2009 ANNUAL REPORT

Oregon State Bar

Professional Liability Fund

www.osbplf.org

By Ira R. Zarov
PLF Chief Executive Officer

After a very difficult year in 2008 caused by the economic downturn, the Professional Liability Fund (PLF) returned to a positive fiscal performance in 2009. This marks positive results in four of the last five years. In calendar year 2009, the PLF Primary and Excess Programs ended with a gain of $3 million. The primary driver of this result was the recovery of PLF investments. The gain follows 2008's loss of nearly $7.5 million, 2007's net income of $5.7 million, 2006's net income of $1.7 million, and 2005's net income of $2.3 million.

Although the 2009 gain is encouraging, an analysis of the year indicates that claim costs were very close to the actuarial predictions. In other words, without the benefit of the recovery of investments, the fiscal results for the year would have been slightly negative.

In 2009, the PLF had 973 new claims. This is a significant increase over the 903 new claims in 2008 and the 781 new claims in 2007. The 973 claim figure is the highest number in PLF history and the highest frequency rate as well – 14.3% of covered parties. Although we do not have a definitive explanation for the increase in claim frequency, industry wisdom predicts an increase in claims during recessionary times. Claim numbers over the last two years provide anecdotal support for this prediction. At the current time, an extrapolation of current claim numbers would predict 937 claims in 2010. While claim frequency was up, claim severity in 2009 was lower than expected, offsetting the costs associated with the higher frequency.

THE 2011 PRIMARY PROGRAM ASSESSMENT

As covered parties are aware, the 2010 Primary Program assessment was maintained at the 2009 rate of $3,200. This is the fourth year in a row that the assessment has remained at $3,200, despite the difficult fiscal year. As always, it is

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PLF Statistics

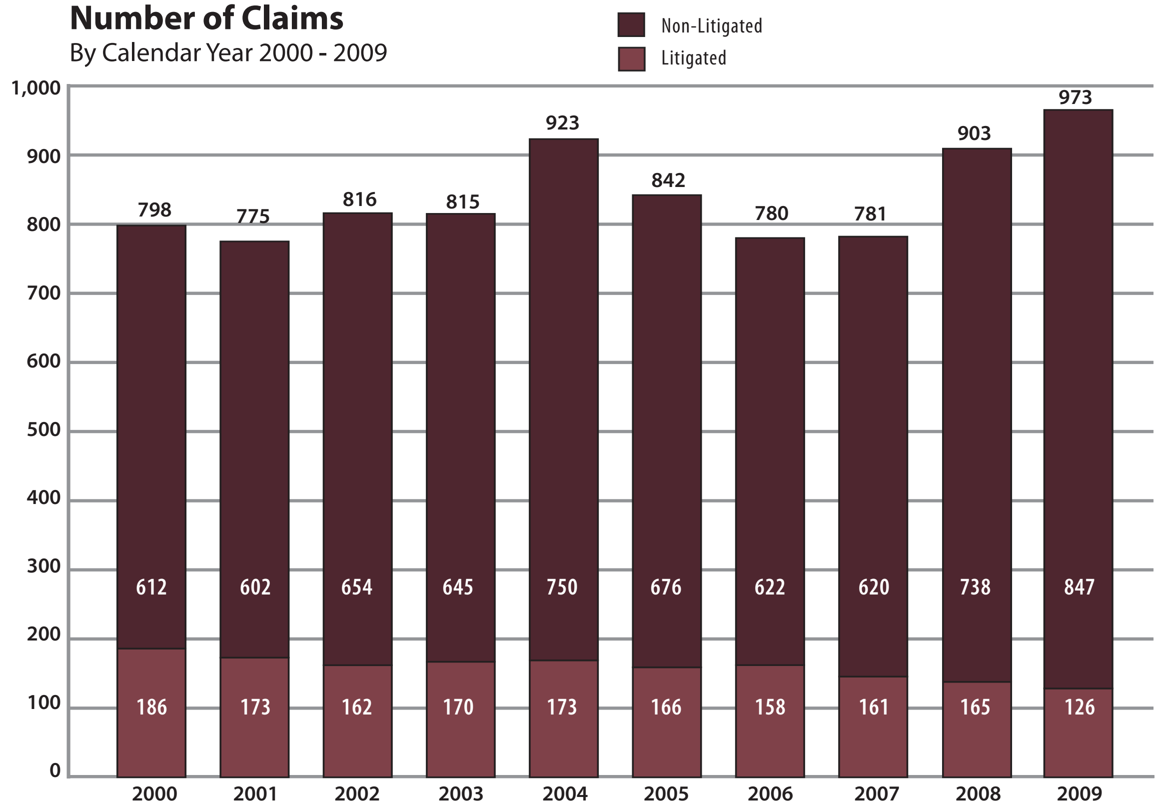
1995 – 2010

	Assessments	Claims
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	973
2010	$3200	937*

* Projected

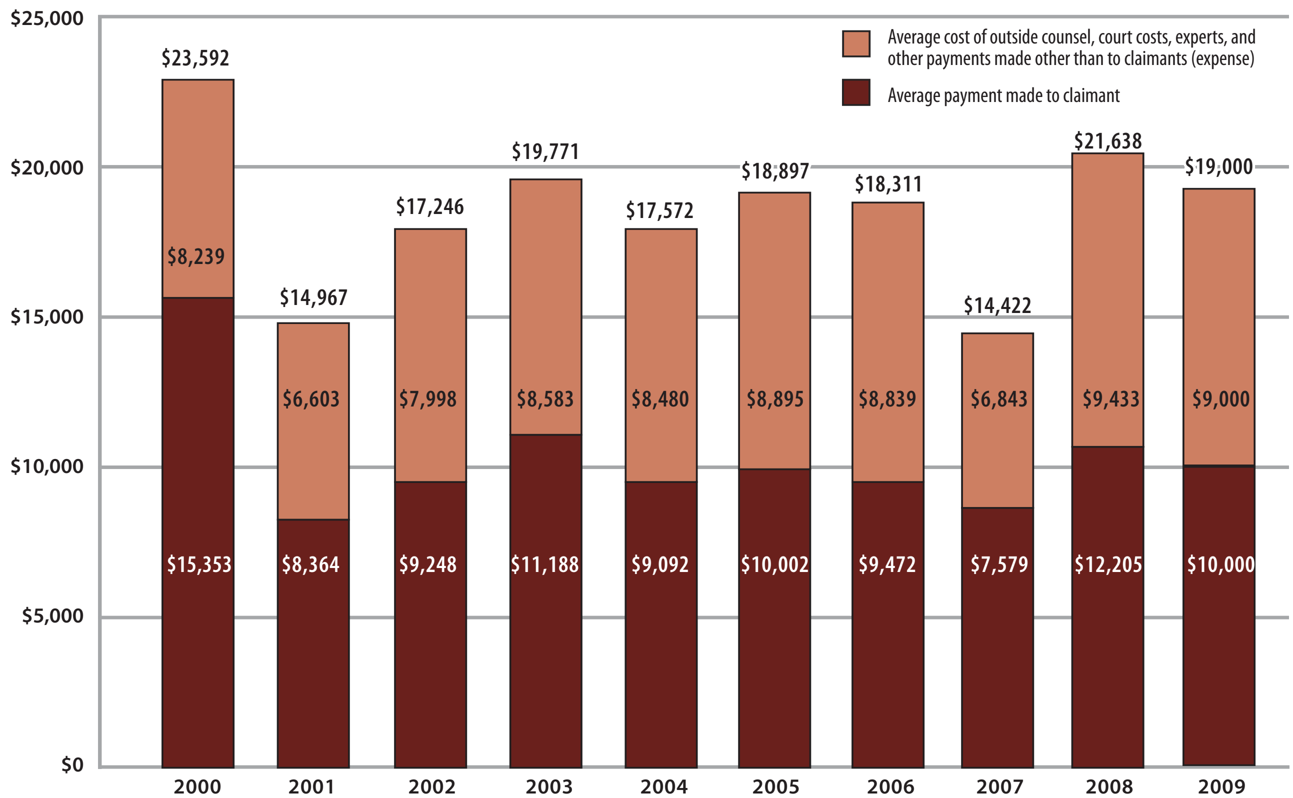
Number of Claims

By Calendar Year 2000 - 2009



Average Cost per Claim

By Year of Reporting



SUMMARY FINANCIAL STATEMENTS (Unaudited)

(Primary and Excess Programs Combined)

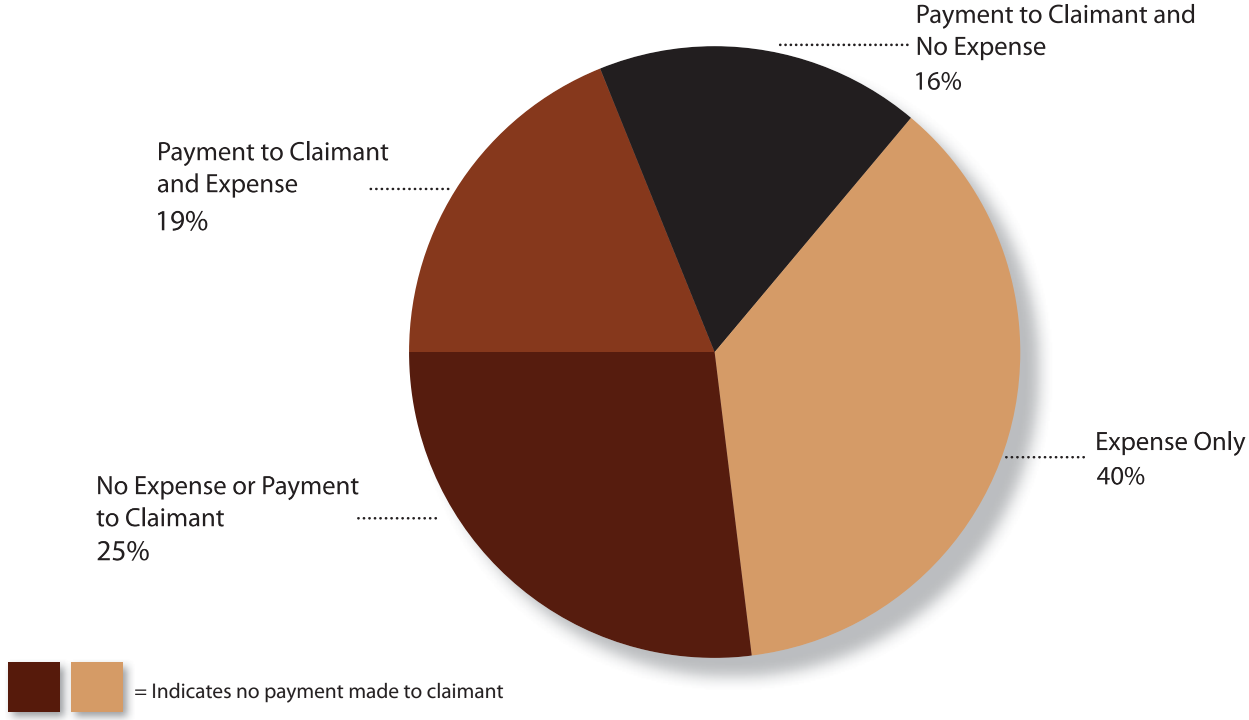
	12/31/2009	12/31/2008
ASSETS		
Cash and Investments at Market	$30,545,197	$26,634,265
Other Assets	1,462,196	1,675,293
TOTAL ASSETS	**$32,007,393**	**$28,309,558**
LIABILITIES AND FUND EQUITY		
Estimated Liabilities for Claim Settlements and Defense Costs	$29,800,000	$29,100,000
Other Liabilities	487,006	504,465
Fund Equity	1,720,387	(1,294,907)
TOTAL LIABILITIES AND FUND EQUITY	**$32,007,393**	**$28,309,558**

	For the Year Ending December 31	
	2009	**2008**
REVENUE		
Assessments	$21,913,959	$21,592,781
Investment and Other Income	6,525,384	(6,735,196)
TOTAL REVENUE	**$28,439,343**	**$14,857,585**
EXPENSE		
Administrative	$6,684,261	$6,250,148
Provision for Settlements	10,071,924	8,636,655
Provision for Defense Costs	8,667,863	7,448,735
TOTAL EXPENSE	**$25,424,048**	**$22,335,538**
NET INCOME	**$3,015,295**	**($7,477,953)**

These statements have been adjusted to remove prepaid assessments (e.g., payments of the 2010 assessment received in December of 2009). A complete copy of the December 31, 2008, audit report is available on request.

Closed Claims

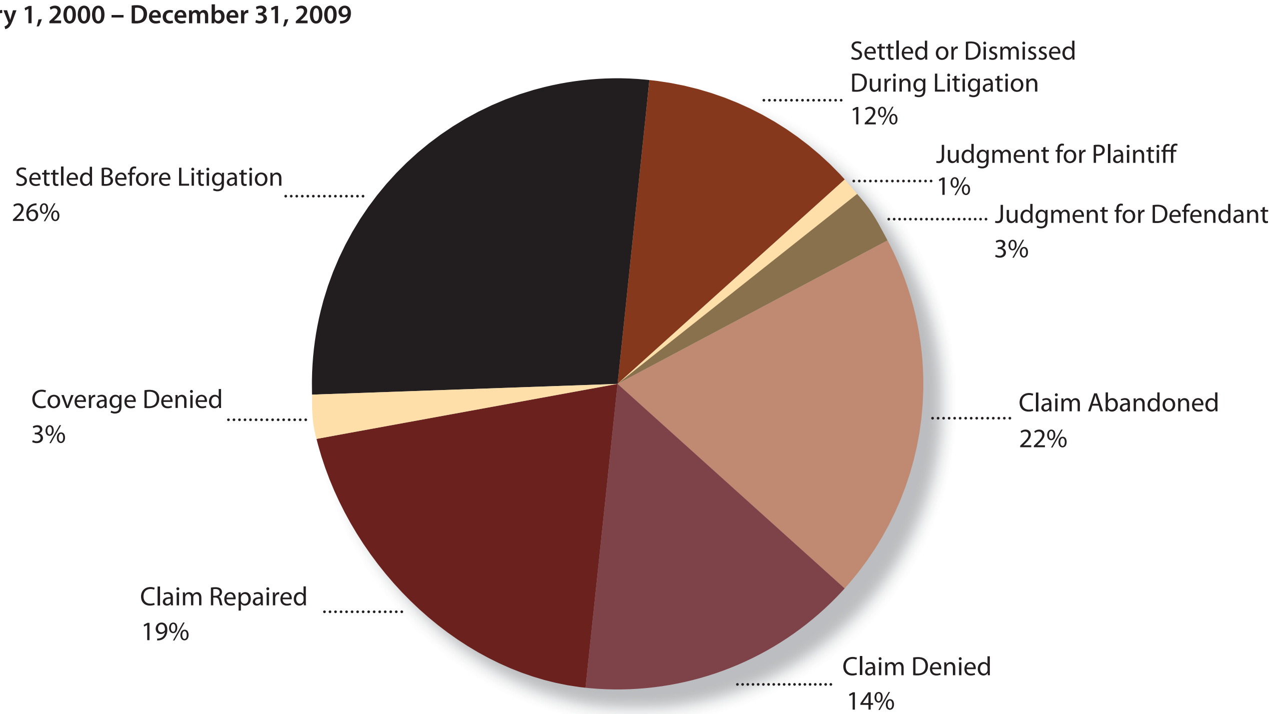
January 1, 2000 – December 31, 2009



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

Disposition of Closed Claims

January 1, 2000 – December 31, 2009



Cost of Claims by Area of Law

January 1, 2000, to December 31, 2009

AREA OF LAW	PERCENT INDEMNITY PAID	INDEMNITY PAID	PERCENT EXPENSES PAID	EXPENSES PAID	TOTAL PAID
Personal Injury	20%	$13,969,434	12%	$6,334,427	$20,303,861
Business Transactions / Commercial Law	13%	$9,388,523	19%	$9,520,450	$18,908,973
Real Estate	15%	$10,914,093	13%	$6,539,596	$17,453,689
Estate Planning & Estate Tax	11%	$8,092,629	9%	$4,325,155	$12,417,784
Bankruptcy & Debtor-Creditor	10%	$6,845,199	9%	$4,320,324	$11,165,523
Domestic Relations / Family Law	9%	$6,660,555	9%	$4,465,929	$11,126,484
Workers' Compensation / Admiralty	4%	$2,666,048	2%	$1,069,270	$3,735,318
Securities	2%	$1,319,203	3%	$1,658,901	$2,978,104
Criminal	2%	$1,188,867	3%	$1,606,191	$2,795,058
Tax	1%	$750,421	3%	$1,476,635	$2,227,056
Other	13%	$9,296,494	18%	$9,498,217	$18,794,711
	100%	**$71,091,466**	**100%**	**$50,815,095**	**$121,906,561**

Frequency of Claims by Area of Law

January 1, 2000, to December 31, 2009

AREA OF LAW		
Personal Injury	17%	1,319
Domestic Relations / Family Law	16%	1,189
Bankruptcy & Debtor-Creditor	12%	915
Real Estate	11%	855
Business Transactions / Commercial Law	10%	743
Estate Planning & Estate Tax	10%	768
Criminal	7%	508
Workers' Compensation / Admiralty	3%	210
Securities	1%	62
Tax	1%	58
Other	12%	1,009
	100%	**7,636**

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very difficult to predict this early in the year whether the assessment is likely to increase; the uncertainties intrinsic in the current economic times add to the difficulty. The low severity of the 2009 claims gives credibility to the theory that the economic downturn, while generating more claims, will produce claims with lower severity. Theoretically, fewer transactions of significant size will result in fewer malpractice cases with large monetary damages. If the actuarial results for 2009 and 2010 are less severe than predicted, it may obviate the need for an increase in the 2011 assessment. Just as the PLF Board of Directors (Board) recognized the economic stresses on lawyers and law firms when setting the 2010 assessment, the Board is committed to making every effort to maintain the assessment at its current rate.

As the process of determining the 2011 assessment proceeds, the Board faces some headwinds not present in 2009 when the PLF's strong 2005-2007 performance had provided an invaluable reserve. The negative 2008 results significantly eroded reserves. Nonetheless, the PLF's positive 2009 fiscal results, the possibly lower severity of 2009 claims, the current positive investment returns if continued, and a potential reduction in claim frequency will factor into the decision. That said, the PLF also faces very real competing negative factors, primarily the volatility of the economy and the potential for negative claim developments. Despite these cross-currents, the PLF holds cautious optimism that the assessment will remain unchanged in 2011. The 2011 assessment will be determined midyear 2010, 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 2009.

The claims-handling evaluation form asks whether covered parties were satisfied, very satisfied, or not satisfied. In 2009, the PLF received 436 responses (47%). The responses gave high ratings to both claims attorneys and defense counsel.

The performance of claims attorneys was particularly noteworthy, with 10.4% of respondents stating that they were satisfied with how their claim was handled and 88% 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 over 98% of the time.

Covered parties' satisfaction with defense counsel was also very high. Among the 267 covered parties who responded to the questionnaire about defense counsel, 10.1% were satisfied, 88.4% were very satisfied, and 1.5% were unsatisfied. (The fewer responses regarding defense counsel reflect the fact that many cases are handled by the PLF claims attorneys without being assigned to defense counsel.)

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 and judges. 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 2009 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, the Servicemembers' Civil Relief Act, employment practices for lawyers, avoiding malpractice in family law, and practice management. In addition, we continue to offer free audio and video programs (currently 47 programs are available), publications (*In Brief* and *In Sight*), over 277 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* (2009), *A Guide to Setting Up and Using Your Lawyer Trust Account* (2009), and *Oregon Statutory Time Limitations* (2010). Our practice aids

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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 2009, the PLF presented video replays of the following programs: The One For All: What Every Practitioner Must Know About the Servicemembers' Civil Relief Act (SCRA); Practical Contract Lawyering; Avoiding Malpractice in Family Law; and Employment Practices for Lawyers. 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 (PMAs), 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 software. In a recent survey about our PMAs, 100% of those who responded said they would recommend the PLF's PMA services to others. In addition, 100% said they were either satisfied or very satisfied with being able to reach a PMA by telephone, how promptly their phone calls were returned, follow-up, and how they were treated. In 2009, the PMAs presented live programs in Eugene, Portland, and Salem, Oregon.

Oregon Attorney Assistance Program. The Oregon Attorney Assistance Program (OAAP) attorney counselors, Meloney C. Crawford, Shari R. Gregory, Mike Long, and Douglas Querin, continue to provide

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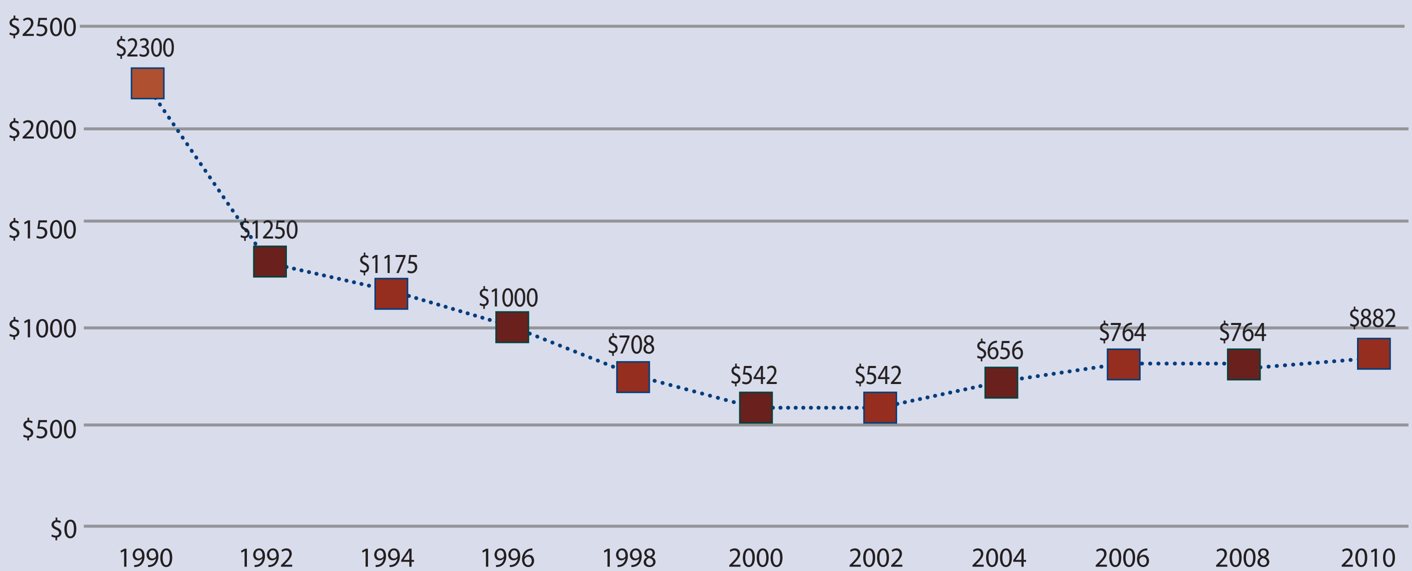
Cost of Excess Coverage – Standard Rates

By Calendar Year 1990 - 2010



Figures are the cost per attorney of $700,000 PLF excess coverage above the primary limits. Figures for 1995 to 2010 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.

assistance with alcohol and chemical dependency; burnout; career change and satisfaction; depression, anxiety, and other mental health issues; stress management; and time management. In 2009, 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 women's support group, a professional effectiveness support group, a job-hunting support and educational workshop, a support group for adult children of dysfunctional families, a men's support group, and a group for overcoming procrastination. In addition, the OAAP attorney counselors assisted over 706 lawyers with personal issues in 2009, including alcoholism, drug addiction, career satisfaction, retirement, and mental health issues.

CHANGES TO THE COVERAGE PLAN

In 2009, the PLF Board and Oregon State Bar (OSB) Board of Governors approved two changes to the 2010 Coverage Plan. The first change concerns the notice-of-claims provision of the PLF Primary Claims Made Plan. It clarifies what plan year applies when a covered party notifies the PLF of a claim. The change is important because covered parties are entitled to the full coverage limit each year; if a claim is assigned to an incorrect claim year, the affected covered party may receive too little or too much coverage in that year.

Section IV.1.b.(1) was revised as follows (additions in italics and bold; deletions noted by strikethrough):

b. This Plan applies only to CLAIMS first made against a COVERED PARTY during the COVERAGE PERIOD.

(1) ~~A CLAIM will be deemed to have been made at the earliest of:~~

The applicable COVERAGE PERIOD for a CLAIM will be the earliest of:

(a) ~~When a SUIT is filed or formally initiated;~~

When a lawsuit is filed or an arbitration or ADR proceeding is formally initiated; or

(b) When notice of ~~such~~ ***a*** CLAIM is received by any COVERED PARTY or by the PLF; or

(c) When the PLF first becomes aware of facts or circumstances that reasonably could be expected to be the basis of a CLAIM; or

(d) ~~(c)~~ When a claimant intends to make a CLAIM but defers assertion of the CLAIM for the purpose of obtaining coverage under a later COVERAGE PERIOD and the COVERED PARTY knows or should know that the COVERED ACTIVITY that is the basis of the CLAIM could result in a CLAIM.

A second change was to Section V.4.a. In the 2009 Plan, this exclusion listed punitive and exemplary damages as within its purview. The 2010 Plan has added the words "or statutorily enhanced" to the exclusion. This language is consistent with previous PLF policy and is a clarification of the intended scope of the exclusion.

The comments to the exclusion have been made consistent with this change. Specifically, the comments have added the following sentence: "Similarly, YOU are not covered to the extent compensatory damages are doubled, trebled, or otherwise enhanced."

The full exclusion reads as follows (addition in italics and bold; deletion noted by strikethrough):

4. This Plan does not apply to:

a. The part of any CLAIM seeking punitive***,*** ~~or~~ exemplary ***or statutorily enhanced*** damages; or

b. Any CLAIM for or arising out of the imposition of attorney fees, costs, fines, penalties, or other sanctions on the COVERED PARTY or others imposed under any federal or state statute, administrative rule, court rule, or case law intended to penalize bad faith conduct and/or the assertion of frivolous or bad faith claims or defenses. The PLF will defend the COVERED PARTY against such a CLAIM, but any liability for indemnity arising from such CLAIM will be excluded.

EXCESS PROGRAM

The PLF Excess Program participation remained stable. In 2009, 714 firms with a total of 2,589 lawyers purchased PLF excess coverage.

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Only one change was made to the 2010 PLF Excess Claims Made Plan this year. This change follows the change made to Section V.4.a. of the PLF 2010 Primary Claims Made Plan regarding the clarification of the exclusion for statutorily enhanced damages.

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 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

No changes were made to the 2010 PLF Bylaws. Several changes were made to the 2010 PLF Policies.

Policy 3.100 relates to retroactive dates of coverage. Previously, when an attorney discontinued PLF coverage in the course of the year and returned during the same calendar year, the attorney retained the old retroactive date, as though the attorney never left PLF coverage. The change gives the attorney a new retroactive date that corresponds to the date of return to practice. The change treats attorneys who leave and return to PLF coverage during the same calendar year the same as attorneys who leave PLF coverage in one year and return to PLF coverage in a different calendar year. Now, in both cases, the PLF will not provide coverage for periods when no assessment has been paid.

Policy 3.500(C) concerning the Special Underwriting Assessment (SUA) has also been changed. The policy now provides a new procedure for rare cases in which a covered party has been assessed a SUA, and a source of income exists from a third party that, if received, would offset the amount of the SUA. The new policy allows the PLF to assess the value of the potential sources of reimbursement based on the likelihood of repayment. A secondary change to the policy allows affected covered parties to challenge the PLF valuation. This provision was necessary to simplify the accounting and handling of these situations.

Changes were also made to PLF Policy 3.800, which relates to PLF coverage for OSB Pro Bono Programs. The new change defines "Pro Bono Program" as "an organized program which has been certified by the Oregon State Bar as an OSB Pro Bono Program. . . ." This change was made to make it easier for attorneys who do pro bono work for such programs to claim PLF exemptions.

Finally, a number of changes have been made to Chapter 7 of the PLF Policies, which concerns the PLF Excess Program. The new policy significantly expands the definition of "Securities Law" under Higher Risk Practice Areas (Policy 7.300) and gives the PLF more leeway in charges for areas of practice considered high risk. The changes to the Securities Law definition were made in response to the high-risk nature of the practice and the need for a clear definition of what the PLF considers the practice of securities law.

Policy 7.300(C)(2) was revised as follows (additions in italics and bold; deletions noted by strikethrough):

(2) Securities Law, which is defined as:

(a) The preparation of any part of a ***subscription document,*** prospectus, offering circular, disclosure statement ~~(including a~~ ***or*** tax opinion~~) which is required by law~~ in connection with the issuance, ***offer,*** sale, or transfer of a security.

(b) ~~(c)~~ Providing services to a seller or underwriter ~~in connection with the initial issuance~~ ***relating to the offer or sale*** of a security, which is required to be registered under state or federal law.

(c) Providing services to an issuer or other seller relating to the offer or sale of a security, which is exempt from federal or state registration requirements.

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(d) Providing services relating to the preparation or filing of periodic and special reports (e.g., Form 10-K, 10-Q or 8-K filings) with the Securities and Exchange Commission.

(e) Advising clients regarding reporting obligations under the securities laws.

(f) Providing advice to clients under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, or the Investment Advisers Act of 1940.

(g) Providing advice to clients on broker-dealer or investment adviser compliance.

(h) Advising unregistered broker-dealers (i.e. "finders") on transactions where they receive compensation for assisting with an offering of a security.

(i) ~~(d)~~ Acting as bond counsel or special counsel in connection with the issuance of a security.

(j) ~~(b)~~ Involvement in the direct sale to an individual purchaser of any security f~~or which a prospectus, offering circular, or disclosure statement is required by law~~. ***(This category is intended to measure potential "seller" liability under state and federal securities laws, such as Section 12 of the Securities Act of 1933 or ORS 59.115 (1)).***

FORECAST FOR THE FUTURE

Many factors underlie the process of setting the annual PLF assessment – projections of income, operational costs, projections of the number of claims, defense expenses related to claims, and indemnity paid on claims. All factors must be evaluated. Currently, frequency is high but within the predicted range; defense expenses and indemnity costs will not be known until the midyear actuarial report is received. However, as noted above, the early results for 2009 claims and strong first quarter investment results support the Board's hope that the assessment will not increase in 2011. This cautious optimism comes with a caveat: Legal malpractice claims are volatile, as are the economic times; accordingly, circumstances may change over the remainder of the year. As with last year, however, the Board recognizes the difficult economic environment and is committed to maintaining the assessment at the current level if reasonably possible. Consistent with that goal, the Board will carefully monitor developments as it awaits the midyear actuarial report.

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

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