

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 DENYING
PLAINTIFF'S MOTION
FOR
RECONSIDERATION

6 v.

7 CENTRAL TEXAS AIRBORNE SYSTEMS,
8 et al.,

9 Defendants.

10 _____/

11 On April 15, 2013, Plaintiff Kalitta Air filed a motion for
12 leave to file a motion for reconsideration of the Court's April 1,
13 2013 order denying Plaintiff's second motion for approval of
14 supersedeas bond. In its motion for leave, Plaintiff presented
15 evidence that its insurance company refused to issue a bond
16 containing the language in the Court's April 1 order.

17 On April 17, the Court deemed Plaintiff's motion for leave to
18 file to be its motion for reconsideration and ordered Plaintiff to
19 "ask its surety to indicate the shortest timeframe in which it can
20 promise to pay the bond amount, should Plaintiff fail to pay the
21 judgment in full within seven days of the Court of Appeals'
22 decision." Docket No. 2279. The Court further ordered Plaintiff
23 to ask the same question of at least three other sureties and to
24 "file a declaration including exhibits that show the question
25 posed to each surety company and each company's answer." Id.

26 Plaintiff has filed a declaration by Lawrence Galizi, its
27 aviation insurance broker. In that declaration, Mr. Galizi states
28 that his company asked "Kalitta's surety, and five other surety

1 companies to indicate the shortest timeframe in which it can
2 promise to pay the bond amount, should Kalitta fail to pay the
3 judgment in full within seven days of the Court of Appeals'
4 decision." Galizi Dec. ¶ 6. However, the exhibits attached to
5 the declaration do not show the question posed as required by the
6 Court's order. Moreover, the email from Travelers Insurance
7 Company, Kalitta's current surety and the company that has written
8 the bonds previously rejected by the Court, does not answer the
9 question posed by the Court. See Galizi Dec., Ex. 1. Instead,
10 the email from Travelers states that it "is comfortable with
11 revising the language within the bond form giving Kalitta a 30 day
12 timeframe to pay the full amount of the appeal along with any
13 additional cost or interest." Id.

14 The other two exhibits to Mr. Galizi's declaration are email
15 messages from Debbie Keller-Niven at Industrial Insurance Agency.
16 See Galizi Dec., Exs. 2 & 3. The emails appear to report on
17 conversations that Ms. Keller-Niven had with representatives of
18 two sureties, CNA and RLI. Id. Mr. Galizi's declaration cannot
19 authenticate these emails, nor is there any indication of the
20 question Ms. Keller-Niven posed to either of the sureties.
21 Moreover, Ms. Keller-Niven specifically states that her company
22 does not "write many bonds" and reports that she is not able to
23 get any commitment from either of the sureties. Id.

24 Plaintiff has failed to comply with the Court's order
25 granting its motion for leave to file a motion for
26 reconsideration. Accordingly, the Court DENIES Plaintiff's motion
27 for reconsideration.

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Within seven days of this order, Plaintiff shall post a supersedeas bond that complies with the Court's April 1, 2013 order. If Plaintiff is unable to secure such a bond within seven days of this order, it shall provide a letter of credit in the amount of \$311,018.19 from Bank of America, or another bank approved of by Defendant within ten days of the date of this order.

IT IS SO ORDERED.

Dated: 5/17/2013



CLAUDIA WILKEN
United States District Judge