

United States District Court
District of Vermont



Early Neutral Evaluation (ENE)
Program

2009 ANNUAL REPORT

November 1, 2008 - October 31, 2009

I. Introduction

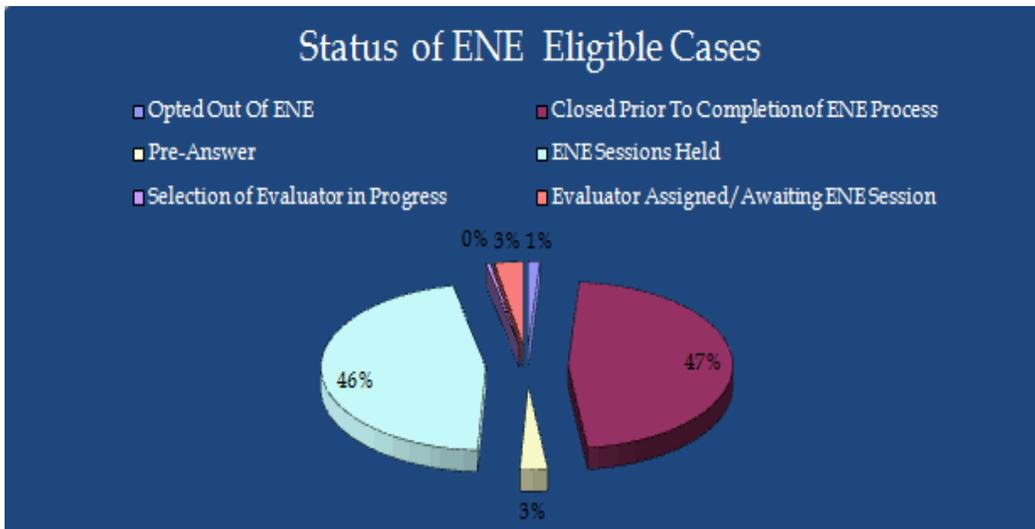
Since the inception of the District of Vermont's mandatory Early Neutral Evaluation program in July, 1994, the expectation was the program would reduce the time and costs of traditional litigation by enhancing direct communication between the parties, identifying and clarifying issues, and positioning cases for early resolution by settlement. This report offers a statistical overview of the ENE program and its success rates for the period November 1, 2008, through October 31, 2009.

Additionally, in 2008 the Court sought input from the Court's Advisory Group members and ENE panelists on what could be done to enhance the program's effectiveness. Those recommendations have been considered and it is anticipated some of those recommendations will be implemented in the coming year.

II. Statistical Analysis

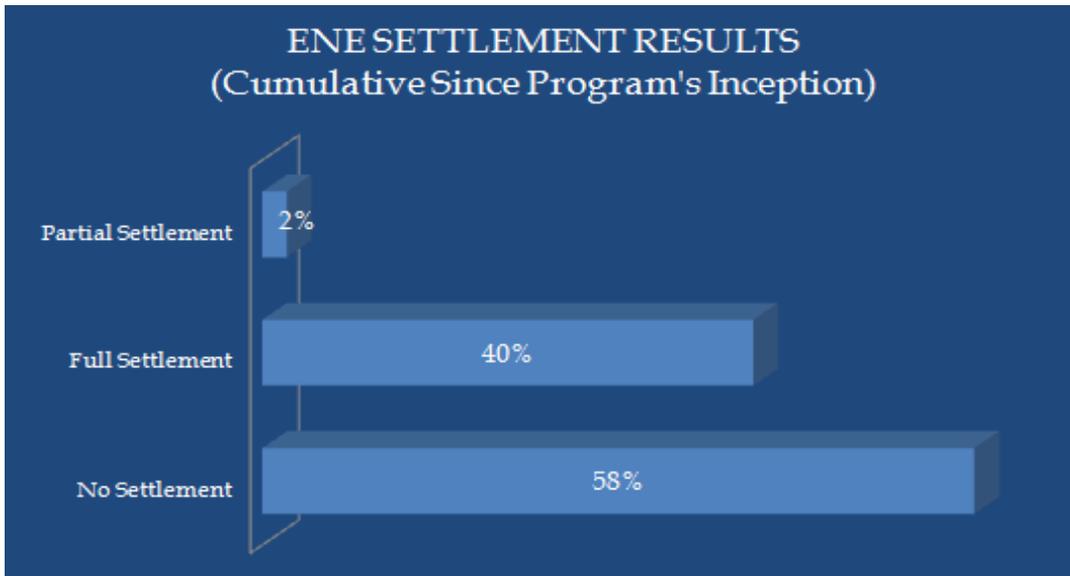
A. ENE Usage

The cumulative total of ENE eligible cases since the program's inception now totals 3,054. The graph below illustrates the current status of ENE eligible cases. Approximately 46% of those cases have held an ENE session, 47% were closed prior to completion of the process, 3% have an ENE evaluator assigned and are awaiting a session, and 3% are in the pre-answer stage. Less than 1% of ENE eligible cases successfully opted out of the process.

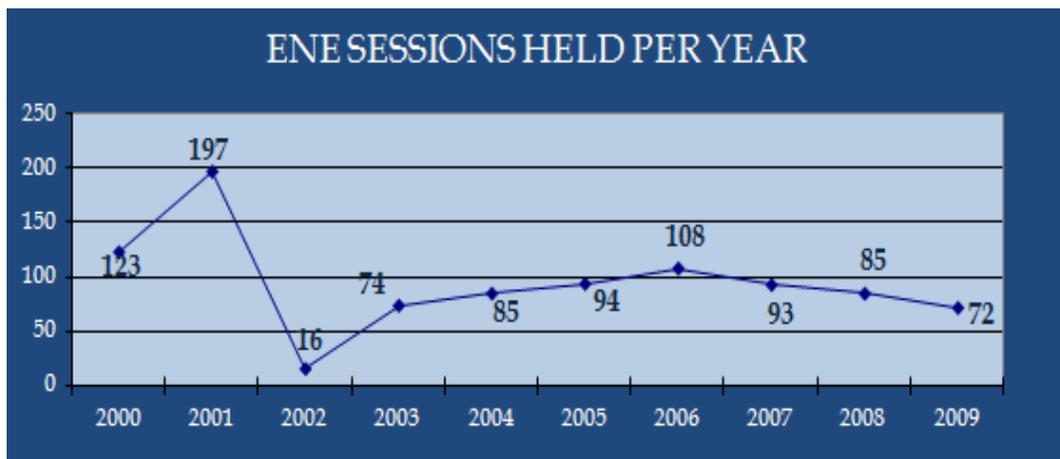


B. ENE Results

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. The success rate for full settlement remains the same as last year, holding at 40% for the program.



The number of ENE sessions held during 2009 was 72, a 15% decrease in the number of sessions held during 2008.



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 case duration before termination. Contract, medical malpractice and civil rights actions continue to be the leading type of cases which settle pre-ENE. At ENE sessions, personal injury cases continue to lead in ENE settlement. Motor vehicle cases appear to be the leading case category for settling post ENE.

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%	18%	28%	362
190 Contract: Other	60%	14%	26%	321
350 PI: Motor Vehicle	25%	33%	42%	369
360 PI: Other	33%	32%	35%	373
362 PI: Med Malpractice	56%	21%	23%	396
365 PI: Product Liability	47%	19%	34%	420
440 Civil Rights: Other	64%	13%	23%	322
442 Civil Rights: Jobs	35%	26%	39%	378
791 Labor: ERISA	49%	25%	26%	290

III. Attorney Feedback

The Court's annual questionnaires were once again sent to counsel participating in the Court's ENE program. Counsel were asked to reflect upon their experiences with the program and its effectiveness. While most of the comments are affirmatory, respondents also offered some very valuable suggestions for improvement. Historically, one of the most prevalent and chronic criticisms of the program is the ENE process is forced upon parties too early in the case. The Local Rules were recently updated to allow the evaluator to reschedule the ENE session without motion if the new date is within sixty days of the original date and rescheduling is not anticipated to affect the trial-readiness date. However, a motion with good cause shown will need to be filed if the request is for an indefinite postponement or the new date requires extension of the trial-readiness date.

Attachment 1 shows the results of the annual attorney questionnaire. Forty-two percent of the attorney participants reported ENE as helpful in the settlement of their cases, down 29% from last year's results. One-third of the attorneys thought the ENE process did help decrease the cost of litigation. One participating attorney added, "*Overall, I find the ENE Program to be very helpful in terms of either settling the case or narrowing down the issues.*" This statement affirms the belief the ENE process enhances direct communications between parties and assists in identifying and clarifying issues early.

In summary, based on comments received from participating attorneys, ENE is regarded as a useful and practical tool for providing an environment to allow settlement. Through the evolution of the program and with the assistance of the panel and participants, the Court remains committed to providing a means by which the settlement process may flourish.

IV. Evaluator Feedback

A. ENE Panel Refresh

The Court is working on implementing the recommendations made by the panel subcommittee in 2007. It is anticipated the ENE panel will be refreshed during the coming year. Upon refreshing the ENE panel, there will be approximately 36 - 40 members. It is believed this size will be a bit more in tune with the number of civil actions currently being filed and the number of cases currently eligible for the ENE process.

B. Annual 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 more than two-thirds of the evaluators rated the preparation by counsel and efforts in the ENE process as "excellent," while just under one-third were rated as "good." One evaluator offered this comment, "It's a good program. It's an expected part of litigation procedure. Professionals treat it with their usual standards of excellence. Resistance to participation is rare."

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.

As discussed previously, evaluator usage, panel size and evaluator effectiveness are currently being refreshed by the Court.

VI. Updates

A. ENE Administrator

Although outside of the scope of the time frame of this report, Beth Cota was appointed ENE Administrator for the District of Vermont on December 1, 2009, succeeding Lisa Wright who has been promoted to Operations Supervisor for the Court.

B. Bankruptcy Involvement

This past reporting period there was minimal activity regarding ENE in Bankruptcy matters. There was one case which participated in the ENE process and full settlement was reached as a result.

C. ENE Training

There were no scheduled training seminars in 2009.

D. ENE Internet Link

Both the public and ENE panel members benefit from an ENE link which was added to the Court's website. An informational web page entitled "ENE/Mediation" provides links to the ENE panel member list, Local Rule 16.1, annual ENE reports, and the program. Future ENE initiatives, seminars and training opportunities will be added to this site.

VII. Conclusion and Future Outlook

It has been a year of introspection and examination for the program as the Court sought input on what could be done to refine and improve the ENE processes. The Court Advisory Group and feedback from the ENE panel have directed the focus which should assist in making the ENE process more efficient. The Court is expected to implement some of the suggested changes in the very near future. With the submission of this report, the Court renews its commitment to the administration of an effective ENE program. The Court looks forward to communicating the improvements to the ENE community.

VIII. Comments

Any commentary or suggestions related to the ENE program may be directed to Jeff Eaton at 802-951-6301 x 118, or Jeff_Eaton@vtd.uscourts.gov.

2009 ENE Case Closing Questionnaire

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:

- 39% Facts/Issues were straightforward so lengthy discovery was not needed
- 4% Settlement was at least partly worked out before the case was filed
- 2% Client changed mind - case dropped or to be pursued in another venue
- 12% ENE process imminent - discovery checklist, case summary, etc. due soon
- 43% Other

If your case closed after ENE session was held:

- 17% Discovery
- 28% Decision on controlling motions by the Court
- 4% Trial date set/approaching
- 2% Attorney/client schedule only recently permitted full attention on this case
- 48% 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)

- 21% Very helpful
- 21% Somewhat helpful
- 51% No effect
- 8% 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)

- 29% Active participation of client in the session, i.e., direct communication with other party(ies), hearing strengths & weaknesses of their own case, etc.
- 7% Prompted counsel to exchange information and/or “get moving” on discovery sooner than we otherwise might have
- 10% \$500 fee prompted consideration of settlement before that stage was reached
- 21% Evaluator’s methods of conducting the session & discussing the case
- 19% Prompted all to consider settlement earlier than we otherwise might have
- 5% Combination of all
- 2% Improved pretrial settlement discussions as trial approached, e.g., court pretrial conference
- 7% Other

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

25% Yes

54% No

21% 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?

33% Yes

67% No

Comments or suggestions on the ENE program:

“The ENE neutral selected in our case allowed the opening ENE session to develop into a meeting in which opposing counsel insulted our clients. Then, the neutral mis-communicated expectations for settlement when serving as go-between which led to another wasted meeting and left hard feelings among the parties. I recommend providing mandatory training to the people who are on the list of ENE neutrals as well as an evaluation process to ensure that ineffective neutrals are removed from the list.”

“I think the ENE was helpful generally, in as much as it helped the parties identify the disputed issues. However, since the case didn’t settle it’s difficult to gauge the usefulness of the ENE.”

“I did not attend ENE. Traveler’s counsel, Attorney Hogan, handled the matter and my presence was not required.”

“The case settled because on both sides, new responsible executives took over the settlement process. The Court did not play a significant role in achieving this result.”

“ENE was helpful and facilitated settlement in every other case except this one.”

“The parties were simply nowhere near ready to talk seriously about settlement when it occurred. Too many variables still to be determined.”

“Overall, I find the ENE program to be very helpful in terms of either settling the case or narrowing down the issues. Unfortunately, this case did not settle at the ENE, but was resolved on motions.”

“These answers are not meant to denigrate the ENE process. This was simply a case that was going to settle quickly in any event.”

“Ellen Fallon was an excellent evaluator. The plaintiff was pro se and very difficult, but she got the job done. One of the best mediators I have ever dealt with.”

2009 ENE Evaluator Questionnaire

1. Considering Attorneys' participation, what percentage falls into each of the categories below regarding the ENE process?
 - 70% Excellent - counsel prepare thoroughly and honestly try to make the process successful for their client/case
 - 26% 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:
 - 67% Increase in attorney participation/attitude
 - 33% 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?
 - 68% Full active participation
 - 22% Some participation
 - 9% 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 answers provided.

Comments or suggestions on the ENE program:

"I continue to see some cases go to an ENE before sufficient discovery has been done, thereby inhibiting the process."

"The reticence of some attorneys to view the ENE process as a valuable resolution tool also continues to inhibit the process."

"It's a good program. Its an expected part of litigation procedure. Professionals treat it with their usual standards of excellence. Resistance to participation is rare."

"It is a great program. The mediators fee is too low. It should be increased, even if that means more cases need to be assigned pro bono."

EVALUATOR USAGE AS OF 10/31/09
(Court's Official Roster)

Evaluator	# of Cases Assigned	Results of Sessions
Frederic W. Allen	24	6-Full Settlement 1-Partial Settlement 10-No Settlement 5-Closed Before Session
Edwin Amidon, Jr.	51	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 8-No Settlement 3-Closed Before Session 2-Out of ENE
John J. Bergeron	15	2-Full Settlement 7-No Settlement 3-Closed Before Session 2-Out of ENE
Eileen M. Blackwood	46	17-Full Settlement 18-No Settlement 7-Closed Before Session 3-Out of ENE
Stephen S. Blodgett	41	8-Full Settlement 21-No Settlement 4-Closed Before Session 10-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

Evaluator	# of Cases Assigned	Results of Sessions
Hon. Alden T. Bryan	25	5-Full Settlement 1-Partial Settlement 7-No Settlement 8-Closed Before Session 5-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
Thomas Z. Carlson	1	1-No Settlement
Richard T. Cassidy	60	24-Full Settlement 21-No Settlement 10-Closed Before Session 4-Out of ENE
David L. Cleary	31	11-Full Settlement 1-Partial Settlement 11-No Settlement 5-Closed Before Session
Stephen R. Crampton	6	1-Full Settlement 1-No Settlement 3-Settled Before Session 1-Out of ENE
Christopher L. Davis	63	16-Full Settlement 31-No Settlement 11-Closed Before Session 7-Out of ENE
Hon. Hilton H. Dier, Jr.	39	9-Full Settlement 1-Partial Settlement 20-No Settlement 8-Closed Before Session 1-Out of ENE
James A. Dumont	35	10-Full Settlement 13-No Settlement 9-Closed Before Session 3-Out of ENE
Ellen M. Fallon	20	4-Full Settlement 7-No Settlement 6-Closed Before Session 3-Out of ENE

ATTACHMENT 3A

Evaluator	# of Cases Assigned	Results of Sessions
William A. Fead	25	8-Full Settlement 8-No Settlement 8-Closed Before Session 2-Out of ENE
James C. Gallagher	33	7-Full Settlement 15-No Settlement 7-Closed Before Session 3-Out of ENE
Robert P. Gerety, Jr.	47	10-Full Settlement 30-No Settlement 5-Closed Before Session 5-Out of ENE
Michael F. Hanley	28	7-Full Settlement 11-No Settlement 7-Closed Before Session 2-Out of ENE
Robert B. Hemley	34	8-Full Settlement 2-Partial Settlement 10-No Settlement 11-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	61	18-Full Settlement 2-Partial Settlement 25-No Settlement 14-Closed Before Session 4-Out of ENE
Mark A. Kaplan	19	7-Full Settlement 1-Partial Settlement 7-No Settlement 4-Out of ENE
Mary P. Kehoe	18	4-Full Settlement 8-No Settlement 7-Closed Before Session 1-Out of ENE
Mary Kirkpatrick	4	2-No Settlement 2-Closed Before Session

ATTACHMENT 3A

Evaluator	# of Cases Assigned	Results of Sessions
Catherine Kronk	18	4-Full Settlement 7-No Settlement 4-Closed Before Session 1-Out of ENE
Anthony B. 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	24	4-Full Settlement 12-No Settlement 6-Closed Before Session 3-Out of ENE
Thomas E. McCormick	62	14-Full Settlement 33-No Settlement 9-Closed Before Session 3-Out of ENE
Robert R. McKearin	38	8-Full Settlement 18-No Settlement 8-Closed Before Session 5-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 5-Closed Before Session 4-Out of ENE
James W. Murdoch	26	4-Full Settlement 1-Partial Settlement 19-No Settlement 3-Closed Before Session
Hon. Richard W. Norton	5	1-Full Settlement 2-No Settlement
Hon. Arthur J. O'Dea	233	95-Full Settlement 1-Partial Settlement 77-No Settlement 39-Closed Before Session 11-Out of ENE

ATTACHMENT 3A

Evaluator	# of Cases Assigned	Results of Sessions
Jerome F. O'Neill	22	8-Full Settlement 8-No Settlement 6-Closed Before Session 1-Out of ENE
Donald J. Rendall	12	5-No Settlement 7-Closed Before Session
James W. Runcie	16	5- Full Settlement 4-No Settlement 6-Closed Before Session 1-Out of ENE
Stephen L. Saltonstall	21	3-Full Settlement 11-No Settlement 6-Closed Before Session 2-Out of ENE
Potter Stewart, Jr.	57	11-Full Settlement 24-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	75	26-Full Settlement 2-Partial Settlement 15-No Settlement 9-Closed Before Session 6-Out of ENE
Robert E. Woolmington	8	1-Full Settlement 4-No Settlement 1-Closed Before Session 3-Out of ENE
TOTAL	1534 (Average = 33)	

ATTACHMENT 3A

EVALUATOR USAGE AS OF 10/31/09
 (Stipulated To By Parties For Those Not on the Court's Official Roster)

Evaluator	# of Cases Assigned	Results of Sessions
Richard Affolter	3	1-Full Settlement 1-Closed Before Session 1-Out of ENE
Leo Bisson	17	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	2	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	2	1-Full Settlement 1-No Settlement
M. Jerome Diamond	1	1-No Settlement
Lisa Dolak	1	1-No Settlement
Christopher D. Ekman	1	1-No Settlement
Kenneth Feinberg	1	1-No Settlement
Richard P. Foote	2	1-Full Settlement 1-No Settlement

Evaluator	# of Cases Assigned	Results of Sessions
Michael G. Furlong	1	1-No Settlement
Hon. Carl Gum	1	1-No Settlement
Samuel Hoar, Jr.	5	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
Stephanie Mapes	2	1-No Settlement 1-Out of ENE
Michael Marks	43	13-Full Settlement 1-Partial Settlement 7-No Settlement 2-Closed Before ENE 2-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	2	1-Full Settlement

ATTACHMENT 3B

Evaluator	# of Cases Assigned	Results of Sessions
Robert Mello	17	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
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	2	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
Jon T. Sartore	1	1-Full Settlement
Shapleigh Smith, Jr.	1	1-Partial Settlement
Hon. Richard B. Simons	1	1-No Settlement
James Spink	130	48-Full Settlement 3-Partial Settlement 53-No Settlement 21-Closed Before Session 2-Out of ENE
Julie Taylor	3	1-Full Settlement 1-No Settlement 1-Closed Before Session
Gordon Troy	1	1-Closed Before Session
Oreste V. Valsangiacomo, Jr.	1	1-No Settlement
James Vana	1	1-No Settlement

ATTACHMENT 3B

Evaluator	# of Cases Assigned	Results of Sessions
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	307 (Average = 4.45)	