

# Business and Commercial Litigation in Federal Courts

Robert L. Haig, editor-in-chief, published by Thomson-West and ABA Section of Litigation (2005), hard cover, 8,922 pages, plus CD-ROM, \$960, [http://west.thomson.com/store/product.aspx?product\\_id=15342716](http://west.thomson.com/store/product.aspx?product_id=15342716), (800) 344-5009

In its March 1999 issue, the *Michigan Bar Journal* published a review of what was then a new and groundbreaking, six-volume treatise entitled *Business and Commercial Litigation in Federal Courts* (BCL), published in 1998 under the auspices of the Section of Litigation of the American Bar Association and edited by nationally known expert on business and commercial litigation Robert L. Haig of Kelley, Drye & Warren in New York.<sup>1</sup> BCL was and is unique among treatises on federal litigation in that it treats each subject substantively, addresses procedural issues, and offers numerous practice aids such as checklists, worksheets, and model documents. Thus, BCL provides, in one source, a comprehensive review of substantive and procedural issues as well as “how to” advice that attorneys can incorporate into their practice immediately.

BCL’s 80 chapters were written by 161 noted practitioners from across the country, including nine federal judges. BCL addressed most or all of the familiar procedural topics that may also be included within other treatises,<sup>2</sup> as well as numerous substantive areas of law.<sup>3</sup> BCL’s approach to those issues was more comprehensive than in the other treatises because of its inclusion of practice aids. Moreover, BCL’s editors are firmly committed to keeping BCL current and publish annual pocket parts.

It is no surprise that BCL gained rapid and wide acceptance throughout the nation, although it was clearly the “new kid on the block” compared to other, more familiar “name brand” treatises on federal practice and procedure. Once lawyers who actually litigate business or commercial cases in federal court have the opportunity to use BCL, they often become ardent advocates.

Now, BCL’s phenomenal success has led to the publication of a new edition, *Business and Commercial Litigation in Federal Courts, Second Edition* (BCL 2nd). Even those whose expectations are high because of their experience with BCL will be impressed.

BCL 2nd continues the approach of BCL, providing the theoretical bases for each subject, practical and strategic considerations, “how to” practice aids, plus a CD containing model pleadings, jury instructions, agreements, etc. All 80 chapters in BCL have been updated, and BCL 2nd contains 16 new chapters. Now an eight-volume work, BCL 2nd incorporates the contributions of 199 of the country’s most accomplished and respected lawyers and experts, including 17 federal judges. Once again, Mr. Haig is editor-in-chief.

The new chapters address some procedural issues that have taken on greater significance recently and are likely to take on even more in the future, such as “Discovery of Electronic Information” and “Civility.”<sup>4</sup> Some of the new chapters cover business entities and types of transactions that are increasingly arising in litigation, including “Partnerships,” “Director and Officer Liability,” “Government Entity Litigation,” “Mergers and Acquisitions,” “E-Commerce,” “Commercial Defamation and Disparagement,” and “Commercial Real Estate.”

BCL 2nd also breaks new ground and offers advice on what many litigators would argue is the most difficult and most important aspect 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 fall short when it comes to managing client expectations, involvement, and satisfaction.

One of BCL 2nd’s new chapters addresses “Case Evaluation” and offers straight talk on when and how to evaluate and re-evaluate the risks the client faces in litigation. Clients do not always want to hear a frank evaluation of the merits of their claims or defenses, but the advantages of presenting them are convincingly detailed in BCL 2nd. Experts offer their advice on how to achieve as reliable an evaluation of the case as possible and how to present and review such evaluations with the client. BCL 2nd also includes a chapter on “Litigation Avoidance and Prevention,” a topic the client may be particularly interested in when enmeshed in commercial litigation.

BCL 2nd offers a chapter on “Techniques for Expediting and Streamlining Litigation,” which addresses head-on the reasons litigation too often becomes protracted and expensive without any commensurate advantage for the parties or the court. This chapter focuses on the relationships that affect the course of litigation, including the relationships between litigation counsel and the client, relationships between or among other and adverse counsel, and relationships with the court. This chapter also reviews fees and expenses and the various types of fee arrangements as well as “the bottom line,” one of those truly fundamental topics that no one ever mentioned in law school.

Today, commercial litigation frequently involves a corporation that has in-house counsel and that also engages an outside lawyer or law firm to handle the litigation. The respective roles of the various players, including the corporation’s general counsel, supervising in-house counsel and outside lawyer(s) may or may not be clear and, even when they are clear, may change over the course of the

litigation. The chapter entitled "Litigation Management by Law Firms" provides practical advice for outside lawyers on how to plan, staff, supervise, and budget for lawsuits on behalf of clients with in-house counsel. It includes sample budgets, which are frequently requested of outside litigation counsel who often try to avoid preparing them.

Similarly, corporations and in-house counsel must manage the corporation's relationship with outside litigation counsel, and BCL 2nd also contains a chapter on "Litigation Management by Corporations." Topics include how to locate and engage outside litigation counsel, manage finances, facilitate communication with outside counsel, respond to corporate reporting requirements such as litigation management reports and audit letters, and deal with corporate officers or employees who are involved in the litigation as well as customers or suppliers of the corporation.

BCL 2nd is unique. Although there are other treatises on federal practice and proce-

dures, none of the familiar publications is as comprehensive or as useable as BCL 2nd. It has very clearly been prepared by practitioners and for practitioners and focuses on the legal and business issues commercial litigators encounter routinely. Brand new lawyers will easily find the help they need to represent a client in a business or commercial case, including legal theories, the current state of the law, practical and strategic considerations, as well as forms, checklists, and other "how to" aids. Very experienced lawyers with large, existing law libraries will also find BCL 2nd invaluable, partly for the same reasons, and partly because BCL 2nd's 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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#### FOOTNOTES

1. Driker, *Business and commercial litigation in federal courts*, 78 Mich BJ 326-327 (1999).
2. Examples include jurisdiction, venue, discovery, motion practice, trials, judgments, appeals, scheduling matters, evidence, use of experts, jury issues, oral presentations, remedies, and class actions.
3. Examples include shareholder derivative actions, contracts, insurance, banking, letters of credit, intellectual property, product liability, labor and employment, employee benefits, RICO (Racketeer Influenced and Corrupt Organizations), and business torts.
4. The United States District Court for the Eastern District of Michigan formally approved the "Civility Principles" on February 5, 1996.

