

SURETY

By: Keith Langley



Jerry Maguire says “Show me the money”! Let’s say a surety feels threatened and asks for a deposit of cash from a principal who refuses and then the surety insists by filing a motion for a positive injunction with the trial court.

The trial court here granted the surety specific performance of the indemnity agreement and found that the surety will likely suffer irreparable harm if the collateral was not provided. The balancing of the equities and the public interest favored the surety. The surety also filed a request for production of books and records which the trial judge saying that discovery would meet this goal. *XL Specialty Insurance Co. v. Big Horn Construction and Reclamation LLC*, 2022 WL 2105925 (D. MD. 6/10/2022).

Collateral was requested by the surety of \$2 million, and then through a joint effort reduced to \$700,000 through maximizing recoveries and diminishing outstanding liabilities. The demand was then again reduced to \$500,000. The court found that the indemnity agreement sets forth exactly this injunctive relief. Applying New York law, the court found specific performance appropriate. The court then cites favorable law for the surety in finding irreparable harm. Next the court balances the equities and the public interest and finds in favor of the surety.



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To "Go Green", our firm uses recyclable paper or ceramic cups and no longer uses Styrofoam cups. In addition, we have adopted a less-paper office environment.

We hope that these changes make big differences in the future.

Well done is better than well said.

- Benjamin Franklin



When a surety has to file a lawsuit to seek cash collateral, the judge may have issues with issuing an injunction ordering the principal and indemnitors to deposit cash with the surety. Here helpful things were 1) being in federal court (where the judge may believe more strongly in the injunction and the contractual indemnity agreement), 2) the surety kept working with the principal and indemnitors, 3) the issues were persuasively explained to the judge.

Constant clear communication is key. Where the surety investigates aggressively and works faithfully, the surety is entitled to protection and the help of the court in getting it.

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