Congress stated two goals in adopting the labeling law. First, the law was designed to provide consumers adequate information concerning cigarettes. Second, Congress desired to protect commerce from the effects of inconsistent requirements adopted by states. The second goal, however, was not inconsistent with the first or dominate to it. Moreover, it did not state that Congress' intent was to restrict the rights of injured consumers. Thus, the court found that the congressional purpose was not directly frustrated by allowing the common law claims based on inadequate warnings.

The court also rejected the argument that allowing the claims would indirectly frustrate the congressional purpose. The companies argued that their only reasonable response to civil liability would be to change their warning, a result that was not permitted under federal law. The supreme court, however, determined that Congress may be willing to accept incidental regulation of an action through common claims even when it prohibits direct regulation concerning warnings. It further noted the manufacturers had the alternative of providing other warnings such as package inserts.

Finally, the court stated that New Jersey had an important interest in compensating injured parties that should not be preempted by federal statue unless that result was clearly articulated. In that regard, the court stated manufacturers could comply with the federal requirements and still bear the risk of injuries that could have been prevented had they convinced the regulators a more comprehensive warning was needed.

Excess Liability Coverage Provisions Interpreted

*Home Ins. Co. V. American Hospital Products Co.,*902 F. 2d 1111 (2d Cir. 1990).

In this case, the court held that an excess liability policy did not cover punitive damages, post-judgment interest, or defense costs. Home insurance was the second level excess coverage provider for American Home Products. American Home Products suffered a judgment award of $9.2 million in compensatory damages and $13 million in punitive damages. It also incurred substantial defense costs and post-judgement interest as it appealed the decision. It filed a declaratory judgment action for a determination of the extent of coverage by Home under the excess liability policy. The Home policy was silent as to punitive damages but excluded post-judgment interest and defense costs. The trial court found that the coverage of punitive damages did not violate public policy but interest and defense costs were excluded by the policy.

On appeal, the Second Circuit Court of Appeals cerified the question of state public policy regarding insurance coverage of punitive damages to the New York Court of Appeals. The New York court found that pulic policy did not permit recovery. (See F. Darr, *Recent Court Decisions*, 57 J. Risk & Ins. 345, 349 (1990), for a discussion of the opinion.) Based on that opinion, the circuit court reversed the trial court and concluded that Home was not liable for punitive damages that exceeded any primary or first level excess coverage.

On the other issue, the circuit court affirmed the trial court's decision that the policy excluded coverage of post- judgment interest and defense costs. The Home policy provided "follow on" coverage, meaning that it subjected Home to the terms of the first level excess policy coverage. Coverage, however, was limited by language providing that the Home policy controlled its coverage to the extent it was not consistent with the first level coverage. Although the Home policy provided for net losses up to $11.5 million, it excluded coverage for expenses and costs. It defined costs to include post-judgment interest and legal expenses. As a result of the policy exclusion, American Home Products was not entitled to recovery.

Fidelity Bond Limitations on Recovery

*Warfield v. Fidelity and Deposit Co.,*904 F. 2d 322 (5th Cir. 1990).

Directors of a failed savings and loan could not recover on a banker's blanket bond because there was no direct and close relationship between the wrongdoer and the claimant. The directors sued the issuer of a banker's blanket bond under a Texas statute for failure to pay a claim. The district court held that the directors failed to state a claim under the statute, and the court of appeals affirmed.

The court of appeals noted that Texas law recognized a duty of good faith and fair dealing. The insurer's duty, however, did not extend to directors since they were not insured this limitation by citing a Texas insurance statute which gives a cause of action to "any person who has sustained actual damages" due to a violation of fair practices provisions of the Texas code. Citing prior cases limiting the application of the statute to those circumstances in which the claimant was an insured, a beneficiary, or one who relied upon the statement of coverage by an insurer, the court rejected the directors' argument. It concluded that the statute was limited to those situations in which there was a direct and close relationship between the wrongdoer and the claimant.

Rate Setting

Community Mutual Ins. Co. v. Fabe, 52 Ohio St. 3d 187, 556 N.E.2d 1155 (1990).

According to the Ohio Supreme Court, the Ohio statutes for setting insurance rates do not permit the state superintendent of insurance to deny a rate increase on grounds other than actuarial soundness. Community Mutual filed for an increase in supplemental Blue Cross, Blue Shield and major medical supplemental insurance. At a hearing, all witnesses generally agreed that the calculations supporting the increase were actuarially sound. The superintendent, however, refused to approve the thirty-three percent increase on grounds that the rates were unreasonable in light of the benefits offered and not calculated in accordance with sound actuarial principles based on testimony indicating that the rates should be about ten percent lower.

The supreme court concluded that the superintendent lacked the authority to reject the rate increase. Under the applicable statute, the superintendent