

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re

NATIVE WHOLESALE SUPPLY COMPANY

Debtor

NATIVE WHOLESALE SUPPLY COMPANY

Plaintiff

v.

U.S. CUSTOMS AND BORDER PROTECTION

Defendant

Case No. 11-14009-CLB
Chapter 11

**NOTICE OF MOTION FOR
PRELIMINARY INJUNCTION
AND FOR TEMPORARY
RESTRAINING ORDER
PENDING HEARING**

A.P. No. 11-01123-CLB

PLEASE TAKE NOTICE that a motion will be made before the Hon. Carl L. Bucki, United States Bankruptcy Judge, for the relief specified herein in connection with the above-entitled action as follows:

MOTION MADE BY:

Native Wholesale Supply Company, Debtor

**DATE, TIME AND PLACE
RETURNABLE:**

December __, 2011 at the United States Bankruptcy Court for the Western District of New York, Part II, Olympic Towers, 300 Pearl Street, Third Floor, Buffalo, New York 14202.

SUPPORTING PAPERS:

Affidavit of Robert J. Feldman, sworn to on the 30th day of November, 2011, together with all Exhibits annexed thereto.

RELIEF REQUESTED:

1. Scheduling an expedited hearing on Plaintiff's motion seeking a preliminary injunction on or prior to December __, 2011, enjoining U.S. Customs and Border Protection from terminating the Debtor's current \$9,300,000 customs Bond, making a determination on

rendering the Customs Bond insufficient, and 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.

2. Temporary Restraining Order ordering the relief identified in Number 1 above pending expedited hearing on preliminary injunction scheduled by the Court as requested in Number 1 above on or prior to December ____, 2011.

ANSWERING PAPERS:

December __, 2011.

DATED: Buffalo, New York
November ____, 2011

Yours, etc.,

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

By: s/Robert J. Feldman
Robert J. Feldman, Esq.
Janet G. Burhyte, Esq.
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TO: United States Attorney's Office
Attn: Jane B. Wolfe, Esq.
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U.S. Customs and Border Protection
Federal Centre, 138 Delaware Avenue
Buffalo, New York 14202

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re

NATIVE WHOLESALE SUPPLY COMPANY

Debtor

Case No. 11-14009-CLB

Chapter 11

NATIVE WHOLESALE SUPPLY COMPANY

Plaintiff

v.

U.S. CUSTOMS AND BORDER PROTECTION

Defendant

**AFFIDAVIT OF ROBERT J.
FELDMAN IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION AND
TEMPORARY RESTRAINING
ORDER**

A.P. No. 11-01123-CLB

STATE OF NEW YORK)
) SS.:
COUNTY OF ERIE)

ROBERT J. FELDMAN, being duly sworn, deposes and says:

1. I am a shareholder in the law firm of Gross, Shuman, Brizdle & Gilfillan, P.C. ("GSB&G") and a member in good standing of the bar of this Court. I make this affidavit based upon my personal knowledge, information and belief and upon my representation of the Debtor, Native Wholesale Supply Company ("NWS" or "Debtor") in this Chapter 11 proceeding and the legal contentions made herein are those of the Debtor.

2. This affidavit is made in support of a motion by Plaintiff, NWS, seeking a preliminary injunction during the pendency of this action or further order of the Court enjoining Defendant, U.S. Customs and Border Protection ("U.S. Customs") from (a) cancelling or terminating an importers customs entry bond in the amount of \$9,300,000 effective December 9,

2010 (the “Customs Bond”) and (b) making a determination or rendering the Customs Bond insufficient; and (c) requiring the simultaneous posting or “stacking” of a new bond by the Debtor in the amount of \$12,400,000 resulting in a combined bond liability of \$21,700,000, a practice commonly referred to as “bond stacking”.

3. This affidavit is also made in support of Plaintiff’s application for a temporary restraining order pursuant to Bankruptcy Rule 7065(b) prohibiting U.S. Customs from taking the actions or any action in furtherance of the conduct in paragraph 2 above pending a determination by this Court on Plaintiff’s request for a preliminary injunction.

FACTUAL BACKGROUND

4. The disputes between the Plaintiff and the Defendant are described in substantial detail in the Complaint in this action, which is annexed as Exhibit A. In the Complaint, the Plaintiff seeks an injunction enjoining the termination of the current \$9,300,000 Customs Bond, rendering of the Customs Bond insufficient by Defendant; and requiring the simultaneous posting or “stacking” of an additional \$12,400,000 bond.

5. The factual allegations contained in the Complaint are based upon my investigation as counsel to the Debtor in this case, and those allegations based upon information and belief are so indicated. As alleged in the Complaint:

a. 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.

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

c. NWS obtained the Customs Bond, effective December 9, 2010 which allows it to import the Goods into the United States. The Customs Bond is secured by a line of credit ("LOC") issued by the Royal Bank of Canada and collateralized by Grand River in the form of cash. A copy of the Customs Bond is annexed to the Complaint as Exhibit A.

d. The Customs Bond, which was issued by Capitol Indemnity Corporation, 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. Its sole purpose is to secure payment of any duty, tax or charge associated with NWS importation of the Goods. Without the Customs Bond, the Debtor will be prohibited from importing any Goods.

e. As set forth in the Complaint, NWS received a letter from the U.S. Customs dated October 28, 2011 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 to the Complaint as Exhibit B.

f. To terminate the \$9,300,000 Bond and post a new \$12,400,000 bond, the Debtor will be required to "stack" the bonds and 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.

g. 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.

h. 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. NWS does not dispute that the volume of Goods it imports has increased, warranting an increase of the bond amount to \$12,400,000. In fact, 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 \$12,400,000, 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 B in which such an offer was made.

i. NWS has the financial ability 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.

j. In a matter wholly separate from the excise and customs duties, NWS is involved in an ongoing dispute with the United States Government regarding multimillion dollar assessments made by the government against the Debtor pursuant to the Fair and Equitable Tobacco Reform Act of 2004 and the Tobacco Transition Payment Program (the "Disputed Assessments"). These Disputed Assessments are not subject to the Bond, however.

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

l. Other than the Disputed Assessments, certain pre-petition obligations it obtained authority to pay on the Commencement Date, and certain disputed claims¹, the Debtor was current on all of its obligations on the Commencement Date. In fact, repayment of the Disputed Assessments 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 Assessments will not be repaid.

6. Annexed hereto are (i) a Customs Directive issued by U.S. Customs in 1991 (the "1991 Directive") and entitled "Monetary Guidelines for Setting Bond Amounts" annexed hereto as Exhibit C; and (ii) a Customs Directive issued by U.S. Customs in 1993 (the "1993 Directive") and entitled "Bond Sufficiency", annexed hereto as Exhibit D.

7. To the awareness of the undersigned, the 1991 Directive and the 1993 Directive are U.S. Customs' currently applicable directives in fixing the required amount of a continuous bond applicable to multiple import transactions.

8. The 1991 Directive, in relevant part at page 4 with respect to importers incurring annual duties and taxes of more than \$1,000,000, is as follows:

"Over \$1,000,000 in duties – the bond limit of liability amount shall be fixed in multiples of \$100,000 nearest to 10 percent of duties, taxes and fees paid by an importer or broker acting as importer of record during the calendar year preceding the date of the application." (emphasis added)

9. The 1993 Directive did not alter the 1991 Directive in this regard.

¹ These disputed claims are essentially claims asserted against the Debtor in State Court lawsuits which the Debtor intends to remove to the Bankruptcy Court.

10. The explicit tying of the required continuous bond amount to annual revenues expected to be paid to the United States provides, it is submitted, the strongest evidence that the sole purpose of the bond, and any required increases in the bond amount, is to protect the pecuniary interest of the United States in collecting the duties, tariffs and fees upon which the calculation of the required bond amount is based.

11. The 1991 Directive, in relevant part at page 1, further provides that:

“... it is not Customs’ intent to require bond amounts which unnecessarily put an excessive burden on a person or firm, or place them in an impossible situation.”

12. It is submitted by the Debtor that imposing a “stacked” bonds requirement on the Debtor places the Debtor in just such an impossible situation.

THE NEED FOR A PRELIMINARY INJUNCTION

13. The Debtor cannot operate without the Customs Bond. A pre-petition notice was provided to the Debtor to increase the Customs Bond creating an apparent need for the Debtor to obtain two bonds simultaneously. Until a hearing on the Debtor’s preliminary injunction request, the Debtor is requesting that all actions of U.S. Customs with respect to terminating and increasing the Customs Bond be stayed.

14. Plaintiff has satisfied all of the elements necessary for a preliminary injunction: (i) strong or substantial likelihood or probability of success on the merits; (ii) irreparable injury if not issued; (iii) no harm to others by issuing the injunction; and (iv) that its issuance will serve the public interest.

a. **Probability of Success on the Merits.**

(1) **Further Action to Terminate Customs Bond is a Violation of Automatic Stay.**

Through the Complaint, this affidavit and all Exhibits annexed thereto, Plaintiff has shown a strong or substantial likelihood of success on the merits. The Bankruptcy Code's automatic stay provision applies to the cancellation of a Customs Bond. *In re Advent Corp.*, 24 B.R. 612, 614 (1st Cir. BAP (Mass.) 1982) ("Under 11 U.S.C. §362, the filing of a petition under Title 11 stays any proceeding against the Debtor. An attempt to cancel a bond is a proceeding."). In *In re Advent Corp.*, the Debtor filed for bankruptcy protection on March 17, 1981, and the surety gave notice that it would cancel the Customs Bond on June 28, 1981. *Id.* At 613. The Bankruptcy Court held that the cancellation of a Customs Bond is a "proceeding" that is subject to the automatic stay, and thus any attempted cancellation after the stay was imposed is void. *Id.* At 614. Accordingly, Plaintiff will show that since the Customs Bond was in place at the time NWS filed for bankruptcy protection, the automatic stay prevents the surety from terminating the Customs Bond.

In addition, the purpose of the automatic stay is "to grant complete, immediate, albeit temporary relief to the Debtor from creditors, and also to prevent dissipation of the Debtor's assets before orderly distribution to creditors can be effected," and is intended "to allow the bankruptcy court to centralize all disputes concerning property of the Debtor's estate so that reorganization can proceed efficiently, unimpeded by uncoordinated proceedings in other arenas." *See S.E.C. v. Brennan*, 230 F.3d 65, 70 (2d Cir. 2000). To that end, §362(a) of the Bankruptcy Code provides, upon filing for bankruptcy, for an automatic stay of "the commencement or continuation, including the issuance or employment of process, 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." 11 U.S.C. §362(a)(1). However, §362(b) of the Bankruptcy Code enumerates a list of exceptions to the application of

the automatic stay, including “the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such government unit’s . . . police and regulatory power.” 11 U.S.C. §362(b)(4). Where the government’s interest is merely pecuniary, however, this exception to the automatic stay does not apply. *See, In Re Go West Entertainment, Inc.*, 387 B.R. 435, 439 (S.D.N.Y. 2008). Accordingly, in this case, the Plaintiff will show that the government’s sole purpose in increasing the amount of the Customs Bond pertains solely to the interest to protect government revenues and not in any regulatory capacity to protect the public’s safety and welfare.

In addition to the foregoing, as evidenced by Exhibit C annexed to the Complaint, Plaintiff, through its counsel, advised U.S. Customs that continued efforts post-petition to terminate the automatic stay were violations thereof and U.S. Customs declined to acknowledge the effect of the automatic stay. U.S. Customs’ failure to seek relief from the automatic stay in light of such knowledge is willful and in contempt of this Court.

(2) Since the Debtor is Financially Willing and Capable of Posting a Supplemental Bond in the Amount of \$3,100,000, There is No Need for “Bond Stacking”.

As stated in the Complaint, the Debtor has kept current with respect to all excise and customs obligations secured by the Customs Bond. Accordingly, U.S. Customs will not require the 180 day Verification Period (as defined in the Complaint) but rather, could make the necessary verification determination to release the \$9,300,000 current Bond within two weeks, which would negate any need for stacking the bonds. As set forth above, the Debtor does not dispute the \$3,100,000 bond increase, and has the financial capability of posting a supplemental bond in that amount.

Given the foregoing, Plaintiff, in addition to enjoining U.S. Customs in any post-petition action to terminate the subsisting Customs Bond, seeks an injunction under 11

U.S.C. §105 to enjoin the “bond stacking” described in the Complaint and above and allowing the Debtor to increase the subsisting Customs Bond by \$3,100,000.

Section 105 of the Bankruptcy Code empowers the Bankruptcy Court to issue orders “necessary or appropriate to carry out the provisions of” Title 11. 11 U.S.C. §105; In Re Johns-Manville Corp., 27 F.3d 48 (2d Cir. 1994). Such an order is necessary and justified in this case to allow the Debtor to survive and reorganize.

b. **Irreparable Injury.**

If the injunction is not issued, there will be irreparable injury to the estate because it will be unable to post two Customs Bonds simultaneously and the Debtor will no longer be authorized to import Goods, operations will cease and the reorganization effort will necessarily fail.

c. **Harm to Others.**

No harm will occur to others by the proposed preliminary injunction. In fact, the status quo will be maintained pending this Court’s final determination regarding the Customs Bond. Harm would only occur if an injunction is not issued.

d. **Public Interest.**

The public interest will be served if a preliminary injunction is issued to preserve the status quo thereby ultimately preserving the ability of the Debtor to continue operating so that it can file and seek confirmation of its Chapter 11 plan which will provide repayment in full plus interest on the Disputed Assessments, which, ironically is owed to another federal agency.

THE NEED FOR TEMPORARY RESTRAINT TO PRESERVE ASSETS

15. Because the Debtor has been advised that the termination process on the \$9,300,000 Customs Bond will commence two weeks prior to December 14, 2011, a temporary restraining order is necessary pending the hearing on the preliminary injunction.

WHEREFORE, I respectfully request that this Court grant the Plaintiff the relief requested herein.

s/ Robert J. Feldman
Robert J. Feldman

Sworn to before me this
30th day of November, 2011.

s/ LuAnn G. Spula

LUANN G. SCHLUETER *SPULA*
Notary Public, State of New York
Qualified in Erie County
My Commission Expires May 31, 2015

EXHIBIT A

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: 

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		<input type="checkbox"/> 5	Public Gauger 113.67	
<input type="checkbox"/> 1a	Drawback Payments Refunds 113.65	\$9,300,000.00	<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	Cost 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 15-160983000	SEAL	
		SIGNATURE 5 ROBERT STEIN AIE/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 <i>[Signature]</i> Kevin A. Tattam	CORPORATE SEAL	
	Name and Address 6	Surety No. 7 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:	99100C754	
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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Leslie Mark Greenbaum
Jeffrey A. Human
Hugh C. Carlin
Howard B. Cohen
R. Scott Atwater
John K. Rottaris
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Harry J. Forrest
Janet G. Burhyte
Thomas M. Gordon
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Email: rfeldman@gross-shuman.com
716.854.4300 x 248

Peter S. Gilfillan
(1945 - 2009)

Gordon R. Gross
Irving M. Shuman
Joel H. Paul
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
Revenue Division, Office of Administration
U.S. Customs and Border Protection
6650 Telecom Drive
Indianapolis, IN 46278

e-mail: Travis.W.Scott@CBP.DHS.gov
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: 905.336.3007

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
Page 2

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
Page 3

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.

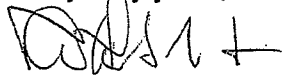
Any such action will indicate that this letter has been forwarded to you and that you have either failed to respond to the same or have failed to agree to acknowledge the prohibitions of Sections 362 and 525 of the Code as applicable to the proposed action by U.S. Customs and Border Protection as set 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 entities, check this box and state type of entity below <hr/>	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.	THIS SPACE IS FOR COURT USE ONLY
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.	
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 \$5 million <input type="checkbox"/> \$5,000,001 to \$10 million <input checked="" type="checkbox"/> \$10,000,001 to \$50 million <input 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 \$5 million <input type="checkbox"/> \$5,000,001 to \$10 million <input checked="" type="checkbox"/> \$10,000,001 to \$50 million <input 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="text-align: right;"> X 11/21/2011 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.) <div style="text-align: right; margin-right: 100px;"> _____ (Name of landlord that obtained judgment) </div> <div style="text-align: right; margin-right: 100px;"> _____ (Address of landlord) </div> <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(f)).			

Voluntary Petition

(This page must be completed and filed in every case)

Name of Debtor(s):

**Native Wholesale Supply Company,
a Corporation****Signatures****Signature(s) of Debtor(s) (Individual/Joint)**

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.

[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)

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X

Signature of Debtor

X

Signature of Joint Debtor

Telephone Number (if not represented by attorney)

Date

Signature of a Foreign Representative

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.

(Check only one box)

☐ 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.☐ 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.**X**

(Signature of Foreign Representative)

(Printed name of Foreign Representative)

(Date)

Signature of Attorney***X /s/ Robert J. Feldman**

Signature of Attorney for Debtor(s)

Robert J. Feldman

Printed Name of Attorney for Debtor(s)

Gross, Shuman, Bixler & Gilfillan, P.C.

Firm Name

465 Main Street

Address

Suite 600**Buffalo, NY 14203****716-854-4300**

Telephone Number

11/21/2011

Date

*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.

Signature of Non-Attorney Bankruptcy Petition Preparer

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.

Printed Name and title, if any, of Bankruptcy Petition Preparer

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.)

Address

X

Date

Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social Security number is provided

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.

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

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.

Signature of Debtor (Corporation/Partnership)

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.

The debtor requests the relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X /s/ Arthur A. Montour, Jr.

Signature of Authorized Individual

Arthur A. Montour, Jr.

Printed Name of Authorized Individual

Title of Authorized Individual

11/21/2011

Date



**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:	99100C754	
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 B

GrossShuman

Brizdle & Gilfillan, P.C.
ATTORNEYS AT LAW

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Robert J. Feldman
Leslie Mark Greenbaum
Jeffrey A. Human
Hugh C. Carlin
Howard B. Cohen
R. Scott Atwater
John K. Rottaris
John F. Leone
Jonathan D. Schechter
David H. Elibol
Thomas J. Keable
Harry J. Forrest
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Thomas M. Gordon
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Daniel T. Hunter
Katherine M. Liebner

Email: rfeldman@gross-shuman.com
716.854.4300 x 248

Peter S. Gilfillan
(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
Revenue Division, Office of Administration
U.S. Customs and Border Protection
6650 Telecom Drive
Indianapolis, IN 46278

e-mail: Travis.W.Scott@CBP.DHS.gov
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

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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

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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 Perrysburg, 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 entities, 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.
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.		
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).		

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 \$5 million <input type="checkbox"/> \$5,000,001 to \$10 million <input checked="" type="checkbox"/> \$10,000,001 to \$50 million <input 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 \$5 million <input type="checkbox"/> \$5,000,001 to \$10 million <input checked="" type="checkbox"/> \$10,000,001 to \$50 million <input 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

(This page must be completed and filed in every case)

Name of Debtor(s):

**Native Wholesale Supply Company,
a Corporation****Signatures****Signature(s) of Debtor(s) (Individual/Joint)**

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.

[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)

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

☒

Signature of Debtor

☒

Signature of Joint Debtor

Telephone Number (if not represented by attorney)

Date

Signature of a Foreign Representative

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.

(Check only one box.)

☐ 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.☐ 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.☒

(Signature of Foreign Representative)

(Printed name of Foreign Representative)

(Date)

Signature of Attorney*☒ /s/ Robert J. Felomen

Signature of Attorney for Debtor(s)

Robert J. Felomen

Printed Name of Attorney for Debtor(s)

Gross, Shuman, Brindle & Gilfillan, P.C.

Firm Name

465 Main Street

Address

Suite 600Buffalo, NY 14203716-854-4300

Telephone Number

11/21/2011

Date

*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.

Signature of Non-Attorney Bankruptcy Petition Preparer

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.

Printed Name and title, if any, of Bankruptcy Petition Preparer

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.)

Address

Signature of Debtor (Corporation/Partnership)

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.

The debtor requests the relief in accordance with the chapter of title 11, United States Code, specified in this petition.

☒ /s/ Arthur A. Montour, Jr.

Signature of Authorized Individual

Arthur A. Montour, Jr.

Printed Name of Authorized Individual

Title of Authorized Individual

11/21/2011

Date

☒

Date

Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social Security number is provided

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.

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

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.



**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:	99100C754	
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) 814-4517. 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

CUSTOMS DIRECTIVE

ORIGINATING OFFICE: OA

DISTRIBUTION: SEE SIGNATURE PAGE

CUSTOMS DIRECTIVE NO. 3510-004

OLD NUMBER: 3510-04

ISSUE DATE: JULY 23, 1991

SUBJECT: MONETARY GUIDELINES FOR SETTING BOND AMOUNTS

1. PURPOSE

To update the Customs Directive on Revised Specific Monetary Guidelines for Setting Bond Amounts, dated January 14, 1991.

2. BACKGROUND

On February 7, 1986, guidelines were established for setting bond amounts in Customs Directive 3510-01 or 02, "Specific Monetary Guidelines for Setting Bond Amounts." This Directive provided for an interim evaluation to modify these guidelines if needed. A new Directive was issued on January 14, 1991, to modify these guidelines.

3. ACTION

- A. The amount of a bond shall be set by utilizing information on the bond application prescribed in Section 113.12, Customs Regulations (CR), in conjunction with the criteria set forth in Section 113.13 CR, and the guidelines attached to this Directive.
- B. The purpose of the bond is to protect the revenue and ensure compliance. Examples include redelivery of merchandise, marking, proper record-keeping, etc. However, it is not Customs intent to require bond amounts which unnecessarily put an excessive burden on a person or firm, or place them in an impossible situation.
- C. The process of setting bond amounts is straightforward in most situations, but in others, judgment and discretion are necessary.

4. RESPONSIBILITIES

District and Area Directors are responsible for following these guidelines within their jurisdiction and making this Directive available to the public. Regional Commissioners are responsible for seeing that the guidelines are applied consistently within their respective regions.

5. SUPERSEDES

This Directive supersedes Customs Directive 3510-03, "Revised Specific Monetary Guidelines for Setting Bond Amounts," issue date January 14, 1991.

Assistant Commissioner
Office of Commercial Operations

Attachment

Distribution:

R-01 Regional Commissioners
F-01 District/Area Directors
F-02 Port Directors
G-07 All Entry Personnel
G-19 All Customs Inspectors
G-20 All Import Specialists

Guidelines for Determining Amounts of Bonds

INTRODUCTION

To require excessive security where it serves no valid purpose places an unnecessary burden on international trade and commerce. Judgment and discretion are important ingredients in the process of setting bond amounts. While discretion is an important aspect in setting bond amounts, the principles of national uniformity or standardization must also be followed regardless of the particular technique or formula used to determine bond amount. Setting the amount of a bond must not be an arbitrary action.

Since all districts are directed to use the same criteria to set bond amounts, a continuous bond in the amount approved by one district shall be honored by all districts unless any district director is aware that either extraordinary circumstances or a greater risk to the government is involved. When such extenuating circumstances are involved, the district director with such knowledge shall contact the district where the bond is filed and convey the supporting facts so that appropriate action, if required, can be taken. For example: When the amount of a continuous bond does not cover the duty on a particular shipment and the district director suspects that a greater risk to the government is involved, the district director shall:

1. secure, at the time of release, deposit of the estimated duty due on the shipment, or
2. request a single entry bond for that shipment, or
3. request that a new continuous bond in a higher amount be filed.

The district director should use discretion in situations where an importer infrequently imports high value shipments and the amount of the continuous bond does not cover the duty on a particular shipment. When a single entry bond is requested in these circumstances, the bond limit of liability may be for the total amount of duty, taxes and fees only.

When a firm conducts business in more than one district, setting and maintaining adequate bond coverage must be a collaborative effort. This effort will become smoother as more definitive data related to bonds and risk of loss or non-compliance become available from the ACS modules which interact with the bond module.

Activity 1 - Importer or Broker - Continuous

The bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given. The non-

discretionary bond amount minimum is \$50,000. To assist the district director in fixing the limit of liability amount, the following formula shall be used.

None to \$1,000,000 duties and taxes - the bond limit of liability amount shall be fixed in multiples of \$10,000 nearest to 10 percent of duties, taxes and fees paid by the importer or broker acting as importer of record during the calendar year preceding the date of the application.

Over \$1,000,000 duties and taxes - the bond limit of liability amount shall be fixed in multiples of \$100,000 nearest to 10 percent of duties, taxes and fees paid by an importer or broker acting as importer of record during the calendar year preceding the date of the application.

In either of these two categories a bond may be demanded with a limit of liability amount greater than that computed using this formula, provided sufficient evidence of high risk is on-hand to support the higher amount.

Bond amounts computed with this 10 percent formula also apply to importations of restricted merchandise unless specific instructions issued mandate otherwise.

If no imports were made during the preceding calendar year, the bond limit of liability amount will be fixed based on the duties, taxes and fees which the applicant estimates will accrue on imports during the calendar year, provided that the district director is satisfied with the accuracy of the estimate. In no event shall the limit of liability amount of any continuous Activity Code 1 bond be less than \$50,000.

However, when little or no duties, taxes, and fees are involved and the \$50,000 bond minimum amount is not deemed sufficient, as an option, the bond limit of liability amount may be fixed at one-half of 1 percent of the value of importations applicable to an annual period.

Activity 1 - Importer or Broker - Single Transaction

a. Generally, a single transaction, Activity Code 1, Importer or Broker bond (for a consumption entry, immediate delivery, to cover articles entered or withdrawn from a warehouse, etc.) will be executed in an amount not less than the total entered value plus all duties, taxes, and fees which apply, unless the merchandise being imported falls into one of the following categories. In these cases, the bond will be executed in an amount which is not less than three times the total entered value of the merchandise.

1. MERCHANDISE SUBJECT TO OTHER AGENCY REQUIREMENTS WHERE FAILURE TO REDELIVER COULD POSE A THREAT TO THE PUBLIC HEALTH AND SAFETY

A) Food and Drug Administration (FDA) - All

- B) Environmental Protection Agency (EPA) - All
- C) Bureau of Alcohol, Tobacco and Firearms (BATF) - Alcoholic Beverages and Distilled Spirits Only
- D) Consumer Products Safety Commission (CPSC) - Toys and Fireworks only if sampled by Customs for CPSC testing
- E) Department of Agriculture, Agricultural Marketing Service (AMS) - Subject to marketing orders
- F) Federal Communications Commission (FCC) - All
- G) Toxic Substances Control Act (TOSCA) - All

2. ALL MERCHANDISE SUBJECT TO QUOTA AND/OR VISA REQUIREMENTS

In cases in which the entry includes merchandise which falls into the above categories, and merchandise which does not, the district director may set the bond amount equal to three times the total entered value of the merchandise which falls into the specified categories, plus the total entered value and all duties, taxes, and fees which apply, for the remainder of the merchandise.

In addition, the district director may set the single transaction bond amount at 10 percent of the total entered value for unconditionally free merchandise, which is not subject to the above categories.

The district director has the authority to accept a single transaction bond unsecured by surety or other means for an entry after making a potential risk assessment (for example, an entry with a total entered value of \$10,000 or less with no revenue implications, no other agency requirements, and no chance of requiring redelivery). Each case should be determined individually; however, continuous bonds without surety or other security are not acceptable. In such individual cases, the importer will be required to execute the bond in an amount equal to the value of the merchandise being imported, unless the district director deems a greater or lesser amount is necessary to accomplish the purpose for which the bond is given. If the importer defaults on any of the bond conditions, liquidated damages will be assessed in accordance with Subpart G, Part 113 CR.

- b. When the bond is given to cover articles for exhibition, the bond limit of liability amount shall be fixed in an amount equal to the estimated duties, as determined at the time of entry. If the commodity would otherwise be free of duty, the bond liability amount shall include one times the merchandise processing fee, or \$100, whichever is greater, if MPF is applicable.

- c. When the bond is for a trade fair operator, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given.
- d. When the bond is for a temporary importation, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to protect the revenue, but not less than an amount equal to double the duties which it is estimated would accrue had all the articles covered by the entry been entered under an ordinary consumption entry. In the case of samples solely for use in taking orders, motion picture advertising films, professional equipment, tools of trade, and repair components for professional equipment and tools of trade, the bond limit of liability amount shall be 110 percent of the estimated duties. Taxes and special duties (for example, IR taxes, antidumping and countervailing duties, etc.) shall be taken into account in all computations.

If the commodity would otherwise be free of duty, the bond liability amount shall include one times the merchandise processing fee or \$100, whichever is greater, if MPF is applicable.

- e. When the bond is to secure the payment of overtime services requested by or on behalf of parties in interest, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to secure the payment of the amount due.
- f. When the bond is for the importation of flammable fabrics, the bond limit of liability shall be fixed in an amount equal to triple the value of the merchandise.
- g. When the bond is for the conditionally free withdrawal of distilled spirits (including alcohol), wines, or beers for supplies of fishing vessels, the bond limit of liability shall be fixed in an amount equal to the duties, taxes, and fees that would have been assessed had the supplies been regularly entered or withdrawn for consumption.
- h. When the bond is for entry of merchandise found or believed by the U.S. International Trade Commission to involve unfair practices or methods of competition, the bond limit of liability amount shall be fixed in an amount determined by that Commission.
- i. When the bond is for the actual owner whose declaration has been filed pursuant to section 485(d), Tariff Act of 1930, as amended (19 USC 1485(d)), the bond limit of liability amount shall be fixed in an amount either equal to the amount of the single transaction bond related to the entry, or if the bond related to the entry was a continuous bond, in an amount equal to the amount a single transaction bond would have been.

Activity 1a - Drawback Payment Refunds Continuous

When the bond is for accelerated payment of drawback, the bond limit of liability amount shall be fixed in an amount sufficient to cover the maximum amount of accelerated payment to be outstanding at any time during an annual period.

When the bond is for drawback claims using the exporter's summary procedure the bond limit of liability amount shall be fixed in an amount equal to 25 percent of the drawback claimed on entries filed by the principal (exporter-claimant) during an annual period.

When the bond is for both accelerated payment of drawback and claims using the exporter's summary procedure the bond limit of liability amount shall be fixed at an amount sufficient to cover the maximum amount of accelerated payment to be outstanding at any time during an annual period, or much larger amount the district director may deem necessary to afford ample protection of the revenue.

Activity 1a - Drawback Payment Refunds - Single Transaction

The bond limit of liability amount for accelerated payment of drawback shall be equal to the amount of accelerated payment to be received on the entry covered.

Activity 2 - Custodian of Bonded Merchandise

When the bond is for a bonded warehouse operator, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given, but not less than \$25,000 on each building or area covered by the bond. Note: In determining the bond amount for a warehouse which will be used to store distilled spirits, consideration must be given to the fact that the warehouse proprietor is liable for both the duty and tax on distilled spirits missing from the warehouse. When the bond is for the carriage of merchandise by common carriers, contract carriers, and freight forwarders, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given, but not less than \$25,000 in the case of motor and air carriers and in an amount not less than \$50,000 in the case of other carriers.

When the bond is for a container station operator, independent of either the importing carrier or bonded carrier, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given, but not less than \$25,000.

When the bond is for a Centralized Examination Station (CES), the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given, but not less than \$25,000.

When the bond is for a customhouse cartage or lighterage operation, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given, but not less than \$25,000.

When the bond is for a private carrier operator, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given.

When the bond is to secure the payment of overtime services requested by or on behalf of parties in interest, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to secure the payment of the amount due.

When the bond is for more than one kind of custodial operation, the bond limit of liability shall be fixed in an amount large enough to cover the combined operations. For instance, if a bonded warehouse and container station are covered under the same bond, the bond limit of liability shall be fixed in an amount the district director may deem necessary to accomplish the purposes for which the bond is given, but not less than \$25,000, plus \$25,000 per warehouse building.

Activity 3 - International Carrier - Continuous

When the bond is to secure activities, including requested overtime services, related to the entry or clearance of vessels, vehicles, or aircraft which arrive directly or indirectly from any place outside the customs territory of the United States, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given, but not less than \$25,000. In addition, the district director has full responsibility for setting bond limits at higher amounts, up to \$250,000 as deemed necessary, for carriers with past narcotics violations and/or those originating from high-risk drug areas.

Activity 3 - International Carrier - Single Transaction

When the bond is to secure activities, including requested overtime services, related to the entry or clearance of a vessel, vehicle, or aircraft which arrives directly or indirectly from any place outside the customs territory of the United States, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given but not less than \$25,000. If the bond is to secure the landing in foreign ports, by a vessel of less than 500 net tons, of spirits, wines, or other alcoholic beverages not covered by a certificate of shipment, the bond limit of liability amount shall be fixed in an amount equal to double the estimated duty and taxes.

(CHANGE 1/AUG '93)

Activity 3a - Instruments of International Traffic

When the bond is for the control of instruments of international traffic required by Section 10.41a CR and/or clearance of serially numbered substantial holders or outer containers required in Section 10.41b CR, the bond limit of liability shall be fixed at \$20,000, or such larger amount the district director deems necessary to accomplish the purpose for which the bond is given.

Activity 4 - Foreign Trade Zone Operator - Continuous

When the bond is for a Foreign Trade Zone operator, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given, but not less than \$50,000.

Activity 5 - Public Gauger - Continuous

The bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given. Under normal circumstances, the bond limit of liability for Public Gauger and Commercial Laboratory companies who have not been the subject of adverse Customs actions will be based on the number of approved or accredited sites operated by that gauger or laboratory company.

Laboratories or gaugers operating one site are considered small and the bond limit of liability should be not less than \$20,000. Companies operating two to ten sites are considered medium in size and the bond limit of liability should be from \$30,000 to \$50,000. Those companies operating more than ten sites are considered large in size and the bond limit of liability should be from \$100,000 to \$120,000.

Activity 6 - Wool & Fur Products Labeling Acts and Fiber Products Identification Act Importations - Single Transaction

The bond limit of liability amount shall be fixed in an amount equal to two times the value of the merchandise involved and duty thereon.

Activity 7 - Bill of Lading - Single Transaction

The bond limit of liability amount shall be fixed in an amount equal to one and one-half times the invoice value.

Activity 8 - Detention of Copyrighted Material - Single Transaction

The bond limit of liability amount shall be fixed in an amount appropriate to hold the United States and its employees, and the importer or owner, harmless from any material depreciation of articles detained as alleged to be infringing and from any loss caused by the detention of articles found not to be infringing. Generally, 120 percent of the value of the articles, as set forth in the entry, plus the estimated duties, taxes and fees will be appropriate, but the district director may raise or lower the amount as necessary.

Activity 9 - Neutrality - Single Transaction

The bond limit of liability amount shall be fixed in an amount equal to double the value of the vessel and cargo on board.

Activity 10 - Court Costs for Condemned Goods - Single Transaction

The bond limit of liability amount shall be fixed in an amount of \$5,000 or 10 percent of the value of the claimed property, whichever is lower, but not less than \$250.

EXHIBIT D

099 3510-005 May 17, 1993

BOND SUFFICIENCY

1. PURPOSE

The purpose of this issuance is to provide guidelines for the determination of the sufficiency of the limit of liability amount for Activity Code 1, Importer or Broker, Continuous Bonds.

2. BACKGROUND

As provided for in Part 113 of the Customs Regulation (19 C.F.R. 113) district/area directors are responsible for the approval of bond amounts for continuous bonds filed in their district/area, and for periodic review of the sufficiency of those bonds. Guidelines for setting bond amounts were previously issued in Customs Directive 3510-04, "Monetary Guidelines for Setting Bond Amounts", dated July 23, 1991. This issuance coupled with the on-line query capabilities in the ACS bond module will enable district/area directors to make bond sufficiency determinations in their respective districts/areas. You will be advised as further enhancements to the bond liability module are developed.

A new ACS bond liability module has been developed which will provide Customs with important information needed in the annual review of Activity Code 1, Continuous Bonds, and also to alert Customs to bonds which may have excessive outstanding liabilities. Two types of information will be available for each bond during the bond year: 1) the total amount of overdue bills and Fines, Penalties and Forfeitures (FP&F) demands billed (plus detail information), and 2) the total estimated entered value, duties, taxes and fees at time of entry summary acceptance for all entry summaries entered during the bond year.

3. ACTION

A. On-Line Query Capability

The new queries that have been created as part of the new bond liability module are as follows:

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1. BNLL (Bond Liability Locate) - this screen lists all continuous bonds by district, bond number and bond year, and an indicator that the bond is currently in an "alert condition". The estimated liability amount represents a total of any outstanding overdue bills from the CLE file and FP&F demands billed. (An alert condition is triggered when the amount of outstanding bills plus two times the amount paid by surety is equal to or greater than 80% of the bond amount for a given bond year.)
2. BNLS (Bond Liability Query) - this screen displays bond liability totals (overdue CLE bills and FP&F demands billed) for a bond number for a particular bond year.
3. BNLI (Estimated Accumulated Entry Amounts by Bond) - this screen displays the accumulated monetary amounts for all entry summaries covered by a continuous bond for a particular bond year. Separate amounts are shown for entered value, duty, antidumping/countervailing duty, taxes, and fees and a grand total. In the future, the total entered value will be separated from the total of duties, taxes, and fees.
4. BNLI (Overdue Bills and FP&F Demands Referred to Surety) - this screen lists, for a continuous bond for a particular bond year, all current associated

FP&F demands billed and overdue CLB bills, and if the bill/demand is protested.

5. BNL2 (Bills Paid by Surety) - this screen will list, for a bond number and bond year, all bills, including FP&F bills, which were paid by surety.

B. BOND SUFFICIENCY COORDINATOR

District/area directors are responsible for ensuring that someone is designated as the Bond Sufficiency Coordinator. Please be cognizant of the importance of this responsibility when making this assignment. The Office of Trade Operations will maintain a listing of the District Bond Sufficiency Coordinators. The

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Coordinator is responsible for reviewing the F40, Monthly CF 301 Bond Liability Report, and the B68, CF 301 Bond Report for Anniversary Date Review, and analyzing these reports to determine if a new bond with a higher limit of liability is necessary. These reports are available each month in ACS using function RMTP. The individual who analyzes these reports will obtain input from other branches in the district, such as FP&F, and determine the amount of the bond for the coming year or the need for additional security in the current bond year.

C. F40, MONTHLY CF 301 BOND LIABILITY ALERT REPORT

The amounts on overdue bills (mostly supplemental duty billings) and FP&F demands billed will be totalled for each continuous bond. When the outstanding liability, as defined by overdue bills and FP&F demands billed, plus two times the amount paid by surety against a bond at any time during a given bond year equals or exceeds 80 percent of the total bond amount, that bond number will print on the Monthly CF 301 Bond Liability Alert Report (F40) for the district where the bond is maintained. The district/area director then can require that the bond coverage be appropriately augmented.

For each bond that appears on the F40, the BNL file should be queried (BNLL, BNLS) to determine the current liability of the principal and/or bond user (BNLS will show any payments received after the date of the monthly report). In addition, the BNLS screen will indicate whether it is overdue bills, Fines Penalties and Forfeitures (FP&F) demands, or a combination of the two which triggered the alert.

Please note - If an importer has received written approval from the district director to defer payment of the importer's internal revenue tax and to pay those amounts by Electronic Funds Transfer (EFT), this process may result in a premature liability alert status. Since EFT deferred tax bill payments are made directly to the National Finance Center (NFC), only EFT deferred tax bills having a bill date more than 60 days old should be considered an outstanding liability. The Bond Sufficiency Coordinator should contact the National Finance Center-EFT/BCA Cashier Unit at 317-298-1348, to verify current liability for those EFT deferred tax bills having a bill date more than 60 days old.

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The office, e.g., FP&F and Commercial Operations, generating the bills/demands (other than EFT deferred tax bills) which triggered the alert should be consulted by the Bond Sufficiency Coordinator by memorandum (Attachment C) for a recommendation in determining if a higher bond amount is needed to provide sufficient liability coverage for the remainder of the bond year. Since continuous bonds can cover activity in various Customs locations, it may be necessary for each respective office to contact the other district offices by telephone or email for their input. Also note, the outstanding liabilities for any

given bond are not necessarily for the principal shown, but may be for other users of the bond.

Function BNLI will provide detail information for all current associated FP&F demands billed and overdue supplemental duty bills, and show if the demand/bill has been protested. The receiving office will have 5-working days from the date of the memorandum (Attachment C) to notify the Bond Sufficiency Coordinator of his/her recommendation. For audit purposes, the memorandum should remain part of the bond file.

In the case of supplemental duty bills, Supervisory Import Specialists should look at factors such as whether the liability alert was triggered by bills generated as a result of the liquidation of entry summaries which were held for a countervailing/antidumping duty investigation. In this case, the total increase in duties resulting from the liquidation of the entry summaries which is applicable to the bond year should be considered in determining the required bond amount, not just those bills which have become overdue and shown on the BNLS screen. FP&F Officers should keep in mind that, while FP&F demands billed may be responsible for triggering the bond alert, such demands are often settled for less than the billed amount.

When necessary, the principal on the bond will be notified by the Bond Sufficiency Coordinator that the bond is insufficient and that additional security must be provided within 30 days of the notice (19 CFR 113.13(a)). A form letter for notification to the principals of Activity Code 1, Importer or Broker, □

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Continuous Bonds is provided as Attachment A. Note that the principal has the option of providing a new continuous bond in the required amount or filing a single transaction bond with each entry. However, in either case, the importer must terminate the existing continuous bond. This is necessary to prevent the existing insufficient bond from being used to effect the release of future shipments.

In the event that the principal does not request termination of the existing insufficient bond within 30 days of notification, the Bond Sufficiency Coordinator will notify the local OAS Division, who in turn will contact the National OAS Division to input national cargo selectivity criteria under the principal's importer of record number requiring entry documents be accompanied by a single transaction bond. An example of the message to be used is included as Attachment E.

The individual reviewing the cargo selectivity insufficient bond message must check the importer of record number on the entry, because the ultimate consignee number is a cargo selectivity data element and the importer of record number is not, and in some instances the ultimate consignee and importer of record are not the same. If the importer of record number matches the number shown on the cargo selectivity message, the entry must be rejected back to the filer requiring entry be accompanied by a single entry bond.

If the principal requests termination of the insufficient bond after the thirty day time frame, the bond will be terminated and the Bond Sufficiency Coordinator will contact local OAS immediately to have the cargo selectivity message deleted. (Please note that establishing cargo selectivity records is an interim step until the proper edits are added to the bond file to automatically check to see if a bond shown on the entry transaction has been determined to be insufficient. You will be notified when this enhancement has been added.)

D. B68, CF 301 BOND REPORT FOR ANNIVERSARY DATE REVIEW

In order to provide information for the annual review

of Activity Code 1, Importer or Broker, Continuous Bonds, the total entered value, duties, taxes and fees for each summary will be captured when the entry summary is placed in Customs accepted status, whether ☐

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that occurs through collection or on-line summary processing. A total of this information is included on the monthly B68, CF 301 Bond Report for Anniversary Date Review. A breakdown of the entered value, duties, taxes and fees is available using function BNLI in ACS, to help in the determination of sufficiency of individual continuous bond amounts.

The section of Customs Directive 3510-04, Monetary Guidelines for Setting Bond Amounts, dated July 23, 1991, concerning the bond limit of liability amount should be the guideline for the Bond Sufficiency Coordinator to determine bond sufficiency. It specifically states in the guidelines for determining amounts of bonds, "... that the bond limit of liability amount shall be fixed in an amount the district/area director may deem necessary to accomplish the purpose for which the bond is given. The non-discretionary minimum bond amount is \$50,000. To assist in fixing the limit of liability amount, the following formula shall be used:

None to \$1,000,000 duties, taxes and fees - the bond limit of liability amount shall be fixed in multiples of \$10,000 nearest to 10 percent of all duties, taxes and fees paid by the importer, or broker acting as importer of record, during the previous bond year but in no case shall be fixed in an amount less than \$50,000.

Over \$1,000,000 duties, taxes and fees - the bond limit of liability amount shall be fixed in multiples of \$100,000 nearest to 10 percent of all duties, taxes and fees paid by an importer, or broker acting as importer of record, during the previous bond year.

Bond amounts computed with this 10 percent formula also apply to importations of restricted merchandise unless specific instructions issued mandate otherwise.

However, when little or no duties, taxes and fees are involved and the \$50,000 bond minimum is not deemed sufficient, as an option, the bond limit of liability amount may be fixed at one-half of 1 percent of the value of importations made during the previous bond year."

□

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When reviewing the monthly B68 report, the Bond Sufficiency Coordinator shall query through ACS the bond activity of each bond using function BNLI, Estimated Accumulated Entry Amounts by Bond (Attachment D). This screen will display estimated accumulated totals of entered value, duty, antidumping/ countervailing duty, internal revenue tax and all fees for a specific bond year. Using the formula outlined in Customs Directive 3510-04, the Bond Sufficiency Coordinator will make a determination whether an increase in the limit of liability is warranted.

In certain circumstances, the Bond Sufficiency Coordinator should consult with other Customs officers for their recommendations when the activity of the principal/bond user has exceeded the liability limits on their current continuous bond. For example, Principal XYZ has an Activity Code 1, continuous bond on file with a limit of liability of \$50,000. At the time of bond anniversary review, it is determined that this principal's and/or bond user's activity resulted in \$660,000 in duties, taxes and fees being paid during the principal's bond year. The Bond Sufficiency Coordinator will send a memorandum to the Supervisory Import Specialist for further review and comments from

Whenever the activity of the principal warrants an increase in the limit of liability, the Bond Sufficiency Coordinator will follow the same procedural steps as outlined in Section C of this Directive.

District and area directors are responsible for following these guidelines within their jurisdiction. Regional Commissioners are responsible for seeing that the guidelines are applied consistently within their respective regions.

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These guidelines are effective on the issue date of this directive.

Acting Assistant Commissioner
Office of Commercial Operations

Distribution:

R-01 Regional Commissioners
F-01 District/Area Directors
F-02 Port Directors
G-07 All Entry Personnel
G-19 All Customs Inspectors
G-20 All Import Specialists

□

ATTACHMENT A

Date:

Dear Sir or Madam:

You have the following Activity Code 1, Importer or Broker,
Continuous Bond on file in this district:

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Bond Number                                     :
Principal's Importer of Record Number:
Surety                                           :
Amount                                           :
Anniversary Date                               :

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Pursuant to Customs Regulation 113.13 (19 CFR 113.13), this bond has been determined to be inadequate to ensure compliance with Customs law and regulations. Within 30 days from the date

of this letter, you must terminate this bond and either replace it with a continuous bond with a minimum limit of liability of \$_____, or be subject to those requirements as outlined below.

When the termination request is sent to Customs, please include a copy of this letter to ensure that Customs will be aware that the conditions of this letter have been followed. Failure to terminate the current continuous bond and provide a new bond within the prescribed time period will require that at the time of entry before the merchandise is released, the entry summary documentation be filed with a single transaction bond and estimated duties, if any, be deposited.

If you have any questions, please contact _____ at _____.

Sincerely,

District Director

cc: Surety Company on Bond

☐

ATTACHMENT B

DATE :

TO : Supervisory Import Specialist

FROM : Bond Sufficiency Coordinator

SUBJECT: B68, CF 301 Bond Report for Anniversary Date Review

The yearly review of the bond limit of liability amount for bond number _____ for principal, _____ is presently being conducted. According to ACS, the estimated accumulated duties, taxes and fees for the current bond year is \$_____. Please check one of the boxes below to indicate whether the present limit of liability is sufficient or the limit of liability should be increased, and return the form within 5 working days from the date of this memorandum.

☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

☐ ☐

Present Limit of Liability Acceptable.

☐ ☐

☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

☐ ☐

Current Limit of Liability Insufficient for the Upcoming Bond Year. New Bond with a Limit of Liability of \$_____ should be Requested.

☐ ☐

☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

Reason limit of liability has been determined to be insufficient: _____

Supervisory Import Specialist Signature and Date

☐

ATTACHMENT C

DATE :

TO :

FROM : Bond Sufficiency Coordinator

SUBJECT: F40, Monthly CF 301 Bond Liability Report

The outstanding liability, as defined by overdue bills and

FP&F demands billed, against bond number _____ for principal, _____, for the current bond year, equals or exceeds 80 percent of the total bond limit of liability amount. The alert condition, which can be queried using function BNLI, was triggered by:

Overdue CLE bill(s) in the amount of \$ _____

FP&F demand(s) billed in the amount of \$ _____

Please check one of the boxes below to indicate whether the present limit of liability is sufficient or the limit of liability should be increased, and return the form within 5 working days from the date of this memorandum.

☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐
☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐
☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

Present Limit of Liability Acceptable.

☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐
☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐
☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

Current Limit of Liability Insufficient.

New Bond with a Limit of Liability of _____

\$ _____ should be requested.

Reason limit of liability has been determined to be insufficient: _____

Signature/Title/Date _____

☐

Attachment D

BNLI 409101566/030192

ACS BOND QUERY: ESTIMATED ACCUMULATED ENTRY AMOUNTS BY BOND

BOND NUMBER: 409101566 BOND YEAR: 03/01/92 - 02/28/93
 DISTR MAINTND: 40 CURRENT STATUS: VALID SURETY1: xxx
 EFFECTIVE DT: 03/01/91 ACTIVITY CODE: 1 IMPOR-BRKR

BOND AMOUNT: \$ 200,000

ESTIMATED ACCUMULATED ENTRY AMTS FOR BOND DURING THIS BOND YEAR:

ENT VALUE:	\$	119,765,108.00
DUTY:	\$	431,739.76
ADD/CVD:	\$.00
IR TAX:	\$	11,296,681.67
FEES:	\$	48,837.41
TOTAL:	\$	131,542,366.84

PF1: NEXT BNLI RECORD PF2: BOND LIAB QUERY (BNLS)
 PF3: BOND LIAB LOCATE (BNLI) PF5: MASTER BOND QUERY (BNDS)
 PF6: OVERDUE BILLS/DEMANDS (BNLI)

☐

ATTACHMENT E

ACS SELECTIVITY CRITERIA REFERRAL FORM
 FOR INSUFFICIENT BOND LIABILITY

____ ADD NATIONAL CRITERIA, DOCUMENT REVIEW

____ DELETE NATIONAL CRITERIA, DOCUMENT REVIEW

IMPORTER NUMBER _____

IMPORTER NAME _____

REMARKS:

ENTRY/ENTRY SUMMARY WITH DEPOSIT OF ESTIMATED DUTY/TAXES/FEES
 ALONG WITH SINGLE TRANSACTION BOND REQUIRED FOR RELEASE OF CARGO.
 CONTINUOUS BOND ON FILE HAS BEEN DETERMINED TO BE INADEQUATE TO
 ENSURE COMPLIANCE WITH CUSTOMS LAWS. FOR INFO CONTACT:

(District contact name and phone number).

SUBMITTED BY DATE

PROCESSED BY OAS DATE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re

NATIVE WHOLESALE SUPPLY COMPANY

Debtor

NATIVE WHOLESALE SUPPLY COMPANY

Plaintiff

v.

U.S. CUSTOMS AND BORDER PROTECTION

Defendant

Case No. 11-14009-CLB
Chapter 11

**ORDER ON MOTION OF
PLAINTIFF NATIVE
WHOLESALE SUPPLY
COMPANY FOR
PRELIMINARY INJUNCTION
AND GRANTING TEMPORARY
RESTRAINING ORDER**

A.P. No. 11-01123-CLB

This matter having come before this Court on the Plaintiff's motion dated November 30, 2011 seeking a preliminary injunction and temporary restraining order with supporting papers, including the affidavit of Robert J. Feldman sworn to November 30, 2011, the Complaint and all exhibits annexed thereto (the "Motion"), and upon the Motion, it is ordered as follows:

1. A hearing on the Motion shall be held at the United States Bankruptcy Court, Part II, Olympic Towers, 300 Pearl Street, Third Floor, Buffalo, New York, on _____, 2011 at _____ o'clock. Responsive papers, if any, shall be filed and served for receipt by Plaintiff's counsel on or before _____, 2011. Reply papers by Plaintiff, if any, shall be filed with the Clerk and a copy served on Defendant or counsel appearing for the Defendant for receipt on or before December ____, 2011.

2. Good cause having been shown, until such time as the Motion is heard and determined by this Court, U.S. Customs and Border Protection and all other persons are hereby enjoined and restrained from continuing the process of terminating the Debtor's \$9,300,000 Customs Bond, making a determination on rendering the Customs Bond insufficient requiring the simultaneous posting or "stacking" of a new bond by the Debtor for \$12,400,000 or taking any action or actions in furtherance of this conduct pending a final decision of this Court with respect to Plaintiff's request for a preliminary injunction.

3. Plaintiff shall serve copies of this Order, the Motion, including the Feldman Affidavit and attached Exhibits, and the Summons and Complaint on the Defendant on or before December ___, 2011.

SO ORDERED at Buffalo, New York this ____ day of November, 2011.

Hon. Carl L. Bucki
United States Bankruptcy Judge