

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

IN RE:)
)
AMERICAN TRADE ASSOCIATION, INC.)
(IN,)
AMERICAN TRADE ASSOCIATION, INC.)
(TN,)
SMART DATA SOLUTIONS, LLC,)
PINNACLE HEALTH SOLUTIONS, LLC,)
BART S. POSEY,)
ANGIE POSEY,)
OBED W. KIRKPATRICK, SR.,)
LINDA D. KIRKPATRICK)
RICHARD H. BACHMAN,)
MICHAEL SCHULTZ, and)
PETER WALSH)

**EMERGENCY CEASE AND
DESIST ORDER AND NOTICE
OF HEARING**

Docket No. INS-10-207

On April 9, 2010, Staff of the Bureau of Insurance ("Bureau Staff") filed with the Superintendent of Insurance ("the Superintendent") a Petition for an Emergency Cease and Desist Order ("Petition"), contending that the following persons (referred to collectively as the "Respondents") were engaging in unlicensed insurance activities in Maine:

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.
Richard H. Bachman
Linda D. Kirkpatrick
Michael Schultz
Peter Walsh

FINDINGS

Having reviewed the Petition and the supporting affidavits (which documents are attached to this Cease and Desist Order), the Superintendent finds that substantial evidence supporting the facts as alleged in the Petition and finds that the Respondents have engaged in unlicensed insurance activities in Maine as specified below:

1. ATA 1 has violated:

- a. 24-A M.R.S. § 404 by acting as an insurer or transacting insurance in this State by mail or otherwise, without being authorized by a certificate of authority issued by the Superintendent pursuant to Title 24-A; and
 - b. 24-A M.R.S. § 1411(1) and 24-A M.R.S. § 1413(1), by acting as or purporting to be an insurance producer or by engaging in producer activities with respect to insurance risks resident, located, or to be performed in Maine without being licensed in accordance with Title 24-A chapter 16, subchapter II-A.
2. ATA 2 as a successor to ATA 1 has violated:
 - a. 24-A M.R.S. § 404 by acting as an insurer or transacting insurance in this State by mail or otherwise, without being authorized by a certificate of authority issued by the Superintendent pursuant to Title 24-A; and
 - b. 24-A M.R.S. § 1411(1) and 24-A M.R.S. § 1413(1), by acting as or purporting to be an insurance producer or by engaging in producer activities with respect to insurance risks resident, located, or to be performed in Maine without being licensed in accordance with Title 24-A chapter 16, subchapter II-A.
3. SDS has violated:
 - a. 24-A M.R.S. § 1902 by acting as or professing to be an administrator by collecting premiums from and paying claims to residents of Maine without being licensed under Title 24-A chapter 18; and
 - b. 24-A M.R.S. § 404, by acting as an insurer or transacting insurance in this State without being authorized by a certificate of authority issued by the Superintendent pursuant to Title 24-A.
4. Pinnacle has violated:
 - a. 24-A M.R.S. § 1411(1) and 24-A M.R.S. § 1413(1), by acting as or purporting to be an insurance producer or by engaging in producer activities with respect to insurance risks resident, located, or to be performed in Maine without being licensed in accordance with Title 24-A chapter 16, subchapter II-A; and
 - b. 24-A M.R.S. § 1411(2) and 24-A M.R.S. § 1413(1), by acting as or purporting to be a consultant with respect to insurance risks resident, located or to be performed in Maine without being licensed as a consultant under Title 24-A chapter 16.
5. Bart Posey, as a member and manager of SDS, has violated:
 - a. 24-A M.R.S. § 1902, by permitting SDS to act as or profess to be an administrator by collecting premiums from and paying claims to residents of Maine without being licensed under Title 24-A chapter 18; and
 - b. 24-A M.R.S. § 404, by permitting SDS to act as an insurer or transact insurance in this State without being authorized by a certificate of authority issued by the Superintendent pursuant to Title 24-A.
6. Angie Posey, as a director of SDS, has violated:
 - a. 24-A M.R.S. § 1902, by permitting SDS to act as or profess to be an administrator by collecting premiums from and paying claims to residents of Maine without being licensed under Title 24-A chapter 18; and
 - b. 24-A M.R.S. § 404, by permitting SDS to act as an insurer or transact insurance in this State without being authorized by a certificate of authority issued by the Superintendent pursuant to Title 24-A.
7. Obed Kirkpatrick, as an officer of ATA 1 and ATA 2, has violated:

- a. 24-A M.R.S. § 404 by permitting ATA 1 and ATA 2 to act as an insurer or transact insurance in this State by mail or otherwise, without being authorized by a certificate of authority issued by the Superintendent pursuant to Title 24-A; and
 - b. 24-A M.R.S. § 1411(1) and 24-A M.R.S. § 1413(1), by permitting ATA 1 and ATA 2 to act as or purport to be an insurance producer or engage in producer activities with respect to insurance risks resident, located, or to be performed in Maine without being licensed in accordance with Title 24-A chapter 16, subchapter II-A.
8. Linda Kirkpatrick, as an officer of ATA 1 and ATA 2, has violated:
 - a. 24-A M.R.S. § 404 by permitting ATA 1 and ATA 2 to act as an insurer or transact insurance in this State by mail or otherwise, without being authorized by a certificate of authority issued by the Superintendent pursuant to Title 24-A; and
 - b. 24-A M.R.S. § 1411(1) and 24-A M.R.S. § 1413(1), by permitting ATA 1 and ATA 2 to act as or purport to be an insurance producer or engage in producer activities with respect to insurance risks resident, located, or to be performed in Maine without being licensed in accordance with Title 24-A chapter 16, subchapter II-A.
9. Richard Bachman, as an officer of ATA 1 and ATA 2, has violated:
 - a. 24-A M.R.S. § 404 by permitting ATA 1 and ATA 2 to act as an insurer or transact insurance in this State by mail or otherwise, without being authorized by a certificate of authority issued by the Superintendent pursuant to Title 24-A; and
 - b. 24-A M.R.S. § 1411(1) and 24-A M.R.S. § 1413(1), by permitting ATA 1 and ATA 2 to act as or purport to be an insurance producer or engage in producer activities with respect to insurance risks resident, located, or to be performed in Maine without being licensed in accordance with Title 24-A chapter 16, subchapter II-A.
10. Michael Schultz as the managing member of Pinnacle has violated:
 - a. 24-A M.R.S. § 1411(1) and 24-A M.R.S. § 1413(1), by permitting Pinnacle to act as or purport to be an insurance producer or engage in producer activities with respect to insurance risks resident, located, or to be performed in Maine without being licensed in accordance with Title 24-A chapter 16, subchapter II-A; and
 - b. 24-A M.R.S. § 1411(2) and 24-A M.R.S. § 1413(1), by Permitting Pinnacle to act as or purport to be a consultant with respect to insurance risks resident, located or to be performed in Maine without being licensed as a consultant under Title 24-A chapter 16.
11. Peter Walsh has violated:
 - a. 24-A M.R.S. § 1411(1), by acting as or purporting to be an insurance producer or by engaging in producer activities with respect to insurance risks resident, located, or to be performed in Maine without being licensed in accordance with Title 24-A chapter 16, subchapter II-A; and
 - b. 24-A M.R.S. § 1411(2), by acting as or purporting to be a consultant with respect to insurance risks resident, located or to be performed in Maine without being licensed as a consultant under Title 24-A chapter 16.
12. The activities of the Respondents are causing significant and ongoing harm to Maine residents, and their sales activities place additional Maine residents at risk, so that immediate action is necessary for the protection of the public.

EMERGENCY CEASE AND DESIST ORDER

1. IT IS THEREFORE ORDERED that 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.
2. IT IS FURTHER ORDERED that notwithstanding Section 1 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.
 - B. Send full refunds, no later than April 20, 2010, 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.
 - 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. No later than April 15, 2010, 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, including at a minimum the following information, 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, no later than April 15, 2010, to each individual and employer described in Paragraph C. A single notice may be sent to households with a single address of record.
3. IT IS FURTHER ORDERED that 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.
4. IT IS FURTHER ORDERED that this Emergency Cease and Desist Order is effective immediately and shall continue in full force and effect until further order of the Superintendent. This Order is binding on Respondents, their agents, affiliates,

employees and/or other representatives, both current and successor, whether named or unnamed herein. This Emergency Cease and Desist Order is issued pursuant to 24-A M.R.S. §12-A(2-A).

NOTICE OF HEARING

On April 15, 2010 the Superintendent of Insurance will conduct a public hearing to determine whether or not grounds exist for the imposition of further sanctions against the Respondents for their conduct related to the business of insurance within the State of Maine. The hearing will commence at 8:00 a.m. on Thursday, April 15, 2010 in Room 214 of the Cross State Office Building, corner of State and Capitol Streets, Augusta, Maine. The hearing will be held pursuant to and in accordance with 24-A M.R.S. § 12-A(2-A)(C).

The hearing is being held in response to a Petition for Enforcement filed by Bureau of Insurance staff. A copy of the Petition for Enforcement and supporting affidavits and exhibits are attached. The purpose of the hearing will be to determine whether the Superintendent shall affirm, modify or set aside, in whole or in part, this Emergency Cease and Desist Order and should combine it with or employ other available enforcement or penalty provisions to arrive at a final order.

The hearing will be held in accordance with the provisions of the Maine Administrative Procedure Act, 5 M.R.S. §§ 9051 through 9064, 24-A M.R.S. §§ 229 through 236 and Maine Bureau of Insurance Rule Chapter 350. You may be represented by an attorney. You may call witnesses to testify on your behalf and may cross-examine any witnesses who testify against you. All testimony will be taken under oath and the hearing will be recorded. You may present written evidence and make oral or written arguments at hearing. Applications for intervention, filed pursuant to 5 M.R.S. §9054, will be accepted up to the commencement of the hearing.

Information obtained during the hearing may be used in subsequent legal proceedings. Failure to appear at the hearing may result in a disposition by default, which may be set aside only if good cause is demonstrated to the satisfaction of the Superintendent.

The Department of Professional and Financial Regulation does not discriminate on the basis of disability. Persons who need any sort of assistance or accommodation for effective participation in this hearing should make their needs known to the hearing officer sufficiently in advance of the hearing that appropriate arrangements can be made.

PER ORDER OF THE SUPERINTENDENT OF INSURANCE

April 9, 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.

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.
- **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:
<https://www.maine.gov/pfr/insurance/consumers/health-insurance-for-individuals-and-families>
or <https://www.maine.gov/pfr/insurance/consumers/health-insurance-for-small-businesses>
- **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