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Treatise Is an Invaluable Resource

Business and Commercial Litigation in Federal Courts

By Rudy Englund

I am grateful to the King County Bar Association Bar Bulletin for this opportunity to provide its readers with an introduction to and overview of the 14-volume treatise, *Business and Commercial Litigation in Federal Courts*, Fourth Edition. First published in 1998, the treatise has been widely acclaimed as the definitive commercial litigation resource for practitioners in both federal and state courts in more than 300 favorable book reviews in bar journals and legal publications throughout the United States.

The treatise is a joint venture between Thomson Reuters and the American Bar Association Section of Litigation. To remain timely and topical, it undergoes an extensive update every year with the publication of annual pocket parts along with a current Index and updated Tables of Cases, Jury Instructions, Forms, Laws and Rules.

I highly recommend the treatise as essential for litigation attorneys in their early years of practice, as well as seasoned practitioners with years of trial experience. While styled to emphasize practice in federal courts, the similarities in federal and state court litigation in Washington give it a universal appeal.

Chapters cover every conceivable procedural aspect of a commercial case from inception through pleadings and discovery, motions practice, trial, appeal and enforcement of judgment. Seventy-eight of the 153 chapters cover substantive topics prominently involved in

business and commercial litigation. The subjects include securities, antitrust, banking, director and officer liability, contracts, insurance, sale of goods, intellectual property, professional liability, business torts, franchising, commercial real estate, and many other business and commercial law topics. In addition, there are hundreds of pages of essential litigation forms and jury instructions.

The current edition adds 25 new chapters that address evolving significant subjects whose importance has increased in recent years. Examples include Marketing to Potential Business Clients, Teaching Litigation Skills, Social Media, Regulatory Litigation, Civil Justice Reform, Cross-Border Litigation, Securitization and Structured Finance, Advertising, Aviation, and Healthcare Institutions. The 128 holdover chapters have been extensively reviewed, revised and updated to keep them timely and at the cutting edge of relevance.

Robert L. Haig, a distinguished litigation partner in the Kelley Drye & Warren LLP firm in New York City, has served since its inception as the editor-in-chief of the treatise. His practice includes commercial, products liability and other types of civil litigation in federal and state trial and appellate courts. Haig's thorough and thoughtful hands-on review and commentary have assured the highest level of quality control standards.

The 296 principal authors of the Fourth Edition include 28 distinguished judges from around the United States, having served as Circuit Court of Appeals

and District Court judges, Bankruptcy Court judges and state court judges. Two jurists with local ties are featured prominently, the Honorable M. Margaret McKeown, who sits on the Ninth Circuit Court of Appeals, and the Honorable Robert S. Lasnik, of the U.S. District Court, Western District of Washington.

The remaining authors include a multitude of distinguished, high-profile trial lawyers from all realms of trial practice nationally. The contributors include: Anton R. Valukas, "Motions in Limine;" David Brodsky, "Opening Statements;" Hilarie Bass, "Jury Conduct, Instructions and Verdicts;" Carolyn B. Lamm, "Enforcement of Judgments;" David Boies, "Litigation Technology;" Harry M. Reasoner, "Ethical Issues in Commercial Cases;" Robert A. Clifford, "Aviation;" Chilton Davis Varner, "Food and Drug;" Theodore V. Wells, Jr., "Interplay Between Commercial Litigation and Criminal Proceedings;" and locally David Burman (co-author with Judge McKeown), "Court Awarded Attorneys' Fees."

Examination of Chapter 8, "Responses to Complaints," authored by our esteemed Judge Lasnik, provides an excellent example of the high-quality content of the treatise and demonstrates the comprehensive breadth of information and insight that is extremely helpful to litigation practitioners at every experience level.

I commend review of this nearly 100-page chapter to everyone reading this overview. The chapter addresses the multiple strategic tasks and approaches

available when your client defendant is served with a lawsuit. Judge Lasnik provides unique perspectives from the bench regarding the Supreme Court's seminal decisions in *Twombly* and *Iqbal*. Valuable guidance is offered regarding affirmative defenses in general, as well as the specified affirmative defenses included in Rule 8(c), and an overview of counterclaims and cross-claims. Multiple final sections of the chapter provide detailed checklists and sample forms.

Chapter 71, "Teaching Litigation Skills," is one of the 25 new chapters. I found this chapter to provide a fresh new outlook to the successful development of business litigation skills. The range of skills covered in depth includes oral advocacy, written advocacy, factual mastery and fact gathering, emotional intelligence and teaching credibility.

The Introduction to "Teaching Emotional Intelligence" is spot on in this new era of litigation training. As defined,

"Identifying and managing one's own emotions and perceiving and understanding others' emotions is known as Emotional Intelligence, or 'EQ.'" Emotional Intelligence is differentiated from IQ and other important technical skills that are required to be a successful trial lawyer.

As the author describes, "truly effective litigators are distinguished by a high degree of emotional intelligence, which includes self-awareness, self-regulation, motivation, empathy, and social skill." As the chapter details, it is essential to teach emotional intelligence to litigators to enable them to succeed in their practices and to obtain favorable results for their clients.

In sum, *Business and Commercial Litigation in Federal Courts* covers virtually everything a trial lawyer needs to know about the world of litigation in 2020. The retail price of the fourth edition is \$1,811 with ABA Section of Litigation members receiving a 25-percent

discount. In the alternative, the entire treatise is available on Westlaw, and law firms and individual practitioners are accessing it increasingly online.

In law firms such as mine, the treatise is readily accessible through the firm's One Pass account with Thomson Reuters. I highly recommend you take a look at the extremely useful *Business and Commercial Litigation in Federal Courts*, and make it your "go to" litigation resource. ■

Rudy Englund is a shareholder in Lane Powell PC and is a seasoned trial lawyer representing clients in a range of business, employment and compliance dispute resolution matters. He has extensive experience in complex commercial and class action litigation in federal and state courts. Englund has been active in the ABA Section of Litigation for more than 30 years, serving in multiple leadership capacities.