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OFFICE OF
INSURANCE REGULATION
Dictated by: MPF

OFFICE OF INSURANCE REGULATION

KEVIN M. MCCARTY
COMMISSIONER

IN THE MATTER OF:

FLORIDA FARM BUREAU CASUALTY
INSURANCE COMPANY AND FLORIDA FARM
BUREAU GENERAL INSURANCE COMPANY

CASE NO: 94976-08

FINAL ORDER

THIS CAUSE came on before the undersigned, for consideration and final agency action. On May 10, 2007, the Office of Insurance Regulation (hereinafter referred to as the "Office" or "Respondent") received a rate filing numbered FCP 07-08928 from Florida Farm Bureau Casualty Insurance Company and Florida Farm Bureau General Insurance Company (hereinafter collectively referred to as "FFB" or "Petitioner") for its homeowners' line of business seeking a rate increase with an effective date of October 1, 2007. By letter dated July 17, 2007, the Office issued a Notice of Intent to Disapprove (hereinafter referred to as the "NOI") rate filing FCP 07-08928.

On July 20, 2007, FFB filed a Petition for Administrative Hearing Involving Disputed Issues of Fact (hereinafter referred to as "Petition") and requested an administrative hearing. FFB amended the Petition on August 13, 2007 (hereinafter referred to as "Amended Petition"). On August 29, 2007, the Office referred the Amended Petition to the Division of Administrative Hearings (hereinafter referred to as "DOAH"). The case was originally assigned to Chief Administrative Law Judge Robert S. Cohen, but was transferred to Administrative Law Judge Susan B. Harrell.

After consideration of the evidence, arguments, and testimony presented at the hearing, the Administrative Law Judge (hereinafter referred to as "ALJ") issued her Recommended Order on April 1, 2008. The Recommended Order is attached hereto as Exhibit "A". The ALJ determined and recommended that a Final Order be entered disapproving FFB's rate filing.

FFB filed exceptions to the ALJ's Recommended Order on April 16, 2008. The Office filed exceptions to the ALJ's Recommended Order on April 16, 2008. Based on a complete review of the record, the Recommended Order and all exceptions and responses thereto, and the relevant statutes, rules, and case law, the Office finds as follows:

FINDINGS OF FACT

1. Section 120.57(1)(k), Florida Statutes, states that,

"[t]he final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record."

2. There are two scrivener's errors in Finding of Fact 7. To correct those errors, the first sentence of Finding of Fact 7 shall now read, "FFB generally begins planning in the summer for its purchase of reinsurance to be effective for the next January 1 by gathering FFB's exposure data (i.e., how many houses FFB insured, where they are located and how much they cost, etc.), which data FFB runs through its own and Applied Insurance Research computer models to estimate FFB's anticipated hurricane losses and PML's.

3. FFB takes exception to Findings of Fact 47 and 48. The Office's application of the provisions of Chapter 2007-1 (hereinafter referred to as "HB 1A") is not an unadopted rule, as is asserted by FFB. HB 1A is a law of general applicability. Furthermore, FFB was aware of

the requirements of HB 1A, as evidenced by the testimony of Melissa Shelley, FFB's corporate representative and actuary, during the hearing:

5 Q Okay. So you don't know whether the presumed
6 factor filing, as it's been called, to reflect the
7 savings in the expansion of the CAT Fund was simply by
8 order of the Office or whether the statute required that
9 as well?

10 A Can—can you show me where it is in
11 House Bill 1A and I'll tell you where it is. There's
12 an order—

13 Q I'm just asking.

14 A There's a report and there's House Bill 1A.

15 Q Okay.

16 A All of them had the intention of making a rate
17 filing. I don't know which called which what—

18 Q Okay.

19 A —without reading the documents in front of
20 me. But yes, I mean, House Bill 1A said that insurers
21 should reflect the savings consistent with the coverage
22 in some manner.

23 Q And the true-up filing was that the company
24 should reflect its actual reinsurance costs?

25 A Yes.

Tr.p. 415. There is competent substantial evidence to support these Findings of Fact. Accordingly, these exceptions are rejected.

4. FFB takes exception to the Preliminary Statement in the Recommended Order, and argues that the statement does not mention that Melissa Shelley testified at the hearing in this matter. As reflected in Volume 3, page 272, of the hearing transcript, Ms. Shelley did provide testimony during the final hearing in this matter. However, the omission of Ms. Shelley's name in the Preliminary Statement of the Recommended Order is not material to the ALJ's findings in the Recommended Order. This exception is accepted, to the extent that the Recommended Order's Preliminary Statement fails to refer to Melissa Shelley as a witness during the final hearing.

5. FFB takes exception to Findings of Fact 2, 3, 5, and 24. The transcript of the public hearing held on August 16, 2006 and a copy of Filing FCP 06-07515 were admitted as Respondent's Exhibits 30 and 5, respectively, during the DOAH hearing. Those exhibits are competent substantial evidence to support these Findings of Fact. Accordingly, these exceptions are rejected.

6. FFB takes exception to Findings of Fact 11, 30, 31, 47, and 48. The exception to Findings of Fact 47 and 48 are rejected for the reasons stated in Paragraph 3 of this Final Order. There is also competent substantial evidence to support Findings of Fact 11, 30, and 31. The testimony of Dr. Mark Crawshaw, Petitioner's expert witness, regarding the cost of greater reinsurance premiums being passed on to policyholders is provided in Finding of Fact 30. Robert Lee, actuary for the Office, provided testimony regarding the increase in maximum coverage of the CAT Fund and the savings that were intended for consumers. Tr. p. 564-568. Accordingly, there is competent substantial evidence to support these Findings of Fact, and these exceptions are rejected.

7. FFB takes exception to Finding of Fact 11. As stated in Paragraph 6, there is competent substantial evidence to support this Finding of Fact. Accordingly, this exception is rejected.

8. FFB takes exception to Findings of Fact 32 and 33. Petitioner's Exhibit 35, the Notice of Intent to Disapprove, was admitted into evidence during the DOAH hearing. Robert Lee provided extensive testimony during the DOAH hearing about that exhibit by stating in part that, "...the company hasn't provided sufficient support, that this is—that the result of all of the reinsurance costs in this filing reflecting coverage, amount of premium and recoveries, which are all close to the calculation, is not—did not provide excessive reinsurance cost for services

rendered relative to the statute.” Tr.p. 616. Accordingly, there is competent substantial evidence to support these Findings of Fact, and these exceptions are rejected.

9. FFB takes exception to Finding of Fact 34. Petitioner asserts that the testimony of Ms. Shelley and Dr. Crawshaw during the DOAH hearing supports the rejection of Finding of Fact 34. However, Robert Lee provided testimony during the hearing regarding the tax exempt status of the CAT Fund which is competent substantial evidence to support this Finding of Fact. In Stinson v. Winn, 928 So.2d 554, 555 (Fla. 1st DCA 2006), the court stated, “[i]f, as in this case, the issue is primarily one of the weight or credibility of the witnesses, it does not matter that there might be competent substantial evidence to support a contrary view of the evidence.” The ALJ considered the relevant testimony presented during the hearing and made the correct determination in this Finding of Fact. Accordingly, this exception is rejected.

10. FFB takes exception to Finding of Fact 46. Robert Lee provided testimony during the DOAH hearing that is competent substantial evidence to support this Finding of Fact. This testimony can be found on pages 625-628 of the hearing Transcript. Accordingly, this exception is rejected.

CONCLUSIONS OF LAW

11. FFB takes exception to Conclusions of Law 57, 58, and 60 of the Recommended Order. Section 3 of HB 1A clearly states that:

“[e]very residential property insurer must make a rate filing with the Office of Insurance Regulation, pursuant to the ‘file and use’ provisions of s. 627.062(2)(a)1., Florida Statutes, which reflects the savings or reduction in loss exposure to the insurer due to the provisions of section 2 of this act. An insurer may not obtain a rate increase due to the election of coverage options from the Florida Hurricane Catastrophe Fund pursuant to s. 215.555(4), (16), or (17), Florida Statutes.”

HB 1A requires that any savings that resulted from the expansion of the Florida Hurricane Catastrophe Fund (hereinafter referred to as the “CAT Fund”) and reduced premiums of the CAT Fund be passed along to policyholders, which FFB failed to do. The ALJ correctly concluded in the Recommended Order that the Legislature intended that the changes to the CAT Fund should result in savings in reinsurance costs to the insurers which, in turn, would be passed along to the policyholders. The ALJ also correctly concluded that whatever savings are realized from the expansion of the CAT Fund should be passed to the policyholders in the form of rate reductions. Additionally, the ALJ appropriately decided that the cost of premiums for the CAT Fund should reflect the tax-exempt status of the CAT Fund, because the large investment income credit resulting from the federal income tax exemption increases the recovery amount significantly. Accordingly, these exceptions are rejected.

12. FFB takes exception to Conclusion of Law 59 of the Recommended Order. Section 627.0623(1), Florida Statutes, provides in pertinent part:

“The rates for all classes of insurance to which the provisions of this part are applicable shall not be excessive, inadequate or unfairly discriminatory....3(b)13(e) After consideration of the rate factors provided in paragraphs (b), (c), and (d), a rate may be found by the office to be excessive, inadequate, or unfairly discriminatory based upon the following standards: (1) Rates shall be deemed excessive if they are likely to produce a profit from Florida business that is unreasonably high in relation to the risk involved in the class of business or if expenses are unreasonably high in relation to services rendered.....”

FFB asserts that its reinsurance costs were not excessive because the cost of reinsurance premiums reflected the average market price and the amount of expected recoveries were reasonable. However, FFB’s reinsurance costs were actually significantly higher than the average price of reinsurance in the market. Moreover, FFB did not factor in the tax-exempt status of the CAT Fund, so the recoveries were inaccurate and estimated too low. The ALJ properly

determined that FFB failed to prove that its reinsurance costs and projected recoveries do not result in excessive reinsurance costs in relation to the services rendered, and therefore FFB's exception is rejected.

13. The Office takes exception to Conclusion of Law 62 of the Recommended Order, in which the ALJ determined that FFB provided access to the information requested by the Office because Applied Insurance Research (hereinafter referred to as "AIR") made the information available to the Office at AIR's Tallahassee office. Under Section 627.068, Florida Statutes, "access" requires more than just having the opportunity to review documents at the modeling entity's business address. Access is granted so that the Office can be confident in the bases of the model and the accuracy of its application by the insurer. That the information is to be furnished to the Office is supported by the language in Section 627.0628(3)(e)1., Florida Statutes, which subparagraph creates a public record exemption by granting confidential status to documents "provided pursuant to this section, by a private company, to the...office...". This language would not be necessary if the entity creating the model could keep the records confidential by requiring the Office to view documents at its office. In such a situation, there would be no public records created. Accordingly, this exception is accepted, and Conclusion of Law 62 is modified to state that the actions taken by FFB did not meet the requirement of access as contemplated by Section 627.0628(3)(c), Florida Statutes.

14. The Office takes exception to Conclusion of Law 63 of the Recommended Order, which states that there was no evidence presented that the Consumer Advocate ever requested the information from FFB for this particular rate filing. A plain reading of Section 627.0628, Florida Statutes, does not require the Consumer Advocate to request access. Rather, the statute provides that the assumptions and factors must have been approved by the Commission and are

admissible and relevant in a rate filing under Section 627.062, Florida Statutes, only if the Consumer Advocate has access. Accordingly, this exception is accepted, and Conclusion of Law 63 is modified to state that FFB did not meet the requirements of Section 627.0628, Florida Statutes, because it did not provide access to the Consumer Advocate.

15. FFB takes exception to Conclusion of Law 66 of the Recommended Order, regarding the allocation of reinsurance cost by territory. Section 627.062, Florida Statutes, provides in pertinent part:

“A rate shall be deemed unfairly discriminatory as to a risk or group of risks if the application of premium discounts, credits, or surcharges among such risks does not bear a reasonable relationship to the expected loss and experience among the various risks.”

FFB alleges that basing the methodology on the largest 200 storms is reasonable and not unfairly discriminatory. However, the use of the data for only the largest 200 storms as opposed to the entire 10,000 storm set is an improper allocation of reinsurance cost to territory. FFB’s method of estimating reinsurance cost does not bear a reasonable relationship to the expected loss and experience among the various risks and would force the coastal communities to subsidize the costs for the inland counties. The ALJ therefore properly decided that it is unfair discrimination, and FFB’s exception is rejected.

16. FFB takes exception to Conclusions of Law 67 and 68 of the Recommended Order. FFB argues that the Office’s interpretation of HB 1A is an unadopted rule. These exceptions are rejected for the reasons stated in Paragraph 11 of this Recommended Order.

17. FFB made other exceptions to the Recommended Order, alleging that the ALJ failed to mention testimony that its rates were reasonable, that the ALJ failed to believe it had complied with the legislative intent of HB 1A, and that the ALJ failed to take into account that it

did not include all of its 2007 reinsurance expense in the True Up Filing. However, the ALJ addressed each of these issues throughout the Recommended Order, and properly found FFB's arguments insufficient. It is within the discretion of the ALJ to weigh the evidence presented, judge the credibility of the witnesses, and render her Recommended Order based on the evidence she found most credible.

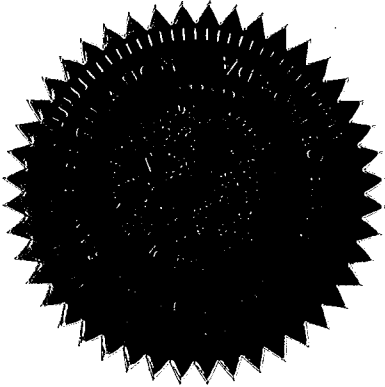
The ALJ's findings were reasonable, supported by competent substantial evidence, and were clearly within the essential requirements of law. FFB failed to reflect the savings in the form of reduction in premiums to the policyholders resulting from the expansion of the CAT Fund and the reduction in CAT Fund premiums. FFB failed to meet its burden of persuasion by a preponderance of the evidence that the proposed rates were not excessive, inadequate, or unfairly discriminatory. FFB failed to comply with the legislative intent to pass along the savings to policyholders. Duplicate coverage offered by the CAT Fund may not be factored in to determine the rate change according to Chapter 2007-1. FFB failed to prove the Office relied upon an interpretation of Chapter 2007-1 that would prohibit an insurer from having more reinsurance in 2007 than it did in 2006. Accordingly, FFB's other exceptions are rejected.

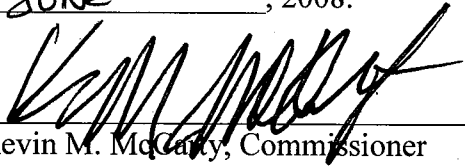
IT IS THEREFORE ORDERED:

1. The Findings of Fact of the ALJ, except as modified herein, are adopted in full as the Office's Findings of Fact.
2. The Conclusions of Law of the ALJ, except as modified herein, are adopted in full as the Office's Conclusions of Law.

ACCORDINGLY, FFB's rate filing FCP 07-08928 is hereby DISAPPROVED.

DONE and ORDERED this 30th day of JUNE, 2008.





Kevin M. McCarty, Commissioner
Office of Insurance Regulation

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Order is entitled to seek review of this Order pursuant to Section 120.68, Florida Statutes, and Rule 9.110, Florida Rules of Appellate Procedure. Review proceedings must be instituted by filing a Notice of Appeal with the General Counsel, acting as Agency Clerk, 200 East Gaines Street, 612 Larson Building, Tallahassee, Florida, 32399-0333 and a copy of the same and filing fee, with the appropriate District Court of Appeal within thirty (30) days of rendition of this Order.

COPIES FURNISHED TO:

Susan B. Harrell
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

Paul R. Monsees, Esquire
Qualified Representative
Foley & Lardner, LLP
Washington Harbour
3000 K Street Northwest, Suite 500
Washington, DC 20007-5143

Thomas J. Maida, Esquire
Nate Wesley Strickland, Esquire
Foley & Lardner, LLP
106 East College Avenue, Suite 900
Tallahassee, Florida 32301

Steven H. Parton, General Counsel
Office of Insurance Regulation
200 East Gaines Street
Tallahassee, Florida 32399-0305

S. Marc Herskovitz, Esquire
Office of Insurance Regulation
200 East Gaines Street
Tallahassee, Florida 32399-0333