

2021

# United States District Court Eastern District of New York

## ALTERNATIVE DISPUTE RESOLUTION REPORT JANUARY 1, 2021 – DECEMBER 31, 2021

ROBYN WEINSTEIN, ADR ADMINISTRATOR  
HON. ROBERT M. LEVY, USMJ, ADR OVERSIGHT JUDGE  
BRENNAN B. MAHONEY, CLERK OF COURT

EDNY ADR DEPARTMENT | 225 CADMAN PLAZA EAST BROOKLYN, NY 11201

# 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 and the ADR Administrator, as well as Arbitration Clerk, Rita Credle, and ADR Clerk, Tina Priftakis.

## MEDIATION PROGRAM

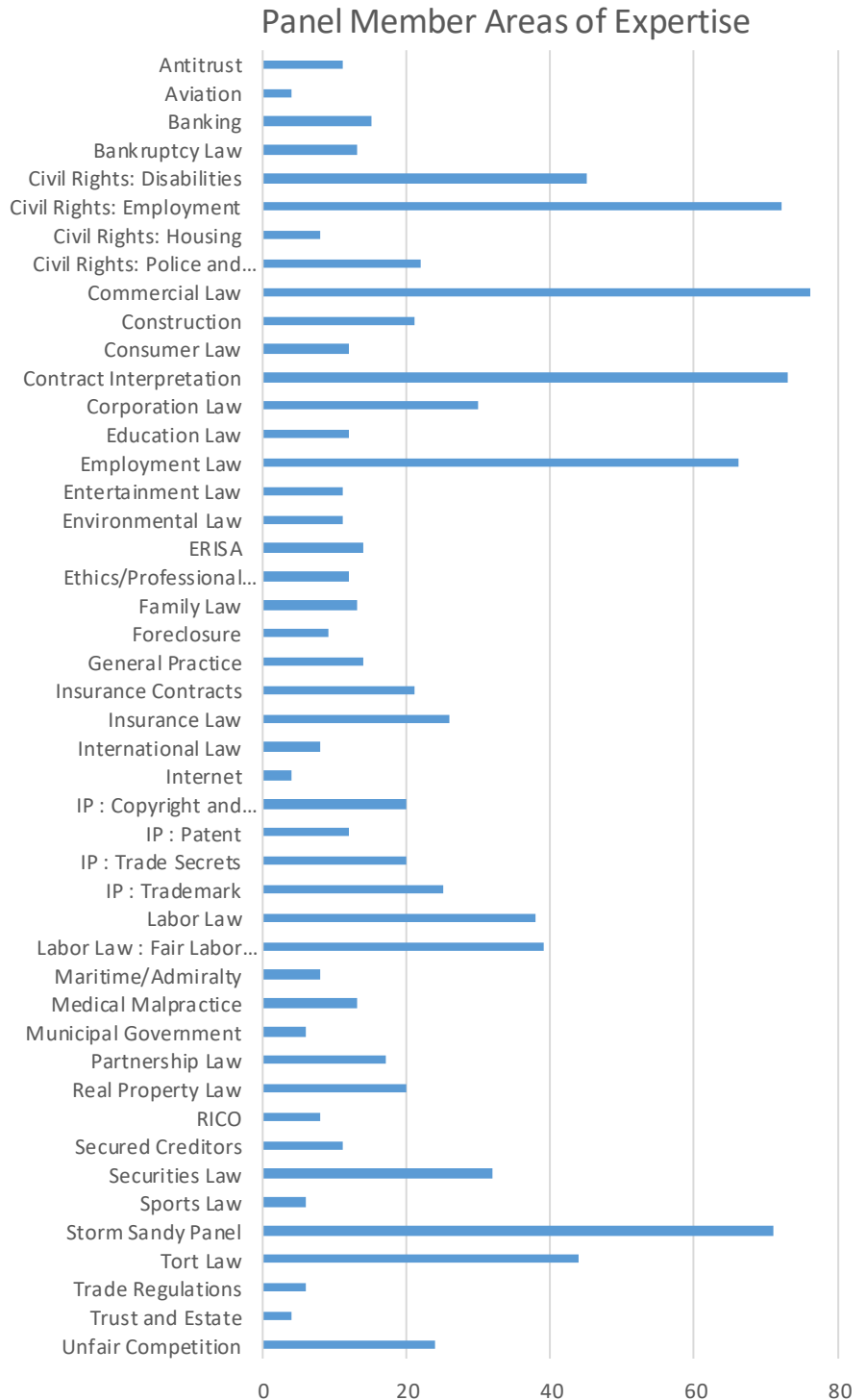
### PANEL MEDIATORS

There are one hundred and sixty-four (164) 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/>

The accompanying chart (right) illustrates the number of EDNY panel mediators qualified in each area of expertise. From January 1, 2021 through December 31, 2021, one hundred and forty-nine (149) mediators were selected to mediate eight hundred and twenty-seven (827) cases.

Of the one hundred and sixty-four (164) mediators on the EDNY panel, seventy-one percent (71%) were selected to mediate at least one case. Seven percent (7%) of cases referred to the program were mediated by private mediators not listed on the EDNY Panel.

The most frequently utilized EDNY mediator conducted sixty (60) mediations.

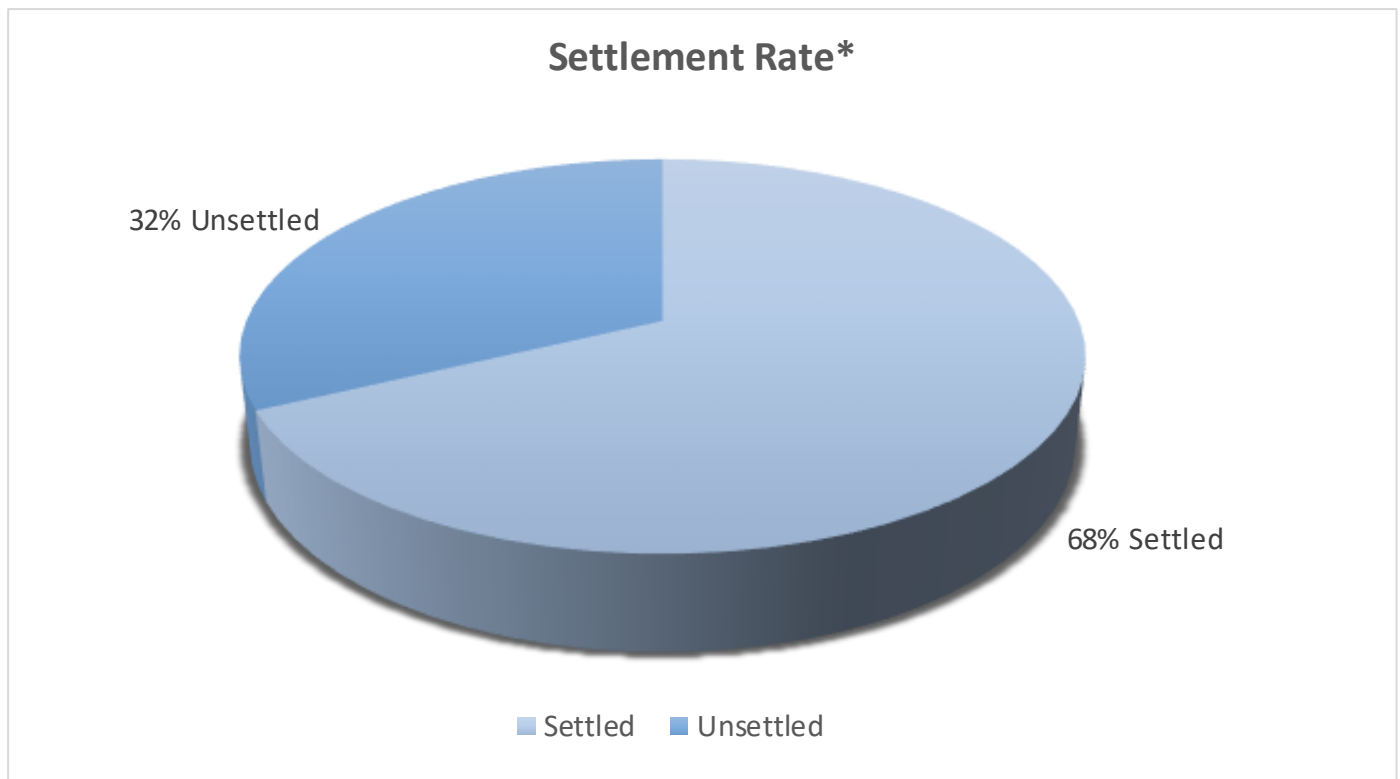


## MEDIATION CASE REFERRALS

From January 1, 2021 through December 31, 2021, nine hundred and five (905) cases were referred to the mediation program. Seventy-six percent (76%) of mediation referrals were from the Brooklyn courthouse, and twenty-four percent (24%) were from the Central Islip courthouse. Eighty percent (80%) of cases were referred to mediation by Magistrate Judges, and twenty percent (20%) were referred by District Judges. Mediation referrals increased by twenty-one percent (21%) in comparison to the same reporting period last year.

## MEDIATION SETTLEMENT RATES AND CASE STATUS

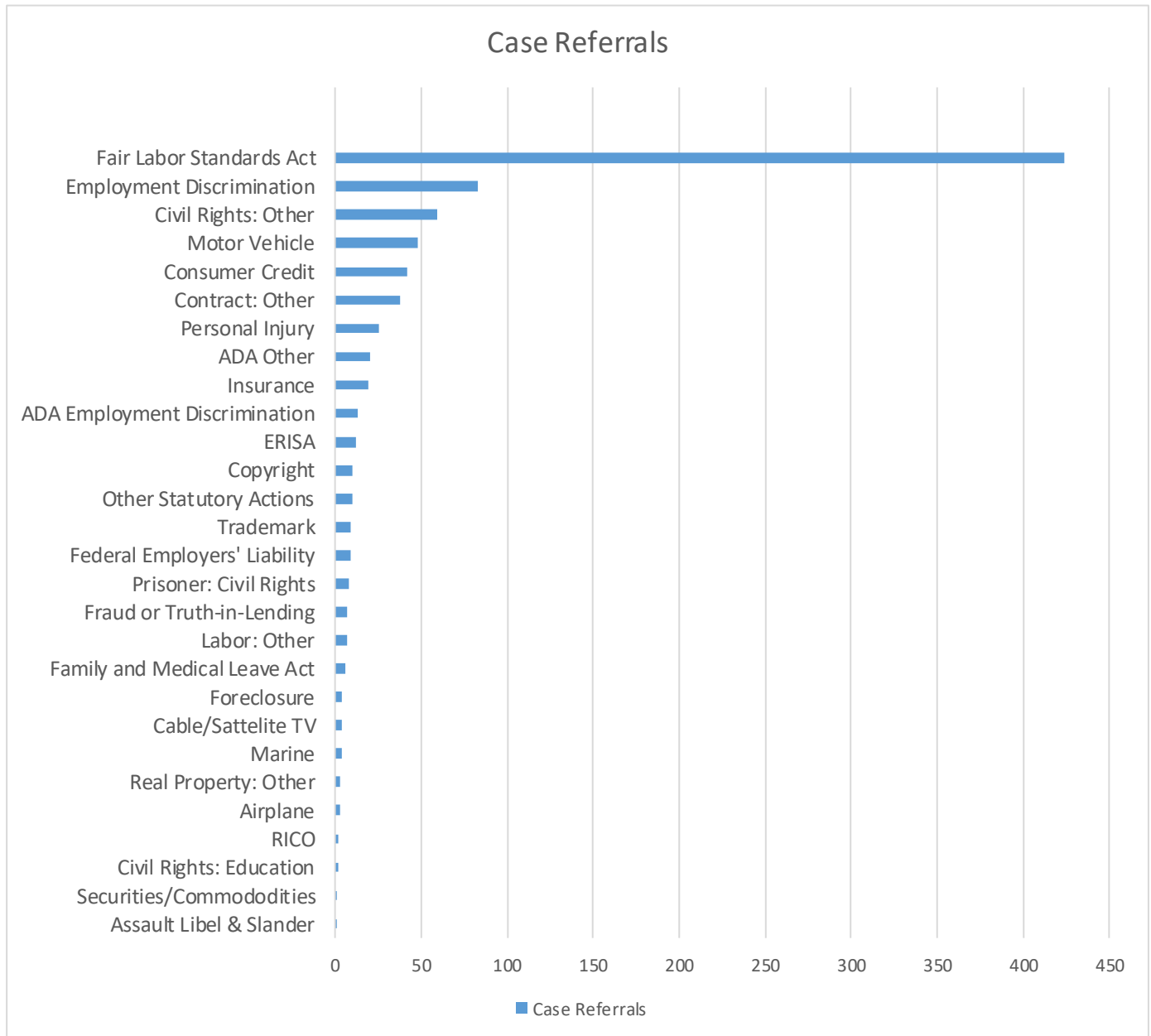
Sixty-eight percent (68%) of all cases referred to the mediation program were settled. Of those cases referred to the mediation program, a mediation session was held in seven hundred and thirty-six (736) cases.



\*This settlement rate includes matters that were resolved at the completion of a mediation session, as well as matters that resolved after a referral to the mediation program but prior to a formal mediation session. Some of the matters that resolved prior to a mediation session were resolved with mediator assistance and others were resolved through direct negotiation by the parties.

## 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 nine percent (9%) of the total civil filings in the District, and forty-six percent (46%) of the mediation referrals. Four hundred and twenty-four (424) cases referred to the mediation program were cases arising under the FLSA. Sixty-eight percent (68%) of the FLSA matters referred to mediation during the period of this report were resolved prior to or as a result of a mediation session. These cases were mediated by members of the EDNY's specialized FLSA Mediation Panel.

Employment discrimination cases are the second most common type of case referred to the EDNY mediation program. During the period of this report, eighty-three (83) cases referred to the mediation program were employment discrimination matters. From January 1, 2021 through December 31, 2021, sixty-five percent (65%) of employment discrimination matters referred to mediation were resolved prior to or as a result of a mediation session.

## MEDIATION SETTLEMENT RATES BY CAUSE OF ACTION

Cause of Action	Sub-Category	Percentage Settled	Settled	Unsettled	Did not Proceed to Mediation	Pending	Total
<b>Contract Actions</b>							
	Contract: Other	46%	13	15	10	0	38
	Insurance	57%	8	6	4	1	19
	Contract: Marine	0%	0	1	0	0	1
	Negotiable Instrument	0%	0	1	0	0	1
	Contract: Recovery/Enforcement	100%	1	0	1	0	2
	Contract: Product Liability	100%	1	0	0	0	1
	Contract/Franchise	100%	1	0	0	0	1
<b>Real Property Actions</b>							
	Real Property: Other	66%	2	1	0	0	3
	Real Property: Foreclosure	33%	1	2	1	0	4
<b>Tort Actions</b>							
	Airplane	66%	2	1	0	0	3
	Motor Vehicle	69%	25	11	9	3	48
	Personal Injury	45%	9	11	3	2	25
	Personal Injury: Med Mal	80%	4	1	0	0	5
	Assault Libel & Slander	0%	0	1	0	0	1
	Personal Injury: Product Liability	50%	3	3	1	1	8
	Federal Employers' Liability	57%	4	3	1	1	9
<b>Personal Property</b>							
	Truth in Lending	66%	4	2	0	1	7
	Marine	100%	3	0	0	1	4
	Prop. Damage Product Liability	100%	1	0	0	1	2
<b>Civil Rights</b>							
	Housing/ Accommodations	66%	2	1	0	0	3
	Americans with Disabilities: Other	83%	10	2	8	0	20

<b>Cause of Action</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 Cont'd</b>	Education	50%	1	1	0	0	2
	Employment	65%	44	24	9	6	83
	Prisoner: Civil Rights	14%	1	6	0	1	8
	Civil Rights: ADA Employment	54%	6	5	2	0	13
	Other Civil Rights	57%	26	19	10	4	59
<b>Labor &amp; Emp</b>							
	E.R.I.S.A.	75%	6	2	2	2	12
	FLSA	68%	242	114	59	9	424
	FMLA	83%	5	1	0	0	6
	Labor/Management Relations	50%	1	1	0	0	2
	Other Labor Litigation	66%	2	1	3	1	7
<b>Intellectual Property</b>							
	Copyright	50%	3	3	3	1	10
	Trademark	28%	2	5	2	0	9
<b>RICO</b>							
	RICO	50%	1	1	0	0	2
<b>Securities</b>							
	Securities and Commodities	100%	1	0	0	0	1
	Stockholder Suits	0%	0	1	0	0	1
<b>Consumer Credit</b>							
	Consumer Credit	65%	13	7	22	0	42
<b>Other Stat. Actions</b>							
	Cable/Satellite TV	50%	2	2	0	0	4
	Other Statutory Actions	66%	4	2	4	0	10
	Environmental Matters	100%	1	0	0	0	1
	Taxes	50%	1	1	0	0	2
	Forfeit/Penalty: Other	100%	1	0	0	0	1
	Telephone Consumer Protection Act	0%	0	1	0	0	1
	<b>Totals</b>		<b>457</b>	<b>259</b>	<b>154</b>	<b>35</b>	<b>905</b>

## **PARTICIPANT EVALUATION OF EDNY MEDIATORS**

The ADR Department requests that all counsel submit a post-mediation evaluation in order to assess each mediator's performance. From January 1, 2021 through December 31, 2021 the EDNY ADR Department received five hundred and sixty (560) evaluations.

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

- 78% of respondents indicated that the mediation session had been helpful.
- 93% of respondents indicated that they would recommend their mediator to other litigants.
- 94% of respondents indicated that their mediator was prepared.
- 80% of respondents indicated that the mediator was able to help the parties engage in a meaningful discussion of the case.
- 95% of respondents indicated satisfaction with the mediator's knowledge of the law.

Overall, the responses to the post-mediation evaluations 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 and matters arising under Section 1983. As of the publication of this report, there are ninety-four (94) attorneys approved by the court to provide limited scope pro bono legal representation for pro se litigants in employment discrimination mediations.

Between January 1, 2021 and December 31, 2021, fifteen (15) cases were referred to MAP and fourteen (14) pro se litigants were matched with limited scope counsel for the purpose of mediation.

All MAP cases that proceeded to mediation were provided with pro bono mediation services. Sixty-three percent (63%) of the cases referred to MAP resolved.

### **PRO BONO MEDIATION**

Under EDNY Local Civil Rule 83.8 each EDNY mediator is required to conduct two pro bono mediations annually in order to remain on the EDNY Mediation Panel. During the period of this report, seventy-one (71) cases were referred to the program for pro bono mediation services. This includes cases that were referred to the Mediation Advocacy Program, as well as cases where a fee waiver was granted to one or both parties by the court.

During the period from January 1, 2021 through December 31, 2021, the following EDNY Mediation Panel members provided their mediation services pro bono:

Richard Brewster, Richard P. Byrne, Alida Camp, Joseph DiBenedetto, Anthony DiCaprio, Felicia Farber, Hon. Steven M. Gold (Ret.), Julie Kowitz Margolies, Hon. Kathleen Roberts (Ret.), Michael Kreitman, Frank Floriani, Julian Friedman, Noah Hanft, Judah Greenblatt, Rachel Gupta, Ira Herman, Andrew Kimler, Michael A. Levy, Peter Mastaglio, Joseph Kevin McKay, Patrick M. McKenna, Charles M. Newman, Miles Orton,

Barry J. Peek, Deborah Reik, David J. Reilly, James. G. Ryan, Royce Russell, Vivien B. Shelanski, Martin J. Siegel, and Holly Weiss.

## **TRIAL READY RAPID MEDIATION PILOT**

In March 2021, the ADR Department launched the [Trial Ready Rapid Mediation Pilot](#), (“The Pilot”) which offers expedited mediation services for trial ready civil cases that were delayed due to the pandemic. This initiative was developed by the ADR Department with the guidance and support of the court’s leadership team including Chief Judge Margo Brodie, Clerk of Court Brenna Mahoney, and ADR Oversight Judge Robert M. Levy.

Between the period of March 1, 2021 and December 31, 2021, ninety-four (94) cases were referred to the Pilot, and forty percent (40%) of mediated cases were resolved. Cases referred to the Pilot were mediated within sixty days of the referral. Fifty percent (50%) of cases referred to the Pilot involved civil rights claims, and the remaining fifty percent (50%) were a mix of personal injury, insurance, consumer credit, and wage and hour cases.

Cases that entered the Pilot were referred by the assigned Judge or at the request of the parties. To encourage participation in the Pilot, some Judges asked the ADR Department to contact counsel in trial ready cases to propose participation in the Pilot.

Mediators for the Pilot included the Court’s panel mediators as well as several retired SDNY and EDNY U.S. Magistrate Judges including: Hon. James C. Francis (Ret.), Hon. Marilyn Go (Ret.), Hon. Steven M. Gold (Ret.), Hon. Frank Maas (Ret.), Hon. Henry Pitman (Ret.), Hon. Viktor Pohorelsky (Ret.), and Hon. Kathleen A. Roberts (Ret.), all of whom offered their services pro bono for trial ready cases where mediation fees were waived.

## **EDNY ADR DIVERSITY EQUITY AND INCLUSION INITIATIVES**

The EDNY ADR Department is committed to increasing the admission and selection of neutrals from historically underrepresented communities. Since 2020, ADR Department has distributed a voluntary and anonymous demographic survey to the EDNY Mediation and Arbitration panel members. In 2021, sixty-one (61) EDNY ADR panel members responded to demographic survey, and their responses serve as a baseline from which the ADR Department can work to promote greater diversity, equity and inclusion among EDNY neutrals.

In 2019 EDNY ADR launched a pilot program, entitled the EDNY Pilot Mediator Incubator. The goal of the Mediator Incubator is to offer talented junior attorneys, from a wide range of cultural, linguistic and professional backgrounds, an opportunity to gain practical experience mediating federal cases. After successful completion of the Mediator Incubator, candidates are eligible for, but not guaranteed, admission to the EDNY Mediation Panel. In 2021, Ralph Carter, Shira Feldman, Nadia Pervez, Nydia Shahajahan, and Matthew Weinick, were competitively selected to participate in the second class of the Pilot Mediator Incubator.

## **MEDIATION PANEL ADMISSIONS**

In 2021, the following individuals were competitively selected for admission to the EDNY Mediation Panel: Ira Block, Rhonda Epstein, Hon. Steven M. Gold (Ret), Rachel Gupta, Michael Kreitman, Rachel Nicotra, Susan Salazar, Evan Spelfogel, Holly Weiss.



## EDNY ARBITRATION PROGRAM

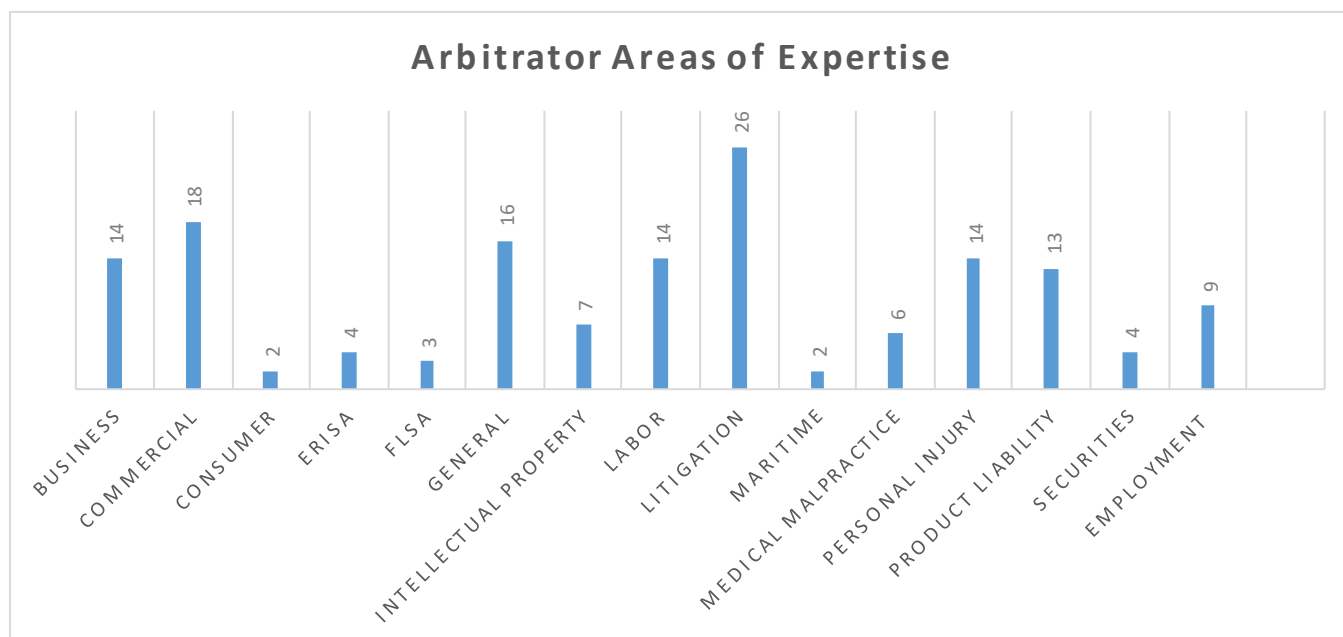
Compulsory arbitration is authorized under EDNY Local Civil Rule 83.7 for cases where money damages do not exceed \$150,000.00 (excluding social security cases, tax matters, prisoner civil rights cases and any action based on an alleged violation of a right secured by the United States Constitution or if jurisdiction is based in whole or in part on Title 28, U.S.C. § 1343). Upon issuance of an arbitration award, there is a thirty-day period during which parties may request a trial de novo.

### ARBITRATION PANEL

There are sixty-five (65) 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/>

During the period from January 1, 2021 through December 31, 2021, nineteen (19) EDNY Panel Arbitrators were selected to arbitrate forty (40) cases, and five (5) arbitrators conducted six (6) arbitration hearings.



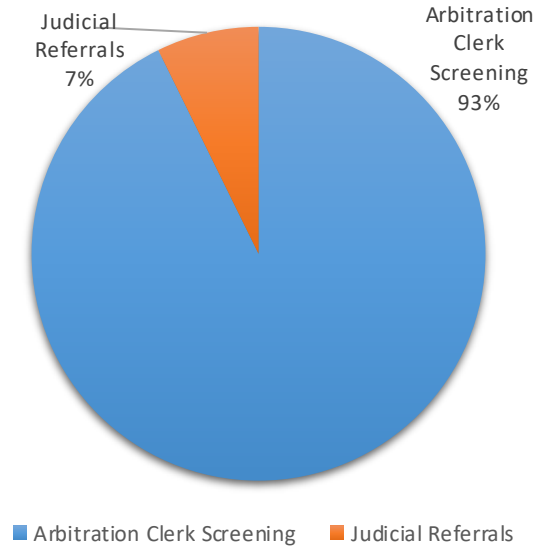
## ARBITRATION CASE REFERRAL SOURCES

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 being sought do not exceed \$150,000.00, exclusive of interest and costs.

Two hundred and six (206) cases were referred to the EDNY court-annexed arbitration program between January 1, 2021 and December 31, 2021. Sixty-three percent (63%) of arbitration referrals were from the Brooklyn courthouse, and thirty-seven (37%) were from the Central Islip courthouse.

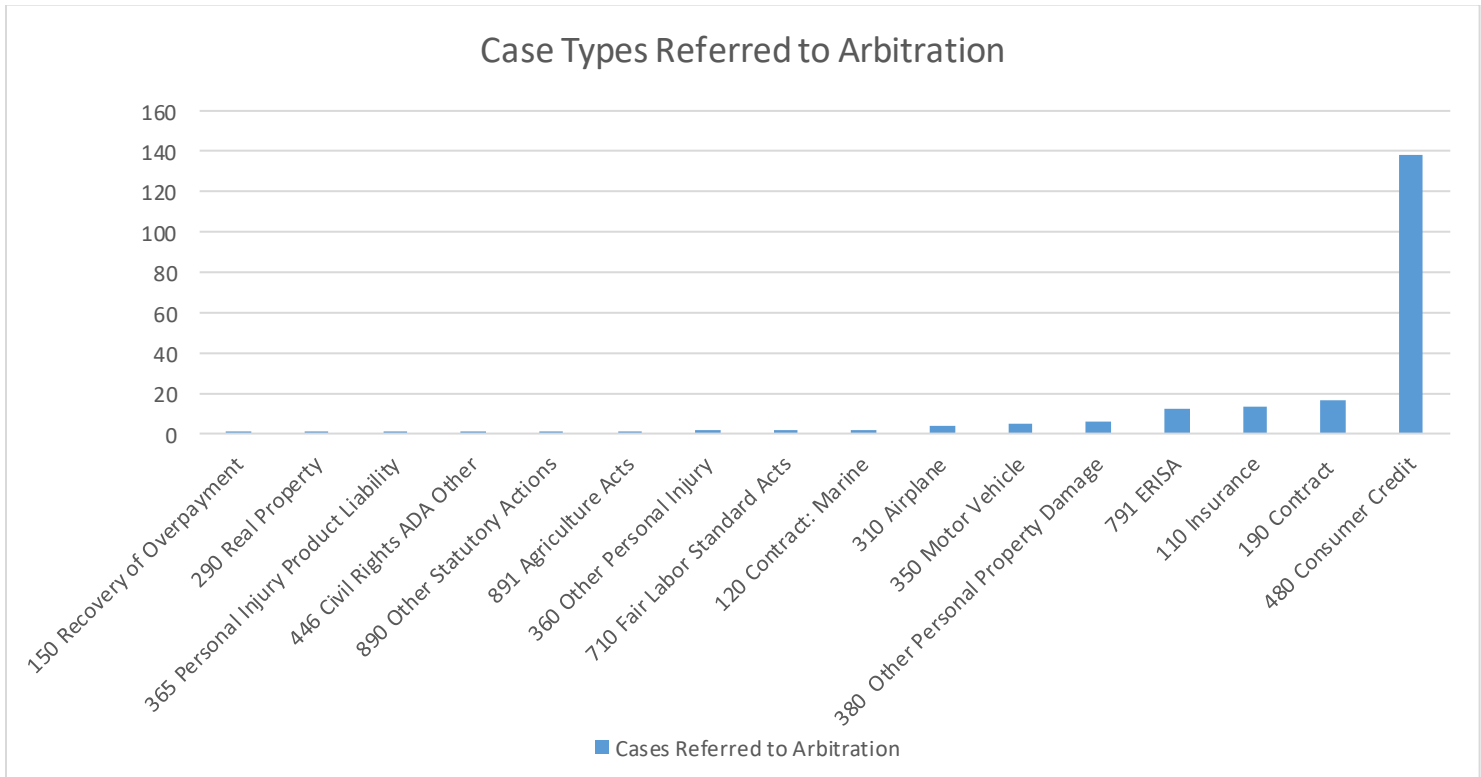
Ninety-three percent (93%) of the referrals into the arbitration program were made by the EDNY Arbitration Clerk, who screens each civil case filed in the EDNY for eligibility for the arbitration program. The remaining seven percent (7%) of arbitration referrals were issued by the assigned District Judge or Magistrate Judge on a case-by-case basis.

### Arbitration Referral Source



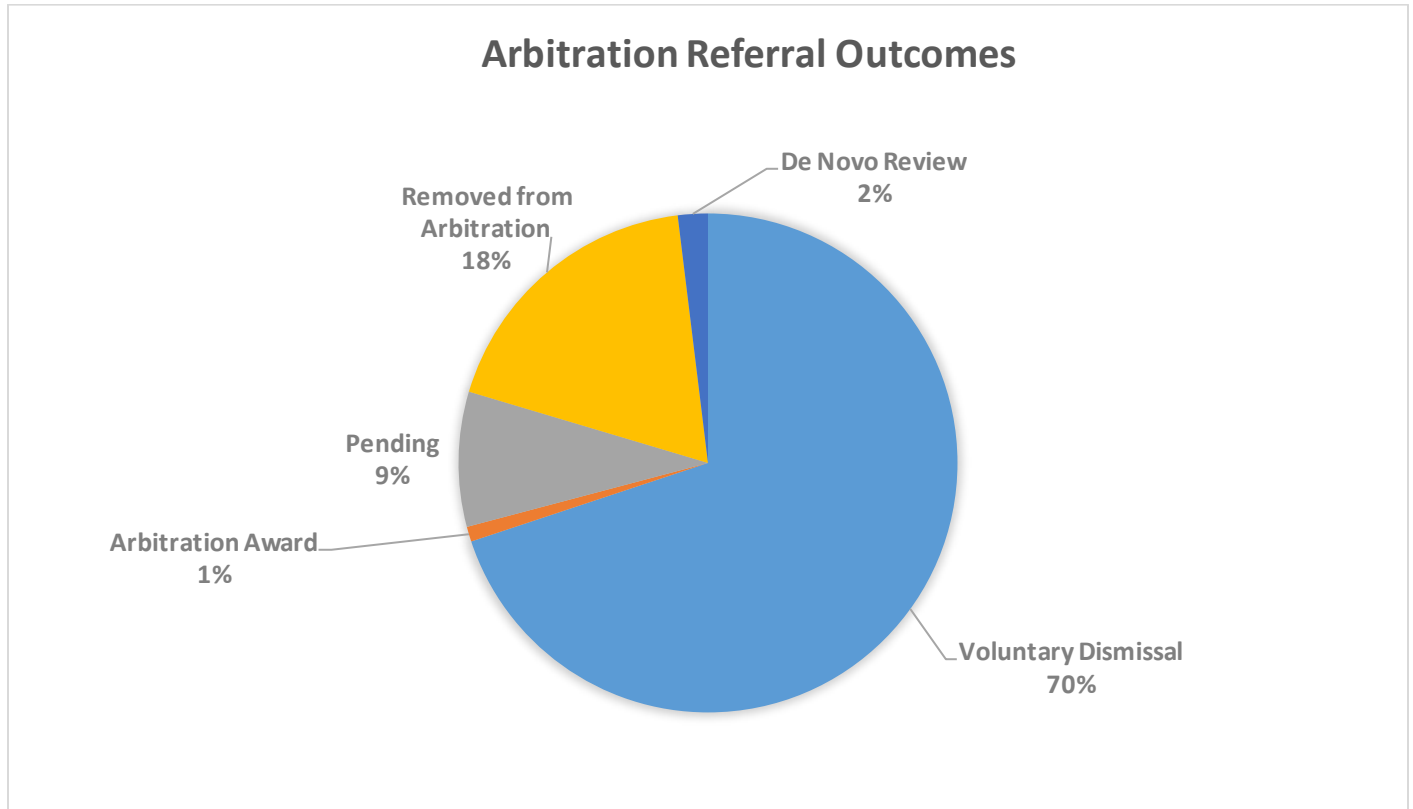
## ARBITRATION REFERRALS BY CAUSE OF ACTION

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



## ARBITRATION OUTCOMES AND CASE STATUS

A referral to the court-annexed arbitration program is effective in encouraging parties to reach early resolution. Of the cases referred to the program where an arbitration hearing was scheduled, seventy percent (70%) were voluntarily dismissed prior to the administration of the arbitration hearing. As of the publication of this report, an arbitration award was issued in six (6) cases, and de novo review was requested in four (4) of those matters. The outcomes in nine percent (9%) of referred cases are still pending.



## ARBITRATION PANEL ADMISSIONS

In 2021, the following individuals were selected for admission to the EDNY Arbitration Panel: Hon. Steven M. Gold (Ret.), and Peter Janovsky.

## 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.

December 13, 2021 Presented to EDNY US Attorney, Civil Division RE: EDNY ADR Department (Remote)

November 18, 2021 Presented to New York State Court ADR Administrators RE: ADR Department Management (Remote)

November 12, 2021 Hosted, *Mediation in an Age of Burnout*, EDNY ADR Department (Remote)

October 28, 2021 Presented at EDNY Law Clerk Orientation (Remote)

- September 29, 2021 Presented at New York State Bar Dispute Resolution Section Fall Meeting (Remote)
- September 27, 2021 Presented to Brooklyn Law School Seminar Course (Remote)
- September 22, 2021 Presented at New York Law School's ADR Skills Program (Remote)
- September 15, 2021 Presented to Federal Bar Council Labor and Employment Committee (Remote)
- July 20, 2021 Presented to High Court Judges from Pakistan, EDNY Courthouse, Brooklyn, NY
- July 15, 2021 Presented at New York State Bar Association Dispute Resolution Section Executive Committee (Remote)
- July 14, 2021 Presented at New York State Bar Association Commercial Arbitration Training (Remote)
- June 17, 2021 Presented at International Institute for Conflict Prevention & Resolution Mediation Committee Meeting entitled, *Consequences of Not Participating in Court-Ordered Mediation – What Is Fair?* (Remote)
- June 10, 2021 Presented at *Mediation Apprenticeships, Mentorships, and Gaining that Coveted Experience!*, New York City Bar Association (Remote)
- May 14, 2021 Presented at *Addressing Barriers and Posing Solutions to Increasing Diversity in ADR*, NELA New York (Remote)
- April 20, 2021 Presented to Touro Law Center Employment Law Class (Remote)
- March 16, 2021 Presented to Columbia Law School Mediation Clinic Students (Remote)
- March 8, 2021 Presented to NYU Dispute Resolution Design Clinic (Remote)
- March 1, 2021 Presented to Brooklyn Law School Seminar Course (Remote)
- February 4, 2021 Presented at Basic Mediation Training for Judges, Columbia Law School (Remote)
- January 22, 2021 Presented at Careers in ADR, Cardozo Law School (Remote)

### **EDNY ADR ADVISORY COUNCIL**

Formed in 2017, the EDNY ADR Advisory Council is comprised of members of the EDNY mediation and arbitration panels. The Council assists the ADR Administrator with panel admissions, the development of ethics guidelines and training for EDNY panelists, designing and implementing diversity, equity and inclusion initiatives, and envisioning the future of the ADR Department. EDNY ADR Advisory Council Members serve a two-year term and attend six meetings annually.

Members of the 2021 EDNY Advisory Council include:

David Berger (2020-22)  
Richard Brewster (2019-21)  
Joseph DeMarco (2020-22)  
Joseph DiBenedetto (2020-22)  
Felicia Farber (2021-2023)  
Erica Garay (2020-22)  
Robin Gise (2020-22)  
Noah Hanft (2021-2023)  
David Paul Horowitz (2019-21)  
Andrew Kimler (2019-21)

Sara Kula (2021-2023)  
Mark C. Morrill (2019-21)  
Elena Paraskevas-Thadani (2020-22)  
Lisa Renee Pomerantz (2020-22)  
Paul Radvany (2020-22)  
Royce Russell (2020-22)  
Vivien B. Shelanski (2019-21)  
Martin Siegel (2020-22)  
Giulio Zanolla (2021-23)

## **IMPACT OF COVID-19 ON EDNY ADR**

In response to the Covid-19 pandemic, the EDNY ADR Department began offering remote services on March 26, 2020. EDNY ADR services remain predominantly remote through the date of the publication of this report. Between January 1, 2021 – December 31, 2021, counsel in six hundred and forty-three (643) cases reported that mediation was conducted remotely. Counsel in seven (7) cases reported that the mediation took place in person. Most remote mediations took place with the use of an online video conferencing platform. A small number were mediated via telephonic conference call. For mediations that took place at the Courthouse, the mediator and all parties and counsel consented to an in person proceeding. When a mediation took place at the courthouse all participants were required to wear facemasks.

During this reporting period, all EDNY arbitration hearings took place via a video conference platform.

The EDNY ADR Department also held all CLE programming, workshops, Advisory Council meetings, and mediator practice groups remotely via a video conference platform.