

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

PRESENT: HON. DEBORAH A. KAPLAN

Administrative Judge

-----X

RANDY WEINER, D.C.,

INDEX NO. 652296/2019

Plaintiff,

- v -

AXA EQUITABLE LIFE INSURANCE COMPANY (AS
SUCCESSOR TO THE EQUITABLE LIFE ASSURANCE
CO. OF THE UNITED STATES), DISABILITY
MANAGEMENT SERVICES, INC.

**ADMINISTRATIVE
ORDER**

Defendant.

-----X

By letter dated June 14, 2019, Jason Newfield, Esq., counsel for plaintiff, requests that this action be assigned to the Commercial Division pursuant to Uniform Rule 202.70.

This action was commenced on April 18, 2019. On May 30, 2019, defendants moved, pre-answer, to dismiss the complaint, and filed an RJl and a Commercial Division addendum. The Clerk's office rejected the Commercial Division addendum, and the case is currently awaiting assignment to a General Part judge.

Plaintiff claims that he was the insured under a policy issued by defendants, and that their denial of disability insurance benefits to him was wrongful. The four causes of action alleged in the complaint are breach of contract, declaratory judgment, violation of General Business Law § 349 and breach of the covenant of good faith and fair dealing.

In support of the letter application, plaintiff's counsel submits that this case falls within the standards for assignment of cases to the Commercial Division, without a monetary threshold, because the complaint demands declaratory relief (see, Uniform Rule 202.70[b]).

The court disagrees. According to plaintiff, the insurance policy provides that "total disability insurance payments will be made to Plaintiff in the event he is unable to engage in the substantial and material duties of his regular occupation due to injury or sickness." The court finds the issues of insurance coverage raised

in this action fall within the ambit of Uniform Rule 202.70(c)(2), which specifically excludes "[c]ases seeking a declaratory judgment as to insurance coverage for personal injury or property damage."

Accordingly, the request for assignment to the Commercial Division is denied.

DATE:

6/26/19



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