



CAP APPEAL BONDS FOR ALL DEFENDANTS

A key protection against an unfair civil verdict is the ability to seek recourse through an appeal. In order to access an appeal, however, most defendants in New Jersey are required by law to post the entire amount awarded as a bond before they may appeal the decision against them. Judges can also require that additional bond money is posted to secure attorneys' and court fees. Capping the bond that must be posted in order to appeal an adverse decision would reduce dead weight litigation costs and ensure that erroneous decisions can be appealed in a cost-effective fashion.

New Jersey's current law regarding appeal bonds does not reflect the consequences of contemporary litigation and the current state of the economy. It can be difficult for many small and mid-sized businesses to obtain the financing they need in order to secure large appeal bond requirements. Even large employers can have a difficult time doing so, especially in cases where they rent office space and therefore lack the collateral necessary for securing capital. In these cases, final judgment rests more on economic factors rather than it does on both parties trusting that their case has been fairly decided.

Pressure to settle. Even though rulings may be overturned or significantly reduced on appeal, the high costs of an appeal bond may deter legitimate appeals and force payment for claims that arguably should not be paid. This deprives the courts of the opportunity to review the claim, and may cause solid New Jersey businesses irreparable harm to their reputation and economic viability.

Suppression of growth. Should a company choose to proceed with an appeal, the inability to obtain or afford the bond may result in a company filing for Chapter 11 bankruptcy as a means to stay the judgment. It is a tremendous disruption to the business, its employees, and its consumers. The funds expended by a business to finance a bond for the duration of an appeal – which may last months or years – are lost and never recovered, even if the appeal is ultimately successful.

Decline in key industries. These appeal bonds disproportionately impact businesses and service providers that do not own large facilities or possess hard assets against which a bond can be levied, including high tech, bio-tech, and research-based companies all of which are major drivers of economic growth in New Jersey.

We can begin to remedy this situation by capping appeal bonds at \$50 million, or the total value of the monetary judgment, whichever is less. This is the same bond cap amount which New Jersey currently grants to tobacco companies. Giving all defendants the benefit of a reasonable cap on appeal bonds ensures justice prevails over economics.