



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

HON. JOSEPH A. ZAYAS
CHIEF ADMINISTRATIVE JUDGE

HON. NORMAN ST. GEORGE
FIRST DEPUTY CHIEF ADMINISTRATIVE JUDGE

DAVID NOCENTI
COUNSEL

MEMORANDUM

To: All Interested Persons

From: David Nocenti

Re: Request for Public Comment on a proposal to amend 22 NYCRR § 202.70(c)(5) to clarify that the Commercial Division can enforce judgments arising from cases decided by the Commercial Division

Date: December 26, 2024

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The Administrative Board of the Courts is seeking public comment on a proposal recommended by the Commercial Division Advisory Council (CDAC) to amend 22 NYCRR § 202.70(c)(5) to clarify that the Commercial Division can enforce judgments arising from cases decided by the Commercial Division.

The proposed amendment is attached as Exhibit 1.

Attached as Exhibit 2 is a memorandum from the CDAC Subcommittee on the Role of the Commercial Division in the Court System, providing background on this issue and the reasons for the proposed amendment. As noted in that memorandum, some Commercial Division judges have interpreted 22 NYCRR § 202.70(c)(5) – which states that proceedings to enforce judgments may not be heard in the Commercial Division – encompasses even those judgments entered in cases brought in the Commercial Division. The proposed amendment will clarify that judgments obtained in the Commercial Division can be enforced in the Commercial Division.

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Persons wishing to comment on the proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: David Nocenti, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 10th Fl., New York, New York, 10004. Comments must be received no later than Friday, February 14, 2025.

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 1

Proposed Amendment

Paragraph 5 of subdivision (c) of Section 202.70 of the Uniform Rules for the Supreme and County Courts (Rules of the Commercial Division of the Supreme Court) is amended to read as follows (deletions are ~~stricken~~ and additions are underscored)

(c) Non-commercial cases

The following will not be heard in the Commercial Division even if the monetary threshold is met:

* * * * *

(5) Proceedings ~~Except where the judgment in the underlying action or proceeding was obtained in the Commercial Division, proceedings~~ to enforce a judgment regardless of the nature of the underlying case;

EXHIBIT 2

MEMORANDUM

October 29, 2024

To: Commercial Division Advisory Council
From: Subcommittee on the Role of Commercial Division in the Court System
Re: Amendment of Rule 202.70(c)(5)

Commercial Division Rules, section 202.70(c)(5) provides:

(c) Non-commercial cases: The following will not be heard in the Commercial Division even if the monetary threshold is met:

* * *

(5) Proceedings to enforce a judgment regardless of the nature of the underlying case.

Some judges in the Commercial Division have interpreted this rule to bar enforcement of judgments in the Commercial Division even where the underlying case was heard and decided in the Commercial Division. The Subcommittee recommends amending Section 202.70(c)(5) to clarify that enforcement of judgments arising from cases decided in the Commercial Division are eligible to be enforced in the Commercial Division. The proposed amendment is consistent with case law. In *Gibson, Dunn & Crutcher LLP v. World Class Capital Group LP*, 194 AD 3d 567, 569 (1st Dept. 2021) where, upon a petition to confirm an arbitration award, the petitioner who has obtained an order confirming the award, the Appellate Division, First Department held that the petitioner need not commence a separate proceeding to enforce the underlying judgment but instead may file a motion in the underlying proceeding to enforce it.

The subcommittee proposes that Section 202.70(c)(5) be amended to add the following phrase: "except when the judgment in the underlying section or proceeding was obtained in the Commercial Division,". If amended, the section would provide as follows:

"Except where the judgment in the underlying action or proceeding was obtained in the Commercial Division, proceedings to enforce a judgment regardless of the nature of the underlying case".

O. Peter Sherwood

Mark C. Zauderer