



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

**December 4, 2020
Zoom Videoconference**

Chair Molly Jo Mullen called the regular meeting of the Board of Directors to order at approximately 9:05 a.m. via Zoom videoconference. Present in addition to Ms. Mullen were Directors Tom Newhouse, Holly Mitchell, Megan Livermore, Gina Johnnie, Michael Batlan, Oren Haker, Steve Hill, and Carol Bernick. BOG liaison Eric Foster, OSB CEO Helen Hirschbiel, and new PLF board members, Harshi Waters, Akeem Williams, and Chris Karlin attended open session. In addition, PLF staff members Nena Cook, Madeleine Campbell, Betty Lou Morrow, Matt Borrillo, Jeff Crawford, Emilee Preble, Cindy Hill, Brad Tompkins, Maureen DeFrank, Heather Bowman, Sarah Troutt, Amy Hoven, Pam Stendahl, Doug Querin, and Kyra Hazilla attended all or part of the meeting.

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. Mullen)

Ms. Mullen announced the new PLF board members for 2021, Harshi Waters, Akeem Williams, and Chris Karlin and asked them to give some background information to the meeting attendees.

Ms. Mullen said that Megan Livermore will be the BOD Chair in 2021 and that she is a wonderful person to lead the Board.

Ms. Mullen thanked all PLF staff who are attending the meeting and said that the Board has watched staff efforts and marveled at their ability to be so flexible and continue meeting the mission of the PLF. She said the Board could not thank PLF employees enough for all the work they have done for the Oregon lawyers and appreciates their service. She asked that this information be passed on to any other PLF staff who are not attending the meeting and share the Board's good regards with everyone.

(A)i. Draft Open Session Minutes (10/09/20):

Ms. Livermore moved and Ms. Johnnie seconded that the October 9, 2020 open session minutes be approved as written. Motion passed unanimously 8-0.

2. CEO REPORT (Ms. Cook)

(A) General Report:

Ms. Cook reported that the PLF continues to work remotely. Ms. Campbell will give more detail on that. Currently, the PLF and OSB are closed in order to keep staff safe and do everything we can to get through the pandemic. Ms. Cook continues to be amazed with the great work of staff, showing up every day and providing amazing work for our Covered Parties. It is not easy and is not smooth working remotely. Ms. Cook wants the Board to be sure they are aware of their great work.

Ms. Cook thanked Ms. Mullen, Mr. Newhouse, and Ms. Bernick for their service on the Board and noted that Ms. Marmaduke had resigned from the Board earlier in the year, due to a conflict. She appreciates their time, guidance, and direction and said we could not do any of this without them. They will be missed very much.

(B) 2021 Committee Assignments:

Ms. Cook reported that she and Ms. Livermore worked together on the committee assignments and did their best to place people on the committees they requested.

Mr. Hill moved and Ms. Johnnie seconded that the 2021 Committee Assignments be approved. Motion passed unanimously 8-0.

3. GENERAL COUNSEL REPORT (Ms. Campbell):

Ms. Campbell thanked all outgoing board members and noted that she has enjoyed working with them. She appreciates all the work they have done and will miss each of them.

Ms. Campbell reported that there are various COVID regulations with which we have to comply, including online training sessions with staff.

Ms. Campbell reported that we are making good progress on our website. The plan is to add new malpractice tool kits on the website and increase content specifically related to claims prevention. The new website will also solve some technical issues, as well as making the website less text-heavy and more interactive. We recently uploaded a new resource to the PLF website to assist lawyers in determining if they need PLF coverage, or if they are exempt. We plan to have information on the website so people can see the function of the PLF. It is an insurance fund and there seems to be a lot of confusion about that. Our home page will reflect what we are and what we do, in an attempt to limit confusion between what the PLF does and what the Oregon State Bar does.

Ms. Hirschbiel echoed that there is a lot of confusion about what each organization does. She encourages Ms. Campbell and the Communications team to reach out to the Oregon State Bar Communications team to coordinate and collaborate the message. Ms. Campbell agreed and thanked Ms. Hirschbiel for her suggestion.

4. CLAIMS REPORT (Mr. Borrillo)

(A) General Claims Report (Open Session):

Mr. Borrillo thanked the Claims Attorneys for their hard work, which has been seamless while working remotely. The claim count is relatively low in terms of numbers (the last count projects a year-end number of 700). We are opening many suspense files. Nonetheless, it was a busy year in spite of the low claim count because claim numbers actually went up per claims attorney due to the retirement of Patricia Nation and Mr. Borrillo's move to Director of Claims, as well as Ms. Campbell's move to General Counsel. In addition, claims attorneys were charged with the task of understanding what the implications are with regard to COVID and how to navigate legislative changes. In order to alleviate the additional workload, we are adding a new claims attorney next year. This will also allow two claims attorneys to receive informational calls each day.

Mr. Borrillo also reported that there have been several office closures recently due to lawyer deaths.

The evaluations have continued to be extraordinarily positive. Mr. Borrillo keeps copies of all letters that are sent with regard to the Claims Department and recently, a notorious claimant gave extreme praise of Sarah Troutt. He also received two emails with positive comments regarding Pam Stendahl and Maureen DeFrank.

Mr. Borrillo reported that there will be a claims audit in 2021 and we are working on getting that set up for remote access. There are usually two people who perform the audit every five years. Additionally, the defense panel conference is scheduled for August of next year and we are prepared to move forward with that plan, but we are intentionally holding off until January before making that decision. If we are not able to hold the conference live, we will probably not do it. It will either be postponed or canceled for next year, as opposed to a virtual conference. He hopes to have a decision by the February board meeting.

At this time, the PLF is scheduled to host NABRICO in 2022.

Ms. Mitchell thanked Mr. Borrillo for keeping the claims committee members informed, as did Ms. Johnnie.

5. FINANCIAL REPORTS (Ms. Morrow)

(A) October 31, 2020 Draft Financial Statements:

Ms. Morrow reported that with regard to the balance sheet, investments are down. Cash flow is down by about \$7 million due to large payout of claims and large excess claims. We are already being reimbursed from the reinsurers on the excess claims, so these numbers will change before the end of the year. VOYA is our bank

loans allocation and they have been struggling. RVK recommended that we get our money out of this account as quickly as possible, which we have done. If we decide to pull bank loans from our allocations all together, we will take this to the BOG after the February 5, 2021 PLF board meeting.

For 2020, there was an almost \$1.4 million entry that decreased our cost of claims and is reflected in the income statement. We are slightly behind on the number of Covered Parties and there is some apprehension about the declining numbers. There has been an erosion of Covered Parties from 7,275 last year to 7,146 at the end of October this year (a \$425,000 loss in PLF revenue). We need to be mindful of this going forward.

Ms. Morrow reported that the number of claims are down. We budgeted 890 claims for 2020 and based on the current numbers, it looks like we will end the year with around 700 claims, which will reduce the cost of claims by approximately \$4 million. This is a huge savings and very helpful on our bottom line for losses in investment returns. We budgeted 4.5% investment return and at the end of October, our return was approximately 1.67%. Ms. Morrow still projects an in year surplus of between \$600,000 and \$800,000. She does not expect a negative adjustment that will affect our bottom line.

Ms. Morrow reported that senior management had asked the PLF Board of Directors to give some staff an end of the year bonus, but do not feel it is appropriate at this time.

Ms. Morrow reported that the surplus in the Excess Program could be attributed to the hard work of Ms. Preble.

Ms. Morrow gave an update on the ISI software project.

6. RISK MANAGEMENT SERVICES (Mr. Crawford)

(A) 2020-December Report:

Mr. Crawford reported on the highlights of Risk Management Services (RMS). RMS staff continue to do remarkable work, considering the circumstances. In the past, most work was face-to-face, providing counseling and assistance to lawyers.

Mr. Crawford referred the Board to an example of the new reports, on page 30 of the materials. He echoed what Mr. Borrillo touched on with regard to an increase in the number of lawyer practices that the PLF is having to get involved with (shutting down practices when a lawyer can no longer practice, for one reason or another). In those situations, there could be potential claims due to negligence of the files. Over the years, there has been an ebb and flow of office closures. This year, the increase seems to be connected to the pandemic and current circumstances of lawyers leaving the practice of law.

Mr. Crawford reported that the Statutory Time Limitations Handbook (aka The Red Book) is updated about every four years and it is now time to do that. The OSB legal publications department will help us with editing

and coordinating contributions to the RedBook. We reached an agreement that the OSB will charge the PLF between \$64,000 and \$74,000 to assist us with this project. The project takes about 16 months to complete.

Learning the Ropes was held virtually this year over four days. It was a great success. Going virtual was like creating the program from scratch. Mr. Crawford referred the Board to the statistical information and the evaluations in the materials.

Mr. Haker asked what the process is for office closures. Mr. Crawford discussed the various ways we handle office closures, depending on circumstances. Sometimes it involves just PMAs; sometimes Claims and/or the OAAP are involved.

Mr. Haker said that it is hard to predict the effect of COVID and demographic issues around the state and questioned whether we have enough resources to deal with an uptick in practices closing. He asked if there is any historical data on claims that may arise or the likelihood of claims coming out of this situation and how the PLF will respond. Mr. Crawford said it is definitely something we are looking at and there is a planning meeting next week with the PMAs. This is currently the number one topic (how to manage office closures).

Mr. Borrillo reported that he has worked with Mr. Crawford in coordinating between the two departments. The goal is to be sure the claims department and PMAs are working together to be sure we are covering everything.

Ms. Hirschbiel commented on two things. With respect to the coordination between the two organizations, she echoes what Mr. Borrillo said in that they have worked together in the past, keeping in mind confidentiality with the PLF. Another tool in the tool chest is that the OSB has a custodian statute and they are hoping to amend that statute in the future.

Ms. Hirschbiel thanked PLF staff for engaging in good faith negotiations around the publication of the Redbook and the OSB looks forward to that collaboration with the PLF and OSB. Mr. Crawford commented that he hopes to do more collaboration with the OSB on other projects.

Mr. Crawford reported that Dr. Seth Bernstein conducted an evaluation of the OAAP and a copy of his report is included in the materials. The conclusions are straightforward. He presented good advice on areas of improvement. Our plan is to move ahead with some of Dr. Bernstein's recommendations, including some recommendations involving a Quality Improvement Program (QIP). Mr. Crawford said the QIP would be more successful if it is done on a broader basis with the PLF. Dr. Bernstein has agreed to work with us and to make himself available to the BOD.

Ms. Mullen noted that the board materials indicated that Dr. Bernstein suggested that the ABA Commission on Lawyer Assistance Programs (CoLAP) could be brought in to do an evaluation. Ms. Mullen was curious if we plan to look at this ABA program and get some input on that. Mr. Crawford said that the attorney counselors agree it would be a great idea but the ABA evaluations have been put on hold due to putting together a new

process. We are hoping to talk to the Chair of that Commission this afternoon to get a timeframe of when the evaluation might take place.

7. EXCESS PROGRAM (Ms. Preble)

(A) Excess Program Renewal Update:

Ms. Preble gave an update on the 2021 excess coverage renewal. The application deadline for renewing firms is January 1, 2021 and the coverage period is January 1 through December 31, 2021. Renewal notices were sent mid-October to 706 law firms. We are ahead of the pace from last year with regard to applications and payments received to-date.

While there is no hard data yet, Ms. Preble noted that it seems like more firms are considering retirement and tail coverage for excess this year. We have already had four firms purchase tail coverage and Ms. Preble suspects that we may end up with slightly more firms purchasing tail coverage this year due to lawyers closing their practices than in prior years. We will have more information about that at the end of January 2021.

8. COMMITTEE REPORTS AND ASSIGNMENTS

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

- i. Approve revised 2021 Budget

Mr. Newhouse turned this portion of the meeting over to Ms. Morrow.

Ms. Morrow reported that she is asking the Board to approve the revised 2021 budget. The budget was presented to the Board of Governors for their approval and the budget was declined as written. The BOG has approved the revised budget, based on a reduced salary pool (from 2.67% down to 2.1%). Ms. Morrow explained that the difference in the budget amounts to about \$30,000 on a \$28 million budget.

Tom Newhouse moved to approve the revised 2021 budget; Megan Livermore seconded the motion. Motion passed unanimously 8-0.

(B) Nominations Committee: (Ms. Cook/Ms. Mullen/Ms. Livermore/Ms. Mitchell:

- i. BOD Appointments (terms beginning January 1, 2021)

Ms. Cook reported that the PLF Board approved the three new board members that were also approved by the Board of Governors. The new board members are Akeem Williams, Harshi Waters, and Chris Karlin. No further action is required.

9. LIAISONS' REPORT (BOG): (Mr. Foster/Ms. Hierschbiel)

Mr. Foster gave the BOG report.

PLF Exemption from Insurance Code – In 2019, Ms. Bernick and Mr. Foster discussed the PLF's exemption from the insurance code. His goal was to make sure that he dealt with the issue. The BOG has approved the amendment that will be presented to the legislation during 2021 regarding ORS 731.036 (includes a cross-reference to the Professional Liability Fund).

Mr. Foster expressed concerns that the relationship between the BOG and the BOD and the PLF and OSB staff has become more challenged this year than in recent memory. He urged both the BOG and BOD to put effort into rebuilding the strained relationship and for staff to do the same. He is confident both entities want a positive relationship and has confidence that open and ongoing communication can lead to a positive outcome. Discussion followed.

Ms. Mullen and Ms. Livermore thanked Mr. Foster for his feedback.

Ms. Cook said that she and Ms. Hierschbiel have agreed to work together and she feels the conversations have been productive and helpful. We should all work together to bridge the communications and make the two organizations strong.

9. EXECUTIVE SESSION

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

Ms. Mullen called the meeting into executive session at approximately 11:17 a.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:

- i. 2020-10-09 Executive Session Minutes.
- ii. 2020-10-09 Executive Session Minutes – General Counsel.
- iii. 2020-11-12 Executive Session Minutes.
- iv. 2020-11-24 Executive Session Minutes.

Ms. Johnnie moved and Ms. Livermore seconded that the above minutes be approved as written. Motion passed unanimously 8-0.

11. UNFINISHED AND NEW BUSINESS

There was no unfinished or new business to discuss.

Ms. Mullen thanked everyone and said she appreciates everyone.

Ms. Livermore thanked Ms. Mullen for her service on the Board.

12. ADJOURNMENT

The meeting adjourned at approximately 11:17 a.m.

These minutes were approved by the Board of Directors at its February 5, 2021 board meeting.