DATE FILED: August 18, 2021 8:10 PM
FILING ID: CFB1AB9666048
CASE NUMBER: 2020SC947

COLORADO SUPREME COURT
Ralph L. Carr Judicial Center
2 East 14th Avenue
Denver, Colorado 80203

COLORADO COURT OF APPEALS
Opinion by Grove, J., Dailey and Welling, J.J., concurring
Case No. 19CA1243

BOULDER COUNTY DISTRICT COURT
Honorable Nancy W. Salomone, Judge
Case No. 11CV912

Petitioner: FORD MOTOR COMPANY

v.

Respondent: FORREST WALKER

▲COURT USE ONLY▲

Case No. 20SC947

Attorneys for Amicus Curiae American Tort Reform Association:

Lee Mickus, #23310
Evans Fears & Schuttert LLP
3200 Cherry Creek Drive South, Suite 380
Denver, CO 80209
Email: lmickus@efstriallaw.com
Telephone: 303-656-2199

BRIEF OF AMICUS CURIAE AMERICAN TORT REFORM ASSOCIATION IN SUPPORT OF APPELLANT FORD MOTOR COMPANY

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all applicable requirements of Colo. App. R. 29 and 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the word limit set forth in Colo. App. R. 29(d).

It contains **4,362** words (does not exceed 4,750 words).

The brief complies with the content and form requirements set forth in Colo. App. R. 29(c).

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of Colo. App. R. 29 and 32.

Dated: August 18, 2021

/s/ Lee Mickus
Lee Mickus #23310
EVANS FEARS & SCHUTTERT LLP
3200 Cherry Creek Drive South
Suite 380
Denver, CO 80209
Telephone: (303) 656-2199
lmickus@efstriallaw.com

Attorneys for Amicus Curiae American Tort Reform Association

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Colorado Statutes

Other Statutes

Other Authorities

INTERESTS OF AMICUS CURIAE

Founded in 1986, the American Tort Reform Association ("ATRA") is a national, nonpartisan, nonprofit coalition of large and small businesses, trade associations, and professional firms. ATRA is dedicated to improving the civil justice system, with a focus on promoting fairness, balance, efficiency and predictability in civil litigation. In addition to legislative efforts and public education outreach, for more than two decades ATRA has filed *amicus curiae* briefs in cases that have addressed important civil justice issues.

Statutes providing for prejudgment and postjudgment interest are prominent among the matters ATRA regularly addresses. ATRA frequently undertakes efforts, including legislative actions and public discussion, to ensure that prejudgment and postjudgment interest practices fulfill their core purpose of accounting for the time value of money without becoming vehicles for windfall recoveries or obstacles to the fair adjudication of disputes on their merits.

The Colorado Court of Appeals' decision irrationally penalizes civil defendants who successfully appeal adverse verdicts. ATRA's members are committed to developing the law, but the conclusion that judgment debtors must pay interest at a high fixed rate during the time spent on appeal to correct

erroneous trial court actions will substantially burden and disincentivize those efforts.

INTRODUCTION

This case spent six years on appeal because of the trial court's error. These appeals led first the Court of Appeals and then this Court to conclude that the jury received improper instructions on Colorado's product liability law, rendering the verdict untenable.[1] Although Ford was the party negatively impacted by the trial court's error, and Ford succeeded at both stages of the appellate process, Ford now finds itself saddled with an award of interest calculated using the harsh prejudgment interest rate for the entire period of litigation – including the six years

[1] *Walker v. Ford Motor Co*., 2015 COA 124, ¶26, ¶31 ("We conclude that, because the consumer expectation test is included in the risk-benefit test instruction that was given to the jury as instruction number 19, the trial court erred by giving a separate instruction that also included the consumer expectation test. . . . Because this error was not harmless, we reverse and remand to the trial court for a new trial[.]")(emphasis original); *Walker v. Ford Motor Co*., 2017 CO 102, ¶26, ¶31 ("[W]e conclude that the trial court erred by instructing the jury on the consumer expectation test. . . . [W]e cannot conclude that the trial court's error in giving Instruction 18 was harmless.").

on appeal.[2] This result is both fundamentally unfair and inconsistent with the language and purpose of Colorado's interest statute.[3]

The Court of Appeals made a novel interpretation of C.R.S. § 13-21-101, but it does not withstand scrutiny. The statute stops any accumulation of fixed-rate interest with finality if the judgment debtor appeals. After an appeal is filed, any additional interest may accrue only as directed by the statute's terms addressing postjudgment interest. But those postjudgment provisions contain no mention of

---

[2] Rather than the "market-determined interest rate" identified in C.R.S. § 13-21-101 (3) that is intended "to neutralize the economic benefits and detriments of appeal," *Rodriguez v. Schutt*, 914 P.2d 921, 928 (Colo. 1996), the trial court and Court of Appeals applied fixed nine percent interest. That rate of interest can be properly seen as harsh because it is three times higher than the C.R.S. § 13-21-101(3) rate for most of the duration of this case's postjudgment period, and therefore goes far beyond compensating for the time value of the money indicated in the judgment. *See* Secretary of State Interest Rate Certificate, available at https://www.sos.state.co.us/pubs/info_center/files/interest_rates.pdf (last accessed August 16, 2021).

[3] The application of a high fixed rate of interest during a case's time on appeal stands in sharp contrast to the postjudgment interest applied in most other states in the West. Arizona, Montana, Nebraska, Nevada, North Dakota, Oklahoma, Utah and Washington all determine postjudgment interest using a market-determined rate. *See* Ariz. Rev. Stat. § 44-1201(B) (prime rate plus 1%); Mont. Code Ann. § 25-9-205 (prime rate plus 3%); Neb. Rev. Stat. § 45-103 (Treasury rate plus 2%); Nev. Rev. Stat. Ann. § 17.130(2) (prime rate plus 2%); N.D. Cent. Code Ann. § 28-20-34 (prime rate plus 3%); 12 Okl. St. Ann. § 727.1 (I) (prime rate plus 2%); Utah Code Ann. § § 78B-5-824 (3)(a) (Federal postjudgment rate plus 2%); Wash. Rev. Code Ann. § 4.56.110 (3)(b)(prime rate plus 2%).

computing interest in cases of successful appeals that are remanded for a new trial with the original judgment fully vacated. The omission of these winning cases carries considerable significance: as a strictly construed statute, C.R.S. § 13-21-101 may not be expanded to allocate interest in situations not specifically enumerated.[4] The Court of Appeals, by relying on the legal fiction that the original judgment vanished upon its reversal, improperly sidestepped the limitations of the statute and adopted an untenable interpretation.

ARGUMENT

I. NEITHER THE STATUTE NOR THE POLICY BASIS FOR INTEREST SUPPORTS ACCRUAL OF ANY INTEREST DURING THE PERIOD OF AN APPEAL THAT RESULTS IN VACATING THE ORIGINAL JUDGMENT.

C.R.S. § 13–21–101 does not provide any basis for holding Ford responsible for interest during the time that elapsed between the entry of the 2013 judgment Ford successfully appealed and the vacating of that judgment with this Court's ruling.[5] C.R.S. § 13–21–101, which must be strictly construed, directs that only

[4] *See Rodriguez v. Schutt*, 914 P.2d 921, 925 (Colo. 1996).

[5] ATRA acknowledges that this perspective departs from the proposed construction of C.R.S. § 13–21–101 Ford has argued. The Court's decision in this case, however, involves an issue of statutory interpretation that will be broadly applied in future litigation, and so carries important public policy implications. Under circumstances such as these, this Court may consider *amicus* arguments that go

postjudgment interest may accumulate during that period on appeal, but the statute's directives on computing postjudgment interest do not address cases that completely overturn the judgment. The statute also halts any accrual of fixed-rate interest after entry of the judgment if the judgment debtor appeals, as Ford did. This fact-based termination precludes any reversion to accumulation of additional fixed-rate interest once the step of filing an appeal has been taken.

Because nine percent interest cannot continue to accrue after the entry of the original judgment that Ford appealed, and the postjudgment interest terms of C.R.S. § 13–21–101 do not indicate that variable-rate interest may be calculated in cases in which an appeal produces a reversal of the judgment, there is no basis in the statute for assessing any interest to Ford for the time from the 2013 judgment until that judgment was vacated. These years of appellate litigation resulted from the trial court's legal error, not any strategic behavior on Ford's part, and so the accrual of no postjudgment interest is a just result.

---

beyond the position of the parties. *See*, *e.g.*, *Lavie v. Procter & Gamble Co.*, 105 Cal. App. 4th 496, 129 Cal. Rptr. 2d 486 (Cal. Dist. Ct. App. 2003).

A. C.R.S. § 13–21–101 Does Not Authorize Inflicting Postjudgment Interest on a Defendant Who Pursues an Appeal that Vacates the Trial Court's Judgment.

Any grounds for imposing postjudgment interest on a defendant who succeeds in vacating an adverse judgment must be stated in C.R.S. § 13–21–101, but the statute contains no language directing the calculation of interest in those cases. An obligation to pay interest on personal injury money judgments must arise, if at all, from the terms of the statute. *Rodriguez v. Schutt*, 914 P.2d 921, 925 (Colo. 1996). Because C.R.S. § 13–21–101 was enacted in derogation of the common law, the Court "must strictly construe" that statute's language. *Id*.; *Sperry v. Field*, 205 P.3d 365, 367 (Colo. 2009). Strictly construing C.R.S. § 13–21–101 means interest is only authorized in the situations explicitly set forth in the statute. *See Clark v. Giacomini*, 85 Colo. 530, 536, 277 P. 306, 308 (1929) ("interest is a creature of the statute and is recoverable, in the absence of contract, only in such cases as enumerated in the statute.").

The Court has properly rejected claims for interest that do not conform to the specific circumstances described in the statute. For example, in *City of Boulder v. Stewardson*, 67 Colo. 582, 587, 189 P. 1, 3 (1920), this Court refused to allow a municipal corporation to recover interest on a claim when the statute only allowed

interest to "corporation[s]." More recently, in *Munoz v. Amer. Fam. Ins. Co*., 2018 CO 68, the Court held that a plaintiff could not recover prejudgment interest on a personal injury claim settled prior to litigation because several of the conditions articulated in C.R.S. § 13–21–101 – including an "action[n] brought" and "entr[y of] judgment" – were not present. *Id*. at ¶¶11-12. Consistent with these rulings, no interest should be allowed in this case unless Plaintiff's claim fits the specific terms set forth in the statute.

C.R.S. § 13–21–101, however, makes no provision for recovery of postjudgment interest during the period of an appeal that results in a vacated judgment, as occurred in this case. In the structure of C.R.S. § 13–21–101, Subsection (1) declares that the amount of any postjudgment interest on appealed money judgments "must be calculated" using the variable rate, and the paragraphs of Subsection (2) set forth the manner of calculation. Paragraph (2)(a) provides the necessary information for computing postjudgment interest for appeals in which the trial court's judgment is affirmed, and Paragraph (2)(b) describes the manner of calculating postjudgment interest for appealed matters in which the judgment is modified or reversed with direction for entry of a money judgment. Entirely

absent from C.R.S. § 13–21–101 is any direction for computing postjudgment interest on appealed cases that result in vacated judgments.

The silence of Subsection (2) on how to address interest on appeals that vacate the trial court's judgment speaks loudly. This strictly construed statute fails to mention the manner of computing postjudgment interest on fully successful appeals, even though interest for the postjudgment period can only accrue on cases explicitly included in the statute. This Court has explained that the strict construction doctrine tightly constrains the availability of interest:

> When the Legislature assumed to declare in what cases interest could be allowed, under the rule that the expression of the one is the exclusion of another, no interest can be allowed in any case not specified.

Cobb v. Stratton's Est., 56 Colo. 278, 284–85, 138 P. 35, 37–38 (1913) (emphasis added). Concluding that postjudgment interest somehow can be determined and granted in cases completely left out of Subsection (2) would run afoul of the strict construction doctrine and, further, would impermissibly render superfluous that provision's detailed instructions for calculating the amount of postjudgment interest payable in other categories of appealed cases. *See Slack v. Farmers Ins. Exch.*, 5 P.3d 280, 284 (Colo. 2000) ("We construe a statute so as to give effect to

every word, and we do not adopt a construction that renders any term superfluous.").

Because C.R.S. § 13–21–101 provides no instruction for calculating postjudgment interest on appealed cases producing vacated judgments, such interest may not be granted in these cases. *Cf. City of Boulder*, 67 Colo. at 587 (disallowing interest when claimant was not included in categories of eligible parties); *Spahmer v. Gullette*, 113 P.3d 158, 163 (Colo. 2005) ("[W]e will not read a statute to accomplish something the plain language does not suggest[.]"). Indeed, the statute's silence on calculating postjudgment interest in successfully appealed cases is consistent with the statute's acknowledged aims of avoiding pecuniary gains or losses due to the exercise of debtors' appeal rights while protecting creditors against financial deprivation resulting from meritless appeals:

> We may infer the following purposes, among others, from the title of the amendment, its legislative history, and its plain language: to eliminate the financial incentive (or disincentive) to appeal and to ensure that the judgment creditor whose satisfaction is delayed due to an unsuccessful appeal receives the time value of his or her money judgment.

Rodriguez, 914 P.2d at 929 (emphasis added). *See also id*. at 932 (Scott, J., dissenting) (applying market-determined postjudgment rate of interest to all

judgments would further "legitimate governmental interest to discourage meritless appeals[.]") (emphasis added). Meritorious appeals lie beyond this purpose.

C.R.S. § 13–21–101 provides no authority for Plaintiff to recover postjudgment interest from Ford, and the doctrine of strict construction precludes stretching the statute to reach a situation it omits. If the General Assembly wanted postjudgment interest to accrue during the pendency of an appeal that prevails and results in a vacated judgment, it needed to say so in the statute – but it didn't.

B. C.R.S. § 13–21–101 Does Not Support Application of Fixed-Rate Interest During a Postjudgment Appellate Period Necessitated by Judicial Error.

C.R.S. § 13–21–101(1) does not allow the calculation of interest at a fixed nine percent rate to continue at any point after "a judgment" is "appealed by the judgment debtor[.]" By concluding that Ford owes prejudgment interest on the entire period from the occurrence of Mr. Walker's crash on September 20, 2009 until Ford satisfied the judgment entered on the second jury's verdict on May 9, 2019,[6] the Court of Appeals deliberately overlooked empirical events – the filing and litigation of an appeal – that the statute identifies as critical. The Court of

[6] *Walker*, 2020 COA 164, ¶1.

Appeals' decision erroneously resurrects the prejudgment interest period after it has expired.

C.R.S. § 13–21–101(1) constructs a fork in the road for computing interest: if a judgment debtor appeals "a judgment for money in an action brought to recover damages for personal injuries," then any allowable "postjudgment interest" – meaning interest for the period after entry of the judgment from which the appeal is taken – must be calculated with the variable rate of interest as set forth in Subsections (2), (3) and (4). If not appealed, interest continues to accumulate at the fixed nine percent rate until the judgment is satisfied. C.R.S. § 13–21–101(1). The act of filing an appeal therefore represents the critical turning point, and the statute does not map out any possible U-turns.

In determining that prejudgment interest accumulated during the six years of appellate litigation, the Court of Appeals grounded its analysis on a legal disappearing act: because a judgment reversed by appellate decree ceases to carry legal significance, the first judgment in this case "vanished" and so did the postjudgment interest period.[7] Contrary to the Court of Appeals' opinion that the statute's "plain language" compels the conclusion that the statute incorporates this

[7] *Walker*, 2020 COA 164, ¶¶10- 11.

illusion,[8] C.R.S. § 13–21–101(1) actually identifies a concrete factual event – the debtor's act of appealing "a judgment" – to be the determining factor for ending accrual of nine percent interest. The statute contains no suggestion that the prejudgment interest period, after expiring at the filing of an appeal, can somehow rise from its tomb.[9]

C.R.S. § 13–21–101 operates on the basis of verifiable occurrences, not legal fictions.[10] Ford's appeal from the 2013 judgment terminated any further

---

[8] *Id*. at ¶10.

[9] The Court of Appeals itself recognized in *Ackerman v. Power Equip. Co*., 881 P.2d 451, 453 (Colo. App. 1994) that "[t]he final paragraph of C.R.S. § 13–21–101(1)" provides the governing rule in a personal injury case and requires variable-rate postjudgment interest "in the event of an appeal." (emphasis added).

[10] The requirement that courts strictly construe interest statutes in accordance with their terms again becomes important when considering the Courts of Appeals' reliance on the legal sleight of hand that the original judgment "vanish[ed]" in order to apply the prejudgment interest rate to the period following Ford's appeal. Strict construction demands that courts examine the specific factual circumstances given significance by the statute and ensure they are precisely met. Thus, when the statute indicates that interest will accrue if "the plaintiff in the complaint . . . claim[s] interest," courts may not overlook a deficient statement in the complaint and allow the plaintiff to amend the complaint postjudgment, *Clark v. Hicks*, 127 Colo. 25, 32 (1953), or construe a complaint's vague "catchall prayer for relief" to express the necessary claim for interest. *Teran v. Reg'l Transportation Dist.*, 2020 COA 151, ¶ 41. Like these nonconforming factual occurrences that cannot be overlooked when construing C.R.S. § 13–21–101, the fully compliant fact that "a judgment for money in an action brought to recover damages for personal injuries

accumulation of prejudgment interest. Ford took the appellate turn at the statutory fork in the road, and that action forever closed the fixed-rate interest avenue.

The Court of Appeals' conclusion that prejudgment interest may accrue during the period after a judgment has been appealed is also inconsistent with the recognized purpose of C.R.S. § 13–21–101. The statute's intended effect should guide its constructions.[11] In this instance, the Court has acknowledged that C.R.S. § 13–21–101 is meant to shift the manner of treating all judgments appealed:

> The 1982 amendment to section 13-21-101 created the distinction between judgments which the judgment debtor appeals and those which the judgment debtor does not appeal. The General Assembly intended that the amendment, and its market-determined interest rate, apply only to judgments which the judgment debtor appeals.

[wa]s appealed by the judgment debtor" in this case, Ford Motor Company, cannot be ignored. Facts matter for purposes of the statute.

[11] *See Rodriguez*, 914 P.2d at 925 ("we must strictly construe section 13-21-101, . . ., while bearing in mind that our primary goal is to give effect to the intent of the General Assembly.") (citation omitted). *See also Smith v. Executive Custom Homes, Inc*., 230 P.3d 1186, 1189 (Colo. 2010) ("When interpreting a statute, we strive to give effect to the legislative purposes by adopting an interpretation that best effectuates those purposes.").

Rodriguez, 914 P.2d at 928.[12] Neither the General Assembly's indications of purpose nor this Court have suggested that only some appealed judgments will receive treatment under the statute's postjudgment terms, while some others will revert to fixed-rate interest accumulation for the period after entry of the judgment from which the appeal is taken.[13] Thus, the Court of Appeals' distinction among categories of appealed cases is not consistent with the statute's purpose.

With no carve-outs articulated in the statute itself and no limitations identified in prior decisions defining the statute's scope, the Court of Appeals' declaration of an exception to the universal shift for all appealed cases from the

---

[12] *See also Sperry*, 205 P.3d at 367 ("the distinction between judgments which are appealed and those which are not for purposes of postjudgment interest is permissible.") (citing *Rodriguez*, 205 P.3d at 927-28).

[13] As further support that C.R.S. § 13-21-101 shifts interest considerations from the prejudgment clause to its postjudgment terms for all appealed judgments, it is noteworthy that the title of the 1982 amendment establishing the postjudgment interest provisions was "An Act Concerning Interest Payable on Appealed Money Judgments in Civil Actions." Act of March 25, 1982, ch. 39, 1982 Colo. Laws 227 (emphasis added). The amendment's effective date statement indicates it "[a]pplies to all appeals filed with the court of appeals or supreme court on or after January 1, 1983." Digest of Bills Enacted by the Fifty-Third General Assembly, 1982 Second Regular Session, at 18-19 (emphasis added). Also, the Court found the statute to have the following rational basis for separating the classes of judgments to which the prejudgment and the postjudgment statutory provisions apply: "their entry or non-entry into the appellate process." *Rodriguez*, 914 P.2d at 927. These sources identify no exceptions.

fixed-rate interest treatment to the postjudgment steps described in C.R.S. § 13–21–101(1) & (2) has no foundation. *See Slack*, 5 P.3d at 284 ("The court will not create an exception to a statute that the plain language does not suggest or demand."). Under the statute, Ford's act of filing the appeal of the 2013 judgment extinguished any further accumulation of interest at the fixed nine percent rate.

II. THE STRUCTURE OF C.R.S. § 13–21–101 CANNOT REVEAL A LEGISLATIVE INTENT TO ACTIVATE RETROACTIVELY ACCRUAL OF PREJUDGMENT INTEREST.

The Court of Appeals' opinion depends on surmising legislative intent from the structure of C.R.S. § 13–21–101,[14] but this inference is a mirage. The General Assembly did not purposefully create the statute's structure as it now exists. The statute was substantially amended in 1982, only to be torched as unconstitutional but resuscitated through judicial re-writing in 1996.[15] The Court then re-built it once more in 2009.[16] After all that, the General Assembly injected the Court's

---

[14] *Walker*, 2020 COA 164, ¶ 9 ("the fact that the General Assembly chose to include those subsections [(2)(a) and (2)(b)] demonstrates that it did not intend for postjudgment interest to accrue in every case once an appeal is filed.").

[15] *Rodriguez*, 914 P.2d at 929-30.

[16] *Sperry*, 205 P.3d at 369-70 (construing statute to avoid applying postjudgment interest from the date of claim accrual, despite the judicially re-written provision stating "postjudgment interest shall be calculated . . . from the date the action

handiwork into the statute.[17] This repeated splicing has distorted the statutory structure established by the General Assembly and obscured the connections and interplay among its components.[18]

The Court of Appeals teased from the statute's patched-together structure an intent to differentiate fully successful appeals from partially successful or unsuccessful appeals, so that only when an appellate outcome described in C.R.S. § 13–21–101(2)(a) or (2)(b) occurs will postjudgment interest be calculated at the

---

accrued."). The Court identified this as "an example of the errors that can occur when we attempt to re-write statutory language." *Id*. at 370.

[17] The General Assembly declared that the 2018 statutory revisions were undertaken "to repeal specific language in a section of statute that was ruled unconstitutional by the Colorado Supreme Court[.]" *See* 2018 Colo. Legis. Serv. Ch. 99 (S.B. 18-098, Section 1).

[18] For example, in the 1982 version of the statute, subsection (1) stated that variable- rate prejudgment and postjudgment interest "must be calculated" for appealed judgments, specified the trigger date for accrual as "the date the action accrued," but identified no termination date for interest accumulation. Section (2) added details to complete the calculation. Subsection(2)(a) described the full period on which variable-rate interest "is payable" on judgments affirmed on appeal: "from the date the action accrued until satisfaction of the judgment[.]" Subsection (2)(b) provided, for judgments modified or reversed with direction for entry of specific sums, the same variable-rate interest calculation period. The 2018 amendments to comport with *Rodriguez* and *Sperry* were grafted onto the existing 1982 statutory structure, but in doing so for the purpose of comporting with the Court's rulings, the calculation end point was added to Subsection (1), overlapping what was already present in Subsections (2)(a) and (2)(b).

variable rate.[19] The history of C.R.S. § 13–21–101 does not support the Court of Appeals' conclusion. Paragraphs (2)(a) and (2)(b), as they were crafted by the General Assembly, applied variable-rate interest to both the prejudgment and postjudgment periods and provided additional detail needed for calculating the accumulated interest in certain situations.[20] The overlapping language that now occurs in Subsection (1) and Paragraphs (2)(a) and (2)(b)[21] exists because the Court's statutory re-writing in *Rodriguez* and *Sperry* has now been incorporated.[22] In other words, the current language in these clauses is the product of two Court rulings that changed the scope and terms of the statute.

---

[19] *Walker v. Ford Motor Co*., 2020 COA 164, ¶ 9. To be sure, the court in *Walker* construed the version of C.R.S. § 13–21–101 reflecting the General Assembly's 2018 amendments. As noted above, however, the General Assembly declared those changes were made to address issued addressed by the Court and did not describe an intent to change the categories of cases in which the statute's postjudgment terms would apply. *See* 2018 Colo. Legis. Serv. Ch. 99 (S.B. 18-098, Section 1).

[20] *See* n. 18, *supra*.

[21] All three clauses now indicate that "postjudgment interest" runs at the rate "set forth [or 'out'] in subsections (3) and (4) of this section" for the period "from the date of judgment through the date of satisfying the judgment[.]"

[22] *See* n. 18, *supra*.

To infer from this splicing of judicial re-articulation onto pre-existing statute an implied legislative intent to exclude from the postjudgment provisions of the statute successful appeals producing reversals for new trials, as the Court of Appeals has done, invents a legislative vision where none exists. Further, C.R.S. § 13–21–101(1) has never contained any of the common statutory signals, such as "subject to" or "only as specified," that would be expected if the General Assembly originally did mean the postjudgment clauses to apply to appealed cases that did not result in reversals for new trials.

The best indication of legislative purpose therefore remains the unlimited language set forth in the enactment's title, which is reflected in the terms of Subsection (1) and acknowledged by the Court: the postjudgment provisions of the statute apply to all judgments appealed.[23] To fulfill that purpose, the act of bringing an appeal must irrevocably end the accumulation of fixed-rate interest, and any postappeal interest must be determined using the calculations described in C.R.S. § 13–21–101(2)(a) & (b). The fact that the circumstances of this case are not discussed in Subsection (2) does not substantiate an inference about legislative

[23] *See* n. 13, *supra*.

intent; rather, the omission signals that postjudgment interest cannot be allowed under this strictly construed statute. *Cf. City of Boulder*, 67 Colo. at 587.

CONCLUSION

C.R.S. § 13–21–101 provides no basis for treating judgment debtors who successfully appeal and overturn judgments less favorably than debtors who pursue only partially successful or utterly unmeritorious appeals. That outcome would be an upside-down result contrary to the purpose of the statute, burdening some of the very appeals that prove the most valuable to the justice system. The Court of Appeals' opinion simply does not square with the terms or the purpose of C.R.S. § 13–21–101. The Court should reverse that ruling.

Dated: August 18, 2021

/s/ Lee Mickus
Lee Mickus #23310
EVANS FEARS & SCHUTTERT LLP
3200 Cherry Creek Drive South
Suite 380
Denver, CO 80209
Telephone: (303) 656-2199
lmickus@efstriallaw.com

Attorneys for Amicus Curiae American Tort Reform Association

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 18, 2021, a true and correct copy of the foregoing **BRIEF OF AMICUS CURIAE AMERICAN TORT REFORM ASSOCIATION IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI** was filed electronically via Colorado Courts E-filing system, and served upon the following individual as indicated below:

Edward C. Stewart
Theresa Wardon Benz
Kristen L. Ferries
Wheeler Trigg O'Donnell LLP
370 Seventeenth Street
Suite 4500
Denver, CO 80202-5647
Email: stewart@wtotrial.com
benz@wtotrial.com
ferries@wtotrial.com

Mark H. Boyle, pro hac vice
Donohue Brown Mathewson
& Smyth LLC
140 South Dearborn Street
Suite 800
Chicago, IL 60603
Email: boyle@dbmslaw.com
Attorneys for Petitioner Ford Motor Company

John A. Purvis
Michael J. Thomson
Purvis • Gray • Thomson, LLP
4410 Arapahoe Avenue, Suite 200
Boulder, CO 80303
Email: jpurvis@purvisgray.net
mthomson@purvisgray.net

Evan P. Banker
Chalat Hatten & Banker, PC
1600 Broadway, Suite 1920
Denver, CO 80202
Email: ebanker@chalatlaw.com
Attorneys for Respondent Forrest Walker

/s/ Lee Mickus