



Commercial Litigation in New York State Courts, 3rd Edition

Edited by Robert L. Haig
(West and the New York County Lawyers Association, 2010) 6 Volumes

Reviewed by Janice Handler

The Third Edition to *Commercial Litigation in New York State Courts* has substantially updated and expanded a highly respected classic work. (It, and the second edition, published in 2005, received more than 50 favorable book reviews in legal journals and newspapers throughout the State of New York). The first edition, published in 1995, was written by a group of 63 New York attorneys and judges working under the leadership of Robert Haig of Kelley Drye & Warren LLP, who served as editor in chief and performs the same function in the new edition, which contains 19 new chapters and the work of 144 authors, including 20 judges and the top litigation lawyers in the State.

As with previous editions, the 3rd edition is a comprehensive analysis of substantive and procedural issues in New York State litigation. It is logically arranged as a step by step practice guide that covers every aspect of a commercial case from investigation and assessment through pleadings, discovery, motions, trial, appeal and enforcement of judgments. The 3rd Edition also contains 38 substantive law chapters that cover the subjects most often encountered in commercial cases, including contracts, insurance, sale of goods, banking, securities, antitrust, intellectual property, franchising, and many other commercial law topics. These chapters contain procedural and practice checklists, counseling sections, jury charges, and litigation forms. The books also supply context and commentary relating to the establishment, in 1995, of the Commercial Division of the New York State Supreme Court, which was founded to facilitate the handling of an increasing volume of commercial cases of escalating complexity.

For the in-house corporate counsel (and particularly one who does not do hands-on litigation) a valuable part of this treatise is Volume 4A which deals with a number of topics of relevance and importance in-house. These chapters include "Litigation Avoidance and Prevention," "Crisis Management," "Litigation Management by Corporations," "Litigation Technology," and "Ethical Issues in Commercial Cases," all priority issues for in-house counsel.

"Litigation Avoidance and Prevention"—which is where all corporate counsel aspire to be—is full of practical suggestions, ranging from establishing corporate compliance programs to inserting some litigation avoidance clauses in standard contracts. However, it was somewhat disappointing to find no reference at all to the Federal (U.S.) Sentencing Guidelines. Although this is a treatise on *New York* litigation, in real life, corporate counsel do not es-

tablish different compliance plans to deal with the federal and state requirements. Since the federal guidelines outline "gold standard" requirements for corporate compliance plans, we are surprised to see them not mentioned.

This treatise is a goldmine in its treatment of many substantive areas of interest to corporate counsel. While the emphasis is on litigating various subject matters, each chapter includes a comprehensive overview of the substance under discussion. Intellectual Property, Defamation, White Collar Crime, Information Technology, Real Estate, Construction, and many other commercial areas are exhaustively discussed, making this work a one-shelf "go to" legal library. Many of the substantive overviews are clear and exhaustive—the Contracts chapter, for example, does not rest with commercial litigation strategy, but discusses at length those basic concepts of formation of contracts, breach, consideration, capacity, repudiation. The Products Liability chapter reviews all of basic torts as well as sophisticated litigation techniques. (Practitioner, if these books are on your shelf, be prepared to have them borrowed by your son, the first year law student!)

Volume 2 also has some useful material. Chapters on "Investigation of the Case" and "Case Evaluation" provide useful insights (with checklists) into the evaluation of any matter, whether it results in litigation or not. Detailed guidance on the creation of litigation "decision trees" is particularly informative.

Even a treatise this detailed and exhaustive cannot cover every area of interest. As mentioned above, I would have liked to see more co-ordination of state and federal issues. And I would have found the author biographies to be more useful had they been placed at the front of each chapter rather than in a separate volume. But these are nits considered against the scope, comprehensiveness, and expertise of these volumes.

Whether you wish to add this opus to your library will largely depend on the size of your shelves and the amount of hands-on litigation you do. The editors might wish to consider extracting a one volume treatise focusing on the specific issues of interest to the corporate generalist. But generalist or specialist will find much of value and interest in these volumes.

Janice Handler is a co-editor of *Inside*. She is a former General Counsel of Elizabeth Arden Cosmetics Co., and currently teaches Corporate Counseling at Fordham Law School.