

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

PRESENT: HON. DEBORAH A. KAPLAN

Administrative Judge

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CONSOLIDATED EDISON COMPANY OF NEW YORK,
INC.,

INDEX NO. 652092/2019

Plaintiff,

- v -

THE CONTINENTAL INSURANCE COMPANY, AMERICAN
HOME ASSURANCE COMPANY, INC.

Defendant.
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**ADMINISTRATIVE
ORDER**

By letter dated June 10, 2019, Eileen T. McCabe, Esq., Jaimie H. Ginzberg, Esq., and Eileen K. Ornousky, Esq., counsel for defendants Continental Insurance Company and American Home Assurance Company, request that this action be assigned to the Commercial Division pursuant to Uniform Rule 202.70.

Defendants previously filed an RJL listing a case pending before the Honorable Manuel J. Mendez as a related action (*Mauro v Atlas Turner, Inc.*, Index 190382/2017). The General Clerk of the court therefore assigned this case to Judge Mendez.

The Mauro Action, pending before Judge Mendez, is an asbestos personal injury action in which Consolidated Edison is named as a defendant. In this action, Consolidated Edison seeks a declaratory judgment and related relief from its insurers regarding defendants' obligation to defend and indemnify it in the Mauro Action.

Counsel now represent that the listing of the Mauro action as a related action on the RJL was in error. Counsel claim that this action is not actually related to the Mauro action and therefore should be assigned to a different judge. Counsel further request that the action be reassigned to a Commercial Division judge.

By letter, also dated June 10, 2019, Alexander D. Hardiman, Esq., counsel for plaintiff Consolidated Edison Company of New York, Inc., agrees that the action should be assigned to another judge and further agrees that it should be assigned to a Commercial Division part.


The court accepts the parties' request to remove the "related case" listing on the RJL and to assign it to another judge.

However, Uniform Rule 202.70 (c) (2) specifically excludes "[c]ases seeking a declaratory judgment as to insurance coverage for personal injury or property damage" from the Commercial Division. Contrary to the parties' positions, a declaratory judgment action, such as this, concerning coverage and indemnification and related relief with respect to a case involving asbestos bodily injury, falls squarely within the scope of this exclusion. Therefore, the case does not qualify for assignment to the Commercial Division.

The application is granted to the extent that the General Clerk's office is directed to transfer (randomly assign) to a judge in a General Part.

DATE:

July 24, 2019


Hon. Deborah A. Kaplan
Administrative Judge
Supreme Court, New York County
Civil Branch