

2020 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 2020.

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 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

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 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 or have been members of the American Bar Association Business Law Section. The Division judges typically meet biannually at the judicial conferences to discuss new developments, caseload distribution, case management techniques, and any other issues that may need addressed.

BUSINESS COURT STAFF

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

WEST VIRGINIA'S BUSINESS COURT DIVISION JUDGES



Honorable Michael D. Lorensen, Chair
Chief Judge of the 23rd Judicial Circuit
December 31, 2026



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



Honorable James H. Young Jr.
Judge of the 24th Judicial Circuit
December 31, 2021



Honorable Paul T. Farrell
Judge of the 6th Judicial Circuit
December 31, 2023



Honorable H. Charles Carl III
Judge of the 22nd Judicial Circuit
December 31, 2022



Honorable Shawn D. Nines
Judge of the 19th Judicial Circuit
December 31, 2027



Honorable Jennifer P. Dent
Judge of the 11th Judicial Circuit
December 31, 2025

UPDATES AND HIGHLIGHTS

Judge Michael D. Lorensen, Judge of the Twenty-Third Judicial Circuit, was re-appointed September 30, 2020 to continue serving as Chair of the Business Court Division until January 31, 2022.

With the COVID-19 pandemic causing many court closures, delays and cancellations, some trials and mediations in business court were continued. However, the business court judges had been using video or teleconferencing technology well before the pandemic hit. In fact, shortly after creation of the Division in 2012, a subscription to WebEx was purchased for the Division for the purpose of virtual hearings. At that time, the technology was not as good as it is today, and the judges' preference was teleconferencing via Conference Nation. They now have the choice of TEAMS or WebEx for video or phone conferencing.

The business court had two cases proceed to trial this past year. A jury trial was held in Tyler County with Judge Carl presiding, and a seventeen-day bench trial was held in Judge Carl's courtroom in Hampshire County.

Several COVID-19 protocols and precautions were implemented, so both bench and jury trials could be tried. The court followed the Supreme Court's directive of adhering to strict compliance with the Supreme Court's COVID-19 Resumption of Operations Protocols. Prior to jury selection, Judge Carl sent out a supplemental jury questionnaire regarding COVID-19 and medical reasons for jury service excusal. The fifty jurors who then appeared for jury selection were all willing and able to serve. Further, jury selection was held offsite to further social distance per Judge Carl's Order. This was received so well that it was further adopted by local judges in that circuit. Other safety protocols were followed, such as mask-wearing and counsel remaining at the dais for argument and not approaching the jury box for distancing purposes. Any out-of-town attorneys and witnesses traveling from Supreme Court-designated "red" or "hot spot" areas were required to test and/or quarantine before trial.

Likewise, the bench trial utilized strict protocols. While declining to grant a motion for a totally remote trial, Judge Carl took a flexible approach and allowed many accommodations that the parties agreed to. Notably, this included allowing some witnesses, including those who would have to otherwise travel by airplane to appear at the bench trial, to testify remotely. The parties retained and utilized a technical contractor to assist with this technology. The tables in the courtroom were spread out and rearranged, so the parties in this trial, which involved many parties, could maintain social distancing. Like the jury trial, protocols such as mask-wearing and the requirement that any attorney or witness coming from a "red" or "hot spot" area, as defined on the website utilized by the Supreme Court, were to arrive in Hampshire County and self-quarantine for fourteen days or obtain a negative COVID test result before such person could participate in trial, were taken.

In both trials, the accommodations worked smoothly and were very well-received by the litigants, courthouse staff, and parties. The Judge, parties, attorneys, and jurors were all ready and willing to be flexible, cooperative, and follow accommodations and safety protocols in order to accomplish taking these cases through trial.

Another business court case that is close to complete resolution was an antitrust suit against 11 asphalt and paving companies that reached a \$101.3 million settlement in October of this year just short of trial. This case was assigned to the business court in April of 2018, and more specifically, to Judge Young as presiding judge. The trial in this matter was scheduled for April 27, 2020, but in light of the pandemic and the restrictions set out in the Supreme Court’s Administrative Order of March 22, 2020, the scheduling order was amended, and a new trial date was set for August of 2020. Due to the COVID restrictions in place for the Kanawha County Circuit Court, the trial was postponed once again to October 2020 but settled just prior to that date. Judge Young held monthly status hearings to ensure all motions were timely resolved and the parties would be prepared for trial. Judge Wilkes, as resolution judge, held numerous mediation sessions and phone conferences to assist the parties in a timely and amenable resolution. While two agreed dismissal orders have been entered in this case, the final order has not yet been submitted.

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 2020, there were 22 Motions to Refer filed, 13 granted, 6 denied and 4 still pending as of the end of 2020. Since inception, there have been 201 Motions to Refer filed in 39 counties by various parties and judges. This is the first year since inception that all the motions to refer to the business court were made only by the parties (no judges) as shown in Figure 1 below.

Figure 1.

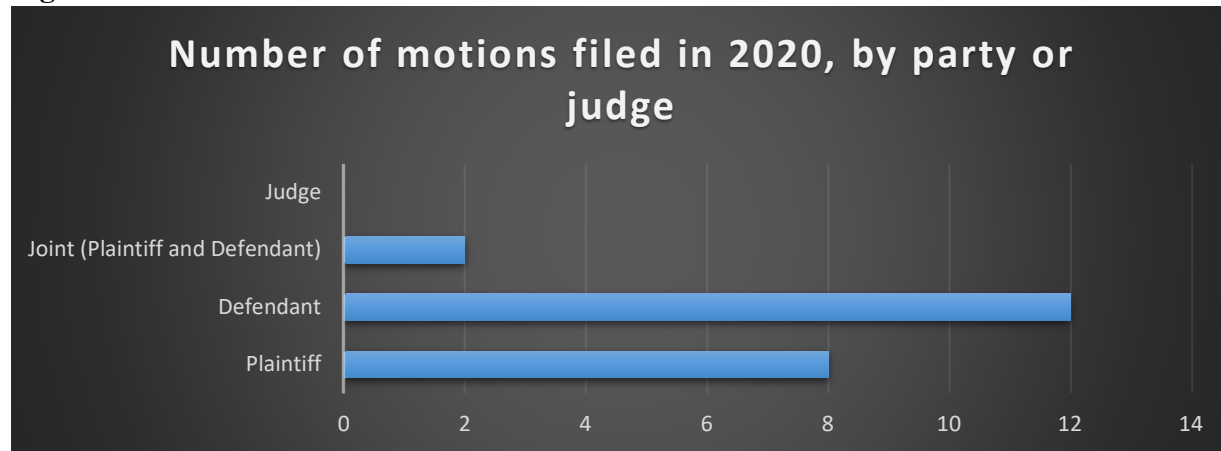


Table 1. Number of Motions to Refer Filed

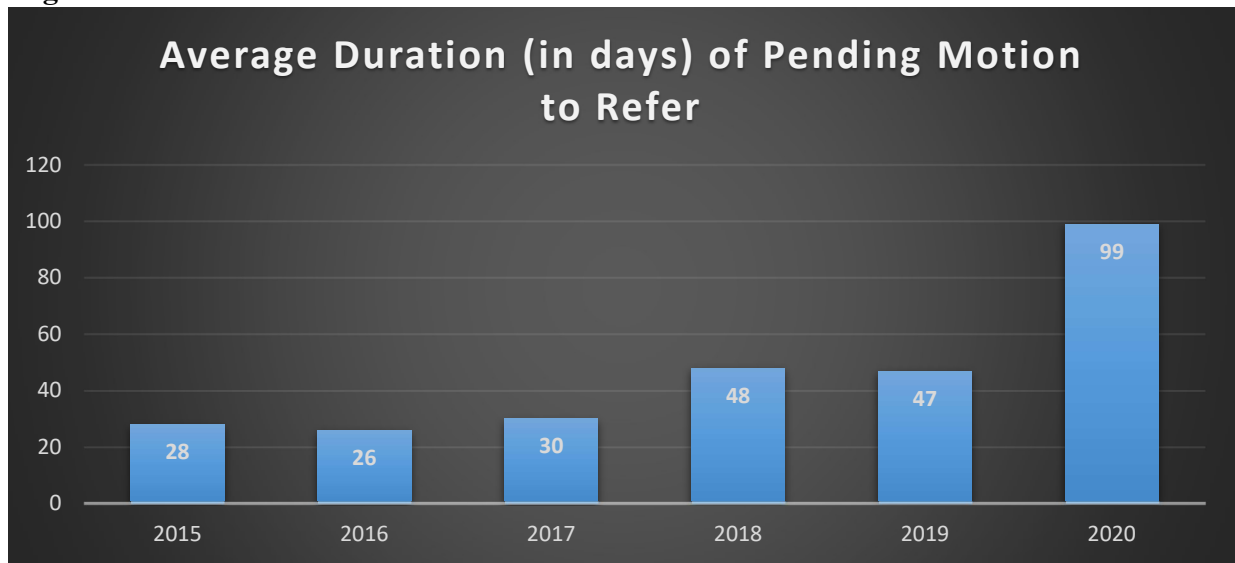
| County | 2020 | Total | Jefferson | | 3 | Pocahontas | | 2 |
|---------------|-------------|--------------|------------|----------|-----------|--------------|-----------|------------|
| Barbour | | 2 | Kanawha | 9 | 52 | Preston | | 5 |
| Berkeley | | 8 | Lewis | | 2 | Putnam | | 0 |
| Boone | 1 | 3 | Lincoln | | 1 | Raleigh | 1 | 7 |
| Braxton | | 2 | Logan | | 4 | Randolph | | 1 |
| Brooke | | 2 | Marion | | 2 | Ritchie | 1 | 3 |
| Cabell | 1 | 6 | Marshall | | 8 | Roane | | 0 |
| Calhoun | | 0 | Mason | | 0 | Summers | | 0 |
| Clay | | 0 | McDowell | | 4 | Taylor | | 0 |
| Doddridge | 2 | 5 | Mercer | | 3 | Tucker | | 0 |
| Fayette | | 0 | Mineral | | 1 | Tyler | 1 | 6 |
| Gilmer | | 0 | Mingo | | 3 | Upshur | | 3 |
| Grant | | 0 | Monongalia | 2 | 11 | Wayne | | 1 |
| Greenbrier | | 5 | Monroe | | 1 | Webster | | 0 |
| Hampshire | | 3 | Morgan | | 0 | Wetzel | 1 | 5 |
| Hancock | | 2 | Nicholas | | 1 | Wirt | | 0 |
| Hardy | | 0 | Ohio | | 7 | Wood | | 2 |
| Harrison | 3 | 20 | Pendleton | | 1 | Wyoming | | 3 |
| Jackson | | 0 | Pleasants | | 1 | TOTAL | 22 | 201 |

Table 2. Number of Motions to Refer Granted

| County | 2020 | Total | Jefferson | | 0 | Pocahontas | | 1 |
|---------------|-------------|--------------|------------|----------|-----------|--------------|-----------|------------|
| Barbour | | 2 | Kanawha | 5 | 28 | Preston | | 2 |
| Berkeley | | 7 | Lewis | | 2 | Putnam | | 0 |
| Boone | | 1 | Lincoln | | 1 | Raleigh | | 2 |
| Braxton | | 2 | Logan | | 2 | Randolph | | 0 |
| Brooke | | 1 | Marion | | 2 | Ritchie | 1 | 3 |
| Cabell | | 2 | Marshall | | 7 | Roane | | 0 |
| Calhoun | | 0 | Mason | | 0 | Summers | | 0 |
| Clay | | 0 | McDowell | | 3 | Taylor | | 0 |
| Doddridge | 2 | 5 | Mercer | | 1 | Tucker | | 0 |
| Fayette | | 0 | Mineral | | 0 | Tyler | 1 | 4 |
| Gilmer | | 0 | Mingo | | 1 | Upshur | | 2 |
| Grant | | 0 | Monongalia | 1 | 6 | Wayne | | 1 |
| Greenbrier | | 1 | Monroe | | 0 | Webster | | 0 |
| Hampshire | | 0 | Morgan | | 0 | Wetzel | | 3 |
| Hancock | | 1 | Nicholas | | 1 | Wirt | | 0 |
| Hardy | | 0 | Ohio | | 3 | Wood | | 2 |
| Harrison | 3 | 14 | Pendleton | | 1 | Wyoming | | 1 |
| Jackson | | 0 | Pleasants | | 1 | TOTAL | 13 | 116 |

Figure 2 below shows the average number of days Motions to Refer were pending with the Chief Justice. The days were calculated from the date a motion to refer was filed until an administrative order was entered by the Chief Justice granting or refusing the transfer of a case to business court. This chart goes back to 2015 which was the year immediately following the Amendment of Trial Court Rule 29, requiring motions to refer be filed directly with the Clerk of the Supreme Court of Appeals rather than the circuit court. That amendment was made to mitigate unnecessary delays in the transfer process. Upon filing of a motion to refer, Trial Court Rule 29.06(a)(4) allows any party or affected judge 20 days to file a response. Since 2015, 46% of the Motions to Refer were filed with no objection of any party or judge.

Figure 2.

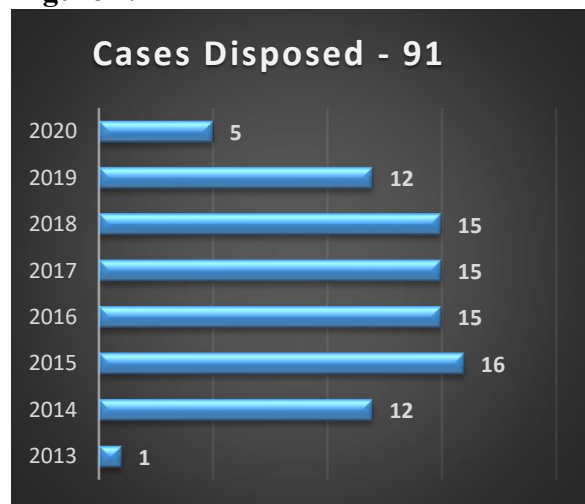


Out of 116 cases received (see Figure 3), the Business Court Division has disposed of 91 (see Figure 4). There are 25 cases currently pending.

Figure 3.



Figure 4.



PENDING CASES

The Chair assigns a presiding judge to every case transferred to the Division, taking into consideration the judges' current caseloads, background and expertise, and locality. Most cases will also be assigned a resolution judge upon transfer of a case to business court; however, if a case is not assigned a resolution judge, one can be appointed at the request of the presiding judge or the parties.

Table 3. Pending cases as of the end of calendar year 2020

| Case Number | County | Presiding Judge | Resolution Judge | Case Age (days) | Status |
|-----------------------|-----------|-----------------|------------------|-----------------|---|
| 15-C-807 | Cabell | Lorensen | Young | * | Stayed due to bankruptcy since 5/2016 |
| 17-C-318 | Harrison | Farrell | Carl | * | Stayed due to Frontier's bankruptcy |
| 17-C-41 and 16-C-1552 | Kanawha | Young | Wilkes | 997 | Settled; awaiting final dismissal order |
| 16-C-82 | Wetzel | Carl | Farrell | 996 | Awaiting transcript from 17-day Bench Trial and judge's final decision |
| 18-C-2 | Pleasants | Lorensen | Carl | 979 | A 9-day Jury Trial is set for 3/2/2021 with a 3/1/2021 pretrial |
| 18-C-115 | Kanawha | Wilkes | Lorensen | 905 | Trial was continued and new date TBD |
| 18-C-215 | Marshall | Lorensen | Wilkes | 714 | Trial was continued and status/scheduling conference is set in March 2021 |
| 18-C-202 and 18-C-203 | Marshall | Wilkes | Carl & Nines | 588 | Trial Continued and new date TBD |
| 18-C-271 | Wood | Nines | Wilkes | * | Stayed due to writ of prohibition. Mandate by S.Ct. issued 12/28/20 granting writ. Trial date TBD |

| | | | | | |
|----------|------------|---------|---------------|-----|---|
| 19-C-357 | Raleigh | Dent | Lorensen | 420 | Scheduling conference set for 2/5/21 to reset trial after continuance |
| 19-C-59 | Marshall | Wilkes | Carl & Nines | 448 | Jury trial set for 3/1/2022 |
| 17-C-108 | Mingo | Farrell | Wilkes & Dent | * | Stayed due to Frontier's bankruptcy |
| 16-C-279 | Monongalia | Nines | Lorensen | * | Stayed due to Frontier's bankruptcy |
| 20-C-282 | Kanawha | Wilkes | Young | 148 | In receivership |
| 20-C-332 | Kanawha | Wilkes | Not assigned | 27 | Status set for 1/14/21 |
| 20-C-350 | Kanawha | Young | Farrell | * | Transferred to Division 12/29/2020 |
| 20-C-209 | Harrison | Nines | Young | * | Transferred to Division 12/30/2020 |
| 20-C-772 | Kanawha | Dent | Farrell | * | Transferred to Division 12/30/2020 |
| 20-C-660 | Kanawha | Farrell | Nines | * | Transferred to Division 12/30/2020 |
| 18-P-235 | Harrison | Wilkes | Not assigned | * | Transferred to Division 12/30/2020 |
| 18-AA-1 | Doddridge | Wilkes | Not assigned | * | Transferred to Division 12/30/2020 |
| 18-AA-1 | Tyler | Wilkes | Not assigned | * | Transferred to Division 12/30/2020 |
| 19-AA-1 | Doddridge | Wilkes | Not assigned | * | Transferred to Division 12/30/2020 |
| 20-P-83 | Harrison | Wilkes | Not assigned | * | Transferred to Division 12/30/2020 |
| 18-AA-1 | Ritchie | Wilkes | Not assigned | * | Transferred to Division 12/30/2020 |

*Case age was not calculated due to mandatory stay or new to division

Table 4. Nature of pending cases

| Case Number | 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. |
|---------------------------|--|
| 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 meruit 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. |
| 18-C-115KAN | 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-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-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-C-357RAL | Plaintiff asserts breach of contract and accounting claims against EMCO and GSR under various contracts; plaintiff further asserts breach of fiduciary duty claims against Elected Board of Directors under UCIOA; EMCO and GSR assert breach of contract counterclaims against plaintiff. |

| | |
|-------------|--|
| 19-C-59MSH | This action is related to 18-C-202 and 18-C-203 which are also pending in the business court. Claims involve breach of contract, insurance coverage disputes in commercial insurance policies, and disputes involving commercial entities. |
| 17-C-108MNG | This action involves breach of contract and disputes involving commercial entities. Plaintiffs allege that they seek to exploit the subject property in Mingo County for timbering and for the extraction of minerals and are challenging the placement of Frontier lines on APCo utility poles located on the property. Causes of action include unjust enrichment, demand for accounting and damages, declaratory judgement, intentional trespass, and permitting intentional trespass. |
| 16-C-279MON | Plaintiff contends his commercial rental property was damaged as the result of the replacement and removal of a utility pole adjacent to his property. Application of the statute of limitations and the statute of repose are disputed. Significant disputes exist between the defendants and the defendants' respective insurance carriers. There are alleged breaches of contract and questions of loss shifting in the form of contractual indemnification. |
| 20-C-282KAN | The DEP seeks the appointment of a special receiver under W.Va. Code §53-6-1 to assume control over ERP's assets, operations, and affairs; to operate ERP's mining sites and water discharge outlets in compliance with mining permits and applicable law, with funding to be provided by ERP's surety company and; to sell and liquidate ERP's properties and assets. |
| 20-C-332KAN | JCF is challenging the constitutionality of the tax system upon which sale-leaseback agreements rely. The case includes issues with Rockwool's business relationship with WVEDA and also foundational principles of West Virginia tax and property law, including the distinction between tax treatment of freehold and leasehold interests, the effect that sale-leasebacks have on the assessed value of the subject property, and the presumption that leaseholds lack independent value. The case also involves issues relating to a commercial lease agreement. |
| 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-209HRR | Plaintiff asserts claims for Tortious Interference with a Business or Contractual Relationship, Conversion, Intentional Misrepresentation, fraud, Civil Conspiracy, Negligent Misrepresentation, and Unjust Enrichment related to Defendants' alleged communications with CityNet, LLC, a third-party information technology company. |
| 20-C-772KAN | At issue is a contractual dispute that involves interpretation of three subcontracts for engineering services in connection with state highway and highway bridge construction projects, the scope of the engineer's duties, and a related dispute with the surety bonding company. |

| | |
|-------------|---|
| 20-C-660KAN | This action arises from disputes relative to a series of contracts executed between and among the parties, said contracts related to the transfer of business assets, the nature of the relationships between the parties, the sale and lease of commercial property, and the condition of said commercial property located in Marion County, WV. |
| 18-P-235HRR | Antero is a producer of natural gas in West Virginia with Marcellus wells located in the relevant counties. The wells are appraised by the West Virginia Department of Revenue, State Tax Department, Property Tax Division based on a mass appraisal system, state-wide. Antero claims the Tax Department failed to properly calculate the fair market value of its Marcellus wells for tax years 2018 and 2019. |
| 18-AA-1DOD | |
| 18-AA-1TYL | |
| 19-AA-1DOD | |
| 20-P-83HRR | |
| 18-AA-1RIT | |

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 20 hearings (including pretrials, trials, motions hearings, and telephonic status hearings) scheduled, 61 motions filed, and 98 orders entered. The average age of the 5 cases disposed in 2020 was 828 days.

Table 5. Cases disposed in 2020

| 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) |
|-------------|----------|-------------------|-----------------------------------|------------------------------|-------------------------------|---------------------|--------------------|
| 13-C-394 | Berkeley | Wilkes | 2 | 8 | 18 | 8/25/20 | 2111 |
| 17-C-55* | McDowell | Farrell/ Young | 3 | 3 | 6 | 1/13/20 | 626 |
| 18-C-130 | Marion | Young | 10 | 20 | 20 | 8/31/20 | 559 |
| 18-C-14 | Tyler | Carl | 4 | 29 | 49 | 11/4/20 | 624 |
| 19-P-23 | Braxton | Nines | 1 | 1 | 5 | 4/14/20 | 218 |

*This case was initially assigned to Judge Farrell and reassigned to Judge Young during Judge Farrell's temporary assignment on the Supreme 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 2020, the Business Court Resolution Judges scheduled at least 9 mediations or status hearings regarding mediation. Table 6 shows that 3 of the 5 disposed cases in 2020 were disposed by an agreed order of dismissal.

Table 6. Cases resolved in 2020

| Case Number/Style | Resolution |
|--|--|
| <p>13-C-394BER <i>DAR, LLC vs. Triad Engineering, Inc., Karen L. Krabill, P.E., and Lydia Work</i></p> | <p>Presiding Judge Wilkes granted Plaintiff’s Motion for Summary Judgment on the issue of contractual liability on June 8, 2020 and the parties submitted an agreed dismissal order on August 25, 2020.</p> |
| <p>17-C-55MCD <i>Stollings Trucking Company, Inc. vs. Continuum Coal, LLC; GS Energy, LLC; Ian Ganzer, individually and in his capacity as a member of Continuum Coal, LLC; and Gary Ganzer, individually and in his capacity as a member of Continuum Coal, LLC</i></p> | <p>A firm trial date was set shortly after this case was transferred to the business court. Mediation was scheduled and held by the resolution judge in late 2018. Counsel jointly announced to the Court in January that all claims were fully and completely resolved by settlement agreement; and therefore, Judge Young entered their Agreed Order of Dismissal on January 9, 2020.</p> |
| <p>18-C-130MRN <i>American Bituminous Power Partners, LP vs. Horizon Ventures of West Virginia, Inc.</i></p> | <p>This matter had been scheduled to begin trial on April 6, 2020. On February 6, 2020, Judge Young granted in part, motion for summary judgment of the defendant, Horizon Ventures of WV, Inc. Pursuant to the Administrative Order from the WVSCA issued on March 16, 2020 directing all trials to be continued until after April 10, 2020, the Court continued the trial until July 28, 2020. Judge Young granted plaintiff’s motion for summary judgment July 30, 2020 with a final order entered August 31, 2020. An agreed order staying judgment has been entered pending appeal.</p> |
| <p>18-C-14TYL <i>Directional ONE Services Inc., USA vs. Antero Resources Corporation.</i></p> | <p>This case was resolved by a 4-day trial by jury that started on August 16, 2020 with Judge Carl presiding. A final order was entered November 4, 2020 and an order granting in part Antero’s Motion to Stay Enforcement of Judgment Pending Appeal was entered November 20, 2020.</p> |
| <p>19-P-23BRX <i>John Skidmore Development, Inc. vs. Sisters’ Antique Mall, Inc. and Dunlap Rental, LLC</i></p> | <p>The pretrial and trial in this matter were continued considering the April 3, 2020 Amended Order Regarding Judicial Emergency entered by the Supreme Court of Appeals. On April 14, 2020, the parties announced to the Court that all claims were settled and compromised. Judge Nines entered an agreed order of dismissal on April 14, 2020.</p> |

SUMMARY

Overall, there have been 201 motions to refer filed since October of 2012. Of those, 116 cases have been transferred to the Business Court Division. There have been 91 disposed cases, leaving 25 pending cases.

In 2020, 22 motions to refer from 10 counties were filed. Of those, 13 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 2020 was 828 days. The Division Judges scheduled approximately 20 hearings, decided approximately 61 motions, and entered approximately 98 orders in the 5 cases that were disposed in 2020. There were at least 9 mediations or mediation status hearings scheduled by the resolution judges in 2020. There were 2 trials, 1 bench and 1 jury. Of the disposed cases in 2020, 3 out of 5 of the cases were settled completely by agreement of the parties, resulting in agreed dismissal orders.