

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

DUKE UNIVERSITY AND DUKE)
UNIVERSITY HEALTH SYSTEM, INC.)

Plaintiff,)

v.)

NATIONAL UNION FIRE INSURANCE)
COMPANY OF PITTSBURGH, PA,)

Case Number: 1:08-CV-0854

Defendant and Third-Party Plaintiff,)

v.)

UNITED EDUCATORS INSURANCE,)
A RECIPROCAL RISK RETENTION GROUP,)

Third-Party Defendant.)

**THIRD-PARTY DEFENDANT UNITED EDUCATORS' MOTION
TO DISMISS OR STAY NATIONAL UNION'S THIRD-PARTY COMPLAINT**

Pursuant to Fed. R. Civ. P. 12(b)(1) and (b)(6), Third-Party Defendant United Educators Insurance, A Reciprocal Risk Retention Group (“United Educators”), in lieu of filing an Answer to the Third-Party Complaint filed by Defendant and Third-Party Plaintiff National Union Fire Insurance Company of Pittsburgh, PA (“National Union”), moves to dismiss or stay the claims asserted against it in the above-captioned action for the following reasons: (1) the United Educators policy at issue in the Third-Party Complaint requires that any disputed coverage issues be resolved in arbitration, and thus Section 3 of the Federal Arbitration Act mandates dismissal or

stay of the Third-Party Complaint; (2) this Court should exercise its discretion under Fed. R. Civ. P. 14 to dismiss the Third-Party Complaint because proceeding with it in this forum or at this time would prejudice both United Educators and the original plaintiffs, Duke University and Duke University Health System, Inc.; (3) National Union's claims for equitable contribution and equitable subrogation are premature by their own terms; and (4) National Union has failed to state a claim upon which relief can be granted because its claims are inconsistent with the controlling provisions of the National Union and United Educators insurance policies at issue. In further support of this motion, United Educators relies on the accompanying Memorandum in Support.

For the foregoing reasons, as more fully set forth in the accompanying Memorandum in Support, United Educators respectfully requests that this Court enter an Order dismissing National Union's claims and awarding United Educators such other relief as may be appropriate.

Respectfully submitted this the 3rd day of March, 2009.

SMITH, ANDERSON, BLOUNT, DORSETT,
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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the foregoing document was served on the following parties to this action by electronic filing and/or by depositing a copy of the same in the United States Mail postage prepaid and addressed to:

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This the 3rd day of March, 2009.

/s/ K. Alan Parry