



NORTH CAROLINA
ADMINISTRATIVE OFFICE
of the COURTS

North Carolina Business Court Semiannual Report (January – June 2016)

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

October 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.

NCAOC submits this report in compliance with the legislative mandate. The report covers the period from January 1, 2016 through June 30, 2016.

An Overview of the North Carolina Business Court

The North Carolina Business Court is an administrative division of the North Carolina General Court of Justice designed to provide a specialized forum for cases involving complex business and technical issues. As of June 30, 2016, there were three active business courts in Charlotte, Greensboro and Raleigh. Each business court has a designated special superior court judge 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. On June 30, 2016, the special superior court judges for complex business cases were the Honorable James L. Gale, who serves as Chief Business Court Judge maintaining chambers at the Elon University School of Law; Louis A. Bledsoe III, maintaining chambers at the Mecklenburg County Courthouse; and Gregory P. McGuire, maintaining chambers at the Wake County Courthouse.

The Honorable Michael L. Robinson was sworn in as a special superior court judge on July 1, 2016. On July 6, 2016, the Chief Justice designated him as a special superior court judge for complex business cases. Judge Robinson will serve as the Business Court judge for a fourth business court location in Winston-Salem once construction of the site is completed. In the meantime, he is working at the Greensboro location, handling both Business Court cases and other matters as assigned by the Chief Justice.

The Chief Justice has discretion to assign other exceptional cases to the Business Court 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

As of June 30, 2016, the North Carolina Business Court had 214 pending cases. Of that number, 192 cases were active cases 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.

Cases Pending More than Three Years

Thirty-five cases have been pending more than three years as of June 30, 2016, but the Business Court may not have had active jurisdiction over all of these cases during the entire pendency. Twelve of these cases are assigned to the Charlotte location, seventeen to the Greensboro location, and six to the Raleigh location. These cases are identified in the attached Table 1 with any information pertinent to the extended duration of the case.

Motions Pending More than Six Months

While other courts, including the federal courts, track pending motions from the date the motion has been submitted for decision after briefing and argument, the North Carolina statute requires a listing of motions which have been pending for six months or more from the date of filing. Often, a motion is not ripe for hearing or ruling until several months after initial filing because of the briefing required for complex issues. It is unusual for a motion in the Business Court to remain outstanding six months after being briefed, heard and submitted for consideration.

The Business Court most often hears oral argument on substantive motions, but may rule on less substantial motions after briefing and without oral argument. As of June 30, 2016, there were 68 pending motions, involving 24 cases, filed prior to January 1, 2016. This number is slightly higher than the previous six-month period, because Judge Gale's initial term expired February 28, 2016, and he continued in a holdover status pending legislative action. During this interim period, some trials and rulings on certain dispositive motions were deferred.

Table 2 includes a list of the motions pending more than six months as of June 30, 2016, including information pertinent to the motion remaining outstanding.

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 June 30, 2016, the Business Court had 35 of 214 cases pending for more than three years, 68 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 remains continuously focused on improving efficiencies and timely disposition of cases.



TABLES

Table 1. Cases Pending More than Three Years as of June 30, 2016

Table 2. Motions Pending More than Six Months as of June 30, 2016





Table 1. Cases Pending More than Three Years as of June 30, 2016.

Case Name	Case Number	Designation Date	Notes
<i>Am. Mech., Inc. v. Bostic</i> <i>Phillips & Jordan, Inc. v. Bostic</i> <i>Yates Constr. Co., Inc. v. Bostic</i>	12 CVS 1384 11 CVS 53 12 CVS 977	06/28/12 04/04/11 06/28/12	Cases intermittently stayed during lengthy appeal.
<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>BDM Invs. v. Wells Fargo & Co.</i>	11 CVS 449	04/07/11	Case set for trial, then 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>Cape Hatteras Elec. Membership Corp. v. Stevenson</i>	13 CVS 190	04/10/13	Stayed pending appeal of summary judgment opinion.
<i>Chambers v. The Moses Cone Mem'l Hosp.</i>	12 CVS 6126	09/20/12	Case intermittently stayed for developments in related case <i>Hefner v. Mission Hospital, Inc.</i> ; stay lifted following resolution of <i>Hefner</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>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>Deluca v. Cape Fear Bluffs, LLC</i>	13 CVS 783	06/03/2013	All claims settled after motion rulings; awaiting final dismissal.
<i>DSM Dyneema, LLC v. Thagard</i>	13 CVS 1686	05/29/13	Case has been actively litigated.
<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	Stayed pending appeal of final judgment.
<i>Seraph Garrison, LLC v. Garrison</i>	11 CVS 14182	07/22/11	Case intermittently stay following bench trial 2014 bench trial; Court of Appeals remanded the case in April 2016; final order and judgment in process.
<i>Gay v. Peoples Bank</i>	13 CVS 383	04/22/13	Case intermittently stayed during appeal of summary judgment opinion, which was affirmed in May 2016.
<i>Henderson v. Manuel</i>	09 CVS 7254	05/15/09	Case intermittently stayed during proceedings before master.
<i>The Kimberly Rice Kaestner Trust v. N.C. Dep't of Revenue</i>	12 CVS 8740	07/19/12	Case stayed pending appeal.

Case Name	Case Number	Designation Date	Notes
<i>Levin v. Jacobson</i> <i>Shareff v. Jacobson</i>	10 CVS 12062 09 CVS 9983	09/03/10 06/03/09	Cases have been actively litigated; set for jury trial in fall 2016.
<i>Lockerman v. S. River EMC</i>	11 CVS 152	03/14/11	Case intermittently stayed during appeal of summary judgment ruling; currently stayed pending appeal of final judgment.
<i>Loftin v. QA Invs., LLC</i>	03 CVS 16882	07/25/06	Case stayed from 2007 to 2013; case now resumed in active litigation.
<i>MBRAB&B, PLLC v. Brewer</i>	06 CVS 6091	07/05/06	Stayed pending appeal of summary judgment opinion dismissing case.
<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 was appealed to Supreme Court of North Carolina, which affirmed in part and reversed in part the Court of Appeals decision. Case recently remanded to this Court for consideration of costs and attorneys' fees.
<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; ruling on multiple motions in progress.
<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 through September 2014.
<i>Premier, Inc. v. Peterson</i>	11 CVS 1054	01/19/11	Case stayed pending appeal of opinion on summary judgment and declaratory judgment; case also previously stayed for appeal.
<i>RoundPoint Mortg. Co. v. Florez</i>	13 CVS 8803	05/23/13	Case has been actively litigated; summary judgment rulings entered; set for trial March 2017.
<i>Safety Test & Equip. Co. v. Am. Safety Utility Corp.</i>	13 CVS 1037	06/13/13	Case has been actively litigated; set for trial February 2017.
<i>Sykes v. Health Network Solutions, Inc.</i>	13 CVS 2595	05/31/13	Case partially stayed pending resolution of market definition.
<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 June 30, 2016.

Scope: All data in this report is accurate as of June 30, 2016. As of the date of this report, some of these motions have been resolved.

Case Name	Case Number	Motion Filing Date	Type of Motion	Notes
<i>Am. Mechanical, Inc. v. Bostic</i> <i>Phillips and Jordan, Inc. v. Bostic</i> <i>Yates Constr. Co., Inc. v. Bostic</i>	12 CVS 1384 11 CVS 53 12 CVS 977	11/13/14	Motion for Attorneys' Fees and Costs	Ruling held in abeyance pending appeal. Case is now active; hearing scheduled for July 2016.
<i>Bella Collina Events, LLC v. Conry</i>	15 CVS 3389	11/04/15	Motion to Dismiss	Hearing held December 2015; case currently stayed due to bankruptcy filing.
<i>Brady v. Van Vlaanderen</i>	12 CVS 7552	02/26/15	Motion for Summary Judgment	Rulings previously held in abeyance to permit additional discovery related to motions. Supplemental briefs filed with respect to two motions; scheduling of hearing in process. Two motions currently under consideration.
		03/09/15	Motion to Exclude	
		04/09/15	Motion for Summary Judgment	
		04/09/15	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 in related case.
<i>Chesson v. Rives</i>	12 CVS 3382	02/09/15	Motion for Partial Summary Judgment	Motions heard; rulings under submission.
		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	
<i>Conry v. Destafino</i>	15 CVS 26	10/08/15	Motion to Stay Consideration	Ruling on Motion for Preliminary Injunction held in abeyance due to bankruptcy filing.
		09/18/15	Motion for Summary Judgment	
		09/18/15	Motion to Stay Discovery	
		01/20/15	Motion for Preliminary Injunction	
<i>Dishner v. Goneau</i>	15CVS473	12/31/15	Motion to Dismiss	Hearing held in June 2016; ruling under consideration.

Case Name	Case Number	Motion Filing Date	Type of Motion	Notes
<i>Ehmann v. Medflow, Inc.</i>	15 CVS 3098	12/04/15	Motion to Dismiss	Ruling on Motion for Preliminary Injunction held in abeyance to allow for discovery; motions deferred by consent pending trial.
		11/19/15	Second Motion to Compel	
		11/02/15	Motion to Compel	
		08/20/15	Motion to Compel	
		03/16/15	Motion for Preliminary Injunction	
<i>Gay v. Peoples Bank</i>	13 CVS 383	06/29/15	Motion to Recover Costs	Ruling held in abeyance pending appeal. Stay now dissolved; further briefing in process.
<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 and proposed summary judgment orders. Ruling under consideration.
		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>Miller v. Burlington Chem. Co.</i>	13 CVS 9719	09/22/14	Motion to Dismiss	Briefing on motions to dismiss and motion to stay informally suspended until injunction issue is resolved; ruling on motion for restraining order and injunction in process following recent hearing.
		09/22/14	Motion to Dismiss	
		09/22/14	Motion to Stay Derivative Proceedings	
		07/21/14	Motion for Temporary Restraining Order and Preliminary Injunction	
<i>Nelson v. Alliance Hospitality Mgmt., LLC</i>	11 CVS 3217	04/27/15	Motion for Costs	Motions deferred until resolution of appeal.
		04/27/15	Motion for Costs	
<i>NNN Durham Office Portfolio I, LLC v. Highwoods Realty Ltd. P'ship</i>	12 CVS S3945	08/17/15	Motion for Summary Judgment	Extensive opinion required, decision under consideration.
		08/17/15	Motion for Summary Judgment	
		08/17/15	Motion for Summary Judgment	
		08/17/15	Rule 54(b) Motions	
		05/29/15	Motion for Judgment on the Pleadings	
		11/15/13	Motion for Partial Summary Judgment	
	10 CVS 4392	08/17/15	Motion for Summary Judgment	

Case Name	Case Number	Motion Filing Date	Type of Motion	Notes
<i>NNN Durham Office Portfolio 1, LLC v. Grubb & Ellis Co.</i>		08/17/15	Motion for Summary Judgment	Extensive opinion required, decision under consideration.
<i>Plasman v. Decca Furniture (USA), Inc.</i>	12 CVS 2832	09/22/15	Motion to Dismiss	Hearing held; decision under consideration; numerous other issues heard and ruled on by Court.
		09/22/15	Motion to Dismiss	
<i>Sykes v. Blue Cross and Blue Shield of N.C.</i>	15 CVS 3136	09/25/15	Motion to Dismiss	Rulings in process on motions to dismiss; ruling deferred on motion to consolidate.
		09/25/15	Motion to Dismiss	
		09/25/15	Motion to Dismiss	
		05/26/15	Motion to Consolidate	
<i>Sykes v. Health Network Sols., Inc.</i>	13 CVS 2595	11/11/15	Motion for Consideration of Additional Authorities	Rulings in process on motions to dismiss and motion for consideration; ruling deferred on motion to consolidate.
		09/25/15	Motion to Dismiss	
		08/25/15	Motion for Partial Summary Judgment	
		05/27/15	Motion to Consolidate	
<i>Tong v. Dunn Powell v. Dunn</i>	11 CVS 1522 13 CVS 1318	07/10/15	Motion for Summary Judgment	Decision under consideration.
<i>Transatlantic Healthcare, LLC v. Alpha Constr. of the Triad, Inc.</i>	14 CVS 5263	10/16/15	Motion for Summary Judgment	Decision under consideration.
		10/16/15	Motion to Strike	
		10/16/15	Motion to Compel	
		09/16/15	Motion for Summary Judgment	
		08/04/15	Motion to Quash	
		08/04/15	Motion to Quash	
		08/04/15	Motion to Quash	
<i>Urquhart v. Trenkelbach</i>	15 CVS 3055	11/23/15	Motion for Protective Order	Hearing scheduled for August 2016; parties also attempting to resolve case.
		11/20/15	Motion to Compel	
<i>USA Trouser, S.A. de C.V. v. Williams</i>	14 CVS 790	05/15/15	Motion to Strike	Decision under consideration.
		10/17/15	Motion to Dismiss	
		10/17/14	Motion to Dismiss	
		09/16/14	Motion to Dismiss	

