*ARIZONA SUPREME COURT*
*ORAL ARGUMENT CASE SUMMARY*

**ELIZABETH STENZ v. INDUSTRIAL COMMISSION,**
**CV-14-0298-PR**

**PARTIES:**

*Petitioners:* Employer City of Tucson and insurance carrier Pinnacle Risk Management (collectively, "Pinnacle")

*Respondent:* Elizabeth Stenz, widow of employee Charles W. Stenz, deceased

**FACTS:**

Charles Stenz ("Charles") was injured in 2005 while working for the City of Tucson. Pinnacle, the insurance carrier for the City, accepted his workers' compensation claim and paid him benefits. Charles died in 2009. His widow, Elizabeth, filed a claim for death benefits under A.R.S. § 23-1046(A) contending Charles's death was due to his work-related injuries. Pinnacle initially denied the claim. Elizabeth protested and the Administrative Law Judge ("ALJ") awarded death benefits to her. The ALJ affirmed the award on March 5, 2013. The following month, Pinnacle paid the benefits dating back to Charles's death, but it did not pay any interest.

Elizabeth requested a hearing, asserting she was entitled to interest on the unpaid death benefits for the four-year period between Charles's death and when Pinnacle paid the benefits. Pinnacle maintained it had timely paid the claim and no interest was due. The ALJ determined Pinnacle did not become liable to pay death benefits until March 5, 2013, when the ALJ affirmed the award, that the payment of benefits was not untimely, and that no interest was due.

On special action review, the court of appeals set aside the ALJ's award. The court relied on *Tisdel v. Industrial Commission*, 156 Ariz. 211, 751 P.2d 527 (1988), and *DKI Corp./Sylvan Pools v. Industrial Commission*, 173 Ariz. 535, 845 P.2d 461 (1993). In *Tisdel*, the carrier accepted a claim in 1971 and suggested the claimant would begin receiving permanent partial disability benefits. But, due to the carrier's error, no benefits were paid. Thirteen years later, claimant sustained a second injury. When his counsel discovered the prior oversight, claimant sought payment. The carrier paid the full amount, but it refused to pay interest.

The *Tisdel* court applied the general interest statute, A.R.S. § 44-1201 (providing for interest on "any loan, indebtedness or other obligation") and concluded the carrier owed interest on benefits not timely paid. It held that, pursuant to A.R.S. § 23-1047(A), the carrier could begin to pay the permanent disability award without waiting for the ALJ to determine whether additional compensation should be awarded. Thus, because the carrier could have begun paying the claim in December 1971 when it issued its notice of claim status, the carrier at that point had notice of its obligation to pay permanent benefits and interest began to accrue.

In *DKI*, the claimant petitioned to reopen his workers' compensation claim. The ALJ awarded benefits and interest from the date the petition to reopen was filed to the date of the award. The supreme court set aside the ALJ's award. It determined that, unlike in *Tisdel*, where the carrier notified the claimant it had accepted the claim, a petition to reopen does not create an obligation to pay benefits because the claimant has the burden of showing a "new, additional or previously undiscovered temporary or permanent condition" before the commission has authority to reopen the claim and determine that a carrier is obligated to pay requested benefits. The *DKI* court also considered "the liquidated-unliquidated test," which allows interest on "liquidated claims" (claims that can be mathematically computed with exactness), but not on "unliquidated' claims." In *Tisdel*, the claim was liquidated because a statutory formula could be applied to the claimant's average monthly wage in order to determine the scheduled benefits. In *DKI*, however, the initial award contained no specific amount of benefits due and the record contained no way to mathematically compute the amount of benefits when the ALJ issued initial award. Consequently, the court concluded the benefits in *DKI* were unliquidated and the ALJ erred in awarding the claimant interest from the date the petition to reopen was filed.

Applying the principles of *Tisdel* and *DKI* to the facts of this case, the majority of the appellate panel noted that Elizabeth's entitlement to death benefits was undisputed. The issue was whether the death benefits were liquidated or unliquidated under the *DKI* test. Because the amount of death benefits owed was "susceptible to mathematical computation," the benefits were liquidated and constituted an obligation to pay once the ALJ issued his award.

The majority next held that Pinnacle had notice of its obligation to pay when Elizabeth's claim was sent to Pinnacle in October 2009. Pinnacle could have begun paying Elizabeth after learning that she had filed her claim for death benefits and before the ALJ's award, as provided for in § 23-1061(G) ("the insurance carrier . . . shall process and pay compensation . . . without the necessity for the making of an award or determination by the commission"). Pinnacle did not pay the claim, and so its late payment was subject to interest.

Finally, the majority noted that public policy considerations underlying the Workers' Compensation Act supported its decision. The purpose of the Act is to dispense with litigation and to place the burden of compensation for work-related injuries on industry. An interest award under § 44-1201 compensates the injured party. Awarding pre-award interest to a claimant when the carrier fails to timely pay benefits comports with these policy concerns. Pinnacle had the use of the death benefit money, and Elizabeth did not. She lost not only the use of the money, but also the "time-value" of the money. It is not unjust to require the carrier to pay interest on the benefits it should have paid before the award.

Judge Howard agreed with the result reached by the majority, but he wrote separately because he disagreed with part of the majority's analysis. The majority determined interest began to run from the date Pinnacle received Elizabeth's notice of the claim, and not the date of the ALJ's award. But it also determined that enforcement through an award was necessary to trigger Pinnacle's legal obligation. Thus, it seemed to conclude that although Pinnacle had no obligation to pay Elizabeth until the ALJ issued its award, the fact that the amount of the award was liquidated controlled the date from which interest began to accrue.

Judge Howard concluded that because the claim was liquidated at the time it was filed, it constituted a legal obligation to pay at that time. *See DKI*, 173 Ariz. at 539, 845 P.2d at 465. *See also Desert Mountain Properties Ltd. Partnership v. Liberty Mutual Fire Insurance Co.*, 225 Ariz. 194, 200-201 ¶¶ 17-18, 236 P.3d 421, 427-28 (App. 2010) ("coverage for sums an insured becomes 'legally obligated to pay as damages' [pursuant to a statute] may be triggered even in the absence of a civil lawsuit against the insured or a court order requiring the insured to make payment"). That an ALJ's award was required to enforce Pinnacle's obligation did not change the fact that § 23-1046(A) created the obligation once Pinnacle received notice of Elizabeth's claim. Pinnacle could have begun to pay the benefits then, even without the ALJ's award. *See* A.R.S. § 23-1046(A) (after an injury causing death, a death benefit "shall be payable" to the surviving spouse). A.R.S. § 23-1061(G) (the carrier "shall process and pay compensation" without waiting for the ALJ's award). Because Pinnacle did not timely pay Elizabeth's death benefits, interest began to accrue once Pinnacle received her claim. *Tisdel*, 156 Ariz. at 212-13, 751 P.2d at 528-29; *DKI*, 173 Ariz. at 537, 845 P.2d at 463.

**ISSUE:**

> Whether interest on workers' compensation benefits accrues as of the date that the claim is made and before a determination of whether benefits are owed.

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