

1988

Vali Convalescent and Care Institutions, a Utah Corporation v. Utah Department of Health, Division of Health Care Financing : Reply Brief of Respondent/Cross-Appellant

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

VALI CONVALESCENT AND	:	
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.	:	

REPLY 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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Clerk of the Court
Utah Court of Appeals

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REPLY BRIEF OF RESPONDENT/CROSS APPELLANT

INTRODUCTION

Vali begins its Reply/Response Brief (i.e., Response to the cross appeal) with an assertion that "[a]s support for the great majority of its alleged facts, DOH cites to its own briefs filed in the lower court..." (Vali Reply Brief, p. 1), when in fact, DOH cites to its own brief in only 3 out of 29 statements of fact. (i.e., Fact Nos- 7, 8 & 9 in DOH Brief). Certainly, 3 out of 29 is not a "great majority." Furthermore, none of those three facts is critical to the issues before the Court but rather were only provided in an effort to assist the Court in

understanding the background to the dispute and to counter statements in Vali's brief that DOH believes are unsupported and inaccurate, if not false. Moreover, Vali did not object to those statements in the District Court and Vali does not seriously disagree with those Statements of Fact in its response to them on page 9 of its Reply Brief herein.¹

In the introduction in its reply brief Vali also contends "that a number of facts are now in issue that never were in issue before." Vali then attempts to use that contention as justification to present alleged facts that are not in the record. Vali also appears to be attempting to confuse the issues in its efforts to get a remand to the district court. "The purpose of a brief is to enlighten the court and elucidate the issues rather than confuse the court and obscure the issues." Demetropoulos v. Vreeken, 754 P.2d 960 (Utah App. 1988).

There are no new issues of fact in this case. The only issues raised by Vali on this appeal are:

1. Whether Vali has a right to interest under Utah Code Ann. § 15-1-1, when the principal sum is resolved by the parties without entry of judgment; and,

2. Whether Vali has a right to interest under Utah Code Ann. § 15-6-1.

¹ DOH does cite documentary evidence that was attached as an exhibit to its brief in an additional 5 statements of fact (i.e., Nos. 13-17) but even 8 out of 29 is not a "great majority." Furthermore, Utah Code Ann. § 26-23-2(4) (1984) allows the District Court to admit additional evidence and Vali did not object to those documents when they were submitted. Moreover, those documents are not critical to the issues before the Court but were provided principally to help the Court understand the background.

The first issue presents no questions of fact but rather only presents two questions of law, i.e., whether Utah Code Ann. § 15-1-1 provides a statutory right to interest at all, and if so whether that right extends to provide an entitlement to interest on amounts that are resolved by the parties without entry of judgment (or as in this case without litigation at all).

The second issue raised by Vali presents only one question of fact, i.e., whether there was a dispute between the parties (because Utah Code Ann. § 15-6-1 et seq. does not apply if there was a dispute). Hence, the only issue of fact that is relevant to Vali's issues is whether there was a dispute and that is not a new issue.

The only issue raised by DOH on appeal is whether the parties settlement agreement of March 22, 1985 bars or otherwise renders Vali's later claim for interest unenforceable for the period prior to the settlement. While that is principally a question of law it also involves an issue of fact as to whether the compromised amount was a final settlement or merely a settlement of principal. Again, that is not a new issue.²

It appears that the only other issue of fact is the issue raised by Vali that it reserved the right to interest.

Hence there are no new issues of fact, nor are the facts relied on to prove those issues new. The only facts set forth in DOH's Statement of Facts that were not clearly argued in

² Both parties argue that there was a settlement that ought to be enforced, so there is no issue as to whether there was a settlement. The only issue is whether it was "final" or for principal only.

the District Court are the facts in statements 16 and 17 that specify the amount Vali claimed as allowable costs and the amounts of the disallowance, and those amounts were taken from documents that are in the record. Reference to those facts by DOH does not justify Vali's attempt to bring in its alleged facts that are not in the record. Furthermore, the Court is not called upon to determine the amount of Vali's claim or of the disallowance. Those facts are not in issue in this case (nor even in dispute as far as DOH is aware).

Nor do the statements made in DOH's "Response To Vali's Statement Of Facts," raise new issues of fact. They are merely DOH's response to statements made by Vali, statements that DOH believes to be inaccurate and misleading. Moreover, most of DOH's responses are tied directly to the record and cite what documents actually say rather than what Vali claims they say.

Not only does DOH's Response To Vali's Statement Of Facts not raise any new issues of fact, for the most part it doesn't even refer to facts that are in issue. It merely gives DOH's response to statements made by Vali that are not in issue. The Court is not asked to determine how Medicaid rates were calculated, or to even understand them for that matter. The Court is not asked to determine whether Vali was really treated as badly as it claims it was by the Department of Public Safety, Bureau of Medicaid Fraud. Nor is the court asked to determine whether the Medicaid Fraud investigation found no evidence to support charges of fraud, as claimed by Vali, or only whether there was insufficient evidence as stated by the prosecutor.

None of those matters are in issue. They have nothing to do with Vali's claim that it has a statutory right to interest. Nor do they seem relevant to DOH's claim that the settlement precludes interest. Vali apparently threw them in as an attempt to gain the Court's sympathy by making it appear that Vali was in innocent victim of serious mistreatment. DOH believes that if all the facts were before the Court it would be clear that if there was any mistreatment of Vali it was by the Department of Public safety and not by DOH, that Vali is not nearly as innocent as it would have the Court believe it is, and that DOH acted in good faith to try to get the matter settled as quickly and fairly as possible. But again, those facts are not before the Court because these matters are not in issue.

In summary, there are no new facts in issue. The only issues before the Court are Vali's claim that it has a statutory right to interest and DOH's claim that even if there were such a right the settlement precludes a later claim for interest.³ The only issues of fact appear to be

1. Whether there was a dispute that precludes the application of Utah Code Ann. § 15-6-1; and

2. Whether the settlement was final or only a settlement of principal.

There are no new facts in issue and DOH strongly objects to Vali's blatant attempt to introduce alleged facts that are not in the record and to Vali's attempts to obscure the issues. DOH

³ Of course Vali also claims that it has been seeking interest pursuant to the common law all along but DOH strongly disagrees.

also strongly objects to Vali's misrepresentation of the arguments raised by DOH and respectfully requests that the Court be careful to evaluate those arguments as presented by DOH rather than as characterized by Vali.⁴

REPLY TO VALI'S FACTUAL ALLEGATIONS

While DOH disagrees with many of Vali's statements of fact, and while DOH believes that many of Vali's statements are overstated and others need correction or qualification, DOH also believes that most of Vali's statements are not relevant to the issues that are before the Court. DOH will therefore not waste the Court's time by responding to those statements. There are, however, a couple of statements made by Vali that are relevant that require a response.

1. In paragraph 21 of the Statement of Facts in DOH's Brief herein DOH states that Vali raised the issue of interest for the first time about two weeks after the settlement agreement was entered into. (The settlement agreement was the culmination of the informal hearing process.) In response to that statement of fact Vali claimed that it was ". . . an absolute distortion of the record and the facts" (Vali Reply Brief, p. 11) yet Vali's Petition for review in the District Court states: "During the exit conferences and informal hearings, Vali intentionally did not raise the issue of whether interest on amounts found due and

⁴ As just one example, DOH does not argue that the legislature has no power to change the common law as Vali claims. Rather DOH's argument was that at the time U.C.A. § 15-1-1 was enacted there was already a right to interest under the common law so there was no need to create that right. There was however uncertainty as to what the rate should be and § 15-1-1 simply solved that problem by setting the rate.

owing should be paid by DHCF." (R. 286, paragraph 12). Thus DOH's statement was not an "absolute distortion" as claimed by Vali but rather was simply a restatement of Vali's claim as to when the issue of interest was raised.

Vali also indicated in its Petition in the District Court that the reason it did not raise the issues in the conferences and informal hearing was because it intended to raise that issue later at a formal hearing (R. 286, paragraph 13). Thus Vali did not raise the issue of interest until after entering the settlement agreement that culminated the informal hearing process.

2. Vali states in paragraph 25 of its Statement of Facts that a meeting regarding interest was held on March 13, 1985. That date is, of course, prior to the date that DOH claims the parties finalized their settlement agreement (March 20/22, 1985). The meeting actually took place on May 13, 1985, which is almost eight weeks after the settlement was finalized. (Stipulation of Facts, paragraph 20.)

3. Contrary to Vali's claim in paragraph 23 of its Statement of Facts, DOH did not issue a decision that it owed Vali \$272,362.03 exclusive of interest. There was no admission that DOH "owed" Vali that amount. Rather the informal hearing officer made a proposal for "final settlement." It was a compromised amount. It was not a proposal for settlement "exclusive of interest." It was a proposal for final settlement. (Stipulation of Facts, Exhibit H, p. 6). Furthermore, though Vali repeatedly refers to amounts DOH owed and continually

asserts that the parties settled the principal amount only, there is no evidence of either of those allegations in the record. DOH did not agree on a principal amount owed but rather on a compromised amount DOH was willing to pay as full and final settlement.

4. In pulling alleged facts from outside the record, Vali generated considerable confusion by trying to tie the dollar amounts of the disallowance to the dollar amounts of the settlement. There is not a dollar for dollar correlation. Once the adjustments are made to the disallowance, the figures go through the rate making process where they are increased by inflation factors, etc. Furthermore, some adjustments affect not only the year to which they apply but every year thereafter. Hence a compromise of one dollar by DOH on the disallowance may result in an increase of substantially more than that on the settlement amount. There are also other factors that affect the calculation of the settlement amount. Hence, Vali's use of those numbers is not accurate and reliable and DOH disagrees with the conclusions Vali draws from those numbers. But again, those conclusions are not relevant to the issues that are before the Court.

DOH should also clarify that its claim was not that the initial disallowance was for \$760,000.00 but that it was in excess of that. DOH also became aware that two of the documents DOH relied on to arrive at that figure should have been in the record but apparently are not. Counsel apologizes to the Court for that oversight.

SUPPLEMENTAL FACTS

1. In December of 1984, about three months prior to the final settlement herein, DOH thought it had finally managed to reach a settlement of every issue, except the retro nursing issue. Thereafter DOH issued a check to Vali that was intended to settle every issue but the retro nursing issue (Stipulation of Facts, Exhibit D.)

2. On February 14, 1985, Mr. Brown, Vali's principal, had a discussion with the Acting Director of the DOH Bureau of Program Review (the informal hearing officer herein). Mr. Brown was apparently uncertain as to just what the settlement check represented. (Stipulation of Facts, Exhibit D.)

3. Under date of February 15, 1985, the informal hearing officer wrote a letter to Mr. Brown in which he explained that the sum listed on the check was "in fact settlement in full for all outstanding issues with the exception of retro nursing." The informal hearing officer also explained:

At this point it appears that there are two options. Either you can accept the existing warrant as payment in full for all issues except retro nursing or you can return the warrant and address the issues through the hearing process.

Stipulation of Facts, Exhibit D, paragraph 4.

4. Mr. Brown chose to return the check. In a letter to the informal hearing officer dated February 15, 1985, Mr. Brown requested that the informal hearing continue and indicated that he would come prepared to finish discussion on the retro nursing matter. Stipulation of Facts, Exhibit E and Formal Transcript p. 49, ln. 1-3.

5. A few months later at the formal hearing regarding the interest issue Mr. Brown explained why he did not cash the check spoken of in the preceding paragraphs. He said the check

. . . had a severely restrictive endorsement on the back that precluded me in our estimation of things, precluded us from raising other issues that were unresolved in our minds; in particular, interest. . . . It had language along the lines of "full and complete" or "final" so on "settlement for any and all issues." . . . I did not want the State to have the opportunity to preclude a discussion concerning interest.

Formal Hearing Transcript, p. 49, lns. 7-10, and 14.

6. Even though the issue of interest was one of the main reasons Mr. Brown did not accept that check, he did not make that known to the informal hearing officer. A few months later at the formal hearing, Mr. Brown explained why he did not raise the issue of interest with the informal hearing officer. He said ". . . I thought, you know, to interject another [issue] to boil the pot wasn't particularly, you know, germane to the discussion we were having at the time." (Formal Hearing Transcript p. 60 ln. 14-17). He also indicated at the formal hearing that if he had raised the issue of interest at the informal hearing he thought it might have been more difficult to get a settlement. He concluded that if he had raised the issue of interest at the informal hearing "I would still have been without any settlement, I think, . . ." (Formal Hearing Transcript, p. 61 ln. 4-6).

ARGUMENT

POINT I

THE SETTLEMENT AGREEMENT WAS THE RESULT OF COMPROMISE ON THE PART OF BOTH PARTIES.

From the alleged facts Vali submitted that are not in the record, Vali would have this Court believe that the settlement agreement was not the result of compromise but rather was just a matter of Vali providing documentation to support its claims. Vali does not tell the Court that a large part of the settlement involved compromises on "unallowable" costs, not unsupported costs. As one example, such claims as salary and benefits to the facility owner that are in excess of Medicaid limits are not allowable costs. Furthermore, the record is clear that there was a great deal of compromise by both parties.

In the letter that Mr. Brown sent as acceptance of the settlement offer he stated " . . . [t]his settlement, while compromised, is a fair one . . . " (Stipulation of Facts, Exhibit K). At the formal hearing he stated " . . . we had agreed on all of the items that were contained in the FCP's that come thorough the audit and the exit conferences at that point, and a great deal of that was compromise--on both the State's part and my part. (Formal Hearing Transcript p. 65, ln. 21-25).

Moreover, in its settlement offer DOH stated that both parties reserved the right to raise any of the issues discussed at the informal hearing or any related issues not discussed in the hearing if the offer was not accepted and the conflict resolved at that level. (Stipulation of Facts, Exhibit H, p. 9).

In other words both parties made it clear that they were retaining the right to unwind all the compromises that they had made to that point if they couldn't get a final resolve at that level. They could also assert related claims that had not yet been raised if the proposal for settlement was not accepted. But if the offer was accepted the compromises would stand and all claims would be settled.

POINT II

VALI DID NOT RESERVE A CLAIM FOR INTEREST.

Almost the entirety of Section IV of Vali's Reply Brief is but another example of Vali's twisting and misrepresentation of the facts and of DOH's arguments. Vali begins that section by stating:

DOH's entire argument to the effect that the settlement of principal bars Vali's claim for interest is premised on its utterly false representation to this Court that DOH was unaware of Vali's intention to claim interest until after the "settlement" was entered and the principal had been paid.

Not only did DOH not make a false representation to the Court, DOH is not aware of any representation whatsoever it made to the Court regarding whether or not DOH was aware of Vali's intention to claim interest. Though Vali had in fact not made it clear that Vali claimed to reserve a right to interest, DOH's settlement agreement was not premised on such a representation but rather on the fact that DOH made an offer for final settlement that Vali accepted without reservation.

Vali's claim that Vali made it clear to DOH very early in the negotiations that Vali was not conceding its right to

claim interest is a new argument that Vali has not raised before. If it were really true, it would seem to form the very heart of Vali's defense against DOH's claim regarding final settlement, yet Vali has not argued it before.

Vali's argument is based solely on a statement made by the DOH audit manager and a statement made by the DOH attorney, neither of which statements show that Vali made it clear to DOH that Vali was reserving the right to claim interest and would assert it after the other matters were settled. Both statements were made at the formal hearing. Both statements were taken out of context of the respective witnesses testimony as a whole. Both witnesses emphatically testified that they considered the March 22 settlement to be a final settlement that resolved all issues.

The audit manager's statement was in the form of an affirmative response to Vali's attorney's claim that he (Vali's attorney) mentioned in an exit conference that Vali might preserve an issue of interest. It is not an indication that Vali ever did in fact reserve the right to interest prior to the settlement.

The DOH attorney's statement was simply an acknowledgment that part of the problem that generated into a denial of Vali's acceptance of the \$185,000.00 check was whether interest should be included in the release. It was not an indication that Vali had reserved the right to interest prior to that proposed settlement but rather just the opposite. DOH clearly considered that the \$185,000.00 was for full settlement

of all issues but retro nursing, as is set forth above. DOH was not aware of any claimed right to reserve the issue of interest because Vali had not made such a reservation.

Furthermore, there is no evidence that Vali's attempt to get interest on the \$185,000.00 settlement amount was tantamount to Vali reserving a right to interest in the future. Again, quite the opposite is true. Before Vali went back into the informal hearing process, DOH (presumably DOH's attorney) made it clear to Vali that DOH was not willing to release the question of interest to be tried separately. (Formal Hearing Transcript p. 75, lines 10-20). DOH was simply not willing to compromise the issues further and then have Vali claim interest on the compromised amount. If Vali wanted to continue with the informal process Vali would have to put all demands on the table. Vali chose to go back to the informal hearing. Yet even then Vali did not raise the issue of interest before the informal hearing officer. Vali's reason for not raising the issue of interest at that point clearly shows that Vali was aware that DOH would not compromise further if interest were claimed. Mr. Brown said that he did not want to boil the pot, that if he had raised the issue it would have been much more difficult to get a settlement and that he would probably still be without a settlement if he raised that issue. Indeed it is likely that he would have still been without a settlement, for DOH would not have been willing to further compromise the claim if Vali also claimed interest.

Furthermore, Vali's claim that it reserved the right to claim interest also flies in the face of the other facts and of other claims made by Vali. For example, there is absolutely no reference in the record in regard to the time prior to the settlement agreement, including the testimony of DOH's attorney and audit manager, where Vali reserved the right to interest or where Vali made it clear that it would seek interest on the settlement amount. On the contrary every witness from the Department of Health that testified at the formal hearing emphatically stated that they considered the settlement to be final. None of them thought Vali had reserved a claim for interest or were aware that Vali intended to claim interest on the settlement amount, including the audit manager and the attorney. It is also significant that Mr. Brown, the only other witness to testify, also made no mention in his testimony at the formal hearing of any claim that he had specifically reserved the right to interest prior to the settlement agreement.

Moreover, the informal hearing officer was the DOH representative who was authorized to negotiate a settlement in behalf of DOH. It was he who finalized the settlement negotiations and made the offer. If Vali intended to reserve a right to interest, it is the informal hearing officer that Vali should have told. There is absolutely no evidence that shows that Vali even mentioned the topic of interest to the informal hearing officer until after the settlement was entered into. To the contrary, Mr. Brown stated that the issue of interest was not raised in the informal hearing because he didn't want to boil the

pot and because he thought it would be more difficult to get a settlement if he claimed interest. The evidence set forth above, when considered together with Vali's admission in its Petition for Review that it intentionally did not raise the issue of interest in the exit conferences and informal hearings because it intended to raise the issue at a formal hearing, makes it fairly obvious that Vali did not reserve a right to interest prior to entering the settlement agreement and that Vali's strategy was to string DOH along and get as favorable a compromise as possible and then assert a claim for interest. And that's exactly what they did, however unfair it may have been.

POINT III

**IT IS THE MARCH 22, 1985
AGREEMENT THAT IS CONTROLLING
AND THAT AGREEMENT WAS FOR
COMPLETE AND FINAL SETTLEMENT.**

Vali has repeatedly attempted to divert the Court's attention away from the March 22, 1985 agreement and toward the May 16, 1985 acceptance of the \$274,000.00 check by mischaracterizing DOH's argument. That, of course, is because Vali did not raise the issue of interest prior to accepting DOH's March 22 proposal for final settlement but Vali did bring up the issue of interest prior to acceptance of that check. Vali's tactic was successful in the district court. Judge Murphy never did rule on DOH's claims regarding the March 22 agreement.

It is the March 22 date that is controlling. Vali accepted the DOH offer for final settlement on that date without reservation. Vali could not reserve an issue after it had entered an agreement for final settlement.

Furthermore, the May 13 meeting regarding interest did not alter what the parties had already done. The result of that meeting was an agreement to disagree. Vali held fast to its position that it had not settled interest and DOH held fast to its position that the settlement proposal was offered as full and final settlement and that Vali's acceptance of that offer precluded a later claim for interest. The parties agreed to hold fast to their respective positions and to submit the question as to who was right to a formal hearing. Thereafter the parties tried to find wording for a restrictive endorsement that was acceptable to both parties so that the check could be released pursuant to that understanding. The informal hearing officer summarized the result of the May 13 meeting as follows:

. . . when we left the meeting, it was--it was agreed by both parties to my understanding that there would be a statement to the effect that this would constitute final settlement on all issues raised in the informal hearing and resolved through the informal hearing. The State's position was the informal hearing resolved all issues. And Mr. Brown's position was, because interest was not specifically addressed in the informal hearing, it would not be covered by that statement.

Thus DOH tendered the check pursuant to its claim that the compromised settlement agreement was final and precluded a later claim for interest and Vali accepted the check pursuant to its claim that the settlement agreement did not settle the question of interest. Hence, the bottom line question relates back to just what the meaning and effect of the March 22, 1985 agreement was.

From the very start of the informal hearings and exit conferences it was clear that the parties were trying to reach a final resolution. Vali had sold its facilities and the parties were attempting to wind up their dealings with each other.

If there was any cause to question whether DOH was trying to reach a complete and final resolve prior to the parties communications regarding the \$185,000.00 check, there certainly was no cause to question that thereafter. DOH clearly expressed to Vali that the check "was in fact settlement in full for all outstanding issues with the exception of retro nursing" Stip. of Facts, Exhibit D. The informal hearing officer then gave Vali the option to accept the check as payment in full for all issues except retro nursing or return the check and resume the hearing process. Vali understood the offer to be for final settlement as is evidenced by Mr. Brown's testimony as to why he did not accept the check, as set forth above. Even though Vali understood the hearing officer was making an offer for final settlement, the acceptance of which would preclude a later claim for interest, Vali still did not make the hearing officer aware that Vali wanted to reserve the issue of interest when it resumed the informal hearing process.

There is nothing in the record that would give Vali cause to believe that the DOH settlement offer of March 20, 1985 was intended to be any less final than the offer associated with the \$185,000.00 check was. Indeed, the March 20 offer even settled the one issue that was excepted from the \$185,000.00 offer, so Vali had all the more cause to know that the March 20 offer was an offer for final settlement of all issues.

Furthermore, the March 20 offer was clearly an offer for final settlement of all issues by its own terms. Mr. Brown had the option to accept it or reject it. He accepted the offer without reservation and even acknowledged that it would dispose of every issue between him and DOH and that they would not have to deal with each other over money again, all of which is set forth more fully in DOH's prior brief. The March 22, 1985 settlement agreement was clearly an agreement for full and final settlement of all issues.

CONCLUSION

There is no question that there was a settlement between the parties. Both parties claim that there was. The evidence clearly shows that there was a great deal of compromise on the part of both parties. The evidence is clear that the settlement agreement of March 22, 1985 was an agreement for final settlement that resolved all issues. The settlement offer was clearly an offer for final settlement and it was accepted without reservation. Having entered into an agreement for final settlement, Vali could not thereafter raise an enforceable claim for interest for the period prior to the settlement agreement.

For the many reasons cited on pp. 19-21 of DOH's prior brief in this case, it is not only unlawful, it is also manifestly unfair to allow one party to string the other party along to get as favorable a compromise as possible and then to assert an additional claim for interest after the parties have entered into an agreement for final settlement. It is clear from Mr. Brown's testimony that he knew full well that if he had

boiled the pot with the interest issue DOH would not have been as willing to compromise and may not have been willing to reach a compromised settlement at all. Had Vali raised the issue of interest prior to its acceptance of the offer for final settlement, DOH would likely have exercised the right it retained in the settlement offer to scrap the whole settlement agreement if the proposal was not accepted. After Vali had accepted the settlement offer, however, there was an enforceable agreement that DOH felt bound to comply with. Furthermore, DOH had been trying for years to get the matter settled and the files closed. Though DOH had compromised a great deal, DOH was not anxious to start that whole miserable process over or to go into possibly lengthy litigation. Rather than waste additional resources, DOH sought to enforce the agreement that it had worked in good faith to achieve.

Moreover Vali 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

[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.

For the many reasons set forth above and in DOH's prior brief, DOH respectfully requests that this honorable Court affirm the Final Determination of the Executive Director of the Department of Health that there was a binding settlement agreement between the parties that prevents Vali's later claim for interest.

DATED this 12th day of July, 1989.

R. PAUL VAN DAM
Attorney General



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Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that on this 12th day of July, 1989, I mailed four copies of the foregoing Reply Brief of Respondent/Cross Appellant, postage prepaid to Spencer E. Austin, Julia C. Attwood, Esq., Attorneys for Appellant Vali Convalescent and Care Institutions, PARSONS, BEHLE & LATIMER, 185 South State Street, #800, P.O. Box 11898, Salt Lake City, Utah 84147-0898.

Bruce J. F.