

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

**June 3, 2016
Eugene, Oregon**

The regular meeting of the Board of Directors and the PPMAC meeting was called to order at approximately 9:00 a.m. at Inn at the Fifth in Eugene, 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, Molly Jo Mullen, and Tom Newhouse. Also present were PLF staff members Carol Bernick, Barbara Fishleder, Bruce Schafer, Betty Lou Morrow, Cindy Hill, Jeff Crawford, Maureen DeFrank and Jennifer Meisberger.

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.

Bob Newell thanked all who attended the Thursday CLE and reception.

(B) Open Session Minutes (04/22/16):

Rob Raschio moved and Tim Martinez seconded that the minutes be approved as written. Motion passed unanimously 9-0.

(C) Committee Minutes:

There were no committee minutes.

2. PLF REPORT

(A) General Report:

Carol Bernick reported that she attended the LPL conference in New Orleans in April and met with most of our reinsurers. They are happy with our progress and changes in the direction of our excess program. While in Eugene, Ms. Bernick met with Watkinson Laird to discuss changes in our new rating system and to hear about any concerns the firm had with the PLF's

excess program. The managing partner confirmed it was solely price that caused the firm to leave. Ms. Bernick let the firm know that the PLF could offer higher limits for cyber coverage.

Carol Bernick discussed the question from the previous night's CLE regarding raising coverage limits. Bruce Schafer commented that a downside to "pushing" excess is it sends a message that \$300,000 is not enough. Everyone needs to look at their practices and determine if the coverage is adequate. Jeff Crawford noted that with the readily available coverage through the PLF, people could buy excess coverage and those who did not need it do not have to buy it. Dennis Black questioned if the study Mr. Zarov did about eight years ago addressed what types of practices \$300,000 in coverage is enough for. Mr. Crawford stated that this was not included in the study and he is not sure that \$300,000 is enough anywhere. Betty Lou Morrow noted that fewer than 10 claims per year hit the primary limits.

Jeff Crawford stated that we used to provide a report to the Board that included every claim but because of the voluminous amount of materials, we did away with those reports. We can certainly bring them back if the Board feels it is necessary. For 68 – 70% of claims, there is no indemnity paid. Jeff Crawford feels it is important to continually look at whether limits are adequate. Rob Raschio commented that where he lives, he does not see large claims.

Carol Bernick stated that at the August board meeting, there will be a discussion of the net position goal. The Finance Committee will meet first and then present at the August meeting. Ms. Bernick reported that there will also be a discussion of recommended changes to the PLF Primary Coverage Plan at the August board meeting.

Bob Newell stated that at the last board meeting, there was a discussion about whether to continue with BOD PLF email addresses. Many board members chose not to use the PLF email address. Regardless of which email address is being used, Board members need to be diligent and pay attention to emails and respond in a timely manner.

(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 Recruitment - 2017:

Ms. Bernick reported that she has been working on board recruitment for 2017. The deadline to apply is July 8. She is optimistic that we will have 3 to 4 good candidates from which to choose. The Nominations Committee will submit the list at the August board meeting.

(D) IT Best Practices:

Carol Bernick referred the Board to the materials (page 16) and stated that Julia Manela suggested that a list of IT Best Practices be given to the BOD since most board members are not using the PLF email address. These practices will not work for everyone, so please feel free to contact Tony Sabala (PLF IT), if you have any questions (tonys@osbplf.org).

(E) PLF Policies 3.300 and 3.350 (Installment Privileges/Payment Default and Late Payment Charges):

Carol Bernick gave some background information regarding the purpose of the request for policy revisions. The accounting department would like to make all late payments the same. This means doing away with the \$50 late fee for the first payment in January and replacing it with \$100, which we do for all other quarters. Currently, if the Covered Party pays two weeks late, the Covered Party is charged a \$50 late fee and can still pay in installments. If the payment is more than two weeks late, the fee is \$100 and there is no installment option. For all other quarters, the \$100 late fee attaches on the first day late and the installment option is lost.

Rob Raschio moved to approve the revisions to PLF Policy 3.300. Tom Newhouse seconded the motion.

Tim Martinez asked Betty Lou Morrow for her opinion on the subject. Ms. Morrow said she believes this recommendation should only be adopted if the change to Policy 3.350 is also adopted.

Rob Raschio withdrew the motion to allow for discussion of PLF Policy 3.350.

Carol Bernick discussed the quarterly installment payments. Currently, covered parties lose the right to pay in installments and must pay in full if they miss an installment by one day. The accounting department gets numerous calls in this situation. We feel the penalty is too harsh. The proposal now allows a covered party to have a month after the due date without losing installment privileges.

Ms. Morrow said she sees this as a package deal - \$100 instead of \$50, but they retain the right to pay in installments.

Dennis Black moved to approve proposed revisions to both Policies 3.300 and 3.350.

A question was asked as to whether there will be an announcement in the *In Brief* regarding the policy changes. Staff assured the Board there would be notices in various places.

Rob Raschio seconded the motion. Motion passed unanimously 9-0.

3. CLAIMS REPORT

(A) General Claims Report (Open Session):

Bruce Schafer gave the claims report.

As of June 1, we had opened 378 claims and 134 suspense files. Extrapolating those numbers out at the same pace would be 904 claims and 321 suspense files for the year. Earlier in the year, the projected claim count was much higher, but in recent weeks the numbers seem

to have stabilized in the 900 to 910 range. The numbers seem to be settling down. The suspense number is also a bit low. This is only relevant because some suspense files turn into claims. Mr. Schafer noted that there is more than six (6) months left in the year, so those numbers could still change.

The claims attorneys are keeping up with their files and are doing a great job.

A claims audit is scheduled for September 20-21. Our rules require an outside audit of the claims department every five years. This is the fifth audit of the PLF Claims Department. We have engaged John Kilcullen (retired from our defense panel) and Warren Savage, a claims attorney at Lawyers Mutual Insurance Company (North Carolina), the North Carolina NABRICO company, to perform the audit. Carol Bernick and Bruce Schafer will work closely with them. The PLF will be paying Mr. Kilcullen a fee and reimbursing Mr. Savage his expenses. Carol Bernick mentioned the CEO of Lawyers Mutual suggested the PLF might reciprocate by having Bruce Schafer participate in performing their audit later this year. It is a positive opportunity for the PLF to see how other similar organizations are doing things. Messrs. Kilcullen and Savage will review files for two (2) days, meet with selected members of the staff, and provide the PLF with a report that will be distributed to the Board. Bob Newell asked if the North Carolina NABRICO is the most similar to the PLF in the United States. Bruce Schafer stated that they have virtually the entire market, which makes it quite similar.

Rob Raschio asked about the purpose of the audit. Mr. Schafer explained that we make all files available to them. They look at files to see how we document our files and if our procedures make sense (timing and numbers); they may ask to meet with some claims attorneys; a dinner is scheduled on the second day to discuss the preliminary conclusions; they then write a report that we share with board members. Rob Raschio suggested including a board member in the process. Mr. Schafer explained that we bring people from the outside to give an objective report (independent outside auditors is part of the process). Teresa Statler asked how the files are chosen that they review. Bruce Schafer stated that he asks them what they want. We do not dictate what they review. We sent the audit letter from the last audit to each of them so they have some idea of how it works. Ms. Bernick and Mr. Schafer will discuss logistics and accommodations with them via telephone. We have already sent basic institutional information to them.

Bruce Schafer introduced Maureen DeFrank. She is a PLF claims attorney who lives in Eugene and works from home a couple of days each week. She plays a big role in maintaining communications with Eugene lawyers and the Lane County Bar.

4. FINANCIAL REPORTS

(A) April 30, 2016 Financial Statements:

Betty Lou Morrow referred the Board to the materials. The claim count is somewhat higher than budgeted, although it is still early in the year. Investments are trending in a positive direction. Operations are remaining under budget.

Ms. Morrow reported that the PLF will receive a profit commission in the Excess program of approximately \$46,000. This is due to the lack of claims breaching the first layer, thereby making the second layer profitable.

The net position (combined Excess and Primary) is \$10.1 million compared to \$12.7 million at the same time in 2015.

Tim Martinez referred the Board to page 29 of the materials (Excess Program Balance Sheet) and noted the flip between cash and investments. Betty Lou Morrow explained that the difference is timing and the inability to move money as frequently as in the past due to the restrictions on the Wells Fargo low duration investment account.

5. PLF PERSONAL AND PRACTICE MANAGEMENT ASSISTANCE COMMITTEE REPORT

(A) Loss Prevention Update:

Ms. Fishleder introduced PMA Jennifer Meisberger and noted that Ms. Meisberger did an excellent job at the CLE on Thursday, as did Carol Bernick and Bob Newell. She thanked all who presented.

Ms. Fishleder asked if anyone had comments regarding the Thursday CLE. Carol Bernick commented that it was a great idea and people appreciated it. It was a great opportunity for covered parties to interact with the Board and they seem to appreciate the PLF. Ms. Bernick thanked Jennifer Meisberger for taking the time to present. She received a lot of good feedback and appreciation.

Barbara Fishleder reported that there will be another program in Baker City on avoiding malpractice. She will send the outline to all. There will also be a local bar reception following the CLE. Teresa Statler suggests publishing for the CLE and reception now so people can plan for it.

Ms. Fishleder reported that Mike Long is working on updating and distributing a retirement survey. Attorneys over the age of 55 will soon get an email asking them to complete the retirement survey. This has been done in the past and we use this information to improve and update our retirement related workshops and CLEs.

Barbara Fishleder reported that she has been interviewing for the PMA position. Beverly Michaelis had planned to stay through July but, because of a family emergency, she has not been in the office all of May and most of June. She had already trained other loss prevention staff on numerous tasks and she has also documented many procedures in preparation of her retirement. She is available to answer questions, but will not be in the office. We are close to making a decision and hope to make an offer soon (possibly today).

The OAAP has a new group regarding healthy habits. There has been an overwhelming response and we are adding more groups. A variation of it will be offered to PLF employees as part of our wellness program.

Jennifer Meisberger thanked the Board for the opportunity to present at the CLE and attend the local bar reception. She is excited to have a new person on the team.

Ms. Meisberger reported that she has received 240 informational calls (new people who have not previously contacted us) and she did 24 office visits in the first quarter (also new people). In March, she attended the Tech Show.

Jennifer Meisberger also reported that the PMAs are doing their “road show.” They have attended 8 cities so far and expect to reach 24 cities in Oregon by the end of next year. The purpose of the road show is to present practice and technology tips. There was a great turnout in Eastern Oregon and they were grateful we were there.

Bruce Schafer asked if they saw any trends in terms of office closures and demographics. Ms. Meisberger reported that there were 3 office closures last week. Many people are closing offices in conjunction with discipline (related to health and cognitive issues). Mr. Schafer commented that the PMAs do a lot of outreach and play a big role when an office is closed. His perception, in keeping with demographics, is that these office closures will continue to increase.

Bob Newell thanked Ms. Meisberger for her presentation on Thursday and noted that it creates a lot of good will to present these CLEs and host the reception. Mr. Newell thanked the PLF staff for the work they are doing.

6. COMMITTEE REPORTS AND ASSIGNMENTS

(A) Claims Committee:

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

(B) Coverage Committee:

Saville Easley noted that as previously discussed, the Coverage Committee is rewriting the Primary Plan. With the help of Bruce Schafer, Emilee Preble, Madeleine Campbell, Jeff Crawford and Carol Bernick it is being rewritten so that it flows better. There are a few substantive changes. The committee will meet on June 20 to review the proposed changes.

(C) Excess Program Committee:

Teresa Statler stated that there is nothing to report at this time.

(D) Finance:

Tom Newhouse stated that there is nothing to report at this time.

(E) Investments:

Tim Martinez stated that there is nothing to report at this time. He expects a report in August.

(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: April 22, 2016

Carol Bernick stated that the BOG member who had planned to attend the meeting had to go out of town unexpectedly due to a death and, therefore, there is no report.

8. CHAIR REPORT

(A) Updates:

Bob Newell stated that there is nothing to report but noted that he received an email from a seriously disgruntled person. Carol Bernick informed Kateri Walsh of the situation. Ms. Bernick expects there will be nothing to report regarding this incident.

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.

Cindy Hill noted an error in the executive session minutes that were included in the materials. She reported that the minutes had been corrected.

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: April 22, 2016:

Tim Martinez moved and Dennis Black seconded that the executive session minutes of April 22, 2016 be approved as written. Motion passed unanimously 9-0.

Tim Martinez asked if there was any new information regarding the NABRICO conference. Ms. Bernick stated that she expects it will be well attended. Betty Lou Morrow will be a facilitator for the Finance roundtable. The theme is the future of the legal profession and malpractice. There is also a topic on how to do presentations and improve speaking abilities. The dates are September 14-16. Tim Martinez indicated that he will attend. Saville Easley and Rob Raschio will work out which one of them will attend.

11. ADJOURNMENT

The meetings adjourned at approximately 10:50 a.m.

These minutes were approved by the PLF Board of Directors at its August 12, 2016 board meeting in Baker City.