

Pennsylvania

Lawyers

Fund

for

Client

Security

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Arthur R. Littleton, Esq., *General Counsel*
Tricia W. Nagel, *Executive Director++*
Kathryn J. Peifer, *Executive Director#*
Susan Erdman, *Administrative Assistant*

- * Appointment as Chairman expired 4-15-97
- ** Appointed Chairman 4-16-97
- + Appointed Vice Chairman 5-15-97
- ++ Resigned 5-97
- # Effective 5-97

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.

1997 Claims Statistics

Statistics for the 1996-97 and 1997-98 fiscal years can be found in Table 3.13.1.

The fund received 364 claims alleging a loss of \$10,124,231 during FY 1996-97*, the highest number ever received, and 205 claims alleging a loss of \$5,425,944 in FY 1997-98. Charts 3.13.2* and 3.13.3* on pages 89 and 90 are a breakdown of amounts claimed by category. Charts 3.13.4* and 3.13.5* on page 91 give comparisons of claims awarded versus claims rejected, both in terms of numbers and dollar amounts. Chart 3.13.6* on page 92 is a comparison of claims awarded, rejected and discontinued, both cumulatively and in 1997-98.

*Note: These figures do not include an extraordinary event in which one attorney misappropriated the settlement proceeds from a class action asbestos suit. To do so would have given the statistics a distorted, unrealistic slant. For an explanation of the incident, see Extraordinary Events under Claims Categories.

<u>Claims</u>	<u>No.</u>	<u>Amount</u>
1996-97*		
Awarded	131	\$1,456,860
Rejected	76	12,814,040
Discontinued	27	231,931
Pending	293	
1997-98*		
Awarded	205	\$2,317,071
Rejected	86	1,880,204
Discontinued	50	890,074
Pending	157	

*These figures do not include the claims arising from an extraordinary event in which one attorney misappropriated the proceeds of an asbestos litigation settlement. Doing so would have given the figures a distorted, unrealistic slant. See Extraordinary Events under Claims Categories for an explanation of the incident.

Table 3.13.1

Claims Categories

Extraordinary Events - The fund experienced two extraordinary events during 1996-97, which resulted in an increase in the annual assessment from \$45 to \$70 for the 1997-98 fiscal year.

The first incident involved the actions of one attorney and resulted in approximately 100 claims. Of these 100 claims, 82 awards totaling \$1,131,461 were made in 1997-98. The fund will recover a portion of these funds as a result of a settlement reached in a constructive trust claim. See Restitution and Subrogation Efforts.

The second incident involved the misappropriation by one attorney of settlement proceeds in a class action asbestos lawsuit. The claim included potentially 966 claimants and more than \$1.5 million in aggregate awards. The fund, with assistance from bankruptcy court, eventually awarded \$1,529,569 to 730 claimants in 1996-97 and \$164,404 to 74

claimants in 1997-98. Including these figures in the statistics would have resulted in the fund having received 1,330 claims in 1996-97 and awarding \$2,986,429 to 861 claimants. Lawsuit Settlement Proceeds would have been the largest payout category with an aggregate total payout of \$1,657,566.

Efforts are still being made to locate approximately 150 potential claimants who may be owed an aggregate award of approximately \$360,000.

Fiduciary funds - After adjustment for extraordinary events, 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 1996-97 cost the fund \$1,003,685, or 68.9%, of total award dollars. In FY 1997-98 they cost the fund \$1,690,336, or 72.95%, of total award dollars. Fifty-three claims in 1996-97 and 95 claims in 1997-98 were paid alleging attorney theft from estate or trust/escrow monies.

Fraud and deceit - Although only three claims in this category were paid during 1996-97, this category ranked as the second highest in award dollars during this fiscal year, with \$150,000, or 9%, of 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.

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 \$198,115 to 18 claimants fitting this category were made in 1997-98.

Non-Performance - The acceptance of unearned fees or retainers represented the third highest payment category in both 1996-97 and 1997-98, with \$140,219 being paid to 52 claimants in the former and \$170,133 being paid to 75 claimants in the latter.

The fund has no jurisdiction over fee disputes. Claims of this nature must usually go through a county fee dispute process. If the Fee Disputes Committee determines that all or part of the fees or retainer paid were not earned and the attorney does not return them, the board will then consider the claim.

It should be noted that claims are filed against less than one-half of one percent of Pennsylvania's licensed attorneys.

1997 Activities

The board met in Philadelphia, Wilkes-Barre, Pittsburgh and Harrisburg in FY 1996-97 and in Philadelphia, Johnstown, Pittsburgh and Mechanicsburg in FY 1997-98.

The board continued to make educating the legal community about the fund a high priority in 1997-98. This included hosting dinners on the eves of board meetings for the judiciary and bar leaders in and around the counties in which the board meets.

Restitution and Subrogation Efforts

In 1996-97 the fund doubled the amount of funds recovered through direct restitution payments, from \$26,493 in FY 1995-96 to \$52,260. In 1997-98 it received \$434,054, including a \$300,000 payment from the constructive trust mentioned under Extraordinary

Events. This \$300,000 payment is a 78% recovery of the awards paid by the fund.

Shortly before the end of the 1997-98 fiscal year, the fund reached a settlement against another constructive trust. Proceeds of \$600,000, approximately one-half of the total awarded, will be paid to the fund in 1998-99.

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 1996-97 the fund received 168 overdraft notices, 140 of which were reviewed and dismissed and 28 of which were referred to the Office of Disciplinary Counsel (ODC). In 1997-98, 150 notices were received, of which 146 were dismissed and four were referred to the ODC.

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)
- Center County (1995)
- Chester County (1990)
- Cumberland County (1998)

- Dauphin County (1984-85, 1989, 1991, 1993, 1996, 1997)
- Delaware County (1994, 1997)
- Erie County (1989, 1992, 1994)
- Fayette County (1992)
- Lackawanna County (1990)
- Lancaster County (1990)
- Lehigh County (1989)
- Luzerne County (1996)
- Monroe County (1992)
- Northampton County (1994)
- Philadelphia County (1982-88, 1990-93, 1995-96)

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 1996-97 \$69,344 of funding was given to the organization known as Lawyers Concerned for Lawyers. In FY 1997-98, the fund gave \$93,950 to the organization.

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.

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.

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. 

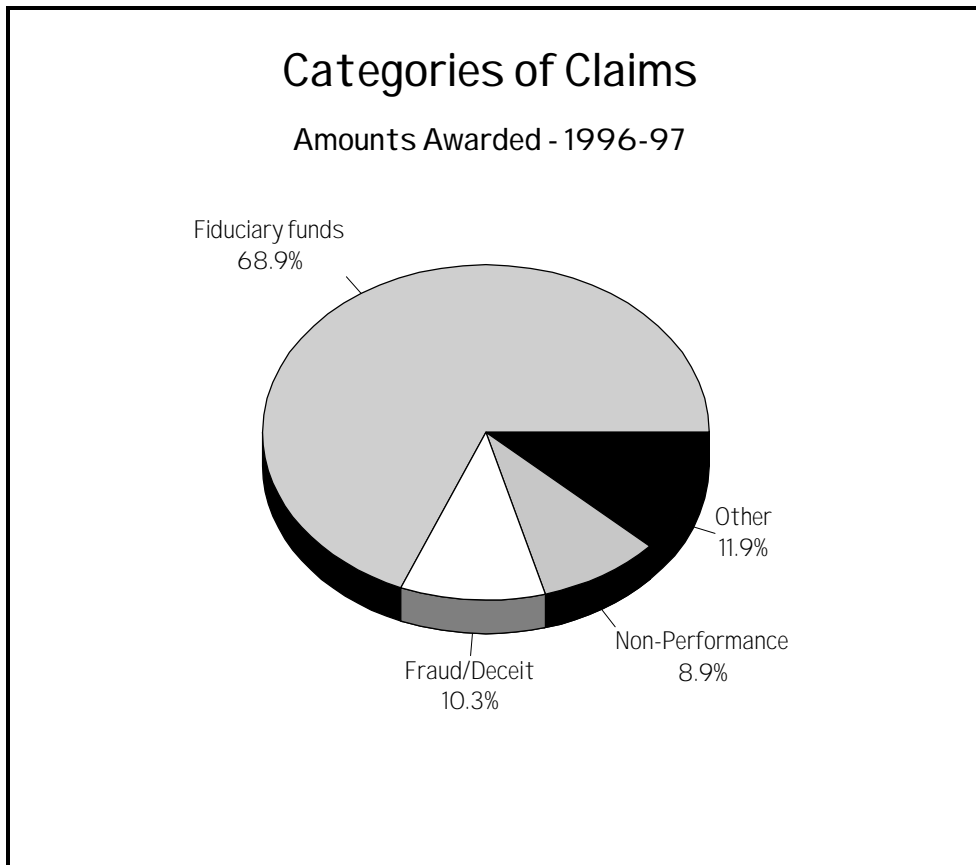


Table 3.13.2

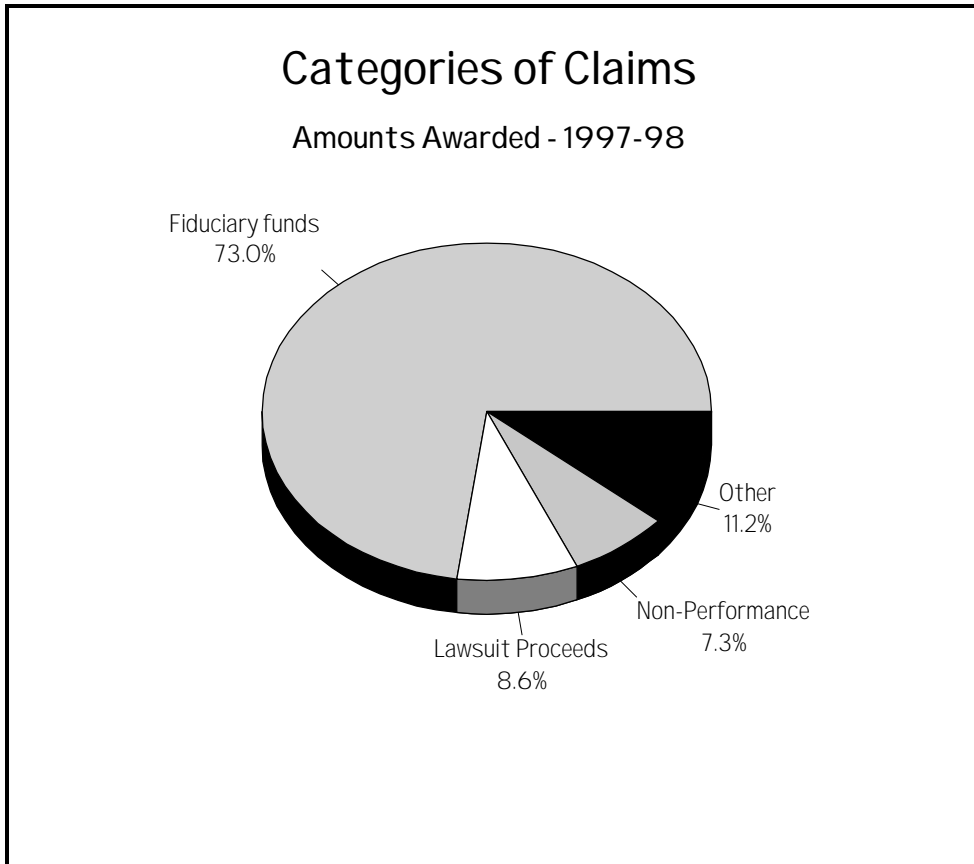


Table 3.13.3

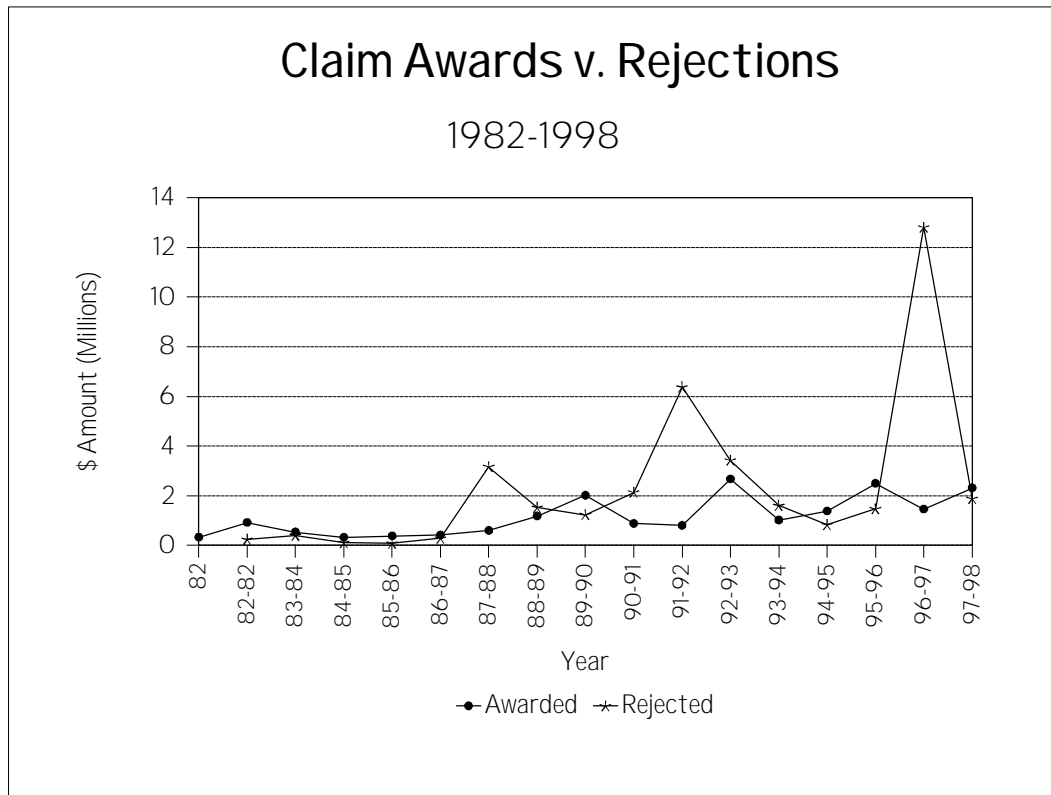


Chart 3.13.4

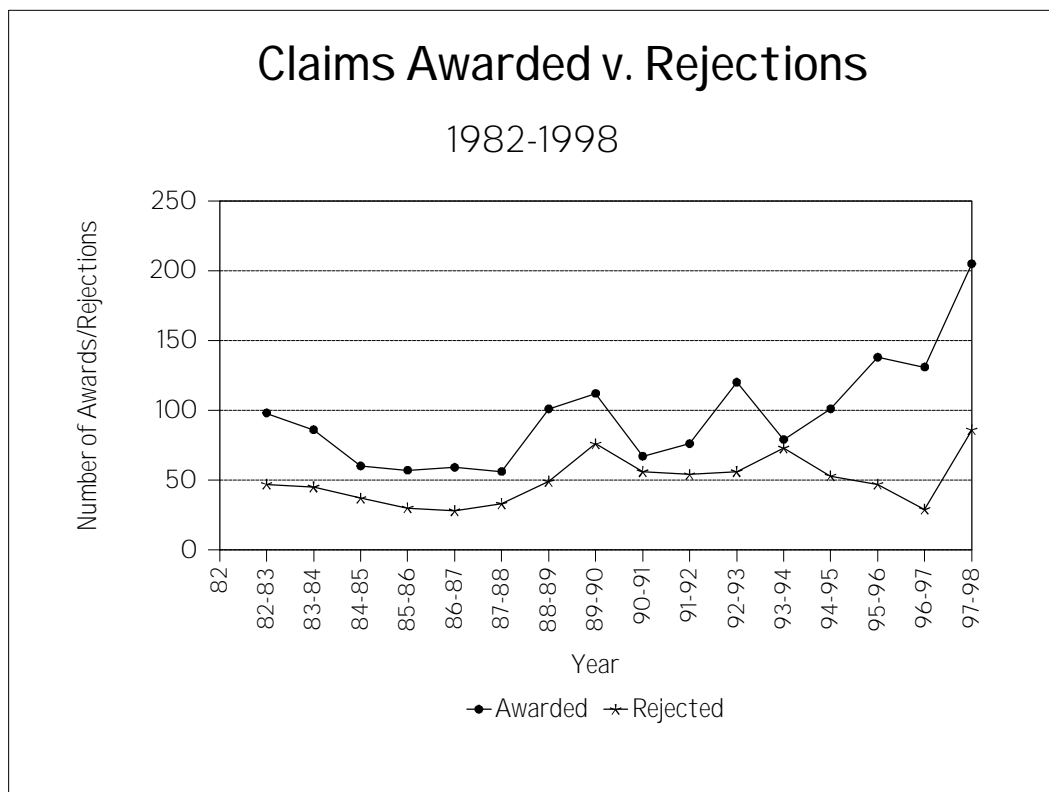
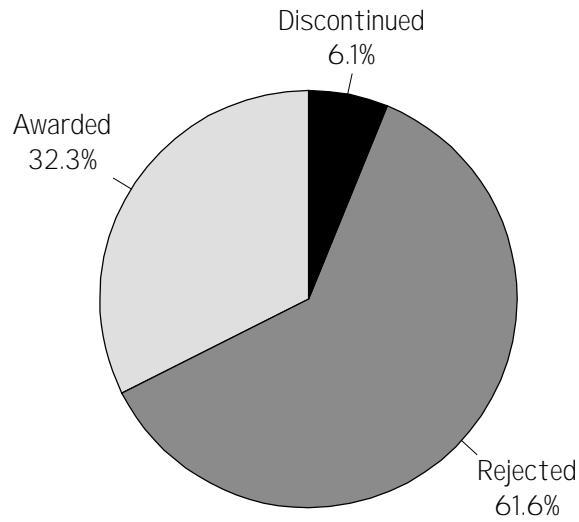


Chart 3.13.5

Comparison of Claim Dispositions

1982-1998



1997-98

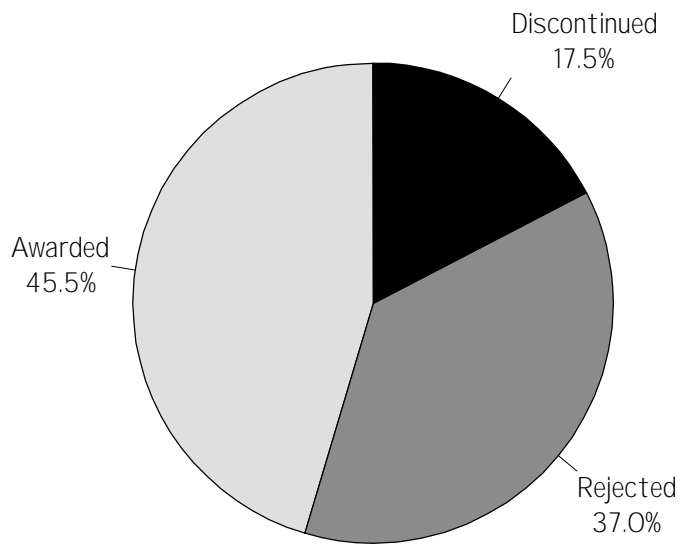


Table 3.13.6