

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

PRESENT: Hon. Joan B. Carey  
Administrative Order

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PARK AVENUE BUILDING AND ROOFING  
SUPPLIES, LLC,

Plaintiff,

- v -

INDEX NO. 102330/2009

EAST COAST DRYWALL, INC., DORMITORY  
AUTHORITY OF THE STATE OF NEW YORK,  
WDF INC., and FIDELITY & DEPOSIT COMPANY  
OF MARYLAND,

Defendants.

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**Administrative Order:**

By letter dated June 12, 2009, counsel for defendants WDF Inc. and Fidelity & Deposit Company of Maryland applies for a transfer of this action to the Commercial Division pursuant to Uniform Rule 202.70. Counsel for the plaintiff, by letter dated June 16, 2009, does not oppose a transfer to the Commercial Division. No other party has responded to this application.

Plaintiff's counsel served a Request for Judicial Intervention (RJI) on June 9, 2009 in connection with a request for a preliminary conference. Plaintiff's counsel advises that, after consultation with the clerk's office, he designated the case as a non-commercial matter based on the fact that the plaintiff's monetary demand in the complaint is \$105,000 without regard to the fact that two sets of cross claims asserted by the defendants each exceed the \$150,000 monetary threshold for New York County's Commercial Division.

Uniform Rule 202.70(b) provides that the "principal claims" in a lawsuit must meet the monetary threshold for assignment to the Commercial Division, and that this threshold, per Uniform Rule 202.70(a), is "exclusive of punitive damages, interests, costs, disbursements and counsel fees." The phrase "principal claims" means the main thrust of the dispute, and is not limited to the claims in the complaint or any one pleading. Since all of the claims in this lawsuit are for breach of various contracts in connection with the same construction project, and the cross claims seek relief well in

excess of the \$150,000 threshold for New York County, the action meets the standards for assignment to the Commercial Division.

Accordingly, plaintiff's request for a transfer of this action to the Commercial Division is granted. The Trial Support Office is directed to reassign this action at random to a Justice of the Commercial Division and schedule a preliminary conference as soon as possible.

Dated: June 18, 2009

ENTER:  , A.J.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION