

**(EVERYTHING YOU WANTED TO
KNOW–OR NOT–ABOUT)
BONDING A FEDERAL APPEAL**

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Federal monetary judgments are generally enforceable during the pendency of an appeal unless and until they are stayed or “superseded”¹ by posting a sufficient bond or other security. In other words, an appeal does not automatically stay enforcement of a final judgment.² Therefore, in the absence of a sufficient supersedeas bond or other “alternate” security approved by the district court, a judgment creditor may begin executing on a monetary judgment at the expiration of the fourteen day automatic stay which follows entry of judgment in federal court.

Because of the small window between final judgment and potential execution thereon, a judgment debtor must move quickly to procure and register sufficient security with the court in order to stay that judgment during the pendency of a federal appeal. This Article is intended as a brief primer on the law of bonding in federal

¹ In this context, “supersede” means to “annul, make void, or repeal by taking the place of.” BLACK’S LAW DICTIONARY 1667 (10th Ed. 2014) (emphasis supplied). *See also Miga v. Jensen*, 299 S.W.3d 98, 100 (Tex. 2009) (“A judgment debtor is entitled to supersede the judgment while pursuing an appeal; this defers payment until the matter is resolved but does not halt the accumulation of interest on the judgment.”).

² Under 28 U.S.C. § 1963, a money judgment may not be registered and enforced during appeal in other judicial districts than the issuing one absent a court order (from the issuing court) for “good cause” shown. *See, e.g., Columbia Pictures Television, Inc. v. Krypton Broadcasting of Birmingham, Inc.*, 259 F.3d 1186, 1197 (9th Cir. 2001).

court and a how-to guide for your client through the process of bonding and required filings in federal court.

A. THE PURPOSE OF THE SUPERSEDEAS³ BOND.

As succinctly set forth by the Fifth Circuit,

The purpose of a supersedeas bond is to preserve the status quo while protecting the non-appealing part’s rights pending appeal. A judgment debtor who wishes to appeal may use the bond to avoid the risk of satisfying the judgment only to find that restitution is impossible after reversal after appeal. At the same time, the bond secures the prevailing party against any loss sustained as a result of being forced to forgo execution on a judgment during the course of an ineffectual appeal.

Poplar Grove Planting & Refining Co., Inc. v. Bache Halsey Stuart, Inc., 600 F.2d 1189, 1190-91 (5th Cir. 1979).⁴ In this sense the purpose of the bond offers “dual protections,” for both the judgment creditor and the judgment debtor. *Id.* The judgment debtor is able to hold the judgment in abeyance pending a favorable result on appeal, while the judgment creditor is ensured of the availability of funds to cover

³ “Supersedeas” (in Latin, “you shall desist”), is an attributive noun, and is defined as “[a] writ or bond that suspends the a judgment creditor’s power to levy execution, usu[ally] pending appeal.” BLACK’S LAW DICTIONARY 1667 (10th Ed. 2014).

⁴ *See id.* (“supersedeas bond is a privilege extended the judgment debtor as a price of interdicting the validity of an order to pay money”); *and see Hebert v. Exxon Corp.*, 953 F.2d 936, 938 (5th Cir. 1992) (“The posting of a bond protects the [judgment creditor] from the risk of a later uncollectible judgment and compensates him for delay in the entry of final judgment [upon which he may execute].”) (internal quotations and citations omitted).

the judgment,⁵ along with appropriate interest, in the event the judgment is affirmed. The “dual protections” served by the supersedeas bond require that in the normal case, the amount of the bond be set to cover entirety of the judgment along with interest accruing over the course of the period for appeal. *Id.*⁶

B. THE AUTOMATIC STAY PERIOD AS WINDOW FOR PROCURING BOND.

A final judgment in a federal district court provides the triggering event for both the filing of a notice of appeal and for the filing of “appropriate security”—to prevent execution on that judgment. Specifically, Federal Rule of Civil Procedure 62(a) provides that “no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 14 days have passed after its entry.”⁷ In practical effect, Rule

⁵ See *Grubb v. FDIC*, 833 F.2d 222, 225 (10th Cir. 1987) (“[T]he rationale for requiring a bond pending appeal is to secure the judgment throughout the appeal process against the possibility of the judgment debtor’s insolvency”).

⁶ See also N.D.Tex. LR 62.1 (“Unless otherwise ordered by the presiding judge, a supersedeas bond staying execution of a money judgment shall be in the amount of the judgment, plus 20% of that amount to cover interest and any award of damages for delay, plus \$250.00 to cover costs. The parties may waive the requirement of a supersedeas bond by stipulation.”); E.D.Tex. LR CV-62 (same); E.D.La. LR 62.2 (“A supersedeas bond staying execution of a money judgment must be in the amount of the judgment plus 20% of that amount to cover interest, costs and any damages award, unless the court directs otherwise.”); W.D.La. LR 62.2 (same).

⁷ This is one of several anomalies in the interaction of the federal rules on bonding and stays of execution. Here, Rule 62(a) provides that the judgment debtor has 14 days from entry of final judgment in which to procure, submit, and gain approval for a supersedeas bond. In turn, Rule 62(d) provides that the supersedeas bond “may be given upon or after filing the notice of appeal. Federal Rules of Appellate Procedure Rule 4 provides that a notice of

62(a) means that to ensure that no proceeding is commenced for execution on the judgment, the judgment debtor must procure, submit, and gain approval for its bond (or other security) within 14 days after entry of final judgment. *See also* FED. R. CIV. P. 62(d) (“The stay takes effect when the court approves the bond.”). Given this short window, and the mechanics of procuring and filing a bond, a judgment debtor needs to act quickly to insure that the judgment creditor will not begin the process of executing on the judgment, and thus imperiling the assets of the judgment debtor.⁸

appeal “must be filed within 30 days after entry of the judgment . . . appealed from.” Read literally, these provisions suggest that to insure that judgment creditor may not begin to execute on the judgment, Appellant must file a notice of appeal (along with the supersedeas bond) no more than 14 days from entry of judgment. As noted, *infra* Section D, this anomaly is compounded by another anomaly regarding the timing and effect of post-judgment motions on the judgment, notice of appeal, and “appropriate security.”

⁸ In practice, the state law procedures involved in executing on a judgment, which are borrowed for enforcement of a federal judgment, FED. R. CIV. P. 62(f), may provide a judgment debtor with a longer window in which to post sufficient security. *See generally* *MM Steel, L.P. v. JSWSteel (USA) Inc.*, 771 F.3d 301, 303-6 (5th Cir. 2014) (discussing procedures for execution on judgment under Texas law). *See also infra* Section I. Similarly, it is possible that a district court in its discretion will decline to provide the abstract or “registration” of judgment, necessary for execution on the judgment, if the judgment debtor has indicated it is going to procure and post a supersedeas bond or move for approval of alternate security. But there are no guarantees of this extra window and client’s are well advised to meet the 14-day window in every case. *See, e.g., Larry Santos Prods. v. Joss Organization, Inc.*, 682 F.Supp. 905, 906 (E.D.Mich. 1988) (denying retroactive application of stay to prior execution actions: “allowing retroactive stays would enable a judgment debtor to delay the filing of a bond until threatened by the efforts of a creditor to execute upon the judgment, and then benefit from the bond as though it had been filed before execution was attempted. Such a rule would subvert the essential purpose of appeal bonds, which are meant to condition stays of execution upon the providing of security in advance. This Court cannot be expected to perform for PolyGram the legerdemain requested here any more than an insurer would be expected to write a policy after the loss had occurred”); *compare*

C. RULE 62(D) PROVIDES FOR A SUPERSEDEAS BOND TO STAY JUDGMENT PENDING APPEAL.

Rule 62(d) applies to any monetary judgment in federal court.⁹ It provides: “If an appeal is taken the appellant may obtain a stay by supersedeas bond. The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal.” FED. R. CIV. P. 62(d). Courts have uniformly held that an appellant is entitled to a stay as a matter of right,¹⁰ pending the posting of a supersedeas bond in an amount sufficient to cover the judgment and interest, and consistent with any applicable local rules.¹¹

Phansalkar v. Andersen Weinroth & Co., L.P., 211 F.R.D. 197, 201 (S.D.N.Y. 2002) (denying action in furtherance of judgment where delay was caused by prevailing party, and distinguishing *Santos*, where delay was caused by judgment debtor); *and see Imperial Commodities Corp. v. S.S. Maria Auxiliadora*, 115 F.R.D. 305, (S.D.N.Y. 1987) (levy on judgment debtor could not be vacated by subsequently filed supersedeas bond).

⁹ *Hebert v. Exxon Corp.*, 953 F.2d 936, 938 (5th Cir. 1992) (“Courts have restricted the application of Rule 62(d)’s automatic stay to judgments for money”).

¹⁰ *Cf. American Mfrs Mut. Ins. Co. v. American Broadcasting–Paramount Theatres*, 87 S. Ct. 1, 3 (1966) (Mem. Op. Of Harlan, Cir. J.) (“a party taking an appeal from the district court is entitled to a stay of a money judgment as a matter of right if he posts a bond in accordance with” the relevant federal rules); *Wilmer v. Board of County Comm’rs of Leavenworth County, Kan.*, 844 F.Supp. 1414, 1417 (D.Kan.1993), *aff’d*, 28 F.3d 114 (10th Cir.1994) (same); *Se. Booksellers Ass’n v. McMaster*, 233 F.R.D. 456, 458 (D.S.C.2006) (same). *See also Hebert*, 953 F.2d at 938 (“Rule 62[(d)] entitles a party appealing a money judgment to an automatic stay upon posting a supersedeas bond.”); *Ascher v. Gutierrez*, 66 F.R.D. 548, (D.D.C. 1975) (same).

¹¹ *See supra* note 4 and accompanying text (local rules of district courts in Fifth Circuit, require bond in amount of 120% of judgment). As a functional alternative to a supersedeas bond, a party may post the full amount of the judgment, with interest, into the registry of the

D. POST-JUDGMENT MOTIONS, “DISCRETIONARY” STAYS, AND “APPROPRIATE” SECURITY.

Rule 62(b), “Stay Pending the Disposition of a Motion,” provides:

On appropriate terms for the opposing party’s security, the court may stay the execution of a judgment – or any proceedings to enforce it – pending disposition of any of the following motions:

- (1) under Rule 50, for judgment as a matter of law;
- (2) under Rule 52(b), to amend the findings or for additional findings;
- (3) under Rule 59, for a new trial or to alter or amend a judgment; or
- (4) under Rule 60, for relief from a judgment or order.

Fed. R. Civ. P. 62(b). How does one square this discretionary rule with Rules 62(a) & (d)? Because neither the stay provided under Rule 62(a), nor the bonding requirement in Rule 62(d), account for the time between filing post-judgment motions and filing a notice of appeal, an additional problem arises concerning appropriate security—to prevent execution on a monetary judgment—pending disposition of motions under Federal Rules of Appellate Procedure Rule 4(a)(4)(A), and as specifically enumerated in Rule 62(b).¹²

court. In such circumstances, the court will likely grant a stay as a matter of right, *supra* note 10, on the same terms as the approval and posting of a supersedeas bond. *See, e.g., Ransom v. M. Patel Enterprises*, No. A–10–CA–857 AWA, 2012 WL 2891102 (W.D.Tex. July 13, 2012). This saves the 10% or more than the insurers charge for the bond.

¹² This rule provides:

In the mine run of cases, parties who have suffered an adverse monetary judgment will file post-judgment motions as set forth in Rule 62(b). The filing of one of these enumerated motions will delay entry of a final order which triggers the time for filing a notice of appeal, FED. R. APP. P. 4(a)(4)(A), but such filings will not delay or suspend the time for posting of a supersedeas bond under Rules 62(a) & (d) nor prevent a judgment creditor from executing on the judgment.¹³ Under these

(4) Effect of a Motion on a Notice of Appeal.

(A) If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure—and does so within the time allowed by those rules—the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

- (i) for judgment under Rule 50(b);
- (ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;
- (iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;
- (iv) to alter or amend the judgment under Rule 59;
- (v) for a new trial under Rule 59; or
- (vi) for relief under Rule 60 if the motion is filed no later than 28 days after the judgment is entered.

FED. R. APP. P. 4(a)(4)(A).

¹³ Cf. *Van Huss v. Landsberg*, 262 F. Supp. 867, 868 (W.D.Mo. 1967) (under rules providing for an automatic stay of execution after entry of judgment and a discretionary stay thereafter pending the disposition of a motion for new trial upon such conditions for security of the other party as the court deems proper, pendency of motion for new trial does not prevent issuance of execution); see also *Wilson Research Corp. v. Piolite Plastics Corp.*, 234 F.Supp. 234, 235 (D.C.Mass.1964) (“The court should not, of course, exercise its discretion in favor of a stay [without security] unless it appears that there is, at least, a possibility that the [post-judgment motion] will be successful.”).

circumstances, a judgment debtor exercising an abundance of caution will post a supersedeas bond within or by the end of the automatic stay period provided by Rule 62(a), regardless of whether that judgment debtor intends to file one of the enumerated motions set forth in Rule 62(b).

Alternately, and in the event that a party is filing a post-judgment motion enumerated in Rule 62(b), a judgment debtor can apply for a stay “on appropriate terms for the opposing party’s security.” But what are appropriate terms? And is the “opposing party’s security” the same during the pendency of post-judgment motions as it is on appeal?

Without entertaining the myriad applications that could be made under Rule 62(b),¹⁴ the Author recommends that a solvent judgment debtor simply post the bond within the 14 day period and style its Motion for Stay under both Rules 62(b) and

¹⁴ See, e.g., *Fox v. Pittsburgh State Univ.*, 319 F.R.D. 342 (D.Kan. 2017) (granting stay under Rule 62(b) without supersedeas bond where court was “persuaded” that “‘judgment creditor’s interest would not be unduly endangered’”) (citing *Wilmer v. Bd. of Cty. Comm’rs of Leavenworth, Kan.*, 844 F. Supp. 1414, 1419 (D. Kan. 1993)).

(d).¹⁵ In all cases, it is difficult to imagine a federal court denying in its discretion a stay under Rule 62(b) that would be granted as a matter of right under Rule 62(d).

E. DISTRICT COURT MUST APPROVE THE SUPERSEDEAS BOND.

Under Rule 62(d), “the stay [of execution] is effective when the supersedeas bond is approved by the Court.” Therefore, to ensure that a judgment creditor may not begin the process of executing on a judgment, a judgment debtor must procure an order from the Court “approving” the bond. Procurement of the bond—from a surety and for an amount consistent with the rules—standing alone is not enough to invoke the rule.¹⁶

F. THE MECHANICS OF BONDING IN FEDERAL COURT.

¹⁵ This Motion should request both (1) extension of the stay pending disposition of the enumerated post-trial motion(s), and (2) prospective stay on appeal pending timely filing of that Notice of Appeal. This dual request is necessary because “Rule 62(b) grants authority to the district court to stay a judgment while it considers and disposes of Rule 60 motions. [But] [t]his Rule gives the court no authority to stay execution of the judgment on appeal after it has disposed of the” post-judgment motion(s). *In re Zapata Gulf Marine Corp.*, 941 F.2d 293, 295 (5th Cir.1991). The movant should also retain the right to seek dissolution or modification of the bond upon successful disposition of an enumerated motion under Rule 62(b). Finally, in the event that the district court enters a separate final judgment awarding costs or attorney’s fees (after the substantive judgment is appealed), the judgment debtor must separately seek to stay that judgment by posting sufficient security, and notwithstanding whether that judgment is merged into a pending appeal of the underlying substantive judgment. *Cf. Armour v. Knowles*, 512 F.3d 147, 156 (5th Cir.2007) (post-judgment orders on costs are not part of the appeal of a final judgment and must be separately appealed).

¹⁶ Draft templates for a Motion to Stay and Approve Bond and Proposed Order thereto are attached in Appendix B.

The necessity for a supersedeas bond is triggered by entry of an adverse, final, monetary judgment.¹⁷ The following is a checklist for actions the judgment debtor should take in order to procure, post, and gain approval for a supersedeas bond, and in order to stay execution on the judgment pending appeal.

1. Check the Local Rules.

To gain approval of a supersedeas bond, a judgment debtor must comply with any local federal district rules. In the Fifth Circuit, various local rules govern (1) the amount required for a supersedeas bond¹⁸ and (2) approved sureties for posting of a supersedeas bond in the district court.¹⁹ Reviewing the local rules is a critical preliminary step in ascertaining what will be required for bonding.

¹⁷ See, e.g., *Se. Booksellers Ass'n v. McMaster*, 233 F.R.D. 456, 460 (D.S.C. 2006).

¹⁸ See *supra* note 5 and accompanying text.

¹⁹ See, e.g., W.D.Tex. L.R. CV-65.1(b) & (c)(2) (requirements for surety including that surety bond has “[a]n individual resident of the Western District of Texas who satisfied the court that he owns real or personal property not exempt by law within the district sufficient to justify the full amount of the suretyship.”); accord E.D.Tex. L.R. CV-62(a) & (b). In other words, under local rules in the Western District of Texas, it is insufficient for the surety to be merely approved by the United States Treasury. See *Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies, available at <https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm>* (last visited July 27, 2017). Instead, that surety must designate a person by written power of attorney to be the resident agent of the corporation in the Western District of Texas. W.D.Tex. L.R. CV-65.1(c)(2). This procedure is strictly consistent with federal statute, see 31 U.S.C. § 9306, but not insisted upon in most federal district courts.

2. Calculate the Amount Necessary for the Bond.

The amount required for bonding is calculated based on the final judgment, any pre-judgment interest,²⁰ post-judgment interest,²¹ and/or any local requirements.²² For example, if the final judgment provides:

Award for Damages: \$1.3 million

Pre Judgment Interest: 5% per annum based on 28 months since complaint was filed

²⁰ Any award of pre-judgment interest in federal court must be explicitly set out in a final judgment. Such an award, where requested and approved, is intended to compensate judgment creditor for the delay between injury and recovery. *See Reyes-Mata v. IBP, Inc.*, 299 F.3d 504, 507 (5th Cir. 2002) (internal citations and quotations omitted.). The interest can be calculated as simple interest or compounded interest in the discretion of the court. *See, e.g., Institutform Techs., Inc. v. Cat Contr., Inc.*, 518 F.Supp.2d 876, 896 (S.D.Tex. 2007) (“The district court has substantial discretion in determining whether prejudgment interest should be awarded, the rate of such interest and whether it should be compounded or uncompounded.”).

²¹ Post judgment interest is granted from the date of judgment until the date of payment. Under federal law post judgment interest is awarded at the fifty-two week Treasury bill rate. 28 U.S.C. § 1961. In jurisdictions where the interest is not factored into the required bond, judgment debtor is advised to base it on the per annum figure of Section 1961 and for a period of 12 months. According to the most recent statistics posted by the Administrative Office of the United States Courts, in the Fifth Circuit and for the period 2015-2016 the median time from filing of a notice of appeal to disposition of that appeal was 9.2 (without oral argument) to 12.4 months (with oral argument) months. *See* Fifth Circuit Case Processing Times 2015-2016, September 25, 2016, available at http://www.baffc.org/content/2016_clerks_office.pdf (last visited October 3, 2016). The 12-month post-judgment interest period therefore accounts for the high-end of the median period for disposition in the Fifth Circuit.

²² So, for example, in the Northern and Eastern District of Texas, local rules provide for a bond in the amount of 120% of the judgment, which amount covers the award of interest without regard to the specific iteration of interest in the final judgment.

In this case, assuming no relevant local rule governing bond amount, and assuming a simple interest calculation, judgment debtor would calculate the bond amount as follows:

$$\begin{aligned} & \$1,300,000.00 \\ + & \$65,000.00 \text{ (12 months - pre-judgment interest)} \\ + & \$65,000.00 \text{ (12 months - pre-judgment interest)} \\ + & \$21,667.00 \text{ (4 months - pre-judgment interest)} \\ + & \$15,730.00 \text{ (12 months - post-judgment interest [assume 1.21\% rate])} \\ = & \$1,467,397.00 \text{ (Total Bond Amount)} \end{aligned}$$

3. Find a Surety.

Once you have determined the appropriate amount of your bond, you can proceed to locate a surety to produce the supersedeas bond. Given the financial requirements, once you have identified an appropriate surety (or multiple for comparison), the client will get involved to provide financial information, correspond directly with the surety, etc. A list of sureties approved by the United States Treasury—a necessary prerequisite for issuing a bond in federal court, 31 U.S.C. § 9303 - 9 - is available at https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570_a-z.htm. Colleagues may also have names of sureties they have worked with in the past. Again, it is important to check the local rules to make sure that the surety has all necessary

qualifications for posting a supersedeas bond in the applicable district court. *See supra* note 18.

4. Filing for Stay Pending Appeal and To Approve Bond.

Once the surety has approved and provided the physical bond, you are ready to file for approval and to stay the execution on the judgment pending appeal. In the normal case, these documents will include, (1) A Motion for Stay and the Approve Bond, (2) Supersedeas Bond, and (3) Proposed Order Granting Stay and Approving Bond.²³ Once approved, the judgment debtor is safe from execution until the mandate issues post-appeal.

G. ADDITIONAL ISSUES FOR APPEAL.

1. Federal Rules of Appellate Procedure Rule 8.²⁴

Federal Rule of Appellate Procedure 8 provides that a party may move in the court of appeals for a “stay of the judgment or order of a district court pending appeal,” and “approval of a supersedeas bond.” FED. R. APP. P. 8(a)(1)(A)-(B).²⁵ Any

²³ Draft templates for these filings are included in Appendix B.

²⁴ A copy of this Rule, along with other relevant federal rules and statutes, is included in Appendix A.

²⁵ *See also* FED. R. CIV. P. 62(g) (Rule 62 “does not limit the power of the appellate court or one of its judges or justices: (1) to stay proceedings—or suspend, modify, restore, or grant an injunction—while an appeal is pending; or (2) to issue an order to preserve the status quo or the effectiveness of the judgment to be entered.”).

such motion filed under this provision must “(i) show that moving first in the district court would be impracticable; or (ii) state that, a motion having been made, the district court denied the motion or failed to afford the relief requested and state any reasons given by the district court for its action.” FED. R. APP. P. 8(a)(2)(A)(i)-(ii).

As applied to bonding, it is difficult to conceive of many situations where a movant could make the showing required by Rule 8(a)(2)(A). More likely, this provision could be employed where the judgment debtor moved to provide no bond or to provide alternate security pursuant to the courts’ inherent authority, and such a request was denied by the district court in the first instance. *See infra* Section H. The judgment debtor could then renew its request for relief in the court of appeals.

2. Costs for Premiums for Supersedeas Bond on Appeal.

In the event of a successful appeal, the judgment debtor may be able to recover costs for bond premiums paid pending appeal. Although not delineated on the Fifth Circuit’s standardized form for bill of costs, and while “[Federal Rule of Appellate Procedure] 39 expressly authorizes that costs for premiums on supersedeas bonds pending appeal are taxable in the district court.”²⁶ a successful appellant should request these fees along with all other costs in its relief requested in the Fifth Circuit

²⁶ *Berkley Regional Ins. Co. v. Phila. Indem. Ins. Co.*, 600 F. App’x 230, 237 (5th Cir. Jan. 27, 2015) (following *Republic Tobacco Co. v. North Atlantic Trading Co., Inc.*, 481 F.3d 442, 449-50 (7th Cir. 2007)).

to ensure there is no waiver. Subject to disposition by the Court of Appeals, the successful appellant can renew its request in the district court after mandate issues.

3. Other Appeal Issues.

Is there an appellate mechanism for a judgment debtor whose motion to stay and/or approve bond or alternative security has been denied by the district court? Given that the denial of the motion to stay permits the judgment creditor to continue attempts to execute on the judgment, a judgment debtor's options for appeal will be a matter of urgency. As set forth above, Federal Rule of Appellate Procedure 8 permits a party to move for relief in the court of appeals.²⁷ However, given the urgency to install the stay, a party could also consider an expedited collateral order appeal²⁸ or a writ of mandamus.²⁹

H. ALTERNATE SECURITY IN FEDERAL COURT.

Under Rule 62(d), federal courts retain discretion “to depart from the usual requirement of a full security supersedeas bond^[30] to suspend the operation of an

²⁷ See *In re Nassau Cty. Strip Search Cases*, 783 F.3d 414, 417-18 (2d Cir. 2015).

²⁸ See *Olympia Equipment Leasing Co. v. Western Union Telegraph Co.*, 786 F.2d 794, 796 (7th Cir. 1986) (Posner, J.).

²⁹ See *In re Zapata Gulf Marine Corporation*, 941 F.2d 293, 294-94 (5th Cir.1991).

³⁰ Under 31 U.S.C. § 9303 a judgment debtor may “give an[other] eligible obligation as security instead of a surety bond.” In addition, it seems well established that a judgment debtor may deposit – the full sum otherwise required to be bonded – directly to the Court

unconditional money judgment.” *Poplar Grove*, 600 F.2d at 1191.³¹ While rare,³² and most often limited to cases involving bankruptcy (where multiple secured lenders may already be in the queue),³³ this mechanism is available in special circumstances.³⁴

As set forth by the Fifth Circuit:

If a judgment debtor objectively demonstrates a present financial ability to facilely respond to a money judgment and presents to the court a financially secure plan for maintaining that same degree of solvency during the period of an appeal, the court may then exercise a discretion to substitute some form of

upon notice and leave of the Court. *See* FED. R. CIV. P. 67(a). This section addresses the situation where a judgment debtor seeks to secure the judgment with something less than the full amount of that judgment.

³¹ *Accord Dillon v. City of Chicago*, 866 F.2d 902, 905 (7th Cir. 1989) (“Responsibility for deciding whether to require a bond as a condition of staying execution of the judgment pending appeal is vested initially in the district judge.”); *see Federal Prescription Service, Inc. v. American Pharmaceutical Assoc.*, 636 F.2d 755 (D.C. Cir.1980) (Rule 62(d) “only operates to provide that an appellant in all cases may obtain a stay as a matter of right by filing a supersedeas bond, and does not prohibit the district court from exercising a sound discretion to authorize unsecured stays in cases it considers appropriate.”) (citing *Poplar Grove*, 600 F.2d at 1191).

³² *See IA Labs CA, LLC v. Nintendo Co.*, 946 F.Supp.2d 429, 430 & n.1 (D.Md. 2013) (noting the rarity of court-approved “alternative” security); *United States v. Kurtz*, 528 F.Supp. 1113, 1115 (E.D.Pa. 1981) (“only extraordinary circumstances will support the provision of security other than a supersedeas bond”).

³³ *See, e.g., Asarco LLC v. America’s Mining Corp.*, 419 B.R. 737, 742-44 (S.D.Tex. 2009) (granting stay pending appeal with corporate shares as security); *Umbrella Bank, FSB v. Jamison*, 341 B.R. 835, 843 (W.D. Tex. 2006) (no error by bankruptcy court in setting lower supersedeas bond under Rule 62(d)).

³⁴ *See, e.g., Waffenschmidt v. MacKay*, 763 F.2d 711, 727 (5th Cir.1985) (court concluded that pledge of assets “would serve as sufficient collateral”); *Athridge v. Iglesias*, 464 F.Supp.2d 19, 24-25 (D.D.C.2006) (real estate holdings as security pending appeal).

guaranty of judgment responsibility for the usual supersedeas bond. Contrariwise, if the judgment debtor's present financial condition is such that the posting of a full bond would impose an undue financial burden, the court similarly is free to exercise a discretion to fashion some other arrangement for substitute security through an appropriate restraint on the judgment debtor's financial dealings, which would furnish equal protection to the judgment creditor.

Poplar Grove, 600 F.2d at 1191. Under this circumstance, where it seeks to except itself from the “usual requirements of a full security supersedeas bond,” the judgment debtor bears the burden “to objectively demonstrate the reasons for such a departure.” *Id.* “It is not the burden of the judgment creditor to initiate contrary proof.” *Id.*³⁵

The application of the rule set forth in *Poplar Grove* has been extended through a number of federal jurisdictions, with variations on the factors relevant to whether to waive or modify the bond requirement.³⁶ In all cases, it will be extremely rare for a court to approve alternate security, and particularly in an amount less than the value of the final judgment and interest.

³⁵ *Accord Enserch Corporation v. Shand Morahan & Co.*, 918 F.2d 462, 464 (5th Cir. 1990).

³⁶ *See, e.g., Dillon v. City of Chicago*, 866 F.2d 902, 904-05 (7th Cir. 1988); *Texaco, Inc., v. Pennzoil Company*, 784 F.2d 1133, 1154, 1155 (2d Cir. 1986); *Olympia Equipment Leasing Co. v. Western Union Telegraph Co.*, 786 F.2d 794 (7th Cir. 1986); *Miami Intern. Realty Co. v. Paynter*, 807 F.2d 871, 874 (10th Cir. 1986); *Federal Prescription Serv. Inc. v. American Pharmaceutical Ass’n*, 636 F.2d 755, 757-58 (D.C.Cir. 1980).

I. FEDERAL STAY OF EXECUTION ON JUDGMENT UNDER STATE LAW.

Federal Rules of Civil Procedure Rule 62(f) provides a separate ground for a stay of execution on the judgment based on state law. It provides: “If a judgment is a lien on the judgment debtor's property under the law of the state where the court is located, the judgment debtor is entitled to the same stay of execution the state court would give.” FED. R. CIV. P. 62(f). In reviewing the applicability of this rule to a specific Louisiana statute, the Fifth Circuit opined:

The obvious purpose behind this rule is to allow appealing judgment debtors to receive in the federal forum what they would otherwise receive in their state forum. This purpose, however, is qualified by the requirement that the state forum treat judgments as a lien, or encumbrance, on the property of judgment debtors. The purpose behind this requirement is also plain: judgment creditors must be afforded security while judgment debtors appeal.

Castillo v. Montelepre, Inc., 999 F.2d 931, 942 (5th Cir.1993).³⁷

More recently, in *MM Steel, L.P. v. JSWSteel (USA) Inc.*, 771 F.3d 301, 303-6 (5th Cir. 2014), the Fifth Circuit addressed judgment debtor’s argument that it was entitled—under Rule 62(f)—to a stay under Texas law if it posted a bond in the amount of \$25 million (maximum required in Texas) despite a final judgment in excess of \$150 million. The court held that to invoke Rule 62(f), it must first

³⁷ In *Castillo*, the Fifth Circuit determined that the judgment debtor was entitled to a stay without posting a supersedeas bond. This holding is confined to judgment debtors who are also “Public boards or commissions,” and will not protect any other judgment debtor from the obligation to post bond to stay execution of the judgment pending appeal.

determine whether Texas considers a judgment to be a lien on the judgment debtor's property. Surveying relevant authority the court noted: “Under the prevailing view of Rule 62(f), a judgment is a lien if a judgment creditor is only required to perform mere ‘ministerial acts’ to transform the judgment into a lien.” *Id.* at 303 & n.1 (citing cases). After reviewing Texas law and procedure on judgments and execution, the Fifth Circuit concluded that the “procedures for creating a judgment lien in Texas, which JSW does not dispute, to be more than mere ministerial acts. Because Texas procedure requires more than mere ministerial acts, a judgment in the state of Texas is not a lien within the purview of Rule 62(f).” *Id.* at 305-6. Given this holding, and unless another statute explicitly governs as in *Castillo*, a judgment debtor in Texas will not be exempted from the standard requirements of Rule 62.³⁸

CONCLUSION

Obtaining a proper bond is crucial to the interests of clients who suffer an adverse judgment and want to appeal. Counsel should equip themselves to proceed expeditiously to protect the client’s interests.

Torrence E.S. Lewis

³⁸ Judge Jones dissented, and argued (1) the “ministerial acts test” was irreconcilable with the Court’s holdings in *Castillo*, and (2) even under the new test, the majority had “overstated” the procedural requirements under Texas law which were, in her view, merely “ministerial.” *Id.* at 306-8 (Jones, J., dissenting).

APPENDIX A:

Bonding a Federal Appeal: Statutes & Rules

(EVERYTHING YOU WANTED TO KNOW ABOUT) BONDING A FEDERAL APPEAL

By: Torrence E.S. Lewis, Esq.

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Appellate Advocacy Seminar

October 2-3, 2017
New Orleans, LA

**FEDERAL RULES OF CIVIL PROCEDURE, Rule 62 –
Stay of Proceedings to Enforce a Judgment**

(a) Automatic Stay; Exceptions for Injunctions, Receiverships, and Patent Accountings.

Except as stated in this rule, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 14 days have passed after its entry. But unless the court orders otherwise, the following are not stayed after being entered, even if an appeal is taken:

- (1) an interlocutory or final judgment in an action for an injunction or a receivership; or
- (2) a judgment or order that directs an accounting in an action for patent infringement.

(b) Stay Pending the Disposition of a Motion. On appropriate terms for the opposing party's security, the court may stay the execution of a judgment—or any proceedings to enforce it—pending disposition of any of the following motions:

- (1) under Rule 50, for judgment as a matter of law;
- (2) under Rule 52(b), to amend the findings or for additional findings;
- (3) under Rule 59, for a new trial or to alter or amend a judgment; or
- (4) under Rule 60, for relief from a judgment or order.

(c) Injunction Pending an Appeal. While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights. If the judgment appealed from is rendered by a statutory three-judge district court, the order must be made either:

- (1) by that court sitting in open session; or
- (2) by the assent of all its judges, as evidenced by their signatures.

(d) Stay with Bond on Appeal. If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a)(1) or (2). The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay takes effect when the court approves the bond.

(e) Stay Without Bond on an Appeal by the United States, Its Officers, or Its Agencies. The court must not require a bond, obligation, or other security from the appellant when granting a stay on an appeal by the United States, its officers, or its agencies or on an appeal directed by a department of the federal government.

(f) Stay in Favor of a Judgment Debtor Under State Law. If a judgment is a lien on the judgment debtor's property under the law of the state where the court is located, the judgment debtor is entitled to the same stay of execution the state court would give.

(g) Appellate Court's Power Not Limited. This rule does not limit the power of the appellate court or one of its judges or justices:

(1) to stay proceedings—or suspend, modify, restore, or grant an injunction—while an appeal is pending; or

(2) to issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

(h) Stay with Multiple Claims or Parties. A court may stay the enforcement of a final judgment entered under Rule 54(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Apr. 17, 1961, eff. July 19, 1961; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

FEDERAL RULES OF CIVIL PROCEDURE Rule 67 – Deposit into Court

(a) **Depositing Property.** If any part of the relief sought is a money judgment or the disposition of a sum of money or some other deliverable thing, a party—on notice to every other party and by leave of court—may deposit with the court all or part of the money or thing, whether or not that party claims any of it. The depositing party must deliver to the clerk a copy of the order permitting deposit.

(b) **Investing and Withdrawing Funds.** Money paid into court under this rule must be deposited and withdrawn in accordance with 28 U.S.C. §§2041 and 2042 and any like statute. The money must be deposited in an interest-bearing account or invested in a court-approved, interest-bearing instrument.

(As amended Dec. 29, 1948, eff. Oct. 20, 1949; Apr. 28, 1983, eff. Aug. 1, 1983; Apr. 30, 2007, eff. Dec. 1, 2007.)

FEDERAL RULES OF CIVIL PROCEDURE Rule 69 – Execution

(a) **In General.**

(1) *Money Judgment; Applicable Procedure.* A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.

(2) *Obtaining Discovery.* In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person—including the judgment debtor—as provided in these rules or by the procedure of the state where the court is located.

(b) **Against Certain Public Officers.** When a judgment has been entered against a revenue officer in the circumstances stated in 28 U.S.C. §2006, or against an officer of Congress in the circumstances stated in 2 U.S.C. §118, the judgment must be satisfied as those statutes provide.

(As amended Dec. 29, 1948, eff. Oct. 20, 1949; Mar. 30, 1970, eff. July 1, 1970; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

31 U.S. Code § 9303 - Use of eligible obligations instead of surety bonds

(a) If a person is required under a law of the United States to give a surety bond, the person may give an eligible obligation as security instead of a surety bond. The obligation shall—

- (1) be given to the official having authority to approve the surety bond;
- (2) as determined by the Secretary of the Treasury, have a market value that is equal to or greater than the amount of the required surety bond; and
- (3) authorize the official receiving the obligation to collect or sell the obligation if the person defaults on a required condition.

(b) (1) An official receiving an eligible obligation under subsection (a) of this section may deposit it with—

- (A) the Secretary of the Treasury;
- (B) a Federal reserve bank; or
- (C) a depository designated by the Secretary.

(2) The Secretary, bank, or depository shall issue a receipt that describes the obligation deposited.

(c) Using an eligible obligation instead of a surety bond for security is the same as using—

- (1) a personal or corporate surety bond;
- (2) a certified check;
- (3) a bank draft;
- (4) a post office money order; or
- (5) cash.

(d) When security is no longer required, an eligible obligation given instead of a surety bond shall be returned to the person giving the obligation. If a person, supplying labor or material to a contractor defaulting under sections [3131](#) and [3133](#) of title [40](#), files with the United States Government the application and affidavit provided under [section 3133\(a\) of title 40](#), the Government—

- (1) may return to the contractor the eligible obligation given as security (or proceeds of the eligible obligation given) under sections [3131](#) and [3133](#) of title [40](#) only after the 90-day period for bringing a civil action under [section 3133\(b\) of title 40](#); and

(2) if a civil action is brought in the 90-day period, shall hold the eligible obligation or the proceeds subject to the order of the court having jurisdiction of the action.

(e) This section does not affect the—

(1) priority of a claim of the Government against an eligible obligation given under this section;

(2) right or remedy of the Government for default on an obligation provided under—

(A) sections [3131](#) and [3133](#) of title [40](#); or

(B) this section;

(3) authority of a court over an eligible obligation given as security in a civil action; and

(4) authority of an official of the Government authorized by another law to receive an eligible obligation as security.

(f) To avoid frequent substitution of eligible obligations, the Secretary may prescribe regulations limiting the effect of this section to an eligible obligation maturing more than one year after the date the obligation is given as security.

([Pub. L. 97-258](#), Sept. 13, 1982, [96 Stat. 1046](#); [Pub. L. 107-217](#), § 3(h)(9), Aug. 21, 2002, [116 Stat. 1300](#); [Pub. L. 108-178](#), § 4(f)(2), Dec. 15, 2003, [117 Stat. 2641](#); [Pub. L. 109-351](#), title IX, § 901(b), (c), Oct. 13, 2006, [120 Stat. 2007](#).)

FEDERAL RULES OF APPELLATE PROCEDURE, Rule 8. Stay or Injunction Pending Appeal

(a) Motion for Stay.

(1) Initial Motion in the District Court. A party must ordinarily move first in the district court for the following relief:

- (A) a stay of the judgment or order of a district court pending appeal;
- (B) approval of a supersedeas bond; or
- (C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending.

(2) Motion in the Court of Appeals; Conditions on Relief. A motion for the relief mentioned in Rule 8(a)(1) may be made to the court of appeals or to one of its judges.

(A) The motion must:

- (i) show that moving first in the district court would be impracticable; or
- (ii) state that, a motion having been made, the district court denied the motion or failed to afford the relief requested and state any reasons given by the district court for its action.

(B) The motion must also include:

- (i) the reasons for granting the relief requested and the facts relied on;
- (ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and
- (iii) relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) A motion under this Rule 8(a)(2) must be filed with the circuit clerk and normally will be considered by a panel of the court. But in an exceptional case in which time requirements make that procedure impracticable, the motion may be made to and considered by a single judge.

(E) The court may condition relief on a party's filing a bond or other appropriate security in the district court.

(b) Proceeding Against a Surety. If a party gives security in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the district court and irrevocably appoints the district clerk as the surety's agent on whom any papers affecting the surety's liability on the bond or undertaking may be served. On motion, a surety's liability may be enforced in the district court without the necessity of an independent action. The motion and any notice that the district court prescribes may be served on the district clerk, who must promptly mail a copy to each surety whose address is known.

(c) Stay in a Criminal Case. Rule 38 of the Federal Rules of Criminal Procedure governs a stay in a criminal case.

(As amended Mar. 10, 1986, eff. July 1, 1986; Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 24, 1998, eff. Dec. 1, 1998.)

APPENDIX B:

Bonding a Federal Appeal: Templates for Filing

(EVERYTHING YOU WANTED TO KNOW ABOUT) BONDING A FEDERAL APPEAL

By: Torrence E.S. Lewis, Esq.

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Appellate Advocacy Seminar

October 2-3, 2017

New Orleans, LA

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

COMPANY ABC,
Plaintiff,

v.

COMPANY XYZ,
Defendant.

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Case No. _____

**MOTION TO STAY EXECUTION OF THE JUDGMENT PENDING POST-TRIAL
MOTIONS AND APPEAL AND TO APPROVE SUPERSEDEAS BOND**

On _____, 2017, this Court entered a judgment in the amount of \$ _____
for Company ABC (“ABC”) on its claim s for _____. Company XYZ (“XYZ”) requests
that the court stay execution of the judgment pending post-judgment motions and appeal and approve
supersedeas bond, attached hereto as Exhibit A, in the amount of \$ _____, to cover the
judgment and pre- and post-judgment interest.

Federal Rules of Civil Procedure, Rule 62(b) provides that “[o]n appropriate terms for the
opposing party’s security, the court may stay the execution of a judgment ... pending disposition”
of post-trial motions for judgment as a matter of law and/or for a new trial. Fed. R. Civ P. 62(b). To
the extent that the final judgment is reduced on disposition of XYZ’s post-trial motions filed under
Federal Rules of Civil Procedure Rules _____, XYZ will submit an application for approval of
a modified supersedeas bond to account for the amended final judgment and upon filing its notice
of appeal. In turn, Fed.R.Civ.P. 62(d), which governs the procedure by which a stay is issued during
the pendency of appeal provides, in relevant part:

Stay with Bond on Appeal. If an appeal is taken, the appellant may obtain a stay by
supersedeas bond,.... The bond may be given upon or after filing the notice of appeal or after

obtaining the order allowing the appeal. The stay takes effect when the court approves the bond.

XYZ now requests approval of its supersedeas bond in the amount of \$_____, which will stay execution on the judgment pending post-trial motions and appeal. This amount covers the judgment of \$_____, pre-judgment interest in the amount of \$_____,¹ and post-judgment interest in the amount of \$_____.²

CONCLUSION

For the foregoing reasons, XYZ respectfully requests that the Court grant this Motion and approve xyz's supersedeas bond in the amount of \$_____ and for all other just and proper relief.

Dated: _____, 2017

Respectfully submitted,

ATTORNEYS FOR COMPANY XYZ

¹ If pre-judgment interest was awarded, provide calculation here.

² The total for post-judgment interest was calculated based on the Court's per annum figure of _____% [Department of Treasury 52-week T-Bill rate] and for a period of 12 months. According to the most recent statistics posted by the Administrative Office of the United States Courts, in the Fifth Circuit and for the period 2015-2016 the median time from filing of a notice of appeal to disposition of that appeal was 9.2 (without oral argument) to 12.4 months (with oral argument) months. *See Fifth Circuit Case Processing Times 2015-2016*, September 25, 2016, *available at* http://www.baffc.org/content/2016_clerks_office.pdf (last visited October 3, 2016). The 12-month post-judgment interest period therefore accounts for the high-end of the median period for disposition in the Fifth Circuit.

CERTIFICATE OF CONFERENCE

On _____, 2017, I contacted counsel for Company ABC, and asked for ABC's position on the requested relief set forth in this Motion. _____

/s/ _____

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all counsel of record via the CM/ECF system on this the _____ day of _____, 2017.

/s/ _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

COMPANY ABC, LLC,
Plaintiff,

v.

COMPANY XYZ,
Defendant.

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Case No. _____

ORDER

On this ____ day of _____, 2017, upon consideration of the motion filed by Defendant Company Y (“XYZ”), Dkt.____, seeking to (1) Stay Execution of the Judgment Pending Post-Trial Motions and Appeal and (2) to Approve Supersedeas Bond,” IT IS HEREBY ORDERED that the motion is GRANTED and:

1. The supersedeas bond proffered by XYZ, in the amount of \$_____, secured by _____ as surety on behalf of IWS as principal is HEREBY APPROVED;
and
2. Execution upon the Order entering Judgment in favor of Company ABC dated _____, is HEREBY STAYED pursuant to Fed.R.Civ.P. 62(b) & (d), pending disposition of XYZ’s post-trial motions and appeal from said Order before the United States Court of Appeals for the Fifth Circuit.

SIGNED this _____ day of _____, 2017.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

COMPANY ABC,
Plaintiff,

v.

COMPANY XYZ,
Defendant.

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Case No. _____

SUPERSEDEAS BOND

We, COMPANY XYZ, as Principal, and _____-, as Surety, acknowledge that we are bound to pay COMPANY ABC the sum of ONE MILLION THREE HUNDRED THOUSAND DOLLARS (\$1,300,000.00), together with prejudgment interest at the rate of 5% per annum from June 1, 2015 until the date of the final judgment, October 1, 2017, which totals ONE HUNDRED FIFTY ONE THOUSAND SIX HUNDRED SIXTY SEVEN DOLLARS (\$151,667.00); post-judgment interest at the rate Of 1.21% per annum from October 1, 2017 until the Final Judgment is paid in full, which is calculated at FIFTEEN THOUSAND SEVEN HUNDRED THIRTY DOLLARS (\$15,730.00) based on the median time for disposition of cases in the United States Court of Appeals for the Fifth Circuit, and seek a Supersedeas Bond in the amount of ONE MILLION FOUR HUNDRED AND SIXTY SEVEN THOUSAND THREE HUNDRED NINETY SEVEN DOLLARS (\$1,467,397.00) as security therefore.

The condition of this bond is such that if COMPANY XYZ shall prosecute an appeal of this Court's Final Judgment entered on October 1, 2017, to the United States Court of Appeals for the Fifth Circuit and/or the Supreme Court of the United States and shall satisfy the judgment in full together with interest and taxable costs that may be awarded, then this bond is void. Otherwise, the bond is to remain in full force and effect.

By this undertaking, the Principal is bound to satisfy in full the Final Judgment of the district court, including costs, interest, and damages for delay that may be awarded, if the appeal should be dismissed or the judgment affirmed. The Surety is also so bound, up to the amount of the bond. The Principal is bound to satisfy in full any modification of the judgment ordered by the appellate court, or, if the judgment should be affirmed only in part, to satisfy that part of the judgment affirmed, including costs, interest and damages for delay that may be awarded. The Surety is also so bound, up to the amount of the bond.

Should the Principal satisfy the judgment as described above, all obligations under this bond would be discharged. Should the Principal fail to satisfy the judgment as described above, all obligations under this bond, including the obligation of the Surety to satisfy the judgment, up to the amount of the bond, shall remain in full force and effect. In any event, the aggregate liability of the surety shall not exceed \$1,467,397.00.

This bond shall become effective as of the ____ day of October, 2017.

Signed, sealed and dated this ____ day of October, 2017.

COMPANY XYZ
Principal

By: /s/
ATTORNEY-IN-CHARGE

ATTORNEYS FOR COMPANY XYZ

SURETY

BY: _____
_____, Attorney-in-Fact

**APPEND PHYSICAL BOND WITH
NOTARIZED SIGNATURE AND
TERMS**