

2017 ANNUAL REPORT



Professional
Liability Fund

INTRODUCTION

I begin my annual report with a thank you to each of you. This year the PLF migrated to a fully paperless assessment and exemption process. We also provided options for larger firms to better manage payments for multiple lawyers. This change involved a significant amount of work by several members of the PLF accounting and IT departments, but the real credit goes to all Oregon lawyers. With virtually no exception, you made the transition without incident. This change allowed us to save almost \$7500 in postage alone normally incurred in just our initial mailing of assessment statements and exemptions.

In 2017, our claim count was lower than budgeted, and our investment return was more than twice budgeted. Our net position at year-end was just over \$20 million, almost double where we ended in 2016. A significant contribution to this positive end-of-year position was the release of over \$4 million from claims reserve due to positive claim development. As we have reported in the past, the PLF has used the actuarial firm of Rudd & Wisdom for almost 25 years to set our actuarial reserve for claims. At the end of 2017, that review resulted in a decrease of \$1000 per claim (from \$21,000 to \$20,000). Particularly remarkable was that our claims expense decreased. Based on reports from other lawyer liability carriers throughout the country, we are a fortunate outlier in this regard. I am confident this reduction is due to the high-quality claims handling of our internal claims staff and the superior service we receive from our PLF defense panel.

For the seventh year in a row, our assessment remained at \$3500. Before 2011, the PLF assessment never remained the same for more than three years. Our strong net position (coupled with careful claims handling and robust loss prevention) has allowed the PLF to satisfy its commitment to ensure stability in the cost of malpractice coverage.

A significant focus of the claims department in the last 18 months has been to improve our data collection so that we can better evaluate how we handle claims. While claims handling can never be driven solely by data, we are hopeful that improved data and use of that data can help us analyze and resolve claims effectively and efficiently. For instance, an area that has increased in recent years is repairs. The PLF has discretion to undertake a repair when a mistake occurs that can be fixed so as to avoid (or mitigate) a claim. As the chart on page 1 shows, for those claims that were successfully repaired, we spent approximately one-third of the average cost of a claim. But of course, not all repair efforts are successful. We also learned that the cost of unsuccessful repairs is almost four times that of successful repairs. Understanding which circumstances likely result in successful repairs, and spending the money on those circumstances, is a good outcome for the covered party, the PLF, and the claimant. We believe our new data collection will help us with this type of analysis.

PLF STATISTICS

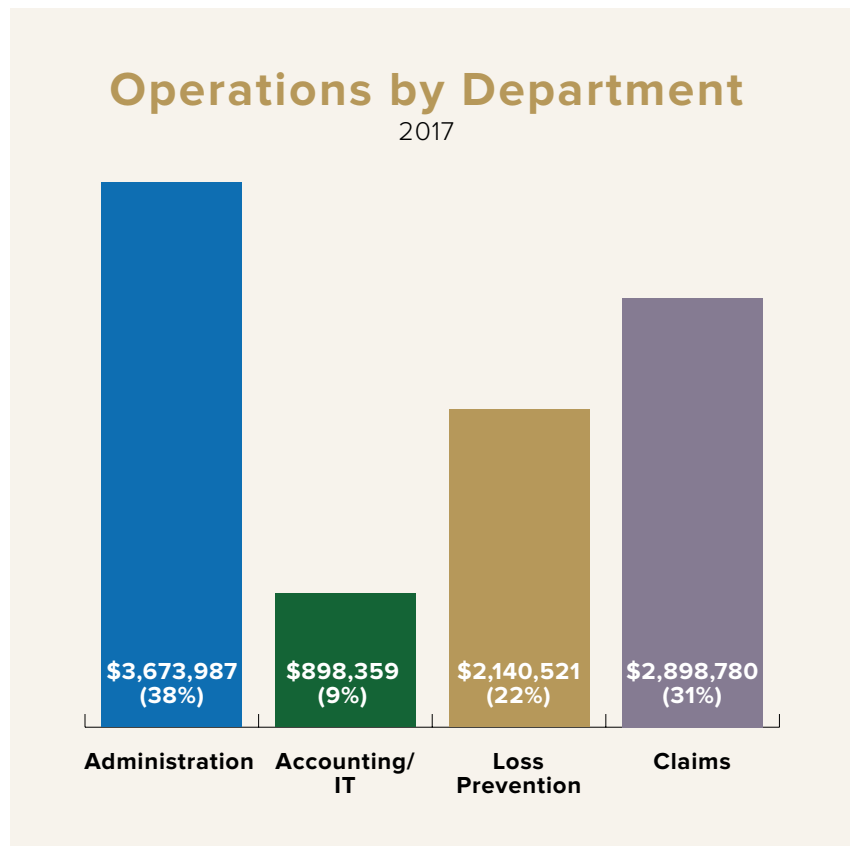
2001–2016

	Assessments	Claims
2013	\$3,500	902
2014	\$3,500	911
2015	\$3,500	808
2016	\$3,500	839
2017	\$3,500	827
2018	\$3,500	855*

* Projected

We also have evaluated the frequency and severity of claims based on years of practice. The average age of a PLF covered lawyer is 50 and the average number of years of practice is 22. Lawyers practicing 31 years or more have a higher frequency and severity. There are several possible explanations for this, including that those lawyers are the ones working on the most high-stakes matters. But we also see matters coming from this demographic where the error was made because the lawyer was not performing at the level he or she had previously.

The staff at the PLF remained largely stable during 2017. We were sorry to say good-bye to longtime OAAP Attorney Counselor Mike Long after 20 years of compassionate service to Oregon lawyers. And our Director of Claims, Bruce Schafer, retired after over 30 years of dedicated service. Bruce was largely responsible for creating the claims handling culture of the PLF – one of professionalism, diligence, and integrity. Bruce is enjoying his retirement in his woodshop and on his new bike. I am delighted that Madeleine Campbell, an attorney with over 30 years' experience, 10 at the PLF, accepted the position of Claims Director effective January 1, 2018.



Carol J. Bernick
PLF Chief Executive Officer

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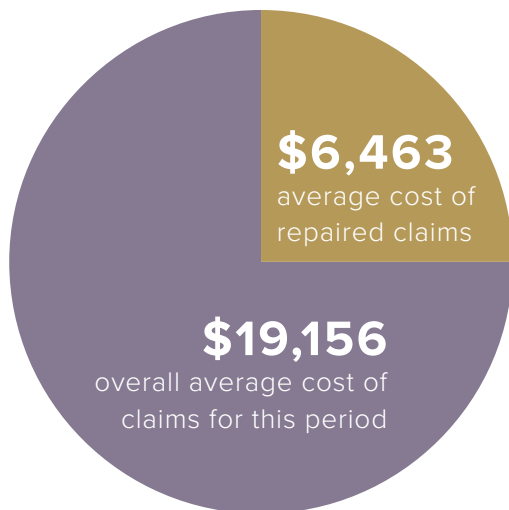
How Is the PLF Doing With Claims Handling?

813
successful
repairs

from January 1, 2013
through
December 31, 2017

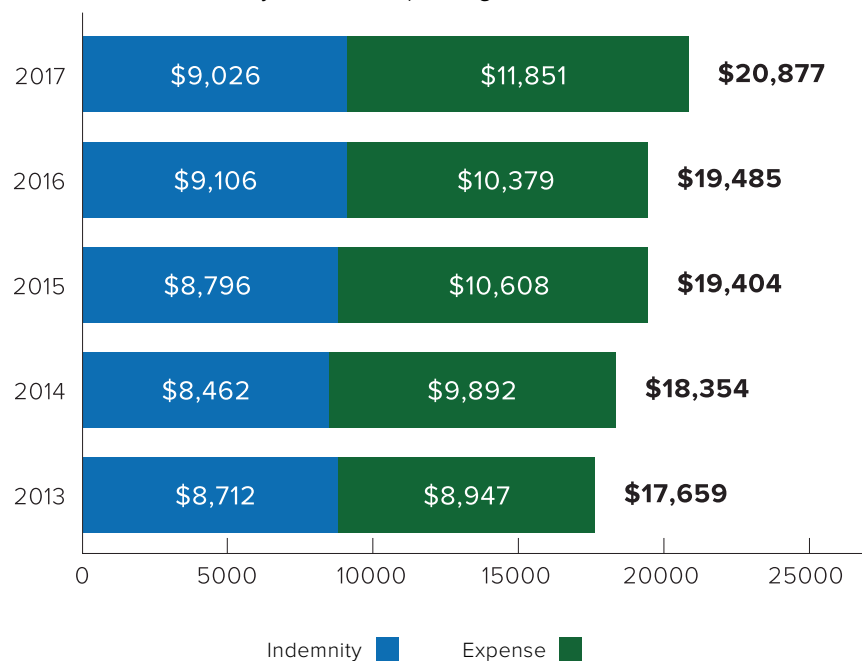
“Repair” has been part of PLF terminology going way back. A “repair,” in PLF-ese, is where the PLF agrees to pay for a lawyer to represent the claimant in an effort to reverse, cure, or mitigate the consequences of an error by a covered party (lawyer covered by the PLF). The most common repairs are those that can put a matter back on track in the same condition it was before the lawyer’s error, such as setting aside defaults and fixing other missed deadlines.

Whether the PLF will embark on a repair is completely within the discretion of the PLF. See, Section I.B.2. of the 2017 PLF Primary Coverage Plan and PLF Policy 4.300 (PLF Policies and Bylaws Manual).



Average Cost Per Closed Claim

By Year of Reporting 2013–2017



Top Three Areas of Law by Frequency and Severity

January 1, 2012 to December 31, 2016

	2017	2016	2015	2014	2013
TOTAL CLOSED CLAIMS	796	872	901	880	1073
FREQUENCY					
Personal Injury					
Number of Claims	155	161	143	126	139
Cost per claim	\$16,598	\$23,970	\$23,812	\$21,061	\$24,214
Domestic Relations					
Number of Claims	123	141	145	177	165
Cost per claim	\$13,650	\$17,407	\$8,035	\$14,007	\$11,682
Bankruptcy/Debtor					
Number of Claims	88	108	138	101	131
Cost per claim	\$14,569	\$18,977	\$17,551	\$8,792	\$15,265
SEVERITY					
Business Transactions					
Number of Claims	44	47	50	70	77
Cost per claim	\$32,395	\$55,790	\$50,862	\$30,256	\$32,521
Securities					
Number of Claims	12	5	4	5	5
Cost per claim	\$49,771	\$119,419	\$11,516	\$102,887	\$57,311
Other Civil Litigation					
Number of Claims	63	*	*	*	*
Cost per claim	\$43,297				

* Civil Litigation was not tracked as a unique area of law until 2017.

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).



700+ people attended the PLF CLE in-person seminars.

Approximately 5,000 CLE programs were downloaded or streamed from our online CLE service providers.



1,093 requests for CDs and 576 requests for DVDs.

Personal and practice management assistance seminars in 2017 included our annual practice skills program for new admittees, Learning The Ropes, programs on various law practice management software products, technology updates, how to avoid ethics violations and malpractice claims, choosing a form of entity, securities law, practicing law with ADD/ADHD, mind body connection, and career workshops.

In addition, the PLF continues to offer free audio and video programs that are available as CDs, DVDs, or by downloading or streaming from our website:

- **92 free audio and video programs available**
- ***InBrief* and *InSight* publications**
- **over 300 practice aids**
- **4 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 (2017); 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.

Practice Management Advisor Program

Our practice management advisors (PMAs), Sheila Blackford, Hong Dao, Jennifer Meisberger, and Rachel Edwards 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 2017, 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.

100% of the people who returned surveys were “very satisfied” or “satisfied” with all of the following areas: (1) reaching a PMA by telephone; (2) the promptness within which the lawyer received a return phone call; (3) the amount of time between calling for an appointment and when the appointment took place; (4) practice management advisor's ability to explain information clearly; (5) how the lawyer was treated by the practice management advisor (patience, courtesy, etc.); (6) receiving information that was helpful; (7) follow-up; and (8) overall level of satisfaction with service.

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 2017, the OAAP sponsored addiction support groups, lawyers-in-transition meetings, career workshops, a depression support group, a support group for lawyers with ADD, a women's wellness retreat, a men's work/life balance support group, a *trans support group, a resiliency building group, a support group for minority lawyers, a mindfulness group, creating healthy habits support group.



100% of the people who returned surveys were "very satisfied" or "satisfied" with eight aspects of the PMA program.



507 lawyers assisted with personal issues in 2017, including alcoholism, drug addiction, career satisfaction, retirement, and mental health issues.

What Are the Changes to the Coverage Plan?

There are several revisions to the PLF Plan for 2018. These revisions address:

(1) the applicable Plan Year when a Covered Party is aware of a potential claim, but does not report the potential claim to the PLF until a subsequent Plan Year; (2) the treatment of expenses incurred for representation regarding a deposition or subpoena where no claim against a Covered Party has been alleged; (3) the applicable Plan Year for claims that are “Related” under the PLF Plan; and (4) the addition of an escrow exclusion to discourage lawyers from acting in the role of an escrow agent.

1. Awareness of a Potential Claim Triggers Plan Year

Under the PLF Plan, the Plan Year in effect when a Covered Party becomes aware of the likelihood of a claim is the applicable Plan Year for the potential claim. This is the case even if the Covered Party does not report the potential claim to the PLF until the next Plan Year. In order to make this intent more apparent, the PLF has added language to the 2018 Plan.

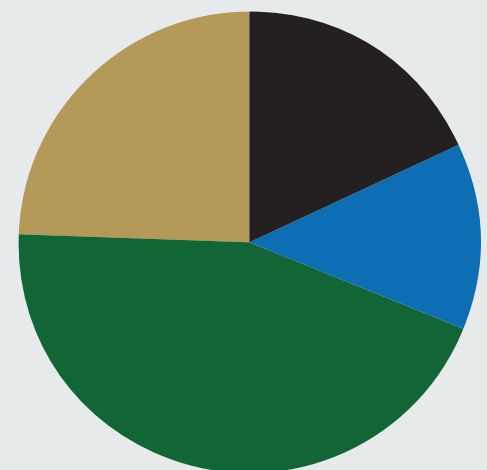
Covered Parties should be aware that there is a duty under the Plan to report a potential claim as soon as the Covered Party learns of facts or circumstances that reasonably could result in a claim. Sometimes if the PLF has timely notice of a potential claim, it is able to take action to assist in preventing a claim or in mitigating any potential harm. Further, timely notice may be important for other reasons, including allowing the PLF to advise the Covered Party regarding appropriate disclosure of any error. Lack of appropriate and timely disclosure to a claimant can compound a mistake and result in ethics problems. Further, if a Covered Party does not provide timely notice to the PLF and this prejudices the ability of the PLF to prevent, mitigate or defend the claim, this may result in lack of PLF coverage.

2. Allocation of Deposition and Subpoena Expenses

Although the PLF is not required to do so, it will often provide defense counsel to a Covered Party who has received a subpoena or notice of a deposition, even if no one has asserted a claim against the Covered Party. The PLF does this to determine whether there may be a potential for a claim, to assist in preventing a claim and/or to help the Covered Party navigate privilege issues relating to providing information regarding the representation of a client. Under the 2018 Plan language, the PLF allocates claims expenses for this type of representation to the Plan Year in which it incurs the expenses. If, however, an actual claim arising from the same matter is made in a later Plan Year, the PLF then reallocates these deposition or subpoena expenses to the Plan Year applicable to the claim.

Payment Allocation of Closed Claims

2013–2017



Paid both Indemnity and Expense	18%
Paid Indemnity Only	14%
Paid Expense Only	45%
Paid neither Indemnity nor Expense	23%

3. Applicable Plan Year Regarding Related Claims

Under the PLF Primary Plan, Covered Parties share a single \$300,000 limit for claims that are “Related,” as defined in the Plan. When claims are “Related,” Covered Parties may not only share a limit with lawyers in their own firm, but they may also share a limit with lawyers in other firms.

Under pre 2018 Plan language, if there were “Related Claims” against Covered Parties in two or more separate firms, regardless of when the various firms performed the work at issue, the applicable Plan Year for all claims was the year that applied to the first of the “Related Claims.” Under the revised Plan language, different Plan Years may now apply where the Covered Parties sharing a limit were not working together as “Associated Attorneys” on the underlying matter(s). In these circumstances, the PLF determines the applicable Plan Year for a Covered Party independently of which Plan Year is applicable to the lawyers who are not “Associated Attorneys.”

This change in applicable Plan Year does not change the longstanding policy that, under the PLF Primary Plan, all Covered Parties share a maximum limit of \$300,000 regarding all Related Claims. This shared single limit applies regardless of when the Related Claims are made and regardless of how many Covered Parties or firms are involved. Consequently, it is important that Covered Parties protect themselves against the risk of diminished limits for Related Claims by purchasing excess coverage.

4. Exclusion for Escrow Services

The PLF has encountered a number of claims in which the lawyer has been acting in the role of an escrow agent. These claims result from the release, or failure to release, funds held in escrow. Because the PLF believes serving as an escrow agent presents unreasonable risks for lawyers, the PLF has added an exclusion to the Plan that precludes coverage for engagements in which the lawyer is performing the function of an escrow agent.

Acting as an escrow agent exposes a lawyer to heightened risks arising from actual or alleged conflicts, and is not the type of “professional service” the Plan is intended to cover.

Taking on the role of an escrow agent is unreasonably risky if the lawyer is representing one of the parties in the transaction. In this case, the lawyer is in a position of conflict and is in violation of ethical rules when purporting to act as a neutral. See, Formal Opinion No. 2005-55.

Where the lawyer is supposed to be acting only as a neutral, and does not represent any of the parties, there is no attorney-client relationship to create the type of liability for legal malpractice that is within the proper scope of the PLF Plan. In addition, even when the lawyer does not actually represent any of the parties in such a transaction, there is a risk of confusion. One or more of the parties may subjectively believe that the lawyer was representing one or more of the parties.

The Escrow/Holding Exclusion in the Plan applies to cases in which the lawyer is doing the type of work that the PLF believes should be performed by a title company or professional escrow agent. The exclusion does not apply to a lawyer holding funds for settlement purposes or to the situation, for example, where a domestic relations lawyer is applying funds held in trust to make payments pursuant to a judgment.

The Escrow/Holding Exclusion in the 2018 Plan provides as follows:

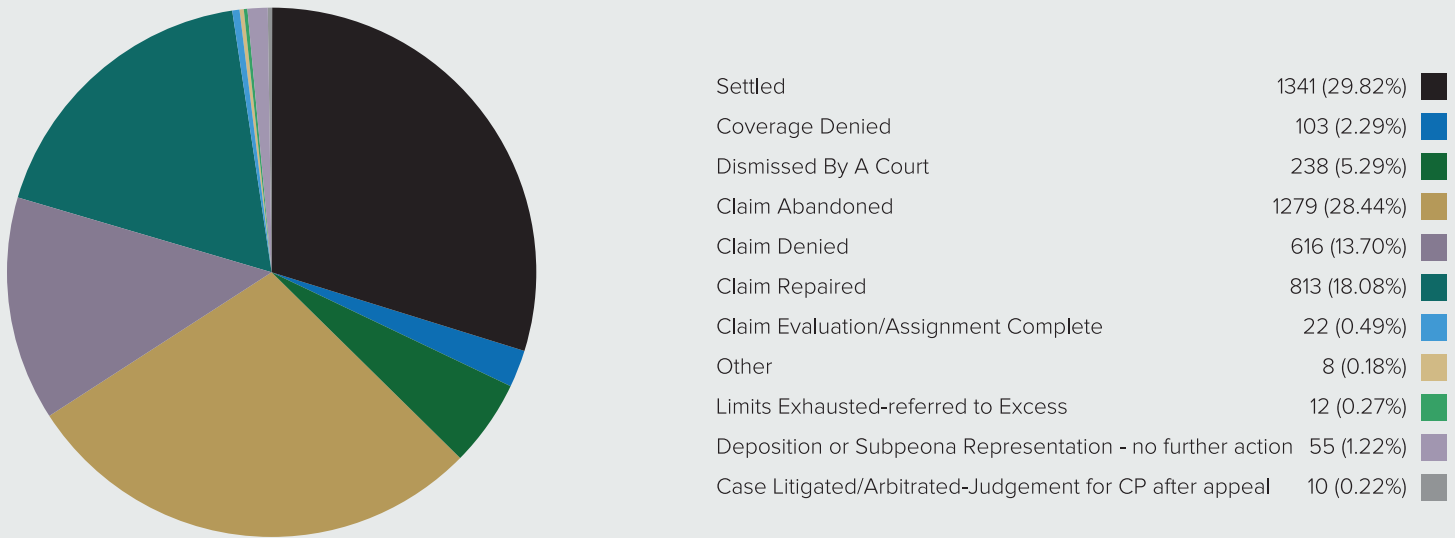
21. Escrow/Holding Exclusion

This Plan does not apply to any **Claim** arising from a **Covered Party** entering into an express or implied agreement with two or more parties to a transaction that in order to facilitate the transaction, the **Covered Party** will hold documents, money, instruments, titles, or property of any kind until certain terms and conditions are satisfied, or a specified event occurs. This exclusion does not apply to a **Claim** based on:

- (a) a **Covered Party’s** distribution of settlement funds received from the **Covered Party’s** client, or from an

Disposition of Closed Claims

January 1, 2013 to December 31, 2017



opposing party, in order to close a settlement; or (b) a **Covered Party's** distribution of funds pursuant to and consistent with a limited or general judgment in a domestic relations proceeding.

The following illustrative examples, not intended to be exhaustive, are provided for the purpose of assisting a **Covered Party** or court in interpreting the PLF's intent as to the scope of Exclusion 21:

Example 1: Lawyer is hired to act as a neutral third party to hold money in a transaction between non-clients. The parties do not provide written instructions, but agree that the lawyer should determine when it is appropriate to release the money and deliver it to one of the parties. Claims arising from this engagement are excluded. Even if the parties agreed upon and provided the lawyer with written instructions regarding when the money should be delivered, the claims are excluded.

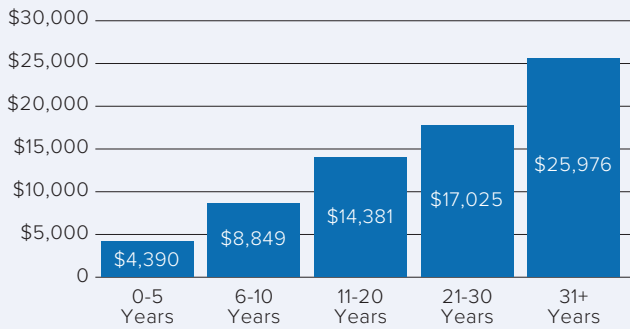
Example 2: Lawyer represents one party to a transaction with another party and pursuant to instructions from both parties, holds money or other property to disburse in accordance with those instructions. Claims arising from this engagement, including the wrongful disbursement or withholding of money or property, are excluded.

Example 3: Lawyer represents one party in a dispute and, upon settlement of the dispute, receives settlement proceeds from the adverse party's lawyer with instructions not to distribute the funds until various contingencies have occurred. Because of an innocent mistake, Lawyer incorrectly believes all contingencies are satisfied and distributes the settlement funds prematurely. Exclusion 21 does not apply to a claim based on this distribution. (But note that Exclusions 2 and 14 would apply to knowingly wrongful distributions or conversion of settlement funds.)

Example 4: Lawyer represents the trustee of a trust and is holding money to be distributed to the trust beneficiaries pending the payment of debts owed by the trust. After payment of the debts, and distribution to the beneficiaries, one of the beneficiaries claims the lawyer negligently paid a debt that was not owed. This claim is not excluded by Exclusion 21 because the lawyer has not "entered into an express or implied agreement with two or more parties to a transaction" within the intended meaning of Exclusion 21.

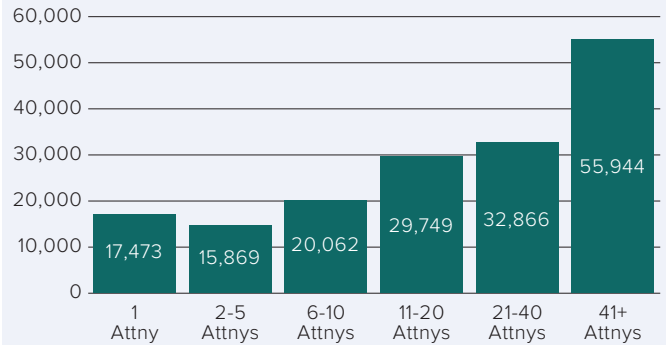
Average Cost of Claim by Year in Practice

2013 to 2017



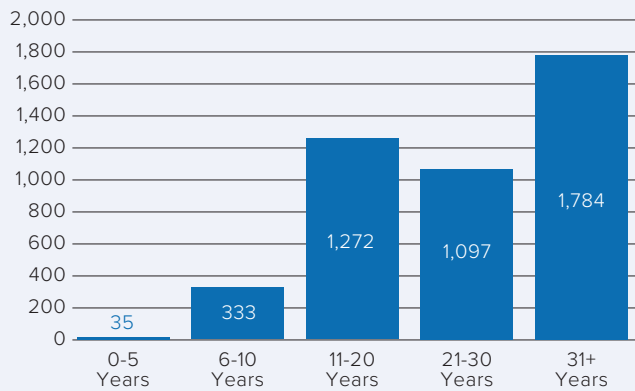
Average Cost of Claim by Firm Size

2013 to 2017



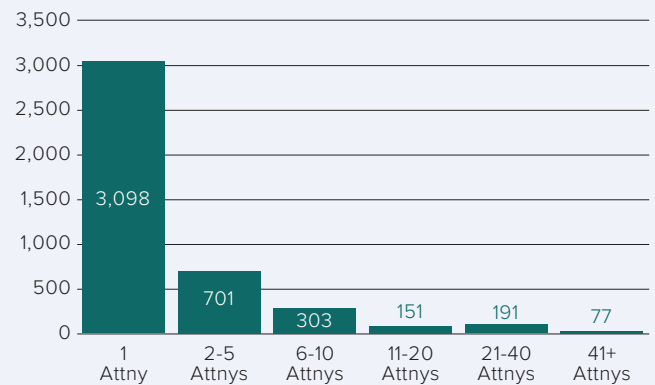
Frequency by Years in Practice

2013 to 2017



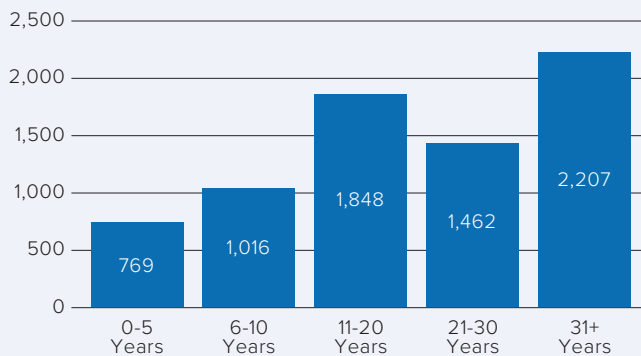
Frequency by Size of Firm

2013 to 2017



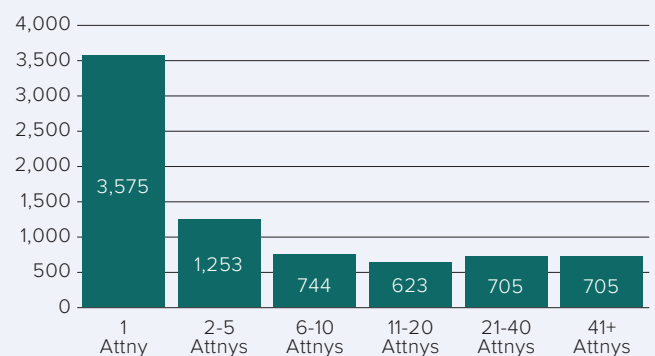
Covered Parties by Years in Practice

2017



Covered Parties by Size of Firm

2017



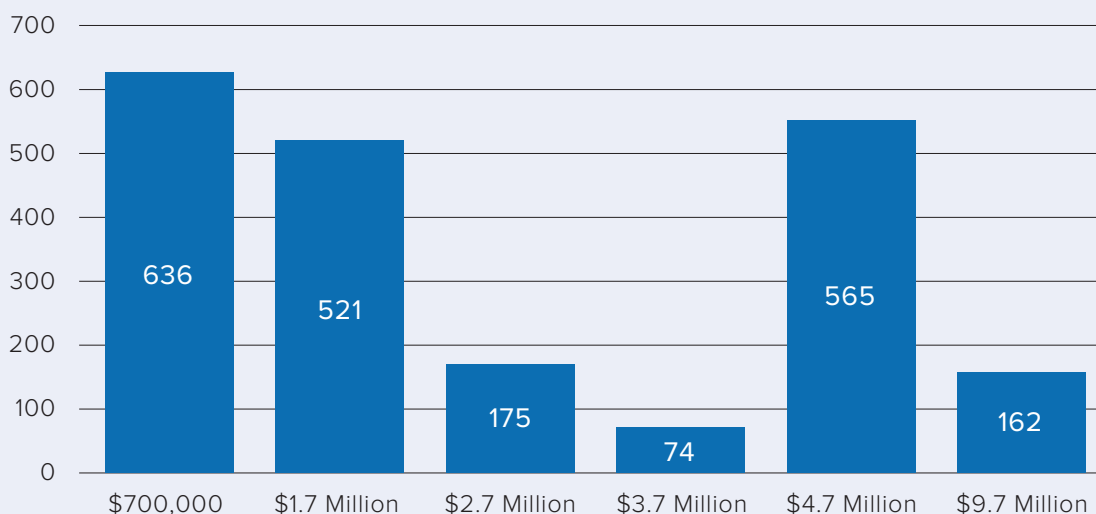
What is the Status of the Excess Program?

Participation in the PLF Excess Program remains stable. Beginning in 2016, the Excess Program began using a new rating model to price firm coverage. In its second year, the rate sheet continued to price coverage for law firms using a variety of factors, including: area of practice, use of practice management systems, firm size, use of an office manager, claims history, desired coverage limits, and so forth. The resulting premium charged to a firm based on the new rate sheet now more accurately reflects the risk presented by that particular firm.

For the 2017 plan year, 720 firms with 2,140 attorneys purchased excess coverage from the PLF.

Number of Attorneys at Each Excess Coverage Level

2017



The 2017 year was not without its challenges, however, as nearly all firms purchasing excess coverage saw an increase in their premiums. This increase was directly related to a spike in the number and severity of excess claims in mid to late 2016. Many of the large and expensive claims experienced by the Excess Program over the years have related to ORS Chapter 59 exposure (Oregon Securities law). In fact, claims in this area of law have cost the Excess Program over \$9 million in claims in the past five years. To address this issue, the PLF has worked to enhance the underwriting of firms working in this area of law. This enhanced review involves completion of a new Securities Law and/or Business Law Supplemental application and, for some firms, may require additional review by an outside securities consultant. Because of this process, we were better able to review and underwrite law firms that presented this additional risk under the Oregon Securities laws.

Over the years, many law firms have requested a way to apply for and renew their excess coverage online. In 2017, we were excited to develop and deploy the Excess Portal. From the portal, law firms are able to log in, review, complete, and submit their excess application, review quotes, and obtain declarations. In addition to this modernization, the Excess Program was able to reduce costs by not spending money on data entry, mailing, and printing. We look forward to continuing to develop the Excess Portal in the years to come by adding online payments.

The PLF Excess Program continues to be entirely reinsured and financially independent from the mandatory PLF Primary Coverage Program. Limits available range from \$700,000 to \$9.7 million. All excess coverage sold also includes a Cyber Liability and Breach Response Endorsement. In 2017, five incidents reported under this Endorsement. Higher limits for Cyber Liability coverage are now available on request.

\$1 million of coverage costs \$3,500 at the primary level, plus an average of \$1,628 for the additional excess for a total of \$5,128.

Summary Financial Statements

(Audited, Primary and Excess Programs Combined)

	12/31/2017	12/31/2016
ASSETS		
Cash and Investments at Market	\$66,655,034	\$57,314,337
Other Assets	\$884,734	\$1,624,146
Capital Assets	\$599,340	\$743,576
PERS Related Deferred Outflow of Resources	\$1,151,573	\$2,000,297
TOTAL ASSETS	\$69,290,681	\$61,682,356
LIABILITIES AND FUND EQUITY		
Estimated Liabilities For Claim Settlements and Defense Costs	\$31,900,000	\$34,300,000
Deferred Revenues	\$11,670,673	\$10,771,503
Other Liabilities	\$693,565	\$750,353
PERS Pension Liabilities	\$4,896,288	\$4,954,052
PERS Related Deferred Inflow of Resources	\$35,421	\$40,484
Net Position	\$20,094,734	\$10,865,964
TOTAL LIABILITIES AND NET POSITION	\$69,290,681	\$61,682,356
REVENUE		
Assessments	\$24,168,892	\$24,299,773
Investment and Other Income	\$8,109,855	\$4,859,835
TOTAL REVENUE	\$32,278,747	\$29,159,608
EXPENSE		
Administrative	\$9,611,648	\$8,611,037
Provision for Settlements	\$6,472,756	\$7,668,773
Provision for Defense Costs	\$6,965,574	\$9,017,791
TOTAL EXPENSE	\$23,049,978	\$25,297,601
NET INCOME	\$9,228,769	\$3,862,007



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