

Book Review

Business and Commercial Litigation in Federal Courts (3d Ed.)

Robert L. Haig, Editor-in-Chief

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Section of Litigation

Reviewed by Mark A. Cunningham

Publications offering practical guidance and insight for lawyers have become ubiquitous in recent years. They all promise to help us work faster and advise clients with confidence. Some attempt to fulfill these promises through daily, weekly or monthly compilations of narrowly focused articles. Others hit you over the head with multi-volume treatises spanning several library book shelves.



Most efforts fall short — some too superficial, others too dense. The third edition of *Business and Commercial Litigation in Federal Courts* (ABA Section of Litigation/Thomson Reuters) stands apart by positioning itself between the two extremes and, in so doing, represents an attractive, modestly-priced option for attorneys looking for an easy-to-use, step-by-step practice guide for federal court commercial litigation.

With 251 principal authors, including seven United States circuit judges and 15 United States district judges, this 11-volume treatise covers a lot of ground very well and succeeds as the only comprehensive book on federal court commercial litigation.

Volumes 1-5 consist of 63 chapters dedicated to the procedural side of commercial lawsuits. Beginning with case investigations and evaluations, the treatise moves through jurisdiction, pleadings, discovery, motions, case preparation, trials and appeals. These chapters do not represent mere restatements of the applicable rules and case law. Rather, after providing an overview of the law, each chapter explores strategic and logistical considerations often providing useful checklists, forms and other practice aids to assist the practitioner looking for quick guidance.

For example, Chapter 26 of the treatise is dedicated solely to interrogatories. Co-written by United States District Judge William S. Duffey and Jason Stach, a patent litigator at Finnegan, Henderson, Chapter 26 is divided into 35 sections and provides an extensive discussion about the tactical considerations for drafting and responding to interrogatories. Granted, interrogatories may be the least interesting part of federal court litigation, but the short shrift attorneys often give them is undeserved and can lead to strategic mistakes. Judge Duffey and Stach take this challenging subject and provide useful insight into the tactical considerations surrounding drafting and answering interrogatories. However, they also take the discussion further by walking the reader through the opportunities and

challenges for using interrogatories as effective evidentiary tools at trial.

While the procedural aspects of federal practice apply generally to commercial and non-commercial civil cases, Robert L. Haig, the editor-in-chief of the third edition, has done an effective job at keeping the authors firmly focused on business litigation. The chapter dedicated to personal jurisdiction, for instance, provides an overview of the general law pertaining to personal jurisdiction, but quickly transitions to a thorough consideration of the application of personal jurisdiction due process standards to specific types of juridical persons (e.g., parent/subsidiary relationships, partnerships, distributors, agents and co-conspirators) and particular commercial activities (e.g., manufacturing, contracts, purchase of goods, defamation, advertising and intellectual property licensing).

Likewise, Haig was careful to allocate sufficient bandwidth to the procedural complexities of many commercial disputes by dedicating individual chapters to the law and tactics applicable to such issues as multidistrict litigation, the coordination of parallel proceedings in state and federal courts, the interplay between commercial litigation and criminal proceedings, issue and claim preclusion, and provisional remedies.

This third edition truly distinguishes itself by including 67 chapters on the substantive law in the areas most commonly encountered by commercial litigators. Few attorneys in Louisiana have the luxury of focusing their practice on a single area of substantive law. We are still, for the most part, generalists. What this treatise offers with respect to each substantive area of law is an easy-to-read overview of the applicable law. The detail is sufficient to orient the reader to the principal issues likely to be encountered in the case without being overwhelming. The substantive law chapters also discuss common strategic issues related to case management, motion practice, discovery, and the use of experts for both plaintiffs and defendants. The substantive law chapters

also often provide jury charges and other helpful practice forms.

For this third edition, Haig significantly expanded the number of areas of substantive law covered by the treatise. To name a few, there are individual chapters dedicated to patent, trademark, copyright, licensing, business torts, antitrust, warranties, sale of goods, bills and notes, agency, franchising, director and officer liability, theft of business opportunities, insurance, reinsurance, letters of credit, banking, collections, tax, FCPA, RICO and ERISA. Scanning the long list of substantive law chapters raises the question of whether the third edition tries to do too much by taking on subjects such as medical malpractice, sports, entertainment and white collar crime. However, these chapters serve an important purpose for the generalist who needs an easy reference source.

Business and Commercial Litigation in Federal Courts (Third Edition) offers value because it under-promises and over-delivers. It is comprehensive enough to provide practitioners with a strong desk reference for most issues encountered in commercial litigation in federal courts but is not so voluminous that it must be relegated to your library. If you make the investment, you will use this series because it will help you work faster and advise clients with confidence.

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Committee member. He also served on the Board of Governors and in the House of Delegates. He received a BA degree in 1989 from Claremont Colleges (Pitzer College), his JD degree in 1992 from Tulane Law School and an LLM (trade regulation) degree in 1994 from New York University Law School. (mcunningham@joneswalker.com; 201 St. Charles Ave., 50th Flr., New Orleans, LA 70170-5100)