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 must approve an application increasing a rate if he finds that benefits provided are not unreasonable in relation to the premium charged. The statute then defines benefits as not unreasonable to mean that the rates were calculated in accordance with sound actuarial principles. In rejecting the superintendent's argument that the definition was meant as an elaboration of the reasonableness standard, the court stated that the legislature expressed a narrower intent to define the term as co-extensive with the meaning of reasonableness. The court reinforced its argument by noting that the legislature had recently amended the statute to prohibit the superintendent form considering the good faith efforts of the insurer to control costs. Thus, the court concluded that the legislature evinced its intention to restrict the reasonableness standard and narrow the scope of the superintendent's discretion.

A dissenting opinion noted that the majority reasoning led to an apparent contradiction. In addition to the requirement for actuarial soundness, another section of the Ohio statutes provided for review of specific additional requirements for supplemental insurance in order to comply with federal requirements and to establish appropriate loss ratios. Since there was more than one standard that had to be met, it was impossible to determine that the rate was reasonable solely on the basis that it was actuarially sound. The dissenting opinion, therefore, suggested that the appropriate standard was to read the statutes together so as to make each provision operative.

Duty to Investigate

Foremost Guaranty Corp. v. Meritor Savings Bank, 1990 U.S. App. Lexis 13414 (4th Cir. 1990).

The fourth Circuit Court of Appeals held that insurers are not permitted to rescind mortgage insurance policies when they possessed documents that were inconsistent with the oral representations on which they relied. Foremost and several other insurers issued mortgage insurance to EPIC to cover loans originated by EPIC and sold to third parties. EPIC was a general partner of several limited partnerships that purchased houses from builders. EPIC would provide the loan and secure it with a mortgage on the property. The mortgage then was repaid through rents from the property, capital contributions from the limited partners, and a builder's rebate on the sale price. After about five years, EPIC would sell the property, pay off the mortgage, pay back capital contributions, and divide any remaining profits among itself and the limited partners.

In 1985, problems began to mount as real estate prices failed. EPIC was forced to resyndicate some of the limited partnerships because buyers were not willing to pay an amount to pay off the projects. EPIC allegedly started to hide losses through the resyndications. It sought out appraisals that were inflated and commingled funds from the various projects. Likewise, the projects suffered from additional financing problems because the resyndications did not have any builder's rebate to assist in paying off the refinanced