Lexington National Insurance Corporation

Spring 2010

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Newsletter for the Independent Bail Bond Agent

Mark Holtschneider Receives PBUS "Individual of the Year" Award

Each year, the PBUS invites nominations for the prestigious "Individual of the Year" award. Nominations are accepted by the PBUS Home Office and forwarded for review by the Awards Committee, which is charged with debating and deciding the worthiness of a nominee.

The Individual of the Year award goes back a number of years, and includes many distinguished winners: best selling author Janet Evanovich, Los Angeles District Attorney Steve Cooley, Congressman Bob Wexler, and Lexington National President Brian Frank.

The Individual of the Year Award is designed to recognize an individual, company, or organization that has served to "uplift our profession across the nation." Nominees should be involved in work that has "positively impacted the PBUS mission by providing information, education, or representation in a manner that reflects national influence on the bail profession." A nominee's contribution must reflect commitment to our profession as well as indisputable evidence of positive impact for our profession on a national level, and that these efforts are done without remuneration.

Mark Holtschneider, Lexington National's Executive Vice President and General Counsel, has worked on the PBUS Insurance Committee for many years and frequently speaks at PBUS conventions and many state bail agent conventions. Mark has also been involved in drafting legislation beneficial to the bail bond industry and in lawsuits that help protect our industry.

Many testimonials were offered in support of Mark's nomination as PBUS' Individual of the Year. Here's one:

> Mark is dedicated, committed, tenacious. One of the most even tempered and rational people I have ever met.

Another testimonial:

> For years, Mark labored in the trenches working with an insurance broker to create a professional liability policy that would be of great benefit to our members. Mark warned that the broker had not met all our needs and the policy was not good for PBUS and its members. He was right and, in a short time, the program was discarded. Many people would have given up at that point, but Mark quickly began the search again for a professional liability policy for our members.

We are proud of Mark's accomplishments at home here with Lexington National and in the national bail bond industry.

Congratulations on this prestigious award, Mark! ■

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How To Testify at a Bail Reduction Hearing

There are times when a potential client's bail amount is so high that he and his family can not pay the premium or provide the necessary collateral. The only way the defendant is going to make bail is for the bail amount to be reduced. As a bondsman, you can help make that happen by providing valuable testimony at the defendant's bail reduction hearing.

In most states, a judge setting bail must consider the defendant's risk of flight and the safety of the public and alleged victim. The judge should set the bail in an amount sufficient to ensure the defendant's appearance at all court hearings. The Eighth Amendment to the United States Constitution, however, prohibits "excessive bail."

Before testifying, you should thoroughly underwrite the bond. You should meet with all indemnitors and, if possible, the defendant. All relevant documents, such as pay stubs, deeds, and mortgages, should be gathered. Finally, you should discuss your testimony with the defendant's lawyer before the hearing.

Your testimony should include the following topics:

1. Your experience as a bail bondsman. The judge will more likely accept your testimony if he determines you are experienced and professional.
2. Your experience performing fugitive recovery work. If the judge believes you are capable of finding and returning the defendant should he becomes a fugitive, then the judge may lower the bail amount.
3. The results of your interview with indemnitors. You should testify about each indemnitor's job, stability, and reputation in the community. These likely will affect the judge's view on the defendant's flight risk.
4. Your opinion regarding the defendant's flight risk. Explain to the judge why you think the defendant's flight risk is low - family ties, job, prior case appearances, etc.
5. Assets that the indemnitors have to secure a bond. If the judge understands that the defendant's parents only have $50,000 of equity in their home, he may agree that the forfeiture of a $50,000 bond would mean the defendant's parents would lose everything if their son became a fugitive.
6. The defendant's check-in requirements if he makes bail. A judge will feel more secure in lowering bail if he knows that the defendant is required to check in regularly with the bondsman by phone or in person. You can even offer to put the defendant on electronic monitoring and house arrest.
7. Your willingness to write, with your insurance company's approval, a bond of a specific amount.

By providing this testimony, you not only help secure a bond you previously could not write, but also you provide your client with a valuable service. In addition, you will gain a reputation in the community as a high quality, professional bondsman. ■

Stay in Touch

Have an idea for our next newsletter? Need to update your contact information? Want to subscribe to our electronic version or unsubscribe from our mailing list? Send a quick note to the editor at **mholtschneider@lexingtonnational.com.**

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Contact the editor Mark Holtschneider at mholtschneider@lexingtonnational.com or 1-888-888-BAIL. Deadline for next newsletter issue content: June 15, 2010.

Important Note
Lexington National Insurance Corporation does not endorse any of the vendors, web sites, forums, organizations, resources, etc. that are presented in this newsletter. All articles and references are prepared strictly for informational purposes.

Tax Wisdom of Solomon: Healthcare Reform Tax Implications

by Eric M. Nislow, CPA

The previous 14 months have been a long and drawn-out process regarding the healthcare reform measures that were enacted into law on March 22, 2010. Over the course of more than a year, partisan political posturing obfuscated the facts, figures, and consequences of the proposed bill. Businesses and individuals have been anxious to see how the proposed measures would affect their tax burdens. Now that the bill is law, the tax benefits and consequences can be fully examined and explained.

Due to political and budgetary constraints while crafting the bill, many of the law's provisions do not come into effect for a few years. The summary below outlines the major phase-in features of the new law.

2010

- Offers tax credits, of up to 35 percent of premiums, to small businesses that choose to provide insurance to employees – effective immediately.
- Addresses the funding gap in the Medicare prescription drug coverage for seniors. Seniors who hit the cap on their Medicare prescription drug benefits will be given a rebate. Once they spend $2,830, they will receive a $250 rebate. Starting in 2011, older Americans who exceed the allotted amount will be given a 50 percent discount on prescription drugs.
- Allows children to remain on parents' insurance plans until age 26, effective September 22, 2009.

2011

- Begins phased-in fees and taxes on the health industry, starting with a $2.3 billion annual fee on drug makers.

2013

- Imposes an additional 3.8 percent tax on investment income, and a 0.9 percent Medicare tax, on families with annual incomes above $250,000.

2014

- Imposes an individual mandate – enforced by fines starting at 1 percent of income.
- Implements government subsidies for insurance for individuals and families with incomes below 400 percent of federal poverty.
- Expands eligibility for Medicaid to anyone earning up to 133 percent of federal poverty.
- Mandates employers to provide employee health insurance or face penalties.
- Prohibits denial of coverage to anyone with a pre-existing condition.
- Establishes health insurance exchanges to serve as a competitive marketplace, thereby enabling individuals to purchase individual policies.

2018

- Imposes excise tax on employer-provided health plans valued at more than $27,500 (family) or more than $10,200 (single).

While these measures appear to address issues related to healthcare access and cost control, there is always the Law of Unintended Consequences; for those familiar, "any intervention in a complex system may or may not have the intended result, but will inevitably create unanticipated and often undesirable outcomes." As we collectively undertake this journey we will keep you abreast of any changes that may adversely impact you. ■

Eric M. Nislow, CPA is the managing partner of Solomon and Nislow, P.A., a Baltimore-based tax, accounting and consulting firm serving clients since 1965. For assistance or questions, contact Eric Nislow at 410-727-2717 or enislow@solomonandnislow.com.

Lexington National Mourns Loss of California Bondsman

The joy of the holiday season was dampened with the loss of longtime agent and good friend, Larry Schaller, who passed away after a brief illness on December 29, 2009.

Larry, who had been a law enforcement officer in Santa Clara County earlier in his life, was a bondsman for more than 20 years. He spent the last nine years honorably and ably representing Lexington National in Fresno, California, as owner of Eladio's Bail Bonds.

Larry brought his daughter, Laura Silveira, into the business, as well as his grandson Richard (currently serving our country in the U. S. Army), and granddaughters Alexis and Brandi. Affectionately known as "Don Eladio", he was active in professional associations in Fresno County, and was highly respected and regarded in the criminal justice community as a man of his word.

We grieve for the loss that Laura, Richard, Alexis, and Brandi are feeling, as well as his longtime assistant and "Girl Friday", Christine. Our hearts go out to them and all who knew and loved him. We will miss Larry greatly and remember him fondly.

Out and About at the 2010 Las Vegas Conference

The Flamingo Hotel & Casino hosted this year's event.

Mississippi Agents Mike and Deborah Lyles

California Managing General Agents Frank and Glenda Stroobant

Florida Managing General Agent Frank Braswell

Fred Frank Bail Bonds' employee Dawn Schaeffer and Chris Schaeffer

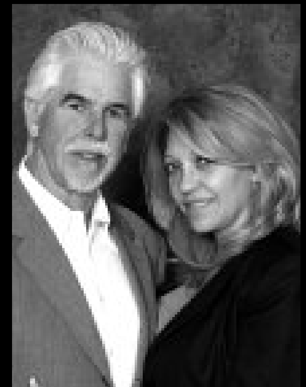
California Managing General Agent Topo Padilla and Tina Padilla

Glenda Stroobant, Denise Parton and Theresa Jennings

"The Lexington Ladies" (l. to r.) Lisa Slater, Fran Whiting, Elise Feit (friend of LNIC), Denise Jett and Erika Douglas

LNIC Senior Vice President Randy Parton and Denise Parton

PBUS Executive Director Steve Kreimer with Florida Managing General Agents Linda and Frank Braswell



Texas Agent Dale Coburn & Marilyn Romo

Texas Agent Alicia Davis and Keith Davis

Lexington National Director of Agent Relations, Fred Frank Bail Bonds employee and PBUS Northeast Director Dennis Sew

Lani Johnson and Robin Matos with Electronic Resource Associates, LLC

Legal Beat: Recent Cases Impacting the Bail Industry

by Mark Holtschneider, Esq.

Bond Discharged when House Arrest Imposed after Conviction – North Carolina

The defendant appeared and pled guilty. The court ordered him to remain in his residence 24 hours a day and not to have a cell phone or pager. The court then continued the Prayer for Judgment for a month. The defendant failed to appear at the continued hearing. The court forfeited the bond, but set the forfeiture aside on the surety's motion. The School Board appealed, and the Court of Appeals held that house arrest and no cell phone or pager was "punishment" sufficient to finally dispose of the charges and thus discharge the surety. Directing the defendant to obey all laws or pay court costs would not be "punishment," but here the conditions went beyond obeying all laws and constituted punishment. Accordingly, the order was a final judgment and the surety had no further obligation to secure the defendant's appearance. *State v. Bonner* (N.C.App. 2010).

Lesson Learned: If a defendant pleads guilty or is found guilty, the bondsman should request that the bond be discharged. Similarly, if the judge imposes stringent home confinement, the bondsman should request that the bond be discharged. If the judge disagrees, the bondsman should consider an appeal.

Nolle Prosequi of Case does not Always Exonerate Bond – Tennessee

The defendant failed to appear in 1996 and the surety paid the forfeiture in 1997. The defendant was not recovered, and in 2007 the State entered a *nolle prosequi* to close the case. The surety then moved for return of its forfeiture payment. The trial court denied relief, and the surety appealed. The surety argued that the dismissal prevented it from recovering the defendant, returning him to custody and seeking remission of the forfeiture. The surety proffered no facts that it was still trying to locate the defendant or had any realistic prospect of returning him to custody. The Court held that dismissal of the case, and thus cancellation of the warrant for the defendant, did not entitle the surety to return of its payment. The Court noted that if the surety were entitled to any relief it would be that the warrant be reinstated, not that the forfeiture payment be returned, but held that the Legislature did not intend to require that old, unprosecutable criminal cases remain on the court's docket forever. *State v. Bejar* (Tenn.Crim.App. 2010).

Lesson Learned: The general rule is that if the State files a nolle prosequi, the case is dismissed and thus the bond is discharged. However, the State's dismissal of a fugitive's case 10 years after the FTA does not provide relief to a bondsman in Tennessee.

Surety Not Discharged by Court's Erroneous Extension that Surety Requested – California

The defendant failed to appear in January 2007, and the court

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American Bail Coalition Update

The American Bail Coalition is a non-profit trade association created for the advancement and protection of the private bail industry. The Coalition is made up of 11 bail bond sureties, including Lexington National.

The Coalition is currently working on many projects, including the reintroduction of commercial bail in Oregon. That state has prohibited private bail for many years and as a result Oregon's criminal justice system faces many problems, including high FTA rates and an unacceptably large number of unserved fugitive warrants. The Coalition is educating lawmakers about the benefits of private bail and will support legislation in next year's legislature to bring surety bail back to Oregon.

The Coalition is also working with local bail bond agent associations on pending bail legislation in California, Colorado, Connecticut, Florida, Washington, and elsewhere.

Finally, the Coalition is working to help pass post-conviction bond legislation in various states.

www.americanbailcoalition.com ■

forfeited the bond. The surety obtained an extension of the appearance period. In January 2008, the surety filed a motion asking for an additional extension of six months. The court granted an extension to July 2008. When the defendant still was not recovered, the court entered summary judgment against the surety in July 2008. The surety did not appeal, but in October 2008, it filed a motion to vacate the forfeiture and exonerate the bond, which the trial court denied. The surety appealed from that denial.

Penal Code §1306(c) required that summary judgment be entered within 90 days of the date it could first be entered. That 90 day period started when the maximum extension of the appearance period ended on January 29, 2008. The bondsman agreed that, once the 90 days passed, the trial court no longer had jurisdiction to enter summary judgment. The Court of Appeal, however, held that the trial court had fundamental jurisdiction over the case and the surety was estopped to object to the court's action in excess of its jurisdiction. The erroneous order extending the appearance period beyond the statutory maximum led to the erroneous summary judgment, but the surety had itself requested the erroneous extension. The Court stated: "We do not intend by this opinion to create a broad estoppel rule applicable to any misstep made by the surety. We recognize that the statutory provisions are replete with technicalities, and the trial courts must be vigilant in following the statutory strictures…To permit the surety to have it both ways – to obtain more time to avoid forfeiture of the bond, and then to have the bond exonerated because the judge gave them more time – would be to allow an intolerable manipulation of the trial courts. This we cannot and will not condone." *People v. Bankers Insurance Co.*, 2010 WL 925180 (Cal.App. 2010).

Lesson Learned: The procedural rules that apply to bail bond forfeitures are often called "technical defenses." These procedural rules, however, are not mere technicalities, but rather provide important safeguards for bondsmen. The notice requirements ensure that a bondsman is made aware of a skip and has the opportunity to recover the defendant and take action against the indemnitors. As such, when procedural rules are not followed, the bondsman should be relieved of liability. In some cases, like the one described above, technical defenses will not prevail.

Surety Discharged when Defendant Locked Up in Other State – California

The defendant failed to appear for court in California and then got locked up in Virginia. The surety located the defendant in custody in Virginia and moved within the appearance period to set aside the forfeiture and exonerate the bond. At the hearing on the motion, the bondsman also moved to toll the appearance period. The trial court denied the motion to set aside the forfeiture and refused to consider the oral motion to toll the appearance period. The surety appealed. The Court of Appeals thought that incarceration of the defendant in another state was a "disability" under Penal Code §1305. If the disability was permanent, the surety was entitled to exoneration. If the disability was temporary and California could seek return of the defendant, the surety was entitled to have the appearance period tolled. *People v. Lexington National Ins.Corp.* (Cal.App. 2010).

Lesson Learned: If a fugitive on a California bond is locked up in another state, the bondsman should file a motion to exonerate the bond or in the alternative, to toll the appearance period.

Defendant in ICE Custody Deemed Good Cause for FTA – Arizona

When the surety posted the bond for the defendant, the jail turned the defendant over to ICE instead of releasing her. The defendant was still in federal custody when her state court date occurred. The defendant failed to appear for arraignment and the bond was forfeited. The Court of Appeals held that if the State was able to obtain the return of the defendant from the federal authorities, the bond should be exonerated. On the other hand, if the defendant was deported or otherwise not available to the State, the bond should be forfeited. The Court vacated the judgment of forfeiture and remanded the case to give the surety an opportunity to demonstrate that the State could have obtained return of the defendant. *State v. Bail Bonds USA* (Ariz.App. 2010).

Lesson Learned: Many states have specific statutes or case law that set forth whether a bond is forfeited when a defendant is taken by ICE and then deported. In some states, however, there is no governing rule and thus no certainty as to what will happen. It is important for the bondsman to know if the state he is writing in has a rule and if so, what that rule is. Further, as soon as the bondsman realizes that the defendant has been turned over to ICE and not released, the bondsman should consider surrendering the bond and gathering whatever documentation is possible to prove that the defendant is held by ICE. If a bondsman can prove that a defendant was being held by ICE on the missed state court date, the bond should be discharged.

Increase in Bail Amount May Not Discharge Surety – California

The surety posted a $17,500 bond before a criminal complaint was filed against the defendant. The bond provided for appearance "to answer any charge in any accusatory pleading based upon the acts supporting the complaint . . . ." When the complaint was filed, the charges would have required bail of $115,000 under the bail schedule, but the bail amount was never increased. The defendant appeared for the arraignnment, but the bond was forfeited when the defendant failed to appear for the next court hearing. The surety argued that because the jail erroneously set the bond amount so low, the surety was prevented from properly evaluating its risk on the bond. The Court looked to the plain terms of the bond and found that they guaranteed appearance to answer any charges from the same operative facts. The Court found that the complaint did not increase the surety's risk and was within the scope of the bond. The Court affirmed judgment against the surety. *People v. Bankers Insurance Co.* (Cal.App. 2010).

Lesson Learned: A bondsman should consider what additional charges could be made against a defendant and recognize that in certain states, like California, the charges may increase and thus affect the risk of flight. Similarly, if a bond amount seems too low for the charges, the bondsman should take in to account that the charges may increase in the future and thus affect the flight risk on the bonds. ■

Studying Your Options?

If you need an insurance company that understands your bail bond business, then you're looking in the right place. At Lexington National, WE KNOW BAIL.

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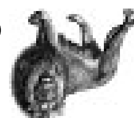

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