

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

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

In the Matter of the Application

of

INDEX NO. 115856/07

CEDEC-AKTIENGESELLSCHAFT,

Petitioner,

**to Compel Disclosure Prior to
Instituting Suit from**

**CIRSA CAPITAL LUXEMBOURG S.A.,
CIRSA BUSINESS CORPORATION, S.A.,
et al.,**

Respondents.

Administrative Order:

By letter dated December 10, 2007, counsel for the corporate respondents requests that this special proceeding be transferred from I.A.S. Part 44 (Milton Tingling, J.) to the Commercial Division pursuant to Uniform Rule 202.70. Counsel for petitioner Cedec-Aktiengesellschaft (Cedec) opposes respondents' application. The court notes that it is timely pursuant to Uniform Rule 202.70(e).

Cedec filed a Request For Judicial Intervention (RJI) on November 28, 2007 in connection with its motion for pre-action disclosure pursuant to CPLR 3102(c) and designated the matter as "Other Special Proceeding."

Respondents contend that this proceeding meets the standards for assignment to the Commercial Division, because the litigation Cedec intends to pursue is an action where the principal claims involve breach of contract and fraud in connection with a complex commercial transaction and the amount in controversy will exceed the \$100,000 monetary threshold for New York County. See Uniform Rule 202.70(a), (b)(1).

Cedec's counsel, on the other hand, maintains that he did not designate the matter as commercial on the RJI because the proceeding is merely a motion for pre-action disclosure and not a plenary action, and that petitioner is not at this stage prepared to state an amount of damages.

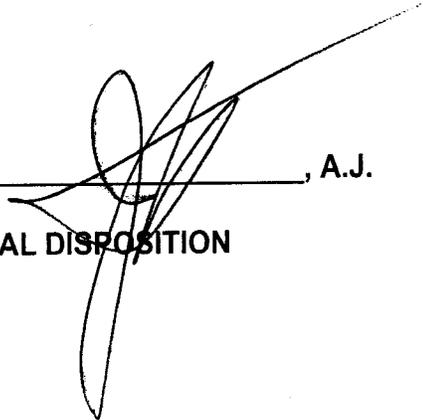
While this court is not of the opinion that a special proceeding pursuant to CPLR 3102(c) can never fall within the guidelines for assignment to the Commercial Division, a review of the memorandum of law submitted in support of the motion reveals that Cedec is the beneficial owner of €50,000 7.875% Senior Notes due 2012 issued by Cirsa Capital Luxembourg, S.A. which are allegedly in default. Thus, it appears that this petitioner's claim, considering the current exchange rate of the Euro, does not meet the \$100,000 monetary threshold of the Commercial Division in New York County. It remains to be seen whether any subsequent action will involve the balance of the outstanding notes, will be brought as a class action, or whether, under the terms of the Indenture, Cedec cannot sue unless 25% of the noteholders request that the trustee of the notes pursue a remedy on their behalf. It would be entirely premature for this court to make any such determination in considering respondents' application for a transfer to the Commercial Division.

For these reasons, respondents' request to transfer this special proceeding to the Commercial Division is denied.

Dated: December 17, 2007

ENTER: _____, A.J.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

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