

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

PRESENT: Hon. Joan B. Carey  
Administrative Order

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Application of OKSLEN ACUPUNCTURE P.C. and  
NICOLO GENOVESE,

Petitioners,

For a Judgment Pursuant to Article 78 of the CPLR

-v-

INDEX NO. 603651/08

ERIC R. DINALLO SUPERINTENDENT OF INSURANCE  
STATE OF NEW YORK, STATE FARM MUTUAL  
AUTOMOBILE INSURANCE COMPANY, AUTOONE  
INSURANCE COMPANY, GENERAL ASSURANCE COMPANY  
and NATIONAL INSURANCE CRIME BUREAU,

Respondents.

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Administrative Order:

By letter dated January 16, 2009, counsel for respondent National Insurance Crime Bureau (NICB) timely requests that this Article 78 proceeding be assigned to the Commercial Division. Counsel for the NICB advises that the insurance company respondents join in the request, while the Superintendent of Insurance takes no position.

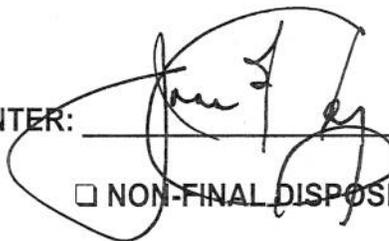
NICB's counsel contends that this special proceeding meets the standards for assignment to the Commercial Division under Uniform Rule 202.70 (b) (1) because the suit seeks "injunctive relief based on various allegations of fraud and misrepresentation, which are disputes expressly listed as being commercial in nature." Counsel mistakes the meaning of Uniform Rule 202.70 (b) (1), which provides that cases in which the "principal claims" involve or consist of "breach of contract or fiduciary duty, fraud, misrepresentation, business tort (e.g., unfair competition), or statutory and/or common law violation where the breach or violation is alleged to arise out of business dealings" will be assigned to the Commercial Division, provided the monetary threshold is met or equitable relief is sought.

This is not a lawsuit alleging fraud or misrepresentation arising out of any complex business dealings between the parties. Rather, the petitioner seeks to compel the Superintendent of Insurance to audit and investigate the no-fault claims practices of

three automobile insurance companies, arguing that they have violated the New York State Insurance Law and insurance regulations by their utilization of unqualified and unlicensed claims investigators and by allegedly engaging in harassing and abusive verification tactics that serve as predetermined pretexts for denial of no-fault claims to claimants and/or medical providers. There is nothing in Uniform Rule 202.70 (b) authorizing the assignment of this type of Article 78 proceeding to the Commercial Division.

For these reasons, NICB's request that this Article 78 proceeding be assigned to the Commercial Division is denied.

Dated: January 20, 2009

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

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION