

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

**PRESENT: Hon. Jacqueline Silbermann
Administrative Order**

EXECUTIVE RISK INDEMNITY INC.,

Plaintiff,

- v -

INDEX NO. 601693/2007

**STARWOOD HOTELS & RESORTS WORLDWIDE,
INC. and SHERATON OPERATING CORPORATION,**

Defendants.

Administrative Order:

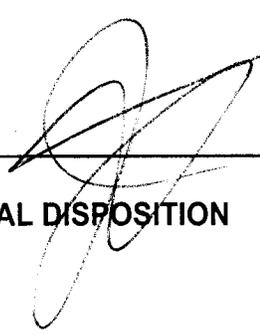
By letter dated August 20, 2008, counsel for the plaintiff applies for a transfer of this action from I.A.S. Part 55 (Solomon, J.) to the Commercial Division pursuant to Uniform Rule 202.70. Counsel for the defendants consents to, and affirmatively requests on a timely basis, transfer to the Commercial Division.

It was the plaintiff's counsel who filed the Request for Judicial Intervention (RJI) on August 12, 2008 in connection with a request for a preliminary conference, and apparently failed to follow the requirements set forth in Uniform Rule 202.70(d)(2) to have this action assigned to the Commercial Division. Regardless of whether this mistake was inadvertent, the Uniform Rules do not provide for a second chance to the party that filed the RJI to correct their error. Rather, Rule 202.70(e) is clear that the right is limited to "any other party."

However, defendants' counsel has affirmatively and timely requested that the matter be assigned to the Commercial Division. This action concerns an errors and omissions commercial insurance coverage dispute and seeks equitable and declaratory relief. In addition, the sums at issue total over \$18 million. See Complaint, ¶¶ 38-39. Accordingly, there is no question that the action meets the requirements for assignment to the Commercial Division. See Uniform Rule 202.70(b)(1), (10).

The request for a transfer is granted, and the Trial Support Office is directed to re-assign this case at random to a Justice of the Commercial Division and to re-schedule the preliminary conference (currently scheduled on September 15, 2008 at 12:00 p.m.) on the earliest date possible.

Dated: September 2, 2008

ENTER:  _____, A.J.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION