

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

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

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**CHEROKEE OWNERS CORP.,**

**Plaintiff,**

**- v -**

**INDEX NO. 601201/05**

**DNA CONTRACTING, LLC, VIGILANT  
INSURANCE COMPANY, JMA CONSULTANTS  
AND ENGINEERS, P.C., and JOSEPH CANTON,**

**Defendants.**

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**Administrative Order:**

By letter dated May 24<sup>nd</sup>, counsel for the plaintiff seeks review, pursuant to Uniform Rule 202.70 (f) (2), of the Honorable Richard B. Lowe's Order transferring this action from Judge Lowe's Commercial part to a Non-Commercial part. Defendant DNA Contracting, LLC (DNA) opposes plaintiff's application.

Uniform Rule 202.70 (f) (2) provides that an aggrieved party may seek review of the designation of an action to a Non-Commercial part within ten days of the party's receipt of such designation. Plaintiff asserts that it was informed of the transfer on May 16, 2006, and therefore, the Court finds the plaintiff's application timely.

Plaintiff's counsel contends that this action meets the standards for assignment to the Commercial Division, because it seeks over \$100,000 in damages, and the action involves claims of a breach of contract and fraud claims, arising out of a business transaction. However, DNA argues that the majority of plaintiff's claims are for engineer malpractice.

Uniform Rule 202.70 (b) (1) provides that actions will be heard in the Commercial Division where the principal claims involve or consist of breach of contract and fraud, that arise out of business dealings. However, a review of the complaint reveals that this action really concerns engineering malpractice, and the allegations are based on engineering malpractice.

Actions for engineering and/or architectural malpractice are not authorized by Uniform Rule 202.70 (b). Only actions for malpractice by accountants or actuaries, and legal malpractice arising out of representation in commercial matters are heard

in the Commercial Division. Uniform Rule 202.70 (b) (8). Therefore, the issues involved are not complex commercial in nature, and plaintiff's request is denied.

Dated: June 14, 2006

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

HON. JACQUELINE W. SILBERMANN

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION