

**FILED**

**DEC 23 2020**

**INSURANCE REGULATION**  
Docketed by:                     



**OFFICE OF INSURANCE REGULATION**

**DAVID ALTMAIER**  
COMMISSIONER

IN THE MATTER OF:

CASE NO.: 269336-20

COLÓN COMPAÑÍA DE SEGUROS, S.A.,

Petitioner.

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**DECLARATORY STATEMENT**

THIS CAUSE came on for consideration upon the filing of a Petition for Declaratory Statement (“Petition”) by Colón Compañía de Seguros, S.A. (“Petitioner”), with the Florida Office of Insurance Regulation (“Office”) on September 8, 2020. The Office published notice of the Petition in the Florida Administrative Register at Volume 46, Number 215, and filed the Petition with the Joint Administrative Procedures Committee pursuant to and in compliance with Section 120.565(3), Florida Statutes,<sup>1</sup> on November 2, 2020. No comments or requests to intervene were received and no hearing was held regarding the Petition.

1. The Petition, attached hereto as Exhibit A, requests the Office issue a Declaratory Statement addressing the question of whether, pursuant to Sections 624.10(5), 624.401(1), and 624.123(1), Florida Statutes, an alien insurer engaging in an online advertisement campaign in the state of Florida constitutes the transaction of insurance business; and whether such alien insurer can engage in these advertisement activities without a certificate of authority from the Office if it targets these advertisements to individuals who reside in the countries in which the alien insurer is authorized

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<sup>1</sup> All references are to the 2020 Florida Statutes unless otherwise indicated.

to conduct the business of insurance and if the alien insurer thereafter conducts all insurance transactions in these countries.

2. In rendering this Declaratory Statement, the Office has relied on the statement of facts set forth in the Petition filed by Petitioner and, pursuant to Rule 28-105.003, Florida Administrative Code, has taken no position with regard to the validity of those facts.

3. Petitioner is an alien<sup>2</sup> insurer headquartered in Buenos Aires, Argentina, under which subsidiaries, affiliates and strategic partners operate in several Latin American jurisdictions, specifically in Argentina, Mexico, Guatemala, and Colombia. Petitioner, its subsidiaries, affiliates and strategic partners offer health insurance products to insureds located in all of these jurisdictions.

4. Petitioner asserts that neither Petitioner nor any of its subsidiaries or affiliates operate, maintain a presence, or employ any person in the United States. Petitioner alleges that neither Petitioner nor any of its subsidiaries or affiliates offer insurance coverage of any kind in the United States, nor do they target or solicit business from potential insureds located in the United States.

5. Petitioner asserts that Petitioner and its subsidiaries, affiliates, and strategic partners only offer coverage to insureds located in jurisdictions in which they are expressly authorized to act as an insurance company and are subject to oversight by the corresponding insurance regulatory authorities.

6. Petitioner alleges it has seen a significant uptick in the number of inquiries it receives from its current insureds, and also from the public in general. Accordingly, Petitioner is considering an online campaign to address these inquiries and to provide answers and resources to existing and potential insureds allegedly all located outside the United States.

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<sup>2</sup> Petition describes Petitioner as a foreign insurer; however, pursuant to Section 624.06, Florida Statutes, Petitioner is an alien insurer and will be described as such in this Declaratory Statement.

7. Petitioner states that as part of their potential online campaign, Petitioner is considering purchasing space on large social media sites where people can click to get more information on insurance offered by Petitioner. Petitioner states that, upon clicking, a person would be connected with one of Petitioner's websites or one of Petitioner's agents located outside of the United States who would thereafter provide the required information to the prospective insured.

8. Petitioner states that to avoid individuals within the state of Florida confusing Petitioner with a Florida domestic or foreign insurance company licensed to provide them with insurance coverage, Petitioner plans to include language in its internet campaign that indicates that: (i) Petitioner, its subsidiaries, and affiliates or strategic partners are located and authorized to do business and offer insurance only in Argentina, Mexico, Guatemala, and Colombia and not in any other jurisdiction; (ii) only persons that reside in Argentina, Mexico, Guatemala, or Colombia can be insureds of and have coverage (local) under policies issued by Petitioner, its authorized subsidiaries, and affiliates or strategic partners; and (iii) any payments or reimbursements for claims made under policies issued by Petitioner, its authorized subsidiaries, and affiliates or strategic partners shall only be made in the alien countries where they are authorized to act as an insurance company and only to insureds who are residents of such jurisdictions. Petitioner asserts that, for further reassurance, these disclaimers would again be repeated live whenever the person clicks on the link and is connected with one of Petitioner's agents located outside of the United States.

9. Section 20.121(3)(a)1., Florida Statutes, provides, in part, that the Office shall be responsible for all activities concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, and claims.

10. Section 624.01, Florida Statutes, provides that Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, Florida Statutes, constitute the "Florida Insurance Code."

11. The Office has jurisdiction over this matter pursuant to Section 20.121(3)(a)1., Florida Statutes; Section 120.565, Florida Statutes; and the Florida Insurance Code.

12. Section 120.565(3), Florida Statutes, requires an agency receiving a petition for declaratory statement to give notice of said filing in the next available issue of the Florida Administrative Register and transmit a copy to the Joint Administrative Procedures Committee.

13. Section 120.565(3), Florida Statutes, declares that the agency disposition of such a petition shall be a final agency action.

14. Pursuant to Section 120.565(1), Florida Statutes, any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statute as it applies to the petitioner's particular set of circumstances.

15. It is well established that the purpose of a declaratory statement is to afford a petitioner the opportunity to seek an agency's position regarding the applicability of the agency's statutory provisions, orders, or rules in particular circumstances. *Adventist Health System/Sunbelt, Inc. v. Agency for Health Care Admin.*, 955 So. 2d 1173, 1176 (Fla. 1st DCA 2007) (citing *Chiles v. Div. of Elections*, 711 So. 2d 151, 154 (Fla. 1st DCA 1998)).

16. A declaratory statement can be used to avoid costly administrative litigation by informing the petitioner in advance as to the agency's views regarding the petitioner's contemplated conduct. *Agency for Health Care Admin.*, 955 So. 2d at 1176; *Chiles*, 711 So. 2d at 154; and *Nat'l Ass'n of Optometrists & Opticians v. Fla. Dep't of Health*, 922 So. 2d 1060, 1062 (Fla. 1st DCA 2006).

17. The Petition is filed for an allowed purpose, that is, to resolve a question or doubt concerning a statutory provision as it may apply to Petitioner's particular set of circumstances.

18. Petitioner possesses the requisite interest and is the proper party to request a declaratory statement under Section 120.565, Florida Statutes, and Chapter 28-105 et seq., Florida Administrative Code.

19. The Office has reviewed the provisions of Section 624.123, Florida Statutes, and finds that they are not applicable to the Petition as Petitioner does not propose to transact insurance at international airports in Florida.

20. An online advertisement campaign may constitute a “solicitation or inducement” of others to engage in the business of insurance, as described in Section 624.10(5), Florida Statutes, and would generally require a license to be issued pursuant to Section 624.401, Florida Statutes.

21. However, based on the Petitioner’s representations that the proposed advertisement campaign will not result in the effectuation of contracts of insurance with Florida residents and that it will provide disclaimers as described in paragraph 8 above, the Office finds that Petitioner’s advertisements do not meet the definition of “solicitation or inducement.”

22. This Declaratory Statement is based solely on the limited information provided by Colón Compañía de Seguros, S.A., in its Petition. This Declaratory Statement is not intended to be valid or legally binding if the information provided in the instant Petition includes any material misrepresentation or omission regarding Colón Compañía de Seguros, S.A.’s, business practices.

WHEREFORE, this Declaratory Statement of the Office of Insurance Regulation is ENTERED this 23 day of December, 2020.



*David Altmaier*

David Altmaier, Commissioner  
Office of Insurance Regulation

## NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Order is entitled to seek review within 30 days of the rendition of this Order, pursuant to Section 120.68, Florida Statutes, and Rule 9.190, Florida Rules of Appellate Procedure. Review proceedings must be instituted by filing a petition or notice of appeal with the Agency Clerk:

Anoush Arakalian Brangaccio, General Counsel  
Florida Office of Insurance Regulation  
200 East Gaines Street  
Suite 647E  
Tallahassee, Florida 32399

Filing with the Agency Clerk may be accomplished via U.S. Mail or hand delivery. The filing date for a document, no matter the method of transmission, shall be the date the Office receives the document. Any document received after 5:00 p.m. shall be filed as of 8:00 a.m. on the next regular business day.

A copy of the petition or notice of appeal must also be filed with the appropriate district court of appeal within 30 days of the rendition of this Order.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy the foregoing Declaratory Statement was sent by U.S. Mail, this 23rd day of December, 2020 to:

José Mauricio Bello, Esq.  
1290 Weston Rd #220,  
Weston, FL 33326  
Telephone: (954) 314-7915  
Email: jmbello@jmbellolaw.com

Christian Perez, Esq.  
1290 Weston Rd #220,  
Weston, FL 33326  
Telephone: (954) 314-7915  
Email: cperezfont@thinkeenlegal.com

A handwritten signature in black ink, appearing to read 'RO', is written over a horizontal line.

Ryan Osborne  
Assistant General Counsel  
Office of Insurance Regulation  
200 East Gaines Street  
Tallahassee, FL 32399  
Telephone: (850) 413-3110  
Email: Ryan.Osborne@flor.com