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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

PNEUTRONICS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. 3:91CV00253
	)	
LOCAL UNION NO. 10, UNITED ASSOCIATION	)	
OF JOURNEYMEN AND APPRENTICES OF THE	)	
PLUMBING AND PIPE FITTING INDUSTRY OF	)	
UNITED STATES AND CANADA, AFL-CIO, ET.	)	
AL.,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

This matter is before the Court on Defendant Trustees of the Plumbers & Pipefitters National Pension Fund and Trustees of the Plumbers and Steamfitters Local No. 10 Welfare, Apprentice and Vacation Funds' ("Trustees") motion to dismiss.

BACKGROUND

On December 28, 1990, the Trustees filed suit against Pneutronics, Inc. in the United States District Court for the District of Maryland ("the Maryland action"). The complaint alleges that Pneutronics, Inc. has failed to make contributions and reports to the Trustees, and seeks damages and injunctive relief. On March 5, 1991, Pneutronics answered the complaint and filed a counterclaim. The counterclaim states that Pneutronics does not employ plumber and pipefitters, and therefore owes no contribution

to the Trustees. Pneutronics also claims that it had no obligation to make contributions because the Plumbers and Steamfitters Local No. 10 ("the Union") failed to adequately train HVAC apprentices and otherwise failed to comply with the collective bargaining agreement ("the Agreement"). Pneutronics seeks reimbursement for fees already paid to the Trustees.

On May 9, 1991, Pneutronics filed this action against the Trustees, the Union, and the Mechanical Contractors Association of Virginia ("MCA"). As it did in the Maryland counterclaim, Pneutronics claims it has no obligation to make contributions, and that the Agreement has been breached. Pneutronics seeks declaratory relief and a refund.

The Trustees now move to dismiss this action insofar as it essentially duplicates the Maryland action. For the reasons stated below, the Court agrees.

#### DISCUSSION

Rule 13(a) of the Rules of Civil Procedure requires a defendant to state as a counterclaim any claim against the plaintiff which "arises out of the same transaction or occurrence" that is the subject matter of the complaint. This rule is designed to insure that "all disputes arising out of common matters" are resolved in a single lawsuit. Southern Constr. Co., Inc. v. United States, 371 U.S. 57, 60 (1962).

Applying the "transaction or occurrence" test, the Court FINDS that Pneutronics' Maryland counterclaim was compulsory. As the

background discussion illustrates, the Agreement and Pneutronics' obligations arising from it are the central points of contention. The witnesses and evidence which supports the Maryland counterclaim are the same that support Pneutronics' complaint before this Court.<sup>1</sup>

Pneutronics argues that the counterclaim was not compulsory because it requires the presence of third parties, the union and MCA, of whom the court cannot acquire jurisdiction. This argument is flawed. As an initial matter, Pneutronics has not proven that the Maryland court cannot obtain jurisdiction over these parties. Indeed, the language of 29 U.S.C. § 185(c), coupled with the allegations of Pneutronics' complaint, suggests that the Maryland court has jurisdiction over both parties.

In any event, however, the Court FINDS that neither the union nor MCA is essential to the dispute between Pneutronics and the Trustees. This dispute concerns the Agreement and the conduct of Pneutronics. Pneutronics concedes that the Agreement itself is the best evidence of its contents. Answer in Maryland action, paragraph 19. To the extent that Pneutronics can allege a breach of the agreement as a defense,<sup>2</sup> Pneutronics admits that this claim can be pursued without joining MCA and the union as parties.

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<sup>1</sup> Indeed, this fact appears to be the basis of Pneutronics' motion to transfer the Maryland action to this Court. Pneutronics' motion leads the Court to wonder whether the action in this Court was commenced simply to facilitate the change of venue motion in the Maryland action.

<sup>2</sup> Although the Trustees have briefed this issue, the Court need not consider the merits of this issue.

Answer in Maryland action, Affirmative Defenses, paragraph 3. Since Pneutronics can obtain full relief against the Trustees in the Maryland forum, the counterclaim was compulsory under Rule 13(a).

Once a party brings a compulsory counterclaim in the original forum, he may not pursue that claim elsewhere. To enforce this rule event, courts have adopted a "first-to-file" rule which provides that a court presented with the identical claims should defer to the court where the claim was first presented. See generally Annotation, Effect of Filing as Separate Federal Action Claim that would be Compulsory Counterclaim in Pending Federal Action, 81 A.L.R.Fed. 240, 257-61 (1987). The principles of comity and judicial efficiency require the Court to abstain from considering Pneutronics' claim. Simultaneous consideration of the same "transaction or occurrence" would defeat the intention of Rule 13(a), and raise the specter of conflicting judicial opinions.

Therefore, this action will be DISMISSED WITHOUT PREJUDICE as to Defendant Trustees.

Furthermore, the Court FINDS that consideration of the Pneutronics' claims against the union and MCA would be premature. Since Pneutronics will only have a claim against MCA or the union if it is found liable to the Trustees, these issues will not be ripe until the Maryland action is concluded. The absence of ripeness deprives the Court of a viable case or controversy, and makes dismissal the appropriate course. See, e.g., Office of Communication of United Church of Christ v. F.C.C., 826 F.2d 101

(D.C. Cir. 1987). Therefore this action against the union and MCA will be DISMISSED WITHOUT PREJUDICE.

Let the Clerk send a copy of this Memorandum Opinion and the accompanying Order to all counsel of record.

\_\_\_\_\_  
DATE

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UNITED STATES DISTRICT JUDGE

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Richmond Division

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LOCAL UNION NO. 10, UNITED ASSOCIATION  
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ORDER

This matter is before the Court on Defendant Trustees of the Plumbers & Pipefitters National Pension Fund and Trustees of the Plumbers and Steamfitters Local No. 10 Welfare, Apprentice and Vacation Funds' ("Trustees") motion to dismiss.

For the reasons stated in the accompanying Memorandum Opinion, this case is DISMISSED WITHOUT PREJUDICE.

Let the Clerk send a copy of this Memorandum Opinion and the accompanying Order to all counsel of record.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE