

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

PRESENT: Hon. JACQUELINE W. SILBERMAN  
Administrative Judge Justice

~~PART~~ \_\_\_\_\_

Ace Fire Underwriters Ins. Co.,  
et al.

INDEX NO. 600133/2006

MOTION DATE \_\_\_\_\_

- v -

ITT Industries, Inc.,  
et al.

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

Administrative Order

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

~~Upon the foregoing papers, it is ordered that this motion~~

Counsel for plaintiffs has applied for a transfer of this case to the Commercial Division pursuant to Uniform Rule 202.70. The Request for Judicial Intervention was apparently filed after the effective date of the Rule by a defendant or several of them, the matter was designated as a non-Commercial case, and the case was so assigned. Counsel for defendant U.S. Silica Company opposes this request. Counsel for the applicants represents that counsel for defendant ITT Industries, Inc. does not object to the application insofar as it is based on an amended statement in support submitted by plaintiffs. It is not asserted that this application is untimely.

It is true, as U.S. Silica argues, that Rule 202.70 (c) (2) provides that the following will not be heard in the Commercial Division: "Cases seeking a declaratory judgment as to insurance coverage for personal injury or property damage ...." Read literally, as U.S. Silica would have me do, this provision appears to require the exclusion of this case from the Division. In my view, however, this provision, a version of which also appeared in the *Guidelines for Assignment of Cases to the Commercial Division* in this county, was intended

Dated: \_\_\_\_\_ J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

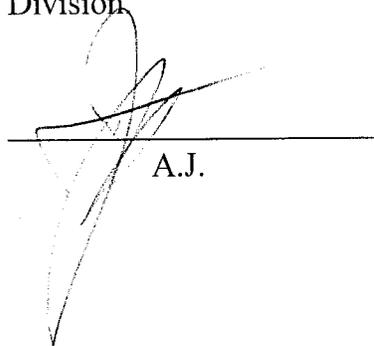
MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

to exclude from the Commercial Division the routine declaratory judgment action regarding insurance coverage concerning an action arising out of an auto accident, an accident at a construction site, property damage to a home, or the like. On the spectrum of declaratory judgment matters, this case is at the farthest possible remove from such a case: it is one of extraordinary dimension and clearly will present complicated issues. It concerns coverage for what plaintiffs describe, without contradiction, as tens of millions of dollars for damages alleged in over 25,000 underlying lawsuits asserting bodily injury from exposure to silica products manufactured, sold or distributed by various defendants. In addition to the two corporations cited above, the complaint names as defendants 37 insurance and reinsurance companies. A large number of policies are alleged to be involved in this controversy and plaintiffs seek declaratory relief with regard to numerous issues. Because of the extraordinary scale and complexity of this case and the facts that it concerns commercial insurance provided to major commercial enterprises nationwide and concerns a vast number of underlying lawsuits of evidently nationwide scope, it is appropriate for this matter to be adjudicated in the Division. Cf. Rule 202.70 (b) (9) (environmental insurance coverage cases will be heard in the Division). Subdivision (c) (2) should, I think, be interpreted as applying to the garden variety DJ action. The standards for assignment of cases seek to provide for the orderly division of the work of this court and should not be construed with the strictness that a court might apply to contractual or statutory provisions affecting the substantive rights of parties.

Accordingly, the Motion Support Office is directed to reassign this case at random to a Justice of the Commercial Division.

Dated:

3/23/06



A.J.