

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

PRESENT: Hon. JACQUELINE W. SILBERMANN
Administrative Judge ~~Justice~~

~~PAGE~~ _____

Global Vision Products, Inc.

INDEX NO. 602207/2004

- v -

Pfizer Inc.

~~MOTION DATE~~ _____

MOTION SEQ. NO. 001

~~MOTION CAL. NO.~~ _____

Administrative Order
Interim Order

The following papers, numbered 1 to _____ were read on this motion to/for _____

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...

PAPERS NUMBERED

Answering Affidavits – Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

~~Upon the foregoing papers, it is ordered that this motion~~

Plaintiff has requested a transfer of this case to the Commercial Division. The request was made to the assigned Justice, who referred the request to me. Pursuant to Paragraph G of the *Guidelines for Assignment of Cases to the Commercial Division*, transfers into the Division must be approved by the Administrative Judge.

The complaint alleges a pattern of anti-competitive conduct by defendant that, according to plaintiff, amounts to tortious interference with prospective economic advantage. The parties are corporations and the dispute is a business one. Apart from the matter of damages, the case would be appropriate for resolution in the Division.

Defendant argues that plaintiff has not identified any compensatory damages. Plaintiff has alleged damages due to lost sales, but claims that the amount at this time is uncertain and states that the amount will be proven at trial. Plaintiff also seeks equitable relief.

Dated: _____

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION JSC.

Check if appropriate: DO NOT POST

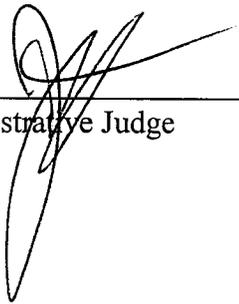
The *Guidelines* provide for preliminary screening of cases in which assignment to the Division is sought. The back office screens cases to determine whether they meet the threshold of \$ 125,000. If, however, equitable relief only is sought or the amount of damages sought is uncertain, the case will be assigned as a Division matter and the issue left to the assigned Division Justice to resolve. Paragraph C (i) of the *Guidelines*. Counsel for defendant filed the RJI in this case and designated the matter as a tort case. Thus, the preliminary review never occurred and the case was assigned at random to a General Part. Although there was no preliminary review, the provision cited is relevant as it indicates that a case may be assigned to the Division where only equitable relief is sought or an unspecified sum is demanded. The Justice may evaluate the assignment. There would be no purpose in the back office's referring such a case to a Division Justice if the absence of a claim for damages in excess of \$ 125,000 in every instance doomed a case to a transfer out of the Division. Here, as the question has come before the undersigned first, I can make the determination. The case is clearly a business dispute and, on the face of the pleading, it appears to be one of sufficient moment to justify a Commercial Division assignment.

Defendant also opposes the requested assignment on the ground that plaintiff seeks it in order to impose "unnecessary, wasteful and costly discovery proceedings" on defendant. Defendant deduces plaintiff's purpose from the fact that it served discovery requests in violation of the CPLR 3214 (b) stay and from the timing of the request for a transfer. However, plaintiff purchased a commercial index number when it began this action, which is inconsistent with defendant's argument.

Defendant does not specifically cite Commercial Division Rule 12, but it apparently has it in mind in arguing that a transfer to the Division means that it will be burdened with "unnecessary, wasteful and costly discovery proceedings." That Rule provides that some discovery at least is to proceed notwithstanding the making of a motion to dismiss. In one Part, the Rule applies only to document production. But even in the other Parts, the Rule controls, by its terms, "unless the Justice directs" otherwise. Thus, defendant can, if it wishes, make an appropriate application to postpone or limit discovery while its motion proceeds.

For these reasons, the application is granted. The Motion Support Office is hereby directed to reassign this case at random to a Justice of the Commercial Division.

Dated: 10/14/04



Administrative Judge