

# Business and Commercial Litigation in Federal Courts (Fourth Edition)



Robert L. Haig, editor-in-chief, published by Thomson Reuters and ABA Section of Litigation (2016), hardcover, 17,142 pages, \$1,806

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Reviewed by Jane Derse Quasarano

*Business and Commercial Litigation in Federal Courts* (BCL)<sup>1</sup> was originally published in 1999 as a groundbreaking six-volume treatise that provided in one source a comprehensive review of substantive and procedural litigation issues as well as how to advise attorneys could incorporate into their practices immediately. BCL, which is published under the auspices of the American Bar Association Section of Litigation and edited by nationally known business and commercial litigation expert Robert L. Haig of Kelley, Drye & Warren in New York, gained rapid and wide acceptance throughout the nation. BCL was unique among treatises on federal litigation in that it treated each subject substantively, addressed procedural issues, described strategy and client counseling, and offered numerous practice aids such as checklists, worksheets, model documents, and more.

Since 1999, BCL's success led to the publication of a second edition in 2005,<sup>2</sup> a third edition in 2012, and now *Business and Commercial Litigation in Federal Courts, Fourth Edition* (BCL 4th), a 14-volume treatise containing 153 chapters written by 296 practitioners from across the country, including 27 judges. BCL 4th will be updated through annual pocket parts.

Even those whose expectations are high based on their experience with BCL will be impressed. The most valuable aspect of this fourth edition is the extensive discussion of strategy and analysis in each chapter by experienced practitioners. All litigators value the opportunity to discuss their thoughts about a case and kick around ideas with

another lawyer. Using this treatise is like having that discussion regarding strategy, objectives, and pitfalls within a particular procedural or substantive subject. Even if the analysis or strategy within a chapter is not directly on point with a particular case or the reader disagrees with the author's analysis, the discussion is likely to spur ideas the reader may not have previously considered. As BCL 4th states in its introduction, it is not only a research tool, but an "idea book" with perspectives from practicing lawyers with years of experience.

BCL 4th addresses most or all of the familiar procedural topics included in other treatises. Examples include jurisdiction, venue, complaints, responses to complaints, removal, joinder, severance, discovery, motion practice, trials, judgments, appeals, scheduling matters, evidence, use of experts, jury issues, oral presentations, remedies, and class actions. Chapters addressing procedural topics painstakingly refer to the applicable rules of civil procedure and related issues. For example, the chapter "Personal Jurisdiction and Service" includes strategy considerations, technical rules for service of process, an analysis of the constitutional due process requirements, application of the due process analysis to specific business entities (parent/subsidiaries, partnerships, agents), and an analysis of due process related to specific commercial activities (internet, advertising, or manufacturing). The chapter also contains a procedural checklist and form documents.

The treatise also provides detailed analysis for numerous substantive areas of law.

Examples include administrative agencies, export controls, government contracts, tax, project finance and infrastructure, sports, entertainment, information technology, shareholder derivative actions, securities, anti-trust, contracts, insurance, banking, letters of credit, intellectual property, product liability, labor and employment, employee benefits, RICO, and business torts. Chapters addressing substantive areas of law offer analysis of claims including forum issues and checklists of essential allegations and defenses. For example, the chapter "Theft or Loss of Business Opportunities" addresses issues including the choice of forum, strategic and tactical issues, analysis of direct versus derivative litigation, elements of claims, defenses, remedies, federal preemption issues, and pleading requirements for shareholder direct actions.

BCL 4th also offers advice on what many litigators would argue are the most difficult and most important aspects of commercial litigation: management of the business of litigation and the relationship between litigation counsel and the client. Many attorneys handle legal and factual issues that arise in litigation fairly well, but don't have significant experience or skills when it comes to managing client expectations, involvement, and satisfaction. With chapters including "Techniques for Expediting and Streamlining Litigation," "Litigation Management by Law Firms," "Teaching Litigation Skills," and "Ethical Issues in Commercial Cases," BCL 4th provides insight from authors with years of experience to enable users to accomplish this difficult aspect of practicing law more effectively.

It also addresses the interplay between federal and state court litigation. For example, the chapter "Comparison with Commercial Litigation in State Courts" discusses issues from the initial overall strategy, objectives, and preliminary considerations with respect to choosing a forum to analysis of different applicable evidentiary rules for trial. A subsequent chapter, "Coordination of Litigation in State and Federal Courts," discusses preliminary and strategic matters that arise in related litigation conducted contemporaneously in state and federal courts. The issues considered include a history of coordination of state and federal litigation, types of coordination, the advantages and disadvantages of coordination, the legal bases for coordination, and coordination of discovery.

Other chapters in BCL 4th address criminal issues that can arise related to commercial litigation. These chapters allow civil litigators who may not have extensive criminal experience to recognize situations giving rise to potential criminal issues. Exam-

ples include chapters titled "White Collar Crime," "Interplay Between Commercial Litigation and Criminal Proceedings," "Money Laundering," and "Foreign Corrupt Practices Act."

New chapters in this fourth edition include topics whose importance has increased since publication of BCL 3rd, including civil justice reform, cross-border litigation, declaratory judgments, effective trial performance, negotiations, mediation, arbitration, social media, healthcare institutions, advertising, regulatory litigation, and the Telephone Consumer Protection Act.

Although there are other treatises on federal practice and procedure, none are as comprehensive or usable as BCL 4th. It has been prepared by practitioners for practitioners and focuses on the legal and business issues commercial litigators encounter routinely. New lawyers will find the help they need to represent a client in a business or commercial case, including legal theories, the current state of the law, and practical and strategic considerations as well

as forms, checklists, and other how-to aids. Experienced lawyers with large law libraries will also find the treatise valuable, partly for the same reasons and partly because its authors and editors have so carefully considered and addressed the issues faced virtually every day by those who represent clients in business and commercial litigation in federal courts. ■

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## ENDNOTES

1. See Driker, *Book Review: Business and commercial litigation in federal courts*, 78 Mich B J 326-327 (March 1999).
2. See Akers, *Book Review: Business and commercial litigation in federal courts* (2nd ed), 85 Mich B J 60-61 (November 2006).



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