

BOOK REVIEW

Commercial Litigators Valuable New Resource

By Scott M. Karson

Commercial litigators in New York have a valuable new resource to add to their arsenals: the Third Edition of *Commercial Litigation in New York State Courts*, edited by the well-known and highly-respected litigator Robert L. Haig of Kelley Drye & Warren in New York City.

Readers who are familiar with the Second Edition should know that the new Third Edition, a six volume treatise pub-

Commercial Litigation in New York State Courts, 3rd Edition

Edited by Robert L. Haig, Esq.
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6 Volumes

lished by West in 2010, has been improved in several significant respects: the 88 chapters carried over from the Second Edition have been substantially expanded, and 19 new chapters have been added. The first five volumes of the Third Edition contain more than 100 chapters covering virtually all aspects of commercial litigation practice. The sixth volume contains a table of laws and rules, a table of cases and a comprehensive index. Taken as a whole, the Third Edition is a much-needed response to the rapidly-evolving and expanding field of commercial litigation in this state.



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The work begins with a fascinating and instructive discussion of the history of commercial litigation in New York written by Chief Judge Jonathan Lippman. Drawing upon the introductory chapter written for the Second Edition by his predecessor, former Chief Judge Judith S. Kaye, Chief Judge Lippman traces the evolution of commercial litigation from the 18th Century, when Alexander Hamilton was New York's preeminent commercial litigator, through the establishment of the Commercial Division of the New York Supreme Court in 1995, through the present. Chief Judge Lippman points with obvious pride to the fact that New York's Commercial Division has provided the business community with a viable alternative to the federal courts, courts of other states and alternative dispute resolution, and now serves as a model for the creation of business courts in many other jurisdictions.

The treatise continues by following the progress of a case, beginning with a series of chapters addressing the procedural aspects of handling a commercial matter in general. There are chapters covering such threshold subjects as case investigation and evaluation, determining jurisdiction and venue, identifying claims and parties and preparation of pleadings.

Continuing chronologically along the procedural continuum, the treatise includes chapters on pre-trial procedure. There are separate chapters covering the major disclosure devices including bills of particulars, document discovery, interrogatories, requests for admissions, depositions and expert witness disclosure. The chapter on document discovery is particularly useful because it contains an insightful and valuable discussion of the developing law

of New York governing electronic discovery. There are also chapters on pre-trial motion practice and calendar practice.

With respect to trials, there are chapters devoted to topics including jury selection, opening statements, direct and cross examination, treatment of expert witnesses, admissibility of evidence, use of demonstrative evi-

dence, closing arguments, damages, judgments, effect of bankruptcy on pending litigation, attorney's fees, costs and disbursements, sanctions, enforcement of judgments and appeals.

In addition, there are chapters covering many substantive areas of law which commonly spawn commercial litigation, including contracts, insurance, bank litigation, letters of credit, collections, employment and restrictive covenants, sale of goods, warranties, bills and notes, secured transactions, agency, partnerships, products liability, mergers and acquisitions, securities litigation, shareholder derivative actions, director and officer liability, not-for-profit institution litigation, health care institution litigation, broker-dealer litigation and arbitration, professional liability litigation, franchising, antitrust litigation white collar crimes, the interplay between commercial and criminal actions, misappropriation of trade secrets, intellectual property, right of publicity claims, privacy and security, commercial defamation, consumer protection, e-commerce, information technology litigation, governmental entity litigation, CPLR article 78 challenges to administrative determinations, commercial real estate litigation, construction litigation and environmental and toxic tort litigation.

In addition to Mr. Haig's role as Editor-in-Chief, the Third Edition of *Commercial Litigation in New York State Courts* features contributions from 144 authors. Among them are 20 distinguished judges and justices, including five current or former members of the New York Court of Appeals, and many well-known and respected members of New York's commercial litigation bar.

Practitioners in Suffolk County will be interested in knowing that Justice Elizabeth Hazlitt Emerson of the Supreme Court, Suffolk County, who was instrumental in the creation of Suffolk County's Commercial Division and now sits as one of our county's two Commercial Division justices, authored the chapter on secured transactions. As is the case with each of the chapters in the set, Justice Emerson lays out the topic of secured transactions in a way that is logical and particularly useful to the practitioner. She begins by giving an overview of secured transactions, followed by a section on litigation strategy in secured transaction cases, a section on selected discovery and evidentiary issues, a section on security interests pursuant to the Uniform Commercial Code, a section on default and enforcement of security interests, a section on challenges to security interests, a section on damages and, finally, practice aids including a checklist of essential allegations and potential sources of proof and proposed jury instructions.

Our county's other Commercial Division justice, the Hon. Emily Pines,

along with well-known litigator Linda Margolin, wrote the chapter on judgments. This chapter contains a clear and thorough analysis of the various types of judgments, including judgments after trial, judgments after motions to dismiss and for summary judgment, judgments by default, judgments by consent and confession of judgment. The authors next address the processes for entry, submission and settlement of judgments, as well as for amendment, correction and vacatur of judgments. The authors also provide the reader with sections on judgment liens and assignment and satisfaction of judgments. Like so many chapters in the treatise, the chapter on judgments concludes with a practice checklist and a useful compendium of forms.

It is the opinion of this reviewer that the Third Edition of *Commercial Litigation in New York State Courts* is an indispensable resource which should be a part of every commercial litigator's library. Bob Haig and the many judges and lawyers who contributed to this great work are truly deserving of the thanks of the commercial litigation bar for providing us with a comprehensive, authoritative and eminently readable source of pertinent information and invaluable practical and strategic advice.

Note: Scott Karson is a partner at Lamb & Barnosky, LLP in Melville. He concentrates his practice in municipal, commercial, land title and appellate litigation. He is a former president of the SCBA.