STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE

In re AMERICAN TRADE ASSOCIATION, *et al.*	]	
	]	
	]	**CEASE AND DESIST ORDER**
Docket No. INS-10-207	]	
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	]	

On April 9, 2010, based on a verified complaint offering proof that their unlicensed insurance activities are causing significant and ongoing harm to Maine residents, and that their sales activities place additional Maine residents at risk, so that immediate action is necessary for the protection of the public, an Emergency Cease and Desist Order was issued against the following Respondents:

American Trade Association, Inc. (incorporated in Indiana) ("ATA 1"),
American Trade Association, Inc., (incorporated in Tennessee) ("ATA 2"),
Smart Data Solutions, LLC ("SDS"),
Pinnacle Health Solutions, LLC ("Pinnacle"),
Bart S. Posey,
Angie Posey,
Obed W. Kirkpatrick, Sr.,
Linda D. Kirkpatrick,
Richard H. Bachman,
Michael Schultz, and
Peter Walsh

After a public adjudicatory hearing held on April 15, 2010, I find that the eleven Respondents have engaged in a pattern of fraudulent activity in Maine, taking advantage of vulnerable citizens with false promises of affordable health coverage. The cease and desist order is therefore affirmed, with modifications to provide further protection for injured consumers. The Respondents are also ordered to pay full restitution to consumers with interest, and civil penalties in a total amount of $1,161,500.[1]

Procedural History

On April 9, 2010, the Staff of the Bureau of Insurance filed a verified petition for emergency cease and desist order against the Respondents, and submitted substantial evidence that the Respondents were soliciting insurance business in Maine and collecting premiums and fees from Maine consumers, although none of the Respondents are licensed by the Bureau in any capacity, and then failing to pay valid claims when due. The same

day, after reviewing the petition and supporting evidence, the Superintendent issued an Emergency Cease and Desist Order pursuant to 24-A M.R.S.A. § 12-A(2-A), together with a notice that a hearing to consider final agency action in this matter would be held on April 15, 2010. All Respondents were served with copies of the order and notice of hearing at their last known addresses. The notice warned that failure to appear at the hearing could result in a disposition by default, which may be set aside only if good cause is demonstrated to the satisfaction of the Superintendent. No Respondent has requested a continuance or otherwise objected to the hearing being held as scheduled. The hearing therefore proceeded as scheduled on April 15, 2010, with Bureau Staff appearing as a party pursuant to 5 M.R.S.A. § 9054(5).

Findings and Conclusions

The evidence against the enterprise centered around Smart Data Solutions, and against Bart Posey and the others who ran this fraudulent enterprise, is compelling and unrefuted. The Respondents sent out numerous unsolicited fax messages, in Maine and elsewhere, promising bargains on health coverage. They took money from thousands of people nationwide. *(Tr. 48)*[2] A record from one payment processor the Respondents used show more than 12,400 names, 23 of whom were listed as Maine residents. *(Staff Exh. 11)* The funds involved added up to more than nine million dollars. *(Id.)* This is a summary of a specific set of transactions processed through one vendor, and it is not clear at this time how much greater the actual damage is.

One of the victims of this scam is H.B., a 63-year-old woman from Wilton, Maine. She described her experiences in her testimony at the hearing. After being laid off from her job, she bought an individual health insurance policy. After three months, the insurer increased the premiums for the plan, and she could no longer afford to keep the policy.*(Tr. 13)* Then, last May, she saw an anonymous fax message her son-in-law had received, offering "Affordable Healthcare Plans." It offered a discount of $50 a month off list prices that ranged from $249 to $419, and it warned that "Reduced Rates Ends *[sic]* Today."[3] *(Id.; Staff Exh. 2, Att. b(1))* She called the toll-free number on the page, and spoke with Respondent Peter Walsh, who said he worked for a company called "Pinnacle." *(Tr. 14)*

She signed up for the cheapest plan, for $199 a month, paid for with an automatic draft from her bank account. She testified that this was one of their requirements for enrollment. *(Tr. 16)* She received an insurance certificate which recited that it was issued by a company called "Serve America, LTD" under a group policy issued to "RBA-American Trade Association." *(Tr. 17; Staff Exh. 2, Att. b(2)* She also received a membership card in the American Trade Association PPO Plan, which

recited that it was "UNDERWRITTEN BY: SERVE AMERICA ASSURANCE." *((Tr. 18; Staff Exh. 2, Att. b(3))* The card also carried the imprints of Express Scripts and Quest Diagnostics, but it is not clear at this time whether those were authorized or forged. No address is listed for Serve America – the only contact information is for their purported administrator, Respondent Smart Data Solutions. *(Tr. 17-18; Staff Exh. 2, Att. b(2) & (3))* ATA and SDS gave the same address and phone number in Springfield, Tennessee. *(Staff Exh. 2, Att. b(2) & (3))*

Serve America has never been licensed to do business in Maine by any name in any capacity. *(Tr. 10-11; Staff Exh. 2, Att. a)* The certificate recites that it was issued under a group policy issued in Arkansas, but Serve America was not licensed in Arkansas either. Bureau of Insurance Licensing Supervisor Pamela Roybal conducted an exhaustive nationwide search and found no evidence of any entity with any similar name being licensed in any other jurisdiction. *(Id.)*

H.B. filed one claim, for a mammogram. The hospital had submitted the claim to SDS, following the instructions copied from H.B.'s insurance card, but notified H.B. that the bill had not been paid. *(Tr. 19, 25)* She called Mr. Walsh, who told her to call SDS. The claims department assured her the bill would be paid, but SDS only paid the physician's fee for reading the mammogram, not the hospital fee. The hospital had still not been paid the last time H.B. checked, more than six months after the mammogram.*(Tr. 19-20)*

H.B. testified that she "had a feeling I was going to have to fight to have every claim paid." *(Tr. 22)* She wrote SDS to cancel her coverage, and was given a form to fill out, but SDS continued to keep her on its books as an active enrollee and continued to withdraw monthly premium payments. After the February 2010 withdrawal, H.B. placed a stop payment order, and she closed her bank account in March to prevent further withdrawals. *(Tr. 20-22)* H.B. and Detective Berkovich traced where her premium payments went after they were withdrawn from her account. The money ended up with SDS after going through "rabbit trails" of intermediaries. *(Tr. 26-27)*

Margie Berkovich, a detective in the Office of the Attorney General, interviewed two other consumers with similar experiences. *(Tr. 44-45)* One of them "was told that the bill had not been paid because of computer problems but that it would be paid." It remained unpaid, and he "stated that he called American Trade Association a third time and when he threatened to drop the policy he was told that the claim had been mistakenly overlooked and that the claim would be paid." A payment of fifty dollars was then sent for his two hundred dollar claim. *(Staff Exh. 2, Att. b, ¶ 8)* The other consumer had more than a thousand dollars in

unpaid claims and was now receiving demands from collectors. *(Tr. 44-45; Staff Exh. 2, Att. b, ¶ 7)*

The Petition asserts that the various Respondents have committed the following violations of the Maine Insurance Code:

That ATA 1, its successor corporation ATA 2, and SDS have violated 24-A M.R.S.A. § 404 by transacting insurance in the State of Maine without being licensed, and that Bart Posey, Angie Posey, Obed Kirkpatrick, Linda Kirkpatrick, and Richard Bachman have violated 24-A M.R.S.A. § 404 by permitting these unlicensed corporate entities to transact insurance;

That ATA 1, its successor corporation ATA 2, and Pinnacle have violated 24-A M.R.S.A. § 1411(1) and 24-A M.R.S.A. § 1413(1) by acting or purporting to act as insurance producers in the State of Maine without being licensed, and that Obed Kirkpatrick, Linda Kirkpatrick, Richard Bachman, and Michael Schultz have violated 24-A M.R.S.A. § 1411(1) and 24-A M.R.S.A. § 1413(1) by permitting these unlicensed corporate entities to act as insurance producers;

That Peter Walsh has violated 24-A M.R.S.A. § 1411(1) and 24-A M.R.S.A. § 1411(2) by acting or purporting to act as an insurance producer and as an insurance consultant in the State of Maine without being licensed;

That Pinnacle has violated 24-A M.R.S.A. § 1411(2) and 24-A M.R.S.A. § 1413(1) by acting or purporting to act as an insurance consultant in the State of Maine without being licensed, and that Michael Schultz has violated 24-A M.R.S.A. § 1411(2) and 24-A M.R.S.A. § 1413(1) by permitting Pinnacle to act as an insurance consultant; and

That SDS has violated 24-A M.R.S.A. § 1902 by acting or purporting to act as an insurance administrator in the State of Maine without being licensed, and that Bart Posey and Angie Posey have violated 24-A M.R.S.A. § 1902 by permitting SDS to act as an insurance administrator.

The facts described above leave no doubt that there was a scheme under which unlicensed insurance was marketed and sold in Maine, premiums were collected, and claims were occasionally paid. The only question that remains to be decided concerns the respective roles played in this scheme by each of the Respondents, none of whom was licensed in any capacity.

The record establishes that ATA 2 is the successor of ATA 1, with the same principals and continuity of operations and management, and that ATA 2 is therefore responsible for all actions performed by the American Trade Association at any relevant time. *(Staff Exh. 4-6)* They will be referred to collectively as "ATA."

Regarding the unlicensed producer charges, Walsh, acting on behalf of Pinnacle, sold the unlicensed insurance to H.B. *(Tr. 14)* This insurance was promoted by ATA as a "membership benefit." *(Tr. 15; Staff Exh. 2, Att. b)* The record establishes further that ATA was more than just a group policyholder, and that marketing the insurance was a core purpose of ATA. *(Staff Exh. 10)* Thus, Walsh, ATA, and Pinnacle have all acted as unlicensed insurance producers. The Petition asserts further that the

Kirkpatricks, Bachman, and Schultz have violated the same laws by permitting ATA and Pinnacle to act as producers. Merely "permitting" a company to violate the law is not itself a violation, in the absence of some legal duty to prevent the violation. However, the record shows that they did more than simply stand by and fail to prevent violations from happening. The Kirkpatricks and Bachman have been the officers of ATA *(Tr. 40; Staff Exh. 5-6),* and Schultz is the managing member of Pinnacle Health Solutions LLC *(Staff Exh. 8).* As such, they are responsible for the illegal acts of the corporate entities they ran.

Regarding the unlicensed consultant charges, Walsh also told H.B. that he worked for a company, Pinnacle, that "took a lot of people from a lot of different areas and put them all into one group, and that's why they could make the premiums as low as they were." *(Tr. 14)* On its website, Pinnacle claims to be working on behalf of consumers, urging them to "employ a professional marketing and research agency like Pinnacle Health Solutions LLC. That markets a wide range of products that are all 'A' rated, and can help you fully understand the choices." *(Staff Exh. 2, Att. b(7))* In reality, Pinnacle was working for ATA and SDS rather than for the consumers, and was paid by them rather than by the consumers, at least in the cases presented to the Superintendent. *(Tr. 23; Staff Exh. 9)* However, Pinnacle, Schultz as its managing member, and Walsh as its Maine representative held themselves out as offering disinterested advice, and thus violated 24-A M.R.S.A. § 1411(2), which makes it unlawful not only to "act as" a consultant, but also to "purport to be" a consultant, without being properly licensed.[4]

Regarding the unlicensed administrator charges, SDS collected premiums, paid claims, and identified itself as the plan administrator. *(Tr. 15, 18-19, 24, 26; Staff Exh. 2 & Att. b(2) through b(5)).* The insurance card carried a disclaimer that SDS "provides administrative only and assumes no financial risk for claims." *(Staff Exh. 2, Att. b(3))* Although that disclaimer was false, as discussed below, it confirms that SDS was professing to be an administrator, in violation of 24-A M.R.S.A. § 1902. The Poseys, as managing members of SDS *(Staff Exh. 7),* are also responsible for this violation.

It is the unlicensed insurer charges that present the most complex factual questions, because the Respondents deliberately structured their scheme to make it difficult to identify who the responsible insurer actually was. The fax solicitations did not identify any insurers, identify the marketers who sent the solicitations, or provide an address for written communications. They only provided two toll-free numbers: one for people to call if they were interested in buying, another for people who were not interested. *(Staff Exh. 2, Att. b(3))* After victims signed up, they received materials identifying "Serve America" as the insurer, with the precise name varying from document to document. *(Tr. 17; Staff Exh. 2,*

Att. b(2) through b(6) However, there is no indication that Serve America actually exists. The premiums paid by H.B. ended up in the pockets of SDS *(Tr. 26-27, 37-38),* and the Tennessee court overseeing the receivership of ATA 1 and SDS found that when SDS did pay claims, it did so out of its own account. The court concluded that Serve America did not exist, that ATA and SDS knew it did not exist, and that ATA and SDS were the actual insurers.[5] *(Staff Exh. 10)* I therefore find that ATA and SDS acted as unlicensed insurers in Maine, in violation of 24-A M.R.S.A. § 404(1), and that the Poseys, the Kirkpatricks, and Bachman were responsible for these activities as officers and directors, in violation of 24-A M.R.S.A. § 404(4).

Remedies

Most important, this unlawful and dishonest scheme must cease operations immediately, and its victims must be made whole to the extent possible. All remedies in the Emergency Cease and Desist Order are therefore affirmed on a permanent basis, pursuant to 24-A M.R.S.A. §§ 12-A(2), (2-A)(D), (4), and (6). In addition, the evidence presented at the hearing has demonstrated that consumers obtaining healthcare services relied on providers' acceptance of the fraudulent insurance provided by the Respondents. If providers actually provided services under contract with one or more Respondents, they facilitated the operation of this scheme. Even though their participation was negligent and unwitting, their recourse for unpaid services should therefore be from the company or companies with which they had contracted. Other providers with outstanding claims are encouraged to refrain voluntarily from pursuing collection from victims when that would create a hardship, and instead accept assignment of the claim.

Claimants and providers with unpaid bills are strongly encouraged to report them to the Bureau of Insurance. Contact information is included in Appendix A to this Order.

Furthermore, each Respondent other than the three unlicensed insurers has represented them in the transaction of business in Maine, and therefore, pursuant to 24-A M.R.S.A. § 2114, is liable for the full amount of any unpaid losses by insureds and claimants, as well as any unpaid premium taxes.

The emergency order is further modified to clarify that all past due claims must be paid with interest at the statutory rate of 1½% per month, pursuant to 24-A M.R.S.A. § 2436(3).

Finally, the Respondents' pattern of dishonest and manipulative tactics, and misappropriation of funds, calls for significant civil penalties. An appropriate measure in this case is to multiply the maximum penalty per

violation by the 23 Maine victims who have been specifically identified in the records submitted by Staff. For each of the four corporate Respondents, the applicable amount per victim is $10,000, pursuant to 24-A M.R.S.A. § 12-A(1), for a total of $230,000. For each of the seven individual Respondents, the applicable amount per victim is $1,500, pursuant to 10 M.R.S.A. § 8003(5)(A-1)(3), for a total of $34,500.

Order and Notice of Appeal Rights

It is therefore *ORDERED:*

1. The Petition is *GRANTED.*
2. Except as otherwise expressly required or permitted herein or by further order of the Superintendent, the Respondents and any agents, affiliates, employees, and/or other representatives, both current and successor, whether named or unnamed herein, shall *CEASE AND DESIST* from all insurance activities and related activities in or affecting this State, including but not limited to:
    A. Making or proposing to make an insurance contract;
    B. Taking or receiving of any application for insurance;
    C. Maintaining any agency or office where any acts in furtherance of insurance activities are transacted, including but not limited to:
        1. execution of contracts of insurance with residents of this or any other state, or
        2. receiving or collecting of any premiums, commissions, membership fees, assessments, dues, or other consideration for any insurance or any part thereof;
    D. Issuing or delivering contracts or certificates of insurance to residents of this State or to persons authorized to do business in this State;
    E. Directly or indirectly acting as an agent for, or otherwise representing or aiding on behalf of another, any person, insurer, or person purporting to be an insurer in:
        1. solicitation, negotiation, procurement or effectuation of insurance or renewals thereof,
        2. dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts,
        3. inspection of risks,
        4. fixing of rates or investigation or adjustment of claims or losses,
        5. transaction of matters subsequent to effectuation of the contract and arising out of it, or
        6. in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this State;
    F. Contracting to provide indemnification or expense reimbursement in this State to persons domiciled in this State or for risks located in this State, whether as an insurer, agent, administrator, trust, funding mechanism, or by any other method;
    G. Engaging in any kind of insurance activity specifically recognized as constituting an insurance activity within the meaning of the Maine

Insurance Code, regardless of the terminology used and regardless of any representations or disclaimers purporting to deny that the activity is insurance or subject to insurance regulation; or

H. Engaging in or proposing to engage in any activity that, in substance, is substantially similar or equivalent to any of the foregoing in a manner designed to evade the provisions of the statutes.

3. Notwithstanding Section 2 of this Order, the Respondents are jointly and severally required to:

   A. Continue to pay all valid claims for benefits when due for coverage on Maine residents or issued to employers doing business in Maine. If refunds have already been provided pursuant to Paragraph B below at the time the claim is processed, they may be offset from the reimbursement. Interest on overdue claims shall be paid at the statutory rate of 1½% per month from the due date. Payment of claims required by this Paragraph includes payment to providers of all claims that have been assigned to providers by the covered person, assigned to providers by operation of Section 6 of this Order, or assumed voluntarily by the provider.

   B. Send full refunds of all premiums, fees, and other consideration paid for insurance coverage and related services to all Maine residents, all employers doing business in Maine, and all individuals who have purchased coverage in the course of their employment in Maine from or through any or all of the Respondents or entities affiliated with or under contract with any Respondent. To the extent that claims have already been paid at the time the refund is processed, they may be offset from the refund. The due date for payment is April 20, 2010, pursuant to the Emergency Cease and Desist Order of April 9, 2010.

   C. Preserve and continue to make and maintain complete and accurate records of all transactions, and make such information available to the Superintendent upon request. The Respondents shall send a full and accurate list of all Maine residents, all employers doing business in Maine, and all individuals who have purchased coverage in the course of their employment in Maine from or through any or all of the Respondents or entities affiliated with or under contract with any Respondent. The due date for providing this information is April 15, 2010, pursuant to the Emergency Cease and Desist Order of April 9, 2010. The information provided shall include, at a minimum, the following, which the Superintendent shall hold under seal as confidential personal information to the extent protected by any applicable privacy laws:

      1. Full names.

      2. All available contact information, including telephone numbers and postal and e-mail addresses.

      3. All amounts paid to any Respondent or any entity affiliated with or under contract with any Respondent.

      4. Whether coverage was issued on a personal basis or on an employment-related basis.

   D. Send a notice in the form attached to this Order as Appendix A to each individual and employer described in Paragraph C. A single notice may be sent to households with a single address of record. The due date for providing this notice is April 15, 2010, pursuant to the Emergency Cease and Desist Order of April 9, 2010.

   E. Pay all applicable premium taxes when due.

4. The Respondents shall *CEASE AND DESIST* from any diversion or waste of assets required for the payment of refunds and claims, including any payments of any nature to related parties and any other payments to service providers other than reimbursements to unrelated health care providers or unrelated health care facilities for the usual and reasonable costs of covered health care services in the course of payment of bona fide benefit claims.
5. Insurance carriers shall treat coverage obtained from the Respondents as prior coverage for purposes of the Maine Continuity of Coverage Act and the federal Public Health Service Act.
6. Pursuant to 24-A M.R.S.A. § 2101, participating providers who have entered into an agreement with one or more Respondents or with their agents to provide services to covered persons shall not collect unpaid bills from the covered person. Their recourse shall be to collect from the company or companies with which they had contracted.
7. Each corporate Respondent shall pay a civil penalty of $10,000 for each of the 23 documented Maine sales, for a total penalty of $230,000, by check payable to the Treasurer of State.
8. Each individual Respondent shall pay a civil penalty of $1,500 for each of the 23 documented Maine sales, for a total penalty of $34,500, by check payable to the Treasurer of State.
9. The obligation to pay civil penalties under this Order shall be subordinated to the obligation to pay claims and to refund premiums.
10. Wherever this Order specifies a due date that has already occurred, pursuant to the Emergency Cease and Desist Order of April 9, 2010, failure to remedy any noncompliance at the earliest possible date shall constitute a further violation of this Order.
11. In addition to all duties and liabilities imposed upon ATA 2 in its own capacity by this Order, ATA 2 shall also be responsible as corporate successor to ATA 1 for all duties and liabilities imposed upon ATA 1 by this Order.
12. This Order modifies and restates the Emergency Cease and Desist Order of April 9, 2010. It is effective immediately and shall continue in full force and effect until further order of the Superintendent. This Order is binding on the Respondents, their agents, affiliates, employees and/or other representatives, both current and successor, whether named or unnamed herein.

This Decision and Order is a final agency action of the Superintendent of Insurance within the meaning of the Maine Administrative Procedure Act. It is appealable to the Superior Court in the manner provided in 24-A M.R.S.A. § 236 and M.R. Civ. P. 80C. Any party to the hearing may initiate an appeal within thirty days after receiving this notice. Any aggrieved non-party whose interests are substantially and directly affected by this Decision and Order may initiate an appeal on or before June 23, 2010. There is no automatic stay pending appeal; application for stay may be made in the manner provided in 5 M.R.S.A. § 11004.

[1] $230,000 for each of the four corporate Respondents, and $34,500 for each of the seven individual Respondents.

[2] Citations to the record, abbreviated as follows, are to the hearing transcript *(Tr.)* and to the exhibits offered by Staff and admitted at the hearing *(Staff Exh.).*

[3] All the Maine consumers interviewed by the Office of the Attorney General paid purported "discount" rates of $199 or $299 per month. None received more than $50 in benefits over the entire time they were covered. *(Staff Exh. 2, 3)*

[4] Although 24-A M.R.S.A. § 1402(4) defines a consultant as an "individual" offering insurance advice for a fee, a consultant license is also required for business entities that engage in insurance consulting. 24-A M.R.S.A. §§ 1411(2) & 1413(1).

[5] The court concluded that under Tennessee law they were "de facto insurers." The same facts demonstrate that under Maine law they were insurers within the meaning of 24-A M.R.S.A. §§ 3, 4, and 404.

PER ORDER OF

MAY 14, 2010

MILA KOFMAN
SUPERINTENDENT OF INSURANCE

Appendix A

Notice to Maine Consumers
American Trade Association Cease and Desist Order

On April 9, 2010, Maine Superintendent of Insurance Mila Kofman issued an Emergency Cease and Desist Order against the American Trade Association (ATA) and related parties, finding that ATA has been selling and issuing insurance illegally in Maine. After a public hearing, a further Cease and Desist Order was issued on May 14, 2010.

Superintendent Kofman has ordered ATA to stop doing business in Maine immediately, and to continue paying benefits on coverage it has already sold. You have received this notice because you are on an ATA customer list.

- **Your right to a refund –** ATA has been ordered to give you a full refund, minus any claims they have paid.
- **Your right to any benefits you have paid for –** ATA has been ordered to continue honoring its obligation to pay claims, and to pay interest on overdue claims.
- **Your right to buy new coverage –** Maine law gives all individuals and small businesses the right to buy any health insurance product sold by any licensed insurer, regardless of your health status. Information on your health insurance options may be found at:

  http://www.maine.gov/pfr/insurance/consumer/indhlth.htm (individuals)
  http://www.maine.gov/pfr/insurance/employer/smallemp.htm (employers)

- **Protection against preexisting condition exclusions –** If you buy new insurance within 90 days, the insurer cannot exclude coverage for preexisting health conditions. This applies whether you get coverage under your own individual insurance, your employer's group insurance, or your spouse's or partner's insurance. If you have a problem getting credit from your new insurer for your ATA coverage, please contact the Bureau.
- **If you have questions, or would like to contact the Maine Bureau of Insurance –** you may reach the Bureau in any of these ways:

  By phone at (207) 624-8475, or in Maine at (800) 300-5000. Please ask for Kelly Rogers.

  By e-mail at insurance.pfr@maine.gov. Please include ATA in the subject line.

  On the Internet at: http://www.maine.gov/pfr/insurance

  By mail at: ATA Consumer Assistance
  Maine Bureau of Insurance
  34 State House Station
  Augusta ME 04333-0034