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**Appeal of Point Insurance Agency of a  
Decision of Commonwealth Automobile Reinsurers  
Docket No. C2017-01**

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**Order on Point Insurance Agency's Appeal of a  
Decision of Commonwealth Automobile Reinsurers**

**I. Introduction**

By letter dated February 2, 2017, Point Insurance Agency (“Point”), appealed to the Commissioner of Insurance (“Commissioner”) from a decision of the Commonwealth Automobile Reinsurers (“CAR”) Governing Committee Review Panel (“GRCP”) denying its request for relief from certain practices of Arbella Protection Insurance Co., Inc. (“Arbella”). The appeal was filed pursuant to Rule 20 of the CAR Rules of Operation (“Rule 20”).

Arbella is a property & casualty (“P&C”) insurer appointed by CAR as a Servicing Carrier for commercial motor vehicle insurance written through the residual market; Point is an insurance producer appointed by CAR as an Exclusive Representative Producer (“ERP”) and assigned to Arbella. Point alleges that Arbella has engaged in unfair, unreasonable or improper practices in connection with the sale or renewal of commercial motor vehicle insurance policies covering vehicles registered to business enterprises. Point objects to Arbella’s use of renewal applications for its commercial policyholders and its requirement that Point verify certain information on applications. Point asserts that Arbella is imposing application or renewal procedures on Point and its commercial customers that it does not apply to other ERPs or their customers and that those procedures conflict with CAR Rules. Point asks the Commissioner to issue permanent orders enjoining Arbella from continuing the allegedly improper practices, and

to pay restitution to Point as well as its attorney's fees. Point also moved for temporary injunctive relief and requested an emergency hearing on that motion.

The parties were informed that on appeals from CAR decisions the Commissioner customarily does not hold *de novo* hearings, but reviews the record of the proceedings before the relevant CAR committees. The parties assented to the production of the entire record of the proceedings before CAR, including all filings, exhibits, transcripts of hearings, and decisions.

I have reviewed the record and the parties' memoranda, and conclude, for the reasons stated below, that CAR's decision should be affirmed.

## **II. Procedural History at the Division of Insurance**

On February 2, 2017, Point filed its appeal of a CAR Decision under Rule 20, which provides that "[a]ny formal Governing Committee ruling may be appealed to the Commissioner by filing a notice of appeal with CAR and the Commissioner within 30 days after the date of the ruling's issuance." In a Rule 20 appeal, "[t]he Commissioner may approve, modify, amend or disapprove the ruling or direct the Governing Committee to reconsider the ruling . . . [and] may issue any other appropriate order, including granting the aggrieved party a new review."<sup>1</sup>

An initial order, issued on February 14, 2017, set a schedule for Point's submission of a detailed written statement on the background of its appeal, a response from CAR, and a prehearing conference. On March 10, 2017, Arbella filed a petition to intervene in this appeal which was unopposed by Point and CAR and was allowed on March 27, 2017. On March 15, 2017, Point timely filed its statement and a set of attachments consisting of documents relating to the prior proceedings at CAR, including the following exhibits: 1) correspondence related to Docket No. C2016-13; 2) correspondence from Point to Arbella and CAR; 3) a December 13, 2016 request to CAR for a review of Point's complaints about Arbella and a January 13, 2017 request for review by the CAR Governing Committee; 4) business transcripts of hearings held before the CAR Market Review Committee ("MRC") and before the GCRP; and 5) decisions of

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<sup>1</sup> Point previously filed a complaint against Arbella on October 18, 2016, requesting similar relief from Arbella's business practices in a matter assigned Docket No. C2016-13. In an effort to ensure a consistent regulatory approach, the Presiding Officer dismissed the complaint on December 19, 2016, citing CAR as the appropriate forum to first address the matter. This appeal followed the subsequent proceedings at CAR in early 2017.

the Market Review Committee and the GCRP. Point additionally submitted an Emergency Motion for Preliminary Injunction with a request for an emergency hearing on March 15.<sup>2</sup> On March 28, 2017, CAR timely submitted its response to Point's statement and on April 10, Arbella also timely submitted its response.

A prehearing conference took place on April 14, 2017. Joshua A. Lewin, Esq. represented Point.<sup>3</sup> CAR was represented by Stephen J. Torres, Esq. and Benjamin L. Hincks, Esq., and Arbella by Roberta Fitzpatrick, Esq. Although Point requested a *de novo* hearing on this matter, since the material facts in the record were not disputed by the parties I declined to convene a hearing. At the close of that conference, the parties were given an additional two weeks to submit supplemental memoranda before the record in this matter was closed. As this matter was an appeal filed pursuant to Rule 20, and the record included undisputed information submitted to the MRC and GCRP, I declined to hold an additional hearing in this matter. The Division does not conduct evidentiary hearings on appeals from CAR decisions, but relies on the record of the CAR proceedings below.<sup>4</sup> Point submitted its supplemental memorandum on April 24, 2017 and CAR and Arbella did so on April 26, 2017. I indicated that the record was closed on April 28, 2017. Point thereafter submitted additional documents which were not included in the record of the proceedings in this matter. Since this appeal is a review of the record of CAR

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<sup>2</sup> Point's request for a preliminary injunction was denied. Neither the Massachusetts Administrative Procedures Act, M.G.L. c. 30A, nor any provision in M.G.L. c. 175 or the Code of Massachusetts Regulations grants the Division the authority to provide a preliminary injunction or other equitable relief to petitioners.

<sup>3</sup> On February 21, 2018, Dana E. Casher, Esq. also filed a Notice of Appearance on behalf of Point.

<sup>4</sup> In its initial complaint for review/relief, Point also requested an independent hearing pursuant to M.G.L. c. 175 § 113H citing "the claims and issues raised by Point before CAR." The sequence of events in this matter, the information before the MRC and GCRP, and the transcript of the proceedings before them, as placed in the record by Point, are not disputed. Point and Arbella presented their respective positions on the non-renewal of commercial insurance at the CAR hearings. The MRC and the GCRP thus had an opportunity to weigh the competing statements, to ask questions and to factor the information presented into their decisions. On appeal, the issue before the Commissioner is whether, on the evidence before it, CAR correctly applied its rules. Since Point's appeal reiterates to the Commissioner the arguments it made to CAR, it has presented no reason to hold an additional evidentiary hearing before the Commissioner. *See Hanover Insurance Company v. Commissioner of Insurance*, 443 Mass. 47 (2004).

proceedings under Rule 20 of the CAR Rules of Operation, any documents, exhibits, or evidence submitted after April 28, 2017 was not considered in rendering this decision.<sup>5</sup>

This decision now addresses Point's specific request to set aside the GCRP decision.

### **III. Procedural History at CAR**

On December 15, 2016, Point submitted a Request for Review pursuant to CAR Rule 20, seeking relief from the actions of Arbella relative to the issuance and renewal of the agency's commercial automobile book of business. Point alleged that Arbella overlooked and ignored the CAR Rules for determining eligibility for commercial insurance in the residual market when it determined that commercial policyholders that did not use vehicles for commercial purposes or did not have a legitimate business (defined as a "profit-making enterprise").

Documents submitted by Point provide the following chronology of events: In early 2016, Rapo & Jepsen Insurance Services, Inc. ("RJIS") and Arbella were engaged in a contractual dispute at CAR, which was eventually settled when Point purchased all of the assets of RJIS, including its book of residual market commercial business. Prior to the sale of RJIS to Point, RJIS was also assigned to Arbella as an ERP for commercial business. However, Arbella terminated RJIS's Limited Servicing Carrier Agreement ("LSCA") effective April 4, 2016 on the ground that it was improperly using its commercial appointment to write insurance on vehicles that were not being used for commercial purposes. The CAR MRC upheld the termination of the Arbella/RJIS LSCA. Although RJIS submitted an appeal to the CAR GCRP, RJIS withdrew its appeal on September 6, 2016 following the sale of RJIS to Point in June 2016.

On June 20, 2016, Point sought appointment as an Assigned Risk Producer ("ARP") and an ERP before CAR, and CAR appointed Arbella as Point's servicing carrier two days later. On July 22, 2016, Point's counsel sent Arbella's counsel a letter requesting the speedy production of

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<sup>5</sup> On June 23, 2017, Point submitted a further supplemental memorandum without a motion to reopen the docket or a motion to supplement the record. CAR and Arbella submitted supplemental memoranda in response. In its supplemental memorandum, Point alleged further improper action in policy cancellations by Arbella that were not before the GCRP in January 2017. On November 13, 2018, Point submitted an Emergency Motion to Supplement the Record to include transcripts and at two recent committee meetings concerning prospective CAR standards related to foreign operators. CAR and Arbella submitted opposition responses shortly thereafter. Since this Decision and Order contemplates only Point's request for review of the proceedings at CAR in 2017 and any standards at CAR during that time period, Point's emergency motion is denied.

“any policies and procedures which Arbella would like Point to follow beyond the general terms dictated by CAR” so that it could avoid the issues surrounding the dispute with RJIS prior to signing the LSCA. On July 29, 2016, Arbella sent Point a document entitled “Procedures for Point Insurance, Inc.” (“Procedures Document”) which required certain new commercial customers of Point to provide: 1) witnessed affidavits certifying that the business was legitimate,<sup>6</sup> that the customers were employed by the business, and that the vehicle would be used for business purposes, 2) color photocopies of the identification documents of all vehicle operators, and 3) copies of all business certificates issued to the commercial customers if they were operating as a “doing business as” or “d/b/a” entity.

Point signed Arbella’s LSCA on or about August 24, 2016. On September 1, 2016, Point began soliciting new business pursuant to the LSCA, as well as servicing the existing book of business from RJIS. In late September 2016, Arbella began sending Point’s renewal customers a “Commercial Auto Renewal Application” form and a “Commercial Auto Renewal Questionnaire” requesting a response within 60 days of the expiration of the existing policy to avoid non-renewal.<sup>7</sup> Arbella subsequently sent non-renewal notices to a number of Point’s commercial customers. The various reasons for non-renewal included: 1) failure to provide tax return or insurance documentation policies, 2) non-commercial use of the insured vehicle, 3) operation of the insured vehicle by a person holding a foreign operator’s license, 4) vehicles being owned by trusts, or 5) the failure of the customer to respond to the “Commercial Auto Renewal Application or “Commercial Auto Renewal Questionnaire.”

On December 15, 2016, Point submitted a “Request for Review/Relief” to CAR. The CAR MRC heard the matter on January 12, 2017. At that hearing, Point argued that Arbella was hindering its ability to operate in the residual market. Point raised ten issues during its

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<sup>6</sup> The “Point Insurance Inc. Assisted Business Creation Affidavit” was drafted by Arbella and translated into Spanish and Portuguese.

<sup>7</sup> The “Commercial Auto Renewal Questionnaire” asks customers for a detailed description of the business, the number of employees, whether or not the customer operates under any other names or insures vehicles elsewhere, along with questions regarding the nature of the vehicles’ use. The “Commercial Auto Renewal Application” asks if the customer owns his or her own business or if he or she is employed elsewhere, the number of employees, and the address of the business and the principal place of garaging of the vehicles. The “Commercial Auto Renewal

presentation and asked the MRC to find that the conduct described was unfair, unreasonable, or improper and/or inconsistent with CAR rules. These issues concerned 1) Arbella's use of the Commercial Auto Renewal Application form with Point's renewal customers, 2) Arbella's underwriting standards for Point's customers, 3) Arbella's imposed terms and conditions on Point's appointment as an ERP, 4) Arbella's LSCA with Point, 5) Arbella's use of correspondence, forms, and applications with Point and its customers, 6) Arbella's requirements that Point follow certain procedures, 7) Arbella's use of its Special Investigations Unit ("SIU") with Point's customers, 8) Arbella's treatment of Point's customers, many of whom are minorities or of foreign national origin, 9) Arbella's issuance of non-renewal notices to Point commercial customers, and 10) Arbella's denial, cancellation, or non-renewal of certain commercial auto insurance policies for Point customers. Point argued that a Massachusetts business entity could be created "to accomplish any purpose whatsoever," that Arbella's policies and practices with respect to issuing and renewing the policies of foreign operators varied from those used with other ERPs and negatively affected Point's book of business. Point further noted that if CAR agreed with Arbella that Point's actions in the residual market were problematic, it could promulgate additional rules with respect to foreign operators or requirements for commercial customers if it so desired.

Arbella contended that despite its initial attempts to prevent fraud and Point's initial acquiescence to the LSCA, Point continued a scheme of insuring foreign or high-risk operators and was improperly using its commercial appointment to insure vehicles that were not being used for commercial purposes. It argued that Point's book of business consisted of primarily private passenger accounts that were created simultaneously with the registrations of new businesses in the Commonwealth, and alleged that several of its commercial customers were unaware of the existence of businesses registered in their names. Arbella argued that neither the Division nor CAR prescribed a standard commercial renewal application, other than for taxi

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Application" also solicits documentation of the business' general liability or workers' compensation insurance policies and proof of the business' tax filing.

businesses, and that a different form was necessary because Point's book of commercial business consists of 80 percent private passenger vehicles.

Nine of the ten members of the MRC voted that Point had not established that Arbella's conduct was unfair, unreasonable, or improper and/or inconsistent with CAR Rules. On January 13, 2017, Point filed a Request for Review by the Governing Committee (the "January 13 RFR"). On January 31, 2017, the three-person GCRP heard the matter and unanimously upheld the decision of the MRC and denied the relief Point sought in its Request for Review. This appeal to the Commissioner followed.

#### **IV. The Documentary Record**

Point submitted a chronological record of the proceedings at CAR, documents and questionnaires submitted by Point's customers, communications between Point and Arbella following the servicing carrier appointment, transcripts of the CAR committee meetings, copies of relevant CAR Rules and MAIP Rules. Neither CAR nor Arbella objected to the documents Point submitted to the record. CAR did not submit additional documents or exhibits and Arbella submitted additional information that was already in the record of proceedings at CAR and submitted by Point.

#### **V. The Arguments to the Commissioner**

##### *A. Point*

Point's original appeal to the Commissioner does not raise any procedural issues with either the MRC or GCRP panels at CAR and does not cite bias or other irregularities calling the proceedings at CAR into question. In its supplemental memorandum briefing the issues, Point noted that the MRC or GCRP "engaged in almost no substantive discussion or deliberation about the legal issues involved."<sup>8</sup>

Upon appeal to the Division, Point's argument continues to rely upon the definitions in the CAR Rules of Operation and the Massachusetts Private Passenger Automobile Insurance

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<sup>8</sup> Although Point did not initially assert in its appeal or its opening statement that the proceedings at CAR were defective, Point noted in its supplemental memorandum that the CAR committees did not sufficiently consider the ten issues it raised in its complaint. Point also indicated that two of the three members of the GCRP remarked that

Manual. Point argues that because CAR Rule of Operation 2 (“Rule 2”) defines a “Commercial Motor Vehicle” as “any insurable motor vehicle not included in the definition of Private Passenger Motor Vehicle contained in Rule 22” and CAR Rule of Operation 22 (“Rule 22”) defines a “Private Passenger Motor Vehicle” as “those vehicles as defined in a Massachusetts Automobile Insurance Manual on file with the Commissioner,”<sup>9</sup> Arbella must only consider the ownership of the vehicle to determine whether it is eligible for commercial insurance on the residual market and for that reason, it argues Arbella should be estopped from further inquiry into whether the entity is engaged in a business enterprise. Point indicates that imposing further requirements on entities that are not eligible for private passenger insurance through the MAIP frustrates the main purpose of CAR, which, in its view, is to ensure that all vehicles driven on Massachusetts roads are insured. Point cites Article II of the CAR Plan of Operation Manual Rules, Rates, and Forms which indicates that “all automobile insurance policies, binders, checks, and usual and customary correspondence . . . shall be the same as used for voluntary business, unless specifically exempted by the Commissioner of Insurance.”

Point requests that the decisions of the MRC and GCRP be reversed and seeks an order that Arbella identify Point’s customers to which it has sent documents such as the “Commercial Auto Renewal Application or “Commercial Auto Renewal Questionnaire” and notify them that the these letters, forms, and questionnaires have been rescinded, as well as any non-renewal or cancellation notices that were issued as a result of responses to those documents.<sup>10</sup> Point further seeks orders that Arbella cannot refuse to issue, cancel or non-renew any future commercial insurance policies to Point’s commercial customers based on criteria other than the ownership of the vehicle and that Arbella cannot impose terms, conditions or requirements or use correspondence, forms, applications, or renewal applications in conjunction with Point insurance

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there were not attorneys and therefore did not consider the underlying legal issues. *See* Supplemental Hearing Memorandum of Point Insurance, Inc. p. 8-9, Exhibit 13, p. 20-21.

<sup>9</sup> The Massachusetts Private Passenger Automobile Insurance Manual defines a “Private Passenger Motor Vehicle” as “[a] motor vehicle of the private passenger or station wagon type that is owned or leased under contract for a continuous period of at least twelve months by one or more individuals, excluding (1) partnerships, (2) corporations, (3) unincorporated business associations and (4) other legal business entities with a federal employer identification number.”

<sup>10</sup> Point also requests that these notices be issued in English, Spanish, and Portuguese.



policies that it does not use with other insurance producers. Additionally, Point requests the Commissioner to modify the LSCA between Arbella and Point and rescind any forms that Arbella provided to Point's customers after Point assented to the LSCA. Finally, Point also seeks monetary damages for losses it has sustained due to loss of premiums for insurance policies that Arbella cancelled or refused to issue or renew based upon its assessment that the insured vehicle was not used for commercial or legitimate business purposes.

*B. CAR*

CAR submits that Point "was provided a full, fair, and unbiased forum and opportunity to present its claims and request for relief at both the MRC and GCRP" and that Point "failed to meet its burden to establish any violation of the CAR Rules, whether Rule 20 or otherwise, and did not demonstrate that the various Company conduct and measures implemented by Arbella to limit its commercial automobile policies to those entities actually engaged in commerce was unfair, unreasonable or improper."<sup>11</sup> CAR further notes that the MRC considered separately each of the ten items for which Point sought review and that MRC members assessed whether or not the conduct was consistent with the CAR Rules of Operation and that the GCRP reviewed the MRC transcripts and unanimously denied Point the requested relief.

CAR argues that although the CAR Rules set forth requirements for services that a servicing carrier must provide, it does not prohibit Arbella from utilizing its own procedures for servicing a book of business. CAR notes that Arbella's use of the LSCA, the renewal questionnaires and forms, and other documents with Point and its customers is warranted because Point informed Arbella that it would continue to service the book of business purchased from RJIS. CAR's position is that evidence in the record included instances where commercial policyholders informed Arbella that they did not have a business or were unaware of a business, and amply demonstrated that they are not eligible for a commercial automobile policy.

*C. Arbella*

Arbella argues that the decisions of the MRC and GCRP were not improper, unfair, or unreasonable and that the communications and actions undertaken with Point and its customers

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<sup>11</sup> Commonwealth Automobile Reinsurers' Response to Opening Statement of Point Insurance Inc., p. 2.

were employed “to ensure that the Point book of business is properly insured in the commercial market and that the drivers of the insured vehicles are validly licensed.”<sup>12</sup> Arbella argues that Massachusetts law only guarantees that motor vehicle insurance in the residual market be made available to qualified applicants who are unable to obtain coverage on the voluntary market.<sup>13</sup> It further asserts that Point agreed with the guidelines set out in Arbella’s LSCA with Point and requested those guidelines when it was appointed to Arbella in order to avoid the disputes that plagued Arbella’s relationship with RJIS.<sup>14</sup>

Arbella’s position is that it is entitled to decline to issue commercial insurance to persons who are not engaged in a commercial enterprise that is described in the initial application for insurance, those who do not have valid operator’s licenses or who are not eligible to obtain Massachusetts driver’s licenses or who are unable to register vehicles as individuals, or to people who were properly licensed, held a high Safe Driver Insurance Plan (“SDIP”) rating in the private passenger insurance market and are using fictitious businesses in order to obtain lower insurance premiums in the commercial market. Arbella argues that the use of its Commercial Auto Renewal Questionnaire is necessary to evaluate whether a commercial customer is eligible for commercial coverage in the residual market. Arbella’s position is that the CAR Rules and the Manual of Administrative Procedures do not require specific forms to be filed with the approval of the Division, and its unique renewal form is necessary to “deal directly with the unique circumstances presented by Point’s acquisition [of the RJIS book of business].”<sup>15</sup> It argues that the revised Point renewal form was necessary because unlike other commercial producers, Point’s book of commercial business consists of 80 percent private passenger vehicles, and questions regarding larger commercial risks posed by Arbella were not applicable

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<sup>12</sup> Response of Arbella Protection Insurance Company, p. 2.

<sup>13</sup> CAR Plan of Operation Art. I, p. 1

<sup>14</sup> Arbella notes that Point voluntarily undertook additional obligations incident to the acquisition of the book of business due to prior association with RJIS, which Arbella terminated due to accusations of similar conduct (i.e. creating businesses to enable individuals who were otherwise ineligible to register a motor vehicle or obtain an operator’s license to obtain commercial automobile insurance). Arbella notes that Point is now owned and operated by a former employee of RJIS, which obtained a Massachusetts Resident Business Entity Producer License effective April 11, 2016.

<sup>15</sup> Response of Arbella Protection Insurance Company, p. 16.

to Point’s customers and therefore irrelevant.<sup>16</sup> It states that the form is necessary in order to “assist Arbella in determining if a risk is genuinely a commercial risk” and provides examples of commercial customers issued the Commercial Auto Renewal Questionnaire who indicated that they do not have a business.<sup>17</sup>

Arbella argues that the CAR enabling statute allows insurance companies to deny coverage if “[a]ny person who usually drives the motor vehicle does not hold or is not eligible to obtain an operator’s license,”<sup>18</sup> and that Massachusetts law prohibits those who do not have lawful presence in the United States from obtaining an operator’s license.<sup>19</sup> Arbella further cites Massachusetts regulations and licensing laws which require operators to obtain a Massachusetts driver’s license within 30 days of establishing residency, and prohibit visitors from other countries to drive private passenger vehicles in Massachusetts with a foreign license for more than one year after arrival.<sup>20</sup> It argues that by requiring sole proprietors to provide the Registry of Motor Vehicles (“RMV”) with a valid Social Security Number (“SSN”), the legislature has imposed similar licensing requirements on vehicles used for commercial purposes.<sup>21</sup>

## **VI. Analysis and Discussion**

### *A. Standard of Review*

The standard procedure when hearing an appeal from a CAR decision without a dispute about the material facts is to conduct a review of the record of proceedings before CAR.<sup>22</sup> Under CAR Rule of Operation 20, CAR has the obligation “to review the Member’s action and to decide whether it constitutes an ‘unfair, unreasonable, or improper practice.’” The Commissioner’s options under CAR Rule of Operation 20.B are to affirm, set aside or modify

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<sup>16</sup> *Id.* Arbella noted that questions regarding federal filing requirements and interstate motor carrier risks were deleted.

<sup>17</sup> *Id.* at p. 16-18.

<sup>18</sup> M.G.L. c. 175, § 113H(A)(2).

<sup>19</sup> M.G.L. c. 90, § 8.

<sup>20</sup> See Massachusetts Driver’s Manual, p. 2-3.

<sup>21</sup> See M.G.L. c. 90, § 2.

<sup>22</sup> See Division of Insurance Order on the Calianos Insurance Agency’s Appeal of Commonwealth Automobile Reinsurers, Docket No. C2012-02 (“Calianos”).

the decision, or remand the matter for further proceedings at CAR.<sup>23</sup> The Commissioner, when hearing an appeal from a CAR decision, absent a dispute about material facts, does not conduct a *de novo* evidentiary hearing but considers the arguments of the parties based on the record of the proceedings at CAR.<sup>24</sup>

Point also requested that the Division assess monetary damages or attorney's fees and modify the LSCA between Point and Arbella. However, the Division does not have the authority to assess civil penalties upon parties in disputes before the agency.<sup>25</sup> Insofar as Point has a civil dispute with Arbella beyond the scope of a CAR Rule 20 appeal, the proper venue is within the Massachusetts Court System.<sup>26</sup> Furthermore, Point has not cited a source of authority that would enable the Division to review or modify servicing agreements such as the LSCA.

*B. The Proceedings at CAR Were Consistent with Its Adjudicatory Obligations Under the CAR Rules.*

After reviewing the transcripts of the hearing, I conclude that the MRC considered each of the ten issues Point raised in its "Request for Review/Relief," the GCRP undertook its responsibility to review the proceedings of the MRC, and that Point was provided a full, fair, and unbiased forum and opportunity to present its claims and request for relief at CAR. The MRC proceedings allowed ample time for Point and Arbella to argue their respective positions and the MRC members both discussed the issues and questioned the parties about the ten issues Point

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<sup>23</sup> See CAR Rule of Operation 20.B, which states "[t]he Commissioner may approve, modify, amend or disapprove the ruling or direct the Governing Committee to reconsider the ruling. In addition, the Commissioner may issue any other appropriate order, including granting the aggrieved party a new review."

<sup>24</sup> Calianos at 3, FN 3, noting "[t]he customary procedure applies when no material facts about the appeal are disputed and the record is complete. The Commissioner has discretion, however, to hold a hearing to resolve disputed factual issues where warranted."

<sup>25</sup> See *Hanover Insurance Company v. Arbella Insurance Company*, Docket. No. C2001-04, noting "[w]e are not persuaded that, absent express legislative authority, the Commissioner's authority to enter 'appropriate orders' extends to the award of other types of monetary damages."

<sup>26</sup> See FN 2. As with Point's request for preliminary injunction, there is no basis for it. Neither the Massachusetts Administrative Procedures Act, M.G.L. c. 30A, nor any provision in M.G.L. c. 175 or the Code of Massachusetts Regulations grants the Division the authority to provide a preliminary injunction or another type of equitable relief to petitioners. See also *Hanover Insurance Company v. Arbella Insurance Company*, Docket. No. C2001-04, p. 17-18, stating "Insurance laws do not provide the exclusive source for resolving disputes between business entities, even though those entities happen to be insurance companies."

raised.<sup>27</sup> These issues included the use of renewal applications, the sale of RJIS to Point, Arbella's SIU investigations of Point's customers, Point's acceptance of the LSCA and negotiations between the parties following Arbella's appointment as a limited serving carrier, and the other matters relevant to the nascent relationship between Point and Arbella.<sup>28</sup>

The GCRP also conducted an appropriate review, with the entire proceeding dedicated to Point's appeal.<sup>29</sup> Point specifically cites two comments made by GCRP members noting that they are not attorneys, viewing those comments as evidence that they did not properly consider the legal issues.<sup>30</sup> This argument is not persuasive. The members of the GCRP are not required to be lawyers.<sup>31</sup> Here, the comments of the GCRP members largely addressed the panel's decision that Arbella's actions were not unfair, unreasonable, and improper and that the MRC properly considered each of the issues in the underlying complaint.<sup>32</sup> The record indicates that comments by GCRP members were responsive to Point's arguments that MRC incorrectly decided that Arbella's actions were not unfair, unreasonable, and improper. Point does not allege that the panel failed to consider the transcripts of the MRC proceeding or the evidence submitted by Point or engaged in untoward conduct suggesting bias or unfairness in the adjudicatory process.<sup>33</sup>

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<sup>27</sup> Exhibit 7. The MRC proceedings lasted one hour and 45 minutes, with almost the entirety of that time reserved for Point's request for review.

<sup>28</sup> *Id.*

<sup>29</sup> Exhibit 13.

<sup>30</sup> *See* FN 8.

<sup>31</sup> The record indicates that CAR's legal counsel was present during the January 31, 2017 GCRP review of Point's appeal and that the members had an opportunity to consult counsel, and in fact did so, during the proceedings.

<sup>32</sup> Exhibit 13, POINT001215-1216.

<sup>33</sup> *Id.* Unlike in the Calianos matter to which Point cites, where the Presiding Officer addressed the inclusion of personal, informal, and irrelevant commentary as reasons for an appearance of bias, there is no such conduct or commentary present in the underlying record of the proceedings before CAR's MRC or GCRP. *Compare* Division of Insurance Order on the Calianos Insurance Agency's Appeal of Commonwealth Automobile Reinsurers, Docket No. C2012-02.

*C. Arbella's use of correspondence, forms, and applications with Point and its customers, and Arbella's requirements that Point follow certain procedures, were not improper, unfair, or unreasonable.*

Point objects to Arbella's use of certain correspondence, forms, and applications with Point's commercial customers, including those that were specified in the executed LSCA between Point and Arbella and the Procedures Document imposing terms and conditions on Point at the time of Arbella's appointment as ERP. Point argues that Arbella's use of the LSCA, its procedures, and forms is arbitrary and improper and includes "a series of onerous terms, conditions and procedures designed to set up Point for failure and with which no other agent in the Commonwealth of Massachusetts must comply."<sup>34</sup>

Point has not offered a persuasive argument that the decisions of the CAR MRC and GCRP were erroneous. Both the MRC and GCRP found persuasive Arbella's argument that Point knowingly entered into contractual obligations immediately following Arbella's appointment as Point's servicing carrier and in fact affirmatively requested additional guidelines and policies from Arbella in order to avoid replicating the disputes at CAR between RJIS and Arbella. On July 22, 2016, Point's counsel sent Arbella's counsel a letter, which stated:

My client and I would appreciate your providing any policies and procedures which Arbella would like Point to follow beyond the general terms dictated by CAR. Point intends to continue to service the existing [RJIS] book of business as it currently exists. With respect to future commercial business, if there are other procedures suggested by Arbella to avoid any ongoing concerns with issues raised in connection with [RJIS], we would appreciate your guidance. . . If it is possible to provide the requested materials as soon as possible, we would be grateful, as Point would like these matters clarified before signing the contract with Arbella.<sup>35</sup>

On July 29, 2016, Arbella's counsel responded by letter and explicitly expressed Arbella's position that "not engaging in fraud or assisting with the creation of sham companies should be sufficient to avoid the situation Arbella experienced with [RJIS]." Arbella's counsel recommended draft guidelines and noted:

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<sup>34</sup> Exhibit 13, POINT001215-1216.

<sup>35</sup> Exhibit 5, POINT000117-118. See also Exhibit 1, POINT 000011, wherein Point's counsel states in the CAR appeal that Point requested guidance from Arbella regarding its appointment as Point's servicing carrier.

Arbella anticipates that Point Insurance will not be involved directly or indirectly, in creating businesses for the purpose of enabling persons to obtain commercial insurance, in particular when such persons are otherwise ineligible for a Massachusetts driver's license, or ineligible to obtain a private passenger policy, or to otherwise circumvent the Massachusetts driver's license requirements or to evade premium.<sup>36</sup>

It is clear from this exchange that Point was both candid in notifying Arbella that it would service the RJIS book of business and that it was seeking additional policies and procedures from Arbella to clarify Arbella's expectations for Point in light of its acquisition of RJIS. In turn, Arbella indicated from the beginning of the relationship that it was intent on taking steps to ensure that Point's commercial customers were "legitimate commercial entities" and not simply created because the operators were ineligible for private passenger automobile insurance or Massachusetts driver's licenses. Nearly a month followed, during which Arbella provided Point with the LSCA, Point policies and procedures, and the draft affidavits for Point customers who recently organized businesses prior to seeking commercial insurance coverage. On or about August 26, 2016, Point assented to the LSCA and agreed to abide by the policies and procedures and the use of additional documents for certain commercial customers. The record demonstrates that counsel for both Point and Arbella had ample opportunity to examine these documents, object to their contents, and offer recommendations for changes. Although Point later objected in its appeal to CAR that Arbella's imposed terms and conditions, policies and procedures, and correspondence, forms and applications were unfair unreasonable and improper, there is nothing in the record showing that Point raised these concerns—including its assertion that Arbella should not be allowed to use forms and correspondence that it does not use with the customers of other insurance agencies—at the time of Point's appointment to Arbella as ERP.

On this record, I find that CAR properly determined that Arbella's imposed terms and conditions on Point's appointment as an ERP, Arbella's LSCA with Point, Arbella's use of correspondence, forms, and applications with Point and its customers, and Arbella's requirements that Point follow certain procedures, were not improper, unfair, or unreasonable.

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<sup>36</sup> Exhibit 5, POINT 000120.

*D. Arbella's use of the Commercial Auto Renewal Application and Renewal Questionnaire and the nonrenewal and denial of certain Point commercial customers were not improper, unfair, or unreasonable.*

Point objects to Arbella's use of a renewal application with its customers that differs from that used with commercial customers of other insurance companies, citing as support CAR Rule 30.A.4.h., which states that an Assigned Risk Company ("ARC") must use the policy forms, endorsements, new business applications and renewal questionnaires filed by the MAIP and approved by the Commissioner for use in private passenger motor vehicle insurance.

Point further argues that Arbella's renewal forms which are unique only to Point's customers are arbitrary, confusing and ambiguous and runs afoul of the CAR Rules, citing Rule 2, which defines a "Commercial Motor Vehicle" as "any insurable motor vehicle not included in the definition of Private Passenger Motor Vehicle contained in CAR Rule 22."<sup>37</sup> It posits that since Massachusetts does not require a legally formed corporation to undertake a specific purpose,<sup>38</sup> Arbella cannot inquire into whether or not the entity is actually engaged in commercial activities when assessing its eligibility for a commercial automobile policy.

In Point's view, if the vehicle is registered to a corporate entity, that is the sole eligibility criterion for commercial insurance in the residual market. Point's position is that the questions asked on the renewal application are not applicable to the eligibility requirements for a commercial policy under the CAR Rules, and it objects to Arbella requesting proof of actual business operations from its customers (such as a worker's compensation policy or business tax returns). This contrasts with CAR's position that "the inherent premise that commercial automobile insurance should be available to those engaged in commercial activities"<sup>39</sup> and

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<sup>37</sup> CAR Rule 22 defines a private passenger motor vehicle as "those vehicles as defined in a Massachusetts Private Passenger Automobile Insurance Manual on file with the Commissioner." The 2016 Massachusetts Private Passenger Residual Market Automobile Insurance Manual Rule 27 defines private passenger automobiles as being owned or leased under contract for a continuous period of at least 12 months by one or more individuals, "excluding (1) partnerships, (2) corporations, (3) unincorporated business associations, and (4) other legal business entities with a federal employer identification number, and is not used as a public or livery conveyance nor rented to others."

<sup>38</sup> See M.G.L c. 156D §3.01, which provides "Every corporation incorporated under this chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in its articles of organization."

<sup>39</sup> Supplemental Memorandum of Commonwealth Automobile Reinsurers, p. 4.



Arbella's position that higher scrutiny and additional documentation is warranted since Point acquired a book of business of a prior ERP that it previously terminated for fraud.<sup>40</sup> Point counters that other servicing carriers do not impose such standards.<sup>41</sup> The MRC found that Arbella could refuse to issue or renew commercial policies that did not engage in a commercial purpose if it so chose. Upon review of the record below, I find that there is ample evidence supporting the decision of the MRC.

First, the CAR Commercial Automobile Insurance Manual Rule 4 ("CAR Manual Rule 4") expressly authorizes the use of a renewal application or questionnaire, which may be accompanied by notice to the customer that the renewal application or form must be completed in order to continue or renew coverage beyond the initial term. CAR Manual Rule 4.A.1 sets forth the standard procedures for renewals as follows:

1. The Servicing Carrier may elect to include a renewal application or questionnaire with the renewal policy.
2. The application or questionnaire may be accompanied by a letter indicating that coverage will be continued or renewed only upon receipt of the completed form and payment of premium based on the latest classification information.
3. The letter may indicate that failure to furnish the necessary items may result in cancellation of the policy.
4. The specific reason for cancellation under this rule shall be:
  - a. Failure to furnish renewal application or questionnaire, or
  - b. Non-payment of renewal premium.

The cancellation notice must also contain the following statement: "If the insured furnishes the necessary item(s) prior to the effective date of the cancellation, the cancellation shall be rescinded."

The MAIP is an insurance plan for drivers of private passenger vehicles who cannot obtain insurance in the voluntary market. CAR Rules 1-20 apply to the residual market for commercial motor vehicle insurance, while CAR Rules 21-40 (also referred to as the "MAIP Rules") apply to the MAIP residual market for private passenger motor vehicle insurance.

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<sup>40</sup> Response of Arbella Protection Insurance Company, p. 6.

<sup>41</sup> Point indicates that many of its customers whose policies were canceled by Arbella were able to acquire commercial insurance coverage through other servicing carriers and notes that it is able to obtain this information when it receives a Notice of Transfer of Insurer from the new servicing carrier. *See* Opening Statement of Point Insurance, p. 14, FN9; Supplemental Hearing Memorandum of Point Insurance, Inc. p. 6-7. Exhibit 5, POINT0001072-1167.

Through the MAIP, drivers are assigned to an ARC that provides automobile insurance coverage. Point misstates the rules that apply to commercial policies in the residual market. The MAIP Rules to which Point cites (e.g., CAR Rule of Operation 30) are applicable only to private passenger insurance policies in the residual market. It is undisputed that Arbella is a servicing carrier for Point's book of commercial business in the residual market. Essentially, Point's position is that its commercial customers should be treated like private passenger customers with respect to consumer protection mechanisms such as the issuance of standardized renewal forms, but that Arbella should not be permitted to inquire about the nature of the commercial entity or the licensure status of the drivers of commercial vehicles insured through CAR. This argument is unpersuasive. Here, both the "Commercial Auto Renewal Application" and "Commercial Auto Renewal Questionnaire" Arbella issued to Point's renewal customers comply with the standard procedures for renewals set forth at CAR Manual Rule 4.A.1 as outlined above. In accordance with these procedures, Arbella elected to include an application and questionnaire and required Point's customers to submit the form with supporting information about their commercial entities in order to renew their commercial coverage at least 45 days in advance of the effective renewal date.

Upon review by the MRC and the GCRP, CAR concluded that there was nothing in the CAR Rules of Operation requiring Arbella to use standardized forms, endorsements, applications, or renewal questionnaires with Point's customers and that such requirements are applicable only to ARCs writing private passenger motor vehicle insurance.<sup>42</sup> This interpretation is consistent with the both the CAR Rules of Operation and the CAR Manual.

Point also objects to the specific contents of the "Commercial Auto Renewal Application" and "Commercial Auto Renewal Questionnaire," including a request for a description of the insured business and questions about the intended commercial activities, lists

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<sup>42</sup> See CAR Rule 30.A.4.h. The MAIP is the residual market for private passenger motor vehicle insurance. CAR Rules 1-20 apply to the residual market for commercial motor vehicle insurance, while CAR Rules 21-40 apply to the MAIP residual market for private passenger motor vehicle insurance. There is no provision in CAR Rules 1-20 requiring the use of the same forms in the voluntary and residual markets.

of drivers and driver's license numbers, and information about its business operations.<sup>43</sup>

However, Point does not cite any authority—other than rules only applicable to private passenger policies, as discussed above—to demonstrate why Arbella should be restricted in requesting further information from its customers when renewing policies. During the time Point's request for review was heard at CAR, neither the CAR Rules of Operations nor the CAR Manual placed restrictions on what type of renewal application or questionnaire may be issued to commercial customers or what questions may be asked on these forms. Here, CAR has so far declined to promulgate additional restrictions or requirements upon its commercial servicing carriers with respect to what it may request from commercial customers or how an insurer. Arbella notes that the CAR Rules of Operation Rule 2 defines an eligible risk as “any Person who qualifies for a Motor Vehicle Insurance policy pursuant to G.L. c. 175, §113H and which has its Principal Place of Business within the Commonwealth of Massachusetts” and defines a principal place of business as “the place where the principal officers generally transact business and the place to which reports are made and from which orders emanate. It is also the place where the corporate functions are performed. It is where the executive offices are located and corporate decisions are made.”<sup>44</sup> In its view, whether or not the commercial customer actually conducts business is relevant to evaluating risks and eligibility for a policy in the residual market.

Point's book of business is 80 percent private passenger vehicles and Arbella chose to delete questions applicable to larger commercial vehicles and questions focused on eligibility based upon its knowledge of the RJIS and Point customer portfolios. As discussed above, Arbella was forthright with Point that it planned to ensure that Point's commercial customers were not created solely because the operators were ineligible for private passenger automobile insurance or Massachusetts driver's licenses. The contents of the renewal forms are tailored to Arbella's repeatedly expressed concerns in this regard. Arbella's position that these questionnaires and forms are used to determine eligibility for a commercial policy and to evaluate the risks posed by drivers who are not properly licensed, engaging in fraud, or who are

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<sup>43</sup> Exhibit 1, POINT000038-POINT000039.

<sup>44</sup> Reply Brief of Arbella Protection Insurance Company in Response to the Supplemental Hearing Memorandum of Point Insurance, p. 3.

not commercial risks is persuasive. Additionally, the record shows that several customers who responded to the questionnaire and renewal form with the requested information were renewed. The evidence before me supports the MRC's decision that Arbella's use of the Commercial Auto Renewal Application and Renewal Questionnaire and the nonrenewal and denial of certain Point commercial customers for failing to return a completed renewal application or questionnaire was not improper, unfair, or unreasonable.

*E. Arbella's treatment of Point's customers, the use of its SIU with Point's customers, and its underwriting practices were not improper, unfair, or unreasonable.*

Point notes that Arbella repeatedly relies on prior proceedings between RJIS and Arbella in its treatment of Point's customers and that Arbella "aggressively questioned" former RJIS customers prior to Arbella's appointment as a servicing carrier for Point.<sup>45</sup> It argues that Arbella, in investigating the customers was targeting business owners, many of whom are minorities or of foreign national origin. In Point's request before the MRC, the agency challenged Arbella's use of its SIU Department as unfair harassment and intimidation and requested orders limiting Arbella's use of its SIU Department. Arbella contended that the SIU Department's involvement in Point's book of business was solely due to its having purchased the RJIS book of business which Arbella previously terminated for fraud. Again, Arbella was upfront with Point about its concerns about fraud in the RJIS book of business at the time of its appointment. CAR Rule 10 requires servicing carriers to maintain a SIU "to investigate suspicious claims for the express purpose of eliminating fraud" and empowers the SIU to "[i]nvestigate suspicious circumstances surrounding underwriting, rating, and premium issues." Based on the underlying record, the MRC concluded that there was no evidence of harassment, aggressive behavior, or other untoward conduct in the use of its SIU department.

After my review of the record, including transcripts of SIU calls with Point's customers, I am persuaded that the MRC had an appropriate basis to find that there was no unfair, improper, or unreasonable use of its SIU department with Point's customers. Furthermore, there is no

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<sup>45</sup> See Exhibit 1, POINT00009-010.

evidence in the record showing that Arbella singled out customers based upon race or national origin. Arbella sent its renewal form and questionnaire to all of Point's customers at the expiration of the policy term, not only those employing drivers with foreign licenses or to only minority-owned businesses.

Also at issue is whether or not Arbella can consider the licensing status of the drivers of vehicles owned by businesses in determining eligibility for a commercial policy through CAR. The enabling statute notes that no insurance company shall be required to issue a policy if any person who usually drives the motor vehicle does not hold or is not eligible to obtain an operator's license.<sup>46</sup> Point's counsel noted in his comments at the MRC: "This is an admittedly messy issue."<sup>47</sup> The issue of who is eligible for an operator's license has been an issue of contention at both the state and federal level. At the federal level, the REAL ID Act of 2005<sup>48</sup> established new requirements for state operator's licenses and identification cards that could be accepted by the federal government such as for boarding commercial airline flights and entering federal buildings, which includes a showing of lawful presence within the United States.

Point contends that "Arbella's approach to foreign licensed operators is misguided, discriminatory and not supported by CAR rules."<sup>49</sup> It argues that the CAR enabling statute does not specifically exclude foreign operators or provide that only Massachusetts licensed operators are eligible to drive vehicles insured under a commercial automobile insurance policy. Neither the enabling statute nor the statute regulating the Registry of Motor Vehicles ("RMV") clarifies whether foreign-licensed operators may drive commercial vehicles. Point notes that if a foreign licensed operator leaves the United States and subsequently returns, the one-year period restarts, and therefore, Arbella has no basis to determine whether or not someone is properly licensed to drive.<sup>50</sup>

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<sup>46</sup> G. L. c. 175, §113H(A)(2)

<sup>47</sup> Exhibit 13, POINT 001202.

<sup>48</sup> Pub.L. 109-13, 119 Stat. 302.

<sup>49</sup> Point Opening Statement p. 19.

<sup>50</sup> Exhibit 13, POINT 001202.

The Massachusetts Driver's Manual provides as follows:

If your privilege to drive on your valid foreign license has expired because more than one year has elapsed since your last date of arrival in this country, or if you are visiting for business or pleasure and are trying to acquire your first driver's license, your ability to obtain a Massachusetts driver's license is limited. Massachusetts law does not authorize driver's licenses to be issued for the convenience of business persons or tourists from other countries. To obtain a license, you must meet all the requirements for a driver's license under the law, including the requirement that you be lawfully present in the U.S. and a resident of Massachusetts."<sup>51</sup>

Arbella has tailored its scrutiny of foreign licensed operators by assessing their eligibility for automobile insurance at the time of renewal and indicates that such measures are necessary to combat insurance fraud. It submits that in most cases the operators who are driving the commercially owned vehicles should have obtained valid Massachusetts driver's licenses after a year of residence in the Commonwealth. Arbella further provides examples of Point's commercial customers who applied for a policy and provided information about the business and upon renewal, indicates that they do not have a business and do not engage in commercial activities, and do not use the insured vehicles for business activities.<sup>52</sup> It is notable that the Appeals Court has determined in one instance that a foreign operator who made false statements on applications for motor vehicle insurance about a non-existent business in order to obtain commercial automobile insurance was found to have committed insurance fraud.<sup>53</sup>

Upon review of the record, the MRC found that these measures were not unfair, unreasonable, or improper in order to properly assess whether or not a customer is an eligible risk in the residual market and to investigate possible insurance fraud. Given a review of the record, I find that the record fully supports its decision.

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<sup>51</sup> See Massachusetts Driver's Manual, p. 5.

<sup>52</sup> See Exhibit 4, POINT 000129, POINT 000131-136.

<sup>53</sup> See *Commonwealth v. Lima*, 34 N.E.3d 745 (2015). The defendant was convicted of "fraudulent statement(s) or representation(s) of any fact or thing material to such a claim in violation of G.L. c. 266, § 111B." The Appeals Court found that submitting information about a business despite no commercial activity observed at either address given for the business was sufficient to show that the defendant's processing of these applications contained materially false statements she knew to be false.

**VII. Conclusion**

For the above-stated reasons, I find that CAR's decision on Point's request for review should be affirmed. The appeal filed by Point Insurance Agency of a January 2017 decision of the CAR Governing Committee is hereby denied.

*Issued:* March 11, 2019

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Kristina A. Gasson  
Presiding Officer

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