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## Business and Commercial Litigation in Federal Courts (4th ED.) Edited By Robert L. Haig

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## BOOK REVIEW

### ***BUSINESS AND COMMERCIAL LITIGATION IN FEDERAL COURTS (4TH ED.)*** **EDITED BY ROBERT L. HAIG**

JAMES M. WICKS<sup>†</sup>

Four years ago, I reviewed *Business and Commercial Litigation in Federal Courts (3d ed.)*,<sup>1</sup> concluding then that notwithstanding the dwindling “brick-and-mortar,” traditional law libraries, this multi-volume treatise is a worthy tool in the arsenal of the business litigator. Well, now nineteen years after its inception, the treatise, *Business and Commercial Litigation in Federal Courts (4th ed.)* (“BCL”),<sup>2</sup> is in its Fourth Edition, having added twenty-five new chapters leading to three more volumes. Is it still worth the shelf space? Unquestionably, this landmark treatise remains an essential guide for commercial litigators and in-house counsel alike. The addition of the new chapters is an important recognition of the evolution of commercial litigation that plays out in the federal courts. As with the past editions, the roster of authors for each of the chapters continues to be a “who’s who” of practitioners and judges well-known in the commercial arena.

New to the treatise are several substantive areas, such as fiduciary duty litigation,<sup>3</sup> securitization and structured finance,<sup>4</sup> public utility,<sup>5</sup> fashion and retail,<sup>6</sup> health care institutions,<sup>7</sup> and social media.<sup>8</sup> Since business litigators are often called upon to assist in a wide variety of issues, industries, and topics, these

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<sup>1</sup> James M. Wicks, *Business and Commercial Litigation in Federal Courts (3d Ed.)* Edited by Robert Haig, 88 ST. JOHN’S L. REV. 143 (2014).

<sup>2</sup> 1 BUSINESS AND COMMERCIAL LITIGATION IN FEDERAL COURTS (Robert L. Haig ed., 4th ed. 2016).

<sup>3</sup> 11 *id.* § 116, at 735.

<sup>4</sup> 7 *id.* § 77, at 889.

<sup>5</sup> 14 *id.* § 143, at 63.

<sup>6</sup> *Id.* § 149, at 821.

<sup>7</sup> 8 *id.* § 87, at 691.

<sup>8</sup> 6 *id.* § 67, at 1089.

new chapters are a welcome addition. Each provides a concise, useful compendium of the area, and a great starting point as matters arise.

Apart from these substantive additions, the book provides strong practice-based chapters that are useful not only to newcomers of the commercial litigation bar, but for seasoned practitioners as well. Some of the new procedure and practice-oriented chapters include mediation,<sup>9</sup> arbitration<sup>10</sup> and teaching litigation skills.<sup>11</sup> One new chapter—something not traditionally taught in law schools—called “Marketing to Potential Business Clients,”<sup>12</sup> is a must read for all.

The treatise continues to be very well organized, and the indices are detailed enough that you can quickly turn to the appropriate chapter and zero in on the topic at hand. In fact, it's highly likely that one researching will produce an answer using the treatise quicker than if using an online database. In the age of the shrinking brick and mortar library, it can be a real pleasure to “go to the books” rather than the screen once in a while.<sup>13</sup> That said, the CD-ROM provided with the set contains useful forms, checklists, and jury charges that are also included in the published set.

Each of the topics covered is comprehensive in scope, yet well-organized and easily navigable. For example, new Chapter 116, “Fiduciary Duty Litigation,”<sup>14</sup> starts with a discussion of the various types of fiduciary relationships, the different types of claims and available remedies. Useful suggestions for discovery and motion practice are particularly helpful,<sup>15</sup> as is the section on ethical issues that may arise in connection with the representation of a fiduciary.<sup>16</sup>

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<sup>9</sup> 5 *id.* § 51, at 583.

<sup>10</sup> *Id.* § 52, at 663.

<sup>11</sup> 7 *id.* § 71, at 171.

<sup>12</sup> *Id.* § 70, at 95.

<sup>13</sup> It has been reported that 343 libraries have been eliminated in the past five years and the number of Librarians has dropped by a quarter, with public usage down 16%. Simon Jenkins, *Libraries are dying — but it's not about the books*, THE GUARDIAN (Dec. 22, 2016), <https://www.theguardian.com/commentisfree/2016/dec/22/libraries-dying-books-internet>.

<sup>14</sup> 11 BUSINESS AND COMMERCIAL LITIGATION IN FEDERAL COURTS § 116, at 735 (Robert L. Haig ed., 4th ed. 2016).

<sup>15</sup> *Id.* § 116:26–32, at 768–76.

<sup>16</sup> *Id.* § 116:38, at 781–82.

The industry-oriented chapter, “Fashion and Retail,” Chapter 149,<sup>17</sup> addresses a wide swath of issues for anyone servicing that industry. For example, there is a concise intellectual property section, as well as topics covering real estate issues, privacy issues, labor law and antitrust concerns. In short, for the commercial litigator thrust into a dispute involving the fashion and retail industries, the industry-oriented chapter should be their first stop. In short, this chapter provides a high-level exploration of the very issues facing those clients of which you, as their litigator, should be aware.

“Litigation Management by Corporations,” Chapter 69,<sup>18</sup> is not only an excellent tool for the office of General Counsel of any company, but gives thoughtful insight to the outside counsel who services those companies. A worthy read for both. The chapter starts with strategies and methodologies employed to effectively manage litigation. It ends with a wide array of forms, checklists and budgets so as to ensure successful management of even the most complex of cases.

Similarly, “Litigation Management by Law Firms,” Chapter 68,<sup>19</sup> gives sound advice and practical tips to help lawyers better manage client relations and expectations. That is, to successfully manage a law practice—something rarely taught in law schools today.<sup>20</sup> The chapter closes with helpful forms and samples, such as engagement letters, declination letters, litigation holds, timelines, and budgets.

Notwithstanding Rule 1 of the Federal Rules of Civil Procedure that requires the Rules be construed to serve the purpose of a “just, speedy, and inexpensive determination of every action and proceeding,” litigation is expensive.<sup>21</sup> Complex business litigation is even more so. The BCL has a chapter on this: “Techniques for Expediting and Streamlining Litigation.”<sup>22</sup> It includes excellent, thought-provoking discussion of everything from overcoming the resistance to streamlining litigation, to effective staffing issues and various types of alternative fee

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<sup>17</sup> 14 *id.* § 149, at 821.

<sup>18</sup> 7 *id.* § 69, at 1.

<sup>19</sup> 6 *id.* § 68, at 1119.

<sup>20</sup> Donald M. Lewis, *Teaching for Success: The Business of Lawyering*, 40 A.B.A. J. No. 1 (2014) [https://www.americanbar.org/publications/law\\_practice\\_magazine/2014january-february/teaching-for-success-the-business-of-lawyering.html](https://www.americanbar.org/publications/law_practice_magazine/2014january-february/teaching-for-success-the-business-of-lawyering.html).

<sup>21</sup> FED. R. CIV. P. 1.

<sup>22</sup> 6 BUSINESS AND COMMERCIAL LITIGATION IN FEDERAL COURTS § 65, at 913 (Robert L. Haig ed., 4th ed. 2016).

arrangements. Everyone in the litigation process—lawyers, judges and clients—should read this chapter. You are likely to consider alternative approaches to managing your next complex case.

With the trend of law offices shrinking in size,<sup>23</sup> shelf space is at a premium. And this treatise is what should occupy the shelf of anyone involved in the commercial litigation process—I assure you, it will not gather dust. The guidance, strategic considerations, checklists and forms, are tools and a “must have” for every business litigator who is or will be going to federal court today.

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<sup>23</sup> Esther Fung, *Big Law Firms Look to Shrink Their Office Space Use*, WALL ST. J. (Oct. 24, 2017), <https://www.wsj.com/articles/big-law-firms-look-to-shrink-their-office-space-use-1508879863>.