(1)

COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

November 20, 2013

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	*Granite Tower Capital v. National Risk Assessment, Inc. (ECSO poundage)*
Document Received:	Order to Show Cause
Name of Claimant:	Granite Tower Capital
Claimant's attorney:	Seth L. Hibbert, Esq. Getman & Biryla 800 Rand Building 14 Lafayette Square Buffalo, New York 14203

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Michelle Parker
Michelle M.Parker
First Assistant County Attorney

MMP:dld
Enc.

At a Term of the Supreme Court held in and for the County of Erie, Part 22, Buffalo, New York on the 14th day of November, 2013.

PRESENT: Hon. Hon. Timothy J. Walker

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

GRANITE TOWER CAPITAL

Plaintiff/Judgment Creditor

v.

NATIONAL RISK ASSESSMENT, INC.

Defendant/Judgment Debtor

ORDER TO SHOW CAUSE

Index No. 12013-605508

Upon reading the annexed Supporting Affidavit of Sandra J. Sturgess, Senior Portfolio Manager of movant ACCORD FINANCIAL, INC. ("Accord"), sworn to November 5, 2013, with exhibits annexed, let Plaintiff/Judgment Creditor GRANITE TOWER CAPITAL ("Granite") show cause on the 21st day of November, 2013 at 2:00 p.m. before this Court, Part 22, 25 Delaware Ave., Buffalo, New York why an Order should not be made and entered pursuant to CPLR 5240: 1) staying all enforcement of Granite's judgment against Defendant Judgment Debtor NATIONAL RISK ASSESSMENT, INC. ("NRA") filed September 11, 2013 in the Erie County Clerk's Office until disposition of Accord's action against NRA pending in the courts of the State of South Carolina and until further Order of this Court; and 2) directing Granite and the Sheriff of Erie County and all other counties in the State of New York to deposit any property or proceeds heretofore or hereafter collected in partial or full satisfaction of

Granite's judgment against NRA into this Court or otherwise pending further Order of this Court

Sufficient reason appearing therefor, it is

ORDERED, that pending the hearing and determination of this Order to Show Cause, the Granite is stayed from enforcement of its judgment against NRA, and it is further

ORDERED, that Granite and any other interested party shall serve any papers in opposition herewith no later than 4:30 p.m. on November 22, 2013 ~~2013~~, and Accord, by its attorneys, Duke Holzman, Photiadis & Gresens LLP, shall serve any reply papers no later than 4:30 p.m. on November 25, 2013, and it is further

so as to be received by the Court, Accord and all parties

so as to be received by the Court and all parties

ORDERED, that a copy of this Order, together with copies of the papers upon which it was made, shall be served by ~~regular mail~~ personal service no later than November 15, 2013 ~~2013~~ upon the following persons: 1) upon Gotman & Bizzla LLC (Seth L. Hilbert, Esq., of counsel), counsel for Granite; 2) upon NRA at 385 Cleveland Drive, Suite 202, Cheektowaga, New York 14225; ~~3) upon~~ sent by overnight mail no later than November 15, 2013 the law firm of Devlin & Parkinson, P.A. (Emily L. Whitney, Esq., of counsel), counsel for NRA in the South Carolina action; ~~4)~~ and by personal service no later than November 15, 2013 upon the Erie County Sheriff's Office, Civil Process Division; and 5) upon such other and further persons whom the Court may direct, and the same shall be deemed good and sufficient service.

ENTER

GRANTED

GRANTED

HON. TIMOTHY J. WALKER, J.C.C.
Acting Supreme Court Justice
Presiding Justice, Commercial Division
8th Judicial District

11 [illegible]

BY [illegible]

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

GRANITE TOWER CAPITAL

Plaintiff/Judgment Creditor

v.

NATIONAL RISK ASSESSMENT, INC.

Defendant/Judgment Debtor

SUPPORTING AFFIDAVIT

Index No. I2013-605508

STATE OF SOUTH CAROLINA)
ss.
COUNTY OF GREENVILLE)

SANDRA J. STURGES, being duly sworn, deposes and says:

1. I am the Senior Portfolio Officer for non-party Accord Financial, Inc. ("Accord"), located at 25 Woods Lake Road, Suite 102, Greenville, South Carolina 29607. I have personal knowledge of the matters set forth herein.

2. I make this affidavit in support of Accord's Order to Show Cause why an Order should not be made and entered pursuant to CPLR 5240 (1) staying all enforcement of Plaintiff Judgment Creditor Granite Tower Capital's ("Granite") judgment against Defendant Judgment Debtor National Risk Assessment, Inc. ("NRA") filed September 11, 2013 in the Erie County Clerk's Office until disposition of Accord's action against NRA pending in the courts of the State of South Carolina and until further Order of this Court, and Enjoining Granite and the Sheriff of Erie County and all other counties in the State of New York to deposit any property or proceeds heretofore or hereafter collected in partial or full satisfaction of

Granite's judgment against NRA into this Court or otherwise, pending further Order of this Court.

3. Accord is a Factor. Annexed hereto as Exhibit A is a copy of a certain Master Purchase and Sale Agreement by and between NRA, as Seller, and Accord, as Purchaser (Factor), dated December 21, 2012 (the "Agreement"). Under the Agreement, NRA contracted with Accord to factor NRA's accounts receivable, in consideration for which Accord obtained an interest in NRA's accounts receivable and other collateral of NRA.

4. Accord maintains that NRA breached the Agreement by failing to pay Accord all amounts due and owing thereunder.

5. In or about June 2013, Accord commenced an action against NRA and its principal Joseph T. Ring ("Ring") in the Court of Common Pleas, County of Greenville, State of South Carolina, bearing Case number 2013-CP-23-03453 (the "South Carolina Action"). A copy of the Summons and Complaint therein is annexed hereto as Exhibit B. Accord seeks judgment against in an amount exceeding $292,000.00 for breach of contract against NRA and for breach of a personal guaranty against Ring. Upon information and belief, NRA has ceased business operations.

6. A copy of the answer served by NRA and Ring in that action is annexed hereto as Exhibit C. NRA and Ring dispute that any debt is owed to Accord under the Agreement or guaranty signed by Ring.

7. The precise amount of the debt owed by NRA and Ring to Accord will be determined by the court in the South Carolina Action, which is being vigorously prosecuted by Accord's counsel there.

8. On or about September 10, 2013, Ring executed an Affidavit of Confession of Judgment ("Confession of Judgment") on behalf of NRA, whereby NRA confessed judgment in favor of Granite in the sum of $369,112.07.

9. One day later, on September 11, 2013, Granite filed the Confession of Judgment in the Erie County Clerk's Office. A copy of the filed Confession of Judgment is annexed hereto as Exhibit D.

10. On or about September 26, 2013, Granite delivered to the Erie County Sheriff's Office an Execution Against Property and Notice to Garnishee directed to Government Employees Insurance Company ("GEICO"). Thereafter, on or about September 30, 2013, the Erie County Sheriff sent the Execution Against Property and Notice to Garnishee to GEICO at 300 Crosspoint Parkway, Amherst, New York 14068. Copies of the Execution Against Property and the September 30, 2013 letter from the Sheriff to GEICO are annexed hereto as Exhibit E.

11. GEICO is one of a number of customers or clients of NRA for whom NRA performed certain medical claims management services. GEICO and other customers of NRA have not yet paid all amounts due and owing for NRA's services.

12. Accord obtained a security interest in NRA's accounts receivable under the terms of the Agreement between Accord and NRA. Accord's security interest in NRA's accounts receivable and other collateral was perfected by the filing of a UCC Financing Statement with the New York Secretary of State on or about December 21, 2012, a copy of which is annexed hereto as Exhibit F.

13. Accord's security interest in NRA's accounts receivable, including the GEICO

receivable, is superior to the judgment lien obtained by Granite by virtue of the filing of the Confession of Judgment.

14. I am advised by counsel that CPLR 5240 provides in pertinent part that "The court may at any time, on its own motion or the motion of any interested person, and upon such notice as it may require, make an order denying, limiting, conditioning, regulating, extending or modifying the use of any enforcement procedure."

15. It is apparent from Granite's delivery of the Execution Against Property and Notice to Garnishee to the Erie County Sheriff that Granite is attempting to enforce its judgment. Accord does not presently know whether or to what extent Granite has attempted to enforce its judgment through other post-judgment devices in Erie County, elsewhere in the State of New York or in any other states. Nor does Accord presently know whether GEICO or any other customer of NRV has turned over any monies to Granite or to the Erie County Sheriff to date in response to the Execution Against Property or any Notice to Garnishee delivered to the Sheriff by Granite or in response to any other similar execution served by Granite.

16. The property sought to be garnished by Granite to satisfy its judgment is property which is subject in the first instance to Accord's superior interest.

17. Accord is not requesting that this Court adjudicate NRV's liability to Accord under the Agreement and guaranty under South Carolina law. As noted above, the court in the South Carolina Action will adjudicate these issues. Accord, however, respectfully requests that this Court immediately stay all efforts by Granite to enforce its judgment against NRV in New York and elsewhere until such time as the court in the South Carolina Action has adjudicated the

issues in that case and determined the precise amount of damages owed by NRA to Accord, and until further Order of this Court.

18. Upon information and belief, the aggregate outstanding NRA accounts receivables do not exceed the amount of damages sought by Accord against NRA in the South Carolina Action.

19. In order to protect Accord's superior interest in NRA's accounts receivable and to assure that the receivables will be available to satisfy any judgment against NRA obtained by Accord in the South Carolina Action, Accord respectfully requests that an Order be made (i) compelling Granite to disclose and identify all post-judgment enforcement efforts it has made to date, including the all Executions Against Property and Notices to Garnishee it has served in any county in the State of New York or elsewhere outside the State of New York, (ii) that to the extent property or proceeds have been delivered to Granite to date in partial satisfaction of its judgment, that Granite be compelled to disgorge and deposit the same as directed by this Court pending the entry of a further Order, and (iii) that pursuant to CPLR 5228, the Sheriff of Erie County and all other counties in the State of New York be directed to account for all property and/or proceeds heretofore and hereafter collected pursuant to any Execution Against Property and Notice to Garnishee delivered by Granite, and to deposit such property or proceeds as directed by this Court pending the entry of a further Order.

WHEREFORE, deponent respectfully requests that the Court grant the relief requested herein and in the annexed Order to Show Cause and grant such other and further relief as it may deem just and proper.

Sandra J. Sturges

Sworn to before me this
_____ day of November, 2013.

Notary Public

MARILYN N BATSON
Notary Public, State of Florida
My Commission Expires
November 18, 2017