



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

**August 16, 2023
Hybrid meeting in Eugene**

Board Chair Steve Hill called the open session meeting of the Board of Directors to order at 1:04 p.m. Present in addition to Mr. Hill were board members Gina Johnnie (via Teams), Valerie Saiki, Oren Haker, Michelle Johansson, Ali Hilsher, and Harshi Waters. In addition, OSB President Lee Ann Donaldson attended open session (via Teams) and OSB CEO Helen Hirschbiel attended open session in person. Also present were PLF staff members Megan Livermore, Betty Lou Morrow, Matt Borrillo, Heather Bowman, Cindy Hill, Emilee Preble, Tanya Hanson, Kyra Hazilla, Hong Dao, Rachel Edwards, John Berge, Amy Hoven, Maureen DeFrank, and Iranzi Ntnhemuka and perspective new board member, Jinoo Hwang (open session).

This meeting was noticed and conducted in compliance with the Oregon Public Meetings Law, ORS 192.610, et seq. and a quorum was verified.

Ms. Livermore thanked everyone for coming to Eugene. She introduced our newest member of the accounting team, Iranzi Ntnhemuka and perspective new board member, Jinoo Hwang.

1. Chair Report (Mr. Hill)

Mr. Hill welcomed and thanked everyone for participating.

(A) Approval of Open Session Minutes

- i. 2023-06-09 Draft Open Session Minutes (BOD)
- ii. 2023-06-21 Draft Open Session Minutes (BOD)

Approval of Executive Session Minutes in Open Session

- iii. 2023-06-09 Executive Session Minutes (BOD/Claims)
- iv. 2023-07-20 Executive Session Minutes (Standing BOD Meeting)

Ms. Saiki moved, and Ms. Waters seconded that the open session minutes of June 9, 2023, open session minutes of June 21, 2023, executive session minutes of June 9, 2023, and executive session minutes of July 20, 2023, be approved as written. Motion passed 7-0 (1 absent; 1 vacancy).

(B) Committee Minutes

- i. 2023-06-09 Claims Committee Quarterly Meeting Minutes

There was no discussion and no action required.

2. Claims Report – Open Session (Mr. Borrillo)

(A) General Claims Report

Mr. Borrillo reported that the claims department is running smoothly. We currently anticipate the claim count to be 620-650 for the year (pre-pandemic, the numbers were 850 to 900 annually). We have not seen an increase. The national trend indicates lower frequency but higher severity and more complex cases. There is also a trend of large number of office closures due to retirements and deaths and more attorneys simply falling off the radar and abandoning their practice. Areas of law that continue to have high frequency are trusts/estates, as well as family law and bankruptcy.

We recently had 2 audits regarding excess claims. The auditor noted that out of all the NABRICO companies, the PLF tends to be the most detailed in our reports. He complimented the claims attorneys for their detail and knowledge. The pride in our claims department is reflected in these audits. A third audit is coming up.

There was a discussion regarding claims frequency of 10.18% and whether this is an annual percentage and if that is normal. The number is low, but typical for now. Mr. Hill asked if it includes claims without merit and Ms. Morrow said yes. It includes everything and represents the number of files we open. Not all files turn into claims.

3. Financial Reports (Ms. Morrow)

Ms. Morrow welcomed new accounting staff member, Iranzi.

Ms. Morrow suggested that all motions for all action items be handled at the end of her section.

(A) Audit 2022-Management Letter

See materials.

(A)i. 2022 Audit Governance Letter

See materials.

(A)ii. 2022 Audited Financial Statements – Action Required

The audited financial statements can be found on page 22 of the materials.

The Capital Assets line item has increased substantially (\$10.4 million) due to updated reporting requirements for Right of Use assets (ROU), but it is offset under Other Liabilities. The PLF has a lease with the Oregon State Bar for the Tigard offices and that lease falls under the auspices of an ROU asset.

We finished the year with a \$13.6 million loss before the PERS entry. With the PERS entry, there was a \$1.2 million reduction.

Ms. Morrow reported that we have not experienced an increase in severity this year. In 2021 and 2022, we did see an increase in severity (not frequency). For 2023, large payments have simmered down. We are reducing the expense portion of the cost of new claims by \$500. Indemnity is \$12,500 and expense is \$10,500 (reduction of \$500). We are recommending the cost of new claims be reduced to \$23,000 (from \$23,500).

Reserves have also come down. We released \$344,000 in reserves. Reserves are now set at \$12.9 million indemnity and \$11.4 million expense, for total liabilities at 50% confidence of \$24.3 million.

The PLF is seeking to return to a \$3,500 assessment, a \$200 increase from the 2023 assessment. This is the first increase request in 13 years. Inflation over those 13 years is at 35-38%. Over the same amount of time, the assessment only went up 9%. During that period, we have reduced the assessment and provided a one-time \$300 credit in 2022.

Ms. Morrow reported that at the recent finance committee meeting, Mr. Karlin expressed some concern that with a \$200 increase, we still have a deficit budget for 2024. We are still financially stable enough we do not want or need to close that gap. We just want to steady the ship and only ask for what we need to withstand the financial pressures we are facing – upward pressure on claims, attrition of Covered Parties, significant investment losses due to a volatile market, and increased operating costs. The increase is intended to allow the PLF to stay financially sound and stabilize the assessment over a number of years.

(B) 2023-June 30 Actuarial Memo – Action Required

Ms. Morrow referred the Board to the actuarial memo in the materials. The actuaries come up with the estimate of what it will cost to cover all expected claims. The results are a shortfall of \$1,124 per covered party (based on the assessment alone). This is at a 50% confidence level. The shortfall is another reason for an increase in the assessment to \$3,500.

(B)i. 2023-June 30 Rudd and Wisdom Determination of Reserve

See materials.

(B)ii. 2023-June 30 Rudd and Wisdom Calendar Year 2024 Assessment

See materials.

(C) 2024 – Net Position – Action Required

Ms. Morrow stated that the PLF needs adequate resources to withstand tough financial years like 2022 thus, we set a Net Position goal based on specific areas of exposure. Total net position recommendation is \$32,071,000.

(D) Cover Memo re 2024 Annual Budget

See materials.

(D)i. 2024 Annual Budget – Action Required

Ms. Morrow discussed assumptions for the budget.

- 6,510 full-pay attorneys.
- \$3,500 full-pay assessments.
- Annual Return on Investments (ROI) = 5.5% (averaged across fund allocations)
- 4% COLA increase.
- 7.5% medical benefit increase.
- Added a \$2,000 annual training allowance for non-exempt staff.
- Net PERS pension interest expense of \$685,000.
- ISI non-contractual expenses of \$150,000.
- GAAP right of use lease interest charge of \$160,000.
- BarBooks contribution remains stable at \$125,000.
- We are assuming 700 new claims at \$23,500 per new claim. This is a claims frequency of 10.1%

Mr. Hill asked if there are any other big changes to the budget that would be deviations from past years. Ms. Morrow said no.

Mr. Hill said that as Chair, he coordinated the CEO evaluation process this year and even though we are past it, he feels he could have used some help with the process. He requested money in the budget to assist the Chair with the process. Ms. Morrow said that there is money for consultancy professional services of about \$35,000 that could be used for this assistance.

(E) 2023-June 30 Draft Financial Statements

Ms. Morrow reported that we finally received the PERS actuarial information to allow final entries to the 2022 statements. There is nothing that is unknown and no adjustments, recommendations, or findings. This is a matter of great pride in our accounting department.

On page 7 of the Combined Investment Schedule, Ms. Morrow pointed out that last year at this time, there was a \$10 million loss on the portfolio. We are now at a \$4.5 million gain, so a huge swing (\$14.5 million). This is great news.

The net position is at \$23.4 million vs. \$17 million described previously. We are on track and over budget by almost \$200,000 on assessment and over budget on investment returns.

We have a YTD 7.24% return on our portfolio.

Ms. Morrow stated that the Balance Sheet does not balance due to an entry as of June 30 not made yet.

See materials for more specific information.

Ms. Morrow asked for a vote on the four action items above. A summary of those items is (1) the 2022 audited financial statements as presented; (2) 3 recommendations on the actuarial memo: \$12.9 million for indemnity, \$11.4 million for expense for a total of \$24.3 million total liabilities, and \$23,000 for cost of new claims for final six months of 2023, and approve \$200 increase to the full-pay Primary assessment, bringing it to \$3,500 for 2024 annual assessment; (3) Approval of the net position goal of \$32,071 million; and (4) Approval of the 2024 annual budget as written.

Ms. Saiki moved, and Mr. Haker seconded that the four action items listed above be approved as written. Motion passed 7-0 (1 absent, 1 vacancy).

4. Practice Management Assistance Program (PMAP) (Ms. Dao)

(A) PMAP Update

Ms. Dao reported that the department is hiring a new PMA since Isaac returned to private practice. They have been interviewing candidates and have a good pool.

Shredding Events. The department provided 5 complimentary shredding events from June to August. A total of 2,348 boxes were shredded and 315 attorneys attended those events. The metro area is done and there will be another shredding event in Eugene in a few weeks. We are hoping for a good turnout.

Publications and Practice Aids. The publications and practice aids have been updated online. 3 new practice aids were added; (1) Checklist to prevent/prepare for a data breach; (2) Checklist for lawyers joining a law firm; and (3) Help for lawyers dealing with a client passing away in the middle of a case. We are working on updating 3 books: Planning Ahead in the Event of Death/Disability; Trust Accounting; and Opening a Solo Practice. They are being significantly updated and we are hopeful they will be done this year.

The *inBrief* publication is coming out in August.

CLEs and Presentations. The PMAP wrapped up PLF-sponsored CLEs for the year. PLF claims attorney, Amy Hoven, was a speaker at the recent CLE "Handling Personal Injury Cases: Malpractice Traps and Ethical Concerns for Lawyers" and we received excellent reviews. It was the best attended CLE we have ever had.

The PMAP is planning to resume its road show in 2024. We have 13 cities planned beginning January through June. The presentations are generally about 1-1/2 hours long and give attorneys the opportunity to meet with PMAs after the CLE.

Learning the Ropes. The department is focusing on Learning the Ropes, which is being held November 7-9.

5. Oregon Attorney Assistance Program (OAAP) (Ms. Hazilla)

(A) OAAP Update

Ms. Hazilla reported that the OAAP has been very busy.

OAAP Article on Suicide. Ms. Hazilla showed an OAAP article regarding suicide that was the cover story in the July OSB Bar Bulletin. Amazingly, there were two attorneys who were willing to tell their personal stories. We are grateful for their willingness to share. There is an OAAP suicide intervention CLE taking place August 22, 2023, in the Columbia rooms at the Oregon State Bar. It is a 1-1/2 hour experiential workshop.

Ms. Hazilla reported that lawyers are falling apart a bit right now. People are really struggling, and many are reaching out for help. We are receiving many “on call” calls of people reaching out for help either for themselves or others. It seems we are bridging the gap.

Wellbeing Stakeholders. Ms. Hazilla reported that a draft wellbeing stakeholders report was presented to the BOG. We are working closely with the OSB on the next steps in implementing some of the suggestions in the report.

OAAP Retreat. A 2023 Wellness Retreat for Lawyers Identifying as Women or Outside the Binary will be held at Surfsand Resort in Cannon Beach on Friday November 3rd and Saturday, November 4th, 2023.

Invitations to Speak at Law Schools. The OAAP has been invited to speak at law schools and professionalism classes and orientations for new law students to the Oregon legal community.

6. Excess Program (Ms. Preble)

(A) Excess Program Update

Ms. Preble reported that in August, Beazley (a reinsurer since 1992 that also provides our cyber endorsement) participated in a claims and underwriting audit. We received many gold stars in the underwriting category.

Reinsurance talks are coming up in the fall. Renewals are effective October 1 each year. We will release applications mid-October. Ms. Morrow and Mr. Borrillo will be representing us at the reinsurance talks with incumbent markets. Ms. Livermore and Ms. Preble will hold a virtual meeting for new markets.

(B) Administrative Update

Ms. Preble reported that, as previously mentioned, we hired Iranzi in the accounting department, and we are in the process of advertising and hiring for a Practice Management Attorney and an Attorney Counselor position.

7. Communications Program (Ms. Hanson)

(A) Communications Department Update

Annual Report. Ms. Hanson referred the board to the materials beginning on page 166 and noted that it includes the 2022 Annual Report. Ms. Hanson had hard copies on hand for anyone interested in one. She noted that the report includes a creative writing financial report from Ms. Morrow, expanded PMAP and OAAP services sections, including areas of assistance, access by region, etc.

NABRICO Conference. The materials include the NABRICO conference brochure. The communications department was involved with the logo, branding, brochure, signage, and content.

inBrief. Ms. Hanson previously mentioned the ChatGPT (AI technology) two-part article pertaining to potential malpractice written by Ms. Dao. The second part will be coming in December, as mentioned in Ms. Dao's report.

inSight. Ms. Hanson reported that the next issue of *inSight* is in the works, and it will include the history of the OAAP, highlighting different services, etc. It will include an article on overcoming stigma for lawyers and a short summary of the wellbeing work being done.

Licensed Paralegals (LPs). The Communications team is working on gearing up for LPs and ensuring our external communications are inclusive of the newest OSB members. We are working with the Oregon State Bar communications team to ensure consistent messaging.

Assessment. Ms. Hanson is working on messaging related to the assessment increase, assuming approval by the BOG.

8. CEO Report (Ms. Livermore)

(A) CEO Update

Kudos. Ms. Livermore gave kudos to PLF staff. She has received positive feedback from people at various events about the PLF and its staff. She is very proud of the PLF and our staff. Ms. Livermore provided specific feedback she had received, as well as thanking all staff for their hard work and dedication to the PLF mission.

CEO Review. Ms. Livermore said that she listened to the feedback from the Board regarding strategic planning and goal setting. To that end, at the beginning of next year, the management team will do a one-day, off-site retreat to begin this work in earnest.

LPs. At some point, Ms. Livermore will add to the BOD agenda a conversation about potentially bringing an LP onto the PLF Board. If so, we would need to know how to integrate them with our board. Would we want to add numbers to our current Board? Would it just be an advisory position? Ms. Livermore would like board members to begin thinking about this topic.

2024 Board Member Recruitment. Ms. Saiki asked if we have an update on potential new board members for next year. Ms. Livermore said we are still in the recruiting phase. She invited Injoo to the meeting today as

a perspective board member and she has spoken with a couple of other people. We have 2 lawyer positions and 1 public member position (Valerie's replacement). If anyone has suggestions, please let Megan know. We look at practice areas, geographical location, and experience with estate planning, family law, and civil litigation.

9. Liaisons' Report (BOG)

(A) BOG Update

OSB President, Lee Ann Donaldson, reported that the BOG is preparing for the HOD meeting in October. They are working on some resolutions.

Highlights.

- The BOG is not asking members to increase their dues.
- ORPC 1.2(d) – Proposed amendment will be presented to the House of Delegates (HOD) on October 27. The amendment will allow attorneys to advise on rules for Psilocybin.
- ORPC 1.8(e)(3) – Resubmission of amendment to be presented to HOD on October 27. It was presented last year but was sent back to the committee. The proposal allows public defenders/pro bono attorneys to provide small gifts to their clients.
- ORPC 1.5(c) and 1.15-1(c) – Recommendation from Legal Ethics Committee (LEC) for BOG to approve amendments pertaining to fees and safekeeping property.
- Licensed Paralegal Program is open and the OSB is accepting applications now.
- Deans are asking that we (OSB and PLF) encourage Oregon college students and Oregon residents to further their careers in law school; trying to increase numbers for law schools.
- The BBX is considering supervised pathway rules/program later this month.
- OSB/PLF are working on the next steps of wellbeing report provided in June. The BOG is excited to see what we can do with all the stakeholders involved.

Ms. Hirschbiel said that Lee Ann Donaldson is doing a great job. She said that no applications have been received yet for LPs, but there have been many inquiries and many people saying that they plan to apply. Work is still being done on the exam which they plan to provide during the 4th quarter this year, between October and the end of the year. They are also working on a 20-hour professional development piece under the rules. CLE seminar staff will be reaching out to the OAAP/PMAP regarding different components to that.

Ms. Hirschbiel has also noted how appreciative she is with collaborations with PLF staff over the last year or so. She appreciates the partnership. We are doing amazing work together and she feels better than ever regarding the relationship between the two organizations. It is a testament to the staff, leadership of staff (specifically, Megan Livermore), and the Board.

10. Unfinished and New Business

There was no unfinished or new business to discuss.

11. Executive Session

Mr. Hill concluded the open session meeting and said they would move 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.

12. Adjournment

The meeting was adjourned at 3:10 p.m.

These minutes were approved by the PLF Board of Directors at its October 13, 2023, board meeting.