



## Releasing Lex Machina's latest 2022 Contracts: Commercial Litigation Report

Join Case Collard (Partner at Dorsey & Whitney), Karen Chadwick (Lex Machina's Commercial Law Legal Data Expert), hosted by Aria Nejad (Lex Machina's in-house counsel), as they discuss federal commercial litigation trends over the last three years and offer insights on judges, parties, law firms, case filings, findings and resolutions, timing, damages, and more. This webcast looks at emerging trends in commercial litigation, including continued effects of the pandemic as well as appellate outcomes.

### Speakers:



Case Collard  
Partner  
Dorsey & Whitney



Karen Chadwick  
Legal Data Expert  
Lex Machina



Aria Nejad  
In-house Counsel  
Lex Machina

Aria Nejad (00:00):

Okay, and welcome everybody to today's webcast where we'll be introducing Lex Machina's newly released commercial litigation report 2022. My name's Aria Nejad, I'm in-house counsel here at Lex Machina and I'm going to be moderating today's webinar. I'm going to be introducing our guests here shortly who will be discussing federal commercial litigation trends over the last three years, and they're going to offer insights on judges, parties, law firms, case filings and more. We're going to take a look at emerging trends in commercial litigation, including some of the continued effects of the pandemic, as well as appellate outcomes, all included in the commercial litigation report.

(00:33):

A couple of quick housekeeping notes before we get started. This is going to be a 25 minute presentation followed by answers to any questions submitted by attendees for up to 30 minutes total. So please share your questions at any time, you don't have to wait until the end, and we'll review them together at the end of the presentation. And also at the end of the presentation we'll have a short survey, which we would really appreciate your feedback on. It only takes about 30 seconds to a minute, and we'll send you a gift card just for participating. So please take the time to share your thoughts with us, on that note.

(01:03):

A little bit about Lex Machina. Lex Machina is legal analytics. It's our focus. Lex Machina provides legal analytics to companies and law firms, enabling them to craft successful litigation strategies, win cases and close business. I'm joined today by my colleague, Karen Chadwick. Karen is a legal data expert in the area of commercial law. Karen came to Lex Machina after serving as a tenured professor of law at Thomas M. Cooley School of Law. Karen previously was in-house counsel for a large automotive supplier in Michigan. In that role, Karen managed the company's litigation throughout the United States. Welcome, Karen.

(01:44):

We're also excited to have with us today Case Collard. Case is a partner at Dorsey and Whitney. He's a first chair trial lawyer with experience representing companies of all sizes in complex litigation and arbitration. He's a computer scientist by training, and a registered patent attorney. Case is fluent in a variety of technical disciplines. And interestingly enough, as a former college football player and a lieutenant with the Golden Fire Department, Case is tenacious and he's very calm under pressure. I really enjoyed working with him just preparing for this webinar. He's honestly probably the only person in this room that could use the jaws of life and litigate a commercial quick case in the same afternoon, so that's always nice to have someone like that around. So at this point I'm going to turn it over to Karen. Karen, go ahead and begin the presentation.

Karen Chadwick (02:30):

Thanks, Aria. Let me just begin by saying that that Aria and Case and I are not in the same place. Aria is in Utah, Case is in Colorado and I'm in Michigan. But we all share an interest in commercial litigation. So today, Case and I are going to discuss Lex Machina's commercial litigation report. The report focuses on the last three years of commercial litigation in the federal courts. When we talk about commercial cases, Lex Machina defines a commercial case as a business dispute between two business entities, where there is at least one claim for a breach of contract or a business tort such as fraud or tortious interference. Or of course, the complaint can contain both breach of contract and business tort claims.

Our report contains in-depth analysis of filings, courts, judges, parties, and all these areas of the law and federal courts, commercial litigation in federal court, including what's happening with Covid and commercial litigation. We're not going to cover everything in depth. If you want to see something, some more depth in any of these areas, please take a look at the report. Next slide, Aria.

So, this is our first slide. And this slide looks at what's been happening with commercial case filings in federal court over the last 10 years. You can see that beginning in about 2014, commercial case filings were pretty flat, until we reached 2021. And then there was a precipitous drop in case filings. The drop was about 20%. This has been really significant, because it's the first time it's happened in a long time. Case, do you have any experience in your practice with a slowdown in case filings?

Case Collard ([04:34](#)):

Well, thankfully my practice, I have not slowed down this year very much. But I think that this goes into really a law firm economics question is how I see this. And this was one of the most significant slides I saw in the whole presentation, so you're getting good value right at the beginning of the presentation. But I've seen articles about deal flow slowing down, and then we've heard about law firm economics and legal work and the legal market slowing down a little bit in 2022. And this is another piece of data that we didn't really have before. But with Lex Machina, we have this piece of data and we can see there really has been a relatively precipitous drop in the number of case filings. That may have a long tail, especially because the litigations that are filed in 2021, as we'll see, have a long timeline that goes through the next few years.

Karen Chadwick ([05:37](#)):

Great insights. Can we have the next slide, Aria? This is a good slide to follow, the 10 year case filing slide. This slide represents what is happening in district courts over the last three years. This is looking at which districts have had the most filings in of commercial cases over the last three years. And you can see that the top districts are the Southern District of New York, the Central District of California and the Northern District of Illinois. This probably doesn't surprise anyone, because the Southern District of New York of course contains New York City, the Central District of California has LA, and the Northern District of Illinois has Chicago. So these are key financial districts and not surprisingly, a lot of commercial cases are filed there. What might be a little bit more interesting is that if you look at the case filings in these districts, just about every district has dropped in 2021 with their case filings. Is there anything that you find particularly thoughtful about this slide, Case?

Case Collard ([06:55](#)):

Well, I think your point that they've dropped off just drives home the point from the prior slide. I guess what I would say is that this type of case, Karen, that you described at the beginning, whether it's a contract or a business tort, these cases are a staple of lawyers, litigators practice. It's probably the most common type of case. The thing I would say here, despite the drop, is that these numbers are pretty stable. This type of legal work is pretty well developed. The jurisdictions, parties know and have known for a long time which jurisdictions they want their commercial disputes to be handled in. And so in a contract, if they're putting in a clause, very common to put in Southern District of New York, because you know what you're going to get. You're going to get sophisticated judges there, that are familiar with these types of cases. I think that this reflects the reality of the fact that this is a pretty well developed area of litigation. Aria mentioned in his very-

Case Collard ([08:03](#)):

... developed area of litigation. Aria mentioned in his very kind intro that I do patent litigation. That's much more volatile. If any of you do or have insight into patent litigation, you would see this insane spike in the western district of Texas over the last few years. That's not what we're seeing here. We're seeing a much more stable environment.

Karen Chadwick ([08:24](#)):

Thanks, Case. The next slide gives us the most active plaintiffs by commercial cases that were filed in the last three years, and I find this particularly interesting. The top plaintiff is Noco Company, and Noco Company is a company that manufactures and sells battery chargers and related products. You can see that in 2019, it brought them to the top of our chart because they filed 175 cases that year. All of the cases that were filed by Noco were filed in the northern district of Ohio.

([09:03](#)):

The other notable thing about the most active plaintiffs is that you can see that there's a significant number of financial institutions as well as two franchisors. Before we comment on the most active plaintiffs, let's take a look at the next slide which presents the most active defendants by commercial cases filed in the last three years. And you can see that the most active defendants also are heavily weighted towards financial entities, so is this surprising to you, Case?

Case Collard ([09:41](#)):

No, and I think maybe Noco being on the top there is surprising, but it's probably their last year on the list unless they have whatever event precipitated all those cases, unless it comes up again in 2022. I think that a lot of practitioners can't really say, "Well, we are on the defense side or on the plaintiff's side mostly," because the same clients are on both sides of these things and both sides of these types of cases. And as everybody knows, almost every time there's cross claims and so there's two sides to this, and a lot of times the question is who got to the courthouse first? And so sometimes, there's not even really that much difference in the claims, whether you're a plaintiff or a defendant because it's a messy business dispute situation that has complaints going both ways if the contract or business relationship, by the time it's made it into litigation.

Karen Chadwick ([10:44](#)):

I'm glad you brought up that point about law firms being on both sides because that goes right into our next slide which shows us the most active plaintiff law firms. At the top of our chart is Kohrman Jackson and Krantz. Not surprising, in 2019, they represented Noco and 176 of those 178 cases brought them to the top of our list.

Case Collard ([11:10](#)):

If anybody knows what Noco was doing in 2019, put it in the question and answer. We'd love to get the insight. Maybe we'll call up somebody at Kohrman Jackson.

Karen Chadwick ([11:20](#)):

Could we see the next slide? The next slide shows the most active defendants' law firms by commercial cases filed in the last three years. And what I think is notable and makes Case's point here is that we're seeing some of the same law firms that were the most active plaintiffs in the most active defendants list.

So the top one, Gordon Rees, is both the most active plaintiff and the most active defendant. Greenberg Traurig, again, both sides, and Fox Rothschild. Is there anything you want to add to that, Case?

Case Collard ([11:56](#)):

No, not much. I think if you've been practicing for a while, you're familiar with probably every one of these, so it's not a surprise to find that these large firms are doing a lot of work, finding a lot of cases on both sides of the matters.

Karen Chadwick ([12:15](#)):

Thanks again. Next, this is a great slide because it brings out our timing analytics that Lex Machina has for each area of the law. So these are our timing analytics for commercial cases that terminated in the last three years. So you can see on this chart that for cases that reached summary judgment, the median time for a commercial case to reach summary judgment was 592 days, the median time for cases to reach trial were 899 days, and the median time for terminating a case was 283 days. Are these timing analytics useful for you in your practice, Case?

Case Collard ([13:05](#)):

They are, and this, I'll be honest, is probably where I get the most value from Lex Machina, is to be able to get some of this data, but specific to a district or specific even to a judge. Because this data is useful, this is aggregated across all the cases over the last three years, and I think that it probably comports with our very broad and general understanding of commercial litigation. How long does it take to get to trial? Two to three years. Boom. It's smack in the middle at two and a half years. How long does it take to get summary judgment? On a trial schedule where you're two to three years out, it takes a year and a half or closer to two years.

([13:48](#)):

So I think that matches, but as far as using it in your practice, really being able to counsel clients when they have a choice about venues and say, "Here's how long it's going to likely take to get to trial in this district. Here's how long it's going to take here." And then when you get your judge and you can set expectations about, well... And you're making decisions there too because sometimes, you have the opportunity to proceed in front of a magistrate. And so if you know that the judge you had, cases are going to trial four years down the line or five years down the line on the very far side of this line, you can say, "Well, we maybe really want to consider agreeing to a magistrate." So this is really a tool that helps you make better strategic decisions, both pre-filing and then once you know who your judge is going to be. So this tool is probably my favorite or most utilized thing from Lex Machina.

Karen Chadwick ([14:46](#)):

Thanks, Case. The next slide shows us how cases that terminated in the last three years were resolved. So on the right hand side of this slide, you can see that the vast majority of cases were resolved by settlement or by some sort of a procedural resolution. Maybe a little bit more interesting is the left side of the slide which shows us what happens on the merits. So if you look at the top of the left hand side, claimants have won 3097 times, so 15% of the time, and the claim defendant has won only 724 or 3% of the time. What is of one of the interesting points of this is that looking at how the claimant wins. So the claimant, half of the wins are on default judgment and then 3% of the wins are at summary judgment, and 1% of claimant wins are at trial, so not that many wins at trial. The claim defendant though predominantly wins either on judgment on the pleadings or on summary judgments. Knowing how cases get resolved, aside from...

Karen Chadwick ([16:03](#)):

Knowing how cases get resolved, aside from settlement and procedural resolution, is this useful information for you, Case?

Case Collard ([16:08](#)):

Well, I think we always tell clients, especially those that don't litigate a lot, that it's not likely that your case is going to trial. And I probably use the number, 95% of cases don't go to trial to be safe, but I'm going to update that to 98% now based on this. So if the client's saying, "Well, we're going to file and we're going to go to trial." That you can tell them there's a lot of other ways the case is probably much, much more likely to get resolved. That's one thing.

([16:39](#)):

The other thing is, probably factoring out default judgment, which tells you some things, but not what I'm going to get at with this point. I think it is pretty interesting to see that if you're looking at summary judgment, and trial, and perhaps judgment on the pleadings as well, what I would consider a more substantive side of it. And so going back to what I was saying before, about there being claims going both ways, I do think that this information helps you make strategic decisions because maybe you are a little faster to file, so that you can be claimant as opposed to counter claimant, and get on the better side of some of these statistics.

Karen Chadwick ([17:24](#)):

Yeah. Thanks for that, Case. The next slide kind of highlights our analytics with respects to findings that are made in commercial cases. So commercial cases over the last few years, findings are... This is just highlighting some of the findings, not all of the findings that are made in commercial cases. But this first slide depicts what is happening with findings with respect to breach of contract and unjust enrichment. The most common finding in commercial cases is a finding of contract breach. As you can see, contract breach is found more than two times as often as no contract breach. Typically, a finding of contract breach is found on default judgment, but nonetheless, it is frequently found also at summary judgment and at trial. The finding of no contract breach is predominantly found at summary judgment. Unjust enrichment, which is frequently pleaded in these contract cases, generally is found most often on default judgment, but no just enrichment is found more often than unjust enrichment.

([18:49](#)):

And no unjust enrichment is frequently found at summary judgment or on the pleadings. Before we discuss this, let's take a look at the business torts findings, which is the next slide. So I find business tort findings really interesting because the claimant usually loses. So you can see tortious interference, which is a very common business tort that is pleaded in these commercial cases, is found about three times more less, so no tortious interference is found three times as frequently as tortious interference. And no fraud is found about twice as often as fraud in these cases. And generally, those findings of no tortious interference, or no fraud, are frequently found on the pleadings or at summary judgment. So this gives you kind of a picture of the kind of findings that are being made at trial, and the likelihood of a specific finding being found in a commercial case. Are these findings useful to you, Case, when you're preparing a case or litigating a case?

Case Collard ([20:05](#)):

So when you're preparing a case and if there's a contract involved, you are... You got your breach of contract claim, right? And you're looking at provisions of the contract that you want to say were



breached. But you also are thinking about other claims that you may bring. Breach of good faith and fair dealing, a tortious interference claim, a fraud claim and claims like that. And so I think it's useful to put all these stats together. I appreciate you going through both slides, Karen, because it shows... It's not surprising to me to get the reminder that these tortious interference claims, these fraud claims, especially the fraud claims, the bar is high. Those are really hard to prove. And so sometimes the lawyers cautiousness, and wanting to say, "I want to include every claim that I can plead and meet my pleading standard, I'm going to include it." But what's the upside?

[\(20:59\)](#):

If you were going to articulate a fraud claim, are you just going to lose that down the road when you have a pretty strong reach of contract claim? And so I think it's important to be aware of the difficulties in some of these claims, and that gives you something to talk to about with the client too, to say, "Yes, we can make these other claims, but what are we giving up if we don't make these claims? Perhaps we are better off just looking at the contract." And then this is a little freebie PSA too, it's just don't forget about the economic loss rule in your jurisdiction, because if you're trying plead tort claims and contract claims in the same case, I think a lot of practitioners are not always thinking about the economic loss rule, and you should. Whether you're a claimant or a counter claimant, make sure that you are appropriately pleading your tort claims.

Karen Chadwick [\(21:57\)](#):

Thanks, Case. Those are great insights into pleading and using findings in your practice. This next slide lists total contract damages awarded and commercial litigation cases by year, in the year that they were awarded. What I find particularly interesting about this list of cases where damages were awarded, is that in 2012 the amount awarded is almost the same as the total amount awarded in 2021. But the number of cases in which damages were awarded was significantly less in 2021 than it was 10 years ago. Do you have any insights into this, Case?

Case Collard [\(22:49\)](#):

The slide kind of speaks for itself. The damages amounts are volatile. The cases have been on the decline.

Karen Chadwick [\(22:56\)](#):

Thank you. This is my last slide and I just want to say a few things about Appellate Analytics. So in the last year, Lex Machina released its appeals analytics, which just provides a wealth of information about what happens on appeal in federal courts. I am not going to be able to go into all the analyses that we have, with respect to tort appeals, but this slide shows what the reversal rate is for commercial cases that terminated in the last three years, and in which there was an appeal. So the reversal rate, and when I say the reversal rate, I'm talking about cases that were reversed, or reversed in part, is 31%. So you can see that you're almost twice as likely to have the district court ruling affirmed an appeal based on these analytics.

Karen Chadwick [\(24:02\)](#):

Based on these analytics, is this useful? Is the appellate analytics useful for you, Case?

Case Collard ([24:08](#)):

It is. I think that there are... Very few cases get to trial. We saw that. Fewer still get to appeal because a lot of cases, even after verdict or after a finding from the court, the parties still settle because they can say, "All right, now in light of that we can settle it this way and drop the appeal." So this is a smaller subset of cases that really made it that far, and then the reversal rate, too, is reversed and partially reversed. So reversed is pretty meaningful, partially reversed, hard to get a lot of meaning out of that because it could be minor points or it could be major points if it's reversed in part, but I guess what I would say is banking on appeal as your legal strategy, that's just a tough road to hoe. That's what I would say I take from this slide. I don't think very many lawyers really say, "We're going to get them on appeal." I think we have a sense of when you have good appeal points and when you have tougher appeal points, but hopefully this brings folks back to reality a little bit about if you've had an outcome didn't like at the trial court level, that you need to be thinking contingencies rather than how you're going to go show everybody on appeal.

Karen Chadwick ([25:33](#)):

Thanks, Case. That is really useful to think about managing expectations. Well that ends our presentation, but let me take a few of these questions that have shown up. The first question I have is for Case and it says, "Of everything discussed, aside from timing analytics, what do you find most useful in your practice?"

Case Collard ([25:55](#)):

Thanks, Karen. I think it's harder to say because you took out the one that I said is most useful, timing analytics, but to try to be true to your question, I will say that I think that the overall filing data is very interesting to me because a lot of us wear two hats. We wear our litigator hat but then we are thinking about law firm management and the business of law and having some of that data about what's going on in the wider legal world, that's in short supply. So I think that's helpful if you're thinking about things in terms of the business of law and what's coming up.

Karen Chadwick ([26:40](#)):

Thanks, Case. Not to put you on the spot, this next question is for you, too. "Do you have any predictions for the next few years in commercial litigation? Any major shifts or movements that you think are coming about?"

Case Collard ([26:53](#)):

So I will tell you one of the things I'm watching, but first I want to answer, we had another question that I just saw come in that I think I can answer quickly. These are actually both from James. So James, I appreciate you putting these in. His first question, I think, was about the dip in cases, "Have more cases gone to arbitration?" Who knows? Is the actual answer because arbitration is private, it's often confidential. I'm not aware of any way to track numbers on cases going to arbitration. I suppose you could track arbitration awards being enforced and see if that's gone up, but that would be a placeholder for the actual numbers, so I don't think we know.

([27:40](#)):

And then, "Aren't there differences in timing in federal and state court?" Yes, absolutely. And that's actually a huge driver, I think, on where you file a lot of times is times trial and court congestion. And depending on where you are, state courts might be much faster than the federal courts or the federal courts might be faster than the state courts. So that's why it's important to have local practice



knowledge. And then to get, Karen, to your question about predictions or what I'm watching, I think it is a lot around court congestions, so it's James's second question. Clients are always thinking about, "I have a dispute now. You're telling me I can have this dispute decided by a court two years from now?" That timeline is a timeline that, for business people, is not a very natural timeline.

[\(28:39\)](#):

So I think the court congestion is something that I'm always thinking about and looking at that that has a lot of factors that you can be... Political factors. Are judges being replaced quickly or are judges being held up in the Senate for federal court judges? Just yesterday there was an order out of the Western district of California saying, "We're canceling all civil motion hearings. We don't have the bandwidth because we don't have enough judges." And a lot of civil motions don't always have a hearing if it's a discovery motion or even summary judgments and things like that, but they just said, "Look, we're canceling them all." And they're focusing on scheduling conferences, pre-trial things that need to take the court's time, so I think keeping an eye on that is something that I'm always looking at to think about what jurisdiction you may want to be in if you have a choice on where you can litigate.

Karen Chadwick [\(29:41\)](#):

Great insights. I'm going to give this next question to Aria because I think we're at the end of the time, but the next question is, "How do we get the report?" Aria.

Aria Nejad [\(29:50\)](#):

Yeah, terrific. Yeah, thanks for that Karen. And I just wanted to thank everyone for joining us today, so just real quickly, if you already are a Lex Machina customer, you can just log in and find the report in the help center right now. So when you log in, just go up to your name on the upper right hand corner. The Help Center is in that menu. And if you're not a Lex Machina customer, you'll receive an email with a follow-up information as well. And as a non-customer, we do ask that you spend just a few minutes with one of our legal data experts before you receive the report and then we will give you the report. I really want to thank Karen and Case for all your expertise. Thank you guys so much. Really appreciate their your time this morning and thank you everyone for joining us. If you have any questions, just reach out to us directly via the Lex Machina website and enjoy the rest of your day everyone. Thank you. Goodbye.

Karen Chadwick [\(30:32\)](#):

Thanks, Aria.

Case Collard [\(30:34\)](#):

Thanks everybody.