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**Point Insurance, Inc.**  
**v.**  
**Arbella Protection Insurance Company**  
**Docket No. C2018-03**

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**Decision on Request for a Hearing**

On December 14, 2018, Point Insurance, Inc. (“Point”), a Massachusetts licensed business entity insurance producer, filed with the Commissioner of Insurance (“Commissioner”) a complaint against the Arbella Protection Insurance Co., Inc. (“Arbella”).<sup>1</sup> Arbella is a motor vehicle insurer appointed by Commonwealth Automobile Reinsurers (“CAR”) as a Servicing Carrier for commercial motor vehicle insurance written through the residual market; Point is a business entity insurance producer appointed by CAR as an Exclusive Representative Producer (“ERP”) and assigned to Arbella. Point filed its complaint pursuant to G.L. c. 175, §113H.

Point alleges that Arbella engaged in an unfair, unreasonable or improper practice in connection with the renewal of commercial motor vehicle insurance policies issued to Point customers. It contends that Arbella requires those customers to complete a new application and driver exclusion form, a practice that CAR does not mandate, and that, absent a directive from CAR requiring all servicing carriers and ERPs to adopt that practice, it is unfair for Arbella to do so. Point asks the Commissioner, after a hearing, to order Arbella to discontinue requiring new applications and driver exclusion forms in connection with renewals until CAR establishes a rule requiring all Servicing Carriers to adopt that practice. It also asks the Commissioner to order Arbella to reimburse Point for losses it allegedly sustained because Arbella did not renew

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<sup>1</sup> The cover letter transmitting the complaint to the Commissioner indicated that a copy had been sent to Arbella.

policies of customers who failed to complete the new application and any driver exclusion forms.<sup>2</sup>

The complaint was assigned docket number C2018-03 and I was designated as Presiding Officer.<sup>3</sup> By letter dated December 20, 2018, I advised CAR and Arbella to respond to Point's complaint by January 18, 2019 and scheduled a prehearing conference for January 30, 2019. In response to Point's complaint, both CAR and Arbella noted that CAR was engaged in an ongoing process to clarify procedures for ensuring that risks seeking motor vehicle insurance in the residual market were eligible for that insurance. Those procedures included the development of certain mandatory forms and other requirements for determining eligibility, including both rule amendments and manual revisions. CAR and Arbella both seek dismissal of 2018-03 for reasons set forth in their memoranda, supplemented at the January 30 conference by the records of CAR committee meetings that occurred after January 18. After hearing argument from counsel for each party, the matter was taken under advisement.

On July 23, 2019, CAR published Bulletin No. 1083 that notified its Members that proposed amendments to CAR Rule of Operation 2 were deemed approved. Those amendments modified the definition of Eligible Risk to incorporate statutory language in M.G.L. c. 175, §114 that to qualify as an Eligible Risk any person who usually drives the motor vehicle must hold or be eligible to obtain a valid operator's license. Limited Servicing Carriers, such as Arbella, and producers must verify the eligibility of applicants to purchase commercial motor vehicle insurance in the residual market. In light of that event, on July 24, the parties to this proceeding were asked to submit statements addressing the effect of that bulletin on 2018-03. Point submitted its response on August 15; CAR and Arbella each submitted comments on August 30. Point conceded that the amendment to the CAR Rules published in Bulletin No. 1083 established a single set of standards for verifying eligibility either to obtain commercial insurance in the residual market or to renew existing policies. It agreed that its second request for relief in 2018-03 was now moot.

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<sup>2</sup> Point also seeks an order that would permit it to inquire of Arbella whether it requires customers of all [insurance] agencies, whom it insures in the residual market, to complete new applications and driver exclusion forms when renewing a policy.

<sup>3</sup> Point filed two requests for an administrative hearing before the Commissioner in 2018. The first, assigned Docket No. 2018-01, was an appeal under the CAR Rules of Operation of a CAR decision affirming Arbella's termination of Point as an Exclusive Representative Producer for commercial motor vehicle insurance. The second, a direct request for a hearing pursuant to M.G.L. c. 175, §113H, was assigned Docket No.C2018-03. To improve clarity, references to the complaint at issue in this matter will be to its docket number.

Point argues that the CAR rule changes did not resolve its three other claims for relief set out in 2018-03. Both CAR and Arbella contend that those three claims are without merit and reiterate their positions that 2018-03 should be dismissed in its entirety. After review of the arguments I conclude, for the reasons stated below, that 2018-03 should be dismissed in its entirety.

Point's First Request for Relief asks the Commissioner to determine that Arbella engaged in an unfair, unreasonable and improper practice by requiring Point's customers, in connection with renewal business, to complete new applications and driver exclusion forms, absent direction from CAR that such requirements apply to all Servicing Carriers and agencies, *i.e.*, producers.

Both CAR and Arbella observe that Point's first request for relief is identical to that sought in an earlier appeal to the Commissioner of a decision of the CAR Governing Committee Review Panel. Point, in 2016, asked CAR to review Arbella's requirements for placing or renewing commercial business and to find that the insurer had engaged in unfair, unreasonable and improper practices. When CAR declined to make such findings, Point appealed its decision to the Commissioner. The Commissioner's decision in that appeal, DOI Docket No. C2017-01, affirmed CAR's conclusions that Arbella's procedures for renewing commercial motor vehicle insurance did not constitute unfair, unreasonable or improper practices. Point has identified no reason to reconsider that decision in the context of this complaint.

Point's Third Request for Relief asks for an order that Arbella reimburse Point for losses allegedly resulting from decisions to non-renew policies issued to customers who failed to complete new applications and driver exclusion forms on renewal policies before July 23, 2019.

Point's request for monetary damages parallels that in the 2017 appeal to the Commissioner from CAR's decision on Point's request for review of Arbella's alleged violations of the CAR Rules; the Commissioner's decision in Docket No. C2017-01 denied its request. The rationale for that denial was the decision in *Hanover Insurance Company v. Arbella Insurance Company*, DOI Docket No. C2001-04 (May, 2002), (Aff'd *Hanover Insurance Company v. Commissioner of Insurance*, 443 Mass. 47 (2004), in which Hanover, in a complaint filed pursuant to G.L. c. 175, §113H, ¶9, sought monetary damages in a dispute with Arbella over allegedly unfair practices in connection with an ERP's purchases of other ERPs. The Commissioner concluded that "[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." Arbella and CAR's position, that the Commissioner does not have authority to assess

civil penalties or money damages is consonant with that decision. Point has identified no reason to reconsider that decision in the context of this complaint brought under that same statute.

Point's Fourth Request for Relief asks the Commissioner to permit Point to inquire of Arbella whether it has required that the customers of all agencies writing Pool policies through Arbella complete new applications and driver exclusion forms to renew existing policies.

Both Arbella and CAR oppose Point's request, observing that it has conceded that the concern underlying its complaint, that until July 23, 2019 the CAR Rules did not require Servicing Carriers and ERPs to comply with uniform requirements for ensuring that applicants for commercial motor vehicle insurance through the residual market are eligible to obtain such coverage, was fully resolved. They argue that the request for discovery should be denied because, absent an outstanding dispute, it is no longer relevant. Point's request for discovery of Arbella's practices with respect to other ERPs submitting initial or renewal applications to it is, further, linked to concerns raised in the earlier proceedings at CAR on Arbella's alleged unfair, unreasonable or improper practices. As noted above, that CAR decision was appealed to the Commissioner and was addressed in his decision in DOI Docket No. C2017-01.

### **Conclusion**

On this record, I find that it is undisputed that the underlying goal of Point's complaint, assurance that under the CAR Rules applicable to the residual market for commercial motor vehicle insurance all Servicing Carriers and ERPs must follow a uniform requirement to document and determine eligibility for such coverage, was achieved with the promulgation of changes to the CAR Rules and revisions to its manuals. Point's second request for relief is therefore moot. Point's first, third and fourth requests for relief parallel issues that were before the Commissioner in Point's 2017 appeal to him of CAR's decision on Point's 2016 complaint to CAR about Arbella and were addressed in the decision in DOI Docket N\ . Point's request for a hearing pursuant to G.L. c. 175, §113H (E), ¶9 is hereby dismissed.

Dated: October 21, 2019

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Jean F. Farrington  
Presiding Officer

Pursuant to G.L. c. 175, §113H, ¶11, this decision is subject to review by appeal to the Superior Court Department of the Trial Court for Suffolk County.