



PATIENTS' COMPENSATION FUND  
 OVERSIGHT BOARD  
 OFFICE OF THE EXECUTIVE DIRECTOR  
 200 LAFAYETTE STREET, # 600  
 BATON ROUGE, LA 70801  
 (504) 342-6052

LYNN BEAUCOUDRAY, WIFE OF/AND  
 JAMES KELTY, JR., INDIVIDUALLY  
 AND ON BEHALF OF THEIR MINOR  
 CHILD, ANNE MARY KELTY

PATIENT'S COMPENSATION FUND  
 OVERSIGHT BOARD  
 -and its-  
 CLAIMS COMMITTEE

VS.

NO. 94-001

FRED O. BRUMFIELD, M.D., AND  
 SOUTHERN BAPTIST HOSPITAL, ET AL

FINAL DECISION

On motion of Paul Lansing, duly seconded by Robert Merkel, the Louisiana Patient's Compensation Fund Oversight Board ("the Oversight Board") hereby adopts as its Final Decision the FINDINGS AND CONCLUSIONS by the Claims Committee (copy attached hereto), there having been no request by any party for review, modification, appeal or rehearing under the Louisiana Administrative Act. The Oversight Board further directs that, where appropriate, the amounts awarded under the FINDINGS AND CONCLUSIONS be paid promptly to the Keltys and/or to third party creditors by direct payment and/or payment into the Registry of the Court, Civil District Court, Parish of Orleans, subject to further review by Judge Gerald Fedoroff or other courts.

SIGNED this 1st day of September, 1994 at Baton Rouge, Louisiana.

BY: Charles D. Belleau  
 CHARLES D. BELLEAU, M.D., CHAIRMAN

BY: Suanne Grosskopf  
 SUANNE GROSSKOPF,  
 EXECUTIVE DIRECTOR

BY: Robert D. Merkel  
 ROBERT D. MERKEL

BY: Chris Barnette  
 CHRIS BARNETTE

BY: Paul B. Lansing, II  
 PAUL B. LANSING, II, M.D.

BY: Ben B. Singletary  
 BEN B. SINGLETARY, M.D.

BY: Dennis E. Simon, III  
 DENNIS E. SIMON, III

BY: Henry Threefoot  
 HENRY THREEFOOT, M.D.

BY: Gary Darnell  
 GARY DARNELL

BY: - absent -  
 RICHARD ZUSCHLAG



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FINDINGS AND CONCLUSIONS

The Louisiana Patient's Compensation Fund Oversight Board ("the Oversight Board"), acting through its Claims Committee, held its Administrative Hearing ("hearing") in this case on July 7, 1994. The hearing was conducted, as close as practicable, to conform to the Louisiana Supreme Court opinion in the Kelty case and the Louisiana Administrative Procedure Act. It is the understanding of the Oversight Board and its Claims Committee that this body is vested with original subject matter jurisdiction concerning issues relating to medical care and related benefits under La.R.S. 40:1299.41 et seq. This body has conducted the hearing consistent with what it understands to be the order of Judge Gerald Federoff of the Civil District Court, Parish of Orleans.

The following parties and their counsel were present and participated in the hearing:

James Kelty, Jr. and Lynn B. Kelty, individually and on behalf of their minor child, Anne Mary Kelty, represented by attorney, Kenneth V. Ward.

The Louisiana Patient's Compensation Fund ("PCF"), as an entity, represented by its attorneys, Lemle & Kelleher, George E. Cain, Jr.

The Claims Committee consisted of: Dr. Paul B. Lansing, II, Dr. Ben B. Singletary and Mr. Robert D. Merkel. These individuals constitute the Claims Committee and sit as three of the nine members of the Oversight Board. Dr. Lansing is a practicing physician from New Orleans; Dr. Singletary is a practicing physician from Shreveport; and Mr. Merkel is the President of the Louisiana Hospital Association from Baton Rouge.

Also present, and participating in the hearing as legal counsel for the Claims Committee and the Oversight Board, was Larry M. Roedel, attorney from Baton Rouge.

All witnesses were placed under oath prior to giving testimony and all parties were afforded a reasonable opportunity to represent documentary evidence, witness testimony, and oral argument concerning their respective positions. Attorneys for the PCF entity filed a "Pre-Hearing Brief" which set forth their position concerning the issues involved in the hearing. The attorney for the Keltys did not file a Pre-Hearing Brief. A recorded transcript was made of the hearing and a copy of that transcript will be made available to any party upon payment to the court reporter.

Following completion of the hearing, the Claims Committee met and reached the following Findings and Conclusions for recommendation to the full Oversight Board for its consideration and implementation, subject to review by the appropriate court.

#### A. Medical Expenses

According to the documents presented at the hearing, confirmed by testimony of witnesses and counsel stipulation, there has been \$112,000 of "past medical expenses" incurred from the birth date of Anne Keltys to the present. Based upon the Supreme Court decision in Kelty, these medical expenses are reasonable in amount and should be paid by the PCF. The more difficult question is "to whom should the medical expenses be paid?"

The attorneys for the PCF sought the production of insurance policies which have paid a substantial portion of the medical expenses for the minor child. Despite the efforts of the Keltys and their attorneys, those policies were not produced for the Claims Committee to review as part of the hearing. The documents that were presented included brochures, booklets and other excerpts from both the Government Employees Hospital Association Benefit Plan and the Mail Handlers Benefit Plan ("the Plans"). Although the language differs somewhat from year to year, the basic "subrogation language" affords the Plans a contractual right to recover amounts paid by the Plans where there is an eventual reimbursement of dollars from a third party who has responsibility to pay for injuries to, in this instance, Anne Mary Keltys. For example, the 1988 Plan includes the following language:

"Subrogation means the Plan's right to recover any of its payments (1) made because of any injury to you or your dependent caused by a third party and (2) which you or your dependent later recover from the third party or the third party's insurer.

If you or your dependent sustain an injury caused by a third party, the Plan will pay benefits for the injury, subject to (1) the Plan being subrogated to any recovery or right of recovery you or your dependent has against the third party, including the right to bring suit in your name; (2) your not taking any action which would prejudice the Plan's subrogation rights; and (3) your cooperating in doing what is reasonably necessary to assist the Plan in any recovery. The Plan will be subrogated only to the extent of Plan benefits paid because of that injury."

The Claims Committee notes that the 1989 through 1993 versions of these Plans contain substantially identical subrogation rights. It is unclear as to whether these Plans for other years contain identical subrogation rights because those policies and plans were not available to the Claims Committee. However, even without a contractual subrogation right, there are legal subrogation rights to consider. It is further unclear whether the Keltys received some governmental assistance for medical expenses. If that has occurred, then the Federal Medicare Program has a statutory right to recover these payments.

For the reasons set forth above, it is the duty of the Claims Committee and the Oversight Board to make certain that the PCF is not exposed to double payment or double liability. This would be consistent with the Supreme Court decision in Kelty, which, at page 12, obligates the Oversight Board to "assure the cost effectiveness of claims adjustment and the fiscal soundness of the PCF."

It is clear, however, that the Keltys have personally paid approximately 20% of their total medical expenses over the years which has not been reimbursed by insurance coverages or governmental plans. Thus, of the \$112,000, at least 20% is owed directly to the Keltys in reimbursement.

Accordingly, as to past medical expenses, it is the Finding and Conclusion by the Claims Committee that the PCF be required to deposit 80% of the \$112,000 medical expense amount into the Registry of the Court, Civil District Court, Parish of Orleans so that Judge Gerald Federoff can direct the manner and method by which these amounts will be distributed to any subrogated Plan, or to other third parties who may have a claim to these expenses.

There is one exception to the directive to make the deposit into the Registry of the Court. Certain expenses incurred on behalf of Anne Kelty, included in the \$112,000 amount, were originally due to the Greenery Neurological Center, which is a specialized medical facility in Slidell, Louisiana where Anne Kelty has sought treatment. Those expenses should be paid directly by the PCF to the Greenery at a daily or weekly rate to be established by the PCF and the Greenery. To the extent the Keltys have made direct, personal payments of \$15,400 to the Greenery, then that amount should be reimbursed directly to the Keltys, plus legal interest from the date the Keltys made those payments.

To summarize as to Medical Expenses:

$\$112,000$  minus  $\$15,400$  (Direct Pay to Keltys) =  $\$96,600$  balance  
80% of  $\$96,600$  =  $\$77,280$  (Deposit into Registry of Civil District Court)  
20% of  $\$96,600$  =  $\$19,320$  (Direct Pay to Keltys)

#### **B. Future Medical Expenses**

The evidence presented in the hearing, both by witnesses and documents, indicates that Anne Kelty is in need of future medical care. This finding is consistent with the Supreme Court opinion in Kelty and, further, it is in compliance with La.R.S. 40:1299.43. Future medical expenses, to the extent shown to be reasonable and medically necessary, should be paid consistent with PCF procedures which govern the payment for other claims under La.R.S. 40:1299.43. Specifically, as to the Greenery Center, the PCF is ordered to enter into an arrangement with that facility for direct payment of Anne Kelty's bills, if she enters that facility for care, whether part-time or full-time, in the future.

#### **C. Transportation Charges**

The evidence indicates that the Keltys have purchased 3 vans within the past 10 years, a 1984 Dodge Concorde, a 1986 Ford Aerostar, and a 1990 Toyota Previa. The Keltys' contend that these vans are used exclusively to transport Anne Kelty to and from doctor visits and other medically necessary activities.

Based upon the evidence received at the hearing, the PCF should pay a substantial portion of the costs for these vans pursuant to its Rules, Sec. 1921. The Claims Committee believes that a fair allocation of "van use", based upon the evidence at the hearing, is 90% related to Anne Kelty and 10% related to "other family needs". Accordingly, the PCF is directed to pay 90% of the costs for these 3 vans. Concerning the cost of the vans, the evidence by the Keltys shows:

1984 Dodge Concorde -- \$21,125.52 (Total purchase price including finance charges);

1986 Ford Aerostar -- \$15,140.68 (Total price before application of \$9,500 used car allowance - trade of 1984 Dodge van)

1990 Toyota Previa -- \$21,380.74 (Total cash price before \$5,325.00 trade in credit - 1986 Ford Aerostar)

The PCF should not pay "double" for transportation charges. It should be entitled to the benefit of the trade-in values. Accordingly, the PCF should pay as follows:

<u>Type of Purchase</u>	<u>Adjusted Price</u>		<u>Medical Use</u>		<u>PCF Owes</u>
1984 Dodge Concorde Van	\$21,125.52	x	90%	=	\$19,012.97
1986 Ford Aerostar Van (Price minus trade-in of 1984 Dodge Van)	\$ 5,640.68	x	90%	=	\$ 5,076.01
1990 Toyota Privia (Price minus trade-in of 1986 Ford Van)	\$16,155.74	x	90%	=	\$14,540.17

#### D. Residential Modifications

The evidence presented indicates that the Keltys family moved from Chalmette, Louisiana to Gulfport, Mississippi in late 1990. The Keltys built a new home valued in excess of \$350,000. According to the Keltys, and as documented by Thomas Meunier, a licensed rehabilitation counselor, \$40,000 is an approximate cost for home modifications of the type made by the Keltys.

For example, the Keltys added wheelchair access ramps, they widened hallways and door openings, they added a special shower and whirlpool, and they made other assorted changes in the construction process. The Keltys were unable to document the exact costs and, apparently, their builder could not be located to testify. For these reasons, the Claims Committee is in a highly subjective area with respect to a proper award for home modifications. Under the Rules, Sec. 1925, reasonable and necessary modifications will be reimbursed.

For the reasons discussed, and based upon the evidence presented, it is the Claims Committee's recommendation that the Keltys be reimbursed the greater of \$40,000 (which is 11.4% of the construction cost) or an amount to be determined by a licensed architect to be chosen by the PCF to inspect the Keltys' home and render a report concerning the costs of special modifications that relate to Anne Keltys. If the architect's report results in an actual cost amount that is greater than \$40,000, then the differential will be paid by the PCF to the Keltys.

#### E. Other Supplies

The evidence at the hearing indicates that the Keltys have purchased a large volume of miscellaneous supplies (such as diapers, syringes, paper towels and other items that in some way relate to the care of Anne Keltys). The Keltys presented no documents, checks, receipts or other paperwork to indicate the exact amounts they have incurred. Despite the lack of documentary evidence, the Keltys testified that a number of these purchases have, in fact, been made.

Prior to 1993, the Keltys were spending approximately \$4.00 per day to cover these miscellaneous items. Beginning in January, 1993, and coinciding with the insertion of a feeding tube for Anne, purchases of Ensure formula became necessary. The cost of this formula is approximately \$6.00 per day. Therefore, from January, 1993 to the present, the Keltys have incurred miscellaneous charges of approximately \$10.00 per day to care for their daughter.

It was difficult for the Claims Committee to determine, based upon the evidence (or lack thereof), whether the Keltys expended personal funds for these "other supplies" from the date of Anne's birth, July 18, 1978 to the present, although that is the argument made by Keltys' counsel. In this regard, although subjective in nature, the Claims Committee does make this portion of the award retroactive to the date of birth.

Accordingly, the PCF is directed to reimburse the Keltys at the rate of \$4.00 per day for "other supplies" dating from July 18, 1978 through December 31, 1992. For January 1, 1993 to the present, the PCF is directed to reimburse the Keltys at the rate of \$10.00 per day.

#### F. Custodial Care

The arguments made at the hearing indicate that the Keltys seek custodial care reimbursement from the date of their daughter's birth, July 18, 1978, on a more than 24 per hour day basis, 365 days per year, at \$31.00 per hour for the first 40 hours of each week, \$46.50 (on a time-and-a-half--overtime basis) for every hour thereafter in each respective week, and also \$62.00 per hour for holidays.

There was no evidence presented by the Keltys that those suggested hourly rates are commensurate with the ability, formal training, or licensure of Mr. and Mrs. Kelty, nor do these rates bear a relationship to charges by outside medical experts in the field of nursing, therapy or sitter care.

The Claims Committee cannot recommend or adopt the rates proposed by the Keltys for several reasons, as set forth below:

- (1) The evidence at the hearing did not support the rates sought by argument of counsel for the Keltys;
- (2) The Claims Committee notes that the Keltys themselves initially requested custodial care reimbursement at the rate of \$6.50 per hour, which is substantially identical to that adopted by the PCF Rules;
- (3) Despite the excellent care rendered by Mr. and Mrs. Kelty as devoted parents to their daughter, the Keltys did not incur expenses at the hourly rates suggested in argument by their counsel. The measure of damages cannot be based on what "could have been incurred."
- (4) As reflected in Edward v. St. Frances Medical Center, 623 So. 2d 1387 (La. App. 2nd Cir. 1993), although the Keltys are dedicated and caring parents, in the absence of formal training, licensure or qualifications, their services are, more likely than not, comparable to that of sitter care, and the \$6.00 per hour figure is reasonable;
- (5) The Oversight Board's Rules, which have been adopted pursuant to the Administrative Procedure Act, La.R.S. 49:950 et seq., provide for reimbursement of nursing or sitter care by members of a patient's family or household at the rate of \$6.00 per hour. While some informal guidelines that the PCF was previously utilizing were criticized in Bower v. Schumpert Medical Center, 618 So. 2d 600 (La. App. 2nd Cir. 1993) as not having been adopted pursuant to the Administrative Procedure Act when applied to that particular patient, the current Oversight Board's Rules have now been adopted under Louisiana law and should be followed.
- (6) Cindy Pittman testified at the hearing as an expert in nursing care and case management. She had offered to prepare a Life Care Plan for Anne Kelty but had been denied the opportunity by the Keltys' counsel. She provided the Claims Committee with the historical summary of costs and charges for registered nurses, licensed professional nurses, and sitters dating back to the late seventies and early eighties. On balance, those figures are more closely aligned with a \$6.00 per hour figure for sitter services than they are with the hourly rates suggested by the Keltys.

- (7) The facts clearly indicate that no outside nurse, therapist or other provider has been hired or paid by the Keltys at rates anywhere close to those proposed by counsel.

Despite rejecting the hourly rates proposed by Keltys' counsel, the Claims Committee is of the belief that Anne Kelty is entitled to and deserving of 24 hour care. This conclusion is based upon the testimony presented in the hearing. The combination of efforts by Mrs. Kelty and Mr. Kelty results in 24 hour care for their daughter.

Mrs. Kelty in effect has "more than a full-time job" taking care of their daughter. Given that both Anne and Mrs. Kelty must sleep on some regular basis, the Claims Committee believes that Mrs. Kelty devotes up to 16 hours per day in taking care of their daughter. Mr. Kelty holds down a full-time job with the U.S. Customs Service and, upon his return home in the evening, obviously devotes some of his time to the care of their daughter. The Claims Committee believes that Mr. Kelty devotes 8 hours per day in assisting his wife to take care of their daughter. Accordingly, the combination of their efforts results in an award of 24 hour care for their daughter.

The Claims Committee is mindful that, at least during the earlier years of Anne's life, it is difficult to determine how much time Mr. and Mrs. Kelty would have spent with Anne if she had been a healthy child as opposed to a child born with significant birth-related injuries. It is impossible for the Claims Committee to "draw the line" between what would have been ordinary care for a completely health child versus extraordinary care for a physically-challenged child such as Anne, during her earlier years. As Anne has aged and grown, the physical stress placed upon Mr. and Mrs. Kelty has increased. For that reason, the Claims Committee does not make any reduction of the award, and directs that the PCF pay this particular item back to the July 18, 1978 birth date.

For the reasons set forth above, it is the Finding and Conclusion of the Claims Committee that custodial care benefits be reimbursed to the Keltys at the rate of \$6.00 per hour, on a 24 hour custodial care basis, dating from July 18, 1978 through and including the date that this decision is implemented between the PCF and the Keltys.

Based upon the mathematical calculations by the Claims Committee, this figure will be \$52,560 per year or \$4,380 per month. This amount would compensate the Keltys at an annual rate equal to or exceeding the cost of two private licensed professional nurses, had the Keltys chosen to go outside their own family for assistance. Therefore, from July 18, 1978 through July 18, 1994, i.e. the first 16 years of Anne's life, the amount is \$840,960 in custodial care reimbursement to the Keltys, plus applicable legal interest discussed below.

#### G. The Issue Of Legal Interest<sup>1</sup>

The calculations for "legal interest" present a difficult task for the Claims Committee. As a general proposition, legal interest is due to the prevailing party from date of "judicial demand" or the date the individual items were incurred. The task is further complicated because of the time span over which the medical expenses were incurred and the uncertainty as to what third parties

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<sup>1</sup>The legal interest rates from August 23, 1985 forward are:

August 23, 1985 to December 31, 1987.....	12.00%
January 1, 1988 to December 31, 1988.....	9.75%
January 1, 1989 to December 31, 1989.....	11.50%
January 1, 1990 to December 31, 1990.....	11.50%
January 1, 1991 to December 31, 1991.....	11.00%
January 1, 1992 to December 31, 1992.....	9.00%
January 1, 1993 to December 31, 1993.....	7.00%
January 1, 1994 to December 31, 1994.....	7.00%

are owed approximately 80% of the medical expenses. Despite these uncertainties, it is the job of the Claims Committee to make a reasonable allocation of legal interest as it understands the facts and the law in this case. The awards of legal interest will be dealt with on a "category-by-category" basis after a discussion of the "judicial demand" issue.

Under the Medical Malpractice Act as originally written, La.R.S. 40:1299.41 et seq. did not include recovery for the amount or value of medical care and related expenses. September 1, 1984 was the effective date of amendments to the Medical Malpractice Act that added "medical care and related expense" benefits as items of recovery under La.R.S. 40:1299.43.

The Keltys filed their original lawsuit in the court system on or about August 23, 1985. Thus, "judicial demand" for whatever the Keltys were entitled to under the Medical Malpractice Act, as amended to include "medical care and related benefits", was made on August 23, 1985. The support for this conclusion is based, at least in part, on the Supreme Court's recognition that August 23, 1985 was the date the Keltys first filed the original court petition seeking additional benefits that were geared to the Medical Malpractice Act.

Also, in Melancon v. Insurance Corp. of America, 633 So. 2d 231 (La. App. 1st Cir. 1993), citing Ferguson v. Lankford, 374 So. 2d 1205 (La. 1979), the filing of a complaint for a medical review panel is not "judicial demand" since it is not a "suit" filed in court. Thus, August 23, 1985 seems to be the appropriate date of "judicial demand." Lastly on this subject, on April 22, 1983, the Keltys requested a medical review panel; however, at that time there was no claim or cause of action to be made for future medical care and related benefits because the Medical Malpractice Act had not been amended at that time to include such benefits. Accordingly, the Claims Committee concludes that August 23, 1985 is the appropriate date when "judicial demand" was made in this case and all interest due will be calculated using that date.<sup>2</sup>

**A. Medical Expenses -- Legal Interest:**

The Keltys are entitled to \$15,400 in base reimbursement for monies paid to the Greenery. According to the evidence and information presented, the Keltys wrote a check on or about May 25, 1994 in the amount of \$15,400 to the Greenery. They are owed legal interest on that amount from May 25, 1994 to the date of reimbursement at the per diem rate of \$2.95.

$$\begin{array}{r} \text{Mathematical error } \$197.85 \\ 67 \text{ days at } \$2.95 \text{ per day} = \$197.88 \text{ (through 7/31/94)} + \$15,400.00 = \underline{\underline{\$15,597.88}} \end{array}$$

With respect to the \$19,320 amount to be reimbursed to the Keltys (representing 20% of their medical costs dating from 1978 to the present), the calculation is complex. It is not possible to determine how much of the \$19,320 was personally incurred by the Keltys for each year of Anne's treatment. For simplicity purposes, the Claims Committee will assume a "straight line" calculation for personal payments, by dividing the \$19,320 by a 16 year time frame, which equals \$1,207.50 per year, and which is reflected in the schedule printed below:

<u>Year</u>	<u>Amount</u>	<u>Running Total</u>	<u>Legal Interest</u> <u>Beginning 8/23/85</u>
1978	1,207.50	1,207.50	
1979	1,207.50	2,415.00	
1980	1,207.50	3,622.50	
1981	1,207.50	4,830.00	
1982	1,207.50	6,037.50	
1983	1,207.50	7,245.00	
1984	1,207.50	8,452.50	
1985	1,207.50	9,660.00	412.87
1986	1,207.50	10,867.50	1,300.53
1987	1,207.50	12,075.00	1,445.03

<sup>2</sup>All calculations for legal interest use a July 31, 1994 date for calculations purposes. After such date, the various per diem rates must be considered.



1988	1,207.50	13,282.50	1,291.51
1989	1,207.50	14,490.00	1,661.78
1990	1,207.50	15,697.50	1,800.27
1991	1,207.50	16,605.00	1,854.46
1992	1,207.50	18,112.50	1,625.67
1993	1,207.50	19,320.00	1,348.69
1994	<u>1,207.50</u>	<u>20,527.50</u>	<u>830.66</u>

\$20,527.50 -plus- \$13,571.47 = \$34,098.97

The total for medical expenses, plus applicable legal interest, to be reimbursed to the Keltys is \$34,098.97. The per diem rate after July 31, 1994 is \$3.94 per day.

With respect to the deposit into the Registry of Civil District Court of the 80% due to the Plans or to other health care providers, the Claims Committee cannot determine at this time which entity may be owed what amount and for what time periods. Accordingly, the issue of "legal interest" in favor of those third party entities will be left open for the Civil District Court to determine at the appropriate time, if and when those entities make an appearance to assert claims for the concursus deposit.

**B. Future Medical Expenses - Legal Interest:**

Since the PCF is directed to enter into a direct payment agreement with the Greenery, there should be no further legal interest ramifications for the Keltys.

**C. Transportation Charges - Legal Interest:**

	<u>PCF Owes</u>	<u>Legal Interest From/To</u>	<u>Amount of Interest</u>
1984 Dodge Concorde Van	\$19,012.97	8/23/85 to 6/7/86	\$ 1,800.24
1986 Ford Aerostar Van	\$ 5,076.01	6/07/86 to 6/13/90	\$ 2,295.50
1990 Toyota Privia	<u>\$14,540.17</u>	<u>6/13/90 to 7/31/94</u>	<u>\$ 5,437.83</u>
TOTALS	\$38,629.15 -plus-		\$ 9,533.57 = <u>\$48,162.72</u>

**D. Residential Modifications - Legal Interest:**

As set forth above, the Keltys moved to their new home in late 1990. Because of lack of proof by the Keltys, it is difficult to know when the \$40,000 was incurred for home modifications or when the Keltys began making mortgage payments, or at what interest rate their home is financed. Accordingly, the \$40,000 amount (unless increased by the architect's report) will accrue interest from January 1, 1991 to July 31, 1994. That interest rate calculation is \$12,414.25, with a per diem rate of \$7.67, for a total of \$52,414.25.

**E. Other Supplies - Legal Interest:**

<u>Year</u>	<u>Amount</u>	<u>Running Total</u>	<u>Legal Interest Beginning 8/23/85</u>
1978	\$4.00/day	1,460.00	
1979	\$4.00/day	2,920.00	
1980	\$4.00/day	4,380.00	
1981	\$4.00/day	5,840.00	
1982	\$4.00/day	7,300.00	
1983	\$4.00/day	8,760.00	

1984	\$4.00/day	10,220.00	
1985	\$4.00/day	11,680.00	499.20
1986	\$4.00/day	13,140.00	1,572.48
1987	\$4.00/day	14,600.00	1,747.20
1988	\$4.00/day	16,060.00	1,561.57
1989	\$4.00/day	17,520.00	2,009.28
1990	\$4.00/day	18,980.00	2,176.72
1991	\$4.00/day	20,440.00	2,242.24
1992	\$4.00/day	<u>21,900.00</u>	<u>1,965.61</u>
			Mathematical error = \$25,674.30
		\$21,900.00	-plus- \$ 3,774.30 = \$35,674.30

1993 \$10.00/day x 365 days  
1994 \$10.00/day x 212 days

577 days x \$10.00 = \$5,770.00

Interest from 1/1/93 to 12/31/93 402.79  
Interest from 1/1/94 to 7/31/94 234.59

\$6,407.38

"Other Supplies" Total \$42,081.68

**F. Custodial Care - Legal Interest:**

<u>Year</u>	<u>Amount</u>	<u>Running Total</u>	<u>Legal Interest Beginning 8/23/85</u>
1978	52,560.00	52,560.00	
1979	52,560.00	105,120.00	
1980	52,560.00	157,680.00	
1981	52,560.00	210,240.00	
1982	52,560.00	262,800.00	
1983	52,560.00	315,360.00	
1984	52,560.00	367,920.00	
1985	52,560.00	420,480.00	17,971.20
1986	52,560.00	473,040.00	56,609.28
1987	52,560.00	525,600.00	62,899.20
1988	52,560.00	578,160.00	56,216.58
1989	52,560.00	630,720.00	72,334.08
1990	52,560.00	683,280.00	78,361.92
1991	52,560.00	735,840.00	80,720.64
1992	52,560.00	788,400.00	70,762.13
1993	52,560.00	840,960.00	58,705.92
1994	<u>52,560.00</u>	<u>893,520.00</u>	<u>36,156.96</u>

Custodial Care Total \$893,520.00 -plus- \$590,737.91 = \$1,484,257.91

This total is through July 31, 1994, with a per diem rate of \$171.36 thereafter.

**G. Grand Total - Summary of Amounts Owed to the Keltys:**

The Claims Committee has gone to great detail to quantify the total amounts owed to the Keltys under a very complicated scenario. The Claims Committee is mindful of the Supreme Court's instruction that it perform its job to "assure the cost effectiveness of claims adjustment and the fiscal soundness of the PCF" while at the same time treating the Keltys fairly in every respect. To that end, the Claims Committee has undertaken its responsibility.

To summarize, the Keltys are entitled to the following total base amounts and legal interest amounts to be paid by the PCF to the Keltys, through their counsel, Kenneth V. Ward, Jr.:

Medical Expenses:

\$15,597.88 (Greenery)  
34,098.97 (Keltys' 20%)

Transportation:

20,813.21 (1984 Dodge)  
7,371.51 (1986 Aerostar)  
19,978.00 (1990 Toyota)

Residential Modifications:

52,414.25

Other Supplies:

42,081.68

Custodial Care:

1,484,257.91

**GRAND TOTAL**

\$1,676,613.41 Mathematical error  
\$1,666,613.38 plus interest

These figures are good through July 31, 1994. A total per diem rate at 7.0% legal interest is \$321.54. Both the Keltys and the PCF may seek review of this decision as provided by law.

**CLAIMS COMMITTEE:**

By:   
PAUL E. LANSING, II, M.D.

By:   
BEN E. SINGLEARY, M.D.

By:   
ROBERT D. MERKEL