

OVERVIEW

The West Virginia Business Court is a Division within West Virginia's Judiciary designed to handle complex commercial litigation between businesses. In 2010, the legislature passed House Bill 4352 authorizing the Supreme Court of Appeals to conduct a study and make a recommendation regarding the creation of a business court division. The Court appointed a committee to study the feasibility of a business court and ultimately a proposal was presented to the Supreme Court with a recommendation by the committee that a business court division be established within the circuit courts. The committee then drafted a rule to govern complex business litigation. After deliberation, public comment, and revision, the West Virginia Supreme Court of Appeals unanimously approved Trial Court Rule 29 on September 11, 2012. Justice Robin Jean Davis, Administrative Director Steven Canterbury, and Division Chair Christopher C. Wilkes held a formal opening of the Business Court Division on October 10, 2012 at the Central Office located in the Berkeley County Judicial Center in Martinsburg.



BUSINESS COURT JUDGES

The Division currently consists of six judges appointed by the Chief Justice to serve a term of seven years. These judges have agreed to undertake the additional caseload because they have a particular interest and expertise in business litigation. Rule 29 allows for one additional Judge to be appointed to the Division as the need arises. The Chief Justice designates one of the Division Judges to serve as Chair every three years. Rule 29 indicates there is no prohibition against serving successive terms, either as judge or as Chair of the Division.

Below are the Business Court Division members and the expiration dates of their terms:



Honorable Christopher C. Wilkes*
Judge of the Twenty-Third Circuit
Business Court Region G

October 9, 2019

Shall serve as Chair through October 9, 2015



Honorable James J. Rowe*
Judge of the Eleventh Circuit
Business Court Region F

October 9, 2019



Honorable James H. Young Jr. *
Judge of the Twenty-Fourth Circuit
Business Court Region D

December 31, 2019



Honorable Thomas C. Evans III**
Judge of the Fifth Circuit
Business Court Region C

October 9, 2019



Honorable Russell M. Clawges Jr.***
Judge of the Seventeenth Circuit
Business Court Region A

September 30, 2020



Honorable Paul T. Farrell***
Judge of the Sixth Circuit
Business Court Region D

September 30, 2020

* Appointed by Chief Justice Menis Ketchum by Administrative Order dated September 11, 2012.

** Appointed by Chief Justice Brent D. Benjamin by Administrative Order dated March 4, 2013 to fill Former Judge Cookman's unexpired term

*** Appointed by Chief Justice Brent D. Benjamin by Administrative Order dated October 1, 2013.

The Division Judges receive specialized training in business law subjects, are members of the American College of Business Court Judges, and are members of the Business Law Section of the American Bar Association. They meet semi-annually at the Judicial Conferences to discuss new developments, case load distribution, case management techniques, and any other issues that may need addressed. The Division Judges currently communicate via email and telephone to discuss case assignments and scheduling; however, the Division is exploring web conferencing software for “face-to-face” meetings amongst the Division Judges and possibly non-evidentiary hearings in business cases. Video conferencing will potentially reduce travel expenses and expedite proceedings. The Division is also in the process of developing policies and procedures, and plan on suggesting modification to Rule 29 to the Supreme Court for amendment in 2014.

STAFF

The central office is administered by Carol A. Miller who is employed by the Supreme Court of Appeals as Assistant to Judge Wilkes. She was given the additional title of Executive Director of the Business Court Division in 2013. The Executive Director works closely with the Division Judges to implement procedures and policies to improve efficiency. Her duties also include coordinating referrals and assignments and implementing appropriate technology to ensure the Business Court Division is running effectively. The Executive Director also performs any other administrative action necessary to assist the Division Judges with achieving effective management of Business Litigation. Lorri J. Stotler was hired in 2013 to assist the Juvenile Justice Monitor, and also assists the Executive Director of the Business Court Division as needed in the Central Office.



Although the Division Judges agreed to take on the additional workload and oftentimes work longer hours, the Judges’ law clerks are now inundated with time-sensitive, complex motions in addition to their regular obligations requiring them to work longer hours as well. The Division will be approaching the Supreme Court in the future to discuss the concept of employing law

clerks to work solely on Business Court cases. The law clerks will be required to travel to evidentiary hearings and trials; however, web conferencing as discussed previously would be the ideal mechanism for the law clerks to participate in non-evidentiary hearings, and to have “face-to-face” meetings with any of the Division Judges to discuss motions without the expense of travel.

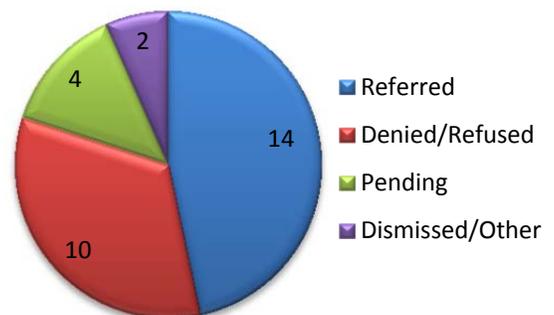
HIGHLIGHTS OF 2013

The Business Court Division was invited to participate in several events in 2013. They presented to various groups including the State Chamber of Commerce, the Berkeley County Chamber of Commerce, the Business Lawyer Division Conference, several Bar Association meetings and CLE’s to apprise the lawyers and businesses of the purpose and benefits of having their cases litigated in West Virginia’s Business Court Division. The Division Judges received specialized training over the past year which included mediation training sponsored by the West Virginia State Bar, Mediating the Litigated Case by Straus Institute for Dispute Resolution, Financial Statements in the Courtroom, and the Complex Commercial/Business Litigation Course at the National Judicial College. Some of the Division Judges also attended the American College of Business Court Judges Annual Conference in Arlington, Virginia. Much of the training and educational opportunities were paid for by scholarships or the providers at no cost to the state. Two of the Division Judges were invited and participated in a panel discussion at a seminar presented by Appalachian Institute of Digital Evidence regarding electronic discovery. Chairman Judge Wilkes penned an article titled, “West Virginia’s New Business Court Division: An Overview of the Development and Operation of Trial Court Rule 29,” which was published in the *West Virginia Lawyer*, January – March 2013. As approved by the Court, the Division will continue to attend courses relating to management of complex business litigation. They will also remain active with the local and statewide bar and business associations to update the lawyers and public on any rule changes and business court statistics.

BUSINESS COURT CASE ACTIVITY

The Business Court has had thirty motions to refer filed since inception, ten were denied and fourteen were referred to the Business Court Division by the Chief Justice. One case was dismissed before the motion to refer was transmitted to the Chief Justice. One motion to refer was filed past the three month deadline and the Judge has yet to forward it to the Chief Justice. One motion was still pending with the Chief Justice at the end of 2013, and three motions were still pending with the presiding circuit judge.

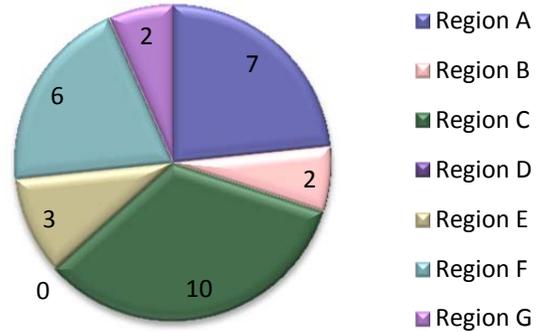
Rulings by Chief Justice



Applications to Business Court

The majority of applications came from Kanawha County which is located in Region C. There were no requests for referral to the Business Court Division from Region D. The chart to the right represents the number of requests by region.

Applications to Business Court by Region



The map to the left shows the Business Litigation Assignment Regions.

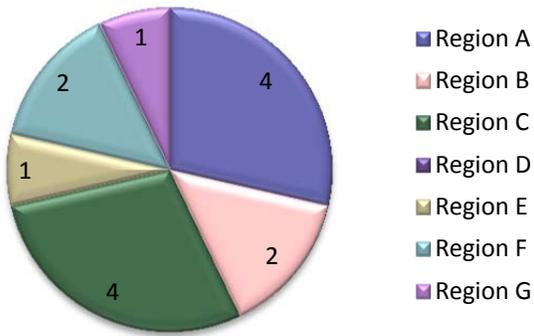
The table to the right indicates the counties from which the applications to business court were made.

	County	Number of Applications
A	Harrison	4
	Monongalia	1
	Upshur	1
	Preston	1
B	Marshall	1
	Ohio	1
C	Kanawha	10
E	Raleigh	1
	Wyoming	2
	Monroe	1
F	Greenbrier	4
	Monroe	1
	Mercer	1
G	Berkeley	1
	Hampshire	1

Referrals to Business Court

The chart below represents the number of cases referred to the Business Court by region and again the map to the right represents the Business Litigation Assignment Regions.

Cases Referred by Region



The table below displays the number of cases referred by region and county.

Region	County	Number of Cases Referred
A	Harrison	2
	Monongalia	1
	Upshur	1
B	Ohio	1
	Marshall	1
C	Kanawha	4
E	Raleigh	1
F	Greenbrier	1
	Mercer	1
G	Berkeley	1

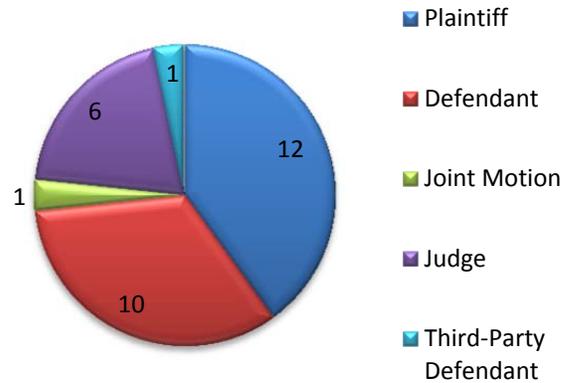
Types of Cases Referred to Business Court

The table below represents the nature of cases that have been referred to the Division by county.

County	Nature of Case
Berkeley County	Breach of contract/professional liability. Also, the insurance company has intervened seeking interpretation of the insurance contract.
Greenbrier County	Injunctive and Declaratory Relief between Commercial Entities; Liability of Shareholders, Directors, Officer, Partners, etc.; and Shareholders Derivative Claims
Harrison County	Breach of Contract; Professional Liability Claims in Connection with the Rendering of Professional Services to a Commercial Entity
Harrison County	Breach of Contract; Commercial Torts; and Professional Liability Claims in Connection with the Rendering of Professional Services to a Commercial Entity
Kanawha County	Dispute over management, operations, control, and governance of Company
Kanawha County	Negligent performance of Consulting Services by the Defendant; Breach of Implied Warranty of Workmanlike Performance by Defendant; Misrepresentation by Defendants; Breach of Warranty by Defendant
Kanawha County	Breach of Contract
Kanawha County	Injunctive Relief Between Commercial Entities; Liability of Shareholders, Directors, Officer, Partners, etc.; Disputes Involving Commercial Entities; and Requests for Dissolution of Commercial Entities
Marshall County	Claims for Breach of Contract; Breach of Warranty; Various Torts; and the Breach of the Implied Duty of Good Faith
Mercer County	Commercial Coverage Disputes
Monongalia County	Breach of Fiduciary Duty, Violation of the Solicitation of Charitable Funds Act, constructive Fraud, Civil Conspiracy, and Violations of the Freedom of Information Act
Ohio County	Breach of Contract, Breach of Implied Duty of Good Faith and Fair Dealing, Tortious Interference with the Coal Supply Agreement, and Corporate "alter ego" claims
Raleigh County	Breach of Contract, Unjust Enrichment
Upshur County	Complex commercial and property law issues; ownership or possessory rights of mining equipment disputes

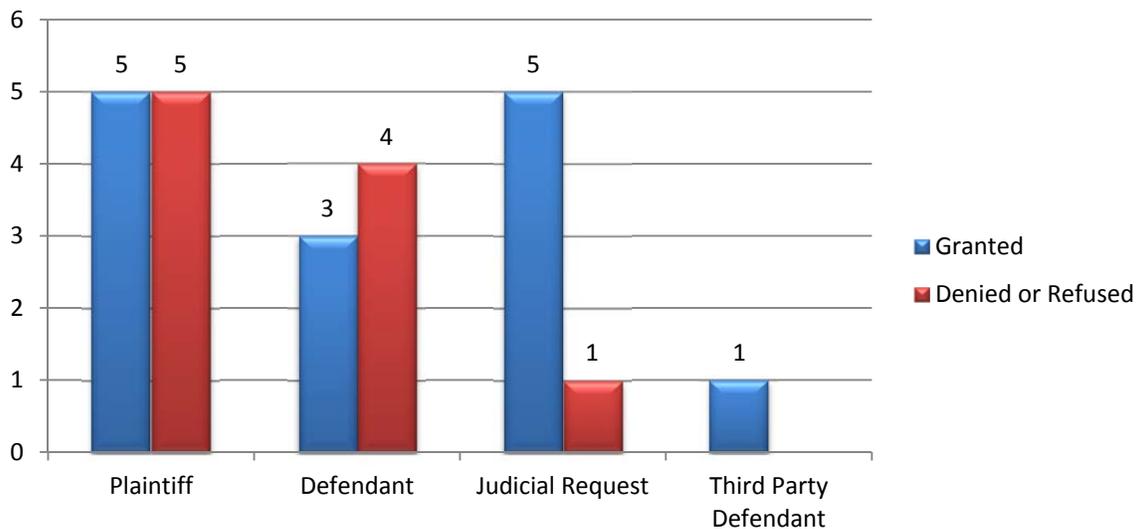
How Cases Transfer to Business Court

Any party or judge can request referral of a case to the Business Court Division. The chart to the right represents who made the initial requests. Nine of the motions were unopposed. Four of the motions were initially filed by plaintiff or defendant, however, the Judge joined in by filing a Judicial Request.



The chart below represents the Chief Justice’s rulings on the motions to refer to the Business Court Division in 2013. On four of the motions, the Chief Justice directed the Division to conduct hearings to receive evidence and entertain arguments by the parties or any judge and submit findings of fact and a recommendation to the Chief Justice. The Division recommended three out of the four cases be referred to the Division, all three of which were referred by the Chief Justice.

Referrals and Denials/Refusals by Chief Justice



As of December 31, 2013, the Business Court Division is pleased to announce that the three cases below have been resolved, two of which Judge Young served as Resolution Judge and held mediation sessions. The other case resolved after mediation with a private mediator.

Name of Case	County	Presiding Judge in Business Court	Age of Case (in days)	Age in Bus. Ct. (in days)
Casto Technical Services, Inc. vs. Omega Facility Solutions, Services & Surety, LLC	Kanawha	James H. Young, Jr.	459	369
DB Land, LLC vs. Empire Consulting Services, et al.	Kanawha	Christopher C. Wilkes	497	329
Mountain State Carbon, LLC vs. Bluestone Coal Corporation, et al.	Ohio	Christopher C. Wilkes	1939	249

The table below shows the name of the pending cases, county of business litigation, presiding business court judge, age of case, and business court age. All of which have firm trial dates set in 2014.

Name of Case	County	Presiding Judge in Business Court	Age of Case (in days)	Age in Bus. Ct. (in days)
Keith W. Atkinson vs. General Glass Company, Inc., et al.	Kanawha	James J. Rowe	435	272
Martin N. Holley vs. Lydia M. Beirne, et al.	Kanawha	James H. Young, Jr.	351	235
POB, LLC, et al. vs. Grant Architects, P.C., Inc., et al.	Harrison	Thomas C. Evans III	418	272
Harrison County Development Authority vs. Tetrick & Bartlett, PLLC	Harrison	James H. Young, Jr.	399	214
Erie Insurance Property and Casualty Company vs. Lambert Construction Company, et al.	Mercer	James J. Rowe	365	235
Gito, Inc. vs. Board of Education of the County of Marshall, et al.	Marshall	Thomas C. Evans	340	186
Bernard Holliday, et al. vs. William Toney, et al.	Greenbrier	James J. Rowe	266	190
Dealership Management Company, LLC vs. Air-Row Sheet Metal Co., Inc., et al.	Berkeley	Christopher C. Wilkes	916	152

Shell Equipment Co., Inc. vs. Rossco Limited Liability Company, et al.	Upshur	Christopher C. Wilkes	2155	98
West Virginia Radio Corporation vs. West Virginia University Board of Governors, et al.	Monongalia County	Thomas C. Evans III	195	96
Wylie Steel Fabricators, Inc. vs. Rock & Coal Construction, Inc.	Raleigh	Paul T. Farrell	168	40

FEEDBACK

The Executive Director sends a survey to all counsel upon resolution of each business court case and requests that it be completed anonymously and returned to the central office. The input from counsel allows the Division to implement or modify procedures and rules in hopes of achieving more effective litigation management.

After one year and three resolved cases, the feedback thus far has been positive. Attorneys have expressed overall satisfaction with the Business Court Division. They feel that the Business Court Division is “very valuable” in getting litigation resolved and provides a more efficient mechanism for the resolution of complex commercial litigation in West Virginia. They view early trial dates and the speedy discovery process as positive attributes. One attorney states, “via a speedy discovery process, parties had to understand each other’s positions quickly [and] efficiently. This ultimately led to a prompt resolution.” Provided that Rule 29.08(g) states that the Business Litigation should proceed to final judgment in an expedited manner...[and] that the Presiding Judge shall make all reasonable efforts to conclude Business Litigation within ten months from the date the case management order was entered and considering the above data, the Business Court Division has had a successful first year. The Division will continue working diligently to efficiently manage and resolve complex litigation involving commercial issues and disputes between businesses.