

# 2019 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 Division Judges 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 2019.

## **PURPOSE AND OVERVIEW**

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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, and 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 Business Court Judges' mediation training and experience, along with the alternative dispute resolution aspect of Trial Court Rule 29, allow the resolution judges to offer various alternative dispute resolution options throughout the litigation process, resolving a considerable number of cases in a timely manner, short of trial.

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

- (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 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**

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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 a particular interest and 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. The senior status judge and the active circuit court judges on the Division 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 members of the American Bar Association Business Law Section. The Division judges meet biannually at the judicial conferences to discuss new developments, caseload distribution, case management techniques, and any other issues that may need addressed.



Division Judges: front row-Judges Wilkes, Farrell, Lorensen (Chair), and Dent; back row- Judges Nines, Young and Carl. Photo taken at the Business Court meeting at the Fall Judges' conference.

## **BUSINESS COURT STAFF**

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Carol A. Miller, the Executive Director of the Business Court Division administers the central office of the Division which is located 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

## **CHANGES TO THE DIVISION**

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Senior Status Judge Christopher C. Wilkes completed his term as Chair of the Division and retired as Judge of the Twenty-Third Judicial Circuit, effective January 31, 2019. He was approved for admission to senior status upon his retirement and will continue serving on the Business Court as a senior status judge.

Judge Michael D. Lorensen, Judge of the Twenty-Third Judicial Circuit was appointed to serve as Chair of the Business Court Division beginning on February 1, 2019, for three years.

Judge Shawn D. Nines, Judge of the Nineteenth Judicial Circuit was appointed to replace Judge Joanna I. Tabit who resigned from the Business Court Division.

Judge James A. Matish, Judge of the Fifteenth Judicial Circuit, completed his term with the Division October 9, 2019. Judge Jennifer P. Dent, Judge of the Eleventh Judicial Circuit was appointed to replace him.

The Supreme Court of Appeals entered an order dated October 9, 2019, approving new terms for all of the Business Court Division Judges. The new terms will insure the terms are staggered, requiring one Business Court Division Judge to be appointed or renewed every year, with the intent of maintaining experienced and specially trained judges on the Division.

## NEW APPOINTMENTS

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**Judge Shawn D. Nines** took the bench in the Nineteenth Judicial Circuit (Barbour and Taylor Counties) on January 2, 2019. Governor Jim Justice appointed Nines on December 11, 2018, to the new judicial position created in the 2018 legislative session.

Before his appointment, Judge Nines had been an attorney with his own law practice in Grafton since 2007. He has served as an Assistant Prosecuting Attorney in both Taylor and Barbour Counties. He previously was City Attorney for Grafton, a lawyer for Huddleston Bolen LLP., and was a law clerk for Judge Moats from 2003 to 2005. He is a registered Patent Attorney with the United States Patent and Trademark Office.



Judge Nines has a 1998 bachelor's degree and a 2000 master's degree in Petroleum and Natural Gas Engineering from West Virginia University and a 2003 law degree from the University of Akron Law School.

**Judge Jennifer P. Dent** was elected on May 10, 2016, to an Eleventh Judicial Circuit (Greenbrier and Pocahontas Counties) term that began on January 1, 2017. On May 19, 2016, Governor Earl Ray Tomblin appointed her to the same seat to serve the remaining seven months on the term of Judge James Rowe, who retired.

Judge Dent is a native of Lewisburg, Greenbrier County. She has a 1983 bachelor's degree in business from the University of Alabama at Birmingham and a 1986 law degree from the Cumberland School of Law.

In 1986 she worked for the Central Bank of the South. She then joined the U.S. Bankruptcy Court for the Northern Division of Alabama, Eastern Division, where she was a law clerk from 1987 to 1989 and the Deputy Clerk in Charge from 1989 to 1991. She was an attorney at the Najjar, Denaburg Law Firm in Birmingham, Ala., from 1991 to 1993.



She returned to West Virginia in 1994. She was an assistant prosecutor in Summers County (1994 to 2002) and an assistant prosecutor in Monroe County (1998 to 2002). From 2002 until her appointment to the bench, she was an assistant prosecutor in Greenbrier County. In that role, she prosecuted child abuse and neglect, juvenile delinquency, juvenile status offenses, misdemeanor and felony cases.



## WEST VIRGINIA'S BUSINESS COURT DIVISION JUDGES



**Honorable Michael D. Lorensen**  
Chair 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

## UPDATES AND HIGHLIGHTS

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The Division Judges had their biannual meetings in May and October at the judges' conferences, led by Division Chair Michael D. Lorensen. The meetings consisted of welcoming and training the recently appointed judges and discussion of the following: assignment of cases, staggering the terms of the Business Court Judges, additional mediation training, enhancing the Business Court webpage, and the need for arbitration rules.

The Business Court webpage has been updated and now loads the most recent significant orders on the home page with a tab that will contain a perpetual list of all significant orders moving forward. The case management tool on the webpage will still allow users to search cases by name or case number, and allow the user to view a list of all Business Court cases by simply clicking on the "search" button. They may also search by case number or party name.

West Virginia Trial Court Rule 29.08(h) authorizes the resolution judge "to schedule and conduct mediation of the case or any alternative dispute resolution as agreed to by the parties and the resolution judge in an attempt to resolve the case in an expedient and efficient manner." Arbitration by the Division Judges has been upheld by the Supreme Court of Appeals of West Virginia, but the Court noted in their opinion that, "at least in the context of arbitrations, litigants and courts would benefit from additional rulemaking pursuant to Rule 29.05(c)".<sup>1</sup> Therefore, the Division Judges are in the process of proposing arbitration rules to the Court for adoption.

Judge Lorensen presented at a Bowles Rice meeting in April. There were approximately 30 lawyers and clients in attendance at the Martinsburg office and up to 100 viewing from other Bowles Rice offices by video.

The 2019 Spring Meeting of the Business Law Section of the American Bar Association was held in Vancouver, Canada. Senior Status Judge Wilkes, as Co-Chair of the eDiscovery Committee and Vice Chair of the Dispute Resolution Committee, helped write, present and organize actors in the "Law & Order" Discovery Victims Unit, a two-hour dramatization and interactive program presenting a simulated eDiscovery dispute that included points of view from attorneys and clients as well as rulings from judges. He also attended the 2019 Business Law Section Annual Meeting that was held in Washington D.C. in September.

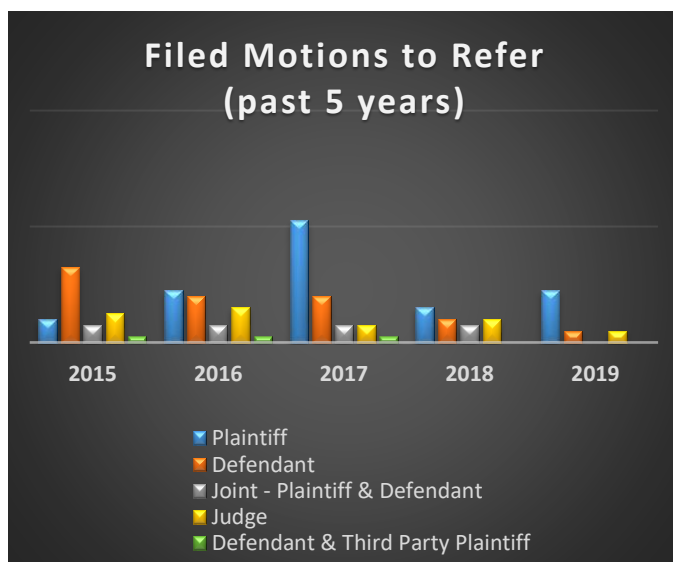
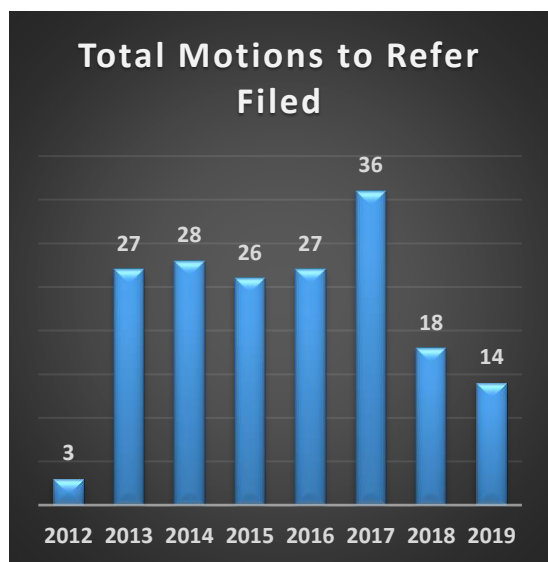
In October, Senior Status Judge Wilkes attended the Fourteenth Annual Meeting of the American College of Business Court Judges in Pittsburgh, Pennsylvania. The meeting consisted of 8.75 hours of instruction in a wide range of areas, including expert testimony and legal analytics, punitive damages, shareholder rights, advanced technologies, and employment agreements.

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<sup>1</sup> *W. Virginia Inv. Mgmt. Bd. v. Variable Annuity Life Ins. Co.*, 241 W. Va. 148, 160, n. 35, 820 S.E.2d 416, 428 n. 35 (2018).

## CASE STATISTICS

Trial Court Rule 29.06 allows any party or judge to seek a referral of Business Litigation to the Division by filing a Motion to Refer to the Business Court Division with the Clerk of the Supreme Court of Appeals of West Virginia. In 2019, there were 14 Motions to Refer filed, and since inception, there have been 179 Motions to Refer filed in 39 counties by various parties and judges.



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

County	2012	2013	2014	2015	2016	2017	2018	2019	Total
Barbour						2			2
Berkeley		1	3	3	1				8
Boone			1			1			2
Braxton			1					1	2
Brooke			1		1				2
Cabell			2		2	1			5
Calhoun									0
Clay									0
Doddridge						3			3
Fayette									0
Gilmer									0
Grant									0
Greenbrier		4	1						5
Hampshire		1		1	1				3
Hancock					1	1			2
Hardy									0
Harrison	1	4		4	3	3	2		17



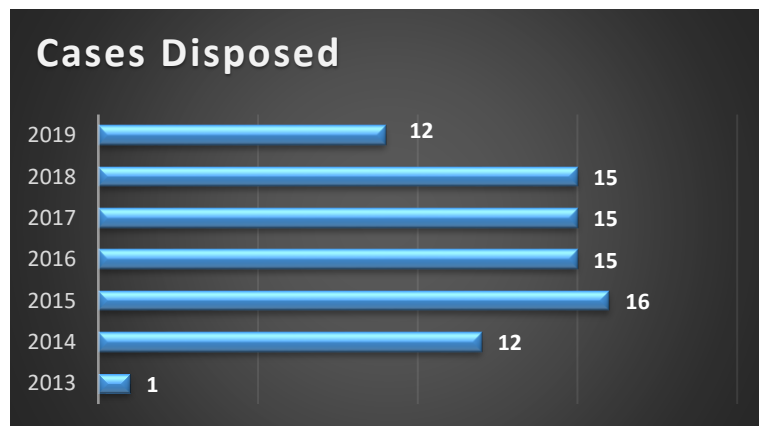
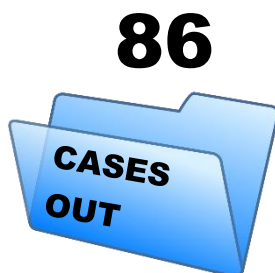
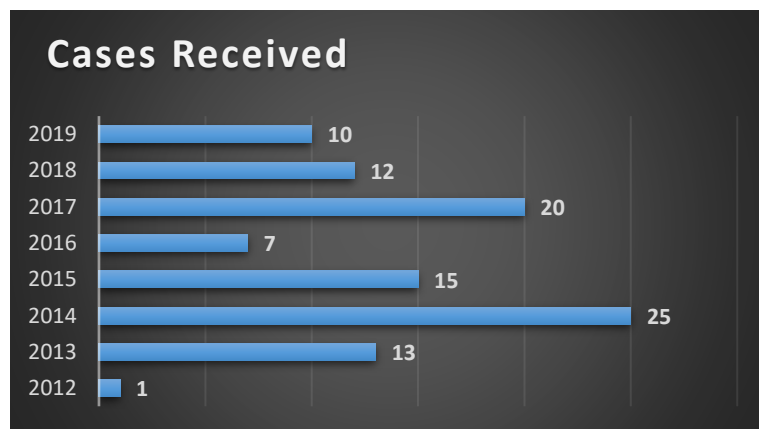
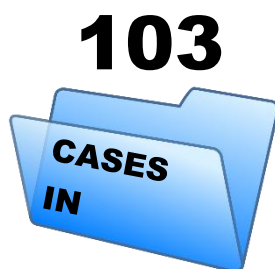
Jackson									0
Jefferson				1	1	1			3
Kanawha	1	8	7	7	6	6	5	3	43
Lewis					1	1			2
Lincoln			1						1
Logan			1	1	1		1		4
Marion				1				1	2
Marshall		1	1		1	1	2	2	8
Mason									0
McDowell			1		1	1	1		4
Mercer		1				1		1	3
Mineral					1				1
Mingo						2		1	3
Monongalia		1	2	3	1	2			9
Monroe		1							1
Morgan									0
Nicholas							1		1
Ohio		1		2	2	1	1		7
Pendleton			1						1
Pleasants							1		1
Pocahontas				1		1			2
Preston			4		1				5
Putnam									0
Raleigh		1				2		3	6
Randolph						1			1
Ritchie						2			2
Roane									0
Summers									0
Taylor									0
Tucker									0
Tyler				1		2	1	1	5
Upshur		1	1	1					3
Wayne					1				1
Webster									0
Wetzel					1		3		4
Wirt									0
Wood						1		1	2
Wyoming	1	2							3
<b>TOTAL</b>	<b>3</b>	<b>27</b>	<b>28</b>	<b>26</b>	<b>27</b>	<b>36</b>	<b>18</b>	<b>14</b>	<b>179</b>

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

<b>County</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>Total</b>
Barbour						2			2
Berkeley		1	3	2	1				7
Boone			1						1
Braxton			1					1	2
Brooke			1						1
Cabell			1		1				2
Calhoun									0
Clay									0
Doddridge						3			3
Fayette									0
Gilmer									0
Grant									0
Greenbrier		1							1
Hampshire									0
Hancock						1			1
Hardy									0
Harrison		2	1	3	1	3	1		11
Jackson									0
Jefferson									0
Kanawha	1	3	7	4	1	3	3	1	23
Lewis					1	1			2
Lincoln			1						1
Logan			1		1				2
Marion				1				1	2
Marshall		1	1			1	1	3	7
Mason									0
McDowell			1			1	1		3
Mercer		1							1
Mineral									0
Mingo								1	1
Monongalia		1	2	2					5
Monroe									0
Morgan									0
Nicholas							1		1
Ohio		1		1			1		3
Pendleton			1						1
Pleasants							1		1
Pocahontas				1					1
Preston			2						2
Putnam									0
Raleigh		1						1	2
Randolph									0
Ritchie						2			2

Roane									0
Summers									0
Taylor									0
Tucker									0
Tyler						2		1	3
Upshur		1	1						2
Wayne					1				1
Webster									0
Wetzel							3		3
Wirt									0
Wood						1		1	2
Wyoming				1					1
<b>TOTAL</b>	<b>1</b>	<b>13</b>	<b>25</b>	<b>15</b>	<b>7</b>	<b>20</b>	<b>12</b>	<b>10</b>	<b>103</b>

In just over seven years, the Business Court Division has disposed of 86 of the 103 cases received with 17 cases currently pending.



## PENDING CASES

The Chair assigns a presiding and a resolution judge upon transfer of a case to business court, taking into consideration the judges' current caseloads, background and expertise, and locality. Each Division judge typically carries two to three business court cases as presiding judges but may also be assigned other business court cases as resolution judges. The average age of pending business court cases is 451 days.

**Table 3. Pending cases at end of the calendar year of 2019**

Case Number	County	Presiding Judge	Resolution Judge	Case Age (days)	Status
13-C-394*	Berkeley	Wilkes	Young	1873	Bench trial is set for 4/28/2020
15-C-807**	Cabell	Lorensen	Young	1426	Stayed due to bankruptcy since 5/2016
17-C-318	Harrison	Farrell	Carl	631	Jury trial is set for 7/27/2020
17-C-41 and 16-C-1552	Kanawha	Young	Wilkes	631	Jury trial is set for 4/27/2020
16-C-82	Wetzel	Carl	Farrell	630	Jury trial is set for 6/8/2020
18-C-2	Pleasants	Lorensen	Carl	613	Jury trial is set for 3/2/2020
17-C-55	McDowell	Farrell	Matish	613	Settled; waiting for dismissal order
18-C-115	Kanawha	Wilkes	Lorensen	539	Trial continued by agreement of counsel; to be reset in first quarter of 2020
18-C-215	Marshall	Lorensen	Wilkes	348	Trial continued by agreement of counsel; to be reset
18-C-130	Marion	Young	Matish	315	Jury trial is set for 2/3/2020
18-C-14	Tyler	Carl	Wilkes	315	Jury trial is set for 4/1/2020
18-C-202 and 18-C-203	Marshall	Wilkes	Carl	223	Jury trial is set for 11/9/2020
18-C-271	Wood	Nines	Wilkes	167	Jury trial is set in September of 2020
19-P-23	Braxton	Nines	Farrell	113	Jury trial is set for 5/8/2020

19-C-357	Raleigh	Dent	Lorensen	54	Jury trial is set for 3/15/2021
19-C-59	Marshall	Wilkes	Carl	81	Trial to be set; pending Writ of Prohibition
17-C-108	Mingo	Farrell	Dent & Wilkes	74	Scheduling conference is set for 1/9/2020

\*Has been continued multiple times at the request of all parties while they work toward a settlement.

\*\*Not included in case age due to mandatory bankruptcy stay

**Table 4. Nature of pending cases**

<b>Case Number</b>	<b>Brief summary of causes of action and/or nature of cases pending as taken from Motion to Refer and/or Complaint. May not include all claims or counterclaims.</b>
13-C-394BER	Causes of action are breach of contract, professional liability claims in connection with the rendering of professional engineering services to a commercial entity, commercial bank transactions, and disputes involving investigation, design, research, surveying and permitting of a 200 unit residential housing complex.
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 \$17,000,000.00 for breach of contract on commercial loans.
17-C-318HRR	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.
17-C-41, and 16-C-1552KAN	Dispute involves alleged statewide antitrust conspiracy of asphalt and asphalt services involving millions of dollars of overpayments by the taxpayers of the state and their local governments.
16-C-82WTZ	Causes of action include breach of contract, negligence and gross negligence, fraud, negligent misrepresentation, and specific performance and asserted counterclaims for breach of contract, quantum merit and unjust enrichment, enforcement of mechanic's lien and declaratory judgement, all resulting from the construction of a retaining wall supporting a natural gas processing facility.
18-C-2PLE	Disputes regard 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.

17-C-55MCD	Disputes regard a contract mining agreement and work performed. Causes of action include <i>quantum meruit</i> , fraud, unjust enrichment, and breach of contract.
18-C-115KAN	Dispute arose out of the design and construction of a large waste water treatment facility and collection system. Causes of action include four counts of breach of contract, personal liability, and special receivership.
18-C-215MSH	Plaintiffs seeks to enforce payment of its overriding royalty interests in oil and gas leases covering approximately 53,000 gross acres in Marshall County against Chevron U.S.A. Inc., TH Exploration, LLC. This is a declaratory judgement action.
18-C-130MRN	Disputes are relative to rents overpaid and/or due pursuant to a Lease Agreement between the parties. Claims include breach of contract, terms of a commercial lease, commercial torts, and declaratory relief between commercial entities.
18-C-14TYL	Involves a dispute regarding lost-in-hole equipment and alleged double billing in oil and gas directional drilling. Claims include breach of contract, sale or purchase of commercial products covered by the UCC, commercial torts, and disputes involving commercial entities.
18-C-202 and 18-C-203MSH	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 loquiter</i> .
18-C-271WDE	Plaintiff alleges in part that defendants collaborated to carry out a fraudulent healthcare billing scheme. Claims of fraudulent misrepresentation & inducement, breach of contract, unjust enrichment, civil conspiracy, joint venture, negligence and piercing the MedTest LLC veil.
19-P-23BRX	Petitioners are seeking declaratory relief to declare contractual rights under a certain ground lease agreement related to the valuation of Respondents' leasehold interest in a building situated on the leased premises.
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.



## CASES DISPOSED IN 2019

After the cases in Table 5 below were transferred to the business court and assigned a presiding judge, there were approximately 60 hearings (including pretrials, trials, motions hearings, and telephonic status hearings) scheduled, 145 motions filed, and 210 orders entered. The average age of the 12 cases disposed in 2019 was 654 days.

**Table 5. Cases disposed in 2019**

Case Number	County	Presiding Judge*	Approx. No. of Hearings Scheduled	Approx. No. of Motions Filed	Approx. No. of Orders Entered	Date of Final Order	Case Age (in days)
14-C-1182	Kanawha	Tabit	5	10	14	3/13/19	995
16-C-92**	Marshall	Matish	3	23	35	5/24/19	764
16-C-365	Harrison						764
15-C-405	Harrison	Farrell	6	6	11	6/21/19	1114
17-C-149	Nicholas	Young	6	17	17	6/21/19	420
19-C-74	Kanawha	Farrell	1	0	2	8/5/19	76
15-C-2202	Kanawha	Lorensen	8	22	34	8/20/19	868
18-C-193	Kanawha	Wilkes	7	23	25	10/4/19	452
16-C-66	Wetzel	Carl	3	29	52	12/5/19	604
18-C-8	Marshall	Young	4	1	8	12/16/19	598
18-C-21	Wetzel	Young	4	2	8	12/16/19	598
17-C-319	Ohio	Young	4	0	8	12/18/19	600

\*Judge assigned at time of final order. Some reassignments may have been done due to judges resigning from business court prior to resolution of case.

\*\*Consolidated into Harrison County Civil Action No. 16-C-365 after transfer into business court

**RESOLUTIONS** – Most cases are assigned a resolution judge to assist in the resolution of the case upon transfer to the Business Court Division. Generally, mediation or a status hearing is scheduled early in the 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, oftentimes leading to a later full-settlement of the case or a shortened trial. Trial Court Rule 29.08(h), authorizes the resolution judge to conduct any alternative dispute resolution as agreed to by the parties and the resolution judge, which allow the parties and judge to think “outside the box” in developing cost-effective ways of resolving complex business litigation. In 2019, the Business Court Resolution Judges scheduled 15 mediations or status hearings regarding mediation. Table 6 shows that 75% of the disposed cases in 2019, were disposed by an agreed order of dismissal.

**Table 6. Cases resolved in 2019**

<b>Case Number/Style</b>	<b>Resolution</b>
14-C-1182KAN* <i>J.F. Allen Corporation v. The Sanitary Board of the City of Charleston, et al.</i>	Jury Trial with Presiding Judge Tabit; case was transferred to Kanawha County Circuit Court for post-trial motions upon Judge Tabit's resignation from Business Court
16-C-92MSH <i>Adkins Entergy, Inc., et al. v. Dominion Transmission, Inc., et al.</i>	After all claims asserted in this action were dismissed by way of stipulations filed by the parties, Judge Matish entered an agreed order of dismissal. (16-C-92MSH was consolidated into 16-C-365HRR after cases were transferred into business court)
16-C-365HRR <i>Riley Natural Gas Company v. Berry Energy, Inc.</i>	
15-C-405HRR* <i>Riley Natural Gas Company v. Northstar Energy Corporation</i>	After oral argument, Judge Farrell, the presiding judge, determined that Plaintiff is entitled to the declaratory and monetary relief it seeks and granted Plaintiff's Motion for Summary Judgment; and that Defendant is not entitled to the declaratory or monetary relief it seeks and denied Defendant's Motion for Summary Judgment. The Court required the parties to submit briefs regarding damages. The parties then reached an agreement that Plaintiff's damages claim is for a sum certain and the Court entered an order granting judgment in the agreed amount of damages owed to Plaintiff, representing actual damages arising from breach of the terms of the parties' contract, plus pre-judgment interest and costs, and the post-judgment interest until paid.
17-C-149NIC* <i>Michael D. Harlow v. Eastern Electric, LLC</i>	Parties stipulated to the value of Plaintiff's distributional interest; however, Judge Young, the presiding judge, determined the payment schedule since the parties were unable to reach an agreement. Judge Young conducted a bench trial and determined that neither party acted in bad faith and did not award either party fees or expenses.
19-C-74KAN <i>Blackjewel LLC v. Nations Equipment Finance, et al.</i>	All matters in controversy between the parties were fully resolved just two months after the case was transferred to the business court and an agreed order of dismissal was entered by Judge Farrell, the presiding judge.
15-C-2202KAN* <i>Soaring Eagle Lodge Master Association, Inc., et al. vs. Soaring</i>	All claims were settled and dismissal was entered as to all parties except for Third Party Defendants The Travelers Indemnity Company of America and Travelers Property and Casualty Company of America in 2018 by

<i>Eagle Development Company, LLC, et al.</i>	Judge Tabit. After counsel fully briefed the remaining issues and after hearing oral argument from both parties, Judge Lorensen, the presiding judge (after Judge Tabit's resignation from business court), granted summary judgment in favor of Third-Party Defendants The Travelers Indemnity Company of America and Travelers Property and Casualty Company of America.
18-C-193KAN <i>Shonk Land Company v. Cabot Oil &amp; Gas Corporation, et al.</i>	After mediation, summary judgment rulings and dismissal of one defendant, Judge Wilkes, the presiding judge, conducted a settlement conference wherein the parties entered into a settlement agreement. An agreed order of dismissal was later entered.
16-C-66WTZ <i>MarkWest Liberty Midstream &amp; Resources, LLC v. Bilfinger Westcon, Inc.</i>	After Judge Carl, the presiding judge, made rulings on numerous motions to dismiss and motions for judgment on the pleadings, the parties reached a settlement and submitted an agreed order of dismissal.
18-C-8MSH <i>SWN Production Company, LLC v. Dale Steager, West Virginia State Tax Commissioner, et al.</i>	Tax appeal was resolved after Judge Young, the presiding judge, directed the Tax Department to revise valuations pursuant to the recent decision of the West Virginia Supreme Court of Appeals in <i>Steager v. CONSOL Energy, Inc.</i> , 242 W.Va 209, 832 S.E. 2d 135 (2019). The parties agreed that the re-valuation resolved all issues and submitted an agreed final order.
18-C-21WTZ <i>SWN Production Company, LLC v. Dale Steager, West Virginia State Tax Commissioner, et al.</i>	Tax appeal was resolved after Judge Young, the presiding judge, directed the Tax Department to revise valuations pursuant to the recent decision of the West Virginia Supreme Court of Appeals in <i>Steager v. CONSOL Energy, Inc.</i> , 242 W.Va 209, 832 S.E. 2d 135 (2019). The parties agreed that the re-valuation resolved all issues and submitted an agreed final order.
17-C-319OHI <i>SWN Production Company, LLC v. Dale Steager, West Virginia State Tax Commissioner, et al.</i>	Tax appeal was resolved after Judge Young, the presiding judge, directed the Tax Department to revise valuations pursuant to the recent decision of the West Virginia Supreme Court of Appeals in <i>Steager v. CONSOL Energy, Inc.</i> , 242 W.Va 209, 832 S.E. 2d 135 (2019). The parties agreed that the re-valuation resolved all issues and submitted an agreed final order.

\*Notice of Appeal has been filed

## **SUMMARY**

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Overall, there have been 179 motions to refer considered by the presiding Chief Justice of the Supreme Court of Appeals of West Virginia, since October of 2012. Of those, 103 cases have been transferred to the Business Court Division. There have been 86 disposed cases, leaving 17 pending cases.

In 2019, 14 motions to refer from nine counties were filed. Of those, 10 were deemed to be complex business litigation by the Chief Justice, as required by Trial Court Rule 29.04(a)(1), and were transferred to the Business Court Division. The average case age of the cases disposed in 2019 was 654 days. The average case age of the cases pending in the business court is 451 days. The Division Judges scheduled approximately 60 hearings, decided approximately 145 motions, and entered approximately 210 orders in the 12 cases disposed of over the past year. Additionally, there were 15 mediations or mediation status hearings scheduled by the resolution judges in 2019. Of the disposed cases in 2019, 75% of the cases were settled partially or completely by agreement of the parties, resulting in agreed dismissal orders.