

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

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LESLIE A. NEWMAN, )  
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. 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 YOEELL, an individual, )  
Respondents. )

No. 10-507-III

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**VERIFIED 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, CONDUCTING UNAUTHORIZED INSURANCE  
COMPANY BUSINESS; IMMEDIATE AND PERMANENT INJUNCTIVE  
RELIEF; REQUEST FOR EXPEDITED HEARING**

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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 states as follows:

### **INTRODUCTION/ NATURE OF THE ACTION**

1. This is an action for receivership and injunction, the comprehensive remedies afforded by 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. According to the facts learned to date, Respondents from their shared principal offices and unlicensed administrative base in Springfield, Tennessee, and via websites and marketers, solicit their customers nationwide, take premiums for, administer and fund, limited health insurance benefits that purport to be covered under a master insurance policy issued to their "association." However, the supposed master policy was issued by an unknown company identified as "Serve America Assurance, Ltd." that lacks authority to insure in Tennessee or in any other state. Now, it appears the policy ended in late 2009, or **never existed**. Each of the Respondents, to the extent coverage was promised or furnished, are functioning as the insurer and underwriting any benefits under the purported policy *themselves* without any legal authority. Numerous laws have been violated.

2. The financial and operational condition of this enterprise is hazardous and beyond repair. The Commissioner has heard of numerous claims denied or turned down unjustly, especially in other states. One Respondent, American Trade Association, Inc., just filed a Complaint for Fraud, Conversion, Action Quantum Meruit, and damages in Robertson County Chancery Court, *American*

*Trade Association, Inc. v. William M. Worthy II, South East Insurance Advisors, LLC and Nationwide Administrators, LLC*, No 21229, on March 1, 2010, alleging conversion of \$2 million in premiums collected from American Trade Association, by persons acting for the purported insurer, and that the insurance supposedly purchased on its behalf was a fraud. This action alleges that no insurance was procured, and that claims by American Trade Association members are being paid by Smart Data Solutions, LLC. (see certified copy of Complaint attached as exhibit H to Exhibit 1, Affidavit of Robert Heisse, ¶ 28). Other insurance-derived assets have recently been funneled off to pay Smart Data Solutions, LLC's owner's commercial real estate loan. Considering that any policy was at best unauthorized, and likely fictitious, and considering the self-funding by wholly unauthorized actors, these entities pose irreparable harm to the members and the public.

3. Respondents' insurance issuance has occurred without being submitted to the Commissioner's authority, or any other state's insurance commissioner, and is designed to evade regulation. Multiple cease and desist orders have issued from other states, as well as from Tennessee. Evidence is mounting that Respondents deny payments owing under policyholders' coverage. Respondents have failed to submit financial statements to the Commissioner, and are at risk for insolvency, wasteful practices and financial self-dealing. Their customers have been induced to purchase bogus health coverage, turning over millions of dollars of premiums, without any of the safeguards that the licensed carriers possess, and without the protections for solvency and consumer protection that accompany lawful insurance. The unlicensed, unauthorized and otherwise fraudulent, deceptive and unfair transactions by Respondents American Trade Association, Inc. ("ATA") and American Trade Association, LLC ("ATA LLC"), Smart Data Solutions, LLC ("SDS"), Serve America Assurance ("SAA") and the other individual Respondents managing ATA, ATA LLC, SDS

and SAA and/or acting as its agents present an immediate danger to the public health, safety or welfare of Tennessee policyholders, and to the public of several other states.

4. The unlawful insurance enterprise lacks the corporate or business form to allow just **one** of the involved entities and persons to be identified as the "insurer" or "insurance company." Thus, to control and stop the full scope of this unauthorized insurer's shifting activities and its assets, the Commissioner must seek a receivership that locks down the insurance coverage by listing the numerous Respondents named herein, and requiring all the components to be liquidated through this Court. Accordingly, the Commissioner seeks to liquidate the entire insurance business, the insurer, its administrators and managers, and any of the assets that were paid or traceable to the funds for health coverage, howsoever the assets have been held or appropriated. All illegal insurance coverage must cease and the duped customers should be urged to find authorized carriers in their jurisdictions including Tennessee. This business must be permanently enjoined, and persons involved prevented from continuing similar unlawful activities under any guise.

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

Exhibit 1 – Affidavit of Robert Heisse, Fraud Investigator for the Insurance Division of the Tennessee Department of Commerce and Insurance. Mr. Heisse discusses evidence adduced from his investigation and about the activities of the Respondents, including victim affidavits, Cease and Desist orders from other states, and the complaint recently filed by American Trade Association, *American Trade Association, Inc. v. William M. Worthy II, South East Insurance Advisors, LLC and Nationwide Administrators, LLC*, Robertson County Chancery No 21229 alleging fraud and conversion.

Exhibit 2 – Affidavit of Victoria Stotzer, Health Compliance Analyst in the Actuarial Services Section of the Insurance Division of the Tennessee Department of Commerce and Insurance. She attaches exhibits regarding the types of health insurance coverage issued by Respondents.

Exhibit 3 – Affidavit of David R. White, Examiner in Charge for the Tennessee Department of Commerce and Insurance, in the Insurance Division. Mr. White addresses information available regarding Respondents' financial accounts, cash flow and financial status of the Respondent entities.

Exhibit 4 – Affidavit of Bob Ribe, Chief Analyst for the Insurance Division, Financial Affairs Section. Mr. Ribe describes the Respondents' lack of authority or qualification to engage in the business of insurance as an insurance company in Tennessee or any other state, and/or for engaging in the business of an administrator in Tennessee, and the lack of filed insurance company financial information by Respondents.

Exhibit 5 – Affidavit of Brenda Sechler, Director of Agent Licensing for the Insurance Division. Ms. Sechler addresses the status of any licensure by any of the Respondents to act as insurance producers in Tennessee.

Exhibit 6 – Corporate filings of Indiana, Florida and Tennessee pertaining to ATA.

Exhibit 7 – Website printouts – March 20, 2010, from [myatabenefits.com](http://myatabenefits.com), the site listing health benefits and soliciting membership for American Trade Association, and press release of March 8, 2010 by ATA.

### **JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction of this insurance receivership action pursuant to Tenn. Code Ann. § 56-9-104, and venue of this action is properly established in the Chancery Court of Davidson County pursuant to Tenn. Code Ann. § 56-9-104(e). Also, this Court has subject matter jurisdiction and venue of this Commissioner's action for enjoining violations of the insurance unfair competition and deceptive practices defined at Tenn. Code Ann. § 56-8-104, *et seq.*, and to enforce compliance with the Tennessee Unfair Trade Practices and Unfair Claims Settlement Act of 2009. Tenn. Code Ann. § 56-8-109.

### **THE PARTIES**

7. The Petitioner, Leslie A. Newman, is the duly appointed Commissioner of Commerce and Insurance for the State of Tennessee. Pursuant to Tenn. Code Ann. §§ 56-9-101, *et seq.*, the rehabilitation, liquidation or conservation of a domestic insurance company is to be conducted by the

Commissioner after her appointment as receiver by the Court. Tenn. Code Ann. §§ 56-9-301, *et seq.*

Pursuant to Tenn. Code Ann. § 56-8-109, whenever it appears to the Commissioner that any person has violated or is about to violate the part of the insurance code pertaining to unfair or deceptive insurance practices, the Commissioner may bring an action in this court to enjoin the violation and enforce compliance with Tenn. Code Ann. §§ 56-8-101, *et seq.*

8. Smart Data Solutions, LLC, ("SDS") was incorporated on November 22, 2005, as a limited liability company organized under the laws of Tennessee with an official address and principal place of business located at 4676 Highway 41 North, Springfield, TN 37172. Its registered agent is Bart S. Posey (Sr.), 4676 Highway 41 North, Springfield, TN 37172, in Robertson County, Tennessee. Bart S. Posey is the owner and managing member of SDS.

9. Respondent American Trade Association, Inc. ("ATA") was originally incorporated on July 8, 1986, under the name Transportation Services Association, Inc. as a foreign nonprofit corporation organized under the laws of the State of Indiana and underwent name changes in that state. Corporate filings for ATA from Indiana, Florida and Tennessee are attached hereto as **Exhibit 6**. In 2009, the Indiana articles of incorporation were amended to change the name of the foreign nonprofit corporation to "American Trade Association, Inc." with an official address and principal place of business located at 4676 Highway 41 North, Springfield, TN 37172, the same address as SDS, its administrator. The American Trade Association has started publishing another address, 400 Memorial Blvd., Springfield, TN 37172 as its offices. ATA's initial filing with the Tennessee Secretary of State is May 15, 2009, listing the principal address of 4676 Highway 41 N, Springfield, TN 37172. Its registered agent in Tennessee is National Registered Agents, Inc., 2300 Hillsboro Road Suite 305, Nashville, TN 37212. On February 26, 2010, the Secretary of State website shows

that ATA has withdrawn its registration in Tennessee and is inactive. ATA filed articles of dissolution in Indiana on March 1, 2010. Nonetheless, ATA still maintains its website for membership and health insurance benefits after this purported withdrawal. SDS administers ATA's insurance plans to ATA members.

10. Respondent American Trade Association, LLC ("ATA LLC") is an Arkansas limited liability company still shown in good standing with its registered agent, InCorp Services, Inc., located at 455 West Maurice, Hot Springs, Arkansas 71901. ATA, LLC is owned by Bart S. Posey ("Posey") and is located at 4676 Highway 41 North, Springfield, Tennessee, 37172. (See Affidavit of Robert Heisse, Investigator, Ex. 1, ¶7). The American Trade Association sometimes identified itself as an Arkansas corporation to ATA members. (Affidavit of Heisse, Ex. 1, Exhibit C affidavit of Durenda Hood, attachment 3; Exhibit D affidavit of Paul Brooks, attachments thereto). The Tennessee Secretary of State does not reflect that ATA LLC ever registered to do business in Tennessee.

11. Obed W. Kirkpatrick, Sr. is listed on corporate filings as the President of Respondent ATA located at 4676 Highway 41 North, Springfield, TN 37172. Respondent Obed W. Kirkpatrick, Sr. is a citizen and resident of Williamson County, Tennessee and maintains a residence at 1705 Rocking Chair Place, Franklin, TN 37067. Obed W. Kirkpatrick had his Tennessee insurance producer license revoked in February, 2007. (Affidavit of Brenda Sechler, Ex. 5, ¶13.)

12. Richard Bachman is listed on corporate filings as the vice president of ATA located at 4676 Highway 41 North, Springfield, TN 37172. He conducts business with Obed W. Kirkpatrick, Sr. and Bart S. Posey, Sr. in the operation and management of ATA and SDS. Respondent Richard H. Bachman is a citizen and resident of Travis County, Texas and maintains a residence at 1600 Magpie Cove, Austin, TX 78746. Richard H. Bachman holds a non-resident insurance producer

license in this State. (Affidavit of Sechler, Ex. 5, ¶15.)

13. Respondent Bart S. Posey, Sr. is listed on corporate filings as a director of ATA and an officer of ATA, LLC, and an owner and manager member of SDS. Respondent Bart S. Posey, Sr. is a citizen and resident of Robertson County, Tennessee, with an address at 3448 Forest Park Road, Springfield, TN 37172. Bart S. Posey holds a delinquent license as an insurance producer for property, accident and health insurance, in the State of Tennessee, that expired on March 31, 2009. (Affidavit of Sechler, Ex. 5, ¶17.) Bart S. Posey has signatory authority on bank accounts connected with SDS, ATA and SAA. (Affidavit of David R. White, Ex. 3, ¶13).

14. Respondent Angie Posey is listed on corporate filings as a director of ATA located at 4676 Highway 41 North, Springfield, TN 37172, and is a resident of Robertson County, Tennessee, with an address at 3448 Forest Park Road, Springfield, TN 37172. Angie Posey is the spouse of Bart S. Posey. Angie Posey has an expired insurance producer license, for casualty insurance, in the State of Tennessee, originally obtained April 5, 2000 and expired on April 4, 2001. (Sechler Affidavit, Ex. 5 ¶21). Angie Posey is involved with the operations and/or assets of the insurance enterprise described infra. Angie Posey has authority over or has access to bank accounts connected with SDS and ATA. (Affidavit of David R. White, Ex. 3, ¶13).

15. Linda Kirkpatrick is listed on corporate filings as the secretary of ATA located at 4676 Highway 41 North, Springfield, TN 37172. Defendant Linda Kirkpatrick is a citizen and resident of Williamson County, Tennessee and maintains a residence at 1705 Rocking Chair Place, Franklin, TN 37067. Linda Kirkpatrick has not held a Tennessee insurance producer license. (Affidavit of Sechler, Ex. 5, ¶25).



16. Kristy Wright is listed on corporate filings as the treasurer of ATA located at 4676 Highway 41 North, Springfield, TN 37172. Defendant Kristy Wright is a resident of Robertson County, Tennessee, with an address at 117 Fieldstone, Springfield, TN 37172. Kristy Wright has never held a Tennessee insurance producer license. (Affidavit of Sechler, Ex. 5, ¶27)

17. The business known as "American Trade Association" on information and belief has been conducted at the times relevant through ATA and ATA LLC, and the names of these entities are so similar as to prevent determining whether the association currently or previously doing business as "American Trade Association" is one or both of these business entities. Collectively, they shall be referred to as the ATA, or the ATA entities.

18. Respondent Serve America Assurance ("SAA"), on information and belief, was incorporated in South Carolina as a Limited Liability Company on February 5, 2009 and was dissolved on September 3, 2009. One address for SAA that has been cited by the Florida insurance regulator for service may be 117 Winding Oak Way, Blythewood, SC 29016. The name "Serve America Assurance" on materials issued by SDS and ATA is represented to be the underwriter of the ATA's group insurance coverage. No records of a corporation or business known as, or starting with the terms "Serve America Assurance" are found on the Tennessee Secretary of State's official website. The existence of Respondent SAA cannot be confirmed or determined other than it was incorporated, although activities using the name Serve America Assurance have been carried on by other Respondents. SAA policies state their Administrative Office is: SDS LLC at its 4676 Highway 41 North, Springfield, Tennessee address. (Victoria Stotzer Affidavit, Ex. 2, Exs. A & B thereto). The Commissioner has located no record of a company by such name authorized to conduct business as an insurance company anywhere in the United States. Serve America Assurance, Ltd. may be and

has sometimes been described as a wholly-owned alien captive insurance company subsidiary of Beema-Pakistan Company, Limited, of P.O. Box 5626, Karachi-7400, Pakistan (Beema) in certain materials allegedly furnished to SDS and ATA; however, Beema denies owning any subsidiary, company or legal entity outside Pakistan. (Robert Heisse Affidavit, Exhibit 1 hereto, and Complaint by ATA attached thereto as exhibit H).

19. Respondent William M. Worthy II ("Worthy") is an individual formerly the President of ATA, under its prior name of Transportation Services Association, Inc. who may reside in South Carolina, with a listed address of P. O. Box 462, Isle of Palms, SC 29451, and whose address may also be 550 Palmetto Street, Spartanburg, South Carolina 29302, (according to recent administrative proceedings of the Missouri Insurance department) and who is connected with SAA or the purported procurement of the SAA policy by or for ATA and who controls funds collected from ATA. (Robert Heisse Affidavit, Exhibit 1 hereto, and Complaint by ATA attached thereto as exhibit H). William M. Worthy II had an insurance producer license in Tennessee, but it was revoked in January 2006. (Brenda Sechler Affidavit, Ex. 5, ¶19).

20. Respondent Collin Youell ("Youell") is an individual foreign national, who resides or resided in 1551 North Flagler Drive, #1116, West Palm Beach, Florida 33401. Youell has purported to be a President or authorized Director of SAA for the purported procurement of the SAA policy by or for ATA. (Victoria Stotzer Affidavit, Ex. 2, Exhibit A "Serve America Assurance, Master Policy of Insurance") (Robert Heisse Affidavit, Ex. 1, Exhibit D attaching ATA and Real Benefits Association "Welcome Kit" Certificate for Limited Group Hospital Indemnity Benefits, and ATA Complaint attached as Exhibit H). Youell on information and belief had an official connection with ATA or its business conducted under its predecessor names.

21. Respondents Bart S. Posey, Sr., Angie Posey, Obed W. Kirkpatrick, Linda Kirkpatrick, Richard H. Bachman, Kristy Wright, William Worthy and Colin Youell are individuals who carry out, or who have carried out at the relevant times herein, ATA's, SDS's and/or SAA's day to day business, and/or are officers or agents or other control persons of the companies or of their assets. The Department so far knows of accounts of ATA, SDS and SAA maintained at First State Bank, 221 Harrison Street, Union City, TN 38261 and Farmers and Merchants Bank, 50 Franklin Street, Clarksville, Tennessee 37040. On information and belief, Bart S. Posey, Angie Posey, Obed W. Kirkpatrick, Richard H. Bachman, William Worthy and/or Colin Youell have control of ATA's, SDS's and SAA's financial records and accounts and of the assets derived or used in the insurance business.

22. On information and belief, any liquidation of the insurer constituted by the ATA entities, SDS and SAA, and any injunction against its business operations, cannot be carried out without encompassing all of them, and requiring the full cooperation of the ATA entities, SDS and SAA, their directors, agents, managers, employees and/or officers, including but not limited to Bart S. Posey, Angie Posey, Obed W. Kirkpatrick, Linda Kirkpatrick, Richard H. Bachman, Kristy Wright, William Worthy and/or Colin Youell, and any persons or institutions having control or custody of its assets. In addition to the injunctions being sought against the individual respondents, the individual Respondents are named party Respondents to effectuate the liquidation of the insurer's operations, and to assist in obtaining full cooperation and adherence to the Court's injunctions. Ordinarily the injunctions that accompany an order of liquidation reach all persons who have been involved in the business under liquidation.

**PERVASIVE ILLEGALITY IN OFFERING INSURANCE WITHOUT AUTHORITY**

23. The business entity Respondents -- SDS, the ATA entities and SAA -- do not have and have never had a certificate of authority issued by the Commissioner of Commerce and Insurance to engage in the business of insurance as an insurance company in Tennessee. (Affidavit of Bob Ribe, Chief Analyst, Department Insurance Analysis Section, Exhibit 4 hereto). SDS, ATA and SAA do not have and have not ever had a license to engage in the business of insurance as an insurance company *in any state*, according to the database of the National Association of Insurance Commissioners. (Ribe Affidavit, Ex. 4). Not one of these entities is licensed to be an administrator for an insurer in Tennessee. (Ribe Affidavit, Ex. 4). Most of the individual Respondents lack an insurance producer license, such that they could not even sell, negotiate or solicit contracts of insurance, supposing there were a legitimate policy involved. (Sechler Affidavit, Ex. 5). These layers of illegality must be addressed by liquidation of the entire enterprise.

24. The business of the respondent entities and individuals is that of an unauthorized insurer. The respondents have, in an attempt to circumvent regulation, formed the ATA entity or entities to serve as an association which individuals can join in order to obtain certain benefits, including health benefits. ATA purports to have an insurance policy which covers its members which policy is or was purportedly underwritten by SAA. SDS purportedly acts as an administrator collecting premiums from members and paying claims submitted by the members.

25. Instead, as a single business enterprise and functioning as an insurer, the ATA entities, SDS and SAA, along with the individual respondents sell/market/solicit memberships plans of the purported association which contain health benefits purportedly covered under an SAA master

policy, known as the Limited Indemnity Benefit Plan, the Per Occurrence Plans, the Accident Medical Plan, and the Critical Illness Plan, often representing these plans as major medical health insurance. (Heisse Affidavit, Ex. 1.)

26. The Commissioner has been unable to verify whether such SAA master policy has ever been issued to ATA, and whether, in fact, ATA has ever been underwritten by any legitimate insurance company. Furthermore, it appears to the Commissioner that the business operations of SDS and ATA are intertwined so that there is no delineation between ATA, who is the purported association and SDS who purports to be the administrator. It appears from the investigation conducted by the department that ATA, SDS, and the individual respondents constitute an unlicensed, unregulated insurance entity.

**Business Entities and Respondents Are Unlicensed.**

27. Serve America Assurance; Smart Data Solutions, LLC; American Trade Association, LLC; American Trade Association, Inc.; and Real Benefits Association (a name which appears in conjunction with American Trade Association on materials furnished to members, *see* Heisse Affidavit, Ex. 1, Ex. D, Paul Brooks affidavit materials), do not have and have never had a certificate of authority issued by the Commissioner to engage in the business of insurance as an insurance company in Tennessee, nor do they have, or have ever had a certificate of authority issued by any insurance commissioner to engage in the business of insurance in ANY state. Furthermore, none of these entities have ever been issued a certificate of authority to engage in the business of an administrator in Tennessee. (Affidavit of Bob Ribe, Ex. 4, ¶3-6).

28. Additionally, these entities are not licensed to issue policies of insurance in Tennessee or any other state. (Affidavit of Bob Ribe, Ex. 4, ¶7).

29. Furthermore, *none* of the Respondents, with the exception of Richard Bachman, including the business entities, are currently licensed insurance producers in Tennessee. (Affidavit of Brenda Sechler, Ex. 5).

**Purported Insurance Coverage for ATA.**

30. From March, 2008 until October, 2009 contracts issued to policyholders alleged that SAA issued a group master policy for ATA and that SAA was the underwriter for such plans. In reality, the purported master policy was issued to an entity known as Real Benefits Association (“RBA”) and not to ATA. *See* Exhibit 2 to the Affidavit of Durenda Hood, Exhibit C to the Affidavit of Rob Heisse, Ex. 1. Real Benefits Association also has no authority to engage in the business of insurance as an insurance company in Tennessee or any other state, or to engage as an administrator in this state. (Affidavit of Bob Ribe, Ex. 4, ¶¶3, 4, 6).

31. Furthermore, it is questionable whether there ever was, or ever could be, any insurance coverage issued to ATA by SAA. According to an action filed on March 1, 2010, ATA is suing William Worthy, II, South East Insurance Advisors, LLC and Nationwide Administrators, LLC alleging that Serve America Assurance, LTD is a fictitious company and that the defendants stole \$2,000,000 from ATA by fraudulently collecting money from ATA on behalf of Serve America Assurance, LTD. (Affidavit of Rob Heisse, Ex. 1, ¶22).

32. In any event, as of October, 2009, ATA and SDS admit that they ceased doing business with SAA, and that currently, there is not an insurance company underwriting any of the insurance contracts sold by ATA and administrated by SDS. *See* Affidavit of Rob Heisse, Ex. 1, Exhibit H (ATA Complaint), ¶ 23.

33. In fact, SDS, the administrator, is apparently also acting as the underwriter for the

ATA plans by receiving the premium payments for the ATA plans and paying the claims to consumers.

**SDS and ATA Are Offering Insurance.**

34. The law requires all group accident and health insurance policy forms and certificates of coverage under such master policies to be filed with the Department before their sale in this state. Tenn. Code Ann. § 56-26-202. The law requires all individual accident and health insurance policy forms to be filed with the Department at least thirty days prior to their sale in this state. Tenn. Code Ann. § 56-26-102. An insurance company may not issue a group accident and health insurance policy or certificates of coverage if the Department notifies the company that it does not comply with the legal requirements for health insurance. (Affidavit of Victoria Stotzer, Ex. 2, ¶3).

35. The Master Policy of Insurance that was provided to consumers and presented by ATA and SDS to be its insurance offerings together with Limited Indemnity Benefit Plan, Per Occurrence Plans, Accident Medical Plan and the Critical Illness Plan constitute health insurance. (Affidavit of Victoria Stotzer, Ex. 2, ¶¶8-14).

36. Further, the benefits being purportedly provided by the respondents are not reasonable in relation to the premium charges. It is the Department's position that a healthy individual, depending on age, could purchase full medical coverage for similar premiums. (Affidavit of Victoria Stotzer, Ex. 2, ¶13).

37. SDS, ATA and SAA have not submitted any insurance policies, forms or products to this Department for approval or review prior to use, nor are any such approved at this time, as these companies or entities are not licensed to issue insurance in Tennessee. (Affidavit of Victoria Stotzer, Ex. 2, ¶8).

38. Respondents, had they applied for a certificate of authority, would likely never qualify under the numerous standards and managerial qualifications to issue these types of contracts, and the contracts themselves in their current form would likely not be permitted policy forms as a health insurance product. (Affidavit of Bob Ribe, Ex. 4, ¶¶10-11).

39. These policies have been issued on the false and misleading premise that these limited benefit health insurance contracts were, in fact, issued by an insurance company to ATA under a group master policy, when there is actually no lawful insurance to be found.

**Sales to Tennessee Residents.**

40. ATA has, and continues to solicit Tennessee residents while lacking the authority to do so. In addition, ATA has and continues to service several contracts illegally consummated in Tennessee.

41. ATA constructed and maintains as a sales promotion website for its business, [www.myatabenefits.com](http://www.myatabenefits.com), which is identified on its contracts and literature, and available nationally to the general public with a web search internet connection, including anyone in Tennessee. This website permits a Tennessee resident to contact ATA by submitting personal information such as name, address, phone number, email address and comments. This website includes pages soliciting and explaining how customers can purchase different level membership in ATA. ATA also engages in unsolicited faxing or "fax blasting." (Affidavit of Durenda Hood, ¶2, Exhibit C to Affidavit of Robert Heisse, Ex. 1). As recently as March 20, 2010, the Respondents were offering unlicensed, unregulated insurance from its website [www.myatabenefits.com](http://www.myatabenefits.com). A printout of certain screen shots from the website is attached hereto as Exhibit 7.

42. One such Tennessee consumer is Mr. Max Fagan. On or about August 2009, Mr.



Fagan purchased health insurance offered by Posey, SDS, and ATA for his family after his wife spoke with Angie Posey. His premiums are \$506.00 a month. Mr. Fagan has approximately \$8,000 in unpaid claims. (Affidavit of Robert Heisse, Ex. 1, ¶ 18).

43. Other such Tennessee consumers are Mr. Paul Brooks, and Ms. Durenda Hood. These persons were individually solicited by ATA in Tennessee for membership in the ATA, and their Affidavits respecting their dealings with ATA, are attached as Exhibits C and E to the Affidavit of Robert Heisse. These affidavits show that ATA continues to accept premiums from Tennessee residents although it admittedly has no underwriter for the insurance that it is offering, and that claims continue to go unpaid when submitted to ATA. (Affidavit of Robert Heisse, Ex. 1, ¶¶ 16-17).

**Hazardous Financial Status of ATA and SDS.**

44. The Commissioner has obtained bank records of SDS and ATA, through an administrative subpoena with delayed notification to the consumer pursuant to Tenn. Code Ann. § 45-10-117. It is not known whether accounts exist at other financial institutions. Although some financial status has been able to be reconstructed, more information will be required to understand and track the full extent of the insurance activities.

45. The signatories on the accounts are as follows: SDS LLC account # \*\*\*\*0201 at Farmers and Merchants Bank ("SDS Account 1"), Bart S. Posey and Angela Posey; SDS LLC account # \*\*\*\*2841 at First State Bank ("SDS Account 2"), Bart S. Posey and Angie S. Posey; American Trade Association, Inc. account # \*\*\*\*2901 at Farmers and Merchants Bank ("ATA Account"), Obed Kirkpatrick, Angela S. Posey and Kristy Wright; and SDS/Serve America Claims Account # \*\*\*\*5601 at Farmers and Merchants Bank ("Claims Account"), Bart Posey. (Affidavit of David R. White, Ex. 3, ¶¶ 2, 13).

46. Paylogix, Inc. is the company that was responsible for automatically drafting the accounts of SDS's, ATA's, and SAA's customers until sometime in November 2009. Paylogix provided the Department with a spreadsheet for the funds collected on behalf of and remitted to, SDS and ATA and deposited into SDS LLC account # \*\*\*\*0201 at First State Bank and American Trade Association, Inc. account # \*\*\*\*2901 at Farmers and Merchants Bank. (Affidavit of David R. White, Ex. 3, ¶¶2-4).

47. From August, 2008 through November, 2009 (a sixteen month period), SDS and ATA received \$14,409,340.29 (\$14.4 million) in premium payments from 12,400 separate policyholders. The policyholders are located *in all fifty states and District of Columbia*, with the greatest concentrations of policyholders in Florida, Texas, New York, New Jersey and California. (Affidavit of David R. White, Ex. 3, ¶4).

48. The joint operation of SDS, ATA and SAA appears to perform the functions of an insurance company. The money gets deposited into SDS Account 1 and then the money is transferred into the Claims Account from which claims are paid, the same as an insurance company would do. (Affidavit of David R. White, Ex. 3, ¶14).

49. From May 2008 to February 2010, the average total amount paid from the Claims Account was \$275,000 per month. The average payment per claim was \$215. (Affidavit of David R. White, Ex. 3, ¶14).

50. Based on the Department's review of SDS Account 1, SDS Account 2, the ATA Account and the Claims Account, there are only enough reserves to cover approximately three months of claims based on the average total monthly claims payments. (Affidavit of David R. White, ¶14). From January, 2008 to February, 2010, SDS Account 1, SDS Account 2, the ATA

Account and the Claims Account took in approximately \$15,000,000 (\$15 million) from policyholders, and on February 28, 2010 the balance of all four accounts account was down to approximately \$1,295,193 (\$1.2 million). (Affidavit of David R. White, Ex. 3, ¶11).

51. The Department does not and cannot know the full liabilities of this unauthorized business. If SDS, ATA and SAA have been denying claims and failing to pay or acknowledge the full extent of obligations to pay claims, the claims liabilities may be vast. If customers have claims for refunds based on having been sold a false product, that liability would also far exceed available assets. (Affidavit of David R. White, Ex. 3, ¶14).

**Payment of Personal Liabilities with Policy Holder Premiums.**

52. Bart Posey has used premium money collected from his customers on personal expenses and expenses not related to the operation of an administrator or an insurance company.

53. The bank records indicate that Posey issued a check (#2521) on December 23, 2009 from his SDS checking account (account # \*\*\*\*0201) in the amount of \$588,539.78 to First State Bank. This check paid off a mortgage loan held by First State Bank. The mortgage loan was secured by property located at 4676 Highway 41 North in Springfield, Tennessee. (Robert Heisse Affidavit, Ex. 1, ¶19). This property is owned individually by Bart Posey. (*Id.*, Ex. 1, ¶20).

54. Additionally, after a review of the bank records it appears that twenty-two percent (22%) of money being expended out of the SDS Account 1 are used for other personal expenses of Bart Posey and his family and are unrelated to paying claims or providing insurance coverage to the policyholders. (Affidavit of David R. White, Ex. 3, ¶9).

**Current Administrative Actions.**

55. At least twelve other states including Missouri, Connecticut, Arkansas, Indiana,

Delaware, Michigan, Montana, North Carolina and Oklahoma<sup>1</sup>, have taken action to halt ATA's, SDS's and SAA's business as unauthorized insurance. (Affidavit of Robert Heisse, Ex. 1, ¶22, Cease and Desist Orders at Exhibit G).

56. Tennessee has also undertaken administrative action against the ATA entities, SDS and SAA and Obed Kirkpatrick, Sr., Richard H. Bachman and Bart S. Posey. The orders entered in January and February 2010 may be found on Tennessee Insurance Division website at company actions [www.state.tn.us/commerce/insurance/AmericanTradeAssociationIndex.shtml](http://www.state.tn.us/commerce/insurance/AmericanTradeAssociationIndex.shtml). The orders entered to date by some other states enumerate ATA's, SDS's and SAA's lack of appropriate insurance licensure as grounds for injunctions and cease and desist orders against ATA, SDS and SAA, and several of the individuals who are Respondents named in this Petition, including Bart Posey, Obed Kirkpatrick and Richard Bachman, prohibiting these entities and persons from conducting business in their states.

57. The Respondents have been and remain in flagrant defiance of these cease and desist orders because they continue to transact business as an unlicensed insurer and are soliciting and servicing consumers nationwide as discussed herein.

58. The factually grounded and legally based conclusion presented by the Commissioner that ATA, SDS and SAA are acting in conjunction as an unauthorized Tennessee insurer violating Tenn. Code Ann. § 56-2-105 in and from Tennessee, makes insurance law remedies appropriate, and those are exclusive to this Court under Tenn. Code Ann. §§ 56-9-101, *et seq.*

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<sup>1</sup> The other states include Ohio, Washington, Kansas.

**GROUNDS FOR LIQUIDATION AND INJUNCTION OF ATA's, SDS's AND SAA's BUSINESS: PROHIBITIONS AGAINST UNAUTHORIZED INSURANCE BUSINESS**

59. Tennessee insurance law, found in Tenn. Code Ann. § 56-2-105, makes it unlawful for any company to enter into a contract of insurance as an insurer, or to transact insurance business in this state, without a certificate of authority from the commissioner or without coming within any statutory exception through application to and satisfaction of all requirements to be enforced by the Commissioner. Similarly, Tenn. Code Ann. § 56-6-114(a), in the provisions governing insurance producers (aka agents), provides that “A person shall be personally liable . . . on, all contracts of insurance unlawfully sold within this state by or through the person directly or indirectly, for or on behalf of an insurance company not authorized to do business in this state.” Tenn. Code Ann. § 56-6-102(7) (2008) defines insurer in the Producer Licensing Act as “any insurance company authorized to transact insurance business by this state.”

60. Tenn. Code Ann. § 56-2-102(a) requires, similarly, “No domestic insurance company or foreign insurance company shall commence business in this state until it has complied with the provisions of § 56-2-101, this section, §§ 56-2-103, 56-2-104, 56-2-113 — 56-2-115, 56-2-201, and 56-2-301<sup>2</sup>, and has received from the commissioner a certificate of authority to do business.” The statutory and rule-based requirements to do business in Tennessee for domestic and foreign insurers are comprehensive and continuing, with minimum standards for financial adequacy, capital, surplus, and organizational and managerial soundness. ATA, SDS and SAA are evading this entire statutory scheme and are conducting business in stark violation of numerous laws and rules adopted for the

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<sup>2</sup> The sections referenced provide several requisites for commencing business, as to qualifications, making application before operation, special deposits, imposing capital and surplus minimum standards, showing a listing of the types and kinds of insurance, and giving the force and effect of law to rules promulgated by the Commissioner to regulate the writing of the kinds and types of insurance listed.

protection of policyholders and the public. ATA's, SDS's and SAA's lack of a certificate of authority includes its failure to comply with any and all of the other required provisions for its operation.

61. The purposes of Tennessee's insurance regulation in Title 56 of the Tennessee Code Annotated have been identified by the Tennessee Supreme Court as follows:

**“[p]rotection of policy holders and revenue of the State are the controlling objects of the [Insurance] Act, the former being paramount....”** *North British & Mercantile Insurance Co. v. Craig*, 106 Tenn. 621, 645, 62 S.W. 155, 160 (1901). As an expression of public policy on insurance, nothing we have found or to which we have otherwise been directed indicates that this policy has not been followed by the Legislature in every enactment and amendment of Title 56.

*Neff v. Cherokee*, 704 S.W.2d 1, 4-5, (Tenn. 1986) emphasis added. The Commissioner seeks the protection of policyholders and the public, which the ATA entities, SDS and SAA have thwarted by failure to submit to the insurance regulatory scheme in Tennessee or anywhere.

62. The Commissioner has presumptive authority and jurisdiction in the area of health benefits coverage. Tenn. Code Ann. § 56-7-1010 provides,

(a) Notwithstanding any other law, and except as provided in this title, any person or other entity that provides coverage in this state for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether the coverage is by direct payment, reimbursement, or otherwise, ***shall be presumed to be subject to the jurisdiction of the department*** unless the person or other entity shows that while providing the services it is subject to the jurisdiction of another agency of this or another state or the federal government.

... (c) Any person or entity that is unable to show that it is subject to the jurisdiction of another agency of this or another state or the federal government shall submit to an examination by the commissioner to determine the organization and solvency of the person or the entity, and to determine whether or not the person or entity is in compliance with the applicable provisions of this code.

63. The ATA entities, SDS and SAA have also not tried to obtain any legal exemption for their operation from the requirements of a certificate of authority, and do not appear based on the Commissioner's knowledge of the business, to have any avenue for an exemption. The Commissioner is unaware of any exemption that would have any applicability to shield ATA, ATA LLC, SDS or SAA from the requirement of a certificate of authority in Tennessee or further that could have any possible applicability to companies and individuals who show such disdain for Tennessee's and other states' insurance laws. ATA, ATA LLC, SDS and SAA hold no certificates of authority from the Commissioner, and have been granted no exemptions from regulation.

64. The ATA entities, SDS and SAA have simply not applied for any insurance authority, which is the most significant omission because it shows intent to evade the law, and the State is not bound to eliminate an exemption which might apply, when ATA, SDS and SAA have made no effort to comply with law.

**Acts of Unauthorized Insurers Constitute Transacting Insurance Business Subject to**

**Receivership**

65. Tenn. Code Ann. § 56-2-107 states:

Any of the following acts in this state, effected by mail or otherwise by an unauthorized insurer, are included among those deemed to constitute transacting insurance business in this state:

- (1) The issuance or delivery of contracts of insurance to residents of this state;
- (2) *The solicitation of applications for such contracts;*
- (3) The collection of premiums, membership fees, assessments or other considerations for such contracts of insurance; or
- (4) The transaction of matters subsequent to the execution of contracts of insurance and arising out of them.

As can be seen from the affidavits attached to Ex. 1, Affidavit of Robert Heisse, ATA, SDS and SAA, through Bart S. Posey, Sr., Richard H. Bachman, Obed W. Kirkpatrick, Sr. and other associates, have erected a series of publicly available and searchable websites that offer health insurance to the public. They have issued and delivered contracts to residents of this state, Mr. Paul Brooks and Ms. Durenda Hood, and Mr. Max Fagan. (Heisse Affidavit, Exhibit 1, Exhibits C, D and E attached). The bank records disclose that premium and membership money has been collected from individuals in all 50 states; ATA, SDS and SAA collected premiums for such contracts. David R. White Affidavit, Ex. 3, ¶4. Thus, under Tenn. Code Ann. § 56-2-107, ATA, SDS and SAA should be found to have transacted insurance business in this state.

66. 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."

67. Respondents have purported to be doing an insurance business. Their sales practices, materials and terminology indicate that insurance, underwritten by an insurer, is being supplied to



members. Importantly, in the instance where there is no lawful insurer, and persons are involved in the same activities without a license, even an individual person can be considered the insurer for purposes of a delinquency action and receivership under IRLA. Bart and Angie Posey, Worthy, Obed and Linda Kirkpatrick, Kristy Wright, Richard Bachman, Colin Youell (whose signature appears on the Serve America documents furnished to members) and others, are fully subject to receivership and injunction to the extent that they have acted and retain assets and records related to the unauthorized insurance enterprise. Distinctions of ownership and control of the assets of the insurance enterprise have been blurred and ignored. The policyholders' money to pay for health care coverage and benefits has shifted around, and this Court should consider the substance of the insurance enterprise, rather than nominal corporate distinctions.

68. The ATAs, SDS and SAA are conducting unauthorized insurance and soliciting and issuing such contracts in Tennessee and to other states' residents. Moreover, they are causing residents to transfer and convey premium payments to ATA, SDS and SAA in exchange for ATA's unlicensed Health Benefits, known as the Limited Indemnity Benefit Plan, the Per Occurrence Plan, the Accident Medical Plan, and the Critical Illness Plan. (Affidavits of Heisse, Ex. 1, Victoria Stotzer, Ex. 2, and David R. White, Ex. 3). These plans all promise to pay benefits or reimbursement to the member for medical and health care expenses in varying amounts depending on the circumstances of required treatment up to stated limits. Thus the ATAs, SDS and SAA are all being paid for and participating in covering members' contingent health expenses and losses. These coverages are health insurance, with similarities to group health insurance policy contracts that have been filed with the Department of Commerce and Insurance by insurance companies. (Affidavit of Victoria Stotzer, Ex. 2, ¶¶9-14).

69. Besides the terms of health coverage provided on the ATA website (examples at Exhibit 7) offered to nearly the entire country indicating that ATA enrolls members in the association and that membership in the association provided insurance benefits through the Limited Medical Plan, the Per Occurrence Plan and the Critical Illness Plan, ATA papers submitted in the American Trade Association / Real Benefits Association Welcome Kit to a Tennessee resident Paul Brooks (attached to Ex. 1, Heisse Affidavit, Exhibit D), specifically contain certificates expressing that the certificate-holder is covered under an SAA policy. Despite the language in this Welcome Kit, ATA never has been authorized to engage in the business of insurance as an insurance company by the Department of Commerce and Insurance. (Bob Ribe Affidavit, Ex. 4). The Welcome Kit issued by ATA directed that all claims for payment be submitted to SDS for payment, and identifies SDS as the administrator and the contact for the benefits. Despite the language in this Welcome Kit, SDS never has been authorized to engage in the business of insurance as an insurance company by the Department of Commerce and Insurance, nor to act as an administrator in this state. (Bob Ribe Affidavit, Ex. 4).

70. The Welcome Kit obtained by Tennessee resident Paul Brooks, and the materials submitted to Tennessee resident Durenda Hood, (*See Exhibits C and D to Affidavit of Robert Heisse, Ex. 1*), contain materials and repeated assurances that benefits are underwritten by SAA. Despite the language in this Welcome Kit stating that SAA was the underwriter for ATA's purported group health plan, and bearing an apparent signature of Respondent Colin Youell on behalf of SAA, SAA never has been authorized to engage in the business of insurance as an insurance company by the Department of Commerce and Insurance, and it is now unclear that SAA exists or issued a policy.

71. On information and belief, the Commissioner asserts that the entire course of conduct engaged in by the ATA entities, SDS and SAA shows prohibited and fraudulent activity by the Respondents in violation of the insurance statutes, and the Welcome Kit demonstrates a clear intent and willingness by ATA, SDS and SAA to market and issue or deliver contracts of insurance as a business model, whether to residents of Tennessee, or of other states.

72. Furthermore, most of the people involved in this health insurance enterprise, the Respondents other than Richard Bachman, are not even licensed as insurance producers for health insurance, and would be prohibited from actions on that ground alone. Contracts of health insurance are described as included in more than one line of insurance for which insurance producers must be licensed. 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.

73. ATA, SDS and SAA are collecting premiums in exchange for the issuance of the Limited Medical Plan, the Per Occurrence Plan and the Critical Illness Plan contracts, which are clearly identified as insurance and underwritten by an insurer. These premiums are deposited into SDS's bank account and then transferred to a bank account entitled "SDS/Serve America Claims Account," both of which Bart S. Posey, Sr., and Angie Posey control by signature or by virtue of their actual managerial roles with SDS. ATA's, SDS's and SAA's obligations under the contracts are to make payments to the insured or the insured's family in accordance with the terms of the contracts. Respondents purport that the payments are the ultimate obligation of SAA to pay, which

means out of the general assets of SAA, because SAA is the purported underwriter and that SDS is the administrator of the contracts for ATA and SAA. However, the bank records 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." Bart Posey and Angie Posey, between them, have signatory authority control over SDS, ATA and SAA accounts. Affidavit of David R. White, Ex. 3, ¶13.

74. A contract of insurance is generally defined in Tennessee law at Tenn. Code Ann. § 56-7-101, and is recognized under relevant cases by viewing the substance of the transaction, by its predominant features of contingency and indemnity to the insured in exchange for consideration. An insurer is also defined in the insurance fraud act as "any person purporting to engage in the business of insurance or authorized to do business in this state or subject to regulation by the state, who undertakes to indemnify another against loss, damage or liability arising from a contingent or unknown event. Tenn. Code Ann. § 56-53-101(6). Issuers of contracts of insurance clearly are required to be licensed as insurers in Tennessee. "Accident and health insurance' means insurance against bodily injury, disablement or death, by accident or accidental means, or the expense of bodily injury, disablement or death, against disablement or expense resulting from sickness, and every insurance pertaining thereto. . ." Tenn. Code Ann. § 56-2-201(1) An insurer may exercise one or more or all of the branches of business in which it is authorized to engage. Tenn. Code Ann. § 56-2-205. Thus, licensed accident and health insurers are empowered to grant and sell contracts for health insurance.

75. ATA, SDS and SAA refer to the Limited Medical Plan, the Per Occurrence Plan, the Accident Medical Plan and the Critical Illness Plan, as being insured. The Affidavit of Vicky Stotzer,

Exhibit 2, identified how ATA's, SDS's and SAA's contracts are recognizable as having the features of policies submitted by other licensed health insurers. But ATA, SDS and SAA as the issuers of contracts of insurance do not qualify and have no exemptions from insurance licensure that could be granted in a proper case by the Commissioner. ATA's, SDS's and SAA's contracts are entered into in the state of Tennessee. The ATA entities, SDS and SAA are offering purported accident and health insurance fitting any of these descriptions, but have no authority whatsoever according to Tennessee law.

76. Just one of many consequences of being licensed as an insurer is the restriction on investments of assets. The Tennessee statutes governing domestic insurance companies severely restrict the use and investment of company assets (*See* Tenn. Code Ann. § 56-3-301 – 305 and 56-3-401-405) with the underlying purpose of protecting the policyholders, just as the statutes and regulations governing banks are designed to protect depositors. *Continental Bankers Life Ins. Co. v. Bank of Alamo*, 578 S.W.2d 625 (Tenn. 1979). The company, if licensed, must meet financial requirements for reserves and capital or come within other statutory requirements. Tenn. Code Ann. § 56-1-403. Those surplus requirements would require demonstration of millions of dollars in excess of the amount required to meet the policyholders' liabilities. ATA, SDS and SAA have made no financial showings to insurance departments in Tennessee and other states (Ribe Affidavit, Ex. 4), nor shown any intent to subject themselves to any insurance regulatory scrutiny. Health insurance contracts in particular are subject to specific regulatory provisions under Tenn. Code Ann. § 56-26-101 and other parts of that chapter. None of the Respondents have been submitted to that regulatory regime.

77. Injunctions against foreign and alien companies violating or about to violate the prohibition against unauthorized insurance business in Tenn. Code Ann. § 56-2-105 may be sought in this court to restrain the company from continuing the violation, engaging in the violation or doing any act in furtherance of the violation. Tenn. Code Ann. § 56-2-110. When the company is domestic, such as the SDS, ATA and SAA enterprise being run from this state, the Commissioner's power to enjoin generally is exercised through the primary jurisdiction and regulatory authority over that insurer, and the need to impose an orderly liquidation for the financial aspects of that business through the Insurers Rehabilitation and Liquidation Act at Tenn. Code Ann. Title 56, chapter 9.

### **STATUTORY GROUNDS FOR LIQUIDATION**

78. Tennessee's insurance code permits the Commissioner to use stronger measures to address the failings of a domestic company, such as she deems the ATA entities, SDS and SAA operating from the Springfield, Tennessee base to be. Although they failed to submit themselves to any jurisdiction, Tennessee business entities and principal business offices in Tennessee are leading the enterprise. The receivership act also permits liquidation and conservation of alien insurers that have failed to domesticate in any state, and of the assets of such insurers found in Tennessee. (Tenn. Code Ann. §§ 56-9-401 – 402). The Commissioner has primary regulatory authority over domiciliary insurers, to apply for the exclusive regulatory and receivership remedies imposed through the Insurers Rehabilitation and Liquidation Act, as well as any of the remedies for foreign and alien insurers, if necessary. Rather than just enjoining the prohibited conduct, the Commissioner is given authority to request this Court's assistance to shut down operations and liquidate the Tennessee insurer's assets for the benefit of the public, and in appointing the Commissioner as statutory receiver for the assets and business of the insurer. Because the Respondents ATAs, SDS

and SAA have operated so far outside of any regulatory authority, the Commissioner believes administrative remedies have shown themselves inadequate to prevent the unlawful conduct. Enforceable Court orders, liquidation provisions for assets and liabilities, and injunctions (including enforceable in other states by full faith and credit being given to those orders) are required.

79. The Commissioner seeks the maximum control available through the issuance of this Court's orders of liquidation and injunction, so as to cause an effective termination of all ATA's, SDS's and SAA's business activities and purported insurance coverages, and an effective freeze to control its assets, records and accounts under the Commissioner.

80. This Liquidation petition is brought 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).

81. Several of the twelve alternative grounds for an order found in Tenn. Code Ann. § 56-9-301 could be applicable to the dire circumstances presented by these Respondents. A few are most obvious and pertinent. 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.

82. 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.

83. There is mounting evidence that the Respondents are unable to pay obligations when they are due, and that the assets are or will become inadequate to meet the liabilities of the insurance enterprise. Although the Commissioner exercised subpoena powers to obtain certain account records of ATA, SDS and SAA, the Commissioner has been in no position to obtain the kind of precise information about the financial condition of the ATA entities, SDS and SAA, and total admitted assets and total liabilities, that would occur under regulatory accounting, and regular filings of



financial statements by licensed insurers according to the highly detailed rules and statutes for measuring assets and liabilities of such entities. All of the Affidavits in support of this Petition contain facts that generate concern by the Department over the financial condition, misleading business practices and overall affairs, and wrongful intent demonstrated through the establishment of the ATA, SDS, and SAA enterprise. Together, they show that the continued operation of ATA, SDS and SAA is and would be hazardous financially and otherwise to its policyholders, creditors and the public, that ATA, SDS and SAA have not come into compliance with any statutes of the insurance law, and that ATA, SDS and SAA have an unknown, unregulated, and likely very poor financial condition, given the large contractual obligations it has undertaken under the Limited Medical Plan, the Per Occurrence Plan, the Accident Medical Plan and the Critical Illness Plan contracts

84. However, even without direct access to all of ATA's, SDS's and SAA's accounts and records, it is apparent that the bank account assets on hand (about \$1.3 million) are a small fraction of the over \$14 million received at least in the 16 month period ending November 2009. Its true obligation to the customers is wholly uncharted. Claims liabilities may be vast, if these entities have simply denied claims and failed to pay or acknowledge the obligations to pay out promised benefits. If customers have claims for refunds, based on having been sold a false product, that liability would also far exceed current available assets. (Affidavit of David R. White, Ex. 3, ¶14).

85. The whole course of conduct, the deceptions and fraud on the policyholders as to the terms of the policies, the cease and desist orders that Respondents have defied in maintaining the ATA/SDS/SAA health benefits insurance, all support the Commissioner's belief that illegal conduct is occurring. Now, one of the Respondents, ATA (Inc.) has brought an action, citing information from SDS, to claim that another of the Respondents, William M. Worthy II, with others has

converted over \$2 million of premium from ATA, alleging the non-performance or fictitious issuance of the Serve America Assurance policy supposedly underwriting the ATA coverage. (Complaint at Exhibit H to Robert Heisse Affidavit, Ex. 1). This Complaint is a stunning admission by some of the Respondents that embezzlement, diversion of insurer's assets, forgery or fraud with respect to the insurer has occurred. The magnitude of this conduct threatens the solvency of the insurer. Accordingly, on the basis of this Complaint, the Commissioner has 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.

86. Bart Posey, the managing owner of SDS, and officer of ATA, has used over \$588,840 of the funds of the insurance enterprise, to pay off a personal loan secured by the office building at 4676 Highway 41 North, in Springfield, Tennessee. Around 23% of the SDS funds are also paying personal expenses of Bart Posey and his family. (Affidavit of David R. White, Ex. 3, ¶9).

87. On top of the self-dealing with insurance assets, the more fundamental hazard, financially and otherwise, that the ATA entities, SDS and SAA presents to the policyholders and the public is that this entire operation has no right to exist or operate. Given the unauthorized insurance issuance, there is no form of these entities entitled to conduct the insurance business, and there is no prospect of entry into any legitimate insurance market with such a history. This threat to the operation justifies immediate liquidation of any assets that can be found.

88. Given that the relevant statutory ground for a liquidation receivership, that ATA, SDS and SAA be hazardous financially, or otherwise, to others, *does not require* that ATA, SDS and SAA

be known with certainty to be insolvent, more than enough justification for receivership is present on these facts. Rather, the Commissioner deems that the creditors and policyholders and the public have already been exposed to personal financial hazard in the payment of premiums and their health care may be jeopardized by the failure of any of these companies and persons to have a legitimate insurer backing the supposed health care coverage. Administrative remedies have proved to be futile. Trusting people have changed their position and placed confidence in the future solvency and good faith of an unregulated health insurance business. The operators have shown that they will ignore numerous regulatory administrative orders. When a financial business ordinarily requiring regulation incurs future obligations to members of the public, the legislature has presumed the public is exposed to clear risk when the business is not licensed. It need not already have stopped paying all its claims, or experience financial crisis before the Commissioner may take action for the protection of members, covered member employees, and other creditors.

89. The purposes of the Act, as set forth in Tenn. Code Ann. § 56-9-101(d), include “Early detection of any potentially dangerous condition in an insurer, and prompt application of appropriate corrective measures.” The prerogative of ATA’s, SDS’s and SAA’s management to keep operating without regulation is non-existent. Thus, there is no requirement that the Commissioner wait until the insurance operations of these entities actually stops paying all of its insurance claims and contractual obligations before she is empowered to act to avoid the prospective financial hazard to enrollees, providers and other creditors. Due to ATA’s, SDS’s and SAA’s failure to apply for licensure of its business of issuing the Limited Medical Plan, the Per Occurrence Plan and the Critical Illness Plan contracts, there has been no disclosure or approval of the qualifications or character of the management or officials of ATA, SDS and SAA. Based on all the foregoing, the

Commissioner has no assurance whatsoever of ATA's, SDS's and SAA's soundness, the safety of its assets, or its ability to pay its obligations when due. They cannot qualify to do any of the insurance business. Their policies are unregulated and unauthorized.

90. In light of the substantial regulatory scheme afforded insurers that issue health insurance contracts of various types, ATA's, SDS's and SAA's business of selling such contracts without any required licensure or even contact with the Tennessee Department of Commerce and Insurance is presumptively highly dangerous to its customers and the public interest. Health insurance business is a business of insurance that the legislature intends to be highly supervised, and the solvency of such entities to be scrutinized and approved before conducting business, and so long as it continues, in this state.

91. Accordingly, the Commissioner has determined that the continued operations of the ATA entities, SDS and SAA, are and would be hazardous, financially and otherwise, to their policyholders, contract-holders, beneficiaries, members, their general creditors and the public. Moreover, the general public will suffer irreparable harm connected with the continuing operation of ATA, SDS and SAA, because the shifting representations they make to each and every contract holder, through the contract terms and marketing practices, are unfounded, and individuals are immediately affected financially and through the risks posed to their health and well-being. These damages may never be reversed even if the ATA, SDS and SAA contracts are cancelled or rescinded. Every day ATA, SDS and SAA operate, the policyholders irrevocably change their financial position.

92. Pursuant to Tenn. Code Ann. § 56-9-133, this Verified Petition and exhibits filed thereto shall be received as *prima facie* evidence of the facts contained herein.

93. Accordingly, the Commissioner requests formal delinquency proceedings under the Act, for the Court to appoint the Commissioner liquidator (hereinafter referred to as "Receiver") of ATA, ATA LLC (the ATA entities), SDS and SAA for the purposes of liquidation as provided by Tenn. Code Ann. § 56-9-306, with all the powers granted to receivers by statute and this Court's orders, and to enjoin all persons described below from interfering with the conduct of the duties of the receiver as provided by Tenn. Code Ann. § 56-9-105. Petitioner proposes, as receiver and liquidator for the ATA entities, SDS and SAA, to locate and marshal their assets in order to return, insofar as possible, the monies and assets of the ATA entities, SDS and SAA to the customers. Some of these assets may be in the possession of or sequestered by Respondent Poseys, Kirkpatricks, Worthy, Youell, Bachman, or Kristy Wright, or in other persons and entities currently unknown. Because ATA, SDS and SAA have no right to exist, they should be shut down and liquidated as soon as possible, and an orderly disposition of its assets and receipts should be started under the Receivership Act. Competing claims for damages and benefits may be made on the same assets. A mere shut-down could leave the policyholders with no recourse whatsoever. A liquidation is vital to establish the orderly statutory process for dealing with its business.

#### **INJUNCTIONS AUTHORIZED BY UNFAIR INSURANCE PRACTICES ACT**

94. Because of the pervasive deceptive practices on the members and policyholders of these entities, in addition to injunctions required to liquidate the insurer, injunction is authorized under the insurance unfair competition and deceptive practices act. Tenn. Code Ann. § 56-8-109 states:

Whenever it appears to the commissioner that any person has violated or is about to violate this part or any rule promulgated under this part, the commissioner may, in the commissioner's discretion, bring an action in the chancery court of Davidson

County to enjoin the violation and to enforce compliance with this part, any rule under this part or any order lawfully entered pursuant to this section. The court shall not require the commissioner to post a bond.

The actions by Respondents constitute a massive deception on the public. The most pervasive fraud is the misrepresentation of the product as legal and that there is an authorized insurer underwriting the coverage. The deception is happening on a national scale. As shown, not only is the insurance coverage not licensed in any state where it is being offered, there is extreme doubt whether the insurer identified in the coverage documents or any policy *even exists*. Further deception is occurring with respect to the scope of the coverage and benefits between what is marketed, and what is actually delivered or paid.

95. This conduct constitutes unfair trade practices defined in Tenn. Code Ann. § 56-8-104, comprising at least (1) Misrepresentation and false advertising of insurance policies, (2) False information and advertising generally with respect to the business of insurance or with respect to any insurer, that is untrue, deceptive or misleading. The conduct fits under several of the definitions of unfair practices. Under Tenn. Code Ann. § 56-8-103, no person shall engage in an unfair trade practice from, in or into this state that is defined in Tenn. Code Ann. § 56-8-104. An injunction is warranted to permanently bar the activities of this insurance enterprise.

#### **FEATURES OF LIQUIDATION RECEIVERSHIP**

96. The Davidson County Chancery Court is given subject matter jurisdiction over receiverships under the insurance act. A liquidation imposes an orderly process to close out the business of ATA, SDS and SAA, and will permit the receiver to marshall the assets that are or should be found on behalf of the creditors as a whole, attempt recoveries of any missing assets, and

to conclude all claims against this insurer. Liquidation, by force of law, requires that all contracts continue in force no longer than 30 days after entry of the order of liquidation, if not shorter. Tenn. Code Ann. § 56-9-308(a). All of the rights and liabilities of the insurer are fixed at the entry of the order of liquidation, except as provided in Tenn. Code Ann. § 56-9-308 and 56-9-326 (third party actions). Tenn. Code Ann. § 56-9-307(b). The State also requests an injunction against suits and other acts that could interfere with the efforts of the receiver, injunctions against all activities that violate Tennessee insurance law, and mandatory cooperation of all persons, agents, service companies, contractors, administrators and entities that have been carrying out the business of ATA, SDS and SAA as set out in the liquidation statutes.

97. **Management and Possession of the ATA entities, SDS and SAA.** When a liquidator is appointed pursuant to Tenn. Code Ann. § 56-9-306, several statutory powers flow from that order under the Act. The order to liquidate the insurer directs the Commissioner, as Liquidator, immediately to take possession of its assets, and vests title to all assets in the Liquidator. Tenn. Code Ann. § 56-9-307(a). Upon issuance of the order to liquidate, the rights and liabilities of any such insurer, its creditors, policyholders, shareholders and members and all other persons interested in its estate shall become fixed as of the date of entry of the order. Tenn. Code Ann. § 56-9-307(b). In ATA's, SDS's and SAA's case, the use of the insurance proceeds to pay off personal real estate obligations of Bart Posey, and further personal expenditures indicated by the records so far, together with the close personal involvement of the Poseys and the other individual Respondents in the administration of the insurance funds, indicate that beyond ATA's, SDS's and SAA's business premises, the individuals may hold assets, information and records of the insurer's business among

their personal effects, or within computer storage, or places that are not at any normal business offices.

98. **Injunctive Relief.** The Commissioner, as Liquidator, has the ability to apply for restraining orders, temporary and permanent injunctions under Tenn. Code Ann. § 56-9-105 to prevent transaction of the insurer's business, transfer of property, interference, waste of assets, destruction of records or data, or continuation or initiation of a number of types of actions against the insurer or its policyholders or enrollees. The Commissioner requests such injunctions against institution of any action against the ATA entities, SDS and SAA for the protection of ATA's, SDS's and SAA's policyholders and insureds upon the appointment of a receiver, all as more fully set forth in the Order terms in the prayer for relief hereto. Additionally, Tenn. Code Ann. § 56-9-313 provides that upon issuance of an order appointing a liquidator of a domestic insurer,

no action at law or equity or in arbitration shall be brought against the insurer or liquidator, whether in this state or elsewhere, nor shall any such existing actions be maintained or further presented after issuance of such order.

Finally, under Tenn. Code Ann. § 56-9-106, all persons who have been performing or are concerned in any way with the affairs of the ATA entities, SDS and SAA are required to cooperate with the Liquidator. This includes all Respondents, any insurance agents or other agents selling these products to the public, or soliciting business in any way, and any persons or financial institutions controlling or with access to the assets that the ATA entities, SDS and SAA have amassed for this business.

99. **Avoidance Powers.** The filing of a petition for liquidation affords statutory remedies upon the entry of an order of liquidation that enable the Liquidator to avoid preferential, fraudulent



and certain other financial transfers prior to the filing date of the petition. These statutory powers, found at Tenn. Code Ann. §§ 56-9-315, 316 and 317, are desirable because they increase the possible available funds for the benefit of the liquidating insurer's policyholders and creditors. Certain transfers and transactions by persons made with the insurance assets of the Respondents may be eligible to be reversed under these insurance statutes, in order to bring assets belonging to the insurance fund back into the estate.

### CONCLUSION

100. Based on all the foregoing facts, reasons, and the law, the Commissioner submits that circumstances support entry of an order of liquidation.

### EXPEDITED HEARING REQUEST

101. Furthermore, the Commissioner submits that the ATA entities, SDS and SAA and other Respondents should be required to respond promptly to this Petition, and that a hearing on this Petition should be granted promptly because of the Commissioner's immediate need for the statutory powers of a Receiver. Service upon the main business entity Respondents will be effected in Tennessee; however, the peripheral individuals and potentially non-existent SAA may be difficult to serve. These delinquency proceedings should not be delayed based on any difficulty in effecting service on the non-Tennessee parties, as effective relief can be obtained against the Tennessee parties to institute a proper receivership of the insurer. The Petitioner requests this Court to set a prompt hearing date on this Petition with an expedited date for the Respondents to file any objection and that notice of such hearing and response date be contained in a Proposed Order Setting Hearing (filed herewith) to be served on the parties and other interested persons at which time the Liquidation Order will be considered. Due to the exigent circumstance of illegality of operations which need to

be stopped forthwith and unknown financial status, there is no just cause to delay the consideration of receivership.

**WHEREFORE**, premises considered, Petitioner prays as follows:

A. That this Court enter its Order finding that the ATA entities (comprised of ATA Inc. 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, and that its continuing operation would be hazardous financially and otherwise to its policyholders, its creditors and the public;

B. That this Court find that individual Respondents have been conducting and promoting the sale of unauthorized insurance contracts by the ATA entities, SDS and SAA, and have acted, in the case of Respondents Bart S. Posey, Sr., Angie Posey, Kristy Wright, William Worthy II, Colin Youell, Linda Kirkpatrick, and Obed W. Kirkpatrick, Sr. without licenses as an insurance producer, and that all Respondents should be ordered enjoined from any further acts of any nature in connection with contracts of unauthorized insurance business in violation of Tennessee law.

C. That this Court find that individual Respondents, together with and through the ATA entities, SDS and SAA, and other instrumentalities, have been committing unfair and deceptive insurance acts in violation of Tenn. Code Ann. §§ 56-8-103 and 104, and that all Respondents on that account as well should be ordered enjoined from any further deceptive acts of any nature in connection with contracts of unauthorized insurance business in violation of Tennessee law.

D. That an Order Appointing the Commissioner and her successors in office as Liquidator of Respondents ATA, ATA LCC, SDS and SAA, with appropriate injunctive and mandatory relief as to Respondents, be entered with substantially the following terms:

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, 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, Kristy Wright, 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. 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 [a date certain be inserted into the Order];

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 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.
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, \_\_\_\_\_ (or other date approved by the court), 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, Kristy Wright, 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 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);

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, Kristy Wright, 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. 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. "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. That 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.



E. That Respondents be required to file a response to this Petition, that summons issue to Respondent, and that an appropriate early hearing date be scheduled for this Petition pursuant to the proposed Order Setting Hearing, that will consider whether to grant this Petition with sufficient time for mailing notice and serving the petition and hearing order on all Respondents or their representatives, as set forth in the service list attached.

F. That the filing of this Petition and any requested Order be entered without cost bond as provided by Tenn. Code Ann. § 20-13-101;

G. For any such other relief as is appropriate.

H. That Petitioner be permitted to amend this Petition and the relief sought herein, to accord with the proof if needed to effectuate complete relief for the circumstances shown to the Court. Such amendment may contemplate additional or alternative grounds for injunctive and permanent relief for other violations of the Tennessee code by Respondents, including but not limited to the unfair and deceptive insurance practices act and for insurance fraud; as well as additional or alternative grounds for delinquency actions pursuant to Title 56, chapter 9, if it should appear that those actions are suited to the facts and any further business entities who may be involved with these Respondents in connection with the unauthorized insurance business.

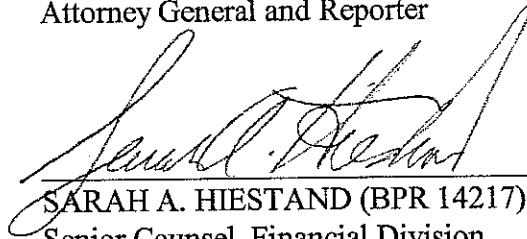
**THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF.**

Respectfully submitted,

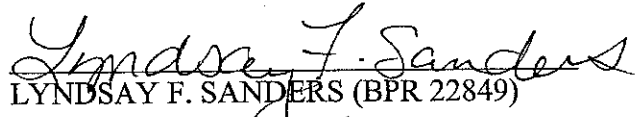


ROBERT E. COOPER, JR. (BPR 10934)

Attorney General and Reporter



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Senior Counsel, Financial Division  
(615) 741-6035; fax (615) 532-8223



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Assistant Attorney General  
Law Enforcement & Special Prosecutions Division  
Office of the Attorney General  
P.O. Box 20207  
Nashville, Tennessee 37202-0207  
(615) 741-4087

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. )  
 )  
 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 YOEELL, an individual )  
 )  
 Respondents. )

No. \_\_\_\_\_

**VERIFICATION**

STATE OF TENNESSEE)  
 COUNTY OF DAVIDSON)

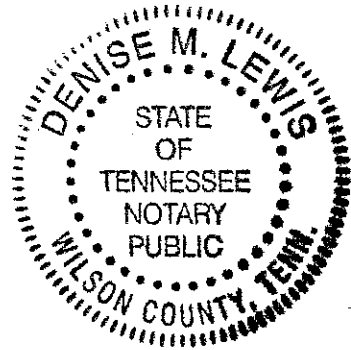
1. I, Leslie A. Newman, am the duly appointed Commissioner of Commerce and Insurance for the State of Tennessee.

2. I have read the foregoing Verified Petition for Appointment of Receiver for Purposes of Liquidation and Injunction and swear that the information contained therein is true and correct to the best of my knowledge, information and belief.

Leslie A. Newman  
LESLIE A. NEWMAN  
Commissioner of Commerce and Insurance  
for the State of Tennessee

SWORN TO AND SUBSCRIBED before me on this 22<sup>nd</sup> day of March,  
2010.

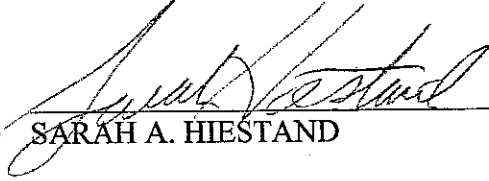
Alexis M. Lewis  
NOTARY PUBLIC  
My Commission Expires: 3/5/12



My Commission Expires MAR

CERTIFICATE OF SERVICE

I hereby certify this 23<sup>rd</sup> day of March, 2010, that the Petition and all attachments thereto will be served by U.S. mail, postage prepaid, to the parties and interested entities listed on the attached service list, after issuance of the summons in this case.

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

William L. Hendricks, Jr.  
Evans Petree, PC  
1661 International Place Drive, Suite 300  
Memphis, Tennessee 38120

901-474-6144, fax 901-374-7571

**Respondent Smart Data Solutions:**

Bart S. Posey, Sr.  
Owner, Smart Data Solutions, LLC  
and Smart Data Solutions, LLC,  
4676 Highway 41 North  
Springfield, Tennessee 37172

**Respondent American Trade Association, Inc.:**

American Trade Association, Inc.  
4676 Highway 41 North  
Springfield, Tennessee 37172

American Trade Association, Inc.  
400 Memorial Blvd.  
Springfield, Tennessee 37172

American Trade Association, Inc.  
c/o National Registered Agents, Inc.  
2300 Hillsboro Road, Suite 305  
Nashville, TN 37212

Obed W. Kirkpatrick, Sr.  
President, American Trade Association, Inc.  
American Trade Association, Inc.  
4676 Highway 41 North  
Springfield, Tennessee 37172

Obed W. Kirkpatrick, Sr.  
President, American Trade Association, Inc.  
400 Memorial Blvd.  
Springfield, Tennessee 37172

**Respondent American Trade Association, LLC:**

American Trade Association, LLC  
c/o Incorp Services, Inc.  
455 West Maurice  
Hot Springs, Arkansas 71901

American Trade Association, LLC  
4676 Highway 41 North  
Springfield, Tennessee, 37172

Bart S. Posey, Sr.  
Owner, American Trade Association, LLC  
4676 Highway 41 North  
Springfield, Tennessee, 37172

**Respondent Serve America Assurance, Ltd.:**

Serve America Assurance, Ltd. Company  
117 Winding Oak Way  
Blythewood, South Carolina 29016

Serve America Assurance, Ltd.  
P.O. Box 5626  
Karachi-7400, Pakistan

Serve America Assurance, Ltd.  
c/o Beema Pakistan Company, Ltd.  
412-427 Muhammadi House  
I.I. Chundrigar Road, P.O. Box 5626  
Karachi-7400, Pakistan

**Individual Respondents:**

Obed W. Kirkpatrick, Sr. and  
Linda Kirkpatrick  
1705 Rocking Chair Place  
Franklin, TN 37067

Richard H. Bachman  
1600 Magpie Cove  
Austin, Texas 78746

Bart S. Posey, Sr. and  
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