

# 2021 ANNUAL REPORT

# WEST VIRGINIA BUSINESS COURT DIVISION

## DIVISION JUDGES

Honorable Michael D. Lorensen, Chair

Honorable Christopher C. Wilkes

Honorable James H. Young, Jr.

Honorable H. Charles Carl, III

Honorable Shawn D. Nines

Honorable Jennifer P. Dent

Honorable Paul T. Farrell



West Virginia Trial Court Rule 29 became effective October 10, 2012, in accordance with West Virginia Code §51-2-15, to establish a Business Court Division to handle a specialized court docket within the circuit courts. The Judges of the Business Court Division later proposed amendments which were approved by the Supreme Court of Appeals of West Virginia and became effective July 1, 2014.

Trial Court Rule 29.05(d) provides that the division shall make an annual report to the Supreme Court and communicate with the Chief Justice and the Administrative Director concerning the division's activities as requested. Therefore, the division submits this report for the calendar year of 2021.

## **PURPOSE AND OVERVIEW**

---

The West Virginia Business Court Division is a specialized court docket established to efficiently manage and resolve litigation involving commercial issues and disputes between businesses. The division judges' case management techniques, specialized training, experience in business principles, knowledgeable and timely decisions on motions and discovery issues in complex litigation reduces litigation costs for businesses and creates a more efficient judicial system. Additionally, the division judges' mediation training and experience, along with the alternative dispute resolution aspect of Trial Court Rule 29, allow the resolution judges to offer alternative dispute resolution options throughout the litigation process, resolving a considerable number of cases in a timely manner, often without a trial.

The West Virginia Business Court Division Trial Court Rule 29.04 specifically defines business litigation as that in which:

- (1) the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities; and
- (2) the dispute presents commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable; and
- (3) the principal claim or claims do not involve: consumer litigation, such as products liability, personal injury, wrongful death, consumer class actions, actions arising under the West Virginia Consumer Credit Act and consumer insurance coverage disputes; non-commercial insurance disputes relating to bad faith, or disputes in which an individual may be covered under a commercial policy, but is involved in the dispute in an individual capacity; employee suits; consumer environmental actions; consumer malpractice actions; consumer and residential real estate, such as landlord-tenant disputes; domestic relations; criminal cases; eminent domain or condemnation; and administrative disputes with government organizations and regulatory agencies, provided, however, that complex tax appeals are eligible to be referred to the Business Court Division.

The Chief Justice of the Supreme Court of Appeals of West Virginia serves as the gatekeeper and may act directly on a motion to refer a case to the Business Court Division by granting or denying the business litigation to the Business Court Division or may direct the division to conduct a hearing for a recommendation to the Chief Justice. Business litigation that is transferred to the division by the Chief Justice is assigned a presiding and resolution judge by the chair of the division. The case remains in the county of origin, but the presiding judge may conduct hearings and trials in any circuit courtroom within the assignment region.

## **BUSINESS COURT JUDGES**

---

The division currently consists of six active circuit court judges and one senior status judge appointed by the Chief Justice. The active judges maintain their own general dockets and have agreed to undertake the additional caseload because they have an interest and/or expertise in business litigation. The Chief Justice designates one of the judges to serve as chair every three years. Rule 29 does not prohibit successive terms, either as judge or as chair of the division. Any of the division judges may be assigned as presiding or resolution judges, by the chair, to any matter pending in the Business Court.

The division judges receive specialized training in business law subjects and are members of the American College of Business Court Judges. Some are or have been members of the American Bar Association Business Law Section. The division judges typically meet biannually at the judicial conferences to discuss new developments, caseload distribution, case management techniques, and any other issues that may need addressed.

## **BUSINESS COURT STAFF**

---

Carol A. Miller, the Executive Director of the Business Court Division, administers the central office of the division, which is in the Berkeley County Judicial Center. 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, maintaining statistics, 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. Tessa Bowers serves as law clerk to assist the division judges with legal research and analysis, drafting orders, and assisting in court hearings and trials.



Berkeley County Judicial Center, Martinsburg, West Virginia  
– Home of the Central Office of the Business Court Division

WEST VIRGINIA'S BUSINESS COURT DIVISION JUDGES



**Honorable Michael D. Lorensen, Chair**  
Chief Judge of the 23<sup>rd</sup> Judicial Circuit  
December 31, 2026



**Honorable Christopher C. Wilkes**  
Senior Status Judge  
December 31, 2024



**Honorable James H. Young Jr.**  
Judge of the 24<sup>th</sup> Judicial Circuit  
December 31, 2021



**Honorable Paul T. Farrell**  
Judge of the 6<sup>th</sup> Judicial Circuit  
December 31, 2023



**Honorable H. Charles Carl III**  
Judge of the 22<sup>nd</sup> Judicial Circuit  
December 31, 2022



**Honorable Shawn D. Nines**  
Judge of the 19<sup>th</sup> Judicial Circuit  
December 31, 2027



**Honorable Jennifer P. Dent**  
Judge of the 11<sup>th</sup> Judicial Circuit  
December 31, 2025

## HIGHLIGHTS

---

On December 29, 2021, the Honorable Maryclaire Akers, Judge of the Thirteenth Judicial Circuit, was appointed to serve on the Business Court Division from January 1, 2022, through December 31, 2028, as a successor to the Honorable James H. Young, Jr., Judge of the Twenty-Fourth Judicial Circuit. Judge Young was initially appointed to the division by Order of former Chief Justice Ketchum on September 11, 2012, with a start date of January 1, 2013. His original seven-year term was extended by then-Chief Justice Walker's order of October 9, 2019, at which time the new staggered terms were created. While on the division, Judge Young presided over 26 business court cases and served as resolution judge in 17 additional business court cases.

Division Judge Jennifer P. Dent was invited and served as one of five female panelists in a West Virginia State Bar Annual Meeting CLE Program in April of 2021 at The Greenbrier. Judge Dent, along with Judge Stephanie D. Thacker, Fourth Circuit Court of Appeals; Judge Irene M. Keeley, U.S. District Court for the Northern District of West Virginia; and Justice Beth Walker, Supreme Court of Appeals of West Virginia discussed Female Jurists in an Evolving Profession.

Judge Dent sat by temporary assignment for both Justice Tim Armstead and Justice John Hutchison in two separate matters on the Supreme Court of Appeals of West Virginia in September of 2021. She also attended a week-long, in-person, Civil Mediation Course at the National Judicial College in November of 2021 to enhance her mediation skills so she can effectively settle disputes in her role as resolution judge with the Business Court Division.

Division Chair Michael D. Lorensen was accepted into membership of the West Virginia Bar Foundation Fellows in June 2021. This recognition means his professional, public and private career have demonstrated outstanding dedication to the welfare of the community and honorable service to the legal profession.

Judge Lorensen presented an overview of West Virginia's Business Court Division at a meeting of the Judge John A. Field, Jr., American Inns of Court. It was held via Zoom on September 8, 2021.

Division Judges Paul T. Farrell and Christopher C. Wilkes attended the week-long Advanced Law & Economics Institute for Judges in August of 2021 at The Greenbrier. Judge Wilkes also served as a panelist via Zoom for "Tips from the Trial Bench," sponsored by the ABA Business Law Section's Judges Initiative Committee.

Executive Director Carol Miller and Business Court Law Clerk Tessa Bowers were invited to attend monthly meetings of State Business Court Coordinators, Managers, Attorneys, and Personnel via Zoom to discuss matters and/or share ideas pertaining to complex litigation courts. These meetings were initiated by Linda Fallowfield, the Complex Litigation Coordinator for the Maryland Business Technology Case Management Program, and began in May of 2021. Some of the other states with attending representatives include Georgia, Wyoming, Tennessee, North Carolina, Maine, New Jersey, and Michigan.

## CASE STATISTICS

### MOTIONS TO REFER

**Table 1** shows that in 2021, there were 18 motions to refer filed in 11 counties and a total of 219 motions to refer since the inception of business court (October of 2012).

**Table 1. Number of Motions to Refer Filed**

County	2021	Total since inception of BCD	County	2021	Total since inception of BCD	County	2021	Total since inception of BCD
Barbour		2	Kanawha	3	55	Preston	1	6
Berkeley	3	11	Lewis		2	Putnam		0
Boone	1	4	Lincoln		1	Raleigh	1	8
Braxton		2	Logan		4	Randolph		1
Brooke		2	Marion	1	3	Ritchie		3
Cabell		6	Marshall		8	Roane		0
Calhoun		0	Mason		0	Summers		0
Clay		0	McDowell	1	5	Taylor		0
Doddridge		5	Mercer		3	Tucker		0
Fayette	1	1	Mineral		1	Tyler		6
Gilmer		0	Mingo	2	5	Upshur		3
Grant		0	Monongalia		11	Wayne		1
Greenbrier		5	Monroe		1	Webster		0
Hampshire		3	Morgan		0	Wetzel		5
Hancock		2	Nicholas		1	Wirt		0
Hardy		0	Ohio		7	Wood		2
Harrison	3	23	Pendleton		1	Wyoming		3
Jackson		0	Pleasants		1			
Jefferson		3	Pocahontas	1	3	<b>TOTAL</b>	<b>18</b>	<b>219*</b>

\*Six of the motions to refer were filed prior to the amendment to Rule 29 and were not sent to the Chief Justice by the circuit court judge. Those motions to refer are included in this table but are not included on the BCD Case Management section of the WV Judiciary website (12-C-153WMG, 12-C-669KAN, 14-C-30PRN, 13-C-121GRN, 14-AA-1BER, and 14-C-113KAN). One motion to refer was denied by the Chief Justice and sealed by the circuit court judge. It is included in this table but not on the BCD Case Management section of the WV Judiciary website.

### GRANTED MOTIONS

The Chief Justice decided 17 of the 18 motions to refer that were filed in 2021 and three that were undecided from 2020. **Table 2** shows the total number of motions to refer that were granted by the Chief Justice in 2021 and since inception. There has been a total of 127 complex business litigation cases transferred to the division in 35 counties since the inception of the Business Court Division.

**Table 2. Number of Motions to Refer Granted**

County	2021	Total since inception of BCD	County	2021	Total since inception of BCD	County	2021	Total since inception of BCD
Barbour		2	Kanawha	2	30	Preston	1	3
Berkeley	1	8	Lewis		2	Putnam		0
Boone		1	Lincoln		1	Raleigh	1	3
Braxton		2	Logan		2	Randolph		0
Brooke		1	Marion	1	3	Ritchie		3
Cabell		2	Marshall		7	Roane		0
Calhoun		0	Mason		0	Summers		0
Clay		0	McDowell		3	Taylor		0
Doddridge		5	Mercer		1	Tucker		0
Fayette	1	1	Mineral		0	Tyler		4
Gilmer		0	Mingo	1	2	Upshur		2
Grant		0	Monongalia		6	Wayne		1
Greenbrier		1	Monroe		0	Webster		0
Hampshire		0	Morgan		0	Wetzel		3
Hancock		1	Nicholas		1	Wirt		0
Hardy		0	Ohio		3	Wood		2
Harrison	3	17	Pendleton		1	Wyoming		1
Jackson		0	Pleasants		1			
Jefferson		0	Pocahontas		1	<b>TOTAL</b>	<b>11</b>	<b>127</b>

**DECISIONS ON MOTIONS TO REFER**

**Table 3** shows the length of time the motions to refer were pending decision of the Chief Justice, who filed the motions to refer, if there was opposition to the motions, and if the motions to refer were granted or denied.

In 2021, 39 percent of the motions to refer were filed with no objection by any party or judge. Of the motions to refer filed with no objection, all of them were granted and transferred to the division in an average of 38 days from the date the motion was filed until the Chief Justice entered an order. Of the motions to refer filed with opposition, three were granted in an average of 64 days and seven were denied in an average of 52 days. Overall, the motions to refer were decided in an average of 53 days. Ten out of 18 of the motions to refer filed in 2021 were filed by defendants/respondents, four by plaintiffs, two jointly by defendants and plaintiffs, and two by judges.

**Table 3. Decisions on Motions to Refer filed in 2021**

MTR Filed	Order Entry Date	No. of days pending	Filed By	Opposition	Granted/Denied
1/13/2021	2/9/2021	27	Defendant(s)	Yes	Denied
1/11/2021	2/9/2021	29	Defendant(s)	Yes	Denied
1/11/2021	2/9/2021	29	Judge	No	Granted
1/29/2021	3/16/2021	46	Plaintiff(s)	Yes	Denied
1/19/2021	3/16/2021	56	Defendant(s)	Yes	Denied
3/1/2021	4/15/2021	45	Judge	No	Granted
2/8/2021	4/15/2021	66	Respondent(s)	Yes	Granted
3/30/2021	5/13/2021	44	Joint	No	Granted
3/31/2021	5/25/2021	55	Defendant(s)	No	Granted
3/24/2021	5/25/2021	62	Defendant(s)	Yes	Denied
5/17/2021	6/10/2021	24	Joint	No	Granted
6/8/2021	7/14/2021	36	Plaintiff(s)	No	Granted
7/2/2021	8/5/2021	34	Defendant(s)	No	Granted
8/5/2021	9/20/2021	46	Defendant(s)	Yes	Denied
7/15/2021	9/20/2021	67	Plaintiff(s)	Yes	Granted
7/13/2021	10/22/2021	101	Defendant(s)	Yes	Denied
6/4/2021	10/22/2021	140	Defendant(s)	Yes	Granted
11/23/2021			Plaintiff(s)	Yes	Undecided

## **PENDING CASES**

---

### **ACTIVE CASES**

**Table 4** shows the status of the 20 active cases and the active case age. The average active case age is 395 days. The three asterisked cases in Table 4 were stayed for the number of days indicated beneath the table. The number in parentheses for those three cases is the pending case age or the total number of days the case has been in business court, including days it was stayed.

**Table 4. Active cases not subject to any present stay or appeal**

<b>Case Number</b>	<b>County</b>	<b>Presiding Judge</b>	<b>Resolution Judge</b>	<b>Active Case Age in Days</b>	<b>Status</b>
18-C-2	Pleasants	Lorensen	Carl	1344	This case was tried in two phases. Jury trial was held in March and damage phase was tried by Bench in September. Judgment order not yet entered.
18-C-202 18-C-203	Marshall	Wilkes	Carl Nines	954	Related case in Pennsylvania was concluded and now a scheduling conference has been set for January 11, 2022.
*18-C-271	Wood	Nines	Wilkes	664 (898)	Pretrial: 4/29/2022 Jury Trial: 5/31/2022
19-C-59	Marshall	Wilkes	Carl Nines	812	Pretrial: 2/22/2022 Jury Trial: 3/1/2022 Motion for expedited stay filed 12/20/2021 but not yet decided.
**17-C-108	Mingo	Young	Wilkes Dent	418 (806)	Pretrial: 2/9/2022 Jury Trial: 3/7/2022
**16-C-279	Monongalia	Nines	Lorensen	289 (677)	Pretrial and Jury Trial TBD but anticipated to be in August 2022.
20-C-350	Kanawha	Young	Farrell	368	Pretrial: 4/25/2022 Jury Trial: 5/16/2022
20-C-772	Kanawha	Dent	Farrell	367	Pretrial: 3/28/2022 Bench Trial: 4/4/2022
20-C-660	Kanawha	Farrell	Nines	367	Pretrial: 2/7/2022 Jury Trial: 2/8/2022 Notified by counsel on 12/10/2021 that case settled, and dismissal order is forthcoming.
20-C-196	Harrison	Young	Carl	326	Pretrial: 1/11/2022 Jury Trial: 1/18/2022
19-C-1259	Kanawha	Farrell	Young	326	Pretrial: 2/14/2022 Jury Trial: 2/28/2022
20-C-110	Berkeley	Carl	Nines	261	Pretrial: 3/14/2022 Jury Trial: 3/30/2022

20-C-142	Fayette	Dent	Nines	261	Pretrial: 4/18/2022 Jury Trial: 5/3/2022
21-C-12, 21-C-60	Harrison, Kanawha	Lorensen	Wilkes	233	Pretrial: 2/11/2022 2 <sup>nd</sup> Pretrial: 3/14/2022 Jury Trial: 3/15/2022
20-C-136	Marion	Young	Nines	220	Pretrial: 4/18/2022 Jury Trial: 5/2/2022 Writ of Prohibition filed with WVSCA: 10/27/2021.
21-C-11	Mingo	Young	Farrell	205	Pretrial 4/22/2022 Jury Trial 5/11/2022
20-C-231	Harrison	Nines	Wilkes	171	Pretrial and Jury Trial TBD but anticipated to be in April 2023.
18-C-90	Kanawha	Farrell	Lorensen	149	Pending motions to be decided before setting pretrial and trial dates per request of parties.
21-C-7	Preston	Carl	Dent	103	Pretrial: 1/13/2023 Jury Trial: 1/30/2023
21-C-129	Raleigh	Dent	Lorensen	71	Pretrial: 1/10/2023 Jury Trial: 2/6/2023

\* 234-day stay due to WVSCA accepting Writ of Prohibition

\*\* 388-day bankruptcy stay

### **STAYED CASES**

The cases in **Table 5** below were transferred to the division but subsequently stayed. The pending and active case age will be calculated once the stay is lifted.

**Table 5. Pending cases that are presently stayed**

Case Number	County	Presiding Judge	Resolution Judge	Status
15-C-807	Cabell	Lorensen	Young	Bankruptcy
17-C-318	Harrison	Nines	Carl	Bankruptcy
18-C-115	Kanawha	Wilkes	Lorensen	Appeal of May 18, 2021, order to WVSCA
18-AA-1	Tyler	Wilkes	Not assigned	Writ of Prohibition filed with WVSCA 8/4/2021
19-C-357	Raleigh	Dent	Lorensen	Appeal of September 27, 2021, order to WVSCA
20-C-282	Kanawha	Wilkes	Young	In receivership

**Table 6. Nature of pending and stayed cases**

<b>Case Number</b>	<b>Summary of causes of action and/or nature of cases pending as taken from the motion to refer and/or complaint. Description may not include all claims or counterclaims.</b>
15-C-807CBL	Defendants are nine different business entities and three individuals who are land holding companies, operational companies and/or service companies working together in connection with the business' coal mining, dock loading, and other operations. The bank is seeking to recover a sum of over \$17 million for breach of contract on commercial loans.
17-C-318HRR	The causes of action include breach of commercial and employment contracts, internal affairs of commercial entities, technology disputes and other commercial torts, liability issues including negligence, fraud, fraudulent billing, bribery and conspiracy; as well as counterclaims involving commercial and individual defamation. Could potentially involve issues as to insurance coverage disputes in commercial insurance policies.
18-C-2PLE	This dispute regards a Lease Acquisition Agreement wherein the parties jointly invested in acquiring oil and gas leases for the purpose of drilling exploratory wells and the parties would share in the risk of developing the properties.
18-C-115KAN	This dispute arose out of the design and construction of a large wastewater treatment facility and collection system. Causes of action include four counts of breach of contract, personal liability, and special receivership.
18-C-202 and 18-C-203MSH	This dispute involves commercial entities concerning a chlorine leak at the Axiall facility in Marshall County. Causes of action include negligence, trespass, nuisance, and <i>Res Ipsa Loquitur</i> .
18-C-271WDE	Plaintiff alleges in part that defendants collaborated to carry out a fraudulent healthcare billing scheme. Claims of fraudulent misrepresentation and inducement, breach of contract, unjust enrichment, civil conspiracy, joint venture, negligence and piercing the MedTest LLC veil.
19-C-357RAL	Plaintiff asserts breach of contract and accounting claims against EMCO and GSR under various contracts; plaintiff further asserts breach of fiduciary duty claims against Elected Board of Directors under UCIOA; EMCO and GSR assert breach of contract counterclaims against plaintiff.
19-C-59MSH	This action is related to 18-C-202 and 18-C-203 which are also pending in the business court. Claims involve breach of contract, insurance coverage disputes in commercial insurance policies, and disputes involving commercial entities.
17-C-108MNG	This action involves breach of contract and disputes involving commercial entities. Plaintiffs allege that they seek to exploit the subject property in Mingo County for timbering and for the extraction of minerals and are challenging the placement of Frontier lines on APCo utility poles located on the property. Causes of action include unjust enrichment, demand for accounting and damages, declaratory judgement, intentional trespass, and permitting intentional trespass.
16-C-279MON	Plaintiff contends his commercial rental property was damaged as the result of the replacement and removal of a utility pole adjacent to his property. Application of the statute of limitations and the statute of repose are disputed.

	Significant disputes exist between the defendants and the defendants' respective insurance carriers. There are alleged breaches of contract and questions of loss shifting in the form of contractual indemnification.
20-C-282KAN	The DEP seeks the appointment of a special receiver under W.Va. Code §53-6-1 to assume control over ERP's assets, operations, and affairs; to operate ERP's mining sites and water discharge outlets in compliance with mining permits and applicable law, with funding to be provided by ERP's surety company and to sell and liquidate ERP's properties and assets.
20-C-350KAN	This matter involves issues surrounding the design and construction of a large facility in Charleston. Those issues include the professional standard of care of engineers and contractors, interpreting and applying numerous construction contracts and related documents, and understanding the duties and responsibilities of various entities intertwined in a large construction project. Damages may require the analysis of delay costs, business finances, construction costs, and construction damages thorough detailed causal analysis.
20-C-772KAN	At issue is a contractual dispute that involves interpretation of three subcontracts for engineering services in connection with state highway and highway bridge construction projects, the scope of the engineer's duties, and a related dispute with the surety bonding company.
20-C-660KAN	This action arises from disputes relative to a series of contracts executed between and among the parties, said contracts related to the transfer of business assets, the nature of the relationships between the parties, the sale and lease of commercial property, and the condition of said commercial property located in Marion County, WV.
18-AA-1TYL	Antero is a producer of natural gas in West Virginia with Marcellus wells located in the relevant counties. The wells are appraised by the West Virginia Department of Revenue, State Tax Department, Property Tax Division based on a mass appraisal system, state-wide. Antero claims the Tax Department failed to properly calculate the fair market value of its Marcellus wells for tax years 2018 and 2019.
20-C-196HRR	This action involves breach of contract, breach of the duty of good faith and fair dealing and failure or refusal to comply with statutory provisions (i.e.; violation of "Prompt Pay Act" as codified at West Virginia Code 33-45-1, et seq., and otherwise entitled "Ethics and Fairness in Insurer Business Practices") with requested recovery of ascertainable actual damages including, but not limited to, attorney fees and costs as well as interest.
19-C-1259KAN	This action includes alleged claims of breach of contract, negligent design and administration, negligence, and breach of warranty related to the design and installation of a commercial HVAC system for CAMC's commercial healthcare facility. Specifically, CAMC alleges that Defendants failed to design and install an HVAC system that would function without defects and that was suitable for operation under normal conditions in Charleston. CAMC also claims that the HVAC system designed and installed by Defendants failed to comply with CAMC's operational requirements and that the HVAC system failed to function properly and experienced critical and catastrophic failures.

20-C-110BER	This is a contract dispute involving bulk purchase of 319 lots with amendments; allegations of breach, default, failure, and refusals to cure and otherwise perform and resulting damages and fees.
20-C-142FAY	The issues in this action come from a Coal and Surface Lease. The counterclaim and third-party complaint request a declaration that New Trinity and Frasure Creek are bound by the lease and subject to arbitration; a declaration that Frasure Creek and New Trinity are bound by the lease and required to transfer permits and coal preparation plant; a declaration piercing the corporate veil of Deep Water, New Trinity and Frasure Creek; and trespass by New Trinity, and by Frasure Creek.
21-C-12HRR, 21-C-60KAN	The causes of action alleged include declaratory relief between a business entity and a former shareholder, as well as claims relating to breach of contract, real estate leases and transactions, liability of shareholders, internal affairs of a commercial entity, commercial torts, and real property issues.
20-C-136MRN	The causes of action include breach of contract, tortious conversion, unjust enrichment, breach of fiduciary duty, breach of duty of good faith, fair dealing, and conspiracy.
21-C-11MNG	The complaint was filed to request an accounting and assert a breach of contract claim.
20-C-231HRR	The complaint states causes of action for negligence; breach of contract; fraud/fraudulent misrepresentation; unfair trade practices, misrepresentation and false advertising of insurance policies; violations of Insurance Sales Consumer Protection Act; negligent supervision and retention; punitive damages; damages.
18-C-90KAN	The complaint includes the following: removal of director and to bar from reelection; breach of fiduciary duty, gross negligence, mismanagement, self-dealing, corporate waste; breach of fiduciary duty in connection with excessive legal fees and personal conflict of interest; excessive legal fees as negligence, and as a breach of contract; unjust enrichment; statutory claim for inspection of records by shareholders and directors.
21-C-7PRN	The action involves breach of contract and professional liability claims in connection with the rendering of professional engineering and design services to public and commercial entities.
21-C-129RAL	This action involves accounting claims, unconscionable loan agreement, breaches of declaration, violations of WV Code 36B-3-107, breaches of fiduciary duties, negligence, conversion, unjust enrichment, mutual mistake, judgment related to Woodhaven, breach of representation and special warranty related to Woodhaven.

### **ACTIVITY OF CASES DISPOSED IN 2021**

**Table 7** shows the activity in each case from the date the case was transferred to the business court until the final order was entered. It also shows the case age in days with the average case age of disposed cases being 675 days. There were approximately 32 hearings scheduled, 188 motions filed, and 213 orders entered in these cases while in business court.

**Table 7. Activity of cases disposed in 2021**

Case Number	County	Presiding Judge	Hearings scheduled	Motions	Orders	Date of Final Order	Case Age (in days)
20-C-209	Harrison	Nines	1	1	1	3/26/2021	87
20-C-332	Kanawha	Wilkes	1	1	1	2/24/2021	83
18-C-215	Marshall	Lorensen	5	56	69	5/3/2021	838
16-C-82	Wetzel	Carl	6	36	77	10/18/2021	1288
17-C-41, 16-C-1552	Kanawha	Young	19	94	55	3/24/2021	1081
18-P-235	Harrison	Wilkes	0	0	2	12/20/2021	355
20-P-83	Harrison	Wilkes	0	0	2	12/20/2021	355
18-AA-1	Doddridge	Wilkes	0	0	2	12/20/2021	355
19-AA-1	Doddridge	Wilkes	0	0	2	12/20/2021	355
18-AA-1	Ritchie	Wilkes	0	0	2	12/20/2021	355

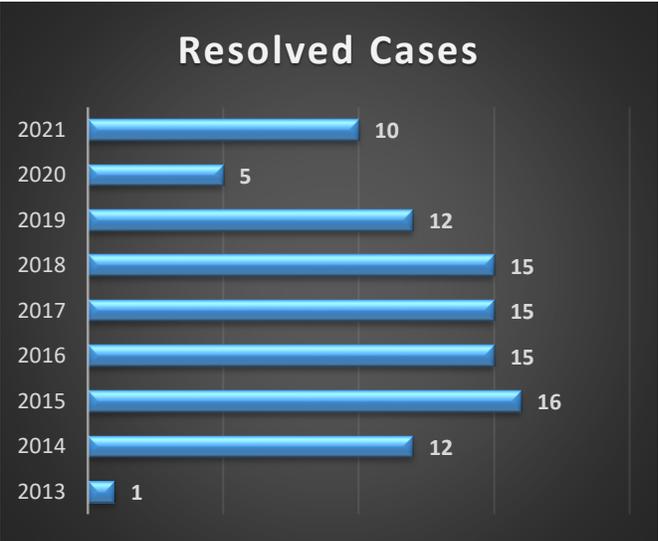
**RESOLUTIONS** – Generally, mediation is scheduled early in a case by the resolution judge, with additional mediation sessions scheduled upon the agreement of parties or at the direction of the presiding judge. Early on, the resolution judge works with the parties and counsel in identifying and narrowing issues, often leading to a full settlement of the case or a shortened trial. In 2021, the Business Court resolution judges scheduled at least nine mediations or status hearings regarding mediation and multiple follow-up phone conferences. **Table 8** shows how each case was resolved.

**Table 8. Disposed cases in 2021**

Case Number/Style	Resolution
<b>20-C-209HRR</b> <i>Capital Wealth Advisors, Inc. vs. Thonas Beynon, et al.</i>	Judge Nines entered an order granting Defendants’ Motion to Dismiss Plaintiff’s Complaint. Mediation was not yet scheduled by the resolution judge.
<b>20-C-332KAN</b> <i>Jefferson County Foundation, Inc. vs. West Virginia Economic Development Authority and Roxul USA, Inc., doing business as ROCKWOOL</i>	Judge Wilkes entered orders granting Defendants’ Motions to Dismiss. A Notice of appeal was filed 3/30/2021. WVSCA Scheduling Order was entered 4/30/2021. A resolution judge was not assigned in this case.

<p><b>18-C-215MSH</b>  <i>KRP Marcellus I, LLC, et al. vs. Chevron U.S.A. Inc., TH Exploration, LLC, and Doe Corporations 1-20</i></p>	<p>Parties reached a settlement, and Judge Lorensen entered the final agreed order of dismissal in May. Judge Wilkes conducted at least one mediation in this matter.</p>
<p><b>16-C-82WTZ</b>  <i>MarkWest Liberty Midstream &amp; Resources, LLC vs. J.F. Allen Company, et al. vs. The Lane Construction Corporation</i></p>	<p>After a 17-day bench trial, Judge Carl entered a 153-page final judgement order in October. A Notice of Appeal was filed 11/18/2021. WVSCA Scheduling Order was entered 11/22/2021. Judge Farrell conducted at least one mediation in this matter.</p>
<p><b>17-C-41, 16-C-1552KAN</b>  <i>SER Patrick Morrissey, Attorney General, et al. vs. Oldcastle, Inc., et al. and City of Charleston and all others similarly situated vs. West Virginia Paving, Inc., et al.</i></p>	<p>Parties reached a settlement, and Judge Young entered the final agreed order of dismissal in March. Judge Wilkes conducted at least two mediations in this matter with numerous follow-up phone conferences.</p>
<p><b>18-P-235HRR, 20-P-83HRR, 18-AA-1DOD, 19-AA-1DOD, 18-AA-1RIT</b>  <i>Antero Resources Corporation vs. Dale Steager, West Virginia State Tax Commissioner, et al.</i></p>	<p>Judge Wilkes entered final orders denying the appeal briefs of Petitioner Antero Resources Corporation in December. A resolution judge was not assigned to this case.</p>

**Figure 1. Resolved cases since inception**



**Figure 1** shows that in 2021, the Business Court judges disposed of 10 cases.

Since inception, the Business Court judges have resolved 101 of the 127 cases transferred to the Division.

**CASE ACTIVITY IN 2021**

The Business Court judges scheduled approximately 67 hearings, entertained 204 motions, and entered 325 orders in 2021 in 35 cases. **Table 9** shows the approximate amount of activity of all seven business court judges in 2021 per case.

**Table 9. Total case activity in 2021.**

<b>Case Number</b>	<b>No. of Motions Filed</b>	<b>Orders Entered</b>	<b>Hearings Scheduled</b>
16-C-279MON	2	4	1
16-C-82WTZ	3	3	0
17-AA-1 & 3DOD	0	0	1
17-C-108MNG	9	8	3
18-AA-1DOD	1	2	0
18-AA-1RIT	1	2	0
18-AA-1TYL	1	1	0
18-C-115KAN	6	15	1
18-C-130MRN	2	0	0
18-C-202&203MSH	2	4	0
18-C-215MSH	3	4	1
18-C-271WDE	6	9	3
18-C-2PLE	11	19	5
18-C-90KAN	3	5	1
18-P-235HRR	1	1	0
19-AA-1DOD	1	2	0
19-C-1259KAN	5	9	2
19-C-357RAL	22	42	6
19-C-59MSH	55	66	5
20-C-110BER	9	21	1
20-C-136MRN	10	10	1
20-C-142FAY	6	11	4
20-C-196HRR	2	1	2
20-C-209HRR	0	4	2
20-C-231HRR	4	4	1
20-C-282KAN	8	9	4
20-C-332KAN	0	3	1
20-C-350KAN	13	28	6
20-C-660KAN	5	10	2
20-C-772KAN	4	5	1
20-P-83HRR	1	2	0
21-C-11MNG	1	1	2
21-C-129RAL	0	2	1
21-C-12HRR, 21-C-60KAN	4	15	9
21-C-7PRN	3	3	1
<b>Grand Total</b>	<b>204</b>	<b>325</b>	<b>67</b>

## **SUMMARY**

---

In 2021, 18 motions to refer to the Business Court Division from 11 counties were filed. There were three motions to refer pending from 2020. Of those 21 motions to refer that required a ruling by the Chief Justice, 11 were deemed to be complex business litigation, as required by Trial Court Rule 29.04(a)(1) and were transferred to the Business Court Division. Nine were denied and one was still pending at the end of 2021. The Chief Justice rendered a decision in an average of 52 days from the date the motions to refer were filed.

As of the end of 2021, there were 20 active pending cases and six other pending cases that are not currently active due to a stay or being in receivership. The average “active” case age of the active cases as of the end of 2021 was 397 days. The division judges disposed of 10 cases in 2021 and the average case age of the disposed cases was 675 days. Two out of the five disposed cases were settled by agreement of the parties, resulting in agreed dismissal orders. The division judges scheduled approximately 67 hearings, entertained approximately 204 motions, and entered 325 orders in 35 cases in 2021. There were nine mediations or mediation status hearings scheduled by the resolution judges in 2021, plus numerous follow-up conference calls. There were two trials, one bench and one jury.

Since inception (October 2012), there have been 219 Motions to Refer filed in 40 counties. Of those, 127 cases from 35 counties have been transferred to the Business Court Division. There have been 101 cases disposed, leaving 26 cases still pending with the division at the end of 2021.