

INC. and the premium finance company as APPCO PREMIUM FINANCE; (b) PETITIONER asserts that she was quoted a price of \$673, but was ultimately charged \$1925, for an additional premium of \$1252. A notice assessing PETITIONER was sent by U.S. SECURITY pursuant to Section 627.7282, Florida Statutes, on February 10, 2000. According to PETITIONER, she was sent a notice of cancellation the following day, February 11, 2000; (c) PETITIONER asserts that U.S. SECURITY cancelled the policy on March 29, 2000 and that U.S. SECURITY refunded the unearned premium to APPCO PREMIUM FINANCE on April 4, 2000. 3. From these alleged facts, PETITIONER makes the following claims: (a) U.S. SECURITY did not, but should have according to PETITIONER, included interest on the unearned premium refund; (b) U.S. SECURITY did not, but should have according to PETITIONER, refund the entire unearned premium of \$186.00. Instead, PETITIONER asserts that U.S. SECURITY only refunded the premium less the agent's unearned commission for a total of \$158.10, representing the "net" unearned premium refund as opposed to the "gross" unearned premium refund of \$186.00; (c) U.S. SECURITY did not, but should have according to PETITIONER, make the unearned premium refund payable to PETITIONER rather than the premium finance company; and (d) U.S. SECURITY should have and failed to, according to PETITIONER, return the unearned premium within forty-five (45) days of cancellation of the policy. 4. The assertions by PETITIONER are part of class action litigation presently pending in Dade County, Florida, as reflected by a copy of the First Amended Complaint attached to the Petition for Declaratory Statement. This lawsuit has been stayed by Order dated May 7, 2008, issued by the Honorable Ronald M. Friedman, Circuit Court Judge. 5. The Order issued by Judge Friedman has stayed the action "pending Plaintiff's contact with the Office of Insurance Regulation, formerly the Department of Insurance in the State of Florida." Clearly, the Petition for Declaratory Statement filed by PETITIONER is an attempt to remove the stay issued by Judge Friedman. 6. In the Petition for Declaratory Statement, PETITIONER essentially requests that the OFFICE mind its own business: Petitioner contends that this Honorable Commission (sic) lacks the statutory authority to meddle in her unearned premium refund claim. Although this Honorable Commission (sic) has jurisdiction over insurance premium "rates" which Petitioner may be charged by her insurer, it does not have jurisdiction to determine whether U.S. SECURITY properly made the unearned premium refunds after it cancelled Petitioner's policy and those of putative class members. (Petition at page 5). 7. PETITIONER is incorrect. The OFFICE has jurisdiction to determine whether U.S. SECURITY properly made unearned premium refunds following cancellation of the policy in the proper set of circumstances. However, the manner in which the Petition is presented is not the proper set of circumstances. 8. The questions presented in this context are not appropriate for

the agency to answer even if it was so inclined in accordance with the provisions of Section 120.565, Florida Statutes. The purpose of a declaratory statement is to address the applicability of a statutory provision or order or rule of an agency in particular circumstances. *Chiles v. Department of State, Division of Elections*, 711 So.2d 151 (Fla. 1st DCA 1998). The purpose is not to have an agency involve itself on one side or the other in pending litigation. As the Court noted in *Novick v. Department of Health, Board of Medicine*, 837 So.2d 1237, 1240 (Fla. 5th DCA 2002): ".....a declaratory statement is not an appropriate remedy where there is pending litigation...." 9. This principle is well-established as noted by the Court in *Suntide Condominium Association, Inc. v. Division of Florida Land Sales*, 504 So.2d 1343, 1345 (Fla. 1st DCA 1987). We do not view the declaratory statement provision as conferring upon an agency the obligation either to give advice as to the jurisdiction of a court to determine matters then pending before the court, or to issue opinions or decisions settling doubts or questions as to the outcome of controversies then pending in a court. We do view it as an abuse of authority for an agency to either permit the use of the declaratory statement process by one party to a controversy as a vehicle for obstructing an opposing party's pursuit of a judicial remedy, or as a means of obtaining, or attempting to obtain, administrative preemption over legal issues then pending in a court proceeding involving the same parties. This principle was reaffirmed in *Padilla v. Liberty Mutual Insurance Company*, 832 So.2d 916 (Fla. 1st DCA 2002), a declaratory statement sought by the same attorney that is representing this PETITIONER. Therefore, the declaratory statement sought by PETITIONER in this instance is not appropriate for issuance by the OFFICE. ACCORDINGLY, it is hereby ORDERED, that the Petition for Declaratory Statement is DISMISSED.

A copy of the Order Disposing of the Petition for Declaratory Statement may be obtained by contacting: S. Marc Herskovitz, Esquire Office of Insurance Regulation, Division of Legal Services, 612 Larson Building, Tallahassee, Florida 32399-4206.

Please refer all comments to: S. Marc Herskovitz, Esquire, Office of Insurance Regulation, Division of Legal Services, 612 Larson Building, Tallahassee, Florida 32399-4206.

Section VIII
Notices of Petitions and Dispositions
Regarding the Validity of Rules

Notice of Petition for Administrative Determination has been filed with the Division of Administrative Hearings on the following rules:

NONE
