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Francis M. Wikstrom, Esq.
Chair, Utah Advisory Committee on
the Rules of Civil Procedure
Parsons Behle & Latimer
201 South Main Street, Suite 1800
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Salt Lake City, Utah 84145-0898

Re: Proposed Changes to Utah Rule of Civil Procedure 62

Dear Mr. Wikstrom:

I understand that at its meeting on September 22, 2004, the Committee will be considering proposed changes to Utah Rule of Civil Procedure 62, that pertain to appeal bonds. I have been asked by business groups interested in the issue to appear before the Committee to discuss this important subject. I am submitting these comments in advance of the hearing, and would be happy to discuss any of these points, or any other matters, at the Committee's meeting on September 22.

Introduction

In the last four years, 31 states other than Utah have enacted statutory limits on the size of appeal bonds or modified their court rules to limit the size of appeal bonds. The chart attached to this letter identifies the states that have acted, and briefly describes what they have done. I have been involved in almost all of these efforts on behalf of my clients Philip Morris USA, Lorillard Tobacco Company, and R.J. Reynolds Tobacco Company. These companies have an interest in this issue because high appeal bonds may make it difficult for them to meet their obligation to the various states under the state tobacco settlement agreement that was entered into in November 1998. Utah is a party to that agreement and receives millions of dollars every year pursuant to that settlement.

In the last decade, the size of damage awards in civil cases has skyrocketed,[1] and the ability of defendants to post bonds to prevent plaintiffs from collecting these awards while the defendant appeals them has been seriously threatened as a result. The potential negative consequences of high appeal bonds was demonstrated in July of 2000, when a Miami court awarded a record-setting $145 billion in punitive damages in a 700,000-member class action against the tobacco industry.[2] Shortly before the verdict, the legislature modified the existing appeal bond requirement in Florida, which required a bond equal to 125 percent of the judgment, to limit the bond for punitive damages to $100 million.[3]

Had there not been an appeal bond cap in place at the time of the Florida verdict, the defendants would have had to post an appeal bond of $181 billion under Florida's bonding rules in order to stay the judgment while they appealed. Since no company or industry could possibly post a bond in this amount, the tobacco companies' only alternative to obtain a stay pending appeal would have been to declare bankruptcy. But if the companies had filed for bankruptcy, this would likely have resulted in the termination of all MSA settlement payments nationwide, at least for some time if not permanently, and made the value of an appeal questionable. However, the legislature's action allowed the companies to post a bond and to continue to make their settlement payments during the appeal. An intermediate appellate court ultimately reversed the verdict in its entirety,[4] and the case is now on appeal to the Florida Supreme Court.

Appeal bonds are far from "just a tobacco issue." Current trends in massive litigation verdicts place many other corporations and industries at risk of being unable to comply with state bonding rules in the diminishing number of states that have not yet acted to limit the size of appeal bonds. No crystal ball is needed to make this prediction – one only needs to pick up a newspaper to read about huge judgments against pharmaceuticals, oil, high-tech and other companies. Unless limits on appeal bonds are enacted throughout the country, companies that employ thousands of people could face a situation where they would be forced into bankruptcy in order to stay the execution of a large damage award.

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1 See e.g., VerdictSearch, Top 100 of 2003 (last visited Feb. 18, 2004), at http://www.verdictsearch.com/jv3_news/top100/ (21 jury verdicts over $100 million in 2003, including one for $11.8 billion); "1992's Largest Verdicts," National Law Journal, at S1 (Jan. 25, 1993) (8 verdicts exceeded $100 million in 1992).

2 See Engle v. R.J. Reynolds Tobacco Co., No. 9408273 (Cir. Ct., Dade Cty., Fla. 2000).

3 See Fl. St. Ann. § 768.733 (2000) (bond for punitive damages portion of class action judgment may not exceed $100 million or 10 percent of defendant's net worth, whichever is less).

4 Liggett Group Incorporated v. Engle, 853 So.2d 434, 445 (Fla. App. 2003).

There is only one way for a defendant to avoid this fate, and it is equally disturbing – the defendant must settle, even if it believes the plaintiff's case is flimsy or without merit. In settlement negotiations, defendants may be forced to accept the plaintiffs' terms, because they know that otherwise they will be forced into bankruptcy. Bonding rules were never intended to be used as a bludgeon against a defendant, but as verdicts have skyrocketed that is what has happened.

Other States Have Enacted Sensible Bond Caps

Recognizing the problems caused by high appeal bonds, the majority of states across the country have adopted legislation and court rules that bring fairness to the bonding process. Thirty-one states, not including Utah, have adopted absolute limits on the size of the bond, regardless of the value of the judgment, and five other states do not require a defendant to post a bond at all during an appeal.[5] Some states have passed legislation that applies broadly to all litigants, while other states have passed more limited legislation that applies only to MSA signatories, successors and affiliates. The bond limits range from $1 million to $150 million.

These limits contrast with Utah's Rule 62, which requires a defendant who seeks to appeal an adverse judgment to post a bond in order to stay the execution of the judgment,[6] generally in the amount of the underlying judgment.[7] This means that in cases with damage awards in the hundreds of millions or billions of dollars, the defendant in a Utah action will likewise be required to post a bond in the hundreds of millions or billions of dollars.

The Advisory Committee's Current Proposal Can Be Simplified And Improved

The Advisory Committee has recognized that changes are needed to Rule 62 in order to solve the problems caused by high appeal bonds. However, I do not believe that the Committee's proposed amendments to Rule 62 adequately address these problems. Most significantly, by giving the court complete discretion to set the bond in any amount that it determines will "adequately protect the judgment creditor," the proposal does not ensure that

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[5] In addition, Illinois has amended its bonding rule to provide that the court may approve a bond in an amount less than the full amount of the judgment if it determines that a full bond is not reasonably available to the judgment creditor. See Ill. Sup. Ct. R. 305.

[6] See e.g., Cheves v. Williams, 993 P.2d 191, 203 (Utah 1999) ("It is elemental that where a judgment is not stayed by a proper order or bond there is no impediment against proceedings in the trial court for the purpose of executing on the judgment.")(citation omitted).

[7] See Utah R. Civ. P. 62(a) (providing that a trial court may grant a motion for stay pending appeal "in its discretion and on such conditions for the security of the adverse party as are proper").

defendants will not be bankrupted by an onerous appeal bond. The proposal contains "presumed limits," but nothing prevents a court from exceeding these limits if it determines that a higher bond is necessary to protect the plaintiff.

With a purely discretionary approach, there is the very real risk that a trial judge who is willing to accept a novel liability theory or enter a large judgment against a defendant will be unwilling to exercise its discretion in favor of that defendant to set a lower bond. As a result, under the Committee's proposal, the amount of the bond required to stay the execution of a multi-million or -billion dollar verdict could still far exceed what a company could post. Placing a cap on the amount of the bond required is the only way to achieve a uniform system that ensures fairness in civil litigation. In addition, a purely discretionary approach would involve extensive post-trial proceedings to determine the appropriate bond. These proceedings would require the use of additional court resources and raise the cost of litigation for all parties.

The Committee's proposed discretionary approach differs dramatically from the actions taken by other states to address the appeal bond issue. As I noted earlier, thirty-one states have adopted specific and absolute limits on the amount of the bond required to stay the execution of the judgment pending appeal. While a number of these states give courts some discretion in setting the bond up to the amount of the bond limit, courts are not permitted to exceed the cap in any case. These states have recognized that the only way to ensure that a defendant is not bankrupted by a high appeal bond is to set a non-negotiable limit on the amount of the bond.

The "presumed limits" in the Committee's proposal are problematic for another reason as well. The "presumed limit" for compensatory damages under the Committee's proposal is the full amount of compensatory damages. However, the "mega-judgments" which create potentially bankrupting appeal bonds are not limited to punitive damages; with increasing frequency, defendants are being ordered to pay hundreds of millions or billions of dollars in non-economic and compensatory damages. In an Illinois case called Price, a judge ordered the defendant to pay a class of smokers over $10.1 billion in damages, of which $7.1 billion was compensatory damages.[8] In cases like Price, a defendant may simply be unable to post a bond in the amount of the compensatory damages, even with a "presumed limit" on the bond required for punitive damages portion of the judgment.

The Committee's separate "presumed limit" for punitive damages also deviates from the structure adopted in other states. Only seven of the thirty-one states with bond caps enacted legislation or adopted court rules that applied the limit only to the punitive damages portion of a judgment. However, four of these seven states have subsequently amended their bond statutes

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[8] Price v. Philip Morris, Case No. 00-L-112 (March 21, 2003).

so that the limits apply to all forms of money judgments.[9] Thus, only three states currently restrict their bond caps to punitive damages.[10]

Finally, the Committee's proposal is flawed because it allows the court to impose a wide range of arbitrary restrictions on the defendant if the court sets a bond lower than the amount of the judgment, without any showing of wrongdoing on the part of the defendant. Some of the restrictions sanctioned by the proposed amendments – such as a requirement that the defendant obtain a lien on its assets in other states – could impede the operation of a defendant's business just as much as an appeal bond that is set so high that the defendant is forced to declare bankruptcy.

Once again, this aspect of the Committee's proposal differs greatly from the approach taken by other states. No other state has adopted language allowing a judge to impose such restrictions. Instead, a full 28 out of the 31 states with appeal bond caps have adopted a much simpler "dissipation of assets" clause that allows courts to set a higher bond amount up to the full value of the judgment if the court determines that the appellant is dissipating assets to avoid paying a judgment.[11] These clauses ensure that defendants will reap the benefit of a bond cap, unless the defendant is misbehaving – in which case it does not deserve the protection afforded by the bond limitation.

Conclusion

For these reasons, I would like to urge the Advisory Committee to revise its proposed amendments to Rule 62 in several respects. First and foremost, the Committee should turn its "presumed limit" into a hard cap. This is the only way to ensure that a defendant is not bankrupted by a high appeal bond, and it follows the approach adopted by other states. Second, the cap should apply equally to both punitive and compensatory damages, in recognition of the fact that compensatory damage awards can reach the tens or hundreds of millions or billions of dollars. Finally, the Committee should take out the numerous restrictions that courts can place on defendants if the bond is set below the amount of the judgment, and replace it with a simple

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[9] See Ga. Code. Ann. § 5-6-46; Va. Code Ann. § 8.01-676.1 J; N.C. Gen. Stat. § 1-289 (2003); Fla. Stat. § 569.23 (2003). The Florida statute was broadened to cover the bond for damages of all kinds but only in cases involving signatories to the tobacco Master Settlement Agreement or their successors or affiliates.

[10] Miss. R. App. P. 8(b)(2); Idaho Code § 13-202 (2003); Ky. Rev. Stat. Ann. § 411.187 (2003).

[11] The three states whose bond limits do not include dissipation of assets provisions are Nebraska, Ohio, and South Carolina. *See* 2004 Neb. Laws L.B. 1207 (not yet codified); Ohio Rev. Code Ann. § 2505.09 (2002); 2004 S.C. Acts 216 (not yet codified).

clause that allows courts to set a higher bond only if a defendant is intentionally dissipating its assets to avoid payment of a judgment. For your consideration, I have attached a revision to the Committee's proposal that would accomplish what I have described.

Thank you for your consideration of these comments, which I look forward to discussing with the Committee on September 22.

Sincerely yours,

Keith A. Teel

KAT/rmr

ENACTED APPEAL BOND LEGISLATION

State	Bill Number	Date Approved	To Whom Limits Apply	Amount of Appeal Bond Limit	Scope of Appeal Bond Limit
Arkansas	HB 1038	3/27/2003	All litigants	$25,000,000	Applies to all judgments in civil litigation regardless of legal theory
California	A 1752	8/9/2003	Master Settlement Agreement signatories, successors, and affiliates	The lesser of 100% of the judgment or $150,000,000	Applies to all judgments in civil litigation regardless of legal theory
Colorado	HB 1366	5/20/2003	All litigants	$25,000,000	Applies to all judgments in civil litigation regardless of legal theory
Florida	HB 1721	5/9/2000	All litigants in class actions	$100,000,000	As passed in 2000, applied to judgments for non-compensatory damages. Broadened in 2003 to apply to all money judgments under any legal theory
	SB 2826	6/10/2003	Master Settlement Agreement signatories, successors, and affiliates	$100,000,000	
Georgia	HB 1346	3/30/2000	All litigants	$25,000,000	Applies to punitive damages only
	SB 411	5/17/2004	All litigants	$25,000,000	Expands current law to apply to all forms of judgments in civil litigation
Hawaii	SB 2840	7/2/2004	MSA signatories, successors, and affiliates	$150 million	Applies to all forms of judgments in civil litigation under any legal theory
Idaho	HB 92	3/26/2003	All litigants	$1,000,000	Applies to punitive damages only
Indiana	HB 1204	3/14/2002	All litigants	$25,000,000	Applies to all judgments in civil litigation regardless of legal theory

State	Bill Number	Date Approved	To Whom Limits Apply	Amount of Appeal Bond Limit	Scope of Appeal Bond Limit
Iowa	HF 2581	*Pending Governor's signature*	All litigants	$100,000,000	Applies to all judgments in civil litigation regardless of legal theory
Kansas	SB 64	4/21/2003	Master Settlement Agreement signatories and their successors	$25,000,000	Applies to all judgments in civil litigation regardless of legal theory
Kentucky	SB 316	3/29/2000	All litigants	$100,000,000	Applies to punitive damages portion of a judgment
Louisiana	HB 1807 HB 1819	6/25/2001 7/2/2003	As passed in 2001, covered Master Settlement Agreement signatories only; broadened in 2003 to include "affiliates"	$50,000,000	Applies to all money judgments
Michigan	HB 5151	5/8/2002	All litigants	$25,000,000 plus COLA every 5th year	Applies to all judgments in civil litigation
Minnesota	HF 1425	5/13/2004	All litigants	$150 million	Applies to all forms of judgments in civil litigation under any legal theory
Mississippi	Rule 8	4/26/2001	All litigants	The lesser of the following: 1. 125% of the judgment 2. 10% of the net worth of the defendant 3. $100,000,000	Applies to the punitive damages portion of a judgment
Missouri	SB 242	7/10/2003	Master Settlement Agreement signatories, successors, and affiliates	$50,000,000	Applies to all forms of judgments in civil litigation
Nebraska	LB 1207	4/15/2004	All litigants	The lesser of the following: 1. Amount of the money judgment 2. 50% of appellant's net worth 3. $50 million	Applies to all forms of judgments in civil litigation

State	Bill Number	Date Approved	To Whom Limits Apply	Amount of Appeal Bond Limit	Scope of Appeal Bond Limit
Nevada	AB 576	5/29/2001	Master Settlement Agreement signatories	$50,000,000	Applies to all forms of judgments in civil litigation
New Jersey	SB 2738	11/21/2003	Master Settlement Agreement signatories, successors, and affiliates	$50,000,000	Applies to all forms of judgments in civil litigation
North Carolina	SB 2 SB 784	4/5/2000 4/23/2003	All litigants All litigants	$25,000,000	As passed in 2002, applied to judgments for non-compensatory damages. Broadened in 2003 to apply to all money judgments under any legal theory
Ohio	SB 161	3/28/2002	All litigants	$50,000,000	Applies to all forms of judgments in civil litigation
Oklahoma	SB 372 SB 1275 HB 2661	4/10/2001 5/28/2004 5/28/2004	As passed in 2001, covered Master Settlement Agreement signatories only; broadened in 2004 to include successors and affiliates as well Separate legislation was passed in 2004 that applies to all litigants	$25,000,000 Separate legislation was passed in 2004 that gives the court discretion to lower the bond if judgment debtor can show that it is likely to suffer substantial economic harm if required to post bond in the amount required by statute (which is double the amount of the judgment)	As passed in 2001, applied to all forms of judgments in civil litigation involving MSA signatories Separate legislation was passed in 2004 that applies to all forms of judgments in civil litigation

State	Bill Number	Date Approved	To Whom Limits Apply	Amount of Appeal Bond Limit	Scope of Appeal Bond Limit
Oregon	HB 2368	9/24/2003	Master Settlement Agreement signatories, successors, and affiliates	$150,000,000	Applies to all judgments in civil litigation regardless of legal theory
Pennsylvania	HB 1718	12/30/2003	Master Settlement Agreement signatories, successors, and affiliates	$100,000,000	Applies to all judgments in civil litigation regardless of legal theory
South Carolina	HB 4823	4/26/2004	MSA signatories, successors, and affiliates	Appeal automatically stays execution of judgment - no bond required	Applies to all forms of judgments in civil litigation
South Dakota	Sup. Ct. R. 03-13	9/29/2003	All litigants	$25,000,000	Applies to money judgments
Tennessee	SB 1687	6/5/2003	All litigants	$75,000,000	Applies to all forms of judgments in civil litigation
Texas	HB 4	6/11/2003	All litigants	The lesser of 50% of the judgment debtor's net worth or $25,000,000	Applies to money judgments
Virginia	HB 1547 HB 430/ SB 172	3/10/2000 4/8/2004	All litigants All litigants	$25,000,000 $25,000,000	As passed in 2000, applied only to punitive damages portion of a judgment; as passed in 2004, expanded to apply to all forms of judgments in civil litigation

State	Bill Number	Date Approved	To Whom Limits Apply	Amount of Appeal Bond Limit	Scope of Appeal Bond Limit
West Virginia	SB 661 S 671	5/2/2001 4/6/2004	As passed in 2001, applied only to Master Settlement Agreement signatories; amended in 2004 to clarify that the appeal bond limitations extend to appellants who control or are under common control with signatories to the master settlement agreement	$100,000,000 for all portions of a judgment other punitive damages; $100,000,000 for the punitive damages portion of a judgment	Applies to all civil litigation and provides that consolidated or aggregated cases shall be treated as a single judgment for purposes of the appeal bond limits
Wisconsin	AB 548	12/12/2003	All litigants	$100,000,000	Applies to all judgments in civil litigation regardless of legal theory

JURISDICTIONS THAT DO NOT REQUIRE BONDS

Jurisdiction	Governing Rule
Connecticut	Proceedings to stay noncriminal judgments shall be stayed automatically until the final determination of the cause. Conn. R. App. P. § 61-11.
Maine	The taking of an appeal operates as a stay of execution upon the judgment, and no supersedeas bond or other security shall be required. Me. R. Civ. P. 62.
Massachusetts	The taking of an appeal from a judgment shall stay execution upon the judgment during the pendency of the appeal. Mass. R. Civ. P. 62(d).
New Hampshire	No execution of a judgment shall issue until the expiration of the appeal period. N.H. Rev. Stat. Ann. § 527:1.
Vermont	The taking of an appeal operates to stay execution of the judgment during the pendency of the appeal; no supersedeas bond or other security is required. Vt. R. Civ. P. 62(d)(1).
Puerto Rico	Once a bill of appeal is filed, all further proceedings in lower courts regarding a judgment or any part thereof which is appealed, or the issues contained therein, shall be stayed, except for an order to the contrary, issued on its own initiative or by petition of a party thereto by the court of appeals. P.R. R. Civ. P. 53.9.

Recommended Amendments to the Advisory Committee's Rule 62 Proposal

Rule 62. Stay of proceedings to enforce a judgment.

(a) Stay upon entry of judgment. Execution or other proceedings to enforce a judgment may issue immediately upon the entry of the final judgment, unless the court in its discretion and on such conditions for the security of the adverse party as are proper, otherwise directs.

(b) Stay on motion for new trial or for judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of, or any proceedings to enforce, a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

(c) Injunction pending appeal. When an appeal is taken, from an interlocutory order or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such conditions as it considers proper for the security of the rights of the adverse party.

(d) Stay upon appeal. When an appeal is taken, the appellant by giving a supersedeas bond may obtain a stay, unless such a stay is otherwise prohibited by law or these rules. The bond may be given at or after the time of filing the notice of appeal. The stay is effective when the supersedeas bond is approved by the court.

(e) Stay in favor of the state, or agency thereof. When an appeal is taken by the United States, the state of Utah, or an officer or agency of either, or by direction of any department of either, and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

(f) Stay in quo warranto proceedings. Where the defendant is adjudged guilty of usurping, intruding into or unlawfully holding public office, civil or military, within this state, the execution of the judgment shall not be stayed on an appeal.

(g) Power of appellate court not limited. The provisions in this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings or to suspend, modify, restore, or grant an injunction, or extraordinary relief or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(h) Stay of judgment upon multiple claims. When a court has ordered a final judgment on some but not all of the claims presented in the action under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

(i) Form of supersedeas bond; deposit in lieu of bond; waiver of bond; jurisdiction over sureties to be set forth in undertaking.

(i)(1) A supersedeas bond given under Subdivision (d) may be either a commercial bond having a surety authorized to transact insurance business under Title 31A, or a personal bond having one or more sureties who are residents of Utah having a collective net worth of at least twice the amount of the bond, exclusive of property exempt from execution. Sureties on personal bonds shall make and file an affidavit setting forth in reasonable detail the assets and liabilities of the surety.

(i)(2) Upon motion and good cause shown, the court may permit a deposit of money in court or other security to be given in lieu of giving a supersedeas bond under Subdivision (d).

(i)(3) The parties may by written stipulation waive the requirement of giving a supersedeas bond under Subdivision (d) or agree to an alternate form of security.

(i)(4) A supersedeas bond given pursuant to Subdivision (d) shall provide that each surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as the surety's agent upon whom any papers affecting the surety's liability on the bond may be served, and that the surety's liability may be enforced on motion and upon such notice as the court may require without the necessity of an independent action.

(j) Amount of supersedeas bond.

(j)(1) A court shall set the supersedeas bond in an amount that adequately protects the judgment creditor against loss or damage occasioned by the appeal and assures payment in the event the judgment is affirmed, but in no case shall the bond exceed the limitations in subsection (j)(2), regardless of the value of the judgment. In setting the amount, the court may consider any relevant factor, including:

(j)(1)(A) the debtor's ability to pay the judgment;

(j)(1)(B) the debtor's opportunity to dissipate assets;

(j)(1)(C) the debtor's likelihood of success on appeal; and

(j)(1)(D) the respective harm to the parties from setting a higher or lower amount.

(j)(2) ~~The presumed limit on the amount of the supersedeas bond for compensatory damages is the amount of the compensatory damages plus costs and attorney fees, as applicable, plus 3 years of interest at the applicable interest rate. The presumed limit on the amount of the supersedeas bond for punitive damages is the lesser of~~ Notwithstanding subsection (j)(1), a supersedeas bond may not exceed the lesser of:

(j)(2)(A) 10% of the defendant's net worth;

(j)(2)(B) ~~50~~ 100% of the ~~punitive~~ total damages awarded; or

(j)(2)(C) $25,000,000.

(j)(3) If the court permits a supersedeas bond that is less than the total amount of the judgment, ~~the order may be conditioned on one or more of the following during the pendency of the appeal:~~ and if the appellee proves by a preponderance of the evidence that the judgment debtor is intentionally dissipating it assets outside the ordinary course of business to avoid payment of a judgment, the court may enter such orders as are necessary to protect the judgment creditor, including an order raising the bond to the full amount of the judgment plus interests and costs.

~~(j)(3)(A) an order prohibiting payment of dividends;~~

~~(j)(3)(B) an order prohibiting transfer or disposition of assets other than in the ordinary course of business;~~

~~(j)(3)(C) an order prohibiting loans other than in the ordinary course of business;~~

~~(j)(3)(D) an order requiring defendant to abstract the judgment to all jurisdictions in which it has significant assets; and~~

~~(j)(3)(E) an order requiring defendant and all corporate officers to personally acknowledge receiving the order and to consent to personal jurisdiction for purposes of enforcing the order.~~

(k) Objecting to sufficiency or amount of security. Any party whose judgment is stayed or sought to be stayed pursuant to Subdivision (d) may object to the sufficiency of the sureties on the supersedeas bond or the amount thereof, or to the sufficiency or amount of other security given to stay the judgment by filing and giving notice of such objection. The party so objecting shall be entitled to a hearing thereon upon five days notice or such shorter time as the court may order. The burden of justifying the sufficiency of the sureties or other security and the amount of the bond or other security, shall be borne by the party seeking the stay, unless the objecting party seeks a bond greater than the presumptive limits of this rule. The fact that a supersedeas bond, its

surety or other security is generally permitted under this rule shall not be conclusive as to its sufficiency or amount.