

# IN BRIEF

## THIS ISSUE

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Oregon  
State  
Bar

## PROFESSIONAL LIABILITY FUND

[www.osbplf.org](http://www.osbplf.org)

*Malpractice Prevention Education for Oregon Lawyers*

## PLF Celebrates 30 Years

Thirty years ago, a group of incredibly insightful colleagues joined together to solve a professional problem: Legal malpractice coverage for Oregon lawyers was hard to get and very expensive. The number of commercial carriers offering coverage in Oregon had dwindled to two, and the terms of coverage were steadily deteriorating. Commercial carrier malpractice rates more than tripled in a single year, without explanation or clear relationship to claims in Oregon.

The visionary response of these Oregon lawyers and the Oregon State Bar was to create our own mandatory legal malpractice fund. At the time, Oregon's requirement that lawyers in private practice carry malpractice insurance was unprecedented in the United States. A mandatory self-insured fund was also unknown in the nation. Remarkably, 30 years later, Oregon remains the only state to require lawyers to be covered for malpractice – and is still the only state to offer its own malpractice fund.

The PLF has grown in many ways over the past 30 years, guided by experience and changes in the legal profession. In 1978, coverage was limited to \$100,000, with a separate \$50,000 available for defense costs. Once the \$50,000 defense was exhausted, the covered party had to pay for the remaining cost of defense. Excess coverage was available, but the PLF had no formal excess program. The Loss Prevention Program was still in its infancy, and the Oregon Attorney Assistance Program (OAAP) had not yet begun.

In 2008, basic coverage includes \$50,000 for claims expenses, and \$300,000 available for indemnity and, if necessary, additional defense costs. The PLF Excess Program now offers up to \$9.7 million in excess coverage per firm and serves over 2,500 lawyers in 700 firms. Loss

Prevention has evolved into a comprehensive Personal and Practice Management Assistance Program, helping thousands of lawyers each year. The OAAP helps approximately 700 lawyers a year. The PLF's practice management advisors make over 345 office visits and answer over 800 informational calls annually. Hundreds of CLEs are presented throughout the state each year.

### In a Class by Itself

The uniqueness of the PLF extends beyond the fact that it is the sole mandatory legal malpractice insurance program in the United States. (Canada and some Western European countries have similar legal malpractice insurance models.) The PLF stands at the vanguard as an innovative program for providing covered parties with services and support in the most cost-effective, efficient, responsive, and responsible way possible.

Distinctive PLF features include the high-quality practice aids and handbooks, remarkable staff continuity, the OAAP, the Practice Management Advisor program, the individual and collective expertise of the claims attorneys, and the absence of a deductible. The PLF's openness to "repairs" (legal assistance to fix the problem and get the case back on track) also has no comparison.

Each of these features serves the dual purpose of high-quality services and cost control. For example, the absence of a deductible fosters timely claim reporting and often presents an opportunity to correct mistakes and avoid or reduce damage claims. Claims attorney responsiveness is yet another example. In an average month, the

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### DISCLAIMER

*IN BRIEF* includes claim prevention information that helps you to minimize the likelihood of being sued for legal malpractice. The material presented does not establish, report, or create the standard of care for attorneys. The articles do not represent a complete analysis of the topics presented, and readers should conduct their own appropriate research.

claims department answers over 100 informational calls from lawyers with questions that span a wide range of practice areas. Although some of these calls are about new claims, the majority of the inquiries are from attorneys seeking advice on how to avoid malpractice in a specific instance.

## Part of the Culture

Over the 30 years since its inception, the PLF has become a readily accessed and trusted part of Oregon's legal culture. In an average five-year period, nearly 60% of Oregon lawyers in private practice have contact with the PLF. If we include the number of lawyers who avail themselves of the PLF's CLE seminars and materials, practice aids, handbooks, and other educational and support resources, that figure rises even higher. These access figures attest to the trust and confidence Oregon lawyers have in the PLF.

The PLF's unique success shows in other ways as well. First, the mandatory nature of coverage means there are no uninsured attorneys in private practice in Oregon. Compare this with other states, where some sources estimate that as many as 25% to 35% of lawyers have no professional liability insurance. Second, virtually all meritorious claims are settled through the lawyer's basic coverage. Over the last 10 years, more than 98% of claims on which indemnity was paid were settled within the \$300,000 limit. On the other side of the coin, if the claim is not meritorious, it is defended. Approximately 64% of claims against covered parties are closed with no damages paid to the claimant.

Many other factors have contributed to the PLF's continued success – the Board of Governors' recognition of the importance of PLF independence in handling claims, the composition of the PLF Board of Directors that includes seven attorney volunteers from diverse geographical and practice areas and two public members, and the PLF's 30-year commitment to being a constructive force in Oregon's legal culture. Most important, however, has been the overwhelming support of Oregon lawyers for the PLF and its role in the legal community.

## A Model for the Future

A number of states are now examining the issue of lawyer liability insurance. At least two states are seriously considering making legal malpractice coverage mandatory. Others, California for example, are making a disclosure rule mandatory. The PLF frequently represents the ideal mandatory malpractice program to the many lawyers and leaders in other states who debate and grapple with these issues. In my view, it deserves to be by any measure.

As we pause at this 30-year mark to reflect and look

forward, we also renew our commitment to operating as transparently as possible, seeking the most balanced solutions, and being guided by a deep-rooted dedication to Oregon lawyers.

IRA R. ZAROV  
PLF CHIEF EXECUTIVE OFFICER

## PLF Board Members

The PLF was fortunate to be guided by the following attorneys and public members who have served on its Board of Directors over the past 10 years. The PLF board members who served during the first 20 years were featured in the 20th anniversary issue of *In Brief*, August 1998. We express our deepest appreciation for all the board members' service.

Hon. Edward J. Jones	1998-1999
Albert J. Bannon	1999-2003
Robert W. Nunn	1999-2004
Robert G. Thuemmel	1999-2004
Stephen M. Bloom	2001-2005
Ron J. Palmer*	2001-2005
Louis Santiago	2002-2006
Amanda Walkup	2002-2006
Lisa Almasy Miller	2003-2007
Tim Martinez*	2003-2012
Robert C. Cannon	2004-2008
William B. Crow	2005-2006
James G. Rice	2005-2009
Ronald L. Bryant	2005-2010
Rodney E. Lewis, Jr.	2006-2009
Kandis Brewer Nunn*	2006-2010
Suzanne Bradley Chanti	2007-2011
Frederick C. Ruby	2007-2011
William G. Carter	2008-2012

\* Served as public member.

## Did You Know?

The Professional Liability Fund provides the following assistance, programs, and resources to Oregon lawyers, confidentially and at no or minimal charge:

### Claims Assistance:

- Discussing your concern or error with a claims attorney will not affect your standing with the PLF in any way.
- Speaking with a claims attorney is a confidential way to ensure that the claim against you is handled promptly and properly and to minimize potential damages, reduce stress, avoid isolation, improve repair potential, reduce the risk of ethics violations, retain coverage, and obtain assistance with decision making.

### Oregon Attorney Assistance Program:

- The OAAP provides assistance with alcohol and chemical dependency; burnout; career change and satisfaction; depression, anxiety, and mental health issues; gambling and sexual addiction; procrastination; relationship issues; stress management; and time management.
- The OAAP provides one-to-one assistance with these issues and also facilitates recovery support groups, lawyers-in-transition groups, depression groups, retirement planning workshops, career workshops, and recovery workshops.

### Practice Management Advisor (PMA) Program:

- The PMAs are available to help you set up an office system that will reduce exposure to malpractice claims.
- A PMA can help you improve your office procedures, including docket control, tickler systems, conflict-of-interest systems, mail handling, billing, trust accounting, general accounting, time management, file management, client communications, computer software, and other practice management issues.

### Educational Materials:

- The PLF has over 200 practice aids in specific areas of law, as well as in practice management.
- The PLF and the OAAP present CLE seminars and video replays throughout the year. The CLEs are available on audio and video from the PLF's lending library.
- The PLF publishes four handbooks that are available free of charge to Oregon attorneys in private practice: *A Guide to Setting Up and Running Your Law Office*; *A Guide to Setting Up and Using Your Lawyer Trust Account*; *Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death*; and *Oregon Statutory Time Limitations Handbook*.

## PLF Founders

The PLF would like to acknowledge the following individuals who were instrumental in the creation of the Professional Liability Fund, some of whom served on its first Board of Directors:

Austin W. Crowe, Jr.	James H. Marvin
Joyle C. Dahl	Paul J. O'Hollaren
Walter H. Evans, Jr.	Hon. Edwin J. Peterson
William L. Hallmark	Charles D. Ruttan
Arthur C. Johnson	William F. Schroeder