for breach of the insurance contract due to failure to make payment. Besides the damages that arise from the coverage provisions of the policy, the insurer may also be liable for consequential damages because of its failure to honor the insurance contract. The court then found that the evidence supported the trial court's conclusion that the insurer's breach caused the loss of the business and the insurer could have foreseen the effects of its breach.

Repo Losses Covered by Bank Bond

First Federal Savings and Loan Association of Toledo v. Fidelity and Deposit Co. of Maryland, 895 F.2d 254 (6th Cir. 1990).

Loan loss and trading loss exemptions in a bankers bond do not preclude coverage for lost repurchase agreements. A savings and loan, Sandusky, bought repurchase agreements from two related dealers. A repurchase agreement, or repo, provides that the buyer will resell the underlying securities it purchases back to the sellers after a fixed period of time at a price set at the time of the original purchase. Under the Sandusky agreement, Sandusky made payment to an intermediary, Bradford, who held the money until the sellers deposited the securities with it. Sandusky made several payments for securities that were not received by Bradford. The seller subsequently went into bankruptcy, and Sandusky discovered the discrepancy. Sandusky then became insolvent and was taken over by First Federal.

First Federal sued to recover on a bond for Sandusky's officers' failure to protect the business on the basis that the bond covered the "mysterious and unexplainable disappearance" of bank property. In part, the court agreed. First, the court concluded that the repurchase agreements were not covered by a loan loss exclusion. It found the agreements were not loans since they did not contain provisions concerning default and did not require collateral. Second, the court held that a rider denying coverage for trading losses did not apply since the ordinary meaning of the provision suggested that it covered only market fluctuations. The court nonetheless remanded the case to the trial court to determine if a provision of the bond excluding defaults for assignments or sales of notes or accounts applied.

Bankers Blanket Bond Termination Provisions Upheld

FDIC v. Aetna Casualty and Surety Co., 903 F.2d 1073 (6th Cir. 1990).

The Sixth Circuit Court of Appeals reversed a trial court decision awarding the Federal Deposit Insurance Corporation (FDIC) $6.5 million in compensatory and punitive damages for Aetna's failure to honor FDIC's claims under a bankers blanket bond. The case arose from the ongoing legal saga of C.H. Butcher and the failure of the United Southern Bank of Nashville. Prior to the bank's failure, Aetna issued two bankers blanket bonds for $3 million covering losses caused by dishonest acts of employees. The bonds provided that coverage terminated immediately upon the appointment of a receiver. The bonds further provided that a government receiver could not purchase additional coverage to extend the terms of the bonds.

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