



NATALIE A. HUBLEY
PRESIDENT

COMMONWEALTH AUTOMOBILE REINSURERS

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ADDITIONAL INFORMATION

TO MEMBERS OF GOVERNING COMMITTEE REVIEW PANEL

FOR THE MEETING OF:

Tuesday, April 30, 2024, at 10:00 a.m.

GCRP

24.04 Calianos Insurance Agency/Norfolk and Dedham Insurance Company

The Records of the Market Review Committee meeting of April 9, 2024 are attached for the Committee's reference in consideration of this agenda item. In addition, Mr. Jason Calianos has requested that the transcript of meeting also be included. (Docket #GCRP24.04, Exhibits #4 and #5)

Also attached is additional information received from the Calianos Insurance Agency and Norfolk and Dedham Insurance Company relative to the agency's appeal of the April 9, 2024 decision of the Market Review Committee. (Docket #GCRP24.04, Exhibits #6 and #7)

LYNNE ROSENBERG
Director of Operations and Residual Market Services

Attachments

Boston, Massachusetts
April 24, 2024



NATALIE A. HUBLEY
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RECORDS OF MEETING

MARKET REVIEW COMMITTEE – APRIL 9, 2024

Members Present

Ms. Sheila Doherty – Chair	Doherty Insurance Agency, Inc.
Ms. Pamela Bodenstab-Krynicky	P.L. Krynicky Insurance Agency
Ms. Sarah Clemens ⁽¹⁾	MAPFRE U.S.A. Corporation
Ms. Roberta Fitzpatrick	Arbella Insurance Group
Ms. Jean Houghton	Norfolk & Dedham Group
Ms. Mary McConnell	Safety Insurance Company
Mr. Kenneth Willis	Plymouth Rock Assurance Corporation
Mr. Mark Winiker	A-Affordable Insurance Agency, Inc.

Substituted for:

⁽¹⁾Mr. Gary Sjolin

Not in Attendance:

Mr. Thomas Skelly, Jr., Deland Gibson Insurance Associates, Inc.

18.01 Records of Previous Meeting

The Committee voted with five members in favor and two recused, Ms. Sarah Clemens and Ms. Roberta Fitzpatrick, to approve the Records of the Market Review Committee meeting of December 19, 2018. The Records have been distributed and are on file.

24.04 Calianos Insurance Agency/Norfolk and Dedham Mutual Fire Insurance Company

Mr. Jason Calianos of the Calianos Insurance Agency requested a review contesting the practice undertaken by Norfolk & Dedham Mutual Fire Insurance Company (the Company) of demanding payment in full of the remaining outstanding premium balance upon issuance of a third cancellation notice. He asserts that the practice is in violation of Rule 28.C.2. of CAR's Rules of Operation. Ms. Jean Houghton of Norfolk & Dedham Group recused herself from participating in the discussion and vote.

In discussion of his request, Mr. Calianos claimed that in undertaking this practice, the Company had terminated the installment plan, stating that Rule 28.C.4. of CAR's Rules of Operation sets forth the remedy available to Assigned Risk Carriers (ARCs) when a policyholder fails to pay an installment premium by the applicable due date. That is, the Rule allows for the assessment of a late fee or cancellation fee of \$29.

Mr. Calianos cited the experience of one Calianos Insurance Agency insured as evidence of the alleged Rule violation. Specifically, he reviewed the cancellation notices issued to the policyholder, claiming that language contained in the second cancellation notice requiring payment in full if a third cancellation notice was issued is not in compliance with 211 CMR 97.04. Further, Mr. Calianos detailed associated communications with the Company as well as CAR staff findings with respect to 3 complaints filed regarding the matter. Mr. Calianos opined that because rates for MAIP policies are typically higher than policies written in the voluntary market, this practice places an added burden on the assigned risk and is therefore unfair and discriminatory. Finally, Mr. Calianos referred the Committee to CAR Rule 28, and indicated that the Rule did not provide for the cancellation of the payment plan, but rather provided for the assessment of a late payment fee.

Mr. Sean Moone representing the Norfolk & Dedham Mutual Fire Insurance Company explained that the Company's practice of requiring payment in full on the third cancellation notice had long been in place for both policies assigned through the MAIP and policies written voluntarily. He also pointed out that the cancellation notices contain the mandatory language prescribed by 211 CMR 97.04, plus additional language. Mr. Moone asserted that the policyholder had violated the billing plan by failing to adhere to the payment schedule. He confirmed that the company uses the CAR billing plan, and maintained that the billing plan set forth in the CAR Rule is silent as to actions that can be taken in instances where payments by the risk are not timely and therefore the nine equal monthly installments are no longer feasible.

The Committee asked questions of Mr. Moone regarding the Company's use of the MAIP billing plan, how the installment plan functions in cases of late payments, the language contained in the cancellation notices, the Company's use and administration of cancellation notices in the voluntary market, and its filing with the Division of Insurance relative to the billing plan and cancellation notices.

Significant discussion ensued focusing on the language in Rule 28.C. of CAR's Rules of Operation. Some members suggested that the Rule does not address remedies when late payments make equal monthly installments infeasible, resulting in ambiguity with respect to acceptable procedures in this case. Ms. Clemens noted that a strict read of the Rule as asserted by Mr. Calianos could mean that other company practices, that for example bill to equity, may be violative of the same provision. Messrs. Willis and Winiker, however, agreed that the remedy provided in the Rule calls only for the assessment of a late payment fee.

After discussion, the Committee voted with five in favor, two opposed, and one recused, that the Calianos Insurance Agency had not established that by requiring its policyholders issue payment in full of the remaining policy premium balance upon issuance of the third cancellation notice, Norfolk & Dedham Mutual Fire Insurance Company violates Rule 28.C.2. of CAR's Rules of Operation.

The Committee then voted with five in favor, two opposed and one recused, that the Calianos Insurance Agency had not established that Norfolk & Dedham Mutual Fire Insurance Company's practice of requiring that its policyholders issue payment in full of the remaining policy premium balance upon issuance of the third cancellation notice is unfair, unreasonable, or improper.

Ms. Rosenberg then advised that a subsequent review by the Governing Committee Review Panel may be requested pursuant to Rule 40 – Review and Appeal upon the submission of a Request for Review form.

RICHARD DALTON
Residual Market Liaison

Boston, Massachusetts
April 19, 2024

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Market Review Committee**

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Mr. Winiker:

There is a remedy if the customer falls off the payment plan. It costs them additional money which then goes to the carrier. If they cancel all nine of them, it's another couple hundred dollars of income to the carrier, which is made to offset the cost of them having to send out the intent to cancels. These are people who typically are financially challenged. As much as I'm a businessman, I'd say, yes, cancel them all as soon as you can if they're not paying on time. The real reality of it is this is to service those people as best we can. By saying, alright, we know you're a higher risk, we know you can't pay on time all the time, I think it's our duty to take care of them more than saying, well, there's an unclear segment in here and you're going to get cancelled because you can't come up with \$3,000 or \$4,000 to finish off your payment six months earlier or whatever it comes out to. I think it's clear enough where there's a remedy for the person who pays slow on the carrier side. There's nothing in here that says if the customer doesn't pay – or it doesn't give a limit to how many times you can get that \$29 so it could be every single one. Although, if we do the math, there is no time in the policy period in order to collect all nine payments individually. So, there has to be consolidation of the payments where it doesn't add one to the end. They all have to end up at the last payment, the policy is paid for.

It's a question of do we terminate them, let them drive uninsured, or go right back and get assigned back to the same carriers and start all over again? Does it just keep going and going? Where does it end?

Ms. Doherty:

Sarah?

Ms. Clemens:

I was going to say that if we take it for the word of the language, and we say that the language is incredibly clear, any situation where we're charging to get caught up to speed or up to speed plus equity would be in violation of this because it literally says nine equal monthly payments. So, I would think that any carrier, any situation, where you have to charge double, like you said, would not be in line with this. I think that's where – for me – the ambiguity is because that's certainly not the intent of the language is to stronghold carriers as well to if you basically miss the monthly payment, based on this wording, you wouldn't even be able to charge for that. It would be just flat, monthly payments. That's all you'd be able to collect in those situations. That's where I think the language starts getting messy. It doesn't even allow for those if we want to take it for the word that it is stated as.

Ms. Fitzpatrick:

I think what we're hearing is the rules, going forward, we may want to tweak the rules to be more precise. But I don't know, because it is silent, that we have enough to say that this was a violation of anything in the rule because it's silent. It's sort of a hybrid between an installment issue and a cancellation issue, when can you cancel. There's nothing that says you can't advance the payments and to Sarah's point, literally, it doesn't work. I think, going forward, we might want to tweak the rule. The question I think before us is whether there's a violation of the rule as it's written. On the unfair piece, I think that Norfolk and Dedham has established that they do this consistently in the voluntary market and the residual market. So, I don't see any unfair practice there. They said that they're following

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the CAR plan. So, I don't see any unfair practice there. I think the rule is unclear such that I don't know that we can find that there's a violation of the rule as written. I just think, going forward, it needs to be reworked.

Ms. Doherty: Before we take a motion and a vote, if nothing else, what's been brought to the attention of CAR certainly needs to be addressed going forward and clarified. For that, I think there is a debt of gratitude to the individual bringing the complaint. I don't know how we're all going to vote, but I think it needs to be clearer. Can I get a motion?

Ms. Bodenstab-Krynicky: I would make a motion of no on the violation of the rule. After I reviewed numbers and different things myself, even as an agent, I think they were fairly stretching it out and trying to get into the nine and covering that.

Ms. Doherty: Would your motion be that the Calianos Agency has not established that requiring the policyholder to issue payment was in violation of Rule 28.C.2.?

Ms. Bodenstab-Krynicky: Yes. I would like to make that motion.

Ms. Doherty: Anyone want to second that?

Ms. McConnell: Second.

Ms. Doherty: Any discussion on that motion, that the agency has not established that it was it was in violation of...

Mr. Calianos: Can I just say one more thing before you vote?

Ms. Doherty: Very quickly because we're going to vote.

Mr. Calianos: The term "will" establishes an obligation. If the term "can" was there, I'd understand that argument.

Ms. Doherty: Are you ready to vote? All those in favor of the motion that the Calianos Agency has not established that Norfolk and Dedham has violated Rule 28.C.2., all those in favor of that, please raise one hand.

(Please note that Ms. Bodenstab-Krynicky, Ms. Clemens, Ms. Fitzpatrick, Ms. McConnell and Ms. Doherty voted in favor of the motion.)

Ms. Doherty: All those opposed.

(Please note that Mr. Willis and Mr. Winiker opposed the motion)

Ms. Doherty: Motion carries. On the second, please, could I have a motion? Would it be helpful to have somebody have this to read to make the motion?

Ms. Bodenstab-Krynicky: I'd make the motion that the Calianos Agency has not established that Norfolk and Dedham's practice of requiring that its policyholders issue payment in full of the remaining policy premium balance upon issuance

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of a third cancellation notice is unfair, unreasonable or improper.

Ms. Doherty: Do I have a second?

Ms. Fitzpatrick: Second.

Ms. Doherty: All those in favor of the motion, please raise one hand.

(Please note that Ms. Bodestab-Krynicky, Ms. Clemens, Ms. Fitzpatrick, Ms. McConnell and Ms. Doherty voted in favor of the motion.)

Ms. Doherty: Those opposed.

(Please note that Mr. Willis and Mr. Winiker opposed the motion)

Ms. Doherty: Thank you. The motion carries. Could I get a consensus from the committee that we direct maybe the MAIP subcommittee to take a look at this and maybe recommend that they make some changes? I don't know if it's proper that we do that, but we're going to do that.

Ms. Clemens: As an ARC, I would like consistency across. It doesn't benefit us, to be fair, for Norfolk and Dedham to be doing this and not us to be doing this. Just to be clear on that. I would encourage this not only from an agency perspective, a customer perspective, but also from a carrier perspective. I think consistency is key.

Ms. Fitzpatrick: And the realities of the climate now, too. I think it's a good opportunity to review what direction we want to go in.

Ms. Doherty: Does anybody have an objection to doing that?

Ms. Rosenberg: Sheila, I just need to read one item before you adjourn.

Ms. Doherty: Go ahead.

Ms. Rosenberg: Mr. Calianos, CAR will confirm the decision of the Market Review Committee in writing via email. This decision may be appealed to CAR's Governing Committee pursuant to Rule 40 – Review and Appeal of CAR's Rules of Operation upon submission of a Request for Review/Relief form within 30 days of being notified of the Market Review Committee's decision.

Ms. Doherty: Could I have a motion to adjourn?

Ms. Clemens: Motion.

Ms. Doherty: Second?

Mr. Winiker: Second.

Ms. Doherty: All those in favor?

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All Committee Members: Aye.

Ms. Doherty: Opposed? Motion carries. Thank you everybody.

(Meeting ended at 1:43 p.m.)



THE COMMONWEALTH OF MASSACHUSETTS
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ANDREA JOY CAMPBELL
ATTORNEY GENERAL

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April 9, 2024

Jason Calianos
Calianos Insurance Agency
21 Roxbury Street
Boston, MA 02119

Re: CAR Market Review Committee Docket MR24.04

Dear Mr. Calianos,

Thank you for providing us with a copy of your Request for Relief under CAR MAIP Rule 40. We have been reviewing Norfolk and Dedham's alleged practice of demanding an accelerated payment of unearned premium for certain MAIP policyholders. As we understand it, the policyholder at issue in your Rule 40 Request was on a payment plan for his insurance premium. He was late with two payments over the course of the policy, each time paying the missed payment (and a \$29 fee) during the 20-day cure period provided in the cancellation notice. On the third late payment, he was advised, via a cancellation notice, that he was required to pay the full remaining premium within twenty (20) days, despite the fact that these sums were not due under the installment plan.

CAR Rule 28(c)(2) indicates that each assigned risk carrier will use the CAR installment plan for MAIP Business. This plan, and the relevant CAR Rules, do not authorize a carrier to demand accelerated payment of policy premium. Indeed, CAR Rule 28(c)(2) is explicit that a policyholder can pay premium via nine (9) months of installments. If a policyholder misses a payment, the consequence is that the policy may be cancelled after twenty (20) days unless the policyholder delivers the missing payment along with the \$29 fee. The carrier is not authorized to demand anything else.

The CAR Rules provide sufficient protection for the carriers, who already receive a downpayment that protects them financially when an installment plan policyholder is late paying an installment. There is nothing in the regulations or CAR Rules that authorizes a carrier to require the payment of all the unearned premium in the situation noted above.¹ Indeed, it would seem that even if this were a commercial policy, where CAR Rules may allow servicing carriers

¹ CAR Rules allow carriers to require full premium payment up-front where a policyholder already had a policy cancelled in the past two years. As we understand it, in the present case, the policyholder had not previously been cancelled. Receiving a notice of cancellation (and curing the defect) is not the same thing as actually being cancelled.

to use their own filed plans to set installment rules, there would be no basis for the accelerated payments demanded here. The payment would still need to be explicitly authorized by the carrier's plan filed with the Commissioner.

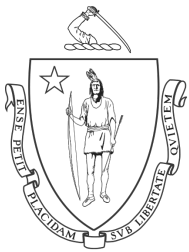
Massachusetts law bars the cancellation of a policyholder who has caught up with his payments within a cure period. *See* G.L. c. 175, sec. 113A (“the cancellation will not be effective if the insured pays the full amount of such deficiency on or prior to the effective date of the cancellation”). *See also* 211 CMR 97(2)(a). An insurer cannot require additional sums and cannot threaten to cancel consumers who fail to pay these unauthorized amounts.

Please keep us apprised of developments in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn Kaplan".

Glenn Kaplan, Division Chief
Insurance & Financial Services Division



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April 23, 2024

Commonwealth Automobile Reinsurers
Governing Committee Review Panel
101 Arch Street, Suite 400
Boston, MA 02110

**Re: Governing Committee Review Panel's Review of CAR Market Review Committee
Docket MR24.04**

Dear Governing Committee Review Panel members,

We understand that the Governing Committee Review Panel will be assessing agent Jason Calianos' Complaint, first heard in Market Review Committee Docket MR24.04. The Market Review Committee appears to have ruled that CAR Rule 28 allows Norfolk & Dedham to accelerate all unearned premiums due under a MAIP consumer's insurance policy. While there is no written decision, the transcript from Mr. Calianos' hearing indicates at least some Committee members believe that a consumer who is late with an installment payment effectively de-enrolls from the CAR installment plan, and then owes the full annual premium immediately.¹

Rule 28 does say "the insured will pay that premium balance over nine equal monthly installments." However, this does not signify that a consumer will be de-enrolled if the consumer is late with a payment. Indeed, such an interpretation would mean that any late payment would result in de-enrollment. But, Norfolk & Dedham's own notices to the consumer in this case belie this conclusion. Norfolk & Dedham responded to the consumer's first late payment, not by de-enrolling him, but by applying the plan's late fee and informing him that he would be cancelled if he did not pay his late installment within 20 days. Norfolk & Dedham did the same thing with the second belated payment in this matter. In both instances, the consumer sent in the late payment, bringing himself current on the debt, and continued on the installment plan. If being late with a payment meant a consumer was no longer on the installment plan, this would not have been possible. Moreover, there is nothing in Rule 28 allowing Norfolk & Dedham to treat the third belated payment any differently than the other two belated payments. In each case, the consumer must pay a late fee of \$29 and is given a deadline by which the consumer must send the payment to the carrier or be cancelled. Rule 28(C)(4); 211 CMR 97(2)(a); G.L. c. 175, sec. 113A.

¹ See Transcript of April 9, 2024 Market Review Committee Hearing at 16-19. This was also the position taken by Norfolk & Dedham during the hearing. Transcript at 9-10.

The CAR installment plan does not authorize a carrier to accelerate the due date for unearned premium, and there would be no reason to do so. The insured must bring himself current after missing an installment deadline, and MAIP policies already require a substantial up-front deposit which covers any payment delay. Moreover, there are explicit standards on how to handle late payments: charge a fee and give a set period of time within which the late installment must be paid. We refer you to our prior letter to Jason Calianos, attached hereto, which deals with this issue in more detail. In sum, Massachusetts law bars the cancellation of a policyholder who has caught up with his payments within a cure period. *See* G.L. c. 175, sec. 113A (“the cancellation will not be effective if the insured pays the full amount of such deficiency on or prior to the effective date of the cancellation”). *See also* 211 CMR 97(2)(a). An insurer cannot require additional sums and cannot threaten to cancel consumers who fail to pay these unauthorized amounts.

Thank you for your review of this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn Kaplan".

Glenn Kaplan, Division Chief
Insurance & Financial Services Division

Encl.

April 23, 2024

Governing Committee
Commonwealth Automobile Reinsurers
101 Arch Street, Suite 400
Boston, MA 02110

RE: April 30, 2024 Governance Committee Meeting
Review of April 9, 2024 Decision of the Market Review Committee

Dear Members:

Thank you for your time and consideration of this matter presented to you pursuant to Jason Calianos Insurance Agency's Rule 40 Request appealing the April 9, 2024 decision of the Market Review Committee that Norfolk & Dedham Mutual Fire Insurance Company's ("N&D") practice of requiring policyholders to make payment in full of the remaining policy premium balance upon issuance of a third cancellation notice for non-payment does not violate Rule 28.C.2 and is not unfair, unreasonable or improper.

N&D respectfully refers the Governance Committee to its prior written submission to the Market Review Committee as well as the transcript of the April 9, 2024 hearing. The Market Review Committee acknowledged the importance of the issues presented and took careful consideration of them in concluding that N&D practice is not in violation of CAR Rules and is not unfair, unreasonable or improper. The Committee appropriately noted that CAR Rules do not specifically address procedures that should be applied when an insured does not adhere to the installment payment plan provided by the carrier as required by Rule 28 C.2

N&D's practice of requiring payment of the full premium on the third cancellation notice has long been in place for policies placed through the MAIP as well as in the voluntary market. Contrary to complainant's assertions, N&D does not discriminate between the MAIP and the voluntary market and its practice is not an attempt to "shed risks" contrary to Mr. Calianos' assertions. Policies placed through the MAIP are assigned on a quota-sharing basis. Further, policies assigned through the MAIP and subsequently canceled for non-payment are reassigned to the same carrier with the requirement to remit full payment for the new policy term in addition to earned premium due from the canceled policy term.

As the Committee acknowledged, once an insured misses a payment, the full premium can no longer be paid in nine equal installments and still be paid in full by renewal – thus the payment plan offered becomes an impossibility. N&D's practice is one method of obtaining full payment by the time of renewal. It is important to note that N&D does not demand anything beyond the installment(s) missed until a third missed payment. As discussed by the Committee, other carriers demand the missed payment along with the next payment to avoid cancelation as early as the first notice and/or missed payment. While

some may debate the merits of either practice, neither is in violation of CAR Rules or Massachusetts law.¹

CAR advised N&D that since CAR Rules do not specifically address cancel notices, insurers are not precluded from adopting the procedure of requiring full payment upon a third notice of cancellation. The Market Review Committee discussed that CAR may wish to amend the rules. N&D recognizes the difficulty and complexity of the issue of making insurance accessible in today's market where inflation and increased costs of repair continue to drive up rates, and the difficulty of CAR's task in implementing rules, approved by the Division of Insurance, which govern the MAIP. N&D will respectfully defer to and comply with any change to the Rules or previously accepted practices.

Thank you for your time and attention on this matter.

Sincerely,



Michele C. Sears, Esq.
General Counsel & Corporate Secretary

¹ Mr. Calianos submitted with his notice of appeal a letter from Glenn Kaplan of the Attorney General's office not previously provided to N&D which argues that requiring payment of anything beyond the installment payment missed and the fee in a notice of cancellation is a violation of M.G.L. c. 175 §113A. However, such a reading of Section 113A also exposes the impossibility of continuing on the payment plan of nine equal installments in compliance with CAR Rule 28.C.2 where the insured fails to make an installment payment when due. We submit that Section 113A addresses the required content of a notice of cancellation, the purpose of which is to make clear to the insured what is owed if not paid prior to the effective date of cancellation, but does not serve to limit what an insurer or CAR Rules may require in the event an insured does not adhere to a payment plan offered.