

A SURETY'S LIABILITY ON A SUPERSEDEAS BOND

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I. INTRODUCTION

When a party in litigation (a “judgment-creditor”) obtains a monetary award and judgment (a “monetary judgment”) against another party in the litigation (the “judgment-debtor”), most jurisdictions permit the judgment-creditor to immediately upon, or shortly after, obtaining the monetary judgment to commence enforcement proceedings to collect on the monetary judgment, regardless of whether the judgment-debtor intends to appeal the award of the monetary judgment. Such enforcement proceedings may allow the judgment-creditor to obtain liens on real property (by operation of law, execution or other measures authorized by the laws of the jurisdiction) and/or personal property (by attachments, garnishments and/or other measures authorized by the laws of the jurisdiction), and then proceed to liquidate the judgment-debtor’s assets and property to satisfy the judgment-creditor’s monetary judgment. The judgment-debtor, however, is not left without recourse and may attempt to stay the enforcement proceedings pending an appeal of the monetary judgment.

Many jurisdictions authorize the judgment-debtor to obtain a supersedeas bond from a surety to stay the judgment-creditor’s enforcement proceedings while the appeal of the monetary judgment is pending.¹ The purpose of a supersedeas bond is to stay the judgment-creditor’s execution of a final monetary judgment pending appeal by the judgment-debtor.² The need for the supersedeas bond is twofold and applies to both the judgment-creditor and the judgment-debtor. First, the supersedeas bond is necessary to protect the non-appealing party, the judgment-creditor, from the risk that the monetary judgment may be unrecoverable from the judgment-debtor and/or its assets and property upon conclusion of the appellate

¹ Some jurisdictions refer to the supersedeas bond as an appeal bond, while other jurisdictions distinguish between the two types of bonds. When a jurisdiction recognizes the two different types bonds, the appeal bond normally ensures the payment of court costs only, while the supersedeas bond guarantees that the judgment-creditor, if successful on the judgment-debtor’s appeal of the monetary judgment, will have a source of recovery and collection after the appeal is concluded in favor of the judgment-creditor. The distinction between the appeal bond and the supersedeas bond, however, is often obscured in some jurisdictions and in case law, which potentially creates confusion. To avoid the potential for such confusion, this paper will use the term “supersedeas bond” in all instances. Accordingly, to the extent a source cited in this paper uses the term “appeal bond,” it should be understood and equated for the purposes of this paper to mean a supersedeas bond that guarantees the payment of a judgment-creditor after an appeal *unless* it is stated otherwise that the particular appeal bond is for payment of court costs only *and not for* the payment of a monetary judgment after the conclusion of the appeal.

² *Beatrice Foods Co. v. New England Printing & Lithographing Co.*, 930 F.2d 1572, 1574 (2nd Cir. 1991).

process.³ Second, the supersedeas bond is necessary to simultaneously protect the appealing party, the judgment-debtor, from execution on a monetary judgment by the judgment-creditor prior to the resolution of the appellate process for two reasons: (i) the monetary portion of the judgment may ultimately be reversed in its entirety or, at least, reduced on appeal; and/or (ii) subsequent to the judgment-debtor's payment of the monetary judgment to the judgment-creditor – prior to the conclusion of the appellate process – the monetary portion of the judgment is reversed or reduced on appeal but the judgment-creditor is unable to reimburse the judgment-debtor's payment of the monetary judgment.⁴ In other words, the purpose and effect of posting a supersedeas bond “is to preserve the status quo while protecting the non-appealing party's rights pending appeal.”⁵

From the surety's perspective, however, a supersedeas bond is simply “a contract by which a surety obligates itself to pay a final judgment rendered against its principal under the conditions stated in the bond.”⁶ Accordingly, a surety must understand (i) the nature and scope of the supersedeas bonds that it executes with its principals; (ii) the differences between federal and state law governing supersedeas bonds; (iii) the circumstances triggering a surety's liability on or discharge from a supersedeas bond; and (iv) the procedures necessary to enforce the supersedeas bond or to effectuate the surety's discharge of and from the supersedeas bond to avoid any future actions against the surety on the supersedeas bond.

Accordingly, this paper discusses the nature and scope of a surety's liabilities and obligations after jointly, with its principal, the judgment-debtor, executing a supersedeas bond in both federal and state court. Since the laws, rules and procedures in the various federal and state courts differ, this paper focuses on relevant examples and cases from jurisdictions around the country. This paper, however, will highlight – where relevant – the applicable law in Maryland, the District of Columbia, and Virginia. Ultimately, the goal of this paper is to provide a surety with the knowledge and understanding to navigate the complicated world of supersedeas bonds in the many federal and state jurisdictions and to reduce the surety's risks, exposure and uncertainty with respect to if and/or when it may be liable on a supersedeas bond.⁷

³ *Id.* at 1574; *Poplar Grove Planting & Ref. Co., Inc. v. Bache Halsey Stuart, Inc.*, 600 F.2d 1189, 1190-91 (5th Cir. 1979).

⁴ *Poplar Grove*, 600 F.2d at 1191.

⁵ *Beatrice Foods Co.*, 930 F.2d at 1574; *Poplar Grove*, 600 F.2d at 1190-91.

⁶ *Rand-Whitney Containerboard Ltd. P'ship v. Town of Montville*, 245 F.R.D. 65, 67 (D. Conn. 2007).

⁷ This paper does not discuss in depth (i) the surety's taking collateral – full or otherwise – and the surety's rights to and use of the collateral; and (ii) the relation between the surety's liability on the supersedeas bond and a judgment-debtor's bankruptcy. Regarding bankruptcy proceedings, it is important to note that while large monetary judgments frequently result in a judgment-debtor's bankruptcy filing, the existence of a supersedeas bond to secure a monetary judgment, whether it is secured by the judgment-debtor's property as collateral, a letter of credit, or otherwise, may add issues that affect the surety's rights with respect to its principal under an indemnity agreement, a collateral agreement, at law and/or in equity. See *e.g.*, *The Law of Commercial Surety and Miscellaneous Bonds* 601-663 (2d ed. 2012). Additionally, the basic protections that a judgment-creditor has

II. THE NATURE AND SCOPE OF SUPERSEDEAS BONDS

A. Governing Law

1. Federal

In federal court, FED. R. CIV. P 62(d) governs supersedeas bonds in conjunction with applicable local rules (*i.e.*, Maryland Local Rule 110(1)(a); Virginia Local Rule 62). It is well-recognized, however, that no federal statute, federal rule of civil procedure or federal rule appellate procedure defines “the conditions that trigger a surety’s obligation under a supersedeas bond.”⁸ Rather, the express terms of a supersedeas bond govern the extent to which a surety may liable under or discharged from the supersedeas bond.⁹ Indeed, the Supreme Court has recognized that “the obligation of sureties upon bonds [sic, is] *strictissimi juris*,¹⁰ and not to be extended by implication or enlarged construction of the terms of the contract entered into.”¹¹

2. State

under a surety’s supersedeas bond may be affected when the judgment-debtor files for bankruptcy protection. For example, in *Celotex Corp. v. Edwards*, 514 U.S. 300 (1995), a judgment-debtor filed for bankruptcy which triggered an automatic stay on all actions against the judgment-debtor. The bankruptcy court also exercised its equitable powers and enjoined all actions related to the bankruptcy proceedings including an action by a judgment-creditor against a non-debtor surety to enforce a supersedeas bond provided on behalf of the judgment-debtor in a prior civil action. The judgment-creditor collaterally attacked the injunction in the District Court, without first challenging it in the bankruptcy court, and was permitted to execute on the supersedeas bond. The Fifth Circuit affirmed. Ultimately, the United States Supreme Court reversed and held a bankruptcy court has jurisdiction to enjoin enforcement of a supersedeas bond provided on behalf of judgment-debtor who subsequently enters bankruptcy. *See id.* at 312. Thus, the *Celotex* Court recognized a bankruptcy court’s power to protect a surety from execution on a supersedeas bond during the bond principal’s/judgment-debtor’s bankruptcy proceedings. The *Celotex* Court, however, noted the judgment-creditor was not without recourse and discussed the appropriate procedure to challenge the merits of the bankruptcy court’s determination to enjoin an action to enforce a supersedeas bond against a third-party not involved in the bankruptcy proceedings. *See id.* at 313. Moreover, the judgment-creditor may also need to seek relief from the automatic stay imposed in bankruptcy proceedings in order to even attempt to execute on the monetary judgment or the supersedeas bond securing the monetary judgment, in the first instance. Interestingly, a judgment-debtor may also need to seek relief from the automatic stay if it desires to continue the appellate process, if applicable.

⁸ *Beatrice Foods Co.*, 930 F.2d at 1574; *Tennessee Valley Auth. v. Atlas Mach. & Iron Works, Inc.*, 803 F.2d 794, 798 (4th Cir. 1986); *Moore*, 577 F.2d at 426 n. 5 (7th Cir. 1978); *Werbungs Und Commerz Union Austalt v Collectors’ Guild, Ltd.*, 782 F. Supp. 870, 875 (S.D.N.Y. 1991).

⁹ *Beatrice Foods*, 930 F.2d at 1574; *Aetna Casualty & Sur. Co. v. LaSalle Pump & Supply Co., Inc.*, 804 F.2d 315, 317 (5th Cir. 1986); *Rand-Whitney Containerboard Ltd. P’ship*, 245 F.R.D. at 67; *Werbungs*, 782 F. Supp. at 875.

¹⁰ Black’s Law Dictionary defines “*strictissimi juris*” as “of the strictest law.” Black’s Law Dictionary, 1275 (5th ed. 1979).

¹¹ *Crane v. Buckley*, 203 U.S. 441, 447 (1906).

In the realm of state law, supersedeas bonds are governed by each state's applicable law and the terms of the bond itself.¹² Indeed, unlike FED. R. CIV. P. 62(d), many states impose at least some minimal operational guidelines for supersedeas bonds that must be incorporated into every bond. For example, in Maryland, Md. Rules 2-632(e) and 8-422 through 8-424 govern supersedeas bonds. Md. Rule 8-423 states "a supersedeas bond shall be conditioned upon the satisfaction in full of (1) the judgment from which the appeal is taken, together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, or (2) any modified judgment and costs, interest, and damages entered or awarded on appeal." In the District of Columbia, Super. Ct. R. Civ. P. 62(d) and 62-I govern supersedeas bonds. Super. Ct. R. Civ. P. 62-I states, "The bond or undertaking shall be conditioned for the satisfaction of the judgment in full together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment and such costs, interest, and damages as the appellate court may adjudge and award." In Virginia, VA Code Ann. § 8.01-676.1 governs appeal bonds (formerly known as supersedeas bonds). Section C of VA Code Ann. § 8.01-676.1 notes an appeal bond is "conditioned upon the performance or satisfaction of the judgment and payment of all damages incurred in consequence of" the stay of execution of the monetary judgment.

Accordingly, a surety issuing a supersedeas bond securing a monetary judgment entered by a state court must familiarize itself with the jurisdiction's rules governing supersedeas bonds. It is important to note that in some jurisdictions, like Maryland, both the trial court and appellate court rules of procedure govern supersedeas bonds. Thus, to fully understand the scope of a particular jurisdiction's supersedeas bond law, all relevant rules and/or statutes must be read in conjunction.

B. Jurisdiction

Regardless of whether a surety is operating in federal or state court, the surety must understand that by providing a supersedeas bond: (i) the surety is bound to pay up to the penal sum of the supersedeas bond depending upon the result of the appeal of the monetary judgment;¹³ and (b) the surety becomes subject to the jurisdiction of the court in which the supersedeas bond is provided for purposes of the judgment-creditor's enforcement of the monetary judgment against the supersedeas bond.¹⁴

¹² State courts are often empowered to set specific terms of the supersedeas bond, as well. See *Kalitta Air, LLC v. Central Texas Airborne Sys.*, CA No. 96-2494, 2013 WL 2156323 (Slip Op. May 17, 2013) (denying motion for approval of supersedeas bond because judgment-debtor failed to include specific language required by court in the supersedeas bond).

¹³ See Footnote 26.

¹⁴ FED. R. CIV. P. 65.1 (when "security is given through a bond or other undertaking with one or more sureties, each surety submits to the court's jurisdiction and irrevocably appoints the court clerk as its agent for receiving service of any papers that affect its liability on the bond or undertaking"); Md. Rule 1-404 ("Upon the filing of a bond with the clerk any surety on the bond submits to the jurisdiction of the court and irrevocably appoints the clerk as agent to receive service of any papers affecting the surety's liability on the bond."). See also

A surety must also understand that federal and state trial courts retain continuing jurisdiction to review the sufficiency of the supersedeas bond throughout the appellate process.¹⁵ Although a surety is not liable on a supersedeas bond in an amount greater than the penal sum,¹⁶ a surety should anticipate a judgment-debtor's request to increase a supersedeas bond amount if the penal sum of the supersedeas bond becomes insufficient, at some juncture in the appellate process, to secure the appealed from monetary judgment. At that time, the surety may re-evaluate its underwriting considerations to determine whether it is willing to increase the amount of the supersedeas bond penal sum (which, under its indemnity agreement, it may have no obligation to do) or face the prospect of paying on the supersedeas bond if the judgment-debtor is otherwise unable to obtain additional security to continue the stay or fails to pay the monetary judgment.¹⁷

C. Timing

1. Federal

FED. R. CIV. P. 62(a) automatically stays execution of a final judgment entered by the District Court for 14 days after entry of the monetary judgment. A supersedeas bond, therefore, is not required during this period. Subsequent to the 14 day automatic stay period, however, a supersedeas bond is necessary to stay execution of a monetary judgment against a judgment-debtor and its assets, including while post-trial motions are pending. Once the supersedeas bond is provided in compliance with the Federal Rules, the appellant/judgment-debtor, is entitled to a stay of execution as a matter of right.¹⁸ The stay becomes effective upon the Court's approval of the supersedeas bond (*i.e.*, amount and conditions).¹⁹

2. State

Ariz. R. Civ. App. P. 7(d) (same); Mont. R. App. P. 8(a) (same); Nev. R. App. P. 8(b) (same); Wis. Stat. § 808.07(4) (same).

¹⁵ See *e.g.*, *Beatrice Foods*, 930 F.2d at 1573-74; Ky. R. Civ. P. 73.06(2) (Kentucky); Va. Code Ann. § 8.01-676.1(E) (Virginia).

¹⁶ See Footnote 26.

¹⁷ In *Beatrice Foods*, the damages award was increased on remand and the trial court ordered the defendant/judgment-debtor to increase the penal sum of the supersedeas bond "if it wanted to continue to stay the judgment pending a further appeal." *Beatrice Foods*, 930 F.2d at 1574. The judgment-debtor refused and the trial court ordered the surety to pay the full sum of the existing supersedeas bond to the judgment-creditor. See *id.* The outcome of *Beatrice Foods* is discussed more in depth *infra*, Section III.B.6.

¹⁸ FED. R. CIV. P. 62(d).

¹⁹ *Id.*; see also *Rand-Whitney Containerboard Ltd. P'ship*, 245 F.R.D. at 68-69 ("Prior to the approval of a supersedeas bond, there must be a showing that the bond is sufficient. The trial judge is the sole party to make the decision in judging the solvency of the sureties and the sufficiency of securities for the purpose of a supersedeas bond.").

The time for a judgment-debtor to provide a supersedeas bond in state court varies by jurisdiction. In several states, there is no automatic stay of a judgment-creditor's enforcement of a monetary judgment, meaning that a judgment-debtor will need supersedeas relief immediately to avoid enforcement proceedings.²⁰ Other jurisdictions stay a judgment-creditor's enforcement of a monetary judgment for specific periods of time.²¹ Still other states stay a judgment-creditor's enforcement of a monetary judgment automatically upon noting an appeal and throughout the appellate process, negating the need for the judgment-debtor to provide a supersedeas bond.²²

Both Maryland and the District of Columbia impose an automatic stay of execution of a monetary judgment for 10 days after entry of the judgment.²³ Subsequently, a supersedeas bond is necessary to further stay the judgment-creditor's enforcement of the monetary judgment.²⁴ In Virginia, a monetary judgment does not become final for a period of 21 days following the entry of the monetary judgment.²⁵ Subsequently, however, an appeal bond is necessary to further stay the judgment-creditor's enforcement of the monetary judgment.

Regardless of the jurisdiction(s) in which a surety may operate, a surety is well-served by developing and maintaining a procedure for issuing supersedeas bonds to most effectively and efficiently meet the needs of its clients while, at the same time, protecting the surety from risk and exposure. Indeed, supersedeas bonds are often sought by judgment-debtors who do not maintain a regular relationship with the surety and need supersedeas relief immediately. Such unfamiliarity between the parties will most likely require the surety to educate the judgment-debtor on the nature of supersedeas bonds, require the execution of an indemnity agreement by the judgment-debtor (and, perhaps, other indemnitors) in favor of the surety, require the surety to obtain collateral or a letter of credit in an amount exceeding the amount of the monetary judgment (from the judgment-debtor or separate indemnitors) to secure the surety's obligations under the supersedeas bond, and the resolution of any other issues that may delay the issuance of a supersedeas bond until after the judgment-creditor begins enforcement of the monetary judgment.

²⁰ *Superseding and Staying Judgments: A National Compendium* 57-58, 175, 183, 269-70, 289, 304-05, 347-48, 409, 421, 542 (Roger D. Townsend et al. eds., 2007) (See e.g., AZ, IN, IA, MN, MO, MT, NM, OR, PA, WY).

²¹ See e.g., Ala. R. Civ. P. 62 (Alabama – 30 days); S.D. R. Civ. P. § 15-6-62(a) (South Dakota – same); Tenn. R. Civ. P. 62.01 (Tennessee – same).

²² Me. R. Civ. P. 62(e) (Maine); Mass. Gen. Laws Ann. ch. 231, § 115 (Massachusetts).

²³ Md. Rule 2-632(b); Super. Ct. R. Civ. P. 62(a).

²⁴ *Id.*; Interestingly, Super. Ct. R. Civ. P. 62(e) grants a stay of execution of judgment in favor of the District, the US Government, or an agency of either, without a supersedeas bond.

²⁵ VA Code Ann. § 8.01-466; VA Sup. Ct. R. 1:1.

D. Calculating The Penal Sum Of The Supersedeas Bond

A surety's liability on a supersedeas bond is limited to the penal sum on the face of the supersedeas bond in both federal and state court.²⁶ Federal and state courts, however, differ in their approach to calculating a sufficient penal sum of a supersedeas bond.

1. Federal

Generally, federal courts require the penal sum of the supersedeas bond to total the entire amount of the monetary judgment, including any pre-judgment interest, attorneys' fees, costs, and one to two years of post-judgment interest at a rate set by statute.²⁷ More notably, however, FED. R. CIV. P. 62(d) is silent as to the specific amount of the penal sum of a supersedeas bond.²⁸ Interestingly, the local rules of certain federal district courts may set forth the method for calculating the penal sum of a supersedeas bond.²⁹ For example, Maryland Federal District Court Local Rule 110(a)(1) requires 120% of the judgment plus \$500 to cover the amount of the costs of the appeal.

2. State

The penal sum of a supersedeas bond in state court varies by jurisdiction. Many courts take a simple approach and require a fixed percentage above the monetary judgment.³⁰ Other jurisdictions evaluate the appropriate amount of the penal sum of the supersedeas bond on a case-by-case basis, but impose a ceiling on the maximum amount.³¹

In Maryland, Md. Rule 8-423(b) requires the penal sum of a supersedeas bond to be "the sum that will cover the whole amount of the judgment remaining unsatisfied plus interest

²⁶ See e.g., *Beatrice Foods*, 930 F.2d at 1573-74; *Tennessee Valley Auth.*, 803 F.2d at 799; *Nolan v. Glynn*, 166 N.W. 717, 718 (Iowa 1918).

²⁷ *Superseding and Staying Judgments: A National Compendium* 6-7 (Roger D. Townsend et al. eds., 2007).

²⁸ See e.g., *U.S. ex rel Sun Const. Co., Inc. v. Torix General Contr.*, CA No. 07-cv-01355, 2011 WL 2182897, *3 (June 6, 2011 D. Co.) (outlining cost break down of supersedeas bond in particular case).

²⁹ See e.g., *Brookridge Funding Corp. v. Northwestern Human Services, Inc.*, 2008 WL 2229852 n. 4 (2008).

³⁰ Ala. R. App. P. 8(a)(1) (Alabama – 125% of the judgment); Alaska R. App. P. 603(a)(2)(c) (Alaska – same); Colo. R. Civ. P. 121, §1-23(3)(a) (Colorado – same); Miss. R. App. P. 8(a) (Mississippi – same); Cal. Civ. Proc. Code § 917.1(b) (California – 150% of the judgment).

³¹ Ga. Code Ann. § 5-6-46(b) (Georgia – \$25 million); Ind. Code § 34-49-5-3(a) (Indiana – same); N.C. Gen. Stat. § 1-289(b) (North Carolina – same); Wis. Stat. § 808.07(2m)(a) (Wisconsin – \$100 million).

and costs, except that the court, after taking into consideration all relevant factors, may reduce the amount of the bond upon making specific findings justifying the amount.”³² Interestingly, however, Md. Rule 8-423(b) permits a different, presumably smaller penal sum, if “the parties otherwise agree[.]” Similarly, in the District of Columbia, D.C. Super. Ct. R. Civ. P. 62-1 requires the penal sum of the supersedeas bond to be the “sum as will cover the whole amount of the judgment remaining unsatisfied, costs on the appeal, interest, and damages for delay, unless the Court after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond.” In Virginia, Va. Code Ann. § 8.01-676.1(C) is fairly vague, but indicates that the penal sum of the supersedeas bond must equal, at least, the judgment plus any “damages incurred in consequence” of the stay.³³ The Supreme Court of Virginia confirmed this interpretation of the statute when holding that the “statutory language does not give the trial court discretion to set an appeal bond in an amount less than the judgment.”³⁴

III. TO BE OR NOT TO BE LIABLE ON A SUPERSEDEAS BOND

A. Determining The Scope Of Security Of A Supersedeas Bond

A critical issue confronting sureties regards the scope of security provided by a supersedeas bond. In other words, at what point in the appellate process may a surety’s liability on a supersedeas bond be enforced, or, conversely, at what point in the appellate process may a surety be discharged on a supersedeas bond?³⁵ An analysis of the issue triggers a familiar refrain – the terms of the supersedeas bond control.³⁶ Accordingly, a ruling from a jurisdiction’s highest court may not be required for a determination and/or resolution of the surety’s liability on or discharge from a supersedeas bond.

1. Federal Court

³² See also *O’Donnell v. McGann*, 529 A.2d 372 (Md. 1987).

³³ In *Zedan v. Westheim*, 741 S.E.2d 792 (Va. 2013), the trial court found a father was in arrears on child support payments. The father appealed and posted an appeal bond. The amount of the appeal bond was calculated as follows: “(1) \$186,410.22 being the sum found due and owing by [the Judge]; and (2) Interest at a 6% per annum on the above sum for 12 months; and (3) 12 months of child support at \$7,000 per month with appeal anticipated to be 1 year.” *Id.* at *1. The *Zedan* court followed the applicable Virginia statute by including the full sum of the monetary judgment. The court required the penal sum of the bond include both 12 months of interest and 12 months of child support payments at a fixed amount presumably to protect the judgment-creditor from “damages incurred in consequence” of the anticipated one year appellate process (*i.e.*, inability to recover the child support payments not made during the appellate process if the judgment-creditor prevailed on appeal).

³⁴ *Tauber v. Com. ex rel. Kilgore*, 562 S.E.2d 118, 132 (Va. 2002).

³⁵ The concept of “scope of security” in this paper does not relate to the penal sum of the bond or the monetary liability facing a surety upon issuing a supersedeas bond. Rather, the “scope of security” will refer to which appellate level in a particular jurisdiction the supersedeas bond secures the judgment.

³⁶ Of course, the supersedeas bond terms are subject to relevant state law or local rules of a particular federal district court.

FED. R. CIV. P 62(d) is largely silent as to the operation of supersedeas bonds in the federal courts. Accordingly, in federal court, a surety's liability on the supersedeas bond is governed almost exclusively by the express terms of the supersedeas bond and the principles of contract interpretation. Generally, the supersedeas bond language creates three potential scenarios in federal court: (i) the supersedeas bond language expressly secures the monetary judgment appealed from *only* to a specified Circuit Court; (ii) the supersedeas bond language expressly secures the monetary judgment appealed from up to and through the United States Supreme Court; or (iii) the supersedeas bond language fails to identify either a Circuit Court or the U.S. Supreme Court. As the discussion below reveals, the surety should identify in the express terms of the supersedeas bond which appellate court can trigger the surety's liability or discharge to avoid any uncertainty in the time and scope of its obligations to pay a monetary judgment at some juncture in the appellate process.

(i) The express language of a supersedeas bond identifies a specific federal Circuit Court

The first of the three scenarios created by the supersedeas bond language was addressed in *Hicks v. Cadle Co.*³⁷ In *Hicks*, the monetary judgment appealed from was affirmed by the Tenth Circuit. Thereafter, the judgment-creditor moved to release the supersedeas bond in its favor (namely, to collect on the supersedeas bond). The court granted the motion stating:

Plaintiff's Motion To Release Supersedeas Bond requests the release of the supersedeas bond which Defendants posted pursuant to FED. R. CIV. P. 62(d) in order to secure a stay of this Court's October 10, 2008, Judgment pending Defendants' appeal of that Judgment to the Tenth Circuit Court of Appeals. The supersedeas bond securing the stay was limited to Defendants' appeal to the Tenth Circuit. That appeal now has been concluded in Plaintiff's favor, the mandate has issued, and no stay of execution is in place. The supersedeas bond thus is properly released even though Defendants state that they intend to petition the U.S. Supreme Court for certiorari.³⁸

The *Hicks* approach is consistent with the universal recognition by courts that "the obligation of sureties upon bonds [sic, is] *strictissimi juris*, and not to be extended by implication or enlarged construction of the terms of the contract entered into."³⁹ Thus, even though the judgment-debtor in *Hicks* could have potentially prevailed in the U.S. Supreme Court, the mandate of the Tenth Circuit triggered the surety's liability on the supersedeas bond because the express terms of the supersedeas bond only secured the monetary judgment

³⁷ Civ. No. A04CV02616ZLWKLM, 2010 WL 1351902 (D. Colo. Mar. 31, 2010).

³⁸ *Id.*

³⁹ *Crane*, 203 U.S. at 447.

appealed from to an appeal to the Tenth Circuit, not the U.S. Supreme Court. It is important to recognize, however, the limitations on the level of the appellate process as provided in the supersedeas bond had no affect on the judgment-debtor's right to seek further appeal. Accordingly, as *Hicks* demonstrates, the scope of security provided by a supersedeas bond does not necessarily correlate to the parties' appellate options. Stated differently, the exhaustion of the appellate process may not be a threshold requirement to triggering a surety's liability on or discharge from a supersedeas bond.

In sum, a supersedeas bond that extends protection only through entry of a mandate by a federal Circuit Court prematurely exposes the judgment-debtor to the risks a supersedeas bond is designed to mitigate – the judgment-creditor's inability to reimburse the judgment-debtor if the monetary judgment is modified downward or even reversed at some later point on appeal. The surety, therefore, potentially faces a greater chance of incurring liability on the supersedeas bond because its liability may be triggered prior to the final exhaustion of the appellate process. Conversely, if the judgment-debtor prevails in the Circuit Court (*i.e.*, reversal of the judgment), then the judgment-creditor may also be stripped of the protections created by the supersedeas bond. For instance, if the supersedeas bond is discharged because the judgment-debtor prevailed on appeal at the Circuit Court level, yet the judgment-creditor could potentially prevail on appeal to U.S. Supreme Court and have the original judgment reinstated, the judgment-creditor may be unable to recover the monetary judgment at that juncture because the original monetary judgment was no longer secured by a supersedeas bond (which has been discharged) and the judgment-debtor is insolvent. The surety, however, would escape liability in this scenario and benefit from the limited security provided by the language of the supersedeas bond.

In determining whether to provide a supersedeas bond that limits the scope of security of the supersedeas bond to a specific federal Circuit Court mandate, a surety must weigh the risks and benefits of subjecting itself to only one bite of the appellate apple.

(ii) The express language of a supersedeas bond identifies the United States Supreme Court

The second of the three scenarios created by the supersedeas bond language is not routinely addressed by the case law. The general rule, however, is that the terms of the supersedeas bond will govern its application.⁴⁰ Accordingly, if a supersedeas bond expressly states that the monetary judgment is secured through a ruling by the U.S. Supreme Court, regardless of the outcome at the Circuit Court level, the supersedeas bond should still secure the monetary judgment until the U.S. Supreme Court either issues a mandate or denies a petition for writ of certiorari, thus ending the appellate process.

(iii) The language of a supersedeas bond does not identify a specific federal court

⁴⁰ *Beatrice Foods*, 930 F.2d at 1574; *Tennessee Valley Auth.*, 803 F.2d at 798; *Moore*, 577 F.2d at 426 n. 5; *Werbungs Und Commerz Union Austalt*, 782 F. Supp. at 875.

The final scenario created by the supersedeas bond language, or more accurately, in the absence of express language identifying a specific federal appellate court, was addressed in *Revlon, Inc. v. Carson Products Co.*, 647 F. Supp. 905, 906 (S.D.N.Y. 1986). In *Revlon*, the Federal Circuit, on the judgment-debtor's appeal, reversed a judgment of attorneys' fees awarded by the District Court to the judgment-creditor. The judgment-creditor, thereafter, petitioned the U.S. Supreme Court for a writ of certiorari. While the petition for the writ of certiorari was pending, the judgment-debtor moved for a release of the supersedeas bond in the District Court.⁴¹ The judgment-creditor opposed the motion arguing, "should the Supreme Court grant certiorari and reinstate our award of attorney's fees, it will not be insured against the possibility of [judgment-debtor's] financial inability to fulfill its obligation."⁴² In granting the judgment-debtor's motion to release the supersedeas bond, the court stated:

First, plaintiff assumes that we have the power to maintain the bond simply because the appellate decision may be reversed. A court of appeals judgment, it must not be forgotten, 'is entitled to a presumption of validity.' *Graves v. Brown*, 405 U.S. 1201, 1203, 92 S. Ct. 752, 753, 30 L. Ed.2d 769 (1971). Far be it for us to presume, as plaintiff would have us do, that the court of appeals erred; a district court must be ever vigilant of such hubris.⁴³

The court, therefore, held "a supersedeas bond securing the stay should be limited to the court of appeals. Consequently, the bond should be released once the appellate court has reversed the underlying judgment."⁴⁴ Accordingly, the supersedeas bond was released.⁴⁵

A surety, therefore, should consider, if possible, expressly identifying the specific federal appellate court to which it agrees to secure the monetary judgment appealed from in the terms of the supersedeas bond to definitively ascertain its risks and avoid protracted litigation over the scope of security of the supersedeas bond.

⁴¹ The petition for writ of certiorari was ultimately denied. *Revlon Inc. v. Carson Products Co.*, 479 U.S. 1018 (1986).

⁴² *Id.* at 906.

⁴³ *Id.*

⁴⁴ *Id.* Interestingly, the court hinted at the possibility that the supersedeas bond could remain in effect and the stay extended pending an appeal to the Supreme Court if the plaintiff/judgment-creditor presented evidence of irreparable harm if the bond was not continued (*i.e.*, judgment-debtor's inability to pay judgment if Supreme Court reinstated award). This statement, however, is merely dicta.

⁴⁵ See also *Am. Fed. Grp., Ltd. v. Rothenberg*, 91CIV.7860(THK)(SWK), 1998 WL 273034 (S.D.N.Y. May 28, 1998) (supersedeas bond stating security extended only to ruling from "Appellate Court" was discharged after Second Circuit reversed appealed from judgment); *Water Technologies Corp. v. Calco, Ltd.*, 694 F. Supp. 1328, 1331 (N.D. Ill. 1988) ("we hold that, absent unambiguous language in the supersedeas bond to the contrary, an appellant is liable under a bond only until the court of appeals has issued its mandate in a case").

2. State Court

The scope of security provided by a supersedeas bond in a state court is also governed by the terms of the supersedeas bond and, therefore, interpretation of the supersedeas bond's terms may result in similar scenarios discussed in the previous Federal Court section. Some jurisdictions, however, impose certain mandatory obligations on the surety that specifically address this issue. For example, Maryland Rule 8-422 states, in pertinent part:

(d) Continuation in Court of Appeals of Previously Filed Security. A bond or other security previously filed to stay enforcement of a judgment of the lower court shall continue in effect pending review of the case by the Court of Appeals. On motion, the Court of Appeals, with or without a hearing, may take such action as may be appropriate, including increasing or decreasing the amount of the bond, any security on the bond, or any other security.

Thus, a supersedeas bond provided and accepted in a Maryland state court, pursuant to the Maryland Rules, must secure a monetary judgment until the Maryland Court of Appeals issues a mandate or denies a petition for writ of certiorari. The Maryland Rules, therefore, eliminate the various scenarios that may arise in Federal Court.

Interestingly, in Virginia, there is no appeal of right for most civil matters.⁴⁶ Moreover, to the extent a civil litigant may obtain an appeal, the appealing party must directly petition the Virginia Supreme Court for a writ of certiorari.⁴⁷ Thus, Virginia civil litigants are not subject to the various Federal Court scenarios arising out of the supersedeas bond language as a result of the structure of the Virginia judiciary. Accordingly, in Virginia, a supersedeas bond secures a judgment until the Virginia Supreme Court issues a mandate or denies a petition for writ of certiorari – similar to Maryland.

A surety issuing supersedeas bonds to secure a monetary judgment entered in a state court proceeding must be familiar with the scope of security that the express terms of the supersedeas bond create and also any obligations imposed by a respective jurisdiction's applicable law to avoid any uncertainty as to which appellate court in a particular state may trigger the surety's liability on or discharge from the supersedeas bond.

B. The Surety's Liability Under The Supersedeas Bond⁴⁸

1. The principal's/judgment-debtor's appeal is dismissed in its entirety

⁴⁶ Va. Code Ann. § 8.01-670; Va. Code Ann. § 17.1-405.

⁴⁷ *Id.* The Virginia Court of Appeals is an intermediate appellate court with limited jurisdiction encompassing appeals from administrative agency decisions, the Workers' Compensation Commission, and various family law matters. See Va. Code Ann. § 17.1-405.

⁴⁸ Virginia law governing supersedeas bonds does not articulate any minimum conditions triggering a surety's liability on a supersedeas bond and, therefore, is only discussed in case law in this section.

It is well-recognized that a surety's liability under a supersedeas bond is triggered if the monetary judgment appealed from and secured by the supersedeas bond is dismissed for any reason, in both state and federal courts.⁴⁹ In fact, the applicable supersedeas bond law in many jurisdictions, including Maryland and the District of Columbia, expressly recognizes a surety's liability in this circumstance.⁵⁰

2. The monetary judgment appealed from is affirmed in its entirety

Equally well-recognized in both state and federal courts is that a surety's liability under a supersedeas bond is triggered when the monetary judgment appealed from and secured by the supersedeas bond is affirmed in its entirety as to both liability and damages.⁵¹ Maryland and the District of Columbia also expressly recognize a surety's liability in this circumstance.⁵² If, as discussed *infra* Section III.C.3, the monetary judgment is not affirmed as to both liability and damages, a surety's liability under a supersedeas bond will not necessarily be triggered.

In *Rector v. Mass. Bonding & Ins. Co.*,⁵³ the court addressed a hybrid situation in which the appellate court affirms, in part, and reverses, in part, the appealed from judgment, which was comprised of a monetary portion and a non-monetary portion. In the underlying case in *Rector*, Rector, the plaintiff, filed a lawsuit against a defendant who defaulted on two promissory notes. The defendant filed a counterclaim against Rector. The District Court denied the counterclaim and entered a monetary judgment in favor of Rector on the principal claim on the two promissory notes. The defendant appealed the monetary judgment entered in favor of Rector, which the defendant secured by a supersedeas bond. The defendant also appealed the denial of its counterclaim, which did not require the security of a supersedeas bond. On appeal, the monetary judgment in favor of Rector, the plaintiff, was affirmed in its entirety. The appellate court, however, reversed the denial of the defendant's counterclaim. Subsequently, Rector moved to enforce the supersedeas bond against the surety as to the monetary judgment that was affirmed on appeal. The District Court denied the motion. On appeal of the District Court's denial of the motion to enforce the supersedeas bond, the appellate court noted the portion of the original appeal which was secured by the supersedeas bond – the monetary judgment in favor of Rector – was affirmed. The appellate court opined that when “the judgment involved is made up of separable elements and there is a reversal as

⁴⁹ See *AmWest Sav. Ass'n v. Farmers Market of Odessa, Inc.*, 753 F. Supp 1339, 1344 (1990); *Strode v. Abshire*, 283 P.2d 842, 843 (Okla. 1995) (surety liable where appeal dismissed on motion as “frivolous and without serious merit”); *Springer v. Metro.Cas. Ins. Co.*, 249 N.W. 226, 227 (Iowa 1933).

⁵⁰ Md. Rule 8-423(a); Super. Ct. R. Civ. P. 62(d) and 62-I.

⁵¹ See generally, *Montgomery v. American Employers' Inc. Co.*, 22 F. Supp. 476 (D. De. 1938); *Matanuska Val Lines, Inc. v. Neal*, 255 F.2d 632 (9th Cir. 1957).

⁵² Md. Rule 8-423(a); Super. Ct. R. Civ. P. 62-I.

⁵³ 191 F.2d 329, 332-33 (D.C. Cir. 1951).

to one of those elements alone,” the surety’s liability is triggered on the element which is affirmed.⁵⁴ Accordingly, the appellate court held the surety’s liability on the supersedeas bond was triggered when the secured portion of the plaintiff’s monetary judgment was affirmed even though another, separable, element of the District Court’s judgment was reversed – the denial of the defendant’s counterclaim.⁵⁵

Thus, *Rector* stands for the proposition that when an appeal encompasses multiple, but separable, elements, any separable element secured by a supersedeas bond which is affirmed in its entirety by the appellate court triggers the surety’s liability.⁵⁶ Accordingly, a surety must be cognizant that even though an appellate mandate may reverse, in part, a judgment appealed from, the surety’s liability may still be triggered on any part of the judgment appealed from that is affirmed in its entirety if it is a monetary judgment secured by the supersedeas bond.⁵⁷

3. The monetary judgment appealed from is affirmed as to liability and entitlement to damages but the appellate court enters a revised damages award

Generally, a surety’s liability under a supersedeas bond is triggered when a monetary judgment appealed from is affirmed as to liability and entitlement to damages, but the appellate court enters a modified damages award on appeal. Maryland and the District of Columbia both follow the general rule.⁵⁸ It is important to note, however, that if a monetary judgment is revised upward, the surety’s liability cannot exceed the penal sum of the bond.⁵⁹

⁵⁴ *Id.* at 331.

⁵⁵ *Id.*

⁵⁶ A similar circumstance arose in *Zedan v. Westheim*, 741 S.E.2d 792 (Va. 2013). In *Zedan*, the trial court found the defendant was in arrears in child support payments and in civil contempt. The defendant appealed the monetary award of child support, which was secured by an appeal bond, and the civil contempt finding, which did not need to be secured by a supersedeas bond. On appeal the appellate court affirmed the monetary award for child support but reversed the finding of civil contempt. *Id.* at 1*. Thereafter, the trial court released the penal sum of the supersedeas bond to the judgment-creditor. The judgment-debtor appealed arguing the original judgment was not affirmed because the finding of civil contempt was reversed. The appellate court rejected this argument and held the “[j]udgment-creditor] was successful in all aspects of the present appeal upon which the appeal bond is based – i.e., the child support provisions of the decree of annulment.” *Id.* at *4.

⁵⁷ Courts have recognized a similar rule applies when multiple defendants appeal a monetary judgment and the monetary judgment is reversed as to one or more defendants but affirmed as to at least one defendant. See *Scholz Homes, Inc. v. Larson*, 437 F.2d 1060, 1062 (7th Cir. 1971).

⁵⁸ Md. Rule 8-423(a); Super. Ct. R. Civ. P. 62-I.

⁵⁹ See Footnote 26.

The general rule was followed in *Harris v. Keoun*.⁶⁰ In *Harris*, the monetary judgment appealed from was affirmed as to liability but the damages award was reduced and re-entered by the appellate court. Pursuant to an odd and winding procedural path, a trial on the surety's liability on the supersedeas bond was ultimately conducted and judgment was entered in favor of the judgment-creditor. The surety appealed contending that because the monetary judgment secured by the supersedeas bond was appealed successfully – to the extent that the damages were reduced – its liability under the supersedeas bond was discharged. The appellate court rejected this argument and held the surety was liable for the amount of the reduced judgment.⁶¹

In *Beatrice Foods*,⁶² the court shed light on the reasons liability is imposed on a surety in this circumstance. Specifically, the *Beatrice Foods* court discussed the concept of “substantial reversal,” also referred to as prosecuting the appeal “with effect,” which is generally defined as prosecuting the appeal with success.⁶³ The *Beatrice Foods* court opined, essentially, that “it would be a stretch” to hold that merely because an appellant succeeded in modifying a damages award on appeal – with no effect on liability – the monetary judgment appealed from was “substantially reversed” or prosecuted with effect.⁶⁴

Thus, *Beatrice Foods* explains why a surety's liability on the supersedeas bond is not discharged upon a mere modification of the damages award (*i.e.*, reduction) – modification does not equate a reversal of the trial court's finding as to either the judgment-creditor's entitlement to damages or the judgment-debtor's liability for damages. A surety, therefore, must recognize an appeal that results only in a reduction of the damages award is not necessarily a “substantial reversal” and does not automatically result in the surety's discharge from the supersedeas bond.

4. The monetary judgment appealed from is affirmed as to liability and entitlement to damages, but the damages award is remanded for entry of a specific dollar amount as ordered by the appellate court

⁶⁰ 135 S.W.2d 194 (Tex. Civ. App. 1939).

⁶¹ *Id.* at 196.

⁶² 930 F.2d 1572.

⁶³ See *id.* at 1575; see also *Grimme Combustion, Inc. v. Mergentime Corp.*, 867 A.2d 602 (Pa. Super. Ct. 2005).

⁶⁴ See *id.* at 1576. The U.S. Supreme Court also addressed the concept and opined:

What is meant by prosecuting his appeal to effect? It is an expression substantially equivalent to prosecuting his appeal with success; to make substantial and prevailing his attempt to reverse the decree or judgment awarded against him.

Crane, 203 U.S. at 447.

A surety's liability is triggered on a supersedeas bond in a rare, but recognized, circumstance when the monetary judgment appealed from is affirmed on appeal as to liability and entitlement to damages, but the damages award is vacated and remanded to the trial court for the entry of a new damages amount as specified by the appellate court, in lieu of the appellate court entering the revised damages award.⁶⁵ The Maryland Rules allude to this circumstance by imposing liability on a surety for "any modified judgment and costs, interest, and damages entered or awarded on appeal."⁶⁶ Thus, it may be inferred in Maryland that any modified monetary judgment not entered by the appellate court but, rather, "awarded" by the appellate court is, in fact, a modified award which the appellate court remands to the trial court for entry.⁶⁷ Again, it must be noted, the surety's liability cannot exceed the penal sum of the supersedeas bond.⁶⁸

The surety, therefore, must understand that simply because an appellate court does not enter the revised damages award on appeal, but instead issues an order to the trial court on remand instructing that the trial court enter a specified dollar amount for the monetary judgment, a surety's liability under the supersedeas bond is triggered to same extent as if the appellate court had, itself, entered the revised damages award.⁶⁹

5. The monetary judgment appealed from is affirmed as to liability and entitlement to damages, but the damages award is vacated and remanded to the trial court for recomputation of damages or to correct apportionment of damages

A surety's liability on a supersedeas bond is triggered when the monetary judgment is affirmed as to liability and entitlement to damages, but the damages award is vacated and remanded to the trial court for recomputation of the damages or to correct the apportionment of damages. The surety often challenges its liability on the supersedeas bond when the damages award of the monetary judgment is vacated by the appellate court and the case is remanded to the trial court on damages. Courts, however, have consistently recognized the fallacy of this argument because the vacation of the damages award was not predicated on a failure to establish entitlement to damages. Rather, the amount of the damages award was calculated in error or inaccurately apportioned. As explained in *Beatrice Foods*:

⁶⁵ See e.g., *Tennessee Valley Auth*, 803 F.2d at 798 (terms of supersedeas bond imposed liability on surety for "any judgment or order which the Court of Appeals may... order to be rendered by the District Court"); *Nolan*, 166 N.W. at 718 (court discusses this scenario arising from Indiana statute).

⁶⁶ Md. Rule 8-423(a)(2).

⁶⁷ See *id.*

⁶⁸ See Footnote 26.

⁶⁹ An analogous situation arose in *Tennessee Valley* which is discussed in depth *infra*, Section III.B.6.

[W]hen an appellee has proven that damages are due, and the remand is merely to determine the proper quantum of injury, then it is not unreasonable that the bond remain effective during this recalculation period. Put another way, when an appellant has merely succeeded in having the case remanded for recomputation of damages, it would be a stretch to say that the appeal was ‘substantially’ successful, or that the judgment was ‘substantially’ reversed.⁷⁰

In *Grimme Combustion, Inc. v. Mergentime Corp.*,⁷¹ the court determined a surety’s liability on a supersedeas bond was never discharged over the course of a 10 year appellate history. During one of the five appellate rulings in the case, the appellate court held the trial court applied an incorrect interest formula for awarding prejudgment interest.⁷² The appellate court, therefore, vacated the pre-judgment interest award and remanded the case “so that the trial court might apply the proper standard to its award of prejudgment interest[.]”⁷³ The surety remained liable on the supersedeas bond for the revised pre-judgment interest award entered on remand by the trial court because the plaintiff’s entitlement to the pre-judgment interest was unaffected by the appellate court’s holding. In fact, the only effect of the appellate court’s vacation and remand was to rectify the trial court’s error in applying an incorrect pre-judgment interest standard.

In *Morrison Knudsen Corp. v. Ground Improvement Techniques, Inc.*,⁷⁴ the court confronted an issue regarding the apportionment of damages which were affirmed on appeal. Morrison Knudsen (“MK”), a federal contractor, sued its subcontractor, Ground Improvement Techniques (“GIT”) for default. GIT counterclaimed for wrongful termination. The trial court entered judgment in favor of GIT on its wrongful termination claim. MK appealed and posted a supersedeas bond. On appeal, the Tenth Circuit affirmed MK’s liability but vacated all of the damages awarded to GIT. Certain categories of damages were vacated for failure to prove entitlement to damages, and those categories were remanded for a retrial on the entitlement issue. Although GIT proved entitlement to the remaining categories of damages, the appellate court nonetheless vacated those damages and remanded because the trial court failed to use a special verdict form and the appellate court could not “untangle the categories of damages for which there was sufficient evidence as compared to those which needed a retrial.”⁷⁵ On remand, the surety sought a discharge from the supersedeas bond arguing that the vacation

⁷⁰ 930 F.2d at 1576.

⁷¹ 867 A.2d 602.

⁷² See *id.* at 605.

⁷³ *Id.*

⁷⁴ 532 F.3d 1063 (10th Cir. 2008).

⁷⁵ *Id.* at 1071.

and remand “substantially reversed” the appealed from monetary judgment.⁷⁶ The Tenth Circuit rejected the surety’s argument and held:

This case’s unique procedural history reflects that MK’s liability was affirmed and several categories of damages, although not affirmed, were vacated merely because of a procedural error. This case lies somewhere between a remand for mere recalculation of damages and one in which no sum of damages was properly proved and the entire judgment was vacated.... We hold, therefore, that the Supersedeas Bond is still enforceable because MK failed to prosecute its appeal ‘to effect.’⁷⁷

Thus, the *Morrison Knudsen* appellate court remanded, in part, to simply reapportion the damages to award the judgment-creditor only those damages proved at the original trial. Accordingly, the surety’s liability on the supersedeas bond was triggered for the categories of damages not reversed on appeal. Conversely, the surety’s liability was discharged for the categories of damages the plaintiff failed to prove entitlement to at the original trial.

Prior to seeking a discharge on a supersedeas bond because an award of damages was vacated, the surety should ascertain whether the vacation was predicated on issues regarding the judgment-creditor’s failure to prove entitlement to damages or merely procedural issues not affecting the trial court’s finding that the judgment-creditor is entitled to damages.

6. The monetary judgment appealed from is affirmed as to liability and entitlement to damages, but remanded for further proceedings regarding the accuracy of the quantum of the damages award

A surety’s liability on a supersedeas bond may be triggered in a similar but slightly different circumstance than that described in the prior section. In that section, the judgment-creditor’s entitlement to damages was proven, but a clerical or procedural error resulted in an erroneous calculation of the amount of the damages (*i.e.*, improper pre-judgment interest formula applied). By contrast, this section deals with a circumstance when the judgment-creditor’s entitlement to damages is also proven at trial, but the appellate court determines that the evidence supporting the accuracy of the amount of damages is insufficient. Although sureties generally challenge their liability on a supersedeas bond under this scenario, the courts routinely refuse to discharge the surety for reasons similar to those discussed in the prior section – a modification of the damages award resulting from insufficient evidence to sustain the quantum of the damages award does not equate to a reversal of the trial court’s findings as to the judgment-creditor’s entitlement to some or any damages or to the judgment-debtor’s liability for those damages.

⁷⁶ *Id.* at 1070.

⁷⁷ *Id.* at 1071 (citations and quotations omitted).

The Fourth Circuit addressed this circumstance in *Tennessee Valley Auth. v. Atlas Mach. & Iron Works, Inc.*⁷⁸ In *Tennessee Valley*, the trial court entered a monetary judgment in favor of the Tennessee Valley Authority (“TVA”) on a breach of construction contract claim.⁷⁹ The trial court, however, significantly offset the monetary judgment by finding that Atlas was entitled to recover its costs incurred from errors in TVA’s design specifications for the underlying construction project and the unpaid balance of the contract.⁸⁰ Atlas appealed the TVA’s monetary judgment and posted a supersedeas bond. On appeal, the Fourth Circuit affirmed the judgment as to Atlas’ liability and TVA’s entitlement to damages, but found that the District Court erred in calculating the amount of Atlas’ offset to the TVA monetary judgment. On remand, the District Court conducted a second damages trial on the amount of damages due to the TVA and the amount of Atlas’ offset, but not the issue of the TVA’s entitlement to damages. Ultimately, the District Court entered a revised damages award and entered a monetary judgment against Atlas. TVA then moved to enforce the supersedeas bond. The District Court denied TVA’s motion and TVA appealed.

The Fourth Circuit analyzed the relevant portion of the supersedeas bond which stated: “Now if the said appellant shall pay to the said appellee... any judgment or order which the Court of Appeals may render or order to be rendered by the District Court...”⁸¹ The Fourth Circuit noted that on the appeal from the original monetary judgment it “ordered the district court to render a new judgment as to damages.”⁸² Accordingly, the Fourth Circuit held that the revised damages award entered by the District Court was pursuant to the Fourth Circuit’s order and, therefore, was contemplated by the express terms of the supersedeas bond.⁸³ Thus, the surety’s liability was triggered.⁸⁴

In *Beatrice Foods*, the District Court entered a monetary judgment in favor of Beatrice Foods.⁸⁵ On appeal, the Circuit Court affirmed the defendant’s liability and Beatrice Foods’ entitlement to damages. The Circuit Court, however, vacated the damages award because the District Court erroneously calculated the damages award based on the defendant’s gross sales

⁷⁸ 803 F.2d 794.

⁷⁹ *Id.* at 796.

⁸⁰ *Id.*

⁸¹ *Id.* at 798.

⁸² *Id.*

⁸³ *Id.* at 799.

⁸⁴ *Id.* Interestingly, the damages trial on remand resulted in a larger damages award. *Id.* at 796. The surety, however, was only liable for the amount of the supersedeas bond. *Id.* at 797.

⁸⁵ *Beatrice Foods*, 930 F.2d at 1573. Beatrice Foods brought the action on behalf of Webcraft Packaging Co., a division of Beatrice Foods at the time the lawsuit was initially filed. *Id.* at 1573 n. 1.

when, in fact, the damages should have been calculated on Beatrice Foods' lost profits.⁸⁶ Accordingly, the Circuit Court remanded for a new trial on damages to compute the damages award based on the proper calculation of lost profits, but not on Beatrice Foods' entitlement to damages.⁸⁷ After the damages trial on remand, the District Court entered a revised damages award in an amount greater than the original monetary judgment and ordered the defendants to increase the penal sum of the existing supersedeas bond to secure the increased monetary judgment pending further appeal.⁸⁸ The defendant refused and the District Court ordered the surety to pay Beatrice Foods the penal sum of the supersedeas bond.⁸⁹ The surety appealed the order and challenged its liability on the supersedeas bond. On appeal, the Circuit Court held that Beatrice Foods "had proven that damages were due" and the only issue on remand was the proper amount due.⁹⁰ Accordingly, because the finding of entitlement to damages was not reversed, the surety's liability on the supersedeas bond was triggered.⁹¹

In *Franklinville Realty Co. v. Arnold Const. Co.*,⁹² the monetary judgment appealed from was affirmed, but remanded in order for the parties to present additional evidence on the amount of the damages due. On remand, the District Court refused to discharge the surety on the supersedeas bond securing the appealed monetary judgment. Subsequently, the defendant appealed the District Court's revised monetary judgment entered on remand and its refusal to discharge the surety on the supersedeas bond. The Fifth Circuit affirmed the finding as to the surety's liability on the supersedeas bond:

As to the refusal to discharge the surety, the judgment on the former appeal was not a judgment of reversal but one of affirmance with reversal limited to taking evidence and obtaining findings not upon whether appellee should have a judgment, but upon whether the judgment it had obtained should be for the same or a less sum. To abide this judgment as finally entered pursuant to the mandate, the surety remained bound.⁹³

As discussed in the prior section, a surety must carefully review the appellate court's reasons for vacating and remanding a damages award to determine if its liability under the supersedeas bond is triggered or discharged.

⁸⁶ *Id.* at 1573-74.

⁸⁷ *Id.*

⁸⁸ *Id.* at 1574.

⁸⁹ *Id.*

⁹⁰ *Id.* at 1576.

⁹¹ *Id.*

⁹² 132 F.2d 828 (5th Cir. 1943).

⁹³ *Id.* at 829.

C. The Surety's Discharge Under The Supersedeas Bond

A surety's liability may be discharged on a supersedeas bond in certain very narrow and limited circumstances. On a state court level, the surety's discharge is governed by both the applicable jurisdiction's laws and the terms of the supersedeas bond.⁹⁴ In federal court, the terms of the supersedeas bond govern the conditions under which a surety may be discharged. As a practical matter, however, courts release supersedeas bonds "when the bond has served its purpose and no outstanding judgment remains."⁹⁵ More specifically, a "supersedeas bond posted for a stay of execution of judgment should be released once all appeals are exhausted, the stay has been lifted and full payment has been made."⁹⁶

1. The judgment-debtor satisfies the judgment appealed from by payment in full to the judgment-creditor

A surety's liability on a supersedeas bond will be discharged upon the full satisfaction of the monetary judgment appealed from by the judgment-debtor.⁹⁷ The respective law governing supersedeas bonds in Maryland, Virginia, and the District of Columbia also expressly recognize a surety's discharge of liability in this circumstance.⁹⁸

Importantly, the full satisfaction of the monetary judgment includes the payment of any costs awarded and interest accrued on the monetary judgment, as well as any damages for delay.⁹⁹ In *Wilmer v. Bd. of Cnty. Com'rs of Leavenworth Cnty., Kan.*,¹⁰⁰ the monetary judgment appealed from was affirmed but modified by the Tenth Circuit on appeal because it exceeded a relevant statutory damages cap. The appellate court reduced the monetary judgment to equal the statutory cap.¹⁰¹ Subsequently, the judgment-debtor paid the principal amount of the monetary judgment entered by the Tenth Circuit and moved for a release of the supersedeas bond securing the monetary judgment. The judgment-debtor, however, failed to pay the interest and costs associated with the monetary judgment, arguing that these

⁹⁴ See e.g., Md. Rule 8-423; Super. Ct. R. Civ. P. 62-I; VA Code Ann. § 8.01-676.1(C).

⁹⁵ *Halliburton Energy Servs., Inc. v. NL Indus.*, 703 F. Supp. 2d 666, 669 (S.D. Tex. 2010).

⁹⁶ *Id.*

⁹⁷ *Id.* at 670-71 (judgment-debtor satisfied monetary portion of judgment affirmed on appeal and supersedeas bond released); *Ministry of Def. & Support for the Armed Forces of the Islamic Republic of Iran v. Cubic Def. Sys., Inc.*, 98-CV-1165-B DHB, 2012 WL 2152068 (S.D. Cal. June 12, 2012) (same).

⁹⁸ Md. Rule 8-423; Super. Ct. R. Civ. P. 62-I; VA Code Ann. § 8.01-676.1(C).

⁹⁹ See *id.*

¹⁰⁰ 916 F. Supp. 1079 (D. Kan. 1996).

¹⁰¹ *Id.* at 1080.

additional sums resulted in the damages award exceeding the statutory damages cap.¹⁰² The District Court denied the motion to release the supersedeas bond and refused to release the supersedeas bond until the interest and costs were paid.¹⁰³

A surety, therefore, may need to educate a judgment-debtor prior to the issuance of the supersedeas bond on the ancillary costs associated with a monetary judgment and the procedures for satisfying a monetary judgment “in full.” Indeed, a judgment-debtor’s failure to pay costs, accrued interest or damages arising from delay, may result in a court’s refusal to discharge the supersedeas bond and may further result in a portion of the penal sum being released to the judgment-creditor to cover any deficiencies in the judgment-debtor’s payment.

2. The complete reversal of the judgment appealed from as to both liability and damages

A surety’s liability on a supersedeas bond will be discharged when the monetary judgment appealed from, or at least the portion secured by the supersedeas bond, is reversed as to both liability and damages.¹⁰⁴ Under this circumstance, the judgment-debtor has successfully prosecuted the appeal with effect.¹⁰⁵

3. The judgment appealed from is affirmed as to liability, but the damages award is vacated for failure to prove entitlement to damages

A surety’s liability on a supersedeas bond is discharged when a damages award is vacated on appeal for failure to prove entitlement to damages even if the defendant’s/judgment-debtor’s liability is affirmed. The Fifth Circuit addressed this circumstance in *Neeley v. Bankers Trust Co. of Texas*.¹⁰⁶ In *Neeley*, the defendant appealed a large monetary judgment awarded to the plaintiff and provided a supersedeas bond. On appeal, the Circuit Court reversed, in part, and affirmed, in part, the District Court’s findings regarding the defendant’s liability and vacated all damages. The damages awarded for the portions of the monetary judgment that were reversed in their entirety were vacated for the

¹⁰² *Id.*

¹⁰³ *Id.* at 1081.

¹⁰⁴ *Revlon, Inc.*, 647 F. Supp. at 906 (supersedeas bond discharged after Circuit Court vacated judgment appealed from as to both liability and damages); *In re Castle Texas Prod. Ltd. P’ship*, 157 S.W.3d 524, 526, 528 (Tex. App. 2005) (supersedeas bond discharged after intermediate appellate court vacated judgment appealed from as to both liability and damages and Texas Supreme Court denied certiorari); *Nolan*, 166 N.W. at 719 (“Where there is a square reversal on appeal, the sureties on the bond, given to stay the execution of that judgment, are not liable.”).

¹⁰⁵ See e.g., *Crane*, 203 U.S. at 447; *Beatrice Foods*, 930 F.2d at 1575; *Grimme Combustion, Inc.*, 867 A.2d at 610.

¹⁰⁶ 848 F.2d 658 (5th Cir. 1988).

plaintiff's/judgment-creditor's failure to prove the judgment-debtor's liability.¹⁰⁷ Regarding the portions of the monetary judgment that were affirmed as to liability, however, the corresponding damages were vacated for failure to prove the plaintiff's/judgment-creditor's entitlement to damages. Accordingly, the appellate court remanded for a new damages trial on the portions of the monetary judgment which were affirmed. On remand, the District Court released the surety from liability on the supersedeas bond.¹⁰⁸ The plaintiff/judgment-creditor moved the District Court to reconsider the surety's release.¹⁰⁹ The court denied the motion for reconsideration and the plaintiff/judgment-creditor appealed.¹¹⁰

The Fifth Circuit noted that it vacated the remaining damages for the portions of the affirmed monetary judgment in the original appeal in order for the plaintiff "to prove [] damages on remand."¹¹¹ Thus, the court held the "retrial on damages result[ed] in an entirely new judgment. The bond is limited to any decree of the court of appeals; it does not include an entirely new judgment of the district court."¹¹² *Neely*, therefore, stands for the proposition that a damages award vacated in its entirety for failure to prove entitlement to damages (*i.e.*, any proof of harm that would result in damages) discharges the surety's liability on the supersedeas bond even if the judgment-debtor's liability is affirmed. This results because any new award of damages on a retrial to prove entitlement to damages constitutes a separate and distinct monetary judgment from the original monetary judgment. The new monetary judgment is not identified in the supersedeas bond and, therefore, not secured by the supersedeas bond. Accordingly, the new monetary judgment is beyond the scope of a surety's obligations on the supersedeas bond.

The circumstance in *Neely* is distinguishable from circumstances when the appellate court vacates a damages award in order for the trial court to recalculate the amount of damages due or to hear additional evidence to determine the accuracy of the damages award because in neither of those circumstances is the trial court's original finding of entitlement to damages affected. Thus, in the two latter scenarios, the only issue on remand is the quantum of the affirmed damages award – no new judgment is entered, only a modification to the monetary amount of the original judgment. By contrast, in the former scenario, the issue on

¹⁰⁷ *Id.* at 659.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* (district court certified issue as a final judgment for appeal pursuant to 28 U.S.C. § 1292(b)).

¹¹¹ *Id.* at 660.

¹¹² *Neeley*, 848 F.2d at 660. In *Neely*, the supersedeas bond language dictated the surety's liability was triggered by a decree from the United States Court of Appeals or the United States Supreme Court. *Id.* at 659. The supersedeas bond language limiting a surety's liability to a decree issued from an appellate court, as opposed to a trial court, is the industry norm and, therefore, the holding in *Neeley* is widely applicable. See *e.g.*, *Morrison Knudsen*, 532 F.3d at 1068-69; *Tennessee Valley Auth.*, 803 F.2d at 798. Moreover, Maryland and the District of Columbia also recognize this general rule. Md. Rule 8-423; Super. Ct. R. Civ. P. 62-I.

remand is the existence of harm that may give rise to the award of damages. The Second Circuit elaborated in dicta:

If, after an appeal, there remains a question of whether *any* compensable harm was done, then the bond may be allowed to lapse. When the plaintiff has yet to prove any damages, it is unnecessary and unfair to ask the defendant to continue to provide a bond to ensure that money will be available should damages be proven. An appeal has been prosecuted to effect, then, when appellee must still prove on remand that he suffered a compensable harm.¹¹³

Prior to *Neeley*, the Fifth Circuit encountered a similar circumstance in *Aetna Cas. & Sur. Co. v. LaSalle Pump & Supply Co., Inc.*¹¹⁴ In *LaSalle*, the original matter was filed in Louisiana state court. In that action, LaSalle sought recovery for losses incurred in a warehouse fire allegedly caused by the negligence of a railroad company. At trial, LaSalle obtained a monetary judgment against the railroad company. On appeal, the liability portion of the monetary judgment was affirmed but the damages award was reversed. The state appellate court held the finding of entitlement to damages was supported solely by inadmissible hearsay evidence. On remand for a new trial on damages, LaSalle sufficiently proved its entitlement to damages and a new damages award was entered by the trial court. Thereafter, the railroad company was unable to pay the judgment and LaSalle sought recovery under the supersedeas bond that secured the original monetary judgment on appeal. Aetna, the surety, then demanded and received, under protest, a sum equaling the penal sum of the supersedeas bond from a bank who secured Aetna for the supersedeas bond with a letter of credit. The bank contended that the reversal of the damages award in the underlying state court appeal discharged Aetna's liability under the supersedeas bond.

To resolve the dispute, Aetna initiated an interpleader action in the U. S. District Court and deposited the penal sum of the supersedeas bond in the District Court. The District Court granted the bank's motion for summary judgment and found that the supersedeas bond was discharged after the reversal of the damages award on the underlying state court appeal. LaSalle appealed to the Fifth Circuit.

The Fifth Circuit affirmed the discharge of the supersedeas bond. Regarding the original monetary judgment, the court held that "LaSalle failed to prove its entitlement to a specific damage award and the judgment in its favor was accordingly reversed."¹¹⁵ The court elaborated:

In this case, we are persuaded by the language of the bond that Aetna did not obligate itself to pay any judgment that might ultimately be rendered in the case

¹¹³ *Beatrice Foods*, 930 F.2d at 1576 (emphasis in original).

¹¹⁴ 804 F.2d 315 (5th 1986).

¹¹⁵ *Id.* at 318.

against the railway. The bond recites the original judgment, including its amount, thus defining the obligation to be only for payment of that judgment and, under the language of the bond and Louisiana case law, any modification of that judgment by the appellate court. Nothing in the bond indicates an intent to be bound for payment of an entirely new judgment, rendered after a new trial.¹¹⁶

Lastly, in *Nolan v. Glynn*,¹¹⁷ a similar result was reached. In *Nolan*, a plaintiff's monetary judgment against a defendant was reversed on appeal and a new trial was conducted. The new trial resulted in another monetary judgment against the defendant. Subsequently, however, the court denied the plaintiff's attempted enforcement of the supersedeas bond provided by the judgment-debtor to secure the original monetary judgment pending appeal. The court stated:

The reversal constitutes a declaration that the judgment below was not rightly entered on account of errors found in the record which vitiated the judgment. A declaration from this court that the judgment was wrongly entered against the defendant is, in effect, a declaration that the plaintiff had no judgment which she had a right to enforce against the defendant.

Upon a retrial under proper proceedings, we assume another judgment was entered. These sureties were not party to this other judgment, nor did they bind themselves in any way to pay this later judgment. Their contract [the supersedeas bond] bound them only to such orders and judgments as were made or rendered by the Supreme Court to which appeal was taken.¹¹⁸

Importantly, a close reading of *Neeley* and *Nolan* again reveals that the language of the supersedeas bond is crucial in determining the scope of a surety's liability. Indeed, a surety's discharge as discussed in this section is not absolute. Rather, the language of the supersedeas bond must expressly indicate that the surety binds itself only to a decree entered or ordered by an appellate court. If the supersedeas bond language is silent on this point, a surety may ultimately be liable on an entirely new damages award entered by a trial court after a retrial on damages on remand, even if the appellate court reversed the original damages award for failure to prove entitlement. This risk may be qualified in state court, somewhat, depending on the scope of the applicable jurisdiction's procedural rules and statutes relating to supersedeas bonds.

4. Other Routes to Avoid Liability

¹¹⁶ *Id.* at 317-18.

¹¹⁷ 166 N.W. 717.

¹¹⁸ *Id.* at 718-19.

Sureties have raised several defenses to the judgment-creditor's enforcement of a supersedeas bond, other than those previously discussed, which do not directly relate to the liability issue. In *Iowa State Bank & Trust Co. v. Michel*,¹¹⁹ the judgment-debtors provided a supersedeas bond to secure some but not all elements of a judgment entered by the trial court. The judgment-creditor attempted to enforce the supersedeas bond against a portion of the judgment which the judgment-debtor did not appeal. The judgment-creditor argued the "defendants' failure to appeal the personal judgment operated as an affirmance of that judgment, thereby making the bond available to satisfy it."¹²⁰ The court recognized that supersedeas bonds are only enforceable to secure judgments "appealed from" and "affirmed[.]" Since the personal judgment against the defendants was never appealed, it could not be secured by the supersedeas bond in the first instance. The supersedeas bond, therefore, could not be enforced against the surety as to the unappealed/unsecured portion of the judgment.¹²¹ This case illustrates a seemingly obvious, but extremely significant, proposition – a supersedeas bond is only enforceable as to the judgment it secures on appeal, not necessarily every portion of a judgment.

In *Goldberg. Marchesano. Kohlman. Inc. v. Old Republic Sur. Co.*,¹²² the court articulated another obvious but important proposition - a supersedeas bond is only enforceable against a judgment entered against a judgment-debtor covered by the supersedeas bond. In *Old Republic*, a plaintiff obtained a monetary judgment against two defendants. Only one defendant provided a supersedeas bond to secure the monetary judgment pending appeal. On appeal, the defendant who provided the supersedeas bond obtained a reversal. The monetary judgment against the other defendant, however, was affirmed. Subsequently, the plaintiff attempted to enforce the supersedeas bond against the judgment entered against the defendant against whom the judgment was affirmed on appeal. The court declined to enforce the supersedeas bond because the defendant was not named on the face of the supersedeas bond and, therefore, was not covered by the supersedeas bond.¹²³

In *Beatrice Foods*, the surety attempted to escape liability on the supersedeas bond by arguing that it never received a proper opportunity to be heard on a motion to execute the supersedeas bond in violation of its procedural due process rights.¹²⁴ The Local Rules for the USDC of Connecticut, where the case was pending, provided 21 days for a party to respond to a motion. The District Court, however, granted the judgment-creditor's motion to enforce the

¹¹⁹ 683 N.W.2d 95, 100-01 (Iowa 2004).

¹²⁰ *Id.* at 100.

¹²¹ *Id.* at 101.

¹²² 727 A.2d 858 (D.C. 1999).

¹²³ *Id.* at 861.

¹²⁴ *Beatrice Foods*, 930 F.2d at 1576-77. The surety also made a non-sensical argument it failed to receive notice which the court rejected. *Id.*

supersedeas bond within 18 days. The appellate court rejected the proposition that the surety's due process rights were violated because the motion at issue was purely "legal in nature." The court, therefore, held that even if the district court erred in prematurely ruling on the motion, the error was harmless. Although the surety in *Beatrice Foods* was unsuccessful, the case illustrates the proposition that procedural obstacles may arise which hinder or even prohibit a judgment-creditor from enforcing a supersedeas bond.

IV. PROCEDURAL MATTERS

A. Procedures For The Judgment-Creditor To Enforce A Supersedeas Bond After The Conditions Of A Supersedeas Bond Have Been Met

If a judgment-creditor prevails on appeal and the judgment-debtor fails to satisfy the monetary judgment in full, the surety's liability under the supersedeas bond is triggered. In this circumstance, there are multiple methods for a judgment-creditor to enforce its rights against the supersedeas bond. In federal court, FED. R. CIV. P. 65.1 ("Proceedings Against a Surety"), allows a judgment-creditor to enforce a surety's liability "on motion without an independent action." Thus, the judgment-creditor may simply move the district court in which the original action was pending to order the surety to release the appropriate amount of the penal sum to the judgment-creditor.

In state court, the relevant local rules and statutes may determine how the enforcement of the supersedeas bond against the surety is undertaken. Regardless, a review of the case law reveals that, generally, some form of affirmative action is required in the trial court where the supersedeas bond was provided.¹²⁵

In both state and federal court, it appears the enforcement of the surety's liability on the supersedeas bond may begin immediately after the surety's liability is triggered – namely, upon the entry of an appellate order or trial court order pursuant to an appellate court order.¹²⁶

Accordingly, the enforcement of the supersedeas bond against the surety may begin once the supersedeas bond conditions are triggered, even if the judgment-debtor can satisfy the judgment in full.¹²⁷ In the event that the judgment-debtor files a bankruptcy case, the

¹²⁵ *Grimme Combustion, Inc.*, 867 A.2d 602 (affirming grant of judgment-creditor's Application to Enforce Liability on Supersedeas Bond after judgment-debtor "refused to pay judgment modified by trial court on remand"); *Harris v. Keoun*, 135 S.W.2d 194 (judgment-creditor initiated and successfully prosecuted lawsuit against surety to recover on supersedeas bond).

¹²⁶ *Brookridge Funding Corp. v. Nw. Human Servs. Inc.*, Ca No. 3:99CV2339, 2008 WL 2229852 (D. Conn. May 29, 2008) (noting that if the judgment-creditor's appeal is dismissed or affirmed by the Second Circuit the surety's liability is triggered and the judgment-creditor "will be entitled to payment [on the bond] immediately upon that that ruling taking effect"); *North Coventry Township v. Tripodi*, CA No. 831 C.D. 2012, 2013 WL 618774 (Pa. Feb. 20, 2013) (Pennsylvania statute, Pa. R.A.P. 1735(b), allows enforcement immediately after entry of appellate order affirming order appealed from).

¹²⁷ For this reason, the surety should always require the judgment-debtor/bond principal to execute an indemnity agreement requiring the judgment-debtor (or other indemnitors) to indemnify the surety for any portion

surety may need to take action in the bankruptcy case to preserve and/or pursue the collateral.¹²⁸

B. Procedures For A Surety To Obtain Discharge On A Supersedeas Bond After The Conditions Of A Supersedeas Bond Have Been Met

If the judgment-debtor prevails on appeal or satisfies in full a monetary judgment affirmed on appeal, the surety should take affirmative action with the relevant court to obtain a discharge from the supersedeas bond. Generally, this requires the surety or the judgment-debtor to move the trial court in which the supersedeas bond is filed to discharge the supersedeas bond.¹²⁹ Since the original supersedeas bond is generally required to be filed with the clerk of the court,¹³⁰ a surety may also consider requesting that the supersedeas bond be returned or destroyed by the clerk of the court to prevent any future actions on the supersedeas bond.

V. CONCLUSION

A surety's execution of a supersedeas bond is risky business. There are very few bonds where the existence of a "default" and a right to pursue the bond is so out of the surety's control, mainly because default on and enforcement of the supersedeas bond are absolutely controlled by the determinations of the court. This paper attempted to create and delineate a list of appellate results which trigger a surety's liability on or discharge from a supersedeas bond. The purpose of this analysis is to inform the surety of the possible scenarios the surety may face when there is a claim against its supersedeas bond. Due to the multitude of and distinctions between federal and state court jurisdictions, however, it is impossible to predict every type of result. Nonetheless, this paper offers a roadmap for the surety to analyze the various risks of providing supersedeas bonds in both federal and state court and the knowledge to mitigate potential liability prior to providing supersedeas bonds in both federal and state court.

of the penal sum paid by the surety. Furthermore, if the surety has obtained collateral to secure the supersedeas bond, it may be able to use the collateral, once it is liquid, to pay the monetary judgment up to either the amount of the value of the collateral or the penal sum of the supersedeas bond.

¹²⁸ See Footnote 7 for issues relating to bankruptcy.

¹²⁹ *Halliburton*, 703 F. Supp.2d at 669 (court granted judgment-debtor's Motion to Release Supersedeas Bond after judgment-debtor paid in full the judgment secured by a supersedeas bond); *Goss Intern v. Tokya Kikai Seisakusho Ltd.*, 2006 WL 4757279 (N.D IA 2006) (court granted judgment-debtor's Motion to Terminate the Appeal Bond after judgment-debtor paid in full the judgment secured by a supersedeas bond); *but cf. In re Castle Texas Prod. Ltd. P'ship*, 157 W.W.3d 524 (surety released from supersedeas bond as a matter of law upon reversal of judgment secured by bond and, therefore, a motion to release the supersedeas bond was "unnecessary under our case law and not required by rule or statute").

¹³⁰ See *e.g.*, FED. R. CIV. P. 65.1; Md. Rule 8-422(a)(1).

BIOGRAPHY

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