

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, for the
use and benefit of MOUNTAIN UTILITIES,
INC., a Washington corporation,

Plaintiff,

v.

FIDELITY AND DEPOSIT COMPANY
OF MARYLAND, an Illinois corporation;
ZURICH AMERICAN INSURANCE
COMPANY, a New York corporation;
AMERICAN HOME ASSURANCE
COMPANY, a New York corporation;
WOOD ENVIRONMENT &
INFRASTRUCTURE SOLUTIONS, INC., a
Nevada corporation; AMEC FOSTER
WHEELER ENVIRONMENT &
INFRASTRUCTURE, INC., a Nevada
corporation; ANDERSON
ENVIRONMENTAL CONTRACTING,
LLC, a Washington limited liability
company,

Defendants.

Case No. 2:19-cv-00293-RCT

**MEMORANDUM DECISION AND
ORDER ON PREJUDGMENT
INTEREST**

The Court has before it Anderson Environmental Contracting (Anderson), and Third Party Defendant Travelers Casualty and Surety Company of America's (Travelers) Motion for Prejudgment Interest (Dkt. 255). Anderson and Travelers move the Court to award prejudgment interest in the amount of \$435,521.10. *Id.* at

2. For the reasons stated below, the Court instead awards Anderson and Travelers prejudgment interest at 12% from March 15, 2021, until August 26, 2022, totaling \$201,429.35, and from each day past August 26, 2022, until the entry of final judgment.

After a bench trial, this Court made Findings of Fact and Conclusions of Law (Dkt. 248) and entered Judgment in a Civil Bench Trial (Dkt. 248-1) in favor of Anderson and Travelers. The Judgment included an award of prejudgment interest at 12% per annum on the amount of \$1,158,187.00 awarded to Anderson. At issue now is the date from which the prejudgment interest should be awarded.

Anderson and Travelers argue prejudgment interest should run from the date of individual invoices and Change Order Requests (Dkt. 255 at 3–6). Defendants Wood and the Wood Sureties contend that if prejudgment interest is awarded, it should be calculated from the date Anderson’s expert, Gary Moorhead, submitted his report—March 15, 2021—and not from when different invoices entered into evidence show work was performed. (Dkt. 257 at 5).

“Liability for interest in a suit under the Miller Act is covered by the law of the state where the contract and bond were performed.” *Am. Sur. Co. of New York v. U.S. for Use & Benefit of B & B Drilling Co.*, 368 F.2d 475, 479 (9th Cir. 1966). Idaho’s prejudgment interest rate is 12% per annum. I.C. § 28-22-104. Under Idaho law, “[i]nterest should be allowed as a matter of law from the date the sum became due in cases where the amount claimed, even though not liquidated, is

capable of mathematical computation.” *Obray v. Mitchell*, 567 P.2d 1284, 1290 (Idaho 1977). A claim is liquidated if “the evidence furnishes data which, if believed, makes it possible to compute the amount with exactness, without reliance upon opinion or discretion. *Ross v. Ross*, 178 P.3d 639, 642 (Idaho Ct. App. 2007) (citing *Seubert Excavators, Inc. v. Eucon Corp.*, 874 P.2d 555, 561 (Idaho Ct. App. 1993)).

The Court agrees with Wood and the Wood Sureties that prejudgment interest should be calculated from March 15, 2021—the date of Anderson and Traveler’s expert’s report—and not from the dates on the individual invoices. This is because March 15, 2021, is the date on which the amounts became both liquidated and capable of mathematical computation.

In both his expert report (Dkt. 83-2) and trial testimony, Anderson’s forensic accountant Moorhead discussed the additional calculations and analyses he performed that resulted in his damages estimate. Wood and the Wood Sureties received that report on March 15, 2021. (Dkt. 257 at 5–6). Accordingly, the Court finds March 15, 2021, is the date on which Wood and the Wood Sureties would have been able to calculate the damages because Moorhead’s report went beyond merely adding or subtracting numbers. He also took into account field overhead and general and administrative expenses applicable to the project— numbers that Wood and the Wood Sureties would not be able to have calculated themselves before Moorhead completed his expert report.

Therefore, the Court awards Anderson and Travelers prejudgment interest at 12% running from March 15, 2021, until August 26, 2022, totaling \$201,429.35 and from each day past August 26, 2022, until the entry of final judgment.

IT IS SO ORDERED.



DATED: September 29, 2022

Richard C. Tallman

Richard C. Tallman
United States Circuit Judge