



COALEX STATE INQUIRY REPORT - 162

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TOPIC: BOND FORFEITURE: RENUMBERED BOND

INQUIRY: A bond issued during the interim program period was renumbered when the permanent state program went into effect. The operator forfeited the bond. The surety will not pay, claiming it was released from responsibility when the bond number was changed. Is there any case law on this issue?

SEARCH RESULTS: Research, conducted using LEXIS, failed to identify any cases ruling on renumbered bonds. A number of cases were identified that discuss varying reasons for reforming bonds. In the cases listed below (and attached) there were mistakes made on bonds, but the courts ruled, in cases where the bonds were or were not reformed, that the parties were in agreement as to the terms of the bond at the time the bonds were originally executed.

AETNA CASUALTY & SURETY CO. v L D BRECKENRIDGE et al., 97 Fla. 375, 121 So. 102 (Fla 1929).

By mutual mistake, a surety bond, written to cover a building contract, was dated incorrectly. The court determined that reformation of the bond to correct the date was not necessary, that the bond, if reformed, "would have the same effect that it has in its present form.... The bond expresses the agreement as it was understood and designed to be made."

With a similar ruling, see NATIONAL UNION FIRE INSURANCE CO. OF PITTSBURGH v DENVER BRICK AND PIPE CO. et al., 162 Colo 519, 427 P 2d 861 (Colo 1967), attached.

COMMERCIAL CASUALTY INSURANCE CO. v LAWHEAD, 62 F 2d 928 (4th Cir 1933), cert. den. 289 US 731 (1933).

In choosing the form of a bond to guarantee the payment of a time deposit, the surety issued the wrong form "because of mistake in the selection of the form or as to the meaning of the language used in the form selected." The court found that all of the parties were in agreement at the time the bond guaranteeing the payment of the deposit was executed, that through "mutual mistake the bond as executed did not cover the agreement", therefore, the bond should be "reformed to embody the agreement".



SKELTON v FEDERAL SURETY CO., 15 F 2d 756 (8th Cir 1926).

In this construction contract case, the court found satisfactory proof that the parties understood that the indemnity contract would cover both the performance bond and the statutory bond even though, by mutual mistake, the "specific mention of the statutory bond" was inadvertently omitted "from the written instrument."

"[A]ppellant understood that he was indemnitor as to both bonds; that he recognized his liability while the contract was being performed, and after it had been completed."

MULBY v DUNHAM, 29 Ohio App 51, 162 NE 718 (Ohio Ct App 1927).

In holding that the evidence was insufficient to "warrant reformation of a supersedeas bond" the court found that:

"In an action to reform an instrument for mistake, the presumption is that the contract or written instrument, as executed, contains the agreement of the parties, and to overcome this presumption the mistake must be proved by satisfactory evidence."

RIVER VALLEY, INC. v AMERICAN STATES INSURANCE CO., 287 Ark 386, 699 SW 2d 745 (Ark 1985).

The court ruled in favor of reforming a substitute bond to conform to an earlier bond.

"[E]veryone in the transaction... mistakenly believed that the second bond was making no change except the addition of the bank as an obligee. This proof only satisfies the requirement that the proof be clear and convincing."

ATTACHMENTS

- A. AETNA CASUALTY & SURETY CO. v L D BRECKENRIDGE et al., 97 Fla. 375, 121 So. 102 (Fla 1929).
- B. NATIONAL UNION FIRE INSURANCE CO. OF PITTSBURGH v DENVER BRICK AND PIPE CO. et al., 162 Colo 519, 427 P 2d 861 (Colo 1967).
- C. COMMERCIAL CASUALTY INSURANCE CO. v LAWHEAD, 62 F 2d 928 (4th Cir 1933), cert. den. 289 US 731 (1933).
- D. SKELTON v FEDERAL SURETY CO., 15 F 2d 756 (8th Cir 1926).
- E. MULBY v DUNHAM, 29 Ohio App 51, 162 NE 718 (Ohio Ct App 1927).
- F. RIVER VALLEY, INC. v AMERICAN STATES INSURANCE CO., 287 Ark 386, 699 SW 2d 745 (Ark 1985).