

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re

Case No. 11-14009-CLB
Chapter 11

NATIVE WHOLESALE SUPPLY COMPANY

Debtor

NATIVE WHOLESALE SUPPLY COMPANY
10955 Logan Road
Perrysburg, New York 14129

Plaintiff

v.

A.P. No. 11-

U.S. CUSTOMS AND BORDER PROTECTION
6650 Telecom Drive
Indianapolis, Indiana 46278

Defendant

COMPLAINT FOR A PERMANENT INJUNCTION AGAINST DEFENDANT

Plaintiff, Native Wholesale Supply Company, Debtor and Debtor-in-Possession, by and through its counsel, Gross, Shuman, Brizdle & Gilfillan, P.C., as and for its Complaint against U.S. Customs and Border Protection (“U.S. Customs”), respectfully alleges as follows.

NATURE OF ACTION

This is an action seeking a permanent injunction against U.S. Customs pursuant to 11 U.S.C. §105 enjoining U.S. Customs from requiring the simultaneous posting or “stacking” of a new bond by the Debtor for \$12,400,000 solely to secure payment of customs duties and

importation taxes while requiring the Debtor to maintain its current bond in the amount of \$9,300,000 also securing the payment of customs duties and importation taxes.

The Debtor is current in the payment of all of its customs duties and excise taxes and other obligations, has a positive cash flow, is profitable and intends to propose a reorganization plan to repay creditors over time in full with interest; it does not, however, have the financial ability to immediately post two bonds simultaneously totaling \$21,700,000. Imposing this requirement will cause the Debtor to cease operations and therefore thwart its reorganization effort. An injunction to prevent what is referred to in the industry as “bond stacking” is critical to the Debtor’s survival and successful reorganization. Irreparable harm will result not only to the Debtor, but to its creditors if an injunction is not issued.

The injunction sought seeks only to preserve the status quo. Without the injunction, the Debtor’s business will be destroyed along with its reorganization effort.

JURISDICTION AND VENUE

1. On November 21, 2011 (the “Commencement Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11, United States Code (the “Bankruptcy Code”) and it is managing its property and its business as a debtor-in-possession.
2. The Court has subject matter jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§1331 and 1334(b) and (e).
3. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A)(K) and (E).
4. Venue in this district is proper pursuant to 28 U.S.C. §1409(a) because this is the district where the Debtor’s bankruptcy case is pending.
5. This proceeding has been brought in accordance with Fed. R. Bankr. P. 7001.

6. The statutory bases for the relief requested herein is 11 U.S.C. §105.

THE PARTIES

7. Plaintiff is the Debtor, Native Wholesale Supply Company (“NWS”). NWS is a corporation chartered by the Sac and Fox Tribe of Oklahoma and maintains its offices on the Seneca Cattaraugus Indian Territory in Gowanda, New York.

8. Defendant, U.S. Customs, is part of the United States Department of Homeland Security.

BACKGROUND

9. The Debtor is engaged in the business of importing cigarettes and other tobacco products from Canada (the “Goods”) and sells them to third parties within the United States.

10. The Goods imported by NWS are manufactured by Grand River Enterprises Six Nations, Ltd. (“Grand River”) on the Grand River Reserve in Canada.

11. The Goods are subject to customs duties payable to the United States pursuant to the Tariff Act of 1930, as amended, and in particular 19 U.S.C. §1623 and 19 CFR 113.62.

12. Pursuant to 19 U.S.C. §1623, Defendant U.S. Customs is authorized to require importers to require the posting of bonds or other security for the protection of the revenue in the form of customs duties payable to the United States on the importation of product subject to such customs duties.

13. The purpose of the bond is to protect the pecuniary interest of the United States in the collection of such customs duties and such other amounts that may be payable to the United States in connection with importation of the Goods.

14. In or about 2010 U.S. Customs fixed the amount of the bond required to be posted by the Debtor in the amount of \$9,300,000.

15. NWS thereafter obtained a \$9,300,000 importers customs entry bond, effective December 9, 2010 that was required under 19 U.S.C. §1623 in order for NWS to continue to import the Goods into the United States (the “Customs Bond”). A copy of the Customs Bond is annexed hereto as Exhibit A.

16. The Customs Bond provides that it “remains in force for one year beginning with the effective date and for each successive annual period, or until terminated”, thus providing for automatic renewals until termination.

17. The Customs Bond was issued by Capitol Indemnity Corporation.

18. The purpose of the Customs Bond is to secure payment of the duty, tax or importation charges arising from NWS’s importation of the Goods.

19. On December 16, 2009, Royal Bank of Canada (“RBC”) issued an irrevocable letter of credit (the “LOC”) in the amount of \$8,200,000 to secure the Customs Bond. The LOC is fully collateralized by cash deposited by Grand River with RBC.

20. NWS is current in its payment of all of its customs duties, excise taxes and/or other taxes arising from importation of the Goods which accrue at the approximate rate of \$2,600,000 per week.

21. On October 28, 2011, NWS received a letter from U.S. Customs notifying NWS that it must terminate its current Customs Bond in the amount of \$9,300,000 “within 30 days from the date of this letter . . . and replace it with a new continuous bond with a limit of liability

not less than \$12,400,000 (the “October 28th Letter”). A copy of the October 28th Letter is attached hereto as Exhibit B.

22. To terminate the \$9,300,000 Customs Bond and post a new \$12,400,000 bond, the Debtor would be required to “stack” the bonds and to secure the stacked bonds, increase the LOC to \$21,700,000 while the government enjoys a 180 day time frame to verify/finalize payment of all of NWS’s customs and excise tax obligations which arose during the \$9,300,000 bond period (the “Verification Period”). The \$9,300,000 Customs Bond must remain in place during the Verification Period.

23. Upon information and belief, because NWS is and has always kept current with respect to all excise and customs obligations secured by the Customs Bond, U.S. Customs does not require a 180 day Verification Period. Upon information and belief, U.S. Customs could make the necessary verification determination to release the \$9,300,000 Customs Bond within two weeks avoiding the necessity of stacking the bonds, and in fact did so the last time the Debtor was required to increase its Customs Bond in December of 2010.

24. Upon information and belief, the sole basis for the U.S. Customs’ decision to increase the Debtor’s bond amount from \$9,300,000 to \$12,400,000 is due to an increase in the volume of Goods imported by the Debtor.

25. NWS does not dispute that the volume of Goods it imports has increased; however, several factors that must be considered by U.S. Customs indicate or mitigate in favor of not increasing the bond – or not increasing to the extent of an additional \$3,100,000. These factors include burden, as well as *inter alia* the fact that Grand River will soon be using an additional importer, which will have the effect of decreasing NWS liability in the next twelve

months. In any event, NWS, through its counsel, has offered to supplement its existing bond with a bond for an additional \$3,100,000 such that the combined level of liability on the bonds in favor of U.S. Customs would have a limit of liability of not less than \$12,400,000¹ or, alternatively, post a replacement bond in the total amount of \$12,400,000 to take effect after liquidation of the entries under the current bond and release of the current bond from any liability. See letter dated November 28, 2011 from Debtor's counsel to U.S. Customs, annexed hereto as Exhibit C, in which such an offer was made.

26. NWS has the financial ability and support to increase the Bond and the LOC (together with Grand River's cash support) by \$3,100,000, the difference between the \$12,400,000 demanded and \$9,300,000.

27. In a matter wholly separate from the excise and customs duties, NWS is involved in an ongoing dispute with the United States Government regarding multi-million dollar assessments made under the Fair and Equitable Tobacco Reform Act of 2004 and the Tobacco Transition Payment Program (the "Disputed Assessment"). These Disputed Assessments are not subject to the Bond, however.

28. The issues pertaining to the Disputed Assessment have resulted in two lawsuits, subsequently consolidated, now pending in the United States District Court for the Western District of New York before Judge Curtin (United States of America vs. Native Wholesale Supply Company 08-CV-850).

¹ NWS does not necessarily agree that the amount of the bond should be \$12,400,000 and it therefore reserves all rights with respect to challenging that calculation.

29. Other than the Disputed Assessment, certain pre-petition obligations it obtained authority to pay on the Commencement Date, and certain disputed claims², the Debtor was current on all of its obligations on the Commencement Date. In fact, repayment of the Disputed Assessment triggered the bankruptcy filing and if the Debtor ceases operations because it is required to post two bonds simultaneously in the total amount of \$21,700,000, the Disputed Assessment will not be repaid.

COUNT I.

U.S. CUSTOMS' EFFORT TO REQUIRE THE DEBTOR TO TERMINATE THE BOND AND POST A LARGER BOND IS IN VIOLATION OF THE AUTOMATIC STAY

30. Plaintiff repeats and realleges each of the preceding paragraphs as though fully set forth herein.

31. Pursuant to 11 U.S.C. §362(a)(1), the filing of a petition under Title 11 operates as a stay of “the . . . continuation . . . of a judicial, administrative, or other action or proceeding against the debtor . . .” 11. U.S.C. §362(a)(1).

32. Defendant U.S. Customs’ determination and demand notice requiring that NWS terminate the \$9,300,000 bond and file a larger bond of \$12,400,000 as set forth in the October 28th Letter is a “proceeding” within the meaning of 11 U.S.C. §362.

33. Any attempt to require or impose termination of the Customs Bond, or a determination that the current bond is insufficient, or requiring the Debtor to post a larger bond after the filing is a violation of the automatic stay imposed under 11 U.S.C. §362.

² These disputed claims are essentially claims asserted against the Debtor in State Court lawsuits which the Debtor intends to remove to the Bankruptcy Court.

34. Any attempt to require termination of the Customs Bond or to make a determination that the current bond is insufficient after the filing of the petition is unwarranted and unlawful.

35. In order to protect the Debtor and its operations, which requires the continuation of the Customs Bond, the Debtor requests a determination by this Court that the U.S. Customs post-petition efforts to require or impose the termination of the Customs Bond or to make a determination that the bond amount is insufficient is a violation of the automatic stay and that any such further action to terminate or to otherwise facilitate the termination of the Customs Bond be enjoined under 11 U.S.C. §105.

COUNT II.

ALLOW THE DEBTOR TO INCREASE THE BOND BY \$3,100,000

36. Plaintiff repeats and realleges each of the preceding paragraphs as though fully set forth herein.

37. The Debtor cannot operate without an importers customs entry bond.

38. The Defendant, U.S. Customs' demand for "bond stacking" will require the Debtor to maintain two bonds simultaneously, which is unreasonable and if enforced, will result in the Debtor ceasing operations.

39. The Debtor is able to increase the current bond by \$3,100,000, the amount demanded by U.S. Customs in the October 28th Letter to provide security for ongoing payment of the Debtor's tax obligations.

40. The Debtor is current on all of its obligations (except for the Disputed Assessment), which it intends to repay in full with appropriate interest in its reorganization plan.

41. Pursuant to 11 U.S.C. §105, the Court has the power to issue an injunction enjoining U.S. Customs from requiring the simultaneous posting or “stacking” of a new bond by the Debtor for \$12,400,000 and allowing the Debtor to increase the current Customs Bond by \$3,100,000. A request to issue such an injunction is hereby requested.

WHEREFORE, the Plaintiff prays that the Court issue an injunction under 11 U.S.C. §105 1) commanding that NWS’s subsisting \$9,300,000 Customs Bond be maintained; 2) ordering U.S. Customs to immediately cease, and that they hereafter be enjoined, from taking any steps to undermine or terminate the subsisting \$9,300,000 Customs Bond; 3) enjoining U.S. Customs from requiring the simultaneous posting or “stacking” an additional Customs Bond by NWS for \$12,400,000 provided that NWS supplements the subsisting Customs Bond amount by \$3,100,000; and 4) providing for such other and further relief as is just.

Dated: Buffalo, New York
November 30, 2011

GROSS, SHUMAN, BRIZDLE &
GILFILLAN, P.C.

By: s/ Robert J. Feldman
Robert J. Feldman
Janet G. Burhyte
Attorneys for Debtor/Plaintiff,
Native Wholesale Supply Company
465 Main Street, Suite 600
Buffalo, New York 14203
Tel: (716) 854-4300

EXHIBIT A

DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection

OMB No. 1651-0050 Exp. 12-31-2010

CUSTOMS BOND

5535933

19 CFR Part 113

CBP USE ONLY	BOND NUMBER 1 (Assigned by CBP) 99100C684
	FILE REFERENCE

In order to secure payment of any duty, tax or charge and compliance with law or regulation as a result of activity covered by any condition referenced below, we, the below named principal(s) and surety(ies), bind ourselves to the United States in the amount or amounts, as set forth below.

Execution Date
12/6/10

SECTION I--Select Single Transaction OR Continuous Bond (not both) and fill in the applicable blank spaces.

<input type="checkbox"/> SINGLE TRANSACTION BOND	Identification of transaction secured by this bond (e.g., entry no., seizure no., etc.)	Date of transaction	Port code
<input checked="" type="checkbox"/> CONTINUOUS BOND	Effective date 12/9/10	This bond remains in force for one year beginning with the effective date and for each succeeding annual period, or until terminated. This bond constitutes a separate bond for each period in the amounts listed below for liabilities that accrue in each period. The intention to terminate this bond must be conveyed within the period and manner prescribed in the Customs Regulations.	

SECTION II-- This bond includes the following agreements. 2 (Check one box only, except that, 1a may be checked independently or with 1, and 3a may be checked independently or with 3. Line out all other parts of this section that are not used.

Activity Code	Activity Name and Customs Regulations in which conditions codified	Limit of Liability	Activity Code	Activity Name and Customs Regulations in which conditions codified	Limit of Liability
<input checked="" type="checkbox"/> 1	Importer or broker 113.62	\$9,300,000.00	<input type="checkbox"/> 5	Public Gauger 113.67	
<input type="checkbox"/> 1a	Drawback Payments Refunds 113.65		<input type="checkbox"/> 6	Wool & Fur Products Labeling Acts Importation (Single Entry Only) 113.68	
<input type="checkbox"/> 2	Custodian of bonded merchandise, includes bonded carriers, freight forwarders, cartmen and lightermen, all classes of warehouse, container station operators 113.63		<input type="checkbox"/> 7	Bill of Lading (Single Entry Only) 113.69	
<input type="checkbox"/> 3	International Carrier 113.64		<input type="checkbox"/> 8	Detention of Copyrighted Material (Single Entry Only) 113.70	
<input type="checkbox"/> 3a	Instruments of International Traffic 113.66		<input type="checkbox"/> 9	Neutrality (Single Entry Only) 113.71	
<input type="checkbox"/> 4	Foreign Trade Zone Operator 113.73		<input type="checkbox"/> 10	Count Costs for Condemned Goods (Single Entry Only) 113.72	

SECTION III-- List below all tradenames or unincorporated divisions that will be permitted to obligate this bond in the principal's name including their CBP identification Number(s). 3 (If more space is needed, use Section III (Continuation) on back of form.)

Importer Number	Importer Name	Importer Number	Importer Name
Total number of importer names listed in Section III:			

Principal and surety agree that any charge against the bond under any of the listed names is as though it was made by the principal(s).

Principal and surety agree that they are bound to the same extent as if they executed a separate bond covering each set of conditions incorporated by reference to the Customs Regulations into this bond.

If the surety fails to appoint an agent under Title 6, United States Code, Section 7, surety consents to service on the Clerk of any United States District Court or the U.S. Court of International Trade, where suit is brought on this bond. That clerk is to send notice of the service to the surety at:

Mailing Address Requested by the Surety
Capitol Indemnity Corporation
Care of International Bond & Marine
2 Hudson Place - 4th Floor
Hoboken, NJ 07030

PRINCIPAL	Name and Address A NY Corp. NATIVE WHOLESALE SUPPLY COMPANY 10955 LOGAN ROAD PERRYBURG NY 14129 USA	Importer No. 3 16-160983000	SEAL	
		SIGNATURE 5 ROBERT STEIN AIF/VP <i>[Signature]</i> MOHAWK GLOBAL LOGISTICS		
PRINCIPAL	Name and Address	Importer No. 3	SEAL	
		SIGNATURE 5		
SURETY	Name and Address 6 Capitol Indemnity Corporation 1600 Aspen Commons Middleton, WI 53562 (A WI Corporation)	Surety No. 7 157 SIGNATURE 5 Attorney-in-fact <i>[Signature]</i> Kevin A. Tattam	CORPORATE SEAL	
SURETY	Name and Address 6	Surety No. 7	SEAL	
		SIGNATURE 5		
SURETY AGENTS	Name 8 KEVIN A. TATTAM	Identification No. 9 143-48-7151	Name 8	Identification No. 9

PART 1 - CBP, PART 2 - SURETY, PART 3 - PRINCIPAL

CBP Form 301 (05/98)

EXHIBIT B



**U.S. Customs and
Border Protection**

NATIVE WHOLESALE SUPPLY COMPANY

October 28, 2011

10955 LOGAN DR
PERRYSBURG, NY 14129-9775

Dear Sir or Madam:

According to our records, you have the following valid continuous bond (Activity Code 1 - Importer or Broker) on file with the Revenue Division, Customs and Border Protection:

Bond Number:	9910OC754	
Importer Number:	16-160983001	
Surety:	CAPITOL INDEMNITY CORPORATION	No: 157
Amount:	\$9,300,000	
Bond Effective Date:	12/09/10	

Pursuant to Title 19 of the Code of Federal Regulations (CFR) Part 113, this bond has been determined to be insufficient to protect the revenue and insure compliance with Customs and Border Protection laws and regulations. Within 30 days from the date of this letter, you must terminate this bond and replace it with a new continuous bond with a limit of liability not less than \$12,400,000.

In order to gain a better understanding of the reason(s) for this increase, please refer to the information about current bonding formulas posted on our website at http://www.cbp.gov/xp/cgov/trade/trade_programs/bonds/pilot_program/. This bond increase is based on the formula described as "Reviewers (1)".

If the bond listed above is not terminated by December 14th, 2011 it will be rendered insufficient. Customs and Border Protection requires that each entry must be covered by a valid, continuous bond or a single transaction bond (19 CFR Part 113).

Notify your Customs or insurance broker and provide a copy of this letter to them. Include a copy of this letter together with the bond termination request and the new replacement bond package. All documents should either be e-mailed to cbp.bondquestions@dhs.gov, or faxed to the Revenue Division at (317) 614-4517. If you have questions about this letter, please contact Travis Scott at (317) 381-5434.

Sincerely,

Thomas C. Scott
Section Chief, Surety Bonds & Accounts
Debt Management Branch
Revenue Division, Office of Administration

EXHIBIT C

GrossShuman

Brizdle & Gilfillan, P.C.
ATTORNEYS AT LAW

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Hugh C. Carlin
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(1945 - 2009)

Gordon R. Gross
Irving M. Shuman
Joel H. Paull
Of Counsel

November 28, 2011

*NY & FLA BAR

VIA E-MAIL
VIA FEDERAL EXPRESS
VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED
VIA FIRST CLASS MAIL
VIA FAX (317) 614-4517

e-mail: Thomas.C.Scott@CBP.DHS.gov
Thomas C. Scott
Section Chief, Surety Bonds & Accounts
Debt Management Branch
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Travis W. Scott
Debt Management Branch
Revenue Division, Office of Administration
U.S. Customs and Border Protection
6650 Telecom Drive
Indianapolis, IN 46278

Re: Native Wholesale Supply Company
Bankruptcy Case No. 11-14009-CLB - Western District of New York

Dear Messrs. Scott and Scott:

Please be advised that the undersigned and my law firm represent Native Wholesale Supply Company ("NWS") in connection with a bankruptcy reorganization proceeding filed under the provisions of Chapter 11 of the United States Bankruptcy Code ("Code") in the United States Bankruptcy Court for the Western District of New York on November 21, 2011. A copy of the filed petition in that case is appended to this letter.

I am in receipt of a copy of correspondence from U.S. Customs and Border Protection to Native Wholesale Supply Company dated October 28, 2011, a copy of which is also appended to this letter. That letter indicates that if by December 14, 2011 the current bond issued by Capitol Indemnity Corporation in the amount

465 Main Street
Suite 600
Buffalo, New York 14203-1787
716.854.4300
866.893.2003
Fax: 716.854.2787

1100 Burloak Drive, Suite 300
Burlington, Ontario,
Canada L7L 6B2
416.221.5600
905.336.8957
Fax: 905.332.3007

By Appointment Only:
5500 Main Street
Suite 308A
Williamsville, New York 14221

www.gross-shuman.com

Thomas C. Scott
Travis W. Scott
November 28, 2011
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of \$9,300,000 is not terminated and replaced with a new continuous bond with a limit of liability not less than \$12,400,000, the bond "... will be rendered insufficient ..."

In light of the filing of the bankruptcy petition by NWS, the automatic stay of Section 362 of the Code is in effect. Section 362 of the Code acts as a stay, as to all entities, including the United States Government of, among other things,

"... the commencement or continuation ... of a judicial, administrative or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this Title ..."

Further, Section 525 of the Code provides in relevant part that:

"... a governmental unit may not deny, revoke, suspend or refuse to renew a license, permit, charter, franchise or other similar grant to ... a person that is, or has been a debtor under [the bankruptcy code] ... solely because such bankrupt or debtor is or has been a debtor under this Title, ... has been insolvent before the commencement of the case under this Title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this Title ..."

It would be our expectation that the United States Department of Customs and Border Protection will adhere in all respects to the provisions of Section 362 and 525 of the Code.

More specifically, because the bond in question protects only the pecuniary interest of the United States Government, it is quite clear that Section 362 of the Code applies to the Government's import license and bond requirements and prohibits the United States Government from taking any action or proceeding against either NWS's import license or the adequacy of its bond, without an order lifting the stay imposed by Section 362 of the Code.

Moreover, because any Government action would be either as a result of the bankruptcy filing or the Debtor's financial condition before the commencement of the bankruptcy case, it similarly appears quite clear that any Government action against the license or with respect to the adequacy of NWS's bond would be in violation of the anti-discrimination provisions of Section 525 of the Code.

In light of the foregoing, we are requesting that the United States Customs and Border Protection promptly, and in any event, no later than noon on Wednesday, November 30, 2011, confirm to the undersigned in writing that it, and the United States Government in general, will take no action with respect to NWS's customs license, or any adverse action with respect to its customs license application, or take any action to determine that the current bond be deemed or rendered insufficient without explicit leave of the United States Bankruptcy Court for the Western District of New York.

Absent confirmation to this effect in writing within two business days, NWS will have no choice but to commence an adversary proceeding in United States Bankruptcy Court for the Western District of New York

Thomas C. Scott
Travis W. Scott
November 28, 2011
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seeking a determination that the provisions of Section 362 and 525 of the Bankruptcy Code apply to the action proposed to be taken by U.S. Customs and Border Protection and determining that the same are enjoined by the provisions of Sections 362 and 525 of the Code, and seeking interim relief prohibiting any such action pending final determination of the adversary proceeding.

Any such action will indicate that this letter has been forwarded to you and that you have either failed to respond to the same or have failed to agree to acknowledge the prohibitions of Sections 362 and 525 of the Code as applicable to the proposed action by U.S. Customs and Border Protection as set forth in your letter of October 28, 2011.

Without prejudice to any of the foregoing, this will finally confirm that NWS, through the undersigned and Robert Luddy, have previously indicated to you that NWS is prepared, within a time frame to be agreed upon, to supplement its existing bond with a bond for an additional \$3,100,000 such that the combined limit of liability on the bonds in favor of U.S. Customs and Border Protection would have a limit of liability of not less than \$12,400,000 or a replacement bond in the total amount of \$12,400,000 to take effect after liquidation of the entries under the current bond and release of the current bond from any liability, and that the United States Government, in what we believe to be a clear violation of applicable statutes and federal regulations, has refused to consent to the foregoing even though the two bonds together (or the replacement bond) would provide the United States with its requested total financial protection amount of \$12,400,000. The Government has taken the position that NWS must provide a new bond with a limit of liability of not less than \$12,400,000 which, until U.S. Customs and Border Protection clears the old bond, would result in a continuous set of bonds in the total amount of \$21,700,000 to be in effect, in patent violation of applicable law and regulation.

If the Government has changed its view on this matter and is willing to accept on a stipulated date by which a supplemental bond is to be posted so that the combined total of the two bonds equals \$12,400,000, please advise the undersigned promptly, as we believe that the matter may be resolvable in relatively short order.

I look forward and expect to hear from you promptly and in any event by no later than noon on Wednesday, November 30, 2011.

Very truly yours,



Robert J. Feldman

RJF/lgs
Enclosures

Doc # 351822.1

United States Bankruptcy Court WESTERN DISTRICT OF NEW YORK		Voluntary Petition
Name of Debtor (If individual, enter Last, First, Middle): Native Wholesale Supply Company, a Corporation		Name of Joint Debtor (Spouse)(Last, First, Middle):
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names): NONE		All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all): 16-1609830		Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all):
Street Address of Debtor (No. & Street, City, and State): 10955 Logan Road Perryburg, NY		Street Address of Joint Debtor (No. & Street, City, and State):
ZIP CODE 14129		ZIP CODE
County of Residence or of the Principal Place of Business: Cattaraugus		County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address): SAME		Mailing Address of Joint Debtor (if different from street address):
ZIP CODE		ZIP CODE
Location of Principal Assets of Business Debtor (if different from street address above): SAME		ZIP CODE
Type of Debtor (Form of organization) (Check one box.) <input type="checkbox"/> Individual (includes Joint Debtors) <i>See Exhibit D on page 2 of this form.</i> <input checked="" type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (if debtor is not one of the above entitles, check this box and state type of entity below 	Nature of Business (Check one box.) <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101 (51B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input type="checkbox"/> Other Tax-Exempt Entity (Check box, if applicable.) <input type="checkbox"/> Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).	Chapter of Bankruptcy Code Under Which the Petition is Filed (Check one box) <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 9 <input checked="" type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13 <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding Nature of Debts (Check one box) <input type="checkbox"/> Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose" <input checked="" type="checkbox"/> Debts are primarily business debts. Chapter 11 Debtors: Check one box: <input type="checkbox"/> Debtor is a small business as defined in 11 U.S.C. § 101(51D). <input checked="" type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D). Check if: <input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,343,300 (amount subject to adjustment on 4/01/13 and every three years thereafter). Check all applicable boxes: <input type="checkbox"/> A plan is being filed with this petition <input type="checkbox"/> Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
Filing Fee (Check one box) <input checked="" type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A. <input type="checkbox"/> Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.		
Statistical/Administrative Information <input checked="" type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.		THIS SPACE IS FOR COURT USE ONLY
Estimated Number of Creditors <input checked="" type="checkbox"/> 1-49 <input type="checkbox"/> 50-99 <input type="checkbox"/> 100-199 <input type="checkbox"/> 200-999 <input type="checkbox"/> 1,000-5,000 <input type="checkbox"/> 5,001-10,000 <input type="checkbox"/> 10,001-25,000 <input type="checkbox"/> 25,001-50,000 <input type="checkbox"/> 50,001-100,000 <input type="checkbox"/> Over 100,000		
Estimated Assets <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input checked="" type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion		
Estimated Liabilities <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input checked="" type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion		

Voluntary Petition <i>(This page must be completed and filed in every case)</i>		Name of Debtor(s): Native Wholesale Supply Company, a Corporation	
All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet)			
Location Where Filed: NONE	Case Number:	Date Filed:	
Location Where Filed:	Case Number:	Date Filed:	
Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor (If more than one, attach additional sheet)			
Name of Debtor: NONE	Case Number:	Date Filed:	
District:	Relationship:	Judge:	
Exhibit A (To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under Chapter 11) <input type="checkbox"/> Exhibit A is attached and made a part of this petition		Exhibit B (To be completed if debtor is an individual whose debts are primarily consumer debts) I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I have delivered to the debtor the notice required by 11 U.S.C. §342(b). <div style="display: flex; justify-content: space-between;"> X 11/21/2011 </div> <div style="display: flex; justify-content: space-between; font-size: small;"> Signature of Attorney for Debtor(s) Date </div>	
Exhibit C Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety? <input type="checkbox"/> Yes, and exhibit C is attached and made a part of this petition. <input checked="" type="checkbox"/> No			
Exhibit D (To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.) <input type="checkbox"/> Exhibit D completed and signed by the debtor is attached and made part of this petition. If this is a joint petition: <input type="checkbox"/> Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.			
Information Regarding the Debtor - Venue (Check any applicable box)			
<input type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.			
<input type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.			
<input type="checkbox"/> Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.			
Certification by a Debtor Who Resides as a Tenant of Residential Property (Check all applicable boxes.)			
<input type="checkbox"/> Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)			
_____ (Name of landlord that obtained judgment)			
_____ (Address of landlord)			
<input type="checkbox"/> Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and			
<input type="checkbox"/> Debtor has included with this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.			
<input type="checkbox"/> Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(l)).			

Voluntary Petition <i>(This page must be completed and filed in every case)</i>	Name of Debtor(s): Native Wholesale Supply Company, a Corporation
Signatures	
<p style="text-align: center;">Signature(s) of Debtor(s) (Individual/Joint)</p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct. [If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.</p> <p>[If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. § 342(b)</p> <p>I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p>X _____ Signature of Debtor</p> <p>X _____ Signature of Joint Debtor</p> <p>_____ Telephone Number (if not represented by attorney)</p> <p>_____ Date</p>	<p style="text-align: center;">Signature of a Foreign Representative</p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.</p> <p>(Check only one box.)</p> <p><input type="checkbox"/> I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. § 1515 are attached.</p> <p><input type="checkbox"/> Pursuant to 11 U.S.C. § 1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.</p> <p>X _____ (Signature of Foreign Representative)</p> <p>_____ (Printed name of Foreign Representative)</p> <p>_____ (Date)</p>
<p style="text-align: center;">Signature of Attorney*</p> <p>X /s/ Robert J. Feldman Signature of Attorney for Debtor(s)</p> <p>Robert J. Feldman Printed Name of Attorney for Debtor(s)</p> <p>Gross, Shuman, Brizdle & Gilfillan, P.C. Firm Name</p> <p>465 Main Street Address</p> <p>Suite 600</p> <p>Buffalo, NY 14203</p> <p>716-854-4300 Telephone Number</p> <p>11/21/2011 Date</p> <p><small>*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.</small></p>	<p style="text-align: center;">Signature of Non-Attorney Bankruptcy Petition Preparer</p> <p>I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.</p> <p>_____ Printed Name and title, if any, of Bankruptcy Petition Preparer</p> <p>_____ Social-Security number (If the bankruptcy petition preparer is not an individual, state the Social-Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)</p> <p>_____ Address</p> <p>X _____ Date</p> <p>_____ Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social-Security number is provided</p> <p>Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual.</p> <p>If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.</p> <p><small>A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.</small></p>
<p style="text-align: center;">Signature of Debtor (Corporation/Partnership)</p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.</p> <p>The debtor requests the relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p>X /s/ Arthur A. Montour, Jr. Signature of Authorized Individual</p> <p>Arthur A. Montour, Jr. Printed Name of Authorized Individual</p> <p>_____ Title of Authorized Individual</p> <p>11/21/2011 Date</p>	



**U.S. Customs and
Border Protection**

NATIVE WHOLESALE SUPPLY COMPANY

October 28, 2011

10955 LOGAN DR
PERRYSBURG, NY 14129-9775

Dear Sir or Madam:

According to our records, you have the following valid continuous bond (Activity Code 1 – Importer or Broker) on file with the Revenue Division, Customs and Border Protection:

Bond Number:	9910OC754	
Importer Number:	16-160983001	
Surety:	CAPITOL INDEMNITY CORPORATION	No: 157
Amount:	\$9,300,000	
Bond Effective Date:	12/09/10	

Pursuant to Title 19 of the Code of Federal Regulations (CFR) Part 113, this bond has been determined to be insufficient to protect the revenue and insure compliance with Customs and Border Protection laws and regulations. Within 30 days from the date of this letter, you must terminate this bond and replace it with a new continuous bond with a limit of liability not less than \$12,400,000.

In order to gain a better understanding of the reason(s) for this increase, please refer to the information about current bonding formulas posted on our website at http://www.cbp.gov/xp/cgov/trade/trade_programs/bonds/pilot_program/. This bond increase is based on the formula described as "Reviewers (1)".

If the bond listed above is not terminated by December 14th, 2011 it will be rendered insufficient. Customs and Border Protection requires that each entry must be covered by a valid, continuous bond or a single transaction bond (19 CFR Part 113).

Notify your Customs or insurance broker and provide a copy of this letter to them. Include a copy of this letter together with the bond termination request and the new replacement bond package. All documents should either be e-mailed to cbp.bondquestions@dhs.gov, or faxed to the Revenue Division at (317) 614-4517. If you have questions about this letter, please contact Travis Scott at (317) 381-5434.

Sincerely,

Thomas C. Scott
Section Chief, Surety Bonds & Accounts
Debt Management Branch
Revenue Division, Office of Administration