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TRANSCRIPT OF GOVERNING COMMITTEE MEETING

A meeting of the Governing Committee was held at the Automobile Insurers Bureau Conference Center at 101 Arch Street, 7th Floor, Boston, on

WEDNESDAY, SEPTEMBER 20, 2017 AT 10:30 A.M.

Committee Members present –

Mr. James S. Hyatt – Chair
Arbella Insurance Group

Ms. Pamela L. Bodenstab-Krynicki	P.L. Krynicki Insurance Agency, Inc.
Mr. William J. Cahill, Jr. ⁽¹⁾	The Hanover Insurance Company
Mr. Thomas C. DePaulo	Meridian Insurance Agency, LLC
Mr. Christopher D. Dupill	EM Freedman Insurance Agency, Inc.
Mr. Sumner D. Gilman	Economy Insurance Agency, Inc.
Ms. Paula W. Gold	Plymouth Rock Assurance Corporation
Mr. Thomas A. Harris	Quincy Mutual Group
Mr. Christopher Jarrard	GEICO
Mr. John V. Kelly	MAPFRE U.S.A. Corporation
Mr. M. John Olivieri, Jr.	J.K. Olivieri Insurance Agency, Inc.
Ms. Meredith M. Woodcock	Liberty Mutual Group

Substituted for:

⁽¹⁾Ms. Carroll M. Foley

Not in Attendance:

N/A

PROCEEDINGS

(Meeting began at 10:30 a.m.)

Mr. Hyatt: Why don't we get started? Good morning. I'd like to call to order the September 20, 2017 Governing Committee Meeting. The first item is we'd like to announce or welcome back – we have Bill Cahill joining us today substituting for Carroll Foley. Welcome Bill.

Mr. Cahill: Thank you, Jim.

GC

17.01 Transcript of Previous Meeting

Mr. Hyatt: We will start off – I will entertain a motion to accept the meeting minutes from the prior meeting that had been distributed.

Mr. Gilman: So moved.

Mr. Hyatt: Do we have a second?

Mr. Kelly: Second.

Mr. Hyatt: Any discussion? All those in favor?

All Committee Members: Aye.

Mr. Hyatt: Any opposed? The motion carries.

GC

17.04 President's Report

Mr. Hyatt: The first item on the busy agenda today, I'd ask Natalie for the President's Report.

Ms. Hubley: Thank you. The first thing I'd like to talk with you about is the Governing Committee schedule for next year as people are making their plans already for next year. We have scheduled, consistent with the third Wednesday of each month, February 14, 2018, April 11, 2018, June 20th and September 19th. All of those meetings will begin at 10:30. The November meeting, which will be held on November 14th, the Annual Meeting of CAR will begin at 9:30 and the Governing Committee meeting will begin at 10:30. That schedule will be posted on CAR's website in the next day or two.

Next, I would like to talk with you about two new entrants we have to the Massachusetts private passenger marketplace. Sentry Insurance Company had rates placed on file by the Division of Insurance this year.

They have begun to write a small amount of business. CAR staff has reached out to that carrier to let them know about what their requirements are to become an Assigned Risk Carrier. They have fulfilled those requirements and CAR is ready to recommend to the Governing Committee that they be appointed as an ARC. That would be an action item for your consideration today.

Mr. Gilman: Move adoption, Mr. Chairman.

Mr. Hyatt: We have a motion on the table.

Mr. Harris: Second.

Mr. Hyatt: Any discussion on this? I'll move to a vote. All those in favor?

All Committee Members: Aye.

Mr. Hyatt: Any opposed? The motion carries.

Ms. Hubley: Second is Cincinnati Insurance Company. They had rates placed on file in August, I believe, of this year. They have not yet begun to write. They are anticipating beginning to write in November. CAR has reached out to them but we are not yet ready to tell you that they have fulfilled their requirements to be appointed as an ARC. We will bring that to you at your November meeting.

Moving on with my report, I only have a couple of other items. We like to keep going, keep the momentum moving on our disaster recovery project. So I have promised that I would report to this Committee the status on those activities in instances where we don't have any Committee reports that are directly related to that. In fact, that's the case. At your last meeting, you voted to adopt the recommendation of the IT Committee for CAR to move forward with its implementation plan. We have solicited proposals from our partners. We're beginning to see those. Our IT staff has been going back and forth with them a little bit. I do expect in the next week or two to have proposals to review so that we're implementing those plans early in the fiscal year, probably beginning mid-October.

Mr. Hyatt: Judging by all the weather that we're having, it's a good thing.

Ms. Hubley: The only other thing I have to report is that I have nothing to report on the two rate filings that are before the Division of Insurance. CAR staff did send out notification to the industry that we've moved the effective dates again to January 1, 2018. We hope to hear soon on those rate filings. That would be all I have to report today.

Mr. Hyatt: John?

Mr. Kelly: It's been deferred several times, obviously. At what point will we re-look at the filing and update it for more current information?

- Ms. Hubley: We have two filings before the Division. One is the commercial filing. That has been reviewed and is before the Commissioner. I have concern about withdrawing the filing and moving forward because my understanding is there's some concern about approval of an 8.7 percent indication. To withdraw and start over would only slow the process down and we would likely be looking at higher indications.
- Mr. Kelly: I guess my thought process is – if I remember correctly, on the MAIP side, the indication was pretty high when we filed and that could even be higher at this point in time. So I think that we should have filings that reflect close to the indications. That's what we should try to negotiate with the Division. Now, for whatever reason why they're not being approved that doesn't mean we shouldn't provide current information and current filings and try to get the appropriate rate for the residual market.
- Ms. Hubley: I think I could report to you, as far as the private passenger filing goes, that we have been involved in some quite active discussions with the actuaries at the Division of Insurance. That filing is a little bit more active. We did reflect a 20 percent indication in our filing. We had filed for a proposed rate of 9.9 percent. So far, in our discussions with the Division, there's been some differing opinion as to what that actual indication should be. But as recently as two weeks ago, we kind of, I think, came to agreement with where the Division actuary was on our filing. At this point, I think it's before the Commissioner for final approval to place on file. That is a little bit more active. I have reached out to Cara Blank at the Division to ask for a status. It's only really been a week or so since I've heard that she is awaiting to have a discussion with the Commissioner.
- Mr. Kelly: My opinion is if it drags on then we should restart the process and re-look at what our filing is to try to get the appropriate rate level because it has gone on for a while. Trends in the industry for auto insurance is up.
- Mr. Hyatt: Maybe refresh the Committee's memory on when does the indication packet normally get redone.
- Ms. Hubley: The effective dates of the filing have shifted over recent years because – we had started with a schedule of April 1 filings. Since the beginning of managed competition there have been a few instances where we've delayed – we've had delayed approval. So the effective date had crept to October 1. So we had an annual review – we were on a schedule of an annual review of October 1. Again, we filed October 1 and we're here today with a delay at least until January 1.
- Mr. Hyatt: I'm sorry, one other thing, Natalie. When we did make that filing, the indication packet was – was it three quarters of '16? Do you remember? I'm sorry to put you on the spot.
- Ms. Hubley: That's okay. The filing included a review of a rolling accident year data that ended September of 2016. That was used to determine CAR's estimate for the trend indications. So we had nine months of 2016

included in there. We have had some dialogue with the Division as to how that selection would then be applied in our filing. So there's been some ongoing dialogue with the Division about that.

Mr. Hyatt: But certainly, I guess, maybe to John's point, is that if we were to run the full 16, of course, we would mostly likely expect that the indication would only actually be strengthened or, I guess, worsened. John, your point is a good one. It's disappointing when we see carriers getting rate increases approved, but yet these two filings are stuck in the mud. I think there's ongoing dialogue, regular dialogue, between staff and the Division. But I think we will get to a point, at some point, where it is, I agree, it will be too stale and the indications and the data based on it will be too old. I think that's something that we maybe need to consider again at the November meeting.

Mr. Kelly: I would think that our body would discuss and see what our alternatives are. I think we all believe that having the appropriate rate in the residual market produces a healthy market in Massachusetts for auto insurance. For whatever reasons these filings are not being approved, I don't understand especially when carriers are getting filings approved. What are our options? Is there ability for us to pursue a different avenue here to get the appropriate rates and should we be talking about that.

Ms. Woodcock: How long has this been pending?

Ms. Hubley: We made the private passenger filing, I think it was April 22nd with a proposed effective date of October 1.

Mr. Hyatt: And the commercial filings have been pending longer than that. Point well taken. Any other comments on that? That's a frustrating topic. Anything else?

Ms. Hubley: I have nothing else to report.

Mr. Hyatt: Any questions for Natalie? Thank you.

GC
17.05 Counsel's Report

Mr. Hyatt: On to the Counsel's Report.

Mr. Torres: Good morning everyone. There are four items on the Counsel Report today.

The first item is the Calianos Insurance Agency appeal to the Division. This item has been included in our prior reports. The Calianos Insurance Agency initiated an appeal to the Division of the Governing Committee Review Panel's decision to uphold the Market Review Committee's decision concerning the agency's claims that Commerce Insurance had withheld certain commission payments and conducted an unauthorized investigation of the agency. The two parties and CAR briefed the issues

and appeared at hearings before the Division and are currently awaiting a decision from the hearing officer at the Division on the Calianos matter.

The second item relates to Point Insurance. The Point Insurance and Arbella issue has been included in prior reports as well. In December of 2016, Point initiated a Request for Review under CAR Rule 20 of certain practices by Arbella Protection Insurance Company concerning the non-renewal of the Point Insurance Agency's commercial auto book of business. Subsequently, both the Market Review Committee and the Governing Committee Review Panel convened meetings to consider the issues raised by Point. In both instances, the Committees found that none of the conduct at issue was unfair, unreasonable, or improper and denied Point's request for relief. Point then appealed to the Division of Insurance and requested further review by the Commissioner. Point, Arbella and CAR filed position statements and supplemental briefs with the Division. Point, Arbella and CAR also attended a hearing before a hearing officer at the Division and now await a decision from the DOI on that matter as well.

Also, with respect to these same parties of Point Insurance and Arbella, Arbella issued a Letter of Termination to Point dated June 29, 2017. On July 28, 2017, Point submitted a Request for Review to CAR of its termination by Arbella and a Market Review Committee meeting was scheduled to consider the matter last week, on September 12, 2017. In the week leading up to the hearing, Point's counsel represented to Arbella and CAR that he had just learned of a conflict that would prohibit him from proceeding with his representation of Point, and as a result Point requested a continuance of the Market Review Committee meeting so that it could retain successor counsel. The parties appeared at the September 12th Market Review Committee meeting at which time the request for a continuance was considered by the Committee and allowed. We anticipate that the Point termination matter will proceed before the Market Review Committee sometime in October. You'll hear additional information regarding the Point/Arbella matter in the report from the Market Review Committee.

The third item is the Rule 31 amendment. It's also been included in prior reports. On March 24th, Acting Commissioner of Insurance Gary Anderson notified CAR that he had disapproved the proposed amendment to Rule 31 of the Rules of Operation. Acting Commissioner Anderson included with the Notice of Disapproval that the Division would convene a public hearing on the proposed amendment in order to obtain additional information and to provide an opportunity for interested parties to comment on it. The hearing went forward as scheduled last April. CAR submitted and read a statement into the Record in support of the proposed amendment. A few agents also spoke at the hearing describing their experiences regarding accepting payments at their agencies. The hearing officer took the matter under advisement and we await a decision from the Division.

Finally, the fourth item relates to Patriot Insurance. Safety Insurance issued a Letter of Termination dated May 3, 2017 to Patriot PCL

Insurance. On May 22, 2017, Patriot submitted a Request for Review to CAR of its termination by Safety. On June 21, a Market Review Committee meeting was held to consider Patriot's Request for Review and Relief. The Market Review Committee considered Patriot's request and after hearing from the parties found that the reasons for termination were not unfair, unreasonable, or improper and voted unanimously to uphold the termination and the deny the agency's Request for Relief. On July 20, Patriot submitted a Request for Review appealing the Market Review Committee's decision. A Governing Committee Review Panel meeting was convened on August 31, 2017 to consider Patriot's appeal. Following statements by both parties and Panel discussion, the Governing Committee Review Panel voted unanimously to deny the agency's petition affirming the decision of the Market Review Committee. You will hear additional information concerning that Governing Committee Review Panel from their report. Patriot is currently within the 30-day period during which it can appeal its termination to the Division. That concludes the Counsel Report.

Mr. Hyatt: Any question for Counsel? Thank you, Steve.

**GC
17.06 Market Review Committee**

Mr. Hyatt: We'll move on to the Market Review Committee. Wendy Browne will report on the meetings of both June 21st and September 12, 2017.

Ms. Browne: Good morning. As the Chairman indicated, I will be reporting on two committee meetings.

First, the Records of the June 21st meeting have been distributed and are on file. At this meeting, the Market Review Committee discussed the Request for Review submitted by Mr. Ricardo De Oliveira of Patriot PCL Insurance, in which he contested the termination of the agency's commercial automobile and taxi/limo Exclusive Representative Producer appointments by Safety Insurance Company for violations of various sections of CAR Rule 14.B. and Safety's Commercial and Taxi/Limo Agreements.

Mr. De Oliveira stated that he did not dispute the accuracy of Safety's findings and presented the Committee with information relative to new procedures that he had implemented to prevent future violations from occurring. He noted that many of the issues were due to the actions of a dishonest employee whose employment has since been terminated. Additionally, more skilled employees have been added, payment tracking software has been implemented and he has become more involved in the daily activities of the agency. Mr. De Oliveira indicated that he was willing to work with Safety in continuing to resolve any outstanding issues and suggested that probation could be an alternative to terminating the agency appointment.

Ms. Brodeur from Safety cited the reasons for the termination and stated that Safety's issues with the agency were well documented. Furthermore, she indicated that non-compliance with CAR Rules and Safety's procedures has been a long standing issue that Safety has already been working with the agency to resolve. She opined that probation is not justified in this case as evidenced by the continued non-compliance by the agency since the dismissal of the dishonest employee. Finally, she noted that Mr. De Oliveira did not dispute Safety's findings and that it was Safety's position that the termination of the agency's commercial and taxi/limo appointments is fully supported and should not be overturned.

The Committee agreed that Safety's termination of Patriot PCL Insurance Agency's Exclusive Representative Producer appointments was not unfair, unreasonable, or improper and voted unanimously to uphold Safety's termination of the agency.

Continuing on to the next meeting, the Records of the September 12th meeting were recently distributed on Friday, September 15th with the Additional Information notice and are on file. At this meeting, the Market Review Committee considered the Request for Relief of termination of the Point Insurance Agency, Inc. by Arbella Protection Insurance Company for violations of CAR Rule 14.B.1., sections c., e., k., l., and n. as well as the agency's Limited Servicing Carrier Agreement with Arbella.

Attorney Joshua Lewin, representing the Point Insurance Agency, requested approval to present a procedural motion to continue the Market Review Committee hearing to a future date. Upon review of the document, the Committee members did not object to its presentation. Mr. Lewin noted that based upon confidential information learned from the Point Insurance Agency and another client, his firm had determined that under the Professional Rules of Conduct, a conflict of interest has made it necessary for him to withdraw his representation of Point in the matter. Point was advised of this determination on September 4th. Mr. Lewin noted that as a result of his firm's ethical obligations to Point, he emphasized that he, not Point, is requesting the continuance of the hearing to allow Point to retain new counsel and to give that new counsel sufficient time to prepare.

Attorney Frances Robinson, representing Arbella, expressed her opposition to Mr. Lewin's request for a continuance, noting that Arbella is prepared to go forward with this matter. She believes the request to be without substantial basis as there is insufficient information for the Committee to determine whether a true conflict exists. Mr. Lewin responded that he is legally unable to disclose to the Committee private communications between his clients and reiterated his position that ethical obligations preclude his ability to represent Point in this matter.

Mr. Torres noted that the Committee must decide whether to grant or not grant the continuance but provided some guidance for the Committee's consideration. Typically, when conflicts arise, they do so in the

beginning of the engagement, whereas there have already been several proceedings this year involving Point and Arbella. Mr. Torres further suggested that if the Committee were to deny the request for a continuance, the Committee could question whether Mr. Lewin would feel able to present the arguments he had previously submitted in writing. Furthermore, if the Committee were to proceed and decide to uphold the termination, Point would have the opportunity to obtain successor counsel and seek a *de novo* review of the matter with the Governing Committee Review Panel. However, the Committee should also consider how the Division of Insurance may view the matter should Point's termination ultimately be upheld and later appealed to the Division.

After discussion, the Committee unanimously voted, with one recusal, to grant the continuance requested by Mr. Lewin. It was recommended that the Request for Review be rescheduled as soon as practical. That concludes my report.

Mr. Hyatt: Any questions for Wendy? Seeing none, thank you Wendy.

GC
17.08 Commercial Automobile Committee

Mr. Hyatt: I will now turn it over to Thom DePaulo to report on the meetings of August 9th and September 14th for the Commercial Auto Committee.

Mr. DePaulo: This is somewhat of a long report. I'm going to try to break it down so that it's manageable. I'll start with the August 9th meeting then we'll move on to the September 14th meeting. As far as the August 9th meeting, I have a reporting piece for you folks and there will be one action item for the second part of the August 9th meeting.

On August 9th, a report by the Ad Hoc Non-Fleet Private Passenger Types Subcommittee was provided to the full Commercial Auto Committee. This Committee had been established to address the growth in the volume of the ceded non-fleet private passenger type business and its impact on CAR's deficit, and concerns that an increasing number of risks that may properly belong in the private passenger residual market are seeking placement in the commercial market.

The Subcommittee was brought together to discuss a number of different options on how to address this. The following were the recommendations that they made to the Commercial Auto Committee: one was to make no changes to the private passenger and commercial eligibility definitions, but rather pursue amendments to CAR Rules, Rating Manual and/or procedures to provide guidance relative to the documentation required to confirm a risk's eligibility for coverage and classification. Modifications may include procedures for validating business operations, principal place of business and classification, development of residency standards for non-Mass. licensed drivers, and requirements to support the existence of the actual entity itself.

Additionally, the burden of proof to confirm business conduct and support risk classification should be placed on the risk. The second recommendation was to direct CAR staff to develop a classification plan for private passenger type risks that introduces driver experience and merit rating. Lastly, require that all business owners include driver's license information for all operators on the application for insurance.

Further into the discussion, it was brought up and recommended that the following topics should be discussed in addressing these issues. I will tell you now that we're looking at setting up subcommittees – that should be done very soon, hopefully within the next week – to start addressing these topics. They are information sharing, Servicing Carrier procedures and audits, Exclusive Representative Producer requirements, and underwriting standards. Some of this information has already been sent out so I'm not going to read what all those are. Those are topics that have been recommended that we would address. So that's the reporting part of the August 9th meeting.

Now for the action item in the second part of the meeting, the Committee then discussed the limits of coverage available in the commercial residual market. At this meeting, Ms. Browne advised the Committee that, with the implementation of the Commercial Limited Servicing Carrier Program, a reduction in the cedeable limits was approved for policies effective back on January 1, 2008. However, it was noted that the amendment was later rescinded due to concerns expressed by the producer community regarding the availability of coverage in the excess markets. As the Committee has recently suggested, the limits higher than those available in other states for the residual market business is a contributing factor to the migration of out of state risks to Massachusetts. Ms. Browne referred to the committee report, prepared by staff, to assist the Committee in discussing this issue.

Discussion ensued relative to the availability of coverage in excess markets to satisfy the limit requirements as well as umbrella policies. It was noted that while coverage is available, the higher cost for added coverage in the excess markets would discourage risks from purchasing such coverage. Accordingly, some Committee Members expressed concern that reducing the cedeable limits would result in an increase in uninsured/underinsured risks. Others noted that there was a lack of quantitative evidence that the increased limits is contributing to the growth in the residual market. Accordingly, the Committee unanimously voted to retain the current cedeable limits.

Before I actually ask for a motion on this, I feel it's probably a good opportunity and I anticipate discussion about the limits, if we discuss that now then we'll look at a motion. The limits are, as we all know, a million dollars. Consideration was to bring those limits down to \$500,000 at this Committee meeting. Again, there was push-back and concern from the producer community that really spearheaded the conversation, having concerns what that would do to the market if we were to bring the limits down. So it was voted to bring it back up and

leave it at a million dollars. Any comments or concerns or discussion before go to a motion?

Mr. Cahill: The limits are at a million now, right?

Mr. DePaulo: Yes.

Mr. Cahill: The discussion was whether or not to reduce them.

Mr. DePaulo: Reduce them to \$500,000.

Mr. Cahill: So one thought is if you're not going to change them is there really a need for a motion or to do anything?

Mr. Hyatt: I think what we wanted to do, before we even get to the motion – we've had some dialogue on this topic at prior Governing Committee meetings. I just want to make sure we allow people to get any other thoughts on the table about this. John?

Mr. Kelly: I'm just a little unclear on the motion. If we're not changing anything I don't think you really need a motion. So I'm just trying to understand. It's not clear. What is the motion specifically?

Mr. DePaulo: The motion would be to actually retain the current cedeable limits in the residual market.

Mr. Kelly: And why do you need a motion.

Mr. DePaulo: I think because in trying to address why there is an uptick in the deficit in the residual market and so forth, there were a lot of things thrown out around the table which contributed to that. That was one of the ideas that really came forward – I'm not exactly sure from where – but it was felt that that's why there was an attraction to the Mass. residual market because we are offering robust limits that are not offered in comparable markets in other states. So we were forced to address this issue and say, alright, should we bring it down or should we leave the limits where they were. So the Committee discussion was around that topic. It came back as a recommendation from the Commercial Auto that we recommend that you vote to keep them where they are.

Mr. Hyatt: It may be a good idea to just talk about this issue because I've got some opinion on this, too, and based on prior discussions that it may be – so we'll kind of put to the side for a second the idea of a motion. Does anybody have any other comments before I dive into mine? Yes, John?

Mr. Olivieri: I'm on that Committee. Unfortunately, I was unable to make it that day to the Commercial Auto. Did we get a sense as to what the other states do offer for limits?

Ms. Hubley: The limits that were being considered, the reduction in the limits to 500/500 for CSL, is very consistent with what's offered in other states.

Mr. Hyatt:

Maybe I'll make a couple of comments. I know there was robust discussion about this at the Subcommittee. There was one comment made that if we were to reduce the limits, or CAR was to reduce the limits, that this would drive up uninsured motorists. I think I'd qualify that to say it may. We really don't know exactly what will happen. I think in 2008, when this was originally considered, the marketplace was very different than it is today. I think that was recognized by the Subcommittee that today there are other markets out there that can offer a buffer layer to fulfill the needed amount for an umbrella coverage. I guess I would just comment that again CAR, obviously we all know this is a residual market and the market of last resort. It does appear that the limits offering that we do have today has been desirable from out-of-state risks to try to find their way into – and some have found their way into the residual market in Massachusetts. Again, I applaud the Commercial Auto Committee for all the work that they're doing to really tighten eligibility and to address some of that. I think that's important. But the limits profile compared to what is offered in other residual markets, especially in the northeast, we appear to be very, very favorable.

As we're going to hear in a future committee report out this morning, the deficit for the commercial auto business at CAR is now \$33 million and it continues to grow. It is ultimately the responsibility of the carriers in Massachusetts to bear the burden of that deficit going forward.

At today's meeting, we always read the Conflict of Interest Policy. I know it's a little onerous, but it's a good reminder for all of us that we're all here to serve, as the subcommittees are, to serve the motoring public and CAR. I would urge the subcommittee to reconsider this decision on limits and to really have a deeper discussion about that. I do think that it is part of the problem that we have today with the deficit in the marketplace. Again, it's different than it was in 2008 and there are markets available that can provide the needed limits. That was my thoughts. Any other comments on that? John?

Mr. Olivieri:

To your point, Jim, I'm not so sure changing just the limits is going to solve the problem. To your point, I think there are alternative markets for excess coverage that are competitively priced. People with more underwriting experience than me can correct me if I'm wrong, but that first 500 level is really where you're collecting a lot of the rate. So I'm not so sure that tweaking the limit is going to have a significant impact on stopping folks from out of state who are looking for a – let's face it – at the end of the day – a cheaper option from coming. I think probably a lot of the work that Thom pointed out that Commercial Auto Committee needs to do going forward, I think as we dig into it we may find other areas. The simplest way to stop it is get rate. Obviously, we know that's going to be the toughest option for us to do. I don't know. Maybe it's, in my opinion, not appropriate to act on – do anything with this at this point until we get a little further down the road and find out if there are other areas that maybe we can kind of put a whole package together to say how do we tighten up the loopholes in the system. I don't know if going from a million to 500, with the alternatives that are out there, are really going to have a significant impact on it. I agree. I think there is a

problem with the system, which is attracting folks and allowing people to get into the residual market for the wrong reason, just the price alone. But I'm not so sure this is the cure-all. I'd like to kind of see the whole picture develop.

Mr. Hyatt: I think that's a fair point. Again, as we tackle – this is a big problem and it is a multifaceted problem. I, personally, feel that the limits offered are a piece of that and we've got to address all of the pieces in order to solve the problem. I think even getting the rate levels increased, as we hope, I still think that that is not enough. I don't think that the rate level increase, if approved – when it's approved – doesn't make this issue go away. John?

Mr. Kelly: I would agree with both comments made. I think it is a complex issue. I think if you – I've seen the chart before. I'm not sure if our Commercial Auto Committee had it in front of them, but when you look at the size of the residual commercial markets in all the states Mass. I think is one – by far – and it's just because we offer so much for coverages. It's not the market of last resort at all. I think that that's something that is concerning especially if you have a department that's not approving rate filings for that, that you have to share. I think you do need to look at it in its entirety and come up with a game plan to transition to something that does work better. I think it should be the market of last resort. We have a very competitive market for commercial auto in this state. That's where most of the business should be written. I think that instructing the Commercial Auto Committee to look at it in total, trying to come up with a good game plan makes sense to me. Obviously, you need to take into account agents' comments about availability and transition, all those types of things to make it work.

Mr. Hyatt: John?

Mr. Olivieri: Just another point, not specifically to the limits, one of the other issues – and John's right. It doesn't look like the market of last resort for sure. There are a lot of inconsistencies between the Servicing Carriers too as to what insureds, through agents, have the ability to get put on policies. I think there's an aspect to – even if we change it and say, listen, they don't have to offer a million. I'm not saying carriers are going to offer it – but that's maybe a little bit of a larger example – but there are carriers who are able to say we're going to do this or we're going to accept that or we're not going to accept that. I think, when looking at everything, we also need to really look and make sure it's consistent. So if it's the market of last resort, it's the market of last resort and it doesn't matter where you go because that adds to it, too. People start shopping for which carriers are going to allow something to go through.

Mr. DePaulo: If I can make a comment on all of your comments, in setting up these subcommittees that we'll be doing over the next week, we will bring back the limit topic and make that part of the discussion as well besides the information sharing, the other items that I gave. I didn't know, at one point, if we were going to need a subcommittee for this, in itself, or maybe it could be part of this plan.

Mr. Olivieri: Absolutely. Just to clarify, I'm not opposed to adjusting the limits.

Mr. DePaulo: No, no. But I think it requires further discussion based on the comments that you're making. We did have a lot of very in depth conversation about this, but after hearing the comments here at this meeting we should go back and revisit it and we'll do that on our committee level.

Mr. Hyatt: I just looked up the data that John referenced. The commercial residual market in Massachusetts is now the largest in the country. We're certainly not nearly the largest auto market in the country by a long shot. It's a dubious distinction. Any other discussion on that? So we do need a motion, or not?

Mr. DePaulo: I think we'll pass on the motion. We're going to keep the limits where they are. We'll bring this back to the committee level.

Moving on to the September 14th meeting. What that September 14th meeting was about was Arbella Protection Insurance Company requested 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. Those will be the two items that we'll be discussing and having an action item on.

Mr. Hyatt: With that – I'll jump in – I'm going to recuse myself from the discussion and from any voting. So, actually, I need to turn the gavel over to my partner here.

Mr. DePaulo: There is a lot of information. I know this has been sent out to you, so I'm going to read most of this. The details that are in the summary are really important. Just so you know, at this meeting, Attorney Roberta Fitzpatrick, representing Arbella Protection Insurance Company, presented Arbella's Requests for Review to the Commercial Auto Committee. Dennis Morris of Arbella Protection recused himself from the Committee discussion. So there was one recusal at this meeting by Dennis.

Ms. Fitzpatrick provided the Committee with background information relative to Arbella's termination of the Rapo and Jepsen Insurance Agency, a large agency, 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 purpose of enabling applicants that were otherwise ineligible to obtain insurance through the commercial market. Consequently, Arbella terminated the agency's commercial automobile Exclusive Representative Producer appointment for violation of various CAR Rules.

Ms. Fitzpatrick distributed to the Committee a timeline of events identifying – and I believe it was issued in the minutes – 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 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 Agency with the Division of Insurance and the Mass. Superior Court against Arbella, hearing dates and the results of the hearings.

Ms. Fitzpatrick stated that upon the Point 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 the Rapo and Jepsen Agency. 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 Mass. Superior Court seeking relief from the additional requirements Arbella had placed upon the agency. As a result, Arbella encountered additional expenses associated 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 was appealing to the Commercial Auto Committee for reimbursement for extraordinary expenses and resources expended by Arbella in the investigation of fraud within the Point 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. She further 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.

At that point, Mr. Ed Spellman of the SIU investigating department 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, 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.

At one point in the meeting, Mr. Barry Tagen from Pilgrim questioned whether a CAR provision exists for a company to request such a reimbursement of extraordinary expenses. Attorney Steven Torres, CAR

Counsel, 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 then indicated that the guidelines provided under these provisions provided the basis under which the request was directed to the Commercial Auto Committee by Arbella. He advised that any extraordinary request may be heard by the appropriate Committee, who would then in turn make a recommendation to the Governing Committee.

I promise you I'm almost done.

The Committee first considered Arbella's request for reimbursement of extraordinary expenses. The Committee noted that all Servicing Carriers do face unique and difficult circumstances in managing those producers that are assigned to them without voluntary relationships, 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 would be 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 and 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 that was in the existing book.

This piece actually talks about what their extraordinary expense request is. Most Committee members were persuaded that the company had incurred extraordinary expenses. Referring to the attachment distributed as additional information, Ms. Fitzpatrick advised that Arbella is requesting reimbursement of \$585,934. Specially, that is broken down that Arbella is requesting \$62,843 in fees relating to the defense of lawsuits, appeals and motions filed by the Point Agency with the Division of Insurance and Mass. Superior Court; \$162,273 representing salary expenses related to claims, underwriting, and operations staff that was dedicated to this effort; \$360,818 represents the 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.

That was the entire discussion about the extraordinary expenses. After considerable discussion, on a vote of 7 in favor, 2 opposed and, again, 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 required Arbella 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. So the way this breaks down is at this meeting the Committee felt very comfortable with the \$162,273, which was the salary-related expense and the \$62,843 for the legal expenses. When it came to the \$360,818, they were open to that, but were looking to have more substantive reports or an audit or review of this number to make sure that it could be substantiated. The Committee directed that to CAR staff, if CAR staff could work with the information from Arbella to formalize and confirm that number.

So the action item or a motion is to accept the recommendation of the extraordinary expenses: legal, salary. We can approve it, in concept, if you will, for the lost savings by the SIU. Any discussion before we have a motion?

Mr. Harris: First of all, really well done. There was a lot of stuff there. Is it easy to get your hands on the portion in the Rules that approve extraordinary expenses because, as Thom said, it was not directly related to this but it seems to support the concept?

Mr. Torres: There's definitely no provision that speaks to reimbursement of extraordinary expenses concerning SIU. There are only two places that we found that reimbursement of extraordinary expenses is contemplated. One is in the Manual and I do have that provision. In one respect it relates to Servicing Carrier reimbursement of premium and extraordinary expenses as a result of an ERP default. That's in the Manual, Chapter III.D. That's specific to producer default. The other place is in the CAR Rules. It's CAR Rule 10.E. that has a provision concerning excess judgments on claims. Those are the only two places where we found there's a provision regarding reimbursement of extraordinary expenses. It's not directed to this circumstance.

Mr. Harris: Secondly, I don't know, with a recusal, I don't know if this is a question for somebody from Arbella, but help me through this \$360,000, isn't that already shared in the marketplace by virtue of the fact that it's lost SIU savings?

Ms. Hubley: I think that Arbella's contention was that they were isolating lost savings that they would have realized in their voluntary book.

Mr. DePaulo:

John?

Mr. Kelly:

I think this is a very complex issue to kind of resolve today. First of all, I support what Arbella did in this process. I think that it acted in the best interest of the residual market. So I applaud them for doing that. I think that there were some extraordinary expenses that they incurred in this process. But I think that the activity that went on, that was the source of this extra work, is not just an Arbella issue. But the other Limited Servicing Carriers are going through the exact same thing. I think that we should take a look at it more from the perspective of developing rules that would apply to all of the Servicing Carriers in trying to define extraordinary expense better than take a look at what happened and apply those rules. I have serious problems with the issue that was just raised with the SIU savings. What they're saying is it's opportunity cost. Were there other avenues to solve that? That gets into managing their business. Could they have gone out and hired someone from MAPFRE at a much lower number and solved that problem? I don't know. I have some real concerns with that. I mean, this is relatively new information, too. I read this last night. I think it may not even be mature enough really for the Governing Committee to really decide. But my preference would be to attack it more at a – for a residual market level and not a specific issue for Arbella, come up with a definition of how to handle this, and then apply that – and maybe it's a rule – that you would come up with to how you would apply that going forward.

There is a little bit of history on this. It's a little different but back in the residual market days the ERPs received a higher expense level than the ceded business and voluntary agents. So it was driven by higher expenses that were associated with dealing with the ERPs. There is some basis for this, kind of, in the past. Again, I think we should look at it as it's necessary to make sure that the residual market is operating efficiently. Again, I go back. What Arbella did was a good thing and as a Limited Servicing Carrier we're doing similar things. So you'll see probably us come to the table at some point in time, too, if you do this on an individual company basis. We'll be in here with our extra costs that we're incurring to do this also. That's how I think about it. I know the meetings happened last week, I think. It is a complex issue. I think we should make sure we come up with the right direction to handle this on a going-forward basis and be fair to Arbella at the same time.

Mr. Harris:

I support John's conclusion. I question one of the individual statements that others are going through the exact same thing. What I find to support this is that there's no effort to recover what was clearly extraordinary expenses associated with Rapo and Jepsen. It is the reassignment that is the thing that I think is highly unique. I'm not aware any others that are experiencing that. But, getting to John's conclusion, this is new information that should be taken with a full plan. In concept, now that I've digested – thank you, Natalie – I think the request is fair but it should be taken in a holistic review.

Mr. DePaulo:

Paula?

Ms. Gold:

I agree that it is a complex issue. It goes beyond what's an extraordinary expense. It goes to the heart of the RFP process because in the RFP announcement, under proposer responsibility, you are obligated to what you say you're going to charge. The only exception that currently appears is the limited extraordinary expenses in terms of the specifics that are in the Rule now, which does not include this. So, to the extent that we want to look at the whole way this is operating, we've got to look at the RFP. We've got to look at what is "extraordinary expense" and it is very limited as the Rules currently exist. I do think it's a broad issue that affects the whole way the residual market, for commercial auto, operates and is at the heart of the RFP process. I have no problem with some kind of study of it now. I don't see how we vote for it under the existing rules, to say nothing of which expenses would be and all the other details.

Mr. Cahill:

Thom, I would agree with the comments that have been offered so far. I do think that there is a balance that really needs to be struck here. Paula appropriately brings up the RFP process. Carriers that have sought to be Servicing Carriers have gone in with some understanding of the expenses that they're going to be expected to bear through the course of honoring their obligation. Certainly, the commercial lines market is quite large as had been mentioned earlier in the meeting. There needs to be some ability to evaluate, as we're going along, whether or not there are unusual circumstances that present themselves that we should take into account. But I do really feel as if the appropriate course would be to not vote on this particular matter at the moment, but to actually go back and have further review along the lines of establishing some set of parameters around whether or not there should be additional considerations around extraordinary expenses. No matter what, if we were to vote now we'd be establishing a precedent without question with regard to other Servicing Carriers perhaps coming forward. I think it would be better for the transparency of everybody having the opportunity to be a part of that discussion and to sort of examine – whether it's this situation, maybe there's an additional situation you want to take into account. But I think that would be the appropriate step and then the Arbella situation could be brought up in that context after establishing some parameters.

Mr. DePaulo:

If I'm hearing this correctly, what we need to do is – there are two parts. One of them is obviously establish some set of guidelines as to what would qualify as an extraordinary expense. Then also look into how that weaves into the RFP process. I feel kind of awkward about this. At that Committee, we had a lot of the same concerns and questions. I have to say, Roberta Fitzpatrick was there and had the opportunity to present an argument for a lot of the stuff that you're bringing up today that we pushed back to her. In some way – I don't know if it's right to say this – I wish she was here to take your questions. I don't feel comfortable speaking on her behalf. I don't want to misspeak or say something that wouldn't be clearly what her intentions were when she was addressing some of these concerns. I will just say this, for whatever it's worth the Committee had all these concerns. Ms. Fitzpatrick really demonstrated a very strong argument because our greatest concern was is this really extraordinary expense. I think a lot of the Committee members were

very unclear about that going into the meeting, but at the conclusion presented a case that this was definitely extraordinary over what we would assume they should encounter. But having said that, it all plays back to where the Rules don't exactly discuss this specific point. It leaves it kind of vague. I'm not sure where we go from here. Does this go back to rewriting the Rules a little bit or incorporating this into the Rules such as ERP defaults, stuff like that? Is that where we would take this?

Mr. Torres:

There could be another provision just like there's a provision that talks about what happens when there's a producer default or an excess claim judgment. You could have a separate provision that contemplates extraordinary expenses and fighting fraud or a host of other reasons. That provision doesn't exist now, so the rubric by which Arbella has presented its request is outside the existence of any such rule. Because a request for expenses was presented, it was determined that the Commercial Auto would be an appropriate committee to consider it. The Commercial Auto Committee considered it and then voted to present its recommendation to the Governing Committee. The Governing Committee can either take a vote to accept or deny that recommendation or it can decide to take further action by deferring a vote on it or deciding something different.

Mr. DePaulo:

John?

Mr. Olivieri:

Could we take the position – I'm just going by what I'm hearing from comments made by the carriers for the most part at the table – could we vote that the Governing Committee agrees that it was extraordinary circumstances and whatnot, but that maybe we need to defer as far as what the compensation amount is only because – to Bill's point, I think whatever we do here is going to carry forward. As John pointed out, my guess is we may have a line of carriers coming in and saying look what I've been doing for the past few years. I want to be fair. As John said, I applaud Arbella for what they did. As Thom pointed out, I think the biggest kick in the teeth here is the fact that you've got the same person all over again just with a different name. That, in itself, probably makes it that much more extraordinary. But I think we need to be cautious about – you know, this isn't a court of law. We're not awarding something but we kind of are to some degree. How do we come up with that number if we are going to come up with it? I think to make a decision on that right now, I don't know if anybody really has the right answer for it.

Mr. DePaulo:

Paula?

Ms. Gold:

I think the suggestion that – there's no real need to have to vote on Arbella right this minute. They can wait a little bit in terms of a process. I'd be uncomfortable voting without knowing how we're interpreting extraordinary expenses and, therefore, why this then qualifies. I think for the integrity of the whole system we ought to take a little time. We have the recommendation of the Committee. There is no specific rule or language. If you have to operate with just what's here before us then I

couldn't vote for it because I don't think there's a provision for that. That being said, I think that it does make sense. This does have an impact on everybody who is in that. It has an impact on the whole industry because even if you're not a Servicing Carrier you pay. I think we should take a little time and maybe some form of a committee could look at it and come back and make a report at the next Governing Committee meeting. That would be my personal recommendation.

Mr. DePaulo:

John?

Mr. Kelly:

I agree with that. My view would be we should be arming the Servicing Carriers with the tools and the resources to fight the fraud that's going on in the commercial marketplace. We have to look at it from that global perspective because everyone does pay. I think that's what our job here is on the Governing Committee. I think a good conversation on what's going on in the marketplace and what tools the Servicing Carriers need to fight that, maybe put in standards as to what they're supposed to do but then provide the resources to do that also. Time has changed. This activity that we're seeing now wasn't as significant as it was when we went through the RFP process. Things change. So you need to make sure that you have the tools allocated to the carriers to really do what they're supposed to do to protect the industry.

Mr. Cahill:

What John is mentioning, that's true of the balance though because you can't reopen the whole thing. To take into account too much of that it takes you all back in time. We had a certain understanding with regard to the duration of the Servicing Carriers participating in the role that they were in before we'd open it back up again. Thom, I think the appropriate step is to not take any action on the recommendation of the Committee. I think there's no obligation to necessarily deal with that at this point. It's not been brought forward as a motion at the table. I think what you can end up doing is having a committee, whether it's the Commercial Committee or a different one, it would be up to you as Acting Chair, I think, to determine that with staff about what's the right way to go, then have them work on some parameters and an outline of what an extraordinary expense actually is, as I said, whether it's this situation or something else as well.

Mr. Harris:

If I'm hearing you correctly, certainly I believe we should be taking a look at updating the Rules of Operation.

Mr. DePaulo:

Would that actually be a different motion to defer this until it's taken up by whatever committee?

Mr. Torres:

I don't think that there's a requirement to make a motion to defer. I think the Governing Committee is within its province to defer accepting the recommendation especially in the circumstance where the meeting had only occurred last week and there was one part of the request that was still being substantiated. The Commercial Auto Committee contemplated that CAR staff was going to confer with Arbella about verifying the last component of the request. So it isn't entirely ripe at the moment in any case. So I think it's appropriate to defer.

Mr. DePaulo: John, do you have a question?

Mr. Olivieri: No. I was just going to say you could take no action, right?

Mr. DePaulo: I will, as the Chairman of the Commercial Auto Committee, take that under advisement. We will come back to CAR staff. We will form some kind of a subcommittee or address this issue as it's been discussed today. We'll report back maybe at the November meeting.

For the last part of this – I promise this is a much quicker part of the day. For the second part of the September 14th meeting, this is where Arbella has requested the redistribution of the residual market.

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. Barry Tagen from Pilgrim Insurance Company recused himself from participating in Committee discussion and voting.

Ms. Fitzpatrick then 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 this 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 by Rule 13.C. Given the level of Arbella's undersubscription, Ms. Fitzpatrick asserted that the 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. Again, it was posed, do we have the opportunity to really vote on this.

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 occur with such an extensive redistribution.

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

we have a motion, any discussion on the redistribution or the recommendation to the Governing Committee to deny the request for redistribution? Tom?

Mr. Harris: Why is it a year? Why couldn't we look at this in the middle of June of '18 or March of '18?

Mr. DePaulo: Arbella is suggesting that they're so undersubscribed to not wait that long.

Mr. Harris: I think they don't want to wait 12 months.

Mr. DePaulo: They don't want to wait for the full 12 months for the data reporting to begin.

Mr. Harris: But you could wait three months. It seems like this is a – this year versus a year from now, why not something in between?

Ms. Hubley: The provisions of Rule 13.C. say that after we have a redistribution we will wait until there is at least 12 months of statistically reported data available before we consider a second redistribution. Timing-wise, given when we would inform the carriers and producers of the redistribution in advance of the effective date, then with the data reporting lags, that realistically turns into about an 18-month time period from one redistribution to another. So, in part, it's because of the availability of data to review. That redistribution would normally be considered 18 months from the time period when it was – the January 1, 2017 was when it was effective. So, we'd be looking at an effective date of July 1, 2018. So, not a year from now but a year and a half from the effective date. That's one, for the availability of data, and two, as the Committee noted here in the Records, that provision was put in place also to minimize the disruption to the producer and the motoring public.

Mr. DePaulo: Any other concerns or discussion before we take a motion? Do I have a motion to deny Arbella's redistribution request?

Mr. Kelly: Just a point of clarification. I don't think we have to have a – if the Commercial Auto Committee didn't approve it, right, you're just reporting on that action. I don't think we have to vote on that, right?

Mr. Torres: The way that it had been contemplated was that this Committee would vote to accept the recommendation or not.

Mr. Cahill: So the Committee denied the request to redistribute, correct?

Mr. Torres: Yes.

Mr. Cahill: So, Thom, you're reporting to this group, if we accept your report, I think I'll make a motion to accept the report from the Commercial Auto Committee on this particular point denying Arbella's request for a redistribution at this time. I think it was around the timing, right?

- Mr. Olivieri: Right. That's what the Committee wanted.
- Mr. Gilman: Second.
- Mr. DePaulo: Any discussion?
- Ms. Gold: Just note my recusal.
- Mr. DePaulo: Okay. Paula is recusing.
- Mr. Kelly: The Servicing Carriers are impacted by this. So are you suggesting that we all should recuse ourselves from this discussion, from this vote?
- Mr. Torres: I'm not suggesting that. I understand that's an instance where I could see Servicing Carriers contemplating the issue and whether or not they believe, in their mind, they should recuse themselves. It's not something that I'm suggesting, recommending or saying you're required. It's sort of a unique issue for you to consider and decide.
- Mr. Kelly: This is a different process than we've done for 20 years. Normally, when there's a report coming out, unless there's a specific action in front of the Governing Committee to change something, you don't vote on that. So I don't understand why we're making this change because Arbella could appeal this decision to the Governing Committee and have a Governing Committee Review Panel. Are we cutting that off by having this vote since we're ruling on it now?
- Mr. Torres: I'm sorry, one more time?
- Mr. Olivieri: It's a very good question, actually.
- Mr. Kelly: Normally, we never do this. We would just hear the report and there wouldn't even be a vote to accept the report at the end of the process, I don't think. Maybe the past Chairman can help me here.
- Mr. Olivieri: I think what John is saying, and I didn't even think of this before, but obviously if the Commercial Auto Committee or any subcommittee makes a decision, whoever is going to appeal it, their relief is to appeal it to the Governing Committee Review Panel. If this Committee takes a vote on supporting the decision of a subcommittee, have we cut out the appeal process. Remember, the Governing Committee Review Panel is acting on our behalf so we don't have to convene the whole Committee and there are timeframes and whatnot that take place. To John's point, I don't know if we cut that off if we cut that out.
- Mr. Cahill: I'm going to simplify it. I'm going to withdraw my motion so that solves the problem because I'm in agreement with this point.
- Mr. Olivieri: Us not doing anything upholds with what the Commercial Auto Committee decided anyway. So, unless someone wants to make a motion to counter us not doing anything is the same result anyway.

- Mr. DePaulo: Say it again?
- Mr. Olivieri: Unless someone wants to make a motion to not agree with the Commercial Auto's decision, it's the same result whether we vote on it or not and it cuts off the opportunity if Arbella wants to appeal it. If they did want to appeal it and we did this, my guess is we'd just make a royal mess for ourselves.
- Mr. Torres: It's fine to leave it as is.
- Mr. DePaulo: So we'll conclude that the Governing Committee, as this point, is accepting what the Commercial Auto Committee's...
- Mr. Cahill: Taking no action.
- Mr. DePaulo: Taking no action. That concludes my report. Back to you.

GC

17.09 Governing Committee Review Panel

- Mr. Hyatt Speaking of the Governing Committee Review Panel, I will report on the meeting of August 31, 2017.

The Committee met on August 31st. The Governing Committee Review Panel met to consider the appeal of Patriot PCL, LLC of the Market Review Committee's decision on June 21, 2017 to uphold the termination by Safety Insurance Company of the agency's commercial automobile and taxi/limousine Exclusive Representative Producer appointments for the violations of various sections of CAR Rule 14.B. and Safety's Commercial and Taxi/Limo Agreements with the agency. Did I get the date right on this meeting? It was definitely on the 31st?

- Mr. Torres: Yes.

- Mr. Hyatt: Mr. Ricardo De Oliveira, President of the agency, requested that the Panel consider a continuance advising that his counsel, Attorney Andrew Lattarulo, was not able to be present at the meeting and noting that Mr. De Oliveira was not prepared to represent himself. CAR Counsel, Attorney Steven Torres, advised the Review Panel that he was in receipt of communication from Mr. Lattarulo, dated August 28, 2017, that he no longer represented the agency in this matter. Despite Mr. De Oliveira's assertion that he had not been so notified by his attorney, Mr. Torres provided the Panel with a copy of an email received by CAR from Mr. Lattarulo, as well as a verbal telephone conversation from Mr. Lattarulo, indicating his notification to his former client.

After considerable discussion and among concerns that further delay may result in undue burden on both the company and its insureds, and keeping in mind that CAR committees are obligated to act in the best interest of CAR and the motoring public, the Panel unanimously voted to deny the agency's request for a continuance.

The Panel then heard statements from the parties. Safety described the longstanding issues and attempts by the company to work with the agency to resolve the agency's pattern of non-compliance. Ms. Elizabeth Brodeur, representing Safety in this matter, described continuing instances of violations that form the basis for the termination activity including submissions of insufficient down payments, missing down payments, late submission of new business, and agency checks returned for insufficient funds. Mr. De Oliveira advised the Panel of the imminent sale of his agency and noted that his request for a continuance is not intended to provide additional time to continue business activities but to preserve the reputation of his agency. The Panel discussed the comments made by the parties and considered the evidence presented with respect to each of the violations of CAR Rule 14 and the agreements between the company and agency as specified in Safety's termination letter dated May 3, 2017.

In each of seven instances, the Panel voted unanimously, noting one recusal for one of the votes, to confirm that Safety had established that the agency had violated CAR Rules of Operation as well as the agreements between Safety and the agency. Further, the Panel voted unanimously that each violation established a valid basis for termination in accordance with CAR Rules. Accordingly, the Panel voted unanimously to uphold the termination based on the grounds stated in the Notice of Termination. That is the report. There is nothing to vote on in the matter. Is there any discussion or comments?

Mr. Harris: Could I just have on the Record that was an abstention not a recusal.

Mr. Hyatt: Okay. Good. Thank you.

GC

17.12 Financial Audit Committee

Mr. Hyatt: We'll move on to the Financial Audit Committee. Mr. Tom Harris will report on the meeting of September 12, 2017.

Mr. Harris: I'm pleased to say that I have six quick bullet points. The Audit Committee, remember, as in the past, I think six years or so, this is an agreed upon procedures process not an audit. So PricewaterhouseCoopers is coming in and reviewing things that have been agreed upon between staff, the Committee and PwC in terms of what we believe is important to review in order gain comfort that the CAR financials that are distributed to all of us are accurate. So it is an agreed upon procedure. It's not an audit.

There are no changes to prior year agreed upon procedures, but there is more detail in the IT portion of it. That's the only change. The fee is up 3 percent to \$106,900. Peter Brennan remains as the partner. We have a new manager. Glen Staples is the new manager. The report will be delivered in February of 2018.

Mr. Hyatt: Thank you. We would entertain a motion to approve the recommendation of the Financial Audit Committee to accept PricewaterhouseCoopers' review of the CAR financials as proposed – at the proposed price of \$106,900.

Mr. Gilman: So moved.

Mr. Harris: Second.

Mr. Hyatt: Any discussion? All those in favor?

All Committee Members: Aye.

Mr. Hyatt: Any opposed? Motion carries.

GC

17.13 Loss Reserving Committee

Mr. Hyatt: Next, we'll move onto the Loss Reserving Committee. Mr. Timothy Galligan will report on the meeting of September 6, 2017.

Mr. Galligan: Good morning. Tim Galligan, CAR staff, reporting on the September 6th Loss Reserving Committee meeting. The full Records of that meeting were distributed as Additional Information, Docket #GC17.13, Exhibit #3.

First, the Committee approved the Records from the June 7th meeting, which are on file with CAR's Secretary. Next, the Committee established reserves using data reported through June '17. For the commercial pool, the Committee estimated a policy year 2016 deficit of \$33.1 million, with a loss ratio of 94.0 up from the prior quarter's estimate of \$30.2 million. For policy year 2015, the Committee estimated a deficit of \$13.5 million, similar to the prior quarter. The 2014 year saw an increase of \$1.4 million, now with an \$11.1 million deficit. For all years combined, the reserves total \$189.9 million on ultimate loss selections of approximately \$901 million. For the private passenger pool, the remaining reserves are estimated \$52,000 for accident years 2008-2010 with 21 open claims. Just two notes, this quarter, CAR's auditing staff did do a review through companies of every year outstanding claims to verify that they were still valid. The results of that study were positive. Some claims are coming off the system as they weren't valid and many were confirmed valid and are staying on. Finally, next quarter, the Committee will project the initial estimate of the 2017 deficit using data at nine months. That concludes my report.

Mr. Hyatt: Any questions for Tim?

Mr. Harris: Why do we continue to do any actuarial reserve for private passenger? The number is very small. The claims are pretty small. I don't think it matters to anybody.

Mr. Galligan: I just think, as the normal course of business for the Committee, we have been looking at these years. With each year one rolls off so we have a couple more and then it's going to be done. I think everybody realizes that the numbers are small

Mr. Harris: I would propose we discontinue that. As the person who took the ten seconds to put those numbers into a spreadsheet every quarter, there's no value in that, for the numbers, for any given individual company.

Mr. Galligan: Certainly, as a Committee, we can discuss that at the next meeting.

Mr. Hyatt: Anything else? Alright.

**GC
17.14 Actuarial Committee**

Mr. Hyatt: Tim is going to continue and give the report for the Actuarial Committee meeting of September 13, 2017.

Mr. Galligan: For this meeting, the full Records were distributed under Additional Information, Docket #GC17.14, Exhibit #2.

The first item, the April 1, 2018 quota share credit offer, the Committee initially reviewed two credit proposals requested at their last meeting. The first proposal included credit indications that indexed the market share group ranges by year with varying minimum thresholds for credit eligibility based on the yearly residual market share relativity. The results of this method were a decrease of around 18 percent for credit eligible exposures and a decrease of 13.5 percent for potential credit premium. The second exhibit used the existing credit methodology that we have and incorporated merit rating status into the credit eligibility criteria for those cells that were proposed to be eliminated entirely. There were 76 of those cells that we were looking at. Overall, this proposal had an 8.1 percent decrease in exposures and a 6.9 percent decrease in potential credit premium. A third proposal was introduced by Safety Insurance, which incorporated both the yearly indexing of the residual market groupings and the addition of the Merit Rating Group parameters. This was presented in an outline form and it wasn't fully developed at the time. After Committee discussion, this proposal was favored over the original merit rating proposal as it applies the merit rating criteria to all cells, therefore offering more credit to policies that are in the MAIP due to higher level of risk associated with unfavorable driving history.

Additionally, some members noted that the Division of Insurance decisions on the proposed credit offers for the last two years suggested

that absent a compelling increase in the size of the residual market, a change to the credit offer would not be viewed favorably. Accordingly, the Committee agreed that no change to the credit offer should also be considered as an option.

So the Committee has interest in pursuing three credit approaches: the Indexed Market Share Group Range Methodology; Safety's proposal to add a merit rating component; and no change to the credits, keeping last year's credits for the current year. These exhibits will be updated and discussed again at the next meeting scheduled for October 11, 2017.

The next agenda item related to the sunseting of the constraints on placement on Clean-in-Three risks pursuant to Rule 21.D.6. set to terminate for policies effective April 1, 2018 and later. The Committee was updated on continuing efforts by staff to assist the remaining producers without a voluntary contract or brokerage agreement where there are currently 11 of these producers with approximately 540 exposures that still qualify for this exclusion. Producers were asked to provide a business plan to assist insurance companies to better evaluate them for a potential voluntary relationship. Business plans were distributed to Member Companies and feedback is expected by the end of September. Staff will provide a final update on the status of these efforts at the October Actuarial Committee meeting. Additional, at this time, two agencies are to be offered voluntary contracts coming out of this process. That concludes my report.

Mr. Hyatt: Yes, John?

Mr. Olivieri: Those two agencies, do you know what the count is as far as exposures?

Mr. Galligan: No. I don't. Sorry.

Mr. Hyatt: John Kelly?

Mr. Kelly: That's good progress to offer voluntary contracts to those two. I want to speak to the credit offer. I believe the Actuarial Committee started early in the process to try to look at the whole process of setting credits and trying to come up with a better approach. I've read the minutes and I applaud the work of the Committee, especially Safety which came forward with kind of a different view of the world of one of them, which I think is a better way of allocating credits to the cells that really need it. The history here is that the Actuarial Committee and Governing Committee have approved credit offers over the last several years – I think it goes back more than two – where the Division has not approved that. So I would think it would be good if we reach out to the Department to try to let them know that this analysis is going on and to get their input into the process also so we won't get to the end and come up with something that we think is better and then it's not approved because the Division may have certain concerns in areas that we didn't address. So anything that we can do to encourage that conversation, to have it now in the development of it I think would be a good thing. We should have staff reach out to the Division and make that offer.

Mr. Hyatt: Any other discussions or questions for Tim? Seeing none, thank you Tim.

GC
17.16 Budget Committee

Mr. Hyatt: Our final report is the Budget Committee. I will report on the meeting of September 14th of this year.

President Natalie Hubley presented the Fiscal Year '18 Budget and Business Plan, noting that management is proposing a net operating budget of \$9,270,100, reflecting an increase of \$441,000 over fiscal year '17 approved budget. The increase was due to two factors: \$208,000 relating to the absence of the four-month rent abatement realized in fiscal year '17 and \$272,000 relating to CAR's disaster recovery plan implementation. To alleviate the impact of these increases, staff proposed applying the anticipated fiscal year '17 surplus towards the fiscal year '18 expenses. Management therefore requested a net fiscal year '18 assessment of \$8,979,400, representing a \$150,300, or 1.7 percent increase over fiscal year '17.

Ms. Hubley advised the Committee that management anticipates closing out fiscal year '17 approximately \$290,700 under budget resulting primarily from staff's continued focused on controlled health care costs and prudent hiring decision. Savings were also realized from lower than anticipated building escalation expenses relating to the 225 Franklin Street lease termination and reduced costs associated with computer hardware and software maintenance.

While the Committee recognized the increase in the rent account, it was noted that rent expenses actually reflected a savings of over \$300,000 from the old lease that we had at Franklin Street versus here.

The Committee discussed ongoing costs attributed to the planned standby disaster recovery site services estimated at \$111,000 annually. Although the implementation of the disaster recovery plan will commence early in fiscal year '18, activation of the standby recovery site is not expected until the third quarter. Accordingly, the Committee agreed that the recovery site services would only require a portion of the – to be reflected in a portion of fiscal year '18. So a reduction in the proposed cost estimate of \$55,000 was appropriate.

The Committee also discussed funding for legal fees which includes a \$60,000 contingency for potential billing outside the monthly retainer agreement. Given that the full \$180,000 budgeted in fiscal year '17 was not incurred and staff anticipates that most of Counsel's efforts will fall within the \$10,000 monthly retainer, the Committee agreed to reduce the proposed amount by \$20,000 to \$160,000.

With all that said, at the end of the day, the Committee did approve a fiscal year '18 expense budget of \$9,195,100 with the fiscal year end surplus applied to the fiscal year '18 expense. I would entertain a motion to approve the fiscal year '18 Budget and Business Plan as presented by Natalie.

Mr. Gilman: So moved.

Mr. Harris: Second.

Mr. Hyatt: Any discussion? All those in favor?

All Committee Members: Aye.

Mr. Hyatt: Any opposed? Motion carries. Any other items to bring before the Committee today? Seeing none, I would entertain a motion to adjourn.

Mr. Gilman: So moved.

Mr. Harris: Second.

Mr. Hyatt: All those in favor?

All Committee Members: Aye.

Mr. Hyatt: Opposed? Motion carries. Thank you.

(Meeting ended at 12:08 p.m.)

NATALIE HUBLEY
President

Note: This Transcript has not been approved. It will be considered for approval at the next meeting of the Governing Committee.

Attachment

Boston, Massachusetts
October 4, 2017

The above proceedings have been transcribed in accordance with CAR's guidelines for producing quality transcripts, which provide for the elimination of insignificant material that does not alter the substance of the Committee's discussions, such as sidebar comments, the use of verbal fillers (i.e., uhm's and ah's), and commentary (i.e., "laughter" and "coughing").

ATTACHMENT LISTING

Docket #GC17.02, Exhibit #4

Attendance Listing

GOVERNING COMMITTEE MEETING
 SIGN-IN SHEET
 WEDNESDAY, SEPTEMBER 20, 2017

Individual's Name

Company / Agency

PLEASE PRINT

Individual's Name	Company / Agency
Tom Harris	Quincy Mutual
Meredith Woodcock	Liberty Mutual
PAMELA A. BODENSTAR-KRYNICKI	KRYNICKI INSURANCE
John Kelly	MARRIF
Chris Dupke	EM Freedman Insurance
Chris Jarrard	GEICO
Bill Cahill	HANDLER INS
John Oliviero	Agnt
Van Dykman	Economy I. A.
Scott Aard	Plymouth Rock
Mary Ellen Thompson	DAI
Ben Hincks	Torres, Scamman, Hincks & Day - CAR
Steve Torres	" "
Natalie Hubley	CAR
Jim Hyatt	Arbella
Thom DePaulo	Meridian Ins Agency
Regina Nagle	CAR

CAR
 Counsel

