



NORTH CAROLINA
ADMINISTRATIVE OFFICE
of the COURTS

North Carolina Business Court Semiannual Report (July –December 2015)

N.C.G.S. 7A-343(8a)

April 1, 2016



Introduction

N.C.G.S. 7A-343(8a) provides that the duties of the Director of the Administrative Office of the Courts include the following:

(8a) Prepare and submit a semiannual report on the activities of each North Carolina business court site to the Chief Justice and to each member of the General Assembly. The semiannual report required under this subdivision shall be separate from the report required under subdivision (8) of this section and shall include the total number of civil cases pending in each business court site over three years after being designated as a mandatory complex business case, motions pending over six months after being filed, and civil cases in which bench trials have been concluded for over six months without entry of judgment, including any accompanying explanation provided by the Business Court.

The North Carolina Administrative Office of the Courts (NCAOC) respectfully submits this report pursuant to the legislative mandate.

An Overview of the North Carolina Business Court

The North Carolina Business Court is a specialized forum within the North Carolina General Court of Justice designed to oversee cases involving complex business and technical issues. As of December 31, 2015, North Carolina had three active business courts, with locations in Charlotte, Greensboro and Raleigh. Each business court has a designated special superior court judge assigned to hear the cases assigned to that court.

N.C.G.S. 7A-45.4 governs the designation of business court cases. The statute provides that any party may designate as a mandatory complex business case an action that involves a material issue related to the following types of disputes:

- Disputes involving the law governing corporations, except charitable and religious organizations qualified under G.S. 55A-1-40(4) on the grounds of religious purpose, partnerships, and limited liability companies
- Disputes involving securities
- Disputes involving antitrust law
- Disputes involving trademark law
- Disputes involving the ownership, use, licensing, lease, installation, or performance of intellectual property, including computer software, software applications, information technology and systems, data and data security, pharmaceuticals, biotechnology products, and bioscience technologies
- Disputes involving trade secrets
- Contract disputes in which specified statutory conditions are met

In addition, the statute establishes three types of cases that must be designated as mandatory complex business cases:

- An action involving a material issue related to tax law that has been the subject of a contested tax case for which judicial review is requested under G.S. 105-241.16, or a civil action under G.S. 105-241.17 containing a constitutional challenge to a tax statute
- An action described in subdivision (1), (2), (3), (4), (5), or (8) of subsection (a) of G.S. 7A-45.4 in which the amount in controversy computed in accordance with G.S. 7A-243 is at least five million dollars (\$5,000,000)
- An action involving regulation of pole attachments brought pursuant to G.S. 62-350

Once a case is designated as a complex business case under G.S. 7A-45.4 after approval by the Chief Justice, all proceedings in the action are heard before the business court judge to whom it has been assigned. The current special superior court judges assigned to the business court are the Honorable James L. Gale, Louis A. Bledsoe III, and Gregory P. McGuire. Judge Gale serves as the chief judge of the business court, and oversees the Guilford County site located in the Elon University School of Law. Judge Bledsoe oversees the Mecklenburg County site located in the Mecklenburg County Courthouse, while Judge McGuire oversees the Wake County site located in the Wake County Courthouse. Retired Chief Business Court Judge John Jolly reached the mandatory retirement age of 72 in 2014, and now serves as an emergency superior court judge. In that capacity, he continues to oversee resolution of certain cases to which he previously was assigned in order to ensure administrative continuity.

The Chief Justice has discretion to assign other exceptional cases to the business court under Rule 2.1. However, as a practical matter, the rise in the number of cases designated as mandatory complex business cases has minimized the number of other cases assigned to business court judges by the Chief Justice under Rule 2.1. When necessary, business court judges may be called upon in their capacity as special superior court judges to handle cases or court sessions in addition to the regular business court caseload.

Case Statistics

Cases Pending More than Three Years

As of December 31, 2015, the North Carolina Business Court had 231 pending cases. Of that number, 184 cases were active cases, 25 cases were on appeal and 22 were inactive or stayed. A case may be stayed or designated inactive for a variety of reasons, such as an interlocutory appeal, bankruptcy filing, arbitration, or a request by the parties.

Forty cases have been on the Business Court's docket for more than three years as of December 31, 2015. The attached Table 1 includes a list of the cases pending more than three years as of December 31, 2015, and information related to significant actions that contributed to the disposition time.

Motions Pending More than Six Months

The Business Court hears oral argument on most substantive motions and resolves many other motions without oral argument. As of December 31, 2015, there were 54 motions filed prior to July 1, 2015, which originated from 30 cases.

It is not unusual, particularly in complex, multiparty litigation, for a motion to be pending for several months before briefing is complete and the motion is ripe for consideration. Motions rarely remain pending for more than six months after being briefed and heard, although written opinions are sometimes extensive, requiring time-intensive writing and editing. The attached Table 2 includes a list of the motions pending more than six months as of December 31, 2015, and information related to significant actions that contributed to the disposition time.

Bench Trials with No Entry of Judgment after Six Months

The Business Court has no cases in which a bench trial was concluded for more than six months without entry of judgment.

Summary

As of December 31, 2015, the Business Court had 40 cases pending for more than three years, 54 motions pending more than six months after being filed, and no cases in which a bench trial was concluded for more than six months without entry of judgment. The Business Court continuously strives to improve efficiencies that will lead to more timely disposition of motions and business court cases overall.

TABLES

Table 1. Cases Pending More than Three Years as of December 31, 2015.

Table 2. Motions Pending More than Six Months as of December 31, 2015



Table 1. Cases Pending More than Three Years as of December 31, 2015.

Case Name	Case Number	Designation Date	Notes
<i>Am. Mech., Inc. v. Bostic</i>	12 CVS 1384	06/28/12	Cases stayed pending appeal.
<i>Phillips & Jordan, Inc. v. Bostic</i>	11 CVS 53	04/04/11	
<i>Yates Constr. Co., Inc. v. Bostic</i>	12 CVS 977	06/28/12	
<i>Artistic S., Inc. v. Lund</i>	12 CVS 11789	08/23/12	Case has been actively litigated.
<i>Assoc. Behavioral Servs., Inc. v. Smith</i>	09 CVS 3854	02/17/10	Case stayed intermittently for <i>pro se</i> Plaintiff's attempted appeals.
<i>BB&T BOLI Plan Trust v. Mass. Mutual Life Ins. Co.</i>	09 CVS 4007	06/22/09	Case was actively litigated, and claims dismissed without prejudice effective May 2015. Stayed pending outcome of pending Motion to Determine Effect of Voluntary Dismissal, and pending motion in related case <i>BB&T BOLI Plan Trust v. Mass. Mut. Life Ins. Co.</i> (15 CVS 2638).
<i>BDM Invs. v. Wells Fargo & Co.</i>	11 CVS 449	04/07/11	Case stayed at request of parties due to related pending case.
<i>Brady v. Van Vlaanderen</i>	12 CVS 7552	09/04/12	Case intermittently stayed by motion of parties.
<i>Chambers v. The Moses Cone Mem'l Hosp.</i>	12 CVS 6126	09/20/12	Case stayed for developments in related case <i>Hefner v. Mission Hospital, Inc.</i>
<i>Chavez v. Rex Venture Grp., LLC</i>	12 CVS 2690	09/27/12	Case stayed pursuant to court order in related federal case.
<i>Chesson v. Rives</i>	12 CVS 3382	12/19/12	Case has been actively litigated.
<i>Daniel v. West</i>	11 CVS 6279	12/14/11	Case resolved by settlement. Court will hold case open until parties fulfill their obligations under the settlement agreement.
<i>DeGorter v. Capitol Bancorp Ltd.</i>	10 CVS 20825	12/08/10	Case was inactive from November 2014 to December 2015 while Defendants were in bankruptcy.
<i>EHP Land Co. v. Boshier</i>	07 CVS 59	04/04/07	All legal claims have been resolved; stayed pending appeal.
<i>Ekren v. K & E Real Estate Invs., Inc.</i>	12 CVS 508	03/27/12	Case has been actively litigated. Case is in receivership and awaiting filing of 2015 tax return.
<i>Elliott v. KB Home N.C., Inc.</i>	08 CVS 21190	06/17/10	Case intermittently stayed during pendency of multiple appeals, including an attempted appeal to the Supreme Court of the United States. Case is now in active litigation.
<i>Fidelity Bank v. N.C. Dep't of Revenue</i>	10 CVS 3405	02/24/10	Court issued opinion on administrative appeal in 2013. Decision was appealed, and appeal was dismissed. Case is active awaiting filing of a Motion for Entry of Judgment.

Case Name	Case Number	Designation Date	Notes
<i>Garrison v. Garrison</i>	11 CVS 14182	07/22/11	Case on appeal following bench trial in June 2014.
<i>Global Promotions Grp., Inc. v. Danas, Inc.</i>	11 CVS 11756	09/29/11	Court proceedings held in abeyance while parties pursue mediation.
<i>Godwin v. Ameriprise Fin. Servs., Inc.</i>	12 CVS 5162	05/11/12	Case stayed pending arbitration.
<i>Hefner v. Mission Hospital, Inc.</i>	12 CVS 3088	08/07/12	Order and Opinion dismissing case entered December 2015.
<i>Henderson v. Manuel</i>	09 CVS 7254	05/15/09	Proposed summary judgment orders recently submitted by parties.
<i>Heron Bay Acquisition, LLC v. United Metal Finishing, Inc.</i>	12 CVS 5505	04/18/12	Case stayed pending appeal of final judgment.
<i>Joalpe-Industria De Expositores, S.A. v. Alves</i>	10 CVS 5697	07/05/11	Case has been actively litigated.
<i>Kezeli v. Logan</i>	12 CVS 12925	09/18/12	Set for non-jury trial February 2016.
<i>The Kimberly Rice Kaestner Trust v. N.C. Dep't of Revenue</i>	12 CVS 8740	07/19/12	Case stayed pending appeal.
<i>Levin v. Jacobson</i>	10 CVS 12062	09/03/10	Cases have been actively litigated.
<i>Shareff v. Jacobson</i>	09 CVS 9983	06/03/09	
<i>Lockerman v. S. River EMC</i>	11 CVS 152	03/14/11	Case stayed in 2012 during appeal of summary judgment ruling.
<i>Loflin v. QA Invs., LLC</i>	03 CVS 16882	07/25/06	Case stayed from 2007 to 2013; case resumed in active litigation.
<i>MBRAB&B, PLLC v. Brewer</i>	06 CVS 6091	07/05/06	Case intermittently stayed for parties to pursue alternative resolution.
<i>McKee v. James</i>	09 CVS 3031	10/19/09	Case stayed pending appeal of summary judgment ruling.
<i>Morris v. Scenera Research, LLC</i>	09 CVS 19678	03/31/11	Case was tried before a jury in 2012; judgment was appealed and affirmed by Court of Appeals. Case currently stayed pending appeal to Supreme Court of North Carolina.
<i>Nelson v. Alliance Hospitality Mgmt., LLC</i>	11 CVS 3217	03/22/11	Stayed pending appeal of jury verdict.
<i>NNN Durham Office Portfolio 1, LLC v. Grubb & Ellis Co.</i>	10 CVS 4392	08/24/10	Case has been actively litigated.
<i>NNN Durham Office Portfolio 1, LLC v. Highwoods Realty Ltd. P'ship</i>	12 CVS 3945	07/11/12	Case has been actively litigated.
<i>Plasman v. Decca Furniture (USA), Inc.</i>	12 CVS 2832	10/24/12	Case removed to federal court from December 2012 to September 2014.
<i>Premier, Inc. v. Peterson</i>	11 CVS 1054	01/19/11	Case intermittently stayed following appeal of 2012 decision.
<i>SCR-Tech LLC v. Evonik Energy Servs., LLC</i>	08 CVS 16632	10/10/08	Case has been actively litigated and is presently stayed pending appeal of ruling on motion to dismiss.
<i>Tong v. Dunn</i>	11 CVS 1522	08/25/11	Case was previously stayed during appeal.



Table 2. Motions Pending More than Six Months as of December 31, 2015

Case Name	Case Number	Motion Filing Date	Type of Motion	Notes
<i>Allscripts Healthcare, LLC v. Etransmedia Tech, Inc.</i>	14 CVS 11860	06/09/15	Motion for Declaratory and Injunctive Relief	Motions did not become ripe until late 2015; hearing scheduling in process.
		06/09/15	Motion to Seal	
		06/26/15	Motion to Dismiss or Stay	
<i>Am. Mechanical, Inc. v. Bostic</i>	12 CVS 1384	11/13/14	Motion for Attorneys' Fees and Costs	Ruling held in abeyance pending appeal.
<i>Phillips and Jordan, Inc. v. Bostic</i>	11 CVS 53			
<i>Yates Constr. Co., Inc. v. Bostic</i>	12 CVS 977			
<i>BB&T BOLI Plan Trust v. Mass. Mutual Life Ins. Co.</i>	09 CVS 4007	05/15/15	Motion for Determination of Effect of Voluntary Dismissal and for Attorney's Fees	Hearing held August 2015; court requested further briefing. Ruling in process.
<i>Brady v. Van Vlaanderen</i>	12 CVS 7552	02/26/15	Motion for Summary Judgment	Rulings held in abeyance to permit additional discovery related to motions.
		03/09/15	Motion to Exclude	
		04/09/15	Motion for Summary Judgment	
		04/09/15	Motion for Summary Judgment	
<i>Campbell Oil Co. v. Amerigas Propane, LP</i>	13 CVS 468	05/29/15	Motion to Amend	Hearing held August 2015; rulings in process.
		06/01/15	Motion for Summary Judgment	
		06/01/15	Motion for Summary Judgment	
<i>Chambers v. The Moses Cone Mem'l Hospital</i>	12 CVS 6126	09/09/12	Motion to Intervene	Ruling held in abeyance pending determination of class certification.
<i>Chesson v. Rives</i>	12 CVS 3382	02/09/15	Motion for Partial Summary Judgment	Hearing held June 2015; rulings in process.
		02/09/15	Motion for Partial Summary Judgment	
		06/30/15	Motion for Sanctions	
		06/30/15	Motion to Strike Expert	
		11/26/14	Motion for Sanctions	



Case Name	Case Number	Motion Filing Date	Type of Motion	Notes
<i>Conry v. Destafino</i>	15 CVS 26	01/20/15	Motion for Preliminary Injunction	Ruling held in abeyance due to bankruptcy filing.
<i>DeGorter v. Capitol Bancorp Ltd.</i>	10 CVS 20825	01/19/12	Motion for Summary Judgment	Motion held in abeyance pending bankruptcy stay over relevant Defendants. Stay lifted December 2015.
<i>Ehmann v. Medflow, Inc.</i>	15 CVS 3098	03/16/15	Motion for Preliminary Injunction	Ruling held in abeyance to allow for discovery.
<i>Empire Foods, Inc. v. Aseptia, Inc.</i>	13 CVS 8423	01/02/15	Motion for Stay and to Compel Arbitration	Ruling held in abeyance pending settlement reported by parties.
			Motion for Judgment on the Pleadings	
<i>Gay v. Peoples Bank</i>	13 CVS 383	06/29/15	Motion to Recover Costs	Ruling held in abeyance pending appeal.
<i>Henderson v. Manuel</i>	09 CVS 7254	10/24/14	Motion for Summary Judgment on Counterclaims and Third Party Claims	Motions ripe February 2015; hearing held June 2015; Court requested additional information from parties regarding complex record; proposed summary judgment orders recently submitted.
		10/24/14	Motion for Summary (Henderson)	
		10/24/14	Motion for Summary Judgment (Manuel)	
		10/24/14	Motion for Partial Summary Judgment	
		10/27/14	Motion for Summary Judgment	
		10/27/14	Motion for Summary Judgment on Counterclaims	
		02/12/15	Motion to Strike	
<i>Hilco Transp., Inc. v. Atkins</i>	14 CVS 8677	01/30/15	Motion to Dismiss	Hearing held April 2015; rulings in process.
		02/20/15	Motion for Judgment on the Pleadings	
		02/20/15	Motion Regarding Appraisal	
<i>Mauney v. Beam Rest Home, Inc.</i>	14 CVS 4148	03/06/15	Motion to Dismiss	Hearing held May 2015; ruling held in abeyance pending settlement reported by parties.
			Motion to Dismiss	
			Motion to Dismiss	
<i>Miller v. Burlington Chem. Co.</i>	13 CVS 9719	07/21/14	Motion for Temporary Restraining Order and Preliminary Injunction	Court advised parties of ruling by letter; written opinion to follow.
<i>Nelson v. Alliance Hospitality Mgmt., LLC</i>	11 CVS 3217	04/27/15	Motion for Costs	Ruling held in abeyance pending appeal.
			Motion for Costs	



Case Name	Case Number	Motion Filing Date	Type of Motion	Notes
<i>NNN Durham Office Portfolio I, LLC v. Highwoods Realty Ltd. P'ship</i>	12 CV S3945	11/15/13	Motion for Partial Summary Judgment	Hearing held; ruling in in process.
		05/29/15	Motion for Judgment on the Pleadings	
<i>Roundpoint Mortg. Co. v. Florez</i>	13 CVS 8803	11/24/14	Motion for Summary Judgment	Hearing held March 2015; rulings in process.
		11/25/14	Motion for Summary Judgment	
			Motion for Summary Judgment	
			Motion for Summary Judgment	
<i>Levin v. Jacobson</i>	10 CVS 12062	06/03/13	Motion to Consolidate	Motion held in abeyance at parties' request pending resolution of matters in <i>Levin v. Jacobson</i> .
<i>Shareff v. Jacobson</i>	09 CVS 9983			
<i>SunEnergy1, LLC v. Brown</i>	14 CVS 293	03/27/15	Motion for Summary Judgment	Supplemental briefing submitted by parties; motion did not become ripe until December 2015.
<i>Sykes v. Blue Cross and Blue Shield of N.C.</i>	15 CVS 3136	05/26/15	Motion to Consolidate	Hearing held; ruling in process.
<i>Sykes v. Health Network Sols., Inc.</i>	13 CVS 2595			
<i>Taidoc Tech. Corp. v. OK Biotech Co., Ltd.</i>	12 CVS 20909	05/29/15	Motion for Summary Judgment	Supplemental briefing submitted by parties; motion did not become ripe until August 2015. Ruling in process.
<i>TFS RT Inc. v. Cavert Wire Co., Inc.</i>	15 CVS 1617	05/26/15	Motion to Dismiss	Ruling held in abeyance pending settlement reported by parties.
<i>USA Trouser, S.A. de C.V. v. Williams</i>	14 CVS 790	09/16/14	Motion to Dismiss	Rulings deferred pending federal court proceedings.
		10/14/14	Motion to Dismiss	
		05/05/15	Motion to Strike	



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