

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

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ANNUAL REPORT
OF THE
BOARD OF TRUSTEES
FOR
CALENDAR YEAR 2020

BOARD OF TRUSTEES

Eric A. Seiff, Chairman
Anthony J. Baynes
Peter A. Bellacosa
Stuart M. Cohen
Patricia L. Gatling
Gary S. Greenberg
Lisa L. Hutchinson



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

Table of Contents

Introduction.....	3	Claims Filed and Processed.....	10
Purpose and History of Law Client Protection.....	3	Claims Filed in 2020.....	10
Special Recognition.....	4	Claims Filed, 1982 to 2020.....	10
Revenue of the Lawyers' Fund.....	4	Claims Filed by Category of Loss in 2020.....	10
The Board of Trustees.....	5	Claims Filed by Category of Loss, 1982 to 2020.....	10
The Staff of the Lawyers' Fund.....	5	Awards of Reimbursement in 2020.....	11
Former Members of The Board of Trustees and Administration.....	6	Awards of Reimbursement, 1982 to 2020.....	11
The Fund's Statutory Authority and the Trustees' Regulations.....	7	Awards by Category of Loss in 2020.....	11
Revenue, Awards and Disbursements.....	7	Awards by Category of Loss, 1982 to 2020.....	11
Restitution Revenue and Litigation.....	7	Ineligible Claims Since 1982.....	12
Public Information and Consumer Education.....	7	Claims Pending as of December 31, 2020.....	12
Processing Applications for Reimbursement.....	7	Lawyers Involved in Awards, 1982 to 2020.....	13
Judicial Review Litigation.....	8	Recommendations.....	14
The Dishonored Check Reporting Rule.....	8	Conclusion.....	16
Escrow Funds of Deceased Lawyers and Missing Clients.....	8	Helpful Telephone Numbers.....	16
Thefts in Real Property Transactions.....	9	Lawyers Involved In 2020 Awards.....	17
Losses in Investment Transactions.....	9	Statistical Tables.....	18
Legal Fee Claims.....	9	Trustees' Regulations (22 NYCRR 7200).....	20
Theft of Personal Injury Settlements and Payee Notification.....	10		

The Fund's Mission Statement:

To protect legal consumers from dishonest conduct in the practice of law, to preserve the integrity of the bar, to safeguard the good name of lawyers for their honesty in handling client money, to promote public confidence in the administration of justice in the Empire State.



Introduction

This 38th Annual Report of the Lawyers' Fund for Client Protection focuses on calendar year 2020. The Lawyers' Fund is an independent public trust, financed by New York's legal profession, that reimburses law clients for financial losses caused by dishonest conduct in the practice of law. **No other profession provides such protection to its clients.** The Lawyers' Fund is administered by a Board of Trustees appointed by the Court of Appeals. The Trustees serve renewable three-year terms as a public service without compensation.

In 2020, the Trustees approved 114 awards providing \$8.4 million in total reimbursement to eligible law clients for losses caused by the dishonest conduct of 46 former New York State lawyers. With a maximum award ceiling of \$400,000 per loss, all but three eligible law clients received 100 percent reimbursement for their losses in 2020. Since 1982, the Trustees have granted 9,079 awards totaling \$233 million.

There are 338,000 registered lawyers in New York State. Over the 38 years of our existence, a small number of former lawyers each year have been responsible for the dishonest conduct resulting in the Fund's awards. Of the 46 lawyers responsible for the client losses reimbursed by the Fund in 2020, 33 appear for the first time in the Fund's awards.

The Trustees remain grateful to Chief Judge Janet DiFiore, the Associate Judges of the Court of Appeals, and all those in State government, our judiciary and the attorney disciplinary system for their invaluable assistance to the Lawyers' Fund. The Trustees also remain proud of New York's legal profession for its financial and other support to the Lawyers' Fund. Special recognition is due those members of the bar who generously donate their time and talents in assisting claimants before the Fund as a public service, without legal fee.

Purpose and History of Law Client Protection

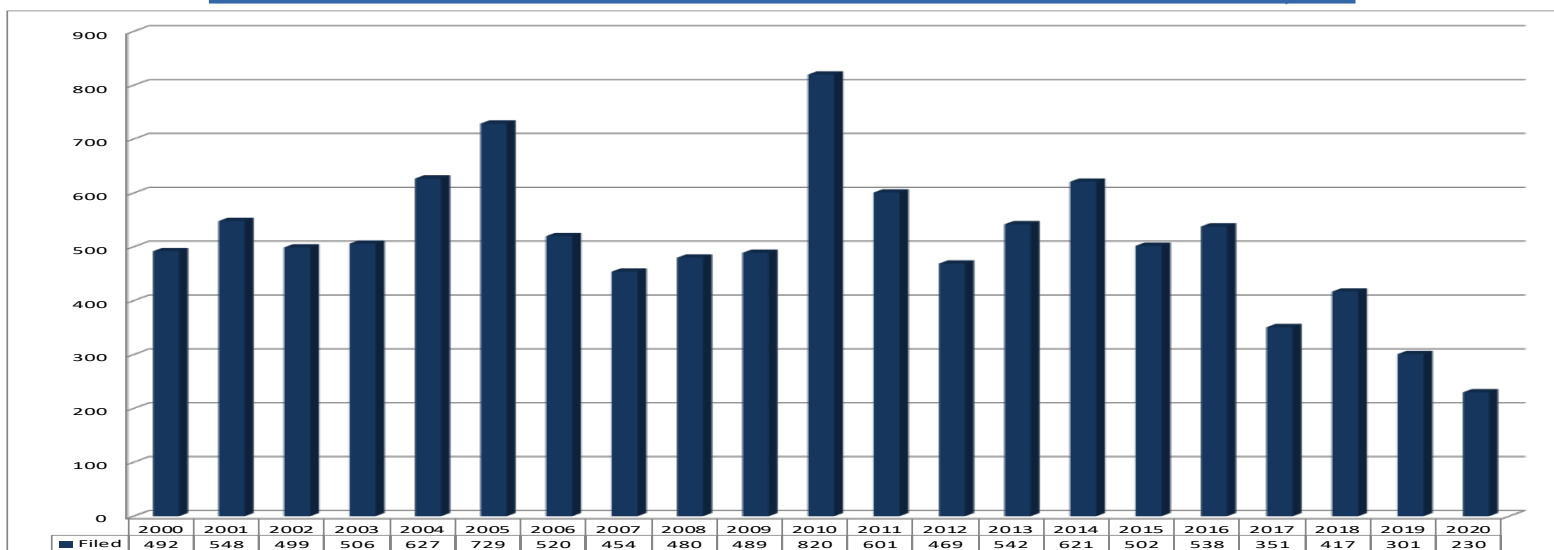
The Lawyers' Fund, originally known as The Clients' Security Fund, was created by Chapter 714 of the Laws of 1981, effective June 1, 1981. Law client reimbursement programs had been first formed in the 1960s by bar associations in New York State. Inadequate financing led to the 1981 legislation for which the Court of Appeals and the New York court system assumed the responsibility for operating the Lawyers' Fund as a statewide client reimbursement program.

The mission of the Lawyers' Fund, 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 client 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, stolen estate and trust assets, failure to distribute settlements in personal injury litigation, theft of 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 to perform their legal services.

Loss prevention is a vital aspect of an effective client protection program. The Trustees' loss prevention efforts include recommending changes in court rules and policies a number of which have been instituted to improve our legal system and protect law clients; the publication of materials to educate lawyers and clients; and engaging in programs which assist lawyers in complying with their fiduciary and escrow obligations and detect lawyer misconduct.

Number of Reimbursement Claims Filed, 2000 - 2020 Total Number of Reimbursement Claims Filed Since 1982: 20,531



Special Recognition

THE BOARD OF TRUSTEES OF THE LAWYERS' FUND PROUDLY RECOGNIZES THE GENEROUS ACTS OF PUBLIC SERVICE DISPLAYED BY THE ATTORNEYS LISTED BELOW WHO HAVE ASSISTED CLAIMANTS IN RECEIVING AWARDS OF REIMBURSEMENT IN 2020:

BRONX COUNTY
Warren Wynshaw, Esq.

KINGS COUNTY
Robert Wu, Esq.

QUEENS COUNTY
Joseph M. Yamaner, Esq.

RICHMOND COUNTY
Michael M. Walsh, Esq.

NASSAU COUNTY
Austin Graff, Esq.
Jay S. Markowitz, Esq.
Vince A. Sabella, Esq.
Neil Torczyner, Esq.

ROCKLAND COUNTY
Ricki H. Berger, Esq.

SUFFOLK COUNTY
Donna Rosen, Esq.

NEW YORK COUNTY
Jason A. Advocate, Esq.
Michael Barasch, Esq.
Jessica Dahan, Esq.
Ann Hsiung, Esq.
Douglas M. Lehman, Esq.

OUT OF STATE
Jeremy Schulman, Esq. (MD)

“The conduct of attorneys is not measured by how close to the edge of thin ice they skate. The measure of an attorney’s 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)

The Fund’s Finances Since 1982

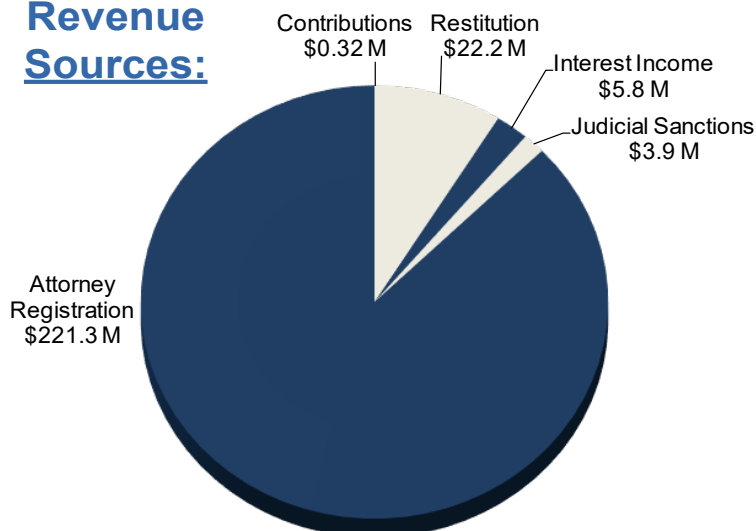
Revenue of the Lawyers’ Fund

New York’s legal profession financially supports 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 \$375 registration fee, or \$30 per year, to the Fund. Since April 1, 1993, additional revenue from the biennial registration fee has been made available to the Fund.

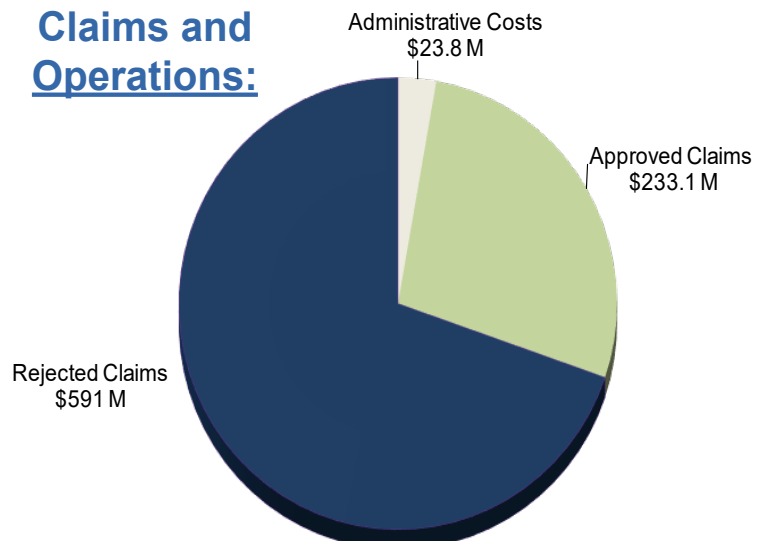
No tax dollars are used to finance the Lawyers’ Fund. Also, the Fund does not receive any revenue from the IOLA (Interest on Lawyer Account) program.

The Fund’s other sources of revenue include restitution, interest, judicial sanctions, contributions and unclaimed missing client and deceased attorney escrow deposits held by the Fund for over five years pursuant to court rules. Since 1982, the Fund has received \$221 million from attorney registration fees; \$22.2 million in restitution; \$5.8 million in interest income; \$3.9 million in judicial sanction revenue; and \$318,000 in contributions from lawyers and the public. The Fund’s revenues are annually appropriated to the Fund by the State Legislature as one portion of the Judiciary Budget.

Revenue Sources:

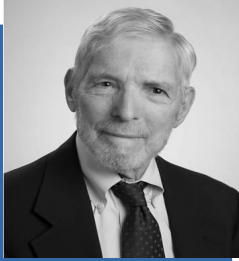


Claims and Operations:



The Board of Trustees

The Court of Appeals appoints the Board of Trustees to administer the Lawyers' Fund. The Trustees serve renewable three-year terms as a public service, without compensation. Since the Fund was established in 1981, a total of 19 Trustees have served with the Fund. The Board is 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. The Trustees currently serving are listed below.



Eric A. Seiff, of the Bronx, is a charter member and Chairman of the Board. He is of counsel to the Manhattan law firm of Amini, L.L.C. Mr. Seiff is a graduate of Yale University and the Columbia University Law School (1958). His present term expires on November 30, 2021.



Patricia L. Gatling, of Manhattan, is Vice-Chairman of the Board. She is an attorney with the Manhattan law firm of Windels Marx Lane & Mittendorf, LLP. She served 13 years as 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, 2023.



Peter A. Bellacosa of Manhattan, is the Fund's Treasurer and a partner with the law firm of Phillips Lytle, LLP. He is a graduate of Georgetown University and St. John's University School of Law (1988). His present term expires on November 30, 2021.



Anthony J. Baynes, of Williamsville, Erie County, is the founder and current Chairman of the AJ Baynes Group, a Buffalo based development and logistics company. Mr. Baynes is a graduate of Buffalo State College (1979). His present term expires on October 17, 2021.



Stuart M. Cohen, of Rensselaer County, retired from private practice after a career during which, among other positions, he served 14 years as the Clerk of the Court of Appeals. Mr. Cohen is a graduate of Connecticut College and New York University School of Law (1979). His present term expires on December 4, 2022.



Dr. Gary S. Greenberg, of Liverpool, Onondaga County, is a dentist specializing in Dental Sleep Medicine. Dr. Greenberg is a graduate of the State University of New York, Buffalo (1973), the University of Pennsylvania School of Dental Medicine (1978) and the University of Rochester School of Medicine & Dentistry (1979). His present term expires on September 15, 2021.



Lisa L. Hutchinson, of Nassau County, is a partner in the Farmingdale law firm of Guercio & Guercio, LLP. She is a graduate of SUNY Albany and the University of Pennsylvania Law School (1995). She was first appointed in 2016. Her present term expires on October 19, 2022.



The Staff of the Lawyers' Fund

The Board of Trustees appoints the Fund's staff. In 2020, the staff consisted of Michael J. Knight, Executive Director and Counsel; Gabriel Huertas, Assistant Counsel; Keri Cleveland, Investigator; Jahnel Kaczor, Administrative Secretary; and Harriett Tremblay, Secretary.



Jahnel Kaczor

Keri Cleveland

Gabriel Huertas

Harriett Tremblay

Michael J. Knight

Former Members of the Board of Trustees and Administration

Former members of the Board of Trustees include the Hon. Judith S. Kaye, former Chief Judge of the State of New York and Chief Judge of the Court of Appeals (1981-1983); Joseph Kelner, Esq. of Manhattan (1981-1982); 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, Esq. of Hicksville (1990 to 2002); Shirley B. Waters of Rome (1992 to 2001); Bernard F. Ashe, Esq. of Delmar (1981-2008), Hon. Charles J. Hynes, former Kings County District Attorney (1982-2009); Theresa B. Mazzullo of Rochester (2002-2012), Eleanor Breitel Alter, Esq. of Manhattan (1985-2013), Nancy Burner, Esq. of Port Jefferson (2002-2016) and Charlotte Holstein of Syracuse (2001-2018). Frederick Miller served as the Fund's charter Executive Director and Counsel from 1982 through his retirement in July 2000. Timothy O'Sullivan served as Deputy Counsel and from 1984 until his retirement in July 2018.



Hon. Judith S. Kaye of Manhattan served as a charter member of the Board of Trustees from 1981 to 1983. Judge Kaye was the former Chief Judge of the State of New York and Chief Judge of the Court of Appeals.



Anthony R. Palermo of Monroe County served as the Charter Chairman of the Board from 1981-1985, and as Trustee from 1981-1990. Mr. Palermo is a partner in the Rochester law firm of Woods Oviatt Gilman LLP.



Eleanor Breitel Alter of Manhattan served as Trustee from 1983 to 2013 and was Chairman of the Board of Trustees from 1985 until 2011. She is a partner in the Manhattan law firm of Alter, Wolff & Foley LLP.



Bernard F. Ashe of Delmar, Albany County, served as a charter member of the Board of Trustees from 1981 to 2008 and as Vice-Chairman of the Board from 2003 to 2008. Mr. Ashe is a former General Counsel to New York State United Teachers.



Ray W. Manuszewski of Erie County served as a charter member and Treasurer of the Fund from 1981 to 2002. He was a former Regional Vice President with Manufacturer's Hanover Trust Company and a principal with an accounting firm.



Nancy Burner of Suffolk County is the founding partner of Nancy Burner & Associates., P.C., an estate planning and elder law firm in Setauket, Westhampton Beach and New York City. Ms. Burner served on the Board from 2002 to 2016 and as Vice-Chairman of the Board from 2010 to 2016.



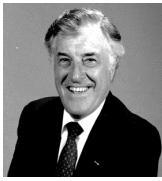
Charles Joseph Hynes of Brooklyn was the former District Attorney of Kings County. Mr. Hynes served on the Board of Trustees from 1982 until 2008.



John F. X. Mannion of Onondaga County served as a charter member of the Board from 1982 to 1992 and as Vice-Chair from 1982 to 1989. He is the former Chairman of the Board of Unity Mutual Life Insurance Company in Syracuse.



Joseph Kelner of Manhattan was a charter member of the Board and served from 1981 to 1982. He was a partner in the Manhattan law firm of Kelner and Kelner.



Theodore D. Hoffmann of Nassau County served as a Trustee and Vice-Chair for the Fund from 1990 to 2002. Mr. Hoffmann was counsel to the Garden City law firm of Albanese, Albanese & Fiore.



Theresa B. Mazzullo of Rochester, Monroe County, served as a Trustee and the Fund's Treasurer from 2002 to 2012. She is the CEO of Excell Partners, Incorporated, a state supported seed capital fund.



Shirley B. Waters of Oneida County is Vice President of the Rome Sentinel Company, the publisher of the Daily Sentinel newspaper. Mrs. Waters served on the Board of Trustees from 1992 to 2001.



Charlotte G. Holstein of Syracuse, Onondaga County, served as a Trustee from 2001 to 2017. She is a civic leader, founder and former Executive Director of F.O.C.U.S. Greater Syracuse, a citizen engagement non-profit organization.



Frederick Miller served as the Fund's first Executive Director and Counsel from 1982 through his retirement in July 2000.



Timothy J. O'Sullivan served as the Fund's Deputy Counsel from 1984 until 2000, and as the Fund's second Executive Director and Counsel from 2000 until his retirement in July 2018.



The Fund's Statutory Authority and the Trustees' Regulations

The Lawyers' 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.) and are available on the Fund's website: www.nylawfund.org.

Revenue, Awards and Disbursements

Since 1982, the Fund has received total revenue of \$264.8 million. As of December 31, 2020, the Trustees have approved a total of \$233 million in reimbursement awards. In 38 years of operations, 91 cents out of every \$1 in revenue received has been directly applied towards the payment of awards of reimbursement.

Restitution Revenue and Litigation

Restitution totaling \$22 million has been recovered by the Fund since 1982 from dishonest attorneys, their estates, and third parties civilly liable for losses reimbursed by the Fund.

The New York State Attorney General represents the Lawyers' Fund in obtaining restitution, and other litigation. Since December 1999, the Fund has financed the cost of an Assistant Attorney General assigned exclusively to the Fund's restitution efforts. Since 2001, the Fund gratefully acknowledges the professional assistance of Assistant Attorney General Richard L. Rodgers who serves as its restitution counsel and defends the Fund in the rare instance of a judicial challenge. The Trustees and staff are indebted to Mr. Rodgers for his 19 years of invaluable service to the Lawyers' Fund.

The Trustees also wish to thank the following members of the Attorney General's Office who assisted in restitution and other litigation in 2020: Assistant Attorneys General John Cremo, Kathryn Blake, Michael Difabio, Norman Fivel, Kenneth Gellhaus, Denis Hurley, and Assistant Solicitors General Kathleen Treasure and Owen Demuth.

Public Information and Consumer Education

The Trustees encourage dissemination of public information about the Fund and its activities. 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 include 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*; eight editions of *A Practical Guide to Attorney Trust Accounts and Record Keeping*; an *Appendix of CLE Materials as well as a 2007* documentary video on the history and purpose of the Lawyers' Fund. In 2017, the Lawyers' Fund updated the *Client Protection Fund Bibliography*, which was donated to the National Client Protection Organization.

The Fund's website at www.nylawfund.org includes answers to frequently asked questions, Fund procedures, the Trustees' Regulations, reimbursement claim forms, recent Annual Reports, consumer publications, press releases, addresses and telephone numbers of Attorney Grievance Committees, and a roster of client protection funds nationwide. The Fund's website also includes the Rules of Professional Conduct, the Dishonored Check Notice Rule, court rules and sample pleadings concerning escrow funds of missing clients and deceased attorneys, and selected New York State Bar Association ethics opinions. The Fund offers an approved CLE program and regularly addresses law schools and state and local bar associations. The New York Lawyers' Fund can also be found on Facebook and Twitter.

Processing Applications for Reimbursement

A completed application for reimbursement along with supporting documentation must be filed with the Fund in order for a law client to be considered for an award of reimbursement. The Executive Director will dismiss a claim with a written explanation if an alleged loss does not appear to qualify for an award. Section 7200.8 (b) of the Trustees' Regulations instructs that a claimant has the responsibility to provide satisfactory evidence of an eligible loss. The Fund's staff conducts investigations into claims for reimbursement.

It is expected that written complaints be filed with the appropriate Attorney Grievance Committee and District Attorney by claimants alleging a misappropriation of money or property in the practice of law. Claimants should cooperate with any investigations by these offices. A lawyer accused of dishonest conduct is provided with notice of the claim, and given the opportunity to respond.

A claimant with the Fund does not have to be represented by counsel. As a public service, lawyers in New York State generously assist claimants with the Fund, without charge. Claimants may wish to consult with a lawyer concerning problems or other issues raised by their loss. Appellate Division rules and the Trustees' Regulations prohibit lawyers 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).

Section 468-b of the Judiciary Law and the Trustees' Regulations provide the Trustees with the sole discretion to determine the merits of claims, set the amount of an award of reimbursement, and the terms and conditions for awards. It is the general practice of the Trustees not to render final determinations in claims until Appellate Division disciplinary proceedings and related criminal 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 and with relevant criminal prosecutors.

Judicial Review Litigation

In 38 years there have been 20,495 determinations in claims filed with the Fund. The Trustees have approved 9,079 awards of reimbursement. The remaining 11,416 claims were determined to be ineligible for failure to provide satisfactory evidence of eligible losses.

Since 1982, twenty-five claimants denied reimbursement and three former attorneys have pursued CPLR Article 78 or other proceedings against the Fund. Each of these judicial challenges were dismissed after litigation. At the end of 2020, one appeal of a dismissed judicial challenge was pending. (*Li v. Lawyers' Fund*).

The Dishonored Check Reporting Rule

A clear indicator of the possible misuse of client funds is the dishonored check from an attorney's escrow account. As a client protection measure, the Trustees recommended a version of the ABA's model overdraft reporting rule, which was implemented by court rule in New York State by the Appellate Division effective January 1, 1993.

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 "Attorney Escrow Account". Lawyers must deposit client funds with banks that 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.

The "bounced" escrow check is mailed to the Lawyers' Fund. If it is not withdrawn within 10 days due to bank error, the Fund forwards the notice to the appropriate attorney grievance committee for investigation. The majority of bounced check notices are caused by innocent mistakes in law office banking practice. In these cases, the rule serves an educational role, alerting lawyers to the accounting, banking and recordkeeping requirements of the Rules of Professional Conduct.

Since 1993, 327 lawyers who were misusing client funds have been identified by bounced check reports, demonstrating that the Dishonored Check Reporting Rule is a proven and effective loss detection and prevention device.

In 2020, the Administrative Board of the Courts approved the Trustees' proposals to expand the Dishonored Check Reporting Rule to require notice of any overdraft on attorney special, trust or escrow accounts. The effective date of the rule change has not been finalized. The new rules will also prohibit attorneys from carrying overdraft protection on attorney trust, special and escrow accounts and from linking personal accounts to attorney trust, special or escrow accounts.

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. This limitation is intended to protect law clients from the misuse of their money. When a sole practitioner dies without a successor signatory practical problems arise.

In 1994, the Appellate Division amended court rules, at the Trustees' suggestion, to permit 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 renumbered Rule 1.15 (g) of the Rules of Professional Conduct. 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 court rules to prevent the escheat of law client escrow funds to the State as abandoned property that were unclaimed or owed to missing clients.

Rule 1.15 (f) of the Rules of Professional Conduct provides that an application can be made for a court order directing that unclaimed escrow funds or funds owed to a missing client 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, owed to any one client, without a court order. See Erie County Bar Association Ethics Opinion (Jan. 15, 2004).

The Fund's staff attempts to identify missing clients to whom these deposits should be returned. The Fund has so far successfully located 685 missing clients and returned over \$1.95 million. These court rules and sample pleadings pursuant to the rules can be found on the Fund's website at www.nylawfund.org in the escrow and ethics material section.

In 2017, the Board amended section 7200.4 (a) of the Trustees' Regulations to authorize the Trustees to utilize, for the benefit of victims, unclaimed missing client and deceased attorney escrow deposits held by the Lawyers' Fund for over five years, and such deposits held for unknown clients, pursuant to Rules 1.15 (f) and 1.15 (g) of the Rules of Professional Conduct (22 NYCRR Part 7200.4 (a)).

Thefts in Real Property Transactions

Since 1982, real estate escrow losses are the largest single category of awards from the Fund, in the amount of reimbursement provided. In 38 years, 37.7 percent of all money paid out by the Fund has been used to reimburse real estate escrow losses. Since 1982, the Trustees have approved 2,501 awards totaling \$87.9 million for real property losses.

In 2020, real estate awards accounted for the largest amount of awards by category, \$3.4 million of the \$8.4 million total payout by the Fund. Real estate awards thus account for 40.2 percent of the total amount reimbursed by the Fund in 2020. This \$3.4 million payout represents an increase from 2019 when realty awards comprised \$2.2 million of the total \$9.8 million reimbursed for that year.

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 added) money, securities, or other property by an attorney. Therefore, losses caused by a lawyer’s breach of fiduciary obligations outside an attorney-client relationship or the practice of law are not eligible for reimbursement.

The Trustees carefully review claims alleging losses from investment and loan transactions with lawyers. In 1984, the Trustees adopted the following policy guidelines in order to explain fully 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.”

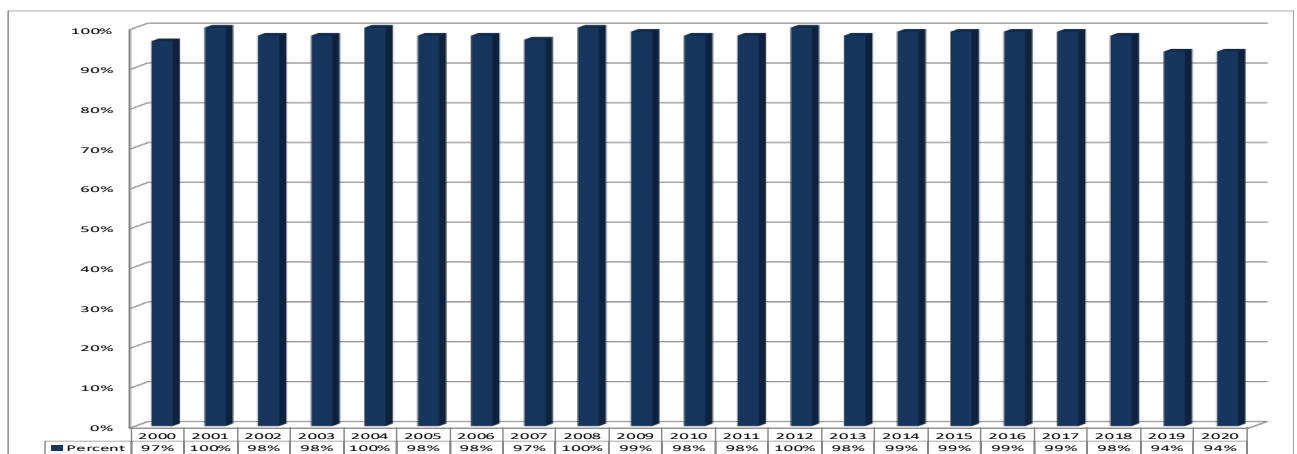
The Trustees also apply a “but for” test in evaluating claims alleging investment losses. Under this test, a loss is eligible if the Board finds that the loss would not have occurred “but for” dishonest conduct within an attorney-client relationship.

Since 1982, 1,865 claims have been filed with the Fund alleging \$320.9 million in losses from investment transactions with lawyers. The Trustees approved awards in 414 of these claims providing total reimbursement of \$27.9 million.

Legal Fee Claims

Since 1982, the largest single category of claims filed with the Fund, 7,685 or 37.4% seek reimbursement of legal fees. 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.

Percent of Eligible Claimants Receiving Full Reimbursement 2000-2020



Theft of Personal Injury Settlements and Payee Notification

One type of loss brought to the attention of the Trustees involves a dishonest lawyer settling a client's action without authority by forging the client's signature on a general release and settlement draft and converting the proceeds. The settlement would be issued without notice of payment to the law client.

In 1988, to detect and prevent these losses, the Trustees recommended adoption of a payee notification rule codified as Insurance Department "Regulation 64". This requires liability insurers 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 theft of personal injury settlements. In so doing, it facilitates timely liability claims for forgery losses against banks that improperly honor forged indorsements 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 fifteen states: Arkansas, California, Connecticut, Delaware, Georgia, Hawaii, Maryland, Massachusetts, Nebraska, Nevada, New Jersey, Pennsylvania, Rhode Island, Texas and Virginia.

In 2020, settlement losses accounted for the second largest amount of awards by category. Of the \$8.4 million paid out in 2020, \$2.7 million (32.4%) involved settlement losses. This continues a disturbing trend over the past five years where settlement losses have accounted for either the largest or second largest category in the number of awards or amount of awards paid by the Fund. While this trend causes concern, a small handful of dishonest lawyers are causing these losses. For example, in 2020, one lawyer alone accounted for \$1.3 million (49%) of the \$2.7 million paid out for settlement losses. In these settlement losses, the common experience is that payee notification is provided to the clients who then accept fabricated excuses from these few dishonest lawyers.

Claims Filed and Processed

Claims Filed in 2020

In 2020, there were 230 claims filed with the Lawyers' Fund. This represents a 24 percent decrease from 2019, when the Fund received 301 claims. The 230 filed claims in 2020 alleged \$25.8 million in losses, a 12.5 percent decrease from the \$29.5 million in alleged losses from the previous year.

Claims Filed, 1982 to 2020

Since 1982, 20,531 claims have been filed with the Lawyers' Fund, alleging over \$1.09 billion in total losses. Annual filings have ranged from a low of 230 in 1984 to a record high of 1,128 in 1997.

Claims Filed by Category of Loss in 2020

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) specified investment transactions with lawyers; and (8) a miscellaneous category of "other".

In 2020, of the 230 filed claims, 97 (42.2%) claims sought reimbursement of legal fees. There were 50 claims (21.7%) alleging losses in personal injury settlements and 47 claims (20.4%) alleging thefts of real property escrow.

Of the \$25.8 million in alleged losses in 2020, \$7.7 million (29.7%) involved other losses; \$4.7 million (18.3%) involved alleged losses in realty transactions and \$3.9 million (15.1%) involved alleged personal injury settlements losses.

Claims Filed by Category of Loss, 1982 to 2020

Since 1982, by category, the largest number of filed claims have sought reimbursement of legal fees. In 38 years, 7,685 claims have been filed alleging unearned legal fees. These legal fee claims account for 37.4 percent of all filed claims. The second largest category of filed claims alleged losses in real property transactions. The Fund has received 4,339 real property claims comprising approximately 21.1 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 have alleged losses of \$320.9 million, or 29.3 percent of all alleged losses in filed claims. Real property claims were second with alleged losses of \$267 million constituting 24.4 percent of all alleged losses. The third largest category of alleged losses involve alleged thefts from estates and trusts. These claims have alleged \$146.7 million in losses or 13.4 percent of all alleged losses.

Claims Filed and Processed (Cont'd)

Awards of Reimbursement in 2020

In 2020, the Trustees approved 114 awards. This represents a 9 percent decrease from 2019 when 125 awards were granted. The awards in 2020 reimbursed a total of \$8.4 million. This payout represents a 14 percent decrease from 2019 when \$9.8 million in reimbursement was paid out by the Fund. The highest single-year payout was in 2015, when \$12.3 million was awarded. In 2020, all but seven eligible claimants received 100 percent reimbursement for their eligible loss. The median client loss and award in 2020 was \$20,500, down from \$21,500 in 2019.

Awards of Reimbursement, 1982 to 2020

Since 1982, the Trustees have approved 9,079 awards of reimbursement totaling \$233 million. On average, since 1982, 94 percent of all eligible claimants have received full reimbursement for their eligible losses. Since 2005, 99 percent of eligible claimants have been fully reimbursed by the Lawyers' Fund.

Awards by Category of Loss in 2020

In 2020, the largest category of awards, by the number of awards, reimbursed personal injury settlements. Of the 114 awards in 2020, 35 (30.7%) reimbursed personal injury settlements. The second largest category of awards, in 2020, by the number of awards, was real property escrow losses, with 34 awards, or 29.8 percent of the 114 total awards.

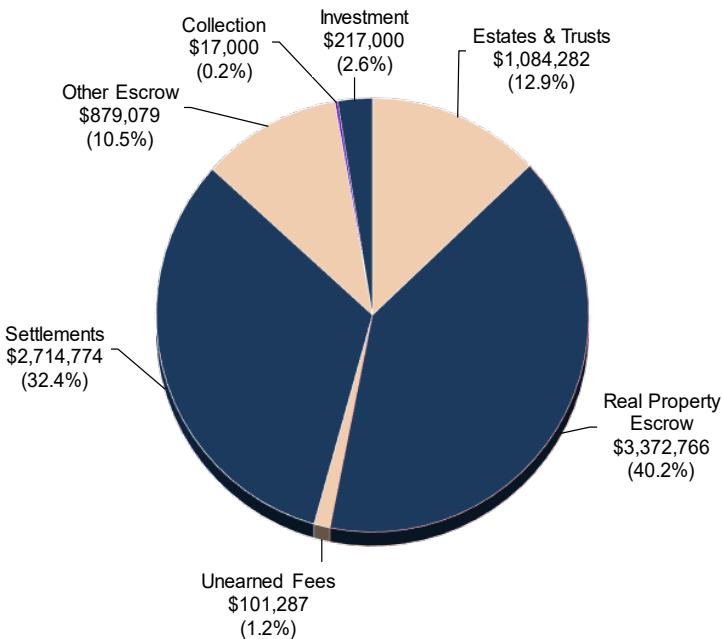
By dollar amount, the largest category of awards in 2020 reimbursed real property escrow losses. Of the \$8.4 million paid out by the Trustees in 2020, \$3.4 million (40.2%) reimbursed real property escrow losses. The second largest category of awards in 2020, by dollar amount, involved personal injury settlements. These awards totaled \$2.7 million, 32.4 percent of the \$8.4 million reimbursed in 2020.

Awards by Category of Loss, 1982 to 2020

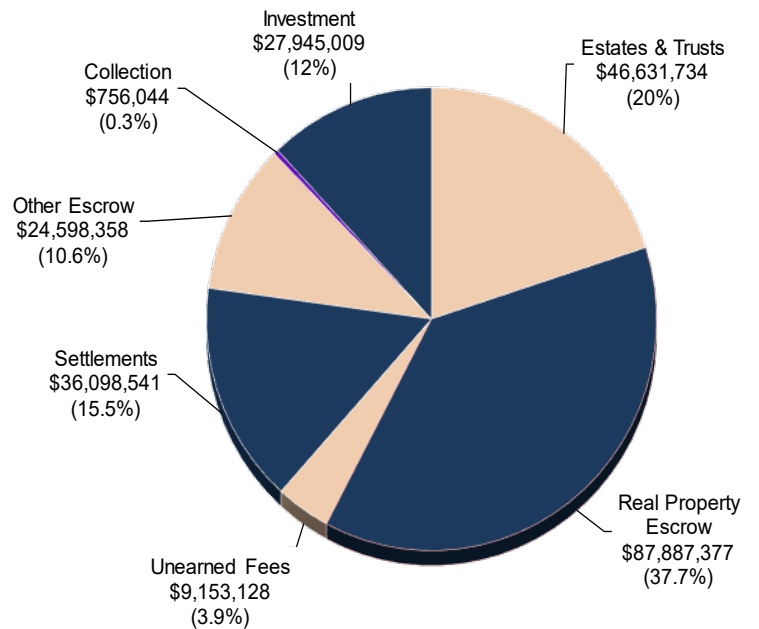
By category since 1982, the largest number of awards approved are for unearned legal fees. Unearned legal fee awards total 3,077, or 33.9 percent. The second largest category of awards reimbursed real property losses. Since 1982, there have been 2,501 real property awards comprising 27.5 percent of all awards.

Since 1982, by dollar amount, awards reimbursing real property losses represent the largest payout by the Fund. Real property awards total \$87.9 million, or 37.7 percent of all money reimbursed. The second largest dollar amount of awards involve thefts from estates and trusts. These awards total \$46.6 million or 20 percent of all awards.

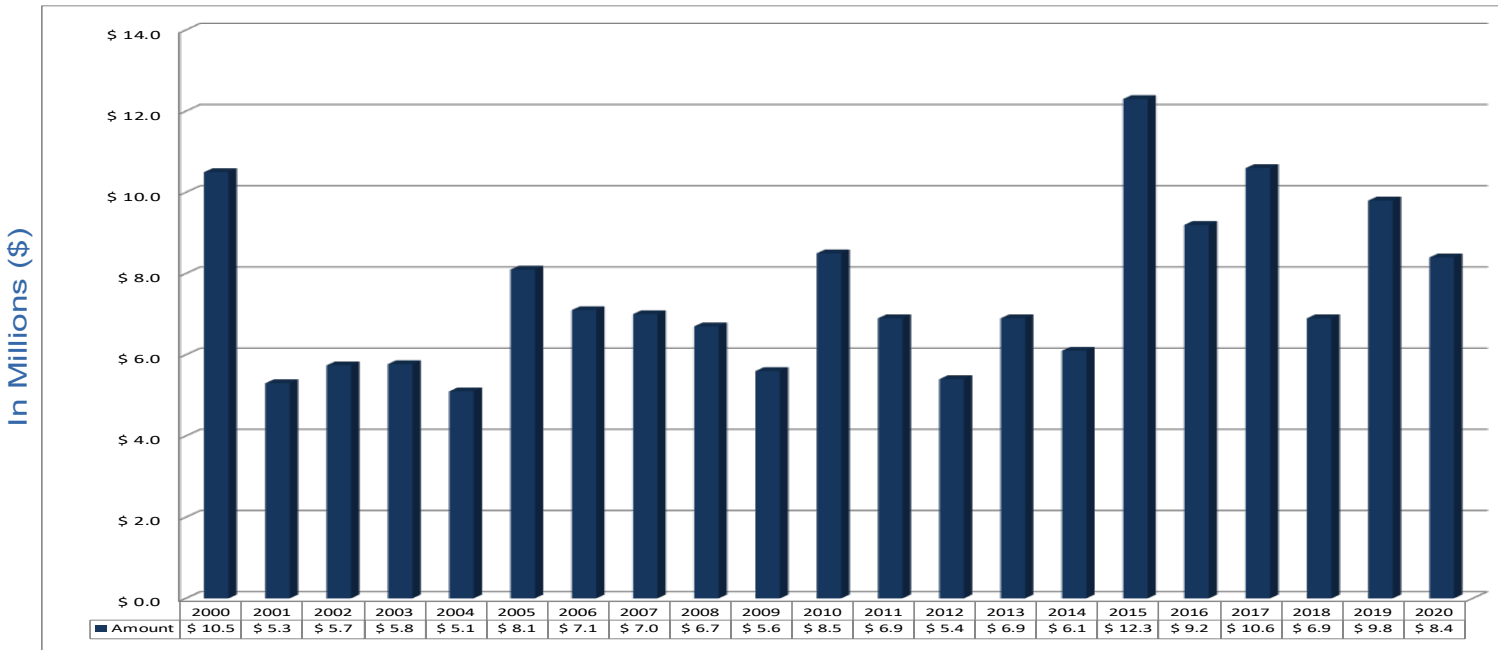
**Amount of 2020 Awards
By Type of Theft: \$8.4 Million**



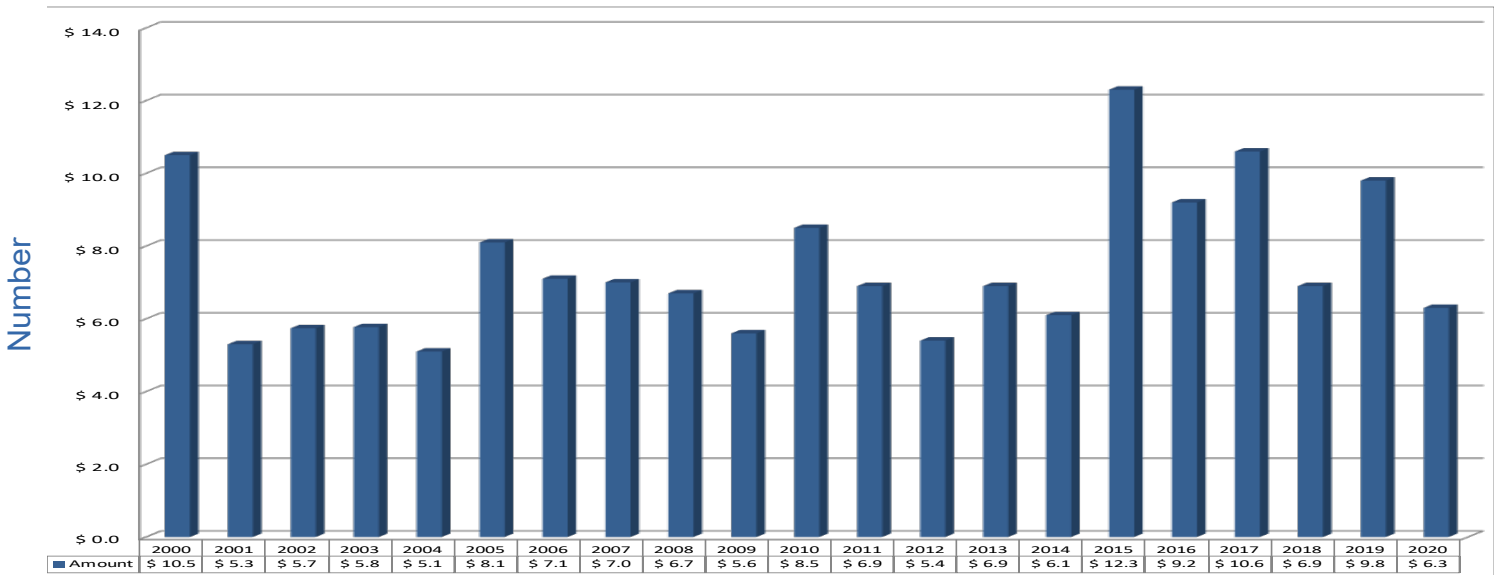
**Amount of Awards Since 1982
By Type of Theft: \$233 Million**



Amount of Awards Approved From 2000-2020 (In Millions \$)
Total Awards Approved Since 1982: \$225.7 Million



Number of Awards Approved From 2000-2020
Total Awards Approved Since 1982: 9,052



Ineligible Claims Since 1982

In 38 years, the Fund has rendered 20,495 determinations in claims. Of these 20,495 claims, 11,416, or 56 percent, were found to be ineligible for reimbursement.

Claims Pending as of December 31, 2020

There were 107 pending claims at the close of 2020. This is a decrease of 52 claims, or 29.6 percent, from the 152 claims which were pending at the end of the prior year.

These 107 pending claims allege total losses of \$19.1 million. The Fund's exposure on these pending claims, adjusted for the \$400,000 maximum limit on awards, is \$12.9 million. This represents a 16 percent decrease from the Fund's \$15.3 million exposure on pending claims at the end of 2020.

Lawyers Involved in Awards 1982 to 2020

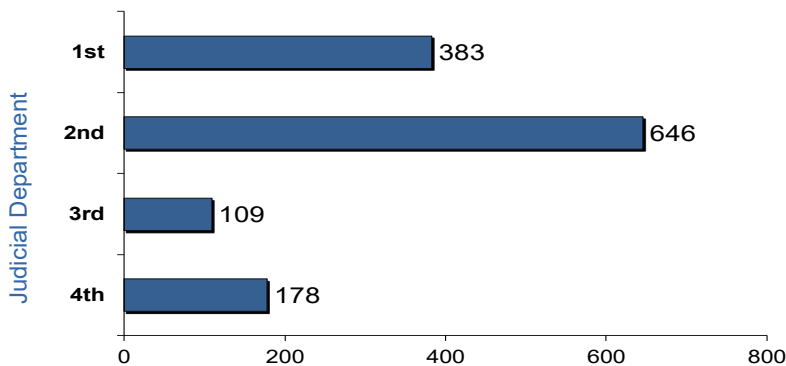
The Trustees' 38-year experience has firmly established that the overwhelming majority of lawyers in New York State are honest and caring and deserving of their law clients' trust.

A tiny percentage of New York's legal profession is each year responsible for the dishonest conduct resulting in awards from the Lawyers' Fund. There are now over 338,000 registered lawyers in New York State as identified in the maps to the right. In 38 years, it is safe to say there have been at least 100,000 additional attorneys since 1982 when awards were first made who no longer practice due to retirement, death or change of careers. From that much larger pool of admitted lawyers over that time, the misconduct of 1,316 former lawyers has led to the 9,079 awards granted by the Fund. In 2020, the Trustees' 114 awards were attributable to dishonest conduct by 46 now suspended, disbarred or now deceased lawyers. Of these 46 former lawyers, 13 were respondents in awards from prior years. The names of 33 dishonest lawyers appear for the first time in 2020 awards.

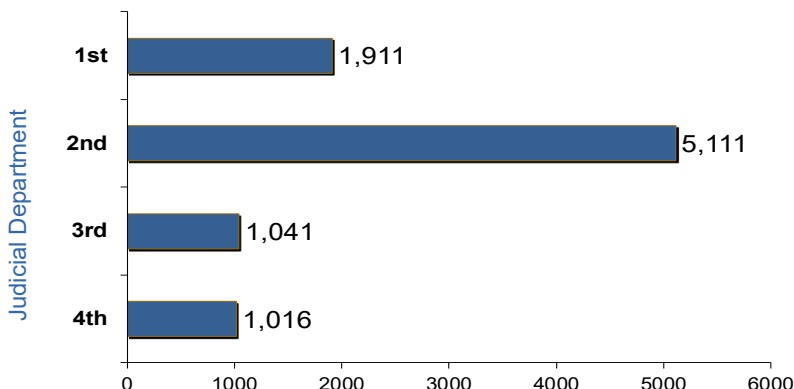
A list of lawyers involved in awards in 2020 is provided in the Appendix. The complete list of lawyers involved in all awards since 1982 is provided on the Lawyers' Fund website: www.nylawfund.org.

Apparent causes of misconduct 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 1,316 former lawyers, and the Fund's 9,079 awards, among the State's judicial departments is represented in the following bar graphs:

Lawyers Involved in All Awards Since 1982 (1,316)



Distribution of Awards Since 1982 (9,079)



First Judicial Department Includes:

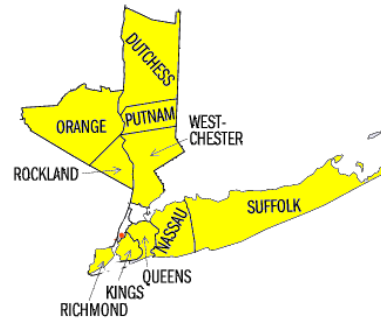
New York and Bronx Counties:



At the close of 2020 99,321 (54%) of in-state attorneys were registered in the First Judicial Department.

Second Judicial Department Includes:

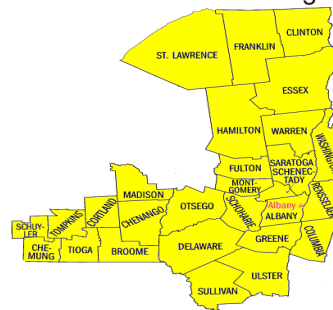
Kings, Richmond, Queens, Nassau, Suffolk, Dutchess, Orange, Putnam, Rockland and Westchester Counties:



At the close of 2020 59,592 (32%) of in-state attorneys were registered in the Second Judicial Department.

Third Judicial Department Includes:

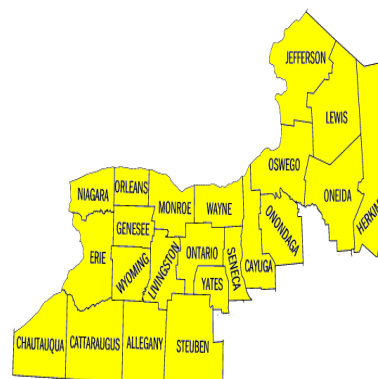
Albany, Broome, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Madison, Montgomery, Otsego, Rensselaer, St. Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Sullivan, Tioga, Tompkins, Ulster, Warren and Washington Counties:



At the close of 2020 11,277 (6%) of in-state attorneys were registered in the Third Judicial Department. An additional 152,989 attorneys registered as Out of State or Out of Country.

Fourth Judicial Department Includes:

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



At the close of 2020 14,886 (8%) of in-state attorneys were registered in the Fourth Judicial Department.

Recommendations

Section 468-b of the Judiciary Law and the Fund's Regulations delegate to the Trustees the statutory responsibility to maintain the integrity of the legal profession and promote public confidence in the administration of justice. To fulfill this statutory responsibility, the Trustees annually recommend changes in legal practice and policy. The Trustees propose the following measures to the judicial, legislative and bar leaders of New York State.

Prohibit ATM (Automated Teller Machine) Withdrawals on Attorney Trust, Special or Escrow Accounts

The Trustees recommend banking regulations and practices be amended to prohibit use of an ATM (Automated Teller Machine) card to make withdrawals from attorney trust, special or escrow accounts.

Current record keeping rules and ethics opinions permit the use of an ATM (Automated Teller Machine) card to make deposits to attorney escrow accounts. These same rules prohibit cash withdrawals from an attorney's escrow account. Despite this prohibition, ATM cards issued for attorney escrow accounts are not currently restricted to prohibit improper cash withdrawal transactions. Given the current state of banking technology, cash withdrawal restrictions could easily be implemented for ATM cards issued on attorney fiduciary accounts and serve as an additional protection for client trust funds.

Interim Suspensions and Restraining Escrow Funds

The Trustees propose that court rules be amended to grant discretion to the Appellate Division 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 grant the Appellate Divisions discretion to restrain attorney escrow accounts of these lawyers who are identified to be a public threat. This measure will protect the interests of legal consumers.

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.

Lawyers who harm their clients by intentionally stealing escrow funds should be disbarred. No questions or excuses. 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 administer properly 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 statements. Absent legislative action, the Trustees propose that 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 named fiduciaries of estates and trusts. This rule could be patterned after the Dishonored Check Reporting Rule. This simple step would discourage and detect thefts.

Recommendations (Cont'd)

Escrow Thefts in Real Property Transactions

The Trustees continue to encourage our bar and judicial leaders to consider and adopt measures to address the recurring problem of escrow thefts in real property transactions.

Since 1982, real property escrow thefts account for the largest dollar amount of reimbursement by the Lawyers' Fund. The Fund's Trustees have reimbursed over \$81 million for these thefts. This represents nearly 40% of all reimbursement from the Fund in 36 years.

In 2019, real property escrow thefts were responsible for the second largest dollar amount of reimbursement by the Lawyers' Fund. Of the \$9.8 million awarded in 2019, \$2.2 million (22%) reimbursed realty losses. While attorneys in the First and Second Departments routinely provide counsel in residential real estate transactions, that is not the practice in the Third and Fourth Departments. First and Second Department practitioners representing sellers ordinarily receive ten percent of the purchase price for deposit into their escrow accounts, leading to the statistic that more than 97% of down payment escrow thefts in real property transactions occur in these two down state Departments.

The few lawyers responsible for these losses cause substantial harm to law clients and to the reputation of the over 332,000 registered lawyers in New York State. The Trustees continue to urge the New York State Bar Association, local bar associations and other interested parties to study and address this problem.

Confidentiality in Attorney Disciplinary Proceedings

The Trustees recommend a uniform disciplinary policy enabling a Grievance Committee to make a prompt referral to the local District Attorney when the Committee has admitted or uncontested evidence of theft by a lawyer.

Section 90 of the State Judiciary Law provides that lawyer disciplinary proceedings shall be "deemed private and confidential", and that all "papers, records and documents" be sealed unless the court sustains the charges of misconduct filed against the respondent lawyer. The Judiciary Law now permits the Appellate Divisions, by written order, to divulge all or any part of disciplinary papers, records and documents upon a showing of good cause.

Lawyers who steal should be criminally prosecuted. A Grievance Committee with admitted or uncontested evidence of larceny by a lawyer should promptly secure an Appellate Division sharing order in order to notify the District Attorney. This policy should help protect law clients and promote public confidence in our justice system.

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.

Attorney Grievance Committees lack the resources to monitor suspended or disbarred lawyers. The unauthorized and illegal practice of law is a threat to 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 clients, adversaries, 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 encourage criminal prosecution of those engaged in the unauthorized practice of law. This enforcement of the penal laws will deter the illegal practice of law and protect legal consumers.

The Trustees are grateful that the recently amended Rules for Attorney Disciplinary Matters now include our prior recommendation that attorneys resigning from the bar for professional misconduct be required to agree in their resignation affidavits not to accept any advance legal fees after their resignation is submitted.

Recommendations (Cont'd)

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 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 protection from this type of loss they should have access to information which would allow them to choose a lawyer who maintains malpractice insurance.

Twenty-seven states now require some form of attorney malpractice insurance disclosure. One 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.

Conclusion

The Trustees remain grateful to Chief Judge Janet DiFiore, the Associate Judges of Court of Appeals, the Clerk of the Court and his staff, and the many in State government, our judiciary and the attorney disciplinary system for their invaluable assistance to the Lawyers' Fund. The Trustees also remain proud of New York's legal profession for its financial and other support to the Lawyers' Fund. Special recognition is due those members of the bar who generously donate their time and talents in assisting claimants before the Fund as a public service, without legal fee.

The Trustees' 38 years of experience has demonstrated that only the tiniest fraction of attorneys admitted to practice in New York have abused their obligation to maintain high standards of integrity when entrusted with law client money and property. These few who disgrace the legal profession cause significant harm to law clients. The Lawyers' Fund for Client Protection therefore continues to have a vital role in our justice system.

Helpful Telephone Numbers

Attorney Grievance 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) 401-3344
Rochester area - (585) 530-3180
Buffalo area - (716) 845-3630

NYS Office of Court Administration

Lawyer Licensing Information
(212) 428-2800

NYSBA Lawyer Assistance Program

(800) 255-0569

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)

Lawyers Involved In 2020 Awards

The following is a list of the 46 now suspended, disbarred or deceased lawyers responsible for the misconduct and resulting client losses reimbursed by the Fund in 2020. The number and amount of awards listed are not cumulative and do not 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.**

Name	JD	#	Amount	Name	JD	#	Amount
Philip G. Ackerman	03	1	\$ 1,195	Matthew J. McGowan	09	2	\$ 21,271
Michael Adges	10	1	\$ 107,194	Paul S. Micho	05	1	\$ 950
Lara C. Bakshi	09	1	\$ 750	Dale J. Morgado	01	1	\$ 11,273
George E. Dazzo	10	2	\$ 30,000	Mark A. Murray	10	2	\$199,665
Alfred C. DiGirolomo	10	2	\$ 650,000	Brian D. Primes	09	2	\$ 16,000
Keisha N. Dixon	09	1	\$ 38,500	Peter L. Rand	10	6	\$247,581
Valmiro L. Donado	11	1	\$ 59,550	John D. Roesser	01	1	\$ 67,836
Gerald P. Douglas	02	6	\$ 577,654	Edmundo Roman-Perez	02	7	\$371,565
Robert A. Evans, Jr.	01	1	\$ 50,000	Luigi Rosabianca	01	1	\$151,576
Lee A. Forlenza	01	4	\$ 717,301	Alan Ross	02	1	\$ 11,667
Barry N. Frank	12	1	\$ 4,000	James M. Russell	03	1	\$372,748
John C. Gallagher, III	09	1	\$ 15,000	Carol E. Ryder	10	1	\$ 3,800
Constantine C. Giannakos	11	2	\$ 198,000	Stuart A. Schlesinger	01	1	\$143,724
Harriet A. Gilliam	10	1	\$ 212,000	Harvey A. Schweiger	10	1	\$ 15,000
Steven D. Hamburg	12	1	\$ 26,500	John O. Shasanmi	03	1	\$400,000
Craig A. Hanlon	01	2	\$ 71,690	Brian D. Solomon	13	2	\$ 52,000
Kendrick D. Harris	01	1	\$ 92,122	Jonathan M. Stein	10	4	\$ 62,400
Paul R. Karan	03	1	\$ 400,000	Michael R. Varble	09	15	\$ 61,831
Kaye & Lenchner	10	21	\$1,338,610	Gustavo L. Vila	09	1	\$400,000
Akhilesh Krishna	11	1	\$ 184,084	Bret C. Votano	10	1	\$100,000
Ronald A. Lenowitz	10	5	\$ 669,100	Edward J. Waters	11	1	\$ 2,916
Lester W. Mackey	10	1	\$ 30,646	Randolph P. Zickl	08	1	\$ 49,417
William F. Mackey	10	1	\$ 139,072				
Barbara L. Maleno	10	1	\$ 10,000				

- refers to Number of Awards in 2020.
JD - refers to Judicial District.



Statistical Tables

Losses Alleged in 2020 Claims

Category of Client Loss	Number of Claims	Percent of All Claims (#)	Amount of Loss Alleged	Percent of Loss Alleged (\$)
Estates & Trusts	13	5.7%	\$2,810,497	10.9%
Real Property Escrow	47	20.4%	\$4,730,954	18.3%
Unearned Fees	97	42.2%	\$2,395,832	9.3%
Settlements	50	21.7%	\$3,895,901	15.1%
Other Escrow	13	5.7%	\$1,345,208	5.2%
Debt Collection	2	0.9%	\$20,000	0.1%
Investment	4	1.7%	\$2,957,617	11.4%
Other	4	1.7%	\$7,680,000	29.7%
Totals	230	100%	\$25,836,009	100%

Losses Alleged Since 1982

Category of Client Loss	Number of Claims	Percent of All Claims (#)	Amount of Loss Alleged	Percent of Loss Alleged (\$)
Estates & Trusts	1,354	6.6%	\$146,707,526	13.4%
Real Property Escrow	4,339	21.1%	\$267,056,169	24.4%
Unearned Fees	7,685	37.4%	\$83,521,096	7.6%
Settlements	1,913	9.3%	\$118,915,521	10.8%
Other Escrow	1,726	8.4%	\$84,910,922	7.7%
Debt Collection	669	3.3%	\$4,033,851	0.4%
Investment	1,865	9.1%	\$320,942,478	29.3%
Other	980	4.8%	\$70,001,722	6.4%
Totals	20,531	100%	\$1,096,089,285	100%

Client Losses in 2020 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	4.4%	\$1,084,282	12.9%	\$1,300,082	83.4%
Real Property Escrow	34	29.8%	\$3,372,766	40.2%	\$3,517,766	95.9%
Unearned Fees	26	22.7%	\$101,287	1.2%	\$101,287	100%
Settlements	35	30.7%	\$2,714,774	32.4%	\$3,138,702	86.5%
Other Escrow	10	8.8%	\$879,079	10.5%	\$879,079	100%
Debt Collection	2	1.8%	\$17,000	0.2%	\$17,000	100%
Investment	2	1.8%	\$217,000	2.6%	\$217,000	100%
Totals	114	100%	\$8,386,188	100%	\$9,170,916	

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	795	8.8%	\$46,631,734	20.0%	\$70,345,987	66%
Real Property Escrow	2,501	27.5%	\$87,887,377	37.7%	\$104,271,992	84%
Unearned Fees	3,077	33.9%	\$9,153,128	3.9%	\$9,227,228	99%
Settlements	988	10.9%	\$36,098,541	15.5%	\$45,054,410	80%
Other Escrow	848	9.3%	\$24,598,358	10.6%	\$33,605,909	73%
Debt Collection	456	5.0%	\$756,044	0.3%	\$811,044	93%
Investment	414	4.6%	\$27,945,009	12.0%	\$33,826,996	83%
Totals	9,079	100%	\$233,070,191	100%	\$297,143,566	

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
Claims Filed	534	375	230	332	341	311	351	486	438	515	627	636	598	909	730	1128	812	442	492	548
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
Claims Approved	1	494	130	183	178	159	202	177	219	200	288	318	362	383	381	625	415	161	205	160
Actual Losses (In Millions \$)	\$ 0.05	\$ 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
Awards (In Millions \$)	\$ 0.0	\$ 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
Lawyers Involved	1	13	26	43	26	24	36	26	38	44	38	52	45	60	38	39	29	28	49	28
% Losses Reimbursed	50%	46%	46%	52%	85%	95%	74%	60%	96%	71%	54%	60%	73%	64%	72%	76%	87%	92%	74%	100%
% Clients Fully Reimbursed	0%	74%	65%	39%	91%	99%	100%	98%	96%	94%	95%	94%	94%	98%	94%	98%	99%	99%	97%	100%
Claims Disallowed	33	201	105	73	164	120	119	169	186	360	253	384	247	366	439	620	522	383	329	383
Total Dispositions	34	695	235	256	342	279	321	346	405	560	540	702	610	749	820	1245	937	544	534	543
Claims Pending Dec. 31	500	180	175	251	250	282	312	452	485	440	526	460	449	609	579	462	337	235	193	198
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
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
Fund Balance (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

Claims Activity Since 1982	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Totals
Claims Filed	499	506	627	729	520	454	480	489	820	601	469	542	621	502	538	351	417	301	230	20,531
Losses Alleged (In Millions \$)	\$ 21.8	\$ 17.4	\$ 26.7	\$ 28.1	\$ 18.6	\$ 31.8	\$ 43.7	\$ 40.6	\$ 89.4	\$ 51.8	\$ 41.8	\$ 53.2	\$ 88.0	\$ 45.5	\$ 42.8	\$ 29.2	\$ 30.2	\$ 29.5	\$ 25.8	\$ 1.1 B
Claims Approved	187	165	196	227	147	185	130	139	198	253	187	218	559	274	155	215	164	125	114	9,079
Actual Losses (In Millions \$)	\$ 5.9	\$ 5.8	\$ 5.1	\$ 8.6	\$ 7.3	\$ 7.1	\$ 6.7	\$ 5.8	\$ 9.3	\$ 9.8	\$ 5.4	\$ 7.5	\$ 9.5	\$ 14.7	\$ 11.6	\$ 10.9	\$ 13.5	\$ 16.1	\$ 9.2	\$ 287.8
Awards (In Millions \$)	\$ 5.7	\$ 5.8	\$ 5.1	\$ 8.1	\$ 7.1	\$ 7.0	\$ 6.7	\$ 5.6	\$ 8.5	\$ 6.9	\$ 5.4	\$ 6.9	\$ 6.1	\$ 12.3	\$ 9.2	\$ 10.6	\$ 6.9	\$ 9.8	\$ 8.4	\$ 225.7
Lawyers Involved	28	37	26	32	35	44	23	36	31	26	31	44	39	37	20	47	30	34	33	1,316
% Losses Reimbursed	98%	99%	100%	94%	98%	98%	100%	97%	96%	69%	100%	96%	64%	84%	80%	97%	51%	51%	61%	
% Clients Fully Reimbursed	98%	98%	100%	98%	98%	97%	100%	99%	98%	98%	100%	98%	99.9%	99%	99%	99%	98%	98%	94%	
Claims Disallowed	281	338	323	327	284	307	351	257	428	310	338	337	351	283	424	304	319	237	161	11,416
Total Dispositions	468	503	519	554	431	492	481	396	626	563	525	555	910	557	579	519	483	362	275	20,495
Claims Pending Dec. 31	229	232	340	515	604	566	565	658	852	883	827	814	525	488	447	279	213	152	107	
Losses Alleged In Pending Claims (In Millions \$)	\$ 13.7	\$ 14.6	\$ 20.7	\$ 17.5	\$ 17.8	\$ 15.7	\$ 30.9	\$ 38.8	\$ 82.3	\$ 81.1	\$ 76.4	\$ 75.9	\$ 76.2	\$ 62.4	\$ 59.9	\$ 50.7	\$ 32.9	\$ 15.3	\$ 19.0	
Exposure on Pending Claims (In Millions \$)	\$ 10.2	\$ 10.3	\$ 15.1	\$ 13.9	\$ 14.8	\$ 14.1	\$ 21.7	\$ 27.1	\$ 42.7	\$ 40.9	\$ 37.0	\$ 33.9	\$ 31.1	\$ 34	\$ 32.0	\$ 25.5	\$ 24.0	\$ 13.3	\$ 12.8	
Fund Balance (Millions \$)	\$ 5.4	\$ 5.5	\$ 8.1	\$ 5.4	\$ 7.0	\$ 3.5	\$ 5.0	\$ 4.5	\$ 5.7	\$ 3.8	\$ 8.4	\$ 7.3	\$ 9.4	\$ 5.0	\$ 4.2	\$ 6.0	\$ 9.8	\$ 5.9	\$ 10.1	

Trustees Regulations (22 NYCRR 7200)

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. For purposes of this subdivision, monies "transferred from any other fund or source" shall include monies paid to the Lawyers' Fund for Client Protection pursuant to Rules 1.15 (f) and 1.15 (g) of the Rules of Professional Conduct (22 NYCRR Part 1200), including earned interest, except that such monies shall not be available for use by the Lawyers' Fund unless the Fund is unable to ascertain the identity of the person or persons entitled to such monies or, during the five years following payment of such monies to the Fund, the Fund has been unable to locate that person or persons, and no valid claim has otherwise been made upon such monies. The Lawyers' Fund's use of such monies shall not extinguish a future valid claim to such monies by persons entitled thereto;

(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, interviews or informal meetings 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 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 willful 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 Rules of Professional Conduct, "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. Unless the attorney accused of dishonest conduct is deceased, a claimant may be required to file both disciplinary and criminal complaints against the attorney and provide copies of such complaints within 30 days of the date of the Fund's letter acknowledging receipt of an application for reimbursement. 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.

(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 \$400,000.

(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.

