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Davidson County Chancery Court

IN THE CHANCERY COURT OF THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

CHLORA A. LINDLEY-MYERS)
SPECIAL DEPUTY COMMISSIONER OF)
COMMERCE AND INSURANCE FOR)
THE STATE OF TENNESSEE,)

Petitioner,)

v.)

AF
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., ANGIE POSEY)
OBED W. KIRKPATRICK, RICHARD)
H. BACHMAN, WILLIAM M. WORTHY)
and COLIN YOEUELL,)

Respondents.)

CLERK & MASTER
DAVIDSON CO. CHANCERY CT.
D.C. & M.

2015 JAN 13 PM 2:02

FILED

**NOTICE AND FINAL ORDER OF LIQUIDATION,
DISSOLUTION, AND DISCHARGE**

Pursuant to this Court's July 28, 2014 Order and Tenn. Code Ann. § 56-9-334, Chlora A. Lindley-Myers in her capacity as Special Deputy Commissioner of Commerce and Insurance for this receivership matter and as Statutory Liquidator of Smart Data Solutions, LLC ("SDS"), American Trade Association, Inc., American Trade Association, LLC (collectively referred to as "ATA"), and Serve America Assurance ("SAA"), hereby submits this Notice and Final Order of

Liquidation, Dissolution, and Discharge for entry by the Court and advises the Court that all of the closure activities ordered by the Court have been performed as follows.

1. **Final Distribution to Approved Class 2 Claimants** – On September 12, 2014, the Special Deputy Liquidator Jeanne Barnes Bryant made the final distribution of \$806,450.00 pro rata to the approved Class 2 claimants. The Court approved these Class 2 claimants and their total claim values as set forth in Exhibit 1 to the Affidavit of Special Deputy Liquidator Bryant (filed on June 27, 2014). *See* Court's July 28, 2014 Order.

2. **Unclaimed Funds** – There are 1,390 checks from the final distribution totaling \$118,339.56 that are unclaimed and outstanding. Accordingly, such checks being in excess of 60 days old have been voided, and, on or around December 9, 2014, the Special Deputy Liquidator transferred the unclaimed funds totaling \$118,339.56 to the State Treasurer's Division of Unclaimed Property pursuant to Tenn. Code Ann. § 56-9-333(a) and the Court's July 28, 2014 Order.

3. **Federal Tax Filings and Reporting** – Upon the Special Deputy Commissioner's approval, the final 2014 tax returns for these companies have been filed with the Internal Revenue Service ("IRS"). In January 2015, the IRS Form 1099s will be mailed to each person who has received a reportable payment from the SDS/ATA/SAA receivership in 2014. Electronic filing of the Form 1099s will be submitted to the IRS by April 1, 2015. The final 2014 Tennessee Franchise and Excise tax returns have been filed with the Tennessee Department of Revenue, and the final 2014 state income tax return for American Trade Association, Inc. has been filed with the State of Indiana. Upon entry of this Order, the Liquidator will file a Form 966 certification of Corporate Dissolution or Liquidation for ATA with the IRS.

4. **Destruction of Records** – While the Court’s July 28, 2014 Order authorized the Special Deputy Liquidator to destroy the records of the Receivership, the Special Deputy Liquidator has not destroyed the documents and records of the companies or the Receivership. Rather, all of the existing documents and records in the Special Deputy Liquidator’s possession have been turned over to various governmental entities as explained below except for the limited receivership processing files which are being maintained by Special Deputy Liquidator Jeanne Bryant until July 28, 2017, pursuant to the Court’s July 28, 2014 Order.

More specifically, all of the documents and records of the SDS/ATA/SAA companies currently in the Liquidator’s possession are required to be preserved in connection with one or both of the two pending criminal proceedings against the individuals connected with these companies, and have been turned over to the U.S. Attorney’s Office and/or the U.S. Postal Inspector except for limited paper and electronic documents and records that were created and/or maintained after seizure by the Receivership. These documents are being maintained under the direction and control of the Special Deputy Commissioner or successor Commissioner. In March 2013, the Special Deputy Liquidator turned over computer hard drives and other electronic equipment to the U.S. Postal Inspector. The remaining computer hard drives, laptops, and the server are being maintained under the direction and control of the Special Deputy Commissioner or successor Commissioner. The items that are being maintained under the control of the Special Deputy Commissioner or successor Commissioner will be destroyed upon confirmation from the Assistant United States Attorney in the federal criminal matter, *United States v. Posey, et al*, United States District Court for the Middle District of Tennessee, Case No. 3:13-cr-00119, and by the State prosecutors in the Tennessee criminal matter, *State v. Eachman, et al*, Circuit Court, 19th Judicial District, Robertson County, Tennessee, Case No. 74CC3-2013-

CR-206, that the parties to the proceedings have obtained all discovery needed and no longer request that the items be preserved.

5. **Final Accounting of Fees and Expenses** – Attached hereto as Exhibit 1 is a final accounting of the administrative fees and expenses of the liquidation estate since May 1, 2014. All administrative fees of the Special Deputy Liquidator, outside legal counsel, and third party contractors incurred from May 1, 2014 through November 30, 2014 have been submitted to the Liquidator and her staff for review and approval in accordance with the Department's administrative guidelines pursuant to Tenn. Code Ann. § 56-9-310(a). The invoices for the fees that are actually incurred from December 1, 2014 through closure of the receivership will be submitted to the Liquidator and her staff for review and approval prior to payment.

As identified in Exhibit 1, the Special Deputy Liquidator has determined that the remaining administrative expenses through closure will be greater than the remaining estate assets, and accordingly there will be no residual assets to transfer to the closed estate no asset fund maintained at the direction of the Commissioner of the Tennessee Department of Commerce and Insurance pursuant to Tenn. Code Ann. § 56-9-333(a). As a result, the Special Deputy Commissioner has determined that it would be appropriate to use the closed estate no asset fund (maintained at the direction of the Commissioner pursuant to Tenn. Code Ann. § 56-9-333(a)) to pay the remaining Class 1 fees and expenses that exceed the estate assets and that are actually incurred and are determined by the Liquidator to be reasonable and necessary costs, which are anticipated to be approximately \$10,164.44. The unanticipated administrative expenses have resulted in part from the document preservation issues and work required by the criminal proceedings. After closure of the Receivership, should any additional assets be discovered or recovered from outstanding third party judgments (see explanation in paragraph 6

below) that are uneconomic to distribute, the Special Deputy Commissioner or successor Commissioner will transfer, pursuant to Tenn. Code Ann. § 56-9-334(a), the money to the closed estate no asset fund maintained at the direction of the Commissioner for the Tennessee Department of Commerce and Insurance pursuant to Tenn. Code Ann. § 56-9-333(a) to reimburse the fund.

6. **Third Party Recovery Actions** - All third party recovery litigation has been resolved except for the collection of two judgments which is unlikely to occur. The Liquidator obtained a Judgment by Default against Caroline H. Worthy, Southeast Insurance Advisors, LLC, and Nationwide Administrators, LLC in the amount of \$2,009,253.82. The Liquidator has taken action to collect on this judgment in part by filing a judgment lien against property in South Carolina owned by Caroline Worthy. There are multiple lien holders in advance of the Liquidator's judgment lien on this property. The Liquidator also obtained an Agreed Order of Judgment against defendants Gary Ketchum and First Risk Holdings, LLC, jointly and severally, in the amount of \$582,966.85 plus costs of the litigation. After closure, the Special Deputy Commissioner or successor Commissioner may continue to monitor these matters and may take any necessary future action in her discretion to collect on these outstanding judgments at no additional expense to the closed receivership.

7. **Court Costs** - To date, the Liquidator has paid the court costs in this case and will pay any additional court costs resulting from the filing of this Notice and entry of the Final Order of Liquidation, Dissolution and Discharge.

8. **Corporate Dissolution Pursuant to Tenn. Code Ann. § 56-9-309** - Pursuant to Tenn. Code Ann. § 56-9-309, SDS, ATA, and SAA will dissolve and the corporate existence of

the companies will terminate upon entry of this Notice and Final Order of Liquidation, Dissolution and Discharge.

9. **Final Order of Liquidation, Dissolution and Discharge** – Upon consideration of the above information, the Court finds that:

- (a) All available assets have been paid and distributed in accordance with the Court's July 28, 2014 Order, and any outstanding checks have been voided and pursuant to Tenn. Code Ann. § 56-9-333(a) have been transferred to the State Treasurer's Division of Unclaimed Property;
- (b) All documents and records in the Special Deputy Liquidator's possession have been turned over to the U.S. Attorney's Office or the U.S. Postal Inspectors except for (1) certain paper and electronic documents that are being maintained under the direction and control of the Special Deputy Commissioner or successor Commissioner, and (2) certain limited receivership processing files that are being maintained by Special Deputy Liquidator Bryant until July 28, 2017 pursuant to this Court's July 28, 2014 Order;
- (c) The final tax returns have been prepared and filed upon the Special Deputy Commissioner's approval with the IRS, the Tennessee Department of Revenue, and the State of Indiana; and
- (d) All other statutory and fiduciary obligations of the Liquidator, the Special Deputy Liquidator, legal counsel, and third party contractors have been fulfilled properly and in accordance with the laws of the State of Tennessee.

Accordingly, the Court hereby releases and discharges the Liquidator, the Special Deputy Liquidator, legal counsel, and third party contractors from any and all further obligations to the

Court, the liquidation estate, and creditors or claimants thereto, except for the Liquidator's submission of the Form 966 to the IRS and the referenced IRS Form 1099 reporting. The Court orders that the corporate existences of SDS, ATA, and SAA are hereby dissolved pursuant to Tenn. Code Ann. § 56-9-309, and upon entry of this Order, the liquidation estate and the receivership proceeding are closed.

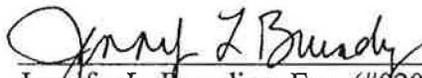
The Liquidator or Special Deputy Liquidator is authorized and instructed as her final duties (1) to submit the Form 966 to the IRS upon entry of this Order and (2) to make the IRS Form 1099 reporting as discussed above. Any paper and electronic documents of the Receivership that remain under the direction and control of the Special Deputy Commissioner or successor Commissioner may be destroyed upon notification from the United States Attorney's Office and, if applicable, the State's Attorney that the parties to the respective criminal proceedings of *United States v. Posey, et al.*, United States District Court for the Middle District of Tennessee, No. 3:13-cr-00119, and *State v. Bachman, et al.*, Circuit Court of the 19th Judicial District, Robertson County, Tennessee, Case No. 74CC3-2013-CR-205, have obtained all discovery needed and no longer request that these records and electronic equipment be maintained. Further, the Special Deputy Commissioner or successor Commissioner is authorized to take any further action in her discretion that is necessary in the future to collect on the outstanding judgments obtained in the third party recovery actions described in paragraph 6 above, and should any money be collected on these judgments after closure of the Receivership that is uneconomic to distribute, the Special Deputy Commissioner or successor Commissioner is authorized to transfer, pursuant to Tenn. Code Ann. § 56-9-334(a), the money into the closed estate no asset fund maintained at the direction of the Commissioner pursuant to Tenn. Code Ann. § 56-9-333(a).

With no further business pertaining to this receivership proceeding, this constitutes the Final Order and Judgment of the Court pursuant to Rule 58 of the Tennessee Rules of Civil Procedure. Any remaining court costs are taxed against the Petitioner, the State of Tennessee, for which execution may issue.

IT IS SO ORDERED.


CHANCELLOR ELLEN HOBBS LYLE

APPROVED FOR ENTRY BY:


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Nashville, TN 37201
(615) 254-9146
*Special Counsel for the Liquidator and
Special Deputy Liquidator*

CERTIFICATE OF SERVICE

I hereby certify this the 19th day of December, 2014, that a true and exact copy of the foregoing has been served by U.S. mail, postage pre-paid, and/or via email as indicated, to the parties and interested entities listed on the attached service list.

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Respondent Serve America Assurance, Ltd.:

Serve America Assurance, Ltd. Company

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Blythewood, South Carolina 29016

Serve America Assurance, Ltd.

c/o Beema Pakistan Company, Ltd.

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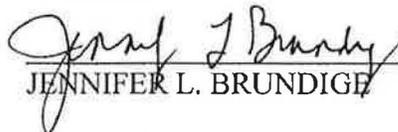
Austin, Texas 78746

Collin Youell

1551 North Flagler Drive, #1116

West Palm Beach, FL 33401

(Unknown, not able to deliver to this address)


JENNIFER L. BRUNDIGE

	A	B	C	F	G	H
1	EXHIBIT 1			ACTUAL		UPDATED
2			ESTIMATE	05/01/2014 -		ESTIMATE
3	<u>ATA/SDS FINAL DISTRIBUTION STATUS 11-30-14</u>		4/30/2014	11/30/2014		POST 11-30-14
4						
5						
6	JEANNE B BRYANT, SDR	*	14,650.00	21,872.00	*	2,000.00
7		*			*	
8	GARFINKLE, MCLEMORE & YOUNG, LEGAL COUNSEL	*	750.00	-	*	-
9		*			*	
10	LUNA LAW GROUP, LEGAL COUNSEL	*	18,000.00	21,123.90	*	5,670.00
11		*			*	
12	FAULKNER MACKIE & COCHRAN, TAX PREPARATION TY 2014	*	3,000.00	2,865.50	*	
13		*			*	
14	JERE COWAN, CLAIMS PROCESSING	*	450.00	2,125.00	*	
15		*			*	
16	GEOFF LEE, DISTRIBUTION DATABASE	*	4,000.00	406.25	*	
17		*			*	
18	RECEIVERSHIP MANAGEMENT INC, TEMPS TO MAIL CKS	*	2,000.00	1,915.25	*	-
19	RECEIVERSHIP MANAGEMENT INC, GENERAL ACCOUNTING	*	12,641.00	17,908.30	*	2,000.00
20		*			*	
21	TOTAL ATA/SDS FEES	*	55,491.00	58,216.20	*	9,670.00
22						
23	FINAL DISTRIBUTION POST 04-30-14 NON BUDGET EXPENSES					
24	PRINT FINAL CHECKS (ASSUMES 8,100 CKS)		8,100.00	8,178.00	*	-
25	PRINT LETTER TO GO WITH CHECK		450.00	447.48	*	-
26	POSTAGE FINAL CHECKS (8,100 *.48)		3,888.00	4,042.16	*	50.00
27	BANK CHARGES FOR POC CHECKS		2,000.00	553.05	*	-
28	RENT (8 MONTHS @ 1,000)		8,000.00	7,000.00	*	1,000.00
29	COPIES, OTHER POSTAGE & OFFICE EXPENSE		399.59	924.39	*	200.00
30	COURT COSTS		200.00	-	*	200.00
31	RECORD DESTRUCTION		3,000.00	-	*	750.00
32	STORAGE (\$187 x 5 MONTHS MAY 2014 / SEPT 2014)		935.00	933.35	*	-
33	STORAGE (\$200 x 15 MONTHS OCT 2014 / DEC 2015)		3,000.00	373.34	*	373.34
34	STORAGE (\$220 x 21 MONTHS JAN 2016 / SEPT 2017)		4,620.00	-	*	-
35	TY 2014 TN FRANCHISE TAX - ATA		335.00	160.00	*	-
36	TY 2014 TN FRANCHISE TAX - SDS		100.00	100.00	*	-
37	LGIP INTEREST		(275.00)	(190.62)	*	-
38	SALE OF FILING CABNETS		-	(200.00)	*	-
39	PROVIDER REFUND OF FINAL DIST CHECK		-	1,590.01	*	-
40	OLD NON CLAIM O/S CKS CANCELLED 06-30-14		-	(782.65)	*	-
41	NET EXPENSE ESTIMATE		<u>90,243.59</u>	<u>88,164.69</u>		<u>12,243.34</u>
42						
43						
44						
45	ACTUAL LIQUID ASSETS END OF PERIOD		917,533.04			30,025.58
46	LESS LIABILITIES		(20,839.45)			(27,946.68)
47	LESS NET EXPENSE ESTIMATE ROW 41		(90,243.59)			(12,243.34)
48	FINAL DISTRIBUTION		<u>(806,450.00)</u>			
49	FUNDS TURNED OVER TO STATE		<u>-</u>			<u>(10,164.44)</u>
50						
51						

12/16/2014 15:30