

IN THE CHANCERY COURT OF THE STATE OF TENNESSEE  
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, )  
KRISTY WRIGHT, an individual, )  
WILLIAM M. WORTHY, II, an individual, )  
COLIN YOUELL, an individual, )  
Respondents. )

FILED  
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D.C. & M.

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**PETITIONER'S NOTICE OF FILING SUPPLEMENTAL AFFIDAVITS IN  
SUPPORT OF PETITION FOR APPOINTMENT OF RECEIVER  
FOR PURPOSES OF LIQUIDATION OF RESPONDENTS SMART DATA  
SOLUTIONS, LLC, AMERICAN TRADE ASSOCIATION, INC.,  
AMERICAN TRADE ASSOCIATION, LLC, and SERVE AMERICA  
ASSURANCE**

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Petitioner, Leslie A. Newman, Commissioner of Commerce and Insurance for the State of Tennessee ("Commissioner" or "Department"), by her counsel, Robert E. Cooper, Jr., Attorney

General of the State of Tennessee, herewith files the following Affidavits to supplement the Commissioner's Petition for Liquidation seeking receivership and injunction under Tennessee's insurance receivership act, Tenn. Code Ann. §§ 56-9-101, *et seq.*, to remove the hazard to the public presented by the Respondents' illegal solicitation and issuance of unauthorized health insurance contracts violating Tenn. Code Ann. § 56-2-105, and to liquidate all the related assets of this business enterprise:

### **AFFIDAVITS FILED**

In support of the Petition, the following affidavits and exhibits are attached and incorporated herein by this reference:

Exhibit 8 – Affidavit of Paul Eggers, Commissioner's appointee as discussed therein. Mr. Eggers discusses the existing bank account assets and the estimated claims liability of Respondents for health care and pharmacy benefits, as well as other liabilities, based on conditions and information obtained at the SDS/ATA offices. Mr. Eggers describes a significant insolvency of the Respondents' health plans in terms of these liabilities, posing a financial hazard to the claimants and the public.

Exhibit 9 – Supplemental Affidavit of David R. White, Examiner in Charge for the Tennessee Department of Commerce and Insurance, in the Insurance Division. Mr. White, with the benefit of additional bank statements and updated information, describes the Respondents' financial accounts, cash flow and financial status of the Respondent entities. His information continues to support the conclusions that SDS and ATA have been funding and comingling the funds for the insurance coverage and claims payments on and after 2008 and that significant amounts have been paid to the Respondent Poseys or for extraordinary items unrelated to any insurance coverage.

Exhibit 10 – Supplemental Affidavit of Robert Heisse, Fraud Investigator for the Tennessee Department of Commerce and Insurance. Mr. Heisse attaches documents from the SDS ATA offices that show additional certificates of coverage and marketing of insurance by SDS and ATA, sales script, incorporation documents for a new American Trade Association, Inc., a Tennessee not-for-profit corporation as of March 19, 2010, and evidences of a new product and a claim directed to AmeriCare Health, and formation of an association Great American Benefit Association, Inc. Finally he includes a copy of a February 2010 subpoena for information from the United States Department of Labor in regards to possible violations of the Employee Retirement Income Security Act of 1974 (ERISA).

Exhibit 11 – Affidavit of Trey King, Investigator in the Tennessee Attorney General's Office, Law Enforcement and Special Prosecutions Division. Mr. King authenticates printouts of

correspondence made at the offices of SDS from the business computers. Some of these printouts contain admissions of the Respondents, and evidence from their business records the non-existence of insurance coverage, and expedited but unsuccessful efforts to obtain insurance coverage in the face of regulatory scrutiny. Petitioner may refer to the records at argument on the Petition.

### DISCUSSION

1. The insurance receivership act, Tenn. Code Ann. §§ 56-9-101, *et seq.*, ("IRLA") is applied to both legal and illegal insurers. The act "may be applied to: (1) All insurers who are doing, or have done, an insurance business in this state, and against whom claims arising from that business may exist now or in the future; (2) *All insurers who purport to do* any insurance business in this state; (3) All insurers who have insureds resident in this state; (4) *All other persons organized or in the process of organizing with the intent to do* any insurance business in this state." Tenn. Code Ann. § 56-9-102. Tenn. Code Ann. § 56-9-103(14) defines "insurer" as "any person who has done, *purports to do*, is doing or is licensed to do an insurance business, and is or has been subject to the authority of, or to liquidation, rehabilitation, reorganization, supervision, or conservation by, any insurance commissioner. For purposes of this chapter, any other persons included under § 56-9-102 are deemed to be insurers."

2. Based on the foregoing information contained in the affidavits the ATAs, SDS and SAA and their principal managers are conducting unauthorized insurance and soliciting and issuing such contracts in Tennessee and to other states' residents. The newest ventures are shown by the attachments to the Supplemental Affidavit of Robert Heisse, showing an intent to issue different certificates of coverage and memberships starting April 1, 2010, under yet additional names or the American Trade Association, but with that organization having changed domicile.

3. Marketing activities are still occurring through persons who are unlicensed to sell or solicit insurance, and still with unauthorized or nonexistent insurance coverage. A person shall not

sell, solicit or negotiate insurance in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with part 1 of chapter 6 of title 56. Tenn. Code Ann. § 56-6-103. Insurance in that part means any of the lines of authority in Tenn. Code Ann. § 56-2-201. *See*, Tenn. Code Ann. § 56-6-102(5), and Tenn. Code Ann. § 56-6-107.

4. ATA, SDS and SAA are collecting premiums in exchange for the issuance of the health coverage plans, or are in the process of organizing for the similar business under other names, which are clearly identified as insurance and underwritten by an insurer.

5. These premiums are deposited into SDS's bank account and then transferred to a bank account entitled "SDS/Serve America Claims Account," without any insurance coverage to back the payment of claims any more. SDS, with ATA is fulfilling the obligations undertaken under the name of Serve America Assurance, or any other name that may be used for underwriter. However, the bank records still reflect that membership dues and premium payments are deposited into an SDS account, and merely are transferred into the account titled "SDS/Serve America Assurance Claims Account." (David White Supplemental Affidavit).

6. The grounds asserted in the Petition for Liquidation continue to be supported by the facts adduced since the filing of the Petition, by further investigation at the premises of SDS, ATA, and of the activities done under the name or on behalf of SAA.

7. Those grounds still remain pursuant to Tenn. Code Ann. § 56-9-306 of the Act, which provides that the Commissioner may request liquidation, regardless of whether there has been any prior order directing rehabilitation of the insurer, as follows:

The commissioner may petition the chancery court of Davidson County for an order directing the commissioner to liquidate a domestic insurer or an alien insurer domiciled in this state on the basis:

(1) Of **any ground for an order of rehabilitation** as specified in § 56-9-301, whether or not there has been a prior order directing the rehabilitation of the insurer;

(2) That the insurer is insolvent; or

(3) That the insurer is in **such condition that the further transaction of business would be hazardous, financially or otherwise**, to its policyholders, its creditors or the public.

Tenn. Code Ann. § 56-9-306 (emphasis added).

8. The alternative grounds for an order found in Tenn. Code Ann. § 56-9-301 are applicable to the circumstances presented by these Respondents. Tenn. Code Ann. § 56-9-301 provides that the Commissioner may apply to rehabilitate (and, by virtue of Tenn. Code Ann. § 56-9-306(1), to liquidate) an insurer, on any one (1) or more of the following grounds:

(1) The insurer is in such condition that the further transaction of business would be **hazardous financially to its policyholders, creditors or the public**;

(2) **There is reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration or diversion of the insurer's assets, forgery or fraud affecting the insurer, or other illegal conduct in, by, or with respect to the insurer that**, if established, would endanger assets in an amount threatening the solvency of the insurer; ...

Tenn. Code Ann. § 56-9-301, emphasis added.

9. For purposes of the express liquidation ground of insolvency found in Tenn. Code Ann. § 56-9-306(2), an insurer is considered insolvent if:

(B) ... **it is unable to pay its obligations when they are due, or when its admitted assets do not exceed its liabilities**, plus the greater of:

(i) Any capital and surplus required by law for its organization; or

(ii) The total par or stated value of its authorized and issued capital stock;

...

(D) .... "liabilities" include, but are not limited to, reserves required by statute or by department general regulations or specific requirements imposed by the commissioner

....

Tenn. Code Ann. § 56-9-103(13), emphasis added.

10. The information set forth in the Supplemental Affidavit of David R. White, Departmental examiner, as well as the information about claims liabilities for the health benefits and insurance coverage supplied through the Affidavit of Paul Eggers, shows the financially hazardous condition of the insurance enterprise. The assets available to pay claims are about \$1.2 million in the bank accounts (unreconciled) (Supplemental Affidavit of White, Paragraphs 4 & 9). The adjudicated claims liability is \$1,621,482, and additional unadjudicated claims for which liability is estimated, are in the range of \$5,272,348, for a total estimated claims liability to be paid for past coverage of \$,6,895,830 (\$6.8 million). (Eggers Affidavit, Paragraphs 4-13, 8 and 21). This evidences a deep insolvency. In the week that this investigation has been able to be conducted, this information is preliminary, and would be adjusted by additional claims that are arriving daily.

11. Respondents are unable to pay obligations when they are due, or without significant preferences in favor of those paid first. Any claims paid now reduce the inadequate pot of assets to pay future claims. As shown, the bank accounts currently do not even support payment of 100% of the already adjudicated claims of \$1.6 million.

12. No significant payments have been made by any purported insurance company (the last payments from TransAmerica Assurance, a previous carrier, of approximately \$112,000, ended in 2008) (White Supplemental Affidavit, Paragraph 10), and Serve America has not contributed any discernible funds apart from the money SDS retains, and continues to be an unknown quantity or possibly fictitious. On information and belief, Respondents do not dispute that they have lacked coverage from any insurer since some time in 2009, and that the SDS/ATA operation has had to self-fund the benefits that are being paid out.

13. Beema-Pakistan that was the purported Pakistani parent company of Serve America Assurance, is not believed to be trustworthy or any financial support to these entities. Although a

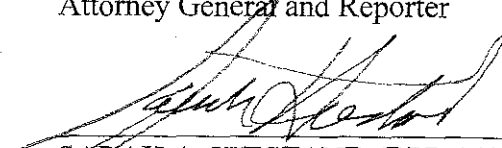
communication was received from the reputed Chairman of Beema by Sarah Hiestand, counsel to the Petitioner, information posted to public websites of Beema-Pakistan Company Limited, and the Securities & Exchange Commission of Pakistan, make statements that Beema is involved in liquidation proceedings by its Pakistan regulator. (See, previously filed Notice of Filing Affidavit of Sarah Hiestand re: Communications from Beema and Status).

14. All payments made will reduce the amount available to pay claims in the future and the assets appear insufficient to meet the present incurred liabilities of the insurance enterprise. The policies continuing to be issued from the SDS offices for ATA or other associations in development (or in existence) still offer similar certificates and various health care coverages in exchange for premium and membership fees. (See Heisse Supplemental Affidavit, exhibits 1, 3 and 4 thereto). These entities remain unlicensed to provide any such benefits, or to administer, sell or solicit these contracts. Nothing about the circumstances discovered since the filing of the Petition changes the conclusion of the Petitioner that the continued operation of ATA, SDS and SAA is and would be hazardous financially and otherwise to its policyholders, creditors and the public.

**WHEREFORE**, premises considered, Petitioner renews the prayer for relief found in the Petition for Liquidation, and that an Order of Liquidation and the other terms be entered at the earliest opportunity.

Respectfully submitted,

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Attorney General and Reporter



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*Lyndsay F. Sanders*

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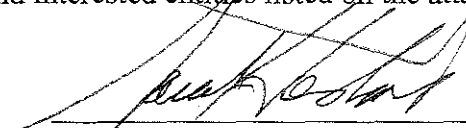
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CERTIFICATE OF SERVICE

I hereby certify this 31<sup>st</sup> day of March, 2010, that the Petitioner's Notice of Filing Supplemental Affidavits, (together with the exhibits) will be served by U.S. mail, postage prepaid, this date, to the parties and interested entities listed on the attached service list.

  
\_\_\_\_\_  
SARAH A. HIESTAND



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