

# Complex Litigation



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FOURTH EDITION

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*Each author can think of many people to whom we might dedicate this text.  
We appreciate the support of all of those persons over many years and  
in particular recognize these:*

**ETS:** *To Leslie Black Sullivan.*

**RDF:** *To Louise, Courtney, and Collin.*

**BGC:** *To Leon Goodrich, Thomas Kane, and Donald Engle,  
my principal mentors in the trenches of complex litigation.*

**RJE:** *To Sam, Maura, Eleanor, and Owen.*



# Contents

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Table of Cases	xix
Preface	xxxv
<b>Chapter 1 · Territorial (Personal) Jurisdiction</b>	<b>3</b>
A. Introduction	3
1. A Refresher as to Some Basic Principles	3
2. Specific Jurisdiction/Stream of Commerce	5
<i>Asahi Metal Industry Co., Ltd. v. Superior Court</i>	5
Notes and Questions	8
<i>J. McIntyre Machinery, Ltd. v. Nicastro</i>	10
Notes and Questions	12
<i>Ford Motor Company v. Montana Eighth Judicial District Court</i>	14
Notes and Questions	19
3. General Jurisdiction	21
<i>Daimler AG v. Bauman</i>	22
Notes and Questions	27
B. Consent or Waiver as a Basis for Jurisdiction	28
<i>Mallory v. Norfolk Southern Railway Co.</i>	29
C. Personal Jurisdiction and the Internet	37
1. The Emergence of <i>Zippo</i> 's Sliding-Scale	37
Notes and Questions	39
2. Post- <i>Zippo</i> Developments as to Personal Jurisdiction and the Internet Today	40
<i>Toys "R" Us, Inc. v. Step Two, S.A.</i>	40
Notes and Questions	43
D. International Personal Jurisdiction	47
1. Same Tests, Similar Application	47
<i>Volkswagenwerk Aktiengesellschaft v. Schlunk</i>	48
Notes and Questions	51
2. Nationwide Contacts	51
<i>Pinker v. Roche Holdings, Ltd.</i>	52
Notes and Questions	55
E. Nationwide Service of Process	56

	<i>Omni Capital International, Ltd. v. Rudolf Wolff &amp; Co., Ltd.</i>	57
	<i>Republic of Panama v. BCCI Holdings (Luxembourg) S.A.</i>	60
F.	Personal Jurisdiction over Absent Defendants	64
1.	Introduction	64
2.	Alter Ego and Agency Theories of Personal Jurisdiction	64
	<i>Doe v. Unocal Corp.</i>	65
	Notes and Questions	68
	<i>Daynard v. Ness, Motley, Loadholt, Richardson &amp; Poole, P.A.</i>	69
	Notes and Questions	72
3.	Conspiracy Theories of Jurisdiction	72
	<i>FC Inv. Group LC v. IFX Markets, Ltd.</i>	72
	Notes and Questions	75
G.	Personal Jurisdiction in Class Actions	76
	<i>Phillips Petroleum Co. v. Shutts</i>	76
	Notes and Questions	80
H.	Personal Jurisdiction in MDL Cases	82
	<i>In re Agent Orange Product Liability Litigation MDL No. 381</i>	83
	Notes and Questions	84
<b>Chapter 2</b>	<b>· Subject Matter Jurisdiction</b>	<b>85</b>
A.	Introduction	85
B.	The Two Major Types of Federal Subject Matter Jurisdiction and the Concept of Removal	86
1.	Federal Question Jurisdiction	86
	<i>Louisville &amp; Nashville Railroad Co. v. Mottley</i>	88
	Notes and Questions	89
2.	Diversity of Citizenship and Alienage Jurisdiction	90
a.	The Complete Diversity Rule	92
b.	The Amount-in-Controversy Requirement	95
3.	The Defendant's Prerogative: Removal Jurisdiction	96
C.	Supplemental Jurisdiction	99
1.	What It Does	99
2.	Statutory Analysis	101
a.	The Grant in § 1367(a)	101
b.	The Limitations for Diversity Cases in § 1367(b)	103
	<i>Exxon Mobil Corp. v. Allapattah Services</i>	107
	Notes and Questions	114
3.	Ancillary Enforcement Jurisdiction	115
D.	Expansion of Jurisdiction Through Statutory Grants Based Upon Minimal Diversity	116
1.	Background	116
2.	Interpleader	117
3.	The Multiparty, Multiforum Trial Jurisdiction Act (MMTJA)	119
	Notes and Questions	121



<i>Case v. ANPAC Louisiana Insurance Co. and In re Katrina Canal Breaches Consolidated Litigation</i>	125
Notes and Questions	134
4. Class Action Fairness Act (CAFA)	135
a. Background	135
b. Jurisdictional Provisions and Exceptions	138
The CAFA Grants of Jurisdiction	139
The “Carve-Outs” to CAFA Jurisdiction	140
<i>Preston v. Tenet Healthsystems Memorial Medical Center, Inc.</i>	142
Notes and Questions	153
Note on Burden of Proof on Removal	154
Ongoing Debate Over CAFA	155
<b>Chapter 3 · Coordination and Consolidation of Overlapping Litigation</b>	<b>159</b>
A. Introduction	159
B. Overlapping Federal Cases	161
1. The First-Filed Principle	161
<i>Biolitec, Inc. v. Angiodynamics, Inc.</i>	162
Notes and Questions	167
Note on Exceptions to the First-Filed Principle	167
Note on Methods for Enforcing the First-Filed Principle Problem	168
2. Transfer of Cases under §§ 1404(a) or 1406(a) (and a Refresher on Venue)	169
<i>Atlantic Marine Construction Co. v. U.S. District Court</i>	173
Notes and Questions	179
3. Consolidation and “Low Numbering”	180
Notes and Questions	183
4. Multidistrict Litigation (MDL) Under § 1407	183
<i>In re Donald J. Trump Casino Securities Litigation</i>	185
Notes and Questions	186
Note on the Prevalence of MDL and Global Settlements	187
Note on the <i>Lexecon</i> Case	189
C. Overlapping Litigation in Federal and State Courts	190
1. Anti-Suit Injunctions Issued by the Federal Court	191
a. Can State Courts Enjoin Federal Litigation?	191
<i>Donovan v. City of Dallas</i>	191
Notes and Questions	194
b. The All Writs Act and the Anti-Injunction Act	195
<i>Dombrowski v. Pfister</i>	196
Notes and Questions	196
<i>Denny’s, Inc. v. Cake</i>	197
Notes and Questions	202
<i>In re Diet Drugs Products Liability Litigation</i>	204

Notes and Questions	212
Problem	212
Note on the <i>Rooker-Feldman</i> Doctrine	213
2. Abstention by the Federal Court	214
a. Background on the Types of Abstention	214
b. Abstention to Avoid Overlapping Litigation: <i>Colorado River</i> Abstention	216
<i>Ingalls v. The AES Corporation</i>	217
Notes and Questions	220
3. Removal from State to Federal Court	221
D. Overlapping Litigation in American and Foreign Courts	222
1. Anti-Suit Injunctions by the American Court	222
<i>Goss International Corporation v. Tokyo Kikai Seisakusho, Ltd.</i>	223
Notes and Questions	230
2. Dismissal or Stay for <i>Forum Non Conveniens</i>	231
<i>Estate of Thomson v. Toyota Motor Corporation Worldwide</i>	232
Notes and Questions	237
Note on “Boomerang” Litigation	238
E. The American Law Institute Proposal	239
<b>Chapter 4 · Choice of Law Issues in Complex Litigation</b>	<b>241</b>
A. Introduction	241
B. <i>Erie</i> and <i>Klaxon</i>	243
<i>Klaxon Company v. Stentor Electric Manufacturing Co., Inc.</i>	245
Notes and Questions	247
C. Choice of Law in Transferred Cases	247
<i>Ferens v. John Deere Co.</i>	248
Notes and Questions	254
Note on Choice of Law in Federal Question and Multidistrict Cases	255
D. Efforts to Ensure a Single Governing Law	256
1. Application of Forum Law	257
<i>Phillips Petroleum Co. v. Shutts</i>	257
Notes and Questions	261
<i>Sun Oil Co. v. Wortman</i>	262
Notes and Questions	266
2. Use of Choice of Law Doctrine to Support Application of a Single Law	267
3. Application of Federal Common Law	269
<i>Boyle v. United Technologies Corporation</i>	271
Notes and Questions	276
<i>In re “Agent Orange” Product Liability Litigation</i>	277
Notes and Questions	284
4. Federal Legislation and Its Impact	285

<b>Chapter 5 · Judicial Management and Control of the Pretrial Procedure</b>	<b>289</b>
A. Introduction	289
B. Overview of Pretrial Judicial Management, Including Alternative Dispute Resolution and Fostering Settlement	291
Notes and Questions	294
<i>Switzer v. Much, Shelist, Freed, Denenberg, Ament,     Bell &amp; Rubenstein, P.C.</i>	295
Notes and Questions	300
C. Judicial Adjuncts: Magistrate Judges and Masters	301
1. Delegation to Magistrate Judges	302
Notes and Questions	304
<i>Williams v. Beemiller, Inc.</i>	304
Notes and Questions	308
2. Delegation to Masters	308
Notes and Questions	311
<i>Cordoza v. Pacific States Steel Corporation</i>	314
Notes and Questions	319
Note on Court Appointment of Expert Witnesses	321
D. Motions to Disqualify (or “Recuse”)	323
Notes and Questions	325
<i>Fairley v. Andrews</i>	327
Notes and Questions	333
E. Judicial Control Through Sanctions	336
1. Federal Rules	336
2. Statutory Fee Shifting	338
<i>Dixon v. Clem</i>	338
Notes and Questions	340
3. Inherent Authority	342
4. Contempt	343
<b>Chapter 6 · Aggregate Litigation: Party and Claim Joinder in the Context of a Single Case</b>	<b>345</b>
A. Introduction	345
B. Joinder Provisions Other Than The Class Action	346
1. Party Joinder: Rules 20, 19, 24, and 14	346
a. Permissive Party Joinder (Rule 20)	346
b. Compulsory Party Joinder (Rule 19)	347
c. Intervention (Rule 24)	349
d. Impleader (Rule 14)	350
Notes and Questions	350
2. Claim Joinder: Rules 18 and 13	353
a. Claim Joinder by the Plaintiff (Rule 18(a))	353
b. Claim Joinder by Defending Parties (Rule 13)	353
Problem	354

C. The Class Action: Certification Under Rule 23(a) and Rule 23(b)	355
1. Introduction and Background	355
2. Rule 23(a): Prerequisites for All Class Actions	358
a. Overview	358
b. Implicit Requirement of a Class: Ascertainability, Manageability, and Standing	358
c. The Four Express Requirements and the Need for Proof	361
i. Rule 23(a)(1): Numerosity Question	361 363
ii. Rule 23(a)(2): Commonality <i>Wal-Mart Stores, Inc. v. Dukes</i> Notes and Questions Note on Front-Loading and Consideration of the Merits	363 364 373 375
iii. Rule 23(a)(3): Typicality	375
iv. Rule 23(a)(4): Fair and Adequate Representation <i>Hansberry</i> : Constitutional Underpinnings Applying Rule 23(a)(4)	377 378 380
3. Rule 23(b): The Types of Class Actions	383
a. Rule 23(b)(1): The “Prejudice” Class Actions Notes and Questions Note on the “Limited Generosity” Class	383 387 387
b. Rule 23(b)(2): Injunctive or Declaratory Relief Can a Rule 23(b)(2) Class Seek Monetary Relief? <i>Wal-Mart Stores, Inc. v. Dukes</i> Notes and Questions	388 389 390 394
c. Rule 23(b)(3): The “Damages” Class Action	395
i. Whether Common Questions “Predominate”	396
ii. Whether the Class Action Is “Superior” <i>Castano v. American Tobacco Company</i> Notes and Questions	399 400 408
iii. “Issue Certification”	409
iv. Rule 23(b)(3) Cases in Other Contexts	411
4. Can a Class Include Future Claims or Members?	414
5. Defendant Class Actions Question	415 417
D. Issues in Class Litigation	417
1. Definition of the Class and Appointment of Class Counsel	418
2. Interlocutory Appeal of the Certification Decision Notes and Questions	418 419
3. Communicating with Class Members	420
a. Limits Imposed by Professionalism Notes and Questions	421 422
b. The Court’s Authority Under Rule 23 to Limit Communications (and Constitutional Limits on that Authority) Notes and Questions	423 425

4. Discovery from Class Members	426
5. Notice of Class Membership, Opting Out, and Intervention into Class Action	428
a. The Provisions	428
Notes and Questions	428
b. “Best Notice Practicable . . .” and Who Pays to Give It	431
c. Opting Out or Entering an “Appearance” in a Rule 23(b)(3) Class	432
d. Intervening into Any Class Action	432
6. Class Remedies	432
Questions	436
E. Settlement, Voluntary Dismissal, or Compromise of a (Certified) Class Action	436
1. The Need for Court Engagement; Rule 23(e)	436
Notes and Questions	439
2. Overview of the Process	439
3. Getting Information to the Court	440
4. “Settlement Classes” — <i>Amchem Products, Inc. v. Windsor</i>	442
Note on Settling Future Claims (More <i>Amchem</i> )	443
Question	444
Question	444
5. Factors for Assessing Whether to Approve the Proposed Settlement	444
<i>In re General Motors Pick-Up Truck Fuel Tank Product Liability Litigation</i>	446
Notes and Questions	457
F. The Class Action: Jurisdiction and Related Issues	458
1. Subject Matter Jurisdiction	458
2. Personal Jurisdiction	459
Questions	460
3. Mootness and Standing	461
a. Mootness	461
Questions	462
b. Standing, “Exposure-Only” Claims, and the Problem of the “No-Injury Class”	463
4. Statute of Limitations	464
Notes and Questions	466
G. Trends in Aggregate Litigation and the Arbitration Threat	466
H. The Bankruptcy “Alternative” to Class Litigation	471
I. Special Statutory Provisions: CAFA, PSLRA, ALI Principles	473
<b>Chapter 7 · Appointment, Organization, and Compensation of Lead, Liaison, and Class Counsel</b>	<b>477</b>
A. Appointment of Class and Lead Counsel	477
1. Introduction	477
2. Note on the Traditional Model of Designating Class or Lead Counsel: Effective Self-Appointment and Routine Court Approval	478

3. The Emergence of Active Judicial Involvement in the Selection and Appointment of Class and Lead Counsel	479
a. Appointment and Powers of Lead and Liaison Counsel	479
Notes and Questions	483
b. Appointment of “Class Counsel” under Rule 23(g)	485
Notes and Questions	486
c. Selection of Class or Lead Counsel Based on the Submission of Bids	487
Notes and Questions	487
4. Note on the Organization of Defense Counsel in Complex Cases	488
B. Award of Attorney’s Fees in Complex Litigation	489
1. Basis for Fee Awards	489
2. Fee Awards in Complex Litigation	490
a. Background	490
b. Who Is a “Prevailing Party”?	492
<i>Buckhannon Bd. &amp; Care Home, Inc. v. W. Va. Dep’t of Health and Human Res.</i>	492
Notes and Questions	497
c. Fee Awards Based on the “Common Fund” Doctrine	499
3. The “Lodestar” Method of Determining Fee Awards	500
<i>Hensley v. Eckerhart</i>	500
Notes and Questions	505
4. The “Percentage of Recovery” Method of Determining Fee Awards	506
Notes and Questions	507
5. Determining Attorneys’ Fees in Cases Where the Relief Obtained Is Difficult to Value	508
6. Court Authority Over Negotiated Fees	510
<i>Staton v. Boeing Co.</i>	510
Notes and Questions	517
7. Note on the Allocation of Fee Awards Among Counsel	518
8. Note on Expert Witness Fees and Litigation Expenses	519
9. Note on the Use of Third Parties to Fund Litigation	521
<b>Chapter 8 · Discovery</b>	<b>523</b>
A. Introduction	523
B. The Discovery Process in Complex Litigation	524
1. Discovery Plans	524
Note	525
2. Document Depositories	527
3. Document Retention Policies	527
Preservation of Documents, Data, and Tangible Things	
Interim Order Regarding Preservation	529
Notes and Questions	531
4. Judicial Management Techniques	531

5. Traditional Discovery Techniques in Complex Cases	534
6. The Freedom of Information Act and Discovery	537
7. Electronic Discovery	537
<i>Zubulake v. UBS Warburg LLC a/k/a Zubulake III</i>	539
Notes and Questions	544
A Note on Metadata	557
<i>Williams v. Sprint/United Management Co.</i>	560
<i>Kentucky Speedway, LLC v. National Association of Stock     Car Auto Racing, Inc.</i>	564
Notes and Questions	566
C. Protective Orders	568
1. Introduction	568
2. Protective Orders and the First Amendment	569
<i>Seattle Times Co. v. Rhinehart</i>	569
Notes and Questions	574
3. The Outer Boundaries: Protective Orders	575
Notes and Questions	577
D. Attorney-Client Privilege, Joint Defense Privilege, and the Work Product Doctrine	578
<i>United States ex rel. Burroughs v. Denardi</i>	580
Notes and Questions	584
Note on Experts and Privilege	585
E. Discovery Sanctions	586
<i>National Hockey League v. Metropolitan Hockey Club</i>	587
Notes and Questions	589
<i>Arthur Andersen LLP v. United States</i>	594
<i>West v. Goodyear Tire &amp; Rubber Co.</i>	597
Notes and Questions	601
<i>The Pension Committee of the University of Montreal Pension     Plan v. Banc of America Securities, LLC</i>	603
Notes	611
F. International Discovery	612
1. Obtaining Discovery Outside the United States to Support Litigation in an American Court	612
<i>In re Automotive Refinishing Paint Antitrust Litigation</i>	614
Notes and Questions	618
2. Domestic Discovery in Aid of Foreign Proceedings	618
<b>Chapter 9 · Streamlining Complex Cases</b>	<b>623</b>
A. Introduction	623
B. Dismissal on the Pleadings	623
1. Heightened Pleading Standards in Complex Cases	623
<i>Bell Atlantic Corp. v. Twombly</i>	624
Notes and Questions	631
<i>Twombly's Aftermath</i>	632

2. The Heightened Pleading Requirements of the Private Securities Litigation Reform Act of 1995	637
<i>Tellabs, Inc. v. Makor Issues &amp; Rights, Ltd.</i>	640
Notes and Questions	643
C. Summary Judgment	644
1. Introductory Note on the Importance of Summary Judgment in Complex Cases	644
2. Summary Judgment Basics	645
3. Summary Judgment in Complex Cases	646
<i>Matsushita Elec. Indus. Co. v. Zenith Radio Corp.</i>	646
Notes and Questions	651
D. Early Settlement	653
1. Excerpts from the MANUAL FOR COMPLEX LITIGATION	653
Notes and Questions	658
E. Other Alternatives to Litigation	659
1. Overview of Methods of Alternative Dispute Resolution	659
2. Arbitration Under the Federal Arbitration Act	659
F. Streamlining the Trial Process	664
1. Is There a Complexity Exception to the Seventh Amendment?	664
Notes and Questions	669
2. Bifurcation	671
Notes and Questions	671
3. Summaries of Evidence as a Trial Simplification Device	674
Summaries of Depositions	674
Summaries of Direct Testimony	676
Summaries of Non-Testimonial Evidence	677
Notes and Questions	678
4. Judicial Time Limits on Trials	679
5. <i>In re Fibreboard</i> and Trial by Statistics	680
<i>In re Fibreboard Corporation</i>	680
Notes and Questions	684
6. Due Process Problems with Trial by Statistics	690
<b>Chapter 10 · Preclusion</b>	<b>695</b>
A. Introduction	695
B. Non-Mutual Issue Preclusion	697
<i>Parklane Hosiery Co. v. Shore</i>	697
Notes and Questions	702
1. Application of the <i>Parklane Hosiery</i> Doctrine in Complex Cases	702
<i>Hardy v. Johns-Manville Sales Corp.</i>	702
2. The Scope of the <i>Parklane Hosiery</i> “Exceptions”	707
C. Preclusion in Class Actions	709
1. Limits of Claim and Issue Preclusion in Class Actions	709



<i>Cooper v. Federal Reserve Bank of Richmond</i>	709
Notes and Questions	714
2. Relitigation of the Issue of Adequate Representation	715
<i>Stephenson v. Dow Chemical Co.</i>	716
Notes and Questions	721
D. Preclusion of Nonparties to a Previous Action	724
1. Basic Principles	724
<i>Martin v. Wilks</i>	724
Note	727
2. Circumstances in which Non-Parties May Be Precluded	727
a. Traditional Exceptions	727
b. “Virtual Representation”	728
<i>Taylor v. Sturgell</i>	728
E. Interjurisdictional Preclusion	734
1. Preclusive Effect of State Judgments in Federal Court	735
<i>Matsushita Electric Industrial Co. v. Epstein</i>	735
Notes and Questions	742
2. Preclusive Effect of Federal Judgments in State Court	743
<i>Semtek Int’l Inc. v. Lockheed Martin Corp.</i>	743
Notes and Questions	747
<b>Index</b>	<b>749</b>



# Table of Cases

---

- Ist Technology, LLC v. Rational Enterprises Ltd., 531
- Abdullah v. Acands, Inc., 351
- Abraham v. Volkswagen of America, Inc., 350, 351
- Accent Delight International Ltd., In re, 620
- Actos Antitrust Litigation, In re, 523, 524
- Adair v. Sunwest Bank, 676
- Agent Orange Product Liability Litigation, In re, 83, 277, 386, 397, 398, 403, 518, 673, 717, 718, 721
- Air Crash Disaster at Fla. Everglades on Dec. 29, 1972, In re, 479, 519
- Air Crash Disaster at Stapleton Int'l Airport, Denver, Co., on Nov. 15, 1987, In re, 674, 675
- Alabama v. Blue Bird Body Co., 672, 686, 687
- Alexander S. v. Boyd, 322
- Allen v. McCurry, 740, 741
- Allen v. United States, 596
- Allison v. Citgo Petroleum Corp., 393
- Allstate Ins. Co. v. Hague, 260
- Alpern v. Lieb, 308
- ALS Scan, Inc. v. Digital Serv. Consultants, Inc., 45
- Alyeska Pipeline Service Co. v. Wilderness Society, 489, 493, 499, 500
- Amalgamated Clothing Workers v. Richman Bros., 200
- Amalgamated Sugar Co. v. NL Indus., Inc., 211
- Amchem Products, Inc. v. Windsor, 135, 391, 442, 443, 444, 716, 721
- American Express Co. v. Italian Colors Restaurant, 662
- American Express Merchs. Litigation, In re, 469
- American Pipe & Constr. Co. v. Utah, 465, 723
- American Safety Equipment Corp. v. J.P. Maguire & Co., 662
- American Tel. & Tel. Co. v. Compagnie Bruxelles Lambert, 67
- American Tel. & Tel. Co., United States v., 637
- Amgen, Inc. v. Connecticut Ret. Plans & Trust Funds, 375
- Amlong & Amlong, P.A. v. Denny's, Inc., 341
- Amoche v. Guarantee Trust Life Ins. Co., 154
- Amoco Prod. Co. v. Village of Gambell, 230
- Anderson v. City of Bessemer City, N.C., 143
- Anderson v. Cryovac, Inc., 575
- Anderson v. Liberty Lobby, Inc., 645
- Answers in Genesis of Kentucky, Inc. v. Creation Ministries Int'l, Ltd., 220
- Apple, Inc. v. Zipit Wireless, Inc., 13
- Arkansas Educ. Ass'n v. Board of Educ., 362
- Arnstein v. Porter, 644

- Arthur Andersen LLP v. United States, 594, 597
- Asahi Metal Industry Co. v. Superior Court, 4, 5, 9, 10, 11, 26, 53, 55, 56, 58, 62, 63
- Ashcroft v. Iqbal, 135, 632
- AT&T Corp. v. Iowa Utilities Bd., 625
- AT&T Mobility LLC v. Concepcion, 469, 663, 692, 693
- Atkinson v. McLaughlin, 45
- Atlantic C. L. R. Co. v. Brotherhood of Locomotive Engineers, 199, 200, 206, 207, 210
- Atlantic Marine Construction Co. v. U.S. District Court, 171, 173, 254
- Atlas Roofing Co. v. Occupational Safety and Health Review Comm'n, 669
- Auction Houses Antitrust Litig., In re, 487
- Auto Workers v. Hoosier Corp., 282
- Automotive Refinishing Paint Antitrust Litigation, In re, 614
- Avirgan v. Hull, 341
- B.F. Goodrich v. Betkoski, 525
- Badgerow v. Walters, 661
- Baffa v. Donaldson, Lufkin & Jenrette Securities Corp., 382
- Baker v. F & F Investment, 588
- Baldwin-United, In re, 207, 211
- Banco Nacional v. Sabbatino, 271
- Banholzer v. New York Life Ins. Co., 265
- Bank of America Nat. Trust & Sav. Assn. v. Parnell, 272
- Bank of the United States v. Deveaux, 91
- Bank of the West v. Valley National Bank, 583
- Bankers Life & Cas. Co. v. Holland, 317
- Barancik v. Investors Funding Corp., 197, 199, 200, 201
- Barancik. Lattimore v. Nw. Co-Op Homes Ass'n, 203
- Barrett v. Catacombs Press, 42
- Basic, Inc. v. Levinson, 412
- Bates v. State Bar of Arizona, 423
- Battle v. Liberty National Life Ins. Co., 212
- Bay State Ambulance & Hosp. Rental Serv., United States v., 584
- Bayer AG & Miles, Inc. v. Barr Labs., Inc., 578
- Bayou Steel Corp. v. M/V Amstelveorn, 29
- Beacon Theatres, Inc. v. Westover, 665, 666
- Beasley v. Custom Commc'ns, Inc, 422, 423
- Becher v. Contoure Laboratories, Inc., 740, 742
- Bell Atlantic Corp. v. Twombly, 135, 624, 631, 632
- Belleville Catering Co. v. Champaign Market Place LLC, 95, 343
- Benedictin Litigation, In re, 673, 674
- Bennett v. General Caster Serv. of N. Gordon Co., 308
- Berger v. Compaq Computer Corp., 382
- Berger v. United States, 332
- Bevill, Bresler & Schulman Asset Management Corp., In re, 584, 585
- Biolitec, Inc. v. Angiodynamics, Inc., 162
- Bittinger v. Tecumseh Products Co., 733
- Bivens v. Six Unknown Fed. Narcotics Agents, 632
- Blanchard v. Bergeron, 492
- Blas, Estate of, ex rel. Chargualaf v. Winkler, 342
- Blonder-Tongue Laboratories, Inc. v. Univ. of Illinois Found., 697, 699
- Blue Cross and Blue Shield of New Jersey, Inc. v. Philip Morris USA Inc., 690, 691
- Blum v. Stenson, 507
- BNSF Railway Co. v. Tyrrell, 21, 27, 32, 34, 36

- Board of Regents of the Univ. of  
Nebraska v. BASP Corp., 557
- Boeing Co. v. Van Gemert, 509
- Bogosian v. Gulf Oil Corp., 586
- Boguslavsky v. South Richmond Sec.,  
708
- Boise Cascade Securities Litigation, In  
re, 666
- Bonanno v. Quiznos Masters LLC,  
426
- Bonds v. District of Columbia, 590
- Borel v. Fibreboard Paper Products  
Corp., 703
- Boston & Mont. Consol. Copper &  
Silver Min. Co. v. Mont. Ore Purch.  
Co., 89
- Boyle v. United Technologies  
Corporation, 271
- Bradley v. Fisher, 272
- Brale v. Campbell, 341
- Breast Implant Cases, In re, 321
- Brennan v. Midwestern United Life  
Insurance Co., 427
- Bridgeport Music, Inc. v. London  
Music, U.K., 340
- Bridgestone/Firestone, Inc. Products  
Liability Litig., In re, 723
- Brinkley v. Monterey Fin. Servs., Inc.,  
141
- Briseno v. ConAgra Foods, Inc., 360,  
458
- Bristol-Myers Squibb Co. v. Superior  
Court, 12, 13, 460
- Brooke Group Ltd. v. Brown &  
Williamson Tobacco Corp., 626
- Brown & Williamson Tobacco Corp. v.  
FTC, 575
- Brown v. Glines, 572
- Brown v. Kerkhoff, 47, 75
- Brown v. Lockheed Martin Corp., 34
- Buckhannon Bd. & Care Home, Inc. v.  
W. Va. Dep't of Health and Human  
Res., 492, 499
- Buckley v. Valeo, 572
- Bullard v. Burlington Northern Santa  
Fe Ry. Co., 137
- Burford v. Sun Oil Co., 215
- Burger King Corp. v. Rudzewicz, 4, 9,  
24, 26, 42, 63, 64
- Burke v. Kleiman, 378
- Burlington, City of, v. Dague, 452, 506
- Burnham v. Superior Court of Cal.,  
County of Marin, 35, 36
- Burroughs, United States ex rel., v.  
Denardi, 580
- Busch v. Buchman, Buchman & O'Brien  
Law Firm, 53
- Butcher's Union Local No. 498 v. SDC  
Investment, Inc., 65, 74
- Bylinski v. Allen Park, 221
- Byrd v. Aaron's Inc., 360
- Byrd v. Blue Ridge Electrical  
Cooperative, Inc., 244
- Cabrera v. Bayer Healthcare, LLC, 460
- Cafeteria Works v. McElroy, 691
- Calder v. Jones, 45
- California Public Employees Retirement  
System v. ANZ Securities, Inc., 466
- California Public Employees Retirement  
System v. The Chubb Corp., 638
- Callier v. Gray, 304
- Calvert v. Huckins, 67
- Campbell-Ewald Co. v. Gomez, 462
- Campos v. City of Baytown, Tex., 143
- Campos v. Ticketmaster Corp., 187
- Carden v. Arkoma Associates, 94
- Carlough v. Amchem Prods., Inc., 207,  
208
- Carmack v. Massachusetts Bay Transp.  
Auth., 164
- Carnegie v. Household Int'l, Inc., 356
- Carnival Cruise Lines v. Shute, 28
- Carrera v. Bayer Corp., 359, 360
- Carroll v. Lafayette Ins. Co., 129
- Caruso v. Allstate Ins. Co., 149
- Case v. ANPAC Louisiana Insurance  
Co., 125

- Castano v. American Tobacco Company, 400, 412
- CBT Flint Partners, LLC v. Return Path, Inc., 547
- Celotex Corp. v. Catrett, 645
- Cendant Corp. Litig., In re, 478, 487, 488, 508
- Chambers v. NASCO, Inc., 234, 342, 599, 605
- Chan v. Korean Air Lines, Ltd., 186
- Chan v. Society Expeditions, Inc., 68
- Channell v. Citicorp Nat'l Servs., 101
- Charles Schwab Corp. v. Bank of America Corp., 45, 75, 76
- Charlestown Capital Advisors, LLC v. Acero Junction, Inc., 602
- Charron v. United States, 330
- Chase National Bank v. Norwalk, 726
- Chauffeurs, Teamsters & Helpers, Local No. 391 v. Terry, 665
- Cherry v. Dometic Corp., 360
- Chevron U.S.A., Inc., In re, 689, 690
- Chick Kam Choo v. Exxon Corp., 199, 203
- China Agritech, Inc. v. Resh, 465, 723, 724
- China Trade & Dev. Corp. v. M.V. Choong Yong, 225
- Chirila v. Conforte, 75
- Christian Sci. Bd. of Dirs. of First Church of Christ, Scientist v. Nolan, 39
- Christiansburg Garment Co. v. EEOC, 339, 491
- Christmas v. Union Pac. R.R. Co., 141
- Chrysler Corp. v. Fedders Corp., 533
- Cianbro Corp. v. CurranLavoie, Inc., 165
- Cimino v. Raymark Indus., 684, 685, 687, 688, 689, 691
- Cipollone Co. v. Liggett Group, Inc., 574
- City of (See Name of City)
- Clark v. Paul Gray, Inc., 103, 109
- Clearfield Trust Co. v. United States, 270, 271, 278, 281
- Cobell v. Norton, 320
- Coburn v. 4-R Corp., 385
- Coleman v. Estes Express Lines, Inc., 141
- Colorado River Water Conservation Dist. v. United States, 215, 216, 217, 218, 219
- Colosi v. Jones Lang LaSalle Americas, Inc., 547
- Compact Disc Minimum Advertised Price Antitrust Litig., In re, 509
- Conant v. Sherwin L. Kantrovitz, P.C., 165
- Conley v. Gibson, 623, 624, 626, 627, 630, 632, 677
- Connecticut v. Doehr, 691
- Connolly Data Systems v. Victor Technologies, 582
- Consolidated Rail Corp. v. Town of Hyde Park, 416
- Continental Time Corp. v. Swiss Credit Bank, 165
- Cooper Tire & Rubber Co. v. McCall, 30
- Cooper v. Federal Reserve Bank of Richmond, 367, 709
- Copeland v. Marshall, 502
- Copley Pharmaceutical, Inc., In re, 673
- Copperweld Corp. v. Independence Tube Corp., 626
- Cordova v. Pacific States Steel Corporation, 314
- Corrugated Container Antitrust Litig., In re, 207, 708
- Country Vintner of N.C., LLC v. E. & J. Gallo Winery, Inc., 547
- Cox v. American Cast Iron Pipe Co., 361
- Crawford Fitting Co. v. J.T. Gibbons, Inc., 520
- Crawford-El v. Britton, 631
- Crown, Cork & Seal Co v. Parker, 465, 466
- Cruden v. Bank of New York, 525
- Cruz v. Savage, 341
- Cybersell, Inc. v. Cybersell, Inc., 39

- D'Oench, Duhme & Co. v. Federal Deposit Ins. Corp., 270, 271
- Daar v. Yellow Cab Co., 433
- Daimler AG v. Bauman, 15, 16, 21, 22, 23, 32, 35, 37, 46, 68
- Dairy Farmers of America, Inc. v. Bassett & Walker Int'l, Inc., 44
- Dairy Queen, Inc. v. Wood, 665, 667
- Dale Electronics v. R.C.L. Electronics, Inc., 362, 415
- Dataphase Systems, Inc. v. CL Systems, Inc., 226, 227
- Daubert v. Merrell Dow Pharmaceuticals, Inc., 460
- Daval Steel Prods. v. M/V Fakredine, 600, 601
- Davenport v. Lockwood, Andrews & Newman, Inc., 141
- Davis, United States v., 677
- Day & Zimmerman, Inc. v. Challoner, 247
- Day v. Union Mines, Inc., 219, 220
- Daynard v. Ness, Motley, Loadholt, Richardson & Poole, P.A., 69
- Dearmore v. City of Garland, 499
- Deepwater Horizon, In re, 373, 410
- DeJames v. Magnificence Carriers, Inc., 53
- Denny's, Inc. v. Cake, 197
- Dental Supplies Antitrust Litigation, In re, 82, 460
- Devlin v. Scardelletti, 81, 317, 318
- Diet Drugs Products Liability Litigation, In re, 204, 214
- DiLeo v. Ernst & Young, 638
- Dillon v. Nissan Motor Co., 601
- DirecTV v. Imburgia, 470
- Disability Rights Council of Greater Wash. v. Wash. Metro. Area Transit Auth., 554, 555
- Discover Bank v. Superior Court, 469, 692
- District of Columbia Court of Appeals v. Feldman, 213
- Dixon v. Clem, 338
- DL v. District of Columbia, 374
- Doctor's Associates, Inc. v. Casarotto, 663
- Doe v. Unocal Corp., 24, 65
- Doe v. Unocal, 65
- Doe, In re, 582
- Dombrowski v. Pfister, 196, 200
- Donald J. Trump Casino Securities Litigation, In re, 185
- Donovan v. City of Dallas, 191
- Drilling Co. v. Sterling Oil of Oklahoma, Inc., 266
- Dunlop Tires Operations, S.A. v. Brown, 21
- Dupasseeur v. Rochereau, 743, 744
- E&J Gallo Winery v. Andina Licores, S.A., 226
- Eastman Kodak Co. v. Image Technical Services, Inc., 652
- Ehrenhaus v. Reynolds, 298
- Eisen v. Carlisle & Jacquelin, 79, 375, 402, 430, 431, 733
- El-Fadl v. Central Bank of Jordan, 66
- Employers Res. Mgmt. Co. v. Shannon, 199
- Epic Systems Corp. v. Lewis, 663, 664
- Epstein v. MCA, Inc., 720
- Erickson v. Pardus, 632
- Erie Railroad Co. v. Tompkins, 242, 246, 249, 745
- Ernst & Ernst v. Hochfelder, 640
- Erwin-Simpson v. AirAsia Berhad, 75
- Espinosa v. Luthercare, 536
- Estate of (See Name of Deceased)
- Evans v. Jeff D., 494, 495, 514, 517
- Ex parte (See Name of Party)
- Executive Software N. Am., Inc. v. United States Dist. Court, 318
- Exxon Mobil Corp. v. Allapattah Services, 91, 107, 459
- Exxon Mobil Corp. v. Saudi Basic Industries Corp., 214
- Ezzes v. Ackerman, 738

- Fairley v. Andrews, 327, 334  
Farber v. Riker-Maxson Corp., 479, 483  
Farrar v. Hobby, 494, 498  
FC Inv. Group LC v. IFX Markets, Ltd.,  
72, 73  
Federal Skywalk Cases, In re, 484  
Federated Dept. Stores v. Moitie, 695  
Feller v. Transamerica Life Ins. Co., 81  
Ferens v. John Deere Co., 84, 171, 248  
Fibreboard Corp., In re, 408, 680, 681  
Fine Paper Antitrust Litigation, In re,  
479, 519  
Finley v. United States, 102  
First Chicago Int'l v. United Exch. Co.,  
74  
First National City Bank, United States  
v., 8, 56  
First Union Mortgage Corp. v. Smith,  
307  
Fitzhenry-Russell v. Dr. Pepper Snapple  
Grp., Inc., 81, 460  
Flatt v. Johns-Manville Sales Corp., 703  
FMC Corp. Patent Litigation, In re, 84  
Ford Motor Company v. Montana  
Eighth Judicial District Court, 14  
Foster-Miller, Inc. v. Babcock & Wilcox  
Canada, 71  
FPI/Agretech Securities Litig., In re, 519  
Frank's Casing Crew & Rental Tools,  
Inc. v. PMR Technologies, Ltd., 29  
Franks v. Bowman Transportation Co.,  
712  
Frazier v. Pioneer Americas LLC, 146  
Frederico v. Home Depot, 154  
Friends of Earth, Inc. v. Laidlaw  
Environmental Services, Inc., 495  
  
Gannett Co. v. DePasquale, 572, 573  
Garcia v. Teitler, 115  
Garment Co. v. EEOC, 339  
Gary Plastic Packaging Corp. v. Merrill  
Lynch, Pierce, Fenner & Smith, Inc.,  
377  
  
Gasoline Products Co., Inc. v. Champlin  
Refining Co., 672  
Gates v. Rohm & Haas Co., 410  
Gau Shan v. Bankers Trust Co., 228  
Gelboim v. Bank of Am. Corp., 187  
General Bronze Corp. v. Kostopulos,  
272  
General Dynamics Corp. v. Selb Mfg.  
Co., 588  
General Motors Corp. Pick-Up Truck  
Fuel Tank Prods. Liab. Litig., In re,  
207, 446  
General Telephone Co. v. Falcon, 366,  
367, 375, 376, 631  
Georgine v. Amchem Prods., 403  
Gilbert, In re, 317  
Gillard v. Boulder Valley School District  
Re-2, 578  
Gilmer v. Interstate/Johnson Lane  
Corp., 660, 663  
Girsh v. Jepson, 449  
Glock v. Glock, Inc., 619  
Goldberger v. Integrated Resources,  
Inc., 508  
Goldhammer v. Dunkin Donuts, Inc.,  
168  
Goldlawr, Inc. v. Heiman, 169  
Gomez v. United States, 307  
Good v. West Virginia-American Water  
Company, 507  
Goodyear Dunlop Tires Operations,  
S.A. v. Brown, 21, 22, 32, 37  
Goodyear Tire & Rubber Co. v. Haeger,  
342  
Google Referrer Header Privacy  
Litigation, In re, 435  
Goss Int'l Corp. v. Man Roland  
Druckmaschinen Aktiengesellschaft,  
231  
Goss Int'l Corp. v. Tokyo Kikai  
Seisakusho, Ltd., 223  
Go-Video, Inc. v. Akai Electric Co.,  
Ltd., 66



- Grable & Sons Metal Products v. Darue  
Engineering & Manufacturing, 88
- Grand Jury Proceedings, In re, 581
- Grand Jury Subpoena, In re, 585
- Grand Jury Subpoenas 89-3 and 89-4,  
John Doe 89-129, In re, 579, 584
- Grand Jury Subpoenas, Matter of, 581
- Granfinanciera, S.A. v. Nordberg, 669
- Great Rivers Coop. of Southeastern  
Iowa v. Farmland Indus., 422
- Green Tree Financial Corp. v. Bazzle,  
661, 662
- Greene v. Mizuho Bank, Ltd., 460
- Griffith v. United Air Lines, Inc., 241
- GTE New Media Servs. Inc. v. BellSouth  
Corp., 39
- Guaranty Trust Co. v. York, 244, 249,  
263
- Gulf Oil Co. v. Bernard, 424, 425
- Gulf Oil Corp. v. Gilbert, 165, 232, 234
- Gunn v. Minton, 88
- Gunnells v. Healthplan Servs., Inc., 410
- Gunter v. Ridgewood Energy Corp., 507
- Hagan v. City of Winnemucca, 377
- Haines v. Liggett Group, 584
- Halkin, In re, 572
- Hall v. E.I DuPont de Nemours Co., 351,  
352
- Hall v. Hall, 182
- Halliburton Co. v. Erica P. John Fund,  
Inc., 412
- Hancock v. City of Oklahoma City, 298
- Handgards, Inc. v. Johnson & Johnson,  
582
- Hanlon v. Chrysler Corp., 207, 516
- Hanna v. Plumer, 243, 745
- Hansberry v. Lee, 78, 377, 379, 429, 719,  
720, 726, 728, 730, 733
- Hanson v. Denckla, 4, 44, 53
- Hardy v. Johns-Manville Sales Corp.,  
702
- Hartford Life Ins. Co. v. Ibs, 259
- Hartman v. Diamond Shamrock  
Chemicals Co., 717, 721
- Hatcher, Matter of, 332
- Haynes Trane Service Agency, Inc. v.  
American Standard, Inc., 668
- Healix Infusion Therapy, Inc. v. Helix  
Health, 46
- Heavner v. Uniroyal, Inc., 264
- Helget v. City of Hays, 611
- Helicopteros Nacionales de Colombia,  
S.A. v. Hall, 21
- Hensley v. Eckerhart, 495, 497, 498, 500,  
505
- Henson v. E. Lincoln Twp., 416, 417
- Hertz Corp. v. Friend, 25, 94
- Hess v. Pawloski, 28
- Hester v. Bayer Corp., 531
- Hewitt v. Helms, 496, 498
- Hewitt v. Hewitt, 75
- Hickman v. Taylor, 568, 582
- Hicks v. Kawasaki Heavy Industries, 7
- Higginbotham v. Baxter International,  
Inc., 644
- Hilao v. Estate of Ferdinand Marcos,  
317, 689, 690, 691
- Hillman v. Webley, 221
- Hilton v. Guyot, 228
- Hinckley v. Gilman, Clinton, and  
Springfield Ry. Co., 317, 318
- Hinderlider v. La Plata River & Cherry  
Creek Ditch Co., 270
- Hirsch v. USHealth Advisors, LLC, 381
- Hoffman v. Blaski, 184, 255
- Holdings, Inc. v. Morgan Stanley & Co.,  
590, 591
- Home Ins. Co. v. Dick, 260, 261
- Hook v. McDade, 327
- Hooper v. Lockheed Martin Corp., 255
- Hopson v. Mayor and City Council of  
Baltimore, 550
- Howard v. Lyons, 272
- HP Inkjet Printer Litig., In re, 509
- Huebner, United States v., 471

- Hy Cite Corp. v. Badbusinessbureau.com, L.L.C., 39
- Hyde Park Partners, L.P. v. Connolly, 199
- IBM Corp., In re, 335
- IJK Palm LLC v. Anholt Servs. USA, Inc., 620
- ILC Peripherals v. International Business Machines, 667
- Illinois v. City of Milwaukee, 269
- IMO Indus., Inc. v. Kiekert AG, 53
- In re (See Name of Matter or Party)
- In the Matter of (See Name of Matter or Party)
- IndyMac Mortgage-Backed Securities Litigation, In re, 509
- Ingalls v. The AES Corporation, 217
- Ingersoll Milling Mach. Co v. Granger, 220
- Ingle v. Circuit City Stores, Inc., 663
- Insurance Corp. of Ireland v. Compagnie Des Bauxites De Guinee, 29, 32, 616
- Intel Corp. v. Advanced Micro Devices, Inc., 619, 620
- International Bhd. of Teamsters v. United States, 393
- International Shoe Co. v. Washington, 3, 4, 5, 7, 9, 10, 11, 26, 31, 36, 52, 62, 71, 83
- Irwin v. Onondaga Cty. Res. Recovery Agency, 567
- Italian Colors Restaurant v. American Express Travel Related Servs. Co., 356, 470
- Itoba Ltd. v. Lep Group PLC, 54
- Ivy v. Diamond Shamrock Chemicals Co., 717, 721
- J. McIntyre Machinery, Ltd. v. Nicastro, 10, 12
- Jack Faucett Assoc., Inc. v. AT&T, 707, 708
- Jackman v. Rosenbaum Co., 264
- Jackson v. Foley, 362
- Jackson v. United States, 308
- Japanese Electronic Products Antitrust Litigation, In re, 666, 667, 668
- Jenkins v. Raymark Industries, Inc., 398, 402, 410, 681
- Jensen v. Fiserv Trust Co., 412
- John B. Hull, Inc. v. Waterbury Petroleum Prods., Inc., 599, 600
- John Hancock Mutual Life Ins. Co. v. Yates, 246, 260
- Johnson v. Ashby, 679
- Johnson v. Georgia Highway Express, Inc., 501
- Johnson v. Manhattan Ry. Co., 182
- Jones v. Ford Motor Credit Co., 101
- Jones v. NFTA, 600
- Jones v. Thompson, 298
- Joyce v. Federated Nat'l Ins. Co., 506
- Jungquist v. Sheikh Sultan Bin Khalifa Al Nahyan, 74
- Kaepa, Inc. v. Achilles Corp., 227
- Karaha Bodas Co. v. Negara, 226, 227
- Katrina Canal Breaches Consolidated Litigation, In re, 125
- Kaufman v. Allstate New Jersey Ins. Co., 141
- Keeton v. Hustler Magazine, Inc., 80
- Kentucky Speedway, LLC v. National Association of Stock Car Auto Racing, Inc., 564
- Kerotest Mfg. Co. v. C-O-Two Fire Equipment Co., 159
- Kimbell Foods, Inc., United States v., 271, 272
- Kindred Nursing Ctrs. Ltd. v. Clark, 470
- King Cty. v. IKB Deutsche Industriebank AG, 82
- Kiobel v. Millson, 308
- Kirkpatrick v. J.C. Bradford & Co., 382
- Kitsap Physicians Serv., United States v., 602

- Klaxon v. Stentor Elec. Mfg. Co, 171, 177, 245
- Kleiner v. First National Bank of Atlanta, 423
- Kline v. Burke Construction Co., 193, 194, 200, 202, 204, 206, 207
- Knorr Brake Corp. v. Harbil, Inc., 341
- Knotts v. Nissan North America, Inc., 81
- Kohler, United States v., 534
- Kohr v. Allegheny Airlines, Inc., 284
- Kokkonen v. Guardian Life Ins. Co. of America, 115, 116, 494
- Konstantopoulos v. Westvaco Corp., 601
- Korean Air Lines Disaster, In re, 186
- Kramer Motors, Inc. v. British Leyland, Ltd., 67
- Kramer v. Scientific Control Corp., 381
- Kremer v. Chemical Constr. Corp., 737, 742
- Kronisch v. United States, 599, 600, 607
- Kumho Tire Co. v. Carmichael, 135
- L.P. v. Developers Diversified Realty Corp., DDR GLH, LLC, 554
- La Buy v. Howes Leather Co., Inc., 312, 313, 314
- Lafayette Ins. Co. v. French, 35
- Lake v. City of Phoenix, 567
- Laker Airways Ltd. v. Sabena, Belgian World Airlines, 228, 230
- LaMar v. H&B Novelty & Loan Co., 377
- Larson, United States v., 332
- Latimer v. S/A Industrias Reunidas F. Matarazzo, 51
- Lawson v. Spirit AeroSystems, Inc., 545
- Lease Oil Antitrust Litig., In re, 742
- Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 623, 624, 628
- Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach, 189
- Liberty Lincoln Mercury, Inc. v. Ford Mktg. Corp., 362
- Liljeberg v. Health Services Acquisition Corp., 334
- Link v. Wabash R. Co., 336, 588
- Liteky v. United States, 327, 328, 332, 334
- Little Lake Misere Land Co., United States v., 271
- LNS Enterprises LLC v. Continental Motors, Inc., 20
- Local Loan Co. v. Hunt, 115
- Louisiana Power & Light Co. v. City of Thibodaux, 215
- Louisiana v. Mississippi, 317
- Louisville & Nashville R. Co. v. Melton, 88, 265
- Loustalet v. Refco, 584
- Love Canal Actions, In re, 673
- Lowery v. Rhapsody International, Inc., 509
- LTL Management, LLC, In re, 473
- Lucky Brand Dungarees, Inc. v. Marcel Fashions Group, Inc., 696
- Luxshare, Ltd. v. ZF Auto. US, Inc., 621
- M/S Bremen v. Zapata Off-Shore Co., 172, 177
- MacAlister v. Guterma, 477
- MacDermid, Inc. v. Deiter, 44
- Machulsky v. Hall, 42
- Maher v. Gagne, 493
- Maisonvill v. F2 America, Inc., 308
- Makar-Wellborn v. Sony Electronics, Inc., 578
- Makor Issues & Rights, Ltd. v. Tellabs Inc., 644
- Malchman v. Davis, 518
- Mallory v. Norfolk Southern Railway Co., 29
- Manax v. McNamara, 342
- Maness v. Meyers, 343
- Markman v. Westview Instruments, Inc., 670, 671
- Marks v. United States, 12

- Marrese v. American Academy of Orthopaedic Surgeons, 533, 737, 738, 739, 742
- Mars Steel Corp. v. Continental Illinois National Bank & Trust Co. of Chicago, 437
- Martin v. Wilks, 724, 730, 731, 732
- Martindell v. Int'l Tel. & Tel. Corp., 576
- Martinez-Catala, In re, 332, 333
- Mathews v. Eldridge, 62, 691
- Mathis v. John Morden Buick, Inc., 531
- Matsushita Elec. Indus. Co. v. Epstein, 735
- Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 645, 646, 652
- Matter of (See Name of Matter or Party)
- Max Daetwyler Corp. v. Meyer, 53
- MCA, Inc. Shareholders Litigation, In re, 736, 738
- McAninch v. Wintermute, 28
- McDonnell Douglas Corp. v. Green, 628, 712
- McElmoyle v. Cohen, 262
- McGee v. Int'l Life Ins. Co., 54
- MCI Communications v. American Tel. & Tel. Co., 679
- McIntosh v. United States, 602
- McKnight v. General Motors Corp., 679
- Meade v. Grubbs, 298
- Medtronic v. Catalyst Research Corp., 226
- Mellon Bank (East) PSFS, N.A. v. DiVeronica Bros., Inc., 42
- Messner v. Northshore Univ. Healthsystem, 375
- Methyl Tertiary Buthyl Ether (MTBE) Products, In re, 689
- Metro Industrial Painting Corp. v. Terminal Construction Co., 660
- Microsoft Corp., United States v., 322, 335
- Migues v. Fibreboard Corp., 703
- Millenium Enters., Inc. v. Millenium Music, LP, 39, 44, 46
- Milligan v. Anderson, 72
- Milliken v. Meyer, 3, 5, 7, 11, 26, 52, 71
- Mills v. Duryee, 264
- Mink v. AAAA Dev. LLC, 39
- Miree v. DeKalb County, 272, 279, 281
- Miscellaneous Docket Matter #1 v. Miscellaneous Docket Matter #2, 569
- Mississippi ex rel. Hood v. AU Optronics Corp., 137
- Mississippi Publishing Corp. v. Murphree, 58, 83
- Mitchum v. Foster, 201, 203
- Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 662
- Monsanto Co. v. SprayRite Service Corp., 649, 650, 652
- Monster Beverage Corp. v. Herrera, 203
- Montana v. United States, 726
- Moody v. CSX Transp., Inc., 602
- Morales v. Turman, 533
- Morgan Stanley & Co. v. Coleman (Parent) Holdings Inc., 591
- Morgan v. Sundance, Inc., 662
- Mosel Vitelic Corp. v. Micron Technology, Inc., 531
- Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 216
- Mosley v. General Motors Corp., 347
- Moyle v. Liberty Mutual Ret. Benefit Plan, 507
- Mullane v. Central Hanover Bank & Trust Co., 3, 51, 79, 431, 733
- Mullins v. Direct Digital, LLC, 360
- Murphy Bros. v. Michetti Pipe Stringing, Inc., 97
- Murphy v. FDIC, 187
- Murphy, In re, 582
- Nadeau v. Helgemoe, 501, 504
- Napster, Inc., Copyright Litig., In re, 527
- Nassau Cnty. Strip Search Cases, In re, 410

- National City Lines, Inc. v. LLC Corp., 199, 200
- National Equipment Rental v. Szukhent, 28
- National Hockey League v. Metropolitan Hockey Club. 587, 589
- Nations v. Sun Oil Co., 707
- Navistar Maxxforce Engines Marketing, Inc., Matter of, 429
- New Motor Vehicles Canadian Export Antitrust Litig., In re, 75
- New Prime, Inc. v. Oliveira, 661
- New York Life Ins. Co. v. Dunlevy, 118
- New York State Ass'n for Retarded Children v. Carey, 317
- New York Telephone Co., United States v., 212
- New York v. United States Metal Refining, 574
- Newman v. Piggie Park Enterprises, Inc., 490
- Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 363
- Nigh v. Dow Chemical, 677, 678
- NLRB v. Bildisco & Bildisco, 726
- NLRB v. Nash-Finch Co., 200
- NLRB v. Sears Roebuck & Co., 537
- Nolan v. Transocean Air Lines, 247
- Northern Dist. of Cal., Dalkon Shield IUD Products Liability Litigation, In re, 397
- Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 302
- Norwood v. Kirkpatrick, 171
- Nottingham Partners v. Dana, 738
- Nowak v. Tak How Invs., Ltd., 166
- O'Bar v. Lowe's Home Centers, Inc., 551
- O'Neill v. City of Shoreline, 567
- Ohralik v. Ohio State Bar Ass'n, 423
- Oklahoma Packing Co. v. Okla. Gas & Elec. Co., 206, 211
- Oliveri v. Thompson, 341
- Olympic Refining Co. v. Carter, 576
- Omni Capital Int'l v. Rudolf Wolff & Co., Ltd., 56, 57, 62
- Oostendorp v. Khanna, 675, 676
- Oppenheimer Fund, Inc. v. Sanders, 431, 432, 540
- Ortiz v. Fibreboard Corp., 135, 386, 472, 716
- Osborn v. Bank of the United States, 87
- Osborne, United States v., 129
- Ottmann v. Hanger Orthopedic Group, Inc., 639
- Oxford Health Plans LLC v. Sutter, 470
- Pacific Employers Ins. Co. v. Industrial Accident Comm'n, 261, 262
- Pacific Railroad Removal Cases, 87
- Panama, Republic of, v. BCCI Holdings (Luxembourg) S.A., 53, 60
- Paramedics Electromedicina Comercial, Ltda. v. GE Med. Sys. Info. Techs., Inc., 225
- Parklane Hosiery Co. v. Shore, 697
- Paul, Johnson, Alston & Hunt v. Gaulty, 507
- Paxman v. Campbell, 417
- Pazol v. Tough Mudder Inc., 154
- Pennoyer v. Neff, 36, 44
- Pennsylvania Fire Ins. Co. v. Gold Issue Mining & Milling Co., 30, 36, 37, 265
- Pennzoil Co. v. Texaco, Inc., 215, 216
- Pension Committee of the University of Montreal Pension Plan v. Banc of America Securities, LLC, 603
- PeopleHelpers Found, Inc. v. City of Richmond, 331
- Perdue v. Kenny, 506, 513
- Perkins v. Benguet Consolidated Mining Co., 21, 51
- Peskoff v. Faber, 554
- Peterson v. BMI Refractories, 340
- Petrobras Securities, In re, 360
- Phillips Petroleum Co. Inc. v. Shutts, 76, 81, 257, 362, 392, 395, 396, 406, 430, 459, 460, 720, 721

- Phillips Petroleum Co. v. Stahl Petroleum Co., 265
- Phinney v. Wentworth Douglas Hosp., 306
- Pickett v. Iowa Beef Processors, 381
- Pinker v. Roche Holdings, Ltd., 51, 52
- Piper Aircraft Co. v. Reyno, 171, 177, 232, 234, 237
- Poller v. Columbia Broadcasting System, Inc., 644
- Poster v. Central Gulf Steamship Corp., 352
- Potash, In re, 531
- Poulsen v. Dep't of Def., 498
- Powers v. Lycoming Engines, 267, 268
- Premier Elec. Const. Co. v. Nat'l Elec. Contractors Assoc., Inc., 709
- Press v. Chemical Investment Services Corp., 640
- Preston Farm & Ranch Supply, Inc. v. Bio-Zyme Enterprises, 265
- Preston v. Tenet Healthsystems Memorial Medical Center, Inc., 142, 153, 154
- Price v. Kramer, 331
- Priceline.com Inc. Securities Litig., In re, 556
- Princess Lida v. Thompson, 193, 194
- Procunier v. Martinez, 572, 573
- Prudential Insurance Co. America Sales Practice Litig., In re, 457, 508, 518
- PT United Can Co. Ltd. v. Crown Cork & Seal Co., 74, 75
- Pueblo of Laguna v. United States, 531
- Quaak v. Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren, 225, 227, 228
- Quackenbush v. Allstate Ins. Co., 233
- Qualcomm Inc. v. Broadcom Corp., 592
- R.R. Donnelly & Sons Co. v. Jet Messenger Servs., Inc., 28
- Race Tires America, Inc. v. Hoosier Racing Tire Corp., 547
- Raddatz, United States v., 308
- RadioShack Corp. v. Ruffin, 203
- Railey v. Sunset Food Market, Inc., 154
- Railroad Commission of Texas v. Pullman, 214
- Rajaratnam v. Moyer, 306
- Raynor v. G4S Secure Solutions (U.S.A.), Inc., 679
- Real Estate Title, In re, 80
- Reilly v. NatWest Mkts. Group, Inc., 601
- Reiter v. Sonotone Corp., 18, 19
- Republic of (See Name of Republic)
- Residential Funding Corp. v. DeGeorge Fin. Corp., 602, 607
- Revell v. Lidov, 39, 45
- Rhone-Poulenc Rorer Inc., In the Matter of, 403, 406, 407, 672, 686
- Richards v. Jefferson County, 730, 731, 732, 733
- Richmond v. Weiner, 673
- Rikos v. Proctor & Gamble Co., 360
- Robertson v. National Basketball Association, 414, 415, 525
- Robinson, United States ex rel., v. Northrop Corp., 581
- Rockwell International Corp. v. Costruzioni Aeronautiche Giovanni Agusta, 7
- Rodriguez v. Berrymore Farms, Inc., 362
- Rollins Burdick Hunter of Southern California, Inc. v. Alexander & Alexander Services, Inc., 67
- Rooker v. Fidelity Trust Co., 213
- Ross v. Bernhard, 665, 666, 670
- Roth v. Bank of the Commonwealth, 200, 201
- Rowe Entertainment, Inc. v. The William Morris Agency, Inc., 545
- Royal Ins. Co. of Am. v. Quinn-L Capital Corp., 200



- Rufenacht v. Iowa Beef Processors, Inc., 707
- Ruhlin v. New York Life Insurance Co., 245
- Ruiz v. Estelle, 319, 320
- Rush v. Savchuk, 64
- Rushford v. New Yorker Magazine, |575
- S-1 and S-2 v. State Bd. of Ed. of N. C., 493
- Sabrina Roppo v. Travelers Commercial Ins. Co., 154
- Sampson v. Channell, 245
- Samsung Electronics Co., Ltd. v. Rambus, Inc., 528
- Samuels v. Mackell, 199
- San Jose Mercury News, Inc. v. U.S. District Court, 578
- Sanborn Mfg. v. Campbell Hausfeld/Scott Fetzer Co., 227
- Sandpiper Village Condominium Assn. v. Louisiana-Pacific Corp., 213
- Sandusky Wellness Ctr., LLC v. Medtox Sci., Inc., 360
- Santana v. Cook County Bd. of Review, 638
- Sassower v. Field, 599
- Saverson v. Levitt, 676
- School Asbestos Litigation, In re, 388, 403, 409, 426
- Schutte v. Ciox Health, LLC, 141
- Schwab v. Philip Morris, 535
- Schwartz v. Millon Air, Inc., 341, 342
- Schwartzman, Inc. v. ACF Industries, Inc., 300
- Scott v. Cricket Comms., LLC, 154
- Seattle Times Co. v. Rhinehart, 569
- SEC v. Jakubowski, 639
- Sedlacek v. Morgan Whitney Trading Group, 584
- Sekisui America Corp. v. Hart, 611
- Semsroth v. City of Wichita, 545
- Semtek Int'l Inc. v. Lockheed Martin Corp., 743, 748
- Sensient Colors, Inc. v. Allstate Ins. Co., 167
- Shaffer Equip. Co., United States v., 605, 606
- Shaffer v. Heitner, 36
- Shamsuddin v. Vitamin Research Prods., 39
- Shearson/American Express, Inc. v. McMahon, 662
- Shelley v. Kramer, 378
- Silicon Graphics Inc. Sec. Litig., In re, 639, 640
- Silkwood v. Kerr-McGee Corp., 533
- Silver Valley Partners, LLC v. De Motte, 75
- Silvestri v. Gen. Motors Corp., 602, 605
- Simer v. Rios, 359
- Simon II Litigation, In re, 388
- Simon v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 405
- Simring v. GreenSky, LLC, 154
- Sindell v. Abbott Laboratories, 702, 703
- Sinochem Int'l Co. v. Malaysia Int'l Shipping Co., 178
- Slottow v. American Cas. Co. of Reading, Pennsylvania, 67
- Smith v. Bayer Corp., 203, 204, 723
- Smith v. Cafe Asia, 547
- Smith v. Nationwide Prop. & Cas. Ins. Co., 154
- Snowney v. Harrah's Entertainment, Inc., 46, 47
- Snyder v. Harris, 139
- Societe Internationale v. Rogers, 587
- Societe Nationale Industrielle Aerospatiale v. U.S. District Court, 50, 613, 615, 616, 617
- Sole v. Wyner, 499
- Soma Med. Int'l v. Standard Chartered Bank, 46
- Sosna v. Iowa, 461

- Southland Corp. v. Keating, 660  
Southwest Airlines Co. v. Texas  
International Airlines, 704  
Spokeo, Inc. v. Robins, 463  
St. Clair v. Cox, 35  
Standard Fire Insurance Co. v. Knowles,  
139, 140  
Standard Microsystems Corp. v. Texas  
Instruments, 200, 201  
Standard Oil Company, United States v.,  
279, 281, 283  
Stanger v. China Electric Motor, Inc.,  
507  
State Farm Fire & Casualty Co. v.  
Tashire, 92, 119, 155  
Staton v. Boeing Co., 510  
Stauffer v. Bennett, 75  
Steering Comm. v. Exxon Mobil Corp.,  
397  
Stephenson v. Dow Chemical Co., 716,  
721, 722  
Stern v. Marshall, 302  
Stine v. Marathon Oil Co., 678  
Strawbridge v. Curtiss, 92  
Strong v. BellSouth  
Telecommunications Inc., 509  
Stuart v. Spademan, 4  
Subpoenas Duces Tecum, In re, 583  
Sugar Industry Antitrust Litigation, In  
re, 84  
Summers v. Tice, 643  
Sun Oil Co. v. Wortman, 261, 262, 266  
Supreme Tribe of Ben-Hur v. Cauble,  
458, 711  
Swamy v. Title Source Inc., 81  
Swierkiewicz v. Sorema N.A., 623, 628  
Swift v. Tyson, 269  
Switzer v. Much, Shelist, Freed,  
Denenberg, Ament, Bell &  
Rubenstein, P.C., 295  
Symbolic Control, Inc. v. Int'l Bus.  
Machs Corp., 671, 672  
Syngenta Crop Protection, Inc. v.  
Henson, 222, 719  
Synthroid Marketing Litig., In re, 508  
Taniguchi v. Kan Pacific Saipan Ltd.,  
547  
Tanoh v. Dow Chemical Co., 136  
Taylor v. Sturgell, 728  
Teamsters v. United States, 712, 713  
Telectronics Pacing Systems, Inc., In re,  
67  
Tellabs, Inc. v. Makor Issues & Rights,  
Ltd., 640  
Texas Dept. of Community Affairs v.  
Burdine, 712  
Texas Employers' Ins. Ass'n v. Jackson,  
199, 203  
Texas Industries, Inc. v. Radcliff  
Materials, Inc., 271  
Texas State Teachers Ass'n v. Garland  
Indep. Sch. Dist., 498, 499  
Theatre Enterprises, Inc. v. Paramount  
Film Distributing Corp., 626  
Thompson v. Bd. of Educ. of Romeo  
Cmty. Schs., 417  
Thomson, Estate of, v. Toyota Motor  
Corporation Worldwide, 232  
Tice v. American Airlines, Inc., 733  
Ticor Title Ins. Co. v. Brown, 390  
Tilley v. TSX Cos., Inc., 417  
Time Warner Inc. Sec. Litig., In re, 640  
Townsend v. Jemison, 262  
Toyota Motor Corp., United States v., 67  
Toys "R" Us, Inc. v. Step Two, 40  
Transcanada Power Mktg., Ltd. v.  
Narragansett Elec. Co., 165, 166  
TransUnion LLC v. Ramirez, 361, 464  
Transure, Inc. v. Marsh and McLennan,  
Inc., 66  
Treppe v. Biovail, 606  
Troxell, United States v., 333  
Tull v. United States, 669  
Tulsa Professional Collection Services,  
Inc. v. Pope, 726  
Turner Entertainment Co. v. Degeto  
Film GmbH, 221  
Tyrer v. City of South Beloit, 218, 220  
Tyson Foods, Inc. v. Bouaphakeo, 413,  
433, 692



- U.S. Financial Securities Litigation, In re, 667, 668
- U.S. Healthcare, In re, 307
- Union Square Associates Securities Litigation, In re, 738
- Uniroyal Chemical Co., Inc. v. Syngenta Crop Protection, 577
- United Mine Workers v. Gibbs, 100, 108
- United Nuclear Corp. v. Cranford, 575
- United Shoe Machinery Corp., United States v., 323
- United States ex rel. (See Name of Relator)
- United States Parole Commission v. Geraghty, 462
- United States v. (See Name of Defendant)
- United States, In re, 306
- Update Art, Inc. v. Modiin Pub., Ltd., 599
- Upjohn Co. v. United States, 579
- Utah v. American Pipe & Constr. Co., 362
- Vaden v. Discover Bank, 660
- Valentine v. Museum of Modern Art, 600
- Valley Disposal, Inc. v. Central Vermont Solid Waste Mgmt. Dist., 742
- Van Dusen v. Barrack, 171, 187, 248
- Van Gemert v. Boeing Co., 720
- Vangura Kitchen Tops, Inc. v. C&C North America, Inc., 180
- Vasquez v. Superior Court, 412
- Velez v. Marriott PR Management, Inc., 527
- Vendo Co. v. Lektro-Vend Corp., 199, 206
- Venegas v. Mitchell, 492
- Vermeulen v. Renault, U.S.A., Inc., 63
- Vincent v. Hughes Air West, Inc., 519
- Vioxx Prods. Liab. Litig., In re, 467, 519
- Virginia Dept. of State Police v. Washington Post, 575
- Visa Check/MasterMoney Antitrust Litigation, In re, 411
- Vogel v. United States Office Prods. Co., 307
- Volkswagenwerk Aktiengesellschaft v. Schlunk, 47, 48
- W.E. Aubuchon, Inc. v. Benefirst, 554
- Walden v. Fiore, 17, 18, 45, 46
- Walker v. American Home Shield Long Term Disability Plan, 322
- Wallace, United States v., 331
- Waller v. Financial Corp. of America, 584
- Wallis v. Pan American Petroleum Corp., 272, 279, 281
- Wal-Mart Stores, Inc. v. Dukes, 364, 390, 430, 692
- Warfarin Sodium Antitrust Litig., In re, 409, 518
- Washington Pub. Power Supply System Sec. Litig., In re, 508
- Water Splash, Inc. v. Menon, 51
- Watson v. Fort Worth Bank & Trust, 369, 370
- Watson v. Shell Oil Co., 690
- Webb v. District of Columbia, 589
- Wells Fargo & Co. v. Wells Fargo Express Co., 56, 68
- Wells v. Simonds Abrasive Co., 262
- Wenokur v. AXA Equitable Life, 82
- West Pub. Co. v. Mead Data Cent., Inc., 226
- West v. Goodyear Tire & Rubber Co., 597
- West v. Johnson, 331
- West Virginia University Hospitals, Inc. v. Casey, 520
- Western Fuels Assn. v. Burlington Northern R.R., 584
- Western Life Indemnity Co. v. Rupp, 265
- Westfall v. Erwin, 272
- White v. National Football League, 81
- Wiginton v. CB Richard Ellis Inc., 546

- Wilk v. Am. Med. Ass'n, 576, 577  
Wilko v. Swan, 662  
Williams v. Beemiller, Inc., 304  
Williams v. Burlington N., Inc., 80  
Williams v. Morgan, 318  
Williams v. Sprint/United Management Co., 560, 565  
Williams v. Yamaha Motor Co. Ltd., 68  
Wilson v. American Motors Corp., 575  
Wilton v. Seven Falls Co., 221  
Windham v. American Brands, Inc., 411  
Winkler v. Eli Lilly & Co., 206, 207, 208, 211  
WinRed, Inc. v. Ellison, 76  
Winter v. NRDC, 231  
Winters v. Diamond Shamrock Chemical Co., 708  
World Wide Minerals v. Republic of Kazakhstan, 73  
Worldcom, Inc. Sec. Litig., In re, 484  
World-Wide Volkswagen Corp. v. Woodson, 4, 7, 9, 18, 19, 62  
Wyeth v. Impax laboratories, Inc., 565  
Xiong v. Minnesota, 221  
York Int'l Bldg., Inc. v. Chaney, 317  
Young v. New Haven Advocate, 45  
Young, Ex parte, 196  
Younger v. Harris, 198, 215  
Yung v. Raymark, 673  
Zahn v. International Paper Co., 105, 109, 459  
Zemel v. Rusk, 572  
Zenith Radio Corp. v. Hazeltine Research, Inc., 730  
ZF Auto. US, Inc v. Luxshare, Ltd., 620  
Zippo Manufacturing Co. v. Zippo Dot Com, Inc., 38, 39, 41  
Zubulake v. UBS Warburg LLC, 538, 539  
Zyprexa Prods. Liab. Litig., In re, 188, 519

# Preface

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Litigation always has been a complicated undertaking. In the current age of multi-party, multi-claim, and overlapping multi-jurisdiction cases, lawsuits have assumed even higher levels of complexity. This text introduces in a comprehensive but compact way both fundamental and cutting-edge aspects of complex litigation.

In contrast to traditional casebooks, *Complex Litigation* relies on a limited number of leading cases, coupled with extensive text and note material reviewing existing doctrine and exploring unanswered legal and policy issues. The reliance on text and notes to develop underlying legal doctrine minimizes the need for students to search for the necessary background based on fragments or inferences from principal cases.

The text comprehensively treats all aspects of the complex litigation process — from CAFA to the ALI Principles of the Law of Aggregate Litigation, from Internet personal jurisdiction to electronic discovery, and more. The text devotes attention to important and often neglected structural issues, including personal and subject matter jurisdiction, choice of law, mechanisms for coordinating overlapping federal and state litigation, and preclusion. It discusses the real-world conduct, management, and control of the pre-trial and discovery process that characterizes complex cases, as well as trends and emerging legal doctrine that have promoted and facilitated the disposition of complex cases without trial.

Despite its broad coverage, the forthcoming Fourth Edition of this text is streamlined in tackling new developments such as:

**Chapter One** — the Supreme Court’s latest *Ford Motor Company* and *Malloy* decisions in the personal jurisdiction arena;

**Chapter Two** — expanded coverage of alienage jurisdiction, and updated and streamlined coverage of the Class Action Fairness Act;

**Chapter Three** — expanded coverage of multidistrict litigation (MDL) including global settlements, and updated discussion of the application of the Anti-Injunction Act;

**Chapter Four** — updated and streamlined coverage for the whole chapter;

**Chapter Five** — expanded coverage of appointments of masters, and coverage of the Supreme Court’s recently adopted ethics code in conjunction with recusal;

**Chapter Six** — updated and expanded discussion of bankruptcy as an alternative to class litigation, inclusion and discussion of recent Supreme Court

class action cases including *TransUnion v. Ramirez*, and expanded discussion of class action notice and the use and problems of e-notice in class litigation;

**Chapter Seven**—new discussion on the granting of fee awards for FOIA litigation;

**Chapter Eight**—added discussion on how the COVID-19 pandemic has affected the Federal Rules of Civil Procedure during the discovery process, new discussion on the role of technology-assisted review tools, such as artificial intelligence, on the e-discovery process, discussion of two new Supreme Court cases (*Luxshare* and *Alixpartners, LLP*) discussing the role of foreign or international tribunals in assisting the discovery process, and incorporation of updates to the Federal Rules of Civil Procedure since the third edition that affect the discovery process;

**Chapter Ten**—discussion of the *Lucky Brands* decision in the area of preclusion doctrine.

Complex Litigation is nonetheless concise as a result of its primary use of text and note material to develop the implications of leading cases. It may easily be adopted for use in a two- or three-unit course. Careful readers will notice our adoption of certain conventions. For example, in excerpted cases, we have deleted without notation various footnotes and citations. We have retained, however, selected footnotes within excerpted cases for teaching purposes. Those bear both consecutive numbering and, in brackets, the original note number from the opinion. We mostly have not included parallel case cites within excerpted opinions even if the original opinion did so. We have tried to eliminate most instances of boldface type even if excerpted opinions contained boldface headings.

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