

782 N.E.2d 297

(Cite as: 335 Ill.App 3d 859, 782 N.E.2d 297, 270 Ill.Dec. 103)

CAppellate Court of Illinois,
First District, Second Division**WHITMAN CORPORATION**, a Delaware
Corporation headquartered in Illinois, and
Pneumo Abex Corporation, a Delaware Corporation,
Plaintiffs-Appellants,

v

**COMMERCIAL UNION INSURANCE
COMPANY**, a Massachusetts corporation, Michigan
Mutual Insurance Company, a Michigan corporation
and United States Fire
Insurance Company, a New York corporation,
Defendants-Appellees

No. 1-00-3954.

Nov 26, 2002

Insured vendor brought action against comprehensive general liability (CGL) and umbrella insurers for a declaratory judgment that they owed a duty to defend the vendor against allegations in purchaser's counterclaim seeking indemnification for environmental liabilities. The Circuit Court, Cook County, Loretta C. Douglas, J., granted insurers' motion to dismiss. Insured appealed. The Appellate Court, McBride, P.J., held that the policies provided no coverage since the counterclaim sought damages for alleged breach of asset purchase agreement, not property damage caused by occurrence.

Affirmed

West Headnotes

[1] Insurance ⚡2914
217k2914 Most Cited Cases

To determine whether a liability insurer has a duty to defend the insured, the court must look to the allegations in the underlying complaint and compare these allegations to the relevant provisions of the insurance policy, if the facts alleged in the underlying complaint fall within, or potentially within, the policy's coverage, the insurer's duty to defend arises.

[2] Insurance ⚡2914
217k2914 Most Cited Cases

A liability insurer's refusal to defend is unjustifiable unless it is clear from the face of the underlying complaint that the facts alleged do not fall potentially within the policy's coverage.

[3] Insurance ⚡2275
217k2275 Most Cited Cases

[3] Insurance ⚡2277
217k2277 Most Cited Cases

Money damages that purchaser sought from vendor pursuant to asset purchase agreement requiring vendor to indemnify purchaser for environmental liabilities were not for property damage and were not a result of an occurrence within the meaning of the vendor's comprehensive general liability (CGL) and umbrella policies; rather, the purchaser's counterclaim against the vendor sought indemnification for expenses incurred for reedifying the environmental contamination contemplated by the parties in the asset purchase agreement, and because the contamination and the expenses for remediation of the contamination were contemplated by the parties, the damages complained of could not have arisen from an unforeseen occurrence. ***298 ***104 *860 Lea Leadbeater and Douglas W. Michaud, Fogani Guibord Homsy & Roberts, Chicago, for Plaintiffs-Appellants.

David P. Cutler, Cutler & Hull, Chicago, for Defendant-Appellee Commercial Union Insurance Company.

Tressler Soderstrom Maloney & Priess (David E. Trainor and Brett L. Warning, of counsel), Chicago, for Defendant-Appellee Michigan Mutual Insurance Company.

John D. Dalton, Merlo Kanofsky & Brinkmeier, Ltd., Chicago, for Defendant-Appellee United States Fire Insurance Company.

Presiding Justice McBRIDE delivered the opinion of the court.

Plaintiffs-appellants, Whitman Corporation (Whitman) and Pneumo Abex Corporation (Pneumo Abex) (collectively plaintiffs), appeal from the trial court's dismissal of counts III and IV of plaintiffs' third amended declaratory judgment complaint under section 2-615 of the Illinois Code of Civil Procedure 735

