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Do you know who writes your U.S. Customs bond?

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Recently, a \$1 billion class action lawsuit was filed by a prominent law firm on behalf of several U.S. companies against several major sureties who have written Customs bonds over the past ten years. At issue is the purported issuance of hundreds of single transaction bonds securing anti-dumping duties assessed to certain agriculture/aquaculture products imported from Chinese exporters classified as “new shippers” under the current anti-dumping laws. The suit also named as defendants, Customs and Border Protection and the Department of Commerce. The suit alleges that the named insurers’ negligent issuance of Customs bonds and their subsequent refusal to pay under the bonds has caused severe financial damages to “affected domestic producers”. Also alleged is that these insurers promoted unfair trade practices by issuing the bonds without applying reasonable underwriting standards thus facilitating the importation of the products subject to dumping identified in the suit. Additional information regarding the suit can be found in the attached press release.

While the merits of this case will be adjudicated in the courts, the issues cited in the suit do not involve or affect the majority of Customs bonds which have been issued or are currently on file with Customs and Border Protection. The suit is limited in scope and applies to single transaction bonds which have secured the anti-dumping duty obligations predominantly of importers of fresh garlic, crawfish tail meat, canned mushrooms and honey imported from certain Chinese producers. The suit, however; has raised questions regarding the underwriting and claim handling practices of certain sureties with respect to U.S. Customs bonds and the potential effect this could have on the industry. Our office has recently received several inquiries whether our clients or the companies with whom we presently write bonds for have been affected. In this respect, we are pleased to state that none of the surety companies for whom we presently execute bonds are named in the suit.

This class action lawsuit is the latest in a string of events involving the surety industry and more specifically underwriters of U.S. Customs Bonds. For those who do not work with Customs surety bonds on a day to day basis, this and other recent developments could affect the continuity of coverage for a bond principal. Some of the developments over the past year include:

- Recently, A.M. Best downgraded a U.S. insurance company owned by a Canadian holding company from B to B- with negative implications. This insurance company is an active writer of U.S. Customs bonds. Many insurance professionals will only seek coverage for their client’s insurance needs with an insurance company with a Best rating of A- or higher.
- Other surety companies have re-evaluated their relationships with their respective MGA resulting in changes affecting the underwriting and continuation of many bonds. U.S. Customs is presently inundated with requests to terminate and replace bonds based on the underwriting decisions of at least two surety companies.
- A large U.S. insurance brokerage firm who is an active writer of U.S. Customs bonds was acquired by a German insurer and will be controlled by a UK insurance syndicate owned and operated by the insurer.

"Courtesy and Service"

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- A surety company who presently writes a large number of Customs bonds announced it is transferring underwriting responsibilities for its Customs bond business to an unrelated MGA and many of the surety's employees would be going to work for the MGA.

In this time of economic uncertainty, navigating the U.S. surety market in these challenging times can be tricky. While some of the above industry developments may have a greater impact than others on the Customs bond process, the most valued and sought after attribute in a company today is stability and experience.

C.A. Shea & Company, Inc. is and continues to be a leading insurance broker and intermediary specializing in the placement and administration of U.S. Customs bonds since 1945. C.A. Shea is a family owned and operated business with four generations of family members who have been employed by the company. Unlike other companies who place and administer Customs bonds with just one or two sureties, we are aligned and partner with several of the finest and most financially stable surety companies operating in the market today. These companies include CNA Surety and Western Surety Company, Travelers, ACE Surety, RLI Surety, Zurich/F&D, The newly combined Safeco Surety and Liberty Mutual Surety, Argo Surety and The Chubb Companies. We have broad access to surety markets and this diversity provides our clients with stability and flexibility in a challenging economy. Our current management has been in place without change for over ten years. Since we are a specialty broker and intermediary, our primary business is Customs bonds and we can solely focus on our client's Customs bond needs. We are not impacted by management or ownership changes, downsizing, product elimination, reductions in capacity and underwriting authority. At C.A. Shea, we provide our clients with the best possible "Courtesy and Service" in the Customs bond process along with our "65" years of expertise. Our office dialogues with Customs bond team personnel on a daily basis and individuals in our management staff serve on various Customs committees and sub committees including TSN, ACE, Customs/Surety Executive Committee and COAC.








For brokers and agents, now is the time to be asking your clients "Do you know who is writing your Customs Bond?"

"Courtesy and Service"

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**KELLEY
DRYE**April 07, 2009 11:00 AM Eastern Daylight Time **Kelley Drye & Warren LLP Files \$1 Billion Lawsuit on Behalf of Domestic Producers Against Insurers and U.S. Government for Damages Caused by Dumped Chinese Food Products**

WASHINGTON--(BUSINESS WIRE)--Today, domestic producers of fresh garlic, crawfish tail meat, canned mushrooms and honey, represented by the law firm of **Kelley Drye & Warren LLP**, filed a class action lawsuit against major insurance companies to recover close to \$1 billion in damages. The Washington, D.C. law firm of Adduci, Mastriani & Schaumberg, LLP is co-counsel with Kelly Drye for many domestic producers of crawfish tail meat. The complaint states that the insurers' negligent issuance of customs surety bonds, and subsequent refusal to pay under those bonds, allowed the sale of huge amounts of competing food imports from China at below-cost, or "dumped" prices. This caused severe financial damages to the domestic producers. The lawsuit, filed in the federal Court of International Trade, also claims that the U.S. Customs and Border Protection and the Commerce Department failed to enforce the four antidumping orders issued years ago to protect the domestic producers from dumped Chinese imports.

The surety defendants include the Hartford Companies, Lincoln General, Washington International, American Home Assurance, Great American Insurance Companies and International Fidelity.

The complaint states that for eight years, the insurers negligently issued hundreds of customs surety bonds that guaranteed the payment of any dumping duties the government might determine were owed by U.S. importers for the specified Chinese goods.

"Without these customs surety bonds, the importers could not have brought in and sold the Chinese goods in the U.S. market at steeply dumped prices. The dumping of these imports forced the domestic producers to significantly lower the prices for their competing products, causing the producers to lose hundreds of millions of dollars," said [Michael Coursey](#), a partner in Kelley Drye's international trade practice group.

[John Heintz](#), chair of Kelley Drye's insurance recovery and D.C. litigation practice groups explained, "Because these importers were new, thinly capitalized, and had little or no credit history or experience in importing, the insurers knew or should have known that the importers posed an extremely high risk of defaulting on assessed dumping duties. The insurers, nevertheless for years, continuously issued the bonds on behalf of the importers, and made millions of dollars in premiums."

Now, the importers have all defaulted on paying the hundreds of millions of dollars in dumping duties the government has billed for these imports. The insurers similarly have refused to pay the duties as required by their bonds, and Customs has failed to prosecute any collections lawsuits against the insurers. The government is legally obligated to distribute to the competing domestic producers any dumping duties ultimately paid by the importers or the insurers. Thus, the government's failure to collect these duties from either the importers or the insurers has resulted in huge losses for the domestic producers.

This ground-breaking lawsuit holds insurance companies accountable for enabling unfair international trade practices with custom bonds, and for failing to honor the payments promised, when issuing those bonds.

Kelley Drye partners [John Heintz](#) (301) 466.3161 and [Michael Coursey](#) (202) 487.5226 are available for interviews regarding the lawsuit.

Kelley Drye & Warren LLP is a multidisciplinary law firm with five offices in the United States, an office in Brussels and an affiliate in Mumbai. It is well known for representing clients in high profile international trade and customs and insurance recovery matters. For more information, log onto www.kelleydrye.com.

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