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