# OFFICE OF INSURANCE REGULATION

**KEVIN M. MCCARTY**
COMMISSIONER

IN THE MATTER OF:

Case No. 94940-08-FO

HARTFORD FIRE INSURANCE COMPANY, HARTFORD INSURANCE OF THE SOUTHEAST, HARTFORD CASUALTY INSURANCE COMPANY, TWIN CITY FIRE INSURANCE COMPANY, HARTFORD UNDERWRITERS INSURANCE COMPANY and HARTFORD ACCIDENT AND INDEMNITY COMPANY
Disapproval of Rate Filings
_____/



## FINAL ORDER

THIS CAUSE came on before the undersigned, for consideration and final agency action.

On September 10, 2007, the Office of Insurance Regulation (OIR or "the Office") disapproved four filings for rate increases filed by the Petitioners. The Petitioners timely petitioned for formal hearings on the disapprovals. The four petitions were forwarded to the Division of Administrative Hearings (DOAH), where they were consolidated for hearing. On January 22-24, 2008, the matter was heard by Lisa Shearer Nelson, the assigned Administrative Law Judge (the "ALJ"), in Tallahassee, Florida. The case numbers at DOAH were 07-5185, 07-5186, 07-5187, and 07-5188.

After consideration of the evidence, argument, and testimony presented at hearing, the ALJ issued her Recommended Order on March 28, 2008, attached hereto as Exhibit "A", recommending that a Final Order be entered disapproving the rate filings, based upon specified deficiencies set forth in the Notices of Intent to Disapprove.

*Department of Professional Regulation, Board of Optometry*, 622 So.2d 607 (Fla. 1st DCA 1993).

The five exceptions labeled as "Scrivener's Errors" are addressed first, by corrections where appropriate, as follows:

1. In Finding of Fact 10 the reference to section 627.026(2)(a)1. is changed to section 627.062(2)(a)1.

2. In Conclusion of Law 102 the reference to section 627.027 is changed to section 627.062.

3. In Conclusion of Law 104 the references to section 627.027 and 627.027(2)(a)1.,(f) are changed to section 627.062 and 627.062(2)(a)1.,(f), respectively.

4. In Conclusion of Law 113, the references to paragraphs 627.027(2)(b) and (e) are changed to paragraphs 627.062(2)(b) and (e), respectively.

5. In Conclusion of Law 115 the reference to section 627.027(2)(b)4. is changed to section 627.062(2)(b)4.

The Office takes exceptions to Findings of Fact numbered 24 and 28. They are addressed as follows:

6. In excepting to Finding of Fact 24, the Office excepts to any implication by the ALJ that the Office is required to issue a clarification letter. However, even if one were to infer from the Finding that the ALJ were implying that this requirement exists, the ALJ, in her Conclusion of Law 104, correctly states, "the issuance of a clarification letter is a matter within the discretion of OIR." This exception is, therefore, denied.

7. Exceptions to Finding of Fact 28 and Conclusions of Law 108 to 110 all address a concern by the Office that there might be an "implication" in the Recommended Order that the

Office and the Consumer Advocate have "access" to the RMS model by virtue of having a representative on the Hurricane Commission. The finding states that the Consumer Advocate and the OIR representative on the Hurricane Commission have access to the information set out in section 627.0628(3)(c). As the finding specifically states that the Consumer Advocate does have access, it appears that what the Office is excepting to is any implication that the Office, as differentiated from the Office's *representative*, had access to the information. The Office's concern is well taken, however, in light of the ALJ's clear statement in Finding of Fact 29 that the Commission's deliberations are not, *standing alone*, sufficient to determine the Office has access as contemplated by section 627.0628(3)(c), these exceptions are denied. The ALJ, starting with Finding of Fact 30, specifies the additional evidence she considered in making her determination in Finding of Fact 33 that the Office was provided access to the factors and assumptions used in the RMS model, as contemplated by section 627.0628. This finding was not based just upon the fact that the Office's representative is on the Commission. That a representative of the Office sits on the Commission is not, by itself, sufficient to determine the Office had access to all the assumptions and factors, as contemplated by section 627.0628.

8. The more important legal issue is whether those additional facts are sufficient to determine that the Office had the access as contemplated by section 627.0628. The ALJ initially answers this legal question in what is misidentified as Finding of Fact 33. In fact, this is a Conclusion of Law. The facts supporting her Conclusion are set out in Findings of Fact 28 through 32, and are adopted in this Final Order, because these Findings of Fact are based upon "competent substantial evidence." However, the question of whether these facts are such to be considered access, "as contemplated by section 627.0628" is a legal one. The ALJ was to apply

these facts *to the law*. The ALJ correctly places this legal conclusion in her Conclusion of Law 110.

9. The Conclusion of Law which is mislabeled as Finding of Fact 33 and which is duplicative of Conclusion of Law 110, is stricken, as explained below.

10. In its review of the legal conclusion in what was misidentified as Finding of Fact 33, and correctly identified in Conclusion of Law 110, the Office is to apply the standards set forth in section 120.57(1)(l). It reads, in pertinent part, 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."

11. The Office has substantive jurisdiction over the section 627.0628, and may, therefore, reject or modify this conclusion of law. The Office rejects it.

12. The Office interprets section 627.0628 as follows. "Access", as contemplated by that section, requires more than just being on the commission and having the opportunity to go look at documents at the modeling entity's business address. Access is granted so 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 627.0628(3)(e)1. This subparagraph creates a public record exception, 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.

13. This public record exception was created in ch 2005-264. Pursuant to Section 24, subsection (c), of the State Constitution, the Legislature is to set forth the public necessity met by the creation of any exemption from chapter 119 it creates. In conformance with that mandate, ch 2005-264, section (4) states:

> The Legislature finds that it is a public necessity that a trade secret, as defined in s. 812.081, Florida Statutes, that is used in designing and constructing a hurricane loss model and that is provided pursuant to law, by a private company, to the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, or an appointed consumer advocate be made confidential and exempt from public records requirements and be made exempt from public meetings requirements. Disclosing trade secrets would negatively impact the business interests of a private company that has invested substantial economic resources in developing the model, and competitor companies would gain an unfair competitive advantage if provided access to such information. Reliable projections of hurricane losses are necessary in order to ensure that rates for residential property insurance meet the statutory requirement that rates be neither excessive nor inadequate. This goal is served by enabling the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, and the consumer advocate appointed pursuant to s. 627.0613, Florida Statutes, to have access to all aspects of hurricane loss models, and encouraging private companies to submit such models to the commission, office, and consumer advocate for review without concern that trade secrets will be disclosed. In addition, the Legislature finds that it is a public necessity to protect trade secrets discussed during meetings or rate proceedings, because release of such information via a public meeting or proceeding would defeat the purpose of the public records exemption and would allow competitors and other persons to attend those meetings and discover the protected trade secrets.

The use by the Legislature of the phrase "submit such models to the commission, office and consumer advocate" clearly establishes that inviting the Office to the offices of the modeling

entity to review documents and meeting with persons associated with the creation of the model does not create "access".

14. Conclusion of Law 110 is modified by changing the last sentence to read, "These actions did not meet the requirement of access as contemplated by section 627.0628(3)(c)."

15. The Office was not provided access to the RMS model as contemplated by section 627.0628(3)(c).

16. In compliance with section 120.57(1)(l), I find that this substituted conclusion of law is as or more reasonable than that which was rejected or modified.

IT IS THEREFORE ORDERED:

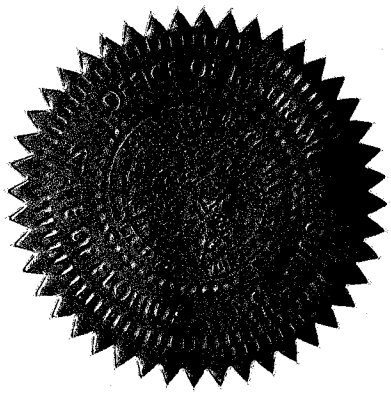
1. The Findings of Fact of the ALJ are adopted in full as the OIR's Findings of Fact, with the correction of the Scrivener's Errors, and with the clarification as set forth in the last sentence of Paragraph 7, and the deletion of what was misidentified as Finding of Fact 33.

2. The Conclusions of Law of the ALJ are adopted in full as the OIR's Conclusions of Law, with the correction of the Scrivener's Errors and as modified herein.

3. The Recommendation is accepted by the Office.

ACCORDINGLY, the subject rate filings are disapproved in accordance with the grounds set forth in the Recommended Order.

DONE and ORDERED this 30th day of MAY, 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:

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