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**Appeal of Paul F. Shannon, Jr. and Shannon Insurance, LLC**  
**of a Decision of Commonwealth Automobile Reinsurers**  
**Docket No. C2019-02**

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**Decision and Order**

**I. Introduction and Procedural History**

By letter dated April 25, 2019, Paul F. Shannon, Jr., and Shannon Insurance, LLC (collectively, “Shannon”), pursuant to Rule 20 of the CAR Rules of Operation (“Rule 20”), appealed to the Commissioner of Insurance (“Commissioner”), a decision of the Commonwealth Automobile Reinsurers (“CAR”) Governing Committee Review Panel (“GCRP”) affirming the termination of Shannon Insurance, LLC as an Exclusive Representative Producer (“ERP”) appointed to the Commerce Insurance Company (“Commerce”) to write commercial motor vehicle insurance. The Commissioner designated me as presiding officer for this proceeding.

An initial order, issued on May 7, 2019, set a schedule for Shannon’s submission, by June 6, 2019, of a detailed written statement including the chronology of the facts and events underlying their appeal, copies of all documents relating to those facts and events, a concise statement of the specific issues on appeal, and copies of all documents relating to the proceedings and hearings before the CAR Market Review Committee (“MRC”) and the GCRP. CAR and Commerce were ordered to respond to Shannon’s statement by June 27, 2019. A prehearing conference was scheduled for July 11, 2019. All parties timely responded to the initial order. CAR, with its response to Shannon’s statement, voluntarily submitted the records of the proceedings before the MRC and GCRP, including documents that Shannon and

Commerce had submitted to those committees as exhibits to be considered at the hearings as support for their positions, and the transcripts of the hearings.<sup>1</sup>

At the July 11, prehearing conference, Mr. Shannon represented himself and Shannon Insurance, LLC. Christopher A. Matherly, Esq represented Commerce, and Benjamin L. Hincks, Esq. appeared on behalf of CAR. John Kelly was also present for Commerce. I advised the parties that the Commissioner's decision in an appeal under CAR Rule 20 is based on a review of the prior proceedings at CAR and consideration of the parties' arguments opposing or supporting affirmation or modification of the CAR decision. All parties at the July 11 conference agreed that the documents supplied by CAR are a complete and correct record of the proceedings at CAR.

Shannon was ordered to file their memorandum by July 31 and CAR and Commerce to submit their memoranda by August 15.<sup>2</sup> No counsel filed a notice of appearance on Shannon's behalf, and Shannon neither submitted a memorandum by July 31 nor requested an extension of time to do so. CAR, in its August 15 response, noting that Shannon had submitted no memorandum, elected to rest on its June 26 filing and the attached records of the underlying proceedings at CAR. Commerce, similarly, reiterated the position taken in its earlier response to the May 7 initial order in this proceeding, that the CAR decisions upholding Shannon's termination should be affirmed on the merits and the appeal dismissed. It also asserted that, in light of Shannon's failure to submit a memorandum on July 31, the appeal should be dismissed for failure to prosecute. On August 15, Shannon submitted to the docket a letter, purportedly in response to the scheduling order issued on July 11, asserting that the CAR decision is invalid because CAR is in violation of its own Plan of Operation. After review of the record in this matter, and the parties' submissions, I conclude that the decision terminating Shannon Insurance, LLC as an ERP appointed to Commerce should be upheld and this appeal dismissed.

## **II. Background**

The records of the proceedings at CAR and statements from the parties document the following history. Shannon and Commerce executed a Commercial Automobile Limited

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<sup>1</sup> CAR observed that, although Shannon claimed in their June 6 statement that they did not have those documents, the records were readily available to them either through requests to CAR, their own e-mail servers, or on the CAR website.

<sup>2</sup> Before setting a briefing schedule, Mr. Shannon was asked if Shannon would be represented by counsel. He indicated that any counsel would be identified by the end of the week.

Servicing Carrier Agreement (“CALSCA”) on April 27, 2011, as amended effective December 31, 2011. By letter dated September 11, 2018 (“the Termination Letter”), Commerce notified Shannon that it was terminating that agreement, effective 30 days after Shannon’s receipt, specifically for noncompliance with CAR Rule 14.B.1., subsections d, e, g, j, x, and y. Commerce attached five sets of documents to that letter as documentary support for its claims of noncompliance with those rules. The Termination Letter also advised Shannon of their right to request a review of Commerce’s decision at CAR.

Shannon submitted a Request for Review to CAR on November 6, 2018, asserting that they did not receive Commerce’s Termination Letter and had only learned of the termination on November 5 through a telephone call from a client. Mr. Shannon contacted CAR and was advised, despite the time lapse between the date of the Commerce letter and the date on which Shannon claimed to have learned of the termination, to submit a Request for Review and that the MRC would decide whether to schedule a hearing. On December 5, 2018, CAR distributed a notice of a December 19, 2018 meeting to the MRC members, together with copies of Shannon’s Request for Review and of the Termination Letter, including the attachments. On December 13, CAR distributed additional materials to the MRC, consisting of a letter from Commerce asserting that the Request for Review should be dismissed as untimely, and documents from Shannon including comments on issues with policies, only one relating to a risk relied on by Commerce as a basis for termination, and copies of e-mails between Shannon and Commerce relating to several other policies.

At its December 19 meeting, the MRC addressed two issues, the timeliness of the Request for Review and the merits of the Termination Letter. On the first issue, after considering statements from Commerce about the delivery of the Termination Letter and from Shannon about receipt of notice of termination, the MRC unanimously voted to accept Shannon’s appeal and to proceed with considering the merits of the termination.<sup>3</sup>

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<sup>3</sup> At the hearing before the GCRP, Commerce again stated its position that Shannon’s original Request for Review was untimely and should have been denied on that basis. However, while Commerce did not waive that position, it did not ask the GCRP to reconsider that aspect of the MRC’s decision, but asserted that the MRC, after full consideration of Shannon’s Request for Review on its merits, properly denied it. In Commerce’s June 27 submission, it again claimed that the Request for Review had not been submitted within 30 calendar days of the delivery date, but noted that it had not appealed the MRC’s decision. No dispute on the timeliness of the Request for Review is therefore before the Commissioner.

Commerce's Termination Letter asserted that Shannon had not complied with six specific subsections of CAR Rule 14.B., the rule that lists the ongoing requirements for and responsibilities of ERPs. Subsections d, e and g, respectively, in pertinent part, require the ERP: 1) to submit, for all applicants, a new business application for insurance, completed in its entirety, and a signed premium finance application/agreement, if applicable, within two business days; 2) provide a reasonable and good faith effort to verify the information provided by the applicant, including rating and licensing data; and 3) to verify that the applicant has not been in default in the payment of any motor vehicle insurance premiums in the past 24 months. Subsection j requires an ERP to forward premium payments it receives to the Servicing Carrier within two days of receipt; Subsections x and y require the ERP to comply with the conditions of the CALSCA and all the provisions of CAR's Rules of Operation and its Manual of Administrative Procedures.

As documentary support for violations of subsections d, e, g and j, Commerce attached documents relating to four new business applications for commercial insurance submitted by Shannon with policy effective dates of July 1, 3 and 24 and August 15, 2018. In three of the four, Commerce did not receive any financing agreement; in one the agreement was received approximately three weeks after the policy effective date. In addition, three of those applications were incomplete, because they omitted information on declinations or non-renewals of the risk's prior policies. On one policy, Shannon had failed to validate driver licensing information; the only listed driver's Massachusetts operator's license and his Commercial Driver License ("CDL") had both been cancelled. On three applications Shannon did not inform Commerce that the applicant had been cancelled earlier in 2018 for non-payment of insurance premium, and either collected payment from the applicant but did not submit it to Commerce within the prescribed period time period or failed to collect a deposit premium or make payment to Commerce.

Shannon did not contest Commerce's specified grounds for terminating the CALSCA. With respect to one risk whose application was considered incomplete because no premium finance agreement was submitted, Mr. Shannon did not deny Commerce's statement, but alleged in general that Commerce did not receive finance agreements because the policies were cancelled or he was unable to get accurate premium quotes. The focus of Shannon's presentation, as set out in the Request for Review, was that the agency had lost business as a

result of Commerce's nonrenewals of commercial business and that the insurer was "systematically and deliberately" destroying that book of business. Shannon asserted that the underwriter who was assigned in December 2017 to review new or renewal applications for the agency's business non-renewed almost all those policies as well as cancelling new business policies. Some of those policies, Shannon noted, had previously been renewed for several years. Mr. Shannon contended that, in connection with renewal policies, Commerce requested documentation, such as fuel tax records and trip logs, that he considered unnecessary, alleging that Commerce did not require those records from other agencies. Mr. Shannon acknowledged that in 2018 he was engaged in back and forth communication with the Commerce underwriter; copies of e-mails submitted by Shannon and Commerce confirm that those communications addressed concerns and sought specific information about risks.

A Commerce vice-president for technical matters and a commercial underwriting supervisor represented the company at the MRC hearing. Commerce noted that the company had sent Shannon a warning letter on June 5, 2018 (the "June 5 Letter") advising them of problems and inconsistencies it had observed with respect to the Agency's compliance with the CAR Rules. Commerce representatives reiterated the violations documented in the attachments to the Termination Letter, responded to Shannon's statements, and explained CAR Rule requirements, in particular, that finance agreements are due within two days of binding an account. Commerce commented that, with respect to fuel tax records, the producer who ultimately wrote the business was able to provide the requested documentation. Addressing Shannon's concerns about documenting information about risks whose policies had previously been renewed without inquiry, Commerce explained that it has implemented more frequent reviews of renewal accounts for two reasons, to determine if the information on record is still accurate and to comply with new CAR standards for writing commercial business in the residual market. Compliance with those standards sometimes increased Commerce's scrutiny of risks and required current information that the Commerce underwriter who reviewed Shannon's book of business requested well in advance of the renewal date. Responding to Shannon's concern about the economic effect of nonrenewals on the agency's book of business, Commerce noted that many policies it had written were cancelled for failure to pay premium, rather than nonrenewed.

After hearing presentations from Shannon and Commerce, MRC members questioned both. Thereafter, in a series of motions, they addressed the merits of each ground for termination listed in the Termination Letter asking, first, whether Commerce had established that Shannon violated the cited rule and, second, whether the violation was a valid basis for termination. All motions passed. On December 20, CAR notified Shannon in writing that the MRC had voted to uphold the termination and that he could appeal its decision to the CAR Governing Committee.

Shannon filed a Request for Review with the GCRP on January 8, 2019; that document, and a letter from Commerce urging that the GCRP uphold the MRC decision were distributed to the GCRP before a March 28, 2019 meeting. The Request for Review again raised the question of delivery of the Termination Letter and complained about the underwriter's decisions, but acknowledged that he had contacted the underwriter to discuss the reasons why policies were not issued. In his presentation to the GCRP, Mr. Shannon did not contest the evidence underlying Commerce's decision to terminate the CALSCA that the MRC reviewed, or the MRC decision, but reiterated the position that the agency was unable to provide finance agreements because policies were cancelled, and his continued disagreement with the underwriter's decisions in connection with reviews of new or renewal applications. Commerce argued that it had provided unambiguous documentation of Shannon's repeated violations of CAR Rule 14, and that Shannon had continued to violate that Rule even after Commerce sent the June 5 Letter. It pointed out that Shannon had offered no defense to the Termination Letter, but deflected attention to other disagreements with Commerce and its alleged intent to harm his business.

The GCRP, after directing questions to Shannon and Commerce, voted in a series of motions on the questions of whether CAR had established that Shannon violated each of the subsections of CAR Rule 14.B.1 set out in the Termination Letter and whether such violation was a valid basis for termination. Each motion carried on a unanimous vote. On March 28, CAR notified Shannon of the GCRP's decision and that it could be appealed to the Commissioner.

### **III. The Appeal to the Commissioner**

Shannon's June 6 statement asserted that until December, 2017, when Commerce assigned a different underwriter to review the agency's business, the agency had experienced no problems with policy renewals or placing new business. The statement also raised the dispute over the delivery of the Termination Letter. With respect to the proceedings at CAR, Shannon

reported that both the MRC and the GCRP had upheld the termination. In response to the request to identify the specific issues on appeal, Shannon submitted data on the differences between 2017 and 2018 in the amounts of the Agency's written commercial motor vehicle premium and its commissions, alleged that its clients who were non-renewed easily found policies from other agents, and contended that Commerce had targeted his agency. Attached to the statement were documents consisting of Shannon Insurance LLC's Forms 1099 from Commerce for calendar years 2017 and 2018 and its production and experience report for 2018. Shannon stated that they had no documents relating to the prior proceedings at CAR. In response to the order setting a briefing schedule that was issued at the July 11 prehearing conference, Shannon filed no memorandum by July 31 and requested no extension to do so.

Commerce's response to Shannon's June 6 statement incorporated by reference documents that it had submitted to the MRC and the GCRP, reviewed the Termination Letter, and reported the MRC votes on each of the grounds for termination set out in that letter. It noted that the GCRP, by unanimous votes, concluded that Commerce had established Shannon's violations of the CAR Rules cited in the Termination Letter and that each of those violations was a valid basis for termination. Commerce argued that the record of the proceedings at CAR showed no evidence of any error or deficiency in that would raise questions about the MRC or GCRP decision, further observing that Shannon had not alleged any such deficiency or irregularity. Commerce contends that the documentation attached to the Termination Letter unambiguously shows repeated violations of CAR Rules 13 and 14 and, furthermore, shows a continuing pattern of non-compliant practices, even after the June 5 Letter about the potential effect of failure to comply with the CAR Rules.

Finally, Commerce argues that Shannon did not contest, refute, or offer any defense to the violations cited in the Termination Letter, but attempted instead to deflect attention from them. It contended that Shannon's allegations about Commerce's intent in reviewing Shannon's business are unsubstantiated and inaccurate as well as irrelevant. Commerce's post-conference memorandum relied on its previous submissions to CAR and its response to Shannon's June 6 statement, asserting as well that the appeal should be dismissed for failure to prosecute the matter. In the alternative, Commerce argued that on this record, the Commissioner should uphold the Termination Letter on the merits.

CAR's response to Shannon's June 6 statement characterized the Agency's Request for Review, viewed in terms of the language in CAR Rule 20, as undertaking to persuade the MRC and the GCRP that Commerce's termination of the CALSCA was unfair, unreasonable or improper. CAR argued that, following a full and fair hearing and opportunity to present their claims, Shannon failed to demonstrate to the MRC or the GCRP that Commerce's termination of the contract was based on practices that violated Rule 20. CAR pointed out that Shannon's November, 2018 Request for Review targeted alleged bias against the Agency and alleged efforts to harm its book of business, but identified no specific violations of any CAR Rules. The Commerce Termination Letter, CAR noted, cited violations of six specific subsections of CAR Rule 14.B.1 as grounds for terminating the Agency. CAR summarized both proceedings before the MRC and the GCRP, the votes that each took on each of the cited Rule violations, and their decisions to uphold the termination. In its August 15, 2019 post-conference submission, CAR noted that, because Shannon had filed no post-conference memorandum, it would rest on its initial June 26 memorandum, incorporating the record of the underlying proceedings and related correspondence attached to it.

#### **IV. Conclusion**

Both CAR and Commerce refer to five standards that the Commissioner has previously identified as relevant to reviewing appeals of CAR decisions, *i.e.*, whether the decision was: 1) based on an error of law; 2) made upon unlawful procedure; 3) unsupported by substantial evidence; 4) unwarranted by facts found [by the Commissioner] on the record; and 5) arbitrary or capricious, an abuse of discretion or otherwise not in accordance with law. Applying those standards to my review of Shannon's appeal, I conclude that CAR's decision is in accord with applicable law, and the procedures for performing its obligations to oversee the residual market for motor vehicle insurance.<sup>4</sup> I further find that the decision was supported by substantial evidence and that there is no basis on which to question or set aside the facts in the record on which CAR relied in reaching its decision. I find no evidence in the record that CAR's decision was arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.

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<sup>4</sup> On August 15, Shannon submitted a letter asserting that the CAR decision is invalid because of CAR's alleged violation of its Plan of Operation. The alleged violation is that the number of insurance producers on the Governing Committee is less than the number authorized under the Plan of Operation. Shannon contends that the letter is submitted pursuant to the order issued at the July 11 conference in this matter. Shannon was ordered to submit its memorandum by July 31; CAR and Commerce were to reply by August 15. Shannon's August 15 correspondence is untimely; further, it offers no legal support for argument that CAR's decision is invalid.



On this record, CAR's decision upholding the termination of the Shannon Insurance Agency, LLC as an Exclusive Representative Producer for Commerce Insurance Company is affirmed. Shannon's appeal is dismissed.

Dated: October 18, 2019

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Jean F. Farrington  
Presiding Officer