6-5-03

OFFICE OF INSURANCE REGULATION

KEVIN M. MCCARTY
DIRECTOR

AP

WRC-CWS

IN THE MATTER OF:

STATE FARM FLORIDA
INSURANCE COMPANY
_____/

OIR CASE NO.: 61873-02-CO
DOAH CASE NO.: 02-3107

FINAL ORDER

THIS CAUSE came on for consideration and final agency action. **STATE FARM FLORIDA INSURANCE COMPANY** (hereinafter "**STATE FARM**") is a Florida domestic insurance company authorized to write homeowners coverage in the State of Florida. **STATE FARM**, like other homeowners insurance companies, has traditionally offered coverage that is comprehensive in nature, including a policy provision that covered mold which resulted from a covered peril. In 2001, in response to court decisions in other states, **STATE FARM** and most of the homeowners insurance companies writing in Florida, began to make filings seeking new exclusions to coverage that would eliminate the coverage of mold even as a result of a covered loss. The issue of new mold exclusions has since been debated on a national basis by the various state insurance regulators and by the insurance industry.

On June 28, 2002, a letter was issued by the **OFFICE OF INSURANCE REGULATION** (hereinafter "**OFFICE**"), formerly known as the Department of Insurance, to **STATE FARM** withdrawing approval of three insurance endorsement forms which excluded mold coverage from homeowners policies even if the mold was a direct result of a covered peril. **STATE FARM** timely filed a request for a proceeding pursuant to Sections 120.569 and 120.57(1),

Florida Statutes. Pursuant to notice, the matter was heard before William R. Cave, Administrative Law Judge, Division of Administrative Hearings, from January 13-17 and February 17, 2003.

After consideration of the record and argument presented at hearing, the Administrative Law Judge (ALJ) issued his Recommended Order on June 5, 2003 (attached as Exhibit A). The ALJ recommended that the **OFFICE** enter a final order approving **STATE FARM'S** three insurance endorsement forms.

On June 20, 2003, an Order was issued granting the **OFFICE** additional time to file exceptions to the Recommended Order to no later than June 27, 2003. On June 27, 2003, the **OFFICE** timely filed Exceptions to the Recommended Order. On July 16, 2003, **STATE FARM** submitted a Response to Exceptions to Recommended Order.

INTRODUCTION

The controversy before the **OFFICE** concerns the filing by **STATE FARM** of three endorsements seeking to exclude coverage for mold damage that results from a covered peril. The **OFFICE** disapproved the endorsements on the basis of Sections 627.411(1)(b), 626.9641(1)(b), and 627.412(2), Florida Statutes. The ALJ made numerous Findings of Fact addressing each basis for the **OFFICE'S** determination that the endorsements were in violation of the Florida Insurance Code. Based on a complete review of the record, the ALJ's Recommended Order, and the Exceptions and Responses thereto, the **OFFICE** enters this Final Order making the determination that the endorsements, as originally filed, do not comply with the Florida Insurance Code.

FINDINGS OF FACT

I. The ALJ's Findings of Fact concerning the "standard or uniform" provisions of mold coverage as the result of covered perils are inconsistent with the conclusions of law as explained below.

The ALJ made 33 numbered Findings of Fact in his Recommended Order. The specific facts as discussed herein demonstrate that the coverage of mold as the result of a covered peril was "a standard or uniform provision *used* or required to be used", as referenced in Section 627.412(2), Florida Statutes. This is contrary to the legal conclusions drawn by the ALJ that there was insufficient evidence to prove mold coverage as the result of a covered peril was a standard or uniform provision. In analyzing the ALJ's Findings of Fact, the **OFFICE** considered the following operative paragraphs:

Specifically, the ALJ found as follows:

> 6. *All* of State Farm's homeowners' policies currently *provide some limited coverage relating to mold.* Although the policies exclude mold as a covered peril, they provide some limited coverage for mold-related losses resulting from covered perils, such as a covered water loss that causes mold-related damage.
>
> 7. *Historically*, there have been exclusions in property insurance for ordinance of law, earth movement, flood, war, the neglect of the insured, and nuclear hazard. *Mold that resulted from a covered peril has historically not been excluded.*
>
> 18. ...While the endorsements totally exclude coverage for fungus (mold), and deny payment for *mold damage historically provided to insureds*, the endorsements are not ambiguous, notwithstanding the testimony offered by the Department to the contrary, which lacks credibility.
>
> 19. The endorsements do not add coverage. Instead, the endorsements *eliminate coverage for mold that currently exists.*
>
> 26. In the fall of 2001, the Department began receiving a large influx of filings seeking to exclude or severely limit coverage for mold. Including State Farm's filing, the Department received between 400 and 450 filings representing between 200 and 250 insurers primarily between October 1, 2001, through the end of 2002.
>
> 32. The endorsements seek to limit or exclude coverage for mold *that has existed for decades.* There is scant Florida experience to support the need for limitations or exclusions on mold coverage.... (emphasis added)

The ALJ's findings of fact support the conclusion that the provision of mold coverage as the result of a covered peril is "a standard or uniform provision" used in insurance contracts,

despite the erroneous legal conclusions contained in Findings of Fact #24 and #25. These findings as to the sufficiency of evidence are by their terms a "legal conclusion". *See Sapp v. Florida State Board of Nursing*, 384 So.2d 254 (Fla. 2nd DCA 1980). Furthermore, this Conclusion of Law is rejected as unsupported by the record, as there is a lack of any competent and substantial evidence to support the conclusions in Findings of Fact #24 and #25. Indeed, **STATE FARM'S** own expert, Richard Corbett, acknowledged as follows:

> Q. So is it fair to say, then, that as a historical matter, I guess it's a historical matter, that mold has been covered or mold is covered if it results from a covered peril?
>
> A. Yes, I don't think there is any argument about that. (T.R. 443)

Findings of Fact # 24 and #25, as such, do not constitute findings of fact which are based on competent and substantial evidence. They appear to be contrary to the other specified findings of fact which acknowledge that: 1) "All" of **STATE FARM'S** homeowners' policies currently provide mold coverage; 2) Historically, for decades this coverage has been provided, not excluded; and 3) Between 200-250 insurers have filed endorsements in approximately 400-450 filings in a relatively short period of time seeking to exclude this coverage. The Findings of Fact in #24 and #25 are contrary and inconsistent with other "specific" findings of fact and further constitute opinions on what is in reality a legal conclusion of what is a standard or uniform provision.

Accordingly, the uncontroverted facts in this matter, as found by the ALJ, indicate that the "provision of mold coverage as the result of a covered peril" is a standard or uniform provision as used in an insurance contract, and as such, may not be subject to a provision by endorsement or otherwise which is inconsistent or contradictory thereto.

The ALJ's Finding of Fact # 32, in the second sentence, reads as follows:

> ...Even so, the Department cannot disapprove endorsement forms without authority to do so. There is no statutory authority mandating mold coverage to the extent of policy limits or otherwise in order for policyholders to have comprehensive coverage.

This is not a finding of fact, but a conclusion of law, which is contrary to the plain meaning of the applicable statutes. This is discussed further in the Conclusions of Law. Specifically, Section 627.412(2), Florida Statutes, when read in connection with Section 626.9641, Florida Statutes, provides a clear statutory basis to disapprove the requested endorsements.

STATE FARM has acknowledged on the record in this proceeding that Section 626.9641, Florida Statutes, which gives policyholders the "right to obtain comprehensive coverage", applies to their business practices. The initial filing sought to exclude mold damage absolutely, under all circumstances, and therefore impair the ability of the insured to obtain comprehensive coverage, especially coverage that has been available for decades and has been historically provided as a part of an "all perils" policy.

During the course of these proceedings, **STATE FARM** irrevocably committed itself to provide policyholders with the ability to obtain mold coverage through optional buybacks as a condition of approving the mold exclusions that are the subject of this proceeding. *See* State Farm's Exhibit 355. This is important, due to the ALJ's conclusion that Section 626.9641, Florida Statutes, did not provide sufficient authority to require an insurer to make available comprehensive coverage. This issue is properly discussed under the Conclusions of Law.

Of utmost importance are the rights of policyholders in this proceeding. The evidence and Findings of Fact by the ALJ clearly demonstrate that the approval of an endorsement which "totally excludes" mold would be inconsistent and contrary to the standard or uniform provision which provided coverage for mold resulting from covered perils. However, **STATE FARM** has now committed to offer the coverage in the form of a buyback choice up to policy limits. The

commitment to provide policyholders with the ability to obtain coverage for mold as the result of a covered peril through a buyback choice not only meets the comprehensive coverage requirement, but also complies with Section 627.412(2), Florida Statutes, by "providing a substitute provision not less favorable in any particular to the insured or beneficiary than the provisions otherwise required" and historically provided.

II. The ALJ's Finding of Fact of non-rule policy is not supported by the plain meaning of the terms "standard or uniform", as used in Section 627.412(2), Florida Statutes.

The ALJ's Finding of Fact alleging the use of non-rule policy is not supported by the record, since the **OFFICE** was applying the plain meaning of the words "standard or uniform" directly from the statute.

The ALJ in Finding of Fact #31 concluded that the **OFFICE** had a "policy" imposing a moratorium on the exclusion or limitation of mold coverage. Although there were three cited grounds; i.e., Sections 627.411(1)(b), 627.412(2), and 626.9641(1)(b), Florida Statutes, the ALJ focused on the requirement that a policyholder was entitled to obtain a comprehensive policy, and that the statute did not specifically require mold coverage. Direct application of the provisions of Section 627.412(2), Florida Statutes, is a clear legal basis to disapprove the endorsements.

The Florida Farm Bureau endorsement cited by the ALJ was a single case, and not the result of a change in the previous policy of the **OFFICE**. The central fact of this case, which is uncontroverted, is that **STATE FARM** has attempted to eliminate, through endorsement, a standard or uniform provision which has historically, over decades, provided mold coverage which arises from covered perils. No "policy" was implemented or changed. The **OFFICE** correctly applied Section 627.412(2), Florida Statutes, in conjunction with the Section 626.9641,

Florida Statutes, directive to exercise administrative discretion to implement a policyholder's right to comprehensive coverage.

Assuming *arguendo* the **OFFICE** applied a policy, it is evident from the record that there was no requirement that the policy be adopted by rule. It is clear that the attempt, on a massive scale by over 200 insurers, to exclude mold coverage was a matter of first impression. This unprecedented action to eliminate valuable coverage on an absolute basis did not allow the **OFFICE** the opportunity to engage in rulemaking, and nothing in the ALJ's Recommended Order is construed to require same. Indeed, it was not feasible or practical to engage in rulemaking, and no petitions were filed pursuant to Section 120.56(4), Florida Statutes.

CONCLUSIONS OF LAW

Section 120.57(1)(l), Florida Statutes, provides that the agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified.

The referenced Conclusions of Law herein are rejected as not supported by the plain meaning of the relevant statutes, and are likewise not supported by the ALJ's analysis of Sections 627.412(2) and 626.9641, Florida Statutes. The ALJ has failed to give due deference to the agency's interpretation of the statute it is charged with enforcing. Further, courts will not depart from the contemporaneous construction of a statute by a state agency charged with its

enforcement unless the construction is clearly erroneous. *Verizion of Florida, Inc. v. Jacobs* 810 So.2d 906 (Fla. 2002); *Colonnade Medical Center, Inc. v. State of Florida Agency for Health Care Administration*, 847 So.2d 540 (Fla. 4th DCA 2003); *Hobbs v. Dept. of Transportation*, 831 So.2d 745 (Fla. 5th DCA 2002); *Sanfile, R.N., v. Dept of Health*, 749 So.2d 525 (Fla. 5th DCA 1999). Based on the uncontroverted fact that the attempt to entirely eliminate mold coverage was inconsistent and less favorable to policyholders than the standard provision used by insurers for decades before the filings at issue, Section 627.412(2), Florida Statutes, particularly when applied in conjunction with Section 626.9641, Florida Statutes, requires the **OFFICE** to disapprove filing.

The following Conclusions of Law found by the ALJ are clearly erroneous and are hereby rejected and recharacterized and reformulated to more reasonably reflect the interpretation of statutes which the **OFFICE** is charged with enforcing. The specifically rejected Conclusions of Law are #40, 42, 43, 47, 48, and 49.

Conclusions of Law #40, 42, and 43 are conclusions by the ALJ that Sections 626.9641(1)(b), 627.411(1)(b), and 627.412(2), Florida Statutes, do not provide specific grounds or authority to disapprove the subject endorsements. The correct analysis of these statutes begins with the plain and ordinary meaning of the applicable statutes that read as follows:

> **627.412 Standard provisions, in general.—**
> (1) Insurance contracts shall contain such standard or uniform provisions as are required by the applicable provisions of this code pertaining to contracts of particular kinds of insurance. The department may waive the required use of a particular provision in a particular insurance policy form if:
> (a) It finds such provision unnecessary for the protection of the insured and inconsistent with the purposes of the policy; and
> (b) The policy is otherwise approved by it.
> (2) *No policy shall contain* any provision inconsistent with or contradictory to any standard or uniform provision *used* or required to be used, but the department may approve any substitute provision which is, in its opinion, not less favorable in any particular to the insured or beneficiary than the provisions otherwise required. (Emphasis added)

626.9641 Policyholders, bill of rights.—

(1) The principles expressed in the following statements *shall serve as standards to be followed by the department in exercising its powers and duties*, in exercising *administrative discretion*, in dispensing administrative interpretations of the law, and in promulgating rules:

...

(b) Policyholders shall have the right to obtain comprehensive coverage. (Emphasis added)

The clear and plain meaning and direct application of these statutes when read in *pari materia* lead to the ultimate legal conclusion that the **OFFICE** shall not approve any provision (i.e. endorsement) which is inconsistent or contradictory to any "standard or uniform provision" used or required to be used. The clear facts of this case demonstrate that coverage of mold that arises from a covered peril has historically been a standard or uniform provision in homeowners' policies for decades. Approval of the endorsement would eliminate this standard or uniform provision and is in direct violation of Section 627.412(2), Florida Statutes.

Furthermore, to allow the elimination of a coverage which has been historically recognized and understood by the consuming public, without the ability to obtain such coverage, is a violation of the "standards" set by the Legislature in Section 626.9641(1)(b) Florida Statutes. Therefore, in conjunction with the direct application of Section 627.412(2), Florida Statutes, and the **OFFICE'S** application of this standard, the **OFFICE** has correctly and reasonably applied the law, contrary to the ALJ's conclusion.

Black's Law Dictionary defines the terms "standard" and "uniform" as follows:

Standard. Stability, general recognition, and conformity to established practice....

Uniform. Conforming to one rule, mode, *pattern*, or unvarying standard; not different at different times or places; applicable to all places or divisions of a country. Equable; applying alike to all within a class; *sameness*.... (Emphasis added)

It is uncontroverted that the mold coverage was longstanding and consistent throughout the industry. Further, the ALJ appears to conclude that because the provision for mold coverage was not "required" by statute that there could not be an affirmative requirement to provide such

coverage. This conclusion directly conflicts with the provisions of Section 627.412(2), Florida Statutes, which recognizes not only "required provisions" but also those standard or uniform provisions which are "used" in policies of insurance. The acceptance of the ALJ's Conclusions of Law would render the phrase "used or required to be used" meaningless. It is a maxim of statutory construction that each word has meaning within the statute, and the legislature would not use redundant or superfluous language. *Hawkins v. Ford Motor Company*, 748 So.2d 993 (Fla. 1999).

The following Conclusion of Law is substituted for the rejected Conclusion of Law:

Section 627.412(2), Florida Statutes, prohibits a policy from containing any provision which is inconsistent with or contradictory to any standard or uniform provision used in the policy. Coverage for mold which arises from a covered peril has been historically and uniformly provided for in policies issued by **STATE FARM** and hundreds of other insurers doing business in Florida. To approve the requested endorsements would violate this section and likewise contravene the legislative directive that the **OFFICE** uses as a standard in the decision making process, that policyholders have a right to comprehensive coverage as set forth in Section 626.9641, Florida Statutes.

A further examination of the record in this matter demonstrates that **STATE FARM** has irrevocably committed, as a condition of approval of the subject endorsements, to providing a buyback option to its policyholders. As provided in Section 627.412(2), Florida Statutes, the **OFFICE** may approve any substitute provision which is not less favorable to the insured. By making the buyback available, **STATE FARM** has made it possible for its policyholders to obtain comprehensive coverage and the option to continue the historical provision of coverage of mold which results from a covered peril.

The ALJ, in Conclusions of Law 44, 45, 46, 47, 48 and 49, analyzes purported "non-rule" policy of the **OFFICE**, erroneously concluding that there was an improper non-rule policy to place a moratorium on the approval of mold exclusion endorsements and claiming that this policy "changed" when a settlement agreement was entered into with "one" insurer, Florida Farm Bureau. The fundamental flaw in the ALJ's analysis flows from the incorrect assumption that the statute did not mandate mold coverage, and that such a mandate would be required for the **OFFICE** to withdraw approval of the endorsements as originally filed. As clearly set forth in the Conclusions of Law herein, the **OFFICE** did not make non-rule policy, but rather applied the plain meaning of Section 627.412(2), Florida Statutes. There was no need to "interpret" a statute and apply that interpretation. The applicable statute was clear on its face and directly applied to **STATE FARM** as such.

Secondly, the ALJ's Conclusion of Law that the **OFFICE** had changed its policy to mandate a minimum of $10,000 in mold coverage is not at issue in this case. **STATE FARM** in its disapproved filing did not seek to apply dollar-value limits, and has now, in fact, committed to offer mold coverage under its buyback option up to policy limits. The settlement of litigation in another unrelated matter on a one-time basis does not constitute a "statement of general applicability." The erroneous conclusion of law that the **OFFICE** changed its policy in another case attempts to adjudicate issues which are not ripe for consideration, nor do these issues impact the substantial interests of **STATE FARM**. Whether this was a policy or not, it had no bearing whatsoever on the adjudication of **STATE FARM'S** rights, as **STATE FARM** was seeking a total exclusion of mold coverage.

Neither the facts of this case nor the interests of **STATE FARM** provide the necessary substantial interest to complain about such purported rule or policy. The test for standing to

challenge proposed or existing rules is twofold: 1) a real and sufficiently immediate injury in fact, and 2) that the alleged interest is arguably within the zone of interest protected or regulated. *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. 2nd DCA 1981). *Ward v. Board of Trustees of the Internal Improvement Trust Fund*, 651 So.2d 1237 (Fla. 4th DCA 1995). In order to challenge an unadopted rule, as **STATE FARM** does here, there must be a showing of a substantial effect by the unadopted rule. *Lanoue v. Florida Department of Law Enforcement*, 751 So.2d 94 (Fla. 1st DCA 2000). There is clearly no substantial effect on **STATE FARM** since they sought an outright exclusion of coverage.

The following substitute Conclusion of Law is made as a more reasonable and legally correct Conclusion of Law:

The **OFFICE** has applied the clear and plain meaning of Section 627.412(2), Florida Statutes, to the facts of this matter. It is an elementary rule of statutory construction that when a statute is clear and unambiguous and conveys a clear and unambiguous meaning, there is no occasion for interpretation or construction. *Holly v. Auld*, 450 So.2d 217 (Fla. 1984). The application of the facts and the applicable law do not constitute the application of non-rule policy to **STATE FARM**.

Conclusion of Law # 49 is clearly erroneous, as it is inescapable that Section 627.412(2), Florida Statutes, is an Insurance Code provision with which the proposed endorsements are inconsistent. This is a "specific" statutory provision which does clearly prohibit the endorsement in this matter.

Conclusion of Law # 40 is a bare statement that there was not a violation of Section 627.411(1)(b), Florida Statutes, based on violations of Sections 626.9641(1)(b) and 627.412(2), Florida Statutes. This analysis is faulty and not supported by the facts as found by the ALJ.

Primarily, the ALJ found in no less than four (4) Findings of Fact that the provisions for mold coverage as the result of a covered peril was not historically excluded, in fact has been covered for decades, and approximately 200-250 insurers have filed to exclude mold coverage which was previously covered.

RULINGS ON RESPONDENT'S EXCEPTIONS TO THE RECOMMENDED ORDER

EXCEPTIONS TO FINDINGS OF FACT

1. This exception is directed to Finding of Fact #2, wherein the ALJ finds that the **OFFICE** is charged with the duty to regulate insurers. The failure to extend this finding to state that there is also a responsibility as well is not fatal to the finding of the ALJ. The **OFFICE** is responsible for exercising the duties conferred upon it by law. The specific authority and duty to apply and enforce the law is not in question. There is no specific basis to revise the ALJ's Findings of Fact, and accordingly this exception is rejected.

2. The next exception is directed to Finding of Fact #4. This finding merely summarizes certain policy provisions contained in the H03 policy. The absence of specific reference to mold coverage is not fatal to the finding itself. There are other Findings of Fact which recognize that mold has been historically covered when the result of a covered peril. Accordingly, there is no basis to reject this finding as lacking in competent and substantial evidence, and therefore the exception is rejected.

3. This exception is directed to Finding of Fact #31, disputing the ALJ's conclusion that the **OFFICE** had a policy to disapprove filings because they discuss mold or seek to exclude coverage for claims involving mold damage. The ALJ in this finding is drawing a conclusion that there was a policy to reject endorsements to exclude or limit mold coverage, and that the policy changed when a settlement was entered into with the Florida Farm Bureau. The Finding of Fact did not go so far as to find that the **OFFICE** engaged in prohibited non-rule policy. The

ALJ's ultimate, albeit erroneous, conclusion was that there was not a statutory basis to disapprove the mold endorsements. This particular finding is discussed in the Findings of Fact, and is rejected in part. To the extent the ALJ has found that the Florida Farm Bureau settlement was a change in policy, this exception is well founded and addressed in this Order. In essence, the facts as found by the ALJ do not constitute improper non-rule policy, because fundamentally there is a clear statutory basis to disapprove the forms pursuant to Sections 627.412(2) and 626.9641, Florida Statutes. Accordingly, this exception is accepted in part and rejected in part.

4. This exception is directed to Finding of Fact #24, which finds that there was insufficient evidence to indicate that the coverage of mold is a standard or uniform provision. This exception is well taken and has been thoroughly discussed in this Order. Accordingly, this exception is accepted.

5. This exception is directed to Finding of Fact #25, finding insufficient evidence that there is a "natural association between mold and water." This finding neither supports nor negates any relevant issue which is necessary to the decision to approve or disapprove the forms. In essence, this is a non-finding which is of no legal significance in this matter. Accordingly, this exception is rejected.

6. This exception is directed to Finding of Fact #32. This specific finding is discussed in this Order and indeed was a mixed finding of fact and erroneous conclusion of law. Accordingly, this exception is accepted.

EXCEPTIONS TO CONCLUSIONS OF LAW

1. This exception is directed to Conclusion of Law #42. The proper analysis and application of Section 626.9641(1)(b), Florida Statutes, is discussed in the Conclusions of Law

portion of this Order. To the extent Section 626.9641, Florida Statutes, is to be given effect in decisions the **OFFICE** makes in its proceedings, this exception is well taken.

2. This exception is not directed to a specific Conclusion of Law, but generally challenges the ALJ's failure to conclude that there is authority to regulate the subject endorsements. This issue is specifically addressed in this Order, and essentially recognizes the concerns raised.

3. This exception again is not directed at a specific Conclusion of Law but generally challenges the ALJ's finding that a violation of Section 626.9641(1)(b), Florida Statutes, is not adequate or sufficient authority to disapprove a form pursuant to Section 627.411(1)(a), Florida Statutes. The primary issue in this case is not whether the endorsement prevents the underlying insurance policy from being comprehensive; rather the larger issue is whether the endorsement violates Section 626.412(2), Florida Statutes, and whether in conjunction with an offer to provide coverage otherwise excluded, is adequate to protect the policyholder's right to obtain comprehensive coverage. The analysis set forth in the Conclusions of Law of this Order addresses the proper consideration of Section 626.9641(1)(b), Florida Statutes, in the regulatory scheme, and recognition of same as an enforceable provision, contrary to the ALJ's conclusion otherwise. This exception is accepted in part and rejected in part.

4. This exception is a continuation of previous exception number 3, and is likewise accepted and rejected in part for the reasons set forth in this Order.

5. This exception is directed to Conclusion of Law #43, which concluded that Section 627.412(2), Florida Statutes, only applied to standard or uniform provisions "mandated" by the Insurance Code. This is a clearly erroneous conclusion and this exception is well taken. It is further discussed in the Conclusions of Law in this Order.

6. This exception is well taken for the same reasons set forth above.

7. This exception is directed at the ALJ's conclusion that Sections 626.9641(1)(b) and 627.412(2), Florida Statutes, were "general" expressions of legislative intent and did not provide specific powers, functions, and duties to deny the subject endorsements. For reasons discussed in the Conclusions of Law of this Order this exception is approved in part and rejected in part.

8. This exception is a continuation of the previous exception concerning the characterization of the **OFFICE'S** action as non-rule policy. Again for the reasons described herein, this exception is accepted in part and rejected in part.

9. This exception is directed to the ALJ's conclusion that because the **OFFICE** had an unadopted rule mandating $10,000 mold coverage, this was sufficient reason to find that the total exclusion endorsement must be approved. This conclusion is clearly erroneous and the exception is accepted.

10. This exception is directed to Conclusion of Law #49. The ALJ concludes that Section 627.414, Florida Statutes, allows insurers generally to provide whatever contractual provisions they determine appropriate, subject to specific statutory or rule limitations. This exception is accepted in part and rejected in part for reasons set forth in the Conclusions of Law in this Order.

Therefore, upon careful consideration of the entire record, the submissions of the parties, and being otherwise fully advised in the premises, it is **ORDERED**:

1. The Findings of Fact of the Administrative Law Judge are adopted in full as the **OFFICE'S** Findings of Fact, except as otherwise specified herein.

2. The Conclusions of Law of the Administrative Law Judge are adopted in full as the **OFFICE'S** Conclusions of Law, except as otherwise specified herein.

3. The Recommendation of the Administrative Law Judge is accepted in part and rejected in part. Specifically, the endorsements submitted by **STATE FARM** are inconsistent with and contradictory to standard or uniform provisions used in the homeowners' policies issued by **STATE FARM** in violation of Section 627.412(2), Florida Statutes, and furthermore results in a policy which does not provide comprehensive coverage and does not give the policyholder the ability to obtain a comprehensive policy as required by Section 626.9641(1)(b), Florida Statutes. However, **STATE FARM** has stipulated in **STATE FARM'S** Exhibit 355 to make available mold coverage as optional endorsements to the policy providing mold coverage of $15,000, $25,000, $50,000 and policy limits, thereby making available comprehensive coverage to the policyholder. Likewise this offer will be in compliance with Section 627.412(2), Florida Statutes, as a substitute provision not less favorable to the insured. Accordingly, the mold exclusion endorsements that are the subject of this proceeding are hereby **APPROVED**, subject to and conditioned upon the filing and approval of the buyback endorsement forms, and their respective rates, providing levels of coverage at $15,000, $25,000, $50,000 and policy limits.

DONE AND ORDERED this 3rd day of September, 2003.

KEVIN M. McCARTY, DIRECTOR
OFFICE OF INSURANCE REGULATION

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Order is entitled to seek review of the Order pursuant to Section 120.68, Florida Statutes, and Rule 9.110, Fla.R.App.P. Review proceedings must be instituted by filing a Petition or Notice of Appeal with the General Counsel, acting as the agency clerk, at 200 East Gaines Street, Tallahassee, FL 32399-4206, and a copy of the same and filing fee with the appropriate District Court of Appeal within thirty (30) days of the rendition of this Order.

COPIES FURNISHED TO:

HONORABLE WILLIAM R. CAVE
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-1550

C. RYAN REETZ, ESQUIRE
JIM TOPLIN, ESQUIRE
AMIE RIGGLE, ESQUIRE
Greenberg Traurig, P.A.
1221 Brickell Avenue
Miami, FL 33131

VINCENT J. RIO, III
State Farm Insurance Companies
315 S. Calhoun Street, Suite 344
Tallahassee, FL 32301

S. MARC HERSKOVITZ, ESQUIRE
ANTHONY B. MILLER, ESQUIRE
Office of Insurance Regulation
200 E. Gaines Street
Tallahassee, FL 32399-4206