

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: Hon. Sherry Klein Heitler
Administrative Order

GRANITE STATE INSURANCE COMPANY,
AMERICAN HOME ASSURANCE COMPANY,
AND NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA,

Plaintiffs,

- v -

INDEX NO. 652506/12

TRANSATLANTIC REINSURANCE COMPANY,

Defendant.

Administrative Order:

By letters dated October 10 and 15, 2012, counsel for the plaintiff insurers (collectively, the AIG Insurers) requests a transfer of this action from I.A.S. Part 7 (Wooten, J.) to the Commercial Division. Defendant Transatlantic Reinsurance Company (TRC) opposes by their counsel's letter dated October 11, 2012.

This is an action for breach of multiple facultative reinsurance contracts entered into between TRC, as reinsurer, and the AIG Insurers, as cedants. The AIG Insurers allege that TRC has failed to reimburse them the agreed-upon portion of insurance claim payments each cedant made under excess liability policies sold to six corporate insureds, and that TRC owes the AIG Insurers approximately \$2,952,000. Citing Uniform Rule 202.70 (b) (1) and (6), the AIG Insurers argue that the case falls within the Guidelines for assignment to the Commercial Division. TRC opposes transfer of this case to the Commercial Division on the ground that the action concerns reinsurance coverage for asbestos-related personal injury and/or property damage liabilities. TRC contends that the action was properly placed in a non-commercial part, because it falls with Uniform Rule 202.70 (c), defining a non-commercial case as including "[c]ases seeking a declaratory judgment as to insurance coverage for personal injury or property damage."

There is no doubt that there have been inconsistent rulings from this court about whether these types of reinsurance disputes fall within the guidelines for assignment to the Commercial Division. Compare Ace Fire Underwriters Ins. Co. v ITT Industries, Inc., Index No. 600133/06, Mar. 23, 2006 Admin. Order (declaratory judgment action against 37 insurance and reinsurance companies

seeking coverage in the tens of millions of dollars in connection with over 25,000 underlying lawsuits transferred to the Commercial Division), with Chartis Prop. Cas. Co. v Transatlantic Reinsurance Co., Index No. 652337/11, Oct. 3, 2011 Admin. Order (upholding the transfer to a non-commercial part of an action seeking to recovery millions of dollars for the alleged breach of reinsurance agreements and/or a declaratory judgment that coverage applies to a settlement of various insurers' obligations to Union Carbide Corp. in connection with asbestos personal injury claims). Many of the justices of the Commercial Division have not "bounced" these types of cases. See, e.g., Excess Ins. Co. Ltd. v Factory Mut. Ins. Co., Index No. 605759/99, Moskowitz, J. (declaratory judgment action to determine rights under reinsurance contract with respect to a property damage claim); U.S. Fid. & Guar. Co. v American Re-Insurance Co., Index No. 604517/02, Lowe, J. (action by casualty insurer against reinsurers over reinsurance coverage for asbestos claims against insured manufacturer); American Home Assur. Co. v American Reinsurance Co., Index No. 602485/06, Ramos, J. (insurer sued reinsurer to recover amounts paid to settle personal injury and property damage claims against insured arising out of PCB contamination).

Just as the judges of this court have differed in their interpretation of the Uniform Rules on this issue, so too have counsel for the litigants. Indeed, the party opposing assignment of this action to the Commercial Division, defendant TRC, recently requested Commercial Division assignment in a very similar reinsurance contract action filed by a different group of cedants (see The Continental Insurance Co., et al. v Transatlantic Reinsurance Co., Index No. 652760/12, Sherwood, J.), and had opposed the bounce of the Chartis Property action.

After a thorough reconsideration of the issue, I am of the opinion that this action, which is for breach of reinsurance contracts and seeks declaratory relief relating to the parties' rights under those agreements, falls within the guidelines for assignment to the Commercial Division under Uniform Rule 202.70 (b) (1), i.e., breach of contract arising out of business dealings. As Justice Silbermann aptly stated in the Ace Fire Underwriters action, Uniform Rule 202.70 (c) "was intended to exclude from the Commercial Division the routine declaratory judgment action regarding insurance coverage concerning an action arising out of an auto accident, an accident at a construction site, property damage to a home, or the like." It was not intended, in my view, to exclude disputes over reinsurance coverage of commercial insurance policies of the type involved in this action.

Accordingly, the AIG Insurers' request to transfer this action into the Commercial Division is granted. The Motion Support Office is directed to randomly reassign this case to the Commercial Division. (Motion seq. 001 and 002 are currently returnable on October 25, 2012 in the E-Filed Submissions Part.)

Dated: October 24, 2010

ENTER: Amy Klein Heller, A.J.

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