

2011
annual
review

Claim numbers & costs reach new highs

\$101 million in claims costs

Do we have your attention yet?

In this, the third annual review of LAWPRO operations, we're taking a slightly different approach. You'll notice that there are fewer words in many sections and more use of graphics to convey information.

Why this change? Because a picture is worth a thousand words. And because now – more than ever – we need to get your attention.

We need you to absorb the information we're going to share on the following pages. And we need you to act on that information, to look seriously at every aspect of your practice from a risk management perspective: Who are your clients? How well do you document? How good are your controls, procedures and overall practice management? And how vulnerable are you to having a claim filed against you?

Because, the BIG story in 2011 is claims. The number of claims reported is up 11 per cent to 2,468. Based on actuaries' projections, claims costs in the E&O program alone could top the \$90 million mark for 2011.

As is more fully explained on the following pages, no matter how we slice and dice the numbers, the trend is up:

- Over the last decade, the number of lawyers in practice has increased 28 per cent. But the number of claims reported is up 34 per cent.

- The claims you're reporting cost more to resolve: The average cost per claim file is up 37 per cent from \$31,000 in 2001 to \$42,000 in 2009. Put another way, the number of claims in the \$100,000+ category has gone up 115 per cent to 275 in 2009 from 132 in 2001.

These are disturbing trends that raise many questions, the most important of which are: What is going on and how can we rein in this trend?

What's driving the increase in claims?

As I said in my comments in the 2011 LAWPRO annual report, there's likely no "Eureka!" explanation for this claims trend. But a few possibilities come to mind:

- It's a more complex business environment in which you're handling more complex files that seem to result in more complex and costly claims.



- It's a more litigious world in which clients have higher expectations.
- There are more claims involving self-represented (and in some cases, vexatious) litigants – a worrisome and often expensive trend that puts tremendous pressure on our court system and on the defendant lawyer.
- Disturbing practice trends – such as lawyers abandoning practice to non-lawyers who are not supervised; or lawyers who (perhaps unthinkingly) deal with an intermediary rather than with the actual client and who are surprised when the client ends up unhappy and sues the lawyer (or worse still, the intermediary turns out to be a fraudster).
- The “law of multiples” which can take many forms such as multiple lawyers doing the same type of work (or based on the same guidance) that leads to class action potential when there's an allegation that they all did it wrong; or the same lawyer is sued over doing the same (allegedly wrong) thing multiple times; or a lawyer undertakes many mortgage transactions without considering that there are red flags that need to be brought to the attention of the lender – such as a significant increase in the value of the property in a very short period of time or inexplicable credits.

In many of these scenarios, communication (with the client) and the related need to pay attention to detail are common themes. And certainly both are front and center in our own concerted efforts to help you understand your claims risk and how to minimize it.

What are we doing to help you manage risk?

Here's a snapshot of what we are doing: Our AvoidAClaim blog has become the best place to go to learn about the latest fraud scams, scammers and the fake ID, cheques and communication they're using. Our new series of practice-specific Webzines (sent to you by email) provide information and risk management advice specific to your area of practice (and even though we go to great lengths to give you only information relevant to you, only 24 per cent of lawyers read the information we provide!). We took our risk management message to 90 lawyer audiences at conferences, seminars, workshops and law firm presentations in 2011 – outreach at a level never seen before. We're reaching out to newer and emerging lawyer networks to ensure we have all bases covered in our drive to get the message out.

But we cannot tackle this claims issue alone: It's more clear than ever that lawyers need to practise defensively more than ever before. Just like there are MORE financial challenges for everyone trying to make a living (including lawyers), MORE complexity of technology and government regulation, there is MORE risk of lawyers being sued and MORE dollars are at stake.

Solid results despite these challenges

In this climate, we are particularly proud of our successes. On the financial front, we are profitable and continue to exceed solvency

benchmarks (although here too challenges continue to loom). For 2011 and 2012 we were able to hold the base insurance premium steady at \$3,350 – while also reducing REPCO premiums, and offering new calls, those practising part time and those eligible for the restricted area of practice option a higher premium discount.

Improved underwriting and lawyer outreach has helped us bring down TitlePLUS claims costs and our claims paid ratio has held at just over 40 per cent. Our Excess Insurance program continues to attract a solid 20 per cent of our target market (lawyers in firms of 50 or fewer lawyers) and in 2011 provided excess coverage to a record 1,466 firms representing 3,711 lawyers; as well, our retention rate on this program is high – with 97 per cent of firms choosing to stay with LawPRO for their excess coverage in 2012.

We're also focused on efficiency: General administration costs of \$17.4 million were \$1.6 million less than expected and represent only about 19 per cent of overall costs compared to industry averages of closer to 30 per cent.

Overall, LawPRO posted net income of \$8.6 million; shareholder's equity – which represents the value of the bar's investment in LawPRO – has increased to \$168 million. These strong results ensured our Minimum Capital Test (220 per cent) – a key solvency metric – stayed well within the parameters set by our board of directors and above the levels that would prompt concern on the part of our regulator. They also contributed to our 12th consecutive A (Excellent) rating from the A.M. Best Company, a leading rating agency. A.M. Best also gave our company a stable outlook – an indication that it believes we will be able to continue to obtain a positive rating in the future.

But we – lawyers and LawPRO – have our work cut out for us: The pressure that the current claims trend is putting on premiums is tremendous. When claims costs account for 80 per cent of our budget, there's little we at LawPRO can do on the administration side that will have a noticeable impact.

The only way to keep premiums at relatively stable levels is to reduce claims numbers and costs. And that task is largely up to you: What one thing are you going to do differently in 2012 that will significantly minimize your claims risk?

Our statistics tell us that each year about 400 lawyers find themselves having to report a claim for the first time. Make sure you're not among the 400 in 2013. Take the time to ask yourself those questions I posed at the start of my comments. Are you really practising in the most risk-averse way reasonable?



Kathleen A. Waters.
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