COURT-ADMINISTERED ARBITRATION: 
AN ALTERNATIVE FOR CONSUMER DISPUTE RESOLUTION

Deborah R. Hensler, Jane Adler, 
with the assistance of Gregory J. Rest

February 1983

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The Institute for Civil Justice
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This Note was prepared for presentation at the first National Conference on Alternative Consumer Dispute Resolution, held January 17-18, 1983 in Washington, D.C. It reports selected preliminary results of a study, conducted by Rand's Institute for Civil Justice, of the Pittsburgh (Allegheny County) Court of Common Pleas arbitration program. The final results of the study will be reported in J. Adler, D. Hensler, and C. Nelson, Simple Justice: How Litigants Fare in Arbitration: A Case Study of the Pittsburgh Court-Administered Arbitration Program, The Institute for Civil Justice, The Rand Corporation (forthcoming).
For many years, consumer representatives have criticized the American judicial system for placing barriers in the way of citizens attempting to redress the "little injustices" of the marketplace. They see the traditional adversarial process as too expensive, too time-consuming, and too difficult to master to be accessible to the average consumer with a modest claim and modest resources to pursue it. The burgeoning of the consumer movement has led to the establishment of numerous alternative dispute resolution mechanisms outside the civil court system. But critics remain concerned that widespread recognition of the consumer's inability to gain access to the court system impairs the consumer's chances of gaining satisfactory outcomes through such extrajudicial procedures.

Court-administered arbitration, an alternative dispute resolution procedure for civil suits involving modest sums of money, could contribute to strengthening the consumer's position in the judicial system. First established in Pennsylvania in the early 1950's, this procedure (also known as "compulsory arbitration," "court-annexed arbitration," and "judicial arbitration") has recently gained attention as a tool for reducing congestion and delay on the civil trial calendar. But its attraction for the consumer lies in its potential for speedy, inexpensive, and comprehensible adjudication of disputes within the court system.

In jurisdictions that have established court-administered arbitration programs, litigants who file civil damage suits within a specified monetary limit (usually $10,000 or $20,000) are scheduled for an arbitration hearing, rather than a trial. The arbitrators are attorneys or retired judges who serve voluntarily and are paid small honoraria. The arbitration hearing is conducted informally, using relaxed rules of evidence, outside of a regular courtroom; the arbitrator delivers a verdict shortly after the hearing is concluded. If the parties accept the verdict, it is entered as a judgment of the court and is legally enforceable. If either party wishes to, however,
he or she may reject the arbitrator's decision and request that the
court schedule a trial, at which point the case returns to the regular
trial calendar. If a trial is held, the case is heard "de novo," that
is, without reference to the arbitration hearing or its outcome.

Because of its special features, court-administered arbitration has
the potential of providing a full hearing of the consumer's case and
producing a legally enforceable decision by a neutral party, at
relatively little expense, in time or money, to the parties. And,
unlike small claims courts, which share many of its features, court-
administered arbitration is applicable to disputes involving significant
amounts of money.

During the past year, the Institute for Civil Justice has been
conducting a study of the Pittsburgh (Allegheny County Court of Common
Pleas) arbitration program. This program is one of the oldest in the
country, and has been particularly successful in achieving efficiency
outcomes.

The Institute's study of the program seeks to understand how
litigants fare in such a process, which seeks to deliver "rough justice"
in a highly efficient fashion. The study does not focus on any
particular class of disputants. But because consumer disputes share
many of the characteristics of other disputes brought to arbitration,
much of what we are learning about litigants in general, applies to
consumers as well. The study of the Pittsburgh program is currently
nearing completion. This Note summarizes our findings to date,
highlighting issues that may be of particular concern to those
interested in consumer dispute resolution. The findings are based on
analyses of court record data for a sample of cases filed in arbitration
in 1980 and 1981, and on interviews with litigants whose cases were
heard in 1982.

The Pittsburgh arbitration program achieves efficient outcomes
through a centralized administration of the arbitration process that
permits streamlining procedures for filing cases, selecting arbitrators,
and scheduling and holding hearings. Most cases are heard within 90
days of the date of filing. The average cost to the court for program
administration, including arbitrators' fees (charged at $100 per day),
have been estimated at about $65 per case.
Since all cases valued at $10,000 or less that are filed in the Allegheny Court of Common Pleas are assigned to arbitration, the total program caseload reflects the multiple uses of a metropolitan trial court. About half of the cases filed are collection cases, and more than half have organizational (business or public agency) plaintiffs. Many of the parties who are sued do not obtain legal counsel. Approximately half of the cases filed do not reach arbitration hearings. Instead, they are resolved by judgments (often, in the case of collection suits, by default), by settlement between the parties, or by the plaintiff dropping suit.

The cases that reach arbitration hearing more accurately portray program usage. Hearing caseload statistics indicate that arbitration is used heavily by individuals to resolve relatively small claims. Property damage and personal injury cases predominate. Collection cases that reach hearing frequently involve disputes between vendors and dissatisfied consumers who have withheld payment. Our interview data suggest that about one-third of all cases heard involve some sort of consumer dispute.

Sixty percent of the cases heard involve amounts under $3000. Sixty percent of the cases involve individuals suing other individuals or organizations. About one-third of the cases involve unrepresented parties on one or both sides; defendants are more likely than plaintiffs to appear pro se.

During the past two years, plaintiffs generally have obtained positive outcomes at arbitration. About 80 percent of the suits heard resulted in an award of some amount to the plaintiff. Taking into account both the probability of winning and the relative amount awarded, a plaintiff could expect to win about 65 percent of the amount claimed. Plaintiffs were less successful in breach of contract cases, in suits over relatively large amounts of money, and when they appeared pro se against represented defendants.

During the period studied, about 14 percent of all outcomes were formally appealed by one of the parties. (Another four percent were apparently rejected, but the parties settled before filing a request for trial de novo). Only half of the appeals actually went to trial,
however; the remainder were settled or dropped. Not surprisingly, given the pattern of arbitrator awards, defendants were more likely than plaintiffs to appeal. About 75 percent of the time, defendants improved their position by appealing. Plaintiffs who appealed defense verdicts usually won a reversal, but plaintiffs who appealed unsatisfactory awards had only a fifty-fifty chance of improving their position.

Litigants reported relatively modest out-of-pocket costs to bring their suits to arbitration. The filing fee is currently $36.50. Litigants who obtained counsel reported spending about $250-$300 in attorney fees. Attorneys were frequently paid on a flat fee arrangement. On average, litigants spent about a day of their own time preparing for and attending the arbitration hearing, but many litigants were able to get paid time off from work to go to court.

If litigants chose to appeal, they could expect to invest substantially more time and money before resolving their dispute. Appealing parties must reimburse the court for the arbitrators' fees. Because the fees are prorated across all of the cases heard on a given day, this cost varies; generally it is between $60 and $90 per case. In addition, parties must pay a filing fee for trial ($36 for a bench trial and $86 for a jury trial). Litigants could also expect to spend additional money for attorneys' fees, and additional time preparing for and attending trial.

Our interview data indicate that litigants generally have positive views about the arbitration process. Arbitration provides an opportunity for the case to be heard by three neutral parties, an opportunity that many litigants appear to value highly. In general, litigants believe that the hearing process is fair and that the arbitrators are even-handed in their conduct of the hearings.

Court-administered arbitration appears to play an important role in consumer dispute resolution in Pittsburgh. It serves as a supplement to the lower level magistrate's court, which operates as a small claims court for disputes involving $2000 or less. Litigants who are dissatisfied with an outcome in magistrate's court have a realistic appeal option that may not be present in other court systems that do not provide as speedy and inexpensive a mechanism for handling small claims appeals. Litigants who, for one reason or another, believe that they
will receive an unsatisfactory outcome in magistrate's court may bypass that process and go directly to arbitration. Finally, arbitration offers a forum for those whose complaints involve damages greater than $2000, and who are therefore barred from bringing suit at the lower level. Absent arbitration, these litigants would have no way of obtaining both a full hearing of their case and a rapid, inexpensive resolution of their dispute.
ACKNOWLEDGMENTS

We would like to acknowledge the support and cooperation of the staff of the Allegheny Court of Common Pleas, without whose assistance the study could not have been conducted. Our special thanks go to President Judge Michael J. O'Malley, Administrative Judge Nicholas P. Papadakos, Mr. Charles H. Starrett, Jr., Court Administrator, Mr. Walter Lesniak, Arbitration Director, and Ms. Lisa Janicki, for their contributions to the study, and to the attorneys and litigants who shared their experiences and opinions with us.
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COURT-ADMINISTERED ARBITRATION:
AN ALTERNATIVE FOR CONSUMER DISPUTE RESOLUTION

BACKGROUND

For many years, leaders of the consumer movement have criticized the American judicial system for placing barriers in the way of citizens attempting to redress the "little injustices" of the marketplace. The regular trial court process is seen as too expensive, too time-consuming, and too difficult to master to be accessible to the average consumer with a modest claim and modest resources to pursue it. Small claims courts, originally established as "citizens' courts" to handle "minor disputes" with a minimum of time, cost, and procedural requirements, are viewed by many as little more than government-subsidized collection agencies serving big business.¹ Not only is the average consumer unable to gain access to the court system, but the recognition of this fact, critics fear, impairs the consumer's ability to gain satisfactory outcomes from extrajudicial mechanisms for dispute resolution (Nader, 1980). Despite the burgeoning of the consumer dispute resolution movement, and increased consumer protection regulations, the typical consumer is seen as forced to bargain, all too often, outside of the "shadow of the law."

Court-administered arbitration, an alternative dispute resolution procedure for civil suits involving modest sums of money, could contribute to strengthening the consumer's position in the judicial system. First established in Pennsylvania in the early 1950's, this procedure (also known as "compulsory arbitration," "court-annexed arbitration," and "judicial arbitration") has recently gained attention as a tool for reducing congestion and delay on the civil trial calendar. But its attraction for the consumer lies in its potential for speedy, inexpensive, and comprehensible adjudication of disputes within the court system.

¹ Recent research provides only partial evidence for this point of view, but the perception persists, nevertheless (Yngvesson, 1975; Weller, 1978).
In jurisdictions that have established court-administered arbitration programs, litigants who file civil damage suits within a specified monetary limit are scheduled for an arbitration hearing, rather than a trial. The arbitrators are attorneys or retired judges who serve voluntarily and are paid small honoraria. The arbitration hearing is conducted informally, using relaxed rules of evidence, outside of a regular courtroom. As in a small claims court, brevity and simplicity of procedure are the rule. After the hearing is concluded, the arbitrator deliberates for a short time, and returns a judgment which is communicated to the litigants without delay. If the parties accept the arbitrator's verdict, it is entered as a judgment of the court and is legally enforceable. If either party wishes to, however, he or she may reject the arbitrator's decision and request that the court schedule a trial, at which point the case returns to the regular trial calendar. If a trial is held, the case is heard "de novo," that is, without reference to the arbitration hearing or its outcome (Ebener, 1981).

Because court-administered arbitration produces outcomes that are legally enforceable, the establishment of such programs raises concerns about the effects of substituting arbitrator decisions for judge and jury verdicts. Obviously, if there were a significant change in the distribution of case outcomes as a result of instituting compulsory arbitration programs, the parties that were disadvantaged by the change would oppose such programs. In response to this concern, program designers have devised a number of procedural safeguards that are intended to minimize the possibility of any class of litigants being harmed as a result of the imposition of an arbitration program. The most significant of these safeguards, which is a part of all arbitration programs, is the preservation of the citizen's constitutional right to a jury trial through the de novo appeal process. In addition, many programs mandate the use of a panel of three to five arbitrators, rather than a single arbitrator, and in some jurisdictions equal numbers of attorneys from the plaintiff's and defense bar are recruited to serve as arbitrators. Most jurisdictions assign arbitrators to particular cases through a random selection procedure that sometimes becomes quite
elaborate in its attempt to permit the parties some say in the process. Many programs also specify relatively generous time intervals for various phases of the arbitration process, and preserve the parties' opportunity to request continuances, or postponements, of the arbitration hearing date. These and other, similar, procedural safeguards are intended to minimize the possibility of arbitrator bias and to ensure that the participants in the arbitration process have adequate opportunity for preparing and hearing the case.

Court-administered arbitration programs have now been authorized by 8 states, and, we estimate, are in operation in more than 100 trial courts of general jurisdiction around the country. One state, New Hampshire, has authorized compulsory arbitration for cases valued at $50,000 or less, but, in most jurisdictions, compulsory arbitration is limited to cases valued at less than $25,000 (Ebener, 1981).\(^2\) Despite these relatively high ceilings, many programs process a large number of disputes involving just a few thousand dollars or less.

For the past year, the Institute for Civil Justice has been studying the Pittsburgh (Allegheny Court of Common Pleas) arbitration program. We selected this program for study because it appeared that it had gone further than many others towards simplifying and speeding the court process. In 1980, about 60 percent of all civil case dispositions in the Allegheny County Court—almost 11,000 cases—were obtained in the arbitration program. The median time to disposition for cases that were heard in arbitration was about 70 days. The cost to the court for arbitrators' fees was about $47 per case; a study by the National Center for State Court's conducted a few years previously estimated that the total per case cost, including administrative processing, was $65 (Allegheny Court of Common Pleas, 1980; National Center for State Courts, 1980).\(^3\) The objective of our research was to find out:

\(^2\) The federal district courts have also experimented with arbitration, but the procedure has not been adopted widely in the federal system (Lind and Shapard, 1981; Broderick, 1983).

\(^3\) In contrast, during the first year of program operations, in the 14 California state superior courts required to adopt arbitration, about 12 percent of all civil money suit dispositions (approximately 12,000 cases) were achieved through arbitration, at a cost of about $140 per case. The median time to disposition varied greatly from court to court; across six courts studied intensively, time to disposition averaged 22 months (Hensler et al., 1981).
1. How the program achieves these efficiency outcomes;
2. Who uses the program, and for what purposes;
3. What kinds of outcomes are achieved at arbitration—i.e., who wins and who loses; and
4. How litigants view the program.

The underlying purpose of the research was to determine how court-administered arbitration, when implemented in a highly efficient fashion, affects case outcomes and litigants' perceptions of the quality of justice dispensed by the court system.

We used a variety of approaches for the study. To learn about program operations, we reviewed statutes and local court rules, and we interviewed court administrative staff and attorneys who have been active in the arbitration program (either as arbitrators or as counselors) to find out how the rules work in practice. We also spent a week in the Pittsburgh court observing the arbitration process and talking with program administrators, attorneys and litigants.

To learn who uses the arbitration program, for what purposes, and to what end, we analyzed court record data for (1) a sample of 544 cases that had been filed in the arbitration program in 1980 and 1981, and (2) a sample of 157 cases that had appealed arbitration awards in 1979-81.¹

To learn more about case outcomes, and about litigants' perceptions of the arbitration process, we interviewed litigants whose cases were arbitrated on three separate occasions: while they were waiting in the courtroom for their cases to be called to hearing, immediately after

¹ The arbitration caseload consists of cases filed initially in arbitration, cases appealed from the magistrate's court (a limited jurisdiction lower court), and cases transferred to arbitration from the general docket by judicial order. The latter are suits that were initially claimed to involve damages greater than $10,000. We randomly selected a two percent sample of the first two types of cases, and a 10 percent sample of the latter group. When reporting statistics for the total arbitration caseload, we use differential weights to correct for the differences in sampling probabilities.

The population of appeals consists of all cases initiated from January 1979 to November 1980 in which appeals were filed and reached disposition. We randomly selected ten percent of these cases.
their hearings were concluded (when the parties still did not know the outcomes of their case), and (by telephone) several weeks after they had received the arbitrators' decisions on their cases.\textsuperscript{5}

Since our purpose in this study has been to learn more about the arbitration experiences of various types of litigants, we have not focused on consumers or consumer disputes. Indeed, the Allegheny County Court, like most other civil courts, does not specifically identify consumer disputes within the program. Official court records categorize cases as involving either property damage and personal injury, debt collection, or breach of contract (failure to deliver goods or perform a service).\textsuperscript{6} The latter category consists almost entirely of consumer disputes. But the only way to identify consumer disputes among the other categories may be to question the parties about the facts of the dispute. By interviewing litigants we learned about tort cases in which consumers were suing service providers—e.g., dry cleaners, auto repair shops, bakeries—for damage to property, or for injuries caused when a product was used. And, not surprisingly, we found collection cases where consumers had refused to pay bills because they believed they had received defective goods or inadequate services. About 30 percent of the arbitration cases covered by our interviews originated as some sort of consumer dispute. But because our interview sample was not selected randomly and is quite small, it may not provide an accurate measure of the characteristics of the total arbitration caseload. The actual proportion of consumer cases brought to arbitration hearings could be considerably larger, or smaller, than this.

Although consumer disputes differ from other types of civil disputes in various ways, the consumer disputes that enter the Pittsburgh arbitration system have several important attributes in common with other disputes in the program: the disputants are strangers, the disputes frequently pit individuals against businesses,

\textsuperscript{5} In all, we interviewed 66 individual litigants by telephone, including 44 whom we had also interviewed immediately after their arbitration hearing.

\textsuperscript{6} In Pittsburgh, the common law term "trespass" is used to label cases that are now usually termed "torts," and the term "assumpsit" is applied to contract claims. In this paper, we use the more familiar modern terms.
the stakes are monetary, and the amounts in dispute are modest. Because of this, we suspect that the outcomes of arbitration, and the factors influencing these outcomes, do not differentiate between consumer and other disputes. If we are correct, then learning about how litigants generally fare in arbitration should provide a good basis for assessing what such programs can, and cannot, do for consumers.

Our analysis of the data we have collected regarding the Pittsburgh arbitration program is now in its final stages. In the remainder of this paper, we summarize our findings to date, highlighting issues that may be of particular concern to those interested in consumer dispute resolution.

HOW THE PROGRAM WORKS

Unlike the courts in California and most other jurisdictions, the Pittsburgh court administers its arbitration program in a highly centralized fashion. Arbitration hearings are held in the County Courthouse, rather than in individual arbitrators' offices, as is common elsewhere. The program administrators, rather than the individual attorney-arbitrators, are responsible for scheduling hearings, and carry out this responsibility in a highly routinized fashion. Cases are automatically scheduled for arbitration hearings 90 days after the filing date. No certificate of readiness is required. The plaintiff is presumed to be ready at the time of filing, and very few defendants reportedly are unable to complete preparation within ninety days. In the large majority of cases such preparations are bound to be simple enough since no discovery is allowed in cases where the claim is under $3,000, except by special permission of the court. The responsibility for granting continuances lies with the court, not, as in other jurisdictions, with attorney-arbitrators who are generally sympathetic to requests for delay.

The plaintiff's own valuation of his claim determines its eligibility for arbitration, thus avoiding the necessity for routine judicial assessment of case values, which, in California, contributed

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significantly to program delays. Only cases filed in Civil Court for more than $10,000 are subjected to any kind of judicial scrutiny as to the probable amount at stake.

The Pittsburgh court uses a simple, on-the-spot procedure to randomly assign arbitrator panels to cases: At the beginning of the day, the arbitration cases are called and assigned numbers in order. Panels of arbitrators assemble in hearing rooms, and cases are "sent in" to be heard in numerical order. The hearings generally last less than an hour. Each three-person panel sits for several hours, hearing cases in order, until all of the cases present have been heard. After each hearing, the arbitrators deliberate and arrive at a decision. Arbitrators are not expected to do any preparation in advance of the hearing (at which point they do not even know what cases they will hear), nor are they expected to deliberate for any substantial amount of time after its completion. Each is paid $100 a day, and they generally hear 4-5 cases during the time they sit. Their decisions are recorded and given to the administrative staff after the hearings are completed and are mailed to the parties at the end of the day. If one of the parties wishes to appeal, he or she must do so within 30 days and must accompany the appeal with a payment reimbursing the court for the arbitrators' fees.

In Pittsburgh, in other words, we have "rough justice" in its simplest form. It is quick, inexpensive to operate, and it disposes of a large proportion of the court's civil caseload.

WHO USES THE PROGRAM, AND FOR WHAT PURPOSE

Our analysis of program usage has two stages. In the first stage, we examine the characteristics of all of the cases filed in arbitration. These are the cases that the Pittsburgh court officially designates as comprising the "arbitration program caseload." And they constitute the pool of cases that are candidates for arbitration hearings. But since the arbitration program is the entry point into the Pittsburgh trial court system for all cases valued at $10,000 or less, the characteristics of the arbitration caseload more likely reflect the multiple uses of an urban trial court, than the particular characteristics of litigants who choose to arbitrate. To learn more
about the latter, we turn, in the second stage of our analysis, to an examination of the characteristics of all those cases that actually reach arbitration hearings. These are the disputes that are adjudicated by the arbitrators, and it is the parties to these disputes who have some basis for judging the program.

Cases Filed in Arbitration

Table 1 summarizes the characteristics of the arbitration caseload. About half of all cases filed in arbitration are collection cases. Most involve attempts by vendors to collect on bills for either home improvements, automobile or appliance sales or repairs, or professional services; a small fraction (less than 10 percent) involve landlord-tenant disputes. Only half of the collection cases fit the stereotype of such claims, however, involving businesses suing individuals. Most of the remainder involve one business suing another; a handful involve individuals suing other individuals or businesses.

Most of the remaining cases are tort suits; only nine percent are for breach of contract, mainly for failure to provide some sort of goods or services. A miscellany of other types of claims round out the arbitration caseload.

Most of the cases filed in arbitration involve very small amounts of money. The average amount claimed is about $2500. About half of the claims are for amounts less than $1800; more than one-third are seeking amounts less than $1000.

One of the characteristics that the Pittsburgh arbitration program shares with small claims courts is a high proportion of unrepresented litigants. More than half of the cases filed in arbitration involve unrepresented litigants on one or both sides. The pattern of pro se representation at the filing stage suggests that lack of legal counsel is more often associated with litigants' inability to afford legal counsel or with a decision that it would not be worthwhile to do so, than with a perception among litigants that they can easily and successfully pursue their claims without an attorney.

* Caseload statistics are based on a weighted sample of 470 cases. The expected accuracy of these statistics is ± 5%. 
Table 1
CHARACTERISTICS OF ARBITRATION CASELOAD

<table>
<thead>
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<th>Item</th>
<th>Cases Filed (%)</th>
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<tbody>
<tr>
<td><strong>Case Type</strong></td>
<td></td>
</tr>
<tr>
<td>Collection</td>
<td>53</td>
</tr>
<tr>
<td>Property Damage/P.I.</td>
<td>31</td>
</tr>
<tr>
<td>Breach of Contract</td>
<td>9</td>
</tr>
<tr>
<td>Other</td>
<td>7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100</td>
</tr>
<tr>
<td><strong>Stakes</strong></td>
<td></td>
</tr>
<tr>
<td>Under $3,000</td>
<td>66</td>
</tr>
<tr>
<td>$3,000–$7,500</td>
<td>19</td>
</tr>
<tr>
<td>Over $7,500</td>
<td>6</td>
</tr>
<tr>
<td>Under $10,000, unspecified</td>
<td>9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100</td>
</tr>
<tr>
<td><strong>Configuration of Parties</strong></td>
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</tr>
<tr>
<td>Individual v. Individual</td>
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</tr>
<tr>
<td>Individual v. Organization</td>
<td>18</td>
</tr>
<tr>
<td>Organization v. Individual</td>
<td>29</td>
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<tr>
<td>Organization v. Organization</td>
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<tr>
<td><strong>Total</strong></td>
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<tr>
<td><strong>Attorney Use</strong></td>
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<tr>
<td>Both Parties Represented</td>
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<tr>
<td>Represented Plaintiff v. Unrepresented Defendant</td>
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</tr>
<tr>
<td>Unrepresented Plaintiff v. Represented Defendant</td>
<td>5</td>
</tr>
<tr>
<td>Both Parties Unrepresented</td>
<td>3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100</td>
</tr>
<tr>
<td><strong>Total Number of Cases</strong></td>
<td>470</td>
</tr>
</tbody>
</table>

SOURCE: Weighted sample of cases selected from court records, 1980-81, Allegheny County Court of Common Pleas, Arbitration Division. See text for description of sample selection.
Individual plaintiffs *bring* suit *pro se* about 15 percent of the time, most frequently in landlord-tenant disputes and property damage cases. Not surprisingly, organizational plaintiffs (businesses or government agencies) are less likely to be unrepresented. Overall, less than 10 percent of the plaintiffs who file claims are unrepresented. While both individual and organizational *defendants* frequently do not retain legal counsel, individuals are considerably more likely than organizations to go unrepresented. Defendants are most likely to be unrepresented in collection cases and motor vehicle property damage suits; individuals appearing as defendants in collection cases are particularly likely to be unrepresented.

About half of all cases filed in arbitration are resolved without hearing, most frequently by default judgment or by dismissal, least often by settlement. Cases are more likely to terminate before hearing if they are collection cases, if they involve less than $7500 in damages, or if they involve unrepresented defendants facing represented plaintiffs, or individual defendants facing organizational plaintiffs.

Collection cases that terminate before hearing, which frequently involve unrepresented defendants, most frequently result in default judgments. Defendants in these cases may fail to answer the complaint because they do not know how to do so, they cannot afford or do not know how to obtain legal assistance, they do not know or recognize the opportunity that the arbitration program presents for obtaining a hearing of their case, or any one of a number of other reasons. Most likely, however, is that the defendant knows that he or she owes the plaintiff the amount claimed, and simply cannot or does not wish to pay what is owed. The existence of an arbitration program, no matter how speedy, inexpensive or easy to understand, cannot ameliorate this situation.

Other types of cases may terminate before hearing because of a dismissal or settlement, as well as because of default. Cases involving *pro se* plaintiffs are more likely to be dismissed than cases involving represented plaintiffs. We suspect that most of these dismissals are for failure to prosecute on the plaintiff's side. Apparently in these cases, the plaintiffs reconsidered their decision to sue, despite the availability of a speedy and inexpensive hearing process.
Arbitration probably does not, then, open up the justice system to all people under all situations. How many litigants decide not to defend themselves against a suit or not to press a claim because they believe they need an attorney and do not know how or cannot afford to obtain one, because they are fearful of appearing at a hearing, or because they believe they cannot obtain a satisfactory hearing of their case is unknown.

**Cases Heard in Arbitration**

When we consider the characteristics of the cases that do go to arbitration hearings, we form a somewhat different picture of the users of the arbitration program. Table 2 summarizes the characteristics of these cases. Only one-third of the cases that go to hearing are collection cases. About 20 percent of these involve landlord-tenant disputes; the remainder encompass the many different types of situations in which disputes may arise over unpaid bills. The majority of collection cases that go to hearing do not involve businesses suing individuals; more than half are disputes between businesses, and the rest involve individuals suing businesses or other individuals.

About half of the cases heard in arbitration are tort cases. The remainder of the arbitration hearing caseload is divided between breach of contract cases (13 percent), and other disputes arising over contracts.

Although disputes over small amounts of money are quite likely to terminate without being heard in arbitration, the average amount of money involved in cases that do go to hearing is still quite modest—about $2700. Half of the cases heard involve amounts less than $2300; about one-third involve amounts under $1000.

What motivates litigants to bring disputes over such modest amounts of money to arbitration hearings? Of course, for many litigants the amounts at stake are not insignificant. But when we asked the litigants what they expected of the hearing process, many gave us reasons that had

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9 Arbitration hearing caseload statistics are based on a weighted sample of 174 cases. The expected accuracy of these statistics is ±8%. 
Table 2
CHARACTERISTICS OF ARBITRATION HEARING CASELOAD

<table>
<thead>
<tr>
<th>Item</th>
<th>Cases Filed (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Case Type</strong></td>
<td></td>
</tr>
<tr>
<td>Collection</td>
<td>36</td>
</tr>
<tr>
<td>Property Damage/P.I.</td>
<td>46</td>
</tr>
<tr>
<td>Breach of Contract</td>
<td>12</td>
</tr>
<tr>
<td>Other</td>
<td>6</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100</td>
</tr>
<tr>
<td><strong>Stakes</strong></td>
<td></td>
</tr>
<tr>
<td>Under $3,000</td>
<td>59</td>
</tr>
<tr>
<td>$3,000-$7,500</td>
<td>24</td>
</tr>
<tr>
<td>Over $7,500</td>
<td>8</td>
</tr>
<tr>
<td>Under $10,000, unspecified</td>
<td>9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100</td>
</tr>
<tr>
<td><strong>Configuration of Parties</strong></td>
<td></td>
</tr>
<tr>
<td>Individual v. Individual</td>
<td>36</td>
</tr>
<tr>
<td>Individual v. Organization</td>
<td>25</td>
</tr>
<tr>
<td>Organization v. Individual</td>
<td>15</td>
</tr>
<tr>
<td>Organization v. Organization</td>
<td>24</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100</td>
</tr>
<tr>
<td><strong>Attorney Use</strong></td>
<td></td>
</tr>
<tr>
<td>Both Parties Represented</td>
<td>67</td>
</tr>
<tr>
<td>Represented Plaintiff v. Unrepresented Defendant</td>
<td>25</td>
</tr>
<tr>
<td>Unrepresented Plaintiff v. Represented Defendant</td>
<td>6</td>
</tr>
<tr>
<td>Both Parties Unrepresented</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100</td>
</tr>
<tr>
<td><strong>Total Number of Cases</strong></td>
<td>274</td>
</tr>
</tbody>
</table>

as much to do with wanting their cases to be heard, as with wanting to
obtain a particular outcome. Of the 38 litigants who responded to this
question, close to half said that their primary objective was either to
tell their side of the story, prove that the other side was not telling
the truth, tell someone in authority how they had been mistreated,
defend their reputation, or get help in reaching a compromise with the
other side. About one-third said their main objective was, simply, "to
collect what I'm owed under law." (About half of those mentioning
process-related objectives were defendants; all those indicating a
collection objective, of course, were plaintiffs.) Based on their
responses to other questions in the interview, we judged that about one-
quarter of the litigants were motivated primarily by pursuit of some
principle or private grudge, rather than by a desire to obtain monetary
compensation for damage or loss. Whether these litigants would have
pursued these non-monetary objectives in the absence of arbitration is
unknown.

When a case is filed in arbitration a litigant may not obtain legal
counsel simply because he or she thinks the case is not worth
contesting. A pro se litigant whose case goes to hearing, however, is
in a quite different position: he or she must be prepared to identify
and submit relevant evidence, present the case to the arbitrators and
cross-examine the opposition's witnesses. More often than not, he or
she must be prepared to face an attorney, representing the other side.
It is not too surprising, then, to find that the incidence of pro se
representation is lower among arbitration hearing cases than among cases
that do not go to hearing. About one-third of all cases that are heard
involve pro se litigants on one or both sides. In most of these cases,
an unrepresented defendant faces a represented plaintiff; a small
percent involve unrepresented plaintiffs suing represented defendants or
pro se litigants on both sides.

Court records provide little information about the kinds of people
whose cases are heard in arbitration. Do they represent a cross-section
of the Pittsburgh population or are they members of some favored elite
that is skilled at using public mechanisms for dispute resolution? Did
they just happen to become involved in a lawsuit, or are they a
particularly litigious group? Our interviews with litigants, while not conclusive, suggest some answers to these questions.

The median age of the 66 litigants we interviewed was 40. About 60 percent of those employed were white-collar workers (in professional, technical, managerial, sales and clerical occupations). Plaintiffs were more likely than defendants to be blue-collar workers. Half the litigants had graduated from high school and had either a few years of college education or a college degree. About 60 percent had family incomes over $25,000; about 10 percent had incomes below $10,000. About 10 percent were Black, and two percent classified their ethnic background as Hispanic. Minority representation was somewhat higher among plaintiffs, than among defendants. With regard to most demographic characteristics, the litigants were remarkably representative of the Pittsburgh population as a whole. Their average educational attainment was somewhat higher than that of the average adult residing in the Pittsburgh metropolitan area; this may reflect a greater tendency to pursue litigation among better educated individuals, but the difference is well within the range of sampling error.

More than half of the litigants reported they had no previous litigation experience. About one-quarter said they had previously been involved in a civil suit, either as a defendant or plaintiff, in arbitration or in the trial division of the court. Another 18 percent said they had served as jurors or witnesses previously or reported some other type of litigation experience. A few reported combinations of these types of experience. Previous litigation experience was more common among business proprietors and representatives. While the extent of exposure to litigation among the respondents may surprise some, these incidence levels are comparable to those reported in surveys of the national population. (National Center for State Courts, 1980).
Collectively, then, those we interviewed are neither particularly naive regarding litigation, nor particularly litigious.

In sum, the litigants we interviewed were a quite heterogeneous group. While they were probably somewhat better-off economically and somewhat better educated than the typical Pittsburgh resident, they in no way resembled an elite group. Although the Pittsburgh program may not provide access to the justice system for all, it does seem to offer
an avenue for dispute resolution to many different kinds of people, with a variety of grievances and objectives.

OUTCOMES OF ARBITRATION

Among attorneys in Pittsburgh, the arbitration program has something of a reputation as a "plaintiffs' program." Defense attorneys see this as a consequence of the arbitrators attempting to make decisions on an "equity" or "fairness" basis, rather than on a strict construction of the facts and the law. Superficially, at least, the pattern of arbitration awards appears to support the view that the program favors plaintiffs. As shown in Table 3, about 80 percent of all cases heard in arbitration result in an award for the plaintiff. Defense verdicts occur in a minority of cases, most frequently in suits alleging breach of contract. Plaintiffs were less successful, however, when they appeared pro se against represented defendants. Similarly, defendants were less successful when they appeared pro se against represented plaintiffs.

When plaintiffs won an award, about half the time it was for the amount originally sought; occasionally, it was for a higher amount. Taking into account both the chance of losing entirely and the average amount awarded, a plaintiff bringing a claim to an arbitration hearing could expect to win about two-thirds of the amount originally claimed. We call this the "expected award ratio," since it is the average ratio between the amount awarded to the plaintiff and the amount claimed. As shown in column 2 of Table 3, the expected award ratio was highest for collection cases, for cases in which organizations are suing individuals, and for cases in which represented plaintiffs face unrepresented defendants; it was lowest for breach of contract suits, for cases in which individuals sue organizations, and for cases in which plaintiffs appear pro se at hearings, against attorneys for the defense.

We used multiple regression analysis, a multivariate statistical procedure, to estimate the independent effects of these different case characteristics on the expected award ratio. The results of this procedure confirm that the type of claim (i.e., the basis on which it is brought), the pattern of attorney representation, the value of the claim, and the number of parties involved all have statistically
Table 3
OUTCOMES OF ARBITRATION

<table>
<thead>
<tr>
<th>Item</th>
<th>Awards to Plaintiff (%)</th>
<th>Expected Award Ratio</th>
<th>Appeal Rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Cases Heard (N=174)</td>
<td>79</td>
<td>.65</td>
<td>14</td>
</tr>
<tr>
<td><strong>Case Type</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Collection</td>
<td>82</td>
<td>.74</td>
<td>18</td>
</tr>
<tr>
<td>Property Damage/P.I.</td>
<td>79</td>
<td>.63</td>
<td>11</td>
</tr>
<tr>
<td>Breach of Contract</td>
<td>70</td>
<td>.45</td>
<td>21</td>
</tr>
<tr>
<td><strong>Stakes</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Under $3,000</td>
<td>88</td>
<td>.72</td>
<td>5</td>
</tr>
<tr>
<td>$3,000-$7,500</td>
<td>74</td>
<td>.62</td>
<td>28</td>
</tr>
<tr>
<td>Over $7,500</td>
<td>81</td>
<td>.26</td>
<td>28</td>
</tr>
<tr>
<td><strong>Configuration of Parties</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Individual v. Individual</td>
<td>78</td>
<td>.65</td>
<td>10</td>
</tr>
<tr>
<td>Individual v. Organization</td>
<td>76</td>
<td>.55</td>
<td>15</td>
</tr>
<tr>
<td>Organization v. Individual</td>
<td>88</td>
<td>.74</td>
<td>13</td>
</tr>
<tr>
<td>Organization v. Organization</td>
<td>78</td>
<td>.68</td>
<td>17</td>
</tr>
<tr>
<td><strong>Attorney Use</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Both Parties Represented</td>
<td>76</td>
<td>.61</td>
<td>21</td>
</tr>
<tr>
<td>Represented Plaintiff v. Unrepresented Defendant</td>
<td>94</td>
<td>.86</td>
<td>2</td>
</tr>
<tr>
<td>Unrepresented Plaintiff v. Represented Defendant</td>
<td>44</td>
<td>.23</td>
<td>0</td>
</tr>
<tr>
<td>Both Parties Unrepresented</td>
<td>100</td>
<td>.65</td>
<td>0</td>
</tr>
</tbody>
</table>

*Average award ÷ demand.

**SOURCE:** Weighted sample of cases selected from court records, 1980-1981, Allegheny County Court of Common Pleas, Arbitration Division. See text for description of sample selection.
significant effects on the expected award amount. The statistical model does not, however, explain why certain relationships obtain. For example, the apparent negative impact of pro se representation may reflect the difficulties that an amateur encounters when he confronts an attorney in an adversary process. On the other hand, pro se representation could indicate that the unrepresented party had a particularly weak case, and, therefore, did not want to invest in, or could not obtain, legal counsel. The available data do not provide a basis for choosing between these two (or any other) explanations of the observed relationship.

About 18 percent of the arbitration verdicts in cases heard during the period we studied were not immediately accepted by the parties. About one-fifth of these were apparently settled by the parties without a formal appeal being filed. In the remainder—about 14 percent of all cases heard—requests for trial de novo were filed. As shown in column 3 of Table 3, appeals were more likely to be filed in cases in which damages were greater than $3000, and cases in which the parties on both sides were represented. More than three-quarters of the appealed cases were ultimately settled or dismissed. The remainder were tried to verdict, usually by a judge rather than a jury.

Not surprisingly, given the pattern of awards, about 70 percent of all appeals were filed by defendants. And about 75 percent of the time, defendants were able to improve their position.18

In about 57 percent of the cases appealed by defendants, the parties eventually settled or the plaintiff dropped the case rather than pursue it to trial. In three-quarters of these cases, the plaintiff accepted less than the amount originally awarded by the arbitrators. When cases appealed by defendants went to trial, defendants improved their position about two-thirds of the time, obtaining either a defense verdict (37% of tried cases) or a reduction in the amount of the plaintiff award (31% of tried cases). In one-third of the cases defendants appealed to trial, the arbitrators' verdict was upheld.

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18 Information on appeals is based on a sample 157 cases in which appeals were filed from 1979-1981. The expected accuracy of these sample estimates is ± 8%.
On the less frequent occasions when plaintiffs appealed arbitrators' verdicts, they were less successful in improving their position. When they appealed defense verdicts, they did usually win some amount. But when they appealed awards for less than the amount they had originally claimed, plaintiffs improved their position only 50 percent of the time.

What did it cost litigants to achieve these outcomes? Plaintiffs paid a filing fee of $15.50 to bring their suit in arbitration. One-fifth of the litigants we interviewed reported spending no more than 3-4 hours pursuing their claims through arbitration; half said they spent no more than 1 day. One-third reported spending 2-3 days in all on their cases; the remainder reported spending more time—as much as two weeks in one case—attempting to resolve their disputes.

Litigants typically lost 1/2 day from work on account of attending the arbitration hearing. About one-half said that they received paid "time off" from employers or charged their time to vacation; one-quarter reported they lost some amount in wages, ranging from less than $50 to, in one case, more than $400. Others, who were self-employed, said they might have lost business as a result of attending the hearing. For most litigants, however, the monetary value of their time involved in litigation seemed too trivial for them to have given it much previous thought.

Litigants paid their attorneys on an hourly basis, on a contingent fee basis, or had a flat fee arrangement; the latter seemed to be most prevalent. Typically, litigants reported spending around $200-300 in attorneys' fees. For most, there were no other court costs.

The costs of appeal can run considerably higher, of course. Litigants who appeal must reimburse the court for the cost of the arbitrators' fees. Since the court prorates the arbitrators' fees across all cases heard on a given day, the amount of reimbursement varies. Usually, the charge is between $60 and $90. Litigants must also pay a filing fee for requesting trial; this fee is $36 for a bench trial and $86 for a jury trial. The amount paid to attorneys will vary

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11 Since our survey was conducted, the filing fee has been increased to $36.50.
depending on the nature of the agreement between litigant and counsel; it is almost certainly greater than the amount paid to bring the case to arbitration hearing. Finally, the litigant who takes a case to trial is almost certain to invest a substantial additional amount of his or her own time before the dispute is resolved.

The pattern of arbitration outcomes suggests that arbitration does provide an avenue for individuals, including consumers, to successfully pursue claims against businesses—either as plaintiffs suing for property damage, personal injury, or breach of contract or as defendants refusing to pay vendors because they believe they did not receive adequate quality goods or services. The evidence suggests, however, that individuals may be at somewhat of a disadvantage when they face business opponents, and that this disadvantage may be substantially increased when they themselves have no legal counsel and are facing represented opponents. Our interviews suggest that this disadvantage is increased when the individual who has lost at arbitration is faced with a decision on whether or not to appeal. For the pro se litigant, appealing almost certainly means obtaining legal counsel; for all litigants, it means additional legal fees and expenses. Thus, the appeals process may not offer the possibility of redressing perceived errors or inequities in arbitration verdicts to all types of disputants equally.

LITIGANTS’ VIEWS OF ARBITRATION

When we first interviewed litigants, immediately after arbitration, many appeared to be disturbed by the experience of hearing formally, perhaps for the first time, the details of their opponents' version of the dispute in question. Some were too preoccupied with the likely outcome of their case to be able to focus readily on the quality of the process they had just undergone.

Overall, litigants interviewed immediately after their hearings were more pessimistic about the outcome than their responses to the questionnaire given before the hearing might have led us to expect. Some asserted that they must have won their case "if there is any justice," but very few were confident that they had prevailed. Several of those who felt certain that the hearing had not been in their favor
subsequently heard that they had won. On the other hand, all but two of those who lost seemed aware at this stage that they had not proved their cases. Of these, a few had already determined to appeal.

In the follow-up telephone interviews conducted in the weeks following arbitration, a large majority of the litigants--68 percent--told us they thought the hearing itself was "very fair;" of the 44 parties interviewed both immediately after hearing and again by telephone, only three changed their opinion of the process after learning the arbitrators' decision. In general litigants were able to distinguish between the fairness of the process and the justice of the outcome. Even those who lost their cases were more likely than not to view the hearing as fair.

Litigant opinions about the fairness of hearings was based almost exclusively on the extent to which arbitrators afforded an opportunity for full case presentation. To be heard was the overriding requirement of litigants, and of those who found the process unfair, a major complaint was that they were denied time to present their arguments in what they considered to be adequate detail. A few individual litigants thought the process unfair because they believed their arbitrators had been biased, or because evidence believed to be crucial had been ruled inadmissible.

Most litigants thought the system in general was satisfactory. Litigants liked the privacy of the hearings, and felt that the arbitrators struck the right balance between formality and informality. A sizable minority of attorneys and arbitrators believe that the hearings should be more formal in style, and that litigants would be more likely to feel that they had had their "day in court" if the hearings took place in more spacious and dignified surroundings. Litigants apparently do not share this concern. No criticisms were made of the hearing rooms, and many said they would find more formal surroundings intimidating and unnecessary. Several stated that their concern was simply to resolve their dispute, and that the setting in which this was achieved was of little significance.

Among those who expressed some dissatisfaction with arbitration, the most frequent source of dissatisfaction, not surprisingly, was an unsuccessful outcome. Some litigants also expressed dissatisfaction
because they had to wait several hours before their cases were heard; often they were concerned that they had received less time than necessary to present their cases because arbitrators were tiring after hearing 3-4 previous cases. Pro se litigants often felt that they had not been able to obtain necessary information to assist them in filing and/or presenting their claims.

Interviews with individual litigants revealed a striking lack of interest, knowledge, or curiosity about the identity and qualifications of the arbitrators. All but two litigants seemed unaware that the arbitrators were volunteers serving on an occasional basis rather than court appointees. A few litigants did not know that the arbitrators were attorneys. A frequently expressed preference for arbitrators, rather than judges, was based simply on the view that "three heads are better than one." Responses to interview questions indicate that a large majority of litigants do not focus on the reactions of arbitrators during the presentation of their case. The hearing is seen as the culminating event in their dispute with the other side, and litigants are therefore preoccupied with the behavior of their opponent, and opponent's counsel. A striking number of litigants had difficulty in recalling even the physical appearance of their arbitrators.

In sum, information obtained from interviews with litigants suggests that the typical claimant is satisfied with the arbitration procedure. The average individual litigant's greatest concern is that he or she receive a fair hearing of his or her side of the dispute; in most cases, this concern is perceived to be satisfied. When litigants lose their cases in arbitration, they attribute the unsatisfactory outcome occasionally to the weakness of their own case, quite often to the deceitfulness of their opponent's presentation, and sometimes to the relative skill of the two attorneys involved; only rarely do they cite any inadequacy in the hearing process or bias on the part of the arbitrators. There is little evidence in these data that the litigants believe they are receiving "second class" justice because they do not have the opportunity to present their case to a judge or jury, and considerable evidence that arbitration serves their needs better than would the bilateral settlement process to which disputes of this sort are relegated in most courts.
COURT ARBITRATION'S POTENTIAL FOR CONSUMER DISPUTE RESOLUTION

We have not conducted a thorough survey of mechanisms for consumer dispute resolution in Pittsburgh. But we suspect a large number of consumer disputes are resolved by the magistrates' courts, neighborhood-based, limited jurisdiction courts. These lower-level courts handle traffic citations and minor criminal complaints, and civil complaints for amounts of $2000 or less. With regard to the latter, they serve the same function as small claims courts do elsewhere. In 1980, the magistrates' courts in Allegheny County disposed of approximately 21,000 civil complaints, about twice the number of civil complaints disposed of by the arbitration division of the Court of Common Pleas. As in the case of the Court of Common Pleas, the magistrates' courts do not distinguish consumer disputes from other civil complaints, but they surely handle many such cases.\textsuperscript{12}

Litigants who are dissatisfied with the magistrate's verdict may file an appeal in the arbitration division of the Court of Common Pleas. About 17 percent of the arbitration cases filed in 1980-81 originated in the magistrate's court. Complaints involving amounts less than $2000 are not required to be filed in the magistrates' courts, however. As we have seen, many of the cases originating in arbitration involve amounts in this range. Litigants may go directly to arbitration because they do not know about the magistrates' courts, or because they believe they will receive unsatisfactory outcomes there.

In Pittsburgh, then, the arbitration program provides consumers with an important supplement to the small-claims-like magistrates' court. Those who are dissatisfied with the outcome obtained at the lower court level have a realistic appeal option that may not be present in other court systems that do not provide as speedy and inexpensive a mechanism for handling appeals.\textsuperscript{13} Those who wish to bypass the lower

\textsuperscript{12} In addition, both the Better Business Bureau and the regional office of the American Arbitration Association offer programs to resolve consumer disputes. But, according to their representatives, only a few hundred cases are resolved annually through these programs.

\textsuperscript{13} In fact, many small claims courts do not permit appeals, or limit the right to appeal to the defendant (Warner, 1980).
court, because they believe they will not obtain a satisfactory outcome there, apparently may do so. For these litigants, arbitration seems to offer the promise of a fuller hearing of their case, by three disinterested parties (rather than one locally-elected magistrate), again at relatively little cost in time or money. Finally, arbitration offers a forum for those whose complaints involve damages greater than $2000, and who are therefore barred from bringing suit at the lower level. Absent arbitration, these litigants would have no way of obtaining both a full hearing of their case and a rapid, inexpensive resolution of their dispute.

Our data suggest that consumers who take their disputes to arbitration hearings in Pittsburgh can expect to obtain a successful outcome. If they must face a represented defendant, their chances of success may be enhanced if they obtain legal counsel, but even pro se litigants have an even chance of winning their cases. For cases involving amounts more than a few hundred dollars the cost of retaining an attorney does not appear prohibitive, and may increase the likelihood of success. Perhaps most important, because of the small investment of time necessary for an attorney to successfully present a case in arbitration, consumers are likely to be able to locate attorneys who are willing to represent them. Whether, over time, the existence of the arbitration program has strengthened the position of consumers vis-a-vis businesses remains to be investigated.
REFERENCES


