

**FINAL ORDER**

**Effective: 02-08-10**

**BEFORE THE COMMISSIONER OF INSURANCE  
OF THE STATE OF KANSAS**

<b>In the Matter of:</b>	)	
<b>REAL BENEFITS ASSOCIATION, a/k/a RBA,</b>	)	<b>Docket No. 3966-SO</b>
	)	
<b>SERVE AMERICA ASSURANCE,</b>	)	<b>3964-SO</b>
<b>LTD.</b>	)	
	)	
<b>AMERICAN TRADE ASSOCIATION, LTD,</b>	)	<b>3967-SO</b>
<b>a/k/a ATA</b>	)	
	)	
<b>SMART DATA SOLUTIONS, LLC</b>	)	<b>3968-SO</b>
<b>Springfield, TN</b>	)	
	)	
<b>Bart Posey</b>	)	<b>3969-SO</b>
	)	
<b>Richard H. Bachman</b>	)	<b>3970-SO</b>
	)	
<b>John Miller</b>	)	<b>3971-SO</b>
	)	
<b>David L. Clark</b>	)	<b>3973-SO</b>

**SUMMARY ORDER**

(Pursuant to K.S.A. 2006 Supp. 40-2404 and K.S.A. 40-2407)

Pursuant to authority granted to the Commissioner of Insurance (“Commissioner”) by K.S.A. 40-2404, K.S.A. 40-2406, K.S.A. 40-2407 and in accordance with the Kansas Administrative Procedure Act (as amended), K.S.A. 77-501 et. seq.

I, Sandy Praeger, the duly elected, qualified and acting Commissioner of Insurance of the State of Kansas, hereby orders the entities and individuals named above and their officers, directors, trustees, agents, employees, and affiliates (collectively known as “Respondents”) to cease and desist from the unauthorized transaction the business of insurance in the state of

Kansas and cease and desist from disseminating deceptive and misleading insurance advertisements to Kansas residents by way of a Summary Order pursuant to K.S.A. 40-2407.

### **Findings of Fact**

The Commissioner finds the following facts:

1. Serve America Assurance, Ltd (hereinafter SAA) has as its address 4676 Highway 41 North, Springfield, Tennessee 37172.
2. SAA has not been granted a certificate of authority or license to conduct the business of insurance in the State of Kansas as an insurance company, agency, Third Party Administrator (TPA) or in any other capacity.
3. SAA is not registered with the Kansas Secretary of State as corporations authorized to conduct business in the state of Kansas.
4. Smart Data Solutions, LLC (hereinafter “SDS”) is a Tennessee corporation located at 676 Highway 41 North, Springfield, Tennessee 37172. Bart Posey is identified as the President of SDS and Richard H. Bachman is identified as the Vice President of SDS.
5. Richard H Bachman is licensed with the Tennessee Department of Commerce and Insurance as a non-resident insurance producer, with license number 900932.
6. Richard H. Bachman is not licensed by the Kansas Department of Insurance as an insurance agent and Mr. Bachman is not authorized to transact the business of insurance in the state of Kansas.
7. Bart Posey is not licensed by the Kansas Department of Insurance as an insurance agent nor is Mr. Posey authorized to transact the business of insurance in the state of Kansas.
8. Real Benefits Association (hereinafter “RBA”), American Trade Association (hereinafter “ATA”) are engaged in the business of marketing, soliciting, sales, and distribution of health and

life insurance products in the state of Kansas via the internet and other methods. Dave Clark is listed as the Chairman of RBA.

9. David L. Clark is not licensed by the Kansas Department of Insurance to act as an insurance agent or to transact the business of insurance in the state of Kansas.

10. RBA, ATA and SDS have not been granted a certificate of authority or license to conduct the business of insurance in the State of Kansas as an insurance company, agency, Third Party Administrator (TPA) or in any other capacity.

11. RBA, ATA are not registered with the Kansas Secretary of State as corporations authorized to conduct business in the state of Kansas.

12. RBA, ATA and SDS operate in a collaborative manner through the use of several different internet websites to market, solicit, sell, distribute and service life and health insurance policies underwritten by several different insurance companies. This collaboration is accomplished through the use of several websites which are located at: [www.sdsfirst.com](http://www.sdsfirst.com); [www.atafirst.com](http://www.atafirst.com); <http://rba-ata.com>; <http://healthtoday.biz>; <http://www.serveamericalltd.com>; <http://www.familyhealthresource.com>; <http://www.firstamericanhealthcare.com>, and; <http://www.myatabenefits.com> .

13. John Miller is an associate of Bart Posey and works with ATA and SAA as a customer assistance associate and is not licensed by the Kansas Department of Insurance to act as an agent or to transact the business of insurance in the state of Kansas.

14. On February 23, 2009 KID received a complaint from Kansas resident M. H. which related that F.H., M.H.'s wife, signed up for insurance from in American Trade Association on February 19, 2009. F. H. responded to a fax that had been received at M.H's business. The fax advertised "Affordable Healthcare Plans". There was no identification of the insurance company

or any other information indicating the source, name, location or affiliation of the advertisement, only a phone number of 800-252-2171. M. H. stated that when the phone number was called and a health insurance policy was negotiated the charge quoted was \$324.00 per month, which was to become effective March 1, 2009.

15. M. H. stated that the company was to take this money from M. H. and F.H.'s joint checking account on February 24, 2009. However, the draft was processed on February 15, 2009. F. H. faxed a request to SDS cancel the insurance on February 23, 2009.

16. Subsequent to requesting cancellation of the policy M. H. has made numerous calls to the various telephone numbers used by SDS, ATA and RBA in an attempt to obtain a refund of the monies withdrawn from his account. M. H. states that when he calls, he is informed that the person he spoke with before is not there, that he should try another number or there is some other reason a refund cannot be made. To date no refund has been made to M.H or F.H. for this insurance.

17. M.H. provided KID with copies of the documents he received from American Trade Association via fax and by reviewing the various websites he was referred to by John Miller.

The following describes these pages:

(a) The first page, describes the "500 Plus Plan". Two types of insurance, life and health, are claimed to be part of this plan. The next to the last paragraph states "There is a term life benefit of \$5,000 for the primary member and \$2,500 for your spouse and any child insured under the plan as well. The Accident/Medical plan also has a \$50,000 accidental death Benefit included for all insured members." The last paragraph of the same page states, in part: "This is a group insurance plan issued directly to the Association. Each member receives a certificate of insurance from the carrier." This page also displays "Copyright 2008-2009. healthtoday.biz. All rights reserved."

(b) The second page, "RBA/ATA Plus500 Plan Benefits" states in part that, "It is an Association group medical plan which helps lower your out of pocket costs by using indemnity benefits and the opportunity to use network providers to reduce costs of medical care."

(c) Pages three, four and five provide the specific coverages, limits, exclusions and claims provisions. The address for notice of a claim is shown to be RBA/ATA

Administrator, 4676 Highway 41 North, Springfield, Tennessee 37172. Further, it states on page five: “Underwritten by: Serve America Assurance, LTD.”

18. On March 12, 2009, pursuant to Nelson v. Miller, 233 Kan. 122, 660 P.2d 1361, 1983, KID notified RBA, ATA, SDS, SAA, Bart Posey, Richard H. Bachman, John Miller and David L. Clark individually, by letter that it considered their actions in marketing, soliciting, selling and servicing life and health insurance policies to be in violation of Kansas law and could result in administrative action being taken against them if they did not cease operations.
19. On April 15, 2009, SDS responded to the KID Nelson v. Miller letter of March 12, 2009, via a letter from the law firm of Evans and Petree, PC, of Memphis, Tennessee. The response admitted that SDS acts as a third party administrator for RBA and others, that SDS does not have any type of license related to insurance in Kansas. The letter also disputed jurisdiction, and the authority of KID to regulate their activities in providing administrative services.
20. On September 28, 2009, KID received a complaint from N.A.R. regarding the failure of RBA to pay claims totaling in excess of Eighty Eight Thousand dollars (\$88,000) for medical services provided to two different RBA members (M.B. and L.C.).
21. On November 13, 2009, KID received a complaint from J.N. regarding unwanted and unsolicited faxes being received at his business. These faxes were offering “Complete Health Care Plans”. There is no insurance agency, insurance agent or insurance company name shown on these faxes, only a toll free telephone number is shown.
22. On November 13, 2009, KID Consumer Assistance representative, Jason Lapham, called the toll free number and was informed the health benefit plan was provided by First American Healthcare (Hereinafter FAH). Upon review of the website that the representative gave Mr. Lapham it was determined that FAH operates in close connection with ATA.

23. On December 8, 2009, after reviewing documentation of the denials provided by M.B., KID sent a letter of inquiry to RBA asking for an explanation for the denial of coverage. To date RBA has not responded.

### Applicable Law

K.S.A. 40-214 states, in pertinent part:

It shall be unlawful for any person, company, corporation or fraternal benefit society to transact the business of insurance, indemnity or suretyship, or do any act toward transacting such business, unless such person, company, corporation or fraternal benefit society shall have been duly authorized under the laws of this state to transact such business and shall have received proper written authority from the commissioner of insurance in conformity with the provisions of the laws of this state relative to insurance, indemnity and suretyship, and further, it shall be unlawful for any insurance company to effect contracts of insurance in this state on the life or person of residents of this state or on property located in this state except through persons duly licensed and certified in accordance with the insurance laws of this state and subject to the provisions of K.S.A. 40-245.

K.S.A. 2006 Supp. 40-216 states, in pertinent part:

(a) No insurance company shall hereafter transact business in this state until certified copies of its charter and amendments thereto shall have been filed with and approved by the commissioner of insurance.

K.S.A. 1972 Supp. 40-2403 provides:

No person shall engage in this state in any trade practice which is defined in this state as, or determined pursuant to K.S.A. 40-2406 to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

K.S.A. 2005 Supp. 40-2404 states, in pertinent parts:

The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

- (1) Misrepresentations and false advertising of insurance policies. Making, issuing, circulating or causing to be made, issued or circulated, any estimate, illustration, circular, statement, sales presentation, omission or comparison which: (a) misrepresents the benefits, advantages, conditions or terms of any insurance policy.
- (2) False information and advertising generally. Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion,

misrepresentation or statement with respect to the business of insurance or with respect to any person in the conduct of such person's insurance business, which is untrue, deceptive or misleading.

- (9) Unfair claim settlement practices. It is an unfair claim settlement practice if any of the following or any rules and regulations pertaining thereto are: (A) Committed flagrantly and in conscious disregard of such provisions, or (B) committed with such frequency as to indicate a general business practice.
- (a) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;
  - (b) failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;
  - (c) failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
  - (d) refusing to pay claims without conducting a reasonable investigation based upon all available information;
  - (n) failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

K.S.A. 40-2406 provides:

- (a) Whenever the commissioner has reason to believe that any such person has been engaged or is engaging in this state in an unfair method of competition or any unfair or deceptive act or practice, whether or not defined in K.S.A. 40-2404 and amendments thereto, and that a proceeding by the commissioner in respect thereto would be in the interest of the public, the commissioner shall issue and serve upon such person a statement of the charges in that respect and conduct a hearing thereon in accordance with the provisions of the Kansas administrative procedure act.
- (b) If, after such hearing, the commissioner determines that the person charged has engaged in any unfair method of competition or any unfair or deceptive act or practice, any costs incurred as a result of conducting any administrative hearing authorized under the provisions of this section shall be assessed against such person or the company or companies represented by such person as an agent, broker or adjuster who is a participating party to the matters giving rise to the hearing. As used in this subsection, "costs" shall include witness fees, mileage allowances, any costs associated with reproduction of documents which become part of the hearing record and the expense of making a record of the hearing.

K.S.A. 40-2407 provides, in pertinent part:

- (a) If, after such hearing, the commissioner shall determine that the person charged has engaged in an unfair method of competition or an unfair or deceptive act or practice, the commissioner shall render an order requiring such person to cease and desist from engaging in such method of competition, act or practice and if the act or practice is a violation of K.S.A. 40-2404 and amendments thereto, the commissioner may in the exercise of discretion order any one or more of the following:

- (1) Payment of a monetary penalty of not more than \$1,000 for each and every act or violation, but not to exceed an aggregate penalty of \$10,000, unless the person knew or reasonably should have known such person was in violation of this act, in which case the penalty shall be not more than \$5,000 for each and every act or violation, but not to exceed an aggregate of \$50,000 in any six-month period.

K.S.A. 2006 Supp. 40-4905 states, in pertinent part:

(a) . . .it shall be unlawful for any person to sell, solicit or negotiate any insurance within this state unless such person has been issued a license as an insurance agent in accordance with this act.

K.S.A. 1989 Supp. 40-3810 states, in pertinent part:

. . . No person shall act as or hold oneself out to be an administrator in this state, unless such person holds a certificate of registration as an administrator issued by the commissioner of insurance. . .

K.A.R 40-1-34 state in the pertinent parts:

Section 6.

B. Every insurer, upon receipt of any inquiry from the insurance department respecting a claim shall, within fifteen working days of receipt of such inquiry, furnish the department with an adequate response to the inquiry.

### **Conclusions of Law**

Based on the findings of fact in paragraphs #1 through #23 and the Applicable Law cited above, the Commissioner hereby finds:

1. The Commissioner has jurisdiction over Respondents as well as the subject matter of this proceeding, and such proceeding is held in the public interest.
2. The Commissioner finds that Respondents unlawfully conducted transactions or assisted in the transaction of the business of insurance in the State of Kansas without being authorized or licensed to conduct the business of insurance in the state of Kansas a violation of K.S.A. 40-214.



3. The Commissioner finds that Respondents RBA and ATA, unlawfully sold, solicited or negotiated insurance within this state without being duly authorized, a violation of K.S.A. 2006 Supp. 40-4905(a).

4. The Commissioner finds that Respondent RBA failed to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies; failed to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies; refused to pay claims without conducting a reasonable investigation based upon all available information; failed to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim in violation of K.S.A. 40-2404(9)(a), (b), (c), (d) and (n).

5. The Commissioner finds that Respondent SDS held themselves out to be, and acted as an administrator of insurance policies and benefits without a valid Kansas certificate of registration in violation of K.S.A. 40-3810.

6. The Commissioner finds that Respondent RBA failed to provide an adequate response within fifteen (15) days to an inquiry from KID respecting a claim in violation of K.A.R. 40-1-34 Section 6.B.

7. The Commissioner finds that permitting the Respondents to continue to conduct the business of insurance in the State of Kansas would pose an immediate danger to the well-being of Kansas residents.

**IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT:**

That **REAL BENEFITS ASSOCIATION; SERVE AMERICA ASSURANCE;**

**AMERICAN TRADE ASSOCIATION, LTD.; SMART DATA SOLUTIONS, LLC; BART POSEY; RICHARD H. BACHMAN; JOHN MILLER, and; DAVID L. CLARK**, as well as their officers, directors, employees, managers, members, partners investors, affiliates, associates, agents and all other persons with actual knowledge of this Order, regardless of relation to or corporate or other form are, all **HEREBY ORDERED** to **IMMEDIATELY CEASE AND DESIST** from the further transaction of the business of insurance in Kansas, by whatever means and through whatever parties. This Summary Order shall continue in force until further Order of the Commissioner of Insurance. If Summary Order is violated, the Commissioner may, at her discretion, subject the Respondents to the provisions of K.S.A. 40-2411.

**NOTICE AND OPPORTUNITY FOR HEARING**

Respondents, within fifteen (15) days of service of this Summary Order, may file with the Kansas Insurance Department a written request for hearing on this Summary Order, as provided by K.S.A. 77-542. In the event a hearing is requested, such request should be directed to:

John W. Campbell, General Counsel  
Kansas Insurance Department  
420 S.W. 9<sup>th</sup> Street  
Topeka, Kansas 66612

Any costs incurred as a result of conducting any administrative hearing shall be assessed against the agent/agency who is the subject of the hearing as provided by K.S.A. 40-4909(f). Costs shall include witness fees, mileage allowances, any costs associated with reproduction of documents which become part of the hearing record, and the expense of making a record of the hearing.

If a hearing is not requested, this Summary Order shall become effective as a Final Order, without further notice, upon the expiration of the fifteen (15) day period for requesting a hearing. The Final Order will constitute final agency action in the matter.

In the event the Petitioner files a petition for judicial review, the agency officer designated pursuant to K.S.A. 77-613(e) to receive service of a petition for judicial review on behalf of the Kansas Insurance Department is:

John W. Campbell, General Counsel  
Kansas Insurance Department  
420 S.W. 9<sup>th</sup> St.  
Topeka, Kansas 66612

**IT IS SO ORDERED THIS \_\_20th\_\_ DAY OF JANUARY 2010, IN THE CITY OF  
TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**



\_\_\_\_\_/s/ Sandy Praeger\_\_\_\_\_  
Sandy Praeger  
Commissioner of Insurance

BY:

\_\_\_\_\_/s/ John W. Campbell\_\_\_\_\_  
John W. Campbell  
General Counsel

**Certificate of Service**

The undersigned hereby certifies that above and foregoing Cease and Desist Order was served via the United States Postal Service, first-class postage prepaid, on this \_\_20th\_\_ day of January, 2010, addressed to the following:

SERVE AMERICA ASSURANCE, LTD.  
4676 Highway 41 North  
Springfield, Tennessee 37172

Real Benefits Association, a/k/a RBA,  
118A Fulton St., Box 138  
New York, NY 10038

American Trade Association, LTD,  
4676 Highway 41 North  
Springfield, Tennessee 37172

Smart Data Solutions, LLC  
4676 Highway 41 North  
Springfield, Tennessee 37172

Bart Posey  
4676 Highway 41 North  
Springfield, Tennessee 37172

Richard H. Bachman  
1600 Magpie Cove  
Austin, TX 78746

John Miller  
4676 Highway 41 North  
Springfield, Tennessee 37172

Dave Clark, Chairman  
Real Benefits Association  
P.O. Box 74  
Basking Ridge, NJ 07920

/s/ Mark A. Marion  
Mark A. Marion  
Staff Attorney