

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

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

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**In the Matter of the Application of**

**CORPORATE OFFICERS & DIRECTORS  
ASSURANCE LTD.,**

**Petitioner,**

**- v -**

**INDEX NO. 603390/07**

**Pursuant to Article 75 of the CPLR For  
Confirmation of Arbitration Awards  
against:**

**L. DENNIS KOZLOWSKI,**

**Respondent.**

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**Administrative Order:**

By letter dated October 22, 2007, counsel for respondent L. Dennis Kozlowski timely applies for a transfer of this special proceeding from I.A.S. Part 1 (Shulman, J.) to the Commercial Division pursuant to Uniform Rule 202.70(e), and specifically to the Hon. Helen E. Freedman as a matter related to a pending action before Justice Freedman. Petitioner opposes the application, and argues that this special proceeding was properly assigned to Justice Shulman on the ground that he is presiding over a civil forfeiture action, entitled Robert M. Morgenthau v. L. Dennis Kozlowski and Mark H. Swartz, Index No. 403698/02, wherein all of Kozlowski's assets are frozen under a restraining order issued on September 10, 2002 in the forfeiture action.

This is a special proceeding commenced by petitioner Corporate Officers & Directors Assurance Ltd. (CODA), an insurance company that insured respondent L. Dennis Kozlowski, formerly the CEO of Tyco International Ltd. (Tyco), under a directors and officers insurance policy. CODA seeks to confirm two arbitration awards rendered in its favor in England for costs and attorneys' fees in the total amount of \$1,972,598.20 plus interest.

Uniform Rule 202.70(b)(10) provides that actions in which the principal claims

concern “[c]ommercial insurance coverage (e.g. directors and officers, errors and omissions, and business interruption coverage),” will be heard in the Commercial Division provided the \$100,000 monetary threshold for New York County is met or equitable or declaratory relief is sought. Also included are applications to affirm or disaffirm arbitration awards involving any of the foregoing commercial issues -- without consideration of the monetary threshold. See Uniform Rule 202.70(b)(12).

There is no question that this Article 75 proceeding meets the standards for assignment to the Commercial Division. However, the proceeding was assigned to Justice Shulman, because the Request For Judicial Intervention listed the civil forfeiture action as a related matter. CODA argues that Justice Shulman expressly approved and authorized the expenditure of funds to permit Kozlowski to pursue the arbitration in England against CODA, having been advised that any award against CODA would go into the accounts he was supervising. However, Justice Shulman was not aware that if (as happened) Kozlowski did not succeed on his claim, CODA would be entitled, under English law, which governed the arbitration, to recover its attorneys’ fees and costs from the assets the court was supervising. In its petition, CODA seeks a judgment that would be satisfied by funds that Justice Shulman is overseeing.

Respondent’s counsel argues that this proceeding should be assigned to Justice Helen E. Freedman, who is presiding over Federal Insurance Co. v Tyco International Ltd., Index No. 600507/03, an action in which another insurance company, Federal, sought a declaratory judgment against, inter alia, Kozlowski, that two of the “Executive Protection” insurance policies issued to Tyco were properly rescinded and void ab initio, and that Federal was entitled to deny coverage to Kozlowski with respect to certain civil and criminal proceedings. Respondent’s counsel argues that a particular ruling in the Federal action should have been, but was not, recognized as controlling precedent by the arbitrators.

The decision as to whether this special proceeding is properly related to the civil forfeiture action must be raised, in the first instance, with Justice Shulman. See Section I(B) of the “Summary of Courthouse Procedures.” Accordingly, I have conferred with Justice Shulman and he agrees that this proceeding is indeed related to the civil forfeiture proceeding, and that he is the most appropriate judge to hear and decide the petition. He also concurs with my determination that the Federal action pending before Justice Freedman involves different insurance policies issued by different companies and possibly involving completely different legal issues governed by different laws.

For these reasons, the respondent’s request to transfer this action to the Commercial Division, and to Justice Helen E. Freedman, is denied.

Dated: October \_\_, 2007

ENTER: \_\_\_\_\_, A.J.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION