

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

**PRESENT: Hon. Sherry Klein Heitler
Administrative Order**

ZOOMERS, INC.,

Plaintiff,

- v -

INDEX NO. 602970/09

**LLM MANAGEMENT COMPANY, LLC,
JOSEPH GABBAY, RALPH GHINDI,
and LIZ LANGE,**

Defendants.

Administrative Order:

By letters dated December 16 and 17, 2009, counsel for the defendants 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. Plaintiff's counsel opposes the request by letter dated December 17, 2009.

It was the defendants' counsel who filed the Request for Judicial Intervention (RJI) on November 23, 2009 in connection with a motion to dismiss. The requirements set forth in Uniform Rule 202.70(d)(2) require that the RJI be accompanied by a brief signed statement justifying the Commercial Division designation and a copy of the pleadings. Indeed, counsel opted to change the designation on the RJI from "Commercial - Contract" to "Other Matters - Contract" at the time of filing. Accordingly, on November 30, 2009, the action was assigned to a general I.A.S. part. The Uniform Rules do not provide a second chance to the party that filed the RJI. Rule 202.70(e) is clear that the right to appeal an RJI designation is limited to "any other party." In addition, this application is past the 10-day time limit. Uniform Rule 202.70(e), (f)(2).

For these reasons, defendants' request for a transfer to the Commercial Division is denied.

Dated: December 18, 2009

ENTER: Sherry Klein Heitler, A.J.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION