

**SUFFOLK COUNTY JUSTICES
AND LOCAL RULES**

Commercial Division - NY Supreme Court

Suffolk County

Chambers and Part Information of Justice Elizabeth Hazlitt Emerson

Part Information:

Part 44

Courtroom and Chambers Location:

Cromarty Court Complex
210 Center Drive
Riverhead, NY 11901
631-852-2139

Part Clerk: John Nunziata

Chambers Mailing Address

Supreme Court of the State of New York
Commercial Division
County of Suffolk
1 Court Street
Riverhead, NY 11901

Law Secretary: Joan L. Hannon, Esq.

Court Attorney Referee: Renee Osborne, Esq.

Secretary: Janine K. Schmalz
Phone: 631-852-2781
Fax: 631-852-3732

Web page updated: March 10, 2014

**INDIVIDUAL PRACTICES OF JUSTICE ELIZABETH EMERSON
PART 44**

1. Commercial Division Rules

All parties should familiarize themselves with the Commercial Division Rules and Suffolk County's E-Filing Protocol, available at www.nycourts.gov

2. Scheduling

Parties should address questions about scheduling appearances or adjournments to the Part Clerk, at (631) 852-2139.

Please be advised that counsel/litigants must obtain Court permission to adjourn a status conference. Except emergencies, such permission must be obtained no later than two business days in advance of the scheduled appearance. Counsel must make every effort to obtain consent to an adjournment from all adversaries in the matter and be prepared to communicate that consent to the Court. If counsel is unable to get consent, counsel must send a brief letter to the Court with a copy to all adversaries, explaining the circumstances necessitating the adjournment and the reason consent could not be obtained. Counsel/litigants must wait at least 24 hours to allow for the adversary to respond to the request before contacting the Court.

3. Mediation

If, at any point, the parties decide that they could benefit from Commercial Division ADR or other mediation, they should write a joint letter to the Court asking to be referred to ADR or such other mediation. In that letter, they should state whether they prefer that discovery continue or be stayed during the mediation process.

Further information on the Court sponsored ADR program can be found at www.nycourts.gov

4. Motion Practice

After compliance with Rule 14 of the Commercial Division Rules whereby counsel have consulted with one another in a good faith effort to resolve all disputes, the parties may make a written request for a conference with the Court.

Discovery disputes should first be addressed through a court conference prior to the filing of a motion. If the Court is unable to resolve the dispute through a conference, then leave will be given for the parties to file the appropriate motion. The failure to abide by this rule may result in a motion being held in abeyance until the Court has an opportunity to conference the matter.

Absent leave of court, a separate petition for corporate dissolution shall be filed for each corporation to be dissolved.

For electronically filed motions, a courtesy copy of all papers in support of and in opposition to the motion, properly backed with exhibit tabs and confirmation notices, must be submitted to chambers by the party making the motion. The failure to follow the E-Filing Protocol or to submit courtesy copies may result in an adjournment of the motion or rejection of the papers in the Court's sole discretion.

If counsel wishes to receive a copy of the decision, a self-addressed stamped envelope must be provided to the Court.

All dispositive motions require a pre-motion conference with the Court. Counsel must send a letter to the Court, on notice to all parties, requesting that a pre-motion conference be scheduled.

With respect to Rule 11(d), of the Commercial Division Rules, the presumption is that discovery is NOT stayed by the filing of a dispositive motion unless otherwise directed.

All citations must include a citation to the official reports.

The Court will notify the parties if oral argument is required after papers in support of and in opposition to the motion have been submitted.

If oral argument is held, at its conclusion, the movant is to order the transcript and have a copy sent to the Court. The motion will not be deemed *sub judice* until a transcript has been received.

5. **Trial Rules**

Pre-trial memoranda and briefs are to be submitted in all matters at least seven business days prior to the start date of the trial.

No electronic media devices will be permitted absent express permission from the Court. Requests should be made to the Court in writing, addressed to the Clerk of the Part, and the reasons for the request must be clearly stated.

No adjournments of the trial date will be granted absent exceptional circumstances. All requests must be made in writing to the Court and not by a telephone call to the Clerk of the Part.

All materials used during the trial must be removed within 48 hours of the conclusion of trial. Any materials not timely removed will be discarded.

All trials require full compliance with directives set forth in the pre-trial order. Additionally, if the trial is by jury, counsel will be required to submit a proposed verdict sheet and proposed charges seven business days prior to the trial.

Absent leave of court, post-trial briefs shall be no more than 50 pages long and must include references to the record.

6. **Communications with the Court**

Neither Justice Emerson nor any of the court attorneys assigned to the part will speak to any litigant or counsel *ex parte*. Upon telephoning chambers, counsel must get all parties on the telephone before placing the call to the Court.

No party shall send a letter to chambers without first contacting their adversary, trying to resolve the problem and telephoning chambers. With permission of the Court, a party may send correspondence to the Court via fax to (631) 852-3732 or U.S. mail or overnight delivery, but not by more than one method of delivery.

7. **Appearances**

An appearance by an attorney with knowledge of the case and authority to bind the party is required on at all conferences.

Pro se litigants shall be notified of all conference and Court appearances and shall be served with all papers.

8. **Disposition**

Counsel must advise Chambers if a case has settled and notify the Court if such a case has any pending motions.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK
COMMERCIAL DIVISION: IAS PART 44

PRESENT: HON. ELIZABETH H. EMERSON

Index No. _____

Plaintiff(s),

-against-

Defendant(s).

**Preliminary Conference
Stipulation and Order**
(Section 202.8[f] and 202.12
of the Uniform Rules)

(All items on the form must be completed unless inapplicable.)

It is hereby STIPULATED and ORDERED that disclosure shall proceed as follows:

(1) **Nature of case:**

(a)

Plaintiff's Claims/Counterclaim Defenses

Amount Demanded \$ _____

(b)

Defendant _____'s Claims/Defenses

Amount Demanded \$ _____

Defendant _____'s Claims/Defenses

Amount Demanded \$ _____

Defendant _____'s Claims/Defenses

Amount Demanded \$ _____

Defendant _____'s Claims/Defenses

Amount Demanded \$ _____

(Add additional sheets, if needed)

It is hereby STIPULATED and ORDERED that disclosure shall proceed as follows:

(2) **Insurance Coverage (CPLR 3101 [f]):** If not provided, shall be furnished by _____ on or before _____. Not Applicable _____.

(3) **Bill of Particulars:** (If relevant)

(a) Demand shall be served on or before _____.

(b) Bill of Particulars shall be served not later than _____ days after receipt of the demand.

(c) All previously served demands shall be responded to on or before _____200____.

(4) **Discovery and Inspection:**

(a) All Demands for Discovery and Inspection (CPLR 3120) shall be served not later than _____ days from the date of this Order which shall be on or before _____.

(b) All responses to Discovery and Inspection demands shall be served not later than _____ days after receipt of the opposing party(ies) demand(s).

(c) All previously served demands shall be responded to on or before _____200____.

(d) All demands for production of books, documents, records and other writings relevant to a party's claims or defenses shall be deemed to include a demand for production of any photograph(s), audio tape(s), video tape(s) and Electronically Stored Information ("ESI"). To the extent relevant the terms of Annex A are incorporated herein.

(5) **Depositions:**

- (a) Depositions shall be held as follows:
(Priority shall be in accordance with CPLR 3106 unless otherwise agreed or ordered)

<u>Party</u>	<u>Date</u>	<u>Time</u>	<u>Place</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(Add additional sheets, if needed)

- (b) Unless otherwise agreed or **Ordered**, if a party fails or refuses to be deposed, he/she may not utilize the deposition of the adverse party(ies) at trial in addition to such other sanctions as may be available (CPLR 3126).
- (c) Depositions of non-party witnesses shall not be noticed until the conclusion of all party depositions unless otherwise agreed by all party(ies) or **Ordered** by the Court.
- (d) Any disputes with regard to the propriety of questions at a deposition shall be promptly resolved via an application to the Court either in person, if the deposition is conducted in the Courthouse, or via telephone, if the deposition is conducted elsewhere. In the event the Justice presiding or his/her law secretary is not available, such applications shall be addressed to the Special Term Justice presiding on that day.

(6) **Other Disclosure:**

- (a) Expert disclosure shall be provided pursuant to CPLR 3101[d]
- (b) Interrogatories (CPLR 3130-3133): Each party shall serve no more than 25 interrogatories, inclusive of subdivisions and subparts unless otherwise **Ordered** by the Court.

(7) **Preservation of ESI:**

Parties shall review Annex A and complete as appropriate. To the extent ESI is relevant to the matters described in this order the provisions set forth on Annex A shall apply.

(8) **Motions:**

- (a) All motions shall be made in accordance with the Commercial Division Rules and as appropriate after a pre-motion conference has been completed.
- (b) All dispositive motion(s) (CPLR 3211 and 3212) shall also be made pursuant to applicable provisions of the CPLR.
- (c) Impleader motion(s) to amend pleadings or to add parties shall be completed on or before _____.

(9) **End Date for All Disclosure** other than expert disclosure _____.
(Set by Court for Part Clerk)

(10) **Certification Conference** shall be held on _____ (set by Court or Part Clerk).

(11) **Status Conference** shall be held on _____ (set by Court or Part Clerk).

(12) **Confidentiality/Nondisclosure Agreement:**

(a) In the event that there is a need for a Confidentiality/Nondisclosure Agreement prior to disclosure, the party(ies) demanding same shall prepare and circulate the proposed agreement. If the party(ies) cannot agree as to same, they shall promptly notify the Court. The failure to promptly seek a confidentiality agreement may result in a waiver of same.

(b) _____ anticipates the need for a Confidentiality Agreement as to the following issues.

(13) **Miscellaneous:**

(a) If the matter settles, the Court shall be promptly notified and a courtesy copy of the Stipulation of Discontinuance shall be promptly forwarded to the Court. Failure to comply with any of these directions may result in the imposition of costs, sanctions or other actions authorized by law.

(b) The failure of any party(ies) to perform any of the requirements contained in this

Order shall not excuse any other party(ies) from performing any other requirement contained herein.

- (c) Any dates established herein shall not be changed or adjourned without the prior approval of the Court.
- (d) Each counsel/party acknowledges that they are familiar with the Commercial Division Rules.

(14) This Order includes the attached _____ page(s) which is/are incorporated herein by reference.

Attorney for Plaintiff(s) Firm Name: _____
Contact Person: _____
Signature: _____

Address: _____
Telephone: _____ Fax: _____

Attorney for Defendant(s) Firm Name: _____
Contact Person: _____
Signature: _____

Address: _____
Telephone: _____ Fax: _____

Attorney for Defendant(s) Firm Name: _____
Contact Person: _____
Signature: _____

Address: _____
Telephone: _____ Fax: _____

Attorney for Defendant(s) Firm Name: _____
Contact Person: _____
Signature: _____

Address: _____
Telephone: _____ Fax: _____

Dated: _____, 20____

SO ORDERED:

J.S.C.

Commercial Division - NY Supreme Court

Suffolk County

Biography of Justice Elizabeth Hazlitt Emerson

JUSTICE ELIZABETH HAZLITT EMERSON graduated magna cum laude from Boston College and magna cum laude from Syracuse University College of Law. She has served as a Supreme Court Judge since 1996.

Justice Emerson has been assigned to the Commercial Division since 2002 when the Division was first established in Suffolk County. Prior to that time she spent four years in a general civil part and two years in a dedicated matrimonial part.

Before coming to the Bench, Justice Emerson was a partner of Shearman & Sterling. Her practice included the representation of domestic and foreign commercial banks, investment banks and corporations in the structuring, negotiating and documentation of complex financing transactions. A representative sample of these transactions included acquisition financings, leveraged buyouts, restructurings, project finance and public offerings.



Justice Emerson began her practice as an associate at White & Case, where, in addition to handling the types of transactions referred to above, she represented corporate clients in a variety of securities litigation, general commercial litigation and complex proceedings.

She is a member of the Suffolk County Bar Association, Suffolk County Women's Bar Association, The New York State Bar Association and The New York State Bar Commercial and Federal Litigation Section.

She recently served as a member of The Chief Judge's Task Force on Commercial Litigation in the 21st Century.

Web page updated: February 5, 2013

Commercial Division - NY Supreme Court

Suffolk County

Chambers and Part Information of Justice Emily Pines

Part Information:

Part 46

Courtroom and Chambers Location:

Supreme Court

One Court Street

Riverhead, NY 11901

Phone: 631-852-3191

Part Clerk: TBA

Chambers Mailing Address

Supreme Court of the State of New York

Commercial Division

County of Suffolk

1 Court Street

Riverhead, NY 11901

Principal Law Clerk: Michael G. Kruzynski, Esq.

Court Attorney Referee: Renee Osborne, Esq.

Secretary: Valarie Genchi

Phone: 631- 852-3117

Fax: 631-852-3120

Web page updated: January 22, 2013

**PRACTICE IN THE COMMERCIAL DIVISION
PART 46 - SUFFOLK COUNTY
CASES PENDING BEFORE HON. EMILY PINES**

Counsel are expected to be familiar with the Commercial Division Rules and comply therewith. The following information is offered as a guide to the practices followed by this Court.

E-Filing Rules and Protocol:

All parties should familiarize themselves with the statewide E-Filing Rules (Uniform Rule §§ 202.5-b and 202.5-bb, available at www.nycourts.gov/efile) and the Suffolk County E-Filing Protocol (available at <http://www.nycourts.gov/courts/10jd/suffolk/efiling/index.shtml>). General questions about e-filing should be addressed to the E-Filing Resource Center at 646-386-3033 or efile@courts.state.ny.us.

All submissions to the Court in E-Filed cases, including but not limited to motions, proposed orders, proposed judgments, and correspondence, must be electronically filed.

Pursuant to Uniform Rules for Trial Courts § 202.5-b(d)(4), the Court requires the parties to provide working copies to chambers of the following documents within seven (7) days after they have been filed electronically: all motion submissions, proposed orders/judgments, ex-parte applications, and proposed stipulations requested to be so-ordered. Pursuant to Uniform Rules for Trial Courts § 202.5-b(d)(4), all working copies submitted to chambers shall include, as a cover page firmly fastened thereto, a copy of the confirmation notice received from the NYSECF site upon the electronic filing of such document. Working copies without the confirmation notice will not be accepted.

Correspondence with chambers shall be filed electronically with a working

Revised 09/15/14

and copy of correspondence submitted via fax at 631-852-3120.

Where an action is subject to e-filing and a party or attorney seeks to file a document therein in hard copy, this Part will not accept the hard copy unless it includes the notice required by Uniform Rule § 202.5-b(d)(1), a form for which is available at www.nycourts.gov/efile.

Scheduling:

All questions about scheduling appearances or adjournments should be addressed to the Court's Secretary, Valarie Genchi, at 631-852-3117. Requests for adjournment of matters appearing on a Tuesday calendar should be made by not later than 3:00 p.m. on Friday. Requests made after that will likely not be granted. All requests for adjournments must be made with the agreement of opposing counsel and, if approved, confirmed by letter with copies to all counsel. If consent cannot be obtained, then the requesting counsel must arrange for a conference call with the Court.

Communication with the Court:

1. Counsel may call the Court's Secretary, Valarie Genchi, with respect to the scheduling of appearances and with respect to adjournment applications.
2. Counsel may call Chambers to arrange for a telephone conference with the Court with either Michael Kruzynski, Principal Law Clerk or Renee Osborne, Court Attorney Referee.
3. Counsel may not contact Chambers on any substantive matter without all opposing counsel on the telephone, except for the purpose of facilitating a conference call.

Motions:

No motion shall be made, except as allowed by Rule 24 of the Commercial Division Rules, without a prior conference with the Court, which conference may be obtained either by conference call or, upon obtaining permission from Chambers, the submission of a brief letter application, not exceeding 1 page in length. At the conference the Court will set a schedule for making the motion, opposing it, and, if applicable, for reply.

Motions are to be returnable on Tuesdays. Motions made returnable at any other time, absent prior permission of the Court, will be adjourned by the Part Clerk to the next available Tuesday.

Adjournments are governed by Rule 16(c) of the Commercial Division Rules.

Motions are submitted without oral argument, unless otherwise directed by the Court.

Reply papers are not permitted, unless: (a) the right of reply is obtained by service of a notice of motion in accordance with CPLR 2214[b]; or (b) expressly permitted by the Court. Counsel may submit supplemental citations as allowed by Rule 18 of the Commercial Division Rules. Sur-reply papers, including papers in support of a cross-motion, are not permitted absent prior permission of the Court. Any unauthorized papers will not be read and will be discarded.

All papers must comply with the applicable provisions of the CPLR and with Rules 16 and 18 of the Commercial Division Rules. In addition, the font size of text and footnotes must be no smaller than 12 point. Papers which do not comply may be rejected.

All motions pursuant to CPLR 3211 and /or 3212 shall include, in outline form, a statement of the nature of each cause of action that is the subject of the motion and

identifying each party seeking relief and the party against who relief is sought. Additionally, if the motion is made pursuant to CPLR 3211, the outline shall identify the specific subdivision(s) of CPLR 3211 relied upon by the movant with regard to each cause of action sought to be dismissed.

All motions for summary judgment shall be accompanied by a Statement of Undisputed Facts Pursuant to Rule 19-a of the Commercial Rules. A motion for summary judgment which lacks such a statement may be rejected. All opposing papers must include a response to the Statement of Undisputed Facts.

No motion papers will be sealed without a prior, or contemporaneous, application for sealing made pursuant to Part 216 of the Rules of the Chief Administrative Judge.

The Court generally does not stay disclosure pending determination of motions to dismiss or motions for summary judgment (made prior to completion of discovery). All dispositive motions shall be made no more than 60 days after the filing of the Note of Issue.

Discovery Disputes:

With respect to cases already assigned to this Court at the time that a discovery dispute arises, no motion with respect to the dispute shall be made without a prior conference with the Court, which may be obtained by submission of a letter application, not exceeding one (1) page in length.

With respect to cases in which a discovery motion accompanies the Request for Judicial Intervention which leads to the assignment to this Court, no opposition papers shall be served until there has been a prior conference with the Court, which may be obtained by letter application, not exceeding one (1) page in length. The application for a discovery conference may be made by the movant or by the

opposing counsel; however, the application must be made within eight (8) days of service of the motion. Failure to request a discovery conference may result in the denial of the motion.

The Court endeavors to resolve discovery disputes promptly, usually by conference, which may be held telephonically or in person. In the event that the dispute is not resolved, the Court will set an expedited briefing schedule. Counsel shall, prior to requesting a conference, meet in person to discuss the issues and endeavor to resolve or limit them, prior to seeking judicial intervention.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X

Hon. Emily Pines

Commercial Division - Part 46

Plaintiff(s)

Index No.: _____

- against -

RJI Filing Date: _____

**PRELIMINARY
CONFERENCE ORDER
COMMERCIAL DIVISION**

Defendant(s)

-----X

- I. APPEARANCES:** Please include (1) your name; (2) your firm's name and address; (3) your firm's telephone number; (4) your direct telephone number and (5) your e-mail address.

Plaintiff(s):

Defendant(s):

Please use additional pages, if necessary.

Please attach your business card(s) to the last page of this PC order and indicate on the card the name of the party you represent.

Plaintiff _____
v. Defendant _____

Index Number: _____
Preliminary Conference Order
Page 2

II. CONFIDENTIALITY ORDER:

The court recognizes that most cases in the Commercial Division involve facts which are highly sensitive. In such cases, the court, in order to proceed to proper discovery, orders the parties to enter into a Confidentiality Agreement which the court will “so order.” The court recommends the City Bar Confidentiality Agreement found at: <http://www.nycbar.org/pdf/report/ModelConfidentiality.pdf>.

If the parties need to change the City Bar Confidentiality Agreement, the parties are to submit a signed stipulation with the changes and a red line copy for the court to review.

The parties _____ HAVE or _____ HAVE NOT entered into a Confidentiality Agreement.

The Court _____ HAS or _____ HAS NOT so ordered the Confidentiality Agreement and, if the Court has so ordered it, on what date did the Court so order it: _____

III. DESCRIPTION OF THE CASE: Pursuant to 22 NYCRR 202.12(c)(1), please provide a brief description of the factual and legal issues raised in the pleadings of the case:

- (a) Plaintiff’s legal theory and salient facts in support of claims/counterclaim defenses:

Amount Demanded: \$ _____

Plaintiff _____
v. Defendant _____

Index Number: _____
Preliminary Conference Order
Page 3

- (b) If issue has been joined, Defendant _____, legal theory and salient facts in support of defenses, counterclaims and third-party claims. If issue has *not* yet been joined, Defendant need not, at this time, answer this question.

Amount Demanded on the Counterclaim/Cross Claim: \$ _____

If there are multiple defendants:

- (c) If issue has been joined, Defendant, _____, legal theory and salient facts in support of defenses, counterclaims and third party claims. If issue has *not* yet been joined, Defendant need not, at this time, answer this question.

Amount Demanded on the Counterclaim/Cross Claim: \$ _____

Please use additional sheets, if needed.

Plaintiff _____
v. Defendant _____

Index Number: _____
Preliminary Conference Order
Page 4

IV. It is hereby **ORDERED** that disclosure shall proceed pursuant to the Commercial Division Rules found at <http://www.nycourts.gov/rules/trialcourts/202.shtml#70>

(1) **BILL OF PARTICULARS** (See CPLR 3130(1)):

(a) Demand for a Bill of Particulars shall be served by _____
on or before _____.

(b) Bill of Particulars shall be served by _____
on or before _____.

Comment:

(2) **DOCUMENT PRODUCTION**

(a) Initial demands for discovery and inspection shall be served by all parties on or before _____.

(b) Responses to demands shall be served by all parties on or before _____.

Comment:

(3) **INTERROGATORIES**

(a) Interrogatories shall be served by all parties on or before _____.

(b) Answer to interrogatories shall be served on or before _____.

Plaintiff _____
v. Defendant _____

Index Number: _____
Preliminary Conference Order
Page 5

Comment:

4. DEPOSITIONS:

Defendant's deposition of plaintiff on or before _____

Plaintiff's deposition of defendant(s) on or before _____

If there are multiple parties, please use additional sheets. Please be sure to indicate the name of the case, the index number and question being answered. Please include the (1) name of the party to be deposed; (2) the name of the person who will be deposing the party; and (3) the date and time of the deposition.

Non-party's depositions on or before _____

All depositions shall be completed on or before _____

Comment:

5. OTHER DISCLOSURE:

6. IMPLEADER:

414

Defendant shall serve his third-party summons and complaint no

Plaintiff _____
v. Defendant _____

Index Number: _____
Preliminary Conference Order
Page 6

later than 15 days after the end of the last deposition of a named plaintiff and defendant and/or the last deposition of a representative of a named party's deposition

7. **ELECTRONIC DISCOVERY**

(a) Will there be Electronic Discovery in the case:

___ YES ___ NO ___ NOT SURE

(b) **Meet and Confer:** Pursuant to Uniform Commercial Division Rule 8(b) [22 NYCRR 202.70(g)(8)(b)] counsel certify that they have fulfilled their requirement to have met and conferred regarding certain matters relating to electronic discovery, before the Preliminary Conference. Counsel also hereby certify that they are sufficiently versed in matters relating to their clients' technological systems to discuss competently all issues relating to electronic discovery or have brought someone to address these issues.

(i) Date(s) of parties had their meet and confer conference(s):

(ii) Did the parties reach an agreement concerning electronic discovery

___ YES ___ NO ___ PARTIALLY

(c) **Other directives concerning electronic discovery.**

The following topics are to be updated and supplemented as new information becomes available.

(i) **Preservation** (22 NYCRR 202.12(c)(3)(a), (c) and (g):
Please identify for both the plaintiff and each of the defendant(s) the

relevant custodians for the computer/servers

(ii) **Production** (22 NYCRR 202.12(c)(3)(e),(d)):
Please identify relevant search terms and the general cut-off date of the discovery

(iii) **Creating Privilege Logs** (22 NYCRR 202.12(c)(3)(d)):

(iv) **Claw Back Provisions** for inadvertent production:

(v) **Costs:** Each party shall bear its own costs of production pursuant to *U.S. Bank Nat'l Assoc. v. Greenpoint Mtge. Funding Inc.* 94 A.D.3d 58 (1st Dep't 2012). In the event that cost shifting becomes an issue, the parties shall write a letter to the Court of not more than three (3) pages outlining the problem prior to setting up a conference call with the court. Please consult the Part 3 rules.

(d) **Judicial Intervention** **416**

The parties anticipate the need for judicial intervention regarding the

Plaintiff _____
v. Defendant _____

Index Number: _____
Preliminary Conference Order
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following issues concerning the scope and methods of preserving electronically stored information:

8. END DATE OF FACT DISCLOSURE:

Fact Disclosure shall be completed by _____

9. EXPERT DISCOVERY (if any):

Pursuant to the proposed Rule 13 (c) and Commercial Division Rule 8 which mandates consultation with opposing counsel, the Court hereby ORDERS that if any party intends to introduce expert testimony at trial or in support of a motion for summary judgment, the parties, no later than thirty (30) days prior to the completion of fact discovery, shall confer on a schedule for expert disclosure – including the identification of experts, the agreement to exchange expert reports and the timetable for the deposition of testifying experts. Expert disclosure shall be completed no later than four (4) months after the completion of fact discovery. In the event that a party objects to this procedure or timetable, the parties shall request a conference to discuss the objection to the court.

The note of issue and certificate of readiness may not be filed until the completion of expert disclosure.

10. END DATE OF ALL DISCOVERY:

11. NOTE OF ISSUE:

_____ shall file a note of issue/certificate of readiness on or before _____.

A copy of this P.C. order shall be served and filed with the note of issue.

12. DISPOSITIVE MOTION(S):

All dispositive motion(s) shall be made on or before _____.

Such motions may be filed by Order to Show Cause or Notice of Motion. The court encourages the parties to confer and agree on the dates for the opposition and reply papers to be exchanged and e-filed.

13. COMPLIANCE CONFERENCE:

Parties or their representatives **with knowledge of the case and this Preliminary Conference order** shall appear for a Compliance Conference on _____

Parties or their representatives **with knowledge of the case and this Preliminary Conference order** shall appear as well at all *subsequent* Status Conferences.

Plaintiff _____
v. Defendant _____

Index Number: _____
Preliminary Conference Order
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14. ADDITIONAL DIRECTIVES:

**THE DATES SET FORTH HEREIN MAY NOT BE ADJOURNED
EXCEPT WITH THE APPROVAL OF THE COURT.**

***THE PARTIES MUST BRING COPIES OF ALL DISCLOSURE
ORDERS TO ALL CONFERENCES.***

SO ORDERED:

DATE: _____

EMILY PINES J.S.C.

Plaintiff _____
v. Defendant _____

Index Number: _____
Preliminary Conference Order
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ADDITIONAL PAGES

Commercial Division - NY Supreme Court

Suffolk County

Biography of Justice Emily Pines

JUSTICE EMILY PINES was elected to the New York State Supreme Court for the Tenth Judicial District (Nassau and Suffolk Counties) in November, 2001. She served previously as a Suffolk District Court Judge from January, 1999. Justice Pines graduated, with distinction, in 1976 from Hofstra University School of Law, where she was granted the first award for Scholarship and Service to the School.

Justice Pines practiced law for over twenty-two years, with emphasis in the fields of municipal and commercial litigation. During this period, she had a varied career in public service, as staff counsel for the NYS Public Service Commission, Deputy Bureau Chief for the Commercial Litigation Division in the NYC Department of Law, Deputy County Attorney for Suffolk County and Town Attorney for the Town of Brookhaven.

In 1983, the New York City Bar Association awarded Justice Pines the honor of Municipal Attorney of the Year, where she was selected from over 500 municipal lawyers for work she completed in revising and defending the City's construction contracts.

Justice Pines is a member of the Committee on Pattern Jury Instructions, NY State Bar Association, Suffolk County Bar Association and Suffolk County Women's Bar Association. She has been an adjunct professor at Touro Law School and lectures for the New York State Bar Association and the Suffolk Academy of Law.

Web page updated: January 17, 2013

Commercial Division - NY Supreme Court

Suffolk County

Chambers and Part Information of Justice Thomas F. Whelan

Part 33

Presiding Justice:

Hon. Thomas F. Whelan

Location and Chambers Mailing Address:

Suffolk County Supreme Court, Commercial Division

1 Court Street - Annex

Riverhead, New York 11901

Phone:

631-852-2365

Law Secretary:

Susan Tobey

Secretary:

Linda A. Luhrs

Web page updated: October 3, 2013

Commercial Division - NY Supreme Court

Suffolk County

Biography of Justice Thomas F. Whelan

JUSTICE THOMAS F. WHELAN was elected to the New York State Supreme Court for the Tenth Judicial District (Nassau and Suffolk Counties) in November 2000. He is a graduate of Columbia University and Brooklyn Law School.

Justice Whelan started his career in law as a law clerk to Suffolk County Court Judge Harvey Sherman and as a law clerk to NYS Supreme Court Justice Alfred Lama. His career included public service and the private sector experience as the Town Attorney for the Town of Babylon and more than 9 years in private practice in a law firm that concentrated in environmental law, zoning, and commercial matters. He was also the Principal Court Attorney for the Suffolk County Supreme Court Law Department.

Since his election to the bench, Justice Whelan has served in the general civil part, concentrating on medical malpractice jury trials and spent more than two years in Suffolk County's dedicated matrimonial part. Justice Whelan has been a frequent lecturer for the New York State and Suffolk County Bar Associations regarding various aspects of the law and has published articles in the Suffolk Lawyer, the publication of the Bar Association. On two occasions, he has received an Award of Recognition from the Suffolk County Bar Association and he continues to devote time as a Judge in mock trials for high schools and Touro Law School.

Further, Justice Whelan, who is married with two children, is an active member of the Wading River Volunteer Fire Department and an EMT for the Fire Department.

Web page updated: January 22, 2013

SUFFOLK COUNTY SUPREME COURT
COMMERCIAL DIVISION
MEDIATION PROGRAM

I. OVERVIEW

Alternative Dispute Resolution ("ADR") refers to a variety of processes other than litigation that parties use to resolve disputes. ADR offers the possibility of a settlement that is achieved sooner, at less expense, and with less inconvenience and acrimony than would be the case in the normal course of litigation. The principal forms of ADR include arbitration, neutral evaluation, and mediation. The Suffolk County Commercial Division will initially focus on mediation.

While there is currently no Court sponsored Arbitration available, parties may choose to proceed to resolve matters with the assistance of a private arbitrator. Parties who choose to proceed to binding arbitration as the initial form of ADR pursuant to an Order of Reference shall agree upon appropriate procedures to govern the process in lieu of the requirements set forth in these rules.

II. MEDIATION

Mediation is a confidential, informal procedure in which a neutral third person ("Mediator") helps parties in disagreement, negotiate with each other. Mediation is particularly appropriate for the resolution of complex commercial cases. Mediation offers the parties a confidential, structured forum in which to explore practical business concerns and develop tailor-made solutions beyond those that a Judge can often provide. With the assistance of the Mediator, parties identify issues, clarify perceptions and explore options for mutually acceptable outcomes. Although parties are not obligated to reach an agreement during mediation, the process frequently concludes with a written agreement. A Mediator will not impose a solution on the parties or attempt to tell them what to do. If the parties do not reach agreement, the case continues with the assigned Trial Justice.

In mediation, the goal is to find a mutually acceptable alternative to having a trial Justice make a determination after trial or hearing. Mediation sessions will take place on neutral ground, usually the Mediator's office. A session can be as short as a few hours or continue over the course of several sessions, depending upon the issues. This program shall be applicable to cases referred by Justices of the Commercial Division ("Referring Justice") either upon request of the parties or at the Referring Justices' discretion. Upon such a request the Court shall issue an Order of Reference. The parties and/or counsel will select a Mediator from the Suffolk County ADR Roster of Mediators. The Court shall have the discretion to appoint a Mediator from the Roster

in the event that the parties and/or counsel are unable to agree on a Mediator or request same.

All parties will have the opportunity to raise issues of concern and to explain the facts of the dispute as each sees them. The Mediator will ask questions in an effort to identify those issues that each of the parties wants to discuss. The Mediator will not offer an opinion as to the likely Court outcome of any particular issue. Once the Mediator and parties have identified the issues for discussion, the Mediator will assist the parties to work collaboratively to develop and choose options which address these issues.

The Mediator may initiate a caucus. During the caucus, the Mediator will meet separately with each party. The Mediator will not divulge any information discussed in the caucus without first obtaining each party's permission to do so. If the parties agree to resolve any or all issues, their agreement will be reduced to writing and forwarded to the Referring Justice for approval.

III. THE ROSTER

The Administrative Judge of the 10th Judicial District (Suffolk County) shall establish and maintain a panel of Mediators (the "Roster") who shall possess such qualifications and training as required by Part 146 of the Rules of the Chief Administrative Judge.

Every member of the Roster, and any other person who serves as a Mediator pursuant to these Rules, shall comply with the Code of Ethical Standards for Mediators of the Commercial Division upon its issuance. Continuing presence on the Roster is subject to review by the Administrative Judge. Mediators may be removed from the Roster at the discretion of the Administrative Judge in consultation with the Unified Court System Office of ADR Programs. The Roster will be available on the Commercial Division website at <http://www.nycourts.gov/courts/comdiv/suffolk.shtml>

IV. PROCEDURES

Cases shall be referred to Mediation as early as is practicable. Where the parties consent to a referral at a conference or in a written stipulation or by order of the Referring Justice pursuant to Rule 3 of the Rules of Practice for the Commercial Division (202.70 g), the Referring Justice shall issue an Order of Reference requiring that the case proceed to Mediation in accordance with these Rules. Along with the Order of Reference, the Referring Justice shall include the contact information for the mediator appointed by the Court. Within fifteen (15) days of receipt, the parties and/or counsel shall contact the Mediator and obtain from the Mediator a confirmation of their willingness to conduct the Mediation proceeding. If the parties and/or counsel object to

the mediator appointed, they must notify the Court within fifteen (15) days or the objection is waived.

The parties and/or counsel shall schedule with the Mediator a time and place for the Mediation proceeding and fill out the Mediation initiation form which requires the names and contact information for all parties and counsel to the case and contains additional provisions for confidentiality and Mediator immunity. This form along with the Confirmation of the Mediator shall be returned to the Referring Justice for approval within 15 days of receipt of the Order of Reference.

The issuance of an Order of Reference shall not stay court proceedings in the case unless otherwise directed by the Referring Justice. In the event the Referring Justice stays the court proceedings, the parties may agree to the informal exchange of information concerning the case if such exchange will promote the effectiveness of the Mediation process. The Mediator shall make reasonable directives for such exchange consistent with any pre-existing disclosure order of the Court and in compliance with the deadlines herein set forth.

Should a conflict arise regarding the scheduled date for the Mediation session, the parties and the Mediator will agree on a convenient date for the initial session without the involvement of the Court. Notwithstanding the above, the initial Mediation session must be conducted within 30 days from the date the Order of Reference was issued. In the event of extraordinary circumstances, the Mediator shall contact the Court which may intervene in order to expedite the process. The Mediator may initially request a conference call with all counsel regarding any preliminary matters.

At least 10 days before the initial session, the Mediator may request that each party deliver to the Mediator a copy of its pleadings and a memorandum of not more than ten pages (except where the parties and the Mediator agree in advance upon a different limit) setting forth that party's opinion as to the facts and the issues that are not in dispute, contentions as to liability and damages, and suggestions as to how the matter might be resolved. This memorandum shall not be served on the adversary or filed in court, shall be read only by the Mediator, and shall be destroyed by the Mediator immediately upon completion of the proceeding.

Unless exempted by the Mediator for good cause, all parties and their respective counsel must attend the Mediation session(s) either in person or, in the case of a corporation, partnership or other business entity, by an official (or more than one if necessary) who is both fully familiar with all pertinent facts and authorized to settle the matter. All attorneys who participate in the Mediation process shall be fully familiar with the action and authorized to settle.

Within seven (7) days after the Mediation process has concluded whether by agreement, or by the refusal of one or more parties to continue, the Mediator shall

complete the Mediation Disposition Form and transmit it along with any written agreement, to the Referring Justice. If the Mediation process results in a settlement, the parties shall file a stipulation of discontinuance with Special Term and fax a copy to the Referring Justice.

Notwithstanding the forgoing, if a party or counsel fails to schedule an appearance for a Mediation session in a timely manner, appear at any scheduled session or otherwise comply with these Rules, the Mediator shall advise the Court, as to the nature of the infraction, and may, if deemed appropriate, recommend the imposition of sanctions.

V. CONFIDENTIALITY

All communications made - whether in writing, orally, or by other means - during the course of mediation by any party, Mediator, or any other person present, shall not be disclosed, except as noted below. Similarly, information generated in or around the mediation --including memoranda, work products or case files of a Mediator--is confidential and shall not be disclosed, except as noted below. However, mediation may not be used as a shield with respect to discoverable documents and information produced or occurring prior to or outside the confines of mediation.

No party or counsel for a party may reveal the details of the mediation process to the Referring Justice or a member of the his/her staff, except as otherwise provided below. Communications and information may be subject to disclosure in any present or future judicial or administrative proceeding under the following circumstances:

1. Attendance

Information pertaining to whether the parties and their counsel attended the mediation session(s) will be reported to the Referring Justice.

2. Waiver

All parties to the mediation and their attorneys may specifically agree in writing to waive confidentiality with respect to any or all issues.

3. Written Agreement

Agreements signed by all the parties will be submitted to the Court for review.

No party to an action referred to Mediation shall subpoena or otherwise seek to compel the Mediator to testify in any legal proceeding concerning the content of the Mediation proceeding. In the event that a party to an action that had or has been referred to Mediation attempts to compel such testimony, that party shall hold the Mediator harmless against any resulting expenses, including reasonable legal fees incurred by the Mediator or reasonable sums lost by the Mediator in representing himself or herself in connection therewith.

Notwithstanding the foregoing and the provisions of the Confidentiality section above, a party or the Referring Justice may report to an appropriate disciplinary body any unprofessional conduct engaged in by the Mediator and the Mediator may do the same with respect to any such conduct engaged in by counsel to a party.

VI. IMMUNITY OF THE MEDIATOR

Any person designated to serve as Mediator pursuant to these Rules shall be immune from suit based upon any actions engaged in or omissions made while serving in that capacity to the extent permitted by applicable law.

VII. COMPENSATION OF MEDIATORS

Mediators shall be compensated at the rate of \$300 per hour unless the parties and the Mediator agree otherwise in writing, except that Mediators shall not be compensated for the first three (3) hours spent in the Mediation session or for the time spent on the selection and appointment process or in preparation for such Mediation session. The Mediator's fees and expenses shall be borne equally by the parties unless otherwise agreed in writing.

VIII. CONFLICTS OF INTEREST

The Mediator shall disqualify himself or herself in the event that there is an actual conflict of interest or the appearance of a conflict of interest, unless the parties and counsel agree, in writing, after full disclosure, to waive the conflict of interest or the appearance of the conflict of interest.

IX. FURTHER COURT PARTICIPATION

In the event that the parties do not reach an agreement during Mediation, the case will return to the Referring Justice. However, nothing set forth herein shall preclude the Referring Justice from participating and/or engaging in further settlement efforts with the parties and/or respective counsel.

**TENTH JUDICIAL DISTRICT ADR PROGRAM
COURT ROSTER MEDIATOR for SUFFOLK COUNTY COMMERCIAL DIVISION**

APPLICATION FORM and INSTRUCTIONS

The Tenth Judicial District Alternative Dispute Resolution (ADR) Program is assembling a Court Roster of mediators for the Suffolk County Commercial Division.

Mediators will not be compensated for the first 3 hours spent in mediation. These first 3 hours may not include time spent in preparing for the mediation session(s). Thereafter, mediators will be paid at a rate of \$300.00 per hour for mediation work unless otherwise agreed to by the parties and mediator. Billable time will include actual time spent in mediation session(s). Mediator responsibilities include:

- Coordinating with Court staff;
- Managing cases promptly and efficiently;
- Conducting mediation in accordance with the Model Standard of Conduct for Mediators (www.nycourts.gov/courts/comdiv/PDFs/NYCOUNTY/Attachment3.pdf);
- Preparing mediation agreements in a format acceptable to the Court;
- Completing a Disposition Report form for submission to the Court;
- Notifying the Court, in writing, if the parties do not participate in the mediation session.

Requirements for roster membership include admission to the Bar of the State of New York and those qualifications and training as required by Part 146 of the Rules of the Chief Administrative Judge. Applicants must submit this application to the Suffolk County District Administrative Judge's Office. Appointment to the Court Roster is at the discretion of the District Administrative Judge and his/her designee(s), in consultation with the Coordinator of the Unified Court System Office of Alternative Dispute Resolution. Admission will be based on each applicant's training, experience, education, and availability to mediate.

Mediators may be removed from the panel at the discretion of the District Administrative Judge in consultation with the Coordinator of the Unified Court System Office of Alternative Dispute Resolution. To be considered for the Tenth Judicial District Court Roster of Commercial Division mediators, please complete the enclosed application and return it to:

**Suffolk County District Administrative Judge's Office
Attn: Kathleen M. Rea
400 Carleton Avenue
Central Islip, NY 11722-9080**

- **Include a copy of your resumé or curriculum vitae.**
- Answer all questions completely.
- Inform your references that they may be contacted by the Tenth Judicial District Administrative Judge's Office.
- Sign and date the declaration at the end of the application.

**ALTERNATIVE DISPUTE RESOLUTION PROGRAM
SUFFOLK COUNTY COMMERCIAL DIVISION**

APPLICATION

COURT ROSTER MEDIATOR - COMMERCIAL MATTERS

A. General Information

Name: _____

Address: _____

Phone: _____

Email: _____

Please check one:

- I meet the training and experience requirements as outlined in Part 146 of the Rules of the Chief Administrative Judge and am applying to be included on the Court Roster of Mediators for the Suffolk County Commercial Division.
- I do not meet the training requirement; however, I would like my application to be filed and to be informed of further training opportunities.

B. Education

(Please list in reverse chronological order. Attached additional pages, if necessary.)

School	Graduated?	Major or Type of Course	Degree Earned or Expected Date

List any professional licenses you hold and corresponding dates:

C. Mediation Training

Please detail all mediation training you have taken (attach additional pages, if necessary):

Course*	Instructor(s)	Date of Completion	Total Hours

* Attach copies of certificates of completion for the above-referenced training(s). If no certificate is available, the review committee may request relevant syllabus or course materials or other documentation that will enable the committee to determine if the course meets the established requirements.

D. Mediation Experience

How many cases have you mediated in the last five (5) years? _____

Of these, how many involved commercial issues? _____

On a separate sheet, please provide a brief statement (one page) outlining your mediation experience.

Are you able to conduct mediation in a language other than English?

Yes

No

If yes, specify language(s) and level of proficiency:

Answer all questions by placing an X in the appropriate column. If you answer "YES" to any of these questions, provide details on an attached sheet.	Yes	No
A) Except for minor traffic offenses and adjudications as a youthful offender, wayward minor or juvenile delinquent: i) Have you even been convicted of an offense against the law?		
ii) Have you ever forfeited bail or other collateral?		
iii) Do you now have any criminal charges pending against you?		
B) Have you ever received a discharge from the Armed Forces that was other than honorable?		
C) Have you ever been dismissed from any employment for reasons other than lack of work or funds?		
D) Are you currently in violation of a court order in any state for child or spousal support?		

E. Declaration

I affirm that all statements on this application (including any attached papers) are true. False statements made in this application package are punishable under the Penal Law (§210.45).

Signature of Applicant

Date

**MEDIATION
INITIATION FORM**

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK
COMMERCIAL DIVISION**

Referring Justice:

Date:

In the Matter of:

Index #:

This case is referred to Mediation with:

INSTRUCTIONS:

This form shall be sent to the selected Mediator accompanied by a Mediation Referral Order signed by the Referring Justice. The selected Mediator shall contact the parties listed below within one (1) week of the above date, and shall arrange for an initial mediation session with all parties and their respective counsel, if indicated, within thirty (30) days of the receipt of this form.

The following individuals have consented to attend a mediation session (the name and contact information of counsel for the respective parties will be provided so they can be present for the mediation):

Client Name:
Address:

Client Name:
Address:

Tel:

Tel:

Counsel:
Tel:

Counsel:
Tel:

Client Name:
Address:

Client Name:
Address:

Tel:

Tel:

Counsel:
Tel:

Counsel:
Tel:

Reason for Referral:

The Court will not ask the mediator for either a written or oral report with regard to this matter (other than the Mediation Disposition Report). Furthermore, the mediator shall not be called as a witness by either party or the Court. The mediation process is confidential and voluntary, and discussions had during the course of the mediation session/s will not be disclosed except in instances where:

- a) the parties to the mediation and their attorneys, if applicable, may specifically agree in writing to waive confidentiality with respect to any and all issues; or
- b) an agreement is signed by all the parties and submitted to the Court for review;

Litigants should be aware that no attorney-client relationship exists between the mediator and litigants. Nor may the mediator provide legal services to litigants during the process. The designated or otherwise chosen mediator handling this matter shall be immune from suit by any of the parties or other participants in this case based upon the mediator's activities in this matter. The mediator shall present a waiver for signature by the parties to that end, at the initial mediation session.

The mediator is also responsible for submitting a Disposition Report Form to the Court within seven (7) business days after the conclusion of the mediation process. The Disposition Report Form shall only indicate that a mediation was held, the dates of such mediation and whether or not a settlement was reached.

I confirm that I have read the Suffolk County Commercial Division ADR Protocols, and I confirm my willingness to serve pursuant to such rules.

Date

Signature of acceptance by Mediator

**SUPREME COURT, COUNTY OF SUFFOLK
COMMERCIAL DIVISION IAS PART 44/46**

PRESENT:

HON. _____
JUSTICE

INDEX NO. _____

Plaintiff(s)

MEDIATION REFERRAL
ORDER

against

Defendant(s)

The above matter having come on for a conference, and upon consent of the parties and counsel for the parties, said parties and their respective counsel, are hereby directed to:

1. Arrange time to meet with the Mediator for the purpose of resolving their outstanding differences.
2. Comply with the following:

All statements made by the parties in the context of the meeting(s) contemplated herein shall be deemed to be made solely for the purpose of settlement and shall not be disclosed, except for the following:

- a) the parties to the mediation and their attorneys may specifically agree in writing to waive confidentiality with respect to any or all issues;
- b) agreements signed by all the parties and submitted to the Court for review;

The Trial Court will not ask the Mediator for either a written or oral report with regard to this matter (other than the Mediation Disposition Report). Furthermore, the Mediator shall not be called as a witness by either party or the Court .

The foregoing constitutes the order of this Court.

J.S.C.

Dated: _____
Riverhead, New York

