

Twin City Fire Ins. Co. v. Leija

Full Citation: Twin City Fire Ins. Co. v. Leija, No. CV-17-0280-PR, 2018 WL 3651026 (Ariz. Aug. 2, 2018).

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Opinion's Author: Justice Pelander

Joined By: Chief Justice Bales, Vice Chief Brutinel, and Justices Timmer, Gould, and Lopez. (Justice Bolick concurred in the result.)

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

Facts: Victor Leija died while working as a window washer when the scaffolding he was standing on collapsed. Victor's employer's insurance carrier paid out benefits to his surviving family. The family exercised their right under the Arizona Workers' Compensation Act¹ (AWCA) to file suit against third parties (The City of Glendale, which owned the building from which Victor fell, the property manager and maintenance company, and the manufacturer of the scaffolding). The family settled with the third-party defendants, but because the employer's insurance company had incentivized quick settlement, the family settled below the limit of the third-parties' insurance coverage. The employer's carrier then attempted to enforce its lien on the settlement funds, also under the AWCA,² to the extent that it had already paid out benefits to the employee's family. Victor's family argued that, under *Aitken v. Industrial Commission*,³ the amount of the lien should be reduced according to the employer's comparative fault and requested a post-settlement trial to determine that fault. They also counter-claimed for the insurer's alleged bad-faith failure to reduce its lien.

Procedural History: The case is currently before the Arizona Supreme Court. The trial court initially denied a motion for summary judgment, reasoning that a worker's compensation carrier does not owe a duty of good faith to compromise its lien for the employer's comparative fault, but also finding a genuine issue of material fact as to whether Twin City breached a *promise* to compromise its lien.⁴ After further discovery, the superior court granted a second motion for summary judgment after finding no proof that Twin City promised to compromise its lien.

The court of appeals reversed and remanded to the trial court for a hearing to determine the extent of the employer's comparative fault.⁵ The court reasoned that, under Arizona's comparative liability regime, the lien statute would reduce the amount recoverable from third parties and also allow the employer's insurance carrier to be reimbursed from an award the employer's conduct had caused to be reduced in the first place. The court instead

¹ A.R.S. § 23-1023.

² A.R.S. § 23-1023(D).

³ 904 P.2d 456, 461 (Ariz. 1995).

⁴ Twin City Fire Ins. Co. v. Leija, No. CV2012-004506 (Ariz. Super. Ct.).

⁵ Twin City Fire Ins. Co. v. Leija, 403 P.3d 587 (Ariz. Ct. App. 2017).

interpreted the statute to achieve what they understood to be the legislature’s intent—fully compensating workers.

Issue: “[A] carrier may assert a lien on a third[-]party recovery only to the extent that the compensation benefits paid exceed the employer’s proportionate share of the total damages fixed by verdict in the [underlying] action.”⁶ If an employee decides to settle rather than pursue a trial under the AWCA (that is, if the damages are not fixed by verdict), may the employee seek a post-settlement judicial determination of the employer’s comparative fault?

Holding: No, the employee may not.

Disposition: The superior court’s grant of summary judgment is affirmed.

Rule: A claimant who settles all of his or her third-party claims is not entitled to a post-settlement trial to determine the percentage of employer fault solely to reduce or extinguish the insurance carrier’s lien.

Reasoning:

- **Post-settlement trial process never authorized.** Neither *Aitken*⁷ nor *Grijalva*⁸ approves of the post-settlement trial process proposed by the court of appeals. *Aitken* requires damages that are “fixed by verdict”⁹ and *Grijalva* affirmed that limitation.¹⁰ A claimant’s proceeds are not “fixed by verdict” in the course of a settlement.¹¹
- **Differences between jury trial and settlement.** A settlement does not necessarily determine liability or damages, including apportionment of fault.¹² In fact, many factors may influence an employee’s decision to settle—for instance, the injury may not be severe, it might be difficult to prove causation, or the employee (or insurer) might merely be risk-averse.¹³ There is no basis to assume that every settlement inherently includes the inequity *Aitken* intended to cure.¹⁴
- **Perverse incentives.** Generally, a claimant seeks to maximize fault attributed to the third-party defendant and minimize employer fault to raise the amount of damages he can obtain.¹⁵ With a post-settlement trial regime, the claimant would have

⁶ *Aitken v. Indus. Comm’n*, 904 P.2d 465, 461 (Ariz. 1995).

⁷ *Id.* at 461.

⁸ *Grijalva v. Ariz. State Comp. Fund*, 912 P.2d 1303, 1305 (Ariz. 1996).

⁹ *Aitken*, 904 P.2d at 461.

¹⁰ *Grijalva*, 912 P.2d at 1305.

¹¹ *Twin City Fire Ins. Co.*, No. CV-17-0280-PR, 2018 WL 3651026 at *4 (Ariz. Aug. 2, 2018).

¹² *Id.*

¹³ *Id.* at *5.

¹⁴ *Id.*

¹⁵ *Id.*

diametrically opposed incentives after reaching settlement, seeking to maximize the fault attributable to the employer to extinguish the insurer's lien.¹⁶

- **Good faith.** In some situations, an insurance carrier's obligation to act in good faith would entail reasonably acting on a claimant's request to reduce the lien on third-party settlement proceeds where evidence of employer fault is clear, undisputed, and substantial.¹⁷ Twin City, however, offered to reduce its lien by five percent if the Leijas settled with third-party defendants.¹⁸ Given that offer, and because the Leijas failed to raise the good faith issue below, the court found no reason to overturn the superior court's grant of summary judgment on that claim.¹⁹

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at *6.

¹⁹ *Id.*