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IN THE CHANCERY COURT OF THE STATE OF TENNESSEE Dev. Co. Chancery Court
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

LESLIE A. NEWMAN,)
Commissioner of Commerce and Insurance)
for the State of Tennessee,)

Petitioner,)

v.)

No. 10-507-III

SMART DATA SOLUTIONS, LLC)
a Tennessee limited liability company,)
AMERICAN TRADE ASSOCIATION,)
INC, an Indiana nonprofit corporation with)
its principal place of business in Tennessee,)
AMERICAN TRADE ASSOCIATION,)
LLC, an Arkansas limited liability company,)
SERVE AMERICA ASSURANCE,)
a corporation with an unknown location,)
BART S. POSEY, Sr. an individual,)
ANGIE POSEY, an individual,)
OBED W. KIRKPATRICK, Sr.)
an individual,)
LINDA KIRKPATRICK, an individual,)
RICHARD H. BACHMAN, an individual,)
WILLIAM M. WORTHY, II, an individual,)
COLIN YUELL, an individual,)
Respondents.)

FILED
2010 MAY 20 PM 2:13
CLERK OF CHANCERY COURT
DAVIDSON COUNTY
M.O.S.M.

**FINAL ORDER APPOINTING THE COMMISSIONER AS RECEIVER
FOR LIQUIDATION OF RESPONDENTS SMART DATA SOLUTIONS,
LLC, AMERICAN TRADE ASSOCIATION, INC., AMERICAN TRADE
ASSOCIATION, LLC, AND SERVE AMERICA ASSURANCE,
CONDUCTING UNAUTHORIZED INSURANCE COMPANY BUSINESS;
PERMANENT INJUNCTIVE RELIEF**

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~~1. The Court has considered the Petition of Leslie A. Newman, Commissioner of Commerce and Insurance for the State of Tennessee ("Commissioner" or "Department"), filed in the captioned matter, for liquidation receivership and injunction under the comprehensive remedies afforded by the Tennessee Insurers Rehabilitation and Liquidation Act, Tenn. Code Ann. §§ 56-9-101, et seq., of Respondent Smart Data Solutions, LLC, ("SDS") a Tennessee limited liability company with an official address and principal place of business located at 4676 Highway 41 North, Springfield, TN 37172, owned and managed by Bart S. Posey, Respondent American Trade Association, Inc., an Indiana corporation ("ATA") with an official address and principal place of business located at 4676 Highway 41 North, Springfield, TN 37172, and of Respondent American Trade Association, LLC ("ATA-LLC"), an Arkansas limited liability company owned by Bart S. Posey and located at 4676 Highway 41 North, Springfield, Tennessee, 37172. The Commissioner's Petition was opposed by Respondents SDS, ATA, ATA-LLC, and Respondents Bart S. Posey and Angie Posey. Respondents Obed Kirkpatrick and Linda Kirkpatrick appeared through counsel and did not oppose an order of liquidation, as stated in their response and the Order as to Obed and Linda Kirkpatrick entered April 20, 2010.~~

~~2. Having considered the petition, responses, oppositions, and the entire record of this matter, including all the prior orders and rulings of this Court, the Court has determined to remove the hazard to the public presented by the illegal solicitation and issuance of unauthorized health insurance contracts, and the hazard presented by the financial condition of Respondents, and to liquidate all the assets of the Respondents' businesses as set forth below.~~

~~3. The Court incorporates herein the findings of fact and conclusions of law set forth in this Court's Memorandum ^a and Order of April 14, 2010, the Memorandum ^s and Order of April 27,~~

Order of Liquidation of Smart Data Solutions, American Trade Association, Inc., American Trade Association, LLC and Serve America Assurance

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2010, and the Order of April 28, 2010 correcting certain calculations in the April 27, 2010 Memorandum and Order. *The court enters the following Order of Liquidation:* In accordance with those findings and conclusions the Court has determined that it has subject matter jurisdiction and proper venue of this insurance receivership action pursuant to Tenn. Code Ann. § 56-9-104, and that Respondents ATA, ATA LLC and SDS have done business as and furnished health insurance coverage as de facto insurers, including by facilitating nonexistent insurance coverage to members of the collective ATA in the name of Serve America Assurance ("SAA"). However, as more fully set forth in the Memorandum and Order of April 14, 2010 and April 27, 2010, this Court has found Respondents ATA, ATA LLC and SDS are and should be treated as the de facto insurer providing such insurance coverage. The ATA entities (comprised of ATA and ATA LLC), SDS and SAA, in conjunction with each other, are an unauthorized insurer in Tennessee violating Tenn. Code Ann. § 56-2-105, and an insurer subject to the Insurers Rehabilitation and Liquidation Act.

4. The Court having found that Respondents' businesses as a de facto insurer are insolvent, and that they are in such condition that the further transaction of business would be hazardous financially or otherwise to the policyholders, creditors or the public, within the meaning of Tenn. Code Ann. § 56-9-306(2) and (3), and on consideration of the entire record on file herein and the hearings before the court, the Commissioner has demonstrated the grounds for liquidation under Tenn. Code Ann. § 56-9-306, and there is good cause for immediate entry of a Final Order of Liquidation and Permanent Injunction of Respondents SDS, ATA and ATA LLC, and the business done by them in the name of or on behalf of the purported SAA, as follows:

~~IT IS THEREFORE, ORDERED ADJUDGED AND DECREED, that.~~

Order of Liquidation of Smart Data Solutions, American Trade Association, Inc., American Trade Association, LLC and Serve America Assurance

1. The Commissioner of Commerce and Insurance for the State of Tennessee, Leslie A. Newman, in her official capacity or her successors in office, is appointed Liquidator of the insurer and insurance business comprised of and known by any of the names: **AMERICAN TRADE ASSOCIATION, an Indiana corporation, and AMERICAN TRADE ASSOCIATION, an Arkansas limited liability company, SMART DATA SOLUTIONS, a Tennessee limited liability company, and SERVE AMERICA ASSURANCE, a business entity of unknown location**, that were operating with principal offices in 4676 Highway 41 North, Springfield, Tennessee 37172 and at 400 Memorial Blvd., Springfield, ^{TN} Tennessee 37172 in conjunction with each other, and with the individual Respondents and owners to conduct the acts set forth in the Verified Petition, as an illegal insurer, (hereinafter "the ATA entities, SDS and SAA", or, collectively "insurer" or "receivership entities") for purposes of liquidation as provided by Tenn. Code Ann. §§ 56-9-306, and 307 with all the powers conferred by law on receivers and liquidators of insurers appointed under those statutes. In addition to those powers specifically enumerated in this Final Order of Liquidation and by operation of law under Tenn. Code Ann. §§ 56-9-101, *et seq.*, for liquidators of insurers, the Liquidator shall have the power to exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with Tenn. Code Ann. §§ 56-9-101, *et seq.*

2. Pursuant to Tenn. Code Ann. § 56-9-307, the Commissioner, as Liquidator, is authorized and directed forthwith (1) to take possession of all accounts, assets, monies, and property (both tangible and intangible) belonging to, held by and/or in the name of **American Trade Association, Smart Data Solutions and Serve America Assurance, as well as possession of accounts, assets, monies and property of Respondents Bart S. Posey, Sr., Angie (Angela) Posey, Obed Kirkpatrick, Sr., Linda Kirkpatrick, Richard Bachman, William Worthy II, and Colin Youell, which relate to, arise out of or are derived from the activities described in the Verified Complaint**, both within and without the State of Tennessee, (2) to be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the accounts, assets, monies, books and records of the insurer, wherever

located, as of the date of entry of the liquidation order, and any further title or rights in property gained by the Commissioner by virtue of such receivership, and (3) to have the right to recover the same and reduce the same to possession and to administer them under the general supervision of the Court with all the powers granted a Liquidator and receivers under Tenn. Code Ann. §§ 56-9-101, *et seq.* The Commissioner shall have immediate access to and shall occupy and control the premises and all records, databases, and computer files used to carry out the business of the insurer, the ATA entities, SDS and SAA, regardless of their location and possession;

3. Any bank, savings and loan association, financial institution or other person, which has on deposit, in its possession, custody or control any funds, accounts and any other assets of the ATA entities, SDS and/or SAA, including financial institution accounts held in the name of other account holders, **INCLUDING BUT NOT LIMITED TO THE FOLLOWING FINANCIAL INSTITUTIONS:** Farmers and Merchants Bank and First State Bank shall immediately transfer title, custody and control of all such funds, accounts, or assets to the Liquidator, and are hereby instructed that the Liquidator has absolute control over such funds, accounts and other assets. The Liquidator may change the name of such accounts and other assets, withdraw them from such bank, savings and loan association or other financial institution, or take any lesser action necessary for the proper conduct of this receivership. No bank, savings and loan association or other financial institution shall exercise any form of set-off, alleged set-off, lien, any form of self-help whatsoever, or refuse to transfer any funds or assets to the Liquidator's control without the permission of this Court;

4. Pursuant to Tenn. Code Ann. § 56-9-307, the rights and liabilities of the ATA entities, SDS and SAA and of their creditors, policyholders, shareholders, members and all other persons interested in this insurer's estate shall become fixed as of the date of the entry of this Order of Liquidation, except as provided in Tenn. Code Ann. §§ 56-9-308 and 326;

5. The facts and legal questions before the Court in the April 14 and 27 Memoranda and Orders pertained and were confined to whether the Commissioner had the authority to liquidate the receivership entities. The Court was able to conclude that that authority existed without reaching or deciding the issue of whether the policyholders have insurance coverage through the receivership entities. Additionally, the issue of the remedies of the State, the policyholders and all others protected by the Liquidation Act, and the legal theories that inform those remedies have not yet come before the Court. In that regard, because the receivership entities have been ruled by the Court to be *de facto* insurers, the State or the policyholders may assert remedies derived from insurance coverage based on a quasi-contract and/or contract implied by law. Accordingly, to preserve all remedies of the State, policyholders and all others protected by the Liquidation Act, the Court provides herein that to the extent the effective date of policies, including bonds and other noncancellable business, becomes relevant or is necessary, pursuant to Tenn. Code Ann. § 56-9-208, all policies, including bonds and other noncancellable business, shall continue in force only for the lesser of: (1) a period of thirty (30) days after the date of entry of the Order of Liquidation, (2) the expiration of the policy coverage, (3) the date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy, (4) the liquidator has effected a transfer of the policy obligation pursuant to Tenn. Code Ann. § 56-9-210(a)(10), or (5) the date proposed by the liquidator and approved by the Court to cancel coverage, which date has been proposed and approved as **May 31, 2010 at 11:59 p.m. Central Time;**

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~~5. Pursuant to Tenn. Code Ann. § 56-9-308, all policies, including bonds and other noncancellable business, in effect at the time of issuance of this Order of Liquidation shall continue in force only for the lesser of: (1) a period of thirty (30) days after the date of entry of the Order of Liquidation, (2) the expiration of the policy coverage, (3) the date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy, (4) the liquidator has effected a transfer of the policy obligation pursuant to Tenn. Code Ann. § 56-9-310(a)(10), or, (5) the date proposed by the liquidator and approved by the Court to cancel coverage, which date has been proposed and approved as **May 31, 2010 at 11:59 p.m. Central Time,**~~

6. This Order of Liquidation shall terminate coverage at the time specified in Tenn. Code Ann. § 56-9-308(a) for purposes of any other statute;

7. The Liquidator shall have all the powers enumerated in Tenn. Code Ann. § 56-9-310, including the power to appoint a special deputy or deputies to act for her and to determine their reasonable compensation. The Commissioner has designated Paul Eggers as one such special deputy liquidator. The special deputy shall have all powers of the Liquidator as granted by this Order and as enumerated in Tenn. Code Ann. § 56-9-310. The special deputy shall serve at the pleasure of the Liquidator;

8. The Liquidator shall have the power to employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants and such other personnel as the Liquidator may deem necessary to assist in the liquidation;

9. The Liquidator shall have the power to fix reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers and consultants with the approval of the Court, and shall have power to pay reasonable compensation to persons appointed and to defray from the funds or assets of the insurer all expenses of taking

possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer;

10. The Liquidator shall have the power to hold hearings, to subpoena witnesses to compel their attendance, to administer oaths, to examine any person under oath, and to compel any person to subscribe to his or her testimony after it has been correctly reduced to writing; and in connection therewith to require the production of any books, papers, records or other documents which the Liquidator deems relevant to the inquiry;

11. The Liquidator shall have the power to audit the books and records of all agents of the insurer insofar as those records relate to the business activities of the insurer;

12. If it appears to the Liquidator that there has been criminal or tortious conduct, or breach of any contractual or fiduciary obligation detrimental to the insurer and receivership entities by any officer, manager, agent, broker, employee or other person, the Liquidator may pursue all appropriate legal remedies on behalf of the receivership entities, including but not limited to the making of criminal referrals to the appropriate state and/or federal authorities and/or law enforcement agencies.

13. The Liquidator may consult and cooperate with other state and federal authorities who may have jurisdiction over any parts of the property and business of the receivership entities, including but not limited to any ancillary liquidator who may be appointed. ~~In addition, the Liquidator shall have any other powers given by state law.~~ EHL

14. The Liquidator shall have the power to acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon or otherwise dispose of or deal with, any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable. The Liquidator shall also have power to execute, acknowledge and deliver any and all deeds,

assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation;

15. The Liquidator shall have the power to enter into such contracts as are necessary to carry out the Order of Liquidation, and to affirm or disavow any contracts to which the insurer is a party;

16. The Liquidator shall have the power to continue to prosecute and to institute in the name of the insurer or in the Liquidator's own name any and all suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims the Liquidator deems unprofitable to pursue further;

17. The Liquidator shall have the power to prosecute any action at law or in equity which may exist on the Liquidator's behalf, and/or on behalf of the creditors, members, policyholders or shareholders of the insurer against any person or entity. Pursuant to Tenn. Code Ann. § 56-9-313(b)(1), the Liquidator may, within two (2) years or such other longer time as applicable law may permit, institute an action or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the instant petition for liquidation;

18. The Liquidator shall have the power to remove any or all records and property of the insurer to the offices of the Commissioner or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation;

19. The Liquidator shall have the power under Tenn. Code Ann. §§ 56-9-315, 316, and 317 to avoid fraudulent and preferential transfers;

20. The enumeration of the powers and authority of the Liquidator shall not be construed as a limitation upon the Commissioner or Special Deputy, nor shall it exclude in any manner

any right to do such other acts not herein specifically enumerated or otherwise provided for, as may be necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation;

21. **Notice.** The Liquidator shall give or cause to be given notice of the Order of Liquidation in accordance with Tenn. Code Ann. § 56-9-311 as soon as possible: (1) by first class mail and either by telegram or telephone to the insurance commissioner of each jurisdiction in which the insurer is doing business; (2) by first class mail to any guaranty association or foreign guaranty association which is or may become obligated as a result of liquidation, if any; (3) by first class mail to all insurance agents of the insurer; (4) by first class mail to all persons known or reasonably expected to have claims against the insurer including all policyholders, at their last known address as indicated by the records of the insurer; and (5) by publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in such other locations as the liquidator deems appropriate;

22. **Claims Deadline** - Except as otherwise established by the Liquidator with approval of the Court, notice to potential claimants under Tenn. Code Ann. § 56-9-311(a) shall specify in the notice and require claimants to file with the Liquidator their claims together with proper proofs thereof under Tenn. Code Ann. § 56-9-324, **on or before 4:30 p.m., Central Time, August 31, 2010**, for purposes of participating in any distribution of assets that may be made on timely filed claims that are allowed in these proceedings;

23. With notice given in accordance with Tenn. Code Ann. § 56-9-311, the distribution of assets of the insurer under Tenn. Code Ann. §§ 56-9-101, *et seq.* shall be conclusive with respect to all claimants, whether or not they receive notice;

24. **Protection from Suit.** Pursuant to Tenn. Code Ann. § 56-9-313, no action at law or equity or in arbitration shall be brought against the insurer or Liquidator, whether in

Tennessee or elsewhere, nor shall any such existing actions be maintained or further presented or prosecuted after issuance of the Order of Liquidation. All claims must be submitted through the claims process as set forth in the Act, and as further defined in this Order. Whenever, in the Liquidator's judgment, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, the Liquidator may intervene in the action. The Liquidator may defend any action in which the Liquidator intervenes under this section at the expense of the estate of the insurer;

INJUNCTIONS AND COOPERATION

25. **Injunctions.** Pursuant to Tenn. Code Ann. § 56-9-105(a)(1-11), all persons, firms, corporations and associations, including, but not limited to, Respondents ATA, SDS and SAA and their officers, directors, members, subscribers, agents, attorneys, accountants, vendors, contractors, subcontractors and all other persons with authority over or in charge of any segment of the ATA entities', SDS's and SAA's affairs, including, without prejudice to the generality, Bart S. Posey, Sr., Angie Posey, Obed W. Kirkpatrick, Sr., Linda Kirkpatrick, Richard H. Bachman, Colin Youell and William M. Worthy, II, any of its sales force, agents or representatives, its claims administrators past and present, ATA's, SDS's and SAA's owners, members, directors, agents, employees and officers, vendors, contractors, and any others, **are prohibited and permanently enjoined from:**

- (1) the transaction of the ATA entities', SDS's and SAA's business, except as to those activities as may be expressly authorized in writing by the Liquidator to aid in the liquidation;
- (2) the interference with any of the members or policyholders of the ATA entities, SDS and SAA, or the use of any client or membership lists or information derived from the operations at any time of the ATA entities, SDS and/or SAA;
- (3) any transformation or appropriation of any of the business of the ATA entities, SDS, and/or SAA;
- (4) the waste or disposition of its property;

(5) the destruction, deletion, modification, concealment or waste of records, databases or computer files of the receivership entities and/or records, databases or computer files that refer or relate to the receivership entities. This prohibition against destroying records, databases or computer files is broad and includes emails. Should the prohibition effectively preclude an individual or entity from using a computer not owned by the receivership entities, the individual shall consult with the Liquidator about transferring the pertinent data to the Liquidator, and failing a resolution with the Liquidator, the individual may apply to this Court for a modification of this injunction specific to that individual;

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~~(5) the destruction, deletion, modification, concealment or waste of its records, databases or computer files,~~

(6) the commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the insurer or against its assets or any part thereof until further order of this Court, and

(7) any other threatened or contemplated action, not permitted under the Act, that might lessen the value of the insurer's assets or prejudice the rights of policyholders, enrollees, creditors or shareholders, or the administration of any proceeding under the Act;

and this Court further authorizes the Liquidator to apply outside of Tennessee for the relief described in Tenn. Code Ann. § 56-9-105(a);

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26. **Cooperation.** Pursuant to Tenn. Code Ann. § 56-9-106, the officers, managers, directors, trustees, owners, employees, agents, attorneys, accountants, vendors, contractors or subcontractors of the insurer, ATA entities, SDS and SAA, and ~~any other~~ persons with authority over or in charge of any segment of the ATA entities', SDS's and SAA's affairs, including, without prejudice to the generality, Bart S. Posey, Sr., Angie Posey, Obed W. Kirkpatrick, Sr., Linda Kirkpatrick, Richard H. Bachman, Colin Youell and William M. Worthy, II, any of their sales force, agents or representatives, their claims administrators past and present, vendors and contractors, are ordered and required to cooperate with the Commissioner in the carrying out of the liquidation. The term "person" shall include any person who exercises control directly or indirectly over activities of the ATA entities, SDS and SAA. *→ of the receivership entities, including but not limited to,*

~~Further, the term "person" shall include any person who exercises control or who participates in the activities of the ATA entities, SDS and SAA, including through the record-keeping, claims administration and adjustment, financial management, payments, and computer systems operation relating to the activities of the ATA entities, SDS and SAA.~~

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"To cooperate" shall include, but shall not be limited to, the following: (1) to reply promptly in writing to any inquiry from the Commissioner requesting such a reply; and (2) to preserve and to make available to the Commissioner any and all books, bank and investment accounts, pension accounts, documents, or other records or information or computer programs and

databases or property of or pertaining to the ATA entities, SDS and SAA wheresoever located and in his or her possession, custody or control. No person shall obstruct or interfere with the Commissioner in the conduct of this liquidation;

27. Pursuant to Tenn. Code Ann. § 56-9-307(e), the Liquidator shall make financial reports to the Court, which shall be filed within one (1) year of the Order of Liquidation, and at least annually thereafter. Financial reports shall include the assets and liabilities of the insurer and all funds received or disbursed by the Liquidator during the current period;

28. Any person, firm, corporation or other entity having notice of this Order that fails to abide by its terms shall be directed to appear before this Court to show good cause, if any they may have, as to why they should not be held in contempt of Court for violation of the provisions of this Order;

29. No bond is required of the Commissioner as a prerequisite for the filing of this petition or entry of this liquidation order or for the issuance of any injunction, restraining order, or additional order issued as provided by Tenn. Code Ann. § 20-13-101;

30. The Commissioner may apply to the Court for any further orders and injunctive relief which may be necessary to implement the terms of this order, or in aid thereof, to which the Commissioner may be entitled. This Court retains jurisdiction for the purpose of granting such further relief as from time to time shall be deemed appropriate, and;

31. *There being no just reason for delay, pursuant to Rule 54.02 of the* ~~This~~ *Tennessee* this Liquidation Order is permanent and a final order and entitled to full faith and credit, pursuant to U.S. Const. Art. IV, § 1 and 28 U.S.C. § 1738, in the state and federal courts of each of the United States.

(EHL)

Rules
of
Civil
Procedure,

IT IS SO ORDERED.

Ellen Hobbs Lyle
CHANCELLOR

Approved for entry,

CC: ROBERT E. COOPER, JR. (BPR 10934)
Attorney General and Reporter

(EHL)

and by telifax

Sarah A. Hiestand
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CERTIFICATE OF SERVICE

(EHL)

Hereby certify this 29th day of April, 2010, that the Order of Liquidation, will be served by U.S. mail, postage prepaid, this date, and/or via email as indicated, to the parties and interested entities listed on the attached service list.

Sarah A. Hiestand
SARAH A. HIESTAND

For Respondents Bart and Angie Posey,
American Trade Association, Inc., American Trade Association, LLC and Smart Data Solutions, LLC:

Order of Liquidation of Smart Data Solutions, American Trade Association, Inc., American Trade Association, LLC and Serve America Assurance

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Respondent Serve America Assurance, Ltd.:

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via email only

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