

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

PRESENT: Hon. George J. Silver, Acting Administrative Judge  
Administrative Order

---

SHELDON SHIMSHI NEUMAN,  
as Trustee of the BELA RUBIN  
IRREVOCABLE LIFE INSURANCE TRUST,

Plaintiff,

- v -

INDEX NO. 656262/2016

AXA EQUITABLE LIFE INSURANCE COMPANY,

Defendant.

---

Administrative Order:

By letter dated May 30, 2017, defendant AXA Equitable Life Insurance Company (AXA) timely seeks review, pursuant to Commercial Division Rule 202.70 (f) (2), of the Hon. Jeffrey K. Oing's Order dated May 19, 2017 transferring this action to a non-commercial part.

Commercial Division Rule 202.70 (a) and (b) (1) provides that actions seeking damages in excess of \$500,000 or equitable relief will be heard in the Commercial Division where the principal claims involve or consist of "breach of contract or fiduciary duty, fraud, misrepresentation, business tort . . . where the breach or violation is alleged to arise out of business dealings . . ." In addition, disputes regarding commercial insurance coverage may be heard in the Commercial Division (see Commercial Division Rule 202.70 [b] 10]). However, excluded from the Commercial Division are cases seeking a declaratory judgment as to insurance coverage for personal injury or property damage (see Commercial Division Rule 202.70 [c] [2]).

Justice Oing's order indicates that the action was transferred out of the Commercial Division for two reasons: (1) because the damages pleaded are only \$182,000; and (2) on the ground that the action does not involve commercial insurance coverage.

I respectfully disagree with Justice Oing's determination. In this action, the holder of a life insurance policy sues for breach of contract and seeks equitable relief arising from AXA's decision to raise the cost of insurance rates on a block of universal life insurance policies in AXA's Athena Universal Life II Line. As such, it satisfies the

standards for assignment to the Commercial Division under subsection (a) and (b) (1). In addition, this action was assigned to Justice Oing as related to two other cases involving the same claims which are pending in his commercial part: Tiger Capital, LLC and AMT Capital Holdings, S.A. v AXA Equitable Life Insurance Co., Index No. 655829/2016 (the AMT Action) and Hobish v AXA Equitable Life Insurance Co., Index No. 650315/2017 (the Hobish Action). In the AMT Action, the damages sought are \$1,050,000. The complaint in the Hobish Action seeks damages of \$2 million. Judicial economy is best served by keeping all three of these substantially related cases assigned to the same Commercial Division justice.

Accordingly, the General Clerk's Office is directed to reassign this case back to Commercial Division Part 48. Although Justice Oing is shortly to be elevated to the Appellate Division, First Department, his entire inventory of cases will be reassigned to a new Commercial Division justice in due course.

Dated: May 31, 2017

ENTER: George J. Silver, A.J.

GEORGE J. SILVER

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION