

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

**August 22, 2019  
Gleneden Beach, Oregon**

The regular meeting of the Board of Directors and the PPMAC meeting was called to order at approximately 9:00 a.m. at Salishan Resort in Gleneden Beach, Oregon by Chair, Saville Easley. Present in addition to Ms. Easley were Directors Tom Newhouse, Holly Mitchell, Megan Livermore, Susan Marmaduke, Gina Johnnie and Patrick Hocking. Board member Rob Raschio attended a portion of executive session. BOG liaison John Bachofner and OSB CEO Helen Hirschbiel attended open session. In addition, PLF staff members Carol Bernick, Barbara Fishleder, Madeleine Campbell, Betty Lou Morrow, Jeff Crawford, Cindy Hill, Sarah Troutt, and Marci Sasik were in attendance.

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) Draft Open Session Minutes (06/07/19):**

*Megan Livermore moved and Gina Johnnie seconded that the open session minutes of June 7, 2019 be approved as written. Motion passed unanimously 7-0 (2 absent).*

**(B) Committee Minutes 05/23/19 (Finance/Investments Committee); and 06/07/19 (Loss Prevention Committee):**

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

**2. PLF REPORT**

**(A) General Report:**

**NABRICO Conference**

Ms. Bernick reported that she and Betty Lou Morrow attended the NABRICO conference in Toronto as well as two claims attorneys (Matt Borrillo and Sharnel Mesirow) and a PMA (Hong Dao). Carol Bernick spoke on the intersection between the challenges to mandatory bars and the movement in some states to impose mandatory malpractice requirements. Matt Borrillo and Sharnel Mesirow spoke about the causes of malpractice claims and Hong Dao spoke about malpractice avoidance efforts by the PLF. Ms. Bernick reported that she believes the NABRICO conferences have value. Board member Holly Mitchell also attended. Ms. Mitchell felt it was

useful. She felt it was good to talk to others to get an overview of how things are in the malpractice coverage arena.

### Nationwide Deferred Comp Plan

Ms. Bernick reported that the OSB is discontinuing one of its deferred comp plans. We worked with the Bar, Nationwide, and a lawyer hired by the Bar and determined that the PLF could take those people on to the PLF plan. Nationwide requires that the BOD and BOG approve a resolution that allows that transfer (moving from the OSB Plan to the PLF 457 1.c Plan).

*Susan Marmaduke moved and Tom Newhouse seconded that the above resolution be approved. Motion passed unanimously 7-0 (2 absent).*

John Bachofner asked if there are any restrictions in PLF participation rules that need to be modified to allow that to happen. Ms. Bernick stated that there are none.

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

See materials for Ms. Bernick's report.

### **(C) Future Meeting Schedule:**

Ms. Bernick asked if the Board wanted to consider moving from six meetings per year to five meetings per year. Discussions ensued. The Board also discussed having monthly standing conference calls to discuss claims. If there were nothing to discuss in a particular month, the meeting would be canceled. Hopefully, all claims discussions would be during those monthly meetings or at a board meeting.

Holly Mitchell said she felt getting out of town and meeting Covered Parties (i.e., Klamath Falls) was important. In Klamath Falls, a couple of people commented on their appreciation for us coming there. Saville Easley asked if Barbara Fishleder has any idea if the presence of Board members is appreciated. Ms. Fishleder feels that it gives lawyers the chance to meet staff and board members that they may have talked to but have not met.

Susan Marmaduke noted that she likes the idea of fewer meetings and really likes the idea of scheduled meetings to discuss claims. Sarah Troutt and Madeleine Campbell support the idea.

Carol Bernick reported that she has discussed with Helen Hirschbiel the idea of moving the joint meeting with the BOG and PLF. A decision has not been made.

Other discussions with Madeleine Campbell have included moving the Defense Panel Conference to September (it is less expensive than in the summer) and possibly having the conference less often (maybe every three or four years, as opposed to every other year). The claims department would then host targeted meetings in Tigard on off years. All of these ideas will be discussed further internally and at the October board meeting.

### **3. CLAIMS REPORT**

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

Madeleine Campbell reported that there has been some slowing in claims over the summer but they are increasing again. We are currently on track for 924 claims for the year. She is doubtful the year-end claim number will be under 900.

Ms. Campbell reported that the claims department is keeping up with claims and we continue to receive positive evaluations.

#### **(B) Defense Panel Conference Agenda:**

Ms. Campbell referred the board to the Defense Panel Conference Agenda on page 15 of the materials. Roundtable discussions are scheduled for this afternoon, then half-days on Friday and Saturday mornings.

Saville Easley asked if Ms. Campbell recommends any specific roundtables to attend. Ms. Campbell suggested the tripartite/ethics discussion would be interesting and useful, as well as the appellate update on Friday.

#### **(C) Recap/Summaries of Trial:**

Madeleine Campbell referred the Board to the materials beginning on page 20 and noted that these will be discussed at the Defense Panel Conference.

Ms. Campbell reviewed the arbitration and trial summaries from the past two years. In all matters taken to trial or arbitration, the PLF obtained equal or better results than the claimants' last settlement demand. Public member director Patrick Hocking asked about cost of going to trial on claims where we go to trial. A discussion about the cost/benefit of taking claims to trial ensued.

Saville Easley commented that the statistics are impressive and complimented the great work of the claims attorneys and Madeleine Campbell. Ms. Easley feels the claims attorneys have great judgment. Patrick Hocking concurred. John Bachofner commented that he feels this proves we should try more cases. Saville Easley asked what the percentage is of cases that are tried. Ms. Campbell replied that it is a low percentage of claims in general that go to trial.

#### **4. FINANCIAL REPORTS**

##### **(A) June 30, 2019 Financial Statements:**

Betty Lou Morrow referred the Board to page 36 of the materials.

Ms. Morrow reported that we are doing well. We currently have \$3.6 million in year surplus. We budgeted 1.5% for investment revenue but are making 9.2% at the end of June. We are off by about 35 paid Covered Parties, so revenue is slightly down on assessments. Overall, investment revenue is carrying the day for us. Claims were budgeted at 875 but they are currently at 924 claims. Our actuarial cost was established at \$20,000 last year but we are breaking even with frequency up.

With regard to Operations, we tend to operate under what is budgeted. The caveat on surplus is that we will have about \$1 million on PERS liability. The actuarial liability historically releases reserves. As of June 30, we had to increase our reserves.

Regarding PERS liabilities, with the past year, PERS sent a notification to employers that they are starting a program to buy-down liability (PERS debt). The state government was going to provide a cap on the amount of money to be used, starting with employers of 220% liability or greater. The PLF is not on the list. There are a lot of employers on that list, so Ms. Morrow is skeptical there will be any left for the PLF to avail ourselves to. We will keep our options open and Ms. Morrow will report to the Board when she has more information.

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

##### **(A) 2<sup>nd</sup> Quarter 2019 Report and Loss Prevention Update:**

Ms. Fishleder gave a quick overview of the loss prevention department. She reported that the OAAP was able to get Kyra Hazilla back with more hours as an attorney counselor and working part-time.

Ms. Fishleder reported that the practice aids and other loss prevention materials would now be in front of the login on the PLF website. This allows easier access to the practice aids.

Barbara Fishleder relayed that a lawyer, who mentioned to colleagues that a pro-se claimant threatened to file suit, immediately received this clear and consistent message from those colleagues: "call the PLF immediately!" Barbara remarked that this impressive response by the lawyer's colleagues was a great indication of lawyers' understanding of how the PLF can help.

## 6. COMMITTEE REPORTS AND ASSIGNMENTS

### (A) Claims:

Megan Livermore reported that the Claims Committee met recently. They discussed a particular claim that was recently resolved. This will be discussed in executive session.

### (B) Coverage: Coverage Plan Update:

Holly Mitchell reported that the Coverage Committee has discussed potential coverage plan changes. They have five recommendations.

Ms. Bernick noted that the most significant change pertains to Related Claims.

Madeleine Campbell explained the concept of Related Claims and gave examples of cases that would not have shared limits and those that would have shared limits. Ms. Bernick reported that PLF staff estimates the proposed draft could cost the PLF as much as \$300,000 per year. Patrick Hocking asked how the analysis was done and Ms. Campbell explained.

Megan Livermore asked if the Related Claims issue involves many claims. Madeleine Campbell responded that she estimates about 20%. Jeff Crawford noted that in most cases, the claims are resolved within the limits, so it is not a pressing issue. Ms. Bernick commented that claims have a separate expense allowance, but one indemnity limit. If the firms involved in these claims have excess coverage, they have protection from Related Claims issues.

Ms. Marmaduke asked if we have a sense of whether most lawyers understand this issue. Madeleine Campbell replied that she does not think they do until the issue surfaces. Ms. Bernick noted that we could do an article but feels it causes unnecessary panic.

Betty Lou Morrow noted that if you look at claims from the beginning of time, there are 150 claims out of 30,000 claims that have reached the limits. This is a very small number in the scheme of things.

Ms. Bernick discussed the other housekeeping changes to the Plan. There are no significant substantive changes. She discussed the changes to the Pro Bono Plan in more depth. It will make clear that the PLF will not provide Pro Bono coverage to certified programs that have malpractice insurance that covers volunteers.

*Holly Mitchell moved for approval of the revisions; Susan Marmaduke seconded the motion. Motion passed unanimously 7-0 (2 absent).*

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

Carol Bernick reported that there is a meeting with Aon and the reinsurers in September. We have a great partner in Aon in terms of helping us regarding positioning our program in the

best light and to help determine how to price our program going forward, while maximizing retention.

Betty Lou Morrow reported the changes to the rate sheet. Some factors on area of law have changed. Every attorney has the same base rate, and then factors above that determine the rates. We removed some credits and changed size of firm credits to better price solos, as they rarely have excess claims.

**(D) Finance/Investments:**

**(D)i. Approve values for June 30, 2019 claim liabilities: Action Required**

Tom Newhouse referred the Board to the materials on page 105. Mr. Newhouse reported that the Committee is recommending liabilities at \$25.5 million.

*See vote below, following (D)iii.*

**(D)ii. Approve values for average claim costs to be used for next six months: Action Required**

The Committee is requesting approval of the increased average cost of claims for the next six months from \$20,000 to \$21,000 per claim. There has been an uptick in both frequency and severity. This is the first time our frequency was higher than the actuaries predicted.

*See vote below, following (D)iii.*

**(D)iii. Approve 2020 PLF Primary Program Assessment: Action Required**

The Committee is recommending the 2020 assessment remain unchanged at \$3,300.

Ms. Bernick noted that she has been with the PLF five years now and we have never had a change in reserves of \$1,000 combined in the cost of claims. Frequency and severity is very real.

Patrick Hocking commented that with regard to the cost per claim, he noticed in the actuary report that the \$300,000 limit per claim has remained the same since 1987. Mr. Hocking questioned if the cost of claims has changed in that time. Ms. Morrow reported that the lowest it has been is \$17,000. It is currently lower than the historic high in recent years. Ms. Morrow also noted that our defense panel members offer very good rates.

*Tom Newhouse moved and Patrick Hocking seconded that the three action items listed above be approved as written (values for the June 30, 2019 claim costs [\$25.5 million in liabilities - \$11.4 million indemnity liabilities and \$14.1 million expense liabilities]; average claim costs to be used for next six months [from \$20,000 to \$21,000]; and the 2020 Primary Program Assessment remain unchanged at \$3,300). The motion passed unanimously 7-0 (2 absent).*

**(D)iv. Approve PLF Budget for 2020: Action Required**

Betty Lou Morrow discussed the details of the recommended 2020 budget.

1. Operations - recommending a 3% salary pool. This is based on the Price Waterhouse report and Department of Labor report (Western region).
2. Medical Benefits – budgeting a 6% increase.
3. PERS – rates increased as of July 1, 2019 and will end 2021. This has created a \$151,000 increase to the budget. Recommendation is a 4.4% increase.
4. Cost of claims – we are projecting 890 claims and \$21,000 per claim.
5. Operational Shortfall – there is an operational shortfall of \$891 per attorney included in the budget.
6. Assessment – recommending no change. Assessment set for \$3,300. When we lowered the assessment for 2019, we planned to spend down our reserves and that is what is happening.
7. Operations Expenses – recommending an increase of 3.75% over 2019 budgeted amounts and 5.74% over actuals projected to December 31, 2019.
8. Shortfall of \$411,817 – The PLF lost approximately \$1.4 million in assessment revenue when we reduced the assessment to \$3,300. We did this with the intent of spending down our surplus reserves (reserves above our net position goal). Additionally, the PERS liability development expense is budgeted at \$750,000. When those two material amounts are removed from the shortfall, the claims/operations shortfall is \$411,817.

There was an aggressive examining of the operating budget this year. We made many small cuts that added up to help reduce the Operating budget. Carol Bernick thanked senior management for looking closely at departmental expenses. Ms. Bernick is very aware of the positive comments received by Covered Parties for all PLF efforts. We need the quality of our staff and the funds to do it, but we can and do always ensure our expenses contribute to that end.

Tom Newhouse asked that assuming a \$2+ million gain, what would the net position be at the end of this budget? Ms. Morrow replied that it would probably be down to about \$17 million. We are getting close to the \$15.555 million budgeted net position goal. Patrick Hocking asked if the 4.5% is conservative and Ms. Morrow replied that it is.

*Tom Newhouse moved and Megan Livermore second that the Board approve the 2020 budget. The motion passed unanimously 7-0 (2 absent).*

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

Saville Easley stated that there is nothing to report.

**(F) Loss Prevention:**

Megan Livermore stated that there is nothing to report.

**(G) Special Issues:**

Susan Marmaduke stated that there is nothing to report.

**(H) Nominations (Easley/Mullen):**

i. BOD Recommendations – terms beginning January 1, 2020 – **Action Required.**

Ms. Bernick reported that the Board had previously wanted a large firm lawyer on the Board. We are also losing an Eastern Oregon lawyer and do not have a personal injury lawyer.

The Committee recommends submitting to the BOG Oren Haker, Steve Hill and Merrill Baumann.

*Saville Easley moved and Holly Mitchell seconded that the recommended names listed above be given to the Board of Governors. Motion passed unanimously 7-0 (2 absent).*

**7. LIAISONS' REPORT (BOG): Draft May 17, 2019, June 21, 2019, and July 26, 2019 BOG Open Session Minutes**

John Bachofner gave the report.

Mr. Bachofner reported as follows:

1. The BOG's focus is on wellness and diversity and inclusion. There was a training on D&I and there will be more training in the future.
2. The BOG approved the changes to PLF Policies 5.200(I) regarding asset allocation and 7.600(C)(2) regarding excess retroactive discount.
3. MCLE Rules Section 5 agreed to include credits for volunteer service as a Pro Tem Judge.
4. The BOG held an anti-bias and discrimination CLE in Hood River in June that was well received.
5. There was a change to the reimbursement policy for all sections: No more than \$250/night plus other limitations.



6. Budget and Finance Committee. There were changes/restructuring to member dues. The elimination of the exemption for 50-year members passed. This created a tier of members who make less than \$40,000 per year and they will receive a 20% discount. They are looking at not only new members, but also those who are struggling, to provide a discount. This will be added to the HOD Agenda.

7. Diversity Section voted to eliminate preference polls for judicial candidates.

8. The BOG voted to amend bylaw 15.2 regarding sunseting of sections of less than 100 members. See BOG Minutes of June 21, 2019.

9. RPC 7.2 was amended to allow nominal gifts. This will be added to the HOD Agenda.

## **8. CHAIR REPORT**

Saville Easley reminded the Board that there is an evaluation of the CEO every year. She is looking for two people to serve on the CEO Evaluation Committee, along with Saville. Ms. Easley asked that board members let her know if interested in serving on that committee. The committee will look for information from staff, the Board of Directors, and the Board of Governors. Questionnaires will go to board members next month. Ms. Easley asks for immediate attention in getting them back to her.

## **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: June 7, 2019, June 24, 2019, and August 6, 2019:**

*Patrick Hocking moved and Gina Johnnie seconded that the executive session minutes of June 7, 2019, June 24, 2019 and August 6, 2019 be approved as written. Motion passed unanimously 7-0 (2 absent).*

**12. UNFINISHED AND NEW BUSINESS**

There was no unfinished or new business to discuss.

**13. ADJOURNMENT**

The meetings adjourned at approximately 12:44 p.m.

**These minutes were approved by the PLF Board of Directors at its October 18, 2019 board meeting.**