

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

PRESENT: HON. DEBORAH A. KAPLAN

Administrative Judge

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NYU LANGONE HOSPITALS,

INDEX NO. 652691/2019

Plaintiff,

- v -

KAREN CHANG, MLMIC INSURANCE COMPANY,
COMPUTERSHARE TRUST COMPANY, N.A.

Defendant.

(And 20 other related actions.)

**ADMINISTRATIVE
ORDER**

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By letter dated May 14, 2019, Mitchell Berns, Esq., counsel for NYU Winthrop Hospitals, in 21 recently commenced related actions, requests that this action (and each of the related actions) be assigned to one Justice of the Commercial Division pursuant to Uniform Rule 202.70.

Each of the related actions was commenced in May 2019. The RJL in this case (and all of the related 21 cases) was filed on May 9, 2019. A Commercial Division addendum was filed with this case, but since the \$500,000 monetary threshold was not reached, the case was assigned to a general part (Hon. D. James, Part 59). Since the above-captioned action was filed first, all of the related actions were likewise assigned to Judge James.

In his letter, Mr. Berns writes:

We request that these actions ("Actions") be assigned to the Commercial Division. The Actions all involve a common issue - whether the proceeds of the recent demutualization of MLMIC, a malpractice insurer, belong to the insured physicians or to the Hospitals who selected and paid for their employed physicians' coverage. . . .

The Actions qualify for the Commercial Division because they are commercial cases seeking declaratory and equitable relief. Section 202.70(b) of the Rules of the Commercial Division provides that commercial actions will be heard in the Commercial Division where

equitable or declaratory relief is sought, irrespective of whether the monetary threshold is met. Here, the Actions are commercial, as described in the rule, because their principal claims are for breach of contract and breach of fiduciary duty arising out of a business transaction involving a financial institution - the demutualization of a mutual insurer, MLMIC. Moreover, the Hospitals seek declaratory and equitable relief. They seek a declaration that they are entitled to the MLMIC demutualization proceeds, primarily on equitable grounds of unjust enrichment. They also seek the imposition of a constructive trust, an equitable remedy. Assignment of the Actions to the Commercial Division is appropriate. . . The Actions seek about \$4.5 million in total and the two largest claims are for \$933,002 (Wirchansky) and \$540,164 (White). The Actions have been filed as related, and the Hospitals are prepared to coordinate their handling in a manner that will promote an efficient use of judicial resources.

Upon review, the court is satisfied that these actions fall within the standards for assignment of cases to the Commercial Division (see, Uniform Rule 202.70[a]). While some do not individually meet the \$500,000 monetary threshold, and others do, the legal and factual issues are similar in each case. Moreover, cumulatively, the claims here are in the millions of dollars.

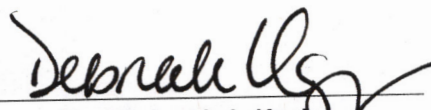
Accordingly, the request for assignment to the Commercial Division is granted. The General Clerk's office is directed to transfer (randomly assign) these related actions from Judge James (part 59) to one Justice of the Commercial Division.

List of Related Actions:

NYU Langone Hospitals v. Chang, et al. - 652691/2019
NYU Langone Hospitals v. Margulis, et al. - 652764/2019
NYU Langone Hospitals v. Shaiova, et al. - 652729/2019
NYU Langone Hospitals v. Wirchansky, et al. - 652731/2019
NYU Winthrop Hospital v. Benilevi, et al. - 652690/2019
NYU Winthrop Hospital v. Cherian, et al. - 652696/2019
NYU Winthrop Hospital v. Gittleman, et al. - 652698/2019
NYU Winthrop Hospital v. Ilowite, et al. - 652701/2019
NYU Winthrop Hospital v. Iqbal, et al. - 652702/2019
NYU Winthrop Hospital v. Johnson, et al. - 652703/2019
NYU Winthrop Hospital v. Kelt, et al. - 652704/2019
NYU Winthrop Hospital v. Koyfman, et al. - 652705/2019
NYU Winthrop Hospital v. Lee, et al. - 652706/2019
NYU Winthrop Hospital v. Li, et al. - 652717/2019
NYU Winthrop Hospital v. Mathew et al., 652721/2019
NYU Winthrop Hospital v. Mikolaenko, et al. - 652722/2019

NYU Winthrop Hospital v. Moskowitz-Brooks, et al. - 652726/2019
NYU Winthrop Hospital v. Nair, et al. - 652727/2019
NYU Winthrop Hospital v. Saha, et al. - 652728/2019
NYU Winthrop Hospital v. White, et al. - 652730/2019
NYU Winthrop Hospital v. Wirkowski, et al. - 652733/2019

DATE: *May 28, 2019*



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