

January 11, 2010

‘Faithful performance’ for loans claim argued

Rules ambiguous, says group, but VP’s behavior questioned

\$5,050,000

In a lawsuit filed in U.S. District Court, Eastern District of Michigan, plaintiff Michigan First Credit Union asserted its insurer, defendant Cumis Insurance Society, Inc., failed to pay a \$5 million claim under the insurance bond’s “faithful performance” coverage.

Michigan First asserted that its former vice president of lending, and other employees under his direction, allowed some 1,600 indirect automobile loans to be made in conscious disregard of the credit union’s lending policies. As a result, Michigan First suffered losses exceeding the bond’s \$5 million coverage limit.

Cumis contended that Michigan First’s losses were the result of ambiguous lending policies; inadequate training and supervision; and a credit culture that encouraged high-risk loans. It was further asserted that the volume of loans at issue itself demonstrated an institutional failure, rather than an employee’s conscious disregard of lending policy.

The plaintiff presented evidence of Michigan First’s monitoring programs, such as regular loan audits, and the vice president of lending’s interference with those functions in an effort to avoid disclosure of high-risk auto loans.

Testimony also was taken from the lending policy’s author, who had trained the vice president of lending on the application of the policy. Samples of the loans at issue were presented together with expert testimony on why each of the loans violated policy.

The jury found for the plaintiff and awarded \$5,050,000.

Type of action: Breach of commercial insurance contract

Type of injuries: Economic damages from insurer’s failure to pay insurance claim

Name of case: *Michigan First Credit Union v. Cumis Insurance Society, Inc.*

Court/Case no./Date: U.S. District Court, Eastern District of Michigan; 2:05-CV-74423 Jan. 22, 2009

Tried before: Jury

Name of Judge: George Caram Steeh

Highest offer: \$200,000

Verdict amount: \$5,050,000

Special damages: \$2,730,415 penalty interest under the Michigan Unfair Trade Practices Act

Most helpful experts: Rex Johnson, Elgin, IL.; Alex Yarber, Fenton

Attorneys for plaintiff: Don W. Blevins, Patricia D. Corkery

Attorney(s) for defendant: withheld

Key to winning: Simplification of complex issues through extensive preparation and electronic evidence presentation

Status: Being appealed in 6th U.S. Circuit Court of Appeals