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Book Review: Business and Commercial Litigation in Federal Courts

By **STEVEN MOLO AND LAUREN DAYTON**



Business and Commercial Litigation in Federal Courts, edited by Robert L. Haig, is an extraordinarily comprehensive and authoritative text. Its 180 chapters cover every aspect of federal commercial litigation, procedural and substantive. The 93 substantive-law chapters, for example, cover contracts, securities, antitrust, banking, intellectual property, and insurance, among others, plus several chapters

on damages and other remedies. Its authorship also sets it apart, with chapters by 32 prominent judges and hundreds of distinguished members of the bar.

Established treatises like this one, which has been in print since 1998, sometimes lose their luster over time with updates consisting of a few new cases in footnotes. But the Fifth Edition of Business and Commercial Litigation in Federal Courts isn't that

sort of moldy tome, suitable for a mahogany bookshelf next to a firm's telex machine. Available electronically and in print, it builds on the robust tradition of prior editions, with comprehensive updates and more than two dozen new chapters. Those new chapters include several discussing the business of litigation. With its astounding breadth and focus on practicalities, this edition is designed for practitioners who

need a real-world answer and need it quickly. It's a key resource for litigators, including in-house counsel.

The chapters are intuitively organized. Sections and subsections are concise. Every chapter addresses relevant strategic considerations — often in the first section — allowing counsel to quickly familiarize themselves with not just the black-letter rules, but why they are likely to matter to their client. They include the essential information, citations, and cross-references, without excessive string cites. Nearly every chapter also contains practice aids — checklists, forms, and sample pleading language — that implement the substantive rules.

The Fifth Edition's new chapters on the business of litigation are likely to be particularly helpful to in-house counsel. "Budgeting and Controlling Costs," authored by the Honorable Barbara S. Jones, Daniel S. Connolly, David J. Ball, and David A. Shargel, is one example. The chapter lays out budget considerations for each

Obligations," by Robert M. Stern, Paul Rugani, and David M. Fine, which addresses litigation reporting obligations and best practices for avoiding exposure. The chapter provides guidance about the types of required reporting, and offers strategies for complying with reporting obligations while protecting confidential information. In addition to the practical recommendations included throughout, the chapter includes sample draft responses to auditors and SEC, PCAOB, and FINRA disclosure forms.

"Fraudulent Transfer," authored by Alexander B. Lees, is one of the many new substantive-law chapters likely to be of great use to in-house counsel. This comprehensive chapter covers strategic considerations, the claim's essential elements, common procedural issues and methods for proving a fraudulent-transfer claim or defense, and pre-transaction strategies to mitigate future litigation risk. Among the many helpful practice aids are checklists for

is a welcome anchor — a go-to guide for fresh, practical advice and expert knowledge.



Steven Molo is a trial lawyer and a founding partner of the national litigation boutique MoloLamken LLP. He represents companies, boards, executives, funds, investors and inventors from around the world in complex matters before juries and judges.



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The Fifth Edition's new chapters on the business of litigation are likely to be particularly helpful to in-house counsel.

step of a federal case, with particular attention to common issues like estimating the cost of e-discovery and the impact of multiple defendants on motions to dismiss. It also identifies frequently overlooked expenses, such as the initial post-complaint scheduling and disclosure process. The chapter also includes, among other practice tools, sample monthly and overall budgets.

Another of the notable business-of-litigation chapters is "Corporate Litigation Reporting

claims and defenses, lists of materials that parties should consider requesting in discovery, and model jury instructions.

Other new chapters of note for in-house counsel include: Corporate Sustainability and ESG, Third-Party Litigation Funding, Shareholder Activism, Virtual Currencies, and Comparison with Business and Commercial Litigation in Delaware Courts and New York Courts.

The litigation world sometimes spins at a dizzying pace. This work