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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, 7<sup>th</sup> Floor, Boston, on

**WEDNESDAY, APRIL 17, 2019 AT 10:30 A.M.**

Committee Members present –

Mr. Thomas C. DePaulo – Chair  
Cabot Risk Strategies, LLC

Mr. Donald Baldini <sup>(1)</sup>	Liberty Mutual Group
Ms. Pamela L. Bodenstab-Krynicky	P.L. Krynicky Insurance Agency, Inc.
Ms. Elizabeth B. Brodeur	Safety Insurance Company
Mr. William Cahill, Jr. <sup>(2)</sup>	The Hanover Insurance Company
Mr. Christopher D. Dupill	EM Freedman Insurance Agency, Inc.
Ms. Roberta Fitzpatrick <sup>(3)</sup>	Arbella Insurance Group
Ms. Paula W. Gold	Plymouth Rock Assurance Corporation
Mr. Thomas A. Harris	Quincy Mutual Group
Mr. John V. Kelly	MAPFRE U.S.A. Corporation
Mr. M. John Olivieri, Jr.	J.K. Olivieri Insurance Agency, Inc.

Substituted for:

<sup>(1)</sup>Ms. Meredith M. Woodcock

<sup>(2)</sup>Ms. Kellie A. Thibodeau

<sup>(3)</sup>Mr. James S. Hyatt

Not in Attendance:

N/A

**PROCEEDINGS**

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

Mr. DePaulo: Good morning everyone. Welcome to the Governing Committee meeting of April 17<sup>th</sup>. Before we get started, I have a couple of housekeeping items I need to review. We have some substitutions today. First, Mr. Donald Baldini will be substituting for Meredith Woodcock. We have Mr. William Cahill, who will be substituting for Ms. Kellie Thibodeau and we have Ms. Roberta Fitzpatrick, who will be substituting for Mr. James Hyatt today. Welcome everybody.

**GC**

**19.01 Transcript of Previous Meeting**

Mr. DePaulo: The first item on our agenda today, as we get into this, is the Transcript of the Previous Meeting. It's been distributed. It's the Governing Committee meeting of February 13<sup>th</sup>. Do I have a motion to accept the transcript?

Mr. Olivieri: So moved.

Mr. DePaulo: Do we have a second?

Mr. Kelly: Second.

Mr. DePaulo: Any discussion? All in favor?

All Committee Members: Aye.

Mr. DePaulo: Any opposed? The transcript has been approved.

**GC**

**19.04 President's Report**

Mr. DePaulo: The next agenda item will be the President's Report. Natalie.

Ms. Hubley: I do have a status report to provide you with relating to some of the action items that took place at your last meeting, as well as some of the ongoing commercial efforts here at CAR.

With respect to some of the items that you took action on at your last meeting, the standards for verification of drivers' licenses, the Committee had proposed an amendment to Rule 2 of the Eligibility definition to require valid licenses. That Rule, as you're all aware, has been disapproved by the Commissioner. It was our understanding, from the decision, that the concern isn't really about what the Committee is trying to do, but rather how the Rule amendment was constructed. So,

we will be working with counsel and coming back to the Commercial Auto Committee at its next meeting with a revised Rule amendment that would mirror more closely the statutory language with respect to eligibility for licensing in Massachusetts. Then we will also take a look at the standard procedures that were drawn up to see if any changes to those need to be made to make sure that Servicing Carriers are all reviewing this business in the same way. There will be further activity on that issue at your next meeting.

Relating to the producer requirements and the market need concept for eligibility for an appointment as a – an ERP appointment to a Servicing Carrier, the Rule amendments to Rule 14 were deemed approved in March. So, the next step there will be to bring through the Commercial Auto Committee a formal recommendation relative to market need and have this Governing Committee vote as to whether there would be a market need for future ERP appointments. So, that will also be coming to your next meeting.

Relating to amendments to CAR's rating manual relating to the radius classification and rating territory, the substantive parts of those rule amendments were placed on file by the Division of Insurance. The standards relating to the determination of radius class and any default procedures and whatnot have been posted and the Servicing Carriers have been notified that those standards would be expected to be fully implemented by June 1<sup>st</sup>. However, there was a portion to those rule amendments that we pulled back relating to the assignment of zone combination. This is because after the filing was made some questions were asked that kind of demonstrated that while our intention was not to change the rating procedure but rather to clarify it, that the amendments as proposed may have changed how some carriers might assign zone combination. So, we pulled those back and we will bring a new look at those rules to the Commercial Auto Committee also at its next meeting.

At your last meeting, you had also voted to move forward to instruct the Financial Auto Committee to move forward with an RFP for auditor services. CAR staff had worked with the Chair of that Committee to modify the RFP. That RFP did go out a week or two ago. It was sent to two national carriers and two regional carriers – or audit service providers. We have requested responses by May 7<sup>th</sup>. So far, we've heard from one company that does intend to propose and we have not heard further from the other three.

In November, I think it was, this Committee had voted to recommend two Statistical Plan changes that we did submit to the Division of Insurance. At this time, they are still pending with the Division of Insurance. The Statistical Plan changes included a modification of the stat penalty provisions relating to the new distribution analysis process and the request for corrective action by companies and penalties that may be associated in the event that they're not complying with that. At this time, the discussions with the Division have been around the size of the penalties that are being proposed. The Division has asked us to look at some of the stat plans of other states and the penalty provisions around

that in order to give a little bit of context there. Those discussions are ongoing and we'll notify the industry as soon as possible when we have a decision on those.

Moving on to the report on the activities of the commercial marketplace. I'd like to not repeat a lot of – you will hear a number of reports from different advisory committees today. You will hear a report from Tim Galligan relating to the Loss Reserving Committee's projections. Their projections are most recently through the end of 2018. So, as we're not sure, 2019 we're starting to see some of those improvements. Our ongoing efforts continue to be very important. As you know, the Chair has assigned a committee, the Joint Actuarial Commercial Lines Committee, to move forward with the rate need study that this Committee had approved the recommendation of the Division to do a thorough study of our rating manual and our rate indications to identify all areas of rate need. We have met with the Chair of that Committee, briefly. Glenn Hiltbold from Safety Insurance will be chairing that Committee to kind of frame how we would kick that off. We expect later in May to get that Committee going with their activities.

With the committee process this year, too, we've established a Reinsurance Committee that will be chaired by Jim Hyatt of Arbella to explore opportunities for a reinsurance arrangement that may help address some of the financial concerns as we're working on this improvement. We have had some preliminary discussions with Jim, as the Chair, to put together a profile of the commercial market, most of which the Commercial Auto Committee and the Oversight Committee has been working with. We will be getting that Committee going also later in May. We're looking, actually, I think, around mid-May to kick off their activities.

The Commercial Oversight Committee will be reviewing the Servicing Carriers' second annual reports I think either later in May or early in June. Those activities will be moving forward as well.

You will also hear a report from the Compliance and Operations Committee where staff has begun to outline a Commercial Audit Program going forward. Staff has presented a Phase I and Phase II approach for these efforts. Phase I will begin in June of this year to concentrate on eligibility of bus classifications. Phase II will deal with some of the other standards that have been put in place by this Committee relating to Principal Place of Business, the validation of businesses, and drivers' licenses and whatnot, radius of operation and classification. Those efforts will begin in June 2020 so that those reports can be provided to the Committee as we're preparing for the next RFP cycle.

A couple of, I think, additional things just of note to see how some of these things that we are doing are kind of causing some improvements out there, staff has met with one Servicing Carrier and provided some overview to their staff relating to these new standards and whatnot. We met with one Service Carrier's staff, a number of, I think, there were

about 25 staff members from all different disciplines to kind of review these standards and the changes so that everybody is kind of on the same page. That was received well, a lot of back-and-forth, a lot of good information, I'm told. So, we would like to just let that be known in case any other Servicing Carriers might find that to be helpful as well. CAR staff is always here to work with you as we can.

CAR staff has also recently rolled out a kind of a redesign of its commercial website, commercial reports pages, as we've introduced a lot of these changes, provided a lot more data for the companies. We've redesigned that in hopes that that's a lot more user-friendly for you. Hopefully that is an improvement as well.

We've had some discussions also with other states' plans relating to businesses with principal places of operation in other states, and in particular Rhode Island is one that has reached out to us recently because of the activities around some of these buses that really have principal places of business outside of Massachusetts. As they go back to their own states' plans, we're finding that those states are reaching out to us to find out how our plan is reciprocal to theirs and what efforts they need to take to make sure that they're able to rate these risks properly as well. I think this is the second or third time that we've seen this happen. I think as these things take place they hopefully will begin to see that improvement in Massachusetts.

Finally, staff has also met with a couple of representatives of the Boston office of the Federal Motor Carrier Administration. They reached out to us because they, in their efforts to inspect some of these multi-state trucking and bus operations, they're finding some businesses whose principal places of business they also question. So, they've come to meet with us to find out ways that they can share information with us and we can share information with them relating to those. But also as part of that discussion they talked about how they can maybe notify CAR if they have maybe shut down any of these operations for safety violations and whatnot so that as we can collect that information we can provide that to the Servicing Carriers. Again, hopefully, that will continue to enhance the oversight process and see some continued improvements in the commercial marketplace.

With that, unless anybody has any questions, that would conclude my report.

Mr. DePaulo:

Any comments or questions? Thank you, Natalie. That was very informative.

**GC**  
**19.05 Counsel's Report**

Mr. DePaulo:

Moving on to our next agenda item, we will now have Counsel's Report.

Mr. Torres:

Thank you. Good morning everyone. There are seven items on Counsels Report today. The first, the Calianos Insurance Agency appeal to the Division, there's no change in the status on that. It remains fully briefed and pending at the Division.

We do have an update to report to the Committee on the different Point Insurance appeals that are pending at the Division. By a decision issued on March 11, 2019, the hearing officer issued a decision on the Point I appeal. You'll recall the Point I appeal was Point's challenge that certain conduct by Arbella was unfair, unreasonable or improper. In the March 11<sup>th</sup> decision, the hearing officer affirmed the determination by CAR, through its Market Review Committee and its Governing Committee Review Panel, that none of the conduct or the 10 specific items that had been alleged by Point constituted conduct by Arbella that was unfair, unreasonable or improper. In a fairly comprehensive decision, the hearing office sided with or adopted some of the underlying contentions or positions by Arbella, as well as CAR, concerning eligibility for commercial insurance. The hearing officer also sided with Arbella on its use of SIU investigations and renewal forms. That determined the Point I appeal.

Soon after, we received a notice from the hearing officer in the Point II appeal. The Point II appeal is Point's challenging Arbella's termination. The hearing officer, recognizing that the Point I appeal addressed certain underlying conduct that was also at issue in the Point II appeal, asked the parties, CAR, Arbella and Point, to confer and see if they could submit a joint submission on issues that had already been decided, as well as issues that remain outstanding, and then we've been instructed to report back to the Division for a status conference on the Point II appeal in May.

We haven't received any word from the Point III appeal. That was a proceeding that Point instituted at the Division of Insurance in December. Both CAR and Arbella took the position that much of the conduct alleged in the Point III appeal was similar conduct that had been alleged in the Point I appeal. So, we haven't received any word on the status of the Point III appeal, but certainly the decision in the Point I appeal supports the notion that the Point III appeal should be dismissed. So, that's the current status on the Point matters.

The next item, the Rule 31 amendment issue still remains pending at the Division. There had been a hearing some time back on that. We're still awaiting further word from the Division on Rule 31.

We did receive a ruling, many of you are probably aware, on the proposed Rule 29 amendments. The changes to credits that had been proposed by a decision dated April 3<sup>rd</sup>, the Division disapproved the proposed amendments to Rule 29.E. that CAR had submitted back in late-November. As a result, the current credits remain unchanged.

Regarding the proposed changes to the Private Passenger and Commercial Performance Standards, the Division conducted a hearing

last Friday, April 12<sup>th</sup>, on the proposed changes that had been approved by the Governing Committee at your meeting in February. There were a number of non-substantive changes included in the Standards. The sole substantive change related to the inclusion of the use of medical fee databases as a tool that may be used in conjunction with medical bill reviews and the determination of usual and customary charges. CAR submitted a statement in support. CAR's Mark Alves appeared at the Division on Friday and provided testimony and answered questions to the hearing officers. The Division took that matter under advisement and left the record opened for parties to submit any additional submissions if they so choose until April 23<sup>rd</sup>.

The next item, in mid-March, CAR received a subpoena to produce records from a plaintiff who is suing Commerce in state court as a policyholder on her behalf and others similarly situated. The subpoena was broad and CAR objected on that basis among others. It served its objections and hasn't produced any responsive documents, also in part because Commerce has moved to quash the subpoena. So, until there's an adjudication on the motion to quash, CAR is in a holding pattern and waiting for further word from the court on that.

Unless there are any questions, this concludes the initial portion of today's Counsel's Report. At the end of today's agenda, counsel will recommend that one final component of our report be presented to and further discussed by the Governing Committee in Executive Session.

Mr. DePaulo: Any questions or comments? Thank you.

**GC**  
**19.06 Commercial Program Oversight Committee**

Mr. DePaulo: Moving to our next agenda item, we'll have the report on the Commercial Program Oversight Committee. Mr. Cahill will report on the meetings of March 5<sup>th</sup> and March 28<sup>th</sup>.

Mr. Cahill: Thank you, Mr. Chairman. Good morning. Good morning members of the Committee. My plan is to report on the couple of meetings that we've had since the last time the Governing Committee met. I might just note the fact that the Records of the meeting of March 5<sup>th</sup> have been distributed to the membership and are available. I'm happy to answer questions with regard to that, but I'm going to focus on the meeting of the 28<sup>th</sup> and will read a bit of this summary for folks and then offer a couple of comments after that. As folks know, our Committee has been meeting a number of times and I'll review the extent of that in just a moment.

We do have one action item that we're going to bring a recommendation forward today to the Governing Committee for your consideration. That's with regard to the request for reimbursement of extraordinary expenses by Arbella Protection Insurance Company.

At our meeting on the 28<sup>th</sup>, Natalie ended up bringing forward to the Committee the fact that the Committee had directed staff to summarize the alternatives being considered with respect to the Arbella request. Accordingly, an exhibit was prepared by staff to break down Arbella's request for reimbursement of \$460,120 as presented at the last meeting on March 5<sup>th</sup>, which included a load for benefit expenses that had been previously overlooked, and reflected a conversion of employee-related expenses to a percentage of an annual full time equivalent (FTE). Staff also identified alternatives considered by the Committee at its last meeting, both with and without benefit expense loads, and reflecting the Committee's discussion points for each that may be used for the development of guidelines in consideration of future extraordinary expense reimbursement requests.

Committee discussion focused on evaluating the request in the context of isolating those expenses that should be considered to be in excess of what was contemplated in the RFP process. The Committee separately addressed the requests for underwriting, operations, and claims/SIU staff expenses. The Committee recognized that Arbella had added to underwriting staff in light of the increased efforts needed to manage the Point book of business. Accordingly, the Committee agreed that reducing the reimbursement to one FTE from the requested 1.16 FTE would reasonably account for extraordinary expenses. Further, the Committee considered that the request relating to 0.44 FTE for the operations staff as identified by Arbella is a reasonable estimation of extraordinary expenses. Finally, the Committee agreed that its previous determination of 0.85 FTE for claims/SIU as extraordinary is reasonable in light of the number of investigations performed and the hours spent as previously reported by Arbella.

Significant discussion then ensued relative to the appropriateness of including benefits in expenses to be reimbursed. The Committee considered whether a threshold should be established based on a percentage of an employee's time spent on the matter at issue over which benefits could reasonably be considered within extraordinary expenses, or whether benefit expenses would be considered extraordinary only in those instances where additions to staff were needed exclusively to address the matter at issue. However, the Committee commented on discussions that took place when developing the process currently described in the Manual of Administrative Procedures allowing for the consideration of employee-related expenses, as well as outside resources. The intention was to encourage Servicing Carriers to employ the most cost-effective solutions to address extraordinary circumstances. As such, the Committee members agreed that to exclude benefits from consideration of extraordinary expenses under certain conditions may be contrary to that objective.

Finally, the Committee agreed that the legal expenses as documented by Arbella reasonably account for extraordinary efforts relating to the Point matter. Accordingly, the Committee unanimously voted to recommend to the Governing Committee that Arbella be reimbursed \$328,812 for underwriting, operations and claims/SIU staff expenses, including



benefits, and legal expenses submitted to date. Further, the Committee advised that any request for additional legal expenses incurred as a result of future Point appeals would be considered as a separate matter.

I am bringing a recommendation forward. I would make a motion to the affect with regard to this reimbursement amount of \$328,812 for underwriting, operations and claims/SIU staff expenses, which includes benefits. That would be a motion.

Mr. DePaulo:

So, we have a motion on the able.

Mr. Kelly:

I'll second it for discussion.

Mr. Cahill:

If I might just be allowed to further add a little bit more perspective. Thank you, John, for doing that. The Committee was formed – as you might recall, the Program Oversight Committee was formed during the summer of 2018. We've had six meetings. Five of the six meetings have focused extensively on this request, which was brought forward to the Committee in September of 2018. The Committee members, which include Chip Boynton, as an agent, Peter Chung from Norfolk & Dedham, who happens to be here today, Brian Hayes from Quincy Mutual and John Olivieri, who's a member of the Governing Committee to my right here this morning, have all put in an awful lot of time. I feel as if the Committee has sought to parse through this as best they can and has devoted an awful lot of attention and thought into trying to come up with an appropriate recommendation for the Governing Committee.

If you recall, there have been a number of discussions with Arbella and Arbella, to their credit, have come forward multiple times in response to our requests. The Governing Committee, way back in September of 2017, was presented with a proposal from the Commercial Auto Committee where the number, at that time, was \$585,000 and change as a request. In the fall of 2018, we were presented with a number of \$371,000 and change. In February of 2019, an adjusted amount that was brought forward was \$460,000. Ultimately, the Committee has ended up with what we think is a reasonable reimbursement level of the \$328,000 figure, which was included in the motion. I think that based upon the hard work of the Committee, the thought that's been put into it, as well as the staff resources that have been devoted to this exercise, I think we feel comfortable with the proposal that we bring forward to you for consideration today.

I'm happy to answer any questions that result from the discussion. I know my colleagues from the Committee, I'm sure, will chime in as they feel appropriate.

Mr. DePaulo:

Yes, Roberta?

Ms. Fitzpatrick:

Mr. Chairman, I just want to note my recusal.

Mr. DePaulo:

So, we have Roberta Fitzpatrick recusing herself from the vote. John?

Mr. Kelly:

Just to have a conversation or discussion of this topic, obviously, the Committee has worked hard on this and has met several times, so it's a difficult issue. At a very high level, I think it's important for the Governing Committee to talk about this and develop a process going forward that makes sense. There are a number of factors that kind of impact this. One is that we all bid or carriers who are interest bid on this process and submit, you know, a response to an RFP. Was there any conversation over how they should be handled going forward? Should this be handled in the same way that there's normal, I guess, response to the RFP and that the Servicing Carriers would have the option to apply for extraordinary expenses on top of that?

Mr. Cahill:

I'll respond and then maybe I'd invite any of the other Committee members and staff to chime in. John, clearly, the Committee members – and I think it's reflected in the record over the course of time, the summary of the meetings – we were all very cognizant of the prospect that this is establishing some kind of precedent with regard to other carriers. We sought out information with regard to the RFP process that had occurred the last time. There were a few thoughts that were expressed at different points early on around, this should be a little bit more black and white. I mean, what was anticipated with regard to the responses to the RFP in relation to where we are now based also on the language that we are obligated to follow in the Rules and in the Manual of Administrative Procedures around what is an extraordinary expense that should be considered for reimbursement.

I think the challenge is that the RFP process to the extent we were able to look at it in the past and staff really took the lead on this part, there really wasn't a lot of clarity around that particular point. We were sort of anticipating that might be the basis for some additional attention and future RFP exercises around the Commercial Servicing Carrier Program.

I do think there are a number of sort of extraordinary circumstances around this particular matter just even from my own personal perspective. Certainly, the – and it was noted back in one of the original Governing Committee discussions on this, but the original termination of an agent, the acquisition by another party, the reappointment of that or appointment of that new agent back to the same Servicing Carrier, obviously the extensive administrative and legal activity that's ensued over the course of time and as counsel has reported on, and ultimately a decision that was sort of on point with regard to the Point matter and the activities that Arbella had sought to impose and that they were doing on behalf of the commercial market to try to ensure that it was not disadvantaged. I think that all of that was affirmed. There are a number of things that I think sort of create this extraordinary unique set of circumstances that point in the direction of reimbursement. But I'll defer to anybody else that might want to comment on that.

Mr. Olivieri:

John, that did come up. Part of the reason there were so many meetings is because there isn't any clear guidance in the RFP process for the Servicing Carriers. One of the other charges of this Committee is going to be that RFP process so I think everyone at the table is very conscious

that we need to figure out a better way to make it a little more black and white. There's always going to be some arbitrariness to this in the sense that what you may consider extraordinary I may not consider extraordinary and where do you draw that line. But it definitely was a significant part of our discussion going forward that we really need to work with staff to somehow come up with better guidance. You could have five people sitting around the table that are going to say that's extraordinary and that number makes sense. A year from now, it could be five different people and they may not agree with that or the threshold may be a little lower. Obviously, it's not going to be a perfect science, so to speak, but, definitely, we were very cognizant of that. I think that Committee, as composed right now, is going to work very diligently to figure out a way to make this a little more black and white. It may not make you feel any better right this second, today, but your question, I think, was what's the Committee going to do because, going forward, these situations may come up again.

Mr. DePaulo:

Paula?

Ms. Gold:

I think that is a real issue because the bid is the bid and these facts may be extraordinary, but in terms of making the bid mean something, there has to be a narrowing or a clear definition of what extraordinary is because companies know when they take this on that there are issues that relate to this market. They have to be prepared to deal with that. They have to be able to factor in what that's going to cost them. I think that the – I mean, I don't know how it's done but I think that it has enormous impact in terms of the bidding process.

Mr. Cahill:

I might just add that the Committee was guided by the language that's contained in the Rules now, which this group had reviewed throughout the process. So, we've got actual Rule language on what we would now define as an extraordinary expense. We've got further language in the Manual of Administrative Procedures. I feel like the Committee took advantage of that directive and sought to have this proposed reimbursement amount meet that. That was the back and forth that was taking place over five meetings. To John's point, to the extent we can further refine this, great, but this is what we worked with right now.

Mr. DePaulo:

John?

Mr. Kelly:

I do think, speaking as a carrier here not a Servicing Carrier, the action Arbella took was, from my perspective, appropriate. I think that that's the activity that we want to see occur going forward. We don't want carriers to be out there – Servicing Carriers to be out there not doing things we need to do to make the market operate efficiently because they're not being reimbursed for the expenses needed to do that. I think that's an important concept here that we should try to embrace. On the flip side of this, I think that maybe our new Committee could look at this issue, too, you know, if this is approved, this is additional expense in the system. We should make sure that that's built into our rate filing process that if there are these extraordinary expenses that that's included in the rate for the residual market and would be included in the expenses that

go into the component of rates. To make the system operate efficiently, we want the Servicing Carriers to do what's needed but we want them to be reimbursed and ultimately the price for the risks in the pool should be reflective of that expense level.

Overall, I am supportive of this. It's not clear to me how we go forward if another case comes up. If we come in next week and say, how do we evaluate if that's extraordinary. That bothers me a little bit that I don't see we have a valid process.

The one technical question I would ask is I always looked at this from an accounting perspective. Arbella got paid an expense allowance to service this risk. What did they get paid? What was their dollar expense to service this risk? What's the difference? Is that this number or is there a difference? It seemed to be your analysis was more what were their expenses or, you know, are people working on this, but doesn't equate back to what they got paid from us for this, you know, expense. Hopefully that the incremental piece that the Committee is suggesting is the difference between the expenses they incurred versus what they got reimbursed from the pool for servicing that account.

Mr. Olivieri:

Again, it wasn't an exact science, to your point. There's no, here's the formula and it spits out a number. At the end of the day, that, we believe, is reflective of that number because what we tried to do is figure out how many people would you have allocated or how much manpower would you have allocated to service that type of a business and what is the differential. When they talk about full-time employees, how much time was put in, it was the difference between what they would have expected to some degree. Again, there was no real foolproof way to say, listen, we can definitely allocate hours. It was the extra effort put in which, I guess, would be considered the difference.

Mr. Cahill:

I might defer to Natalie or John or someone on staff about this question. We had a lot of discussion about what was available for information, what can we look at. Ultimately, I think we ended up going down this path that John's describing, too, because we didn't have some of that information immediately available. Is that correct?

Ms. Hubley:

That's true. The RFPs aren't that specific or the proposals by the different Servicing Carriers aren't that specific as to staffing that allowed us to put together any kind of apples-to-apples comparisons. You've got moving targets to expenses based on exposures that, you know, in a book of business that's being non-renewed it's very difficult to track this to what was given versus what was incurred.

Mr. DePaulo:

So, we have a first and second on the table, any further discussion? I just want to say it's duly noted the effort that you've put in as a committee to this. It's been a challenging topic, needless to say. We certainly need to look at this from a committee level going forward for an RFP. I think that would obviously be our next step. As John points out, we could get one a week from now, we don't know. I think we need to be prepared on

how to deal with that. On that note, we'll take a vote. All in favor of the recommendation?

Most Committee Members: Aye.

Mr. DePaulo: Any opposed? The recommendation is – action is approved. The recommendation to provide extraordinary expenses of \$328,812 has been approved. Thank you.

## **GC**

### **19.07 Commercial Automobile Committee**

Mr. DePaulo: Moving on to our next agenda item, we will have the Commercial Auto Committee. John Olivieri will report on the meetings of March 5<sup>th</sup> and April 4<sup>th</sup>.

Mr. Olivieri: Thank you, Thom. I'll try to do this relatively quickly. We have one action item that we'll be bringing to the Governing Committee for a recommendation.

I am going to just quickly mention, one of the topics that came up at one of the prior two meetings on either April 4<sup>th</sup> or March 5<sup>th</sup> – actually it came up at both – had to do with the radius of operation and rating territory. I'm going to skip over that only because I believe Natalie has brought you all up to date. If you have any further questions I will defer those over to Natalie.

The other two items – there we three other items. The other two items that are not going to be action items that we did discuss over the past two meetings and we still have a little more work to do on that were the review of additional insureds and how the Servicing Carriers are handling those, as well as non-ownership liability coverages. We have tasked CAR staff with gathering some additional information. These are two items that had been brought to the Committee that there's not a whole lot of consistency between the carriers and how they're handling them. Both of them seem to be bigger – not seem to be – but are bigger issues in the marketplace than had been in the past. So, we're grappling with how to handle that. We will be back with a recommendation at some point.

The other item that is an action item – I'm going to read myself to keep myself on task here – is Procedures for the Review of Large Ceded Losses. The Committee worked with staff to develop the procedures for the review of large ceded losses, which focused on the notification and disclosure aspects of the process. There are three components in this review. The first, large loss pre-reporting notification requires that Servicing Carriers provide notification to CAR of an incident involving a ceded commercial risk that could potentially result in a large loss liability to the pool. Servicing Carriers are required to notify CAR through a web-based application within 10 business days of becoming aware of the accident or becoming aware of the severity of the injuries. Accidents

that should be pre-reported are those with serious injuries and fatalities and are not based upon a specific dollar amount threshold. The pre-reporting notification procedure will bridge the gap from when the accident occurs to when the claims are statistically reported to CAR and when the Loss Reserving Committee estimates reserves.

Staff will continue to provide the large loss summary reports to the Loss Reserving Committee for use in its data review and loss projections. These reports will be cumulative, will be updated quarterly, and will be available on CAR's website. Finally, to monitor the timeliness of loss reserve reporting, staff will review claim reporting patterns and identify industry trends and Servicing Carrier anomalies which will be brought to the attention of the Servicing Carrier for explanation and remedy and, if necessary, to the appropriate CAR committee.

The Committee unanimously voted to recommend the large loss notification and disclosure proposal as presented. In addition to this, some of the forms – again, it's going to be a portal where this stuff is reported to – were included in the additional information that was sent out to all the Governing Committee members and posted on the web page.

We do have a recommendation. I would make the motion to approve that recommendation as outlined in my report.

Mr. Kelly: Second.

Mr. DePaulo: Any further discussion? All in favor?

All Committee Members: Aye.

Mr. DePaulo: Any opposed? Thank you. Motion carries.

Mr. Olivieri: That will conclude my report, Mr. Chairman.

Mr. DePaulo: Thank you.

**GC**  
**19.09 Compliance and Operations Committee**

Mr. DePaulo: Moving to our next agenda item, we'll have the report on the Compliance and Operations Committee. Ms. Wendy Browne will report on that.

Ms. Browne: Good morning. I will be reporting on the actions taken at the Compliance and Operations Committee meeting on Wednesday, April 3<sup>rd</sup>.

The Committee reviewed the focus audit results for Bankers Standard Insurance Company. The Committee had previously recommended a second focus audit of Bankers due to issues identified in prior audits,

including data quality reporting problems and compliance with SIU standards. Overall results demonstrated continued improvement in two of the three remaining data quality issues within anticipated corrections of the third problem later this year. Additionally, Bankers has instituted a new process that allows for sufficient SIU referrals in order to test compliance in accordance with the requirements of the Performance Standards. After testing, Bankers' SIU program is now compliant. Accordingly, the Committee unanimously accepted the report as written and directed staff to return Bankers to the normal audit schedule.

The Committee also reviewed the Charter Oak Performance Standards Run-off focus audit that included 61 accounting year 2018 policies with either paid losses or reserves. All sampled claims and reserves were evaluated for compliance with six Best Practices and were found to be at 95.5 percent compliance rate. Overall, Charter Oak was compliant with the required 80 percent benchmark for ceded run-off claims.

The Committee was informed that new online cession reporting and correction system available on CAR's website is scheduled to be moved into production on Monday, April 22<sup>nd</sup>. A bulletin will be published this week notifying Servicing Carriers about the availability of the new system. It will include instructions for using that new system.

Under Private Passenger and Commercial Stat Plans, the Committee unanimously voted to recommend changes to the Private Passenger Statistical Plan to redefine the anti-theft device discount code and rename that code to anti-theft device identification code. This code will now identify the category of anti-theft device or vehicle recovery system installed in the vehicle. It's noted that while the discount has been discontinued, anti-theft device information is still needed for MAIP policies in order to confirm whether an extra-risk rate has been appropriately applied for designated high theft vehicles.

The Committee determined that an optional effective date of January 1, 2020 and a mandatory effective date of July 1, 2020 was appropriate for implementation. The proposed changes can be found on Pages 5 to 13 of Exhibit #2 in the Additional Information packet. This is an action item for your consideration.

- Ms. Gold: Please note my recusal.
- Mr. DePaulo: Paula Gold is recusing.
- Mr. Kelly: So moved.
- Mr. Olivieri: Second.
- Mr. DePaulo: Any further discussion? All in favor?
- Most Committee Members: Aye.
- Mr. DePaulo: Any opposed? Thank you. That motion carries.

Ms. Browne: The Committee also unanimously voted to recommend changes to the Commercial Statistical Plan to update the reference found on the anti-theft device discount code page and to add a new classification code that identifies coverage provided for drivers using their personal automobiles for transportation network services. It should be noted that the anti-theft discount has not yet been removed from the Commercial Rating Manual, so a similar modification has not been proposed at this time. The changes apply to policies effective January 1, 2020 and subsequent. The proposed changes can be found on Pages 14 to 17. This, again, is an action item for your consideration.

Mr. Olivieri: So moved.

Mr. Harris: Second.

Mr. DePaulo: Any further discussion? All in favor?

All Committee Members: Aye.

Mr. DePaulo: Any opposed? Thank you. Motion carries.

Ms. Browne: Continuing, the Committee was provided with an overview of the Compliance Audit Program redesign that will incorporate changes to commercial audit responsibilities. As noted during the Servicing Carrier focus audits, the objectives were not only to gather information to support the development of underwriting standards but also to develop long-term audit and oversight procedures. Accordingly, staff has begun the process of developing enhanced procedures for evaluating compliance with the requirements of the Commercial Automobile Program.

Phase one will focus only on the bus risks that are of immediate concern impacting the residual market due to eligibility questions. All four Servicing Carriers will be audited separately beginning in June 2019 using a small focus sample of policies effective as of January 2019, which is subsequent to the approval of enhanced standards. The audit process will be consistent with the normal procedures, including status reports and the opportunity for the company to respond to the findings. However, audits results will be included in the report as determined by CAR staff while documenting the company's perspective. The final report, as well as the company response letter, will be provided to the Compliance and Operations Committee for consideration.

Phase two will begin in 2020 with completion scheduled to coincide with the next RFP process in 2021. The detailed audit procedures included with the Additional Information on Pages 18 to 29 will continue to be redefined and documented as standards are updated. Again, all four Servicing Carriers will be audited using the updated procedures. Future phases will consider and incorporate other examples of Servicing Carrier requirements such as loss controls, experience rating, endorsements and additional insureds.



It was noted that the enhancement of audit procedures for the Commercial Automobile Program will impact the audit schedule thus resulting in the need for a redesign of the overall Compliance Audit Program, including the potential change to the frequency of Hybrid Audits. As part of this process, the Compliance and Operations Committee will be reviewing and approving changes to CAR Manuals.

Finally, the Committee heard a statistical data quality penalty appeal. The Berkshire Hathaway Specialty Insurance Company requested a reduction to the penalties that were incurred for late statistical submissions. The Committee was informed that Berkshire Specialty had reported its March 2018 submission on time, but then failed to report its June, September and December shipments. In late February 2019, because three submissions were still missing, CAR assessed an interim penalty of \$30,500. Because the company had exceeded the low volume threshold and did not appear to be responsive to CAR's communications, the penalty amounts were based on the calculation for monthly submissions rather than the flat fee of \$1,500 assessed for low volume submissions. It was noted that Berkshire Specialty had reported its missing submissions in March and was complete.

Berkshire Specialty recognized that shipments were late and that penalties were warranted, however, it requested that the penalty calculation be assessed at the low volume maximum as the company did not exceed the thresholds until 2018. The Stat Plan defines a low volume company as one that has written less than \$500,000 in premium or paid losses during the prior year. Furthermore, the company had taken several steps to ensure that the company would avoid late reporting in the future. While the Committee indicated that the low volume penalty seemed insufficient, the current penalty assessed to Berkshire was excessive. Accordingly, the Committee voted unanimously to approve the reduction of the penalty to \$4,500.

Unless there are any questions, that would conclude my report.

Mr. DePaulo: Any questions, comments? Thank you, Wendy. Before I move on, just for clarification, Paula, you had recused yourself on the first motion and I didn't ask you on the second one. Did you want to recuse yourself from the second motion as well, just for the record?

Ms. Gold: What was the second one?

Mr. DePaulo: The second one was a motion to approve the Commercial Statistical Plan change to add a class code for coverage for personal vehicle use for...

Ms. Gold: I don't have to recuse myself.

Mr. DePaulo: Okay. I just wanted to be clear.

Ms. Gold: Thank you for asking.

GC

19.12 Loss Reserving Committee

Mr. DePaulo: Moving right along, we will now have the report of the Loss Reserving Committee. Tim Galligan will report on the meeting of March 5<sup>th</sup>.

Mr. Galligan: Good morning everybody. Tim Galligan, CAR staff, reporting on the March 5<sup>th</sup> Loss Reserving Committee meeting.

A summary of this meeting was distributed with the agenda, listed as Docket Number, Governing Committee, 19.12, Exhibit #1. First, the Committee approved the Records from the December 5, 2018 meeting which are on file with CAR's Secretary.

Next, the Committee discussed ongoing data reporting and data quality concerns. The Committee was advised of 17 Bodily Injury large loss claims and one PDL loss that were referred to CAR's Compliance Audit Department for additional information and verification of these reported statistics.

The Committee then reviewed large loss reports. Those are for losses greater than \$1 million. This exhibit is actually attached to your Executive Summary as Pages 4 through 6. Of note during the current quarter, there were 11 new claims that were added to this report that had crossed this \$1 million threshold. These claims range from policy years 2015 to 2018. Also, three claims fell below the \$1 million threshold. I would direct your attention to the attached Page 7 of this exhibit where we compiled a new exhibit that shows the changes in the large losses for this current quarter versus the prior quarter.

Moving on, in the data quality discussion, one Committee member advised of a significant bus accident that occurred during the fourth quarter of 2018. Now, while the initial reserves for this bus loss were \$100,000, the reserve was increased to the \$5 million level later in January and, therefore, while not reflected in the loss reserving data at the time of the meeting, the Committee member informed everybody of this loss and took that loss into consideration as they were making their ultimate losses.

Finally, the Committee was updated on the status of an accident year 2018 bus loss that occurred in Canada and was reserved at the \$5 million CSL level. This is an item that I've updated this Committee on, I think, for the past two quarters. The Committee member advised that an adjuster specializing in Canadian loss benefits has been retained. The investigation to determine coverage is ongoing and includes an evaluation of all available coverages outside of Massachusetts. The claim includes fatalities and multiple serious injuries and final determination of coverage and claim payments may be a lengthy process.

Moving on to the results of the meeting itself, the Committee did set loss and loss adjustment expense reserves using data through December of

2018. The Committee estimated a policy year 2016 commercial deficit of \$48.7 million with a loss ratio of 103.3 percent, representing an improvement of \$300,000 from the prior quarter.

The Committee also estimated a policy year 2017 commercial deficit of \$33.4 million with a loss ratio of 93.4 percent, representing basically no change from the prior quarter.

The Committee estimated a policy year 2018 commercial deficit of \$35.7 million with a loss ratio of 94.2 percent, representing an improvement of \$3.7 million from the prior quarter. This policy year 2018 improvement was primarily due to improved accident year 2018 bodily injury loss ratio selections, although the Committee recognized and discussed the fact that this year is still early on in development.

Just for your records, these ultimate loss ratio and deficit projections for policy year 2016 to 2018 are attached to your exhibit as Pages 8 and 9.

Finally, not on that three-year exhibit, just a note about the policy year 2015 deficit, it showed an improvement of \$2.3 million during the current quarter in part due to the Committee recognizing that alternate projection methodologies that minimize the over-projecting of these large losses that are already reported at their policy limits. So, the Committee has been taking a look at a lot of these large losses, making development triangles that remove these large losses, making projections, and then adding these large losses back in so as a way to not over-inflate the projections in these loss development triangles.

The Committee also noted that for policy year 2015, these claims are 3 to 4 years in development. It's not unreasonable for them to start recognizing and bringing them back down a little bit based on what they see.

That would conclude my report. I'd be happy to take any questions.

Mr. DePaulo:

Roberta?

Ms. Fitzpatrick:

Thank you, Mr. Chairman. I have a question, I don't know, for you, Tim, or for CAR staff. On the Canadian loss and the information, I had heard different things about no-fault limits in different provinces in Canada. I don't know if CAR has reached resolution on – somebody I had heard, up through the Committee, that there was at least one province that might have \$1 million per person no-fault limits. Have we identified the no-fault limits in the provinces yet?

Mr. Torres:

We looked into, sort of at a high level, some of those issues that we had heard, but in terms of making the specific coverage determination, as CAR's counsel, that's not something that we've undertaken. We trust that the Servicing Carrier is investigating that and making an ultimate assessment.

- Ms. Fitzpatrick: I don't know how the Committee feels. I don't know if we need to get a feel for, of the buses that we insure, how many of them have Canadian routes if we want to find out what the no-fault limits are if we have significant exposure, even if we inquire about that on new business. It just seems to me that that's something we should know in the residual market. I mean, if there's just one bus company that has a Canadian route, but if we have a number of bus companies with Canadian routes, I think we should know about that.
- Mr. DePaulo: John?
- Mr. Kelly: I would support that. I think that our new Committee that's looking at the development of the rate filing, I think that's an example of what they should be looking at. Is there exposure out there that we're not carrying the appropriate rates for? Should we provide the coverage? If we should then what should be the rate for that? I think that's a very good example of why risks may be coming to us because our prices are cheap for this type of situation out there.
- Mr. DePaulo: John?
- Mr. Olivieri: Roberta's question on the incident that's already taken place and what the limit is or what the laws are in Canada, I get that CAR's counsel, it's not on us to do that, but have we asked the carrier yet if they've – I mean, I think that would be a fair question for CAR or the Committee to inquire as to, you know, have you guys figured this out yet? I can't imagine it would be that – I'm oversimplifying legal research, but I'm not imagining it's that difficult to find out where the accident happened and what's the law. One of the issues on this large loss stuff – correct me if I'm wrong – is we want to make sure we accurately know what we're walking into. As much as this is a big loss as it is, it could be even that much bigger and we should know about it sooner.
- Mr. DePaulo: Natalie?
- Ms. Hubley: We have reached out to the Servicing Carrier. I believe the accident did occur in a province where the limit is a million dollars per person. As reported in Tim's report, that carrier has contracted with claims and legal services that are expert in this in Canadian law. That investigation is still pending. My understanding as well, as Tim reported, is the investigation is also including a review of what other insurance may be available to those risks or what other insurance may be carried by the passengers on that bus and that kind of has also impacted the determination of coverage in primary and whatnot. You know what we know.
- Ms. Fitzpatrick: Mr. Chairman?
- Mr. DePaulo: Yes.
- Ms. Fitzpatrick: I had read something on that that suggested there may be subrogation available to reduce the exposure. So, it would be interesting to know what happens on that claim. Maybe, I don't know if the Committee

needs to direct the Program Oversight Committee or staff to identify, if we can, in the current residual market book of business, how many bus companies we have that have routes in Canada. Then see if it makes sense to explore and have CAR explore, through counsel or perhaps even through this person, what the limits are in the provinces. I had looked at it. What I had first heard is there are a million dollar no-fault limits in Canada, but there are provinces in Canada like there are in the United States. So, we started looking. We did see that it varied by province, but we also thought we saw million dollar limits. That's when we kind of raised the question. I don't know if that's something at least we can look at. I don't know if this Committee needs to direct CAR staff to look at, do we have exposure and can we tell in our current book of business with Canadian routes.

Mr. DePaulo: And if it varies by province it's not just whether you're crossing over the border. We need to know specific routes or what that province's – or what their rules or laws are.

Ms. Fitzpatrick: And maybe we only have one or two bus companies that travel into Canada and then it's perhaps a non-issue. But if it's multiple routes, I think we ought to get our arms wrapped around it.

Mr. DePaulo: Natalie?

Ms. Hubley: I guess I should also maybe comment that we also don't have information as to what the extent of the individual injuries are. We do have reserves reported, a number of PIP reserves reported, and that's all included in the data. As far as we know, that is what the carrier knows.

Mr. Cahill: I was just going to pick up on this. There's sort of two different lines here. I think the claim question, I think, Natalie, you and Tim, you guys have sort of responded to that and it's ongoing. I think where you're going, Roberta, is more on a going-forward basis with regard to risks. It's an interesting question about Canada. But in the U.S. there are 12 no-fault states, including Massachusetts, and if there's a bus route that goes from here to Michigan, it's an unlimited lifetime medical benefit. I think it's a good one to have a committee take a look at. Program Oversight, happy to take on any new assignments. John, you did mention this other committee that's looking at it from a rate standpoint. I don't know if that's a first stopping point. I'll leave it up to the Chair and staff to figure out. I think it's a good one to look at.

Mr. DePaulo: We'll look into that and report back. That concludes your report? Any further questions for Tim? Thank you, Tim.

**GC**  
**19.13 Governing Committee Review Panel**

Mr. DePaulo: Moving on to our next agenda item, we will have the report of the Governing Committee Review Panel. John Metcalfe will report on the meeting of March 28<sup>th</sup>.

Mr. Metcalfe:

At the meeting of March 28<sup>th</sup>, the Shannon Insurance Agency was requesting a review of the December 19, 2018 decision of the Market Review Committee, which was reported to the Governing Committee at their meeting in February of this year.

The decision of the Market Review Committee involved the agency's appeal of the termination of the Shannon Insurance Agency's commercial automobile appointment by the Commerce Insurance Company for violations of Rule 14 involving Section B.1. That included items d., e., g., j., x., and y. of that section.

Mr. Paul Shannon of the agency presented the agency's appeal stating that his agency had been with Commerce since 2011 and had always had a good relationship with his assigned underwriters, and that he also represents several other large commercial auto carriers. He indicated that in December 2017, when a new Commerce underwriter was assigned to his agency, many large risks that had been on the books for many years and renewed with Commerce without issue were now being scrutinized by this underwriter. Additional reports and records were requested at renewal and if this documentation was not received the policies would be non-renewed. He discussed several of the specifics accounts referenced at the Market Review Committee meeting. Mr. Shannon stated that based on these apparent underwriting requirement inconsistencies he felt that his agency had been singled out by Commerce.

Commerce responded by stating that the agency's notice of termination and its attachments provided clear documentation of the agency's repeated violations of Rules 13 and 14. This documentation formed the basis of the ERP's termination and provided proof that the cited violations were not isolated events but rather a continuous pattern of non-compliant business practices on the part of the ERP. Commerce attempted to remedy these concerns prior to issuing the notice of termination in June of 2018 in an effort to assist the ERP in avoiding the termination of its appointment. Commerce provided a detailed notice to the ERP of the repeated Rule violations and requested that the ERP conduct its future business with Commerce in accordance with CAR Rules.

However, the ERP failed to alter their business practices and the violations continued despite warnings and offerings of assistance. Accordingly, Commerce issued a September 11, 2018 notice of termination. Commerce further noted that the actions of its underwriter were consistent with the obligations of the Servicing Carrier Agreement and that the request of Mr. Shannon to provide additional reports were to validate eligibility, proper classification, and rating of the risks. Over the past year, Commerce has focused on creating consistency among the Servicing Carriers' handling of risks in the commercial marketplace, therefore, increased scrutiny on risks is to be expected from all Servicing Carriers. Commerce stated that Mr. Shannon provided no defense of the violations cited in their termination letter. Instead, he attempted to

deflect the agency's non-compliance with CAR Rules with unsubstantiated, inaccurate and irrelevant allegations relative to Commerce's intent.

After hearing from both parties, the Panel discussed the presented information and agreed that there exists a clear set of CAR Rules to which every agent in the state of Massachusetts must adhere, and the fact that a new underwriter had been assigned to the Shannon Agency was irrelevant. The Panel also acknowledged that the written documentation submitted by Commerce provided sufficient evidence that indicated that the agency had failed to adhere to those rules. The Panel considered each of the actions from which the Shannon Insurance Agency requested review as specified in Commerce's termination letter dated September 11<sup>th</sup> and voted on each item individually. For each item, the Panel unanimously found Commerce had established that the agency violated the specific CAR Rule and that each individual violation provided a valid basis for termination of the agency.

Finally, the Records of the March 28, 2019 meeting of the Review Panel are on file and available on CAR's website.

Mr. DePaulo: Any questions or comments for John? Thank you, John.

## GC

### 19.14 Legal Contract Review Committee

Mr. DePaulo: Moving to our next agenda item, we will have the report of the Legal Contract Review Committee. Before we do that, I'd invite counsel to either stay for this portion or if you'd like to leave while we discuss this.

Mr. Torres: Sure. We're happy to step outside.

Mr. DePaulo: For the Legal Contract Review Committee we'll have John Olivieri report on the meeting of April 4<sup>th</sup>.

Mr. Olivieri: We met on April 4<sup>th</sup> to discuss the performance of our current counsel, Torres, Scammon, Hincks & Day, who I will refer to as current counsel so I don't have to keep repeating that. The Records of the meeting have been distributed. I'm just going to kind of give you a brief summary.

Normally, CAR's policy for professional services is to review them every five years but where this was a new engagement with a new law firm, initially, when we had awarded the contract, we had said we were going to review them at year three to kind of see how everything was going and measure their performance.

The Committee met. It was myself, Thom, Liz Brodeur and Roberta Fitzpatrick. It was very helpful having two attorneys on the Committee to get their perspective because they've both dealt with the firm on a number of different issues and committees and whatnot. Also, we gathered CAR staff input. Overwhelmingly, everyone seemed very

happy with the firm's performance, not just technically with their legal knowledge and the work that they do for us, but the time and effort that they've committed. They've gone well beyond what, in everyone's estimation, staff and the Committee members, well beyond the retainer agreement that they had signed with CAR three years ago.

We did reach out – or staff did reach out to the firm to advise that we were going to be having this meeting. They did come back because we inquired, you know, what would it look like if we wanted to extend the engagement into the future. They did give us some options. I did have Tim Costain reach out to some other firms just to kind of get a feel for, cost-wise, where those numbers were coming in at. They were extremely in line and competitive. Again, I can't repeat enough how happy staff and the Committee members have been with their performance.

We concluded that the Legal Contract Review Committee was happy with their performance and would like to recommend us to continue and enter into a five-year continuance or – I forget if we're calling it a renewal or an extension – I think we're calling it a renewal engagement – for, at this point, just to give everyone a feel for where we are, the monthly retainer that we have right now is \$10,000 per month, which is \$120,000 annually. I will point out that there was one specific item that had come up and Natalie can comment on it if anyone is interested that went outside of the monthly retainer. With everything that's been going on with CAR, with appeals, with all the commercial auto work and whatnot, they have never come back and said that the \$10,000 was not sufficient. Again, the Committee, as well as staff, believes the \$10,000 probably wasn't sufficient but they've never come back and asked us or billed us for anything additional.

Having said that, the renewal engagement that the Committee is recommending would be for five years. In year '19 through '21, which is the first two years, it's \$12,000 retainer, which would be \$144,000 annually. Year '21 to '22, would be \$12,500 monthly retainer, \$150,000 annually. The '22 to '23, \$13,000 monthly retainer, \$156,000 annually. The final year, year five, which is '23 to '24, would be \$13,500, \$162,000. So, basically, the first two years are at \$12,000 and then \$500 incremental increases for the remaining three years. So, that would be the recommendation of the Legal RFP Committee to keep counsel and to enter into a five-year renewal engagement agreement with them at the numbers I just proposed.

Ms. Gold:

Natalie, what was the one matter that went outside the retainer?

Ms. Hubley:

Probably a year or so ago, as the – one of the committees was getting together to talk about the classifications relating to the private passenger non-fleet type, to do research into the genesis of the whole Lane-Bolling amendment back to the legislative committee work and all that to find out if in today's environment we might be able to kind of look at that in a little bit of a different way. So, they did a lot of research there at my



request. So, it was a little bit outside of the committee's activity. So, that was the matter.

Mr. Olivieri: I'll point out – and correct me if I'm wrong – it was at your request.

Ms. Hubley: Yes.

Mr. Olivieri: It seems like any time staff has gone to them, no, no, no, we got it, we got it.

Mr. Cahill: You made a motion to that effect?

Mr. Olivieri: I will turn that recommendation into a motion.

Mr. Cahill: Second.

Mr. DePaulo: Any further discussion?

Mr. Cahill: I take it that obviously these kind of relationships that we could discharge it. It's a five-year arrangement, but it's upon notice we could end up exiting from it pretty quickly as I recall.

Mr. Olivieri: The original agreement, which I assume we're going to use the same verbiage, had that in it.

Mr. DePaulo: All in favor?

All Committee Members: Aye.

Mr. DePaulo: Any opposed? Motion carries to approve a five-year renewal engagement with Torres, Scammon, Hincks & Day.

Mr. Olivieri: That concludes my report, Mr. Chairman.

Mr. DePaulo: Thank you, John. We tried not to keep you waiting too long.

Before we move into the last agenda item for today, I'd like to take this opportunity to turn this over to counsel for some further direction.

Mr. Hincks: Sure. For the last item of Counsel's Report, as Steve alluded to earlier, we'd like to propose a follow-up strategy discussion to the Governing Committee's September 19, 2018 Executive Session discussion concerning certain large ceded claims. To do so, we recommend that the Governing Committee vote to reconvene in Executive Session pursuant to Mass. General Laws, Chapter 30A, Section 21(a)3. With that, I'll turn it back to Mr. Chairman to propose a vote.

Mr. DePaulo: On that direction, do I have a motion?

Mr. Olivieri: So moved.

Mr. Cahill: Second.

Mr. DePaulo: Any discussion?

Mr. Harris: Just to clarify, on what basis are we going into Executive Session?

Mr. Hincks: There are ten exemptions set forth in Chapter 30A to the Open Meeting Law. One of them relates to litigation, threatened, depending, imminent. That's the basis for 21(a)3.

Mr. Harris: Thank you.

Mr. Hincks: To vote on this, the statute requires a roll call vote. So, without stepping on your toes, Mr. Chairman, the suggestion is that we go around the room and each Governing Committee member identify herself or himself and say either I approve or I disapprove the motion.

Mr. DePaulo: So, having said that, we'll start with Roberta and work around the table and take a motion to go into Executive Session.

Ms. Fitzpatrick: Roberta Fitzpatrick with Arbella Insurance Group and I approve.

Mr. Baldini: Don Baldini with Liberty Mutual, for Meredith Woodcock, and I also approve.

Ms. Bodenstab-Krynicky: Pam Bodenstab-Krynicky, Krynicky Insurance Agency, I approve.

Mr. Kelly: John Kelly from MAPFRE U.S.A. and I approve.

Mr. Dupill: Christopher Dupill, EM Freedman Insurance, I approve.

Mr. Harris: Tom Harris, I approve.

Mr. Cahill: Bill Cahill, Hanover Insurance, I approve.

Mr. Olivieri: John Olivieri, I approve.

Ms. Gold: Paula Gold, Plymouth Rock, I approve.

Ms. Brodeur: Liz Brodeur, Safety Insurance Group, I approve.

Mr. DePaulo: Thom DePaulo, Cabot Risk Strategies, I approve. So, the motion carries. We'll move into Executive Session. At this point, I'd like to ask everyone who is not a Governing Committee member to leave the room.

*(Following the roll call vote, the Governing Committee convened in Executive Session)*

*(Immediately following Executive Session, the Governing Committee reconvened in Open Session)*

Mr. DePaulo: We're back in Open Session. At this point, I would entertain a motion to adjourn.

Mr. Olivieri: So moved.

Mr. Cahill: Second.

Mr. DePaulo: Meeting adjourned.

*(Meeting ended at 12:50 p.m.)*

NATALIE A. 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  
May 14 , 2019

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 #GC19.02, Exhibit #2

Attendance Listing

**GOVERNING COMMITTEE MEETING  
 SIGN-IN SHEET  
 WEDNESDAY, APRIL 17, 2019**

Individual's Name

Company / Agency

PLEASE PRINT

Individual's Name	Company / Agency
[Signature] David [Signature]	DOT PRAC
M. John Olivier	agent
Bill Cahill	HANOVER
Tom Harris	Quincy Mutual
Chris Dupin	EM Freedman Insurance
John Kelly	MAPFRE USA
Sam Zupinski	P.L. KRYNECKI
Don Baloni	Liberty Mutual
ROBERTA Fitzpatrick	Arbella
Ben Hincks	TSHO - CAR Counsel
Steve Torres	" "
Natalie Hickey	CAR
Thom DeGout	CABOT RISK STRATEGIES
Elizabeth Brodeur	Safety
Regina Nagle	CAR

