

1996

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Recommended Citation

Honorable Israel Rubin, *Commercial Litigation in New York State Courts Robert L. Haig, editor*, 23 Fordham Urb. L.J. 1317 (1996).
Available at: <https://ir.lawnet.fordham.edu/ulj/vol23/iss4/16>

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Commercial Litigation in New York State Courts

Robert L. Haig, editor

*Reviewed by Hon. Israel Rubín**

The commercial case presents a special challenge even to those of us (such as Appellate Justices) who are, by necessity, generalists. The commercial litigator is confronted with an area of practice that is potentially demanding in its subtlety and extensive in its breadth. The inter-relationships of the various parties and their agents, the financial instruments employed, contractual provisions, conditions, warranties, arbitration and venue agreements, indemnification and insurance coverage all require careful analysis, often in the context of the particular type of transaction involved or the custom of a specific industry. Effective representation therefore requires that the practitioner possess specialized knowledge of a broad range of legal topics.

Commercial Litigation in New York State Courts (Robert L. Haig, editor) is an ambitious attempt to offer a work that is both comprehensive in its coverage and detailed in its analysis. Due to the knowledge and experience of the contributing authors, it is successful on both counts. The 68 chapters of its three volumes (numbered 2 through 4), which comprise part of West's New York Practice Series, strike a good balance between the depth and breadth of the subject matter. While much of the material they contain is undoubtedly available elsewhere and could be located, in time, by patient and diligent research, the treatise provides the information in a single, convenient reference. This offers several advantages. If the problem is not unduly complex, the practitioner may not need to look elsewhere to locate the answer. But even where recourse to additional sources is required, the material contained in the treatise is easily accessible and presented in context, both in terms of the subject matter and the stage of the litigation. Therefore, if it does not furnish all of the answers necessary to the resolution of a particular problem, it should provide at least enough background information to enable the practitioner to formulate the right questions preliminary to undertaking extensive research. Perhaps more significantly, it should enable the researcher

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to evaluate the product of the endeavor from the proper perspective.

The individual chapters are written by some of the most prominent litigators and jurists in New York State. Chapters 1 through 49 (in volumes 2 and 3) present commercial litigation topics in chronological sequence, from considerations of jurisdiction and venue and the drafting of complaints to the enforcement of judgments and prosecution of appeals. The approach of the authors is as practical as the organization, presenting a concise discussion of the strategic, procedural and substantive considerations incident upon each stage of the litigation process. Individual chapters are devoted to the investigation of the case and the effective exploitation of each of several discovery devices. Other chapters deal with pre- and post-trial motions, calendar practice and topics pertinent to the conduct of the trial. Extensive use is made of checklists, and most chapters contain sample forms, documents and provisions. The publisher conveniently supplies this material on an accompanying floppy disk (in uncompressed, ASCII format to expedite incorporation into any document, irrespective of the word-processing program used).

The last volume of the treatise is devoted largely to substantive matters, beginning with a review of general contract litigation, which includes a concise (17 pages) but informative treatment of the substantive law of contracts. Subsequent chapters deal with more specific areas of litigation including sales, antitrust, banking, insurance, environmental and construction litigation. The authors cover the substantive law in the area, generally, and discuss the elements of each cause of action, available defenses and the strategic implications of its prosecution or defense. Each chapter includes checklists of essential allegations and potential defenses, sample pleadings and jury instructions. This portion of the treatise also contains chapters considering the ethics of commercial litigation and the management of the commercial case.

In the so-called "Information Age," the problem is often not one of knowledge but access to knowledge. While information necessary to fully comprehend the complexities of commercial litigation is available to the dedicated researcher, *Commercial Litigation in New York State Courts* provides a far more efficient starting point for any such endeavor. Although not furnished for review, a CD-ROM version is available, which, according to the publisher's literature, includes "the full text of thousands of cases, statutes and court rules cited, all accessible via hypertext links." Such a re-

source offers an impressive amount of information in a convenient format at a reasonable cost, allowing even the modest practice access to an extensive (and highly portable) library.

Whether in hardcover or CD-ROM, *Commercial Litigation in New York State Courts* is a formidable research tool which will be of value to any attorney engaged in commercial practice. While not directed at an academic audience, the treatise might also be of interest to the law student. It offers a refreshingly concise and lucid treatment of a number of general topics (those likely to be represented on law school and bar examinations), both procedural and substantive. It also provides some needed perspective on how various subjects encountered in the academic curriculum apply to the litigation process.

