

**Pennsylvania**

**Lawyers**

**Fund**

**for**

**Client**

**Security**

**1998 Membership:**

Carl E. Esser, Esq., *Chairman*  
Robert L. Capoferri, *Vice Chairman*  
George J. Amonitti, M.D.  
Paul S. Diamond, Esq.  
Stuart D. Fiel, Esq.  
William V. Lamb, Esq.  
Evans Rose, Jr., Esq.  
Bernard W. Smalley, Sr.  
Richard A. Zappala, Esq.

**Staff:**

Arthur R. Littleton, Esq., *General Counsel*  
Kathryn J. Peifer, *Executive Director*  
Susan L. Erdman, *Administrative Assistant*

**Legal Authorization:**

Pa. Constitution, Article V, § 12  
Pennsylvania Rules of Disciplinary Enforcement, §501 *et seq.*

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## History/Background

Originally known as the Pennsylvania Client Security Fund, the Pennsylvania Lawyers Fund for Client Security was established by the Pennsylvania Supreme Court on April 30, 1982, as a means of helping clients recover some or all losses of money and/or property stolen from them by their attorneys. It is funded by a special annual assessment paid by any attorney admitted to practice law in Pennsylvania. Clients may receive up to \$50,000 for any claim.

The fund is supervised by the Pennsylvania Lawyers Fund for Client Security Board. This board includes five members of the bar of the Supreme Court and two non-lawyer public members. Each member's term is three years in length and a member may serve a maximum of two consecutive terms. Approximately one-third of the terms expire each year.

## 1998 Claims Statistics

Statistics for the 1998-99 fiscal year can be found in Table 3.14.1.

The fund received 189 claims alleging a loss of \$3,486,517 during FY 1998-99. Chart 3.14.2 on page 96 is a breakdown of amounts claimed by category. Chart 3.14.3 on page 97 gives comparisons of claims awarded versus claims rejected, both in terms of numbers and dollar amounts. Chart 3.14.4 on page 98 is a comparison of claims awarded, rejected and discontinued, both cumulatively and in 1998-99.

### *Claims Categories*

**Fiduciary funds** - Theft of estate funds and trust/escrow funds consistently tops the list of claims filed against attorneys. Combined, these two types of theft during FY 1998-99 cost the fund \$1,188,511, or 64.97%, of its total award dollars.

<u>Claims</u>	<u>No.</u>	<u>Amount</u>
1998-99		
Awarded	142	\$1,829,267
Rejected	71	2,197,107
Discontinued	<u>21</u>	<u>200,615</u>
Total	234	\$4,226,989
Pending	157	

Table 3.14.1

**Lawsuit Settlement Proceeds** - Claims of misappropriation of settlement proceeds often occur when an attorney settles a lawsuit without the knowledge or consent of the client. The attorney receives the funds and fails to remit them to the client. Also included in this category are claims involving attorneys who withhold funds from settlement proceeds to pay clients' medical providers and fail to make the payment/s. Payment of \$265,838 to 22 claimants fitting this category were made in 1998-99, 14.53% of the total dollars awarded.

**Fraud and deceit** - The conversion of funds through fraudulent representations or activities by the attorney represented the third highest payment category in 1998-99 with awards to eight claimants totaling \$216,172, or 11.82% of the total dollars awarded.

Claims involving fraud and deceit often occur where an attorney induces a client to permit him/her to hold the client's monies for a certain period of time with the promise of interim interest payments and/or immediate access to the monies. Interest payments are then either not made and/or access is not provided when requested, or an attorney abuses the trust placed in him/her by obtaining a loan from a client, not repaying it and never intending to repay it.

The types of claims which typically fall within this category are those where a long-standing attorney/client relationship has existed. They tend to be the most difficult to evaluate and are decided on a case-by-case basis.

Notwithstanding the award amounts reported, it should be noted that claims are filed against less than one percent of all Pennsylvania licensed attorneys.

## 1998 Activities

The board met in Mendenhall, Hershey, Pittsburgh and Scranton in FY 1998-99.

The board continued to make educating the legal community about the fund a high priority in 1998-99. This included hosting dinners on the eve of board meetings for the judiciary, bar leaders and prominent local citizens from in and around the counties in which the board meets.

### *Restitution and Subrogation Efforts*

The fund received \$677,371 in subrogation and restitution payments during FY 1998-1999. Of this amount, \$600,000 was received in settlement of the fund's claim against a constructive trust pursuant to an orphans' court decision. This amount represents approximately one-half of the awards paid by the fund as a result of the covered attorney's actions.

Two other claimants in the constructive trust proceedings who were denied recovery by the orphans' court appealed to the Pennsylvania Superior Court. The Superior Court remanded the matter back to the orphans' court. The fund and other parties to the action have appealed the decision of the Superior Court to the Supreme Court of Pennsylvania. If this appeal is unsuccessful, the fund may be required to disgorge a portion of the recovered funds.

### *Mandatory Overdraft Notification*

Pennsylvania Rules of Disciplinary Enforcement 221 requires financial institutions to report to the fund all checks drawn on attorney fiduciary accounts which contain insufficient

funds. In 1998-99 the fund received 234 overdraft notices, 212 of which were reviewed and dismissed and 16 of which were referred to the Office of Disciplinary Counsel (ODC). Six remained pending at the end of the fiscal year.

## County Bench, Bar Meetings

The board has been holding meetings with leaders of the county benches and bars in conjunction with the board's quarterly business meetings since 1989. These meetings keep the county bench and bar leaders informed about the fund's activities, both statewide and regionally, and request the assistance of the bench and bar in carrying out the fund's mission.

To date, the fund has met with the following counties:

Allegheny County (1983, 1986-89, 1991, 1993-1998)

Cambria County (1998)

Centre County (1995)

Chester County (1990, 1998)

Cumberland County (1998)

Dauphin County (1984-85, 1989, 1991, 1993, 1996, 1997, 1999)

Delaware County (1994, 1997)

Erie County (1989, 1992, 1994)

Fayette County (1992)

Lackawanna County (1990, 1999)

Lancaster County (1990)

Lehigh County (1989)

Luzerne County (1996)

Monroe County (1992)

Northampton County (1994)

Philadelphia County (1982-88, 1990-93, 1995-96, 1998)

## Lawyers Concerned for Lawyers

With prior approval of the Supreme Court, the Pennsylvania Lawyers Fund for Client Security may provide funding to non-profit

organizations that assist Pennsylvania lawyers and judges who are impaired by alcohol or drugs. In accordance with this rule, during FY 1998-99 \$99,440 of funding was given to the organization known as Lawyers Concerned for Lawyers.

Pennsylvania attorneys should note the extent of their fund's operations and that it provides meaningful services to the profession in return for that portion of the annual lawyer assessment fee, which each active attorney contributes to its funding.

### National Ranking

The Pennsylvania Lawyers Fund for Client Security continues to rank among the top four funds in the United States in terms of both awards made and claims processed, as determined through the most recent American Bar Association Survey of Client Protection Funds. The funds in California, New York and New Jersey are the other most active organizations.

### Contact Person

The contact person for the fund is executive director, Kathryn J. Peifer. She may be reached in care of the fund at 5035 Ritter Road, Suite 900; Mechanicsburg, PA 17055; (800) 962-4618 or (717) 691-7503.



## Categories of Claims

Amounts Awarded - 1998-99

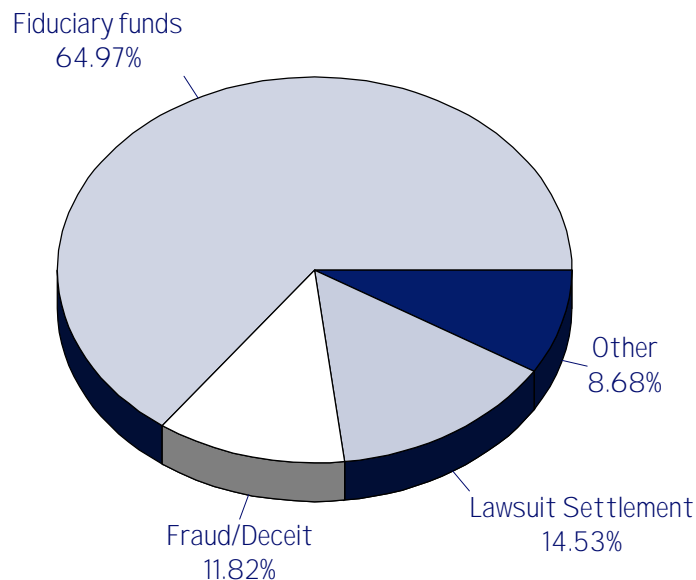


Table 3.14.2

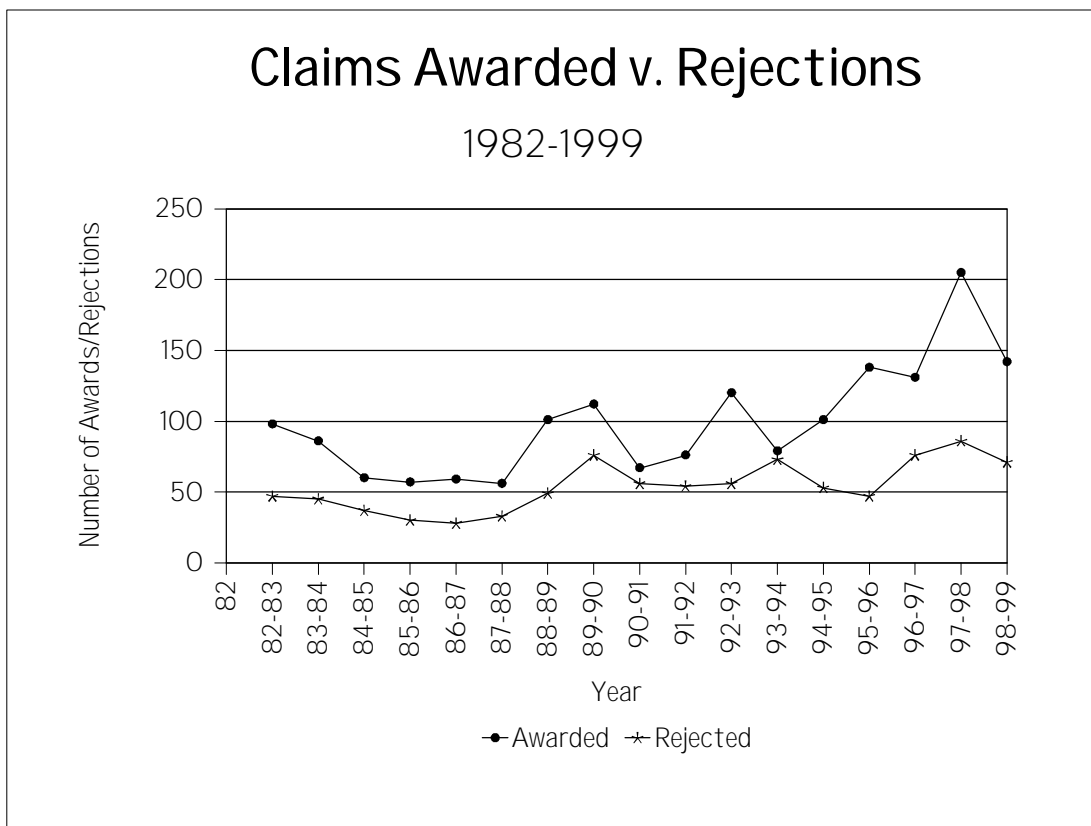
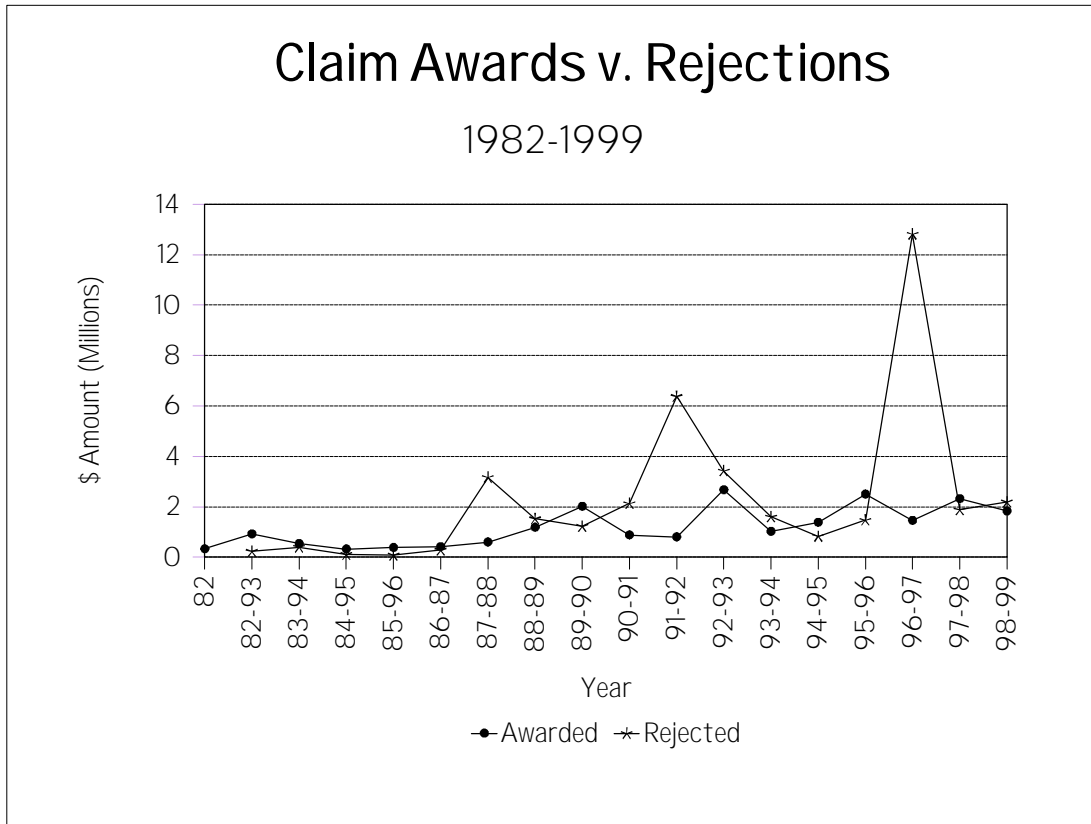
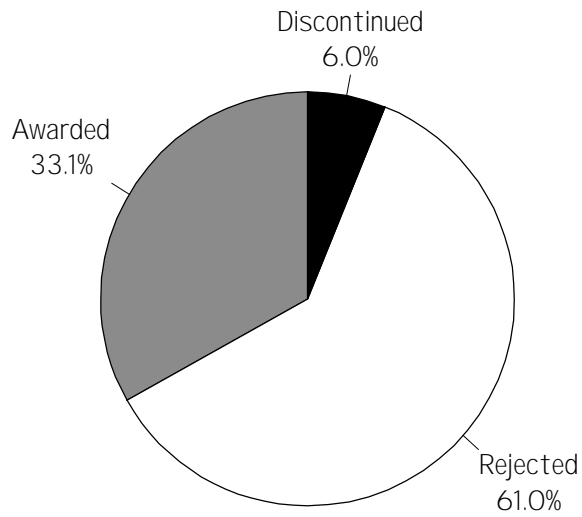


Table 3.14.3

# Comparison of Claim Dispositions

Cumulative



1998-99

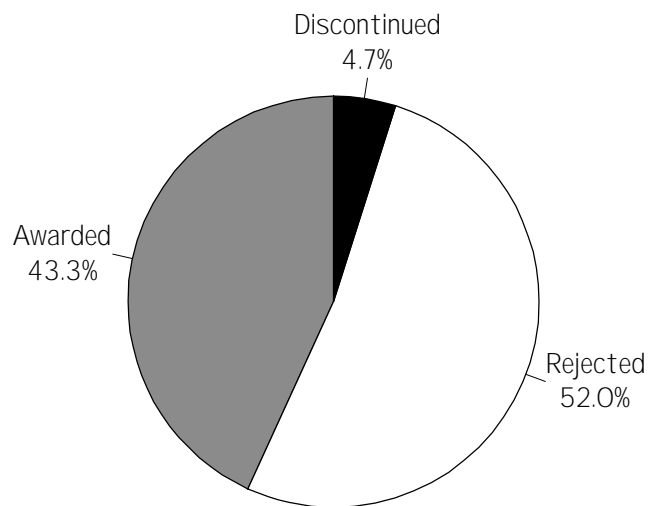


Table 3.14.4