

Glazer v. State

Full Citation: Glazer v. State, No. CV-17-0229-PR, 2018 WL 4039524 (Ariz. Aug. 21, 2018).

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Opinion's Author: Justice Brutinel

Joined By: Chief Justice Bales, Vice Chief Justice Pelander, and Justices Timmer, Bolick, Lopez, and Berch (retired)

Practitioners: For quick reference, please see the "Issue" and "Holding" sections.

Facts: In 2007, Diana Glazer lost her husband and daughter in a car accident. She successfully sued the State for negligently failing to install a freeway median barrier or warn of its absence, and was awarded \$7.8 million.¹

The Arizona Department of Administration's ("Department") risk management section decided to pay the judgment from the State's Risk Management Revolving Fund ("Revolving Fund"), but an accounting technician accidentally paid it from the Construction Insurance Fund ("CIF"). When they caught the mistake, the Department repaid the CIF with money from the Revolving Fund. The Revolving Fund exists to pay claims against the State and buy insurance. The State self-insures for claims up to \$7 million and purchases an umbrella insurance policy to reimburse itself for payments in excess of that amount.

A.R.S. section 44-1201(B) prescribes the post-judgment interest rate during pendency of appeal for payments paid out of the CIF.² At the time, that rate was 4.25% per year. A.R.S. section 41-622(F) prescribes the post-judgment interest rate during pendency of appeal for payments paid of the Revolving Fund.³ At the time, that rate was less than 1%.

Procedural History: The case is currently before the Arizona Supreme Court. At the trial level, the parties filed cross-motions for summary judgment on the issue of post-judgment interest accrued during pendency of appeal—Glazer arguing for the higher interest rate prescribed by A.R.S. section 44-1201(B) upon payments from the CIF, and the State arguing for the lower interest rate prescribed by A.R.S. section 41-622(F) upon payments from the Revolving Fund. The superior court granted summary judgment for the State.

Upon Glazer's appeal, the Arizona Court of Appeals affirmed that the mistaken payment from the CIF had no bearing upon the post-judgment interest rate. However, the court further found that only the \$7 million in self-insured judgment paid by the State qualified for the reduced rate under A.R.S. section 41-622(F), and the remaining \$800,000 to be paid by the umbrella insurance policy did not.

The Arizona Supreme Court granted the State's petition for review of the interest rate upon which the judgment would accrue during pendency of appeal.

¹ See Glazer v. State, 347 P.3d 1141 (Ariz. 2015).

² ARIZ. REV. STAT. ANN. § 44-1201(B) (2018).

³ See ARIZ. REV. STAT. ANN. § 41-622(F).

Issue: Arizona self-insures up to \$7 million for claims against the State paid out of the Revolving Fund, and has an umbrella insurance policy for excess payments. Does the portion of a judgment that exceeds the State’s self-insured retention qualify for a reduced post-judgment interest rate under A.R.S. section 41-622(F)?

Holding: Yes, the lower interest rate in A.R.S. section 41-622(F) applies to all judgments against the State that are paid out of the Revolving Fund, including the portions of those judgments that may be later reimbursed by the State’s excess insurer.⁴

Disposition: The court of appeals’ decision is affirmed in part, insofar as the reduced interest rate under A.R.S. section 41-622(F) was the proper rate to apply to this judgment.⁵ The court of appeals’ judgment is vacated in part and remanded to calculate costs insofar as the court found the portion of the judgment to be paid by the State’s insurer does not qualify for the reduced interest rate.⁶

Rule: When determining post-judgment interest rates during pendency of appeal, the judgment amount within the State’s self-insured retention is not distinguished from the amount covered by excess insurance.

Reasoning:

- Although the parties construe the meaning of section 41-622(F) differently, a statute is only deemed “ambiguous” when it is open to multiple reasonable interpretations.⁷ That is not the case here. Section 41-622(F) provides only one requirement for a lower interest rate: that the judgment be paid for out of the Revolving Fund.⁸ It provides no exceptions, conditions, or qualifications regarding excess insurance that the State may purchase.⁹ Further, section 41-622(A) provides that the State may purchase excess insurance using the fund.¹⁰ Additionally, section 41-622(E) contemplates the State being reimbursed by insurance or other collateral sources for Revolving Fund payments.¹¹ The legislature clearly knew of the possibility of excess insurance coverage, and consciously decided not to make it an exception to the rate in section 41-622(F).¹²
- Both the House bill summary and the Senate Committee minutes proved that passing section 41-622(F) was meant to save the State money by lowering interest rates for any judgments against the State while the judgment is under appeal.¹³

⁴ Glazer v. State, No. CV-17-0229-PR, 2018 WL 4039524, at ¶ 21 (Ariz. Aug. 21, 2018).

⁵ *Id.* at ¶ 22.

⁶ *Id.*

⁷ *Id.* at ¶ 12 (citing Ariz. Citizens Clean Elections Comm’n v. Brain, 322 P.3d 139, 142 (Ariz. 2014)).

⁸ *Id.* at ¶ 13 (citing § 41-622(F)).

⁹ *Id.*

¹⁰ *Id.* at ¶ 16.

¹¹ *Id.* at ¶ 17.

¹² *See id.* at ¶ 21.

¹³ *Id.* at ¶ 20–21.

Neither document distinguishes interest rates for portions of the judgment paid by the State's excess insurer.¹⁴ Consistent with this rationale, the State saves money by way of lower insurance premiums when the interest rate charged to an insurer's excess portion of a judgment is lower.¹⁵

¹⁴ *Id.* at ¶ 20.

¹⁵ *See id.* at ¶ 21.