DEPARTMENT OF FINANCIAL SERVICES, DIVISION OF WORKERS' COMPENSATION

Petitioner,

v.

PEREZ CONCRETE, INC.,

Respondent.

and

KC CURB, INC.,

Intervenor.
_____/

DOAH CASE NO.: 15-5281
DWC CASE NO.: 15-472-D4-WC

FINAL ORDER

THIS CAUSE came on for entry of a final order. The recommended order concludes the Department misinterpreted specific provisions within chapter 440, Florida Statutes, in determining the scheme by which respondent Perez Concrete, Inc., relied upon intervenor[1] KC Curb, Inc., to provide worker's compensation coverage to persons employed by respondent, left respondent non-compliant with the statutory mandate to secure the payment of workers' compensation benefits. The administrative law judge (ALJ) recommended the Department dismiss the Stop-Work Order and the Amended Order of Penalty Assessment. The Division of Workers' Compensation (Division) and the respondent/intervenor filed exceptions to the

[1] Intervenor, KC Curb, Inc., respondent's general contractor, was granted leave to intervene in this proceeding by the ALJ. The Division of Workers' Compensation offered no objection to intervention, and the granting of the motion to intervene is not a ruling which the Department is permitted to reject. Nevertheless, the Department does not concur with the ALJ's conclusion that KC Curb has a substantial interest in this proceeding. The Department issued a Stop Work Order and Amended Penalty Order to respondent, not KC Curb. The Department has not alleged KC Curb has violated any statute or rule, and KC Curb, accordingly, is under no risk of sanction. KC Curb does not meet the standard for standing in a section 120.57(1) proceeding established in *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So. 2d 478 (Fla. 2d DCA 1981).

recommended order. The Department's exceptions, to the extent they are well-taken, are incorporated in the discussion below. Otherwise, they are rejected. Respondent/Intervenor's exceptions are addressed below.

This case hinges entirely on a question of statutory interpretation: whether section 440.10(1)(d)1., Florida Statutes, authorizes a construction subcontractor to comply with its statutory obligation to "secure and maintain compensation" for its employees by agreeing with a contractor who is a statutory employer for the subcontractor's employees, to purchase workers' compensation insurance on the subcontractor's behalf. There remains no dispute as to the material facts surrounding the Stop Work Order or the penalty calculation imposed in the Amended Order of Penalty Assessment. If the Department's interpretation of the pertinent statutes is permissible, then the sanction was appropriate. If respondent/intervenor's reading of the statute prevails, then the sanctions must be rescinded.

The recommended order properly identifies the primary statutes implicated in this case: sections 440.10, 440.38, and 440.107, Florida Statutes. The ALJ's plain language and *in pari materia* review of those statutes, however, is flawed. The problematic analysis appears in recommended order paragraphs 108 through 112, together with paragraphs 119 and 120. In sum, the ALJ construed section 440.10(1)(d)1., Florida Statutes, to provide an affirmative answer to the question posed above. The ALJ concluded respondent "secured" workers' compensation coverage for its employees within the meaning of sections 440.10(1) and 440.38(1), Florida Statutes, when intervenor added respondent's employees to intervenor's compensation insurance, for which respondent then reimbursed intervenor. (Rec. Ord. ¶ 120). The ALJ opined that, because the statutes in question do not expressly state that an employer must directly purchase insurance, the Department cannot sanction respondent for failing to do so. The ALJ's

interpretation is rejected, because it does not give effect to the actual language of the statutes in question, and it blurs the separate protection and enforcement objectives of chapter 440, Florida Statutes.

Sections 440.10(1) and 440.38(1), Florida Statutes, each mandate that every "employer," as defined in chapter 440, Florida Statutes, must secure the payment of workers' compensation benefits. *Deen v. Quantum Resources, Inc.*, 750 So. 2d 616, 618 (Fla. 1999). Section 440.10(1)(a), Florida Statutes, covers respondent in this case, and expressly provides that "[a]ny 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 this chapter as provided in section 440.38." Section 440.38(1), Florida Statutes, authorizes five methods through which employers may secure the payment of compensation, only the first of which, section 440.38(1)(a), is an option for respondent in this case. That provision requires respondent to meet its obligation "by insuring and keeping insured the payment of such compensation with any stock company or mutual company or association or exchange, authorized to do business in the state." The ALJ, in effect, concluded section 440.10(1)(d)1., Florida Statutes, modifies section 440.38(1)(a), to create an additional approved method through which an employer can comply with the requirement to secure coverage[2]. The ALJ, however, is equating coverage with compliance, and those concepts are distinct in chapter 440, Florida Statutes.

Section 440.10(1)(b), Florida Statutes, provides:

> In case a contractor sublets any part or parts of his or her contract work to a subcontractor or subcontractors, all of the employees of such contractor or subcontractor or subcontractors engaged on such

[2] The ALJ also points to Rule 69L-6.015(9)(a), *Florida Administrative Code,* which addresses employer record keeping. It provides that every employer must maintain all workers' compensation insurance policies obtained by the employer or obtained on the employer's behalf. This rule addresses only records an employer must maintain, it does not purport to define "securing" compensation.

> contract work shall be deemed to be employed in one and the same business or establishment, and the contractor shall be liable for, and shall secure, the payment of compensation to all such employees, except to employees of a subcontractor who has secured such payment.

This is the so-called "statutory employer" provision. *See generally, Gator Freightways, Inc. v. Roberts*, 550 So. 2d 1117 (Fla. 1989); *Miami Herald Pub. v. Hatch*, 617 So. 2d 380 (Fla. 1st DCA 1993). This section applies to all contractors/subcontractors, not just the construction industry, and its primary purpose is to ensure that industries and owners do not circumvent workers' compensation coverage requirements by parceling out large projects or operations to multiple contractors who, individually, employ fewer than four workers, and so are exempt from chapter 440, Florida Statutes. *See McCollough v. Bush*, 868 So. 2d 1271, 1273-74 (Fla. 1st DCA 2004). Section 440.10(1)(b), accordingly, makes a contractor liable for the payment of benefits to employees vertically below the contractor on the particular jobsite, except to the extent that subcontractors have, in fact, already secured coverage. *See Villalta v. Comn Int'l, Inc.*, 110 So. 3d 952 (Fla. 1st DCA 2013). The statute also determines which employers on a given jobsite are entitled to tort immunity under section 440.11, Florida Statutes, because such immunity protects those employers, and only those employers, who would be liable for the payment of benefits to a particular employee. *See Deen v. Quantum Resources, Inc.* 750 So. 2d 616 (Fla. 1999); *Employers Ins. of Wausau v. Abernathy*, 442 So. 2d 953 (Fla. 1983); *VMS, Inc. v. Alfonso*, 147 So. 3d 1071 (Fla. 3d DCA 2014); *Adams Homes of NW Fla. v. Cranfill*, 7 So. 3d 611, 613-14 (Fla. 5th DCA 2009).

Section 440.10(1)(b), Florida Statutes, is concerned only with liability for benefits and coverage for employees performing subcontracted work. *See generally, Latite Roofing and Sheet Metal Co., Inc. v. Barker*, 886 So. 2d 1064, 1066 (Fla. 4th DCA 2004)(subcontractor entitled tort

immunity as a statutory employer, regardless of whether it complied with terms of the contract under which it was working, because employees had coverage). The Legislature recognized that some subcontractors would be too small to be an employer within the meaning of chapter 440, Florida Statutes, and accordingly, would have no obligation to secure workers' compensation coverage, whereas larger subcontractors and construction companies of any size should already have secured workers' compensation coverage whether or not they perform under a particular subcontract. The Legislature chose to promote coverage by making the contractor liable for paying benefits and responsible for securing appropriate insurance, unless a particular subcontractor already has its own coverage. To that end, section 440.10(1)(c), Florida Statutes, requires a contractor to verify that any of its subcontractors who are required to purchase workers' compensation insurance have actually done so.

Section 440.10(1)(d)1., Florida Statutes, provides:

> If a contractor becomes liable for the payment of compensation to the employees of a subcontractor *who has failed to secure such payment in violation of s. 440.38*, the contractor or other third-party payor shall be entitled to recover from the subcontractor all benefits paid or payable plus interest unless the contractor and subcontractor have agreed in writing that the contractor will provide coverage.

(emphasis supplied). This subsection is a corollary to section 440.10(1)(b), Florida Statutes. It addresses the particular scenario where a subcontractor *who is an employer* subject to the act *unlawfully* fails to secure coverage, giving rise to a successful claim for benefits against the contractor on a particular project. It gives the affected contractor, and its workers' compensation insurance carrier, a right of recovery against the non-compliant subcontractor. Notably, section 440.10(1)(d)1., does not afford a contractor/carrier the right to recover the value of benefits paid to subcontractor's employee where the subcontractor is not an "employer" already obligated to

secure coverage. The right to recovery hinges on the subcontractor's non-compliance with the obligation to secure benefits. The contractor may, for business expediency and/or liability protection, agree to purchase coverage for a non-compliant subcontractor's employees. *See generally, Motchkavitz v. L. C. Boggs Indus., Inc.,* 407 So. 2d 910, 912 (Fla. 1981), *overruled on other grounds by Employers Ins. of Wausau v. Abernathy*, 442 So. 2d 953 (Fla. 1983)("even when a subcontractor agrees to secure coverage for its employees, a prudent contractor will prepare for or insure against its contingent liability as a 'statutory employer' in case the subcontractor fails to do so."). In such event, the contractor/carrier's right of recovery against the subcontractor is extinguished, so long as the agreement regarding coverage is in writing. Nothing in section 440.10(1)(d)1., however, suggests such action by the contractor excuses the subcontractor's violation of section 440.38(1), Florida Statutes. Section 440.10(1)(d)1. is operative in the instant case, because respondent "in violation of s[ection] 440.38," allowed its workers' compensation insurance to lapse in April 2015. The intervenor wisely protected itself from potential liability and from sanction under Rule 69L-6.032(6), *Florida Administrative Code*[3], by purchasing insurance for respondent's employees, but did not in the process "cure" respondent's violation of sections 440.10(1) and 440.38(1). This is demonstrated by the plain language in sections 440.10(1)(a) and 440.38(1)(a), Florida Statutes, and by reference to other statutes.

Section 440.107, Florida Statutes, defines the Department's authority to enforce the requirement that employers secure the payment of compensation for their employees. Section

[3] Rule 69L-6.032(6) provides that, where a subcontractor fails to secure coverage, and a contractor fails to obtain the required evidence of the subcontractor's coverage and does not secure coverage for the subcontractor's employees, both the contractor and subcontractor will be subject to a Stop Work Order and a penalty. Where the contractor obtains the required evidence that the subcontractor has secured coverage, but subcontractor actually does not have coverage, only the subcontractor will be subject to a Stop Work Order and penalty.

440.107(2), Florida Statutes, defines "securing the payment of compensation" as "obtaining coverage that meets the requirements of this chapter." Section 440.38(1)(a), Florida Statutes, defines securing payment as "insuring and keeping insured the payment of [workers' compensation benefits] with any stock company or mutual company or association or exchange, authorized to do business in the state." Relying on another entity to purchase coverage for respondent's employees does not constitute "securing" compensation. Section 440.10(1)(e), Florida Statutes, helps to sharpen the distinction:

> A subcontractor providing services in conjunction with a contractor on the same project or contract work is not liable for the payment of compensation to the employees of another subcontractor or the contractor on such contract work, and is protected [from tort liability] by s. 440.11 . . . on account of injury to an employee of another subcontractor, or of the contractor, provided that:
> 1. The subcontractor has secured workers' compensation insurance for its employees *or the contractor has secured such insurance on behalf of the subcontractor and its employees in accordance with paragraph (b)*; and
> 2. The subcontractor's own gross negligence was not the major contributing cause of the injury.

(emphasis supplied). Section 440.10(1)(e) addresses workers' compensation liability and tort immunity in both "horizontal" and "vertical" relationships among subcontractors and contractors on specific sites. *See Wert v. Camacho*, 2016 WL 1234737 (Fla. 2d DCA Mar. 30, 2016). It is not part of the enforcement regime. Nevertheless, the statute clearly indicates that an employer "secures" the payment of benefits by purchasing insurance. If, as the ALJ contends, a subcontractor may "secure" coverage in compliance with section 440.38(1) by having coverage purchased by a contractor on its behalf, then the language in section 440.10(1)(e)1., quoted in italics above, would be meaningless surplus. Furthermore, if the Legislature intended a contractor's purchase of insurance to cover a non-compliant subcontractor's employees to be

equivalent to the subcontractor purchasing insurance, then section 440.10(1)(e)1. would logically provide immunity to a subcontractor where "the contractor has secured such insurance on behalf of the subcontractor and its employees in accordance with *paragraphs (b) or (d)1.*" Clearly, however, the Legislature has intentionally prescribed differential treatment for subcontractors who have no obligation to secure coverage (i.e. section 440.10(1)(b)) and those who are required by law to secure coverage, but have failed to do so (i.e. section 440.10(1)(d)1.).

Section 440.10(1)(g), Florida Statutes, also supports the Department's view of an employer's obligation to directly purchase workers' compensation insurance. It provides that "[s]ubject to s. 440.38, any employer who has employees engaged in work in this state *shall obtain a Florida policy or endorsement* for such employees" to ensure Florida class codes, rates, rules, and manuals are applied. While this provision is directed at the type of policy which may be purchased, it indicates that each employer must obtain its own policy to comply with section 440.38. *See also,* Fla.Admin.Code.R. 69L-6.019(1)("Every employer . . . required to provide workers' compensation coverage for employees engaged in work in this state shall obtain a Florida policy or endorsement").

While there appears to be no case law directly on point, appellate decisions discussing the requirement to "secure the payment of benefits" support the Department's interpretation. This includes three cases the ALJ cited in support of his contrary construction. In *Limerock Industries, Inc. v. Pridgeon*, 743 So. 2d 176 (Fla. 1st DCA 1999), an injured employee sought to hold his employer liable in tort, claiming that section 440.11(1), Florida Statutes (1995), did not provide tort immunity because the employer erroneously classified the injured employee as an independent contractor, and so did not report the employee's risk factors and salary to the insurer for calculation of an appropriate premium. The court held the employer was immune in tort,

because section 440.38(1), Florida Statutes, required employers to "secure the payment of compensation" by insuring and keeping insured the payment of compensation, and the employer had, in fact, purchased and maintained workers' compensation insurance. 743 So. 2d at 177-78. This case supports the Department's reading of the statute, because the court equates "securing coverage" with the employer directly purchasing an insurance policy for its own employees. The instant respondent, unlike the employer in *Limerock*, did *not* purchase and maintain workers' compensation insurance. *Limerock* illustrates, as well, that an employee may have coverage, and an employer may have immunity under section 440.11, Florida Statutes, but still not be in compliance with its obligations under the Act[4].

The ALJ also cites *Mena v. J.I.L. Construction Group Corp.*, 79 So. 3d 219 (Fla. 4th DCA 2012), and *VMS, Inc. v. Alfonso*, 147 So. 3d 1071 (Fla. 3d DCA 2014), which hold that the duty to secure the payment of compensation requires only that an employer purchase coverage, not the employer actually pay benefits to an injured employee. Again, the issue in these two cases was tort liability. To the extent the cases discuss the statutory obligation to secure benefits, they support the Department's conclusion that respondent, here, failed to fulfill that obligation. In *Mena*, a general contractor for a residential development subcontracted work to Slorp Construction Company, which in turn subcontracted part of the work to J.I.L. Construction Group, which employed Mr. Mena, who was injured on the job. 79 So. 3d at 221. While there were multiple issues in the appeal, the *Mena* court specifically addressed Slorp's tort immunity under section 440.11, Florida Statutes:

> J.I.L. procured a policy of worker's compensation insurance that was in effect for the date of Mena's accident. Slorp verified that J.I.L. had coverage. Slorp was Mena's statutory employer because

[4] If the misrepresentation of the *Limerock* employee as an independent contractor was intentional, the employer would have been subject to sanction under section 440.381(6), Florida Statutes (1995).

> it owed a contractual obligation to the general contractor and subcontracted a portion of that work to J.I.L., thus taking on the responsibility to provide coverage for Mena in the event J.I.L. failed to do so. *See Candyworld, Inc. v. Granite State Ins. Co.*, 652 So.2d 1165, 1167 (Fla. 4th DCA 1995); *Woods v. Carpet Restorations, Inc.*, 611 So.2d 1303, 1304 (Fla. 4th DCA 1992). "[W]here the statutory employer secures coverage *or ensures that the subcontractor does so,* the statutory employer is immune from suit for the employees' personal injuries." *Adams Homes of Nw. Fla., Inc. v. Cranfill,* 7 So.3d 611, 613 (Fla. 5th DCA 2009) (emphasis added). *Accord Latite Roofing & Sheet Metal Co. v. Barker,* 886 So.2d 1064, 1066 (Fla. 4th DCA 2004) (contractor "performed in the way the statute sought to encourage" and was "entitled to immunity" where it verified that its subcontractor had coverage); *Motchkavitz,* 407 So.2d at 913 ("It is the liability to secure coverage for such employees in the event the subcontractor does not do so that immunizes a contractor from suit by such employees."). Consequently, Slorp was immune from Mena's negligence action, and we affirm the trial court's entry of summary judgment for Slorp.

Id. at 225. (emphasis in original). As in *Limerock*, the subcontractor, J.I.L., that actually employed the injured worker had purchased workers' compensation insurance, thus "securing" the payment of benefits.

In *VMS*, appellant contracted with the state to maintain certain roadways and bridges. 147 So. 3d at 1072. VMS secured coverage by purchasing workers' compensation insurance. *Id.* VMS subcontracted certain tasks to ABC, which also purchased workers' compensation insurance. *Id.* ABC further subcontracted work to Lazaro Contreras, who in turn hired a number of day laborers, including appellee Alfonso, who was injured on the job. *Id.* Contreras did not purchase workers' compensation insurance. *Id.* Alfonso never sought workers' compensation benefits; rather, he sued both VMS and ABC for negligence.

The *VMS* court explained that, as an employer, VMS was obligated to secure the payment of compensation to its employees by insuring and keeping insured the payment of benefits. *Id.* at 1073. The court further noted that, as the statutory employer of ABC's workers, VMS was

obligated to secure coverage for those employees, or to ensure that ABC did so, which ABC, in fact, did. *Id.* at 1074. The court held that, having satisfied these obligations, VMS was not liable in tort for injuries sustained by ABC's or Contreras' employees. *Id.* at 1075. Contrary to the ALJ's assertion in recommended order paragraph 86, the *VMS*, *J.I.L.*, and *Limerock* courts did not adopt a "fairly broad" definition of compliance with the requirement to "secure payment." Each of these decisions, and many similar ones, cite to sections 440.10 and 440.38, Florida Statutes, when describing the statutory obligation to "secure coverage" as the employer directly purchasing insurance. The cases note that a contractor may protect itself from tort liability to a subcontractor's employees by securing coverage "on behalf" of the subcontractor, but no case describes such an arrangement as the subcontractor "securing" coverage, nor does any case suggest that the arrangement renders the subcontractor compliant with the statutory directive to secure coverage.

The ALJ, in recommended order paragraph 93, also appears to suggest that section 440.107(2), Florida Statutes, limits "failure to secure payment of workers' compensation" to specific delineated acts: understating or concealing payroll; materially misrepresenting or concealing employee duties so as to avoid proper classification for premium calculations; and materially misrepresenting or concealing information pertinent to the computation and application of an experience rating modification factor. Section 440.107, however, is not so limiting. It provides, in pertinent part:

> (1) The Legislature finds that the failure of an employer to comply with the workers' compensation coverage requirements under this chapter poses an immediate danger to public health, safety, and welfare.
> (2) *For the purposes of this section, "securing the payment of workers' compensation" means obtaining coverage that meets the requirements of this chapter and the Florida Insurance Code.* However, if at any time an employer materially understates or

> conceals payroll, materially misrepresents or conceals employee duties so as to avoid proper classification for premium calculations, or materially misrepresents or conceals information pertinent to the computation and application of an experience rating modification factor, such employer shall be deemed to have failed to secure payment of workers' compensation and shall be subject to the sanctions set forth in this section. A stop-work order issued because an employer is deemed to have failed to secure the payment of workers' compensation required under this chapter because the employer has materially understated or concealed payroll, materially misrepresented or concealed employee duties so as to avoid proper classification for premium calculations, or materially misrepresented or concealed information pertinent to the computation and application of an experience rating modification factor shall have no effect upon an employer's or carrier's duty to provide benefits under this chapter or upon any of the employer's or carrier's rights and defenses under this chapter, including exclusive remedy.
>
> (3) The department shall enforce workers' compensation coverage requirements, *including the requirement that the employer secure the payment of workers' compensation, and the requirement that the employer provide the carrier with information to accurately determine payroll and correctly assign classification codes.*

§ 440.107, Fla. Stat. (emphasis supplied). The clear intent of the statute is to ensure that employers are accountable not only for purchasing workers' compensation insurance, but for securing coverage that is commensurate with their claims exposure. "Securing" coverage means not only purchasing insurance, but also paying premium based on an accurate assessment of risk. To the extent recommended order paragraph 93 suggests otherwise, it is rejected.

The ALJ, in recommended order paragraphs 115 – 117, discounts the Department's argument below that the coverage intervenor secured on respondent's behalf would be limited to work performed under the contract with intervenor. The ALJ noted there was no evidence presented to prove respondent's employees performed any work other than under that contract, nor was there evidence as to the coverage limitations of the intervenor's insurance policy. The ALJ's reasoning in paragraphs 116 and 117 underscores why his construction of the applicable

statutes is less reasonable than the Department's. The ALJ's view that any subcontractor can secure coverage for its employees by having a contractor purchase insurance on its behalf, leads directly to the regulatory quagmire the ALJ describes in these two paragraphs. Establishing an employer's periods of compliance and non-compliance could theoretically require an investigation into every subcontracting arrangement the employer entered at any work site during, or even before, a period under review. The ALJ's construction of the pertinent statutory language would render enforcement a herculean task, because an employer, particularly in the construction industry, may be performing work at any number of sites under all manner of contracting relationships. Given that contractor and contractor records often rely on poorly-documented exchanges of funds to establish payments, reimbursements, and the like, the ALJ's approach, which would require the Department to prove by clear and convincing evidence that an employer's workers were *not* covered by a third party's insurance policy, could create a crippling loophole in the enforcement framework. This cannot be the intent of the plain statement in section 440.10(1)(a), Florida Statutes, that any construction contractor or subcontractor "shall secure and maintain" coverage as provided in section 440.38, Florida Statutes.

The Department's construction of the term "secure" the payment of compensation benefits as it is used in sections 440.10, 440.107, and 440.38, Florida Statutes, is more reasonable than that which the ALJ ascribes to those statutes. Respondent is a construction company. Section 440.10(1)(a), Florida Statutes, imposes upon respondent a plain and unambiguous obligation to purchase coverage for its employees. The Department is charged in section 440.107, Florida Statutes, with determining if an employer has secured coverage for its employees. In this role, the Department is not concerned with determining which entity at a

particular site is responsible for paying benefits, nor does the Department sort out tort liability. Those matters are reserved to Judges of Compensation Claims and the courts, respectively. The plain language of the pertinent statutes, and the case law addressing those statutes, indicate that contractor or subcontractor's employees may be covered in terms of the ability to seek and receive benefits, yet the contractor or subcontractor may still be non-compliant with its obligation to secure those benefits. The Department respectfully rejects the ALJ's contrary view.

The respondent and intervenor jointly filed exceptions to the recommended order. The first exception challenges the ALJ's ruling, in footnote 10, that a 2011 settlement agreement the Department executed with another employer upon similar facts precluded the Department from issuing the Stop-Work Order and Amended Order of Penalty Assessment against respondent in this case. As an initial matter, the ALJ's ruling on issue preclusion and collateral estoppel vis-à-vis the 2011 settlement agreement is not a matter within the Department's substantive jurisdiction, so the Department lacks authority to reject the ALJ's conclusion. In any event, the ALJ's ruling was correct. A five-year old settlement agreement with a different party has no binding effect in this proceeding. The exception is rejected.

Respondent/intervenor's second exception challenges the lack of findings in the recommended order relative to respondent/intervenor's demand for attorney's fees. The Department lacks authority to address this exception, so it is rejected.

Respondent/intervenor's third exception challenges the Recommendation's failure to include language to the effect that respondent, should it prevail, is entitled to have the sum it paid to settle the penalty returned to it. Such a recommendation may be beyond the scope of the recommended order, but respondent can be assured that, should respondent ultimately prevail, the Department will return funds respondent has paid to satisfy the penalty.

The ALJ's findings of fact are adopted. In accordance with the foregoing, the conclusions of law are adopted, with modification. All of the affected conclusions of law relate to the ALJ's interpretation of the term "secure" the payment of compensation benefits as it is used in sections 440.10, 440.107, and 440.38, Florida Statutes. Recommended order paragraph 86 is rejected. Paragraphs 93 and 94 are rejected to the extent they suggest only concealing payroll or failing to provide a carrier information to accurately compute premium can constitute failing to secure coverage. Paragraphs 108 – 111 are rejected. Paragraph 114 is rejected. The last sentence of paragraphs 116 and 117 are rejected. Paragraph 119 is rejected. Paragraph 120, second sentence, is rejected. Paragraph 121, second sentence, is rejected. The recommendation is rejected.

Accordingly, a penalty of $11,902.20 is imposed on respondent for failure to secure workers' compensation coverage as required by sections 440.10(1) and 440.38(1), Florida Statutes.

DONE and ORDERED this 4th day of August, 2016.

Robert C. Kneip
Chief of Staff

NOTICE OF RIGHT TO APPEAL

A party adversely affected by this final order may seek judicial review as provided in section 120.68, Florida Statutes, and Florida Rule of Appellate Procedure 9.190. Judicial review is initiated by filing a notice of appeal with the Agency Clerk, and a copy of the notice of appeal, accompanied by the filing fee, with the appropriate district court of appeal. The notice of appeal must conform to the requirements of Florida Rule of Appellate Procedure 9.110(d), and must be filed (i.e., received by the Agency Clerk) within thirty days of rendition of this final order.

Filing with the Department's Agency Clerk may be accomplished via U.S. Mail, express overnight delivery, hand delivery, facsimile transmission, or electronic mail. The address for overnight delivery or hand delivery is Julie Jones, DFS Agency Clerk, Department of Financial Services, 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0390. The facsimile number is (850) 488-0697. The email address is Julie.Jones@myfloridacfo.com.

Copies furnished to:

Augstin Osorio, President of Respondent
6632 Willow St.
Mount Dora, FL 32757

Robin Sempier, Representative of Intervenor
4975 Patch Rd.
Orlando, FL 32822

Patrick Charles Crowell, Esq., Attorney for Respondent and Intervenor
Patrick C. Crowell, P.A.
4853 S. Orange Ave., Suite B
Orlando, FL 32806

Trevor S. Suter, Esq., Attorney for the Division
200 E. Gaines St.
Tallahassee, FL 32399-4223