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REPRESENTING
ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

Chief Financial Officer
Docketed by: *[Signature]*

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DIVISION OF
ADMINISTRATIVE
HEARINGS **000479**

IN THE MATTER OF:

U.S. BUILDERS, L.P.

Case No. 91827-07-WC

07-143-D1

FINAL ORDER

THIS CAUSE came on for consideration of and final agency action on the Recommended Order rendered by Administrative Law Judge Don W. Davis on April 30, 2008, subsequent to a hearing held on February 29, 2008, exclusively to determine the applicability of the doctrine of equitable tolling to this cause.

The Department of Financial Services, Division of Workers' Compensation (the Department) timely filed an exception to the Recommended Order. No exceptions were filed by U.S. Builders, L.P (USB). The Recommended Order, the Department's exception thereto, the testimony and documents entered into evidence, and applicable law were all considered during the promulgation of this Final Order.

RULING ON THE DEPARTMENT'S EXCEPTION

The cumulative thrust of the Department's exception is that the ALJ erred in Conclusion of Law 14 by stating that Investigator Quenemoen's failure to proceed to immediately contact USB, as instructed by her superior, and advise USB of the Notice of Rights contained in the Order of Penalty Assessment (and of the timeline requirement for the filing of a petition requesting a hearing) until after the filing deadline had passed as found by the ALJ in Paragraph 5 of the Findings of Fact misled or lulled USB into

inactivity, thus justifying application of the doctrine of equitable tolling to USB's belated request for a hearing.

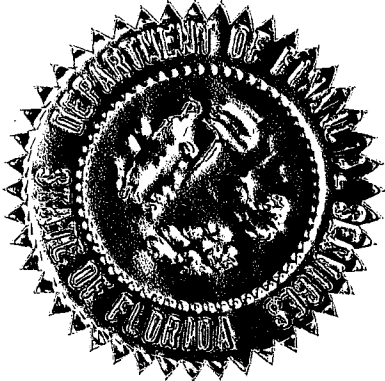
The Department's exception is not well taken. First, the exception advocates the rejection of a Conclusion of Law over which the Department lacks substantive jurisdiction. The doctrine of equitable tolling is judge-made law; it is not a part of the Florida Insurance Code. Therefore, the Department lacks jurisdiction to reject or modify the challenged Conclusion of Law. Section 120.57(1)(l), Fla. Stat; *Barfield v. Department of Health*, 805 So.2d 1008 (Fla. 1st DCA 2001). Secondly, the exception simply asks the Department to re-weigh the evidence and come to a different conclusion than did the ALJ. This is impermissible. *Packer v. Orange County School Bd.*, 881 So.2d 1204 (Fla. 2004); *S.A. v. Department of Children and Family Services*, 728 So.2d 1228 (Fla. 3rd DCA 1999) Moreover, there is competent substantial evidence in the record to support the challenged conclusion.

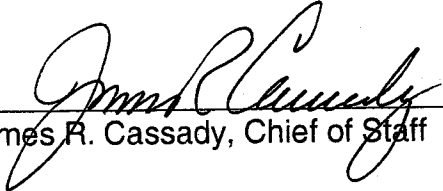
Accordingly, the Department's exception is rejected.

Therefore, IT IS ORDERED that the Findings of Fact and Conclusions of Law stated in the Recommended Order are adopted as the Department's Finding of Fact and Conclusions of Law.

IT IS FURTHER ORDERED that this matter is remanded to the Division of Administrative Hearings for further proceedings under Chapter 120, Fla. Stat.

DONE AND ORDERED this 25 day of June, 2008.




James R. Cassady, Chief of Staff

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, 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 612 Larson Building, Tallahassee, Florida, and a copy of the same with the appropriate district court of appeal within thirty (30) days of rendition of this Order.

Copies to:

William Andrews

Kristian Dunn; Anthony Miller