Litigation

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New York Creates Rocket-Docket for Commercial Disputes—But Accelerated Adjudication Comes With Trade-Offs

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As of June 2, the Commercial Division of the New York Supreme Court will allow for the accelerated adjudication of commercial disputes. Rule 9 of Section 202.70(g) of the Uniform Rules for the Supreme and County Courts takes effect today, requiring litigants who consent to this accelerated process to be trial-ready in no more than nine months. The caveat is that parties who avail themselves of this option must also agree to limit discovery and irrevocably waive certain procedural rights and objections.

Rule 9 gives commercial parties the chance to avoid costly and protracted litigation, thereby ensuring that New York remains an attractive venue for commercial dispute resolution.

Parties may express their consent to this accelerated adjudication process by using specific triggering language in their contracts. Rule 9 provides the following model language for such a contractual 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.*

By doing so, litigants agree to conclude all pre-trial proceedings—including discovery, pre-trial motion practice, and mandatory mediation—within nine months of the filing of a Request of Judicial Intervention (RJI).

To achieve these efficiencies, parties must agree to waive certain rights and objections, including any objections based on lack of personal jurisdiction or forum non conveniens; the right to a trial by jury; the right to recover punitive or exemplary damages; and the right to an interlocutory appeal.

In addition, Rule 9 limits the scope and volume of discovery. For example, absent agreement by the parties, litigants will be allowed no more than seven interrogatories; five requests to admit; and seven discovery depositions per side of no more than seven hours each, absent a showing of good cause.

Significantly, the rule also narrows the contours of e-discovery: document requests are to be narrowly tailored in terms of their time frame and subject matter; only those individuals with documents reasonably expected to contain material information may be named custodians; and where the burden of complying with e-discovery requests is disproportionate to the nature of the dispute or the amount in controversy, the court will deny such requests or fashion a cost-shifting remedy.

Before committing to accelerated adjudication, contracting parties should weigh the benefits of a speedy outcome against these trade-offs.

Parties may be tempted to address concerns about truncated discovery by agreeing to these rules for only certain types of disputes, or disputes in which the amount in controversy is below a certain threshold. The risk is that doing so may spawn collateral litigation about whether the expedited rules apply to a particular dispute. This, in turn, would defeat the very purpose of the expedited rules.

We set forth below the full text of Rule 9 of Section 202.70(g):

Rule 9. Accelerated Adjudication Actions.

(a) This rule is applicable to all actions, except to class actions brought under Article 9 of the CPLR, in which the court by written consent of the parties is authorized to apply the accelerated adjudication procedures of the Commercial Division of the Supreme Court. One way for parties to express their consent to this accelerated adjudication process is by using specific language in a contract, such as: "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. "

(b) In any matter proceeding through the accelerated process, all pre-trial proceedings, including all discovery, pre-trial motions and mandatory mediation, shall be completed and the parties shall be ready for trial within nine (9) months from the date of filing of a Request of Judicial Intervention (RJI).

(c) In any accelerated action, the court shall deem the parties to have irrevocably waived:

(1) any objections based on lack of personal jurisdiction or the doctrine of forum non conveniens;

(2) the right to trial by jury;

(3) the right to recover punitive or exemplary damages;

(4) the right to any interlocutory appeal; and

(5) the right to discovery, except to such discovery as the parties might otherwise agree or as follows:

(i) There shall be no more than seven (7) interrogatories and five (5) requests to admit;

(ii) Absent a showing of good cause, there shall be no more than seven (7) discovery depositions per side with no deposition to exceed seven (7) hours in length. Such depositions can be done either in person at the location of the deponent, a party or their counsel or in real time by any electronic video device; and

(iii) Documents requested by the parties shall be limited to those relevant to a claim or defense in the action and shall be restricted in terms of time frame, subject matter and persons or entities to which the requests pertain.

(d) In an accelerated action, electronic discovery shall proceed as follows unless the parties agree otherwise:

(i) the production of electronic documents shall normally be made in a searchable format that is usable by the party receiving the e-documents;

(ii) the description of custodians from whom electronic documents may be collected shall be narrowly tailored to include only those individuals whose electronic documents may reasonably be expected to contain evidence that is material to the dispute; and

(iii) where the costs and burdens of e-discovery are disproportionate to the nature of the dispute or to the amount in controversy, or to the relevance of the materials requested, the court will either deny such requests or order disclosure on condition that the requesting party advance the reasonable cost of production to the other side, subject to the allocation of costs in the final judgment.

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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