

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

PRESENT: Hon. Peter H. Moulton  
Administrative Order

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HEALTH CAPITAL INVESTORS, INC. and  
STEVEN NITSBERG,

Plaintiffs,

- v -

INDEX NO. 161180/15

JONES DAY, a general partnership,

Defendant.

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Administrative Order:

By letters dated April 14 and 20, 2016, defendant Jones Day timely requests a transfer of this action to the Commercial Division. By letter dated April 19, 2016, plaintiffs' counsel opposes the request and specifically opposes assignment to Commercial Division Justice O. Peter Sherwood as related to Indigo Secured High Income Note, Ltd. v HCI Secured Medical Receivables Special Purpose Corp. et al., Index No. 650487/13 (the Indigo Action).

The summons with notice alleges that Jones Day committed legal malpractice and breach of contract in connection with its drafting and negotiation of a settlement agreement with non-party Indigo Secured High Income Note, Ltd. (Indigo) and plaintiffs seek damages in excess of \$42 million.

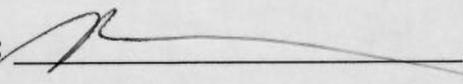
Defense counsel advises that the settlement agreement was executed to settle prior litigation between Indigo and two borrowers, HCI Secured Medical Receivables Special Purpose Corporation (NY) (HC-NY) and HCI Secured Medical Receivables Corporation (VA) (HC-VA). Shortly after the settlement agreement was executed, HCI-NY and HCI-VA ceased making the required payments, and the Indigo Action was commenced in this court and assigned to Justice Sherwood. In February 2015, Justice Sherwood directed the entry of a judgment in excess of \$30 million against HCI-NY, HCI-VA and the two named plaintiffs. The judgment is currently on appeal to the First Department, and the Indigo Action is marked disposed in the court's case management system.

Actions in which the principal claim involves legal malpractice arising out of representation in commercial matters can be heard in the Commercial Division, provided the \$500,000 monetary threshold for New York County is met or equitable or declaratory relief is sought (Uniform Rule 202.70 [a], [b] [8]). There is

no doubt that this action involves legal malpractice arising out of representation in a commercial matter and meets the monetary threshold for New York County. In addition to the fact that defendant does not seek assignment of this action to Justice Sherwood as a related matter, the Indigo Action is now disposed (see N.Y. County Operations Manual, § I [D] [2]).

For these reasons, the defendant's request for a transfer to the Commercial Division is granted. The General Clerk's Office is directed to randomly reassign this case from I.A.S. Part 47 (Wright, J.) to a Justice of the Commercial Division.

Dated: April 20, 2016

ENTER:  , A.J.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION