



EARLY NEUTRAL EVALUATION PROGRAM

2006 ANNUAL REPORT

November 1, 2005 - October 31, 2006

I. INTRODUCTION

Since July 1, 1994, the District of Vermont has operated its mandatory Early Neutral Evaluation (ENE) program with the expectation that it will reduce the time and costs of traditional litigation by enhancing direct communication between parties, identifying and clarifying issues, and positioning cases for early resolution by settlement.

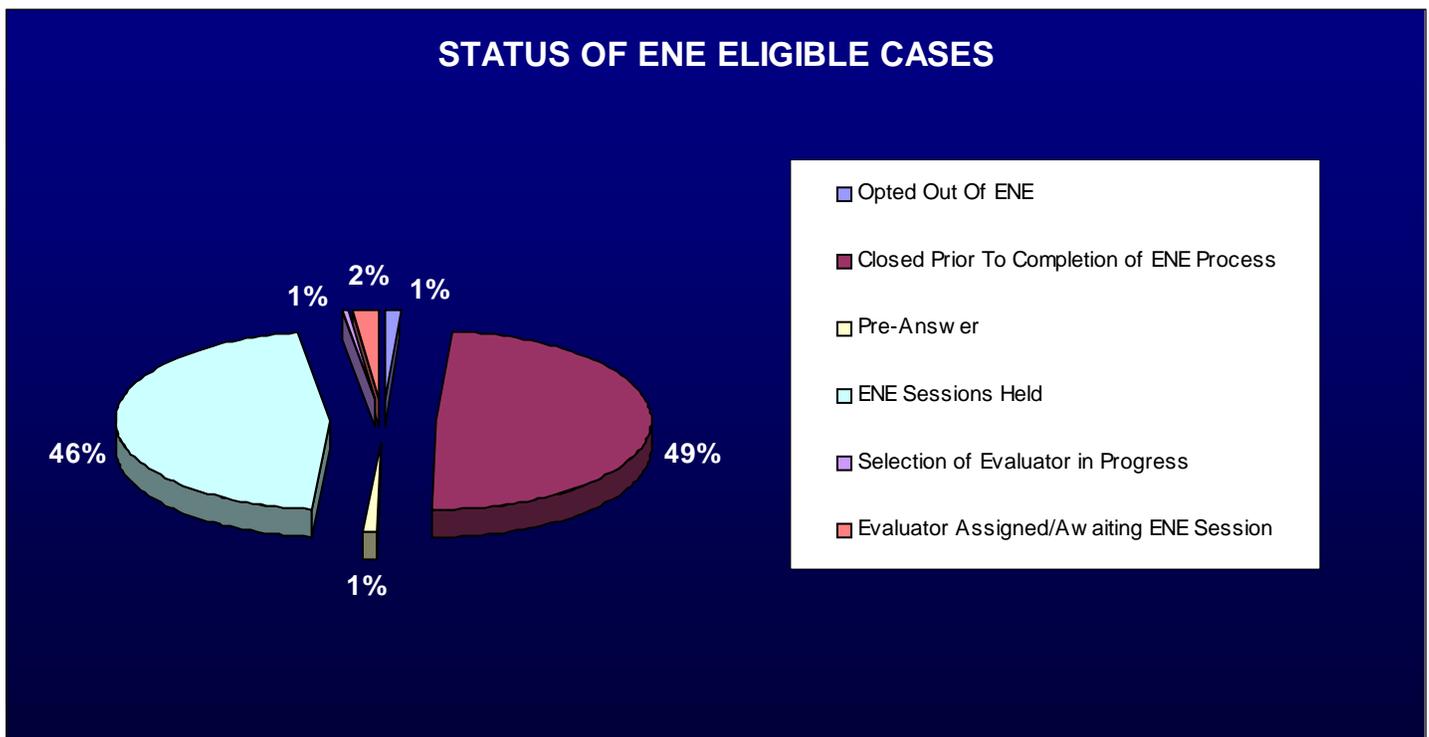
This annual report offers a statistical overview of the ENE program, as well as an overall summary of the feedback from the evaluators and attorney participants for the period November 1, 2005 through October 31, 2006. It also compares this year's results to previous years in order to gauge the effectiveness and progress of the program over time.

II. STATISTICAL ANALYSIS

A. ENE Usage

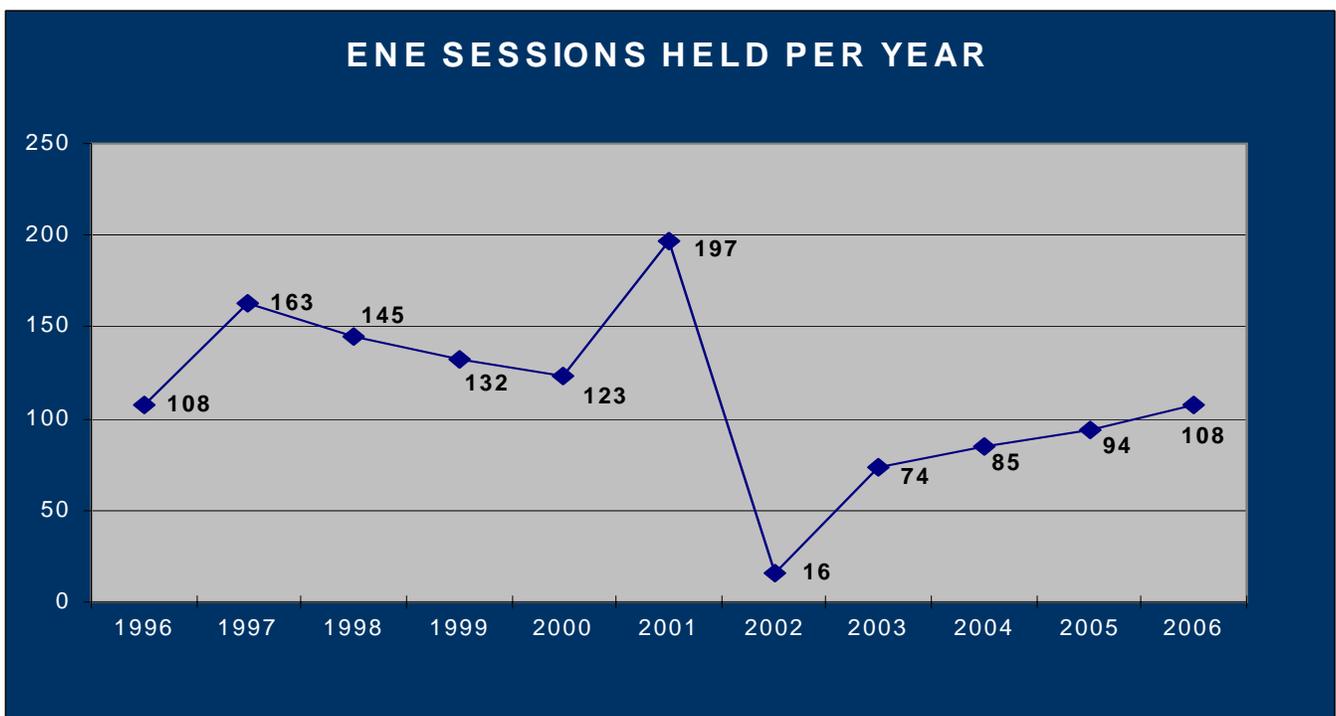
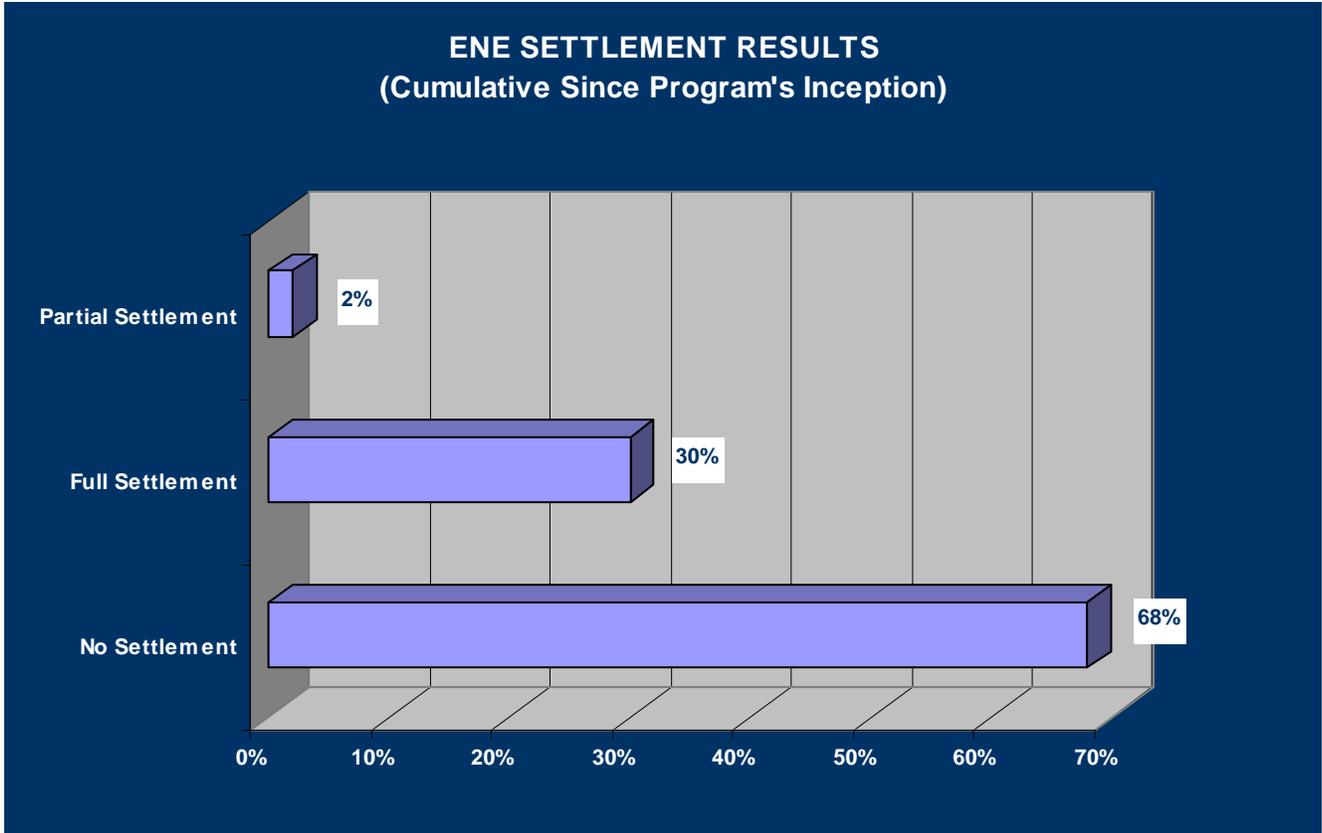
The number of ENE sessions held during 2006 was 108, a 14% increase over the number of sessions held during 2005, which was 94. This increase in ENE activity occurred despite an overall decrease in civil case filings.

The cumulative total of ENE eligible cases since the program's inception now totals 2,567. The graph below illustrates the current status of ENE eligible cases. Forty-six percent of those cases have held an ENE session, 49% were closed prior to completion of the process, 2% have an ENE evaluator assigned and are awaiting a session, 1% are in the pre-answer stage and an additional 1% are in the selection phase for an evaluator. Only 1% of ENE eligible cases were allowed to opt out of the process.



B. ENE Results

The graphs displayed below illustrate cumulative results for all ENE eligible case over the past ten years, including the number of ENE sessions held per year on a per-year basis. As has been true in the past, the Court's full settlement rate continues to remain at a relative constant. The full settlement rate this year was 30%.



C. Disposition of ENE Eligible Cases

Table A compares the nature of suit category with the point of disposition for all ENE eligible cases. It also displays the mean disposition time in each category. This information suggests which type of cases benefit most from the program and provides a general indication of the duration of case life before termination.

Table A - Disposition By Nature of Suit

NATURE OF SUIT	WHEN DISPOSED			MEAN DISPOSITION TIME (in days)
	Pre- ENE Session	At ENE Session	After ENE Session	
110 Contract: Insurance	58%	14%	28%	363
190 Contract: Other	63%	14%	23%	302
350 PI: Motor Vehicle	28%	29%	43%	380
360 PI: Other	34%	31%	35%	371
362 PI: Med Malpractice	61%	20%	19%	355
365 PI: Product Liability	46%	18%	36%	430
440 Civil Rights: Other	66%	18%	16%	307
442 Civil Rights: Jobs	39%	22	39%	380
791 Labor: ERISA	53%	22%	25%	285

III. ATTORNEY FEEDBACK

Once again, our annual survey questionnaires were sent to counsel involved with the Court's ENE program and counsel were asked to reflect upon their experiences with the program and its effectiveness. Attachment 1 shows the results of the survey. Fifty-one percent of the attorney participants reported ENE as helpful in the settlement of their cases, supporting the program as a useful and practical tool for encouraging case settlement. Additionally, 37% of the participants believed that ENE helped decrease the costs of litigation.

Opening the lines of communication between the parties and encouraging settlement discussions have always been the primary objectives of the ENE program. In 2006, 15% percent of the participants believed their case settled earlier that it would have if there were no involvement in the ENE process.

IV. EVALUATOR FEEDBACK

Attachment 2 represents the ENE evaluators' views on the program. Results of this year's questionnaire were positive in the fact that 73% of the evaluators rated counsels' preparation and efforts in the ENE process as "excellent" while 21% were rated "good." This relatively high positive assessment regarding preparation and performance appears to indicate that the vast majority of attorneys take the role of ENE seriously and prepare adequately for ENE sessions. One evaluator additionally added that "in the past 1-2 years, I have seen attorneys, particularly local ones, place greater emphasis on trying to resolve the case through ENE and view it as the last realistic opportunity for settlement."

Once again, this feedback continues to indicate that attorneys are gradually becoming more accepting of the ENE process as a valuable instrument in the process.

V. EVALUATOR USAGE

Attachments 3A and 3B indicate the cumulative number of ENE assignments received by evaluators. Attachment 3A references those evaluators on the court's official roster and attachment 3B represents those evaluators who are not on the roster but were stipulated to by the parties. Each attachment displays the cumulative results of their sessions.

While the court's ENE administrator continues to make every effort to assign evaluators based on their experience and type of case, the statistics continue to express an on-going increase in the number of parties who prefer to stipulate to their own evaluator. Attorneys have attributed this development to the fact that they would prefer to have a "known commodity"- someone they know either professionally, personally, or by reputation.

The statistics detailed in these two attachments has raised some concern among the Bar regarding the number of assignments and the success rates of certain individuals as compared to others. The Court is in the process of evaluating these concerns, including re-evaluating the size of the panel and potentially parring it down.

VI. UPDATES

A. Bankruptcy Involvement

Based upon the numbers reported from Bankruptcy Court this year, it appears that ENE is evolving into a more valuable alternative and tool in bankruptcy cases. To date, a total of eight bankruptcy cases have participated in the ENE process, doubling the total from the previous year. Additionally, this is the first year that a bankruptcy case has recorded a full settlement as a result of an ENE session.

B. Evaluator Training

There were no scheduled training seminars in 2006.

We are pleased to announce that on May 4, 2007 the Court will sponsor an ENE Training and Professional Development Seminar. Attorney/mediator Ken Feinberg will be the keynote speaker. Mr. Feinberg is the key principal in a dispute resolution practice located in both Washington, DC and New York City and he is considered to be one of the nation's premier experts in alternative dispute resolution practice. Ken has been involved in many high-profile matters and was appointed by the Attorney General of the United States as the Special Master for the September 9/11 Victims Compensation Fund. In this capacity, he developed and administered all aspects of this unique program including evaluating applications, determining appropriate compensation and issuing awards. The location will be at the Double Tree Hotel and Conference Center in South Burlington. Lunch and CLE credit will be included. Formal invites to evaluators will be issued in the near future.

VI. CONCLUSION AND FUTURE OUTLOOK

The ENE program continues to receive a strong endorsement from the Court because of its usefulness in expediting the resolution of cases by bringing the parties together before they have made a major economic and emotional investment in litigation. It provides a practical, cost efficient alternative for encouraging settlement, enhances communication, narrows the issues in dispute and encourages parties to take responsibility for their own disputes without instinctively relying upon the Court for relief through adjudication. Additionally, it also expedites judicial case management by helping to reduce the number of trials.

We will continue to monitor and evaluate the program in order to measure its degree of success and to identify areas for improvement. The Court looks forward to the Training and Professional Development Seminar in May. We hope to facilitate discussion on the administration and design of the program and what can be done to make it more efficient and effective.

VII. COMMENTS

Any commentary or suggestions related to the ENE program may be forwarded to Jeff Eaton at 802-951-6395 x 118, or Jeffrey.Eaton@vtd.uscourts.gov.

ENE Case Closing Questionnaire District of Vermont

1. The primary reason(s) this case closed when it did is/are: (Check all that apply)

If your Case Closed Before ENE Session was Held

- 29% Facts/Issues were straightforward so lengthy discovery was not needed
- 0% Settlement was at least partly worked out before the case was filed.
- 3% Client changed mind - case dropped or to be pursued in another venue
- 6% ENE process imminent - discovery checklist, case summary, etc. due soon
- 62% Other

If your Case Closed After ENE Session was Held

- 27% Discovery
- 16% Decision on controlling motions by the Court
- 27% Trial date set/approaching
- 2% Attorney/client schedule only recently permitted full attention on this case
- 27% Other

2a. Was the ENE process as a whole helpful in settling this case? (Please consider "intangible effects" of ENE such as opening communication between the parties, identifying strengths and weaknesses of each side, getting clients to be more realistic, etc.)

- 23% Very helpful
- 29% Somewhat helpful
- 46% No effect
- 2% Detrimental

2b. If you checked "Very" or "Somewhat helpful" above, what about the ENE process helped most in resolution of the case? (Check all that apply)

- 23% Active Participation of client in the session, i.e., direct communication with other party(ies), hearing strengths & weaknesses of their own case, etc.
- 15% Prompted counsel to exchange information and/or "get moving" on discover sooner then we otherwise might have
- 4% \$500 fee prompted consideration of settlement before that stage was reached
- 19% Evaluator's methods of conducting the session & discussing the case
- 8% Prompted all to consider settlement earlier then we otherwise might have
- 4% Combination of all
- 19% Improved pretiral settlement discussions as trial approached, e.g., court pretrial conference
- 8% Other

ATTACHMENT 1

3. Do you think this case settled any earlier then it would have if there were no ENE process?

- 15% Yes**
- 58% No**
- 26% No way to tell**

4. Did the ENE process help decrease the cost of the litigation, either because of the early settlement, or in other ways?

- 37% Yes**
- 63% No**

Comments or suggestions on the ENE program:

- ▶ **“Generally ENE is scheduled too early in the litigation. The date should be left to the parties to determine.”**
- ▶ **“Case dismissed without ENE, case re-filed in state court.”**
- ▶ **“The process is too rigid. Please allow the parties more flexibility about scheduling.”**
- ▶ **“My guess is that ENE would have been helpful if we made it that far.”**
- ▶ **The evaluator “either did not have credibility with the defendant or did not choose to use. The case settled for nearly 20 times the highest ENE offer.”**
- ▶ **“ENE is always helpful (i.e. it can’t hurt).”**
- ▶ **“ENE is a very valuable process. It did not produce a settlement in this case because it occurred before dispositive motion was decided. It would be nice to get the cases resolved before effort of depositions with travel and work on dispositive motions are necessary, but in this case a complicated disabilities discrimination in employment case, those steps were I guess needed.”**
- ▶ **“The evaluator in this case was not motivated to assist the parties to settle the case. She had little to no credibility with the Defendant which was very surprising because she is a very able defense attorney. The matter ended up settling for over 20 times what was offered at the ENE. The Courts rulings denying summary judgment and the quality of the plaintiff’s legal arguments drove the timing of settlement - the ENE process, unfortunately, was a waste of time & money.”**
- ▶ **“Our mediator was very good and made a lot of efforts to learn about our case and was well prepared. the dynamics of the case & the parties involved here perhaps required additional pressure and the imminence of the trial date to get a settlement done.”**
- ▶ **“Did not use & was not a factor in present case.”**
- ▶ **“Our case might have settled through ENE if (a) evaluator knew more about the particular area of law, (b) evaluator had been more forceful, (c) parties were forced to a 2nd day within 5 days of the first day; (d) conceivably, had more discovery been undertaken before the ENE session.”**

2006 ENE Evaluator Questionnaire

District of Vermont

1. Considering Attorneys' participation, what percentage falls into each of the categories below regarding the ENE process?

- 73% Excellent - counsel prepare thoroughly and honestly try to make the process successful for their client/case
- 21% Good - counsel make some effort, but seem a bit hesitant/skeptical
- 4% Indifferent - participate minimally to comply with the local rule
- 1% Negative - do little to no preparation and don't give the process a chance
- 0% Other (please briefly explain)

1a. Compared to your observations during the first couple of years of the ENE program, does your response above represent –

- 48% Increase in attorney participation/attitude
- 48% Same attorney participation/attitude as in earlier years
- 5% Worse attorney participation/attitude

2. Considering the participation of the parties at the ENE session, what percentage falls into each of the categories below?

- 57% Full active participation
- 28% Some participation
- 12% Neutral - present but did not volunteer input in the process
- 3% Negative - participation hurt the progress of the case
- 0% Other - please describe

3. From your evaluation experiences, are there any types of cases that are now subject to ENE that should not be?

“No” was the consensus answer.

COMMENTS OR SUGGESTIONS ON THE ENE PROGRAM:

- ▶ “Above based on one ENE. Other ENE did not occur, as case was dismissed. One of the parties was pro se. The ENE process did not work well in that circumstance.”
- ▶ “The program is great! The only times that I see lawyers or parties fail to participate in good faith are some instances involving insurance carriers. Some of them know what they intend to do, and do it, whatever the facts at the ENE suggest.”
- ▶ “Generally speaking, it seems that parties have greater hopes than attorneys that the ENE will be successful - I assume because they wish to avoid further costs of litigation & want the matter concluded. Generally speaking, in the past 1-2 years I have seen attorneys, particularly local ones, place greater emphasis on trying to resolve the case through ENE & view it as the last realistic opportunity for settlement.”
- ▶ “You need to find a way to better deal with pro se litigants.”
- ▶ “It’s a good program, as evidenced by its adoption in the state courts.”

EVALUATOR USAGE AS OF 10/31/06
(Court's Official Roster)

<u>Evaluator</u>	<u>Total # of Cases Assigned</u>	<u>Results of Sessions</u>
Frederic W. Allen (**)	23	5-Full Settlement 1-Partial Settlement 9-No Settlement 4-Closed Before Session
Edwin Amidon, Jr.	51	7-Full Settlement 28-No Settlement 10-Closed Before Session 2-Out of ENE
Gary Barnes (***)	9	4-Full Settlement 2-No Settlement 2-Closed Before Session
Alison J. Bell (**)	16	3-Full Settlement 7-No Settlement 2-Closed Before Session 2-Out of ENE
John Bergeron (***)	13	2-Full Settlement 4-No Settlement 3-Closed Before Session 1-Out of ENE
Eileen M. Blackwood	34	15-Full Settlement 14-No Settlement 6-Closed Before Session 2-Out of ENE
Stephen S. Blodgett	41	8-Full Settlement 21-No Settlement 4-Closed Before Session 9-Out of ENE
Samuel S. Bloomberg	17	1-Full Settlement 1-Partial Settlement 10-No Settlement 5-Closed Before Session 1-Out of ENE
John J. Boylan III (***)	9	2-Full Settlement 4-No Settlement 1-Closed Before Session

<u><i>Evaluator</i></u>	<u><i>Total # of Cases Assigned</i></u>	<u><i>Results of Sessions</i></u>
Hon. Alden T. Bryan (**)	20	3-Full Settlement 6-No Settlement 1-Partial Settlement 6-Closed Before Session 6-Out of ENE
Joseph F. Cahill, Jr.	27	4-Full Settlement 1-Partial Settlement 14-No Settlement 6-Closed Before Session 2-Out of ENE
Richard T. Cassidy	46	18-Full Settlement 17-No Settlement 8-Closed Before Session 4-Out of ENE
David Cleary (***)	23	7-Full Settlement 1-Partial Settlement 8-No Settlement 4-Closed Before Session
Stephen R. Crampton	6	1-Full Settlement 1-No Settlement 3-Settled Before Session 1-Out of ENE
Christopher L. Davis	55	12-Full Settlement 28-No Settlement 11-Closed Before Session 4-Out of ENE
Hon. Hilton H. Dier, Jr.	37	8-Full Settlement 1-Partial Settlement 18-No Settlement 8-Closed Before Session 1-Out of ENE
James A. Dumont	33	9-Full Settlement 13-No Settlement 8-Closed Before Session 3-Out of ENE
Ellen M. Fallon (**)	15	2-Full Settlement 4-No Settlement 4-Closed Before Session 2-Out of ENE

<u><i>Evaluator</i></u>	<u><i>Total # of Cases Assigned</i></u>	<u><i>Results of Sessions</i></u>
William A. Fead	21	8-Full Settlement 7-No Settlement 7-Closed Before Session 1-Out of ENE
John H. Fitzhugh	38	4-Full Settlement 1-Partial Settlement 22-No Settlement 8-Closed Before Session 3-Out of ENE
James C. Gallagher	32	6-Full Settlement 15-No Settlement 5-Closed Before Session 3-Out of ENE
Robert P. Gerety, Jr.	43	9-Full Settlement 27-No Settlement 5-Closed Before Session 3-Out of ENE
Michael F. Hanley (**)	24	6-Full Settlement 11-No Settlement 6-Closed Before Session 1-Out of ENE
Robert B. Hemley (**)	27	7-Full Settlement 2-Partial Settlement 7-No Settlement 7-Closed Before Session 1-Out of ENE
John R. Hughes, Jr.	20	2-Full Settlement 1-Partial Settlement 6-No Settlement 5-Closed Before Session 5-Out of ENE
Peter B. Joslin	54	15-Full Settlement 2-Partial Settlement 23-No Settlement 10-Closed Before Session 1-Out of ENE
Mark A. Kaplan	18	7-Full Settlement 1-Partial Settlement 7-No Settlement 3-Out of ENE
Mary Kehoe	15	3-Full Settlement 8-No Settlement 7-Closed Before Session

ATTACHMENT 3A

<u>Evaluator</u>	<u>Total # of Cases Assigned</u>	<u>Results of Sessions</u>
Mary Kirkpatrick (***)	4	2-No Settlement 2-Closed Before Session
Catherine Kronk	14	3-Full Settlement 6-No Settlement 4-Closed Before Session 1-Out of ENE
Anthony Lamb (**)	24	7-Full Settlement 2-Partial Settlement 7-No Settlement 5-Closed Before Session 3-Out of ENE
Robert E. Manchester	14	1-Full Settlement 9-No Settlement 2-Closed Before Session
Karen McAndrew	22	3-Full Settlement 12-No Settlement 4-Closed Before Session 3-Out of ENE
Thomas E. McCormick	55	11-Full Settlement 30-No Settlement 8-Closed Before Session 3-Out of ENE
Robert R. McKearin	31	6-Full Settlement 15-No Settlement 7-Closed Before Session 3-Out of ENE
Hon. John P. Meaker (***)	6	1-Closed Before Session 5-Out of ENE
William H. Meub	37	18-Full Settlement 12-No Settlement 4-Closed Before Session 4-Out of ENE
James W. Murdoch	25	4-Full Settlement 1-Partial Settlement 19-No Settlement 3-Closed Before Session
Arthur O'Dea (**)	202	80-Full Settlement 1-Partial Settlement 66-No Settlement 36-Closed Before Session 9-Out of ENE

ATTACHMENT 3A

<u><i>Evaluator</i></u>	<u><i>Total # of Cases Assigned</i></u>	<u><i>Results of Sessions</i></u>
Jerome F. O'Neill	21	8-Full Settlement 8-No Settlement 5-Closed Before Session 1-Out of ENE
Donald J. Rendall (***)	11	4-No Settlement 6-Closed Before Session
James W. Runcie (**)	14	3- Full Settlement 4-No Settlement 6-Closed Before Session 1-Out of ENE
Stephen L. Saltonstall	18	2-Full Settlement 9-No Settlement 6-Closed Before Session 2-Out of ENE
Potter Stewart, Jr.	52	10-Full Settlement 22-No Settlement 12-Closed Before Session 8-Out of ENE
Susan M. Sussman (**)	6	2-Full Settlement 2-No Settlement 1-Closed Before Session 1-Out of ENE
Joan Loring Wing (**)	44	16-Full Settlement 2-Partial Settlement 10-No Settlement 5-Closed Before Session 2-Out of ENE
Robert E. Woolmington (**)	7	1-Full Settlement 4-No Settlement 1-Closed Before Session 2-Out of ENE
Dinah Yessne (**)	4	1-No Settlement 2-Closed Before Session 1-Out of ENE
TOTAL	1378	Average = 29

**trained 09/03/98

***trained 10/18/01

EVALUATOR USAGE AS OF 10/31/06
(Stipulated To By Parties - Not on the Court's Official Roster)

<u>Evaluator</u>	<u>Total # of Cases Assigned</u>	<u>Results of Sessions</u>
Richard Affolter	3	1-Full Settlement 1-Closed Before Session 1-Out of ENE
Leo Bisson	9	1-Full Settlement 6-No Settlement 1-Closed Before Session
Heather Briggs	1	1-No Settlement
Victoria J. Brown	1	1-Closed Before Session
Daniel Burchard	1	1-Out of ENE
Jim Carroll	1	1-No Settlement
Mark Chadurjian	1	1-Closed Before Session
Michael Clapp	1	1-No Settlement
Gregory Clayton	1	1-Full Settlement
James Coffrin	1	1-No Settlement
John Collins	1	1-No Settlement
Patrick Coughlin	1	1-No Settlement
Geoffrey Crawford	1	1-No Settlement
Lawrin P. Crispe	1	1-No Settlement
Rogert Deitz	1	1-Full Settlement
Denise Deschenes	1	1-Full Settlement 1-No Settlement
M. Jerome Diamond	1	1-No Settlement
Lisa Dolak	1	1-No Settlement
Kenneth Feinberg	1	1-No Settlement
Richard P. Foote	2	1-Full Settlement 1-No Settlement
Michael G. Furlong	1	1-No Settlement
Samuel Hoar, Jr.	2	2-No Settlement
Donald S. Holland	1	1-Full Settlement

<u><i>Evaluator</i></u>	<u><i>Total # of Cases Assigned</i></u>	<u><i>Results of Sessions</i></u>
Joseph Iandiorio	2	1-No Settlement 1-Closed Before Session
John Kassel	1	1-Full Settlement
Christopher Kauders	1	1-No Settlement
John Kellner	1	1-Out of ENE
Allan R. Keyes	1	1-No Settlement
Spencer Knapp	1	1-Closed Before Session
Robert Lotty	1	1-Closed Before Session
Michael Marks	3	2-No Settlement 1-Closed Before ENE
Hon. Stephen B. Martin	1	No Session Held Yet
Hon. David A. Mazzone	3	1-Closed Before Session 2-Out of ENE
Robert McClallen	2	1-Full Settlement 1-No Settlement
Robert Mello	13	3-Full Settlement 6-No Settlement 1-Closed Before ENE 1-Out of ENE
Gregory Mertz	1	1-Full Settlement
John Monahan, Jr.	1	1-No Settlement
Glenn Morgan	1	1-Closed Before ENE
Jerrold A. Olanoff	1	1-No Settlement
David A. Otterman	1	1-Full Settlement
Mitchell Pearl	2	1-Full Settlement 1-No Settlement
Myron Pession	2	1-Full Settlement 1-No Settlement
Robert Rachlin	3	1-Partial Settlement
Robert K. Reis	1	No Session Held Yet
Amy Rothstein	1	1-Closed Before Sessions

<u><i>Evaluator</i></u>	<u><i>Total # of Cases Assigned</i></u>	<u><i>Results of Sessions</i></u>
James Spink	44	10-Full Settlement 1-Partial Settlement 16-No Settlement 5-Closed Before Session
Gordon Troy	1	1-Closed Before Session
Oreste V. Valsangiacomo, Jr.	1	1-No Settlement
James Vana	1	1-No Settlement
John B. Webber	5	1-Full Settlement 1-No Settlement 2-Closed Before Session 1-Out of ENE
Glen Yates	5	4-Closed Before Session
John Zawistowski	1	1-Full Settlement
TOTAL	137	Average = 2.6