The DTCWV Defender

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Featured Contributors...

Charles Bailey

Mychal Sommer Schulz

Jon Anderson

Sabrina Taylor-Perotti
Hunter Mullens

Alex J. Zurbuch

Jenna Fonner
Parker Zopp

Ashley C. Pack
Jordan "Jo" McMinn

Ramonda C. Marling

Eric Salyers
Noah Clark

Peggy L. Schulz
Thomas J. Hurney

Bernard Vallejos

Highlights

DTCWV, P. O. Box 527, Charleston, WV 25322-0527 • 304-552-7794 • www.dtcwv.org
Committee Chair & Editor, Charles Bailey
Co-Editor, Alex J. Zurbuch
Peggy L. Schultz, Publisher

Introduction

Charles Bailey, *Bailey and Wyant, PLLC*
Editor-in-Chief
cbailey@baileywyant.com

The theme for this Defender is commercial litigation and law. As we learned in law school, the term "time is of the essence" is very important in business transactions. Because your editors need to get Defender published before year end, I am dispensing with the usual overview and analysis of each article. The Defender does provide the names of the authors names and the title for each article, as you will see below.We will give a special shout out to first time contributors Jordan "Jo" Minn, Jon Anderson, Sabrina Taylor-Perotti, Hunter Mullens, Jenna Fonner and Parker Zopp.

Your associate editor Alex Zurbuch contributed, as did Eric Salyers (always willing to write), as well as Noah Clark, Ashley Pack, Romonda Marling, and veteran contributor Mychal Schultz, former WVDTC President.

The theme for this Defender came from conversations with many of our members including your associate editor, Alex Zurbuch. We noticed an uptick in the number of commercial cases being tried and an increase in the number of appeals for commercial litigation before the Intermediate Court of Appeals, the West Virginia Supreme Court of Appeals, and the federal courts. Often out of state attorneys will comment about the paucity of commercial law in West Virginia, but it is developing as Mychal Schultz reports in his article on the doctrine of first breach. I assisted in the trial of that case and may have to try it again.

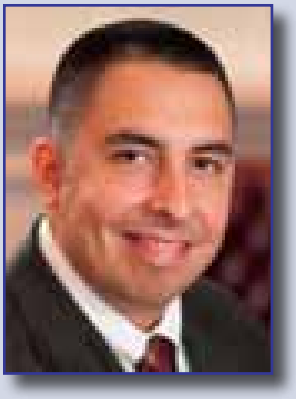
The article that does not involve commercial and business law is the one by Peggy Schultz, DTCWV Executive Director and Thomas Hurney of Jackson Kelly. The article is titled "Be a Leader By Following in the Footsteps of Others". It presents the benefits of being active in DTCWV and other groups dedicated to the advancement of defense trial lawyers here , across the country and the world. Please try and get the members of your firm involved in DTCWV because in trains and develops leaders.

I want to express my deepest gratitude to Alex Zurbuch of Frost Todd Brown who voluntarily became the associate editor of the Defender. Alex found authors, wrote an article and gathered the final drafts and shipped them to Peggy Schultz so she could work her magic to get the Defender published. For anyone who practices commercial law, either a lot or a little, you will find the articles timely, informative, and will strengthens your knowledge of the subject.

We have the President's Article from Bernard Vallejos, who has been providing excellent leadership to DTCWV for years. Having served with Bernard as a member of the Board and now an ex officio member, I know how much time and effort he puts into the betterment of our organization. Additionally, we always praise the efforts of Peggy Schultz, our Executive Director, in getting the Defender published.

At the risk of sounding like a broken record, I ask you to message Alex or me or the person contributing an article to comment on the publication as a whole or on a particular article. We like feedback. We encourage people to write for Defender, providing them with an opportunity to express themselves professionally and to promote their firms. You are invited to provide either Alex or me with any suggestions you may have for an upcoming issue of the Defender or to volunteer to for an article. Law partners, having an associate publish an article is a good way to get them involved in the organization and a way to advance their careers.

Alex, Peggy and I wish each of you the Happiest of Holidays and a Prosperous New Year with trial wins, summary judgments, motions to dismiss and arbitration awards.



President's Page

Bernard Vallejos, *Vandalia Health, Inc.*
DTCWV President

It is a privilege for me to lead the Defense Trial Counsel of West Virginia as its 44th President, and the first ever in-house counsel to be blessed with this incredible opportunity. A most sincere "thank you" to my fellow Board members, mentors, colleagues, family and friends for the ongoing support, faith and trust, as together we embark on another awesome journey over the next year.

Throughout the four plus decades of this organization's existence, and pursuant to the wise counsel and guidance of its esteemed Past Presidents, Executive Committee and Board, the DTCWV has continued on in the pursuit of its unwavering mission: "To bring together attorneys who defend individuals and corporations in civil litigation for purposes of elevating the standards of West Virginia trial practice; supporting and advocating for the improvement of the adversary system of jurisprudence; and increasing the quality of services rendered by the legal profession to the citizens of West Virginia." Indeed, this mission is consistent with the foundational principles that I am certain led many, if not all, of the readers of this publication to pursue a career in the law: diligence, integrity, the propensity for—and enjoyment of—vigorous civil discourse, and tireless and zealous advocacy on behalf of the client. This ethos is enshrined in in the West Virginia Rules of Professional Conduct, which states, "These [basic principles underlying the Rules of Professional Conduct] include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system."[1] In 2021, several of these principles also were added to the Oath of Attorney taken by each attorney admitted to the practice of law in West Virginia, which now provides, "I do solemnly swear or affirm . . . that I will conduct myself with integrity, dignity and civility and show respect toward judges, court staff, clients fellow professionals and all other persons . . ."[2]

Accordingly, it is not only of the utmost importance, but also our obligation, to lead by example, at all times living these ideals that are fundamental to our profession and our responsibilities to our clients and the Rule of Law as a whole. In that regard, the DTCWV continues to excel in its role as a leading professional organization focused upon facilitating the consistent application of these standards to its members' law practices, as well as to the broader legal community, through such things as: publications like this fantastic edition of The DTCWV Defender; excellent continuing legal education offerings with top notch presenters; networking opportunities and instant connection with other accomplished member litigators throughout West Virginia and beyond; helpful research and information resources and databanks; and submission of position statements and *amicus curiae* briefs on issues vital to the defense bar. To be sure, the essential nature of the DTCWV and the significance of its honorable mission, now and in the future, cannot be overstated. All of us who are fortunate to call ourselves members know this, and it is our duty to share such knowledge with other members of the defense bar who have not yet experienced all that our dynamic organization has to offer. Therefore, I call upon each of you to reach out to any such colleagues, educate them on the substantial benefits attendant thereto, and encourage them to join us in furthering the DTCWV's worthy mission.

Onward.

1 West Virginia Rules of Professional Conduct, Preamble: A Lawyer's Responsibilities, ¶ 9.
2 West Virginia Rules for Admission to the Practice of Law, Rule 7.0(c) (in part).

Exceptions to the First Material Breach Doctrine: Blackrock Enterprises v. BB Land

Mychal Sommer Schulz, Esq., *Babst Calland*

In Blackrock Enterprises, LLC, v. BB Land, LLC, 250 W.Va. 123, 902 S.E.2d 455 (2024), the West Virginia Supreme Court of Appeals recognized exceptions to the First Material Breach Doctrine, under which a material breach of a contract by a party excuses subsequent performance by the non-breaching party as such non-performance (i.e., breaches) by the non-breaching party are considered immaterial and non-recoverable. In doing so, the Court significantly limited the scope and application of the First Material Breach Doctrine.

In Blackrock, Jay-Bee[1] and Blackrock entered into a written agreement ("Agreement") that required Blackrock to acquire mineral leases in an "area of mutual interest" and assign them to Jay-Bee for the purpose of drilling horizontal Marcellus and Utica wells. The Agreement required Blackrock to perform abstracting work related to the leases, obtain title insurance, provide lease packets (containing executed leases from the mineral owners, among other information), and maintain updated maps reflecting its leasing efforts. In turn, the Agreement required Jay-Bee to offer Blackrock an interest in any leases Jay-Bee obtained within the "area of mutual interest." In addition, Blackrock also possessed an option to purchase up to 25% additional interest in all leases acquired under the Agreement. To exercise this option, the Agreement required Blackrock to either tender payment for the additional interests or notify Jay-Bee in writing if it decided to not exercise its rights to acquire the additional interests within a set period of time after being offered the interest.

After a long and tortured history of performance and alleged breaches by both parties under the Agreement, Jay-Bee filed suit against Blackrock alleging, among other things, breach of contract. At trial, the jury was presented with a special verdict form in which it found that (1) both Blackrock and Jay-Bee materially breached the Agreement, (2) Blackrock materially breached the Agreement first, and (2) almost 4 years after Blackrock's first material breach, Jay-Bee "gave reasonable notice of the termination of the Agreement[.]" As a result of these findings, the trial court awarded no damages to Blackrock for Jay-Bee's material breaches finding, in part, that the First Material Breach Doctrine excused Jay-Bee's breaches after Blackrock's initial material breach. After entry of a final judgment order, Blackrock appealed to the West Virginia Supreme Court of Appeals.

The Court began its analysis by acknowledging that West Virginia law recognizes the First Material Breach Doctrine, "although the statement that a material breach excuses performance is generally correct, it is incomplete." Blackrock Enterprises, 250 W. Va. at 135, 902 S.E.2d at 467. Specifically, the Court noted that, in Triple 7 Commodities, Inc. v. High Country Mining, Inc., 245 W. Va. 63, 74, 857 S.E.2d 403, 414 (2021), it discussed the "well-recognized [principle] that first material breach may be waived by continued performance" and observed that "[i]t is well-established that '[i]f the [nonbreaching] party elects to continue with the contract, it cannot later suspend performance and then claim that it had no duty to perform based upon the first material breach. That defense is waived when the party elects to continue performance of the contract.'" Blackrock Enterprises, 250 W. Va. at 136, 902 S.E.2d at 468. The Court also noted that "the general rule that one party's uncured, material failure of performance will suspend or discharge the other party's duty to perform does not apply when the latter party, with knowledge of the facts, either performs or indicates a willingness to do so, despite the breach, or insists that the defaulting party continue to render future performance." Blackrock Enterprises, 250 W. Va. at 136, 902 S.E.2d at 468 (citing Triple 7, 245 W. Va. at 78, 857 S.E.2d at 418 (citations omitted)).

As the Court in Blackrock Enterprises noted that its discussion in Triple 7 did not require it to "issue a new statement of law" concerning the First Material Breach Doctrine, the Court concluded: "We [] now hold that the general rule that a breaching party's uncured, material failure of performance discharges the other party's duty to perform does not apply when the non-breaching party, with knowledge of the facts, either performs or indicates a willingness to do so despite the breach or insists that the breaching party continue to render future performance." Blackrock Enterprises, 250 W. Va. at 136, 902 S.E.2d at 468. In doing so, the Court observed that

1 BB Land and JB Exploration 1, LLC, represented the appellants in the appeal, and the Court referred to those entities together as "Jay Bee."

the trial court's analysis in the case before it applied only the "general rule" of the First Material Breach Doctrine and failed to examine whether exceptions to the general rule properly excused Jay-Bee's subsequent breaches. As the result, the Court reversed the judgment order and remanded to the trial court, though the Court's extensive evaluation of the evidence presented at trial made clear its belief that Jay-Bee both continued to perform under the Agreement and allowed, and even expected, Blackrock to continue to perform under the Agreement after the first material breach by Blackrock.

Non-breaching parties use the First Material Breach Doctrine to bludgeon breaching parties with threats of breach of contract claims amid exorbitant demands for breach of contract damages. The exceptions to the First Material Breach Doctrine formally recognized in Blackrock Enterprises, however, may provide effective defenses to such claims when the non-breaching party continues to perform, or expects the non-breaching party to continue performing, even after the first material breach.

Rezulin's Ruins: How Far Have We Come In Correcting Its Mistakes?

Jon Anderson, *Jackson Kelly PLLC*
jlanderson@jacksonkelly.com

To proceed as a class action, a suit must first meet the four requirements of Rule 23(a) of the West Virginia Rules of Civil Procedure: numerosity, commonality, typicality, and adequacy of representation.[1] Next, the suit must meet one of the three subdivisions of Rule 23(b).[2] And the class must be ascertainable. A circuit court's decision as to whether the requirements for class certification under Rule 23 have been met is reviewed for an abuse of discretion.[3]

Actions seeking money damages under Rule 23(b)(3) are the most common type of class action. In addition to the requirements of Rule 23(a), the party seeking class certification under Rule 23(b)(3) must establish that "the questions of law or fact common to the class members predominate over any questions affecting only individual class members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy."[4]

It goes without saying that a court's decision on class certification is the most important decision in a suit seeking certification under Rule 23(b)(3). As one court has stated, "[T]he fight over class certification is often the whole ball game."[5] From a defense perspective, because of the potentially significant monetary liability, the granting of class certification creates significant settlement pressure regardless of the merits.[6] On the other hand, a denial of class certification "may effectively eviscerate the plaintiffs' ability to recover,"[7] leaving class representatives with no choice but to accept an "often miniscule value" for his or her individuals claims.[8]

When defending against certification of a Rule 23(b)(3) class, the absence of commonality under Rule 23(a)(2) and a lack of predominance under Rule 23(b)(3) are the most commonly asserted defenses to certification.[9] The Supreme Court of Appeals' 2003 decision in *In re Rezulin* established a less stringent, "watered down" version of the class certification analysis, particularly as it pertains to commonality and predominance under Rule 23(a)(2) and 23(b)(3). Another problematic aspect of *Rezulin* was its bright line holding that any consideration of the merits at the class certification stage was not allowed. This seemingly prohibited any consideration of evidence beyond the pleadings, even if necessary as part of whether the Rule 23 requirements for class certification were met. *Rezulin* also rejected federal decisions as persuasive. The net effect of *Rezulin* was a much more liberal standard in favor of class certification. This article examines the Supreme Court of Appeals' jurisprudence since *Rezulin*, how those decisions have retreated from *Rezulin*, and what the practical effects of these subsequent decisions have been with respect to certification.

A. 2003: *In re West Virginia Rezulin Litigation.*

Plaintiffs in *Rezulin* were a putative class of patients who had used Rezulin, a drug approved by the FDA to treat Type II diabetes. They alleged the makers of Rezulin made false and misleading statements concerning the safety and efficacy of the drug. Specifically, they alleged use of Rezulin caused an increased risk of liver disease, a fact that was not disclosed. The plaintiffs' proposed class definition was: "All persons who either consumed the drug Rezulin in West Virginia or consumed the drug Rezulin after having had the drugs prescribed or sold to them in West Virginia."[10] The class size was estimated to be 5,000 persons. The circuit court denied class certification.

1 W.Va. R. Civ. P. 23(a)(1)-(4) (2025); *see also* syl. pt. 8, *In re West Virginia Rezulin Litigation*, 214 W. Va. 52 (2003)
2 *See* W.Va. R. Civ. P. 23(b); syl. pt. 8, *In re Rezulin*, 214 W.Va. at 52.
3 *See id.* at syl. pt. 1.
4 W.Va. R. Civ. P. 23(b)(3).
5 *Hartford Acc. and Indem. Co. v. Beaver*, 466 F.3d 1289, 1294 (11th Cir. 2006).
6 *See, e.g.*, Fed. R. Civ. P. 23(f) advisory committee's note to 1998 amendment ("An order granting certification, on the other hand, may force a defendant to settle rather than incur the costs of defending a class action and run the risk of potentially ruinous liability."); *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 476, 98 S.Ct. 2454, 57 L.Ed.2d 351 (1978) ("Certification of a large class may so increase the defendant's potential damages liability and litigation costs that he may find it economically prudent to settle and to abandon a meritorious defense.").
7 *In re Diet Drugs Prod. Liab. Litig.*, 93 Fed. Appx. 345, 350 (3d Cir. 2004).
8 *Anderson Living Trust v. WPX Energy Production, LLC*, 306 F.R.D. 312, 379 n.39 (D.N.M. 2014).
9 2025 Carlton Fields Class Action Survey, https://www.carltonfields.com/getmedia/5c94a1c8-3263-48c9-91b3-9f3900a9dc76/2025-04-class-action-survey.pdf.
10 214 W.Va. at 60.

The Supreme Court of Appeals first addressed what it characterized as the circuit court's consideration of the merits. The Court held that a circuit court had no authority to do even a preliminary inquiry into the merits in making its class certification decision: "Nothing in either the language or history of Rule 23 of the *West Virginia Rules of Civil Procedure* [1998] gives a court any authority to conduct a preliminary inquiry into the merits of a suit in order to determine whether it may be maintained as a class action."[11] The Court's application of this holding in *Rezulin* reveals just how hamstrung circuit courts were.

For example, the circuit court cited the evidence concerning the proportion of individuals who experience no adverse liver reaction to Rezulin and the class representatives' experiences with the drug.[12] While this evidence was relevant to the merits of the claims, it was also relevant to whether class certification requirements such as commonality and typicality were met. Nonetheless, the Court held that "[t]hese factual conclusions were not relevant to the circuit court's consideration of whether the requirements of Rule 23 were met" and that the circuit court abused its discretion in considering them.[13] The Court's holding was at odds with the case law under Rule 23 of the Federal Rules of Civil Procedure, which recognized that class certification will often involve considerations entangled with the factual and legal issues of the plaintiffs' causes of action.[14]

Next, addressing commonality under Rule 23(a)(2), the Court stated, "Commonality requires that class members share a single common issue," but "[t]he common questions need be neither important nor controlling, and one significant common question of law or fact will satisfy this requirement."[15] The Court held that the circuit court abused its discretion by not finding commonality.[16]

In discussing the predominance requirement of Rule 23(b)(3), the Court gave little discussion or guidance to circuit courts as to how the predominance analysis should be conducted and what factors should be considered. Instead, the Court simply stated: "The predominance requirement is not a rigid test, but rather contemplates a review of many factors, the central question being whether 'adjudication of the common issues in the particular suit has important and desirable advantages of judicial economy compared to all other issues, or when viewed by themselves.'"[17]

Along those lines, the Court's analysis indicated that finding predominance was a low standard because circuit courts could manage individual issues through other procedural mechanisms. The Court even appeared to discount issues that are usually inherently individualized, causation and reliance, as playing little to any role in the predominance analysis.[18]

At the end of the day, *Rezulin* left little daylight between the commonality requirement of Rule 23(a)(2) and the predominance requirement of Rule 23(b)(3).

Three problematic aspects of *Rezulin* made it somewhat of a "perfect storm" for defendants opposing class certification: (1) a circuit court's inability to conduct any inquiry into the factual and legal merits of the plaintiff's causes of action in determining the propriety of class certification; (2) the view that to establish commonality under Rule 23(a)(2), the common issue need not even be important; and (3) the vague, all-things considered Rule 23(b)(3) predominance analysis.

B. 2019-2020: The Supreme Court of Appeals Retreats from *Rezulin* in *Gaujot I* and *Surnaik I*.

For more than fifteen years, *Rezulin* remained the law in West Virginia. In 2019, the Supreme Court of Appeals took a significant step in retreating from and correcting the missteps of *Rezulin* in *State ex rel. West Virginia University Hospitals, Inc. v. Gaujot* ("*Gaujot I*").[19]

First, *Gaujot I* brought West Virginia back in line with the mainstream, federal view that consideration of the merits at the class certification stage is permitted if necessary to determine whether the Rule 23 requirements are met. In fact, the Court held that if consideration of the merits is necessary, failing to do so is clear error and an abuse of discretion. Relying upon federal case law, the Court formulated four new syllabus points on this issue:

11 *Id*. at syl. pt. 6.
12 *Id*. at 63.
13 *Id*.
14 *See General Tel. Co. of the Southwest v. Falcon*, 457 U.S. 147, 160 (1982) ("The class determination generally involves considerations that are enmeshed in the factual and legal issues comprising the plaintiff's cause of action . . . [S]ometimes it may be necessary for the court to probe behind the pleadings before coming to rest on the certification question.") (internal quotations and citation omitted).
15 *Id*. at 67.
16 *Id*.
17 *Id*. at 72 (quoting 2 *Newberg on Class Actions*, 4th Ed., § 4:25 at 174).
18 *See id*. ("As the leading treatise in this area states, '[c]hallenges based on . . . causation, or reliance have usually been rejected and will not bar predominance satisfaction because those issues go to the right of a class member to recover, in contrast to underlying common issues of the defendant's liability.'") (citations omitted).
19 242 W.Va. 54 (2019).

> 5. Determining whether the requirements of Rule 23 of the West Virginia Rules of Civil Procedure [2017] have been met often involves, by necessity, some "coincidental" consideration of the merits. *Gariety v. Grant Thornton, LLP*, 368 F.3d 356, 366 (4th Cir. 2004).
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> 6. "[C]lass determination generally involves considerations that are enmeshed in the factual and legal issues comprising the plaintiff[ ]s[′] cause of action." *Comcast Corp. v. Behrend*, 569 U.S. 27, 34, 133 S. Ct. 1426, 1432, 185 L. Ed. 2d 515 (2013) (cleaned up).
>
> 7. "Merits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied." *Amgen Inc. v. Connecticut Ret. Plans & Tr. Funds*, 568 U.S. 455, 466, 133 S. Ct. 1184, 1195, 185 L. Ed. 2d 308 (2013).
>
> 8. When consideration of questions of merit is essential to a thorough analysis of whether the prerequisites of Rule 23 of the West Virginia Rules of Civil Procedure [2017] for class certification are satisfied, failing to undertake such consideration is clear error and an abuse of discretion.[20]

Next, *Gaujot I* addressed commonality under Rule 23(a)(2). The Court again brought West Virginia in line with the federal interpretation of Rule 23(a)(2), adopting the United States Supreme Court's view of commonality as set forth in opinion in *Wal-Mart Stores, Inc. v. Dukes*.[21]

In *Dukes*, the Court discussed how the requirement of commonality under Rule 23(a)(2) was prone to misreading because identifying a single or several common questions was not difficult: "That language is easy to misread, since '[a]ny competently crafted class complaint literally raises common questions.'"[22] Instead, "'[w]hat matters to class certification . . . is not the raising of common questions—even in droves—but rather, the capacity of a class-wide proceeding to generate common *answers* apt to drive the resolution of the litigation. Dissimilarities within the proposed class are what have the potential to impede the generation of common answers.'"[23] Simply put, commonality requires that the claims "depend upon a common contention" and that common contention "must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id*.

Contrast the United States Supreme Court's above discussion of commonality in *Dukes* with language used in *Rezulin* where the Supreme Court of Appeals stated that "[t]he common questions need be neither important nor controlling, and one significant common question of law or fact will satisfy this requirement."[24] A common question that is neither important nor controlling would be unlikely to generate common answers to questions apt to drive the resolution of the litigation as noted in *Dukes*. *Gaujot I* corrected this flawed view of commonality by expressly adopting the United States Supreme Court's position on commonality as set forth in *Dukes*:

> For commonality to exist under Rule 23(a)(2) of the *West Virginia Rules of Civil Procedure* [2017], class members' "claims must depend upon a common contention[,]" and that contention "must be of such a nature that it is capable of classwide resolution[.]" *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350, 131 S. Ct. 2541, 2551, 180 L. Ed. 2d 374 (2011). In other words, the issue of law (or fact) in question must be one whose "*determination* . . . will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id*. (emphasis added).[25]

Ultimately, in *Gaujot I*, the Supreme Court of Appeals found that the circuit court "fail[ed] to conduct a sufficiently thorough analysis of the case to determine whether the commonality required for class certification under Rule 23 of the *West Virginia Rules of Civil Procedure* [was] present."[26] The circuit court's class certification order was vacated with direction for it to conduct the required analysis on remand.

Whereas *Gaujot I* corrected two of the three problematic aspects of *Rezulin*, the third correction concerning predominance under Rule 23(b)(3) came just one year later in *State ex rel. Surnaik Holdings of WV, LLC v. Bedell* ("*Surnaik I*").[27] The circuit court had certified a class of arising out of an October 2017 fire at a warehouse owned by Surnaik. The class consisted of residents and businesses in the surrounding area impacted by the warehouse fire. The circuit court's analysis and finding of predominance was perfunctory, consisting of a mere two sentences.[28]

20 *Id*. at syl. pts. 5-8.
21 564 U.S. 338 (2011).
22 *Id*. at 350 (quoting Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. Rev. 97, 132 (2009)).
23 *Id*. (quoting Nagareda, 84 N.Y.U. L. Rev. at 132).
24 214 W.Va. at 67.
25 *Id*. at syl. pt. 3.
26 *Id*. at 64.
27 244 W.Va. 248 (2020).
28 *See id*. at 254.

Discussing the predominance requirement of Rule 23(b)(3), the *Surnaik I* Court noted how *Rezulin* diverged from the mainstream application of predominance as set forth in federal case law. The Court referred to *Rezulin* as establishing "a vague, all things considered test that does not give the circuit courts any real guidance."[29] The Court concluded "that to the extent *Rezulin* simply suggests that there is not much difference between commonality and predominance and that no rigid test is necessary, it must now be modified."[30] The Court's issued this new syllabus point:

> [A] class action may be certified only if the circuit court is satisfied, after a thorough analysis, that the predominance and superiority prerequisites of Rule 23(b)(3) have been satisfied. The thorough analysis of the predominance requirement of West Virginia Rule of Civil Procedure 23(b)(3) includes (1) identifying the parties' claims and defenses and their respective elements; (2) determining whether these issues are common questions or individual questions by analyzing how each party will prove them at trial; and (3) determining whether the common questions predominate. In addition, circuit courts should assess predominance with its overarching purpose in mind—namely, ensuring that a class action would achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results. This analysis must be placed in the written record of the case by including it in the circuit court's order regarding class certification.[31]

In addition to modifying the holding of *Rezulin* and providing more concrete guidance on the predominance analysis, another important aspect of *Surnaik I* was the Court's clear mandate that "class certification determinations are not perfunctory" and conclusory class certification orders would no longer be accepted.[32] The Court's new syllabus point 8 held that a circuit court's failure to conduct a thorough analysis of Rule 23's class certification requirements would amount to clear error: "A circuit court's failure to conduct a thorough analysis of the requirements for class certification pursuant to West Virginia Rules of Civil Procedure 23(a) and/or 23(b) amounts to clear error."[33] Because the circuit court's class certification order did not contain the necessary thorough analysis, the order was vacated with direction on remand to conduct the required analysis.

C. While *Gaujot I* and *Surnaik I* Were Steps in the Right Direction, They Have Not Resulted in More Favorable, Ultimate Class Certification Decisions.

Gaujot I and *Surnaik I* represented a clear (and appropriate) backtracking from *Rezulin*. The real question is whether they had any appreciable effect on class certification decisions. The answer is possibly, but if so, this has yet to play out in terms of the Supreme Court of Appeals.

First, a clearly positive import of *Gaujot I* and *Surnaik I* is that circuit courts can no longer short shrift a class certification analysis. Since those decisions, the Supreme Court of Appeals has not hesitated to vacate class certification rulings that do not contain the required thorough analysis as to whether the requirements of Rule 23 are met. In *State ex rel. Municipal Water Works v. Swope*,[34] the Court vacated the circuit court's certification order due to its failure to contain a thorough analysis of the Rule 23 requirements:

> In sum, it is clear that the circuit court's order did not contain a thorough analysis of the Rule 23(a) factors—the order's brief, general analysis of the four factors falls far short of the detailed and specific showing that is required . . . Because the circuit court failed to conduct a thorough analysis of the Rule 23(a) factors, the order granting class certification must be vacated.[35]

Similarly, in *State ex rel. Dodrill Heating and Cooling, LLC v. Akers*,[36] the Court vacated the circuit court's granting of class certification, finding that it did not conduct the thorough analysis required under *Surnaik I*:

> The conclusions made in the circuit court's order with respect to predominance and superiority cannot pass muster under the standards articulated in *Surnaik*, and, in fact, are more conclusory than the analysis conducted in that case . . . But we do not – as Dodrill requests – vacate the order and require denial of class certification upon remand by concluding that the class *cannot* meet the predominance and superiority requirements. We simply grant the writ of prohibition and direct

29 *Id*. at 261.
30 *Id*.
31 *Id*. at syl. pt. 7.
32 *Id*. at 256.
33 *Id*. at syl. pt. 8.
34 242 W.Va. 258 (2019).
35 *Id*. at 267-68.
36 246 W.Va. 463 (2022).

> the circuit court to undertake a more thorough analysis of those two factors under Rule 23(b)(3) to ensure class resolution is the appropriate method to adjudicate these claims.[37]

And in *State ex rel. West Virginia University Hospitals – East, Inc. v. Hammer*,[38] the Court remanded the case because the circuit court failed to analyze typicality under Rule 23(a)(3).[39]

The Supreme Court's new focus on requiring circuit courts to conduct a detailed, thorough analysis of the class certification requirements is, again, a positive development that should not be understated. But what matters most from a defense perspective is whether *Gaujot I* and *Surnaik I* have resulted in more denials and/or reversals of class certification. At least at the Supreme Court of Appeals, this has yet to play out. Instead, the decisions have been more of a procedural hurdle.

To illustrate, after both *Gaujot I* and *Surnaik I* were remanded for the circuit courts to conduct the required thorough analysis, the circuit courts again certified classes, and the cases returned to the Supreme Court of Appeals. On both occasions, the Court found no clear error of law with the circuit court's analysis and denied the requested writ of prohibition.[40]

In *State ex rel. West Virginia-American Water Company v. Webster*,[41] the circuit court certified a liability issues class under Rule 23(c)(4). The Court reiterated that if the circuit court has conducted a thorough analysis, its certification decision will be given significant deference: "Once the Court is satisfied that the circuit court has undertaken a thorough and meaningful analysis of the required Rule 23 elements, our deferential standard of review requires the Court to permit the class to proceed in absence of an unmistakable error of law."[42]

While *Gaujot I* and *Surnaik I* were steps in the right direction, if *Webster* demonstrates anything, it is that the standard of review is still the number one consideration. As long as a circuit court's order contains a thorough analysis, the likelihood of obtaining an outright reversal is low. In fact, outside of those instances where the orders are procedurally defective, there appears to be no reported instances where the Supreme Court of Appeals has found a circuit court's granting of class certification to be an abuse of discretion. Thus, defeating class certification at the circuit court level remains of utmost importance.

Indeed, while a detailed discussion is beyond the scope of this article, it should be noted that at least one state has, by statute, required *de novo* review of class certification decisions. Specifically, Oklahoma law provides that class certification orders "shall be subject to a de novo standard of review by any appellate court reviewing the order."[43] Requiring *de novo* review of class certification decisions would be a hugely meaningful step with respect to class action reform. Given the practical effects of a circuit court's class certification decision, which can often be *de facto* dispositive, one is hard pressed to find another context where such an impactful decision is only subject to an abuse of discretion review.

D. An Emerging Issue to Watch: The Intersection of Rule 23(c)(4) and Rule 23(b)(3).

Rule 23(c)(4) of the West Virginia Rules of Civil Procedure, like its federal counterpart, states, "When appropriate, an action may be brought or maintained as a class action with respect to particular issues."[44] How this provision interacts with the predominance requirement of Rule 23(b)(3) has resulted in divergent views among courts. Specifically, the issue is whether predominance under Rule 23(b)(3) only applies to the issue(s) certified under Rule 23(c)(4), or whether more is required. For example, if a court were to use Rule 23(c)(4) to certify liability issues because damage issues were highly individualized, is predominance met if common liability issues predominate over individual liability issues? Or, must the individualized damages issues still be considered in the analysis?

Taken to its extreme, if the predominance requirement only applies to the discrete issue(s) to be certified under Rule 23(c)(4), then the predominance requirement becomes meaningless because a court can continue to drill down and sever issues until predominance is finally met. As the Fifth Circuit stated: "Reading rule 23(c)(4) as allowing a court to sever issues until the remaining common issue predominates over the remaining individual issues would eviscerate the predominance requirement of rule 23(b)(3); the result would be automatic certification in every case where there is a common issue, a result that could not have been intended."[45]

37 *Id*. at 474.
38 246 W.Va. 122 (2021).
39 *Id*. at 138.
40 *See State ex rel. Surnaik Holdings of WV, LLC v. Bedell*, 247 W.Va. 41 (2022) ("*Surnaik II*"); *State ex rel. West Virginia University Hospitals, Inc. v. Gaujot*, 248 W.Va. 138 (2022) ("*Gaujot II*").
41 248 W.Va. 268 (2023).
42 *Id*. at 282.
43 12 Okla. Stat. § 2023(C)(2).
44 W.Va. R. Civ. P. 23(c)(4).
45 *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 745 n.21 (5th Cir. 1996).

According to the Fifth Circuit, "[t]he proper interpretation of the interaction between subdivisions (b)(3) and (c)(4) is that a cause of action, as a whole, must satisfy the predominance requirement of (b)(3) and that (c)(4) is a housekeeping rule that allows courts to sever the common issues for a class trial."[46] The Fourth Circuit's approach was consistent, finding that predominance must still be met as to a particular cause of action versus only the elements of the cause of action: "[S]ubsection 23(c)(4) should be used to separate 'one or more' *claims* that are appropriate for class treatment, provided that within that claim or claims (rather than within the entire lawsuit as a whole), the predominance and all other necessary requirements of subsections (a) and (b) of Rule 23 are met."[47]

On the other hand, some courts take a broader view of Rule 23(c)(4), holding that predominance need only be met with respect to the common issues identified as opposed to a cause of action as a whole: "Under what is known as the broad view, courts apply the Rule 23(b)(3) predominance and superiority prongs after common issues have been identified for class treatment under Rule 23(c)(4). The broad view permits utilizing Rule 23(c)(4) even where predominance has not been satisfied for the cause of action as a whole."[48] This broad view has been followed by the Sixth Circuit and others: "In sum, Rule 23(c)(4) contemplates using issue certification to retain a case's class character where common questions predominate within certain issues and where class treatment of those issues is the superior method of resolution."[49]

In *Webster*, the circuit court certified a class under Rule 23(c)(4) of certain liability issues because causation and damages issues were highly individualized. The defendants argued that, under Rule 23(c)(4), the circuit court was required to analyze whether common questions predominated over individual questions in the cause of action as a whole, not just within the liability issues certified. The Court, however, declined to undertake the analysis, finding it unnecessary because predominance was met with respect to both the causes of action and the liability issues certified.[50]

As plaintiffs seeking issue certification under Rule 23(c)(4) is becoming more prevalent, how Rule 23(b)(3)'s predominance requirement applies in the context of a Rule 23(c)(4) issues class will be a topic for which to be on the lookout.

46 *Id*.
47 *Gunnells v. Healthplan Serv., Inc.*, 348 F.3d 417, 441 (4th Cir. 2003).
48 *Martin v. Behr Dayton Thermal Prod's LLC*, 896 F.3d 405, 411 (6th Cir. 2018).
49 *Id*. at 413.
50 *See Webster*, 248 W.Va. at 284.

Standing Room Only: New Lessons from West Virginia's Class Action Cases

Sabrina Taylor-Perotti, *Bowles Rice LLP*
Hunter Mullens, *Bowles Rice LLP*

Class action law in West Virginia is undergoing a period of transformation, with state and federal courts not only refining the requirements for class certification under Rule 23, but also recognizing classification of injury that can allow class claims to proceed even in the absence of physical harm. This article discusses two major trends emerging from these developments: first, the expansion of class certification where defendants' conduct or state policies create uniform questions of law or fact; and second, the growing judicial acceptance of class claims seeking relief for economic or preventive harms rather than traditional physical injury. Taken together, these trends suggest that West Virginia's courts are becoming more inclusive in their approach to collective redress.

The first major trend centers on class certification and the courts' willingness to recognize commonality and predominance even amid diverse factual circumstances. Since the COVID Pandemic in 2020 there have been legal contentions raised regarding vaccines and whether citizens should be required to take them. This issue has come to the forefront of West Virginia class actions lawsuits as Judge Michael Froble in Raleigh County Circuit Court has granted a motion certifying plaintiffs seeking a religious, philosophical, or conscientious exemption from mandates requiring vaccination to attend public school in West Virginia as a class. Certifying the class is for the purpose of ensuring uniformity and cohesion in how these requests for non-medical exemptions are handled. The major implication this class certification carries is that it does not differentiate religious, philosophical, or conscientious exemptions. This creates widespread and lasting implications stemming from the resolution of this suit for all public schools going forward as the consolidation of all non-medical exemptions could essentially create a system where objecting parents would only have to raise an objection, with or without any added protection of the implications of religion, and then could send their child to public school without vaccination. This consolidation of non-medical exemptions by Judge Froble could also lead to a challenge of the class certification for a lack of commonality as these non-medical exemption requests are generally based on different reasoning. This case is ongoing and this ruling on the class certification is likely to be heard by the West Virginia Supreme Court within the next year.

Just as this still-developing case reflects how class certification can promote uniform treatment of West Virginia policies, the Fourth Circuit has reached similar conclusions in West Virginia's oil and gas industry. The Fourth Circuit, in *Glover v. EQT Corp.*, issued a decision on class certification under West Virginia oil and gas law, affirming certification of a large royalty-owner class on breach of contract claims while reversing class certification on fraudulent concealment. *Glover v. EQT Corp.*, 151 F.4th 613 (4th Cir. 2025). This case involved thousands of oil and gas leases across five West Virginia counties— Marshall County, Wetzel County, Tyler County, Doddridge County, or Ritchie County—where the class members alleged that EQT Corporation systematically underpaid royalties under all the leases, despite differences in the material language therein. *Glover*, 151 F.4th at 619, 620. The district court had certified a class and three subclasses under Rule 23(b)(3), finding that common questions predominated over individual lease differences—a decision the Fourth Circuit largely upheld. *Id*. at 617.

The Fourth Circuit held that the class certification on the breach of contract claim was proper because EQT used a uniform payment method for all class members and because the key legal issue—how West Virginia law defines a "sale" and royalty obligation—could be resolved commonly. *Id*. at 627. Tying together the West Virginia Supreme Court's decisions in *Wellman v. Energy Resources, Inc.* (2001), *Estate of Tawney v. Columbia Natural Resources, LLC* (2006), and most recently *Romeo v. Antero Resources Corp*. (2025), the majority confirmed that the West Virginia marketable product rule applied, thus, providing a common question of law across the different lease forms and allowing the class to proceed. *Id*. at 621. While the majority upheld the certification, Judge Niemeyer dissented, arguing that the leases at issue contained too many material variations for class wide treatment and that the

majority improperly assumed those differences were immaterial. *Id*. at 629.

However, the majority drew a clear line when it turned to the plaintiffs' fraudulent concealment claim. Unlike the contract claim, which rested on EQT's uniform payment method, the concealment claim required individualized proof of reliance and plaintiff-specific circumstances, defeating predominance under Rule 23(b)(3). *Id*. at 628–629. Accordingly, the court reversed class certification. *Id*.

Together, these certification rulings—from school vaccine mandates to oil and gas royalties—illustrate a shared judicial inclination to allow class treatment when the defendant's conduct or the governing legal standard is consistent, even if factual nuances vary among plaintiffs. Having examined how courts are refining the boundaries of class certification, the second emerging trend shifts focus from procedure to substance—specifically, how courts are broadening what qualifies as an actionable injury resulting from healthcare practices.

The West Virginia Supreme Court recently took up a legal question certified to it by the Fourth Circuit that determines whether the Medical Professional Liabiltiy Act operated to bar an action for purely economic damages resulting from healthcare practices. ("MPLA"). *Neidig v. Valley Health Sys.*, 919 S.E.2d 52, 54 (2025); W. Va. Code § 55-7B-6.

In *Nedig* the plaintiff sued medical professionals at Valley Health Systems for improperly performing mammograms that created alleged "image quality deficiencies." *Id.* This suit was a putative class action covering plaintiffs that had paid Valley Health Systems for the allegedly defective mammogram imaging. *See id.* at 55–56. The Court of the Northern District of West Virginia held that the plaintiff's claim resulting from healthcare services was based on medical professional liability and therefore was time barred by the applicable statute of limitations in the MPLA. *Id.* at 56. On appeal, the Fourth Circuit then determined that the question at issue was whether a suit could be based on "medical professional liability" and thus fall under the MPLA when the suit claims only economic damages. *See id.* at 56–57. The Fourth Circuit court then certified this question to the West Virginia Supreme Court. *Id.* at 57.

The issue centered on the definition of "Medical Professional Liability" under the MPLA which is defined as "any liability for damages resulting from the death or injury of a person for any tort or breach of contract based on health care services rendered, or which should have been rendered, by a health care provider or health care facility to a patient. It also means other claims that may be contemporaneous to or related to the alleged tort or breach of contract or otherwise provided, all in the context of rendering health care services." W. Va. Code § 55-7B-2(i).

The Court focused in on how the language stating the damages must result from "death or injury of a person" operated when used alongside "any tort of breach of contract based on health care services rendered" in the statutory text. *Nedig*, 919 S.E.2d at 58–59. This analysis was based on the differentiation of anchor claims and ancillary claims within a statute. *Id.* at 58. An anchor claim in a statute is the necessary claim that must exist before the ancillary claims may be asserted. *See id.* The Court then interpreted the MPLA definition of "Medical Professional Liability" to require damages be claimed resulting from "death or bodily injury" as the anchor claim and then damages for "any tort or breach of contract" to be ancillary. *Id.* at 59–60. The Court further demonstrated that in the context of the MPLA "injury to a person" refers to physical injury based on the legislative intent behind the statute and the legislatures decision to associate the term injury with death in creating the anchor claim. *Id* at 61–62. Based on this interpretation of the statute, the Court held that a claim that involved only economic damages and no physical or emotional injury could not fall under the MPLA. *Id.* at 63 ("[W]e reject respondent's argument that the MPLA's [provisions] appl[y][] to injuries that are purely economic.").

The implications of this case are that the class action claim for purely economic damages against Valley Health is not barred by the MPLA statute of limitations and may continue in the Fourth Circuit. This will move this lawsuit forward for the women who fit the proposed class that did not incur physical injury as a result of the mammograms. In practical terms, this ruling allows class actions for economic damages resulting from the actions of healthcare professionals to proceed where they might otherwise have been barred by and confined within the confines of the MPLA.

If *Neidig* expanded the reach of class claims for purely economic loss for healthcare services, the Fourth Circuit's subsequent decision in *Sommerville v. Union Carbide Corp*. took that reasoning a step further —extending the concept of injury to include preventive medical costs. *Sommerville v. Union Carbide Corp.*, 149 F.4th 408 (4th Cir. 2025). The United States Court of Appeals for the Fourth Circuit recently took up an appeal from the Southern District of West Virginia regarding whether plaintiffs have Article III standing in medical monitoring cases if the plaintiffs have not yet suffered an illness. *Sommerville v. Union Carbide Corp.*, 149 F.4th 408 (4th Cir. 2025).

In *Sommerville*, the plaintiff, Lee Ann Sommerville, alleged that a chemical plant operated by Union Carbide and Covestro in South Charleston exposed her and similarly situated residents to ethylene oxide— a gas that causes cancer. *Sommersville*, 149 F. 4th. at 414. Invoking the tort of medical monitoring recognized in *Bower v. Westinghouse Electric Corp.*, Sommersville alleged that the exposure created a present need for diagnostic testing and an increased risk of developing specific diseases. *Bower v. Westinghouse Electric Corp.*, 522 S.E.2d 424 (W. Va. 1999). The district court dismissed her claim, reasoning that without a manifest physical injury she lacked standing under *TransUnion LLC v. Ramirez* (2021).

On appeal, the Fourth Circuit reversed. Writing for the majority, Judge Benjamin explained that "an individual has an interest in avoiding expensive diagnostic examinations just as he or she has an interest in avoiding physical injury." *Sommersville*, 149 F. 4th. at 414-415 (internal citations omitted). The court framed the injury to the Plaintiffs as the "exposure itself to environmental toxins…which affect the body in ways that often do not become manifest for several years" and "the concomitant need to pay for medical testing…to mitigate an increased risk of illness which [Plaintiff] would not bear but for the [Defendants'] actions." *Sommersville*, 149 F. 4th. at 419, 420. (internal quotations omitted). The court reasoned that "this injury is no less concrete than the injury suffered by the 1,853 class members in *TransUnion*" and held that the plaintiffs had Article III standing to proceed. *Id*.

The *Sommersville* decision opens the door for classes of individuals affected by environmental contamination or chemical releases to have standing in court, even without a manifest illness. While Chief Judge Diaz dissented, warning that the ruling risks blurring the line between speculative and concrete injury, the majority's reasoning signals a shift toward broader judicial acceptance of preventive injury claims—a major boost for plaintiffs in environmental and public health class actions.

Taken together, these decisions reflect two converging movements in West Virginia class action law: an expanded willingness to certify classes when uniform conduct or legal standards are at issue, and a broader recognition of injury that encompasses economic and preventive harms. Courts are demonstrating greater openness to class action/collective litigation when defendants' conduct is standardized and the legal question is unified, as shown in *Glover* and the upcoming vaccine exemption certification case in Raleigh County. At the same time, rulings like *Neidig* and *Sommerville* show a willingness to adjudicate purely economic loss in the context of medical harms and exposure-based injury. As these cases move through further proceedings, they will likely shape not only West Virginia's class action doctrine but also influence how neighboring jurisdictions define the limits of collective redress in the years to come.

Standing in Consumer Statutory Litigation: A Tale of Two Standards

Alex J. Zurbuch, *Frost Brown Todd LLP*

This is a tale of two standards for evaluating standing and concrete hard considerations consumer statutory actions. A distinct division remains between the federal courts and West Virginia state courts. In the federal courts, under *TransUnion LCC v. Ramierez*, standing, as a general matter, may only be satisfied where there is an actual concrete injury, as opposed to a technical violation of a consumer statute. 594 U.S. 413 (2021). West Virginia precedent takes a different approach. Standing is afforded by the violation of consumer statutes (and likely others), irrespective of actual concrete injury. *State ex rel. Dodrill Heating & Cooling, LLC v. Akers*, 246 W. Va. 463, 471, 874 S.E.2d 265, 273 (2022).

This division presents opportunities and challenges alike in the defense of consumer statutory claims—among other allegations of technical violations of various statutes. This article briefly explores these issues through the lens of the competing cases of *TransUnion* and *Dodrill*.

I. Federal Standing under Article III and *TransUnion*

The U.S. Supreme Court's decision in *TransUnion* reaffirmed and sharpened the federal standing doctrine under Article III in the context of consumer protection and class suits. Under Article III, federal courts may hear only 'cases' or 'controversies.' That requirement has been distilled into three core standing elements: (1) an injury-in-fact (which must be concrete and particularized and actual or imminent); (2) the injury must be fairly traceable to the defendant's conduct; and (3) it must be redressable by a favorable decision. In TransUnion, the Court held that only those class members whose credit files were actually disseminated to third parties had suffered a concrete injury sufficient for standing. Those whose files merely contained inaccurate information, but were never shared, lacked standing.

The Court emphasized that Congress cannot create standing merely by authorizing a statutory cause of action; a plaintiff must still show a concrete injury akin to those traditionally recognized at common law. This ruling has made it significantly harder for plaintiffs in federal consumer litigation to establish standing based solely on technical or procedural statutory violations.

II. Standing in West Virginia Consumer Litigation: *Dodrill*

West Virginia's standing doctrine diverges from Article III and is governed by state constitutional principles and statutory interpretation. In *Dodrill*, the West Virginia Supreme Court of Appeals considered whether consumers who alleged a violation of the West Virginia Consumer Credit and Protection Act ("WVCCPA") had standing even though they suffered no actual monetary loss. The court held that they did. The Dodrill plaintiffs alleged that the defendant included a contract provision allowing recovery of attorney's fees in violation of the WVCCPA. The Court concluded that the legislature had determined that such a representation itself constitutes an injury-in-fact, regardless of whether fees were ever charged.

This holding illustrates that under West Virginia law, a statutory violation can itself confer standing, particularly where the legislature has declared the proscribed conduct to be harmful. The WVCCPA is remedial legislation, and courts have construed it liberally to effectuate its protective purpose. Thus, while some claims under the WVCCPA—such as those requiring proof of reliance or ascertainable loss—still demand a causal connection to damages, others do not.

III. Comparison Between Federal and West Virginia Standing

For consumer litigation, the contrast between Article III and West Virginia standing is consequential. Plaintiffs may prefer West Virginia state courts, where the threshold for standing is lower, while defendants may seek federal jurisdiction to invoke stricter standing requirements. Class certification in federal court is often more difficult post-*TransUnion*, since each class member must show a concrete injury. In state court, the focus shifts from injury-in-fact to whether the statutory violation applies uniformly across the class.

This difference underscores the continuing importance of forum selection and jurisdictional strategy in consumer litigation—particularly where the reward for establishing lack of standing in a case removed to federal court is almost certain remand to the state court system that would, being beholden to *Dodrill*, find that statutory standing itself suffices. One consideration in this scenario, at least in the class action setting, is whether there is the ability to thread the needle by establishing standing for the named plaintiff, while relying on *TransUnion* to argue that the balance of putative class members have not established or cannot establish standing. This creates some interesting (and seemingly perverse) incentives—all interesting and important considerations to keep in mind . . .

Legislation and Litigation: Bills from 2025 Affecting Commercial Litigation and More

Jenna Fonner, *Jackson Kelly PLLC*
Parker Zopp, *Jackson Kelly PLLC*

In the ever-evolving landscape of commercial litigation, attorneys must navigate a complex web of regulatory changes that can profoundly influence dispute resolution, risk management, and client strategies. During the 2025 session, West Virginia legislators passed important legislation that is reshaping the terrain for businesses entangled in breaches of contract, intellectual property disputes, unfair competition claims, and class actions. Other bills have reformed procedures in the executive branch (such the State's licensing and permitting processes), as well as various judicial processes. As these reforms affect a broad swatch of practice areas, attorneys should be aware of these changes given their potential downstream effects on litigation. This article explores a few key bills that have already become effective and highlights potential implications for litigation in the Mountain State.

S.B. 458 – Universal Professional and Occupational Act of 2025

S.B. 458[1] gave holders of out-of-state licenses[2] the ability to apply for a reciprocal professional license in West Virgina when such licenses are governed by Chapter 30 of the West Virginia Code.[3] This law impacted a wide variety of professionals across a multitude of fields, such as architects, contractors, engineers, physicians, physician assistants, massage therapists, nurses, and realtors. A critical feature is that an applicant can receive his or her license without having to take an examination in the applicable discipline if the applicant fulfills all the law's other conditions.[4]

Any person who applies to the applicable state board of examination or registration must meet the qualifying criteria and establish residency in West Virginia[5] to receive a reciprocal license.[6] Qualifying criteria includes, but is not limited to, the following: the applicant has a current license in good standing in a different state at the same practice level in the applicable discipline; the applicant has met the educational and work requirements of the different state; the applicant passed any examinations required by the different state for the license; the applicant has not had the different state's license revoked or else voluntarily surrendered a license while under investigation for unprofessional conduct; the applicant has not been disciplined in the different state (unless the matter was corrected and is fully resolved); the applicant has paid all applicable licensing fees in West Virginia; and the applicant does not having a disqualifying criminal record.[7]

H.B. 2002 - Establishing One-Stop Shop Permitting Process

H.B. 2002 introduced significant changes to West Virginia's permitting, licensing, and business registration processes by establishing the "One-Stop-Shop Permitting Program."[8] The bill directed the Secretary of the Department of Administration to develop an online "Permitting Dashboard" by January 1, 2027.[9] This dashboard will serve as a single, unified portal for obtaining and renewing all permits, licenses, and business registrations issued by specified state permitting agencies that may be required for construction, economic development, infrastructure, or natural resource projects.[10] The bill defines "permitting agency" as any division operating in the

1 References to "H.B." or "S.B." refer to "House Bill" and "Senate Bill," respectively.
2 While the bill references "licenses, registrations, and certificates," for simplicity, these will be collectively referred to as "licenses."
3 S.B. 458 adds a new section to the state code, W. Va. Code § 30-1-27.
4 *See id.* § 30-1-27(a). Notwithstanding this feature, a board of examination or registration may require an applicant to take and pass an examination specific to West Virginia law. *See id.* § 30-1-27(d). Furthermore, for professions regulated by the West Virginia Dental Practice Act, W. Va. Code § 30-4-1 *et seq.*, the applicant must have completed a clinical hand-skills exam.
5 Alternatively, an applicant may be married to an active-duty member of the U.S. armed forces if he or she has accompanied the service member to an official permanent change of station to a military installation in West Virginia. *Id.* § 30-1-27(a)(2).
6 *See id.* § 30-1-27(a)-(b).
7 *See id.* § 30-1-27(b).
8 H.B. 2002 adds a new article to the state code, W. Va. Code § 5A-13-1 *et seq.*
9 W. Va. Code § 5A-13-3(c).
10 While the bill references "permits," "licenses," "approvals," and "business registrations," for simplicity, these will be collectively referred to here as "permits."

West Virginia Department of Commerce, Department of Environmental Protection, the Office of Environmental Health Services, the Department of Revenue,[11] the Department of Tourism, the Department of Transportation,[12] and the Secretary of State.[13]

The bill mandated that the Permitting Dashboard be designed to be accessible, searchable, and user-friendly, and allow applicants to manage applications, pay fees, track the processing status, communicate with agencies, and receive electronic copies of permits.[14] The Permitting Dashboard should also enable coordination among agencies to streamline sequential permitting requirements.[15]

H.B. 2002 included several components to increase the permitting process's efficiency. First, the process has a "fast-track" option to those applicants willing to pay additional fee to expedite an application's processing.[16] Second, the bill detailed that on and after January 1, 2027, any permitting agency that fails to grant or deny a permit within a statutory or regulatory deadline must refund all fees to the applicant.[17] At this time, the Department of Administration has promulgated an applicable rule to implement the bill's directives with respect to establishing "fast-track" deadlines and issuing refunds.[18]

Use of the Permitting Dashboard is optional until July 1, 2027.[19] Until that date, applicants may continue to submit applications directly to agencies via paper or existing electronic systems without penalty.[20] After July 1, 2027, the dashboard will be the exclusive means of application, subject to exceptions for disability accommodations under federal and state law.[21]

H.B. 2354 – Banning Certain Products from Food in West Virginia

H.B. 2354, or the "Food Dye Bill," amended West Virginia's food safety code by prohibiting the manufacturing or sale of food or drinks that contain synthetic food dyes or additives that have been deemed "poisonous or injurious" to health.[22] Specifically, H.B. 2354 prohibits the synthetic dyes Blue No. 1, Blue No. 2, Green No. 3, Red No. 3, Red No. 40, Yellow No. 5, and Yellow No. 6; and the preservatives butylated hydroxyanisole (BHA) and propylparaben.[23] This ban went into effect on August 1, 2025, for school nutrition programs,[24] restricting these additives from being an ingredient in any meal served as part of the program, and will go into effect statewide for all food products effective January 1, 2028.[25] While H.B. 2354 did provide exceptions, such as for the sale of foods with these ingredients during school fundraisers[26] or for sellers within the State who are selling less than $5,000 worth of "adulterated food" per month, an individual in noncompliance with this new regulation may find themselves charged with a misdemeanor.[27]

Notably, H.B. 2354 is already directly impacting litigation in the State. On October 3, 2025, the International Association of Color Manufacturers filed a lawsuit in the United States District Court for the Southern District of West Virginia against the Cabinet Secretary of the West Virginia Department of Health, the Interim Commissioner of the West Virginia Bureau for Health, members of the West Virginia State Board of Education, and the State Superintendent of Schools of West Virginia.[28] The complaint alleges that H.B. 2354 is unconstitutional, stating it is just "part of a new pseudoscientific fad,"[29] that violates equal protection guarantees, due process protections, and acts as an unconstitutional bill of attainder.

Looking ahead, this bill is likely to impact food manufacturers, distributors, and retailers as they learn to navigate this new regulatory scheme, potentially leading to defensive litigation against state-led enforcement actions

11 The Lottery, Lottery Commission, and the Division of Financial Institutions are exempt. *Id.* § 5A-13-2(4).
12 The Division of Motor Vehicles is exempt. *Id.* §5A-13-2(6).
13 *See id.* § 5A-13-2(4).
14 *See id.* § 5A-13-3(c)(3).
15 *See id.* § 5A-13-3(c)(4).
16 *See id.* § 5A-13-3(c)(6).
17 *See id.* § 5A-13-4. Refunds may only be received for an application submitted through the Permitting Dashboard. *See id.* § 5A-13-5(c).
18 *See* W. Va Code R. § 148-25-1 *et seq*.
19 *See* W. Va. Code § 5A-13-5(a).
20 *See id.*
21 *See id*. § 5A-13-5(b).
22 W. Va. Code § 16-7-2(b)(7).
23 *See id.*
24 W. Va. Code § 18-5D-3A.
25 W. Va. Code § 16-7-2(b)(10).
26 W. Va. Code § 18-5D-3A(b).
27 W. Va. Code § 16-7-4.
28 *See* Complaint, *International Association of Color Manufacturers v. Singh, et al.*, No. 2:25-cv-00588 (S.D.W. Va. Oct. 10, 2025).
29 *See id.* at ¶ 6.

or breach-of-contract suits between buyers and suppliers. Additionally, H.B. 2354 sets up these entities to see a potential uptick in product liability or consumer class actions by labeling these synthetic dyes and preservatives as "poisonous or injurious" to health.

H.B. 2434 - Relating to Establishing the Stop Squatters Act

This bill altered West Virginia law regarding the removal of unauthorized occupants from residential and commercial properties. During the West Virginia Legislature's 2024 Regular Session, the Legislature enacted H.B. 4940, which defined "squatting" and the detailed certain remedies relating to squatting.[30] H.B. 2434 built on the prior legislation to create more comprehensive legal framework related to squatting, known as the "Stop Squatters Act."[31]

The Stop Squatters Act defines a "squatter" as "a person unlawfully occupying a dwelling or structure without entitlement under a rental or lease agreement, or without authorization from the tenant or owner."[32] The law details that the act of "squatting" is explicitly equated with criminal trespass under existing criminal statutes, and that state courts cannot require an owner to use eviction or similar procedures to remove a squatter from the property.[33]

The Act streamlines the process for property owners to remove squatters by relying on immediate law enforcement action.[34] To remove a squatter in a residential dwelling or commercial building, if certain conditions are met, the property owner may submit a verified complaint to a law enforcement officer with the proper jurisdiction to immediately remove a squatter.[35] Law enforcement must conduct preliminary fact-finding and, upon probable cause, serve a notice to vacate and restore possession to the owner.[36] After law enforcement serves the notice, the property owner may request the law enforcement agency to remove the unauthorized person if they do not vacate the property when ordered to do so.[37]

The Act establishes new criminal penalties for squatters who cause property damage.[38] However, the Act also establishes certain safeguards for those accused of squatting. Individuals wrongfully removed under the Act may bring a civil action for restoration, damages, and attorney fees.[39] Furthermore, property owners who act in bad faith may face criminal prosecution and indemnification obligations.[40]

H.B. 2576 – NIL Protection Act

H.B. 2576, or the NIL Protection Act,[41] created a framework governing how college student-athletes in West Virginia can profit off their Name, Image, and Likeness ("NIL"), allowing them to enter into agreements for the use of their NIL, while also imposing protections against interference from athletic governing bodies, such as athletic associations, athletic conferences, or other organizations overseeing intercollegiate athletics.[42] H.B. 2576 broadly defined "NIL" to include, among many other items, personal characteristics of the student-athlete, any and all intellectual property rights owned by the student-athlete, and "services and activities" related to the use of the student-athletes NIL.[43] H.B. 2576 clarified that "compensation" does not include any scholarship provided to a student-athlete that covers some or all of the cost of attendance or any benefit they receive in accordance with the rules of the relevant athletic association or conference.[44]

H.B. 2576 authorized student-athletes to retain an attorney or athlete agent[45] in connection with any NIL deal and authorized institutions[46] to facilitate, negotiate, and even enter into agreements providing for the compensation of student-athletes for the use of their NIL.[47] However, these deals come with limitations, as H.B. 2576 prohib-

30 H.B. 4940 added a new section to the W. Va. Code, § 37-6-31, and added a new article designated as W. Va. Code § 55-3C-1 and 55-3C-2.
31 The Stop Squatters Act is codified at W. Va. Code § 55-3C-1 *et seq*. Herein also referred to as the "Act."
32 *Id.* § 55-3C-2(c). The definition excludes those tenants who hold over in a periodic tenancy (as described in W. Va. Code § 37-6-5) or an owner.
33 *See id.* § 55-3C-2(b)-(c).
34 *See id.* § 55-3C-3.
35 *See id.* § 55-3C-3(a)-(c).
36 *See id.* § 55-3C-3(c).
37 *See id.* § 55-3C-3(d).
38 *See id.* § 55-3C-4. Property damage in an amount less than $1,000 qualifies as a misdemeanor, and the penalty is a jail sentence of up to 1 year and/or a fine up to $2,500. Property damage exceeding $1,000 qualifies as a felony, and the penalty is confinement in a penitentiary for a 1-10 year sentence, or in the discretion of the court, a jail sentence of up to 1 year and a fine of up to $2,500.
39 *See id.* § 55-3C-5(b).
40 *See id.* § 55-3C-5(a).
41 The NIL Protection Act is codified at W. Va. Code § 18B-22-1 *et seq.*
42 *See* W. Va. Code § 18B-22-3.
43 *Id.* § 18B-22-1.
44 *See id.*
45 The athlete agent must be registered pursuant to W. Va. Code § 30-39-5.
46 "Institution" means a state institution of higher education, as defined in W. Va. Code § 18B-1-2.
47 W. Va. Code § 18B-22-2.

ited student-athletes from being compensated for NIL deals tied to certain industries, such as alcohol, cannabis, steroids, or gambling.[48] Finally, the bill provided 1) a cause of action for injunctive relief for any student-athlete harmed by a party in violation of the NIL Protection Act, 2) liability protection for institutions for any decisions or actions routinely taken in the course of intercollegiate athletics that may result in damages to a student-athletes ability to earn compensation for his/her NIL rights, and 3) a cause of action for actual damages for any institution harmed by an athletic governing body in violation of the NIL Protection Act.[49]

The NIL Protection Act is poised to impact commercial litigation, as we can expect to see heightened contract and intellectual property disputes over NIL agreements.

H.B. 2761 – Relating generally to magistrate courts

H.B. 2761 increased the civil jurisdictional limit of magistrate courts from its previous threshold of $10,000 to $20,000, exclusive of interest and costs.[50] This change expanded the types and value of civil cases that may be heard in magistrate court and allows parties to bring claims up to this new threshold without resorting to circuit court.[51]

H.B. 3272 – Relating to eviction proceedings

This bill amended the current law to require courts to schedule a hearing within five to ten judicial days upon the filing of a petition for summary relief for wrongful occupation of residential rental property.[52]

H.B. 3274 – Relating to reports of circuit court proceedings

H.B. 3274 amended West Virginia Code §51-7-1 to modernize the process for recording circuit court proceedings. The legislation expressly authorized circuit courts to utilize electronic recording methods, provided these electronic means are approved by the Supreme Court of Appeals.[53] This amendment should give circuit courts greater flexibility in how they document proceedings and aligns statutory language with evolving technological capabilities.

H.B. 3275 – Update timing for appeals

This bill provided that the "[t]he time for filing a notice of appeal, perfecting an appeal, and filing related documents with the Intermediate Court of Appeals and the Supreme Court of Appeals shall be in accordance with rules promulgated by the Supreme Court of Appeals."[54] This change brought the applicable statute in line with the West Virginia Rules of Appellate Procedure, which requires that an appeal be perfected within four months of the date of the judgment being appealed was entered (unless otherwise provided by law).[55]

Overall, these are just some of the bills from this past legislative session that are poised to impact commercial litigation in West Virginia. Looking forward, the 2026 legislative session is fast-approaching, and attorneys should keep an eye out for bills that may soon have a similar impact.

48 *Id.* § 18B-22-4.
49 *Id.* § 18B-22-5.
50 *Id.* § 50-2-1.
51 *See id.*
52 *See id.* § 55-3A-1(b).
53 *See id.* § 51-7-1.
54 *Id.* § 58-5-4.
55 W. Va. R. App. P. 5(g), (i).

Re: Ezra Schoolcraft v. Jeffrey Isner and PBC Energy, LLC, Circuit Court of Kanawha County, Business Court Division, Civil Action No. 22-C-910

Ashley C. Pack , *Dinsmore & Shohl LLP*
ashley.pack@dinsmore.com
Jordan "Jo" McMinn , *Dinsmore & Shohl LLP*
jordan.mcminn@dinsmore.com

Summary of Orders Denying in Part and Granting in Part Summary Judgment Motions

On January 22, 2024, and January 17, 2024, respectively, Judge Joseph K. Reeder entered orders (1) granting in part and denying in part Defendant Jeffrey Isner's motion for summary judgment and (2) denying Plaintiff Ezra Schoolcraft's motion for partial summary judgment.

Factual Background

These motions for summary judgment were filed in a case which arose from a business dispute between Plaintiff and Defendant, two business partners. The two partners formed a series of limited liability companies for the purpose of engaged in the oil and gas business. Relevant to the litigation were Pillar Energy, LLC ("Pillar Energy"); Pillar Enterprises, LLC ("Pillar Enterprises"); and PBC Energy, LLC ("PBC"). Plaintiff and Defendnat both owned 50% of the outstanding membership interest of PBC and were PBC's only two employees.

PBC was formed for the purpose of acquiring Blue Creek Gas Company ("Blue Creek"), and, as part of that seller-financed transaction, PBC agreed to certain restrictions and negative covenants on its finances. Specifically, PBC agreed not to make any payment to any of its affiliates or make a distribution to its shareholders of more than $50,000.

In 2016, in order to acquire certain wells, Pillar Energy executed two promissory notes, one on July 7, 2016 and one on October 6, 2016. Under the October promissory note, Pillar Energy had an obligation to make monthly payments to the note holder. In July of 2020, Pillar Energy received notice that it was in default for failing to make monthly payments. To cure the default, Pillar Energy executed an amendment to the October promissory note, which required a $200,000 payment to the note holder. Pillar Energy did not have sufficient funds to make this payment, and Defendant transferred $400,000 from PBC to Pillar Energy. These funds were returned to PBC less than two months later.

Additionally, Plaintiff took issue with the fact that he had stopped receiving salary payments from PBC, while Defendant continued to collect a salary.

Issues Presented

Plaintiff sought summary judgment in his favor on claims for (1) breach of fiduciary duties to Plaintiff concerning PBC; (2) a derivative claim for breach of fiduciary duties on Behalf of PBC; (3) statutory dissociation of Defendant from PBC; (4) conversion with respect to PBC; and (5) unjust enrichment with respect to PBC.

Defendant, on the other hand, filed a cross motion for summary judgment in his favor on the claims for (1) breach of fiduciary duties concerning PBC; (2) unjust enrichment, and (3) statutory dissociation from PBC.

Defendant also sought summary judgment on claims for (1) breach of fiduciary duties concerning Pillar Energy; (2) breach of contract; (3) aiding and abetting breach of fiduciary duties; (4) civil conspiracy; (5) fraud; (6) intention misrepresentations; and (7) statutory dissolution of PBC.

Legal Analysis of Claims

Fiduciary Duties Concerning Pillar Energy and Breach of Contract (Defendant's Motion)

Pillar Energy and Pillar Enterprises had an operating agreement which provided that member and managers would not be "liable for any act or omission performed in good faith in a manner reasonably believed to be within the scope of authority granted by the operating agreements, provided that the member or manager was not guilty of gross negligence, willful misconduct or breach of fiduciary duty." The agreement further stated that "[a]ny act or omission performed or omitted . . . in good faith on advice of counsel to the Company shall be conclusively deemed to have been performed or omitted in good faith."

In support of his argument for summary judgment on this claim, Defendant asserted as a defense that he had relied upon the advice of the company's counsel and advisory board. The Court noted that factual issues regarding the reasonableness of the Defendant's actions under the circumstances remained, and that those issues were proper for the jury.

Fiduciary Duties to Plaintiff as a Member of PBC (Cross Motion)

Plaintiff alleged Defendant breached the fiduciary duty Defendant owed Plaintiff by "deriving personal profit and advantage from PBC which he did not permit Plaintiff to share in an by freezing Plaintiff out of PBC." The basis for this claim was Defendant ceasing to make salary payments to Plaintiff from PBC while still making salary payments to himself, and removing Plaintiff from PBC's bank accounts.

The Court found that a reasonable jury could find Defendant's actions conformed to his fiduciary duties to Plaintiff as a co-member of PBC. In West Virginia, "[a] member's duty of care to . . . its other members in the conduct of . . . the company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law." W. Va. Code § 31B-4-409(c).

The Court noted that there was evidence in the record that Defendant relied on advice of counsel and the company advisory board in deciding to cease making salary payments to Plaintiff and that there was a dispute of fact regarding Plaintiff's continued involvement in the operation of the business.

Accordingly, the Court reserved these issues for resolution by the finder of fact and denied both parties motion for summary judgment.

Derivative Claim for Breach of Fiduciary Duty to PBC (Plaintiff's Motion)

Plaintiff's derivative claim for breach of fiduciary duty owed to PBC was based on Defendant's transfer of funds from PBC to Pillar Energy to allow Pillar Energy to cure its default on the October 2016 promissory note. Plaintiff asserted, on PBC's behalf, that this transfer put PBC at risk of violating its restrictions pursuant to the Blue Creek transaction.

Again, the Court noted that the duty Defendant owed to the LLC under W. Va. Code § 31B-4-409(c) is to refrain "from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law."

Considering evidence in the record that the transfer of the funds, despite the restrictions on PBC's restrictions, was a justified risk, and that no evidence had been presented that the transfer had caused harm to PBC, the Court again reserved the issue of whether Defendant breached his duty to PBC for a jury.

Dissociation of Defendant from PBC (Cross Motion)

The West Virginia Limited Liability Act provides that a member of an LLC may be expelled by judicial determination upon:

> "application by the company or another member . . . because the member: (i) Engaged in wrongful conduct that adversely and materially affected the company's business; (ii) Willfully or persistently committed a material breach of the operating agreement or of a duty owed to the company or the other members under [§ 31B-4-409]; or (iii) Engaged in conduct relating to the company's business which makes it not reasonably practicable to carry on the business with the member[.]"

W. Va. Code § 31B-6-601(6).

For many of the same reasons that the Court denied summary judgment on the claims for breach of fiduciary duty to Plaintiff and to PBC, the Court found that there was a genuine issue of material fact regarding whether Defendant's actions adversely or materially affect PBC's business and warranted judicial dissociation.

Dissolution of PBC (Defendant's Motion)

A similar analysis applied to Defendant's request for summary judgment in his favor on the claim for judicial dissolution of PBC. Defendant asserted that his conduct did not justify dissolving PBC because it did not adversely or materially affect PBC's business. Defendant further argued that less drastic remedies were available, like awarding Plaintiff backpay if he was ultimately entitled to his salary from PBC.

Again, the court reserved these issues for a jury, noting that there were issues of material fact, many of which went to "the heart of the claim" for a jury to decide.

Aiding and Abetting Breach of Fiduciary Duties and Civil Conspiracy (Defendant's Motion)

Based on Plaintiff's own deposition testimony that no one other than the Defendant had done anything wrong, and West Virginia law which requires as an element of claims for aiding and abetting breach of fiduciary duty and civil conspiracy that each member of the conspiracy must share in a common plan to do something unlawful, the Court granted Defendant's motion for summary judgment on this claim.

Fraud and Intentional Misrepresentations (Defendant's Motion)

The Court also granted Defendant's motion as to the claims for fraud and intentional misrepresentations.

Plaintiffs claims for fraud and intentional misrepresentations stemmed from conduct related to the October 2016 promissory note. Plaintiff was aware of the note on or before July 1, 2020. However, the litigation was not filed until November 2022, more than two years after Plaintiff became aware of the note.

Plaintiff argued that the statute of limitations should be tolled under the continuing tort doctrine and under the equitable tolling or equitable estoppel doctrine. The Court noted that under West Virginia law the continue tort doctrine required continued wrongdoing, not merely continued harm from one alleged tort.

The Court further found that equitable tolling would have required evidence that showed excusable ignorance of the limitations period and equitable estoppel would have required evidence that Defendant, by his conduct, induced Plaintiff to refrain from timely bringing his action. The record was devoid of evidence on both counts.

Unjust Enrichment (Cross Motions)

The Court likewise granted summary judgment in Defendant's favor on Plaintiff's claim for unjust enrichment. The basis for the claim was PBC ceasing salary payments to Plaintiff. The Court found that there was no evidence in the record that Defendant, rather than PBC, had retained any funds that would have been due to Plaintiff, and thus that there was no evidence Defendant had been enriched.

Conversion (Plaintiff's Motion)

Finally, the Court determined that Plaintiff was not entitled to summary judgment for his claim for conversion. The claim was based on Defendant's "improper acts of dominion over PBC and the benefits derived from it." The Court noted, however, that there was not evidence of Defendant unlawfully possession personal property of Plaintiff. Rather, the allegations were of wrongful control of a business entity which was equally owned by Defendant.

The Court concluded that issues of fact remained regarding whether Defendant had "frozen out" the Plaintiff or if the Plaintiff had voluntarily reduced his level of participation in the business. Further, if salary payments to Plaintiff had been improperly withheld, the remedy would come from PBC, not Defendant personally. Thus, Court denied summary judgment on this claim.

West Virginia's Business Court Division – An Underutilized Resource

Ramonda C. Marling, Esq., *Babst Calland*
rmarling@babstcalland.com

West Virginia's Business Court Division ("BCD") is a creature of statute created under West Virginia Code § 51-2-15 (2010) to adjudicate actions involving commercial issues and disputes between businesses. W. Va. Code § 51-2-15(a). The West Virginia Legislature authorized the West Virginia Supreme Court of Appeals ("WVSCA") to designate a business court division "within any judicial district with a population in excess of sixty thousand according to the 2000 Federal Decennial Census" and to promulgate rules for the establishment and jurisdiction of the division. W. Va. Code § 51-2-15(b). The WVSCA did just that in 2012 with the promulgation of Rule 29 of the West Virginia Trial Court Rules. The BCD is designed to promote uniform development of business law, improve case management for fact- and document-intensive matters, and provide parties with judges who have subject-matter expertise in corporate, commercial, and technology-related disputes. By centralizing complex business cases, the Division aims to reduce delays, encourage early, informed case evaluation, and facilitate just, speedy, and cost-effective resolutions. Commercial litigators would be well-served to routinely consider the possibility of filing a motion to refer to the BCD in every case that meets the jurisdictional definition of business litigation. As discussed below and based upon 2023 statistics, it does not appear that commercial litigators in West Virginia are fully utilizing the BCD.

The appointment of Business Court Division judges is governed by West Virginia Trial Court Rule 29.02 which establishes the Chief Justice as the primary appointing authority. The Business Court Division consists of up to seven (7) active or senior status circuit court judges appointed by the Chief Justice with the approval of the WVSCA. There are currently six BCD judge

BCD Judge	Home Circuit	Expiration of Term on BCD
The Honorable Michael D. Lorensen (Chairman)	Twenty-Seventh Judicial Circuit (Berkeley and Morgan Counties)	December 31, 2026
The Honorable Christopher C. Wilkes	Senior Status Judge	December 31, 2031
The Honorable Shawn D. Nines	Twenty-Third Judicial Circuit (Barbour and Taylor Counties)	December 31, 2027
The Honorable David M. Hammer	Twenty-Eighth Judicial Circuit (Jefferson County)	December 31, 2029
The Honorable Robert E. Richardson	Eleventh Judicial Circuit (Greenbrier and Pocahontas Counties)	December 31, 2030
The Honorable Andrew Dimlich	Fourteenth Judicial Circuit (Raleigh County)	December 31, 2025

Business Court Division appointments are for seven-year terms on a staggered appointment system. W. Va. Trial Ct. Rule 29.02. This staggered structure prevents wholesale turnover of the division and maintains institutional knowledge and continuity. The Chief Justice also designates leadership within the Business Court Division. The Chair has significant administrative responsibilities, including assigning presiding and resolution judges to specific cases with the advice and consent of the Division.

The BCD hears "business" and commercial disputes that are sufficiently complex or consequential to warrant specialized management. The jurisdiction of the BCD is prescribed by West Virginia Code § 51-2-15 to include actions involving commercial issues and disputes between businesses. W. Va. Code § 51-2-15(a). In turn, Rule

29.04(a) defines "Business Litigation" as one or more actions in circuit court 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

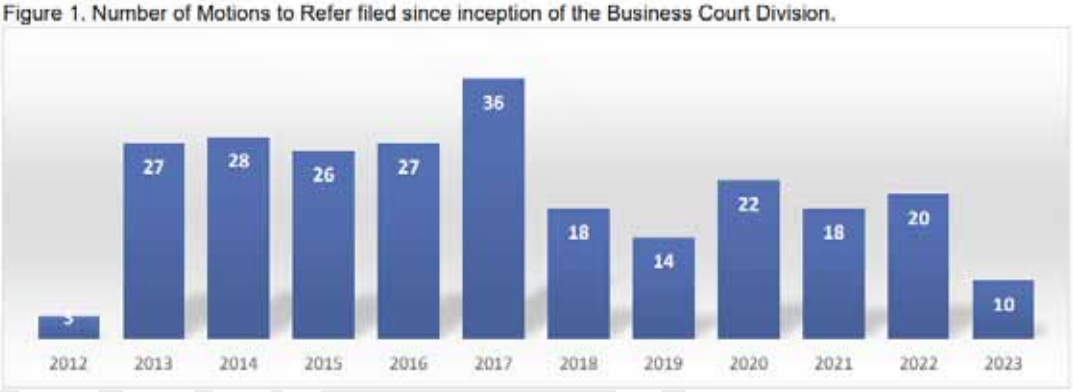
(3) the principal claim or claims do not involve: consumer litigation, such as products liability, personal injury, wrongful death, consumer class actions, actions arising under the West Virginia Consumer Credit Act and consumer insurance coverage disputes; non-commercial insurance disputes relating 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.

W. Va. Trial Ct. R. 29.04(a).

The procedural pathway to the BCD is relativity simple. Either party or the presiding judge may file a motion to refer a matter to the BCD. W. Va. Trial Ct. R. 29.06. The BCD's website contains form motions for referral that set forth the filing requirements. *See* **https://www.courtswv.gov/lower-courts/business-court-division/court-forms**. While there is no set deadline for the filing of a motion to refer to BCD, it should be done as early as practicable after the filing of initial pleadings frames the issues and before discovery becomes unwieldy. Early filing underscores the efficiency rationale and minimizes duplication of effort.

Once a motion to refer has been filed, the opposing party and the presiding judge have twenty (20) days to file a response. W. Va. Trial Ct. R. 29.06(a)(4). The Chief Justice decides the motion to refer. According to the 2023 Annual Report of the West Virginia Business Court Division, only ten (10) motions to refer to BCD were filed in 2023 and two hundred forty-nine (249) motions to refer have been filed since the inception of the BCD. Of those, eight (8) motions were granted in 2023 and one hundred forty-five (145) motions have been granted since inception of the BCD. In 2023, motions to refer to BCD were decided on average 21 days from filing. As reflected below, utilization of the BCD peaked in 2017 and has declined thereafter:

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



2023 Annual Report of the West Virginia Business Court Division, p. 5, Figure 1.

While there are clearly legitimate and strategic reasons not to seek referral to the BCD in a given matter that falls within the jurisdiction of the BCD, it is clear that utilization of the BCD has fallen significantly since its peak in 2017. In fact, more motions to refer to the BCD were filed in 2013 (the first full year of statistical reporting) than in any year since 2017. The reason for this decline is unclear. As noted earlier in this article, consideration of a potential motion to refer to the BCD should become part of every commercial litigator's strategic checklist upon the filing of a complaint containing business litigation claims or in responding to such a complaint. Just as we routinely consider potential removal to federal court, we should likewise consider seeking referral to the BCD early in a business litigation case.

Exponent®

Mitigating Fires in Recycling Facilities

Tom Long, Jr., P.E., CFEI, Corporate Vice President and Principal Engineer, Thermal Sciences
Michael Barry, Ph.D., P.E., CFEI, Senior Managing Engineer, Thermal Sciences
Michael Synodis, Ph.D., P.E., CFEI, Senior Managing Engineer, Material Science & Electrochemistry
George Dimitrakopoulos, Ph.D., P.E., CFEI, CVFI, Managing Engineer, Thermal Sciences
Malima Wolf, Ph.D., P.E., CFEI, Managing Engineer, Thermal Sciences
Jacques De Beer, Ph.D., CFEI, Senior Associate, Thermal Sciences

How can recycling facilities address the pervasive threat of fires caused by hazardous materials and batteries?

According to a 2024 report from the National Waste & Recycling Association, more than 5,000 fires occur at materials recycling facilities (MRFs) each year. Not only do these fires cause devastating and costly damage to an MRF's infrastructure, but they emit toxic fumes and particulate matter into the atmosphere due to the presence of plastics and metals. These materials can contain toxins like lead, mercury, cadmium, polyvinyl chloride (PVC), phthalates, and more. In some cases, this leads to having recycling facilities shuttered after a fire, citing health and environmental concerns.

What causes MRF fires?

A variety of ignition sources can initiate MRF fires, including pressurized containers with flammable liquids and gases like propane tanks or spray paint cans that are not detected

during the intake screening process. More recently, lithium-ion batteries have become an area of concern, as indicated in a 2021 study by the U.S. Environmental Protection Agency, "An Analysis of Lithium-ion Battery Fires in Waste Management and Recycling." According to the study, lithium-ion battery fires are endemic to all types of waste management facilities, but MRFs have faced the brunt of the negative impacts. The EPA report found that 78% of MRFs that experienced lithium-ion battery fires had to call emergency responders, as opposed to just 40% of landfills. MRFs also had the highest rates of reported worker injuries and monetary damage due to lithium-ion battery fires.

The EPA report also emphasizes the financial ramifications of MRF fires, citing one example in Plano, Texas, that cost more than $30 million to repair and reopen following a 2016 fire. In addition to repairs, MRF fires can lead to environmental liabilities and cleanup costs, as well as increases in insurance premiums and legal consequences. Even minor fires that cause MRF line shutdowns can rack up significant costs in downtime.

How can materials inspection and detection help prevent MRF fires?

While fire detection systems help protect MRF facilities, prevention — identifying hazardous materials before they enter an MRF — is one of the best lines of defense in reducing the risk of thermal incidents in these facilities. Thorough materials inspection at collection points is essential to preventing dangerous materials from entering recycling streams.

Facilities can follow hazardous materials requirements listed in NFPA 400 (Hazardous Materials Code), NFPA 30 (Flammable and Combustible Liquids Code), and the International Fire Code (IFC). These codes and standards outline procedures for handling hazardous materials such as nitrates, corrosives, organic peroxides, reactive metals and materials, compressed gases, and flammable solids and liquids. Nevertheless, estimates suggest dozens of potentially hazardous materials enter MRFs each day — a number that is predicted to grow alongside the rising use of electronics, which can contain lithium-ion batteries and lead, mercury, cadmium, zinc, yttrium, chromium, beryllium, nickel, and tin.

MRFs have several common strategies for detecting hazardous materials. The first is visual inspection: an employee at the MRF is responsible for reviewing materials as they enter the facility. After this initial review, materials are typically sorted into large piles using equipment like bulldozers or backhoes. It can be challenging to spot ignitable liquids and hazardous solids, which could result in their thermal stability being compromised as part of the recovery process. MRF operators can develop protocols for the proper sorting of items received, as well as the safe storage of any prohibited items.

Beyond human visual inspection, there is not currently a commercially viable technology that can automatically spot and sort hazardous materials at MRFs at scale; however, automated artificial intelligence systems are currently being developed and used in plastic recycling facilities.

How can MRF fires be detected and mitigated earlier?

One of the key challenges with preventing fires at MRFs is that they are difficult to initially detect. A fire may start in large piles of mixed materials that may not be visible until the fire has spread to surrounding ignitable trash and recyclables and grown to a point that could overwhelm fire protection systems and complicate firefighting efforts.

To increase the probability of early fire detection, some MRFs rely on thermal imaging cameras in addition to visual inspections, but the size and scope of materials at these facilities could be extensive, making it potentially challenging for these facilities to achieve comprehensive monitoring.

Preventing and mitigating thermal incidents in recycling facilities caused by hazardous materials is important to the safety and sustainability of these operations. By implementing materials inspection protocols, utilizing fire detection and suppression systems, and staying on top of materials screening technologies, recycling facilities can reduce the risks associated with processing hazardous materials.

The West Virginia Uniform Commercial Real Estate Receivership Act: A Guide to Navigating the Statutory Framework

Eric Salyers, *Nelson Mullins Riley & Scarborough LLP*
Noah Clark , *Nelson Mullins Riley & Scarborough LLP*

I. INTRODUCTION

In 2022, the West Virginia Legislature enacted Senate Bill 440, adopting the Uniform Commercial Real Estate Receivership Act (UCRERA) as West Virginia Code §55-21-1 through §55-21-28. This comprehensive statutory framework modernized and clarified the law governing receiverships for commercial real property in West Virginia. For defense attorneys representing property owners, tenants, or other parties with interests in commercial real estate, understanding this new statutory regime is essential to protecting client interests when a receivership is threatened or already in place.

The UCRERA, promulgated by the Uniform Law Commission, was designed to provide clarity, consistency, and procedural safeguards in commercial real estate receiverships. West Virginia became one of the early adopters of this uniform act, which has since been enacted in multiple jurisdictions.

There are also specific receivership provisions for corporations (W.Va. Code Ann. § 31D-14-1432), nonprofit corporations (W.Va. Code Ann. § 31E-13-1332), financial institutions (W.Va. Code Ann. § 31A-7-4), and special receivers under the court's equitable powers (W.Va. Code Ann. § 53-6-1-3; W. Va. R. Civ. P. 66). The local limited liability company and partnership acts do not provide for receiverships specifically, although receivers have been appointed in partnership actions under W.Va. Code Ann. § 53-6-1. See, *e.g., Snodgrass v. Snodgrass*, 107 W. Va. 136, 147 S.E. 483 (1929); *Szturm v. Huntington Blizzard Hockey Associates Ltd. Partnership*, 205 W. Va. 56, 58, 516 S.E.2d 267, 269, 5 Wage & Hour Cas. 2d (BNA) 711 (1999). Receiverships are also available in connection with West Virginia's Voidable Transactions Act W.Va. Code Ann. § 40-1A-7.).

This article provides an overview of the UCRERA's key provision for the receivership process.

II. GROUNDS FOR APPOINTMENT AND DEFENSIVE STRATEGIES

A. Statutory Grounds for Receiver Appointment

W.Va. Code Ann. § 55-21-6 sets forth the circumstances under which a court may appoint a receiver. The statute authorizes appointment in three primary circumstances:

1. Pre-Judgment Protection (§55-21-6(a)(1))

A court may appoint a receiver before judgment to protect a party that demonstrates an "apparent right, title, or interest" in real property that is the subject of the action if:

- **The property or its revenue-producing potential is being subjected to or is in danger of waste, loss, dissipation, or impairment; or**
- **The property has been or is about to be the subject of a voidable transaction.**

2. Post-Judgment Enforcement (§55-21-6(a)(2))

After judgment, a receiver may be appointed:

- **To carry into effect the judgment; or**
- **To preserve nonexempt real property pending appeal or when an execution has been returned unsatisfied and the owner refuses to apply the property in satisfaction of the judgment.**

3. Equitable Grounds (§55-21-6(a)(3))

A receiver may be appointed "in an action in which a receiver for real property may be appointed on equitable grounds." This provision preserves the court's traditional equitable jurisdiction over receiverships.

B. Notice and Hearing Requirements

One of the most important provisions under the UCRERA is the requirement (or lack thereof) of notice and an opportunity for hearing. W.Va. Code Ann. § 55-21-3(a) provides that a court may appoint a receiver only after notice and an opportunity for a hearing. However, W.Va. Code Ann. § 55-21-3(b) provides that the court may issue an order: (1) Without prior notice if the circumstances require issuance of an order before notice is given; (2) After notice, and without a prior hearing, if the circumstances require issuance of an order before a hearing is held; or (3) After notice, and without a hearing, if no interested party timely requests a hearing.

III. RECEIVER DISQUALIFICATIONS AND BONDING

A. Disqualifications from Appointment

W.Va. Code Ann. § 55-21-7 establishes strict disqualification criteria designed to ensure receiver impartiality. A person is disqualified from appointment as receiver if the person:

1. **Is affiliate of a party;**
2. **Has an adverse interest to a party;**
3. **Has a material financial interest in the outcome of the action, other than compensation the court may allow the receiver;**
4. **Has a debtor-creditor relationship with a party; or**
5. **Holds an equity interest in a party, other than a noncontrolling interest in a publicly-traded company.**

The statute defines "affiliate" expansively to include not only family members but also business relationships and individuals occupying the same residence. W.Va. Code Ann. § 55-21-2.

B. Bonding Requirements

W.Va. Code Ann. § 55-21-8 requires that a receiver post a bond conditioned on the faithful discharge of the receiver's duties, with court-approved sureties. The court may also approve alternative security such as a letter of credit or deposit of funds. Critically, the receiver may not use receivership property itself as security for the bond.

IV. THE AUTOMATIC STAY

One of the most significant impacts of a receiver appointment is the automatic stay imposed by W.Va. Code Ann. § 55-21-14. Upon appointment, an order appointing a receiver operates as an automatic stay, applicable to all persons, of:

1. **Any act, action, or proceeding to obtain possession of, exercise control over, or enforce a judgment against receivership property; and**
2. **Any effort to enforce a lien against receivership property to the extent the lien secures a claim against the owner which arose before entry of the order.**

This stay is analogous to, though narrower than, the automatic stay in bankruptcy proceedings. It prevents creditors and other parties from pursuing individual remedies against the receivership property, thereby preserving the property for administration under court supervision.

V. RECEIVER POWERS, DUTIES, AND LIMITATIONS

West Virginia Code Ann. § 55-21-12 outlines a receiver's core authority and responsibilities, dividing them into three broad categories: powers the receiver may exercise independently, powers that require court approval, and duties the receiver must fulfill.

A receiver may, without further approval, collect, manage, and protect receivership property; operate any business that forms part of the receivership; and engage in routine transactions such as selling, leasing, licensing, or exchanging property in the ordinary course of business. The receiver can incur unsecured debt and pay normal operating expenses, assert or defend legal claims belonging to the property's owner, and seek the court's guidance when needed. The statute also permits the receiver to issue subpoenas to compel testimony or production of

documents, hire professionals such as accountants or attorneys, apply for appointment in another state as an ancillary receiver, and exercise any additional powers authorized by law or court order.

Certain actions, however, require prior court approval. These include borrowing money outside the ordinary course of business, making improvements to the property, using or transferring assets outside normal operations, adopting or rejecting executory contracts, paying compensation to the receiver or professionals, resolving or recommending allowance of creditor claims, and distributing receivership assets.

The statute also imposes mandatory duties. A receiver must maintain detailed business and accounting records, account for all receipts and disbursements, and record the appointment order with the county clerk. The receiver must disclose any facts that would create a conflict or disqualification and must perform all duties required by court order or other law.

VI. SPECIAL CONSIDERATIONS FOR MORTGAGEES

West Virginia Code Ann. § 55-21-25 contains important provisions protecting mortgagees who seek appointment of a receiver. Specifically, the statute provides that a mortgagee's request for appointment of a receiver, the actual appointment, or the mortgagee's application of receivership property to the secured obligation does NOT:

1. **Make the mortgagee a mortgagee in possession of the real property;**
2. **Make the mortgagee an agent of the owner;**
3. **Constitute an election of remedies that precludes a later action to enforce the secured obligation;**
4. **Make the secured obligation unenforceable;**
5. **Limit any right available to the mortgagee with respect to the secured obligation; or**
6. **Bar a deficiency judgment, except as provided in §55-21-16(c) regarding sales free and clear of liens.**

While this provision protects mortgagees from certain liabilities, it also limits the property owner's ability to argue that the mortgagee has taken possession or control of the property. Property owners should understand that a mortgagee-initiated receivership does not constitute a waiver of the mortgagee's other remedies, including foreclosure.

VII. CONCLUSION

The West Virginia Uniform Commercial Real Estate Receivership Act represents a significant modernization of receivership law in this State. For defense attorneys, the statute provides both challenges and opportunities. Success in defending against or limiting receiverships requires thorough knowledge of the statutory framework, prompt and vigorous advocacy at the appointment stage, and close monitoring of receiver activities throughout the proceeding.

The statute is still relatively new, and West Virginia courts have not yet developed extensive case law interpreting its provisions. We should monitor judicial interpretations as they develop. As with any uniform act, interpretations from other adopting jurisdictions may provide some guidance. Additionally, West Virginia Code Ann. § 55-21-26 requires courts to give consideration to rulings from other states who have adopted UCRERA to promote uniformity.

As courts continue to interpret and apply the UCRERA, practitioners who stay familiar with its framework will be well-positioned to protect their clients' interests and ensure receiverships proceed fairly and in accordance with the statute's intended safeguards.

Be a Leader by Following in the Footsteps of Others

Peggy L. Schulz
DTCWV Executive Director
Thomas J. Hurney, Jr., *Jackson Kelly PLLC*
DTCWV Past President

DTCWV is proud to have been the launching pad for so many members into national positions as association presidents, directors and chairs. Those who recognize the value of belonging to DTCWV, get involved in some capacity in the organization, serve on the Board of Governors, and attend meetings in person always seem to stand out among others who just take a passive interest in membership opportunities. This involvement offers a member access to other civil defense attorneys practicing in WV to create long-term relationships, have access to critical educational resources, an expansive network, leadership development opportunities, and mentorship—each of which contributes to an attorney's ongoing success in creating awareness of the qualities one offers to other civil defense attorneys and associations.

It's important that we convey the long-term value of the benefits of "belonging" to DTCWV to young attorneys to naturally continue their civil defense focused education through our programs, but that we also provide a training ground to serve as professional or community leaders statewide or nationally. You may be a leader, but you cannot develop the confidence of others by always communicating on social media. Attending meetings in person with face-to-face conversation reveals abilities much better. Also, let young attorneys know that the earlier they join DTCWV or any professional association, the sooner they'll start to see a return on their investment.

DTCWV is proud to detail below *(please excuse us if we overlooked anyone)* many members who joined as young lawyers, or senior attorneys, volunteered, served DTCWV in different capacities and then moved into national civil defense attorney associations to hold leadership positions. These members recognized and will tell you today that their DTCWV membership helped make them known statewide in their young careers and is also what launched them on the national stage. We are very proud of each one. Our list is focused on the "sister" associations, DRI being the largest of the "sisters," with the Association of Defense Trail Attorneys (ADTA), Federation of Defense Corporate Counsel (FDCC) and the International Association of Defense Counsel (IADC), with each having different focuses and certain criteria for membership.

Defense lawyers have voluntarily banded together since the 1920's. The International Association of Defense Counsel (IADC) was founded in 1920 as the General Counsels' Association of the United States.[1] The Federation of Defense and Insurance Counsel (FDIC) was started in 1936 as the Federation of Insurance Counsel (FIC).[2] The Association of Defense Trial Attorneys had its start as the Association of Insurance Attorneys (AIA) in 1941.[3] DRI, first known as the Defense Research Institute, was founded by the IADC (then known as the International Association of Insurance Counsel) in 1960 to provide as a counter to plaintiffs' groups "a massive, many-sided program of information and education," which started with the "For the Defense" newsletter.[4] DRI's Board of Directors "included six *ex-officio* representatives of the three national defense lawyer associations—the IAIC, the FIC, and the AIA."[5]

Meanwhile, state and local defense groups (SLDO's) also developed. One of the earliest was the Association of Defense Counsel in Philadelphia, founded in 1955.[6] By 1970, there were 66 SLDO's. West Virginia joined the fray with the founding of the Defense Trial Counsel of West Virginia in 1981.

1 IADC, History of the Association (online at https://www.iadclaw.org/about/iadc-history/).
2 Above and Beyond: A History of the Federation of Defense & Corporate Counsel (75th Ann. Ed. 2011) (Online at https://www.thefederation.org/Online/About/History/Online/About/History.aspx?hkey=788f98ad-be60-47ef-afc7-ae3c2666a087).
3 The Evolution of the Association of Defense Trial Attorneys 3 (online at https://adtalaw.com/assets/pdf/HISTORY_BOOK_WEB_1-25_2023.pdf).
4 A History of DRI – Serving the Defense Bar (online at https://www.dri.org/docs/default-source/default-document-library/dri-history2005.pdf).
5 *Id.* at 7.
6 Id. at 11.

West Virginia lawyers, particularly DTCWV members, have been at the forefront of leadership and involvement in national defense groups.

DRI's first President in 1960 was Stanley Morris, Charleston. Stanley went on to become the President of the IADC (1954-55). Fast forward to 2008-09, when Marc Williams, Huntington, stepped into the DRI Presidency, to be followed in 2026 by Jill Rice, Bridgeport (who will also be West Virginia's first woman DRI President). Marc was DTCWV President in 1995-96, and Jill was President in 2016-17. Other DTCWV members who have served on the DRI Board of Directors include Steve Crislip (DTCWV President 1996-97) who served two terms, Neva Lusk, Charleston (DTCWV President 2005-06), and Tom Hurney, Charleston (DTCWV President 2008-09). Danielle Waltz, Charleston, is currently serving as a national representative.

Other members are heavily involved in DRI committees and seminar planning. Mychal Schulz, Charleston, Immediate Past President of DTCWV is the Chair of DRI's Appellate Skills Subcommittee. Eric Kinder, Charleston, is Vice Chair, DRI Employment and Labor Law Committee and received DRI's Albert H. Parnell Outstanding Program Chair Award, 2022. DTCWV Board alum Laurie Miller, Charleston, is now Vice President of Education and Meeting Services for DRI. Tom Hurney chaired DRI's Complex Medicine seminar in 2008, and Sexual Torts in 2024. Jeff Holmstrand, Wheeling, Laurie Miller, and Tom Hurney served on the DRI Law Institute. As a member, Jeff created and served as Chair of DRI's Class Action Seminar in 2011. Danielle Waltz and Laurie Miller both served as DRI Annual Meeting chairs.

West Virginia lawyers are also leaders in national "sister" defense groups. Lee Murray Hall, Huntington (DTCWV President 2010-11), is currently a Senior Director on the FDCC Board and served as co-chair of the 2019 FDCC Insurance Industry Institute. Jeff Van Volkenburg, Clarksburg, current DTCWV President-Elect previously was the Chair of DRI's Insurance Coverage and Claims Institute (ICCI) (2022), and the FDCC's Insurance Industry Institute (I-3) (2025). Debra Varner, Clarksburg, served on the FDCC Board. Mike Bonasso, Charleston, (DTCWV President 1997-98) was longtime co-chair of the FDCC Corporate Counsel College. Steve Crislip (2006-2007) and Tom Hurney (2017-18) served as Presidents of the ADTA. Eric Legg (2018-2019) IADC, Chair, Medical Liability Committee. Monté Williams (2023-24) served on the ADTA Executive Council to then become its Treasurer (2021-2022). Tom Hurney and Marc Williams served on the IADC Trial Academy faculty in 2013 and 2014 respectively, and Rob Aliff, Charleston, was on the faculty in 2024.

DTCWV members are also leaders in other national organizations. Debra Varner, Clarksburg, was the President of the American College of Coverage Counsel (ACCC) (2023-2024). Marc Williams served as President of the Lawyers for Civil Justice and the National Foundation for Judicial Excellence (NFJE), and State Chair of the ABA Council of Appellate Lawyers. Hurney now serves on the NFJE Board. Williams, Hurney, Mike Farrell, Huntington (1988-89), and Al Emch, Lewisburg (1985-6), are Fellows of the American College of Trial Lawyers; Williams, Hurney, and Emch served as Chairs of the West Virginia State Committee. Hurney and Farrell served as President of West Virginia's Chapter of the American Board of Trial Advocates Chapter; Tiffany Durst, Charleston, is the current state ABOTA President, and Rob Aliff is Vice President.

And last but not least, our Executive Director, Peggy Schultz, received DRI's first SLDO Executive Director of the Year Award (2015). DRI requested she start up and then became the Executive Director of the Tri-State Defense Lawyers Association (TDLA) (2007-2014) and the Defense Lawyers Association of Wyoming (DLAW) 2014-present. She was the first Executive Director of the Association of Defense Trial Attorneys (ADTA) (2006-2025).

Follow the footsteps of leaderss. Get involved.

BENEFITS OF MEMBERSHIP

Networking

Expand your personal network by meeting defense attorneys from all over West Virginia. Grow your potential referral network and grow your book of business.

Substantive Law Committees

Membership in DTCWV allows involvement and sharing of information within the various Substantive Law Committees. These Committees are free to join with your membership and include:

- Business/Commercial Law Committee
- Creditor's Rights
- Construction Law /Safety & Health Committee
- Employment Law
- Energy Law Committee
- Governmental Liability
- In-House Counsel
- Insurance Law
- Medical Liability
- Product Liability Committee
- Workers' Compensation Committee

Substantive Law Committees add great value to your membership through their individual committee email chatter, asking and answering questions to help gather particular information during case prep, latest court rulings, actions by a judge, etc.

Amicus Committee

DTCWV's Amicus Committee reviews requests for amicus support and makes recommendations to the Board of Governors as to whether the organization should add its voice on issues of importance to the West Virginia defense bar and the civil justice system more generally. In instances where the Board authorizes the submission of a brief, volunteers within the Amicus Committee prepare the filing. These amicus briefs are written free of charge.

IDEA Committee

Our IDEA Committee is committed to promoting diversity, inclusion, and equality. As a core value, and in pursuit of its organizational mission objectives, DTCWV celebrates and welcomes individual differences, including

unique backgrounds, perspectives, experiences, and talents, which allow the organization to provide optimal programming and services to its membership.

The committee holds regular meetings and plans a variety of activities.

Lobbyist

We have representation and a voice during legislative sessions by a lobbyist. This helps to keep the DTCWV Board and our members up-to-date on issues related to the civil defense profession, allowing us speak collectively when necessary.

Quarterly Newsletter & E-Mail Blasts

Stay up-to-date on West Virginia with our electronic newsletter "DTC Docket." Our newsletter is produced quarterly to provide members more insight into the activities of the organization, membership activities, CLE opportunities, firm updates, events, industry news and any other news of interest to our members. In addition, you can opt-in to a wildly successful e-mail list for update on case law from the West Virginia Supreme Court of Appeals, United States Supreme Court, 4th Circuit, and the Southern District and Northern Districts of West Virginia.

Young Lawyer Committee

The DTCWV Young Lawyer program is one of the most active in the country. There are quarterly lunchtime meetings held with at least one being a CLE. They prepare the annual Young Lawyer one-day seminar, provide writing opportunities for the *WV Defender*, Litigation Digest and speaking opportunities to help build their resume.

Expert Witness Search

Our Expert Witness Search allows DTCWV members to poll DTCWV membership for information on expert witnesses. Free of charge.

Additional CLE

- Annual Meeting Program
- Monthly Free Webinars
- Substantive Committee Lunchtime Webinars
- Women in the Law Committee Initiatives
- Alternating Years:
    - Deposition Boot Camp
    - Trial Academy
    - Expert Witness Seminar
    - Discovery Seminar
- Young Lawyer Lunchtime Meetings
- Periodical Managing Partner Seminars

Social Media

DTCWV can be found on the following social media platforms. Join today!

Twitter: @DefenseDTCWV

Facebook: https://www.facebook.com/Defense-Trial-Counsel-of-West-Virginia-831684940350056/

LinkedIn: Find the DTCWV by doing a search from your personal profile.

Social Events

- Charleston Member and Summer Law Clerk Social
- Morgantown Member and Summer Law Clerk Social
- Women In the Law Luncheons around the state

DTCWV'S MISSION – JOIN US!

To bring together attorneys who defend individuals and corporations in civil litigation for the purposes of elevating the standards of West Virginia trial practice; supporting and advocating for the improvement of the adversary system of jurisprudence; and increasing the quality of services rendered by the legal profession to the citizens of West Virginia.