

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CAMBRIDGE UNIVERSITY PRESS,
OXFORD UNIVERSITY PRESS, INC.,
and SAGE PUBLICATIONS, INC.,

Plaintiffs,

- v. -

MARK P. BECKER, in his official
capacity as Georgia State University
President, et. al.

Defendants.

Civil Action No. 1:08-CV-1425-ODE

**PLAINTIFFS' MOTION FOR STAY OF EXECUTION OF THE
JUDGMENT AWARDING ATTORNEYS' FEES AND COSTS PENDING
APPEAL, NOTICE OF UNOPPOSED BOND AMOUNT, AND
MEMORANDUM OF LAW IN SUPPORT**

Plaintiffs Cambridge University Press, Oxford University Press, Inc., and SAGE Publications, Inc. (collectively, "Plaintiffs") hereby move under Rule 62(d) of the Federal Rules of Civil Procedure for stay of execution of that portion of the September 30, 2012 judgment that awards Defendants attorneys' fees and costs pending appeal.

ARGUMENT

Pursuant to Federal Rule of Civil Procedure 62(d), “the appellant may obtain a stay by supersedeas bond” of the judgment pending appeal. Fed. R. Civ. P. 62(d). “The purpose of a supersedeas bond is to preserve the status quo while protecting the non-appealing party’s rights pending appeal.” *Prudential Ins. Co. of Am. v. Boyd*, 781 F.2d 1494, 1498 (11th Cir. 1986). “[A] party taking an appeal from the District Court is entitled to a stay of a money judgment as a matter of right if he posts a bond in accordance with Fed. R. Civ. P. 62(d).” *Am. Mfrs. Mut. Ins. Co. v. Am. Broad. -Paramount Theatres, Inc.*, 87 S. Ct. 1, 3 (1966); see *United States v. Wylie*, 730 F.2d 1401, 1402 n.2 (11th Cir. 1984) (“[Rule] 62(d) allows for a stay pending appeal if the appellant files a supersedeas bond. *The stay is a matter of right.*” (emphasis added)).¹

¹ *Accord Hickey v. Columbus Consol. Gov't*, 4:07-CV-96 CDL, 2011 WL 882110 at *1, *7 (M.D. Ga. Mar. 10, 2011) (“Federal Rule of Civil Procedure 62(d) allows an appellant to obtain an automatic stay of execution of judgment pending an appeal by posting a bond.”); *Goolsby v. Astrue*, 507-CV-183-CAR, 2010 WL 339786, at *1 (M.D. Ga. Jan. 21, 2010) (“When a party appeals a district court’s judgment, the party is entitled to stay of a money judgment as a matter of right if he posts a bond under rule 62(d).”); *Rashad v. Fulton Cnty. Dep’t of Health & Wellness*, 1:05-CV-01658-JOF, 2010 WL 2821845 at *1, *4 (N.D. Ga. July 15, 2010) (“Under Rule 62(d), [appellant] has the right to a stay of execution of the monetary portion of the judgment, pursuant to the posting of a supersedeas bond in an amount approved by this court.”); *Hicks v. Battle*, 5:03-CV-307CAR, 2008 WL 150676 at *1, *3 (M.D. Ga. Jan. 14, 2008) (“When a party appeals a district court’s

Plaintiffs request a stay of the judgment only insofar as the judgment awards Defendants attorneys' fees in the amount of \$2,861,348.71 and costs in the amount of \$85,746.39. *See, e.g.*, 11 C. Wright & A. Miller, FEDERAL PRACTICE AND PROCEDURE § 2905 (2d ed. 2004) (stating that, when appeal is taken from a judgment in an action for an injunction, “a supersedeas stays the money award but not that part of the judgment that deals with injunctive relief”). Where, as here, the appellant appeals the fees and costs order, the posting of a supersedeas bond “entitle[s the appellant] to a stay [of the fees award] as a matter of right.” *ACLU of Nev. v. Masto*, 670 F.3d 1046, 1066 (9th Cir. 2012); *see also Standard Dredging Corp. v. Henderson*, 150 F.2d 78, 79-80 (5th Cir. 1945) (affirming that Rule 62(d) stays costs portion of a judgment in an action for injunctive relief).²

While Rule 62(d) does not specify the amount of the bond, it “usually will be set in an amount that will permit satisfaction of the judgment in full, together

judgment, the party is entitled to stay of a money judgment as a matter of right if he posts a bond under rule 62(d).”).

² *See Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc) (holding that decisions of the United States Court of Appeals for the Fifth Circuit prior to October 1, 1981 are binding as precedent in the Eleventh Circuit). Rule 62(d) authorizes a stay of an award of attorneys' fees and costs just as it authorizes a stay of a money judgment. *See Masto*, 670 F.3d at 1052, 1066-67; *e.g., Pugach v. M & T Mortg. Corp.*, No. 2:05-CV-02498, 2008 WL 2640465, at *1 (E.D.N.Y. July 3, 2008) (in judgment awarding only attorneys' fees and costs under False Claims Act, 31 U.S.C. § 3730(d)(4), appellant “can obtain a stay as a matter of right under Rule 62(d) by posting a bond to secure the amount of the judgment”).

with costs, interest, and damages for delay.” 11 Wright & Miller, § 2905; *see Eagle Hosp. Physicians LLC v. SRG Consulting, Inc.*, No. 1:04-CV-1015, 2009 WL 1658174 (N.D. Ga. June 12, 2009). In accordance with Local Rule 65, Plaintiffs are prepared to provide security by cash deposit with the Court in the amount of \$3,271,275 (111% of the full amount of the award of attorneys’ fees and costs). *See* N.D. Ga. LR 65.1.1(C)(1) (stating that surety is satisfied by “[a] cash deposit equal to the amount of the bond”). Defendants consent to this amount. Based on the most recent one-year constant maturity Treasury yield³ of 0.18%, interest on the award over two years (a conservative estimate of the duration of the appellate process) would amount to \$10,609.54. The amount of Plaintiffs’ deposit is therefore well above what is required by Rule 62(d).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request an order staying execution of that portion of the September 30, 2012 judgment awarding Defendants attorneys’ fees and costs pending appeal and for an order directing the

³ According to 28 U.S.C. § 1961: “Interest shall be allowed on any money judgment in a civil case recovered in a district court. . . . Such interest shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment.” (citation omitted).

Clerk to accept Plaintiffs' cash transfer of \$3,271,275 in lieu of a bond for deposit in the Commercial Registry of the Court for the Northern District of Georgia.

Respectfully submitted this 18th day of October, 2012.

/s/ John H. Rains IV
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CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the foregoing **PLAINTIFFS’
MOTION FOR STAY OF EXECUTION OF THE JUDGMENT
AWARDING ATTORNEYS’ FEES AND COSTS PENDING APPEAL,
NOTICE OF UNOPPOSED BOND AMOUNT, AND MEMORANDUM OF
LAW IN SUPPORT** with the Clerk of Court using the CM/ECF filing system
which will send e-mail notification of such filing to opposing counsel as follows:

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This 18th day of October, 2012.

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