

Magistrate Enforces Arbitration Clause in Inter-Insurer Dispute

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U.S. Magistrate Judge P. Trevor Sharp of the Middle District of North Carolina, applying federal law of arbitration to a motion to stay, has issued a recommendation that the district court stay an insurer's third-party claim against another insurer based on the arbitration clause in the defendant-insurer's policy. *Duke Univ. v. Nat'l Union Fire Ins. Co.*, 2010 WL 456940 (M.D.N.C. Feb. 4, 2010).

Duke University filed coverage litigation against one of its insurers, demanding defense costs in connection with claims by the 2005-2006 Men's Lacrosse Team. That insurer filed a third-party claim for contribution against another insurer. The latter insurer's policy contained a clause requiring arbitration of "[a]ll disputes that may arise between the Insureds and us in relation to this Policy, or for its breach." Based on this clause, the third-party-defendant insurer moved to dismiss or stay the third-party complaint. The magistrate judge agreed.

The magistrate held that the Federal Arbitration Act applied to the dispute and rejected the third-party-plaintiff insurer's argument that state law should apply. The third-party-plaintiff insurer unsuccessfully argued that insurance is not "commerce" under the Federal Arbitration Act.

The magistrate judge further held that the third-party plaintiff insurer was seeking a direct benefit under the policy issued by the third-party-defendant insurer. "[E]ach claim in the third-party Complaint is based on the Duke-[insurer] insurance policy which contains the arbitration clause." The court, quoting *International Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 418 (4th Cir. 2000) (further quotation omitted), further reasoned that the suing insurer may not "claim the benefit of the contract and simultaneously avoid its burdens."

Finally, the court rejected as incompatible with equitable estoppel the third-party-plaintiff insurer's argument that the arbitration clause literally only applied to disputes between the third-party-defendant insurer and the insureds. Because the suing insurer was seeking to enforce the agreement, the court reasoned, it was equitable to hold the suing insurer to the arbitration clause.