the notice may be too early (or too late) consult a [Virginia construction attorney](#) for advice.

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