

FAQS ABOUT THE NEW EIGHTH JUDICIAL DISTRICT COMMERCIAL DIVISION

The Commercial Division, Supreme Court, Erie County was established in 1999. From that date until August 2007, the Commercial Division accepted all cases filed in Erie County in which the amount of damages sought was \$25,000 or more, excluding interest, costs and attorneys' fees, and which fell within the types of cases the rules defined as "Commercial". The threshold dollar amount was increased to \$50,000 in August 2007.

Recently, the Administrative Board of the Courts determined that the Commercial Division's services should be available to the entire Eighth District. On November 28, 2007, Chief Administrative Judge Ann T. Pfau issued an Administrative Order creating the Eighth District Commercial Division, out of the former Commercial Division, Erie County. The Seventh and Eighth Judicial Districts now both have district-wide Commercial Divisions. The purpose of this document is to explain what that Order means to practicing attorneys in the Eighth District.

Q: What is the purpose of the Commercial Division?

A: The Commercial Division was established through a collaborative effort by the Bench and Bar, particularly the NYSBA Commercial and Federal Litigation Section. Its purpose is to provide a dedicated part for handling a wide range of business-related disputes. By focusing exclusively on commercial law matters, the Division is able to offer greater expertise in handling the many complex disclosure disputes (including electronic discovery) and dismissal/summary judgment motions that predominate in commercial litigation.

Q: What is a commercial case?

A: After promulgation of Statewide Rules for Commercial Divisions (22 NYCRR 202.70). in 2006, the definition of a Commercial case is uniform state-wide (*see* 22 NYCRR 202.70 [b], [c]).

(b) Commercial cases. Actions in which the principal claims involve or consist of the following will be heard in the Commercial Division provided that the monetary threshold is met or equitable or declaratory relief is sought:

(1) breach of contract or fiduciary duty, fraud, misrepresentation, business tort (e.g., unfair competition), or statutory and/or common law violation where the breach or violation is alleged to arise out of business dealings (e.g., sales of assets or securities; corporate restructuring; partnership, shareholder, joint venture, and other business agreements; trade secrets; restrictive covenants; and employment agreements not including claims that principally involve alleged discriminatory practices);

- (2) transactions governed by the Uniform Commercial Code (exclusive of those concerning individual cooperative or condominium units);
- (3) transactions involving commercial real property, including Yellowstone injunctions and excluding actions for the payment of rent only;
- (4) shareholder derivative actions--without consideration of the monetary threshold;
- (5) commercial class actions--without consideration of the monetary threshold;
- (6) business transactions involving or arising out of dealings with commercial banks and other financial institutions;
- (7) Internal affairs of business organizations;
- (8) malpractice by accountants or actuaries, and legal malpractice arising out of representation in commercial matters;
- (9) environmental insurance coverage;
- (10) commercial insurance coverage (e.g., directors and officers, errors and omissions, and business interruption coverage);
- (11) dissolution of corporations, partnerships, limited liability companies, limited liability partnerships and joint ventures--without consideration of the monetary threshold; and
- (12) applications to stay or compel arbitration and affirm or disaffirm arbitration awards and related injunctive relief pursuant to CPLR article 75 involving any of the foregoing enumerated commercial issues--without consideration of the monetary threshold.

(22 NYCRR 202.70 [b]).

By rule, the following types of cases are deemed NOT to be commercial cases and will not be accepted in the Commercial Division, even if the monetary threshold is met:

- (1) Suits to collect professional fees;

- (2) Cases seeking a declaratory judgment as to insurance coverage for personal injury or property damage;
- (3) Residential real estate disputes, including landlord-tenant matters, and commercial real estate disputes involving the payment of rent only;
- (4) Proceedings to enforce a judgment regardless of the nature of the underlying case;
- (5) First-party insurance claims and actions by insurers to collect premiums or rescind non-commercial policies; and
- (6) Attorney malpractice actions except [as arising out of representation in commercial matters].

(22 NYCRR 202.70 [c]).

Q: How do I get a case assigned to the Eighth District Commercial Division from a county outside of Erie County?

A: When an RJI is filed in a pending case in any of the counties in the Eighth District, the filer may check the “commercial” box on the RJI and attach to it a Commercial Division Certification (see Appendix A [form]). The Certificate contains several check boxes for cases which fall within our jurisdiction. A party seeking a designation of a special proceeding as a commercial case shall check the “other commercial” box on the RJI, not the “special proceedings” box (see 22 NYCRR 202.70 [d]). All RJIs with the Commercial Division Certificate attached which profess that the case is a “commercial” case, shall be assigned automatically to the Commercial Division.

If the filer of the RJI does not attach a commercial division certification to the RJI in a commercial case, and the case is randomly assigned to a Justice outside of the Commercial Division, the case will proceed before that Justice, absent one of two events.

First, that Justice may request of the Administrative Justice that a qualified case be transferred to the Commercial Division; the Administrative Justice’s decision in such matters shall be final. Second, pursuant to 22 NYCRR 202.70, “any other party may apply by letter application (with a copy to all parties) to the Administrative Judge, within ten days after receipt of a copy of the RJI, for a transfer of the case into the Commercial Division. The determination of the Administrative Judge shall be final and subject to no further administrative review or appeal” (22 NYCRR 202.70[e]).

Q: As the attorney filing the RJI, do I get the last word on whether a case belongs in the Commercial Division?

A: The Justice assigned to the Commercial Division reviews all cases in which a Commercial Division Certification has been filed indicating that the matter is “commercial.” If the Justice determines that the case does not meet the threshold amount or does not fall within the jurisdictional subject matter, the filer will be contacted and the case reassigned by the Chief Clerk of the county of origin.

Q: If my case is assigned to the Commercial Division, will I have to drive to Buffalo for all pretrials and motions?

A: The Commercial Division will make every effort to accommodate the needs of attorneys and parties in cases assigned to the Commercial Division from counties other than Erie. Telephone conferences will be available, and videoconferencing of motion practice may be possible, if arranged in advance.

Q: Will my trial be in Buffalo as well?

A: Cases in which a jury demand is filed will be tried in the county of origin. The Court will make every effort to accommodate the needs of the parties, counsel and witnesses in scheduling the location of proceedings in non-jury trials and hearings.

Q. Who is involved with the Commercial Division?

A: The Justice presently assigned is Hon. John M. Curran, J.S.C. His part information is located on the Commercial Division website (www.nycourts.gov/comdiv). The Eighth District Commercial Division also has a Court Attorney (Anne S. Rutland, Esq.) assigned to it.