

Business and Commercial Litigation in Federal Courts

edited by Robert L. Haig
ABA Section of Litigation and West, 3d ed. 2011, 11 volumes

Reviewed by Craig T. Merritt

After legal research moved into the electronic age, lawyers faced the temptation to trade speed and scope for analytical rigor and depth. A researcher using “terms and connectors” to search databases of case law is limited by her ability to understand and define the issues. Thus, there is a critical need for research tools that help lawyers understand a subject before wading into a morass of cases.

This need arises frequently in federal commercial litigation. How do we know if we have identified all of the key issues in a case? Have we missed a new development in federal procedure or in the subject matter of our client’s case that will be the difference between success and failure?

This is where treatises retain great value. A top-notch treatise must be comprehensive and comprehensible—a buffer between organized and disorganized thinking and a bridge for moving from a bit of knowledge about an issue to a deeper grasp. *Business and Commercial Litigation in Federal Courts* (3d ed.) (2011), edited by Robert L. Haig and published by the ABA Section of Litigation and West, fills these roles very effectively.

This edition of the treatise is an eleven-volume set with a separate index volume. Its 130 chapters include 34 new chapters not present in the second edition. Chapters 1 through 66 address federal civil procedure, including chapters on litigation management, litigation technology, and streamlining techniques. Each of chapters 67 through

130 covers a single substantive topic, from antitrust to securities to white collar crime. Chapters are authored by leading practitioners and judges. This approach gives the treatise a lively and practical voice, speaking from the collective wisdom of 251 able individuals.

The chapter on jury selection illustrates the value of the treatise. The selection of a jury presents a series of decisions driven by the Federal Rules of Civil Procedure, the Constitution, local practice, judicial quirks, and plain common sense. In Chapter 34, Houston attorney David J. Beck and his colleague Eric J.R. Nichols, working with U.S. District Judge David Hittner of the Southern District of Texas, provide a systematic, scholarly and practical overview of everything from the composition of the venire, to voir dire by judges and attorneys, challenges for cause, peremptory strikes, and challenges to jury strikes under *Batson v. Kentucky*. Judge Hittner, a federal judge since 1986, has authored numerous articles and a three-volume book on pretrial procedure. Beck is one of America’s premier trial lawyers. This powerhouse pairing is typical of the talent brought to bear on each chapter.

The chapters on substantive law are useful not just to lawyers preparing to litigate a case. If an experienced trial lawyer (or an in-house lawyer) has a client encountering its first antitrust case, he may not want to master Professor Areeda’s multi-volume antitrust treatise. However, Chapter 67 of the Haig treatise, written by Peter E. Halle (former chief of the Antitrust



Division’s Trial Section and now head of the antitrust practice at Morgan Lewis), clearly and concisely presents the key principles. It begins with strategy, explains the elements of a violation, discusses special rules for jurisdiction and venue, summarizes defenses, and explains damages. It includes practice checklists, jury instructions, and extensive cross references for the reader seeking greater depth.

This practical approach characterizes all eleven volumes, updated annually by pocket parts. Even the table of sections preceding each chapter is a useful “checklist” of critical issues to be considered in a case. The index volume allows cross referencing not only to covered topics but to federal statutes, cited cases, forms and jury instructions. A separate CD is shipped with the set that includes all of the forms that are presented in the eleven volumes.

Business and Commercial Litigation in Federal Courts is an investment well worth considering for attorneys maintaining an active practice in the federal court system.

Craig T. Merritt is a partner at Christian & Barton LLP who frequently litigates business and commercial disputes in the federal courts.