Appeal of Phillip Rivera, et al., of a Decision of
Commonwealth Automobile Reinsurers
Docket No. C2005-07

Decision

I. Introduction and Procedural History

On September 28, 2005, through counsel, Phillip Rivera, Carlos Oviedo, Marvelett Moulton and Bernard Pizzi (collectively, the "Appellants") appealed to the Commissioner of Insurance ("Commissioner") a September 22, 2005 ruling of the Commonwealth Automobile Reinsurers ("CAR") Governing Committee denying Appellants' request for review of Commerce Insurance Company's ("Commerce") practices relating to the referral of automobile insurance claims to its Special Investigation Unit ("SIU").[1] Each of the four Appellants had made a claim on a motor vehicle insurance policy issued by Commerce.[2] The Commissioner designated me as presiding officer for this proceeding. An initial order, issued on October 3, set a schedule for Appellants to provide a written statement providing detailed information on the background of their appeal, for responses from Commerce and CAR, and for a prehearing conference.

Appellants timely filed their statement on November 8; attached to it were copies of documents relating to the prior proceedings at CAR, including Appellants' May 18,

[1] Pursuant to CAR Rule of Operation 20A, hearings are heard by a review panel consisting of three members of the CAR Governing Committee. A ruling by the majority of the review panel is deemed to be the formal ruling of the Governing Committee unless the full committee, on its own motion, modifies or rescinds the panel's action.

[2] Rivera and Oviedo were insured by Commerce and filed first-party claims. Moulton and Pizzi made third-party claims on policies issued by Commerce. In each case, the Commerce policy had been purchased through the Kokoras Insurance Agency ("Kokoras").

2005 request to CAR for a formal hearing relating to an alleged improper practice by Commerce, and notices and transcripts of September 7 and September 21, 2005, meetings of the CAR Governing Committee Review Panel ("GCRP"). Commerce submitted its response to Appellants' statement on November 22; CAR provided its response on December 9.

The Appellants, in their November 8 statement, asked the Commissioner to set aside the CAR decision and to find that each of them had been subject to an improper practice, in addition to asking her to provide the relief that they had requested from CAR. At the prehearing conference held on December 19, 2005, they changed their request for relief, stating that they no longer sought money damages but, rather, sought an investigation of: 1) alleged wrongdoing by the Kokoras Insurance Agency ("Kokoras"), which had sold some of the policies underlying the Appellants' claims; and 2) the alleged improper practice of wrongful referrals to the Commerce SIU. Appellants were therefore ordered to submit a statement of the relief they were actually seeking on appeal. On January 18, 2006, Appellants moved for an order directing CAR to produce to their counsel the audits of the Commerce SIU that CAR had performed. Both Commerce and CAR objected to Appellants' request. On February 8, an order issued denying Appellants' motion. On February 28, 2006, Appellants submitted an Amended Request for Relief that focused on specific matters that Appellants wished to have addressed through investigations of Kokoras and Commerce. Commerce and CAR filed responses to the Amended Request on March 29 and March 31, respectively, requesting that the Commissioner deny or dismiss the Appellants' appeal.

On May 2, Appellants were ordered to respond to the Commerce and CAR requests to deny or dismiss by June 9, 2006. On May 22, Appellants filed a Memorandum opposing the CAR and Commerce requests. On June 7, Appellants submitted a document titled Supplemental Attachment to their Amended Request for Relief, and Memorandum in Opposition to the Request to Deny or Dismiss their Appeal, and two copies of a decision issued on May 25 by the Massachusetts Appeals Court, *Guerrier v. Commerce Insurance Company, et al*., 66 Mass. App. 351 (2006). Commerce filed a statement in response to Appellants' submissions on June 20; CAR submitted its response on June 22.

II. The Proceedings at CAR

On May 18, 2005, pursuant to Rule 20A of the CAR Rules of Operation, the Appellants requested a formal hearing at CAR regarding an alleged improper practice by Commerce, a CAR member company. The practice alleged was the "wrongful referral of claims to [the Commerce] Special Investigative Unit solely on the basis that the claims arise from a policy issued through CAR, in violation of Article IV of the CAR Rules [sic] of Operation." Appellants thereafter submitted to CAR a standard Request for Review form. By letter to CAR dated August 11, 2005, which was copied to Appellants' counsel, Commerce responded to the Appellants' Request for Review. A hearing before the GCRP was scheduled for September 7. Before the hearing, documents from the Appellants relating to the four claims that Commerce had allegedly incorrectly referred to its SIU were distributed to the review panel members. Because one member of the panel was not available on September 7, the hearing was rescheduled for September 21.

Counsel for the Appellants, Mark Vanger, Esq. argued to the GCRP that the Appellants were aggrieved by Commerce's alleged referral of claims to its SIU solely on the ground that the policy was issued through CAR, a violation of Article IV of the CAR Plan of Operation. Asserting that the claims involving his clients arose on policies written through Kokoras, an exclusive representative producer ("ERP") for Commerce, Mr. Vanger expressed the opinion that Commerce was sending many legitimate cases to the SIU because the insured person had bought insurance from Kokoras. In Ms. Moulton's case, he states, the only reason for sending the claim to the SIU was its issuance through Kokoras. Counsel stated that the fourth appellant, Mr. Pizzi, was not insured by Commerce but his automobile was struck by a vehicle insured by Commerce on a policy issued through Kokoras. Mr. Vanger asserted that, beginning in 1999, he had concerns about claims that were being denied and, upon additional inquiry, found that the policies at issue had been issued through that agent. He contended that, in his belief, the Appellants are representative of a much larger group. Based on conversations with other insurers, Mr. Vanger asserted that it ordinarily takes two or three weeks to refer a case to an insurer's SIU while, in contrast, the four Appellants' claims were referred within a matter of days. He defined the focus of the Appellants' appeal as the reasons why cases are referred to the SIU.

Mr. Vanger further argued that he believed that Kokoras incorrectly reported dates on which applicants for insurance had been licensed in other jurisdictions. He stated that Kokoras's applications for insurance on behalf of Rivera and Oviedo indicated that each of them had first received a driver's license on his 17th birthday. Mr. Vanger asserted, as well, that Commerce claims adjusters failed to identify themselves as members of the SIU. In 2001 and 2004, he stated, he received letters from claims adjusters at Commerce who did not so identify themselves. Appellant Pizzi's claim, Vanger asserted, was assigned to an adjuster who was in the Commerce SIU, even though Pizzi was not at fault. Vanger argued that the magnitude of the problems relating to out-of-state licensing and claim referral that he associated with Kokoras threatened CAR's credibility. He asserted that CAR had an obligation to police itself and concluded that it should investigate the problems he had identified.

Louise McCarthy, Esq., appearing for Commerce, argued that Appellants had failed to make a claim on which CAR could grant relief. She noted that the complainants were not CAR members, ERPs or agents. Commerce unequivocally denied referring claims to its SIU because the claim arises from a policy ceded to CAR, stating that many claims on such policies are not referred to or handled by its SIU. Ms. McCarthy pointed out that one of the Appellants' claims involves a loss on a voluntary policy, and two of the four involve claimants who are not insured through Kokoras. Commerce questioned whether CAR had the authority to impose sanctions and damages for individual claimants.

Ms. McCarthy argued, further, that the claim file submitted by each Appellant demonstrates that Commerce made every effort to resolve each claim professionally, to obtain the facts necessary to ensure that it is meeting its obligations to claimants, and to fulfill its obligation to identify and investigate potentially fraudulent claims activity. She asserted that the GCRP should not consider Mr. Vanger's allegations about Kokoras and licensing dates or out-of-state licensing procedures because they were not included in his request for review, and are not directed towards Commerce.

As evidence that Commerce complies with CAR's claims handling requirements, Ms. McCarthy stated that the periodic CAR audits of the Commerce SIU operations included policies that the company writes voluntarily as well as those ceded to CAR. Ms. McCarthy cited a portion of the CAR 2002 audit of the Commerce SIU that concluded

that Commerce makes a conscious effort to investigate all aspects of a claim, including leads that may be favorable to the insured. She noted that the 2002 review specifically covered a number of files on policies written through Kokoras. Ms. McCarthy asserted that the most recent CAR audit, conducted in June 2005, also produced positive results. She commented that the Division of Insurance recently completed a market conduct examination of the Commerce SIU. Ms. McCarthy argued, further, that the relief the Appellants seek relating to the handling of their individual claims could be obtained elsewhere. She concluded her presentation by asking the GCRP to dismiss the Appellants' Request for Review.

The members of the GCRP, after hearing counsels' presentations, raised questions about the scope of CAR's responsibility to review claim practices, the request for specific relief related to the handling of the four Appellants' claims, and the alternatives available to individual claimants, such as Appellants.[3] They also engaged in additional discussion about CAR's audit procedures relating to member company SIUs. At the request of CAR's counsel, Joseph Maher, Jr., Esq., Valerie Gedziun, CAR's vice-president for claims, summarized for the GCRP the results of CAR's most recent audit of the Commerce SIU. She stated that CAR found that Commerce complied with the Performance Standards and found no assignments to the SIU of cases that should not have been so referred. Ms. Gedziun noted that CAR would be more concerned about companies that delay sending claims to their SIUs rather than those who do so promptly as soon as they identify any fraud indicators. She stated that the CAR Performance Standards require referrals to an SIU when fraud indicators appear, pointing out that referral is based on the need for further investigation and does not necessarily mean that the claim is fraudulent. She affirmed that the audit had found no problems with Commerce referrals to its SIU, or any evidence that, compared to other insurers, it referred an aberrant number of cases to its SIU for investigation or that Commerce handled claims in the voluntary and ceded markets differently.

Mr. Maher stated that it is incumbent on CAR to be aware of any systemic company practices that would violate G.L. c. 113H, or the CAR Plan and Rules of

[3] One member of the Panel noted that claimants could complain to the Division of Insurance or pursue legal remedies if they believed Commerce had acted in bad faith.

Operation, and that it utilizes audits to identify any discriminatory practices. Mr. Maher pointed out that CAR's audit findings are based on its review of a sample of claim files from member carriers, but that it does not investigate individual claims. A review of CAR's periodic audit of Commerce, he asserted, found no deficiencies in the audit, determined that the audit had not shown any aberrant behavior on the part of the company in handling claims and SIU referrals, and was unable to substantiate any of Appellants' claims of targeting for SIU referral claims from any particular ERP or any other sub-group of the Commerce book of business. He reiterated that individual claims can be litigated if a person believes that he or she has been prejudiced by the company's claims handling, but that CAR does not provide a forum for and would not be a party to such a proceeding. A person who believes that a carrier is engaging in unfair or deceptive trade practices with respect to its total book of business can complain to the Division of Insurance. Mr. Maher pointed out that CAR cannot level sanctions against a carrier on behalf of a claimant, or assess fines or impose damages.

Ultimately, on a unanimous vote, the GCRP approved a motion to deny the request for review. On September 22, GCRP issued its written decision, signed by Mr. Maher. The letter summarized the presentations to the GCRP, and stated specifically that the SIUs of Servicing Carriers have an obligation to fight fraud, and that Appellants had failed to sufficiently state any violation of CAR Rules.

III. Discussion and Analysis

a. The GCRP Decision

Appellants appeal, pursuant to CAR Rule of Operation 20 B, a decision of the GCRP denying their May 2005 Request for Review. That Rule permits the Commissioner to approve, modify, amend or disapprove the GCRP ruling, direct the Governing Committee to reconsider it, or to order a new hearing. In their November 8, 2005 statement, Appellants framed their appeal in the form of two questions: 1) whether CAR denied their request for review on the merits; and 2) whether they had received a fair hearing before the GCRP. On the first issue, I find that there is no genuine dispute. At the December 19 prehearing conference there was consensus that CAR had, after a hearing, denied the Appellants' Request for Review on its merits.

On the second question, Appellants argue that their statements identified them as aggrieved persons and that the documents attached to those statements proved their allegations of wrongful conduct by Commerce. They assert that the Review Panel did not discuss these documents, and that the only evidence rebutting Appellants' allegations was testimony on the CAR audit reports on the Commerce SIU. Appellants argue that those reports were not given to their counsel before the hearing and that, without an opportunity to examine the audit findings, they could not adequately respond to them. Therefore, Appellants argue, they did not receive a fair hearing.

Appellants' arguments are not persuasive. With regard to the CAR audits, Commerce, in an August 11 letter to CAR which was copied to Mr. Vanger, referred to the audits of its SIU that CAR performed in 2002 and 2005. Appellants therefore had notice of those audits well before the scheduled hearing. The record does not reflect any attempt on their part to inquire further into the audit findings. Mr. Vanger's argument that Appellants did not receive a fair hearing because, without a review of the audit reports he was unable to respond adequately at the hearing to statements that Commerce fully complied with the CAR requirements for SIUs, is untimely.[4]

Appellants contend that the Review Panel was not aware of the particular aspects of the four specific claims which, Appellants assert, proved their case for wrongful conduct. The record does not support their conclusory statement that the members of the GRCP did not consider their statements. They offer no persuasive support for their argument that CAR's denial of their request for review was therefore "arbitrary or capricious." The September 22 decision specifically states that the GCRP considered both the discussion at the hearing and the written record before it, which included the materials that Appellants provided. Further, Appellants do not contest the concerns regarding their Request for Review that the GRCP articulated at the hearing or the grounds for its decision stated in the September 22 decision.

Appellants' Request for Review was filed pursuant to CAR Rule 20A which, in pertinent part, permits "[a]ny person….aggrieved by any unfair, unreasonable or improper practice of CAR or a Member with respect to the operation of CAR" to request a formal

[4] In the course of this appeal, counsel for Appellants sought an order requiring CAR to produce the audit reports. As noted in the summary of proceedings above, his motion was denied.

hearing and ruling by the Governing Committee.[5] The gist of Appellants' Request for Review, as articulated by their counsel, is that referrals to the Commerce SIU were made shortly after the claims were filed, rather than two or three weeks later, and that such referrals constituted an improper practice, *per se*. Appellants bore the burden of demonstrating to the GCRP that the referrals occurred as alleged and were an improper practice with respect to the operation of CAR.[6] At the hearing, Appellants' counsel focused on two aspects of their claims: referral by Commerce to its SIU of claims on the ground that they arose from policies ceded to the residual market, and problems with the producer who sold the policies that gave rise to the claims. He argued that the Appellants' claims were representative of a practice of referring claims on policies sold by ERPs, including Kokoras, to the Commerce SIU.

In its August 11 letter, as well as in its presentation at the hearing before the GCRP, Commerce pointed out inconsistencies between the claim files submitted as part of the Appellants' statements and their counsel's allegations. Ms. McCarthy noted that one of the four claims in the request for review involved a loss with a customer insured under a voluntary, not a ceded policy, and that two of the claimants were not Kokoras customers.[7] Appellants did not contest those statements. Further, Ms. McCarthy argued, the claim files demonstrate that Commerce makes every effort to fulfill its obligation to identify and investigate potentially fraudulent claims activity. CAR asserts that the record shows that there was no discriminatory treatment of claimants based on whether the claim arises from a ceded policy, noting Ms. Gedziun's statements to the GCRP about the results of the CAR audits of the Commerce SIU.[8]

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[5] Commerce raised the issue of the Appellants' standing, but did not pursue the question of whether they are "aggrieved persons" under the statute. Mr. Vanger asserted, in general, that referrals to an SIU delay payments to claimants. CAR argued that there was no evidence of injury to the Appellants as a result of the alleged improper practices. On this record, I make no finding on the issue of Appellants' standing.

[6] The allegation that Commerce refers claims to its SIU depending on whether they arise on voluntary or ceded policies was raised at the hearing before the GRCP, rather than in the Appellants' Request for Review.

[7] The Appellants' statements indicate that only Rivera and Oviedo had bought insurance from Kokoras. Although the other two claimants statements assert that motor vehicles involved in the accidents were insured on policies issued through Kokoras, no documentation supports those assertions.

[8] In its response to Appellants' November 8 statement, CAR noted that, upon receipt of the allegations from Appellants' counsel it immediately reviewed the most recent audits of Commerce to determine whether there was any evidence of disparate treatment of claims on ceded and voluntary policies, but did not find anything that suggested such treatment, particularly as to referral of claims to the SIU.

Appellants' reliance on Article IV of the CAR Plan of Operation as support for their position that the referral of their claims was an improper practice is misplaced. That Article requires every servicing carrier to establish an SIU and procedures for investigating suspicious or questionable motor vehicle insurance claims for the purpose of eliminating fraud. Article IV also requires the Governing Committee to adopt rules that impose penalties on servicing carriers for failure to investigate suspected fraudulent claims reported under ceded policies. A review of the Appellants' claim files discloses reasons for investigating the Rivera, Oviedo and Moulton claims; CAR, in its response to Appellants initial statement identifies these elements as legitimate "flags" that would require a carrier to use "due diligence" before settling a claim.[9] Appellants do not dispute that Commerce has an obligation to investigate claims before payment, and do not challenge the reasons for denial of their claims. The September 22 decision demonstrates that the Review Panel was cognizant of the obligation to investigate fraud; Appellants made no argument that the facts that gave rise to the referrals were incorrect.

Further, the statements do not support Appellants' arguments that the referrals to the SIU occurred within an unusually short timeframe. Rivera's statement that he reported a claim for an accident that occurred on November 11, 1999 to Commerce on December 6 is not documented. The December 7 letter from a Commerce SIU adjuster refers to an ongoing investigation, and an earlier scheduling of an appointment for a

[9] The Rivera claim file notes multiple reasons for further inquiry: a question about the identity of the person who was driving the vehicle when the accident occurred; failure of the insured to cooperate with the investigation; and false information about the date on which the insured was first licensed. The Oviedo file involved the evaluation of a claim for personal injury protection ("PIP") benefits by a claimant whose car was involved in a rear-end collision; on May 17 Oviedo's counsel received a letter from a claim adjuster for Commerce who had, a year earlier, identified himself as an SIU adjuster. However, on May 18 Mr. Vanger received a letter from a different person at Commerce who did identify himself as an SIU adjuster. Ms. Moulton's claim file for PIP benefits indicates that Commerce was unable to verify the facts about the alleged accident, after examining the minimal physical damage to the automobile questioned whether the impact was sufficient to cause the alleged injury, and further found that the claimant had not sought treatment until three weeks after the alleged incident. Appellant alleges, on information and belief, that one of the two adjusters who handled the claim, Kathleen Bourdon, was identified as a claims adjuster but was actually a member of the Commerce SIU. A second claim adjuster was identified on correspondence sent in September 2004 as a claims adjuster and, in a letter sent in February 2005 as an SIU adjuster. According to the documents submitted to CAR, Mr. Pizzi reported a claim to Commerce and was told that it had been assigned to two adjusters, one of whom was Kathleen Bourdon. His statement describes them as members of the Commerce SIU, but provides no document that supports his assertion. Mr. Vanger then sent a letter of representation to Commerce asking why Mr. Pizzi's claim had been referred to the SIU. According to Mr. Vanger, he was then informed that the claim had been sent to the SIU because of a coverage issue but then referred back to another claims adjuster.

recorded statement.[10] The record does not indicate the date on which Oviedo submitted his claim to Commerce. Ms. Moulton's claim was, according to Commerce correspondence with Mr. Vanger, reported almost four weeks after the accident. Delayed reporting, as noted in CAR's response to the Appellants' November 8 statement, is a legitimate flag for additional investigation of a claim that would justify any immediate referral of Ms. Moulton's claim to the SIU. The Pizzi claim provides no information relevant to a determination of the time frame for an SIU referral. On this record, even assuming, *arguendo*, that referrals to an SIU less than two weeks after a claim is made are sufficiently unusual to raise a question about claims handling practices, the Appellants' statements do not support the premise that such referrals actually occurred or, if they did, were unjustified.

Appellants complain that staff assigned to handle their claims did not identify themselves as SIU adjusters, but offer no rationale for their allegation that Commerce therefore engaged in an improper practice. CAR, in its response to their statements, notes that CAR does not require an insurer's representatives to identify themselves by job title, so long as it is clearly understood that the individual is communicating as part of a claim investigation. Therefore, even assuming, *arguendo*, that the facts support Appellants' allegations, they would not be considered an improper practice. Further, a review of the Appellants' statements raises questions about the reliability of their assertions. The issue of the status of the claims adjuster in the Oviedo claim is based on the assumption that an individual who had, in May 2000 identified himself as a Commerce SIU adjuster, held such a position in May 2001. It ignores May 2001 correspondence from a different claims handler who did identify himself as an SIU adjuster. No documentary evidence supports the assertions in Ms. Moulton's statement that Kathleen Bourdon, whose correspondence consistently titles herself as a claims adjuster, was an SIU investigator for Commerce. As for Ms. Bernabe, another investigator, the claimant's allegation is based on the hypothesis that a person who identified herself as a claims adjuster in September 2004 and an SIU adjuster in February 2005 did not change jobs. The Pizzi claim does not document the

[10] Even if the claim had been initially reported on December 6, a delay of over three weeks between the accident and the claim report could be considered a fraud indicator justifying immediate referral to an SIU.

status of any Commerce adjuster, describe any interaction between Mr. Pizzi and Commerce, or specify the reasons for the alleged SIU referral.[11]

Article IV also states that SIUs are to investigate claims on policies issued on a voluntary basis as well as policies issued through CAR, but are not to investigate claims solely on the basis that they arise on a ceded policy. Rule 10 of the CAR Rules of Operation, which also addresses claim practices, requires Servicing Carriers to apply the same practices to claims that arise from both voluntary and ceded policies, and reiterates the provision of Article IV that prohibits referrals to the SIU solely on the ground that the claim arises from a ceded policy. Appellants do not allege that Commerce violated any of the provisions of Rule 10 that apply generally to claims handling or those that refer specifically to policies ceded to CAR.[12] Appellants' opaque argument that referrals of their claims to the Commerce SIU violated Rule 10 is not persuasive. Vague assertions that the Appellants represent a group of unidentified claimants are insufficient to expand the issue beyond what was presented to the GCRP. The record fully supports the GCRP's denial of the Request for Review on the grounds that Appellants did not state a violation of CAR Rules.

As a measure of compliance with CAR claims handling standards, Commerce argued that CAR's audits of its SIU operations confirm that those operations meet the CAR Performance Standards.[13] Appellants do not challenge that criterion, but argue that CAR has the authority to review their concerns and an obligation to investigate why claims are being sent to SIUs. Their argument is not persuasive. The record before the GCRP demonstrates that CAR SIU audits address referrals to company SIUs and that the Commerce audits do not support the Appellants' allegations of improper claims handling.

The hearing transcript further demonstrates that the GCRP considered the relief sought by the Appellants in their Request for Review and determined that it could not be achieved at CAR. The panel members concluded that CAR's responsibilities for review of claims handling practices did not extend to resolving individual insurance claims, and

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[11] It is based on Mr. Vanger's conversation with a Commerce adjuster.

[12] Rule 10B states that Servicing Carriers shall not misrepresent pertinent facts or policy provisions relating to the coverage at issue, refuse to pay claims without conducting a reasonable investigation based on all available information, or fail to settle claims promptly, if liability is reasonably clear, under one portion of the policy so as to influence settlements under another aspect of the coverage. Appellants do not allege that Commerce engaged in any of these prohibited actions.

[13] The presentation by CAR staff to the GCRP confirmed Ms. McCarthy's statements.

that CAR could not provide relief in the form of damages for the Appellants and those similarly situated. The GCRP also concluded that it could not sanction a carrier on behalf of a claimant. It was pointed out that a claimant who objects to the denial of a claim has other options, including complaining to the Division of Insurance or pursuing legal action. To the extent that the Appellants sought a cease and desist order against Commerce and appropriate sanctions for the alleged improper practice, the GCRP's decision indicates that it was not persuaded that an improper practice had occurred.

After reviewing the record, I am persuaded that it fully supports the GRCP's decision to deny Appellants' Request for Review of their individual claims. However, in the course of the hearing at the GCRP, Appellants' counsel also asked for relief in addition to that sought for the individual Appellants in the Request for Review, asserting that CAR should investigate the Kokoras agency because of an alleged problem relating to that agency's recording on insurance applications of information about licensing in jurisdictions other than Massachusetts. The GCRP decision acknowledged his request, but did not grant the requested relief.

b. The Amended Request for Relief ("Amended Request") and the Requests to Deny or Dismiss this Appeal

At the December 19 prehearing conference, Appellants' counsel reiterated his request for an investigation of Kokoras, but dropped Appellants' request for money damages for themselves and others similarly situated. Appellants were therefore asked to clarify the relief that they were actually seeking in their appeal.

In their Amended Request, Appellants asked the Commissioner to remand the matter to CAR to investigate their allegation that Commerce wrongfully refers claims to its SIU that arise from policies purchased through Kokoras and also to investigate Kokoras. They submitted an extensive list of matters that they wished to have investigated for the period from 1999 to the present, asked for a written report of the CAR findings, and then proposed that the Governing Committee meet to address those findings. In the alternative, Appellants asked that the Governing Committee's decision be disapproved, findings made that the Appellants were subjected to improper practices, and orders entered requiring cessation of the improper practices and imposing sanctions on Commerce and Kokoras.

Commerce objected to Appellants' Amended Request, arguing that it significantly expanded what they had sought in their Request for Review. It asserted that this appeal is limited to the record of the proceedings at CAR, and should consider only Appellants' initial arguments on appeal, *i.e.*, that CAR did not adequately consider their allegations, that they did not receive a full and fair hearing, and that they were unable to review certain CAR audit reports. Commerce argued that Appellants have stated no authority for CAR to provide relief in the form of an investigation of Kokoras, and reiterated that Commerce is in compliance with the CAR Performance Standards.

CAR objected to the amended request for relief on the ground that referrals of the Appellants' claims to the Commerce SIU did not violate any CAR Rule or regulation. It argued that the CAR Rules should not be interpreted so as to discourage carriers from carefully monitoring claims. Further, CAR stated, the information that Appellants seek through an investigation of Kokoras is not relevant to their claims of wrongful assignment to the Commerce SIU, raises privacy concerns, and is unreasonable and overly burdensome. Both CAR and Commerce asked that Appellants' appeal be denied or dismissed.

In subsequent submissions regarding the requests to deny or dismiss their appeal, Appellants argued that the GCRP decision is deficient because it contains no findings of fact addressing their complaints or the alleged improper practices of Kokoras, and reiterated their position that the issue in this case is compliance with the prohibition in the CAR Plan of Operation against referring claims for special investigation because they arise from ceded policies. Appellants argue that the audits of the Commerce SIU are not relevant to their claims, and ask that the matter be remanded to the GCRP. They continue to assert that CAR is obligated to conduct the investigation that they request.

CAR, responding to Appellants, argues that the GCRP decision was based on its findings that the Appellants had failed to identify any violation of CAR Rules that could form the basis for the relief they request, and is neither arbitrary nor capricious. It asserts that the facts do not support Appellants' allegation that Commerce acted improperly with respect to their claims. CAR reiterates that its audit of Commerce's claims handling practices found that the company complied with the CAR Performance Standards and found no problem with its referrals to its SIU. In addition, it points out that G.L. c. 175,

§113H requires it to oversee the operation of its member companies pursuant to the residual market and to intervene if systemic issues become apparent. CAR notes, also, that the statute includes no provision that would require CAR to review claims by individual policyholders.

Commerce, in its response, argues that the GCRP heard extensive argument on Appellants' complaints, actively questioned their counsel, and unanimously concluded that their allegations relating to an improper practice by Commerce had no merit. It asserts that the record of the proceedings before the GCRP amply supports its conclusions, and that the GCRP was not required to make specific findings of fact in connection with its decision. Commerce reiterates its position that the allegations against Kokoras that were raised before the GCRP were not part of the Appellants' Request for Review and therefore should not be considered in this proceeding. It notes, as well, that the allegations about Kokoras are not directed at Commerce.

Appellants' arguments in their Amended Request and their Opposition to the Commerce and CAR Requests to Deny or Dismiss their appeal in large measure reiterate their position that the GCRP did not properly consider their statements or the arguments made by counsel at the hearing. For the reasons stated above, I am persuaded that the record supports the GCRP's decision. Further, I find no merit to the Appellants' position that the GCRP decision was deficient because it did not include specific findings of fact; they identify no such requirement in the CAR Rules.

I am not persuaded that this matter should be remanded to CAR for additional proceedings. In the course of this appeal, counsel for the Appellants has shifted the focus of this matter from the four claimants to the producer who sold policies to two of those claimants. Appellants identified Kokoras as an ERP assigned to Commerce in their initial Request for Review, but sought no relief relating to him. The Kokoras agency, however, has now become the target of the Appellants' request for relief. Appellants do not identify any provision of the CAR Plan of Operation or Rules that authorizes it to conduct a direct investigation of Kokoras.[14] Further, they offer no justification for shifting to CAR the responsibility for undertaking an inquiry in order to determine the possible merits of their

[14] As CAR points out, its audit authority under c. 175, §113H relates to member companies. Kokoras does not fall within that category.

claims. A person who submits a Request for Review to CAR must be able to support his or her claims; such a request is not the starting point for an investigation that the filing party hopes will support those claims.

I am also not persuaded to provide the alternate relief sought by the Appellants. As discussed above, the record does not support Appellants' position that they have been the target of improper claims handling, and thus provides no basis for the findings that they request. To the extent that Appellants seek an order directing CAR to provide the relief with respect to their individual claims, they have made no persuasive argument that CAR has the authority to investigate and resolve complaints from individual policyholders about specific claims. Therefore, it is inappropriate to order such relief. The record also does not demonstrate that Commerce has engaged in a widespread practice of improper referrals to its SIU that would justify issuing a cease and desist order or imposing sanctions on it.

The Supplemental Attachment to Appellants Amended Request, filed on June 7, 2006, does not alter my conclusions. The attachment consists of a recent decision of the Massachusetts Appeals Court, *Guerrier v. Commerce Insurance Company*, *supra*, a case brought by a policyholder whose insurance claim had been denied. The plaintiff had purchased her insurance through Kokoras, who allegedly failed to report correctly on an insurance application information provided by her. Appellants do not explain why this case supports a request for CAR to investigate Kokoras.

IV. Conclusion

For the above-stated reasons, the appeal filed by Phillip Rivera, Carlos Oviedo, Marvelett Moulton and Bernard Pizzi of a September 22, 2005 decision of the CAR Governing Committee is hereby denied.

Issued: August 29, 2006

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Jean F. Farrington
Presiding Officer

This decision may be appealed pursuant to G. L. c. 175, §113H.