STATE OF NEW YORK
UNIFIED COURT SYSTEM
25 BEAVER STREET
NEW YORK, NEW YORK 10004
TEL: (212) 428-2150
FAX: (212) 428-2155

A. GAIL PRUDENTI
Chief Administrative Judge

JOHN W. McCONNELL
Counsel

MEMORANDUM

December 6, 2013

To: All Interested Persons

From: John W. McConnell

Re: Proposed adoption of a new Rule of the Commercial Division (22 NYCRR § 202.70(g)) (Rule 9), relating to use of accelerated adjudication procedures in the Commercial Division of the Supreme Court.

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The Commercial Division Advisory Council has recommended adoption of a new Commercial Division Rule (22 NYCRR § 202.70(g)) (Rule 9), relating to the use of accelerated adjudication procedures in the Commercial Division of the Supreme Court (Exhibit A). Proposed Rule 9(a) provides that the parties may consent in writing to submit their disputes to the Commercial Division's accelerated adjudication process, and sets forth specific consent language for inclusion in any contract between the parties. The Advisory Council's proposal would place limits on discovery and other pre-trial procedures in order to streamline the litigation process and ensure that the parties are ready for trial within nine months of the filing of the Request for Judicial Intervention.

Persons wishing to comment on this proposal should e-mail their submissions to CommDivAccelAdjud@nycourts.gov or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004. **Comments must be received no later than February 6, 2014.**

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. The issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the court system.

EXHIBIT A

MEMORANDUM

To: Commercial Division Advisory Council

From: Subcommittee on Procedural Rules to Promote Efficient Case Resolution

Re: Accelerated Adjudication Procedures

Date: September 26, 2013

In examining ways to enhance the efficient and timely resolution of commercial disputes, the Task Force on Commercial Litigation in the 21st Century examined various procedures currently used in the business and legal communities to determine whether an accelerated adjudication procedure would be an effective tool for use exclusively in the Commercial Division.

The Task Force considered numerous proposals to limit discovery, eliminate certain trial practices and, generally, to truncate the process. In their original form, all the proposals considered were designed to streamline the processes, eliminate waste, reduce costs and provide certainty. In its report, the Task Force concluded that certain summary proceedings could be adapted for use within the Commercial Division and recommended that the Advisory Council devise an amendment to the Rules of the Commercial Division to provide for an accelerated adjudication procedure to be implemented upon consent of all parties in commercial division cases.

We were assigned the task of devising such a rule which would permit parties to contract for accelerated adjudication in a pre-dispute context.

We examined, in addition to those proposals considered by the Task Force, two existing proposals for accelerated procedures – one of which is currently being used in commenced litigation in matters pending before Commercial Division Justice Charles E. Ramos, New York County, Supreme Court and the other which was set forth in the Final Report of the New York State Bar Association's Task Force on New York Law in International Matters.[1]

In designing the accelerated procedures, our goal was to address the dilemma that pre-contract negotiating parties and post-dispute litigants often encounter when attempting to streamline the litigation process. Historically, in the pre-dispute context, the negotiation of a contract provision to establish limits on the pre-trial process could become so time consuming and mired by other practical considerations that the parties often abandoned this endeavor. For example, a party seeking agreement on the business terms of a proposed contract might understandably be 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

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[1] See attached.

distrust often run so high between the parties that the parties find it impossible to reach an agreement on how to truncate the process.

Although, under the proposed procedures, the parties would remain free to negotiate their own limitations on the process, we drafted the proposed accelerated procedures so that parties can elect the accelerated process by inserting a contract provision which essentially states: "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."

For inclusion in the existing Rules of the Commercial Division of the Supreme Court (Section 202.70 of the Uniform Civil Rules for the Supreme Court), the Subcommittee on Procedural Rules to Promote Efficient Case Resolution recommends that the Advisory Council adopt the following rule:

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: "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.

Concerning electronic discovery, the parties agree that:

(i) the production of electronic documents shall normally be made on the basis of generally available technology 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.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

, Plaintiff, - against - , Defendant.	Index No. **Addendum to Preliminary Conference Order***

Charles Edward Ramos, J.S.C.:

Opt in by checkmark.

_____ **Jury Trial Waiver.** The parties agree that any trial of their Dispute shall be heard by a judge sitting without a jury and that their constitutional right to trial by jury is hereby waived.

_____ **Mandatory Mediation.**

_____ **Waiver of Service of Process Issues.** Each party agrees to waive questions regarding service of process. In lieu of formal service of process, the parties agree that any pleading may be served by overnight delivery service to the business address of the chief executive officer for each party with a copy by overnight delivery service to counsel for such party.

_____ **Proof of Service.** The parties agree that a tracking order showing overnight delivery shall be prima facie proof of service and may be filed as an exhibit with an affidavit of service by counsel for each party served.

_____ **Time for Responsive Pleading. Answer Extension as of Right.** The parties agree that upon written notice by a party by letter or email to adversary counsel, the time within which the party shall answer, move or otherwise respond to any pleading shall be extended an additional 15 days beyond the date such answer or response otherwise would be due under the applicable rule to the same extent as filing a stipulation and without need for a court motion or order. In the event the extended deadline falls on a weekend or legal holiday, the answer or response shall be due on the next business day following such weekend or legal holiday.

_____ **Protective Orders.** The parties agree to limit the scope of discovery that seeks privileged information or trade secrets on the grounds of the relevance, materiality and relative cost to each party.

*Justice Ramos drafted this Addendum based on work done by the International Institute for Conflict Prevention and Resolution.

_____ **Page Limits.** Unless the court *sua sponte* orders otherwise the parties agree that no motion filed with the court shall be more than ten pages in length, excluding caption and certificates of service, and no memorandum in support of or in opposition to any motion shall exceed ten pages in length, excluding caption, affidavits filed in support of such motions and certificates of service.

_____ **Threshold Motions.** In the event a defendant party files a motion to dismiss or for judgment on the pleadings, unless the Court orders otherwise, the parties agree that all discovery shall be stayed with the exception of discovery requests that directly concern the basis of that motion until the date the court issues its decision on that motion.

_____ **Summary Judgment Motions.** In the event that any party files a motion for summary judgment, all discovery shall be stayed in the case from the date the opposition to the summary judgment motion is filed until the date the court issues its decision regarding summary judgment unless the Court orders otherwise. This section shall not apply to motions for partial summary judgment.

_____ **Scope of Discovery.** The parties agree to limit the scope of permissible discovery to information and documents that are both relevant and material to the underlying dispute between the parties.

_____ **Non-Electronic Discovery Limits and Time for Response.** The parties agree to the following limits on non-electronic discovery based on the lesser of (a) the stated monetary consideration of the contract or (b) the amount claimed in the complaint or counterclaim (see Table 1 for summary chart). Where the value of the dispute cannot be determined from the face of the contract, claim or counterclaim, upon request of any party, the Court shall decide the alleged value of the dispute solely for purposes of determining applicable discovery limits. All discovery interrogatories, document requests, requests for admissions and omnibus conditional discovery requests, shall be responded to within 30 days after the date of service, with three additional days for service by mail, or such additional time as the parties may agree. If the day a response is required is a weekend or holiday, the response shall be due on the next following business day.

_____ **Interrogatories.** Interrogatories propounded by any party shall not contain any instructions and shall not include any definitions other than shorthand expression of relevant parties, places or events. No interrogatory shall contain multiple parts or subparts or consist of more than one sentence. All parties are entitled to one interrogatory seeking the name and contact information of all factual witnesses and one interrogatory seeking expert witness(es) information. The parties agree that each party shall be limited to the additional number of interrogatories specified in the table below.

_____ **Requests for Production of Documents:** Requests for Production of Documents shall not contain any instructions and shall not include any definitions other than shorthand expression of relevant parties, places or events. No document request shall contain multiple parts or subparts

or consist of more than one sentence. Document requests shall be deemed to exclude documents that exist in electronic form only, including emails, on the date the document request is made. Document requests may seek categories of documents relevant and material to the case. The parties agree that each party shall be limited to the number of requests specified below:

Disputes up to $400,000: 7;
Disputes up to $1,000,000: 14;
Disputes up to $10,000,000: 21;
Disputes $10,000,000 or more: 28, plus any additional found by the Court to be necessary to prepare for dispositive motion or trial.

_____ **Requests for Admission:** Requests for Admission shall not contain any instructions and shall not include any definitions other than shorthand expression of relevant parties, places or events. No request shall contain multiple parts or subparts or consist of more than one sentence. The parties agree that each party shall be limited to the number of requests specified below:

Disputes up to $400,000: 6;
Disputes up to $1,000,000: 12;
Disputes up to $10,000,000: 18;
Disputes $10,000,000 or more: 24, plus any additional found by the Court to be necessary to prepare for dispositive motion or trial.

_____ **Omnibus Conditional Discovery Requests.** The parties may serve omnibus discovery requests on a conditional basis, consisting of a single document that includes interrogatories, document requests and requests for admission, in which any interrogatory or document request shall be deemed to be withdrawn if a request for admission to which such interrogatory or document request corresponds is admitted. For purposes of the discovery limits, any interrogatory or document request that is withdrawn because a corresponding request for admission has been admitted shall not be counted toward the limit of discovery for such party.

_____ **Depositions Generally.** The parties agree that depositions may be conducted by audio visual means by any party upon written notice to all other parties at least one week before the scheduled deposition. Depositions shall not exceed four hours of examination by any party or counsel, excluding recesses agreed to by all counsel or suspension required for resolution of disputes by the Court. The court reporter shall be responsible for determining the amount of time remaining for each party to conduct an examination and shall be requested to advise such party 30 minutes before the four-hour limit is reached. Counsel for any party may appear at any deposition by conference call or video conference and the party taking such deposition shall make accommodation for such calls or video appearances to occur. The parties agree that deponents shall have seven business days after the court reporter mails the transcript of their testimony to their counsel to review and submit any errata sheet signed by the deponent regarding such deposition testimony.

_____ **Number of Depositions Allowed.** The parties agree that the number of depositions shall be limited by the amount in controversy as set forth below.

Disputes up to $400,000: 2;
Disputes up to $1,000,000: 4;
Disputes up to $10,000,000: 6;
Disputes $10,000,000 or more: 8, plus any additional found by the Court to be necessary to prepare for dispositive motion or trial.

_____ **Informal Witness Interviews.** In addition to depositions, counsel for any party shall be permitted to conduct informal witness interviews with any current or former employees of the opposing party or third persons by teleconference at which all counsel are invited to be present, provided that any counsel wishing to conduct an informal interview of a witness shall give written notice to counsel for all other parties at least seven business days before the interview, the interview is conducted by teleconference at which counsel for any party may dial in to participate, the conference call is audio recorded and the witness so advised at the outset of the interview, and the witness agrees at the outset of the interview to tell the truth. Any witness who fails to agree to be recorded or to agree to tell the truth, or refuses to cooperate with the interview as determined by the Court, may be subject to deposition by the inquiring party in addition to the limits on number of depositions described above. No counsel may interview a witness longer than 45 minutes, provided that any other counsel for different parties participating in the conference call also may interview the witness in turn for up to 45 minutes each. Counsel for witnesses or any party for whom the witness is currently or was formerly employed may briefly interject cautions to the witness on matters of privilege during any counsel's interview. Each party shall be permitted to initiate the following number of informal witness interviews:

Disputes up to $400,000: 3;

Disputes up to $1,000,000: 6;

Disputes up to $10,000,000: 9;

Disputes $10,000,000 or more: 12, plus any additional found by the Court to be necessary to prepare for dispositive motion or trial.

_____ **Copy of Witness Interviews.** Within seven business days after completion of the witness interview, the party initiating the witness interview shall provide a copy of the audio recording, either in analog or digital format, to all counsel who request it in writing or by email and to the witness.

_____ **E-Discovery. Electronic discovery** ("e-discovery") refers to the preservation, search, collection, and production of electronic documents. E-discovery includes both key wordbased searches for electronic documents as well as requests for specific electronic documents.

_____ **Scope.** The parties agree that the scope of permissible e-discovery shall be documents

both relevant and material to the underlying Dispute between the parties. The parties shall not be entitled to any e-discovery except as specifically set forth herein. All e-discovery requests shall be responded to within 30 days after the date of service, with three additional days for service by mail, or such additional time as the parties may agree.

_____ **Search Tools.** To the extent necessary, parties shall conduct key word-based searches using any software tool or tools that are capable of searching searchable files and e-mails, including the contents of e-mail archive files (such as .PST and .NSF), attachments, and the contents of files compressed using common formats, such as ZIP, RAR, GZIP, LHZ and TAR. E-mails shall be searched with a tool or tools capable of searching the FROM, TO, CC, BCC, SENT, RECEIVED and SUBJECT fields, the body of the e-mail, and any searchable attachments.

_____ **Document Retrieval.** Specific electronic documents requested by a party may be retrieved in any manner at the sole discretion of the custodial party that does not alter the contents of the document. The retrieval may alter metadata with the exception of "created by" and "doc date."

_____ **Non-Searchable Files.** Parties are under no obligation to make non-searchable files searchable. Parties shall not produce a non-searchable version of a document when a searchable version exists and can be accessed by the same custodian.

_____ **Format.** Spreadsheets, or the exported contents of databases, shall be produced in native format, unless the native format would render the data not reasonably accessible because it would require software not licensed to the requesting party. In such case, the spreadsheet or database export shall be produced in an alternate searchable format that maintains the organization of the spreadsheet or database export to the extent possible. All other documents need not be produced in native format and, at the sole discretion of the custodial party, may instead be produced in alternate formats that are at least as searchable as the documents' native format.

_____ **Identification.** The identification of a document's custodian shall be provided with each document or group of documents.

_____ **Preservation of Privileges and Work Product.** The parties agree that the attorney-client privilege and work product doctrine and any other privileges shall not be waived by disclosure of any privileged information to any other party. Notwithstanding any such disclosure during e-discovery, the parties reserve the right to object and move to strike any privileged or work product-protected information to the Court in connection with any submission to or introduction of evidence to the Court. Nothing in Section 12 shall prevent the custodial party from objecting to the production of privileged documents or attorney work product. A party shall be under no obligation to withhold documents subject to privilege or work product protections prior to production, and the parties agree that a failure to withhold such documents prior to production shall not constitute a waiver of the applicable privilege or work product protections.

_____ **Protective Relief.** To the extent a party believes that a request for electronic discovery is

beyond the scope of discovery or made for an improper purpose, that party may submit a discovery motion seeking relief to the Court. Presumptions. It shall be presumed that:

_____ **Metadata.** Metadata or slack space need not be searched or produced, with the exception of "created by" and "doc date."

_____ **Reasonable Accessibility.** Electronic repositories that are not reasonably accessible because of undue burden or cost need not be restored, searched, or produced. Examples of not reasonably accessible repositories include backup tapes that are intended for disaster recovery purposes and that are not searchable, legacy data from obsolete systems and not readable, and deleted data potentially discoverable through forensics.

_____ **Personal Digital Devices.** Electronic information residing on PDAs, Smartphones, and instant messaging systems need not be searched, collected or produced unless such repository is the only place where particular discoverable information resides.

_____ **Voicemail.** Voicemail systems need not be searched, collected or produced.

_____ **Foreign Privacy Laws.** Repositories of documents subject to the European Union's Data Protection Directive or other foreign laws restricting the processing or transfer of data to the United States for use in civil litigation ("Foreign Privacy Laws") need not be searched and documents subject to Foreign Privacy Laws need not be produced.

_____ **Overcoming Presumptions.** A party seeking to rebut the presumptions set forth herein may submit a discovery motion to the Court showing good cause why such discovery is essential to a claim or defense along with an explanation why the same or equivalent information cannot be found from a different source.

_____ **Exception:** Written Information Management Policy. Notwithstanding the above, to the extent an organization has a written information management policy, that organization may continue to follow that policy, including the destruction of documents in the ordinary course of business, with the exception of documents located in repositories accessible by a custodian. Such repositories must continue to be preserved during the pendency of the Dispute even if documents in such repositories were scheduled for destruction in the ordinary course of business unless, after a good faith investigation by the custodial party, a party has a good faith reasonable belief that no documents that are relevant and material to a known Dispute are located in a particular repository.

_____ **Exception:** Permission of Court. To the extent a custodial party believes that the preservation of a particular electronic repository is unreasonably burdensome, the custodial party can seek relief by motion to the Court, with a specific showing of the burden that makes preservation unreasonable

_____ **E-Discovery Limits.** The parties agree to the following limits on e-discovery determined

by the amount in controversy based on the lesser of (a) the stated monetary consideration of the contract or (b) the amount claimed in the complaint or counterclaim (see Table 2 for summary chart). Where the value of the dispute cannot be determined from the face of the contract, claim or counterclaim, upon request of any party, the Court shall decide the alleged value of the dispute solely for purposes of determining applicable discovery limits.

_____ **Document Requests for Specific Electronic Documents.** Requests for Specific Electronic Documents shall not contain any instructions and shall not include any definitions other than shorthand expression of relevant parties, places or events. No request for electronic documents shall contain multiple parts and subparts or consist of more than one sentence. Requests for Specific Electronic Documents shall reasonably describe the specific electronic document that is sought. In the case of a database or spreadsheet, the Request shall further reasonably identify the specific tables or records requested. Requests for Specific Electronic Documents shall not seek broad categories of documents or require key word searches. To the extent a database subject to a Request for Specific Electronic Documents has a built-in search capability, the parties shall not be required to use any search tools to extract relevant records from the database other than that built-in capability. The parties agree that each party shall be limited to the number of requests specified below:

Disputes up to $400,000: 4

Disputes up to $1,000,000: 7;

Disputes up to $10,000,000: 15;

Disputes $10,000,000 or more; 25 plus any additional found by the Court to be necessary to prepare for dispositive motion or trial.

_____ **Document Requests for Key Word Searches.** Requests for Key Word Searches of Electronic Documents shall include an identification of the custodians whose electronic repositories are to be searched, along with a single set of key words that will be searched in those repositories. Requests shall not contain any other instructions and shall not include any definitions other than shorthand expression of relevant parties, places or events. No request for key word searches shall contain multiple parts and subparts or consist of more than one sentence.

_____ **Designation of Custodian.** Subject to the limitations set forth below, a party may designate any current or former employee or executive of another party as a custodian if there is a reasonable basis for believing that custodian has relevant documents.

_____ **Scope of Search.** For each identified custodian, subject to the limitations of Section 12, searches shall be run in the Custodian's live and archived e-mail and work computer(s) (desktop and/or laptop). Searches also shall be run in any network locations that are associated with the custodian's work computer, including group shares, that, after a reasonable investigation by the custodial party, are determined to be reasonably likely to contain relevant and material information.

_____ **Limits of Search.** The custodial party shall not be obligated to search an electronic repository if, after a reasonable investigation by the custodial party, it is determined to not be reasonably likely to contain relevant information, even though that electronic repository is accessible by the custodian.

_____ **Key Words.** Key words shall consist of words or Boolean phrases with proximity believed to be reasonably likely to return a reasonable volume of relevant documents. A key word shall not include a word that is not substantively related to the dispute (such as "and"). Key words shall not include the name of a product, a party, or a current or former employee or executive of a party, but may include these words in combination with other key words. A Boolean combination of key words shall count as a single key word. Key words may include a reasonable use of wild cards and root extenders.

_____ **Number of Key Word Search Requests.** A party shall make no more than two requests for key word searches, which may include in total the key word search limits described below.

_____ **Protective Orders.** A custodial party that believes that a requested key word or custodian was selected for an improper purpose, or would result in an unreasonable volume of documents, after consultation with opposing counsel to attempt to resolve the issue by agreement, can file a motion with the Court requesting relief. Such motion shall include the results of sampling, or other evidence, showing the unreasonableness of the requested key word or custodian.

_____ **Key Word Search Limits.** The parties agree that each party's Requests for Key Word Searches shall be limited as specified below:

Disputes up to $400,000: No Requests for Key Word Searches allowed.
Disputes up to $1,000,000: Requests for Key Word Searches may be sent in the form of an e-document request as follows: Identifying no more than 4 custodians of information; for a period of time no more than six months, which may include multiple periods of time aggregating to no more than six months; and involving not more than six key words likely to lead to the discovery of information both relevant and material to the underlying dispute.
Disputes up to $10,000,000: Requests for Key Word Searches may be sent in the form of an e-document request as follows: Identifying no more than 8 custodians of information; for a period of time no more than 1 year, which may include multiple periods of time aggregating to no more than one year; and involving not more than 18 key words likely to lead to the discovery of information both relevant and material to the underlying dispute.

Disputes more than $10,000,000: Requests for Key Word Searches may be sent in the form of an e-document request as follows: Identifying no more than 16 custodians of information; for a period of time no more than three years, which may include multiple periods of time aggregating to no more than three years; involving not more than 40 key words likely to lead to the discovery of information both relevant and material to the underlying dispute; and upon an assertion that additional requests are necessary to discover information both relevant and material to the underlying dispute, the Court may allow additional e-discovery at the request of any party.

_____ **Attorney Fee Shifting.** Unless the Court finds that the discovery dispute was (a) reasonable and (b) not susceptible of voluntary resolution between counsel, the Court shall determine and award attorneys' fees incurred by the party who prevailed in any discovery dispute to be paid by the opposing party. In making the determination whether a dispute was susceptible of voluntary agreement by counsel, the Court shall consider whether any counsel engaged in lack of civility or professional Courtesy. The parties agree that the Court shall award damages in the amount of increased costs of litigation as well as reasonable costs and attorneys' fees to any party who prevails in a hearing before the Court.

_____ The parties may agree in writing at any time to additional or different procedures.

TABLE 1: PAPER DISCOVERY LIMITS

	Interrogatories	Document Requests	RFAs	Depositions	Interviews
Up to $400,000	5	7	6	2	3
Up to $1,000,000	10	14	12	4	6
Up to $10,000,000	15	21	18	6	9
$10,000,000 or more	20	28	24	8	12

TABLE 2: E-DISCOVERY LIMITS

	Requests for Specific E-Documents	Key Word: Custodians	Key Word: Time Period	Key Words Number
Up to $400,0000	4	0	0	0
Up to $1,000,000	7	4	6 months	6
Up to $10,000,000	15	12	1 year	18
$10,000,000 or more	25	24	3 years	50

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Attorney for

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Attorney for

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Attorney for

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Attorney for

Dated:_____

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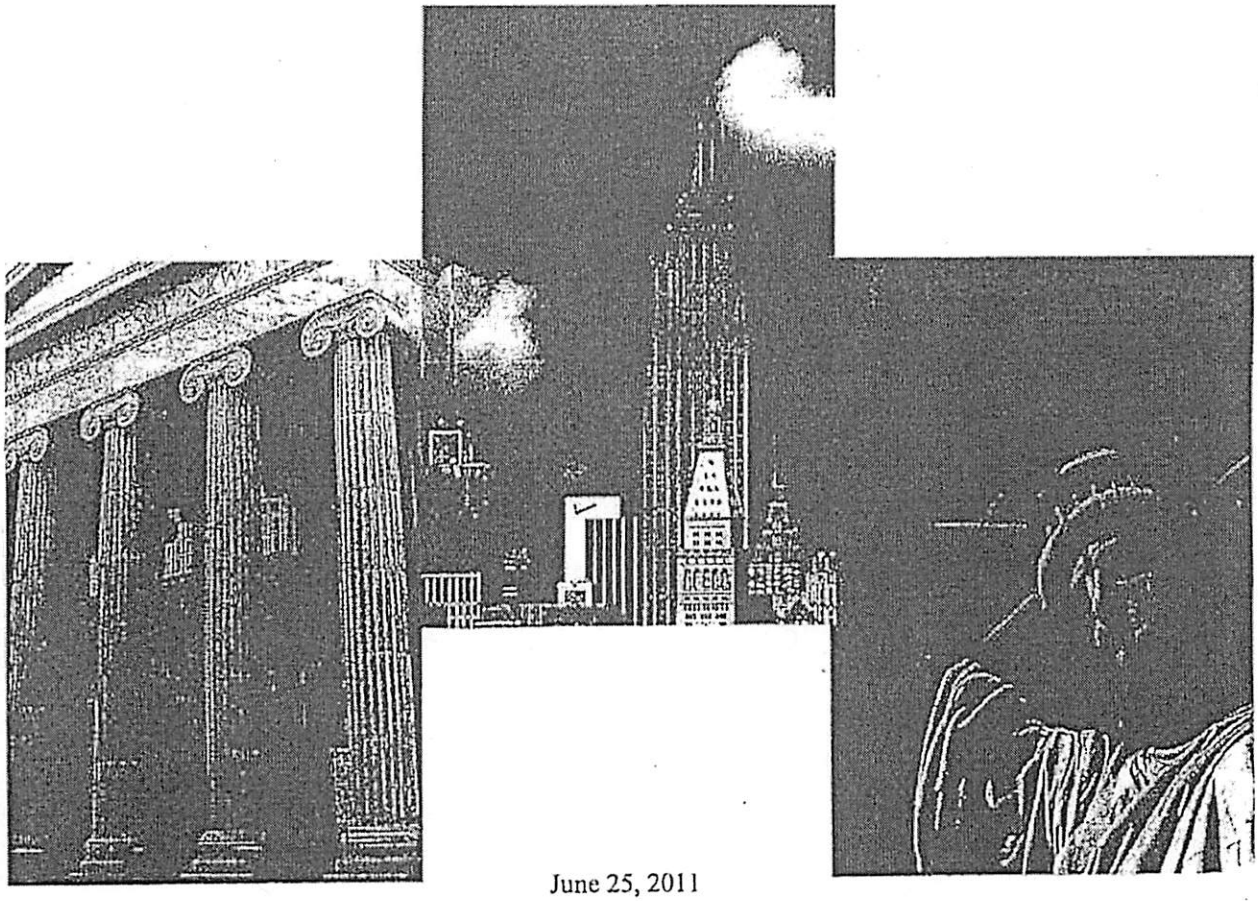
J.S.C.

Final Report of the
New York State Bar Association's

TASK FORCE ON NEW YORK LAW IN INTERNATIONAL MATTERS



June 25, 2011

Appendix C

Sample New York Governing Law and Submission to Jurisdiction Clauses; Waiver of Jury Trial and Punitive Damages.

Dispute resolution agreements and clauses are found across a wide spectrum of transactional contracts — from complex merger documents, to royalty agreements, oil exploration contracts and joint venture agreements.

At its best, dispute resolution clause drafting is the convergence of the business lawyer's negotiating skills and ability to foresee difficulties for his or her client, and the arbitration/litigation lawyers' insights about what clauses work best in what types of agreements and circumstances. At its worst, drafting is a haphazard, last-minute guessing exercise by transaction lawyers at the 11th hour of a deal's closing — which down the road can cost the client significantly in terms of outcome and costs.

Assuming the parties wish to submit any disputes to the New York courts, and provided the parties want their contract to be governed by New York law, the following are suggested provisions that could be adapted to the circumstances of a particular international agreement.

1. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of New York, not including the conflict or choice of law rules.

2. SUBMISSION TO THE NEW YORK COURTS

The parties submit irrevocably to the exclusive jurisdiction of the New York State Supreme Court, New York County or the United States District Court for the Southern District of New York in connection with any dispute, claim or controversy arising out of or relating to this Agreement, or the breach, termination, enforcement, termination or validity thereof and the parties irrevocably waive any objections based on lack of personal or subject matter jurisdiction or the doctrine of *forum non conveniens*.

3. OPTIONAL ADDITIONAL CLAUSES

Having included the provisions of paragraph 2 above (with or without paragraph 1), the parties may wish to add some or all of the following:

a. The parties to this Agreement hereby irrevocably waive the right to trial by jury.

b. In any action arising out of or related to this Agreement, the parties waive the right to recover punitive or exemplary damages and the court is not empowered to award any such damages.

c. In any action arising out of or related to this Agreement, the parties waive the right to discovery as follows:

(i) There shall be no interrogatories or requests to admit;

(ii) There shall be no discovery depositions except for good cause shown and, in the event such depositions are permitted by the court, there shall be no more than three depositions per side with no deposition to exceed six (6) hours in length;

(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 and shall not include broad phrases such as "all documents directly or indirectly related to . . . ."

4. E-DISCLOSURE

Given the special considerations that may be required with respect to any request by a party for electronic records, the parties may wish to tailor the following provisions to the circumstances of the action.

In any action arising out of or relating to this Agreement,

a. There shall be production of electronic documents only from sources used in the ordinary course of business. Absent a showing of compelling need, no such documents are required to be produced from backup servers, tapes or other such media.

b. Absent a showing of compelling need, the production of electronic documents shall normally be made on the basis of generally available technology in a searchable format that is usable by the party receiving the e-documents and convenient and economical for the producing party. Absent a showing of compelling need, the parties need not produce metadata, with the exception of header fields for email correspondence.

c. 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.

d. 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.