

In the Matter of:)
)
 City Beverage – Markham, LLC, d/b/a City Beverage –)
 Markham, City Beverage – Arlington Heights;)
 City Beverage, LLC, d/b/a City Beverage – Bloomington;) 12 CCH 001
 Chicago Distributing, LLC, d/b/a City Beverage - Chicago)
)

ILLINOIS LIQUOR CONTROL COMMISSION LEGAL DIVISION
LEGAL MEMORANDUM IN SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT

I. Introduction

(ILCC Legal 7/18/2012 Motion for Summary Judgment incorporated by reference.) See Exhibit 1

In 2005, Wholesaler Equity Development Corporation (WEDCO), a wholly owned subsidiary of Anheuser Busch Companies, LLC, purchased a 30% interest in City Beverage, Illinois, LLC (“CBI, LLC”) which wholly owns four Illinois distributorships, City Beverage – Markham, LLC (2 locations), City Beverage, LLC and Chicago Distributing, LLC (“City Beverage Licensees”). Anheuser Busch Companies, LLC also wholly owns Anheuser Busch, LLC (“AB, LLC”), a brewer¹ and Illinois Non-resident Dealer (“NRD”).² Because CBI, LLC is wholly owned by WEDCO which, in turn, is wholly owned by Anheuser-Busch Companies, LLC, the City Beverage Licensees (licensed as distributors) are owned by a licensed Illinois NRD and brewer, AB, LLC through Anheuser-Busch Companies, LLC.

¹ 235 ILCS 5/1-3.09 defines a “Brewer” as “a person who is engaged in the manufacture of beer.”
² Previously stated facts are uncontested and confirmed in affidavits in Legal Division Motion for Summary Judgment of 7/18/2012.

The question to be answered from the Commission's citations against the City Beverage Licensees is whether or not Illinois law authorizes a beer distributor (City Beverage Licensees) to be owned and managed by a Non-resident Dealer/brewer (AB, LLC, Anheuser Busch Companies, LLC). As argued in prior filings on this matter, the Commission's Legal Division submits that the Liquor Control Act prohibits all brewers, large or small, regardless of location from having an ownership and management interest in an Illinois beer distributorship pursuant to: 1) Public Act 97-0005 ("the Craft Brewer Act"); 2) prior published Commission interpretations of the Illinois Liquor Control Act; and 3) the Liquor Control Act's prohibition on license issuance to ineligible managers.

II. Public Act 97-0005, Commonly Known as the Craft Brewer Act, Legislatively Nullified an Illinois Brewer's Statutory Right to Obtain a Distributor's and Importing Distributor's License and in so doing, Nullified an Illinois Brewer's Right to Own a Distributorship in the Same Manner in which the Legislature has not Authorized an Out-of State Brewer or NRD to Own a Distributorship.

In 2011, the Illinois General Assembly nearly unanimously³ (See Exhibit 2) passed the Craft Brewer Act which, first, nullified a brewer's right to hold a Distributor's and Importing Distributor's license and second, permitted small⁴ in-state and out-of-state brewers to distribute their own manufactured beer to Illinois retailers.⁵ (See Exhibit 3). While the Craft Brewer Act allows a small brewer to sell its own product directly to retailers, it nullified the right of all brewers, large and small, to obtain a Distributor's and Importing Distributor's licenses ("Distributor's Licenses"). When Governor Pat Quinn signed the Craft Brewer Act into law on June 1, 2011, the Governor and Illinois General Assembly committed Illinois to a fair and consistent three-tier alcohol beverage policy in

³ Exhibit 2 - 97th General Assembly Roll Call vote on SB 754; House of Representatives passed 112-0-3; Senate passed 48-1-3.

⁴ Brewers annually producing less than 15,000 barrels a year can annually distribute not more than 7,500 barrels of their own beer.

⁵ Exhibit 3 + Craft Brewer Act Amendments to 235 ILCS 5/3-12 (18) and 235 ILCS 5/5-1(a) Class 3

which no brewer, large or small, regardless of location, could gain an unfair competitive advantage of owning and operating a beer distributorship.

A “fundamental rule of statutory construction is to ascertain and give effect to the legislative intent.”⁶ While the “best indication of legislative intent is the statutory language, given its plain and ordinary meaning,”⁷ basic principles of statutory construction require the interpretation to go “beyond the Act’s language to ascertain its meaning.”⁸ Also, specific to the interpretation of the Liquor Control Act, a “strict and technical construction of any of its provisions detrimental to the public interest should be avoided”⁹ and the “Illinois Liquor Control Commission’s interpretation of the statute it was created to enforce is entitled to great weight.”¹⁰ Therefore, as the courts have required, interpreting the Liquor Control Act and the Craft Brewer Act demands a broad analysis of the intent of the Legislature to make a legal ruling.

A. The plain reading of the Craft Brewer Act’s deleted language Section 5/5-1(a) Class 3 of the Liquor Control Act is evidence of the General Assembly’s intent to deny distribution privileges to brewers.

By simply reading the language of Section 5/5-1(a) Class 3 before and after the passage of the Craft Brewer Act, it is clear the State Legislature intended to deny beer distribution rights to brewers. Before the Craft Brewer Act, Section 5/5-1(a) Class 3 specifically permitted a Class 3 Brewer to “make sales and deliveries of beer . . . to retailers provided the brewer obtains an importing distributor’s license or distributor’s license in accordance with the provisions of this Act.” (See Exhibit 3, Section 5/5-1(a)

⁶ People ex rel. Madigan v. Kole, 968 N.E.2d 1108, 1116-17, *citing Michigan Avenue National Bank v. County of Cook*, 191 Ill.2d 493, 503-04 (2000).

⁷ People ex rel. Madigan at 1117 citing Illinois Graphics Co. v. Nickum, 159 Ill.2d 469, 479 (1994).

⁸ Id. at 1117 citing In re D.D., 196 Ill.2d 405, 419 (2001).

⁹ Carrigan v. Liquor Control Comm’n, 19 Ill.2d 230, 236, 166 N.E.2d 574, 577-78 (1960).

¹⁰ Erfor Corp. v. State Liquor Control Commission, 47 Ill.App.3d 72, 74; 361 N.E.2d 776 (1st Dist. 1977)

Class 3 Amendment) If a business holds a Distributor’s license, the Liquor Control Act allows it to engage in “purchasing, storing, possessing or warehousing any alcoholic liquors for resale or reselling at wholesale. . .”¹¹ If a business holds an Importing Distributor’s license, it “imports into this state, from any point in the United States outside this State, . . . any alcoholic liquors for sale or resale. . .”¹² Therefore, by holding a Distributor’s license, an Illinois Brewer had the statutory authority to purchase, warehouse and wholesale any beer, including beer manufactured by a different brewer. Moreover, by holding an Importing Distributor’s license, an Illinois Brewer had the authority to import into the State beer that was produced by a different brewer in another state. In this way, prior to the passage of the Craft Brewer Act, a plain reading of the Act permitted an Illinois Brewer to own a beer distributorship with the same rights and obligations related to the sale of beer as other non-Brewer beer distributors. The Craft Brewer Act changed Section 5/5-1(a) Class 3 in the following manner:

~~“A Brewer may make sales and deliveries of beer to importing distributors and distributors and may make sales as authorized under section (c) of Section 6-4 of this Act. to non-licensees, and to retailers provided the brewer obtains an importing distributor’s license or distributor’s license in accordance with the provisions of this Act.~~

Because the Legislature removed an Illinois Brewer’s right to hold Distributor’s Licenses, they intended to remove any statutory authority that allowed a Brewer to own a beer distributorship.

B. The debate in the Illinois House of Representatives clearly identifies the intent of the Legislature to deny all brewers the right to own a distributorship.

¹¹ 235 ILCS 5/3.15

¹² 235 ILCS 5/3.16

Further evidence of legislative intent prohibiting brewer ownership of a distributor comes from the debate of the Craft Brewer Act on the floor of the House of Representatives. Representative Mike Bost stated the Craft Brewer Act “does not allow a monopoly to exist, which is the concern and why we have also always had the three tiered ‘TTT’ system in place, which many people or the majority of people on this floor agree with.”¹³ (See Exhibit 4, p. 3.) Likewise, Representative Roger Eddy expressed that the Craft Brewer Act “helps the small brewers get their beer into the market without dismantling what has been the three-tier system.” (See Exhibit 4, p 4-5.) The House Majority Leader and bill sponsor, Representative Frank Mautino made the following statement:

This bill, except for the craft brewer exemption, continues a prohibition against self-distribution for out-of-state brewers and clearly extends that prohibition to Illinois brewers. The out-of-state brewers and Illinois brewers are treated equally as required by the Commerce Clause provision of the U.S. Constitution. **In other words, all brewers, in state and out of state, manufacturing beer above the craft brewer limits may not self-distribute or own a distributorship in Illinois.**

(Emphasis added, See Exhibit 4, p. 1). In this statement, Majority Leader Mautino confirms legislative intent by stating: 1. The Liquor Control Act has always prohibited beer distribution by out of state producers; and 2. The Craft Brewer Act is now prohibiting an Illinois Brewer to own a distributor. While one might argue from Representative Mautino’s statement that the above mentioned distribution prohibitions only apply to “self-distribution” and not to the ownership of a distributor, this argument fails because of the clarification of Mautino’s last sentence which makes it undeniably clear that his statement refers to the denial of all brewers the right to “own” a

¹³ Exhibit 4-Transcription of Debate on Senate Bill 754 in the Illinois House of Representatives, 5/23/2011.

distributor.¹⁴ By nearly unanimously passing the Craft Brewer Act, the legislators fully understood that while it may be beneficial to allow limited self distribution, the law must continue to prevent vertical “monopolies” that would lead to the “dismantling” of the three tier system. They accomplish this task by prohibiting ownership of a distributorship by any brewer, large or small, regardless of location.

C. The Craft Brewer Act sanctioned the federal court order that nullified an Illinois brewer’s right to own a distributorship and refused to authorize the extension of that privilege to an out-of-state brewer.

Further evidence that the legislature intended to prohibit brewer ownership of a distributor comes from the context of the pending federal lawsuit under which the Craft Brewer Act was passed. In Anheuser-Busch Inc. et. al. v. Schnorf et. al., federal Judge Robert Dow ruled that the State violated dormant Commerce Clause principles¹⁵ by declaring that a Non-resident Dealer, or out-of-state brewer, could not “possess an ownership interest in a licensed Illinois distributor.”¹⁶ The Court found a Commerce Clause violation existed because Section 5/5-1(a) Class 3 of the Liquor Control Act permitted Illinois Brewers to obtain Distributor’s Licenses. When the Commission prohibited AB LLC, an out-of-state brewer from owning a distributor while an Illinois Brewer could, a constitutional violation ensued. In his decision, Judge Dow recommended that the best way for the State to cure the discrimination was for the State Legislature to remove an Illinois Brewer’s right to obtain Distributor’s Licenses in Section 5/5-1(a) Class 3 of the Act.¹⁷ In fact, Judge Dow gave the State Legislature as

¹⁴ This use of the word “self-distribution” is used many times interchangeably with ownership of a distributor as evidenced by this statement from Rep. Mautino.

¹⁵ Anheuser-Busch, et.al. v. Stephen B. Schnorf, et. al., 738 F. Supp.2d 793 (2010).

¹⁶ From ILCC Declaratory Ruling in Anheuser Busch/City Beverage Matter – Declaration A, March 10, 2010.

¹⁷ AB, Inc., et. al. v. Schnorf, et. al. at 814.

much time as it needed to nullify the discriminatory language. The result of Judge Dow's recommendation was the Craft Brewer Act and its removal of an Illinois Brewer's right to obtain Distributor's Licenses (see strike through language of Section 5/5-1(a) Class 3 cited in the above paragraph).

In passing the Craft Brewer Act, the legislature knew that it was operating under the direction of Judge Dow and that it needed to ensure that no brewer held a right to a distributor's license or a claim that it had a right to own a distributorship. Again, Representative Mautino stated in the floor debate the following:

The bill is consistent with the clarification suggested by the Federal District Court in the case entitled Anheuser-Busch, et. al. v. Stephen B. Schnorf, et. al. Under this bill, it is the clear intent that Illinois **continues** to adhere to the three-tier system for the regulation of alcoholic beverages.

(Emphasis added, See Exhibit 4, p. 1.) Thus, in making this statement, Representative Mautino is clearly stating that Illinois is a "three-tier" state and always has been. While one might argue that adhering to the principles of the three-tier system does not conflict with a brewer's ownership of a distributorship, it is clear from the floor debate that the legislature was heeding Judge Dow's advice to nullify an Illinois Brewer's statutory right to hold Distributor's Licenses, and thus own a distributorship.

If there is any confusion at all about Dow's nullification order, clarity can be found in the Anheuser-Busch appeal of the Judge's order. Anheuser-Busch appealed Judge Dow's nullification order by stating:

The court either could "extend" the in-state brewer distribution right to out-of state brewers, such that out-of-state brewers could continue to **own or operate** an Illinois distributor as in-state brewers are permitted to do. . . or nullify the in-state brewer distribution right such that no brewers could **own or operate** an Illinois distributor . . . The district court chose to nullify provisions of the Liquor Control

Act such that no brewers, whether in-state or out-of-state, may **own or operate** an Illinois distributor.¹⁸ (Emphasis added, see Exhibit 5, at p. 5.)

In the last paragraph of their appeal, Anheuser Busch summarized by stating:

Accordingly, this Court should reverse that portion of the Sept. 3 Order that nullifies provisions of the Liquor Control Act, such that no brewer may distribute beer in Illinois, and reform the remedy to extend (“reinstate”) to out-of-state brewers the same right **to own or operate** an Illinois beer distributor afforded to in-state brewers under the Liquor Control Act.

(Emphasis added, see Exhibit 5, at p. 55). From this language, it is unambiguously clear that Anheuser-Busch believed that the impact of Judge Dow’s nullification order was to prohibit all brewers from “owning and operating” a beer distributorship in Illinois. Therefore, if, according to Anheuser-Busch, Judge Dow’s nullification precluded any brewer from owning and operating a distributorship and, as demonstrated previously, the Illinois General Assembly specifically adopted Judge Dow’s nullification remedy, then Anheuser-Busch must agree that the effect of the Craft Brewer Act was to nullify the right of any brewer to “own and operate a distributorship”. This argument is further enhanced by the fact that the Anheuser-Busch appeal of Judge Dow’s nullification remedy was mooted and dismissed upon the passage of the Craft Brewer Act.

Even Judge Dow himself seems to echo the impact of the Craft Brewer Act by opining in his March 2012 denial of Anheuser-Busch’s petition for attorneys’ fees that: “Plaintiffs made clear that they wanted all brewers to be able to act as distributors. That relief was never accorded, either in court or through the legislature”; and “Plaintiffs aimed to acquire 100% of a distributor and effectively collapse Illinois’ three-tier system, and instead the 30% interest that they already own is in jeopardy . . .”¹⁹

¹⁸ Exhibit 5 – Excerpts from “Appellants’ Brief and Required Short Appendix, filed in the United States Court of Appeals for the Seventh circuit” by Anheuser Busch/WEDCO attorneys, 1/21/2011.

¹⁹ Slip Copy, 2012 WL 1068765 (N.D.Ill.) (2012), p. 9.

D. Anheuser Busch's lobbying effort to amend and then defeat the Craft Brewer Act demonstrates the impact the Craft Brewer Act would have on its ability to own a distributorship.

Furthermore, per Anheuser-Busch's lobbying efforts to amend and then defeat the Craft Brewer Act, there can be no doubt that the impact of the Act was to prohibit all brewers, large and small, regardless of location, from being issued Distributor's Licenses that would allow them to own a distributorship. First, Anheuser-Busch lobbied for their interests to be represented in the Craft Brewer Act through the circulation of a grandfather clause that would have permitted them to "own or acquire" a distributor that they already partially owned.²⁰ (See Exhibit 6). Once it was clear that the Legislature had no interest in grandfathering their interest, Anheuser-Busch lobbyists implored legislators to take "no action" on the Craft Brewer Act because the judge's remedy, represented by the language of the Act, "was to treat both in-state and out-of-state brewers the same by prohibiting either from holding a distributor's license."²¹ (See Exhibit 7) Third and finally, at the same time, Anheuser-Busch's President Dave Peacock sternly warned its Illinois distributors that it "strongly opposes" the Craft Brewer Act.²² (See Exhibit 8). In the Q and A attached to his letter, Peacock states that there is no urgency for the General Assembly to pass a law that negatively impacts "brewery-owned distributorships" and that the Craft Brewer Act is a "significant departure" from past Illinois beer regulatory practices. (Emphasis not added, see Exhibit 8) Therefore, if Anheuser Busch currently argues that the Liquor Control Act, after the passage of the Craft Brewer Act, did not

²⁰ Exhibit 6- Letter and attachment from Mark Bordas, Region Vice President, State Affairs, Anheuser - Busch Companies, to Bill Olson, President of Associated Beer Distributors of Illinois, 12/14/2010. In addition, this "grandfather clause" would have allowed them to purchase River North distributorship in Cook County of which they have no current ownership.

²¹ Exhibit 7- Letter to Honorable Antonio Munoz from Anheuser-Busch lobbyists, May 3, 2011.

²² Exhibit 8 - Letter to "All Anheuser-Busch Illinois Wholesalers" from AB President Dave Peacock.

prohibit an in-state or out-of-state brewer from owning and operating a distributorship, then why would it expend significant resources to defeat the bill after their interests were not grandfathered as part of its passage? The answer to this question lies with the fact that the Craft Brewer Act did nullify an Illinois Brewer's statutory right to obtain a distributor's license and through this, additionally nullified its right to own a distributorship.

E. The Illinois Liquor Control Commission has already interpreted the Craft Brewer Act to preclude brewer ownership of a distributor.

As a result of an investigatory hearing held before the Illinois Liquor Control Commission on 12/7/2011, the Illinois Liquor Control Commission unanimously stated:

It was the intent of the General Assembly in 2011 to deny AB the right to own a distributorship. We believe this even though the General Assembly did not amend Section 5/6-4(a) to include brewers as parties specifically prohibited from owning distributorships.²³ (See Exhibit 9)

As argued above, in interpreting the Liquor Control Act, the courts give great deference to the Illinois Liquor Control Commission, which is charged with the Act's enforcement. The Commission's 12/7/2011 decision is another example of the Legislature's objective in passing the Craft Brewer Act to prohibit brewer ownership of a distributor.

III. Past Commission Published Interpretations Prohibiting a Non-Resident Dealer (NRD) from Owning a Distributor are Consistent with the Legislative Intent of the Craft Brewer Act Prohibiting Brewer Ownership of a Distributor.

Since 2001, the Illinois Liquor Control Commission has repeatedly published interpretations of the Liquor Control Act that are consistent with ensuring each tier of the three tier system is independently owned and licensed. This is entirely consistent with

²³ Exhibit 9 – Findings from the 12/7/2011 Meeting Regarding the Anheuser Busch Ownership Interest in City Beverage LLC, Finding F.

the three tier principles clarified by the State Legislature upon the passage of the 2011 Craft Brewer Act which prohibits, as demonstrated in the above paragraphs, all brewers from owning distributorships.

A. The Commission's interpretations were and are founded on a narrow and limited plain reading of the Liquor Control Act.

In the plainest of all terms, the language of the Liquor Control Act and Illinois Appellate Court interpretations of the Act provide the foundation of the Illinois Liquor Control Commission's past interpretations that prohibit out-of-state manufacturers from owning a distributorship. The Liquor Control Act defines a Distributor and an Importing Distributor as a "person other than a manufacturer or non-resident dealer."²⁴ A Non-resident Dealer ("NRD") is a person "who exports into this State, from any point outside of this State, any alcoholic liquors for sale to Illinois licensed foreign importers or importing distributors."²⁵ Thus, the simple plain reading of the Act suggests that distributors and NRDs are separate entities. While the Act is silent on whether or not those separate entities can or cannot be commonly owned, the Act does instruct the Commission to interpret the Act in a manner that promotes "temperance" and "sound and careful **control and regulation**" of alcoholic liquor. Careful control of alcohol includes maintaining a strong and independent wholesale tier which creates a buffer between a large manufacturer and small retailer. Historically, a weak wholesale tier or a wholesale tier tied to a manufacturer will lead to more tied houses which will lead to less retail independence and less product diversity.

In 2000, the Illinois Appellate Court supported principles of the narrow construction of the Liquor Control Act by holding that "[i]f the Act is to have any

²⁴ 235 ILCS 5/1-3.15; 235 ILCS 5/1-3.16.

²⁵ 235 ILCS 5/1-3.29.

meaning, it must be interpreted as starting from a point of prohibition” upon which exceptions to the general prohibitory rule can be made.²⁶ This is a basic tenet of alcohol beverage regulation because of the mandate that State Legislatures have given regulators to control the distribution and sale of alcoholic beverages. Where the Legislature has determined that there is no threat to the merging of the tiers due to the de minimus effect that cross-tier ownership will have on liquor control, it will specifically create exceptions. Before the passage of the Craft Brewer Act, one of those exceptions permitted Illinois Brewers to obtain Distributor’s Licenses giving them the statutory right to own a distributorship. No similar exception, however, gave an NRD the same right to obtain a distributor license. While the disparate privileges offered the Illinois Brewer and NRD eventually led to a constitutional violation, it does not change the fact that the NRD/brewer has never been authorized to hold Distributor Licenses. While it is true that the Legislature has taken an additional step to specifically prohibit distillers and wine manufacturers from being distributors, we agree that the additional prohibitions are superfluous. There exists little if any legislative evidence or explanation of the circumstances under which those backstop prohibitions were passed and neither the Liquor Control Act nor the Illinois Appellate Court permits the Commission to interpret the Act to authorize a brewer to own a distributor when the Act itself does not expressly so authorize it.

B. Since 2001, the Commission has narrowly interpreted the Liquor Control Act to preclude Non-resident Dealer ownership of distributorships.

Since 2001, the Commission has been consistent in notifying all license holders and non-license holders that the law prohibits a Non-resident Dealer (NRD) from owning

²⁶ People v. Select Specialties, Ltd., 617 Ill.App.3d 538, 544; 740 N.E.2d 543, 548 (2000).

a distributor. An NRD includes an out-of-state brewer who sells beer to Illinois distributors (“NRD/brewer”). In 2001, Chief Legal Counsel John Stanton authored over twenty letters to NRDs who had previously been issued a distributor license in which he stated that the Liquor Control Act prohibits “non-resident dealers from the class of proper applicants for a distributor’s and importing distributor’s license.”²⁷ (See Exhibit 10). In 2003, through the Commission publication of Trade Practice Policy 39, it is clear that CLC Stanton based his 2001 letters on the Act’s definitions of Distributor, Importing Distributor, Non-Resident Dealer and even upon the general principles of 235 ILCS 5/6-4, which specifically prohibit a distiller and wine manufacturer from being a distributor.²⁸ (See Exhibit 11). We know that CLC Stanton applied the principles of NRD/Distributor separation to NRD/brewers because two of the recipients of the 2001 letter were brewers Miller Brewing Company and B.T. McClintic Beer Company Inc.. (See Exhibit 10). Commission license records also suggest that the Stanton policy was supported by his successor William O’Donaghue, who instructed Commission licensing staff to enforce the NRD/Distributor separation against at least two of the 2001 letter recipients.²⁹ (See Exhibit 10; See also Exhibit 11³⁰). The policy was again reiterated in 2010 when, in response to the Anheuser-Busch attempt to purchase a full ownership interest in City Beverage distributors, a unanimous vote of the Commissioners declared that the Act prohibits an NRD “from possessing an ownership interest” in a distributor.³¹

²⁷ Exhibit 10 – ILCC List of license holders receiving letters and copy of John Stanton Letter to Miller Brewing Company, January 10, 2001.

²⁸ Exhibit 11 – Amendment to Illinois Liquor Control Commission Trade Practice Policies, TPP-39, 1/24/03.

²⁹ Exhibit 12 – From “Comments” and “Note Editing Screen” of ILCC database records for Lionstone International (SLJ Group, Inc.) and Stanley Stawski Distributing Company (Stanley Imports).

³⁰ Exhibit 13 – See Dusanka Marijan Affidavit as evidence of the source of Exhibit 10 Comments.

³¹ From ILCC Declaratory Ruling in Anheuser Busch/City Beverage Matter – Declaration A, 3/10/10.

While it is true that the Commission's enforcement of the NRD/distributor separation policy has not always been consistent with the stated policy itself, this must be critiqued in two separate ways. First, as it relates specifically to the licensing of City Beverage in 2005, the Commission staff, not the Commissioning body, clearly acted outside the scope of its authority and outside the principles of fundamental fairness. If, after the publication of Trade Practice Policy 39 which clearly states that an NRD cannot be a distributor, the Commission staff knowingly permitted Anheuser-Busch (through WEDCO) to obtain interests in four separate City Beverage licenses, then Commission staff acted in direct contradiction to the Commission's stated policy. Even if one concedes that one of those four distributorship locations could be administratively grandfathered (we don't concede the Arlington Heights distributorship should have been grandfathered), then how does that justify issuing 3 new licenses to newly formed distributorships with an interest held by an NRD? In addition, how can one justify the issuance of the NRD owned City Beverage Licenses in 2005 when at the same time, the Commission staff was mandating that other Non-resident Dealers surrender their distribution licenses? This "carve out" exception allowing Anheuser Busch to own distributorships was not only contrary to Commission policy, but patently unfair to other NRDs and/or distributors who may also have desired to seek a competitive advantage through wholesaling. Second, as to the Commission's uneven enforcement of the 2001 Stanton letter and the 2003 Trade Practice Policy 39, it is clear that the notice to surrender the NRD or distributor licenses was offered under the spirit of cooperation with business owners rather than through an immediate and heavy handed demand to surrender the license or else face severe consequences. Under this softer enforcement

approach, all of the businesses that received letters in 2001 eventually voluntarily surrendered either their NRD license or their distributor license. The surrender of the licenses occurred without the need for a hearing before the Commission or the raising of equitable arguments. To the Commission's knowledge, the only remaining NRD who refuses to surrender their interest in a distributor is Anheuser-Busch even after the passage of the Craft Brewer Act so clearly precludes their ownership of a distributor. In the same manner that the Commission requested other NRDs to surrender their interest in Distributor Licenses, the Commission should now order Anheuser-Busch to do the same.

IV. Because the Liquor Control Act Does Not Authorize Any Brewer to Own a Distributor, the Act Also Prohibits a Brewer from Operating or Managing a Distributor.

As argued above, the Liquor Control Act does not permit any brewer to own a distributor. The Act also states that no license can be issued to a "person whose place of business is conducted by a manager or agent unless the manager or agent possesses the same qualifications required by the licensee."³² It is undisputed that WEDCO has either a whole or partial operational management interest in the City Beverage Licensees through WEDCO's ownership and contractual agreements with City Beverage, Illinois, LLC. Because it is clear that WEDCO (Anheuser-Busch) has operational control of the City Beverage Licensees and WEDCO (Anheuser-Busch) is not qualified to be the license holder in its own right, the Commission should not continue to permit the City Beverage Licensees to hold their licenses as long as WEDCO continues to maintain its ownership and management interest in City Beverage.

³² 235 ILCS 5/6-2(11).

V. **Conclusion**

The passage of the 2011 Craft Brewer Act, through the plain reading of the Act, through an understanding of the judicial legal context in which it was passed, through the attempts Anheuser-Busch made to stop its passage, and through the Commission's own interpretation, proves that the Legislature intended that all brewers be prohibited from owning Illinois beer distributorships. The Act confirmed prior Commission rulings that similarly prohibited cross tier ownership in an attempt to sustain a strong and independent wholesale beer distribution tier. In the same way that it prohibits brewer ownership of a distributor, the Liquor Control Act prohibits brewer control or management of the distributor.

Therefore, the Legal Division's Motion for Summary Judgment should be granted and the Commission should revoke the City Beverage licenses with such order stayed pending the divestiture of Anheuser-Busch ownership and management of the City Beverage Licensees.

Respectfully Submitted on September 7, 2012 by,

Richard R. Haymaker
Konstantina J. Tsatsoulis
Ivan H. Fernandez

Illinois Liquor Control Commission Legal Division

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned certifies that the foregoing LEGAL MEMORANDUM IN SUPPORT OF A MOTION FOR SUMMARY JUDGMENT, AFFIDAVIT AND EXHIBITS were hand delivered to the Illinois Liquor Control Commission and emailed on September 7, 2012 to: Stephen B. Schnorf, Acting Chairman of the Illinois Liquor Control Commission, at stephenbs@sbcglobal.net, Allyson Reboyras, Commission Secretary at allyson.reboyras@illinois.gov, Thomas J. Verticchio, counsel for City Beverage, at tverticchio@smbtrials.com, Irene Bahr, counsel for Anheuser Busch LLC/WEDCO at irene.bahr@gmail.com and Edward M. Crane, counsel for Anheuser Busch LLC/WEDCO at edward.crane@skadden.com.

/s/ Richard R. Haymaker

Richard R. Haymaker
Chief Legal Counsel
Illinois Liquor Control Commission

Exhibit 1

**STATE OF ILLINOIS
LIQUOR CONTROL COMMISSION**

In the Matter of:	)	No. 12 C 100220
	)	No. 12 C 100221
City Beverage – Markham, LLC)	
d/b/a/ City Beverage Markham	)	LIC: 12-2A-102035; 12-2B-69574
2064 W. 167 th St.	)	Exp: 9/30/2012
Markham, IL 60428	)	IBT: 5524-4025
In the Matter of:	)	No. 12 C 100222
	)	No. 12 C 100223
City Beverage – Markham, LLC)	
d/b/a/ City Beverage –Arlington Heights	)	LIC: 12-2A-102034; 12-2B-69575
1401 E. Algonquin Rd.	)	Exp: 9/30/2012
Arlington Heights, IL 60005	)	IBT: 3665-2202
In the Matter of:	)	No. 12 C 100218
	)	No. 12 C 100219
Chicago Distributing LLC)	
d/b/a/ City Beverage - Chicago	)	LIC: 12-2A-96603; 12-2B-64729
4841 S. California Ave.	)	Exp: 10/31/2012
Chicago, IL 60632	)	IBT: 5515-9060
In the Matter of:	)	No. 12 C 100216
	)	No. 12 C 100217
City Beverage LLC)	
d/b/a/ City Beverage	)	LIC: 12-2A-98399; 12-2B-61392
1105 E. Lafayette Ave.	)	Exp: 3/31/2013
Bloomington, IL 61701	)	IBT: 5509-8851

MOTION FOR SUMMARY JUDGMENT

1. The Legal Division of the Illinois Liquor Control Commission (“Commission”) respectfully petitions the Commission for summary judgment on the substantive merits of the legal argument of whether or not Anheuser Busch, LLC, (“AB LLC”), an Illinois Non-Resident Dealer, may possess an equity interest and a management interest in City

Beverage Distributors¹ through a commonly owned affiliate, the Wholesaler Equity Development Corporation (“WEDCO”). Summary judgment is appropriate and encouraged when the court determines there is no genuine issue of material fact. The above stated legal question is the only question at issue and the relevant facts pertaining to it are not or should not be at issue. The basic facts are as follows:

- a. AB LLC is a licensed Illinois Non-Resident Dealer² (Exhibit 1B).
- b. WEDCO holds a 30% ownership interest City Beverage³ (Exhibit 1A).
- c. WEDCO holds a 75% management interest in City Beverage⁴ (Exhibit 1C).
- d. AB LLC and WEDCO are commonly owned affiliates and are both wholly owned subsidiaries of Anheuser Busch Companies LLC⁵ (Exhibit 2).

2. Illinois Courts have ruled that administrative agencies should use the Illinois Code of Civil Procedure as a guide to ruling on motions for summary judgment.⁶ The Illinois Civil Procedure Code states “any time after the opposite party has appeared”, a party “may move with or without supporting affidavits for a summary judgment in his or her favor for all or any part of the relief sought.”⁷ The Code also directs that a “judgment sought shall be rendered without delay if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of

¹ “City Beverage” is a group of Illinois Distributor and Importing Distributor license holders under the names City Beverage – Markham, LLC, City Beverage – Bloomington, LLC and Chicago Distributing, LLC.

² Exhibit 1 - Affidavit of Dusanka Marijan, subsection 3, 7/17/2012.

³ Marijan Affidavit at subsection 2.

⁴ Marijan Affidavit at subsection 4.

⁵ From Defendants’ submission in federal court, “Affidavit of Anthony J. Short in Support of Plaintiffs’ Motion for Summary Judgment on Their Commerce Clause Claim”, p. 2, 4/9/2010.

⁶ Cano v. Village of Dolton, 250 Ill.App.3d 130, 620 N.E.2d 1200 (1993).

⁷ 735 ILCS 5/2-1005(a).

law.”⁸ Courts have regularly encouraged the use of summary judgment in order to promote the “expeditious disposition of a lawsuit.”⁹

3. In the current case before the Commission, there is no genuine issue of material fact and the Legal Division of the Illinois Liquor Control Commission is entitled to a judgment as a matter of law. The factual claim stated in the affidavits and exhibits are simple and should be undisputed. AB LLC is an Illinois Non-Resident Dealer which has an ownership and management interest in City Beverage, an Illinois Distributor and Importing Distributor. The information contained in Exhibit 1, Affidavit of Dusanka Marijan, is all a matter of public record and was submitted by Anheuser Busch and City Beverage. The Commission has conducted no specific fact finding investigation in this matter other than what is normally conducted and/or expected in the processing of applications. In addition, per the defendant’s submission of the affidavit of Anthony Short (Exhibit 2) submitted in a prior federal court matter,¹⁰ there is an uncontested ownership connection between AB LLC and City Beverage. The only change to the information since the federal court filing was a business structure change from “AB Inc” to “AB LLC” which was reported to this Commission as a conversion earlier this year. As such, Commission staff recognizes AB Inc. and AB LLC as the same entity. To the knowledge of the Commission staff, all alleged facts regarding ownership and management of AB LLC, WEDCO and City Beverage are true and correct as of the date of this motion.

⁸ 735 ILCS 5/2-1005(c).

⁹ Bryant v. Glen Oaks Medical Center, 272 Ill.App.3d 640, 650 N.E.2d 622 (1995); Bolingbrook Equity I Ltd. Partnership v. Zayre of Illinois, Inc. 252 Ill.App.3d 753, 624 N.E.2d 1287 (1993).

¹⁰ Anheuser-Busch, et. al. v. Schmorf, et. al., 738 F.Supp.2d 793.

4. The substance of the litigation is simply a matter of statutory construction of the Illinois Liquor Control Act. The Defendants argue that an Illinois Non-Resident Dealer and Illinois Distributor and Importing Distributor can be commonly or wholly owned and managed by the same parent. Effectively, an Illinois Non-Resident Dealer can be an Illinois Distributor. The Legal Division of the Commission argues that an Illinois Non-Resident Dealer cannot own or manage an Illinois Distributor and Importing Distributor thus precluding WEDCO from owning thirty percent of and managing City Beverage (See Amended Citation and Notice of Hearing). Because the matter before the Commission is simply one of statutory construction, it should be reviewed as a question of law only under a motion for summary judgment.

5. For the purpose of honoring the Commission scheduling order, the Legal Division refrains from currently arguing the substantive merits of the construction of the statute and reserves the right to do so when the schedule permits.

Respectfully Submitted on July 18, 2012,

Richard R. Haymaker
Konstantina J. Tsatsoulis
Ivan H. Fernandez

Legal Division
Illinois Liquor Control Commission

EXHIBIT 1

AFFIDAVIT OF DUSANKA MARIJAN

1. My name is Dusanka Marijan. I make this affidavit in my professional capacity as Licensing Administrator for the Illinois Liquor Control Commission (Commission). I have held this position since January 1999. My duties include the supervision of personnel that regularly take in, review and process applications for new liquor licenses, applications for recorded changes to liquor licenses and applications for the renewal of liquor licenses (collectively "Liquor License Applications"). As part of my duties, I regularly undertake the direct review of Liquor License Applications for Illinois Distributor and Importing Distributor licenses. I additionally supervise the intake and processing of applications for alcoholic beverage brand registrations and the concurrent assignment of brand distribution territories (collectively "Brand Registrations"). My duties include but are not limited to: 1) reviewing Liquor License Applications and Brand Registrations, 2) corresponding with license applicants or their agents related to the processing of Liquor License Applications and Brand Registrations, 3) requesting supplementary documentation related to the processing of the Liquor License Applications and Brand Registrations, 4) maintaining a system of records for Liquor License Applications and Brand Registrations.

2. Having reviewed the Commission records for the most recent liquor license renewals for business names containing the term "City Beverage", I certify that the Commission records indicate:

- a. Chicago Distributing LLC, City Beverage - Markham LLC and City Beverage LLC (collectively "City Beverage") currently hold Illinois Distributor and Importing Distributor licenses at four separate business locations within Illinois¹ issued by the Illinois Liquor Control Commission; and,

¹ City Beverage - Markham LLC is issued two sets of Distributor and Importing Distributor licenses in Arlington Heights, Illinois and in Markham, Illinois.

- b. City Beverage Illinois LLC wholly owns City Beverage; and,
 - c. Wholesaler Equity Development Corporation (WEDCO) owns a partial 30% interest in City Beverage Illinois LLC; and,
 - d. BDT Capital Partners CBI I, L.P., BDT – CBI A Corp., and BDT – CBI B Corp (Collectively “BDT Capital Partners), own a partial 70% interest in City Beverage Illinois LLC.²
3. Having reviewed the Commission records for business names containing the term “Anheuser Busch”, I certify that the Commission records reflect that Anheuser Busch LLC currently holds an Illinois Non-Resident Dealer license.³
4. Having reviewed the documents submitted in support of a September 2010 City Beverage change of ownership application, I certify the renewal file contains the attached Exhibit 1C documents and that the documents are considered part of the application record. The documents contain the following statements:
- a. In 2010, WEDCO held the right to appoint 2 of 5 board members of City Beverage;
 - b. In 2010, WEDCO held the right to approve 3 of top 4 management employees of City Beverage;
 - c. In 2010, WEDCO had whole or partial control of buying or selling distribution rights, territories and brands;
 - d. In 2010, WEDCO had first right to purchase 21% of the equity (increasing its share to 51%) of City Beverage Illinois LLC from BDT Capital Partners in September 2013;
 - e. In 2010, WEDCO had first right to purchase all of City Beverage from BDT Capital Partners by September 2019 or find a legally permissible buyer.⁴

² Exhibit 1A – From RJ O’Hara letter to Dusanka Marijan “RE: City Beverage-Markham Distributor Renewals – License Nos. 11-2B-0069575 and 11-2B-0069574 (Arlington Heights and Markham)”, 9/22/2011.

³ Exhibit 1B - From Illinois Liquor Control Commission License Database records, printed 7/17/2012.

⁴ Exhibit 1C – From RJ O’Hara email to Richard Haymaker titled “Haymaker’s Questions on the Change of Ownership Notice – FW: Change of Corporate Officers Application – License#: 10-2B-61392”, 11/18/2010.

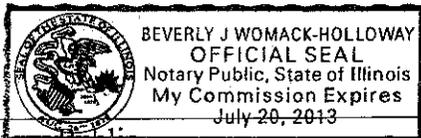
5. Having reviewed Illinois Liquor Control Commission records, I certify that City Beverage has not submitted an application to change or update records with the Commission (as would be required by Commission Rule 100.100 if any of the terms or conditions of ownership or corporate officers have substantially changed) since September 2010. Based on this, I make this statement under the presumption that the information contained in the 2010 Change of Officers application currently remains true.

6. Having reviewed Illinois Liquor Control Commission records, I certify that Anheuser Busch LLC obtained a new Illinois Non-Resident Dealer license in 2012 as a result of a corporate conversion from Anheuser Busch Inc..⁵



Dusanka Marijan
License Administrator
Illinois Liquor Control Commission

Sworn to before me this 18th day of July 2012



Notary Public



⁵ See Exhibit 1B – From Illinois Liquor Control Commission Database records, printed 7/17/2012.

EXHIBIT 1A

EXHIBIT 1B

General License Info for ANHEUSER-BUSCH LLC (43-0161000)

Licensee Editing Screen

State License Number		License Class		IBT	License Issued	License Expires	Effective Date
12-3J-103501		NR DEALER > 500,000		0	02/23/2012	01/31/2013	02/23/2012
Name: ANHEUSER-BUSCH LLC						County: OUT OF STATE	
Premise Address				NRD Address			
Address: ONE BUSCH PLACE							
Unit/Suite: 202-1							
C/S/Z: ST LOUIS		MO		63118		Copy Cont. Addr.	
Certificate No: E-294333						Method Of Application Delivery: <input type="checkbox"/> Walk Up To Counter <input checked="" type="checkbox"/> Mail	
Activity Code		Business Code		Refund Amount	Refund Date	Fee Due	
ACTIVE		OTHER		0.00	11	270.00	
Fee Paid	DCN	Plane/Train	<input type="checkbox"/> Late Fee	Late Filing Fee	Reissue Date	Reissue Fee	Total Fees
270.00	C-088112	0		0.00	11	0.00	270.00
Method of Payment							
License Fee / Late Fee		<input checked="" type="checkbox"/> Check		<input type="checkbox"/> Credit Card		Conf (or Auth) #	
Reissue Fee		<input type="checkbox"/> Check		<input type="checkbox"/> Credit Card		Conf (or Auth) #	
Comments: A new license number was issued due the fact that AB went from Anheuser Busch Inc to Anheuser-Busch LLC; they obtained a new file number with the Secretary of State offices in Missouri and in Illinois- this required that they obtain a new state license.					Added By: DV		02/23/2012
<input type="checkbox"/> Read Notes					Last Edit By: DV		02/23/2012
					<input type="button" value="Leased"/> <input type="button" value="Bill Of Sale"/> <input type="button" value="Waivers"/> <input type="button" value="Status"/>		
<input type="button" value="Renewal Form"/>		<input type="button" value="Brand/Type"/>		<input type="button" value="Non-Res Dir"/>		<input type="button" value="Dist Prod"/>	
<input type="button" value="Lic. Hist"/>							
<input type="button" value="Top"/>		<input type="button" value="Prior"/>		<input type="button" value="Next"/>		<input type="button" value="Bottom"/>	
<input type="button" value="Print"/>		<input type="button" value="Search"/>		<input type="button" value="Review"/>		<input type="button" value="Change"/>	
<input type="button" value="Delete"/>		<input type="button" value="Exit"/>					

EXHIBIT 1C

City Beverage – Response to ILCC Questions

18 November 2010

1. Financial terms of transaction

- The purchase price paid by BDT Capital Partners (“BDT”) for the 70% Soave stake in City Beverage was unchanged from original agreement between WEDCO and Soave. WEDCO did not consummate the transaction with Soave.
- Through Agreement to Assign and Assume (“Assignment Agreement”), BDT became the direct purchaser of the 70% interest in City Beverage from Soave itself (i.e., BDT did not pay WEDCO for the interest)
- WEDCO continues to hold its 30% stake in City Beverage; BDT Capital Partners is the 70% majority owner of the business

2. WEDCO’s retained rights

- With respect to your question about Sections 8.1.3 and 8.3 of the Assignment Agreement, while BDT assumed the same economic terms as WEDCO had with Soave (e.g., purchase price), Section 2.1 of the Assignment Agreement describes two specific obligations in the Purchase Agreement that remained with WEDCO and were not transferred to BDT:
 - a) The Gross Profit Earn-Out due to Soave under Section 1.4 of the Purchase Agreement, which provides for up to an additional \$2mm of earn-out payments to Soave over 4 years subject to Company meeting certain gross profit targets. The Assignment Agreement states that this earn-out will be paid out of the cash flow of City Beverage.
 - b) Separation pay due to City Beverage employees under Section 3.3.3 of the Purchase Agreement, which covers any employees terminated without cause prior to December 31, 2010. These costs will be shared 70% by Soave and 30% by WEDCO.
- As a 30% minority owner in City Beverage, WEDCO retains customary shareholder rights including:
 - Right to appoint 2 of 5 board members of City Beverage
 - Right to approve 3 of top 4 management employees
 - Changes to the cash distribution policy
 - Reserved actions related to buying or selling distribution rights, territories and brands

- WEDCO also has various minority consent rights, including amendment of agreements, admission of new members to the LLC, dissolution of the LLC, guarantee, sales of assets other than in the ordinary course, replacement of accountants and the approval of any transactions with affiliates of the managers of the LLC
- All of these rights are customary for a party having a significant minority interest in a business and were negotiated at arm's-length

3. WEDCO call option

- As we mentioned in our meeting, should WEDCO become legally permitted to increase its ownership in City Beverage by a final court decision or legislative change, WEDCO has the contractual right (but not the obligation) to purchase portions of BDT's stake in City Beverage on the following dates:
 - At any time prior to March 31, 2011, WEDCO may purchase some or all of BDT's interest in City Beverage
 - * - If the March 31, 2010 call right expires, on the 3rd anniversary of close (September 2013) WEDCO may purchase 21% of the equity of City Beverage from BDT. If this call right were able to be exercised, BDT would still own 49% of City
 - * - On the 9th anniversary of close, WEDCO may purchase all of BDT's interest in City Beverage. If WEDCO is still not able to legally increase its ownership, WEDCO must find a legally permissible buyer to purchase BDT's interest

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ANHEUSER-BUSCH, INC., WHOLESALER)
EQUITY DEVELOPMENT CORPORATION,)
CITY BEVERAGE - ILLINOIS, L.L.C., CITY)
BEVERAGE L.L.C., CITY BEVERAGE -)
MARKHAM L.L.C., CHICAGO DISTRIBUTING)
L.L.C., SD OF ILLINOIS, INC., And DOUBLE)
EAGLE DISTRIBUTING COMPANY)

Plaintiffs,)

v.)

STEPHEN B. SCHNORF, JOHN M. AGUILAR,)
DANIEL J. DOWNES, SAM ESTEBAN,)
MICHAEL F. MCMAHON, MARTIN)
MULCAHEY, DONALD O'CONNELL,)
Commissioners, of the Illinois Liquor Control)
Commission, in their official capacities; And)
RICHARD R. HAYMAKER, Chief Legal Counsel)
of the Illinois Liquor Control Commission, in his)
official capacity)

Defendants.)

Case No. 10 CV 01601

Hon. Robert M. Dow, Jr.

Hon. Michael T. Mason

**AFFIDAVIT OF ANTHONY J. SHORT IN SUPPORT OF PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT ON THEIR COMMERCE CLAUSE CLAIM**

1. I, Anthony J. Short, have personal knowledge of the matters set forth herein and could testify competently about these matters if called as a witness.
2. I am Vice President of Business & Wholesaler Development for Anheuser Busch Inc. I have held this position since 2002. Throughout my 23 years in the beer industry I have held

many positions, several of which have involved the oversight, operation, and management of beer producers and wholesalers.

3. I make this affidavit in support of Plaintiffs' motion for summary judgment in the above-captioned action and on behalf of Anheuser-Busch, Inc. ("AB Inc.") and Wholesaler Equity Development Corporation ("WEDCO").

4. AB Inc. is a wholly owned subsidiary of Anheuser-Busch Companies, Inc. AB Inc. is the leading U.S. brewer and producer of beer in the United States, brewing, among others, the Budweiser and Bud Light brand beers, which are the two largest selling beers in the world. AB Inc. produces over 100 beers, flavored alcoholic beverages, and nonalcohol brews, and imports other beers for distribution in the United States. AB Inc.'s Budweiser, Bud Light, Michelob ULTRA, Busch, and Natural Light brand beers hold the No. 1 positions in their respective U.S. market segments. AB Inc. operates 12 breweries in the United States in 11 States and distributes products through a network of nearly 600 independent wholesalers and operates 11 company-owned distributors in eight states.

5. AB Inc. does not brew/produce beer within Illinois and has not done so at any time relevant to this matter. AB Inc. produces beer at various breweries throughout the United States, including its brewery in St. Louis, Missouri, that is sold in Illinois through CITY Beverage. The St. Louis brewery is located on the Western bank of the Mississippi river, which is the border between Missouri and Illinois.

6. At all times relevant to this matter, AB Inc. has exported beer produced in the United States into Illinois for distribution within the State, and intends to continue to do so in the future. AB Inc.'s beer is widely distributed, sold, and consumed in Illinois.

7. AB Inc.'s beer is distributed in Illinois through various distributors, including in parts of northern Illinois by CITY Beverage. In 2009, CITY Beverage distributed within Northern Illinois over 16.9 million case equivalents (over 38 million gallons) of AB Inc. beer, translating into tens of millions of dollars of product revenue for AB Inc. and CITY Beverage.

8. Plaintiff WEDCO, formerly known as AB Investment Capital Corp., is a wholly-owned subsidiary of Anheuser-Busch Companies, Inc. From CITY Beverage's formation in 2005, through the present, WEDCO has maintained a 30 percent ownership interest in CITY Beverage WEDCO.

9. In December 2009, WEDCO reached an agreement with SD of Illinois, Inc. ("SDI") and Double Eagle Distributing Company ("Double Eagle") (SDI and Double Eagle, collectively the "Soave Entities") to purchase the Soave Entities' 70 percent interest in CITY Beverage. The transaction was scheduled to close on February 12, 2010. The transaction involves the acquisition of a business worth many millions of dollars.

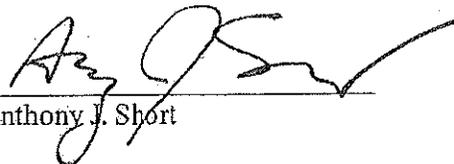
10. As of February 11, 2010, virtually all preconditions to the closing of the transaction were complied with by all parties to the transaction. All material closing documents were prepared and significant funds had been transferred from various accounts to a particular WEDCO account that was designated to wire the purchase price to the Soave Entities. In preparation for the imminent closing, and to make the transition as seamless as possible, by February 11, 2010, AB Inc. already had enrolled all of the CITY Beverage employees in its benefits plans. CITY Beverage's beer shipments were cancelled to accommodate an audit of the inventory scheduled to occur the next day. AB Inc. also had made a significant capital investment in IT infrastructure to transition the business to AB Inc.'s IT systems, including arranging for computers and servers to be installed immediately after the closing.

11. After receiving a letter from Richard Haymaker of the Illinois Liquor Control Commission in the evening of February 11, 2010, stating that it would be unlawful for WEDCO to consummate the acquisition of CITY Beverage, the parties postponed the sale of CITY Beverage. The only reason that WEDCO did not close the transaction on February 12, 2010, is that Mr. Haymaker's letter stated that it would violate Illinois law to do so.

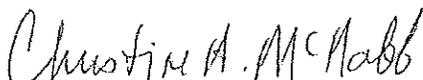
12. Plaintiffs have continued to postpone the closing of this transaction through the present. WEDCO remains ready, willing, and able to immediately close an acquisition of CITY Beverage if this lawsuit is resolved in their favor.

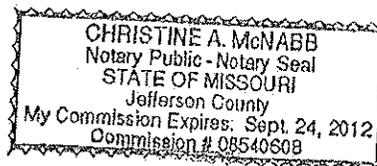
13. The acquisition of the remainder of the CITY Beverage business is a unique and important business opportunity for WEDCO and AB Inc. that will permit AB Inc. to realize the same common advantages that in-state brewers may achieve by distributing beer. The fact that WEDCO's acquisition of the CITY Beverage Entities has not closed is causing substantial harm to WEDCO and AB Inc.

14. Subsequent to an acquisition by WEDCO of CITY Beverage, AB Inc. intends and is prepared to continue to comply with all regulations applicable to holders of an NRD License and WEDCO intends and is prepared to require the CITY Entities to continue to comply with all regulations applicable to holders of Distributor's and Importing Distributor's Licenses.


Anthony J. Short

Sworn to before me this 9th day of
April, 2010


Notary Public



STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned certifies that the foregoing MOTION FOR SUMMARY JUDGMENT, AFFIDAVIT AND EXHIBITS were hand delivered to the Illinois Liquor Control Commission and emailed on July 18, 2012 to: Stephen B. Schnorf, Acting Chairman of the Illinois Liquor Control Commission, at stephenbs@sbcglobal.net, Allyson Reboyras, Commission Secretary at allyson.reboyras@illinois.gov, Thomas J. Verticchio, counsel for City Beverage, at tverticchio@smbtrials.com, Irene Bahr, counsel for Anheuser Busch LLC/WEDCO at ibahr@aol.com and Edward M. Crane, counsel for Anheuser Busch LLC/WEDCO at edward.crane@skadden.com.

/s/ Richard R. Haymaker

Richard R. Haymaker
Chief Legal Counsel
Illinois Liquor Control Commission

Exhibit 2

STATE OF ILLINOIS
 NINETY-SEVENTH
 GENERAL ASSEMBLY
 HOUSE ROLL CALL
 SENATE BILL 754
 LIQUOR-CRAFT BREWER-DISTRIB
 THIRD READING
 PASSED

May 23, 2011

112 YEAS

0 NAYS

3 PRESENT

Y	Acevedo	Y	DeLuca	Y	Leitch	Y	Reitz
Y	Arroyo	Y	du Buclet	Y	Lilly	Y	Riley
Y	Barickman	Y	Dugan	Y	Lyons	Y	Rita
Y	Beaubien	Y	Dunkin	Y	Mathias	Y	Rose
Y	Beiser	Y	Durkin	Y	Mautino	Y	Rosenthal
Y	Bellock	Y	Eddy	Y	May	Y	Roth
Y	Berrios	Y	Farnham	Y	Mayfield	Y	Sacia
Y	Biss	Y	Feigenholtz	Y	McAsey	Y	Saviano
Y	Bost	Y	Flowers	Y	McAuliffe	Y	Schmitz
Y	Bradley	Y	Ford	Y	McCarthy	Y	Senger
Y	Brady	Y	Fortner	Y	McGuire	Y	Sente
Y	Brauer	Y	Franks	Y	Mell	Y	Smith
Y	Brown	Y	Gabel	Y	Mitchell, Bill	Y	Sommer
Y	Burke, Daniel	Y	Golar	Y	Mitchell, Jerry	Y	Sosnowski
Y	Burke, Kelly	Y	Gordon	Y	Moffitt	Y	Soto
Y	Carli	Y	Hammond	Y	Morrison	E	Stephens
Y	Cassidy	Y	Harris, David	Y	Morthland	Y	Sullivan
Y	Cavaletto	Y	Harris, Greg	E	Mulligan	Y	Thapedi
Y	Chapa LaVia	P	Hatcher	Y	Mussman	Y	Tracy
Y	Coladipietro	Y	Hays	Y	Nekritz	Y	Tryon
P	Cole	Y	Hernandez	Y	Nybo	Y	Turner
Y	Colvin	Y	Holbrook	Y	Osmond	Y	Unes
Y	Connelly	Y	Howard	E	Phelps	Y	Verschoore
Y	Crespo	Y	Jackson	Y	Pihos	Y	Watson
Y	Cross	Y	Jakobsson	Y	Poe	Y	Williams
Y	Cunningham	Y	Jefferson	Y	Pritchard	Y	Winters
P	Currie	Y	Jones	Y	Ramey	Y	Yarbrough
Y	D'Amico	Y	Kay	Y	Reboletti	Y	Zalewski
Y	Davis, Monique	Y	Kosel	Y	Reis	Y	Mr. Speaker
Y	Davis, William	Y	Lang				

E - Denotes Excused Absence

State of Illinois
97th General Assembly
Senate Vote

Senate Bill No. 754
THIRD READING

May 03, 2011

48 YEAS

1 NAY

3 PRESENT

Y Althoff	Y Haine	Y Lightford	Y Raoul
Y Bivins	Y Harmon	Y Link	Y Rezin
Y Bomke	Y Holmes	Y Luechtefeld	Y Righter
Y Brady	Y Hunter	Y Maloney	NV Sandack
Y Clayborne	Y Hutchinson	P Martinez	Y Sandoval
Y Collins, A.	Y Jacobs	Y McCann	Y Schmidt
NV Collins, J.	Y Johnson, C.	Y McCarter	Y Schoenberg
Y Crotty	Y Johnson, T.	NV Meeks	Y Silverstein
Y Cultra	NV Jones, E.	NV Millner	Y Steans
Y Delgado	Y Jones, J.	Y Mulroe	Y Sullivan
Y Dillard	Y Koehler	Y Muñoz	Y Syverson
Y Duffy	NV Kotowski	Y Murphy	Y Trotter
Y Forby	Y LaHood	P Noland	Y Wilhelmi
Y Frerichs	N Landek	Y Pankau	P Mr. President
Y Garrett	NV Lauzen	Y Radogno	

Exhibit 3

(235 ILCS 5/5-1) (from Ch. 43, par. 115)

Sec. 5-1. Licenses issued by the Illinois Liquor Control Commission shall be of the following classes:

- (a) Manufacturer's license - Class 1. Distiller, Class 2. Rectifier, Class 3. Brewer, Class 4. First Class Wine Manufacturer, Class 5. Second Class Wine Manufacturer, Class 6. First Class Winemaker, Class 7. Second Class Winemaker, Class 8. Limited Wine Manufacturer, Class 9. Craft Distiller, Class 10. Craft Brewer,
- (b) Distributor's license,
 (c) Importing Distributor's license,
 (d) Retailer's license,
 (e) Special Event Retailer's license (not-for-profit),
 (f) Railroad license,
 (g) Boat license,
 (h) Non-Beverage User's license,
 (i) Wine-maker's premises license,
 (j) Airplane license,
 (k) Foreign importer's license,
 (l) Broker's license,
 (m) Non-resident dealer's license,
 (n) Brew Pub license,
 (o) Auction liquor license,
 (p) Caterer retailer license,
 (q) Special use permit license,
 (r) Winery shipper's license.

No person, firm, partnership, corporation, or other legal business entity that is engaged in the manufacturing of wine may concurrently obtain and hold a wine-maker's license and a wine manufacturer's license.

(a) A manufacturer's license shall allow the manufacture, importation in bulk, storage, distribution and sale of alcoholic liquor to persons without the State, as may be permitted by law and to licensees in this State as follows:

Class 1. A Distiller may make sales and deliveries of alcoholic liquor to distillers, rectifiers, importing distributors, distributors and non-beverage users and to no other licensees.

Class 2. A Rectifier, who is not a distiller, as defined herein, may make sales and deliveries of alcoholic liquor to rectifiers, importing distributors, distributors, retailers and non-beverage users and to no other licensees.

Class 3. A Brewer may make sales and deliveries of beer to importing distributors and ~~7~~ distributors and may make sales as authorized under subsection (e) of Section 6-4 of this Act, ~~and to non-licensees, and to retailers provided the brewer obtains an importing distributor's license or distributor's license in accordance with the provisions of this Act.~~

(18) (A) A craft brewer licensee, who must also be either a licensed brewer or licensed non-resident dealer and annually manufacture less than 465,000 gallons of beer, may make application to the Commission for a self-distribution exemption to allow the sale of not more than 232,500 gallons of the exemption holder's beer to retail licensees per year.

(B) In the application, which shall be sworn under penalty of perjury, the craft brewer licensee shall state (1) the date it was established; (2) its volume of beer manufactured and sold for each year since its establishment; (3) its efforts to establish distributor relationships; (4) that a self-distribution exemption is necessary to facilitate the marketing of its beer; and (5) that it will comply with the alcoholic beverage and revenue laws of the United States, this State, and any other state where it is licensed.

(C) Any application submitted shall be posted on the Commission's website at least 45 days prior to action by the Commission. The Commission shall approve the application for a self-distribution exemption if the craft brewer licensee: (1) is in compliance with the State, revenue, and alcoholic beverage laws; (2) is not a member of any affiliated group that manufactures more than 465,000 gallons of beer per annum or produces any other alcoholic beverages; (3) shall not annually manufacture for sale more than 465,000 gallons of beer; and (4) shall not annually sell more than 232,500 gallons of its beer to retail licensees.

(D) A self-distribution exemption holder shall annually certify to the Commission its manufacture of beer during the previous 12 months and its anticipated manufacture and sales of beer for the next 12 months. The Commission may fine, suspend, or revoke a self-distribution exemption after a hearing if it finds that the exemption holder has made a material misrepresentation in its application, violated a revenue or alcoholic beverage law of Illinois, exceeded the manufacture of 465,000 gallons of beer in any calendar year or became part of an affiliated group manufacturing more than 465,000 gallons of beer or any other alcoholic beverage.

(E) The Commission shall issue rules and regulations governing self-distribution exemptions consistent with this Act.

(F) Nothing in this paragraph (18) shall prohibit a self-distribution exemption holder from entering into or simultaneously having a distribution agreement with a licensed Illinois importing distributor or a distributor. If a self-distribution exemption holder enters into a distribution agreement and has assigned distribution rights to an importing distributor or distributor, then the self-distribution exemption holder's distribution rights in the assigned territories shall cease in a reasonable time not to exceed 60 days.

(G) It is the intent of this paragraph (18) to promote and continue orderly markets. The General Assembly finds that in order to preserve Illinois'

regulatory distribution system, it is necessary to create an exception for smaller manufacturers in order to afford and allow such smaller manufacturers of beer access to the marketplace in order to develop a customer base without impairing the integrity of the 3-tier system.

Exhibit 4

STATE OF ILLINOIS
97th GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES
TRANSCRIPTION DEBATE

62nd Legislative Day

5/23/2011

Clerk Mahoney: "Senate Bill 754, a Bill for an Act concerning liquor. Third Reading."

Speaker Lyons: "The Gentleman from Bureau, Representative Mautino."

Mautino: "Thank you, Speaker. Ladies and Gentlemen of the House, Senate Bill 754 grants a limited option to Illinois and out-of-state startup breweries defined in the Bill as craft brewers to self-distribute beer products pursuant to a permit issued by the Liquor Control Commission. The permit process is similar to that previously adopted by the Illinois General Assembly for small wineries. This Bill, except for the craft brewer exemption, continues a prohibition against self-distribution for out-of-state brewers and clearly extends that prohibition to Illinois brewers. The out-of-state brewers and Illinois brewers are treated equally as required by the commerce clause provisions of the U.S. Constitution. In other words, all brewers, in state and out of state, manufacturing beer above the craft brewer limits may not self-distribute or own a distributorship in Illinois. The Bill is consistent with the clarification suggested by Federal District Court in the case entitled Anheuser-Busch, et al v. Stephen B. Schnorf, et al. Under this Bill, it is the clear intent that Illinois continues to adhere to the three-tier system for the regulation of alcoholic beverages. This Bill is in response to the court case, which many of you have heard about up until now, and I would be happy to answer any questions. The Senate and Senator Trotter held about ten meetings with Anheuser Busch InBev, the Craft Brewers

STATE OF ILLINOIS
97th GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES
TRANSCRIPTION DEBATE

62nd Legislative Day

5/23/2011

Guild, MillerCoors, Wine and Spirits Distributers of Illinois, and the Illinois Licensed Beverage Association. I thank Senator Donne Trotter for his work as well as Representative Greg Harris, Representative Mike Bost, and John Bradley. And I bring to you for your vote today Senate Bill 754, Appreciate your support."

Speaker Lyons: "The Chair recognizes the Gentleman from Jackson, Representative Mike Bost."

Bost: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Lyons: "Sponsor yields."

Bost: "Representative, just so that we have it real clear on record for any question that might be out there. The gallonage total that the small brewers can self-distribute, what is the amount in that?"

Speaker Lyons: "That was a question, Frank."

Mautino: "Fifteen thousand barrels."

Bost: "Thank you. And that doesn't matter if that small brewery is located in Illinois or let's say there's one just across the river into Missouri or Indiana. It's all the same, correct?"

Mautino: "Yep. That's correct."

Bost: "And, therefore, that answers the judge's question on whether or not it is... if there is discrimination among the states?"

Mautino: "Certainly. And with that, you know it's important to remember that Judge Dow was faced with two decisions, either to stop all distribution by anyone who is not existing within that tier, so basically, force them to close down that portion of their operation for those small

STATE OF ILLINOIS
97th GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES
TRANSCRIPTION DEBATE

62nd Legislative Day

5/23/2011

brewers or allow it for all, and the least disruptive means was to disallow any. And now that's... that's with the court case itself, anyone from being in multiple tiers at the same time. So this Bill actually creates the structure, which you were describing on a very limited basis, in order to make sure that they will be able to continue so long as they're licensed by the Liquor Control Commission."

Bost: "Thank you, and Mr. Speaker, to the Bill. With the hard work that has been and set forth by all parties involved, basically what we've done is we've met the court's requirements by doing this, but we've also encouraged young entrepreneurs to go into a craft brewer business, to get involved to raise up their product, to start new businesses that the distributors then can have all that new business to move around and actually makes it better for them as well. But what it does do is, it does not allow a monopoly to exist, which is the concern and why we have also always had the three-tiered 'TTT' system in place, which many people or the majority of people on this floor agree with. I stand in support of the Bill, and I thank you... say a big thank you to all the people who have worked on it."

Speaker Lyons: "Representative Roger Eddy."

Eddy: "Thank you, Speaker. Would the Sponsor yield?"

Speaker Lyons: "Sponsor yields."

Eddy: "Representative, at this point, I know this has been a pretty long process and a lot of negotiations, there are still some opposition?"

Mautino: "Yes, the brew pubs and the micra... the brew pubs are still in opposition."

STATE OF ILLINOIS
97th GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES
TRANSCRIPTION DEBATE

62nd Legislative Day

5/23/2011

Eddy: "Okay. And the basis of that opposition is that they would not be able to meet the gallonage. Is that the issue?"

Mautino: "No, that's a separate issue under there where they basically were seeking the ability that would.. to license and self-distribute. So that does not answer the court case in here. We've stuck directly to that. I would be opposed to that because it's the same problem, where they would be operating within multiple tiers of the system. So, they would need a separate legislation, they are not in this."

Eddy: "Okay. So one of their concerns is about brewing off site? I think that... that's something that continues to concern them. You mentioned that there might need additional legislation. I guess, my question is, is that something that we can work on that you anticipate there be further discussions related to?"

Mautino: "In the future they can... they may bring forth another Bill. Part of their group received the license as the specialty brewers. The other part are the brew pubs. And so they were reluctantly opposed. They liked the portion of the Bills that were in here dealing with craft brewers, but their association also here some members who will not be able to self-distribute."

Eddy: "Well I appreciate that and I appreciate you pointing that out because it is something, I think, we're going to possibly see again. Ladies and Gentlemen of the House, to the Bill. I stand in support of the Bill. I think that the Amendment addresses the district court, northern district case, the decision made there. It helps the small brewers get their beer into the market without dismantling what has

STATE OF ILLINOIS
97th GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES
TRANSCRIPTION DEBATE

62nd Legislative Day

5/23/2011

been the three-tier system. It does it in a way, I think, that's reasonable, and I think that it's something that we should support here in the House and I'd urge a 'yes' vote."

Speaker Lyons: "The Chair recognizes the Gentleman from Cook... Representative Eddy, you're finished, correct, Sir? Yeah. Representative Dunkin."

Dunkin: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Lyons: "Sponsor yields."

Dunkin: "Representative, I know we had some discussion before. I just want to get a sense of... with a lot of these micro brewers or excuse me, these craft brewers coming about and them now being possibly to participate in the distributioning end of things, how would this help with, sort of, minorities becoming brewers and distributors as well? Is there..., sort of... does it help or hurt..."

Mautino: "Actually, it's unlimited opportunities. They can... if they are starting up one of the craft brewers, anyone, in any walk of life, can go in and apply for a license, meet the criteria within the state, and then would be able to both produce and distribute so long as it's below the 15 thousand gallon... barrels."

Dunkin: "Sure. Some of... again, in some of our discussion, some of the challenges with some of the smaller ones versus the larger distributors, excuse me, brewers is because is that, for example, an Anheuser-Busch or Miller Lite... had the opport... they actually... some of... they actually provided opportunities for some minority ownership in several

Exhibit 5

Nos. 10-3298 and 10-3570

In the
United States Court of Appeals
for the Seventh Circuit

U.S.C.A. - 7th Circuit
RECEIVED
JAN 21 2011 RMS
GINO J. AGNELLO
CLERK

Anheuser-Busch, Inc., *et al.*,
Plaintiffs-appellants,

v.

Stephen B. Schnorf, *et al.*, Commissioners of the
Illinois Liquor Control Commission, in their official
capacities,

Defendants-appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF ILLINOIS
No. 10 C 1601
Hon. Robert M. Dow, Jr., Judge

APPELLANTS' BRIEF AND REQUIRED SHORT APPENDIX

ORAL ARGUMENT REQUESTED

Edward M. Crane
Albert L. Hogan, III
Andrew J. Fuchs
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
155 North Wacker Drive
Chicago, Illinois 60606
(312) 407-0700

*Counsel for Plaintiffs-appellants
Anheuser-Busch, Inc. and WEDCO*

that justifies their discrimination" against out-of-state brewers, and thus the discrimination is unconstitutional. (*Id.* at 27.)

To remedy defendants' unconstitutionally discriminatory interpretation of Illinois law, the district court had to equalize the treatment of in-state and out-of-state brewers. The court either could "extend" the in-state brewer distribution right to out-of-state brewers, such that out-of-state brewers could continue to own or operate an Illinois distributor as in-state brewers are permitted to do and as out-of-state brewers had for over 70 years prior to defendants' recent interpretation, or "nullify" the in-state brewer distribution right such that no brewers could own or operate an Illinois distributor. (*Id.* at 37-38.) The district court chose to nullify provisions of the Liquor Control Act such that no brewers, whether in-state or out-of-state, may own or operate an Illinois distributor. (*Id.*) The Sept. 3 Order provided that this remedy would be stayed until March 31, 2011, to give the Illinois General Assembly an opportunity to act, if it chooses to do so. (*Id.* at 37.)

On October 1, 2010, AB Inc. and WEDCO filed a notice of appeal pursuant to 28 U.S.C. § 1292(a)(1), appealing only those portions of the district court's Sept. 3 Order that pertain to the proper remedy for defendants' violation of the Commerce Clause.

On October 18, 2010, the parties to the action in the district court filed a joint stipulation of dismissal with prejudice as to Counts II (violation of Procedural Due Process of the Fourteenth Amendment) and III (violation of

Accordingly, this Court should reverse that portion of the Sept. 3 Order that nullifies provisions of the Liquor Control Act, such that no brewer may distribute beer in Illinois, and reform the remedy to extend ("reinstate") to out-of-state brewers the same right to own or operate an Illinois beer distributor afforded to in-state brewers under the Liquor Control Act. This Court should enter plaintiffs' proposed form of injunction to accomplish as much. (Docket No. 28, Exhibit A.)

Dated: January 21, 2011

Respectfully submitted,



Edward M. Crane
Albert L. Hogan, III
Andrew J. Fuchs
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
155 N. Wacker Drive
Chicago, Illinois 60606
312-407-0700 (Telephone)

**Counsel for Plaintiffs Anheuser-
Busch, Inc. and WEDCO**

Exhibit 6



Office of Industry & Government Affairs
1005 Congress Avenue, Suite 370
Austin, Texas 78701
tel: (512) 236-9242
fax: (512) 236-9038

December 14, 2010

Mr. Bill Olson
President
Associated Beer Distributors of Illinois
100 W. Cook Street
Springfield, IL 62704

Dear Bill:

I am enclosing a draft copy of legislation which was presented to our wholesaler partners at a meeting earlier today with senior management.

We would appreciate the opportunity to discuss this with you and the decision makers for your association at your earliest possible convenience, in the interest of continued dialogue.

Sincerely,

A handwritten signature in black ink that reads "Mark Bordas". The signature is fluid and cursive, written over a horizontal line.

Mark Bordas
Region Vice President, State Affairs

C. M. Thomson; M. McClain; K. Feehan; D. Kolditz; T. Roth

An Act concerning liquor.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5 of the Liquor Control Act of 1934 is amended by changing section 5/6-4, as follows:

(235 ILCS 5/6-4) (from Ch. 43, par. 121)

Sec. 6/4. The Legislature hereby finds and declares that for purposes of ensuring the preservation and enhancement of a three-tier system of distribution in the State of Illinois, promoting interbrand competition in the alcoholic liquor industry within the State, ensuring that importation and distribution of alcoholic liquor in the State will be subject to thorough monitoring by the State, reducing the importation of illicit or untaxed alcoholic liquor into the State, excluding misbranded alcoholic liquor products from the State, the following provision shall be enacted.

(a) No person licensed by any licensing authority as a distiller, or a wine manufacturer, or any subsidiary or affiliate thereof, or any officer, associate, member, partner, representative, employee, agent or shareholder owning more than 5% of the outstanding shares of such person shall be issued an importing distributor's or distributor's license, nor shall any person licensed by any licensing authority as an importing distributor, distributor or retailer, or any subsidiary or affiliate thereof, or any officer or associate, member, partner, representative, employee, agent or shareholder owning more than 5% of the outstanding shares of such person be issued a distiller's license or a wine manufacturer's license; and no person or persons licensed as

FINAL-12/14/10

a distiller by any licensing authority shall have any interest, directly or indirectly, with such distributor or importing distributor.

However, an importing distributor or distributor, which on January 1, 1985 is owned by a brewer, or any subsidiary or affiliate thereof or any officer, associate, member, partner, representative, employee, agent or shareholder owning more than 5% of the outstanding shares of the importing distributor or distributor referred to in this paragraph, may own or acquire an ownership interest of more than 5% of the outstanding shares of a wine manufacturer and be issued a wine manufacturer's license by any licensing authority.

(b) The foregoing provisions shall not apply to any person licensed by any licensing authority as a distiller or wine manufacturer, or to any subsidiary or affiliate of any distiller or wine manufacturer who shall have been heretofore licensed by the State Commission as either an importing distributor or distributor during the annual licensing period expiring June 30, 1947, and shall actually have made sales regularly to retailers.

(c) Notwithstanding any other provisions in this Act, a brewer licensed by any licensing authority, which on January 1, 2010, owned in whole or in part an importing distributor or distributor, or owned the same through any subsidiary or affiliate thereof, or any successor entity of the brewer, subsidiary or affiliate, may own or acquire the outstanding shares, in whole or in part, of that same importing distributor or distributor, or any entity which purchases or acquires the importing distributor or distributor or of any other importing distributor or distributor located within Cook County, Illinois, regardless of whether said brewer, or any subsidiary, affiliate, or successor entity thereof holds an Illinois non-resident dealers license.

~~(c)~~ (d) Provided, however, that in such instances where a

FINAL - 12/14/10

distributor's or importing distributor's license has been issued to any distiller or wine manufacturer or to any subsidiary or affiliate of any distiller or wine manufacturer who has, during the licensing period ending June 30, 1947, sold or distributed as such licensed distributor or importing distributor alcoholic liquors and wines to retailers, such distiller or wine manufacturer or any subsidiary or affiliate of any distiller or wine manufacturer holding such distributor's or importing distributor's license may continue to sell or distribute to retailers such alcoholic liquors and wines which are manufactured, distilled, processed or marketed by distillers and wine manufacturers whose products it sold or distributed to retailers during the whole or any part of its licensing periods; and such additional brands and additional products may be added to the line of such distributor or importing distributor, provided, that such brands and such products were not sold or distributed by any distributor or importing distributor licensed by the State Commission during the licensing period ending June 30, 1947, but cannot sell or distribute to retailers any other alcoholic liquors or wines.

~~(d)~~ (e) It shall be unlawful for any distiller licensed anywhere to have any stock ownership or interest in any distributor's or importing distributor's license wherein any other person has an interest therein who is not a distiller and does not own more than 5% of any stock in any distillery. Nothing herein contained shall apply to such distillers or their subsidiaries or affiliates, who had a distributor's or importing distributor's license during the licensing period ending June 30, 1947, which license was owned in whole by such distiller, or subsidiaries or affiliates of such distiller.

~~(e)~~ (f) Any person having been licensed as a manufacturer shall be permitted to receive one retailer's license for the premises in which he or she actually conducts such business, permitting the sale of beer only on such premises, but no such person shall be entitled to

FINAL-12/14/10

more than one retailer's license in any event, and, other than a manufacturer of beer as stated above, no manufacturer or distributor or importing distributor, excluding airplane licensees exercising powers provided in paragraph (I) of Section 5-1 of this Act, or any subsidiary or affiliate thereof, or any officer, associate, member, partner, representative, employee or agent, or shareholder shall be issued a retailer's license, nor shall any person having a retailer's license, excluding airplane licensees exercising powers provided in paragraph (I) of Section 5-1 of this Act, or any subsidiary or affiliate thereof, or any officer, associate, member, partner, representative or agent, or shareholder be issued a manufacturer's license or importing distributor's license.

A person licensed as a craft distiller not affiliated with any other person manufacturing spirits may be permitted to receive one retailer's license for the premises in which he or she actually conducts business permitting only the retail sale of spirits manufactured at such premises. Such sales shall be limited to on-premises, in-person sales only, for lawful consumption on or off premises. A craft distiller licensed for retail sale shall secure liquor liability insurance coverage in an amount at least equal to the maximum liability amounts set forth in subsection (a) of Section 6-21 of this Act.

~~(f)~~ (g) However, the foregoing prohibitions against any person licensed as a distiller or wine manufacturer being issued a retailer's license shall not apply:

(i) to any hotel, motel or restaurant whose principal business is not the sale of alcoholic liquors if said retailer's sales of any alcoholic liquors manufactured, sold, distributed or controlled, directly or indirectly, by any affiliate, subsidiary, officer, associate, member, partner, representative, employee, agent or shareholder owning more than 5% of the outstanding shares of such

FINAL-12/14/10

person does not exceed 10% of the total alcoholic liquor sales of said retail licensee; and

(ii) where the Commission determines, having considered the public welfare, the economic impact upon the State and the entirety of the facts and circumstances involved, that the purpose and intent of this Section would not be violated by granting an exemption.

~~(g)~~ (h) Notwithstanding any of the foregoing prohibitions, a limited wine manufacturer may sell at retail at its manufacturing site for on or off premises consumption and may sell to distributors. A limited wine manufacturer licensee shall secure liquor liability insurance coverage in an amount at least equal to the maximum liability amounts set forth in subsection (a) of Section 6-21 of this Act.

(i) All pricing practices of beer distributors and brewers shall be subject to the Illinois Antitrust Act, 740 ILCS 10/1, and the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 et seq., and the Beer Industry Fair Dealing Act, 815 ILCS 720/1 et seq.

Source: P.A. 95-634, eff. 6-1-08; 96-1367, eff. 7-28-10; _____, eff. _____.)

Exhibit 7

IMPORTANT INFORMATION REGARDING SENATE BILL 754

May 3, 2011

Honorable Antonio Munoz
323 Capitol Building
Springfield, IL 62706

Dear Senator Munoz:

We represent Anheuser-Busch and write to share important information from our client on Senate Bill 754 (currently on Senate 3rd Readings) and to correct misinformation about the bill that has been distributed to lawmakers by other interested parties.

As you may know, the Illinois Liquor Control Commission last year denied Anheuser-Busch the opportunity to acquire City Beverage, a wholesale distributor in which it already had a partial ownership interest for several years, on the grounds that out-of-state brewers should not be allowed to hold a distributor's license. A federal judge agreed with Anheuser-Busch and found the ILCC's action an unconstitutional violation of the Commerce Clause because it discriminated against non-resident brewers. The judge's proposed remedy, however, was to treat both in-state and out-of-state brewers the same by prohibiting either from holding a distributor's license. If allowed to stand, some Illinois craft brewers could be forced to close, as there is no guarantee that other wholesalers would agree to distribute their products.

Anheuser-Busch appealed and the judge stayed his remedy until May 27. At this time, the status quo remains in place in Illinois. Anheuser-Busch will soon ask the judge to extend his stay further while the case remains on appeal, thus preserving the status quo and ensuring that small Illinois brewers are not harmed.

Anheuser-Busch, the largest brewer in the world, stands arm-in-arm with small Illinois brewers and their trade association, the Craft Brewers Guild, which also opposes Senate Bill 754. Our client has worked cooperatively with the craft brewers because brewers want the same thing: fair competition in the marketplace and equal treatment under the law.

We request that no action be taken on the bill unless the courts decide to not extend the stay and it becomes necessary to act to ensure Illinois craft brewers will be allowed to continue distributing their beer. This decision will be made before the scheduled May 31 adjournment and with sufficient time for the General Assembly to act if necessary.**

Thank you very much for your time and consideration. This issue is very important to Anheuser-Busch's business in Illinois, where the company spends millions of dollars annually - more than it spends in many other states combined. We hope you find the enclosed letter from Anheuser-Busch President Dave Peacock to his company's distributors and Q&A informative and helpful. We would be happy to answer any questions or respond to concerns you may have.

Sincerely,

James DeLeo
Mike McClain
Brent Hassert

Coy Pugh
Mike Thomson
H. Carter Hendren

Barbara Staples-King
Jennifer Morrison
Liz Brown

Tom Taylor
Michael Weir

Exhibit 8



Anheuser-Busch, Inc

May 2, 2011

TO: All Anheuser-Busch Illinois Wholesalers

ANHEUSER-BUSCH RESPONSE TO ILLINOIS SENATE BILL 754

As you are aware, Anheuser-Busch ^{*}strongly opposes Illinois SB 754 because it unfairly restricts the ability of brewers – large and small – to compete in the marketplace.

The practice of brewery participation at the wholesaler level is not uncommon – federal law and half the states provide for it in some form. It assures brewers competitive market access, sometimes where the market is difficult, the business is low-share, or for other factors, such as allowing financial aid to wholesalers who might otherwise not have the experience or capital to enter the industry or expand their operations. This all leads to a healthier market that's better for wholesalers, retailers and ultimately the consumer and is fully consistent with our firm support of the three-tier system.

Recently, you received a Q&A from Bill Olson, Associated Beer Distributors of Illinois, that spreads misinformation about SB 754 and our position. To one question on the "real reason" we are interested in owning a licensed operation in Chicagoland, Mr. Olson responds: "Market share. Anheuser-Busch InBev has a market share in the low to mid twenties in the Chicago metro area where MillerCoors' products are the market leader."

Growing market share is an outrageous goal only to those who stand to lose business in a more competitive environment. We absolutely work to grow market share every day in every market – our business depends on it, as does yours. I don't believe it is ABDI's role to determine who should have what market share, nor how A-B and its wholesalers choose to lawfully pursue an improved competitive position.

Mr. Olson proclaims Anheuser-Busch is a "foreign brewer" and that the "company owned and operated by the Busch family no longer exists." Anheuser-Busch has been a publicly held company for decades, we brew and package beer at 12 U.S. breweries with local employees and our U.S. headquarters remains in St. Louis. Such irrelevant, emotional rhetoric has no place in a discussion on assuring that a competitive marketplace exists in Illinois.

As ABDI continues to spread falsehoods and innuendos, we will work to correct these with legislators and others, starting with the attached Q&A in response to Mr. Olson's. If you have any questions about our position, please contact Mark Bordas at (512) 236-9242 or Tom Roth at (314) 577-2575.

Sincerely,

Daye Peacock
President

Response to ABDI Letter to Lawmakers Regarding Senate Bill 754

May 2, 2011

1. Why should the General Assembly act on the issue of brewery-owned distributorships? ✚

Judge Dow did not ask the General Assembly to act on the issue of brewery-owned distributorships in Illinois. Rather, he gave the General Assembly an opportunity to act if it chose to do so. In the meantime, the remedy is under appeal because the Liquor Control Act in fact has permitted all brewers to distribute under state license from 1934 through the present. There is absolutely no urgency to act now, before the appeal is decided.

2. How does SB 754 help resolve the discrimination that exists between in-state and out-of-state breweries?

It doesn't. The Liquor Control Act has permitted all brewers – in-state and out-of-state – to distribute beer since 1934 *without discrimination*. The only issue here is the discrimination that resulted from the interpretation of the act in 2010 by the Illinois Liquor Control Commission (ILCC). Before that, the ILCC interpreted the act to permit all brewers to distribute beer.

3. Why did Judge Dow decide to not allow Anheuser-Busch to own distributorships?

Judge Dow made no such decision. He looked at the ILCC's interpretation of the act, not the act itself, and correctly decided the ILCC acted in a discriminatory way. The court cannot create a law or public policy, and the judge made very clear the court would not.

4. Why does ABDI support SB 754?

✚ ABDI supports SB 754 because the bill will give it virtually complete control of beer distribution in Illinois – to its members' competitive and economic advantage. SB 754 is a significant departure from the way Illinois has historically regulated beer and threatens fair competition in the state. Neither A-B nor the Illinois Craft Brewers Guild support SB 754. It's bad for beer and consumers. The Guild, with 30 Illinois members, is against the bill because it could result in an even worse position for them than if no legislation was passed.

5. Doesn't A-B own distributorships in other states?

Yes, and it's not uncommon. Federal law and half the states provide for brewers to own licensed distributors in some form. These states do so because the state remains in control of the middle tier through licensing, which assures transparency, taxation and protection of community interests, regardless of whether they are affiliated with a brewer or other business.

Anheuser-Busch is interested in City Beverage because the Chicagoland market is a difficult, cost-prohibitive market and its majority partner asked them to buy the remaining stake.

7. Didn't A-B own a distributorship in Illinois previously?

A-B has had a historic presence as a wholesaler in Illinois since the late 1800s. More recently, A-B owned a distributorship in Illinois from 1982 to 2005, and then rolled that ownership over into its ownership of City Beverage in 2005, without interruption. Every year, the ILCC issued A-B a distributor license because it correctly interpreted the Liquor Control Act as permitting brewers to hold distributors' licenses. The Illinois law governing this has remained consistent over the years – it did not change in 1982, so no "grandfathering" could have occurred.

8. Why now? What is the real reason A-B wants to own distributorships?

A-B has owned a distributorship in Illinois for more than 30 years. This is nothing new. The ILCC recently created an issue where none exists.

Brewer-owned distributorships assure brewers competitive market access, sometimes where the market is difficult, the business is low-share, or for other factors, such as allowing financial aid to wholesalers who might otherwise not have the experience or capital to enter the industry or expand their operations. This all leads to a healthier market that's better for wholesalers, retailers and ultimately the beer consumer.

9. What would the harm be if A-B owned distributorships?

None – just look at A-B's track record in Illinois. The ILCC has licensed A-B as a beer distributor in Illinois for more than 30 years, and it has operated as a responsible, compliant licensed wholesaler. In fact, during the lawsuit, the ILCC failed to produce any evidence that A-B's holding of a distributor license had any negative effect whatsoever.

10. What benefit do distributors provide to the market?

All distributors – regardless of ownership – provide value and service to retailers and communities through products, revenue, taxes and community support. A-B has been an outstanding distributor in large markets for decades – more than a century in Denver – and we remain a firm supporter of the three-tier system.

###

Exhibit 9



Illinois Liquor Control Commission

Governor Pat Quinn • Acting Chairman Stephen Schnorf • Executive Director Gloria L. Materre

Findings from the 12/7/2011 Meeting Regarding the Anheuser Busch Ownership Interest in City Beverage LLC

We find:

- A. The Commission ruled in March 2010 that under Illinois law Anheuser Busch (AB) couldn't own a distributor.
- B. The Federal Court in 2010 was obligated to accept our interpretation of state law.
- C. AB testified that they relied on the advice of ILCC Chief Counsel during their consideration of purchasing City Beverage LLC (City Bev).
- D. AB, until 2009, in various configurations, has owned all or parts of distributorships with ILCC staff continued reissuance of licenses.
- E. Two attorneys, each functioning respectively as Chief Counsel to the Illinois Liquor Control Commission, within a period of 5 years, came to opposite conclusions as to whether the Liquor Control Act allowed manufacturer ownership of distributorships, while the statute had not changed during the intervening time.
- * F. It was the intent of the Illinois General Assembly in 2011 to deny AB the right to own a distributorship. We believe this even though the General Assembly did not amend Section 5/6-4(a) to include brewers as parties specifically prohibited from owning distributorships.
- G. A new question was raised by interested parties, whether a foreign corporation must be registered to do business in Illinois in order to own more than 5% of a distributorship (or any other license).
- H. We are not legally estopped from sanctioning AB/WEDCO/City Bev for the current status of license ownership.
- I. The Commission has substantial discretion in determining whether or not to issue, renew or revoke a license in accordance with the Liquor Control Act.
- J. The current status of license ownership does not adversely affect the ability of the Illinois Liquor Control Commission to soundly and carefully control and regulate the manufacture, sale and distribution of alcoholic liquors.

Exhibit 10

Joseph Seagram & Sons, Inc.
Seagram Americans Division
2100 Golf Road Ste 230/290
Rolling Meadows, IL 60008

Amtec International of NY Corp
213-215 North 9th St
Brooklyn, NY 11211

Krinos Foods, Inc.
160 North Morgan
Chicago, IL 60607

Stanley Imports
2017 N. Mendell
Chicago, IL 60614

Paterno Imports, Ltd.
900 Armour Drive
Lake Bluff, IL 60044

Baum Wine Imports, Inc.
485 Thomas Drive
Bensenville, IL 60106

Winesellers, Ltd.
9933 N Lawler
Skokie, IL 60077

Vinifera Imports Ltd.
205 13th Ave
Ronkonkoma, NY 11779

Wein Bauer, Inc.
10600 Seymour Ave
Franklin Park, IL 60131

Jin Han International, Inc.
3445 N Kimball #e
Chicago, IL 60618

Geneva International Corp.
29 E Hintz Rd
Wheeling, IL 60090

Leonel & Noel, Corp
4476 North Elston Avenue
Chicago, IL 60630

Dime Group International, Inc.
100 Fairway Drive
Suite 128
Vernon Hills, IL 60061

Una Voz, Inc.
Box 274
Aurora, IL 60507

Cracovia Brands, Inc.
5632 N Northwest Hwy
Chicago, IL 60646

Grape News Importing Ltd.
1537 W Wolfram
Chicago, IL 60657

Maguey, Inc.
1905 Loomis
Chicago, IL 60608

Bozic's Imports & Wholesale Liquors
1964 W Lawrence Ave
Upper Suite 1
Chicago, IL 60640

Sikon International, Inc.
7406 W Arcadia Ave
Morton Grove, IL 60053

International Products & Services of Sea & Earth
16 E Main St
East Dundee, IL 60118

Rose Importing & Distributing
13941 Kostner Ave
Crestwood, IL 60445

Vino Dolce Imports, Inc.
5000 S Cornell Ave
Suite 14-B
Chicago, IL 60615

Taxco De Mis Amores, Inc.
7845 N Crawford Ave
Skokie, IL 60076

Miller Brewing Company
3939 W Highland Blvd
Milwaukee, WI 53208-0482

B.T. McClintic Beer Company, Inc.
136 W Grand Ave-Ste 245
Beloit, WI 53511

United Distillers USA
18 W 140 Butterfield Rd
Suite 1520
Oakbrook Terrace, IL 60181

SLJ Group, Inc.
55 Albrecht Drive
Lake Bluff, IL 60044

Louis Gluntz Beer, Inc.
7100 N. Capital Dr.
Lincolnwood, IL 60645

Connoisseur Wines
P.O. Box 1722
Arlington Hts, IL 60006



STATE OF ILLINOIS LIQUOR CONTROL COMMISSION

George H. Ryan
Governor

Don W. Adams
Chairman

Mark T. Bishop
Acting Executive Director

Commissioners

Leonard L. Branson • Robert E. Hayes • James M. Hogan • Irving J. Koppel • Lilibeth Lopez • Myrna E. Pedersen

January 10, 2001

Miller Brewing Company
3939 W. Highland Blvd
Milwaukee, WI 53208-0482

Re: Multiple tier licensing - Non-Resident Dealer and Distributor/Importing Distributor

Dear Licensee:

In the past year it has come to the attention of the Legal Division that there are a number of licensees who may be improperly holding licenses on different tiers. You are directed to review the following Sections 5/1-3.29, 5/5-1(m), 5/1-3.15, 5/5-1(b), 5/6-4 of the Liquor Control Act, a summary of which follows.

It is the considered opinion of the Legal Division that the Liquor Control Act specifically excludes manufacturers and non-resident dealers from the class of proper applicants for a distributor's and importing distributor's license; and distributors and importing distributors from the class of proper applicants for a manufacturers and non-resident dealer license.

The Commission licensing database indicates that you are presently improperly licensed under the above rationale. Your options appear to be to continue to be licensed as a Non-resident dealer and to secure another Illinois distributor or importing distributor to handle your products, or relinquish your Non-resident dealer license and continue to operate as an Illinois distributor or importing distributor; assuming in either case that you have the proper permit from the Bureau of Alcohol, Tobacco and Firearms, COLAs and Registration Statements.

Very truly yours,


John R. Stanton
Chief Legal Counsel
JRS/ps

J:\Licensing\NRDDistLetter.wpd

Exhibit 11

ANNOUNCEMENT

DATE: JANUARY 24, 2003

RE: REVISED TRADE PRACTICE POLICIES
(effective January 1, 2003)

Please take notice that the Illinois Liquor Control Commission has now published the revised Trade Practice Policies, placing the updated version on the Commission's website.

The website address is:

These policies were subject to numerous comment periods and meetings with the industry and their representatives, as well as verbal and written comments and observations. Some of the suggestions received by the Commission were incorporated into the revision; others had to be rejected as contrary to the provisions of the Liquor Control Act; and others are still being reviewed for possible addition at a later date.

All comments, which were submitted to the Commission, have been reviewed and acted upon in one fashion or another. It should be understood generally that these revised policies express the Commission's best decision on questions presented to it, given the facts and circumstances involved and the state of prevailing law.

It should further be understood that ALL policies will remain under continuous review to better develop revisions responsive to new and changing circumstances.

Trade Practice Policies
INDEX

- TPP-1 "Of Value" Standards
- TPP-2 ~~(Reserved)~~ Specific Items or Activities which have been reviewed by the Commission for "of value" violations.
- TPP-3 Manufacturer, Non-Resident Dealer, Distributor, Importing Distributor and Foreign Importer
sponsorship of events at Retail Premises
- TPP-4 Donations of Product and Services to Organizations
- TPP-5 Retailer Payments to ~~Manufacturers;~~ Distributors Importing Distributors and Foreign Importers
-
- TPP-6 Cooperative Purchasing Agreements
- TPP-7 ~~Reserved~~ Point of Sale Materials - Manufacturer to Distributor
- TPP-8 ~~(Reserved)~~
- TPP-9 Signage and other Advertising Materials
- TPP-10 ~~Reserved~~ Signage Dollar Limits (1997 to present)
- TPP-11 Consumer Coupons and Rebates
- TPP-12 Hotel/Motel Mini Bars

TPP-38	<u>Distributor Warehousing</u>
* TPP-39	<u>Multi-tier licensing arrangements</u>
TPP-40	<u>Introduction of new spirits producer</u>

TPP-1 "Of Value" Standards ("Tied House")

I. Purpose

To set the procedures of the Illinois Liquor Control Commission whereby the term "of value" (also referred to as "tied house") shall be defined, and to determine what constitutes items "of value," and not "of value," under the Illinois Liquor Control Act, Rules and Regulations of the Commission, case authority, and prior interpretive opinions.

II. Policy Statement

It is the policy of this Commission to enforce the provisions of the Liquor Control Act in relation to prohibiting manufacturers, distributors and importing distributors from giving anything "of value" to retailers, and simultaneously prohibiting retailers from accepting anything "of value" from manufacturers, distributors and importing distributors, unless such transactions are specifically allowable pursuant to Illinois Statute, Rule, Regulation, case law, or Trade Practice of this Commission.

III. Precedent

A. Statutory History

The term "of value" originates in the Federal Tied House Laws (Federal Alcohol Administrative Act (FAAA), 27 U.S.C. 205 (a), (b) and (c)), which sections respectively refer to "Exclusive outlet," "Tied house" and "Commercial bribery." By granting gifts and loaning money to retailers, manufacturers, distributors and importing distributors had effectively "tied" themselves to retailers to the point of excluding competitors. This form of vertical integration between manufacturers, distributors and retailers allowed the distributors to exercise virtual control over the retailers. The federal Tied House Laws prohibited manufacturers and distributors from giving equipment, fixtures, signs, supplies, money, services, or other things "of value" to retailers. The federal Tied House Laws also prohibited manufacturers and distributors from inducing retailers to purchase alcoholic products from them only, to the exclusion of other suppliers. The Congressional objective sought by passage of the federal Tied House Laws; was the prevention of this wholesaler control of retailers. The concern was that buying decisions of the retailers were in actuality being made by the wholesalers, or by retailers too strongly influenced by the wholesalers, so that no independent business decision was being made. Congress also intended that the Act would promote a competitive alcohol market. The underlying premise being a genuinely competitive market led to lower prices, and lower prices removed the incentives for the creation of a black market. This federal law was implemented by rules, found at 27 CFR 1, et seq., as well as Trade Practice Regulations.

The Illinois General Assembly enacted its own "tied house" provisions in 1934, with the enactment of Laws 1933-34, 2nd. Sp. Sess., p. 57, art. VI, subsec. 4; subsequently Ill. Rev. Stat., ch. 43, par. 122 and 123; now known as 235 ILCS 5/6-5 and 5/6-6. These statutes have been interpreted in single subject opinion letters and most recently by these Trade Practice Policies. Also directly related to this "tied

decrease in the Consumer Price Index during the previous 2 years according to the most recent available data.

The Peerless changes: 5/6-9

(4) His sales are made within the geographical area for which the licensed Illinois distributor from whom the purchases are made has the right to sell the brand or brands of alcoholic liquor and only to retail licensees whose licensed premises are located within the aforementioned geographical area.

No person to whom such right is granted shall sell at wholesale in this State any alcoholic liquor bearing such trade mark, brand or name outside of the geographical area for which such person holds such selling right, as registered with the State Commission, nor shall he sell such alcoholic liquor within such geographical area to a retail licensee if the premises specified in such retailer's license are located outside such geographical area. Any licensed Illinois distributor who has not been granted the right to sell any alcoholic liquor at wholesale and is purchasing alcoholic liquor from a person who has been granted the right to sell at wholesale may sell and deliver only to retail licensees whose licensed premises are within the same geographical area as the person who has been granted the right to sell at wholesale.

No manufacturer, importing distributor, distributor, non-resident dealer, or foreign importer shall sell or deliver any package containing alcoholic liquor manufactured or distributed by him for resale, unless the person to whom such package is sold or delivered is authorized to receive such package in accordance with the provisions of this Act.

(Source: P.A. 90-0596, eff. 6-24-98)

III. Procedures

1. All licensed Illinois distributors, importing distributors and foreign importers shall have licensed warehouse facilities within the State of Illinois.

2. All sales to retailers, located within each distributor, importing distributor and foreign importer's geographic territory, shall be made from the licensed warehouse facilities within the State of Illinois.

3. All business records, as defined in Sec. 5/6-8 and Regulation 100.130, shall be maintained upon the licensed warehouse facilities within the State of Illinois.

4. All alcoholic products sold to the licensed Illinois distributors, importing distributors and foreign importers shall be off-loaded at the licensed warehouse facilities within the State of Illinois.

5. The alcoholic products shall be stored at the licensed warehouse facilities within the State of Illinois before sale and delivery to licensees in this State.

6. Illinois distributors, importing distributors and foreign importers may warehouse product in public warehouses, registered under Article VIIA of the Liquor Control Act; however, sales of such products may not take place from such warehouse premises.

TPP-39 Multi-tier licensing arrangements

Non-resident dealer and Distributor

The Commission has received applications requesting the issuance to one legal entity both an Illinois Distributor and Non-resident dealer license.

It is the position of the Legal Division of the Commission that such licenses cannot be issued to the same applicant for the following reasons:

1. The Liquor Control Act defines a Non-resident dealer as follows: 5/1-3.29. Non-resident dealer

"Non-resident dealer" means any person, firm, partnership, corporation or other legal business entity who or which exports into this State, from any point outside of this State, any alcoholic liquors sale to Illinois licensed foreign importers or importing distributors. Such license shall be restricted to actual manufacturer of such alcoholic liquors or the primary United States importer of such alcoholic liquors, if manufactured outside of the United States, or the duly registered agent of such manufacturer importer. Registration of such agent with the State Commission, in such manner and form as it may prescribe, shall be a prerequisite to the issuance of such license to an agent.

Any licensed Illinois manufacturer of Class 1, Class 2, or Class 3 may obtain a Non-Resident Dealer's License at no fee. A manufacturer whose production of alcoholic liquor is less than 500,000 gallons per year may obtain a Non-Resident Dealer's License for an annual fee of \$75. (emphasis supplied)

5/5-1. Licenses issued by Illinois Liquor Control Commission

Licenses issued by the Illinois Liquor Control Commission shall be of the following classes:

(m) A non-resident dealer's license shall permit such licensee to ship into and warehouse alcoholic liquor into this State from any point outside of this State, and to sell such alcoholic liquor to Illinois licensed foreign importers and importing distributors and to no one else in this State; provided that said non-resident dealer shall register with the Illinois Liquor Control Commission each and every brand of alcoholic liquor which it proposes to sell to Illinois licensees during the license period; and further provided that it shall comply with all of the provisions of Section 6-9 hereof with respect to registration of such Illinois licensees as may be granted the right to sell such brands at wholesale.

2. The Liquor Control Act defines a distributor as follows:

5/1-3.15. Distributor

"Distributor" means any person, other than a manufacturer or non-resident dealer licensed under this Act, who is engaged in this State in purchasing, storing, possessing or warehousing any alcoholic liquors for resale or reselling at wholesale, whether within or without this State. (emphasis supplied)

5/5-1. Licenses issued by Illinois Liquor Control Commission

Licenses issued by the Illinois Liquor Control Commission shall be of the following classes:

(b) A distributor's license shall allow the wholesale purchase and storage of alcoholic liquors and sale of alcoholic liquors to licensees in this State and to persons without the State, as may be permitted by law.

3. The above sections of the Liquor Control Act specifically exclude both manufacturers and non-resident dealers licensed under the Act from the class of proper applicants for a distributor's license.

4. Further, a second ground for the denial of such licenses to a single legal entity is found in Sec. 6-4 of the Liquor Control Act which provides in relevant part:

5/6-4. Retail sales by Distillers, Manufacturers, Subsidiaries or Affiliates Prohibited Transactions and Interests Exemptions

(a) No person licensed by any licensing authority as a distiller, or a wine manufacturer, or any subsidiary or affiliate thereof, or any officer, associate, member, partner, representative, employee, agent or shareholder owning more than 5% of the outstanding shares of such person shall be issued an importer's or distributor's license, nor shall any person licensed by any licensing authority as an importer, distributor, distributor or retailer, or any subsidiary or affiliate thereof, or any officer or associate, member, partner, representative, employee, agent or shareholder owning more than 5% of the outstanding shares of such person be issued a distiller's license or a wine manufacturer's license; and no person or persons licensed as a distiller by any licensing authority shall have any interest, directly or indirectly, with such distributor or importing distributor.

However, an importing distributor or distributor, which on January 1, 1985, is owned by a brewer, or

subsidiary or affiliate thereof or any officer, associate, member, partner, representative, employee, agent or shareholder owning more than 5% of the outstanding shares of the importing distributor or distributor referred to in this paragraph, may own or acquire an ownership interest of more than 5% of the outstanding shares of a wine manufacturer and be issued a wine manufacturer's license by any licensing authority.

(b) The foregoing provisions shall not apply to any person licensed by any licensing authority; distiller or wine manufacturer, or to any subsidiary or affiliate of any distiller or wine manufacturer who shall have been heretofore licensed by the State Commission as either an importing distributor or distributor during the annual licensing period expiring June 30, 1947, and shall actually have made sales regularly to retailers.

(c) Provided, however, that in such instances where a distributor's or importing distributor's license has been issued to any distiller or wine manufacturer or to any subsidiary or affiliate of any distiller or wine manufacturer who has, during the licensing period ending June 30, 1947, sold or distributed as such licensor distributor or importing distributor alcoholic liquors and wines to retailers, such distiller or wine manufacturer or any subsidiary or affiliate of any distiller or wine manufacturer holding such distributor's or importing distributor's license may continue to sell or distribute to retailers such alcoholic liquors and wines which are manufactured, distilled, processed or marketed by distillers and wine manufacturers with the products it sold or distributed to retailers during the whole or any part of its licensing periods; and such additional brands and additional products may be added to the line of such distributor or importing distributor, provided, that such brands and such products were not sold or distributed by any distributor or importing distributor licensed by the State Commission during the licensing period ending June 30, 1947, but can not sell or distribute to retailers any other alcoholic liquors or wines.

(d) It shall be unlawful for any distiller licensed anywhere to have any stock ownership or interest in a distributor's or importing distributor's license wherein any other person has an interest therein who is not a distiller and does not own more than 5% of any stock in any distillery. Nothing herein contained shall apply to such distillers or their subsidiaries or affiliates, who had a distributor's or importing distributor's license during the licensing period ending June 30, 1947, which license was owned in whole by such distiller or subsidiaries or affiliates of such distiller. (emphasis supplied)

4. From the foregoing, it appears that there are two options available to such an applicant: (a) continue to be licensed as a Non-resident dealer and to secure another Illinois distributor, or (b) relinquish the non-resident dealer license and become licensed as an Illinois distributor. Either of these options assumes that the applicant has the proper permit from the Bureau of Alcohol, Tobacco and Firearms.

TPP-40 Introduction of new spirits products

Parties wishing to introduce new spirits products in the State of Illinois may utilize non-licensing third-party companies representing the manufacturer and promoting the new products. The representatives may not carry on any activities which are enumerated in Sec. 5/5-1(a-1) unless the third party company shall be registered as agents of the manufacturer under 5/5-1(a-1).

The manufacturer and its third-party agent may run the risk of "exposing" the product for sale which practice was specifically addressed in the Fourth District Appellate Court case of People v. Se Specialties, Docket No. 4-99-0976 (12/6/2000), which found that such "exposure" amounted to "selling" stating:

"Although defendants did not ship the product or cash the consumer's check, they conducted a 'sale' within the meaning of the Act. Both the intent behind the Act (see Hassiepen v. Marcin, 24 Ill. App. 3d 100, 320 N.E.2d 572, 575 (1974)) and common sense dictate the finding of a sale under the Act. Although defendants later added the terms 'all wines are delivered by Shermer Specialties, which will appear on credit card receipts and statements' in small print at the bottom of the form, this does not change the result. Defendants are selling alcohol without a license. The language of the statute is sufficiently comprehensive

Exhibit 12

Licensee Editing Screen

State License Number: 03-2D- 183 License Class: [REDACTED] IBT: [REDACTED] License Issued: 01/07/2003 License Expires: 01/31/2004 Effective Date: 02/01/2003

Name: LIONSTONE INTERNATIONAL LAKE

Premise Address: 13801 W L
 Unit/Suite:
 C/S/Z: LAKE FORE
 Certificate No:
 Activity Code: RENEWAL
 Fee Paid: 320.00
 License F:
 Reissue F:

07/23/2003- IHF- Do not renew without speaking to IHF. We need information regarding Wine Club.
 DO NOT RENEW THIS LICENSE OR THE OTHER LICENSE OF THIS APPLICANT. IT CAN ONLY HOLD A DISTRIBUTOR OR A NON-RESIDENT DEALER, NOT BOTH. REFER QUESTIONS TO ME. 7/23/03
 Placed on ROT Hold 12/02/2003 By RAGUAY
 Removed from ROT Hold 02/04/2004 By RAGUAY

847) 247-8755
 Mail

Date	Fee Due
	0.00
Due Fee	Total Fees
0.00	0.00

DLH: 01/07/2003
 DV: 08/13/2012
 Leased Bill Of Sale Waivers Status

Comments: 07/23/2003- IHF regarding Wine
 Read Notes
 DO NOT RENEW THIS LICENSE OR THE OTHER LICENSE OF THIS

[Edit] [Print] [Exit]

[Brand/Type] [Agent Reg.] [Dist. Prod.] [Hours] [Lic. Hist.]
 [Top] [Prior] [Next] [Bottom] [Find] [Search] [Browse] [Change] [Delete] [Exit]

Licensee Editing Screen

State License Number: 06-31-40490
License Class: NR DEALER < 500,000
IBT: [REDACTED]
License Issued: 09/20/2005
License Expires: 09/30/2006
Effective Date: 10/01/2005

Name: LIONSTONE INTERNATIONAL
County: LAKE

Premise Address:
NRD Address:

Address: 13801 W LAUREL DR
Phone: (847) 247-8755

Unit/Suite:
Ext.:

C/S/Z: LAKE FOREST IL 60045
Mail To:

Certificate No: E-038281
Method Of Application Delivery: Walk Up To Counter Mail

Activity Code	Business Code	Refund Amount	Refund Date	Fee Due			
INACTIVE	OTHER	0.00	11/11/05	90.00			
Fee Paid	DCIF	Plate/Train	Late Filing Fee	Reissue Date	Reissue Fee	Total Fees	
90.00	C-104882	0	<input type="checkbox"/> Late Fee	0.00	11/11/05	0.00	90.00

Method of Payment

License Fee / Late Fee: Check Credit Card
Conf (or Auth):

Reissue Fee: Check Credit Card
Conf (or Auth):

Comments: 5/09/06-WOD- Do not renew or accept a change of officers/ownership application until cross ownership issue with distributor license is resolve. *

Added By: EXG 09/20/2005
Last Edit By: WDO 05/09/2006

Licensee Editing Screen

State License Number: 06-2D-183 License Class: [Redacted] IBT: [Redacted] License Issued: 01/18/2006 License Expires: 01/31/2007 Effective Date: 02/01/2006

Name: LIONSTONE INTERNATIONAL County: LAKE
 Premise Address: 13801 W LAUREL DR E811 Address: [Redacted]
 Address: 13801 W LAUREL DR Phone: (847) 247-8755
 Unit/Suite: [Redacted] Ext.: [Redacted]
 C/S/Z: LAKE FOREST IL 60045 Mail To: [Redacted]

Certificate No: [Redacted] Method Of Application Delivery: Walk Up To Counter Mail

Activity Code	Business Code	Refund Amount	Refund Date	Fee Due		
INACTIVE	OTHER	320.00	//	0.00		
Fee Paid	DCR	Plane/Train	Late Filing Fee	Reissue Date	Reissue Fee	Total Fees
320.00	C-212687	0	0.00	//	0.00	0.00

Method of Payment
 License Fee / Late Fee: Check Credit Card Conf (or Auth) #: [Redacted]
 Reissue Fee: Check Credit Card Conf (or Auth) #: [Redacted]

Comments: 5/09/06 WOD- Do not renew or accept change of officers or ownership application until cross ownership with NRD license 06-31-40490 is resolved by legal staff.
 Placed on ROT Hold 11/29/2006 By HALE
 Added By: EXG 01/18/2006
 Last Edit By: WDO 05/09/2006
 Notes

Brand/Type Agent Reg. Dist. Prod. Hours Lic. Hist.

General License Info for STANLEY STAWSKI DISTRIBUTING CO INC

Licensee Editing Screen ROT HOLD

State License Number	License Class	IBT	License Issued	License Expires	Effective Date
06-3J- 27504	NR DEALER > 500,000		12/20/2005	01/31/2007	02/01/2006

Name: STANLEY STAWSKI-DIST CO County: COOK

Premise Address	NRD Address	Phone:
Address: 2017 N MENDELL		(773) 278-4848
Unit/Suite:		Ext:
C/S/Z: CHICAGO IL 60614		Mail To:

Certificate No: E-095490 Method Of Application Delivery: Walk Up To Counter Mail

Activity Code	Business Code	Refund Amount	Refund Date	Fee Due
INACTIVE	OTHER	0.00		270.00
Fee Paid	DCN	Plane/Train	Late Filing Fee	Reissue Date
270.00	C-111043	0	0.00	
		<input type="checkbox"/> Late Fee		Reissue Fee
				0.00
				Total Fees
				270.00

Method of Payment

License Fee / Late Fee Check Credit Card Conf (or Auth) #

Reissue Fee Check Credit Card Conf (or Auth) #

Comments: Read Notes
 5/09/06- WOD No further renewals of this license until licensee corrects cross ownership with distributor license number 06 2d 47840. See legal if a renewal or change of ownership/officers is submitted.
 Placed on ROT Hold 06/30/2006 By HALE

Added By: FDM: 12/20/2005
 Last Edit By: DV: 08/13/2012

Leased Bill Of Sale Waivers Status

Brand/Type Non-Res Dir Dist Prod Lic Hist

Top Prior Next Bottom Print Search Renew Change Delete Exit

Licensee Editing Screen

ROT HOLD

State License Number	License Class	IBT	License Issued	License Expires	Effective Date
06-2D- 47840			08/04/2005	08/31/2006	09/01/2005

Name: STANLEY IMPORT COOK

Premise Address: 2017 N ME

Address: 2017 N ME

Unit/Suite:

C/S/Z: CHICAGO

Phone: (773) 278-4848

Activity Code: RENEWAL

Fee Paid: 320.00

DCW: C-1019

License Fee:

Reissue Fee:

Comments: 5/09/06- WOD Do not renew this license or accept a change of officers/ownership application without referring the matter first to legal for review and action.
 Placed on ROT Hold 06/30/2006 By HALE
 Removed from ROT Hold 08/22/2006 By RAGUAY

Read Notes

Buttons: Edit, Print, Exit

Buttons: Leased, Bill Of Sale, Waivers, Status

Buttons: Brand/Type, Agent Reg., Dist. Prod., Hours, Lic. Hist.

Buttons: Top, Prior, Next, Bottom, Post, Search, Change, Delete, Exit

General License Info for STANLEY STAWSKI DISTRIBUTING CO INC

Licensee Editing Screen

ROT HOLD

State License Number	License Class	IBT	License Issued	License Expires	Effective Date
06-2D- 47840			08/04/2005	08/31/2006	09/01/2005

Name: STANLEY IMPORTS		County: COOK
Premise Address	E911 Address	
Address: 2017 N MENDEL ST		
Unit/Suite		
CITY: CHICAGO	IL	60614
Phone: (773) 278-4848	Ext.:	
Mail To:	Com Premise: E-811 NRD	

Certificate No: Method Of Application Delivery: Walk Up To Counter Mail

Activity Code	Business Code	Refund Amount	Refund Date	Fee Due
RENEWAL	OTHER	320.00	//	0.00
Fee Paid	DCIT	Plane/Train	Late Filing Fee	Reissue Date
320.00	C-101952	0	0.00	//
Method of Payment		Reissue Fee	Total Fees	
License Fee / Late Fee	<input checked="" type="checkbox"/> Check <input type="checkbox"/> Credit Card	0.00	0.00	0.00
Reissue Fee	<input type="checkbox"/> Check <input type="checkbox"/> Credit Card			

Method of Payment

License Fee / Late Fee Check Credit Card Conf (or Auth) #:

Reissue Fee Check Credit Card Conf (or Auth) #:

Comments: 5/09/06- WOD Do not renew this license or accept a change of officers/ownership application without referring the matter first to legal for review and action. *[Handwritten Signature]*

Reqd Notes Placed on ROT Hold 08/30/2006 By HALE

Added By: EXG 08/04/2005
Last Edit By: WDO 05/09/2006

Leased Bill Of Sale Waivers Status

Exhibit 13

AFFIDAVIT OF DUSANKA MARIJAN

1. My name is Dusanka Marijan. I make this affidavit in my professional capacity as Licensing Administrator for the Illinois Liquor Control Commission (Commission). I have held this position since January 1999. My duties include the supervision of personnel that regularly take in, review and process applications for new liquor licenses, applications for recorded changes to liquor licenses and applications for the renewal of liquor licenses (collectively "Liquor License Applications"). As part of my duties, I regularly undertake the direct review of Liquor License Applications for Illinois Distributor and Importing Distributor licenses. I additionally supervise the intake and processing of applications for alcoholic beverage brand registrations and the concurrent assignment of brand distribution territories (collectively "Brand Registrations"). My duties include but are not limited to: 1) reviewing Liquor License Applications and Brand Registrations, 2) corresponding with license applicants or their agents related to the processing of Liquor License Applications and Brand Registrations, 3) requesting supplementary documentation related to the processing of the Liquor License Applications and Brand Registrations, 4) maintaining a system of records for Liquor License Applications and Brand Registrations.

2. Having reviewed the Commission License Editing Screens for SLJ Group, Inc, d/b/a, Lionstone International, to the best of my knowledge, I confirm that any comment next to initials "jrs" in the "Note Editing Screen" is a comment by former Commission Chief Legal Counsel John R. Stanton. In addition, to the best of my knowledge, I confirm that any comment in the "Comments" screen next to initials "WOD" is a comment by former Commission Chief Legal Counsel William O'Donaghue.

3. Having reviewed the Commission License Editing Screens for Stanley Stawski Distributing Co, Inc., d/b/a, Stanley Stawski Distributing Co., to the best of my knowledge, I confirm that any comment in the "Note Editing Screen" and "Comments" screen next to initials "WOD" is a comment by former Commission Chief Legal Counsel William O'Donaghue.



Dusanka Marijan
License Administrator
Illinois Liquor Control Commission

Sworn to before me this 7 day of September 2012



Notary Public

