**309 ***115 In *Bituminous,* the defendants-insureds were sued by the State of Illinois for various acts and omissions related to the design, manufacture, and installation of the heating, ventilating, and air conditioning *874 system (HVAC) in the State of Illinois Building The defendants tendered the claims to their insurance company, Bituminous Casualty The policy provided that the insurer would defend any suit seeking damage against the insured for property damage, which was defined in the policy as loss of the use of tangible property caused by an occurrence

Bituminous filed a declaratory judgment action which sought a determination that it had no duty to defend or indemnify on the grounds that the complaint alleged a breach of contract and that a comprehensive general liability policy was not intended to pay the costs for repairing or replacing the insured's defective work and products The trial court found in favor of Bituminous and granted its motion for summary judgment

On review, the appellate court concluded that the State's complaint did not allege a loss of use of tangible property caused by an occurrence and affirmed the trial court *Bituminous,* 218 Ill App 3d at 966, 161 Ill Dec 357, 578 N E 2d 1003

In our view, the instant case is analogous to the facts in *Hydra* and *Bituminous* Upon *de novo* review of the paragraphs relied upon by plaintiffs in the counterclaim, we conclude that the allegations concern a breach of the asset purchase agreement, and do not amount to claims for environmental property damage caused by an "occurrence" as required under the policies at issue Here, the Pneumo complaint and the counterclaim solely concern whether monies are owed for the breach of the asset purchase agreement between the parties Significantly, the first paragraph of the Pneumo complaint characterizes the nature of the action as "an action by Pneumo Abex for declaratory and other relief arising out of a breach of a written contract " Further, the "WHEREFORE" clause of the same pleading first seeks a declaration that "BFG has failed to fulfill its obligations under the [asset purchase] Agreement " A review of the counterclaim reveals that it too concerns the parties' obligations arising out of the asset purchase agreement The mere mention of the words "hazardous substances" or "contamination" in the counterclaim does not establish that "those conditions" on the properties were the result of an "occurrence "

The language of the policies in the instant case is identical to the policy in *Hydra* where the Insurers were legally obligated to pay damages because of property damage caused by an occurrence As we noted above, an occurrence means an accident under the instant policies and an accident has been defined as " 'an unforeseen occurrence * * * of untoward or disastrous character' or 'an undesigned sudden or unexpected event' " *Bituminous,* 218 Ill App 3d at 965-66, 161 Ill Dec 357, 578 N E 2d 1003, quoting *Aetna Casualty,* 89 Ill App 3d at 619, 44 Ill Dec 791, 411 N E 2d 1157 Here, the underlying complaint *875 reveals that the asset purchase agreement concerns indemnity provisions pertaining to environmental liabilities We do not find that the environmental liabilities referred to in BFG's counterclaim arose from an unforeseen occurrence because the primary purpose of the asset purchase agreement was to provide indemnification for their remediation Therefore, we conclude that the trial court correctly ruled that the money damages sought were not for property damage and were not a result of an "occurrence" but, rather, were the result of a breach of the asset purchase agreement

**310 ***116 For the reasons above, we conclude that the trial court correctly held the allegations in the counterclaim did not amount to property damages caused by an occurrence As a result, the allegations did not fall within or potentially within the policies' coverage, and the Insurers' motion to dismiss was properly granted

Because of our finding on the first issue, we need not address the second issue in this case For the reasons above, the judgment of the trial court is affirmed

Affirmed

CERDA and BURKE, JJ , concur

782 N E 2d 297, 335 Ill App 3d 859, 270 Ill Dec 103

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