

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	X	
MF GLOBAL HOLDINGS LTD., <i>et al.</i> ,	:	Chapter 11
	:	Case No. 11-15059 (MG)
Debtors.	:	(Jointly Administered)
	X	
MF GLOBAL HOLDINGS LTD., as Plan	:	
Administrator, and MF GLOBAL ASSIGNED	:	
ASSETS LLC,	:	
	:	
Plaintiffs,	:	Adv. Proc. No. 16-01251 (MG)
	:	
v.	:	
	:	
ALLIED WORLD ASSURANCE COMPANY LTD.,	:	
IRON-STARR EXCESS AGENCY LTD.,	:	
IRONSHORE INSURANCE LTD., STARR	:	
INSURANCE & REINSURANCE LIMITED., and	:	
FEDERAL INSURANCE COMPANY,	:	
	:	
Defendants.	X	

**ORDER STRIKING BOND POSTED BY ALLIED WORLD AND REQUIRING
THAT NEW BOND BE POSTED ON OR BEFORE 5:00 PM, FRIDAY,
JULY 21, 2017, OR ALLIED WORLD'S PLEADINGS WILL BE STRICKEN
AND A DEFAULT ENTERED**

**MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE**

Pending before the Court is *Plaintiffs' Motion to Strike Defendant Allied World's Defective Bond Under New York Insurance Law Section 1213, Strike Pleadings and Enter a Default Judgment*, ("Motion to Strike," ECF Doc. # 171). In response to the Motion to Strike, Allied World filed *Defendant Allied World's Opposition to Plaintiffs' Motion to Strike*, ("Opposition," ECF Doc. # 177). Plaintiffs then filed *Plaintiffs' Reply Brief in Support of Its Motion to Strike Defendant Allied World's Defective Bond Under New York Insurance Law Section 1213, Strike Pleadings and Enter Default Judgment*, ("Reply," ECF Doc. # 178). For the reasons explained below, the Motion to Strike is **GRANTED IN PART**. The bond on file with

the Court is **STRICKEN**; but Allied World may file a new bond that complies with applicable law on or before 5:00 PM, Friday, July 21, 2017, or Allied World's pleadings in this case shall be deemed stricken forthwith, without further order of this Court, and a default shall be entered.

On June 12, 2017, the Court entered its *Memorandum Opinion and Order Finding That Allied World Must Post a Bond Pursuant to New York Insurance Law Section 1213*, ("Opinion Requiring Posting of Bond," ECF Doc. # 159). The Opinion Requiring Posting of a Bond ordered Allied World to post a \$15 million bond with the Clerk of the Court within 14 days of the issuance of that Opinion. Allied World posted a bond, but Plaintiffs' Motion to Strike contends that the bond is deficient because it conditioned performance under the bond upon exhaustion of any appeal by Allied World from a final judgment entered by the Court. Indeed, the bond posted by Allied World does just that. The conditions imposed by the bond are improper.

Allied World attempts to condition the availability of its surety bond upon the exhaustion of appeals. No such requirement is contained in New York Insurance Law § 1213 and permitting this limitation is inconsistent with the purpose of the statute. Section 1213(c) makes clear that an unauthorized foreign insurer must post a bond that is "sufficient to secure payment of any *final judgment* which may be rendered in the proceeding." N.Y. Ins. Law § 1213(c) (emphasis added). As Plaintiffs correctly argue, a "final judgment is defined at both the state and federal level as a judgment entered by the *trial court* which "represents a valid and conclusive adjudication of the parties' substantive rights, unless and until it is overturned on appeal." *See, e.g., Da Silva v. Musso*, 76 N.Y.2d 436, 440 (1990); *see also* FED. R. BANKR. P. 7062, 7069, 8007. A final judgment by a trial court is considered "final" even when an appeal from the judgment is taken. *See Da Silva*, 76 N.Y.2d at 440 (stating that "while an appeal

from a final judgment or order may leave an inchoate shadow on the rights defined therein, those rights are nonetheless fully enforceable in the absence of a judicially issued stay pending disposition of the appeal”). Section 1213(c)’s reference to a “final judgment” means that any bond posted by an unauthorized insurer, such as Allied World, must be available to be drawn by the plaintiff upon the entry of a final judgment by the trial court, regardless of whether an appeal is taken from the judgment.

In its Opposition, Allied World proposed to modify the bond in ways that are still unacceptable. Allied World cannot post a bond that would abridge the Plaintiffs’ rights under New York Insurance Law § 1213(c) by permitting the surety company to withhold payment until *after* an appellate court issues its ruling. To avoid or delay payment, Allied World must obtain a stay of enforcement pending appeal for which a supersedeas bond must be posted. The proposed amended bond would permit Allied World or the surety to withhold payment of a judgment pending an appeal without obtaining a supersedeas bond.

The bond required by Section 1213 is not a substitute for a supersedeas bond that would be required to stay enforcement of a judgment pending an appeal. Assuming entry of a judgment against Allied World in an amount of \$15 million or larger, Allied World would be required to post a supersedeas bond in excess of the \$15 million bond requirement previously set by this Court. *See* Local Bankruptcy Rule 8007-1(a) (“A supersedeas bond, where the judgment is for a sum of money only, shall be in the amount of the judgment plus 11% to cover interest and such damages for delay as may be awarded, plus \$250 to cover costs.”).

Therefore, the bond posted by Allied Work is **STRICKEN**.

Allied World is hereby ordered to post a \$15 million bond, issued by a satisfactory surety, upon which Plaintiffs may promptly recover on any judgment they obtain against Allied World, unless enforcement of the judgment is stayed pending disposition of an appeal by filing a supersedeas bond. If Allied World fails to post a new bond with the Clerk of the Court consistent with this Order on or before 5:00 PM, Friday, July 21, 2017, Allied World's pleadings in this case shall be deemed stricken forthwith, without further order of this Court, and a default shall be entered.

IT IS SO ORDERED.

Dated: New York, New York
July 17, 2017

Martin Glenn

MARTIN GLENN
United States Bankruptcy Judge