

2016

# The Commercial Litigator's Bible - Fourth Edition: A Review of the Fourth Edition of Commercial Litigation in New York State Courts

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## Recommended Citation

Warshawsky, Hon. Ira B. (2016) "The Commercial Litigator's Bible - Fourth Edition: A Review of the Fourth Edition of Commercial Litigation in New York State Courts," *Touro Law Review*: Vol. 32: No. 4, Article 15.

Available at: <http://digitalcommons.tourolaw.edu/lawreview/vol32/iss4/15>

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**THE COMMERCIAL LITIGATOR'S BIBLE - FOURTH  
EDITION: A REVIEW OF THE FOURTH EDITION OF  
COMMERCIAL LITIGATION IN NEW YORK STATE COURTS**

*Hon. Ira B. Warshawsky, JSC (Ret.)\**

In 2005, while sitting as a judge in the Commercial Division in Nassau County, I was given the opportunity to review the second edition of this amazing research tool. It took me quite some time to complete my task because I found myself engulfed in reading section after section of the then-new material. Nothing has changed in that regard. If you are an admirer of quality legal writing, you, too, will find yourself drawn into these volumes.

Robert Haig's opus is literally "the Bible," for both the commercial practitioner and a judge of the Commercial Division. While some texts of this nature may be the starting point of your research on a particular issue of commercial law, this now eight-volume set may be the only place you need to go to get your questions answered. Admittedly, you might actually have to look up the case or statute referenced by the text, but that really doesn't ask very much of the reader.

Robert Haig is a magician who has corralled 182 authors for the fourth edition of this treatise which, of course, updates the third edition, but also adds twenty-two timely new chapters. You may have to make more room on your library shelf because the fourth edition has two more volumes than the third.

This work continues to be an extremely valuable resource for the commercial litigator in both procedural and substantive areas of commercial law. It frequently provides insight into areas, such as Motion Practice (Hon. Timothy Driscoll); Coordination of Litigation

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within New York between Federal and State Courts (Hon. Helen Freedman (ret.)); Preliminary and Compliance Conferences and Orders (Hon. Linda S. Jamieson); and Bills of Particulars (Hon. Deborah H. Karalunas), where the view from the bench is so very important and, normally, not easily obtained.

Upon reading through the appendix, perhaps not the first place a reviewer would examine, I found references to not only every possible New York and federal statute one could imagine having anything to do with a commercial problem, but also to the more esoteric, including the Clean Water Act; the Communications Decency Act of 1996; local rules for all the federal courts in New York State; and references to the laws of twenty-four other states as well as the United Nations Convention for the International Sale of Goods.

In determining where to concentrate my efforts as a reviewer, I turned to the twenty-two new chapters. Their titles alone reflect how the law in the commercial world has evolved in the last five years since the third edition was published: Internal Investigations; Preliminary and Compliance Conferences and Orders; Negotiations; Mediation and Other Nonbinding ADR; Arbitration; International Arbitration; Pro Bono; Reinsurance; Workers Compensation; Trade Associations; Securitization and Structural Finance; Derivatives; Medical Malpractice [yes you read that correctly]; Licensing; Social Media [a must read]; Tax; Land Use Regulation; Commercial Leasing; Project Finance and Infrastructure; Entertainment; and Sports and Energy.

Since retiring from the bench over four years ago, much of my practice has been in the area of commercial mediation and arbitration. The addition of the chapters on mediation and arbitration help to complete the circle for me as far as the new edition is concerned. Where the original treatise essentially concentrated on the possible nuances and ramifications of what happens to a commercial case within the system, both federal and state, the new edition now goes beyond such a framework.

Chapter Sixty, Mediation and Other Nonbinding ADR, provides not only the “how-to” of the ADR process for the uninitiated, but also its impact on the Commercial Division in New York. It provides a quick view into the AAA, CPR and JAMS; their differences, similarities, and costs. You, of course, are not limited in choosing a mediator. This chapter also explains the current “court-directed mediation” in the Commercial Division. As found in many other chap-

ters of this treatise, Chapter Sixty includes an excellent checklist with chapter section references and concludes with a sample term sheet which I highly recommend to mediation participants. The arbitration section immediately zooms in on the interaction between federal law (FAA) and New York law (CPLR Article 75). It then follows a matter through the slings and arrows of an arbitration process.

Another new chapter, Medical Malpractice, surprised me by its presence. I was immediately drawn to it, just to see what it would be discussing. This chapter is authored by Judge Karla Moskowitz of the Appellate Division, First Department, and formerly a Commercial Division judge in New York County. Prior to that assignment, she spent nine years as a medical malpractice judge. I was impressed by what the chapter calls "preliminary considerations" for both the plaintiff's and defendant's counsels. The chapter then proceeds to discuss the many elements of a medical malpractice claim and the various possibilities of how the statute of limitations impacts such a claim. This is just the start of a chapter that clearly and concisely covers diverse topics that include possible defendants, litigation procedure and strategy, discovery and expert witnesses and special trial issues. As with other chapters in this treatise, there is an excellent checklist covering essential allegations and affirmative defenses. Additionally, it includes a sample complaint and, perhaps most importantly, detailed jury interrogatories.

Though not a new chapter, the chapter on e-discovery has been updated and now includes a discussion on Technology Assisted Review (TAR/Predictive Coding). This terminology, a mystery to almost all commercial litigators, is made understandable and its usefulness is explained. A recent survey of federal judges and practitioners relating to e-discovery pointed to the concern of the bench regarding a lack of cooperation amongst counsel in this area, while attorneys complained of a lack of competence of fellow practitioners. The study stated that if the litigator doesn't understand something, all too often he or she thinks it's not important enough to know. Clearly, today's commercial litigator must have at least a basic understanding of e-discovery, and this chapter is the perfect place to start.

Another new chapter, Social Media, discusses the impact of social media on almost every area of a commercial case. For those of you who do or don't believe social media can impact on a commercial matter, this is another, not meaning to be redundant, must-read chapter.

Further, the new chapter on Energy is invaluable. Just as we, in New York, use or consume all types of energy resources, this chapter seems to cover all related areas, and it incorporates the federal and state regulations that govern them. Such areas include hydraulic fracturing (better known as “fracking”) used in the obtaining of natural gas and oil, electric transmission siting (process for licensing electric transmission facility), natural gas and oil siting, rate disputes involving utility companies, and nuclear generation concerns and load pocket issues. Though New York now has an outright ban on fracking, lawsuits related to all of the above, including toxic tort claims and nuisance actions, will continue to exist on the court’s docket in the state. All such issues are well covered in the energy chapter.

Immediately following Energy is the chapter on Environmental and Toxic Tort Litigation. This is not a new section but it is appropriately situated after the Energy section. This topic is covered from the view of federal and state agencies, then civil litigation involving toxic torts. The treatise carefully reviews the broad umbrella of toxic torts, including the controlling law in New York on expert witnesses (the ongoing battle between Frye and Daubert). You may never have an environmental or toxic tort case, but if you possess an inquiring mind, just open this chapter and soak up the knowledge.

It should be clear to the reader of this review that I thoroughly enjoy the work of Bob Haig and his 182 authors. My only regret is not having the time to read it chapter by chapter. I highly recommend it.