

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

FILED

2011 OCT -7 PM 4:01

CLERK & MASTER
DAVIDSON CO. CHANCERY CT.

D.C. & M.

MARIE MURPHY, SPECIAL DEPUTY)
COMMISSIONER OF COMMERCE AND)
INSURANCE FOR THE STATE OF)
TENNESSEE,)

Petitioner,)

v.)

No. 10-507-III

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

Respondents.)

COPY

**MOTION TO PROCEED WITH THE ISSUANCE OF NOTICES OF
DETERMINATION PURSUANT TO TENN. CODE ANN. § 56-9-327**

Pursuant to the Court's Order entered on September 27, 2010, Marie Murphy, in her capacity as Special Deputy Commissioner of Commerce and Insurance for this receivership matter ("Commissioner") and as Statutory Liquidator of Smart Data Solutions, LLC ("SDS"), American Trade Association, Inc., American Trade Association, LLC (collectively referred to as "ATA"), and Serve America Assurance

("SAA"), by and through her counsel, hereby moves this Court for an Order authorizing the Liquidator to proceed with the next phases in the liquidation. These phases include the issuance of the Liquidator's notices of determination on proofs of claim and the adjudication of claims as set forth in Tenn. Code Ann. § 56-9-327 and, after completion of the adjudication process, the submission of the report on claims to the Court pursuant to Tenn. Code Ann. § 56-9-331.

Over eight (8) months have passed since the Liquidator provided the respondents with information about the Liquidator's approach for processing proofs of claim, and no one has responded or filed an objection with the Court. The Liquidator is ready to begin the process of preparing and issuing notices of determination for the over 12,700 proofs of claims (some of which contain hundreds of claims) received by the Liquidation and then to proceed with adjudicating claims in accordance with Tenn. Code Ann. § 56-9-327.

BACKGROUND AND CURRENT STATUS

Upon certain respondents' appealing the May 20, 2010 Final Liquidation Order to the Tennessee Court of Appeals¹ and this Court's denying respondents' request to stay the matter pending the appeal, the Liquidator filed an appeal pendency plan in accordance with Tenn. Code Ann. § 56-9-307(f). Because the Court ordered all policies to terminate by May 31, 2010, and because the entities were not licensed in any state to conduct the

¹ The Court of Appeals rendered its opinion on June 3, 2011, affirming this Court's decision that ATA and SDS were engaging in the business of insurance and thus were insurers subject to the Liquidation Act. The appealing respondents did not file a Rule 11 application to appeal the Court of Appeal's decision to the Tennessee Supreme Court; thus, the Court of Appeal's mandate was returned to this Court on or around August 9, 2011, signifying the end of the appeal.

business of insurance and thus were barred as unauthorized insurance businesses, the Liquidator did not seek a plan for the continued performance of the respondents' policy obligations during the appeal period or to pay any claims, but rather sought to continue to proceed with reviewing and processing the proofs of claim in accordance with the Tennessee Insurers Rehabilitation and Liquidation Act, Tenn. Code Ann. §§ 56-9-101, *et seq.* ("Liquidation Act" or "Act"), and the Final Liquidation Order. Respondents, ATA, SDS, Bart Posey, Richard Bachman, and William Worthy, objected to the Liquidator's proposal and sought to investigate and challenge the Liquidator's claims processing and adjudication methods.²

After conducting a hearing on these issues, the Court issued its September 27, 2010 Memorandum and Order ("September 27, 2010 Order") in which the Court ordered the Liquidator to proceed in accordance with the provisions of the Final Liquidation Order and the Liquidation Act, to submit to the Court on or before January 31, 2011 a report on the number and types of proofs of claim received by the Liquidator, and to present to the objecting respondents the systematic approach that the Liquidator intended to use to determine the claim amounts once the approach was determined. The objecting respondents were instructed to review the Liquidator's systematic claims processing approach and file any objections with the Court. The Liquidator was further ordered not to issue notices of determination on proofs of claim referred to in Tenn. Code Ann. § 56-9-327(a) or to submit the report on the Liquidator's determination and recommendation

² The objecting respondents expressed concern that the Liquidator would not correctly apply the terms of the policies about which the respondents had knowledge from processing and paying policy claims prior to liquidation, and the respondents were interested in minimizing claims liability in the event that the Court of Appeals overturned the Liquidation Order. Certain objecting respondents were seeking the appointment of a third party administrator of claims rather than having the Liquidator and her Special Deputy Liquidator process and adjudicate claims.

for claims referred to in Tenn. Code Ann. § 56-9-331 until the Court ordered those phases to proceed.

On or around January 14, 2011, the Liquidator provided the objecting respondents with a letter explaining the claims processing system that the Liquidator intended to utilize to determine the value and class of proofs of claim submitted to the Liquidator pursuant to the Final Liquidation Order and the Liquidation Act. On January 31, 2011, the Liquidator filed the court-ordered report on the number and types of proofs of claim and included as an exhibit a copy of the January 14, 2011 letter to inform the Court of the process that the Liquidator was implementing to process claims. Over eight (8) months have passed since the Liquidator provided the objecting respondents with information about the Liquidator's approach for processing proofs of claim. The objecting respondents have not responded and have not filed any objections with the Court.

The Liquidator believes that the objecting respondents have had sufficient time and opportunity to submit any objections to the Court and to make further inquiry, to the extent that it is deemed to be appropriate, into the Liquidator's claims processing system. Further, the respondents' appeal of the Final Liquidation Order is over, and the Court of Appeals affirmed that ATA and SDS were transacting the business of insurance and thus were insurers subject to the Liquidation Act. Since nothing has been raised about the Liquidator's claims processing system and over eight (8) months have passed which is sufficient time to allow respondents to raise any objections pursuant to the Court's September 27, 2010 Order, the Liquidator believes that it is time to move forward and is ready to begin preparing and issuing notices of determination in accordance with Tenn. Code Ann. § 56-9-327 for the over 12,700 proofs of claim that have been received.

Claims Processing Overview

The Liquidation has been proceeding with its powers and responsibilities under the Final Liquidation Order and the Liquidation Act, including reviewing proofs of claim. As explained in the January 14, 2011 letter (which is attached hereto as Exhibit 1), the Liquidation is using the Eldorado claims processing system, which ATA, SDS, and/or SAA developed to administer claims based on the various types of policies issued by ATA, SDS, and/or SAA, to initially determine the payable amounts for policy claims submitted by members and providers in the Liquidation.³ The Liquidation staff has identified and has implemented measures to correct any errors in the Eldorado system based on the terms of the various types of policies issued by ATA, SDS, and/or SAA.

The Liquidator has determined that claims for unearned or earned premium refunds and claims of general creditors will be Class 5 claims pursuant to Tenn. Code Ann. § 56-9-330(a)(5). Class 5 claims will only be paid if all valid and approved claims immediately preceding Class 5, including Class 2 policy claims, are paid in full. The Liquidator will issue notices of determination to establish the Class 5 status of these proofs of claim but will only assign a value to these claims if and when all immediately preceding classes are paid in full. Proofs of claim filed after the August 31, 2010 claims

³ Upon the recommendation of the Special Deputy Liquidator, the Liquidator has determined that the Eldorado claims processing system is the most efficient system for processing the proofs of claim submitted in the Liquidation. First, since members of the Liquidation staff who are initially processing the proofs of claim are familiar with and utilized the system prior to seizure, estate assets are not being expended to train staff to learn a different claims processing program. Likewise, estate assets are not being expended to build another claims processing system which would be wasteful considering that the Court has terminated all of the ATA policies, has enjoined the issuance of any new ATA policies, and the companies are being wound down by the Liquidator. Further, the use of Eldorado provides access to previous claim submissions and payment history which allows duplicate claims to be easily identified, allows review of the past payment history for a member, and allows the Liquidation staff to link proofs of claim to any previously entered medical claim information.

filing deadline are late-filed and are Class 7 claims. The Liquidator will issue notices of determination to establish the Class 7 status of these late-filed proofs of claim but will only assign a value to these claims if and when all immediately preceding classes are paid in full.

Control Measures Implemented by the Liquidator

The Liquidation staff has implemented control measures to manually review certain policy claims to ensure that the initial results produced by the Eldorado system are accurate. For example, upper management level liquidation staff has manually reviewed and audited all claims that are deemed payable by the Eldorado system at or above \$2,500.00. The Liquidation staff has also manually reviewed claims with certain types of treatment or payment codes and has manually reviewed claims identified by the Eldorado system as containing possible pre-existing conditions.

Additional Procedures Implemented by the Liquidator

In reviewing proofs of claim, the Special Deputy Liquidator has discovered the following situations and has recommended to the Liquidator the implementation of the following additional procedures to ensure the administration of a fair and equitable claims processing system. First, based on the recommendation of the Special Deputy Liquidator, the Liquidator has decided that, when there are proofs of claim submitted by both a member and a provider for the same services and the claims are determined as payable by the Eldorado system based on the terms of the member's policy, the Liquidator will issue a notice of determination for the determined payable amount to the

member and will inform the provider that the member's proof of claim for the same services has been accepted by the Liquidator. In all other situations when claims are determined to be payable and there are no duplicates filed by additional claimants, the Liquidator will issue the notice of determination to the person or entity who filed the proof of claim.

Second, as part of the ongoing Liquidator's asset recovery efforts, the Special Deputy Liquidator has communicated with the officials at the various payment processors who during different time periods were in charge of debiting and crediting members' bank accounts and credit card accounts to collect the monthly premiums owed on the ATA, SDS, and/or SAA policies and for providing ATA, SDS, and/or SAA with reports about members' cancellation of coverage. In certain instances, some of the coverage data received from the payment processors appears to be incomplete and is not reconcilable with data maintained by ATA, SDS, and/or SAA or received by the Liquidation during the proof of claim process.⁴ Upon the Special Deputy Liquidator's recommendation, the Liquidator has determined that the coverage data within the Eldorado system, the data that has been provided by the various payment processors, and the bank account statements that have been provided as part of some of the members' proofs of claims should all be utilized to determine whether ATA members' policies continued in effect until the court-ordered termination of coverage on May 31, 2010. If there is incomplete or irreconcilable data about whether a member paid for coverage up to the May 31, 2010 court-ordered policy termination deadline, the Liquidator has determined that it is fair and equitable to presume that coverage existed through May 31, 2010. This

⁴ Referring to data as "incomplete" or "not reconcilable" merely suggests that there may be additional data available that has not been provided to the receivership. This does not imply that the data received to date from the various payment processors is inaccurate.

determination is based in part on the Special Deputy Liquidator's review of data showing that the amount of money being deposited into the payment processors' accounts for ATA, SDS, and/or SAA post seizure through April 2010 was not significantly different from the amount of money being deposited prior to seizure, which suggests a fairly stable membership and supports the Liquidator's determination to presume coverage continued in these situations.

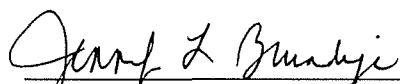
The fact that SDS, ATA, and SAA may have incomplete data at the company level is not unique to the Liquidation of ATA, SDS, and SAA, but traditionally exists in most situations when fraudulent, mismanaged, or unauthorized insurance companies are placed into receivership pursuant to the Act. The Liquidation team, including the Department staff and the Liquidator's appointed Special Deputy Liquidator, has experience with these types of situations and is experienced in making well informed decisions based on the information that is available for purposes of claims processing and winding down the administrative functions of the liquidated companies.

As the Liquidator and Special Deputy Liquidator continue to review and process proofs of claim and discover unique factual scenarios like those explained above, the Liquidator will continue to implement procedures that ensure the fair and equitable determination and adjudication of claims.

In conclusion, the Liquidator respectfully requests that the Liquidator be allowed to proceed with the next phases in the liquidation so that the Liquidator may begin preparing and issuing notices of determination for the over 12,700 proofs of claim and then proceed with the claims adjudication process pursuant Tenn. Code Ann. § 56-9-327.

Respectfully submitted,

LUNA LAW GROUP, PLLC



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*Special Counsel for the Liquidator and
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THIS MOTION IS SET TO BE HEARD ON FRIDAY, OCTOBER 21, 2011, AT 9:00 A.M. OR AS SOON THEREAFTER AS IT MAY BE HEARD. IF NO RESPONSE IS TIMELY FILED AND SERVED, THE MOTION SHALL BE GRANTED WITHOUT FURTHER HEARING.

CERTIFICATE OF SERVICE

I hereby certify this the 7th day of October, 2011, that a true and exact copy of the foregoing has been served by U.S. mail, postage pre-paid, and/or via email as indicated, to the parties and interested entities listed on the attached service list.

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January 14, 2011

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Re: *Leslie A. Newman v. Smart Data Solutions, et al., Chancery Court of Davidson County, Tennessee, Case No. 10-507-III*

Dear Nader and John:

Pursuant to the Court's September 27, 2010 Order, the Liquidation is providing your clients with general information about the systematic approach that the Liquidator intends to utilize for determining the value of Proofs of Claim ("POCs") that have been submitted to the Liquidator pursuant to the Insurers Rehabilitation and Liquidation Act, Tenn. Code Ann. §§ 56-9-101, *et seq.*, and the Final Order of Liquidation.

At the time of seizure of American Trade Association ("ATA"), Smart Data Solutions LLC ("SDS"), and Serve America Assurance ("SAA") on March 24, 2010, the companies were utilizing the Eldorado claims processing system to process and determine claims submitted by the members of ATA or their medical providers. The Eldorado system was programmed to administer the various types of policies issued by ATA, SDS, and/or SAA.

At the direction of the Liquidator, the Special Deputy Liquidator and the liquidation staff have tested the Eldorado system and have determined that the system produces reliable results based on the terms of the various health care policies. The Liquidator has determined that the Eldorado claims processing system is the most efficient system for processing the POCs submitted in the liquidation. As the liquidation staff who will initially be processing the POCs are familiar with and utilized the Eldorado system prior to seizure, estate assets will not be expended to train staff to learn a different

claims processing program. Likewise, estate assets will not be expended to build another claims processing system. This would be wasteful considering the Court has terminated all of the ATA policies, has enjoined the issuance of any new ATA policies, and the companies are being wound down by the Liquidator. Additionally, medical claims previously submitted by providers or ATA members for services rendered through April 2010 have already been input into the Eldorado system. This allows the liquidation staff to link a POC to any previously entered medical claim information, which saves time and reduces redundancies. The use of Eldorado will provide access to previous claim submissions and payment which will allow duplicate claims to be identified easily and will allow review of past payment history for a member.

While the Liquidator and her staff have performed the testing necessary at this time to determine that the Eldorado system will produce reliable initial results, the Liquidator is establishing control measures to be implemented by the Special Deputy Liquidator and management-level liquidation staff to ensure that the initial Eldorado results are accurate before the Liquidator issues notices of determination for the POCs to the claimants. For example, Eldorado claim determinations for certain types of treatment codes, as well as claims deemed by Eldorado to be payable above a yet-to-be established dollar amount, will be reviewed and individually audited before the Liquidator's notices of determination are issued. When the Eldorado system indicates that a claim should be denied based on a possible pre-existing condition, the Liquidator will cause the claim history for the member to be reviewed to ascertain if and how previously submitted claims for similar conditions and services have been treated for the member.

Additionally, the Liquidator has determined that POCs submitted for refund of premiums paid to ATA, SDS, and/or SAA are Class 5 claims pursuant to Tenn. Code Ann. § 56-9-330(a)(5). These claims will only be paid if all valid and approved Class 2 policy claims are paid in full. At this time, the Liquidator has determined that there are not enough assets to pay the Class 2 claims in full. Therefore, at the appropriate time, the Liquidator will issue the Liquidator's notices of determination to establish the Class 5 status of these POCs. The Liquidator will only assign a value to these Class 5 claims when and if all preceding classes (i.e., Class 2, Class 3, and Class 4) of POCs pursuant to Tenn. Code Ann. §56-9-330(a) are paid in full.

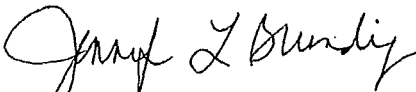
Similarly, at the appropriate time, the Liquidator will issue notices of determination for POCs submitted by general creditors or other types of claimants who are assigned a class below Class 2 (i.e., Class 3, Class 4, Class 6, etc.) pursuant to Tenn. Code Ann. § 56-9-330(a) that establish the class of the claim. The Liquidator will only assign a value to these classes of claims when and if all immediately preceding classes are paid in full.

The Liquidator is currently working toward filing a report with the Court on January 31, 2010, concerning the number of claims and types of POCs received by the Liquidator. At that time, the Liquidator can provide any additional information about the

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systematic approach that continues to be implemented and evaluated for processing the POCs received by the Liquidator.

Sincerely,



Jennifer L. Brundige

cc: Counsel of Record