



2019

ANNUAL REPORT



Professional
Liability Fund

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Professional
Liability Fund

FINANCIAL INTRODUCTION

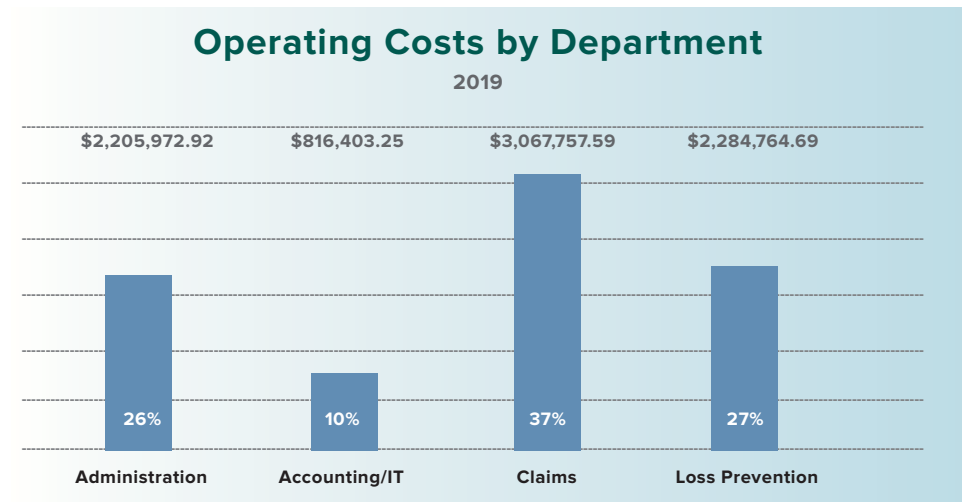
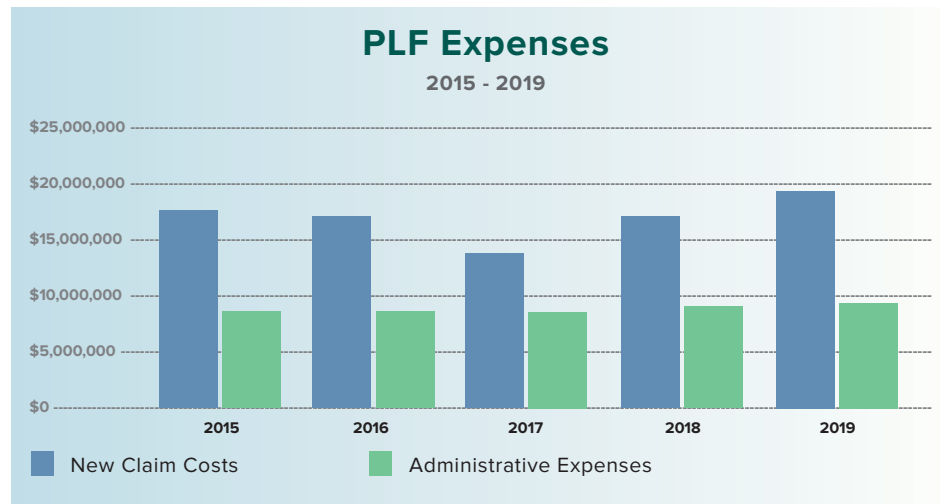
The Professional Liability Fund (PLF) achieved positive financial results in 2019 after financially challenging results in 2018. The 2019 combined (Excess and Primary programs) annual surplus was approximately \$3 million, up from a loss of approximately \$4 million in 2018. This swing is largely a result of investment portfolio performance. In 2018 the PLF’s return on investment was -2.35%. In 2019 the PLF achieved a return of 15.86%. The size and number of claims, along with portfolio performance, are the two strongest financial indicators of the PLF.

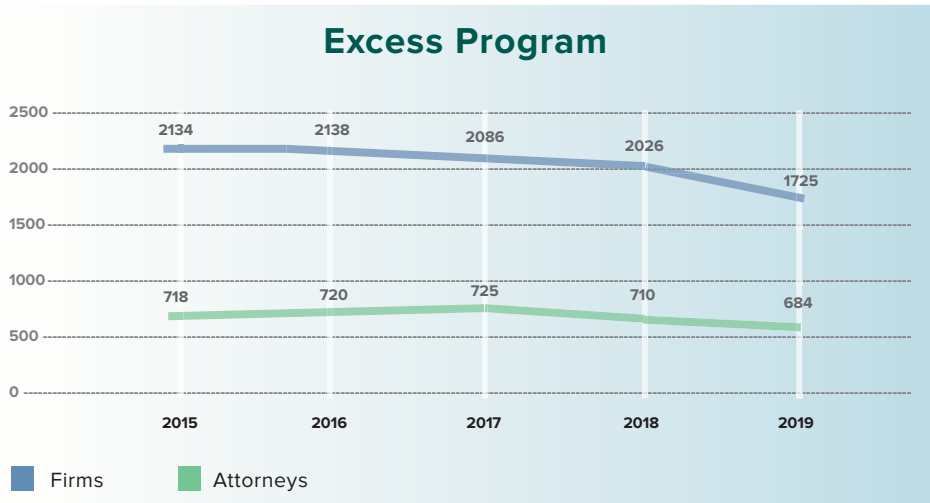
Primary claims expense for new claims received in 2019 is projected to be \$19.6 million. This is based on actuarial calculations that take into account past claims experience. There were 861 claims opened in 2018 and 891 claims in 2019. Because there are more claims, the overall claims expense is expected to increase. Additionally, prior year claims that settled in 2019 settled at values greater than reserved. This meant for the first time since December 2016 the PLF had to increase claims liabilities and decrease surplus. In 2017 and 2018, the PLF was able to decrease claims liabilities and increase surplus funds.

The Primary program had a slight decrease in the total number of attorneys with coverage in 2019. The PLF covered 7278 attorneys during some part of 2019. This represents approximately 51% of all Oregon licensed attorneys. In 2018 there were 7318 attorneys who had PLF coverage.

The 2019 plan year provided relief to Oregon attorneys in private practice with a decrease to the annual Primary assessment from \$3500 to \$3300. The reduction to the assessment represented a loss in assessment revenue to the PLF of approximately \$1.7 million.

Operating costs at the PLF rose by about 3.6% over 2018. This is representative of inflationary increases across the two major operating costs – compensation and occupancy.





The Excess Program also had positive financial outcomes in 2019. The program achieved a surplus of \$135,384 in 2019 versus a loss of (\$98,415) in 2018. Retention continues to be strong in the Excess program with an average of approximately 91%.

Excess firms could make online payments for their premiums for the 2019 coverage year. The payment platform that was available only to the Primary program was expanded to the Excess program in 2019. Approximately 35% of all Excess payments were made online.

Financial and technology trends that we are watching:

- increase to both the number and value of claims;
- paperless vendor payments;
- increasingly sophisticated database software;
- appropriate surplus allocations commensurate to PLF fiscal threats and challenges.

In summary, the PLF was in a strong financial position at the end of 2019. This means there are adequate funds to fully pay claim settlements and costs. It also ensures there is appropriate staffing and technology to support the successful defense of claims. However, subsequent to year end 2019 the PLF has been affected by the historical negative financial impact of the COVID-19 virus. The PLF is closely monitoring these impacts from both an organizational and legal community perspective. As always, financial stewardship is one of our top priorities. ■

Summary Financial Statements (Unaudited)

(Primary and Excess Programs Combined)

	12/31/2019	12/31/2018
ASSETS		
Cash and Investments at Market	\$68,224,851	\$62,557,336
Other Assets	\$2,040,673	\$1,077,553
Capital Assets	\$364,287	\$416,116
PERS Related Deferred Outflow of Resources	\$1,479,492	\$1,479,492
TOTAL ASSETS	\$72,109,303	\$65,530,497
LIABILITIES AND FUND EQUITY		
Estimated Liabilities For Claim Settlements and Defense Costs	\$34,100,000	\$31,600,000
Deferred Revenues	\$11,188,890	\$10,835,021
Other Liabilities	\$787,411	\$828,981
PERS Pension Liabilities	\$6,563,505	\$5,763,505
PERS Related Deferred Inflow of Resources	\$289,534	\$289,534
Net Position	\$19,179,963	\$16,213,456
TOTAL LIABILITIES AND NET POSITION	\$72,109,303	\$65,530,497
REVENUE		
Assessments	\$23,433,009	25,059,140
Investment and Other Income	\$9,217,552	-\$1,804,703
TOTAL REVENUE	\$32,650,561	\$23,254,437
EXPENSE		
Operations	\$10,110,667	\$9,861,578
Provision for Settlements	\$10,446,877	\$8,697,561
Provision for Defense Costs	\$9,126,510	\$8,576,572
TOTAL EXPENSE	\$29,684,054	\$27,135,711
NET INCOME (LOSS)	\$2,966,507	(\$3,881,274)

REPORT FROM THE PLF CLAIMS DEPARTMENT

A. SATISFACTION SURVEY

Since the early 1990s, the PLF Claims Department has been sending our Covered Parties evaluation forms at the closure of their claim files for them to complete and return to us. Because the PLF is a mandatory program, we believe it is very important to give Covered Parties an opportunity to express their opinions about how their claims were handled. We have always received high marks from our Covered Parties and 2019 was no exception.

We question our Covered Parties in three major categories as to how their claims were handled: 1) overall handling; 2) handling by PLF Claims Attorney and 3) representation by defense or repair counsel. Here are the results of the survey for 2019:

PLF OVERALL:

Total Responses	Very Satisfied	% Of Responses	Satisfied	% Of Responses	Not Satisfied	% Of Responses
336	308	91.67%	26	7.74%	2	0.59%

PLF CLAIMS ATTORNEY:

Total Responses	Very Satisfied	% Of Responses	Satisfied	% Of Responses	Not Satisfied	% Of Responses
336	313	93.16%	20	5.95%	3	0.89%

DEFENSE COUNSEL:

Total Responses	Very Satisfied	% Of Responses	Satisfied	% Of Responses	Not Satisfied	% Of Responses
336	313	93.16%	20	5.95%	3	0.89%

We are very pleased to report that the evaluations reflected 99.41% of those responding were very satisfied/satisfied with the overall handling of their claim, 99.11% were very satisfied/satisfied with the performance of their PLF Claims Attorneys, and 99.04% were very satisfied/satisfied with the performance of their defense or repair counsel.

B. CLAIMS EXPERIENCE

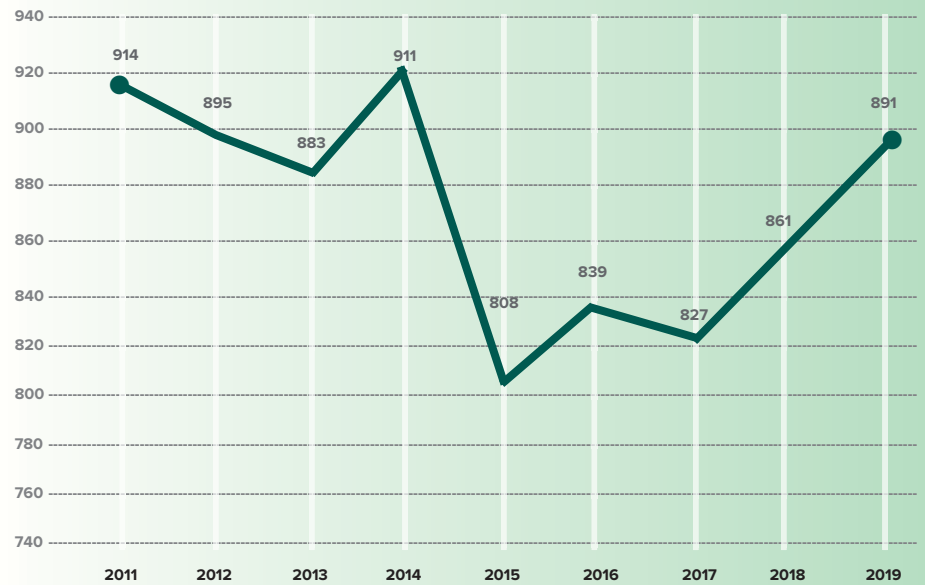
Following a significant drop in 2015, claims have been on an upward trend going forward, as depicted in the chart at right.

Not surprisingly, with an increase in costs of defense and some greater severity during 2019, the PLF’s cost per claim has also been trending slightly upward. In 2019 the cost per claim is about 4.3 percent higher than the average cost of claims in 2017 and 2018.

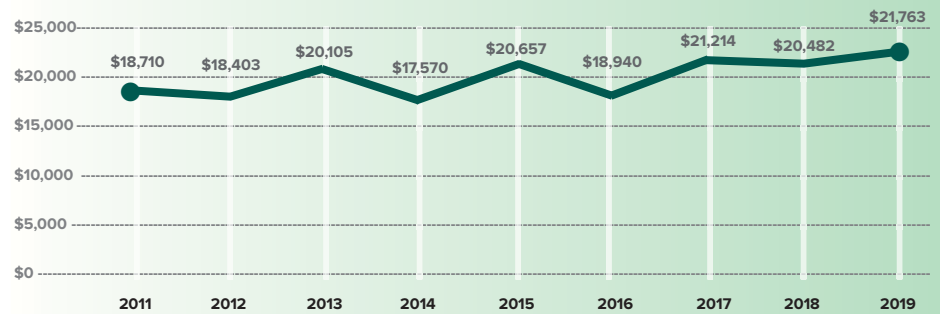
Considering the rate at which defense counsel rates have increased in recent years, we believe we are doing well in not seeing larger increases in the cost of claims. Because our numbers are based on closed claims, we can expect that more recent increases in the cost of defense will cause more significant increases in the cost of claims in the years to come.

We continue to believe that the best way to keep claims costs manageable is by early evaluation of claims, timely and reasonable settlement of meritorious claims and the vigorous defense of claims that do not have merit, or for which any damages claimed are unreasonably inflated.

New Claims by Year



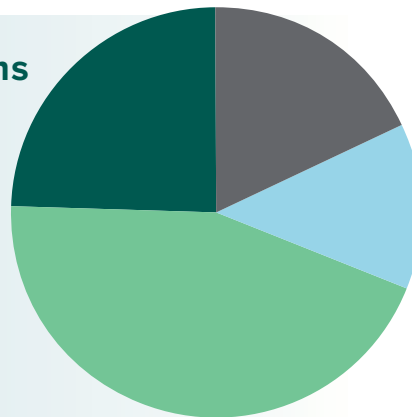
Average Claim Value



Payment Allocation of Closed Claims

January 1, 2015 to December 31, 2019

- Payment to Claimant and Expense 18%
- Payment to Claimant and No Expense 13%
- Expense Only 45%
- No Expense or Payment to Claimant 24%

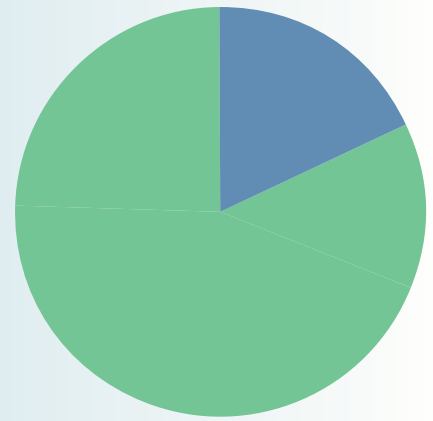


Historically, payment allocation regarding claims remains fairly static, with about 31% of claims resulting in payments to claimants.

The chart at right shows the number of claims litigated versus those not litigated in 2017 to 2019:

Closed Claims 2017-19 Litigated and Non-Litigated Claims

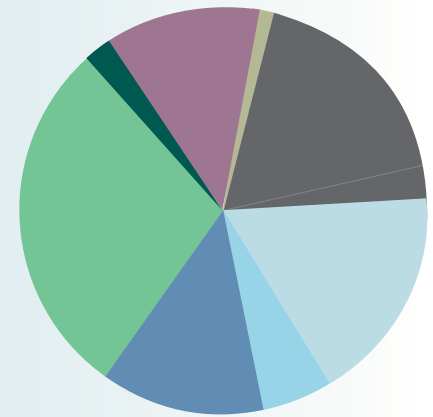
■ Litigated	.....	391	.....	15%
■ Non-Litigated	.....	2114	.....	85%
TOTAL	.....	2505	.....	100%



Of the 85% of claims not litigated, here is how claims closed in 2017 to 2019 concluded:

Claims Closed 2017-19 Closing Status Non-Litigated

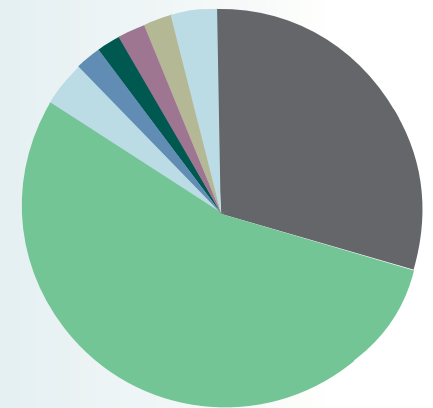
■ Claim Abandoned	.....	20%
■ Claim Denied	.....	15%
■ Claim Evaluation/Assignment Complete	.....	6%
■ Claim Repaired	.....	10%
■ Claim Settled	.....	28%
■ Coverage Denied (No Defense or Indemnity Paid)	.....	3%
■ Deposition or Subpoena Representation – No Further Action	.....	15%
■ Other	.....	1%



For the litigated claims closed in 2017 to 2019, 52% were settled and the majority of the remainder of these claims were either dismissed by the court on summary judgment or otherwise abandoned or otherwise disposed of without payment of indemnity.

Claims Closed 2017-19 Closing Status - Litigated

■ Dismissed by Court	.....	28%
■ Claim Settled	.....	52%
■ Summary Judgment for Defense	.....	5%
■ Claim Abandoned	.....	2%
■ Claim Evaluation	.....	2%
■ Coverage Denied	.....	2%
■ Limits Exhausted	.....	2%
■ Other	.....	7%

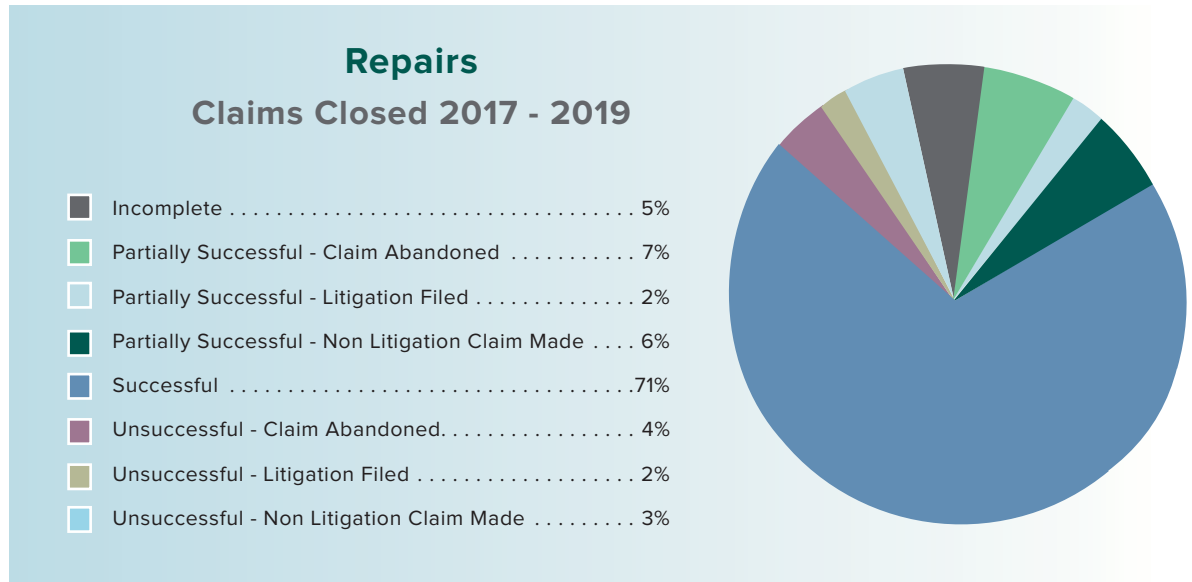


C. REPAIR EXPERIENCE

For those of you who may not be familiar with repairs, this a process by which the PLF attempts to correct an error a Covered Party may have made. Repairs are discretionary with the PLF and there is no absolute right to a repair. Obviously, we cannot repair every error. In some cases, it may not make financial sense to try to do so or there may be some other good reason that attempting a repair would not improve the situation. Generally, repairs are undertaken only when the PLF can identify specific and clearly defined steps it can take to eliminate or mitigate an error and then withdraw from the matter. Deciding whether to undertake a repair is a judgment call that is guided by our experience with how repairs have worked over the past forty plus years.

As illustrated by the chart below, in the vast majority of cases in which the PLF undertakes repairs, we are successful in either eliminating any claim, or in mitigating any damages that would otherwise have resulted if not for the repair.

The chart at right illustrates the results in 286 repairs undertaken for which files were closed between 2017 and 2019.



The PLF’s success in repairing claims depends on receiving timely notice of an error. The timing of the repair is frequently the key to success. If you make an error, it is important to call the PLF immediately. While there are some exceptions, ordinarily, the PLF does not recommend trying to repair your own errors.

Between 2015 and 2019, the average cost of a repair was \$6,479.00, while the average cost of a claim was \$19,824.00.

D. PLF COVERAGE PLAN AND CHANGES TO THE COVERAGE PLAN FOR 2020

PLF Coverage Plan – Background

As background, in 1978, pursuant to ORS 9.080, the Legislature empowered the Oregon State Bar Board of Governors (BOG) to create a professional liability fund. The BOG chose to create the PLF. The elected representatives on the BOG continue to have ultimate authority over the PLF and the scope of the coverage that lawyers in private practice receive under the PLF Plans.

Each year the BOG reviews and approves any proposed changes to the PLF Coverage Plans. In addition, the PLF has a voluntary Board of Directors, approved by the BOG, ordinarily consisting of seven lawyers and two public members. Oregon lawyers in private practice exclusively fund the PLF through their annual assessments. Proposed changes to the PLF Plans are also approved by the PLF Board of Directors.

Although the PLF Coverage Plan is not an insurance policy, and is not subject to the Insurance Code, it functions in much the same way as a private market professional liability policy. The intent of the Plan is to cover lawyers in private practice for acts, errors, omissions or breaches of duty in providing or failing to provide professional legal services. Like any professional liability coverage, it does not cover every kind of claim made against a lawyer in private practice and has limitations.

Unlike a private insurer, the PLF does not earn profit. Investments are held to cover operating costs not funded by the assessments paid by its Covered Parties. The PLF annually establishes a net position goal sufficient to meet claims and operating obligations.

The PLF Plan is unusual in that it does not have a deductible. In addition, the PLF does not raise primary assessments of its Covered Parties or make coverage unaffordable because of a claim against a Covered Party. At the primary level, the PLF cannot cancel a Covered Party's coverage or refuse to cover a Covered Party because of claims history. In contrast to the private market, the PLF Plan is applicable to all Covered Parties and the PLF cannot add special endorsements only applicable to an individual in order to broaden or lessen its risk.

Because PLF coverage is not individually underwritten, various provisions in the PLF Plan are intended to generally protect the Fund against losses that would make coverage unsustainable, such as: paying the fees lawyers charge their clients; collusive claims; claims that are, in essence, uninsurable because they are subject to the control of the lawyer; claims caused by a deliberate decision to take a serious risk; or stacking of individual limits.

2020 Plan Changes

There were no changes to the PLF Excess Plan for 2020. Apart from some clarification and corrections to Plan language, the only change to the intent of the Plan involved the scope of Related Claims under the 2020 Primary Plan.

The PLF covers all individual private practice lawyers in Oregon, by lawyer, and not by firm. Consequently, in order to avoid catastrophic losses to the Fund that could result from the stacking of limits of individual lawyers regarding claims arising from the same set of circumstances, the PLF Plan makes certain claims “Related.” When claims are Related they share a single primary limit of coverage.

Under the current assessment level, it would not be financially sustainable for the PLF to completely eliminate shared limits. However, the PLF Board identified some limited circumstances when claims were Related under the former Plan language that it believed created a fundamental unfairness. Changes made to the Related Claims language for 2020 are designed to eliminate shared limits under those particular circumstances.

Under the 2020 Plan language, lawyers who successively represent the same client or group of clients in related matters, and lawyers working in the same firm or lawyers working in different firms but on the same goal or set of goals for a client or group of clients, continue to share primary limits. Under the 2020 revision, however, in certain circumstances, lawyers in different firms who acted independently of each other on representations that had entirely different goals or purposes, no longer share limits. This exception is more completely described in the 2020 Plan, which provides extensive examples of which claims share limits. It is important that lawyers covered under the Plan read and understand the shared limit language in its entirety. The PLF continues to recommend, as it has on numerous past occasions, that all lawyers obtain excess coverage to protect against the risk that when claims arise from the same set of circumstances, they may share primary limits with other lawyers who may or may not be in the same firm. ■

Notable Areas of Law by Frequency and Severity

January 1, 2015 to December 31, 2019

	2019	2018	2017	2016	2015
TOTAL CLOSED CLAIMS	891	869	827	839	808
FREQUENCY					
Personal Injury					
Number of Claims	136	117	155	161	143
Cost per claim	\$22,789	\$20,629	\$16,598	\$23,970	\$23,812
Domestic Relations					
Number of Claims	150	174	123	141	145
Cost per claim	\$6,924	\$8,761	\$13,650	\$17,407	\$8,035
Bankruptcy/Debtor					
Number of Claims		105	88	108	138
Cost per claim		\$20,004	\$14,569	\$18,977	\$17,551
Other Civil Litigation					
Number of Claims	164	119	63	*	*
Cost per claim	\$22,789	\$19,307	\$43,297		
SEVERITY					
Business Transactions					
Number of Claims	51	41	44	47	50
Cost per claim	\$43,825	\$35,603	\$32,395	\$55,790	\$50,862
Securities					
Number of Claims		6	12	5	4
Cost per claim		\$130,274	\$49,771	\$119,419	\$11,516
Other Civil Litigation					
Number of Claims		119	63	*	*
Cost per claim		\$19,307	\$43,297		
Tax/Non Profit					
Number of Claims		6			
Cost per claim		\$63,817			
Intellectual Property					
Number of Claims	6				
Cost per claim	\$52,158				
Construction					
Number of Claims	12				
Cost per claim	\$37,661				

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

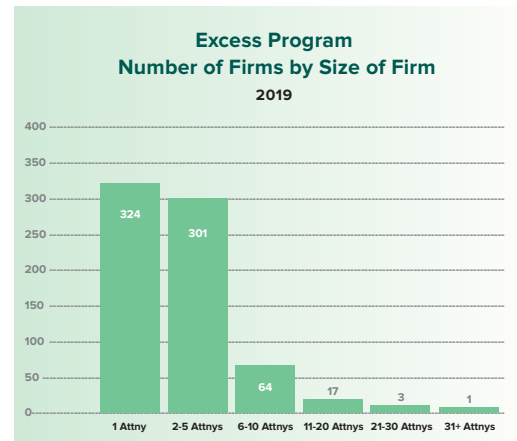
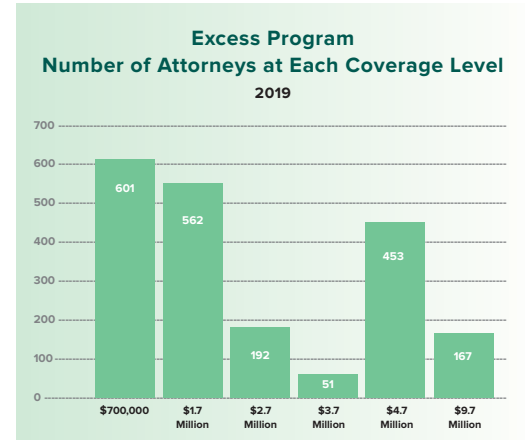
WHAT IS THE STATUS OF THE EXCESS PROGRAM?

With \$6.6 million in claims development (paid and reserved), 2019 was a challenging year for the Excess Program. This represented an increase in claims activity of approximately 87% over 2018. When the Excess Program experiences negative claims development, premium costs must increase to ensure financial stability. In addition to increased claims cost, the global reinsurance markets experienced some market hardening in 2019 that resulted in pressure to increase premiums for many types of insurance - including lawyers professional. These two factors combined meant that all firms with PLF excess coverage saw premiums rise by 10% in 2019. Renewing firms were informed of the premium increase in advance of the renewal so that alternative quotes could be pursued. Even with cost pressure, the programs renewal rate (percentage of renewing firms that purchased coverage again) was over 90% and in line with prior years.

Though the increase in claims activity in 2019 was not attributable to one particular area of law or practice, we continue to evaluate our underwriting rules and criteria to ensure we are offering coverage to firms with good risk profiles. As in the past two years, we continue to evaluate firms presenting ORS Chapter 59 exposure (Oregon Securities Law) more stringently. We believe this heightened review has had a positive impact on the risk profile of the Excess Program overall by both making firms aware of the risks associated with work in this area and by not offering coverage to some firms that may present a significant degree of risk. Most Oregon law firms continue to meet the underwriting criteria for PLF excess coverage – even those that do some amount of Oregon Securities work.

In 2019, the Excess Program continued to add new firm business at a rate comparable with prior years. Overwhelmingly, this new business was comprised of solo practitioners and small firms. Looking at the Excess Program overall, nearly 50% of covered firms are solo practitioners and around 40% are in small firms of 2-5 attorneys.

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 2019, eight incidents were reported under this Endorsement. Higher limits for Cyber Liability coverage are now available on request. ■



Cyber Liability & Breach Response Endorsement Included

1-10 Attorneys	\$100,000 Limit
11 + Attorneys	\$250,000 Limit



Applications accepted year-round.
www.osbplf.org/excess/excess-portal

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 Assistance Program), and personal assistance (through the Oregon Attorney Assistance Program). Personal and practice management assistance seminars in 2019 included our annual practical skills program for new admittees, Learning The Ropes, programs on mental health and substance use education, data security, and practicing law with ADD/ADHD. In addition, the PLF offers free resources including:

- 110+ free audio and video programs available on our website
- *inBrief* – malpractice avoidance tips and resources
- *inPractice* blog – practice management tips and resources
- 300+ practice forms
- 4 handbooks:
 - Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death;
 - A Guide to Setting Up and Running Your Law Office;
 - A Guide to Setting Up and Using Your Lawyer Trust Account;
 - Oregon Statutory Time Limitations.



950 + people
attended PLF events.

11,488 +
recorded CLE
programs
were accessed.



Our practice forms, handbooks, and most CLEs are 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.



OAAP
assisted **604**
lawyers in
2019 for individual,
personal
assistance.



PMAs made
201 law office
visits in 2019 to
establish, improve, or
otherwise transform
their law offices.

Practice Management Assistance Program

Our practice management attorneys (PMAs), Sheila Blackford, Hong Dao, 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 technology. In 2019, the PMAs presented seminars around the state on practice management and in-house CLEs for law firms. In addition, the PMAs visited 115 law firms and made 201 visits to law firms to help lawyers establish, improve, or otherwise transform their law offices. Satisfaction surveys show 100% of the people who returned surveys have been “very satisfied” with: (1) availability of a PMA for an appointment, (2) the PMA’s ability to explain information clearly, and (3) the PMA’s level of professionalism. Of those who returned surveys, 92% indicated “satisfied” with: (1) reaching a PMA and (2) promptness of follow up after initial services. 100% of the people responding indicated that they would recommend our services to others and noted that overall they were very satisfied with the services provided by the PMAs.

Oregon Attorney Assistance Program

The Oregon Attorney Assistance Program (OAAP) attorney counselors, Shari R. Pearlman, Douglas Querin, Kyra Hazilla, Bryan Welch, and Karen Neri provide assistance with problem alcohol and substance use; burnout; career change and satisfaction; depression, anxiety and other mental health conditions; stress management; and time management. In 2019, the OAAP offered education and support groups for lawyers on these topics: practicing law with ADHD, well-being, mindful parenting, aging parents, self-compassion, anxiety, depression, recovery from problem addiction or substance use, gender identity, career transition, mindfulness, overcoming trauma, and retaking the bar exam. Our publication, *inSight*, offers support and information about health and wellness for lawyers. ■



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