



# BUSINESS COURT DIVISION

2015 Annual Report



## OVERVIEW

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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, which was later amended by order entered June 13, 2014. 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

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The Division consists of seven judges appointed by the Chief Justice to serve a term of seven years. These judges maintain their own general dockets but have agreed to undertake the additional caseload because they have a particular interest and expertise in business litigation. 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.



*Photo above by Jennifer Bundy:* Division Judges at the 2015 Fall Judicial Conference, front row: Judges Young, Wilkes, & Rowe; back row: Judges Evans, Clawges, Carl, & Farrell.

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, caseload distribution, case management techniques, and any other issues that may need addressed.

Below are the Business Court Division Judges and their terms:



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

October 9, 2019

Chair through October 9, 2018



**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



**Honorable H. Charles Carl III\*\*\*\***  
Judge of the Twenty-Second Circuit  
Business Court Region G

June 30, 2022

\* 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.

\*\*\*\*Appointed by Chief Justice Margaret L. Workman by Administrative Order dated June 24, 2015.

## STAFF

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The central office is administered by Carol A. Miller, the Executive Director of the Business Court Division. She works closely with the division judges to implement procedures and policies to improve efficiency. Her duties also include coordinating referrals and assignments, implementing appropriate technology and any other administrative duties necessary to assist the division judges with achieving effective management of business litigation. Lorri J. Stotler assists the Executive Director of the Business Court Division as needed in the central office. Claire A. Watson, hired in 2015 serves as law clerk to assist the division judges with legal research and analysis, drafting orders, and assisting in court hearings and trials.

## DEVELOPMENTS IN 2015

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The Division, with the assistance of Rory Perry, Clerk of Court, implemented an online case management system which became available to the public in February so that the public can follow business court cases. This system can be found under the Business Court Division link on the official website of the Supreme Court of West Virginia. All cases moved for referral to the Division can be searched on this system by case number, case title, county, or case status. Significant orders including assignment and scheduling orders are posted for public view. Additionally, motions to refer and the Chief Justice's orders granting or denying referral are viewable. This was developed after receiving feedback that attorneys would like a way of researching prior motions to refer and the Court's opinions as to the granting or denial of a motion to refer.



## OTHER HIGHLIGHTS OF 2015

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In June, Judge Young and Judge Wilkes had the opportunity to present to West Virginia business owners and members of the Putnam County Chamber of Commerce an overview of the Business Court Division and its significance to business owners.



Judge Wilkes presented at five of the West Virginia State Bar regional meetings including Shepherdstown, Moorefield, Bridgeport, Morgantown, and Wheeling at the request of Anita Casey, Executive Director of the West Virginia State Bar. Judge Carl co-presented with him in Moorefield and Judge Clawges co-presented with him in Morgantown. The presentations detailed the requirements for having a matter transferred to the

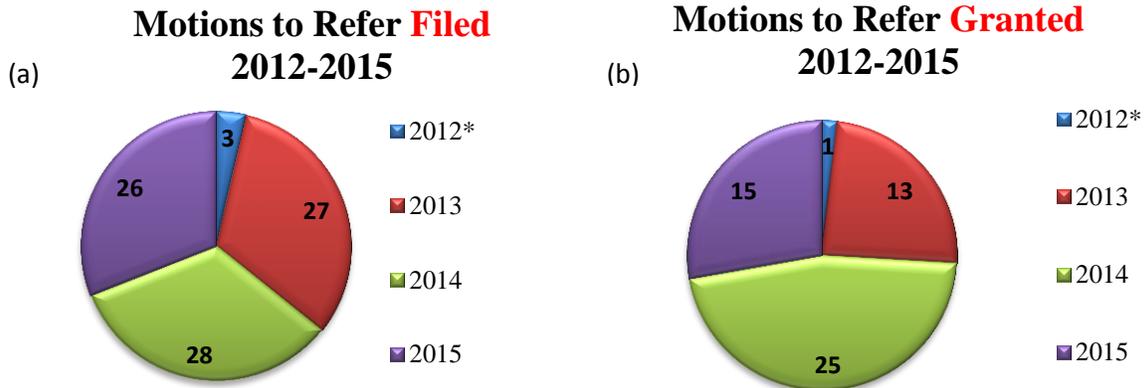
Business Court and outlined the practices and procedures employed once a transfer is made.

Judge Rowe attended the annual meeting of the American College of Business Court Judges in Las Vegas, Nevada, and also attended a week long course at the National Computer Forensic Institute for Judges in Hoover, Alabama.

The division judges will continue to attend courses relating to the management of complex business litigation and will also remain active with the local and statewide bar and business associations as requested to update lawyers and the public on any rule changes and business court statistics.

## BUSINESS COURT CASE ACTIVITY

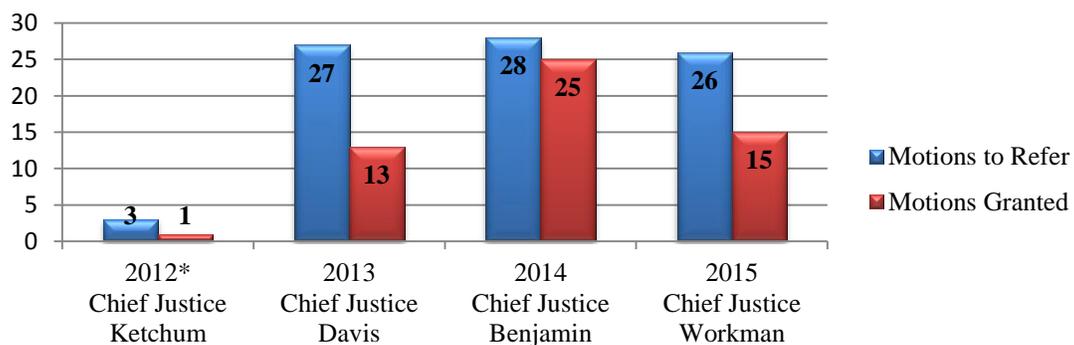
Since inception, **84** motions to refer to the Business Court Division have been filed; the yearly breakdown is shown in chart (a) below. Of those motions, **54** were granted and referred to the Business Court Division; the yearly breakdown of referrals is shown in chart (b) below. Five of the motions filed did not require a ruling from Chief Justice due to settlement or withdrawal.<sup>1 2</sup>



*\*Business Court was established October of 2012.*

The chart below shows the number of motions to refer filed compared to the number of motions granted per year and the Chief Justice deciding the motions:

### Comparison of Filed Motions to Granted Motions

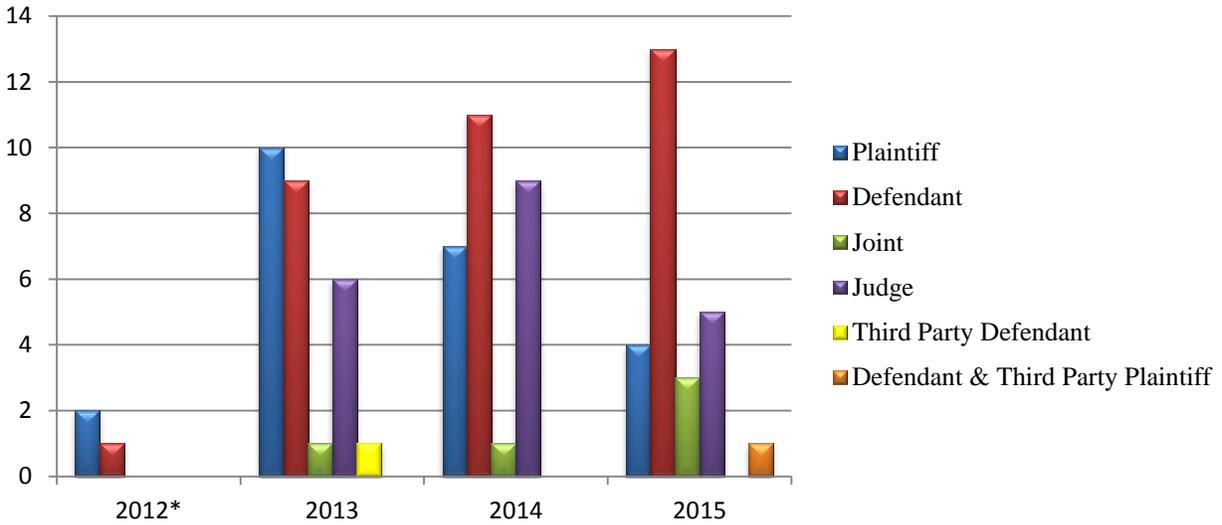


*\*Business Court was established October of 2012.*

<sup>1</sup> Since these five cases did not require a ruling of the Chief Justice, they were not included on the online case management system.

<sup>2</sup> Statistics may be different from the 2013 Annual Report due to certain cases being consolidated. Consolidated cases will be counted as one case for the purposes of the Annual Report regardless of consolidation before or after referral.

## Who Filed Motions to Refer Each Year?

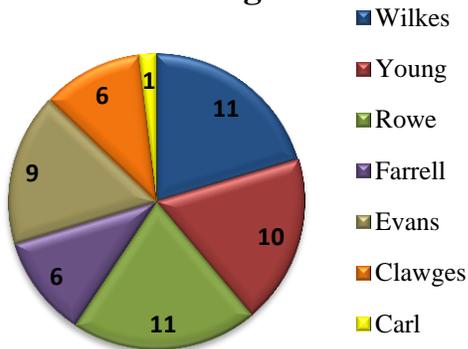


\*Business Court was established October of 2012.

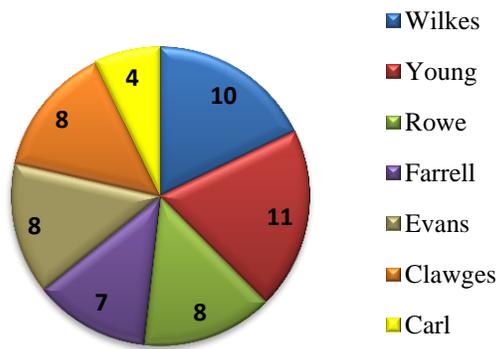
## How Cases Are Assigned

The Chair considers the locality, number of assignments, and expertise of the judges when receiving a new referral. He then consults with the division judges to ensure there are no conflicts before making assignments of presiding and resolution judge. The cases since inception have been assigned as indicated in the charts below:

**Assigned as Presiding Judge**



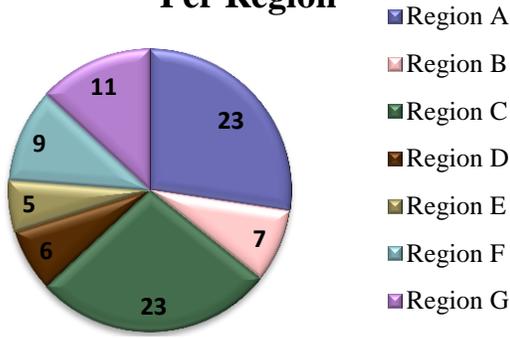
**Assigned as Resolution Judge\***



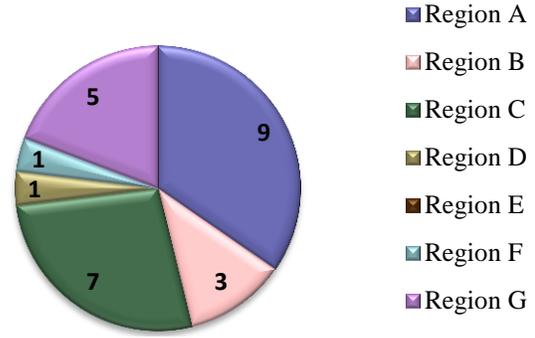
\*Due to number of parties and/or complexity, co-resolution judges are oftentimes assigned to cases.

# Number of Motions to Refer **Filed** in Business Court by Region/County

**Total Number of Motions to Refer Filed Since Inception Per Region**

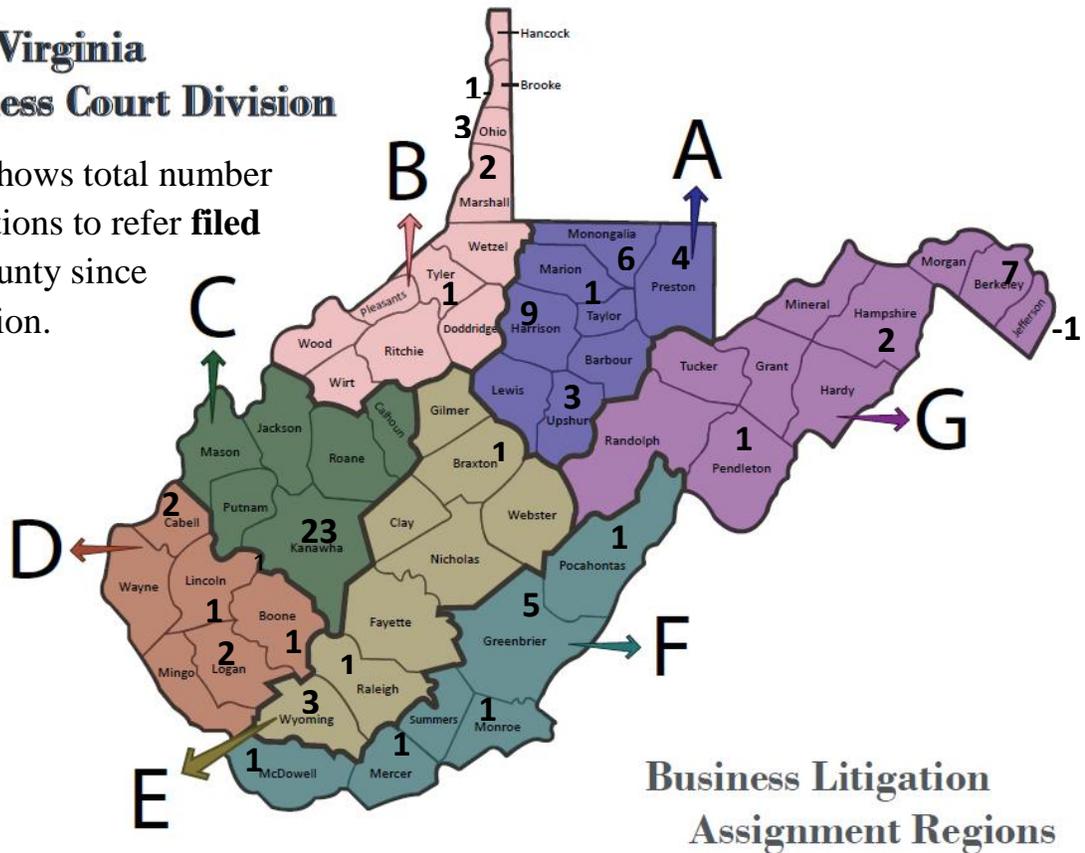


**Motions to Refer Filed in 2015 Per Region**



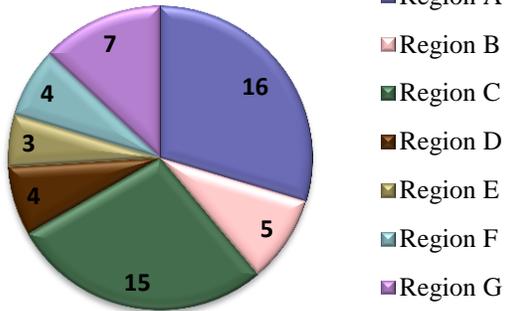
## West Virginia Business Court Division

Map shows total number of motions to refer **filed** per county since inception.

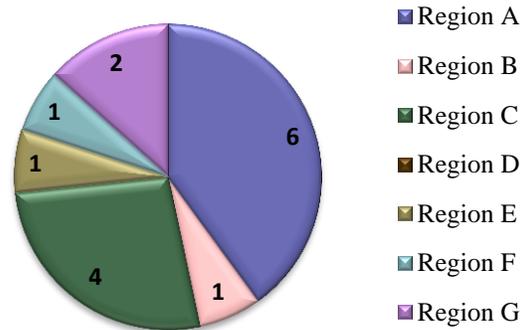


## Number of Motions to Refer **Granted/Referred** to Business Court by Region/County

**Total Number of Motions to Refer Granted Since Inception**

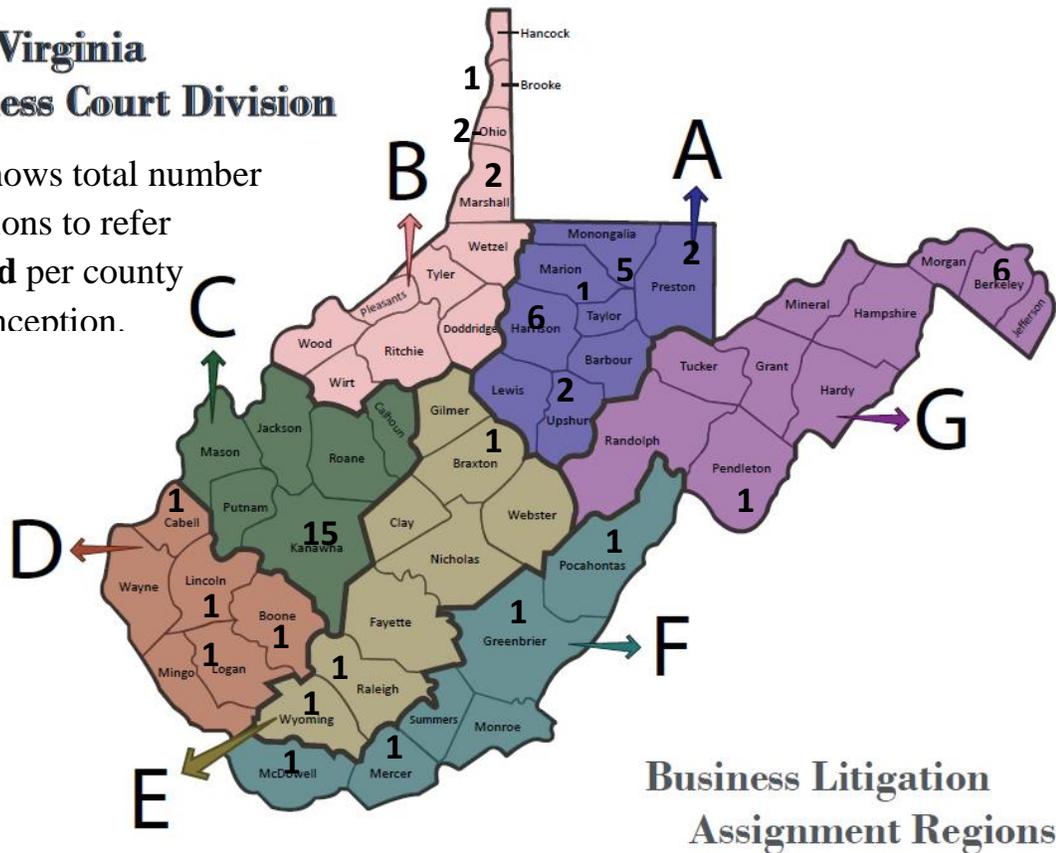


**Motions to Refer Granted in 2015**



### West Virginia Business Court Division

Map shows total number of motions to refer granted per county since inception.



## Nature of Cases Referred to Business Court in 2015

(As taken from the Motions to Refer and/or Complaint)

Case No./ County	Nature of Case
15-C-38 Berkeley	Breach of Contract, Unjust Enrichment
15-AA-6 Berkeley	Complex tax appeal regarding whether a certain parcel of real property in Berkeley Co., WV, is exempt from ad valorem property tax for 2015 tax year.
14-C-503 Harrison	Action is a claim under the WV Unfair Trade practices Act, arising out of the alleged sale of gasoline below cost by the Def Mac's Convenience Stores.
15-C-208 Harrison	Breach of Contract
14-C-391 Harrison	Breach of Contract, Commercial Torts, Insurance Coverage Disputes in Commercial Insurance Policies, Professional Liability Claims, Subrogation Assignments and Indemnification.
15-C-568 Kanawha	Breach of Contract, Sale or Purchase of Commercial Real Estate, Commercial Non-Consumer Debts, Injunctive and Declaratory Relief Between Commercial Entities, Disputes Involving Commercial Entities.
15-C-699 Kanawha	Breach of Contract; Sale or Purchase of Commercial Entity; Sale or Purchase of Commercial Real Estate: Sale or Purchase of Commercial Products Covered by the Uniform Commercial Code; Terms of a Commercial Lease; Commercial Non-Consumer Debts; Non-Compete Agreements; Commercial Torts; Liability of Shareholders, Directors, Officers, Partners, etc.; Mergers, Consolidations, Sale of Assets; Issuance of Debt, Equity and Like Interest; Disputes involving Commercial Entities
13-C-978 Kanawha	Breach of Contract, Commercial torts, Disputes Involving Commercial Entities, Wrongful/Retaliatory Termination of Contractual Relationship; Tortious Interference with Prospective Business Relations; Civil Conspiracy to Interfere with Prospective Business Relations; Unfair and Deceptive Business Practices; and Business Disparagement.

<b>Case No./ County</b>	<b>Nature of Case</b>
15-C-562 Kanawha	Involves claims between private business entities concerning the creation and implementation of a self-funded employee healthcare plan; professional liability by brokers, agents and administrators in the recommendation, management and administration of such plan; breach of contract and material representations and omissions pertaining to the structure and costs of the plan.
15-P-63 Marion	Petition for Judicial Dissolution, Breach of Corporate Duties, Misappropriation of Assets, Conspiracy, Demand for Receivership, Accounting Demands for a Corporation and a Limited Liability Company, will likely include additional counterclaims concerning additional commercial/business issues.
15-C-134 Monongalia	Dispute involving commercial entities, Breach of Contract, Commercial Torts-Tortious Interference, Injunctive Relief Between Commercial Entities, Breach of Fiduciary Duty, will likely include counterclaims concerning commercial/business issues.
15-C-74 Monongalia	Breach of Fiduciary Duty and Violations of the WV Solicitations of Charitable Funds Acts. This action is related to an action currently pending in business court and could possibly be consolidated.
13-C-196 Ohio	Dispute involving complex contractual agreement.
14-C-32 Pocahontas	Breach of Contract and Implied Covenant of Good Faith and Fair Dealing; Breach of Implied Warranty of Habitability, Fitness, and/or Quality; Negligent Development; Piercing the corporate veil; Negligence and Professional Negligence.
14-C-60 Wyoming	Fraud - Initial Purchase of Working Interests, Subsequent Purchase of Working Interests, Drilling of Wells, Operation of the Wells, and Civil Conspiracy.

## Pending Cases

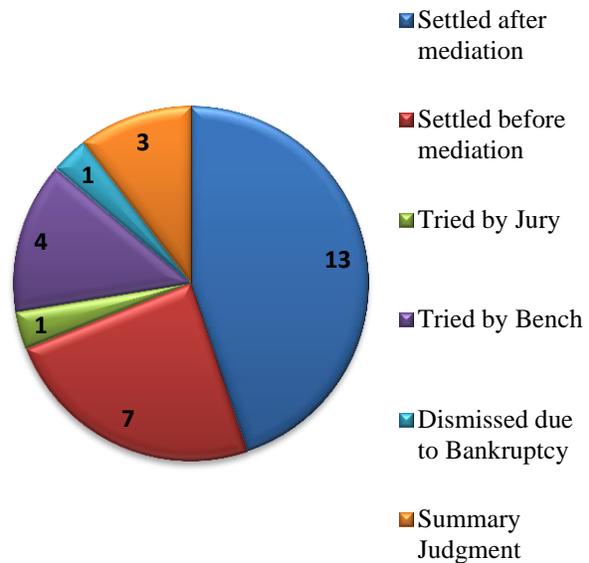
The table below shows the **25** pending cases as of December 31, 2015. Some cases have been stayed due to bankruptcy or appeal, but every case is closely monitored and being managed efficiently by the combined efforts of the Chair, the Executive Director, law clerk and the assigned presiding and resolution judges.

<b>Case No./ County</b>	<b>Plaintiff</b>	<b>Defendant</b>	<b>Presiding</b>	<b>Resolution</b>	<b>Trial Date</b>
97-C-725 Kanawha	Rashid	Tarakju	Young	Evans	Feb. 1, 2016
13-C-198 Preston	Marrara, et al.	Marrara, et al.	Clawges	Wilkes	Stayed pending bankruptcy
14-C-7 Lincoln	Pauley	Appalachian Stream Restoration, et al.	Farrell	Young	Feb. 22, 2016
14-C-7 Brooke 14-C-28 Berkeley 14-C-29 Berkeley	Monongalia Power Company/Potomac Edison	CitizensTelecom- munications of WV/Frontier Communications of WV	Clawges	Evans	Stayed pending ruling of FCC
12-C-63 Preston	Mangus Coal Co., et al.	Jennings, et al.	Farrell	Clawges	TBD after ruling on pending motions
13-C-122 Upshur	The Velotta Company	Stantec Consulting	Wilkes	Rowe	Feb. 9, 2016
13-C-570 Kanawha	Vandalia Capital, II, et al.	Pray, et al.	Farrell	Clawges	TBD after ruling on pending motions
14-C-374 Monongalia	Parmer	United Bank, Inc, et al.	Wilkes	Clawges	March 8, 2016
14-C-231 Logan	Southern Amusement Co.	B&J Enterprises, et al.	Rowe	Farrell	June 1, 2016
13-C-394 Berkeley	DAR, LLC	Triad Engineering, et al.	Clawges	Young	PT: Feb. 10, 2016 Trial: TBD
14-C-1745 Kanawha	Omega Facility Services, et al.	Jacobs & Company, et al.	Evans	Clawges	Jan. 19, 2016
09-C-2104 Kanawha	WV Investment Management Board, et al.	The Variable Annuity Life Insurance Co.	Wilkes	Rowe	March 22, 2016
14-C-60 Wyoming	Summit Resources, Inc.	Kelly, et al.	Farrell	Young	Cont. due to anticipated Bankruptcy

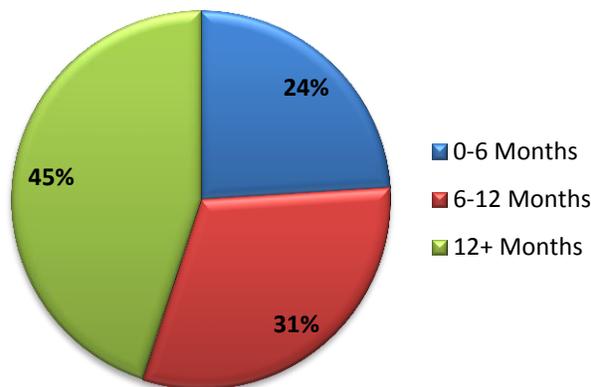
14-C-571 Kanawha	United Bank, Inc.	White, et al.	Rowe	Farrell	Settled; awaiting dismissal order
15-C-38 Berkeley	M&D Rental Corp	Farmer's Merchants Bank, et al.	Evans	Wilkes and Clawges	Jul 26, 2016
15-AA-6 Berkeley	University Healthcare Foundations	Hess, et al.	Wilkes	N/A	Stayed pending outcome of appeal
14-C-32 Pocahontas	Black Bear Crossing Town House Association	Black Bear Crossing LLC, et al.	Rowe	Wilkes and Young	Settled at mediation; awaiting final order
15-C-568 Kanawha	TM Associates, Inc.	Deer Forest Limited Partnership, et al.	Carl	Evans	May 2, 2016
15-C-699 Kanawha	Frame, et al.	Holcomb, et al.	Young	Carl	Apr. 4, 2016
13-C-978 Kanawha	Joe Holland Chevrolet, Inc.	Liberty Mutual Insurance Co, et al.	Evans	Rowe	Jan. 19, 2016
15-C-562 Kanawha	Greenbrier Hotel Corporation, et al.	Marsh & McClennan Agency, et al.	Evans	Young and Wilkes	June 27, 2016
15-P-63 Marion	Mentus	Washenitz, et al.	Clawges	Carl	Settled at mediation; awaiting dismissal order
14-C-503 Harrison	Alan Enterprizes	Mac's Convenience Stores	Rowe	Carl	Oct. 5, 2016
15-C-208 Harrison	Shell Equipment Company	J.F. Allen Company	Young	Carl	June 6, 2016
13-C-196 Ohio	Horizon Ventures of WV	American Bituminous Power Partners	Young	Evans	Sched. conf. Jan. 28, 2016

## How Cases Were Resolved

The chart to the right shows how **29** cases have been resolved. Although parties may choose to use private mediators, resolution judges have successfully settled numerous issues and cases. Four cases have been tried by bench trials and only one case has been adjudicated by jury trial.



## Length of Case in Business Court



The chart to the left shows the length of all closed cases in business court. Although 45% of the cases exceeded the 10 month anticipated adjudication goal, the following table shows that the average business court case age was **342** days, which is significant as compared to other business courts. For example, the Fulton County Superior Court's 2014 Annual Report shows that the average complex contract case in business court is administered in 608 days.\*

\*Fulton County, Ga., Business Court 2014 Annual Report.  
[https://www.fultoncourt.org/business/Business\\_Court\\_2014\\_Annual\\_Report.pdf](https://www.fultoncourt.org/business/Business_Court_2014_Annual_Report.pdf)

## Case Age in Business Court

The following table shows the case age and assigned judges of the **29** resolved cases. The timely resolution of these cases can often be attributed to early court intervention and close case monitoring by the assigned judges and staff. A case conference is conducted within 30 days of being assigned and alternate dispute resolution is offered by the assigned resolution judge shortly after the scheduling order is entered as well as various times throughout the litigation process.

Case Style	County	Presiding Judge	Resolution Judge	Date of Referral to Bus. Ct.	Date of Final Order	Age of Case in Business Court
Casto Technical Services, Inc. v. Omega Facility Solutions Surety, Inc.	Kanawha	Young	Rowe	12/27/2012	9/30/2013	277
DB Land, et al. v. Empire Consulting Services, et al.	Kanawha	Wilkes	Young	2/5/2013	2/24/2014	384
Erie Insurance v. Lambert Construction Co., et al.	Mercer	Rowe	Evans	5/10/2013	3/12/2014	306
Mountain State Carbon v. Bluestone Coal Corp., et al.	Ohio	Wilkes	Young	4/26/2013	4/3/2014	342
Atkinson v. General Glass Company, et al.	Kanawha	Rowe	Evans	4/3/2013	4/4/2014	366
Shell Equipment v. Rossco, et al.	Upshur	Wilkes	Rowe	9/24/2013	5/1/2014	219
Viking Video & Music, Inc. v. Summit Community Bank, Inc.	Kanawha	Young	Farrell	11/14/2014	6/26/2015	224
Holliday, et al. v. Toney, et al.	Greenbrier	Rowe	Evans	6/24/2013	7/14/2014	385

Case Style	County	Presiding Judge	Resolution Judge	Date of Referral to Bus. Ct.	Date of Final Order	Age of Case in Business Court
Franklin Oil Co v. GEOJIM	Pendleton	Wilkes	Clawges	3/18/2014	7/18/2014	122
Harrison County Development Authority v. Tetrick & Bartlett	Harrison	Young	Wilkes	5/31/2013	8/5/2014	431
Dealership Management Company v. Air-Row Sheet Metal Co., Inc., et al.	Berkeley	Wilkes	Evans	8/1/2013	8/12/2014	376
Huntington Municipal Development Authority v. Mountaineer Gas	Cabell	Farrell	Young	3/18/2014	8/14/2014	149
Lee Trace v. BC Council, et al. <sup>3</sup>	Berkeley	Wilkes	None	5/29/2014	8/29/2014	92
Dopkin v. Shriver	Marshall	Rowe	Wilkes	7/30/2014	10/13/2015	440
Holley, et al. v. Beirne and Elk Meadow Energy, et al.	Kanawha	Young	Rowe	5/10/2013	11/11/2014	550
POB, LLC, et al. v. Grant Architects, P.C., et al.	Harrison	Evans	Wilkes	4/3/2013	2/19/2015	687
Wells Fargo Insurance Services of West Virginia v. MVB Insurance, Inc.	Monongalia	Clawges	Farrell	7/23/2014	3/17/2015	237
Bluestone Coal Corporation, et al. v. Chestnut Land Holdings	McDowell	Rowe	Young	5/8/2014	3/17/2015	313
John Skidmore Trucking, Inc. v. Mark W. Matkovich	Braxton	Young	Not appointed	10/29/2014	4/6/2015	159

<sup>3</sup> This referral is a tax appeal that consists of five separate cases involving the same parties. A final order has been issued in two of the cases which are on appeal. The other three cases are stayed pending appeal to the U.S. S. Ct.

Case Style	County	Presiding Judge	Resolution Judge	Date of Referral to Bus. Ct.	Date of Final Order	Age of Case in Business Court
Gito, Inc. v. Board of Education of the County of Marshall, West Virginia, et al.	Marshall	Evans	Wilkes	6/28/2013	4/27/2015	668
University Healthcare Foundation, Inc. v. Larry A. Hess, Assessor, et al.	Berkeley	Wilkes	Not appointed	7/30/2014	5/8/2015	282
Greer Industries, Inc. v. WVU Foundation, Inc.	Monongalia	Evans	Wilkes & Young	4/6/2015	6/22/2015	77
West Virginia Radio Corp. v. WVU BOG, et al.	Monongalia	Evans	Wilkes & Young	9/26/2013	6/24/2015	636
Wylie Steel Fabricators v. Rock & Coal Const., Inc.	Raleigh	Farrell	Clawges	11/21/2013	7/6/2015	592
Boone Motor Sales, Inc. v. Thornhill Group, Inc., et al.	Boone	Young	Rowe	7/30/2014	7/27/2015	362
Graphite Investments, LLC v. Jacobs Financial Group, Inc., et al.	Kanawha	Evans	Farrell	1/16/2014	8/25/2015	586
F.K. Everest, Inc. v. Ryan L. Eddy, et al.	Monongalia	Rowe	Farrell	4/6/2015	9/9/2015	156
Shell Equipment Company, Inc., et al. v. Mcneer, Highland, McMunn And Varner, L.C.	Harrison	Clawges	Rowe	6/11/2014	9/17/2015	463
Zurich American Insurance Company, et al. v. Thrasher Engineering , Inc., et al.	Harrison	Rowe	Farrell & Clawges	11/9/2015	12/14/2015	35

## FEEDBACK

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The Division continues to hear positive feedback from participants in Business Court. The Chair was advised by attorneys that there has been discussion about using the Business Court Division in a forum selection clause in commercial contracts. The Chief Justice would still make the final decision as to whether or not a case is referred to the Division, but the clause would require parties to file an agreed motion to refer to the business court if a dispute arises and a complaint is filed in circuit court.

Floyd Boone, an attorney with Bowles Rice LLP in Charleston wrote in a published article that he is optimistic about West Virginia's Business Court but perceives it as under-utilized.<sup>4</sup> He encourages more lawyers to file motions to refer cases to business court to boost the body of case law and ensure the continued success of this division.

Chief Justice Margaret L. Workman is quoted in a Charleston Gazette article as stating, “[The] state business court...seems to be achieving its goal of speeding up the process of hearing complicated cases involving commercial and technological issues.”<sup>5</sup>

Following the Morgantown Regional Bar presentation, a participant attorney stated in a letter to the Chair that the Business Court is the most innovative improvement in the State's judicial system since the 1974 Judicial Reorganization Amendment.

Another lawyer commented in an email to the Executive Director that “[t]his is my third or fourth business court case and I have been VERY PLEASED with all of the work that the entire staff and judges do to make our lives easier!”

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<sup>4</sup> Floyd Boone, *The West Virginia Business Court Division Two Years Later: Reasons for Optimism But More Remains*, Defense Trial Counsel of West Virginia Newsletter (Winter 2015).

<sup>5</sup> Phil Kabler, *Chief Justice Says More Drug Treatment Programs Needed*, The Charleston Gazette (January 19, 2015).