

Book Review: *Commercial Litigation in New York State Courts* (4th ed.)

By John R. Higgitt, Esq.

In the timeless classic *Field of Dreams*, the film's protagonist, Ray Kinsella (played by Kevin Costner), heeding a phantom's call that, "[i]f you build it, he will come," dedicates a sizable portion of his Iowa cornfield for use as a baseball field. Toward the film's end, Kinsella, who has sacrificed so much to build and maintain the field, finds himself asking, "[w]hat's in it for me?" That question must be asked too by lawyers and judges before investing the money to purchase and the time to read a legal treatise. In the case of the fourth edition of *Commercial Litigation in New York State Courts*, the answer is "a great deal."

A joint venture between Thomson Reuters and the New York County Lawyers Association, *Commercial Litigation in New York State Courts* was first published in 1995 as a 68-chapter, three-volume work at a time when the Commercial Division was a novel concept. Just like the Commercial Division, the treatise has matured and expanded over the past two decades.

The fourth edition of the treatise comprises 127 chapters in eight volumes. Those 127 chapters were produced by 182 authors, and edited by the inimitable Robert L. Haig, Esq., a partner at Kelley Drye & Warren LLP. Bob co-chaired the Commercial Courts Task Force (which was charged with creating and refining the Commercial Division), chairs the Commercial Division Advisory Council, and is a dean of the commercial bar. The roster of authors Bob assembled is remarkable: accomplished and esteemed commercial litigators, and experienced and admired judges of both trial and appellate courts. A quick scan of the "Table of Chapters and Authors" reveals a proverbial "Murders' Row" of commercial law.

The 10,188 pages of the fourth edition cover in great depth the full panoply of procedural and substantive subjects that are encountered in commercial practice and litigation. Attention is given to all facets of a controversy: pre-action investigation and evaluation of a potential claim or defense; initiation of and response to a lawsuit; disclosure; motion practice; settlement; alternative dispute resolution; trial preparation and the trial proper; appeals; and enforcement of judgment. In addition to the soup-to-nuts inspection of procedure and practice, most, if not all, of the commercial-related causes of action cognizable in New York are reviewed; 53 substantive law chapters can be found, covering topics such as "Contracts" (chapter 72), "Insurance" (chapter 73), "Collections" (chapter 78), "Contracts for Services" (chapter 79), "Professional Liability Litigation" (chapter

98), and “E-Commerce” (chapter 112). Also, the various remedies available to vindicate the rights of a commercial-action plaintiff are examined in the treatise: “Provisional Remedies” (chapter 18), compensatory and punitive damages (chapters 48 and 49), and “Specific Performance and Rescission” (chapter 10).

One might be tempted to assume that *Commercial Litigation in New York State Courts* is meant exclusively for the lawyer practicing in the Commercial Division or a judge sitting in that aspect of the court. That would be an unfortunate assumption. To be sure, those in the Commercial Division have been making (and will continue to make) substantial use of the treatise. But *every* civil litigator and judge of civil jurisdiction can benefit from this sweeping work. Many of the procedural law chapters have broad appeal, providing information and guidance to the whole spectrum of civil lawyers. Whatever the field of law in which one concentrates, the treatise has myriad crossover chapters that will aid in litigating a matter. Such chapters include, “The Complaint” (chapter 7), “Responses to Complaints” (chapter 8), “Parties” (chapter 19), “Bills of Particulars” (chapter 23), “Motion Practice” (chapter 31), “Summary Judgment” (chapter 32), “Trial and Post-Trial Motions” (chapter 50), “Judgments” (chapter 51), “Social Media” (chapter 113), and “CPLR Article 78 Challenges to Administrative Determinations” (chapter 116).

Was a fourth edition necessary? You bet. The third edition was published in 2010, and many subsequent changes (both significant and subtle) in New York’s procedural and substantive law relating to commercial law have occurred. Indeed, the 2014 Pocket Parts were stout, totaling more than 1,400 pages. To maintain the book’s eminent readability (more on that below), weave into the main text the appropriate discussions and citations, and expand the coverage of the treatise to include a chapter on every subject likely to be of interest to the commercial bar and judiciary, a new edition was required. The fourth edition brings with it 2,500 additional pages of text and 22 new chapters, including, among others, “Preliminary and Compliance Conferences and Orders” (chapter 22), “Negotiations” (chapter 59), “Mediation and Other Nonbinding ADR” (chapter 60), “Arbitration” (chapter 61), and “Workers’ Compensation” (chapter 75).

The breadth of matter treated in *Commercial Litigation in New York State Courts* makes it an awesome work, and the list of authors responsible for producing the fourth edition is the envy of editors of multi-author legal treatises. Yet the book is not overbearing. To the contrary, its well-organized material is an effortless read, covering basic fundamentals and important nuances in plain language. Thus, one needn’t be intimidated by the number of volumes in the set or expanse of matter

covered in them.

Furthermore, *Commercial Litigation in New York State Courts* is not just a first-rate legal treatise. It's also a practice guide, legal research tool, and form book. *Commercial Litigation in New York State Courts* provides a step-by-step litigation manual for the commercial case; contains copious citations to legal authority; and includes hundreds of pages of litigation forms and jury instructions. The practical focus of the book is further manifested by its strategies and client counseling sections, and the myriad checklists it provides to aid the practitioner. At bottom, whether one is interested in learning about a topic relating to commercial litigation, brushing up on such a topic, getting guidance on how best to take a particular step in commercial litigation, or finding a citation for a principle of procedural or commercial law, *Commercial Litigation in New York State Courts* provides one-stop shopping.

Given all that is offered by the fourth edition of *Commercial Litigation in New York State Courts*, I strongly recommend it as a principal legal resource. And after completing this book review I wish to amend my response to the question posed above, “[w]hat’s in it for me?” Let the record reflect that my prior response of “a great deal” should be modified to read “just about everything.”

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