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## What Baseball Teaches Us About Law Firm Risk Management

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As we head into September's pennant races, avid fans will be quick to tell you that baseball is a game of statistics. Individual batting and earned run averages for hitters and pitchers, in turn, often tell the story of a team's success in the "wins" column. Just as in baseball, statistics are also important to law firm risk management. Again just as in baseball, individual effort usually translates into team results. We have a wealth of statistics on both civil and regulatory claims available. If we use them effectively, they can offer important guides for tailoring risk management to the particular areas in which our firms practice.

In this column, we'll look at two primary facets of the statistics of law firm risk management. First, we'll discuss the many statistics available on the web or from similarly accessible sources. Second, we'll suggest ways of using those statistics as a way to focus risk management in our individual practices.

**What's Available.** Comprehensive statistics on both civil and regulatory claims are readily accessible on both a state and national basis. In Oregon, the Oregon State Bar Professional Liability Fund and the Disciplinary Counsel's Office publish very comprehensive annual reports that are available via the web at, respectively, [www.osbplf.org](http://www.osbplf.org) and [www.osbar.org](http://www.osbar.org). Nationally, the ABA publishes an annual survey of lawyer discipline that is available through its

Center for Professional Responsibility at [www.abanet.org/cpr](http://www.abanet.org/cpr) and periodically publishes (most recently in 2007) a survey of malpractice claims that is available in hard copy through its on-line bookstore. At each level, the reports both compile overall numbers, and, more importantly for present purposes, parse those numbers with a variety of filters, including practice area and claim type. Again at each level, the reports also track the numbers over time so trends can be identified and assessed. The Oregon malpractice statistics are particularly instructive due to our unique circumstance: all Oregon lawyers in private practice must carry insurance and we must buy the first layer of coverage through the PLF. The PLF's statistics, therefore, present a very specific profile of claims experience for Oregon lawyers. The Disciplinary Counsel's statistics do the same for regulatory complaints.

***Using Statistics.*** The available statistics offer much more than simple academic interest. They provide concrete guidance to Oregon lawyers on two levels.

On an initial level, because both the claims and disciplinary statistics are broken down by practice area, they can tell us which of the two present more significant risks to our particular firms. For example, corporate, securities and tax practitioners typically make up an extremely small share of bar complaints each year. By contrast, those same areas collectively present a distinct segment of malpractice claims each year—especially if measured by claim severity. That

said, it is important to stress that *both* civil and regulatory complaints involve very real economic costs. Although malpractice claims are covered by insurance, we all pay for that insurance through our annual PLF assessment. Although regulatory complaints are not typically covered by insurance, responding to them almost always involves significant expense—through direct payments to defense counsel, time and attention diverted from other work for the responding lawyer or both.

On the next level, having identified the kind of risk that firms in particular practice areas are most susceptible to, we can then tailor internal risk management programs to meet those risks. To return to the corporate practitioner example, the data suggests that many claims arise from asserted substantive deficiencies in the work involved. Given the highly technical and ever changing nature of, for example, tax practice, that is perhaps not surprising. It also suggests that a principal focus for risk management in an area like that includes regular training for firm lawyers and meaningful internal peer review. By contrast, a high percentage of bar complaints in “retail” practice areas like criminal defense, plaintiffs’ personal injury and family law involve asserted lawyer-client communication issues. That, in turn, suggests a risk management focus on internal systems to ensure that clients understand the nature of the proceedings involved, the realistic objectives and the status of their matters.

With all practice areas, some fundamentals transcend the statistics. Consistent use of conflict systems and engagement agreements are basic tools of risk management that cross practice areas. The former are required by both regulatory and fiduciary duties. The latter foster clear communication with clients in many areas that can later become flashpoints if not adequately addressed at the outset of a representation, including who the client will be, the scope of the work involved and the fee structure. The effect of these “basics” are sometimes difficult to quantify, but, just as in baseball, are often best reflected in the team “wins” column.

#### **ABOUT THE AUTHOR**

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