



SUPREME COURT OF APPEALS OF WEST VIRGINIA

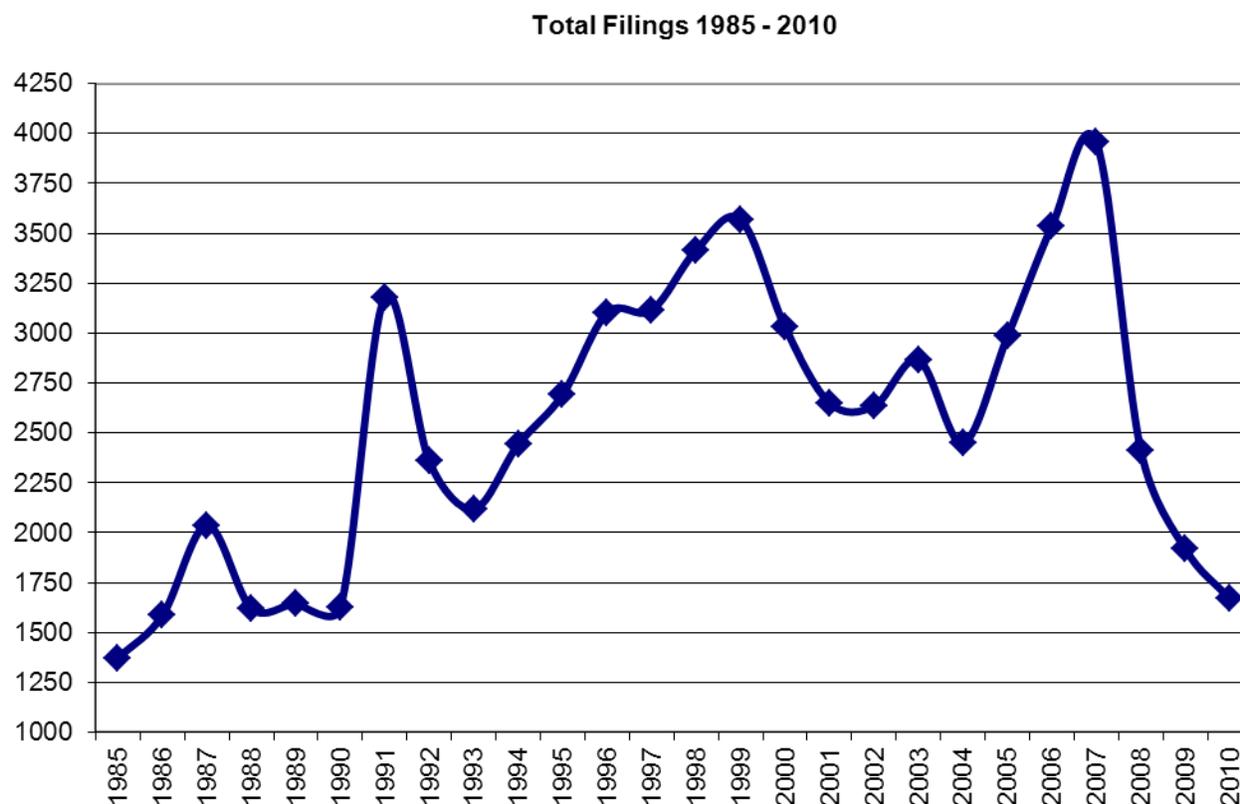
2010 Statistical Report

(Released May 19, 2011)

Case Filings Continue Significant Declining Trend

The 1,668 new cases filed in 2010 continue a significant declining trend over the past three years. New filings in 2010 were down thirteen percent from the 1,917 new cases filed in 2009, and represent a **fifty-eight percent decrease** from the record-high number of filings in 2007. From all indications, the filing levels of 2007 were an anomaly and should not be used as a basis for forming any long-term conclusions about the workload of the Court. As illustrated in Figure 1, the number of petitions filed in 2009 is a return to filing levels that have not been seen since the 1980s.

Figure 1



The decrease in the number of new petitions filed in 2010 is attributable in large part to a continuing drop in the number of workers' compensation petitions filed. The all-time high of 2,894 filed in 2007 decreased by half in 2008, to 1,447. The reduction

continued in 2009, with 967 compensation appeals filed. In 2010, only 610 compensation appeals were filed. In part, the reduction in compensation appeals is a signal of stability in the decision-making body at the agency level, following a period of transition as the Office of Judges and the Board of Review became part of the Office of the Insurance Commissioner.

Despite the overall drop in filings, non-compensation filings in 2010 actually showed increases across the civil, criminal, and original jurisdiction categories, with a slight decline in domestic relations cases. (See Table 1.)

Table 1

	Certified	Certiorari	Civil	Criminal	Domestic	Ethics	Habeas	Mandamus	Pet. Bail	Prohibition	Workers' Comp.	TOTAL
1983	18	9	293	180	—	0	321	132	10	80	116	1159
1984	20	27	306	183	—	1	317	166	20	80	162	1282
1985	12	10	332	157	—	10	367	181	24	81	198	1372
1986	17	6	376	182	—	16	240	196	30	101	421	1585
1987	23	4	422	176	—	20	200	214	52	85	841	2037
1988	21	2	394	182	—	13	195	183	47	96	488	1621
1989	28	7	419	168	—	12	186	141	39	116	528	1644
1990	29	5	426	183	—	17	171	149	40	122	481	1623
1991	35	4	524	181	—	23	149	179	20	118	1947	3180
1992	43	2	538	168	—	25	192	184	12	118	1075	2357
1993	34	2	536	165	—	27	319	187	21	118	708	2117
1994	46	7	575	178	—	69	239	173	30	159	966	2442
1995	27	8	642	209	—	43	218	172	39	114	1220	2692
1996	30	4	646	234	—	33	265	180	30	146	1534	3102
1997	27	5	571	203	—	27	253	164	24	132	1708	3114
1998	15	3	556	207	—	24	230	162	20	131	2067	3415
1999	19	5	519	232	—	27	118	177	16	120	2306	3539
2000	7	3	578	203	—	18	100	199	19	86	1816	3029
2001	15	3	606	189	—	19	96	245	13	84	1380	2650
2002	14	2	605	173	—	17	102	210	18	118	1394	2653
2003	17	3	423	186	136	16	170	236	12	94	1572	2865
2004	30	4	402	174	127	24	108	202	16	83	1279	2449
2005	19	0	388	175	151	21	82	190	11	86	1860	2983
2006	18	0	381	169	179	24	78	104	13	105	2473	3544
2007	8	0	386	175	180	26	74	105	8	98	2894	3954
2008	9	0	308	159	201	28	53	99	6	101	1447	2411
2009	18	0	315	164	225	18	60	84	3	63	967	1917
2010	12	2	343	185	218	26	71	114	7	80	610	1668

In 2003, appeals from family court orders and appeals in abuse and neglect cases began to be counted as part of the domestic case type. These cases were previously counted as part of the general civil case type, thus explaining the apparent dip in civil filings in 2003. After taking this adjustment into account, general civil appeals have shown an overall decline in the past eight years, dropping nineteen percent since 2003.

The number of extraordinary remedy petitions filed in 2010 increased in all categories. The number of certified questions declined. **Figure 2**

In non-compensation cases, filing trends have been steady in certain areas, while fluctuating in other areas, as seen in Figure 2. Criminal filings have remained largely steady since 1985, while requests for extraordinary remedies and civil appeals have declined in recent years.

The overall trend in domestic cases has been on the rise since 2003. The category "Other" includes ethics cases, certified questions, and petitions for bail. This category has been largely steady since 1985, apart from a spike in ethics filings in 1994, and a spike in certified questions in 2004.

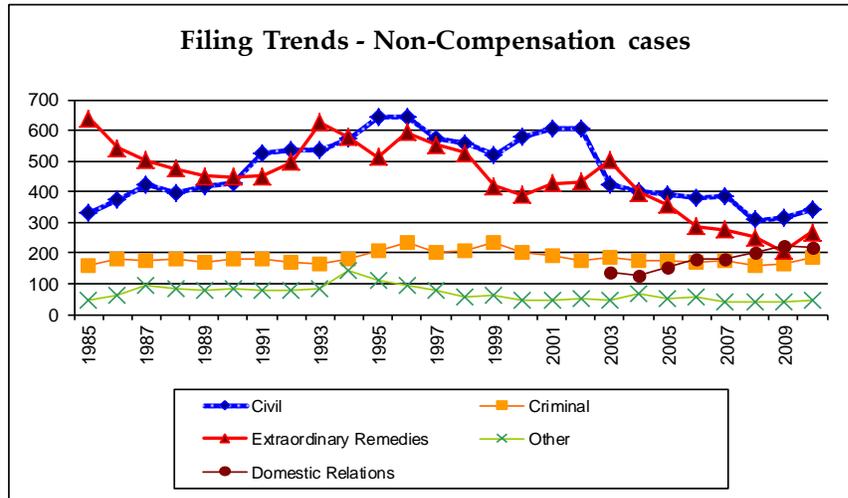
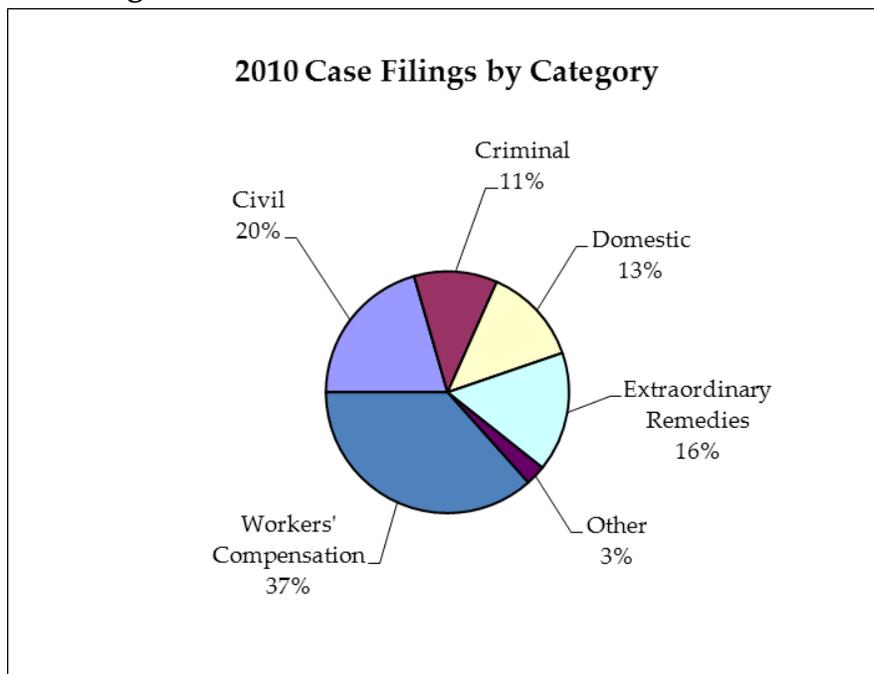


Figure 3



The overall composition of cases filed in 2010, as shown in Figure 3, continues to reflect the breadth and scope of the Court's workload. Although in 2007 workers' compensation cases made up nearly three-quarters of all new filings, in 2010 that figure fell to **just thirty-seven percent**. Through the first three months of 2011 it appears that the filing

levels in this area will continue at last year's levels.

Case Disposition

The Court can dispose of cases by a variety of methods, resulting in opinions and orders. Prior to December 1, 2010, the Court's review of all appeals and original jurisdiction matters was discretionary.¹ Therefore, some cases were disposed by entry of a refusal order, which did not constitute a decision on the merits. Other cases were granted and set for argument, but later withdrawn, dismissed, or otherwise disposed by order. After being granted, most non-compensation cases were disposed by written opinion. Most compensation appeals that were granted were ultimately disposed by memorandum order.

The case clearance percentage is a practical measure of the Court's workload and its ability to keep pace with recent filing levels. Because of the extraordinary workers' compensation filings in recent years, combined with delays associated with new statutory changes, the case clearance percentage fell to below one hundred percent in some prior years.² In 2009, however, the Court disposed of 3,589 cases, for a clearance rate of 187 percent. The clearance percentage remained very high in 2010, with an overall clearance rate of 166 percent. The overall breakdown of the number of cases by disposition method is shown in Table 2.³

Table 2

Disposition Method	Number of Cases Disposed in 2010
Opinion & Mandate	162
Petition Refused	1,917
Memorandum Order & Mandate	542
Dismissed	58
Withdrawn	42
Moot	3
Disposed by Order	58
TOTAL DISPOSITIONS	2,782

Other components of the Court's workload are not reflected in Table 2. In addition to disposing of cases filed, the Court considered eighty-nine pre-petition matters in 2010, which is up from last year's total of eighty-three. Pre-petition matters often involve emergent questions for litigants, such as whether a stay should be granted pending appeal.

The number of petitions for rehearing increased slightly in 2010. In 2000, thirty-one petitions for rehearing were filed. In 2001, that number more than doubled, to sixty-three. In 2002, that number increased again, to eighty-seven, nearly three times the number filed in 2000. In 2003, forty-three petitions for rehearing were filed. In 2004,

that number fell again, to thirty-six petitions for rehearing filed. In 2005 the number rose slightly to forty-five. In 2006, the number fell by almost half, to twenty-three. That figure held steady in 2007, with twenty-four petitions for rehearing filed, and fell only slightly in 2008, with twenty-one filed. In 2009, twenty-six petitions for rehearing were filed. The number rose slightly in 2010 with thirty-five petitions for rehearing filed.

Discretionary Petition Disposition

By narrowing the focus to the disposition of discretionary petitions, rather than the broader area of case disposition, it is possible to determine the percentage of petitions for appeal in several categories that were granted by the Court in the first eleven months of 2010.⁴ The petition grant rate is based upon the total number of petitions of a given type *actually considered* by the Court in a given year (which will differ from the number of petitions *filed* in a given year). Table 3 sets forth the total number of discretionary petitions considered over the past twelve years in each category, along with the percentage of the petitions that were granted for full briefing and argument.

Table 3

	Certified Questions		Certiorari		Civil		Abuse & Neglect		Criminal		Domestic		Habeas Corpus		Mandamus		Petition for Bail		Prohibition		Workers' Comp.		Totals	
	Reviewed	Granted %	Reviewed	Granted %	Reviewed	Granted %	Reviewed	Granted %	Reviewed	Granted %	Reviewed	Granted %	Reviewed	Granted %	Reviewed	Granted %	Reviewed	Granted %	Reviewed	Granted %	Reviewed	Granted %	Reviewed	Granted %
1999	17	35%	6	67%	456	30%	96	11%	234	18%	x	x	108	>1%	132	30%	16	0	113	27%	1874	51%	3052	41%
2000	10	60%	4	50%	431	29%	120	>1%	194	21%	x	x	91	>1%	142	39%	17	6%	85	26%	2298	65%	3392	52%
2001	16	69%	0	0	378	39%	135	4%	187	18%	x	x	62	3%	165	15%	14	0	69	26%	2211	51%	3237	42%
2002	14	43%	2	50%	370	35%	118	11%	144	22%	x	x	102	10%	131	21%	16	0	109	28%	1162	42%	2168	34%
2003	14	86%	2	50%	479	32%	84	8%	195	17%	37	27%	132	7%	146	27%	13	0	83	37%	1011	34%	2196	29%
2004	26	69%	5	40%	405	30%	113	5%	182	10%	34	35%	126	6%	109	20%	14	7%	79	20%	1496	40%	2589	32%
2005	20	60%	1	100%	393	30%	90	1%	167	14%	51	22%	82	9%	107	23%	9	22%	77	32%	844	27%	1841	24%
2006	19	42%	0	0	384	21%	130	5%	190	14%	50	14%	87	9%	240	14%	12	0	110	15%	1367	8%	2589	11%
2007	8	38%	0	0	319	27%	136	3%	147	17%	41	37%	69	1%	92	27%	10	0	84	18%	1751	17%	2657	17%
2008	8	75%	0	0	390	32%	150	3%	171	12%	43	21%	48	4%	89	21%	5	0	101	15%	2706	23%	3711	22%
2009	10	100	0	0	282	23%	154	6%	161	22%	37	27%	48	6%	91	15%	4	0	63	24%	2654	22%	3504	21%
2010	18	1	1	100	326	28%	203	5%	170	19%	42	31%	67	10%	105	28%	7	0	71	28%	1248	10%	2258	15%

In 2010 the Court continued to review a high number of workers' compensation petitions – more than double the number of new petitions filed. The number of civil appeals granted increased by five percent. Across all categories, about one in seven petitions reviewed in 2010 were granted. (For a graphical representation of these data,

see Table 5 on page seven: “Percentage of Discretionary Petitions Granted - Major Case Types - 1999-2010.”) As recognized by the National Center for State Courts, “most discretionary petitions filed in both intermediate appellate courts and courts of last resort are denied.”⁵

Caseload Comparison with Comparable Courts

The historic increase of filings in West Virginia is consistent with the increase of filings nationally since 1950. In response to the steady increase in filings, the number of states with intermediate appellate courts (IACs) tripled in the same time period; thirteen states had IACs in 1950, compared with thirty-nine states in 2001. In the past twenty years, Mississippi, Nebraska, and Utah have created IACs. More recently, growth in IACs has slowed, with voters disapproving a ballot measure in Nevada in 2010.

The most recent (2008) data from the National Center for State Courts⁶ indicate that case filings in West Virginia exceed those of other jurisdictions without an intermediate appellate court. However, filings in Nevada and the District of Columbia are quite close. If 2010 filing figures were used for West Virginia (1,668), and assuming that all other states would remain stable, then West Virginia would have the third highest in filings.

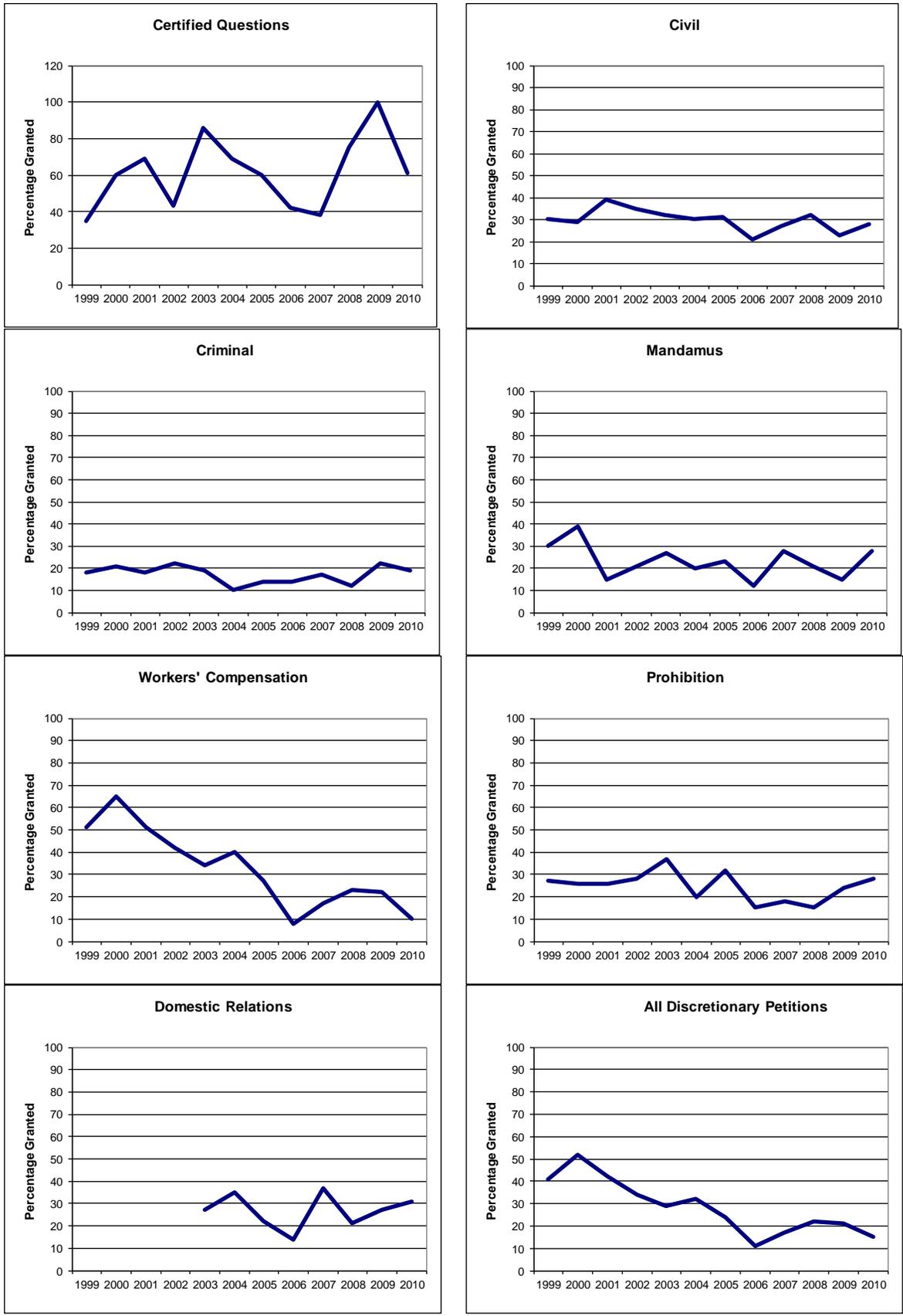
Table 4 illustrates the comparable caseload figures for 2008 across jurisdictions without a permanent intermediate appellate court.⁷

Table 4

Jurisdictions Without Intermediate Appellate Courts	Total Filings	Population Rank
Delaware	670	46
District of Columbia	1,757	51
Maine	755	41
Montana	699	45
Nevada	2,248	36
New Hampshire	964	42
North Dakota	342	49
Rhode Island	323	44
South Dakota	361	47
Vermont	503	50
West Virginia	2,411	38
Wyoming	284	52

Percentage of Discretionary Petitions Granted - Major Case Types - 1999-2010

Table 5



¹ The Revised Rules of Appellate Procedure became effective on December 1, 2010, and require a decision on the merits in every properly prepared appeal. The practice of issuing refusal orders that contain no explanation for the Court's action in appeals ended on December 1, 2010. The Court retains the discretion to refuse petitions for extraordinary relief (i.e. Mandamus, Prohibition, Habeas Corpus, and Certiorari) as well as the discretion to refuse certified questions.

² Two main factors combined to cause the clearance rate to fall below typical levels. First, dispositions in workers' compensation cases were held in abeyance for about a year beginning in late October 2003, while the Court considered cases involving the impact of the adoption of Senate Bill 2013, and to what extent the statutory changes could constitutionally be applied retroactively to cases filed before July 1, 2003. See *Wampler Foods, Inc. v. Workers' Compensation Div.*, 216 W.Va. 129, 602 S.E.2d 805 (July 1, 2004). The clearance rate was only seventy-eight percent in 2003. In 2004, as the Court began to clear pending cases after the *Wampler* decision was issued, the clearance rate rose to ninety-five percent. The second factor occurred over the next three years, when the extraordinary increase in workers' compensation petitions made it increasingly difficult to keep pace with new filings. Despite the fact that the Court in 2007 reviewed more than double the number of compensation petitions than it reviewed as recently as 2005, the overall clearance rate fell to sixty-four percent in 2007.

³ Cases in which opinions and memorandum orders are written are not disposed until the mandate issues, which is at least thirty days after the opinion or memorandum order is released. Table 2 counts the date of the mandate as the disposition date.

⁴ As of December 1, 2010, petitions for appeal are no longer "granted" or "refused." See Note 1. Accordingly, the information in Table 3 and Table 5 related to appeal categories (Civil, Abuse & Neglect, Criminal, Domestic and Compensation) does not include action by the Court in cases of those kind filed after December 1, 2010. In next year's report, these tables will only contain the categories of cases where the Court retains discretion to refuse the petition (i.e. Mandamus, Prohibition, Habeas Corpus, Certiorari, Bail and Certified Questions).

⁵ R. LaFountain, R. Schaufler, S. Strickland, W. Raftery, & C. Bromage, *Examining the Work of State Courts, 2006: A National Perspective from the Court Statistics Project* at 74 (National Center for State Courts 2007). Among twenty state courts of last resort, West Virginia had the fifth-highest percentage of petitions granted in 2005. This ranking would be higher if the National Center's percentage was calculated based upon the number of cases *actually considered*, versus the number *filed* in a given year. The website of the Court Statistics Project, a joint effort by the Conference of State Court Administrators, the Bureau of Justice Statistics, and the National Center for State Courts, contains a wealth of resources and publications related to court statistics. <http://www.ncsconline.org/d_research/csp/CSP_Main_Page.html>

⁶ R. LaFountain, R. Schaufler, S. Strickland, C. Bromage, S. Gibson & A. Mason, *Examining the Work of State Courts: An Analysis of 2008 State Court Caseloads* at 2 (National Center for State Courts 2010).

⁷ North Dakota has a temporary intermediate appellate court that can be called up from time to time by the North Dakota Supreme Court to handle overload matters. Because its IAC is temporary and not usually activated, North Dakota is counted as a jurisdiction without an intermediate appellate court. See *Examining the Work of State Courts, 2006*, Id. at 68.