

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

PRESENT: Hon. Jacqueline Silbermann  
Administrative Order

---

ARCH INSURANCE COMPANY,

Plaintiff,

- v -

INDEX NO. 600805/2006

PHILIP R. BENNETT, LEO R. BREITMAN,  
NATHAN GANTCHER, TONE GRANT,  
DAVID V. HARKINS, SCOTT L. JAECKEL,  
DENNIS A. KLEJNA, THOMAS H. LEE,  
SANTO C. MAGGIO, JOSEPH MURPHY,  
RONALD L. O'KELLEY, PERRY ROTKOWITZ,  
SCOTT A. SCHOEN, WILLIAM M. SEXTON,  
GERALD SHERER, PHILIP SILVERMAN  
and ROBERT C. TROSTEN,

Defendants.

---

Administrative Order:

By letter dated October 10, 2006, counsel for defendants Breitman, Gantcher, Harkins, Jaeckel, Lee, O'Kelley and Schoen objects, on behalf of all parties, to the transfer of this action from Commercial Division Part 56 (Lowe, J.) to a non-commercial part (Goodman, J.).

Justice Lowe directed that this action be re-assigned to a non-commercial part by order dated September 29, 2006. Uniform Rule 202.70(f)(2) provides that any party aggrieved by such a transfer may seek review by letter application "within ten days of receipt of the designation of the case to a non-commercial part." Although defense counsel fails to state when he was notified of the transfer, the application is deemed timely since the transfer order was not entered in the county clerk's office until October 3rd.

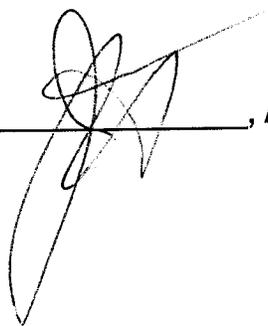
The parties contend that this action meets the standards for assignment to the Commercial Division, because it seeks a declaratory judgment that an excess directors' and officers' liability insurance policy issued by plaintiff Arch Insurance Company to Refco, Inc. affords no coverage to the defendants, named as parties in numerous lawsuits and governmental and/or regulatory investigations that were commenced

following the collapse of Refco, Inc. in October 2005. Uniform Rule 202.70(b)(10) provides that actions in which the principal claims involve “[c]ommercial insurance coverage (e.g. directors and officers, . . .)” will be heard in the Commercial Division, provided the \$100,000 monetary threshold for New York County (Uniform Rule 202.70[a]) is met or equitable or declaratory relief is sought. Thus, the nature of this declaratory judgment action makes it one that should be assigned to the Commercial Division.

Accordingly, the Motion Support Office is directed to reassign this case at random to a Justice of the Commercial Division. (Various motions to dismiss the complaint, substitute counsel, etc. (seq. 001 to 006) are presently returnable on November 1, 2006 in the Motion Submissions Part).

Dated: October 23, 2006

ENTER: \_\_\_\_\_, A.J.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right, positioned over the signature line.

Check one:  FINAL DISPOSITION       NON-FINAL DISPOSITION