

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

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. BACHMEN, WILLIAM M. WORTHY )  
and COLIN YUELL )

Respondents. )

**OPPOSITION TO THE MOTION FOR APPROVAL OF FEES**

Comes SDS, LLC, Bart S. Posey, Sr., and Angie Posey (hereafter "Defendants" or "these Defendants") and files this opposition to the Motion to approve fees submitted by the Liquidator. Before the Court in addition to the Liquidator's motion to approve fees is the motion to proceed with the issuance of Notices of Determination. These defendants, represented by the undersigned counsel, don't take a position as to the issuance of Notices but for the below set forth reasons, oppose the Court's approval of the requested fees.

Liquidation is an unfortunate end to an insurance company<sup>1</sup> that must be handled *as efficiently, expeditiously and economically* as possible. State ex rel. Sizemore v. United Physicians Ins. Risk Retention Group, 56 S.W.3d 557, 563 (Tenn. App. 2001). Emphasis Added. In a liquidation, the pervasive goal is to equitably apportion the *unavoidable* loss. Id. Sizemore, at 563. Emphasis Added. The Act's provisions regarding fraudulent conveyances and preferential transfers, as well as the provisions ordering the distribution of claims, are all carefully tailored to *maximize equity* in the distribution of limited assets. Id. Sizemore, at 563. Emphasis Added. The goal of the Act is to provide an orderly and complete procedure for *handling claims*, especially third-party claims, in which all involved make some concessions to the common necessity, and no one absorbs a disproportionate share of the loss. Id. Sizemore, at 563. Emphasis Added.

In a formal proceeding to liquidate the Commissioner derives his power from the statutes governing the liquidation of insurance companies where his deputy is to use his independent judgment and discretion to follow the statutory mandates. The State may retain a special deputy to oversee liquidation. Tenn. Code Ann. § 56-9-310(a). The deputy or receiver is to:

- (1) Give notice of the liquidation proceedings to the affected parties, Tenn. Code Ann. § 56-9-311(a),
- (2) Establish a procedure for submitting claims, Tenn. Code Ann. § 56-9-311(b),
- (3) Undertake to set aside fraudulent transfers and preferential conveyances, Tenn. Code Ann. § 56-9-317,
- (4) Marshall the company's assets, Tenn. Code Ann. § 56-9-310,
- (5) Determine the priority of the claims in accordance with the statutory priorities, Tenn. Code Ann. § 56-9-330,

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<sup>1</sup> It has been the consistent position throughout by these defendants they were not operating an insurance business and therefore do not come under the ambit of the Insurers Rehabilitation and Liquidation Model Act. However this Court has found the Act applicable to this *de facto* insurer and the Court of Appeals has affirmed that finding, therefore, only for the purposes of this motion, these defendants wield, though unwillingly, to the Courts' previous rulings.

- (6) Provide a report to the trial court containing recommendations for the distribution of the company's marshaled assets, Tenn. Code Ann. § 56-9-331, and
- (7) Distribute the available funds in the manner approved by the Court. Tenn. Code Ann. § 56-9-332.

The liquidator should take all steps reasonably calculated to prevent the piecemeal and *protracted* processing of claims. State ex rel. McReynolds v. United Physicians Ins. Risk Retention Group, 921 S.W.2d 176, 180 (Tenn. 1996). Emphasis Added. The deputy liquidator should take any steps reasonably calculated to manage the liquidations consistent with the Act's stated principles of *efficiency, economy, and equity*. Id. Sizemore, at 563. Emphasis Added.

In the present case, we are over one-year into to the appointment of the special deputy liquidator working for or on behalf of the Commissioner who has spent the last year determining the Eldorado Method<sup>2</sup> of processing the claims was in fact the most efficient way to process the claims. The Liquidator has employed at least two previous parties to the action in the exact same jobs they before held at a rate of pay two to three times above what they were previously paid. Additionally, the Liquidator has spent over a year paying himself and his staff an exorbitant amount of money per hour to not resolve one single claim. What has happened is that they have spent millions of dollars to tell us they can't come up with a better system for claim resolution than what was being before employed.

These defendants oppose the motion to approve the fees sought because the liquidation has not been handled efficiently, expeditiously or economically and the Special Deputy Liquidator and his staff have not provided an orderly and complete procedure for *handling claims*. It is respectfully

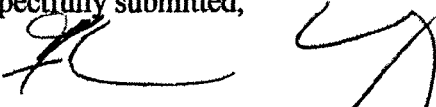
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<sup>2</sup> In previous Court filings it appears undisputed both that the Eldorado Method of claim resolution was both being employed by SDS and Bart Posey prior to the action taken by the State to Liquidate and that method has been determined by the Liquidator as the most efficient method to resolve outstanding claims, though no claims have, as of yet, been resolved.

submitted that the Poseys have absorbed a disparately disproportionate share of the loss and that the members of the organization for which SDS handled the benefits have seen the pool from which their claims might be paid waste and dissipate substantially with the only winner being the parties seeking payment and approval of the present fees.

WHEREFORE, premises considered, these defendants request the motion to approve the pending fees not be approved and the Special Liquidator be charged to either march toward claim resolution or turn the business back over to these defendants permitting them to resolve the existing claims. Defendants additionally request further relief as either law or equity would find appropriate.

Respectfully submitted,



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### **CERTIFICATE OF SERVICE**

I hereby certify this the 20<sup>th</sup> 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, to the parties and interested entities listed on the attached service list.

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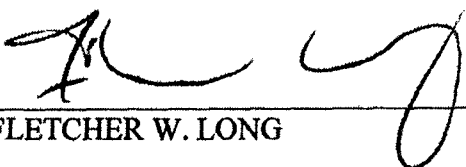
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