

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

PRESENT: HON. DEBORAH A. KAPLAN

Administrative Judge

NOVANTAS, INC.

INDEX NO. 656247/2018

Plaintiff,

- v -

EXECUTIVE RISK INDEMNITY, INC.,

Defendant.

**ADMINISTRATIVE
ORDER**

By letter dated May 2, 2019, Nicholas Caputo, Esq., counsel for plaintiff requests that this action be assigned to the Commercial Division pursuant to Uniform Rule 202.70. Defendant has not submitted a response to this application.

This action, which concerns a multi-million-dollar commercial insurance coverage dispute, was commenced on December 14, 2018, and the summons and complaint was served on defendant on December 18, 2018. Defendant filed its answer on February 15, 2019. On April 26, 2019, plaintiff filed an RJL and a Commercial Division addendum. The Commercial Division addendum was rejected because it was filed more than 90 days after service of the complaint.

In his letter application in support of this application, plaintiff's counsel writes:

We respectfully request that the Action be transferred to the Commercial Division as the Action is a commercial insurance coverage dispute seeking in excess of \$4,000,000 in compensatory damages. Pursuant to Uniform Rule § 202.70(a)-(b), the Action satisfies the monetary threshold and it is one of the enumerated cases (contained in subpart (b)(10)) appropriate for Commercial Division assignment. The only reason that the Action was not assigned to the Commercial Division was because the Request for Judicial Intervention ("RJL") and the Commercial Division Addendum were filed a month after the 90-day time period had expired. . .

The reason that the RJL was not filed until April 25 was because, prior to that time, there was no controversy or dispute requiring judicial intervention. And, in the approximately two months since the Answer was filed, Plaintiff prosecuted its case without delay. Indeed, on the same day Defendant served its Answer, Plaintiff served a Notice of Deposition on Defendant. Shortly thereafter, Plaintiff served a comprehensive First Request for Production of Documents on Defendant. . . . A few days after [defendant's response] was due, on April 23, 2019, Plaintiff served Defendant's counsel with a "good-faith" letter ... pursuant to Commercial Division Rule 14, making a good faith attempt to have Defendant respond to the Request for Production of Documents. [On April 26, 2019], Plaintiff filed a Request for a Preliminary Conference, along with the RJL and Commercial Division Addendum, so that a conference could be held and the agreed-upon discovery date memorialized. Until this discovery dispute arose, it was premature to seek judicial intervention from the Court.

In short, Plaintiff diligently prosecuted this case in the two months after the Answer was filed, and there is good cause for the slight delay in filing the RJL after the 90-day period, given that there was no relief requiring judicial intervention.

The court agrees that the action falls within the standards for assignment of cases to the Commercial Division (see Uniform Rule 202.70 [a]). However, counsel's argument that "the reason that the RJL was not filed until April 25 was because, prior to that time, there was no controversy or dispute requiring judicial intervention" is flawed. The Commercial Division Rule 202.70 (d) requires that "[w]ithin 90 days following service of the complaint, any party may seek assignment of a case to the Commercial Division by filing a Request for Judicial Intervention (RJL) that attaches a completed Commercial Division RJL Addendum certifying that the case meets the jurisdictional requirements for Commercial Division assignment." There is nothing in this rule that permits a late filing in the absence of a controversy between the parties. Rather, Commercial Division Rule 202.70 (d) is simply a straight 90-day rule, commencing with service of the complaint. As such, counsel's claim that it would have been premature for him to file the RJL earlier than when he did is incorrect.

Having said that, given the facts and circumstances of this particular case, including counsel's prompt letter application within 10 days of the date the addendum was rejected, the court will excuse counsel's delay.

Accordingly, the request for assignment to the Commercial Division is granted. The General Clerk's office is directed to randomly reassign this case to a Justice of the Commercial Division.

DATE: May 22, 2019


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