

sums which the insured shall become 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 suits against the insured seeking damages on account of such property damage * * * " Outboard Marine, 154 Ill 2d at 109, 180 Ill Dec 691, 607 N E 2d 1204

The question presented in Outboard Marine was whether the underlying actions, which sought primarily equitable relief, fell potentially within the coverage afforded by the insurer's commercial general liability policies for "suits seeking damages," thereby triggering the insurer's duty to defend OMC. The supreme court reasoned that a comprehensive general liability insurance policy is a very broad policy where the insurer assumes a wide scope of risks. It found that the insurer in that case intended to offer and OMC intended to purchase comprehensive protection against liability for property damage caused by an occurrence, and concluded that the underlying actions were "suits seeking damages" which triggered the insurer's duty to defend. Outboard Marine, 154 Ill 2d at 117, 180 Ill Dec 691, 607 N E 2d 1204

Outboard Marine is distinguishable from the instant case. First, the underlying actions in Outboard Marine were filed by state and federal environmental protection agencies against OMC for environmental contamination. In this case, the underlying action arose from the alleged breach of the asset purchase agreement between the parties. Thus, the Pneumo complaint here does not involve an action for environmental pollution. Instead, the suit from which plaintiffs seek relief is the counterclaim filed by BFG concerning Pneumo Abex's alleged failure to comply with the agreement's indemnification provisions. Such a claim did not exist in Outboard Marine.

Second, the third-party complaint and cross-claim in Outboard Marine sought indemnification or contribution from the respective contaminators in the event of liability incurred as a result of the action from the environmental protection agencies. Here, the Pneumo complaint and BFG counterclaim sought declaratory relief that the breaching party failed to fulfill its respective obligations under the asset purchase agreement.

*871 Specialty Coatings is also distinguishable. In Specialty Coatings, Unites States Fidelity and Guaranty Co (USF&G) issued the defendants-insureds, who were producers of industrial coatings, sealants, and adhesives, comprehensive general liability policies. The defendants tendered to USF&G the defense of two

separate claims for environmental damage. The first was filed by the state for the alleged delivery and disposal of industrial wastes in Kankakee County. The second action was a potentially responsible party (PRP) letter issued from the United States Environmental Protection Agency. A third-party action was also filed against the defendants for contribution in connection with the defendants' disposal of hazardous wastes at a certain site.

The relevant issue decided was whether the PRP letter triggered USF&G's duty to defend. The appellate court found that the duty to defend was triggered because the PRP letter amounted to a suit and the concomitant duty to defend. Specialty Coatings, 180 Ill App 3d at 389, 129 Ill Dec 306, 535 N E 2d 1071

*307 ***113 Specialty Coatings is distinguishable because the underlying allegations in that case involved direct action by environmental agencies for alleged pollution by the defendants. The third-party claim was directly related to contribution for potential expenses incurred by another defendant named in the action taken by the environmental agencies. In Specialty Coatings, no asset purchase agreement with indemnification provisions existed between the parties.

Although we find Specialty Coatings distinguishable, there is language in that decision which supports our conclusion in this case. In Specialty Coatings, the court found that, "where the genesis of the relief sought is 'physical injury to tangible property' or 'loss of use of tangible property,' the claim seeks relief from 'property damage' as defined by the contract [Citations]" Specialty Coatings, 180 Ill App 3d at 393-94, 129 Ill Dec 306, 535 N E 2d 1071. In the instant case, the genesis for the relief sought was not for "physical injury to tangible property" or "loss of use of tangible property" but, rather, for monies owed as a result of a breach of the indemnification agreement.

Plaintiffs also rely upon the Supreme Court of California's decision in Vandenberg v Superior Court of Sacramento County, 21 Cal 4th 815, 982 P 2d 229, 88 Cal Rptr.2d 366 (1999). In Vandenberg, the plaintiff leased a parcel of land from Eugene and Katherine Boyd (collectively the Boyds) for the purpose of selling and servicing automobiles. In 1988, plaintiff discontinued the business and possession of the land reverted to the Boyds. Testing of the property revealed contamination of soils and groundwater on the property as the result of three underground waste oil storage tanks installed by the plaintiff. The Boyds filed a complaint *872 against the plaintiff for several causes of action including waste, nuisance, and breach of the lease agreement.