

OPERATING STATEMENT
COMMERCIAL DIVISION, SUPREME COURT
CIVIL BRANCH, NEW YORK COUNTY

November 6, 1995

OPERATING STATEMENT
COMMERCIAL DIVISION, SUPREME COURT
CIVIL BRANCH, NEW YORK COUNTY

A Commercial Division of the New York County Supreme Court, Civil Branch, will commence operations on November 6, 1995. The Division will be located on the second floor of 60 Centre Street, where the five justices assigned to the Division will have contiguous courtrooms. A Commercial Division Support Office will be established.

Commencement of A Commercial Action

In accordance with CPLR 306 (a) and (b), commencement of a commercial action takes place upon filing with the County Clerk of a summons and complaint or summons with notice and payment of an index number fee. Effective November 6, 1995, the County Clerk will issue a discrete series of index numbers (600,001-95 et seq.) for commercial cases, and commercial action filings will be accepted and shelved in a specially designated area of the County Clerk's Office. In order to secure a commercial index number, a party filing a commercial case will self-select among the commercial action types in the "Commercial Section" of the index number purchase cover sheet maintained in the County Clerk's Office. This form will list the same commercial action types provided in the Request for Judicial Intervention ("RJI"), which are: contract, corporate, insurance, UCC and other commercial (specify).

Court Intervention

Court intervention will occur upon the filing of an RJI and payment of the RJI fee. After payment of the RJI fee in the County Clerk's Office, RJIs will be accepted in conjunction with (1) filing of a request for a preliminary conference in the Commercial Division Support Office; (2) filing of an order to show cause in the Commercial Division Support Office; or (3) filing of a motion in the Motion Support Office.

The party filing an RJI in a commercial case will select on the RJI the same commercial action type originally identified on the County Clerk's index number purchase cover sheet.

Upon the filing of the RJI, the case will be randomly assigned to one of the five Commercial Division justices, who will determine, as early on in the case as practicable, whether or not the case is suitable for adjudication in the Division based upon the papers submitted by the parties. To this end, the court may request that one or all of the parties submit a one-page, double-spaced statement supporting or opposing designation of the case to the Commercial Division.

Regardless of whether the RJI was filed in conjunction with an application for a preliminary conference, an order to show cause or a notice of motion, a preliminary conference will be held, where practicable, within forty-five (45) days of assignment to the Commercial Division justice. Where an RJI is accompanied by a dispositive motion, a preliminary conference shall take place within thirty (30) days after disposition of such motion.

In the event a case is designated a Commercial Division case, the parties shall be bound by these procedures and shall be obligated to:

(a) attempt in good faith to achieve early resolution of their dispute by use of appropriate forms of nonbinding Alternative Dispute Resolution (ADR) in which the court may direct the parties to engage, or such other forms of ADR to which the parties may agree;

(b) cooperate in identifying and thereafter promptly engage in limited-issue discovery in aid of early dispositive motions or settlement;

(c) cooperate with each other and the Commercial Division justice in good faith efforts to reach a fair and reasonable settlement or other final resolution of the case; and

(d) cooperate with each other and the Commercial Division justice in establishing a firm discovery plan and entering into appropriate stipulations for the purpose of saving time during the pre-trial and trial phases of the case.

Case Management Procedures

The Commercial Division justice, in his or her discretion, may, upon application of any party or upon his or her own initiative, depart from or modify the following procedures.

Preliminary Conference: At the preliminary conference, the following subjects, as well as any others raised in the discretion of the Commercial Division justice, shall be addressed:

(1) Means for Early Disposition

- a. All forms of Alternative Dispute Resolution (ADR);
- b. Scheduling pre-discovery dispositive motions;
- c. Scheduling limited-issue discovery in aid of early dispositive motions or settlement.

(2) Schedules and Deadlines

- a. A comprehensive discovery plan and schedule, together with a pre-trial discovery cutoff date;
- b. Motion scheduling, including a deadline for making motions under CPLR 3211 and a provision for appropriate notice to the assigned justice prior to making any unscheduled disclosure motion;
- c. Scheduling a target trial date.

The Commercial Division justice may establish any informal procedures that he or she deems appropriate to achieve expeditious resolution of discovery disputes and other nondispositive issues. Prior to the preliminary conference, it shall be the obligation of the parties to confer concerning all of the above matters for the purpose of reaching agreement acceptable to the court.

The court shall have authority to direct the filing of a note of issue and statement of readiness and to set a firm date for commencement of trial.

In addition, a Commercial Division justice, in his or her discretion, may at any time during the pendency of the action determine that a matter should not remain in the Division and may accordingly then refer the case to a general IAS Part.

Alternative Dispute Resolution (ADR): Commercial Division cases will be subject to mandatory mediation at the discretion of the Commercial Division justice, who may make such referrals at the time of the preliminary conference. In connection with any such referral, parties will be entitled to elect to use private providers of ADR services or select a volunteer mediator from the panel lists maintained by the Commercial Division and made available to the parties by the court. Those lists will include Judicial Hearing Officers available to serve in this capacity. In the event that the mediator selected is unavailable, the court will select a name from the panel.

Where appropriate, and whether or not mediation is pursued at an early stage of the litigation, the Commercial Division justice has the discretion to refer cases to mediation at a later stage of the proceedings.

The mediation procedures of the Commercial Division are set forth in the attached "ADR Rules for the Commercial Division of the Supreme Court, New York County."

Differentiated Case Management and Tracking: Based upon the nature and complexity of the case, the Commercial Division justice, in consultation with the parties, shall assign to each case a tracking category, and, if appropriate, establish guidelines for differentiated treatment of each case in terms of the degree of case management and direct involvement by the Commercial Division justice which shall be required, the pace at which the case should proceed to trial, and time frames for disposition.

Settlement Conferences: Commercial Division justices shall make diligent efforts throughout the pre-note of issue phase of the case to assist the parties in reaching a fair and reasonable settlement or other resolution of the matter. To that end, the assigned justice, in his or her discretion, may schedule one or more formal settlement conferences.

In setting a firm trial date, the Commercial Division justice shall encourage the parties to engage in settlement discussions and in any form of ADR, binding or nonbinding, including the assistance of a Special Master or Judicial Hearing Officer (JHO), that may result in settlement or avoidance of trial. Except upon order of the court, the pendency of any form of ADR shall not alter the date for commencement of trial.

Upon consent of the parties and in the discretion of the assigned Commercial Division justice, nonjury cases may be conferenced for settlement by the assigned justice. In the absence of such consent or in the event of an unwillingness of the assigned justice to participate in such a settlement conference, the case may be conferenced before another Commercial Division justice, a JHO or as the court directs.

Preparation for Trial: At the time of the fixing of a firm trial date, the Commercial Division justice shall order the parties within specified times prior to the commencement of trial to:

- (1) Stipulate in writing to facts about which there can be no reasonable dispute;
- (2) Identify all fact and expert witnesses to be called by the parties at trial;
- (3) Pre-mark and exchange copies of all documents or other exhibits to be offered in evidence at trial. All documents or other exhibits as to which a party intends to object at trial shall be identified in writing to the parties, together with the legal basis for such objection;
- (4) Identify in writing all deposition testimony, by page and line number, intended to be read into the record at trial. To the extent any party intends to object at trial to such deposition testimony or any part thereof, the basis for such objection shall be provided to the parties in writing. To the extent any party intends to read into the record at trial other parts of the deposition testimony of a witness whose testimony has been identified pursuant to this procedure, such testimony shall be identified, by page and line number, to the parties in writing;
- (5) Exchange trial briefs and requests to charge.

At such time prior to trial as may be fixed by the court, it shall rule on all matters placed in issue under this procedure.

In addition, the Commercial Division justice shall establish procedures consistent with the requirements of each case to ensure close interaction with the parties in order to minimize trial time.

Other Procedures

Motion Practice: Motion practice in the Commercial Division will be in accordance with existing procedures. Motions will be returnable in the first instance in a "submission part" without a need for attorneys to be present on the submission return date. If oral argument is sought and the Commercial Division justice wishes to entertain such argument, the parties will be notified of the scheduled argument date.

Orders to Show Cause: Orders to show cause in cases assigned to the Commercial Division will be presented in the Commercial Division Support Office, where they will be reviewed as to form, entered into the CCIS (Civil Case Information System) mainframe and forwarded to the assigned Commercial Division justice for consideration.

Notes of Issue: Notes of issue in Commercial Division cases shall be filed in the Commercial Division Support Office, which shall, in conjunction with the Trial Support Office, provide trial calendar support for the Commercial Division parts.

Settlement of Orders and Judgments: When possible, the Commercial Division will issue self-executing orders in accordance with the procedures set forth in the Civil Term's "Guide to the Form of Orders and Judgments." In the event a "settle order" or "settle judgment" is required, the settlement thereof shall take place in the Commercial Division Support Office. That office shall also, where necessary, coordinate entry of orders and judgments in the County Clerk's Office, interacting with County Clerk staff assigned to that function.