

2015-2016

# United States District Court Eastern District of New York

ALTERNATIVE DISPUTE RESOLUTION REPORT  
JULY 1, 2015-JUNE 30, 2016

ROBYN WEINSTEIN, ADR ADMINISTRATOR  
HON. ROBERT M. LEVY, USMJ, ADR OVERSIGHT JUDGE

EDNY ADR DEPARTMENT | 225 CADMAN PLAZA EAST BROOKLYN, NY 10021

## PROGRAM OVERVIEW

The Eastern District of New York (EDNY) is a trial-level federal court that serves Kings, Queens, Richmond, Nassau and Suffolk Counties, with courthouses located in Brooklyn and Central Islip. The EDNY Alternative Dispute Resolution (ADR) Department administers arbitration and mediation services for civil cases filed in the EDNY. The ADR Department is overseen by the ADR Judge, ADR Administrator, Arbitration Clerk, and ADR Department staff.

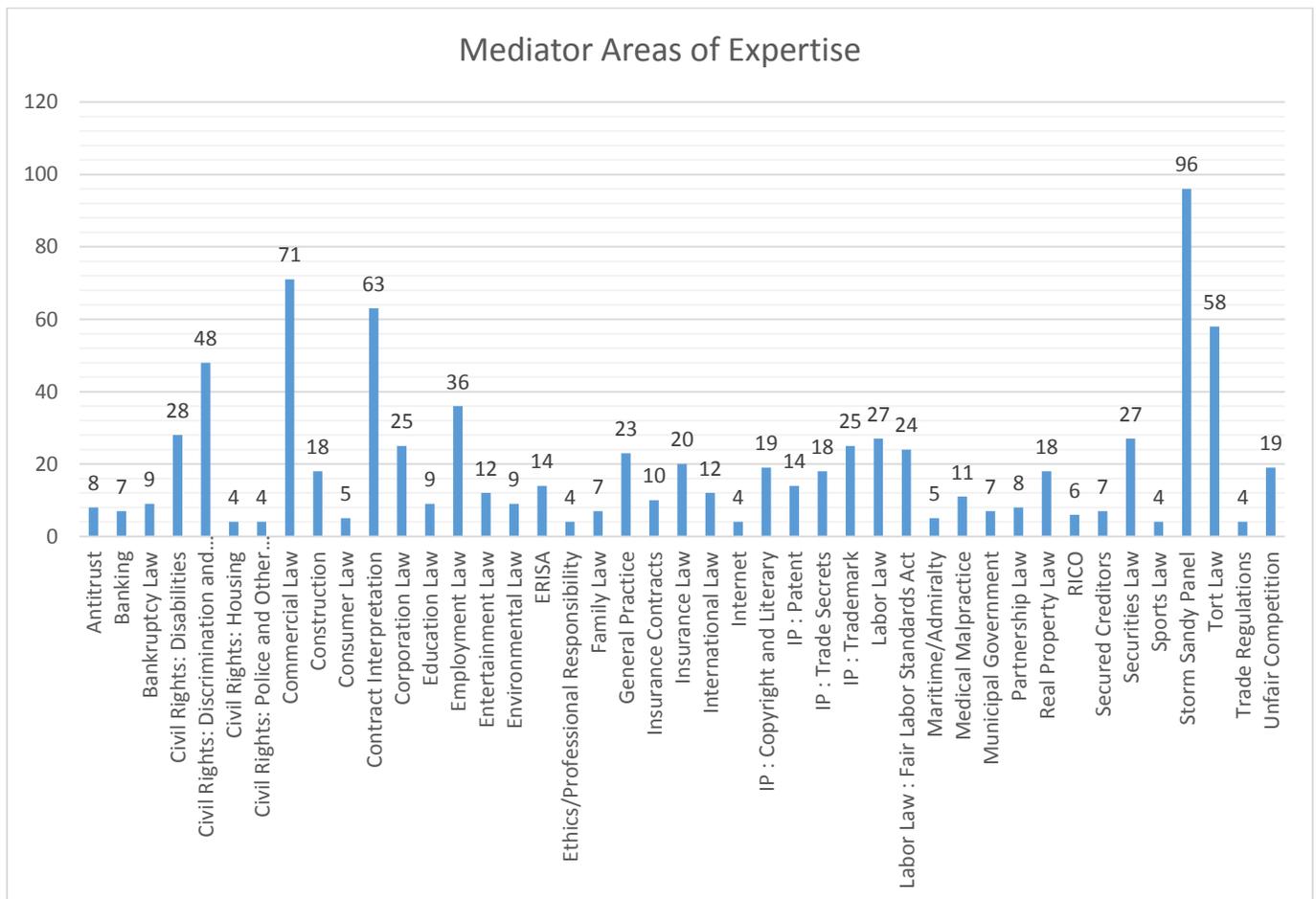
## EDNY MEDIATION PROGRAM

### MEDIATION PANEL

There are one hundred and sixty-seven (167) mediators on the EDNY Mediation Panel. EDNY litigants may search for and review biographies for EDNY Mediation Panel members on the EDNY ADR Website at: <https://www.nyed.uscourts.gov/adr/Mediation/displayAll.cfm>.

The EDNY ADR Department also administers the EDNY Hurricane Sandy Mediation Panel, which was established in 2014 to expedite the resolution of claims filed in the aftermath of Hurricane Sandy. There are ninety-six (96) mediators admitted to the EDNY Hurricane Sandy Mediation Panel, of which forty-three (43) Hurricane Sandy Panel members are admitted solely to the Sandy Panel, and fifty-three (53) are full EDNY Mediation Panel members.

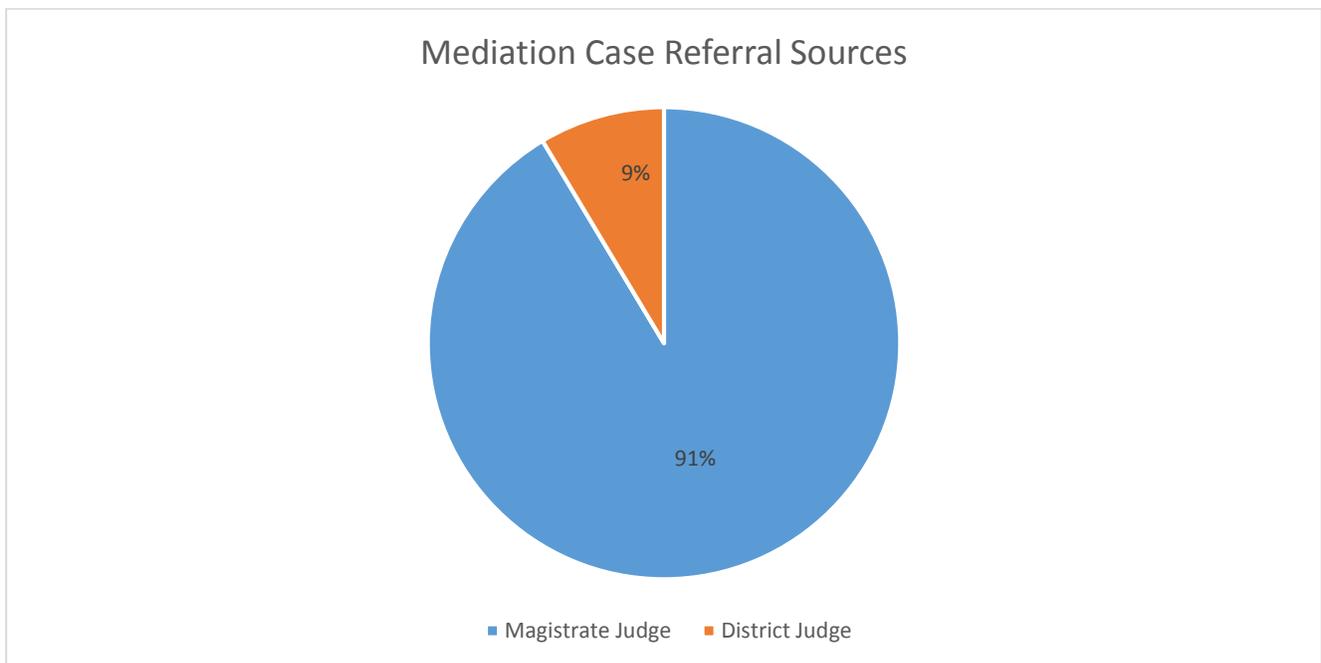
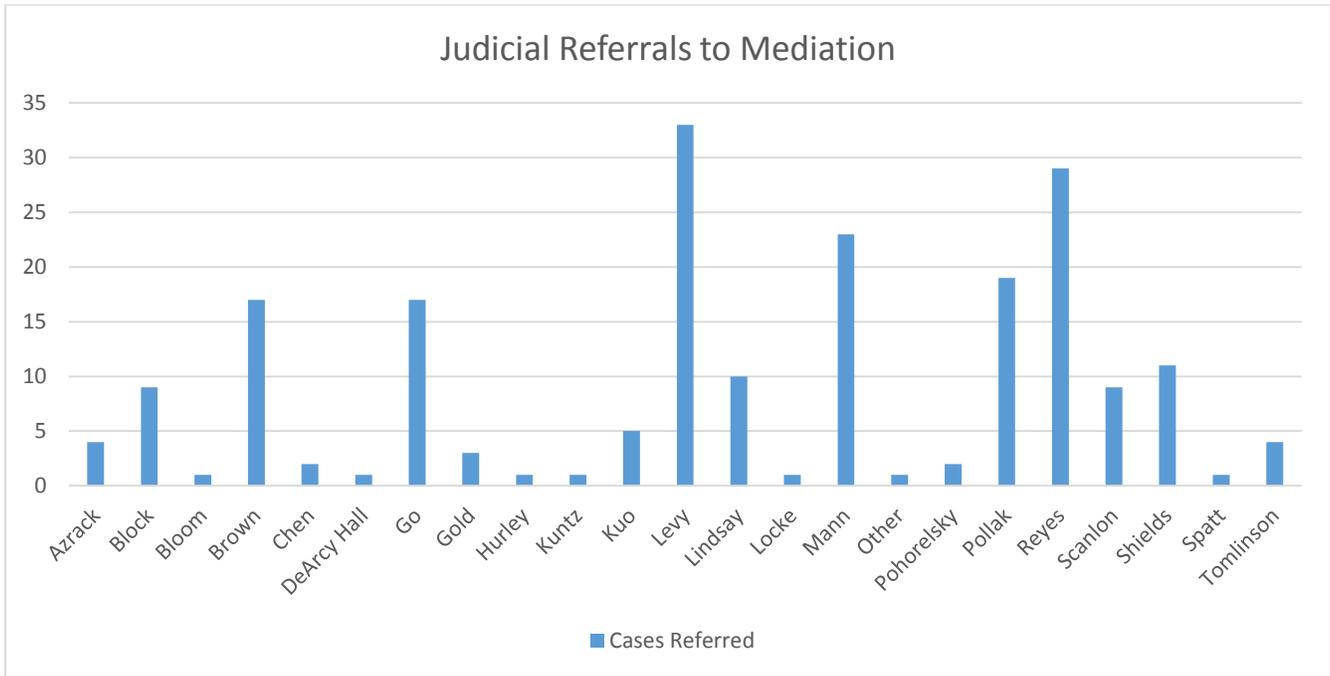
The following chart illustrates the number of EDNY panel mediators qualified in each area of expertise:



## MEDIATION CASE REFERRALS

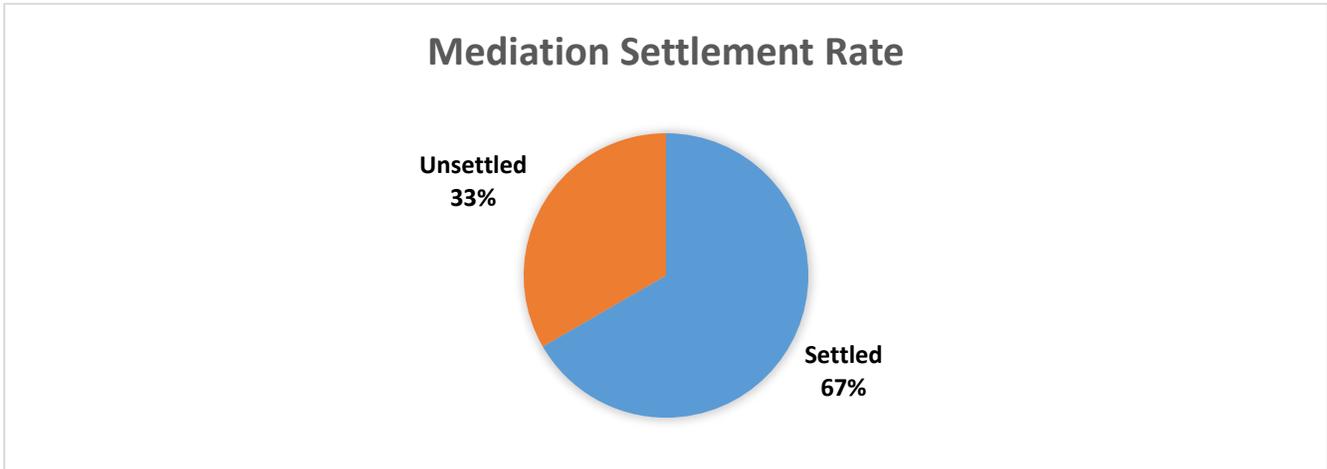
Between July 1, 2015 and June 30, 2016, two hundred and twenty-one (221) cases were referred to the mediation program. Cases are referred to the mediation program from both the Brooklyn and Central Islip courthouses. Of the cases referred to mediation, 65% were from the Brooklyn courthouse, and 35% were referred to mediation from the Central Islip courthouse.

The majority (91%) of cases referred to the EDNY mediation program are referred by Magistrate Judges. District Judges are responsible for 9% of mediation referrals.



## MEDIATION SETTLEMENT RATES AND CASE STATUS

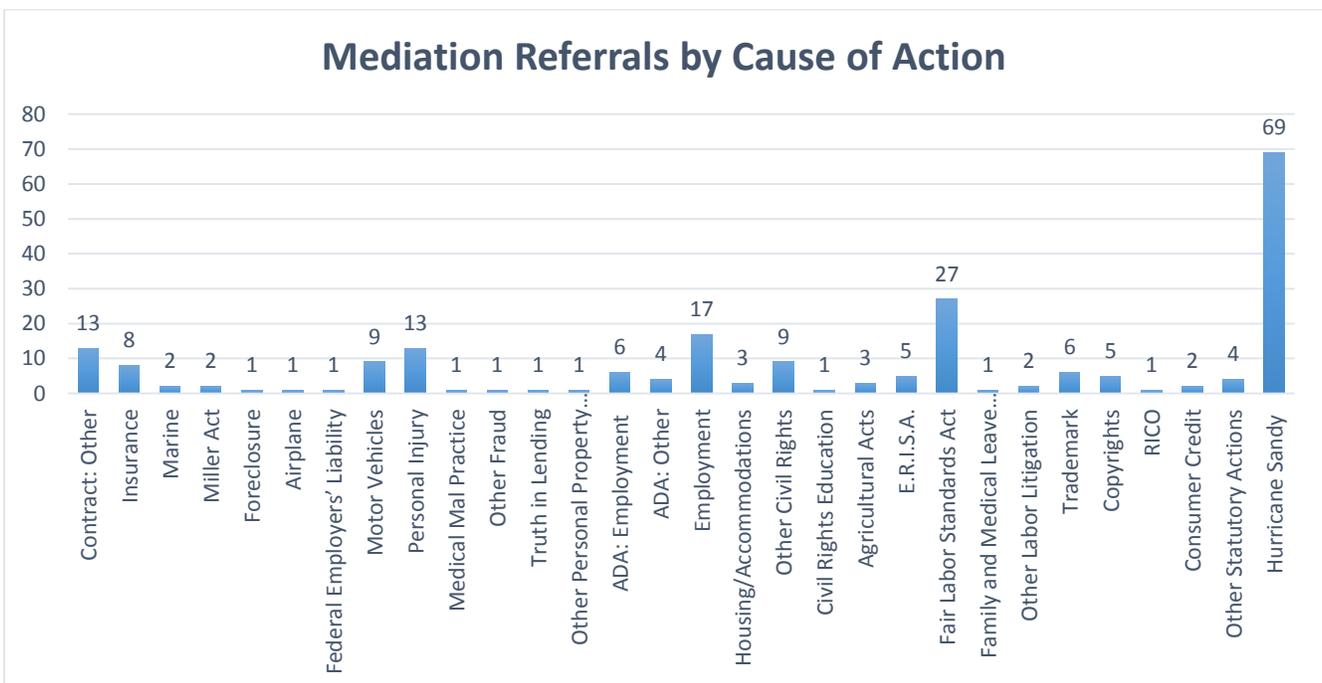
During the period of July 1, 2015 to June 30, 2016, two hundred and twenty-one cases (221) were referred to the mediation program. Of those cases referred, mediation was completed in one hundred and forty-nine (149) cases. Of cases where mediation was completed, 67% were settled as a result of mediation. (This settlement rate does not reflect cases that were resolved after litigation resumed.)



Of the remaining seventy-two (72) cases where mediation did not occur, twenty-four (24) cases settled prior to mediation, and ten (10) cases did not proceed to mediation due to a stay of proceedings or other motion. Thirty-eight (38) cases referred to the mediation program are still pending.

## MEDIATION REFERRAL BY CAUSE OF ACTION

The following chart illustrates the types of cases referred into the EDNY Mediation Program. Hurricane Sandy cases were the most frequently referred followed by Fair Labor Standards Act cases, employment discrimination, personal injury and contract matters.



Of the two hundred and twenty-one (221) cases referred into the mediation program, 30% were referred to the Hurricane Sandy Mediation Panel. In 2014, the EDNY directed all Hurricane Sandy cases to mediation. This was the first automatic referral to mediation ever instituted by the court. Between July 1, 2015 and June 30, 2016, 80% of the Hurricane Sandy matters referred to mediation were settled. Based upon the high rate of settlement, the automatic referral of Hurricane Sandy matters to mediation proved to be an effective and efficient way to resolve the large number of disputes arising from damage caused by the storm.

**MEDIATION SETTLEMENT RATES BY CAUSE OF ACTION AT MEDIATION**

<b>Cause of Action</b>	<b>Sub-Category</b>	<b>Percentage Settled</b>	<b>Settled</b>	<b>Unsettled</b>	<b>Did not Proceed to Mediation</b>	<b>Pending</b>	<b>Total</b>
<b>Contract Actions</b>							
	Contract: Other	28%	2	5	0	6	13
	Insurance	100%	4	0	2	2	8
	Insurance: Hurricane Sandy	80%	40	10	12	7	69
	Marine	100%	1	0	0	1	2
	Miller Act	100%	1	0	0	1	2
<b>Real Property Actions</b>							
	Foreclosure	100%	1	0	0	0	1
<b>Tort Actions</b>							
	Airplane	N/A	0	0	0	1	1
	Federal Employers' Liability	100%	1	0	0	0	1
	Motor Vehicles	66%	2	1	0	7	10
	Personal Injury	11%	1	8	2	2	13
	Personal Injury – Medical Mal Practice	0%	0	1	0	0	1
<b>Personal Property Damage</b>							
	Other Fraud	100%	1	0	0	0	1
	Truth in Lending	N/A	0	0	1	0	1
	Other Personal Property Damage	100%	1	0	0	0	1

<b>Cause of Action</b>	<b>Sub-Category</b>	<b>Percentage Settled</b>	<b>Settled</b>	<b>Unsettled</b>	<b>Did not Proceed to Mediation</b>	<b>Pending</b>	<b>Total</b>
<b>Civil Rights</b>							
	Americans with Disabilities: Employment	33%	1	2	0	3	6
	Americans with Disabilities: Other	50%	1	1	0	2	4
	Employment	58%	7	5	0	5	17
	Housing/Accommodations	100%	3	0	0	0	3
	Other Civil Rights	50%	2	2	1	5	10
	Civil Rights Education	100%	1	0	0	0	1
<b>Forfeiture and Penalty</b>							
	Agricultural Acts	66%	2	1	0	0	3
<b>Labor Laws</b>							
	E.R.I.S.A.	66%	2	1	1	1	5
	Fair Labor Standards Act	70%	7	3	8	9	27
	Family and Medical Leave Act	N/A	0	0	0	1	1
	Other Labor Litigation	50%	1	1	0	0	2
<b>Intellectual Property Rights</b>							
	Trademark	66%	2	1	1	2	6
	Copyrights	33%	1	2	0	2	5
<b>RICO</b>							
	RICO	0%	0	1	0	0	1
<b>Consumer Credit</b>							
	Consumer Credit	0%	0	1	0	1	2
<b>Other Statutory Actions</b>							
	Other Statutory Actions	100%	3	0	0	1	4
						<b>Total</b>	<b>221</b>

## **PARTICIPANT EVALUATION OF EDNY MEDIATORS**

The ADR Department requests that all mediation participants submit a post-mediation evaluation in order to assess each mediator's performance. From the period of July 1, 2015 – June 30, 2016 the EDNY ADR Department received seventy-two (72) evaluations.

A review of the post-mediation evaluations revealed the following data:

- 72% of respondents indicated that the mediation session had been helpful.
- 93% of respondents indicated that they would recommend their mediator to other litigants.
- 87% of respondents indicated that their mediator was well prepared.
- 80% of respondents indicated that the mediator was able to help the parties engage in a meaningful discussion of the case.
- 83% of respondents indicated satisfaction with the mediator's knowledge of the law.

Overall, the responses to the post-mediation evaluation indicate satisfaction with EDNY mediators' skills, legal knowledge, and ability to facilitate meaningful discussion.

## **MEDIATION ADVOCACY PROGRAM**

The EDNY ADR Department administers the Mediation Advocacy Program (MAP) which seeks pro bono counsel and pro bono mediators for pro se litigants in employment discrimination cases. As of the publication of this report fifteen (15) attorneys have volunteered to provide limited scope pro bono representation for pro se litigants in employment discrimination mediations.

Between July 1, 2015 and June 30, 2016, five (5) cases were referred to the MAP and five (5) pro se litigants were matched with limited scope counsel for the purpose of mediation. One (1) MAP case was settled in mediation, two (2) cases did not settle in mediation, and two (2) cases are still pending. All MAP cases that proceeded to mediation were provided with a pro bono mediator.

The EDNY ADR Department is engaged in activities to increase the number of volunteer attorneys participating in MAP. In February 2016, the EDNY ADR Department co-sponsored a Mediation Advocacy Training with the Southern District of New York (SDNY) ADR Department and the New York City Bar Association ADR Committee to train and recruit attorney advocates to participate in the EDNY MAP.

A second Mediation Advocacy Training is scheduled to take place on September 14, 2016 and the ADR Department plans to conduct these trainings bi-annually in order to recruit additional MAP advocates.

In February 2016 the EDNY ADR Department created a MAP webpage on the court's website which is available at: <https://www.nyed.uscourts.gov/pro-se-mediation-advocacy-program> The MAP page includes a Frequently Asked Questions Page for pro se parties, information and instructions for attorneys interested in volunteering for the program, and links to MAP forms.

## **EDNY ADR FAIR LABOR STANDARDS ACT MEDIATION INITIATIVE**

In response to the increase in claims arising under the FLSA, the EDNY ADR Department is working to increase the number of mediators on the EDNY Mediation Panel who are qualified to mediate FLSA matters.

On June 15, 2016, the EDNY ADR Department conducted a full-day FLSA Mediation Training at the Brooklyn Courthouse for current members of the EDNY Mediation Panel. Speakers included Rachel Bien, Esq., Magistrate Judge Steven M. Gold, Troy L. Kessler, Esq., James M. Lemonedes, Esq., Patrick M. McKenna, Esq., Jeffrey A. Myer, Esq., Ruth D. Raisfeld, Esq., Magistrate Judge Ramon E. Reyes, Jr., Carolyn D. Richmond, Esq., and Michael Starr, Esq. The agenda, trainer biographies, and materials distributed at the training are available on the EDNY ADR Website at:

[https://img.nyed.uscourts.gov/files/local\\_rules/Fair%20Labor%20Standards%20Act%20Update.pdf](https://img.nyed.uscourts.gov/files/local_rules/Fair%20Labor%20Standards%20Act%20Update.pdf).

Thirty-six (36) EDNY Panel Mediators attended the training. The bios of the panel mediators who attended the training have been updated to indicate that they have attended the EDNY FLSA Training. EDNY litigants may search the EDNY Mediation Panel for mediators with FLSA expertise on the EDNY ADR Website at: <https://www.nyed.uscourts.gov/adr/Mediation/displayAll.cfm>.

In July 2016, the ADR Department admitted nine new mediators to the EDNY Mediation Panel who have substantial experience mediating FLSA matters. New mediators to the panel attended one of four swearing-in ceremonies conducted by Magistrate Judges Levy, Gold, and Kuo.

The EDNY ADR Department will conduct a second FLSA Mediation Training at the Central Islip Courthouse on September 28, 2016 where an additional thirty-three (33) EDNY Panel Mediators will be trained in FLSA Mediation.

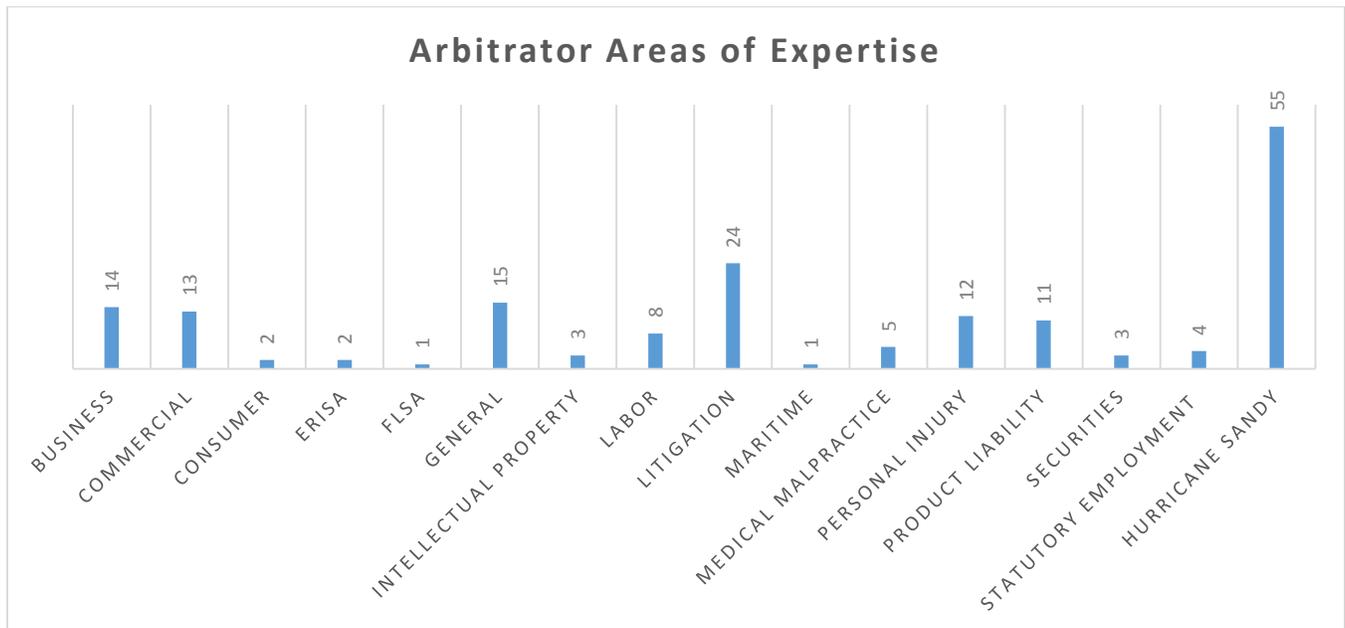
From July 1, 2015 – June 30, 2016, nine hundred and seventeen (917) FLSA cases were filed in the EDNY. FLSA cases constitute 12% of the total civil filings in the district, making FLSA the most frequently filed civil case category of civil litigation in the district. The second most frequently filed civil cases are civil rights cases with nine hundred and eleven (911) filed between July 1, 2015 and June 30, 2016.

# EDNY ARBITRATION PROGRAM

## ARBITRATION PANEL

There are fifty-two (52) arbitrators on the EDNY Arbitration Panel. EDNY litigants may search for and review biographies for EDNY Arbitration Panel members on the EDNY ADR Website at: <https://www.nyed.uscourts.gov/adr/Arbitration/displayAllArb.cfm>

The EDNY ADR Department also administers the EDNY Hurricane Sandy Arbitration Panel which was established in 2014 to expedite the resolution of claims filed in the aftermath of Hurricane Sandy. There are fifty-five (55) arbitrators admitted to the EDNY Hurricane Sandy Arbitration Panel, thirty-four (34) Hurricane Sandy Panel members are admitted solely to the Sandy Panel, and twenty-three (23) are full EDNY Arbitration Panel members who are also admitted to the Sandy Panel.

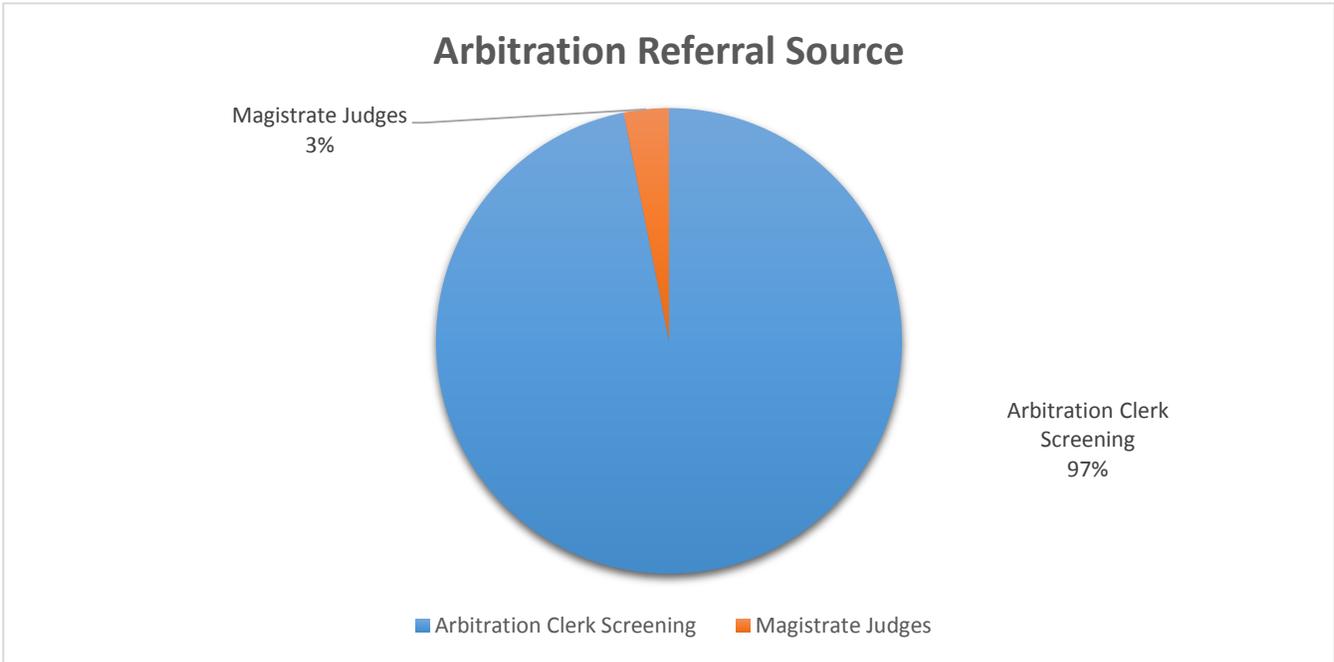


## ARBITRATION CASE REFERRAL SOURCES

In accordance with Local Civil Rule 83.7(d), the EDNY Arbitration Clerk designates all civil cases for compulsory arbitration (excluding social security cases, tax matters, prisoners' civil rights cases and any action based on an alleged violation of a right secured by the Constitution of the United States or where jurisdiction is based in whole or in part on Title 28, U.S.C. § 1343), wherein money damages only are being sought in an amount not in excess of \$150,000.00 exclusive of interest and costs.

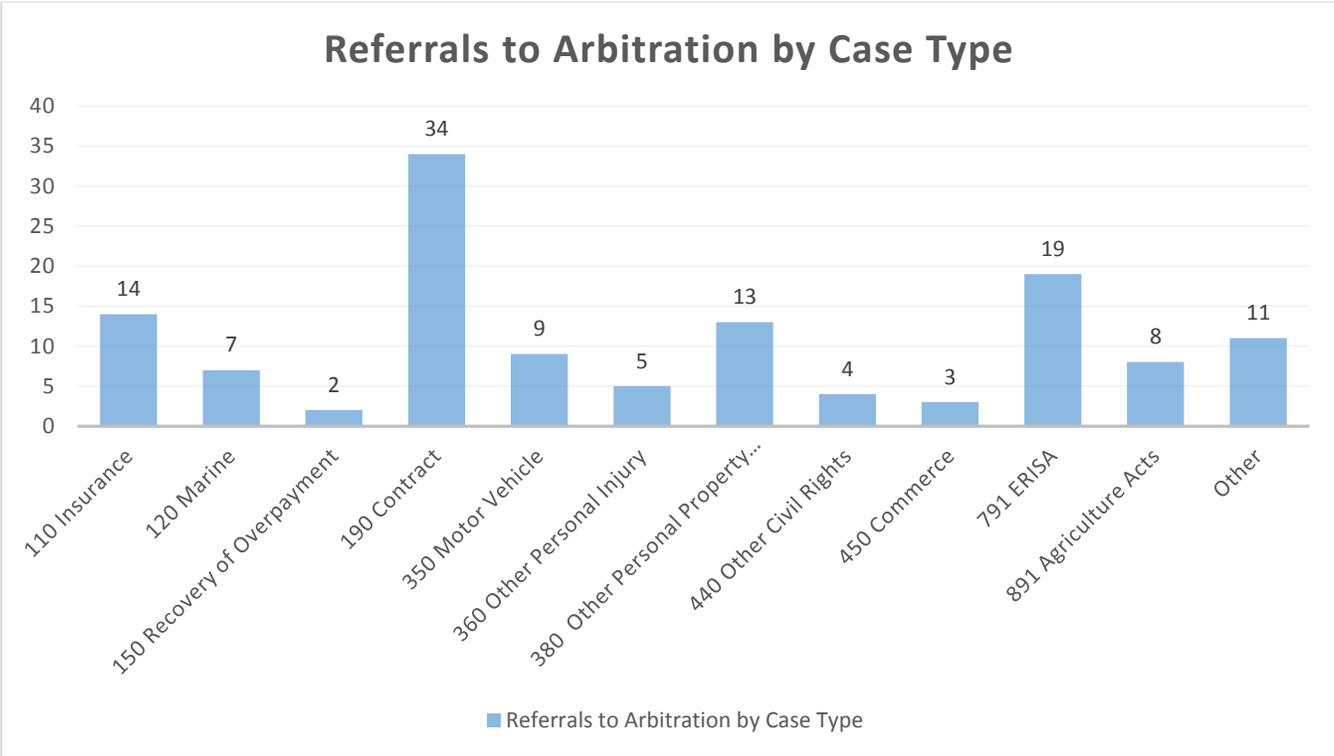
One hundred and twenty-nine (129) cases were referred to the EDNY court-annexed arbitration program between July 1, 2015 and June 30, 2016. Ninety-seven percent (97%) of cases are referred into the arbitration program by the EDNY Arbitration Clerk, who screens each civil case filed in the EDNY for eligibility for the arbitration program. The remaining 3% of referrals to arbitration are issued by Magistrate Judges on a case-by-case basis.

During the period of July 1, 2015 – June 30, 2016, 66% of referrals were from the Brooklyn courthouse, and 34% of cases were referred to arbitration from the Central Islip courthouse.



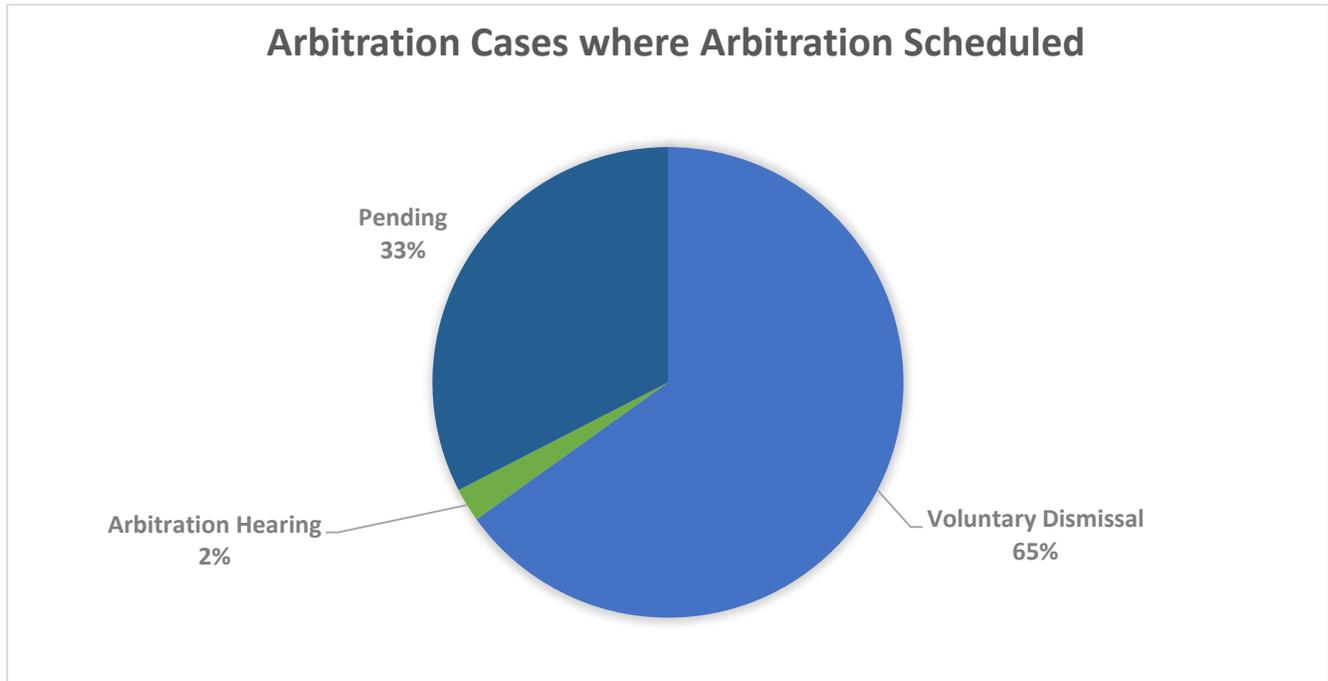
**ARBITRATION REFERRALS BY CAUSE OF ACTION**

The following chart illustrates the types of cases referred into the EDNY Arbitration Program. Contract disputes were the most frequent referral, followed by ERISA cases, insurance, personal property damage, and personal injury matters.



## ARBITRATION OUTCOMES AND CASE STATUS

The referral of a case to the court-annexed program effectively encourages parties to reach settlement early in the litigation. Of the cases referred to a program where an arbitration hearing was scheduled, 65% were voluntarily dismissed prior to the administration of the arbitration hearing. As of the publication of this report, 33% of cases are still pending and 2% of cases have proceeded to an arbitration hearing.



## ADR PROGRAM OUTREACH, TRAINING, AND EVENTS

ADR Department staff planned and participated in several programs and training events. These outreach efforts include presentations to the legal community, the dispute resolution community, and the EDNY judiciary to raise awareness about EDNY ADR Department programs and initiatives.

October 13, 2015	Presentation at New York Mediation Settlement Day
December 2, 2015	EDNY ADR Judicial Reception
December 15, 2015	Presentation to the New York State Bar ADR Committee
January 20, 2016	Presentation to NYCLA Federal Courts Committee
February 8, 2016	Presentation at NYU Law School Advanced Mediation and Dispute System Design Seminar
March 16, 2016	Presentation to EDNY Magistrate Judges regarding the EDNY Mediation Advocacy Program
April 6, 2016	Presentation regarding EDNY FLSA Mediation Initiative to the Federal Bar Association

May 10, 2016	Presentation to EDNY Judges at Central Islip Courthouse regarding Mediation Advocacy Program and FLSA Mediation Initiative
May 13, 2016	Presentation at Nassau County Bar Association Advanced Mediation Training
June 15, 2016	EDNY Fair Labor Standards Act Mediation Training
June 27, 2016	Presentation at New York City Bar Program entitled “Mediation in Federal Courts”
June 29, 2016	Presentation at New York City Bar Association Arbitration Training

### **EDNY ADR WEBSITE UPDATES**

In November of 2015 the EDNY ADR Department launched an updated website which includes a simplified homepage with easily accessible links to the EDNY mediator and arbitrator listings. The individual profiles for the mediation and arbitration panelists were updated, and seventy-four (74) inactive panel members were removed from the panel and website.

A new ADR Forms page was created which provides litigants with easy access to all documents and instructions related to EDNY ADR programs.