

# WEST VIRGINIA CODE: §58-5-14

## **§58-5-14. Appeal bond generally; limitation on amount.**

(a) When required by the court, an appeal shall not take effect until bond is given by the appellants or petitioners, or one of them, or some other person, in a penalty to be fixed by the court or judge by or in which the appeal is allowed or entered with condition: If a supersedeas be awarded, to abide by and perform the judgment and to pay to the opposite party, and to any person injured, all such costs and damages as they, or either of them, may incur or sustain by reason of said appeal, in case such judgment, or such part, be affirmed, or the appeal be dismissed, and also, to pay all damages, costs and fees, which may be awarded against or incurred by the appellant or petitioners; and if it is an appeal from a judgment dissolving an injunction, or dismissing a bill of injunction, with a further condition, to indemnify and save harmless the surety in the injunction bond against loss or damage in consequence of his or her suretyship; and with condition when no supersedeas is awarded to pay such specific damages and such costs and fees as may be awarded or incurred: Provided, That whenever an appeal is awarded in any action or suit wherein a judgment for the payment of money has been entered against an insured in an action which is defended by an insurance corporation, or other insurer, on behalf of the insured under a policy of insurance, the limit of liability of which is less than the amount of said judgment, execution on the judgment to the extent of the policy coverage shall be stayed until final determination of such appeal and no execution shall be issued, or action brought, maintained or continued against such insured, insurance corporation or other insurer, for the amount of such judgment so stayed, by either the injured party, the insured or the legal representative, heir or assigns of any of them, during the pendency of such proceeding, provided such insurance corporation, or other insurer, shall:

(1) File with the clerk of the court in which the judgment was entered a sworn statement of one of its officers describing the nature of the policy and the amount of coverage thereof;

(2) Give or cause to be given by the judgment debtor or some other person for him or her a bond in a penalty to be fixed by the court or judge by or in which the appeal is allowed or entered, not to exceed the amount of such insurance coverage set out in the sworn statement above required, with condition to pay the amount of such coverage upon said judgment if the judgment or such part is affirmed or the appeal is dismissed, plus interest on said sum and cost;

(3) Serve a copy of such sworn statement and bond upon the judgment creditor or his or her attorney;

(4) Deliver or mail to the insured at the latest address of the insured appealing upon the records of such insurance corporation, or other insurer, written notice that execution on such judgment to the extent that it is not covered by such insurance is not stayed in respect to the insured: Provided, That the filing of a bond by the insured or someone for him or her,

conditioned upon the payment of the balance of the judgment and interest not stayed by the insured as aforesaid if the judgment is affirmed or the appeal is dismissed, shall stay execution on the balance of said judgment not covered by such insurance: Provided, however, That the filing of such statement and bond hereunder by an insurance corporation or other insurer shall not thereby make such insurance corporation or other insurer a party to such action, either in the trial court or in the appellate court.

(b) Except for bonds required under section four, article eleven-a, chapter four of this code, an appeal bond required by a court in accordance with this section may not exceed the amount of the total judgment, which includes the actual judgment, plus costs, interest and fees: Provided, That for all verdicts returned or judgments rendered on or after July 1, 2007, in which the judgment exceeds \$50 million, the court shall require an appeal bond of no more than \$50 million. For purposes of this subsection, multiple judgments resulting from cases that have been consolidated or aggregated for purpose of trial proceedings shall be treated as a single judgment.

(c) If the appellee proves by a preponderance of the evidence that the appellant is dissipating or diverting assets outside the ordinary course of business, thereby impairing the appellant's ability to pay the ultimate judgment, the court is not bound by the limitations stated in subsection (b) of this section and may set the appeal bond at any amount not to exceed the total judgment.

(d) The maximum amount allowed for a bond under subsection (b) of this section shall be adjusted on July 1, 2012, by an amount to reflect the annual aggregate percentage change in the Federal Consumer Price Index for All Urban Consumers, as published by the United States Department of Labor for the immediately preceding five years, and shall thereafter be adjusted on July 1, every five years after that initial adjustment by an amount determined by the aggregate change in the Federal Consumer Price Index for All Urban Consumers since the previous adjustment.