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Designer Qualifies as Subcontractor Under Colorado Prompt Payment Act

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The court in *AECOM v. Flatiron* was back at it last week with rulings on the parties' post-trial motions. As you may recall, the case was tried to a jury earlier this year. The jury returned a verdict for AECOM in the amount of $5 million. Flatiron's modified total cost counterclaim in the amount of $250 million was rejected. AECOM's post-trial motion sought to add $2.5 million in prejudgment interest and another $4 million in "penalty interest" under the Colorado Prompt Payment Act. That law allows "subcontractors" to receive at least 15% interest if a contractor fails to pay its subcontractor within seven calendar days of receiving payment. The question was whether AECOM, a designer, qualified as a "subcontractor" within the meaning of the act, which defines contractor as "any person, company, firm, or corporation which is a party to a contract with a contractor to construct, erect, alter, install, or repair any highway,…and which, in connection therewith, furnishes and **performs on-site labor** with or without furnishing materials" C.R.S. § 24-91-102(4) (emphasis added). Flatiron argued that AECOM was not a subcontractor because, as a designer, it performed no on-site labor.

Based on the evidence presented at trial, the court found that AECOM did perform some on-site labor and therefore could potentially recovery penalty interest under the Colorado Prompt Payment Act. However, the court held that AECOM could not recover such interest in this case because it failed to present evidence as to when Flatiron had been paid for AECOM's work. Having presented no evidence on that issue, AECOM could not meet its burden of proof as to the amount of penalty interest owed. The court declined to reopen the record to receive evidence on that issue, reasoning as follows:

> In its discretion, the Court concludes that ATS had a chance to present evidence supporting its request for penalty interest at trial and failed to adequately do so. Reopening the evidentiary record in a case that was tried to a jury after the jury has issued its verdict in no small thing in American jurisprudence. It is a step that would almost most certainly raise important Seventh Amendment issues. The Court will not here engage in such an undertaking. The Court perceives no fundamental miscarriage of justice to hold ATS to the evidence it adduced at trial, and no more. ATS will not receive a second bite at the apple on the issue of penalty interest.

The court did award AECOM prejudgment interest in the amount of $2.5 million. A copy of the court's opinion is available here.

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