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