



Anatomy of a Cyber Claim

By Emilee S. Preble, in collaboration with the Beazley Breach Response team

From headline news to state bar bulletins, ABA articles to lawyer blogs and other social media – it is hard to be a lawyer in 2017 and not know that cyber security risks are on the collective minds of lawyers and law firms across the country. In many ways, this makes sense. Lawyers are the guardians of vast quantities of confidential client information, which makes law firms a natural target for cyber criminals.

In 2016, the networks of Cravath Swaine & Moore LLP, Weil Gotshal & Manges LLP, and other major law firms were besieged by a hacking event that sought to find and leverage confidential or insider information related to large

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The Professional Liability Fund

Carol J. Bernick
Chief Executive Officer

EDITORS

Barbara S. Fishleder,
*Director of Personal and Practice
Management Assistance*

and

Tanya Hanson,
Loss Prevention Attorney
tanyah@osbplf.org

phone: 503.639.6911
toll-free: 1.800.452.1639
www.osbplf.org

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Welcome!

By Carol J. Bernick, PLF Chief Executive Officer

Welcome to the newly redesigned *inBrief*. We hope that you will continue to find the content timely and useful but easier to read and with additional news from the PLF. August is a busy month for the PLF. Our Board of Directors always meets in August to approve our budget and set the assessment. This year we will also host our biennial Defense Panel Conference. This two-and-a-half-day CLE provides an opportunity for our defense panel members and PLF claims attorneys to share the latest trends in claims and strategies. We have a very dedicated and talented defense panel that serves Oregon lawyers both efficiently and with the highest quality of representation.

Oregon has served as the only state in the country to require lawyers to carry malpractice insurance. That will change in 2018 when Idaho's new requirement will become effective. At least a half dozen other states are looking at similar requirements, including Washington and Nevada. I have participated in a number of panels and phone conferences to discuss the Oregon model and its success. When talking with lawyers and bar leaders from these and other states, I have heard many expressions of envy for the foresight of the Oregon State Bar in 1977 for creating the PLF. I want to continue its success for the rest of my tenure as CEO. If you have any questions, concerns, or suggestions for how we can best serve our statutory mandate (ORS 9.080(2)), I can be reached at carolb@osbplf.org or 503.726.1468.

public companies. That event made national news – covered by the *Wall Street Journal*, *Bloomberg News*, and others – and served as a confirmation for what too many in the legal community have known for years – law firms have become an attractive target for hackers. This is as true for large national firms with hundreds of lawyers as it is for Oregon solo practitioners.

As the mandatory malpractice coverage provider in Oregon, the PLF was well positioned to see the potential risk to Oregon lawyers for these types of claims or incidents increase over time. Beginning in 2013, all PLF Excess Coverage was issued to law firms with an endorsement that covered cyber liability and breach response.¹ This endorsement is serviced by Beazley Breach Response (BBR) Services. Beazley is a longtime reinsurer of the PLF Excess Program and was among the first reinsurers in the world to develop and write cyber insurance policies for businesses. Cyber incidents often require the involvement of many specialized resources, including computer forensic experts, privacy lawyers, credit monitoring services, and call centers. Because cyber incidents are altogether different from typical malpractice claims, the PLF’s partnership with Beazley is key, as BBR Services has the resources and expertise to handle the complexities of cyber incidents.

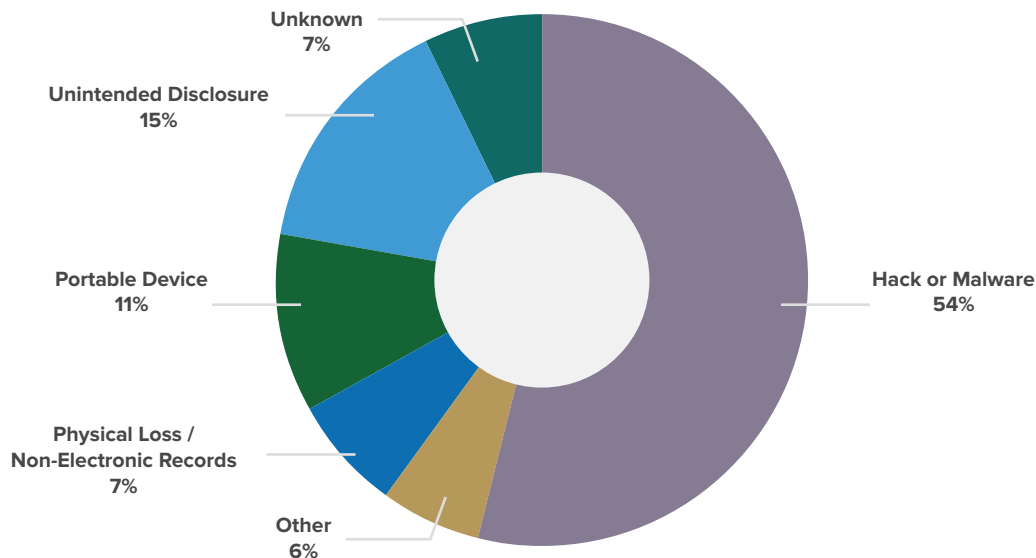
What risks do law firms face?

Client confidentiality has always been a hallmark of legal professional ethics, but protecting that confidentiality is now much more challenging and complex as the sands of technology shift over time. In this brave new world of both ever-changing technology and constantly evolving cyber threats, lawyers need to know how to best safeguard their data. Though some firms have the benefit of in-house IT staff to safeguard their systems, many law firms, particularly small and solo firms, may not be able to devote adequate resources and time to information security. In addition, not all cyber attacks are the result of inadequate technology protections. Lawyers and staff must be trained on how to prevent the hackers from entering the system. One click on a hacker’s seemingly innocuous link or email attachment can result in an attack on the firm’s entire network.

The chart below shows how U.S. law firms covered by Beazley experienced cyber attacks in 2015 to 2016.

2015–16 Law Firm Incidents²

Reprinted with permission from “BBR Services Industry Insights Law Firms 03/17”



¹ The PLF Primary Plan excludes these claims in Section VI.20 – Confidential or Private Information/Computer Systems.

² Data from cyber incidents managed by BBR Services.

“Everything went very smoothly. They [BBR Services] were responsive and helpful in making sure we complied with all the best practices standards. I was able to get everything wrapped up in just under two weeks. It was good to have a prompt response team in place for something time sensitive. I also appreciate how Beazley handled everything professionally and politely. It all helped keep the situation manageable for me and enabled me to get back to work with only a minimal loss of productivity.”

–PLF Excess-covered lawyer with a stolen laptop in 2016

What’s happening in Oregon?

Since the PLF Excess Program began offering cyber coverage in 2013, eight incidents were reported to and serviced by BBR.

2017	2016	2015	2014	2013
3 <i>(as of July 13, 2017)</i>	4	1	0	0

Of those eight incidents, seven involved some kind of theft (vehicle or office break-in, stolen laptop/tablet, stolen briefcase). This pattern differs from the national law firm trend. Looking at the chart on page 4, 15% of all cyber incidents BBR serviced dealt with Unintended Disclosure (including stolen property), whereas for the PLF program, that type of incident happened 87.5% of the time.³ The tendency in Oregon reported incidents resulting from theft should be read cautiously, as the sample size and timeline is very short. These types of incidents are also likely reported more often than other types of cyber incidents as the loss is known immediately. All that said, it is interesting to note these early trends in cyber incidents for firms covered under PLF Excess.

³ The other lone incident involved a possible network breach at a third-party provider, but no notices were required.

What can you do to protect your firm?

This is a question we get asked a lot at the PLF. The first step would be to make sure your law firm is covered by a cyber insurance policy. The mandatory PLF Primary Coverage specifically excludes these types of incidents (2017 PLF Primary Plan, Section VI.20). Cyber coverage is available on the commercial market and can be included as an add-on to most excess coverage. PLF Excess Coverage automatically includes a cyber endorsement for firms with limits of \$100,000 for firms of 1–9 lawyers, and \$250,000 for firms of 10 or more lawyers. Limits above that are available on a separately underwritten basis.

A high percentage of Oregon cyber incidents result from theft or physical loss of devices. So the next step would be to take measures to protect your devices and the data stored on them. Never leave your portable devices in a vehicle (even trunks are unsafe because they can be accessed via fold-down seats). Offices can also be unsafe, as they can be burglarized. While you may never be able to guarantee the physical security of your devices around the clock, you can take some important steps to secure the data on those devices. Using encryption and a strong password can help reduce the likelihood a hacker will gain access to your client data, even if the device is stolen or compromised.

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In addition to ensuring your firm has coverage for these events, it is also important to make sure your firm takes appropriate steps to reduce the risk of data loss. Our partners at Beazley have provided the following list of steps law firms can take to reduce the risk of cyberattacks.

Cyberattacks against law firms are on the rise, and they are happening here in Oregon. Educate yourself about the potential risks and take the steps to protect your firm and your client information. Preparation is key. ■

- **Incident response planning.** Develop an incident response plan, designate your incident response team, and practice and update your plan regularly.
 - **Employee training.** Train employees on security awareness throughout the year; consider phishing tests to maintain employee vigilance.
 - **Risk analysis.** Conduct a risk analysis to identify what sensitive data the firm holds and where, and to evaluate your risks and the effectiveness of mitigating controls. Consider employing an experienced third-party vendor to conduct the risk assessment.
 - **Encryption.** Implement full device encryption on all portable devices and consider secure email solutions.
 - **Two-factor authentication.** Set up two-factor authentication for remote access and for administrator access to key resources. Provide remote access only through secure channels, such as a well-configured virtual private network (VPN) connection. Require strong passwords.
 - **Backups.** Implement a data backup and recovery plan; maintain copies of sensitive or proprietary data in a separate and secure location not readily accessible from local networks.
 - **Document retention policy.** Develop a document retention policy and properly dispose of sensitive data accordingly.
 - **Penetration testing.** Retain a security firm to evaluate the risk that an attacker can compromise your IT assets and remediate accordingly.
 - **Antivirus and patching.** Regularly update antivirus definitions for all users and ensure timely patching of operating systems and software.
 - **Intrusion prevention and detection.** Deploy an intrusion detection system (IDS) and an intrusion prevention system (IPS) that aggregate logs to a Security Information and Event Management (SIEM) tool that sends real-time alerts.
 - **Vendor risk management.** Ensure vendors are contractually obligated to protect sensitive data, provide timely notice of a breach, return or destroy data at termination, and maintain cyber liability insurance.
- Reprinted with permission from “BBR Services Industry Insights Law Firms 03/17.”*

Timeline of a Cyber Incident from Stolen Devices

Timeline developed in partnership with the BBR Services and Claims Team





EXAMPLE FROM ANOTHER BEAZLEY BREACH

Example: Hook, Line, and Hacker



A real estate attorney fell for a phishing email and gave up his credentials. After clients started complaining about spam emails they were receiving from him, the attorney realized his email had been compromised and contacted BBR Services. BBR Services quickly connected him with privacy data breach counsel and a forensic firm. Unfortunately, the forensic firm could not rule out the possibility of unauthorized access to the attorney’s email inbox, which contained client information dating back to 1990, but was able to use data mining to determine the affected population (thousands of clients). Counsel reviewed applicable state breach notification statutes and drafted notification letters and a call center script. BBR Services coordinated notification and call center services. Affected individuals whose Social Security numbers had been exposed were offered credit monitoring.

Reprinted with permission from Beazley

To find additional resources on information security, visit the PLF website (www.osbplf.org). Our practice aids include guidance on file retention, using online data storage providers, and how to back up your computer, as well as an information security checklist for small businesses. See also our *inPractice* blog (www.osbplf.org/inpractice/). Posts discuss two-factor authentication, encryption, and passphrases.

Emilee Preble is the lead underwriter for the PLF Excess Program.

Likely no computer forensics would be needed unless devices are recovered or the law firm needs help determining what data or confidential information was on stolen devices.

Notifications sent to affected individuals, call center goes live, credit monitoring may be offered if SSNs could have been compromised.

Incident typically closed 90-180 days after being reported.

WEDNESDAY
September 13, 2017

Week of September
11th and 18th, 2017

Week of
October 10, 2017

Week of
October 17, 2017

December 2017–
March 2018

Determination that personally identifiable information (PII) could have been compromised and that notifications are required. A list of affected individuals and their addresses is compiled by the law firm (with potential help from forensics, if needed).

Law firm receives a letter from the PLF Claims department confirming a suspense file has been opened.

THE PLF IS GOING PAPERLESS

✔ assessments ✔ exemptions

Important Notice Regarding Your PLF Assessment

The PLF is going paperless! Beginning with the 2018 assessment cycle, you will no longer receive your PLF assessment and exemption notice by mail. In early November 2017, the PLF will email your notice of assessment and exemption to the email address you have on file with the Oregon State Bar. Instructions for how to pay your assessment or request an exemption will be provided in the email.

Please verify that you have a valid and current email address on file with the OSB.

Please also add *notices@osbplf.org* as a “safe sender” so that emails from the PLF do not end up in your spam filter. Be sure to check your spam filter regularly.

If you have questions, please contact Kathy Medford, Assessment Coordinator, at 503.639.6911.

Frequently Asked Questions About the Professional Liability Fund

By *Teresa A. Statler, Chair, PLF Board of Directors*

As a board member and now chair of the OSB Professional Liability Fund, I hear a lot of comments and questions from lawyers about what the PLF does and does not do. I am taking this opportunity to dispel some misconceptions and share answers to some of our most common questions.

The PLF is an independently managed quasi-subdivision of the Oregon State Bar. Currently, Oregon is the only state in the country that requires lawyers to have malpractice coverage. We have our own board of directors, appointed by the OSB Board of Governors, which consists of nine members (seven attorneys and two public members) from across the state.

Your communications with the PLF are protected by statute as well as OSB and PLF policies and are exempt from ORPC 8.3(c)(3). All claims information is confidential. All communication with our Oregon Attorney Assistance Program and our PLF practice management advisors is also confidential. These confidentiality protections prevent the Oregon State Bar, including regulatory services (discipline), the Board of Governors, and all other OSB-related entities, from accessing the information.

What are we doing to keep PLF coverage affordable? We work hard to keep the annual assessment both stable and as low as possible. The current \$3,500 assessment hasn't changed since 2011. We also offer discounts for new lawyers: 40 percent in the first year of coverage and 20 percent in the second and third years.

The assessment is set at the amount our actuaries predict will provide sufficient income during the year to cover the cost of claims and operating expenses. The cost-of-claims figure is based on predictions of the number of claims and the projected cost of those claims. Approximately 75 percent of your assessment dollars covers claims, and 25 percent goes to operations.

The assessment does not fully cover our claims costs, so the PLF relies on investments to make up the difference and to provide a reserve for significant losses. Because the PLF relies on its investment income to help pay for claims and operations, it must charge lawyers who pay in installments a finance charge to account for that loss of investment income.

Why do all lawyers pay the same amount, even part-time lawyers and lawyers who have never had claims? The fund is a shared-risk pool. To keep the assessment stable and affordable for all lawyers, we do not “underwrite” – or charge



OSB offers discounts
for new lawyers

40% in the first year of coverage
and 20% in the second and third years.

The PLF produces
more than 400
downloadable practice aids that
are free to OSB members.



Approximately 75%
of your assessment dollars covers
claims, and 25% goes to operations.

CONTINUED ON PAGE 10



FREQUENTLY ASKED QUESTIONS CONTINUED FROM PAGE 9

based on practice area, claims experience, or other factors. A single assessment also ensures that everyone has coverage and that all practice areas are equally accessible. A significant increase in rates for lawyers in some practice areas could substantially decrease the number of lawyers who are able to afford to practice in that area of law.

What areas of law generate the most claims and the most expensive claims? The most claims are generated by domestic relations (1,371 – 17 percent), personal injury (1,262 – 15 percent), and debtor-creditor/bankruptcy (1,111 – 13 percent).

The most expensive areas of law based on total indemnity paid are personal injury (\$13,739,057 – 20 percent), real estate (\$9,822,761 – 14 percent), and business law (\$8,593,521 – 12 percent).

What about expenses by size of firm? For claims opened in 2017, so far we have spent \$6.52 million on claims against sole practitioners, \$1.64 million for small firms (2-5 lawyers), and \$1.71 million for claims against large firms (15 or more lawyers).

People also ask what other benefits they get from the liability fund. Twenty-five percent of our operating budget is devoted to loss prevention programs. The PLF produces more than 400 downloadable practice aids, maintains a library of 90 CLEs in various formats, and publishes four handbooks that are free to OSB members.

PLF claims attorneys field over 1,000 calls a year from covered parties about potential mistakes, risks, and coverage.

The fund's four practice management advisors field calls and make office visits to help lawyers with office systems, trust accounting, cyber protection, and similar issues. In 2016, they made 246 office visits throughout the state to work one-on-one with lawyers and staff on practice management systems.

Finally, the Oregon Attorney Assistance Program provides support to lawyers with career or life transitions, mental health and addiction issues, and other impediments to successful practice. Communication with the OAAP is completely confidential, except as provided under ORS 419B.010 (child abuse) and ORS 124.060 (elder abuse), or to avert a threat to your safety or that of another person. Your communications will not affect your standing with the Professional Liability Fund or the Oregon State Bar. No one outside the OAAP is provided any information about who uses the OAAP's services or for what purpose. ■

Ms. Statler has a solo immigration law practice in Portland and has been an OSB member since 1991.

Amendments to UTCR – *Effective August 1, 2017*

The following amended Uniform Trial Court Rules (UTCR) took effect on August 1, 2017:

1. Form 2.010.7 – Certificate of Document Preparation: Amended to include additional options.
2. UTCR 2.020 – Certificate of Service: Amended to require certificate to include information related to manner of service. See item 14.
3. Form 2.130.1 – UTCR 2.130 Confidential Information Form: Amended to replace “Former Legal Name(s)” with “Any Other Names Used.”
4. Form 2.130.2 – Notice Re: Filing of Confidential Information Form: Amended to replace “former legal name(s)” with “any other names used.”
5. UTCR 3.140 – Resignation of Attorneys: Amended to eliminate repetitive text.
6. UTCR 3.170 – Association of Out-of-State Counsel (*Pro Hac Vice*): Amended to create exception for certain cases subject to Indian Child Welfare Act.
7. UTCR 5.100 – Submission of Proposed Orders or Judgments: Amended to clarify requirements of rule and modify exception to service requirement.
8. UTCR 5.170 – Limited Scope Representation: Adopted new rule to expand limited scope representation. See item 9.
9. UTCR 8.110 – Limited Scope Representation: Repealed rule as redundant of new rule expanding limited scope representation. See item 8.
10. UTCR 8.120 – Informal Domestic Relations Trials: Adopted new rule and form authorizing informal domestic relations trials.
11. UTCR 11.100 – Submission of Proposed Orders or Judgments in Dependency and Termination of Parental Rights Cases: Adopted new rule requiring certificate of readiness in juvenile proceedings.
12. UTCR 13.120 – Compensation of Arbitrator: Amended to allow arbitrator to preclude non-paying party from appearing or participating in arbitration.
13. UTCR 21.010 – Format of Documents to Be Filed Electronically: Amended to require that electronically filed documents allow copying and pasting, when practicable.
14. UTCR 21.100 – Electronic Service: Deleted section (6) regarding proof of service in light of amendments to UTCR 2.020. See item 2.

You can view the amendments to the rules at http://www.courts.oregon.gov/rules/UTCR/2017_UTCR.pdf.

“Emergency” Legislation

The Oregon State Legislature enacted many bills in 2017 that are effective before the usual effective date of January 1, 2018. To search for bills or to view reports of enacted bills, go to www.oregonlegislature.gov.

Adjusted Public Body Tort Liability Limits – *Effective July 1, 2017*

The Office of the State Court Administrator (OSCA) has followed the required statutory methodology identified in ORS 30.271(4), 30.272(4), and 30.273(3) to calculate the annual adjustment to the limitations on liability of state and local public bodies for personal injury, death, and property damage or destruction. Based on these calculations, the limitations are adjusted as shown in this table:

Public Body	Claimant(s)	Claim	Adjusted Limit
state	single	injury or death	\$ 2,118,000
state	multiple	injury or death	\$ 4,236,000
local	single	injury or death	\$ 706,000
local	multiple	injury or death	\$ 1,412,000
state or local	single	property damage or destruction	\$ 115,800
state or local	multiple	property damage or destruction	\$ 579,000

These new limitations became effective on July 1, 2017, and apply to all causes of action arising on or after July 1, 2017, and before July 1, 2018.

OSCA opened a public comment period on the adjustments from March 6, 2017, to 5:00 p.m. on May 5, 2017. They received no public comment.

A list of past and current limitations on liability of public bodies can be found on the Oregon Judicial Department website at <http://www.courts.oregon.gov/Pages/tort.aspx>.

Please submit questions or comments to Bruce.C.Miller@ojd.state.or.us.



PLF Volunteers at Oregon Food Bank

The PLF is proud to support the Oregon Food Bank through volunteer efforts. On August 9, PLF staff helped package 12,343 pounds of food, equaling 10,285 meals, or 271 meals per volunteer.

Why You Need to Form an Entity for Your Law Practice

This article was adapted from the PLF CLE, “From Startup to Endgame: Form of Entity Considerations for Your Law Practice,” presented on June 1, 2017, at the OSB Center, by Jay Richardson, Buckley Law PC, and Scott Schnuck, AltusLaw LLC.

Lawyers often ask, do I really need to form and operate my law practice under an LLC or corporation (S or C), or is “sole proprietorship” or “general partnership” acceptable? The answer is yes, you really need to practice law under an entity for all of the following reasons:

At the very least, operating under an LLC or corporation simply has more cachet. An entity extension implies permanence.

While a legal entity does not provide liability protection from your professional malpractice, an LLC, corporation, LLP, or PC does provide a layer of protection between your personal assets and liabilities that result from the obligations of the business (aside from your professional advice). In other words, the entity separates your personal affairs from those of your business, tying the liabilities and obligations of the business to the business.

A limited liability entity will protect you from:

1. Contract disputes – such as landlord and tenant disputes.
2. Disputes with vendors such as tech providers.
3. Liability associated with an employee.
4. Tort injuries of clients and others visiting your office. Commercial liability insurance – if you have it – would probably cover this event. Still, why not provide all of the protection you can? Also, insurance always



has a policy limit, and it is generally bad business to fully insure against all perils as you will be paying for protection you are unlikely to need. On the other hand, an LLC/corporation can give you the protection from those uninsured liabilities.

If you plan to hire associates and want them to help in your succession planning, you will need to operate as a partnership, LLC, or corporation anyway (unless you plan to sell out entirely when you retire), so why not form an LLC now? If you form the LLC now, you get to choose the name, create the operating agreement, and so on. ■

To read about which form of entity to choose, how to change the form of entity, and much more, download the materials from the PLF CLE presentation or listen to the program at www.osbplf.org > CLE > Past CLE.

Tips, Traps, and Resources



EMPLOYMENT LAW

The latest minimum wage increase went into effect July 1, 2017. The new minimum wage is \$10 in nonurban counties, \$11.25 in the Portland metro area, and \$10.25 everywhere else. Employers can use this tool from Metro (www.oregonmetro.gov/library/urban-growth-boundary/lookup) to determine whether a particular location is within the Portland metro area. For more information on how to determine the applicable wage region, go to www.barran.com/alerts/boli-issues-final-rule-on-oregons-new-minimum-wage-law/view. Employers are also required to display an updated minimum wage poster in a conspicuous place beginning July 1. The poster is available for download at http://www.oregon.gov/boli/TA/docs/2017-18_MW_Poster%28Eng%29.pdf. Updated composite posters, which include revisions to the USERRA, and Oregon OSHA posters can also be purchased online at <https://apps.oregon.gov/boli/storefront/> or at BOLI's Portland, Salem, and Eugene field offices.



CYBERSECURITY

Has your entity just experienced a ransomware attack or other cyber-related security incident? Are you wondering what to do now? This guide and quick-response checklist from the U.S. Department of Health and Human Services, Office for Civil Rights, explains, in brief, the steps for a HIPAA-covered entity or its business associate (the entity) to take in response to a cyber-related security incident. (www.hhs.gov/sites/default/files/cyber-attack-checklist-06-2017.pdf.)



Vital Numbers for Your Law Firm's Health

By Larry Port and Tim Baran, Rocket Matter

If you want to take superhuman care of your clients, you will want to run an efficient business. You need to learn to love numbers. To run an efficient business, knowing your vitals is crucial.

Do a Checkup to See if Your Business Is Healthy

Vital numbers for business are what are known as key performance indicators, or KPIs. KPIs are like blood

pressure, temperature, pulse rate, and respiration rate for the body. They let you know succinctly if you are ill or healthy. KPIs may vary based on what type of firm you run. For the most part, though, there are common measurements most attorneys should observe.

Cash position. Your cash position is how much liquid cash you have available to run your business. Get into the habit of checking yours every day. It's important to know what money is moving in and out of your business. This movement of funds is your cash flow, and understanding it is the most critical aspect of running a business.

Cash is oxygen for a business. It's important to focus on all aspects of managing it, including knowing what vendors you're paying and when, how you can collect on your work more quickly, and what revenue you can expect coming down the pike. Not only will you understand your business better, but you'll probably sleep better at night.

New leads per month. "Lead" is a four-letter word to many law firms. A lot of lawyers prefer the term "prospective clients." If you want a steady stream of new business, then start measuring how many leads you create each month.

New clients per month. If you know how many new clients you typically engage per month, and you're tracking your monthly lead creation, plus you have some insight into your cash flow, then congratulations! You have more insight into your law firm's business (and future business) than 90 percent of all practices.

It's a good idea to use a spreadsheet to keep track of your trends on an ongoing basis. If Excel frightens you, learn more about it and get past that fear. Spend 10 minutes watching a basic tutorial on YouTube, and teach yourself one of the most powerful business tools on the planet.

Case volume. Case volume is simply the number of cases you have active at any given time.

Case value. Case value is how much a case is worth from a dollar perspective. This could be a flat-fee amount, an hourly billing amount, or a predicted outcome for a contingency case. Let's go one step

further: When you multiply case volume by case value, you have an idea of how much your current work will bring in. Then you can assess if you want to bring more revenue into the business, which can be accomplished by raising rates (increasing case value) or by amping up the number of cases you handle (increasing case volume).

Matter budget. Whether you bill flat fee, contingency, or hourly, knowing how much work you're putting into a matter is critical. Tracking your time keeps things from spiraling out of control and allows you to identify which cases are better economic performers than others.

Utilization rate. Your utilization rate is the amount of time you bill versus your target hours (the amount of time you are supposed to bill). If your weekly billable target hours are 40, and your actual billable time for that period is 36 hours, your utilization rate would be 90 percent. Tracking utilization rates across timekeepers in your firm allows you to set performance-based goals, reward top billers, and deal with poor employees.

Realization rate. For some law firms, it is important to track all time, not just billable time, which helps partners understand the efficiency of their staff. Your realization rate is the amount of billable hours you capture versus the total hours you capture. For example, if you capture 50 total hours worth of time in a week, and 40 of those hours are billable, then your realization rate is 80 percent. This rate helps you understand the amount of administrative work you are doing versus legal work.

Collection rate. Collecting money for their invoices is a big problem for law firms, but many firms don't understand how well or poorly they are performing on that critical issue. Your collection rate is the amount of money you collect for your invoiced work. The best law firms have collection rates of over 90 percent. ■

This article was adapted from the PLF CLE, "Happier Clients, Higher Profits," presented September 20, 2016, at the Oregon State Bar Center, by Larry Port and Tim Baran of Rocket Matter. To download the materials or view the program, visit www.osbplf.org > CLE > Past CLE.



CASES *of* NOTE

INSURANCE/ATTORNEY FEES: In *Long v. Farmers Insurance Co.*, 360 Or 791 (February 2, 2017), the Oregon Supreme Court held that when an insured files an action against an insurer to recover sums owing on an insurance policy and the insurer subsequently pays the insured more than the amount of any tender made within six months from the insured's proof of loss, the insured obtains a "recovery" that entitles the insured to an award of reasonable attorney fees under ORS 742.061.

<http://www.publications.ojd.state.or.us/docs/So63701.pdf>

INSURANCE/PERSONAL INJURY PROTECTION: In *Dowell v. Oregon Mutual Insurance Co.*, 361 Or 62 (February 16, 2017), the Oregon Supreme Court held that personal injury protection (PIP) benefits in ORS 742.524(1)(a) for "expenses of medical services" do not include an insured's transportation costs for traveling to receive medical care.

<http://www.publications.ojd.state.or.us/docs/So63079.pdf>

TRADE PRACTICES/DEBT COLLECTION: In *Daniel N. Gordon, PC v. Rosenblum*, 361 Or 352 (April 27, 2017), the Oregon Supreme Court considered whether provisions of Oregon's Unlawful Trade Practices Act (UTPA) applied to the debt collection activities of a lawyer and his law firm. The court concluded that the debt collection activities were subject to ORS 646.607(1) (prohibiting "unconscionable tactics") and ORS 646.608(1)(b) (causing likely "confusion" or "misunderstanding" regarding loans and credit). <http://www.publications.ojd.state.or.us/docs/So63978.pdf>

NEGLIGENCE/MEDICAL MALPRACTICE: In *Smith v. Providence Health & Services*, 361 Or 456 (May 11, 2017), the Oregon Supreme Court concluded, as a matter of first impression, that a loss of a substantial chance of a better medical outcome can be a cognizable injury in a common-law claim of medical malpractice in Oregon. The court reversed and remanded for further proceedings. <http://www.publications.ojd.state.or.us/docs/So63358.pdf>