

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

**August 12, 2016
Baker City, Oregon**

The regular meeting of the Board of Directors and the PPMAC meeting was called to order at approximately 9:00 a.m. at the Geiser Grand Hotel in Baker City, Oregon by Chair, Bob Newell. Present in addition to Mr. Newell were Directors Julia Manela, Tim Martinez, Teresa Statler, Dennis Black, Saville Easley, Rob Raschio, and Tom Newhouse. Also present were PLF staff members Carol Bernick, Bruce Schafer, Betty Lou Morrow, Cindy Hill, Jeff Crawford, and Madeleine Campbell.

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.

(B) Open Session Minutes (06/03/16):

Teresa Statler moved and Tim Martinez seconded that the minutes be approved as written. Motion passed unanimously 7-0 (2 absent).

(C) Committee Minutes: 04/12/16 (Investments), 04/12/16 (Finance), 06/20/16 (Coverage), 06/28/16 (Finance), 07/20/16 (Excess), and 07/25/16 (Nominations):

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

2. PLF REPORT

(A) General Report (with Exhibits):

Carol Bernick referred the Board to the Steve Carpenter Celebration of Life pamphlet in the materials (beginning on page 21). Mr. Carpenter passed suddenly and unexpectedly on July 16. Ms. Bernick noted that Steve was well thought of and will be missed, not just by PLF staff but by the legal community.

Ms. Bernick reported that she attended the OSB conference “How Today’s Lawyers Can Adapt to Tomorrow’s Changing Legal Profession.” She felt it was an excellent program. She referred the Board to the materials beginning on page 23.

There was a 2-day underwriting audit from Hanover (one of our reinsurers). Betty Lou Morrow, Emilee Preble and Jeff Crawford should be commended for all of their hard work on the new rating system. The auditor reported that our system (seeing the underwriting files beginning to end) is among the best he had seen.

(B) 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.

(C) Board Member Recommendations – Terms beginning January 1, 2017:

Ms. Bernick referred the Board to the materials. She reported that we had fewer applications than last year. The claims attorneys would like a board member with estate planning background and a litigator with creditors rights experience. Ms. Bernick recommends Holly Mitchell (Duffy Kekel) and Megan Livermore (Hutchinson Cox) as the two top candidates. Ms. Mitchell has been an estate planning lawyer for 35 years and is highly regarded. Julia Manela knows Ms. Livermore and reported that she is also very highly regarded. These individuals also give us geographic diversity.

Ms. Bernick commented about a few other people on the list. Mr. Welsh (Albany) came highly recommended by Mitzi Naucner, but he does not have a lot of experience. Mr. Welsh suggested having less experienced people on our board would be a benefit. If we were simply a policy board, Ms. Bernick would agree, but we need experienced practitioners because of the Board’s role in claims settlements.

The BOG prefers that we submit at least one more name than openings on the board, so Ms. Bernick recommends Lisanne Butterfield. She has been a member of the Client Security Fund and has done a lot of volunteering for the Oregon State Bar. She represents financial professionals.

Dennis Black moved and Saville Easley seconded that the three names listed above (Mitchell, Livermore and Butterfield) be submitted to the OSB Board of Governors.

Rob Raschio discussed the diversity issue brought up by Mr. Welsh and agrees with his analysis. Tim Martinez noted that historically we have had difficulty attracting large firms because of the prohibition of directors and their firms prosecuting or defending claims against lawyers. Tim Martinez feels it is valuable to have a Board member from a large law firm. Rob Raschio concurs with Mr. Martinez.

Motion passed unanimously 8-0 (1 absent).

(D) Proposed 2017 BOD Meeting Schedule:

Ms. Bernick referred the Board to the memo on page 51 of the materials. She asked that board members look over the dates and let her know within one week if there are any problems. Otherwise, we will go with the dates listed.

Tim Martinez stated that he likes the idea of the local bar reception and CLE. He hopes we continue to do this.

(E) 2015 Annual Report:

Carol Bernick referred the Board to the Annual Report beginning on page 52 of the materials. The main highlights are that the claim count is the lowest in recent memory. It is back up a bit so far this year, but has leveled off from a sharp spike in the first quarter. We have spent a lot of time in the last year revising our tracking of claim information so we can have more fulsome data about areas of law and following the stages of the case.

3. CLAIMS REPORT

(A) General Claims Report (Open Session):

Bruce Schafer gave the claims report.

As of August 10, we had opened 535 new claims and 228 new suspense files, which is a pace of 878 claims and 375 suspense files for the year. The pending count as of July 31, 2016 was 755 and the count from August 2015 through July 2016 was 773 new claims, compared to 816 for 2015 and projected pace of 878 for 2016. Mr. Schafer suggested we may be in a temporary low in terms of frequency; he expects frequency will go up. Mr. Schafer informed the Board he and Carol Bernick had deferred the decision on whether to replace Steve Carpenter until September.

Mr. Schafer reported there will be a claims audit (required every five years) on September 19 and 20, 2016. Retired defense panel member, John Kilcullen and Warren Savage of Lawyers Mutual Insurance Company in North Carolina (North Carolina NABRICO company) will perform the audit. We will provide them with a random cross-section of all types of cases.

Bruce Schafer commented about Steve Carpenter. As a claims attorney, he did great work and was very intellectual. Most people we work with have just made a mistake. The hardest part is dealing with lawyers who have other problems. Steve gravitated to these types of people. He provided a valuable component to our group and was very well liked. Rob Raschio suggested the Board express condolences through the PLF to Steve's family.

4. FINANCIAL REPORTS

(A) June 30, 2016 Financial Statements:

Carol Bernick stated that the 2017 Budget is not on our agenda. It is normally discussed at the August board meeting. When working on the budget and the reserves, Ms. Bernick and Ms. Morrow decided to move it to later in the year because there are so many projections involved. It will be discussed at the October board meeting each year. Tim Martinez noted the budget was historically done earlier to ensure enough time for both the PLF Board and the BOG to approve it.

Betty Lou Morrow discussed the revised 2015 PLF Financial Audit.

Tom Newhouse moved and Rob Raschio seconded that the Financial Audit be approved.

Tom Newhouse reminded the Board that the financial statements were discussed in great detail at the last meeting. This revised audit only involves the final PERS numbers.

Motion passed 8-0 (1 absent).

Ms. Morrow referred the Board to the June 30, 2016 Financial Statements. Overall, the PLF is trending in a positive direction. Investments are starting to recover, and the claim count is starting to come down. The June 2016 actuarial adjustment for claims development provided a \$1.6 million positive impact to the in-year surplus. The PLF is in a good place moving into the Fall.

5. PLF PERSONAL AND PRACTICE MANAGEMENT ASSISTANCE COMMITTEE REPORT

(A) Loss Prevention Update:

Carol Bernick reported in Barbara Fishleder's absence.

Ms. Bernick informed the Board that Barbara Fishleder's father passed away last Sunday. Barbara has been out of the office quite a bit while her father was in hospice. She had previously planned a vacation and had not planned to attend this board meeting. It has been a tough time for Barbara but her team has pitched in and I believe she has felt supported. The good news is that we hired a new Practice Management Advisor, Rachel Edwards. Her bio is in the materials. Ms. Edwards is very engaged and excited about being here. Barbara Fishleder involved the other PMAs in the interviewing process and they are committed and enthusiastic about training her. She is a great addition.

The road show has been all over the state. The technology tips and practice pointers CLE has been well received. Covered Parties outside Portland very much appreciate that the PLF does this. Dennis Black asked who would be doing the road show in Barbara's absence. Ms. Bernick stated that the plan was always that Barbara and the PMAs would share the load.

The OAAP hired a facilitator to help them work through some philosophical differences about approach. It is going well and the conversations are productive. They continue to do great work. Next year, Mike Long will co-chair the CoLAP annual conference. This is a significant honor for him.

Teresa Statler commented that she attended the shred day at the PLF. Ivan Hernandez was the staff person overseeing the program. She noted that it was well received.

6. COMMITTEE REPORTS AND ASSIGNMENTS

(A) Claims Committee:

Bob Newell stated that there is nothing to report at this time.

(B) Coverage and Excess Committees (Combined):

Carol Bernick introduced PLF claims attorney, Madeleine Campbell. Ms. Bernick stated that not only did Ms. Campbell prepare the revisions to the Primary and Excess plans, she also clearly explained the revisions and provided charts. Ms. Campbell did a fabulous job.

Ms. Bernick reported that the coverage plans were completely rewritten and presented to the Coverage Committee. Bob Newell reported that the Coverage Committee studied the changes carefully and that they had received a lot of time and attention. Bruce Schafer noted that most of the changes were to simplify and clarify the Plans.

Ms. Bernick explained that the first two pages of the cover memo in the materials summarize the changes. Saville Easley reported that there are two outstanding issues the Board needs to resolve with respect to changes to the Plans. Madeleine Campbell then discussed those issues. The first involved the definition of "Family Member" in the Family Member exclusion. There was significant discussion. The BOD also agreed with the original proposed language for the Sanctions exclusion.

Bruce Schafer suggested that Madeleine Campbell and the Committee work out the wording. Teresa Statler said that once the committee and BOD approve the language, an *In Brief* article should be published explaining the changes, as she does not think people know this.

Bob Newell asked if, procedurally, the Committee wants to adopt all other changes and leave this one until the next board meeting. Carol Bernick stated that the coverage plans need to be presented to the BOG for their approval, so it cannot wait until the next board meeting; however, a conference call could be scheduled.

Bob Newell asked for a motion to approve all changes except the Family Member exclusion.

Teresa Statler moved and Saville Easley seconded the motion that all changes to both the Primary and Excess Plans be approved as written, except the Family Member exclusion. Motion passed unanimously 8-0 (1 absent).

Jeff Crawford again thanked Madeleine Campbell for her work on these revisions. Madeleine Campbell expressed her appreciation to Carol Bernick, Bruce Schafer, Jeff Crawford, Emilee Preble and outside counsel who all worked together to make this happen.

Saville Easley encourages the Board to read the Plans, if they haven't done so already. They are definitely much better than before.

(C) Excess Program Committee: 2017 Excess Application:

Teresa Statler turned this portion of the meeting over to Jeff Crawford.

Mr. Crawford explained that under PLF policies, the Board of Directors approves the Excess Application each year. The major change this year is that we have revised the securities law supplement, but also included a business law supplement. The business law supplement hopefully will flush out those firms who are providing securities work.

The committee asks that the 2017 Application be approved as written. Carol Bernick noted that it is very significant to our reinsurers that we are trying to identify high risk firms.

Bob Newell questioned why the Board has to approve the Excess Application each year. Jeff Crawford stated that, historically, the Board needs to approve the loss prevention questions of the application. It could be delegated to the staff, as we make underwriting decisions as well. Carol Bernick stated that we will take a look at it for the future.

Rob Raschio moved and Tom Newhouse seconded that the 2017 Excess Application be approved as written. Motion passed unanimously 8-0 (1 absent).

(D) Finance:

Betty Lou Morrow referred the Board to the materials including the two actuarial reports prepared by Rudd & Wisdom.

The actuaries reported that claims frequency in the first six months of 2016 is at 12.84%, up from 11.57% in 2015. The PLF has had only 125 claims since 1978 at or near limits, demonstrating that current limits are adequate.

The actuaries are recommending for the 2nd half of 2016 that the cost of new claims be set at \$22,500 (\$10,500 indemnity and \$12,000 expense). Their recommendation reflects a \$500 increase in expense and \$500 decrease in indemnity.

Additionally, the actuaries recommend claims liability reserves be set at \$13.3 million for indemnity and \$15.1 million for expense. The actuarial recommendations for reserves is set at a 50% confidence level.

Carol Bernick noted that we continue to have very competitive rates from our defense panel members. We pay significantly less than the Portland market for litigation expertise. Tim Martinez asked why they are willing to charge reduced rates for the PLF. Ms. Bernick stated that they see it as a service to the profession, and they find the work interesting.

Ms. Morrow then discussed the proposed assessment rate for 2017. The actuaries have stated the current level of \$3500 should statistically be adequate to support the cost of claims at the PLF. The actuaries stated the average cost per attorney of a single claim remains steady at \$2730. The margin between the cost of claims and the assessment is intended to defray operational costs.

Ms. Morrow then introduced the net position discussion. Ms. Bernick explained that a year ago, a memo was presented to the Board, suggesting lowering the net position, but not changing the assessment. At that time, the Board asked for a framework to establish the appropriate net position. Carol Bernick and Betty Lou Morrow spent the last year developing that framework and assigning values to each of the stated goals with the overall goal of keeping the assessment stable.

In summary, the Finance Committee is recommending a \$13.3 million net position goal. The Board then discussed each component individually.

Julia Manela and Bob Newell thanked Betty Lou Morrow for her hard work on coming up with a net position number.

Ms. Morrow noted that new government reporting requirements of PERS liabilities mean the PLF shows a liability on audited financial statement of \$1.8 million. This liability is not included in the net position goals. Tom Newhouse stated he does not believe the PERS exposure should be part of the net position.

Tim Martinez asked if we see the Board revisiting these numbers monthly, semi-annually or how often. Tom Newhouse suggests annually, after the actuarial report. Carol Bernick agrees with at least annually but at times, some of the components may need to be addressed more frequently. Mr. Martinez asked if the actuaries were comfortable with our proposal. Ms. Bernick said they expressed that the claims and operations exposure of the PLF have been represented accurately.

Dennis Black stated that this was the first year he has seen a rational basis for a net position goal. It is clear there was a lot of thought given to the development of this figure. In a year, it will be looked at again. However, it is a rational start to addressing the concept of the reserve.

Bob Newell moved and Julia Manela seconded that all 4 recommendations (listed below) on page 301 of the materials be approved as written:

1. Adopt the following liabilities for claims as of June 30, 2016:

<i>Indemnity Liabilities</i>	<i>\$13.3 million</i>
<i>Expense Liabilities</i>	<i>\$15.1 million</i>
<i>Total Liabilities</i>	<i>\$28.4 million</i>

2. Approve the cost of new claims remain at the same level of \$22,500 for the final six months of 2016.

3. Approve the Primary Program assessment remain at \$3,500.

4. Adopt an increased net position goal from \$12 million to \$13.3 million for combined Excess and Primary Program.

Motion passed unanimously 8-0 (1 absent).

(E) Investments:

Tim Martinez stated that there is nothing to report at this time.

(F) Long Range Planning/Communications:

Julia Manela stated that there is nothing to report at this time.

(G) Special Issues:

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

7. LIAISONS' REPORT (BOG): Draft BOG Minutes: June 24, 2016

Helen Hirschbiel gave the BOG report.

Ms. Hirschbiel gave a follow-up on Carol Bernick's comments about the Futures Conference. Ray Heysell's goal is to bring these concepts to the membership. The morning session was videotaped and they plan to make it available to the entire membership (hopefully within the next couple of weeks). She encourages people to take a look at it.

Earlier in the year, the BOG approved the creation of a Futures Task Force. The BOG anticipates two committees with two separate charges. One committee will look at the concept of incubator law firms. The second committee will be focused more on the rules of professional conduct and regulations of the practice of law. The OSB General Counsel is concerned that some alternative service providers (for instance, some of what Avvo does) violates our rules of professional conduct as currently written.

The BOG approved changes to the MCLE rules. One major change is that lawyers will now be able to get credit for classes that relate to the business side of law and the advertising and marketing of their business.

The OSB is working in collaboration with The Campaign for Equal Justice and the Supreme Court on setting up an access to justice conference.

8. CHAIR REPORT

(A) Updates:

Bob Newell stated that there is nothing to report.

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: June 3, 2016 and July 20, 2016:

Tim Martinez moved and Rob Raschio seconded that the executive session minutes of June 3, 2016 and July 20, 2016 be approved as written. Motion passed unanimously 7-0 (2 absent).

11. ADJOURNMENT

The meetings adjourned at approximately 12:26 p.m.

These minutes were approved by the PLF Board of Directors at its October 14, 2016 board meeting in Sisters, Oregon.