



REPRESENTING
ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

IN THE MATTER OF:

SMOLINSKI AND ASSOCIATES, INC.,
D/B/A PALM COAST TRAVEL;
SMART TRAVEL GROUP, LTD.;
SMARTCRUISER.COM, LLC;
SMART CRUISER HOLDINGS, LLC; and
TRIPSMART, INC.

CASE NO.: 102955-09-AG

AMENDED NOTICE OF INTENT TO ISSUE CEASE AND DESIST ORDER

SMOLINSKI AND ASSOCIATES, INC.,
D/B/A PALM COAST TRAVEL;
SMART TRAVEL GROUP, LTD.;
SMARTCRUISER.COM, LLC;
SMART CRUISER HOLDINGS, LLC; and
TRIPSMART, INC.
through Lee Smolinski
4175 Congress Ave., Suite K
Lake Worth, Florida 33461-4725

SMOLINSKI AND ASSOCIATES, INC.,
D/B/A PALM COAST TRAVEL;
SMART TRAVEL GROUP, LTD.;
SMARTCRUISER.COM, LLC;
SMART CRUISER HOLDINGS, LLC; and
TRIPSMART, INC.
through Lee Smolinski
4800 N. Federal Highway, Suite 207D
Boca Raton, FL 33431

SMOLINSKI AND ASSOCIATES, INC., D/B/A PALM COAST TRAVEL, SMART TRAVEL GROUP, LTD., SMARTCRUISER.COM, SMART CRUISER HOLDINGS, LLC, and TRIPSMART, INC. (collectively referred to as "RESPONDENTS"), are hereby notified that

the Chief Financial Officer of the State of Florida has caused to be made an investigation of your activities in this state, as a result of which it is alleged:

GENERAL ALLEGATIONS

1. RESPONDENTS do not currently hold a license issued under or pursuant to Chapters 624-632, 634, 635, 636, 641, 642, 648 and 651, Florida Statutes (collectively referred to as "Florida Insurance Code"), or hold an appointment under the Florida Insurance Code.

2. At all times pertinent to the dates and occurrences referenced herein, RESPONDENTS did not hold a license issued under or pursuant to the Florida Insurance Code, or hold an appointment under the Florida Insurance Code.

3. At all times pertinent to the dates and occurrences referred to herein, Lee Smolinski was the Director and President of SMOLINSKI AND ASSOCIATES, INC., and TRIPSMART, INC.

4. At all times pertinent to the dates and occurrences referred to herein, TRIPSMART, INC. was a general partner of SMART TRAVEL GROUP, LTD.

5. At all times pertinent to the dates and occurrences referred to herein, SMART TRAVEL GROUP, LTD. was the Managing Member of SMARTCRUISER.COM, LLC.

6. At all times pertinent to the dates and occurrences referred to herein, SMOLINSKI AND ASSOCIATES, INC. was the Managing Member of SMART CRUISER HOLDINGS, LLC.

7. At all times pertinent to the dates and occurrences referred to herein, the fictitious name of SmartCruiser.com was owned by SMART TRAVEL GROUP, LTD., SMOLINSKI AND ASSOCIATES, INC., and/or SMARTCRUISER.COM, LLC.

8. At all times pertinent to the dates and occurrences referred to herein, the fictitious name of PALM COAST TRAVEL was owned by SMOLINSKI AND ASSOCIATES, INC.

9. At all times pertinent to the dates and occurrences referred to herein PALM COAST TRAVEL was registered as a "seller of travel" with the Florida Department of Agriculture pursuant to Chapter 559, Part XI, Florida Statutes.

10. At all times pertinent to the dates and occurrences referred to herein, SmartCruiser.com was the internet cruise division of PALM COAST TRAVEL and/or SMART TRAVEL GROUP, LTD.

11. Section 624.401, Florida Statutes, provides that no person shall act as an insurer, and no insurer or its agents, attorneys, subscribers, or representatives shall directly or indirectly transact insurance in this state except as authorized by a subsisting Certificate of Authority issued to the insurer by the Florida Office of Insurance Regulation ("OIR").

12. Section 624.04, Florida Statutes, defines "person" and includes "company", "corporation", and "every legal entity" in the definition.

13. Section 624.09, Florida Statutes, provides that an "unauthorized insurer" is an insurer which is not duly authorized by a subsisting certificate of authority issued by OIR to transact insurance in this state.

14. Section 624.10, Florida Statutes, provides that transacting insurance includes any of the following, in addition to other applicable provisions of this code: 1) solicitation or inducement; 2) preliminary negotiations; 3) effectuation of a contract of insurance; and 4) transaction of matters subsequent to effectuation of a contract of insurance and arising out of it.

15. Pursuant to Chapter 626, Florida Statutes, the Florida Department of Financial Services (“Department”) has jurisdiction over RESPONDENTS, and the business of travel insurance.

COUNT I

16. The above general allegations are hereby realleged and fully incorporated herein by reference.

17. In November 2007, Peter Lay (“P.L.”) of Danville, CA, purchased a cruise package and travel insurance through SMOLINSKI AND ASSOCIATES, INC., D/B/A PALM COAST TRAVEL, SMART TRAVEL GROUP, LTD., and/or SMARTCRUISER.COM, LLC (collectively referred to as “SELLING RESPONDENTS”).

18. The travel insurance that one or more of the SELLING RESPONDENTS initially sold to or booked for P.L., on or about November 2007, was with AccessAmerica.

19. However, subsequent to the rescheduling of P.L.’s trip, his travel insurance was transferred from AccessAmerica to Smart Travel Insurance and/or Prime Travel Protection, Inc.

20. Subsequent to the rescheduling of P.L.’s trip and the transfer of travel insurance, P.L. had to cancel the trip.

21. P.L. filed a claim with Smart Travel Insurance and/or Prime Travel Protection, Inc., which was denied.

22. P.L. presently has a monetary loss of approximately \$3900 in relation to the cancelled trip.

23. Smart Travel Insurance and Prime Travel Protection, Inc. have never held a license or Certificate of Authority to transact insurance in Florida or California.

24. At least three states, Oklahoma, Colorado and Florida, have ordered Prime Travel Protection Services, Inc. to cease and desist from selling insurance without a license.

25. One or more of the SELLING RESPONDENTS directly or indirectly acted as an agent for or otherwise represented or aided one or more unauthorized insurers, including but not limited to Smart Travel Insurance and Prime Travel Protection, Inc., by, including but not limited to, soliciting, negotiating, procuring, or effectuating insurance contracts, or renewals thereof; disseminating information as to coverage or rates; forwarding applications; delivering policies or contracts and/or collecting or forwarding premiums; or in any other manner representing or assisting such an insurer in the transaction of insurance.

IT IS THEREFORE CHARGED that SMOLINSKI AND ASSOCIATES, INC., D/B/A PALM COAST TRAVEL, SMART TRAVEL GROUP, LTD. and/or SMARTCRUISER.COM, LLC have violated or are accountable under one or more of the following provisions of the Florida Statutes or Florida Administrative Code, which constitutes grounds for the imposition of a cease and desist order and fines:

(a) No person may be, act as, or advertise or hold himself or herself out to be an insurance agent, insurance adjuster, or customer representative unless he or she is currently licensed by the department and appointed by an appropriate appointing entity or person.

[Section 626.112(1)(a), Florida Statutes];

(b) No person shall, from offices or by personnel or facilities located in this state, or in any other state or country, directly or indirectly act as agent for, or otherwise represent or aid on behalf of another, any insurer not then authorized to transact such insurance in this state in:

(1) the solicitation, negotiation, procurement, or effectuation of insurance or annuity contracts, or renewals thereof; (2) the dissemination of information as to coverage or rates; (3) the

forwarding of applications; (4) the delivery of policies or contracts; (5) the inspection of risks; (6) the fixing of rates; (7) the investigation or adjustment of claims or losses; or (8) the collection or forwarding of premiums; or in any other manner represent or assist such an insurer in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed in this state. If the property or risk is located in any other state, then, subject to the provisions of subsection Section 626.901(4), Florida Statutes, insurance may only be written with or placed in an insurer authorized to do such business in such state or in an insurer with which a licensed insurance broker of such state may lawfully place such insurance.

[Section 626.901(1), Florida Statutes];

(c) If an unauthorized insurer fails to pay in full or in part any claim or loss within the provisions of any insurance contract which is entered into in violation of this section, any person who knew or reasonably should have known that such contract was entered into in violation of this section and who solicited, negotiated, took application for, or effectuated such insurance contract is liable to the insured for the full amount of the claim or loss not paid. [Section 626.901(2), Florida Statutes];

(d) Engaging in the business of insurance without being properly licensed. [Sections 626.9571(1), Florida Statutes]; and

(e) Engaging in the unlawful transaction of insurance. [Sections 626.9581, Florida Statutes].

COUNT II

26. The above general allegations are hereby realleged and fully incorporated herein by reference.

27. In January 2008, Nancy Swinney ("N.S.") of Hardy, VA, purchased a cruise package and travel insurance through SMOLINSKI AND ASSOCIATES, INC., D/B/A PALM COAST TRAVEL, SMART TRAVEL GROUP, LTD., and/or SMARTCRUISER.COM, LLC (collectively referred to as "SELLING RESPONDENTS").

28. The travel insurance that one or more of the SELLING RESPONDENTS initially sold to or booked for N.S., on or about January 2008, was with AccessAmerica.

29. However, subsequent to N.S.'s scheduled trip, her travel insurance was transferred from AccessAmerica to Prime Travel Protection, Inc.

30. Prior to N.S.'s trip, N.S. had to cancel the trip.

31. N.S. filed a claim with Smart Travel Insurance and/or Prime Travel Protection, Inc.

32. Smart Travel Insurance and/or Prime Travel Protection, Inc. neither denied nor paid N.S.' claim.

33. Smart Travel Insurance and Prime Travel Protection, Inc. have never held a license or Certificate of Authority to transact insurance in Florida or Virginia.

34. At least three states, Oklahoma, Colorado and Florida, have ordered Prime Travel Protection Services, Inc. to cease and desist from selling insurance without a license.

35. One or more of the SELLING RESPONDENTS directly or indirectly acted as an agent for or otherwise represented or aided one or more unauthorized insurers, including but not limited to Smart Travel Insurance and Prime Travel Protection, Inc., by, including but not limited

to, soliciting, negotiating, procuring, or effectuating insurance contracts, or renewals thereof; disseminating information as to coverage or rates; forwarding applications; delivering policies or contracts and/or collecting or forwarding premiums; or in any other manner representing or assisting such an insurer in the transaction of insurance.

IT IS THEREFORE CHARGED that SMOLINSKI AND ASSOCIATES, INC., D/B/A PALM COAST TRAVEL, SMART TRAVEL GROUP, LTD., and/or SMARTCRUISER.COM, LLC have violated or are accountable under one or more of the following provisions of the Florida Statutes or Florida Administrative Code, which constitutes grounds for the imposition of a cease and desist order and fines:

(a) No person may be, act as, or advertise or hold himself or herself out to be an insurance agent, insurance adjuster, or customer representative unless he or she is currently licensed by the department and appointed by an appropriate appointing entity or person. [Section 626.112(1)(a), Florida Statutes];

(b) No person shall, from offices or by personnel or facilities located in this state, or in any other state or country, directly or indirectly act as agent for, or otherwise represent or aid on behalf of another, any insurer not then authorized to transact such insurance in this state in:

- (1) the solicitation, negotiation, procurement, or effectuation of insurance or annuity contracts, or renewals thereof;
- (2) the dissemination of information as to coverage or rates;
- (3) the forwarding of applications;
- (4) the delivery of policies or contracts;
- (5) the inspection of risks;
- (6) the fixing of rates;
- (7) the investigation or adjustment of claims or losses; or
- (8) the collection or forwarding of premiums; or in any other manner represent or assist such an insurer in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed in this state. If the property or risk is located in any other state, then, subject to the

provisions of subsection Section 626.901(4), Florida Statutes, insurance may only be written with or placed in an insurer authorized to do such business in such state or in an insurer with which a licensed insurance broker of such state may lawfully place such insurance. [Section 626.901(1), Florida Statutes];

(c) Engaging in the business of insurance without being properly licensed. [Sections 626.9571(1), Florida Statutes]; and

(d) Engaging in the unlawful transaction of insurance. [Sections 626.9581, Florida Statutes].

COUNT III

36. The above general allegations are hereby realleged and fully incorporated herein by reference.

37. In August 2008, Chris Lockard (“C.L”) of Kennewick, WA, purchased a cruise package and travel insurance through SMOLINSKI AND ASSOCIATES, INC., D/B/A PALM COAST TRAVEL, SMART TRAVEL GROUP, LTD., and/or SMARTCRUISER.COM, LLC (collectively referred to as “SELLING RESPONDENTS”).

38. The travel insurance that one or more of the SELLING RESPONDENTS sold to or booked for C.L., on or about August 2008, was with Smart Travel Insurance and/or Prime Travel Protection, Inc.

39. C.L. had to cancel the trip.

40. C.L. filed a claim with Smart Travel Insurance and/or Prime Travel Protection, Inc., which was denied.

41. Smart Travel Insurance and/or Prime Travel Protection, Inc. neither denied nor paid C.L.’s claim.

42. C.L. presently has a monetary loss of approximately \$2,600 in relation to the cancelled trip.

43. Smart Travel Insurance and Prime Travel Protection, Inc. have never held a license or Certificate of Authority to transact insurance in Florida or Washington.

44. At least three states, Oklahoma, Colorado and Florida, have ordered Prime Travel Protection Services, Inc. to cease and desist from selling insurance without a license.

45. One or more of the SELLING RESPONDENTS directly or indirectly acted as an agent for or otherwise represented or aided one or more unauthorized insurers, including but not limited to Smart Travel Insurance and Prime Travel Protection, Inc., by, including but not limited to, soliciting, negotiating, procuring, or effectuating insurance contracts, or renewals thereof; disseminating information as to coverage or rates; forwarding applications; delivering policies or contracts and/or collecting or forwarding premiums; or in any other manner representing or assisting such an insurer in the transaction of insurance.

IT IS THEREFORE CHARGED that SMOLINSKI AND ASSOCIATES, INC., D/B/A PALM COAST TRAVEL, SMART TRAVEL GROUP, LTD., and/or SMARTCRUISER.COM, LLC have violated or are accountable under one or more of the following provisions of the Florida Statutes or Florida Administrative Code, which constitutes grounds for the imposition of a cease and desist order and fines:

(a) No person may be, act as, or advertise or hold himself or herself out to be an insurance agent, insurance adjuster, or customer representative unless he or she is currently licensed by the department and appointed by an appropriate appointing entity or person. [Section 626.112(1)(a), Florida Statutes];

(b) No person shall, from offices or by personnel or facilities located in this state, or in any other state or country, directly or indirectly act as agent for, or otherwise represent or aid on behalf of another, any insurer not then authorized to transact such insurance in this state in: (1) the solicitation, negotiation, procurement, or effectuation of insurance or annuity contracts, or renewals thereof; (2) the dissemination of information as to coverage or rates; (3) the forwarding of applications; (4) the delivery of policies or contracts; (5) the inspection of risks; (6) the fixing of rates; (7) the investigation or adjustment of claims or losses; or (8) the collection or forwarding of premiums; or in any other manner represent or assist such an insurer in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed in this state. If the property or risk is located in any other state, then, subject to the provisions of subsection Section 626.901(4), Florida Statutes, insurance may only be written with or placed in an insurer authorized to do such business in such state or in an insurer with which a licensed insurance broker of such state may lawfully place such insurance.

[Section 626.901(1), Florida Statutes];

(c) If an unauthorized insurer fails to pay in full or in part any claim or loss within the provisions of any insurance contract which is entered into in violation of this section, any person who knew or reasonably should have known that such contract was entered into in violation of this section and who solicited, negotiated, took application for, or effectuated such insurance contract is liable to the insured for the full amount of the claim or loss not paid. [Section 626.901(2), Florida Statutes];

(d) Engaging in the business of insurance without being properly licensed. [Sections 626.9571(1), Florida Statutes]; and

(e) Engaging in the unlawful transaction of insurance. [Sections 626.9581, Florida Statutes].

WHEREFORE, SMOLINSKI AND ASSOCIATES, INC., D/B/A PALM COAST TRAVEL, SMART TRAVEL GROUP, LTD., SMARTCRUISER.COM, LLC, SMART CRUISER HOLDINGS, LLC, and TRIPSMART, INC. are hereby notified that the Chief Financial Officer intends to enter an Order requiring RESPONDENTS to cease and desist, fining you and imposing other such penalties as may be provided under the provisions of Sections 626.9521, 626.9571, 626.9581, 626.901, Florida Statutes, any referenced sections of the Florida Statutes as set out in this Notice, and under any other applicable section of the Florida Insurance Code.

Considering some of the RESPONDENTS have requested a formal hearing in relation to the Department's Administrative Complaint dated March 5, 2009 ("Original Complaint"), the Amended Administrative Complaint is being referred to the Division of Administrative Hearings for a formal hearing in lieu of the Original Complaint.