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SHERRY KLEIN HEITLER
Administrative Judge for Civil Matters
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ADMINISTRATIVE ORDER

By the authority vested in me as Administrative Judge, I hereby issue this Administrative Order in regard to *Stonington Insurance Co. v. Kougemitros*, Index No. 158096/2012 and a group of related cases, which are listed on the Appendix to this Order and are hereinafter sometimes referred to as the “Frontier Fire cases.” The fact that these cases are, with one exception, pending before multiple Justices of this court has been brought to my attention by the Clerk.

These cases clearly are related. All of the cases pending in this court and listed on the Appendix arise out of a single incident, a fire at the Frontier Restaurant in Manhattan on September 10, 2010. In these actions, parties that suffered damages as a result of the fire or their subrogees sue various persons and entities alleging responsibility on the basis of negligence and other theories. Various claims are made with regard to a failure of fire prevention or suppression services, improper cleaning and maintenance of ducts, and the like. Parties connected with the Frontier Restaurant assert claims against an insurance broker for failing to procure adequate coverage. A case is also pending in the Queens County Civil Court that Justice Paul Wooten of this court has determined to be related to the *Stonington* case.

In one of the six actions pending in this court, *Sentinel*, the filer of the Request for Judicial Intervention designated the *Stonington* case as a matter related thereto. The former was accordingly assigned by the Clerk’s Office to the Justice to whom the latter had already been assigned, Justice Wooten. In the other four actions in this court, no “related case” notation was made on the RJI and the Clerk accordingly assigned the cases at random. As a result, we have a situation in which six related cases in this court are pending before five different Justices. As a general rule, it is not in the interests of the parties or the court nor does it promote efficiency and the avoidance of inconsistent rulings for multiple related cases to be pending before different Justices.

Some steps have been taken in an effort to bring order and efficiency to the processing of the Frontier Fire cases. In *Stonington*, Justice Wooten issued an order, dated October 7, 2013, that directed that the *State Farm* case from Queens County Civil Court be consolidated with *Stonington* for purposes of joint discovery and joint trial. It appears that the order was not served upon the Queens Clerk or that, if it was served, there was some misadventure. That case remains in Queens County Civil Court.

By order of Feb. 4, 2014, Justice Cynthia S. Kern granted a motion seeking to join *Penn-Star* for discovery and trial with *Stonington*. The order also directed that the case be transferred to Justice Wooten, but that has not happened.

Next, counsel for all parties in all actions entered into a stipulation in which all counsel agreed that the seven actions, including the Civil Court case, should be consolidated for purposes of joint discovery and joint trial before Justice Wooten. The stipulation contained a purported amended, consolidated caption for the consolidated actions, which consisted of a seriatim replication of the captions in the individual actions, including the Queens caption and its Queens number. Justice Wooten so ordered the stipulation and it was filed with the County Clerk of New York County on April 28, 2014.

Notwithstanding this stipulation and order, Justice Wooten is listed in the Civil Case Information System, the court's case history computer, and in the *Supreme Court Records On Line Library* (which is accessible on the website of this court at www.nycourts.gov/supctmanh) as the assigned Justice in two of the cases and four remain with the four Justices to whom the cases were originally assigned, as shown on the Appendix.

The nature of the consolidation agreed upon and directed in the stipulation and order is partial only. That is, Justice Wooten is to preside over discovery in a joint and coordinated manner in all cases and there is to be a joint trial. The stipulation and order does not, however, state what is to be done in regard to any other proceedings in the cases. It is only with respect to the Queens case and *Penn-Star* that there has been an order that would also reassign those cases to Justice Wooten. Since there has been no order directing consolidation for all purposes, I think that, as things stand right now, if a party were to make a motion not involving discovery, say, one to amend a pleading or for summary judgment, in any one of the five cases that have not been assigned to Justice Wooten, the motion would technically have to be decided by the assigned Justice, who is a Justice other than Justice Wooten, except that, as to the Civil Court case, no motion could be entertained at all because the case is not yet here.

Moreover, the proposed "amended caption for the consolidated actions" does not resolve this situation. Because there has been no complete consolidation, each case keeps its own identity; the pleadings stand as they are and the captions of the individual cases must stand; and there must be, though a joint trial, separate verdicts and a separate judgment and bill of costs in each case. David D. Siegel, *New York Practice* 227 (5th ed. 2011). There is no way to modify CCIS or the County Clerk's records to accommodate the amended caption that has been agreed upon since CCIS and the County Clerk's records must continue to reflect the original captions in the absence of an order of full consolidation. In any event, I believe, CCIS and the County Clerk's records cannot accommodate a multi-case caption in the form used in the stipulation and order.

These technical difficulties can be resolved if two steps are taken. First, the four Supreme Court cases that remain assigned to Justices other than Justice Wooten must be transferred to him for all purposes, which was the intention of Justice Kern in regard to *Penn-Star* and probably the intention underlying the stipulation and order. The cases will remain distinct matters since they have

not been consolidated for all purposes, but an assignment of all of them to Justice Wooten will allow him to supervise coordinated discovery, handle all motions and any other proceedings that arise in any of these cases, and arrange for and conduct a joint trial. Therefore, I hereby direct the Clerk of the General Clerk's Office to reassign to Justice Wooten in Part 7 all of the cases now pending in this court that are listed on the Appendix and that are not already assigned to him. I will forward a copy of this Order to the Clerk of the General Clerk's Office, but in addition counsel for plaintiffs are directed promptly to file a copy with that office to ensure that the reassignment takes place.

Second, the Queens County Civil Court case must be brought to this court, as previously ordered by Justice Wooten. The Clerk of this court has been in communication with the Clerk of the Queens County Civil Court and has been advised that the file has been collected and will be sent to this court, although it is not clear precisely when the file will arrive. Counsel for plaintiffs is hereby directed forthwith to serve a copy with notice of entry of Justice Wooten's order in *Stonington* of Oct. 7, 2013 on the County Clerk of New York County, who shall assign a New York County index number to the Queens County case. An RJI shall be filed therein and, upon the filing of the RJI, the Clerk of the General Clerk's Office shall assign the new New York County case (the former Queens case) to Justice Wooten in Part 7. Since the Queens file is not yet here, counsel for plaintiffs must follow up with the County Clerk of this county and the Clerk of the General Clerk's Office to see to it that these steps take place in a timely manner. If counsel have any questions, they are advised to consult the staff of the County Clerk and, with respect to the assignment, the Clerk of the General Clerk's Office.

If an RJI is filed hereafter in any Frontier Fire case commenced in this court that is not listed on the Appendix (that is, an action for damages alleged to have been caused by or to have arisen out of the fire at the Frontier Restaurant on September 10, 2010), the filer shall designate that action on the RJI as a case related to the Frontier Fire cases assigned to Justice Wooten and the Clerk is directed to assign that action to Justice Wooten as a related matter. The filer shall annex to the RJI a copy of this Administrative Order.

In case the information may be of assistance to counsel in these matters, they should be aware that case management orders in various groups of related actions are posted on the website of this court at the address listed earlier (under "Court Resources - - Mass Tort Orders"). Some of these orders may provide for a master case file (using a formulation such as "In re [Case Type] Litigation," with its own index number separate from those in the individual cases) in which documents having to do with common proceedings in the cases are filed. See, e.g., Order No. 1, dated April 5, 2010, in the Crane Collapse Cases (East 91st Street); Order No. 1, dated April 15, 2011, in the Chantix Litigation.

Dated: June 12, 2014

New York, New York


Hon. Sherry Klein Heitler

APPENDIX

FRONTIER FIRE CASES - - NY COUNTY SUPREME COURT

Stonington Insurance Co. v. Kougemitros, Index No. 158096/2012 (Wooten, J.)

Sentinel Insurance Co. v. Kougemitros, Index No. 153315/2013 (Wooten, J.)

Penn-Star Insurance Co. v. Frontier Restaurant Inc., Index No. 157697/2012 (Kern, J.)

Byblos Restaurant, Inc. v. Frontier Restaurant Inc., Index No. 157219/2013 (Hagler, J.)

Public Service Mutual Insurance Co. v. Kidde-Fenwal, Inc., Index No. 151504/2013 (James, J.)

593 Rest. Corp. v. Kidde-Fenwal, Inc., Index No. 653122/2013 (Singh, J.)

FRONTIER FIRE CASE - - QUEENS COUNTY CIVIL COURT

State Farm & Casualty Insurance Co. v. Kaugiemitos, Queens No. 92425/2011