

2006

# Working RX, Inc. v. Workers Compensation Fund : Reply Brief

Utah Court of Appeals

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Rex H. Huang; Attorney for Appellant.

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IN THE COURT OF APPEALS STATE OF UTAH

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WORKING RX, INC., a  
Delaware corporation,

Plaintiff,

vs.

WORKERS COMPENSATION  
FUND et al,

Defendants.

**REPLY BRIEF OF  
APPELLANT**

Appellate Court Number:  
20061131-CA

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APPEAL from a Decision of the  
Third Judicial District Court, West Jordan Department  
Salt Lake County, State of Utah  
Honorable Robert W. Adkins

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UTAH APPELLATE COURTS  
JUN 14 2007

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## ARGUMENT

### **I. DEFENDANTS COMPLETELY IGNORE CLEAR STATUTORY AND CASE AUTHORITY**

Defendants offer no basis for their argument that Plaintiff has not met the four part test for a private cause of action. Rather Defendants ignore relevant case law cited by Plaintiff and simply assert that the Workers' Compensation Act (the "Act") has only one purpose – providing income to injured workers. Defendants inexplicably ignore those Utah cases and provisions of the Act that detail the importance of health care and treatment for injured workers. Defendants have been relegated to calling Plaintiff a "pharmacy collection agency" in an attempt to disparage Plaintiff and obfuscate the very real fact that most injured workers would not be able to get their medications from pharmacies without Plaintiff's services unless the injured worker was able to pay cash out of pocket.

Defendants do not even address the 2003 amendments to Utah Code Ann. §§ 34A-2-407(12) (2003), 34A-2-801(1)(c) (2003), which removed the term "surgeon or other health provider" from Title 34A, Section 2, and replaced it with the term "physician." Instead, Defendants attempt to misapply the exclusive remedy provision of the Act relating to the wage compensation in misinterpreting Utah Code Ann. § 34A-2-105. This exclusive remedy provision only concerns "compensation" and does not refer to reimbursement for medical benefits and medicines. Compensation is defined as "the payments and benefits provided for in [the Act]." Utah Code Ann. § 34A-2-102(3) (2005). The Workers' Compensation Act clearly distinguishes between the right to

recover compensation and the right to receive reimbursement for medical benefits and medicines. Section 34A-2-418 provides, in relevant part,

In addition to the *compensation* provided in this chapter . . . , the employer or the insurance carrier shall pay reasonable sums for *medical, nurse, and hospital services, for medicines*, and for artificial means, appliances, and prostheses necessary to treat the injured employee.

Utah Code Ann. § 34A-2-418(1) (2005) (emphasis added). The distinction between compensation and medical benefits is further supported by Utah Code Ann. §34A-2-401, which provides, in relevant part,

- (1) An employee . . . who is injured . . . by accident arising out of and in the course of the employee's employment . . . shall be paid:
  - (a) *compensation* for loss sustained on account of the injury or death;
  - (b) the amount provided in this chapter for:
    - (i) *medical, nurse, and hospital services*;
    - (ii) *medicines* . . .
- (2) The responsibility for *compensation* and payment of *medical, nursing, and hospital services and medicines* . . . provided under this chapter shall be:
  - (a) on the employer and the employer's insurance carrier; and
  - (b) not on the employee.

Utah Code Ann. § 34A-2-401 (2005) (emphasis added). Moreover, § 34A-2-408 makes a further distinction between compensation and medical benefits by distinguishing when compensation is to be paid and when reimbursement for medical benefits and medicines are to be made. This section provides, in relevant part,

- (1) (a) Except as provided in Subsections (1) (b) and (2), *compensation* may not be allowed for the first three days after the injury is received.
  - (b) The disbursements authorized in this chapter . . . for *medical, nurse and hospital services, and for medicines* and funeral expenses are payable for the first three days after the injury is received.
- (2) If the period of total temporary disability lasts more than 14 days,

compensation shall also be payable for the first three days after the injury is received.

Utah Code Ann. § 34A-2-408 (2005) (emphasis added).

Clearly, § 34A-2-105 does not apply to Plaintiff because Plaintiff is not attempting to recover compensation, but rather reimbursement for medical benefits and medicines; therefore, Plaintiff is not subjected to the exclusivity provision.

None of the cases cited by Defendants relate to medical care nor medicines provided to injured workers. They all relate only to monetary compensation to be paid to the injured worker or their heirs, not reimbursement of medical care or medicines.

Furthermore, the exclusivity provision of the Act only “bars common-law tort actions requiring proof of physical or mental injury” sustained on the job. Touchard v. La Z-Boy, Inc., 2006 UT 71, ¶24, 148 P.3d 945, 954 (citing Shattuck-Owen v. Snowbird Corp., 2000 UT 94, ¶19, 16 P.3d 555, 560-61). The claims brought by Plaintiff are not common-law tort claims and thus do not fall under the exclusivity provision of the Act.

**A. Defendant Has Made Contradictory Statements Regarding Plaintiff’s Administrative Remedy.**

Throughout this case, Defendant has continually asserted that the Labor Commission is the proper forum to handle Plaintiff’s complaint. However, in a separate case in front of the Utah Labor Commission for prescription claims incurred after May 1, 2006, Defendant Workers Compensation Fund (“WCF”) filed a Petition for Agency Declaratory Order to declare that Plaintiff is not a “person providing goods or services described in subsections 34A-2-407(12)’ of *Utah Code Ann.* (Supp. 2006), and is not,

therefore, entitled to file hearing applications pursuant to *Utah Code Ann.* § 34A-2-801 (Supp. 2006).” See Workers’ Compensation Fund’s Petition for Agency Declaratory Order, attached hereto as “Exhibit A.”

Although Defendants assert that an administrative remedy is available to Plaintiff in this case, Defendant WCF is asserting the contrary in its Petition before the Labor Commission. By this Petition and this present case, Defendant WCF is preventing Plaintiff from accessing not only the judicial system but also the administrative system for prescription claims incurred after May 1, 2006. If the administrative remedies are not available to Plaintiff, then the judicial court system must be available for Plaintiff to adjudicate its claims for payment of goods and services provided to the injured workers. Otherwise, Plaintiff would be without a forum to adjudicate its valid and compensable claims, for which Defendants are statutorily responsible for paying.

Defendants should not be permitted to argue that the Labor Commission has exclusive jurisdiction over such claims and that administrative remedies are available to Plaintiff when those arguments are wholly contradictory with its position in the case presently in front of the Labor Commission.

## **II. PLAINTIFF HAS A VALID CLAIM FOR UNJUST ENRICHMENT.**

In the alternative, if the trial court’s dismissal of Plaintiff’s private cause of action is upheld, then Plaintiff is entitled to its claim for unjust enrichment.

The Labor Commission is not a court of equity, and as such, it does not have the power to exercise jurisdiction over claims that were not expressly or impliedly granted to



it by the state legislature. See Bevans v. Industrial Comm'n of Utah, 790 P.2d 573, 576 (Utah Ct. App. 1990). Even though Plaintiff's claim may relate to the Act, the Labor Commission does not have jurisdiction to consider an equitable claim.

Moreover, such claim is not subjected to the exclusive remedy provision of the Act because it is not a basis for compensation under the Act. See Mounter v. Utah Power & Light Co., 823 P.2d 1055, 1057 (Utah 1991). The Act "relates to a diminution or loss of earning power caused by a physical or mental injury or by death sustained in the work place." Id. "The key to whether the [Act] precludes a common law right of action lies in the nature of the injury for which plaintiff makes claim, not the nature of defendant's act which plaintiff alleges to have been responsible for that injury." Id. (citations omitted). Claims that involve proof of mental and physical harm would bar a common law claim. In contrast, unjust enrichment is a claim implied by law where the courts find that a remedy at law does not exist. American Towers Owners Ass'n v. CCI Mech., Inc., 930 P.2d 1182, 1193 (Utah 1996). Additionally, unjust enrichment does not relate to a diminution or loss of earning power caused by a physical or mental injury or by death sustained in the work place, nor does it require proof of physical or mental harm. Therefore, it is not barred by the exclusivity provision of the Act.

Defendants alleged that Plaintiff does not have a valid claim for unjust enrichment because Plaintiff voluntarily paid the debts of another. Defendants, however, have not made any showing that Plaintiff is somehow a "voluntary payor." Nor has the Complaint plead any set of facts that would establish Plaintiff voluntarily paid off someone's debts.

Plaintiff did not officiously confer a benefit upon another, nor did it voluntarily pay the debt of another. But rather, Plaintiff took assignment of the pharmacies' workers compensation prescription claims and stepped into the shoes of the pharmacies. Defendants are then statutorily required to reimburse Plaintiffs for the medicines needed to treat their injured workers. See Utah Code Ann. § 34A-2-418(1). Defendants' argument is akin to barring any health care provider from ever seeking payment from an insurer.

Defendants, in their brief, cited a few cases in which a voluntary payor of debt is not entitled to a claim for unjust enrichment. Those cases are easily distinguished from this case. In Southern Title Guarantee Co. v. Bethers, 761 P.2d 951, 955 (Utah App. 1988), the Court found that the plaintiff was not entitled to a claim for unjust enrichment because it received what it bargained for when it paid money to the defendants to receive a reconveyance of a particular parcel of land. Contrary to the plaintiff in Bethers, in the present case, Plaintiff never received what it bargained for. Plaintiff bargained for the ability to bill and collect on the claims from the carrier for the medicines provided to its injured employees. Plaintiff was able to bill the carrier, however, Defendants never paid the full amount of the invoice to which Plaintiff was legally entitled to.

In Estate of Cleveland v. Gorden, 837 S.W.2d 68, 70 (Tenn. App. 1992), the court did state that a "person who voluntarily and officiously pays another's debts is not entitled to reimbursement." However in that case, the court found that when the niece attempted to obtain reimbursement from her deceased aunt's estate for medical and other

expenditures made on behalf of her aunt, *she was entitled to be reimbursed* for those expenses because she was acting out of a moral obligation, she did not intend those expenses to be a gift, and the aunt knew that the niece expected to be reimbursed. Similarly, in this case, Plaintiff paid the pharmacies based on a contractual obligation; Plaintiff did not intend the payments to be a gift, especially when it was expending time and money in collecting on the prescription claims from the carrier; and Defendants knew that Plaintiff expected to be reimbursed for those services because of Plaintiff's invoices and collection attempts. Plaintiff did not voluntarily and officiously pay the debt of another. Therefore, Plaintiff is entitled to reimbursement for the full amount of the services that it provided.

Although Defendants argue that a volunteer is not entitled to a claim for unjust enrichment, Defendants have failed to define a "volunteer." In State Farm Mutual Automobile Insurance Co. v. Northwestern National Insurance Co., 912 P.2d 983 (Utah 1996), the Court adopted the Tenth Circuit's determination as to when a person or entity is a volunteer. The Court stated that a "payment is not voluntary if it is made with a reasonable or good faith belief in an obligation or personal interest in making that payment." Id. at 986 (quoting Weir v. Federal Ins. Co., 811 F.2d 1387, 1395 (10<sup>th</sup> Cir. 1987)). The Court held that State Farm was not a volunteer because it had a legal interest of its own to protect when it investigated and settled insurance claims. Similarly, in this present case, Plaintiff clearly is not a volunteer because it had a contract with the pharmacies to receive assignment of their workers' compensation prescription claims.


Plaintiff made those payments to the pharmacies because it had a contractual obligation to do so and to protect its own legal interests under that agreement.

In Bingham v. Walker Bros., Bank, 283 P. 1055, 1064 (Utah 1929), the Court found that the defendant was not entitled to subrogation for the debts he paid on behalf of the decedent, Elias Crane, because the purported settlement agreement entered into between the defendant and Crane's widow was void since she did not have authority to act on behalf of Crane's estate. The Court stated that it "always requires something more than payment of the debt in order to entitle the person paying to be substituted in place of the original creditor." Id. In this case, there is something more that entitles Plaintiff to be substituted in place of the pharmacies. That something is a valid and enforceable agreement with the pharmacies, whereby the pharmacies assigned their right to bill and collect on the workers' compensation prescription claims to Plaintiff in addition to the electronic adjudication system that Plaintiff provides to pharmacies that allows them to fill prescriptions for injured workers without requiring the injured workers to pay cash out-of-pocket. Plaintiff has paid the debts of Defendants, not as a volunteer, but based on an obligation to do so. Since Plaintiff stepped into the shoes of the pharmacy, it was legally entitled to reimbursement from Defendants. Therefore, Defendants cannot avoid their obligation under the Act by claiming that Plaintiff is a mere volunteer.

### **CONCLUSION**

For these reasons, Plaintiff respectfully requests that this Court reverse the trial court's ruling and order to dismiss Plaintiff's complaint and remand the case for trial.

Dated this 14 day of June, 2007.

  
Rex H. Huang  
Attorney for Plaintiff/Appellant

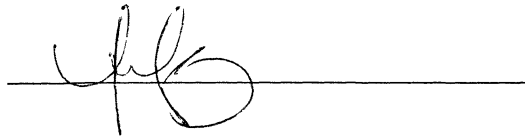
### **CERTIFICATE OF SERVICE**

I hereby certify that two true and corrected copies of the Reply Brief of Appellant were served upon all the following parties, via first-class mail on this 14<sup>th</sup> day of June, 2007:

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Salt Lake City, UT 84111

Michael Z. Hayes  
2118 East 3900 South, Suite 300  
Salt Lake City, UT 84124

Douglas P. Simpson  
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Salt Lake City, UT 84109



# EXHIBIT A

# PRINCE•YEATES

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† ALSO ADMITTED IN CALIFORNIA  
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^ ALSO ADMITTED IN NEVADA

F. S. PRINCE (1910-1991)  
DAVID S. GELDZAHLER (1932-1994)

ROBERT M. YEATES (RETIRED)

February 20, 2007

Joyce A. Sewell, Director  
Industrial Accidents  
Labor Commission  
160 East 300 South, 3<sup>rd</sup> Floor  
Salt Lake City, Utah 84111

Dear Ms. Sewell:

Enclosed you will find a Petition for Agency Declaratory Order filed on behalf of the Workers Compensation Fund. I have mailed a copy of this Petition to Working RX, Inc., who I believe to be a party who is entitled to intervene in connection with this matter.

Thank you for your attention to this matter.

Very truly yours,

PRINCE, YEATES & GELDZAHLER



M. David Eckersley

MDE/gm  
Enclosure  
cc: Cynthia Daniels  
Rex Huang

G:\Mde\Workers Comp-RX\Sewell letter.wpd

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Attorney for Workers Compensation Fund

IN THE UTAH LABOR COMMISSION

WORKERS COMPENSATION FUND,  
Petitioner.

PETITION FOR AGENCY  
DECLARATORY ORDER

Case No. \_\_\_\_\_

The Workers Compensation Fund hereby petitions the Labor Commission for a declaratory order indicating the company Working RX, Inc. is not a "person providing goods or services described in subsections 34A-2-407(12)" of *Utah Code Ann.* (Supp. 2006), and is not, therefore, entitled to file hearing applications pursuant to *Utah Code Ann.* § 34A-2-801 (Supp. 2006).

The facts giving rise to this petition are that Working RX, Inc. has filed a number of hearing applications claiming to have provided prescription medications to employees of the petitioner's insureds. In reality, Working RX has paid pharmacies for the medicines provided to the employees and now seeks to recover from the petitioner amounts in excess of what it has paid to the pharmacies for such medicines.

Working RX, Inc., cannot qualify as a person providing medicines, not only because it does not in fact do so, but also because dispensing medicines requires a pharmacist or



pharmacy license. *See Utah Code Ann.* §§ 58-17b-301 and 303 (Supp. 2006). Anyone "selling, dispensing, or otherwise trafficking in prescription drugs" without a license is guilty of unlawful conduct, specifically a third degree felony. *See Utah Code Ann.* §§ 58-17b-501(11) and 504(1) (Supp. 2006).

Thus, only the dispensing pharmacy would have standing to bring an action like this to argue the inadequacy of reimbursement amounts.

Petitioner requests a declaration that a person providing medicines must be a licensed pharmacy or pharmacist to meet the statutory definition of who can file an application for a hearing.

DATED this 20<sup>th</sup> day of February, 2007.

PRINCE, YEATES & GELDZAHLER

By M. David Eckersley  
M. David Eckersley  
Attorney for Workers Compensation Fund

MAILING CERTIFICATE

I hereby certify that on the 20<sup>th</sup> day of February, 2007, I caused a true and correct copy of the foregoing **Petition for Agency Declaratory Order** to be mailed, first-class postage prepaid thereon, to the following:

Rex H. Huang  
Michelle Christensen  
4225 Lake Park Blvd., Suite 400  
Salt Lake City, Utah 84120

Michelle Christensen

G:\Mde\Workers Comp-RX\Petition for Agency Declaratory Order - Labor Comm.wpd