LEXINGTON NATIONAL INSURANCE CORPORATION

BUILT BY BONDSMEN FOR BONDSMEN

Winter 2014

Newsletter for the Independent Bail Bond Producer

Truth is Stranger than Fiction

America's "Most Wanted" Now Found

#1 In 1978, Gary Irving was convicted of kidnapping and raping three young women in Norfolk County, Massachusetts. He was 18 at the time. Despite warnings from the county prosecutor, Judge Robert Prince released the defendant to spend one last weekend of freedom with his parents. Instead of reporting for jail, Irving ran. The state police put him on their "most wanted" list; and television shows like "America's Most Wanted" and "Unsolved Mysteries" blasted his story to the public. Nearly 35 years later, Irving was arrested at his home. Now 52 and living in Maine, "Greg" (AKA Gary) Irving was found in possession of illegal handguns and long guns when federal authorities found him.

#2 In 1973, Michael Ray Morrow was sentenced for "5 years to life" or "10 year minimum" for armed robbery. After serving four years at the California Institute for Men Facility (CIMF), he scaled the fence on August 27, 1977 and never looked back. Living under the name Carl Frank Wilson, Morrow was arrested under suspicion of murder, then released with no charges filed, in 1984 by the Saline County Sheriff's Department in Arkansas. When FBI investigators launched "Operation Manhunt" in 2013, they matched Morrow and "Wilson's" fingerprints, using the latest industry technology. Thirty-six years later and 1,600 miles away from CIMF, Morrow was captured under a fugitive arrest warrant. Now 70, he holds California's record for the longest-sought fugitive inmate to be caught.

NEW BAIL BOND FORMS PROTECT BONDSMEN BETTER

Two years ago, Lexington National and a dozen other bail bond sureties formed a group to create new standard bail bond forms. The existing forms used by Lexington National and many other companies had changed very little over the last 25 years. The goal of the group was to standardize the forms, create an intake sheet for today's skip tracing methods, and provide the greatest legal rights possible for the surety and bondsman.

The Forms Group started the process by hiring a national law firm from California. The firm researched the bail and insurance laws of each state. We then gathered input from various bondsmen to make sure the forms were as user-friendly as possible. The new forms were then submitted to the necessary Departments of Insurance for review and approval. All of the forms have now been approved and are ready for use.

Check out the new forms at www.lexingtonnational.com. Click on "BONDSMEN RESOURCES" then "Bail Bond Forms".

STREAMLINED INTAKE SHEET

Gathering information about the defendant and each indemnitor is critical to good underwriting and successful fugitive recovery. The new forms have streamlined the intake section and organized the areas of information in an easy to use manner. In addition, new information, like the applicant's Facebook name, has been added.

EXPANDED LEGAL RIGHTS

The new forms also provide new legal rights to the surety and bondsman. For example, the new forms specifically grant the surety and bondsman the right to ping the applicant's phone, place a tracking device on his car, and enter his residence. These rights could be useful if a defendant becomes a fugitive.

PRINTED COPIES FOR APPLICANTS

California, Florida, and certain other states require that a bondsman give copies of signed document to the applicant. This can easily be done when the bondsman is in the office with a copy machine. But, when the bondsman is not in the office, providing copies becomes more difficult.

The new forms will be PDF-fillable on Lexington National's website and, thus, copies can also be provided through a portable printer when the bondsman is out of the office. In addition, Lexington National will provide the forms with NCR paper for use in the field.

BENEFITS FOR BONDSMEN

The bottom line is that these new forms offer loads of benefits for your business, including:

- Reduce your risk of loss on a bond
- Increase your legal rights
- Help you avoid regulatory fines and sanctions ■

If you have any questions about the new forms, please feel free to contact Mark Holtschneider at 888-888-2245 or mholtschneider@lexingtonnational.com

Winter 2014

Did You Know?

Prisoner Profiles

According to Crime and Delinquency, almost a third of Americans have been arrested by age 23.

Among offenders, men are arrested more often than women. Here are the statistics by gender and race:

	WHITE	BLACK	HISPANIC
Men	38%	49%	44%
Women	20%	16%	18%

The Bureau of Justice Statistics claims: almost seven million offenders were supervised by adult correctional authorities at the end of 2011. An analysis of this group showed:

- male inmates have an incarceration rate 14 times higher than females
- 36% of females were incarcerated for violent crimes
- nearly 1 in 5 nonviolent offenders leaving state prison had been convicted of drug trafficking
- 39% of sentenced state and federal prisoners were age 40 or older
- one in every 50 adults in the U.S. was on probation or parole
- one in every 107 adults was incarcerated in prison or jail
- 25% of state prisoners had a recent history of a mental health problem
- 21% of jail inmates had recent mental health problems ■

Most Dangerous States in America

According to the FBI's 2013 statewide statistics, violent crimes rose nearly 1% after a steady decline in recent years. According to the FBI report, 'violent crime' includes murder, rape, robbery and aggravated assault. The following list identifies the 10 states with the highest rates of violent crime per 100,000 residents.

1. Tennessee
2. Nevada
3. Alaska
4. New Mexico
5. South Carolina
6. Delaware
7. Louisiana
8. Florida
9. Maryland
10. Oklahoma

Source: 24/7 Wall Street at www.247wallst.com/special-report/3013/10/04/the-most-dangerous-states-in-america

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**.

LEXINGTON NATIONAL INSURANCE CORPORATION

P.O. Box 6098
Lutherville, MD 21094

www.lexingtonnational.com

Built by Bondsmen for Bondsmen

1-888-888-BAIL(2245)

Officers

Brian Frank – *President*
Phyllis Kimmelman Frank – *Vice President*
Ronnie Frank – *Vice President*
Mark Holtschneider – *Executive Vice President/General Counsel*
Kim Marzullo – *Vice President/ Chief Financial Officer*
Mike Monks – *Vice President/ Texas Counsel*
Randy Parton – *Senior Vice President*
Lisa Slater – *Vice President/Chief Operating Officer*

Our Team

Tami Barksdale – *Executive Assistant to Senior Vice President*
Alyssa Barnes – *Producer Servicing*
Jamie Burchett – *Producer Servicing*
Roxanne Cucina – *Producer Servicing*
Erika Douglas – *Special Projects*
Jennifer Everhart – *Producer Servicing*
Denise Jett – *Executive Assistant to Executive Vice President*
Kristie Marquess – *Producer Servicing*
Terry Marquess – *Executive Assistant to President*
Quiana Mondowney – *Office Administrator*
Patricia Price – *Producer Servicing*
Dennis Sew – *Director of Agent Relations*
Vicki Shinsky – *Producer Servicing*
Jarre Weinstein – *Licensing Administrator*
Fran Whiting – *Forfeiture Supervisor*
Scott Williams – *National Field Service Representative*

Contact the editor Mark Holtschneider at mholtschneider@lexingtonnational.com or 1-888-888-BAIL. Deadline for next newsletter issue content: March 1, 2014.

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.

Defining 'Compelling Evidence' in Chargeback Disputes

by James M. Peeler

There is an old saying I've heard time and time again, "Be careful…the devil knows the scriptures too!" Over the years, I have come to understand the meaning very well. Simply put, bad people often take the time to learn the rules so well that they twist them to their own advantage. Unfortunately, it is usually at the cost of the innocent.

Thankfully, within these same scriptures there is a weapon for the innocent to use, a solution hidden in five simple words, "Study to show yourself approved." It seems almost too easy. Learn more than evil did today, and your tomorrows will be filled with victories.

Never have these words rang more true than in the world of electronic payments, where the rules and regulations seem to change almost daily. With credit card transactions making up nearly 70% of all bail bond sales in the U.S. today, and with such a large portion of bail agents' bread and butter coming from one source, perhaps we might all agree that bail agents need to take more time to learn these rules? I like to say, "A little time learning today can save you a lot of time fighting losses tomorrow!"

Chargeback Disputes

Often, I have bail agents who call our office asking for help because one of their customers has started a chargeback against them. For those of you who may not know, a chargeback is a process wherein a cardholder (your bail customer) is attempting to dispute a credit card transaction. In most cases these cardholders claim they did not authorize the sale. It is also true that, in the majority of chargeback cases, the original sale was not performed in the bail office; it was transacted long distance, over the phone.

This type of sale is referred to as a "keyed" transaction, meaning that the card was "not present" at the point-of-sale. Most agents understand, when you key in a card number, you are raising the risk of that transaction. What most agents do not understand is: the extra steps required to keep this kind of transaction safe against future fraud. Here are a few steps we offer that will increase the odds in your favor during these long distance sales—and virtually eliminate chargeback losses all together.

When a chargeback happens, merchants receive a chargeback request with a case number assigned to it. Merchants must respond to the issuing bank, known as the "issuer" (i.e. the bank that issued the actual credit card to the cardholder/customer) and this response must be completed by the merchant within a given amount of time, typically 14 days. This repose is the merchant's opportunity to send the issuer their proof that the cardholder did, in fact, authorize the merchant to charge their card for services.

I cannot express enough how crucial it is that merchants take these chargeback requests seriously and respond as quickly as possible. In many cases we see, merchants lose a chargeback case simply because they did not respond in time.

During a chargeback dispute, one of the first items-of-proof the issuer will request from a bail merchant is a copy of the "signed" sales draft. Most chargebacks are related to phone sales; therefore it is impossible for an agent to have a signed sales draft. How is an agent supposed to deliver a physically signed sales draft for proof? The answer is simple…you can't. But, there is hope.

If a signed sales draft is not possible, then an issuer is required by the card association to consider any other proof the merchant may have. This additional proof is commonly referred to by the issuers as "Compelling Evidence". Herein is where confusion now arises. What constitutes good compelling evidence?

First let's eliminate what is not good evidence. Though it is good for agents to offer a very brief overview of the case in one or two paragraphs, it is not good to submit long, drawn-out stories of "He said/She said" evidence. Just as it is in court, this kind of evidence is nearly impossible to prove; therefore an issuer will simply disregard it and side in favor of the cardholder. Bail merchants should strive to get solid evidence during the first few minutes of the actual sale. This is when the customer is most desperate to get their family member out of jail and most willing to cooperate with an agent.

How to Capture Compelling Evidence

During this long-distance conversation between agent and cardholder, the agent should first write down the card number, expiration date and three-digit verification code (from the back of card). Agents should do this before typing anything into the terminal; and should NOT "store" this full card information electronically on any computers. (NOTE: We will discuss storing data issues in another article).

The agent should also require the cardholder to give their actual mailing address of the card. This way the agent can input correct information during the transaction for the Address Verification System (AVS) request by their terminal. AVS consist of the numeric part of the street address and the zip code. If the cardholder has given their correct billing address, the agent should receive an "AVS Match" on their printed receipt.

Once the sale has completed, the agent should clearly write down the authorization code for case reference. All of this will take no more than two minutes—and it is time well spent.

With most long-distance sales, agents will end up sending indemnitor documents to the actual cardholder to sign. We strongly suggest that the bail merchant also require the cardholder to complete a credit card voucher. This voucher can vary in its language, but for this document to be worth its salt, the following items must be included: The cardholder's name, the last four digits of the card used, card expiration date, space to input the actual authorization code from the original transaction, and the cardholder's signature and date. There should be verbiage that clearly states that the cardholder authorizes your bail agency to charge their card for this case in the quoted dollar amount. We also suggest having the bail case or power number printed on this document for a better flow of information. If a bail merchant has run the transaction properly as instructed herein, when a chargeback happens, agents will be able to respond with all of

Continued on page 5

Judgment Enforcement Q&A

by Megan Morrissette

What is a homestead exemption and how will it affect judgment collection?

Many states have a homestead exemption which means that a debtor's primary residence is exempt from enforcement by a judgment creditor to satisfy an outstanding judgment. The amount exempt from enforcement will vary from state to state, ranging from a full exemption in some states to little or no exemption in others. The homeowner's equity is exempt, so if your debtor owns a million dollar home that has $25,000 in equity and state law allows her to exempt $25,000 in equity, you can collect nothing from the home.

Bear in mind that if your debtor owns multiple properties, she can only use the homestead exemption to protect one property.

How much can I receive through a judgment debtor's wage garnishment?

Although it varies by state, generally speaking, you may receive as much as 25 percent of the debtor's net pay also known as disposable earnings. Bear in mind, however, that some states will allow you to recover a smaller percentage of the judgment debtor's disposable earnings and some states prohibit wage garnishments altogether. Wage garnishments are very powerful when available and are often the surest path to recovery, but patience is required.

I know where my debtor banks. How can I collect from their account?

Generally, the procedure to attach funds held in a debtor's bank account is uniform across states. First, the judgment creditor must request the court to issue a writ or order of garnishment that is served on the bank. The order will instruct the bank to freeze all funds that the judgment debtor is keeping with the bank and notify the creditor of the amount in the accounts.

Next, the judgment creditor must request that the court order the bank to turn over the funds to the judgment creditor. Usually every penny in the account is subject to attachment, although the debtor may assert some exemptions. For example, Social Security benefits are exempt from garnishment.

How do I collect my judgment if the debtor moved out of state?

If you obtain a judgment the debtor later moves to another state, all is not lost. You may register the judgment in the state where the debtor currently resides.

Typically, you will need to first obtain a certified or exemplified copy of the judgment from the court clerk, and then file the copy with the clerk of court in the new state. You will also need to send written notice to the debtor, letting him know that the judgment is being registered in his new home state.

Once the judgment is properly registered, you can enforce it anyway the new state's laws allow, which may include conducting a debtor's exam, garnishing wages or bank accounts, attaching a lien to real estate owned by the debtor, and seizing personal property like cars, boats, jewelry, etc. ■

Megan Morrissette is Staff Counsel at Kazlow & Fields LLC, a collections and investigations firm based in Baltimore, MD. Megan also previously worked as a law clerk at Lexington National. Megan can be reached at 410-825-9644 or 800-323-1597 and megan@kazlowfields.com. Check out the company's website at www.kazlowfields.com.

Continued from page 3

this clearly defined "compelling evidence".

This voucher can be made up in advance by agents and used in all cases for better security. This same voucher could be posted on a bail agency's website for customer convenience. In any case, agents must not try to use the original authorization code for any other transaction. If the authorization code does not match the chargeback case, the merchant will normally lose the chargeback.

Credit Cards are a great way for bail agents to reach much larger client markets. Agents need not avoid long-distance sales; they just need to tighten their operating procedures. Now, with this information, if you receive a chargeback request you will be prepared!

Adding these simple steps to your standard operating procedures, and making sure that all of your agents are implementing these steps to the letter, will prevent undue stress, save you thousands of dollars each year, insure better financial security for you and your family, and offer you a greater peace of mind each and every day. ■

James M. Peeler is President/CEO of American Spirit Processing, Inc., the largest Bail Bond Industry merchant account provider in the U.S. Active with the Professional Bail Agents of the United States for 22 years, James and the ASP team understand the unique credit card processing needs of bondsmen. For a free evaluation of your current card processing fees or to learn more about your new Lexington National benefits through ASP, call 800-877-2964 or write contactus@asp247.com.

Giving Back

'Tis the season to be generous! In December, Lexington National staff members joined forces with the Maryland Food Bank to collect nonperishable food items. During this second annual giving project, coordinated by Denise Jett, the company donated hundreds of canned goods, boxed foods and treats to families-in-need in the Baltimore area.

Legal Beat: Recent Cases Impacting the Bail Industry

by Mark Holtschneider, Esq.

COMMISSION-ONLY AGENT NOT ENTITLED TO UNEMPLOYMENT BENEFITS - UTAH

A bondsman for AAA Bail Bonds sought unemployment benefits after he was terminated. The bondsman obtained most of his clients from calls to AAA that were automatically rerouted to his cell phone. Calls to AAA's phone number on the jail list were forwarded to its bondsman's personal phone. Premiums on bonds written by the bondsman were split 40% for the bondsman and 60% for AAA. After AAA terminated the relationship with the bondsman, the bondsman filed for unemployment benefits. Benefits were granted and AAA appealed. Under the Utah Unemployment Act, "insurance agents" are not eligible for unemployment if (1) the claimant "performed [services] . . . for a person as an insurance agent or as an insurance solicitor," (2) the services were "performed for remuneration solely by way of commission," and (3) such "services are also exempted under Federal Unemployment Tax Act." The appeals court held that each element was met and thus the bondsman was not entitled to unemployment benefits. *Carlos v. Department of Workforce Services* (UT 2013).

Lesson Learned – There are significant differences between your tax liability as an "employer" and as a customer purchasing services from an independent contractor. If you have hired someone as an independent contractor to help you in your business, you should work with your local lawyer and accountant to prepare an Independent Contractor Agreement and have it signed by the contractor before any work begins.

Continued from page 5

DEPORTATION EXONERATES SURETY IN SOME STATES, BUT NOT OTHERS – ARIZONA, CALIFORNIA, MARYLAND

Arizona – After the bondsman posted a $75,000 bond, the defendant was turned over to ICE and deported to Mexico. At the time of his arrest, the defendant used an alias although the court file also showed his correct name. After the trial court forfeited the entire bond amount, the surety appealed. The surety argued that the bond was void because the defendant was not bailable pursuant to Ariz. Const. Art. II §22, which bars release on bail if there is probable cause to believe that the defendant is in United States illegally and the proof is evident or the presumption great that the defendant committed a serious crime. There was no evidence before the court setting bond, however, to establish that the proof was evident or the presumption great. The Court noted that the trial court cannot presume a defendant is non-bailable. On the record before it, the trial court would have abused its discretion if it had held that the defendant was non-bailable. The Court also rejected the surety's argument that the defendant's deportation exonerated the bond. The Court found that deportation, like other causes of a failure to appear, can be considered but does not automatically require exoneration. On the facts found be the trial court, there was no abuse of discretion. The Court rejected the argument that the defendant's use of an alias and the trial court's failure to clarify his name prejudiced the surety and required exoneration of the bond. Investigation of the defendant was the surety's responsibility, and if for business reasons it posted the bond without a thorough investigation, then the surety could not complain. *State v. Better Bail Bonds* (AZ 2013)

California – Two days after bond was posted, the defendant was deported. The surety moved to vacate the forfeiture and exonerate the bond pursuant to Penal Code §1305(d) because the defendant was permanently unable to appear in court. The trial court denied the motion because it thought the surety did not establish that the failure to appear was without the connivance of the surety. The trial court reasoned that the surety knew the defendant was an undocumented alien who had previously been deported and likely would be deported and not be able to appear, but wrote the bond anyway. The trial court found this constituted "unclean hands" in the transaction and, therefore, connivance in the failure to appear.

The Court of Appeals reversed. The Appeals Court held that connivance required wrongdoing by the defendant combined with intentional failure by the surety, such as consent or cooperation or failure to oppose the wrongdoing. Here, there was no evidence the defendant, with the surety's knowledge or consent, arranged for his own deportation or that the surety knew he did not intend to appear and either aided or failed to prevent or oppose his plan. The Court concluded, "We hold that even assuming the surety should have known there was a likelihood Villa would be deported while out on bail, the surety did not "connive" in his deportation and therefore was entitled to exoneration of its bond." *County of Los Angeles v. Financial Casualty & Surety, Inc.* (CA 2013).

Maryland – The court files available to the surety before several bonds were written showed that ICE detainers were in place. The trial court held that the surety knew or should have known the defendants were likely to be deported and denied relief from the forfeitures. The Court of Appeals reversed. Maryland law allows discharge of the surety's obligation if the failure to appear is caused by an act of God, an act of the obligee, or an act of the law. The death of the principal would be an act of God, abolition of the court in which the defendant was to appear would be an act of the obligee, and extradition of the defendant to another state would be an act of the law. The focus should be on the conduct of the defendant and whether he or she willfully failed to appear, not on the conduct of the surety and the ability of the surety to return the absconding defendant. Thus, if the defendant flees to another country and cannot be extradited, the failure to appear was willful and the bond should be forfeited. On the other hand, if the Governor extradites the defendant to another state and he or she is imprisoned there, the defendant has not willfully failed to appear, and the bond should be exonerated by the act of the law in extraditing the defendant. The Court found that deportation by the federal government was analogous to extradition by the state, not to a defendant who voluntarily fled to another country. The State argued that the bail bondsman should not be able to charge a premium and post a bond for a defendant likely to be deported and then avoid payment on the bond when the deportation takes place. The Court pointed out that the State similarly should not be able to hand a bonded defendant over to ICE and then collect the face amount of the bond. The Court noted the important role of bail bonds in avoiding pretrial detention of accused persons and the chilling effect on the availability of bonds if the bond would be forfeited every time a defendant was deported. The Court stated, "it simply is not Maryland law that bail must be denied merely because an individual is subject to an I.C.E. detainer or at risk of being deported." The Court concluded that deportation of the defendants was an act of law and reasonable grounds under Maryland Rule 4-217(i)(2) to strike the forfeiture in whole or in part and grant remission in whole or in part of the penal sum. *Big Louie Bail Bonds, LLC v. State* (MD 2013).

LESSON LEARNED – The state the bond was written in determines whether deportation exonerates the bond.

DISMISSAL OF CASE EXONERATES BOND - TEXAS

The defendant's aunt provided $35,000 cash collateral for her daughter's $75,000 bail. Eventually, a "Dismissal and Discharge from Prosecution" decision was entered in the case. The indemnitor then requested the return of her collateral, but the bondsman refused because (1) the State might be reinstate the charges because the statute of limitation had not run, and (2) the defendant failed to report by phone and update her address after the case was dismissed. The indemnitor sued and the court ruled for the indemnitor. The court held that "When the case was dismissed, a final disposition occurred regardless of when the statute of limitations expires, and the bondsman had no remaining or potential liability on the bond." The court also held that failure by the defendant to check in did not give the bondsman the right to keep any collateral because the purpose of the collateral was to protect the bondsman from a forfeiture loss and there was no loss on the bond. *Action Bail Bonds v. Vela* (TX 2013).

Lesson Learned – The termination of liability on a bond is governed by statute and case law. In some states, liability ends upon conviction. In other states, it ends when the defendant is sentenced. Make sure you know whether your liability on a bond ends.

BONDSMAN NOT PERSONALLY LIABLE TO COURT FOR FORFEITURE – MICHIGAN

The trial court entered judgment forfeiting the bond and named the bondsman instead of the insurance company as the defendant. The bondsman appealed and argued that he was not the surety on the bond. The Court agreed and stated, "MCL 765.28 provides for the entry of judgment against the surety on the recognizance, not the surety's agent." *People v. Kade* (MI 2013).

LESSON LEARNED – In virtually every state, a bondsman is not liable to the court for a forfeiture on a bond. The bondsman may, however, be liable to the General Agent or insurance company based on an agreement between them. In those cases, the State has a claim against the insurance company and the insurance company has a claim against the bondsman.

DELIVERY OF DEFENDANT BY POLICE TO HOSPITAL DOES NOT EXONERATE BOND – TEXAS

The defendant failed to appear and a judgment nisi was entered. Prior to the final hearing, the bondsman "lured" the defendant to the bondsman's office and called the police to take her into custody. However, the defendant was "visibly pregnant" and complained of stomach pains. Instead of arresting her, the police allowed the defendant to be taken by ambulance to a local hospital. The trial court entered judgment for the amount of the bond, and the surety appealed. The surety argued that he had shown good cause for full or partial remission of the bond because he did everything expected of him and the police officer's failure to comply with his duty to arrest the defendant deprived the bondsman of his statutory right to exoneration of the bond. The Court reviewed the factors which the trial court should consider in exercising its discretion to remit a bond forfeiture and the fact that the surety addressed only one of them – the surety's efforts to have the defendant taken into custody. The Court held that on the record presented the trial court's denial of remittitur was not an abuse of discretion and affirmed the trial court's judgment. *Mendez v. State* (TX 2013).

LESSON LEARNED – The bondsman in this case did not argue that the defendant was placed in custody when the police arrived at the bondsman's office and the defendant was presented for arrest. If this argument had been made, the court may have concluded that the defendant had been detained by the police and thus the bond would have been exonerated. When a bondsman delivers a defendant to law enforcement, it is important to prove custody and to argue that point to the court.

BAN ON SOLICITATION IN JAIL CONSTITUTIONAL - CALIFORNIA

A bondsman made an unsolicited visit to a defendant in jail. The bondsman was arrested and charged with unlawful bail solicitation in violation of CA Ins. Code 1814 and California Code of Regulations, title 10, chapter 5, section 2079.1.1. Those sections state that a bondsman shall not directly solicit a defendant unless the defendant, his lawyer, or family member has requested the bondsman's services. The bondsman argued that the prohibitions violated his free speech rights under the Constitution, but the trial court found the bondsman guilty of a misdemeanor and ordered him to pay a $1,000 fine and be placed on probation for one year. The bondsman appealed his conviction, but lost. The appeals court stated that because only "commercial speech" was being protected, the standard of review would be more liberal in favor of regulation. The court concluded that there were sufficient public interests for prohibiting direct solicitation of defendants and thus upheld the conviction. *People v. Dolezal* (CA 2013)

LESSON LEARNED – Although government restriction of certain speech, like political and religious speech, is great, the government has more leeway to make laws that prohibit commercial speech, like soliciting for bail bonds. Each state has its own laws on what kind of solicitation by a bondsman is prohibited. Solicitation at jails is universally banned and several courts have upheld the constitutionality of such bans.

RELEASE BY COURT OF PASSPORT FOR 2 DAYS DOES NOT NECESSARILY DISCHARGE BOND – NEW JERSEY

The defendant was a foreign national attending college in New Jersey. One condition of his release was that he surrender his passport to the court. Several weeks later, the defendant's attorney and the prosecutor agreed to a consent order allowing the passport to be released to the defendant's attorney or one of his staffers so that the defendant could apply for renewal of his driver's license. The court entered the order and the passport was released for two days during which it remained in the possession of the attorney or the staffer and was returned to the court. It may, however, have been photocopied. The defendant was able to fly to China from JFK airport, and his subsequent failure to appear resulted in forfeiture of the bond. The surety moved to vacate the forfeiture or for other relief, which the trial court denied. The Appellate Division acknowledged that if the State and the defendant agree on a change that materially increases the surety's risk, the surety is discharged. However, here there was no proof that the passport or a copy of it enabled the defendant to flee. The temporary release of the passport to the defendant's attorney did not increase the surety's risk or make it impossible for the surety to perform its obligations. The Court reviewed the trial court's finding that the surety should have realized the risk of writing a bond for a foreign student with few ties to the United States who would normally return to his home at the end of the school year. The trial court also thought the surety's supervision of the defendant was "unacceptable" and "nonexistent." The Court affirmed judgment for the amount of the bond. *State v. Huang* (N.J. 2013)

LESSON LEARNED – Although it is helpful when a court takes a defendant's passport, doing so does not guaranty that the defendant will not flee the country. A bondsman should notify the Department of Homeland Security that a defendant's passport has been seized and request that the defendant's name be added to the No Fly list. ■

Grow Your Business

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.

We are bail bondsmen and the Frank family has operated retail bail bond offices for over 60 years. While some insurance companies juggle bail bonds with construction bonds, court bonds and homeowners insurance, we focus only on BAIL BONDS. It's simply what we do.

We welcome agents who want to work with a surety that understands them and is devoted solely to bail. We'll help you write more bail and be more profitable. We do that every day.

Join our family of bondsmen across the country and watch your bail bond business GROW!

Reap the Benefits

www.lexingtonnational.com 888-888-BAIL (2245)

Built by Bondsmen for Bondsmen