***In re*: United States Contractors Trust; Real Benefits Association; Metropolitan Business Alliance, LLC (d/b/a National Association of Business Leadership); *and* Access Health Now**	)	**CEASE AND DESIST ORDER**
Docket No. INS 12-216	)	

The evidence in this proceeding has proven that United States Contractors Trust (USCT) and the other three Respondents named above have engaged in a nationwide scheme of fraudulent activity, taking advantage of vulnerable consumers, including at least four Maine citizens, with false promises of affordable health coverage. The Respondents are therefore hereby ordered to cease doing business in Maine immediately, and to pay full restitution to consumers with interest along with civil penalties in a total amount of $260,000.

Procedural History

On May 30, 2012, the Staff of the Bureau of Insurance filed a Petition for Cease and Desist Order and Other Relief against the Respondents. The Superintendent issued a Notice of Hearing on June 4, 2012, scheduling the hearing for June 18, 2012. Each of the four Respondents was served with copies of the Notice of Hearing at its last known address. Additional copies of the notice were sent to two other addresses of record for United States Contractors Trust and to one other address of record for Real Benefits Association (RBA). 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. Upon motion by the Staff to accommodate the availability of a witness, the Superintendent issued an order on June 12, 2012, postponing the hearing until June 20, 2012. That order was mailed to the Respondents at all of the same addresses. No Respondent has objected to the continuance requested by the Staff, requested a further continuance, or otherwise objected to the hearing being held as scheduled. The hearing therefore proceeded as scheduled, with Bureau Staff appearing as the Petitioner pursuant to 5 M.R.S.A. § 9054(5). At the Staff's request, the record was left open until June 21, 2012, to include additional information on the Staff's efforts to serve the Respondents. I find that the notices, sent to the Respondents at their last known addresses, were reasonably calculated under the circumstances of this case to notify the Respondents of the pendency of this action and of the possible consequences of a default should they fail to appear.

Findings and Conclusions

The evidence against the Respondents is persuasive and uncontradicted. The Respondents promised "affordable benefits ... that address the needs of the consumer and enhance their quality of life." Instead, they took consumers' money and left some of them with crushing medical expenses.
One of the victims is T.B., a 63-year-old substitute teacher from Garland, Maine. She described her experiences in her testimony at the hearing. She saw the Respondents' advertisements on television, and called their toll-free number. She began paying monthly premiums of $242 in April of 2009, and she received an insurance card issued by Real Benefits Association.
In July of 2010, she had surgery, incurring medical bills totaling $12,644.55. When she called the number on her card, she was told there had been a change in her health plan. She was mailed a new insurance card issued by USCT, which listed April 1, 2009 as the effective date of her USCT coverage. However, when she called the number on her new card, she was told her claim payment would be delayed due to a backlog. She filed a complaint with the Bureau of Insurance.

On July 5, 2011, a Bureau of Insurance complaint investigator received a letter from Randall Rabe, an attorney in Columbus, Ohio, stating that "the plan's administrator ... abruptly terminated its relationship with the plan," and that a "Claims Resolution Project was set up and a new claims administrator was filed." He said the "backlog of paper claims is still quite extensive," but that four claims filed by T.B. had been identified and "have been forwarded to the claims administrator for processing." The claims remained unpaid, and on October 4, 2011, the Bureau asked Mr. Rabe for "a timetable that will give the Bureau a more substantive understanding of the likelihood and the date that the complainant's benefit claims will be paid.

Mr. Rabe replied: "Regretfully, there are no funds available to pay additional claims at this time.... In the absence of funds to pay claims, I am no longer in a position to help my client address the current situation. Accordingly, my work for this client is coming to a close." None of the Respondents ever reimbursed any of T.B.'s medical bills as they had promised.[1] After paying the Respondents thousands of dollars for this coverage, T.B. remains responsible for substantial medical bills that she cannot afford to pay.

Three other Maine consumers, J.C., C.H., and J.W., had similar experiences, and filed complaints with the Bureau of Insurance after buying coverage from the Respondents, paying premiums, and being left with substantial unreimbursed medical expenses.
Three distinct substantive patterns of activity are charged in the Petition. First, the Petition alleges that Respondents USCT, RBA, and National Association of Business Leadership (NABL, which despite its representations that it is "an independent Non-profit Association," is a registered business name used by Metropolitan Business Alliance, LLC), none of which has ever been licensed in Maine in any capacity, have acted as insurers or transacted insurance in Maine, in violation of 24-A M.R.S.A. § 404, and have acted as or professed to be third-party administrators in

Maine, in violation of 24-A M.R.S.A. § 1902.

The record demonstrates clearly that USCT acted as an insurer while representing that it was acting as an administrator. Each of the four known Maine victims paid premiums to USCT, and USCT's plan documents promised a variety of insurance benefits, including dental, vision, and pharmacy insurance.[2] USCT issued insurance cards with logos of dental, vision, and pharmacy benefit providers, and its plan description also represented that the medical benefits would be provided "under the policies issued to the Association by its vendors." Thus, USCT represented that it was collecting premiums for health benefits on behalf of others. USCT also directed its members to submit claims to "USCT Claims." Both the collection of premiums and the processing of claims are third-party administrator activities. I therefore conclude that USCT committed four violations of 24-A M.R.S.A. § 1902, by professing to act as an administrator for the accounts of four Maine consumers, without being licensed by the Superintendent to do so.

However, it was USCT, not the unnamed "vendors," that made the promise to pay the benefits to these victims, and broke that promise. Although the documents describing the medical portion of the plan are written almost entirely in the passive voice, and the few exceptions are statements that the "plan" will pay, it was USCT that issued those documents in return for premiums that were collected by USCT. When USCT failed to pay, its representatives acknowledged the unpaid claims as USCT's own obligations and did not send the victims or their providers to any other party for payment. Furthermore, J.C.'s plan documents include a "Limited Benefits Schedule" expressly describing the plan as being "Underwritten by United States Contractors Trust – Atlanta, GA." I therefore conclude that USCT committed four violations of 24-A M.R.S.A. § 404(1), by acting as an insurer and transacting insurance with four Maine consumers, without being authorized by a certificate of authority issued by the Superintendent.

In NABL's case, it is even clearer that NABL held itself out as an administrator. Two of the Maine USCT victims, J.C. and C.H., were initially enrolled in NABL, and received documentation and insurance cards similar to those provided by USCT, which included "Limited Benefits Schedules" expressly describing the plan as being "Underwritten by Phoenix Insurance Company – Phoenix, AZ." I therefore conclude that NABL committed two violations of 24-A M.R.S.A. § 1902, by professing to act as an administrator for the accounts of two Maine consumers, without being licensed by the Superintendent to do so.

However, there is no Phoenix Insurance Company in Arizona. The only Phoenix Insurance Company licensed anywhere in the United States is one of the Travelers companies, domiciled and headquartered in Connecticut, which is a property and casualty company that does not issue health insurance.[3] Because NABL promised to pay benefits in the name of a

nonexistent insurer, while collecting premiums for its own account, NABL acted as an insurer. *See In Re American Trade Association,* No. INS-10-207 (Me. Bur. Ins., May 14, 2010). I therefore conclude that NABL committed two violations of 24-A M.R.S.A. § 404(1), by acting as an insurer and transacting insurance with two Maine consumers, without being authorized by a certificate of authority issued by the Superintendent.

The record is more limited with regard to RBA, because T.B. testified that RBA did not send her actual plan documents, only an insurance card. However, she also testified that RBA in its advertising and enrollment process made similar benefit promises, and her RBA and USCT insurance cards had the same Member ID and the same effective date of coverage. I therefore find that T.B.'s relationship to RBA was substantially similar to the four victims' relationships to USCT and NABL, and conclude that RBA violated 24-A M.R.S.A. § 1902 by professing to act as an administrator for T.B.'s account, and violated 24-A M.R.S.A. § 404(1) by acting as an insurer and transacting insurance with T.B., when RBA was not licensed in either capacity.

Next, the Petition alleges that USCT violated 24-A M.R.S.A. § 2164-D(5) by failing to deal with its insureds in good faith to resolve claims made against the policies of its insureds without just cause and with such frequency as to indicate a general business practice. I have already found that USCT acted as an insurer, and as such is subject to the obligations of the Unfair Claims Practices Act pursuant to 24-A M.R.S.A. §§ 2164-D(1) and 2167. The record shows that USCT failed to pay claims filed by every one of its Maine insureds who have been identified, without denying coverage for any of those claims, so the questions to be resolved are whether USCT failed to deal with them in good faith, and if so, whether that failure was without just cause and with such frequency as to indicate a general business practice.

The lack of good faith and just cause for nonpayment is demonstrated by the manner in which USCT responded to the claims. In T.B.'s case, she had surgery in July of 2010. She called USCT around the beginning of March of 2011 because the bills were still unpaid, and was told there was a backlog. After USCT remained unresponsive, she filed a complaint with the Bureau of Insurance on June 1, 2011. USCT's representative assured the Bureau on July 5, 2011, that her claims had been identified and forwarded for processing. USCT then remained silent for another three months, its former representative finally informing the Bureau on October 13, 2011, that funds were not available at the time.
The record does not show whether the inability to pay was genuine, but even if it was, it does not constitute just cause for failure to pay earlier, before the date the funds were exhausted. Regardless of the reasons for nonpayment, there was no just cause for the prolonged period of delay and failure to communicate, especially after USCT had acknowledged T.B.'s claims and identified them specifically for attention. USCT was not dealing in good faith with T.B. at that time, and the record leads to a reasonable conclusion that

USCT never dealt with her in good faith at any time and never intended to pay these claims. The similar history of every other Maine insured who has been identified to date is persuasive evidence that this was USCT's general business practice, and the findings by insurance regulators in other states that have been introduced into the record indicate further that this was part of a national plan.

Indeed, USCT appears to have entered the scheme in the first place for purposes of delay and avoidance of responsibility. T.B. first called RBA, and was only told she had been switched to USCT in response to her claim for benefits. New Jersey found that there had been "numerous complaints from RBA's customers whose claims were not paid even after they had paid premiums to RBA. At various times, RBA [and its principals] have represented that their insurance products were underwritten by various entities, including, but not limited to, ... United States Contractor Trust."[4] Two other USCT victims, J.C. and C.H., were initially enrolled in NABL and purportedly insured by the fictitious Phoenix Insurance Company. Subsequently, they received USCT materials that were substantially similar to their NABL materials, including a welcome flyer that is nearly identical, down to the typographical error "heath care," the only differences being the names and logos of the entities and the sentence, appearing only in the NABL flyer: "NABL has been an important resource for Trade, Consumer and Professional Association Members since 2002."

I therefore conclude that USCT violated 24-A M.R.S.A. § 2164-D four times by failing to deal with four different insured in good faith to resolve their claims, without just cause and as a general business practice.

Finally, the Petition alleges that the fourth Respondent, Access Health Now, represented and aided USCT and NABL in their unauthorized insurance activities, in violation of 24-A M.R.S.A. § 2101. The record demonstrates that both USCT and NABL referred their insureds to Access Health Now for information on their purported benefits and their purported provider networks. In addition, the Staff provided testimony and documentation proving that Access Health Now has maintained a Web site promoting USCT to the general public, which formally, in almost identical form, promoted NABL. I therefore conclude that Access Health Now committed six violations of 24-A M.R.S.A. § 2101, by assisting USCT in its unauthorized insurance transactions with four Maine consumers and assisting NABL in its unauthorized insurance transactions with two Maine consumers, and that it committed two further violations of 24-A M.R.S.A. § 2101 by maintaining a Web site publicly offering USCT's and NABL's unlicensed insurance coverage to citizens of Maine.

Remedies

Most important, this unlawful and dishonest scheme must cease operations immediately, and its victims must be made whole to the extent possible. In

addition, if any providers actually provided services under contract with one or more Respondents, they facilitated the operation of this scheme. Even though any such participation would likely have been 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.

The Respondents cannot retain any funds for their own business purposes while claims remain unpaid. As restitution under 24-A M.R.S.A. § 12-A(6), the Respondents must pay all valid claims, and refund all premiums unlawfully collected. Because the evidence demonstrates a common enterprise, their responsibility for this obligation must be joint and several.

Finally, the Respondents' pattern of dishonest and manipulative tactics, and collection of insurance premiums under false pretenses, calls for the maximum civil penalty for each proven violation. Pursuant to 24-A M.R.S.A. § 12-A(1), that penalty is $10,000 per violation.

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, or insurance cards or other evidence 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 August 1, 2012.

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 July 16, 2012. 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 July 16, 2012.

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 and 4303(8-A)(C), if any participating provider has entered into an agreement with one or more Respondents or with their agents to provide services to covered persons, such providers shall not collect unpaid bills from covered persons. Their recourse shall be to collect from the company or companies with which they had contracted.

7. Respondent USCT shall pay a civil penalty of $10,000 for each of the twelve proven violations set forth above, for a total penalty of $120,000, by check payable to the Treasurer of State.

8. Respondent NABL shall pay a civil penalty of $10,000 for each of the four proven violations set forth above, for a total penalty of $40,000, by check payable to the Treasurer of State.

9. Respondent RBA shall pay a civil penalty of $10,000 for each of the two proven violations set forth above, for a total penalty of $20,000, by check payable to the Treasurer of State.

10. Respondent Access Health Now shall pay a civil penalty of $10,000 for each of the eight proven violations set forth above, for a total penalty of $80,000, by check payable to the Treasurer of State.

11. The obligation to pay civil penalties under this Order shall be subordinated to the obligation to pay claims and to refund premiums.

12. This Order 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 August 7, 2012. There is no automatic stay pending appeal; application for stay may be made in the manner provided in 5 M.R.S.A. § 11004.

PER ORDER OF

June 28, 2012

Eric A. Cioppa
SUPERINTENDENT OF INSURANCE

Appendix A

Notice to Maine Consumers
USCT/NABL Cease and Desist Order

On June 22, 2012, Maine Superintendent of Insurance Eric Cioppa issued a Cease and Desist Order against the United States Contractors Trust, National Association of Business Leadership, and related parties (USCT/NABL), finding that USCT/NABL has been selling and issuing insurance illegally in Maine.

Superintendent Cioppa has ordered USCT/NABL 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 a USCT/NABL customer list.

- **Your right to a refund –** USCT/NABL has been ordered to give you a full refund, minus any claims they have paid.
- **Your right to any benefits you have paid for –** USCT/NABL 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:
    - https://www.maine.gov/pfr/insurance/consumers/health-insurance-for-individuals-and-families (individuals) or https://www.maine.gov/pfr/insurance/consumers/health-insurance-for-small-business (employer)
- **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 USCT/NABL 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 USCT/NABL in the subject line.
On the Internet at: https://www.maine.gov/pfr/insurance/home
By mail at:

USCT/NABL Consumer Assistance
Maine Bureau of Insurance
34 State House Station
Augusta ME 04333-0034

[1] T.B. testified that she did receive some benefits from a separate drug plan, paying $80 for prescriptions that were worth $200. Her cards refer to "Per4mance RX" and "Plan RX," which appear to be pharmacy discount plans. If T.B.'s pharmacy benefit was a discount plan rather than an insurance plan, then the Respondents paid nothing toward her prescription costs, and the record is not sufficient to conclude whether the $200 list price she was quoted actually reflects the amount that she would have had to pay in the absence of the discount plan.

[2] USCT's description of dental coverage specifically promised: "In addition to the Network Discount, the indemnity portion (see below) of the benefit will reimburse a specific amount for each procedure." *(Emphasis in original.)* Although the pharmacy benefit description included a disclaimer representing that "PlanRx is a non-insurance benefit program," both the vision and pharmacy plan descriptions explicitly promised payment of a portion of the provider's charges, and also referred to the patient's "co-pay," terminology that represents that the patient only pays a share of the provider's charge. In a non-insurance discount plan, the patient always pays the full amount charged by the provider. It is likely that the plans in question were in fact discount plans rather than insurance, but the Respondents' failure to deliver on their promises to provide insurance benefits is not a defense to the charges.

[3] The Superintendent takes official notice that The Phoenix Companies, a separate group of life and annuity companies, also includes some companies with somewhat similar names. They are also headquartered in Hartford, Connecticut, and do not issue health insurance. It should also be noted that the record includes a Cease and Desist Order issued in 2010 by the North Carolina Department of Insurance, which found that NABL had represented that it had an insurance policy issued by the "Phoenix Insurance Company of Baltimore, Maryland."

[4] RBA was also referenced on victims' insurance cards in *In re American Trade Association,* though it was not a named respondent. There was no finding as to the meaning of those initials in that Decision and Order, but it is clear from this record that it is Real Benefits Association.