

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

PEKIN INSURANCE COMPANY,

ORDER

Plaintiff,

00-C-124-C

v.

MINNESOTA MINING and MANUFACTURING
COMPANY, a corporation,

Defendant, and

PRAIRIE INDUSTRIES, INC., a
corporation,

Defendant and
Third-Party Plaintiff

v.

SUTTON INSURANCE, INC., a
corporation,

Third-Party Defendant.

On October 6, 2000, third-party defendant Sutton Insurance, Inc., filed a motion for summary judgment on three grounds:

1. The allegations of the *Kirschbaum* Complaint fail to trigger the indemnification provisions of the Master Agreement between 3M and Prairie as to the conduct

of 3M. 3M is not entitled to indemnification from Prairie for the conduct of 3M.

2. In the alternative, the Master Agreement is an “insured contract” under the relevant Pekin insurance policy and, therefore, there is insurance coverage for the Master Agreement.

3. In the alternative, if the Pekin insurance policy, as written, does not provide coverage for the Master Agreement, then said Pekin policy should be reformed so that insurance coverage is provided for the Master Agreement.

Mot. for Summ. J. on behalf of Sutton Insurance, Inc., dkt. # 52, at 2. In an order entered October 4, 2000, but not received by Sutton until October 9, 2000, I denied Sutton’s motion to dismiss the third-party complaint on the first ground for which Sutton has asked for summary judgment. See Opinion and Order, dkt. # 45 at 17-18 (concluding “that defendant Prairie is required to indemnify defendant 3M for any damages 3M may incur as a result of the Kirschbaum action.”). Third-party defendant Sutton has filed a letter with the court recognizing that its first ground for summary judgment was resolved in the October 4 order and suggesting that the court issue a denial of the indemnification issue raised in its summary judgment motion in order to spare the court and the parties relitigation of an issue that has already been decided. I will adopt the suggestion.

IT IS ORDERED that the motion of third-party defendant Sutton Insurance, Inc. for summary judgment is DENIED IN PART. The motion for summary judgment on the ground that the Master Agreement does not require defendant Prairie to indemnify defendant 3M for

3M's own conduct is DENIED. The parties may continue to brief the issues raised alternatively as grounds (2) and (3).

Entered this 13th day of October, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge