

**STATE BOARD OF ADMINISTRATION OF FLORIDA**

TOWER HILL INSURANCE GROUP, LLC,	)	
Petitioner	)	
	)	
vs.	)	Case No. 2008-01
	)	
STATE BOARD OF ADMINISTRATION,	)	
Respondent	)	
	)	

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**DENIAL OF PETITION FOR AN EMERGENCY WAIVER OR VARIANCE**

THIS CAUSE came before the State Board of Administration (SBA) for consideration and action in response to a Petition for an Emergency Waiver or Variance from Rule 19-8.028, Florida Administrative Code (F.A.C.). The Petition for an Emergency Waiver or Variance was filed by Tower Hill Insurance Group, LLC, (Petitioner), pursuant to Section 120.542, Florida Statutes (F.S.), on behalf of five of Tower Hill Insurance Group, LLC's managed companies: Tower Hill Preferred Insurance Company, Tower Hill Select Insurance Company, Tower Hill Prime Insurance Company, Omega Insurance Company and Hillcrest Insurance Company. When the reference herein is to all five of the relevant companies, "Each Affected Company", "Affected Companies" or "Petitioner" will be used as the reference.

Having considered Petitioner's request for waiver or variance and supporting documentation, including additional information provided upon the SBA's request, the SBA finds as follows:

**STATEMENT OF THE ISSUES**

1. Whether Petitioner is entitled to an emergency waiver or variance from the requirements of Rule 19-8.028, F.A.C., imposing the premium rates applicable to both the mandatory coverage and the optional coverage from the Florida Hurricane Catastrophe Fund (FHCF).
2. Whether Petitioner is entitled to the benefit of Section 215.555(3), F.S., which allows for "reasonable flexibility" in the application of rules in situations of "undue hardship" or in situations of "an unusual nature." However, such flexibility must not "impair, override, supersede, or constrain the public purpose of the fund and must be consistent with sound insurance practices."

**ACTION REQUESTED**

3. Petitioner is requesting that the SBA waive the provisions of the rule which sets forth the reimbursement contract rates for the 2008/2009 Reimbursement Contracts and implement a lower rate that is more in line with the amount of coverage Petitioner believes they are receiving from the FHCF. (Petition for Emergency Waiver or Variance, paragraph 24)

4. As discussed in paragraph 2. supra, Petitioner seeks application of Section 215.555(3), F.S., which allows flexibility in the application of rules under certain circumstances.

#### SUMMARY OF PETITIONER'S ARGUMENTS

5. Petitioner seeks to lower the FHCF reimbursement contract rates for the 2008/2009 Contract Year and in support makes the following arguments:

- Petitioner argues that the October 2008 bonding estimates show that the FHCF would have "inadequate resources to fully reimburse insurers if a storm during the 2008 hurricane season results in insured residential losses of greater than \$16.2 billion" and that the maximum potential shortfall of the FHCF is \$14.5 billion. (Petition for Emergency Waiver or Variance, paragraphs 16-17)

- Petitioner argues that it actually is receiving only 58% of the coverage they paid for with respect to the "traditional" coverage and only 33% of the coverage they paid for with respect to the optional Temporary Increase in Coverage Limit (TICL). (Petition for Emergency Waiver or Variance, paragraph 18)

- Petitioner argues that it paid an actuarially sound rate for \$28 billion in coverage but is receiving coverage for less than half that amount. The invoices reflect premiums for coverage not available and that this is a substantial hardship. (Petition for Emergency Waiver or Variance, paragraphs 39-41, 51 and 52)

- The Affected Companies have been "called upon to substantiate the existing ratings they maintain...." and that this action is due to "the declining credit status of the FHCF." (Petition for Emergency Waiver or Variance, paragraphs 21 and 29)

- The cost of private reinsurance may go up and Petitioner may need to adjust the premium charged to its policyholders for the 2009 hurricane season to "cover the FHCF gaps for the 2009 hurricane season." (Petition for Emergency Waiver or Variance, paragraphs 19, 22 and 30)

- In support of the emergency nature of the Petition, Petitioner states that they have a Reimbursement Premium installment due on 12/1/08 and must have its reinsurance contracts with private reinsurers in place by May, 2009. (Petition for Emergency Waiver or Variance, paragraphs 26 and 53)

- Petitioner argues that the underlying purpose of the statute will be achieved if Reimbursement Premiums are refunded to Petitioner because it could use the funds to pay covered claims, increase surplus or to purchase additional reinsurance in the future and that its premium represents only 1% of all premium submitted to the FHCF. (Petition for Emergency Waiver or Variance, paragraphs 33 and 48)

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

6. The level of coverage offered by the FHCF in its Reimbursement Contract is set by law. Section 215.555(4)(c)1., F.S., provides that the "traditional" or mandatory coverage provided to participating insurers is up to "\$15 billion for that contract year adjusted based upon the reported exposure from the prior contract year to reflect the percentage growth in exposure...for covered policies since 2003...." Using the premium formula, the "traditional" coverage for the 2008/2009 Contract Year that the FHCF was required to provide was \$16.35 billion. The optional TICL coverage which must be offered is provided in Section 215.555(17)(d)9.a., F.S. Within the limits provided by law, participating insurers chose \$11.143 billion in TICL coverage for the 2008/2009 Contract Year. Therefore, the total coverage for the 2008/2009 Contract Year and for which coverage is promised in the Reimbursement Contract is up to \$28 billion. The FHCF provides coverage set by law for either the "traditional" or the optional coverages.

7. Rates, by law, must be actuarially sound, Sections 215.555(2)(a) and (5), F.S. Rates would not be actuarially sound if they were based upon an amount of coverage LESS than the coverage the FHCF was required, by law, to provide. Therefore, the rates, which are based upon many factors, were also based upon the fact that the FHCF may need to reimburse participating insurers approximately \$28 billion in "traditional" and optional coverages.

8. The FHCF rates are thoroughly reviewed, and the public has ample opportunity to comment upon them. On March 26, 2008, the 2008/2009 premium formula and rates, including the formula and rates for the optional TICL coverage, which rates are the subject of this Petition for Emergency Waiver or Variance and which were prepared by the FHCF's independent actuary, were presented at a public meeting of the FHCF Advisory Council and approved by it. On April 15, 2008, the formula and rates were presented and unanimously approved at a public meeting of the Board of the SBA. The Board of the SBA consists of the Governor, the Attorney General, and the Chief Financial Officer of the State of Florida. The rates and premium formula are required by Section 215.555(5)(a), F.S., to be actuarially sound. Subsequently, the approved premium formula and rates were adopted by incorporation into Rule 19-8.028(3)(k), F.A.C. Petitioner had the opportunity at each of these public meetings to address the specifics as to how the premium formula was being developed, but did not.

9. On May 30, 2008, the SBA published an Estimated Borrowing Capacity notice, which noted the "increased volatility in the financial markets, coupled with the additional uncertainty brought about by the financial market conditions evidenced since August 2007 associated with the sub-prime mortgage problem and the continuing impact on financial market liquidity" and raised concerns about the ability of the FHCF to raise substantial sums in the financial markets.

10. On or before June 1, 2008, each of the Affected Companies returned an executed Reimbursement Contract to the SBA. Each Affected Company chose \$12 billion optional additional TICL coverage pursuant to Section 215.555(17), F.S. Three of the companies also chose optional additional coverage pursuant to Section 215.555(4)(b)4., F.S.: Tower Hill Preferred Insurance Company chose \$5,000,000 in coverage, Omega Insurance Company chose \$6,315,000 in coverage, and Hillcrest Insurance Company chose \$2,513,183 in coverage.

(Levels of coverage provided on 11/14/08 to the SBA by Petitioner's counsel in response to a request for information.)

11. On August 8, 2008, the SBA entered into a Put Option Agreement with Berkshire Hathaway which obligated Berkshire Hathaway to purchase, under certain conditions, \$4 billion in bonds from the FHCF Finance Corporation for the benefit of the FHCF. Combining the assets on hand of \$2.786 billion plus \$4 billion from the Berkshire Hathaway Put Option Agreement and \$3.5 billion in Series 2007A Floating Rates Notes, the FHCF has \$10.286 billion in readily accessible assets to meet its obligations before it goes to the financial markets to raise additional funds. This \$10.286 billion is the largest amount of liquid assets ever held by the FHCF. This amount would cover two hurricanes the size of Hurricane Wilma (landfall in Florida on 10/24/05).

12. On October 31, 2008, the SBA published an Estimated Borrowing Capacity notice which, like the May 2008 notice, again noted the "highly volatile global financial market conditions" and gave the projected year end balance of the FHCF as approximately \$2.786 billion and the estimated borrowing capacity over the next six to twelve months as approximately \$1.5 billion to \$3.0 billion.

13. On November 12, 2008, Petitioner, Tower Hill Insurance Group, LLC, pursuant to Section 120.542, F.S., filed a Petition for an Emergency Waiver or Variance from Rule 19-8.028, F.A.C.

14. On November 14, 2008, the SBA requested additional information from Petitioner regarding the level of its purchases of optional coverages. On November 14, 2008, additional information was provided.

15. On November 26, 2008, as required by Section 120.542, F.S., the SBA published a notice in the Florida Administrative Weekly, Volume 34, No. 48, regarding the receipt of this Petition and invited public comment. The deadline for receiving public comments on the Petition for an Emergency Waiver or Variance was set in the published notice to be 5 days following publication, or December 1, 2008. On December 9, 2008, the Florida Property and Casualty Association, Inc. filed a Petition for Intervention in the instant action. Section 120.54, F.S., and the applicable rules provide no authority for intervention in the Petition for an Emergency Waiver or Variance, but do provide the opportunity for public comment, under certain time constraints. Pursuant to Rule 28-104.005(2), F.A.C., and the notice published by the SBA on November 26, 2008, in Volume 34, No. 48, of the Florida Administrative Weekly, this Petition for Intervention is untimely; nevertheless, the SBA has considered the matters contained in the Petition as if they were comments to the instant proceeding. A copy of the Petition for Intervention is provided herewith.

16. Section 120.542, F.S., provides in pertinent part as follows:

- (1) ...This section does not authorize agencies to grant variances or waivers to statutes....
- (2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial

hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

17. Petitioner argues that it has been "called upon to substantiate the existing ratings they maintain..." and that this action is due to "the declining credit status of the FHCF." (Petition for Emergency Waiver or Variance, paragraphs 21 and 29) However, the FHCF Finance Corporation, which issues bonds for the benefit of the FHCF, has held the S&P rating of AA- since January 2007, the Fitch AA- rating since January 2007 and the Moody's Aa3 rating since August 2004. The credit status of the FHCF's bond-issuing entity, the FHCF Finance Corporation, remains unchanged. In addition, on May 28, 2008, the Internal Revenue Service issued a private letter ruling holding that a prior exemption for the bonds of the FHCF Finance Corporation, which was to expire on June 30, 2008, could continue to be relied upon on a permanent basis. There has been no decline in the FHCF Finance Corporation's credit status.

18. Petitioner admits that the Reimbursement Premium is an actuarially indicated premium based upon approximately \$28 billion in coverage. (Petition for Emergency Waiver or Variance, paragraph 39) However, Petitioner alleges that the FHCF cannot possibly pay out \$28 billion, should a catastrophic event or events occur which cause maximum losses. Therefore, the rates should have been based upon some lower amount, not the \$28 billion promised in the Reimbursement Contracts. (Petition for Emergency Waiver or Variance, paragraphs 16-18, 39-40, and 51-52) As discussed above, the amount of "traditional" and optional coverages provided by the FHCF is set by law. Further, by law, the rates charged for such coverages are required to be actuarially sound. Rates could be reduced if less coverage were offered; however, the FHCF has no statutory authority to reduce the coverages offered and, since the rates must be actuarially sound, they must be based upon the coverage provided in the Reimbursement Contracts, i.e. \$28 billion. There can be no waiver or variance to a Statute. The Reimbursement Premium is set in order to provide up to \$28 billion in coverage. It is not possible to charge a variable premium that would reflect the FHCF's "actual claims-paying capacity" since that would not be known until actual bonds are issued at some time in the future, possibly many years later. The circumstances of the future are not known and economic conditions can change quickly. The assumption has to be that the FHCF would make every effort to reach its statutory limit and ultimately pay all of its participating insurer's claims. To reduce coverage or to charge actuarially unsound premiums would be in violation of law and thus, cannot be achieved through waiver or variance.

19. Petitioner claims that it is paying for coverage that is not available. However, this assertion is not supported by credible evidence. Petitioner claims that it is receiving only 58% of the coverage paid for with respect to the "traditional" coverage and only 33% of the coverage paid for with respect to the optional TICL coverage. (Petition for Emergency Waiver or Variance, paragraph 18) Petitioner alleges that it has therefore paid "\$13,629,638 in excess premiums." Although the allegation is untrue, this calculation is incorrect and was not done according to principles of actuarial science. Should a statistically low probability event occur that would have

required the FHCF to pay out \$28 billion in covered losses during the 2008/2009 Contract Year, the FHCF has approximately \$10.3 billion in liquid assets consisting of \$2.786 billion, a \$4 billion Put Option, \$3.5 billion in Floating Rate Notes, and an additional ability, according to the October 2008 notice, of raising \$1.5 billion to \$3.0 billion within a six to twelve month period. Each insurer's share of approximately \$6.8 billion of the industry-wide retention would need to be paid by each participating insurer to trigger FHCF coverage. Further, loss development takes time, sometimes years. Participating insurers are still, to this date, submitting losses for the 2004 and 2005 hurricane seasons and receiving payments from the FHCF for those losses. By law, the FHCF has time in which to pay losses. Section 215.555(4)(d)1., F.S., provides that the FHCF must pay losses "as soon as practicable...." Therefore, at the various times that the FHCF would need to access the various financial markets, it may be able to raise all the funds needed to reimburse covered losses in full.

20. Given the assets the FHCF has on hand and the time it has to access the financial markets, there is reason to believe that in most loss scenarios all reimbursable losses would be paid in full. Historically, all covered losses have been paid; even after an unprecedented eight storms caused covered losses during the 2004 and 2005 seasons, the FHCF has paid all covered losses. Further, given the importance of the insurance industry to the State's economic health, it is not inconceivable that if the FHCF cannot raise the necessary funds from the financial markets after a catastrophic event, the state or federal governments could become involved to enable the FHCF to fully pay reimbursable losses.

21. With respect to the 2008/2009 Contract Year in particular, there have been no hurricanes to occur during the hurricane season and no loss claims. This largely relegates the Petitioner's request as moot. The Petitioner has never been in danger of the FHCF's non-payment of claims. At the time the Petition for Emergency Waiver or Variance was filed on November 12, 2008, there were no hurricane losses for the 2008/2009 Contract Year and the FHCF had more liquid assets available to cover losses than at any prior time in its history. The likelihood of losses occurring in the last 18 days of the hurricane season or for that matter, during the remainder of the 2008/2009 Contract Year, is extremely low. From 1950 through 2008, only one hurricane made landfall in Florida in November and no hurricanes made landfall in Florida from December through May. Storm information obtained from the DAS Cyclone Tracker, an on-line interactive site provided to the public by the Department of Atmospheric Sciences, University of Illinois at Urbana-Champaign. See [http://ww2010.atmos.uiuc.edu/\(Gh\)/guides/mtr/hurr/hurtrack/index.html](http://ww2010.atmos.uiuc.edu/(Gh)/guides/mtr/hurr/hurtrack/index.html).

22. Petitioner has received exactly what they are entitled to pursuant to the law and their Reimbursement Contracts. They have a promise from the FHCF to pay reimbursable losses up to the amount promised in the contract as limited by law to "actual claims-paying capacity." The "actual claims-paying capacity" of the FHCF is defined in Section 215.555(2)(m), F.S., as follows:

"Actual claims-paying capacity" means the sum of the balance of the fund as of December 31 of a contract year, plus any reinsurance purchased by the fund, plus the amount the board is able to raise through the issuance of revenue bonds under subsection (6).

Since the timing of the FHCF's loss payments are limited only to the statutory requirement of payment "as soon as practicable..." the FHCF can continue to attempt to issue debt over time in order to fully fund its obligations. There is no statutory requirement that would limit the FHCF's loss reimbursements to the "estimated claims-paying capacity" as published in the October 2008 notice. No insurer or reinsurer can guarantee that all claims will be paid. Private reinsurers have and do become insolvent if losses exceed their solvency thresholds. The FHCF will never become insolvent, given its statutory liability limitation of "actual claims-paying capacity," but under certain circumstances, its "actual claims-paying capacity" may be short of its statutory limits of liability.

23. At the time each Affected Company entered into the 2008/2009 Reimbursement Contract on or about June 1, 2008, each choosing the highest available optional coverage under TICL, the SBA had issued numerous May and October bonding capacity notices containing a number of caveats regarding the amounts that could be raised following a major catastrophe, including the uncertainty of financial markets at the time when funds needed to be raised, the uncertainty of the financial markets to absorb the size of the bond issuance that may be needed, the volatility of the markets, etc. Further, the market volatility at the time the Reimbursement Contracts were executed was public knowledge. From September 18, 2007 through October 29, 2008, the Federal Reserve Board cut federal fund interest rates 10 times. Prior to September 18, 2007, the last federal fund interest rate cut by the Federal Reserve was on June 25, 2003. In March of 2008, the Federal Reserve, in an unprecedented move, approved a \$30 billion credit line to assist JP Morgan Chase to acquire the failing Bear Stearns. On February 13, 2008, President Bush signed an economic stimulus package passed by Congress to help the economy. Yet Petitioner, knowing that the FHCF would need to access the markets if a catastrophic event was to occur requiring maximum capacity and with full knowledge of the turmoil of those markets, chose the maximum optional coverage under TICL. Petitioner could have chosen a lower level of the optional TICL coverage or none at all; yet, they chose the maximum and now argue for lower rates based upon turmoil in the financial markets, a fact of which they had knowledge before making their choice of coverage.

24. Petitioner argues that it has been harmed because the Legislature has mandated that the savings from the addition to the law of FHCF optional coverages be passed on to policyholders and that its private reinsurers "may begin to price into their 2009/2010 reinsurance rates the potential consequences from the FHCF's inability to fulfill its responsibilities...." (Petition for Emergency Waiver or Variance, paragraphs 11 and 22) This alleged "harm" has no impact on the 2008/2009 Contract Year as Petitioner has not alleged that the FHCF's perceived inability to perform has impacted reinsurance rates it already has had to pay. The FHCF has in the history of its existence fully paid reimbursable losses. The FHCF is not responsible for the actions of private reinsurers or for the requirement of law regarding rate filings.

25. A "substantial hardship," as defined in Section 120.542(2), F.S., "means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver." As discussed above, inquiries from A.M. Best and possible reinsurance premium increases in future years do not rise to the level of substantial hardship. The requirement to pay premiums for coverage even when Petitioner ultimately experienced no losses is not a substantial

hardship. Further, the Petitioner may have been harmed by the poor state of the economy, but it has not been harmed by any action or inaction of the FHCF.

26. Petitioner argues that the purpose of the underlying statute, Section 215.555, F.S., will be or has been achieved by other means. In paragraphs 44, 47, 48, and 49 of the Petition for an Emergency Waiver or Variance, Petitioner argues that refunding a portion of its FHCF premiums would serve the underlying purpose of the statute to “maintain a viable and orderly private sector market for property insurance in Florida” and would “correct the inability of the private sector insurance and reinsurance markets to maintain sufficient capacity....” Petitioner’s argument is incorrect and contrary to law. Weakening the FHCF by withdrawing Petitioner’s premium would not encourage the stability of the insurance market in Florida nor increase insurance capacity in Florida. This effect would be magnified by the reasonable foreseeability that other similarly situated insurance companies would seek similar treatment. See letters of December 1, 2008 from Metropolitan Property and Casualty, Metropolitan Casualty, and Economy Preferred Assurance Company (collectively), HomeWise, and Homeowners Choice insurance companies, attached hereto. Finally, allowing certain insurers to withdraw Reimbursement Premiums harms all the other participants in that it reduces assets available to pay future covered claims. The Legislature created the FHCF to operate as it is being operated. It was created for the purpose of maintaining a viable and orderly private sector insurance market. The FHCF’s performance, with regard to the 2004 and 2005 hurricane seasons, clearly shows that this purpose has and is being achieved. The purposes of the statute cannot be achieved by allowing premiums to be removed based upon a perception that the FHCF may not pay, in full, its obligations for reimbursable losses.

27. Petitioner argues that an emergency exists for the following reasons: that there are pending invoices for Reimbursement Premiums which need to be paid; that Petitioner has been contacted by A.M. Best and asked to substantiate its ratings “due to the declining credit status of the FHCF”; that the private reinsurance market will be affected by the October 31, 2008 Estimated Borrowing Capacity notice; and that it may need to pay higher than normal costs from private reinsurers for the next storm year. (Petition for Emergency Waiver or Variance, paragraphs 21-32). There is no emergency. The amount of the FHCF Reimbursement Premium is known by the Participant early in the Contract Year and payments are made in three installments, August 1, October 1 and December 1. The FHCF Finance Corporation’s credit ratings remain stable and there is no reason to believe it will be downgraded. The FHCF has historically paid all reimbursable losses and currently has on hand more liquid assets available than it has ever had. All losses need not be paid immediately after the occurrence of a covered event as the process of loss development may take a substantial period of time. Further, the FHCF law contains no time requirements for the FHCF to pay reimbursable losses other than “as soon as practicable after receiving...reports of reimbursable losses...” (Section 215.555(4)(d)1., F.S.) The likelihood of hurricane losses following hurricane season until the end of the Contract Year is extremely low. While there is turmoil in the financial markets, this turmoil has harmed everyone from individuals to businesses to governments. There is no emergency that has been created by the FHCF which would call for the relief sought in the Petition for an Emergency Waiver or Variance. No covered events occurred during the 2008 hurricane season, and if such events would have occurred, there are a number of scenarios where insurers could have been reimbursed to the fullest extent of their coverage.

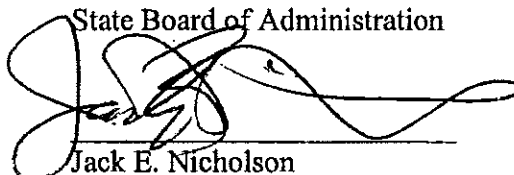


28. Section 215.555(3), F.S., which provides rulemaking authority to the FHCF, also provides for flexibility in the application of the rules where there is "undue hardship" or in situations of "an unusual nature." Petitioner's situation is not of an unusual nature. All 201 insurers participating in the "traditional" FHCF coverage and all 133 insurers participating in the TICL optional coverage are in the same position. No participant has greater rights than any other participant. If the Affected Companies are entitled to receive refunds of premium, which they are not, the other insurers would also be so entitled. The flexibility allowed by law is limited. Such flexibility must not "impair, override, supersede, or constrain the public purpose of the fund and must be consistent with sound insurance practices." Refunding a portion of the Reimbursement Premiums for all 201 participants in the "traditional" coverage and all 133 participants in the TICL coverage would not be sound insurance practice and would clearly weaken the FHCF. The purposes of the statute cannot be achieved by allowing premiums to be removed based upon a perception that the FHCF may not pay, in full, its obligations for reimbursable losses. The FHCF's premium formula is actuarially indicated, it was developed by an independent actuarial consultant, and it was unanimously approved by the Board of the SBA. Further, the premium formula has been adopted by administrative rule. The statute is clear as to the coverage to be provided by the FHCF. The FHCF premiums are low relative to private reinsurance, and it is well known that benefits are provided "up to" the statutorily defined limits.

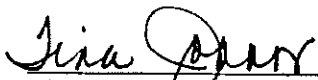
#### **DENIAL OF PETITION FOR AN EMERGENCY WAIVER OR VARIANCE**

Based upon the foregoing and being otherwise fully advised in the premises, the SBA issues this Denial of Petition for an Emergency Waiver or Variance.

Done and Issued this 12 day of December, 2008 in Tallahassee, Florida.

State Board of Administration  
  
Jack E. Nicholson  
Chief Operating Officer - FHCF  
P.O. Box 13300  
Tallahassee, Florida 32317-3300

Filed this 12<sup>th</sup> day of December, 2008.

  
Tina Joanos  
Agency Clerk

## **NOTICE OF RIGHTS**

Section 120.542(8), F.S., states that "the agency's decision to grant or deny the petition shall be supported by competent substantial evidence and is subject to ss. 120.569 and 120.57. Any proceeding pursuant to ss. 120.569 and 120.57 in regard to variance or waiver shall be limited to the agency action on the request for the variance or waiver, except that a proceeding in regard to a variance or waiver may be consolidated with any other proceeding authorized by this chapter." Section 120.569(1), F.S., requires that a notice of Final Agency Action "inform the recipient of any administrative hearing or judicial review that is available under this section, s. 120.57 or s. 120.68; shall indicate the procedure which must be followed to obtain the hearing or judicial review; and shall state the time limits which apply."

## **PETITION FOR ADMINISTRATIVE PROCEEDINGS**

Any person whose substantial interests have been affected by this Denial of Petition for an Emergency Waiver or Variance has the right to request an administrative hearing pursuant to Section 120.542(8), F.S., and Section 120.57, F.S., by filing a Petition with the Clerk of the State Board of Administration, Office of the General Counsel, P.O. Box 13300, Tallahassee, Florida 32317-3300, within 21 days of receiving notice of this Order. Petitions must substantially comply with the requirements of Chapter 28-106, F.A.C. Your failure to submit a petition for hearing within 21 days from your receipt of this Denial of Petition for an Emergency Waiver or Variance will constitute a waiver of your right to an administrative hearing and this Denial of Petition for an Emergency Waiver or Variance will become a Final Order.

## **DISTRICT COURT OF APPEAL**

Any party who is adversely affected by a Final Order is entitled to judicial review pursuant to Section 120.68, F.S. Review proceedings are governed by the Rules of Appellate Procedure. Such proceedings can be commenced by filing one copy of a Notice of Appeal with the Clerk of the State Board of Administration, Office of the General Counsel, P.O. Box 13300, Tallahassee, Florida 32317-3300 and a second copy, accompanied by the applicable filing fees, with the District Court of Appeal where the party resides or the First District Court of Appeal. The Notice of Appeal must be filed within 30 days of the rendition of the Final Order.

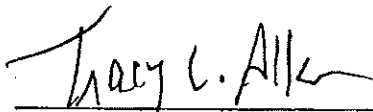
## **MEDIATION**

In accordance with Section 120.573, F.S., mediation is not available.

### CERTIFICATE OF SERVICE

I certify that on December 12, 2008, a true and correct copy of the foregoing Denial of Petition for an Emergency Waiver or Variance was Hand Delivered to Tower Hill Insurance Group, LLC, Attention: Timothy J. Meenan, Esquire, 204 South Monroe Street, Tallahassee, Florida 32301. A copy was also, on this date, furnished to Mr. Meenan by e-mail. I also certify that on December 12, 2008, a true and correct copy of the foregoing Denial of Petition for an Emergency Waiver or Variance was mailed, by U.S. Mail, postage pre-paid to the Florida Property & Casualty Association Inc., Attention: Krista S. Kovalcin, Esquire, Colodny, Fass, Talenfeld, Karlinsky & Abate, P.A., One Financial Plaza, 23<sup>rd</sup> Floor, 100 Southeast Third Avenue, Fort Lauderdale, Florida 33394.

State Board of Administration



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