IN BRIEF

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PLF Assessment to Increase $300

The PLF Board of Directors (Board) and the OSB Board of Governors approved a $300 increase in the PLF assessment. This increase raises the 2011 PLF primary assessment to $3,500. The 2011 increase is the first since 2007.

The most significant factor in determining each year's assessment is the cost of claims. Non-claim-related administrative expenses account for less than 15% of the assessment. Simply put, the assessment increase was unavoidable due to three successive years of an annual claim count well over 900, coupled with increases in the cost of claims and the upward adjustment of past-year liabilities. *If not for these negative claim developments, there would be no assessment increase.*

The PLF uses actuaries to predict the future cost of claims. (The PLF receives two actuarial reports per year and sets the assessment based on recommendations the actuaries make after their midyear report.) The actuaries' 2010 midyear report indicates that the cost of claims has been increasing due to a precipitous surge in the number of claims that began in 2008 and has continued through 2009 and 2010. In 2008 and 2009, the PLF received well over 900 claims, and 2010 is projected to have over 950 claims. By comparison, there were 781 claims in 2007. In past years, when the number of claims has increased (frequency), the average cost of claims (severity) has not increased and has even decreased. That is not the case in the current times and environment. Claim severity appears to have increased for the 2008 and 2009 claim years, and projected severity has been raised for 2011 claims.

The reasons for the increase in frequency and severity are not known with certainty. Common wisdom holds that difficult economic times increase the claims against attorneys, who often are the only remaining fiscally viable resource when a transaction fails. Along with the effect of difficult economic times, demographics appear to be playing an increasing role in the rise in frequency. As covered parties age, an increasing number of attorneys have been unable to continue their practices because of sudden and serious illnesses or other difficulties. These events often result in an increase in claims.

As noted, not only has frequency increased, recent actuarial reports indicate that severity has increased as well. The increase has primarily been in expenses – that is, defense costs. A recent in-house analysis of defense costs indicates that the increase in expenses is not driven by increases in the hourly rates of defense panel members. (The PLF is the beneficiary of excellent lawyers who provide services at very reasonable rates.) Rather, the increase appears to be driven by the increased complexity of claims. For example, many recent claims involve the failure of complex business transactions, which are document-intensive and therefore inherently costly to litigate. In addition, increases in expense costs can be traced to the additional burdens of electronic discovery, as well as the increased sophistication and specialization of the attorneys bringing malpractice actions.

Finally, the actuarial reports, besides setting the amount per claim to be assigned to future claims, also evaluate the results of claims pending from past years. If the development of those claims is better than expected, the PLF receives an adjustment that reduces claim liabilities for that year; if the development is worse than expected, liabilities increase. Unfortunately, consistent with other recent developments, past claim

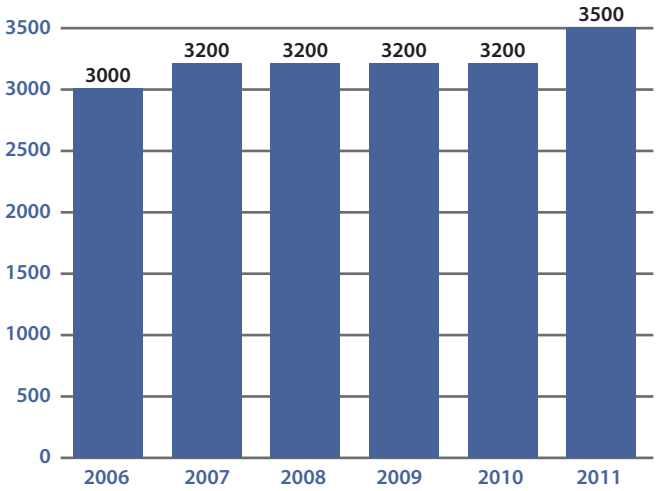
years have developed poorly, and in each of the last two actuarial reports approximately $1 million dollars in past-year liabilities were added.

The last three years have seen a trend of increasing frequency and severity for PLF claims. The increased severity, coupled with poor investment performance due to weak investment markets, has resulted in losses in two of those years. Although these losses do not threaten the fiscal integrity of the PLF, their consequence has been the depletion of the Fund's retained earnings (reserves above projected liability), which are important because they provide the Board flexibility when setting the assessment in down years. The increase in the 2011 assessment reflects the amount necessary to meet the costs of the negative claim developments and also considers the Board's goal of ensuring long-term stability in the assessment.

Ira R. Zarov
PLF Chief Executive Officer

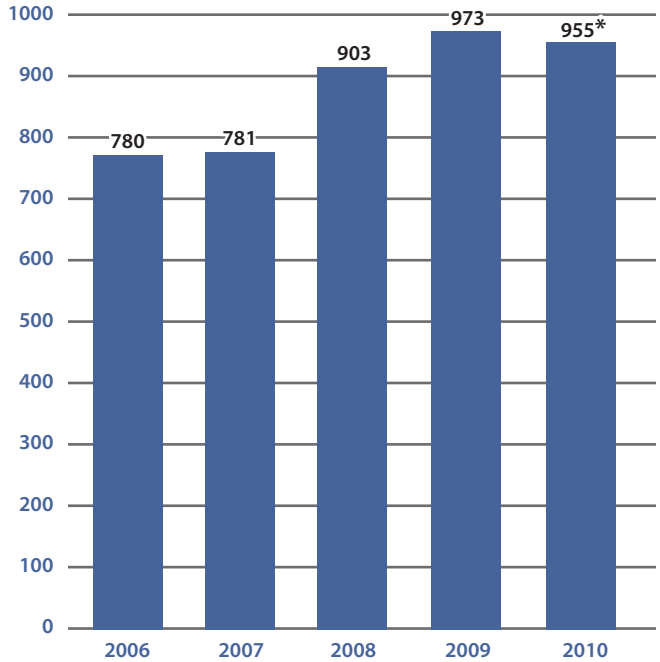
Assessments

Calendar Year 2006 - 2011



Number of Claims

Calendar Year 2006 - 2010



*Projected