

1                                    IN THE UNITED STATES DISTRICT COURT  
2                                    FOR THE NORTHERN DISTRICT OF CALIFORNIA

3  
4 KALITTA AIR, LLC,

No. C 96-2494 CW

5                                    Plaintiff,

ORDER RE:  
SUPERSEDEAS BOND

6                                    v.

7 CENTRAL TEXAS AIRBORNE SYSTEMS,  
8 et al.,

9                                    Defendants.

10 \_\_\_\_\_/

11  
12                    On December 5, 2012, this Court granted in part Plaintiff  
13 Kalitta Air's motion for review of the Clerk's notice of taxable  
14 costs and granted Plaintiff's request to stay collection of costs  
15 pending the outcome of its appeal. The Court ordered Plaintiff to  
16 post a supersedeas bond in the amount of \$311,018.19, fifty  
17 percent of the taxable costs.

18                    Plaintiff has now filed a motion for approval of supersedeas  
19 bond. Defendant Central Texas Airborne Systems opposes. As  
20 Defendant points out, Plaintiff's proposed bond does not include  
21 an unequivocal promise to pay, list the conditions for payment, or  
22 provide a time frame for payment. Plaintiff's proposed bond  
23 simply refers to Federal Rule of Civil Procedure 62(d) and Local  
24 Rule 65.1-1. However, neither of those rules, nor any other  
25 federal statute or rule "defines the conditions that must occur to  
26 trigger an appellant's obligation under a supersedeas bond."  
27 Tennessee Valley Auth. v. Atlas Machine & Iron Works, Inc., 803  
28 F.2d 794, 798 (4th Cir. 1986) (citing Moore v. Townsend, 577 F.2d

1 424, 426 n.5 (7th Cir. 1978)). Therefore, "the extent of the  
2 appellant's liability is governed by the terms of the bond  
3 itself." Id. (citing Aviation Credit Corp. v. Conner Air Lines,  
4 Inc., 307 F.2d 685, 688 (5th Cir. 1962)).

5 Accordingly, the Court DENIES Plaintiff's Motion for Approval  
6 of Supersedeas Bond. Docket No. 2265. Plaintiff shall submit a  
7 proposed bond that unequivocally binds the surety to pay any  
8 amount that may be awarded to Defendant, up to \$311,018.19, unless  
9 within seven days of the Court of Appeals' decision affirming or  
10 modifying the judgment or dismissing the appeal, Plaintiff  
11 satisfies the judgment in full, including any additional costs or  
12 interest awarded.

13 The Court's grant of Plaintiff's request to stay the  
14 collection of costs pending appeal was premised on the posting of  
15 a supersedeas bond. If Plaintiff does not submit a proposed bond  
16 that conforms to this order within twenty-one days of the date of  
17 this order, the stay will be lifted.

18  
19 IT IS SO ORDERED.

20  
21 Dated: 1/29/2013

22   
23 CLAUDIA WILKEN  
24 United States District Judge  
25  
26  
27  
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