

In ***Big Louie Bail Bonds, LLC v. State***, 2013 WL 5731064 (Md. October 23, 2013) the Court began its opinion by stating, “The issue in these ten consolidated cases is whether a bondsman’s liability should be discharged when a defendant who has been deported . . . fails to appear . . .” The court files available to the surety before the bonds were written showed that there was an ICE detainer against the defendant or the defendant was in the United States illegally and subject to deportation. The trial court held that the surety knew or should have known the defendants were likely to be deported and denied relief from the forfeitures. The Court of Appeals reversed. Maryland law allows discharge of the surety’s obligation if the failure to appear is caused by an act of God, an act of the obligee, or an act of the law. The death of the principal would be an act of God, abolition of the court in which the defendant was to appear would be an act of the obligee, and extradition of the defendant to another state would be an act of the law. The focus should be on the conduct of the defendant and whether he or she willfully failed to appear, not on the conduct of the surety and the ability of the surety to return the absconding defendant.

Thus, if the defendant flees to another country and cannot be extradited, the failure to appear was willful and the bond should be forfeited. On the other hand, if the Governor extradites the defendant to another state and he or she is imprisoned there, the defendant has not willfully failed to appear, and the bond should be exonerated by the act of the law in extraditing the defendant. The Court found that deportation by the federal government was analogous to extradition by the state not to a defendant who voluntarily fled to another country. The State argued that the bail bondsman should not be able to charge a premium and post a bond for a defendant likely to be deported and then avoid payment on the bond when the deportation takes place. The Court pointed out that the State similarly should not be able to hand a bonded defendant over to ICE and then collect the face amount of the bond. The Court noted the important role of bail bonds in avoiding pretrial detention of accused persons and the chilling effect on the availability of bonds if the bond would be forfeited every time a defendant was deported. The Court stated, “it simply is not Maryland law that bail must be denied merely because an individual is subject to an I.C.E. detainer or at risk of being deported.” The Court concluded that deportation of the defendants was an act of law and reasonable grounds under Maryland Rule 4-217(i)(2) to strike the forfeiture in whole or in part and grant remission in whole or in part of the penal sum. The Court, therefore, reversed the judgments appealed from and remanded the cases to the Circuit Court.