

**DECISION**

*J. Barber*  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

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FILE: B-190429

DATE: November 14, 1978

MATTER OF: Vaillancourt v. United States--Payment of  
Interest on Judgment

- DIGEST:
1. Wrongful death judgment against United States for \$573,431, apportioned equally by court among four heirs, is subject to interest limitations in 31 U.S.C. § 724a (applied as it existed at time of judgment, prior to 1977 amendment), since each judgment beneficiary received severable and distinct amount less than \$100,000.
  2. Since a purpose of first proviso of 31 U.S.C. § 724a was to provide compensation to a successful plaintiff whose judgment payment was delayed solely because the United States appealed and lost, interest may be allowed on a wrongful death judgment against the United States where the Government filed notice of appeal and appeal was subsequently dismissed by stipulation of the parties because the Government did not pursue its appeal. B-145389 April 18, 1961, is overruled.

The plaintiff in Vaillancourt v. United States, United States District Court, Northern District of California, has requested reconsideration of the settlement action of our Claims Division, dated July 19, 1977, which disallowed interest on the judgment awarded to her.

The original suit was a wrongful death action brought pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-2680. The Plaintiff, Mary T. Vaillancourt, suing individually and as guardian ad litem for her three children, alleged negligence on the part of the Palo Alto Veterans Administration Hospital resulting in the death of her husband, Roger F. Vaillancourt, a patient at the hospital. On September 30, 1976, the Court entered judgment for the plaintiffs in the amount of \$373,431. The California wrongful death law requires a lump-sum judgment. California Code of Civil Procedure § 377; Cross v. Pacific Gas and Electric Co., 60 Cal. 2d 690, 388 P. 2d 353 (1964). California law also requires that the award be apportioned among the various heirs in accordance with their separate interests. The Court's Memorandum and Order accompanying the judgment apportioned the award as follows: "Mary T., wife, 25%; Gail A., daughter, 25%; Joan Marie, daughter, 25%; and Marie Cecile, daughter, 25%." Thus, the amount payable to each was \$93,357.75.

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On October 13, 1976, the plaintiffs forwarded a certified copy of the judgment to our Claims Division along with a demand that interest be applied in favor of the plaintiffs from the date of the judgment. On December 3, 1976, the United States filed a Notice of Appeal in the Ninth Circuit Court of Appeals. We understand that the Government prepared an appellate record but did not further prosecute the appeal. The appeal nevertheless remained pending in the Court of Appeals until the parties filed a stipulation to dismiss the appeal on October 21, 1977. On June 29, 1977, the Department of Justice submitted the judgment to us for payment, certifying that no proceedings for review of the judgment would be taken. At that time, we were not aware that the appeal had been filed and was still pending. On July 19, 1977, we issued settlement for the principal amount of the judgment, without interest. The Attorney for the plaintiffs has requested that we reconsider our position that no interest is payable on the judgment in this case.

Interest on judgments under the Federal Tort Claims Act is generally authorized by 28 U. S. C. § 2411(b) as follows:

"Except as otherwise provided in subsection (a) of this section, on all final judgments rendered against the United States in actions instituted under section 1346 of this title, interest shall be computed at the rate of 4 per centum per annum from the date of the judgment up to, but not exceeding, thirty days after the date of approval of any appropriation Act providing for payment of the judgment."

Our authority to pay interest is limited, however, by the permanent indefinite appropriation established by 31 U. S. C. § 724a, which at the time of the judgment provided in pertinent part as follows\*:

"There are appropriated, out of any money in the Treasury not otherwise appropriated, and out of the postal revenues, respectively, such sums as may on and after July 27, 1956 be necessary for the payment, not otherwise provided for, as certified by the Comptroller General, of final judgments, awards, and compromise settlements (not in excess of \$100,000, or its equivalent

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\*The \$100,000 limitation was removed by Pub. L. No. 95-26 (May 4, 1977). Although we believe the plaintiff's entitlement to interest should be governed by the law as it existed at the time of the judgment, the result here, as discussed infra, would be the same in either case.

in foreign currencies at the time of payment, in any one case) which are payable in accordance with the terms of sections 2414, 2517, 2672, or 2677 of Title 28, together with such interest and costs as may be specified in such judgments or otherwise authorized by law; Provided, That, whenever a judgment of a district court to which the provisions of section 2411(b) of Title 28 apply, is payable from this appropriation, interest shall be paid thereon only when such judgment becomes final after review on appeal or petition by the United States, and then only from the date of the filing of the transcript thereof in the General Accounting Office to the date of the mandate of affirmance (except that in cases reviewed by the Supreme Court interest shall not be allowed beyond the term of the Court at which the judgment was affirmed); Provided further, That whenever a judgment rendered by the Court of Claims is payable from this appropriation, interest payable thereon in accordance with section 2516(b) of Title 28 shall be computed from the date of the filing of the transcript thereof in the General Accounting Office \* \* \*."

Thus, with respect to district court judgments, at the time of the entry of the judgment in this case, the law governing interest on judgments greater than \$100,000 differed from that governing judgments of less than \$100,000. On judgments exceeding \$100,000, interest was not contingent on any appeal and was payable from the date of the judgment pursuant to 28 U. S. C. § 2411(b). Under 31 U. S. C. § 724a, interest on judgments not in excess of \$100,000 was payable only when such judgments became final after review on appeal or petition by the United States.

It has been our position that, in suits involving more than one plaintiff, the \$100,000 limitation is to be applied not to the aggregate amount of the judgment but to the amounts due each individual judgment creditor. This view is consistent with Congress' purposes in establishing the permanent indefinite appropriation, which were to provide for the prompt payment of judgments without awaiting a special appropriation, and to reduce interest costs to the Government. H. R. Rep. No. 2638, 84th Cong., 2d Sess. 72 (1956). Also, this position has been supported by the courts. Thus, in United States v. Maryland ex. rel. Meyer, 349 F.2d 693 (D. C. Cir. 1965), the court held that the limitation applied with respect to "each individual who recovered a severable and distinct amount not in excess of

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\$100,000." 349 F. 2d at 695. See also, United States v. Varner, 400 F. 2d 369 (5th Cir. 1968); 40 Comp. Gen. 307 (1960).

California law allows for only one judgment in a wrongful death action. Its purpose, to expedite litigation, bears no relationship to the purposes of 31 U.S.C. § 724a. Thus, where under California law, a severable and specific award in a final judgment, payable only to a particular claimant, is less than \$100,000, it constitutes a judgment "in any one case" as that expression is used in 31 U.S.C. § 724a. Here, since the awards apportioned by the court were each for \$93,357.75, an amount less than \$100,000, they must be treated as four "judgments not exceeding \$100,000." Therefore, entitlement to interest is governed by the first proviso of 31 U.S.C. § 724a. United States v. Maryland ex. rel. Meyer, supra.

Under the first proviso of 31 U.S.C. § 724a, interest is payable only when the judgment has "become final after review on appeal or petition by the United States, and then only from the date of the filing of the transcript thereof in the General Accounting Office to the date of the mandate of affirmance." The question thus becomes whether the filing of a notice of appeal by the Government, and the subsequent dismissal of that appeal, can be deemed to satisfy the statutory condition. We considered essentially the same question in B-145389, April 18, 1961, and concluded that interest was not payable since the statute contemplated an actual review on the merits. Our conclusion was stated as follows:

"Under the statute your claim for interest would be allowable only on the basis that the Government's action in filing a notice of appeal on November 28, 1960, which was dismissed on January 19, 1961, constituted a 'review' and an 'affirmance' by the Court of Appeals. The issuance of a mandate of affirmance presupposes a review of the merits and the mere dismissal of the notice of appeal in no sense indicates such action has taken place. In your case, there having been no 'review' of the merits and no mandate of affirmance having been issued, interest is not payable under [31 U.S.C. § 724a]. \* \* \*"

Upon careful reconsideration, we now believe our 1961 decision was incorrect.

Prior to the enactment of 31 U.S.C. § 724a in 1956, interest on district court judgments was governed by 28 U.S.C. § 2411(b),

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supra, and was not contingent upon an appeal by the Government. The purpose of the first proviso of § 724a was to make interest provisions for district court judgments consistent with those for the Court of Claims. The proviso was explained in detail in a statement prepared by the Bureau of the Budget (now Office of Management and Budget), as follows:

"The present situation with respect to the payment of interest is undesirable in two respects-- first, the Government, because of the delay in making appropriations, bears the expense of interest which could be saved if appropriations were available for payment of the judgments when rendered; and second, there is a wide variance between the provisions of law respecting the payment of interest on judgments rendered by the district courts as compared with those rendered by the Court of Claims. Interest is paid on Court of Claims judgments only when the United States appeals and then only from the date when the transcript of the judgment is filed with the Treasury Department to the date of the mandate of affirmance. Interest is paid on judgments of the district courts, regardless of whether the Government appeals, from the date of the judgment to a date not later than 30 days after the making of an appropriation for payment of the judgment.

"It is believed that the provision for the payment of interest in cases where the Government appeals, as now prescribed by law with respect to judgments in the Court of Claims, is fair and equitable and need not be disturbed. If this belief is correct, it would follow that interest should be paid on judgments of the district courts on the same basis. If interest on judgments of the district courts were placed on the same basis as the Court of Claims, interest on district court judgments not appealed by the United States would be eliminated entirely. In district court cases which are appealed by the Government, interest would be eliminated from the date the judgment was rendered to the date the plaintiff filed a transcript thereof with the proper Government agency, and from the date of the mandate of affirmance to the time when a specific appropriation could be secured for the payment of the judgment."

Hearings on Supplemental Appropriation Bill, 1957, Before Subcommittees of the House Committee on Appropriations, 84th Cong., 2d Sess., pt. 2, at 883 (1956).

The interest provision for judgments of the Court of Claims, upon which the first proviso of 31 U.S.C. § 724a was patterned, is found at 28 U.S.C. § 2516(b) and also contains the "mandate of affirmance" language.

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Thus both statutes use the term "mandate of affirmance," a term which normally presupposes a review on the merits. See, e.g., Fed. R. App. Proc. Rule 41. A literal reading of the statutory language would therefore seem to support our 1961 decision. However, in adopting this literal construction, we now believe the 1961 decision overlooked the purpose of the interest provisions.

We have researched the legislative histories of both statutes--31 U.S.C. § 724a and 28 U.S.C. § 2516(b)--and have found no indication that Congress considered the application of those provisions to a situation where the Government appealed from an adverse judgment and, after considerable delay, later consented to withdraw the appeal. To be sure, one of the purposes of the first proviso of section 724a was to reduce interest costs to the Government. This was accomplished by virtue of the fact that the first proviso is considerably more restrictive than 28 U.S.C. § 2411(b) which would have governed had the proviso not been enacted. It is clear that Congress, had it so desired, could have eliminated post-judgment interest entirely. Since it chose not to do so, it is significant and proper to examine the reasons why Congress authorized interest in cases where the Government appealed and lost.

Section 724a was originally enacted on July 27, 1956, as section 1302 of the Supplemental Appropriation Act of 1957, 70 Stat. 678, 694. Prior to that time, with few exceptions, payment of a judgment against the United States required a specific congressional appropriation, a process which involved considerable delay since it could not be initiated until the judgment had become final. The rationale of 28 U.S.C. § 2411(b) was to compensate the plaintiff for the delay in receiving payment occasioned by the Government, i. e., the need to request and receive a specific appropriation. The enactment of section 724a made funds immediately available for the payment of judgments not in excess of \$100,000 in most cases. The first proviso recognized the one situation--an appeal by the Government--in which actions of the Government could still produce a significant delay in payment. It seems clear that the purpose of this proviso, as stated by the Comptroller of the Treasury in an 1899 decision concerning the corresponding Court of Claims provision, was "no doubt to compensate claimants for the loss suffered by delay in receiving payment, when the delay is not justified by the result of the appeal." 5 Comp. Dec. 893, 897 (1899). (\*)

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(\*) When the Court of Claims interest provision was originally enacted in 1863 (12 Stat. 766, the predecessor of 28 U.S.C. § 2516(b)), it was contemplated that indefinite appropriations would be made for the payment of final Court of Claims judgments. In fact this was not done until the enactment of section 724a in 1956 (and, for judgments greater than \$100,000, the 1977 amendment made by Pub. L. No. 95-26), hence the historic "inconsistency" in the entitlement to post-judgment interest between 28 U.S.C. §§ 2411(b) and 2516(b).

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In this context, it seems clear that the essential purpose of the first proviso is equally served by the allowance of interest in a case where the Government appeals and simply does not prosecute the appeal. "The want of justification in an appeal is as clearly shown by a dismissal of the appeal as it would be by an affirmance of the judgment." 5 Comp. Dec. at 898. Since the essence of the first proviso is the delay occasioned by the action of the Government, and since the filing of a notice of appeal effectively prevents prompt payment, it would in our opinion be highly anomalous to allow interest where the Government vigorously but unsuccessfully prosecutes the appeal but to deny it where the Government for whatever reason decides not to prosecute the appeal and withdraws it. The effect is the same--the original judgment in favor of the plaintiff stands. Accordingly, B-145389, April 18, 1961, is hereby overruled.

The final question is the determination of the proper beginning and ending dates for interest computation. A certified copy of the original judgment was filed with GAO by plaintiff's counsel by letter dated October 13, 1976, received by GAO October 18, 1976. Although the appeal was not formally dismissed until October 21, 1977, the Justice Department submitted the judgment for payment on June 29, 1977, certifying in its transmittal letter that no proceedings for review of the judgment would be taken. Pursuant to 28 U. S. C. § 2414, whenever the Attorney General determines that no further review will be sought, "he shall so certify and the judgment shall be deemed final." It was this determination which effectively rendered the judgment final for payment purposes and which permitted GAO to certify it to the Treasury Department for payment.

In accordance with the foregoing, an additional settlement will be issued for interest at the rate of 4 percent from October 18, 1976, through June 29, 1977.

  
Deputy Comptroller General  
of the United States