

Avoid Prejudgment Interest By Expressly Saying So in the Contract

Striking an interest provision from a draft subcontract wasn't enough to keep a party to the agreement from being required to pay interest, according to a review of a Missouri case by **Jane Fox Lehman** in Pepper Hamilton's **Constructlaw** blog.

When the general contractor later failed to pay the subcontractor, the sub sued and won a verdict that included prejudgment interest at the rate of 9 percent pursuant to Missouri law. The general contractor appealed.

Lehman explains the outcome: "The court held that it could not consider the stricken interest provision because it was extrinsic evidence. 'The rationale,' it explained, 'is that the writing excised from the agreement, whether by way of striking, erasing, or simply transferring the agreement to a new piece of paper without the stricken language, is not part of the agreement between the parties.'"

Because the parties had failed to reach an express agreement on an interest rate, the trial court's ruling was upheld.

Read the article.