

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

COMMERCIAL DIVISION

**HON. STEPHEN G. CRANE
ADMINISTRATIVE JUDGE
SUPREME COURT, CIVIL BRANCH
NEW YORK COUNTY**

December 2, 1997

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 New York County at the conclusion of its second year of operation and outlines some concrete plans for the future.

During the past year, the Commercial Division has consolidated and built upon the progress achieved in its first year. The Division has experienced:

- a dramatic reduction in the length of the litigation process;
- notable increases in productivity, particularly the rate of settlements, the number of motions decided, and the number of cases tried to verdict;
- implementation of technological improvements, with innovative plans for the future, most notably, the Courtroom of the 21st Century;
- timely entry of orders by the County Clerk;
- high quality treatment of matters handled by the Division, as evidenced by the approval rating of the commercial bar; and
- a 53% settlement rate for cases involved in the court-annexed alternative dispute resolution program, with additional settlements subsequently achieved as a direct result of the process.

The Commercial Division has largely achieved its initial objective of creating a forum in which business disputes can be resolved in an efficient, timely, and cost-effective fashion. The Division now seeks higher goals, with innovative plans to accomplish these ends.

I. OVERVIEW

Basic operating procedures of the Division have remained unchanged over the past year. At initiation, a commercial index number is assigned based upon the filer's request. However, actual assignment to the Division occurs pursuant to the designation contained in the Request for Judicial Intervention ("RJI"). A random assignment to a Division Justice then is made.

After assignment, each case is subject to rigorous judicial management. If the case arrives in court by way of motion, the Justice endeavors to resolve the motion promptly. If the motion does not dispose of the case, a timetable for accelerated disclosure and the filing of a Note of Issue is set. Cases susceptible to court-annexed dispute resolution may be referred to the Division's mandatory ADR Program where the parties may select from an extensive roster the neutral they wish to handle the proceeding.

Commercial Division cases often settle before the Note of Issue deadline is reached. Cases that are not so resolved proceed promptly to trial.

II. PRODUCTIVITY OF THE COMMERCIAL DIVISION

The Division has shouldered a very significant workload. Commercial Division motions are disproportionately complex, time-consuming, and demanding. Despite that, during 1996, the Justices of the Division, who constitute 10% of the corps of Judges, handled 19% of the motions decided in this Court. This averages out to more than 1750 motions per Justice, or almost 34 decisions per week.

Statistics show that the Division's case management efforts are having a significant impact on the delivery of justice. In 1992, on average 610 days passed from the filing of the Request for Judicial Intervention to disposition in cases resolved prior to the filing of the note of issue. This time has been cut in 1997 to an average of 396 days, a decrease of 35%. More than 90% of Commercial Division cases are resolved within this period. In 1992, the time from filing of the RJI to disposition in cases disposed of at the note of issue stage averaged 920 days. This time has been cut in 1997 to an average of 546 days, a 41% decrease.

The bar has responded favorably to the high quality work of the Commercial Division. A New York Law Journal survey revealed high levels of satisfaction with the performance of the Division; these findings were confirmed recently by a survey of the

Commercial and Federal Litigation Section of the State Bar. That group, along with the Association of the Bar of the City of New York, have recommended additional categories of cases to be included in the Commercial Division—surely a vote of confidence.

III. THE ALTERNATIVE DISPUTE RESOLUTION PROGRAM

In 1997, the Division studied the ADR Program and issued an extensive report. The study consisted of a survey of some 400 neutrals and attorneys who had participated in the Program. Survey results revealed substantial satisfaction with all aspects of the Program, particularly with the procedures and administration of the Program and the dedication, skill, and energy of the neutrals. The Program's statistics indicate that while 53% of the referred cases settle during the ADR process, additional settlements are achieved after completion of the process. Where settlement is not achieved, issues are often narrowed and relations between the parties improved, making settlement at a later time more likely.

The Division has sponsored mediation training for 70 volunteer neutrals. The Division is grateful for the assistance on a pro bono basis of JAMS/Endispute and the New York County Lawyers' Association in this effort.

IV. TECHNOLOGICAL DEVELOPMENTS

Central to the success of the Commercial Division has been the use of technological advances in facilitating caseload management. A state-of-the-art computer network in the Justices' chambers and the Commercial Division's Support Office provides instantaneous access to advanced e-mail and fax capabilities as well as the DataCase public access system. A technologically innovative Commercial Case Management System developed by the court system's Information and Technology Department allows Commercial Division Justices to easily track and manage their large inventories of cases. Using this system, Justices can obtain, rapidly and efficiently, information on cases in their inventories, schedule their cases effectively, manage their progress through the Division, and run reports on their inventories. Designed to respond to the individual needs and desires of each Justice, each Justice is also free to tailor the presentation of case information to his or her particular needs. This program has proven so successful that it now being used by the Court's back offices to track its large inventories.

DataCase, an on-line civil case information system, installed on all Commercial

Division Justices' computers, permits searches from their computers of civil Supreme Court case histories, allows reviews of New York City judgment docket lien entries and scanning of New York County Clerk records—all instantaneously. This civil case information system provides access to more than two million case files from thirteen major counties: Bronx, Dutchess, Erie, Kings, Nassau, New York, Orange, Putnam, Queens, Rockland, Richmond, Suffolk and Westchester. Information on the Commercial Division, its Operating Statement, the ADR Program and other court information will be made available on-line in the near future.

V. WORKING WITH THE BAR

The Commercial Division has made a vigorous effort to maintain open lines of communication with the bar, to work with the bar in addressing concerns about the Division and to seek ways to improve its operations.

The Division created an ADR Advisory Group composed of distinguished practitioners with extensive experience in ADR to make recommendations to the Administration on the Division's ADR Program. The Administration has had many beneficial exchanges with the Group members.

In addition to addressing the operational concerns of individual practitioners, the Court has met frequently with bar groups interested in the Division. For example, in 1997, officials from the Administration of 60 Centre Street met on numerous occasions with representatives from committees of the New York County Lawyers' Association, the Association of the Bar of the City of New York (including its Council on Judicial Administration) and the New York State Bar Association. The Division sent statistics on court operations to these groups for studies they were undertaking.

Recently, the Court received reports from the Commercial and Federal Litigation Section of the State Bar and the Association of the Bar of the City of New York. Steps will be taken by the Court in response to the recommendations contained in these reports.

VI. PLANS FOR THE FUTURE

A number of initiatives the Commercial Division will be undertaking in the coming year include:

- Expansion of the ADR Program: Based on the findings and recommendations of the ADR report and suggestions received from the ADR Advisory Group, the Division will expand the ADR Program in 1998 and issue new ADR Rules and a *Guide to the Alternative Dispute Resolution Program*. At the direction of the Administrative Judge, contract and similar cases that are to be assigned to a non-Commercial Part will be referred to the ADR Program for mandatory court-annexed ADR.
- ADR Newsletter: The Division will publish an ADR newsletter to be circulated to neutrals in the ADR Program in the coming year. This quarterly newsletter will contain both information about the Program and general developments in mediation and ADR.
- Commercial Decisions On-line: The Commercial Division has been investigating placing decisions on-line through DataCase as well as a Commercial Division home page. Both locations will provide ready electronic access to decisions: one containing all recent decisions, which would temporarily be maintained for a period of time so that parties can electronically retrieve copies of decisions in their cases upon issuance; and a second to be maintained permanently and searchable for legal research purposes. A pilot program for collection, security, and processing procedures for on-line decisions will begin soon.
- Digest of Noteworthy Commercial Division Decisions: At the beginning of the year, the Division will commence publication of a bi-monthly digest of leading Commercial Division decisions. This digest will be made available to subscribers.
- Commercial Division Motion Calendar: The Commercial and Federal Litigation Section of the State Bar in its recent report suggested streamlining the motion process in Commercial Division cases. Beginning January 1, 1998, all Division motions will appear on a separate motion calendar to be called each day in the Motion Support Office Courtroom (Room 130). Disputes regarding these motions will be handled directly by the assigned Justice or designee. This will improve and expedite the resolution of disputes in these cases while also permitting expeditious treatment of non-commercial motions.

VII. TAKING NOTE OF A DEPARTURE

Finally, we note that a few days ago, the Honorable Stanley S. Ostrau, former Administrative Judge of this Court, retired after decades of public service. Justice Ostrau was instrumental in the establishment of the Commercial Parts and the creation of the Commercial Division. He was a member of the IAS Committee, which, in its report of October 1992, recommended the establishment of commercial parts as an experiment. He set up and administered these parts, oversaw their progress and planned the creation of the Division in New York County. On behalf of all the current Justices of the Division, their predecessors, and the entire staff of the Division, we take this opportunity to acknowledge the Division's great debt to this Founding Father and to wish him well in all his future endeavors.

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