

# 2018 ANNUAL REPORT



Professional  
Liability Fund

# INTRODUCTION

What a difference a year makes! The PLF ended 2018 in a far different financial picture than we ended 2017. After experiencing a record high in 2017, the investment markets showed significant volatility in 2018 and the PLF ended up with a \$3 million loss to our net position (aka retained reserves). The good news is that the PLF's finances are strong and are designed to weather unexpected swings in our investment portfolio or in claims development, which are the two single drivers of the PLF's financial position.

Although the PLF Board of Directors and the OSB Board of Governors have not yet set the 2020 PLF assessment, we anticipate it will remain at \$3,300 again this year. As I explained in late 2017 when both Boards agreed to lower the assessment from \$3,500, our goal is always to maintain consistency in the assessment to the greatest degree possible. Having adequate reserves allows us to do that, even when the investment or claims performance drops.

2018 was not without its highlights. Barbara Fishleder and I worked with the Bar's CLE Committee and the Board of Governors on its recommendation to the Supreme Court to add a mandatory CLE credit addressing Mental Health and Substance Use. Recently, an attendee at a CLE in which the last hour was devoted to this credit wrote the PLF saying that when he first learned of this new requirement he was more than a little skeptical. But after participating in the hour-long presentation, he said that the CLE "demonstrated why the training is needed." We believe this is vital information to all practicing lawyers, and we applaud the BOG and the Supreme Court for implementing this change.

While our claim count was up slightly for 2018, our average cost of claim went down. Our covered parties continue to be well-represented by some of the best lawyers in Oregon who continue to handle matters efficiently and effectively. Virtually every other legal

| PLF STATISTICS |             |        |
|----------------|-------------|--------|
| 2014-2019      |             |        |
|                | Assessments | Claims |
| 2014           | \$3,500     | 911    |
| 2015           | \$3,500     | 808    |
| 2016           | \$3,500     | 839    |
| 2017           | \$3,500     | 827    |
| 2018           | \$3,500     | 869    |
| 2019           | \$3,300     | 925*   |

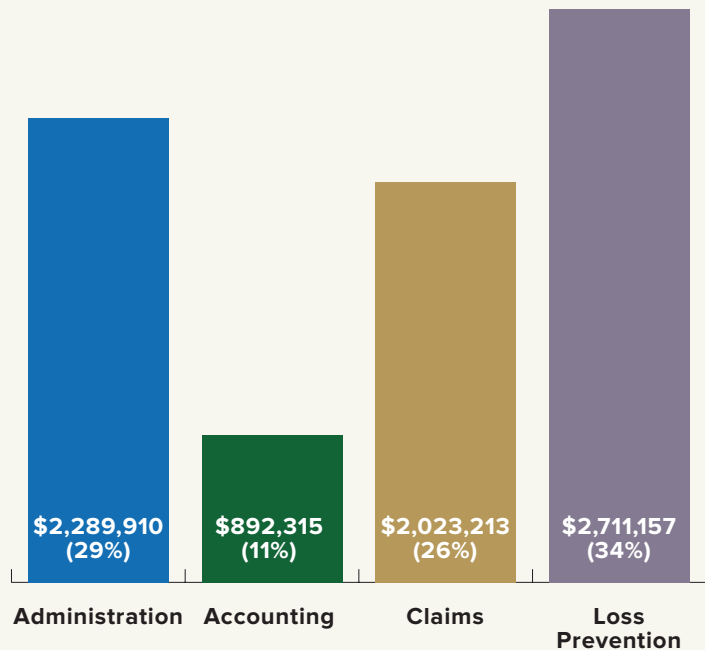
*\*Projected*

malpractice insurance provider reports that defense costs are increasing, while ours have remained largely flat or declined over the last four years. Finally, a significant high of 2018 was Madeleine Campbell finishing her first year as the PLF's Director of Claims. She has done an excellent job of maintaining all the good work and service our claims attorneys have historically provided while making important changes to enhance our work.

The PLF welcomed two new vital members of the staff: Heather Bowman, a Claims Attorney who had served for many years on our Defense Panel, joined us in the spring of 2018, and Lee Wachocki joined us as a Practice Management Advisor in the fall of 2018. Both have been fully integrated into the team and are already providing assistance to lawyers. •

## Operations by Department

2018



*Carol J. Bernick*  
*PLF Chief Executive Officer*

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# How is the PLF Doing With Claims Handling?

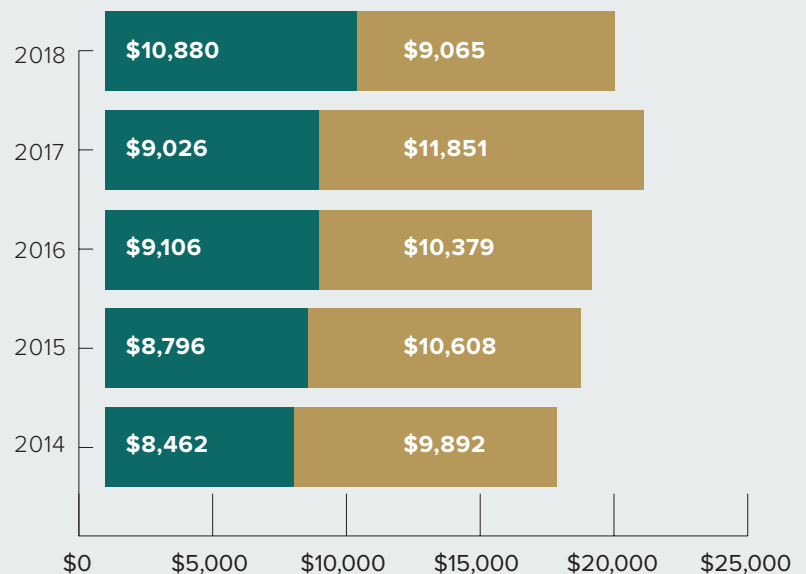
Following a national trend among legal malpractice carriers, the PLF is beginning to receive a larger number of claims relating to estate planning. We assume this is, in some part, related to the aging of the baby boom generation. Therefore, it is likely we will continue to see an increase in these claims over the next few years. A good number of the more difficult claims we see involve long-term familial disputes and resentments. These sometimes come to a head and find a forum when a parent dies. We also find that previously fractured families may find common ground and unite behind claims against the estate planning attorney.

In 2017, the number of estate planning cases more than tripled and remained at that level in 2018. Equally concerning is the cost related to these claims. In 2018, the PLF closed 111 estate planning claims. The cost relating to these claims was \$2,286,655. This is approximately double the amount paid in each of the previous three years for these types of claims.

## Average Cost Per Closed Claim

By Year of Reporting 2014–2018

Indemnity ■  
Expense ■



# Notable Areas of Law by Frequency and Severity

January 1, 2013 to December 31, 2018

|                            | 2018 | 2017 | 2016 | 2015 | 2014 | 2013 |
|----------------------------|------|------|------|------|------|------|
| <b>TOTAL CLOSED CLAIMS</b> | 866  | 803  | 872  | 902  | 880  | 1076 |

## FREQUENCY

### Personal Injury

|                  |          |          |          |          |          |          |
|------------------|----------|----------|----------|----------|----------|----------|
| Number of Claims | 117      | 155      | 161      | 143      | 126      | 139      |
| Cost per claim   | \$20,629 | \$16,598 | \$23,970 | \$23,812 | \$21,061 | \$24,214 |

### Domestic Relations

|                  |         |          |          |         |          |          |
|------------------|---------|----------|----------|---------|----------|----------|
| Number of Claims | 174     | 123      | 141      | 145     | 177      | 165      |
| Cost per claim   | \$8,761 | \$13,650 | \$17,407 | \$8,035 | \$14,007 | \$11,682 |

### Bankruptcy/Debtor

|                  |          |          |          |          |         |          |
|------------------|----------|----------|----------|----------|---------|----------|
| Number of Claims | 105      | 88       | 108      | 138      | 101     | 131      |
| Cost per claim   | \$20,004 | \$14,569 | \$18,977 | \$17,551 | \$8,792 | \$15,265 |

### Other Civil Litigation

|                  |          |          |   |   |   |   |
|------------------|----------|----------|---|---|---|---|
| Number of Claims | 119      | 63       | * | * | * | * |
| Cost per claim   | \$19,307 | \$43,297 |   |   |   |   |

## SEVERITY

### Business Transactions

|                  |          |          |          |          |          |          |
|------------------|----------|----------|----------|----------|----------|----------|
| Number of Claims | 41       | 44       | 47       | 50       | 70       | 77       |
| Cost per claim   | \$35,603 | \$32,395 | \$55,790 | \$50,862 | \$30,256 | \$32,521 |

### Securities

|                  |           |          |           |          |           |          |
|------------------|-----------|----------|-----------|----------|-----------|----------|
| Number of Claims | 6         | 12       | 5         | 4        | 5         | 5        |
| Cost per claim   | \$130,274 | \$49,771 | \$119,419 | \$11,516 | \$102,887 | \$57,311 |

### Other Civil Litigation

|                  |          |          |   |   |   |   |
|------------------|----------|----------|---|---|---|---|
| Number of Claims | 119      | 63       | * | * | * | * |
| Cost per claim   | \$19,307 | \$43,297 |   |   |   |   |

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

# 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 Advisor Program), and personal assistance (through the Oregon Attorney Assistance Program).



**500+** people attended the PLF CLE in-person seminars.

**11,300+** recorded CLE programs were accessed.



Personal and practice management assistance seminars in 2018 included our annual practice skills program for new admittees, Learning The Ropes, and programs on law practice management technology, how to avoid ethics violations and malpractice claims, data security, practicing law with ADD/ADHD, building resilience, stress management, and career transition. In addition, the PLF offers free resources including:

- **120+ 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* (2015);

*A Guide to Setting Up and Running Your Law Office* (2016);

*A Guide to Setting Up and Using Your Lawyer Trust Account* (2018); and

*Oregon Statutory Time Limitations* (2018).

**Our practice forms, handbooks, and most CLEs are available free of charge. You can download them at [www.osbplf.org](http://www.osbplf.org), or call the Professional Liability Fund at 503.639.6911 or 800.452.1639.**

## Practice Management Advisor Program

Our practice management advisors (PMAs), Sheila Blackford, Hong Dao, Rachel Edwards, and Lee Wachocki, 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 2018, the PMAs presented seminars around the state on practice management and in-house CLEs for law firms. In addition, the PMAs visited 215 law firms and made 247 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 were “very satisfied” or “satisfied” with all of the following areas: (1) reaching a PMA by telephone; (2) the promptness within which the lawyer received a return phone call; (3) the amount of time between calling for an appointment and when the appointment took place; (4) PMA's ability to explain information clearly; (5) PMA's level of professionalism; (6) receiving information that was helpful; (7) follow-up; and (8) overall level of satisfaction with service. 100% of the people returning the surveys noted that they would recommend the PMAs' services to others.

## Oregon Attorney Assistance Program

The Oregon Attorney Assistance Program (OAAP) attorney counselors, Shari R. Gregory, Karen Neri, Douglas Querin, and Bryan Welch, 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 2018, the OAAP offered education and support groups for lawyers on these topics: recovery, career change, healthy habits, mental health conditions, ADHD, trauma, grief, wellness, and stress management. Our publication, *inSight*, offers support and information about health and wellness for lawyers. •



OAAP  
assisted **573**  
lawyers in  
2018 for individual,  
personal  
assistance.



PMAs made  
**247** law office  
visits in 2018 to  
establish, improve, or  
otherwise transform  
their law offices.



# Plan Changes for the 2019 Primary and Excess Plans

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The PLF Board of Directors recommended the following changes to the Primary and Excess Coverage Plans for 2019 to the Oregon State Bar Board of Governors, which approved the changes on November 17, 2018. Copies of the 2019 Coverage Plans can be found on the PLF website. This summary does not include approved minor wordsmith changes.

## Return of Attorney Fees is Not Covered

Consistent with virtually every other attorney malpractice policy of which we are aware, the PLF's long-standing position is that claims seeking return or recovery of attorney fees are not covered by the Plan. In order to make the PLF's position even more clear, the Board and the BOG approved changes to three sections of the Plan.

1. **Definition of Damages.** The definition of Damages in the 2019 Plan now reads:  
Damages means monetary compensation a Covered Party must pay for loss and does not include:
  - a. Fines, penalties, statutorily enhanced damages, or enhanced prevailing fees;
  - b. Punitive or exemplary damages;
  - c. The return, forfeiture, disgorgement, restitution, reduction, or offset of any fees, costs, expenses or disbursements paid to, charged by, or owed to any Covered Party or to any Law Entity with which any Covered Party was associated at the time any such fees, costs, expenses or disbursements were paid, charged, or incurred, including but not limited to fees, costs, expenses or disbursements alleged to be excessive, not earned, unnecessary, ill-advised, or caused, in whole or in part, by any alleged negligent advice;
  - d. Rescission, injunctions, accountings, restitution, equitable relief;
  - e. Any personal profit or advantage to a Covered Party;
  - f. Any award of attorney fees, costs, or interest arising from any claim reference in (a) through (d) above, or from any excluded claim.

There are a number of examples provided to illustrate the PLF's intent.

2. **A new paragraph has been added** in the Duty to Defend to make it clear that the PLF does not have a duty to defend any Claim that is not a claim for Damages.

The PLF does not have a duty to defend any Claim, or the portion of any Claim, that is not a Claim for Damages, as defined in Section IA. In the event the PLF voluntarily agrees to defend any Claim, or any portion of a Claim, that does not seek Damages, it will be subject to the Covered Party's agreement

that the Covered Party will cooperate with the PLF's attempt to settle or dismiss any alleged Claim for Damages that may also be alleged. Following any such dismissal or settlement the PLF will have the right to withdraw from the defense of any remaining claim.

3. **Exclusion 10**, dealing with Law Practice Business Activities, has been amended to remove references to claims involving return or recovery of attorney fees. We made this change so that the PLF's position with respect to claims seeking return or recovery of attorney fees was in one place: the definition of Damages. This change comes with an important warning, incorporated into the Plan:

**IMPORTANT NOTE: THIS EXCLUSION WAS AMENDED AS OF 1/1/19 BUT THIS IS NOT AN EXPANSION OF PREVIOUS COVERAGE. PLEASE SEE THE AMENDED DEFINITION OF "DAMAGES" REGARDING CLAIMS INVOLVING ATTORNEY FEES, COSTS, EXPENSES OR DISBURSEMENTS.**

## Innocent Partner Coverage – Exclusion 2.

The PLF issues Plans individually, to each lawyer. Under the more recent Plan language, the only Covered Parties under each of these Plans are the individual lawyer, named on the Declaration page, and any Law Entity that is legally liable for any Claims against the individual lawyer. Exclusion 2, on page 8 of the 2018 Plan, excluding certain wrongful acts, contains a provision intended to say that innocent Covered Parties are not subject to Exclusion 2. We revised this provision to clearly state the PLF's intent as to when a Law Entity, sued for the wrongful conduct of another member of the firm, qualifies as an innocent Covered Party. To clarify the PLF's intent the PLF Board and the BOG approved the following language:

2. **Wrongful Conduct.** This Plan does not apply to any Claim based on or arising out of:
  - a. Any criminal act or conduct;
  - b. any knowingly wrongful, dishonest, fraudulent or malicious act or conduct;
  - c. any intentional tort; or
  - d. any knowing or intentional violation of the Oregon Rules of Professional Conduct (ORPC) or other applicable code of ethics.

Exclusion 2 applies even if the Covered Party did not intend to cause harm or damages.

This Exclusion 2 does not apply to You if You: did not commit or participate in any acts or conduct set forth in subsections (a) through (d); had no knowledge of any such acts or conduct at the time they occurred; and did not acquiesce or remain passive after becoming aware of such acts or conduct. Exclusion 2 does not apply to any Law Entity covered under this Plan unless a member of the Control Group of the Law Entity:

- (1) committed or participated in any acts or conduct set forth in subsections (a) through (d); or
- (2) had knowledge of any such acts and acquiesced in them or failed to take, or attempt to take, corrective action.

Control Group includes all persons who are managers or officers of the Law Entity, and/or all persons with authority to act, make decisions or enter into agreements on behalf of the Law Entity.

## Business Interests – Exclusion 6.

The Board and BOG approved a complete rewrite of Exclusion 6. The intent of Exclusion 6 is to ensure that the Plan excludes claims where the lawyer has a significant connection with the business enterprise making the Claim, beyond providing legal representation or services, or had such significant connection with the business enterprise at the time of the acts, errors or omissions on which the Claim is based. In reviewing Exclusion 6, we concluded it was not as clear as it could be. The change is not intended as any change to the scope of coverage.

**Business Interests.** This Plan does not apply to any Claim by a business enterprise:

- a. In which You have an Ownership Interest; or in which You are a general partner, managing member, or employee; or in which You control, operate or manage, either individually or a fiduciary capacity, any property that is owned, managed or maintained by the business enterprise; or
- b. At the time of the alleged acts, errors or omissions on which the Claim is based: You had an Ownership Interest in the business enterprise; You were a general partner, managing member, or employee of the business enterprise; or You controlled, operated or managed, either individually or a fiduciary capacity, any property that was owned, managed or maintained by the business enterprise.

Ownership Interest means either You, those controlled by You, Your spouse, parent, stepparent, child, stepchild, sibling, any member of Your household, or those with whom You are regularly engaged in the practice of law collectively own more than 10% of the business enterprise or owned more than 10% of the business enterprise at the time of the alleged acts, errors or omissions on which the Claim is based.

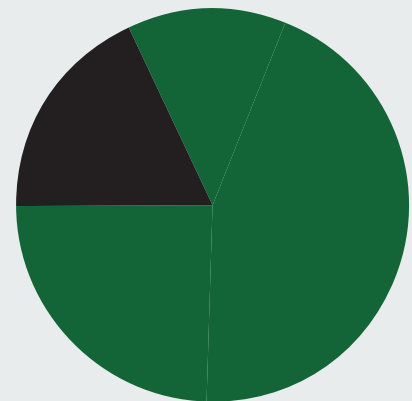
## Harassment & Discrimination – Exclusion 16.

The PLF Plans do not apply to claims involving harassment or discrimination. The Board and BOG approved changes to make clear that this exclusion does not apply when a lawyer is involved in a workplace investigation into harassment. We also added a protected class of sexual identity.

16. **Harassment and Discrimination.** The Plan does not apply to any Claim based on or arising out of harassment or discrimination by any Covered Party on the basis of race, creed, age, religion, sex, sexual orientation, sexual identity, disability, pregnancy, national origin, marital status, or any other basis protected by law. •

### Number of Litigated and Non-Litigated Claims 2017-18

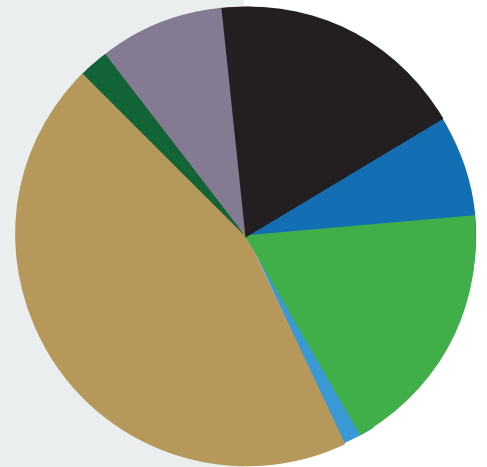
|                           |                |       |
|---------------------------|----------------|-------|
| ■ Litigated . . . . .     | 272 . . . . .  | .17%  |
| ■ Non-Litigated . . . . . | 1356 . . . . . | .83%  |
| TOTAL . . . . .           | 1628 . . . . . | .100% |



## Closed Claims 2017-18

### Closing Status - Litigated

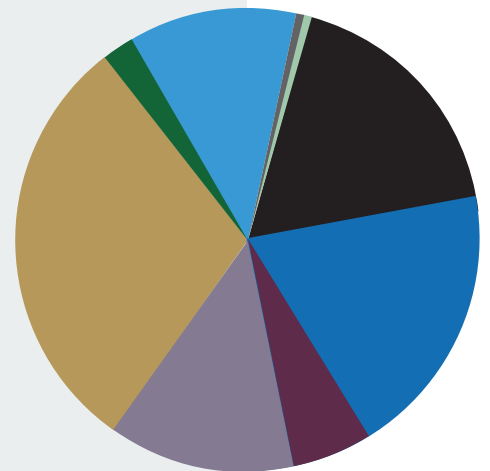
|  |     |
|--|-----|
| ■ Dismissal Before Completion . . . . .                    | 18% |
| ■ Disposed of by Court . . . . .                           | 7%  |
| ■ Litigated/Arbitrated for Covered Party . . . . .         | 17% |
| ■ Litigated/Arbitrated-Jury Verdict for Claimant . . . . . | 1%  |
| ■ Claim Settled . . . . .                                  | 46% |
| ■ PLF Limits Exhausted referred to Excess . . . . .        | 1%  |
| ■ Other . . . . .  | 10% |



## Closed Claims 2017-18

### Closing Status Non-Litigated

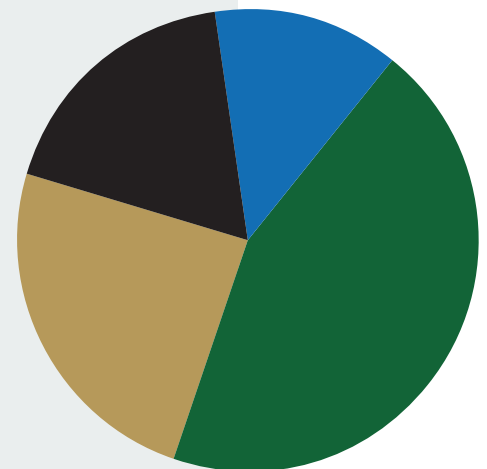
|   |       |
|---|-------|
| ■ Claim Abandoned . . . . .                       | 23.2% |
| ■ Claim Denied . . . . .                          | 15.6% |
| ■ Claim Review . . . . .                          | 4.7%  |
| ■ Claim Repaired . . . . .                        | 13.1% |
| ■ Claim Settled . . . . .                         | 29.0% |
| ■ Coverage Denied . . . . .                       | 2.3%  |
| ■ Deposition or Subpoena Representation . . . . . | 11.6% |
| ■ Limits Exhausted . . . . .                      | 0.1%  |
| ■ Opened in Error . . . . .                       | 0.4%  |



## Payment Allocation of Closed Claims

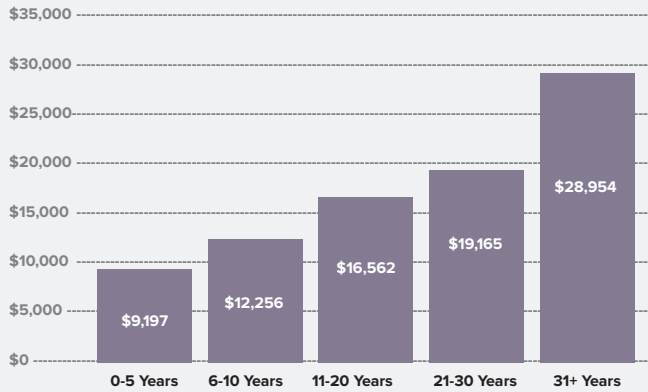
January 1, 2014 to December 31, 2018

|  |     |
|--|-----|
| ■ Payment to Claimant and Expense . . . . .    | 17% |
| ■ Payment to Claimant and No Expense . . . . . | 13% |
| ■ Expense Only . . . . .                       | 45% |
| ■ No Expense or Payment to Claimant . . . . .  | 25% |



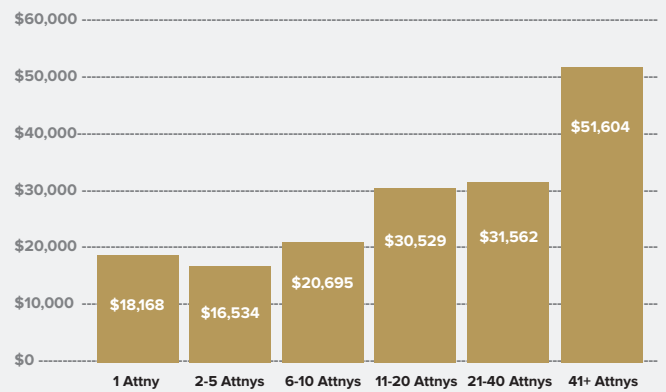
### Average Cost of Claim by Years in Practice

2014 - 2018



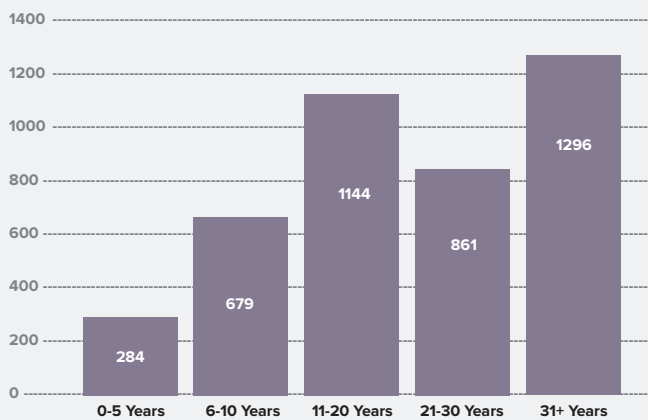
### Average Cost of Claims by Size of Firm

2014 - 2018



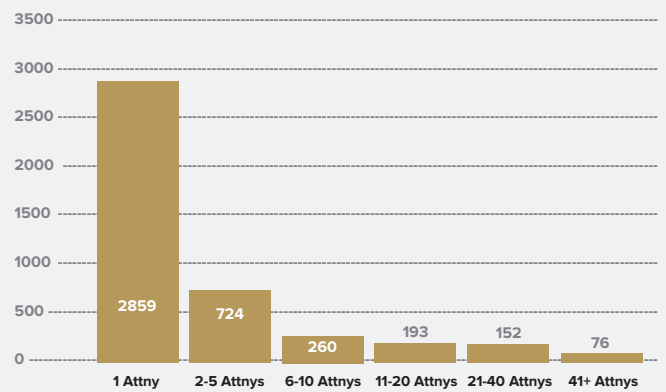
### Claim Frequency by Years in Practice

2014 - 2018



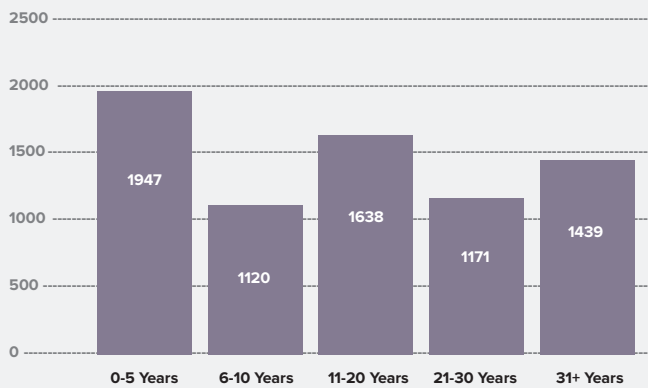
### Claim Frequency by Size of Firm

2014 - 2018



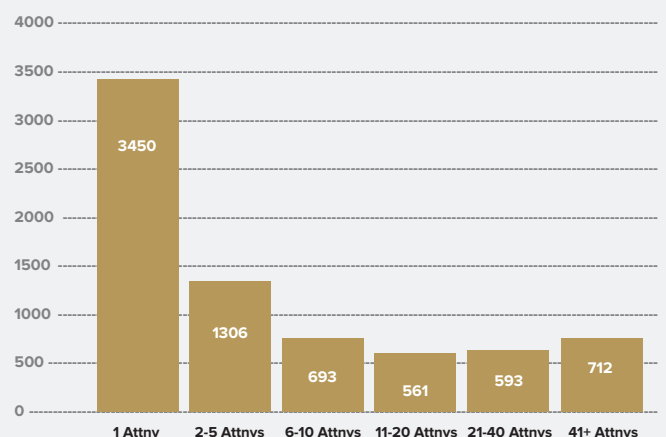
### Covered Parties by Years in Practice

2018



### Covered Parties by Size of Firm

2018

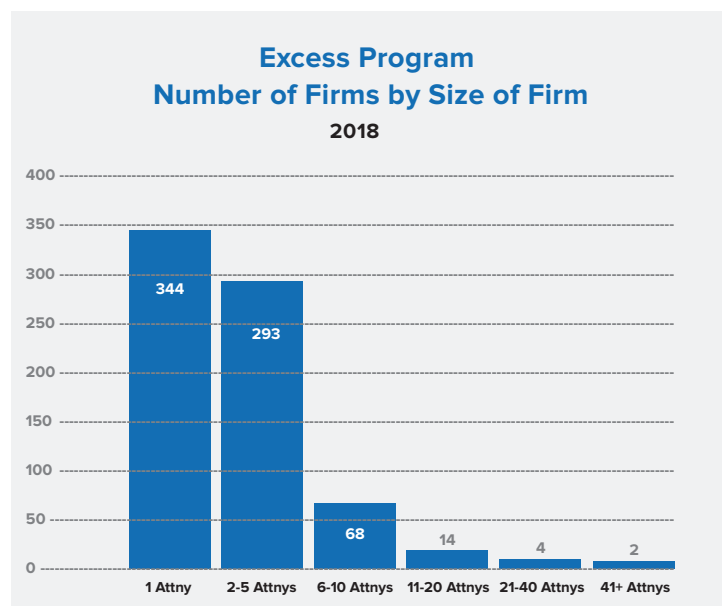
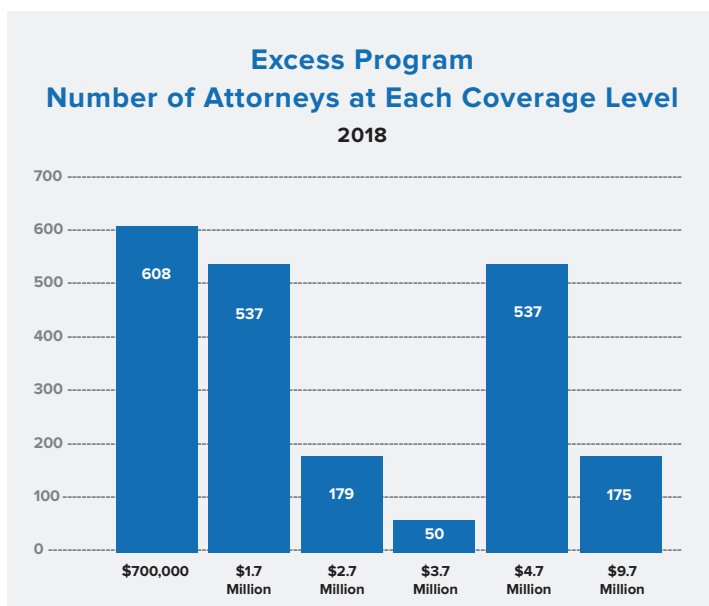


# What is the Status of the Excess Program?

The 2018 year continued to see a focus on the underwriting review of law firms presenting additional risk under the Oregon Securities Law. Many of the large and expensive claims experienced by the Excess Program over the years have related to ORS Chapter 59 exposure (Oregon Securities Law). These significant claims have necessitated steady rate increases for the Excess Program over the past few years. Though many firms saw their rates remain steady in 2018, some firms did continue to see an increase. The increases were part of a continued effort to price firms commensurate with the risk and claims exposure they present.

Over the past two years, we have made strides to modernize the application and administrative processes for our Excess firms. In 2017, online applications became available in addition to online retrieval of quotes and declarations. Beginning in 2018, we expanded the online services to firms by allowing online payments in the form of eCheck and credit card. Since Excess premiums vary widely by firm, and since we did not have a way to predict how many firms would make use of the online payment options, we decided to pass along the payment processing fees to firms. The processing fees were 2.99% on transaction total for credit cards and \$0.25 per transaction for eCheck. During the renewal period, 13.8% of firms paid by credit card, 24.2% paid by eCheck, and 62% paid by paper check. Through these modernization efforts, the Excess Program is able to reduce costs by not spending money on data entry, mailing, and printing. We look forward to continuing to develop and improve the Excess Portal in the years to come.

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 2018, eight incidents were reported under this Endorsement. Higher limits for Cyber Liability coverage are now available on request. •



# Summary Financial Statements (Unaudited)

(Primary and Excess Programs Combined)

|   | 12/31/2018                             | 12/31/2017          |
|---|--|---------------------|
| <b>ASSETS</b>   |  |                     |
| Cash and Investments at Market                                | \$62,557,336                           | \$66,655,034        |
| Other Assets  | \$1,077,553                            | \$884,734           |
| Capital Assets  | \$416,116                              | \$599,340           |
| PERS Related Deferred Outflow of Resources                    | \$1,151,573                            | \$1,151,573         |
| <b>TOTAL ASSETS</b>   | <b>\$65,202,578</b>                    | <b>\$69,290,681</b> |
| <b>LIABILITIES AND FUND EQUITY</b>                            |  |                     |
| Estimated Liabilities For Claim Settlements and Defense Costs | \$31,600,000                           | \$31,900,000        |
| Deferred Revenues   | \$10,835,021                           | \$11,670,673        |
| Other Liabilities   | \$828,983                              | \$693,565           |
| PERS Pension Liabilities                                      | \$4,896,287                            | \$4,896,288         |
| PERS Related Deferred Inflow of Resources                     | \$35,421                               | \$35,421            |
| Net Position  | \$17,006,866                           | \$20,094,734        |
| <b>TOTAL LIABILITIES AND NET POSITION</b>                     | <b>\$65,202,578</b>                    | <b>\$69,290,681</b> |
|   | <b>For the Year Ending December 31</b> |                     |
|   | <b>2018</b>                            | <b>2017</b>         |
| <b>REVENUE</b>  |  |                     |
| Assessments   | \$25,059,140                           | \$25,040,056        |
| Investment and Other Income                                   | -\$1,811,703                           | \$7,238,492         |
| <b>TOTAL REVENUE</b>  | <b>\$23,247,437</b>                    | <b>\$32,278,548</b> |
| <b>EXPENSE</b>  |  |                     |
| Operations  | \$9,036,168                            | \$9,611,648         |
| Provision for Settlements                                     | \$8,697,561                            | \$6,472,756         |
| Provision for Defense Costs                                   | \$8,576,572                            | \$6,965,574         |
| <b>TOTAL EXPENSE</b>  | <b>\$26,310,301</b>                    | <b>\$23,049,978</b> |
| <b>NET INCOME (LOSS)</b>                                      | <b>(\$3,062,864)</b>                   | <b>\$9,228,570</b>  |



Professional  
Liability Fund

PHYSICAL ADDRESS

16037 SW Upper Boones Ferry Road, Suite 300  
Tigard, OR 97224

MAILING ADDRESS

PO Box 231600 | Tigard, OR 97281-1600

p: 503.639.6911 | [www.osbplf.org](http://www.osbplf.org)