2008 ANNUAL REPORT

Oregon State Bar

PROFESSIONAL LIABILITY FUND

www.osbplf.org

Malpractice Prevention Education for Oregon Lawyers

By Ira R. Zarov
PLF Chief Executive Officer

After three consecutive years of positive performance and excellent claim results in 2008, overall results for the year were compromised by the downturn in investments. In calendar year 2008, the PLF Primary and Excess Programs ended with a loss of $7.5 million. PLF investments lost approximately 20.6% in the course of the year and are responsible for the 2008 loss. This loss follows 2007's net income of $5.7 million, 2006's net income of $1.7 million, and net income of $2.3 million in 2005. By comparison, the PLF suffered losses of $600,000 in 2003 and $6.5 million in 2002.

Although the 2008 loss is large, it does not compromise the fiscal integrity of the PLF. The results are unique because the loss comes despite excellent claim results for the year. Our latest actuarial report resulted in a decrease in claim liabilities of $1,329,625. That adjustment primarily reflects a decrease in the predicted severity of 2007 claims. Most often, claim results, rather than investment results, are the most critical factor in the PLF's fiscal picture. Even in these difficult financial times, the decrease in liabilities is an encouraging result that better represents the fiscal health of the PLF than the outlier investment results—results that fall a historic three standard deviations from the norm.

As noted, the PLF investment loss was just over 20.6%. This was much less than the losses experienced by equity markets and is a product of the PLF's conservative and disciplined asset allocation policies. The investment policies require that the PLF portfolio be diverse and that investments in a particular category are rebalanced on a regular basis to ensure that the benefits of the policies are realized. The policies are reviewed annually by the PLF Board of Directors (BOD) with the help of a highly respected investment advisory firm. In addition, the PLF Investment Committee meets once a year with each of representatives of the investment firms chosen to manage PLF funds.

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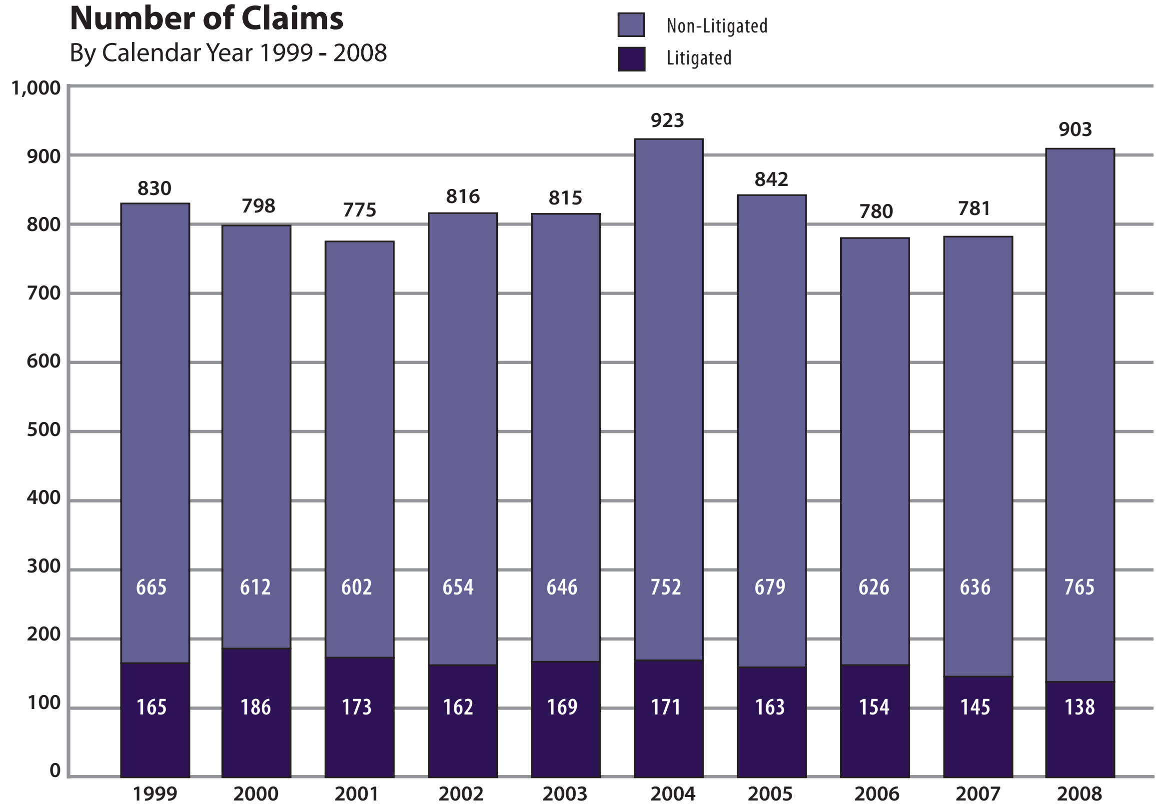
PLF Statistics
1994 – 2009

	Assessments	Claims
1994	$2100	681
1995	$2100	825
1996	$2100	721
1997	$2200	769
1998	$2100	761
1999	$1900	830
2000	$1800	798
2001	$1800	775
2002	$2200	816
2003	$2600	815
2004	$2600	923
2005	$3000	842
2006	$3000	780
2007	$3200	781
2008	$3200	903
2009	$3200	884*

* Projected

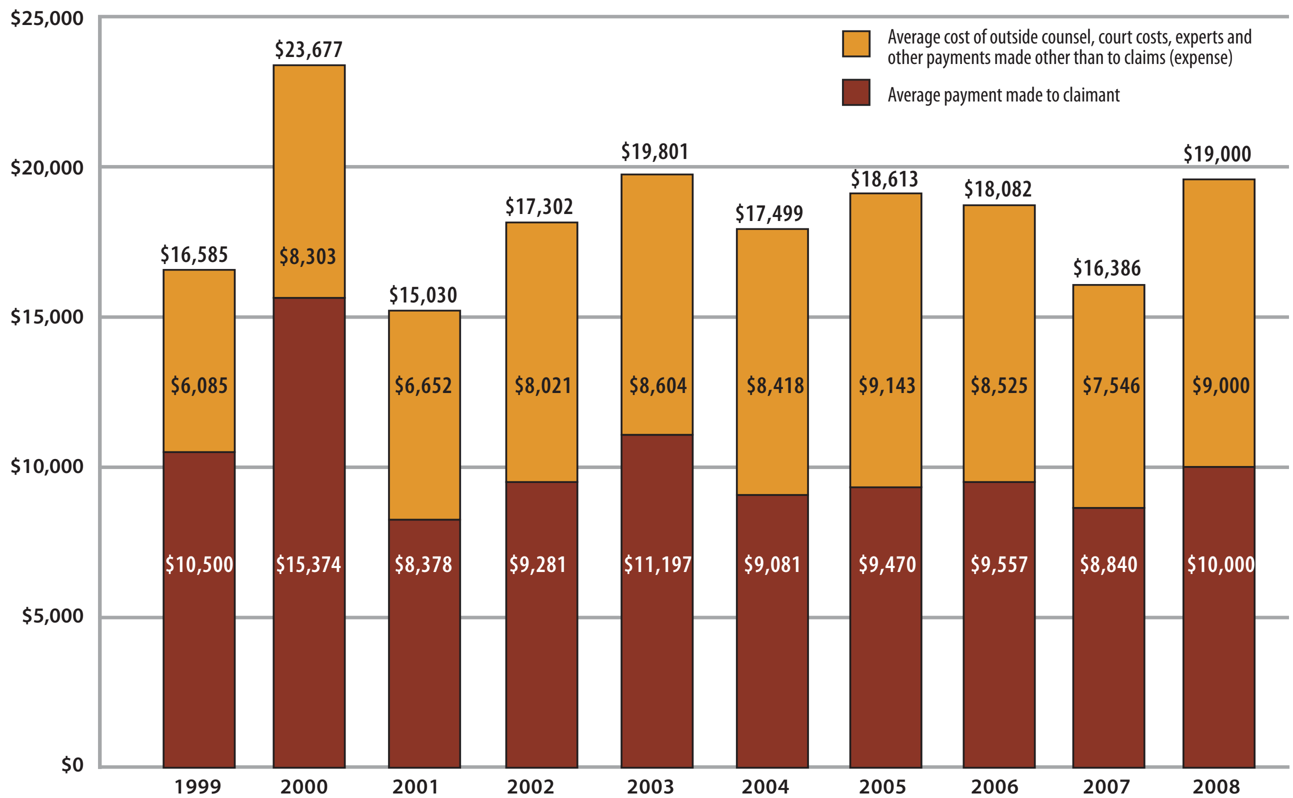
Number of Claims

By Calendar Year 1999 - 2008



Average Cost per Claim

By Year of Reporting



Summary Financial Statements (Unaudited)

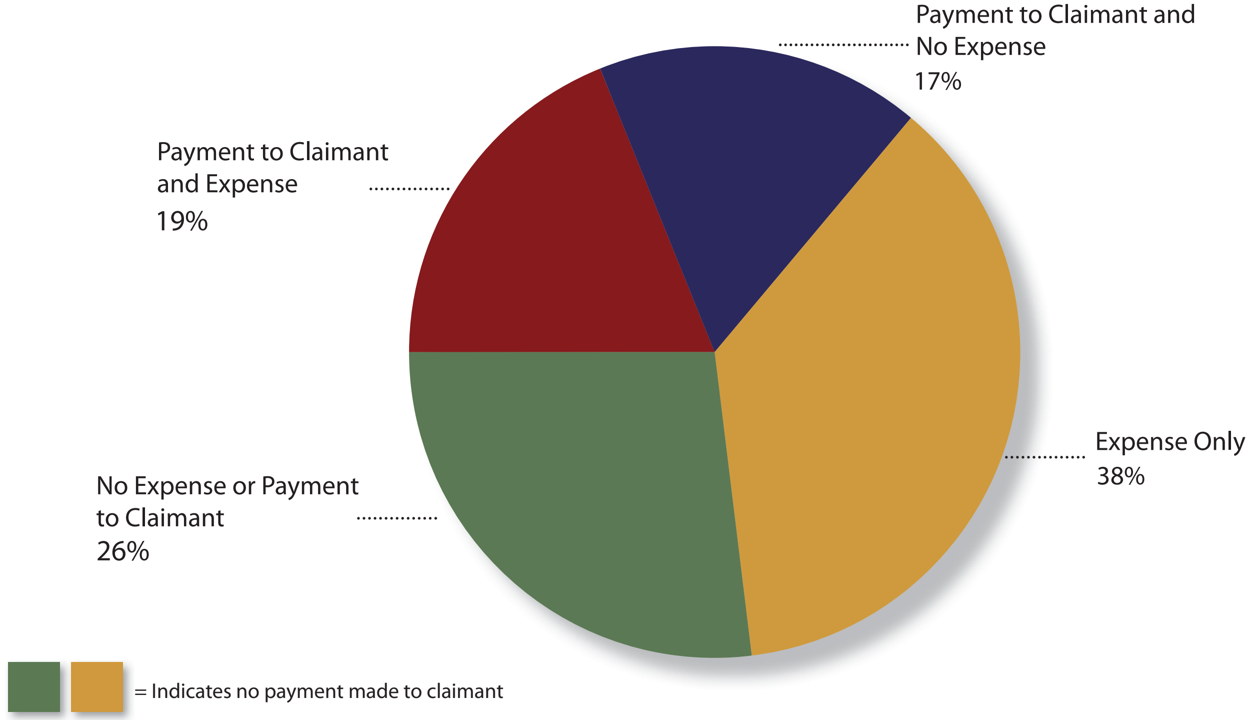
(Primary and Excess Programs Combined)

	12/31/2008	12/31/2007
ASSETS		
Cash and Investments at Market	$26,634,265	$34,684,948
Other Assets	1,675,293	701,092
TOTAL ASSETS	**$28,309,558**	**$35,386,040**
LIABILITIES AND FUND EQUITY		
Estimated Liabilities for Claim Settlements and Defense Costs	$29,100,000	$28,500,000
Other Liabilities	504,465	702,994
Fund Equity	(1,294,907)	6,183,046
TOTAL LIABILITIES AND FUND EQUITY	**$28,309,558**	**$35,386,040**

	For the Year Ending December 31	
	2008	**2007**
REVENUE		
Assessments	$21,592,781	$21,224,537
Investment and Other Income	(6,735,196)	5,361,429
TOTAL REVENUE	**$14,857,585**	**$26,585,966**
EXPENSE		
Administrative	$6,250,148	$5,935,824
Provision for Settlements	8,636,655	7,228,538
Provision for Defense Costs	7,448,735	7,786,928
TOTAL EXPENSE	**$22,335,538**	**$20,951,290**
NET INCOME	**($7,477,953)**	**$5,634,676**

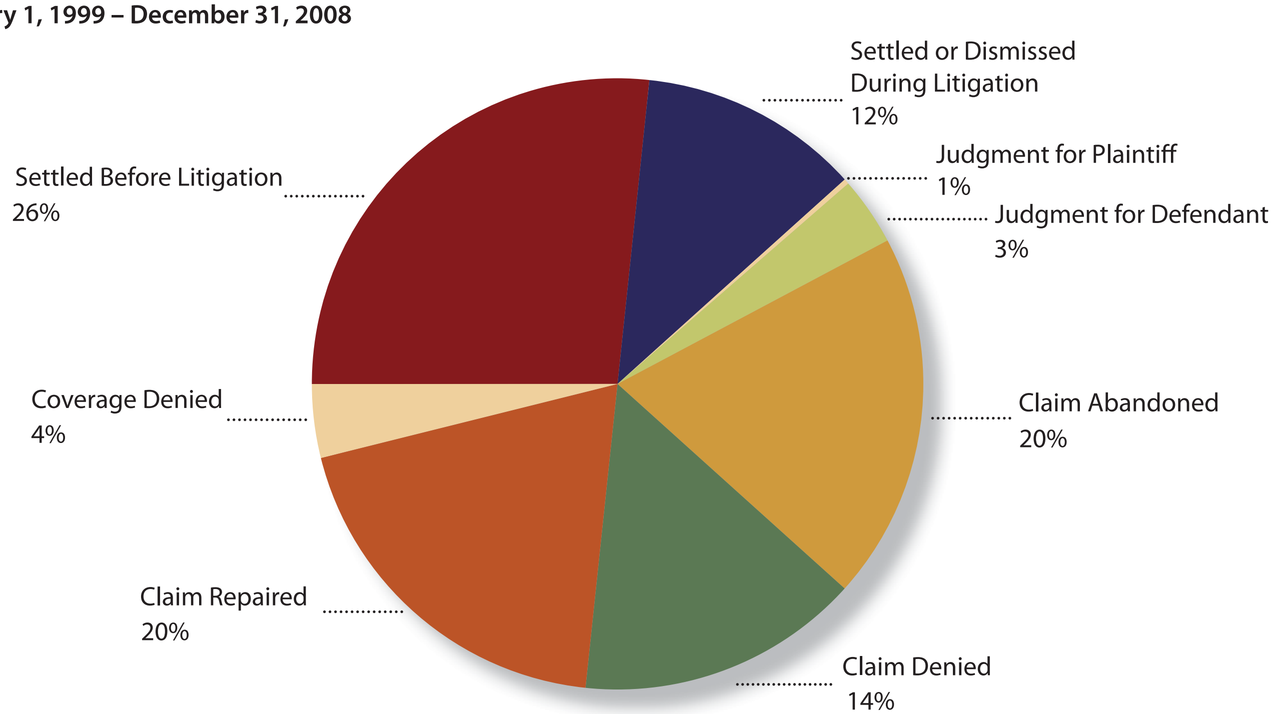
These statements have been adjusted to remove prepaid assessments: e.g., payments of the 2009 assessment received in December of 2008. A complete copy of the December 31, 2007, audit report is available on request.

Closed Claims
January 1, 1999 – December 31, 2008



Expense = cost of outside counsel, court costs, experts, and other payments made other than to claimants

Disposition of Closed Claims
January 1, 1999 – December 31, 2008



Cost of Closed Claims by Area of Law

January 1, 1999 to December 31, 2008

AREA OF LAW	PERCENT INDEMNITY PAID	INDEMNITY PAID	PERCENT EXPENSES PAID	EXPENSES PAID	TOTAL PAID
Business Transactions / Commercial Law	14%	$9,561,955	21%	$9,632,830	$19,194,785
Personal Injury	19%	$13,152,574	12%	$5,803,611	$18,956,185
Real Estate	16%	$11,185,641	13%	$6,110,951	$17,296,592
Domestic Relations / Family Law	11%	$7,362,205	10%	$4,628,268	$11,990,473
Estate Planning & Estate Tax	10%	$6,696,260	9%	$4,270,052	$10,966,312
Bankruptcy & Debtor-Creditor	10%	$6,946,418	9%	$4,065,790	$11,012,208
Workers Compensation / Admiralty	4%	$2,460,876	2%	$900,746	$3,361,622
Criminal	1%	$858,367	3%	$1,342,401	$2,200,768
Securities	2%	$1,123,148	2%	$1,095,122	$2,218,270
Tax	1%	$749,239	2%	$1,119,405	$1,868,644
Other	12%	$8,778,469	17%	$7,969,112	$16,747,581
	100%	**$68,875,152**	**100%**	**$46,938,288**	**$115,813,440**

Frequency of Claims by Area of Law

January 1, 1999 to December 31, 2008

AREA OF LAW		
Personal Injury	17%	1,294
Domestic Relations / Family Law	16%	1,180
Bankruptcy & Debtor-Creditor	12%	915
Real Estate	11%	843
Business Transactions / Commercial Law	10%	769
Estate Planning & Estate Tax	10%	719
Criminal	7%	492
Workers Compensation / Admiralty	3%	221
Tax	1%	52
Securities	1%	52
Other	12%	912
	100%	**7,449**

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In 2008, the PLF had 903 new claims. This is a significant increase over the 781 new claims in 2007 and the 780 new claims in 2006. Although high, the 2008 new claim number is within the actuaries' predicted frequency and is comparable to the 842 new claims in 2005 and the 923 claims in 2004. Just as there was no clearly ascertainable reason for the decrease in claims in 2006 and 2007, there is no obvious reason for the increase in claims in 2008. As of March 1, 2009, the extrapolated claim count for 2009 is 884.

THE 2010 PRIMARY PROGRAM ASSESSMENT

As covered parties are aware, the 2009 Primary Program assessment was maintained at the 2008 rate of $3,200. This is the third year in a row that the assessment has remained at $3,200. Even in ordinary times, it is very difficult to predict whether the assessment is likely to increase; the current economic downturn makes that prediction still more difficult. Nonetheless, in recognition of unavoidable economic stresses on lawyers and law firms in this environment, the PLF Board of Directors is committed to making every effort to maintain the assessment at its current rate.

As the process of determining the assessment proceeds, a positive factor will be the PLF's strong 2005-2007 performance that has provided an invaluable reserve. The reserve can now be used to offset the negative results caused by the increased claims frequency and the economic downturn. And although the PLF's 2008 fiscal results are disappointing, other positive trends will be part of the decision-making equation – among them the positive 2007 claim results and the apparent stabilization of defense costs, as seen in the past several actuary reports. That said, there are very real competing negative factors as well, including the erosion of the reserve, a continuation of a high frequency rate, and indications of increasing claim severity. These factors are consistent with the expectation that difficult economic times result in increases in the frequency and severity of legal malpractice cases. The 2010 assessment will be determined midyear 2009, when more is known about overall claim development.

HOW IS THE PLF DOING WITH CLAIMS HANDLING?

Historically, covered parties who returned the PLF claims-handling evaluation form have been overwhelmingly satisfied with the performance of the PLF claims department. That result was replicated in 2008.

The claims-handling evaluation form asks whether covered parties were satisfied, very satisfied, or not satisfied. In 2008, the PLF received 384 responses (47%). The responses gave high ratings to both claims attorneys and defense counsel.

The performance of claims attorneys was particularly noteworthy, with 8.6% of respondents stating that they were satisfied with how their claim was handled and 90.4% stating that they were very satisfied – remarkable numbers. Combining these numbers, the evaluations indicated that covered parties who responded were either satisfied or very satisfied with the performance of claims attorneys 99% of the time.

Covered parties' satisfaction with defense counsel was also very high. Among the 219 covered parties who responded to the questionnaire about defense counsel, 10% were satisfied, 87.7% were very satisfied, and 2.3% were unsatisfied. (The fewer responses regarding defense counsel reflect the fact that many cases are handled by the PLF claims attorneys without being assigned out.)

WHAT IS THE PLF DOING IN THE AREAS OF PERSONAL AND PRACTICE MANAGEMENT ASSISTANCE?

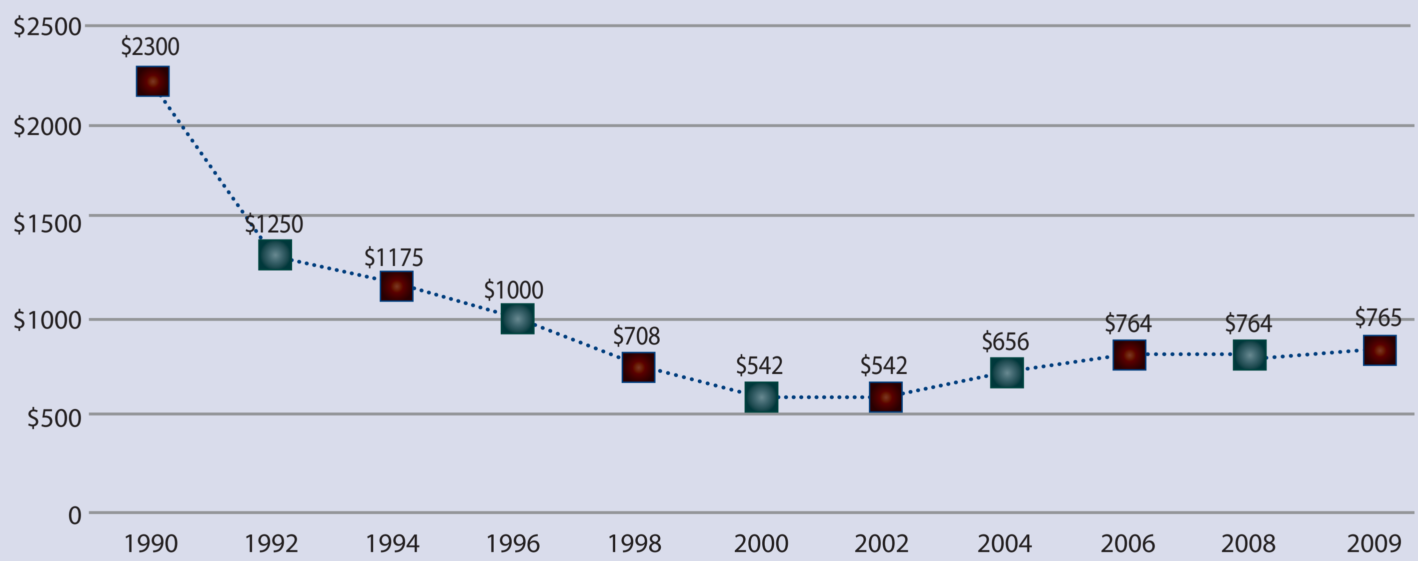
The PLF continues to provide free and confidential personal and practice management assistance to Oregon lawyers. These services include legal education, on-site practice management assistance (through the PLF's Practice Management Advisor Program), and personal assistance (through the Oregon Attorney Assistance Program).

Personal and practice management assistance seminars in 2008 included programs on software updates, conflict-of-interest systems, trust accounting, setting up a sole practice, time management, confidentiality in the law office, technology tips, contract lawyering, and practice management. In addition, we continue to offer free audio and video programs (currently 39 programs are available), publications (*In Brief* and *In Sight*), over 271 practice aids, and the following handbooks: *Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death* (2006), *A Guide to Setting Up and Running Your Law Office* (2005), *A Guide to Setting Up and Using Your Lawyer Trust Account* (2005), and *Oregon Statutory Time Limitations* (2003). Our practice aids and handbooks are all available free of charge. You can download them at **www.osbplf.org**, or call the Professional Liability Fund at 503-639-6911 or 800-452-1639.

During 2008, the PLF presented video replays of the following programs: QuickBooks 2007 Tips; Microsoft Outlook 2007 Tips; Corel WordPerfect X3 Tips; Microsoft Word 2007 Tips; Recognizing and Representing Clients with Mental Health Impairments; Managing Stress Caused by Technology; Time Management; Stress Management; Professionalism and the Legal Profession; and The Re-Styled Federal Rules of Civil Procedure. These video replays were presented in Astoria, Bend, Coos Bay, Eugene, Grants Pass, Klamath Falls, La Grande, Medford, Newport, Pendleton, Redmond, Roseburg, Salem, and Vale, Oregon.

Practice Management Advisor Program. Our practice management advisors, Dee Crocker, Beverly Michaelis, and Sheila Blackford, answer practice management questions and provide information about effective systems for conflicts of interest, mail handling, billing, trust accounting, general accounting, time management, client relations, file management, and soft-

Cost of Excess Coverage
By Calendar Year 1990 - 2009



Graph shows cost of $700,000 excess coverage above primary PLF limits.

Figures are the cost per attorney of $700,000 PLF excess coverage above the primary limits. Figures for 1995 to 2009 do not include the continuity credit granted to firms for each year of continuous excess coverage with the PLF. Figures are not adjusted for inflation.

ware. In a recent survey about our practice management advisors, 100% of those who responded said they would recommend the PLF's practice management advisor services to others. In addition, 100% said they were either satisfied or very satisfied with how promptly their phone calls were returned, follow-up, how they were treated, how helpful the information was, the practice management advisor's ability to explain information clearly, and the overall level of service. In 2008, the practice management advisors presented live programs in Coos Bay, Eugene, Medford, Portland, Roseburg, and Salem, Oregon.

Oregon Attorney Assistance Program. The Oregon Attorney Assistance Program (OAAP) attorney counselors, Meloney Crawford Chadwick, Shari R. Gregory, Mike Long, and Douglas Querin, continue to provide assistance with alcohol and chemical dependency; burnout; career change and satisfaction; depression, anxiety, and other mental health issues; stress management; and time management. In 2008, the OAAP sponsored addiction support groups, lawyers-in-transition meetings, career workshops, a depression support group, a support group for lawyers going through divorce, an Inner Peace workshop, a support group for chronic health issues, a women's support group, and a grief support group. In addition, the OAAP attorney counselors assisted over 742 lawyers with personal issues in 2008, including alcoholism, drug addiction, career satisfaction, retirement, and mental health issues.

CHANGES TO THE COVERAGE PLAN

In 2008, other than editorial changes, the PLF BOD and OSB Board of Governors approved three changes to the Coverage Plan. None of the changes represent changes in PLF policy but are simply clarifications of the Coverage Plan.

The definition of "damages," Section I.8. was changed. Previously, the damages definition excluded "non-economic loss." The change recognizes that non-economic damages might flow from legal malpractice claims in a very limited category of cases. For example, non-economic damages have been paid when the client of a criminal lawyer is incarcerated because of the Covered Party's malpractice.

The revised section states:

SECTION I.

8. "DAMAGES" means money to be paid as compensation for harm or loss. It does not refer to fines, penalties, punitive or exemplary damages, or equitable relief such as restitution, disgorgement, rescission, injunctions, accountings or damages and relief otherwise excluded by this Plan.

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Changes were also made to the Comments to the Contract Obligation Exclusion, Section V. 20. The comments clarify that although coverage is provided to attorneys acting pursuant to Section III.3 (i.e., as a named personal representative, administrator, conservator, executor, guardian, or trustee except BUSINESS TRUSTEE), if the attorney is required to sign a bond or any surety, guaranty, warranty, joint control, or similar agreement while carrying out one of these special capacities, Exclusion 20.a does not apply, but Exclusion 20.b, 20.c, or 20.d may be applicable.

The full exclusion states:

20. This Plan does not apply to any CLAIM:

a. Based upon or arising out of any bond or any surety, guaranty, warranty, joint control, or similar agreement, or any assumed obligation to indemnify another, whether signed or otherwise agreed to by YOU or someone for whose conduct YOU are legally liable, unless the CLAIM arises out of a COVERED ACTIVITY described in SECTION III.3 and the person against whom the CLAIM is made signs the bond or agreement solely in that capacity;

b. Any costs connected to ORS 20.160 or similar statute or rule;

c. For liability based on an agreement or representation, if the Covered Party would not have been liable in the absence of the agreement or representation; or

d. Claims in contract based upon an alleged promise to obtain a certain outcome or result.

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Section IX.1.h – the part of the Plan that specifies the subrogation rights of the PLF when the Covered Party has a right against a third party – has been moved and is now Section IX.2. The wording has been revised to strengthen the requirement that the Covered Party must assist in bringing such a claim.

Section IX.2 states:

To the extent the PLF makes any payment under this Plan, it will be subrogated to any COVERED PARTY's rights against third parties to recover all or part of these sums. When requested, every COVERED PARTY must assist the PLF in bringing any subrogation or similar claim. The PLF's subrogation or similar rights will not be asserted against any non-attorney employee of YOURS or YOUR law firm except for CLAIMS arising from intentional, dishonest, fraudulent, or malicious conduct of such person.

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EXCESS PROGRAM

The PLF Excess Program rates and participation remained stable. In 2008, 717 firms with a total of 2,584 lawyers purchased PLF excess coverage.

A few minor changes were made for the 2009 PLF Excess Coverage Plan this year. These changes follow changes made to the PLF 2009 Primary Claims Made Plan.

In addition, an option for firms that do not meet standard underwriting criteria was added to the PLF Excess Program policies. These firms may now be eligible to purchase non-standard excess coverage.

As in the past, the PLF Excess Program is entirely reinsured and financially independent from the PLF's mandatory Primary Coverage Program. Because of the success of the PLF's Excess Program, we are able to negotiate very favorable reinsurance rates. That savings is passed on to Oregon lawyers in lower excess coverage rates. We continue to offer continuity credits of 2% for each year of participation (up to 20%).

CHANGES IN PLF BYLAWS AND POLICIES

Other than the Excess Program policies discussed above, the PLF made no substantive changes to its policy.

FORECAST FOR THE FUTURE

The current economic uncertainties added to the many other factors that underlie predictions – projections of income, projections of the number of claims, defense expenses related to claims, and indemnity paid on claims – make predicting the 2010 assessment substantially more difficult than in past years. As noted earlier, in recognition of the difficult economic environment, the Board of Directors is committed to maintaining the assessment at $3,200 if reasonably possible. Consistent with that goal, the BOD will carefully monitor developments over the next several months as it awaits the midyear actuary report.

If you have questions or suggestions about the PLF, please contact me.

Ira R. Zarov
Professional Liability Fund
Chief Executive Officer
503-639-6911 or 800-452-1639
iraz@osbplf.org