

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

SOUTH MACOMB DISPOSAL  
AUTHORITY,

Appellant,

vs.

Case No. 2004-4406-CZ

MICHIGAN DEPARTMENT OF  
ENVIRONMENTAL QUALITY, a  
Department of the State of Michigan, and  
MICHIGAN BROWNFIELD  
REDEVELOPMENT BOARD, an entity  
within the Department of Environmental  
Quality,

Appellees.

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OPINION AND ORDER

This matter is on remand from the October 17, 2006 decision of the Michigan Court of Appeals. See *South Macomb Disposal Authority v Department of Environmental Quality*, unpublished opinion per curiam of the Court of Appeals, issued [October 17, 2006] (Docket No. 262914).

Initially, appellant South Macomb Disposal Authority ("SMDA") appealed to this Court pursuant to MCL 600.631, MCR 7.103, and MCR 7.104. SMDA challenged the Brownfield Redevelopment Board ("BRB") and Michigan Department of Environmental Quality's ("MDEQ") interpretation and application of MCL 324.20109a(9) in determining SMDA's repayment obligation. MDEQ rendered a final decision on September 23, 2004, which provided that SMDA was obligated to repay the full grant amount.

On May 4, 2005 the Court issued an Opinion and Order that affirmed the decision of BRB and MDEQ, which required full repayment by SMDA of the received grant money. The Court specifically found variable A of the formula under MCL 324.20109a(9)(b) consisted of the total amount of money or compensation received when pursuing recovery activity costs, including prejudgment interest and defense costs.

The Court of Appeals affirmed this Court's decision with regards to the inclusion of all the funds received by SMDA from the other source in variable A. *South Macomb Disposal Authority v Department of Environmental Quality*, unpublished opinion per curiam of the Court of Appeals, issued [October 17, 2006] (Docket No. 262914). With respect to variable B, the Court of Appeals vacated the Court's Opinion and Order and remanded for consideration of whether variable B must include prejudgment interest awarded to SMDA in the insurance coverage litigation. *Id.*

The appropriate standard of review shall include a determination of whether such final decision, findings, rulings and orders are authorized by law. Constitution 1963, Art. 6, §28; *Viculin v. Department of Civil Service*, 386 Mich 375; 192 NW2d 449 (1971). The decision must be affirmed unless it is in violation of a statute, in excess of the statutory authority or jurisdiction of the agency, made upon unlawful procedure resulting in material prejudice to a party, or is arbitrary or capricious. *Michigan Waste Systems v Department of Natural Resources*, 147 Mich App 729, 736; 383 NW2d 112 (1985).

Agency findings of fact are given deference on review. *Michigan Education Association v North Dearborn Heights School District*, 169 Mich App 39; 425 NW2d 503 (1988). However, an agency's construction of a statute is not afforded deference if inconsistent with legislative intent. *Empire Iron Mining Partnership v Orhanen*, 455 Mich 410, 416; 565 NW2d 844 (1997).

The appellate court, on judicial review, will give the agency's construction such weight as the court concludes is appropriate on full consideration of statutory criteria and record of the case on review. *West Bloomfield Hospital v Certificate of Need Board*, 452 Mich 515, 524; 550 NW2d 223 (1996).

The Court has reviewed the record, provided by the parties, which stated appellant SMDA has received \$5,716,956.26 in grant money, under the Municipal Landfill Cost Share Grant Program, MCL 324.20109a. Appellees, BRB and MDEQ, administer this program. The Municipal Landfill Cost Share Grant Program is designed to provide cost-share grants for up to 50% of eligible response activity costs incurred by local units of government at municipal solid waste landfills. MCL 324.20109a.

Pursuant to MCL 324.20109a(9)(a), a recipient is obligated to notify the MDEQ "if it receives money or any other form of exemption from any other source to pay for or compensate for any of the response activity costs for which it is liable." The recipient, in addition, must provide "[d]ocumentation of the costs incurred by the local unit of government to obtain the funds or compensation." MCL 324.20109a(9)(a)(vi). Specifically, MCL 324.20109a(9)(b) provides:

(b) If the recipient receives money or compensation from any other source as described in subdivision (a), the recipient shall repay the department an amount of money not to exceed the grant amount based on the following formula:

(A minus B) multiplied by (C divided by D)

with A, B, C, and D defined as follows:

A = The total amount of money received from the other source or dollar value of the compensation.

B = All reasonable costs incurred by the recipient to obtain the money or compensation.

C = The total amount of grant funds received.

D = The total amount of response activity costs that the applicant has or will incur....

SMDA has received two insurance settlements, in 2000 and 2002, after lengthy litigation. SMDA immediately notified MDEQ of the amounts received. In November 2002, SMDA calculated its estimated repayment obligation under the statute and submitted it to the BRB. On September 23, 2004, BRB and MDEQ, after receiving legal advice from the Michigan Department of Attorney General, rejected SMDA's calculation and determined the formula required full repayment.

Appellant SMDA contends the full amount of prejudgment interest must be included in variable B of the repayment formula. According to SMDA, statutory prejudgment interest compensates a party for costs of litigation and is deemed reasonable. It relies upon this Court's previous approval of the amount of prejudgment interest during the insurance litigation. SMDA argues its calculation applies the formula and is fair.

In response, appellees BRB and MDEQ argue the plain language of the statute, read as a whole, concludes prejudgment interest is not included in variable B as a "cost incurred". Appellees contend prejudgment interest has no direct relationship to actual costs. Appellees assert MCL 324.20109a(9)(a)(vi) requires documentation for the cost incurred and the costs are not deemed reasonable. According to appellees, SMDA's interpretation would require reading words into the statute and not giving weight to words purposely included in the statute, contrary to the principles of statutory construction.

In this matter, the Court must determine whether the statutory definition regarding variable B of the repayment formula includes prejudgment interest. The primary goal of statutory interpretation is to determine and give effect to the intent of the legislature.

*Frankenmuth Mutual Insurance Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). Statutory language should be construed reasonably, keeping in mind the purpose of the act. *Ryant v Cleveland Twp*, 239 Mich App 430, 433; 608 NW2d 101 (2000). "If the plain and ordinary meaning of the language is clear, judicial construction is normally neither necessary or permitted." *Guardian Photo Inc v Department of Treasury*, 243 Mich App 270, 277; 621 NW2d 233 (2000). The fair and natural import of the terms employed, in view of the subject matter of the law, should govern. *Ryant, supra*, at 433. Where a statute is ambiguous, then judicial construction is appropriate to determine legislative intent. *Adrian School Dist v Michigan Public School Employees Retirement System*, 458 Mich 326, 332; 582 NW2d 767 (1998). If reasonable minds can differ with respect to the meaning of the statute, judicial construction is appropriate. *Ryant, supra*, at 433. The court does not interpret a statute in a way that renders any statutory language surplusage or nugatory. *Pohutski v City of Allen Park*, 465 Mich 675, 684; 641 NW2d 219 (2002).

Here, the statutory definition of variable B is not ambiguous. Variable A includes "[a]ll reasonable costs incurred by the recipient to obtain the money or compensation." MCL 324.20109a(9)(b). The statute does not define "costs incurred". A dictionary definition may be used to establish the meaning of a word having a common usage. *Michigan Millers Mutual Ins Co v Bronson Plating Co*, 445 Mich 558, 568; 519 NW2d 864 (1994). *Black's Law Dictionary* (1991), p 240-242, describes "cost" as "[t]he sum or equivalent expended, paid or charged for something" or "expenses in prosecuting or defending an action...". The term "incur" means "to become liable". *Id.* at 528. The term "costs incurred" would properly be read as the amount paid for something that one is liable or expense in prosecuting an action that one is liable.

The purpose of awarding statutory interest on money judgments recovered in civil actions is to compensate the prevailing party for loss of use of funds awarded due to the delay, as well as to offset any costs of bringing the court action and to provide incentive for prompt settlement. *McKelvie v Auto Club Ins Ass'n*, 203 Mich App 331, 338 (1994). Costs of bringing the court action are only a part of an award for prejudgment interest. As a result, the full amount of prejudgment interest cannot be included in variable B as "costs incurred" to obtain the money.

Moreover, SMDA is required to provide documentation of the reasonable costs incurred. MCL 324.20109a(9)(a)(vi). Prejudgment interest compensates a prevailing party for some of these costs. Costs that are compensated by the award of prejudgment interest are not considered a cost incurred by SMDA. SMDA must submit documentation of reasonable costs incurred to obtain the money; this may include costs that were compensated by the prejudgment interest award. SMDA previously submitted documentation of its costs incurred in the amount of \$15,268,077. The prejudgment interest was awarded to compensate SMDA for these costs; SMDA cannot now claim that the full amount of prejudgment interest that was awarded to offset the costs of bringing the action, in addition to the actual out of pocket costs for the litigation. SMDA's interpretation would allow recipients of grant monies to deduct costs twice under variable B, by deducting prejudgment interest, as compensation for the recipient's costs, and deducting the recipient's actual costs. Accordingly, only documented reasonable costs incurred by SMDA may be included under variable B.

SMDA's argument that prejudgment interest is deemed reasonable, although may be true, is not relevant for the Court's current determination. Here, the specific statute at issue, MCL 324.20109a, requires documentation of the reasonable costs incurred. MCL

324.20109a(9)(a)(vi). To follow SMDA's interpretation would deem this section nugatory, which is not proper under the principles of statutory interpretation. *Pohniski, supra.*

Furthermore, SMDA's reliance on this Court's Order in the insurance litigation is without merit. The Order dated October 23, 2002, which approves the distribution between principal and interest, specifically provides:

This Order does not determine any obligation of SMDA to repay the State of Michigan pursuant to MCL 324.20109a and cannot be used by SMDA offensively as to any such obligation.

See Exhibit 7 of SMDA's brief on remand. Accordingly, SMDA is prohibited from relying upon this Order in the current litigation. Regardless, the distribution between principal and interest is not pertinent as the Court has determined variable B does not include prejudgment interest.

Accordingly, the Court is satisfied that BRB and MDEQ's decision, which determined under variable B the reasonable costs incurred by SMDA to recover the money or compensation exclude prejudgment interest, is proper.

For the reasons set forth above, the decision of BRB and MDEQ on September 23, 2004, which required full repayment by SMDA of the received grant money, is AFFIRMED. This Court does not retain jurisdiction. Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order resolves the last claim and closes the case.

**IT IS SO ORDERED.**

*MATTHEW S. SWITALSKI*

MATTHEW S. SWITALSKI, Circuit Judge  
CIRCUIT JUDGE

Date: August \_\_\_\_\_, 2007

cc: Roger Trim  
400 Renaissance Center  
Detroit, MI 48243

Celeste Gill  
P.O. Box 48909  
Lansing, MI 48909

AUG 06 2007

A TRUE COPY  
CARMELLA SABAUGH, COUNTY CLERK

BY: *Blanch Carter*, Court Clerk



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# REMITTANCE REPORT

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RECEIPT NUMBERS COVERED BY THIS REPORT	
BEGINNING	ENDING

REPORT DATE <i>11/3/08</i>	REPORT NUMBER
DIVISION OR DISTRICT NAME <i>RRD/U.Sarka</i>	
LOCATION TELEPHONE NUMBER	

REMARKS (Reason for remittance etc.)  
*Settlement  
 RRD-2236  
 South Macomb Nisposal Auth.*

MUST PROVIDE SOURCE DOCUMENT INFORMATION FOR EXPENDITURE CREDIT	
SOURCE DOCUMENT NUMBER <i>CK# 33317274</i>	VENDOR NAME <i>Morgan Stanley</i>

NUMBERS IN PARENTHESES REPRESENT THE NUMBER OF INPUT CHARACTERS

AGY (3)	AY (2)	INDEX (REQUIRED) (5)	PCA (REQUIRED) (5)	AOBJ (REQUIRED) (4)	PROJECT/PHASE (OPTIONAL) (8-2)	FUND (4)	APPN (4)	AMOUNT
<i>761</i>	<i>09</i>	<i>45000</i>	<i>99104</i>	<i>9297</i>	<i>453465 00</i>			<i>1,680,627.90</i>

NOTE: This amount has been credited to the account noted. If an error is found in either account information or amount, notify the DEQ-Cashier's Office immediately.

TOTAL AMOUNT → *1,680,627.90*

PREVIOUSLY FAXED DEPOSIT INFORMATION	
DEPOSIT SLIP NUMBER (PREVIOUSLY FAXED)	DEPOSIT AMOUNT
<b>RECEIVED</b> <i>NOV 03 2008</i>	
FINANCIAL & BUSINESS SERVICES ENVIRONMENTAL QUALITY	
SIGNATURE <i>Brian Morrison</i>	DATE <i>11/3/2008</i>
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RPD-2236*

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<i>761</i>	<i>09</i>	<i>45000</i>	<i>99104</i>	<i>9297</i>	<i>453465 00</i>			<i>12,419.90</i>

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**TOTAL AMOUNT** → *12,419.90*

**PREVIOUSLY FAXED DEPOSIT INFORMATION**

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