

Lawyer Insights

Is New York's Commercial Division Right for My Case?

This series of Commercial Litigation articles will explain the fundamentals of Commercial Division practice. Part I addresses the key advantages of the Commercial Division and how to commence a case there.

By Kevin Small, Joseph Saltarelli and Charlotte Leszinske
Published in New York Law Journal | March 25, 2024



The Commercial Division of New York State Supreme Court is hand-tailored to resolve complex commercial disputes quickly and efficiently. Proceeding in the Commercial Division can streamline litigation and save your clients substantial time and resources. But the Commercial Division is governed by several overlapping sets of rules, which may make it difficult for uninitiated counsel to take full advantage of the Division's potential to

deliver results for their clients.

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Key Advantages: Expertise and Efficiency

The availability of a New York judicial forum, and the choice of New York commercial law, remain critical to the resolution of many complex business disputes. Most major corporations do business in New York City, and a significant proportion of the financial services industry is centered there. For example, a 2018 study found that around 34% of domestic contracts and 51% of international contracts designate New York as the forum for adjudication of disputes. See Julian Nyarko, "We'll See You in ... Court! The Lack of Arbitration Clauses in International Commercial Contracts", 58 Int'l Rev. L. & Econ. 6 (2019).

This should come as no surprise: New York has perhaps the most well-developed caselaw on commercial law issues in the country. And given the vicissitudes and expense of litigation generally, corporations like as much predictability in governing law as possible when they are required to litigate. New York courts have traditionally established precedent for how courts around the country address commercial issues, particularly those involving New York law, with implications often reaching far beyond any particular case. Given the importance of New York law to parties across the country and around the world, the availability of a dedicated court whose judges are steeped in New York commercial law is a vital resource for the resolution of complex disputes.

Enter the New York Commercial Division.

Created in 1995, the New York Commercial Division handles only certain disputes and emphasizes efficiency and consistent outcomes. Justices are specifically assigned to the Commercial Division based

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on their experience with commercial disputes and spend almost all of their time adjudicating such disputes. There are “chapters” of the Commercial Division throughout New York State, including several in New York City alone. New York County (Manhattan) currently has ten justices appointed to the Commercial Division, two recently added.

The deep experience of Commercial Division justices with complex commercial matters greatly increases efficiency and predictability of outcome. So too do the Commercial Division's rules, which are tailored to quickly and meaningfully advance resolution of disputes. Unlike cases in other departments, the Commercial Division requires that a Request for Judicial Intervention (RJI), which triggers assignment of a justice, be filed within 90 days of service of the complaint. As a result, justices get involved earlier than is typically the case. And each justice has their own set of practices and sample forms, which are designed to resolve routine issues with minimal downtime (such as agreements governing confidentiality and the exchange of electronically stored information).

Other Commercial Division rules emphasize early and frequent contact with the court and opposing counsel, increasing momentum. For example, a preliminary conference must be held within 45 days of assignment of a case to a Commercial Division justice. 22 NYCRR 202.70(g) rule 7. Prior to the conference, parties must meet and confer about resolution of the case, discovery matters, alternate dispute resolution (ADR) and settlement opportunities. 22 NYCRR 202.70(g) rule 8. At the conference, the court will query the parties about their expectations and set deadlines, allowing the schedule to be as flexible as required for any particular matter. Parties may also use accelerated adjudication procedures, under which cases will proceed through discovery and reach trial within nine months from the date of filing of the RJI. 22 NYCRR 202.70(g) rule 9.

Discovery is also streamlined and accelerated. When making a first appearance, parties must file corporate disclosure statements similar to those required by Federal Rule of Civil Procedure 7.1. 22 NYCRR 202.70(g) rule 35. Limits placed on interrogatories (25 total, limited to certain topics) and depositions (10 total) discourage vexatious discovery. See 22 NYCRR 202.70(g) rules 11-a(a) & 11-d(a)(1). The Commercial Division rules also simplify discovery procedures, allowing categorical privilege logs and specifying guidelines for electronically stored information and confidentiality stipulations. See 22 NYCRR 202.70(g) rules 11-b(b), 11-c & 11-g.

Finally, the Commercial Division has a sophisticated ADR program, which parties are urged to participate in: counsel are required to remind their clients of ADR options at regular intervals. See, e.g., 22 NYCRR 202.70(g) rules 3 & 10. Unlike many other state courts, judicial hearing officers and special referees are available to hear discovery disputes, resolve discrete legal issues (attorneys' fees, jurisdiction) and facilitate mediation. 22 NYCRR 122.6; NY CPLR 3104. The Commercial Division rules also empower the court to direct, or parties to request, mediation at any point in the case. 22 NYCRR 202.70(g) rule 3(a). Some chapters have additional requirements to speed things along: New York County, for example, requires mediation to take place within 30 days after a mediator is assigned. See New York State Unified Court System, Commercial Division – New York County/Manhattan, ADR Overview, https://ww2.nycourts.gov/courts/comdiv/ny/ADR_overview.shtml (last visited Feb. 20, 2024).

Getting Into Court: Jurisdictional Requirements

The Commercial Division has chapters located in major centers of commercial dispute, spanning several judicial districts in and around New York City and Long Island as well as Albany, Buffalo, Rochester and

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Syracuse. Each location has its own monetary threshold, which varies from as low as \$25,000 (Albany and Onondaga Counties) to as high as \$500,000 (New York County).

Location	Monetary Threshold
Albany County	\$50,000
Bronx County	\$75,000
Eighth Judicial District (Buffalo)	\$100,000
Kings County	\$150,000
Nassau County	\$200,000
New York County	\$500,000
Onondaga County (Syracuse)	\$50,000
Queens County	\$100,000
Seventh Judicial District (Rochester)	\$50,000
Suffolk County	\$100,000
Westchester County	\$100,000

See 22 NYCRR 202.70(a). Certain internal corporate affairs cases—*e.g.*, derivative and commercial class actions—are exempted from meeting the threshold. 22 NYCRR 202.70(b)(4)-(5), (11). To qualify for assignment to the Commercial Division, a case must be “commercial,” which is defined to include contract and real estate cases, corporate affairs, arbitration matters and some insurance matters. See 22 NYCRR 202.70(b).

To get your case into the Commercial Division, begin by filing a complaint in any Supreme Court with a Commercial Division chapter. If the case is not originally filed as a Commercial Division case, within 90 days of service of the complaint, any party may move for the case to be assigned to the Commercial Division by filing an RJI. 22 NYCRR 202.70(d)(1). The RJI must be accompanied by a Commercial Division RJI Addendum, which certifies that the case meets the requirements to be assigned there. *Id.* If the RJI is filed and did not request that the case be assigned to the Commercial Division, any party (other than the party who filed the RJI) has ten (10) days to request that the case be transferred to the Commercial Division. 22 NYCRR 202.70(e). After then, any party can request transfer for good cause, including the party that filed the initial RJI. *Id.*

Parties may also agree in their contracts that the Commercial Division will have exclusive jurisdiction over them and their dispute; provided, however, that the Division’s and any other jurisdictional requirements are met. 22 NYCRR 202.70(d)(2). In that regard, most litigators are familiar with Sections 5-1401 and 5-1402 of the General Obligations Law. Section 5-1401 provides that an agreement designating New York law as governing law is valid, even if the agreement has no connection to New York, so long as the amount in controversy exceeds \$250,000. N.Y. Gen. Oblig. Law § 5-1401. In turn, Section 5-1402 provides that parties can designate New York as their chosen forum so long as (1) their contract designates New York law pursuant to Section 5-1401, (2) the transaction at issue involves at least \$1 million and (3) any foreign corporation or non-resident party to the agreement submits to the jurisdiction of the New York courts. N.Y. Gen. Oblig. Law § 5-1402. The Commercial Division includes sample forum selection clauses in Appendix C to the Commercial Division rules. See 22 NYCRR 202.70 Appendix C.

The Commercial Division rules can be found in 22 NYCRR 202.70. In addition, each chapter of the Commercial Division has its own local rules of practice, and individual judges typically have their own

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rules as well. And, of course, cases in the Commercial Division remain subject to the New York Civil Practice Law and Rules. All sets of rules must be analyzed carefully before commencing an action. Future columns in this series will explore how these rules interact at each stage of litigation.

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