

WEST VIRGINIA BUSINESS COURT DIVISION



2022 ANNUAL REPORT

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 2022.

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 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.

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. 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 Maryclaire A. Akers
Judge of the 13th Judicial Circuit
December 31, 2028



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 Joseph K. Reeder
Judge of the 29th Judicial Circuit
December 31, 2025

UPDATES & HIGHLIGHTS

On January 5, 2022, Chief Justice Hutchison entered an order appointing the Honorable Michael D. Lorensen to continue serving as Chair of the Business Court Division until December 31, 2024.

In April, Senior Status Judge Wilkes (pictured at far left of photo) attended the American Bar Association Section of the Business Law Spring Meeting in Atlanta. He participated in the Law & Order – Discovery Victims Unit, a presentation on eDiscovery with the other judges and lawyers pictured. This was the second year he was asked to participate in the presentation on eDiscovery. He was also reappointed co-chair of the eDiscovery subcommittee of the Business and Corporate Litigation section of the American Bar Association.



The Honorable Joseph K. Reeder, Judge of the Twenty-Ninth Judicial Circuit, was appointed by Chief Justice Hutchison October 4, 2022, to complete Judge Dent's term upon her resignation from the Business Court. Judge Reeder is a graduate of the West Virginia University College of Business and Economics. He graduated Magna Cum Laude with a Bachelor of Science in Business and Economics (Accounting). He graduated from West Virginia University College of Law with honors, as a member of the Order of the Coif. Judge Reeder tried numerous cases and represented both individual and business clients in state and federal courts throughout West Virginia.

Mediation with a resolution judge is an option in the division, thus many of the division judges have received training to further develop their mediation management skills. Judge Lorensen attended the Civil Mediation Course at the National Judicial College in November of 2022.



On December 19, 2022, Chief Justice Hutchison entered an order appointing the Honorable David M. Hammer, Judge of the Twenty-Third Judicial Circuit to serve on the Division from January 1, 2023, through December 31, 2029. He will replace Judge Carl, whose term ended December 31, 2022. Judge Hammer is a graduate of Temple University and a graduate of the College of William & Mary, Marshall Wythe School of Law. Before being elected judge in 2018, he worked for 26 years at Hammer, Ferretti & Schiavoni, which he co-founded in 1992.

CASE STATISTICS

MOTIONS TO REFER

Table 1 shows in 2022, 20 motions to refer were filed in 14 counties, including two direct referrals by the Chief Justice, making a total of 239 motions to refer filed since the inception of business court (October 2012).

Table 1. Number of Motions to Refer Filed

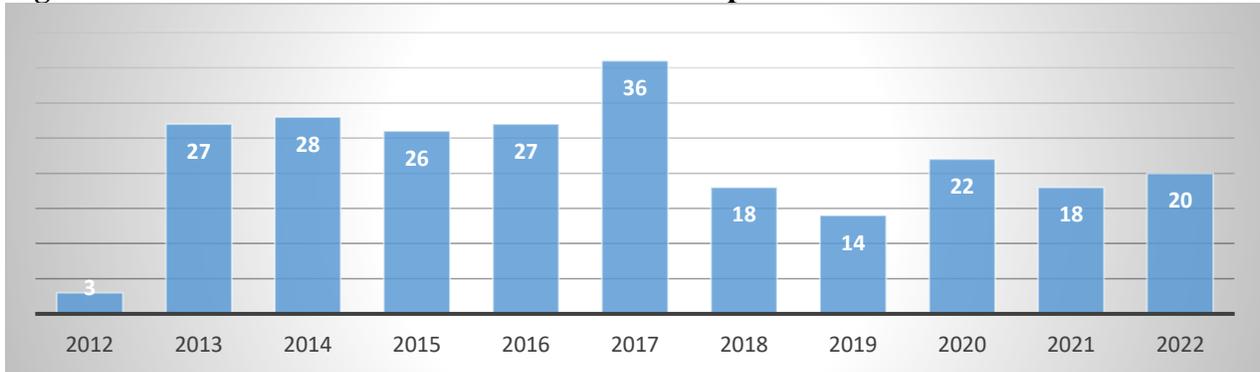
County	2022	Total since inception of BCD	County	2022	Total since inception of BCD	County	2022	Total since inception of BCD
Barbour		2	Kanawha	2	57	Preston		6
Berkeley	1	12	Lewis		2	Putnam		0
Boone	1	5	Lincoln		1	Raleigh		8
Braxton		2	Logan		4	Randolph		1
Brooke		2	Marion		3	Ritchie	1	4
Cabell		6	Marshall	1**	9	Roane		0
Calhoun		0	Mason		0	Summers		0
Clay		0	McDowell		5	Taylor		0
Doddridge	1	6	Mercer		3	Tucker	2	2
Fayette	1	2	Mineral		1	Tyler	3	9
Gilmer		0	Mingo	1	6	Upshur		3
Grant		0	Monongalia		11	Wayne		1
Greenbrier		5	Monroe		1	Webster		0
Hampshire		3	Morgan		0	Wetzel	1**	6
Hancock		2	Nicholas		1	Wirt		0
Hardy		0	Ohio	1	8	Wood		2
Harrison	2	25	Pendleton		1	Wyoming		3
Jackson		0	Pleasants		1			
Jefferson	2	5	Pocahontas		3	TOTAL	20	239*

*Six of the motions to refer were filed prior to the amendment to Rule 29 and were not sent to the Chief Justice by the circuit court judge. Those motions to refer are included in this table but are not included on the BCD Case Management section of the WV Judiciary website (12-C-153WMG, 12-C-669KAN, 14-C-30PRN, 13-C-121GRN, 14-AA-1BER, and 14-C-113KAN). One other motion to refer was denied by the Chief Justice and sealed by the circuit court judge. It is included in this table but not on the BCD Case Management section of the WV Judiciary website.

**Direct referral by the Chief Justice in complex tax appeal cases upon recusal of judges.

The following chart (Figure 1) shows the trend in the filing of motions to refer. Overall, the average number of motions to refer filed from the first full year of business court until the end of 2022 (2013 – 2022) was 24.

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



GRANTED MOTIONS

The Chief Justice decided the 18 motions to refer that were filed in 2022, one that was undecided from 2021, and directed two referrals in two complex tax appeal cases on his own accord. Table 2 shows the total number of motions to refer that were granted by the Chief Justice in 2022 and since inception (including the direct referrals). A total of 137 complex business litigation cases have been transferred to the division in 36 counties since the inception of the Business Court Division. The overall transfer rate is 57 percent.

Table 2. Number of Motions to Refer Granted

County	2022	Total since inception of BCD	County	2022	Total since inception of BCD	County	2022	Total since inception of BCD
Barbour		2	Kanawha	1	31	Preston		3
Berkeley		8	Lewis		2	Putnam		0
Boone		1	Lincoln		1	Raleigh		3
Braxton		2	Logan		2	Randolph		0
Brooke		1	Marion		3	Ritchie	1	4
Cabell		2	Marshall	1*	8	Roane		0
Calhoun		0	Mason		0	Summers		0
Clay		0	McDowell		3	Taylor		0
Doddridge	1	6	Mercer		1	Tucker	1	1
Fayette		1	Mineral		0	Tyler	1	5
Gilmer		0	Mingo		2	Upshur		2
Grant		0	Monongalia		6	Wayne		1
Greenbrier		1	Monroe		0	Webster		0
Hampshire		0	Morgan		0	Wetzel	1*	4
Hancock		1	Nicholas		1	Wirt		0
Hardy		0	Ohio	1	4	Wood		2
Harrison	2	19	Pendleton		1	Wyoming		1
Jackson		0	Pleasants		1			
Jefferson		0	Pocahontas		1	TOTAL	10	137

* Direct referral by the Chief Justice on complex tax appeals upon recusal of judges.

DECISIONS ON MOTIONS TO REFER

In 2022, nine of the 18 motions to refer were filed with no opposition by any party or judge. Of those, six were granted and transferred to the division with an average of 40 days from the date the motion was filed until the Chief Justice rendered a decision. The other three motions without opposition were denied with an average of 62 days. Of the motions to refer filed with opposition, two were granted with an average of 32 days and seven were denied with an average of 39 days. Overall, the motions to refer were decided with the average number of days being 43, from filing to decision.

Seven of the motions to refer filed in 2022 were filed by defendants/respondents, of which three were granted; eight by plaintiffs or petitioners, of which four were granted; and three were filed jointly by defendants and plaintiffs, of which one was granted. Two direct referrals by the Chief Justice on complex tax appeals were also transferred in but are not included on the following table.

Table 3. Decisions on Motions to Refer filed in 2022

MTR Filed	Order Entry Date	No. of days pending	Filed By	Opposition	Granted/Denied
1/6/2022	2/2/2022	27	Defendant(s)	Yes	Denied
2/23/2022	3/29/2022	34	Plaintiff(s)	Yes	Denied
2/11/2022	3/29/2022	46	Petitioner(s)	No	Granted
2/11/2022	3/29/2022	46	Petitioner(s)	Yes	Granted
3/18/2022	4/11/2022	24	Petitioner(s)	No	Granted
5/27/2022	6/13/2022	17	Petitioner(s)	Yes	Granted
4/6/2022	6/14/2022	69	Defendant(s)	Yes	Denied
6/6/2022	6/30/2022	24	Plaintiff(s)	No	Granted
6/28/2022	8/23/2022	56	Defendant(s)	No	Granted
7/15/2022	8/23/2022	39	Joint	No	Granted
9/2/2022	10/3/2022	31	Plaintiff(s)	Yes	Denied
8/29/2022	10/3/2022	35	Defendant(s)	Yes	Denied
9/23/2022	12/30/2022	98	Joint	No	Denied
11/9/2022	12/30/2022	51	Plaintiff	No	Granted
11/9/2022	12/30/2022	51	Joint	No	Denied
11/17/2022	12/30/2022	43	Respondents/Cross-Claim Plaintiffs	Yes	Denied
11/23/2022	12/30/2022	37	Defendant(s)	Yes	Denied
11/28/2022	12/30/2022	37	Defendant(s)	No	Denied

PENDING CASES

ACTIVE CASES

Table 4 shows the status of 13 active cases and their pending case age as of the end of 2022. The average pending case age is 620 days. This pending case age includes the amount of time cases were stayed. Absent the stays the average active case age was 572 days.

Table 4. Active cases not subject to any present stay

Case Number	County	Presiding Judge	Resolution Judge	Pending Case Age in Days	Status
18-C-130	Marion	Lorensen	No judge assigned after Judge Matish's term on BCD expired.	*247	Summary judgement was granted, and final order entered August of 2020. Appeal was filed; case was reversed and remanded in April of 2022. Presiding Judge Young's term on BCD expired so case was reassigned to Judge Lorensen in June. Pretrial: 2/17/2023 Jury Trial: 2/27/2023
18-C-202 18-C-203	Marshall	Wilkes	Carl Nines	1319	Pretrial: 10/16/2023 Jury Trial: 11/7/2023 This case has a related case in Pennsylvania. Trial has been delayed waiting on decisions in related PA case at request of parties but resulting in a lengthier pending case age.
**18-C-271	Wood	Nines	Wilkes	1263	9-day bench trial was held beginning May 31; final judgement order has not yet been entered. Case was previously stayed for a period of 234 days due to filing and acceptance of Writ of Prohibition resulting in the lengthier pending case age.
**17-C-108	Mingo	Akers	Wilkes Dent	1170	Trial continued and status set for 1/30/2023. This case was stayed for 388 days due to filing of bankruptcy resulting in a lengthier pending case age.
20-C-350	Kanawha	Akers	Farrell	732	Discovery ongoing; depositions being taken; no trial date set

Case Number	County	Presiding Judge	Resolution Judge	Pending Case Age in Days	Status
20-C-772	Kanawha	Reeder	Farrell	731	Dispositive motions hearing: 2/1/2023 Pretrial: 3/1/2023 Bench Trial: 3/20/2023
20-C-196	Harrison	Akers	Carl	690	Motions ruled on but no recent filings by counsel; no trial date set
20-C-136	Marion	Akers	Nines	585	Parties paused discovery to pursue the resolution route but after unsuccessful mediation, parties will pursue the discovery route and have requested a scheduling order
20-C-231	Harrison	Nines	Wilkes	535	Scheduling order previously entered with pretrial and jury trial dates TBD but anticipated to be in April 2023.
21-C-7	Preston	Hammer	Dent	467	Judge Carl entered a scheduling order for fraud claims and a separate scheduling order for non-fraud claims with various deadlines. The pretrial and jury trial dates are to be determined by his successor to the BCD, Judge Hammer.
22-C-4	Tucker	Lorensen	Farrell	184	March trial and pretrial dates recently continued, and status conference is set for 1/30/2023.
22-C-359	Kanawha	Nines	Akers	130	Case Management and scheduling conference was held 12/16/2022; counsel will be coordinating dates for trial and deadlines before judge enters scheduling order.
21-C-273	Harrison			1	Order Granting Referral to BCD was entered 12/30/2022.

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

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

STAYED CASES and CASES ON PARTIAL APPEAL

The 14 cases in Table 5 below were transferred to the division but subsequently stayed or have an issue 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 with limited activity

Case Number	County	Presiding Judge	Status
15-C-807	Cabell	Lorensen	Bankruptcy
17-C-318	Harrison	Nines	Bankruptcy
18-C-115	Kanawha	Wilkes	Appeal of May 18, 2021, order to WVSCA
20-C-282	Kanawha	Wilkes	In receivership
20-C-110	Berkeley	Wilkes	Stayed at the joint request of all parties pending settlement trigger
21-P-15	Ritchie	Wilkes	Stayed at the joint request of all parties pending decision of six consolidated appeals under SCA No. 22-0048, et al.
21-P-31	Doddridge	Wilkes	Stayed at the joint request of all parties pending decision of six consolidated appeals under SCA No. 22-0048, et al.
22-AA-1	Tyler	Wilkes	Stayed at the joint request of all parties pending decision of six consolidated appeals under SCA No. 22-0048, et al.
22-P-85	Harrison	Wilkes	Stayed at the joint request of all parties pending decision of six consolidated appeals under SCA No. 22-0048, et al.
20-C-155	Ohio	Lorensen	Temporary stay granted for 90 days, or longer if needed so parties can pursue an alternative process to effectuate a resolution, wherein the parties would engage an expert of the valuations of assets at issue. A status Conference is set for 3/31/2023.
22-P-7	Wetzel	Wilkes	Temporary stay granted to allow EQT and the County Commission to explore settlement possibilities.
19-C-59	Marshall	Wilkes	Case is not stayed but a coverage decision is on appeal – Notice of Appeal was filed 12/17/2021 of Circuit Court’s 11/19/2021 Orders on summary judgment motions.
19-C-357	Raleigh	Reeder	Case is not stayed but an issue is on appeal as to whether Glade Springs is a common interest community or not. Notice of Appeal was filed 1/3/2022 appealing Judge Burnside’s 12/3/2021 Order. (Appeal at issue is the appeal of Raleigh County Case No. 19-C-481)

Case Number	County	Presiding Judge	Status
21-C-129	Raleigh	Reeder	Case is not stayed but an issue is on appeal as to whether Glade Springs is a common interest community or not. Notice of Appeal was filed 1/3/2022 appealing Judge Burnside's 12/3/2021 Order. (Appeal at issue is the appeal of Raleigh County Case No. 19-C-481)

Table 6. Nature of all cases pending in the business court division

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-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> .
18-C-271WDE	Plaintiff alleges in part that defendants collaborated to carry out a fraudulent healthcare billing scheme. Claims of fraudulent misrepresentation and inducement, breach of contract, unjust enrichment, civil conspiracy, joint venture, negligence and piercing the MedTest LLC veil.
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.
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-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.
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-110BER	This is a contract dispute involving bulk purchase of 319 lots with amendments; allegations of breach, default, failure, and refusals to cure and otherwise perform and resulting damages and fees.
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-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.
21-C-7PRN	The action involves breach of contract and professional liability claims in connection with the rendering of professional engineering and design services

	to public and commercial entities involving the Upper Deckers Creek Dam.
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.
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.
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-P-7WTZ	Complex Tax Appeal
21-C-273HRR	Plaintiff contends it sustained substantial damages as a result of the Defendants' breach of contract, fraudulent misrepresentation(s), and tortious interference with a prospective economic advantage. Additionally, this matter involves complex issues related to the management of commercial aggregate production and sales, commercial property management, and commercial torts.

ACTIVITY OF CASES DISPOSED IN 2022

Table 7 shows the activity in each case 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 479 days. There were approximately 25 hearings scheduled, 86 motions filed, and 163 orders entered in these cases while in business court.

Table 7. Activity of cases disposed in 2022

Case Number	County	Presiding Judge	Hearings scheduled	Motions	Orders	Pending Case Age in days
19-C-1259	Kanawha	Farrell	1	0	9	330
21-C-11	Mingo	Young then Akers	1	1	2	230

Case Number	County	Presiding Judge	Hearings scheduled	Motions	Orders	Pending Case Age in days
18-C-90	Kanawha	Farrell	1	3	6	191
20-C-660	Kanawha	Farrell	1	9	11	404
16-C-279	Monongalia	Nines	2	3	6	742*
21-C-12 21-C-60	Harrison Kanawha	Lorensen	7	3	21	358
18-C-2	Pleasants	Tabit then Lorensen	11	52	89	1487
20-C-142	Fayette	Dent	1	14	18	501
22-P-6	Marshall	Wilkes	0	1	1	64

*Case was stayed for 380 days so the active case age was 362 days

RESOLUTIONS – Generally, mediation is scheduled early in a 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, often leading to a full settlement of the case or a shortened trial. In 2022, the Business Court resolution judges scheduled at least nine mediations or status hearings regarding mediation, excluding follow-up phone conferences that are not tracked.

RESOLUTIONS OF CASES RESOLVED IN 2022

19-C-1259KAN, *Charleston Area Medical Center, Inc. vs. BSA Lifestructures, Inc., et al.*

Plaintiff reached an agreement with each of the six defendants separately, with the first agreed order of dismissal being entered July 19, 2021, and the final agreed order of dismissal being entered January 5, 2022.

21-C-11MNG, *The Gorman Company, LLC vs. OK Gentry, LLC and Coal-Mac, LLC.*

The parties were able to reach an agreement and a final agreed order of dismissal was entered February 9, 2022.

18-C-90KAN, *Lewis Clark Tierney, III; et al. vs. Ann Tierney Smith, et al.*

The parties reached an agreement. After shareholders received notice of the settlement, the Court held a final fairness hearing on January 11, 2022, and granted final approval of a settlement agreement and entered a dismissal order February 15, 2022.

20-C-660KAN, *Julius Wolford vs. Form Tech Concrete Forms, Inc. and Form Tech Concrete Forms, Inc. vs. Construction Solutions & Leasing, LLC.*

After mediating with the resolution judge, the parties were able to resolve the issues and agreed to a dismissal with prejudice of all claims. Dismissal Order was entered January 31, 2022.

16-C-279MON, *Howard Liston vs. Frontier West Virginia, Inc. and T.A. Chapman, Inc.*

The judge granted Defendant T.A. Chapman, Inc.'s motion for summary judgement, Defendant Frontier West Virginia, Inc.'s renewed motion for summary judgment and joinder in T.A. Chapman, Inc.'s motion for summary judgment. The judge dismissed plaintiff's second amended complaint and frontier's crossclaim against T.A. Chapman, Inc., both with prejudice as moot. The final order was entered March 7, 2022.

21-C-12HRR, *Ronald Lane, Inc., Christopher Lane, and Norman Lane vs. Ronald Lane*
21-C-60KAN, *Ronald Lane vs. Christopher Lane, Norman Lane, and Ronald Lane, Inc.*

A confession of, consent to, and stipulation to judgment by Defendants Christopher Lane and RLI Solutions, Inc. was agreed to and entered by the judge on March 24, 2022.

18-C-2PLE, *BB Land, LLC; and JB Exploration 1, LLC v.) Blackrock Enterprises, LLC; and Michael L. Benedum.*

The trial was had in two phases, with Phase 1 being a jury trial which took place on March 2-12, 2021, and a bench trial which took place on September 22-23. The final judgment order was entered April 25, 2022.

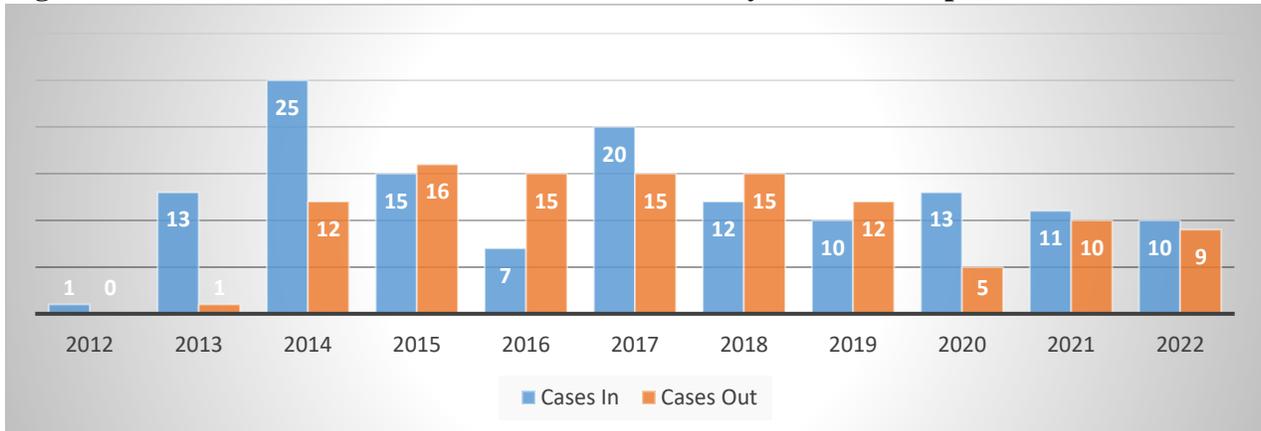
20-C-142FAY, *Frasure Creek Mining, LLC vs. Pocahontas Land LLC and Pocahontas Surface Interests LLC vs. Deep Water Resources, LLC and New Trinity Coal, Inc.*

The parties jointly filed an agreed judgement order in this matter, and it was entered by the Court August 29, 2022.

22-P-6MSH, *EQT Production Company vs. Matthew Irby, West Virginia State Tax Commissioner*

The Court granted Respondents' motion to dismiss Petition for Appeal and the final order was entered November 15, 2022.

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



The above chart (Figure 2) shows that in 2022, the Business Court judges disposed of nine cases. Since inception, the Business Court judges have resolved 110 of the 137 cases transferred to the Division.

CASE ACTIVITY IN 2022

The Business Court judges scheduled approximately 47 hearings, entertained approximately 106 motions, and entered 192 orders in 2022, in 31 cases. Table 9 shows the approximate amount of activity of all seven business court judges in 2022 per case.

Table 9. Total case activity in 2022.

Case Number	No. of Motions Filed	Orders Entered	Hearings Scheduled
16-C-279MON	0	2	2
16-C-82WTZ	0	1	0
17-C-108MNG	14	7	5
18-AA-1TYL	0	1	0
18-C-130MRN	5	9	0
18-C-202MSH	6	13	2
18-C-271WDE	8	15	3
18-C-2PLE	0	4	0
18-C-90KAN	0	2	1
19-C-357RAL	16	29	6
19-C-59MSH	0	15	5
20-C-110BER	3	5	1
20-C-136MRN	7	2	0
20-C-142FAY	7	7	4
20-C-155OHI	0	4	0
20-C-196HRR	3	6	0
20-C-231HRR	1	2	0

Case Number	No. of Motions Filed	Orders Entered	Hearings Scheduled
20-C-282KAN	5	10	0
20-C-350KAN	12	3	3
20-C-660KAN	0	1	0
20-C-772KAN	6	8	5
21-C-11MNG	0	2	1
21-C-129RAL	3	9	5
21-C-7PRN	4	13	2
21-P-15RIT	0	2	0
21-P-31DOD	0	2	0
22-AA-1TYL	0	2	0
22-C-359KAN	3	7	1
22-C-4TKR	3	5	1
22-P-6MSH	0	2	0
22-P-85HRR	0	2	0
Grand Total	106	192	47

SUMMARY

In 2022, 20 motions to refer to the Business Court Division from 14 counties were filed (including 2 direct referrals by the Chief Justice). There was also one motion to refer pending from 2021. Of those 21 motions to refer (including the two direct referrals by the Chief Justice), 10 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. Eleven were denied. The Chief Justice rendered a decision in an average of 43 days from the date the motions to refer were filed.

As of the end of 2022, there were 13 active pending cases and 14 additional pending cases that were not active due to a stay or having an issue on appeal thus limiting the activity in the case. The average case age of the active cases as of the end of 2022 was 572 days.

The division judges disposed of nine cases in 2022 and the average case age of the disposed cases was 479 days. Six out of the nine disposed cases were settled by agreement of the parties, resulting in agreed dismissal orders.

The division judges scheduled approximately 47 hearings, entertained approximately 106 motions, and entered 192 orders in 31 cases in 2022. There were approximately nine mediations or mediation status hearings scheduled by the resolution judges in 2022, excluding any follow-up conference calls. There were no jury trials and one bench trial.

Since inception (October 2012), 239 motions to refer have been filed in 41 counties. Of those, 137 cases from 36 counties have been transferred to the Business Court Division. The overall transfer rate is 57 percent. There have been 110 cases resolved, leaving 27 cases still pending with the division at the end of 2022.