

FILED

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
20th JUDICIAL DISTRICT, PART II 2011 APR 12 PM 4:04

LESLIE NEWMAN, Commissioner of the)
Tennessee Department of Commerce and)
Insurance (Marie Murphy, Special Deputy)
Commissioner),)
)
Petitioner,)
)
v.)
)
SMART DATA SOLUTIONS, LLC, and others,)
)
Respondents.)

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

No. 10-507-III

COPY

MOTION TO WITHDRAW AS COUNSEL OF RECORD

Pursuant to Local Rule 5.01, the law firm Evans Petree, PC, and its members William Hendricks, Jr., Russell Hensley, and Theodore Kitai (collectively, "the Evans Petree Lawyers") respectfully move for leave to withdraw as counsel of record for Smart Data Solutions, LLC ("SDS"); American Trade Association, Inc. ("ATA"); American Trade Association, LLC; and Bart and Angie Posey. These are the grounds for granting this motion:

1. The Commissioner originally filed this action to seize and liquidate ATA, SDS, and SAA. ATA and SDS disputed the Commissioner's authority to seize and liquidate ATA and SDS because ATA and SDS are not insurers. The Evans Petree lawyers, as co-counsel with Baydoun & Knight, argued that dispute on behalf of their clients before this Court. This Court ruled in favor of the Commissioner on April 14, 2010 and entered a Liquidation Order on May 20, 2010. The Court's April 14, 2010 ruling is on appeal.

2. On March 15, 2011, the Commissioner filed a contempt petition. The Commissioner named as "Contempt Respondents" eight individuals and entities. The "Contempt Respondents" include the Evans Petree Lawyers, as well as Bart Posey. The contempt petition

asserts that in early 2010 “some combination” of the “Contempt Respondents” engaged in conduct that violated the Court’s March 23, 2010 Seizure Order and May 20, 2010 Liquidation Order.

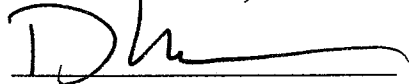
3. The Evans Petree Lawyers’ clients should be able to speak through counsel who are not also having to defend themselves against the Commissioner’s claims. The Commissioner’s contempt petition therefore requires that the Evans Petree Lawyers withdraw from representing any party to this matter. See, e.g., Rules of Professional Conduct 1.7(b) & 1.16. The Evans Petree Lawyers have themselves retained Harwell Howard Hyne Gabbert & Manner, P.C., who file this motion on their behalf.

4. To the best knowledge of the Evans Petree Lawyers, no hearing or other matter is currently set in these proceedings, other than an April 19, 2011 scheduling conference concerning the contempt petition (see March 23, 2011 Memorandum and Order). Granting this motion therefore will not have a material adverse effect on the parties for whom the Evans Petree Lawyers are currently co-counsel of record.

As good cause exists, the Evans Petree Lawyers respectfully request leave to withdraw as counsel of record.

Respectfully submitted,

HARWELL HOWARD HYNE
GABBERT & MANNER, P.C.

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Jr., Russell Hensley, and Theodore Kitai*

NOTICE OF HEARING: Movants have docketed this motion to be heard during the Court's regular motion docket that will begin at 9 a.m. on April 29, 2011. If you fail to timely file and serve a written response to this motion, the Court may grant the motion without further hearing.

Certificate of Service

On April 12, 2011, I caused this document to be sent by first-class mail to:

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