

# SUPERSEDEAS – WHAT FOR AND HOW MUCH?

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- ▶ Purpose of supersedeas is to:
  - ▶ (1) preserve the status quo; *Ranger*, 182 S.W.2d 701 (Tex. 1994); and
  - ▶ (2) secure the appellee and abate the remedies he would otherwise have for realizing the judgment. *Whitmire*, 333 S.W.3d 255 (Tex.App.—Houston [1<sup>st</sup> Dist.] 2010, pet. denied).
- ▶ A judgment debtor is entitled to supersede and defer payment of the judgment while pursuing an appeal. *Miga*, 299 S.W.3d 98 (Tex. 2009).

## SUPERSEDEAS, GENERALLY

- Twice the amount of the judgment - 17th century England, most colonies, and Texas from statehood until adoption of TRCP in 1940.
- The amount of the judgment, plus interest and costs – from 1940 until 1988, the supreme court amended Rule 47, provided for “alternate security” upon a showing of “irreparable harm to the judgment debtor and no substantial harm to the judgment creditor.” *Isom*, 925 S.W.2d 604 (Tex. 1996).
- 1989 – Legislature enacted Chapter 52, slightly different standard than Rule 47, provided for appellate review of sufficiency and excessiveness.
- 2003 – HB4, “new balance,” security only for compensatory damages, interest, costs, provided an absolute cap. Rule 24.2 amended to conform.

## SUPERSEDEAS, HISTORICALLY

- ▶ When the judgment is for money:
- ▶ The amount of security must equal the sum of the amount of compensatory damages awarded in the judgment, interest for the estimated duration of the appeal, and costs.
- ▶ Must not exceed the lesser of: (1) 50% of the judgment debtor’s net worth; or (2) \$25 million. CPRC 52.006; TRAP 24.2

## SUPERSEDEAS, TO DAY

## *What constitutes compensatory damages under the statute?*

Three times in three years, the Texas Supreme Court has addressed whether a judgment constitutes “compensatory damages” under the superdead statute.

- *In re Nalle*, 406 S.W.3d 168 (Tex. 2013).
- *In re Corral-Lerma*, 451 S.W.3d 385 (Tex. 2015).
- *In re Longview Energy Co.*, 464 S.W.3d 353 (2015).

### *In re Nalle*

- To resolve a conflict in the courts of appeals (1<sup>st</sup>/3<sup>rd</sup>), the Supreme Court considered whether a judgment award for attorney’s fees incurred in the prosecution or defense of claim must be secured.
- Court held that, while attorney’s fees may be compensatory by helping “to make a claimant whole, they are not and have never been damages.”
- Court noted that Chapter 52 doesn’t define “compensatory damages,” cited Black’s for proposition that the term is interchangeable with “actual damages,” which is defined as “an amount awarded to a complainant to compensate for a proven injury or loss, damages that repay actual losses.”
- Court expressly declined to address whether Chapter 41’s “compensatory damages” definition (which includes “economic and noneconomic damages”) governs when Chapter 52 applies.

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