tially withdrew from the market. To enforce renewal on an insurer would thus be inconsistent with the assumption that withdrawal would make joint underwriting necessary.

The court extended the exception to applicants for withdrawal as well. Starting from the premise that Proposition 103 did not prevent withdrawal, the court found that requiring further renewals would overcomplicate the working out process. Under statutes not changed by Proposition 103, an insurer seeking withdrawal must demonstrate that they have terminated policies or found reinsurance for existing obligations. If the insurer were required to renew while its withdrawal application was pending, the orderly process of withdrawal would be more difficult and expand the potential liability of reinsurers. Further, the court concluded that the submission of the certificate to do business as part of the withdrawal application changed the status of the insurer so that it was not permitted to write new business including renewals of existing policies. Thus, the court concluded that an insurer submitting an application to withdraw need not renew existing policies despite the requirements of Proposition 103.

New York Asbestos Cases: Order Appointing a Settlement Referee

In re New York City Asbestos Litigation, Index No. 40,000 (Jan. 30 N.Y. Sup. Ct. 1990); *In re Joint Eastern and Southern Districts Asbestos Litigation*, N.Y. Asbestos Litigation Order, (S.D.N.Y. Jan. 30, 1990).

In a joint order, state and federal judges ordered the appointment of a settlement referee to assist the conclusion of the Brooklyn Navy Yard asbestos cases. The cases arose from exposure during and after World War II. The order stated the courts' belief that prior litigation resolved the general legal issues, leaving only issues concerning the fair settlement of the remaining cases. The courts further justified their unusual order by noting the court congestion caused by the hundreds of asbestos cases, the substantial cost of treating these cases individually, and the need to free resources to deal with the increase in criminal cases. The order directed the parties to meet promptly with the referee and to assist him in the disposition of the cases without trial.

Coverage of State Guarantee Fund for Marine Insurance

Sifers v. General Marine Catering Co., 892 F.2d 386 (5th Cir. 1990).

Interpreting an exclusion for "ocean marine insurance," the Fifth Circuit Court of Appeals concluded that the Louisiana guarantee fund did not cover maritime personal injury and property claims. Louisiana adopted a guarantee fund in 1970 to reinsure the obligations of insolvent insurers doing business in the state. The law excluded coverage for ocean marine insurance but failed to define the term. Parties claiming personal injury and property damage as a result of maritime accidents filed claims against the fund after the primary insurers became insolvent. The fund denied coverage based on the exclusion, and the court agreed. First, it found that a definition concerning inland marine insurance included personal injury and property coverage, thus suggesting that the exclusion extended to those kinds of accidents. Second, the court relied on technical literature that included personal injury and property damage within the industry understanding of marine insurance. Third, the court felt that the language used by the legislature was intended to exclude certain kinds of policies. As a result, the court concluded that the exclusion prohibited coverage of the personal injury and property claims.

Police Activities Exclusion Construed

Murdock v. Dinsmoor, 892 F.2d 7 (1st Cir. 1989).

The court concluded that a policy that excluded claims against the policyholder "arising out of" the activities of its police extended to its negligent hiring of officers. Murdock claimed that police employed by the Town of Gilsum, New Hampshire, kidnapped and beat him in an effort to recover stolen marijuana. He sued the officers, the town, and the town council. A claim against the town alleged that it negligently hired the officers. One insurer sought a declaration that its policy did not cover the incident on the basis of a policy exclusion. The exclusion provided for no coverage for bodily injury arising out of the legal liability of the insured resulting from the activities and operations of the town's police department and the individual officers the town employed. Applying New Hampshire law, the court found that there was no ambiguity in the term "arising out of," which was broadly construed as applying to any originating act. The court then held that the allegation of negligent hiring was a sufficient connection to warrant application of the exclusion.

Auto Exclusion in Homeowner's Policy Construed

Cone v. Nationwide Mutual Fire Insurance Co., 58 U.S.L.W. 2385 (N.Y. 1989).

In contrast to the prior case, the New York Court of Appeals construed a clause excluding coverage in a homeowner's policy for occurrences "arising out of" the ownership of an automobile to require defense of a claim for negligent entrustment of a vehicle. Cone's son, a 14-year-old, was riding a three wheeled vehicle when he struck a pick-up truck. Cone sued the truck owner who counterclaimed, alleging negligent entrustment of the vehicle to the minor. Cone sought to have his homeowner's insurer defend the counterclaim. The insurer denied coverage under an exclusion for occurrences "arising out of ownership, maintenance, or use of a motor vehicle."

The court held that the exclusion did not apply to the counterclaim. According to the court, the claim of negligent entrustment of the vehicle was separate from a claim based on negligence. Relying on a case in which the court concluded that negligent entrustment claims were not excluded under a clause excluding occurrences "based directly on" the use of a motor vehicle, the court concluded that the difference in language was not significant enough to warrant a different result.