

\$10,000 increase in deductible for certain administrative dismissal claims

In our efforts to control escalating claims, we have circulated repeated warnings, tips, and resources about the risk of having a claim administratively dismissed for delay or by reason of abandonment under Rule 48 of the *Rules of Civil Procedure*. The article “Know how administrative claims happen, and take 8 steps to immunize against them,” which appeared in the September 2013 issue of *LAWPRO Magazine*, represents the eighth article we have published on this topic since 2009 – and that’s not including the many other efforts our spokespeople – and other writers and presenters – have made to educate the bar about the topic in the context of presentations, speeches, and CPD programming.

Nevertheless, these highly preventable claims continue to occur, and are becoming more challenging than ever to defend. Having opened our battle against administrative dismissals with a bushel of lawyer resource “carrots,” we are now forced to resort, in certain circumstances, to a less palatable approach. Starting with the 2014 policy year, where an administrative dismissal is not set aside through steps taken by or under the direction of LAWPRO, in regard to a resulting claim, the deductible for that claim will be deemed to apply to claim expenses, indemnity payments and/or repair costs and be \$10,000 more than the deductible chosen by the insured

and/or listed on the declarations page of the policy. (There is an exception to this, for claims arising out of certain *pro bono* work.)

We know that the possibility of an increased deductible has the power to deter oversights and misjudgments that lead to claims. When, in an effort to target claims based on conflicts of interest, a “double deductible” was introduced for claims arising from circumstances in which a lawyer represented parties adverse in interest, the proportion of LAWPRO claims based on conflicts of interest decreased in the years that followed. It is our hope that the introduction of an increased deductible for claims arising from non-rectifiable administrative dismissals will have a similar influence on lawyers’ practice habits.

Often these types of claims can be repaired if early notice is provided, so we urge lawyers to continue to report actual and potential claims as soon as they are discovered, to permit LAWPRO counsel every opportunity to have the proceeding reinstated and to avoid the application of the increased deductible. For this reason the increased deductible will apply only to claims resulting from administrative dismissals that are not set aside through steps taken by or under the direction of LAWPRO.