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***BUSTING THE PENAL LIMITS OF A SURETY BOND  
AND  
BUSTING THE POLICY LIMITS OF A FIDELITY POLICY***

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# I. BUSTING THE PENAL LIMITS OF A SURETY BOND

## A. Introduction

The liability of a surety on a construction contract is generally co-extensive with that of its principal. This paper deals specifically with the issue of whether, under certain circumstances, the surety can be held liable in excess of the penal sum of its bond. This determination is made by looking at both the bond language, the underlying construction contract, and any relevant case law.

Assume the following facts in the context of a private construction project. The principal and owner enter into a construction contract which contains a provision which reads as follows:

TERMINATION AND DEFAULT. In case of a breach, or in the event Owner is required to retain the services of an attorney to enforce any provisions of this contract, then the Principal/Contractor and its surety company, shall be liable to Owner for any and all additional costs, expenses, attorney's fees and other damages both liquidated and unliquidated which directly or indirectly result from the Principal/Contractor's breach, threatened breach, default or lack of performance of any term or condition of this contract.

The surety provides a performance bond which contains a clause which provides:

... In no event shall the aggregate liability of the surety exceed the amount of this bond.

The performance bond incorporates by reference the underlying contract into the bond.

The issue that will arise is whether the surety's penal sum provision in the bond limits the surety's liability despite the amount of the principal's contractual liability.

In Southern Systems v. Morgan Watt and Fidelity & Deposit Company of Maryland; Case No. 91-2999, Western District of Tennessee (1993), this situation was addressed. The surety argued that the bond language as stated above specifically stated a penal sum of \$124,000. The court ruled for the surety limiting its liability, if any to the penal sum based on the bond language.

In the above-referenced situation, the surety is basing the bond premium in pertinent part on the penal sum. The surety's position is that the obligee is paying for the bond on the basis of the terms expressed in the bond, and the surety is charging the premium on this basis. From the surety's viewpoint, if the bond's penal sum limit does not apply, the surety will need to charge a much greater premium if it is going to be potentially exposed to the additional liability involved. The obligee, on the other hand, has contracted with the principal and is relying on the surety to see that the contractor

performs in accordance with the contract. If the principal does not perform, the obligee will be looking to the surety.

B. Discussion

As a general rule, a surety's liability may not exceed the penal amount of the bond. The weight of authority holds that the surety cannot be held liable on a bond for a sum greater than the penal sum of the bond.<sup>1</sup> To increase the limits of liability would violate that principle.<sup>2</sup> The surety's liability for damages is limited by the undertaking of the bond.<sup>3</sup> Obligees have argued that the surety was or should have been aware of its principal's contract and the provisions therein before it issued the performance bond and that additional elements of damages should be added to the penal sum; i.e., attorneys' fees, interest, and liquidated damages, especially if the bond incorporates a contract which provides for such damages. The courts have not provided a definitive answer.

1. Cases Holding that the Penal Sum is the Limit of the Surety's Liability

In re Technology for Energy Corp.,<sup>4</sup> (Interpreting New Jersey law), the bankruptcy court held that a provision in the bond to pay "all damages" had to be interpreted with reference to the limitation of liability provision in the bond, providing that in no event would the surety's liability be in excess of the dollar amount of the bond.<sup>5</sup> Any real conflict between the penal sum limit and the surety's promise to pay all damages caused by its failure to perform had to be decided in favor of the penal sum limit.<sup>6</sup> The court also stated that the penal sum is **always** the limit on the surety's liability for its own refusal to perform the contract.<sup>7</sup> In Louisville & Nashville Railroad Co. v. United States Fidelity & Guaranty Co.,<sup>8</sup> the court held that the amount of the bond "penalty" cannot be exceeded even by the addition of interest.<sup>9</sup>

In Simpson v. Simpson<sup>10</sup>, the court held the surety's liability on a supersedeas undertaking was limited to the amount stated on the face of the undertaking, and the surety was not obligated to pay interest, costs and disbursements of judgment as affirmed.<sup>11</sup>

Likewise, in Riva Ridge Apartments v. Robert G. Fisher Company,<sup>12</sup> a Colorado appellate court held that although the construction manager and bonding company were jointly and severally liable, the surety company was not liable for the entire amount of the damage award. The terms of the performance bond unequivocally limited the bonding company's liability to \$3,934,000.<sup>13</sup> When language used in a contract is plain, its meaning clear and unambiguous, the agreement must be enforced as written.<sup>14</sup> Therefore, the court in Riva Ridge Apartments held that the maximum amount of damages which could be assessed against the bonding company was \$3,934,000.

The Supreme Court of Florida held in Aetna Casualty & Surety Company v. Buck,<sup>15</sup> that the surety's liability may not be increased beyond the face amount of the bond in order to cover costs.

In Fidelity & Deposit Company of Maryland v. LaCentre Trucking, Inc.,<sup>16</sup> the court held that the trial court committed error by including in its final judgment a provision for costs and interest on the due amounts and attorney's fees. The court held that the judgment amount for which the surety is responsible cannot exceed the amount posted by the surety.

In Aetna Casualty & Surety Company v. Butte-Meade Sanitary Water District,<sup>17</sup> the district court was faced with the issue of whether liquidated damages could force the surety to pay beyond its bond penal limit. The court said that the rule appeared clear that the owner could not recover liquidated damages from the surety which exceeded the penal sum contained in the bond. The court quoting the Fifth Circuit in Bill Curphy v. Elliott,<sup>18</sup> said:

If appellant's contention that the surety's liability may exceed the sum stated on the face of the bond is correct, and it is not, it would be futile to state any amount of liability in the bond.... [T]he sole object of stating the penalty in a bond is to fix the limit of liability of the signers, and no recovery can be had on such bond against the principal or surety beyond the penalty named in the bond.<sup>19</sup>

## 2. Cases Holding that the Penal Sum is Not Limited to the Surety's Liability

### a. Statutory and Contractual Liability

In Iowa Concrete Breaking v. Jewat Trucking,<sup>20</sup> Road Constructors, Inc. subcontracted with Jewat Trucking, Inc. to crush pavement for a state highway project. Jewat then obtained from Central National Insurance Co. of Omaha (CNICO) the performance and labor and material payment bonds required by the subcontract. The surety's bonds incorporated by reference the Road Constructors, Inc. subcontract which required Jewat to undertake all obligations relative to Road Constructors, Inc. (RCI) that RCI owed to the state. By statute, RCI was required to provide a labor and materials bond:

saving [the state] harmless from all costs and charges that may accrue ... for the enforcing of the terms of the bond, ... including reasonable attorney's fees, in any case where such action is successfully maintained.<sup>21</sup>

Therefore, because Jewat was required to obtain a bond covering "all the terms, provisions and conditions of the subcontract," the court held that those bonds, by incorporating the subcontract's language, required CNICO to pay attorney

fees. This analysis is similar to recent statutory bond rulings where the bond issued provides less coverage than mandated by statute.

In Jewat Trucking, CNICO argued that the limit of its liability was the face amount of the bond. However, the court found to the contrary and held that where a bond covers both a sum and attorney fees, the surety is liable for attorney fees in addition to the penal sum of the bond. Perhaps significant in that case is that the payment bond specifically stated that the obligee (RCI) would not be liable for litigation costs which the court held included attorneys' fees.<sup>22</sup>

b. Prejudgment Interest

Prejudgment interest is sometimes allowed even though the interest may cause the surety's loss to exceed the penal sum of its bond. The reasoning is that the surety has the benefit of the funds once a default or claim is made and it is therefore not unfair to require the surety to pay prejudgment interest. In Insurance Company of North America v. United States,<sup>23</sup> the court was faced with the issue of determining whether pre-judgment interest could increase Insurance Company of North America's (INA) liability beyond the face amount of its bond. The court stated that the Supreme Court of the United States has endorsed assessment of interest beyond the penal amount of the surety bond.<sup>24</sup> The court reasoned that the surety can be liable for its own default and unjustly withholding payment after being notified of the default of the principal. Thus, if a surety delays payment beyond proper notification of liability, interest accrues on the debt. This interest may cause the surety's obligation to exceed the penal sum of the bond.

In Carrols Equities Corp. v. Villnave<sup>25</sup> the Supreme Court of New York, Appellate Division held that the bond's penal sum could be exceeded, in light of the fact that such limitation could be exceeded by the addition of interest from the date of the surety's default.<sup>26</sup> The court stated that although the amount specified in the bond ordinarily constituted the maximum liability of a surety, General Obligations Law § 7-301 provides that such sum could be exceeded by the addition of interest from the date of the surety's default.<sup>27</sup>

In Veneto v. McCloskey, the Massachusetts court held that the surety's liability was limited to the amount of the bond plus interest and costs.<sup>28</sup>

c. Attorney Fees

Attorney fees are an additional expense which may cause the surety's liability to exceed the penal sum. In United Bonding Ins. Co. v. Banco Suizo-Panameno, S.A.,<sup>29</sup> the bonds at issue provided that "the principal and surety further agree jointly and severally to pay all costs of collection, including a reasonable attorney's fee." The Fifth Circuit Court of Appeals held that "the

words 'further agree' indicated that the attorney's fees are payable over and above the penalty amount of the bonds and that the recovery under the bonds is not specifically limited to the penalty amount."<sup>30</sup>

In Triangle Elec. Supply Co. v. Mojave Elec. Co.,<sup>31</sup> the court held that, where a contractor sued a subcontractor and surety on payment and performance bonds due to a default on the subcontract, both attorney's fees and prejudgment interest were allowed against the surety, even in amounts in excess of the penal sum of the surety's bond.<sup>32</sup> Specifically, with regard to the allowance of prejudgment interest, the court explained that "the mere fact that the allowance of prejudgment interest would exceed the amount of the bond is not a valid legal reason for its disallowance."<sup>33</sup>

d. **Bad Faith and Punitive Damages**

In addition to the other three areas in which the surety's penal sum can be exceeded, bad faith and punitive damages can cause the surety's loss to exceed the penal sum although there is a trend against such liability.<sup>34</sup> This is a topic which has been much discussed in other papers and articles and will not be addressed in this paper.

C. **Conclusion**

Generally, the liability of the surety will be limited to the penal sum of the bond. To strengthen this position, the issuer of the bond should clearly and unambiguously state in the bond that the maximum limit of the surety's liability is the stated amount without regard to the contract between the principal and owner and without regard to any statutory requirement that the principal must satisfy. Further, the bond should state that any interest, attorneys' fees, and similar amounts which are covered are covered only up to the stated, maximum amount.

If a statute or a contract requires an "open-ended" maximum amount, the premium charged should obviously take that certainty into account. Additionally, prejudgment interest is sometimes an exception which is allowed to exceed the penal limits.

## II. BUSTING THE PENAL LIMITS OF A FIDELITY POLICY

### A. Introduction

There are generally five ways which an insured may attempt to exceed a fidelity policy's limits:

- (1) The insured may recover up to the penal sum for each policy period;
- (2) Each independent claimant may recover the penal sum;
- (3) Events may constitute single vs. multiple occurrences;
- (4) Prejudgment interest is sometimes allowed; and
- (5) Bad Faith statutes and/or punitive damages may cause the policy to be exceeded.

### B. Discussion

#### 1. Continuous Contract/Separate Policy Periods

The interpretation of non-accumulation of liability provisions is a key factor in determining whether the penal limits of a fidelity bond can be exceeded. Fidelity policies generally contain provisions similar to the following:

Regardless of the number of years this Endorsement shall continue in force, and the number of premiums which shall be payable or paid or any other circumstances whatsoever, the liability of this Company under this Endorsement with respect to any loss or losses shall not be cumulative from year to year or from period to period. When there is more than one Insured, the aggregate liability of this Company for loss or losses sustained by any or all of them shall not exceed the amount for which this Company would be liable if all losses were sustained by any one of them.

The insureds have attempted to circumvent such a clause by arguing that the insured may recover up to the penal sum for each policy period.

Courts have generally held if coverage is based on a series of separate, independent contracts, then the insured is entitled to recover up to the limit of liability for each policy period in which a loss occurs. On the other hand, if there is but one continuous contract, then the insured's recovery cannot exceed the limit of liability stated in the contract regardless of the number of years the

coverage has been in force, the number of policies issued, or the number of premiums the insured has paid.

In First National Bank v. Fidelity & Guaranty Co.,<sup>35</sup> the court held that a renewal certificate was a new contract only so far as it extended the indemnity provided by the original bond to another year, and there was in fact only one bond with one penal sum to which recovery was limited.<sup>36</sup> In First National Bank, a bond given by a guaranty company to indemnify a bank for loss occasioned by the fraud or dishonesty of its employees provided that said surety would make good and reimburse the bank to the extent of \$7,000 for all loss occasioned by infidelity occurring during the continuance of the bond or renewal thereof. A renewal certificate was executed for the following year. The bank sustained a loss of \$7,217.50 the first year and \$13,157.20 the second year. The trial court held that the bank was entitled to \$14,000, the penal sum for both years added together.<sup>37</sup> However, the appellate court reversed and held that recovery was limited to one penal sum.<sup>38</sup>

In United States Fidelity & Guaranty Co. v. Barber,<sup>39</sup> the court stated that under a fidelity schedule bond for three annual periods indemnifying a bank against losses sustained through dishonesty or criminal acts of employees, with a provision limiting recovery to a single stated amount therein for any employee, the total liability of the surety was held limited to the amount stated in the bond for each employee, irrespective of the number of annual periods the bond remained in force or how many annual premiums were paid.<sup>40</sup> The court stated that where the bond itself contains an unambiguous provision limiting recovery to the single stated amount therein for any employee, there is no room for construction, and total liability must be limited to such an amount no matter how long the bond has been in force or how many premiums are paid for the insurance.<sup>41</sup> An example of such "unambiguous language" according to the court in Barber is the following: "Provisions stating that the named amount of insurance was to cover losses occurring during the continuance of the bond or any renewal thereof, or one stating that the liability of the insured should not be cumulative, or one stating that the liability should not be for more than the stated sum. . . ." <sup>42</sup>

However, in ABS Clothing Collection, Inc. v. The Home Insurance Co.,<sup>43</sup> a California court held that an insurer seeking to limit the amount of its liability to the insured for losses incurred during successive years of coverage must show by clear and unambiguous policy language that the parties intended to enter into one continuous contract.<sup>44</sup> The action involved the terms of coverage of a comprehensive general liability insurance policy issued by insurer Home to insured A.B.S., Policy No. BPR-54116 ("the Policy"), which was effective April 4, 1991, through April 4, 1992, and contained a coverage limit of \$100,000 for acts of employee dishonesty, with a \$1,000 deductible. The Policy served as a renewal of Policy BPRF 540889, which contained an effective policy period of April 4, 1990, through April 4, 1991, and Policy BPRF 540889 served as a

renewal of a previous policy, Policy BPRF 404908, which contained an effective policy period of April 4, 1989, through April 4, 1990.<sup>45</sup>

On May 21, 1991, A.B.S. presented a claim alleging that on May 20, 1991, A.B.S. had discovered a loss based upon dishonesty of A.B.S. employees (vice-president of finance, and the assistant bookkeeper). A.B.S.' proof of loss described the manner of theft, specifically indicating that as a result of the dishonest actions of the employees, petty cash funds had been drawn on the A.B.S. bank account aggregating to the sum of at least \$1,400,000 over a three-year period, between July 1988 and May 1991.<sup>46</sup>

A.B.S. claimed that its investigation revealed that it sustained a loss based upon the dishonest acts of the employees as follows:

04/04/88 through 04/03/89	.....\$100,692.27
04/04/89 through 04/03/90	.....\$557,636.97
04/04/90 through 04/03/91	.....\$779,388.45
04/04/91 through 04/03/92	.....\$78,181.62

A.B.S. sought cumulative recovery for the full Policy limits for each year the Policy was in effect.<sup>47</sup> Home acknowledged the validity of A.B.S.' loss and responded by issuing a draft in the amount of \$100,000 - the Policy limit. A.B.S. filed a complaint on May 18, 1992, against Home for declaratory relief and tortious breach of insurance contract. The trial court held that the non-accumulation clause supported a finding that the policies constitute one continuous contract. The appellate court reversed. The non-accumulation clause provided:

Regardless of the number of years this insurance remains in force or the number of premiums paid, no Limit of Insurance cumulates from year to year or period to period.

The court held that this language was ambiguous and therefore must be interpreted for the insured.<sup>48</sup> The dissent and other courts have found that this type of clause is unambiguous and limits liability.<sup>49</sup> The ABS case is another typical California appellate decision which fortunately has little relevance to the other 49 states.

In re Endeco, Inc.<sup>50</sup>, the Eighth Circuit Court of Appeals held that a trustee's bond provided to an estate in reorganization was not one continuous contract over the period of trusteeship, but was a separate contract for each year for which an additional premium was paid. Certificates of continuation were issued each year which contained the following provision:

A premium in the amount set forth below will become due on the first date shown for the term indicated. This premium is paid and is accepted upon the express stipulation that the liability of the Company under the bond herein described shall not be cumulative, and that in no event shall the aggregate liability of the Company for any one or more defaults of the Principal, during any one or more years of the suretyship under the said bond, as extended by this or any other extension of the terms thereof, exceed the amount set forth in said bond or any existing certificate changing the amount of said bond.

However, the court found that because the premiums were paid by the principal and not the obligee and the obligee did not receive the certificates, they were not part of the contract and held the bonding company liable to pay up to the face amount of the bond for the defalcations of the trustee in each year.<sup>51</sup>

2. Independent Claimants

The second way a fidelity bond's policy limits may be exceeded is by allowing each separate claimant to claim the penal sum. In Danella Construction Corp. v. Western Surety Co.,<sup>52</sup> the Colorado Court of Appeals reversed a trial court ruling that stated while the statute under which the bonds were issued permitted a surety to limit its aggregate liability as to each bond to \$30,000, found that the language used in the bond was more expansive than the statute and held that each claimant under the bond was entitled to recover up to the full \$30,000 limit of the bond. The bonds provided in pertinent part as follows:

Centennial Motor Co., Inc. . . . as Principal and the WESTERN SURETY COMPANY . . . as Surety, are held and firmly bound unto the State of Colorado to indemnify any and all persons, firms and corporations for any loss suffered by reason of violation of the conditions hereinafter contained, in the penal sum of Thirty thousand and no/100 (\$30,000) DOLLARS . . .

Principal . . . shall faithfully observe and comply with all the requirements of the laws of the State of Colorado, respecting the licensing and dealers, being Title 12, Article 6, Colorado Revised Statutes 1973, as amended, and indemnify any and all persons, firms and corporations for any loss suffered by reason of the fraud or the fraudulent representations made, or through the violation of any of the provisions of said Title 12, Article 6, Colorado Revised

Statutes 1973, as amended, and shall pay all judgments and costs adjudged against said Principal on account of fraud or fraudulent representations and for any violation or violations of said Article during the time of said license . . .<sup>53</sup>

The trial court had relied on Dennis Dillon Oldsmobile GMC, Inc. v. Zdunich<sup>54</sup> in which the Utah Supreme Court found identical language unambiguous and held the sureties liable to the extent of the bond amount on a per-claim basis. However, in this victory for the surety, the Colorado Court rejected the Utah Supreme Court's rationale and held that even though the bond itself may be ambiguous, where its language closely tracks the statute under which it was written, there is an assumption that it was issued to accomplish those objectives only. With respect to the interpretation of the bond, the court stated:

A court must interpret the language of the bond in accordance with the intent of the parties, which generally is to be determined from the language of the instrument itself . . . However, where the meaning of an instrument is uncertain, extrinsic evidence may be utilized to determine contractual intent . . . .

Under these circumstances it is appropriate to look to the legislation pursuant to which the bond was issued in order to determine the nature of the contractual obligation . . . . The determination of the character of the bond, as enlightened by the legislative enactment giving rise to its issuance, is a question of law . . . . Given the existence of a specific legislative requirement for a bond, it is not unreasonable to assume that the principal purchased the bond and the surety issued it in order to accomplish the objectives outlined by the lawmaking body in requiring this form of security as a condition of performance.<sup>55</sup>

The court found that the bond provided indemnification for only the penal sum of \$30,000 regardless of the number of claims or claimants.<sup>56</sup>

### 3. Single v. Multiple Occurrences

Whether or not an event constitutes an occurrence or multiple occurrences under a fidelity policy can make a major difference in the liability exposure of an insurer.

Most policies contain essentially the same definition of what constitutes an occurrence or loss similar to the following:

"Claims based on or arising out of the same act, interrelated acts, or one or more series of similar acts of one or more of the Directors or Officers shall be considered a single Loss and the

Insurer's liability shall be limited to the limit of liability stated in Clause 4(B) and 4(C)."

However, the case law has been inconsistent. In Atlantic Permanent Federal Savings and Loan v. American Casualty Company,<sup>57</sup> Atlantic's claims for misappropriation of funds by officers and directors involved nine separate loan transactions and seven counts against each officer and director for each transaction. American Casualty sought to apply the \$10,000 per loss retention to each count. Alternatively, American Casualty argued that each loan transaction constituted a separate loss. The Fourth Circuit held that there had been only one loss pursuant to the policy language.

In Federal Savings & Loan Insurance v. Burndette, 718 F. Supp. 649 (E.D. Tenn. 1989), the court ruled that there were multiple losses even though there was evidence that all the loans directly or indirectly benefitted C. H. Butcher.<sup>58</sup> The courts seem to construe the policy language to indicate multiple losses when the policy has low limits per occurrence and indicate single loss when the policy has a high deductible or retention per occurrence.

It is important for all fidelity or other insurance policies to define "occurrence" and to make sure the policy caps its coverage at a sum certain regardless of whether there are multiple occurrences or not.

#### 4. Prejudgment Interest

Prejudgment interest is sometimes allowed even though the interest may cause the policy limits to be exceeded. In the Bank of Huntingdon v. Smothers,<sup>59</sup> the Tennessee Court of Appeals addressed the issue of prejudgment interest:

We find, as did the Chancellor, that this is a proper case for the assessment of prejudgment interest and the judgment below, when entered, shall carry prejudgment interest in the manner previously allowed by the Chancellor. We find no merit in counsel for insurer's argument that prejudgment interest should not be awarded. We do not believe that the defendant insurer is in the habit of keeping its reserves for losses hidden in the bottom of a sugar jar in the kitchen. They are put out at interest. Therefore, we see no reason why they should not be liable for prejudgment interest to the plaintiff on the amount honestly due under their contract with the insured.<sup>60</sup>

It should be noted that the court denied damages for bad faith.

## 5. Bad Faith and Punitive Damages

Tennessee, along with other states, have statutes dealing with bad faith involving insurance companies,<sup>61</sup> but unlike a surety bond which many states, including Texas, have held are not subject to the insurance bad faith statutes, fidelity policies are generally held subject to the insurance bad faith statute.

### C. Conclusion

The three ways insureds generally attempt to exceed the policy limits of a fidelity bond are by arguing that the insured may recover up to the penal sum for each policy period, each independent claimant may recover up to the penal sum, and events either constituted single or multiple occurrences. A non-accumulation of liability provision should prevent exceeding policy limits for each period, but some courts have gone out of their way to find such clauses ambiguous. A clear, unambiguous clause is a necessity. Additionally, prejudgment interest is sometimes allowed even though the loss may exceed the policy limits. Bad faith statutes and punitive damages may also cause a fidelity policy's limits to be exceeded.

1. Long v. City of Midway, 311 S.E.2d 508 (Ga. App. 1983).
2. Id. at 509
3. Major v. General Motors; 742 F. Supp. 1355 (M.D. Tenn. 1990); Fisher v. Fidelity & Deposit Company of Maryland, 466 N.E.2d 332 (Ill. App. 5th Dist. 1984); Simpson v. Simpson, 766 P.2d 1055 (Or. App. 1989); Fidelity & Deposit Company of Maryland v. Sholtz, 123 Fla. 837, 168 So. 25 (1935).
4. In re Technology for Energy Corp., 123 B.R. 979 (Bkrtcy. E.D. Tenn. 1991).
5. Id. at 983.
6. Id. at 983.
7. Id. at 983; See also Miracle Mile Shopping Center v. National Union Indemnity Co., 299 F.2d 780 (7th Cir. 1962); Bill Curphy Co. v. Elliott, 207 F.2d 103 (5th Cir. 1953).
8. Louisville & Nashville Railroad Co. v. United States Fidelity & Guaranty Co., 125 Tenn. 658, 148 S.W. 671 (1911).
9. Id.; See also Trainor Co. v. Aetna Cas. & Surety Co., 290 U.S. 47, 78 L.ed. 163 (1933); See Polk v. American Cas. Co., 816 (Supreme Court of Kentucky interpreting a Kentucky statute held that surety is not chargeable with interest when interest will result in recovery larger than face amount of the bond).
10. Simpson v. Simpson, 766 P.2d 1055 (Or. App. 1989).
11. Id.
12. Riva Ridge Apartments v. Robert G. Fisher Company, 745 P.2d 1034 (Colo. App. 1987).
13. Id. at 1040.
14. Petty v. Sloan, 277 S.W.2d 355 (Tenn. 1955).
15. Aetna Casualty & Surety Company v. Buck, 594 So.2d 280 (Fla. 1992).
16. Fidelity & Deposit Company of Maryland v. LaCentre Trucking, Inc., 559 So.2d 1242 (Fla. App. 4 Dist. 1990).
17. Aetna Casualty & Surety Company v. Butte-Meade Sanitary Water District, 500 F. Supp. 193 (D.S.C. 1980).
18. Bill Curphy v. Elliott, 207 F.2d 103, 106 (5th Cir. 1953).

19. Butte-Meade Sanitary Water District, 500 F. Supp. 193 (D.S.C. 1980).
20. Iowa Concrete Breaking v. Jewat Trucking, 444 N.W.2d 865 (Minn. App. 1989).
21. Minn. Stat. § 574.26 (Supp. 1985).
22. Jewat Trucking, 444 N.W.2d. at 872.
23. Insurance Company of North America v. United States, 951 F.2d 1244 (Fed. Cir. 1991).
24. United States v. United States Fidelity & Guaranty Company, 236 U.S. 512, 530-31, 35 S.Ct. 298, 303-04, 59 L.Ed. 696 (1915).
25. Carrols Equities Corp v. Villnave, 395 N.Y.S.2d 800 (N.Y. App. Div. 1977).
26. Id. at 803.
27. Id. at 803.
28. Veneto v. McCloskey & Co., 128 N.E.2d 337 (1955); Union Market National Bank v. Nonantum Investment Co., 291 Mass. 439, 197 N.E. 57 (1935).
29. United Bonding Ins. Co. v. Banco Suizo-Panameno, S.A., 422 F.2d 1142 (5th Cir. 1970).
30. Banco, 422 F.2d at 1149 (citing Truax v. Capitol Life Ins. Co., 26 P.2d 755 (Okla. 1933)).
31. Triangle Elec. Supply Co. v. Mojave Elec. Co., 238 F. Supp. 815 (W.D. Mo. 1965).
32. Id. at 819.
33. Id. at 819; See Illinois Surety Co. v. John David Co., 244 U.S. 376 (1917) (surety liable for interest which exceeded penal sum of surety's bond)); See also Maryland Cas. Co. v. Kansas City, Mo., 128 F.2d 998 (9th Cir. 1942); Russell v. Travelers Indemnity Co., 244 F. Supp. 419 (W.D. Mo. 1965); U.S. v. Greene Electrical Service of Long Island, Inc., 252 F. Supp. 324 (E.D.N.Y. 1966).
34. Great American Ins. Co. v. North Austin Municipal Utility Dist. No. 1, 850 S.W.2d 285 (Tex. App. 1993).
35. First National Bank v. Fidelity & Guaranty Co., 110 Tenn. 10 (1902).
36. Id. at 25-26.
37. Id. at 24.

38. Id. at 25-26.
39. United States Fidelity & Guaranty Co. v. Barber, 70 F.2d 220 (6th Cir. 1934).
40. Id. at 225-226.
41. Id. at 226.
42. Id. at 226.
43. ABS Clothing Collection, Inc. v. The Home Insurance Co., 34 Cal. App. 4th 1470, 41 Cal. Repr. 2d 1166 (1995).
44. Id.; Contra Karaney Realtor & Developer, Inc. v. Travelers Ins. Co., 501 N.W.2d 335 (1993).
45. ABS Clothing Collection, Inc., 34 Cal. App. 4th at 1474.
46. Id. at 1474.
47. Id. at 1475.
48. Id. at 1485; See also Cincinnati Ins. v. Hopkins Sporting Goods, 522 N.W.2d 837 (Iowa 1994); Penalosa Co-Op v. Farland Mut. Ins., 14 Kan. App. 2d 321 (1990).
49. Id. at 1497-1498; See Santa Fe General Office Credit Union v. Gilberts, 12 Ill. App. 3d 693, 299 N.E.2d 65 (1973); Columbia Hospital v. United States Fidelity & Guaranty Co., 188 F.2d 654 (D.C. Cir. 1951); State ex rel. Guste v. Aetna Cas. & Surety Co., 417 So.2d 1404 (La. Ct. App. 1982), aff'd 429 So.2d 106 (La. 1983).
50. Endeco, Inc., 718 F.2d 879 (8th Cir. 1983)
51. Id. at 882.
52. Danella Construction Corp. v. Western Surety Co., 628 P.2d 557 (Colo. App. Ct. 1995).
53. Id.
54. Dennis Dillon Oldsmobile, GMC, Inc. v. Zdunich, 668 P.2d 557, 561 (Utah 1983).
55. Danella Construction Corp., 628 P.2d 557 (1995).
56. Id.

57. Atlantic Permanent Federal Savings and Loan v. American Casualty Company, 839 F.2d 2121 (4th Cir. 1988).
58. Id.; See also McCuen v. American Casualty Company, 946 F.2d 1401 (8th Cir. 1991); Eureka Federal Savings & Loan Association v. American Casualty Company of Reading, Pennsylvania, 873 F.2d 229 (9th Cir. 1989).
59. Bank of Huntingdon v. Smothers, 626 S.W.2d 267 (Tenn. App. 1981).
60. Id. at 271.
61. Tenn. Code Ann. § 56-7-105 (1981).

