

Lawyer's Bookshelf

Business and Commercial Litigation In Federal Courts, Fourth Edition

REVIEWED BY PAUL C. SAUNDERS

Edited by Robert L. Haig. West-law, 2016, 2017, \$1,806

When I reviewed the Third Edition of this truly remarkable treatise (NYLJ, July 10, 2012), I wrote that "I have tried hard to think of a relevant subject matter that is not covered in this treatise, but I cannot come up with one." Thank goodness that Bob Haig, the editor-in-chief of this now 15 volume work, was not so limited. For this Fourth Edition, he has come up with 25 new and very relevant subject matters. Those new subjects range from mass torts to civil justice reform. Their inclusion calls into question the title of this treatise. Instead of calling it *Business and Commercial Litigation in Federal Courts*, he could just as easily have called it *The Law: Everything You Need to Know*. It is that comprehensive.

For those (very few, I am sure) of you who are not already familiar with this work, it began as a treatise written by experts in their fields that covered every aspect of commercial litigation in federal courts. It was largely a "how to" treatise, containing such things as how to draft a complaint and sample jury instructions. At the time, there were slightly over 100 contributors; in the Fourth Edition, there are nearly three times as many. As a result, the work is much more than a "how to" work; it is a compendium of the relevant law in a vast array of subject matters. The 296 authors, each a true expert, would make the most erudite and exceptional law faculty that one could dream of. Imagine, for example, taking a course in ethical issues in commercial cases from Harry Reasoner, or a course in document discovery from Jim Quinn, or a course in discovery of electronically stored information from former Southern District Judge Shira Scheindlin. All are here.

I was particularly interested in the new chapter on civil justice reform because I recently chaired a task force of the American College of Trial Lawyers that wrote a report on that subject. To my delight, that report is featured in this chapter, written by Craig Stewart and Gregory Goldberg, both of Holland & Hart.

The "how to" aspects of the first three editions are retained and indeed improved. David Brodsky writes about opening statements,

Bill Frank and his partners write about presentation of the case in chief, Evan Chesler writes about trials and Bill McGuire writes about evidence. You would expect those subjects to be covered in a treatise on commercial litigation and they are covered very well. But you would be pleasantly surprised to find chapters on banking (Owen Pell), marketing to potential business clients (Phil Kessler), and civil rights (Judge Edmond Chang of the Northern District of Illinois).



The authors of each chapter explore the subject matters in great depth and bring a vast amount of real-world experience to their work. Most of the chapters have "practice aids" of checklists and forms. The chapter on venue, forum selection and transfer, written by Gary Naftalis and Michael Oberman, itself nearly 200 pages long, has 16 checklist items and five sample forms.

Not every chapter, strictly speaking, concerns business litigation in federal courts. For example, Southern District Judge Paul Crotty and his brother Robert Crotty have written a chapter on international arbitration. This chapter covers the different types of international arbitration, drafting an arbitration clause, interim relief, discovery, the hearing and enforcement of awards, among other topics. They note that although there is a strong pro-arbitration policy under the international Federal Arbitration Act, it is nevertheless sometimes necessary to enlist the aid of a federal court, for example, to stay an action in light of an arbitration agreement.

Similarly, you might wonder what a chapter on fashion and retail, written by Howard Rubinroit and Amy Lally, has to do with litigation in a federal court. It turns out, nearly everything. Consider, for example, patent and other intellectual property issues, real estate issues, advertising, privacy, antitrust issues and, of course, bankruptcy. All are discussed with expertise in this chapter.

But the heart and soul of this treatise, and what makes it truly indispensable for the federal court practitioner, is its emphasis on "bread and butter" federal litigation. The first 62 chapters cover nearly every litigation issue imaginable, beginning with subject matter jurisdiction (Marie Yeates), through the complaint (Alan Mansfield), discovery strategy (Paul Bschorr), interrogatories (Lewis Liman), trial strategy and advocacy (Evan Chesler and Wes Earnhardt), and trial and post-trial motions (Eastern District Judge William Kuntz II).

This work is truly a litigator's practice guide that covers every aspect of a commercial case in federal court. As Haig observes in his introduction, the Fourth Edition contains features that 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." The treatise comes with a CD-ROM that contains the jury instructions, forms and checklists that are included in the printed volumes.

Haig, who has edited each edition of this treatise, is a renowned litigator in his own right and he has had extensive experience in federal courts. He was the president of the New York County Lawyers Association and of the New York Bar Foundation and he has received the first Robert L. Haig Award for Distinguished Public Service from the New York State Bar Association's Commercial and Federal Litigation Section. He is a partner in Kelley Drye & Warren in New York City.

The Fourth Edition continues to be the result of a joint venture between Thomson Reuters and the American Bar Association Section of Litigation. All royalties go to that section. Haig writes in his introduction that "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 ABA Section of Litigation and to the bar and the judiciary in this country." Indeed they have!

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