

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF FINANCIAL)
SERVICES, DIVISION OF WORKERS')
COMPENSATION,)
)
Petitioner,)
)
vs.) Case No. 03-0926
)
WOOD-HOPKINS CONTRACTING, LLC,)
)
Respondent.)
_____)

RECOMMENDED ORDER

A formal hearing was conducted in this case on September 3, 2003, in Tallahassee, Florida, before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: John M. Iriye, Esquire
Department of Financial Services
Division of Workers' Compensation
200 East Gaines Street
Tallahassee, Florida 32399-4229

For Respondent: D. Andrew Byrne, Esquire
Cooper, Byrne, Blue & Schwartz
1358 Thomaswood Drive
Tallahassee, Florida 32308

STATEMENT OF THE ISSUES

The issues are whether Respondent had workers' compensation insurance coverage for the relevant time period as required by

Sections 440.10(1)(a) and 440.38(1), Florida Statutes, and if not, what penalty should be imposed.

PRELIMINARY STATEMENT

On or about November 13, 2002, Petitioner, Department of Financial Services, Division of Workers' Compensation Insurance (Petitioner), issued an Amended Stop Work and Penalty Assessment Order to Respondent Wood-Hopkins Contracting, LLC (Respondent). The Order stated that Respondent had failed to secure workers' compensation insurance for its employees. The Order also directed Respondent to cease and desist from all operations until it had complied with the workers' compensation law, including the payment of the total assessed penalty in the amount of \$425,056.76.

Respondent requested a formal administrative hearing to challenge the Amended Stop Work and Penalty Assessment Order on December 6, 2002. Petitioner referred Respondent's request to the Division of Administrative Hearings on or about March 18, 2003.

The parties filed a Response to Initial Order on March 28, 2003. Administrative Law Judge Stephen F. Dean issued a Notice of Hearing dated April 10, 2003, scheduling the hearing for June 12-13, 2003.

On May 23, 2003, Petitioner filed an Agreed Motion for Continuance. On June 11, 2003, Judge Dean issued an Order

granting the motion and rescheduling the hearing for July 17-18, 2003.

On July 1, 2003, Petitioner filed an Agreed Motion for Continuance. On July 2, 2003, Judge Dean issued an Order granting the motion and rescheduling the hearing for September 3-4, 2003.

On August 29, 2003, the Division of Administrative Hearings transferred this case to the undersigned.

During the hearing, Petitioner presented the testimony of two witnesses, Robert Lambert and Paul Gilbert. Petitioner offered Exhibits P1 through P7, all of which were accepted into evidence.

Respondent presented the testimony of two witnesses, Paul Gilbert and Robert Allen. Respondent offered Exhibits R1 through R4, R5A, R5B, and R6, all of which were accepted into evidence.

The parties offered the three following Joint Exhibits as transcripts of depositions in lieu of testimony at hearing: JE 1, deposition of Stephen McMillan; JE 2, deposition of Seth Hausman; and JE 3, deposition of Michael T. Esposito. The transcripts of these depositions were accepted as offered.

On September 9, 2003, the parties filed a Joint Notice of Filing Exhibits. As agreed during the hearing, the exhibits are

hereby accepted into the record as exhibits to the deposition of Stephen McMillan, JE 1.

On September 25, 2003, Petitioner filed an unopposed Motion for Extension of Time to File the Proposed Recommended Order. In an Order dated September 26, 2003, the undersigned granted the motion. Petitioner and Respondent filed their respective Proposed Recommended Orders on October 10, 2003.

All references are to Florida Statutes (2002) unless otherwise indicated.

FINDINGS OF FACT

1. Petitioner is the agency responsible for enforcing the requirement that employers secure the payment of workers' compensation insurance for their employees.

2. Respondent is a Florida corporation, incorporated on October 3, 2001. Paul Gilbert is Respondent's only officer and the corporation's managing member.

3. Zurich-American Insurance Group (Zurich) issued a workers' compensation and employer's liability insurance policy (Policy No. WC 3617144) to Mitchell Construction Company (Mitchell) in October 1999. Zurich also provided Mitchell with general liability and business automobile insurance. At that time, Paul Gilbert was the risk manager for Mitchell, which was a large commercial contractor doing business in several states. Mitchell's offices were located in Vidalia, Georgia.

4. In October 2000, Zurich renewed Mitchell's workers' compensation policy (Policy No. WC 3617144-01) for the period October 1, 2000 through October 1, 2001. The original and renewed policies listed other combinable entities as named insureds.

5. Mitchell owned at least 51 percent of its combinable companies, one of which was Wood-Hopkins Contracting Company of Georgia, LLC. The company was also registered in Florida as Wood-Hopkins Contracting Company, LLC. The company was located in Jacksonville, Florida, with a mailing address in Vidalia, Georgia.

6. The type of workers' compensation insurance that Zurich provided to Mitchell was known as a rolling contractor-controlled insurance policy (CCIP). It had endorsements for large deductible reimbursements for paid losses and a set monthly premium based in part on the projected payroll and experience rating modifiers for Mitchell and its combinable entities. The CCIP also covered subcontractors that had a contract with Mitchell for such coverage.

7. The CCIP was renewable on an annual basis. Zurich did not need to re-underwrite the policy each year because the policy was created using three-year parameters. Additionally, Zurich had the option of auditing Mitchell's operations to

determine whether there was a substantial change in the business.

8. Palmer and Cay of Georgia (Palmer and Cay) was the producer and the broker of record for Mitchell's original and renewed CCIP. Stephen McMillan, an associate with Palmer and Cay at its offices in Savannah, Georgia, was the insurance agent that helped Mr. Gilbert negotiate and service Mitchell's CCIP with Zurich.

9. In the Fall of 2001, Mr. Gilbert and Mr. McMillan contacted Zurich about renewing Mitchell's CCIP for the period October 1, 2001 through October 1, 2002. In a meeting with Zurich's representatives at its offices in Atlanta, Georgia, Mr. Gilbert advised Zurich that a company bearing the Wood-Hopkins name was going to complete Mitchell's then on-going projects. Zurich's employees believed Mr. Gilbert was referring to Wood-Hopkins Contracting Company, LLC.

10. During the trip to Atlanta, Mr. Gilbert told Mr. McMillan that he was attempting to form a new company. However, Mr. Gilbert did not make it clear in the meeting with the Zurich representatives that he intended to incorporate Respondent, an independent company with a similar name to Wood-Hopkins Contracting Company, LLC, but unrelated to Mitchell.

11. After the meeting in the Fall of 2001, Zurich was unaware that Mitchell and its combinable entities were or soon

would be out of business as a general contracting group. Zurich's employees mistakenly believed that Mr. Gilbert continued to work for Mitchell.

12. Mr. Gilbert resigned his position with Mitchell on September 1, 2001. After he incorporated Respondent, it purchased the assets of Mitchell and Wood-Hopkins Contracting Company, LLC, and hired about 100 of Mitchell's employees. Respondent planned to complete Mitchell's on-going projects and then operate primarily as a marine and civil contractor. Respondent was a new company, smaller than Mitchell, with a different risk exposure.

13. Mr. Gilbert provided Zurich's underwriters with the payroll projections and other information necessary to renew Mitchell's CCIP. The data related to Mitchell's on-going projects and loss history as well as Respondent's planned projects.

14. Zurich subsequently issued Policy No. WC 3617144-02 for the period October 1, 2001 through October 1, 2002. The policy designated Mitchell as the primary named insured and Wood-Hopkins Contracting Company, LLC, as one of the combinable entities and an additional named insured. The policy listed Palmer and Cay as the broker of record. The policy did not list Respondent as a named insured.

15. Mr. Gilbert did not receive a copy of the policy until March 2002. However, Mr. Gilbert learned that Zurich had not added Respondent as a named insured to Mitchell's CCIP at least by February 2002.

16. After learning that Zurich had not named Respondent as an insured, Mr. Gilbert continued to operate Respondent as if it had workers' compensation insurance. He was convinced that Respondent's assumption of Mitchell's business presented no additional risk exposure to Zurich. In fact, Mr. Gilbert had a history of spending sufficient funds on safety to reduce a company's loss ratio by half. Additionally, Respondent had suffered no workers' compensation losses. For these reasons, Mr. Gilbert hoped to persuade Zurich to add Respondent retrospectively as a named insured on Mitchell's CCIP policy.

17. Towards the end of 2001 or the beginning of 2002, Zurich learned that Mitchell was going out of business or was no longer in business. Michael Esposito, Mitchell's account manager at Zurich, began to realize that something was wrong when Zurich received a premium payment for Mitchell's CCIP drawn on Respondent's bank account. At that time, Mitchell was behind in making deductible and premium payments to Zurich. Mitchell also was behind in paying Palmer and Cay its fees.

18. On or about January 2, 2002, Mr. Gilbert signed one of Respondent's checks made payable to Palmer and Cay in the amount

of \$28,740.23. The check included a premium payment in the amount of \$3,818.00 for October 2001 workers' compensation insurance. Mr. Gilbert wrote the check pursuant to a Palmer and Cay invoice addressed to The Mitchell Group. The record indicates that Respondent sent its check to Palmer and Cay's lockbox in Atlanta, Georgia, and that it was cashed.

19. By letter dated February 7, 2002, Palmer and Cay advised Mitchell that it resigned as broker of record for The Mitchell Group. The most persuasive evidence indicates that Palmer and Cay resigned due to a dispute with Respondent over fees, not premium payments.

20. By the end of February 2002, Mr. Esposito became aware that Mr. Gilbert wanted Zurich to continue Mitchell's CCIP with Respondent, a totally new company, listed as a named insured. Mr. Esposito then told Mr. Gilbert that Respondent would have to pay Mitchell's past-due premiums and provide Zurich with the necessary information to re-underwrite the policy, reflecting the change in ownership and operations. There is no persuasive evidence that Palmer and Cay or Mr. Gilbert ever provided Zurich with this information.

21. Despite its resignation as broker of record for Mitchell's CCIP, Palmer and Cay agreed to continue servicing the policies until Zurich advised otherwise. For example, on or about February 22, 2002, Mr. Gilbert asked Palmer and Cay to add

Respondent as a named insured, along with Wood-Hopkins Contracting Company, LLC, to Mitchell's railroad protection policies. Palmer and Cay referred this request to Zurich.

22. Effective February 26, 2002, Zurich issued a Notice of Cancellation for Mitchell's Policy No. WC 3617144-02. The notice indicates that the policy was cancelled due to nonpayment of premium. About that time, Mr. Gilbert began trying to find a replacement for Palmer and Cay as broker of record.

23. Willis of Florida, an affiliate of Willis of North America, Inc. (Willis), is an insurance broker with offices located in Tampa, Florida. Robert Allen is an insurance agent associated with Willis of Florida. Mr. Allen and Mr. Gilbert had a social and business relationship for many years prior to the time frame at issue here.

24. Toward the end of February 2002, Mr. Allen and Mr. Gilbert had a telephone conference with Mr. Esposito. During that conversation, Mr. Allen indicated that his company was not interested in becoming the broker of record for Mitchell. However, Mr. Allen agreed that, in order to assist Zurich, Willis would issue Certificates of Liability Insurance for Respondent. At that time, Mr. Allen was under the impression that Respondent was a named insured under the Mitchell CCIP.

25. As authorized by Zurich, Palmer and Cay issued three Certificates of Liability Insurance to the Florida Department of Transportation on March 4, 2002. The certificates indicate that Zurich provided commercial general liability and railroad protection insurance for CSX Transportation, Inc., Norfolk Southern Corporation, and Florida East Coast Railway as the named insureds. The certificates state that Wood-Hopkins Contracting Company, LLC, and Respondent were the contractors. Palmer and Cay issued these certificates for the Beaver Street viaduct bridge replacement in Jacksonville, Florida, a project begun by Wood-Hopkins Contracting Company, LLC, during the time that Palmer and Cay was acting as Mitchell's broker of record.

26. On or about March 6, 2002, Mr. Gilbert signed one of Respondent's checks made payable directly to Zurich in the amount of \$24,848.00. The check included premium payments in the amount of \$3,818.00 for Policy No. WC 3617144-02 for the months of February and March 2002. The record indicates that this check was sent to Zurich's lockbox in Chicago, Illinois, and that it was cashed.

27. On or about March 7, 2002, Zurich reinstated Policy No. WC 3617144-02 without lapse of coverage. The Notice of Reinstatement indicates that Mitchell was the named insured and that Palmer and Cay was the broker of record.

28. On or about March 20, 2002, Zurich sent Mitchell a Notice of Cancellation. The notice states that Mitchell's Policy No. WC 3617144-02 would be cancelled effective June 8, 2002, due to a material change in exposures. Mr. Gilbert did not receive a copy of this cancellation notice. Mr. Gilbert and Mr. Allen did not learn about the cancellation until November 2002.

29. On or about April 17, 2002, Mr. Gilbert signed one of Respondent's checks made payable directly to Zurich in the amount of \$12,424.00. The check included a premium payment in the amount of \$3,818.00 for Policy No. WC 3617144-02 for the month of April 2002. The record indicates that this check was sent to Zurich's Illinois lockbox and cashed.

30. On April 25, 2002, Willis issued a Certificate of Liability Insurance to American Home Assurance with Respondent as the named insured. The certificate indicates that Zurich provided commercial general liability, automobile liability, and workers' compensation insurance for Respondent on the Beaver Street viaduct bridge replacement project with American Home Assurance and the Florida Department of Transportation as additional named insureds with respect to the general liability coverage. Mr. Allen signed this certificate.

31. On May 6, 2002, Willis issued a Certificate of Liability Insurance to the University of Georgia Athletic

Association with Respondent as the named insured. The certificate indicates that Zurich provided commercial general liability, automobile liability, and workers' compensation insurance for Respondent on an academic achievement center project. Mr. Allen signed this certificate.

32. On or about June 13, 2002, Mr. Gilbert signed one of Respondent's checks made payable directly to Zurich in the amount of \$12,424.00. The check included a premium payment in the amount of \$3,818.00 for Policy No. WC 3617144-02 for the month of May 2002. The record indicates that this check was sent to Zurich's Illinois lockbox and cashed.

33. On July 18, 2002, Willis issued a Certificate of Liability Insurance to Crowley Maritime Corporation with Respondent as the named insured. The certificate indicates that Zurich provided general liability, automobile liability, and workers' compensation insurance to Respondent for a barge loading ramp concrete removal and replacement in Jacksonville, Florida, and that Crowley Maritime Corporation was an additional named insured with respect to general liability coverage. Mr. Allen did not know the policy was cancelled when he signed this certificate.

34. On August 12, 2002, Willis issued a Certificate of Liability Insurance to Martin K. Eby Construction Company with Respondent as the named insured. The certificate indicates that

Zurich provided general liability, automobile liability, and workers' compensation insurance for Respondent on the Wonderwood Expressway channel excavation with the Jacksonville Transit Authority and J. E. Sverdrup (Engineer) as additional named insureds as to general liability coverage. Mr. Allen did not know the policy was cancelled when he signed this certificate.

35. On or about August 15, 2002, Mr. Gilbert signed one of Respondent's checks made payable directly to Zurich in the amount of \$12,424.00. The check included a premium payment in the amount of \$3,818.00 for Policy No. WC 3617144-02 for the month of June 2002. The record indicates that this check was sent to Zurich's Illinois lockbox and cashed.

36. On or about October 1, 2002, Mr. Gilbert signed one of Respondent's checks made payable directly to Zurich in the amount of \$12,424.00. The check included a premium payment in the amount of \$3,818.00 for Policy No. WC 3617144-02 for the month of September 2002. The record indicates that this check was sent to Zurich's lockbox in Illinois and cashed.

37. In November 2002, Petitioner issued a Stop Work and Penalty Assessment Order for failing to secure workers' compensation insurance. In November and December 2002, Mr. Gilbert and Mr. Allen attempted to persuade Seth Hausman, Zurich's regional manager, to provide retroactive coverage for Respondent under the Mitchell workers' compensation policy, to

reinstate the coverage, and to let the policy continue until it lapsed at expiration. Mr. Hausman concluded that Zurich could not assume the exposure without an underwriting evaluation. Mr. Hausman told Mr. Gilbert what information he had to provide in order for Zurich to conduct such an evaluation.

38. In January 2003, Mr. Hausman advised Mr. Gilbert that Zurich had been unable to collect on a surety bond and that Mitchell owed Zurich approximately \$750,000.00 in uncollected deductible payments. Mr. Hausman stated that in order to amend the workers' compensation policy to include Respondent as a named insured and to rescind the cancellation retroactively to allow the policy to run full term, Zurich would have to be paid for all outstanding balances. In that event, Zurich was willing to talk about extending workers' compensation coverage to Respondent as requested.

39. When Petitioner issued the Stop Work and Penalty Assessment Order in November 2002, Respondent had about 20 employees.

40. For the period October 1, 2001 through December 31, 2001, Respondent had the following amounts of payroll by class code:

<u>Class Code</u>	<u>Payroll</u>
5213	\$126,739.96
5606	\$170,615.31
5610	\$5,391.51
6003	\$5,777.00
6217	\$62,691.54
7335	\$73,434.08
8227	\$135,572.71
8810	\$27,503.88

41. For the period October 1, 2001 through December 31, 2001, the workers' compensation premium rates per \$100.00 of payroll for each relevant class code were as follows:

<u>Class Code</u>	<u>Premium Rates</u>
5213	\$33.02
5606	\$4.76
5610	\$18.08
6003	\$62.53
6217	\$14.27
7335	\$25.97
8227	\$9.80
8810	\$0.59

42. For the period October 1, 2001 through December 31, 2001, the premium Respondent would have paid for workers' compensation coverage by class codes was as follows:

<u>Class Code</u>	<u>Premium</u>
5213	\$41,849.53
5606	\$8,121.29
5610	\$974.79
6003	\$3,612.36
6217	\$8,946.08
7335	\$19,070.83
8227	\$13,286.13
8810	\$162.27

43. For the period January 1, 2002 through November 5, 2002, Respondent had the following amounts of payroll by class code:

<u>Class Code</u>	<u>Payroll</u>
5213	\$360,825.22
5403	\$7,969.23
5606	\$355,253.16
5610	\$93,981.09
6003	\$17,977.19
6217	\$237,889.32
7335	\$212,654.00
8227	\$261,091.70
8810	\$162,068.41

44. For the period January 1, 2002 through November 5, 2002, the workers' compensation premium rates per \$100.00 of payroll for each relevant class code were as follows:

<u>Class Code</u>	<u>Premium Rates</u>
5213	\$32.31
5403	\$30.39
5606	\$4.91
5610	\$17.91
6003	\$57.57
6217	\$13.52
7335	\$29.60
8227	\$10.80
8810	\$0.65

45. For the period January 1, 2002 through November 5, 2002, the premium Respondent would have paid for workers' compensation coverage by class codes was as follows:

<u>Class Code</u>	<u>Premium</u>
5213	\$116,582.63
5403	\$2,421.85
5606	\$17,442.93
5610	\$16,832.01
6003	\$10,349.46
6217	\$32,162.64
7335	\$62,945.58
8227	\$28,197.90
8810	\$1,053.44

46. Respondent was out of compliance with the workers' compensation law for 398 calendar days between October 1, 2001 and November 5, 2002. Petitioner properly assessed penalty of \$100.00 per day, totaling \$39,800.00.

47. Respondent would have paid a premium of \$384,011.72 to secure workers' compensation insurance for its employees and owes a \$39,800.00 penalty for the days it operated without coverage during the period October 1, 2001 through November 5, 2002. Accordingly, Respondent owes a total penalty in the amount of \$423,811.72.

CONCLUSIONS OF LAW

48. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2003).

49. Petitioner must prove by a preponderance of the evidence that Respondent failed to provide his Florida employees with workers' compensation insurance and that the penalties

assessed are correct. See Department of Labor and Employment Security, Division Of Workers' Compensation v. Eastern Personnel Services, Inc., DLES Case No. 99-275 (Final Order, October 12, 1999), adopting in toto DOAH Case No. 99-2048 (Recommended Order, October 12, 1999)(Although violations of Chapter 440, can result in a substantial fine, which may even render an employer insolvent, the employer nonetheless does not have a license or property interest at stake so as to raise the standard of proof to clear and convincing evidence).

50. Section 440.015 states as follows in relevant part:

440.015 Legislative intent.--It is the intent of the Legislature that the Workers' Compensation Law be interpreted so as to assure the quick and efficient delivery of disability and medical benefits to an injured worker and to facilitate the worker's return to gainful reemployment at a reasonable cost to the employer.

51. Section 440.03 states as follows:

440.03 Application.--Every employer and employee as defined in s. 440.02 shall be bound by the provisions of this chapter.

52. Section 440.02 states as follows in pertinent part:

(15)(a) 'Employee' means any person engaged in any employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes, but is not limited to, aliens and minors.

* * *

(16) 'Employer' means . . . every person carrying on any employment. . . .

* * *

(17)(a) 'Employment,' subject to the other provisions of this chapter, means any service performed by an employee for the person employing him or her.

(b) 'Employment' includes:

* * *

2. All private employment in which four or more employees are employed by the same employer or, with respect to the construction industry, all private employment in which one or more employees are employed by the same employer.

53. Section 440.10(1)(a) states as follows in relevant part:

(1)(a) . . . Any contractor or subcontractor who engages in any public or private construction in the state shall secure and maintain compensation for his or her employees under the chapter as provided in Section 440.38.

54. Section 440.38 requires employers to secure payment of compensation for their employees. The statute allows employers to insure the payment of such compensation through an insurance carrier or by acting as a self-insurer. See Section 440.38(1).

55. Petitioner has the duty of enforcing the employer's compliance with the requirements of the workers' compensation law. Section 440.107(1).

56. Section 440.107(5) states as follows:

(5) Whenever the department determines that an employer who is required to secure the payment to his or her employees of the compensation provided for by this chapter has failed to do so, such failure shall be deemed an immediate serious danger to public health, safety, or welfare sufficient to justify service by the department of a stop-work order on the employer, requiring the cessation of all business operation at the place of employment or job site. . . . The order shall take effect upon the date of service upon the employer, unless the employer provides evidence satisfactory to the division of having secured any necessary insurance or self-insurance and pays a civil penalty to the division, to be deposited by the department into the Workers' Compensation Administration Trust Fund, in the amount of \$100 per day for each day the employer was not in compliance with this chapter.

57. Section 440.107(7) states as follows in pertinent part:

(7) In addition to any penalty, stop-work order, or injunction, the department shall assess against any employer, who has failed to secure the payment of compensation as required by this chapter, a penalty in the following amount:

(a) An amount equal to at least the amount that the employer would have paid or up to twice the amount the employer would have paid during periods it illegally failed to secure payment of compensation in the preceding 3-year period based on the employer's payroll during the preceding 3-year period; or

(b) One thousand dollars, whichever is greater. Any penalty assessed under this subsection is due within 30 days after the date on which the employer is notified, except that, if the department has posted a stop-work order or obtained injunctive relief against the employer, payment is due, in addition to those conditions set forth in this section, as a condition to relief from a stop-work order or an injunction. Interest shall accrue on amount not paid when due at the rate of 1 percent per month. The division shall adopt rules to administer this section.

58. In this case, the preponderance of the evidence indicates that Respondent did not have workers' compensation insurance in place between October 1, 2001 and November 5, 2002. Therefore, Respondent failed to abide by the coverage requirement of the workers' compensation law.

59. Respondent owes \$39,800.00 under Section 440.107(5), and \$384,011.72 under Section 440.107(7). The total assessed penalty is \$423,811.72.^{1/}

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED:

That Petitioner enter a final order affirming the Amended Stop Work Penalty Assessment Order and directing Respondent to pay a penalty in the amount of \$423,811.72.

DONE AND ENTERED this 10th day of November, 2003, in
Tallahassee, Leon County, Florida.

Suzanne F. Hood

SUZANNE F. HOOD
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of November, 2003.

ENDNOTE

1/ The fact that Mr. Gilbert, in the interest of Respondent, sent checks to Zurich, does not create a defense nor establish an offset against the administrative fine. When the fact and law are considered, any opportunity that Respondent might have to seek legal recourse against third parties is not at issue here.

COPIES FURNISHED:

D. Andrew Byrne, Esquire
Cooper, Byrne, Blue & Schwartz
1358 Thomaswood Drive
Tallahassee, Florida 32308

John M. Iriye, Esquire
Department of Financial Services
Division of Workers' Compensation
200 East Gaines Street
Tallahassee, Florida 32399-4229

Honorable Tom Gallagher
Chief Financial Officer
Department of Financial Services
The Capitol, Plaza Level 11
Tallahassee, Florida 32399-0300

Mark Casteel, General Counsel
Department of Financial Services
The Capitol, Plaza Level 11
Tallahassee, Florida 32399-0300

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.