

2016-2017

United States District Court Eastern District of New York

ALTERNATIVE DISPUTE RESOLUTION REPORT
JULY 1, 2016 - JUNE 30, 2017

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 mediation and arbitration services for civil cases filed in the EDNY. The ADR Department is overseen by the ADR Oversight Judge, ADR Administrator, Arbitration Clerk, and ADR Department staff.

EDNY MEDIATION PROGRAM

MEDIATION PANEL

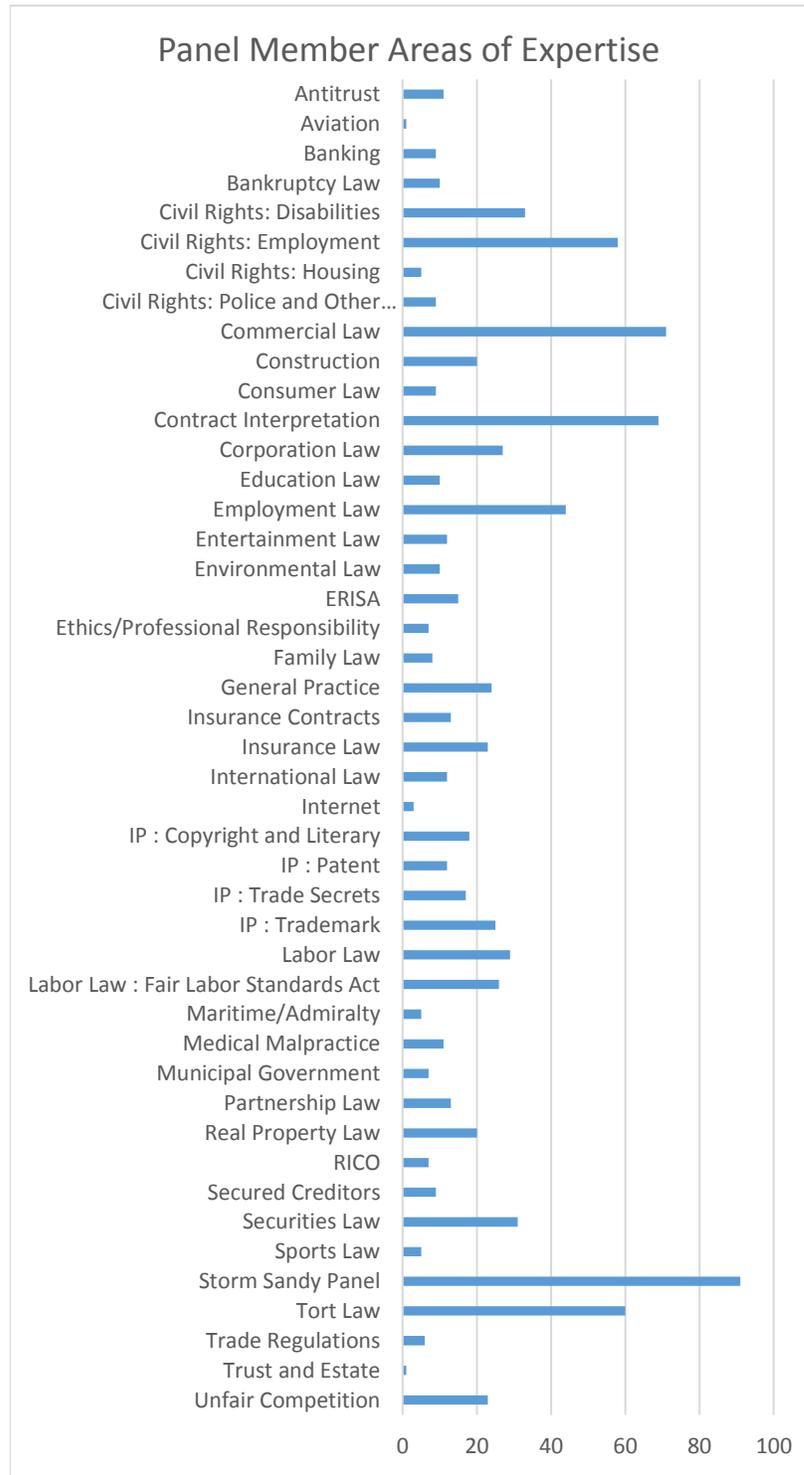
There are one hundred and seventy-two (172) mediators on the EDNY Mediation Panel. EDNY litigants may review biographies for EDNY Mediation Panel members on the EDNY ADR Website at: <https://www.nyed.uscourts.gov/adr/Mediation/displayAll.cfm>.

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 accompanying chart (right) illustrates the number of EDNY panel mediators qualified in each area of expertise.

Of the one hundred and seventy-two (172) mediators on the EDNY panel, forty-five percent (45%) were selected to mediate a case. The most frequently utilized mediator conducted 22 mediations.

One percent (1%) of cases referred to the program were mediated by mediators not listed on the EDNY Panel.

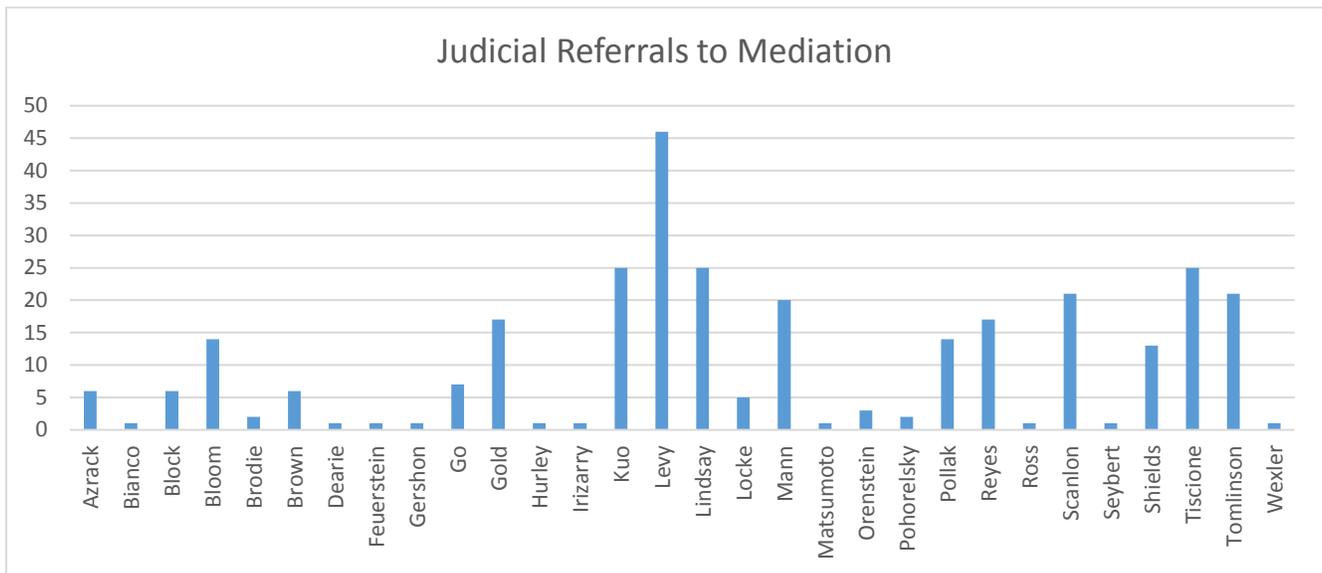


MEDIATION CASE REFERRALS

Between July 1, 2016 and June 30, 2017, three hundred and six (306) 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, seventy-four percent (74%) were from the Brooklyn Courthouse, and twenty-six percent (26%) were referred from the Central Islip Courthouse.

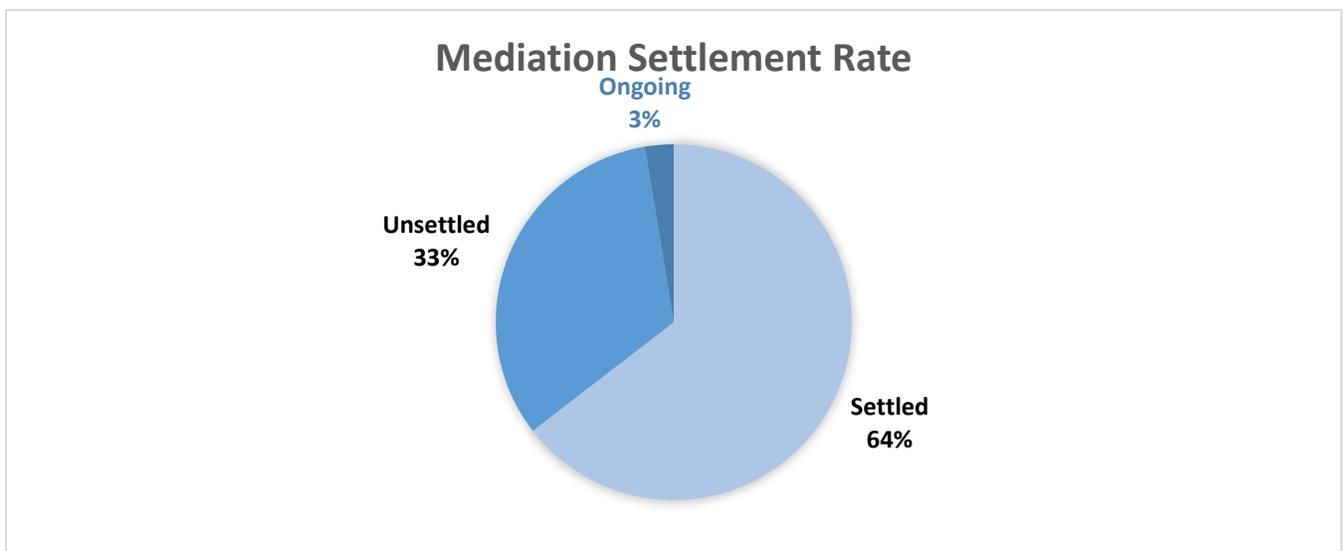
Ninety-two percent (92%) of cases referred to the EDNY mediation program are referred by Magistrate Judges. District Judges are responsible for eight percent (8%) of mediation referrals.

Mediation referrals increased by thirty-eight percent (38%) in comparison to this same reporting period last year.



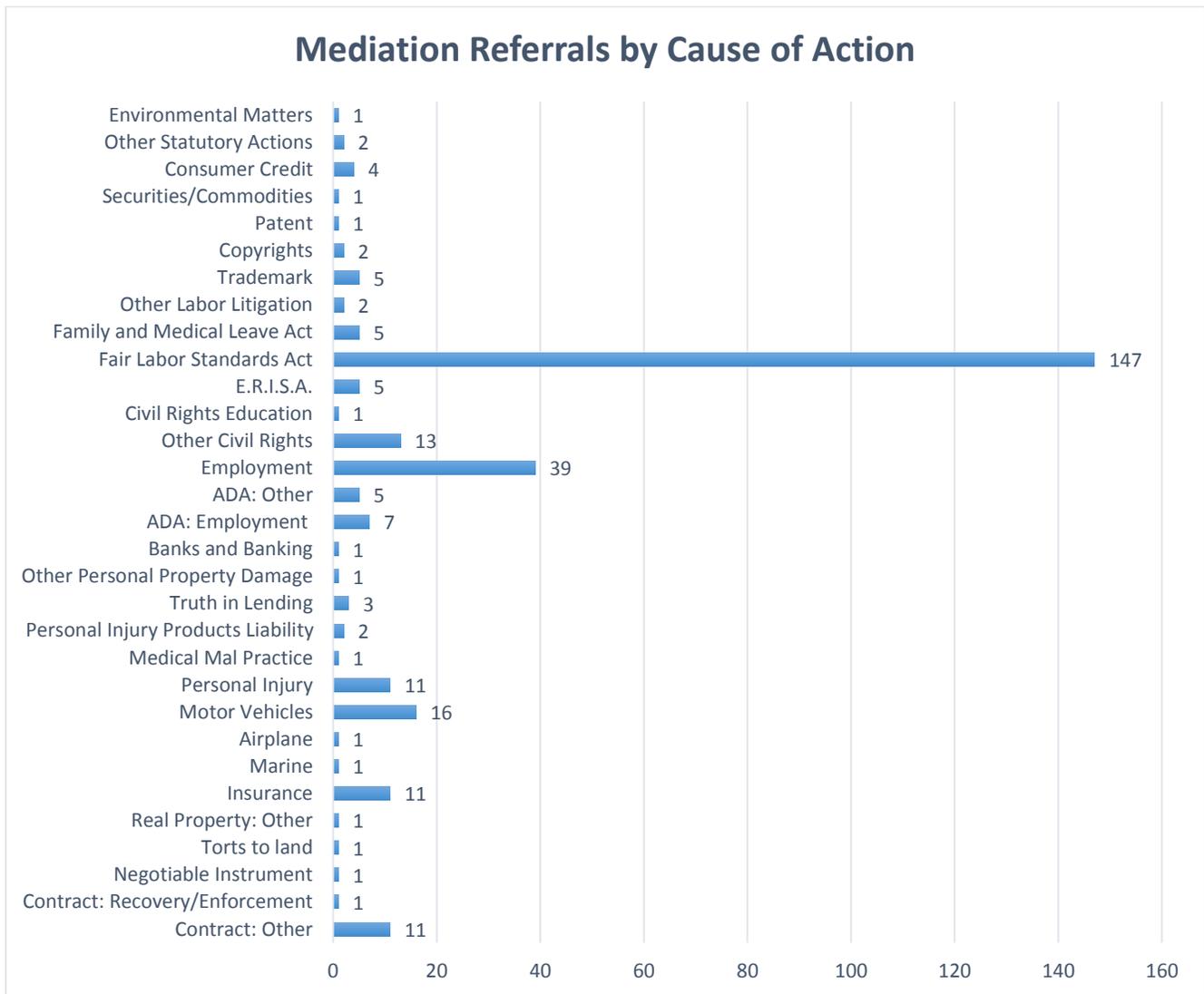
MEDIATION SETTLEMENT RATES AND CASE STATUS

Of those cases referred, a mediation session was conducted in two hundred and thirty-eight (238) cases. Sixty-four percent (64%) of cases referred to the mediation program were resolved.



MEDIATION REFERRAL BY CAUSE OF ACTION

The following chart outlines the referrals to the mediation program by cause of action.



Cases filed under the Fair Labor Standards Act (FLSA) constitute about ten percent (10%) of the total civil filings in the District, and forty-five percent (45%) of the mediation referrals (147 cases) were cases arising under the FLSA. Sixty-six percent (66%) of the FLSA matters referred to mediation during the period of this report were resolved.

The increase in FLSA case referrals marks a 444% increase over last year's FLSA case referrals during the same time-period. This substantial increase is likely the result of efforts by the ADR Department to increase the number of mediators on the panel qualified to mediate FLSA matters.

Employment discrimination cases are the second most common case-type referred to the EDNY mediation program. During the period of this report, thirteen percent (13%) of cases referred to mediation are employment discrimination matters. Between July 1, 2016 and June 30, 2017 fifty-two (52%) of employment discrimination matters referred to mediation were resolved.

MEDIATION SETTLEMENT RATES BY CAUSE OF ACTION

Cause of Action	Sub-Category	Percentage Settled	Settled	Unsettled	Did not Proceed to Mediation	Pending	Total
Contract Actions							
	Contract: Other	67%	6	3	0	2	11
	Contract: Recovery and Enforcement	0%	0	1	0	0	1
	Insurance	50%	5	5	1	0	11
	Negotiable Instrument	N/A	0	0	1	0	1
	Marine	0%	0	1	0	0	1
Real Property Actions							
	Real Property: Other	N/A	0	0	1	0	1
Tort Actions							
	Airplane	100%	1	0	0	0	1
	Motor Vehicles	55%	5	4	3	4	16
	Personal Injury	87%	7	1	2	1	11
	Personal Injury – Medical MalPractice	100%	1	0	0	0	1
	Personal Injury – Products Liability	50%	1	1	0	0	2
	Torts to Land	N/A	0	0	1	0	1
Personal Property Damage							
	Truth in Lending	50%	1	1	1	0	3
Civil Rights							
	Americans with Disabilities: Employment	60%	3	2	2	0	7
	Americans with Disabilities: Other	100%	2	0	1	2	5
	Employment	52%	16	15	6	2	39
	Civil Rights: Accommodations	100%	1	0	0	0	1

Cause of Action	Sub-Category	Percentage Settled	Settled	Unsettled	Did not Proceed to Mediation	Pending	Total
	Other Civil Rights	40%	2	4	6	1	13
	Civil Rights Education	0%	0	1	0	0	1
Labor Laws							
	E.R.I.S.A.	100%	3	0	2	0	5
	Fair Labor Standards Act	62%	74	46	23	4	147
	Family and Medical Leave Act	66%	3	2	0	0	5
	Other Labor Litigation	100%	2	0	0	0	2
Intellectual Property Rights							
	Patent	N/A	0	0	1	0	1
	Trademark	60%	3	2	0	0	5
	Copyrights	0%	0	1	0	1	2
RICO							
	RICO	50%	1	1	1	0	3
Banks and Banking							
	Banks and Banking	100%	1	0	0	0	1
Securities and Commodities							
	Securities and Commodities	100%	1	0	0	0	1
Consumer Credit							
	Consumer Credit	0%	0	1	3	0	4
Environmental Matters							
	Environmental Matters	N/A	0	0	0	1	1
Other Statutory Actions							
	Other Statutory Actions	N/A	0	0	1	1	2
						Total	306

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, 2016 – June 30, 2017 the EDNY ADR Department received four hundred and twenty-nine (429) evaluations. The number of evaluations received represents a 495% increase from the number of reports received during this reporting period last year.

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

- Seventy-nine percent (79%) of respondents indicated that the mediation session had been helpful.
- Ninety-one percent (91%) of respondents indicated that they would recommend their mediator to other litigants.
- Ninety-five percent (95%) of respondents indicated that their mediator was prepared.
- Eighty-three percent (83%) of respondents indicated that the mediator was able to help the parties engage in a meaningful discussion of the case.
- Ninety-three percent (93%) 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 AND PRO BONO MEDIATION

The EDNY ADR Department administers the court's 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, forty-three (43) attorneys have volunteered to provide limited scope pro bono legal representation for pro se litigants in employment discrimination mediations.

Between July 1, 2016 and June 30, 2017, twenty-one (21) cases were referred to the MAP and twenty (20) pro se litigants were matched with limited scope counsel for the purpose of mediation. Eight (8) MAP cases were settled in mediation, seven (7) cases did not settle in mediation, five (5) cases did not proceed to mediation, and one (1) case is still pending. All MAP cases that proceeded to mediation were provided with pro bono mediation services.

The EDNY ADR Department conducts bi-annual mediation advocacy trainings in order to recruit attorneys to participate as advocates in the EDNY MAP. On September 14, 2016 the EDNY ADR Department conducted a Mediation Advocacy Training at the EDNY Brooklyn Courthouse with thirty-six (36) attorneys in attendance. On March 16, 2017 the EDNY ADR Department conducted a second Mediation Advocacy Training at the EDNY Central Islip Courthouse at which twenty-eight (28) attorneys were trained.

During the period of this report, twenty-eight (28) cases were referred to the program for pro bono mediation. This includes cases that were referred into the Mediation Advocacy Program, as well as cases where a fee waiver was granted to one or both parties by the court.

Under EDNY Local Civil Rule 83.8 each EDNY mediator is required to conduct two pro bono mediations in order to maintain membership on the EDNY Mediation Panel.

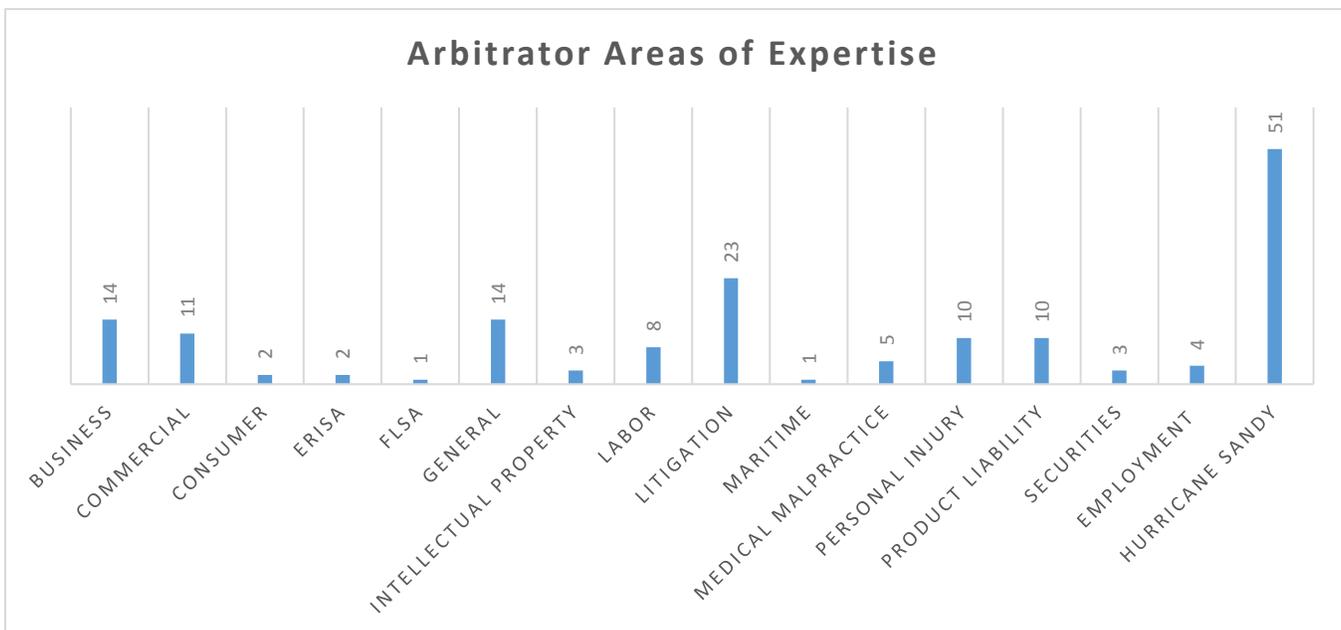
EDNY ARBITRATION PROGRAM

ARBITRATION PANEL

There are fifty (50) 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-one (51) arbitrators admitted to the EDNY Hurricane Sandy Arbitration Panel, thirty-one (31) Hurricane Sandy Panel members are admitted solely to the Sandy Panel, and twenty (20) are full EDNY Arbitration Panel members who are also admitted to the Sandy Panel.

During the period of July 1, 2016 – June 30, 2017, thirty-two percent (32%) of EDNY Panel Arbitrators were selected to arbitrate a case, and twelve percent (12%) of EDNY Panel Arbitrators conducted an arbitration hearing.

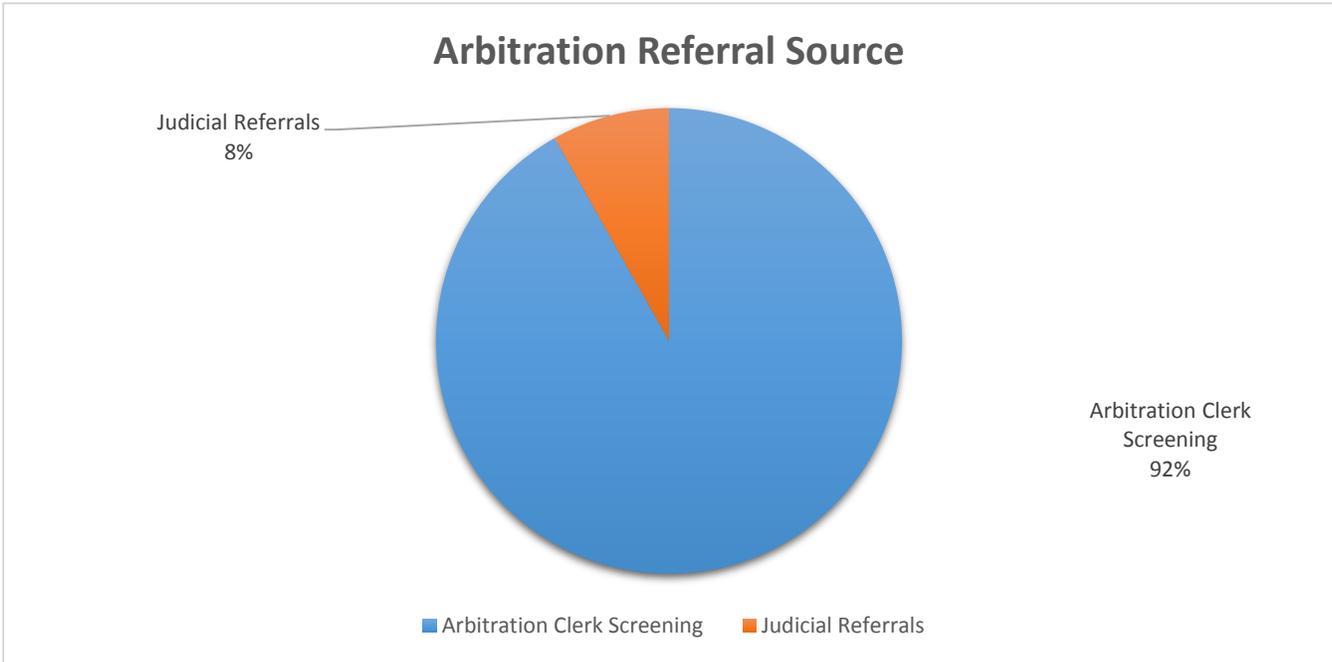


ARBITRATION CASE REFERRAL SOURCES

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.

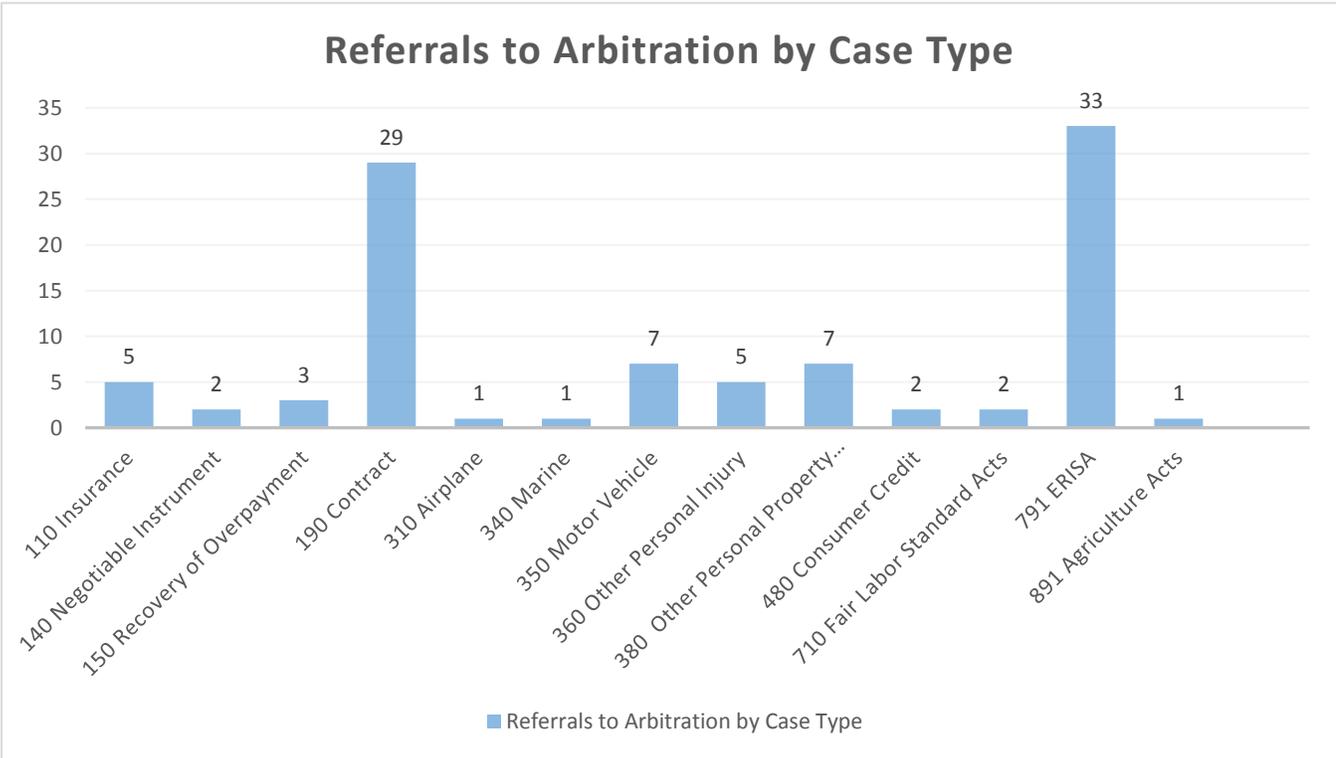
Ninety-eight (98) cases were referred to the EDNY court-annexed arbitration program between July 1, 2016 and June 30, 2017. Ninety-two percent (92%) of the referrals into the arbitration program were made by the EDNY Arbitration Clerk, who screens each civil case filed in the EDNY for eligibility for the arbitration program. The remaining 8% of referrals to arbitration are issued by District and Magistrate Judges on a case-by-case basis.

During the period of July 1, 2016 – June 30, 2017, seventy-three percent (73%) of arbitration referrals were from the Brooklyn courthouse, and twenty-seven percent (27%) were from the Central Islip courthouse.



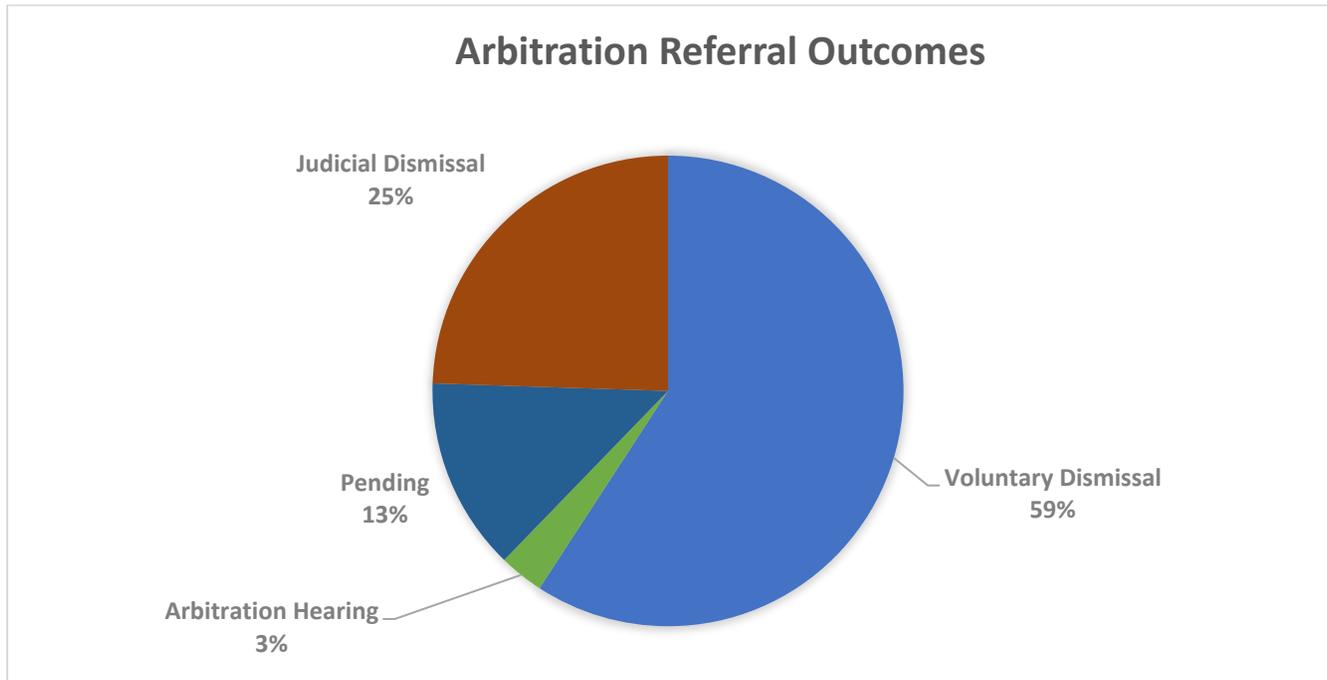
ARBITRATION REFERRALS BY CAUSE OF ACTION

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



ARBITRATION OUTCOMES AND CASE STATUS

The referral of a case to the court-annexed arbitration program effectively encourages parties to reach settlement early in the litigation. Of the cases referred to a program where an arbitration hearing was scheduled, fifty-nine (59%) were voluntarily dismissed prior to the administration of the arbitration hearing. As of the publication of this report, thirteen percent (13%) of cases are still pending and three percent (3%) of cases have proceeded to an arbitration hearing.



ADR PROGRAM OUTREACH, TRAINING, AND EVENTS

ADR Department staff planned, participated in, and attended 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.

September 14, 2016	EDNY Mediation Advocacy Program Training
October 20, 2016	Presentation at the Federal Bar Association Mediation Settlement Day – Touro Law School
October 24, 2017	FLSA Settlement Issues One Year After <i>Cheeks</i> (New York City Bar Association)
October 26, 2016	Presentation at EDNY Law Clerk Orientation
November 5, 2016	Presentation at Southern California Mediation Association Annual Conference
November 7, 2016	Presentation at the Cardozo Journal of Conflict Resolution Symposium
February 6, 2017	Presentation to NYU Advanced Mediation Clinic

March 1, 2017	EDNY Crowd Sourcing Mediator Ethics (Brooklyn)
March 16, 2017	EDNY Mediation Advocacy Program Training
March 31, 2017	EDNY Crowd Sourcing Mediator Ethics (Central Islip)
April 18-21, 2017	Attended ABA Dispute Resolution Section Conference
April 26, 2017	Participated in ADR Inclusion Network Formation Meeting
May 10, 2017	Presentation to EDNY Magistrate Judges
June 15, 2017	Presentation at ACR GNY Annual Conference
June 20, 2017	Presentation at Federal Bar Association <i>Cheeks</i> 2.0
June 21, 2017	Presentation at New York City Bar Association Arbitration Training

EDNY ADR ADVISORY COUNCIL

In January 2017 the EDNY ADR Department formed the EDNY ADR Advisory Council which serves in an advisory capacity for the EDNY ADR Department. The Council assists the ADR Administrator with panel admissions, the development of ethics guidelines and training for EDNY panelists, designing and implementing diversity initiatives, and creating a vision for the future of the Department. EDNY ADR Advisory Council Members serve a two-year term and attend six meetings annually.

Members of the EDNY Advisory Council include: Alida Camp, Vivian Berger, Cynthia L. Boyce, Richard P. Byrne, Pamela R. Esterman, Michael A. Levy, Patrick M. Mckenna, Deborah Reik, James G. Ryan, Michael Starr, David J. Weisenfeld, Usher T. Winslett, and Stephen P. Younger.