SUPREME COURT
STATE OF LOUISIANA

DOCKET NO.: # 2013-C-1929

LEON A. CANNIZZARO, JR., DISTRICT ATTORNEY FOR THE PARISH OF ORLEANS, ON BEHALF OF THE STATE OF LOUISIANA
PLAINTIFF-Respondent

VERSUS

AMERICAN BANKERS INSURANCE COMPANY
DEFENDANT-Applicant

On Appeal from the Civil District Court for the Parish of Orleans, No. 2009-9317, c/w 2009-10179, Div. D-16, The Honorable Lloyd J. Medley Judge Presiding, and from the Fourth Circuit Court of Appeal, No. 2012-CA-1455, c/w 2012-CA-1456, The Honorable Dennis R. Bagneris, Sr., Terri F. Love, and Roland L. Belsome, Judges

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ORIGINAL AMICUS CURIAE BRIEF OF THE PROFESSIONAL BAIL AGENTS OF THE UNITED STATES AND ASSOCIATION OF LOUISIANA BAIL UNDERWRITERS IN SUPPORT OF DEFENDANT/APPLICANT AND URGING GRANT OF ORIGINAL APPLICATION FOR WRIT OF CERTIORARI AND REVIEW FROM THE DECISION OF THE FOURTH CIRCUIT COURT OF APPEAL

CIVIL PROCEEDING

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INTEREST OF THE AMICI

The Professional Bail Agents of the United States (PBUS) is the professional association representing the 15,500 bail agents nationwide as the National Voice of the Bail Agent, with associate members from insurance and related industries. Since its founding in 1981, PBUS and its alliance with state associations have advanced the profession through legislative advocacy, professional networking, continuing education, support of bail agent certification, enhanced liability insurance and development of a code of ethics.

The Association of Louisiana Bail Underwriters (ALBU) was formed in 1994 to promote a better community understanding of bail bonds and assist the courts and State of Louisiana as partners in the criminal justice system by providing access to reasonable bail under the Eighth Amendment to the United States Constitution and to enhance public safety, without cost to taxpayers, by ensuring the defendant's appearance before the court.

The ruling of the 4th Circuit Court of Appeals will seriously alter how, and indeed whether, bail bonds are undertaken and enforced in Orleans Parish. This profound change has broader implications for agents statewide and nationwide. It is not a stretch of the imagination to conclude that the ruling will also affect the local bail agent's ability to contract with willing insurance underwriters and indemnitors and consequently reduce the availability of commercial bail bonds.

STATEMENT OF THE CASE

The issues presented by these consolidated cases have not been previously submitted to the judges of the Civil District Court, to the Fourth Circuit Court of Appeal, nor to this Court, because they arise out of a practice for the collection of bail bonds revenues newly implemented by the District Attorney for Orleans Parish. That practice radically departs from the prior policy, to the detriment of the sureties in Orleans Parish and in violation of their constitutional and statutory rights.

STATEMENT OF FACTS

Amici PBUS and ALBU adopt the Statement of the Facts of Surety Corporation of America.

STATEMENT OF ISSUE

Applicant has stated that "The decision below does violence to principles of subject matter jurisdiction . . ." The victims of that violence include not just the surety Applicant, but also the local bail agents, criminal defendants and their indemnitors in the community. We, the Professional Bail Agents Association of the United States and the Association of Louisiana Bail Underwriters, urge the Louisiana Supreme Court to grant the Application for Writ of Certiorari submitted by Surety Corporation of America, indemnitee of American Banker's Insurance Company, to consider issues of serious importance to members of our respective nationwide and statewide organizations, and thereby restore clarity to the law.

ARGUMENT AND LAW

I. Background of Commercial Bail Bonds

The right to third party indemnification was granted to bail agents by the United States Supreme Court in 1873:

> When bail is given, the principal is regarded as delivered to the custody of his sureties. Their dominion is a continuance of the original imprisonment. Whenever they choose to do so, they may seize him and deliver him up in their discharge; and if that cannot be done at once, they may imprison him until it can be done. They may exercise their rights in person or by agent. They may pursue him into another State; may arrest him on the Sabbath; and, if necessary, may break and enter his house for that purpose. The seizure is not made by virtue of new process. None is needed. It is likened to the rearrest by the sheriff of an escaping prisoner.
>
> If the testimony were admissible, the plaintiff proved that the sum of $8000 was placed in the hands of the sureties to indemnify them against the liability they assumed . . .
>
> * * *
>
> The fact that the sureties were indemnified was proper to be considered by the Superior Court upon an application for time to produce the body of McGuire. But it could have no effect upon the rights of the parties in this action, and may therefore be laid out of view.

Taintor v Taylor, 83 U.S. 366, 370 (1873)

Most bail agents believe the importance of the case was that it gave bail agents the ability to recover the defendant. What it really gave bail agents was the right to third-party indemnification of bail, thus legalizing commercial bail. A commercial bail bond is more than an insurance product rendering the insurance company liable if the defendant fails to appear in court. It is actually a chain of third-party indemnity contracts. The first indemnitor is the defendant. If

he fails to appear and will not pay the forfeiture then his indemnitors are liable - mother, brother, sister - whoever acted as his indemnitor on the bond and put up collateral, like Mom's house.

If the defendant fails to appear, and if friends or family indemnitors don't pay, then the street-level agent is next up on the chain of indemnity, by virtue of his contract with his insurance company and managing general agent. His contract collateral may be liquidated to satisfy the forfeiture liability and reimburse the company or managing general agent. Usually, agents have Build-Up Fund accounts - personal savings accounts held in trust by the insurance company and /or the agent has granted a mortgage on his home as collateral to the insurance company and managing general agent. If the agent can't or won't pay, then his managing general agent, like Applicant Surety Corporation of America, must pay and seek any reimbursement from those lower indemnitors. If the insurance company pays anything, the managing general agent, *e.g.* Surety Corporation of America, will be liable since it indemnifies the company against all liability on all bonds written under that general agency. Bottom line - the insurance company is not where the buck stops. In Orleans, local bail agent Build-up Funds have been hit hard or even wiped out and agents put out of business due to garnishments of the insurance company by the Orleans District Attorney. Even so, Surety Corporation of America and American Bankers Insurance Company have not been made whole.[1] Defendants and their indemnitors are held liable to reimburse the surety and/or agent for their loss, even in criminal cases where the prosecutor has dropped charges.

While the judgment of bail bond forfeiture is entered only against the defendant and the surety under La. C. Cr. Pr. Art. 349, a contract to indemnify a surety against loss on a bail bond is valid and enforceable. La. C. Cr. Pr. Art. 329. When the surety lost its remedy in civil nullity under La. C. Cr. Pr. Art 349.5 (A)(2) by the ruling of the court below, the local agent, the defendant and the defendant's indemnitors also lost that remedy. Nevertheless, they are held liable by the insurance company and managing general agent with whom they entered into indemnity contracts.

The chain of indemnity consists of local agents, defendants, family (defendant's indemnitors) and managing general agents, all of whom are indemnitors retaining their contractual rights to reimbursement for monies seized by the State. However, the courts below have shut the courthouse doors to the action for nullity that, if entertained on the merits, would provide a remedy

[1] Any ultimate recovery of wrongfully garnished funds which had been reimbursed to the surety from agent collateral would be necessarily be returned to those agents if their contractual liability is otherwise satisfied.

for all indemnitors in the chain. Absent the right to merely seek redress in civil court, the agents and indemnitors have lost before they start; it is unlikely that a commercial bond will be underwritten under such circumstances.

II. Previous Custom and Practice in Orleans Parish

Under the administration of previous Orleans District Attorneys (Harry Connick, Sr., 1973 to 2003, and Eddie Jordan, Jr., 2003 until 2007) a policy was in place whereby judgments of forfeiture were not enforced if there was a viable defense evident on the face of the record. The policy of the Orleans District Attorney's Office to not seek enforcement of such "open" judgments helped to ensure the viability of local bail agents. It was understood that it could cost a bail agent more in legal fees than he earned in premium to bring a motion to set aside an obviously null forfeiture.

That custom and practice changed abruptly in the consolidated cases *sub judice*, under the administration of Orleans District Attorney Leon Cannizzaro. First elected in in 2008, the unenviable spectre of a monstrous 42 U.S.C. §1983 money judgment greeted him upon taking the oath of public office. In 2007, a man named John Thompson, who was wrongfully convicted of murder by Connick's office due to evidence withholding, was awarded a $14 million verdict by a federal court jury. The Orleans Parish District Attorney's office appealed the case, and the lower court was reversed by a 5-4 vote. *Connick v. Thompson*, 131 S.Ct. 1350 (2011).

However, when Orleans District Attorney Leon Cannizzaro assumed office in 2008, he was facing that multi-million dollar judgment and sought ways to garner funds for his office. Cannizzaro appointed Graymond Martin as Orleans First Assistant District Attorney, disregarded the long-standing practice as to deficient bond forfeitures, and instead instructed the First Assistant to proceed directly to Orleans Civil District Court (CDC) and collect all outstanding bail forfeiture judgments.[2] The civil judges, unfamiliar with prior practice, were thus persuaded in *ex parte*

[2] Rather than appear as counsel of record (due to a long list of conflict representations attached as Appendix A), The First Assistant Martin implemented a bold program in 2009 whereby Assistant District Attorney Michael Redmann would present judgments of bond forfeiture from Criminal Court to the judges in CDC for execution and collection (writ of garnishment). In private practice, Mr. Martin had represented American Bankers Insurance Company and other sureties for many years. Well aware of the long-standing policies of Connick and Jordan to not enforce these kinds of judgments *civilly* against his former client, and to the detriment of his former client, First Assistant District Attorney Martin eschewed the due process afforded by the State Department of Insurance through textually demonstrable statutory law (La C.Cr. Pr. Art 349.7(A)(3)), and in lieu thereof, enlisted Mr. Redmann to make the journey to Poydras and Loyola

proceedings that the judgments of bond forfeiture were enforceable money judgments arising from a foreign court, subject to executory process without notice. Judge Belsome's concurrence below compounded the foundation error, regarding the precatory criminal court judgments of bond forfeiture as ordinary money judgments, enforceable within their own jurisdiction against ordinary debtors, further regarding the surety on the judicial bond as a "judgment debtor" as if the surety were cast in an actual money judgment rendered in a court of competent jurisdiction in another parish or county. All of which resulted in the deprivation of the surety's right to an meaningful opportunity to be heard on the merits of nullity grounds, be those grounds civil or criminal.[3]

But the agent, defendant and surety (insurance company and managing general agent) relied on the OPCSO Criminal District Court Docket Master ("Docket Master") and court case file which clearly indicated that the bond obligation was released by operation of law or by court order, or both. (See example case below.) To the surety, it appeared the agent had accurately reported the bond as discharged, or forfeiture set aside. That is, the agent would produce a copy of the Docket Master to the surety reflecting the statutory triggering event which released the surety by operation of law and report it as discharged. Under long standing custom and practice, that was sufficient. And, the agent and the surety assumed there would be a court in which to seek absolute nullity under La. C. C. P. Art. 2001 *et. seq*, should the void judgment be enforced, an assumption based on the existence of subject matter jurisdiction which is the basis of the consolidated appeals here.

Surety Corporation of America (SCA), indemnitee for American Bankers Insurance Company, seeks to redress the wrongful collection of bail forfeitures where the underlying judgment of bond forfeiture and/or collection by garnishment is contrary to law. But, after four years of litigation, SCA has not yet had its day in court to challenge those judgments and collection practices due to the lower courts' perception of their jurisdictional restraints. Now, SCA urges the Louisiana Supreme Court to recognize that a forum must be available to present the sureties'

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for *ex parte* executory enforcement of these 98 open flawed judgments of bond forfeiture in complete disregard of La. C. C. P. Art. 2592(4).

[3] See *e.g.*, La. C. C. P. Art. 2592(4) which permits summary proceedings as a matter of law, in actions against a surety on a judicial bond. It is well-settled that statutory construction favors the specific over the general. Thus, Judge Belsome's resort to general articles on garnishment against ordinary judgment debtors must succumb to the specific action against a surety on a judicial bond, at least for purposes of a hearing prior to civil judgment, the minimal process due to the surety, where the deprivation of which is the gravamen of the instant application.

challenges. This appeal may well determine the future or the end of bail bonds in Orleans Parish, and will certainly affect bail bonds statewide.

III. The ruling below not only disregards self-operative law, but creates new restrictions tantamount to a peremptive period.

The following provisions of Louisiana law pertaining to commercial bail are self-operative and are mandatory as enacted by the legislature:

> **La. C. Cr. Pr. Art. 344. Right to notice of time and place of defendant's required appearance**
> B. When a bail bond does not fix the appearance date, written notice of the time, date, and place the defendant is first ordered by the court to appear shall be given to the defendant or his duly appointed agent and his personal surety or the commercial surety or the agent or bondsman who posted the bond for the commercial surety.
> E. Failure to give the notice required by this Article relieves the surety from liability on a judgment of bond forfeiture for the nonappearance of the defendant on that particular date (emphasis supplied)

> **La. C. Cr. Pr. Art. 701(B)(2)**
> . . . Failure to institute prosecution as provided in Subparagraph (2) shall result in the release of the bail obligation if, after contradictory hearing with the district attorney, just cause for the delay is not shown. (emphasis supplied)

> **La. C. Cr. Pr. Art. 349.3. Notice of judgment**
> C. Failure to mail notice of the signing of the judgment within sixty days after the defendant fails to appear shall release the sureties of all obligations under the bond. (emphasis supplied)

> **La. C. Cr. Pr. Art. 349.5. Nullity actions, summary proceedings, and cumulative actions**
> (2) Nullity actions pursuant to Code of Civil Procedure Article 2001 et seq. not filed within the sixty days provided for filing summary proceedings shall be brought by the use of ordinary civil proceedings. (emphasis supplied)

The use of the word "shall," must be interpreted as a mandatory provision or word of command. *See,* La. Rev. Stat. 1:3.

> Shall. As used in statutes, contracts, or the like, this word is generally imperative or mandatory. In common or ordinary parlance, and in its ordinary signification, the term "shall" is a word of command, and one which has always or which must be given a compulsory meaning; as denoting obligation. The word in ordinary usage means "must" and is inconsistent with a concept of discretion.

Borel v. Young, 989 So. 2d 42 - La: Supreme Court 2007, citing BLACK'S LAW DICTIONARY, 1019, 1375 (6th ed.1990) and *Pittman Construction Co. v. Housing Authority of Opelousas*, 167 F. Supp. 517 n. 38 (W.D.La.1958), aff'd, 264 F.2d 695 (5th Cir.1959)

The ruling of the 4th Circuit Court of Appeals has effectively subjugated the above rules to its contrived preemptive period in total disregard of the mandatory provisions set forth by the legislature. Peremption is a period of time fixed by law for the existence of a right, and unless timely exercised, the right is extinguished upon the expiration of the peremptive period. La. C. C. P. Art. 3458. Thus, peremption is a period of time, fixed by law, within which a right must be exercised or be forever lost. *Guillory v. Avoyelles Ry. Co.*, 104 La. 11, 15, 28 So. 899, 901 (1900). By restricting the surety, agent and indemnitor to the forum of the Criminal Court and the sixty day time constraints of criminal court jurisdiction (La. C. Cr. Pr. Art. 349.5(A)(1)) and barring them from CDC, it has concocted its own peremptive period for all remedies afforded to the parties of a bail bond contract, *i.e.*, agent, managing general agent, insurance company, principal (defendant) and indemnitors (family and friends of the principal). There is no underlying public interest or rationale that their right to relief should exist only for an extremely limited period of time, and court below offers none. The 4th Circuit Court of Appeals has created a purely fictional preemptive period which is inconsistent with the legislature's use of the "shall" word of command which appears in the above rules. There is nothing to support the notion that the legislature intended to predicate such mandated relief on any preemptive period. Such a newly devised restriction period for asserting rights profoundly and adversely impacts the risk undertaken by the parties to a commercial bail bond contract as demonstrated below.

Further, this new peremptive period hatched by the ruling of the court below opens a Pandora's box of unresolved questions. For example: Does the 4th Circuit intend to say that the surety is not afforded relief for failure to produce the defendant after a hurricane unless it seeks that relief within a peremptive period which has nothing to do with the time or duration of the effects of the fortuitous event? It simply boggles the mind. *See*, La. R.S. 15:83(C)(1) "The surety is not liable for his failure to perform when it is caused by a fortuitous event that makes performance impossible."

IV. The Parade of Consequences of the Ruling Below

The effects of what the Applicant described as "violence to principles of subject matter jurisdiction" will undoubtedly impact the availability of commercial bail to defendants who reside in Orleans or travel there. If the ruling of the 4th Circuit Court of Appeals is allowed to stand, the surety, agent, defendant and indemniors of bail bonds in Orleans, unlike all similarly situated

parties in all other parishes, will have no recourse in nullity after the sixty day period for summary proceedings expires in Criminal Court pursuant to La. C. Cr. Pr. Art. 349.5(A)(1). "Because ABIC attempts to have Civil District Court review the judgments of bond forfeiture issued by Criminal District Court, we find that Civil District Court has no supervisory or appellate jurisdiction; and therefore, it has no authority to review acts of the Criminal District Court. ABIC's remedy was to seek relief on any issues involving vice of form and substance in Criminal District Court, and in the instance of an adverse judgment, to apply for relief with this Court." Opinion, pp. 11-12. Sixty days after notice of forfeiture, the court house doors are slammed shut by that ruling.

A. <u>Bail Bond Agents</u> are far less likely to write commercial bail bonds in Orleans without full collateral due to the increased risk caused by loss of the remedy previously available under La. C. Cr. Pr. Art 349.5 (A)(2)

"Full Collateral" is a bail industry term of art meaning that the agent receives collateral on behalf of the defendant (bond principal) equal to or greater than the face amount of the bond obligation. Usually, full collateral means a cash deposit but can also be equity in real property.

Defendants without resources, or indemnitors to provide collateral such as close friends or family, could be disenfranchised of their right to bail as an economic consequence of the ruling below. Presently, agents often write bail bonds without any collateral based on the defendant's prior record, ties to the community or the perceived strength of his legal defense. That makes bail very affordable to the defendant who has to pay only the premium, being twelve percent of the bail amount by statute.[4] Under the ruling below, that could not continue to be the case. A reasonable agent or indemnitor would likely not assume the increased risk and simply decline to undertake a bail bond under the ruling of the court below without full collateral. As a consequence, bail becomes a privilege restricted to the affluent. Otherwise the risk simply becomes too great without access to a court to redress a nullity where grounds are discovered more than sixty days after notice of forfeiture. Full collateral is the only way for the bail underwriter to be protected.

[4] Increased risk when underwriting a bail bond cannot be passed on to the consumer via increased premium as with other insurance products. Bail bond rates are set by the legislature who has reserved that exclusive power. La. Rev Stat. 22:1443

B. Bail Bond Indemnitors will become reluctant or unavailable because, under circumstances created by the court below, their loss would be both unjust and unrecoverable.

Indemnitors who could offer such collateral on behalf of a defendant and may be reluctant or refuse to do so due to the increased risk of loss and no avenue of recovery. Consider, for example, one of the 127 consolidated cases on appeal as it appears from the Docketmasters attached as Appendices B and C:

In the felony case of *State v. Charles Johnson* the Magistrate Court (case #467528 – Appendix B) set bail at $15,000 and American Bankers Insurance Company (ABIC) posted a commercial bail bond. However, the power-of-attorney was written in the amount of $20,000 because there was an additional charge where bail was anticipated to be $5,000. *See*, Power-of-Attorney, Appendix D and Appearance Bond, Appendix E from the Criminal Court file in *State v. Charles Johnson*) More than 150 days after the defendant was arrested, the Orleans District Attorney had not yet filed a Bill of Information in Criminal Court. As mandated by La. C. Cr. Pr. Art. 701, the bond obligation was released on December 16, 2006. *See*, Magistrate Docket Master, Appendix B. Almost five months later, the District Attorney filed a Bill of Information in Criminal Court under case number 470-046 A/M2 regarding only one of the two charges which previously carried the $15,000 bail requirement. The other charge was not prosecuted. *See*, Criminal Court Docket Master Appendix C.

The Magistrate Court Docket Master (Appendix B) regarding both charges clearly indicates that on December 16, 2006 the bond obligations were released pursuant to Louisiana Code of Criminal Procedure Article 701 which provides in part:

> CCRP 701(B)(2)
> Failure to institute prosecution as provided in Subparagraph (1) shall result in release of the defendant if, after contradictory hearing with the district attorney, just cause for the failure is not shown. If just cause is shown, the court shall reconsider bail for the defendant. Failure to institute prosecution as provided in Subparagraph (2) shall result in the release of the bail obligation if, after contradictory hearing with the district attorney, just cause for the delay is not shown. (emphasis supplied)

But, upon motion and purported evidence offered by the state, the Criminal Court ordered judgment of bond forfeiture on July 13, 2007 (in the wrong amount of $20,000) against surety

American Bankers Insurance Company.[5] A copy of the Docket Master in the case of *State v. Charles Johnson* is attached hereto as Appendix C which indicates the above chronology.

The surety filed a motion in Criminal Court to set aside the judgment of bond forfeiture on grounds of Article 701 with notice to the District Attorney's Office. That motion was continued without date. Nonetheless, on August 31, 2011 (five years after release for the bond obligation) under Orleans Civil District Court (CDC) case number 11-09451, the Respondent Orleans District Attorney garnished the following from American Bankers Insurance Company by an *ex parte* proceeding, (See, Appendix F - Court Order):

Principal at Judgment	20,000.00
Interest	5,142.33
Court Costs*	576.50
Sheriff's 6% Commission	1,508.54
Total	27,227.37

* No filing fee was charged to the District Attorney

Under the ruling of the court below, the local bail agent, defendant or his indemnitor no longer have an avenue of redress for the alleged wrongful collection of this judgment of bond forfeiture for which they remain contractually liable to the surety, even though the judgment of bond forfeiture was void on its face *ab initio* and that is clearly evident from the Docket Masters in that case. (Appendices B and C)

In the above situation the agent would be obligated to promptly return any collateral to the indemnitor upon occurrence of the Article 701 release of the bond obligation. Failure to do so for a period of five years would certainly violate provisions of his license under Department of Insurance Regulations. *See,* La. Admin. Code, Part XIII, Title 37, Chapter 49, Regulation 65§4913(A). So, having returned any collateral as required, the agent is nonetheless contractually liable to the surety for the garnishment that occurred *five years later.* And there is no longer any court to which he can seek redress on the nullity grounds of the prior order releasing the bail obligation!

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[5] The judgment of bond forfeiture in *State v. Charles Johnson* was entered in Orleans Criminal Court M/2 by a non-elected magistrate (commissioner). Not only was the bond obligation released by the Magistrate Court and then later judgment of forfeiture was entered in the wrong amount by the Criminal Court, the Criminal Court Commissioner had no jurisdiction to enter any such judgment against the surety. "Because they are not elected judges, the commissioners of the Magistrate Section of the Criminal District Court for the Parish of Orleans may not exercise the adjudicatory power of the state . . ." *State of Louisiana v. Smalls*, 48 So. 3d 212 (2010), Louisiana Supreme Court. (Successfully argued before this Court by Orleans District Attorney Leon Cannizarro). Although this Court in *Smalls* was deciding the ability of non-elected magistrates to enter pleas and conduct trials, we submit (or would submit if there were an available forum) that the same result obtains in this underlying forfeiture case.

The height of irony, subject to actual ridicule in other states, is that the scrupulous judicial attention to meticulous details of due process afforded the presumption of innocence of the alleged criminal perpetrator, is accompanied incongruously in the courts below by the utter disregard for the two most essential elements of civil process due to the surety on the criminal defendant's constitutionally protected bail right, adequate notice and a meaningful opportunity to be heard prior to seizure of the surety's money by order of the judges of Civil District Court.

C. <u>Bail Bond Sureties</u> will experience an increase in "Loss Agents" who will then be terminated, thus reducing availability of commercial bail agents in the community

A "Loss Agent" in the bail bond industry is one whose Build-up Fund and agent collateral is exhausted before satisfying all judgments of forfeiture. A Loss Agent will cease to receive additional powers of attorney from the insurance company or his managing general agent. He is out of business. That has already happened in Orleans Parish as a result of civil garnishments against the surety described in these consolidated cases. If the ruling below is not clarified, the number of Loss Agents will necessarily increase, because they are liable for losses incurred by the surety. If the surety, agent, defendant and indemnitors have no remedy in civil nullity available under La. C. Cr. Pr. 349.5(A)(2) as ruled below, then those losses cannot be mitigated and will be charged to the liable agent. Once that agent becomes a Loss Agent, he or she is effectively out of business.

Consequently, bail bonds become far less available to the arrested public; communities do not enjoy the safety provided, without tax burden, by the law enforcement augmentation of commercial bond recovery agents; the local bail bond industry is eviscerated; the local jails become even more overcrowded, and; Orleans Parish becomes yet more Balkanized. Eventually, sociologists will study whether, and to what extent, the court-ordered extinction of remedies on bail bond forfeitures, contributed to the demise of New Orleans as a culturally diverse, open, tourist-friendly, and safe place to rear one's children.

Insofar as the book of bail bond business is an insurance product regulated statewide, the effect of refusing to consider the writ application is not limited to the metropolis of New Orleans, but necessarily impacts the statewide book of business for local bail bond agents licensed in all sixty-four Louisiana parishes. If an insurance company, for example, terminates writing bail bonds in Orleans, it will necessarily terminate statewide. Agents are licensed by the state and are

authorized by the state to write bail in any parish. The only practical way for an insurer to ensure no bail is written in one parish, is to terminate agents' authorization to write bail throughout the state. A consequence of the ruling below may very well be the elimination of commercial bail in the State of Louisiana in the not so distant future.

D. Jail population will increase, exacerbating overcrowding, due to less availability or elimination of commercial bail and fugitives will not be returned to court by commercial bail enforcement agents.

This public safety problem would be especially acute for Orleans. From October 2009 to September 2010 the first primary method of Orleans Parish Prison Releases (Excluding Warrant Releases) was surety/property bond releases of 9,310 inmates or 23.6% - the largest segment of releases. James Austin, Wendy Ware, Roger Ocker (2011) *Orleans Parish Prison Ten-Year Inmate Population Projection,* Document No. 233722, Funded by U.S. Department of Justice, Award Number: 2010-IJ-CX-K003.

While there will be 1,438 beds in the new Orleans jail building, the Sheriff's Office estimates it will likely be able to house at most 1,200 inmates, due to the need to separate special populations. Once the new building opens as projected in May 2014, Sheriff Gusman is required by a 2011 city ordinance to demolish all other jail buildings except for one that has a 316-bed capacity. That will mean a total of 1,516 usable beds. "I don't think it's big enough," Rafael Goyeneche, president of the Metropolitan Crime Commission, said after touring the new facility on August 1, 2013. "Just based on the current pre-trial inmate population, we're going to be having to release people, which is going to become a public-safety issue going forward." Naomi Martin, (August 01, 2013), *NOLA.com, The Times-Picayune.* Recent Orleans Parish Prison population was reported at 2,400 by Kevin McGill (August 13, 2013), *Associated Press.*

A reduction or elimination of bail bonds as a type of pre-trial release would exacerbate that public safety issue because 23.6% of those released will no longer have bail bonds as an option. On an annual basis, a minimum of 9,310 defendants who previously obtained bail bonds will need to be released on some other form of pre-trial release, or there will be severe overcrowding. Moreover, there would be no bail enforcement agents involved in those 9,310 releases to apprehend and surrender fugitives to the court. That increased burden would fall to law enforcement in Orleans and other jurisdictions in the United States to which Orleans fugitives may

CONCLUSION

The horrific consequences of the ruling below are no stretch of imagination. As it stands, all parties to a commercial bail bond contract in Orleans are subject of severely restricted rights to be heard and to redress wrongful seizures, restrictions so draconian as to effectively eliminate those rights. Availability of commercial bail will be restricted to the affluent or likely become unavailable to all in Louisiana. If the ruling below is allowed to stand, it will adversely impact public safety as well.

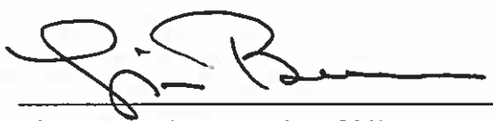
> Defendants released on surety bond are 28 percent less likely to fail to appear than similar defendants released on their own recognizance, and if they do fail to appear, they are 53 percent less likely to remain at large for extended periods of time. Deposit bonds perform only marginally better than release on own recognizance. Requiring defendants to pay their bonds in cash can reduce the FTA rate similar to that for those released on surety bond. Given that a defendant skips town, however, the probability of recapture is much higher for those defendants released on surety bond. . . . These finding [sic] indicate that bond dealers and bail enforcement agents (bounty hunters) are effective at discouraging flight and at recapturing defendants. Bounty hunters, not public police, appear to be the true long arms of the law. (emphasis supplied)

Helland & Tabarrok (2004), *The Journal of Law and Economics* vol. XLVII, The Fugitive: Evidence on Public Versus Private Law Enforcement from Bail Jumping.

The ruling below, if allowed to stand, has effectively sliced off the "true long arms of the law." And, they are severed from a major city that can ill-afford to lose them.

WHEREFORE, Amici Professional Bail Agents of the United States and the Association of Louisiana Bail Underwriters respectfully urge this Honorable Court to grant Writ of Certiorari, review the ruling below and provide clarity to the conflicts and questions we present.

Respectfully submitted,



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