



Commercial Litigation in New York State Courts (4th Edition 2015)

Lawyers, law firms and corporate legal departments are all challenged these days to spend their money wisely. This is particularly true with law library expenses, given the allure of computerized legal research and other options on-line, with firms of all capabilities offering client advisories on all kinds of topics. As attorneys consider what books should occupy precious shelf space, they rightly put a premium on getting the most bang for their buck.

In this environment, the Fourth Edition of the treatise “Commercial Litigation in New York State Courts” stands out as a “must have.” Prior editions established it as the leading authority on commercial litigation in New York and an outstanding resource for the bar.

Editor-in-Chief Robert L. Haig, who co-chaired the Commercial Courts Task Force that led to the creation of the Commercial Division courts, has prevailed upon 182 principal authors, including 29 distinguished judges, to contribute to the latest edition, which now numbers 127 chapters. Among the judges who contributed their time and insight are two former Chief Judges of the State of New York; four other New York State Court of Appeals Judges; the Chief Administrative Judge of the State of New York; seven Appellate Division Justices; ten Commercial Division Justices; and three federal district court judges.

The Westchester bench is well represented, with the following judges with Westchester ties (in alphabetical order) included among the authors: Appellate Division Justices Thomas A. Dickerson (Chapter 111: Consumer Protection) and Colleen D. Duffy (Chapter 123: Entertainment); and Westchester Commercial Division Justices Linda S. Jamieson (Chapter 22: Preliminary and Compliance Conferences and Orders) and Alan D. Scheinkman (co-author of Chapter 118: Commercial Real Estate). Nowhere else will you find in one place such a valuable collection of views from the bench on commercial litigation in New York.

The treatise includes chapters from some of the top commercial litigators in New York, writing on topics with which they are deeply familiar. The four editions of “Commercial Litigation in New York State Courts” are conservatively estimated to reflect the investment of more than 40 million dollars of billable time.

While the cynic may view that as an inadvertent indictment of the billing rates of some of the large New York City law firms whose partners have contributed to the book, it is a reflection of the scope of the undertaking and the amount of work that went into it. The authors have provided commercial litigators with tremendous collective expertise, all in a single place and available as a ready desk reference. In addition to the copious

legal research reflected in the various chapters, those experienced litigators have freely shared valuable strategic and practical insights, developed over decades of practice.

Like its predecessors, the Fourth Edition provides a step-by-step guide to every procedural aspect of a commercial case, from investigation and initial case assessment through pleadings, discovery, motions, trial, appeal and enforcement of judgment.

The treatise also includes 53 substantive law chapters, covering topics regularly encountered in commercial cases, including contracts, insurance, bank litigation, letters of credit, warranties, bills and notes, securities, intellectual property and business torts. It also covers a wide range of other important substantive areas, including product liability, privacy and security, consumer protection, white collar crime and e-commerce, to name a few.

The Fourth Edition also has much to offer to in-house corporate counsel, including chapters on “Case Evaluation,” “Litigation Avoidance and Prevention,” “Crisis Management,” “Techniques for Expediting and Streamlining Litigation,” “Litigation Management by Corporations,” “Litigation Technology” and “Not-For-Profit Institution Litigation.” Corporate counsel and general commercial litigators alike will find the chapters

on litigating a wide range of commercial cases to be a valuable and comprehensive resource.

The Fourth Edition maintains the user-friendly approach of Mr. Haig's three prior treatises. The chapters include practice aids, checklists and forms, and provide references for further research. The publication includes a CD-ROM containing jury instructions, forms and checklists that are included in the printed volumes, and a separate appendix, containing an index and tables of the laws, rules and cases cited, which will be replaced annually. This is a resource for both the practitioner in the trenches and the academic.

Those who already have one of the prior editions may be wondering whether the latest edition is worth it. The answer is yes. The Fourth Edition contains 22 new chapters, including a number of subjects that have become critically important to commercial litigators today, such as Internal Investigations; Preliminary and Compliance Conferences and Orders; Negotiations; Mediation and Other Non-binding ADR; Arbitration; Social Media; and Land Use Regulation.

The latest edition also substantially expands and updates the remaining chapters. The First Edition was published in 1995, coinciding with the creation of the Commercial Division in New York. At that time, the Commercial Division had five judges in New York County and one in Rochester, in Monroe County. Since then, it has grown tremendously, as businesses have embraced New York's specialized state courts to address their commercial disputes. Today, New York boasts 28 Commercial Division judges in ten counties, including Westchester, and has become a model for other states looking to create specialized business courts of their own. The growth of the treatise mirrors the expansion of the Commercial Division. The treatise, originally three volumes, is now eight, and contains more than 10,000 pages of text.

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The Fourth Edition also highlights significant recent changes in New York commercial litigation practice. As former Chief Judge Jonathan Lippman outlines in the opening chapter, New York's courts have responded to the enthusiasm of the business community by making further efforts to improve the performance of the Commercial Division.

In January 2012, then Chief Judge Lippman created the Task Force on Commercial Litigation in the 21st Century. The Task Force, chaired by former Chief Judge Judith S. Kaye and Martin Lipton of Wachtell Lipton, issued a report containing more than 20 recommendations on how the Commercial Division can better serve the business community. Implementing one of the Task Force's key recommendations, Chief Judge Lippman appointed a permanent Commercial Division Advisory Council (chaired by Bob Haig) to advise the Chief Judge on an ongoing basis about matters involving the Commercial Division.

In the past two years, the Advisory Council has recommended numerous

changes which have been approved by the Administrative Board. Former Chief Judge Lippman described these changes as "the most significant reform of the Commercial Division since its inception." The treatise does an outstanding job of addressing these new developments.

For example, Justice Jamieson's new chapter on Preliminary and Compliance Conferences and Orders provides useful, practical advice for the lawyer preparing for such conferences, and also walks through the optional Model Preliminary Conference Order adopted last year.

Chapter 12, "Comparison with Commercial Litigation in Federal Courts," highlights variations in state and federal procedure and summarizes recent changes. Among those are Rule 9 on "Accelerated Adjudicated Actions" which permits parties to agree to an abridged form of action requiring the case to be ready for trial in nine months; Rule 11-b, which encourages categorical designations in the preparation of privilege logs; Rule 11-d, which presumptively limits the number and length of depositions; and Rule 13(c), which brings expert disclosure practice in the Commercial Division more in line with the Federal Rules.

For the newly admitted litigator, the treatise is an authoritative roadmap. For those who regularly try cases in the Commercial Division, it is a trusted procedural, substantive and strategic guide. For both, the Fourth Edition is a "go to" resource well worth the investment.

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