



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**MARISOL METZLER v. BCI COCA-COLA BOTTLING COMPANY
CV-13-0302-PR**

PARTIES:

Petitioners: BCI Coca-Cola Bottling Company of Los Angeles, Inc., dba BCI Coca-Cola Bottling Company of Arizona (“BCI”).

Respondent: Marisol Metzler (“Metzler”).

FACTS:

Metzler was injured when she slipped and fell in a grocery store. She subsequently sued BCI. Prior to trial, Metzler extended a Rule 68 offer of judgment, under which Metzler would settle for \$150,000. Under Rule 68(g), if an offeree (in this case BCI) rejects such an offer and does not later obtain a more favorable judgment, “the offeree must pay, as a sanction, reasonable expert witness fees and double the taxable costs, as defined in A.R.S. § 12-332, incurred by the offeror after making the offer and prejudgment interest on unliquidated claims to accrue from the date of the offer.” Ariz. R. Civ. P. 68(g). After BCI rejected the \$150,000 offer, the matter went to trial and a jury awarded Metzler \$1.5 million in damages. BCI does not dispute that Metzler is entitled to an award of sanctions pursuant to Rule 68(g), but there is a dispute about how pre-judgment interest should be calculated and how long interest continued to accrue.

The trial court entered a judgment on September 2, 2009, in favor of Metzler, in the amount of \$1,855,398.86, which included prejudgment interest under Rule 68(g), from the date the offer of judgment was made until the date of the September 2, 2009 judgment. Three months after entry of judgment, the trial court granted BCI’s motion for a new trial on liability, but denied a new trial on damages. Both sides filed cross appeals. On appeal, the court of appeals reversed the trial court’s grant of a new trial on liability, but affirmed the denial of a new trial on damages. *Metzler v. BCI Coca-Cola Bottling Co.* (“*Metzler I*”), 2011 WL 917330, No. 2 CA-CV 2013-0023, ¶ 16 (memorandum decision filed March 16, 2011). This appeared to restore the situation to what it had been on September 2, 2009, when the trial court entered the judgment.

In April 2011 (the month after *Metzler I* was issued), BCI unconditionally tendered, and Metzler accepted, payment of \$1,906,690.76, representing: the principal of the damage award; Rule 68(g) sanctions (prejudgment interest from the date of the offer of judgment through September 2, 2009, when judgment was entered); and post-judgment interest from September 3, 2009 through December 8, 2009 (when the trial court granted BCI’s motion for a new trial on liability but denied a new trial on damages); and costs on appeal.

On May 11, 2011, the court of appeals' mandate issued in *Metzler I*. BCI filed a motion for a judgment on the mandate, but BCI and Metzler disagreed about how long the prejudgment interest should have accrued. BCI argued that prejudgment interest stopped accruing when the trial court originally entered the judgment on September 2. Metzler argued that prejudgment interest continued to accrue from the date of the offer of judgment until entry of the judgment on the mandate. The trial court accepted BCI's view, and entered judgment on the mandate, specifying that prejudgment interest terminated on September 2. Metzler appealed.

On appeal, the court of appeals vacated the judgment, noting that the September 2 judgment had been vacated by the trial court in granting BCI's motion for new trial. *Metzler v. BCI Coca-Cola Bottling Co. (Metzler II)*, 230 Ariz. 26, 27 ¶ 1, 279 P.3d 1188, 1189 (App. 2012). The court of appeals concluded that prejudgment interest had continued to accrue, and remanded to the trial court for entry of judgment after a redetermination of prejudgment interest. The mandate in *Metzler II* issued on August 6, 2012.

After the August 6, 2012 mandate issued, Metzler lodged a form of judgment calculating prejudgment interest at the rate of ten percent per annum, the same interest rate that had been used in the two prior judgments. BCI objected, pointing to an amendment to A.R.S. § 44-1201 that had taken effect on July 20, 2011. BCI argued that, under the amended statute, the interest rate should have been calculated at the rate of one percent per annum plus the prime rate or 4.25 percent. The trial court ruled that the proper interest rate was ten percent, and entered judgment on October 10, 2012. BCI appealed.

The court of appeals affirmed, agreeing with the trial court that pre-judgment interest under Rule 68(g) was interest on an "obligation" (the obligation to pay prejudgment interest as a sanction), which fell under A.R.S. § 44-1201(A), rather than interest on a judgment (which would fall under A.R.S. § 44-1201(B), because the interest did not become due until a future judgment was entered.

ISSUES:

1. Whether the prejudgment interest rate is the 10% rate in A.R.S. § 44-1201(A) or the 4.25% rate in A.R.S. § 44-1201(B).
2. Whether a tender of the full amount of a damage award ends the accrual of additional prejudgment interest.

RELEVANT STATUTE:

A.R.S. § 44-1201, as revised effective July 20, 2011, provides:

A. Interest on any loan, indebtedness **or other obligation** shall be at the rate of **ten per cent per annum**, unless a different rate is contracted for in writing, in which event any rate of interest may be agreed to. Interest on any judgment that is based on a written agreement evidencing a loan, indebtedness or obligation that bears a rate of

interest not in excess of the maximum permitted by law shall be at the rate of interest provided in the agreement and shall be specified in the judgment.

B. Unless specifically provided for in statute or a different rate is contracted for in writing, interest on any judgment shall be at the lesser of ten per cent per annum or at a rate per annum that is equal to one per cent plus the prime rate as published by the board of governors of the federal reserve system in statistical release H.15 or any publication that may supersede it on the date that the judgment is entered. The judgment shall state the applicable interest rate and it shall not change after it is entered.

A.R.S. § 44-1201 (emphasis added).

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