

ILCS 5/2-615 (West 1998) Defendants-appellees are Commercial Union Insurance Company (Commercial Union), Michigan Mutual Insurance Company (Michigan Mutual), [FN1] and United States Fire Insurance Company (U S Fire) (collectively the Insurers) In May of 1993, Pneumo Abex sold certain assets to B F Goodrich Company (BFG) in the form of facilities at four separate locations pursuant to an asset purchase agreement The agreement included indemnification provisions, including special provisions pertaining to environmental liabilities, where the parties agreed *861 to indemnify each other for certain environmental remediation expenses at the four site locations On March 12, 1996, Pneumo Abex filed a complaint against **299 ***105 BFG alleging that BFG had violated certain indemnity terms in the agreement In response, BFG filed a counterclaim alleging that Pneumo Abex had breached the agreement by failing to indemnify it for environmental expenses at the site locations

FN1 Michigan Mutual and U S Fire joined Commercial Unions' motion to strike and dismiss counts III and IV of plaintiffs' third amended complaint under section 2-615 of the Illinois Code of Civil Procedure 735 ILCS 5/2-615 (West 1998)

In plaintiffs' third amended complaint, plaintiffs alleged that the Insurers had an obligation to defend them against the counterclaim filed by BFG under several policies issued to the plaintiffs by the Insurers

According to plaintiffs, the Insurers' failure to defend amounted to a breach of the policies and resulted in defense costs incurred by plaintiffs in the amount of \$1,953,186 The Insurers filed a motion to dismiss plaintiffs' third amended complaint for declaratory judgment which was granted by the trial court on October 10, 2000

The trial court's primary ground for dismissal was that the allegations in the BFG counterclaim arose out of the alleged breach of the asset purchase agreement and did not amount to property damage caused by an "occurrence" as defined in the policies issued by the Insurers As a result, it found that the allegations in the counterclaim did not fall within or potentially within the policies' coverage for environmental contamination or property damage The trial court further found that "plaintiffs" failed to precisely allege when the damage, for which BFG sought reimbursement, occurred

We first review whether the trial court properly granted the Insurers' motion to dismiss on the grounds that the

allegations in the BFG counterclaim did not amount to property damage caused by an "occurrence" under the policies and therefore did not fall within or potentially within the policies' coverage We state the following additional facts

The Insurers provided primary general liability and umbrella insurance coverage to Cleveland Pneumatic Company through 46 separate policies that were collectively effective from December 1, 1960, to February 1, 1985 The policies contained similar language with regard to coverage Specifically, the policies stated

"The company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of * * * property damage * * * to which this policy applies, caused by an occurrence, and the company shall have the right and duty to defend any suit against the Insured seeking damages on account of such * * * property damage "

An "occurrence," as defined in the policies, "means an accident, including continuous or repeated exposure to conditions, which results *862 in bodily injury or property damage neither expected nor intended from the standpoint of the insured "

Cleveland Pneumatic was a subsidiary of Pneumo Dynamics Corporation, which was subsequently named Pneumo Corporation Cleveland Pneumatic owned or leased and operated several facilities at four sites two of which were located in Cleveland, Ohio, one in Tullahoma, Tennessee, and one in Miami, Florida, respectively In 1984, Whitman acquired Pneumo Corporation, which remained a wholly owned subsidiary of Whitman until August 28, 1988 Pneumo Abex is a successor to Pneumo Corporation The record reveals that a stock purchase agreement (SPA) existed as part of the financial relationship between Pneumo Abex and Whitman

On May 15, 1993, Pneumo Abex sold the Cleveland Pneumatics assets, including the four sites identified above, to BFG pursuant to an asset purchase agreement

The agreement included indemnification provisions, including special provisions pertaining **300 ***106 to environmental liabilities, whereby each party agreed to indemnify and hold the other party harmless for certain environmental liabilities "Environmental Liabilities" were defined in the agreement as

"Losses or expenses incurred for response and compliance measures undertaken as a result of Environmental Laws and relating to the ownership of the Purchased Assets or operation of the Purchased Business 'Environmental Laws' are in turn defined as those laws and ordinances pertaining to the