

BOOK REVIEW: BUSINESS AND COMMERCIAL LITIGATION
IN FEDERAL COURTS, FOURTH EDITION (ROBERT L. HAIG,
EDITOR-IN-CHIEF)

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Since publishing my review of the Third Edition of *Business and Commercial Litigation in Federal Courts* (“*Federal Commercial Litigation*”) in 2013, two significant events relevant to this article have transpired—first, an expanded Fourth Edition of this exquisite treatise, with up-to-date amendments and twenty-five new chapters, was published, and second, I have retired from the federal judiciary and returned to the intrigues of private practice. Having now had more than a few occasions to seek guidance from its pages from this side of the bench, I stand firmly by my previous proclamation that *Federal Commercial Litigation* “should be every commercial litigator’s litigation bible and should have a reigning presence in every commercial law firm’s library.”¹ Indeed, now expanded from eleven to fourteen volumes, the Fourth Edition² of this much-lauded legal anthology is, now more than ever, the greatest single depository of insight and practical guidance regarding federal commercial and business litigation in existence.

This superb compendium enjoys pride of place on my bookshelf not simply because of its handsome binding, but for the more sensible reason that I find myself reaching for it with some frequency. Whether I am seeking a quick refresher on a topic in which I am well versed, or a primer on an area in which I have not yet toiled, I continually rely on this treatise above all others because of the depth and breadth of its coverage and commitment to contemporaneity. The veritable who’s who of authors and contributors, esteemed

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¹ Randolph F. Treece, Book Review, *Business and Commercial Litigation in Federal Courts, Third Edition* (Robert L. Haig, Editor-in-Chief), 76 ALB. L. REV. 253, 262 (2013).

² BUSINESS AND COMMERCIAL LITIGATION IN FEDERAL COURTS (Robert L. Haig ed., 4th ed. 2016) [hereinafter FEDERAL COMMERCIAL LITIGATION].

members of the commercial bench and bar, have and continue to ensure that the discussion of each subject includes the most recent cases and trends. The newest edition is a testament to the editor's unceasing quest to displace other well-known treatises as "the authority" on federal commercial and business litigation.

In addition to rivaling Moore's Federal Practice and Wright & Miller in terms of its treatment of federal procedure, the Fourth Edition of *Federal Commercial Litigation* distinguishes itself from these venerable authorities with its exhaustive discussions of seventy-eight substantive subjects pertinent to the federal commercial practitioner.³ Inclusive of all the usual suspects, including securities, antitrust, banking, contracts, insurance, intellectual property, business torts, franchises, admiralty, labor, tax, e-commerce, and governmental and administrative agencies, there are, as well, subjects distinctive to federal practice, such as commodities and futures, mergers and acquisitions, derivatives, export controls, the Alien Tort Statute and Torture Victim Protection Act, sports and entertainment law, white collar crimes, money laundering and information technology.⁴ The Fourth Edition also includes chapters on non-traditional, yet practical topics like *pro bono*, ethical considerations, civility, and most recently chapters on mediation, social media and marketing to potential business clients, to name just a few.⁵ Within each chapter, the authors have included checklists and forms of every nature: procedural and practice checklists, tactical and strategic checklists, checklists concerning pleading allegations and motion considerations, discovery demands, and other corresponding litigation forms and jury instructions.⁶

As a former federal magistrate and a practicing mediator, I was pleased to see that a thoughtful discussion of mediation was included in the Fourth Edition—one of the few essential topics absent from the Third Edition.⁷ The importance of mediation in federal litigation continues to rise as the cost of litigation and other forms of advanced

³ Compare BUSINESS AND COMMERCIAL LITIGATION IN FEDERAL COURTS (Robert L. Haig ed., 4th ed. 2016) (153 chapters on litigation in federal courts), with JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE (Daniel R. Coquillette et al. eds., 3d ed. 2018) (thirty-one volumes of federal practice), and CHARLES A. WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE (3d ed. 2001) (fourteen chapters on federal civil procedure).

⁴ FEDERAL COMMERCIAL LITIGATION, *supra* note 2; see Treece, *supra* note 1, at 254.

⁵ FEDERAL COMMERCIAL LITIGATION, *supra* note 2.

⁶ *Id.*

⁷ 5 DANIEL WEINSTEIN & CEDRIC CHAO, FEDERAL COMMERCIAL LITIGATION, *supra* note 2, at §§ 51:1–51:48.

dispute resolution, including arbitration, continue to surge.⁸ Recognizing the need for effective conflict resolution short of full-throated litigation, and spawned by various federal laws and mandates,⁹ many federal courts, including the Northern District of New York,¹⁰ now require civil litigants to attend mandatory mediation at the outset of most categories of civil cases.¹¹

The discussion on Mediation Advocacy is a must read for every litigator. Far too many settlements are stymied by tactics that—though highly effective in the courtroom—are inappropriate and counterproductive at the mediation table. The included “Reflections of a Leading Neutral on Mediation Advocacy” ambitiously undertakes to provide as concise and complete a primer on effective mediation skills as I have found anywhere, presenting a thoughtful discussion of the key differences between effective litigation and mediation tactics, identifying the key qualities of successful mediation advocates, and defining the services and strategies employed by such advocates. Given that an estimated eighty percent of all civil litigation will undergo mediation at some point,¹² this is a chapter that no competent litigator can afford to overlook.

Similar to the section on mediation, the coverage of social media is also a must read. Like the law itself, social media in the digital age is ubiquitous, invading—and often recording—nearly every aspect of our lives; the wealth of potential evidence available from sources like Twitter, Facebook, and Instagram cannot be overstated. The discussion on social media in the Fourth Edition affords a level of approachability to this topic that will be appreciated by attorneys of all levels of experience and technological-savvy. Be it a seasoned master of the Federal Rules of Civil Procedure who began practicing in the age of the type-writer (present company included), or a tech prodigy new to federal practice and the nuances and intricacies of federal discovery, both will find the discussion on social media an excellent navigational aid. Those more facile with the Federal Rules of Civil Procedure than the ever-changing and expansive universe of social media platforms will find a bridge between the authors’ pragmatic application of traditional discovery principles and this

⁸ *Id.* at § 51:2.

⁹ *See id.* (discussing the evolution of federal policy surrounding advanced dispute resolution and mediation).

¹⁰ *See* N.D.N.Y. R. 83.7.

¹¹ *See* 5 DANIEL WEINSTEIN & CEDRIC CHAO, FEDERAL COMMERCIAL LITIGATION, *supra* note 2, at § 51:2.

¹² *Id.* at § 51:9.

critical new source of information, and vice versa. Indeed, those practitioners new to the rules of federal discovery practice but who are adept in utilizing social media may well find that the application of traditional federal discovery principles to an area in which they are familiar will help them to better grasp the essential principles that drive the discovery process in federal court.

The exploration of Social Media goes well beyond the methods by which this valuable information can be reaped, highlighting various pitfalls associated with social media which though only beginning to take shape in the law, are sure to occupy greater judicial attention as the influence of social media expands. Addressing these issues, the Fourth Edition includes discussions regarding ethical considerations involved in gathering evidence from publicly available social media profiles,¹³ as well as the ramifications and concerns presented by the use of social media by jurors¹⁴ and the ethical implications for attorneys who communicate with judges and clients¹⁵ *via* these mediums.

Like the chapters discussed above, the other twenty-three new chapters of the Fourth Edition proliferate with profundity. While I cannot endeavor to analyze each of these new chapters in this brief review, suffice it to say that I have found the additions of the chapters on Arbitration, Civil Rights, Civil Justice Reform and Marketing to Business Clients, to name just a few, to be well worth the read and a valuable addition to the existing reservoir of knowledge overflowing from the now fourteen volumes of *Federal Commercial Litigation*.

Perhaps the only thing more impressive than the comprehensiveness of this masterful work is its ease of use. The editors should be praised for the quality of its organization and the precision of its table of contents. And though it is irrefutable that in our contemporary technological era law firms and lawyers tend to rely more heavily upon digital research tools than the hard copies of legal treatises occupying their libraries,¹⁶ I have found that with a copy of the Fourth Edition close at hand, I often drift to the bookshelf rather than the keyboard for quick answers to everyday important procedural or substantive issues. And for this reason, I submit that *Federal Commercial Litigation* is one legal tome that will not be relegated to mere decorative status—but rather will serve as a

¹³ See *id.* at § 67:7.

¹⁴ See *id.* at §§ 67:12–18.

¹⁵ See *id.* at §§ 67:23–24.

¹⁶ See Barbara Bintliff, *Legal Information and the Development of American Law: Further Thinking About the Thoughts of Robert C. Berring*, 99 LAW LIBR. J. 249, 249 (2007).

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valuable resource that will be in continuous employment by all those in need of clear, concise and impeccably well researched advice on business and commercial litigation in federal court.

This series abounding with sage legal discussions, analyses, advice and strategies from scholarly and experienced members of the bench and bar, is sure to enhance every litigator's skill—regardless of level of experience—and expand her ability to navigate the fluid nuances of the practice of law with the grace and ease of the most learned of practitioners.