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Lawyers as Rats, Part Deux

The Paradox of New York's Commercial Financial Disclosure Law

What To Know About the Bankruptcy Code's New Subchapter V

Book Review
Commercial Litigation in New York State Courts 5th Edition, by Robert L. Haig

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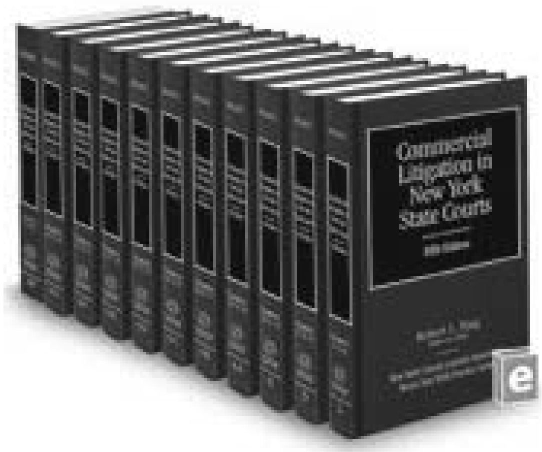

Robert L. Haig has done it again with the fifth edition of *Commercial Litigation in New York State Courts*, published in October 2020. Increasing the deeply talented bench of jurists and practitioners to a corps of 256 principal authors, Haig & co. have vastly expanded the work to 10 volumes, including 28 new chapters.

This is a very different animal from its forebears, although its evolution has been consistent and relentless. Haig, a litigation partner at Kelley Drye & Warren, with numerous positions and honors, is the chair of the Commercial Litigation Advisory Council, being one of the architects of the Commercial Division of the New York State Supreme Court. The three-volume 1995 debut edition of the treatise was the first step-by-step "how-to" book for litigators in New York State courts and became indispensable for a generation of litigators.

The fifth edition maintains those distinctions, but it has become much more, and for many more members of the bar than litigators. It remains a uniquely useful guide into areas with which practitioners are not familiar, not least due to its frequent integration of the discussion of substantive law with procedure. Add the yet broader scope of business subjects and analyses of objectives, options, and strategies from different perspectives and you have a tool not only helpful to litigators but equally useful to business law practitioners.

The core of the treatise (the first 66 chapters) remains a description of the rules and procedures and advice on the practice of commercial litigation for the life of a case from pleading preparation, through trial, appeal, settlement, and judgment enforcement. It is a detailed, practical guide for litigators and the lawyers who work with them.

There is much in these chapters for the business lawyer, whose partnership with the litigator in charting litigation strategy cannot be overstated. For example, whether considering a claim or responding to one or to a regulatory inquiry, the client's business lawyer is the first on the scene, and the chapter on the investigation of the case ably covers the basics, such as protecting privilege. Similarly, as to drafting contract dispute resolution clauses and advising clients on where to file suit, the fifth edition adds Delaware and foreign courts to its previous comparison of New York with federal courts. These chapters are sufficiently detailed and annotated for a litigator but provide clear comparisons and strategic considerations for the non-litigator.

The comparison with foreign courts includes England and Wales, Australia, France, Germany, and Russia. It continues the series' recognition that New York courts are in global competition for dispute resolution work with foreign courts and with private dispute resolution services. It thus helps to educate the increasing cadre of consumers of such services in company general counsel and litigation departments and in law firms. In this connection, added to its previous chapters on suing or representing foreign corporations in New York state courts and international arbitration, is the comparison with foreign courts as well as a chapter on cross-border litigation. While no substitute for international litigation and dispute resolution practice materials, the set alerts the reader to important issues and provides references for further study.

Next in the set one finds chapters covering litigation avoidance and alternatives including negotiation, mediation and other nonbinding ADR, arbitration, including international arbitration, and even business matters surrounding litigation decisions such as crisis and public relations management. Then the treatise moves into an expanded treatment of litigation management subjects including techniques for expediting and streamlining litigation, litigation management by judges (new), corporations and law firms and the litigation finance and technology subjects of third-party litigation funding (new), litigation technology and artificial intelligence (new).

Haig adds chapters on subjects acknowledged to be unconventional for a conventional litigation treatise but which he views as important to commercial litigators regarding the "business" of litigation practice and professional growth and development of commercial litigators. These chapters include marketing to potential business clients, teaching litigation skills, career and practice development, and diversity and inclusion. They are filled with sound advice, some new and some tried and true. These chapters are well written and surprisingly comprehensive (if duplicative from time to time) and include practical advice.

Sixty-four of the 68 next and final chapters housed in more than four volumes cover a wide array of substantive law matters. This is a gold mine for the business lawyer. The subjects include those you would expect, such as contracts, sale of goods, insurance, banking, and M&A, but also such industry-specific titles as sports, energy, not-for-profit institutions, health care institutions, e-commerce and social media. Among the new chapters are those on private equity, gaming, joint ventures, limited liability companies, valuation of a business and valuation of real property.

To take an example, the securities litigation chapter begins with an overview of the types of securities litigation and pleading considerations for plaintiffs and defendants, given the federal statutory scheme strongly favoring federal jurisdiction. In an illustration of the care given to the coordination of related subjects in the treatise, the chapter first advises that two of the four types of securities litigation are treated in the separate chapters on, respectively, shareholder derivative actions and broker-dealer litigation and arbitration. The chapter discusses federal jurisdiction, preemption, and removal of class actions, state statutory claims, and claims by large and sophisticated investors. While a full examination of all the involved issues is beyond the scope of the chapter, it is a good introduction and overview, reasonably annotated and ends with a useful checklist.

Commercial litigators, business lawyers, in-house counsel, and lawyers of nearly every other stripe will continue to learn new areas, find procedural and substantive practical roadmaps and tips and references for further guidance related to all things which touch commercial litigation in New York State courts and beyond. The fifth edition is available hardbound from Thomson Reuters, which publishes it in a unique joint venture with the New York County Lawyers Association, and digitally on the Westlaw online legal research platform.

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