**One Key to winning a court case is to let them know you are not surety (liable party) – that is the one and only game to play. It’s not about the “charges” or claims, but about the liability for being surety for the case. As you read, remember the debt isn’t about “money”, it is the “charge”. All criminal and civil cases have brought you in as a debtor, surety for a commercial transaction. Does it sound like insurance? Maybe that’s because it is.**

**Who’s is gonna pay, is your question? It will be you if you don’t cut it off at the beginning.**

**§962 is Surety Subrogation**

**§962. Suits for Exoneration of Sureties** - Entire good faith is required between debtor and creditor and sureties. And if a creditor does any act affecting the surety, or if he omits to do any act of duty which he is required to do by the surety, or otherwise bound to do, and that act or omission may prove injurious to the surety; or if a creditor enters into any stipulations with the debtor, unknown to the surety, and inconsistent with the terms of the original contract, the surety may set up such act, omission or stipulation, as a defence to any suit brought against him, in a Court of law or Equity.

So that if a creditor stipulates with his debtor, in a binding manner, upon a sufficient consideration, to give further time for payment, without the consent of the surety, the latter [surety] will be thereby discharged, if the arrangement might be injurious to him. Mere delay on the part of the creditor, at least if some other Equity does not intervene, unaccompanied [in the negative] with any valid contract for such delay, will not [in the negative] amount to laches, so as to discharge the surety; for the creditor is under no obligation to press the principal for payment. However, sureties are not obliged to wait for their principal to bring suit, but are entitled to come into a Court of Equity, after a debt has become due, and compel the debtor to exonerate them from their liability by paying the debt. If a surety requests the creditor to sue forthwith, stating that he will consider himself no longer bound as surety if the creditor fails to do so, he will be discharged by the creditor's failure so to sue, if his principal was solvent when the notice was given, but becomes insolvent after the expiration of the time probably required to prosecute the suit to judgment if it had been promptly instituted as requested.

**Elements to exonerate**  
§963. Frame and Form of Bill for Exoneration of Sureties - The bill must allege  
(1) the fact of suretyship and how arising, [i signed the paperwork, i am not the debtor - name holder]

(2) the solvency of the principal debtor when the right of action on the obligation accrued, [it is unknown if the BC is insolvent]

(3) that, after such right accrued and while the principal was solvent, complainant notified the creditor to bring suit at once on said obligation or he, the complainant, would stand as surety no longer, [do equity - give notice to creditor to demand he bring suit or i will no longer stand as surety]  
(4) that after such notice the creditor failed to sue in a reasonable time,[SOI of the Notice and failure]  
(5) that in the interim between such notice and the bringing of suit by said creditor, against complainant on said obligation the principal debtor became insolvent, and [it is unknown if the BC is insolvent]

(6) should pray that said creditor suit be enjoined and complainant discharged from liability on said obligation.

**Gibson - ARTICLE II. SUITS FOR SUBROGATION.**§964. Suits for Subrogation and Substitution - Subrogation is the substitution of one person in place of a creditor, whose debt he has paid under compulsion not being liable primarily therefor, and to whose rights as to the collection of that debt he, thereupon, succeeds. [that’s the merger!!!!!!!] So, whenever a surety, or other person secondarily liable, discharges a debt, he [the surety] is entitled to the benefit of all collaterals or liens which the creditor held as security[that’s the merger of the liens!!!!!]; and the person secondarily liable is entitled to be subrogated to the rights of the creditor against the person primarily liable. In such cases, Equity regards the payment by the surety, or other person secondarily liable, as equivalent to a purchase of the creditor's rights, equities and collaterals as against the debtor primarily liable; and the Court will treat such payor as an assignee of the creditor, to that extent. So, a creditor is entitled  
to the benefit of any indemnity, or collateral security, given by the debtor to his surety. Where, in *any case*, one not primarily liable pays a debt, or discharges an encumbrance or lien, being under legal compulsion so to do, he will in Equity be substituted to all of the creditor's rights against the person primarily liable. [Notice how he never says that the Surety “must” sue the debtor - it’s never ever put that way; rather, it’s saying that you take over for the Creditor, and that’s that - it’s “merger” and “extinguishment of the debt, lien, encumbrance, poof, gone!]

**The following are the most usual cases of substitution and subrogation:**

1. "Where a surety discharges the debt or obligation of his principal. [every payment you ever made in life was as the Surety, not the Principal - let that sink in}  
2. "Where a co-surety pays a judgment that is a lien on the other surety's land.  
3. "Where anyone not primarily liable pays the debt or discharges the obligation of the one primarily liable. [we’ve been paying the debts of the ALL CAP since 15 days after our birth - time to subrogate!!!]  
4. "Where a purchaser, for his own protection, discharges an incumbrance on the purchased property. [Due to threat they take your house, car, money, children, liberty, turn off your lights, turn off your cell phone, etc - you pay the debt for the Principal debtor]  
5. "Where a junior encumbrancer for like reason pays off a prior encumbrance. [merger and extinguishment].  
6. "Where a person advances money to discharge an encumbrance on an agreement that he should succeed to the rights of the encumbrancer. [could this be every time you cashed a check at the teller’s window to get an advance, don’t know?]   
7. "Where a devisee, heir, or legatee satisfies a debt against the estate for which others are equally liable. [this is us….the debtor is a “decedent’s legal estate, we are the heir, and we are paying the decedent’s debts all this time - the STATE is the estate’s administration.]  
8. "Where any person, for his own protection, or the protection of some interest he represents, pays a debt for which another is primarily liable. [that’s compulsion - whether you signed or not - you are dragged into this suretyship because otherwise they will take your property, money, cut o ff your lights, etc]  
9. "When an insurance company pays in full a loss, it thereby becomes subrogated to the rights of the insured against the party causing the loss, and against other insurers. [2016 SCOTUS - “Montanile” case already looked at.]

**§965. Form of Bill for Subrogation and Substitution.**  
more elements from web -  
1) the plaintiff-surety conferred a benefit upon a defendant-creditor by paying the debtor’s debt;  
2) the defendant had knowledge of such benefit - from notice;  
and under circumstances where it would be unjust for him to retain the benefit without payment *(paying back the surety).*

See more at:  
http://subrogation.uslegal.com/subrogation-and-liens/#sthash.Mgvad8pu.dpuf