

**STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION**

In the Matter of **OTR Truckers Association, Inc.**,) **CEASE AND DESIST**
OTR Truckers Health and Welfare Fund,) **ORDER**
M & M Underwriting, Inc.) Case No. INS 03-05-043

The Director of the Department of Consumer and Business Services (director) hereby issues this cease and desist order, pursuant to Oregon Revised Statutes (ORS) 731.252, to OTR Truckers Association, Inc. (OTR), OTR Truckers Health and Welfare Fund (OTR Fund), and M & M Underwriting, Inc. (M & M), because the director has reason to believe that each party has violated, is violating, or is about to violate the Insurance Code as specified herein.

Findings of Fact

Licensing Information

OTR has never been licensed in Oregon as an insurer, multiple employer welfare arrangement, third party administrator, insurance agent, on in any other similar capacity. OTR was incorporated under the laws of Pennsylvania on 5/12/99 with James F. Mustoe as President and Jessica W. Crocker as Secretary. In Pennsylvania, OTR conducted business at 102 W Germantown Pike #C, Norristown, PA 19401-1330. Later, OTR changed its name to Over The Road Truckers Association, Inc. and incorporated under the laws of Georgia on 7/27/01 with the officers unknown but Rusk L. Jones as the registered agent. OTR continued to also use the name of "OTR Truckers Association." In Georgia, OTR conducted business at 327 Dahlonega Street Suite A302, Cumming, GA 30040-2483; 327 Dahlonega Street Suite 803, Cumming, GA 30040-8209; and PO Box 2669, Cumming GA 30028-6508.

OTR Fund also has never been licensed in Oregon as an insurer, multiple employer welfare arrangement, third party administrator, insurance agent, on in any other similar capacity. OTR Fund has also been known as OTR Truckers

Health and Welfare Plan, OTR Truckers Health and Welfare Fund, OTR Truckers Healthcare Fund, Over The Road Truckers Health Care Fund, and Over The Road Truckers Healthcare Fund. OTR Fund also conducted business at 327 Dahlonega Street Suite 803, Cumming, GA 30040-8209; 327 Dahlonega Street Suite A302, Cumming, GA 30040-8209; and PO Box 2669, Cumming GA 30028-6508.

M & M has never been licensed in Oregon as a third party administrator, insurance agent, or similar capacity. M & M was incorporated under the laws of Pennsylvania on 2/17/87 with “James F. Mustue” as President of M & M. Thomas G. Kilcullen was the Director of Marketing. M & M conducted business at 377 School Lane, Plymouth Meeting, PA 19462-2742.

Transacted Insurance in Oregon Without a License

In June 1999, OTR established OTR Fund to provide health and welfare benefits to members of OTR. OTR Fund was a self-funded health plan. The funding for the payment of benefits was derived from contributions made by covered members. The Plan was purportedly reinsured under a stop-loss policy. OTR appointed a Board of Trustees to be the Plan Administrator. James F. Mustoe and Rusk L. Jones were trustees of OTR Fund. As of February 2002, there were 18 employers and 350 covered members taking part in the plan.” OTR Fund was a multiple employer welfare arrangement (MEWA) as defined by the Employee Retirement Income Security Act (ERISA), Section 3(40), 29 U.S.C. §1002(40). The Georgia Insurance Commissioner issued a C&D on 4/2/02. The federal Department of Labor obtained a temporary restraining order on 6/7/02 for the immediate removal of OTR and the trustees of its health plan for improperly managing the plan that resulted in \$998,515.50 in unpaid claims owed to participants.

OTR Fund violated ORS 731.354 by transacting insurance in Oregon as an insurer by soliciting applications and premium from, and in consideration thereof promising to provide health insurance to, Oregon resident from about 4/00 to 3/02.

OTR violated ORS 744.051 (1999) and 746.310(1) by, at all relevant times, directly or indirectly through M & M, informing Oregon residents about the availability and terms of the health insurance provided by OTR Fund.

M & M violated ORS 744.051 (1999) and 746.310(1) by, at all relevant times, sending to residents of Oregon blank applications for and information about the health benefits offered by OTR Fund, and receiving from such persons completed applications and payments for such benefits.

Order

OTR Fund, OTR and M & M each shall immediately cease and desist from violating the above provision(s) of the Oregon Insurance Code, pursuant to ORS 731.252.

Notice of Right to a Hearing and Judicial Review

Each party has the right to a hearing pursuant to ORS 731.252. If a party wants a hearing, then the party must send to the Insurance Division a written request for a hearing so that the Insurance Division *receives* the request within **20 days** from the date this order was *sent* to the party. The party may send the request by delivering or mailing it to the Insurance Division at 350 Winter Street NE, Room 440, Salem, Oregon, 97301-3883; or faxing it to 503-378-4351; or e-mailing it to mitchel.d.curzon@state.or.us.

If the Insurance Division receives from or on behalf of a party a written request for a hearing by the due date, then the Insurance Division will refer the request to the Office of Administrative Hearings (OAH). OAH will schedule the hearing and notify the party of the date and location of the hearing and other related information. An administrative law judge of OAH will conduct the hearing and issue a proposed order. The hearing will be conducted in accordance with the Oregon Administrative Procedures Act, ORS Chapter 183; and the Attorney General's Model Rules, OAR 137-003-0501 *et seq.* A party that is an individual may represent him or her self at a hearing; or may be represented by an attorney licensed in Oregon. A party that is a corporation, partnership, limited liability company, unincorporated association, trust, or government agency must be

represented at a hearing by an attorney licensed in Oregon except as otherwise provided by law.

If the Insurance Division does not receive from or on behalf of a party a written request for a hearing by the due date, then this order will become final by default. If this order becomes final by default, then the designated portion of the Insurance Division's investigation file on the party automatically becomes part of the contested case record upon default for the purpose of proving a prima facie case.

Also, if this order becomes final by default, then a party may request the Oregon Court of Appeals to review this order pursuant to ORS 183.480 and 183.482 by filing a written petition for judicial review with the court within 60 calendar days after the date this order was *sent* to the party.

Dated June 10, 2003

/s/ Cory Streisinger
Cory Streisinger
Director
Department of Consumer and Business Services

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