



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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CIVIL MINUTES -- GENERAL

Case No. CV 07-850-VBF(JTLx)
CV 07-1458-VBF(JTLx)✓

Dated: June 29, 2007

Title: United States Life Insurance Co. - v- Superior National Insurance Co., et al.
Superior National Insurance Co., et al.-v- United States Life Insurance Company

PRESENT: HONORABLE VALERIE BAKER FAIRBANK, U.S. DISTRICT JUDGE

Rita Sanchez
Courtroom Deputy

None Present
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

None Present

None Present

PROCEEDINGS (IN CHAMBERS): RULING ON PETITIONER'S *EX PARTE*
APPLICATION FOR STAY PENDING APPEAL
WITHOUT SUPERSADEAS BOND OR,
ALTERNATIVELY, TO SET AMOUNT OF
SUPERSADEAS BOND

The Court has read and considered Petitioner's *Ex Parte* Application papers, Respondents' Opposition thereto, and Petitioner's Reply. After careful review of the arguments set forth therein, the Court GRANTS Petitioner's request to stay execution of the judgment pending appeal, on the condition that a bond in the amount set herein be posted; and the Court DENIES Petitioner's request for waiver or reduction of the supersadeas bond. The supersadeas bond is set in the amount of six hundred million dollars (\$600 million). See Fed. R. Civ. P. 62(a).

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THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

Initials of Deputy Clerk

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Petitioner is entitled to a stay upon posting of an adequate supersedeas bond. Federal Rule of Civil Procedure 62(d), Stay Upon Appeal, states:

When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

The Court has discretion to set the amount of bond at an appropriate amount. Arban v. West Pub. Corp., 345 F.3d 390, 409 (6th Cir. 2003) (waiver of bond requirement not an abuse of discretion where there existed a "vast disparity between the amount of the judgment in this case and the annual revenue of the group."); Dillion v. City of Chicago, 866 F.2d 902 (7th Cir. 1988).

There is insufficient support for Petitioner's request for waiver of the bond requirement. There is no "vast disparity" between the amount of the judgment and the reserves of Petitioner. Moreover, Petitioner's request for a reduction in the bond amount based on grounds of solvency and availability of the Special Schedule P Funds to satisfy the judgment also has inadequate support and is denied.

Although Petitioner presents evidence of considerable financial strength, the showing does not support the relief requested, especially in light of the Opposition. (See Respondents' Opp., at 12; Stone Decl., ¶ 12.) Furthermore, the availability of the Special Schedule P Funds to satisfy the judgment is unclear, particularly in light of the grounds set forth in the Opposition. (See Respondents' Opp., at 13-18; Cal. Ins. Code §§ 923.5, 11691(a), 11698.02, 11700.)

In arriving at a specific bond amount, federal courts generally require that the amount be sufficient to satisfy the judgment plus interest, costs, and any other monetary relief (e.g. attorney fees) the appellate court may award. "Although the practice varies among judges, a bond of 1.25 to 1.5 times the judgment is typically required." Christopher A. Goelz and Meredith J. Watts, CAL PRAC. GUIDE: FED. NINTH CIR. CIV. APP. PRAC., Ch. 1-E, §1:168 (The Rutter Group 2007). Here, Petitioner acknowledges a liability amount of \$592.8 million and then asks this Court to issue a bond amount that offsets this value by that of the Special Schedule P Funds. Respondents request a bond amount of \$686,721,596.4. In light of all the information before the Court, this Court finds that a \$600 million supersedeas bond amount is appropriate.

With respect to the remaining arguments advanced by Respondents in Opposition—i.e. Petitioner's appeal is frivolous and the Court should require that the bond be issued by an unaffiliated surety (see Respondents' Opp., at 12-13; 18-23)—the Court finds them lacking in merit. The Court has no reason at present to doubt the ability or willingness of Petitioner or its chosen surety to satisfy the final judgment in this case.

The (Proposed) Order has been modified to reflect this ruling and is filed this date. The Clerk shall serve a copy of this Order on counsel by fax.

IT IS SO ORDERED.