



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

**April 17, 2020
Zoom Videoconference**

The regular meeting of the Board of Directors was called to order at approximately 9:06 a.m. via Zoom videoconference by Chair, Molly Jo Mullen. Present in addition to Ms. Mullen were Directors Tom Newhouse, Holly Mitchell, Megan Livermore, Susan Marmaduke, Gina Johnnie, Michael Batlan, Oren Haker, and Steve Hill. In addition, PLF staff members Nena Cook, Barbara Fishleder, Madeleine Campbell, Betty Lou Morrow, Shari Pearlman, Jeff Crawford, Cindy Hill, Emilee Preble, Holli Houston, Marci Sasik, Amy Hoven, and Heather Bowman attended all or part of 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. CHAIR REPORT (Ms. Mullen)

Ms. Mullen reviewed Ms. Cook's discussion at the last board meeting regarding Ms. Mullen's interest in increasing diversity on the PLF Defense Panel. In light of how this year has gone so far (due to COVID-19), Ms. Mullen assigned this topic to the PLF Special Issues Committee. Mr. Hill is the Chair of that Committee. Ms. Mullen indicated that there could be a subcommittee if others are interested in participating. Ms. Campbell can keep the BOD updated on this project.

Ms. Mullen announced that Ms. Fishleder had resigned from the PLF and Ms. Fishleder spoke of her very long and satisfying career with the PLF. Ms. Fishleder has truly been honored with the trust and confidence placed in her leadership and management and the opportunity to develop and implement services to Oregon lawyers, allowing lawyers to assist lawyers. Ms. Fishleder discussed some situations over the years and noted that year after year, she has seen the OAAP and PMAs do a tremendous job of outreach and change lives. Ms. Fishleder commented that she would not have been able to do this without insights and support of the BOG, BOD, and PLF staff. She thanked the BOD for their dedication, commitment and oversight and she thanked all very deeply and sincerely.

Ms. Mullen commented that she is excited to see what Ms. Fishleder will do next. The entire Bar owes a debt of gratitude to Ms. Fishleder. Ms. Mullen stated that the OAAP and PMA programs are a few of the hallmarks of this organization and agreed that countless lawyers over the years have benefited from Ms.

Fishleder's knowledge, caring, compassion and more. Ms. Mullen thanked her for all of her efforts and gave congratulations to her future.

(A) Draft Open Session Minutes (02/21/20):

Gina Johnnie moved and Susan Marmaduke seconded that the February 21, 2020 minutes be approved as written. Motion passed unanimously 9-0.

(B) Committee Minutes: February 21, 2020 (Finance/Investments Committee):

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

2. CEO REPORT (Ms. Cook)

(A) General Report:

Ms. Cook reported that since our last meeting, the majority of her time has been spent making sure our staff is safe in light of the coronavirus and helping Oregon lawyers as they navigate through this difficult time.

Ms. Cook reported that mid-March there was a discussion about whether the PLF offices should close or not. When making that decision, the PLF had a day or a day and a half to prepare our entire group to work remotely. The initial plan was to have a few essential people in the office, with the rest working remotely. Within that short period of time, our IT department (under Ms. Morrow's amazing leadership), put everything together for people to work from home. Ms. Morrow did a great job. Her staff did a great job to make sure we had what we needed to work remotely.

Mr. Crawford reviewed the new federal legislation and made sure the PLF communicated with staff. That was an amazing effort. We found out that there was some anxiety and concern going into this and Mr. Crawford's comments eased this tension. We tried to keep the BOD informed, letting them know we are protecting our staff and building out our remote capacity to continue assisting Oregon lawyers.

Ms. Campbell had a concern that if this goes on for any length of time, what impact would it have on claims. Statute of limitations deadlines could be missed, court rules require certain things to happen on certain days, etc. These issues were discussed early on and working with Bar staff and the Supreme Court staff, they came up with an emergency order that amended the Rules of Civil Procedure to amend some of these deadlines. Ms. Grabe and other Bar staff were instrumental in putting together that work group and the PLF participated as well. Ms. Cook took many calls regarding deadlines. The order went a long way to satisfy and, hopefully minimize, claims during this process. We are working with Bar staff to propose legislation (w/Governor Brown and the State Court Administrator) that would do the same thing on the legislative side. When Governor Brown calls a special session, we have a Bill that is ready to go that will stay or toll the Statute of Limitations on the statutory side. That is not to say that when we reopen we will not get a spike in claims, but we have gone a long way to minimizing that. Ms. Cook thanked Ms. Campbell for all of her hard work.

Ms. Cook reported that there was concern about the financial impact if the April 10 assessment installment deadline was postponed. We have about 40% of lawyers who are on the installment plan. Initially, we were going to stick with that deadline but after a few days of receiving comments, we decided to postpone the April 10 deadline by 60 days. Ms. Morrow will report in her section of the financial impact of this. Ms. Cook feels this was a great decision and thanked the BOD for their support. It was a unanimous decision by BOD to postpone the deadline. We were expecting \$2.4 million on April 10 and will wait to see what comes in by June 10.

Ms. Cook noted that there was extraordinary effort with the Loss Prevention Team to write two blog posts about working remotely. Initially, Attorney Counselors were still in the office seeing people and assisting through this process, but have since moved to working remotely. They continued working with lawyers on the PMA side and we received many comments from lawyers thanking the PLF for the assistance. Ms. Cook thanked Ms. Fishleder for her assistance during this difficult time.

Despite our efforts trying to minimize the impact on the PLF due to the crisis, our financial situation has been up and down. It would be negligent on our part if we do not get together a long-term plan regarding this pandemic and the impact on the PLF. Mr. Crawford, Ms. Morrow, and Ms. Cook are working on a plan to address the impact, our programs, services, etc. We are already seeing the need to adjust our budget and what was anticipated in January of this year is a lot different from what was projected for July of this year. We are thinking about possible layoffs, job-shares, and furloughs. We are doing our best to meet our obligations in claims/operations, but at the same time, just like any business, it will impact us and we are spending a lot of time thinking about that.

Ms. Mullen thanked Mr. Crawford for his HR assistance with anxiety and other issues, and Ms. Campbell for getting ahead of the curve in terms of how it might impact the Bar. She also thanked Ms. Morrow and Ms. Cook regarding the assessment issue, which came fast and hard. There is a fine line when trying to help people but maintain our financial viability, which we have to do. She appreciates those hard calls. Ms. Morrow thanked Ms. Fishleder and Ms. Pearlman for the almost immediate broadcast email regarding resources and availability. Ms. Mullen decided it was a great time to remind people they can do CLEs online. It is great to have the PMAs and OAAP attorneys available as a resource, relieving anxiety in a different way.

Ms. Marmaduke commented on how amazing everyone is and noted that Ms. Cook has done a great job dealing with this.

Ms. Marmaduke asked if the legislation also deals with the statute of ultimate repose, in addition to the statute of limitations. Ms. Cook replied that it does include the statute of ultimate repose, but it is not retroactive from when the court shut down. Governor Brown imposed the order to shut down on March 8.

3. CLAIMS REPORT – (Ms. Campbell)

(A) General Claims Report (Open Session):

Ms. Campbell thanked Ms. Cook for her great leadership and the ingenuity of her colleagues with the ability to leave the office one day and have the claims department up and running the next day. IT made sure they had what they needed. Ms. Morrow and her team had everything set up to process fee bills and write settlement checks, Mr. Crawford took care of mail handling and other issues, and Ms. Sasik did a great job of putting together court notices that are readily available for people to view regarding COVID-19. Ms. Campbell thanked everyone for their joint efforts.

Ms. Campbell noted that working from home is slower because we are working off laptops. The claims department has continued their weekly meetings via Zoom videoconference and has proven to be a great idea for Claims Committee meetings. Mediations are being done by Zoom and they are not as effective, but better than nothing. Ms. Campbell reported that things slowed down immediately after we moved out of the office, including telephone calls, but they have picked up again.

Ms. Campbell reported that we are currently estimating 800 claims at the end of the year. Ms. Campbell also noted that Ms. Cook deserves the credit for the statute of limitations issue. She did most of the work.

Ms. Campbell noted that the PLF continues to receive highly favorable reviews from Covered Parties. Ms. Sasik created a fillable form that can be sent out and received in an email box at the PLF. Ms. Preble created a program that is up and running online for filing claims. We also encourage people to call if they want to.

Mr. Hill asked if everyone was doing well and healthy. Ms. Cook stated that we are all doing well and we have no employees who are a presumptive positive and none infected with the virus. We have many employees with minor children who are out of school. Ms. Cook described some efforts the PLF made prior to closing our office in an effort to minimize risk and so far, everyone is healthy and safe.

4. FINANCIAL REPORTS (Ms. Morrow)

(A) February 20, 2020 Financial Statements:

Ms. Morrow reported that the February financial statements are included in the materials, but it is outdated information.

Ms. Morrow brought the March financial statements and projections to the Finance/Investments Committee meeting that was held on Monday. She noted that she would like to defer any conversation about PLF finances to the Finance/Investments Committee portion of the meeting.

(B) Investments Portfolio Update:

This topic was deferred to the Finance/Investments Committee section of the meeting.

5. PLF PERSONAL AND PRACTICE MANAGEMENT ASSISTANCE COMMITTEE REPORT

Ms. Fishleder asked if there was any new information regarding the OAAP space. Ms. Cook noted that there is nothing to add to the materials and we are looking at various options for OAAP space.

(A) 2020 1st Quarter Report and Loss Prevention Update:

Ms. Mullen asked for questions/comments from the Board regarding these materials and stated that we are otherwise, not discussing this section.

6. EXCESS REPORT (Ms. Preble/Mr. Crawford)

(A) 2020 Excess Enrollment Report

Ms. Preble reported that her materials capture everything with regard to the PLF's Excess enrollment information. The second excess payment installment is due May 1. As of yesterday, about 180 firms have not yet paid. Of those firms, three asked about extension of deadlines. The Excess Plan is different from the Primary Plan and does not have flexibility to extend deadlines. The firms pay 40% of the premium in the first installment, so firms on installment payments are paid up through the end of May. In addition to the timeline, firms purchasing above \$700,000 in limits also have the ability to lower the limits as a way to reduce the cost. At this point, no firm has taken advantage of that option – thought it has been discussed with a few firms. We will have a better idea after May 1 of the enrollment status.

7. COMMITTEE REPORTS AND ASSIGNMENTS

(A) Claims (Ms. Marmaduke):

Ms. Marmaduke stated there is nothing to report.

(B) Coverage (Ms. Livermore):

Ms. Livermore stated there is nothing to report.

(C) Excess Program (Ms. Johnnie):

Ms. Johnnie stated there is nothing to report.

(D) Finance/Investments: (Mr. Newhouse):

Mr. Newhouse turned the meeting over to Ms. Morrow.

Ms. Morrow reported that the March 31 financial statements look much different from February. The end of March reflects an in year \$8 million deficit, which reduced our net position to about \$12 million. The good news is that 2019 ended well.

Despite a 13% loss to the portfolio value so far (since December), we are still in a relatively strong financial position. Extrapolating the numbers out to the end of June, Ms. Morrow predicts we will be at a \$10 million net position unless the market completely tanks. With everything Ms. Morrow has read and constant contact with our consultants, RVK, regarding our portfolio, it appears that the market will not tank between now and the end of June and they expect the market will recover much better than the overall economy. We took a hit and lost a lot of money in March, but we are not making any drastic changes and plan to hold the course. We will draw in the Finance/Investments Committee if we feel we need to move investments, but that is not the plan for now.

Ms. Morrow reported that we have a healthy portfolio and adequate funds to cover claims.

Ms. Morrow reported that she looked back at 2008 and the PLF had a \$1.3 million net position deficit. So, we are clearly much further ahead now than then.

Ms. Morrow reported that even with the installment payment deferral, about 60% of the attorneys paid their installment on time. We found that it was an interesting mix. About 27% of attorneys who did not pay by the original deadline come from firms of 10 or more people and about 50% were solo practitioners. One hesitation about extending the deadline to June was that the next deadline occurs in July. Ms. Morrow feels confident we will get our remaining \$1 million which is approximately what we have pending.

Ms. Morrow discussed the SBA payroll protection program. When she and Ms. Cook discussed this, we had a \$17 million surplus net position. We reached out to Wells Fargo and initially, they said they would only do loans for organizations of 50 employees or less. The PLF is slightly higher than that. As of beginning of this week, we received notification from Wells Fargo that they had opened it up and we could apply for the PPP. We do not want to take money we do not need, but want to be diligent in case there are layoffs or our finances change dramatically. We completed the application, so we are prepared to apply for the loan in the future. The application has not been submitted. We recently received information that the program has run out of funds. Should more money become available and we feel the need to apply, we are prepared to do that. Ms. Morrow suspects it would be somewhere around \$1 million that the PLF would be applying for. We will wait and see what happens. Mr. Haker said he would connect us with someone at his firm who has become an expert on this subject.

Ms. Cook reported that when we were considering whether to apply for the loan or not, in addition to Ms. Morrow reaching out to our bank, Ms. Cook reached out to our NABRICO partners. One group is receiving questions from its Board about applying for a loan. Most others said they were not applying for all of the same

reasons Ms. Morrow mentioned. Each of them are different from the PLF and none decided to go ahead and apply for it. As Ms. Morrow said, in addition to the financial stability, we do not want to compete with our Covered Parties for these funds in case we are able to get a loan and the Covered Parties are not. Ms. Cook has also been in communication with the Bar and they have gone ahead and applied. They asked that we apply jointly with the Bar and we declined to do so for the reasons mentioned and a short time frame to work with them on this.

Mr. Haker noted that the decision on whether to apply is a complex one and acknowledge that it is not free money. It is limited. We do not have timeframes for how long this will go on. Having gone through the process with a number of clients, it is a difficult decision to make. Mr. Haker appreciates the thoughtfulness of the PLF on this issue.

Ms. Mullen thanked Mr. Newhouse, Ms. Morrow, and Ms. Cook for their thoughtfulness regarding the optics. It is important and we can revisit going forward.

(E) Long Range Planning/Communications (Mr. Newhouse):

Mr. Newhouse stated there is nothing to report, but he wants to remind the BOD that the Long Range Planning Committee needs to keep an eye on the Legacy claims processing system. It is not urgent at this time, but needs to remain on the radar before it becomes unsupportable.

Ms. Morrow commented that she continues to be in touch with the elders of the firms that have done installations with NABRICO companies and it remains on the radar.

(F) Loss Prevention (Ms. Marmaduke):

Ms. Marmaduke stated that there is nothing to report.

(G) Special Issues (Mr. Hill):

Mr. Hill stated that there is nothing to report.

8. LIAISONS' REPORT (BOG): (Ms. Hierschbiel):

Ms. Hierschbiel asked Ms. Cook to apologize for her for not being able to attend our meeting. The BOG committees are meeting at the same time as the PLF meeting. The OSB/BOG materials are included in the BOD materials.

Ms. Cook and Ms. Hierschbiel discussed the BOG minutes and the BOG agenda. Ms. Cook is prepared to answer any questions there might be on both issues. Ms. Cook reminded the BOD that at our February board meeting, there was a discussion about what to do with our Bylaws regarding a PLF exiting CEO serving a one-year term on our Board. Ms. Cook discussed some history behind this topic. Following the PLF's February board

meeting, Ms. Hirschbiel and Ms. Hollister sent the proposed bylaw changes that are included in the BOG materials. We are hopeful the BOG Policy and Governance Committee will approve these proposals this morning and the BOG will approve them this afternoon. Ms. Cook will report following the BOG meeting this afternoon.

Ms. Cook called Ms. Bernick in early March with an update on what was happening with this proposal. Ms. Bernick was on vacation at the time and Ms. Cook has not heard from Ms. Bernick or updated her on the process and has not asked her specifically that if the BOG passes this today, is she still willing to serve on the PLF BOD for remainder of year. Ms. Cook will reach out to her again, if the BOG approves the proposals.

Ms. Cook noted that in the proposed language, it refers to the former CEO as serving on the BOD ex officio. If the BOG allows us to appoint an outgoing CEO, that person would be a non-voting member. The reason for this decision is that with ten people we could have a deadlock (with an even number of board members), but it also makes that person a little less powerful, in that the former CEO does not try to interject anything.

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.

Ms. Mullen called the meeting into executive session at 10:20 a.m., 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 at 10:50 a.m. to approve the executive session minutes and other executive session issues.

11. OPEN SESSION

(A) Approval of Executive Session Minutes in Open Session:

- i. 2020-02-21 Executive Session Minutes

Ms. Livermore motioned and Ms. Johnnie seconded that the February 21, 2020 executive session minutes be approved as written. Motion passed unanimously 9-0.

12. UNFINISHED AND NEW BUSINESS

Ms. Mullen reported that unfinished business is the Legacy system that has been assigned to the Long Range Planning Committee.

13. ADJOURNMENT

The meeting adjourned at approximately 10:55 a.m.

These minutes were approved by the PLF Board of Directors at its June 5, 2020 board meeting.