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Book Review – Commercial Litigation in New York State Courts

When asked what kind of law I practice, I usually respond, “commercial litigation,” which more often than not seems to satisfy even other lawyers that they have a sense of what it is that I actually do as an attorney. As even a quick perusal of the recently released third edition of “Commercial Litigation in New York State Courts,” Robert L. Haig, Ed. In Chief (West Publishing, 2010) makes clear, however, my standard description is sorely lacking in specificity. “Commercial litigation” is a broad, umbrella term that encompasses a wide breadth of substantive and procedural practice niches, some of which the average commercial litigator will encounter frequently, others of which he or she may see only rarely, but all of which he or she must be prepared to handle when they do arise. The seven-volume “Commercial Litigation in New York State Courts” covers a great variety of these substantive and procedural situations that comprise commercial litigation practice, and because of this comprehensiveness, it is one of the finest resources available to New York State commercial litigators. Seasoned practitioners and newly minted attorneys alike will find value in this treatise, whether they are seeking a concise refresher on a familiar topic, a resource for identifying key cases, statutes and rules for use in drafting a brief, or a succinct introduction to a new area of practice. It is, in short, a primer for the New York State commercial

litigator.

Mr. Haig, editor in chief of these volumes since the first edition came out in 1995, has held a variety of positions over the past three decades that have placed him at the center of commercial litigation in New York State. Most prominently, that same year, he was selected as the co-chair of the Commercial Courts Task Force, the panel established by then-Chief Judge Judith S. Kaye and Chief Administrative Judge E. Leo Milonas to create and develop the Commercial Division of the New York State Supreme Court – now universally recognized as one of the finest systems in the nation, federal or state, in which to seek adjudication of commercial disputes. In addition, Mr. Haig, now a partner in the New York City office of Kelley Drye & Warren LLP, has, among other accolades, served as President of the New York County Lawyers’ Association, and Chair of the New York State Bar Association’s Commercial and Federal Litigation Section, Committee on Federal Courts, and Committee on Multi-Disciplinary practice, and is a member of the American Law Institute and a frequent lecturer, author, and editor (including of another treatise covering similar subject matter, the eleven-volume “Business and Commercial Litigation in Federal Courts”).

Mr. Haig, however, is just one of many top New York State commercial litigators who have contributed to “Commercial Litigation in New York State Courts.” The



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seven volumes are comprised of over one hundred individual articles written by some of the most highly-skilled professionals in the world of commercial litigation, including commercial litigation attorneys from the State’s most prestigious firms, as well as judges from all levels of the New York State court system. Topics range from fairly narrow summaries of specific substantive practice areas (such as “Professional Liability Litigation,” by Richard P. Swanson of Arnold & Porter LLP, and “Commercial Real Estate Litigation,” by The Hon. Alan D. Scheinkman of the Commercial Division, Westchester County), to procedural tutorials for situations commonly encountered during commercial litigation (“CPLR Article 78 Challenges to Administrative Determinations,” by The Hon. Victoria A. Graffeo of the Court of Appeals, and “Fees, Costs and Disburse-

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Torts and Civil Practice, *cont.*

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Coonjbeharry v. Altone Electric, LLC (Spain, J., 4/19/12)

Plaintiff was seriously injured in the course of his employment at a rubber recycling facility owned by the defendant New York Rubber which was a wholly-owned subsidiary of plaintiff's employer, Permalife Products. Supreme Court (Kramer, J., Schenectady Co.) granted New York Rubber's motion for summary judgment because it was an "alter ego" of Permalife, and as such, plaintiff's entitlement to recovery

of benefits was limited to workers' compensation. The Third Department affirmed, citing to evidence that sufficiently demonstrated the two entities "shared purpose, intermingling of finances and unity of management", establishing as a matter of law that New York Rubber was an alter ego of the employer.

COURT OF APPEALS ON CAUSATION AND THE LAPSE OF TIME

Williams v. State of New York (Memorandum opinion, 4/26/12)

Not all negligence leads to liability; plaintiff must also establish a causal connection between what went wrong and the damages. The proximate cause analysis includes a "test of temporal duration", which questions whether there was a reasonable lapse of time between the negligence and the injury. Here, the Court of Appeals finds the lapse of nearly two years to be unreasonable, reversing the Appellate Division and dismissing the claim. Plaintiff's assailant, a voluntary patient at a state-operated mental health facility, stole away when per-

mitted to go unescorted to the bathroom, and having been designated as non-dangerous was classified as "left without consent" rather than "escaped". Almost two years later, he was arrested and convicted of assaulting the claimant with a bottle. The Court of Appeals found the alleged causal connection "simply too attenuated and speculative to support liability", noting that "any number of circumstances arising during the two-year period might have triggered a change in the assailant" causing him to become a danger to others.

Commercial Litigation in New York State Courts, *cont.*

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ments," by Jay Kasner of Skadden, Arps, Slate, Meagher & Flom LLP). The basics of commercial litigation are also covered (i.e., "Jurisdiction," by Mitchell A. Lowenthal and Boaz S. Morag of Cleary Gottlieb Steen & Hamilton LLP, or "Venue," by the Hon. Robert S. Smith of the Court of Appeals and William C. Silverman of Greenberg Traurig LLP), and many articles also concern what might be termed "advice for better lawyering" (e.g., "Case Evaluation," by Alan I. Raylesberg of Chadbourne & Parke LLP, "Suing or Representing Foreign Companies in New York State Courts," "Techniques for Streamlining and Expediting Litigation," by Steven Wolowitz of Mayer Brown LLP, and "Litigation Technology," by Peter Bicks of Orrick Herrington & Sutcliffe LLP). There are also a wide variety of practical guides to commercial litigation

pre-trial and trial practice that are particularly notable for their clarity, organization, and comprehensiveness (many of these have been contributed by attorneys at Proskauer Rose LLP, such as "Trials," by Steven Obus, "Presentation of the Case in Chief," by Edwin M. Baum, and "Cross Examination," by Emily Stern).

Pedigree and depth of coverage aside, "Commercial Litigation in New York State Courts" is also quite useful in practice. Finding relevant material can be accomplished in a variety of ways. The seventh volume of the treatise is comprised of tables of statutes, rules, and cases, and also contains a detailed, 185 page topical index, allowing for precise, targeted searching of the variety of covered topics. Practitioners could also access the book's contents via the table of contents, which lists each article by title as an individual chapter. While there is no outline substructure or

headings to the table of contents, articles are generally grouped into three categories: litigation procedures (with individual articles organized roughly into the order in which the procedures are encountered in litigation), litigation practice management, and substantive law surveys. In practice, I actually preferred using the table of contents to the index. The more casual organizational style required me to scan the article titles until a relevant article title jumped out. In that process, in addition to finding the material I was initially looking for, I would often come upon other articles pertinent to other aspects of the matters on which I was working at the time. Had I simply relied on the index, I may not have found the additional material, nor would I have necessarily encountered it if my perusal of the table of contents had been aided by a more robust, outlined structure.

The accessibility of the ma-

terial is what makes "Commercial Litigation in New York State Courts" one of the best investments any attorney or firm can make. It is not an academic refresher, or a book to be read during your down-time (although it could be used that way as well). It is a practical guide to be used in and during practice. And in using these volumes, you will find assistance in solving the problems you were looking to solve, but along the way, you will encounter a wealth of other materials that will, without exaggeration, make you a better commercial litigator. If your practice regularly concerns commercial litigation matters of any kind and you were to invest in only one treatise to have on your office shelf for regular consultation, "Commercial Litigation in New York State Courts" is thus a very worthy contender.