



REPRESENTING  
**ALEX SINK**  
CHIEF FINANCIAL OFFICER  
STATE OF FLORIDA

**FILED**

SEP 10 2010

Docketed by EA

IN THE MATTER OF  
GUARANTEE INSURANCE COMPANY

DOAH Case No. 09-6875  
CASE NO. 108145-09-WC

FINAL ORDER

THIS CAUSE came on for consideration of and final agency action on the Recommended Order rendered by Administrative Law Judge Barbara J. Staros on June 17, 2010, subsequent to a hearing held on March 24 and 25, 2010, in Tallahassee, Florida. An exception was timely filed by the Department of Financial Services, Division of Workers' Compensation (Division).

**RULINGS ON THE DIVISION'S EXCEPTION**

The Division takes exception to the ALJ's observations about the burden of proof in such cases, contending that on the basis of the Department's determination procedures certain of those observations are incorrect.

The Division's exception correctly analyzes the relationships between the parties. The party advocating change from the Department's Letter of Determination, which is the challenged agency action in this case, is the Petitioner Guarantee Insurance Company. Guarantee's previous payments to Largo do not constitute agency action. Thus, the agency action under consideration is the Letter of Determination, with which Guarantee Insurance Company was dissatisfied and therefore sought a *de novo* hearing on that determination at DOAH. At that hearing, it was Guarantee Insurance Company's burden to show why it should prevail in that proceeding because it was the challenger to the agency action. It was not Largo's burden to prove that it should prevail,

as it did not challenge the agency action in question. Therefore, although the exception does not alter the outcome of this case, it is accepted, and the language of Conclusion of Law 35 is modified to read, following the citations therein:

It was Guarantee Insurance Company that petitioned DOAH for a *de novo* hearing challenging the agency action reflected in the Letter of Determination. Therefore, Guarantee Insurance Company bore the ultimate burden of proof in this cause.

This modified Conclusion of Law is as or more reasonable than the Conclusion of Law it modifies.

After review of the record, including the transcript of proceedings and admitted exhibits, the Recommended Order, the Division's exception, and being otherwise fully apprised in all material premises,

IT IS HEREBY ORDERED that, except as noted above, the ALJ's Findings of Fact and Conclusions of Law set forth in the Recommended Order are adopted as the Department's Findings of Fact and Conclusions of Law.

IT IS HEREBY FURTHER ORDERED that the Recommendation made by the Administrative Law Judge is adopted by the Department, and that the Department's Determination requiring Guarantee Insurance Company to pay the specified reimbursements to Largo is affirmed.

DONE and ORDERED this 10<sup>th</sup> day of September, 2010.



  
Brian London  
Deputy Chief Financial Officer

## 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 petition or notice of appeal with Julie Jones, DFS Agency Clerk, at 612 Larson Building, Tallahassee, Florida 32399-0390, and a copy of the same with the appropriate District Court of Appeal within thirty (30) days of rendition of this Order.

### Copies furnished to:

Cindy R. Galen, Esquire  
Eraclides, Johns, Hall, Gelman  
Johannssen & Goodman, LLP  
2030 Bee Ridge Road  
Sarasota, Florida 34239  
Attorney for Petitioner

Barbara J. Staros  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060

Mari H. McCully, Esquire  
Department of Financial Services  
Division of Workers' Compensation  
200 East Gaines Street  
Tallahassee, Florida 32399  
Attorney for Respondent