



# **COMMONWEALTH AUTOMOBILE REINSURERS**

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## **BUSINESS TRANSCRIPT OF MEETING**

### **MARKET REVIEW COMMITTEE**

A meeting of the Market Review Committee was held at the offices of Commonwealth Automobile Reinsurers, 100 Summer Street, Boston, Massachusetts, on

**WEDNESDAY, APRIL 13, 2005, AT 10:00 A.M.**

Committee Members present –

Mr. David H. Cochrane – Chairman  
The Commerce Insurance Company

Mr. Daniel F. Crimmins	Safety Insurance Company
Mr. Timothy J. DelGrande*	Norfolk & Dedham Group
Mr. John B. Doherty	Barry & McHugh Insurance Agency, Inc.
Ms. Sheila M. Doherty	Doherty Insurance Agency, Inc.
Mr. Richard P. Jones	Leslie S. Ray Insurance Agency, Inc.
Mr. Douglas R. Long	Liberty Mutual Group
Mr. David J. McCormick	McCormick & Sons Insurance Agency, Inc.
Ms. Susan K. Scott	The Premier Insurance Company of Mass.
Mr. Joseph A. Vargas	Vargas & Vargas Insurance
Mr. William J. Whitebone	Quincy Mutual Fire Insurance Company

Substituted for:  
Mr. Joel P. Murray\*

Not in Attendance:  
Mr. Stephen P. Rogers, Encompass Insurance  
Mr. Mark R. Silva, Benson, Young & Downs Insurance Agency, Inc.

**PROCEEDINGS**

*(Meeting started at 10:04 a.m.)*

Mr. Cochrane: (Inaudible), but we don't know whether he's necessarily coming, Steve Rogers. Other than that, we do have one substitute today for Joel Murray from Norfolk and Dedham, we have Tim DelGrande. And other than that, we have a full Committee here.

**MR**

**05.01 Transcript of Previous Meeting**

Mr. Cochrane: The first item on the agenda is the transcript of the previous meeting minutes. There was discussion with the Governing Committee in terms of the whole idea of approving them. And, If Joe could make a statement and describe to us why we are approving them, I'd appreciate it.

Mr. Maher: Okay. Dave asked me just to comment on this, and as he indicated, we stated this before the Governing Committee. Due to the volume of meetings that we had and the nature of a lot of the subjects discussed and the fact that a lot of those issues were in litigation and we were getting a lot of requests for transcripts, about a year ago, CAR embarked on an effort to transcribe all of the meetings. And, it was eventually determined that the transcriptions would take the place of minutes of the meeting. However, the pure transcription contains a lot of superfluous sidebar comments, laughter, stuff like that. And, it was determined that what we would put out and is available on the website are what is characterized as a "Business Transcript." Which means it is not an absolute verbatim transcription of the meeting, but redundant statements have been removed, off the record statements are not contained, and if there's like a stuttering or a hesitation, those are cleaned up. So for that reason, since they are not absolutely verbatim, and since they do take the place, if you will, of minutes, it is incumbent upon each committee to approve that transcript which has been made part of the record. And, I know Buddy's been very involved in trying to get the word out to everyone that if there is a need for a verbatim transcript, that request should be made five days prior to the meeting so that we can outsource, if necessary, and have the appropriate assets available to do the job and do it in the most efficient and expeditious manner. Anyone here today who has such a need in the future, you're best advised to contact Karen Angrisano and make that request. Buddy, anything that I missed?

Mr. Iannaco: No, I think if you just look at the end of the transcript you will see the following information you need relative to either obtaining a copy of the CD that we have on that particular meeting, and if you wish to have a verbatim transcript made, there is some instructions to follow, and you can just do that via e-mail. It's pretty basic.

Mr. Cochrane: Thank you very much, Joe and Buddy.

Mr. McCormick: Mr. Chairman, I move that we accept the business transcript as a record of the meeting.

(Unidentified) Second.

Mr. Cochrane: Any discussion? All those for?

Committee Members: Aye.

Mr. Cochrane: Against? Passed unanimously.

**MR**

**05.04 Torres Insurance Agency/The Commerce Insurance Company**

Mr. Cochrane: With that, we go to the first item on the agenda, The Torres Insurance Agency vs. Commerce. Since we're involved, I'll read the leading and then I'll turn it over to our Vice-Chairman, since I'll be recused. But attached is a Request for Review submitted by Mr. Daniel Torres of the Torres Insurance Agency requesting the termination of his ERP appointment by The Commerce be vacated and the appointment be fully reinstated. I'll recuse myself from the discussion in this since I represent Commerce Insurance to Susan Scott, the Vice-Chair to handle this item.

Ms. Scott: Thank you. Is the representative from Torres Insurance Agency here?

Mr. Torres: My attorney is parking the car. He's on his way up. So I'm wondering if I can get a couple of minutes until he steps in.

Ms. Scott: Sure.

Mr. Cochrane: Yeah. You expect him here within a couple of minutes?

Mr. Torres: Yeah, we came together, I just came upstairs and he needed to park.

Ms. Scott: We'll take five.

Mr. Cochrane: Five minute recess.

Mr. Torres: Thank you.

*(The Committee recessed from 10:08 a.m. to 10:14 a.m.)*

Ms. Scott: I think we'll go back in session. Mr. Torres, are you prepared to present your case? Thank you.

Mr. Martin: Good morning.

Ms. Scott: Good morning.

Mr. Martin: Would you prefer on the podium?

Ms. Scott: Whichever you're more comfortable with.

Mr. Martin: I think I'd rather sit.

Ms. Scott: Fine.

Mr. Martin: My name is Bradford Martin. I'm an attorney in Springfield, Massachusetts. I work for the firm of Martin, Downey and Steiger at 1500 Main Street in Springfield. And, I'm going to represent Mr. Torres today and present his case, and then if you have any questions or you need to speak directly to Mr. Torres, he'll be glad to answer any further questions.

Ms. Scott: Great.

Mr. Martin: This is my first time at CAR. It looks as though you have a pretty busy day so I think that we'll go right to the issue that's at hand today. There's been a request for a termination of Mr. Torres' status as an ERP, and basically it stems around two complaints that Commerce Insurance has: Failure to provide payment of the premiums within the two days as required and failure to notify the company or booking policies when the individuals had been cancelled within the last 24 months. Mr. Torres has been in business since about 2002, August of 2002. His office is on Main Street in Springfield in what's known as the North end of Springfield. It is an urban, poor area of the city, heavily Hispanic. And, Mr. Torres began to function as an ERP approximately two years ago, but it's really only been 2002, 2003, and 2004 that he really has gotten off the ground with respect to his agency. I've read the request of Commerce Insurance which lays out in quite a bit of detail the number of violations. And, I think it's fair to say while we would dispute some of those issues, for the most part, many of them are true and accurate. But at this point in time, it's my understanding that all amounts that were due to Commerce have been paid, and particularly in the last 30 days or so, there's been a marked improvement in Mr. Torres' payments to the company and I don't think there's any violations at this time. And, I understand that that's kind of the current situation and not the past. But, part of the concern that we have is that Mr. Torres is functioning in an area that really doesn't have any other companies that will service it. He's providing a real benefit to this area of the community. And, with respect to the notices he got for the cancellation of the policies, the people that had been cancelled within 24 months, we have records that show that when Mr. Torres booked up nine out of the 13 that were claimed were violations, the individuals did not owe any money at the time. And, while they may have been cancelled within 24 months, there was no evidence that they were cancelled for non-payment of the premiums, and so Mr. Torres proceeded to book those. But, it's my understanding that none of those individuals that he did place policies with were later terminated by Commerce for any reason, and they kept the business that he booked. His present business is doing very well and he had total sales last month of over \$300,000, \$41,000 in commissions. And, part of the problem in the past, and I can say now,

I'm a fairly recent participant in this issue with respect to Mr. Torres, but I have been working with him on other issues. And, one of the other things that affected him personally and had a spillover affect on his business was issues involving the DOR and child support, and an ex-wife and a child that he has living in Iowa. And, as of Friday, where we spent a considerable time in the probate court, all of those issues are now resolved to the point that for the next year there can be no further action with respect to any of those issues. There's no more liens on any of his property, there's no levies on any of his accounts. And, one of the issues that he had had in the past was having money that was in bank accounts in his name were subject perhaps to levies by the DOR. And, so that's all gone now. And, in further attempt to kind of make his company work in a more efficient and compliant way, is we've formed a Corporation called Torres Insurance Agency, Inc. That name has been approved by the Division of Insurance and its Articles of Organization have been filed with the Secretary of the Commonwealth. And, within the next day or so, we expect that he will open up new accounts in the name of Torres Insurance Agency, Inc., and that there will be some segregated accounts that provide for only the deposit of the premiums into those accounts, and he will not co-mingle those funds with any of his operating accounts, he'll have a separate operating account. It's my understanding that he's going to implement electronic transfers of all those premiums to Commerce. So, hopefully the progress that he's made in the last month or so will continue going forward even a more significant way. And, based on those facts, we would request that the termination not occur and that he be allowed to continue to proceed with his business.

Ms. Scott: Does the Committee have any questions or issues you'd like to discuss before we hear from the representative from Commerce?

Mr. Whitebone: Just a couple of questions. How large is your book of business?

Mr. Torres: Presently, I believe there's 1,275 vehicles, and premium volume is about 1.8.

Mr. Whitebone: How many employees do you have in the office?

Mr. Torres: Including myself, four.

Mr. Whitebone: Thank you.

Mr. Vargas: Do you currently have access to the Registry of Motor vehicles to check for, I know earned premiums was an issue in the past?

Mr. Torres: Yes, through Collaborative Edge. As the attorney mentioned, nine of the 13 showed us, the day we wrote the policy, it showed zero owed. So if anything popped up, it could have popped up days after while the policy was being processed.

Mr. Vargas: So with Collaborative Edge, you're keying the applications in (inaudible)?

Mr. Torres: No. I get Registry information through Collaborative Edge.

Mr. Vargas: But the applications have to be manual?

Mr. Torres: So far we've been doing applications manually.

Ms. Scott: Yes.

Mr. Doherty: Are you keying your payments through Collaborative Edge?

Mr. Torres: In March, there's a reference in the letter that there was four payments in March of \$1,500 that weren't submitted. I had asked one of my employees to do agency pre-authorized check through Collaborative Edge. Somehow, she didn't do a pre-authorized agency check. What she ended up doing was making an electronic paid-at-agency notice, which, that's not how I operate right now. Basically, I fax my paid-at-agencies every night. So those four payments never made it to that sheet, and so those are the only four payments that in March that weren't submitted within the time frame. Outside of that there's almost 187 payments in March that were submitted within the correct time frame. I've also since instituted a practice at the agency that all my work now goes in through certified mail the next morning. So I stay in the office at night going through all the work and reviewing all the work, and the following morning go to the post office and get my little receipts and submit my work. Does that answer your question?

Mr. Doherty: Yes.

Mr. Torres: Thank you.

Ms. Scott: Mr. Long?

Mr. Long: It's been a while since I've had anything to do with Collaborative Edge. You can make payments through Collaborative Edge or you can create transmittal...?

Mr. Torres: You can create pre-authorized, yes, you can actually do a pre-authorized client check electronically, you can do a pre-authorized agent check electronically or you can just let Commerce know that there was a payment taken at the agency.

Mr. Long: And, then they EFT out of your agency?

Mr. Torres: No, technically you're supposed to send that money in. If you do a paid-at-agency transaction, basically you're just reporting that the payment came in; you're supposed to mail that payment in. So that's what happened in March. I asked for a certain thing to be done, and another function got done instead of the authorized check and the payment actually going in on those.

Mr. Long: So there isn't a standard way that your agency submits?

Mr. Torres: Yeah, there is a standard way. Every night we submit a fax of paid-at-agencies and then I draft a check that night for all the payments that came in, and that's how I submit it. In those cases there was probably a pending cancellation and I wanted the money there immediately, so I instructed my staff to do a pre-authorized agency check, and unfortunately, that process didn't complete itself the way it should have.

Mr. Long: Thank you.

Ms. Scott: Anyone else? Representatives from Commerce, please? I wonder if we could make some room down at the end of the table (inaudible).

Ms. McCarthy: Good morning. I'm Louise McCarthy, counsel to the Commerce Insurance Company, and I have with me here today Karen Lussier, our Vice President of Premium Accounting. Under the terms of the agreement between Commerce and Torres, and according to the CAR rules, Mr. Torres is required to remit premiums to Commerce within two business days of receipt of those premiums. And, he's also required to submit to Commerce all applications with the required down payment. The evidence before you today demonstrates that Torres has failed to comply with those obligations, and our primary concern relates to the failure to remit the premiums. By way of background, in late December 2004, Commerce became aware of accounting irregularities at the agency, and those were with respect to the remittance of the premiums by Torres. Torres informed a Commerce marketing representative that he had discovered these irregularities and that he had had to let three employees at the agency be released. In early January 2005, one of our customer service reps reviewed the documents that we had on file and noted that Torres has accepted numerous payments at his office that had not been remitted to Commerce. When we contacted Mr. Torres in early January 2005, he requested that we retain direct-bill commissions to set off those amounts that had been accepted but not remitted to Commerce. And, we agreed to do so in an effort to accommodate him and in an effort to try and resolve the matter for a very limited period between December 16, 2004 and December 23, 2004. During the month of January, the instances of the failure to remit premiums continued and during that month alone, Torres accepted more than \$22,000 in payments at his office that weren't remitted to Commerce within two working days. On January 25, 2005, we issued a demand for payments of those amounts, and we formally notified Mr. Torres that we would take further action if he continued to violate the CAR rules and the terms of his Representative Producer Agreement. By that time, it had become apparent to us that he was demonstrating a pattern of failing to remit the premiums, and despite our notification to him that all payments had to be remitted to us on a timely basis, he continued to accept those payments on a daily basis without forwarding them to Commerce. In February 2005, Torres accepted more than \$16,000 in payments that were not remitted to Commerce. And, in addition to that formal letter of notification that I just mentioned to you, as part of our ordinary business practices when an instance of a failure to

remit on time comes to our attention, we issue a separate reminder notice to the ERP for each such instance. So, during the months of January and February 2005 alone, we issued more than 200 separate notices of late payment to Mr. Torres. From the time that we first became aware of this matter, we feel that we have afforded Torres numerous opportunities to rectify the situation. We've maintained a regular dialogue with him and we have, in our view, demonstrated a strong willingness to work with him to address the situation. However, we have never received what we would believe to be a credible explanation for the transgressions, and in our view, Torres has failed to implement any corrective measures or controls to ensure his compliance with the CAR rules. We received several reasons for the non-compliance ranging from some of the things you heard today. We were told that there was no checking account, that there were some situations going on with the department of revenue, and that there were individuals, or at least an individual who had laid claim to some of the monies in the agency's account. And, now we're told that Mr. Torres has implemented procedures to assure that all the payments are remitted to us in a timely basis. But, as you see in your materials before you, since the termination date of March 7, 2005, Torres failed to remit four payments totaling \$1,400. And, we've now identified since the termination date, two instances in April where Mr. Torres has collected monies at his agency and failed to remit them to Commerce, one in the amount of \$197 and one in the amount of \$252. So in Commerce's view, we have continuing evidence that Torres refuses to follow the CAR rules. In fact, he doesn't appear to dispute here today that he has done so, and seems to admit that at least in some instances, he's failed to collect the appropriate down payments. Our evidence, therefore, demonstrates a continuing failure to meet his obligations under his contract and to meet the CAR rules. In his Request for Review, Mr. Torres complains that we have failed to maintain effective communication with him. But, we have sent out our marketing reps to his agency on numerous occasions, and in fact, we sent out an underwriter as well, and Mr. Torres has never seemed to have any questions about his obligations, or has never asked for training or information about the requirements or the rules. And, even if he had, it's certainly his obligation to become familiar with those rules. It's Commerce's view that, based on Torres' continued failure to remit the premiums in accordance with the rules and his disregard for his obligations under the CAR rules, that the termination should be upheld and that his request be denied. And, we'd be glad to take any questions.

Ms. Scott: Yes.

Mr. DelGrande: I think there were two comments that one, the attorney for Torres indicated that all amounts owed were paid in full. Is that the case?

Ms. McCarthy: We, as I mentioned before, have now found some instances where he has not submitted the premiums. We have instituted a set-off procedure where we set off the amounts that are not remitted against his commissions. So, at the present his commissions have been sufficient to outweigh the amounts that he has not sent in to us. But, certainly should



that continue, and if his commissions were not sufficient to outweigh those monies, we'd be right back here at CAR looking for money.

Mr. DelGrande: Just one other question, it may be redundant, but the other statement was in the last 30 days there's been no violations. Would you agree with that?

Ms. McCarthy: No, we would not agree with that. And, as I said, there were two instances since April 1<sup>st</sup>. We've been monitoring this very closely, and we did find those recent instances even since these materials had been presented to you.

Mr. DelGrande: Thank you.

Ms. Scott: Mr. Whitebone?

Mr. Whitebone: I had the same question.

Ms. Scott: Mr. Long?

Mr. Long: This is a question about process here. Do you folks know when a payment has been taken by the agency and it hasn't been remitted to the company?

Ms. McCarthy: Yes.

Mr. Long: I won't ask how that works because I'm sure that's proprietary. But then after 48 hours or two working days you guys then send notice to the agency?

Ms. McCarthy: Yes, not immediately after the two working days, I believe we wait seven days and once the payment hasn't come to us after seven days, we send out, each time, a separate notice saying, you haven't sent in that money.

Mr. Long: And, how many of those notices did you send to the agency?

Ms. McCarthy: Hundreds.

Ms. Lussier: Over 200 in January and February alone.

Mr. Long: So, it doesn't (inaudible).

Ms. Scott: Yes.

Ms. Doherty: A lot of this started to, obviously, come to your attention in December of 04?

Ms. McCarthy: Correct.

Ms. Doherty: Up until that point, had things been consistent or, was it just a case of (inaudible)?

Ms. Lussier: Up until that point, there were occasional violations, but nothing that would cause us to want to take any additional action there. We certainly work with an agent if there's an occasional mistake, an occasional failure to remit, but in December, it became apparent that there were issues that needed to be addressed.

Ms. Scott: Any other questions? Yes, Mr. Vargas?

Mr. Vargas: The most recent payments that you had said that were late, how late were they?

Ms. McCarthy: Well, the items that I'm talking about we have not yet received. The two recent ones in April and then in your materials in March, there were four that haven't been remitted at all.

Mr. Vargas: And they should've been due by when?

Ms. McCarthy: Well they're due within two working days of receipt. So, the ones in April, was it April 1<sup>st</sup>, in April?

Ms. Lussier: April 1<sup>st</sup>, both of them.

Ms. McCarthy: April 1<sup>st</sup>, so they should have been in on the 3<sup>rd</sup>.

Mr. DelGrande: Would you like to respond to those two situations?

Mr. Torres: Definitely. The March payments were, as I stated before, the four payments totaling \$1,400 or \$1,500, there was an error that was made at the agency in terms of processing those payments. Those payments were offset from my \$4,100, the commission statement for this month, so they have that \$1,400. The April 1<sup>st</sup> payments, the two payments that they're alleging to, I don't know right now what they are referring to. But I do have my payment log for April 1<sup>st</sup> with me, right here, and in this log there is April 1<sup>st</sup>, there is no payment for 192 and there is no payment for 252.

Ms. Lussier: May I respond to Mr. Torres? These two payments Mr. Torres were actually entered at your agency and the name that was recorded is someone named Tanya. They weren't faxed in, which is your normal process, these were actually entered. There was one for Marasol Valasquez for 197 and the second payment was for Lisa or Liza Esavedo for 252.

Ms. McCarthy: And, under our normal procedures, you would have received the notices that we were discussing earlier.

Mr. Torres: Number eight in my paid to the agency for April 1<sup>st</sup> has Marasol Valasquez in a pay to the agency for \$300, and Lisa Esavedo is number four and her payment was for \$100 that day.

Ms. Lussier: The \$300 we have recorded that you reported you accepted that on April 4<sup>th</sup> versus April 1<sup>st</sup>. We have a payment on April 1<sup>st</sup> of 197 and an additional payment on April 4<sup>th</sup> for 300.

Mr. Torres: Pay to the order, April 4<sup>th</sup>. I do not have either of those two individuals on my April 4<sup>th</sup> statement. That same staff person was the one that made the errors in March and I have asked her not to use that system any longer unless I'm involved. And, this is the first time I'm aware of this. Have I gotten notice about these two payments?

Ms. Lussier: You would have received the individual notices as we send each time a payment isn't received. If we don't receive it within seven days of the date you report that you received them, we mail you those individual notices.

Mr. Torres: So notices for the 4<sup>th</sup> I would get this week?

Ms. Lussier: These were from the 1<sup>st</sup>, they should have been mailed to you on the 8<sup>th</sup>.

Mr. Torres: So, there's definitely a difference here. I took the payment on the 1<sup>st</sup> for 300 for this Marasol Valasquez and you're stating that it was 190 or 252.

Ms. Lussier: No, 197.58 was entered on April 1<sup>st</sup> at your agency as a payment.

Mr. Torres: Through electronic?

Ms. Lussier: Yes. Well, it wasn't entered as a pre-authorized check, it was entered as a pay to the agency, which, as you know, means we expect the payments.

Mr. Torres: I would have to go back to the office and research further. There's a couple, there's one more, probably two more issues that I wanted to address here. The attorney for Commerce represented that Commerce has made numerous visits to my agency, and it's very true. During 2002 and 2003, there's probably a total of eight visits from the marketing rep. In 2004, early 2004, that former marketing rep came out early in the spring to tell me she was no longer going to be with Commerce. And, for the remainder of 2004 and August of 2004, I had one visit from my marketing rep and that was, I believe in August, when I moved to Main Street. Since then there's been no visits, and since December, I've been trying to call my marketing rep, I put in about six phone calls to her office and have yet, to this day, received any response. As a matter of fact, when I first reported this issue, I didn't report it to my marketing rep, I reported it to her supervisor. So, in terms of communications, in terms of addressing issues, in terms of coming out and visiting the agency. From an agency that goes in 2002, when I didn't even meet my CAR requirements for the first year, I got a ton of visits. 2003, I finally met my first year requirements of 100 cars and I still got a good number of visits. 2004, when I finally had some breathing room, finally can say, I'm going to make it here, the visits diminish, communications diminishes. Yes, the underwriter came out once in 2003. Since then, I've had very little communication with my underwriter. So, in terms of two way

communications and this whole process, the only person I've actually spoken to is actually Ms. Karen Lussier, is the only one that has responded to my phone calls, the only one who has responded to my letters during this whole process. And, a lot of these issues have been personal issues and have happened, and I think I've taken the steps to resolve and put these personal issues behind me, they were issues that were definitely keeping me from moving forward. There's always been a Torres Insurance Agency bank account, I was not the main signer on the account. All that is changing with DOR no longer putting a lean on anything that belongs to me. It definitely gives me the freedom to move forward and to really get things established the way they need to be. And, I can reassure folks here that these issues would not happen in the future, once I have total control of everything that's happening.

Mr. DelGrande: I thought I recalled that in one of your correspondences that you indicated your marketing representative had left Commerce.

Mr. Torres: Yes.

Mr. DelGrande: At some point in time and apparently that's why you had not seen anyone?

Mr. Torres: Well in 2004, she left Commerce in the spring. I didn't get a marketing rep assigned to me till much later in 2004, somewhere in the fall 2004. When I moved the office from my house to Main Street in the north end of Springfield, this new rep came out to see me. She's been out to see me once, only once. And, that's the only communication that I've had with marketing during that whole period.

Mr. DelGrande: Thank you.

Ms. Scott: Mr. Whitebone?

Mr. Whitebone: You mentioned, or someone mentioned earlier in the session here that you have had some internal problems with your staff and you had let some or all of your staff go?

Mr. Torres: Yes.

Mr. Whitebone: How long has this current staff been with you?

Mr. Torres: Since, I've had to rehire and hire staff. December 15<sup>th</sup>, I released everybody that was working for me. So, all my work since December 15<sup>th</sup> has been in, basically moving into a new office, hiring new people, training these folks, getting them on board and also producing about \$800,000 in new business during this period. And, trying to resolve all these personal issues, plus these business issues. So, there's been a little bit on my plate.

Mr. Whitebone: I think the Commerce representatives indicated earlier, too, that there was a willingness to train. Have you availed yourself of that training with your staff?

Mr. Torres: I have been speaking with underwriting and the underwriter had said that if we got past this hump that she would be willing to come out with the auto service rep and be willing to do some training at the agency.

Mr. Whitebone: Thanks.

Ms. Scott: Mr. Vargas?

Mr. Vargas: Have you put any type of agency management system in place?

Mr. Torres: In December, I bought Special Agent and installed Special Agent.

Mr. Vargas: So at the end of the day, just looking at the way I do it, at the end of the day, do you run the reports? So, when somebody leaves your office and makes a payment, the problem is not the checks, the problem is the cash, is that what's not going out?

Mr. Torres: The problem was that during that time, the account, I wasn't the signer on the account.

Mr. Vargas: I heard that. But if a check is payable to Commerce, a check goes out to Commerce?

Mr. Torres: Right.

Mr. Vargas: But if the check is payable to you or there's cash that comes in, it goes into your account?

Mr. Torres: Right.

Mr. Vargas: And the DOR, you're saying, was tapping into this account.

Mr. Torres: Well they did have a levy on, no, no, they never touched it. There was the fear that they would, they did have a levy on me.

Mr. Vargas: But the money was in the account.

Mr. Torres: Right.

Mr. Vargas: So now the question is, at the end of the day, who came in to make the payment and the payment should have gone out. So, is there an agency management system in place now that's going to correct that?

Mr. Torres: There is. Now, I haven't gotten to the point of Special Agent, they come out and they teach you the basic system. I'm not at the point yet where they've come out to train me on billing and all that fun stuff through that whole system.

- Mr. Vargas: I know we can't be everywhere all the time. And, I know that with the numbers that you're talking about, there are other people obviously involved doing the work and at the end of the day, pulling that report. I think would, because the problem here it seems to be just recently is that the two people that they mentioned on their list, is they're not on your list. So, money came in, money didn't go out. So, I would think that you'd get that up and running right away so you can correct this problem. But you do have the (inaudible).
- Mr. Torres: Yes. I just spent a lot of money in December getting this system and I still haven't learned how to use it totally; I don't know how to use the billing features yet. They're supposed to come out and do that, the training.
- Mr. Vargas: How soon is that happening?
- Mr. Torres: I have to request it, and with everything that's been going on, it wasn't on the top of my list.
- Mr. Vargas: Thank you.
- Ms. Scott: Ms. McCarthy?
- Ms. McCarthy: Ms. Scott, may I address the Committee? Just a couple of points. Mr. Torres is responsible for any of the actions of his employees. He's responsible for his bank account. And, he's telling us now that in December he received some sort of, purchased some sort of software that could have resolved this, but it certainly hasn't resolved it. And, we have heard over the last few months all of these reasons why he can't comply with these obligations and he's trying to put some sort of blame on Commerce for this. In our view, these are very simple requirements. If you get the money in cash or in a check in your agency, you send it to Commerce in two days. And, in every instance in which that didn't happen, we reminded him of that obligation and gave him a chance to rectify it. I can't imagine any amount of training that would make that requirement any clearer to anyone. And, I haven't even heard Mr. Torres say today that he has tried to ask for training from Commerce or even from this new agency management software that he purchased. So, there's simply no effort on his part to rectify this in an immediate way, nor has there been over the past several months and we've seen a demonstrated pattern of failure to comply with these very simple obligations. So, we would reiterate that immediate termination is warranted and appropriate.
- Ms. Scott: Mr. McCormick?
- Mr. McCormick: This is a question for Commerce or Ms. Lussier. It looks like, or it appears, that the most grievous of the problems occurred in a fairly compressed period of time. You indicated that there hadn't been much of a dispute before December of 2004. And, between December and March

there's been, really, a dramatic difference in the number of transgressions, and some may be tied into trying to integrate an agency management system and do some training with new staff people. In your opinion, do you recognize a change in the performance of the agency? Do you think there has been an improvement there? And viewing that, would that make you more optimistic about what your relationship would be with this agent, moving forward?

Ms. Lussier:

From our perspective, there has indeed been a dramatic improvement, after we notified Mr. Torres via telephone that we intended to terminate him and after we issued the termination notice. Up until that point, there was, at any point in time, \$15,000, upwards of \$20,000 of premiums that he had accepted from Commerce customers that weren't remitted to us until we demanded it and until we told him we were going to terminate him. So while there has indeed been improvement, I can't say with any certainty that I would expect that improvement to continue. We feel that he needs to have processes in place to make sure that every check that comes into the agency is turned around to Commerce. There were also other options available to him. He could have not taken payments. He could have directed customers to mail their payments directly into us. So, while we do feel that there has been improvement made, we felt like we gave him plenty of opportunities and notice to make those improvements well in advance of the time that he did.

Mr. McCormick:

I respect your opinion, but clearly you got his attention. And, based on what we've heard today, he has made dramatic improvement in where he's headed and it would sound, in my opinion, is that at least it sounds as though that improvement is likely to continue, and the problem may actually disappear. I mean, if he's allowed to pursue some training and get his arms around this agency management system, based on what he's doing from a production standpoint from what we've heard today, it sounds that it's more likely that he would become a more effective than less effective agent for the company.

Ms. McCarthy:

May I address that one point, and I'm not trying to be argumentative. But I think he did say he's had this system since December, and most of these problems, the pattern, really commenced in December. And, he also admitted that he hasn't made any effort to get any training on that software. So, the simple fact that he purchased it before all of these problems really came to that compressed time frame, leaves me to the conclusion that there has been no effort or desire on Mr. Torres' part to resolve the situation.

Mr. McCormick:

Once again, I respect your opinion and I think maybe all of us have different standards for how quickly we expect people to embrace and understand an automation system. And, I think that, given the distractions, that it appears that Mr. Torres faced by hiring and training an entire new staff of people, moving his office and dealing with the difficulties that he was encountering with Commerce, learning an automation system and integrating it into your business so that you become fully automated might not have been on the top of his priority list.

And, I'm not sure that it's fair to say that within 60 days he should have accomplished that, that you'd necessarily see the fruits of that expense and those (inaudible). I think it's reasonable to expect that that might have taken a bit longer than a couple months.

Ms. Scott: What's the Committee's pleasure? Yes, Mr. Vargas?

Mr. Vargas: I'm new at this but could we make a motion, maybe to review this and see if he can get the training with the new automated system? Maybe review this and, I don't know what length of time, but review it to see if this automated system is going to take care of the problem. There were a lot of issues with moving the agency and new employees and things of that nature, and maybe this new agency system will help. And I think that, I mean maybe he didn't realize it then, but I believe that he realizes it now that you've got to get the training and you have to put that in place in order for this to work.

Ms. Scott: Do you want to transform that into a motion?

Mr. Vargas: A motion...If I could ask another question?

Mr. Maher: If I could help. If the Committee's of accord with where you're going, the motion would be to uphold the appeal and require that Commerce and the producer report to CAR in a time certain six months to ascertain that the issues have been resolved and that there is no further accounting problem.

Ms. Scott: And, I believe that suggestion of the length of time was simply a suggestion, not as an example. It can be any length of time.

Mr. Maher: Yes.

Mr. Vargas: If I could ask one more question. Any idea of how much time it's going to take for you to get these people to show you how to use this agency management?

Mr. Torres: I just have to set the training up.

Mr. Vargas: So, the next 30 days, 60 days?

Mr. Torres: Yeah. That's reasonable.

Ms. McCarthy: May I address the Committee, Ms. Scott. I believe that in the past these may have been handled as a probationary matter, so that if it were the Committee's pleasure to not have the termination go forward immediately that they would put the ERP on probation for some period of time, so that it was clear that the Committee had recognized that the behavior shouldn't be allowed to continue.

Mr. Maher: Well, the rules don't contain any reference to probation, okay. So, in effect, what you do is you vacate the termination for a period of time.



You can come in and make a report, and if there is a difficulty then obviously, a motion to terminate would be appropriate and there would be a record of these proceedings and that would be part of the consideration of the Committee. But, the rules do not technically provide, they don't contain any reference to probation.

Ms. Scott: Sheila Doherty?

Ms. Doherty: I have a question of Commerce, please. Is it a common practice that monies that come in that have not been received that the agents would have that option to have it taken out of their commission? I mean obviously, I know that's your goal, but it amazes me that you would be sitting on that money waiting and then just say we'll take that out of our commission. That seems to be eminently more of an issue to me than the software. The money comes in, the money should go out. I mean, that's all basic to all of us. So that to hold that money and say 30 days later, well I haven't paid you these hundred policies so take it out of my commissions, that's an issue to me. That's a huge issue to me because that's going to get caught down the road. Is that common?

Ms. Lussier: We do, any time that a payment is accepted at an agency, we want the customer not to be impacted, so we do set off that amount from commissions, but we don't allow it as a regular practice because, typically, the dollar amount of payments that an agent accepts typically exceeds their commissions in a given month. So, no, it's not an allowable practice. We did allow it to Mr. Torres during a brief period, about two weeks, to try and help him get his agency back on track in December.

Ms. Scott: I have a process issue. We have a motion on the table. It needs a second for a further discussion.

Mr. McCormick: Second.

Ms. Scott: Okay. Any discussion?

Mr. DelGrande: Clarification. The motion on the table, is it six months? I really don't know if I heard a motion quite frankly.

Ms. Doherty: I think it's really a motion, was it?

Mr. Vargas: Well, I was trying to make a motion in determining on how many months we should give Mr. Torres to get his agency management system in place. Can I ask another question, to this motion?

Ms. Scott: Yes, and then with the motion, and then we'll have to hear whether the second supports (inaudible).

Mr. Vargas: I'll make the motion for six months.

Mr. McCormick: Second.

Ms. Scott: Discussion?

Mr. Long: I actually would speak against the motion. I don't run an agency; I've never had that responsibility. But, I think if I was getting 200 notices in a 30 or 60 day period that I would be running around the agency with my hair on fire to try to get this transmittal sheet, that sort of stuff, in place and make sure that I didn't end up here. And, if we are going to go with the motion, I think a period of six months is way too long. I mean this is Commerce's money.

Ms. Scott: A substitute motion is certainly possible if that's what you're implying to do make it a shorter period of time. That requires the second to support your substitute, but that's an open avenue.

Mr. Long: I'd be more comfortable with 60 days. It seems that Commerce is monitoring this very closely. If this is going to clear up, they're going to know about it pretty quick.

Mr. McCormick: I would second that, I think that's a reasonable period of time. I think Mr. Torres, I'd like to think that he understands the gravity of the situation. 60 days is enough time to make sure that those payments are made.

Ms. Scott: Okay. We have a motion and a second. Now, discussion?

Mr. Vargas: If we were to go with that six months or three months or four months, if Commerce were to recognize that the payments were not being received, within that motion could Commerce bring it up before the six months or the three months or...?

Mr. Maher: At the time of any infraction of the rules, Commerce would be free to issue the appropriate notice of termination. If the rule provided for an immediate termination, they could do it immediately, if it was a 30 day notice, they could do so immediately. And that, quite frankly, is the purpose of not calling it probation, but rather giving the ability to immediately take action.

Mr. Vargas: 60 days might be a little short because of trying to get the agency management company in and setting all that up. But, so do I...

Mr. Long: Substitute the substitute motion?

Mr. Vargas: Yeah, substitute motion, maybe four months.

Ms. Scott: Well, you're certainly free to make a substitute motion. It requires that the person who made the second to support that substitute motion, otherwise it goes back to the former motion which is two months.

Mr. Vargas: So, I make a substitute motion for four months.

Mr. McCormick: I'm going to decline to second that. I think Ms. McCarthy made a great point. And, an agency management system, while it's a distraction,

certainly isn't the cause for payments to be received and remitted on a timely basis. So, that's just part of doing business. So, I will fail to be the second for the substitute.

Mr. Vargas: Do I take my motion off the table then?

Ms. Scott: That's right.

Mr. Vargas: Okay.

Ms. Scott: And, so we're back to a motion and a second that has the termination suspended for a period of two months with report back. Did I get that right? Any further discussion?

Mr. Long: Just clarification. Is it that the termination is...

Mr. Maher: No, the appeal has been uphold, the termination is vacated. There will be a report to CAR within two months and, as part of CAR's normal course of business, CAR of course monitors these things, and if there is any evidence that comes to CAR's attention, it would be reported to the Committee also.

Ms. Doherty: Can I ask a procedural question? And, forgive me because I don't know this and I should. If we vote for this 60 day extension, then that vacates the termination? Is that what I just heard you say?

Mr. Maher: We're vacating the termination. There's going to be a report coming to the Committee in 60 days as to the compliance of this producer with the Rules of Operation.

Ms. Doherty: So, if in the 60 day period there is, again, non-compliance, does Commerce then need to start another termination process?

Mr. Maher: Yes.

Ms. Doherty: Thank you.

Ms. Scott: Any further discussion? All those in favor?

Many Committee Members: Aye.

Ms. Scott: Opposed?

Some Committee Members: Aye.

Ms. Scott: I think we need a count. At least I do. All those in favor of the vacation for a two-month period?

Many Committee: Members: Aye.

Ms. Scott: Okay, we have five, seven in favor. Those opposed? Two. And, the motion carries.

Mr. Maher: If anybody is dissatisfied with the actions of this Committee, they have a right to further review by filing a request for same with CAR within 30 days of the receipt of the decision of the Committee, which will be in writing and forthcoming in the next couple of business days.

Mr. Cochrane: Thank you. Is there any other business to come before the Committee? Now, I'll take a motion to adjourn?

Mr. Long: I move to adjourn.

Mr. Doherty: Second.

*(Meeting ended at 11:07 a.m.)*

**RALPH A. IANNACO**  
President

NOTE: This Business Transcript has not been approved. It will be considered for approval at the next meeting of the Market Review Committee.

Attachment

Boston, Massachusetts  
May 16, 2005

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**ATTACHMENT LISTING**

Docket #MR05.02, Exhibit #2      Sign-in Sheet of Meeting Attendees

## Sign-in Sheet

**Individual's Name**

## Representing / Animation

COR  
CAR

AGENT

Deputy

Norfolk & Dedham

Lubben

Agent C

Agent

*[Signature]*

Cherry M. Nelson

5 of 5

Prisoner

## Sign-in Sheet

CAR DOCKET #MR05.02  
EXHIBIT #2  
PAGE 2 OF 2

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