NEW JERSEY NEEDS AN APPEAL BOND CAP

What you should know about the civil appellate process and the impact it is having on justice for New Jersey's businesses.

- Appeal bond statutes were originally developed in England to prevent defendants from avoiding interest accrual on debt settlements through the appeal process. Today in New Jersey they are applied to all civil appeals. A defendant posts the bond in escrow to stay the judgment pending appeal. At the time of their creation, multi-million dollar verdicts were rare and largely inconceivable and businesses were more easily able to escape court rulings than they are in today's globalized and high-tech world.

- In today's increasingly litigious society, the reality is that a business or individual can be sued for almost anything and, on average, the size of judgments has increased significantly. The current appeal bond statute did not anticipate the difficulty that businesses, both large and small, would have in obtaining the financing needed to exercise their right to appeal adverse rulings.

- Businesses which cannot obtain the financing they need to post a bond for appeal are denied this right by default or must face bankruptcy. Even with a strong case warranting appellate review, the cost of proceeding with litigation is unattainable for many defendants, increasing pressure to settle frivolous claims and risking damage to an entity's reputation.

- Appellate review or trial court (Superior Court in New Jersey) verdicts, especially those which are larger than normal, is necessary for the proper functioning of our court system.

- New Jersey is a particularly bad place in which to get sued. We are among a minority of states which do not cap appeal bonds for all industries. Twenty seven states (and Puerto Rico) have either no bonding requirement or have enacted appeal bond caps that cover all defendants and are applied to all forms. Of the remaining 23 states, 11 (including New Jersey) have passed legislation capping appeal bond amounts for signatories to the Master Settlement (tobacco companies).

- The fear of being sued is one of the biggest barriers to entrepreneurship in New Jersey. High tech, bio-tech, and research-based companies, as well as small businesses and professional firms – all of which are major drivers of economic growth in New Jersey – are particularly vulnerable. Justice should not be denied to businesses and service providers which do not own large facilities or possess hard assets against which a bond can be leveraged.

- The funds expended by a business to finance a bond for the duration of an appeal are lost and never recovered, even if the appeal is ultimately successful. These are funds which could have been used for additional innovation, expansion, and job creation.

- A $50 million bond cap has been in New Jersey for some time, but is only available to tobacco companies. Extending this cap to all industries would shield companies from having to prepay court fees before seeking an appeal. It sends the message that New Jersey is open for business, and allows the courts the opportunity to review legitimate appeals for a broader scope of industries.