

When does the statute of limitations for filing a payment bond claim under the Little Miller Act begin to run?

By Christopher Solop

Mississippi's Little Miller Act, *Miss. Code Ann.* §§ 31-5-51, *et seq.*, which is modeled after the federal Miller Act, 40 U.S.C. §§3131, *et seq.*, requires that a subcontractor file suit on its payment bond claim "within one (1) year after the day on which the last labor was performed or material was supplied by the person bringing the action and not later." *Miss. Code Ann.* § 31-5-53(b). This language appears to be straight forward. Nonetheless, the majority of appellate circuit courts have taken the position that "labor" or "material" furnished for minor work (e.g., punch list, remedial, or warranty-related work) does not toll the statute of limitation. Only "significant" work (relative to the nature of the subcontract work) constitutes "labor" under the Miller Act. Even where the subcontractor has a remaining contractual obligation to perform punch list items or minor corrective work, such work will not toll the 1-year statute of limitation. This means that a subcontractor should carefully monitor the date the last of its labor or material was furnished that rendered their portion of the work functional or substantially complete.