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.

In May 1983, FDIC accepted an appointment as receiver for the bank. Though the prior bank's management failed to notify Aetna of the claims arising out of several Butcher-approved loans in which he had an interest, FDIC claimed it was covered and sued to recover the full amount of the bonds and punitive damages for Aetna's bad faith failure to pay the claim. The trial court ruled that the termination and extension provision violated public policy and were void, thus precluding Aetna's major defense for refusing to honor the bonds.

In reversing the trial court's decision, the court of appeals found that the clauses limiting Aetna's liability did not violate any clearly articulated public policy. The court noted that FDIC had failed to demonstrate any statutory provision in the banking laws that supported its position that the bond could not be canceled according to its terms. The court thus concluded that the termination clauses were not contrary to public policy if their continuation was not mandated by law.

Standard for Punitive Damages—One Percent Solution?

Cash v. Beltmann North American Co., 900 F.2d 109 (7th Cir. 1990).

A persistent question in recent litigation concerns the standard for setting punitive damages. In this case, Cash successfully claimed that he was wrongfully discharged for refusing to participate in a scheme to defraud the state on a moving contract. He received compensatory damages of $250,000 and punitive damages of $137,409, an amount roughly equivalent to the amount that the employer allegedly overcharged the state. The trial court upheld the jury's verdict on both the compensatory and punitive damages, but the Seventh Circuit Court of Appeals ordered that the punitive damages be reduced.

The appeals court stated that the determination of punitive damages should be guided by (1) the nature and size of the wrong; (2) the financial status of the defendant; and (3) the potential liability of the defendant for its action. The court found that the amount of punitive damages was not keyed to the harm done to Cash, but rather was tied to the harm done to the state. Moreover, the court felt that the amount was excessive based on its review of several cases in which the average punitive damages award was about one percent of the net worth of the defendant. In this case, the award was approximately eight percent of the defendant's net worth. The court, therefore, ordered that Cash accept $75,000 in punitive damages or face a new trial on the issue.