



BUSINESS COURT DIVISION

2016 Annual Report



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, later amended by order entered June 13, 2014. Justice Robin Jean Davis, then 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 consists of seven judges appointed by the Chief Justice to serve a term of seven years. While maintaining their own general dockets, the judges 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 does not prohibit successive terms, either as judge or as Chair of the Division.



Division Judges at the 2016 Fall Judicial Conference, front row: Judges Clawges & Tabit; back row: Judges Young, Carl, Wilkes, & Farrell. Not pictured, Judge Evans. Photo by Jennifer Bundy.

The division judges receive specialized training in business law subjects and are members of the American College of Business Court Judges. Some are members of the American Bar Association Business Law Section. The division judges meet bi-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 Thomas C. Evans III**
Judge of the Fifth Circuit
Business Court Region C

October 9, 2019

Retired December 31, 2016



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

December 31, 2019



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

September 30, 2020



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

September 30, 2020



Honorable Joanna I. Tabit*****
Judge of the Thirteenth Circuit
Business Court Region C

October 9, 2019



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.
- ***** Appointed by Chief Justice Menis E. Ketchum by Administrative Order dated February 12, 2016.

STAFF

Carol A. Miller, the Executive Director of the Business Court Division administers the central office of the 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 serves as law clerk to assist the division judges with legal research and analysis, drafting orders, and assisting in court hearings and trials.

UPDATES

Division Judge James J. Rowe retired at the end of February and Chief Justice Menis E. Ketchum appointed Kanawha County Circuit Judge Joanna I. Tabit to finish the unexpired term of Judge Rowe. Judge Tabit's extensive knowledge and experience in commercial litigation qualified her to not only take over Judge Rowe's pending business court cases but also accept new cases assigned to the Division in 2016 as presiding and resolution judge.

Division Judge Thomas C. Evans, III retired December 31, 2016. Chief Justice Ketchum, by order dated November 9, 2016, appointed Harrison County Circuit Judge James A. Matish to begin January 1, 2017. Judge Matish will take over Judge Evans' pending cases and will begin accepting new assignments as presiding and resolution judge. He brings to the Division an academic and professional background relating to business issues plus years of experience as a circuit court judge.

The division judges held bi-annual meetings during the spring and fall judicial conferences where they met with the Executive Director of the Division, the Chief Justice and other Justices



2016 Business Court meeting, pictured from left: Chair, Judge Wilkes; Executive Director, Carol Miller; Chief Justice Menis Ketchum, and Division Judge Farrell. Photo by Jennifer Bundy.

of the Supreme Court to discuss the activities of the division and future endeavors. The judges discussed prior business court decisions, statistics and case distribution. The judges will continue to meet bi-annually and as needed to discuss any new case law related to business, technology or potential rule changes that may enhance the business court's operations.

EDUCATION

In June, Judge Clawges attended a five-day mediation course titled, *Mediating Disputes*, offered by Harvard Negotiation Institute at Harvard Law School.

Division judges will continue to attend courses related to complex business litigation and alternate dispute resolution and remain active with the local and statewide bar and business associations to update lawyers and the public on any business court developments and statistics.



2016 Business Court meeting, pictured from left: Division Judge Evans, Justice Robin Jean Davis, and Division Judge Carl. Photo by Jennifer Bundy

PRESENTATIONS BY THE BUSINESS COURT IN 2016

The Business Court continues to receive invitations for Division judges to serve as speakers, panelists, authors of magazine articles, and participants in symposiums demonstrating statewide and national recognition of the specialized court.

In April, Judge Wilkes presented an overview and update of the business court from the bench's perspective while Teresa Dumire, an attorney with Kay Casto and Cheney presented the litigator's perspective at the Eastern Panhandle Bar Association's Spring CLE in Martinsburg.

In May, Judge Young, Judge Rowe and Judge Wilkes served on a panel, *As Judges See it: What Attorneys Need to Know About West Virginia's Business Court* that was held in Charleston. The division judges instructed and answered questions regarding the business court including proving prerequisite complexity to preventable e-discovery errors.



In May, Judge Wilkes accepted an invitation from Michelle M. Harner, Professor of Law and Director of the Business Law Program at the University of Maryland, to serve as a panel participant in the Business & Technology Case Management Program (BTCMP) Symposium: *Taking Stock of Maryland's Business and Technology Case Management Program and Business Courts Around the County*, in Baltimore, MD. The BTCMP held the symposium after a two-year study by the Ad Hoc Task Force created by the Maryland State Bar Association created to improve the effectiveness of the program. Judge Wilkes participated on *Panel IV: Select Issues Relating to Business Courts: Education, Resources, and Potential Barriers to Implementation and/or Effectiveness*. He shared insight to West Virginia's business court model while also learning of other's criticisms and concerns regarding the various models throughout the nation.

As Chair of the Division, Judge Wilkes spoke at the All Law Clerk Education Program in Charleston to ensure that circuit law clerks are up to date on business court referral procedures. The Defense Trial Counsel of West Virginia invited the Division to speak on the practical tips and techniques for attorneys litigating in the business court. Judge Wilkes spoke and also co-presented with Judge Moats on the differences between the business court and mass litigation panel. In October, Judge Wilkes delivered a lecture regarding the operations of business court to the newly elected circuit judges in Charleston.

Wilkes also accepted an invitation to contribute to the Fall 2016 edition of *Views & Visions*, and authored an article focusing on how the "business court can support the growth of business development in the Eastern Panhandle as well as the State of West Virginia as a whole."¹

¹ Christopher Wilkes, *The Business Court Division*, *Views & Visions* (Fall 2016).

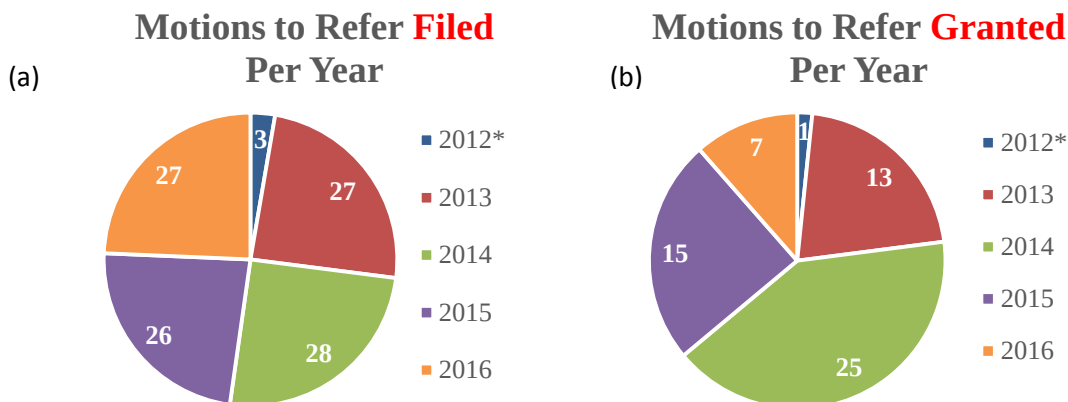
Nature of Cases Referred to Business Court in 2016

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

Case No./ County	Nature of Case
15-C-807 Cabell	Matters of significance to the transactions, operations, or governance between business entities; commercial and/or technology issues. Defendants' counterclaims include breach of contract; breach of duty of good faith and fair dealing; violation of the Uniform Fraudulent Transfers Act; and unlawful setoff/conversion.
16-C-70 Logan	Breach of contract; the terms of a commercial lease; and disputes among business entities involving the lease.
15-C-405 Harrison	Breach of contract and breach of contractual commitments; seeking declaratory judgment.
16-AA-3 Berkeley	Appeal of an administrative agency.
14-C-1182 Kanawha	Breach of contract; professional negligence.
14-C-36 Lewis	Injunctive relief; declaratory relief; and monetary damages stemming from alleged unlawful encroachment of a right-of-way in which access was prevented.
16-C-34 Wayne	Breach of contract.

BUSINESS COURT CASE ACTIVITY

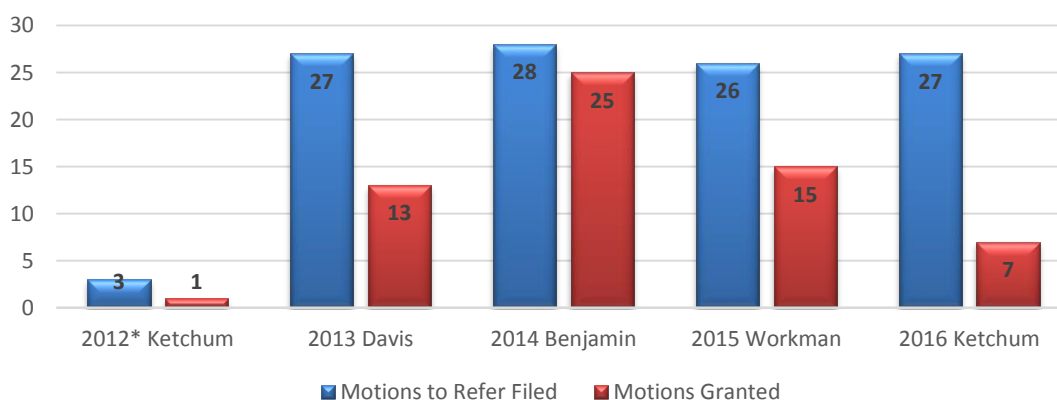
Since inception, **111** motions to refer to the Business Court Division have been filed; the yearly breakdown is shown in chart (a) below. Of those motions, **61** were granted and referred to the Business Court Division; the yearly breakdown of referrals is shown in chart (b) below. Five of the motions filed did not require a ruling from the Chief Justice due to settlement or withdrawal.²



**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:

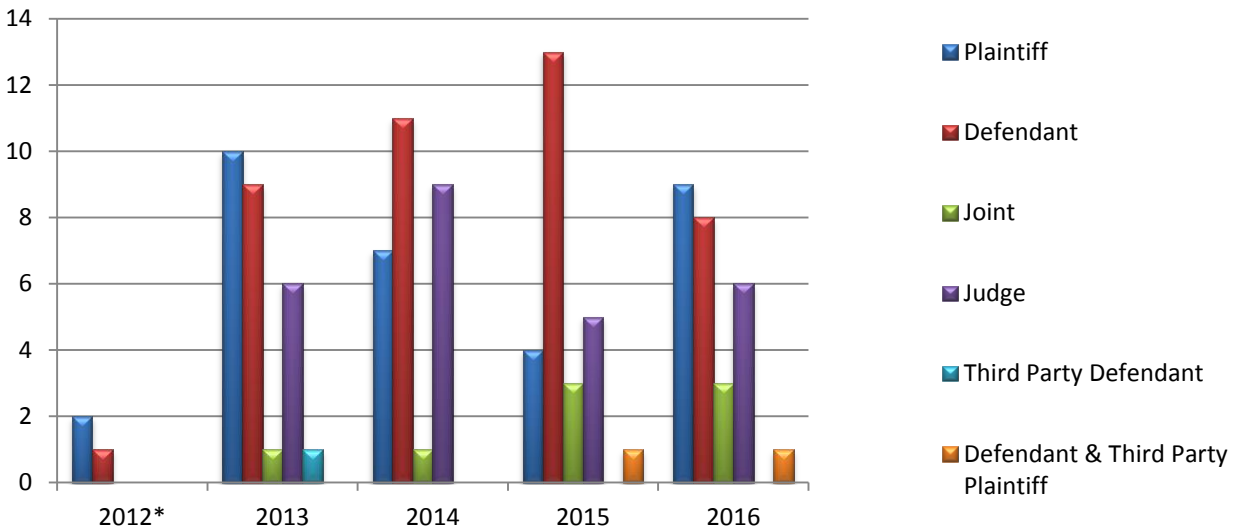
Comparison of Filed Motions to Granted Motions



**Business Court was established October of 2012.*

² Since these five cases did not require a ruling of the Chief Justice, they were not included on the online case management system. 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?

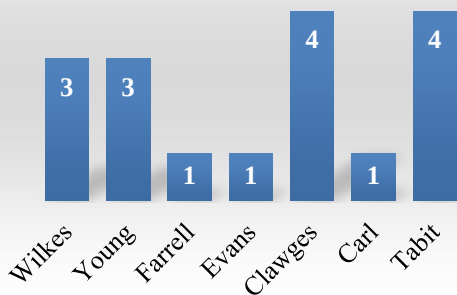


*Business Court was established October of 2012.

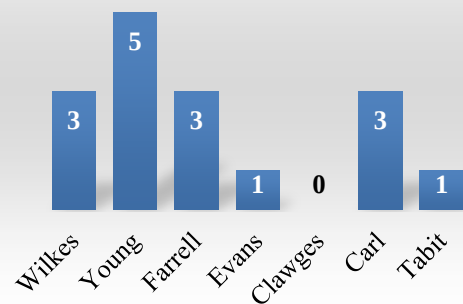
How Cases Are Assigned and Number of Current Pending Cases Per Judge

The Chair considers the locality, number of assignments, and expertise of the judges when receiving a new referral. The Chair then consults with the division judges to ensure there are no conflicts before making assignments of presiding and resolution judge. The charts below show how many cases are currently pending per judge.

Pending Cases Per Judge
as Presiding



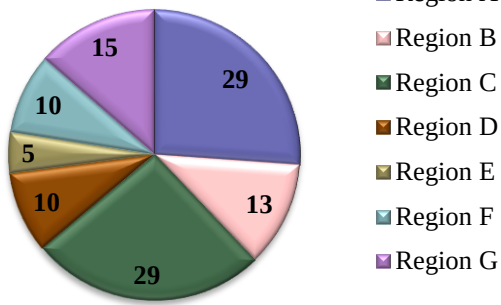
Pending Cases Per Judge
as Resolution



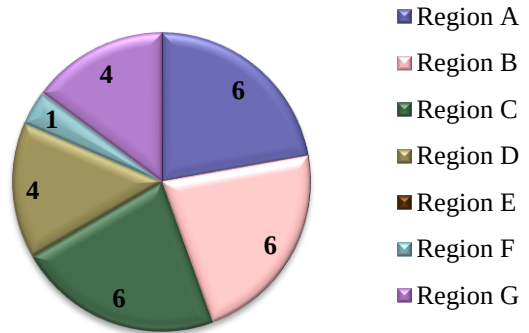
*Due to number of parties and/or complexity, co-resolution judges are oftentimes assigned to cases.

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

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

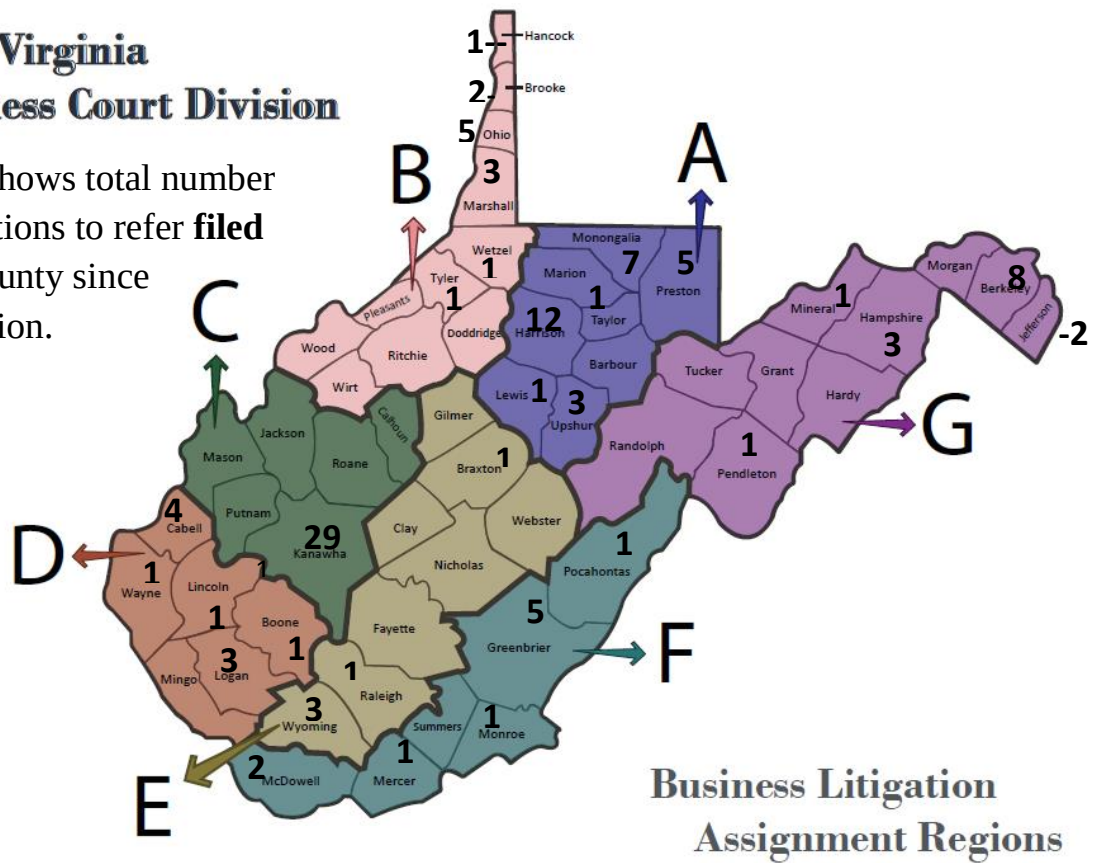


**Motions to Refer Filed in
2016 Per Region**



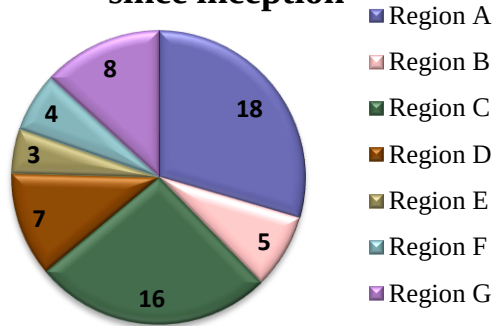
West Virginia Business Court Division

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

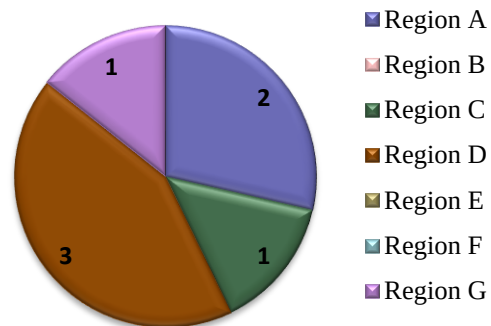


Number of Motions to Refer **Granted/Referred** to Business Court by Region/County

Total Number of Motions to Refer that were granted since inception

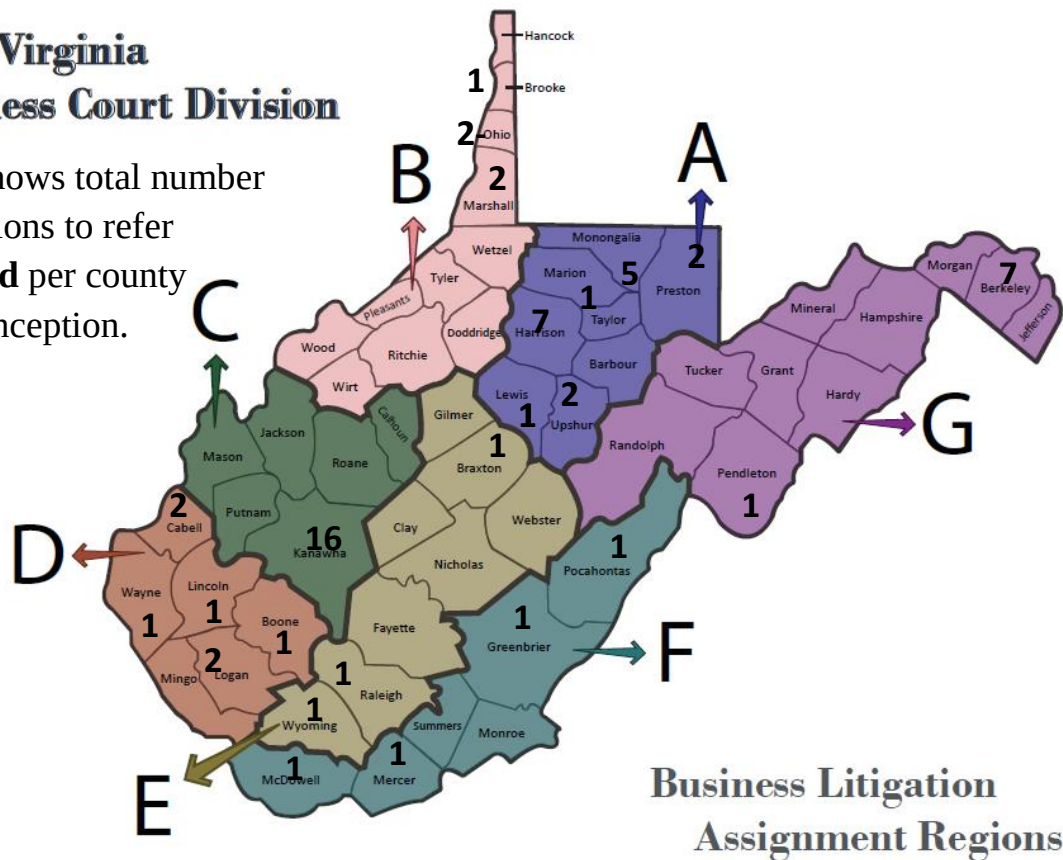


Motions to Refer Granted in 2016



West Virginia Business Court Division

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



Pending Cases

The table below shows the **17** cases pending as of December 31, 2016. 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.

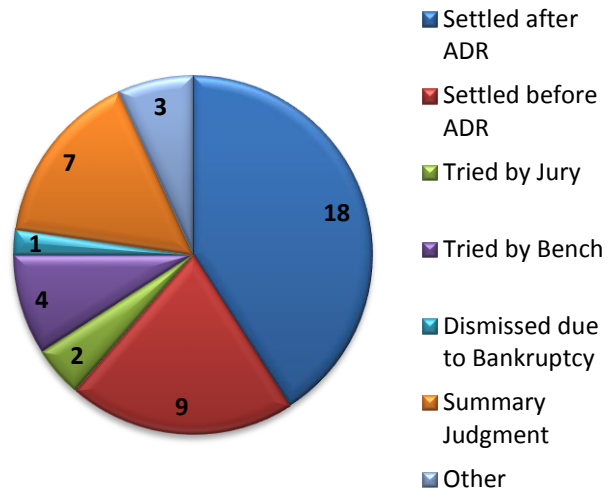
Case No./ County	Plaintiff	Defendant	Presiding Judge	Resolution Judge	Trial Date or Status
13-C-198 Preston	Marrara, et al.	Marrara, et al.	Clawges	Wilkes	Stayed pending bankruptcy
14-C-231 Logan	Southern Amusement Co.	B&J Enterprises, et al.	Tabit assigned after Rowe retired	Farrell	Settled as of November 10, 2016; awaiting submission of final order
13-C-394 Berkeley	DAR, LLC	Triad Engineering, et al.	Clawges	Young	PT: February 21, 2017 Trial: TBD
09-C-2104 Kanawha	WV Investment Management Board, et al.	The Variable Annuity Life Insurance Co.	Wilkes	Rowe	Arbitration set with three-judge panel of business court judges: January 18, 2017
14-C-60 Wyoming	Summit Resources, Inc.	Kelly, et al.	Farrell	Young	Will be reset for trial in 2017
13-C-196 Ohio	Horizon Ventures of WV	American Bituminous Power Partners	Young	Evans	PT: April 11, 2017 Trial: April 25, 2017
15-AA-6 Berkeley	University Healthcare Foundations	Hess, et al.	Wilkes	N/A	Stayed pending outcome of appeal
15-C-562 Kanawha	Greenbrier Hotel Corporation, et al.	Marsh & McClennan Agency, et al.	Matish effective 1/1/17 after Evans retired	Young and Wilkes	Will be reset for trial in 2017

15-P-63 Marion	Mentus	Washenitz, et al.	Clawges	Carl	Arbitrated by Judge Carl; awaiting final order
14-C-503 Harrison	Alan Enterprizes	Mac's Convenience Stores	Rowe	Carl	PT: February 13, 2017 Trial: February 28, 2017
15-C-807 Cabell	Peoples Bank	Appalachian Mining and Reclamation, LLC, et al.	Tabit	Young	Trial: July 10, 2017
16-C-70 Logan	The Bruce McDonald Holding Company, et al.	Addington, Inc., et al.	Young	Tabit	PT: March 14, 2017 Trial: April 3, 2017
15-C-405 Harrison	Riley Natural Gas Company	Northstar Energy Corporation	Clawges	Carl	PT: February 21, 2017 Trial: TBD
14-C-1182 Kanawha	J.F. Allen Corporation	The Sanitary Board of the City of Charleston, et al.	Tabit	Farrell	PT: March 20, 2017 Trial: April 3, 2017
16-AA-3 Berkeley	University Healthcare Foundation, Inc.	Larry A. Hess, Assessor, et al.	Wilkes	None	Stayed pending appeal in 14-AA-4
14-C-36 Lewis	Stephen R. Peters, et al.	J&J Land Properties, LLC	Carl	Wilkes	PT: August 14, 2017 Trial: September 19, 2017
16-C-34 Wayne	Millie Tomblin	Eagle Pipeline, LLC, et al.	Young	Farrell	To be set in 2017

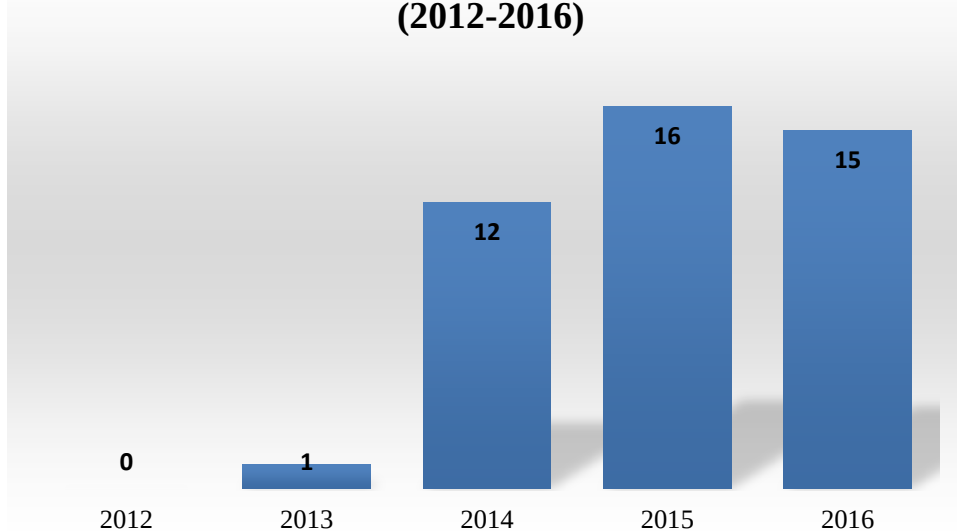
Resolution of Cases

The chart to the right shows how the **44** cases were resolved. Although parties may choose to use private mediators, resolution judges have successfully settled numerous issues and cases. The majority of cases have settled after some form of alternate dispute resolution, primarily mediation. One case has been resolved by arbitration and another case is scheduled for arbitration. Four cases have been tried by bench trials and one case has been adjudicated by jury trial. One case settled after three days into a jury trial.

How Cases Were Resolved



Cases Closed By Year (2012-2016)



Cases Resolved in 2016

The following table shows the case age and assigned judges of the **15** cases that were resolved in 2016. The timely resolution of cases can 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
Joe Holland Chevrolet, Inc. v. Liberty Mutual Insurance Co. and Greg Chandler's Frame & Body, LLC	Kanawha	Evans	Rowe	7/29/2015	2/8/2016
Mangus Coal Company, Inc. a West Virginia Corporation, et al. v. Christopher Jennings, Individually, and as an officer, director, and majority shareholder of Mangus Coal Co. Inc., et al.	Preston	Farrell	Clawges	7/23/2014	2/10/2016
Betty Parmer v. United Bank, Inc. and Randall Williams	Monongalia	Wilkes	Clawges	10/31/2014	2/12/2016
The Velotta Company v. Stantee Consulting Services, Inc.	Upshur	Wilkes	Rowe	8/27/2014	2/12/2016
TM Associates, Inc. v. Deer Forest Limited Partnership, et al.	Kanawha	Carl	Evans	6/26/2015	2/22/2016
Richard C. Rashid, M.D. v. Muhib S. Tarakju, M.D.	Kanawha	Young	Evans	1/16/2014	3/8/2016
Doran H. Frame, III, et al. v. Eric Holcom	Kanawha	Young	Carl	7/23/2015	3/16/2016
James Scott Pauley v. Appalachian Stream Restoration, LLC, et al.	Lincoln	Farrell	Young	6/17/2014	3/21/2016
United Bank, Inc. v. Clarence E. White, et al.	Kanawha	Rowe	Farrell	9/24/2014	4/5/2016

Case Style	County	Presiding Judge	Resolution Judge	Date of Referral to Bus. Ct.	Date of Final Order
Omega Facility Services, Solutions & Surety, LLC v. Jacobs & Company, Inc., et al.	Kanawha	Evans	Clawges	12/11/2014	4/5/2016
Monongahela Power Company v. Citizens Telecommunications Co. of WV d/b/a Frontier Communications of WV and Frontier Communications Corporation, et al. consolidated with: Potomac Edison v. Citizens Telecommunications of WV, et al. and Potomac Edison v. Frontier Communications of WV, et al.	Brooke Berkeley Berkeley	Clawges	Evans	7/15/2014	5/16/2016 ³
Black Bear Crossing Town House Association, LLC, et al. v. Black Bear Crossing LLC, et al	Pocahontas	Rowe	Wilkes & Young	6/10/2015	7/27/2016
M&D Rental Corporation v. Farmer's and Merchants Bank and Trust, Inc., et al.	Berkeley	Evans	Wilkes & Clawges	6/4/2015	8/1/2016
Shell Equipment Company, Inc. v. J.F. Allen Company, Inc.	Harrison	Young	Carl	11/9/2015	9/30/2016
Vandalia Capital, II, LLC v. David P. Pray, Individually and as Trustee of The David P. Pray Revocable Trust, et al.	Kanawha	Farrell	Clawges	9/24/2014	12/21/2016

³ This case was stayed 2/6/15 pending a determination by the FCC. Stay was lifted and case was dismissed by order dated 5/16/16.

SUMMARY

Of the **106** motions considered by the presiding Chief Justice, **61** cases have been referred to the Business Court Division of which **44** have had final orders entered, leaving **17** pending cases. Of the **44** disposed cases, the average business court case age was **392** days.⁴

FEEDBACK

Stuart McMillan, a partner of Bowles Rice who has appeared before the business court in numerous cases moderated a seminar hosted by the National Business Institute and the partners of Bowles Rice. When referring to the business court, McMillan said, “I think it’s been positive. It’s still new; we’re still getting familiarity with it, but the court has been very good about making sure the right cases get in there. The system has worked well...There’s always tweaking that’s going on. They put a lot of time into it to make it work right.”⁵

Charles “Chuck” Bailey’s Contributor’s Column in the Defense Trial Counsel of West Virginia’s Winter Newsletter included a note about the business court. Bailey, highlighted the past article of the Defense Trial Counsel (DTC) of West Virginia stating that they had “demonstrated that the judges who serve on this Court are extremely dedicated to it, and the lawyers within [the DTC’s] membership who appear before the Business Court give the Court a “thumbs up.”⁶ He further stated that the feedback received from that newsletter was well received.

⁴ The average business court case age is over the 10 month anticipated adjudication goal as set out in Rule 29; however, the average business court case age as calculated includes cases that were stayed. For example, the business court case age of the Brooke County case above that was consolidated with two Berkeley County cases was 671 days even though the case was stayed for 465 of those days.

⁵ Chris Galford, West Virginia Business Court marks unique place in legal system, *West Virginia Record* (February 15, 2016).

⁶ Charles “Chuck” Bailey, *Contributor’s Column*, Defense Trial Counsel of West Virginia Newsletter (Winter 2015-2016).