



## **EARLY NEUTRAL EVALUATION PROGRAM**

### **2005 ANNUAL REPORT**

November 1, 2004 - October 31, 2005

## I. INTRODUCTION

Since July 1, 1994, the District of Vermont has been operating its mandatory Early Neutral Evaluation (ENE) program in hope that it would 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, 2004 through October 31, 2005. It also compares this year's results to previous years in order to gauge the effectiveness and progress of the program over time.

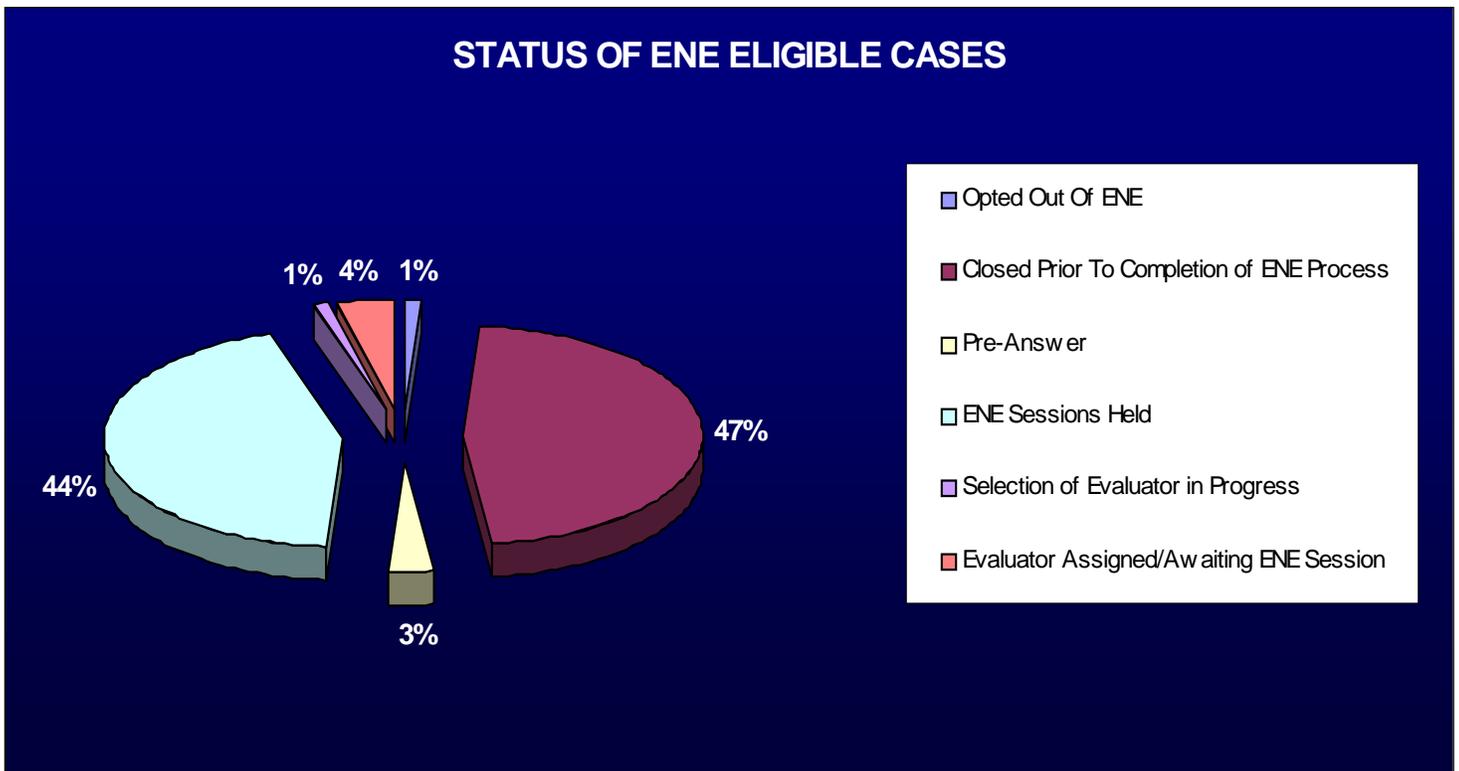
## II. STATISTICAL ANALYSIS

### A. ENE Usage

The number of ENE sessions held during 2005 was 94, which is slightly higher than the number of sessions held during 2004, which was 85.

The cumulative total of ENE eligible cases since the program's inception now totals 2,416. The graph below illustrates the current status of ENE eligible cases. Forty-four percent of those cases have held an ENE session, 47 percent were closed prior to completion of the process, 4 percent have an ENE evaluator assigned and are awaiting a session, 3 percent are in the pre-answer stage, 1 percent are in the selection phase for and evaluator. Only one percent were allowed to opt out of the ENE 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.

### C. Disposition of ENE Eligible Cases

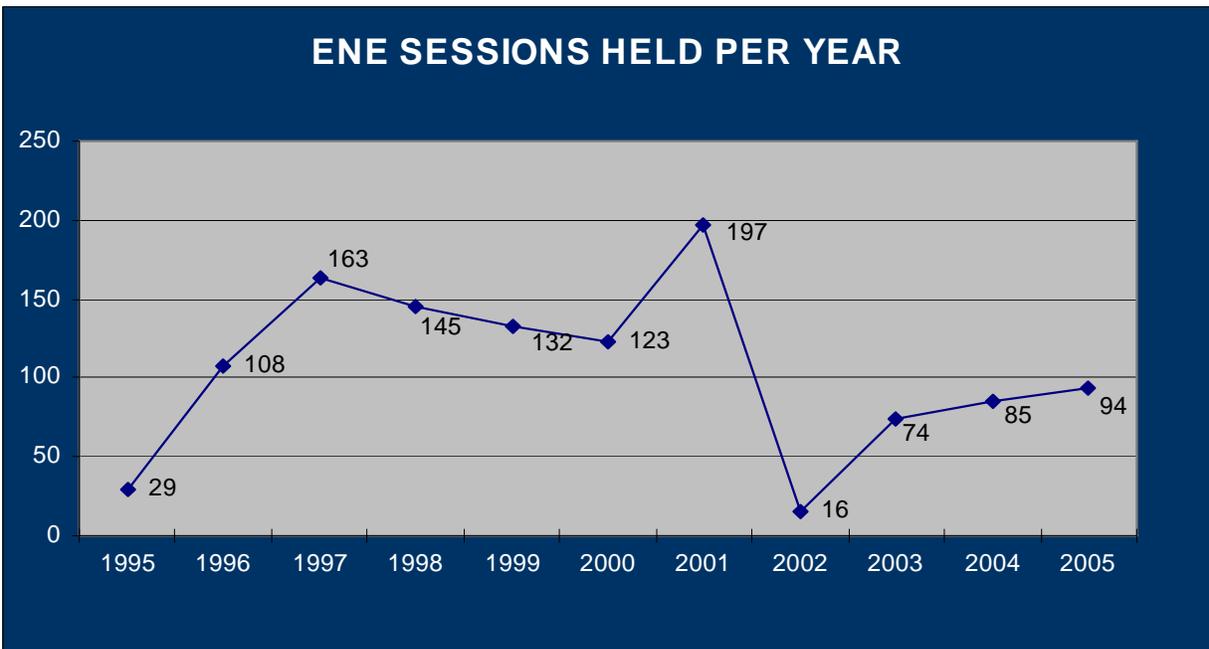
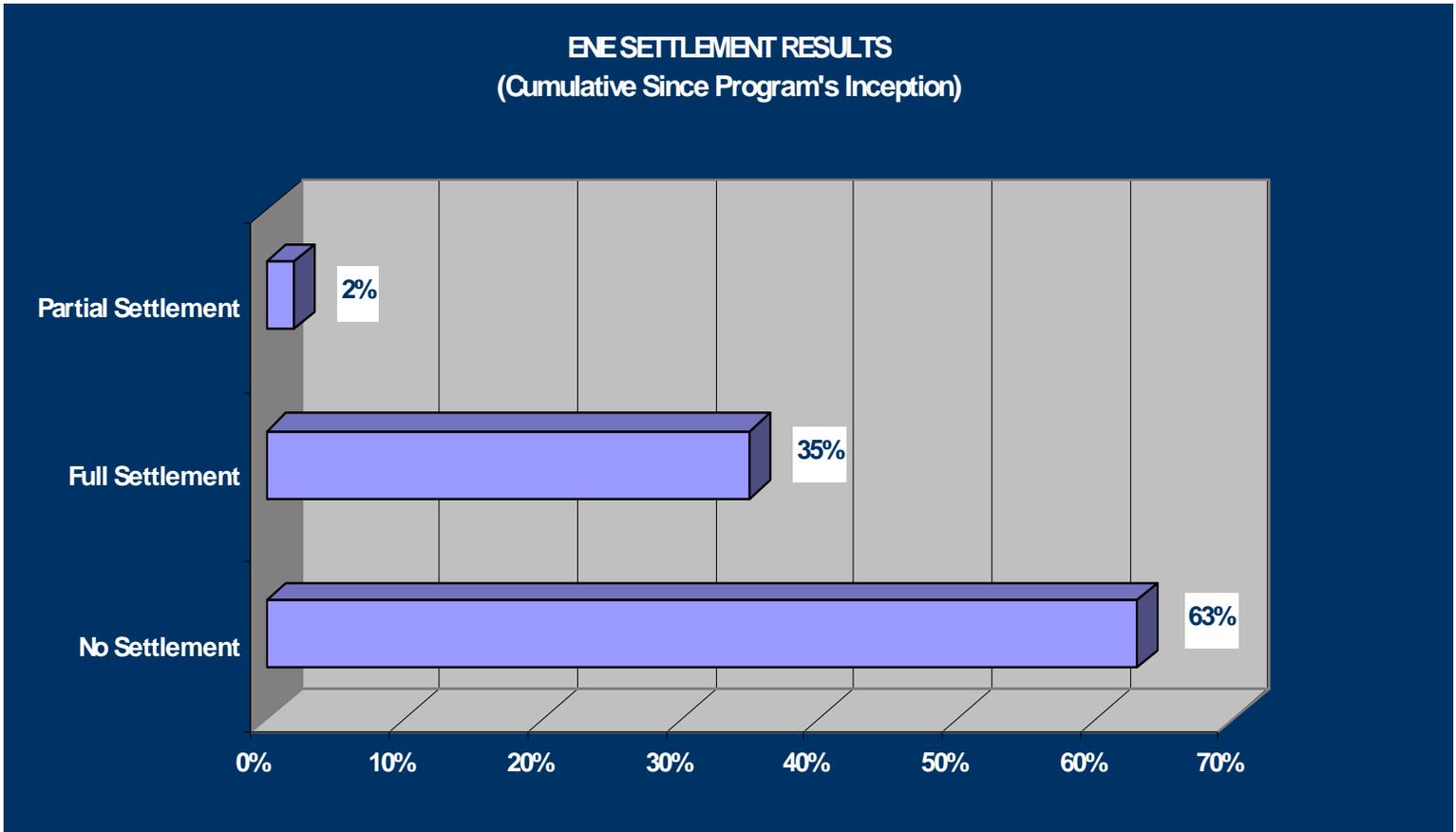


Table A compares the nature of suit category with the point of disposition for all ENE eligible cases. It also displays the mean disposition time in each category. This information suggests which type of cases benefit most from the program and provides a general indication of the duration of case life 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%	355
190 Contract: Other	64%	12%	24%	317
350 PI: Motor Vehicle	28%	30%	42%	376
360 PI: Other	34%	30%	36%	373
362 PI: Med Malpractice	60%	20%	20%	347
365 PI: Product Liability	43%	19%	38%	441
440 Civil Rights: Other	66%	10%	24%	304
442 Civil Rights: Jobs	37%	23%	40%	383
791 Labor: ERISA	51%	23%	26%	280

### III. ATTORNEY FEEDBACK

Our annual survey questionnaires were sent to counsel involved in ENE cases during the past year and counsel were asked to reflect upon their experiences with the program and its effectiveness. Attachment 1 shows the results of the survey. Fifty-two 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 settlement talks. Although this figure represents a 12 percent decline from last year's survey, the evaluations still continue to suggest that ENE is generally thought of as a positive experience. Additionally, 42 percent of the participants believed that ENE helped decrease the costs of litigation.

Opening the lines of communication and encouraging settlement talks have always been the primary objectives of the ENE program. In 2005, nearly 30 percent of the participants believed

their case settled earlier that it would have if there were no involvement in the ENE process. This suggests that the ENE program continues to successfully provide a forum for parties to talk openly and constructively about possible resolutions that are both faster and less expensive than traditional litigation.

#### **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 62 percent of the evaluators rated counsels' preparation and efforts in the ENE process as "excellent" while 32 percent were rated "good". Also encouraging is the fact that 62 percent of the evaluators responded that they perceived an increase in attorney participation and attitude at the ENE sessions, up 12 percent from last year's survey.

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. It also appears from the statistics that some evaluators have earned a reputation for providing quality work in resolving cases and parties are naturally gravitating towards their selection as evaluators.

#### **VI. UPDATES**

##### **A. Bankruptcy Involvement**

To date, a total of four bankruptcy cases have participated in the ENE process. Despite this low number of involvement, the Court continues to encourage ENE as a viable option in bankruptcy cases.

##### **B. Evaluator Training**

There were no scheduled training seminars in 2005.

#### **VI. CONCLUSION AND FUTURE OUTLOOK**

The ENE program continues to be a success in terms of providing a practical and cost

efficient alternative for encouraging settlement of civil cases. Statistics support that the number of trials in civil cases are diminishing and that most cases conclude through settlement negotiations. The ENE program has been a positive force in many of the cases that settle by offering parties creative solutions and alternatives to formal litigation.

The Court continues to support the ENE program on the belief that it provides an effective opportunity not only to potentially reach settlement, but also early enough to save investigative, discovery and litigation costs. ENE 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. It also expedites judicial case management by helping to reduce the number of trials.

The Court will continue to monitor and evaluate the program in order to measure its degree of success and to identify areas for improvement.

## **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

- 33% Facts/Issues were straightforward so lengthy discovery was not needed
- 7% Settlement was at least partly worked out before the case was filed.
- 0% Client changed mind - case dropped or to be pursued in another venue
- 13% ENE process imminent - discovery checklist, case summary, etc. due soon
- 47% Other

#### If your Case Closed After ENE Session was Held

- 34% Discovery
- 18% Decision on controlling motions by the Court
- 15% Trial date set/approaching
- 3% Attorney/client schedule only recently permitted full attention on this case
- 31% 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.)**

- 25% Very helpful
- 27% Somewhat helpful
- 42% No effect
- 6% 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.
- 10% 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
- 31% Evaluator's methods of conducting the session & discussing the case
- 14% Prompted all to consider settlement earlier than we otherwise might have
- 6% Combination of all
- 2% Improved pretrial settlement discussions as trial approached, e.g., court pretrial conference
- 8% Other

## **ATTACHMENT 1**

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

**process?**

- 30%** Yes
- 47%** No
- 23%** 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?**

- 42%** Yes
- 58%** No

**Comments or suggestions on the ENE program:**

- ▶ “ENE commenced a dialogue that led to settlement”
- ▶ “The ENE program is helpful in the majority of cases and should be continued”
- ▶ “Good concept - well run program - generally helpful in the litigation process - sometimes held too early in development of case”
- ▶ “ENE did not work in this case because the plaintiff was not prepared to admit the weakness in his case until he prepared for deposition, saw his expert deposed, and realized that the unvarnished truth was fatal to his case”
- ▶ “I think the ENE process is generally very helpful - just not applicable in this case”
- ▶ “In other cases the ENE program works well”
- ▶ “We were on the verge of conducting numerous depositions”
- ▶ “I was once a skeptic, now a convert!”
- ▶ “Difficult legal issues made settlement elusive; ENE process was unable to give clients outside feedback on the relative strength of each side’s case”
- ▶ “I’m a big believer in the ENE process, but it wasn’t successful in this case; We had two mediators (the first was the ENE) and we didn’t get close to settling at either; the case finally settled only after plaintiffs’ medical expert gave a deposition that was helpful to the defense”
- ▶ “ENE’s are helpful in settling cases”
- ▶ “ENE normally work; in this particular case with this particular evaluator it didn’t; such is life”
- ▶ “The original ENE - way back in November 2003 - went nowhere, probably because it was too early in the case for the parties to comprehend the issues fully; fortunately Judge Sessions conducted his own “ENE” after the jury draw on March 3, 2005, at a time when the parties (and the court) knew as much about the case as they were ever going to know, and Judge Sessions personal evaluation helped the parties bridge a sizeable gap in demand/offer”
- ▶ “Court dismissed case one week after ENE so much of this survey does not apply; however, the ENE has been helpful with respect to a pending companion case in State Court; Sandy Fead was ENE evaluator & his contribution was very helpful; if the state case settles, as it may, it will be largely due to the ENE session”

## **2005 ENE EVALUATOR QUESTIONNAIRE DISTRICT OF VERMONT**

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

- 62% Excellent - counsel prepare thoroughly and honestly try to make the process successful for their client/case
- 35% Good - counsel make some effort, but seem a bit hesitant/skeptical
- 3% 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 –**

- 62% Increase in attorney participation/attitude
- 38% 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
- 19% Some participation
- 11% Neutral - present but did not volunteer input in the process
- 2% 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:***

- ▶ “I had few ENEs this past year so I cannot appropriately assess percentage figures to the above. My impression is that attorney/attitude is the same as in earlier years & that most try to make the process successful & work hard at doing so”
- ▶ “I think the program is going very well. Occasionally parties send people who do not have any or much authority. They should be required to send someone with the authority to agree to plaintiff demand if they find that it is in the company's best interest to do so”
- ▶ “Pro se litigants present special challenges & may need extra support from court personnel”
- ▶ “Thank you for making available a courthouse location as a “safe” space for ENE; the Court needs to have such space available w hen requested in the judgment of the evaluator”

**EVALUATOR USAGE AS OF 10/31/05**  
**(Court's Official Roster)**

<b><u>Evaluator</u></b>	<b><u># of Cases Assigned</u></b>	<b><u>Results of Sessions</u></b>
Frederic W. Allen (**)	22	6-Full Settlement 1-Partial Settlement 9-No Settlement 4-Closed Before Session
Edwin Amidon, Jr.	54	7-Full Settlement 28-No Settlement 10-Closed Before Session 2-Out of ENE
Gary Barnes (***)	7	3-Full Settlement 2-No Settlement 2-Closed Before Session
Alison J. Bell (**)	15	3-Full Settlement 6-No Settlement 2-Closed Before Session 2-Out of ENE
John Bergeron (***)	11	2-Full Settlement 4-No Settlement 2-Closed Before Session 1-Out of ENE
Eileen M. Blackwood	39	13-Full Settlement 14-No Settlement 6-Closed Before Session 3-Out of ENE
Stephen S. Blodgett	41	8-Full Settlement 21-No Settlement 4-Closed Before Session 7-Out of ENE
Samuel S. Bloomberg	17	1-Full Settlement 1-Partial Settlement 10-No Settlement 5-Closed Before Session
John J. Boylan III (***)	7	2-Full Settlement 3-No Settlement 1-Closed Before Session
Hon. Alden T. Bryan (**)	20	3-Full Settlement 5-No Settlement 1-Partial Settlement 5-Closed Before Session 6-Out of ENE

<u><i>Evaluator</i></u>	<u><i># of Cases Assigned</i></u>	<u><i>Results of Sessions</i></u>
Joseph F. Cahill, Jr.	26	4-Full Settlement 1-Partial Settlement 14-No Settlement 5-Closed Before Session 2-Out of ENE
Richard T. Cassidy	44	15-Full Settlement 16-No Settlement 7-Closed Before Session 4-Out of ENE
David Cleary (***)	17	5-Full Settlement 5-No Settlement 2-Closed Before Session
Stephen R. Crampton	6	1-Full Settlement 1-No Settlement 3-Settled Before Session 1-Out of ENE
Christopher L. Davis	53	11-Full Settlement 26-No Settlement 10-Closed Before Session 4-Out of ENE
Hon. Hilton H. Dier, Jr.	36	8-Full Settlement 1-Partial Settlement 17-No Settlement 7-Closed Before Session 1-Out of ENE
James A. Dumont	31	8-Full Settlement 13-No Settlement 8-Closed Before Session 2-Out of ENE
Ellen M. Fallon (**)	13	1-Full Settlement 4-No Settlement 1-Closed Before Session 2-Out of ENE
William A. Fead	20	7-Full Settlement 7-No Settlement 7-Closed Before Session 1-Out of ENE
John H. Fitzhugh	38	4-Full Settlement 1-Partial Settlement 21-No Settlement 8-Closed Before Session 3-Out of ENE

<u><i>Evaluator</i></u>	<u><i># of Cases Assigned</i></u>	<u><i>Results of Sessions</i></u>
James C. Gallagher	31	6-Full Settlement 15-No Settlement 5-Closed Before Session 2-Out of ENE
Robert P. Gerety, Jr.	41	9-Full Settlement 27-No Settlement 5-Closed Before Session 3-Out of ENE
Michael F. Hanley (**)	23	3-Full Settlement 10-No Settlement 6-Closed Before Session 1-Out of ENE
Robert B. Hemley (**)	25	7-Full Settlement 2-Partial Settlement 7-No Settlement 6-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	49	12-Full Settlement 1-Partial Settlement 21-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 7-No Settlement 7-Closed Before Session
Mary Kirkpatrick (***)	3	1-No Settlement 2-Closed Before Session
Catherine Kronk	12	3-Full Settlement 5-No Settlement 3-Closed Before Session

<u><i>Evaluator</i></u>	<u><i># of Cases Assigned</i></u>	<u><i>Results of Sessions</i></u>
Anthony Lamb (**)	24	7-Full Settlement 2-Partial Settlement 7-No Settlement 4-Closed Before Session 3-Out of ENE
Robert E. Manchester	13	1-Full Settlement 9-No Settlement 2-Closed Before Session
Karen McAndrew	20	3-Full Settlement 12-No Settlement 4-Closed Before Session 3-Out of ENE
Thomas E. McCormick	54	11-Full Settlement 26-No Settlement 8-Closed Before Session 3-Out of ENE
Robert R. McKearin	29	6-Full Settlement 14-No Settlement 6-Closed Before Session 3-Out of ENE
Hon. John P. Meaker (***)	6	1-Closed Before Session 2-Out of ENE
William H. Meub	37	17-Full Settlement 12-No Settlement 4-Closed Before Session 4-Out of ENE
James W. Murdoch	24	4-Full Settlement 1-Partial Settlement 18-No Settlement 3-Closed Before Session
Arthur O'Dea (**)	185	68-Full Settlement 1-Partial Settlement 62-No Settlement 36-Closed Before Session 9-Out of ENE
Jerome F. O'Neill	21	7-Full Settlement 8-No Settlement 5-Closed Before Session 1-Out of ENE
Donald J. Rendall (***)	10	4-No Settlement 4-Closed Before Session

<u><i>Evaluator</i></u>	<u><i># of Cases Assigned</i></u>	<u><i>Results of Sessions</i></u>
James W. Runcie (**)	13	2- Full Settlement 4-No Settlement 5-Closed Before Session 1-Out of ENE
Stephen L. Saltonstall	17	2-Full Settlement 8-No Settlement 6-Closed Before Session 2-Out of ENE
Potter Stewart, Jr.	46	9-Full Settlement 19-No Settlement 10-Closed Before Session 7-Out of ENE
Susan M. Sussman (**)	5	1-Full Settlement 1-No Settlement 1-Out of ENE
Joan Loring Wing (**)	36	15-Full Settlement 1-Partial Settlement 7-No Settlement 5-Closed Before Session 2-Out of ENE
Robert E. Woolmington (**)	7	1-Full Settlement 3-No Settlement 1-Closed Before Session 2-Out of ENE
Dinah Yessne (**)	5	1-No Settlement 2-Closed Before Session 1-Out of ENE
<b>TOTAL</b>	1306*	Average = 27

\*\*trained 09/03/98

\*\*\*trained 10/18/01

**EVALUATOR USAGE AS OF 10/31/05**  
*(Stipulated To By Parties For Those Not on the Court's Official Roster)*

<b><u>Evaluator</u></b>	<b><u># of Cases Assigned</u></b>	<b><u>Results of Sessions</u></b>
Richard Affolter	2	1-Full Settlement 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
Joseph Iandiorio	2	1-No Settlement 1-Closed Before Session
John Kassel	1	1-Full Settlement

<u><i>Evaluator</i></u>	<u><i># of Cases Assigned</i></u>	<u><i>Results of Sessions</i></u>
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
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

<u><i>Evaluator</i></u>	<u><i># of Cases Assigned</i></u>	<u><i>Results of Sessions</i></u>
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
<b>TOTAL</b>	136	Average = 2.5