

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

PRESENT: Hon. George J. Silver, Acting Administrative Judge
Administrative Order

FIRST SPECIALTY INSURANCE CORPORATION,

Plaintiff,

- v -

INDEX NO. 650242/2017

AL COPELAND INVESTMENTS, L.L.C. and
DIVERSIFIED FOODS & SEASONINGS, L.L.C.,

Defendants.

Administrative Order:

By letters dated September 25 and October 4, 2017, counsel for plaintiff First Specialty Insurance Company (First Specialty) requests assignment of this action to the Commercial Division pursuant to Commercial Division Rule 202.70 (e). No opposition to the request has been received.

Actions in which the principal claims are for breach of contract, where the breach is alleged to arise out of business dealings, may be heard in the Commercial Division, provided the \$500,000 monetary threshold for New York County is met or equitable or declaratory relief is sought (Commercial Division Rule 202.70 [a], [b] [1]). In addition, disputes regarding “commercial insurance coverage (e.g. directors and officers, errors and omissions, and business interruption coverage)” qualify for assignment to the Commercial Division (Rule 202.70 [b] [10]). Excluded, however, are “cases seeking a declaratory judgment as to insurance coverage for . . . property damage” (Rule 202.70 [c] [2]).

This dispute concerns an all-risk commercial property insurance policy by which First Specialty insured a food manufacturing plant located in Madisonville, Louisiana (the Property). The policy insured the Property “against direct physical loss or damage” (Cmplt., ¶ 9). After two ammonia leaks occurred at the Property involving refrigeration piping and equipment, defendants advised First Specialty that they were submitting a claim for unreimbursed property damage. First Specialty commenced this action seeking a declaratory judgment that the defendants’ alleged failure to provide prompt notice of the leaks prejudiced the insurer and is a complete bar to recovery under the policy. Defendants have filed a counterclaim seeking damages for First Specialty’s failure to honor their claim for the property damage.

The request is denied. This dispute over insurance coverage for property damage falls squarely within the exclusion found in Commercial Division Rule 202.70 (c) (2).

Dated: October 16, 2017

ENTER: George J. Silver, A.J.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

GEORGE J. SILVER