

HB

468

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: February 16, 2004

FURTHER REFERRALS:

Date of Committee Action: March 16, 2004

The JUDICIARY Committee considered:

HB 468

HOUSE BILL NO. 468

APPEAL BONDS: TOBACCO SETTLEMENT PARTIES

"An Act relating to the amount of the bond required to stay execution of a judgment in civil litigation involving a signatory, a successor of a signatory, or an affiliate of a signatory to the tobacco product Master Settlement Agreement during an appeal; amending Rules 204 and 205, Alaska Rules of Appellate Procedure; and providing for an effective date."

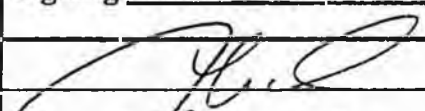

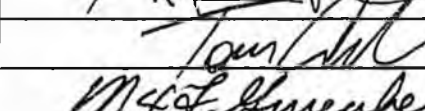
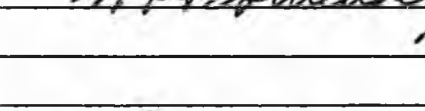
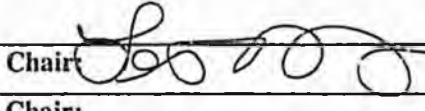

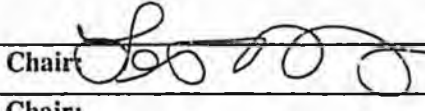
Recommends it be replaced with HCS or CS for HB 468 (JUD)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts.:
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 IISS
 LEG
 LAW
 LWF
 MVA
 DNR
 D'S
 REV
 DOT
 UA

NEW FISCAL NOTES				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
<u>LAW</u>				✓
<u>CRT</u>				✓

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Gara		✓		
	Holm			✓	
	SAMUELS		✓		
	Oga			✓	
	ANDERSON	X			
	Bruenhey			✓	
Chair: 	McGuire			✓	
Chair:					

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: HB468-LAW-C&FB-2-27-
 Bill Version: HB 468
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title: "An Act relating to the amount of the bond required to stay execution of a judgment in civil litigation..." RDU: CIVIL
 Component: Commercial & Fair Business
 Sponsor: House Labor & Commerce Committee
 Requester: House Judiciary Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill adds a new section to AS 43.53 limiting the amount of the bond required to stay execution of a judgment involving signatory, or a signatory's affiliate or successor, to the tobacco product Master Settlement Agreement.

Passage of this legislation will have no foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn A. Daughetee, Director Phone 465-3673
 Division: Administrative Services Date/Time 2/27/04 3:16 PM
 Approved by: Kathryn Daughetee for Gregg D. Renkes, Attorney General Date 2/27/2004
 Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB468-ACS-TC-2-26-04
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Appeal Bonds in Tobacco Product BRU Alaska Court System
Master Settlement Litigation Component Trial Court
 Sponsor House L & C Commtee
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
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1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 The court system does not anticipate any fiscal impact from the passage of HB 468.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
 Division Alaska Court System Date/Time 2/26/04 10:43 AM
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 2/26/2004
 Agency Alaska Court System

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

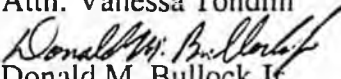
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 17, 2004

SUBJECT: Civil Rule 62(d) and the amount of a supersedeas bond
(CSHB 468(JUD))

TO: Representative Lesil McGuire
Attn: Vanessa Tondini

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

You asked whether Civil Rule 62(d) would be indirectly amended by the above referenced bill. In my opinion, the answer is no.

The subject bill limits the amount of the supersedeas bond required to stay the execution of judgment but does not change the requirement that a bond must be given. Appellate Rules 204(c) and 205 describe the terms and conditions of a bond on appeal, including the bond amount. On the other hand, Civil Rule 62(d) states that a supersedeas bond must be given to obtain a stay, but does not set the amount. Since the bill speaks to the amount of the bond and does not change the requirement in Civil Rule 62(d) that a bond be filed, the bill neither directly nor indirectly amends Civil Rule 62(d).

The amount of the appeal bond was not an issue in the *Powell* case.¹

DMB:med
04-300.med

¹ *Powell v. City of Anchorage*, 536 P.2d 1228 (Alaska 1973). The appellants sought to stay an injunction issued by the superior court while they appealed the judgment. The appellants sought a stay from the Supreme Court without first making application to the superior court as required by Civil Rule 62. The Supreme Court denied the petitioners' motion for stay of proceedings.

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: March 16, 2004
Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS1719A, HB 468, incorporating the attached three amendments (Amendments # 1, 3, and 4). The bill was passed out of committee today.

Also, please correct the reference to the statutory section on Page 1, Line 7 by changing "AS 43.53" to correctly read "AS 45.53", as that is the chapter being amended.

In addition, a question was brought up in the committee hearing regarding the Indirect Court Rule Amendment. Currently, the bill states that Rules 204 and 205, Alaska Rules of Appellate Procedure, are effected by the bill in its current form. The committee requests a brief legal opinion on whether or not Alaska Civil Rule 62(d) would be indirectly amended as well. (The case of Powell v. City of Anchorage was mentioned in reference, although I don't have the cite). If you determine that R 62(d) is effected, please amend the CS accordingly. If not, nevermind ☺

If you have any questions, please call me at 4990. Thank you!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

HB 468

Amendment 1 - PASSED

By Rep. McGuire

Page 2, Line 2:

Delete "25,000,000"

Insert "100,000,000"

AMENDMENT 3 HB 468

~~AMENDED~~
PASSED
(on reconsideration)

BY: REP. GARA

Page 1, line 10, after "civil"

Insert: "tobacco-related"

PASSED

HB 468

Amendment #4 by Rep. Gruenberg

P. 2, L. 5

Delete "outside the ordinary course
of business"

AMENDMENT #2 - FAILED

OFFERED IN THE HOUSE
TO: HB 468

BY REPRESENTATIVE GARA

- 1 Page 2, line 1:
- 2 Delete "total"
- 3 Insert "portion of the"
- 4
- 5 Page 2, line 2, following "collectively":
- 6 Insert "that is attributable to the amount of the judgment for punitive damages"
- 7
- 8 ~~Page 2, lines 2 - 3:~~
- 9 ~~Delete "\$25,000,000, regardless of the value of the judgment"~~
- 10 ~~Insert "\$100,000,000"~~

ALASKA STATE LEGISLATURE
House of Representatives

COMMITTEE ASSIGNMENTS
LABOR & COMMERCE COMMITTEE, CHAIRMAN
COMMUNITY & REG AFFAIRS COMMITTEE, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
ADMINISTRATIVE REGULATION REVIEW COMMITTEE, MEMBER

website: <http://www.akrepublicans.org/Anderson.htm>



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JUNEAU, AK 99801-1182
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Representative Tom Anderson

email: Representative_Tom_Anderson@legis.state.ak.us

Date: February 16, 2004
To: Representative Lesil McGuire, Chair
House Judiciary Committee
From: Representative Tom Anderson, Chairman
House Labor & Commerce Committee *Tom*
Re: HB 468

I respectfully request you schedule HB 468 for Judiciary consideration at your earliest convenience.

Enclosed are:

1. HB 468
2. Sponsor Statement
3. Background material

Thank you for your consideration of this request.

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT FOR HB 468 BY: Representative Tom Anderson

TITLE: "An Act relating to the amount of the bond required to stay execution of a judgment in civil litigation involving a signatory, a successor of a signatory, or an affiliate of a signatory to the tobacco product Master Settlement Agreement during an appeal; amending Rules 204 and 205, Alaska Rules of Appellate Procedure; and providing for an effective date."

The Tobacco Master Settlement Agreement ("MSA") is vitally important to Alaska and to the 45 other states who are parties to the settlement. It delivers millions of dollars in revenues to Alaska annually, and it will continue to do so for years to come. Yet the continued receipt of these funds is threatened by the huge judgments that have been awarded against the tobacco companies that are funding the settlement. Defendants facing such large judgments almost always have a right to appeal them, and in many cases their appeals are successful in obtaining a reduced judgment or in overturning the judgment entirely. But in order to stay the execution of a money judgment on appeal, a defendant must post a supersedeas (or appeal) bond which, in the diminishing number of states not having limits on appeal bonds, usually equals the amount of the judgment. In Alaska, the bond required is ordinarily the amount of the judgment remaining unsatisfied, plus appeal costs and interest.¹ But Alaska courts are permitted to set the bond in a different amount for good cause shown -- meaning judges may set the bond at an amount exceeding the total judgment.²

If a company cannot afford to post a bond in the amount set by the court, the company may be forced to file for bankruptcy -- which carries with it an automatic stay of the debtor's obligation to pay its creditors -- in order to stop the plaintiff from taking its assets during the appeal. Such a stay could disrupt payments by the company, including payments to Alaska and the other states under the MSA. This problem has been most vividly demonstrated by the ongoing Engle case in Florida, in which a class of smokers was awarded \$145 billion in punitive damages. Had there not been an appeal bond cap in place at the time, the defendant tobacco companies would clearly have gone bankrupt, resulting in the termination of all MSA settlement payments nationwide, and precluding the ability to pursue a fair and orderly appeal. However, because Florida had previously enacted bond cap legislation, the settlement payments continued during the appeal, and the appellate court ultimately rejected and reversed the verdict in its entirety.

¹ Alaska R. App. P. 204(d).

² Id.

To date, 26 states have recognized the possibility of enormous appeal bonds causing signatory companies to be unable to meet their obligations to the states under the MSA, and these states have passed legislation or amended court rules to limit the size of the required bond in cases involving large judgments. In addition, five other states do not require a defendant to post a bond at all during an appeal. Some states have passed legislation applying broadly to all litigants, while other states have passed more limited legislation applying only to MSA signatories, successors, and affiliates. The bond limits range from \$1 million to \$150 million. Nearly all of the statutes include a provision allowing for a higher bond amount up to the full value of the judgment if the court determines the appellant dissipating assets to avoid paying a judgment.

HB 468 imposes a \$25 million limit on the supersedeas bond MSA signatories, successors, and affiliates must post to stay the execution of a judgment in Alaska. This bond limit would not change any other aspect of the law -- meaning it does not change the rules by which the trial is conducted, or affect who ultimately wins or loses the lawsuit -- or affect the rights of plaintiffs to recover fully the damages to which they are entitled if the judgment is upheld on appeal. Plaintiffs are also protected by the provision in the proposed legislation allowing the court to require a bond amount up to the value of the judgment if the appellant is dissipating its assets to avoid paying a judgment. HB 468 thus would not injure plaintiffs in any way, and it would protect the state by ensuring it will continue to receive its MSA payments while the tobacco companies fully appeal an adverse judgment.

I urge your support for this legislation.

**Alaska Should Join Other States
To Limit The Size Of Appeal Bonds and Protect Its
Tobacco Settlement Revenues**

The Tobacco Master Settlement Agreement (“MSA”) is vitally important to Alaska and to the 45 other states who are parties to the settlement. It delivers millions of dollars in revenues to Alaska annually, and it will continue to do so for years to come. It also delivers real benefits to the state through its non-monetary provisions, which restrict advertising by participating (but not by non-participating) manufacturers and are designed to help reduce youth smoking.

Yet the continued receipt of these funds is threatened by litigation against the tobacco companies that are funding the settlement. The ability of the tobacco companies to meet their obligations under the MSA ultimately depends upon their financial viability. It may seem far-fetched to worry about the financial viability of tobacco companies, but the litigation onslaught they are currently facing presents a real risk to their ability to make MSA payments.

This memorandum explains what Alaska can do to minimize that risk and protect the state’s ongoing receipt of MSA money.

A. The Enormous Litigation Risks Confronting The MSA Signatories Threaten Alaska’s Master Settlement Agreement Revenues

Within the last several years, the tobacco companies have faced gargantuan judgments. In 2000, the Engle class action in Florida resulted in a verdict of \$145 billion, which was reversed on appeal in May 2003. In California, two individual suits resulted in verdicts of \$28 billion and \$3 billion respectively, although both of these verdicts were reduced by the trial judge. In March 2003, a judge in the case of Price v. Philip Morris in Illinois ordered one tobacco company to pay compensatory damages of \$7.1 billion and punitive damages of \$3 billion in a class action. This decision is currently being appealed.

As the Engle case demonstrates, many extraordinarily large verdicts are reduced or overturned on appeal. In order for a verdict to be overturned, however, a defendant must be able to appeal and do so while remaining in business. The problem is that in most states, a defendant must post an appeal bond at least equal to the size of the judgment in order to stay the execution of the judgment during the appeal. In Alaska, the bond required to stay the execution of a money judgment is ordinarily the amount of the judgment remaining unsatisfied, plus appeal costs and interest.¹ But Alaska courts are permitted to set the bond in a different amount or to order alternate security for good cause shown -- meaning that judges may theoretically set the bond at any amount they deem appropriate, even if that amount exceeds the total judgment.²

¹ Alaska R. App. P. 204(d).

² Id.

If a defendant cannot afford to post an appeal bond in the amount set by the court, a plaintiff could potentially seize the defendant's bank accounts, or its manufacturing facilities, or any property located anywhere that the plaintiff can find, even though the defendant may be in the middle of an appeal. In order to stop the plaintiff from taking its assets during the appeal, the defendant may have no alternative other than to file for bankruptcy, which carries with it an automatic stay of the debtor's obligation to pay its creditors.

However, a stay in bankruptcy is indiscriminate: while it would allow tobacco companies subject to huge judgments to appeal while the stay is in place without fear that plaintiffs could seize their assets, it would also prevent the companies from making their payments to Alaska and the other states under the MSA. This potential problem has been most vividly demonstrated by the ongoing Price case in Illinois. In March 2003, the judge in that case set the appeal bond at \$12 billion -- an amount that the company could not possibly have posted.³ If the company had been forced to post such a large bond, it most likely would not have been able to continue to make the billions of dollars in payments that it owes under the MSA. Because of concern about this disastrous result, 37 state attorneys general (including Alaska's) and the National Conference of State Legislatures petitioned the Price court to allow a lower bond to be posted so that MSA payments would not be jeopardized. The bond was eventually lowered to \$6.8 billion, but even this reduced amount would bankrupt many companies.

As the Price case demonstrates, the state has a vital interest in ensuring tobacco companies can appeal massive judgments in Alaska by posting a bond under state law, rather than being forced into bankruptcy.

B. Other States Have Recognized The Risks That Litigation Against MSA Signatories Pose To Their Continued Receipt Of Tobacco Settlement Funds, And They Have Enacted Appeal Bond Caps

Increasingly, states have become aware of the potential consequences of high appeal bonds and have imposed reasonable limits on the size of these bonds. In 2000, legislators in Florida became concerned because the Engle class action against the tobacco companies was proceeding in that state. It was estimated that the punitive damages awarded in the case could be so large that these companies could not afford to post a bond, thereby forcing the companies to seek a stay from the bankruptcy court. While legislators had no particular sympathy for tobacco companies, they recognized that these companies, like every defendant, are at least entitled to a full and fair appeal, and they also recognized that Florida and every other state might lose an important income stream from the MSA payments if the companies were driven out of business. Thus, the legislature enacted a cap on the size of the appeal bond that would have to be posted with regard to the punitive damages aspect of any judgment. The cap limited appeal bonds to the

³ "Confidential Talks Continue on \$12 Billion Bond Issue in Light Cigarette Class Action," Mealey's Litigation Report: Tobacco (Apr. 14, 2003).

lower of the punitive damages judgment plus twice the statutory rate of interest, ten percent of a defendant's net worth, or \$100 million.⁴

As noted above, the jury in Engle eventually awarded the plaintiffs \$145 billion in punitive damages. Under Florida's previous appeal bond rules, the defendants would have had to post an \$181 billion bond to appeal this judgment, which would have bankrupted any company or group of companies. But because the legislature had passed the appeal bond cap, the tobacco companies were able to post a much lower bond and appeal the verdict. Their appeal was ultimately successful: on May 21, 2003, a Florida appeals court decertified the Engle class and set aside the jury's decision in the case. In an emphatic opinion, the court ruled that the class action approach for Engle was completely improper. But if the legislature had not acted to limit the appeal bond prior to the trial court's judgment in Engle, the previous bonding requirement would have bankrupted the entire industry, thrown thousands of people out of work, and deprived each state of its tobacco settlement revenues.

Florida did not act alone. Twenty-five other states have also enacted limits on the size of appeal bonds, two of them by court rule and the rest through legislation. Five other states (Connecticut, Maine, Massachusetts, New Hampshire and Vermont) automatically stay a judgment upon the filing of a notice of appeal. As a result, over half of the states currently limit the appeal bond requirement. The approaches taken by the states have differed somewhat, as summarized below.

In the year 2000, along with Florida, four other states enacted limits on the size of appeal bonds.⁵ These states were Kentucky (\$100 million limit) and Georgia, North Carolina and Virginia (\$25 million limits). In each of these states, the limit applied only to the bond for the punitive damages portion of a judgment. Each of these states was concerned that if the Florida legislature did not act, the Florida plaintiffs might seek to seize tobacco company assets in these other states. Thus, these states limited the size of bonds for judgments entered by courts within their states, and further provided that if a plaintiff with an out-of-state judgment came to their state to collect on that judgment, the defendant could stop the plaintiff until the appeal was completed by posting the bond required in that state. These states were worried that the tobacco settlement proceeds might be threatened before an appeal could ever be completed, and they were also worried about the jobs that could be lost in their states if the tobacco companies were put out of business before they could appeal.

In 2001 Louisiana, Nevada, Oklahoma and West Virginia passed legislation that limited the size of the appeal bond that signatories of the Master Settlement Agreement would have to post to appeal a damages verdict of any kind, be it compensatory or punitive damages.⁶ Again,

⁴ Fla. Stat. § 768.733 (2002).

⁵ Florida (Fla. Stat. § 768.733), Georgia (Ga. Code Ann. § 5-6-46), Kentucky (Ky. Rev. Stat. Ann. § 205.1), North Carolina (N.C. Gen. Stat. § 1-289), and Virginia (Va. Code Ann. § 8.01-676.1 J.) each passed legislation in 2000.

⁶ Louisiana (La. Rev. Stat. Ann. § 98.6), Nevada (Nev. Rev. Stat. § 20.035.1); Oklahoma (Okla. Stat. Ann. tit. 12 § 990.4 B.5); and West Virginia (W. Va. Code § 4-11A-4).

a primary motivating factor for these states was their financial interest in ensuring that settlement proceeds under the state tobacco settlement were not threatened because of an inability of the tobacco companies to appeal a judgment. The Oklahoma appeal bond cap was \$25 million; the caps in Nevada and Louisiana were \$50 million; and West Virginia's cap was \$100 million for punitive damages and \$100 million for compensatory damages.

As these states were doing their work, the Mississippi Supreme Court amended its court rules, which govern appeal bonds in that state, to limit the bond that a defendant of any kind would have to post to stay a punitive damages judgment while it appeals.⁷ The amount of the limit in Mississippi was the lower of \$100 million, 125 percent of the punitive damages award, or 10 percent of the defendant's net worth.

In 2002 three states enacted limits on the size of appeal bonds. Ohio adopted a \$50 million limit,⁸ while Indiana and Michigan⁹ adopted a \$25 million limit. These bond limitations were not tied in any way to tobacco companies or to the MSA. Rather, in each state, the limit that was adopted applies to damages of all kinds, including the costs a defendant might incur to pay for equitable relief, and it applies to any kind of defendant.

In 2003 Arkansas, California, Colorado, Idaho, Kansas, Missouri, New Jersey, Oregon, Pennsylvania, South Dakota, Tennessee, Texas and Wisconsin adopted appeal bond caps.¹⁰ The Arkansas, Colorado, Tennessee, Texas and Wisconsin statutes apply to all litigants in civil litigation regardless of legal theory. The other states' laws are more limited in scope. Idaho's \$1 million cap, for example, applies to all litigants in civil litigation but covers only the punitive damages portion of the appeal. The Kansas cap applies to appellants who are signatories or successors of signatories to the tobacco Master Settlement Agreement; California, Missouri, New Jersey, Oregon and Pennsylvania extend this application to also include affiliates of signatories to the tobacco Master Settlement Agreement. The amounts of the caps enacted in these states range from \$25 million to \$100 million.¹¹ In addition, the South Dakota Supreme Court amended its court rules to limit the bond required to stay the execution of a judgment during an appeal to \$25 million.¹² Lastly, North Carolina and Florida broadened their existing

⁷ Mississippi Rule of Appellate Procedure 8.

⁸ Ohio Rev. Code Ann. § 2505.09 (2002).

⁹ Ind. Code Ann. § 34-49-5-3 (2002); Mich. Comp. Laws. Ann. § 600.2607(1) (2002).

¹⁰ Ark. Code § 16-55-214 (2003); Cal. Health & Safety Code § 104558 (2003); Colo. Rev. Stat. 13-16-125 (2003); Idaho Comp. Stat. Ann. § 13-202 (2003); 2003 Kan. Sess. Laws 110 (not yet codified); Mo. Rev. Stat. § 512.085 (2003); 2003 N.J. Laws 195 (not yet codified); 2003 Or. Laws 804 (not yet codified); 2003 Penn. Laws 55 (not yet codified); Tenn. Code § 27-1-124 (2003); Tex. Civ. Proc. & Rem. Code § 52.006(b) (2003); 2003 Wis. Laws 105 (not yet codified).

¹¹ Arkansas, Colorado, Kansas and Texas agreed to cap their appeal bonds at \$25 million, while Missouri and New Jersey set their caps at \$50 million. Tennessee set its cap at \$75 million. The Pennsylvania and Wisconsin bills capped bonds at \$100 million, and California and Oregon each set a cap of \$150 million.

¹² S.D.C.L. 15-26A-26.

statutes in 2003 to limit the appeal bond for money judgments under any legal theory, not just punitive damages.

Like these other states, the Alaska legislature should act to solve the problems caused by high appeal bonds immediately. While some states have passed broader measures that apply to any defendant in any kind of litigation, a bill limiting the appeal bond in cases involving signatories, successors of signatories, or affiliates of signatories to the MSA would be sufficient to solve the most problematic aspects of Alaska's current law. The legislature, in its role as the protector of the state's finances, has the authority to adopt such a measure,¹³ which is important not only for Alaska, but also for all other states who are relying on the continued stream of tobacco revenues for vital public projects.

C. The Appeal Bond Limitation Laws Provide No Substantive Legal Protections To A Tobacco Company In Litigation, But They Do Protect Plaintiffs

A key point for each of the states discussed above is that, in limiting the bond, none of them changed their substantive law in any way. Bond limitation laws only ensure that defendants can fully exercise their right to an appeal without going into bankruptcy or being forced to settle with the plaintiffs. So, for example, had the tobacco companies lost their appeal in the Engle case in Florida, they would have had to pay the full amount of the judgment. Nothing in the bond limitation statute passed in Florida would have prevented that. In addition, virtually all of the laws passed in each state allow a judge to require a much larger bond if it is shown that a defendant is dissipating its assets to avoid a judgment. Thus, plaintiffs are protected under these bills in two ways: because the amount of the appeal bond even as limited is large in and of itself, and because in a case where the defendant is misbehaving, the court may require a larger bond.

Alaska should adopt legislation limiting the size of appeal bonds that MSA signatories, successors and affiliates must post to \$25 million, regardless of the value of the judgment. Plaintiffs would be protected by the large but limited bond that is required and by the provision in the bill allowing a judge to require a higher bond if a defendant is improperly dissipating assets. A defendant's right to appeal would also be fully protected, by mandating a large but not impossibly high appeal bond. And Alaska and the other states would be protected, by ensuring

¹³ Although Article IV, section 15 of the Alaska constitution gives the Supreme Court primary authority over rules that affect court procedure, the Court upholds legislative enactments if the main subject of the statute is substantive with only an incidental effect on procedure. See, e.g., Ware v. City of Anchorage, 439 P.2d 793, 794 (Alaska 1968) (upholding statute requiring a non-resident plaintiff to provide security for the costs of litigation). An important part of the inquiry into whether the statute is substantive or procedural is "whether the rule or statute under scrutiny is more closely related to the concerns that led to the establishment of judicial rule making power, or to matters of public policy properly within the sphere of elected representatives." Nolan v. Sea Airmotive, 627 P.2d 1035, 1042-43 (Alaska 1987). Since the purpose of the appeal bond cap is to "secure and protect the monies to be received as a result of the Master Settlement Agreement," which is a substantive goal clearly within the purview of elected representatives, the legislature has the power to enact this statute.

that the MSA signatories can fully appeal an adverse judgment, thereby avoiding the necessity of seeking a stay in the bankruptcy court. This, in turn, will benefit Alaska and its citizens by preserving the uninterrupted flow of tobacco settlement revenues.

MSA Signed NOVEMBER 1998

Annual Payments to Each State

Year	1998	1999	2000	2001	2002	2003	2004 to 2007	2008 to 2017	2018 to 2025	Total
Amount	\$2,400,000,000.00	\$0.00	\$6,411,750,000.00	\$6,923,660,000.00	\$8,313,294,800.00	\$8,391,971,144.00	\$7,004,000,000.00	\$7,143,000,000.00	\$8,003,999,997.00	\$195,918,675,920.00
Alabama	\$38,787,139.87	\$0.00	\$103,622,268.35	\$111,895,403.67	\$134,353,720.06	\$135,625,232.71	\$113,193,803.17	\$115,440,225.02	\$129,355,111.40	\$3,166,302,118.81
Alaska	\$8,194,049.54	\$0.00	\$21,890,915.46	\$23,638,672.09	\$28,383,145.58	\$28,651,761.36	\$23,912,967.90	\$24,387,539.93	\$27,327,155.19	\$668,903,056.50
Arizona	\$35,373,226.92	\$0.00	\$94,501,786.55	\$102,046,748.46	\$122,528,359.76	\$123,687,958.17	\$103,230,867.24	\$105,279,566.63	\$117,969,711.74	\$2,887,614,909.02
Arkansas	\$19,873,586.24	\$0.00	\$53,093,527.74	\$57,332,480.87	\$68,839,575.47	\$69,491,067.60	\$57,997,749.17	\$59,148,761.04	\$66,278,410.08	\$1,622,336,125.69
California	\$306,334,930.78	\$0.00	\$818,392,913.50	\$883,732,877.84	\$1,061,105,244.62	\$1,071,147,458.11	\$893,987,439.65	\$911,729,337.72	\$1,021,626,993.76	\$25,006,972,510.74
Colorado	\$32,900,674.16	\$0.00	\$87,896,207.30	\$94,913,784.01	\$113,963,751.40	\$115,042,295.05	\$96,015,134.08	\$97,920,631.45	\$109,723,748.27	\$2,685,773,548.89
Connecticut	\$44,556,896.25	\$0.00	\$119,036,533.13	\$128,540,333.44	\$154,339,422.45	\$155,800,078.15	\$130,031,875.55	\$132,612,462.45	\$148,597,248.93	\$3,637,303,381.55
Delaware	\$9,491,268.84	\$0.00	\$25,356,517.92	\$27,380,966.02	\$32,876,548.30	\$33,187,689.27	\$27,698,686.24	\$28,248,388.89	\$31,653,381.58	\$774,798,676.89
D.C.	\$14,570,838.84	\$0.00	\$38,926,906.65	\$42,034,805.86	\$50,471,532.83	\$50,949,191.30	\$42,522,564.69	\$43,366,459.11	\$48,593,747.53	\$1,189,458,105.56
Florida	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Georgia	\$58,906,980.41	\$0.00	\$157,373,679.86	\$169,938,293.33	\$204,046,289.14	\$205,977,366.58	\$171,910,204.50	\$175,321,900.45	\$196,454,779.60	\$4,808,740,668.60
Hawaii	\$14,444,759.81	\$0.00	\$38,590,078.62	\$41,671,085.70	\$50,034,811.08	\$50,508,336.45	\$42,154,624.04	\$42,991,216.38	\$48,173,273.94	\$1,179,165,923.07
Idaho	\$8,718,317.14	\$0.00	\$23,291,529.13	\$25,151,109.85	\$30,199,141.89	\$30,484,944.11	\$25,442,955.52	\$25,947,891.39	\$29,075,587.65	\$711,700,479.23
Illinois	\$111,701,933.67	\$0.00	\$298,418,697.16	\$322,244,254.19	\$386,921,293.46	\$390,583,085.03	\$325,983,476.42	\$332,452,880.08	\$372,525,948.64	\$9,118,539,559.10
Indiana	\$48,955,278.39	\$0.00	\$130,787,085.94	\$141,229,042.84	\$169,574,858.88	\$171,179,701.52	\$142,867,820.78	\$145,703,147.32	\$163,265,853.39	\$3,996,355,551.01
Iowa	\$20,872,006.95	\$0.00	\$55,760,871.07	\$60,212,783.18	\$72,297,977.85	\$72,982,200.02	\$60,911,473.61	\$62,120,310.68	\$69,608,143.15	\$1,703,839,985.56
Kansas	\$20,008,109.65	\$0.00	\$53,452,915.44	\$57,720,561.87	\$69,305,547.47	\$69,961,449.52	\$58,390,333.34	\$59,549,136.35	\$66,727,045.67	\$1,633,317,646.19
Kentucky	\$42,267,806.11	\$0.00	\$112,921,085.75	\$121,936,632.68	\$146,410,305.30	\$147,795,920.49	\$123,351,547.49	\$125,799,557.93	\$140,963,133.32	\$3,450,438,586.10
Louisiana	\$54,128,474.21	\$0.00	\$144,607,601.88	\$156,152,979.89	\$187,494,151.32	\$189,268,580.68	\$157,964,930.57	\$161,099,871.36	\$180,718,461.42	\$4,418,657,915.22
Maine	\$18,464,411.55	\$0.00	\$49,328,829.47	\$53,267,211.52	\$63,958,373.54	\$64,563,670.37	\$53,885,307.70	\$54,954,704.87	\$61,578,812.49	\$1,507,301,275.81
Maryland	\$54,250,967.50	\$0.00	\$144,934,850.37	\$156,506,355.69	\$187,918,452.52	\$189,696,897.43	\$158,322,406.83	\$161,464,442.03	\$180,926,976.56	\$4,428,657,383.58
Mass.	\$96,935,496.43	\$0.00	\$258,969,237.19	\$279,645,174.68	\$335,772,232.68	\$338,949,953.70	\$282,890,090.42	\$288,504,271.26	\$323,279,880.48	\$7,913,114,212.77
Michigan	\$104,446,741.41	\$0.00	\$279,035,997.59	\$301,314,052.34	\$361,790,230.09	\$365,214,183.32	\$304,810,407.01	\$310,859,614.11	\$348,329,882.46	\$8,526,278,033.60
Minnesota	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Mississippi	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Missouri	\$54,590,425.51	\$0.00	\$145,841,733.70	\$157,485,644.00	\$189,094,291.94	\$190,883,864.90	\$159,313,058.50	\$162,474,753.97	\$182,059,069.06	\$4,456,368,286.30
Montana	\$10,194,218.72	\$0.00	\$27,234,492.45	\$29,408,876.82	\$35,311,477.28	\$35,645,662.22	\$29,750,128.30	\$30,340,543.46	\$33,997,719.42	\$832,182,430.63
Nebraska	\$14,279,599.86	\$0.00	\$38,148,843.51	\$41,194,622.66	\$49,462,718.04	\$49,662,829.17	\$41,672,632.27	\$42,499,659.09	\$47,622,465.53	\$1,165,683,457.48
Nevada	\$14,638,443.42	\$0.00	\$39,107,516.49	\$42,229,835.47	\$50,705,706.47	\$51,185,581.14	\$42,719,857.37	\$43,567,667.21	\$48,819,208.77	\$1,194,976,854.76
New Hampshire	\$15,982,416.92	\$0.00	\$42,698,025.70	\$46,107,008.63	\$55,361,059.77	\$55,884,992.33	\$46,642,020.04	\$47,567,668.35	\$53,301,360.40	\$1,304,689,150.27
New Jersey	\$92,807,910.83	\$0.00	\$247,942,134.27	\$267,737,674.95	\$321,474,801.04	\$324,517,212.33	\$270,844,419.77	\$276,219,544.60	\$309,514,382.50	\$7,576,167,918.47
New Mexico	\$14,313,352.87	\$0.00	\$38,239,016.77	\$41,291,995.30	\$49,579,634.15	\$50,048,851.76	\$41,771,134.78	\$42,600,116.47	\$47,735,031.79	\$1,168,438,809.05
New York	\$306,288,745.07	\$0.00	\$818,269,525.50	\$883,599,638.62	\$1,060,945,263.21	\$1,070,985,962.65	\$893,852,654.37	\$911,591,877.52	\$1,021,472,964.43	\$25,003,202,243.12
North Carolina	\$5,974,840.09	\$0.00	\$149,540,283.73	\$161,479,483.90	\$193,889,727.95	\$195,724,684.52	\$163,353,241.67	\$166,595,117.83	\$186,676,091.64	\$4,569,381,898.24
North Dakota	\$8,784,330.94	\$0.00	\$23,467,889.12	\$25,341,550.30	\$30,427,805.29	\$30,715,771.56	\$25,635,605.78	\$26,144,364.95	\$29,295,743.66	\$717,089,369.09
Ohio	\$20,900,234.58	\$0.00	\$322,992,532.93	\$348,780,049.22	\$418,783,038.09	\$422,746,366.61	\$352,827,184.57	\$359,829,323.15	\$403,202,282.16	\$9,869,422,448.51
Oklahoma	\$24,867,287.65	\$0.00	\$66,434,513.15	\$71,738,602.00	\$86,137,122.12	\$86,952,316.82	\$72,571,034.45	\$74,011,264.86	\$82,932,404.27	\$2,029,985,862.29
Oregon	\$27,543,797.82	\$0.00	\$73,584,977.37	\$79,459,954.68	\$95,408,213.01	\$96,311,148.56	\$80,381,983.32	\$81,977,228.27	\$91,858,565.71	\$2,248,476,833.11
Penn.	\$137,924,610.41	\$0.00	\$368,474,217.00	\$397,892,961.71	\$477,753,311.05	\$482,274,729.42	\$402,509,988.05	\$410,498,121.73	\$459,978,575.54	\$11,259,169,603.46
Rhode Island	\$17,253,727.23	\$0.00	\$46,094,410.65	\$49,774,558.78	\$59,764,717.02	\$60,330,325.43	\$50,352,127.30	\$51,351,405.67	\$57,541,180.29	\$1,408,469,747.28
South Carolina	\$28,232,446.25	\$0.00	\$75,424,744.69	\$81,446,607.84	\$97,793,603.59	\$98,719,114.28	\$82,391,688.98	\$84,026,818.16	\$94,155,208.21	\$2,304,693,119.82
South Dakota	\$8,374,699.41	\$0.00	\$22,373,532.90	\$24,159,821.39	\$29,008,893.79	\$29,283,431.59	\$24,440,164.46	\$24,925,199.13	\$27,929,622.54	\$683,650,008.54
Tennessee	\$58,581,467.29	\$0.00	\$156,504,051.21	\$168,999,234.09	\$202,918,753.08	\$204,839,159.61	\$170,960,248.71	\$174,353,092.02	\$195,369,193.34	\$4,782,166,127.09
Texas	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Utah	\$10,677,285.47	\$0.00	\$28,525,035.47	\$30,802,455.97	\$36,984,759.08	\$37,334,779.83	\$31,159,878.10	\$31,778,270.89	\$35,608,747.04	\$871,616,513.42
Vermont	\$9,868,441.49	\$0.00	\$26,364,158.22	\$28,469,055.67	\$34,183,026.39	\$34,506,531.76	\$28,799,401.75	\$29,370,948.99	\$32,911,252.36	\$805,588,329.25
Virginia	\$49,073,882.70	\$0.00	\$131,103,944.75	\$141,571,199.45	\$169,985,689.11	\$171,594,419.81	\$143,213,947.68	\$146,056,143.38	\$163,661,398.74	\$4,006,037,550.26
Washington	\$49,278,196.65	\$0.00	\$131,649,782.25	\$142,160,616.27	\$170,693,406.67	\$172,308,835.15	\$143,810,203.90	\$146,664,232.79	\$164,342,785.78	\$4,022,716,266.79
West Virginia	\$21,275,048.98	\$0.00	\$56,837,623.03	\$61,375,502.33	\$73,694,064.18	\$74,391,498.79	\$62,087,684.60	\$63,319,864.52	\$70,952,288.31	\$1,736,741,427.33
Wisconsin	\$49,728,936.59	\$0.00	\$132,853,962.15	\$143,460,937.12	\$172,254,712.48	\$173,884,917.03	\$145,125,613.28	\$148,005,747.52	\$165,846,003.46	\$4,059,511,421.32

Wyoming \$5,960,276.82	\$0.00	\$15,923,252.04	\$17,194,554.25	\$20,645,640.96	\$20,841,029.62	\$17,394,074.52	\$17,739,273.88	\$19,877,523.19	\$486,553,976.10
American Samoa \$365,208.62	\$0.00	\$975,677.65	\$1,053,575.12	\$1,265,036.21	\$1,277,008.41	\$1,065,800.48	\$1,086,952.15	\$1,217,970.74	\$29,812,995.31
N. Marianas \$202,503.22	\$0.00	\$541,000.00	\$584,193.09	\$701,445.39	\$708,083.81	\$590,971.89	\$602,700.20	\$675,348.22	\$16,530,900.80
Guam \$526,489.51	\$0.00	\$1,406,549.63	\$1,518,847.65	\$1,823,692.71	\$1,840,951.99	\$1,536,471.89	\$1,566,964.41	\$1,755,842.52	\$42,978,803.27
US Virgin Island \$416,623.09	\$0.00	\$1,113,034.64	\$1,201,898.61	\$1,443,129.42	\$1,456,787.08	\$1,215,845.06	\$1,239,974.49	\$1,389,438.02	\$34,010,162.11
Puerto Rico \$26,910,657.33	\$0.00	\$71,893,502.96	\$77,633,434.04	\$93,215,094.84	\$94,097,274.89	\$78,534,268.30	\$80,092,843.87	\$89,747,042.15	\$2,196,791,813.07
\$2,400,000,000.00	\$0.00	\$6,411,750,000.00	\$6,923,660,000.00	\$8,313,294,800.00	\$8,391,971,144.00	\$7,004,000,000.00	\$7,143,000,000.00	\$8,003,999,997.00	\$195,918,675,920.00

ENACTED APPEAL BOND LEGISLATION

State	Bill Number	Date Approved	To Whom Limits Apply	Amount of Appeal Bond Limit	Scope of Appeal Bond Limit
California	A 1752	8/9/2003	Master Settlement Agreement signatories, successors, and affiliates	The lesser of 100% of the judgment or \$150,000,000	Applies to all judgments in civil litigation regardless of legal theory
Colorado	HB 1366	5/20/2003	All litigants	\$25,000,000	Applies to all judgments in civil litigation regardless of legal theory
Florida	HB 1721	5/9/2000	All litigants in class actions	\$100,000,000	As passed in 2000, applied to judgments for non-compensatory damages. Broadened in 2003 to apply to all money judgments under any legal theory
	SB 2826	6/10/2003	Master Settlement Agreement signatories, successors, and affiliates	\$100,000,000	
Georgia	HB 1346	3/30/2000	All litigants	\$25,000,000	Applies to punitive damages only
Idaho	HB 92	3/26/2003	All litigants	\$1,000,000	Applies to punitive damages only
Indiana	HB 1204	3/14/2002	All litigants	\$25,000,000	Applies to all judgments in civil litigation regardless of legal theory
Kansas	SB 64	4/21/2003	Master Settlement Agreement signatories and their successors	\$25,000,000	Applies to all judgments in civil litigation regardless of legal theory
Kentucky	SB 316	3/29/2000	All litigants	\$100,000,000	Applies to punitive damages portion of a judgment

Notes

* Created by court rule rather than legislation.

State	Bill Number	Date Approved	To Whom Limits Apply	Amount of Appeal Bond Limit	Scope of Appeal Bond Limit
Louisiana	HB 1807	6/25/2001	As passed in 2001, covered Master Settlement Agreement signatories only; broadened in 2003 to include "affiliates"	\$50,000,000	Applies to all money judgments
	HB 1819	7/2/2003			
Michigan	HB 5151	5/8/2002	All litigants	\$25,000,000 plus COLA every 5th year	Applies to all judgments in civil litigation
Mississippi	Rule 8	4/26/2001	All litigants	\$100,000,000	Applies to all litigation subject to court rule
Missouri	SB 242	7/10/03	Master Settlement Agreement signatories, successors, and affiliates	\$50,000,000	Applies to all forms of judgments in civil litigation
Nevada	AB 576	5/29/2001	Master Settlement Agreement signatories	\$50,000,000	Applies to all forms of judgments in civil litigation
New Jersey	SB 2738	11/21/2003	Master Settlement Agreement signatories, successors, and affiliates	\$50,000,000	Applies to all forms of judgments in civil litigation
North Carolina	SB 2	4/5/2000	All litigants	\$25,000,000	As passed in 2002, applied to judgments for non-compensatory damages. Broadened in 2003 to apply to all money judgments under any legal theory
	SB 784	4/23/2003	All litigants		
Ohio	SB 161	3/28/2002	All litigants	\$50,000,000	Applies to all forms of judgments in civil litigation
Oklahoma	SB 372	4/10/2001	Master Settlement Agreement signatories	\$25,000,000	As passed in 2001, applied to all forms of judgments in civil litigation involving MSA signatories

State	Bill Number	Date Approved	To Whom Limits Apply	Amount of Appeal Bond Limit	Scope of Appeal Bond Limit
Oregon	HB 2368	9/24/2003	Master Settlement Agreement signatories, successors, and affiliates	\$150,000,000	Applies to all judgments in civil litigation regardless of legal theory
Pennsylvania	HB 1718	12/30/2004	Master Settlement Agreement signatories, successors, and affiliates	\$100,000,000	Applies to all judgments in civil litigation regardless of legal theory
South Dakota	Amend. to Sup. Ct. R. 15-26A-26	9/29/2003	All litigants	\$25,000,000	Applies to money judgments
Tennessee	SB 1687	6/5/2003	All litigants	\$75,000,000	Applies to all forms of judgments in civil litigation
Texas	HB 4	6/11/2003	All litigants	The lesser of 50% of the judgment debtor's net worth or \$25,000,000	Applies to money judgments
Virginia	HB 1547	3/10/2000	All litigants	\$25,000,000	Applies to punitive damages portion of a judgment
West Virginia	SB 661	5/2/2001	All Master Settlement Agreement signatories	\$100,000,000 for all portions of a judgment other than punitive damages; \$100,000,000 for the punitive damages portion of a judgment	Applies to all civil litigation and provides that consolidated or aggregated cases shall be treated as a single judgment for purposes of the appeal bond limits
Wisconsin	AB 548	12/12/2003	All litigants	\$100,000,000	Applies to all judgments in civil litigation regardless of legal theory

STATES THAT DO NOT REQUIRE BONDS

State	Governing Rule
Connecticut	Proceedings to stay noncriminal judgments shall be stayed automatically until the final determination of the cause. Conn. R. App. P. § 61-11.
Maine	The taking of an appeal operates as a stay of execution upon the judgment, and no supersedeas bond or other security shall be required. Me. R. Civ. P. 62.
Massachusetts	The taking of an appeal from a judgment shall stay execution upon the judgment during the pendency of the appeal. Mass. R. Civ. P. 62(d).
New Hampshire	No execution of a judgment shall issue until the expiration of the appeal period. N.H. Rev. Stat. Ann. § 527:1.
Vermont	The taking of an appeal operates to stay execution of the judgment during the pendency of the appeal; no supersedeas bond or other security is required. Vt. R. Civ. P. 62(d)(1).

Appeal Bond Bill (SB 307/HB 468)

The American Heart Association is concerned about proposed SB 307/HB 468, legislation that would limit the amount of appeal bonds to \$25 million in any civil lawsuit that involves a tobacco company, or any affiliate of a tobacco company, that participated in the 1998 Master Settlement Agreement, regardless of the amount of the legal judgment or the subject matter of the lawsuit. This legislation fails to protect the public health of all Alaskans, and it is not needed to protect the MSA payments that Alaska receives each year.

Appeal bond limits help only the big tobacco companies. Appeal bond limits are special interest, special protection bills to benefit the tobacco companies – and the tobacco companies certainly do not deserve special treatment or special protections.

The only reason the Alaska Legislature is being asked to consider this proposed legislation is because tobacco companies are trying to avoid being brought to justice for years of misinformation and deceit about so-called “light” cigarettes that killed and harmed millions of people. Because the judicial systems in other states have forced the tobacco companies to pay for the harm they have caused, the tobacco companies are now trying to legislate options away from judges, juries and the injured parties who file lawsuits in many states throughout the country, including Alaska.

Appeal bond limits hurt deserving plaintiffs who have won lawsuits. Appeal bond limits reduce the security and protections that are currently in place to protect worthy plaintiffs who win lawsuits. Appeal bond provisions require losing defendants to post bonds prior to appealing lawsuits that they have lost – and the winning plaintiffs have recourse to those posted bond amounts if the defendants lose on appeal and, for whatever reason, are no longer able to pay the damages they owe to the plaintiffs.

Through this mechanism, appeal bond requirements are meant to ensure that losing defendants do not use repeated frivolous appeals to avoid paying the damages owed to winning plaintiffs. They are also meant to ensure that losing defendants do not waste their assets or hide them during the appeal process, and appeal bonds protect plaintiffs against the possibility that the defendants lose their ability to pay during the appeal process. Low appeal bond limits fail to provide any of these protections in lawsuits where plaintiffs have been awarded damages that significantly exceed the amount of the appeal bond maximum.

No Alaska business has gone bankrupt under the existing appeals bond law. Only the tobacco companies are using this ploy to fight class-action suits.

The judicial system and existing laws already have sufficient protections in place to stop appeal bond requirements from bankrupting defendants. Tobacco companies who lose big lawsuits and have large damages judgments against them have numerous protections available:

- 1) They can file a motion with the court seeking to have the appeal bond amount reduced.
- 2) If the lower court refuses, they can file an appeal to a higher court to have the bond reduced.
- 3) They can work out a deal with the winning plaintiffs to post a smaller bond amount.

In April 2003, for example, Phillip Morris used existing avenues of appeal to get a court in Illinois to reduce an appeal bond in a large class action lawsuit from \$12 billion to \$ 6 billion. In fact, courts have already ruled that appeal bond requirements that force a losing defendant that wants to appeal into bankruptcy violate the constitutional right to due process. Other rulings on punitive damages indicate that forcing losing defendants into bankruptcy may also not be permissible.

Tobacco companies have access to enormous financial resources that can be used to satisfy even the largest appeal bond requirements. The tobacco companies (and their parent companies) have enormous assets, revenue streams, and profits – and have a vast capacity to borrow money or to raise needed revenue through price increases. In 2002, Altria (Philip Morris' parent company) had total assets of \$87.5 billion, net revenues of \$80.4 billion, and US tobacco revenues of \$18.9 billion.

Tobacco companies can easily raise even very large appeal bond amounts by reducing their current non-essential spending. The tobacco companies (and their parent companies) currently spend enormous amounts of money on expenditures that are not necessary to protect their market share. Most notably, the companies could save a lot of money by reducing or eliminating their shareholder dividends and stock buybacks. Ironically, the \$25 million cap that the tobacco companies seek is the very same amount that tobacco companies spend every year on marketing their deadly products in Alaska alone.

Tobacco companies' risk of being financially overwhelmed by multiple appeal bond requirements and lawsuit losses is very low. For example, tobacco companies are promoting this legislation in Alaska despite the fact that there is no indication that there will be a significant tobacco-related lawsuit in Alaska, and despite the fact that Alaska judges and juries have proven to be moderate in their damage awards.

There are other options that would protect payments while also protecting Alaska citizens. The above facts show that no appeal bond limits should be instituted at all. But if some appeal bond limit is destined to pass in Alaska, these arguments support a much higher appeal bond limit than those currently being pushed by Philip Morris and other tobacco companies. To date, they have proposed appeal bond limits of \$25 million, but in order to protect legitimately harmed Alaskans who have prevailed in superior court, there is absolutely no justification for any appeal bond limit that is not in the billions of dollars.

Another alternative would be to set appeal bond limits to be no greater than the total value of a losing defendant's assets or no greater than a losing defendant's total revenues in the prior fiscal year. An even better alternative (if some appeal bond limit must be passed) would be to set guidelines for the courts. For example, a proposed bill could read: "Appeal bond limits shall not be set in an amount that would force a losing defendant into bankruptcy or otherwise cause severe financial strains that jeopardize the losing defendant's ability to stay in business or meet its preexisting financial obligations."

February 23, 2004



Northwest Division
Alaska Office

Fax Cover Sheet

To: Vanessa Tondini – House Judiciary Committee
Fax #: 465-6592
Date: March 5, 2004
Re: HB468 – tobacco industry appeals bond cap

From: Emily Nenon
Alaska Advocacy Manager
American Cancer Society

Phone: (907) 263-2097

Fax: (907) 263-2073

Email: Emily.Nenon@cancer.org

Pages including cover sheet: 2

Vanessa:

This is a visual aid for my testimony this afternoon. Will you please have a copy of this ad available for committee members to see?

Thank you,

Emily

1057 West Fireweed Lane, Suite 204 • Anchorage, AK • 99503
(907) 277-8696 • (800) 478-9355 • Fax (907) 263-2073



New Mexico's
biggest killer
is asking for
special protection.

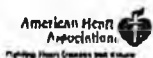
5,200 New Mexico kids get hooked on tobacco each year. 1 in 3 will die prematurely from it. And yet our legislature is about to approve a bill that will protect Big Tobacco.

Senate Bill 176 gives tobacco companies special protection from lawsuits — making it the only industry in New Mexico with that privilege. And tobacco companies are threatening that unless the bill passes, they won't be able to continue making tobacco settlement payments — money they owe New Mexico.

Big Tobacco spends over \$72 million each year to market its deadly products in our state. And tobacco addiction kills more than 2,100 New Mexicans each year. When you are dealing with a killer, special protection is simply out of the question.

Call 505-966-1411 and tell House Judiciary Committee members:
Protect our kids. Not Big Tobacco. Say NO to SB 176.

FOR MORE INFORMATION, CALL 505-260-2105, EXTENSION 24.



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