2015 ANNUAL REPORT

OSB Professional Liability Fund

www.osbplf.org

By Carol J. Bernick
PLF Chief Executive Officer

As we approach the PLF's 40th anniversary in 2017, I am pleased to report that the Fund is stable and it continues to serve Oregon lawyers well. While the net position (our retained earnings) dipped at the end of 2015, the Fund remains in a strong financial position.

The 2016 assessment for the PLF Primary Plan remained unchanged at $3,500 for the sixth consecutive year. The PLF had an end-year loss in 2015 of just over $900,000, due almost exclusively to losses in investments. Nonetheless, the Fund's net position remains strong (just over $10,000,000). The net position creates the "cushion" to allow the PLF to maintain a stable assessment year over year as the PLF can absorb losses – either from higher-than-expected claim costs or loss of investment income – without having to raise the assessment. In 2015, the PLF had both – higher costs and greater losses. Yet, as discussed below, we do not currently anticipate making any change to the assessment for 2017.

In 2015, the PLF had 808 new claims, significantly fewer than the previous year. The projected claim count for 2016 is currently 886. The PLF has two actuarial reports prepared each year. Those reports are used to set the average cost of claims received in the applicable year. For claims filed in the first half of 2015, the actuaries raised the projected claim cost to $22,000 (up from $21,000: $10,500 for indemnity and $11,500 for defense expense). Although defense costs continue to be higher than indemnity (in part because the PLF pays only expense and no indemnity for 43% of our claims), indemnity is rising. For claims filed in the second half of 2015, the actuaries projected the average claim cost at $21,500: $11,000 for indemnity and $11,500 for defense expense. In summary, as is true throughout the country, claim severity is increasing.

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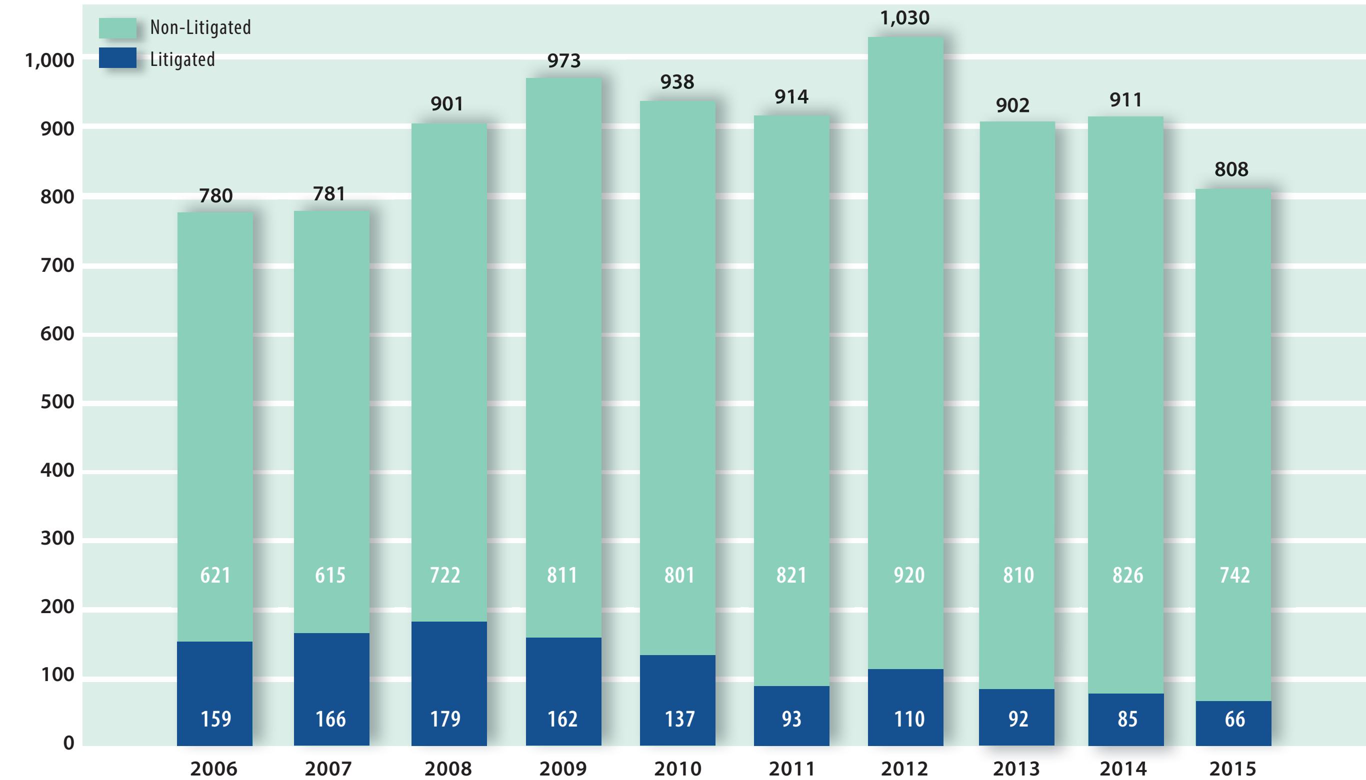
PLF Statistics
2000 – 2015

	Assessments	Claims
2000	$1,800	798
2001	$1,800	775
2002	$2,200	816
2003	$2,600	815
2004	$2,600	923
2005	$3,000	842
2006	$3,000	780
2007	$3,200	781
2008	$3,200	901
2009	$3,200	973
2010	$3,200	938
2011	$3,500	914
2012	$3,500	1,030
2013	$3,500	902
2014	$3,500	911
2015	$3,500	808
2016	$3,500	886*

* Extrapolated

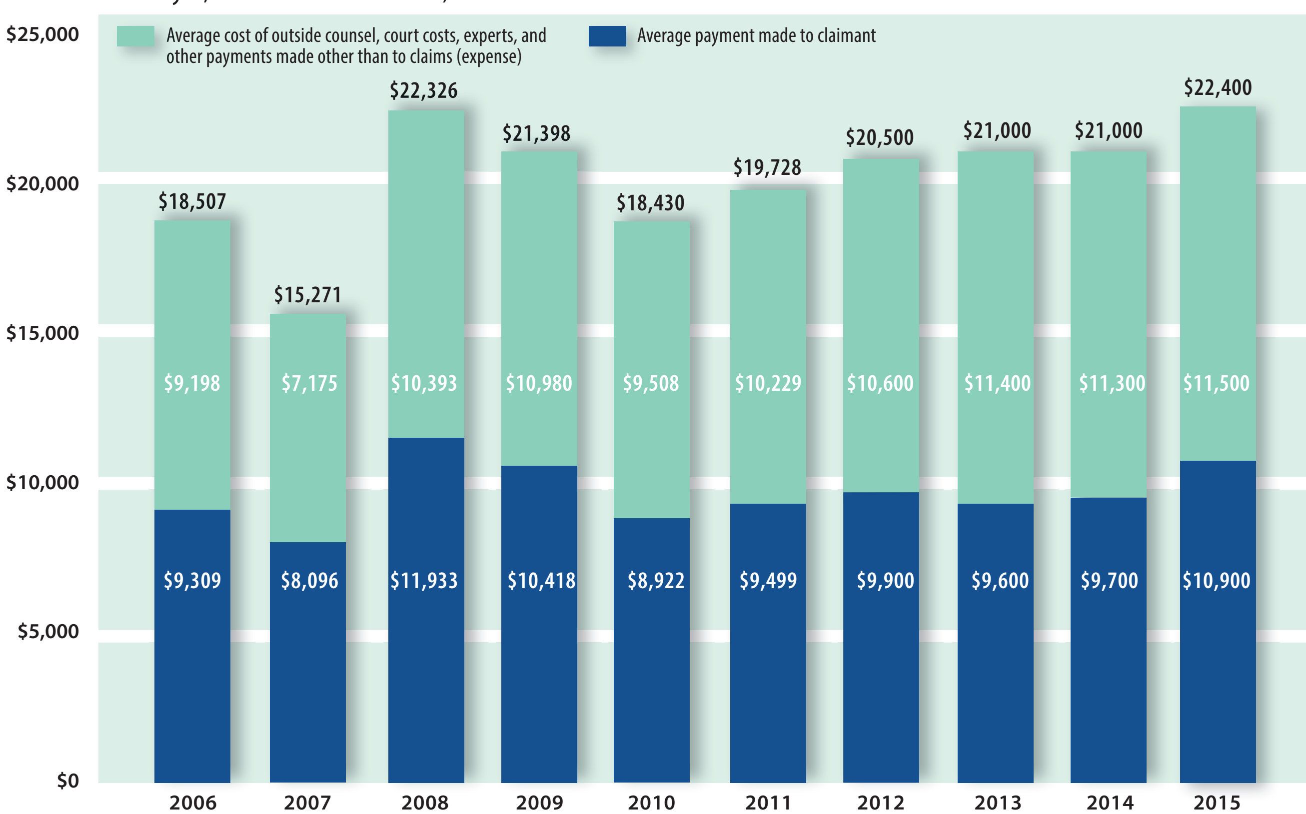
Number of Opened Claims

By Calendar Year 2006 – 2015



Average Cost Per Closed Claim

January 1, 2006 – December 31, 2015



Summary Financial Statements (Unaudited)

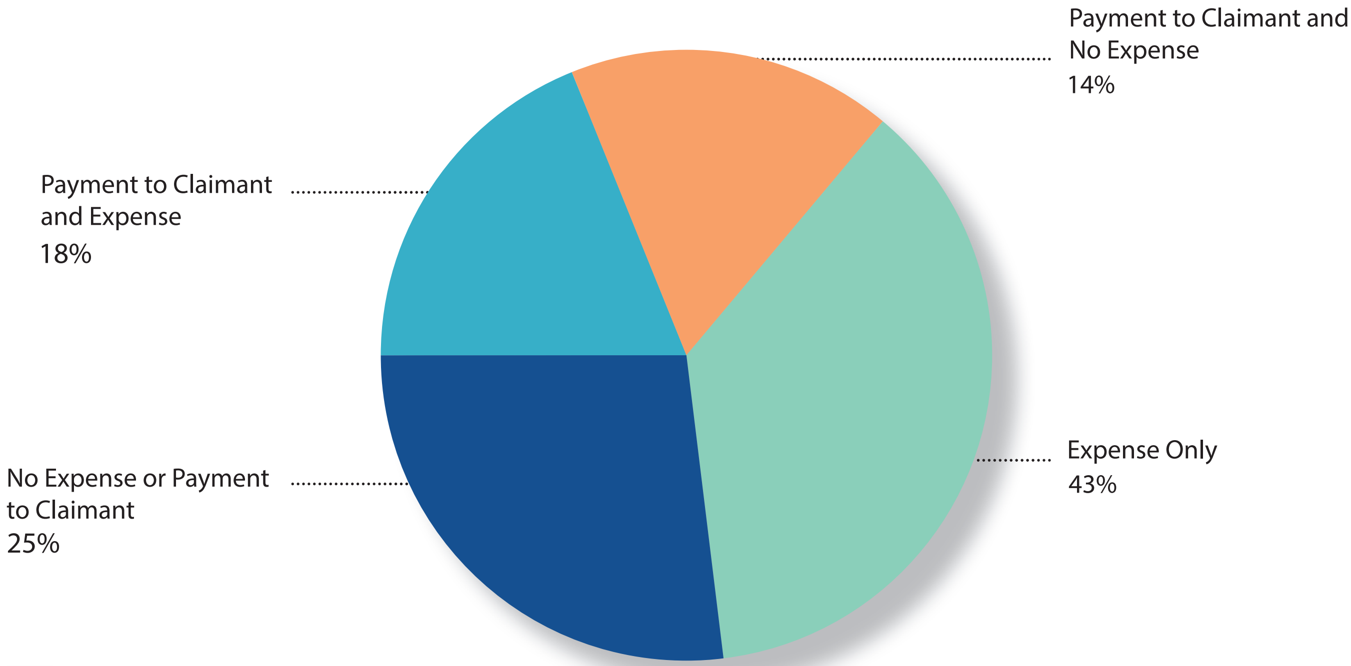
(Primary and Excess Programs Combined)

	12/31/2015	12/31/2014
ASSETS		
Cash and Investments at Market	$52,663,201	$55,688,986
Other Assets	3,438,366	911,987
Capital Assets	740,183	852,010
TOTAL ASSETS	**$56,841,750**	**$57,452,983**
LIABILITIES AND NET POSITION		
Estimated Liabilities for Claim Settlements and Defense Costs	$35,300,000	$35,200,000
Deferred Revenues	10,847,994	10,580,097
Other Liabilities	666,585	743,914
Net Position	10,027,171	10,928,972
TOTAL LIABILITIES AND NET POSITION	**$56,841,750**	**$57,452,983**

	For the Year Ending December 31	
	2015	**2014**
REVENUE		
Assessments	$25,461,021	$24,668,300
Investments and Other Income	91,920	3,807,139
TOTAL REVENUE	**$25,552,941**	**$28,475,439**
EXPENSE		
Administrative	$8,768,450	$7,960,204
Provision for Settlements	10,362,499	9,844,149
Provision for Defense Costs	7,323,794	9,012,402
TOTAL EXPENSE	**$26,454,743**	**$26,816,755**
NET INCOME	**-$901,802**	**$1,658,684**

These statements have been adjusted to remove prepaid assessments (e.g., payments of the 2015 assessment received in December of 2014). A complete copy of the December 31, 2015, audit report is available upon request.

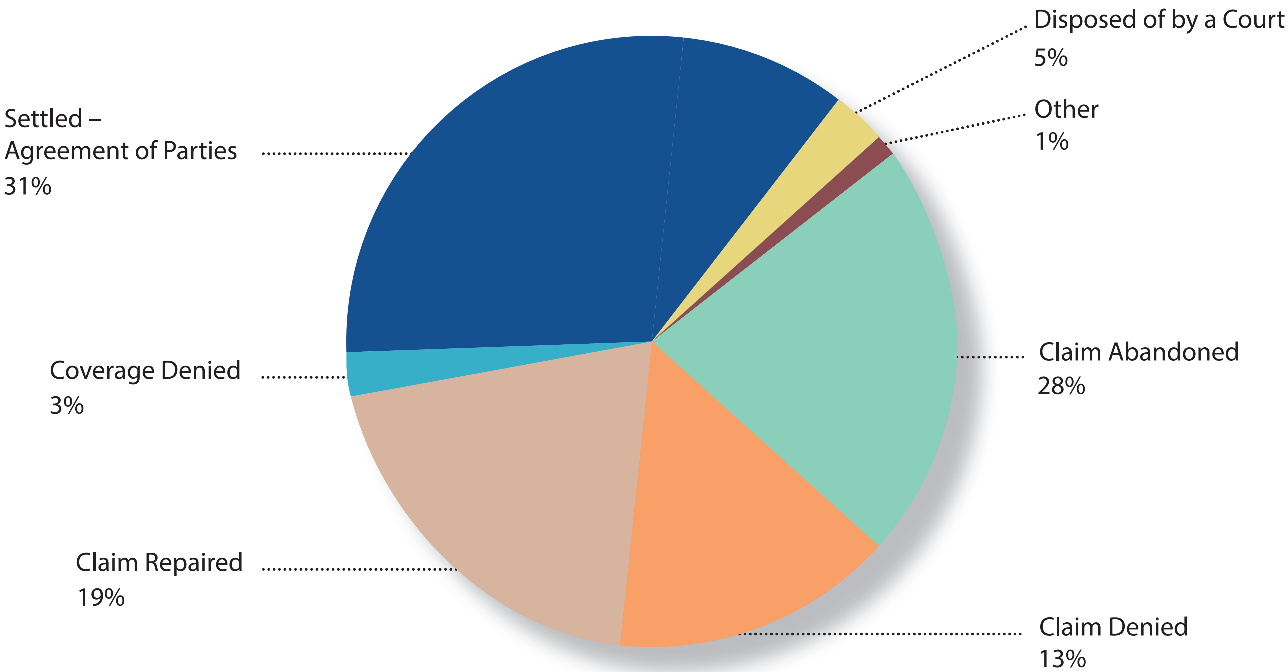
Payment Allocation of Closed Claims
January 1, 2006 – December 31, 2015



= Indicates no payment made to claimant

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

Disposition of Closed Claims
January 1, 2006 – December 31, 2015



Cost of Closed Claims by Area of Law

January 1, 2006, through December 31, 2015

AREA OF LAW	PERCENT INDEMNITY PAID	INDEMNITY PAID	PERCENT EXPENSES PAID	EXPENSES PAID	TOTAL PAID
Personal Injury	20%	$13,739,057	12%	$8,479,399	$22,218,456
Business Transactions / Commercial Law	12%	$8,593,521	16%	$10,264,261	$18,857,782
Real Estate	14%	$9,822,761	14%	$9,095,578	$18,918,339
Estate Planning & Estate Tax	12%	$8,350,215	10%	$6,643,961	$14,994,176
Bankruptcy & Debtor-Creditor	9%	$6,370,212	11%	$7,116,973	$13,487,185
Domestic Relations / Family Law	10%	$6,651,412	9%	$5,951,729	$12,603,141
Workers' Compensation / Admiralty	3%	$2,045,931	2%	$1,041,488	$3,087,419
Securities	2%	$1,248,508	4%	$2,351,620	$3,600,128
Criminal	2%	$1,239,172	3%	$2,016,962	$3,256,134
Tax	1%	$476,369	1%	$676,689	$1,153,058
Other	15%	$10,879,492	18%	$11,892,540	$22,772,032
	100%	**$69,416,650**	**100%**	**$65,531,200**	**$134,947,850**

Frequency of Closed Claims by Area of Law

January 1, 2006, through December 31, 2015

AREA OF LAW	PERCENT OF CLAIMS	NUMBER OF CLAIMS
Personal Injury	15%	1,262
Domestic Relations / Family Law	17%	1,371
Bankruptcy & Debtor-Creditor	13%	1,111
Real Estate	10%	814
Estate Planning & Estate Tax	10%	849
Business Transactions / Commercial Law	7%	599
Criminal	7%	567
Workers' Compensation / Admiralty	2%	194
Tax	1%	60
Securities	1%	44
Other	17%	1,415
	100%	**8,286**

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THE 2015 PRIMARY PROGRAM ASSESSMENT

Four major objectives were considered in the process of setting the 2015 assessment. Those objectives are (1) to provide sufficient income to meet the costs of 2015 claims; (2) to provide sufficient income to fully fund the cost of older pending claims; (3) to provide stability to the assessment for as long as possible; and (4) to move the PLF toward the goal of providing a reserve to stabilize future assessments.

As the process of determining the 2017 assessment proceeds, the PLF Board will carefully review 2015 financial results and the projected claim count, currently higher than budgeted. The Board will also consider the increasing severity trend. In 2015 we paid policy limits on more claims (15) than we had in all previous years combined. Nonetheless, the PLF is optimistic that, barring unforeseen developments, the assessment will not be increased. The 2017 assessment will be determined mid-year 2016.

HOW IS THE PLF DOING WITH CLAIMS HANDLING?

The PLF closed 951 claims in 2015. When a claim is closed, the PLF sends the covered party a claims-handling evaluation form. The claims-handling evaluation form asks whether covered parties were "very satisfied," "satisfied," or "not satisfied." In 2015, the PLF received 408 responses (42.9%). The responses gave high ratings to both claims attorneys and defense counsel.

The performance of claims attorneys continued to be very highly ranked. 91.1% of respondents stated that they were "very satisfied" with how their claim was handled, 7.7% stated that they were "satisfied," and just 1.2% "not satisfied." In other words, 98.8% of the respondents were "very satisfied" or "satisfied" with the PLF claims attorney's handling of the claim, a remarkable accomplishment.

Covered parties' satisfaction with defense counsel was also very high. Among the 244 covered parties who responded to the questionnaire about defense counsel, 88.52% were "very satisfied," 11.1% were "satisfied," and just .4% were "not satisfied." (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.)

The combined responses for claims attorneys and defense counsel totaled 89.2% "very satisfied" and 9.8% "satisfied" – thus 99% either "very satisfied" or "satisfied."

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 2015 included programs on employment law practice for attorneys, avoiding malpractice when filing and serving a complaint, bankruptcy for non-bankruptcy lawyers, practicing law with ADD/ADHD, and career workshops. In addition, the PLF continues to offer free audio and video programs that are available as CDs, DVDs, downloads, or streaming from our website (currently 91 programs available), publications (*In Brief* and *In Sight*), over 400 practice aids, and the following handbooks: *Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death* (2015); *A Guide to Setting Up and Running Your Law Office* (2016); *A Guide to Setting Up and Using Your Lawyer Trust Account* (2016); and *Oregon Statutory Time Limitations* (2014). 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 2015, the PLF presented video replays of the following programs: *Avoiding Malpractice When Filing and Serving a Complaint*; *Employment Law Practices for Attorneys: Hire With Confidence and Avoid Trouble at Termination*; *Health Insurance Today, At 65 And In Retirement*; *Making More Money in Less Time – Practi-*

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cal Practice Management Advice to Maximize Income; *Oregon eCourt Update*; *Technology Update – Office 365*; and *At the Corner of Law Practice and Disability*. These video replays were presented in Bend, Coos Bay, Eugene, Medford, Newport, Redmond, and Salem, Oregon.

Practice Management Advisor Program. Our practice management advisors (PMAs), Beverly Michaelis, Sheila Blackford, Hong Dao, and Jennifer Meisberger, 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% of the people who returned surveys were either "very satisfied" or "satisfied" in the following survey categories: (1) reaching a PMA by telephone; (2) practice management advisor's ability to explain information clearly; (3) how the lawyer was treated by the practice management advisor (patience, courtesy, etc.); (4) overall level of satisfaction with service; (5) the promptness within which the lawyer received a return phone call; (6) the amount of time between calling for an appointment and when the appointment took place; (7) receiving information that was helpful and; (8) follow up. In 2015, the PMAs presented seminars all over the state on practice management. In addition to these presentations, the PMAs also provide in-house CLEs for law firms.

Oregon Attorney Assistance Program. The Oregon Attorney Assistance Program (OAAP) attorney counselors, Shari R. Gregory, Mike Long, Douglas Querin, Kyra Hazilla and Bryan Welch, 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 2015, the OAAP sponsored addiction support groups, lawyers-in-transition meetings, career workshops, a depression support group, a grief support group, a support group for lawyers with ADD, a women's wellness retreat, a men's work/life balance support group, a support group for lawyers going through the disciplinary process, a support group for overcoming procrastination, a resiliency building group and a mindfulness group. In addition, the OAAP attorney counselors assisted over 841 lawyers with personal issues in 2015, including alcoholism, drug addiction, career satisfaction, retirement, and mental health issues.

CHANGES TO THE COVERAGE PLAN

A number of changes were made to the 2016 PLF Primary Claims Made Plan. The majority were ministerial – simplifying terms, removing outdated language, and streamlining plan commentary. More significant changes were made to Exclusions 2, 4, 8, 10, and 11.

Exclusion 2 – Wrongful Conduct Exclusion

Exclusion 2 is now broken into subsections that more specifically describe the activities to be excluded. These changes are meant to explain existing policy and practice, rather than to create new exclusions. Excluded from coverage are claims for actual or alleged criminal, dishonest, knowingly wrongful, fraudulent, and malicious acts or conduct, as well as intentional violations of the Oregon Rules of Professional Conduct. Also now specifically excluded from coverage are claims arising out of non-payment of a valid and enforceable lien if actual notice of such lien was provided to you or anyone in your office, prior to payment of the funds to a person or entity other than the rightful lien-holder.

Exclusion 4 – Punitive Damages and Cost Award Exclusions

Exclusion 4 now specifies that claims arising from false or unwarranted certification in a pleading, or for monetary sanctions for improper conduct, are excluded from coverage. These changes are meant to define existing policy and practice, rather than to create new exclusions.

Exclusion 8 – ORPC 1.8 Exclusion (Business Transactions with Clients)

When Oregon lawyers engage in a business transaction with a client, they have an ethical duty to make certain disclosures to the client pursuant to ORPC 1.0(g) and 1.8(a). In prior plan years, covered parties were required to make the appropriate disclosures and provide the PLF with copies of such disclosure letters or risk exclusion of coverage. The reporting requirement to the PLF has been removed. You are no longer required to provide the PLF with copies of disclosure and consent letters when engaging in business transactions with clients. *Caveat: Your ethical duty of disclosure and consent is unchanged.* For the convenience of practitioners, a sample disclosure and consent letter for engaging in business transactions with clients is available on the PLF website at **www.osbplf.org**. Under Practice Management, select Forms, then search for the Disclosure of Potential Malpractice category.

Although the reporting requirement to the PLF was eliminated, Exclusion 8 still stands. The Plan excludes from coverage any claim arising from a business transaction subject to ORPC 1.8(a) in which you participate with a client, unless any required written disclosure has been properly executed in compliance with the rule and fully executed by you and the client before the business transaction giving rise to the claim.

Exclusion 10 – Law Practice Business Activities Exclusion

Exclusion 10 was changed to further distinguish covered activities – the practice of law – from activities that relate to the business of practicing law, which are excluded from coverage.

Exclusion 10 is now broken out into more specific subsections. Excluded from coverage are claims for amounts paid, incurred, or charged as fees, costs, or disbursements, including amounts claimed as restitution, forfeiture, financial loss, or set-off. Also excluded from coverage are claims arising from or related to the negotiation, securing, or collection of fees, costs, or disbursements, and claims for damages or the recovery of funds or property that will benefit you. These changes are meant to clarify existing policy and practice, rather than to create new exclusions.

If the PLF defends a claim that includes any claim covered by this exclusion, the PLF can settle or attempt to dismiss the other claims not falling within this exclusion and can withdraw from defense following the settlement or dismissal of those claims. In essence, the PLF has no obligation to defend claims that are entirely excluded under Exclusion 10. This amendment represents a change in PLF policy.

Exclusion 10 does not apply to claims based on your malpractice regarding your client's right or ability to recover fees, costs, or expenses; the PLF will defend those claims.

Exclusion 11 – Family Member and Ownership Exclusion

Exclusion 11 was amended to prevent coverage through vicarious liability for otherwise excluded claims. Now excluded from coverage are any claims against you arising out of another lawyer having provided legal services or representation to his or her own spouse, parent, child, step-child, sibling, or member of his or her household, or on behalf of a business entity in which any of them individually or collectively have a controlling interest. The other exclusion for claims based on your legal work for your own family members or their business interests remains unchanged.

A complete copy of the 2016 PLF Primary Claims Made Plan may be found on the PLF website at **www.osbplf.org**.

CHANGES IN PLF BYLAWS AND POLICIES

Bylaws

There were no changes to the 2016 bylaws.

PLF Policies

The term "retained earnings" was changed to "net position" in Chapter 1, Goal No. 2 and Chapter 7, 7.100 (B) to reflect a more modern nomenclature.

In Chapter 5, Section 5.100(A) was changed to update the dollar amount requiring managerial signatures from $500 to $10,000 (one signature for under that amount and two signatures of that amount or more).

In Chapter 6, Section 6.200(F) updates the way the OAAP will collect and use generic statistical data.

(F) The OAAP will ~~not~~ maintain statistical data, including the number of people accessing the OAAP and the type of services provided. Statistical reports will be produced ~~records of participant's names or the nature of participation. Statistical data will be maintained including the number of people utilizing the OAAP. Statistical reports will be produced~~ periodically as requested by the ~~program~~ OAAP executive director ~~Director~~. The reports will not disclose the identity of any person who has received assistance from the OAAP.

Many changes were made to Chapter 7 of the PLF Policies that govern the Excess Program. The majority of these changes corresponded to the overhaul of the rating system discussed below.

EXCESS PROGRAM

Participation in the PLF Excess Program remains stable. For the 2015 plan year, 706 firms with a total of 2,007 attorneys purchased excess coverage from the PLF.

Over the past several years the PLF Excess Program saw a steady attrition of law firms switching from PLF Excess to coverage on the commercial market. This phenomenon was particularly true for mid-sized law firms (firms over 5+ attorneys). Many of the law firms who left PLF Excess for the commercial market did so because of cost, often stating that they would have preferred to stay with the PLF, but the rates were no longer competitive.

Historically, the Excess Program determined a law firm's premium by using a series of flat rates per attorney at each coverage level. This approach did not allow for premium adjustments based on a particular firm's risk profile (for example, charging more for a firm with claims issues, or less for a firm with no claims history). This resulted in over and under pricing that made the Excess Program less competitive in the marketplace for excess coverage.

To address this issue, in 2015 members of the PLF staff worked closely with Aon Benfield (the Excess Programs reinsurance broker) and lead reinsurer, Faraday, to develop a new pricing model that would determine a premium for a law firm based on that particular firm's risk profile. The model uses a per attorney base rate and a rate sheet with a variety of factors that all go into determining the firm's premium for coverage. Examples of factors included in the rate sheet are: area of practice, attorney CLE attendance, use of practice management systems, firm size, use of an office manager, claims history, desired coverage limits, etc. The resulting premium charged to a firm based on the new rate sheet now more accurately reflects the risk presented by that particular firm.

The PLF Excess Program continues to be entirely re-insured and financially independent from the mandatory PLF Primary Coverage Program. The Excess Program continues to provide all covered firms with an endorsement for Cyber Liability and Data Breach coverage. In 2016, the Cyber Liability & Breach Response Endorsement was expanded to include coverage for cyber extortion events.

PLF Policies

Corresponding to this overhaul of rating system, a number of changes were made to PLF Policies Section 7 to remove language that was more applicable to the older pricing model. Most significantly, Section 7.300, which previously laid out extensive criteria for applications that were acceptable for underwriting, was shortened to demonstrate that a rating model would be used to determine a law firm's premium, and that the premium charged would result from examination of a variety of factors. Section 7.300(A) now reads:

(A) Applications submitted for underwriting will be evaluated against a variety of factors, including, but not limited to: prior claims experience, area of practice, CLE history, firm size, amount of excess insurance sought, and the use and quality of standard practice management systems.

New language has also been added in Section 7.300(E) to now require the following approval:

(E) Assessments for excess coverage will be determined through an underwriting formula and rate sheet. Base rates will be set by the PLF in agreement with reinsurers and will be approved by the Board of Governors upon recommendation of the PLF Board of Directors.

Other changes to Section 7 were more ministerial and clarified language relating to the processing of applications, the role of the PLF Board of Directors Excess Committee, and the way the extended reporting coverage (ERC) assessment is calculated.

FORECAST FOR THE FUTURE

After two years of significant retirements of many PLF staff members, 2016 was largely stable and provided an excellent opportunity to focus on forging a new team. We devoted considerable time towards a complete overhaul of our claim data collection which we believe will greatly enhance our claims handling and loss prevention efforts. In August, we hosted the biennial defense panel conference, which was very successful. The claims department has focused on enhancing diversity on our panel over the last five years. During a recent outside claims audit, the auditor commented on the high quality of our defense panel. Finally, we are in the process of hiring a new PMA due to the impending retirement of Beverly Michaelis, an extraordinary talent who has helped thousands of Oregon lawyers. We wish her well!

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

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