FIRST DIVISION
August 22, 2016

No. 1-15-1363
2016 IL App (1st) 151363-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

AMERICAN HOME ASSURANCE COMPANY, NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, AIU INSURANCE COMPANY, LEXINGTON INSURANCE COMPANY, Plaintiffs-Appellants, v. NATIONAL-STANDARD, LLC, f/k/a NATIONAL-STANDARD COMPANY, NATIONAL-STANDARD COMPANY OF CANADA, LTD., LIBERTY MUTUAL INSURANCE COMPANY, AMERICAN EMPLOYERS INSURANCE COMPANY, THE CENTRAL NATIONAL INSURANCE COMPANY OF OMAHA, PINE TOP INSURANCE COMPANY, TRANSIT CASUALTY COMPANY, COLOMBIA CASUALTY COMPANY, CENTURY INDEMNITY CO, f/k/a INA INS. CO., XYZ PRIMARY CARRIERS 1-50, XYZ EXCESS CARRIERS 1-50, MAXUS ENERGY CORP., f/k/a DIAMOND SHAMROCK CORPORATION, and TIERRA SOLUTIONS, INC., Defendants	)	Appeal from the Circuit Court of Cook County. No. 13 CH 14311

(National-Standard LLC, and Liberty Mutual Insurance Company, Defendants-Appellees).	))	Honorable LeRoy K. Martin, Jr. Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Dismissal of Illinois action pursuant to section 2-619(a)(3) was proper; trial court properly denied plaintiffs' alternative motion for leave to file an amended complaint; affirmed.

¶ 2 At issue in this appeal is the proper forum to resolve a dispute among a group of excess insurers, the primary insurer, and the insured. The group of excess insurers, which consists of American Home Assurance Company, National Union Fire Insurance Company of Pittsburgh, PA, AIU Insurance Company, and Lexington Insurance Company (collectively, the AIG insurers), contends that the dispute should be resolved in Illinois. Meanwhile, the primary insurer, Liberty Mutual Insurance Company (Liberty), and the insured, National-Standard LLC (National-Standard) assert that the dispute should be resolved in New Jersey. Pursuant to Liberty's and National-Standard's motions to dismiss pursuant to section 2-619(a)(3) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(3) (West 2012)), the court determined that New Jersey was the proper forum for the dispute. On appeal, the AIG insurers contend that this case should proceed in Illinois and that the circuit court improperly denied their alternative motion for leave to file an amended complaint against Liberty. We affirm.

¶ 3 I. BACKGROUND

¶ 4 National-Standard and Liberty were involved in earlier litigation in New Jersey, which resulted in a 2004 settlement agreement. Subsequently, the National-Standard and the AIG insurers settled a dispute over coverage in 2006. The 2006 settlement covered costs incurred on or before December 31, 2005.

¶ 5 Another dispute over coverage arose, and on June 7, 2013, the AIG insurers filed a complaint for a declaratory judgment in the circuit court of Cook County. The AIG insurers filed an amended complaint on November 22, 2013. The named defendants included National-Standard, National-Standard Company of Canada, Limited (National-Standard Canada), Liberty, and excess and umbrella insurers from whom the AIG insurers sought equitable contribution. The AIG insurers alleged that National-Standard notified them and Liberty of a number of environmental events, including that:

- Sometime in or after 1987, the New Jersey Department of Environmental Protection mandated an environmental cleanup on a site in Clifton, New Jersey, on which National-Standard had operated a steel rolling mill between 1937 and 1988;
- Sometime in or after 1985, the Environmental Protection Agency (EPA) identified National-Standard as a potentially responsible party for a landfill in Elizabethtown, Pennsylvania;
- Sometime in or after 1986, the EPA identified National-Standard as a potentially responsible party for a site in Lancaster County, Pennsylvania;
- Sometime in or after 1987, the Pennsylvania Department of Environmental Protection required National-Standard to conduct groundwater pumping, remediation, and monitoring on a site in Mount Joy, Pennsylvania;
- Sometime in or around 1995, the EPA and the Michigan Department of Environmental Quality identified National-Standard as a potentially responsible party for a site in Niles, Michigan, known as the City Complex site;

- Sometime in or after 1981, the Massachusetts Department of Environmental Protection required National-Standard to investigate, remediate, and monitor a site in Worcester, Massachusetts;
- Sometime in or after 1994, the Alabama Department of Environmental Management required National-Standard to perform groundwater monitoring and address other concerns at a site in Columbiana, Alabama;
- The Canadian Ministry of the Environment and the City of Guelph, in Ontario, requested that National-Standard investigate and monitor a property in Guelph;
- In or about April 1990, the owner of land in Clifton, New Jersey, advised National-Standard of threatened litigation against it to recover cleanup costs for the site; and
- In or around June 2001, National-Standard was notified by the EPA that it was a potentially responsible party for buildings in Kansas City, Missouri, and Kansas City, Kansas.

The AIG insurers also stated that National-Standard provided them with information about action that National-Standard was required to take at a plant in Lacey Creek, Michigan in 2003, and about environmental costs related to sites in Stillwater, Oklahoma, Corbin, Kentucky, and Mishawaka, Indiana. Lastly, the AIG insurers alleged that National-Standard notified them and Liberty about additional events in New Jersey:

- On or about November 9, 2005, the EPA notified National-Standard that it was potentially liable for actions in the Lower Passaic River Study Area in New Jersey;
- The Federal Natural Resources Trustees prepared a draft clean-up plan for the Diamond Alkali Superfund site; and

- National-Standard was named a third-party defendant in a case entitled *New Jersey Department of Environmental Protection, et al. v. Occidental Chemical Corp., Tierra Solutions, Inc., et al.*, in the Superior Court of New Jersey.

According to the AIG insurers, National-Standard presented Liberty and the AIG insurers with claims for some or all of the above environmental events.

¶ 6 The AIG insurers also mentioned the previous settlement agreements. The AIG insurers alleged that after National-Standard entered into a confidential settlement with Liberty, National-Standard presented three of the AIG insurers with claims for what National-Standard maintained were unreimbursed costs for a number of the environmental events and projected future costs. The AIG insurers stated that in 2006, they entered into a confidential agreement with National-Standard to settle, under a reservation of rights, disputed past costs incurred on or before December 31, 2005.

¶ 7 According to the AIG insurers, National-Standard continued to claim costs with respect to certain environmental events incurred on and after December 31, 2005, and to demand that the AIG insurers contribute to those costs. The AIG insurers stated that they asked National-Standard for proof that it had exhausted its primary policies and self-insured retentions, as well as information about the allocation method used in its exhaustion calculations, but National-Standard had not provided its allocation methods or proper proof that its primary layer of coverage was exhausted. The AIG insurers also stated that Liberty's documentation showed that its policies were not exhausted. The AIG insurers further alleged that National-Standard refused to provide critical information unless the AIG insurers executed a "confidentiality undertaking," which the AIG insurers could not do. The AIG insurers contended that they had no duty to defend or indemnify National-Standard for any of the environmental events because National-

Standard's primary policies had not been exhausted and National-Standard had not paid the amount of its self-insured retention. The AIG insurers also contended that their policies contained exclusions that precluded coverage and that their policies did not cover damages that occurred outside of the policies' effective periods.

¶ 8 Additionally, the AIG insurers alleged an alternative cause of action for reimbursement from Liberty. The AIG insurers stated that they had paid disputed past costs incurred on or before December 31, 2005, to National-Standard that should have been paid by Liberty.

¶ 9 Also in the alternative, the AIG insurers asserted that National-Standard breached the conditions of the AIG insurers' policies by entering into an agreement with Liberty that: (1) may have altered or effectively altered the terms and conditions of Liberty's policy; (2) released Liberty from liability for the environmental events despite not exhausting Liberty's policies; (3) resulted in National-Standard assuming Liberty's obligation for costs arising out of the environmental events; and (4) resulted in National-Standard assuming an obligation to Liberty to maintain the confidentiality of their settlement terms, the information and documentation regarding the allocation of Liberty's payments, and the terms of Liberty's policies. The AIG insurers contended that those breaches eroded the underlying policy limits, impaired their right to reimbursement from Liberty, and prevented them from obtaining necessary information.

¶ 10 Lastly, as a further alternative claim, the AIG insurers sought a finding that costs incurred before December 31, 2005, were equally owed by the other excess insurers.

¶ 11 On July 3, 2013, after the AIG insurers filed their complaint in Illinois, National-Standard filed a complaint and demand for a declaratory judgment in New Jersey. National-Standard filed a second amended complaint on October 15, 2013, in which the named defendants consisted of three of the AIG insurers and additional excess insurers. In the complaint, National-Standard

summarized the previous litigation with Liberty in New Jersey, including that following investigation and monitoring at a site in Clifton, New Jersey, where it had operated a steel rolling mill, National-Standard requested that Liberty reimburse it for costs related to the site. National-Standard stated that when Liberty did not agree, National-Standard filed coverage litigation in New Jersey. National-Standard averred that in 2004, it entered into a confidential settlement with Liberty, and that in 2006, it entered into a confidential settlement with three of the AIG insurers that settled claims for past costs incurred on or before December 31, 2005.

¶ 12 National-Standard further alleged that in 2005, the EPA notified National-Standard that it was a potentially responsible party for contributing to the pollution of the Lower Passaic River in New Jersey. Additionally, National-Standard stated that it was named a third-party defendant in 2009, in a case entitled, *New Jersey Department of Environmental Protection v. Occidental, et al.*, which concerned cleanup and removal activities in the Newark Bay Complex. Additionally, National-Standard alleged that the Newark Bay Complex contained natural resources under the protection of the National Resources Trustees, and that National-Standard had become subject to potential liability to the National Resources Trustees.

¶ 13 National-Standard asserted that it had notified the three AIG insurers of its costs. National-Standard further stated that although most of the costs related to cleanup activities in New Jersey, National-Standard also provided information about unreimbursed costs from sites in Columbiana, Alabama, Corbin, Kentucky, Lacey Creek and City Complex, Michigan, Worcester, Massachusetts, and Mount Joy, Pennsylvania. National-Standard contended that these costs, run through the applicable allocation scheme, either reached certain of the policies of the three AIG insurers, or helped make up the difference between the amount left on National Standard's primary policies and the attachment point of the first level excess policies. National-

Standard also noted that it had unreimbursed costs from sites in Pass Recovery, New Jersey, Elizabethtown, Pennsylvania, and Lancaster Battery, Pennsylvania, but did not forward these costs to the AIG insurers because they were incurred before 2006, and so were subsumed in the 2006 settlement. According to National-Standard, the substantial majority of its unreimbursed environmental costs were incurred in connection with cleanups in New Jersey, and its future environmental costs would be even more concentrated in New Jersey. National-Standard alleged that the AIG insurers invited discussions about a draft interim coverage agreement and reservation of rights. National-Standard further alleged that it sent a draft agreement to the AIG insurers in April 2013, but the AIG insurers filed suit in Illinois in June 2013.

¶ 14 National-Standard asserted that it had complied with the conditions and obligations of the three AIG insurers' policies, but that in breach of their obligations of good faith and fair dealing, the AIG insurers refused to indemnify National-Standard and failed to make all payments due. As to the remaining excess insurers listed as defendants, National-Standard alleged that they were responsible for all sums in excess of their respective underlying limits that National-Standard had or would become obligated to pay, but these excess insurers had not yet acknowledged their contractual obligations to cover National-Standard.

¶ 15 The record includes an excerpt of the AIG insurers' affirmative defenses in the 2013 New Jersey action. In those affirmative defenses, the AIG insurers asserted that National-Standard's claims were barred because the AIG insurers' "coverage obligations, if any, under any commercial umbrella policy or excess policy issued or allegedly issued to [National-Standard] are contingent on the proper exhaustion of all underlying insurance policies." The AIG insurers further asserted that National-Standard's claims were barred because National-Standard "has not and cannot establish that the insurance underlying any commercial umbrella or excess policy

issued or allegedly issued by [the AIG insurers] to [National-Standard] has been properly exhausted." Additionally, the AIG insurers stated that National-Standard's claims were barred to the extent that National-Standard "failed to fully perform or comply with its obligations or the terms, conditions, or provisions of any policy of insurance issued or allegedly issued by [the AIG insurers]."

¶ 16 On September 23, 2013, the AIG insurers filed a motion in New Jersey to dismiss or stay National-Standard's complaint. The AIG insurers asserted that pursuant to principles of comity and New Jersey's first-filed rule, the New Jersey court should defer to the Illinois court. The AIG insurers asserted that the Illinois action sought a comprehensive adjudication of the parties' rights and obligations and involved sites in Michigan, Massachusetts, Pennsylvania, Alabama, New Jersey, Missouri, Kansas, and Guelph, Ontario. The AIG insurers also stated that there was no dispute that "the first-filed Illinois Coverage Action involves 'substantially' the same parties, claims, and issues as presented in the New Jersey action."

¶ 17 A hearing was held on the AIG insurers' motion on December 6, 2013. There, the court noted the New Jersey Supreme Court's statement in *Sensient Colors, Inc. v. Allstate Insurance Co.*, 939 A.2d 767, 779 (N.J. 2008), that a key consideration was the state's strong public policy interest in remediating environmental contamination within its borders. The court also noted that "the fact that none of the clean-up sites are in Illinois and none of the AIG insurers are based in Illinois only reinforces the point that Illinois has no substantial interest in or connection to this coverage dispute." Ultimately, the court denied the motion to dismiss and stated:

> "This Court is firmly of the opinion that this case does not deserve deference to the first-filed case in Illinois, that clearly the center of gravity in this case is New Jersey. There are parts of the case, parts of the papers which indicate

> that most of the expenses that have been incurred and will occur in the future are in New Jersey. I think it's something like 70 percent. *** [C]learly the focus of this dispute is New Jersey. The strong public policy of New Jersey is involved. *** And I hope that this colloquy and this decision will be taken into account by my colleague in Illinois when they make the decision as to what happens in that state."

¶ 18 On March 26, 2014, the AIG insurers filed a third-party complaint against Liberty in New Jersey. The AIG insurers asserted that because Liberty's primary policies were not released or extinguished when Liberty and National-Standard settled, those policies were available for coverage. The AIG insurers sought a declaration that Liberty was liable to National-Standard for Liberty's allocable share of any alleged costs and damages incurred and to be incurred by National-Standard.

¶ 19 Liberty filed a motion to dismiss the AIG insurers' third-party complaint, and the New Jersey court held a hearing on September 12, 2014. On January 8, 2015, the court entered a written order that granted Liberty's motion and dismissed the third-party complaint with prejudice. At the hearing, the court cited *DiTrolio v. Antiles*, 662 A.2d 494 (N.J. 1995), and referred to New Jersey's entire controversy doctrine, which bars a subsequent action when a prior action based on the same transactional facts had been tried to a judgment or settled. The court stated that this doctrine applied and "to the extent that AIG wanted to be heard or participate in connection with the settlement that Liberty reached with National Standard in the [previous action], if they wanted what I will colloquially call a seat at the table they should have *** filed a cross claim and raised some of the issues that are being raised now." According to the court, the

AIG insurers would not be prejudiced by the ruling because National-Standard was required to fully comply with demands for information that the AIG insurers legitimately put forth.

¶ 20 We return to the Illinois proceedings. On January 13, 2014, National-Standard Canada, Liberty, and National-Standard filed motions to dismiss the AIG insurers' complaint. We briefly summarize each of these motions. In National-Standard Canada's motion filed pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)), it asserted in part that there were no facts alleged in the AIG insurers' complaint that tied National-Standard Canada to the dispute. National-Standard Canada noted that the AIG insurers referenced a site in Guelph, Ontario, but stated that this site was the subject of a coverage demand before the 2006 settlement. Liberty's motion to dismiss was also pursuant to section 2-615 of the Code. Liberty asserted in part that the AIG insurers did not articulate a viable legal theory pursuant to which they would be entitled to reimbursement.

¶ 21 In its motion, National-Standard contended that the AIG insurers' amended complaint should be dismissed pursuant to section 2-619(a)(3) of the Code because there was another action pending in New Jersey between the same parties for the same cause. According to National-Standard, the only difference in the parties was that the Illinois action involved three parties who had no interest in the litigation—AIU Insurance Company (AIU), which issued excess insurance policies but from which National-Standard had not sought coverage, Liberty, which National-Standard settled with previously and from whom National-Standard was also not seeking coverage, and National-Standard Canada, an "inactive subsidiary" of National-Standard that had no unreimbursed cleanup costs and was not seeking coverage. National-Standard further contended that the Illinois and New Jersey actions involved the same cause because they arose

out of the same cleanup sites and the same insurance policies. National-Standard also asserted that the principles of comity overwhelmingly favored the New Jersey action.

¶ 22 As part of their response to National-Standard Canada's motion to dismiss, the AIG insurers cited a Michigan case, *National-Standard Co. v. Department of Treasury*, 180 N.W.2d 764, 771 (Mich. 1970), in support of their assertion that National-Standard Canada was a wholly-owned subsidiary of National-Standard. In response to National-Standard's motion to dismiss, the AIG insurers asserted that National-Standard had substantial contacts in Illinois. The AIG insurers cited National-Standard's corporate filings that listed its principal business address in Downers Grove, Illinois. Additionally, the AIG insurers pointed to National-Standard's Michigan corporate filings that listed a Downers Grove address for its president, secretary, treasurer, vice president, and all directors. The AIG insurers also cited documents that showed that National-Standard's insurance brokers were in Illinois, and stated that the AIG insurers' policies were negotiated through and issued to National-Standard's Chicago insurance broker and Liberty's policies were sold through its Illinois sales offices. The AIG insurers additionally noted that the relevant settlement agreements were executed in Illinois by National-Standard's Illinois officers or directors. The AIG insurers further stated that National-Standard identified its environmental counsel and coverage counsel as law firms located in Chicago.

¶ 23 At a hearing on April 16, 2014, National-Standard's counsel informed the court that the EPA had recently issued a focused feasibility study related to the Passaic River, which indicated that the projected cleanup cost was approximately $1.7 billion. According to National-Standard's counsel, National-Standard was 1 of approximately 70 companies involved.

¶ 24 Following arguments on the motions, the court issued an oral ruling on July 24, 2014. The court granted National-Standard's motion to dismiss pursuant to section 2-619(a)(3) of the

Code. The court found that comity was the most compelling argument for dismissal, and stated that the Illinois and New Jersey actions involved the same parties and same subject matter. The court found that much of the pollution at issue took place in New Jersey, and moreover, that the New Jersey court had indicated that "New Jersey has a legitimate interest in seeing *** the issues litigated there." Acknowledging the AIG insurers' assertion that other sites in other states were involved, the court stated that none of the sites were in Illinois. The court also granted National-Standard Canada's and Liberty's motions to dismiss pursuant to section 2-615 of the Code. The court stated that it struggled with the claim for reimbursement against Liberty and "just [did not] see a justiciable claim here." According to the court, the AIG insurers had not articulated a claim or cause of action against Liberty. The court stated that the dismissals were without prejudice so that the AIG insurers could bring those claims in New Jersey. On August 18, 2014, the court entered a written order disposing of the motions, and noted that the dismissal pursuant to section 2-619(a)(3) was not on the merits.

¶ 25 On September 17, 2014, the AIG insurers filed a motion to reconsider the dismissals or for leave to amend. The AIG insurers contended that as to the section 2-619(a)(3) dismissal of the claims against National-Standard, the court had overlooked the proper consideration and application of all the relevant factors. As to Liberty's dismissal under section 2-615, the AIG insurers maintained they had stated justiciable claims against Liberty for declaratory relief and to recover amounts paid by the AIG insurers and other excess carriers that Liberty should have paid. Alternatively, the AIG insurers sought leave to amend their complaint.

¶ 26 Liberty responded to the AIG insurers' motion, contending in part that under New Jersey's entire controversy doctrine, the AIG insurers' claim was barred because the AIG insurers never made the claim in the prior New Jersey action.

¶ 27 Following a hearing and in a written order entered on February 2, 2015, the court denied the AIG insurers' motion to reconsider. The court stated that it had considered the relevant factors in granting National-Standard's motion to dismiss, and believed that comity was the more compelling factor. The court continued the motion to reconsider as to Liberty's section 2-615 dismissal, pending Liberty's filing of a motion to dismiss pursuant to section 2-619(a)(3).

¶ 28 On February 17, 2015, Liberty filed its motion to dismiss pursuant to section 2-619(a)(3). Liberty stated that the 2004 settlement between National-Standard and Liberty, the 2006 settlement between National-Standard and the AIG insurers, and the exhaustion issue were all raised in the New Jersey action. Liberty also asserted that the New Jersey court's dismissal of the AIG insurers' third-party complaint against Liberty did not negate the same parties requirement of section 2-619(a)(3). Liberty further contended that the effect of the New Jersey dismissal should be decided under New Jersey law.

¶ 29 In response, the AIG insurers asserted that no other action was pending between them and Liberty because the New Jersey court had dismissed their third-party complaint with prejudice. The AIG insurers also maintained that given the New Jersey court's ruling, the AIG insurers could not obtain any relief against Liberty in New Jersey. Additionally, the AIG insurers contended that their dispute with Liberty was centered in Illinois because Liberty sold policies to National-Standard through an Illinois broker, policies were sold to National-Standard through its Chicago sales office for decades, and Liberty's 2004 settlement with National-Standard was executed in Illinois.

¶ 30 At a hearing on March 9, 2015, Liberty's counsel stated that the AIG insurers did not lack access to the court in New Jersey, but rather, the New Jersey court found that the AIG insurers should have brought their claims earlier. In response, counsel for the AIG insurers asserted that it

would have been useless to raise their claims in the earlier New Jersey action because New Jersey law did not recognize the applicable cause of action. Citing *UMC/Stamford, Inc. v. Allianz Underwriters Insurance Co.*, 647 A.2d 182 (N.J. Super. Ct. Law Div. 1994), counsel for the AIG insurers stated that in New Jersey, an excess carrier has no right to inquire into the primary carrier's settlement. The court ultimately granted Liberty's motion to dismiss, stating that although Illinois had certain connections to the litigation and an argument could be made that the case should be heard in Illinois, "this controversy *** really has its genesis in that New Jersey litigation." The court further stated that New Jersey provided a complete remedy, asserting that "[s]imply because the laws may be different in New Jersey as opposed to Illinois, I don't think [a]ffects whether or not a complete remedy can be made." The court clarified that the dismissal was not on the merits and was purely a procedural determination. In a written order, the court denied the motion to reconsider the section 2-615 dismissal as to Liberty. Additionally, the court stated that the AIG insurers' alternative request for leave to amend as to Liberty was denied as moot without prejudice.

¶ 31 Pursuant to the AIG insurers' unopposed motion, the court entered a finding under Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010) that there was no just reason for delaying either enforcement or appeal or both from the final dismissals under section 2-619(a)(3). The AIG insurers timely appealed.

¶ 32 II. ANALYSIS

¶ 33 A. Motions Taken With the Case

¶ 34 Before we turn to the merits of the AIG insurers' appeal, we first address two motions taken with the case, one from the AIG insurers and the other from National-Standard and Liberty (collectively, defendants). The AIG insurers filed a motion to strike defendants' counterstatement

of facts, asserting that it violates Illinois Supreme Court Rule 341(h)(6) (eff. Feb. 6, 2013). In response, defendants assert that the motion to strike should be denied because it was brought to circumvent the page limits for appellate briefs.

¶ 35 Below, we summarize the statements that the AIG insurers find problematic and the AIG insurers' proposed reasons for striking them:

- Defendants state that National-Standard is based in Michigan and operates from its administrative headquarters in Niles, Michigan. The AIG insurers refer to documents in the record that they assert are judicial admissions that National-Standard no longer operates in any of its former facilities in Michigan and has not done so since 2010. The AIG insurers also ask this court to take judicial notice of a 2013 corporate filing that states that National-Standard is not transacting or conducting affairs in Michigan.
- Defendants state that the 2004 settlement "effectively resolved Liberty's liability for" National-Standard's environmental costs. The AIG insurers assert that elsewhere in the brief, defendants make judicial admissions that the settlement did not fully release Liberty, even as to National-Standard.
- Defendants assert that they provided the AIG insurers "with detailed information about National-Standard's costs incurred." The AIG insurers contend that as support for this statement, defendants improperly cite National-Standard's own seconded amended complaint filed in New Jersey.
- Defendants assert that the AIG insurers have pled environmental sites for which National-Standard has not submitted costs and for which it is not seeking coverage. According to the AIG insurers, defendants' assertion is argument presented as fact. The AIG insurers contend that defendants' statement ignores the central issue of whether there

has been exhaustion of the primary layer of insurance, which would necessarily involve the costs previously claimed by National-Standard.

- Defendants present an argumentative recitation of National-Standard's responses to the AIG insurers' requests for information, culminating in a statement that the AIG insurers' counsel never responded to an inquiry about exhaustion information. The AIG insurers contend that this is disingenuous.
- Defendants assert that the AIG insurers "invited discussions" about a draft interim coverage agreement and "agreed in concept" to enter into such an agreement. According to the AIG insurers, this statement is not a fair and accurate statement of fact without argument or comment, as it was contested in the trial court and consists of the conclusion of defendants' attorney.
- Defendants violate Illinois Supreme Court Rule 341(h)(6) (eff. Feb. 6, 2013) by not citing any page reference for their assertion that the AIG insurers never objected to litigating the prior action in New Jersey.
- Defendants selectively and partially quote the brief filed by the AIG insurers in the New Jersey action, stating that "the first filed Illinois Coverage Action involves 'substantially' the same parties, claims and issues as presented in the New Jersey Action." The AIG insurers assert that defendants failed to quote or mention the AIG insurers' further statements "arguing how the Illinois coverage action is far more comprehensive."
- The AIG insurers also take issue with defendants' discussion of a January 2015 subpoena and a Record of Decision from the EPA. Because the subpoena and Record of Decision are the subjects of the other motion taken with this case, we put those matters aside until we address that motion.

¶ 36 Although an appellee's brief need not include a statement of facts, if the appellee deems one necessary, it must conform to our supreme court rules. See Ill. S. Ct. R. 341(h), (i) (eff. Feb. 6, 2013). Illinois Supreme Court Rule 341(h)(6) (eff. Feb. 6, 2013) provides that a statement of facts "shall contain the facts necessary to an understanding of the case, stated accurately or fairly without argument or comment, and with appropriate reference to the pages of the record on appeal."

¶ 37 Initially, we agree with the AIG insurers that some of defendants' statements are improper. Defendants' citation to their own New Jersey complaint runs afoul of the principle that allegations in a complaint do not qualify as evidence of the facts alleged. See *Anderson Dundee 53 LLC v. Terzakis*, 363 Ill. App. 3d 145, 152 (2005). Defendants respond that the AIG insurers' objection to citing their own complaint constitutes "mindless quibbling," and refer to an affidavit in the record as additional support for their statement, but we remind defendants that supreme court rules are not suggestions and have the force of law. See *In re Denzel W.*, 237 Ill. 2d 285, 294 (2010). We also agree with the AIG insurers that some of defendants' statements veer towards argument rather than facts "stated accurately and fairly without argument or comment." See Ill. S. Ct. R. 341(h)(6) (eff. Feb. 6, 2013).

¶ 38 On the whole, however, both sides select facts that are advantageous to them and omit others. For example, the AIG insurers claim that defendants improperly stated that National-Standard is based in Michigan, but defendants' brief actually stated that National-Standard was "long-based" in Michigan and cited in part to annual reports in the record from 1950, 1960, and 1970 that indicated that the company's executive office was in Michigan. Both parties appear to use the motion to strike as an opportunity to further argue the merits of the appeal. Such conduct is not well-taken, but does not warrant striking the statement of facts. See *Rock River Water*

Reclamation District v. Sanctuary Condominiums of Rock Cut, 2014 IL App (2d) 130813, ¶ 31 (admonishing a party's attorney for what appeared to be an attempt to place before the court additional argument that the party was unable to include because of page limits); *Schnuck Markets, Inc. v. Soffer*, 213 Ill. App. 3d 957, 983-84 (1991) (declining to strike brief where both parties' briefs set forth facts that were advantageous to each and omitted facts that may have been harmful to their respective cases). Although we will not strike defendants' statement of facts because the violations are not so egregious that they hinder our review, we will disregard any improper or unsupported statements. See *Lamb-Rosenfeldt v. Burke Medical Group, Ltd.*, 2012 IL App (1st) 101558, ¶ 21.

¶ 39 We next consider defendants' motion for this court to take judicial notice of two items: (1) a subpoena that the AIG insurers served in the New Jersey case to obtain discovery of information relating to the 2004 settlement agreement; and (2) the EPA's Record of Decision with respect to the remediation of the lower eight miles of the Passaic River in New Jersey, a site involved in this litigation. Defendants state that the estimated cost of the final remedy selected by the EPA exceeds $1.3 billion.

¶ 40 These two items were the subject of previous motions filed in this court. On April 15, 2016, defendants filed a motion to supplement the record on appeal regarding postjudgment developments. In that motion, defendants stated that the AIG insurers subpoenaed the 2004 settlement agreement from Liberty in the New Jersey action and reached a negotiated resolution with Liberty about information concerning the settlement agreement. Defendants appended a subpoena *duces tecum* issued by the AIG insurers in the New Jersey action and served on Liberty on January 28, 2015. Defendants contended that the record should be supplemented to take account of this development because the negotiated resolution of the subpoena represented a

postjudgment development that mooted an issue raised by the AIG insurers on appeal—that the AIG insurers had been denied any information about the 2004 settlement agreement. Additionally, defendants sought to supplement the record with the EPA's recent Record of Decision concerning the Passaic River Superfund site in New Jersey.

¶ 41 Initially, on April 20, 2016, this court granted defendants' motion to supplement the record upon being bound and certified by the circuit court. However, pursuant to the AIG insurers' motion to reconsider, this court vacated the April 20, 2016, order, and stated that "[t]he parties may request the Court to take judicial notice of any appropriate matters, but supplementation of the record is not proper where these matters were not before the trial court."

¶ 42 Apparently trying to heed that order, defendants request that we take judicial notice of the subpoena and the Record of Decision. Generally, courts may take judicial notice of matters that are commonly known or, if not commonly known, are readily verifiable from sources of indisputable accuracy. *People v. Henderson*, 171 Ill. 2d 124, 134 (1996). Public documents that are included in the records of other courts and administrative tribunals may be the subject of judicial notice. *In re Marriage of Wojcik*, 362 Ill. App. 3d 144, 169 (2005).

¶ 43 Here, we will not take judicial notice of the subpoena because it is unclear whether it was in the public records of the New Jersey court. We note that we may take judicial notice of the laws of New Jersey. See *People v. Behnke*, 41 Ill. App. 3d 276, 281 (1976) ("Illinois courts may take judicial notice of the laws of sister states and of the United States"). In New Jersey, a subpoena may be issued by the clerk of the court or by an attorney or party in the name of the clerk. N.J. Ct. R. 1:9-1 (eff. Feb. 1, 1998). The subpoena at issue does not include a file-stamp or other indication that it is part of a court record, and it is not clear whether the subpoena was publicly filed. Defendants appended to their motion an affidavit from National-Standard's

attorney in the New Jersey action that only states that the subpoena "is a true and accurate copy of the subpoena [*duces tecum*] issued by the AIG Insurers in the New Jersey action and served on Liberty Mutual Insurance Co. *** on January 28, 2015." In responding to defendants' motion, the AIG insurers included their own affidavit, in which their attorney averred that he did not file the subpoena with the court or cause it to be filed with the court. Because it is unclear whether the subpoena was part of the public record, it is not capable of "immediate and accurate demonstration by resort to easily accessible sources of indisputable accuracy" (*People v. Spencer*, 408 Ill. App. 3d 1, 10 (2011)), and so we will not take judicial notice of it. But *cf. May Department Stores Co. v. Teamers Union Local No. 743*, 64 Ill. 2d 153, 159 (1976) (court took judicial notice of contents of NLRB letters of determination where counsel for both parties agreed to the accuracy of the letters and they were public documents included in the records of other courts and administrative tribunals, and so fell into the category of readily verifiable facts capable of instant and unquestionable demonstration).

¶ 44 We also decline to take judicial notice of the EPA's Record of Decision. Defendants contend the EPA's action is a readily verifiable and indisputable fact and supply the websites for the Record of Decision and accompanying news release. Defendants assert that even a small share of the cleanup cost will be many millions of dollars and further demonstrates the salience of the New Jersey connection to the dispute.

¶ 45 "An appellate court may take judicial notice of readily verifiable facts if doing so will aid in the efficient disposition of a case, even if judicial notice was not sought in the trial court." (Internal quotation marks omitted.) *Bank of America, N.A. v. Kulesza*, 2014 IL App (1st) 132075, ¶ 21. Even if the Record of Decision was capable of immediate and accurate demonstration by resort to an easily accessible source of indisputable accuracy, it will not help our decision in this

case, and so we will not take judicial notice of it. Defendants do not indicate that the Record of Decision assigns National-Standard a specific amount of the cleanup cost. Further, the record already indicates that the circuit court was aware of the Passaic River's role in this case. At one hearing, National-Standard's counsel referenced an EPA study that projected the cleanup cost at approximately $1.7 billion. Because the Record of Decision is not helpful, we will not take judicial notice of it. See *NBD Highland Park Bank, N.A. v. Wien*, 251 Ill. App. 3d 512, 521 (1993) (court declined to take judicial notice of new material in party's reply brief because it was "not helpful to our present purpose").

¶ 46 Lastly, we address defendants' suggestion that we adopt a procedure for bringing postjudgment events before the court that moot an issue on appeal. Defendants assert that the Third District adopted such a procedure in *Mirar Development, Inc. v. Kroner*, 308 Ill. App. 3d 483 (1999). In that case, the court granted a motion to supplement the record with a postjudgment order because one party argued that the order made the appeal moot. *Mirar Development, Inc.*, 308 Ill. App. 3d at 486. We fail to see how this procedure was unavailable here. Defendants had an avenue for supplementing the record, and indeed took advantage of it by filing a motion to supplement the record. This court ultimately denied the motion because the material was not before the trial court. It is not that this court lacks a procedure for supplementing the record under the right circumstances—instead, defendants failed to meet the requirements for doing so.

¶ 47 As we decline to take judicial notice of the subpoena and the Record of Decision, defendants' motion is denied.

¶ 48 B. Dismissal Pursuant to Section 2-619(a)(3)

¶ 49 Next, we turn to the issues that the AIG insurers raise on appeal. The AIG insurers first contend that the action should not have been dismissed pursuant to section 2-619(a)(3) of the Code. The AIG insurers argue that defendants cannot prove that the Illinois and New Jersey actions involve the same parties and same cause, particularly where the New Jersey action against Liberty was dismissed and National-Standard Canada is not named in the New Jersey complaint. Additionally, the AIG insurers contend that the Illinois action is more comprehensive than the New Jersey action. The AIG insurers state that the Illinois action seeks coverage determinations for 18 sites, while the New Jersey action seeks coverage determinations for 6 sites. The AIG insurers further assert that even if the same parties and same cause requirements are met, dismissal was still improper because the case has a legitimate and substantial relation to Illinois and the AIG insurers cannot obtain any relief against Liberty in New Jersey.

¶ 50 Section 2-619(a)(3) of the Code provides that a defendant may move for a dismissal or stay when "there is another action pending between the same parties for the same cause." 735 ILCS 5/2-619(a)(3) (West 2012); *Overnite Transportation Co. v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen, & Helpers of America*, 332 Ill. App. 3d 69, 73 (2002). Dismissal under section 2-619(a)(3) is a procedural tool used to avoid duplicative litigation. *Midas International Corp. v. Mesa, S.p.A.*, 2013 IL App (1st) 122048, ¶ 12. The movant must demonstrate by clear and convincing evidence that the two actions involve the same parties and same cause. *Whittmanhart, Inc. v. CA, Inc.*, 402 Ill. App. 3d 848, 853 (2010). The same parties requirement does not mean that the parties in both matters must be identical—rather, the litigants' interests must be "sufficiently similar, even though the parties differ in name or number." *Hapag-Lloyd (America), Inc. v. Home Insurance Co.*, 312 Ill. App. 3d 1087, 1091-92 (2000). "Actions involve the same cause where the relief requested rests on substantially the

same set of facts." *Midas International Corp.*, 2013 IL App (1st) 122048, ¶ 13. "The crucial inquiry is whether the two actions arise out of the same transaction or occurrence," and not "whether the legal theory, issues, burden of proof, or relief sought materially differs between the two actions." (Internal quotation marks omitted.) *Id*. Further, "the purpose of the two actions need not be identical; it is enough that there is a substantial similarity of issues between them." *Id*.

¶ 51 Even if the same parties and same cause requirements are met, section 2-619(a)(3) does not mandate an automatic dismissal. *Performance Network Solutions, Inc. v. Cyberklix US, Inc.*, 2012 IL App (1st) 110137, ¶ 33. Rather, the court should consider four additional factors known as the *Kellerman* factors: (1) comity; (2) the prevention of multiplicity, vexation, and harassment; (3) the likelihood of obtaining complete relief in the foreign jurisdiction; and (4) the *res judicata* effect of a foreign judgment in the local forum. *Kellerman v. MCI Telecommunications Corp.*, 112 Ill. 2d 428, 447-48 (1986); *Performance Network Solutions, Inc.*, 2012 IL App (1st) 110137, ¶ 33. A court does not need to apply all four *Kellerman* factors and not all four factors necessarily apply to each section 2-619(a)(3) dismissal. *Performance Network Solutions, Inc.*, 2012 IL App (1st) 110137, ¶ 33. Additionally, the fact that one action is filed before the other is not determinative. *Illinois Central Gulf R.R. Co. v. Goad*, 168 Ill. App. 3d 541, 544 (1988).

¶ 52 As for our standard of review, the AIG insurers contend that we should review *de novo* whether the same parties and same cause requirements are met because the application and construction of such statutory language is a question of law. While generally, a court of review applies a *de novo* standard of review to a motion to dismiss because the motion does not require the trial court to weigh facts or determine credibility, when a motion to dismiss is inherently

procedural, such as in this case, the motion urges the trial court to weigh several factors, and so is reviewed for an abuse of discretion. *Overnite Transportation Co.*, 332 Ill. App. 3d at 73. See also *Midas International Corp.*, 2013 IL App (1st) 122048, ¶ 12 ("[w]e will not reverse a trial court's decision on a motion to dismiss pursuant to [section 2-619(a)(3)] absent an abuse of discretion"); *Hapag-Lloyd (America), Inc.*, 312 Ill. App. 3d at 1091 (applying an abuse of discretion standard to a motion brought under section 2-619(a)(3); *Kapoor v. Fujisawa Pharmaceutical Co.*, 298 Ill. App. 3d 780, 786 (1998) ("[w]e will reverse the trial court's decision on a section 2-619(a)(3) motion to dismiss only if it abused its discretion"). We follow this well-established precedent and will review the dismissal for an abuse of discretion.

¶ 53 "An abuse of discretion occurs when the ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view." (Internal quotation marks omitted.) *Performance Network Solutions, Inc.*, 2012 IL App (1st) 110137, ¶ 27. This court will not substitute its judgment for that of the trial court or determine whether the court acted wisely. *Midas International Corp.*, 2013 IL App (1st) 122048, ¶ 22. Additionally, we note that review for an abuse of discretion "is the most deferential standard of review, with the exception of no review at all." *Id.*

¶ 54 We begin by comparing the allegations in both actions. *Id.* ¶ 14. In the Illinois action, the AIG insurers named as defendants National-Standard, National-Standard Canada, Liberty, and other excess and umbrella insurers from whom the AIG insurers sought equitable contribution. The AIG insurers stated that National-Standard had previously entered into confidential settlements with Liberty and the AIG insurers. The AIG insurers further alleged that because Liberty's policies were not exhausted and National-Standard had not provided proof of exhaustion, the AIG insurers had no duty to defend or indemnify National-Standard or contribute

costs for the environmental events in the complaint. These events were located in New Jersey, Pennsylvania, Massachusetts, Kentucky, Missouri, Alabama, Michigan, Indiana, and Ontario, Canada. The AIG insurers further stated that the EPA had issued to National-Standard a notice of potential liability related to actions in the Lower Passaic River, New Jersey, that the Federal Natural Resources Trustees had prepared a draft of a cleanup plan for the Diamond Alkali Superfund site, and that National-Standard had been named as a third-party defendant in a New Jersey matter, *New Jersey Department of Environmental Protection, et al. v. Occidental Chemical Corp., Tierra Solutions, Inc., et al.* Additionally, the AIG insurers stated that they had paid National-Standard disputed past costs that should have been paid by Liberty and that National-Standard breached its policies with the AIG insurers through National-Standard's settlement agreement with Liberty.

¶ 55 Meanwhile, in the New Jersey complaint, National-Standard was the sole plaintiff and three AIG insurers and other excess insurers were named as defendants. National-Standard noted that it entered into previous settlements in 2004 and 2006 with Liberty and the AIG insurers, respectively. National-Standard sought a declaration of coverage for certain claims. National-Standard alleged that in 2005, the EPA had notified National-Standard that it was a potentially responsible party for pollution of the Lower Passaic River in New Jersey, and that it was a third-party defendant in a New Jersey matter, *New Jersey Department of Environmental Protection v. Occidental, et al.* Additionally, National-Standard alleged that it had become subject to potential liability to the National Resources Trustees for an area known as the Newark Bay Complex. National-Standard further stated that it had provided information to the AIG insurers about unreimbursed costs from sites in Alabama, Kentucky, Michigan, Massachusetts, and Pennsylvania, and that these costs either reached the policies of the excess insurers or helped

make up the difference between the amount left on its primary policies and the attachment point of its excess policies. National-Standard also stated that it had unreimbursed costs from sites in Pennsylvania and New Jersey, but they were subsumed in the 2006 settlement. National-Standard asserted that the AIG insurers invited discussions about a draft coverage agreement, but ultimately filed suit in Illinois.

¶ 56 We find that the two actions involve the same cause. As noted above, the central inquiry is whether the relief requested rests on substantially the same facts. *Phillips Electronics, N.V. v. New Hampshire Insurance Co.*, 295 Ill. App. 3d 895, 906 (1998). In both actions, the dispute revolves around New Jersey sites for which National-Standard is potentially responsible and which arose after the 2004 and 2006 settlements, and whether the AIG insurers are obligated to provide coverage for those sites in light of past claims, which may or may not have exhausted National-Standard's primary policies with Liberty. The AIG insurers contend that the Illinois action is more comprehensive because it seeks a determination of coverage for 18 sites. However, both actions place substantially the same sites at issue. Many of the same sites in the Illinois complaint are also in the New Jersey complaint, where National-Standard stated that costs incurred from those sites triggered the excess policies or were subsumed by the 2006 settlement. The two actions here arose out of the same transactions or occurrences—National-Standard's past costs for environmental cleanup that may or may not have exhausted its primary coverage, and National-Standard's recent effort to secure excess coverage for sites in New Jersey. As a result, the two actions involve the same cause under section 2-619(a)(3).

¶ 57 We also find that the two actions involve the same parties. We reiterate that the same parties requirement is met if the litigants' interests are sufficiently similar. *Kapoor*, 298 Ill. App. 3d at 788. Although differences in name and number should not be totally overlooked, "they are

not determinative of different parties." *Hapag-Lloyd (America), Inc.*, 312 Ill. App. 3d at 1092. In both actions, the parties have very similar interests. A group of excess insurers seeks in both actions to avoid coverage for environmental cleanup costs based on National-Standard's failure to exhaust its primary policies with Liberty. Meanwhile, National-Standard in both actions contends that it is entitled to coverage from the excess insurers. We acknowledge that there are differences in the parties between the two actions. For one, neither National-Standard Canada nor AIU—a plaintiff AIG insurer in the Illinois action—are named in the New Jersey action. However, National-Standard asserted in the circuit court that National-Standard Canada was its "inactive subsidiary" and the AIG insurers cited a case to assert that National-Standard Canada was a wholly-owned subsidiary of National-Standard. Given that the parties agree that National-Standard Canada is a subsidiary of National-Standard, the missing presence of National-Standard Canada from the New Jersey action does not affect the same parties analysis. See *Phillips Electronics, N.V.*, 295 Ill. App. 3d at 905 (named parties were substantially similar even though only subsidiary was named in foreign proceeding). As for AIU, the AIG insurers do not explain how AIU's interest is different from that of the other excess insurers such that the parties are not the same in both actions.

¶ 58 Although Liberty's dismissal from the New Jersey action raises questions, it does not change our conclusion. The AIG insurers initially added Liberty as a third-party defendant in the New Jersey action, but the New Jersey court dismissed the complaint against Liberty, stating that the claims against Liberty should have been raised in the previous New Jersey litigation. Still, Liberty's interests remain at issue in New Jersey. As the primary insurer, Liberty's interests are key to the exhaustion issue, which was raised as an affirmative defense in New Jersey and was asserted in the Illinois complaint. Further, the question of whether Liberty is a necessary party is

a question for the New Jersey court. See *Continental Casualty Co. v. Radio Materials Corp.*, 366 Ill. App. 3d 345, 348 (2006) (questions of whether two entities that were missing from an Indiana action but named in an Illinois action were necessary parties, as well as their legal relationship to each other, "should be brought before and addressed by the Indiana court").

¶ 59 We briefly address defendants' contention that the AIG insurers are bound by a statement they made at a New Jersey proceeding that the Illinois action involves substantially the same parties, claims, and issues as the New Jersey action. Defendants argue that this statement is a judicial admission. Although we ultimately agree with defendants that the same cause and same parties requirements are met, we disagree with this portion of defendants' argument. Judicial admissions are deliberate, clear, unequivocal statements by a party about a concrete fact within that party's knowledge. *Smith v. Pavlovich*, 394 Ill. App. 3d 458, 468 (2009). However, a party is not bound by admissions about conclusions of law because the courts determine the legal effect of facts adduced. *JP Morgan Chase Bank, N.A. v. Earth Foods, Inc.*, 238 Ill. 2d 455, 475 (2010). As our discussion above demonstrates, whether actions involve the same parties, claims, and issues is not a "concrete fact" and concerns a conclusion of law. The AIG insurers' statement was not a judicial admission and we are not persuaded by this part of defendants' argument.

¶ 60 Having found that the two actions involve the same parties and same cause, we next consider the *Kellerman* factors: (1) comity; (2) the prevention of multiplicity, vexation, and harassment; (3) the likelihood of obtaining complete relief in a foreign jurisdiction; and (4) the *res judicata* effect of a foreign judgment in the local forum. *Performance Network Solutions, Inc.*, 2012 IL App (1st) 110137, ¶ 33. At the outset, we note that *res judicata* is not a relevant consideration in the context of a dismissal, as opposed to a stay, because after a dismissal, there

is no remaining action to which *res judicata* principles can apply. *Kapoor*, 298 Ill. App. 3d at 790.

¶ 61 We agree with the circuit court's finding that considerations of comity strongly favored New Jersey. Comity refers to respecting the laws and judicial decisions of other jurisdictions out of deference. *Continental Casualty Co.*, 366 Ill. App. 3d at 347. The AIG insurers contend that Illinois has a legitimate and substantial relation to the dispute and notes several Illinois connections, including that Liberty sold its primary policies to National-Standard through Liberty's Illinois sales offices, National-Standard bought its excess coverage through a Chicago broker, and National-Standard's directors and chairman have been located in Illinois. Nonetheless, it was not an abuse of discretion for the circuit court to defer to New Jersey. The recent cleanup sites are in New Jersey, and moreover, the New Jersey court expressed a strong desire to handle the case. The New Jersey court found that the focus of the dispute was in New Jersey, "the strong public policy of New Jersey" was involved, and stated that it hoped its "colleague in Illinois" would take its comments into account. The New Jersey court also referred to *Sensient Colors Inc.*, 939 A.2d at 779, in which the New Jersey Supreme Court asserted that the state had an interest in "ensuring that the clean-up of any contaminated New Jersey site is fully funded" and that the state had a "strong public policy interest in the remediation of environmental contamination within its borders." Based on the dispute's connection to New Jersey sites, New Jersey's public policy interest in cleaning up sites within its borders, and the New Jersey court's express desire to hear the matter, it was not an abuse of discretion for the circuit court to defer to New Jersey out of considerations of comity. See *Continental Casualty Co.*, 366 Ill. App. 3d at 349 ("Simply because this cause does have some connection with Illinois

does not mean that it was an abuse of discretion for the circuit court to dismiss it in favor of the previously filed Indiana cause").

¶ 62 The other *Kellerman* factors also support the circuit court's dismissal. There is very little evidence that the New Jersey action was filed to harass or vex the AIG insurers. Although the AIG insurers filed their complaint in Illinois first, the previous litigation between the AIG insurers and National-Standard took place in New Jersey. Thus, it is not wholly surprising that National-Standard pursued a remedy there.

¶ 63 Additionally, New Jersey can provide complete relief even though Liberty is not a party there. We acknowledge that the New Jersey court dismissed the AIG insurers' complaint against Liberty for its share of costs and damages. Yet, there is no evidence that New Jersey cannot provide complete relief—rather, the New Jersey court found that the AIG insurers asserted their claim too late. Further, the New Jersey court should determine the *res judicata* effect of Liberty's dismissal in New Jersey. See *Bjorkstam v. MPC Products Corp.*, 2014 IL App (1st) 133710, ¶ 18 (stating that under the full faith and credit clause of the United States Constitution, a court must give the judgment of a sister state at least the *res judicata* effect that the sister state rendering the judgment would give). We also recognize that the AIG insurers sought reimbursement from Liberty in the Illinois action, but the type of relief available is not relevant to our analysis. See *Overnite Transportation Co.*, 332 Ill. App. 3d at 78 (party's inability to secure monetary compensation in the other forum "is irrelevant for purposes of a section 2-619(a)(3) dismissal"); *Katherine M. v. Ryder*, 254 Ill. App. 3d 479, 487 (1993) (fact that plaintiffs were unable to assert state-law claims after dismissal was "irrelevant to the determination of a section 2-619(a)(3) motion"). The AIG insurers' dispute with Liberty is intertwined with their dispute with National-Standard. Whether the Liberty policy was exhausted is a central question in determining whether

the AIG insurers must provide coverage to National-Standard. Under these circumstances, it would not make sense to keep this dispute in Illinois while the action is pending in New Jersey. Overall, the *Kellerman* factors, and especially considerations of comity, point to New Jersey as the proper forum for this dispute.

¶ 64 Finally, the AIG insurers assert that the circuit court improperly denied their alternative motion for leave to file an amended complaint as to the causes of action against Liberty. The decision to grant or deny a motion for leave to amend is within the trial court's discretion and we will not reverse that decision absent an abuse of that discretion. *Selcke v. Bove*, 258 Ill. App. 3d 932, 937 (1994). Further, we may affirm a correct decision for any reason appearing in the record. *AIDA v. Time Warner Entertainment Co.*, 332 Ill. App. 3d 154, 158 (2002). We find that it was not an abuse of discretion to deny the AIG insurers' alternative motion for leave to file an amended complaint. The purpose of section 2-619(a)(3) is to avoid duplicative litigation (*Combined Insurance Co. of America v. Certain Underwriters at Lloyd's London*, 356 Ill. App. 3d 749, 754 (2005)), and our analysis is guided by common sense (*Kapoor*, 298 Ill. App. 3d at 786). The AIG insurers' claims against Liberty are intertwined with the larger dispute over whether the AIG insurers must provide coverage to National-Standard. Having affirmed the circuit court's decision that New Jersey is the proper forum for this dispute, to permit claims against Liberty to proceed in Illinois while the rest of the matter proceeds in New Jersey would undermine the purpose of section 2-619(a)(3). The circuit court properly denied the AIG insurers' alternative motion for leave to file an amended complaint.

¶ 65 III. CONCLUSION

¶ 66 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 67 Affirmed.