

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

PRESENT: Hon. Sherry Klein Heitler
Administrative Order

SENECA INSURANCE COMPANY, INC.,

Plaintiff,

- v -

INDEX NO. 652090/2014

NEW YORK BUS SERVICE ADVERTISING, LLC,

Defendant.

Administrative Order:

By letter dated February 3, 2015, counsel for plaintiff Seneca Insurance Company (Seneca) seeks review of the order of the Hon. Eileen Bransten transferring this action to a non-commercial part. By virtue of that order, the case is now assigned to the Hon. Cynthia S. Kern (Part 55). The court has not received any response to this letter.

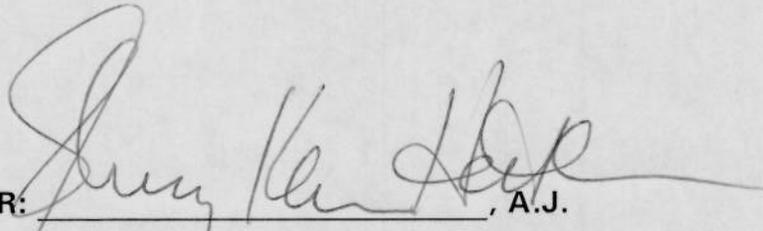
In this action, Seneca seeks a declaratory judgment that its commercial general liability policy of insurance issued to defendant for the period August 1, 2012 to August 1, 2013, covering premises located at 2301 Tillotson Avenue in the Bronx, is void due to the defendant's material misrepresentation that the property was a vacant lot and that no structural alterations or demolition was contemplated (see Complaint, ¶¶ 4-8). Seneca further seeks a declaration that it has no duty to defend and indemnify the defendant for any claims or lawsuits made against it, specifically a personal injury lawsuit by a construction worker allegedly hurt at the premises entitled Ray Hines v New York Bus Service Advertising, LLC, et al., Index No.24290/2013E (Sup Ct, Bronx County).

On January 5, 2015, Justice Bransten ordered the case be transferred to a non-commercial part on the ground that the Rules of the Commercial Division exclude matters "seeking a declaratory judgment as to insurance coverage for personal injury or property damage," quoting Uniform Rule 202.70 (c) (2). I concur with Justice Bransten that this action does not meet the standards for assignment to the Commercial Division. There is nothing in the Rules of the Commercial Division that supports counsel's argument that this section is only applicable to insurance policies issued to individuals, i.e., personal lines, and this court has not

interpreted the rule as such (see, e.g., Century Indemnity Co. v Liberty Mutual Insurance Co., Index No, 105491/10 [Administrative Order dated January 6, 2011]).

Accordingly, plaintiff's request that this action be reinstated to the Commercial Division is denied.

Dated: February 18, 2015

ENTER:  A.J.

HON. SHERRY KLEIN HEITLER

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION