

# FEDERAL BUSINESS AND COMMERCIAL LITIGATION:

## *An Updated Comprehensive Overview of Procedure, Substance, and Strategy*

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**T**he fourth edition of *Business and Commercial Litigation in Federal Courts* is remarkable in its ambitions. It seeks to provide “in depth treatment of federal civil procedure with substantive law in the areas most commonly encountered by [federal] commercial litigators,” with a unique focus on the intersection of substance, procedure, and strategic considerations. More striking, perhaps, it seeks to provide not just the analysis and citations of a conventional treatise, but to serve as “an idea book filled with nuggets of wisdom and perspective” from experienced lawyers and judges.

The book's ambitions are matched by its encyclopedic scale, consisting of 153 chapters—25 of them brand new—spanning more than 17,000 pages, approaching the scale of the 18,000 pages in Diderot's original *Encyclopedie*, which aimed to cover all of human knowledge!

About half of the chapters broadly concern procedure; the other half substantive law. For procedure, many chapters focus on traditional topics such as the law of civil procedure, evidence, and remedies, both in the trial court and on appeal, while others reach beyond the courtroom to diverse topics like litigation avoidance, crisis management, associate training, litigation technology, and ethics. The menu of substantive chapters is equally broad, ranging from staples like antitrust and employment discrimination, to more specialized federal statutes, to the full range of state law claims arising in diversity. And throughout the book—particularly in the procedural chapters—many sections focus on practical questions, including nearly ten chapters on effective motion and trial practice. In other words, the book covers virtually all topics that a federal commercial litigator is likely to encounter, often from several different angles.

To test how well the book achieves its principal ambitions, we selected three of the new chapters, each dealing with a subject of particular interest to us and our own practice.

A new chapter on Mediation, co-authored by the Honorable Daniel Weinstein and Cedric Chao, delivers fully on all counts, combining a careful summary of the mediation process and the rules governing it with wise practical advice about the strategic and tactical choices involved in the timing, design, and conduct of the mediation. Judge Weinstein's personal thoughts on effective mediation advocacy reflect precisely the kind of unique "wisdom and perspective" that the book aims to provide.

*Business and Commercial Litigation in Federal Courts, Fourth Edition, with 153 chapters written by 296 principal authors, is a step-by-step practice guide that covers every aspect of a commercial case.*

For when mediation fails, Senior District Court Judge Reggie Walton provides a similarly wise and practiced perspective in a new chapter on Effective Trial Performance. The ground covered is broad: Judge Walton moves from motions in limine to closing arguments, and covers everything in between. And the well of practical knowledge is deep: based on his forty-plus years of trial experience, Judge Walton offers valuable insight into—and strategies for confronting—each stage of trial. Combined, the chapter offers a broad, useful starting point when approaching trial.

A new chapter on Fiduciary Duty Litigation also hits its mark. Procedurally, the chapter covers everything from pre-filing considerations through discovery and to trial, highlighting jurisdictional, standing, forum, ethical, and privilege considerations specific to fiduciary litigation. Along the way, the reader will find useful substantive knowledge in areas likely to arise, including definitions of particular fiduciary relationships and typical claims and their elements. Simultaneously, the chapter offers strategic and tactical

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considerations to help both plaintiffs' and defense counsel evaluate and succeed at each stage of the case. With such breadth of coverage, and cautious not to overwhelm readers, the chapter closes by packaging its "nuggets of wisdom" into easily accessible checklists.

Because of its coverage and structure, this book should be useful for a wide audience. A typical chapter (averaging 112 pages) offers a compact and efficient gateway to an unfamiliar problem—one that can then be followed by research in more conventional single-subject treatises.

This kind of high-quality introduction is probably most important for those who are doing something for the first time: first-year associates writing their first set of interrogatories or preparing for their first mediation; mid-level associates litigating their first case with international or cross-border aspects; partners finding that a case that began in familiar territory has veered into the unfamiliar. It should also be particularly useful for lawyers in smaller firms, who typically lack in-firm access to experts in other fields. And it could be useful to lawyers who have to monitor other lawyers, as when corporate counsel supervises a specialist litigator in an unfamiliar field or when one needs a general understanding of issues being handled by co-counsel.

For more ambitious research, the book's comprehensive index and careful cross-referencing provides a mechanism

for coordinated research from multiple angles, both substantive and procedural.

A final new and intriguing feature of the book is that every chapter includes a closing checklist that highlights, in shorthand form, the critical issues and steps to be taken in dealing with the subject covered. This feature offers another practical tool for making effective real-time use of the book's extensive information.

As documented in Atul Gawande's *The Checklist Manifesto: How To Get Things Right* (2010), in complex areas like surgery, construction, and flying an airplane, well-designed checklists consistently reduce errors and omissions and improve teamwork and responsiveness to unexpected emergencies. The checklists in this book represent a welcome step. Drawing on the checklist designs from these other fields and expanding the feature further could be an important direction for the authors to pursue in future editions.

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