

1988

# Vali Convalescent and Care Institutions, a Utah Corporation v. Utah Department of Health, Division of Health care financing : Brief of Respondent

Utah Court of Appeals

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BRIEF

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DOCKET NO. 880434-CA

IN THE COURT OF APPEALS  
OF THE STATE OF UTAH

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VALI CONVALESCENT AND  
CARE INSTITUTIONS, a Utah  
Corporation,

Petitioner/Appellant,

-vs-

UTAH DEPARTMENT OF HEALTH,  
DIVISION OF HEALTH CARE  
FINANCING,

Respondent/Cross Appellant.

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Case No. 880434-CA

Priority No. 14a

BRIEF OF RESPONDENT/CROSS APPELLANT

ON APPEAL FROM THE JUDGMENT OF THE THIRD  
JUDICIAL DISTRICT COURT FOR SALT LAKE  
COUNTY, THE HONORABLE MICHAEL R. MURPHY,  
PRESIDING

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COURT OF APPEALS

IN THE COURT OF APPEALS  
OF THE STATE OF UTAH

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CARE INSTITUTIONS, a Utah	:	
Corporation,	:	Case No. 880434-CA
Petitioner/Appellant,	:	
-vs-	:	Priority No. 14a
UTAH DEPARTMENT OF HEALTH,	:	
DIVISION OF HEALTH CARE	:	
FINANCING,	:	
Respondent/Cross Appellant.	:	

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Case No. 880434-CA

BRIEF OF RESPONDENT/CROSS APPELLANT

JURISDICTION AND NATURE OF PROCEEDINGS BELOW

This is an appeal from the final order of the Honorable Michael R. Murphy, Judge, Third District Court, Salt Lake County, affirming the Final Determination of the Executive Director of the Department of Health.

Jurisdiction is conferred on this Court by Utah Code Ann. § 78-2a-3(2)(a) (1987). The appeal of the administrative hearing decision to the Third District Court was pursuant to Utah Code Ann. § 26-23-2(3) (1987, Supp.).

### ISSUES PRESENTED FOR REVIEW

In addition to the two issues Appellant Vali has presented for review regarding its claim for interest on the amount of a settlement between the parties, Respondent Department of Health, Division of Health Care Financing (DHCF) presents the following issue:

Did the settlement that the parties orally agreed to on March 20, 1985 and confirmed in writing on March 22, 1985, bar, or otherwise render unenforceable, Vali's later claim for interest for the period prior to the settlement?

A ruling in favor of DHCF on either the issues presented by Vali or on the issue presented by DHCF would dispose of the case and render consideration of the other issue(s) unnecessary.

### STATEMENT OF THE CASE

This appeal is Vali's attempt to get pre-settlement interest on the amount of a settlement between the parties, which amount was compromised, settled, and paid in full prior to initiation of litigation. At the time the underlying dispute arose, nursing homes in Utah were paid a certain number of dollars per patient per day by the Division of Health Care Financing (DHCF) for nursing home services provided to Medicaid recipients. The rates for each nursing home facility were calculated according to regulations of DHCF and were based principally on cost data supplied by each nursing home on its annual Facility Cost Profile (FCP). The nursing homes were paid monthly pursuant to the rates in effect. The rates were subject to adjustment on audit of the FCPs.



The underlying dispute arose when independent auditors found that Vali, a provider of Medicaid nursing home services, had significantly overstated its allowable costs on certain FCPs that Vali had submitted. Vali disagreed with the audit findings and requested an informal hearing, which commenced a rather lengthy series of conferences and meetings in an attempt to resolve differences and agree to a final settlement of the audit without the necessity of litigation in a formal administrative hearing. The parties reached a final compromised settlement agreement on or about March 22, 1985. The rates were adjusted and final settlement calculated.

About two weeks after March 22, 1985, Vali raised the issue of interest for the first time. About a week later the parties met to discuss how the interest issue should be handled. At that meeting DHCF was informed by Vali that, in its opinion, the issue of interest had not been settled by the informal hearing. Vali was informed by representatives of DHCF that, in their opinion, the question of interest was settled by the informal hearing. The parties reached no agreement at that meeting except an agreement to disagree. Pursuant to the compromised settlement agreement of March 22, 1985, and without revoking its position that interest was settled by the informal hearing, DHCF thereafter tendered a check for the full settlement amount to Vali. Vali accepted the check and negotiated it, though Vali did not specifically rescind its contention that interest had not been settled.

Thereafter the dispute regarding interest was submitted to a formal administrative hearing officer who found in his recommended decision that Vali was entitled to interest. That decision was based largely on the Utah Procurement Code (Utah Code. Ann. § 63-56-1 et seq). The Executive Director of the Department of Health then entered her Final Determination holding in part that the statute relied on by Vali did not apply and that Vali was not entitled to interest. The matter was appealed to the Third District Court where the Final Determination of the Executive Director was affirmed. Vali no longer asserts that it is entitled to interest under the statute relied on by the Administrative Law Judge but continues to assert that it is entitled to interest under two other statutes.

#### STATEMENT OF FACTS

1. Respondent/Cross Appellant DHCF is the state agency responsible for the administration of the Medicaid program pursuant to Title XIX of the Federal Social Security Act.

2. Appellant Vali was an owner and operator of nursing homes and provided nursing home services to Medicaid recipients at the time the original dispute arose. However, Vali sold its nursing homes prior to requesting an informal hearing and was not a Medicaid provider at the time the parties settled their dispute (R. 157) and Formal Hearing Transcript, p. 26 ln 23.

3. The Medicaid regulations require that within 90 days after the close of each fiscal year every nursing home must file a report of its actual "allowable costs" for the fiscal year. That report is referred to as a Facility Cost Profile or

FCP. The Medicaid program specifies what costs are allowable. Medicaid State Plan, Attachment 4.19D §§ 330, 332, and 500 (1979).

4. The State Plan requires that "[u]nallowable costs should not be claimed on the FCP", and that the provider "is primarily responsible for the accuracy and appropriateness of the reported information." Medicaid State Plan, Attachment 4.19D, § 331 (1979).

5. At the time this action arose, the allowable costs reported in a facilities FCP were used to determine that facility's per patient per day prospective payment rate for later periods. Medicaid State Plan, Attachment 4.19D, § 920 (1979).

6. In December of 1979 or January of 1980, Vali submitted its long overdue FCPs for the period from January 1, 1978 to June 30, 1978 (approximately 15 months late), and its slightly overdue FCP for the period of July 1, 1978 to June 30, 1979 (approximately 3 months late). Stipulation of Facts, paragraph 1.

7. Based on review of those FCPs, auditors of the independent accounting firm of Main Hurdman determined that a substantial portion of the costs reported on those FCPs were not "allowable costs" within the Medicaid program (R. 106).

8. Because those FCPs were submitted late and because they contained disallowances, the Division of Health Care Financing (DHCF) was not able to use them at the time that it was necessary to calculate Vali's prospective payment rate. DHCF, therefore, calculated an interim rate that would be paid to Vali

until the audit was settled. The interim rate was based on past reports submitted by Vali's facilities, inflated forward (R. 105).

9. At such time as the dispute regarding the above-mentioned FCP's could be settled, DHCF would then use the settled FCP's to recalculate the prospective payment rates regarding Vali and make any adjustments that might be necessary, whether it be for overpayments or for underpayments (R. 105).

10. The Bureau of Medicaid Fraud, Department of Public Safety, undertook an investigation of Petitioner early in 1980. Stipulation of Facts, paragraph 2.

11. Settlement negotiations between the parties in relation to disputed claims were stayed pending the conclusion of that investigation. Stipulation of Facts, paragraph 2.

12. At the conclusion of that investigation, the Bureau of Medicaid Fraud determined that there was insufficient evidence to support criminal charges. Stipulation of Facts, Exhibit A.

13. After the Medicaid Fraud investigation was completed on April 22, 1982, the Rate Reimbursement Specialist in the Department of Health recalculated the rates to be paid to the nursing homes that were operated by Vali, and informed Vali of those recalculations in letters that were sent to the facilities under dates of May 5, 1982 and May 10, 1982 (R. 141-148).

14. Vali disagreed with the amounts and, almost a year later, on March 25, 1983 submitted its request for an informal administrative hearing (R. 157).

15. That hearing was scheduled for April 19, 1983. Pursuant to requests from Vali, the date of that hearing was rescheduled several times and was eventually held on July 28, 1983 (R. 158-162).

16. The total amount Vali claimed as allowable costs for its four nursing homes on the above-mentioned FCPs was approximately 3.9 million dollars. After months of negotiations between the parties in their efforts to resolve their dispute without formal litigation, the portion of that sum that continued to be disallowed was a little more than \$768,000.00 (R. 166-171).

17. The final session of the informal hearing took place on March 20, 1985. As a result of that meeting the parties agreed that an additional \$60,000.00 of the disallowance would be allowed, making the final disallowance a little more than \$708,000 (R. 174) and Stipulation of Facts, Exhibit I.

18. At that meeting the parties orally agreed to a proposed final settlement of their dispute. Uncontroverted evidence shows that at that meeting Mr. Brown (the principal of Vali) affirmed that the proposed settlement would "dispose of every claim which [he had] against the Health Department" and that he would go his way and the Department would go its way "without having to deal with each other over money again." Formal Hearing Transcript, Exhibit S-1 Paragraph 5.

19. After that meeting, the hearing officer put the terms that the parties had agreed to into written form (letter and attachments dated March 25, 1985), and proposed them for Vali's approval as final settlement. In the proposed settlement

the hearing officer stated, "I propose the following as final settlement in the Vali Care and Convalescent Centers issues." Stipulation of Facts, Exhibit H, p. 6, and Exhibit I.

20. Mr. Brown (the principal of Vali) went to the Health Department and picked up that proposed settlement on March 22, 1985. On that same day Mr. Brown confirmed, in writing, his acceptance of the Department's offer for final settlement by a letter in which he wrote:

Mr. Don Hampton and I have reviewed the contents of your letters of March 18 and 25 (picked up March 22) containing your findings as informal hearing officer of the Valley Care Center Audit review.

Therein, you expressed a desire to expedite a final resolve in these matters; so too do we. Therefore, in an attempt to resolve without further discussion at the administrative hearing level; I am informing you of our decision to accept your findings as contained in the two (2) aforementioned letters. This settlement, while compromised, is a fair one and I appreciate your efforts in carrying it to this point.

Stipulation of Facts, Exhibit K.

21. About two weeks after the settlement agreement was entered into, Vali raised the issue of interest for the first time as the parties attempted to draft a mutual release. Formal Hearing Transcript, p. 83.

22. On May 13, 1985, the parties met to discuss the issue of interest. Regarding that meeting, the Stipulation of Facts herein states:

[at that] meeting. . . the DHCF was informed by the claimant that, in his opinion, the issue of interest had not been settled by the informal hearing. The claimant was informed by representatives of the DHCF

that, in their opinion, the question of interest was settled by the informal hearing.

Stipulation of Facts, p. 4, paragraph 21.

23. The parties left that meeting with the issue of interest unresolved and with nothing more than an agreement to disagree, each party holding fast to its respective position as stated in the Stipulation of Facts and agreeing only that the issue of whether interest was settled by the settlement agreement would have to be resolved through litigation. Formal Hearing Transcript, p. 22 et seq.

24. Respondent thereafter delivered a check for the full settlement amount to Vali. Stipulation of Facts, p. 5, paragraph 23.

25. Vali negotiated the check and filed a request for a formal hearing to resolve its claim regarding interest. Stipulation of Facts, p. 5, paragraphs 24 and 25.

26. A hearing was held before an administrative law judge. The recommended decision of the administrative law judge was in favor of granting interest to Vali (R. 19-25).

27. The record including the transcript of the hearing, the stipulation of facts, the exhibits, the briefs of the parties and the recommended decision of the administrative law judge was then forwarded to the Executive Director of the Department of Health for her review and final order. The Executive Director entered her Final Determination that Vali was not entitled to interest (R. 16-18).

28. Vali then appealed to the Third District Court. After extensive briefing and oral argument, that court entered its order affirming the Final Determination of the Executive Director that Vali is not entitled to interest (R. 229-237, 281-283, 304-305).

29. Vali then appealed to this Honorable Court and the Department of Health cross-appealed (R. 306-307, 313-314).

RESPONSE TO VALI'S STATEMENT OF FACTS

1. The Form 271-A referred to in paragraph 1 of Vali's statement of Facts (hereinafter referred to as "Vali's Facts") is not an itemized statement "with fees for services" as Vali claims. Payment was not made on a fee for services basis but rather pursuant to an established rate per patient per day. Form 271-A simply contained an itemized list of Medicaid recipients that resided in the facility during the month, the number of days they resided there, the level of care and rate they were entitled to, the total reimbursement the facility was entitled to (the applicable rate times the number of days in residence for each patient), the amount of the total reimbursement that would be paid by third party insurers, etc., and the amount of the total reimbursement that would be paid by Medicaid. Form 271-A is not a Facility Cost Profile (FCP). It is the FCPs that are the cause of the controversy herein. Since the record contains no evidence or contention to the contrary, it must be assumed that Vali submitted Form 271-A each month for each of its nursing homes and that Vali was timely paid each month pursuant to those Form 271-A's.



2. In response to paragraph 2 of Vali's Facts, the Facility Cost Profiles do not contain "fees for services" as claimed by Vali. Rather they contain the "costs" that Vali claimed were allowable costs based on the cost reimbursement manual. As indicated in DHCF's Statement of Facts, those costs were used to set the per patient per day rate for later periods, which rates were subject to adjustment after audit of the FCPs.

3. In response to paragraph 3 of Vali's Facts, it is likely that under normal circumstances the audits, hearings, etc., would have been completed by July 1, 1980 but contrary to Vali's suggestion, payment of the settlement amount would not have been made by that date because it would not have been due. The FCPs were used to calculate rates for later periods, as pointed out in DHCF's Statement of Facts. Furthermore, the reason circumstances were not normal was because Vali grossly overstated its claims.

4. In response to paragraph 4 of Vali's Facts, the Bureau of Medicaid Fraud did not state that "there was no evidence to support any charges that VALI had filed false or inaccurate FCPs" (Emphasis added) as claimed by Vali. Rather the Bureau stated that there was "insufficient evidence to support criminal charges against Richard Brown or any of the principals . . . ." Exhibit A to Stipulation of Facts, emphasis added. As the Court is well aware, fraud can be one of the most difficult of criminal cases to prove. Evidence may be insufficient to support "criminal charges" for any of a number of reasons and yet the same evidence may still show wrongfulness, inaccuracies or

falsehood. Vali's claims as to the statement made by the Bureau of Medicaid Fraud are inaccurate, misleading and untrue.

5. In paragraph 5 of Vali's Facts, Vali claims that the Bureau of Medicaid Fraud seized virtually every business document Vali possessed, that only part of those documents were returned and that those that were returned were in such disarray as to be virtually worthless without a major effort at reconstruction. In citing to the record, Vali cites the Third District Court's Memorandum Decision, as if to suggest that the Court had made such a finding. The Court did not make such a finding. Rather, after noting that Vali sought and received several extensions of time, the Court simply stated: "Vali suggests that the extensions were necessary as a result of the fraud investigators' disruption of its business documents." Memorandum Decision p. 2. Emphasis added. Hence the Court did not make such a finding but simply restated Vali's allegation. Furthermore, based on information supplied by the Bureau of Medicaid Fraud, the Department of Health would vigorously contest Vali's allegations that their documents were not returned or returned in disarray. (R. 8, paragraph 2.)

Even if the alleged facts stated in paragraphs 4 and 5 of Vali's Facts were true, they are irrelevant to Vali's case against the Department of Health. The Bureau of Medicaid Fraud is in the Department of Public Safety and the Department of Health has no control over the Department of Public Safety. Hence, Vali's cause of action, if any they have, should be

against the Bureau of Medicaid Fraud.<sup>1</sup>

6. In response to paragraphs 7, 8 and 9 of Vali's Facts, Vali quotes the hearing officer out of context and conveniently drops the "However" from the original quote so that it would appear that there was a reservation of rights in the proposed settlement that would allow Vali to raise the interest question for the first time after the settlement proposal was accepted. The full quote immediately follows the settlement proposal and reads:

Both parties in this issue have indicated that if they find this settlement satisfactory, they will accept settlement at the administrative hearing level. However, both parties reserved the right to raise any of the issues discussed in this hearing, or any related issues not necessarily discussed in the informal hearing level if the conflict cannot be resolved at the administrative review level.

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<sup>1</sup> In oral argument in the District Court, Vali argued that it did not matter which Department it sued because ultimately the money comes from the State. But it does make a difference. The case Vali would have to prove against Medicaid Fraud is quite different than the case against the Department of Health. Moreover, each Department has its own separate budget. If Medicaid Fraud caused harm to Vali, then Medicaid Fraud should pay, not Health. Furthermore, since the Federal government reimburses the State for approximately 73% of the cost of Medicaid-covered medical services but does not reimburse the State for interest, if the State pays interest, they pay not only on State dollars but also on federal dollars. In addition, any money paid out to interest is not available for medical care. If it is not spent on medical care, the State also loses the Federal match that could have been claimed had the money been spent on medical care. The result is that for every \$100,000.00 taken out of the Department of Health budget to pay interest, the State's Medicaid program loses about \$370,370.00 that would otherwise be available to fund much needed medical care for the poor of our State. Hence it does make a difference which agency is sued. If the Department of Health ends up paying interest it is the medically needy poor who are the real losers. Vali's action, if any, should be against the Bureau of Medicaid Fraud.

Stipulation of Facts, Exhibit H, p. 9. Emphasis added. Hence the reservation of rights to raise issues applied only if the settlement proposal was not accepted. Since it was accepted, there was no reservation of rights.

7. In paragraph 10 of Vali's Facts, Vali claims that as a result of the informal hearings and conferences a determination was made that Vali was "entitled" to a certain "principal" sum. The exhibit relied on by Vali in support of that claim makes no reference to Vali being entitled to anything or to a principal amount but rather sets forth ". . . calculations for the settlement. . ." and "The settlement results . . ." (Stipulation of facts paragraph 17 and accompanying exhibit).

#### SUMMARY OF ARGUMENT

In the District Court, Vali argued that it had a statutory right to interest based upon any one of three specified Utah statutes. The Third District Court ruled against Vali on all three statutes. Vali's appeal is based on two of those statutes. The Department of Health's argument is simply that neither of the statutes relied on by Vali apply in this case.

Though Vali has argued below that it does not seek interest as damages, Vali now asserts that it does seek interest as damages. The Department of Health argues that it is not permissible to raise a new issue on appeal and that even if it were permissible, the law provides that acceptance of the principal amount bars any claim for interest as damages. Vali did accept the full principal amount and is therefore barred from now claiming interest.

By way of cross-appeal, the Department of Health points out that the final settlement was the result of compromise between the parties. Moreover, the Department's proposal for settlement was, by its own terms, a proposal for final settlement. Vali did not reject the offer or even propose a counter offer but simply accepted the offer as written, i.e., as an offer for final settlement. Hence, Vali could not thereafter raise another claim.

Furthermore, the compromised settlement agreement was binding on the parties and was substituted for the underlying claims. The compromise agreement barred any subsequent litigation on the underlying claim.

#### ARGUMENT

##### POINT I

**SECTION 15-1-1, UTAH CODE ANN. CREATES NO RIGHT OR ENTITLEMENT TO INTEREST; IT MERELY ESTABLISHES THE LEGAL RATE**

The first issue presented by Appellant in this appeal is:

Is interest awardable under Utah Code Ann. § 15-1-1 where the principal sum due by contract is resolved by the parties without entry of formal judgment?

Utah Code Ann. § 15-1-1 states:

(1) Except when parties to a lawful contract agree on a specified rate of interest, the legal rate of interest for the loan or forbearance of any money, goods, or chose in action shall be 10% per annum. Nothing in this section may be construed to in any way affect any penalty or interest charge which by law applies to delinquent or other taxes or to any contract or obligations made before May 14, 1981.

(2) The parties to a lawful contract may agree upon any rate of interest for the loan or forbearance of any money, goods, or chose in action.

In its Minute Entry of May 11, 1988, the Third District Court, in this action, ruled:

Section 15-1-1, Utah Code Ann., on its face creates no cause, claim, right or entitlement; it merely establishes the legal rate of interest.

The correctness of the Court's ruling is verified by a brief examination of the legislative history of Section § 15-1-1, and by a close reading of that statute. Section 15-1-1 was first enacted in 1907. At that time the common law in Utah already provided for prejudgment interest as damages on amounts past due. Godbe v. Young, 1 U. 55 (No date listed); Perry v. Taylor, 1 U. 63 (1871). Hence, § 15-1-1 did not create any new right or even codify an existing one. Rather, § 15-1-1 simply set the rate at which prejudgment interest would be assessed when a party had a common law right to prejudgment interest or when the parties had contracted for the payment of prejudgment interest but had not agreed upon a rate.

A close reading of 15-1-1 will verify that this is true. There are no words requiring payment. The statute does not say "the debtor shall pay interest" or "the creditor is entitled to interest." Rather, it simply says "the legal rate of interest . . . shall be 10% per annum." The right to the interest is derived from the common law. The statute (§ 15-1-1) simply sets the rate.

Since Utah Code Ann. § 15-1-1 in and of itself creates no right or entitlement to interest, Vali is not entitled to interest under that statute. In order for Vali to be entitled to interest at the rate set by § 15-1-1, Vali would have to show that it is entitled to interest pursuant to principles of the common law.

## POINT II

VALI CLAIMED BELOW THAT INTEREST WAS SOUGHT PURSUANT TO STATUTORY ENTITLEMENT AND NOT PURSUANT TO THE COMMON LAW. VALI CANNOT NOW CLAIM ENTITLEMENT TO INTEREST PURSUANT TO THE COMMON LAW, BUT EVEN IF IT COULD, THE COMMON LAW RULE OF EXTINGUISHMENT WOULD BAR VALI'S CLAIM.

At the administrative hearing level, Vali argued that

[s]ince interest is being sought pursuant to State statutes and not as general damages,  
the general rule of extinguishment does not apply.

Claimants Hearing Memorandum, p. 9 Emphasis added (R. 59). Thus, Vali did not seek interest based on a theory of damages. On the contrary, Vali specifically argued that it did not seek interest as damages but rather as an entitlement pursuant to certain State statutes, so as to avoid application of the general rule of extinguishment. (That rule provides that when interest is claimed as damages, acceptance of the principal amount extinguishes any claim for interest and that a separate suit for interest as damages may not be maintained.)

Statutory entitlement, of course, was also the basis of Vali's claim on appeal to the district court. Again, in framing its issues on appeal before this Honorable Court, Vali did not claim interest as damages but rather argued only that it was

entitled to interest pursuant to State statutes. Indeed, the first time Vali claimed interest as damages was in response to DOH's Motion for Summary Disposition in this Honorable Court.

The law in Utah is well settled that issues may not be raised for the first time on appeal. Franklin Financial v. New Empire Develop. Co., 659 P.2d 1040 (Utah 1983). Hence, Vali's untimely claim that it now seeks interest as damages should not even be considered by this Court.

Moreover, even if Vali could now assert a claim for interest under the common law, it would not prevail because of the general rule of extinguishment. The law in Utah is clear that "[p]rejudgment interest represents an amount awarded as damages," L & A Drywall, Inc. v. Whitmore Const. Co., Inc., 608 P.2d 626, 629 (Utah 1980) and that

where interest is payable merely as damages for nonpayment of money when due, acceptance of the principal amount bars any claim for interest.

Cox Const. Co. v. State Road Comm., 583 P.2d 87 (Utah 1978).

Moreover, the authority relied upon by the Cox court indicates that this is true even though the creditor receives the payment of principal, without interest, under protest. The rule barring separate claims for interest is further explained in Point III hereinafter.

Since Vali did accept payment of the principal in full, Vali's claim for interest is barred and Vali cannot now maintain a separate action for interest.



### POINT III

THE CASES RELIED ON BY VALI IN POINT I OF ITS ARGUMENT ARE INAPPLICABLE IN THE PRESENT CASE AND DO NOT JUSTIFY VALI'S CLAIM FOR INTEREST UNDER UTAH CODE ANN. § 15-1-1.

The cases relied on by Vali in Point I of its Argument are easily distinguishable from the case at bar. One of the most significant differences is that none of the cases relied on by Vali involved a claim for interest on an amount that had been determined by a compromise between the parties. Rather, all of the cases relied on by Vali involved a claim for interest on either a principal amount that was uncontested or on the amount of a liability that had been determined by the Court.

By way of contrast, payment of a compromised claim is payment of a claim of questionable validity and enforceability. Certainly, it would be unjust to assess interest on such a claim. Though Vali has the burden of proof, it has not cited one case where interest was claimed and ordered on a settlement amount that had been determined by a compromise between the parties. Indeed, it is highly doubtful that such a case exists, not only because of the manifest injustice of assessing interest on a questionable claim but also because when parties compromise and settle their disputes, the compromise agreement is substituted for the antecedent claim and the rights and liabilities of the parties are measured and limited by the terms of the compromise agreement, as is explained more fully hereinafter.

In trying to justify its claim that interest should be paid on the settled amount, Vali points out that the law generally encourages settlements. Vali then seems to argue that

a ruling denying presettlement interest on the compromised amount would fly in the face of the well-settled principle of law that "settlements are favored in the law." Respondent asserts that quite the opposite is true. The only way to encourage settlements is to enforce them. If the Court were to allow a party to assert additional claims after a settlement had been agreed to, surely that would have a chilling effect. Certainly, there is disincentive to compromise and settle if a party must always wonder whether the opposing party will later assert a claim for interest. Moreover, a party would be disinclined to agree to pay a questionable claim if there was always the possibility that the other party could later hit him over the head with interest.

If a claim for interest could be maintained after entering into a settlement, the only way for a party to protect himself from such uncertainty would be to inquire up front whether the other party would like to claim interest. Such would be not only unfair but would also fly in the face of the well-settled principle that each party is responsible to assert its own claims.

Moreover, if a claim for interest were made up front, prior to the settlement, it is quite possible that it would affect the extent to which the payor was willing to compromise the claim. Indeed, in the present case, Mr. Brown, Vali's principal, testified that he thought it would have been more difficult to get a settlement if interest had been included in the claim. Formal Hearing Transcript, p. 61, lines 1-6.

The law favors a policy of openness and honesty. When parties are negotiating a settlement, they should put all their demands on the table before the compromise is accepted. It is not only unlawful, it is also manifestly unfair to allow one party to impose an additional claim on the other after a settlement has been reached.

Another difference between the two principal cases relied on by Vali and the present case is that, in those cases, the statutes relied upon by the courts specifically provided a right to interest instead of just setting the legal rate as does Utah Code Ann. § 15-1-1. In United States v. Consolidated Edison, 590 F. Supp. 266 (S.D.N.Y 1984), the Court relied on N.Y. Civ. Prac. Law § 5001 (McKinney 1963) which begins with the words "Interest shall be recovered . . . ." In Girard Trust Co. v. United States, 270 U.S. 163 (1926), the Court relied upon a United States statute that provided ". . . interest shall be allowed and paid upon the total amount of such a refund . . . ." 42 Stat. 316 § 1324(a) (1921). Hence, the statutes relied on in both cases specifically provided a right to interest, whereas Utah Code Ann. § 15-1-1 merely sets the legal rate.

Con. Ed. and Girard are the only cases cited by Vali where a suit for interest was allowed after the principal had been paid. There is an additional distinction between those cases and the present case that is significant.

As a general rule, if interest is due by the terms of the contract, the payment of the principal is no bar to its subsequent recovery, but if it is not due by the terms of the contract, the payment of the principal sum is a bar to recovery.

45 Am. Jur. 2d, Interest and Usury, § 341 p. 259.

In finding that an action for interest could be maintained after payment of the principal, the Con. Ed. Court relied on that general rule, as evidenced by the following language the Con. Ed. court quoted from the Girard decision:

[In Stewart] [t]his Court held that the taxpayer could not maintain an independent action for interest, for the reason that in such cases interest is considered as damages, does not form the basis of the action, and is only an incident to the recovery of the principal debt. We do not think that it controls this case. The payment of interest in the Stewart Case was not expressly provided for in the Act. In this case there is statutory provision for it, and it is analogous to a suit in debt or covenant in which the contract specifically provides for payment in interest on the principal debt.

Con. Ed., p. 270. Emphasis added. Thus, in Con. Ed. and Girard, not only was the principal amount uncontested, there were also statutes that specifically provided for payment of interest. The Courts reasoned that those statutes were analogous to a contract that specifically provides for the payment of interest. Therefore payment of the principal would not bar a suit for interest. However, consistent with the general rule quoted above, the Courts also noted that it was a different situation than where interest was claimed as damages.

In the present case, the amount of the payment was a compromised amount rather than an uncontested amount, the statute (Utah Code Ann. § 15-1-1) does not specify a right to interest, and the Utah Supreme Court has made it clear that prejudgment interest is damages, as pointed out at page 18 hereinabove. Hence, Girard and Con. Ed are inapplicable in the present case.

At page 11 of its brief, Vali states:

In reliance upon § 15-1-1, the Utah Supreme Court has held that, "In contract cases, certainly, interest on amounts found to be due in judicial proceedings is recovery to which the creditor is entitled as a matter of law." Lignell v. Berg, 593 P.2d 800, 809 (Utah 1979).

Vali seems to suggest that the Court in Lignell relied on § 15-1-1 in determining that the creditor was entitled to interest when in fact the Court relied on several cases, not on the statute, to establish that right. The Court did, however, reference § 15-1-1 as setting the legal rate. See Lignell, p. 809. This, of course, is consistent with DHCF's argument as set forth above. Section 15-1-1 does not establish a right, but merely sets the rate.

It should also be noted that the above-quoted language from Lignell, by its own terms, applies only to "interest on amounts found to be due in judicial proceedings." Lignell makes no reference to compromised claims.

Moreover, application of the Lignell rule in the present case would not entitle Vali to recovery. If a party pays the principal in full, there is no principal owed, and the only amount that can be "found to be due in judicial proceedings" is zero. Of course, interest on a zero amount is itself zero.

Citing Holmes v. Kewanee Oil Co., 664 P.2d 1335 (Kan. S. Ct. 1983), Vali claims that equitable principals would entitle Vali to interest "where a party retains and makes actual use of money belonging to another." Though that may be true, there is no evidence in the present case that the money was retained and used. Indeed, the evidence shows that 73% of the settled amount

was paid by the Federal Government. Furthermore, since the settlement amount was reached by compromise, it is questionable whether the money "belonged to another" until the settlement was agreed to.

It should also be noted that prejudgment interest is denied where the claim is substantially inflated and a genuine dispute exists between the parties as to the amount due since the policy of the law is to discourage grossly inflated and overstated claims. Pappas v. Jack O.A. Nelsen Agency, Inc., 260 N.W.2d 271 (Wis. 1978). As DHCF has previously pointed out, this whole dispute was caused by the grossly overstated claims on Vali's Facility Cost Profiles. Even the final disallowance was a whopping \$708,000.00 on an allowed claim of about 3.2 million dollars. Hence, interest should not be allowed.

#### POINT IV

##### UTAH CODE ANN. § 15-6-1 DOES NOT APPLY BECAUSE THERE WAS A DISPUTE BETWEEN THE PARTIES

The second issue presented by Appellant in this appeal is:

Is petitioner entitled to interest under the  
Utah Prompt Payment Act (Utah Code Ann. §§  
15-6-1 et seq.?)

The Prompt Payment Act (copy attached as Exhibit A) is an act providing for the payment of interest by the State on delinquent accounts. By its own terms, the Prompt Payment Act does not apply where there is a dispute as to the amount due. That act provides that if the agencies' failure to timely pay

is the result of a dispute between the  
agency and the business over the amount due

or over compliance with the contract, the provisions of this act are inapplicable."

Utah Code Ann. § 15-6-4 (1986 Replacement). Hence, in this action, the Third District Court ruled, at page five of its Memorandum Decision of February 11, 1988, that the Prompt Payment Act

is limited by Section 15-6-4, which renders the interest provisions inapplicable if the failure to timely pay is the result of a dispute. There was here a dispute . . . Section 15-6-3 is therefore inapplicable.

Vali has argued that there is no dispute in this case and that the Act therefore applies. Such a position is untenable.

When Vali submitted its FCPs in December 1979, those FCPs were Vali's claims as to what expenses it claimed were allowable Medicaid expenses for the purpose of setting Vali's prospective payment rate. Upon the recommendation of the independent auditors who reviewed those FCPs, DHCF disputed the amount claimed and disallowed a substantial portion of the amount claimed. Had there been no dispute, DHCF would not have made a disallowance but would simply have accepted the figures Vali claimed in its FCPs and used those figures in calculating Vali's prospective payment rate. There would have been no need for the months of conferences and hearings. DHCF, however, did not accept those figures. Rather, they disputed the amount claimed by Vali.

On page 19 of Vali's Brief, Vali seems to infer that the Administrative Law Judge ("ALJ") considered the applicability of the Prompt Payment Act and determined that there was "no

legitimate dispute" and that the Department's interpretation of what constitutes a dispute is "clearly unreasonable." Vali's argument is misleading. The ALJ did not even mention the applicability of the Prompt Payment Act in his findings, conclusions and recommended decision. The ALJ's decision was based principally on the Procurement Code (Utah Code Ann. § 63-56-1, et seq.), which the Third District Court found does not apply in this case, and which finding Vali did not appeal to this Court. Furthermore, the Procurement Code (the statute relied on by the ALJ) has no "dispute" provision. Hence, the issue of whether there was a dispute was not even considered by the ALJ.

There clearly was a dispute between the parties. As mentioned above, the informal hearing officer's proposed settlement stated:

Both parties in this issue have indicated that if they find this settlement satisfactory, they will accept settlement at the administrative hearing level. However, both parties reserved the right to raise any of the issues discussed in this hearing, or any related issues not necessarily discussed in the informal hearing level if the conflict cannot be resolved at the administrative review level.

Moreover, when the owner of Vali accepted the proposed settlement, he wrote: "[T]his settlement, while compromised, is a fair one and I appreciate your efforts in carrying it to this point." Statement of Facts herein, paragraph 18.

Were there no dispute, there would be no need for a settlement. Were there no dispute, there would be nothing to compromise. Furthermore, the fact that both parties reserved the right to contest any of the issues if the hearing officer's



settlement proposal was not accepted, is evidence that all issues remained in dispute right up until the settlement proposal was accepted in March of 1985. Most significantly, the very fact that Vali compromised and settled the FCP's for over seven hundred thousand dollars less than it originally claimed, and called the settlement "a fair one", is sufficient evidence by itself that there was a dispute.

This case is simply not the type of case to which the Prompt Payment Act applies. The intent of that Act is to ensure that the state agencies make timely payment of undisputed claims. That Act clearly applies only in those situations where there is no dispute as to the amount due and where the state agency is simply delinquent in making payment of an uncontested amount. When there is a dispute, a party may still seek interest under the Procurement Code or pursuant to the common law, if either are applicable, but the Prompt Payment Act does not apply.

There was a dispute in the present case and the Prompt Payment Act is therefore inapplicable.

#### **POINT V**

##### **THE SETTLEMENT ENTERED INTO BY THE PARTIES BARS VALI'S CLAIM FOR INTEREST.**

After months of negotiations between the parties in their efforts to resolve their dispute without formal litigation, the final session of the informal hearing took place on March 20, 1985. At that meeting, the parties orally agreed to terms for final settlement of their dispute. Uncontroverted evidence shows that at that meeting, Mr. Brown (the principal of Vali) affirmed that the proposed settlement would "dispose of every claim which

[he had] against the Health Department" and that he would go his way and the Department would go its way "without having to deal with each other over money again." Formal Hearing Transcript, Exhibit S-1, paragraph 5.

After that meeting, the hearing officer put the terms to which the parties had agreed into written form and proposed them for Vali's approval as final settlement. In that typed copy of the settlement agreement, the hearing officer stated: "I propose the following as final settlement in the Vali Care and Convalescent Center's issues." Formal Hearing Transcript, Exhibits H & I, p. 6. Emphasis added. The hearing officer then set forth the terms and concluded "[i]f, as we discussed [the settlement] is satisfactory to you, I would appreciate a letter to that effect so we can begin the process of adjusting the rates and generate a final warrant." Stipulation of Facts, Exhibit "I". Emphasis added.

Mr. Brown picked up the hearing officer's proposal for final settlement at the Health Department on March 22, 1985. On that same day, Mr. Brown confirmed, in writing, his acceptance of the Department's offer for final settlement by a letter in which he wrote:

Mr. Don Hampton and I have reviewed the contents of your letters of March 18 and 25 (picked up March 22) containing your findings as informal hearing officer of the Valley Care Center audit review.

Therein, you expressed a desire to expedite a final resolve in these matters' so too do we. Therefore, in an attempt to resolve without further discussion at the administrative hearing level; I am informing you of our decision to accept your findings as contained

in the two (2) aforementioned letters. This settlement, while compromised, is a fair one and I appreciate your efforts in carrying it to this point.

Stipulation of Facts, Exhibit "K". Emphasis added.

Thus, on March 20, 1985, the parties had agreed orally to a settlement, and that oral agreement was confirmed in writing by both parties on March 22, 1985.

Moreover, the parties do not even contest whether there was a settlement agreement of some sort. Indeed, Petitioners argue that settlements are favored by the law. The only real disagreement between the parties is whether their settlement also settled the question of interest.

The law is well settled that an offer of settlement must be accepted on the terms in which the offer is made. Watters v. Hedgpeth, 90 S.E. 314, 172 N.C. 310 (1916). That, of course, is not surprising. It is a basic principle of contract law. When one party makes an offer, the other party may either accept the offer, make a counter offer, or reject the offer.

The hearing officer's proposal, as quoted above, was a proposal for final settlement. Mr. Brown had the option to accept that offer on the terms in which it was made (i.e. as final settlement), to reject the offer, or to make a counter offer. He did not reject. Nor did he make a counter offer. He simply accepted the offer as written,. Thus, the parties had entered an agreement for final settlement, and Mr. Brown had even indicated that the settlement, while compromised, was a fair one.

As Vali has pointed out, the law favors settlement. It favors the finality of settlements. Holler v. Wallis, 573 P.2d

1302 (Wash. 1978). Hence, Vali could not raise a new issue after accepting the hearing officer's proposal for final settlement.

Another reason that Vali is not entitled to interest for the period preceding the settlement agreement is that:

[a] valid compromise and settlement is final, conclusive, and binding upon the parties . . . and, regardless of what the actual merits of the antecedent claim may have been, they will not afterward be inquired into and examined . . .

The compromise agreement is substituted for the antecedent claim or right, and the rights and liabilities of the parties are measured and limited by the terms of the agreement. The antecedent claim is extinguished, and subsequent litigation based upon it is barred by the compromise and settlement.

15a Am Jur 2d Compromise and Settlement §§ 24, 25.

Hence, because the settlement agreement extinguishes the prior agreement and because the rights and liabilities of the parties are determined by the settlement agreement, even if the Court were to rule that the settlement agreement herein settled only the principal amount, Vali would still be entitled to interest on the settlement amount only from the date payment of the settlement amount was due up to and including the date it was paid.

The earliest that the settlement amount herein was due was April 5, 1985 (the date the parties' accountants agreed on the calculations). The record shows that the Department did pay interest on the settlement amount from that date up to the date when payment of the settled amount was made on May 16, 1985. Vali has no other enforceable claim for interest.

### CONCLUSION

Vali raised two issues on appeal, namely:

1. Whether interest is awardable under Utah Code Ann. § 15-1-1 where the principal sum due by contract is resolved by the parties without entry of a formal judgment; and

2. Whether petitioner is entitled to interest under the Utah Prompt Payment Act (Utah Code Ann. §§ 15-6-1, et seq.), under the facts of this case.

As set forth above, § 15-1-1 in and of itself creates no right or entitlement to interest, but rather merely sets the rate that applies when there is a right to interest pursuant to common law principles regarding prejudgment interest, and § 15-6-1 et seq. does not apply in this case because there was a dispute between the parties. Since neither statute relied upon by Vali is applicable, Vali's appeal must fail.

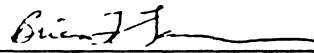
Though Vali's claim for interest under the common law is not timely and should not be considered by this Court, even if it was timely, it would not entitle Vali to interest since the well-settled rule of the common law provides that where interest is sought pursuant to the common law rather than by a specific contract right, a separate action for interest may not be maintained and acceptance of the principal bars any claim for interest.

Furthermore, because the parties compromised their claims and entered a settlement agreement, Vali is only entitled to interest from the time of the settlement to the time of payment, which interest has already been paid to Vali.

Settlements are favored in the law. The settlement between the parties ought to be enforced and no further claims allowed.

For the many reasons cited above, but especially because Vali has no right to interest under the statutes it relies on, Vali's appeal must fail. DHCF respectfully requests that the Final Determination of the Executive Director of the Department of Health be affirmed, as was done by the Third District Court, and that the relief requested by Vali be denied.

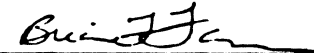
Respectfully submitted this 1<sup>st</sup> day of March, 1989.

  
BRIAN L. FARR  
Assistant Attorney General  
Attorney for Respondent

CERTIFICATE OF MAILING

I hereby certify that I mailed four true and exact copies of the foregoing Brief, postage prepaid, on this 1<sup>st</sup> day of March, 1989, to:

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**EXHIBIT A**

## EXHIBIT A

### PROMPT PAYMENT ACT

§ 15-5-8

History: L. 1929, ch. 61, § 5; R.S. 1933 & C.  
1943, 47-0-5.

#### 15-4-6. Death of joint obligor — Survivorship.

On the death of a joint obligor in contract his executor or administrator shall be bound as such jointly and severally with the surviving obligor or obligors.

History: L. 1929, ch. 61, § 6; R.S. 1933 & C.  
1943, 47-0-6.

### COLLATERAL REFERENCES

Am. Jur. 2d. — 17 Am. Jur. 2d Contracts § 301.	will, made pursuant to agreement as to disposition of property at death, to dispose of such property during life, 85 A.L.R.3d 8.
C.J.S. — 17A C.J.S. Contracts § 353.	Key Numbers. — Contracts — 182(2).
A.L.R. — Right of party to joint or mutual	

#### 15-4-7. Effective date of chapter.

This chapter shall not apply to obligations arising prior to July 1, 1929.

History: L. 1929, ch. 61, § 7; R.S. 1933 & C.  
1943, 47-0-7.

## CHAPTER 5

### REVOLVING CHARGE AGREEMENTS

(Repealed by Laws 1969, ch. 18, § 9.103)

#### 15-5-1 to 15-5-8. Repealed.

Repeals. — Sections 15-5-1 to 15-5-8 (L. charge agreements, were repealed by Laws 1965, ch. 26, §§ 1 to 8), relating to revolving 1969, ch. 18, § 9.103.

## CHAPTER 6

### PROMPT PAYMENT ACT

Section  
15-6-1. Short title.  
15-6-2. Time for payment by state agencies.  
15-6-3. Interest on payments by state agencies.

Section  
15-6-4. Disputed payments excepted.  
15-6-5. Contractors' payments to subcontractors — Time — Interest.



**15-6-1. Short title.**

This act shall be known and may be cited as the "Utah Prompt Payment Act."

History: L. 1983, ch. 300, § 1. 1983, ch. 300, which enacted this section and  
Meaning of "this act". — The term "this act," referred to in this section, refers to Laws §§ 15-6-2 to 15-6-5.

**15-6-2. Time for payment by state agencies.**

(1) An agency of the state of Utah which acquires property or services pursuant to a contract with a business shall pay for each complete delivered item of property or service on the date required by contract between such business and agency or, if no date for payment is specified by contract, within 60 days after receipt of the invoice covering the delivered items or services.

(2) The acquisition of property includes the rental of real or personal property.

History: L. 1983, ch. 300, § 2.

**15-6-3. Interest on payments by state agencies.**

(1) Interest shall accrue and be charged on payments overdue under § 15-6-2 at the rate of 15.5% per annum beginning on the day after payment is due, if the payment due date is specified by contract, or on the 61st day after receipt of the invoice, if no payment date is specified by contract. Interest ceases to accrue on the date payment is made.

(2) Any interest which remains unpaid at the end of any 60-day period or which remains unpaid at the end of any specified period provided by contract shall be added to the principal amount of the debt and shall thereafter accumulate interest.

(3) An agency of the state is prohibited from seeking additional appropriations to pay interest which accrues as a result of an agency's failure to make payments as required by § 15-6-2.

History: L. 1983, ch. 300, § 3.

**15-6-4. Disputed payments excepted.**

If the agency's failure to timely pay interest as required by § 15-6-3 is the result of a dispute between the agency and the business over the amount due or over compliance with the contract, the provisions of this act are inapplicable.

History: L. 1983, ch. 300, § 4.  
Meaning of "this act". — See the note under this catchline under § 15-6-1.

### 15-6-5. Contractors' payments to subcontractors — Time — Interest.

Upon payment by an agency of the state of Utah or by an agency of the United States, a business which has acquired under contract, property or services in connection with its contract with such an agency from a subcontractor or supplier, shall pay such subcontractor or supplier within 30 days after payment from such agency. Interest at the rate of 15.5% per annum shall accrue and is due any subcontractor or supplier who is not paid within 45 days after the business receives payment from the agency, unless otherwise provided by contract between the business and the subcontractor or supplier. Interest begins to accrue on the 31st day at the rate specified in this subsection.

History: L. 1983, ch. 300, § 5.

## CHAPTER 7

# REGISTERED PUBLIC OBLIGATIONS ACT

Section		Section	
15-7-1.	Short title.	15-7-10.	Investment of public funds in registered obligations of public entities of other states.
15-7-2.	Definitions.	15-7-11.	Registration records — Public inspection — Location.
15-7-3.	Purpose.	15-7-12.	Obligations subject to chapter.
15-7-4.	Registration system established by issuer.	15-7-13.	Construction with other law.
15-7-5.	Execution of obligations.	15-7-14.	Covenant against repeal of chapter.
15-7-6.	Signatures of officers.		
15-7-7.	Seals.		
15-7-8.	Agents of issuer.		
15-7-9.	Transfer costs — Agreements as to payment of costs.		

### 15-7-1. Short title.

This act shall be known and may be cited as the "Registered Public Obligations Act."

History: L. 1983, ch. 62, § 1.  
Meaning of "this act". — The term "this act," referred to in this section, refers to Laws

1983, ch. 62, which enacted this section and §§ 15-7-2 to 15-7-14.

### 15-7-2. Definitions.

As used in this chapter:

(1) "Authorized officer" means any individual required or permitted by any law or by the issuing public entity to execute on behalf of the public entity, a certificated registered public obligation or a writing relating to an uncertificated registered public obligation.

(2) "Certificated registered public obligation" means a registered public obligation which is represented by an instrument.