



## **Expedited adjudication in N.Y. Supreme Court's Comm'l. division now available to consenting parties**

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Part 2 continued from the 10-28 edition of NYREJ.

### **Expedited Adjudication**

#### **Available on Consent**

New York's new rule applies to all actions, except certain class actions, in which the court, by written consent of the parties, is authorized to apply the accelerated adjudication procedures. The rule even suggests a specific provision that the parties can include in a contract.

Written consent by the parties can be set forth in the initial closing documents, or at the time of a modification of the operative documents (such as at the time of a loan workout, lease modification, or other extension agreement).

#### **Weigh the Advantages and Disadvantages**

There could be a "knee jerk" reaction to add this consent provision to all agreements, because it may appear to be a very attractive alternative to protracted litigation, especially to a lender in the loan default context, where the use of dilatory tactics by a borrower, mortgagor, or guarantor, is sometimes the only card that can be played. But even with the consent of both parties, "accelerated" litigation can still be expensive: the legal fees for necessary litigation services that will be rendered (for mandatory mediation, preparation and argument of dispositive motions, and conducting limited discovery) will still be incurred; these fees and costs will be compressed into a shorter period of time.

Additionally, the effect of this new rule, and the logistical ability of court personnel to manage a "rocket docket," is unknown.

#### **Part of a Larger Trend**

To address delays, "Rocket Docket" provisions have been successfully implemented in other courts. For example, the U.S. immigration court in New York recently started a program having the goal of reducing adjudication time from many months to a matter of weeks. The United States District Court for the Eastern District of Virginia has, for many years, successfully utilized a "rocket docket" to adjudicate complex civil cases in less than a year.

#### **Conclusion**

When launched in 1995, the commercial division of the New York Supreme Court was the first of its kind in the country. New York's chief judge has sought to keep New York at the cutting edge of how commercial disputes are resolved. The changes described above resulted from a report of a task force on commercial litigation in the 21st Century.

Although it's too early to measure the effectiveness of the expedited opportunity afforded by the New York Supreme Court Commercial Division's "rocket docket," it's not too early to "shine a

spotlight on the boilerplate," and consider including a consent provision in each of the operative documents in a commercial real estate transaction. A decision should be made on a case-by-case basis, after consultation with counsel, as to whether a party to the transaction would benefit from consenting to allow accelerated adjudication.

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