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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.)

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 YUELL**)

Respondents.)

CHLORA A. LINDLEY-MYERS)
Special Deputy Commissioner of)
Commerce and Insurance for the State)
of Tennessee, in her official Capacity as)
Statutory Liquidator of Smart Data Solutions,)
LLC, American Trade Association, Inc.,)
American Trade Association, LLC, and)
Serve America Assurance,)
Plaintiff,)

v.)

BART S. POSEY, SR., and)
ANGIE POSEY,)
Defendants.)

No. 10-507-III

Petition for Damages v.
Bart Posey and Angie Posey

COPY

**NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE
OF THIRD PARTY ACTION AGAINST
BART S. POSEY, SR., AND ANGIE POSEY**

Special Deputy Commissioner Chlora A. Lindley-Myers of the Tennessee Department of Commerce and Insurance, as the 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”), along with her appointed Special Deputy Liquidator Jeanne Barnes Bryant, has determined pursuant to Tenn. Code Ann. § 56-9-310(a)(14) that it would be unprofitable at this time to continue to prosecute the claims pending against Bart S. Posey, Sr., and Angie Posey, in the Liquidator’s *Petition to Recover Damages from Bart S. Posey, Sr., and Angie Posey* (“Petition”), which is a third party recovery action that was filed within this receivership. Pursuant to Tenn. R. Civ. P. 41.01, the Liquidator hereby provides written notice of voluntary dismissal without prejudice of the claims pending against Bart S. Posey, Sr., and Angie Posey (“the Poseys”) in the Petition, and respectfully requests that this Court enter an order of voluntary dismissal. A proposed order of voluntary dismissal is being filed contemporaneously herewith.

Background

On May 20, 2010, the Court placed SDS, ATA, and SAA into receivership pursuant to the Insurers Rehabilitation and Liquidation Act, Tenn. Code Ann. §§ 56-9-101, *et seq.* On August 13, 2010, the Liquidator filed within the receivership action the Petition against the Poseys, alleging in part that the Poseys made fraudulent transfers from SDS to or for their own benefit in violation of Tenn. Code Ann. § 56-9-315 and § 66-3-301, *et seq.*; that the Poseys are liable pursuant to Tenn. Code Ann. § 56-6-114 for all premiums paid on all contracts of

insurance unlawfully sold for or on behalf of SDS, ATA, and SAA (companies engaged in the insurance business that were unauthorized to do such business); that the Poseys failed to discharge all duties as members of SDS in good faith and violated their fiduciary duties to SDS pursuant to Tenn. Code Ann. § 48-240-102; and that the Poseys are liable for conversion of SDS assets transferred to themselves for their own benefit. On or around June 26, 2013, the Poseys were indicted by the U.S. Government in part for their activities and involvement with SDS, ATA, and/or SAA and the sale of unauthorized insurance.

Upon determining pursuant to her statutory authority that all of the known estate assets that are available and profitable to pursue have been marshaled into the estate, the Liquidator has filed a motion contemporaneously herewith requesting that the Court approve the final distribution of the SDS/ATA/SAA assets to the approved Class 2 claimants.

Analysis

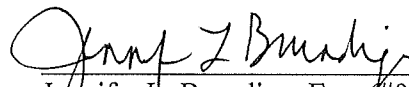
Pursuant to Tenn. Code Ann. § 56-9-310(a)(14), the Liquidator has the authority “to prosecute and institute in the name of the insurer, or in the liquidator’s own name, any and all suits and other legal proceedings, in this state or elsewhere, and abandon the prosecution of claims the liquidator deems unprofitable to pursue further.” This consideration is generally an economic one regarding whether the pursuit of the legal proceedings will be profitable in terms of maximizing the estate assets for the benefit of the claimants. The Liquidator has determined that it would not be profitable at this time to keep the Liquidation open and to continue to incur administrative expenses while the criminal proceedings are pending against the Poseys.

The criminal proceedings against the Poseys will likely delay the Liquidator’s ability to obtain a judgment against the Poseys in this Petition and, if successful, will further delay the Liquidator’s ability to collect the judgment in a timely manner. These delays will cause the

Liquidator to continue to incur administrative expenses for the receivership and will deplete the assets of the SDS/ATA/SAA liquidation estate. Thus, it is not feasible, prudent, or justified to maintain the litigation.

For these reasons, the Liquidator in the reasonable exercise of her discretion has determined that at this time all of the assets that it would be profitable to pursue have been marshaled into the estate and reduced to liquidity. With the likely delays that will result from the criminal proceedings against the Poseys, the Liquidator has determined that it is not profitable pursuant to Tenn. Code Ann. § 56-9-310(a)(14) to continue to prosecute the Petition against the Poseys and to deplete the assets of the estate by incurring additional administrative expenses. Therefore, pursuant to Tenn. R. Civ. P. 41.01, the Liquidator provides written notice of voluntary dismissal without prejudice of the remaining claims pending against the Poseys in the Petition, and respectfully requests that the Court enter an order of voluntary dismissal. A proposed order of voluntary dismissal is being filed contemporaneously herewith for the Court's consideration.

Respectfully submitted,
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*Special Counsel for the Liquidator and Special
Deputy Liquidator*

CERTIFICATE OF SERVICE

I hereby certify this the 27th day of June, 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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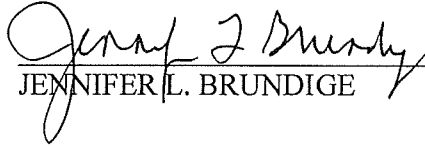
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