IN BRIEF

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MALPRACTICE AVOIDANCE NEWSLETTER FOR OREGON LAWYERS

PLF ASSESSMENT LIKELY TO INCREASE $400

The PLF Board of Directors has requested that the OSB Board of Governors approve a $400 increase in the PLF assessment. This increase would raise the 2005 PLF primary assessment to $3,000.

Most of each year's assessment goes toward the payment of claims, with administrative costs accounting for only 12% of the assessment. Increases in claim costs and projections of limited investment income are the driving forces behind the recommended assessment increase.

The PLF uses actuaries to predict the future cost of claims. (The PLF receives two actuarial reports a year and sets the assessment based on recommendations the actuaries make after their midyear report.) The actuaries' 2004 midyear report indicates that the cost of claims has been increasing due to a precipitous surge in the number of claims the PLF is processing each year (frequency) and a long-term trend of increases in the cost per claim (severity). A corollary of the increased frequency is the need to add staff, with accompanying costs, to handle new claims. The difficult economic atmosphere nationwide requires that income from investments be projected conservatively. This combination of factors created the need for the proposed PLF assessment increase.

The increase in the number of claims the PLF is handling in 2004 is extraordinary and appears to reflect three separate developments. Most striking is the congruence between the opening of the Bar's Client Assistance Office (CAO) and the increase in PLF claims frequency. A spike in claims began in the last half of 2003, precisely coinciding with the opening of the Bar's CAO. Before the CAO opened, 800 claims per year was a high claim year for the PLF. Since the CAO opened, PLF claims have been running at a rate above 900 claims per year. (If the additional 100 claims cost a typical $17,000 per claim, the extra claims would cost the PLF approximately $1.7 million a year.) The CAO report issued after its first year indicates that approximately 4.75% of the 3,485 inquiries it received were referred to the PLF. Although some of those claims would have been filed with the PLF in any event, the CAO appears to be generating a large number of new claims.

Two other factors appear to be playing a role in the frequency increase. Recently, the PLF has seen an increase in the number of attorneys who have been unable to continue their practices because of sudden and serious illnesses or other difficulties. These situations often lead to an increase in the PLF claims count. Anecdotally, other jurisdictions with bar-related insurance companies have also recently witnessed this effect. While this year's experience may be an anomaly, one theory explaining the phenomenon ties it to the large number of aging attorneys, who experience more serious health issues as they grow older. The PLF experience is consistent with that view.

The third reason for the frequency increase may reflect changes in how Oregon lawyers are practicing law. With increasing frequency, attorneys are asking to take the deposition of a client's former

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attorney. In such cases, the PLF often provides a defense attorney to protect against future malpractice actions.

The long-term effect of the recent spike in claims is not known, but we believe that the spike is in frequency only and not in severity. The cases referred from the CAO, the claims arising from attorneys suddenly leaving practice, and the deposition representations generally do not cost large amounts of money. This lower claim severity, however, will not show up in actuarial reports until later years. If severity does drop lower than the 2004 actuarial reports expect, the result will be good economic news for the PLF and for PLF covered parties.

The PLF is mindful that it is a mandatory program and that the assessment is a substantial expense for covered parties. The PLF Board of Directors (BOD), which is a diverse group of lawyers by firm size, geography, and practice area, has set as its mission to keep the assessment as low as possible consistent with the financial stability of the PLF. The BOD implements this directive through the PLF's practice management advisors, claims-handling process, investment policy, and through the Oregon Attorney Assistance Program (OAAP). In addition, the PLF controls claim costs by "repairing" cases that might otherwise result in large claims. When this occurs, the PLF hires an attorney to fix correctable errors before damages are incurred.

The PLF continues to be a unique and effective way to ensure that lawyers' malpractice coverage needs are met. PLF rates are affected by the performance of Oregon lawyers and not the general U.S. malpractice market. The PLF continues to provide substantial benefits that commercial carriers do not, including the OAAP (an acknowledged national leader in its field with a demonstrable nexus to reduced claims), practice management assistance, CLE programs, and the day-to-day advice that PLF claims attorneys give covered parties. In addition, the PLF has no deductible and offers free extended reporting coverage (tail coverage).

Despite the increase in the 2005 assessment, overall claim severity and the annual assessment have remained below the rate of inflation. For example, in 1987 the primary assessment was $2,000. Adjusted for inflation, the assessment would be $3,300 in 2004 and $3,465 in 2005. (During the 1990s, the strong stock market performance and equally good claims experience allowed the PLF to lower rates. Consequently, for many years the PLF assessment was far below average inflationary increases.) In 1987, claim severity was $12,822. Adjusted for inflation, claim severity would be $21,156 in 2004 and $22,213 in 2005. In fact, the claim severity for 2004 and 2005 is expected to be in the range of $17,000 to $18,000.

The last five years have seen a trend of increasing severity for PLF claims. The increased severity, coupled with poor investment performance due to weak investment markets, has resulted in overall losses in each of those years. The recent increase in frequency has also increased PLF losses. Although these losses do not threaten the fiscal integrity of the PLF, the PLF BOD is committed to maintaining the PLF's financial strength. The 2005 assessment begins the process of returning the PLF to the fiscal position of being fully funded.

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