

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

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

**THERESA HORGAN, on behalf of herself
and all others similarly situated,**

Plaintiff,

- v -

INDEX NO. 604503/2005

HIP HEALTH PLAN OF NEW YORK,

Defendant.

Administrative Order:

By letter dated February 12th, counsel for plaintiff applies for a transfer of this action from I.A.S. Part 23 (Braun, J.) to the Commercial Division pursuant to Uniform Rule 202.70. Defendant opposes the application as unnecessary.

The Request for Judicial Intervention (RJI) was filed on February 5, 2007. Therefore, the plaintiff's application is timely. Uniform Rule 202.70 (e).

Plaintiff's counsel contends that this action meets the standards for assignment to the Commercial Division, because the plaintiff seeks a monetary judgment in excess of \$100,000, and the action is a commercial class action involving claims of unjust enrichment and violations of New York General Business Law § 349.

Uniform Rule 202.70 (b) (5) provides that commercial class actions, without consideration of the monetary threshold, will be heard in the Commercial Division. Further, an action is deemed commercial where relief is sought for a statutory violation arising out of business dealings. Uniform Rule 202.70 (b) (1).

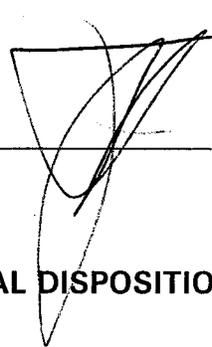
A review of the complaint filed reveals that this action concerns a claim arising out of an alleged violation of the New York General Business Law § 349. Plaintiff was insured by defendant as a sole proprietor. Plaintiff alleges that defendant engaged in deceptive acts or practices that resulted in inflated prices for

sole proprietor or small group health insurance. The nature of the action makes it one that should be assigned to the Commercial Division. Defendant's argument that there is a significant likelihood that this action will not exist after the resolution of its motion to dismiss is not sufficient to overcome plaintiff's request to transfer the action to the Commercial Division.

Accordingly, the Motion Support Office is directed to reassign this case at random to a Justice of the Commercial Division. (Defendant's motion to dismiss [seq. 001] is on for submission on February 21, 2007.)

Dated: February 16, 2007

ENTER: _____, A.J.



Check one: FINAL DISPOSITION NON-FINAL DISPOSITION