CREDIT UNION TIMES

Michigan First Wins Insurance Suit

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By Myriam DiGiovanni

SOUTHFIELD, Mich. — Michigan First Credit Union has won over $5 million in damages against its former insurer Credit Union Mutual Insurance Society.

The jury, which took two-and-a-half hours to deliberate, found that CUNA Mutual's CUMIS breached its insurance bond with Michigan First when it refused to pay the credit union for losses resulting from hundreds of defaulted indirect auto loans that had been granted under the supervision of Michigan First's former vice president of lending.

"For most of my 21 years working in credit unions, CUMIS had always been there to help. I don't understand why CUMIS turned on our credit union and attacked the integrity of our volunteer officials just to avoid paying a legitimate claim," said Michigan First President/CEO Michael Poulos.

The loans were deemed the result of intentional violations of the credit union's lending policies and a jury unanimously determined that CUMIS had wrongfully denied Michigan First's insurance claim under a faithful performance provision of the bond.

"Could Michigan First have done things differently and avoided these losses? Who knows?" **said Michigan First co-counsel Patricia Corkery of Holzman, Ritter & Leduc.** "But if failure to prevent a loss were a basis for denying coverage, then no loss would ever be covered, and the insurance would be meaningless."

According to Corkery, the credit union acted quickly. Michigan First's indirect lending program started in July 2003 and within three months of the loans being booked, the credit union "quickly realized the delinquencies and put the brakes on the whole program."

This ruling comes on the heels of an earlier jury award of over $415,000 for Michigan First against local automobile dealer Al Long Ford Inc., where the jury held that the dealer had falsified down payments and committed other acts of fraud. It was found that the dealer-directed loans had a 34% default rate.

Throughout the three-week jury trial, CUMIS maintained that Michigan First's losses were the result of its own reckless behavior and lack of oversight.

CUMIS stated the CU's loan policy, which was based on the Rex Johnson sample loan policy in the Lending Manual for Credit Unions, was too vague to be enforced or violated. As such, CUMIS argued, the policy could not serve as a basis for coverage, which hinged on an intentional violation of policy.

According to CUMIS, the credit union's policy lacked the bright-line parameters essential to enforcement. Michigan First responded that bright lines cannot substitute for good judgment, and its employees were heavily trained in the essential skills required for sound lending decisions.

"We respect the jury's decision, but still believe the losses incurred by the credit union are not covered under the terms of our bond policy. We are also gratified the court issued a ruling agreeing with our interpretation of our Faithful Performance coverage as requiring intentional misconduct," said CUNA Mutual Media Relations Manager Phil Tschudy. "Our legal team will be reviewing information from the trial and assessing our appellate options."

Earlier in the action, the judge had ruled that if the jury found for the credit union, then CUMIS' denial of Michigan First's claim would constitute a violation of the state's Unfair Trade Practices Act.

With the ruling, since Michigan First's claim dates back to May 2004, the credit union can recover 12% penalty interest on its claim in addition to standard prejudgment interest, which could bring the total recovery closer to $9 million.—mdigiovanni@cutimes.com