



NATALIE A. HUBLEY  
PRESIDENT

COMMONWEALTH AUTOMOBILE REINSURERS

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## RECORDS OF MEETING

### COMMERCIAL AUTOMOBILE COMMITTEE – SEPTEMBER 14, 2017

#### Members Present

Mr. Thomas DePaulo – Chair	Meridian Insurance Agency, LLC
Ms. Elizabeth Brodeur	Safety Insurance Company
Mr. Peter Chung <sup>(1)</sup>	The Norfolk & Dedham Group
Ms. Sheila Doherty	Doherty Insurance Agency, Inc.
Mr. Coleman Johnson	The Hanover Insurance Company
Mr. Richard Jones	Leslie S. Ray Insurance Agency, Inc.
Mr. Dennis Morris	Arbella Insurance Group
Mr. John Olivieri, Jr.	J.K. Olivieri Insurance Agency, Inc.
Mr. Thomas Skelly	Deland, Gibson Insurance Associates, Inc.
Ms. Wendy Stearns	MAPFRE U.S.A. Corporation
Mr. Barry Tagen	Pilgrim Insurance Company

Substituted for:

<sup>(1)</sup>Mr. Michael Faron

Not in Attendance:

N/A

#### 17.01 Records of Previous Meeting

The Committee unanimously voted to approve the Records of the Commercial Automobile Committee meeting of August 9, 2017. The Records have been distributed and are on file.

#### 17.13 Arbella Protection Insurance Company – Request for Review

Arbella Protection Insurance Company is requesting reimbursement for extraordinary expenses incurred by the company in its investigation of fraud within the Point Insurance Agency's book of business, in lost resources diverted from regular investigations, and in its defense of substantial litigation initiated by Point Insurance Agency against Arbella. Arbella is also requesting that a redistribution of commercial residual market business to maintain equity among Servicing Carriers be undertaken.

Attorney Roberta Fitzpatrick, representing the Arbella Protection Insurance Company, presented Arbella's requests for review to the Commercial Automobile Committee. Mr. Dennis Morris of Arbella Protection Insurance Company recused himself from Committee discussion on this agenda item.

Ms. Fitzpatrick provided the Committee with background information relative to Arbella's termination of the Rapo and Jepsen Insurance Agency, a large agency with approximately \$14 million in premium and over 11,000 policies. She noted that over the course of an extensive investigation by

Arbella, pervasive fraud was uncovered within the Rapo and Jepsen Insurance Agency. In particular, Arbella had identified that the agency assisted applicants in creating businesses for purposes of enabling applicants that were otherwise ineligible to for insurance to obtain insurance through the commercial market. Consequently, Arbella terminated the agency's commercial automobile Exclusive Representative Producer appointment for violations of various CAR Rules.

Ms. Fitzpatrick distributed to the Committee a timeline of events identifying important dates relative to the termination of the Rapo and Jepsen Insurance Agency and the purchase of Rapo and Jepsen's assets and policy expirations by the Point Insurance Agency which was created by a former employee of the Rapo and Jepsen Insurance Agency. The timeline also included all dates of lawsuits, appeals and motions filed by the Point Insurance Agency with the Division of Insurance and Massachusetts Superior Court against Arbella, hearing dates and the results of the hearings.

Ms. Fitzpatrick stated that upon the Point Insurance Agency's assignment back to Arbella, the agency initially requested guidelines to follow and appeared to be cooperating with Arbella to eliminate the fraudulent practices undertaken by Rapo and Jepsen. The guidelines were made part of the contract between the agency and Arbella, however, Ms. Fitzpatrick noted that the same issues encountered with Rapo and Jepsen were continuing to occur. The agency, deeming the guidelines and requirements placed upon the agency unreasonable, filed multiple complaints against Arbella to the Division of Insurance and the Massachusetts Superior Court seeking relief from the additional requirements Arbella had placed upon the agency. As a result, Arbella encountered additional expenses associated both with the continuing investigation of the agency and the litigation initiated by Point.

Ms. Fitzpatrick indicated that due to the tremendous drain placed upon Arbella's underwriting, claims and SIU departments, Arbella is appealing to the Commercial Automobile Committee for reimbursement of the extraordinary expenses and resources expended by Arbella in the investigation of fraud within the Point Insurance Agency, as well as the efforts involved in developing the guidelines and procedures needed to manage the agency and in the defense of litigation brought forth from Point against Arbella. She specified that Arbella is not seeking reimbursement for any expenses the company incurred in connection with its investigation and subsequent termination of the Rapo and Jepsen Insurance Agency. Further, she stressed that the expenses for which Arbella is requesting reimbursement are those incurred by the company but which are not contemplated in the RFP process such as those relative to typical claim fraud issues.

Mr. Ed Spellman, SIU investigator for Arbella, provided the Committee with further information to support Arbella's assertion that due to the substantial amount of fraud in Point's book of business, the company's investigation of Point was not within the scope of ordinary SIU investigations. He noted that SIU resources had to be devoted on a full time basis, diverting SIU resources away from the company's regular SIU investigations and the investigations often required the involvement of both underwriting and claims personnel.

Mr. Barry Tagen questioned whether a CAR provision exists for a company to request reimbursement of extraordinary expenses. Attorney Stephen Torres, Counsel for CAR, noted that he had reviewed CAR's Rules of Operation and the Manual of Administrative Procedures and indicated that there isn't a direct provision in either of those documents that address reimbursement for expenses concerning fraud investigations or SIU expenses. However, there does exist provisions in the CAR Rules and manuals that contemplate reimbursement for extraordinary expenses, typically pertaining to producer default or excess claim judgments. Mr. Torres indicated that the guidelines provided under these provisions, provided the basis under which the request was directed to the Commercial Automobile Committee. He advised that any extraordinary request may be heard by the appropriate Committee, who would in turn make a recommendation to the Governing Committee.

The Committee first considered Arbella's request for reimbursement of extraordinary expenses. The Committee noted that all Servicing Carriers face unique and difficult circumstances in managing those producers that are assigned to them without a voluntary relationship, often ending in an agency termination. The Committee questioned whether such expenses related to the Point agency should be considered extraordinary, and expressed concern with respect to the precedent that would be established if such a request were granted. Ms. Fitzpatrick agreed, and explained that, for those reasons, Arbella is not seeking reimbursement for expenses incurred in addressing the pervasive fraud perpetrated by the Rapo and Jepsen agency, nor is Arbella seeking reimbursement for expenses incurred to date, and that will continue to incur, in addressing the termination of the Point agency, the appeal of which is on-going before the Market Review Committee. However, Ms. Fitzpatrick noted, that pursuant to CAR policies and procedures, the agency was assigned back to Arbella after being sold to a former employee. Further, she noted that the agency had retained its workforce. Under normal circumstances, it would be anticipated that the successor organization would cease fraudulent activity, work with the company as it reviewed the renewal book of business. Instead, Ms. Fitzpatrick asserted that the agency not only perpetuated the fraudulent activity, but also obstructed Arbella's efforts to ferret out the fraud in the existing book.

Most Committee members were persuaded that the company had incurred extraordinary expenses. Referring to the attachments distributed as additional information, Ms. Fitzpatrick advised that Arbella is requesting reimbursement of \$585,934. Specifically, Arbella is requesting \$62,843 in fees relating to the defense of lawsuits, appeals and motions filed by the Point Insurance Agency with the Division of Insurance and Massachusetts Superior Court against Arbella, \$162,273 representing salary expense relating to those claims, underwriting, and operations staff, and \$360,818 representing lost savings associated with SIU efforts that would have been realized by Arbella had it not focused these extraordinary resources on the Point agency. The Committee supported Arbella's request for reimbursement of legal fees and salary expenses, but was unable to opine on the lost SIU savings. The members questioned whether staff could assist the Governing Committee in a review of that figure.

After considerable discussion, on a vote of 7 in favor, 2 opposed and 1 recused, the Committee approved a motion to recommend to the Governing Committee that Arbella be reimbursed for extraordinary expenses incurred relative to its investigation of the Point Insurance Agency. The motion recommends an amount up to \$585,934, the amount initially requested by Arbella. Arbella will be required to provide the Governing Committee with back up information to justify its requested amount; however, the Governing Committee may consider whether an audit or further investigation may be required to further validate the figure.

Ms. Fitzpatrick then addressed Arbella's request to redistribute ceded business among all Servicing Carriers in accordance with the requirement of CAR Rule 13 to ensure the equitable distribution of risks among all Servicing Carriers. Mr. Tagen from Pilgrim Insurance Company recused himself from participating in Committee discussion and voting on this item.

Ms. Fitzpatrick reviewed an exhibit included with the Additional Information that illustrated the distribution of the ceded written premium for policy year 2017 through June, noting that Arbella is undersubscribed following the termination of the Rapo and Jepsen Insurance Agency and the nonrenewal of fraudulent Point risks. As reflected in the exhibit, Arbella predicts it will be undersubscribed by approximately \$17 million by the close of the year. Accordingly, Arbella is requesting that if a review by CAR later this year indicates that this trend continues, a redistribution be performed effective January 1, 2018, rather than waiting until the 12 months of reported data is available, as stipulated in Rule 13.C. Given the level of Arbella's undersubscription, Ms. Fitzpatrick asserted that redistribution is appropriate and should not wait until the second quarter of 2018, when calendar year 2017 data is complete.

In response to a question from the Committee, Mr. Torres noted that although Arbella is requesting relief from the specific terms of Rule 13.C., the Committee may take into account extraordinary circumstances in making a recommendation to the Governing Committee.

The Committee members observed that the provisions of Rule 13.C. were put in place to avoid the disruption which has been evident in the marketplace recently as a result of the redistribution required with the withdrawal of Travelers from the Commercial Automobile Program. Further, the members noted that the action requested by Arbella would be premature given the potential for shifts in books of business that typically occurs with such an extensive redistribution.

After considerable discussion, on a unanimous vote, with two recusals, the Committee approved a motion to recommend to the Governing Committee to deny Arbella's redistribution request.

MARIAN ADGATE  
Corporate Documentation Specialist

Boston, Massachusetts  
September 19, 2017

**ATTACHMENT LISTING**

Docket #CAC17.02, Exhibit #4

Attendance Listing

Docket #CAC17.13, Exhibit #3

Rapo/Point Timeline Submitted By Arbella Protection  
Insurance Company





## **RAPO/POINT TIMELINE**

March 2016	Arbella issues Notice of termination to Rapo and Jepsen
April 2016	Rapo and Jepsen appeals the termination
April 2016	Bruno Rozembarque, while employed at Rapo and Jepsen, obtains producer's license
April 2016	Bruno Rozembarque creates the Point Insurance Agency
June 2016	Point Insurance and Rapo and Jepsen enter into a purchase and sale agreement wherein Point purchases the assets of Rapo and Jepsen including all expirations owned by the Rapo and Jepsen
July 2016	Point is appointed by CAR as an ERP and is assigned to Arbella
July 2016	Point requests guidelines from Arbella "to avoid the problems experienced by Rapo and Jepsen"
July 2016	Arbella provides Point with the requested guidelines
September 2016	Point and Arbella enter into a Limited Servicing Carrier Contract which includes the requested guidelines
September 2016	Rapo and Jepsen withdraws its appeal of the termination
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10/17/2016	Point files a Lengthy Complaint and Motion for Temporary Injunction against Arbella at the Division of Insurance seeking, amongst other relief, to enjoin Arbella from using fraud fighting tools such as guidelines, renewal applications and SIU interviews.
10/16	Arbella prepares and files detailed opposition papers
11/1/2016	Point files in the Division of Insurance an Emergency Motion for An Expedited Hearing on its Request for a Temporary Restraining Order against Arbella
11/16	Arbella responds to Points Emergency Motion
11/7/2016	Point files a Complaint, a Motion for a Temporary Restraining Order (TRO), and a Request for Hearing on its Emergency Motion for a TRO against Arbella in the Massachusetts Superior Court seeking essentially the same relief sought in the Division of Insurance
11/16	Arbella prepares and files detailed opposition papers



11/10/2016 After hearing, Justice Heidi Brieger denies all of the relief sought by Point in the Superior Court

11/29/2016 The Division of Insurance holds a hearing on the Complaint filed by Point against Arbella

12/15/2016 Point files a Request for Relief at CAR pursuant to CAR Rule 20 seeking essentially the same relief as it sought in the Division of Insurance and the in the Massachusetts Superior Court

12/19/2016 The Division of Insurance Issues A Decision Dismissing the Complaint Point Filed Against Arbella and declining to grant Point the relief sought.

1/17 Arbella prepares and files detailed Opposition papers in the connection with the newly initiated CAR proceeding

1/12/2017 The CAR Market Review Committee holds a hearing and issues a decision finding that Point did not establish that the conduct of Arbella unfair, unreasonable or improper and denying the relief sought by Point against Arbella

1/13/2017 Point appeals from the Decision of the CAR Market Review Committee

1/31/2017 The Governing Committee Review Panel holds a hearing and unanimously votes to uphold the decision of the Market Review Committee

2/2/2017 Point files another Complaint against Arbella at the Division of Insurance and Files a Notice of Appeal of the CAR Decision

2/17 Arbella files a brief detailing the history and requesting that the Division of Insurance uphold the CAR Decision on appeal and deny the Complaint against Arbella

3/15/2017 Point Files another Emergency Motion for a Preliminary Injunction against Arbella in the Division of Insurance

3/28/2017 Point files a letter in the Division of Insurance Renewing its Request for an Emergency and Expedited hearing on its Request for a Preliminary Injunction against Arbella

4/12/2017 The Division of Insurance holds a preliminary hearing on Point's Appeal and Complaint

4/21/2017 Point files a Supplemental Memorandum in the Division of Insurance in Support of its Request for Relief

6/23/2017 Point files a Further Supplemental Memorandum with the Division of Insurance