

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

**April 22, 2016  
Tigard, Oregon**

The regular meeting of the Board of Directors and the PPMAC meeting was called to order at approximately 8:30 a.m. at The Professional Liability Fund in Tigard, Oregon by Chair, Bob Newell. Present in addition to Mr. Newell were Directors Julia Manela, Tim Martinez (via telephone), Teresa Statler, Dennis Black, Rob Raschio, Molly Jo Mullen, and Tom Newhouse. Present during portions of open session were BOG member Guy Greco and OSB CEO Helen Hirschbiel. Also present during all or part of the meeting were PLF staff members Carol Bernick, Barbara Fishleder, Bruce Schafer, Betty Lou Morrow, Cindy Hill, Jeff Crawford, Emilee Preble, Sarah Troutt, Patricia Nation, Brad Tompkins, and John Berge.

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

**1. OPEN SESSION**

**(A) Determination of Quorum and Compliance with Public Meetings Notice Statute Requirements:**

Mr. Newell verified a quorum and confirmed that the public meetings notices had been done as required by statute.

BOG member, Guy Greco, introduced himself.

**(B) Open Session Minutes (02/05/16):**

*Rob Raschio moved and Julia Manela seconded that the minutes be approved as written. Motion passed unanimously 8-0 (1 absent).*

**(C) Committee Minutes: 12/01/15 (Finance); 02/01/16 (Finance); and 02/05/16 (Claims):**

There were no comments on the minutes and no action is required.

## 2. PLF REPORT

### (A) BarBooks:

Ms. Bernick recommends that the PLF continue to contribute \$200,000 annually toward BarBooks in perpetuity, absent some event or reason that causes the PLF to stop the payment. The payment will be highlighted when the budget is presented annually for review so the Board can raise any questions or concerns it may have. She referred the Board to the materials.

At the last meeting, the Board asked how much it costs the OSB to produce BarBooks. Rod Wegener prepared a spreadsheet showing costs and revenue for 2015. Different books are produced each year so costs change but on average, the cost is approximately \$885,000 annually. The Bar receives approximately \$270,000 in revenue each year. This means the OSB is losing approximately \$615,000 annually to keep the program going.

Another question that came up at the last meeting was how much time the OSB gives the PLF in terms of working on the PLF's Red Book (which is part of the agreement for the PLF's contribution to BarBooks each year). Over the last three years, OSB staff spent about 1500 hours on the Red Book. Tanya Hanson, PLF editor, reported to Ms. Bernick the Bar staff's assistance was invaluable.

Finally, Ms. Bernick reported that the Lawyer Referral Service made \$21,000 in 2014 and \$122,715 in 2015.

*Dennis Black moved that the Board approve an annual contribution of \$200,000 in perpetuity to the OSB for BarBooks – with the provision that the PLF has the opportunity to revoke the contribution with sufficient notice to the OSB. Teresa Statler seconded the motion. Motion passed unanimously 8-0 (1 absent).*

### (B) General Report:

#### (i) WSBC – March 30 through April 2, 2016

Carol Bernick reported that she attended the Washington State Bar Conference and reported it was excellent. The conference focused on the future of the legal profession. Ms. Bernick is talking with Helen Hirschbiel about some of the programs from other states that might be copied here.

#### (ii) LPL – April 27-30, 2016

Ms. Bernick reported that she will attend the LPL conference next week and will meet with most of the reinsurers on our slip.

#### (iii) 2016 CFO of the Year – Betty Lou Morrow

Carol Bernick announced that Betty Lou Morrow is an honoree in the CFO of the Year Award for Non-Profits from the *Portland Business Journal*. There will be a lunch honoring all award recipients on May 19 and the PLF will purchase a table.

(iv) Meeting with Faraday

Ms. Bernick reported that Faraday was here on April 20 to discuss our renewal and the rating changes. Chris Thorne of Faraday put in a tremendous amount of time on this project. He felt it went well. Faraday also did a brief audit on some excess files. They commented about how impressed they are with the quality of the PLF claims attorneys and the defense panel.

(v) Additional Information

The Small/Solo Firm has asked for changes in the way covered parties can make installment payments. They have requested ACH payments (electronic payments). We looked into it and discovered there are costs (a fee and percentage of transaction). It would require a significant addition to our staff time to set it up. We decided it was too expensive. A lawyer can set up payments on his/her own through his/her bank without the PLF incurring additional costs. The Section is considering taking the issue to the HOD or Legislature. Tim Martinez said he had some ideas for potential solutions and agreed to talk with Ms. Morrow about options.

Ms. Bernick announced that there are two BOD attorney positions coming up. We are losing complex commercial litigator and creditors' rights attorneys with Bob Newell and Julia Manela leaving the board at the end of the year. The PLF Claims Attorneys continue to say these two areas of practice are helpful. Estate planning is another area. Ms. Bernick welcomes recommendations. We have not had the influx of applicants like we did last year.

We are in the process of scheduling a claims audit and have identified John Hester (Senior Claims Attorney at North Carolina NABRICO) and John Kilcullen (retired PLF defense panel member) to perform the audit. This combination of NABRICO staff and retired defense panelist has worked well in the past.

**(C) Outside Activities on Behalf of the PLF:**

Carol Bernick referred the Board to her list of activities on behalf of the PLF since the last board meeting.

**(D) NABRICO 2016 – Vancouver, B.C. – September 14-16:**

Ms. Bernick referred the Board to the materials and asked them to let Cindy Hill know if they plan to attend and she will keep them in the loop.

### **3. CLAIMS REPORT**

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

Bruce Schafer gave the claims report.

As of April 20, we had opened 280 claims and 103 suspense files. Extrapolating those numbers out at the same pace would be 953 claims and 340 suspense files for the year. Last year, we had 808 new claims. It is early in the year, but at this pace, it would be an increase of 18% in claims. The numbers have fluctuated between 930 and 980. Mr. Schafer is confident there will be a significant increase in claims this year.

Carol Bernick reviewed the first quarter claims and compared them to claims over the previous two years. She looked at area of law, years of practice, firm size and location to see if she could find any spikes. She determined there were no significant differences, other than a slight rise in real estate claims.

The claim count was in the 900's the year before. We have the lowest unemployment in history (since keeping track in Oregon) and we are the second fastest economy in the country. Other NABRICO firms have hit historic lows. Thus, the increase in claims is somewhat surprising.

Bob Newell noted that 2015 may have been an anomaly. Rob Raschio asked if this number reflects a large number for a specific Covered Party. Mr. Schafer said it did not.

### **4. FINANCIAL REPORTS**

#### **(A) February 29, 2016 Financial Statements:**

Betty Lou Morrow referred the Board to the materials. She noted that the cash balance this year is higher than the same time last year. This is due to the timing of transfers between the cash account and the low duration investment account.

Ms. Morrow noted that if the trend towards high claims frequency continues, it will have a negative impact on the budget. There were 834 claims budgeted for 2016 and the PLF is currently on pace for 953 claims.

#### **(B) March 31, 2016 Brief Portfolio Review:**

Looking at the 1<sup>st</sup> quarter investment portfolio, we have gained back almost \$600,000 (see page 52 of materials) of the approximate \$1.2 million that was lost in the first two months of 2016. This is a positive trend and is necessary to meet operational budgets reliant on investment income.

#### **(C) BOD Tax Consequences – Reimbursement of Spousal Expenses (1099):**

Ms. Morrow explained what triggers 1099 qualifying expenses for BOD members. Briefly, if the BOD member is accompanied by an individual who does NOT serve a direct business role for the PLF, then all expenses reimbursed for that person accrue against the \$600 threshold for preparing a 1099. This has been confirmed by the PLF auditors Kern & Thompson. Ms. Morrow wants to make Board members aware of this IRS requirement as they decide if they will have accompaniment for out of town events. She also noted that for the group meals that are attached to Board meetings, the cost of the companion meals are not qualifying expenses for 1099 purposes.

## **5. PLF PERSONAL AND PRACTICE MGMT. ASSIST. COMM. REPORT**

### **(A) 1<sup>st</sup> Quarter 2016 Report and Loss Prevention Update:**

Ms. Fishleder gave a general update. She noted that our most recent issue of *In Brief* includes an article about Beverly Michaelis and advertises the open PMA position. Ms. Fishleder noted that she is very impressed with our current PMA team and how willing everyone has been to step up to the challenges resulting from Beverly's departure.

Ms. Fishleder reported that she is working with Charles Schulz at the OSB with respect to how the BBX can obtain information they need about OSB candidates, without delving into areas about the applicant that are not relevant to their character or fitness to practice. The conversations have been very productive and we will continue them later this summer.

OAAP continues to reach out to law students. The OAAP and Barbara Fishleder will be meeting with Lewis and Clark to discuss greater OAAP visibility at the law school and ways we can better assist law students in need. One of the options on the table is for the OAAP to establish some office hours at the schools. Lewis & Clark was very responsive to our ideas and we will continue to collaborate when school resumes in the fall. Ms. Fishleder noted that the law school counseling programs utilize an EAP-style of counseling, in that the number of sessions is limited. Bryan Welch has been doing outreach to the Multnomah Bar Young Lawyers Section as well.

Last month, Barbara Fishleder and the PMAs attended the annual ABA Tech Show. She noted that it is an excellent and valuable conference that provides many educational and networking opportunities to those who attend.

The OAAP held a successful women's retreat at the coast, with the largest attendance – and the best weather - ever. The OAAP will also be starting a new group in June for lawyers who want to change unhealthy habits, such as gaming or overeating.

Ms. Fishleder referred the Board to the materials regarding the First Quarter 2016 Report and to the complimentary comments about the Practice Management Advisors.

Carol Bernick reported that Beverly Michaelis's schedule changed such that she was unable to attend the meeting today. We had planned to honor her for her outstanding service

at the PLF. Ms. Bernick encouraged everyone to take a minute to send her a note. She's a terrific asset to this organization.

Dennis Black commented that it's clear that Barbara Fishleder and her department provide most of their services to small firms. Mr. Black suggested Ms. Fishleder reach out to that section. Carol Bernick said that Barbara Fishleder is already an ambassador to that group. Barbara Fishleder added that the PLF often also cosponsors their annual meeting.

Carol Bernick suggested that a future *In Brief* include a breakdown of what the \$3500 annual assessment goes to so lawyers can appreciate how many resources we devote to loss prevention.

There was a suggestion to check into the use of lottery funds to assist the PLF/OAAP with the group(s) that deal with gambling addiction. Ms. Fishleder agreed to do so.

## **6. COMMITTEE REPORTS AND ASSIGNMENTS**

### **(A) Claims Committee:**

Bob Newell reported that the Claims Committee met on April 18. They reviewed the high reserve cases and noted a spike in claims.

### **(B) Coverage Committee:**

Carol Bernick reported in Saville Easley's absence. Ms. Bernick reported that PLF staff (led by claims attorney, Madeleine Campbell) is working on a complete rewrite of our Coverage Plan. Substantively, there are not many significant changes, but it flows better. We are moving the "comments" into the language of the Plan and continuing our effort to remove extraneous language. Defense Panel member Bill Earle is very involved, as is Bruce Schafer, Jeff Crawford, Emilee Preble, and Carol Bernick. The rewrite will be brought to the committee in a month or so, then to the Board for discussion/approval.

### **(C) Excess Program Committee:**

Teresa Statler turned this portion of the meeting over to Emilee Preble. Ms. Preble distributed a handout that included renewal data/statistics for the excess program. At the February board meeting, the renewal was mostly done, but not quite. The overall combined book of business is up 1% in both firm and attorney count. 95.6% of our firms renewed. The losses were less than in prior years. We had a 77% increase in new firms over last year and a 512% increase in attorneys. We believe this increase is due to direct marketing. Virtually every firm we met with personally returned to the PLF. We are very happy with the new firm results, as are the reinsurers.

The Excess Committee will be working soon on reviewing how the excess application asks questions to determine if a firm presents securities risks under ORS 59. Carol Bernick looked at claims for the past 10 years and securities claims are less frequent but most severe.

Many Covered Party's had not disclosed on their applications that they were doing securities work. We are going to revise our application to better address the area of law. We hope the 2017 application will give us what we need.

**(D) Finance:**

(i) Draft Audit – Years Ended December 31, 2015 and 2014

Tom Newhouse turned this portion of the meeting over to Betty Lou Morrow. Ms. Morrow submitted the Draft audit to the Board of Directors (see materials). She noted that there is a \$400 difference from the December 31, 2015 statements that were included in the February board package to the present audited draft statements. Ms. Morrow applauded her team for their work to make the audit successful and what they do year round. She stated the PLF has a remarkably detail-oriented accounting staff who are very committed to the highest standard of work.

Ms. Morrow reviewed the draft audit report noting again there would be no surprises as the Board essentially saw the statements at the February board meeting. Ms. Morrow did note however that the statements will remain in draft format until all of the necessary PERS information has been received from the State of Oregon that will allow completion of newly mandated GASB reporting requirements. All PERS employers are now required to reflect the employer share of the PERS liability on the audited financial statements. It is expected these numbers will be received from the State in June at the earliest.

(ii) Draft Governance Audit Letter – December 31, 2015

Ms. Morrow referred the Board to the audit letters. This is basically a PLF audit report card. The auditors reported no disagreement in financial presentation and the PLF was forthcoming in all of the information requests. No adjusting entries were required by the auditors and it was a 100% clean audit.

**(E) Investments: December 31, 2015 – Investment Performance Analysis:**

Tim Martinez referred to the report in the materials. He noted that Betty Lou Morrow has done a good job reporting current portfolio values and status. The Investments Committee is working jointly with the Finance Committee on the establishment of an appropriate Net Position value. In that context, the asset allocation of the investment portfolio is being reviewed.

Betty Lou Morrow reported that RVK is recommending the PLF retire PIMCO from their portfolio. Their funds have been underperforming and RVK is recommending the PLF consider bank loan funds in replacement of the PIMCO funds. There are pros and cons to bank loan funds. Ms. Morrow's greatest concern is liquidity and the PLF's ability to access cash easily to pay out claims. No purchases/redemptions of new funds will be made until the committees make a recommendation about net position. Ms. Morrow briefly reviewed the investment

success of 2015 until the market declined substantially in the last quarter of 2015. Fortunately, at this point in 2016 the trends appear to be moving in a positive direction.

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

Julia Manela stated that the committee has not met and there is nothing to report.

**(G) Special Issues:**

Rob Raschio stated that there are no special issues and nothing to report.

Mr. Raschio reported about a lawyer who has run into a barrier of being able to pay his PLF assessment. He has been a long-term capital murder defender. He cannot pay bar dues either. Mr. Raschio has discussed the situation with Carol Bernick and his concern about people like this. There are some people in Oregon's legal community who do exclusive public defense work and they make about \$45 an hour. It makes it very difficult for them to pay their PLF assessment. He asks that the Board consider discussing possible ways to assist people who do public interest work with their assessment.

Bob Newell stated that rather than open this up for discussion now since it was not on the agenda, he felt a special committee should review the issue and make a recommendation. Mr. Newell appointed a special committee Molly Jo Mullen (Chair) and Rob Raschio and asked that they investigate the issue.

Bruce Schafer pointed out that for the last 40 years, the PLF has been a one-size fits all company and asked that the committee keep this in mind. Betty Lou Morrow noted that every time assessments come due, the accounting department gets numerous calls from lawyers facing hardships. We need to be very careful when making any decisions.

Bob Newell suggested that questions pertaining to this issue be directed to Molly Jo Mullen and Rob Raschio.

**7. LIAISONS' REPORT (BOG): Draft BOG Minutes: 01/08/16:**

Carol Bernick gave a brief BOG update.

The BOG voted on recommended changes to the discipline process. While there were many recommended changes, the significant recommendation was that an independent judge sit on all discipline cases going forward. That judge would make decisions on all pre-trial matters. The BOG conditioned its approval on that person being an employee of the court. The Supreme Court is meeting in April to discuss all the recommendations.

**8. CHAIR REPORT**

**(A) Updates:**

Bob Newell discussed the issue of BOD PLF email addresses. The PLF is not receiving responses to emails in a timely fashion. We either need to do away with them, make them optional, or respond to emails in a timely manner. Carol Bernick reported that the BOG did away with OSB email addresses. Bob Newell stated that he does not like using the new email address.

Bob Newell asked the Board for its consensus but stated he is inclined to opt out. The Board concurred.

Carol Bernick asked Board members to be more diligent and responsive to email polls and invites. She stated that Cindy Hill will send an email next week, asking which email Board members prefer to use. If some want to stay with the PLF email address, that is fine.

Julia Manela feels that there should be some expectations as to how board members are handling data. She asked the PLF to look at the issue and possibly have instructions that are included with the materials. Carol Bernick stated that we will prepare a checklist or something along those lines.

Bob Newell commented that the next 3 board meetings are out-of-town. There will be a CLE/local bar reception on Thursday prior to each of the board meetings. He feels it is important for Board members to attend the CLE and/or the reception. It requires arriving a little earlier on Thursday, but he encourages attendance if possible.

**9. \*EXECUTIVE SESSION**

Bob Newell 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.

**10. OPEN SESSION**

**(A) Approval of Closed Session Minutes in Open Session: 02/05/16:**

*Julia Manela moved and Dennis Black seconded that the minutes of February 5, 2016 be approved as written. Motion passed unanimously 7-0 (2 absent).*

11. **ADJOURNMENT**

The meetings adjourned at approximately 11:25 a.m.

**These minutes were approved by the Board of Directors at its June 3, 2016 board meeting.**