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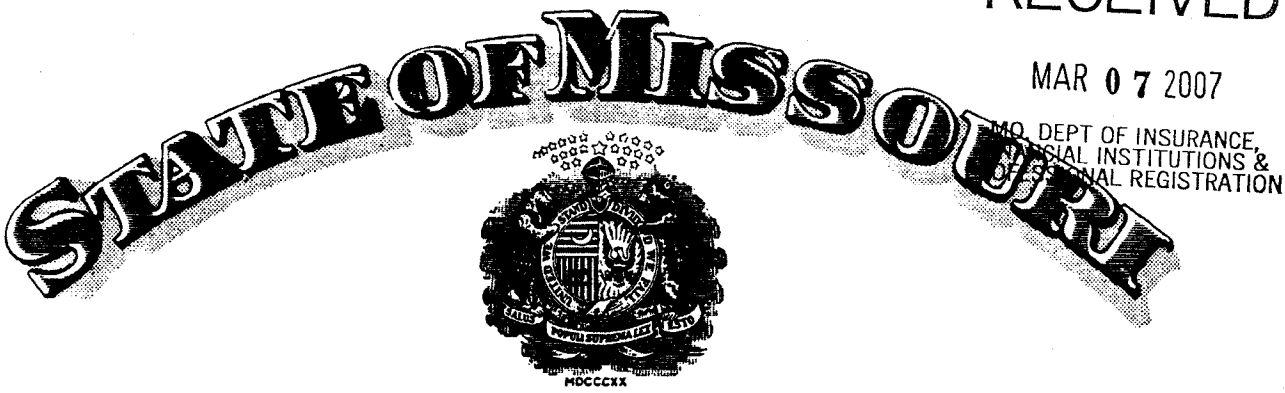
MO. DEPT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION



DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

P.O. Box 690, Jefferson City, Mo. 65102-0690

IN RE:	**Absolute Surety, Inc.**	)	
		)	**Case No. 07-0122091C**
SERVE:	Absolute Surety, Inc.	)	
	261 East 6th Street	)	
	Lebanon, Missouri 65536	)	
	Telephone: (417) 588-4344	)	

STATEMENT OF CHARGES

The Division of Consumer Affairs of the Department of Insurance, Financial Institutions, and Professional Registration, by and through counsel, requests the Director of the Department of Insurance, Financial Institutions, and Professional Registration ("Director") to issue a cease and desist order, order payment of a monetary penalty and order payment of costs of investigation based on the following statement of charges:

PARTIES

1. Absolute Surety, Inc. ("Absolute Surety") is a duly registered corporation in the state of Missouri which engages in the business of bail bonding, and is licensed by

the Department of Insurance, Financial Institutions and Professional Registration as a general bail bond agency.

2. The Director has the duty to administer Chapters 374, 375, and 379, RSMo, which includes the supervision, regulation, and discipline of general bail bond agents, agencies, and their agents licensed to operate and to do business in the state of Missouri.

3. The Consumer Affairs Division of the Department of Insurance, Financial Institutions, and Professional Registration ("Consumer Affairs Division") has the duty of conducting investigations into the unfair or unlawful acts of bail bond agencies and agents under the insurance laws of this state and has been authorized by the Director to initiate this action before the Director to enforce the insurance laws of this state.

JURISDICTION

4. The jurisdiction of the Director, and the specific procedure to initiate and administer this proceeding is found in § 374.046.1, RSMo (Cum. Supp. 2006) which provides:

> If the director determines based upon substantial and competent evidence that a person has engaged, is engaging in or has taken a substantial step toward engaging in an act, practice, omission, or course of business constituting a violation of the laws of this state relating to insurance in this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo, or a rule adopted or order issued pursuant thereto or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of the laws of this state relating to insurance in this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo, or a rule adopted or order issued pursuant thereto, the director may order the following relief:
> (1) An order directing the person to cease and desist from engaging in the act, practice, omission, or course of business;

(2) A curative order or order directing the person to take other action necessary or appropriate to comply with the insurance laws of this state;
(3) Order a civil penalty or forfeiture as provided in section 374.049; and
(4) Award reasonable costs of the investigation.

5. Section 374.049, RSMo (Cum. Supp. 2006) authorizes the Director to impose a monetary penalty or forfeiture of not more than one thousand dollars ($1,000) for each violation which resulted in actual financial loss to consumers or which was knowingly committed, but not to exceed an aggregate penalty or forfeiture of fifty thousand dollars ($50,000) per annum, unless the violation was committed in conscious disregard of the law, in which case the monetary penalty or forfeiture may be up to five thousand dollars ($5,000) for each violation but not to exceed an aggregate penalty of one hundred thousand dollars ($100,000) per annum.

ALLEGATIONS RELEVANT TO ALL COUNTS

6. The Consumer Affairs Division incorporates by reference the allegations set forth in paragraphs 1-5.

7. Absolute Surety is licensed by the Director as a general bail bond agent pursuant to § 374.710, RSMo (Cum. Supp. 2005), license number GC8004138, and as defined in § 374.700(5), RSMo (Cum. Supp. 2005).

8. Absolute Surety was organized on March 31, 1997 as a corporation for the stated purpose of, *inter alia*, operating a bail bonding agency.

COUNT I

9. Absolute Surety violated § 375.786, RSMo (2000) by transacting the business of insurance in this state with neither a certificate of authority from the Director nor under any exception from authorization set forth in § 375.786, RSMo (2000).

10. Section 375.786, RSMo (2000), states, in pertinent part, that "[i]t shall be unlawful for any insurance company to transact insurance business in this state, as set forth in subsection 2, without a certificate of authority from the director; . . . ."

11. The facts are as follows:

a. Absolute Surety is licensed by the Director as a general bail bond agency.

b. Absolute Surety has not been granted a certificate by the Director as an insurance company, nor has it demonstrated compliance with solvency standards or any other requirements for a corporation to issue surety or other insurance.

c. Absolute Surety is engaged in the business of insurance in this state in that Absolute Surety makes, writes or takes, surety bonds in connection with judicial proceedings in this state.

12. The conduct of Absolute Surety, as described in the aforementioned facts, constitutes a violation of § 375.786, RSMo (2000).

COUNT II

13. Absolute Surety violated § 375.161, RSMo (2000) by failing to first obtain from the Director, a certificate stating the requirements of the insurance laws of this state

have been complied with and authorizing Absolute Surety to engage in the business of insurance, prior to engaging in the business of insurance in this state.

14. Section 375.161, RSMo (2000) states, in pertinent part, that "[n]o company shall transact in this state any insurance business unless it shall first procure from the director a certificate stating the requirements of the insurance laws of this state have been complied with authorizing it to do business, ..."

15. Section 379.010, RSMo (2000) provides, in pertinent part, that "persons . . . may associate and form a corporation . . . for the purpose of making insurance regarding . . . surety;"

16. The facts are as follows:

a. The Division of Consumer Affairs re-alleges and expressly incorporates the allegations in paragraphs 9-12.

17. The conduct of Absolute Surety, as described in the aforementioned facts, constitutes a violation of § 375.161, RSMo (2000).

COUNT III

18. Absolute Surety violated § 375.158, RSMo (2000) by engaging in the business of insurance without first complying with all the laws of this state governing the business of insurance.

19. Section 375.158, RSMo (2000) provides, in part, that "[n]o insurer shall engage in the business of insurance in this state without first complying with all the provisions of the laws of this state governing the business of insurance."

20. Section 379.010, RSMo (2000) provides, in pertinent part, that:

1. Any number of persons, not less than thirteen in number, a majority of whom shall be citizens of this state, may associate and form a corporation, association or company for the purpose of making insurance regarding the following classes:

. . .

(3) Fidelity and surety;

21. Section 379.010, RSMo (2000) further states, in part, that:

2. No company shall commence business or make insurance on one of the classes of insurance named in subsection 1 of this section unless, if it is a stock company, it has and maintains a paid in capital of at least eight hundred thousand dollars and a surplus of at least eight hundred thousand dollars or, if it is a mutual company, it has and maintains a policyholder's surplus of at least one million six hundred thousand dollars.

22. Section 375.161, RSMo (2000) states, in pertinent part, that "[n]o company shall transact in this state any insurance business unless it shall first procure from the director a certificate stating the requirements of the insurance laws of this state have been complied with authorizing it to do business, ..."

23. Section 375.786, RSMo (2000), states, in pertinent part, that "[i]t shall be unlawful for any insurance company to transact insurance business in this state, as set forth in subsection 2, without a certificate of authority from the director; . . . ."

24. The facts are as follows:

a. The Division of Consumer Affairs re-alleges and expressly incorporates the allegations in paragraphs 9-12.

b. Absolute Surety does not maintain a paid in capital of at least eight hundred thousand dollars and a surplus of at least eight hundred thousand dollars.

c. Absolute Surety does not maintain a policyholder's surplus of at least one million six hundred thousand dollars.

25. The conduct of Absolute Surety, as described in the aforementioned facts, constitutes a violation of § 375.158, RSMo (2000).

RELIEF

WHEREFORE, the Division of Consumer Affairs of the Department of Insurance, Financial Institutions, and Professional Registration requests that the Director issue an order granting the following relief:

A. Find that Absolute Surety, Inc. engaged in the unlawful acts alleged herein;

B. Issue an order prohibiting Absolute Surety, Inc. and its agents and employees from:

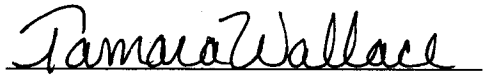
i. Violating or materially aiding in any violation of §§ 375.786, 375.161 and 375.158, RSMo (2000);

C. Order Absolute Surety, Inc. to pay a civil penalty for each unlawful act;

D. Order Absolute Surety, Inc. to pay reasonable costs of investigation; and

E. Such other relief as the Director deems just in this proceeding.

Respectfully submitted,



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CONSUMER AFFAIRS