THE DAILY RECORD

CivilLITIGATION

Recent commercial division rule changes, amendments

"You have to learn the rules of the game. And then you have to play better than anyone else."
— *Albert Einstein*

This article highlights some of the recent amendments to the Rules of the Commercial Division of the Supreme Court, as well as new rules that were adopted and put into effect earlier this year. These recent amendments include: 1) increased monetary thresholds for principal claims to be heard in the Commercial Division, 2) expanded requirements relating to settlement disclosure, 3) staggered court appearances with assigned time slots for argument on motions, 4) new guidelines intended to streamline discovery of electronically stored information from nonparties, and 5) limitations on the number and scope of interrogatories.

These rule changes are the result of Administrative Orders of the Chief Administrative Judge of the Courts. The powers of the chief administrative judge are conferred by the New York State Constitution. Under Article VI, Section 30, the Legislature may delegate to the chief administrator rule-making powers with respect to the practice and procedure of the courts.

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Daily Record Columnist

Monetary thresholds

The monetary bar in the Eighth Judicial District, which includes Buffalo, was doubled effective Sept. 2, from $50,000 to $100,000. The $50,000 threshold in the Seventh Judicial District, which was increased a couple years ago from $25,000, will not change. In Albany and Onondaga County, the monetary threshold is now $50,000, up from $25,000. These changes follow the increased threshold by the New York County (Manhattan) Commercial Division in February 2014 from $150,000 to $500,000.

Consultation prior to conferences

Under an amendment to Rule 8(a) of the Commercial Division Rules, "counsel for all parties" must consult about "any volun-

tary and informal exchange of information that the parties agree would help aid early settlement of the case," prior to a preliminary or compliance conference. This requirement is in addition to the preexisting duties on counsel to consult about: 1) resolution of the case, 2) discovery and other issues to be discussed at the conference, and 3) the use of alternative dispute resolution to resolve some or all of the issues in the litigation.

Staggered court appearances

A new rule, which went into effect on September 2, 2014, is Rule 34 of section 202.70(g) of the Uniform Rules, which is intended to "streamline the litigation process in the Commercial Division" by assigning a time slot to each court appearance for oral argument on a motion. Rule 34 provides that "[t]he length of the time slot allotted to each matter is solely in the discretion of the court." The new rule places the responsibility of notifying all other parties - by email - about when the matter is scheduled to be heard on each attorney "who receives notification of an appearance on a specific date and time." The rule also requires an exchange of email addresses by counsel. Specifically, Rule 34(c) provides that "All parties are directed to exchange email addresses with each other at the commencement of the case and to keep those e-mail addresses current, in order to facilitate notification by the person(s) receiving the court notification."

Guidelines for e-discovery from nonparties

Another new rule provides guidance to litigants in the area of collecting electronically stored information from nonparties in discovery. Practitioners seeking or responding to a demand for ESI from nonparties should refer to the guidelines, which encourage early assessment and discussion of the potential costs and burdens imposed with respect to preservation, retrieval and production – in light of the nature of the litigation and the amount in controversy.

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Limits on interrogatories

The Commercial Division Rules now include specific limitations on interrogatories. A recent administrative order, with an effective date of June 2, limits the number of interrogatories to 25, including subparts, unless a preliminary conference order specifies another limit. This numerical limitation brings the Commercial Division Rule consistent with Federal Rules of Civil Procedure.

In addition to limiting the number of interrogatories, the administrative order also limits the scope of interrogatories to certain specified categories of requests. Absent a court order, interrogatories are now limited to: name of witnesses with knowledge of material information, computation of each category of damage alleged, and the existence, custodian, location and general description of necessary documents and other physical evidence.

Practitioners should note that under the new rule, "at the con-clusion of other discovery, and at least 30 days prior to the discovery cut-off date," unless prohibited by court order, a party may serve contention interrogatories, to elicit factual bases or support for allegations contained in a pleading.

Proposed limitations on depositions

The chief administrator is also considering adoption of an amendment that would limit the number and duration of depositions to ten per side and seven hours, respectively. The public comment period for the proposed rule closed in August. If adopted, the numerical limit and durational limit would make New York's Commercial Division rules consistent with Federal Rules of Civil Procedure 30(d)(1) and 30(a)(2)(A).

For a full listing of recent amendments to the Uniform Rules of the Trial Courts, see www.nycourts.gov/rules/amendments.shtml.

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