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RECORDS OF MEETING

GOVERNING COMMITTEE REVIEW PANEL – MARCH 15, 2018

Members Present

Mr. Thomas DePaulo – Chair
Mr. John Kelly
Ms. Meredith Woodcock

Cabot Risk Strategies, LLC
MAPFRE U.S.A. Corporation
Liberty Mutual Group

Substituted for:

Not in Attendance:

17.01 Records of Previous Meeting

The Committee unanimously voted to approve the Records of the Governing Committee Review Panel meeting of August 31, 2017. The Records have been distributed and are on file.

18.04 Point Insurance Agency, Inc./Arbella Protection Insurance Company

Point Insurance Agency is appealing the November 28, 2017 decision of the Market Review Committee to uphold the termination action of the Arbella Protection Insurance Company in which Arbella terminated the agency's commercial automobile and taxi and limousine Exclusive Representative Producer appointments for violations of various sections of CAR Rule 14.B. and Arbella's Commercial and Taxi/Limo Servicing Carrier Agreements.

Mr. John Metcalfe provided the Panel with information relative to the appeal. He noted that on July 28, 2017, Point submitted a Request for Review/Relief to CAR appealing its termination by Arbella. After several agreed upon continuances, the Market Review Committee met on November 28, 2017 to consider whether the termination should be upheld based upon the grounds stated in Arbella's termination notice. The Market Review Committee considered the merits of Point's Request for Review/Relief and found that Arbella's termination of the Point Insurance agency's Exclusive Representative Producer appointments was not unfair, unreasonable or improper. Accordingly, the Market Review Committee voted to uphold Arbella's termination of the agency. Point Insurance Agency is now appealing the decision of the Market Review Committee to the Governing Committee Review Panel.

Mr. Metcalfe indicated that the Governing Committee Review Panel's review is a *de novo* review in which the Panel is not bound by the Market Review Committee's decision. The Panel should consider whether or not the termination should be upheld based on the grounds stated in the notice of termination. Each alleged violation should be considered individually to determine whether each was a valid basis for termination, and the Panel should ultimately determine whether Arbella's termination of the agency's commercial automobile and taxi and limousine Exclusive Representative Producer appointments was unfair, unreasonable or improper.

Mr. Stephen Torres, counsel for CAR, stated that attached to the meeting's Additional Information notice was material submitted by both Point and Arbella, specifically noting that included within Point's submission was a new Request for Review/Relief. Point requested that CAR provide this information to the Panel, believing it to be germane to the issue before the Panel today. However, Mr. Torres clarified that although the information presented in the new request may be considered by the Panel, it should be only considered as underlying information relative to the alleged violations that are the subject of today's review and should not be acted upon by the Panel at the meeting. In short, the Panel should focus only on the five grounds for termination outlined in Arbella's notice of termination dated June 29, 2017 and whether those items were a valid basis for termination.

Ms. Dana Casher, representing the Point Insurance Agency, requested that the Panel consider postponement of the hearing until after a decision is rendered by the Division of Insurance (DOI) on a prior pending matter. Point has requested the DOI to provide a ruling on several issues key to this hearing, noting that the DOI's decision on this matter will provide clarification relative to the basis on which eligibility for a commercial policy is determined, whether Arbella is required to apply the same underwriting standards to Point as it does to other ERPs, and whether Arbella must compensate Point for the losses suffered by the agency as a result of the company non-renewing a substantial number of its commercial policies.

Ms. Roberta Fitzpatrick, representing Arbella Protection Insurance Company, responded to the points made by Ms. Casher. She stated that Arbella does not believe that the matter pending before the Division of Insurance has any bearing on this termination proceeding and noted that the reason for Arbella's termination of the agency's ERP appointments was not due to eligibility issues but because of significant instances of fraud perpetrated by the agency. Ms. Fitzpatrick also noted that if Arbella imposed a higher level of underwriting standards on the agency, it was only to investigate suspected fraud within the agency. Additionally, she opined that whether Arbella must compensate Point is irrelevant to the termination proceeding as both CAR and the Division of Insurance have no authority in this regard. She stated that the issue before the Panel is whether or not Arbella's termination of the agency based on the grounds noted in the June 29, 2017 letter have been established and she indicated that Arbella would not agree to a continuance of the hearing.

Mr. Torres indicated that absent the agreement of the parties for a request for continuance, it is the Panel's decision whether to consider Point's request. He noted that the Rules and Manual of Administrative Procedures contemplate a specific process and order which in this instance has been followed and is currently underway, but the process does not contemplate a postponement or continuance due to a pending parallel proceeding between the same parties at the Division of Insurance. Members of the Panel were not persuaded that the matter pending at the DOI was relevant to the alleged violations subject to this review and therefore were in agreement that the meeting and the review should proceed.

Ms. Casher proceeded to present Point's case, referencing specific policies used by Arbella to support its termination of the Point agency. She indicated that all of the policies were renewals, initially written by Rapo and Jepsen Insurance Agency and underwritten by Arbella. Point was unaware of why the businesses had been set up and in most cases, the insurance has been in a corporate name for many years. She noted that of those policies, three were subsequently renewed by Arbella and four have been renewed in the residual market by other Servicing Carriers. Three policies were cancelled and correctly rewritten in

the private passenger market with assistance by Point and three insureds were able to get insurance on their own. She asserted that Point has tried to do the right thing by setting up meetings with Arbella, going to the DOI for guidance, and assisting its customers where necessary in securing individual insurance and that Point should not be held responsible for Rapo's prior conduct. She requested the Panel to consider a reversal of Point's termination or at least defer action until the DOI ruling is rendered.

Ms. Fitzpatrick responded that Arbella is not suggesting that the conduct of Rapo is grounds for termination of Point and any references to Rapo and Jepsen are purely for context. However, she pointed out that Mr. Rozembarque, principal of the Point agency, had been employed at the Rapo and Jepsen agency for five years at the time of the Rapo and Jepsen agency's termination and he was well aware of the underlying grounds for termination which included findings for fraud; specifically the scheme to create fraudulent businesses to enable people who were ineligible for insurance coverage in the private passenger market to obtain insurance in the commercial market. Despite initial optimism when Point took over the Rapo and Jepsen book of business, it became clear to Arbella that Point was not on board with cleaning up the book of business, identifying legitimate commercial accounts and obtaining fresh information to uncover fraud. Additionally, Ms. Fitzpatrick responded to Ms. Casher's assertion that the fact that some of the policies that were cancelled by Arbella and subsequently rewritten in the residual market by other Servicing Carriers was evidence that fraud did not exist. She stated that these carriers did not have the benefit of historical investigations on these policies and may not yet have identified red flags associated with those accounts. She further noted that the policies that Arbella had rewritten were done so because additional information was submitted by the risk that identified the risk as an eligible risk.

Mr. Ed Spellman, SIU Investigator for Arbella and Mr. Frank Hart, a private investigator for Arbella also provided the Panel with specific details relative to the evidence of fraud in support of Arbella's termination of the Point agency. In conclusion, Ms. Fitzpatrick asserted that Arbella's termination of the Point Insurance Agency's Exclusive Representative Producer assignments was not unfair, unreasonable or improper and therefore requested the Panel to uphold the ruling of the Market Review Committee.

The Panel discussed the comments made by the parties and subsequently considered each of the actions from which Point Insurance Agency requested review/relief, as specified in Arbella's termination letter dated June 29, 2017. The Panel voted on these items individually as follows:

- On a unanimous vote, the Panel approved a motion that Arbella has established that by failing to refrain from engaging in fraudulent activity in connection with the business of Motor Vehicle Insurance in accordance with the provisions of the CAR Rules of Operation, Point has violated CAR Rule 14.B.1.c. Additionally, the Panel unanimously approved a motion agreeing that Arbella has established that this violation provides a valid basis for termination of the agency.
- On a unanimous vote, the Panel approved a motion that Arbella has established that by failing to provide a reasonable and good faith effort to verify the information provided by the applicant, including rating and licensing data, Point has violated CAR Rule 14.B.1.e. Additionally, the Panel unanimously approved a motion agreeing that Arbella has established that this violation provides a valid basis for termination of the agency.
- On a unanimous vote, the Panel approved a motion that Arbella has established that by failing to cooperate with the Servicing Carrier during all audits and investigations, Point has violated Rule 14.B.1.i. Additionally, the Panel unanimously approved a motion agreeing that Arbella has established that this violation provides a valid basis for termination of the agency.
- On a unanimous vote, the Panel approved a motion that Arbella has established that by failing to notify the Servicing Carrier of any suspected fraud, Point has violated CAR Rule 14.B.1.k. Additionally, the

Panel unanimously approved a motion agreeing that Arbella has established that this violation provides a valid basis for termination of the agency.

- On a unanimous vote, the Panel approved a motion that Arbella has established that by failing to only order those coverages from the Servicing Carrier that are requested by the insured and for which the insured is eligible, Point has violated Rule 14.B.1.n. Additionally, the Panel unanimously approved a motion agreeing that Arbella has established that this violation provides a valid basis for termination of the agency.

Finally, the Panel unanimously approved a motion to uphold the decision of the Market Review Committee at its meeting of November 28, 2017 to terminate the Point Insurance Agency's commercial automobile and taxi and limousine Exclusive Representative Producer appointments based upon the grounds stated in the Notice of Termination.

Mr. Metcalfe advised the agency that the decision of the Governing Committee Review Panel carries the weight of the full Governing Committee and may be appealed to the Division of Insurance pursuant to Rule 20 – Review and Appeal of CAR's Rules of Operation within 30 days of being officially notified of the Panel's decision.

MARIAN ADGATE
Corporate Documentation Specialist

Boston, Massachusetts
March 29, 2018

ATTACHMENT LISTING

Docket #GCRP18.02, Exhibit #1

Attendance Listing

