

**STATE OF MINNESOTA  
COMMISSIONER OF COMMERCE**

**STATE OF MISSOURI  
DIRECTOR OF INSURANCE**

In the Matter of the Certificate of Authority  
of Virginia Surety Company, Inc. (NAIC #40827),  
a corporation domiciled in Illinois and licensed to  
do business in the States of Minnesota and Missouri

**CONSENT ORDER**

To: Virginia Surety Company, Inc.  
175 West Jackson  
Chicago, IL 60604

The Commissioner of the Department of Commerce, State of Minnesota, Mike Rothman, and the Director of the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri, John M. Huff (collectively, the “Participating States” or “States”) have advised Virginia Surety Company, Inc. of Chicago, Illinois (“VSC”) that the States are prepared to commence formal proceedings against VSC and to seek penalties under Minn. Stat. § 45.027 (2012) and §374.049 RSMo. This is a result of an investigation (“Investigation”) by the Department of Commerce (the “Department”) pursuant to Minn. Stat. § 45.027 (2012) and the State of Missouri pursuant to §374.190 RSMo concerning VSC’s Travel Services Protection Product, which was offered through travel agencies, tour operators and cruise lines (Travel Insurance Product”).

**RECITALS**

1. VSC carries National Association of Insurance Commissioners (NAIC) Number 40827 and is currently authorized to solicit insurance in the States of Minnesota and Missouri.
2. VSC underwrites the insurance portion of the Travel Insurance Product. VSC marketed and sold the Travel Product to Minnesota and Missouri consumers.
3. VSC stated that they contracted with Assist-Card, who in turn contracted with various travel agencies, including Cheap Caribbean, Online Vacation Center, MK Cruises, and

Friendly Planet (hereinafter "Travel Agencies"). According to VSC, the Travel Agencies received commissions and/or fees for the sale and service of the Travel Insurance Product from VSC, but were not licensed in Minnesota and Missouri.

4. VSC has in its possession the names and addresses of consumers who purchased the Travel Insurance Product through Cheap Caribbean.
5. For the above Travel Agencies identified by VSC, Southeast Insurance Brokerage ("SIBC") provided claims and administrative services for the Travel Insurance Product underwritten by VSC, but was not licensed in Minnesota and Missouri.
6. VSC reported that the "opt-out" approach was used on the Cheap Caribbean website from May 1, 2011 to April 25, 2012.
7. Cheap Caribbean was one of the Travel Agencies that offered the Travel Insurance Product. During the Investigation, the Department, when accessing Cheap Caribbean's website, discovered a consumer could book a trip by choosing their destination and departure city. After selecting "View Results," a consumer was directed to select a hotel in Step 1. After selecting a hotel the consumer was directed to Step 2 to choose dates of travel and type of vacation or package (hotel and flight or hotel only). After selecting "Book Now" the consumer was allowed to choose departing and returning flights in Step 3 by selecting "Select this Flight". Next, a consumer was directed to make a room selection as part of Step 4. After the consumer chose "Select this Room", they had the option of adding excursions and airport transportation by selecting "Add" in Step 5 or continuing with the flight and hotel or hotel only by selecting "Continue". After clicking on "Continue" the consumer was directed to Step 6, which was the trip insurance screen. In this step, a consumer was automatically enrolled in the "Enhanced Coverage" offered by VSC without making an affirmative selection. The consumer must have chosen to opt-out and select "No Coverage" if they did not wish to purchase travel insurance or "Standard Coverage" if they wished to purchase less insurance. In addition to the automatic enrollment, a consumer was automatically presumed to have read the Description of Coverage. Prior to this point, a consumer did not have the option of reading the Description of Coverage. The consumer was not allowed to skip Step 6 or check out without going through the travel insurance screen. The consumer must select "Check Out" on Step 6 in order to complete the transaction. On the right side of the

screen in steps 1 through 6 there was a breakdown of the consumer's trip costs. The costs increased as the consumer went through the six steps and made selections. As part of the cost breakdown, there was a line for trip insurance, which stated "None" (on steps 1-6) until the consumer reached the final check out screen. If the consumer did not opt-out of coverage, the cost of the trip insurance would not have appeared until the final check out screen.

8. Cheap Caribbean offered coverage options for VSC's Travel Insurance Product through its website: Enhanced, Standard and Weather. Minnesota and Missouri consumers were charged premium for the Enhanced and Standard coverage. VSC stated that Cheap Caribbean paid for the Weather coverage as a way to differentiate itself from competitors in the marketplace.
9. From on or about July 31, 1993 to on or about October 31, 2012, VSC issued the Travel Insurance Product through trusts based in Illinois and the District of Columbia. Coverage was provided through these trusts to trust participants comprised of wholesale tour operators and cruise lines that provided coverage as a benefit to travelers residing throughout the United States, including the States of Minnesota and Missouri.
10. Under the trusts, VSC did not collect individual information on Minnesota and Missouri consumers insured by policies underwritten by VSC unless and until a claim was filed.
11. Under the trusts, VSC failed to pay premium taxes to the States of Minnesota and Missouri.
12. VSC estimated that over 65,000 Travel Insurance Products were sold to Minnesota consumers through various travel websites or agencies and trusts between January 1, 2007 and October 31, 2012; the total charge to consumers for travel insurance exceeded \$7.5 million. VSC estimated that over 68,000 Travel Insurance Products were sold to Missouri consumers through various travel websites or agencies and trusts between January 1, 2007 and October 31, 2012; the total charge to consumers for travel insurance exceeded \$5.5 million. The charge to consumers for travel insurance in many cases was significantly more than the premium reported to VSC by various travel agencies, tour operators or other entities reporting travel insurance sales to VSC because these entities reported only net premiums to VSC not the entire amount collected from consumers.

This method of reporting caused VSC to underreport its premium and premium tax to the States.

13. VSC notified the Department that as of October 31, 2012, they stopped writing Travel Insurance Products nationwide.

### **FINDINGS**

The States reviewed VSC's operations in connection with the sale of travel insurance. Based on the Investigation, the States allege that VSC committed certain violations of Minnesota and Missouri insurance law. Specifically, that VSC:

1. Automatically enrolled consumers with Travel Insurance Products without receiving affirmative consent, oral or written, to such insurance coverage, in violation of Minn. R. § 2700.3200, subp. 2 (2011) and §§375.144 and 375.936 (6) (a) RSMo.
2. Paid commission, service fee, brokerage, or other valuable consideration to the Travel Agencies for selling, soliciting, or negotiating insurance when they were not licensed to do so in Minnesota or Missouri in violation of Minn. Stat. § 60K.48, subd. 1 (2012) and §§375.076 and 375.936 (7) RSMo.
3. Paid SIBC for claims and administrative services when it was not licensed to do so in Minnesota or Missouri in violation of Minn. Stat. § 72A.20, subd. 18(b) (2012) and §375.445 RSMo.
4. Knowingly offered to pay or allow directly or indirectly or by means of any device or artifice, as inducements to insurance, rebate or premium payable on the policy in the form of free weather insurance in violation of Minn. Stat. § 72A.08, subd. 1 (2012) and §375.936 (9) RSMo.
5. Failed to make the appropriate tax allocation to the States of Minnesota and Missouri in violation of Minn. Stat. § 297I (2012) and §148.340 RSMo.

## **ORDER**

The following order is in the public interest.

**NOW, THEREFORE, IT IS HEREBY ORDERED** that VSC shall not underwrite and offer Travel Insurance Products to Minnesota or Missouri consumers for two years from October 31, 2012. Should VSC wish to offer travel insurance after October 31, 2014, VSC must provide notice to, seek and receive approval from, and properly file all rates and forms with the States.

**FURTHER, IT IS HEREBY ORDERED**, that pursuant to Minn. Stats. §§ 45.027, subd. 6 and 72A.20, subd. 17 (2012) and §374.046 RSMo, VSC shall refund the entire amount charged to Minnesota consumers and Missouri consumers who purchased VSC travel insurance through Cheap Caribbean from January 1, 2007 until October 31, 2012, when VSC stopped offering travel insurance nationwide. VSC shall, within thirty days of this Order, implement a process acceptable to the States whereby such charges shall be refunded to Minnesota and Missouri consumers or – where Minnesota and Missouri consumers are not reasonably identifiable or able to be located – to the States. The process may include the following elements:

1. Identification of Minnesota and Missouri consumers through data already in VSC's possession or by using billing and/or travel origination information;
2. Notification of consumers through direct mail at the last known address and/or electronic means at the last known email address;
3. Notification of consumers through the placement of advertisements on the various travel agency's web sites and other media if unable to locate Minnesota and Missouri consumers as described above; and,
4. Where Minnesota consumers are not located, transfer of any remaining funds to the State of Minnesota general fund.
5. To the extent that the Travel Agencies reporting premium to VSC have records available that allow for the identification of consumers in a manner acceptable to provide the unclaimed property division of the Missouri Treasurer's office, VSC shall report any unclaimed funds to the unclaimed property division of the Treasurer's office. To the extent that the records are not available from the various

travel entities to report in a manner acceptable to the unclaimed property division, VSC may remit the remaining unclaimed fund to a charity that is mutually agreed upon by VSC and the DIFP.

The text and format of such notifications and advertisements shall be approved by the States in advance.

**FURTHER, IT IS HEREBY ORDERED,** that VSC shall within thirty days of this Order, pay all unpaid past due premium taxes that are the subject of this Consent Order to the State of Minnesota, Department of Revenue, and submit proof of payment to the States. At or prior to the time they are due, VSC shall pay all premium taxes to the State of Minnesota, Department of Revenue, for gross premium from the sale of Travel Insurance Products in 2012 underwritten by VSC and submit proof of payment to the States.

**FURTHER, IT IS HEREBY ORDERED,** that pursuant to §148.350, VSC shall pay all unpaid past due premium taxes that are the subject of this Consent Order to the State of Missouri, Department of Revenue, and submit proof of payment to the States. At or prior to the time they are due, VSC shall pay all premium taxes to the State of Missouri, Department of Revenue, for gross premium from the sale of Travel Insurance Products in 2012 underwritten by VSC and submit proof of payment to the States.

**FURTHER, IT IS HEREBY ORDERED,** that pursuant to Minn. Stat. § 45.027, subd. 6 (2012), VSC shall pay to the state of Minnesota a civil penalty of \$100,000.00.

**FURTHER, IT IS HEREBY ORDERED,** that pursuant to §§374.046 and 374.049 RSMo, VSC shall pay to the state of Missouri a civil penalty of \$100,000.00.

This Order shall be effective up on the signature of the States.

Dated this 19 day of February, 2012.

MINNESOTA DEPARTMENT OF COMMERCE

MIKE ROTHMAN  
Commissioner

By

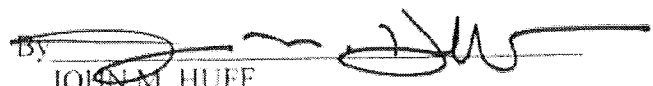
  
NANCY J. LEPPINK  
Assistant Commissioner-Enforcement

85 Seventh Place East, Suite 500  
Saint Paul, Minnesota 55101  
651.296.2488

Dated this 6<sup>th</sup> day of FEBRUARY, 2013

MISSOURI DEPARTMENT OF INSURANCE,  
FINANCIAL INSTITUTIONS AND  
PROFESSIONAL REGISTRATION

By

  
JOHN M. HUFF  
Director

**CONSENT TO ENTRY OF ORDER**

The undersigned, VSC states that they have read the foregoing Consent Order; that they know and fully understand its contents and effect; that they have been advised of their right to a hearing in this matter and waives that right; that they have been represented by legal counsel in this matter, or have been advised of their right to be represented by legal counsel and waives that right; and that they consent to entry of this Order by the States. It is further understood that this Consent Order constitutes the entire settlement agreement between the parties, there being no other promises or agreements, either express or implied.

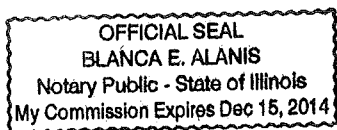
  
\_\_\_\_\_  
Virginia Surety Company, Inc.

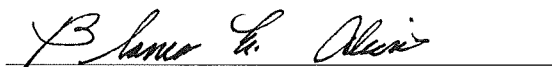
UNITED STATES OF AMERICA

COUNTY OF Cook

Signed or attested before me on 30<sup>th</sup> of January 2013 (date)

(stamp)



  
\_\_\_\_\_

(Signature of notary officer)

Notary  
\_\_\_\_\_

Title (and Rank)

My Commission expires: 12/15/14