

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

**February 5, 2016
Tigard, Oregon**

The regular meeting of the Board of Directors and the PPMAC meeting was called to order at approximately 9:12 a.m. at The Professional Liability Fund in Tigard, Oregon by Chair, Bob Newell. Present in addition to Mr. Newell were Directors Julia Manela, Teresa Statler, Dennis Black, Saville Easley, Rob Raschio, Molly Jo Mullen, and Tom Newhouse. Present during open session only was BOG liaison Tim Williams (via telephone). Also present during all or part of the meeting were PLF staff members Carol Bernick, Barbara Fishleder, Betty Lou Morrow, Cindy Hill, Emilee Preble, Maureen DeFrank, Holli Houston, Patricia Nation, Pam Stendahl, Sarah Troutt, Steve Carpenter, Hong Dao, and Bryan Welch. Defense Panel member William (Bill) Earle attended a portion of executive session.

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

Mr. Newell welcomed new board members, Molly Jo Mullen and Tom Newhouse, and asked each person to introduce themselves.

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 (12/04/15):

A correction to the December 4, 2015 minutes was made.

Rob Raschio moved and Teresa Statler seconded that the minutes be approved as revised. Motion passed unanimously 8-0 (1 absent).

(C) Committee Minutes:

There were no committee minutes.

2. PLF REPORT

(A) General Report:

Diversity – Defense Panel Members

Ms. Bernick reported that we are making improvements in diversifying our defense panel assignments, specifically with women on the panel. She gave some comparative statistics between 2013 and 2015, reflecting the improvement. In December, the PLF hosted a lunch for women defense panel members. It was well received and there was good interaction among all.

Demographics of Covered Party

Betty Lou Morrow ran a report to assess the age of our current Covered Parties. 38 percent of covered parties are 55 and older. In 2013, there were 650 new admittees; in 2015 there were 585 new admittees. New admittees who sat for the bar, as opposed to being admitted through reciprocity is down. Because a decrease in covered parties results in a decrease in revenue, Ms. Bernick and Ms. Morrow will be highlighting this trend to the actuaries when they make their assessment recommendation.

Bob Newell asked for statistics on claims versus age. Barbara Fishleder stated that historically, there are fewer claims against new lawyers because their practices have not advanced enough; however, that could be different now. Rob Raschio asked how many litigations the PLF has been engaged in as an organization in the last five years that stemmed from conduct outside the state. Statistics were not immediately available but Carol Bernick feels the numbers are low.

PLF Email Addresses for Board Members

Ms. Bernick sent an email to all Board members, letting them know that Tony Sabala (IT) would be in the office all day, if anyone needs assistance with their PLF email addresses. We plan to continue using PLF email addresses unless it becomes unworkable for too many.

Senate Bill 1590 – Tripartite Relationship with Insurance Companies

Senate Bill 1590 will change the tripartite relationship with insurance companies. If there is a reservation of rights, insurers will be required to hire independent counsel for the covered party. The good thing for the PLF is that it will not apply to us because we are not subject to the insurance code. But, if the bill passes there is the potential for increased claims against covered parties who do this type of work.

Aon Visit

Ms. Bernick reported that some people from Aon (our reinsurance broker) will be coming to the PLF in a couple of weeks to discuss the excess rating changes that went into effect the first of the year. The Excess Committee will be reporting on the results so far, later in the meeting.

BarBooks

Ms. Bernick reminded the board of the BarBooks discussion in December and noted that since Helen Hirschbiel was unable to attend this meeting, the discussion has been moved to the April meeting.

Entertainment Fund

Ms. Bernick reminded Board members that she sent an email regarding the entertainment fund and asked that people let her know if they have any questions.

(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. Noteworthy was the Implicit Bias CLE on January 22 in which 11 PLF employees attended. It was put on by specialty bars as well as local lawyers. Ms. Bernick felt the CLE was very interesting and the presentation was well done. They discussed implicit bias in all areas including race, gender identity, disability, etc. People gave testimonials on video and in person. They held roundtable discussions which were thought provoking. Ms. Bernick appreciated that so many PLF staff members attended and she is hoping to bring a version of the program on site.

(C) Lodging Poll 2016:

Carol Bernick asked that Board members and staff return their lodging polls to Cindy Hill.

3. CLAIMS REPORT

(A) General Claims Report (Open Session):

Carol Bernick gave the claims report in Bruce Schafer's absence.

Ms. Bernick reported that last year, the claim count was down by over 100 claims from the prior year (808 claims at the end of 2015). As of January 31, 2016, there were 757 pending claims compared to 764 at the end of December and 801 at the end of November.

As of February 4, 2016, the PLF had opened 81 new claims and 37 new suspense files. Ms. Bernick reminded the Board that a certain percentage of suspense files turn into claims over time (approximately 10 percent). Extrapolating these numbers out for the year, keeping at the same pace, would be 847 claims and 388 new suspense files. Even though it is early in the year, this number is higher than any time in 2015. But again, it is too early to predict.

(B) 2015 Claims Attorney & Defense Counsel Evaluations:

Ms. Bernick referred the Board to the memo in the materials regarding the results of 2015 Claims Attorney and Defense Counsel Evaluations. Once again, the PLF received excellent evaluations. Ms. Bernick also noted that she had received very positive comments from a specific covered party who felt the claims attorneys provide a tremendous service in emotionally supporting our covered parties going through a very difficult time.

The evaluations indicated 98.76% of covered parties who responded to the survey were either satisfied or very satisfied with our claims attorneys' performance (based on 405 responses) and 99.5% were either satisfied or very satisfied with our defense counsel (based on 244 responses).

4. Financial Reports

(A) Draft December 31, 2015 Financial Statements:

Betty Lou Morrow referred the Board to the materials. The PLF is now at a \$1.1 million deficit. The board materials are dated December 30, rather than December 31 due to the timing of year-end entries.

Ms. Morrow explained that the cash balance is down significantly from 2014 because in 2014 a transfer of funds from the bank to short duration fund was not done before December 31. This year, on December 31, there was a funds transfer. Ms. Morrow also explained that a \$2.5 million claim was paid on December 31. Reimbursement from the reinsurers is forthcoming.

Ms. Morrow reviewed the Statement of Revenues, Expenses, and Changes in Net Position. Investment return for 2015 was minus 1 percent. The PLF relies on investment returns for operations. This loss was mitigated by lower than budget claim costs. The original new claims budget was set at 844 claims; it was then adjusted to 822 claims. In fact, the claim number ended at 808. The actuarial estimate of claims liabilities was less than was budgeted, further adding to less than budgeted total cost of claims.

Defense Panel costs were \$9.5 million in 2015 compared to approximately \$8 million in 2014. Even though claim numbers are down, we are dealing with more complex cases. Ms. Morrow reviewed defense costs in 2013 (\$9.7 million) and 2012 (\$10 million).

Operationally, the year-end budget was off by less than 1 percent.

Dennis Black asked if we have investment results for January. Betty Lou Morrow stated that we have lost about \$1.3 million. Mr. Black is concerned about the PLF finances and noted that he has been concerned for the better part of a year. He feels that because we are well diversified, it will get us through for now, but he hopes that people are taking a closer look at the problem and that Betty Lou Morrow, Carol Bernick, and the Investment Committee members get more concerned. Ms. Morrow stated that she shared his concern. For 2016, we predicted 5% return on our investments; if we reduce that to 1 percent, we need to determine the financial impact of that decision. Last year, we benefited from lower claims count. This year, the numbers seem to be increasing. Some of the claims in the materials are very high cost cases. Higher claim counts, higher-cost claims, and investment losses is very concerning. Ms. Morrow stated that early numbers for attorneys with PLF coverage may be less than budgeted. There are multiple 2016 budget items that require vigilance. Carol Bernick commented that Betty Lou Morrow has been paying a lot of attention to the situation and that she and Ms. Morrow have had multiple discussions about it.

Rob Raschio asked what was spent on defense panel costs for 2015. Ms. Morrow reiterated that we spent \$9.5 million for defense panel costs in 2015. Ms. Morrow stated that defense panel costs are largely predicated on the frequency and severity of claims in the fiscal year.

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

(A) 2015 4th Quarter Report and Loss Prevention Update:

Ms. Fishleder introduced PMA, Hong Dao and OAAP Attorney Counselor, Bryan Welch. Ms. Dao and Mr. Welch gave presentations.

Mr. Welch stated that he is the newest attorney counselor at the OAAP and gave some background information. He discussed a recent study on law student impairment which demonstrated that law students suffer a higher rate of problem substance use and mental health issues than the general population. Law students showed a 25% rate of problem substance use, as compared with 9% to 15% seen in the general population.

Ms. Fishleder stated that even though the loss prevention department has provided law school outreach, we are going to renew our outreach efforts and explore additional ways to reach law students. The research found that law students resist accessing assistance due to their fear that access will negatively impact their bar admission or the ability to obtain a job. The other prominent factors included fear of stigma and fear for their privacy. Teresa Statler asked if the reason we are focusing on helping law students is because of the assumption that they are likely to become covered parties. Ms. Fishleder confirmed. Ms. Fishleder then presented a similar recent study on lawyers that showed that lawyers suffer from problem substance use at a much higher rate (20%) than other professionals (15%) and than the general population (9-15%). The study also revealed that lawyers also suffer from depression, anxiety and stress (28%, 19%, and 23% respectively) at a much higher rate than the general population

(17%). She noted that similar to the law students, the lawyers resist accessing treatment because of their perceived impact on their reputation, their concern that access may not be truly confidential, and their fear of being stigmatized. Ms. Fishleder noted that the OAAP has the advantage of a long history for being truly confidential and that this accounts, in part, for the high access to our programs. She noted that the research also found that lawyers are more apt to be successful in treatment if there is a lawyer-specific treatment program. She remarked that this finding supports our OAAP belief that our program is more successful in reaching lawyers because our OAAP staff is lawyers and counselors. She also noted that lawyer assistance programs in other states that do not have lawyers as staff, in general are not as successful with lawyer access. See the two articles in the materials for additional information.

Rob Raschio asked if there is an opportunity for the PLF to engage law school students in a discussion about the PLF taking over the student counseling programs at the law schools (allowing a safe place for students to go). Ms. Fishleder stated that she feels it is best to ramp up our relationships with those counseling programs, working together so that the law school counselors are more inclined to refer students to us. Steve Carpenter stated that PMAs and attorney counselors and some claims attorneys go to law schools and discuss the PLF and its services. Mr. Raschio feels that outreach is important but not a full measure of the need and he would like us to consider the economics of law schools and the PLF for having more permanent staffing relationships to engage law students early on and take the financial pressure off law schools. Bob Newell suggested this could be a topic for the Long Range Planning Committee. Barbara Fishleder agreed to reach out to the law schools to explore additional opportunities to reach students.

Hong Dao introduced herself and gave some background information. She noted that the lawyer job market seems to be improving, since many of the newest lawyers are receiving job offers in firms. This is a change from the last few years, when most new lawyers did not find work in law firms and either found employment outside of the law or were forced to start their own firms.

Hong Dao explained that she enjoys technology and gadgets that help lawyers in their law practices. She discussed a free app called *Cam Scanner*. It takes pictures of documents and makes them PDF files, but allows for editing.

Rob Raschio explained that he lives in Eastern Oregon. That part of the country is just coming into the e-court age. Mr. Raschio asked for advice on affordable programs. Ms. Hong stated that Adobe Acrobat is the gold standard in PDF conversion. It allows redacting and other editing.

(B) 2014 Year-End Report:

Ms. Fishleder referred the Board to the OAAP materials. See materials for specific information/statistics.

In 2015, 841 people accessed the OAAP. The overall access in 2015 was approximately 31% higher than in 2014 and 42% higher than in 2013. Ms. Fishleder believes this is a direct result of a full staffing level. Part of it is due to the additional OAAP space which allows for more groups to run simultaneously.

In 2015, the PMA program assisted 161 law firms and made 363 office visits. These numbers are about 8% higher than in 2014. Barbara Fishleder stated that the evaluations (in the materials) indicate that 100% of those who completed the survey would recommend the PMA services to others.

Last year was the first full year that we offered conference room use at the Oregon Lawyers Conference Room (OLCR). The space was used for 500 hours of time during 2015. This is remarkable considering that OLCR is available only for a portion of each day due to other OAAP groups that utilize the space.

Ms. Fishleder announced that PMA, Beverly Michaelis, is retiring. While she is very happy for Beverly, she is very sad for the PLF. Ms. Michaelis' departure will leave a giant hole for us to fill. She expects we will do some restructuring. Ms. Michaelis is an incredibly experienced and talented PMA. She maintained the OAAP website in addition to all of her regular duties and is an invaluable employee.

Dennis Black stated that he has seen a lot of restructuring of the loss prevention department while on the board and feels that Barbara Fishleder has handled this remarkably well. He has every confidence she will rise to the changes. The loss prevention department serves all lawyers well.

Ms. Fishleder referred the Board to the article *The Surprising Health Tip That Doctors and Bosses Should Recommend* in the materials (page 68). She noted that volunteering has been found to provide a surprising number of health benefits. She thanks the board for choosing to volunteer with the PLF.

6. COMMITTEE REPORTS AND ASSIGNMENTS

(A) Claims Committee:

Bob Newell reported that the Claims Committee met last week via telephone and reviewed the high reserve cases. The committee met again prior to today's meeting for the annual claims committee meeting (including PLF claims attorneys). It was a great meeting and those who attended (most board members were here during this portion of the meeting) got to hear discussions from various claims attorneys about "a day in the life of a PLF claims attorney." It was very helpful information for board members.

(B) Coverage Committee:

Saville Easley stated that there is nothing to report.

(C) Excess Program Committee: Preliminary Excess Results and Cyber Coverage:

Teresa Statler thanked Emilee Preble for the excellent article in the *In Brief* pertaining to covered parties considering excess coverage. She turned this portion of the meeting over to Emilee Preble.

1. Excess Program Renewal Update:

Ms. Preble reported that she is very pleased with the results so far. We have received 711 applications and as of today, 660 of those firms have bound coverage with the PLF. Overall, this is a positive outcome. We are at 94% of revenue on Treaty 1 from renewing firms (firms that purchased in 2015). When new firms joining in 2016 are added, we are hugging 100% of Treaty 1 revenue from last year. Ultimately, we expect more revenue this year due to our new underwriting and rating criteria.

Ms. Preble noted that the article referred to above by Teresa Statler has resulted in an uptick in excess applications for people who had not thought of it before. Within the past two weeks, we have received 20 new applications. During the same two week period last year, we had only received 8 applications. The renewal deadline is technically January 1 of each year, but we take applications any time.

With regard to new firms who purchased coverage in 2015, we added 51 law firms with 71 attorneys. To-date in 2016, we have added 19 new firms with 140 new attorneys. These are very positive results.

The flipside is that we did see 3 percent attrition of firms (7 percent of attorneys) during this renewal; this is pretty typical and we expected it. Also, there were price increases for some firms and they were not comfortable with the increase, so they dropped our coverage. This was also expected.

2. Cyber Coverage:

Emilee Preble referred the Board to the memo on page 101 of the materials. This memo requires action.

We were informed in November by Aon that Beazley Group wanted to extend an offer, at no additional charge, to the PLF or to our covered firms, an additional provision in the existing cyber endorsement to cover cyber extortion claims. These are claims that are the result of a situation where malware infiltrates a computer and locks the device and encrypts all files. In order to retrieve the files, extortion is attempted. Cyber extortion events were excluded under the original cyber coverage. Tim Williams stated that this happened at his firm and it was a real mess.

This endorsement will be added to cover these claims and provide a sublimit maximum of \$10,000 with a \$2,000 deductible. Beazley's theory is to get notification of these claims in the door early to get a sense of how to track them and also potentially stop other claims that might result from the extortion event. This also allows them the opportunity to look at the law firm's systems to see if they need any improvements. This is a great service for our covered firms.

Dennis Black asked if they provide proactive services to insureds on how to protect themselves on this. Emilee Preble stated that they do have some information/resources that she will provide. Barbara Fishleder stated that technology is paralleling this trend as well. There are some new ways to backup information that hopefully will address this type of issue. The tech show is coming up and PLF staff will be checking into it. Hong Dao explained that law firms often use mirror backups where the system backs up a mirror image of the documents on a system – and that these can be very problematic because any viruses or malware that infect the system are then copied to the backup. She suggests discussing this issue with IT.

Rob Raschio moved and Teresa Statler seconded that the Board approve the changes to the current cyber endorsement. Motion passed unanimously 8-0 (1 absent).

(D) Finance:

Tom Newhouse stated that the committee met last Monday. He turned this portion of the meeting over to Betty Lou Morrow.

Ms. Morrow stated that the PLF received the December 31, 2015 actuarial results (see page 126 of the materials) and they were discussed at the committee meeting.

Motion

Ms. Morrow stated that every six months, we work with the actuaries to determine what our claims are expected to cost. Their analysis has resulted in quantifiable estimates that the Finance Committee is recommending, as follows:

1. Adopt the following liabilities for claims as of December 31, 2015:

Indemnity Liabilities	\$13.8 million
Expense Liabilities	<u>\$14.4 million</u>
Total Liabilities	<u>\$28.2 million</u>

2. Adopt an average claim cost figure of \$22,500 (\$11,000 indemnity and \$11,500 expense) to be used to calculate claim liabilities for new claims for the first six months of 2016. The expense portion of the claim cost remains the same while the indemnity portion increases another \$500 since the June 30, 2015 recommendations.

3. Readopt the goal for combined Excess and Primary Program Retained Earnings of \$12 million.

The Finance Committee will be reviewing the Net Position this year and may make a different recommendation at that time.

4. AOE, ERC, and Suspense liabilities are calculated annually by PLF staff using information derived from the claim database software. The same methodology for calculating these liabilities has been applied consistently dating back prior to 1999.

Adjusting and Other Expense (AOE) Liability – increase by \$100,000 to \$2.4 million
(8.62% of claims reserve – recommended between 5-10%)

Extended Reporting Coverage (ERC) Liability – increase by \$400,000 to \$3.1 million

Suspense File Liability – increase by \$100,000 to \$1.6 million

Bob Newell asked that the recommendations of numbers 1, 2 and 4 above be approved.

Tom Newhouse moved and Teresa Statler seconded that the above recommendations be approved as written.

In response to a question of 2016 budget impact due to the increase in cost of new claims, Betty Lou Morrow stated the 2016 budget would need to be adjusted to reflect the increase estimated cost. Betty Lou Morrow explained that the average cost of new claims was \$22,000 in August of last year, so we are now making a \$500 adjustment.

Rob Raschio asked if we are looking at a rate increase for next year. Bob Newell stated that it is too early to tell.

Motion passed unanimously 8-0 (1 absent).

(E) Investments:

There was nothing to report.

(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.

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

Tim Williams reported BOG highlights. The BOG held a special open session meeting on January 8, 2016. See draft minutes in the materials (beginning on page 173).

1. The BOG was asked to consider the ABA Futures Commission resolution to adopt model regulatory objectives. The motion passed by a narrow vote that the Policy and Governance Committee look at the issue long and hard, then report back to the full board.

2. The BOG was asked to consider the Board of Bar Examiner's (BBX) recommendation to the Oregon Supreme Court to adopt the Uniform Bar Exam (UBE). After hearing pros and cons, the Board unanimously decided to support it.

3. The ABA changes to the disciplinary system are now in the public comment phase. It is expected that some changes will be adopted and others will not.

4. Helen Hirschbiel took over as CEO as of January 1, 2016. So far, she is doing a great job.

8. CHAIR REPORT

(A) Updates:

Bob Newell and Carol Bernick have discussed the issue of whether Board members should attend the NABRICO conference each year. The collective feeling is that, this year we should proceed as in the past, for those who are eligible to attend then evaluate the value for the Board.

Mr. Newell informed the Board that the PLF is working on scheduling local bar receptions and/or CLEs during our out-of-Tigard board meetings, with the hope of increasing interaction with the Board and local bar members. We are working on this project.

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: 12/04/15 and 12/14/15:

Julia Manela moved and Rob Raschio seconded that the minutes of December 4, 2015 and December 14, 2015 be approved as written. Motion passed unanimously 8-0 (1 absent).

11. ADJOURNMENT

The meetings adjourned at approximately 1:00 p.m.

These minutes were approved by the Board of Directors at its April 22, 2016 board meeting.