

**SUPREME COURT, CIVIL BRANCH
NEW YORK COUNTY
COMMERCIAL DIVISION**

**Hon. Stephen G. Crane
Administrative Judge
Supreme Court, Civil Branch
New York County**

November 7, 1996

THE JUDGES OF THE COMMERCIAL DIVISION

HON. HERMAN CAHN

HON. LEWIS R. FRIEDMAN

HON. IRA GAMMERMAN

HON. CHARLES E. RAMOS

HON. BEATRICE SHAINSWIT

FORMER JUDGES OF THE COMMERCIAL DIVISION

HON. STEPHEN G. CRANE

HON. WALTER M. SCHACKMAN (RETIRED)

FORMER JUDGE OF COMMERCIAL PART 14

HON. MYRIAM J. ALTMAN

ASSOCIATE JUSTICE

APPELLATE DIVISION, SECOND DEPARTMENT

INTRODUCTION

The Commercial Division of the New York State Supreme Court began operations on November 6, 1995. This report surveys the progress of the Commercial Division in its first year of operation and outlines plans for its future.¹

During the past year, the Commercial Division has experienced:

- a 43% settlement rate for cases involved in court-annexed alternative dispute resolution;
- new and sophisticated computer technology accessible by lawyers and Judges to aid in the management, litigation and disposition of commercial cases;
- centralization of Commercial Division courtrooms and the Commercial Division Support Office;
- dramatic increase in productivity of the Commercial Division in the rate of settlements, the number of cases tried to verdict and the brevity of the life of litigation; and
- a significant reduction in the delay of the entry of orders and judgments by the County Clerk.

¹ Information on the background of the Division can be found in the following articles: Chief Judge Judith S. Kaye, A Wish Fulfilled for the Chief Judge, Metropolitan Corporate Counsel (June 1996); Hon. Stanley S. Ostrau, The Commercial Division: Past and Future, N.Y. Litigator (Nov. 1996); Robert L. Haig, New York Creates Business Courts, Business Law Today p.32 (Sept - Oct. 1996). The interested reader is also referred to the comprehensive volume issued by the Commercial and Federal Litigation Section of the New York State Bar Association in connection with its Annual Meeting in January 1996.

Building on the experience of the commercial parts that preceded the inauguration of the Commercial Division, the New York County Commercial Division has achieved its overall objective of creating a forum in which business disputes are resolved in an efficient and timely fashion at a reduced cost. The achievement of this objective has led business parties to actively specify "the New York County Supreme Court, Commercial Division," as their chosen forum in the event of litigation between the parties. The success of the Division has also served to showcase for other states the viability and advantages of a business court in addressing the needs of the business community.

I. OVERVIEW

A plaintiff may request a case be transferred to the Commercial Division upon the filing of the summons and complaint with the County Clerk of New York County. The case is then assigned an index number in the 600000 series. The case does not reach the attention of a Commercial Division Judge, however, until a party files a Request for Judicial Intervention ("RJI") and indicates that the case is commercial in nature. The case then is randomly assigned to any of the five Commercial Division Judges.

After assignment to a Judge, the case is subject to rigorous judicial management. Timetables for disclosure and the filing of the Note of Issue are set. Cases proceed along one of two tracks. Simple commercial matters are expected to be trial-ready within 12 months of the filing of the Request for Judicial Intervention. Complex cases are expected to be trial-ready within 15 months of the RJI filing. If the case is susceptible to court-annexed dispute resolution, the Commercial Division Judge may direct the parties to a list of neutrals in the private sector for alternative dispute resolution. Parties interested in ADR resolution may receive a list of providers from the Commercial Division ADR Coordinator. Commercial Division Judges may also transfer cases out of the Division when appropriate for disposition by a noncommercial part.

Oftentimes, Commercial Division cases are settled before the Note of Issue is filed. Cases that are not amenable to settlement proceed to trial and are disposed of by jury verdicts or by decisions following non-jury trials.

Once a case is decided, Judges are encouraged to enter short form orders without the need for settlement of an order. However, the Commercial Division Support Office can and will process the settling and entering of orders and judgments

in necessary cases with a minimum of delay. The Commercial Division's close collaboration with the County Clerk's Office has effectively reduced the lag time for the processing of signed and entry-ready orders to just 24 hours.

II. THE PROGRESS OF THE COMMERCIAL DIVISION

Between November 6, 1995 and October 31, 1996, 6508 commercial index numbers were purchased. The data on contract cases demonstrates the very positive results achieved by the Commercial Division Judges since the Commercial Parts began in 1993.

- The average disposition time for cases has been reduced by 29%;
- The mean period of time in days between trial readiness (the filing of the Note of Issue) and the disposition of contract cases by trial or settlement has declined dramatically. In 1992, prior to the creation of the Commercial Parts, the mean was 404 days. From 1995 to 1996, the mean dropped to 271 days -- a decrease of 33%.
- Commercial cases tend to settle before the Note of Issue is filed, often after a decision on a substantive motion is rendered. The rate of settlement rose by 85% between 1992 and 1996.
- The number of pending contract cases has been significantly reduced since 1992 by 26%. The number of pending Notes of Issue in contract cases also has been reduced by 27% since 1992.

III. CASE MANAGEMENT

Each of the Commercial Division Judges has adopted a personal case management style within the broader framework of the Commercial Division Operating Statement to facilitate the expeditious resolution of their case load. All Division Judges hold preliminary conferences and compliance conferences to actively track case progress. Oral arguments are frequently held to narrow the issues in the case and to monitor motion practice and discovery compliance. Teleconferences likewise facilitate judicial management of commercial cases.

IV. AUTOMATION

The Commercial Division has been the laboratory for technological innovation for the entire Supreme Court, Civil Branch, New York County.

A computer network with powerful equipment and facilities was installed in the Division Support Office and the Judges' chambers. Under this computer network, the Judges have advanced E-mail and fax capabilities, and participate in a public access system called DataCase. The public access system permits Judges and attorneys, from their offices via modem, to check on the status of motions, ascertain future conference dates, examine motion and trial calendars and research case histories. Court personnel may also use this system to examine calendars, investigate case histories, run reports and perform a variety of other searches in the CCIS and County Clerk databases.

The court system also has developed a Commercial Case Management System, a program that allows Judges to more easily track their large inventories and manage them efficiently. Using this automated case management system, Judges can obtain, rapidly and efficiently, information on cases in their inventories, schedule cases effectively, manage their progress through the Division and run reports on their inventories. The program is designed to respond to the individual needs and desires of each Judge and enables each Judge to tailor the presentation of case information to his or her particular needs. This program will be adapted for all civil courts in the New York court system.

Existing computer technology also permits the creation of a databank of Commercial Judges' decisions to be made available through Westlaw.

V. THE ADR PROGRAM

The Commercial Division Operating Statement authorizes Judges to require the parties, at least once in the lawsuit, to resort to the technique of Alternate Dispute Resolution (ADR). The parties may agree on a neutral and an ADR technique of their choosing, or they may avail themselves of any name on the Commercial Division list of volunteer neutrals. If the parties cannot agree on a neutral to hear their case, the ADR Coordinator in the Commercial Division Support Office will select a neutral at random.

While the ADR process is ongoing, litigation between the parties generally is stayed. However, the Judges may, in their discretion, direct disclosure on a limited basis. In making this determination, the Judges balance the parties' needs to have sufficient information to engage in meaningful ADR with the goal of moving cases through the process expeditiously.

An ADR Advisory Group guides the Commercial Division and the Administrative Judge of the Civil Term in setting and implementing policies for ADR. The Advisory Group is made up of distinguished lawyers experienced in ADR techniques for business and commercial matters, and provides a reservoir from which to train less experienced neutrals.

To date, 159 cases have gone through the ADR program in the Commercial Division. Of that total, 38 are pending and 53 have settled -- a 44% success rate.

VI. COMMERCIAL DIVISION SUPPORT OFFICE

A Commercial Division Support Office was established to provide direct support for the Judges and improve the level of service available to commercial litigants. The Support Office is conveniently located in Courtroom 300 and is staffed by dedicated and experienced clerks. Specific procedures have been implemented to facilitate case processing and to save attorneys time and inconvenience -- e.g., the time involved for orders to show cause has been drastically reduced; processing paper in the office is rapid and largely error-free; copies with entry stamp of decisions of the Division Judges are available to the bar for examination and duplication in the Support Office at about noon of the same day on which the original is delivered to the County Clerk.

VII. PLANS FOR THE FUTURE

The Commercial Division soon will issue a new Operating Statement that preserves the fundamental principles of the original Statement issued last year. The new Statement will contain additional information to help litigants unfamiliar with the Division. The Statement will also contain guidelines on motion practice that, if followed by the bar, will help the court issue decisions more quickly and efficiently.

In the ADR area, on the anniversary of the commencement of the ADR Program (at the end of 1996), the Division will evaluate the ADR Program. Over the past months, the Division has been gathering evaluations from participants in ADR sessions. The Division will also canvas neutrals to collect their observations and suggestions. The views of the ADR Advisory Group will be sought and carefully considered. Once this data is collected, the Administration will synthesize the information, correct any shortcomings and build upon the points of strength.

The Division has planned from the outset to offer ADR training to the corps of neutrals. Many of the distinguished attorneys who make up this list have had training in ADR elsewhere. However, some neutrals, though extremely experienced attorneys, have not been formally trained in ADR.

VIII. CONCLUSION

The Commercial Division has tried to keep its eye fixed upon its Charter but also not to forget that it is part of a larger court. The Division is not an island of privilege. Rather, it is a laboratory for experimentation and reform. The Division Judges and staff have become experienced in moving cases ahead quickly, efficiently, inexpensively, skillfully, with devotion to the highest professional standards, and, above all, with sensitive concern for the administration of justice in every case. Adherence to these lessons inures to the benefit of the entire court.

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