

Commercial Division, New York State Supreme Court, Adopts New Rule Relating to Accelerated Adjudication Actions

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The New York Office of Court Administration has adopted, effective June 2, 2014, [Rule 9](#) of section 202.70(g) of the Uniform Rules for the Supreme and County Courts (Rules of Practice for the Commercial Division). The new rule will allow businesses, when negotiating and entering into all forms of contracts, to choose an accelerated procedure in New York's Commercial Division for the resolution of any disputes through the simple insertion of a single sentence referring to the new rule.

Specifically, the rule provides that in all actions, except for class actions brought under Article 9 of the CPLR, the court by written consent of the parties is authorized to apply the Commercial Division's accelerated adjudication procedures. New Rule 9 is designed to address the dilemma often encountered by pre-contract negotiating parties and post-dispute litigants when attempting to streamline the litigation process. Specifically, in the pre-dispute context, the negotiation of a contract provision to establish limits on the pre-trial process can become so time consuming and mired by other practical considerations that the parties abandon this endeavor. A party seeking agreement on the business terms of a proposed contract is understandably reluctant to engage the other party in extensive negotiation of litigation procedures and to thereby suggest to the other party that disputes are likely to arise from the contractual relationship and that it is already planning how to win those disputes. In the post-dispute context, contentions and distrust often run so high between the parties that the parties find it impossible to reach an agreement on how to truncate the process.

While, under the proposed procedures, parties remain free to negotiate their own limitations on the process, one way for parties to express their written consent is to use specific language in a contract. While the parties are free to negotiate their own language, the rule itself includes the following proposed contract provision:

"Subject to the requirements for a case to be heard in the Commercial Division, the parties agree to submit to the exclusive jurisdiction of the Commercial Division, New York State Supreme Court, and to the application of the Court's accelerated procedures, in connection with any dispute, claim or controversy arising out of or relating to this agreement, or the breach, termination, enforcement or validity thereof."

Under the rule's accelerated process, all pre-trial proceedings, including all discovery, pre-trial motions and mandatory mediation, shall be completed and the parties ready for trial within nine

months from the date of filing of a Request of Judicial Intervention (RJI). The accelerated procedures allow businesses to waive the use of costly and time-consuming litigation tactics and to limit electronic and regular discovery. In particular, the parties to an accelerated action waive the following:

- Any objections based on lack of personal jurisdiction or forum non conveniens;
- The right to a jury trial;
- The right to recover punitive or exemplary damages;
- The right to interlocutory appeal; and
- The right to discovery, except as provided for in the rule or such discovery as the parties might otherwise agree.