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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

NATIONAL SURETY CORPORATION,)
Plaintiff,)
vs.)
DUSTEX CORPORATION, MIRON)
CONSTRUCTION CO., INC., and)
BOARD OF TRUSTEES OF)
MUNICIPAL ELECTRIC UTILITY OF)
THE CITY OF CEDAR FALLS, IOWA,)
Defendants.)

No. 13 cv 2004 EJM

ORDER

This matter is before the court on plaintiff’s resisted motion filed May 20, 2014, to set aside or reconsider the court’s Order¹ filed May 9, 2014 (Order).
Denied.

NSC brought this suit seeking a declaratory judgment that certain Commercial General Liability (CGL) insurance policies did not cover Dustex or Miron in an arbitration brought against them by the Utility.

The Order granted plaintiff partial summary judgment that the CGL policies did not cover or require defense or indemnity regarding the Arbitration Award. After review of the arguments, nothing new or persuasive has been offered to change the previous holding.

NSC now, in its motion for reconsideration, seeks summary judgment on the question of estoppel. Iowa law provides that “the doctrine of estoppel

¹ Abbreviations from the May 9, 2014 Order shall be adopted here.

may not be used to bring within the coverage of policy risks not covered by its terms, or risks expressly excluded therefrom," City of Carter Lake v. Aetna Cas. & Surety Co., 604 F.2d 1052 (8th Cir. 1979). However, if the insurance company has already started providing a defense to the insured, and the insured relied to its detriment upon a false representation in that regard, then the doctrine of estoppel may be used. Westfield Ins. Co. v. Economy Fire & Cas. Co., 623 N.W.2d 871, 879 (Iowa 2001). In this case, NSC did start providing a defense to Dustex. Although NSC did provide a reservation of rights letter to Dustex, Dustex alleges that there were misstatements in those letters and elsewhere upon which it relied to its detriment. This presents a disputed question of material fact which cannot be resolved on summary judgment.

It is therefore

ORDERED

Denied.

June 27, 2014



Edward J. McManus, Judge
UNITED STATES DISTRICT COURT