

Commercial Division Sees Uptick, Followed by Flattening in Case Filings

A discussion of the uptick in case filings and comparison to the number of cases filed over similar recent time periods. The authors analyze the types of cases filed during this time and discuss why this uptick may have occurred, as well as what we can expect to see in the coming months.

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The New York County Commercial Division saw a substantial increase in the number of new cases filed (*i.e.*, a total of 102 new cases) during the first four-week span after the New York courts reopened for non-essential matters on May 25, 2020—as compared to both February 2020 (77 new cases), the last full month of filings prior to the crisis, and a comparable period between May 27 and June 23, 2019 (87 new cases).[1]

This uptick in new cases appears largely to be attributable to the fact that litigants were barred from fil-

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Photo: Ryland West/ALM

ing new actions in the New York court system between March 22, 2020 and May 25, 2020. During the second four-week span that followed—*i.e.*, between June 22 to July 19, 2020—there was a marked decrease in the number of cases filed in the New York County Commercial Division (54 new cases) compared to a similar four-week period between June 24, 2019 and July 21, 2019 (98 new cases). There could be a variety of factors for

this flattening in case filings, which we discuss below.

As readers may recall, Chief Administrative Judge Lawrence K. Marks closed the New York court system for non-essential filings on March 22, 2020 in response to the COVID-19 outbreak. *See* AO/78/20. Commercial litigation matters were generally deemed non-essential. [2] While the Chief Administrative Judge allowed motion practice to resume in already pending non-

essential matters on May 4, 2020, *see* AO/87/20, litigants had to wait until mid to late-May to file new non-essential matters—depending on the region of the state where the claim arose. AO/114/20. New York County opened for new filings on Memorial Day, May 25, 2020.

On Memorial Day, May 25, 2020, litigants filed 13 new cases in the New York County Commercial Division. The next day, the first business day that state courts in New York County were open for new filings, litigants filed 17 more commercial cases. By the end of the first week that the New York County Commercial Division had re-opened for non-essential matters, litigants filed a total of 42 new cases.

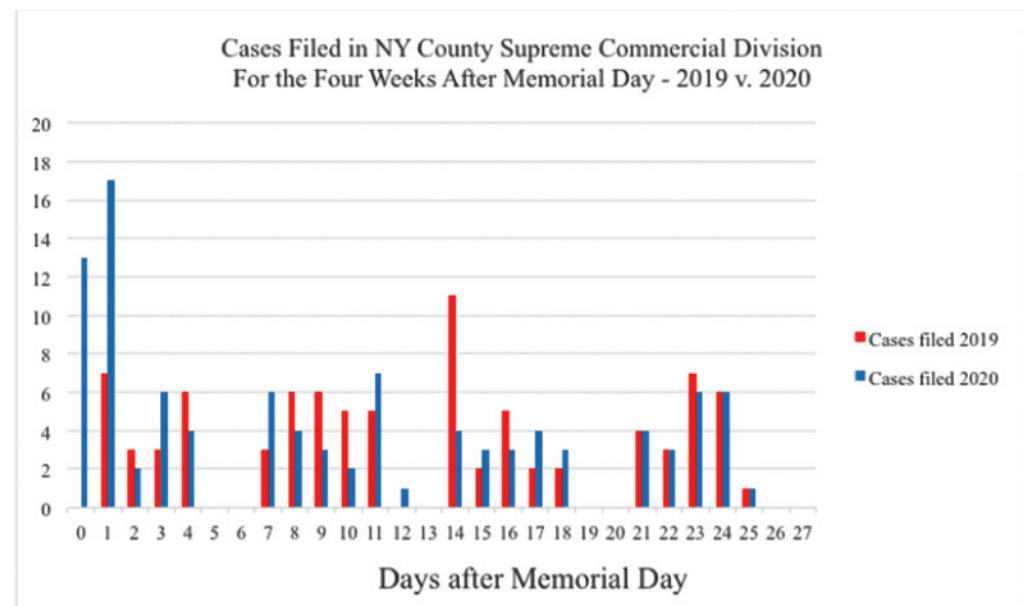
In the three weeks that followed, litigants filed an average of 20 new commercial cases each week in New York County. By June 21, 2020—four weeks after Memorial Day—litigants had filed 102 new cases in the New York County Commercial Division. This was a significant increase (25 more cases or a 32.4% increase in filings) when compared to the 77 cases that litigants filed during the four weeks of February—the last full month that the Commercial Division was open prior to the onset of COVID-19 in New York. It appears that some of these 102 cases involved disputes that had arisen prior to the onset of COVID-19 and thus would have been filed during the time period when the courthouses were closed for new filings.

In comparison to a similar period last year, litigants filed no new commercial cases in New York County on Memorial Day 2019, seven cases on the first business day after Memorial Day, and 19 total cases that week. In the three weeks that followed in 2019, new case filings picked up and litigants filed an average of 22.7 new commercial cases each week in New York County. By June 23, 2019—four weeks after Memorial Day—litigants had filed 87 new cases in the New York County Commercial Division.

The chart below compares the New York County Commercial Division filings during the first four weeks after Memorial Day in 2019 versus 2020

with several of them having a real estate component. This indicates that some, but not all, of the new cases filed during the first week were triggered due to events connected to the pandemic.

For the three weeks following Memorial Day week in 2020, the influx of cases was slightly lower than the comparable period during 2019—*i.e.*, on average roughly 2.7 less cases per week. During this three-week period in 2020, at least 6 COVID-related cases and 2 possible COVID-related cases were filed (or on average 2 COVID-19 related and 0.67 possible COVID-19 related cases per week). Similarly, these COVID cases were mostly contractual mat-



Our analysis of the recent Commercial Division filings also suggests that at least eight cases filed during the Memorial Day week this year were COVID-19 related and at least three cases were possibly COVID-19 related.[3] These COVID-related cases were mostly contractual matters,

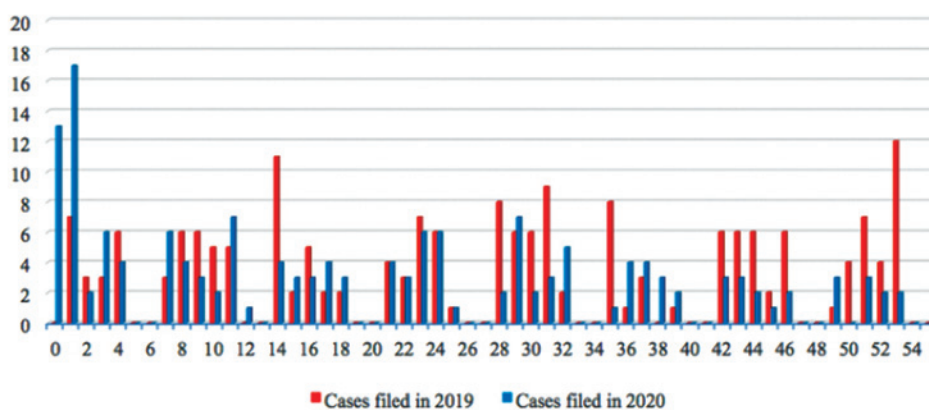
with some of them having a real estate component.

For the second four-week span that followed, the influx of new cases was significantly lower than the comparable period during 2019. During a four-week span between June 22, 2020 to July 19,

2020, litigants filed 54 new cases in the New York County Commercial Division or 13.5 cases per week on average. In a comparable four-week span between June 24, 2019 and July 21, 2019, litigants filed 98 cases in the same venue or 24.5 cases per week on average. This translates to an average of 11 less cases a week (or 81.5% less) than in the same period in 2019.

The chart below compares New York County Commercial Division filings during the first eight weeks after Memorial Day in 2019 versus 2020.

Cases filed in NY County Supreme Commercial Division
For the Eight Weeks After Memorial Day - 2019 v. 2020



During this second four-week span of 2020, there were at least six COVID-19 related cases and 4 possible COVID-19 related cases (or on average 1.5 COVID-19 related and 1 possible COVID-19 related cases per week). Like the previous four-week span, these COVID-19 related cases were mostly contractual matters, with many of them having a real estate component. Compared to the previous timeframes, this

suggests that the outbreak is still playing a modest—but somewhat decreasing—role in driving Commercial Division litigation.

There are a wide variety of factors that could contribute to this experience. For example, commercial parties may be taking extra efforts to try to resolve their disputes before resorting to the courts. Relatedly, more cases could be going into private dispute resolution processes, recognizing the strains that the pandemic has placed on the courts. It may also be taking time for the impact of the economic downturn

associated with COVID-19 to actually result in substantially more commercial filings.

Conversely, for litigants that are already feeling the impact of the downturn, there may be reluctance to dedicate their cash on hand to commencing discretionary litigations. Finally, litigants may be feeling less pressure to file new cases given that the Governor has repeatedly stayed the statute of limitations

period since March, with the latest Executive Order staying the limitations period until Sept. 4, 2020. EO No. 202.55.

Time will tell if these trends continue as New York City settles into a new normal, and businesses and individuals continue to deal with the adverse consequences of this crisis. We will continue to monitor these case filings to assess whether COVID-19 related case filings tick further upward with time.

ENDNOTES

^[1] This data from May, June, and July 2020 is preliminary. Litigants can still move their cases into the New York County Commercial Division via an RJJ; and parties with new cases assigned to a noncommercial part can still request a transfer into the Commercial Division Rule Section 202.70(e). 22 N.Y.C.R.R. § 202.70(e). In addition, the monetary threshold for Commercial Division treatment in New York County is \$500,000, 22 N.Y.C.R.R. § 202.70(a); this data does not reflect commercial cases that involve money damage claims that fall below that threshold. Our data for filings between May 26 and June 26 was accurate as of July 15, 2020, and our data for filings between June 27 to July 19 was accurate as of July 29, 2020.

^[2] See April 7, 2020 Memorandum from Chief Administrative Judge Marks at 1.

^[3] We tagged cases that discussed COVID-19 in their complaints as COVID-related. Cases where the alleged critical events (e.g., contract breach or default) occurred during the COVID-19 outbreak (March 2020 onwards in the New York City area), but did not explicitly mention COVID, were tagged as possible COVID-related cases.