



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

**October 9, 2020
Zoom Videoconference**

The regular meeting of the Board of Directors was called to order at approximately 9:04 a.m. via Zoom videoconference by Chair, Molly Jo Mullen. Present in addition to Ms. Mullen were Directors Tom Newhouse, Holly Mitchell, Megan Livermore, Gina Johnnie, Michael Batlan, Oren Haker, Steve Hill, and Carol Bernick. BOG member Eric Foster as well as OSB CEO Helen Hierschbiel attended open session. In addition, PLF staff members Nena Cook, Madeleine Campbell, Matt Borrillo, Betty Lou Morrow, Jeff Crawford, Cindy Hill, Maureen DeFrank, Amy Hoven, Pam Stendahl, 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)

(A)i. Draft Open Session Minutes (06/05/20):

Megan Livermore moved and Gina Johnnie seconded that the June 5, 2020 minutes be approved as written. Motion passed unanimously 8-0.

(A)ii. Draft Open Session Minutes (08/26/20):

Gina Johnnie moved and Steve Hill seconded that the August 26, 2020 minutes be approved as written. Motion passed unanimously 8-0.

(B) Committee Minutes:

The following committee minutes were included in the board materials.

- i. 2020-09-10 (Program Funding Committee)

- ii. 2020-09-24 (Finance/Investments Committee)
- iii. 2020-09-28 (Coverage Committee)
- iv. 2020-09-30 (Nominations Committee)

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

(C) CEO Evaluation Process:

Ms. Mullen reported that she is constituting a subcommittee for the CEO evaluation process. She will be on that subcommittee, as well as Ms. Livermore. Ms. Mullen asked if any other board members wanted to serve on the subcommittee. Ms. Mitchell and Mr. Haker both indicated they would like to participate. The subcommittee will be comprised of Ms. Mullen, Ms. Livermore, Ms. Mitchell, and Mr. Haker.

Ms. Mullen indicated that evaluations would be sent to a broad variety of people for feedback. Once completed, they will be returned to Ms. Livermore. They will not be returned to anyone within the PLF. This allows for confidentiality and anonymity for all evaluations.

A subcommittee meeting will be set in coming days to discuss the process further.

2. CEO REPORT (Ms. Cook)

(A) General Report:

Staff Update re Working Remotely and Other Staff Issues.

Ms. Cook reported that the PLF is continuing to work remotely. Approximately 10-15 staff members come to the office voluntarily. All staff are maintaining social distancing and following the safety protocols.

Ms. Cook announced at a staff meeting earlier this week that we will continue working remotely at least through the end of the year. We will continue to evaluate the working situation after the first of the year.

Ms. Cook said she cannot express her appreciation enough for the amazing job employees are doing under the circumstances (dealing with anxiety, stress, and uncertainty). The pandemic has taken a toll. The wild fires experienced a few weeks ago caused even more difficulties and anxiety. About one-third of PLF staff were affected by the fires and reached Level 2 evacuation status. Many shared with Ms. Cook that for the first time in their lives, they had to think about safety of families, valuables, etc. Ms. Cook determined that staff who were impacted by the fires could use sick days to take care of themselves and their families. The evacuations have been lifted, but it was a very unsettling time.

Mental health professionals agree that self-care during the pandemic is very important and that people should check in with others. At the PLF, we are really focusing on trying to connect everyone, despite working remotely. We have various ways of doing this. We have a book club facilitated by Sharnel Mesirow. We also just completed our annual walking challenge. It was a six-week event, people were divided into eight teams, and each week, steps were increased (beginning with 5,000 steps the first week and increasing to 10,000 steps by the last week). It is a nice way to stay connected. We held a game day event earlier this week that began with an all staff meeting with quick updates from each department. We then divided into teams (remotely via Zoom) for a scavenger hunt. Carolyn Shearer and Sharnel Mesirow did an amazing job organizing this event.

Ms. Cook announced that there was a change to the PLF Personnel Manual with regard to sabbaticals. In the past, there was a sabbatical policy for employees who have worked at the PLF for 15 years or more. The senior leadership team discussed the policy and felt 15 years was too long, so the time was reduced to ten years. A schedule was put together for staff, indicating when they are eligible to take their sabbatical.

Ms. Livermore asked how long the sabbaticals are that the PLF offers. Ms. Cook stated that they are for three months and can be taken all at once or broken into no more than three increments, depending on departmental needs. They are structured in such a way that no more than one person per department is gone at the same time. Additional sabbaticals are available after working consecutively for 15 years from the end date of the last sabbatical. The second sabbatical is only two months.

Ms. Cook reminded the board that Patricia Nation retired. While we are very happy for Ms. Nation, the PLF is sad to see her go. There was a socially distant BBQ event for her last month.

(B) 2021 Election of Officers:

Ms. Mullen reported that the slate for 2021 officers is Megan Livermore (Chair), Gina Johnnie (Vice Chair), as well as Michael Batlan (Secretary-Treasurer). She appreciates their willingness to serve in these roles.

Mr. Batlan moved and Mr. Haker seconded that the slate of names listed above be approved. Motion passed unanimously 8-0.

(C) 2021 Committee Preferences:

Ms. Cook asked Board members whose terms do not end this year to please select committee preferences and return them to Ms. Hill or Ms. Cook, or both. Ms. Cook and Ms. Livermore will work together to assign the committees. Ms. Cook invited board members to reach out to her with any questions.

3. GENERAL COUNSEL REPORT:

Ms. Campbell reported that we had a somewhat difficult excess renewal this time. Reinsurers are nervous about what might happen going forward. However, we continue to have A or A+ reinsurers. We are doing direct outreach to sole practitioners in the criminal area because of an increase in claims in this area. In one

case, we received a negative response, but we have had positive responses from people who feel excess coverage is important.

Ms. Campbell asked board members for their thoughts on the direct outreach. Ms. Livermore commented that if we are not receiving overwhelming negative feedback, she thinks it is a good idea, although people may not want to spend additional money right now, with all the uncertainty.

Ms. Mullen said that she does not know if the OCDLA conference has already taken place, but feels that a presentation at that conference is a good way to raise these issues.

Ms. Campbell reported that it is important to increase our book of business for excess. We need a larger base with more premiums to make up for some of our large claims. We have had some very large claims recently and have not had good claims experience over the last several years at the excess level. We want more communication between excess and claims and Ms. Campbell intends to act as a bridge for that. At the claims level, we need to get large claims evaluated early and out of the way early, if appropriate. More communication between claims and underwriting will help us identify firms that are risky that may need to be removed from our book of business.

Ms. Campbell reported that things are going well from a technical standpoint with people working from home. The PLF prepared a Telework Agreement to formalize the working arrangement. In the beginning, we anticipated a short time frame but, since that is not the case, we felt a need to have a formal agreement with staff.

The Communications Group has plans to go forward and enhance our website with tool kits for specific practice areas (litigation, bankruptcy, etc.), rather than focusing on just office management. The tool kits will make it easy to find tools to help prevent malpractice. While the website has many malpractice tools, it does not have kits that focus on specific practice areas. We are working cross-departmentally to assist with the process. Ms. Bernick wondered whether this is similar to BarBooks. Ms. Campbell advised her that the tool kits would be different in that they point out specific areas of risk known to the PLF and are not going to be treatises on areas of law.

Mr. Crawford commented that the tool kits are a great idea, allowing lawyers to have more targeted resources available to them. Ms. Campbell said that the idea is to package tools in a certain way so that while people are looking at the tool kit, they might see something they had not thought about.

Mr. Haker asked if there is a focus in bankruptcy cases, as there are areas that seem to surface frequently (missed deadlines, etc.). Ms. Campbell said that we have not worked on that area but it sounds like we should. Ms. Campbell asked that if anyone is willing to give input on the tool kits, the Communications Group is happy to receive comments and suggestions.

4. CLAIMS REPORT (Mr. Borrillo)

(A) General Claims Report (Open Session):

Mr. Borrillo reported that working remotely has gone very well. A couple of claims attorneys had to evacuate their homes during the fires; one had to find a home for his goats. Others had to prepare to evacuate. Everything is going well, as usual, in the claims department.

Mr. Borrillo reported that everything outside of hearings and trials is going well. Mediations are being scheduled regularly. We are seeing many files that would be in litigation but have been sitting dormant because they are not going to trial at this time. We are not pushing things too rapidly and are allowing more time to analyze and try to come up with solutions outside of court.

The evaluations that are sent when a claim file closes contained no negatives at all. The Claims Department is receiving consistently high remarks of “satisfied” or “very satisfied” and no “dissatisfied.” This has been consistent throughout the years.

Mr. Borrillo reported that the current claim count is 548 year-to-date and we are predicting 718 for the year. This number is close to Ms. Morrow’s projection. We are still seeing claims through the website portal. This is a valuable tool. While the claim count is low, the activity has gone up. Mr. Borrillo just finished file reviews and the claims attorneys have very active files. Another reason for the high activity is that there are fewer attorneys, so the claims count per attorney is high. Following the file reviews, Mr. Borrillo drafted a forecasting memo of cases that are potentially over \$150,000, breaking them down to those with PLF excess coverage, those with no excess, and those with no PLF excess. The hope is to work together with Ms. Campbell, the excess department, and Mr. Crawford to predict earlier on and, hopefully, negotiate early to save dollars in the long run.

We are trying to monitor claim areas that will be problematic and bankruptcy is currently an area of concern. We are expecting that lawyers will dabble in it, which is not a good thing if they do not have bankruptcy experience. Mr. Borrillo and Ms. Bowman are keeping an eye on the *Ramos* decision. Any *Ramos*-related cases are going to Ms. Bowman.

Mr. Haker asked if we have seen an uptick in foreclosure or landlord/tenant claims that might relate to the executive orders that have recently come out. Ms. Campbell stated that we have not seen anything yet but, similar to the bankruptcy cases, we are anticipating these types of claims because of the sheer quantity. We anticipate that lawyers may be taking on cases (loans, rental issues, debtor/creditor issues) that they are not experienced in, because there are not enough lawyers in the landlord/tenant world to handle these cases.

Ms. Mullen commented that it is wonderful to hear that the claims department continues to receive such high marks. Even in the best of times, that is one thing, but with everything going right during this pandemic is really wonderful and telling. Ms. Mullen hopes Mr. Borrillo will share that with the claims attorneys.

5. FINANCIAL REPORTS (Ms. Morrow)

(A) August 31, 2020 Draft Financial Statements:

Ms. Morrow reported that as of August 31, 2020, the PLF's in year surplus was approximately \$3.4 million. The bi-annual actuarial analysis recommended a release of primary reserves in the amount of \$1.4 million. This amount directly increases the in year surplus. Claims frequency is down considerably from recent prior years. Extrapolated to 12 months, the new claim count is at 730 claims. The two highest operation costs the PLF incurs, staffing and occupancy, have not changed versus budget for the year to date. The PLF has not undertaken layoffs, furloughs, or reduction in hours. As of August 31, 2020, the PLF's portfolio earned approximately 4.5%. Ms. Morrow is projecting approximately 720 claims to the end of the year; actuarial adjustments of approximately \$1.2 million; and an in year surplus of between \$600,000 - \$800,000.

6. RISK MANAGEMENT SERVICES (Mr. Crawford)

(A) Third Quarter Update:

Mr. Crawford reported that the trends reported at the last board meeting are continuing and we have seen the same increase in demand for risk management services for PMAs and OAAP attorney counselors. The department remains busy. Risk Management staff, like the rest of PLF staff, has shown remarkable resilience and pulled together with a real sense of teamwork and responsiveness. The department has faced very serious personal issues with working from home, children home schooling, etc.

Mr. Crawford reported that the areas defined as most pressing for the PMAs are all the things expected (working remotely, technology issues, employment/firm structure changes, attorney office closures, attorneys retiring, rather than adapting to the changes, etc.). The pandemic has resulted in an increase in office closures. Everything is more complicated working remotely, but the PMAs are meeting the challenges successfully.

Mr. Crawford reported that the attorney counselors have reported some new issues relating to the lockdown and civil strikes taking place in Portland. All other issues remain the same as before, but there are more of them and more serious as well. They require more time and attention. Attorney counselors have reported a silver lining, because the current crisis has brought many lawyers who have not dealt with longstanding issues to reach out for help.

Mr. Crawford discussed the statistics of risk management services. The old way of keeping track of services (outcomes and where services were provided) was really focused on in-person contact. We are no longer able to keep track of that information meaningfully and have to look at things differently. This is a work in progress and the department is working together to determine what is reported to the Board of Directors. Reports may look different in the future as they experiment with collecting information differently.

Mr. Crawford reported that Learning the Ropes is coming up at the end of October. This is the premiere annual CLE targeted for new lawyers, but all lawyers are welcome to participate. This year's program has a

different format. It will not be an in-person event but rather, an online Zoom event. We are hopeful to replicate many of the great aspects of the live event but are also encouraged by the fact that more people can participate than in the past. In the past, people had to travel to attend, some had to pay for lodging, etc. With a virtual event, we currently have about 150 people registered and we are anticipating the numbers will increase with the swearing-in ceremony having just taken place. Mr. Crawford expects about twice as many people will attend this year, than in the past. He also reported that we were able to get speakers this year that we would not have had in the past, when it was a live event. There is some trepidation in terms of technology. We are using almost all features that Zoom allows. We are hoping this will allow for a more engaging program.

Mr. Crawford reported that the Oregon Statutory Time Limitations Handbook (the Red Book) is updated every four years and it is now the time to do that, following the legislative session. It is about a 15-month process and is probably the best practice aid that the PLF produces, because missed deadlines are one of the most common mistakes. We are hopeful the OSB will be able to help us with the updates and we have requested a proposal from the OSB and are expecting a response shortly.

Mr. Crawford announced that Shari Pearlman, long-standing attorney counselor with the OAAP has resigned. She will be moving to Vancouver, B.C., as she has a new job working for the British Columbia Law Society Assistance Program. Her new position begins in December. Mr. Crawford said that Ms. Pearlman has been a wonderful part of the OAAP for so many years and we are excited for her new endeavor.

Ms. Bernick asked Mr. Crawford if he knows why Ms. Pearlman decided to leave and asked if there is a plan to replace her. Mr. Crawford said that Ms. Pearlman's decision to move to Canada has been in the works for quite a while. She sees it as an opportunity to help and reshape that program. The program is smaller than ours in terms of staff, but it is a new opportunity for her. Mr. Crawford stated that since he had only learned of her resignation a few days ago; there has not been a discussion with management about what we will do in terms of her replacement. Mr. Crawford feels we should find a replacement and that will be his recommendation, but nothing has been discussed yet.

Ms. Cook reported that risk management services under Mr. Crawford's leadership is doing a fantastic job. For example, during the week of the wild fires the PMAs put together a comprehensive list of resources. The OSB was also linked in this. Ms. Cook appreciates Mr. Crawford's leadership and the great job his team is doing for all those people who really needed the help. Mr. Crawford said this is an example of the type of teamwork we are able to put together and staff has really adapted to the new way of working.

Ms. Hirschbiel asked Mr. Crawford if his department has been tracking if there is an increase of contacts from bar members with the OAAP since COVID hit. If so, does he know what the increase looks like? Ms. Hirschbiel reported that Bar president Liani Reeves has been sending regular messages, encouraging lawyers to take care of themselves. That definitely has helped to encourage lawyers to contact the OAAP. Mr. Crawford projected a 25% increase in terms of direct contact. He reported an even higher increase with group attendance and presentations, speculating the numbers have doubled.

There was a comment that it will be interesting to see how Learning the Ropes plays out online and a request that the information be provided to the Board at its December meeting. It is always a well-received event with a lot of useful information and new attorneys appreciate it. Firms also appreciate the opportunity to send new lawyers to the program.

7. COMMITTEE REPORTS AND ASSIGNMENTS

(A) Coverage (Ms. Livermore/Ms. Campbell):

i. Potential Coverage Plan Changes.

Ms. Livermore turned this portion of the meeting over to Ms. Campbell.

Ms. Campbell reported that the Coverage Committee met to discuss a proposed amendment to all Plans that would include an arbitration provision. Ms. Campbell gave some background information. In 2006, there was an arbitration provision in all plans. In order to opt out of that provision, there was an opt-out fee. In 2006, the PLF decided it would be better to litigate coverage issues and other disputes in court because arbitration does not allow the opportunity to appeal. Because of this concern, a decision was made to remove the provision and take disputes to court in Multnomah County. The hope was to guide us to get decisions as to certainty on specific coverage issues. In reality, we litigated few cases. Those we did litigate were very expensive. We prevailed in most cases, but there was one large case we did not prevail in and it was very costly. After this negative experience, we thought about bringing back the arbitration provision. Ms. Campbell stated that her opinion, which is also shared by Ms. Cook, is that we should bring back the provision and charge \$100 to opt out of the provision.

Since the Coverage Committee meeting, there have been internal discussions about implementing the amendment with or without the fee. It would be too difficult to implement the revision with the 2021 Plan, so Ms. Campbell is recommending tabling it for discussion for the 2022 Plan. Committee members felt that charging to opt out of arbitration would be something people would find objectionable and felt a free opt-out of some kind would be an option. Ms. Campbell asked the BOD for their thoughts.

Mr. Haker asked for clarification of the issues the Committee had pertaining to charging to opt out. Ms. Campbell said that lawyers who wanted to opt out would have to pay \$100 to purchase an endorsement to opt out.

Ms. Bernick said she is in favor of arbitration. Aside from tabling the implementation for this year, Ms. Bernick asked what the rationale is for giving people the option to opt out. Ms. Campbell said that the PLF originally felt that people should be given a choice; that we could not just impose it on everyone. This was a way to give them that choice. Ms. Bernick said that letting Covered Parties know when we are making changes like this ahead of time is important. The fact that there will be a delay in implementing it gives Covered Parties plenty of notice, regardless of what the change will be. Ms. Campbell agreed and said this was another reason why she has recommended that it be tabled.

Mr. Hill commented that it is important for an organization that concerns lawyers that we maintain the ability to choose to have a jury to decide the dispute. He questioned if it is binding arbitration or if there is the ability to appeal the arbitrator's decision. Ms. Campbell said it would be binding. Mr. Hill had concerns over it being binding and feels we need to send a signal that we respect what juries do, even though it is more expensive and there are delays, etc. He feels it is important for our group to consider the ability to choose. Ms. Bernick commented that she feels these disputes are not decided by juries because they are issues of law. Ms. Campbell said that is correct. Ms. Campbell said that if there were factual issues, they would be decided by a jury. Mr. Hill said his concern is that there might be a jury decision involved.

Mr. Haker said that in response to the opt out or a choice, there was a discussion about having arbitration be the default unless a Covered Party elects to opt out. From his perspective, having it be a default, it requires the Covered Party to do something to opt out and that might push more people to do arbitration. However, to pay to stay in a court process sends the wrong message (i.e., if you want a judge or jury, you have to pay for it). This is a concern for him. If there is a clear reason for charging people to opt out, there needs to be a record of why. Ms. Campbell said a different way of characterizing it is that we are charging people because there are additional charges when going to court and we need to charge for that. Ms. Campbell said that there were no complaints before but, because we are bringing it up as a new issue, there could be complaints. If we had no charge at all and people just check a box, we would not be accomplishing much. People would choose not to arbitrate because many people feel that being in court (as a plaintiff) is better for them.

Mr. Haker commented that he does not know how difficult it would be to have some support for why we are charging a fee to opt out. Conventional wisdom says it is always more expensive to go to court, but we should message it in some way with backup data as to the amount of the fee. Ms. Campbell said that we have the costs for litigating cases. What we do not have is the cost of not challenging and not going forward with having coverage disputes resolved. There are many issues raised in some of the cases. We cannot measure that cost, but we know it is high. Ms. Bernick said it happened multiples times in the five years she was at the PLF.

Ms. Mullen addressed Mr. Hill's concern regarding the idea that a Covered Party would be denied the opportunity to go to court, if that is how they feel it should be. Ms. Mullen questioned if instead of it being binding arbitration, could it be written that they must arbitrate first then, if unhappy with the outcome, they could appeal the result and get a trial de novo with a judge in Multnomah County. She said statistically, the vast majority of cases are resolved at arbitration. She feels that the path of requiring arbitration first, which is consistent with other arbitration programs, could knock out 90% of the cases anyway and feel it is something to consider. Ms. Campbell said it is worth considering. She also feels that if people lose in arbitration, they might be less likely to want to litigate. The PLF has the opportunity to litigate as well.

Ms. Mullen said there is no motion to change the Plan at this point because the proposed changes are under discussion.

Ms. Mullen moved to table taking any action on the proposed changes to the Coverage Plan and send it back to the Coverage Committee for further discussion on the various possibilities of what the arbitration clause might look like in the Plan changes. Since the effective date is not until 2022, hopefully, there is time to do that. Mr. Hill seconded the motion. Motion passed unanimously 8-0.

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

Mr. Newhouse turned the meeting over to Ms. Morrow to discuss the four items below.

Ms. Morrow reported that all materials have been reviewed by the Finance/Investments Committee and where applicable are based on actuarial recommendations. Ms. Morrow requested one motion on the following four recommendations, if possible.

Ms. Morrow pointed out an error in the actuarial memo (page 2). The memo lists an increase in claim costs of \$177,238. It should be corrected to reflect a decrease to claims costs in the amount of \$1.4 million.

The Committee is seeking approval of the following:

i. Values for June 30, 2020 primary claim liabilities; \$23.3 million (Indemnity \$11.7 million, Expense \$11.6 million)

ii. Values for the cost of new claims for the final six months of 2020 are \$10,000 indemnity and \$11,000 expense for a total claim cost of \$21,000. These amounts are unchanged from the first six months of 2020.

iii. 2021 PLF Primary Program Assessment; \$3,300, unchanged from 2020.

iv. 2021 Net Position Goal; \$20.3 million, increased from \$15.5 million in 2019.

The two items with the largest impact to the net position goal are integrated claims database software; and the dollars required to keep the primary claims reserve confidence level at 80%.

Mr. Newhouse moved to adopt the four items discussed by Ms. Morrow. Ms. Livermore seconded the motion. Motion passed unanimously 8-0.

v. 2021 PLF Budget.

Ms. Morrow reported that the budget for 2021 was challenging. There are multiple factors that have a substantial impact on the 2021 financial results of the PLF. They include the impact COVID-19 could continue to have to the legal community and the broader local and national communities; and the presidential election in November of 2020. The overriding assumption for preparation of

the 2021 budget is that the impact of COVID will be mitigated and/or negated through therapeutics and vaccines. Therefore, we are assuming a return to business mostly as usual.

The committee is proposing a 2% salary pool based on a 2.84% increase to the CPI. The OSB is proposing the same salary pool. An additional .67% has been allocated for individual staff increases beyond the 2% pool.

Healthcare premiums are budgeted to increase by 5%. This figure is at the lower end of nationally published projections. However, the PLF has enjoyed a lower than average loss ratio on benefit usage.

PERS Tier 1 and Tier 2 premiums are projected to increase by 3.52% while OPSRP premiums are projected to increase by 4.29%. These numbers are based purely on past increases, statements from PERS alluding to smaller than usual increases, and analysis of prior year increases.

There are 846 new primary claims budgeted for 2021 at a cost of \$21,000 each. The number 846 is representative of a five-year average of new primary claims.

Return on Investment (ROI) is projected to be 4.5%.

As previously noted, the Committee is recommending leaving the assessment at the current level of \$3300. The assessment at this level creates an in year deficit of approximately \$2.2 million. An obvious question is why the PLF is not increasing the assessment when the current level creates a deficit budget. Ms. Morrow reminded the Board that in 2018, it was acknowledged the net position of almost \$21 million was more than adequate for PLF operations and claims management. Modeling done in consideration of decreasing the assessment in 2019 from \$3500 to \$3300 was based on a shrinking surplus, leading to the year 2025. When the assessment was decreased, we projected the loss to 2025. In that year, unless required sooner, the Board would once again consider the assessment amount. So the deficit created by the current assessment level was planned with full knowledge of the resulting impact on net position. Ms. Morrow stated her belief that the PLF continue down this path as it is too soon to fully gauge the financial impact of COVID. Additionally, it has always been a goal of the PLF to keep the assessment stable for as long a period as possible.

Ms. Bernick commented that the BOD just voted to increase our net position goal to \$20.3 million. She questioned if there is something in the materials projecting where the PLF's net position will be at the end of 2021. Ms. Morrow stated that, if at the end of 2021 the PLF realizes the budgeted in year \$2.2 million deficit, the net position would hover around \$18 million. Ms. Bernick said that she understands the impact of the pandemic on lawyers which might be a reason not to increase the assessment, but feels it is important to recognize that we are not increasing the assessment at a time we are now predicting \$2 million below our net position goal. Ms. Bernick wants to be sure the Board is tracking the planned reduction in net position, leading to a net position less than the approved goal. Ms. Morrow reiterated when the assessment was reduced in 2019, the expectation was that

the net surplus would decrease. That has not happened to a large degree. Therefore, it seems appropriate to leave the assessment where it is for 2021. If it becomes obvious in 2021 an increase to the assessment is required for 2022, it can be reviewed at that time. The Committee agrees with the \$3,300 assessment.

Ms. Hirschbiel said that she understands that it is difficult to predict circumstances for next year and she appreciates all of Ms. Morrow's work on the budget. With respect to the budget, Ms. Hirschbiel returned to Ms. Bernick's question about whether there is a plan to replace Ms. Pearlman and noted that the report says there is an anticipated decrease of 1 FTE in 2021. She questioned if the decrease was due to Ms. Pearlman's resignation. Ms. Morrow said that it is not. The budget was put together prior to Ms. Pearlman's resignation. Ms. Morrow said she would have to refer to her budget support documents to determine how staff changes netted out to a loss of 1.0 FTE in 2021. Ms. Hirschbiel questioned the 2% salary pool with an additional .67% budgeted for reclassifications and individual increases. The way the Bar looks at their salary pool is that the salary pool includes those adjustments. From her perspective, the actual salary pool for the PLF would be 2.67%. She asked if that is correct. Ms. Morrow said it is correct but noted as well that the PLF has in prior years reported a salary pool amount, then an additional amount for reclassification/pay equity increases. Ms. Hirschbiel pointed out that there is actually a difference between the Bar's projected salary pool of 2% and the PLF's salary pool of 2% plus the allocated .67% for individual increases.

Mr. Newhouse moved to adopt the 2021 budget as proposed by Ms. Morrow and the Finance Committee. Ms. Johnnie seconded the motion. Motion passed unanimously 8-0.

vi. RVK Report: Executive Summary, Quarterly Reports, and Asset Allocation and Bank Loans Education/Recommendation.

Ms. Morrow reported that Mark Higgins of RVK attended the Finance/Investments Committee meeting. She commented that Mr. Higgins demonstrated an elevated level of apprehension around market results for 2021. However, RVK and the PLF understand the value of the PLF's mixed allocation portfolio and the long-term resilience that provides. Ms. Morrow reiterated the PLF's portfolio has earned an approximate 4.5% ROI for 2020 to August 31. See materials for further information.

(C) Nominations Committee (Ms. Cook/Ms. Mullen/Ms. Livermore/Ms. Mitchell):

i. BOD Candidates for terms beginning January 1, 2021.

Ms. Mullen asked Ms. Livermore to present the Nominations Committee recommendations.

Ms. Livermore reported that she reviewed resumes for a number of people. Ms. Cook spoke with everyone who applied. With an eye toward trying to keep the Board diverse in gender, race, ethnically, and geographically, the Committee settled on two people. One has less experience in the practice of law and is also

in-house counsel, but has been in private practice and was a member of the PLF defense panel. He is highly regarded by all claims attorneys.

Attorney Members

The Committee recommends Harshi Waters and Akeem Williams.

There was some discussion among committee members, but the decision was that Harshi Waters would fill the two years left in Susan Marmaduke's term (Ms. Marmaduke resigned in May due to a conflict) and Akeem Williams would fill the full five-year term.

Public Member

The Committee also asked Ms. Morrow to help determine a good public member. Ms. Morrow works closely with the public members on the Finance/Investments Committee. Therefore, she looked for someone with a solid financial background, preferably with statistical/investment portfolio experience. Mr. Chris Karlin of Portland was selected to be recommended to the Board. Mr. Newhouse also spoke with Mr. Karlin. Mr. Newhouse said that he has not met Mr. Karlin but had a long telephone conversation with him prior to the Board meeting. He feels Mr. Karlin would be an excellent addition to the Board. He has a broad financial background. Additionally, Mr. Karlin has experience with corporate implementation of new software. Mr. Karlin is highly recommended by Ms. Morrow and Mr. Newhouse. They believe his experience will be valuable to the BOD as well as Ms. Morrow.

Ms. Cook reported that ads were placed in all the appropriate places. We do not know why (probably because of the pandemic) but we only received responses from six people. All of them were white men. There is nothing wrong with that but with an eye toward diversity and recognizing that the three new board members this year are also white men, Ms. Cook felt it was important to reach out directly to women and lawyers of color. Ms. Cook spoke with a number of people and all of them had various reasons for declining to serve except one. Many were unsure of where this pandemic will take them. We currently have no people of color on our board. Ms. Cook said she is very happy to recommend Harshi Waters. She is very qualified in immigration and is of Sri Lankan descent. Akeem Williams has less than ten years' experience, but has a number of years at Lindsay Hart and Hart Wagner. Ms. Cook spoke with the claims department about these two people and they were all very complimentary of Mr. Williams. Ms. Waters was less well known but Sharnel Mesirow knows her professionally and spoke very highly of her. We are very excited to have them join our Board.

Ms. Mullen agrees that with the pandemic, working women are finding it particularly difficult to juggle life issues, making it more challenging to recruit people to the Board, especially with a five-year term commitment. To be sure that our Board reflects the diversity in Oregon, we need to continue to attempt to recruit diverse individuals.

Ms. Livermore moved and Ms. Mitchell seconded that the Board approve the recommendations of the Nominations Committee of Harshi Waters, Akeem Williams and Chris Karlin for the terms beginning January 1,

2021. Motion passed unanimously 8-0. It was noted that the motion includes presenting the names to the BOG Development Committee, then to the BOG at its November meeting.

Ms. Mullen asked Ms. Cook to extend the invitation to Ms. Waters, Mr. Williams, and Mr. Karlin to join the PLF Board of Directors, once approved by the Board of Governors.

8. LIAISONS' REPORT (BOG): (Mr. Foster/Ms. Hirschbiel)

Mr. Foster reported on two major issues.

Bar Budget – Mr. Foster said the OSB has done an excellent job of taking on its budget, dealing with anticipated shortfalls due to COVID and other issues. Staff has made tremendous sacrifice through layoffs and furloughs to keep the budget on track. It is important to note that a reduction in the budget means less jobs. The BOG contemplated a \$45 annual license fee increase to present to the HOD on October 30 to help balance the budget for the next two years. In the past, the BOG has looked at a five-year time horizon. With the cloudiness of a five-year time frame, the BOG felt it was well served to shorten that time frame. The BOG could have asked for a \$60 annual fee increase to cover the shortfall for BarBooks but felt it was too much to ask, so they are sticking with the \$45.

Governance Structure – Mr. Foster reported that there was a great debate on the government structure and BOG proposed changes with respect to BOG members. The initial proposal was to have the Supreme Court appoint BOG members after an election by BOG members. The Bar sought comments from membership. A number of members attended the last meeting. A decision was made to not change the appointment structure.

9. EXECUTIVE SESSION

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

Ms. Mullen called the meeting into executive session at approximately 12:30 p.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 1:25 p.m. to approve the executive session minutes and other executive session issues.

10. OPEN SESSION

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

- i. 2020-06-05 Executive Session Minutes.

Ms. Mullen moved and Ms. Johnnie seconded that the minutes be approved as written. Motion passed unanimously 8-0.

ii. 2020-08-26 Executive Session Minutes.

Ms. Johnnie moved and Ms. Livermore seconded that the minutes be approved as written. Motion passed unanimously 8-0.

11. UNFINISHED AND NEW BUSINESS

There was no unfinished or new business to discuss.

12. ADJOURNMENT

The meeting adjourned at approximately 1:28 p.m.

These minutes were approved by the PLF Board of Directors at its December 4, 2020 board meeting.