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RECORDS OF MEETING

GOVERNING COMMITTEE REVIEW PANEL – MARCH 28, 2019

Members Present

Mr. James Hyatt – Chair
Mr. Thomas DePaulo
Ms. Kellie Thibodeau

Arbella Insurance Group
Cabot Risk Strategies, LLC
The Hanover Insurance Company

Substituted for:
N/A

Not in Attendance:
N/A

18.01 Records of Previous Meeting

The Committee unanimously voted to approve the Records of the Governing Committee Review Panel meeting of March 15, 2018. The Records have been distributed and are on file.

19.04 Shannon Insurance Agency, LLC / Commerce Insurance Company

Mr. John Metcalfe provided the Panel with background information relative to the Shannon Insurance Agency's appeal. He stated that the Market Review Committee met on December 19, 2018 to consider whether the termination of the Shannon Insurance Agency should be upheld based upon the grounds stated in Commerce's termination notice. Commerce's termination of the agency was by letter dated September 11, 2018, but the agency had indicated that it never received the termination letter and was not aware of the termination until November 2018. Therefore, Mr. Shannon's Request for Review/Relief was not received by CAR until November 6, 2018. The Market Review Committee accepted the agency's request for review as if it had been timely filed and the Committee's determination was not appealed by Commerce. The Committee then considered the merits of the agency's Request for Review/Relief and found that Commerce's termination of the Shannon Insurance Agency's Exclusive Representative Producer appointments was not unfair, unreasonable or improper. Accordingly, the Market Review Committee voted to uphold the termination action of the Commerce Insurance Company in which the company terminated the agency's commercial automobile and taxi and limousine Exclusive Representative Producer appointments for violations of CAR Rule 14.B.1.d., e., g., j., x., and y., and deny the agency's request for relief.

Mr. Metcalfe stated that on January 8, 2019, the Shannon Insurance Agency submitted a Request for Review/Relief to CAR appealing the decision of the Market Review Committee. He noted that that the Governing Committee Review Panel's review is a *de novo* review in which the Panel is not bound by the Market Review Committee's decision. The Panel should consider whether or not the termination should be upheld based on the grounds stated in the notice of termination. Each alleged violation should be considered individually to determine whether each was a valid basis for termination, and the Panel should ultimately determine, in accordance with CAR Rule 20, whether Commerce's termination of the agency's commercial automobile and taxi and limousine Exclusive Representative Producer appointments was unfair, unreasonable or improper.

Mr. Paul Shannon of the Shannon Insurance Agency, LLC, presented the agency's appeal. He stated that he had been with Commerce since 2011, had always had a good relationship with his assigned underwriters and he also represented other large carriers. However, in December 2017 when a new Commerce underwriter was assigned to his agency, many large risks that had been on his books for many years and renewed by Commerce without issue, were now being scrutinized by this underwriter. Additional reports and records were requested at renewal and if this documentation was not received, the policies would be non-renewed. He discussed several of the specific accounts referenced at the Market Review Committee meeting. In one example, the policy was submitted through Collaborative Edge to Commerce, however, a 5-10 day underwriting hold was placed on it, and a subsequent notice of cancellation issued by the carrier as a result of the determination that the business did not qualify for the commercial market. In another case, it took a substantial amount of time for the premium to be developed which impacted the securing of financing and in other instances the carrier often refused to make the motor carrier filings that the risk required. These risks were then often able to secure insurance through another Servicing Carrier, frequently for less premium, and were sometimes even rewritten by Commerce with another Commerce agent, without the request for documentation as previously requested from the Shannon agency. Mr. Shannon stated that, based upon these apparent underwriting requirement inconsistencies, he felt that his agency had been singled out by Commerce.

Mr. John Kelly, representing MAPFRE/Commerce, reiterated Commerce's position that the ERP's request for review was submitted untimely and the appeal should be rejected on that basis alone. However, without waiving the company's position in this regard, he opined that after full consideration of the Shannon agency's request for review on its merits, the appeal was properly denied by the Market Review Committee. Mr. Kelly presented Commerce's case to the Panel, stating that the company's notice of termination and its attachments provided clear documentation of the agency's repeated violations of Rules 13 and 14 of CAR's Rules of Operation. This documentation formed the basis for the ERP's termination and provided proof that the cited violations were not isolated events but rather a continuous pattern of non-compliant business practices on the part of the ERP. Commerce attempted to remedy these concerns prior to issuing the notice of termination and in June 2018, in an effort to assist the ERP in avoiding the termination of its appointment, Commerce provided a detailed notice to the ERP of the repeated rule violations and requested that the ERP conduct its future business with Commerce in accordance with CAR Rules. However, the ERP failed to alter its business practices and the violations continued despite warnings and offers of assistance. Accordingly, Commerce issued the September 11, 2018 notice of termination.

In conclusion, Mr. Kelly stated that Mr. Shannon provided no defense of the violations cited in Commerce's termination letter. He instead attempted to deflect the agency's noncompliance with the CAR Rules with unsubstantiated, inaccurate and irrelevant allegations relative to Commerce's intent. Mr. Kelly further noted that the actions of Commerce's underwriter were consistent with the obligations of the Limited Servicing Carrier Agreement and the requests of Mr. Shannon to provide additional reports were to validate eligibility, proper classifications and rating of the risk. Over the past year, CAR's committees have focused on creating consistency among Servicing Carriers' handling of risks in the commercial marketplace, therefore, increased scrutiny on risks is to be expected from all Servicing Carriers. Finally, he noted that in the cases mentioned by Mr. Shannon where the risk was subsequently written by Commerce through

another agency, Mr. Kelly indicated that the successor agency had properly provided all the documentation necessary to issue the policy. Accordingly, Mr. Kelly stated that the termination of the Shannon Insurance Agency's Exclusive Representative Producer assignments was not unfair, unreasonable or improper and requested the Panel to uphold the ruling of the Market Review Committee to deny the ERP's petition for relief from the termination of its commercial automobile and taxi and limousine Exclusive Representative Producer appointments to Commerce.

After hearing from both parties, the Panel discussed the presented information and agreed that there exists a clear set of CAR Rules to which every agent in the state of Massachusetts must adhere and the fact that a new underwriter had been assigned to the Shannon agency is irrelevant. The Panel also acknowledged that the written documentation submitted by Commerce provided sufficient evidence that indicated that the agency had failed to adhere to those Rules.

Accordingly, Mr. Benjamin Hincks, CAR counsel, walked the Panel through the proposal for voting on the various grounds contained in Commerce's termination letter. He indicated that the Panel should focus only on the six grounds for termination outlined in Commerce's notice of termination dated September 11, 2018 and whether those items were a valid basis for termination. The Panel should determine whether Commerce's termination of the agency's Limited Servicing Carrier contract should be upheld based on any or all of the specific grounds stated in the termination letter. The Panel should deliberate on each alleged violation that was the basis of the termination and determine if each one individually was a valid basis for termination and whether, pursuant to Rule 20 of CAR's Rules of Operation, whether Commerce's termination on each ground is an unfair, unreasonable or improper practice.

The Panel considered each of the actions from which the Shannon Insurance Agency requested review/relief, as specified in Commerce's termination letter dated September 11, 2018 and voted on these items individually as follows:

- On a unanimous vote, the Panel approved a motion that Commerce has established that by failing to submit for all applicants a new business application for insurance with appropriate certification form(s) completed in their entirety, and a signed premium finance application/agreement, if applicable, within two business days, the Shannon Insurance Agency has violated CAR Rule 14.B.1.d. Additionally, the Panel unanimously approved a motion agreeing that Commerce has established that this violation provides a valid basis for termination of the agency.
- On a unanimous vote, the Panel approved a motion that Commerce has established that by failing to provide a reasonable and good faith effort to verify the information provided by the applicant, including rating and licensing data, the Shannon Agency has violated CAR Rule 14.B.1.e. Additionally, the Panel unanimously approved a motion agreeing that Commerce has established that this violation provides a valid basis for termination of the agency.
- On a unanimous vote, the Panel approved a motion that Commerce has established that by failing to verify that the applicant has not been in default in the payment of any Motor Vehicle Insurance premiums in the past 24 months, the Shannon Agency has violated Rule 14.B.1.g. Additionally, the Panel unanimously approved a motion agreeing that Commerce has established that this violation provides a valid basis for termination of the agency.
- On a unanimous vote, the Panel approved a motion that Commerce has established that by failing to forward all premium payments to a Servicing Carrier within two business days, such period not required to be extended by the Servicing Carrier because notwithstanding any written assurances the premium finance company has previously failed to perform its commitment, the Shannon Agency has violated CAR Rule 14.B.1.j. Additionally, the Panel unanimously approved a motion agreeing that Commerce has established that this violation provides a valid basis for termination of the agency.

- On a unanimous vote, the Panel approved a motion that Commerce has established that by failing to comply with all of the conditions set forth in the contract between the ERP and the Servicing Carrier, the Shannon Agency has violated Rule 14.B.1.x. Additionally, the Panel unanimously approved a motion agreeing that Commerce has established that this violation provides a valid basis for termination of the agency.
- On a unanimous vote, the Panel approved a motion that Commerce has established that by failing to comply with all the provisions of the Rules of Operation and the Manual of Administrative Procedures, the Shannon Agency has violated Rule 14.B.1.y. Additionally, the Panel unanimously approved a motion agreeing that Commerce has established that this violation provides a valid basis for termination of the agency.

Mr. Hincks advised that the Panel having determined that it would uphold the Market Review Committee's decision on all six of the bases for termination, a stay of this termination will remain in place for at least 30 days from the issuance of CAR's notice of the Panel's decision unless, in the best interest of the motoring public, this Panel decides to lift the stay. If the Shannon agency subsequently files an appeal with the Division of Insurance (DOI) and the Panel has not lifted the stay, the stay will remain in place until the DOI rules on the appeal or makes an earlier decision to lift the stay during the course of the DOI's proceedings.

MARIAN ADGATE
Corporate Documentation Specialist

Boston, Massachusetts
April 4, 2019

ATTACHMENT LISTING

Docket #GCRP19.02, Exhibit #1

Attendance Listing

