

Business and Commercial Litigation in Federal Courts (Third Edition)



Robert L. Haig, editor-in-chief, published by Thomson Reuters and ABA Section of Litigation (2011), hardcover, 12,742 pages, plus CD-ROM, \$1,351
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Reviewed by Jane Derse Quasarano

B*usiness and Commercial Litigation in Federal Courts* (BCL)¹ was originally published in 1999 as a groundbreaking, six-volume treatise that provided in one source a comprehensive review of substantive and procedural litigation issues as well as how-to advice attorneys could immediately incorporate into their practices. BCL—published under the auspices of the American Bar Association Section of Litigation and edited by nationally known expert on business and commercial litigation Robert L. Haig of Kelley, Drye & Warren in New York—gained rapid and wide acceptance throughout the nation. It was unique among treatises on federal litigation because it treated each subject substantively, addressed procedural issues, described strategy and client counseling, and offered numerous practice aids such as checklists, worksheets, and model documents.

Since 1999, BCL's success led to the publication of a second edition in 2005² and now a third edition, *Business and Commercial Litigation in Federal Courts, Third Edition* (BCL 3rd), which consists of 130 chapters written by 251 practitioners from across the country, including 22 judges. BCL 3rd will be updated through annual pocket parts. Even those with high expectations based on their experience with BCL will be impressed. The most unique and valuable aspect of this treatise is the extensive discussion of strategy and analysis provided within each chapter by experienced practitioners. All litigators value the opportunity to discuss their thoughts about a case and kick around ideas with another lawyer. Using this treatise is like

having that discussion. Even if the analysis or strategy within a chapter is not directly on point with a particular case or if the reader disagrees with the author's analysis, the discussion is likely to spur ideas the reader may not have previously considered.

BCL 3rd addresses most or all of the familiar procedural topics that may also be included within other treatises³ as well as numerous substantive areas of law.⁴ Chapters devoted to procedural topics painstakingly refer to the applicable rules of civil procedure. Chapters dealing with substantive areas of law offer analysis of claims, including forum issues and checklists of essential allegations and defenses. For example, the chapter "Theft or Loss of Business Opportunities" tackles issues including the choice of forum, strategic and tactical issues, analysis of direct versus derivative litigation, elements of claims, defenses, remedies, federal preemption issues, and pleading requirements for shareholder direct actions. Specific causes of action include the corporate opportunity doctrine, breach of fiduciary duty, and tortious interference with business relationships.

BCL 3rd also 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 don't have significant experience or skills when it comes to managing client expectations, involvement, and satisfaction. With chapters including "Techniques for Expediting and Streamlining Litigation" and "Litigation Management by Law Firms," BCL 3rd offers insight from years of experience of its authors to enable users to accomplish this difficult aspect of practicing law more effectively.

New chapters in BCL 3rd also cover the interplay between federal litigation and state court litigation. For example, a chapter on "Comparison with Commercial Litigation in State Courts" discusses issues from the initial overall strategy, objectives, and preliminary considerations with respect to choosing a forum to analysis of different applicable evidentiary rules for trial. A subsequent chapter, "Coordination of Litigation in State and

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Federal Courts,” discusses preliminary and strategic matters that arise in related litigation conducted contemporaneously in state and federal courts. The issues considered include a history of coordination of state and federal litigation, types of coordination, the advantages and disadvantages of coordination, the legal bases for coordination, and coordination of discovery.

The recent credit crisis and anticipated securities and commodities regulatory changes have resulted in increased commercial litigation related to the securities market. BCL 3rd offers new chapters covering these issues including “Regulatory Litigation with the SEC,” “Derivatives,” and “Commodities and Futures.”

Other new chapters in BCL 3rd address criminal issues that can arise related to commercial litigation. These chapters allow civil litigators who may not have extensive criminal experience to recognize situations giving rise to potential criminal issues. Examples include chapters on “White Collar Crime,”

“Interplay Between Commercial Litigation and Criminal Proceedings,” “Money Laundering,” and the “Foreign Corrupt Practices Act.”

BCL 3rd is unique. Although there are other treatises on federal practice and procedure, none of the familiar publications is as comprehensive or as useable. It has been prepared by practitioners for practitioners and focuses on the legal and business issues commercial litigators routinely encounter. New lawyers will easily find the help they need to represent clients in business or commercial cases including legal theories; the current state of the law; practical and strategic considerations; and forms, checklists, and other how-to aids. Experienced lawyers with large law libraries will also find BCL 3rd valuable, partly for the same reasons and partly because the treatise’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. See Driker, *Book Review: Business and commercial litigation in federal courts*, 78 Mich B J 326–327 (March 1999).
2. See Akers, *Book Review: Business and commercial litigation in federal courts* (2nd ed), 85 Mich B J 60–61 (November 2006).
3. Examples include jurisdiction, venue, removal, joinder, discovery, motion practice, trials, judgments, appeals, scheduling matters, evidence, use of experts, jury issues, oral presentations, remedies, and class actions.
4. Examples include administrative agencies, export controls, government contracts, tax, project finance and infrastructure, sports, entertainment, information technology, shareholder derivative actions, securities, antitrust, contracts, insurance, banking, letters of credit, intellectual property, product liability, labor and employment, employee benefits, RICO, and business torts.