

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

PRESENT: Hon. Joan B. Carey
Administrative Order

LABORATORY PARTNERS, INC.,

Plaintiff,

-against-

INDEX NO. 603694/2008

PAUL KILBOURNE, SR.,

Defendant.

Administrative Order:

By letter dated January 20, 2009, counsel for the plaintiff timely requests that this action be assigned to the Commercial Division pursuant to Uniform Rule 202.70. Defendant's counsel has not opposed the application.

This action falls clearly within the standards for assignment of cases to the Commercial Division, because it arises out of a stock purchase agreement pursuant to which the plaintiff acquired all of the issued and outstanding stock of Kilbourne Medical Laboratories, Inc., a company owned, in part, by the defendant for a purchase price in excess of \$16 million. Plaintiff sues for a purchase price adjustment in excess of \$2.8 million and asserts a claim for indemnification arising out of the defendant's alleged breach of representations and warranties in the stock purchase agreement. See Uniform Rule 202.70 (a) and (b) (1). The fact that defendant has filed a "motion" to compel arbitration in this action does not change the nature of this action into a special proceeding under CPLR Article 75. In any event, the rules of the Commercial Division are clear that applications brought pursuant to CPLR Article 75 may be heard in the Commercial Division provided they involve any of the enumerated commercial issues. See Uniform Rule 202.70 (b) (12).

The Motion Support Office is directed to reassign this case at random from I.A.S. Part 55 (Solomon, J.) to a Justice of the Commercial Division. (A motion to compel arbitration is returnable in the Motion Submissions Part on January 28, 2009.)

Dated: January 23, 2009

ENTER:  _____, A.J.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION