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.

A dissenting opinion suggested the use of the term "arising out of" was sufficiently broad to encompass the facts of the case. The dissent further noted that the use of that term was intended to broaden the meaning of the contract to account for the narrow interpretation of "based directly on" in earlier decisions.

Effect of Competing Excess Coverage Clauses

Cargill, Inc. v. Commercial Union Insurance Co., 889 F.2d 174 (8th Cir. 1989).

The Eighth Circuit Court of Appeals concluded that policies containing competing excess coverage clauses were not reconcilable and directed the insurers to pay the claimant on a pro rata basis subject to deductibles. Cargill purchased grain insured by two policies. A policy issued by Commercial Union contained a $10,000 deductible, a $600,000 limit of coverage, and a clause that stated the policy would be deemed excess coverage if other insurance covered a loss covered by the policy. The policy issued by St. Paul provided for a $100,000 deductible, a $2 million limit, and stated that it was contingent and secondary if another policy provided for coverage. A barge carrying the grain sank, causing a $194,000 loss. Each insurer agreed that the loss was within the coverage of its policy but disagreed as to the effect of the competing excess coverage clauses.

The court concluded that it would disregard the competing clauses because they were mutually repugnant if they both provided for excess coverage. The Commercial Union clause clearly contemplated that purpose. According to the court, the St. Paul policy provision was equivalent to an excess coverage provision. Thus, the court concluded that the clauses were ineffective.

The court then divided the liability of the parties. Of the $194,000 loss, the court concluded that St. Paul was not liable for any of the first $100,000 due to its deductible. The insurers were responsible for the remainder based on the amount of each one's coverage limit to the total coverage available under the two policies.

Scope of Fidelity Bond Exclusion

Continental Corp. v. Aetna Casualty and Surety Co., 892 F.2d 540 (7th Cir. 1989).

Reversing a prior decision, the Seventh Circuit held that an exclusion in a fidelity applied to only dishonest action otherwise within the bond's stated coverage. The insured company, Continental Corporation, filed a claim on a fidelity bond to recover for the malfeasance of an employee of a subsidiary, American Title. The American Title employee had issued title insurance omitting prior encumbrances in a scheme with another person to sell property. As a result, American Title paid $3.2 million to settle title insurance claims brought against it due to the defective titles of purchasers. Continental then sought to recover the settlement payments on the fidelity bond. The bond generally covered the dishonest acts of employees but excluded loss or expense