Foreword

This Foreword provides an opportunity to salute and to thank the 272 principal authors of the Sixth Edition of this treatise. Their expertise and qualifications are outlined in the "About the Authors" section following this Foreword. I would like to give readers at least some sense of the time and thought our authors have expended. Although it is difficult to quantify their efforts, one statistic may be helpful. We conservatively estimate that our authors and their law firms have invested more than 80 million dollars of their own billable time, calculated at their regular hourly billing rates, in working on the First, Second, Third, Fourth, Fifth, and Sixth Editions of this treatise and its annual Pocket Parts. I believe that readers will agree that our authors' efforts are reflected in the comprehensiveness and quality of the Sixth Edition.

The First, Second, Third, Fourth, and Fifth Editions

The First, Second, Third, Fourth, and Fifth Editions of this treatise, which were published in 1995, 2005, 2010, 2015, and 2020, respectively, have been widely recognized as unique and invaluable resources and became the definitive works in their field. The first five editions received an enthusiastic reception from the legal press, reflected in more than 100 favorable book reviews in legal newspapers, bar journals, and other publications throughout the State of New York which confirm the value of this legendary treatise.

Pocket Parts for all chapters in the Fifth Edition have been published each year since 2020. Due to the many changes over the past six years in New York procedural and substantive law relating to commercial litigation, it became clear that a new, sixth edition of the treatise was in order. In addition, as a result of the authors' careful and comprehensive annual updating of their chapters, the 2025-2026 Pocket Parts consisted of a total of 2,523 pages of text (on average, more than 16 pages of text per chapter) and the treatise was becoming unwieldy and inefficient to use.

Accordingly, the authors began work on the Sixth Edition of the treatise during the fall of 2025.

The Sixth Edition

Five new chapters have been added in the Sixth Edition to the chapters in the Fifth Edition. In addition, the chapters carried forward from the Fifth Edition have been substantially expanded. As a result, the Sixth Edition is ten volumes (there were three volumes in the First Edition, five volumes in the Second Edition, six volumes in the Third Edition, eight volumes in the Fourth Edition, and ten volumes in the Fifth Edition) and contains 14,516 pages of text (1,440 more pages of text than the Fifth Edition). The Sixth Edition also features a separate appendix that contains an Index as well as tables of all laws, rules, and the more than 34,000 unique cases cited in the Sixth Edition. The appendix makes it easy for readers to find precisely what they are looking for in one place.

In 2020, while we were working on the Fifth Edition, I thought that we had included a chapter on every subject likely to be of interest to commercial litigators. Commercial litigation in New York State courts has evolved over the past six years and we have added five new chapters in the Sixth Edition to address new subjects that are important to commercial litigators today. The following list of new chapter titles in the Sixth Edition includes a number of subjects whose importance has dramatically increased in recent years: Art; Asset Management; Blockchain and Digital Assets; Corporate Litigation Reporting Obligations; and Corporate Sustainability and ESG.

The authors of these five new chapters have obviously devoted substantial time and effort to the Sixth Edition. Less obvious, but no less important, are the new contributions to the Sixth Edition by the authors of the chapters carried forward from the Fifth Edition. The 2025-2026 Pocket Parts for some of the chapters in the Fifth Edition were more than 50 pages. The tasks of integrating and synthesizing lengthy Pocket Parts into even lengthier chapters to create completely current and seamless new chapters required extensive efforts by our authors. Even more crucial was the expertise and judgment they exercised to determine what needed to be added, and what should be eliminated, to create new chapters that provide comprehensive and up to date guidance without extraneous or obsolete material that wastes readers' time. I welcome readers' assessments of the results.

Although quality is always more important than quantity, we are grateful for the comprehensive work which our authors have submitted. To provide three quick examples, three of the most important and complex topics in commercial litigation in New York State courts are responses to complaints, provisional remedies, and document discovery. In this Sixth Edition, Chapter 8 on "Responses to Complaints" is 868 pages of text; Chapter 20 on

"Provisional Remedies" is 384 pages of text; and Chapter 30 on "Document Discovery" is 358 pages of text. I have discussed later in this Foreword the efforts we have made to provide accessibility and efficient delivery of the relevant practical guidance in these voluminous chapters.

Our Authors

The Sixth Edition of this publication contains the work of 272 principal authors, including 37 distinguished judges and the cream of the commercial litigation bar, the best lawyers practicing in the courts of this State. The generosity of these renowned authors, in sharing their experience and insights, backed up by the resources of many of the finest law firms in the United States, has enabled this unprecedented work.

I thank all of our 272 principal authors for both the quality and the quantity of their efforts and for the enthusiasm and commitment that characterized their participation. I particularly thank the 37 distinguished judges who graciously shared their valuable time and insights with us, including Chief Judge of the State of New York Rowan D. Wilson; Court of Appeals Judges Eugene M. Fahey, Victoria A. Graffeo, Madeline Singas, and Robert S. Smith; Chief Administrative Judge Lawrence K. Marks; Appellate Division Justices Sharon A.M. Aarons, Richard T. Andrias, Margaret Chan, John M. Curran, Helen E. Freedman, Judith J. Gische, John R. Higgitt, Barbara R. Kapnick, Joseph J. Maltese, Marsha D. Michael, Saliann Scarpulla, Alan D. Scheinkman, and Lillian Wan; Commercial Division Justices Nancy M. Bannon, Timothy S. Driscoll, Cenceria P. Edwards, Elizabeth Hazlitt Emerson, Linda S. Jamieson, Orin R. Kitzes, Andrea Masley, Nicole McGregor Mundy, Anar Rathod Patel, Martin E. Ritholtz, and Gretchen Walsh; United States District Judges Brian M. Cogan, Katherine B. Forrest, Barbara S. Jones, and William F. Kuntz, II; and United States Magistrate Judges Stewart D. Aaron, Mitchell J. Katz, and James M. Wicks.

The late Chief Judge Judith S. Kaye and former Chief Judge Jonathan Lippman wrote Chapter 1 in the First, Second, Third, and Fourth Editions. Former Chief Judge Janet DiFiore, who succeeded Judge Lippman as Chief Judge of the State of New York in 2016, also succeeded him as the author of Chapter 1 in the Fifth Edition. Chief Judge Rowan D. Wilson, who succeeded Judge DiFiore as Chief Judge of the State of New York in 2023, also succeeded her as the author of Chapter 1 in the Sixth Edition. I am grateful to Chief Judges Kaye, Lippman, DiFiore, and Wilson both for their contributions to this treatise and for their extraordinary contributions to commercial litigation in New York which I discuss later in this Foreword.

Scope and Focus

This publication is unique in the legal literature. There is no other book on commercial litigation in New York State courts. There is also no other book that combines in depth treatment of New York civil procedure with substantive law in the areas most commonly encountered by commercial litigators. Even more unique, however, is that again and again throughout this work, our authors have pointed out the interplay between the rules of procedure and substantive law. They have painstakingly outlined strategies for the representation of plaintiff and defendant. They have given thoughtful consideration to the delineation and attainment of objectives and to the advantages as well as ramifications and pitfalls of various actions and inactions on the part of the commercial litigator throughout the entire course of a lawsuit. This is not only a law book that is valuable as a research tool and a source of legal knowledge and citations, it is an idea book filled with nuggets of wisdom and perspective that could only have been gained by years of experience in handling cases from the most simple to the most complex. This book tells readers not only what the law is but how to use the law to achieve their clients' objectives.

The Sixth Edition of this treatise is a step-by-step practice guide that covers every aspect of a commercial case, from the investigation and assessment that take place at the inception, through pleadings, discovery, motions, trial, appeal, and enforcement of judgment. Great emphasis is placed on strategic considerations specific to commercial cases. The Sixth Edition also contains 68 substantive law chapters that cover the subjects most commonly encountered in commercial cases, including contracts, insurance, sale of goods, banking, securities, antitrust, intellectual property, professional liability, business torts, franchising, and many other commercial law topics. Covered as well are compensatory and punitive damages and other remedies such as specific performance, rescission, and declaratory judgments. Alternative dispute resolution is also addressed in separate chapters on settlements, negotiations, mediation and other nonbinding ADR, arbitration, and international arbitration.

In addition, the Sixth Edition contains a number of chapters on subjects that might not be covered in a conventional litigation treatise but nevertheless are important to commercial litigators. These additional chapters address the "business" of litigation practice (for example, our chapters on Marketing to Potential Business Clients; Third-Party Litigation Funding; Litigation Management by Law Firms; Litigation Management by Corporations; Crisis Management; and Litigation Avoidance and Prevention) as well as the professional growth and development of commercial litigators (for example, our chapters on Career and Practice Development; Teaching Litigation Skills; Pro Bono; and Diversity and Inclusion).

Special Features

The special features and categories of information in the Sixth Edition of this treatise include in-depth text on law and procedure, strategies and client counseling sections, procedural and practice checklists, checklists of essential allegations and defenses, checklists of sources of proof of allegations and defenses, hundreds of pages of essential litigation forms and jury charges, and numerous cross-references which facilitate efficient navigation within each chapter and throughout the entire treatise. These features were designed to provide the reader with everything needed to handle every aspect of a commercial litigation. The format makes this wealth of information equally accessible and useful for the commercial litigator when she needs an immediate answer for the client on the telephone or during a five minute deposition recess or when he has several hours to read, learn, and (hopefully) enjoy at leisure.

To facilitate further legal research, many chapters in the Sixth Edition contain research references to other treatises.

Accessibility and Efficient Delivery of Relevant Practical Guidance

One of the most important and pervasive objectives of this treatise is not only to answer all of readers' litigation questions but also to do so quickly and efficiently so readers can serve their clients cost-effectively throughout the litigation process. We have also sought to facilitate reader understanding and to make this treatise "come alive" for the reader. We have used a number of strategies to pursue these goals.

The chapters in this treatise are permeated with examples, illustrations, and practical and strategic advice. The authors have told readers exactly when and how the issues presented by the subject matter of their chapter arise in commercial litigation and how litigators should resolve those issues.

Our authors have recognized that very few lawyers are as experienced or sophisticated about the subject matter of their chapters as the authors. In order to help these less knowledgeable readers, our authors have gone beyond general recommendations and have provided readers with the details of how they should implement the authors' advice under various specific circumstances.

It is our intention that this publication serve as a blueprint for implementation by the reader. One of our goals is to provide commercial litigators with enough information so they can do almost everything they need to without any further guidance from anyone else. To achieve this goal, our authors have provided examples, both real and hypothetical, to illustrate their

recommendations. They have described specific applications. They have also included alternative strategies, and the factors that would dictate the utilization of alternative strategies. For contrast, they have given examples of failed approaches and have explained the problems and pitfalls.

Many legal treatises contain language that is probably readily understandable to lawyers who have substantial experience with the subject matter of the treatise but that may be difficult to penetrate for a litigator who is not familiar with such matters. To avoid this problem, our authors have put the concepts they discuss in their commercial context and have provided examples and illustrations of the concepts and principles they are discussing. Our goal is to make this treatise invaluable to all readers, not just lawyers who are already knowledgeable about the subjects covered in this treatise.

Each chapter in this treatise provides a substantial amount of guidance to any reader who reads the chapter from beginning to end. However, we recognize that many readers will not read entire chapters in this treatise from beginning to end but instead will use the Index to this treatise and/or the table of sections at the beginning of each chapter to turn immediately to the particular section or sections that they think will answer their question. Such readers may not know what the authors have discussed in their chapter before or after the particular section they are reading and often need guidance in finding other topics that the authors have discussed. As a result, we have devoted substantial efforts throughout this treatise to assist readers in navigating each chapter efficiently and in finding what they are looking for quickly. There are two particular vehicles in this treatise which enable efficient navigation and which have been implemented comprehensively throughout each chapter.

First, we have inserted literally thousands of cross-references to other sections of each chapter and to other chapters of this treatise to enable readers to find and obtain access to what they need quickly and efficiently. These cross-references also enable hyperlinking on Westlaw. In addition, these cross-references have assisted authors in focusing their chapter on its specific subject matter and have obviated any need for them to provide detailed descriptions of other types and aspects of litigation which may overlap with other chapters.

One example of the utility of these cross-references may help to communicate their contributions to accessibility and efficient delivery of relevant practical guidance to readers. Chapter 8 is on "Responses to Complaints" which is arguably the most consequential subject of the 160 chapters in the Sixth Edition. I am not aware of any more comprehensive analysis of this subject in New York practice than the coverage of responses to complaints in

Chapter 8 in the Sixth Edition. However, because of the herculean efforts by the author of Chapter 8, the chapter is 868 pages of text and thus finding the particular discussion to answer a reader's question could be a daunting challenge. Fortunately, the author of Chapter 8 has confronted and conquered that challenge. Chapter 8 contains 584 cross-references to other sections of Chapter 8 and 264 cross-references to other chapters of the Sixth Edition. Thus, all a reader has to do if they want additional information about a topic covered in Chapter 8 is to click on the relevant cross-reference and they will have immediate access to the information.

Second, the format of the numbered section headings in each chapter enables readers to understand the structure and contents of each chapter with one quick glance at the table of sections at the beginning of each chapter. The format of the numbered section headings also enables readers to understand the contents of each section of each chapter with one quick glance at the heading of each section, as well as the relationship of that section to the other sections in that chapter. This format is designed to facilitate efficient use of each chapter as well as to make the contents of this treatise readily accessible to readers.

Under many of the principal sections in each chapter are subordinate sections and sub-subordinate sections. Each subordinate section addresses one particular aspect of the principal section to which the subordinate section relates and each sub-subordinate section addresses one particular aspect of the subordinate section to which the sub-subordinate section relates. To implement this section heading format throughout each chapter, each subordinate section heading is preceded by the principal section heading for the principal section to which the subordinate section relates and each sub-subordinate section heading is preceded by first the principal section heading and then the subordinate section heading to which the sub-subordinate section relates. In addition, internal cross-references in footnotes enable readers to hyperlink instantaneously to other topics in each chapter as well as to other chapters of this treatise.

We believe that these additional features of this treatise maximize the accessibility and efficient delivery of the information in each chapter.

The New York County Lawyers Association

This publication is the result of a highly successful joint venture between Thomson Reuters and the New York County Lawyers Association. This was the first time that a commercial publisher and a major bar association in New York have undertaken a joint project of this nature. All royalties from sales of this treatise and its annual Pocket Parts go to NYCLA. The amount

of those royalties has been substantial.

I would like to thank NYCLA for the support it has provided for this publication over the past 31 years. I am particularly grateful to NYCLA's incomparable Executive Director, Sophia Gianacoplos, for her thoughtful advice and assistance.

The Commercial Division

When the First Edition of this treatise was published in 1995, commercial litigation in New York was at a critical juncture. The increasing volume of litigation and the increasing complexity of many commercial cases had placed an unsupportable burden on the court system that threatened timely and thoughtful resolution of disputes. As a result, many businesses were turning to the federal courts with their vastly greater resources as well as to the courts of other states such as Delaware and to private dispute resolution. In order to remain the commercial, financial, and banking capital of the world, New York had to have a viable public court system. Anything less would have been an impediment to the prompt and cost-effective resolution of business disputes.

In February 1995, Chief Judge Judith S. Kaye and Chief Administrative Judge E. Leo Milonas established a Commercial Courts Task Force to create and develop a Commercial Division of the State Supreme Court. I had the honor of co-chairing that Task Force with Judge Milonas.

This new dimension to commercial litigation was an exciting challenge to commercial litigators as they turned with increasing frequency to reap the benefits of this enhancement of the court system. This publication was intended to assist in maximizing the benefits of litigating in State court.

The rest is history. The Commercial Division has not only been an enormous success in New York: it has also led a national and international trend toward creation of business courts.

The Commercial Division began in 1995 with five judges in two counties. Thirty-one years later, there are 31 Commercial Division judges in nine counties as well as in the Seventh and Eighth Judicial Districts. During the past 31 years, the Commercial Division has dramatically changed the way in which the business community in New York State perceives the court system and the judicial process. Thirty-one years ago, the business community did its best to avoid the New York courts, perceiving them as inefficient, unproductive, unpredictable, and unfair. The same business community is now united in its unqualified and enthusiastic support for the Commercial Division. In fact, when our business leaders are seeking to attract businesses to New York, they mention the existence of the Commercial Division as one of the attractive features of doing business here.

Despite the potential for opposition to any change affecting the New York courts, the Commercial Division is remarkably

popular with all relevant constituencies. There is broad recognition that the Commercial Division has been good for the entire court system in New York.

Despite the critical acclaim for the Commercial Division, it has not been content to rest on its laurels. Instead, extraordinary efforts have been made during the past few years to further enhance the capabilities and performance of the Commercial Division. In January 2012, Chief Judge Lippman created the Task Force on Commercial Litigation in the 21st Century to take a fresh look at how the Commercial Division can continue to serve as an efficient and effective forum for resolving business disputes. In June 2012, the Task Force delivered a comprehensive report on how the Commercial Division can better serve the litigation needs of the business community and New York State's economy. One of the key recommendations of the Task Force was that the Chief Judge appoint a statewide Advisory Council on the Commercial Division. Thereafter Chief Judge Lippman created a permanent Commercial Division Advisory Council to advise him on an ongoing basis about all matters involving and surrounding the Commercial Division. I am honored and grateful that Chief Judge Lippman appointed me as the Chair of the Advisory Council which consists of lawyers, current and former members of the judiciary, and in-house counsel from around New York State. I am also grateful that Chief Judge DiFiore, who became Chief Judge in 2016, allowed me to continue to serve as Chair of the Advisory Council. In addition, I am grateful that Chief Judge Wilson, who became Chief Judge in 2023, has not only allowed me to continue to serve as Chair of the Advisory Council but has in 2025 also appointed a Co-Chair for whom I have the utmost respect, the Honorable Marguerite A. Grays, the Administrative Judge for the Eleventh Judicial District, Civil Term.

During the past 13 years, the Advisory Council has recommended numerous improvements to the Commercial Division's rules, procedures, and operations that have been designed to be responsive to the needs and concerns of the business community. The ultimate goal of these changes is to make the business litigation process in New York more cost-effective, predictable, and expeditious, and to thereby provide a more hospitable and attractive environment for business litigation in New York State. The success of these improvements has been widely recognized both in the United States and in other countries.

Although I could say much more about the Commercial Division and what it means to New York, I will conclude this Foreword with two other observations. Thirty-one years ago, the prevailing attitude within the New York courts was that there were too many cases and not enough money and that nothing could be done about the many intractable problems which permeate the

court system. Thirty-one years later, there are still too many cases and not enough money. Nevertheless, the culture and attitude of the judges and non-judicial personnel throughout our State have changed. The people who work in the New York State courts are aware that we now have a business court that many lawyers and business people perceive as the best forum for the resolution of business disputes anywhere available.

Accordingly, it now appears to those who work in the New York courts that if you work hard enough and do the right thing, there is no aspect of our courts that cannot be substantially improved. The magnitude of that change in attitude is almost incomprehensible to those who have not witnessed it personally. The benefits to New York are enormous. I believe that this treatise will enhance those benefits.

In addition, there has been increasing recognition during the past few years of the fact that the Commercial Division helps New York State to attract and retain businesses and therefore to generate tax revenues and provide jobs. The value and importance of these benefits is confirmed in the Proclamation relating to the Commercial Division which the New York City Council issued at its Stated Meeting on December 20, 2018. In its Proclamation, the City Council concludes that "New York owes much of its world-class status as an economic engine to its world-class court: the Commercial Division of the New York Supreme Court." The Proclamation also states:

> WHEREAS: The Commercial Division is uniquely qualified to increase taxable revenue for the City of New York while stimulating job growth. It strengthens New York City's ability to attract and retain businesses, which add jobs, fuel demand for real property, and increase tax revenue. The tax revenues from local businesses also provide financial support for the New York State judicial system;

Conclusion

I feel privileged to serve as Editor-in-Chief of this publication. In that role I reviewed and commented on the chapters in all six editions as well as the annual Pocket Parts each year since 1995. Throughout I have been impressed by the creativity of this magnificent team of volunteer litigators and judges. Their accumulated wisdom has made this an educational experience for me far beyond what I could have hoped for. In the best traditions of our profession, our authors have created, and then refined and improved, a significant work that has become a lasting credit to the New York County Lawyers Association and to the bar and the judiciary in New York State. I am grateful for the opportunity to participate.

Foreword

Robert L. Haig

October 2026