



EARLY NEUTRAL EVALUATION PROGRAM

2008 ANNUAL REPORT

November 1, 2007 - October 31, 2008

I. INTRODUCTION

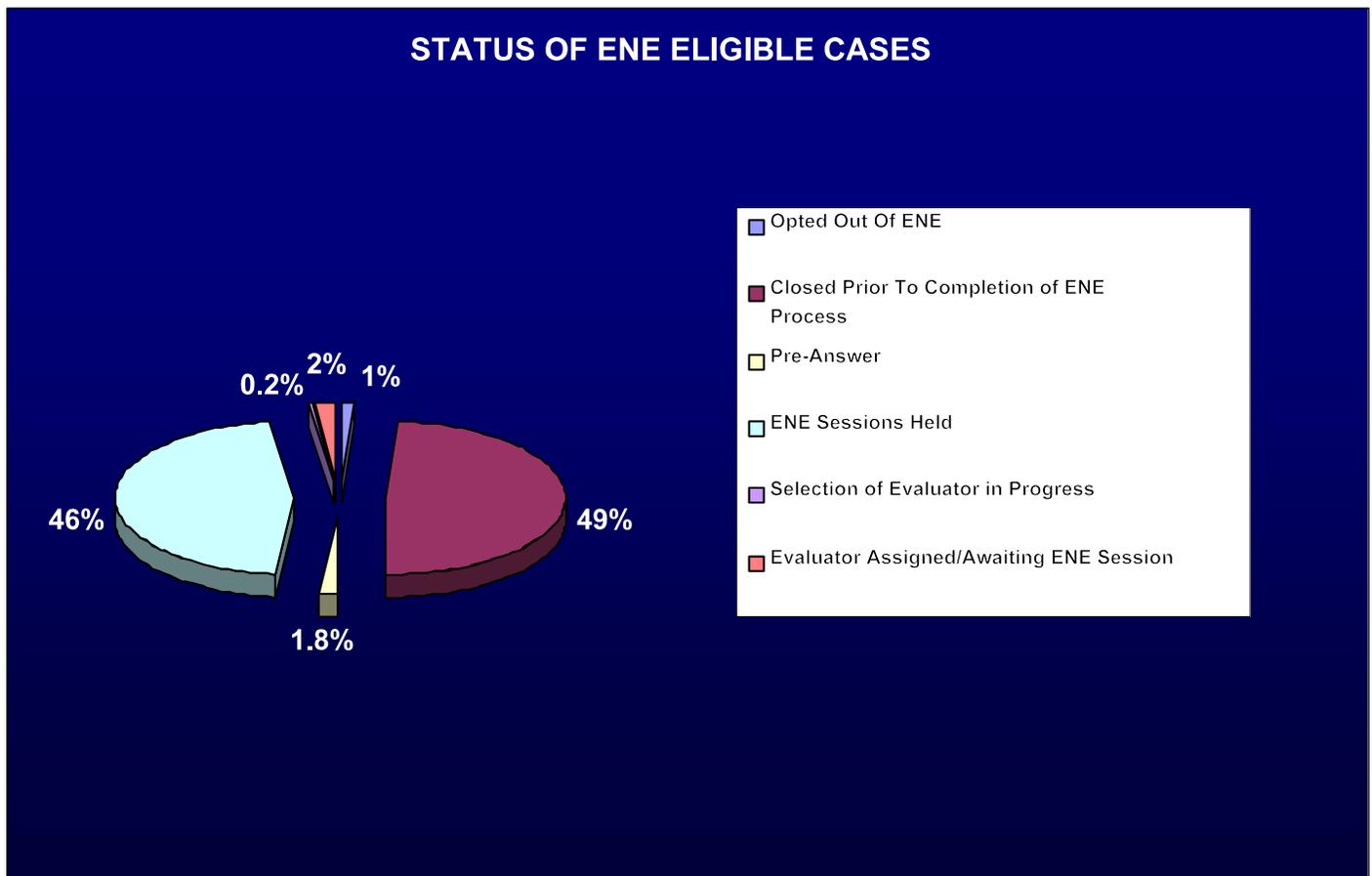
Since July 1, 1994, the District of Vermont has operated its mandatory Early Neutral Evaluation (ENE) program with the expectation that it will reduce the time and costs of traditional litigation by enhancing direct communication between parties, identifying and clarifying issues, and positioning cases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

In addition to offering a statistical overview of the ENE program and its success rates for the period November 1, 2007 through October 31, 2008, this report also summarizes the recent actions this district has initiated to improve the ENE process. 2008 was a year of significant change for the ENE program. For the first time in the program's history the court's ENE panel was refreshed with the expectation that a new panel would, over time, yield more effective results.

II. STATISTICAL ANALYSIS

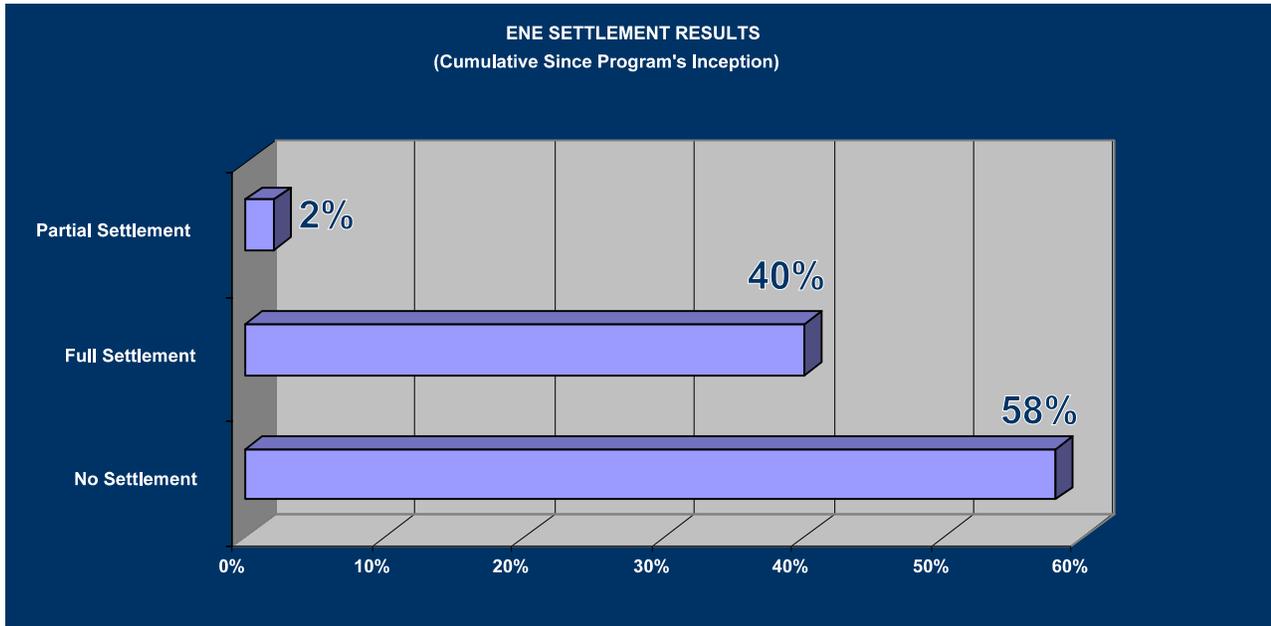
A. ENE Usage

The cumulative total of ENE eligible cases since the program's inception now totals 2,881. 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, and 1.7% are in the pre-answer stage. Less than 1% of ENE eligible cases successfully opted out of the process.

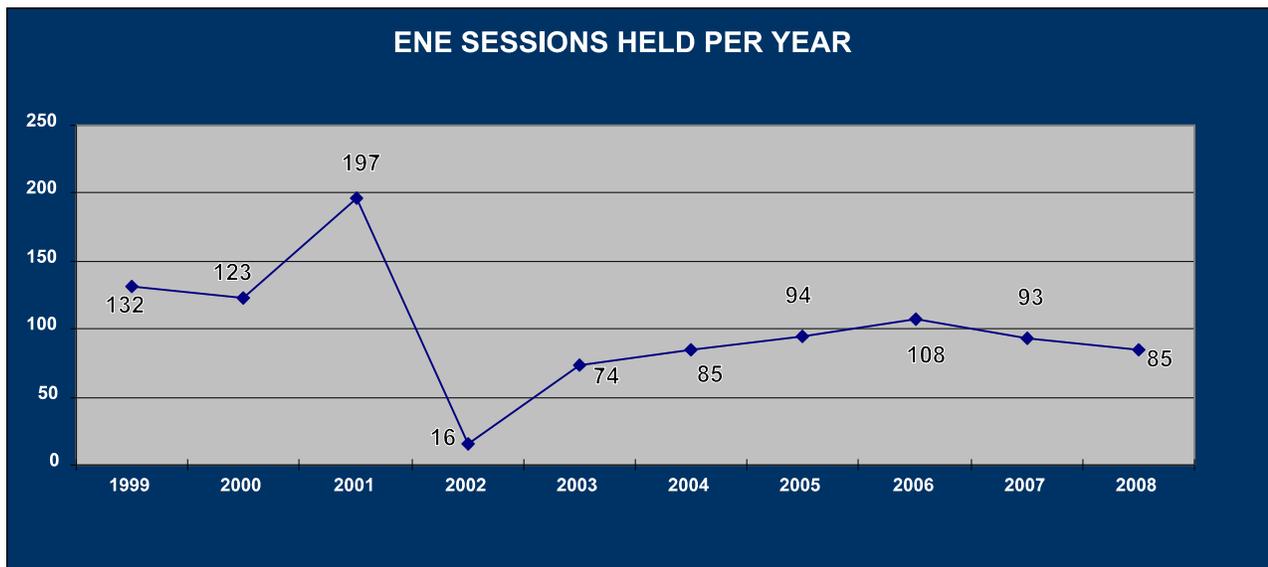


B. ENE Results

The graph displayed below illustrates cumulative results for all ENE eligible case since the programs inception. Most notably, the Court's cumulative full settlement rate increased by 2% from the previous year, increasing the historic full settlement rate to 40% for the program.



The number of ENE sessions held during 2008 was 85, a 9% decrease in the number of sessions held during 2007, which was 93.



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	54%	16%	30%	364
190 Contract: Other	61%	14%	25%	321
350 PI: Motor Vehicle	26%	34%	40%	372
360 PI: Other	33%	32%	35%	375
362 PI: Med Malpractice	59%	20%	21%	377
365 PI: Product Liability	47%	20%	33%	423
440 Civil Rights: Other	65%	13%	22%	312
442 Civil Rights: Jobs	37%	25%	38%	378
791 Labor: ERISA	47%	24%	29%	298

III. ATTORNEY FEEDBACK

Based upon the feedback provided in the court’s annual questionnaire, it is apparent that the program is continuing to be successful in providing opportunities for resolving disputes more efficiently than traditional litigation would allow. Seventy-one percent of the attorney participants reported ENE as helpful in the settlement of their cases, up 15% from last year’s results (see Attachment 1). One participating attorney added that “overall, the ENE process is helpful. If nothing else, it forces parties to “focus” on the case to attend to discovery issues sooner than they would otherwise,” suggesting that the lines of communication have been opened and settlement discussions encouraged. Additionally, in 2008, 37% percent of the participants believed their case settled earlier that it would have if there were no involvement in the ENE process.

Several attorneys opined that parties would be better served if settlement talks were to begin later in the discovery process. The Court is aware of this concern and has given authority to the ENE Administrator to communicate to attorneys the option of re-scheduling their ENE session, if necessary, simply by informally writing a letter rather than filing a formal motion with the Court.

In reviewing the comments received from participating attorneys, a vast majority of the participants regard ENE as a very practical tool for encouraging settlement. In restructuring and optimizing the size of the ENE panel, the Court hopes that the program will have a greater influence in the settlement process of future cases.

IV. EVALUATOR FEEDBACK

Attachment 2 displays the results of the Court's annual ENE Evaluator Questionnaire. Results of this year's questionnaire were encouraging in the fact that 75% of the evaluators rated the preparation by counsel and efforts in the ENE process as "excellent," while 21% rated them as "good." One evaluator offered this comment: "The program has probably been the single most productive force in bringing about an effective mediation systems and practice in Vermont. It has drawn many talented mediators in the practice (and eliminated those who do not have a calling). The teaching events have been of the highest quality - I wish there could be more. Various styles and methods have been allowed to develop. The Court has stood back and let the practice develop with little, if any, intrusion."

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.

VI. UPDATES

A. Size and Effectiveness of ENE Panel

In September of 2007, the district court undertook a survey to evaluate the size and effectiveness of the district's ENE panel. At the conclusion of the survey, the Court appointed an *ad hoc* ENE panel subcommittee consisting of five members of the district's Court Advisory Group.

In December of 2007, the subcommittee reported its findings to the Court. After reviewing the subcommittee's report and recommendations, the Court determined that it was in the best interest of the mandatory ENE program to refresh the panel. On October 1, 2008, after several months of communications between current ENE panel evaluators and a long list of pending panel applicants, a refreshed ENE panel was established consisting of 44 members. It will be interesting to see the effect of these changes in next year's report, especially the effect the refreshed panel has on our historical settlement rates.

B. Bankruptcy Involvement

Based upon the numbers reported from Bankruptcy Court this year, it appears that ENE continues to evolve as a viable option in bankruptcy cases. To date, a total of 19 bankruptcy cases have participated in the ENE process, an increase of 74% from last year's cumulative total.

C. ENE Training

There were no scheduled training seminars in 2008.

D. ENE Internet Link

Both the public and ENE panel members benefit from an ENE link that was added to the court's website. An informational web page entitled "ENE/Mediation" was added, which provides links to our ENE panel member list, Local Rule 16.3, annual ENE reports, and the program contact (Lisa Wright, ENE Administrator). Should we have future ENE initiatives, seminars, or training opportunities, they will be added here as well.

VII. CONCLUSION AND FUTURE OUTLOOK

The research and recommendations from the ENE Subcommittee provided valuable guidance to the Court for making the program more efficient which ultimately led to the restructuring of the panel. While it is too early to determine the effect that the refreshed panel has on settlement results, the Court is optimistic that the improvements made over the past year will have a greater impact on the settlement of cases through ENE for 2009.

Based upon feedback provided, practitioners in federal court clearly value the ENE process and the expertise and competence of members of the panel. Settlement figures aside, the ENE program continues to receive strong endorsements from judges, evaluators, and attorneys because of its usefulness in getting parties to focus on the strength and weaknesses of their respective cases and for providing suggestions for resolving them efficiently.

VIII. COMMENTS

Any commentary or suggestions related to the ENE program may be directed to Lisa Wright at 802-951-6395 x 116, or Lisa.Wright@vtd.uscourts.gov.

2008 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
- 7% Settlement was at least partly worked out before the case was filed.
- 21% Client changed mind - case dropped or to be pursued in another venue
- 0% ENE process imminent - discovery checklist, case summary, etc. due soon
- 43% Other

If your Case Closed After ENE Session was Held

- 22% Discovery
- 15% Decision on controlling motions by the Court
- 15% Trial date set/approaching
- 2% Attorney/client schedule only recently permitted full attention on this case
- 46% Other

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

- 33% Very helpful
- 38% Somewhat helpful
- 26% No effect
- 3% 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)

- 35% Active Participation of client in the session, i.e., direct communication with other party(ies), hearing strengths & weaknesses of their own case, etc.
- 6% Prompted counsel to exchange information and/or "get moving" on discover sooner than we otherwise might have
- 0% \$500 fee prompted consideration of settlement before that stage was reached
- 32% Evaluator's methods of conducting the session & discussing the case
- 9% Prompted all to consider settlement earlier than we otherwise might have
- 4% Combination of all
- 10% Improved pretrial settlement discussions as trial approached, e.g., court pretrial conference
- 3% Other

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

- 37% Yes
- 37% No
- 26% No way to tell

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

40% Yes

60% No

Comments or suggestions on the ENE program:

- ▶ “Expert deposition and possible expenses of additional experts was avoided.”
- ▶ “Counsel should have the discretion to schedule the ENE process later (in the litigation process) than required by the rule.”
- ▶ “Just not a factor in this case; maybe held too early.”
- ▶ “Jim Spink did an excellent job, as usual, outlining for each party the strengths and weaknesses of their case.”
- ▶ “I am strongly in favor of ENE/mediation. However, I and every adverse attorney I have ever worked with have agreed that it is counterproductive to require ENE so early - effectively before depositions are taken - typically everyone shows up and the insurance carrier says they will not offer anything until after depositions have been conducted.”
- ▶ “Great program. Could not help in this particular case. If evaluator had Labor/Duty of Fair Representation experience he might have been able to help.”
- ▶ “Litigation “stand down” (by agreement) at ENE allowed for testing of possible non-monetary settlement strategy.”
- ▶ “Two mediations were held in case. First was not helpful at all. Second mediator got the job done with two defendants. The individual defendant did not show up for either mediation, although his counsel was present. This prevented settlement with individual.”
- ▶ “The defendant insisted on defending the case. We had a very good discussion at ENE. The fact then was a trial is in no way a reflection that ENE was not beneficial.”
- ▶ “It is likely that the two ENE session in this case prompted the defendants to evaluate the case more realistically, which, in turn, was likely helpful in ultimately getting the defendants to a number that was acceptable to plaintiff - since the settlement occurred before the close of discovery and before the pre-trial conference stage, the costs of litigation were likely decreased.”
- ▶ “Overall, the ENE process is helpful. If nothing else, it forces parties to “focus” on the case to attend to discovery issues sooner than they would otherwise, to give priority to federal court cases vs. state court cases, and to force the defendants decision-makers to the table.”
- ▶ “At the ENE, Mr. McKearin proposed a solution that the parties had not previously discussed. Although the case settled after the ENE, Mr. McKearin’s proposed solution to one aspect of the case proved to be a major factor in helping the parties to reach a settlement.”
- ▶ “It is a good program.”
- ▶ “The evaluator was very effective - that was important in getting down to the important issues. And the ability of the parties to speak honestly, confidentially with one another was important in this case.”
- ▶ I generally find ENEs to be helpful, even if they don’t produce a settlement.”
- ▶ “This is a great program. I have asked before to be added to the list. I am a certified mediator for the New Hampshire court system and for the Vermont state courts, and have completed numerous courses on ADR. Please let me know how I can be added to list.”

2008 ENE Evaluator Questionnaire

District of Vermont

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

- 75% 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
- 0% Negative - do little to no preparation and don't give the process a chance
- 0% Other (please briefly explain)

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

- 50% Increase in attorney participation/attitude
- 50% Same attorney participation/attitude as in earlier years
- 0% Worse attorney participation/attitude

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

- 69% Full active participation
- 24% Some participation
- 6% Neutral - present but did not volunteer input in the process
- 1% 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. Timing remains the most critical element which the Court should continue to push parties and counsel to mediate as soon as reasonable it should also continue to give them the flexibility to defer mediation until the case is ripe for that process.
- Timing of ENE should be left to the parties - still is often too early to be useful.
- Should be excluded unless by Court order specific to the case.
- As always success is driven by degree of knowledge of the facts/law by the parties & their counsel as of the date of ENE. Discovery is crucial to effective resolution in 90% of cases

COMMENTS OR SUGGESTIONS ON THE ENE PROGRAM:

- ▶ “Sometimes legal issues predominate & there is no real incentive for parties to resolve case before motions decided.”
- ▶ “The program has probably been the single most productive force in bringing about an effective mediation systems and practice in Vermont. It has drawn many talented mediators in the practice (and eliminated those who do not have a calling). The teaching events have been of the highest quality - I wish there could be more. Various styles and methods have been allowed to develop. The Court has stood back and let the practice develop with little, if any, intrusion.”
- ▶ “Have the ENE sessions at a later stage of the case. That has been good.”

EVALUATOR USAGE AS OF 10/31/08
(Court's Official Roster)

<i>Evaluator</i>	<i># of Cases Assigned</i>	<i>Results of Sessions</i>
Frederic W. Allen (**)	23	6-Full Settlement 1-Partial Settlement 10-No Settlement 5-Closed Before Session
Edwin Amidon, Jr.	52	7-Full Settlement 28-No Settlement 11-Closed Before Session 3-Out of ENE
Gary Barnes (***)	11	6-Full Settlement 2-No Settlement 3-Closed Before Session
Alison J. Bell (**)	17	4-Full Settlement 7-No Settlement 3-Closed Before Session 2-Out of ENE
John Bergeron (***)	13	2-Full Settlement 6-No Settlement 3-Closed Before Session 1-Out of ENE
Eileen M. Blackwood	46	17-Full Settlement 16-No Settlement 7-Closed Before Session 3-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 1-Out of ENE

<i><u>Evaluator</u></i>	<i><u># of Cases Assigned</u></i>	<i><u>Results of Sessions</u></i>
Hon. Alden T. Bryan (**)	25	4-Full Settlement 7-No Settlement 1-Partial Settlement 7-Closed Before Session 6-Out of ENE
Joseph F. Cahill, Jr.	27	4-Full Settlement 1-Partial Settlement 15-No Settlement 6-Closed Before Session 2-Out of ENE
Richard T. Cassidy	55	20-Full Settlement 18-No Settlement 8-Closed Before Session 4-Out of ENE
David Cleary (***)	29	10-Full Settlement 1-Partial Settlement 10-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	60	15-Full Settlement 29-No Settlement 11-Closed Before Session 7-Out of ENE
Hon. Hilton H. Dier, Jr.	38	9-Full Settlement 1-Partial Settlement 20-No Settlement 8-Closed Before Session 1-Out of ENE
James A. Dumont	35	9-Full Settlement 13-No Settlement 8-Closed Before Session 3-Out of ENE
Ellen M. Fallon (**)	17	2-Full Settlement 6-No Settlement 5-Closed Before Session 3-Out of ENE
William A. Fead	24	8-Full Settlement 8-No Settlement 7-Closed Before Session 1-Out of ENE

ATTACHMENT 3A

<i><u>Evaluator</u></i>	<i><u># of Cases Assigned</u></i>	<i><u>Results of Sessions</u></i>
James C. Gallagher	33	7-Full Settlement 15-No Settlement 6-Closed Before Session 3-Out of ENE
Robert P. Gerety, Jr.	44	10-Full Settlement 29-No Settlement 5-Closed Before Session 4-Out of ENE
Michael F. Hanley (**)	26	6-Full Settlement 11-No Settlement 7-Closed Before Session 2-Out of ENE
Robert B. Hemley (**)	33	8-Full Settlement 2-Partial Settlement 10-No Settlement 7-Closed Before Session 2-Out of ENE
John R. Hughes, Jr.	20	2-Full Settlement 1-Partial Settlement 7-No Settlement 5-Closed Before Session 5-Out of ENE
Peter B. Joslin	60	17-Full Settlement 2-Partial Settlement 24-No Settlement 12-Closed Before Session 4-Out of ENE
Mark A. Kaplan	20	7-Full Settlement 1-Partial Settlement 7-No Settlement 4-Out of ENE
Mary Kehoe	16	3-Full Settlement 8-No Settlement 7-Closed Before Session 1-Out of ENE
Mary Kirkpatrick (***)	4	2-No Settlement 2-Closed Before Session
Catherine Kronk	16	3-Full Settlement 7-No Settlement 4-Closed Before Session 1-Out of ENE

<i><u>Evaluator</u></i>	<i><u># of Cases Assigned</u></i>	<i><u>Results of Sessions</u></i>
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 10-No Settlement 2-Closed Before Session
Karen McAndrew	23	4-Full Settlement 12-No Settlement 4-Closed Before Session 3-Out of ENE
Thomas E. McCormick	58	12-Full Settlement 30-No Settlement 9-Closed Before Session 3-Out of ENE
Robert R. McKearin	36	8-Full Settlement 18-No Settlement 7-Closed Before Session 4-Out of ENE
Hon. John P. Meaker (***)	6	1-Closed Before Session 5-Out of ENE
William H. Meub	39	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
Hon. Richard W. Norton (****)	3	1-Full Settlement 1-No Settlement
Arthur O'Dea (**)	218	90-Full Settlement 1-Partial Settlement 73-No Settlement 48-Closed Before Session 10-Out of ENE
Jerome F. O'Neill	21	8-Full Settlement 8-No Settlement 5-Closed Before Session 1-Out of ENE
Donald J. Rendall (***)	12	5-No Settlement 7-Closed Before Session

ATTACHMENT 3A

<i><u>Evaluator</u></i>	<i><u># of Cases Assigned</u></i>	<i><u>Results of Sessions</u></i>
James W. Runcie (**)	15	4- Full Settlement 4-No Settlement 6-Closed Before Session 1-Out of ENE
Stephen L. Saltonstall	20	3-Full Settlement 10-No Settlement 6-Closed Before Session 2-Out of ENE
Potter Stewart, Jr.	55	11-Full Settlement 23-No Settlement 12-Closed Before Session 10-Out of ENE
Susan M. Sussman (**)	7	2-Full Settlement 3-No Settlement 1-Closed Before Session 1-Out of ENE
Joan Loring Wing (**)	62	23-Full Settlement 2-Partial Settlement 13-No Settlement 8-Closed Before Session 3-Out of ENE
Robert E. Woolmington (**)	8	1-Full Settlement 4-No Settlement 1-Closed Before Session 3-Out of ENE
TOTAL	1463	Average = 30

**trained 09/03/98

***trained 10/18/01

****added 08/2007

*We have omitted data re: Douglas Richards due to his death and James Suskin due to his medical condition.

EVALUATOR USAGE AS OF 10/31/08

(Stipulated To By Parties For Those Not on the Court's Official Roster)

<i>Evaluator</i>	<i># of Cases Assigned</i>	<i>Results of Sessions</i>
Richard Affolter	3	1-Full Settlement 1-Closed Before Session 1-Out of ENE
Leo Bisson	15	5-Full Settlement 1-Partial Settlement 9-No Settlement 2-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
Jerry Cohen	1	1-Full Settlement
John Collins	1	1-No Settlement
Patrick Coughlin	1	1-Full Settlement 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
Hon. Carl Gum	1	1-No Settlement

<i>Evaluator</i>	<i># of Cases Assigned</i>	<i>Results of Sessions</i>
Samuel Hoar, Jr.	4	1-Full Settlement 3-No Settlement
Donald S. Holland	1	1-Full Settlement
Joseph Iandiorio	2	1-No Settlement 1-Closed Before Session
Edward Infante	1	1-Out of ENE
John Kassel	1	1-Full Settlement
Christopher Kauders	1	1-No Settlement
Robert Keiner	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
Peter Kunin	2	2-Full Settlement
Ira B. Lobel	1	1-No Settlement
Robert Lotty	1	1-Closed Before Session
Robert B. Luce	1	1-Full Settlement
Andrew Manitsky	1	1-Closed Before Session
Michael Marks	21	7-Full Settlement 1-Partial Settlement 6-No Settlement 2-Closed Before ENE 1-Out of ENE
Hon. Stephen B. Martin	1	1-Full Settlement
Hon. David A. Mazzone	3	1-Closed Before Session 2-Out of ENE
Robert McClallen	2	1-Full Settlement 1-No Settlement
P. Scott McGee	1	N/A
Robert Mello	16	4-Full Settlement 10-No Settlement 1-Closed Before ENE 1-Out of ENE
Gregory Mertz	1	1-Full Settlement
John Monahan, Jr.	1	1-No Settlement

<i>Evaluator</i>	<i># of Cases Assigned</i>	<i>Results of Sessions</i>
Glenn Morgan	1	1-Closed Before ENE
William A. Mulvey, Jr.	2	1-Full Settlement 2-No Settlement
Jerrold A. Olanoff	1	1-No Settlement
David A. Otterman	1	1-Full Settlement
Mitchell Pearl	2	1-Full Settlement 1-No Settlement
Myron Stuart Pessin	2	1-Full Settlement 1-No Settlement
Donald Powers	3	2-Full Settlement
Robert Rachlin	3	1-Partial Settlement 2-No Settlement
Robert K. Reis	1	1-Closed Before ENE
Amy Rothstein	1	1-Closed Before Sessions
Shapleigh Smith, Jr.	1	1-Partial Settlement
James Spink	109	40-Full Settlement 3-Partial Settlement 49-No Settlement 19-Closed Before Session 2-Out of ENE
Gordon Troy	1	1-Closed Before Session
Oreste V. Valsangiacomo, Jr.	1	1-No Settlement
James Vana	1	1-No Settlement
John B. Webber	6	1-Full Settlement 1-Partial Settlement 1-No Settlement 2-Closed Before Session 1-Out of ENE
Glen Yates	7	6-No Settlement 1-Out of ENE
John Zawistowski	1	1-Full Settlement
TOTAL	250	Average = 3.9