

The Lawyers' Fund for Client Protection  
of the State of New York

119 Washington Avenue, Albany, New York 12210  
Telephone: (518) 434-1935 or (800) 442-3863  
E-mail: [info@nylawfund.org](mailto:info@nylawfund.org)  
Web site: [www.nylawfund.org](http://www.nylawfund.org)

**BOARD OF TRUSTEES**

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Peter A. Bellacosa  
Nancy Burner  
Patricia Gatling  
Charlotte G. Holstein  
Theresa B. Mazzullo  
Eric A. Seiff

**ANNUAL REPORT**  
**OF THE**  
**BOARD OF TRUSTEES**  
**FOR**  
**CALENDAR YEAR 2009**



Submitted to the  
Judges of the Court of Appeals  
and the  
State Comptroller  
pursuant to the provisions of

General Order of the Court of Appeals dated November 16, 1981

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## **Introduction**

This 27th Annual Report of the Lawyers' Fund for Client Protection focuses on the Fund's activities in calendar year 2009. The Board of Trustees is pleased to present this annual accounting of the operations of the Lawyers' Fund.

The Lawyers' Fund is an independent public trust, financed by lawyers in New York State, which reimburses law clients for financial losses caused by dishonest conduct in the practice of law. The legal profession is alone in providing such protection to its clients.

There are 253,000 registered lawyers in New York State. The Trustees' experience over 27 years has clearly established that the overwhelming majority of New York's lawyers are honest and caring and deserving of their clients' trust. In 2009, as in each year since 1982, only a small number of former lawyers are responsible for the dishonest conduct resulting in the Fund's awards. In 2009, 59 now suspended, disbarred or deceased lawyers were responsible for the client losses reimbursed by the Fund. Of these 59 former lawyers, 36 appear for the first time in the Fund's awards.

In 2009, the Trustees approved 139 awards reimbursing a total of \$5.6 million to eligible law clients for losses caused by dishonest conduct of attorneys in New York State. All but one eligible law client received 100 per cent reimbursement for their loss in 2009. Since 1982, the Trustees have now granted 6,617 awards totaling \$142.9 million.

The Trustees remain proud of New York's legal profession, and grateful for the financial and other support lawyers in New York State provide to the Lawyers' Fund and its client protection program. The Trustees also wish to commend the members of the bar who generously donate their time and talents in assisting claimants before the Fund as a public service, without legal fee.

Special recognition must also be given to the Court of Appeals and Chief Judge Jonathan Lippman, and all those in State government and our judiciary, for their wisdom and leadership in establishing the Lawyers' Fund and ensuring its strength and independence since 1982. Due to these collaborative efforts, New York State provides a meaningful and responsive client reimbursement program that is a model for our nation.

**“Thank you so much for all of your efforts on my behalf. You and the Lawyers' Fund reflect so well on your profession...We are happy and grateful.”**  
*Message from a Claimant, 2009*

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## **Dedication: Hon. Charles J. Hynes, Esq.**



The Trustees are honored to dedicate this Annual Report to Charles J. Hynes who retired in 2009 after 27 years of noble service as a Trustee with the Lawyers' Fund.

Since his initial appointment to the Board in 1982, “Joe” has been a trusted colleague and dear friend whose strength and wisdom has guided the Lawyers' Fund for three decades. His sense of duty and commitment to the Lawyers' Fund, our legal profession, our justice system and the public remains a beacon for the Fund's Trustees and staff, and all those in public service.

Recently elected to a sixth term as the District Attorney of Kings County, Joe has pioneered many innovative and successful criminal justice programs which serve the principles of social justice, improve the administration of justice, and continue to shine as models across our Nation. The Fund has been fortunate to have Joe's progressive intellect and reasoned compassion as a resource to benefit New York's client protection program and legal profession.

Over the years, we have come to understand how important family is to Joe as he and his wife Patricia are blessed with five children and 16 grandchildren. We at the Lawyers' Fund feel privileged to have had Joe as a vital part of our family for these 27 years. For that, we will always be grateful.

## History and Purpose of Law Client Protection

Law client reimbursement programs were begun by bar associations in New York State in the 1960's. As a result of inadequate financing, these associations appealed to the Court of Appeals and the New York court system which embraced the responsibility for operating a statewide client reimbursement program.

The Lawyers' Fund, originally known as The Clients' Security Fund, was created by Chapter 714 of the Laws of 1981, effective June 1, 1981. The Fund is an independent public trust administered by a Board of Trustees appointed by the Court of Appeals.

The Fund's mission as set forth in section 468-b of the State Judiciary Law and the Trustees' Regulations is to maintain the integrity and protect the good name of the legal profession, protect law clients from dishonest conduct in the practice of law, and promote public confidence in the administration of justice in New York State.

The Fund's primary focus is the reimbursement of losses caused by the dishonest conduct of attorneys who were admitted to the practice of law in New York State. Typical losses reimbursed by the Fund include the theft of escrow deposits in real property transactions, estate and trust assets, settlements in personal injury litigation, debt collection receipts, money embezzled in investment transactions within an attorney-client relationship and the practice of law, and unearned fees paid in advance to lawyers who falsely promise their legal services.

In an effort to prevent losses, the Trustees also publish materials to educate lawyers and clients, engage in programs to assist lawyers in complying with their fiduciary and escrow obligations; and recommend court rules intended to improve our legal system and protect law clients.

### Revenue of the Lawyers' Fund

Attorneys in New York State financially support the Lawyers' Fund. The biennial attorney registration fee required of every practicing attorney in the State is the primary source of revenue for the Lawyers' Fund. Section 468-a of the Judiciary Law allots \$60 of each \$350 registration fee to the Fund. Since April 1, 1993, additional revenue from the biennial registration fee has been made available to the Fund.

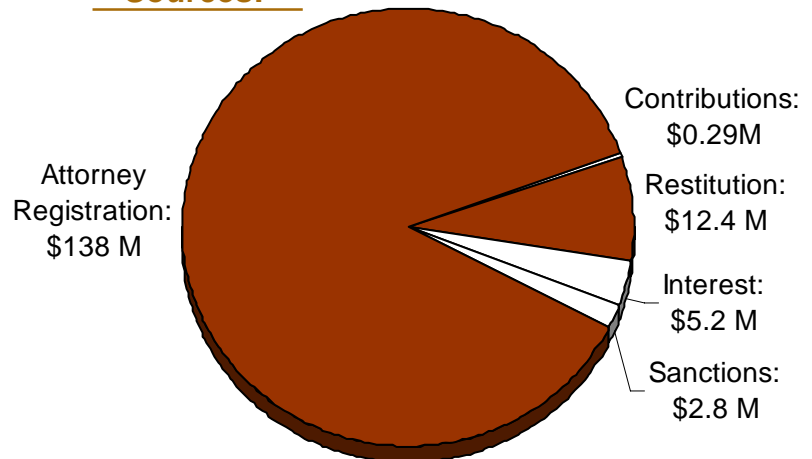
**No tax dollars are used to finance the Lawyers' Fund. The Fund also does not receive any revenue from the Interest on Lawyer Account (IOLA) program.**

Other sources of revenue for the Fund include restitution, interest, sanctions and contributions. Since 1982, the Fund has received \$138 million from attorney registration fees; \$12.4 million in restitution; \$5.2 million in interest income; \$2.8 million in judicial sanction revenue; and \$291,000 in contributions from lawyers and the public. The Fund's revenues are annually appropriated to the Board of Trustees by the State Legislature as one component of the Judiciary Budget.

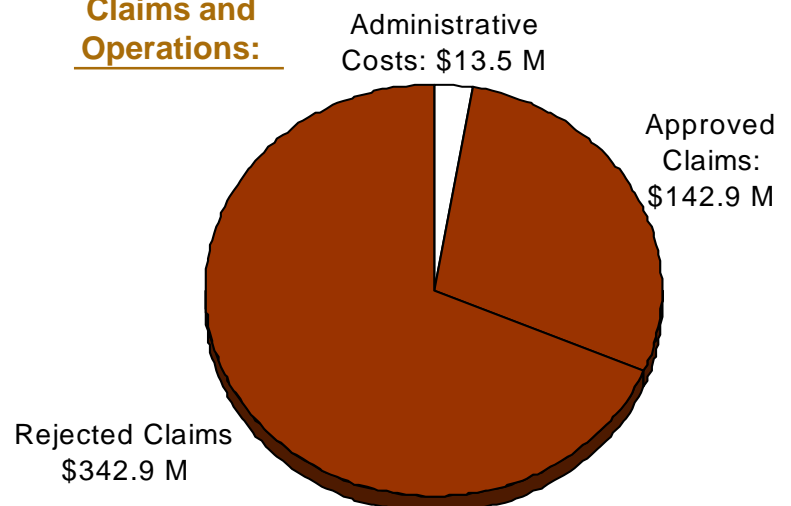
**"This has been my first involvement in a case involving...the Lawyers' Fund, to which I have been contributing, via my bi-annual registration fee, since being admitted 25 years ago. I can honestly say that I am both impressed and pleased with the way this matter has been handled. Equally important (is my client's) renewed faith in our profession when I advised him that his claim had been approved."**  
*Message from an Attorney, 2009*

### The Fund's Finances Since 1982

#### Revenue Sources:



#### Claims and Operations:



# Special Recognition

THE BOARD OF TRUSTEES OF THE LAWYERS' FUND PROUDLY RECOGNIZES THE GENEROUS ACT OF PUBLIC SERVICE DISPLAYED BY THE ATTORNEYS LISTED BELOW WHO HAVE ASSISTED CLAIMANTS IN RECEIVING AWARDS OF REIMBURSEMENT IN 2009:

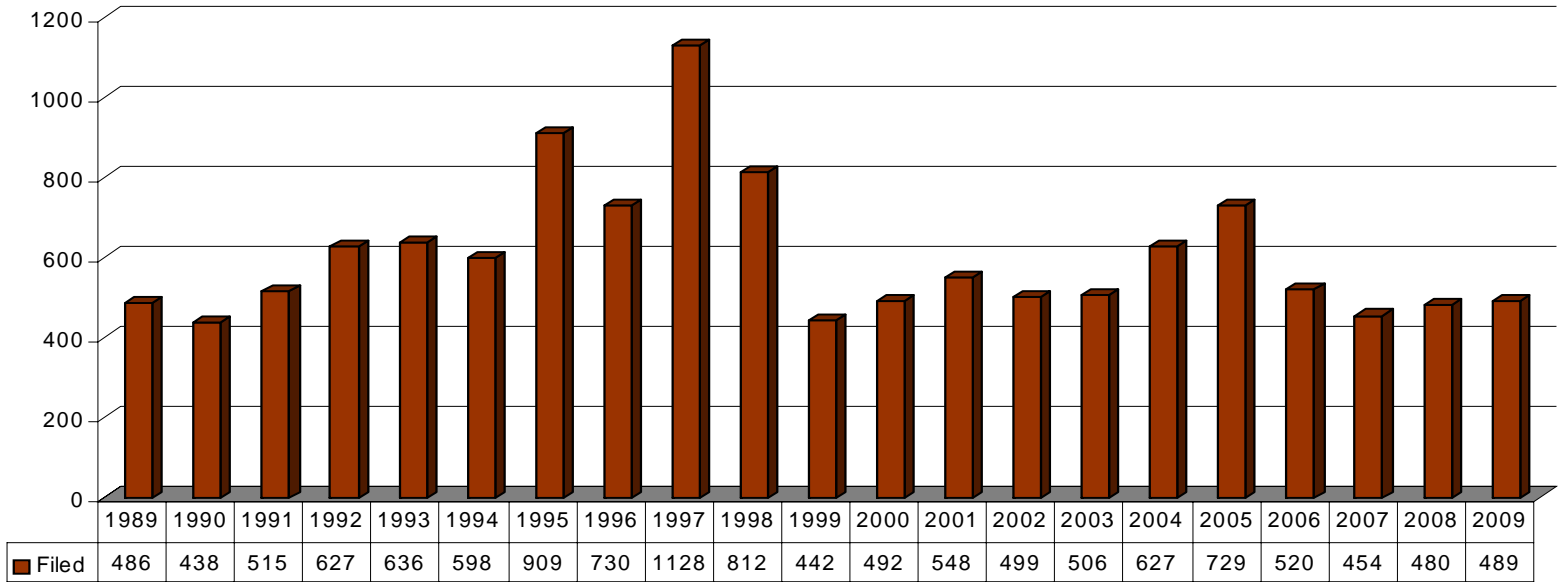
- BRONX COUNTY**  
Anthony L. Verrelli, Esq.
- ESSEX COUNTY**  
David D. Scaglione, Esq.
- KINGS COUNTY**  
Steven Lowenthal, Esq.  
Ann C. Northern, Esq.  
Anthony C. Ofodile, Esq.  
Seth Rubenstein, Esq.
- NASSAU COUNTY**  
Thomas W. Archer, Esq.  
Ronald M. Arrick, Esq.  
Erin L. Dayton, Esq.  
Jeffrey Falk, Esq.  
Jeffrey Gross, Esq.  
Anthony P. Guistino, Esq.  
Richard L. Hutchinson, Esq.  
Kimberly Lerner, Esq.  
James J. Quail, Esq.  
Justin M. Reilly, Esq.  
Robert L. Schneps, Esq.  
Robert J. Spence, Esq.  
Harry Zubli, Esq.
- NEW YORK COUNTY**  
Aaron Ambalu, Esq.  
Frederica L. Miller, Esq.  
Howard B. Solomon, Esq.

- NIAGARA COUNTY**  
Joseph G. Frazier, Esq.
- SCHENECTADY COUNTY**  
Gregory E. Schaaf, Esq.
- SUFFOLK COUNTY**  
Susan A. Kassel, sq.  
Marc Kreig, Esq.
- QUEENS COUNTY**  
Kenneth Golden, Esq.  
John P. Kapsalis, Esq.  
Robert J. Mackle, Esq.  
Josep Polanco, Esq.  
Andrew J. Saladino, Esq.  
Kawal P. Totoram, Esq.
- MONROE COUNTY**  
Audrey Peartree, Esq.
- WESTCHESTER COUNTY**  
William A. Cerbone, Esq.  
Thomas J. Hughes, Esq.  
John S. Savage, Esq.
- OUT OF STATE ATTORNEYS:**  
Scott C. Pyfer, Esq. (New Jersey)



**“The conduct of attorneys is not measured by how close to the edge of thin ice they skate. The conduct is not how much clarity can be squeezed out of the strict letter of the law, but how much honor can be poured into the generous spirit of lawyer-client relationships .”**  
*Matter of Cooperman, 83 N.Y.2d 465 (1994)*  
**(Bellacosa, J)**

**Number of Reimbursement Claims Filed, 1989 - 2009**  
**(Total Number of Reimbursement Claims Filed Since 1982: 15,139)**



## The Board of Trustees

The Court of Appeals appoints a Board of Trustees to administer the Lawyers' Fund. The Trustees serve renewable three-year terms as a public service without compensation. Since December 1, 1981, the Board has been composed of five members of the bar and two business and community leaders.

The Fund's officers, elected by the Trustees, consist of a Chairman, Vice-Chairman and a Treasurer. The Fund's Executive Director serves as the Fund's Chief Administrative Officer and the Board's Secretary and Counsel. Below are the Trustees currently serving.



**Eleanor Breitel Alter** of Manhattan has served as Chairman of the Board of Trustees since 1985. She is a partner in the Manhattan law firm of Kasowitz, Benson, Torres & Friedman. Mrs. Alter is a graduate of the University of Michigan and the Columbia University Law School (1964). She was first appointed to the Board of Trustees in 1983. The Chairman's current term expires on November 30, 2010.



**Eric A. Seiff** of the Bronx is Vice-Chairman of the Board. He is a partner in the Manhattan law firm of Seiff, Kretz & Abercrombie. Mr. Seiff is a graduate of Yale University and the Columbia University Law School (1958). Mr. Seiff is a charter member of the Board. His present term expires on November 30, 2012.



**Nancy Burner** of Suffolk County, the founding partner of Burner, Smith & Assoc., LLP, an estate planning, trusts and estates, and elder law firm in Setauket and Westhampton Beach. She is a graduate of the State University at Stony Brook and Hofstra University School of Law (1988). Her present term expires on December 10, 2011.



**Charlotte G. Holstein** of Syracuse is a civic leader, founder and Executive Director of F.O.C.U.S. Greater Syracuse, a community interest group. She is a graduate of Brockport State University (1946) and the 1998 recipient of an honorary degree, Doctor of Humane Letters, from LeMoyne College in Syracuse. Her present term expires on November 30, 2010.



**Peter A. Bellacosa** of Manhattan is a partner in the litigation group of the Kirkland & Ellis law firm. He is a graduate of Georgetown University (1985) and St. John's University School of Law (1988). Mr. Bellacosa was appointed to the Board of Trustees in 2009. His present term expires on December 31, 2012.



**Theresa B. Mazzullo** of Rochester, Monroe County, is the CEO of Excell Partners, Incorporated, a state supported seed venture capital fund. Mrs. Mazzullo, the Fund's Treasurer, is a graduate of Spring Hill College and Stonier Graduate School of Banking (1994). Her present term expires on December 10, 2011.



**Patricia L. Gatling**, of Manhattan, is the Commissioner and Chair of the New York City Commission on Human Rights. She is a graduate of Johns Hopkins University and the University of Maryland School of Law (1982). Her current term expires on November 19, 2011.

### Former Members of the Board of Trustees

Former members of the Board of Trustees include the Hon. Judith S. Kaye, former Chief Judge of the State of New York (1981-1983), Anthony R. Palermo, Esq. of Rochester (1981-1990); John F. X. Mannion of Syracuse (1981-1992); Ray W. Manuszewski of Cheektowaga (1981-2002); Theodore D. Hoffmann of Hicksville (1990 to 2002); Shirley B. Waters of Rome (1992 to 2001) Joseph Kelner, Esq. of Manhattan (1981-1982), Bernard F. Ashe, Esq. of Delmar (1981-2008) and Charles J. Hynes, Esq. of Brooklyn (1982-2009).

## The Staff of the Lawyers' Fund

The Fund's staff is appointed by the Board of Trustees. In 2009, the staff consisted of Timothy J. O'Sullivan, Executive Director and Counsel; Michael J. Knight, Deputy Counsel; Ray Wood, Investigator; Jahnel Hall-Worthen, Administrative Secretary; and Harriett Tremblay, Secretary.



*Timothy J. O'Sullivan*



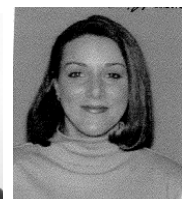
*Michael J. Knight*



*Ray Wood*



*Jahnel Hall-Worthen*



*Harriett Tremblay*

## The Fund's Statutory Authority and the Trustees' Regulations

The Fund was established by Section 97-t of the State Finance Law. This statute also provides for the management of the Fund's assets as a special revenue fund by the State Comptroller. Section 468-b of the Judiciary Law governs the administration of the Fund and provides the Trustees with full authority to administer the Fund, subject to the general supervisory authority of the Court of Appeals.

The Trustees' Regulations for administration and claims procedures are published in Title 22 of the Official Compilation of Codes, Rules and Regulations of the State of New York (22 NYCRR Part 7200, et seq.). The Appendix includes section 97-t of the State Finance Law, section 468-b of the Judiciary Law and the Trustees' Regulations.

## Liaison and Coordination with the Appellate Divisions

The four Appellate Divisions of the Supreme Court have each designated a Justice to serve as a liaison with the Fund. In 2009, the Liaison Justices were Associate Justices Milton L. Williams of the First Department; David S. Ritter of the Second Department; Anthony J. Carpinello of the Third Department; and Presiding Justice Henry J. Scudder of the Fourth Department.

The Trustees do not render final determinations in claims until Appellate Division disciplinary proceedings involving the accused attorney are completed. The Fund therefore coordinates its investigations of claims with those of the Attorney Grievance Committees in the four judicial departments.

## Revenue, Awards and Disbursements

Since 1982, the Fund has received total revenue of \$158.9 million. As of December 31, 2009, a total of \$142.9 million in reimbursement awards were approved by the Trustees. The Fund's administration cost in 2009 was \$559,587. In 27 years of operations, 90 cents out of every \$1 in revenue received has been directly applied towards the payment of awards of reimbursement. At the close of 2009, the Fund held \$4.4 million in revenue in the state treasury.

## Restitution Revenue and Litigation

Since 1982, the Fund has recovered a total of \$12.4 million in restitution from dishonest attorneys, their estates, and third parties civilly liable for losses reimbursed by the Fund.

The New York State Attorney General's Office represents the Lawyers' Fund in restitution and other litigation in collaboration with the Fund's legal staff. Since December 1999, the Fund has financed the payroll expense of an Assistant Attorney General assigned exclusively to the Fund's restitution litigation.

In 2009, Assistant Attorney General Richard L. Rodgers served as the Fund's restitution counsel and also defended the Fund in Article 78 proceedings. The Trustees and staff are greatly indebted to Mr. Rodgers for his dedicated and talented service to the Lawyers' Fund.

Also assisting the Fund in 2009 with restitution litigation were Assistant Attorneys General John V. Cremona, Norman Fivel, Henry Collins and Stephen M. Nagle. In Article 78 proceedings, the Fund was defended and assisted by Assistant Solicitor Generals Paul Groenwegen and William E. Storrs and Deputy Solicitor General Andrew Bing. The Trustees are grateful to these dedicated professionals for their skillful representation.

## Public Information and Consumer Education

The Trustees encourage public information about the Fund. Responsible public information efforts promote public confidence in the integrity of the legal profession and the administration of justice in New York State. Educational publications by the Fund for legal consumers and members of the bar have included editions of *Know Your Escrow Rights*; *Know Your Escrow Rights: The Lawyers' Edition*; *Attorney Trust Accounts: The Video*; *What's A Power of Attorney? Answers for New Yorkers*; *Avoiding Grief With A Lawyer: A Practical Guide*; and an *Appendix of CLE Materials*. A documentary video on the history and purpose of the Lawyers' Fund was produced in 2007 in recognition of the Fund's 25th anniversary. In 2009, the Trustees published an updated edition of *A Practical Guide to Attorney Trust Accounts and Record Keeping*.

The Fund's website at [www.nylawfund.org](http://www.nylawfund.org) is a source of information which includes frequently asked questions, Fund procedures, the Trustees' Regulations, reimbursement claim forms, recent Annual Reports, consumer publications and press releases, addresses and telephone numbers of Attorney Grievance Committees, and a roster of the nation's Funds. The Fund's website also includes ethics and escrow materials such as the Rules of Professional Conduct, the Dishonored Check Notice Rule, a list of approved banking institutions, court rules and sample pleadings concerning escrow funds of missing clients and deceased attorneys, and selected New York State Bar Association ethics opinions.

## Processing Applications for Reimbursement

To be considered for reimbursement, a law client must file a completed application form with documentation supporting the alleged loss. The Executive Director will dismiss a claim with a written explanation if an alleged loss does not appear to qualify for reimbursement.

Claimants alleging a misappropriation of money or property in the practice of law must report their losses to the appropriate Attorney Grievance Committee and District Attorney and cooperate with these agencies in their investigations. Notice of a claim, and the opportunity to respond, is provided to lawyers accused of dishonest conduct.

A claimant with the Fund does not have to be represented by counsel. Claimants may wish to consult with a lawyer concerning problems or other issues raised by their loss. As a public service, lawyers in New York State generously assist claimants with the Fund. Nearly half of all claimants have attorneys assist them in their applications, without legal fee. Lawyers are prohibited by court rules and the Trustees' Regulations from charging or accepting legal fees for assisting claimants, except with the prior approval of the Board of Trustees. (See, 22 NYCRR 603.24, 691.24, 806.16, 1022.35 and 22 NYCRR 7200.14).

The Trustees have sole discretion pursuant to Section 468-b of the Judiciary Law and the Trustees' Regulations to determine the merits of claims, set the amount of an award of reimbursement, and the terms and conditions for awards. Before rendering a determination in a claim against an accused attorney, the Trustees wait for the completion of disciplinary proceedings, and related criminal proceedings if necessary.

### Judicial Review of Rejected Claims

In 27 years, 14,541 determinations have been rendered in claims filed with the Fund. The Trustees have approved 6,617 awards of reimbursement. The remaining 7,924 claims were determined to be ineligible for failure to provide satisfactory evidence of eligible losses. Since 1982, only thirteen claimants denied reimbursement have pursued Article 78 proceedings against the Fund. Ten of these judicial challenges were dismissed after the courts held that there was a rational basis for the Trustees' denials in the claims. Three Article 78 proceedings remained pending at the close of 2009.

### The Dishonored Check Reporting Rule

A dishonored check drawn upon a lawyer's escrow account is a clear indication of the possible misuse of law client money.

To protect law clients, the Trustees recommended that a form of the ABA's model overdraft reporting rule be implemented by court rule in New York State. The Appellate Divisions responded by enacting court rules effective January 1, 1993 which instituted a Dishonored Check Reporting Rule in New York.

The "Bounced Check Rule" (22 NYCRR 1200.46(b) (1), (2); Part 1300) requires that a lawyer in possession of funds belonging to another person incident to the lawyer's practice of law must maintain such funds in a special account separate from the lawyer's business, personal or other accounts. These separate fiduciary accounts must be designated as an "Attorney Special Account", "Attorney Trust Account", or an "Attorney Escrow Account". Lawyers may only use banks which have agreed to report dishonored checks on these accounts. A list of approved banks is available on the Fund's website at [www.nylawfund.org](http://www.nylawfund.org). Nearly all banking institutions in New York State participate in this reporting rule.

The role of the Lawyers' Fund under this Bounced Check Rule is to serve as a clearinghouse. A dishonored check notice on a reportable account is mailed to the Fund's office. If not withdrawn within 10 days due to bank error, the Fund forwards the notice to the appropriate attorney disciplinary committee for investigation. The majority of bounced check

notices are caused by innocent mistakes in law office banking practice. In these cases, the rule has served an educational role by alerting lawyers to the accounting, banking and recordkeeping requirements of the Rules of Professional Conduct.

The Dishonored Check Reporting Rule has proven to be an effective loss prevention and detection device. Since 1993, bounced check reports have identified and led to the discipline of approximately 232 lawyers for misusing client funds.

### Escrow Funds of Deceased Lawyers and Missing Clients

Rule 1.15 (e) of the Rules of Professional Conduct provides that only an attorney admitted to practice law in New York State shall be an authorized signatory on an attorney's trust, escrow or special account. The purpose of this limitation is to protect law clients from the misuse of their money. Practical problems arise when a sole practitioner dies without a successor signatory.

In 1994, at the Trustees' suggestion, the Appellate Divisions amended court rules by adding what was then known as Disciplinary Rule 9-102 (g) which permitted a Justice of the Supreme Court to designate a successor signatory for a deceased attorney's trust, escrow or special account. Effective April 1, 2009, this Disciplinary Rule was replaced by Rule 1.15 (g) of the new Rules of Professional Conduct, an identical provision in the new court rules. Rule 1.15 (g) permits a Justice of the Supreme Court to designate a successor signatory for a deceased attorney's trust, escrow or special account. A Court may now direct that money from a deceased attorney's client funds account be disbursed to persons who are entitled thereto, or deposited with the Lawyers' Fund for safeguarding.

The Trustees also recommended the addition of court rules to address law client escrow funds which were unclaimed or owed to missing clients. Disciplinary Rule 9-102 (f) was thus amended to prevent the escheat of these monies to the State as abandoned property. Rule 1.15 (f) of the new Rules of Professional Conduct has replaced this prior Disciplinary Rule. This court rule provides that if escrow funds are unclaimed or owed to a missing client, an application can be made for a court order directing that the money be deposited with the Lawyers' Fund for safeguarding and disbursement to persons entitled thereto. To prevent the depletion of nominal deposits, the Fund's policy is to accept deposits of \$1,000 or less without a court order.

The Fund's staff attempts to locate missing clients to return these deposits. As of December 31, 2009, 1,575 deposits totaling \$3.3 million in escrow funds unclaimed or owed to missing clients were received by the Fund. The Fund's staff has so far successfully located 159 missing clients and returned to them \$407,026.

These court rules and sample pleadings pursuant to these rules can be found on the Fund's website at [www.nylawfund.org](http://www.nylawfund.org).



## Thefts in Real Property Transactions

Real estate escrow losses is the largest single category of awards from the Fund in both the amount of reimbursement provided and in the number of awards approved. This is true for the Fund's experience in 2009 and in the 27 years since the Fund's began operations in 1982.

In 2009, real estate awards accounted for 67 of the 139 awards (48.2%). There numbers are nearly identical to those in 2008 when realty awards comprised 48.5% of the total awards. Realty awards in 2009 accounted for \$3.6 million of the total payout of \$5.6 million, or 64 percent of all money reimbursed in 2009. This \$3.6 million payout is a decrease from 2008 when realty awards constituted \$5.2 million of the total \$6.8 million reimbursed (74%).

Since 1982, thirty-nine percent of all money awarded by the Fund has reimbursed the theft of real estate escrows. The Trustees have paid out a total of \$56.8 million in granting 2,001 awards involving real property losses. These 2,001 awards represent thirty percent of all awards from the Fund in 27 years.

A lawyer's theft of a purchaser's down payment in the sale of residential property has historically constituted the majority of these real estate losses. In 2009, of the 67 real estate awards, 26 (39%) involved the theft of a real estate down payment. Of the \$3.6 million payout in 2009 for realty losses, \$1.1 million (30%) reimbursed losses from thefts of down payments. A total of 15 former lawyers were responsible for these down payment thefts. Of these 15 lawyers, 12 (80%) were from the Second Judicial Department.

## Losses in Investment Transactions

In establishing the Fund, the State Legislature made clear that reimbursement was intended for losses arising within an attorney-client relationship and the practice of law. Section 468-b of the Judiciary Law defines "dishonest conduct" as the misappropriation or wilful misapplication of **clients'** (emphasis supplied) money, securities, or other property by an attorney. Therefore, losses caused by a lawyer's breach of fiduciary obligations outside an attorney-client relationship and the practice of law are not eligible for reimbursement.

The Trustees carefully review claims involving investment transactions with lawyers. In 1984, the Trustees adopted the following policy guidelines in order to fully explain the eligibility of claims involving these types of losses:

*"The Trustees will consider for payment only those claims arising out of an attorney-client relationship. Investment advice given by the claimant's attorney, although such advice may result in the loss of claimant's money, is not, in and of itself, a ground for seeking reimbursement from the Fund.*

*Claims arising out of investments may be considered for payment, however, when the attorney is in the possession of the claimant's money, which the attorney has obtained by virtue of an attorney-client relationship with the claimant, when the attorney advises the claimant to invest the money in a business or other venture, and the attorney then misappropriates the claimant's money.*

*Ordinarily, interest on investments will not be reimbursed.*

*Unless a claimant establishes otherwise, all payments received on an investment will be considered to be return of principal and will be deducted from the claimant's initial investment with the attorney in order to determine, for Fund purposes, the claimant's reimbursable loss."*

The Trustees also apply a "but for" test in evaluating claims alleging investment losses. Under this test, a loss is eligible if the Board finds that the loss would not have occurred "but for" dishonest conduct within an attorney-client relationship. Since 1982, 1,406 claims have been filed with the Fund alleging \$164 million in losses from investment transactions with lawyers. The Trustees approved awards in only 351 of these claims providing total reimbursement of \$18 million.

## Legal Fee Claims

The largest single category of claims filed with the Fund seek reimbursement of legal fees. Since 1982, legal fee claims have accounted for thirty-five percent of all filed claims.

The Fund has no authority to settle fee disputes, or to compensate for alleged negligence, malpractice, or dissatisfaction with legal services. To qualify for a refund of a legal fee, a claimant must provide satisfactory evidence of dishonest conduct. Section 7200.8 (e)(1) of the Trustees' Regulations provides that dishonest conduct in legal fee claims includes an attorney's misrepresentation, or false promise, to provide legal services in exchange for an advance fee.

## Theft of Personal Injury Settlements and Payee Notification

In a theft of a personal injury settlement by forgery, a dishonest lawyer may settle a client's action without authority by forging the client's signature on a general release. A settlement draft is then issued payable jointly to the law client and attorney without notice of payment to the law client. The client's endorsement is then forged and the settlement proceeds converted.

In 1988, to detect and prevent these losses, the Trustees recommended the adoption of a payee notification rule. This led to the Insurance Department "Regulation 64" notice which requires liability insurers and their agents to provide law clients with written notice of payment whenever a third-party liability claim is settled for \$5,000 or more. (11 NYCRR 216.9). Regulation 64 detects and prevents losses involving the forgery and theft of personal injury settlements. This client protection measure also shifts the liability for forgery losses to banks that improperly honor forged endorsements on negotiable instruments.

New York's Regulation 64 has been approved as a Model Rule for attorney disciplinary systems by the American Bar Association. Variations of this payee notice rule have now been adopted in the Canadian Province of New Brunswick and in the following other fourteen states: California, Connecticut, Delaware, Hawaii, Georgia, Kansas, Maryland, Massachusetts, Nebraska, Nevada, New Jersey, Pennsylvania, Rhode Island and Utah. There are ten other states who report that this client protection device is under study in their jurisdiction.

# Claims Filed and Processed

## Claims Filed in 2009

In 2009, there were 489 claims filed with the Lawyers' Fund. This represents a two percent increase from filed claims in 2008 when 480 claims were filed and an eight percent increase from 2007 when filed claims totaled 454. The 489 filed claims in 2009 alleged \$40.6 million in losses, an eight percent decrease in alleged losses from the previous year.

## Claims Filed, 1982 to 2009

Since 1982, 15,139 claims have been filed with the Lawyers' Fund alleging \$571 million in total losses. Annual filings have ranged from a low of 230 in 1984 to a record high of 1,128 in 1997.

**"I received my award of reimbursement today and I would like to thank you, the Trustees, and the staff of the Lawyers' Fund for your courteous help with regard to (my claim). I very much appreciate it."**  
*Message from a Claimant, 2009*

## Claims Filed by Category of Loss in 2009

Claims to the Lawyers' Fund are classified into the following eight categories: (1) trusts and estates; (2) real property escrow funds; (3) debt collection proceeds; (4) settlements in litigation; (5) other escrow transactions; (6) unearned legal fees; (7) investment transactions with lawyers; and (8) a miscellaneous category of "other" for other claims.

In 2009, the largest category of claims filed sought reimbursement of legal fees. Of the 489 filed claims, 242 (49.5%) alleged unearned legal fees. The second largest category of claims filed were real property claims. In 2009, there were 132 real property claims filed comprising 27 percent of all filings.

For alleged losses in 2009, real property claims alleged \$13.1 million in losses. This represents 32 percent of all alleged losses. Filed claims in 2009 involving investment transactions alleged \$10.9 million in losses, or 27 percent of alleged losses.

## Claims Filed by Category of Loss, 1982 to 2009

Since 1982, by category, the largest number of filed claims have sought reimbursement of legal fees. In 27 years, 5,286 claims have been filed alleging unearned legal fees. These legal fee claims account for 35 percent of all filed claims. The second largest category of filed claims alleges losses in real property transactions. The Fund has received 3,288 claims in this category comprising approximately 22 percent of all filed claims.

Since 1982, the largest alleged dollar losses in filed claims were in claims alleging losses from investment transactions with lawyers. Investment claims alleged losses of \$164.6 million or 28.8 percent of all alleged losses in filed claims. Real property claims were second with alleged losses of \$148 million constituting 25.9 percent of all alleged losses. The third largest category of alleged losses involve alleged thefts from estates and trusts. These claims have alleged \$95 million in losses or 16.6 percent of all alleged losses.

## Awards of Reimbursement in 2009

In 2009, the Trustees approved 139 awards. This is a 7 percent increase from 2008 when there were 130 awards granted. The awards in 2009 provided total reimbursement of \$5.6 million. This total payout is an 18 percent decrease from the \$6.8 million reimbursed in 2008. In 2009 all but one eligible claimant received 100 percent reimbursement for their eligible loss. The awards in 2009 ranged between \$150 and \$300,000. The median client loss, and award, was \$10,000, down from \$15,000 in 2008.

## Awards of Reimbursement, 1982 to 2009

Since 1982, the Trustees have granted 6,617 awards reimbursing \$142.9 million to eligible law clients. On average, since 1982, 93 percent of all eligible claimants have received full restitution. Since 1998, 99 percent of eligible claimants were fully reimbursed.

## Awards by Category of Loss in 2009

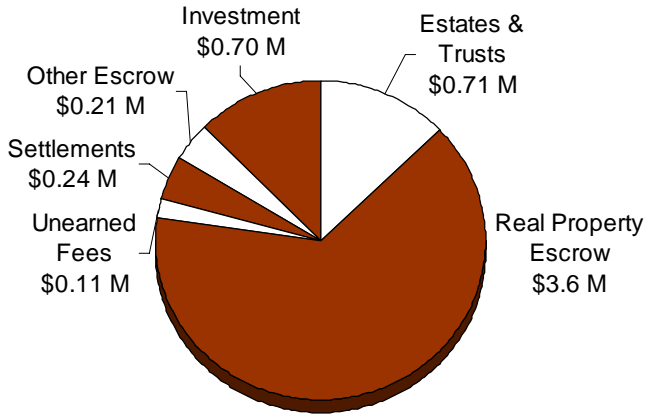
In 2009, the largest category of awards in both number and amount reimbursed involved real property escrows. Of the 139 awards this year, 67 (48.2%) reimbursed realty losses. Of the total payout in 2009 of \$5.6 million, real property escrows account for awards totaling \$3.6 million (64%). The second largest category of awards in 2009 by number of awards was unearned legal fees with 45 awards, or 32.4 percent of the 139 awards. By dollar amount, awards involving estates and trusts were the second largest category in 2009. These awards totaled \$718,067 which is 12.8 percent of the \$5.6 million awarded in 2009.

## Awards by Category of Loss, 1982 to 2009

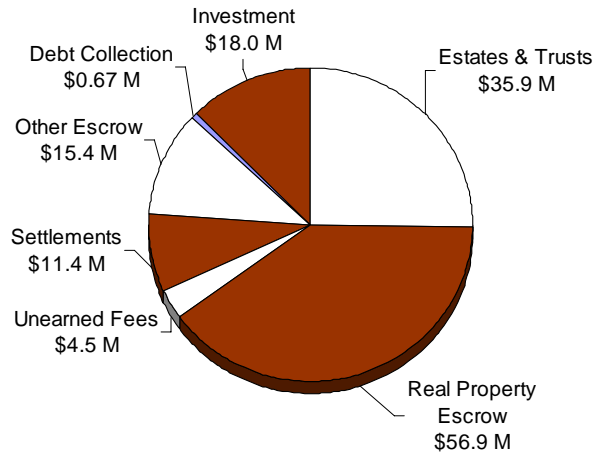
By category since 1982, the largest number of awards approved are for real property escrows. Real property escrow awards total 2,001 or 30 percent of all awards. The second largest category of awards reimbursed are unearned legal fees. Since 1982, there have been 1,898 legal fee awards comprising 28.8 percent of all awards.

Since 1982, by dollar amount, awards reimbursing real property losses represent the largest payout by the Fund. Real property awards total \$56.9 million, or 39 percent of all reimbursement awards. The second largest dollar amount of awards involve thefts from estates and trusts. These awards total \$35.9 million or 25.2 percent of all awards.

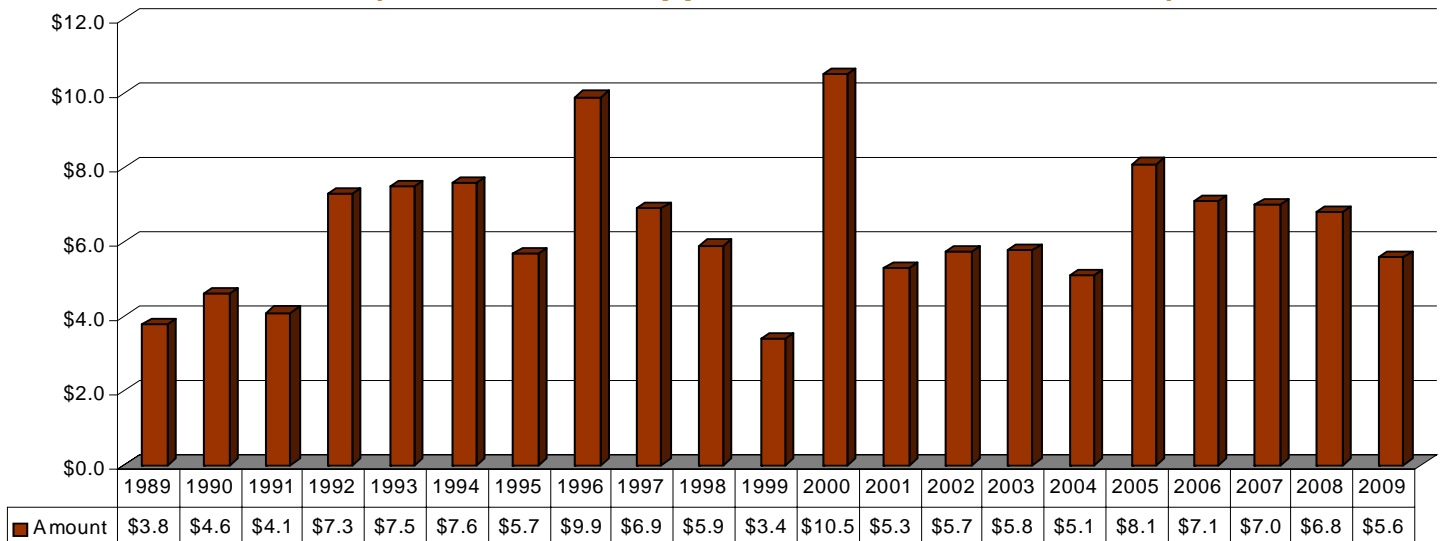
**Amount of 2009 Awards  
By Misconduct : \$5.6 Million**



**Amount of Awards Since 1982  
By Misconduct : \$142.9 Million**



**Approved Awards Experience From 1989-2009 (In Millions \$)  
(Total Awards Approved Since 1982: \$142.9)**



## Ineligible Claims Since 1982

In 27 years, the Fund has rendered 15,139 determinations in claims. Of these 15,139 claims, 7,924 or 52 percent, were found to be ineligible for reimbursement.

## Claims Pending as of December 31, 2009

There were 658 pending claims at the close of 2009. This is an increase of 93 claims from the 565 claims which were pending at the end of the prior year. This increase in pending claims is mainly due to claims involving five lawyers who are the subject of ongoing criminal proceedings. Of the 658 pending claims, 378, nearly 57 percent, involve one law firm whose attorneys are also involved in pending federal criminal proceedings.

These 658 pending claims allege total losses of \$38.8 million. The Fund's exposure on these pending claims, adjusted for the \$300,000 maximum limit on awards, is \$27.1 million. This represents a 25 percent increase in the Fund's exposure on pending claims from the end of 2008. This increase in the Fund's exposure is due to pending claims involving eight lawyers with alleged losses in real estate and investment transactions.

## Lawyers Involved in Awards 1982 to 2009

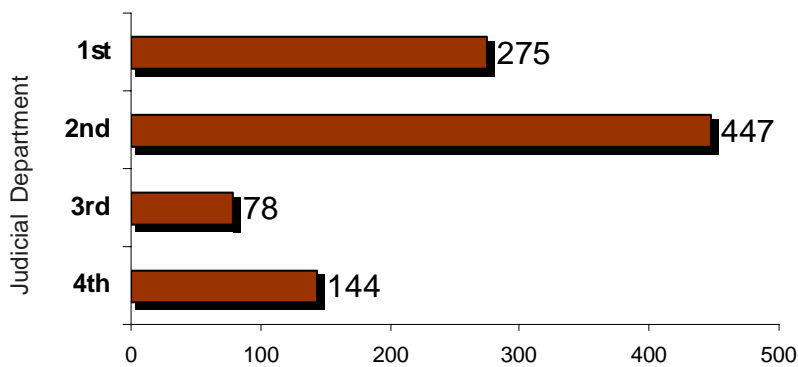
The overwhelming majority of lawyers in New York State are honest and caring and deserving of their law client's trust. This fact is established by the Trustees' experience in the 27 years of the Fund's operations since 1982.

Less than one-third of one percent of the bar's membership is responsible for the misconduct resulting in the Fund's awards. There are now 253,000 registered lawyers in New York State. In 27 years, only 944 former lawyers have caused the 6,617 awards granted by the Fund. In 2009, the Trustees' 139 awards were attributable to dishonest conduct by 59 now suspended, disbarred or deceased lawyers. Of these 59 former lawyers, 23 were respondents in awards from prior years. The names of 36 dishonest lawyers appear for the first time in 2009 awards.

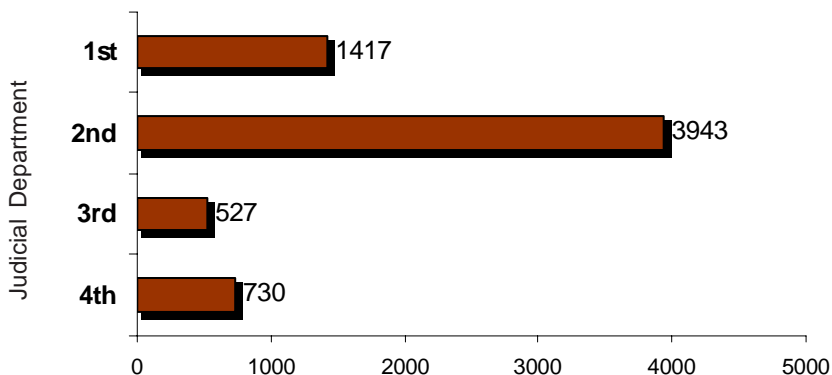
A list of lawyers involved in awards in 2009 is provided in the Appendix. The complete list of lawyers involved in all awards since 1982 is provided on the Lawyers' Fund website: [www.nylawfund.org](http://www.nylawfund.org).

Most losses involve sole practitioners, the majority of which are male and middle-aged. The apparent causes of misconduct by these lawyers are often traced to alcohol or drug abuse and gambling. Other causes are economic pressures, mental illness, marital, professional and medical problems. The geographic distribution of these 944 former lawyers, and the Fund's 6,617 awards, among the state's judicial departments is represented in the following bar graphs:

### Lawyers Involved in All Awards Since 1982



### Distribution of Awards Since 1982



### First Judicial Department Includes:

New York and Bronx County



### Second Judicial Department Includes:

Kings, Richmond, Queens, Nassau, Suffolk, Dutchess, Orange, Putnam, Rockland and Westchester Counties:



### Third Judicial Department Includes:

Albany, Broome, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Madison, Montgomery, Otsego, Rensselaer, St. Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Sullivan, Tioga, Tompkins, Ulster, Warren and Washington Counties:



### Fourth Judicial Department Includes:

Herkimer, Lewis, Oneida, Onondaga, Oswego, Cayuga, Livingston, Monroe, Ontario, Seneca, Steuben, Wayne, Yates, Allegany, Cattaraugus, Chatauqua, Erie, Genesee, Niagara, Orleans and Wyoming Counties:



## Recommendations

Each year, the Trustees recommend changes in legal practice and policy in fulfillment of their statutory responsibility to maintain the integrity of the legal profession and promote public confidence in the administration of justice.

### **Escrow Thefts in Real Property Transactions**

***The Trustees again urge our bar and judicial leaders to consider and adopt measures to address the continuing problem of escrow thefts in real property transactions.***

In 2009, 67 (48.2%) of the Fund's 139 awards involved lawyers' thefts of real property escrows. Of the \$5.6 million awarded in 2009, \$3.6 million (64.4%) reimbursed realty losses. Since 1982, the Trustees have paid out over \$56 million reimbursing real estate escrow thefts. This total constitutes over 39 percent of the amount of all awards from the Fund in 27 years. The most common realty loss involves the theft of a purchaser's down payment by the seller's attorney in a residential transaction.

Without question, these realty losses are caused by a tiny percentage of New York's legal profession. In 2009, only 27 former lawyers were responsible for the thefts of real estate escrows reimbursed by the Fund. There are 253,000 registered lawyers in New York State. These few disgraced lawyers though cause substantial harm to law clients and the legal profession. The Trustees continue to encourage the recent efforts by the New York State Bar Association and other local bar associations in studying this problem.

### **Escrow Accounts of Suspended and Disbarred Lawyers**

***The Trustees recommend the enactment of clear and precise court rules directing a suspended or disbarred lawyer to transfer client funds and property and prohibiting further use of attorney escrow accounts.***

Present court rules in New York make no specific provision for the transfer or protection of law client escrow funds and property in possession of members of the bar who are suspended or disbarred for professional misconduct. The Trustees are concerned that law client assets are not adequately safeguarded when it is clear that they may be in danger if left under the control of a lawyer who has lost his or her license to practice law for serious misconduct.

### **Interim Suspensions and Restraining Escrow Funds**

***The Trustees propose that court rules be augmented by granting discretion to the Appellate Divisions to restrain attorney escrow accounts of lawyers who are determined to be a public threat.***

Court rules in New York State allow for the temporary suspension of an attorney when there is a judicial finding

that the attorney is guilty of professional misconduct immediately threatening the public interest. These rules should allow the Appellate Divisions to restrain attorney escrow accounts of these lawyers who are found to be a public threat. This measure will protect the interests of legal consumers.

### **Thefts by Suspended, Disbarred and Bogus Lawyers**

***The Trustees recommend a court rule to require every lawyer to endorse his or her Attorney Registration Number on each pleading the lawyer files with a court or a court agency.***

The unauthorized practice of law is a misdemeanor crime under New York's penal laws but is seldom prosecuted. Attorney disciplinary committees lack the resources to monitor suspended or disbarred lawyers. These shortcomings in law enforcement encourage the illegal practice of law and exploitation of the public.

The Office of Court Administration maintains an Official Register of Attorneys, which assigns to each lawyer a unique identification number. That simple endorsement will provide a cost-free and reliable opportunity for court clerks or court officials to verify the credentials of persons who represent themselves to be licensed to practice law in New York State.

The Trustees also support legislation to authorize the state attorney general to pursue criminal prosecutions for the unauthorized practice of law. This additional enforcement of the penal laws will serve to protect the public and deter the illegal practice of law.

### **Attorney Malpractice Insurance Disclosure**

***The Trustees propose that New York attorneys be required to disclose on their attorney registration statement whether they maintain malpractice insurance.***

The Lawyers' Fund is only authorized to reimburse law client losses caused by dishonest conduct in the practice of law. The Fund can not compensate for damages due to attorney malpractice. If law clients wish to be protected from this type of loss they should have access to information which would allow them to choose a lawyer who maintains malpractice insurance.

Twenty states now require some form of attorney malpractice insurance disclosure. One possible method is to require that attorneys disclose on their biennial registration statement whether they maintain professional liability coverage and the limits of their policy. Legal consumers can then access this information and make an informed choice when seeking legal representation.

### Multijurisdictional Practice and Pro Hac Vice Rules

***The Trustees recommend that any changes in court rules which permit out-of-state attorneys to practice law in New York State should also require that they pay the attorney registration fee required of New York attorneys so that they will contribute financially to our State's disciplinary system and the Lawyers' Fund.***

Bar leaders in New York State are considering multijurisdictional practice of law and whether lawyers should be granted the privilege to practice in states where they are not admitted to the bar. The Trustees are concerned about the impact multijurisdictional practice of law will have on legal consumers, the Lawyers' Fund and our disciplinary system. It is only equitable that out-of-state attorneys authorized to practice law here share in the responsibilities all New York attorneys bear in our justice system.

### Disbarment for Conversion

***The Trustees again recommend a consistent, firm statewide disciplinary policy imposing disbarment for a lawyer who injures clients by converting escrow funds.***

This clear, evenhanded penalty will deliver a strong message to victims, the public and lawyers about the administration of justice in our State. The Trustees are grateful to the Appellate Divisions and their disciplinary staff for including orders of restitution in disbarment proceedings involving clear cases of lawyer theft. This important use of the provisions of the Judiciary Law has proven to be beneficial to victims and the Lawyers' Fund.

### Bar Examinations & Legal Education

***The Trustees continue to recommend that the New York bar examination test for knowledge and competence with respect to a lawyer's fiduciary obligations to safeguard and account for law clients' money and property and that these necessary skills be reinforced in Continuing Legal Education programs.***

The necessary knowledge and skills to properly administer client trust funds as fiduciaries or escrow agents should be taught in law school and enhanced through the bar examination and New York's Continuing Legal Education program. The Trustees firmly believe that our system of legal education should prepare students and lawyers for this vital aspect of lawyering.

### Bank Notices to Fiduciaries

***The laws of New York should require that the named fiduciary for an estate or trust be provided with a copy of the estate's monthly bank statement.***

The Trustees' experience in claims involving the theft of estate or trust assets has shown that these types of losses can be concealed when someone other than the fiduciary controls the bank account and receives the monthly bank statements. Absent legislative action, the Trustees propose a court rule be adopted to prohibit lawyers from depositing fiduciary monies in banking institutions that do not agree to forward copies of bank statements to legal fiduciaries of estates and trusts. This rule could be patterned after the Dishonored Check Reporting Rule. This simple step would discourage and detect thefts.

### Conclusion

The Trustees firmly believe, based upon 27 years of experience, that the overwhelming majority of New York's lawyers are honest and caring and maintain the highest standards of integrity when entrusted with law client money and property. The Trustees though continue to witness a persistent problem of dishonest conduct in the practice of law by a few lawyers. Each year, a tiny percentage of New York's legal profession is responsible for this dishonest conduct and client losses resulting in the Fund's awards. It therefore remains essential that a well-financed and responsive Lawyers' Fund continue to be an integral part of our justice system.

The Trustees wish to publicly recognize the invaluable support and assistance the Lawyers' Fund receives from our colleagues in public service. Our special thanks is again extended to the Court of Appeals; the Office of Court Administration; the staffs of New York's Attorney Grievance Committees; the Attorney General and his assistants; District Attorneys statewide and their prosecutors; and the Office of the State Comptroller. The dedication and professionalism of these public servants enables the New York Lawyers' Fund to provide one of the leading client protection programs in the United States.

***"Given how unfortunate our situation was, we still can't believe that our money will be returned to us. It is the greatest feeling! We will be forever grateful that your organization is able to provide a way for justice to be served."***

**Message from a Claimant, 2007**

## **NY Judiciary Law Sec. 468-b**

### **§§ 468-b. Clients' security fund of the state of New York.**

1. The court of appeals shall appoint a board of trustees to administer the lawyers' fund for client protection of the state of New York established pursuant to section ninety-seven-t of the state finance law. Such board shall consist of seven members. Of the trustees first appointed, three shall be appointed for a term of three years; two for a term of two years; and two for a term of one year. As each such term expires, each new appointment shall be for a term of three years. The court of appeals may require such reports or audits of the board as it shall from time to time deem to be necessary or desirable.

2. The board shall have the power to receive, hold, manage and distribute the funds collected hereunder for the purpose of maintaining the integrity and protecting the good name of the legal profession by reimbursing, in the discretion of the trustees to the extent they may deem proper and reasonable, losses caused by the dishonest conduct of attorneys admitted to practice in this state. For purposes of this section, the term "dishonest conduct" shall mean misappropriation or wilful misapplication of clients' money, securities, or other property, by an attorney admitted to practice in this state.

3. The board of trustees shall adopt regulations for the administration of the lawyers' fund for client protection of the state of New York and the procedures for presentation, consideration, allowance and payment of claims, including the establishment of a maximum limitation for awards to claimants.

4. The board of trustees shall have the sole discretion to determine the merits of claims presented for reimbursement, the amount of such reimbursement and the terms under which such reimbursement shall be made. Such terms of reimbursement shall require that the claimant execute such instruments, take such action or enter into such agreements as the board of trustees shall require, including assignments, subrogation agreements and promises to cooperate with the board of trustees in making claims against the attorney whose dishonest conduct resulted in the claim.

5. The board of trustees shall serve without compensation but shall be entitled to receive their actual and necessary expenses incurred in the discharge of their duties.

6. The board of trustees may employ and at pleasure remove such personnel as it may deem necessary for the performance of its functions and fix their compensation within the amounts made available therefor.

7. The board of trustees shall be considered employees of the state for the purpose of section seventeen of the public officers law.

8. All payments from the lawyers' fund for client protection of the state of New York shall be made by the state comptroller upon certification and authorization of the board of trustees of said fund.

9. Acceptance of an award of reimbursement from the lawyers' fund for client protection shall, to the extent of such award, (a) subrogate the fund to any right or cause of action that accrued to the claimant as a consequence of the dishonest conduct that resulted in the claimant's award and (b) create a lien in favor of the fund that shall attach to any money asset that is designated to be paid to the claimant from, or on behalf of, the attorney who caused the claimant's loss. If the fund fully reimburses the claimant's loss, as determined by the board of trustees, the lien shall be in the amount of the fund's award. If the claimant's loss exceeds the fund's award, the lien shall not extend to the claimant's right to recover additional restitution from the attorney for the claimant's unreimbursed loss. In the event of a recovery by the fund, a claimant shall be entitled to any money recovered in excess of the fund's award of reimbursement to the claimant.

**"I would like to add my thanks to the Trustees of the Lawyers' Fund for Client Protection for (approving an award) to the estate of our mother.....It has been extremely difficult to lose our mother and then (have to) deal with the reality that a significant portion of her estate was misappropriated. As you well know, while the majority of the New York State legal profession (is) honorable, the suffering inflicted on families by one immoral practitioner is immense. If not for the Lawyers' Fund for Client Protection, it is likely that we would never receive repayment of the misappropriated funds."**  
**Message from a Claimant, 2007**

## **NY State Finance Law Sec. 97-t**

### **§§ 97-t. Lawyers' fund for client protection of the state of New York.**

1. There is hereby established in the custody of the state comptroller a special fund to be known as the "lawyers' fund for clients protection of the state of New York".

2. The full amount of the allocable portion of the biennial registration fee collected pursuant to the provisions of section four hundred sixty-eight-a of the judiciary law and such other monies as may be credited or otherwise transferred from any other fund or source, pursuant to law, including voluntary contributions, together with any interest accrued thereon, shall be deposited to the credit of the lawyers' fund for client protection of the state of New York. All deposits of such revenues not otherwise required for the payment of claims as hereinafter prescribed shall be secured by obligations of the United States or of the state having a market value equal at all times to the amount of such deposits and all banks and trust companies are authorized to give security for such deposits. Any such revenues in such fund, may be invested in obligations of the United States or of the state, or in obligations the principal and interest on which are guaranteed by the United States or by the state.

## Trustees Regulations (22 NYCRR 7200, et seq.)

**7200.1 Purpose of fund.** The purpose of the Lawyers' Fund for Client Protection is to promote public confidence in the administration of justice and the integrity of the legal profession by reimbursing losses caused by the dishonest conduct of attorneys admitted and licensed to practice law in the courts of New York State.

**7200.2 Organization.** (a) The fund shall be administered by a board of trustees appointed by the Court of Appeals of the State of New York.

(b) The board of trustees shall consist of seven members. Of the trustees first appointed, three shall be appointed for terms of three years, two for a term of two years, and two for a term of one year. As each term expires, each new appointment shall be for a term of three years.

(c) The trustees shall serve without compensation, but shall be entitled to receive their actual and necessary expenses incurred in the discharge of their duties.

(d) The trustees shall from time to time elect from their membership a chairman, vice-chairman, treasurer and such additional officers as they deem necessary or appropriate.

(e) The trustees shall retain an executive director to serve as the chief administrative officer of the fund.

**7200.3 Meetings.** (a) The trustees shall meet at least four times each year at such locations, or in such manner, as the chairman shall designate. Special meetings may be called by the chairman, and shall be called by the chairman upon the request of at least two trustees. Special meetings may be conducted by telephone conference. The chairman shall provide reasonable notice of all meetings.

(b) Four trustees shall constitute a quorum. A majority of the trustees present at any meeting of the board may exercise any power held by the trustees, except as otherwise provided in this Part.

**7200.4 Powers of trustees.** In the exercise of the authority granted the trustees, the trustees have the power to:

(a) receive, hold, manage and distribute 50 per centum of the monies collected pursuant to the provisions of section 468-a of the Judiciary Law and such other monies as may be credited or otherwise transferred from any other fund or source, pursuant to law, including voluntary contributions together with any interest accrued thereon. All deposits of such revenues not otherwise required for the payment of claims shall be secured and invested as required by the provisions of section 97-t of the State Finance Law;

(b) adopt regulations for the administration of the fund and procedures for the presentation, determination and payment of claims, including the establishment of a maximum limitation for awards to claimants;

(c) investigate claims for reimbursement of losses as the trustees deem appropriate using staff and other available resources;

(d) coordinate and cooperate with the Appellate Divisions of the Supreme Court in the investigation of claims;

(e) examine witnesses and, in accordance with the Provisions of the Civil Practice Law and Rules and the regulations of the trustees, administer oaths or affirmations and issue subpoenas;

(f) hold such hearings as the trustees deem appropriate;

(g) determine, in the trustees' sole discretion, the merits of claims presented for reimbursement, the amount of reimbursement to be awarded, the terms under which reimbursement shall be made and the order of payment;

(h) prosecute claims for restitution to which the fund may be entitled;

(i) engage in studies and programs for client protection and prevention of dishonest conduct in the practice of law;

(j) employ and at pleasure remove employees, legal counsel, agents and consultants, and fix their compensation within the amounts made available therefor;

(k) furnish the Court of Appeals with such reports and audits as the court may require; and

(l) perform all other acts necessary or proper for the fulfillment of the purposes of the fund and its effective administration.

**7200.5 Duties of officers.** (a) The chairman shall preside at all meetings of the trustees, generally supervise the administration of the fund, and exercise such other functions and duties that the trustees may assign or delegate, or that are customary to the office of chairman.

(b) The vice-chairman shall assume the duties of chairman in the absence or disability of the chairman.

(c) The treasurer shall maintain the financial records of the fund and, jointly with the chairman, certify vouchers of the fund that authorize the State Comptroller to make payments to claimants.

(d) The executive director shall assist the trustees, supervise the implementation of regulations and policies of the trustees, coordinate the investigation of claims and prepare reports thereon, supervise staff, serve as secretary at meetings, and fulfill such other duties as may be assigned or delegated by the chairman or the trustees.

**7200.6 Conflict of interest.** A trustee with a past or present relationship with a claimant or the attorney whose alleged conduct is the subject of the claim shall disclose such a relationship to the trustees and, if the trustees deem appropriate, that the trustee shall not participate in any proceeding relating to such claim.

**7200.7 Reports** (a) On or before the first day of April each year, the trustees shall prepare an annual report of the activities and operations of the fund during the preceding year. The report shall be transmitted to the Court of Appeals, the Governor, the Legislature and the State Comptroller.

(b) The trustees may also issue periodic reports to the



## Trustees Regulations (22 NYCRR 7200, et seq.)

public concerning the activities and procedures of the fund.

**7200.8 Eligible claims.** (a) The trustees shall consider claims for reimbursement of losses caused by the dishonest conduct of attorneys admitted to practice in New York State, provided that:

(1) the dishonest conduct alleged in the claim constituted the wrongful taking of money, securities or other property belonging to a law client or other person who entrusted it with an attorney admitted to the practice of law in New York State;

(2) the dishonest conduct occurred in the practice of law by an attorney admitted to practice law in New York State;

(3) there is, in the trustees' discretion, a sufficient nexus between the dishonest conduct alleged in the claim and the practice of law in New York State;

(4) the claim is made directly by the client or other person, or their representative;

(5) the loss occurred or was discovered on or after June 1, 1981; and

(6) unless the trustees decide otherwise, the attorney has been suspended or removed from practice, is dead, or the attorney's whereabouts cannot be determined.

(b) The claimant shall have the responsibility to provide satisfactory evidence of an eligible loss.

(c) For the purposes of this section, "dishonest conduct" shall include the misappropriation or wilful misapplication of money, securities or property in the practice of law, and unlawful acts in the nature of theft, larceny, embezzlement, fraud or conversion.

(d) Losses not eligible for reimbursement include damages resulting from an attorney's negligence, malpractice or neglect; losses incurred by government agencies; losses incurred by financial institutions; losses incurred by business organizations having twenty or more employees; and losses arising from financial transactions with attorneys that do not occur within an attorney-client relationship and the practice of law.

(e) (1) In a loss resulting from an attorney's refusal or failure to refund an unearned legal fee as required by the Lawyer's Code of Professional Responsibility, "dishonest conduct" shall include an attorney's misrepresentation, or false promise, to provide legal services to a law client in exchange for the advance payment of a legal fee.

(2) An attorney's failure to perform or complete a legal engagement shall not constitute, in itself, evidence of misrepresentation, false promise or dishonest conduct.

(3) Reimbursement of a legal fee may be allowed only if: (i) the attorney provided no legal services to the client in the engagement; or (ii) the legal services that the attorney actually provided were, in the trustees' judgment, minimal or insignificant; or (iii) the claim is supported by a determination of a court, a fee conciliation bureau, or an accounting acceptable to the trustees that establishes that the client is owed a refund of a legal fee. No award reimbursing a legal fee shall exceed the actual fee that

the client paid the attorney.

(4) In the event that a client is provided equivalent legal services by another attorney without cost to the client, the legal fee paid to the predecessor attorney will not be eligible for reimbursement, except in extraordinary circumstances.

**7200.9 Filing claims.** (a) Claims for reimbursement from the fund shall be written and verified. The fund shall provide an official claim form which shall require the following information: the name and address of the claimant; the name and last-known address of the attorney who is alleged to have committed a dishonest act; the terms of the attorney's professional engagement for the claimant; the amount of the loss incurred; the date of the loss or the period of time when the loss occurred; the place and manner in which the loss occurred; the date and manner in which the claimant discovered the loss; a description of what steps the claimant has taken to recover the loss from the attorney or any other source; and whether there are other sources, such as insurance, fidelity bonds or surety agreements, to reimburse the claimant's loss. The trustees may require a claimant to submit additional information that may be necessary to determine a claim.

(b) The fund shall promptly acknowledge receipt of the claim, which shall be assigned a claim number.

(c) A claim shall be filed with the fund within two years after the following dates, whichever is later:

(1) the date when the alleged dishonest conduct occurred; or

(2) the date when such dishonest conduct was first discovered.

(d) The trustees, in their discretion, may permit the late filing of claims upon a showing that compliance with the time limitations of this section may cause undue hardship or result in an injustice.

(e) In the discretion of the trustees, a claim shall be deemed filed when any writing specifying the claim is received by the fund, a bar association, an attorney grievance committee, or a police or other government agency.

**7200.10 Processing claims.** (a) Whenever it appears that a claim is not eligible for reimbursement pursuant to these regulations, the claimant shall be advised of the reasons why the claim is not eligible for reimbursement, and that unless additional facts to support eligibility are submitted to the fund within 30 days, the claim shall be dismissed.

(b) All claims that are eligible for reimbursement from the fund shall be investigated in such manner as the trustees deem appropriate. The trustees shall be furnished a written report of each investigation.

(c) The appropriate Appellate Division of the Supreme Court shall be requested to assist the trustees, to the extent the court deems appropriate, in the investigation of claims for reimbursement from the fund.

(d) A certified copy of an order disciplining an attorney for the same act of conduct alleged in a claim, or a final judgment imposing civil or criminal liability therefor, shall, for the purpose of these regulations, be evidence that the attorney committed such act.

## Trustees Regulations (22 NYCRR 7200, et seq.)

(e) Upon receipt of the investigation report, the trustees shall determine whether to conduct additional investigation. If the attorney whose alleged conduct gave rise to the claim has not been previously notified of the claim, a copy shall be provided the attorney. The attorney shall be invited to respond to the claim within 20 days.

(f) The trustees may request that testimony be presented to complete the record. Upon request, the claimant and the attorney, or their respective representatives, shall be given an opportunity to be heard.

(g) The trustees shall determine, in their sole discretion, whether a claim merits reimbursement from the fund and the amount, time, manner of its payment and the conditions upon which payment shall be made. The award of a claim shall require the affirmative vote of at least four trustees.

(h) Unless the trustees direct otherwise, no claim shall be awarded during the pendency of a disciplinary proceeding involving the same act of conduct that is alleged in the claim.

(i) In the exercise of their discretion in determining claims, the trustees shall consider, together with such other factors as they deem appropriate:

(1) the amount of money available and likely to become available to the fund for the payment of claims, and the size and number of claims that have been or are likely to be presented;

(2) the amount of the claimant's loss as compared with the amount of losses sustained by other claimants who may merit reimbursement from the fund;

(3) the degree of hardship suffered by the claimant as a result of the loss;

(4) any conduct of the claimant that contributed to the loss; and

(5) the existence of other sources to reimburse the claimant's loss, such as insurance, fidelity bonds or surety agreements.

(j) Written notice of the trustees' determination shall be provided the claimant and the attorney whose alleged conduct gave rise to the claim, or their representatives.

**7200.11 Reconsideration of claims.** A claimant who is denied reimbursement in whole or in part may request that the trustees reconsider the claim by filing an application with the fund no later than 30 days following receipt of the trustees' determination. If a claimant fails to request reconsideration, or the original determination of the trustees is confirmed, the trustees' determination shall be final.

**7200.12 Legal right to payment from fund.** No person or organization shall have any legal right to payment from the fund as a claimant, third-party beneficiary or otherwise.

**7200.13 Payment of awards.** (a) Claimants shall be reimbursed for losses in amounts to be determined by the trustees. No award shall exceed \$300,000.

(b) Awards shall not include interest. Attorneys' fees and other incidental and out-of-pocket expenses shall not be reimbursed by the fund. Additional taxes, interest, late charges and similar penalties finally incurred by a claimant as the direct result of an attorney's misappropriation may be eligible for reimbursement in the discretion of the trustees. The investigation report in a claim which involves such an element of loss shall contain an estimate of the amount of such loss and a recommendation whether the loss merits reimbursement from the fund. Unless the trustees determine otherwise, payment thereof may be processed as a supplemental award of reimbursement without further action by the trustees, provided the claimant provides proof of loss within six months following the trustees' approval of the underlying claim. The executive director shall report quarterly to the trustees on the payment of all supplemental awards during the preceding quarter.

(c) No claim for reimbursement shall be paid until the claimant transfers to the fund, in such form as the trustees shall authorize, the claimant's rights against the attorney whose dishonest conduct caused the claimant's loss and any other person or entity who may be liable for the claimant's loss.

(d) Payment of claims shall be made in such amounts and at such times as the trustees deem appropriate and may be paid in lump-sum or installment amounts.

(e) If a claimant is a minor or an incompetent, the award may be paid to a parent, guardian, committee or the attorney of the claimant, on the behalf of and for the benefit of the claimant.

(f) All payments of awards of reimbursement from the fund shall be made by the State Comptroller on vouchers certified by the chairman and the treasurer.

**7200.14 Representation by counsel.** (a) A claimant and the attorney whose alleged conduct resulted in the claim shall have the right to be represented by an attorney.

(b) In accordance with the rules of the Appellate Divisions of the Supreme Court, no attorney who assists a claimant process a claim with the fund shall charge or accept compensation for those services, without the prior written approval of the trustees. No fee applications by attorneys, including public officers and court-appointed fiduciaries, shall be approved by the trustees absent a showing of extraordinary circumstances.

**7200.15 Confidentiality.** (a) Except as otherwise provided, all claims and proceedings and the records relating thereto shall be sealed and confidential.

(b) All information provided by an Appellate Division of the Supreme Court shall remain sealed and confidential to the extent required by section 90 of the Judiciary Law.

(c) The trustees' final determination awarding reimbursement of a claim, and the facts relating to the claimant's loss, shall be a public record.

(d) An attorney whose alleged conduct gave rise to the claim may waive confidentiality.

(e) This section shall not be construed to deny access to information by the Court of Appeals, and Appellate Division of the Supreme Court, or to any court of competent jurisdiction in a judicial review proceeding.

**7200.16 Amendment of regulations.** New regulations may be adopted, and any regulation may be amended or repealed by the trustees at any regular or special meeting, provided that notice of the proposed adoption, amendment or repeal has been given to all trustees at least seven days before the meeting. New regulations, amendments and repeals shall be published in the State Register. Copies of all regulations shall be made available to the public at all offices of the fund.

**7200.17 Construction of regulations.** These regulations shall be liberally construed to accomplish the objectives of the fund and the policies of the trustees.

**Helpful Telephone Numbers**

**Attorney Grievance & Disciplinary Committees**

- Manhattan & Bronx - (212) 401-0800
- Brooklyn, Staten Island, Queens - (718) 923-6300
- Nassau & Suffolk - (631) 231-3775
- Westchester area - (914) 824-5070
- Albany area - (518) 285-8350
- Syracuse area - (315) 471-1835
- Rochester area - (585) 530-3180
- Buffalo area - (716) 845-3630

**NYS Office of Court Administration**

Lawyer Licensing Information  
(212) 428-2800

**NYS Lawyer Assistance Trust**

(518) 285-4545

**NYS Department of Law (Attorney General)  
Consumer Frauds & Protection Bureau**

1-800-771-7755

**Lawyer Referral Services**

Contact your local county or city bar association, or call the New York State Bar Association in Albany at 1-800-342-3661.

**Attorney-Client Fee Dispute Resolution Program**

(877) FEES-137  
(877-333-7137)



The following is a list of the 59 now suspended, disbarred or deceased lawyers responsible for the misconduct and resulting client losses reimbursed by the Fund in 2009. The number and amount of awards listed are cumulative and may represent awards approved from prior years. **A complete list of lawyers involved in all reimbursement awards since 1982 is available on our website: [www.nylawfund.org](http://www.nylawfund.org).**

Name	JD	#	Amount
Tommy Alejandro	12	1	\$ 750
Nat J. Azznara	09	1	\$ 40,400
Anthony Bellettieri	09	19	\$1,151,542
Ira L. Berman	01	19	\$1,903,837
F. Daniel Blizzard	09	5	\$ 17,710
Edward A. Christensen	10	7	\$ 316,325
James Coffin	03	1	\$ 6,590
Mark E. Crutchfield	02	4	\$ 12,773
Edwin E. Drakes	02	1	\$ 25,647
James S. Falletta	11	27	\$1,091,854
Michael G. Feurtado	11	4	\$ 57,800
Alan E. Fielitz	08	7	\$ 70,543
Stuart G. Fish	01	5	\$ 172,966
Jeffrey D. Fletcher	01	1	\$ 500
Jonathan P. Francis	03	2	\$ 1,947
Stuart Frum	04	6	\$ 86,652
Jerome J. Galluscio	10	1	\$ 3,000
Glen J. Gentile	01	19	\$ 90,810
Stuart M. Gorman	10	3	\$ 131,611
Louis Haddad	02	1	\$ 4,290
Warren E. Hamburger	10	7	\$1,009,613
Glyne L. Harper	02	1	\$ 21,000
Berthold H. Hoeniger	01	1	\$ 71,893
Matthew S. Hogan	04	9	\$ 18,545
Bryan J. Holzberg	10	2	\$ 1,740
Mark L. Jacobs	10	5	\$ 113,412
Anthony Jones	01	1	\$ 1,500
Leopold Kaplan	01	2	\$ 10,000
Alvin E. Leonard	01	4	\$ 667,151
Joseph C. Levine	11	13	\$ 451,916
Michael P. Marmor	05	1	\$ 182,594
Christopher W. Meyers	09	2	\$ 147,243
Stuart R. Moshell	10	7	\$ 789,500
Mayank V. Munsiff	11	1	\$ 131,117
Matthew J. Neuren	09	4	\$ 452,350
Thomas E. O'Bryan	05	1	\$ 1,500
John P. Oliver	10	8	\$ 403,785
Allan L. Paglia	08	1	\$ 1,200
William M. Parente	01	1	\$ 10,000
Carlos Perez-Olivo	12	4	\$ 28,000
Gregory Ronan	10	1	\$ 300,000
Jay W. Rosen	10	72	\$4,426,690
Mark W. Scher	01	1	\$ 1,630
Mark S. Schwartz	02	3	\$ 230,265
Vsevolod Shakhanov	11	1	\$ 4,667
Albert A. Silbermann	01	1	\$ 31,000
William Simms	02	3	\$ 18,513
Robert H. Slocum	07	2	\$ 44,780
Linda J. Stanch	01	1	\$ 500
Arelija Taveras	11	6	\$ 136,422
Gary J. Viscio	10	5	\$ 50,250
Dennis E. Vourderis	02	1	\$ 40,159
Dexter Wadsworth	01	3	\$ 379,526
David R. Wendt	08	12	\$ 165,702
Mark V. Williams	05	2	\$ 3,033
Charles A. Willinger	02	1	\$ 300
Daniel N. Willkens	07	1	\$ 500
Thomas E. Wynne	10	1	\$ 21,000
Maurice Young	11	3	\$ 15,277

## Statistical Tables

All Losses Reported Since 1982					Losses Reported in 2009 Claims				
Category of Client Loss	Number of Claims	Percent of All Claims	Amount of Loss Alleged	Percent of All Losses	Category of Client Loss	Number of Claims	Percent of All Claims	Amount of Loss Alleged	Percent of All Losses
Estates & Trusts	1,064	7.0%	\$94,609,085	16.5%	Estates & Trusts	19	3.9%	\$2,444,173	6.0%
Real Property Escrow	3,288	21.8%	\$148,129,048	25.9%	Real Property Escrow	132	27.0%	\$13,152,621	32.4%
Unearned Fees	5,296	35.0%	\$40,221,398	7.0%	Unearned Fees	242	49.5%	\$6,604,506	16.3%
Settlements	1,094	7.2%	\$30,261,507	5.3%	Settlements	32	6.5%	\$2,817,473	6.9%
Other Escrow	1,467	9.7%	\$56,750,022	9.9%	Other Escrow	16	3.3%	\$1,296,791	3.2%
Debt Collection	643	4.2%	\$2,895,682	0.5%	Debt Collection	8	1.6%	\$552,253	1.4%
Investment	1,406	9.3%	\$164,613,296	28.9%	Investment	26	5.3%	\$10,946,676	27.0%
Other	881	5.8%	\$34,312,995	6.0%	Other	14	2.9%	\$2,790,451	6.9%
<b>Totals</b>	<b>15,139</b>	<b>100%</b>	<b>\$571,793,033</b>	<b>100%</b>	<b>Totals</b>	<b>489</b>	<b>100%</b>	<b>\$40,604,944</b>	<b>100%</b>

Client Losses in All Awards Since 1982						
Category of Client Loss	Number of Awards	Percent of All Awards (#)	Amount of All Awards	Percent of All Awards (\$)	Client Losses Involved	Percent of All Losses Reimbursed
Estates & Trusts	696	10.5%	\$35,985,518	25.2%	\$57,430,305	62.7%
Real Property Escrow	2,001	30.2%	\$56,890,810	39.8%	\$60,626,316	93.8%
Unearned Fees	1,898	28.8%	\$4,515,054	3.2%	\$4,541,154	99.4%
Settlements	545	8.2%	\$11,411,034	8.0%	\$11,957,731	95.4%
Other Escrow	676	10.2%	\$15,437,775	10.8%	\$22,204,022	69.5%
Debt Collection	450	6.8%	\$673,513	0.4%	\$728,513	92.5%
Investment	351	5.3%	\$18,034,052	12.6%	\$22,848,014	78.9%
<b>Totals</b>	<b>6,617</b>	<b>100%</b>	<b>\$142,947,756</b>	<b>100%</b>	<b>\$180,336,055</b>	

Client Losses in 2009 Awards						
Category of Client Loss	Number of Awards	Percent of All Awards (#)	Amount of All Awards	Percent of All Awards (\$)	Client Losses Involved	Percent of All Losses Reimbursed
Estates & Trusts	5	3.6%	\$718,067	12.8%	\$888,067	80.9%
Real Property Escrow	67	48.2%	\$3,620,141	64.4%	\$3,620,141	100%
Unearned Fees	45	32.4%	\$113,027	2.0%	\$113,027	100%
Settlements	8	5.8%	\$244,632	4.4%	\$244,632	100%
Other Escrow	9	6.5%	\$213,975	3.8%	\$213,975	100%
Debt Collection	1	0.6%	\$8,000	0.1%	\$8,000	100%
Investment	4	2.9%	\$701,893	12.5%	\$701,893	100%
<b>Totals</b>	<b>139</b>	<b>100%</b>	<b>\$5,619,735</b>	<b>100%</b>	<b>\$5,789,735</b>	

**“What a joyous surprise and great relief your decision gave to us, to compensate our losses through your Fund... We are retired, and live on a fixed income, and the loss of this amount would have meant a significant dent in our ability to cover our daily life expenses. So, our sincere thanks...to your organization to protect people like us from losses of this kind.”**  
**Message from a Claimant, 2007**

# Statistical Tables

Claims Activity Since 1982		1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Totals
Claims Filed		534	375	230	332	341	311	351	486	438	515	627	636	598	909	730	1,128	812	442	492	548	499	506	627	729	520	454	480	489	15,139
Losses Alleged (In Millions \$)		\$3.2	\$5.4	\$6.1	\$5.3	\$5.1	\$5.7	\$10.8	\$14.1	\$15.8	\$28.3	\$25.2	\$25.4	\$25.5	\$36.8	\$29.9	\$40.8	\$24.3	\$15.9	\$20.5	\$22.6	\$21.8	\$17.4	\$26.7	\$28.1	\$18.6	\$31.8	\$43.7	\$40.6	\$595.4
Claims Approved		1	494	130	183	178	159	202	177	219	200	288	318	362	383	381	625	415	161	205	160	187	165	196	227	147	185	130	139	6,617
Actual Losses (In Millions \$)		\$0.1	\$1.5	\$1.9	\$2.5	\$1.3	\$2.0	\$3.8	\$6.3	\$4.8	\$5.8	\$13.5	\$12.4	\$10.4	\$8.9	\$13.7	\$9.1	\$6.8	\$3.7	\$14.2	\$5.3	\$5.9	\$5.8	\$5.1	\$8.6	\$7.3	\$7.1	\$6.8	\$5.8	\$180.3
Awards (In Millions \$)		\$0	\$0.7	\$0.9	\$1.3	\$1.1	\$1.9	\$2.8	\$3.8	\$4.6	\$4.1	\$7.3	\$7.5	\$7.6	\$5.7	\$9.9	\$6.9	\$5.9	\$3.4	\$10.5	\$5.3	\$5.7	\$5.8	\$5.1	\$8.1	\$7.1	\$7.0	\$6.8	\$5.6	\$142.9
Lawyers Involved		1	13	26	43	26	24	36	26	38	44	38	52	45	60	38	39	29	28	49	28	28	37	26	32	35	44	23	36	944
% Losses Reimbursed		50%	46%	46%	52%	85%	95%	74%	60%	96%	71%	54%	60%	73%	64%	72%	76%	87%	92%	74%	100%	98%	99%	100%	94%	98%	98%	100%	97%	
% Client Fully Reimbursed		0	74%	65%	39%	91%	99%	99%	98%	96%	94%	95%	94%	94%	98%	94%	96%	99%	99%	97%	100%	98%	98%	100%	98%	98%	97%	100%	99%	
Claims Disallowed		33	201	105	73	164	120	119	169	186	360	253	384	247	366	439	620	522	383	329	383	281	338	323	327	284	307	351	257	7,924
Total Dispositions		34	695	235	256	342	279	321	346	405	560	540	702	610	749	820	1,245	937	544	534	543	468	503	519	554	431	492	481	396	14,541
Claims Pending Dec. 31		500	180	175	251	250	282	312	452	485	440	526	460	449	609	579	462	337	235	193	198	229	232	340	515	604	566	658		
Losses Alleged in Pending Claims (In Millions \$)		\$2.9	\$4.6	\$7.4	\$8.5	\$9.5	\$10.2	\$15.3	\$18.0	\$23.9	\$32.0	\$30.1	\$24.2	\$27.3	\$43.5	\$46.9	\$46.6	\$18.0	\$16.1	\$10.2	\$11.1	\$13.7	\$14.6	\$20.7	\$17.5	\$17.8	\$15.7	\$30.9	\$38.8	
Exposure on Pending Claims (In Millions \$)		\$1.7	\$1.6	\$2.3	\$2.7	\$3.5	\$5.2	\$6.3	\$9.8	\$15.1	\$14.9	\$16.0	\$13.9	\$15.2	\$24.4	\$25.1	\$17.4	\$11.3	\$11.6	\$8.3	\$9.2	\$10.2	\$10.3	\$15.1	\$13.9	\$14.8	\$14.1	\$21.7	\$27.1	
Fund Balance (In Millions \$)		\$1.8	\$1.4	\$2.1	\$1.3	\$4.4	\$3.3	\$5.1	\$4.2	\$3.6	\$2.8	\$3.4	\$1.8	\$2.4	\$3.4	\$2.5	\$2.1	\$6.6	\$6.3	\$3.4	\$4.1	\$5.4	\$5.5	\$8.1	\$5.4	\$7.0	\$3.5	\$5.0	\$4.5	

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# NOTES