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Will your insurance company put up the supersedeas bond required for your appeal?

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It's the dreaded moment that no general counsel wants to think about — the jury has ruled against your company in a major lawsuit, and has ordered that it pay significant damages to a defendant.

Your attorney assures you that the decision is wrong, and that you are sure to win on appeal.

In the meantime, however, you need to keep the plaintiff from executing his judgment and raiding the company coffers.

That's where a supersedeas bond comes into play.

According to Black's Law Dictionary a supersedeas bond is "a bond required of one who petitions to set aside a judgment or execution and from which the other party may be made whole if the action is unsuccessful."

In order to hold off paying a judgment during the pendency of an appeal, the appellant is typically required to obtain a stay of enforcement from the court.

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When the court issues the stay of enforcement, it also determines the amount of the required supersedeas bond, to ensure the judgment is paid if the appeal is unsuccessful.

Generally, the cost of such a bond will include the whole amount of the judgment, costs on appeal, interest, and sometimes even additional damages for the delay.

In cases with multimillion-dollar awards at stake, this requirement can devastate a company.

But what if the company has a tower of liability insurance? Will the insurance companies be required to pay for the bond?

Often, the answer is yes. Many liability insurance policies include language requiring them to furnish bonds.

Even where the policy language does not explicitly provide that the insurance company must furnish a supersedeas bond, some courts have held that posting the bond could constitute a necessary cost of defense, and would therefore be covered by a typical liability policy that covers defense costs.[1]

Some insurance policies, however, specifically state that the insurance company must pay for the cost of obtaining the bond and any other incidental costs involved with procuring the bond, but will not be required to furnish it, i.e., act as the surety or provide the collateral for the bond.

Policyholders should speak with their brokers about obtaining policy language that makes it clear the insurance company is required to furnish the bond.

It is important to note, however, that even where an insurance company is obliged to furnish a supersedeas bond, most courts have held that the insurance company's liability will not exceed the available policy limits.[2]

In sum, policyholders should make sure that their liability policies include coverage for supersedeas bonds — including the full bond amount, not just the ancillary costs.

If the policy does not address the issue, a policyholder forced to put up a supersedeas bond should seek coverage in any case. It should not be expected, however, that an insurance company will put up a bond amount in excess of policy limits.

NOTES

[1] *See, e.g., Wiegert-Stathes v. Am. Family Mut. Ins. Co.,* No. A-05-200, 2017 WL 1276954 (Neb. Ct. App. May 1, 2007) ("We can envision that, posting a supersedeas bond, by either posting cash or paying for a surety to post a bond, could be required as a 'cost of defense' in certain situations. The obvious example would be where the appealed judgment is less than the policy limits and the insured justifiably expects to be protected from levy while the adverse judgment is on appeal."); *Hyundai Motor Am. v. Nat'l Union Fire Ins. Co.,* No. 08-cv-20, 2011 WL 13131156 (C.D. Cal. Sept. 1, 2011) (noting that "It is clear that when a defending insurer elects to appeal a judgment against the insured, the insurer has a duty to furnish the appeal bond.").

[2] *See, e.g., Fitzgerald v. Addison,* 287 So. 2d 151, at *6 (Fla. 2d Dist. Ct. App. 1973) (holding that "the supersedeas bond filed by the carrier should supersede only that portion of the judgment against the insured which equals the amount of the judgment against the carrier"); *Courvoisier v. Harley Davidson,* 742 A. 2d 542 (N.J. 1999) (holding that "the insurer should not be required to post a bond for the entire judgment when its contractual liability is not coextensive with that amount.").

ABOUT THE AUTHOR

Diana Shafter Gliedman, a shareholder in **Anderson Kill PC**'s New York office, represents policyholders in actions ranging from small insurance coverage disputes to multiparty, multi-issue insurance coverage litigations. She often counsels professional firms and organizations seeking to analyze potential sources of insurance coverage and maximize insurance recovery when faced with liabilities arising from professional practice. She is chair of the firm's professional liability group and co-chair of the firm's hospitality group. She can be reached at dgliedman@andersonkill.com. This expert analysis was first published April 4 as an Anderson Kill Policyholder Alert. Republished with permission.

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