

**OPEN SESSION MINUTES  
OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
BOARD OF DIRECTORS**

**June 7, 2019  
Klamath Falls, Oregon**

The regular meeting of the Board of Directors and the PPMAC meeting was called to order at approximately 9:38 a.m. at Running Y Resort in Klamath Falls, Oregon by Chair, Saville Easley. Present in addition to Ms. Easley were Directors Rob Raschio, Tom Newhouse, Holly Mitchell, Megan Livermore, Susan Marmaduke, Gina Johnnie and Patrick Hocking (via telephone). BOG liaison, Robert Gratchner, attended open session. In addition, PLF staff members Carol Bernick, Barbara Fishleder, Madeleine Campbell, Betty Lou Morrow, and Cindy Hill attended the meeting.

These meetings were noticed and conducted in compliance with the Oregon Public Meetings Law, ORS 192.610, et seq. and a quorum was verified.

**1. OPEN SESSION**

**(A)i. Draft Open Session Minutes (04/12/19):**

*Rob Raschio moved and Susan Marmaduke seconded that the open session minutes of April 12, 2019 be approved as written. Motion passed unanimously 8-0 (1 absent).*

**(A)ii. Draft Open Session Minutes (04/23/19):**

Susan Marmaduke noted that she attended the April 23, 2019 BOD conference call.

*Rob Raschio moved and Tom Newhouse seconded that the open session minutes of April 23, 2019 be approved as revised. Motion passed unanimously 8-0 (1 absent).*

**(B) Committee Minutes 02/08/19 (Claims Committee-Annual Meeting); 05/17/19 (Coverage Committee); and 05/23/19 (Finance/Investments Committee):**

There were no comments regarding the minutes and no action was required.

## 2. **PLF REPORT**

### **(A) General Report:**

#### **MBA Fellows Program**

Ms. Bernick reported that the MBA started a Fellows program for underrepresented law students to help find law opportunities between their first and second years. We are considering having an MBA Fellow for half the summer next year.

#### **Washington Bar Association**

Ms. Bernick reported that there has been more discussion around the states regarding mandatory malpractice coverage. A task force for the Washington Bar unanimously recommended mandatory coverage. It went before the Washington Bar and was defeated by a vote of 8-5.

#### **Meeting with the Reinsurers**

Ms. Bernick and Ms. Morrow met with the reinsurers in April at the LPL Conference. We are noticing a slight hardening of the insurance market which could impact the PLF. There have been huge, catastrophic losses due to fires and other natural disasters. Even though it has nothing to do with malpractice, many companies have had large payouts and it presents challenges to the reinsurers that could impact our rates. One carrier dropped the PLF but we have another one that is interested in our business.

#### **PLF Remodel and PLF Personnel Manual**

Carol Bernick reported that the PLF is currently remodeling our space. She also reported that the PLF Personnel Manual has been updated and given to staff.

### **(B) Outside Activities on Behalf of the PLF:**

See materials for Ms. Bernick's report.

### **(C) Revised 2020 Board Meeting Schedule:**

Ms. Bernick noted that a change was made to the February 2020 meeting date. The BOG had to change their February meeting, so we moved ours to accommodate. The PLF meeting date was changed from February 7 to February 21, 2020.

### **(D) Annual Report:**

Carol Bernick reviewed some highlights of the annual report.

### **(E) Memo to BOD and BOG re complaint from pro se claimant:**

Ms. Bernick referred the Board to the memo in the materials. She reported that a pro se claimant asked her to report a claim to the BOG and BOD and she does not see a reason to refuse the request. The memo will be given to the Board of Governors at their next BOG meeting.

### **3. CLAIMS REPORT**

#### **(A) General Claims Report (Open Session):**

Madeleine Campbell reported that we currently have 402 new claims to-date. It is slightly less busy than it has been and we are currently on track for 934 claims at the end of the year. Ms. Campbell is hoping for a reduction in claims over the summer.

Ms. Campbell reported that we have the results of the trial experience survey of defense panel members. She has not yet compiled the results. There is a wide disparity among the defense counsel regarding trial experience. Largely, this is a generational split. Nobody has substantial federal jury trial experience. There are some counsel in the younger generation who have enough jury trial experience to take a case to a jury. A detailed report will be presented in August.

### **4. FINANCIAL REPORTS**

#### **(A) March 31, 2019 Financial Statements:**

Betty Lou Morrow referred the Board to page 32 of the materials to discuss the balance sheet.

The April balance sheet in-year has a surplus of \$3.7 million (up \$1 million in one month) due to the investment portfolio. We have now made up the loss from 2018.

We are looking at approximately 934 claims for the year. We budgeted for 850 claims. If this trend continues, we will be using our surplus to absorb the shortfall.

In both March and April, the Excess Program had an operating surplus. We did not have as large a book as originally planned; ceding commissions were down; but we made money via investments.

Tom Newhouse noted that looking at the March statement, even without investment returns, we are more than breaking even. Our net position was \$18+ million at the end of March and \$19 million at the end of April.

Rob Raschio asked what the impact of the reduced assessment was. Ms. Morrow stated that we budgeted for a deficit and the impact has been negated. It was \$1.7 million overall, but with the great investments so far, we have not seen the deficit.

#### **(B)i. December 31, 2018 Audited Financial Statements:**

Betty Lou Morrow reported that the audited financial statements are the same as before except now, they include the PERS information.

*Megan Livermore moved and Tom Newhouse seconded that the audited financial statements for December 31, 2018 be approved as written. Motion passed unanimously 8-0 (1 absent).*

**(B)ii. December 31, 2018 Audit Governance Letter:**

Ms. Morrow referred the Board to the Governance Letter in the materials. There was no further discussion.

**5. PLF PERSONAL AND PRACTICE MANAGEMENT ASSISTANCE COMMITTEE REPORT**

**(A) Loss Prevention Update:**

Ms. Fishleder gave a brief summary of the loss prevention report in the materials and added the following:

1. The OSB has started a reBAR Program. The program is for lawyers who have not passed the bar. The OAAP is involved in providing support for those in the program.

The most recent Bar exam was in February. Four people who participated in the reBAR Program passed the bar exam.

2. Ms. Fishleder reported that we are offering significantly more live CLEs due to the recent MHSU credit requirement.

Holly Mitchell commented that two attorneys that attended the CLE on Thursday thanked us for bringing the CLE to Klamath Falls. The turnout was great.

**6. COMMITTEE REPORTS AND ASSIGNMENTS**

**(A) Claims:**

Rob Raschio reported that he has nothing to add and feels claims are well in hand.

**(B) Coverage: Coverage Plan Update:**

Holly Mitchell reported that the Coverage Committee has been working on the business interests Exclusion and continues to work on Related Claims and the shared limits issue. We expect to present proposed plan language at the August board meeting.

**(C) Excess Program: Aon meeting update and Rate Sheet update:**

Carol Bernick reported that we started the underwriting program about 4 years ago. 2020 will see the most significant changes to the application and rate sheet. This involved changing some of the factors (lowering in some circumstances; raising in others) to better assess the risk for specific areas of law. We have also added some additional questions to the application to help assess risk.

In addition, when we have a large claim at the excess layer, Emilee Preble will go back over the underwriting history over the last several years to see if there is anything we missed. We continue to monitor risk for securities claims.

With the predicted hardening of the market, our reinsurers are expecting us to be on top of our risk. We have lost a few firms and have denied coverage on a few.

**(D) Finance/Investments:**

Tom Newhouse stated that the committee met recently.

Betty Lou Morrow reported that in 2016, we did a fairly exhaustive review of all PLF areas of exposure that translate to dollars. The BOD approved our net position goal at that time. In January, we decided to do another review. We also wanted to review our asset allocation. We worked with RVK and are recommending a change in our net position goal to \$15.555 million.

See page 100 of the materials for further information.

**(D)i. Approval of Net Position Goal:**

*Tom Newhouse moved and Holly Mitchell seconded that the Board approve the recommendation to increase the net position goal to \$15.555 million. The motion passed unanimously 8-0 (1 absent).*

**(D)ii. Portfolio Allocation:**

Ms. Morrow referred the Board to page 111 of the materials. We built a model for all risk, looking at the investment portfolio. RVK reviewed numbers back to 1978. Page 113 of the materials includes the RVK summary. In short, over time, there is very little benefit in moving to a more conservative portfolio. We divested Westwood in January and that process is complete. We are not recommending any additional changes.

Patrick Hocking commented that his observation as a new board member is that the team (including outside consultants) has done a very good job and he is impressed with the approach and allocations. His overall conclusion is that the recommendation does a good job of balancing risk and safety. He supports the recommendation.

The PLF strategy on investments is to stay the course. It has served the PLF well. Despite some bad years, it has done well overall.

*Since there were no changes made to the portfolio allocation, there is no reason to take action.*

**(E) Long Range Planning/Communications:**

Saville Easley stated that there is nothing to report.

**(F) Loss Prevention:**

The committee met prior to the board meeting. There was a focused conversation on a proposal to add a fifth attorney counselor. See paragraph 4 of the Loss Prevention Committee memo (beginning on page 114 of the materials) regarding the added cost per Covered Party.

There was interesting discussion of the need to add staff. The committee came to the consensus to add an additional staff person. There was discussion about measuring our return on investment and ensuring broad state coverage.

Saville Easley asked what the feedback has been from the added mandatory mental health CLE. Ms. Fishleder stated that the feedback and participation has been remarkably positive. The audiences have been notably interested in learning more about the topics.

**(G) Special Issues:**

Susan Marmaduke stated that there is nothing to report.

**7. LIAISONS' REPORT (BOG): Draft April 12, 2019 BOG Open Session Minutes**

Robert Gratchner gave the report.

Mr. Gratchner reported that the BOG had a short meeting in May. There is not a lot to report since the last joint meeting.

The *Gruber* decision was dismissed in Federal Court, which is good news.

Mr. Gratchner discussed the Bar exam and the admissions ceremony held last month. 114 lawyers passed the exam.

Robert Gratchner reported that Tri-Met has decided not to place the new Max line in the Bar parking lot.

There was discussion about the Client Security Fund Assessment. There have been many issues with one particular lawyer and there are cases still coming in. The Bar has done some outreach. The OSB may have to increase the assessment for the Client Security Fund. Saville Easley asked if there is an estimate of how much the deficit will be. Mr. Gratchner did not have that information. He stated that the Fund taps out at \$50,000 per person.

Rob Raschio asked if we know who is backing the unified bar issue. The Goldwater Institute is representing people in Oregon.

**8. CHAIR REPORT**

Saville Easley stated that she will be presenting at the upcoming Oregon Defense Attorney's meeting and will attend the next two upcoming BOG meetings as the PLF liaison.

**9. INFORMATION ITEMS**

**(A) Miscellaneous Articles/Other:**

There were no informational items to discuss.

**10. EXECUTIVE SESSION**

See separate executive session agenda. Executive Session materials require a password.

Saville Easley called the meeting into executive session pursuant to ORS 192.660(2)(f) and (h) to discuss claim matters and other executive session issues. See separate executive session minutes.

The meeting was called back into open session to approve the executive session minutes and other executive session issues.

**11. OPEN SESSION**

**(A) Approval of Executive Session Minutes in Open Session: April 12, 2019:**

*Rob Raschio moved and Holly Mitchell seconded that the executive session minutes of April 12, 2019 be approved as written. Motion passed unanimously 8-0 (1 absent).*

**12. UNFINISHED AND NEW BUSINESS**

There was no unfinished or new business to discuss.

**13. ADJOURNMENT**

The meetings adjourned at approximately 11:46 a.m.

**These minutes were approved by the BOD at its August 22, 2019 board meeting in Gleneden Beach.**