



**COMMONWEALTH OF MASSACHUSETTS**  
**Office of Consumer Affairs and Business Regulation**  
**DIVISION OF INSURANCE**

One Federal Street, Suite 700 • Boston, MA 02110  
(617) 521-7794 • Toll-free (877) 563-4467  
[www.mass.gov/doi](http://www.mass.gov/doi)

**MAURA T. HEALEY**  
GOVERNOR

**MICHAEL T. CALJOUW**  
COMMISSIONER OF INSURANCE

**KIMBERLEY DRISCOLL**  
LIEUTENANT GOVERNOR

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Appeal of Point Insurance, Inc. of a CAR Decision Affirming the Arbella  
Protection Insurance Company's Termination of Point as a  
Limited Servicing Carrier for Commercial Motor Vehicle Insurance  
Docket No. C2018-01

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**Decision and Order**

**I. Introduction and Procedural History**

On June 29, 2017, the Arbella Protection Insurance Company ("Arbella") terminated the appointment of Point Insurance, Inc. ("Point") as a Limited Servicing Carrier ("LSC") for commercial motor vehicle insurance written through the residual market managed by Commonwealth Automobile Reinsurers ("CAR"). Point, in accord with the CAR Rules of Operation ("CAR Rules"), asked CAR to review the termination. The CAR Market Review Committee ("MRC"), after a hearing, voted to uphold the termination. Point appealed its decision to CAR's Governing Committee Review Panel ("GCRP") which, after a March 15, 2018 hearing, affirmed the MRC decision.<sup>1</sup> On April 5, 2018, Point appealed the GCRP decision to the Commissioner of Insurance ("Commissioner"). With its notice of appeal Point asked, pursuant to CAR Rule 14.F, to stay the termination until the appeal process was complete; its request was allowed on May 9, 2018.

At the time of the 2017 termination, Point and Arbella were opposing parties in another matter before the Commissioner, Point's appeal of a CAR decision denying its claim that Arbella, in overseeing insurance business conducted under the LSC contract, engaged in unfair, unreasonable or improper practices prohibited by the CAR Rules.<sup>2</sup> The MRC, after hearing, had decided in favor of Arbella, concluding that its practices were permissible under those Rules; the GCRP then affirmed that decision. Point appealed the CAR decision to the Commissioner on January 31, 2017 (the "2017 Appeal"); as of

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<sup>1</sup> Three members of the CAR Governing Committee serve on the GCRP.

<sup>2</sup> Point initiated that proceeding in December 2016, a few months after it received its LSC appointment.

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May 2018 that appeal remained open. Because Arbella terminated the LSC appointment on the grounds that Point failed to comply with the regulatory requirements pertinent to eligibility for commercial insurance, Point objected to scheduling any further events in this new proceeding until a decision was issued on the 2017 Appeal. Scheduling was postponed; at the same time, to preserve the record for this appeal, the parties were ordered to submit to the docket the record of the CAR hearings on Point's termination. That record comprised the documents that Point and Arbella submitted for review at the MRC and GCRP hearings, transcripts of those hearings and the committee decisions.<sup>3</sup>

On March 11, 2019, the Commissioner issued a decision in the 2017 Appeal that affirmed CAR's decision that Arbella, in overseeing Point's commercial insurance business to ensure compliance with the applicable eligibility rules, did not engage in unfair, unreasonable or improper practices. The parties to this proceeding were then ordered to submit a joint response on the extent to which that decision resolved issues in his appeal. In that joint response, they declined to agree that any issue was resolved. Anticipating that a previously scheduled hearing would take place, Point submitted a brief on August 5, 2019 and CAR and Arbella submitted briefs on September 19, 2019. Subsequent proceedings in this matter, including that hearing, were then delayed when Point appealed the Commissioner's decision in the 2017 Appeal to the Superior Court. On June 1, 2020, that court affirmed the Commissioner's decision. Point then sought further review at the Appeals Court; it heard argument on October 4, 2021 and, in a Rule 23 order dated November 29, 2021, affirmed the Superior Court's opinion. Point sought further appellate review from the Supreme Judicial Court; its petition was denied on January 14, 2022.

On January 31, 2022, each party to this proceeding was ordered to submit a memorandum identifying issues that it considered resolved as a result of the judicial proceedings on the 2017 Appeal and those that remained open, in whole or in part. A party arguing that an issue was open was instructed to identify the specific portions of the CAR record that it relied on to support its position. The memoranda were submitted timely. At a virtual hearing on November 13, 2023 the parties confirmed that the record submitted in January 2018 correctly reflected the proceedings before the MRC and the GCRP. Point submitted a second memorandum on November 16, 2023, reiterating its positions. CAR filed a

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<sup>3</sup> In addition to these two CAR appeals, on December 14, 2018, pursuant to G.L. c. 175, §113H (E) ¶8, Point filed with the Commissioner a separate complaint against Arbella, again alleging that it had engaged in unfair, unreasonable or improper practices in connection with Point's renewal of commercial motor vehicle insurance policies. On October 19, 2019 that complaint was dismissed.

response to that memo on December 20, 2023; Point subsequently responded to CAR in a brief memorandum dated January 8, 2024.

## II. Point's arguments

Point first asserts that the issues in this appeal are independent from those disputed in the 2017 Appeal, contending that it focuses on Point while the 2017 Appeal was directed toward Arbella. Responses from both Arbella and CAR oppose that argument. As Arbella observes, the 2017 Appeal arose from Point's objections to Arbella's actions requiring that the agency comply with rules requiring it to gather from renewing or prospective insureds the information necessary to enable Arbella to determine their eligibility to purchase commercial motor vehicle insurance on a private passenger type vehicle.<sup>4</sup> It comments that even after the CAR proceedings affirming Arbella's actions concluded, Point continued to object to complying with those requirements. The termination was based on Point's failure to comply with the CAR rules.

CAR notes that Point, rather than focus on the reasons for termination, now contends that after that termination it engaged in transactions with Arbella that were not contested. Any transactions that occurred while the termination was stayed, in accordance with the CAR Rules, were not addressed at the CAR hearings and therefore were not contained in the hearing records that are the basis for this appeal. Those subsequent transactions were not the basis for termination and provide no support for setting aside the CAR decision.

In summary, Point unsuccessfully contended in 2017 that Arbella unfairly required it to comply with rules that allow Arbella to assess a customer's eligibility to purchase commercial motor vehicle insurance; in this proceeding Point challenges Arbella's termination of the LSC because of Point's failure to comply with those rules. Point's attempt to distinguish what was ultimately at issue in the

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<sup>4</sup> In brief, commercial motor vehicle insurance was being written on private passenger type vehicles that were alleged to be used for business purposes. Business entities had been created but did not in fact conduct business. If the applicant for the insurance did not have a Massachusetts operator's license, policies identified as operators of the vehicle individuals with Massachusetts' licenses who did not typically drive the insured vehicle. Point, in the 2017 appeal, asserted that Arbella's actions to enforce the eligibility rules for purchasing commercial motor vehicle insurance were unfair. This termination was based on Point's failure to comply with the following sections of CAR Rule 14: Provide a reasonable and good faith effort to verify the information provided by the applicant, including rating and licensing data in violation of Rule 14.B.1.e.; notify the Servicing Carrier of any suspected fraud in violation of Rule 14.B.1.k; and cooperate with the Servicing Carrier during all investigation in violation of Rule 14.B.1.l.

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2017 Appeal, enforcement of the CAR Rules, from the issue in this appeal, termination of Point's LSC appointment for failure to comply with those Rules, is not persuasive.<sup>5</sup>

Second, Point asserts, as it did in response to the January 31, 2022 order, that in this proceeding it has a right to a de novo hearing before the Commissioner. It contends that due process necessitates such a hearing to resolve alleged differences among statements made at the CAR hearings.

CAR Rule of Operation 20A establishes the procedures underlying this appeal. A licensed insurance producer who claims to be "aggrieved by any unfair, unreasonable or improper practice of CAR or another Member with respect to the operation of CAR" may ask CAR to review the alleged practice. The CAR rule provides a two-tier review of the request. As preparation for the MRC hearing Point and Arbella each submitted to CAR all the documents it relied on to support its position on the dispute. Each then had an opportunity first to argue its position at MRC hearings that were recorded, transcribed and made part of the record. When the MRC did not rule in its favor, Point appealed to the GCRP. That panel, after a hearing, affirmed the MRC's findings and decision. Under CAR Rule 20B, Point then appealed the final CAR decision to the Commissioner. The record in a Rule 20B appeal consists of the records of the two CAR committee hearings. After reviewing the record and hearing the parties' arguments, the Commissioner's options are to approve, modify, amend or disapprove the CAR ruling, direct the Governing Committee to reconsider it, or issue other orders that they consider appropriate. Point nevertheless asserts that the Commissioner should either set aside the CAR decision affirming its LSC termination or conduct a de novo hearing, contending that such a hearing is needed because the GCRP's review of the MRC decision was inadequate. Point does not dispute that the GCRP reviewed the MRC decision, had access to the lengthy MRC record, and heard argument from Point and Arbella, but claims that it should have conducted an independent review of Point's termination. Point notes that CAR staff advised the GCRP that its review is "de nova" [sic], explaining that it could "consider the

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<sup>5</sup> Point states that during the suspension of this proceeding it has continued to have a book of Arbella business that has been reviewed annually to ensure compliance with CAR Rules. It asserts that upholding the termination now will hurt its ability to serve its customers by denying them access to the commercial residual market and contravening the mission of that market to provide access to insurance for people unable otherwise to obtain it. Point's argument is flawed; it was terminated for events that occurred in or just before 2017. Transactions between Point and Arbella during the suspension of this proceeding are not relevant to a proceeding arising from events underlying that termination. Point offers no evidence to support its position on the potential effect on applicants for commercial motor vehicle insurance of terminating its LSC appointment. It offers no legal support for the premise that post-termination acts are a basis for reversing CAR's decision affirming termination for activities that occurred between September 2016 and June 29, 2017.

Market Review Committee's decision but is not bound by it.” Point then contends that the GCRP should have addressed each issue heard at the MRC separately, independently assessed the support in the record for that committee’s decision, and then applied the CAR rules. Its proposal would thus give a producer seeking formal review of allegedly improper practices two independent opportunities to present its entire case at a CAR hearing. It offers no support for interpreting the CAR rules to create such a duplicative process.

Further, Point offers no persuasive argument that an alleged failure to hold two independent hearings at CAR supports a de novo hearing in this forum. As noted above, a de novo hearing is not among the alternatives open to the Commissioner on an appeal of a CAR decision. Point nevertheless asserts that such a hearing is necessary on the ground that the CAR hearings deprived it of due process, in particular contending that statements in the documentation that Arbella filed in advance of the hearings and made in its presentation at CAR were all hearsay. CAR noted that Point’s memoranda include no citations to the record in support of that position; it observed as well that Point was granted continuances of the CAR hearing dates and therefore had extra time to prepare responses to Arbella. Further, after hearing Arbella’s presentations, Point offered no rebuttals to the documentation that CAR submitted or to statements at the hearings.<sup>6</sup> Point cites nothing in the record suggesting that at any hearing the scope of its presentation was limited. Further, Point offers no support for its apparent position that when weighing statements made at a CAR hearing, committee or panel members should adopt the hearsay rule, applicable to evaluating statements in judicial proceedings. A more appropriate model is the statutory provision that applies in administrative hearings that gives probative effect to evidence “only if it is the kind of evidence on which reasonable persons are accustomed to rely on in the conduct of serious affairs.”<sup>7</sup> Point’s memorandum cites to nothing that would support a finding that CAR did not comply with that principle at the hearing. On this record, I find that Point has made no persuasive argument that the CAR hearings did not comply with the principles of due process.

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<sup>6</sup> CAR, in its memorandum, notes Point’s comment that some policies underlying its termination were renewals of policies that had been written initially by the agency that it had purchased, contending that it “had worked assiduously” for months to rehabilitate such policies. CAR observed that Point provided no citation, whether to the applicable record here or otherwise, to support its alleged efforts to rehabilitate any policies. In any case, any subsequent measures Point undertook after termination are not relevant to the merits of the grounds for Point’s termination.

<sup>7</sup> M.G.L. c. 30A, section 11(2).

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Lastly, Point contends that the CAR decision should be set aside because of allegedly inherent structural bias at CAR hearings that occurs because the CAR committee and panel members who heard the request to review its termination are producers or representatives of insurance carriers and compete with the parties to such proceedings.<sup>8</sup> It offers no support for that contention. CAR established internal procedures to address member grievances related to “unfair or unreasonable or improper practices of CAR or another member with respect to the operation of CAR” that are memorialized in Rule 20.<sup>9</sup> Point submitted its request for review under that Rule. It cites to nothing in the record of those proceedings that raised a question about the composition of either the MRC or the GCRP.

Point now asks the Commissioner to set aside the GCRP's unanimous vote to affirm the MRC's decision, alleging that two of the three panelists “clearly did not believe” that Point had engaged in fraudulent business practices and hypothesizing that, if those panelists had exercised independent judgment, they would not have voted to support termination. The panelists at issue were associated with either Mapfre Insurance or the Liberty Mutual Group. Point claims that between 2018 and 2019 Safeco, a member of the Liberty Mutual Group, Liberty Mutual and Mapfre contracted with Point to sell motor vehicle insurance. It posits that, because CAR Rules explicitly do not tolerate fraud in the business of motor vehicle insurance, if the panelists associated with Liberty Mutual and Mapfre had conducted a de nova [sic] review of the MRC decision and concluded that Point had engaged in fraudulent conduct, neither Mapfre nor the Liberty group insurers would have contracted with Point. In sum, Point seeks to reverse the CAR decision on an hypothesis that two members of the GCRP did not “honestly believe” that Arbella had established that Point violated CAR Rules.<sup>10</sup>

Point's theories are not persuasive. This dispute is grounded on transactions occurring before June 29, 2017, that related to the management of a particular book of commercial motor vehicle insurance and resulted in Arbella's termination of Point as an LSC. The termination was based on Point's failure to ensure that applicants for commercial insurance on private passenger type motor vehicles satisfied the legal requirements for eligibility to purchase such coverage. Point offers no support of any kind for its theory that, because the insurers with whom they were associated later

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<sup>8</sup> Point claimed that historically, in disputes between insurance producers and insurance companies CAR never decided in favor of the producer.

<sup>9</sup> Each Rule of Operation has been approved by the Commissioner.

<sup>10</sup> See, Point Memoranda dated February 22, 2022, p.2, November 16, 2023, pp. 6-7, and January 8, 2024.

had business relationships with Point, the GCRP members who voted to uphold a termination based on the historical record before it could not have “honestly believed” that Point had failed to comply with the CAR Rules.

### III. Conclusion

In this proceeding, Point seeks to reverse Arbella's termination of its agreement to serve as an LSC for commercial motor vehicle insurance in the residual market. To that end it asks that the Commissioner conduct a de novo hearing, giving Point a third forum in which to oppose that termination. Point's request is identical to that made in the 2017 Appeal when it challenged Arbella's enforcement of the CAR Rules. The Commissioner's decision rejected Point's argument, stating that the standard procedure for appeals of CAR decisions provides for submission of complete records of the CAR proceedings and written memoranda and oral argument from the parties.<sup>11</sup>

Point now seeks to override that precedent by redirecting its arguments to objections to the CAR hearings rather than to the record of transactions between Point and Arbella that resulted in the termination. To that end, it contends that the hearings did not provide it with due process and that the members of the MRC and GCRP were biased. Neither argument finds support in the record. The Commissioner's review is based on the records of the CAR decisions, the record that the parties to this matter were ordered to file in 2018 when this appeal was docketed. In November 2023 they confirmed that the record correctly reflected the proceedings before the MRC and the GCRP. Point does not now identify specific factual discrepancies in the record but objects that those hearings should have evaluated their probative value under rules of evidence applicable to judicial proceedings rather than those applicable to administrative proceedings.<sup>12</sup> It has provided no support for its position, nor has it offered any argument that the CAR decisions were based on any documentation outside the CAR records. Point's third argument, both inherent and actual bias against it at CAR, similarly finds no support in the record.

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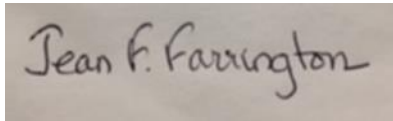
<sup>11</sup> See, Decision in Docket No. C2017-01, at 11. As noted above, that decision was upheld by the Suffolk County Superior Court and the Massachusetts Appeals Court.

<sup>12</sup> Id. That Decision also noted that Point objected to the fact that members of the GCRP were not attorneys.

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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 2018 decision of the CAR Governing Committee is hereby denied.

Dated: June 12, 2025

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Jean F. Farrington  
Presiding Officer

Affirmed : June 16, 2025

A handwritten signature in blue ink that reads "Michael T. Caljouw".

Michael T. Caljouw  
Commissioner of Insurance