

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

LAWRENCE E. JAFFE PENSION PLAN,	)	
on Behalf of Itself and All Others Similarly	)	
Situated,	)	Lead Case No. 02-C-5893
	)	(Consolidated)
	)	
Plaintiff,	)	CLASS ACTION
	)	Judge Ronald A. Guzmán
	)	
v.	)	Magistrate Judge Mary M. Rowland
	)	
HOUSEHOLD INTERNATIONAL, INC.,	)	
<i>et al.</i> ,	)	
	)	
Defendants.	)	

**DEFENDANTS’ RESPONSE TO PLAINTIFFS’ OBJECTION  
TO THE FORM OF THE SUPERSEDEAS BOND**

Defendants Household International Inc. (“Household”), William F. Aldinger, David A. Schoenholz, and Gary Gilmer, respectfully respond to Plaintiff’s Objection to the Form of the Supersedeas Bond (“Bond Objection”). For the following reasons, Plaintiffs’ Bond Objection should be overruled.

**ARGUMENT**

**I. The Supersedeas Bond Conforms To All Requirements Of This District’s Local Rules And Was Approved By The Clerk Of Court Pursuant To Those Rules.**

The practice in the Northern District of Illinois is for the Clerk of Court to approve conforming supersedeas bonds. Indeed, Local Rule 65.2, titled “Approval of Bonds by the Clerk,” not cited by Plaintiffs, states:

Except in criminal cases, or where another procedure is prescribed by law, the clerk may approve bonds without an order of court if—

- (1) the amount of the bond has been fixed by a judge, by court rule, or by statute, and
- (2) the bond is secured in accordance with LR65.1(b).

N.D. Ill. LR 65.2; *see also* LR 62.1 (“If in conformance with LR 65.1 the bond may be approved the clerk.”).

Plaintiffs do not dispute that “the amount of the bond” is proper. Here, the amount of the bond is set by Local Rule 62.1, which provides that a supersedeas bond “shall be in the amount of the judgment plus one year’s interest at the rate provided in 28 U.S.C. § 1961, plus \$500 to cover costs.” N.D. Ill. LR 62.1. As expressly stated in Paragraph 3 of the approved bond, the amount of the bond conforms to the requirements of Local Rule 62.1.

Plaintiffs also do not dispute that the “bond is secured in accordance with LR 65.1(b).” Local Rule 65.1(b) provides that a bond may be secured by “the undertaking or guarantee of a corporate surety holding a certificate of authority from the Secretary of the Treasury.” N.D. Ill. LR 65.1(b)(2). The bond is properly secured by the undertaking of sureties holding valid certificates of authority from the Secretary of Treasury, *see* Department of the Treasury’s Listing of Certified Companies, available at [http://www.fms.treas.gov/c570/c570\\_a-z.html](http://www.fms.treas.gov/c570/c570_a-z.html), and pursuant to Rule 8(b) of the Federal Rules of Appellate Procedure and Rule 65.1 of the Federal Rules of Civil Procedure, each surety has submitted to the jurisdiction of the District Court.

In accordance with the standard practice in this District, the Clerk of Court determined that the form of the supersedeas bond was proper, that all requirements were satisfied, and the bond was approved and entered.<sup>1</sup>

Plaintiffs’ objections disregard the Local Rules of this District and are without merit.

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<sup>1</sup> Prior to filing the bond, Defendants advised Plaintiffs’ counsel that the form of bond had been checked with the Clerk of Court and deemed to be in conformance with local practice and all legal requirements.

**II. There Is No Requirement That All Defendants Be Listed As “Principals” And Sign The Bond.**

Plaintiffs contend that the bond is defective unless each of the four Defendants is listed as a “principal” on the bond and signs the bond. (Bond Objection at 2-3.) Plaintiffs cite no authority from the Northern District in support of the proposition. For good reason—the argument is contrary to this District’s Local Rules. Local Rule 65.1 provides that “[b]onds or similar undertakings may be executed by the surety or sureties alone.” N.D. Ill. LR 65.1. Plaintiffs do not contest that the bond is properly executed by the sureties.

Moreover, the lone case Plaintiffs cite for their proposition—an opinion from the Eastern District of Pennsylvania—is inapposite. (Bond Objection at 2-3, citing *Zebrowski v. Evonik Degussa Corp. Admin. Comm.*, No. 10-542, 2013 U.S. Dist. LEXIS 9118 (E.D. Pa. Jan. 23, 2013)). The primary concern of the *Zebrowski* court was that the bond named only a “non-party” and failed to even “list the defendants . . . who are parties bound by the judgment and taking the appeal.” *Id.* at \*8. Thus, the bond “does not identify as an obligor any party liable for the judgment.” *Id.* at \*11. Here, the bond expressly identifies each of the Defendants-Appellants by name and sets forth that the Defendants-Appellants and Sureties undertake and promise to pay to Plaintiffs-Appellees all damages, costs, and interest that may be awarded to them following the appeal. The supersedeas bond, therefore, is fully enforceable in accordance with Federal Rule of Civil Procedure 65.1.

**III. There Is No Successor-in-Interest Requirement.**

Plaintiffs assert that the bond “must explicitly bind the Sureties’ successors in interest.” (Bond Objection at 3-4.) Plaintiffs cite to no rule or precedent supporting this proposition. Local Rule 65.1(b) requires that the sureties hold a valid certificate of authority from the Secretary of

the Treasury. N.D. Ill. LR 65.1(b). Under the Rules of this District, that is all that is necessary to establish that the sureties have the resources to satisfy their obligations on the bond.

**IV. The Promise To Pay Is Not “Impermissibly Vague.”**

Contrary to Plaintiffs’ assertions, the language of the bond is not “impermissibly” or “hopelessly” vague. (Bond Objection at 4-6.) Plaintiffs incorrectly assert that the Promise to Pay “contains no reference at all to the judgment.” (*Id.* at 4.) Paragraph 1 of the Recitals sets forth the amount of the Judgment. (*Id.*, Ex. B at 1.) The Promise to Pay expressly incorporates the Recitals (“As a result of the facts just recited. . .”) and sets forth in plain language, routinely used in supersedeas bonds, the “promise to pay to Plaintiffs-Appellees’ all damages, costs, and interest that may be awarded to them following the appeal of this matter . . . .” (*Id.* at 2-3.)

Also meritless is Plaintiffs’ assertion that “the clause voiding the Promise to Pay ‘[i]f Defendants-Appellants fulfill the obligations on appeal as set forth above’ is so vague as to be meaningless.” (Bond Objection at 4.) The bond plainly states that Defendants-Appellants’ obligations are “to pay promptly all sums awarded against them in or following the appeal in this action, including any costs that the court of appeals may award if the judgment is modified.” (Bond Objection, Ex. B at 3.). There is nothing “meaningless” about the language. It is the very language used routinely with supersedeas bonds, and indeed, is the language set forth in the exemplar published by the United States Court of Claims. A copy of the Court of Claims Form 12, Supersedeas Bond (Surety) is attached as Exhibit A hereto.<sup>2</sup>

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<sup>2</sup> *Rand-Whitney Containerboard Ltd. Partnership v. Town of Montville*, 245 F.R.D. 65 (D. Conn. 2007), provides no support for Plaintiffs’ argument that this Court should refuse to accept the language approved by the Court of Claims. (PLS.’ Obj. at 5.) In that case, although defendants asserted that the language in the bond they submitted was surety Travelers “standard bond for federal appeals,” *id.* at 68, the defendants in fact submitted “two very different form bonds, one executed and one proposed, both of which are said to have originated with Travelers.” *Id.* The court remarked: “If  
(*cont’d*)

The Clerk of Court, consistent with its responsibility to approve supersedeas bonds, deemed the form of the bond proper. There is nothing improper in the language of the bond used here.

**V. The Ministerial Date Error Does Not Affect The Validity Of The Bond And Can Be Corrected.**

The supersedeas bond identifies the date of judgment as October 18, 2013, rather than October 17, 2013. (Bond Objection at 1.) Defendants submit that this ministerial error does not affect the validity of the bond or render it ambiguous. There is no basis for confusion as to the judgment at issue—as there has been only one judgment for \$2,462,899,616.21 entered in this case. If the Court deems it necessary to correct this ministerial error, Defendants suggest that the Court enter an order stating that, upon agreement of the parties, the first paragraph of the supersedeas bond is amended to reflect that judgment was entered on October 17, 2013, rather than October 18, 2013.

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either form were standard, this discrepancy would not exist between the two.” *Id.* Here, there is no dispute the Defendants’ supersedeas bond employs language approved by the Court of Claims.

**CONCLUSION**

For the reasons set forth herein, Plaintiffs' Objection to the Form of the Supersedeas Bond should be denied.

Dated: November 25, 2013

Respectfully submitted,

*/s/R. Ryan Stoll*

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**CERTIFICATE OF SERVICE**

R. Ryan Stoll, an attorney, hereby certifies that on November 25, 2013, he caused true and correct copies of the foregoing Defendants' Response to Plaintiffs' Objection to the Form of the Supersedeas Bond to be served via the Court's ECF filing system on the following counsel of record in this action:

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*/s/ R. Ryan Stoll*

\_\_\_\_\_

R. Ryan Stoll

## **EXHIBIT A**



FORM 12  
SUPERSEDEAS BOND (SURETY)

United States Court of Federal Claims

_____	)	
	)	
	)	
Plaintiff,	)	No. _____
	)	
v.	)	Judge _____
	)	
THE UNITED STATES,	)	
	)	
Defendant.	)	

SUPERSEDEAS BOND (SURETY)

Recitals

1. A judgment was entered in the above-captioned case on \_\_\_\_\_ [date] in the United States Court of Federal Claims against Appellant, \_\_\_\_\_ [name of appellant] and in favor of \_\_\_\_\_ [name(s) of appellee(s)].

2. \_\_\_\_\_ [name of appellant] has filed a timely notice of appeal of this judgment to the United States Court of Appeals for the Federal Circuit and desires to suspend enforcement of the judgment pending determination of the appeal.

Promise to Pay

As a result of the facts just recited:

\_\_\_\_\_ [name of appellant] and \_\_\_\_\_ [names of corporate surety or sureties], which has an office and usual place of business at \_\_\_\_\_ [street address], \_\_\_\_\_ [city, state, zip code], each undertakes and promises to pay to \_\_\_\_\_ [name(s) of appellee(s)] all damages, costs, and interest that may be awarded to \_\_\_\_\_ [him or her or it or them] following the appeal of this matter up to the sum of \$ \_\_\_\_\_ if:

- a. the judgment so appealed is affirmed;
- b. the appeal is dismissed; or
- c. \_\_\_\_\_ [name of appellant] fails to pay promptly all sums awarded against \_\_\_\_\_ [him or her or it or them] in or following the appeal in this action, including any costs that the court of appeals

may award if the judgment is modified.

If \_\_\_\_\_ [name of appellant] fulfills the obligations on appeal set forth above, then this obligation will become void. Otherwise, the obligation will remain in full force and effect.

Dated: \_\_\_\_\_

For the principal:

\_\_\_\_\_ [signature of plaintiff]

\_\_\_\_\_ [typed name of plaintiff]

For the \_\_\_\_\_ [surety or sureties]:

\_\_\_\_\_ [typed or printed name of surety]

By \_\_\_\_\_ [signature]

\_\_\_\_\_ [typed name of signer]

\_\_\_\_\_ [title of signer]

\_\_\_\_\_ [street address]

\_\_\_\_\_ [city, state, zip code]

\_\_\_\_\_ [telephone & facsimile numbers]

\_\_\_\_\_ [e-mail address]

[Repeat signature block for each additional surety.]

APPROVED: \_\_\_\_\_, 20\_\_

\_\_\_\_\_, Clerk, United States Court of Federal Claims