



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

**February 5, 2021
Zoom Videoconference**

Chair Megan Livermore called the regular meeting of the Board of Directors to order at approximately 9:00 a.m. via Zoom videoconference. Present in addition to Ms. Livermore were Directors Holly Mitchell, Gina Johnnie, Michael Batlan, Oren Haker, Steve Hill, Harshi Waters, Akeem Williams, and Chris Karlin. BOG liaisons David Wade and John Grant and OSB CEO Helen Hierschbiel attended all or part of open session. In addition, PLF staff members Carol Bernick (interim CEO), Madeleine Campbell, Betty Lou Morrow, Matt Borrillo, Jeff Crawford, Emilee Preble, Cindy Hill, Heather Bowman, Pam Stendahl, and Maureen DeFrank attended all or part of the meeting. Mark Higgins of RVK reported in open session.

This meeting was 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. Livermore)

Ms. Livermore noted that the three new board members would abstain from voting on 2020 minutes. She then asked meeting attendees to introduce themselves.

- (A) i. Draft Open Session Minutes (12/04/20):**
- ii. Draft Open Session Minutes (12/14/20):**

Ms. Johnnie moved and Mr. Batlan seconded that the Draft minutes of December 4, 2020 and December 14, 2020 be approved as written. Motion passed 5-0 (1 absent; 3 abstained).

(B) 12/04/20 Joint Annual Claims Committee/Claims Attorney Meeting Minutes:

There was no discussion and no action was required.

(C) Congratulations to Board Members:

Ms. Livermore congratulated Ms. Johnnie as a recipient of the OWLS Roberts & Deiz Award. She also recognized the birthdays of Mr. Batlan, Mr. Hill, and Mr. Haker.

2. CEO REPORT (Ms. Bernick)

(A) General Report:

Ms. Bernick said it was great to be back at the PLF. She reported that she has met individually with all staff members and these meetings reminded her of the quality of staff at the PLF. She is hopeful that the information will help guide her during this transition period and help set the new CEO up for success.

Ms. Livermore asked Ms. Bernick if, after meeting with staff, there are any priorities the Board should be addressing immediately. Ms. Bernick noted that staff has appreciated the communication from the BOD and the BOD Search Committee. It was also noted that having a more structured HR person is important to staff. Ms. Campbell has a lot to do in her General Counsel role and it is only fair to her that she get some relief, especially with COVID, OSHA and other issues that are changing constantly. Ms. Livermore said that she appreciates knowing how staff feels and noted that the PLF has great staff with lots of longevity and she would like to keep that momentum going.

Ms. Bernick echoed Ms. Livermore's previous comments that Ms. Cook accomplished many positive things while at the PLF. In particular, the coalescing of the management team. This is a great asset for the new CEO. Ms. Bernick noted that it was a hard year for the team last year. Mr. Crawford served as Director of Administration for many years, and then replaced someone who had been at the PLF for over 30 years. This was a huge transition and he has done an incredible job. Ms. Morrow had to manage an extremely difficult budget and manage the team that is in the office most regularly. Ms. Campbell took on a new role as General Counsel, filling in gaps of areas that desperately needed help and attention. Mr. Borrillo stepped into his new role as Director of Claims. The team has coalesced together and as CEO, they have her complete support.

In addition, Ms. Bernick reported that she has had great meetings with Ms. Hirschbiel. They have had full and frank discussions about how our organizations can work together, collaboratively and inclusively. Ms. Bernick has always valued Ms. Hirschbiel as a partner. Similarly, she met with Mr. Wade. Mr. Wade also met with Ms. Livermore. She expects great collaboration moving forward between the two organizations.

Ms. Bernick reported that she received a call from the president of the Washington State Bar Association (WSBA) expressing interest in expanding the PLF's jurisdiction to include Washington attorneys. Ms. Bernick told him that she saw some significant hurdles in such a proposal but that she was happy to further discuss the idea with him or others at the Washington Bar.

The management team has begun talking about returning to work after vaccines are widely available and restrictions have been lifted.

Ms. Bernick and Ms. Campbell have had one meeting and are planning another meeting to discuss hiring an outside consultant to serve as a PLF HR partner. It is not uncommon for an organization of our size to have outside HR professionals.

Ms. Bernick reminded the Board that we were considering some changes to the BOD meeting schedule for 2021. The remaining meetings for this year are:

April 16 (Tigard or Zoom). The PLF will have its regular meeting in the morning, followed by a joint lunch (if not meeting remotely) and a joint BOG/BOD meeting. Mr. Wade is hoping to have a speaker at the meeting (Dr. Alisha Moreland-Capua) to discuss fear, trauma and racism.

June 11 (Tigard or Zoom). The meeting location was changed from Ashland to Tigard or Zoom.

August 20 (Ashland). This is a new date and location. The original meeting was scheduled for August 5 in Tigard or via Zoom, but has now been changed to August 20 in Ashland.

October 15 (Sisters or Astoria). This is a new meeting.

December 10 (Tigard). This meeting remains unchanged.

(B) Kudos to PLF Staff:

Ms. Bernick referred the Board to the materials. Several positive comments were received regarding staff and she wanted to share her appreciation for the great work of the PLF staff.

3. GENERAL COUNSEL REPORT (Ms. Campbell):

(A) Paraprofessional Licensing:

Ms. Campbell discussed the potential impact on the PLF regarding paraprofessional licensing. The Bar would likely look to the PLF to provide coverage. A recommendation will be presented to the legislature in October. Ms. Campbell requested input from board members.

Ms. Livermore asked who was putting forward the idea. Ms. Campbell said it is an access to justice issue as posed and the BOG is interested in having it be as broad as possible. Ms. Livermore asked if the PLF is in a position to handle this. Ms. Campbell said it is difficult without knowing the scope of services provided and how many people will be doing this. Ms. Livermore asked Ms. Campbell to keep the Board posted as considerations arise, as she wants to be prepared.

A discussion ensued regarding specific areas of law and claims severity.

(B) Diploma Privilege Task Force:

Ms. Campbell reported that the Diploma Privilege Task Force is exploring alternatives to the bar exam. Wisconsin and New Hampshire have special programs that allow people to qualify for admission to the bar without a bar exam. The Task Force will look at other programs for emergencies. She is interested to see what board members think regarding alternatives to the bar exam and how much it would influence the quality of legal services. Ms. Campbell noted that Wisconsin requires particular core courses and standards and that has been successful. Ms. Livermore said she is happy that Ms. Campbell is on the task force.

Ms. Hirschbiel thanked the PLF and Ms. Campbell for sitting on these two task forces. It is invaluable to have her there contributing to the conversations.

Ms. Livermore said we want to see the profession do well and these initiatives are important.

4. CLAIMS REPORT (Mr. Borrillo)

(A) General Claims Report (Open Session):

Mr. Borrillo reported that things are going well. He praised the high quality of the claims department.

The claim count was lower last year. We opened and closed about 700 claims, but this is not indicative of the workload. Claims attorneys faced more challenges than normal. In addition to managing everything during COVID, they also needed to stay up to date with legislative changes, particularly the extension of the statute of limitations for some matters.

We are hiring a new claims attorney and are currently in the second round of interviews. We hope to have the new claims attorney on board to introduce to the Board in March or April. This should help balance the claims department for the upcoming year and in the future.

(B) 2020 Claims Attorney and Defense Counsel Evaluations:

Mr. Borrillo referred the Board to the materials and noted that he added a section to the report that included redacted comments from Covered Parties, indicating their satisfaction with the work of the claims attorneys. These comments demonstrate how the claims attorneys display an amazing emotional IQ in the way they manage claims. The Covered Parties are taking the time to comment, which speaks loudly. The same applies to repair counsel.

(C) 2020 Claims Statistics 2010-2020 (by Claim Year and Year Closed):

Mr. Borrillo reported that the Defense Panel Conference that was scheduled for August of this year has been postponed to 2022 due to COVID. We believe the conference should be in person. Mr. Borrillo thanked Ms. Campbell for her efforts in working with Skamania Lodge to avoid contract penalties.

Mr. Borrillo reported that the PLF periodically hosts the NABRICO Conference. The PLF was scheduled to host the conference in 2022 but that has now been moved to 2024 because of the cancellation of the 2020 conference due to COVID.

Ms. Livermore said she feels the claims attorneys are fabulous and she appreciates Mr. Borrillo's leadership and professionalism of the entire team. She asked if there is anything the Board should know about or make improvements on. Mr. Borrillo said the department would like more interaction with the Board.

Ms. Livermore encouraged board members and claims attorneys to feel free to speak up if they have any questions or concerns.

5. FINANCIAL REPORTS (Ms. Morrow)

Ms. Morrow thanked her fiscal staff who have been coming into the office on rotation since work from home began in March of 2020. They have all been there on their designated days and show up without complaint. Ms. Morrow also thanked the IT staff. She mentioned Tony Sabala who worked with our tech consultants to create a reliable platform for all staff to work from home and doing so with two days' notice. They created a system using existing infrastructure to eliminate the need to purchase additional hardware with the exception of a few laptops for staff who did not have appropriate equipment at home. Ms. Morrow very much appreciates her staff.

Ms. Morrow reported that the 2021 audit would begin March 8. With the Kern Thompson staff also working from home, this audit will be carried out in a vastly different way than any previous audit.

(A) December 30, 2021 Draft Financial Statements:

Ms. Morrow reported that she had expected to finish the year with a \$600K to \$800K surplus. Instead, the PLF finished the year with a \$7.6 million surplus. The large swing in the surplus from the October board meeting was due almost entirely to the strong performance of the investment portfolio in the last quarter.

Ms. Livermore asked if the return on the portfolio is converted to cash or kept in the portfolio. Ms. Morrow said it is automatically reinvested but we withdraw funds from the portfolio when cash flow requires it.

Ms. Livermore asked about the planned new database. Ms. Morrow said this is on the agenda for 2021. Ms. Morrow is working with the provider, ISI, and each of the departments to design curated workshops. These workshops will provide staff with an insight as to how the ISI system would provide enhanced value to the PLF's integrated processes. Ms. Morrow hopes the workshops will take place in February or early March. The PLF

experienced a successful year financially in 2020 and Ms. Morrow would like to use some of those gains to begin to pay for the ISI software, if the PLF moves in that direction. Mr. Karlin noted that in terms of an investment, the return from this software would likely exceed anything we could expect from our portfolio.

Ms. Morrow noted that there is a decline in the number of covered parties from 2020 to 2021. Ms. Morrow has done some analysis and currently there are about 600 attorneys who have not renewed coverage for 2021. It is still early, but important for the PLF to pay attention to this trend as it has impacts on multiple areas of the organization.

Ms. Morrow reported that Mr. Karlin inquired about the format of financial statements that are presented to the Board. Later in the year, she will begin to look at what is meaningful information to provide to the Board with input from committee and board members. Ideally, she would like to create a dashboard that provides easily accessible, high level quantitative information about claims and operations at the PLF.

Ms. Livermore asked if the decline of 600 lawyers are solos. Ms. Morrow said that everyone is a solo at the primary level. However, in her analysis she notes approximately 30% of the attorneys are attached to firms. However, some of those firms might be solo firms, so it is difficult to tell without significantly more in depth analysis.

6. RISK MANAGEMENT SERVICES (Mr. Crawford)

(A) 2020 Year-End Report:

Mr. Crawford referred the Board to the materials beginning on page 40. He echoed comments from other managers. Looking back on 2020, he shared how impressed and proud the Board should be with the way the Risk Management Staff and the rest of the staff have responded to the challenges and changes during the last year. Many faced their own personal challenges that included taking time off work and they still rose to the occasion and continued to deliver a high level of service.

Mr. Crawford discussed how his department is changing the information provided and reporting of statistical data.

See materials regarding CLE presentations, publications, Recovery Groups and Support Groups, and Speaking Engagements by Attorney Counselors.

Ms. Livermore asked if the OAAP has been advertising programs and groups that used to be more Portland based, but are now available around the state due to Zoom. Mr. Crawford said that the OAAP and the PMAs have been more mindful of informing people that we can reach more people electronically. Ms. Livermore mentioned that some groups in Portland do not work well via Zoom and wondered for those who are located outside of Portland, what programs/groups could be attended via Zoom. Mr. Crawford said that looking forward to 2021 and having had virtual events, we are trying to do things in a hybrid way. There is great value for some

services in person, but we are also reaching out via Zoom and other ways. We do not have everything worked out yet.

Looking ahead to Ropes for 2021, we are meeting with an audio-visual company as to how to do a hybrid-type presentation.

Mr. Wade said it looks like we are providing services to about 7% of active lawyers and he questioned if that is higher than normal. Mr. Crawford said it is. The percentage usually averages around 3% (in terms of volume of contact). Previously, it was 1% to 1.5%. So the percentage has really increased this past year.

Mr. Crawford said that for 2021, looking at what we would call substantive CLEs (focusing on certain areas of heightened malpractice risks); they are some of the same themes already discussed today. We are working on topical packets (tool kits) that include resources for topics in high demand. The tool kits will appear on the PLF website this year. We are constantly working on how the PLF website can reach people.

Last year, the PLF removed the complimentary lawyer conference room that had been available to Oregon lawyers and shredding events were not scheduled. This year, we plan to bring back shredding events, as this is a valuable service to small firms and solo practitioners. The shredding events will be held at the PLF and around the state.

Mr. Crawford reported that an ad has been placed for an Attorney Counselor position. We expect to have someone hired within the next few months. Mr. Crawford's recommendation and Ms. Bernick concurred is to hire a clinical supervisor for the OAAP, but we are leaving this for the new CEO to decide if this is the direction to go. We continue to implement ideas from Dr. Bernstein's report (see materials).

Ms. Livermore asked if the information in Dr. Bernstein's report was well received by OAAP staff and if they are involved in reviewing the suggestions. Mr. Crawford said there were big changes in 2020 and the attorney counselors and PLF are looking at the report and implementing some of the suggestions. Policies and procedures will be overhauled and we expect to work with the Risk Management Committee this year to include the Board. Ms. Livermore thanked Mr. Crawford for working on getting the issues in a better place. Ms. Bernick has spent time talking with the staff of the OAAP and getting their perspectives. Ms. Livermore said there was previously a discussion about doing an evaluation through the ABA and she wondered what the status was. Mr. Crawford said it has been suspended. The ABA is working on bringing it back. Ms. Livermore thanked Mr. Crawford for spearheading this project and said it looks like things are getting back on track to the level we need in order to support our members.

Mr. Crawford reported that this year we are scheduled to update all practice aids, so the PMAs have begun that process. The update of the Statutory Time Limitations Handbook (aka the Redbook) with the help of the OSB is underway. This is a lengthy project and we do not expect it to be complete until mid-2022.

7. EXCESS PROGRAM (Ms. Preble)

(A) Excess Program Renewal Update:

Ms. Preble reported on the results of what was a challenging renewal where all firms saw a price increase. Nonetheless, with the 2021 renewal season largely concluded, we are currently at about normal numbers – 90% retention of renewing firms and some new firms as well. Based on application information, it seems that most firms purchasing excess coverage are financially doing well. This was an unknown heading into the renewal as 2020 has been a challenging year for many firms. The retention percentage will continue to float up over the next few weeks as firms continue to bind coverage.

Ms. Preble reported that the ERC endorsements (Extended Reporting Coverage) have increased slightly over a typical year. Currently, 17 firms purchased ERC. We have seen one year that was higher (19 firms), but the average range is around 10 to 15 firms per year.

Though retention levels were normal, we did lose some mid-sized firms this year, which was expected. We have robust competition for mid-sized firms at the commercial market. Larger firms are also able to purchase coverage easily from the commercial market. Approximately 89% of the firms we cover have one to five lawyers. This firm size seems to be a good fit for PLF Excess.

Ms. Livermore thanked Ms. Preble for keeping the program healthy.

Mr. Wade exited the meeting at this time.

8. COMMITTEE REPORTS AND ASSIGNMENTS

(A) Finance/Investments Committee (Mr. Haker/Ms. Morrow):

- i. 2020-12-31 RVK Report (Mark Higgins of RVK)

Mr. Higgins said that even though the situation due to COVID seems unique, historically, it is not as unique as you might think when looking back in time.

Across the board, the PLF portfolio had a strong return.

Performance Report – The total value of the PLF portfolio due to strong returns in 2020 is \$64.5 million. In March of last year, we would not have expected this. Odds are high that these returns will not endure and we will likely not see returns this high in the near future.

Mr. Higgins discussed rebalancing the portfolio. A guideline is that if a fund is 2% over/underweight, it is a good time to rebalance. Ms. Morrow said the PLF has a policy with minimum and maximum targets by asset type that we look at when considering rebalancing.

Mr. Higgins reported that the annual return on investment (net of fees) is 13.7%, which outperformed the index.

Ms. Livermore thanked Mr. Higgins and Ms. Morrow for managing our portfolio and keeping us on track. Ms. Livermore said they have worked very hard in difficult times. This is her fifth year on the Board and the funds have been handled very well.

Mr. Higgins said it is a pleasure working with the PLF and Ms. Morrow has done a great job.

ii. 2020-12-31 Actuarial Report

Ms. Morrow reported that the actuarial analysis indicates that indemnity cost component of new claims will increase \$2,000 in the first six months of 2021. This is a relatively large increase to indemnity. The expense portion of the cost of new claims will remain the same for the first six months of 2021. Ms. Morrow reported the reserves for outstanding claims has decreased given the very low new claim count in 2020.

Ms. Morrow does not expect the volume of new claims to increase dramatically in the first six months of 2021. She budgeted 845 claims for 2021 and feels that number may be high.

Ms. Livermore agreed it all sounds reasonable and appreciates the conservative approach to how we handle financial matters.

The Finance and Investments Committee recommends the following:

1. With a 50% confidence level, adopt the following **liabilities for primary claims** as of December 31, 2020.

Indemnity Liabilities	\$11.2 million
Expense Liabilities	\$10.7 million
Total Liabilities	<u>\$21.9 million</u>

2. Adopt an **average cost of new claims** of **\$23,000** (\$12,000 indemnity and \$11,000 expense) for the first six months of 2021. The cost has increased \$2,000 from January 1, 2020. Throughout 2020, the cost of new claims remained stable at \$21,000. All of the increase was borne by the indemnity portion of the claim cost. The expense portion remains the same.

3. Adopt **AOE, ERC, and Suspense liabilities** as follows:

AOE Liability – No change. Current liability of **\$2.4 million** is approximately 10.96% of claims liability. Actuarial recommendation is 5-10%.

ERC Liability – increased by \$400,000 to \$3.6 million

Suspense Liability – No change.

Mr. Karlin moved and Mr. Batlan seconded that the recommendations listed above be approved. Motion passed unanimously 6-0 (3 absent).

A discussion ensued about socially responsible investment options. Ms. Morrow will work with RVK to provide the board with information related to portfolio options.

iii. 2020-12-31 Rudd and Wisdom Actuarial Report
See above discussion.

iv. Divestment of Bank Loans – PLF Policy 5.200(I)

Mr. Haker moved and Mr. Karlin seconded to divest our portfolio of all bank loans and allocate 3% to equities (bringing the total to 32%) and 2% to fixed income (bringing the total to 35%). Motion passed unanimously 9-0.

(B) CEO Search Committee Update (Ms. Johnnie/Mr. Haker/Mr. Williams/Ms. Graham/Ms. Hazilla/Ms. Mesirov):

Ms. Johnnie reported that the committee met on February 3 to discuss concepts/options of the hiring process. There was one change to committee members. Hong Dao stepped off the committee and Kyra Hazilla stepped on. Ms. Johnnie noted that Sharnel Mesirov and Kyra Hazilla are staff members, representing all staff. The committee's next meeting is on February 23 and she hopes they will have the name of the consultant that will assist the committee at that time. Ms. Johnnie asked people to review the CEO profile that was sent to all staff and to let her know if there are any recommended changes. The committee members are engaged in the process and Ms. Johnnie thanked Ms. Mesirov for the huge amount of work she did in looking at different options for a consultant.

9. LIAISONS' REPORT (BOG): (Mr. Wade/Ms. Hirschbiel)

Mr. Wade had to exit the meeting early, but prior to leaving, he said they testified before the judiciary and gave a general report about what is going on. There was a very nice shout out about the PLF in written testimony.

Ms. Hirschbiel reported that the next BOG meeting is on February 12, 2021. The BOG held a special meeting in January to adopt areas of focus for 2021. The BOG will continue to work on Board leadership development. One of Mr. Wade's themes this year is Good Governance. He is focusing on trying to increase board member leadership skills and governance skills and they are working on trainings and workshops for board members. The BOG is also working on the Diversity Action Plan, a project that began last year. They hope to have it complete by the April board meeting. They are continuing with the review of the OSB Governance Model. Ms. Hirschbiel reported that the diversity of the BOG varies from year to year. Last year was one of the most diverse boards ever, this year it is one of the least diverse.

The Bar is working on updating their bylaws. They are dividing them into Bylaws and Policies.

The Bar is in the middle of the legal publications program review. A number of proposed amendments to section bylaws were presented and they are hoping to have feedback for the April meeting.

The BOG has approved an amendment pertaining to ORS 731.036 that will be presented to the legislature in 2021. This statute includes a cross reference to the PLF. The PLF is exempt from the insurance code and thus the reference in the insurance code makes sense.

Ms. Hirschbiel said that another area of focus for Mr. Wade is well-being. This is a great way for the OSB and PLF to collaborate around common goals. The Policy and Governance Committee will take a second look at the National Wellness Task Force Report. The PLF brought it to the BOG's attention some time ago and requested the BOG adopt a wellness CLE. This is another great example of partnership around common interests. They are reviewing the report to see if there is anything they can or should be doing. Ms. Hirschbiel asked Mr. Crawford if the PLF is still looking at that report as a guide toward long-term planning around wellness initiatives at the PLF. Mr. Crawford said we are and we could get more involved with it. Mr. Crawford asked Ms. Hirschbiel to keep him in the loop.

Ms. Livermore asked if the April 15 training session includes Bar staff or just BOG members and PLF board members. Ms. Hirschbiel and Ms. Bernick discussed this and decided it makes sense to include some staff. The thought is to invite the senior leadership team and OAAP attorney counselors. They are open to discussing this further. There is an educational piece to the training but also understanding meaningful changes that can be made in life and work. A meeting is scheduled with the speaker on February 19.

9. EXECUTIVE SESSION

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

Ms. Livermore called the meeting into executive session at approximately 1:09 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.

10. OPEN SESSION

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

Due to the length of the meeting and the lack of a quorum, we did not return to open session to vote on the following minutes. They will be presented at the April 16 board meeting.

- i. 2020-12-04 Executive Session Minutes.
- ii. 2020-12-04 Executive Session Minutes – BOD CEO Evaluation.

iii. 2020-12-07 Executive Session Minutes.

iv. 2021-01-13 Executive Session Minutes.

11. UNFINISHED AND NEW BUSINESS

There was no unfinished or new business to discuss.

12. ADJOURNMENT

The meeting adjourned at approximately 1:47 p.m. (following executive session).

These minutes were approved by the PLF Board of Directors at its April 16, 2021 board meeting.