

2022

# United States District Court Eastern District of New York

## ALTERNATIVE DISPUTE RESOLUTION REPORT JANUARY 1, 2022 – DECEMBER 31, 2022

DANIELLE SHALOV, 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 ADR Coordinator, Rita Credle, and ADR Clerk, Julissa Rey.

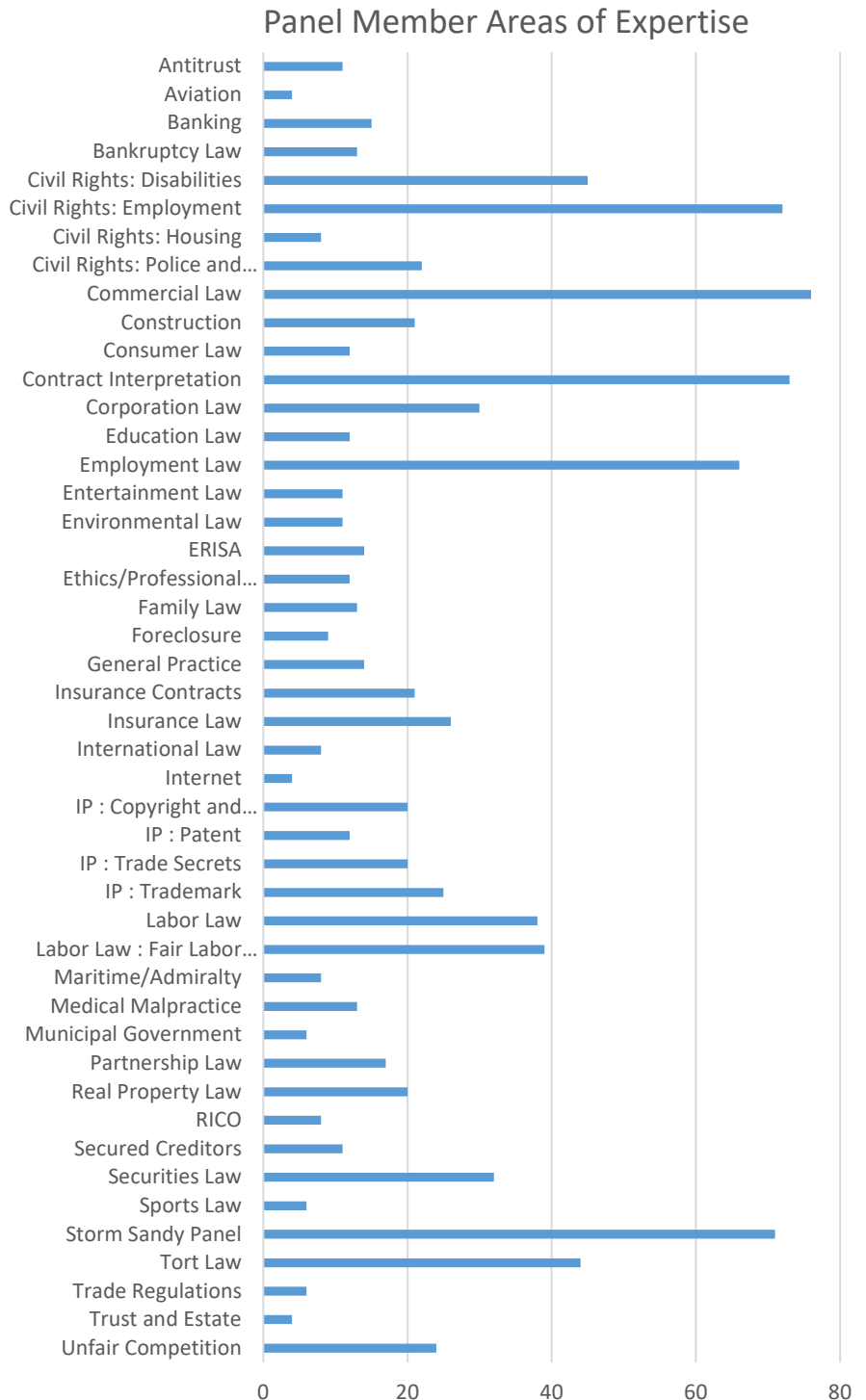
### MEDIATION PROGRAM

#### PANEL MEDIATORS

There are one hundred 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, 2022 through December 31, 2022, one hundred twenty-two (122) mediators were selected to mediate six hundred ninety-nine (699) cases.

Of the one hundred sixty-four (164) mediators on the EDNY panel, seventy-four percent (74%) were selected to mediate at least one case.

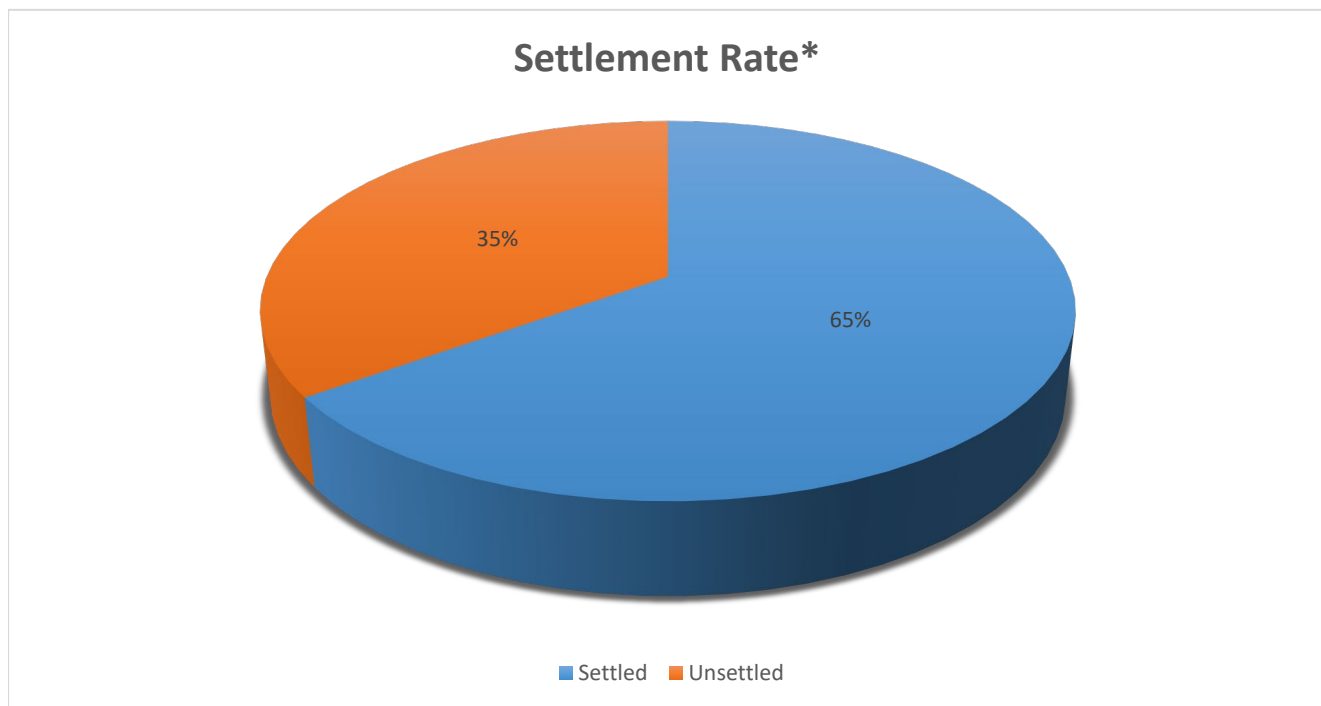


## MEDIATION CASE REFERRALS

From January 1, 2022, through December 31, 2022, eight hundred twenty-eight (828) cases were referred to the mediation program. Seventy-one percent (71%) of mediation referrals were from the Brooklyn courthouse, and twenty-nine percent (29%) were from the Central Islip courthouse. Ninety percent (90%) of cases were referred to mediation by Magistrate Judges, and ten percent (10%) were referred by District Judges. Mediation referrals decreased by eight and a half percent (8.5%) in comparison to the previous year.

## MEDIATION SETTLEMENT RATES AND CASE STATUS

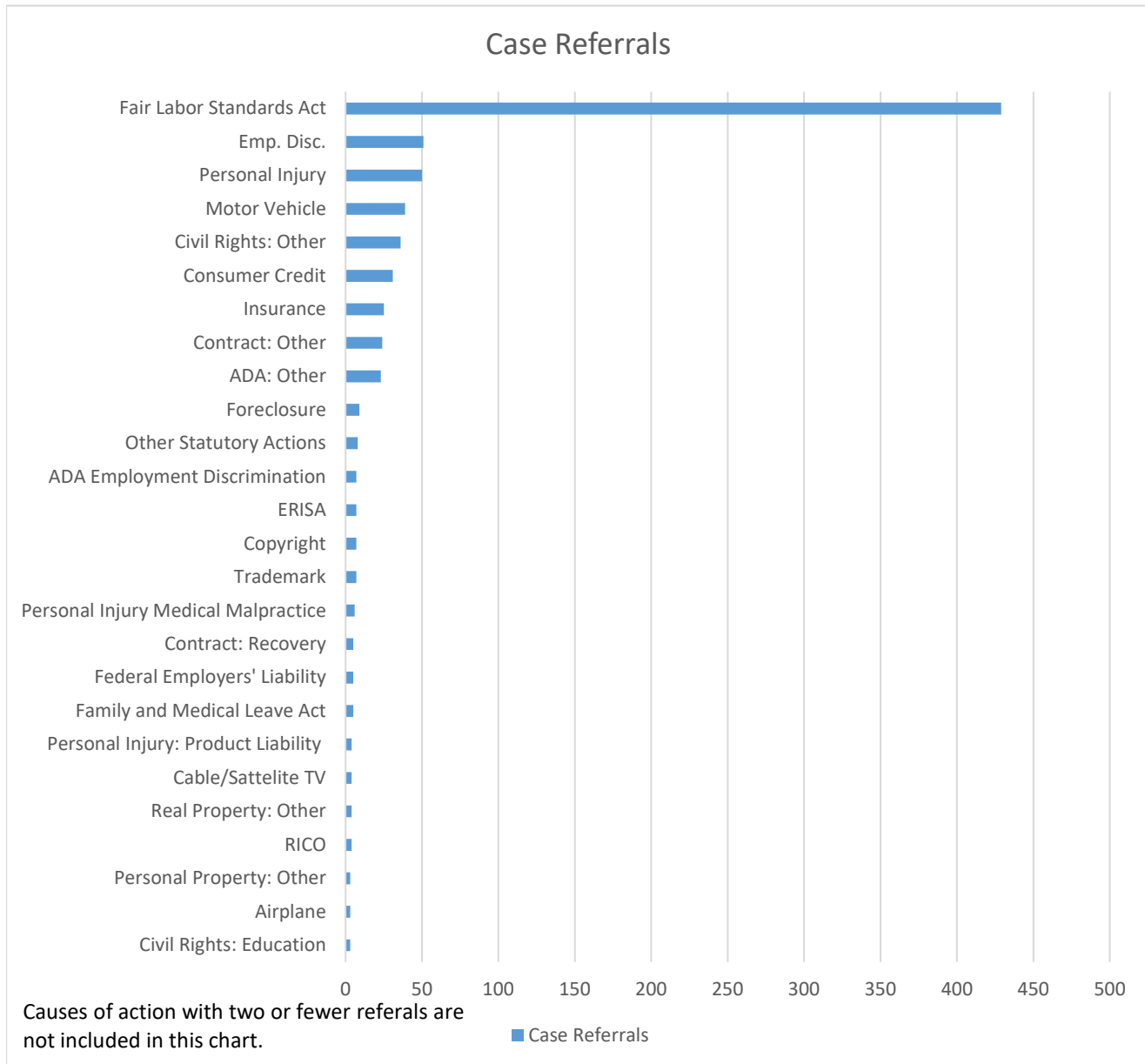
Of the eight hundred twenty-eight (828) cases referred to the mediation program, eight percent (8%) settled before an initial session was held. At least one mediation session was held in six hundred ninety-nine (699) cases. Sixty-five percent (65%) of all cases where a mediation session was held settled.



\*This settlement rate includes matters that were resolved at the completion of a mediation session or soon afterwards.

## 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) constituted about ten percent (10%) of the total civil filings in the EDNY in 2022, and fifty-two percent (52%) of the mediation referrals. Four hundred twenty-nine (429) cases referred to the mediation program were cases arising under the FLSA. Six percent (6%) of FLSA matters referred to mediation during the period of this report were resolved prior to a mediation session. At least one mediation session was held in three hundred eighty-two (382) cases with a settlement rate of seventy percent (70%).

Employment discrimination cases are the second most common type of case referred to the EDNY mediation program. During the period of this report, fifty-one (51) cases referred to the mediation program were employment discrimination matters. From January 1, 2022 through December 31, 2022, fifty-five percent (55%) of employment discrimination matters referred to mediation were resolved a result of a mediation session.

## MEDIATION SETTLEMENT RATES BY CAUSE OF ACTION

Cause of Action (Nature of Suit Code)	Sub-Category	Percentage Settled	Settled	Unsettled	Did not Proceed to Mediation	Pending	Total
<b>Contract Actions</b>							
110	<b>Insurance</b>	79%	15	4	6	0	25
120	<b>Contract: Marine</b>	0%	0	2	0	0	2
150	<b>Contract: Recovery/Enforcement</b>	20%	1	3	1	0	5
190	<b>Contract: Other</b>	30%	6	14	4	0	24
<b>Real Property Actions</b>							
220	<b>Real Property: Foreclosure</b>	33%	3	6	0	0	9
240	<b>Torts to Land</b>	100%	1	0	0	0	1
290	<b>Real Property: Other</b>	0%	3	0	1	0	4
<b>Tort Actions</b>							
310	<b>Airplane</b>	50%	1	1	1	0	3
320	<b>Assault Libel &amp; Slander</b>	0%	0	1	0	0	1
330	<b>Federal Employers' Liability</b>	80%	4	1	0	0	5
345	<b>Marine</b>	100%	1	0	0	0	1
350	<b>Motor Vehicle</b>	74%	23	8	7	0	38
355	<b>Motor Vehicle Product Liability</b>	N/A	0	0	1	0	1
360	<b>Personal Injury</b>	65%	26	14	9	1	50
362	<b>Personal Injury: Med Mal</b>	67%	4	2	0	0	6
365	<b>Personal Injury: Product Liability</b>	33%	1	2	1	0	4
<b>Personal Property</b>							
340	<b>Marine</b>	0%	0	1	0	1	1
370	<b>Truth in Lending</b>	67%	2	1	1	0	4
375	<b>False Claims Act</b>	0%	0	1	0	0	1
380	<b>Product Liability Other</b>	0%	0	1	2	0	3
385	<b>Prop. Damage Product Liability</b>	0%	0	1	1	0	2

<b>Cause of Action (Nature of Suit Code)</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>							
440	<b>Other Civil Rights (including 1983)</b>	53%	16	14	5	1	36
443	<b>Housing/ Accommodations</b>	0%	0	1	3	0	4
442	<b>Employment</b>	55	26	21	4	0	51
445	<b>Civil Rights: ADA Employment</b>	83%	5	1	1	0	7
446	<b>Americans with Disabilities: Other</b>	69%	9	4	9	0	22
448	<b>Education</b>	0%	0	1	2	0	3
450	<b>Commerce</b>	100%	1	0	0	0	1
550	<b>Prisoner: Civil Rights</b>	100%	1	0	1	0	2
<b>Labor &amp; Emp.</b>							
710	<b>FLSA</b>	70%	266	116	44	2	429
751	<b>FMLA</b>	80%	4	1	0	0	5
790	<b>Other Labor Litigation</b>	50%	1	1	0	0	2
791	<b>E.R.I.S.A.</b>	71%	5	2	0	0	7
<b>Intellectual Property</b>							
820	<b>Copyright</b>	50%	3	3	1	0	7
830	<b>Patent</b>	0%	1	0	0	0	1
840	<b>Trademark</b>	75%	3	1	2	1	7
<b>RICO</b>							
470	<b>RICO</b>	50%	2	2	0	0	4
<b>Securities</b>							
850	<b>Securities and Commodities</b>	100%	1	0	0	0	1
<b>Consumer Credit</b>							
480	<b>Consumer Credit</b>	72%	13	5	13	0	31
<b>Other Stat. Actions</b>							

485	<b>Telephone Consumer Protection Act</b>	0%	0	1	0	0	1
<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>
490	<b>Cable/Satellite TV</b>	100%	2	0	2	0	4
880	<b>Defend Trade Secrets Act</b>	0%	0	1	1	0	2
890	<b>Other Statutory Actions</b>	66%	1	4	3	0	8
891	<b>Agricultural Acts</b>	0%	0	1	0	0	1
896	<b>Other Statutory: Arbitration</b>	100%	1	0	0	0	1
950	<b>Constitutional-State Statutes</b>	100%	1	0	0	0	1
	<b>Totals</b>		453	243	126	6	<b>828</b>

## **PARTICIPANT EVALUATION OF EDNY MEDIATORS**

The ADR Department requests that all counsel submit a post-mediation evaluation to assess each mediator's performance. Due to a change in collection procedures, an insufficient number of evaluations were collected for the 2022 calendar year preventing meaningful analysis. This matter has been addressed to ensure data is available for future reports.

## **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, 2022 and December 31, 2022, sixteen (16) cases were referred to MAP and twelve (12) 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. Fifty-five percent (55%) of the cases referred to MAP resolved.

### **PRO BONO MEDIATION**

The EDNY requires Mediation Panel members to offer their mediation services free of charge up to two times per year if requested. During the period from January 1, 2022 through December 31, 2022, the following EDNY Mediation Panel members provided their mediation services pro bono:

Roger Briton, Chaim B. Book, Theodore K. Cheng, Richard Crisona, Joseph DiBenedetto, Rhonda Epstein, Hon James C. Francis (Ret.), Hon. Steven M. Gold (Ret.), Rachel Gupta, Henry Pitman, Hon. Viktor Pohorelsky (Ret.), Hon. Kathleen Roberts (Ret.), James. G. Ryan, Robyn Weinstein, and Holly Weiss.

## EDNY ARBITRATION PROGRAM

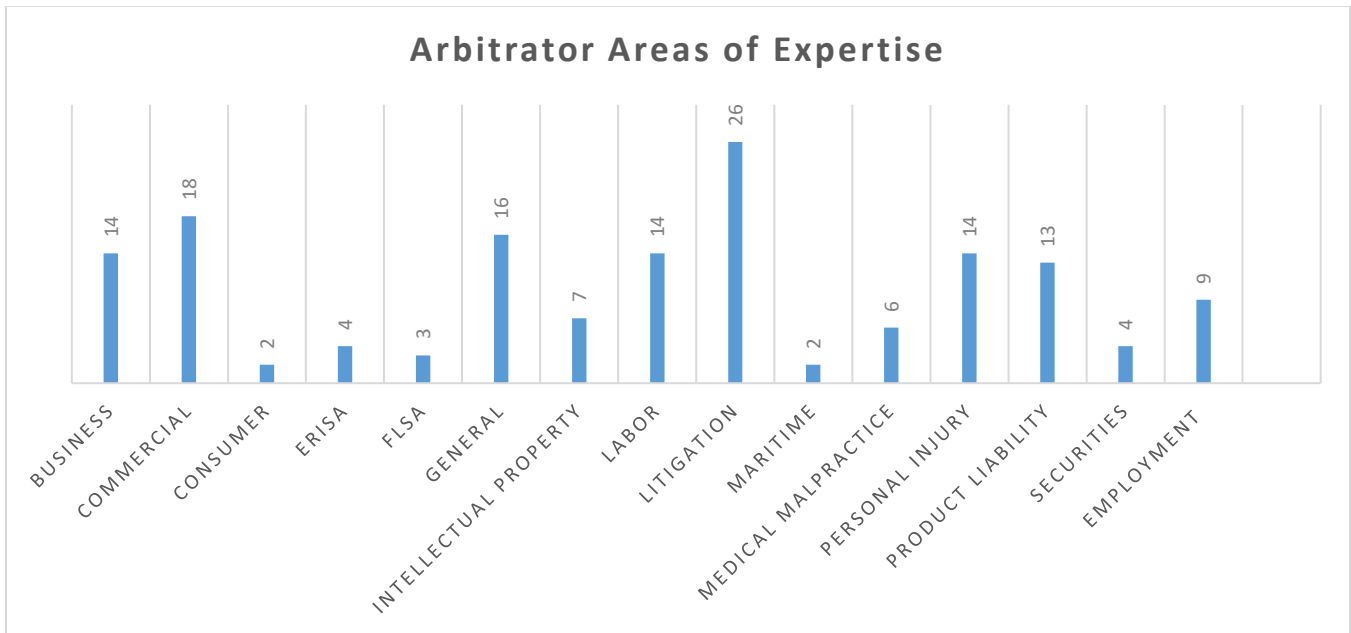
Compulsory arbitration is authorized under EDNY Local Civil Rule 83.7 for cases where money damages do not exceed \$150,000.00 (excluding social security cases, tax matters, prisoner civil rights cases and any action based on an alleged violation of a right secured by the United States Constitution or 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, 2022 through December 31, 2022, ten (10) EDNY Panel Arbitrators were selected to arbitrate eleven (11) cases, and four (4) arbitrators conducted four (4) arbitration hearings.



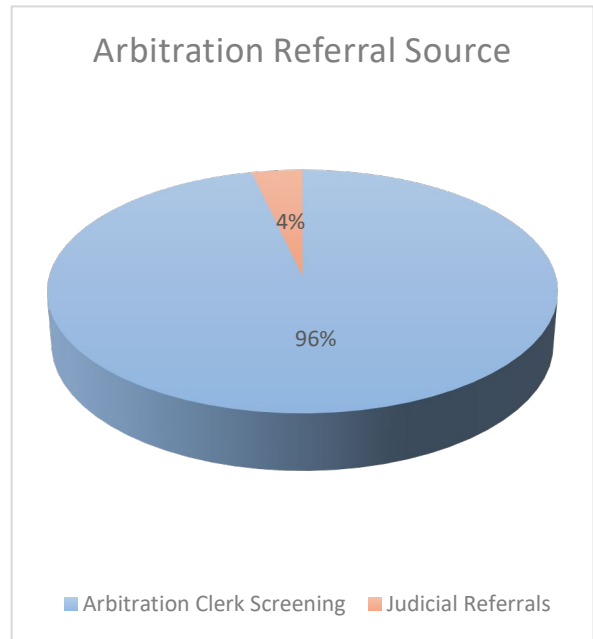


## ARBITRATION CASE REFERRAL SOURCES

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.

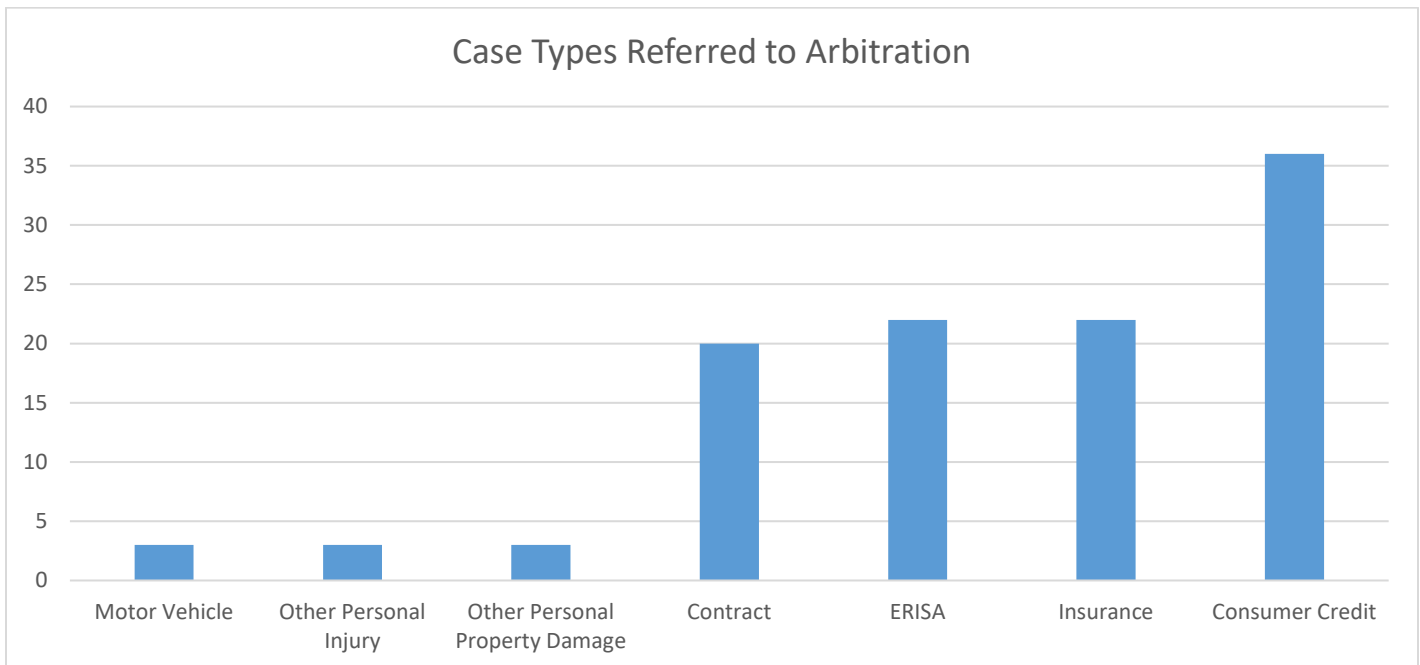
One hundred ten (110) cases were referred to the EDNY court-annexed arbitration program between January 1, 2022 and December 31, 2022. Seventy-three percent (73%) of arbitration referrals were from the Brooklyn courthouse, and twenty-seven (27%) were from the Central Islip courthouse.

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.



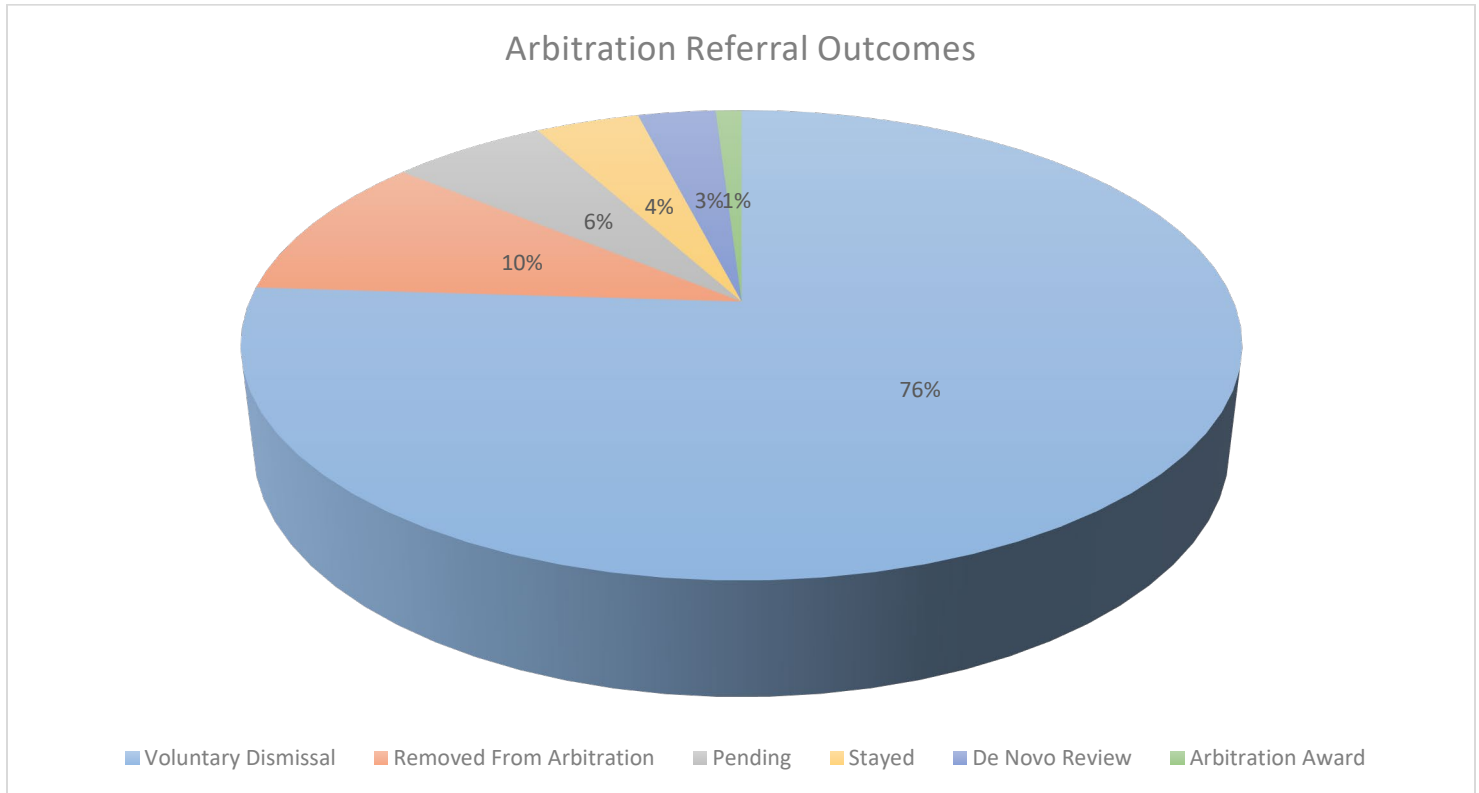
## ARBITRATION REFERRALS BY CAUSE OF ACTION

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, seventy-seven percent (77%) were voluntarily dismissed prior to an arbitration hearing. As of the publication of this report, an arbitration award was issued in four (4) cases, and de novo review was requested in three (3) of those matters. The outcomes in six percent (6%) of referred cases are still pending.



## 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 2022 EDNY Advisory Council include:

Howard Adelsberg (2022-2024)  
David Berger (2020-22)  
Felicia Farber (2021-2023)  
Erica Garay (2020-22)  
Robin Gise (2020-22)  
Noah Hanft (2021-2023)  
Andrew Kimler (2021-2023)  
Sara Kula (2021-2023)

Jennifer Lupo (2021-2023)  
Elena Paraskevas-Thadani (2020-22)  
Lisa Renee Pomerantz (2020-22)  
Paul Radvany (2020-22)  
Royce Russell (2020-22)  
Vivien B. Shelanski (2021-2023)  
Martin Siegel (2020-22)  
Giulio Zanolla (2021-2023)