

2023

Annual Report



**West Virginia
Business Court Division**

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 2023.

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, 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 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 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. 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. She also serves as a liaison between the Division Judges and attorneys, circuit clerks, court personnel, and the Supreme Court of Appeals of West Virginia.



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

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.



The Honorable Michael D. Lorensen first took the bench in 2012 as a circuit court judge in the Twenty-Third Judicial Circuit serving Berkeley, Jefferson, and Morgan Counties. He was appointed to the Business Court Division, effective October 9, 2018. He was appointed chair of the division in January of 2019 and reappointed chair in 2022. His term as chair expires December 31, 2024, and his term on the division expires December 31, 2026, both of which can be renewed. Of the 16 cases assigned to him in just over four years, he has served as presiding judge in eight and as resolution judge in eight. Nine of those 16 cases have been resolved.

The Honorable Christopher C. Wilkes first took the bench in 1993, as a circuit court judge in the Twenty-Third Judicial Circuit, serving Berkeley, Jefferson, and Morgan Counties. In October of 2012, Judge Wilkes was one of three judges first appointed to the division and the first to serve as chair. He was reappointed as chair in 2015 and 2018 and continued serving as Chair until his retirement as a circuit court judge, effective, January 31, 2019. At that time, he was approved to continue serving on the division as a senior



status judge. He was subsequently reappointed to continue his service on the business court division until December 31, 2024. In just over ten years on the Division, Judge Wilkes has been assigned 65 cases, of which he served as presiding judge in 44 and served as resolution judge in 21. Ten of his cases remain pending. One pending case has been resolved but the final order has not yet been entered.



The Honorable Paul T. Farrell has been a circuit court judge in the Sixth Judicial Circuit serving Cabell County since 2011. He was appointed to the Business Court Division in October 2013, one year after the Division was established. His term was to expire in September of 2020. However, in 2019, the Court altered the expiration dates of each term to ensure the terms of all seven division judges were staggered, and Judge Farrell agreed to have his term extended to December 31, 2023. In just over nine years on the Division, he has been assigned 33 cases, of which he has served as presiding judge in 14 and resolution judge in 19. He only had four resolution cases remaining upon expiration of his term.

The Honorable Shawn D. Nines took the bench as a circuit court judge in 2019 in the Nineteenth Judicial Circuit serving Barbour and Taylor Counties. He was appointed to the Business Court Division, effective, April 3, 2019. His term on the division will expire on December 31, 2027, unless renewed. Judge Nines has accepted 18 business court case assignments, 11 as presiding judge and seven as resolution judge. In just over three and a half years on the Division, nine of his 18 cases have been resolved. The final orders in two of the resolved cases have not yet been entered.



The Honorable Maryclaire Akers was appointed by Governor Justice in 2021 as circuit court judge of the Thirteenth Judicial Circuit serving Kanawha County. She was appointed to the Business Court Division, effective, December 29, 2021. Her term on the division will expire December 31, 2028, unless renewed. She has accepted five presiding judge assignments and one resolution judge assignment in her two years on the division. One case has been resolved, and her oldest case is set for trial in early 2024.

The Honorable Joseph K. Reeder was elected to the bench in 2012 in the Twenty-Ninth Judicial Circuit serving Putnam County. He was appointed to the Business Court Division, effective, October 4, 2022. His term on the division will expire December 31, 2025, unless renewed. Judge Reeder has accepted seven business court case assignments, four of them were presiding judge assignments and three were resolution judge assignments. In just over a year on the Division, one case has been resolved.



The Honorable David M. Hammer was elected circuit court judge in 2018 in the Twenty-Third Judicial Circuit serving Berkeley, Jefferson, and Morgan Counties. He was appointed to the Business Court Division, effective December 19, 2022. His term will expire December 31, 2029, unless renewed. He has accepted seven case assignments, with four of them being presiding judge assignments and three of them being resolution judge assignments. Having only been on the Division for one year, three of the cases assigned to him have reached resolutions. A final dismissal order has not yet been entered in one of the resolved cases where he served as resolution judge.

UPDATES & HIGHLIGHTS

NEW APPOINTMENT

Judge Farrell's term ended December 31, 2023. A replacement has not been appointed as of the end of 2023.

EDUCATION

Judge Hammer attended the Civil Mediation Course at the National Judicial College in Reno, Nevada in March of 2023. This was a five day, 40-hour course for developing effective mediation management skills needed for the resolution judge role in the business court.

HONORS

Four of the business court judges were invited and had the privilege of sitting by temporary assignment on the Supreme Court of Appeals of West Virginia on separate cases over the past year. Judge Nines sat by temporary assignment for Justice Armstead on January 10, 2023, to hear a Rule 20 argument in *A. Karim Katrib, MD v. Herbert J. Thomas Memorial Hospital Association and Thomas Health System, Inc.*, No. 21-0843. Judge Akers sat by temporary assignment on January 11, 2023, replacing Justice C. Haley Bunn. She heard Rule 20 arguments in *West Virginia Land Resources, Inc. and Marion County Coal Resources, Inc. v. WV Environmental; Quality Board, et al.*, No. 21-0845; and in *American Bituminous Power Partners, LP v. West Virginia Environmental Quality Board, West Virginia Land Resources, Inc., and Marion County Coal Resources, Inc.*, Nos. 21-0885 and 21-0893. Judge Farrell sat by temporary assignment on February 8, 2023, taking the place of Justice C. Haley Bunn and heard Rule 19 arguments in *State of West Virginia v. Aaron Hoard*, No. 21-0764. The Chair of the Business Court Division, Judge Lorensen, sat in for Justice William R. Wooton on April 25, 2023, to hear Rule 20 arguments in *Carl J. Martin, II, et al. v. Sherree D. Martin*, No. 22-0417, and *Sherree D. Martin, Executor of the Estate of Shirley A. Martin v. Carl J. Martin, II, et al.*, No. 21-0757.

STAFFING CHANGE

In November, Administrative Assistant Lorri Stotler began working full-time for the Division of Children and Juvenile Services and therefore will no longer be assisting the Business Court Division. For the business court, she maintained internal case files, monitored the business court email account, updated information in the business court database that is maintained for statistical purposes used in the annual report, posted orders on the business court webpage, and communicated as needed with circuit clerks and attorneys. Those duties are being assumed by Carol Miller and Tessa Bowers for the time being.

TECHNOLOGY

The Business Court's webpage has a new look that came with the redesign of the West Virginia Judiciary website. Carol and Tessa worked with IT on this project. Once training is complete, all orders entered in business court cases will again be posted and searchable under the case search link on that page. A new search option is available so users can search by case type. Additionally, cases may be searched by county, case status, presiding or resolution Judge, case number, or by party name.

PROPOSED AMENDMENT TO RULE 29

The Court entered an order on October 23, 2023, requesting public comment on the Business Court Division's proposed amendments to Rules 29 of the West Virginia Trial Court Rules, which would clarify that business court judges may hold hearings and trials in any county if agreed to by all parties and the presiding judge; and further establishes rules for arbitration as an alternative dispute resolution in business court cases. All comments were to be filed in writing with the Clerk of Court no later than December 22, 2023.

CASE STATISTICS

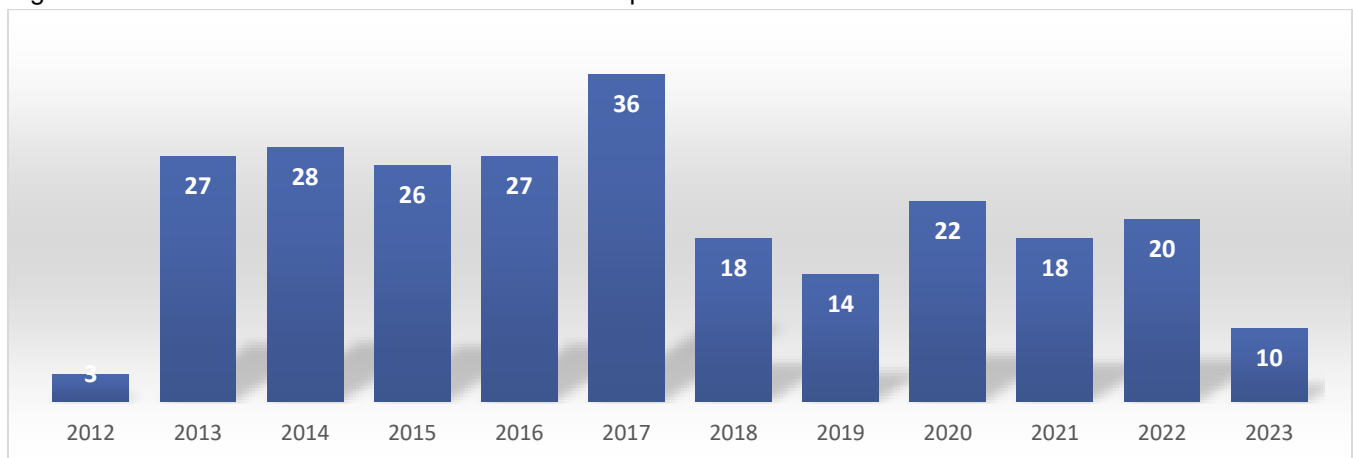
MOTIONS TO REFER

Table 1 below shows that in 2023, there were a total of 10 motions to refer filed in four counties - four in Harrison, one in Jackson, four in Kanawha, and one in Putnam, making a total of 249 motions to refer in 43 counties filed since the inception of business court (October 2012).

Table 1. Number of Motions to Refer Filed

County	2023	Total since inception of BCD	County	2023	Total since inception of BCD	County	2023	Total since inception of BCD
Barbour		2	Kanawha	4	61	Preston		6
Berkeley		12	Lewis		2	Putnam	1	1
Boone		5	Lincoln		1	Raleigh		8
Braxton		2	Logan		4	Randolph		1
Brooke		2	Marion		3	Ritchie		4
Cabell		6	Marshall		9	Roane		0
Calhoun		0	Mason		0	Summers		0
Clay		0	McDowell		5	Taylor		0
Doddridge		6	Mercer		3	Tucker		2
Fayette		2	Mineral		1	Tyler		9
Gilmer		0	Mingo		6	Upshur		3
Grant		0	Monongalia		11	Wayne		1
Greenbrier		5	Monroe		1	Webster		0
Hampshire		3	Morgan		0	Wetzel		6
Hancock		2	Nicholas		1	Wirt		0
Hardy		0	Ohio		8	Wood		2
Harrison	4	29	Pendleton		1	Wyoming		3
Jackson	1	1	Pleasants		1			
Jefferson		5	Pocahontas		3	TOTAL	10	249

Figure 1. Number of Motions to Refer filed since inception of the Business Court Division.



GRANTED MOTIONS

The Chief Justice decided eight of the ten motions to refer that were filed in 2023. A total of 145 complex business litigation cases have been transferred to the division in 38 counties since the inception of the Business Court Division. Out of the 249 motions to refer that have been filed, 58 percent were granted.

Table 2. Number of Motions to Refer Granted

County	2023	Total since inception of BCD	County	2023	Total since inception of BCD	County	2023	Total since inception of BCD
Barbour		2	Kanawha	2	33	Preston		3
Berkeley		8	Lewis		2	Putnam	1	1
Boone		1	Lincoln		1	Raleigh		3
Braxton		2	Logan		2	Randolph		0
Brooke		1	Marion		3	Ritchie		4
Cabell		2	Marshall		8	Roane		0
Calhoun		0	Mason		0	Summers		0
Clay		0	McDowell		3	Taylor		0
Doddridge		6	Mercer		1	Tucker		1
Fayette		1	Mineral		0	Tyler		5
Gilmer		0	Mingo		2	Upshur		2
Grant		0	Monongalia		6	Wayne		1
Greenbrier		1	Monroe		0	Webster		0
Hampshire		0	Morgan		0	Wetzel		4
Hancock		1	Nicholas		1	Wirt		0
Hardy		0	Ohio		4	Wood		2
Harrison	4	23	Pendleton		1	Wyoming		1
Jackson	1	1	Pleasants		1			
Jefferson		0	Pocahontas		1	TOTAL	8	145

DECISIONS ON MOTIONS TO REFER

In 2023, six of ten motions to refer were filed with no opposition, two were opposed. The other two were filed in December and will not be ripe for decision until January of 2024 (not on table 3 below). Two were filed by defendants, three by petitioner/plaintiff, and five by a judge. Overall, the eight motions to refer that were decided in 2023 were decided in an average of 21 days from filing to decision.

Table 3. Decisions on Motions to Refer filed in 2023.

Date MTR Filed	Order Entry Date	No. of days pending	Filed By	Opposition	Granted/Denied
1/18/2023	2/8/2023	21	Defendant	No	Granted
4/24/2023	4/27/2023	3	Judge	No	Granted
4/21/2023	5/19/2023	28	Defendants	Yes	Granted
4/20/2023	5/19/2023	29	Petitioner	Yes	Granted
6/30/2023	7/26/2023	26	Judge	No	Granted
11/16/2023	12/6/2023	20	Judge	No	Granted
11/16/2023	12/6/2023	20	Judge	No	Granted
11/16/2023	12/6/2023	20	Judge	No	Granted

PENDING CASES

ACTIVE CASES

Table 4 shows the status of 21 active cases and their pending case age in the business court as of the end of 2023. The average pending case age is 869 days. This pending case age includes the amount of time cases were stayed or not active. Absent the stays or non-active time, the average active case age as of December 31, 2023, is 737 days.

Table 4. Active cases not subject to any present stay (See Appendix for Case Styles)

Case Number	County	Presiding Judge	Resolution Judge	Pending Case Age in Days	Status
*17-C-108	Mingo	Akers	Wilkes Dent	1535	Case was stayed due to bankruptcy for a total of 388 days making the active pending case age 1147 days. Trial is now set: 2/5/2024
*17-C-318	Harrison	Nines	Hammer	2092	Case was stayed for a period of 1043 days due to bankruptcy, making the active case age 1049 days. Judge Hammer, serving as resolution judge, reported on 11/28/2023 that case has been resolved. Awaiting final dismissal order.
*18-C-115	Kanawha	Wilkes	Lorensen	2000	Case was stayed for a period of 723 days pending an appeal with the SCAWV, making the active case age 1277 days. Appeal was affirmed in part, reversed in part, and remanded. Pretrial: 11/12/2024 Jury Trial: 11/13/2024
**18-C-130	Marion	Lorensen		1776	Bench Trial was held October 10, 2023. Damages hearing was December 15, 2023. Writ of Prohibition accepted by WVSCA 11/20/2023.
18-C-202, 18-C-203MSH	Marshall	Wilkes	Nines	1684	Case resolved at Status/Settlement Conference on 11/3/2023. Dismissal Order to be filed by 1/10/2024.
*19-C-357	Raleigh	Reeder	Lorensen	1515	Case was delayed pending an issue on appeal in a related non-business court case. Appeal took 626 days, making the active pending case age 889. It is now on track for trial. Pretrial: 10/15/2024 Jury Trial: 12/2/2024

20-C-136	Marion	Akers	Nines	950	Status reports were filed by both parties. Scheduling order forthcoming.
20-C-196	Harrison	Akers	Hammer	1055	Recent substitution of counsel. Scheduling order forthcoming.
20-C-231	Harrison	Nines	Wilkes	900	Pretrial: 11/7/2024 Jury Trial: TBD Mediation deadline: 5/1/2024.
20-C-350	Kanawha	Akers	Farrell	1097	Discovery Commissioner has been appointed. Summary judgement motions pending.
20-C-772	Kanawha	Reeder	Farrell	1096	Most issues have been resolved on motions for summary judgment.
21-C-129	Raleigh	Reeder	Lorensen	800	Dispositive motions recently ruled upon. Discovery is ongoing.
22-C-88	Putnam	Hammer	Reeder	248	Pretrial: 9/18/2024 Jury Trial: 10/7-18/ 2024
22-C-91	Jackson	Lorensen	Reeder	226	Pretrial: 11/1/2024 Jury Trial: 12/2/2024
22-C-359	Kanawha	Nines	Akers	495	Pretrial: 7/16/2024 Jury Trial 7/29/2024
22-C-910	Kanawha	Reeder	Farrell	326	Pretrial: 2/28/2024 Jury Trial: 3/18/2024
23-C-44	Harrison	Nines	Hammer	158	Scheduling order forthcoming after consideration of a forthcoming consolidation motion.
23-C-167	Harrison	Nines	Hammer	25	Transferred to BCD 12/6/2023.
23-C-168	Harrison	Nines	Hammer	25	Transferred to BCD 12/6/2023.
23-C-227	Kanawha	Hammer	Wilkes	226	Case Sealed
23-C-251	Harrison	Nines	Hammer	25	Transferred to BCD 12/6/2023.

*Case was stayed for the number of days specified under status on same row.

**Case age is calculated from date case was reversed and remanded as it had previously been closed with a final order

STAYED CASES AND CASES ON PARTIAL APPEAL

The nine cases in Table 5 were transferred to the division but subsequently stayed or have an issue on appeal or an issue in a related case is on appeal, resulting in limited to no activity in the case. The pending and active case age will be calculated once the stay is lifted, or the case becomes active.

Table 5. Pending cases that are presently stayed and cases on partial appeal. (See Appendix for Case Styles)

Case Number	County	Presiding Judge	Status
15-C-807	Cabell	Lorensen	Bankruptcy
19-C-59	Marshall	Wilkes	Notice of Appeal was filed 12/17/2021 for Circuit Court's 11/19/2021 orders on summary judgment motions. Oral argument with SCAWV is set 1/9/2024.
20-C-155	Ohio	Lorensen	Case is stayed by request of parties while they pursue an agreed settlement track; however, status conferences have been held every 90 days to ensure parties are progressing toward settlement. The next status Conference is 1/22/2024.
20-C-282	Kanawha	Wilkes	In receivership
21-P-15	Ritchie	Wilkes	Stayed at the joint request of all parties while related case is pending appeal to SCOTUS
21-P-31	Doddridge	Wilkes	Stayed at the joint request of all parties while related case is pending appeal to SCOTUS
22-AA-1	Tyler	Wilkes	Stayed at the joint request of all parties while related case is pending appeal to SCOTUS
22-P-85	Harrison	Wilkes	Stayed at the joint request of all parties while related case is pending appeal to SCOTUS
22-C-4	Tucker	Lorensen	ICAWV reversed and remanded; subsequently a notice of appeal to the SCAWV was filed

Table 6. Nature of all cases pending in the business court division. (See Appendix for Case Styles)

Case Number	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.
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-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.
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-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-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-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> .
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.
19-C-357RAL	Plaintiff Glade Springs Village Property Owners Association, Inc. 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.
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.
20-C-155OHI	This action involves breach of contract, sale or purchase of commercial entity, and possible regulatory violations or unlawful conduct by a medical transport company, valuation, and alleged damages.
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.
20-C-231HRR	The complaint states cause 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.
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.
21-C-129RAL	This action is related to 19-C-357 which is also pending in the business court. It 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.
21-P-15RIT	Complex Tax Appeal
21-P-31DOD	Complex Tax Appeal
22-AA-1TYL	Complex Tax Appeal
22-P-85HRR	Complex Tax Appeal
22-C-4TKR	Plaintiff is seeking recourse for Defendants' breach of the Agreement and other intentional torts related to the Agreement. Complex issues related to a public utility.
*22-C-88PNM	This action comes out of a construction project and involves breach of contract, commercial torts, disputes involving commercial entities and allegations of fraud relating to individuals working for defendants.
*22-C-91JKN	This action involves a dispute between four sophisticated business entities and involves allegations of breach of contract, negligence, misrepresentation, breach of warranty and fraud. The dispute is over the installation of a water line metering system that plaintiff claims was defective, never operated properly, or as marketed, and, as a result, it was damaged.
22-C-359KAN	This action involves multiple contractual agreements or business negotiations. Plaintiff CAMC alleges economic losses and declaratory relief, as well as punitive damages.
*22-C-910KAN	This action involved the interpretation of multiple companies' operating agreements; the alleged breach of fiduciary duties owed to a member of multiple limited liability companies; the purported liability of a limited liability company member and manager for multiple alleged commercial torts; and the validity of multiple commercial transactions, promissory notes, and intercompany transfers.
*23-C-44HRR	This action stems from construction of an airport expansion project and includes three claims by a self-described homeowners association corporation – negligence, interference with riparian rights/unreasonable use of land, and private nuisance. This action involves commercial torts and disputes involving commercial entities and involves highly technological, engineering design, construction, environmental, and meteorologically related issues.
*23-C-167HRR	This action stems from construction of an airport expansion project and includes three claims by a self-described homeowners association corporation – negligence, interference with riparian rights/unreasonable use of land, and private nuisance. This action involves commercial torts and disputes involving commercial entities and involves highly technological, engineering design, construction, environmental, and meteorologically related issues.
*23-C-168HRR	This action stems from construction of an airport expansion project and includes three claims by a self-described homeowners association corporation – negligence, interference with riparian rights/unreasonable use of land, and private nuisance. This action involves commercial torts and disputes involving commercial entities and involves highly technological, engineering design, construction, environmental, and meteorologically related issues.
*23-C-227KAN	Case is sealed.
*23-C-251HRR	This action stems from construction of an airport expansion project and includes three claims by a self-described homeowners association corporation – negligence, interference with riparian rights/unreasonable use of land, and private nuisance. This action involves commercial torts and disputes involving commercial entities and involves highly technological, engineering design, construction, environmental, and meteorologically related issues.

*Referred to BCD in 2023

ACTIVITY IN 2023

In 2023, the Business Court judges scheduled approximately 37 hearings as either presiding or resolution judge, entertained approximately 148 motions, and entered 177 orders in 31 cases. Table 9 shows the approximate activity of all seven business court judges, by case.

Table 9. Total case activity in 2023. (See Appendix for Case Styles)

Case Number	Motions Filed	Orders Entered	Hearings Scheduled
17-C-108MNG	18	13	2
17-C-318HRR	5	5	1
18-C-115KAN	1	6	2
18-C-130MRN	9	11	4
18-C-202MSH	13	7	1
18-C-271WDE	0	1	0
19-C-59MSH	0	1	0
19-C-357RAL	10	12	1
20-C-110BER	1	2	0
20-C-136MRN	0	0	1
20-C-155OHI	0	7	3
20-C-196HRR	1	1	0
20-C-231HRR	0	2	0
20-C-282KAN	7	7	0
20-C-350KAN	13	6	3
20-C-772KAN	1	6	1
21-C-7PRN	11	4	1
21-C-129RAL	26	19	2
21-C-273HRR	0	5	3
21-P-15RIT	0	1	0
21-P-31DOD	1	1	0
22-AA-1TYL	1	1	0
22-C-4TKR	1	2	0
22-C-88PNM	0	4	1
22-C-91JKN	4	9	1
22-C-359KAN	15	23	2
22-C-910KAN	6	7	2
22-P-7WTZ	1	2	0
22-P-85HRR	1	2	0
23-C-227KAN	8	8	5
23-C-44HRR	0	2	1

DISPOSED CASES

ACTIVITY OF CASES DISPOSED IN 2023

Table 7 shows the activity in each case disposed in 2023, 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 pending case age of disposed cases being 675 days. There were approximately 18 hearings scheduled, 68 motions filed, and 102 orders entered in these cases while in business court.

Table 7. Activity of cases disposed in 2023. (See Appendix for Case Styles)

Case Number	County	Presiding Judge	Hearings scheduled	Motions	Orders	Case Age in days
18-C-271	Wood	Nines	11	35	55	1528
21-C-7	Preston	Carl then Hammer	4	16	18	709
21-C-273	Harrison	Hammer	3	0	5	210
20-C-110	Berkeley	Wilkes	0	13	19	684
22-P-7	Wetzel	Wilkes	0	4	5	245

RESOLUTIONS OF CASES DISPOSED IN 2023

Table 8. Resolutions in 2023.

<p>18-C-271WDE, <i>Highmark West Virginia, Inc., vs. MedTest Laboratories, LLC</i></p> <p>The presiding judge (Nines) granted default judgment and summary judgment in favor of Highmark against MedTest, Cenegen, and Vitas Laboratories. The presiding judge also granted Highmark's motion for evidentiary hearing to determine whether Highmark WV's judgments against MedTest may be imputed to its members and managers through veil piercing. A 2-day evidentiary hearing was held in June of 2022. The Court concluded in a 22-page order entered September 22, 2023, that Count VIII of the Amended Complaint is dismissed and disposed of and that the request to pierce the corporate veil of Defendant MedTest, LLC is denied. This constituted a final order in this matter.</p>
<p>21-C-7PRN, <i>Triton Construction, Inc., a West Virginia corporation vs. Gannett Fleming, Inc., a Delaware Corporation, and Monongahela Conservation District</i></p> <p>The parties met with the resolution judge (Lorensen) on August 15 and were able to completely resolve the case. The presiding judge (Hammer) entered an order of dismissal on August 30, 2023.</p>
<p>21-C-273HRR, <i>Purdy Run Aggregates, LLC vs. Tall Grass Management Partners, LLC, John H.W. Gefaell, William M. Ward, and Award Development LLC</i></p> <p>This case was referred to the business court division on December 30, 2022. The parties informed the presiding judge (Hammer) at a status conference held in May that they were working toward settlement. The presiding judge directed them to the resolution judge at that time. Counsel later informed the Court that a resolution of all issues had been agreed upon and the presiding judge (Hammer) entered an order of dismissal July 28, 2023.</p>
<p>20-C-110BER, <i>Dan Ryan Builders West Virginia, LLC vs. Overlay I, LLC</i></p> <p>The parties entered into a settlement of the claims between them and filed a stipulation of voluntary dismissal with prejudice in its entirety on February 28, 2023.</p>

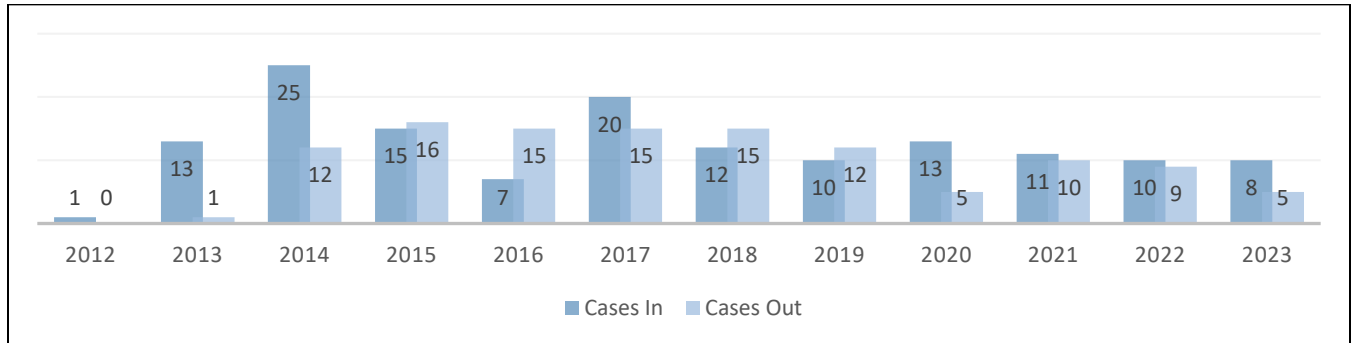
22-P-7WTZ, *EQT Production Company vs. Matthew Irby, West Virginia State Tax Commissioner*

The parties filed a joint motion and agreed order of dismissal that they had fully resolved this matter. Order was entered by presiding judge (Wilkes) on April 16, 2023.

NUMBER OF CASES IN AND OUT

Since inception, the Business Court judges have disposed of 115 of the 145 cases transferred to the Division.

Figure 2. Cases transferred in and cases disposed of each year since inception.



SUMMARY

In 2023, ten motions to refer to the Business Court Division from 4 counties were filed. Of those 10 motions to refer, eight 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. Two were not ripe for decision by the end of 2023. The Chief Justice rendered a decision on the ripe motions to refer in an average of 21 days from the date the motions were filed.

As of the end of 2023, there were 21 active pending cases and 9 additional pending cases that were not active due to a stay or having an issue on appeal or an issue in a related case on appeal, thus limiting the activity in the cases. The average case age of the pending active cases as of the end of 2023 was 869 days.

The division judges disposed of five cases in 2023 and the average case age of the disposed cases was 675 days. Four out of the five disposed cases were settled by agreement of the parties, resulting in agreed dismissal orders.

The division judges scheduled approximately 37 hearings, entertained approximately 148 motions, and entered 177 orders in 31 cases in 2023. There were approximately seven mediations or mediation status hearings scheduled by the resolution judges in 2023, excluding any follow-up conference calls. Notably, the resolution judges assist with resolving or narrowing issues in most cases which often lead to shortened trials or complete resolutions. There were no jury trials and one bench trial in 2023.

Since inception (October 2012), 249 motions to refer have been filed in 41 counties. Of those, 145 cases from 38 counties have been transferred to the Business Court Division. There have been 115 cases disposed of, leaving 30 cases still pending with the division at the end of 2023. There are two motions to refer pending with the Chief Justice that will be ripe for decision in January of 2024.

Appendix

Case Styles of Cases Referenced in the 2023 Annual Report

15-C-807	Cabell	Peoples Bank v. Appalachian Mining and Reclamation, LLC, et al.
17-C-108	Mingo	Dallas Runyon, Sr. v. Citizens Telecommunications Company, et al.
17-C-318	Harrison	Community Care of West Virginia, Inc. v. Frontier Communications of America, Inc., et al.
18-C-115	Kanawha	WW Consultants v. Pocahontas County Public Service District, et al.
18-C-130	Marion	American Bituminous Power Partners v. Horizon Ventures of West Virginia
18-C-202	Marshall	Covestro, LLC v. Axial Corporation, et al.
18-C-271	Wood	Highmark West Virginia v. MedTest Laboratories, et al.
19-C-357	Raleigh	Glade Springs Village Property Owners Association v. Emco Glade Springs Hospitality, et al.
19-C-59	Marshall	Axiall Corporation, et al. v. National Union Fire Insurance Company of Pittsburgh, et al.
20-C-110	Berkeley	Dan Ryan Builders West Virginia v. Overlay I
20-C-136	Marion	American Bituminous Power Partners v. Employers' Innovative Network, et al.
20-C-155	Ohio	Tri-State Ambulance, Inc. v. Wheeling Hospital, Inc., et al.
20-C-196	Harrison	Doctors Specialty Care v. The Health Plan of West Virginia
20-C-231	Harrison	Douglas Griffith, Jr., et al. v. MVB Bank, Inc., et al.
20-C-282	Kanawha	Harold D. Ward v. ERP Environmental Fund
20-C-350	Kanawha	Mountain State Pipeline & Excavating v. Smith/Packett Med-Com, et al.
20-C-772	Kanawha	The Thrasher Group v. Bear Contracting, et al.
21-C-129	Raleigh	Glade Springs Village Property Owners Association v. Cooper Land Development, et al.
21-C-7	Preston	Triton Construction v. Gannett Fleming, et al.
21-P-15	Ritchie	Antero Resources Corporation v. Matthew R. Irby, et al.
21-P-31	Doddridge	Antero Resources Corporation v. Matthew R. Irby, et al.
22-AA-1	Tyler	Antero Resources Corporation v. Matthew R. Irby, et al.
22-C-359	Kanawha	CAMC v. WV United Health System, et al.
22-C-4	Tucker	Kapitus Servicing, Inc. v. Timberline Four Seasons Utilities Inc., et al.
22-P-85	Harrison	Antero Resources Corp v. Matthew R. Irby, West Virginia State Tax Commissioner, et al.
22-C-88	Putnam	The Early Construction Cof v. American Electric Power Service Corporation, et al.
22-C-91	Jackson	Southern Jackson PSD v. Master Meter, Inc., et al.
22-C-910	Kanawha	Ezra Schoolcraft v. Jeffrey Isner, et al.
23-C-44	Harrison	Maple Lake Club, Inc. v. Benedum Airport Authority, et al.
23-C-167	Harrison	Philip "Mark" Fetty and Paula N. Fetty v. Benedum Airport Authority, et al.
23-C-168	Harrison	James D. Miller, et al. v. Benedum Airport Authority, et al.
23-C-227	Kanawha	Firelands WV LLC v. Swordfish Holdings, LLC, et al.
23-C-251	Harrison	All About Dogs, LLC, et al. v. Benedum Airport Authority, et al.
23-C-916*	Kanawha	RadioWV, LLC v. John D. Price, et al.
23-C-1067*	Kanawha	Mountaineer Gas Company v. West Virginia-American Water Company

*Motions to Refer filed in December of 2023 but not ripe as of the end of 2023.