

Business and Commercial Litigation in Federal Courts

Robert L. Haig, Editor-in-Chief

West Group, 6 Volumes

Business and Commercial Litigation in Federal Courts is permeated with sage advice and the guiding hand of counsel provided by a team of “Cracker Jack” litigators. Distinguished team members include Judge David Hittner of the Southern District of Texas, former Secretary of State Warren Christopher, and Texas attorneys Blake Tartt of Fulbright & Jaworski; Edward Carr, Carol Dinkins, Arthur Murphy, Harry Reasoner, and Allan Van Fleet of Vinson & Elkins; John McElhaney of Locke Purnell Rain Harrell; Noel M.B. Hensley and Barry F. McNeil of Haynes & Boone; Eric Nichols of Beck, Redden & Secrest; and James E. Coleman, Jr. and Barbara M.G. Lynn of Carrington, Coleman, Sloman & Blumenthal.

Written under the joint auspices of the ABA Litigation Section and the West Group, this 6-volume series organizes the myriad complexities of business and commercial litigation into 80 chapters (28 substantive law chapters and 52 procedural chapters) focusing on “action at the front.” That is, each chapter provides a step-wise methodology that shares the insights and hardcore practical knowledge of litigators having expertise in the matter being covered. Inherent in the materials is a balanced presentation of developing winning litigation strategies and being conversant with substantive law. Although most legal matters do not neatly fit into a well-defined template, this presentation strives to assure that sound litigation is effectuated by removing heuristics from the litigation formula.

Having such a series fraught with rich litigation-related information is particularly valuable if information sought can be readily located by attorneys and staff personnel. Many currently available texts — in hard-copy or CD — fail to provide an effective “search engine” for expeditiously locating and retrieving relevant information. Happily, unlike most multi-volume texts, commensurate with the authors’ unique knowledgeable and practical approach to litigating in federal court, convenient and effective searching is the order of the day. In addition to a table of contents and detailed cross-reference index, the authors have provided an user-flavored, superb search engine comprising a series of tables including jury instructions, statutes, forms (which are also provided in WordPerfect format on disk), rules, sections, and cases. Locating jury instructions and forms has been rendered rather routine because each of the Table of Jury Instructions and the Table of Forms is cross-referenced to the relevant section with informative titles of each jury instruction and form. The table of cases contains complete citations, which obviously saves considerable time by the reader not having to locate citations in footnotes contained in the appropriate volume. As an alternative to finding individual topics via the index, the table of contents offers a nifty section “index” that enables finding topics that are subsumed into the series’ chapter-by-chapter organization. Thus, topics may be quickly found and reviewed on a broad or narrow basis.

As an example of the accessibility of the materials, consider the basic task of properly responding to a complaint. Walking through the Table of Contents reveals that Chapter 6 is entitled “Responses to Complaints”; observing the section breakdown, it becomes immediately clear that Federal Rule of Civil Procedure 12 is the heart of lodging defenses and making suitable objections (per section 6.3 “Defenses and Objections”). To review the mechanics of making responses, Section 6.4 is the answer: “The Mechanics of Response.” If, however, the particular focus is upon how to calculate

the time to respond to the complaint, then Section 6.4 (d) contains the Rosetta Stone for this calculation. Similarly, to entertain the possibility of raising counter-claims or cross-claims, Sections 6.12 and 6.13, respectively, should be sought. As is the protocol throughout this series, the last section contains applicable and referenced forms.

Consider, as another example, issues related to the use of expert witnesses. Chapter 35 affords comprehensive coverage of these issues. Simply reviewing this chapter via the table of contents indicates that the major factors are qualification of an expert (Section 35.2), the expert providing specialized knowledge under Rule of Evidence 702 (Section 35.3), expert testimony being based on reliable data (Section 35.4), and not being confusing or prejudicial under Rule 403 (Section 35.6), preparation of expert testimony (Section 35.8), and strategies (Section 35.9). On the other hand, accessing expert witnesses issues via the index provides 2½ pages of specific topics. Focused sub-issues such as communication with experts, Daubert procedures, ethics, and jury instructions are readily found. These issues are presented with a hands-on touch that, besides elucidating the relevant case law, provides insight into the tactics effective at trial. Thus, after discussing the impact of the U.S. Supreme Court's Daubert holding and application to recent admissibility decisions throughout the circuits, the authors provide sound practical advice. The advice for the party seeking to exclude expert testimony is essentially to promote expert-disqualification by arguing for the narrowest possible definitions of the issues being litigated and the expert's qualifications. On the contrary, the advice for the party seeking to introduce expert testimony is essentially to argue for expansive characterization of the expert's qualifications and also to assure that the expert's analysis is based upon the record and consistent with industry practices.

An interesting application of this series is to consider the contemporary issue of personal jurisdiction premised on Internet-related activities. Searching this issue using the index brings the reader to Section 2.9 (e) "Personal Jurisdiction & Service: The Internet." This search is easily accomplished regardless of the particular search strategy invoked. For instance, if the word "Internet" is sought directly, then the reader is directed to the appropriate section under "Personal jurisdiction and service." Trying to find relevant material under "jurisdiction," however, under "Personal," the reader is pointed to "Service of process and personal jurisdiction." Similarly, trying to find relevant material under "Personal jurisdiction," the reader is pointed to "Service of process and personal jurisdiction." After an efficient discussion of the few recent lower court decisions and occasional appellate decision, it is made clear that this "virtual" personal jurisdiction issue is still evolving in the courts.

Business and Commercial Litigation in Federal Courts is a complete toolkit for litigating the diversity of business and commercial matters in federal court. To help the litigator cross the goal line, various checklists are provided for preventing fumbles and penalties throughout the stages of litigation. The only drawback is that this masterpiece is not currently available on CD; if available on CD, it would be a candidate for the most compact and comprehensive library of its kind.