



## What if the judgement is in excess of the insurance coverage?

As further addressed in Ms. Bumbalo's article, "Examining Insurers' Obligations to Their Insureds Post-Verdict," "the majority of courts have concluded, logically, that insurer's responsibility for a bond extends only to the limits of the policy..."

In those instances when a judgment is in excess of the insurance coverage provided by the insurer, the insurer will typically provide an appeal bond up to their policy limit. In order for the insured to stay enforcement of the judgment in excess of the policy limit, the insured will have to provide a separate appeal bond for the difference.

## How do surety companies qualify insurers?

When surety companies underwrite insurers for an appeal bond, they essentially want to ensure that the insurer has the financial wherewithal and stability to pay the judgement if it is upheld on appeal.

The surety's review will include the AM Best rating of the insurer, if applicable, and possibly the most recent financial statement, which is usually publicly available as insurers are required to file statements with their state regulatory agency.

The surety companies specifically examine the size of the judgment relative to the insurer's capital base, their length of time in business, and their record of profitability.

## What is the process and how long does it take?

Approving appeal bonds for most insurers is a relatively quick process that takes as little as a few hours to a couple days depending on the insurer's financial strength. All that is required to begin is to know the name of the insurer, the amount of the bond required, and to obtain copies of the court complaint and judgment if it has been entered.

Once approved, an authorized officer of the insurer will have to sign the surety's indemnity agreement, pay the surety's premium, and the appeal bond can be issued.

For insurers that need appeal bonds on a somewhat regular basis, a bond program can be established whereby bonds up to a certain dollar amount are pre-approved and can be issued instantaneously.

## What are some of the common challenges that can arise?

Challenges can arise with insurers that are not rated by AM Best, are thinly capitalized relative to the bond amount and/or have an inconsistent track record with profitability. Insurers that are domiciled and hold their assets outside of US can add to the complexity of underwriting. These issues are by no means insurmountable, but it may increase the time frame or terms required for securing the bond.

## Conclusion

In the words of Abraham Lincoln, "Time is everything..." and this is particularly true when it comes to securing appeal bonds for insurers. We encourage all the attorneys and insurers we work with to start the process early even if the judgment has not been entered. Much of the preliminary leg work can be done with just a ballpark estimate of the bond amount potentially required.

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