

period, on October 23, 1989, Plaintiffs notified defendant Abex, in writing, of Plaintiffs' belief that underground landfills at the Orzinuovi plant might expose them to liability, thereby constituting a material breach by Defendants of representations and warranties under the 1989 purchase agreement. *See* Defs' Supplemental 56.1 Statement, Ex. 1. In the letter, Plaintiffs stated "While such waste disposal may or may not be partially covered by some official permit, it appears that at least a significant portion of the waste disposal on the Orzinuovi premises is not covered by any license or permit whatsoever." *Id.* The letter also explained "We are currently in the process of investigating and inspecting the nature and scope of the waste disposal site as well as its legality." *Id.*

*4 Plaintiff Frendo first notified Italian authorities about the landfills in an October 2, 1991 letter proposing a landfill removal project as part of a plan to modernize and expand the Orzinuovi plant and to comply with the dictates of an environmental policy recently prepared by Frendo's new management. *See* Roberts Aff., ¶ 9, Ex. H. This letter made no reference to a violation of law as the reason for the project and came more than two years after the indemnity demand asserted against Defendants. All of Frendo's subsequent correspondence with Italian authorities likewise contained no mention of a violation of law as the impetus for the removal project. *See id.* Ex. H. On January 23, 1993, the Mayor of Orzinuovi issued an order relating to the removal of the landfills at the Frendo plant. *See* Coccia Decl., Tab. R.

Discussion

I Summary Judgment Standards

This Court may grant summary judgment only if the moving party is entitled to judgment as a matter of law because there is no genuine dispute as to any material fact. *See Silver v. City Univ. of New York*, 947 F.2d 1021, 1022 (2d Cir. 1991), *Montana v. First Fed. Sav. & Loan Ass'n*, 869 F.2d 100, 103 (2d Cir. 1989), *Knight v. U.S. Fire Insur. Co.*, 804 F.2d 9, 11 (2d Cir. 1986). The role of the Court on such a motion "is not to resolve disputed issues of fact but to assess whether there are any factual issues to be tried, while resolving ambiguities and drawing reasonable inferences against the moving party." *Knight*, 804 F.2d at 11, *see also First Fed. Sav. & Loan Ass'n*, 869 F.2d at 103 (stating that to resolve a summary judgment motion properly, a court must conclude that there are no genuine issues of material fact, and that all inferences must be drawn in favor of the non-moving party).

The movant bears the initial burden of informing the Court of the basis for its motion and identifying those

portions of the "pleadings, depositions, answers to interrogatories, and admissions to file, together with affidavits, if any," that show the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). If the movant meets this initial burden, the party opposing the motion must then demonstrate that there exists a genuine dispute as to the material facts. *See id.*, *Silver*, 947 F.2d at 1022.

The opposing party may not solely rely on its pleadings, on conclusory factual allegations, or on conjecture as to the facts that discovery might disclose. *See Gray v. Darien*, 927 F.2d 69, 74 (2d Cir. 1991). Rather, the opposing party must present specific evidence supporting its contention that there is a genuine material issue of fact. *See Celotex Corp.*, 477 U.S. at 324, *Twin Lab. Inc. v. Weider Health & Fitness*, 900 F.2d 566, 568 (2d Cir. 1990).

To show such a "genuine dispute," the opposing party must come forward with enough evidence to allow a reasonable jury to return a verdict in its favor. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986), *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986), *Cinema North Corp. v. Plaza at Latham Assocs.*, 867 F.2d 135, 138 (2d Cir. 1989). If "the party opposing summary judgment propounds a reasonable conflicting interpretation of a material disputed fact," then summary judgment must be denied. *Schering Corp. v. Home Ins. Co.*, 712 F.2d 4, 9-10 (2d Cir. 1983). The Court will analyze the summary judgment motions in accordance with these principles.

II Plaintiffs' Motion For Summary Judgment

*5 In May 1993, Plaintiffs brought this diversity action asserting contractual indemnification claims against Defendants for the cost of the landfill removal project at the Orzinuovi plant. [FN6] Plaintiffs move for summary judgment on their indemnity claims, arguing that no genuine issues of material fact exist. Specifically, Plaintiffs contend that they deserve summary judgment against Defendants because the remaining material facts in this case have been significantly narrowed as a result of Defendants' alleged failure to defend against claims potentially within the scope of the duty to indemnify.

[FN6.] Plaintiffs claim damages for the cost of the investigation and remediation of landfills at the Orzinuovi plant in the amount of the U.S. dollar equivalent of approximately DM 3,850,743.52 and Lira 21,268,488,677. *See* Pls.' Notice of Mot. at 3.