

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

FILED
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CHLORA A. LINDLEY-MYERS,)
Special Deputy Commissioner of)
Commerce and Insurance)
for the State of Tennessee,)

Petitioner,)

v.)

SMART DATA SOLUTIONS, LLC,)
a Tennessee limited liability company,)
et al.,)

Respondents.)

No. 10-507-III

Petition for Contempt v.
Posey, Bachman and others

**JOINT MOTION FOR APPROVAL OF
POST-JUDGMENT SETTLEMENT AGREEMENT**

Special Deputy Commissioner Chlora A. Lindley-Myers, in her capacity of Statutory Liquidator of Smart Data Solutions, LLC; American Trade Association, Inc.; American Trade Association, LLC; and Serve America Assurance (the "Liquidator") and Evans Petree PC, a Tennessee professional corporation (the "Law Firm"), Russell J. Hensley ("Hensley"), and Theodore T. Kitai ("Kitai"), (Hensley and Kitai, collectively, the "Attorneys") move the Court for an order approving a Post-Judgment Settlement Agreement (attached hereto as Exhibit 1), between the Liquidator and the Law Firm and the Attorneys.

The movants would show:

1. On May 20, 2010, this Court entered a Final Order appointing the Commissioner as Receiver for Liquidation as provided by Tenn. Code Ann. §§ 56-9-306 and 307, and by operation of law under Tenn. Code Ann. §§ 56-9-101, et seq., and all powers specifically enumerated in the Final Order appointing the Commissioner as Receiver for Liquidation.

2. Pursuant to her authority, the Liquidator filed a petition for contempt against Bart S. Posey ("Posey"); Richard H. Bachman ("Bachman"), Best Benefits Association, Inc.; Quality Benefits Group, LLC; William L. Hendricks, Jr. (formerly an attorney at the Law Firm); the Law Firm; and the Attorneys. Following a three-day trial in February, 2012, the Court on April 2, 2012, entered judgment for contempt in the amount of \$669,016.79 jointly and severally against Posey, Bachman, Hendricks, the Law Firm and the Attorneys.

3. The itemized damages for contempt in the April 2, 2012, order were:

- (1) Posey, Bachman, Hendricks, the Firm and the Attorneys were jointly and severally liable for contempt in the amount of \$150,000.00 (related to Plan Rx);
- (2) Posey, Bachman, Hendricks, the Firm and the Attorneys were jointly and severally liable for contempt in the amount of \$374,616.79 (related to Best Benefits Association);
- (3) Posey, Bachman, Hendricks, the Firm and the Attorneys were jointly and severally liable for contempt in the amount of \$144,400.00 (related to funds in EP Trust Account); and
- (4) Hendricks, the Firm and the Attorneys were jointly and severally liable for conversion in the amount of \$100,200.00 (which sum was also included in the \$144,400.00 damage amount). Posey was also liable for conversion in the amount of \$13,000.00 (which sum was also included in the \$144,400.00 damage amount).

Attorney's fees were to be determined.

4. Post-trial, the Liquidator filed her motion for attorney's fees, and the Law Firm and Attorneys objected. The Law Firm filed a Rule 60 motion as to \$374,616.70 of the damages. The Law Firm and Attorneys also filed a Rule 60 motion as to \$150,000.00 of the damages. Hendricks was also represented by counsel for the Attorneys as a party in the post-trial motions.

5. On August 15, 2012, the Court entered a Memorandum and Order (1) awarding the Liquidator \$250,864.60 in attorney's fees and expenses against all of the Respondents; (2) granting the Rule 60 motion as to the \$374,616.70 in damages in favor of the Law Firm only; and (3) denying the Rule 60 motion as to the \$150,000.00 in damages. The Law Firm and the Attorneys did not file a post-trial motion as to the \$144,400.00 damage award or the conversion.

6. The overall result of the two orders was an award of damages for contempt against the Law Firm in the amount of \$545,264.60, and an award of damages in the amount of \$919,881.36 against the Attorneys and Hendricks. Posey and Bachman did not contest the April 2, 2012, award of damages against each of them in the amount of \$669,016.79 or the additional award of attorney's fees and expenses as damages in the amount of \$250,864.60.

7. Both the Liquidator and the Law Firm and the Attorneys are in a position to appeal the Court's orders of April 2 and August 15, 2012, to the Tennessee Court of Appeals. Upon consideration of the time, cost and uncertainty of further litigation, the Liquidator, the Law Firm and the Attorneys have entered into the attached Post-Judgment Settlement Agreement and ask the Court for an Order approving it and directing the

Liquidator to take all necessary steps to conclude the post-judgment settlement for the benefit of the Receivership Estate.



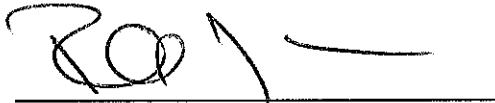
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Special Counsel for Chlora A. Lindley-Myers,
Special Deputy Commissioner, in her
Official Capacity as Statutory Liquidator

Evans Petree PC

By: 
Its 

1000 Ridgeway Loop Road, Suite 200
Memphis, TN 38120
Phone: (901) 525-6781
Fax: (901) 374-7505


Russell J. Hensley
Theodore T. Kitai

NOTICE OF HEARING

This motion is set to be heard on September ____, 2012, at ____ o'clock.

CERTIFICATE OF SERVICE

I certify that a true and exact copy of the foregoing document has been forwarded by United States Mail, first class, with sufficient postage, and by e-mail where indicated, on this, the 12th day of September, 2012, to the following:

D. Alexander Fardon, Esq. alex.fardon@h3gm.com
Craig V. Gabbert, Jr., Esq. cvg@h3gm.com
Harwell, Howard, Hyne, Gabbert & Manner PC
333 Commerce Street, Suite 1500
Nashville, Tennessee 37201

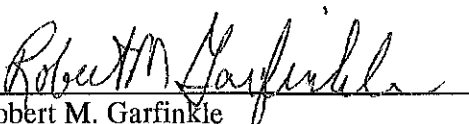
Attorneys for Evans Petree, PC, William L. Hendricks, Jr.,
Russell J. Hensley, and Theodore T. Kitai

E. Woods Weathersby, Esq. wweathersby@evanspetree.com
David J. Cocke, Esq. dcocke@evanspetree.com
Theodore T. Kitai, Esq. tkitai@evanspetree.com
Russell J. Hensley, Esq. rhensley@evanspetree.com
Evans Petree PC
1000 Ridgeway Loop Road, Suite 200
Memphis, Tennessee 38120

William L. Hendricks, Jr., Esq. ksw@citlink.net
c/o Kenneth S. Williams, Esq.
Madewell, Jared, Halfacre & Williams
230 North Washington Avenue
P. O. Box 721
Cookeville, Tennessee 38503-0721

Mr. Bart Posey
3448 Forest Park Road
Springfield, Tennessee 37172

Mr. Richard Bachman
1600 Magpie Cove
Austin, Texas 78746


Robert M. Garfinkle

POST-JUDGMENT SETTLEMENT AGREEMENT

THIS POST-JUDGMENT SETTLEMENT AGREEMENT (the "Agreement") dated as of this the 11 day of September 2012, is entered into by and among Chlora Lindley-Myers, Special Deputy Commissioner of Commerce and Insurance for the State of Tennessee in her official capacity as statutory liquidator of Smart Data Solutions, LLC, American Trade Association, Inc., American Trade Association, LLC, and Serve America Assurance ("Liquidator"), Evans Petree PC, a Tennessee professional corporation (the "Firm"), Russell J. Hensley ("Hensley") and Theodore T. Kitai ("Kitai")(Hensley and Kitai, collectively, the "Attorneys").

RECITALS:

WHEREAS, without admission of any liability on the part of any of the parties hereto and upon consideration of the time and cost of further litigation, including additional post-trial motions and appeals, the parties mutually desire to resolve and settle this action and to avoid further litigation in connection therewith;

WHEREAS, on or about March 15, 2011, the Liquidator filed a suit in the Chancery Court of Davidson County, Tennessee (the "Court") in cause no. 10-507-III (the "Lawsuit");

WHEREAS, after the trial of the Lawsuit, the Court entered its Memorandum and Order on or about April 2, 2012 (the "April 2012 Order"), wherein the Court found made the following findings with regard to the Firm and the Attorneys:

- (a) The Firm and Attorneys are jointly and severally liable for contempt in the amount of \$150,000.00;
- (b) The Firm and Attorneys are jointly and severally liable for contempt in the amount of \$374,016.79;

(c) The Firm and Attorneys are jointly and severally liable for contempt in the amount of \$144,400.00; and

(d) The Firm and Attorneys are liable for conversion in the amount of \$101,200.00, which sum is included in the \$144,400.00 contempt damage award.

WHEREAS, after hearing certain post-trial motions, the Court entered its Memorandum and Order Awarding Attorneys' Fees; Denying Rule 60 Motion as to \$150,000 Damages; Granting Rule 60 Motions as to \$374,616.70 Damages on or about August 15, 2012 (the "August 15, 2012, Order", together with the April 2, 2012, Order, collectively, the "Orders"), wherein the Court made the following additional findings with regard to the Firm and/or the Attorneys:

(a) The Firm and Attorneys are jointly and severally liable for the \$231,095.00 fee award and the \$19,769.60 expenses award;

(b) The Firm and Attorneys are jointly and severally liable for the \$150,000.00 damage award;

(c) The Attorneys are jointly and severally liable for the \$374,616.79 damage award, not the Firm¹; and

(d) Court costs are assessed against the Firm and the Attorneys.

WHEREAS, in connection with the foregoing, the parties desire to (i) settle this action and to resolve all claims which were or could have been alleged against the Firm and the Attorneys through an accord and satisfaction of the judgment awards found against them by the Court pursuant to the Orders; and (ii) provide for other matters as set forth in this Agreement.

¹ The August 2012, Order inadvertently states that "only \$294,000.00 is assessed jointly and severally against the Law Firm." August 2012, Order, p. 13. The parties hereto acknowledge and agree that such amount should be \$294,400 to account for certain funds that were in the amount of \$144,400, not \$144,000.

A G R E E M E N T:

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Final Settlement and Resolution. At its completion, this Agreement constitutes a final and binding settlement and resolution as to all issues and claims arising between the parties or which could have arisen between the parties. It is understood that this Agreement does not include William L. Hendricks, Jr., as an individual attorney and/or his former capacity as an attorney at the Firm.

2. Payment to Liquidator. The Firm, on behalf of the Firm and the Attorneys, agrees to pay to the Liquidator the amount of Six Hundred Thousand and NO/100 Dollars (\$600,000)(the "Settlement Amount") on or before September 12, 2012 in immediately available good funds.

3. Effectiveness of Settlement Agreement. This Agreement shall become effective immediately upon the execution hereof by all parties and upon receipt of the wire transfer or funds clearing for the payment of the Settlement Amount.

4. Waiver of Appellate Rights. As further consideration for the settlement and resolution of the matters set forth herein, the Firm and the Attorneys, on the one hand, and the Liquidator, on the other hand, hereby agree not to commence, join in, prosecute or participate in any appeal to the Tennessee Court of Appeals regarding the Lawsuit which would be adverse to the other party and hereby waive all of their respective rights to make such an appeal.

5. Entering of Order. Upon receipt of the Settlement Amount, the Liquidator shall immediately submit to the Court a proposed order, substantially in the form attached hereto as Exhibit A, approving this settlement.

6. Release of Liquidator. For and in consideration of the settlement contemplated hereunder, the Firm and the Attorneys and their respective administrators, successors and assigns, hereby fully and forever release and discharge the Liquidator, its successors and assigns, its officers, interest owners, directors, managers, affiliates, agents, attorneys, employees and its heirs, executors, administrators, successors, and assigns from any and all claims, demands, judgments, damages, expenses, actions and causes of action including any claim which the Firm and/or the Attorneys now have, known or unknown, or may have in the future, including without limitation, claims arising out of or in connection with any and all damages, expenses, claims, actions or causes of action in the Lawsuit or that could have asserted in the Lawsuit.

7. Release of Firm and Attorneys. For and in consideration of the settlement contemplated hereunder, the Liquidator and its administrators, successors and assigns, hereby fully and forever releases and discharges the Firm and the Attorneys, their respective successors and assigns, their respective officers, interest owners, directors, managers, affiliates, agents, attorneys, employees and their respective heirs, executors, administrators, successors, and assigns from any and all claims, demands, judgments, damages, expenses, actions and causes of action including any claim which the Liquidator now has, known or unknown, or may have in the future, including without limitation, claims arising out of or in connection with any and all damages, expenses, claims, actions or causes of action in the Lawsuit or that could have asserted in the Lawsuit. The Liquidator hereby represent and warrants to the Firm and Attorneys that it owns all rights, title and interest in (and has not assigned) the claims, demands, judgments,

damages, expenses, actions and causes of action being released by Liquidator hereunder.

8. No Admissions. The parties hereto understand and agree that the payment of the Settlement Amount and all other consideration payable or given hereunder is strictly for the purpose of compromise and settlement of disputed claims, and is not an admission of liability, which liability is expressly denied, such consideration having been paid/given and/or agreed to be paid/given solely to avoid further litigation in connection with these matters.

9. Confidentiality. The Liquidator acknowledges that all of the communications, discussions and negotiations between the parties leading up to and resulting in this Agreement and the settlement and resolution of the matters contemplated herein are confidential and agrees that it shall keep all of such communications, discussions and negotiations, in whatever form, confidential to the greatest extent allowable by applicable law.

10. No Interference. The Liquidator hereby acknowledges and agrees that, in the event that the Firm and/or any of the Attorneys pursues indemnification, contribution or other similar rights from third parties with regard to the Lawsuit, it shall not take action to bar any such efforts. The Firm and Attorneys acknowledge that, notwithstanding the foregoing, the Liquidator expresses no opinion as to any rights or claims of action that the Firm and/or any of the Attorneys have or may have with regard to any third party related to the Lawsuit.

11. Attorneys' Fees and Expenses. Except as otherwise provided in this Agreement, each party shall bear the costs of its own attorneys' fees and expenses in this matter, including any such fees and expenses relating to the negotiation and closing of the settlement contemplated hereunder. Notwithstanding the foregoing, the Firm and Attorneys shall bear all court costs relating to the Lawsuit.

12. Breach of the Agreement. In the event of breach of this Agreement by either

party, the prevailing party will be entitled to attorney's fees and all other costs associated with the resolution of said breach.

13. Amendments. This Agreement may not be amended, modified, or supplemented except in writing signed by the parties hereto.

14. Waiver. No waiver, delay, omission or forbearance on the part of any party to exercise any right, option, duty, or power arising from any default or breach by the other party(ies) shall affect or impair the rights of the non-defaulting party(ies) with respect to any subsequent default of the same or a different kind; nor shall any delay or omission of the non-defaulting party(ies) to exercise any right arising from any such default affect or impair the non-defaulting party's rights as to such default or any future default.

15. Headings. Captions and section headings are used herein for convenience only, and are not part of this Agreement, and shall not be used in construing it.

16. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs and assigns.

17. Governing Law. This Agreement shall be governed in all respects by, and be construed in accordance with, the laws of the State of Tennessee.

18. Acknowledgement of Understanding. Each party to this Agreement acknowledges and agrees that, prior to signing this Agreement, the party has read it and has had the opportunity to consult with the party's attorneys, accountants, or any other advisors that the party deemed necessary or appropriate and that no party hereto has in any manner relied upon any other party hereto for legal or other advice in connection herewith.

19. Entire Agreement. This Agreement constitutes the entire understanding and agreement among the parties hereto with respect to the subject matter hereof. There are no

arrangements, understandings, restrictions, representations or warranties among the parties other than those expressly set for herein. This Agreement may be signed in any number of counterparts, with each signed counterpart being deemed to be an original of this Agreement.

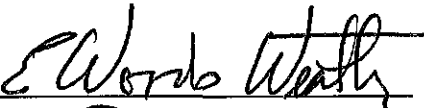
[Counterpart Signature Page(s) Follows]

Signature Page to Settlement Agreement


IN WITNESS WHEREOF, each of the parties has entered into this Agreement as evidenced by the signatures of the parties or their duly authorized representatives herein below.

FIRM:


EVANS PETREE PC

By: 
Its: President

LIQUIDATOR:


Chlora Lindley-Myers, Special
Deputy Commissioner of Commerce
and Insurance for the State of
Tennessee in her official capacity as
statutory liquidator of Smart Data
Solutions, LLC, American Trade
Association, Inc. and American
Trade Association, LLC, and Serve
America Assurance

ATTORNEYS:


Russell J. Hensley


Theodore T. Kitai

of the settlement. Good cause having been found,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that:

1. The Agreement is hereby approved as a fair and reasonable resolution.
2. Pursuant to the Final Order of Liquidation entered May 20, 2010, and the authority conferred therein, the Liquidator is vested with all rights of action of the entities in liquidation and the authority to compromise and settle such rights of action.
3. In entering into this settlement, the Liquidator has not abused her discretion. The consummation of this negotiated settlement is in the best interest of the SDS/ATA/SAA Receivership Estate and its creditors.
4. The Liquidator shall take all necessary steps to conclude the post-judgment settlement for the benefit of the Receivership Estate.
5. Court costs associated with the "Petition for Contempt" in No. 10-507-III are assessed against Evans Petree PC, Russell J. Hensley and Theodore T. Kitai.

ELLEN HOBBS LYLE
CHANCELLOR

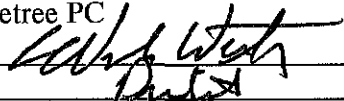
Approved for Entry:



Robert M. Garfinkle, Tn. Bar No. 5354
Phillip G. Young, Jr., Tn. Bar No. 21087
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E-mail: rgarfinkle@gmylaw.com
E-mail: pyoung@gmylaw.com



Special Counsel for Chlora A. Lindley-Myers,
Special Deputy Commissioner, in her
Official Capacity as Statutory Liquidator

Evans Petree PC

By: 

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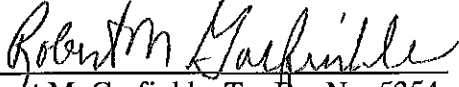
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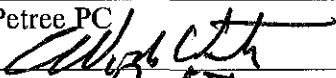
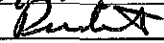
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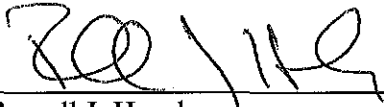
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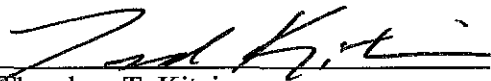
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