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**Appeal of the Calianos Insurance Agency of a
Decision of Commonwealth Automobile Reinsurers
Docket No. C2016-02**

Decision

I. Introduction

On August 1, 2016, Jason Calianos (“Calianos”), owner of the Calianos Insurance Agency (“the Agency”) appealed to the Commissioner of Insurance (“Commissioner”) a July 7, 2016 decision of the Commonwealth Automobile Reinsurers (“CAR”) Governing Committee Review Panel (“GCRP”). Its decision concluded CAR proceedings on the Agency’s March 1, 2016 Request for Review (“RfR”) alleging that the Commerce Insurance Company (“Commerce”) had engaged in “unfair, unreasonable or improper” practices under the Massachusetts Automobile Insurance Plan (“MAIP”) Rules. After hearings, CAR concluded that two of the three events alleged in the RfR did not constitute such practices and that the third, setting off the Agency’s commissions to cover policyholder premium payments made at the Agency and allegedly not timely received by Commerce, was moot.

An initial order, issued on August 9, 2016, (the “August 9 Order”) instructed the Agency to clarify its appeal by providing a chronology of the underlying events, copies of the documents reviewed at the CAR hearings and identifying the rules that were allegedly violated. CAR and Commerce were ordered to respond to that revised appeal by September 30, 2016. Calianos represented the Agency throughout this proceeding. Barbara Petersen Law, Esq. represented Commerce and Benjamin Hincks, Esq. and Stephen Torres, Esq. appeared on behalf of CAR.

A prehearing conference, held on October 14, focused on additional issues with the Agency's response to the August 9 Order, among them that documents were not in chronological order as presented at the CAR Market Review Committee ("MRC") hearing and included materials that were not offered there. The Agency also did not document the regulatory framework applicable to the transactions between the Agency and Commerce. CAR and Commerce consented to work with Calianos to develop an accurate chronological record, to be filed by November 4, 2016. On that date, the parties stated that they were unable to agree on a single chronology. Commerce identified items that the Agency omitted from its timeline that should have been included in the Agency's initial response and included documents that Commerce believed were not in the MRC hearing record. CAR submitted a Compendium of Documentation References consisting of copies of sections of its Rules, Manuals and Performance Standards that apply to the relationship between Assigned Risk Producers ("ARPs"), *i.e.*, the Agency, and Assigned Risk Carriers ("ARCs"), *i.e.*, Commerce.

On November 30, 2016, I instructed the Agency to review the documents that Commerce and CAR indicated should be included in the record, to state any objections to their inclusion, with specific reasons, and to clarify which, if any, documents in its statement that were not marked as exhibits for review at a CAR hearing were submitted at a hearing. On December 27, the Agency submitted a revised chronology and stated that it did not object to including in the record the documents identified by CAR and Commerce. I reviewed their comments in a January 12, 2017 letter to the parties; they responded on January 26. The listed documents included the transcript of the GCRP hearing, but no notice to Calianos of its final decision, the Agency was asked to supply a copy of that document. The final record was completed on May 22, 2017.

II. Procedural History at CAR

On March 1, 2016 the Agency, pursuant to CAR Rule 20/MAIP Rule 40, submitted an RfR to CAR.¹ On March 23, 2016 the MRC which holds initial hearings on RfRs, noticed an April 7, 2016 meeting. On March 30, 2016, the Agency submitted an Addendum (the "Addendum") to its RfR that, along with the Commerce response to the RfR, was distributed to MRC members on April 4, 2016. On April 7, after hearing presentations from Commerce and the Agency, the MRC determined that the third issue, offsetting commission payments to cover premium payments made at the Agency that allegedly were not promptly transmitted to Commerce, had been resolved. It conditionally agreed to consider two other issues, one raised in the Addendum about a Commerce investigation of premium payments made at the Agency, and another at the April 7 hearing about transactions between the Agency and Commerce relating to commissions on unearned premium, provided that the Agency first provided

¹ CAR oversees and manages the residual market for private passenger motor vehicle insurance. The principal framework for the operation of that market is its rules of operation. When the residual market was converted to an assigned risk plan, the initial set of twenty CAR rules was expanded to cover the new structure. CAR Rules 1 through 20 now apply to the residual market for commercial motor vehicle insurance; Rules 21-40 apply to the residual market for private passenger motor vehicle insurance. Although the participants in this proceeding may refer to the CAR Rules, the specific references are to provisions in Rules 21-40. In the interest of clarity, this decision will refer to Rules 21-40 as the MAIP Rules.

documentation on each issue to support its claims. The MRC voted to hold a second hearing, first scheduled for May 11 but ultimately postponed to June 6, 2016, to provide time to review documents submitted by the Agency and Commerce on those topics.

At the June 6 meeting, after hearing presentations from the Agency and Commerce on the two above issues, the MRC dismissed as untimely the Agency's request to review transactions dated between 2008 and early 2016 involving commission payments on unearned premium. For such transactions that occurred less than thirty days before the Agency filed its RfR, the MRC considered the merits of the Agency's claim and concluded that failure to pay commission on unearned and uncollected premium is not an unfair, unreasonable, or improper practice. After hearing presentations addressing the Agency's complaint about the Commerce investigation of the matter of transmission of payments from the Agency to Commerce, the MRC again concluded that Commerce did not commit an unfair, unreasonable or improper practice.

Calianos appealed the MRC decisions to the GCRP on June 17, 2016; it met on July 7. Both the documents provided to the MRC and the transcripts of the April 7 and June 6 MRC hearings were available for the GCRP's review. The GCRP, after hearing argument from the Agency and Commerce, voted to accept the MRC's June 6 conclusions. By electronic mail it notified the Agency of the decision and advised it of its appeal rights.

III. The Parties' Arguments on Appeal

A. The Agency

The Agency asserts that CAR concluded incorrectly that Commerce did not commit unfair, unreasonable or improper practices with respect to 1) commission payments to the Agency and 2) its investigation of the Agency's premium transmittal practices. As well as setting aside CAR's decision, it asks for orders requiring Commerce to repay commissions to it, to provide information on the investigation, and to issue a statement acknowledging the impropriety of its conduct. Finally, it seeks an independent investigation into conflicts of interest within CAR committees.

The Agency's arguments on adjusting its commissions address two different issues: 1) setting off premium payments from commissions when Commerce does not receive, within the schedule set by the MAIP rules, policyholder payments received at the Agency's office; and 2) charging back previously paid commissions when Commerce is unable to collect from the policyholder the full earned policy premium. It contends that the MAIP Rules do not incorporate the doctrine of setoff, and that it should not apply in the residual market. It asserts that the argument that a payment from a policyholder accepted at the Agency's office is a debt that the Agency owes the company has no legal support. Addressing chargebacks for commissions paid on unearned premium, the Agency does not dispute that the industry standard is to pay commission only on earned premium, but asserts that if a policyholder does not pay the full premium due on a policy the Agency does not owe Commerce a return of previously received commission.²

² The Agency also argues that the MRC should not have considered any of its claims barred by MAIP Rule 40, because it had complained to CAR about Commerce's practices in prior years.

The Agency asserts that the MAIP Rules do not allow Commerce to initiate an investigation when it has concerns about violations of those rules, including failure to comply with the rules for remitting premiums. It argues that if Commerce suspected that the Agency was engaged in wrongful activity, it was obligated to report the matter to CAR, which would then investigate. Finally, the Agency questions the hearing process at CAR, alleging that members of the MRC, under the CAR conflict of interest policy, might have had financial or other interests with Commerce that could raise questions of their ability to act in a fair and unbiased way.

B. Commerce

Commerce argued that the record supports the MRC's conclusions, affirmed by the GCRP, that Commerce did not engage in any unfair, unreasonable or improper practices relating to charging back commissions it paid to the Agency on unearned premium or the investigation of issues relating to the transfer to Commerce of premium payments made at the Agency to Commerce, relying on the materials submitted to the MRC to support its position.³

Addressing the issue of chargebacks for commissions paid on policies when a portion of the premium was unearned, Commerce states that those commission practices have been in place for many years, predate the MAIP and apply equally to voluntary producers and ARPs. Commerce asserts that no CAR Rule prohibits the practice and that it is not aware of any legal authority that requires paying agents' commissions when the underlying required premium is not paid. That history, it contends, supports the MRC's conclusion that its commission practices were not unfair, unreasonable or improper. Commerce further argues that the MAIP Rules do not prohibit setting off against commissions premium payments accepted by the Agency that the company does not receive within the time frames prescribed by the MAIP Rules.⁴ Commerce noted that MAIP Rule 40 restricts RfRs to events occurring no more than 30 days before the filing of the Request. It points out that from April 2008 through February 2016 it monthly provided documentation to the Agency including separate reports on Paid at Agency Adjustment to Commissions and on Uncollectable Premium for Commission Chargebacks. Those reports, it argues, establish that the Agency knew or should have known of these adjustments well before it submitted its March 1, 2016 RfR.

Further, Commerce argues, that documentation supports its position that its investigation of the Agency was not unfair, unreasonable or improper, noting that it includes transactions occurring during the years 2008 through 2016 in which the Agency reported that it had received premium payments that were not remitted to Commerce on a timely basis in accord with MAIP Rules. As additional support for initiating the investigation, it also relies on affidavits from Commerce staff relating to the timing and basis for its decision.

Commerce asserts that the Agency's contentions that the proceedings at CAR did not comply with its conflict of interest policy are misplaced. It points out that the policy was not intended to preclude

³ Addressing the Agency's objection to Commerce's setoff from its commission account of five premium payments reportedly made at the Agency on January 4, 2016, as set out in the March 1, 2016 RfR, Commerce pointed out that the facts establish that it paid the disputed amount to the Agency before the first MRC hearing and thus fully support the MRC's conclusion that that aspect the RfR was moot.

⁴ Commerce contends that the practice is an alternative to reversing the payment to the MAIP policyholder's account or pursuing action against the Agency at CAR. It further argues that the equitable doctrine of setoff supports the practice.

members of a CAR committee from participating in a proceeding because of an agent-company relationship but requires the presence of a financial or other interest that could compromise the committee member's ability to be fair and impartial. Commerce asserts that the Agency has identified no facts that would establish such a conflict for any member of the MRC and further notes that it recused itself from participation in the MRC hearings on the Agency's RfR. Further, Commerce contends that, contrary to the Agency's position, there is nothing improper about a Commerce representative serving on an ad hoc CAR committee created to address questions of commission adjustments related to premiums paid at an agency. It notes that the questions before that committee are industrywide and relate to policy development, not dispute resolution.

C. CAR

CAR argues that the Agency failed to meet its burden to establish violations of MAIP Rules or other authority sufficient to support its RfR and received a full, fair and unbiased forum in which to present its claims. It asks the Commissioner to affirm the GCRPs decision and to deny the Agency's request to investigate alleged conflicts of interest on CAR committees. CAR particularly objected to the Agency's statements on matters relating to scheduling the MRC hearings, to the timing of its complaint about "unpaid premiums" and to a complaint it had previously made to CAR.⁵ CAR further contends that the Agency did not meet its burden to establish that the GCRP's decision was based on an error of law, made upon unlawful procedure, unsupported by substantial evidence, unwarranted by the facts in the record, or arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

CAR asserts that the record supports the MRC's findings that the Agency's complaint about a group of five checks was moot, and that the MAIP rules do not address the underlying basis for the complaint, Commerce's practice of charging back to the Agency premium payments that were paid at the Agency but not received by Commerce within a specified time period. It further argues that the MRC appropriately concluded that, because any ruling on whether the practice was unfair, unreasonable or improper would affect all CAR Members and producers participating in the residual market, it should first be reviewed by the MAIP Steering Committee, the entity that is responsible for considering issues affecting the entire residual market.⁶ CAR asserts as well that the evidence supports the MRC's decision, responding to the Agency's claim that Commerce owed it money for commission setoffs over an eight-year period, from 2008-2016, that such claims are barred by MAIP Rule 40.

CAR argues that evidence before the MRC supported its conclusions that the Commerce investigation of the Agency was not initiated in retaliation for the Agency's RfR nor unauthorized under the MAIP Rules. It points out that the MRC ultimately concluded, after reviewing documentation submitted by the parties, that the investigation did not constitute an unfair, unreasonable, or improper practice. CAR asserts that the MRC and GCRP hearings were conducted in a fair and unbiased manner and in compliance with CAR's conflict of interest policy. It pointed out that two MRC members, one a

⁵ On the first issue, CAR provided copies of e-mails that document communications between CAR and the Agency relating to scheduling.

⁶ Because the Agency expressed concern that John V. Kelly, the Senior Vice-President for Commerce's New England Region was also the Chair of the MAIP Steering Committee, an MRC member suggested that an *ad hoc* committee be convened to consider the practice of setting off premium payments made at an Agency against commissions. His suggestion was implemented. Comments by the Agency and Commerce about that committee are not relevant to the Request for Review and had no effect on this decision.

Commerce employee and another from a company that had a pending issue with the Agency, properly recused themselves from the hearings. That producer MRC members place insurance with Commerce does not, CAR observes, give them a financial interest in the outcome of this dispute between the Agency and Commerce. CAR points out that the MRC gave the Agency extensions of time to provide it with the documentation it intended to rely on to support its RfR, and ample opportunity to present its case. It notes that the Agency did not identify any procedural irregularity, error of law, lack of evidentiary support or abuse of discretion with respect to any decision rendered by the MRC or GCRP. CAR opposes the Agency's request for an independent investigation of CAR committees, asserting that it was not sought at any CAR committee hearing, has no substantive merit, and is simply unwarranted.

IV. Analysis and Discussion

The record on appeal in this hearing consists of the RfR, documents initially submitted by the Agency and Commerce to the MRC as exhibits, items submitted with the Agency's Addendum, an agreed set of documents negotiated by the parties and transcripts of the two CAR hearings. Commerce and CAR each ask that the Commissioner affirm the GCRP decision adopting the recommendations of the MRC.

A. Commission Payments to the Calianos Agency

ARCs compensate producers for placing private passenger motor vehicle insurance in the MAIP under a commission system in which the producer receives a percentage of the policy premium.⁷ Commerce credits the producer with the full commission when a policy incepts, even though the premium may be paid over time. The Agency complains about two types of adjustments that Commerce applies to commission payments.

1. Adjustments for premium payments made at the Agency

The RfR challenged adjustments that Commerce makes to the Agency's commissions when it does not receive on a timely basis premiums that a policyholder pays in person at the Agency. That claim was based on evidence that in February 2016 Commerce deducted from the Agency's commissions five premium payments made to it that were not received by Commerce within the time frame prescribed by the MAIP rules. On March 29, after the Agency initiated its RfR, Commerce returned to the Agency's commission account \$879.88, the total of the then outstanding premiums paid at the Agency. It agreed as well, on a temporary basis to discontinue setting off commissions to cover premium payments made at the Agency that were not received within ten days. The MRC, after hearing the parties' presentations, concluded that because Commerce had returned to the Agency's commission account all five premium payments listed on the January 4, 2016 payment log, no ongoing dispute was before it. It dismissed the issue raised in the RfR as moot, and took no position on characterizing the application of commissions to cover premium payments made to a producer but not timely received by the insurer as unfair, unreasonable or improper under the MAIP Rules.⁸

At the April 7 MRC hearing, Calianos conceded that those payments had been returned to the Agency, but asserted that its RfR should not be limited to those five premium checks. The Agency continued to object to deferring a decision on adjusting commissions to cover premium payments paid at the

⁷ MAIP Rule 37 addresses commission payment rates for policies written through the MAIP.

⁸ The participants in this proceeding agreed that no MAIP Rule addresses that question.

Agency, contending that its request related only to a dispute with Commerce. Commerce argued that any questions about an insurer's right to set off commissions to cover premium payments that are not timely received from a producer are of direct interest to the entire motor vehicle insurance industry, and that such questions and any recommendations for uniform practices should be considered by the MAIP Steering Committee. The MRC agreed with the principle that any decision about that issue and its use in the residual market should be made by the MAIP Steering Committee.⁹

In this appeal to the Commissioner, the Agency asks for an order generally addressing Commerce's practices with respect to commission adjustments. This appeal, however, is limited to a review of the GCRP's decision. The record fully supports the MRC's decision that the Agency's complaint about applying commission payments to cover specified premium payments that it had received, as set out in the March 1, 2016 RfR, was fully resolved before the first MRC hearing. The recommendation to refer the underlying controversy to a special CAR Committee to consider in the context of the residual market as a whole was based on sound policy considerations. On this record, the Agency's appeal of CAR's decision on that aspect of its RfR, is denied.

2. Adjustments for commissions paid on unearned premium

At the April 7 MRC hearing the Agency asserted that its dispute with Commerce was not limited to its claims in the initial RfR, but contended that since April, 2008 Commerce had wrongfully taken back commissions paid to the Agency that were calculated on the full policy premium if the policyholder stopped making payments and the unearned premiums were uncollectable. Calianos conceded that he had not provided Commerce with an accounting for those alleged takings, but would file another complaint for that time period.¹⁰

On or about April 26, 2016, the Agency submitted for distribution to the MRC 93 pages of reports titled "Uncollectible Premium for Commission Chargebacks" that Commerce generated monthly for the Agency between February 1, 2008 and April 1, 2016.¹¹ Commerce, opposing the Agency's claim, provided copies of the same reports. It explained to the MRC that it charges back to the producer commission paid on a policy when the premium for that policy is earned but unpaid and its efforts to collect the premium from the policyholder are unsuccessful.¹² The Agency agreed that it is an industry standard to pay commission only on earned premium but asserts that it should not have to repay commissions if the policyholder fails to pay the full premium due.

⁹CAR created an Ad Hoc Committee on Premium and Commission Payment Practices. The Agency included a copy of the minutes of that committee's first meeting, on June 23, 2016, with the documents it submitted in connection with its appeal to the Commissioner. Because the meeting took place well after the MRC meetings and was not offered as an exhibit to the GCRP, the minutes were not considered in this review.

¹⁰ Ultimately, rather than require the Agency to file another RfR, the MRC continued the hearing for 45 days to permit the Agency to document its additional claim.

¹¹ These documents were marked as Exhibit 4 for the MRC proceeding. On May 4, the Agency submitted a second set of reports with the same title for the same dates that were marked as Exhibit 7 for the MRC.

¹² The documents submitted to the MRC marked as the Agency's Exhibits 4 and 7 are titled Uncollectible Premium for Commission Chargebacks. Commerce Exhibit E, the Agency's monthly reports from May 2015 through April 2016, includes a section on commission chargebacks. These documents show that chargebacks may be made some years after a policy terminated. Chargebacks are adjusted to reflect payment to Commerce of the premium previously shown as unpaid.

Commerce opposed the expansion of the Agency's RfR on the ground that claims that occur more than thirty days before filing a RfR are time-barred under MAIP Rule 40. The Agency asserted that it did not know about the chargeback adjustments before 2016, when it received copies of reports from Commerce in connection with this RfR. Calianos also claimed that after January 1, 2008, he did not read commission reports from Commerce but relied on MAIP rule 37 as the basis for his commissions.¹³ Commerce challenged those assertions, pointing out that the Agency's claim that it had no knowledge of the uncollectible premium reports before he obtained them from CAR in connection with this appeal is inconsistent with complaints he made to CAR in 2011 about the company's commission practices.¹⁴ After reviewing the exhibits and considering the statements from the Agency and Commerce, the MRC voted to deny, as untimely under MAIP Rule 40, the Agency's Request seeking to recover commissions paid on unearned premium that were charged back to it more than 30 days before it filed that Request.

Two chargebacks for commissions paid on unearned premium occurred in February 2016, within the 30-day period before the RfR filing, and the MRC therefore heard argument about them. At the June 6 hearing the Agency argued that the commission percentages for MAIP business are set out in a schedule prescribed in MAIP Rule 37 and cannot be altered. At the same hearing, Calianos also agreed that commission is paid to agents on the American Agency System based on earned premium. The insurer pays the full commission up front, and when a policy cancels, recovers the commission paid on premium that it did not receive by a chargeback to the producer's commission account. Calianos agreed that, if a policy cancels, the producer owes the insurer that part of the commission paid on premium that was not received, reiterating that position at the GCRP hearing on July 7, 2016.¹⁵ The monthly reports to the Agency include detailed data on commission chargebacks that include the policyholder's name or the policy number, the policy effective date, the amount of unpaid premium written off, the commission rate, and the commission chargeback amount. Calianos identified no entry in which the commission rate adjustment is other than the appropriate commission rate prescribed in MAIP Rule 37 applied to the unpaid premium.

The Agency's argument that Rule 37 sets a commission schedule on MAIP policies that must be paid, whether or not the insurer receives the underlying premium is not persuasive. It conflates the prescribed commission schedule and a proposal to define the premium base on which the commission is paid that is not in Rule 37. The principle that commissions are payable only on premiums that are

¹³ The same documents were also part of the Agency's Exhibit 7. Commerce again asserts that because the Agency was an Exclusive Representative Producer for Commerce before 2008, it should be familiar with the company's commission practices and its reports to producers that include chargebacks for commissions paid on premiums that are unpaid.

¹⁴ Commerce submitted three exhibits, G, H and I, complaints sent to CAR relating to transactions between the Agency and the company. In 2011 and in 2014, the Agency complained to CAR about setoff of commissions to cover payments that Commerce had not received; in 2014 Commerce complained once about the Agency's failure to remit payment on a timely basis. All three relate to setoffs of premium payments received by the Agency that were not received on a timely basis, rather than commission chargebacks.

¹⁵ Although the Agency concedes that it does not object to netting out earned and unearned commission, it alleged that Commerce took incorrect amounts from its commission account. At the June 6 MRC hearing, Calianos questioned the chargeback made on a policy that he believed was cancelled, positing that the chargeback was incorrect because it was based on an improper calculation of unearned premium. The Agency hypothesizes that Commerce might have made a billing error, failed to collect enough down payment or "let the policy go on longer than was due" and suggests that for those reasons the unearned premium calculation was excessive. It offered no evidence to support any of these theories.

earned and paid is incorporated into MAIP Rule 31.b.19, that requires an ARP to “return uncontested unearned commission within 45 calendar days from the date the producer receives notice from the insurer that such commission is due.” Calianos acknowledged in the course of his hearings at CAR that commission is not paid on unpaid earned premium. Documentation in the record on commission chargeback amounts does not support the Agency’s concerns. No evidence in the record supports the Agency’s contention that Commerce charged back to it the policyholder’s unpaid premium as a debt to the insurer. Commerce denied that it charges back to producers unpaid premium that it is unable to collect from the policyholder. The Agency’s theories about the sufficiency of Commerce’s efforts to collect unpaid premium and incorrect calculation of the premium are speculative. Calianos contests no particular chargeback transaction, as he is permitted to do under Rule 31.B.19.¹⁶

After discussion, the MRC concluded that the practice of charging back to producers commission payments on unpaid premium was not unfair, unreasonable or improper. The GCRP voted to accept those recommendations. The record fully supports the MRC’s conclusion. The Agency presented no evidence to support its concerns that commission chargebacks might be incorrect. On this record, the Agency’s appeal of its commission payments is denied.

B. Investigation of the Calianos Agency

In its Addendum the Agency complained that after it filed the RfR Commerce initiated an investigation of the Agency, alleging that it did so to retaliate for that RfR. It argued that no CAR member has a right to conduct an independent investigation of an ARP, and requested a list of all the policyholders that Commerce contacted and its communications with each. The Agency also demanded that Commerce send letters of apology to it each policyholder, pay a fine and be prohibited from investigating any agent in the future.¹⁷ At the April 7 MRC meeting Calianos expanded the Agency’s position, contending that Commerce exceeded its authority as an ARC by improperly using its Special Investigation Unit to visit Agency clients on matters not related to claims. He submitted to the MRC two one-page affidavits from individuals stating that they had been visited by a Commerce representative.¹⁸ The Agency asserted that the documents showed that Commerce was attempting to harass him and his clients and to interfere with his business relationships with clients.

Commerce contended that the MRC was not the right venue for hearing the Agency’s RfR relating to the investigation. After discussion, MRC members concluded that it did not have sufficient information to vote on issues relating to that aspect of the RfR and chose to keep the hearing record open for forty-five days and to continue the meeting to a later date.¹⁹

¹⁶ Calianos’s decision not to review the reports on commission chargebacks that Commerce sent to the Agency on a monthly basis does not excuse his failure to report any perceived anomalies.

¹⁷ By letter dated May 3, 2016, to the chair of the MRC, the Calianos Agency suggested that if its request for fines was problematic, it would withdraw that request.

¹⁸ The MRC, at its April 7 meeting, briefly considered those affidavits. It was noted that the notary’s signature was unclear and that the name was not printed. Calianos then asked if at the next MRC meeting he could bring in the affiants to speak; he was advised to provide, within the time period for submitting additional information to the MRC, information on the witnesses and the subject of their testimony. Neither affiant appeared at the June 7 hearing.

¹⁹ Early in that discussion, Calianos stated that he would be agreeable to continue the hearing on the investigation so “they [*i.e.* Commerce] can answer that and defend that.”

Before the June 6 hearing, both Calianos and Commerce submitted to the MRC additional documents relating to the investigation. The Agency's submission included transcripts of examinations under oath of Kathy [sic] Familia and Maryleny Abreu, both taken on April 27, 2016.^{20, 21} Commerce submitted affidavits from three Commerce employees, James Stolberg, a Supervisor of the Commerce Premium Accounting Operations, Scott Ferguson, a Field Investigator for the company's Special Investigations Unit ("SIU"), and Tania Spring, a Supervisor in the SIU who had participated in the investigation.

Reiterating the position that the investigation was initiated in retaliation for the Agency's initial RfR, Calianos contended at the June 6 hearing that Commerce was made aware before mid-February that the Agency intended to file a request for review of the practice of offsetting premium payments made at an agency from its commissions. It again asserted that Commerce could not investigate an agent and objected to its questioning of Agency customers. It further argued that the MAIP Rule requiring ARCs to have SIUs limits their purpose to "investigate suspicious or questionable motor vehicle insurance claims for the purpose of eliminating fraud."²²

Commerce argued that its investigation was appropriate in light of issues arising from its failure to receive five premium payments that the Agency allegedly sent to it on January 4, 2016, and that prior administrative complaints to CAR also arose from failure to receive premiums on a timely basis. It pointed out that the history of late payments from the Calianos Agency showed that many policyholders send replacement payments directly to Commerce, a pattern that might indicate that the payments reported as received by the Agency were not lost in the mail.²³ When that history was repeated with the January 4, 2016, payment log, Commerce questioned whether those payments had been lost in the mail, and, on February 11, attempted to contact the five policyholders. It stated that it determined that review was appropriate because one policyholder asserted that the Calianos Agency had asked the policyholder to leave it a signed and dated, but otherwise blank, check. Commerce asserted that the MAIP Rules require companies to investigate problems with premium payment including, among other things, failure to remit premium within the prescribed timeframes, premium irregularities, and willful appropriation of premium.²⁴ In light of the pattern of delayed receipt of paid at agency premiums and its obligations to investigate, Commerce asserts that the timing of the investigation should not be characterized as retaliatory.²⁵

²⁰ Ms. Abreu is referred to in the heading of the examination as Maryleny Aberu and spells out her name that way in the text. However, on her notary appointment, attached as Exhibit 1 to that transcript, she is identified as Maryleny Abreu. In the context of this proceeding, I am not persuaded that the discrepancy needs to be resolved.

²¹ Calianos conducted those examinations that were allegedly taken pursuant to the Massachusetts Rules of Civil Procedure. By e-mail on April 25, the Agency advised Commerce that it intended to conduct these examinations and invited it to attend. Commerce pointed out that no formal rules of discovery apply in CAR hearings, and declined to attend.

²² MAIP Rule 30.A.4.e. No party to this proceeding asserts that the investigation related to motor vehicle claims.

²³ Commerce considered it unlikely that a policyholder who had given the Agency a money order would be likely to make the same installment payment twice.

²⁴ See, MAIP Rule 30.B.5.i, relating to the obligations of an ARC, such as Commerce, to monitor ARPs. Note that Commerce informed the MRC that it found no indication of willful appropriation of premium or fraud by the Agency. It posited that the payment irregularities occurred for other reasons.

²⁵ The Agency dismissed Commerce's arguments, claiming that there is no evidence that it is responsible for any problems relating to the late receipt of paid at agency premiums. At the April 7 MRC hearing, it contended that problems occurred because Commerce "has a bad habit of losing or misapplying payments," and that "on rare occasions," the Post Office fails to deliver payments.

The MRC, after considering whether the Commerce investigation of premium payments made at the Agency should be characterized as an unfair, unreasonable or improper practice, concluded that it was not unfair, unreasonable or improper. The GCRP, after reviewing the records of the MRC proceedings and hearing oral argument from the Agency and Commerce, voted to accept the MRC's recommendations.

The record supports CAR's decisions. The Agency does not dispute the documents or statements that substantiate a longstanding problem of delayed receipt by Commerce of premium payments made at the Agency, nor did it challenge Commerce's statement that the frequency of such delays is higher for the Agency than for other producers whose MAIP business is assigned to Commerce.²⁶ The MAIP Rules specify a time frame for producers to forward payments made at the Agency to the insurer, and that that failure to do so may be a rule infraction that is reportable to CAR.²⁷ The Agency argues that if Commerce has reason to believe that a producer has engaged in activities that violated the MAIP Rules, its sole recourse is to notify CAR, which periodically assesses ARP's performances based on such notices. The insurer's obligation, however, as described in the MAIP Assigned Risk Producers Procedures manual, is to report validated producer violations to CAR. Commerce is therefore expected to report only violations that it has validated. Calianos dismissed out of hand Commerce's concerns that the payment delays resulted from Agency actions, contending that they occurred because Commerce loses or misapplies payments that it receives. He offered no evidence to support his hypotheses.

I find that the record fully supports the MRC's determination that the investigation into issues related to the longstanding issue of Commerce's delayed receipt of premium payments made at the Agency was not an unfair, unreasonable or improper practice.²⁸ No evidence supports the Agency's argument that initiating an investigation violated the MAIP Rules. The Agency offered no persuasive arguments for overturning the GCRP's decision adopting the MRC's conclusions. On this record, the relief that the Calianos Agency is seeking on appeal, orders characterizing the investigation as an unfair, unreasonable or improper practice and seeking specific relief from Commerce is denied.

C. The Proceedings at CAR

The Agency challenges the fairness of the MRC hearings, asserting that some committee members had a conflict of interest that might have affected their ability to act in an unbiased manner. At the initial MRC hearing Calianos asked how many members had contracts with Commerce, contending at the second hearing that there was at least the appearance of a conflict of interest. At the GCRP hearing, Calianos alleged that the MRC was influenced by Commerce, asserting that some MRC members have

²⁶Commerce characterized the Agency as an "outlier" with respect to delayed receipt of premium payments made at an agency.

²⁷ It is reasonable for an insurer monitoring a producer or initiating an investigation to rely on the skills of personnel who have some experience in conducting such undertakings. I find no merit to the Agency's argument that the MAIP rules limit staff in an insurer's Special Investigation Unit to inquiries about insurance claims.

²⁸ Calianos was concerned as well about the breadth of the investigation, which the Agency persistently characterizes as "retaliatory." The amendment to its Request for Review, submitted to CAR on March 30, 2016, states that the investigation was initiated only after the initial Request for Review was filed. The Agency's attempts to demonstrate that Commerce knew that it intended to submit a Request for Review before contemplating the investigation are not persuasive. Calianos also challenged the content of the investigation, but did not pursue his concerns before the MRC, and it made no findings related to that issue.

a direct financial relationship with the company that he thought affected their decision. He also expressed concern that Commerce had proposed to refer the question of setting off against commission premiums paid at the Agency that were not timely received to the MAIP Steering Committee.²⁹

Commerce pointed out that the CAR enabling statute, G.L. c. 175, §113H, established the Governing Committee, half of whose members represent member companies and half insurance producers. It contends that the CAR Conflict of Interest policy was not intended to prevent insurers or producers from participating in a proceeding based solely on a company/agent relationship, but was intended to apply to circumstances where a unique financial or other interest might compromise the committee member's ability to be fair and impartial. It contends that the Agency has identified no facts that suggest that an MRC member had a relationship with Commerce that rose to that level. Commerce points out that it recused itself from participating in the first MRC hearing and was not present at the second.³⁰

CAR argues that the record in this proceeding is devoid of any improper influence on MRC members, that there is no evidence that the proceeding contravened the CAR Conflict of Interest policy or that any MRC member had any financial interest in the outcome of the matter. It asserts that there is no basis for the investigation of CAR's hearing procedures that the Agency requests and asks that the Commissioner reject it. CAR contends that the Agency suggests that arrangements between Commerce and producers could take many forms, some of which would constitute financial interests that are not common to all committee members, but that it does not identify any such interests that in this matter would equate to a financial interest in the Agency's dispute with Commerce.

CAR points out that its Conflict of Interest Policy indicates that a potential conflict may exist if the facts would reasonably appear to someone else that a committee member has a financial or other personal interest that could affect a committee decision or activity. It identifies four specific sets of facts: 1) the committee member is employed by a Member or producer which holds a current contract with CAR; 2) a dispute resolution proceeding directly involves a committee member's company or agency; 3) the committee member's employer is seeking to enter into a contact between the employer and CAR; and 4) a matter before the committee has the potential to benefit a committee member's family member or close personal friend. CAR asserts that the circumstances of this proceeding are not conflicts of interest and do not violate the Conflict of Interest Policy. It notes that no Commerce representative was on the MRC, and that there is no support for any of the dealings that the Agency posits. Even if there were, CAR contends, commercial business relationships in and of themselves do not create conflicts.

On this record, I find no support for the Agency's contentions that the hearings at CAR were biased or unfair. That some producer members of the MRC have agency relationships with Commerce and unsupported assumptions about those relationships, do not constitute evidence of either a possible

²⁹ Commerce and CAR contend that there is no basis for preventing a Commerce representative from serving on the Ad Hoc Committee on Premium and Commission Practices. Questions relating to the composition of that committee or its proceedings are not within the scope of this appeal, and for that reason the participants' comments have not been considered.

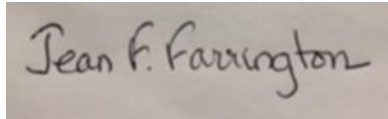
³⁰ The MRC member from another insurer recused herself because of an open dispute between that company and the Agency.

conflict of interest or bias in the proceeding.³¹ The Agency has not identified any aspect of the hearings that suggests bias on the part of any committee member or unfairness in the conduct of the proceedings. The record reflects that the Agency had a full opportunity to present its case before the MRC and the GCRP and to respond following Commerce's presentations. Therefore the Agency's appeal requesting relief on the ground that the decision-making at CAR was biased is denied.³²

V. CONCLUSION

The Governing Committee Review Panel's July 7, 2016 decision on the Calianos Agency's Request for Review is hereby affirmed. For the reasons stated above, the Calianos Agency's appeal of that decision is denied.

Dated: March 19, 2025



Jean F. Farrington
Presiding Officer

³¹ The Agency appears to be concerned about MRC members who have contracts with Commerce. Under the MAIP, however, applications for motor vehicle insurance submitted by any producer may, with some exceptions, be assigned to any CAR Member. For that reason, an MRC producer member could have a working relationship with Commerce, but no contract.

³² Even if a record supported a claim of bias, the Agency identified no legal authority that would support its request that the Commissioner conduct an independent investigation into potential conflicts of interest within CAR and make recommendations about such conflicts.