



STATE OF NEW YORK
UNIFIED COURT SYSTEM
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A. GAIL PRUDENTI
Chief Administrative Judge

JOHN W. McCONNELL
Counsel

MEMORANDUM

April 14, 2015

To: All Interested Persons

From: John W. McConnell

Re: Proposed amendment of 22 NYCRR § 202.70(b) and (c), relating to eligibility criteria for matters that may be heard in the Commercial Division.

The Commercial Division Advisory Council has recommended the amendment of section 202.70(b) and (c) of the Rules of the Commercial Division, relating to eligibility criteria for cases that may be heard in the Division (Exh. A). The proposed amendment of section 202.70(b) would limit arbitration proceedings that may be heard in the Commercial Division to those that meet the monetary threshold for the applicable County or Judicial District. For the reason set forth in the Advisory Council's memorandum, arbitration proceedings heard outside the United States would remain exempt from the monetary threshold requirement. The proposed amendment of section 202.70(c) would add home improvement contracts involving certain residential properties to the list of matters that are not eligible to be heard in the Commercial Division.

Persons wishing to comment on this proposal should e-mail their submissions to rulecomments@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 June 10, 2015.**

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. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

EXHIBIT A

Memorandum

To: Commercial Division Advisory Council

From: Subcommittee on “The Role of the Commercial Division in the Court System”

Subject: Amendments to NYCRR §202.70(b) Eligibility Criteria for Commercial Cases

Date: March 2, 2015

This series of recommendations responds to a number of suggestions set forth in the Taskforce Report relating to the eligibility criteria for cases to be heard in the Commercial Division. The Taskforce recommended “remov[al] of the exemption to the monetary threshold for actions involving arbitration - these matters should be subject to the same monetary threshold as are all other non-exempt categories.” The Taskforce also recommended that the Advisory Council “periodically examine the categories of cases eligible for the Commercial Division and, as necessary, recommend adjustments to the Administrative Board.” The co-chairs of the Sub-Committee on the Role of the Commercial Division in the Court System communicated with all Justices assigned to the Commercial Division to solicit their views on these subjects.

Three categories of cases attracted multiple comments: (1) applying the threshold in arbitration cases; (2) excluding *Yellowstone* injunction cases; and (3) excluding all home improvement contract claims involving single family homes or individual units in co-ops and condominiums. The following recommendations reflect the Sub-Committee’s consideration of the Taskforce recommendations and the responses of the Commercial Division Judges.

1. There is broad support for applying the monetary threshold to arbitration cases. The mere fact that a commercial dispute may be subject to arbitration was not viewed as justification for treating such disputes differently than cases litigated in the courts involving amounts that are below the threshold. Because rules concerning international arbitrations were promulgated only recently, it has been suggested that the proposed change might be perceived as a retreat from the policy imbedded in those rules to encourage use of New York courts in international arbitrations. The Subcommittee believes that virtually all of the international arbitration disputes that are likely to be filed in the New York Supreme Court will involve sums that are well above the highest threshold. However, in order to avoid any unintended perception, the Subcommittee has drafted the proposed amendment to exempt such arbitrations, at least until our courts have more experience under the new international arbitration rules. Accordingly, the threshold will be applied only to arbitration proceedings held within the United States.
2. The Taskforce Report noted that “a number of Justices in the Commercial Division have called for reconsideration of the eligibility of all *Yellowstone* injunction cases for the Commercial Division”. This view was reiterated in our conversations with Commercial Division Justices. However, most Justices who expressed a view favored retaining the current rule.

Yellowstone injunction cases do not represent a substantial part of the docket in the Commercial Division. The Sub-Committee believes that crafting a rule to capture only those *Yellowstone* cases thought to be appropriate for the Commercial Division is likely to introduce a level of complexity that does not appear to be justified, given the negligible impact the limitation is likely to have on the Commercial Division docket. For this reason, the Sub-Committee recommends no change to the current rule.

3. The Sub-Committee agrees with the views expressed by a number of Justices that disputes arising out of home improvement contracts involving one to four family dwellings and individual units in cooperative or condominium residential buildings are not true commercial cases, even if the amounts in dispute exceed the monetary threshold. However, where the contract(s) at issue concern renovations contracted for by the owner of a rental property, a co-op board or a condominium board, and the renovations affect the building generally (*e.g.* roof replacement), the case should be eligible to be heard in the Commercial Division if it meets the monetary threshold.

Text of the amendments proposed is attached.

EXHIBIT A

PROPOSED AMENDMENTS TO
NEW YORK CODES, RULES AND REGULATIONS §202.70

Amendment #1.

The Commercial Division Rules concerning arbitration cases shall be amended (1) to delete from §202.70(b)(12) (concerning arbitration cases) the words “-without consideration of the monetary threshold”; and (2) to add as a second sentence “Where the applicable arbitration agreement provides for the arbitration to be heard outside the United States, the monetary threshold set forth in §202.70(a) shall not apply.”

Amendment #2.

The Commercial Division Rules shall be amended to add as §202.70(c)(4) (concerning certain home improvement contracts) the following:

(4) Home improvement contracts involving residential properties consisting of one to four residential units or individual units in any residential building, including cooperative or condominium units.

Existing subsections (4) through (6) of §202.70(c) shall be re-numbered accordingly.

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby amend Section 202.70(b)(12) of the Uniform Rules for the Supreme and County Courts (Rules of the Commercial Division), and section 202.70(c), to read as follows, effective _____, 2015:

Section 202.70. Rules of the Commercial Division of the Supreme Court

(a) Monetary thresholds

* * *

(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:

* * *

(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~~]. Where the applicable arbitration agreement provides for the arbitration to be heard outside the United States, the monetary threshold set forth in section 202.70(a) shall not apply.

(c) Non-commercial cases

The following will not be heard 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) Home improvement contracts involving residential properties consisting of one to four residential units or individual units in any residential building, including cooperative or condominium units;
- (45) Proceedings to enforce a judgment regardless of the nature of the underlying case;

(56) First-party insurance claims and actions by insurers to collect premiums or rescind non-commercial policies; and

(67) Attorney malpractice actions except as otherwise provided in paragraph (b)(8).

Chief Administrative Judge of the Courts

Dated:

AO/ /15