

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<p><b>UNITED STATES OF AMERICA,</b></p> <p style="text-align: center;"><b>Plaintiff,</b></p> <p><b>v.</b></p> <p><b>2010 CHEVROLET CAMARO 2SS COUPE BEARING VIN 2G1FT1EW0A9145379; et al</b></p> <p style="text-align: center;"><b>Defendants.</b></p>	<p>)</p>	<p><b>Case No. 3 :11CV00090</b></p> <p><b>JUDGE HAYNES</b></p>
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**MEMORANDUM IN SUPPORT OF MOTION FOR  
INTERLOCUTORY PRIVATE JUDICIAL SALE  
OF DEFENDANT VEHICLES ONLY**

The United States has moved for an interlocutory private judicial sale of the Camaro 2SS Coupe bearing VIN # 2G1FT1EW0A9145379 (“Defendant Camaro) and the 2005 Harley Davidson Road King Motorcycle bearing VIN 1HD1FXV185Y677771 (“Defendant Harley”) (collectively hereinafter referred to as “Defendant Property”). If the court orders the sale, the proceeds of the interlocutory sales will become substitute *res* subject to forfeiture in place of the property that was sold, and as such will be held in an interest-bearing account maintained by the United States pending the conclusion of the forfeiture action. *See* Supp.R.Fed.R.Civ.P G(7)(b)(iv). The United States has no objection to returning the Defendant Property to the only Claimant, Bart S. Posey, if Claimant posts security for the Defendant Property in the amount of the appraised value. *See* Supp.R.Fed.R.Civ.P G(7)(b)(v).

***The value of the Defendant Property is diminishing.***

In support thereof, since the time of seizure of the Defendant Camaro, the value has diminished from approximately \$30,000.00 to approximately \$23,200.00 and has accrued expenses of over \$5,000.00 to date. (D.E. \_\_\_; Affidavit of Paralegal Deborah Krause filed simultaneously herewith). The Defendant Harley was valued at approximately \$8,000.00 to \$10,000.00 when it was seized in 2010, and it has incurred over \$5,580.00 in expenses since the date of seizure. (D.E. \_\_\_; Affidavit of Paralegal Deborah Krause filed simultaneously herewith). Further, both vehicles are subject to deterioration the longer they sit without use.

***Victims of fraud allegedly committed by the Poseys stand to lose over \$2.5 million dollars.***

Petitioner Marie Murphy, in her capacity as Special Deputy Commissioner of Commerce and Insurance for the State of Tennessee, and as the Statutory Liquidator/Receiver (“the Liquidator”) of Smart Data Solutions, LLC, (“SDS”) American Trade Association, Inc., and American Trade Association, LLC (together ATA) and Serve America Assurance (“SAA”) owned and/or operated by Bart Posey and wife Angie Posey (collectively “entities”) performed an investigation into the entities. The Liquidator’s investigation revealed that “the Poseys fraudulently transferred and/or converted over \$2.5 million from the entities to or for themselves or their benefit.” The “Liquidator has been locating and collecting assets for the benefit of the victims of the operations of the entities [and] is well along in the claims process of the purported health insurance business. . . . Some 12,000 claims have been filed.” (D.E. 10: Verified Claim of Statutory Liquidator/Receiver and Exhibits). A review of the Liquidator’s claim makes it clear that the fraud is the same fraud set forth in the Affidavit to the Verified Complaint. (D.E. 10: Claim)(D.E. 2: Affidavit).

## **I. PROCEDURAL HISTORY**

In 2011, the United States filed civil forfeiture actions (which were later consolidated into this action) against the Defendant Property alleging that the Defendant Property is subject to forfeiture because:

- a) the Defendant Property constitutes or is derived from proceeds traceable to a violation of wire fraud in violation of 18 U.S.C. § 1343 using a scheme and artifice to defraud using marketing via the internet and other interstate sources including interstate payment processors to receive payments intended to pay for health care premiums;
- b) the Defendant Property constitutes or is derived from proceeds traceable to a theft or embezzlement in connection with health care in violation of 18 U.S.C. § 669;
- c) the Defendant Property constitutes property involved a transaction or attempted transaction in violation of 18 U.S.C. § 1957, or any property traceable to such property in that they were each purchased through a monetary transaction in criminally derived property (embezzled health care premium funds or wire fraud) of a value greater than \$10,000 in violation of 18 U.S.C. § 1957; and
- d) the Defendant Harley is property which constitutes or is derived from proceeds of some form of unlawful activity and is involved in a financial transaction which is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds of specified unlawful activity in violation of 18 U.S.C. § 1956.

(D.E. 1 & 2: Defendant Camaro Verified Complaint and Affidavit)( 3:11cv00388, D.E. 1 & 2: Defendant Harley Complaint and Affidavit).

Public notice of each forfeiture action was advertised online on [www.forfeiture.gov](http://www.forfeiture.gov) for a period of thirty (30) consecutive days, and direct notice was given to persons who reasonably appeared to have an interest in the Defendant Property. (D.E. \_\_: Affidavit of Deborah Krause filed simultaneously herewith). Direct notice of the forfeiture action against the Defendant Camaro was sent by certified mail to Bart Posey and his attorney, Peter Strianse, and direct notice of the forfeiture

action against the Defendant Harley was sent to Bart and Angie Posey by certified mail return receipt requested. (D.E. \_\_: Affidavit of Deborah Krause filed simultaneously herewith). Bart Posey is the only Claimant to the Defendant Property. (D.E. 6: Posey Claim to Defendant Camaro)(3:11CV00388 D.E. 5: Posey Claim to Defendant Harley).

## **II. AUTHORITY FOR INTERLOCUTORY SALE**

When certain conditions are present, the court has authority under the following procedural rules and statutory provisions to order an interlocutory sale of property that is subject to forfeiture prior to a final adjudication on the Government's forfeiture action.

The Defendant Property is in the custody of the United States Marshals Service. ( D.E. 1: Camaro Complaint)( 3:11cv00388, D.E. 1: Harley Complaint). The court may order the property sold if the property is at risk of deterioration by being detained; the expense of keeping the property is excessive or is disproportionate to its fair market value; the property is subject to a mortgage or to taxes on which the owner is in default; or if the court finds other good cause. Supp.R.Fed.R.Civ.P G(7)(b)(i).

The sale must be made by a United States agency that has authority to sell the property, by the agency's contractor, or by any person the court designates. Supp.R.Fed.R.Civ.P G(7)(b)(ii). A contested sale of personalty is governed by 28 U.S.C. § 2004. Supp.R.Fed.R.Civ.P G(7)(b)(ii). 28 U.S.C. § 2004 provides that personalty shall be sold in accordance with 28 U.S.C. § 2001, unless the court orders otherwise. It is the position of the United States that the conditions set forth in 28 U.S.C. § 2001 require more expense than necessary to conduct a fair sale of two vehicles. In particular, the government would suggest that only one independent appraisal is necessary and a minimum sale price of two-thirds of the appraised value is appropriate, and that no additional after-

sale advertising need be made if the minimum sale price is met.

### **III. THE CONDITIONS FOR AN INTERLOCUTORY SALE ARE PRESENT**

A court-ordered interlocutory private judicial sale of the Defendant Property, pursuant to the provisions cited above, is justified in this case. The Defendant Property is not only at risk of deterioration by being detained, it is incurring expense due to storage that is disproportionate to its fair market value. The Defendant Camaro has lost over \$7,000.00 in value and has incurred an additional \$5,580.00 in expenses, and the Defendant Harley has incurred expenses of over one-half of its value. (D.E. \_\_\_: Affidavit of Paralegal Deborah Krause filed simultaneously herewith).

The foregoing demonstrates the need for an interlocutory sale to preserve the value of the Defendant Property for the victims of the alleged 2.5 million dollar fraud involving health care pending a determination of the Government's forfeiture claims. (See D.E. 1 & 2: Complaint and Affidavit)(setting forth the alleged fraud scheme).

By this motion, the United States is requesting authorization to proceed with a private sale of the Defendant Property after one appraisal, with a minimum sale value set at two-thirds of the appraised value for the Defendant Property.

Based upon the reasons set forth herein, a sale of the Defendant Property by the United States Marshals Service affords the best protection to all concerned. A private sale versus a public sale will allow the United States Marshals Service the discretion to sell the Defendant Property in the most commercially feasible manner.

### **IV. CONCLUSION**

For the reasons stated above, the United States respectfully requests that the court order the sale of the Defendant Property described herein on the terms and conditions set forth in the proposed

order submitted herewith.

Respectfully submitted,

JERRY E. MARTIN  
United States Attorney

By: s/Debra Teufel Phillips  
DEBRA TEUFEL PHILLIPS  
Assistant U.S. Attorney  
110 Ninth Avenue South, Suite A-961  
Nashville, Tennessee 37203  
Telephone: 615 736-5151  
Facsimile: 615 736-5323

**CERTIFICATE OF SERVICE**

I hereby certify that on this 23rd day of May, 2012, a copy of the foregoing Memorandum of Law in Support of Motion for an Interlocutory Private Sale was filed electronically. Notice of this filing will be sent to the following, if registered, by operation of the Court's electronic filing system.

If not registered, notice was mailed by regular U.S. mail to:

Peter J. Strianse  
Tune, Entekin & White  
315 Deaderick Street, Suite 1700  
Nashville, TN 37238

Eric W. Smith  
Bradley Arant Boult Cummings LLP  
Roundabout Plaza  
1600 Division Street, Suite 700  
Nashville, TN 37203

s/Debra T. Phillips  
DEBRA TEUFEL PHILLIPS