



COUNTY OF LOS ANGELES

CLAIMS BOARD

500 WEST TEMPLE STREET

LOS ANGELES, CALIFORNIA 90012

MEMBERS OF THE BOARD

September 16, 2002

Jacqueline White
Chief Administrative Office
Lloyd W. Pellman
Office of the County Counsel
Maria M. Oms
Auditor-Controller

Honorable Board of Supervisors
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Re: **Diane Williams, Donna Mayers, Lester Binion,
and Sandra Slaton v. County of Los Angeles**
Los Angeles Superior Court Case No. BC 240 113

Dear Supervisors:

The Claims Board recommends that:

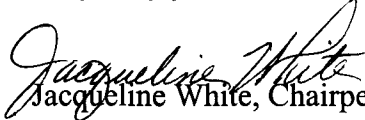
1. The Board authorize settlement of the above-entitled action in the amount of \$170,000.00, plus assumption of the Medi-Cal Lien not to exceed \$7,960.00.
2. The Auditor-Controller be directed to draw a warrant to implement this settlement from the Department of Health Services.

Enclosed is the settlement request and a summary of the facts of the case.

The Litigation Report, including the Corrective Action Report, is being transmitted to you under separate cover by the Department of Health Services.

Return the executed, adopted copy to Frances Lunetta, Suite 648 Kenneth Hahn Hall of Administration, Extension 4-1754.

Very truly yours,


Jacqueline White, Chairperson
Los Angeles County Claims Board

BNU/fsl

Enclosure

MEMORANDUM

August 28, 2002

TO: LOS ANGELES COUNTY CLAIMS BOARD

FROM: SCOTT B. McFALL, Esq.
Agajanian, McFall, Weiss, Tetreault & Crist

GARY N. MILLER
Principal Deputy County Counsel

RE: Diane Williams, Donna Mayers, Lester Binion, and Sandra Slaton v. County of Los Angeles
Los Angeles Superior Court Case No. BC240113

DATE OF INCIDENT: November 8-13, 1999

AUTHORITY REQUESTED: \$170,000, Plus Assumption of the Medi-Cal Lien Not to Exceed \$7,960

COUNTY DEPARTMENT: DEPARTMENT OF HEALTH SERVICES

CLAIMS BOARD ACTION:

Approve

Disapprove

Recommend to Board of Supervisors for Approval

_____, Chief Administrative Office
JACQUELINE WHITE

_____, County Counsel
LLOYD W. PELLMAN

_____, Auditor-Controller
MARIA M. OMS

on _____, 2002

SUMMARY

This is a recommendation to settle for \$170,000 the wrongful death lawsuit brought by Diane Williams (daughter), Donna Mayers (daughter), Lester Binion (son), and Sandra Slaton (daughter) for the death of Marjorie Binion while hospitalized at LAC+USC Medical Center on November 13, 1999. The State, having paid \$7,960 for the provision of Medi-Cal care, has a claim for reimbursement, which will be settled by the County.

LEGAL PRINCIPLES

The County is liable for the failure of its hospital and medical staff to provide services consistent with the appropriate standard of care for the circumstances encountered.

SUMMARY OF FACTS

On November 5, 1999, Marjorie Binion, a 64-year-old woman, underwent a surgical procedure at LAC+USC Medical Center for a total joint replacement (arthroplasty) of both knees. The arthroplasty was successfully concluded without complication, and Marjorie Binion was given an antibiotic (Ancef) as a precaution against a possible post-operative infection in the area of the operation.

On November 7, 1999, Marjorie Binion had a fever, and at 4:30 a.m., results of a blood test for a determination of the number of red and white blood cells (complete blood count [CBC]) indicated that Marjorie Binion's total white blood count (WBC) was elevated. A fever and an elevated WBC are both indications of a possible infection occurring in the body. Medical personnel evaluated the surgical sites, determined they were not infected, and discontinued the Ancef.

On November 8, 1999, at 12:10 a.m., results of a CBC of Marjorie Binion's blood indicated that her WBC had worsened. Marjorie Binion continued to have a fever, and complained of being unable to urinate. Although the surgical sites remained free of infection, there were no additional steps taken to identify the cause of her fever and the worsening WBC.

On November 10, 1999, at 3:41 p.m., a microscopic examination of a sample of Marjorie Binion's urine (urinalysis) indicated the presence of an abnormal amount of white blood cells and bacteria, a sign of an infection in her urinary tract. At 4:30 p.m., Marjorie Binion experienced a sharp increase in her temperature (spike). A spike in temperature may result from the presence of an infection (sepsis).

On November 11, 1999, medical personnel suspected that Marjorie Binion might be suffering from a urinary tract infection, and at 10:00 a.m., she was administered an antibiotic (Levaquin).

On November 13, 1999, at 3:45 p.m., Marjorie Binion was noted to be unresponsive and without a pulse. A distress call requiring immediate resuscitative efforts (code blue) was made. Restoration of heart and lung function using artificial respiration and manual closed chest compression (cardiopulmonary resuscitation [CPR]) was initiated, and she was resuscitated. A breathing tube (endotracheal [ET] tube) was inserted through her mouth, past the voice box to the breathing passages of the lungs (endotracheal intubation), and she was placed on a mechanical device to aid respiration (ventilator).

At 5:13 p.m., an analysis of Marjorie Binion's blood indicated an excessive accumulation of carbon dioxide (respiratory acidosis). At 5:30 p.m., a chest x-ray indicated that Marjorie Binion's left lung had collapsed, and that the ET tube was positioned in the large air passage (bronchus) leading to the lung on the right side rather than within the trachea. Although an order was given that the ET tube be pulled back from the bronchus to be properly positioned within the trachea, the medical record does not document that the ET tube was repositioned. At 6:02 p.m., an analysis of Marjorie Binion's blood indicated that the respiratory acidosis had worsened.

At 6:36 p.m., Marjorie Binion suffered a complete cessation of breathing and heart function (cardiopulmonary arrest). CPR was initiated, but she could not be resuscitated. Marjorie Binion was pronounced dead at 6:47 p.m. An autopsy attributed the cause of death to an overwhelming infection (sepsis) resulting from an infection in her urinary tract.

DAMAGES

If this matter proceeds to trial, the claimants will likely seek the following:

Diane Williams,		
Loss of Care, Comfort and Companionship (MICRA limit)	\$ 62,500	
Donna Mayers,		
Loss of Care, Comfort and Companionship (MICRA limit)	\$ 62,500	
Lester Binion,		
Loss of Care, Comfort and Companionship (MICRA limit)	\$ 62,500	
Sandra Slaton,		
Loss of Care, Comfort and Companionship (MICRA limit)	\$ 62,500	
Funeral Expenses	\$ 6,250	
Costs of Litigation	<u>\$ 12,600</u>	
TOTAL		\$268,850

The proposed settlement includes:

Diane Williams, Loss of Care, Comfort and Companionship (MICRA limit)	\$ 26,625
Donna Mayers, Loss of Care, Comfort and Companionship (MICRA limit)	\$ 26,625
Lester Binion, Loss of Care, Comfort and Companionship (MICRA limit)	\$ 26,625
Sandra Slaton, Loss of Care, Comfort and Companionship (MICRA limit)	\$ 26,625
Funeral Expenses	\$ 6,250
Attorneys Fees (MICRA Estimate)	\$ 50,900
Costs of Litigation	\$ <u>12,600</u>
TOTAL	\$170,000

STATUS OF CASE

The current trial date has been vacated pending approval of this settlement.

Expenses incurred by the County of Los Angeles in the defense of this case through August 16, 2002, are attorneys fees of \$32,605.10 and \$14,227.76 in costs.

The total cost to the County of Los Angeles, as a result of this settlement, is as follows:

Indemnity (Settlement Amount)	\$170,000.00
County Attorneys Fees and Costs	\$ 46,832.86
Medi-Cal Lien	\$ <u>7,960.00</u>
TOTAL	\$224,792.86

EVALUATION

Medical experts will be critical of the failure of medical personnel to timely recognize and treat Marjorie Binion's urinary tract infection. On November 8, 1999, medical personnel took no additional steps to identify the cause of Marjorie Binion's fever or worsening WBC. Further, on November 10, 1999, medical personnel failed to order any treatment after a urinalysis indicated the presence of an abnormal amount of white blood cells and bacteria, and Marjorie Binion experienced a spike in her temperature. These failures allowed her condition to worsen, resulting in an overwhelming infection, and is directly responsible for the results observed here.

Medical experts will also be critical of the failure of medical personnel to appreciate that Marjorie Binion was not properly intubated on November 13, 1999, when the results of blood tests indicated that she was suffering from respiratory acidosis, and a chest x-ray indicated that the ET tube was not positioned within the trachea, and that Marjorie Binion's left lung had collapsed. This failure led directly to her cardiopulmonary arrest at 6:36 p.m., and contributed to the results observed here.

We join with our private counsel, Agajanian, McFall, Weiss, Tetreault & Crist, and our claims administrator, Octagon Risk Services, Inc., in recommending settlement in the amount of \$170,000, and payment of the Medi-Cal lien in the amount of \$7,960.

The Department of Health Services concurs in this settlement.