

**CLAIMS FOR REIMBURSEMENT INVOLVING  
LIENS OR INTERESTS OF THIRD PARTIES**

Assuming only law clients can be claimants, what can or should a Fund do when third-parties claim a lien or other interest in misappropriated monies?

Should a Fund pay the claimant anyway? Pay the lienholder on behalf of a claimant? Reject the claim?

**Applicable Statutes or Regulations in New York**

Section 468-b of New York's Judiciary Law provides that the Fund's Board of Trustees shall have the power to reimburse "losses caused by the dishonest conduct of attorneys...". Dishonest conduct is defined as the "misappropriation or wilful misapplication of clients' money, securities, or other property...." (emphasis supplied)

Trustees' Regulations state that a claim shall be considered for reimbursement provided that:

(1) the alleged loss involves the wrongful taking of money or other property belonging to a law client or other person who entrusted it with an attorney...; and

(2) the claim is made directly by the client or other person.... [emphasis supplied]

**CASES OF INTEREST**

Advance Finance Co., Inc. v Trustees of the Clients Security Fund of the Bar of Maryland. 625 A 2d 660 (Md. 1995). Finance company that loaned law clients money, secured by assignments of personal injury settlement proceeds, has standing to seek reimbursement from client security fund where law firm misappropriated settlement proceeds.

Monumental Life Insur. Co. v Trustees of the Clients' Security Trust Fund, 588 A.2d 340, (Ct. App. 1991). Maryland Court of Appeals holds that a life insurance company which paid insurance proceeds to improper party as a result of lawyer's dishonest conduct cannot recover loss from clients' security trust fund: the insurance company was not a law client of the dishonest lawyer.

Seminole Tribe of Florida v Florida. 517 U.S. 44 (1996) Unites States Supreme Court decision strengthening state sovereign immunity granted by the 11<sup>th</sup> Amendment. States immune from suit in federal court.

## Examples

What determination would your Fund make if the following liens or third-party interests are asserted in the claim summaries below?

### I. Claim Summary:

Lawyer represents claimant in a personal injury action on a one-third contingency basis. Claimant agrees to a \$90,000 settlement. Claimant's share of settlement after legal fees is \$60,000.

#### **[1] WORKERS' COMPENSATION LIEN:**

Lien for workers' compensation benefits paid to the claimant is asserted against the claimant with the Fund. State statute grants a workers' compensation lien against the proceeds of any recovery in the underlying negligence action.

(A) Workers' Compensation lien of \$10,000?

New York: Award the claimant \$50,000, the \$60,000 net settlement amount he should have received less the \$10,000 lien. Make no payment to Workers' Compensation. Rationale: Fund's award is a matter of grace, not a replacement of the stolen personal injury settlement.

(B) Workers' Compensation lien of \$75,000?

New York: Deny claim when lien would deplete an award. Again, rationale is that the Fund's award does not replace the stolen personal injury settlement. Award is not made if it would not benefit the claimant.

#### **[2] INSURANCE SUBROGATION CLAIM:**

Insurance company asserts interest in claimant's award as result of insurer's payment of no-fault benefits to claimant. Claimant executed agreement with insurer subrogating the insurer, to the extent of its payments, to claimant's rights against the negligent party liable for their injuries.

(A) Insurance subrogation claim of \$10,000?

New York: Award the claimant \$50,000, the \$60,000 net settlement they should have received less the \$10,000 subrogation claim of insurer. No payment to insurer. Rationale: Again, the Fund's award is a matter of grace, not a replacement of the stolen settlement proceeds to which the subrogation claim attaches.

(B) Insurance subrogation claim of \$75,000?

New York: Deny claim when insurer's subrogation claim would deplete an award. Award is not replacement of stolen settlement. Aim is to restore claimant to same position they would be in if no theft had occurred. To pay an award would be a windfall to the claimant.

**[3] SOCIAL SERVICES' LIEN:**

Social Services holds a lien for the cost of nursing home care provided to the claimant. State statute provides that the social services' lien attaches to any award or settlement in any action or proceeding arising from the claimant's injuries.

(A) Social Services' lien of \$10,000?

New York: Award the claimant \$50,000, the net \$60,000 settlement she would have received less the \$10,000 lien. No payment to Social Services. Rationale: Fund's award does not replace the stolen settlement proceeds to which the lien attaches. Also, County Social Services Agency is ineligible claimant. New York Regulations provide that loss incurred by government agencies are not eligible for reimbursement.

(B) Social Services' lien of \$75,000?

New York: Deny reimbursement. Lien would deplete a \$60,000 award. Rationale: Fund's award does not replace the stolen settlement proceeds to which the lien attaches. Any award to claimant would be a windfall.

**[4] SOCIAL SERVICES LIEN AND CLAIM OF CONSERVATOR**

II. Claim Summary: Same \$90,000 theft of settlement proceeds. The claimant would have received net settlement of \$60,000. There are no other assets. Social Services asserts lien of \$75,000 for cost of nursing home care being provided to claimant who is now an incompetent and in a nursing home. Social Services threatens to terminate payment for claimant's care if its lien is not honored by the Fund. Conservator has incurred \$5,000 in expenses.

Claimant's court-appointed conservator files a claim with the Fund. What determination would your Fund make?

New York: Award the conservator \$5,000 to reimburse her expenses. Deny payment to Social Services because its lien would deplete any award. Fund's award does not replace stolen settlement proceeds to which lien attaches. Deny payment to the

claimant since an award would be a windfall.

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**[5] ATTORNEY'S LIEN**

Assume that the lawyer who stole the settlement proceeds replaced a "good" lawyer who was originally retained by claimant to prosecute the negligence action.

The "good" lawyer files a claim with the Fund for what he claims is his portion of the one-third contingency fee the dishonest lawyer was to pay him.

Would your Fund pay an award?

If yes, how would the award amount be determined?

New York: Pay award directly to the "good" lawyer, after the lawyer has obtained a court order fixing the amount of his lien for legal fees.

**[6] MEDICAL BILLS**

What would your Fund do if a doctor files a claim for payment of the claimant's medical bills for treatment given the claimant?

What would your Fund do if the claimant's lawyer had represented to the doctor that he would pay the claimant's medical bills out of the claimant's settlement proceeds.

If an award is made, how would your Fund make payment?

**CLAIMS FOR REIMBURSEMENT INVOLVING  
THIRD PARTY LIENS OR INTERESTS  
IN THEFTS IN REAL ESTATE TRANSACTIONS**

III. Claim Summary:

Buyer purchases residence from seller. Lawyer represents buyer's mortgage lender. Lawyer misappropriates mortgage proceeds. Mortgage lender is bankrupt.

**[1] REAL ESTATE BROKER'S COMMISSION:**

Among the mortgage proceeds misappropriated is the seller's or buyer's real estate broker's commission. Lawyer's checks to the real estate broker bounce.

Would your Fund pay a claim filed by the real estate broker?

How would your Fund reimburse the loss?

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**[2] SATISFACTION OF FIRST MORTGAGE:**

Lawyer's check to first mortgagee in satisfaction of the seller's mortgage bounces after lawyer misappropriates the mortgage proceeds. First mortgagee files foreclosure proceeding. Mortgage debt now includes interest, penalties and legal fees for the foreclosure. Fee and mortgagee title insurance purchased.

Claims for reimbursement are filed with your Fund by the seller, buyer and first mortgagee.

What determination would your Fund make in each claim?

How would an award of reimbursement be paid?

What steps would your Fund take to recover restitution?

New York: (1) Seller - Pay award reimbursing seller's mortgage debt, including interest, penalties and other charges. Pay award directly to the mortgagee. Obtain assignment of the mortgage and subrogation agreement from seller.

(2) Buyer - No award to buyer. Award to seller's mortgagee satisfies buyer's obligation to seller. Obtain subrogation agreement from buyer in consideration for payment of buyer's obligation to seller. Pursue recovery from buyer's title insurer.

(3) First Mortgagee - its loss is reimbursed in claim filed by seller.

**BANKRUPTCY**

IV. Claim Summary:

Lawyer misappropriates \$50,000 from his law client. The client then files for Chapter 7 bankruptcy protection. He has assets of \$100,000, which includes a \$50,000 claim with your Fund. He has debts of \$500,000.

Would your fund pay an award in this claim?

If an award would be granted, how would payment be made?

New York: Deny reimbursement. Rationale: bankrupt claimant would not benefit from the award which would be consumed by the claimant's creditors in bankruptcy or wind up paying the costs of administering the debtor's bankruptcy proceeding. Proposed amendment in New York would provide that losses incurred by

estates in bankruptcy proceedings would be ineligible for reimbursement.

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V. Claim Summary:

Lawyer steals \$20,000 in escrow funds from his client. From the \$20,000 escrow, \$2,000 was owed to a creditor of the client for a public adjuster's fee. The creditor is in Chapter 7 bankruptcy with assets of \$100,000 and debts of \$1 million.

What determination would your Fund make in claims filed by the law client and the creditor?

What if the law client's debt to the creditor was a non-dischargeable debt in bankruptcy? Different result?

New York:

(1) Law Client - pay \$18,000, the amount of the escrow balance the client should have received. Do not pay the \$2,000 portion of the loss because it would be consumed in the creditor's bankruptcy proceeding with no benefit to the law. If the law client would remain personally liable for the debt then we would pay the creditor because it would personally benefit the client.

(2) Creditor - deny reimbursement because an award of \$2,000 would be consumed in the creditor's bankruptcy proceeding.