

## Business and Commercial Litigation in Federal Courts (3D ED.), Edited by Robert L. Haig

James M. Wicks

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## BOOK REVIEW

### ***BUSINESS AND COMMERCIAL LITIGATION IN FEDERAL COURTS (3D ED.)* EDITED BY ROBERT L. HAIG**

JAMES M. WICKS<sup>†</sup>

“Business and commercial” litigation not only encompasses myriad substantive practice areas and diverse venues—federal court, state court, or one of many arbitration or mediation forums—but also harbors many procedural traps for the unwary. Finding the right navigational aid is not easy, but fortunately for the federal court business litigator, *Business and Commercial Litigation in Federal Courts (3d ed.)* (“BCL”)<sup>1</sup> is just the right tool. Fifteen years after its inception, and now in its Third Edition, this treatise is an essential element of every commercial litigator’s tool box. The BCL now boasts eleven volumes—each filled with sound advice, guidance, and step-by-step practical tips in both substantive and procedural areas.<sup>2</sup> With 130 chapters (thirty-four of which are new) and 251 prominent judges and practitioners contributing,<sup>3</sup> this treatise is a “must-have” for anyone involved in a business dispute in federal court—whether practitioner, judge, law clerk, or in-house counsel. The collection of authors for each of the chapters is truly a “who’s who” of the bench and bar today.

In this electronic and digital age of research, where brick-and-mortar legal bookshelves are shrinking, one might ask the question, “*Why do I need to subscribe to yet another multiple-volume practice treatise, that frankly takes up shelf space?*” The answer is simple: The BCL is a quick, yet accurate,

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<sup>1</sup> 1 BUSINESS AND COMMERCIAL LITIGATION IN FEDERAL COURTS (Robert L. Haig ed., 3d ed. 2011).

<sup>2</sup> *Id.* at iii.

<sup>3</sup> *Id.* at iii–v.

comprehensive, and up-to-date guide to virtually any substantive or procedural issue that a business litigator might encounter in federal court. The volumes are so well-organized, and the indices so "user friendly," that the reader is likely to have a more comprehensive answer in a shorter time than online research might yield. The utility of this set is far different from most existing practice-based treatises.

The BCL differs greatly from other practice guidebooks in significant and useful ways. First, this treatise focuses on business and commercial law.<sup>4</sup> Not only do the substantive topics cover the key areas of commercial disputes, but the authorities cited throughout the chapters consist of relevant, current commercial case law.<sup>5</sup> This approach enables a commercial litigator to become generally familiar with areas that may not be in his area of expertise, and is critically important simply to assist in identifying issues for clients.

Furthermore, the BCL is very well-organized and easy to navigate. Before launching into research of any substantive area, it behooves the practitioner to start the process by reviewing the applicable chapter in the BCL. Both the table of contents and the indices are easily maneuvered to lead the reader to an area very quickly. Unlike the frustrating indices of many treatises, this one is instinctive and in no time points the user to the proper section. Very little time will be spent trying to figure out *where* in the treatise the answer is likely to be found.

Once the reader finds the appropriate chapter, he eases into the area through a concise "overview" and then into "strategies" and related considerations.<sup>6</sup> The subheadings within each chapter are good guideposts. Finally, there are useful "practice checklists" for the practitioner to consider.<sup>7</sup>

The BCL also covers many specific areas in detail. Indeed, the comprehensiveness of the BCL is aptly demonstrated by Chapter 5, "Internal Investigations."<sup>8</sup> That chapter carefully describes the statutory and regulatory framework for, and then provides a "how-to" approach in, planning and conducting the

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<sup>4</sup> *Id.* at v.

<sup>5</sup> *See id.*

<sup>6</sup> *See, e.g., id.* §§ 1:1-1:3, at 4-7.

<sup>7</sup> *See, e.g., id.* § 1:85, at 96-97.

<sup>8</sup> *See generally id.* §§ 5:1-5:65, at 414-94.

investigation—pointing out traps for the unwary along the way.<sup>9</sup> This thorough explanation of the process will not only be of great help to those conducting an internal investigation, but will also enable those who may never conduct or oversee such an investigation personally to be able to understand and, if necessary, explain the process to a client.

Chapter 10, a welcome new addition, compares commercial litigation in federal and state courts, pointing out the key differences and suggesting many useful strategic considerations.<sup>10</sup> This chapter is invaluable in helping lawyers advise clients faced with an important venue choice. Other new chapters provide good general guidance when criminal issues arise from or relate to civil litigation.<sup>11</sup> Understanding the interplay between commercial litigation and criminal proceedings is also made easy in Chapter 113.<sup>12</sup> Critically important to the civil litigator is how to navigate the minefield when there is even a potential overlay with criminal proceedings. Working in tandem with a criminal lawyer will be made much easier with this reference.

Arbitration is becoming more and more prevalent in commercial disputes.<sup>13</sup> Fortunately, the BCL has a comprehensive chapter dealing with all aspects of arbitration.<sup>14</sup> Whether seeking to enforce an arbitration agreement, modify, correct, or confirm an award, or whether in need of a provisional remedy in aid of arbitration, Chapter 12 easily explains the issues and provides practical suggestions.<sup>15</sup> Even navigating international arbitrations, including confirming foreign awards, is presented in an easy-to-understand way for those who do not generally have such experience.<sup>16</sup>

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<sup>9</sup> See generally *id.*

<sup>10</sup> See generally *id.* §§ 10:1–10:22, at 772–97.

<sup>11</sup> See *id.* at iv.

<sup>12</sup> 10 BUSINESS AND COMMERCIAL LITIGATION IN FEDERAL COURTS §§ 113:1–113:29, at 757–807 (Robert L. Haig ed., 3d ed. 2011).

<sup>13</sup> See AM. ARBITRATION ASS'N, COMMERCIAL ARBITRATION RULES AND MEDIATION PROCEDURES 7 (2013), available at [www.adr.org/aaa/ShowProperty?nodeId=/UCM/ADRSTG\\_004103&revision=latestreleased](http://www.adr.org/aaa/ShowProperty?nodeId=/UCM/ADRSTG_004103&revision=latestreleased).

<sup>14</sup> See generally 1 BUSINESS AND COMMERCIAL LITIGATION IN FEDERAL COURTS, *supra* note 1, §§ 12:1–12:83, at 917–1021.

<sup>15</sup> See generally *id.*

<sup>16</sup> See *id.* §§ 12:67–12:79, at 1008–17.

What more could one expect from a multiple-volume practice treatise? How about downloadable forms in Word format from the accompanying CD-Rom?<sup>17</sup> Whether searching for the correct language for an engagement letter, drafting document demands or pleadings, or preparing a confidentiality stipulation or even a litigation budget for a client, practitioners are likely to find excellent examples on the CD.<sup>18</sup> The language contained in the forms is based on current developments in the law, so practitioners can use it with certainty.

The BCL is comprehensive, up-to-date, and very user-friendly. The practice aids, strategic considerations, checklists, and forms all make this set of books a "must-have" for every business litigator who is or will be going to federal court. Even as law libraries seem to be moving toward cutting book subscriptions, if one were to subscribe to only a single set of practice-based books, this should be it.

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<sup>17</sup> *Id.* at vi.

<sup>18</sup> *Id.*