

WESTCHESTER LAWYER



WCBA

THE WESTCHESTER COUNTY BAR ASSOCIATION'S MONTHLY MAGAZINE

DECEMBER 2017 | VOL. 4 | NO. 12

From the Executive Committee,
Board and Staff of the
Westchester County Bar Association

Wishing all of our members a
JOYOUS HOLIDAY SEASON
filled with peace, health
and prosperity!



Business and Commercial Litigation in Federal Courts

4th Edition 2016

BY WILLIAM P. HARRINGTON, ESQ. and CHRISTOPHER C. PALERMO, ESQ.

AS THE CALENDAR TURNS TO December, 'tis the season for giving gifts. It's also time to start thinking about 2018 law firm budgets and how best to invest your law firm's resources to ensure that you get the most bang for your buck. Whether you're wondering what the litigator in your life could really use or deciding which books are "must haves" for your firm's perhaps ever-shrinking law library, we highly recommend the Fourth Edition of the treatise "Business and Commercial Litigation in Federal Courts," edited by New York City litigator Robert L. Haig, and the product of a joint venture of Thomson Reuters and The American Bar Association's Section of Litigation.

Mr. Haig is both a leader of the commercial litigation bar and an experienced editor. He is the Chair of the Commercial Division Advisory Council, which advises the Chief Judge on matters relating to the Commercial Division courts in New York. He has

also been the editor-in-chief of each edition of the treatise, which dates back to 1998.

Mr. Haig has enlisted nearly 300 authors to contribute their expertise and strategic insights to chapters in the Fourth Edition of the treatise. This is not a treatise prepared by academics who have rarely if ever tried a case or appeared in court.

The authors include some of the most experienced commercial trial lawyers in the country, such as David Boies (Chapter 66, "Litigation Technology"); Evan Chesler (Chapter 38, "Trial Strategy and Advocacy"); Gary Naftalis (Chapter 3, "Venue, Forum Selection and Transfer"); and Theodore V. Wells and Roberta A. Kaplan (Chapter 132, "Interplay Between Commercial Litigation and Criminal Proceedings"), to name just a few.

Their time and talent is backed by the research and resources of some of the largest law firms in the world. By Mr. Haig's conservative estimate, the various editions of the treatise are the end product of more than \$80 million of billable time, a reflection of those firms' deep commitment to the effort.

The Fourth Edition also includes the work of 27 current and former judges, a number of whom are very familiar to attorneys in Westchester who try cases in the Southern and Eastern Districts: Second Circuit Judge Hon. Richard C. Wesley (Chapter 60, "Appeals to the Courts of Appeals"); Southern District Judges Hon. Paul A. Crotty (Chapter 53, "International Arbitration"); Hon. John F. Keenan (Chapter 110, "Mass Torts"); Hon. Shira A. Scheindlin (Chapter 26, "Discovery of Electronically Stored Information"); Eastern District Judges Hon. Brian M. Cogan (Chapter 56, "Bankruptcy Code Impact on Civil Litigation in the Federal Courts");

and Hon. William F. Kuntz, II (Chapter 54, “Trial and Post-Trial Motions”) and New York State Commercial Division Justice Hon. Barry R. Ostrager (Chapter 91, “Reinsurance”).

When it was first published in 1998, the treatise was six volumes. The Fourth Edition now spans 14 separate volumes, and includes a staggering 153 chapters and more than 17,000 pages. We confess we have not yet read all of them. The first 62 chapters provide a step-by-step practice guide to every aspect of a commercial case, from initial investigation through pleadings, discovery, motions, trial and appeal.

Mr. Haig has wisely continued the user-friendly format of prior editions. Chapters include strategic considerations, procedural and practice checklists, checklists of essential allegations and defenses, and litigation forms and jury charges that are highly useful both for seasoned commercial trial lawyers and litigators fresh out of law school.

These chapters contain a gold mine of practical and strategic advice from those who have been there. Chapter 26 on “Discovery of Electronically Stored Information” illustrates the type of valuable, current, practical guidance provided throughout the procedural chapters of the Fourth Edition. Co-authored by Hon. Shira A. Scheindlin and Jonathan M. Redgrave, the chapter begins with 15 pages of “strategy, objectives, and preliminary considerations,” emphasizing the importance of pre-litigation planning.

The chapter then continues with a discussion of the federal rules provisions applicable to discovery of ESI; the duty to preserve ESI; preservation orders for ESI; discovery and production of ESI; and cost-shifting and claims of spoliation. The chapter concludes with practice aids in the form of six separate checklists as well as form case management order provisions.

If that type of procedural depth weren’t enough, the Fourth Edition also contains 78 substantive law chapters. Those chapters include subjects that are the bread and butter of a thriving commercial litigation practice, such as contracts, insurance, warranties, letters of credit and sale of goods, to name a few. They also cover litigation under a wide variety of federal statutes, including OSHA claims, ERISA, RICO, Food and Drug Law, the False Claims Act, the Foreign Corrupt Practices Act, the Alien Tort Statute and the Torture Victim Protection Act.

(continued on page 17)

THANK YOU!

WCBF
Benefit
GOLD SPONSOR

KEANE & BEANE P.C.
ATTORNEYS AT LAW



Located in White Plains, NY, Keane & Beane, P.C., has provided the highest quality legal counsel to its clients—businesses, developers, individuals, families, school districts, municipalities and non-profit organizations—in the Hudson Valley and beyond—for over 30 years.

At Keane & Beane, P.C., clients get the best of two worlds: the breadth and depth of professionals and practice areas usually found only at a large law firm—with the accessibility, personalized service and loyalty to clients of a smaller firm.

Since Edward F. Beane and Thomas F. Keane, Jr. founded the firm in May, 1980, it has grown from a four attorney practice to one of the largest law firms in Westchester County. At the same time, it has provided tremendous continuity for our clients. The average tenure of our members is 18 years.

Shortly after 1980, Keane & Beane, P.C. moved its headquarters to White Plains, NY and in 2008, it opened a Fishkill, NY office to better serve clients in the northern portion of the Hudson Valley. The firm now maintains an additional office in New York City.

Since the firm’s founding, it has adhered to a simple philosophy—to develop strong working relationships with clients while ensuring they receive “small firm,” personal attention at all times. These principles have allowed Keane & Beane, P.C. to understand the objectives of its clients and provide well-managed, cost effective and timely service.

FLORIDA ATTORNEY

LAW OFFICES OF RANDY C. BOTWINICK

Formerly of Pazer, Epstein & Jaffe, P.C.

CONCENTRATING IN PERSONAL INJURY

- Car Accidents • Slip & Falls • Maritime
- Wrongful Death • Defective Products
- Tire & Rollover Cases • Traumatic Brain Injury
- Construction Accidents

Now associated with Jay Halpern and Associates, we have obtained well over \$100,000,000 in awards for our clients during the last three decades. This combination of attorneys will surely provide the quality representation you seek for your Florida personal injury referrals.



Co-Counsel and
Participation Fees Paid



RANDY C. BOTWINICK
30 Years Experience

MIAMI

150 Alhambra Circle
Suite 1100, Coral Gables, FL 33134
P 305 895 5700 F 305 445 1169

PALM BEACH

2385 NW Executive Center Drive
Suite 100, Boca Raton, FL 33431
P 561 995 5001 F 561 962 2710



JAY HALPERN
35 Years Experience

Toll Free: 1-877-FLA-ATTY (352-2889)

From Orlando to Miami... From Tampa to the Keys

www.personalinjurylawyer.ws

BOOK REVIEW

(continued from page 13)

Those who have one of the prior editions likely already recognize the enormous value the treatise brings, and do not need us to persuade them to buy the new one. For those who may still be on the fence, the latest edition contains no less than 25 new chapters on procedural and substantive topics that have grown in importance since the Third Edition was published in 2011, including Cross-Border Litigation; Mediation; Arbitration; Social Media, Health Care Institutions; Mass Torts; Joint Ventures; Advertising; International Trade; and Civil Rights, to name only a handful.

Equally as valuable, the Fourth Edition also updates the remaining chapters to reflect the many changes in procedural and substantive law relating to business and commercial litigation since 2011.

The Fourth Edition is unique. No other treatise on federal business and commercial litigation provides a commercial trial lawyer with this combination of procedural guidance, practical and strategic advice and substantive expertise in a single place. While many attorneys now do their legal research primarily if not entirely online, searching for the too-often-elusive authoritative client advisory, it is far more efficient to have the Fourth Edition close at hand as a ready reference on a (sturdy, reinforced) shelf (or two) right in your office.

The broader an attorney's commercial litigation practice, the more helpful the Fourth Edition is. In the last month alone, we have been able to turn to the Fourth Edition as a useful resource on a wide array of subjects, from Antitrust to Products Liability, and from Employment Discrimination to Multidistrict Litigation.

The comprehensive scope of the Fourth Edition makes the treatise all the more valuable as a way to level the playing field for smaller firms and solo practitioners who do not have colleagues with the relevant expertise right down the hall. For experienced commercial litigators who regularly try a wide range of cases in federal court as well as newly-admitted attorneys seeking an authoritative "how-to" guide for their first commercial case, the Fourth Edition is a procedural and substantive godsend, well worth every penny.

William P. Harrington, Esq., is a partner and the Chairman of Bleakley Platt & Schmidt, LLP, and the head of the Firm's Litigation and Toxic Tort/Complex Litigation practice groups. Mr. Harrington is also the Chairman of the Westchester County Association.

Christopher C. Palermo, Esq., is a litigation partner at Bleakley Platt & Schmidt, LLP and is a member of the Commercial Division Advisory Council.