United States District Court
Southern District of Texas
Houston Division

MM Steel, LP, Plaintiff, v. Reliance Steel & Aluminum Co., Chapel Steel Corp., American Alloy Steel, Inc., Arthur J. Moore, JSW Steel (USA) Inc., & Nucor Corp., Defendants.	§ § § § § § § § § § §	Case No. 4:12-CV-01227

DEFENDANT JSW STEEL (USA) INC.'S MOTION UNDER RULES 62(f) AND 69(a) TO SET AMOUNT OF SUPERSEDEAS BOND AT $25 MILLION

To the Honorable Court:

Under Federal Rules of Civil Procedure 62(f) and 69(a), Texas law governs the amount of the bond required to supersede the judgment in this case. Under Texas law, the bond cannot exceed $25 million. Defendant JSW Steel (USA) Inc. therefore requests that the Court enter an order setting (a) a joint supersedeas bond of $25 million for all Defendants that are required to post a bond, or (b) alternatively, a $25 million for JSW individually.

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I.
Nature of the Proceeding

This is an antitrust case brought by Plaintiff MM Steel, LP against Defendants JSW, Reliance Steel & Aluminum Co., Chapel Steel Corp., American Alloy Steel, Inc., Arthur J. Moore, and Nucor Corp. MM Steel obtained a verdict of $52 million in actual damages for antitrust violations. On April 29, 2014, this Court entered a Final Judgment [Dkt. No. 541] on the jury's verdict. The judgment trebles the actual damages, and requires the Defendants to pay the trebled amount ($156 million) jointly and severally. JSW now files this motion asking the Court to set the amount of JSW's supersedeas bond at $25 million (jointly or individually), in accordance with Texas law as adopted by Federal Rules of Civil Procedure 62(f) and 69(a).

II.
Request for Expedited Consideration

JSW requests that the Court expedite consideration of this motion. Under the regular schedule provided by the Local Rules, this Court ordinarily would not consider this motion until June 3, 2014. *See* S.D. Tex. Loc. R. 7.3, 7.4 (motions are submitted 21 days from the date of filing, and response must be filed before submission date). By agreed order entered May 5, 2014 [Dkt. No. 547], this Court entered a temporary stay of enforcement of the judgment. The stay expires on the 14th day after the Court rules on the Defendants' post-judgment motions. The post-judgment motions are due on May 27, 2014. Thus, there is a possibility that the stay could expire before the Court issues a ruling on this motion.

JSW's bond request should be considered before MM Steel is allowed to attempt enforcement of the judgment. JSW therefore requests that the Court consider this motion on an expedited basis, to give JSW ample time to determine what steps to take in response to the Court's ruling on this motion. JSW requests that the Court order that any response to this motion be filed on an expedited basis by May 20, 2014, and that the Court consider the motion on or

before May 27, 2014.

III.
Statement of the Issue

Rule 62(f) entitles a judgment debtor "to the same stay of execution the state court would give" if the judgment could constitute a lien under state law. Under Texas law, a judgment is a lien on the debtor's property upon the recording of an abstract of judgment. Texas law caps the amount of a supersedeas bond at $25 million, regardless of the amount of the judgment. Under Rule 62(f) and the companion Rule 69(a),[1] are the Defendants therefore entitled to stay enforcement of the judgment by posting a joint bond of $25 million (for those Defendants required to post a bond)? Or alternatively, is JSW entitled to stay enforcement by posting a $25 million bond for itself?

IV.
Standard of Review

A district court's decision regarding supersedeas is reviewable by independent motion in the Fifth Circuit. *See* Fed. R. App. P. 8(a)(2); *State Bank & Trust Co. v. "D.J. Griffin" Boat*, 926 F.2d 449, 450 (5th Cir. 1991) (granting appellant's motion to stay execution without posting a bond). On legal questions (such as whether Texas supersedeas law governs), the standard of review in the Fifth Circuit is *de novo*. *E.g.*, *Richardson v. Wells Fargo Bank, N.A.*, 740 F.3d 1035, 1037 (5th Cir. 2014) (*de novo* review of legal questions regarding application of a Federal Rule of Civil Procedure); *see also* Fed. R. App. P. 8(a) (giving the court of appeals independent authority to approve a bond).

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[1] Rule 69(a) states that "[t]he procedure on execution . . . must accord with the procedure of the state where the court is located . . . ."

V.
Argument and Authorities

Rule 62(d) permits JSW to stay enforcement of the judgment by posting a supersedeas bond. Fed. R. Civ. P. 62(d). The stay takes effect "when the court approves the bond," not when the bond is posted. *Id*. JSW requests that the Court approve a joint supersedeas bond of $25 million for the Defendants that are required to post a bond, or alternatively, $25 million for JSW individually.

A. Under Texas law, a supersedeas bond cannot exceed $25 million.

After the *Pennzoil* verdict required Texaco to file bankruptcy because it could not fully supersede the judgment, Texas reformed its supersedeas-bond rules. *See Umbrella Bank, FSB v. Jamison*, 341 B.R. 835, 842 (W.D. Tex. 2006) (Yeakel, J.) ("In the wake of *Texaco, Inc. v. Pennzoil Co.*, the Texas Legislature addressed the need for alternate security in appeals from money judgments." (footnote omitted)); *Isern v. Ninth Court of Appeals*, 925 S.W.2d 604, 605-06 (Tex. 1996) (orig. proceeding) (describing the Texas Legislature's deliberate decision to permit reduced supersedeas bonds after *Pennzoil v. Texaco*).

Texas recognized that requiring a full supersedeas bond is not always warranted, because it can cause financial calamities and deprive the judgment debtor of an effective appeal. *See, e.g.*, Elaine A. Carlson, *Reshuffling the Deck: Enforcing and Superseding Civil Judgments on Appeal After House Bill* 4, 46 S. Tex. L. Rev. 1035, 1038 (2005); *see also Culbertson v. Brodsky*, 775 S.W.2d 451, 453-54 (Tex. App.—Fort Worth 1989, mand. leave denied, write dism'd w.o.j.) (noting that the changes in Texas supersedeas law, "reflect an intent to deal with a problem made notorious by the *Texaco* case, the financial impracticability of appeal because of the onerous cost of superseding judgment"). Thus, the Texas Legislature imposed limits on supersedeas bonds. *See, e.g.*, Carlson, *supra*, at 1038; *Isern*, 925 S.W.2d at 605-06.

The reformed Texas law caps the supersedeas bond amount at the lower of (a) 50% of the judgment debtor's net worth, or (b) $25 million. Tex. Civ. Prac. & Rem. Code § 52.006(b) ("Notwithstanding any other law or rule of court, when a judgment is for money, the amount of security must not exceed the lesser of: (1) 50 percent of the judgment debtor's net worth; or (2) $25 million."); Tex. R. App. P. 24.2(a)(1) (same limits). Thus, a supersedeas bond in Texas can never be more than $25 million, regardless of the size of the judgment. *See, e.g.*, *In re Nalle Plastics Family L.P.*, 406 S.W.3d 168, 170 (Tex. 2013) (orig. proceeding); *Huff Energy Fund, L.P. v. Longview Energy Co.*, No. 04-12-00630-CV, 2014 WL 661710, at *3-4 (Tex. App.—San Antonio Feb. 12, 2014, mand. filed).[2]

The next question is whether the $25 million cap applies on a "per judgment" basis or a "per judgment debtor" basis. If the cap applies on a "per judgment" basis, then the bond could not exceed $25 million for all defendants jointly. If the cap applies on a "per judgment debtor" basis, then each defendant could be individually liable for up to $25 million on any bond. In the only two Texas cases that have addressed this issue, the courts were split.

The first case is *John M. O'Quinn, PC v. Wood*, No. 12-08-00011-CV, 2009 WL 2367133 (Tex. App.—Tyler June 10, 2009, no pet.), where the court held that the $25 million cap applies on a "per judgment debtor" basis. *Id.* at *5. The court reasoned that the term "judgment debtor," as used in the statute (Tex. Civ. Prac. & Rem. Code ch. 52), is singular, so that the $25 million cap applies to each judgment debtor singularly. *Id.* at *5-6. Thus, the *O'Quinn* court decided that each judgment debtor could be required to bond up to $25 million.

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[2] Also, Texas law does not require the judgment debtor to supersede punitive or treble damages. Tex. Civ. Prac. & Rem. Code § 52.006(a); Tex. R. App. P. 24.2(a)(1); *see* Carlson, *supra*, at 1038; *Umbrella Bank*, 341 B.R. at 842 (under Texas law, as applied through Fed. R. Civ. P. 62(f), the judgment debtor need not supersede usury penalties).

Even so, the court also recognized that when the judgment exceeds $25 million, the defendants can file a joint bond, but "the bond must be written so that [no defendant is] responsible for more than $25,000,000.00 individually." *Id.* at *8.

The better reasoned (and more recent) decision is *Huff Energy Fund, L.P. v. Longview Energy Co.*, No. 04-12-00630-CV, 2014 WL 661710 (Tex. App.—San Antonio Feb. 12, 2014, mand. filed), in which the court held that the $25 million cap applies on a "per judgment" basis. *Id.* at *4-5. The court had two basic reasons for this conclusion. First, the court examined the text of the statute, including the definition of "security," which is tied to suspending execution of "the judgment." *Id.* at *4 (discussing Tex. Civ. Prac. & Rem. Code §§ 52.001, 52.006). The court concluded that "[b]ecause the statute links the security that must be posted to a *single judgment*, we believe the cap on the amount of security that must be posted to suspend a single final judgment applies without regard to the number of judgment debtors." *Id.* (emphasis added). The court explained: "Therefore, we conclude that, under the plain language of the statute, the cap is applied per judgment and not per judgment debtor." *Id.* (footnote omitted). The court specifically disagreed with the *O'Quinn* court's reading of the statute. *Id.* at *4 n.3.

The *Huff Energy* court next examined the statutory purposes behind chapter 52. *Id.* at *4-5. The court noted that the reforms to Texas supersedeas law "reflect[ed] a new balance between the judgment creditor's right in the judgment and the dissipation of the judgment debtor's assets during the appeal against the judgment debtor's right to meaningful and easier access to appellate review." *Id.* at *4 (quoting *In re Nalle Plastics Family L.P.*, 406 S.W.3d at 170 (quoting Carlson, *supra*, at 1038)). These reforms "reflected a policy shift away from the policy of protecting judgment creditors toward the goal of protecting judgment debtors' ability to appeal." *Id.* (quoting *Shook v. Walden*, 304 S.W.3d 910, 918-19 (Tex. App.—Austin 2010, no pet.)). The *Huff Energy* court concluded that this "'new balance' is struck by capping the amount of the

security on a per judgment basis when a single judgment is rendered against multiple judgment debtors jointly and singly." *Id.* at *5. Thus, under *Huff Energy*, the bond cannot be more than $25 million for the entire judgment, regardless of the number of judgment debtors.

The *Huff Energy* opinion contains the better reasoned interpretation of the $25 million cap in chapter 52. The cap was enacted to implement the policy shift toward protecting the right to appeal. This has been accomplished, in part, by imposing a $25 million cap on the amount necessary to suspend the judgment, regardless of the number of judgment debtors. The "security" necessary to bond "the judgment" cannot exceed $25 million for the entire judgment. *See* Tex. Civ. Prac. & Rem. Code §§ 52.001, 52.006(b).

In summary, under Texas law, JSW is entitled to a $25 million cap on its bond — either a $25 million joint bond for the Defendants that must post a bond or, alternatively, a $25 million bond for JSW individually.

B. Under Federal Rules 62(f) and 69(a), Texas law governs the bonding requirements in this case.

Rule 62(f) provides that "[i]f a judgment is a lien on the judgment debtor's property under the law of the state where the court is located, the judgment debtor is entitled to the same stay of execution the state court would give." Fed. R. Civ. P. 62(f). As the Fifth Circuit has explained, "[t]he obvious purpose behind this rule is to allow appealing judgment debtors to receive in the federal forum ***what they would otherwise receive in their state forum***." *Castillo v. Montelepre, Inc.*, 999 F.2d 931, 942 (5th Cir. 1993) (emphasis added) (holding that Louisiana law, which exempted the statutorily created Patient's Compensation Fund from posting a supersedeas bond, applied in federal court); *see State Bank & Trust Co. v. "D.J. Griffin" Boat*, 926 F.2d 449, 450 (5th Cir. 1991) (recognizing that "Rule 62(f) entitled State Bank to the same stay in federal court that it would receive in [Louisiana] state court"); *Whitehead v. Food Max of*

Miss., Inc., 277 F.3d 791, 794 (5th Cir. 2002) ("Rule 62(f) bestows upon a federal litigant grounds for securing or claiming an applicable state law stay in district court."), *vacated on other grounds*, 332 F.3d 796 (5th Cir. 2003) (en banc); *Harvey v. Baton Rouge Marine Contractors*, No. 08-31164, 2009 WL 166802, at *1 (5th Cir. Jan. 26, 2009) (unpublished) (recognizing that "Rule 62(f) ordinarily directs that a federal court follow state stay of execution procedures"); *Whitehead v. K Mart Corp.*, 202 F. Supp. 2d 525, 531 (S.D. Miss. 1999) ("Rule 62(f) . . . provides that a judgment debtor is entitled to a stay accorded him by state law."), *aff'd sub nom.*, *Whitehead v. Food Max of Miss., Inc.*, 332 F.3d 796 (5th Cir. 2003) (en banc).

Thus, the Fifth Circuit has specifically recognized that, with respect to superseding the judgment, a judgment debtor in federal court should stand on the same footing as a judgment debtor in state court. *See Whitehead*, 202 F. Supp. 2d at 531 ("The Fifth Circuit has stated that the purpose of Rule 62(f) is to allow an appealing judgment debtor to receive in the federal forum what he otherwise would receive in the state forum." (citing *Castillo*, 999 F.3d at 942)); *see also North Am. Specialty Ins. Co. v. Chichester Sch. Dist.*, No. 99-2394, 2001 U.S. Dist. LEXIS 5544, at *5 (E.D. Pa. Apr. 5, 2001) (stating that under Rule 62(f), the judgment debtor "must be allowed to obtain a stay *under the same conditions* as provided for by state law" (emphasis added)); *Hurley v. Atlantic City Police Dep't*, 944 F. Supp. 371, 373 (D.N.J. 1996) (under Rule 62(f), the judgment debtor "must be allowed to obtain a stay *under the same conditions* provided for by state law . . . ." (emphasis added)).

Under this recognition, the Fifth Circuit affords "great deference . . . to the manifest desire of the [state] legislature to allow" a judgment debtor to post a reduced bond. *Castillo*, 999 F.2d at 942; *see Umbrella Bank*, 341 B.R. at 842 (affording "great deference to the manifest desire of the Texas Legislature" to not require the bonding of punitive damages). This is consistent with the U.S. Supreme Court's statement that the purpose behind the predecessor to

Rule 62(f) was "to prevent a creditor suing in the Federal Courts from obtaining an advantage over another creditor suing in the State Courts." *Ward v. Chamberlain*, 67 U.S. 430, 441, 1862 WL 6736, at *7 (1862). Since MM Steel would be limited to a $25 million bond as a creditor in state court, it should not be granted the advantage of a larger bond as a creditor in federal court.

Rule 62(f) therefore adopts state-law supersedeas rules when a judgment could constitute a lien on the judgment debtor's property. Fed. R. Civ. P. 62(f).[3] This does not require that the judgment must automatically constitute a lien; rather, Rule 62(f) is satisfied if the judgment can become a lien. *See Castillo*, 999 F.2d at 942 & n.10; *see also State Bank & Trust Co.*, 926 F.2d at 450-52 (applying Louisiana law to exempt the judgment debtor from posting a bond); *Harvey*, 2009 WL 166802, at *1-2 (same).

In *Castillo*, the Fifth Circuit held that Louisiana's "judicial mortgage" process satisfied Rule 62(f)'s "judgment as a lien" requirement. *See Castillo*, 999 F.2d at 942 *n.10. Under that "judicial mortgage" process, a judgment creditor need only file a judgment with the recorder of mortgages to create a judgment lien. *See id.* (citing La. Civ. Code art. 3300). The Fifth Circuit concluded that the judgment creditor did not actually have to file the judgment for Rule 62(f) to require application of Louisiana supersedeas rules. *See id.* The Fifth Circuit has ruled similarly in other cases involving Louisiana law. *State Bank & Trust*, 926 F.2d at 450-52; *Harvey*, 2009 WL 166802, at *1-2.[4]

Under Texas law, a judgment is a lien on the judgment debtor's real property upon the

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[3] JSW owns property in or near Baytown, Texas, consisting of about 650 acres containing a pipe mill and a plate mill. (*See* trial testimony of Mike Fitch in 3/12/14 trial transcript at 4769-70, attached as Exhibit C.)

[4] The Fifth Circuit's adoption of state law through Rule 62(f) does not apply only in diversity cases. *Harvey*, 2009 WL 166802, at *1 ("[W]e did not hold [in *Castillo*] that Rule 62(f) applies only in diversity cases.").

recording of an abstract of judgment. *See* Tex. Prop. Code § 52.001. As Judge Yeakel (Western District of Texas) has held, this Texas process satisfies Rule 62(f)'s "judgment as a lien requirement." *Umbrella Bank*, 341 B.R. at 842 ("This Court observes that the Louisiana process for creating a judicial mortgage is similar to the Texas process for creating a judgment lien. By implication, therefore, the ministerial act of recording an abstract of judgment in a Texas county suffices to satisfy Rule 62(f)'s requirement that 'a judgment is a lien upon property of the judgment debtor.'").

In addition to the *Umbrella Bank* case, other federal district courts in the Fifth Circuit have also required application of state-law supersedeas rules when the judgment could become a lien. *Whitehead*, 202 F. Supp. 2d at 528 n.6, 531-32 (Mississippi law governed since an enrolled judgment would constitute a lien); *Cozzo v. Parish of Tangipahoa*, No. 98-2728, 2000 WL 224141, at *2 (E.D. La. Feb. 16, 2000) (Louisiana law governed; citing *Castillo*).

Courts in other federal circuits have ruled similarly where state law provides that the judgment is or can become a lien. *Hoban v. Washington Metro. Area Transit Auth.*, 841 F.2d 1157, 1158-59 (D.C. Cir. 1988) (District of Columbia law governed since a D.C. judgment is a lien when recorded); *Munoz v. City of Philadelphia*, 537 F. Supp. 2d 749, 750 (E.D. Pa. 2008) (Pennsylvania law governed because a judgment, when recorded, creates a lien); *DeKalb Cnty. Sch. Dist. v. J.W.M.*, 445 F. Supp. 2d 1371, 1376-77 (N.D. Ga. 2006) (Georgia law governed since a judgment is a lien); *Nester v. Poston*, No. 3:00 CV 277-H, 2002 WL 32833256, at *11 (E.D.N.C. Oct. 8, 2002) (North Carolina law governed since a judgment is a lien); *Bennett v. Smith*, No. 96 C 2422, 2001 WL 717490, at *4 (N.D. Ill. June 26, 2001) (if an appeal was pending, Rule 62(f) would apply Illinois law, under which a recorded judgment would operate as a lien); *North Am. Specialty Ins. Co. v. Chichester Sch. Dist.*, No. 99-2394, 2001 U.S. Dist. LEXIS 5544, at *3-4 (E.D. Pa. Apr. 5, 2001) (Pennsylvania law governed since a judgment

entered of record is a lien); *Cote Corp. v. Thom's Transp. Co.*, No. 99-169-P, 2000 U.S. Dist. LEXIS 12563, at *3-4 (D. Me. Aug. 24, 2000) (Maine law governed since filing an attested copy of the judgment creates a lien); *Hurley v. Atlantic City Police Dep't*, 944 F. Supp. 371, 372-73 (D.N.J. 1996) (New Jersey law governed since an entered judgment creates a lien); *Spellman v. Aetna Plywood, Inc.*, No. 84 C 5735, 1992 WL 80528, at *1-2 (N.D. Ill. Apr. 8, 1992) (Illinois law governed since a recorded judgment acts as a lien); *Smith v. Village of Maywood*, No. 84-2269, 1991 WL 277629, at *1 (N.D. Ill. Dec. 20, 1991) (Illinois law governed since a recorded judgment would be a lien); *McDonald v. McCarthy*, No. 89-0319, 1990 WL 165940, at *1 (E.D. Pa. Oct. 22, 1990) (Pennsylvania law governed since a judgment is a lien); *Hild v. Bruner*, 496 F. Supp. 93, 100 (D.N.J. 1980) (New Jersey law applied to absolve the defendants from posting a bond); *see also Staley v. Harris County*, 332 F. Supp. 2d 1041, 1043-44 (S.D. Tex. 2004) (county not required to post a bond since Texas law exempts counties from that requirement); *Waldorf v. Shuta*, No. 84-3885, 1992 WL 333304, at *8 (D.N.J. Nov. 10, 1992) (applying New Jersey law to not require a bond for 30 days), *vacated on other grounds*, 3 F.3d 705 (3d Cir. 1993).

Because Texas law satisfies the "judgment as a lien" requirement, Rule 62(f) requires a federal court in Texas to apply Texas law when setting a supersedeas bond. *See, e.g.*, *Umbrella Bank*, 341 B.R. at 842 (applying the Texas limits on a supersedeas bond); *see also Port Elevator Brownsville, L.C. v. Vega*, No. B-98-23, Docket No. 230, Opinion and Order (S.D. Tex. July 17, 2009) (Tagle, J.) (a copy of which is attached as **Exhibit A**) (applying Texas law to approve a reduced supersedeas bond).[5]

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[5] Two federal district judges in Texas — Chief Judge Fitzwater in the Northern District of Texas and Judge Cardone of the Western District of Texas — have held that Texas limits on a supersedeas bond do not apply in federal court. *El Paso Indep. Sch. Dist. v. Richard R.*, 599 F. Supp. 2d 759, 764-65 (W.D. Tex. 2008), *aff'd in part & vacated in part on other grounds*, 591 F.3d 417 (5th Cir. 2009); *EEOC v. Service Temps, Inc.*, 782 F. Supp. 2d 288, 291-92 (N.D. Tex.

Under Rule 62(f)'s adoption of Texas law, the maximum supersedeas bond that the Defendants can be required to post is a joint bond of $25 million (or alternatively, $25 million for each Defendant individually). *See* Fed. R. Civ. P. 62(f); Tex. Civ. Prac. & Rem. Code § 52.006(b)(2); Tex. R. App. P. 24.2(a)(1); *see also* section V.A. on pages 3-6, above.

Applying the Texas limit on supersedeas bonds is also consistent with Rule 69(a)(1)'s instruction that "[t]he procedure on execution . . . must accord with the procedure of the state where the court is located," unless a federal statute applies. Fed. R. Civ. P. 69(a)(1). Because no federal statute applies here, Texas post-judgment enforcement procedure controls under Rule 69(a)(1). This would include Texas laws governing supersedeas bonds. *See* Order Approving Supersedeas Bond, *Waste Mgmt. of Wash., Inc. v. Kattler*, No. 4:12-cv-3454, Docket No. 204 (S.D. Tex. Aug. 28, 2013) (Hoyt, J.) (a copy of which is attached as **Exhibit B**) (under Rule 69(a)(1), approving a reduced bond consistent with Texas rules).[6]

2011). Despite recognizing the similarities between Louisiana's "judicial mortgage" process (discussed in *Castillo*) and Texas's "abstract of judgment" process, both courts held that because an abstract of judgment must be technically correct, Texas law does not satisfy Rule 62(f)'s "judgment as a lien" requirement. *El Paso Indep. Sch. Dist.*, 599 F. Supp. 2d at 764-65; *Service Temps, Inc.*, 782 F. Supp. 2d at 292. This formalistic view is inconsistent with the Fifth Circuit's instruction that federal courts are to afford "great deference . . . to the manifest desire of the [state] legislature to allow" a judgment debtor to post a reduced bond. *Castillo*, 999 F.2d at 942; *see Umbrella Bank*, 341 B.R. at 842. The Texas Legislature has determined that supersedeas bonds must be capped at $25 million. The decisions in *El Paso Independent School District* and *Service Temps* improperly disregard that reasoned legislative judgment, as well as Fifth Circuit case law.

A third federal district judge in Texas declined to address the judgment debtor's alternative argument that Texas supersedeas rules governed under Rule 62(f). *ASARCO LLC v. Americas Mining Corp.*, 419 B.R. 737, 744 (S.D. Tex. 2009). Instead, the court ordered alternate security under Rule 62(d). This decision is not inconsistent with applying Rule 62(f) here.

[6] Although this Court's Order Approving Supersedeas Bond in *Kattler* does not indicate the Court's basis for approving the reduced supersedeas bond, review of the Notice of Filing Supersedeas Bond and Request for Approval With Supporting Authorities shows that the

Under Rules 62(f) and 69(a), JSW therefore requests that the Court enter an order (a) applying Texas law, (b) approving a joint supersedeas bond of $25 million for the Defendants that are required to post a bond (or alternatively, $25 million for JSW individually), and (c) staying enforcement of the judgment upon the posting of such a bond.

C. If the Court denies this motion, JSW will have to seek a reduced bond under Rule 62(d).

If the Court denies this motion, JSW expects that it will not be able to fully bond the $156 million judgment. JSW has retained a bond broker, who has been unable to find a surety that will issue a bond to JSW for the full $156 million judgment, unless JSW provides the surety with 100% collateral. JSW does not have the ability to provide such collateral.

Thus, if the bond is not set at $25 million (either jointly or individually) under Texas law as applied through Rule 62(f), then JSW will have to file a Rule 62(d) motion and tender the evidence to show (a) that it cannot post a full bond, and (b) that requiring more than a $25 million bond would be an undue financial burden on JSW. For now, however, JSW requests, under Rules 62(f) and 69(a), that the Court apply Texas supersedeas law in this case and order a joint bond of $25 million for the Defendants that must post a bond or, alternatively, a bond of $25 million for JSW individually.[7]

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only basis for approving the reduced bond was application of Texas supersedeas law. *See* Dkt. No. 186, in Case No. 4:12-cv-03454 (S.D. Tex., filed June 28, 2013).

[7] The Texas limit on supersedeas bonds applies to all judgments and does not depend on whether $25 million will completely protect the judgment creditor. It is notable, however, that MM Steel is, and will continue to be, adequately protected, because the joint-and-several judgment applies to six defendants, including (a) Reliance with total equity of almost $4 billion, and (b) Nucor with total equity of over $7.9 billion. (For the equity numbers, *see* page 1 of Reliance's 10-Q on file with the SEC (http://investor.rsac.com/phoenix.zhtml?c=61001&p=irol-SECText&TEXT=aHR0cDovL2FwaS50ZW5rd2l6YXJkLmNvbS9maWxpbmcueG1sP2lwYWdlPTk1NjU2MzEmRFNFUT0wJlNFUT0wJlNRREVTQz1TRUNUSU9OX0VOVElSRSZzdWJzaWQ9NTc%3d), and page 46 in Exhibit 13 of Nucor's 10-K on file with the SEC

VI.
Conclusion and Prayer

Wherefore, Defendant JSW Steel (USA) Inc. respectfully requests that the Court apply Texas supersedeas law and approve a joint supersedeas bond of $25 million for all Defendants that are required to post a bond. JSW alternatively requests that the Court approve an individual supersedeas bond for JSW in the amount of $25 million. JSW further requests that the Court consider this motion on an expedited basis, with MM Steel required to respond by May 20, 2014 and the Court to consider the motion on or before May 27, 2014. Finally, JSW requests general relief.

(http://www.nucor.com/investor/sec/html/?id=9432885&sXbrl=1&compId=107115).) *See also* Defendant Nucor's Motion for Stay of Execution of Judgment Without Bond Pending Appeal at 5-6.

Dated: May 13, 2014

Respectfully submitted,

/s/ Hunter M. Barrow

Hunter M. Barrow
Attorney-in-Charge
State Bar No. 24025240
Federal ID No. 25828
THOMPSON & KNIGHT LLP
333 Clay Street, Suite 3300
Houston, TX 77002
Phone: 713.951.5838
Fax: 713.654.1871
E-mail: hunter.barrow@tklaw.com

Of Counsel:

Gregory S. C. Huffman
State Bar No. 10191500
Federal ID No. 9889
THOMPSON & KNIGHT LLP
One Arts Plaza
1722 Routh Street, Suite 1500
Dallas, Texas 75201-2533
Phone: 214-969-1700
Fax: 214-969-1751
E-mail: gregory.huffman@tklaw.com

Scott P. Stolley
State Bar No. 19284350
Federal ID No. 124251
THOMPSON & KNIGHT LLP
One Arts Plaza
1722 Routh Street, Suite 1500
Dallas, Texas 75201-2533
Phone: 214-969-1700
Fax: 214-969-1751
E-mail: scott.stolley@tklaw.com

Nicole L. Williams
State Bar No. 24041784
Federal ID No. 37382
THOMPSON & KNIGHT LLP
One Arts Plaza
1722 Routh Street, Suite 1500
Dallas, Texas 75201-2533
Phone: 214-969-1700
Fax: 214-969-1751
E-mail: nicole.williams@tklaw.com

Wade A. Johnson
State Bar No. 24062197
Federal Bar No. 1055556
THOMPSON & KNIGHT LLP
333 Clay Street, Suite 3300
Houston, Texas 77002
Phone: 713-654-8111
Fax: 713-654-1871
Email: wade.johnson@tklaw.com

Emily W. Miller
State Bar No. 24079527
Federal Bar No. 1366940
THOMPSON & KNIGHT LLP
333 Clay Street, Suite 3300
Houston, Texas 77002
Phone: 713-654-8111
Fax: 713-654-1871
Email: emily.miller@tklaw.com

Attorneys for Defendant JSW Steel (USA) Inc.

CERTIFICATE OF CONFERENCE

I hereby certify that on May 13, 2014, I conferred with counsel for Plaintiff regarding the relief requested in this motion, and counsel said that Plaintiff is opposed to the relief requested.

/s/ Gregory S.C. Huffman
Gregory S.C. Huffman

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on May 13, 2014, the foregoing document was transmitted to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing for this filing to all registered counsel of record.

/s/ Hunter M. Barrow
Hunter M. Barrow

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05/13/2014