Simple Justice

How Litigants Fare in the Pittsburgh Court Arbitration Program

Jane W. Adler, Deborah R. Hensler, Charles E. Nelson
with the assistance of Gregory J. Rest
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1983
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Foreword

A strong case can be made that the most authentic test of the effectiveness of any social policy or institution is its capacity to deal with the ordinary. The exceptional challenges—emergencies, events that provoke fear or outrage, matters involving huge dollar amounts or famous personalities—are just what the label implies: exceptions. Their sheer singularities often render them imperfect lenses through which to analyze how a policy or a process affects most people most of the time.

In the civil justice field, nothing more closely approximates the ordinary than a legal action seeking damages of $10,000 or less. For every lawsuit that attracts public attention, there are thousands of these modest but often bitterly contested disputes. Likewise, for every individual who is caught up in a cause célèbre of some sort, there are millions whose only brush with the civil justice system has or will come in the context of such an action. It could well be argued that a system handling such matters fairly, promptly, and inexpensively represents at least as important a contribution to the public good as any reform aimed at the tiny minority of highly publicized cases.

In recent years, many have felt that court-based arbitration is the most promising means to this end. Now in use in more than 100 trial jurisdictions across the country, these procedures vary from place to place; but all use the judicial administrative mechanism to interpose a mandatory, non-binding decision by one or more neutral arbitrators before the parties to a run-of-the-mill civil action are permitted to take the issue to trial in the traditional manner. A judge may preside over only a few civil trials a year, but the arbitrators active in these programs may hear and decide five or more in a single day. Their collective effect on both the substance and the popular perception of American civil justice is already considerable in the jurisdictions that use them, and it is growing fast. In other jurisdictions, intensifying pressures on the public purse reinforce natural curiosity about whether and to what extent this device actually delivers the benefits promised.
This report is the second Institute study designed to respond to this need for systematic examination of court-based arbitration programs. The first, published in 1981, focused on the results achieved during the first year under the California law mandating such a program, which became effective in July 1979. The California program is among the nation's newest and most inclusive (the case value ceiling is now up to $25,000 in some counties).

This study examines the Pittsburgh/Allegheny County program, which has been in operation for almost three decades. At the time of the study, the Pittsburgh program applied to cases valued at $10,000 or less.1 Read alone, each study is an invaluable contribution to the very thin store of fact and analysis available with respect to either system. Read together, the two works offer a wealth of fascinating insights that can be gained only through comparative cross-state analysis.

The practical importance of such insights becomes obvious if one simply reviews the kinds of questions that arise every time a legislative or a judicial council considers establishing or amending such a program. What difference would it make, decisionmakers often ask, if the parties were permitted to determine whether the case fits under the dollar value ceiling (which is the rule in Pittsburgh), rather than judicial rendering of that decision (as is the practice in California)? Must there be elaborate procedures for choosing arbitrators and allowing for challenges of that choice by the parties (as in California) or is it workable to make an essentially random assignment in which the parties play no role and against which they have no practical recourse other than to appeal the arbitrators' decision (as in Pittsburgh)? Does it matter whether responsibility for scheduling and moving an action assigned to arbitration is decentralized to the arbitrators (the California technique), or remains with the administrative arm of the court (the Pittsburgh model)? Does either approach result in a true "people's court," where representation by an attorney is not only not required, but is not likely to be particularly influential in terms of the results achieved?

The authors shed much light on these and many other issues. But they also bring to life the day-to-day dispensation of civil justice, American style. They detail the hard facts about what sorts of cases arise, where they come from, who the litigants are, who represents them, who wins and loses, and how the participants feel about the entire experience. And they provide a sense of context that is just as

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1The jurisdictional limit of the Pittsburgh program was raised to $20,000, effective July 1, 1983.
indispensable to the reader's understanding of the process as the data. The result is a combination of solid figures and sensitive depiction of realities that cannot be conveyed by the numbers alone. I believe it is high quality fare for scholar and layman alike and an example of the kind of interdisciplinary comparative analysis the Institute is always striving for.

Gustave H. Shubert
Director, The Institute for Civil Justice
EXECUTIVE SUMMARY

BACKGROUND

For years, critics of the American adversarial legal process have been concerned about the monetary and emotional costs that process imposes on citizens trying to resolve disputes over minor matters. The establishment of small claims courts during the early part of this century was one effort to respond to this concern. More recently, court administrators and state legislators have become interested in the potential of compulsory court-administered arbitration for resolving "minor disputes" with a minimum of time, cost, and procedural requirements.

In jurisdictions that have established compulsory court arbitration programs, litigants who file civil damage suits within a specified monetary limit are not permitted to take their cases to trial unless they have previously attempted, but failed, to arbitrate the dispute. The jurisdictional limit of the programs is usually between $10,000 and $25,000. The court administers the arbitration process. Arbitrators are attorneys or retired judges who serve voluntarily and are paid small honoraria. Informal hearings, with relaxed rules of evidence, are conducted outside of a regular courtroom. After a hearing is concluded, the arbitrators deliberate for a short time and return a judgment, which is communicated to the litigants within the next few days. If the parties accept the arbitrators' verdict, it is entered as a judgment of the court and is legally enforceable. Either party may reject the arbitrators' decision and request that the court schedule a trial, at which point the case returns to the regular trial calendar. But often there is some cost associated with appealing the arbitrators' verdict. If a trial is held, the case is heard de novo—without reference to the arbitration hearing or its outcome (Ebener et al., 1981).

Among various court reforms attempted nationwide, compulsory court arbitration is particularly attractive to policymakers. It promises not only simple, fast, and inexpensive adjudication to litigants,
but also a means of reducing judicial workloads and controlling public expenditures for the civil justice system. Since 1952, when Pennsylvania established the first such program, more than 100 trial courts around the nation have adopted some form of court-administered arbitration. But there are many unresolved questions about the utility and appropriateness of these programs. Does arbitration resolve disputes faster and cheaper without greatly increasing public expenditures? What kinds of disputes can be resolved through arbitration? Who wins and who loses in arbitration? Are litigants who are ordered to take their cases to arbitration, rather than to trial, satisfied with the process, or do they perceive it as a second-class form of justice? Because of uncertainty about the sorts of outcomes arbitration programs deliver to litigants and about litigants' attitudes toward arbitration, some policymakers are unwilling to adopt court arbitration programs in their jurisdictions.

STUDY OBJECTIVES

In 1981, The Institute for Civil Justice conducted a study of the first year of the California court-administered arbitration program. It dealt primarily with arbitration's ability to solve problems of court congestion, trial delay, and rising court costs (Hensler, Lipson, and Rolph, 1981). For its second study of court arbitration, the Institute turned to program effects on litigants, because of the importance of this issue in the policy debate.

As a site for this study, the Institute selected the Pittsburgh (Allegheny County) Court of Common Pleas. Established in 1959, the Pittsburgh arbitration program is one of the oldest in the country. It has acquired a reputation as one of the most efficient of such programs, processing a large proportion of the court's civil caseload quickly and inexpensively. Although state law authorizes arbitration for cases up to $20,000, until recently the jurisdictional limit of the Pittsburgh program was $10,000. In 1982, the program was responsible for about 64 percent of all civil case dispositions in the

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1Arizona, California, Nevada, New Hampshire, New York, Pennsylvania, and Washington have implemented court-administered arbitration statutes that apply variously to one or more of the largest jurisdictions in the state, or to all of a state's urban trial courts. In Ohio, the three largest metropolitan jurisdictions have adopted arbitration programs by local court rule. Two federal district courts, Eastern Pennsylvania (Philadelphia) and Northern California (San Francisco) have also adopted court arbitration programs (Ebener et al., 1981).

2As of July 1, 1983, the limit was increased to $20,000.
Pittsburgh court (Allegheny County Court of Common Pleas, 1982). The average time between case filing and arbitration hearing was three months. Previous studies of the program indicated that the per case costs to operate the program were less than one-tenth the costs of processing cases through the regular trial division (National Center for State Courts, 1980).

The Institute's study of the Pittsburgh arbitration program sought to answer three major questions:

- How does the Pittsburgh arbitration program achieve these efficient outcomes?
- What are the outcomes of arbitration for litigants?
- How satisfied are litigants with the Pittsburgh program?

By answering these questions, we hope to provide an empirical basis for the policy debate regarding the quality of justice delivered by court-administered arbitration.

RESEARCH APPROACH

We used several data sources for the study, including:

1. State and local court rules governing the arbitration program;
2. Interviews with court administrators, arbitrators, and attorneys who practice in arbitration;
3. Court record data for a sample of 544 cases filed in the arbitration program in 1980 and 1981, and a supplementary sample of 157 appeals from arbitration awards filed in 1979 through 1981;
4. Interviews with 66 individual litigants whose cases were heard during spring 1982; and
5. Interviews with 29 institutional litigants (representatives of insurance companies, financial institutions, and public agencies) who have used arbitration repeatedly over time.

HOW THE PITTSBURGH ARBITRATION PROGRAM WORKS

The Pittsburgh program achieves efficient outcomes, for the court and for litigants, through centralized administration of the arbitration process and a flexible, pragmatic approach to arbitrator appointment and assignment to cases. The main ingredients of the Pittsburgh approach to arbitration are:
• Plaintiff determination of case eligibility. Rather than having the court determine each civil case's eligibility for arbitration as it is filed, plaintiffs are initially permitted to assess the value of their own case. The court reviews the decision only for those cases valued at more than $10,000, at a pretrial hearing held about 16 months after filing. Limiting judicial review of case eligibility to these cases reduces program-related costs and speeds disposition of cases that plaintiffs choose to file in arbitration.

• Centralized hearing process. Hearings are held in the court, on a date set by the court when the case is filed. Arbitrators are assigned to cases on the day of the hearing. By centralizing administration of the hearing process, the Pittsburgh court is able to control how fast cases move through arbitration, with only a modest investment of court administrative resources. Using a "calendar call" approach to scheduling hearings assures that the court can make maximum use of the arbitrators' time.

• Minimal requirements for arbitrator appointment. Pennsylvania Supreme Court rules governing arbitration procedures require only that the arbitrators be "active" members of the bar and that the chairman of each arbitration panel have a minimum of three years of experience. The Pittsburgh court informally balances the arbitration panels between plaintiff and defense bar and ensures that an experienced attorney is in the chairman's position.

• A shared commitment to delivering "rough justice" efficiently. With almost a quarter century of experience behind it, arbitration has become institutionalized in Pittsburgh and has broad support within the local legal community. Program administrators, arbitrators, and attorneys share an ethos of delivering quick, inexpensive, and acceptable outcomes to litigants.

Cases filed in arbitration reflect the diverse uses of an urban trial court. About half of all cases are resolved without hearing. Those that go to hearing are a mix of property damage, personal injury, collection, and breach of contract suits. Many of the collection suits actually arise from consumer disputes. About half of all cases involve tort claims, most of which arise from motor vehicle accidents. The amounts at stake in arbitration cases are on average less than $3000 and rarely more than $5000. Cases ordered to arbitration by a judge, which account for less than 5 percent of cases heard, are predominantly personal injury and breach of contract claims for larger amounts of
money. About one-third of all cases that are heard in arbitration involve pro se or unrepresented litigants on one or both sides. In most of these cases, an unrepresented defendant faces a represented plaintiff.

Individual litigants who use the program appear to represent a cross-section of the Pittsburgh metropolitan population. They bring their cases to arbitration primarily for financial reasons, seeking either to obtain compensation for damage or injuries or to counter what they feel are unjustified demands for payment by plaintiffs. They seem to be no more litigious than Americans generally.

We found no evidence that the program encourages the filing of frivolous claims. Indeed, arbitration does not attract all those cases that are formally eligible for the program. In particular, attorneys for plaintiffs with personal injury claims apparently prefer to file their cases in the regular trial division, thus buying additional time for case preparation and, perhaps, a tactical advantage in dealing with their opponents. Institutional litigants, such as banks and insurance companies, prefer to resolve their disputes with customers and claimants within their own corporate or industrial structure, reserving arbitration as a “court of last resort.”

OUTCOMES OF ARBITRATION

The pattern of arbitration awards suggests that arbitrators believe the plaintiffs have at least some factual and legal basis for their claims in the majority of cases they hear. During the period we studied, plaintiffs won some compensation in 80 percent of the cases. They won the amount claimed or more 45 percent of the time and less than the amount claimed about 35 percent of the time. Arbitrators returned defense verdicts (zero awards to the plaintiff) about 20 percent of the time.

The amount won by the plaintiff, relative to the amount claimed, varied by type of case, pattern of attorney representation, and number of parties involved. Across the entire sample, the amount won averaged 65 percent of the amount claimed. With other factors held constant, plaintiffs won less in personal injury and breach of contract suits than in property damage suits. Both plaintiffs and defendants were more successful when they obtained legal counsel. When plaintiffs appeared pro se against represented defendants they won less, on average, than when both parties were represented; when represented plaintiffs faced pro se defendants they won more, on average, than when both parties were represented.
When litigants retained attorneys on a flat fee or hourly rate basis, their total costs to bring cases to arbitration ranged between $400 and $600. These costs to arbitrate included the value of their time spent in litigation, their legal fees, and other court costs.

For most litigants the major cost of arbitrating the case was the amount paid in attorneys’ fees. The typical represented litigant paid about $200 to $300 in attorneys’ fees, unless he was a plaintiff with a contingent fee arrangement (in which case, the attorney fee was zero if the case was lost and one-third of the amount awarded by the arbitrators if it was won) or was represented by an attorney for his insurance company (in which case, he had no out-of-pocket cost for legal counsel). Typically, litigants paid no more than $50 in other legal costs. On average, litigants spent about 1½ days on arbitration litigation. For an individual employed at a salary of $15,000, the estimated value of this time would be about $100.

If we take legal expenses into account, represented plaintiffs with contingent fee arrangements could expect to obtain about 50 to 60 percent of the amount demanded in their original complaint as net compensation for damages. If we take both expenses and the arbitrators’ award into account, represented defendants could expect to pay out less than the amount originally demanded by the plaintiff. Arbitration therefore appears to have been cost effective for plaintiffs and defendants alike, at least in those cases where settlement efforts were fruitless.

Not all litigants were satisfied with the net outcomes they obtained through the arbitration hearing process. During the period we studied, appeals were filed in about one-quarter of the cases heard. Within our sample, appeals were filed most frequently in tort cases not arising from motor vehicle accidents, in suits for amounts over $3000, and in suits that originated in the trial division of the court. The division of appeals between plaintiffs and defendants generally followed the pattern of arbitration awards. Not surprisingly, given that pattern, defendants filed about 60 percent of all appeals.

About three-quarters of the appeals we sampled were ultimately settled or dropped. The remainder were tried to verdict, usually by a judge rather than by a jury. Plaintiffs who appealed settled more frequently than defendants who appealed.

Both defendants and plaintiffs who appealed improved their position about 75 percent of the time. Within our sample, appellants generally obtained better outcomes when they went to trial than when they settled; however, there were only a few cases in each disposition category, so this finding should be interpreted cautiously.

Although the majority of appeals improved the appellant’s position, the net effect of the appeals process on the distribution of arbitration
outcomes was slight. Taken together, our findings on the results of individual appeals and the data showing the distribution of final arbitration outcomes suggest that the appeal mechanism serves its intended function as a corrective device for individual arbitrator errors or misjudgments, while preserving the pattern of outcomes delivered by the arbitrators.

Despite the high success rate of appellants, most of them probably did not greatly improve their net financial position. Our interviews with litigants and attorneys suggest that the total cost to appeal, in Pittsburgh, ranges from about $500, if a case settles after appeal, to about $2000, if it goes to jury trial.\(^3\) Using these cost figures and the outcomes on appeal recorded in court files, we estimated that less than half of these appellants had net gains of more than $100.

Our analysis of outcomes suggests that pro se litigants facing represented opponents are at a particular disadvantage with regard to arbitration. Although they pay no attorneys' fees, their net outcomes from arbitration are less favorable than those of represented litigants. They are also unlikely to be able to afford to appeal. Within our sample, there were no instances of pro se appeals from arbitration.

LITIGANTS' VIEWS OF ARBITRATION

Critics believe court arbitration may deliver "second-class" justice to citizens with small claims and modest resources for litigation. Their standard of "first-class" justice includes the full panoply of judge, jury trial, and due process safeguards that are provided by our traditional adversarial process. Our interviews with litigants whose cases were heard in the Pittsburgh arbitration program indicate that they share neither the critics' concern nor their standards for evaluating quality.

The majority of individual litigants whom we interviewed were quite satisfied with the program. Not surprisingly, winners were more satisfied than partial winners, who were, in turn, more satisfied than losers. But even among the last group, close to half expressed satisfaction with arbitration.

We found little evidence that individual litigants have in their minds a paradigm of judge and jury trial against which they measure the arbitration process, and find it wanting. Instead, most had a sim-

\(^3\)Because our data are fragmentary, there is considerable uncertainty about the estimates. The true costs of appealing an arbitration verdict under different scenarios are probably not much smaller than our estimates indicate, but they may be substantially larger.
ple model of what constitutes a fair hearing of a dispute. Satisfaction with the arbitration program depended on perceived fairness, measured by this "fair hearing" standard, and on the objective outcome of the case.

More than 80 percent of the individual litigants whom we interviewed found their hearings "fair." Almost all of the respondents who won their cases thought that the hearing was fair, but even among the losers two-thirds said that the hearing was at least "somewhat" fair.

Litigants who believed that their hearings were less than fair complained that the arbitrators had not given them an adequate opportunity to present their case, that the arbitrators were biased against them, or both. But among the majority of litigants who believed that hearings had been conducted fairly, there was little concern about the qualifications of the arbitrators who were chosen to hear their case.

Dissatisfaction with arbitration seemed to have a practical consequence: Litigants who were dissatisfied with arbitration, for whatever reason, were more likely to appeal than those who were satisfied.

Pro se respondents were less successful overall than their represented counterparts, more likely than represented litigants to believe they had been treated unfairly, and more likely to be dissatisfied. They were also more likely than represented litigants to believe that the arbitrators' decision was "unjust," to perceive the arbitrators themselves as biased, and to report difficulty in gathering or submitting evidence related to their case. Complaints made by pro se litigants who perceived unfairness were often emphatic, and these litigants tended to be the most disgruntled. The differences between represented and unrepresented litigant samples were not large enough to be statistically significant. Nevertheless, the generally negative shift in the distribution of pro se litigants' attitudes is a disturbing note.

Representatives of institutions that make extensive use of arbitration also appear to be satisfied with the program. Most attorneys and business representatives whom we interviewed reported that it serves their diverse purposes well. Like individual litigants, representatives of institutions do not generally compare the arbitration procedure to trial. However, institutional litigants appear to care little about the qualitative aspects of the hearing process. They are concerned about the effect of relaxing the rules of evidence on arbitrators' decisions in particular cases, but they generally do not object to the absence of witnesses, prohibitions on discovery, or the fast pace of the hearing process.

In their evaluations of arbitration, institutional litigants primarily look at the objective outcomes of the process, the pattern of arbitration awards. Because most institutional litigants believe that awards
fall within a predictable, acceptable range, they are generally satisfied with the program. Unexpected outcomes, awards described as "way out of line," are attributed to poorly qualified arbitrators. They are appealed, often as a matter of course, even when it is not cost effective, to "keep the system honest." The easy availability of appeal from an arbitration award is an important "fail-safe" feature of the arbitration program for institutional litigants.

Most of the decisions the Pittsburgh court has made regarding the operations of arbitration seem to serve its users well. The simplified filing procedure, immediate setting of a hearing date, and centralized hearing process are the ingredients that enable the program to deliver speedy, inexpensive dispute resolution. But the single-session "calendar call" approach to scheduling each day's hearings is a source of considerable dissatisfaction to litigants, because it frequently leads to long waits for hearing. Of all individual litigants who expressed any dissatisfaction with the arbitration program, 20 percent objected, sometimes emphatically, to the length of time they had to wait for hearing. Some litigants worried that the waiting time lessened their chances of a fair hearing, because all of the participants, including the arbitrators, would be exhausted by the time of the hearing. Dissatisfaction with waiting was thus often linked to anxieties about the likelihood of receiving an equitable hearing and a just outcome. Arbitrators' comments about the nonstop scheduling of each day's hearings suggested that concern about the effect of such scheduling on the quality of hearings is not entirely unfounded. Half of the arbitrators we interviewed commented about the "scheduling problem."

Another major source of dissatisfaction with arbitration, its use as an appeal mechanism for the lower court, is probably beyond the purview of the program's administrative staff. Of the individual litigants we interviewed, 22 percent had arrived at arbitration through this route; only one-quarter were entirely satisfied with their experience in arbitration.

USES AND LIMITATIONS OF COURT-ADMINISTERED ARBITRATION

Our findings on how litigants fare in the Pittsburgh arbitration program should interest local court administrators and other policy-makers considering the adoption of a "Pittsburgh-style" court arbitration program. In combination with our previous findings on the California judicial arbitration program, they also provide some insight into what court arbitration can and cannot offer to those who
seek a simpler but equitable form of dispute resolution. Our results show that court arbitration can:

- Speedily dispose of civil suits, without great expense to the taxpayer;
- Provide access to the court for diverse users, without encouraging a flood of frivolous litigation;
- Deliver final outcomes that are acceptable to most users;
- Satisfy many different individual and institutional litigants.

Compulsory court-administered arbitration probably cannot, however, achieve all of the objectives of its most enthusiastic supporters. Our study suggests that court arbitration:

- Is not a "people's court" that does away with the need for legal representation;
- Has a tendency, over time, to produce "reasonably acceptable" rather than "correct" decisions;
- Is not the optimal dispute resolution procedure for all civil suits; and
- May not work effectively in all jurisdictions.
Acknowledgments

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I. INTRODUCTION

BACKGROUND

For many years, critics of the American adversarial legal process have been concerned about the monetary and emotional costs it imposes on civil litigants. These costs are seen as particularly onerous for the ordinary citizen trying to resolve a dispute over property damage, the homeowner seeking compensation for a contractor’s failure to perform, and the small tradesman attempting to collect payment for services rendered. One expression of such concern was the establishment, during the early part of this century, of small claims courts to resolve "minor disputes" with a minimum of time, cost, and procedural requirements. But over the years, small claims courts acquired a reputation for serving the interests of big businesses, rather than the ordinary citizen; as a result, there has been little support for efforts to extend their jurisdiction to apply to disputes over larger amounts of money.¹

Criticism of the civil litigation process has emphasized the issues of court congestion, delays in obtaining trial, and rising public expenditures for resolving civil suits. As the number of disputes brought to court has swelled, court managers and state legislators have sought alternatives to the traditional court process that can reduce congestion on the civil trial calendar and speed disposition of cases, without greatly increasing public expenditures for civil case processing. Many people believe that compulsory court-administered arbitration is one of the most attractive of such alternatives, promising simple, fast, and inexpensive adjudication to litigants, and a means of reducing judicial workloads and controlling public expenditures for civil court administrators.

In jurisdictions that have established such programs, litigants who file civil damage suits within a specified monetary limit are not permitted to take their cases to trial unless they have previously attempted, and failed, to arbitrate the dispute. The jurisdictional limit of the programs is usually between $10,000 and $25,000, far greater than the limit of most small claims courts. The arbitration process is

¹The empirical basis for this reputation is shaky. Businesses use small claims courts as a mechanism for collecting on bad debts, but small tradesmen as well as large retailers and service providers are also served as are consumers, tenants, property owners, and other citizens attempting to obtain compensation for injuries (Yngvesson and Hennessey, 1975; Weller and Ruhnka, 1978).
administered by the court. Arbitrators are attorneys or retired judges who serve voluntarily and are paid small honoraria. The arbitration hearing is conducted informally, with relaxed rules of evidence, typically outside of a regular courtroom. After the hearing is concluded, the arbitrators deliberate for a short time and return a judgment. If the parties accept the arbitrators' verdict, it is entered as a judgment of the court and is legally enforceable. But either party may reject the arbitrators' decision and request that the court schedule a trial, and the case then returns to the regular trial calendar. Often some cost is associated with appealing the arbitrators' verdict. If a trial is held, the case is heard de novo—without reference to the arbitration hearing or its outcome (Ebener et al., 1981).²

Since 1952, when the first such program was established in Pennsylvania, more than 100 trial courts around the nation have adopted some form of court-administered arbitration.³ But there are many unresolved questions about the utility and appropriateness of these programs. How effective is court arbitration in reducing congestion on the trial calendar? Does arbitation deliver faster and cheaper dispute resolution to litigants without greatly increasing public expenditures to process civil cases? What kinds of disputes can arbitration resolve? Who wins and who loses in arbitration? Are litigants who are ordered to take their cases to arbitration, rather than to trial, satisfied with the process, or do they perceive it as a second-class form of justice?

In 1981, The Institute for Civil Justice conducted a study of the first year of the California court-administered arbitration program directed at answering the first two of these questions. The study concluded that court arbitration, as implemented in California, was likely to make only a modest contribution to reducing court congestion and that its effect on court costs was highly uncertain. Court costs to operate the program, although not huge, were large enough that a considerable decrease in cases going to trial would be necessary if the program were to achieve substantial net cost reductions.

²The use of the term "arbitration" to describe such a process distresses practitioners of the classical form of arbitration, who view the voluntary nature of the parties' participation in arbitration and the finality of the arbitrators' decision as the hallmarks of the process (see remarks by Coulson, in Adler et al., 1982). What court-administered arbitration shares with classical arbitration is an emphasis on getting the facts of the dispute before the adjudicator simply, quickly, and directly, without great attention to formal procedural rules, and the ability to deliver a legally enforceable outcome.

³Arizona, California, Nevada, New Hampshire, New York, Pennsylvania, and Washington have court-administered arbitration statutes, which apply variously to one or more of the largest jurisdictions in the state, or to all of a state's urban trial courts. In Ohio, the three largest metropolitan jurisdictions have arbitration programs by local court rule. Two federal district courts, Eastern Pennsylvania (Philadelphia) and Northern California (San Francisco) have also adopted court arbitration programs (Ebener et al., 1981).
The study found also that arbitration's ability to speed disposition of civil cases was limited by statutory procedural rules and, within these limits, depended on program implementation decisions made at the local court level and on the status of the local court calendar. In some courts, these factors combined to slow cases assigned to arbitration. In other jurisdictions, however, courts amended the statewide guidelines to permit the parties to bypass certain time-consuming procedures and allocated management resources to activities that speeded disposition of arbitration cases (Hensler, Lipson, and Rolph, 1981).

The Institute's study of the California program dealt primarily with arbitration's ability to solve problems of court congestion, trial delay, and rising court costs. It did not directly address the question of how arbitration affects litigants. This question concerns some critics of compulsory arbitration, who are disturbed by the possibility that courts may be requiring litigants to accept a "second-class" form of justice, in place of the traditional adversarial process. These critics wonder what sorts of outcomes court arbitration programs deliver to litigants and how litigants feel about the arbitration process. Uncertainty about such issues has caused some policymakers to be unwilling to adopt court arbitration programs in their jurisdictions. Because of the importance of this issue in the policy debate over arbitration, in its second study of court arbitration, the Institute is examining program effects on litigants.

STUDY APPROACH

As a site for this study, the Institute selected the Pittsburgh (Allegheny County) Court of Common Pleas. Established in 1953, the Pittsburgh arbitration program is one of the oldest in the country. In 1980, the program was responsible for about 60 percent of all civil

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4 Arbitration's effects on litigants have also been largely ignored by other recent evaluations of court arbitration programs. In its study of the federal arbitration experiment, the Federal Judicial Center found that arbitration speeded disposition of civil cases, apparently by providing an incentive for parties to settle their cases sooner through private negotiation (Lind and Shepard, 1981). A study of the Rochester, New York arbitration program found that total case processing time (from filing to disposition) was unaffected by the implementation of arbitration, although the time between a case being declared "ready" and its disposition was considerably reduced (Weller, Ruhnka, and Martin, 1981). But neither of these studies analyzed data on arbitration awards or appeals nor did they collect information directly from litigants.

5 Such concern is said to have contributed to Congress's failure to extend the federal court arbitration program past an experimental stage (see comments by Briskman, in Adler et al., 1982).
case dispositions in the Court of Common Pleas, or a total of 10,689 cases. The average time between case filing and arbitration hearing was under three months. In contrast, a civil case filed in the regular trial division, on average, required about two years to reach disposition. A study of the Pittsburgh court, conducted by the National Center for State Courts, estimated that the cost to the Court to operate the arbitration program in 1978 was about $62 per case filing. The cost to dispose of a civil case in the regular trial division averaged $1046 (National Center for State Courts, 1980).6 Pittsburgh's court administrators are understandably enthusiastic supporters of arbitration. The headline in the Court's 1980 description of program operations read "Arbitration essential to Court efficiency" (Allegheny County Court of Common Pleas, 1980). In sum, Pittsburgh offered Institute researchers an opportunity to examine a well-established arbitration program that apparently went a long way toward reducing time to disposition and court costs to process civil cases.

The Institute's study of the Pittsburgh arbitration program sought to answer three major questions:

- **How does the Pittsburgh arbitration program work?** Arbitration statutes, formal operational rules, and local implementation policies vary considerably across the country. Before we could investigate the effects of arbitration on litigants, we needed to understand the nature of the Pittsburgh arbitration program, the types of cases that this program disposes of, and the characteristics of litigants who bring their cases to arbitration hearings in Pittsburgh. Only by properly placing our results in the context of a particular arbitration program could we accurately inform the policy debate over court arbitration.

- **What are the outcomes of arbitration for litigants?** Like any other dispute resolution mechanism, arbitration delivers particular case results (arbitration awards) at a particular cost. The possibility that establishing a court arbitration program may greatly affect the distribution of these outcomes is at the heart of the policy debate over arbitration. Our single case

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6To compute the costs of arbitration the National Center divided the total costs to operate the program, including arbitrators' fees, by the total number of cases filed. Only half of the cases filed in arbitration actually go to hearing. The average cost to the court to process these cases is more than $62. To compute the costs of processing cases through the trial division, the National Center divided the total costs of that division by the number of cases in which a certificate of readiness (in Pittsburgh, termed a praecipe to issue) was filed. If the total number of cases filed was used in the calculation, the per case cost would be somewhat lower.
study of the Pittsburgh program could not provide the com-
parative analysis of outcomes obtained with and without a
court arbitration program that is necessary to answer this
question. But for the first time we could offer a detailed em-
pirical analysis of the pattern of arbitration awards, appeals
and appeal outcomes, and litigants' costs to obtain these case
results for a particular court arbitration program.

- How do litigants feel about arbitration? Ultimately, the suc-
cess of arbitration depends on its ability to satisfy court per-
sonnel, attorneys, and litigants. Although we may assume
that court administrators will be satisfied with a program
that reduces congestion and delay without increasing costs or
nonmonetary burdens on the court, it is not certain what
sorts of outcomes are required to satisfy litigants. Are liti-
gants concerned merely with whether they win or lose, or do
they care about the nature of the procedure? How do they
weigh the benefits of a speedy, inexpensive dispute resolution
process against the procedural protection offered by the tradi-
tional civil jury trial? By answering such questions, we hoped
to provide an empirical basis for the debate over the quality
of justice delivered by arbitration.\(^7\)

We used several approaches for the study. To learn about program
operations, we reviewed the state authorizing statute and the local
court rules. 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 worked in practice. And
three project staff members spent a week in the Pittsburgh court ob-
serving the arbitration administrative process and talking with pro-
gram administrators, attorneys, and litigants.

To describe the characteristics of cases filed in arbitration, and to
investigate the pattern of arbitration awards, appeals, and appeal out-
comes, we analyzed court record data for two different samples of
cases. First, using sampling instructions and a data collection form
that we provided, court administrative staff drew a sample of all cases
that had been filed in the arbitration program in 1980 and 1981 and
abstracted information from the court files on the characteristics of
these cases, the nature of the parties involved and their legal repre-
sentation, the time required to process the cases, and their mode of
disposition. This sample consists of 544 cases, about 3 percent of the

\(^7\)Our study did not attempt to systematically investigate arbitration's effects on
attorneys, although some of these effects are suggested. A detailed investigation of
sources of attorney satisfaction and dissatisfaction with arbitration must await further
study.
arbitration caseload in these years.\textsuperscript{8} Then, to supplement these data, the court staff drew an additional sample of cases that had appealed the arbitrators’ awards and abstracted information on their characteristics and on their final outcomes. To ensure that we would have complete disposition information on these cases, about 10 percent of appeals were sampled from a list of all appeals filed from 1979 to 1981, yielding a total of 157 cases for analysis.

To obtain information about individual litigants’ experiences in arbitration, their litigation costs, and their perceptions of the arbitration process, we interviewed 66 litigants whose cases were heard during the week that we visited the Pittsburgh court. While they were waiting for their cases to be heard by the arbitrators, we asked litigants about their expectations of the arbitration process. Immediately after each hearing was concluded (when the parties still did not know the outcomes of their cases), we conducted brief semi-structured interviews with litigants to get their first reactions to their experience. Finally, after they had been informed of the outcome of their hearing, we conducted lengthy, standardized telephone interviews with the litigants, to gather detailed information about the nature of their disputes, their previous litigation experiences, their costs associated with litigation, their reactions to the arbitration awards, and their views of the arbitration process. Our analysis of individual litigants’ perceptions of arbitration is based primarily on the results of this last interview.\textsuperscript{9} Although not selected in a strictly random fashion, the 66 telephone respondents represented a cross-section of litigants whose cases were heard during the observation week. Appendix A presents additional details of the interview methodology, including the data collection forms used for each phase, and discusses the representativeness of the litigant sample.

To round out our picture of litigants’ perceptions of arbitration, we also interviewed 15 attorneys and 14 institutional litigants (representatives of insurance companies, financial institutions, and public agencies) who have used arbitration repeatedly. Their stakes in the arbitration process are different from those of the individual litigants, and they are attentive to and care about different aspects of the arbitration process.

\textsuperscript{8}Because this sample was drawn from three separate sources using different sampling fractions, we had to use a weighted sample for our analysis. See Sec. II, footnote 8.

\textsuperscript{9}Some of the telephone respondents did not participate in the earlier phases of data collection, either because they chose not to or because project staff were not available to interview them when they came out of their hearings. Of the 66 litigants interviewed by telephone, 41 completed the pre-hearing form, and 39 were interviewed immediately after hearings.
ORGANIZATION OF THE REPORT

Section II describes how arbitration works in Pittsburgh and analyzes the characteristics of the arbitration caseload. Section III analyzes the objective outcomes of arbitration: the distribution of wins and losses, the amounts of money awarded to different types of cases and litigants, the pattern of appeals, the distribution of appeal outcomes, and the costs associated with taking a case to arbitration hearing and through the appeal process. In Section IV we discuss litigants' views of arbitration. We describe litigants' assessments of the "fairness" of the arbitration process and of the appropriateness of case outcomes, their level of satisfaction, and the role of perceptions of procedural fairness in determining litigant satisfaction. Section V assesses the uses and limitations of court-administered arbitration programs, drawing on the results of the previous sections.
II. HOW ARBITRATION WORKS IN PITTSBURGH

How a court-administered arbitration program functions depends on many factors, including the statutory requirements for the program, its formal rules of operation as adopted by state or local court rule, its informal implementation policies, and the legal culture in which it is enmeshed. These factors, in turn, determine the types of cases that are brought to arbitration. Any investigation of the outcomes of arbitration for litigants requires a clear understanding of the nature of the program’s operations and the characteristics of the population it serves.

We first describe how the Pittsburgh arbitration program works and discuss the role of formal rules, local implementation policies, and local legal culture in its operations. This discussion is based on our observations of program operations during our visit to Pittsburgh and on our interviews with program administrators, arbitrators, and attorneys. We then describe the uses and users of arbitration. Data drawn from court files enable us to present a detailed statistical description of the arbitration caseload. Then, drawing upon our interviews with litigants, we describe the characteristics and objectives of the individuals and institutions who bring cases to arbitration in Pittsburgh.

PROGRAM OPERATIONS

Statutory Basis and Formal Rules of Operation

The history of court-administered arbitration in Pennsylvania dates back to the early 19th century, when, under the terms of the Arbitration Act of 1836, the state legislature created an elaborate system for referring cases to arbitration, including provisions for compulsory arbitration. This system gradually fell into disuse until its revival was prompted by concern about growing congestion and delay in local courts throughout the state. In 1952, the old Act was amended to create an entirely new system of compulsory arbitration, administered by the Courts of Common Pleas, the trial courts of general jurisdiction. The amended Act authorized these courts to provide, by local rule, for arbitration of all civil suits where the amount in controversy was less than $1000. Successive legislative amendments increased the
jurisdictional limit to the current levels of $20,000 in the larger urban judicial districts and $10,000 in all others.

The amended arbitration statute amounted to little more than enabling legislation, very broadly outlining compulsory arbitration procedures, setting monetary and subject matter limitations, and fixing the time for appeal to trial de novo—that is, without reference to the arbitration procedure. Operating under such loose guidelines, courts in Pennsylvania adopted widely varying approaches to implementing arbitration, and local rules proliferated, particularly in jurisdictions that sought aggressively to discourage appeals from arbitrator awards. Some of these courts imposed substantial financial and evidentiary requirements on appellants, and during the 1970s, there were frequent bouts of litigation as to the constitutionality of such forms of impediment to the right to trial.

In 1978, the state enacted legislation to repeal the Arbitration Act of 1836, and all its amendments. In its place, compulsory arbitration was authorized by a single enabling provision in the Judicial Code, and the Pennsylvania Supreme Court assumed the responsibility for uniformly regulating arbitration procedures statewide. The new rules, issued by the Supreme Court in 1981, established minimum requirements for appointing arbitrators and for assembling arbitration panels to hear specific cases. They formally liberalized the rules of evidence to permit introduction of certain types of written documents without calling witnesses, a practice that many local jurisdictions had already adopted. But the rules left to local discretion the decision where and when hearings should be held and procedures for assigning arbitrators to cases. Local courts were also left to choose the jurisdictional limit of their arbitration programs, within the limits set by the Supreme Court, and subject matter jurisdiction in all civil suits excepting those concerned with title to real property. (Appendix B presents the 1981 Supreme Court rules.)

Implementation

Unlike the courts in California and many other jurisdictions, the Pittsburgh court chose to administer 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. \(^1\) The program administrators, rather than the

\(^1\) The California statute, for example, states, "Arbitration hearings shall be as informal and private as possible... and shall be held during nonjudicial hours whenever possible." (Cal. Stats. (1978), Ch. 743, 1141.10(b)(2).)
individual attorney-arbitrators, are responsible for scheduling hearings, and they carry out this responsibility in a highly routinized fashion.

The Pittsburgh court has chosen to arbitrate any kind of civil suit, including replevin (suits for repossession of property), within the statutory authorization but until recently had set the jurisdictional limit at $10,000.\textsuperscript{2} The plaintiff's own valuation of his claim determines its eligibility for arbitration. Only cases that plaintiffs assert are worth more than $10,000, and therefore file in the regular civil trial division of the court, are subjected to any kind of judicial scrutiny as to the probable amount at stake.

Cases arrive for hearing at the Pittsburgh Arbitration Center by one of three routes. The majority are filed directly in arbitration, at the Prothonotary's (court clerk's) office, either by a plaintiff's attorney or by the plaintiff himself, if he is unrepresented. Some cases arrive at the Arbitration Center on appeal from a decision at the local district justice's court (similar to a justice of the peace's court or a small claims court elsewhere), where the jurisdictional limit at the time of our study was $2000.\textsuperscript{3} A small fraction are originally filed in the regular trial division but are later ordered to arbitration by a civil court judge who assesses their value at less than $10,000.

Where the claim is for less than $3000, no more is required than a one page document including a simple statement of the cause of action and the amount at issue, and the payment of a $36.50 filing fee. If the claim is for an amount between $3000 and $10,000, a more detailed complaint is expected, but in practice some attorneys who use the Center on a regular basis file the one page claim in all suits. Clerks in the Prothonotary's office give simple instructions to parties filing their own claims and, if the pressure of business permits, will provide some information about procedure at arbitration. However, no formal arrangements exist to provide this kind of assistance, and unrepresented parties with larger claims and many questions are very likely to be advised by court personnel to hire an attorney. After the suit has been recorded, a copy of the claim is served on the defendant by the plaintiff himself, by the sheriff, or by certified mail, depending on where the claim originated. The defendant is required to answer, if only with a denial, using a simple form entitled "Notice of Intention To Appear," for cases under $3000 and a more formal procedure for higher-value cases.

Cases are automatically scheduled for arbitration hearings approximately 90 days after the filing date. No certificate of readiness is

\textsuperscript{2}Effective July 1, 1983, the limit was increased to $20,000.

\textsuperscript{3}Effective January 1, 1983, raised to $4000.
required. The plaintiff is presumed to be ready at the time of filing, and very few defendants are unable to complete preparation within 90 days. In most of the cases, preparation is simple, because no discovery is allowed in cases where the claim is under $3000, except by special permission of the court. The responsibility for granting delays in the normal schedule resides with the court.4

At the beginning of each court day, the parties whose cases have been scheduled for hearing assemble in the Arbitration Center, a room that once served as a courtroom but that has since been remodeled to produce a large waiting room surrounded by six smaller hearing rooms. Panels of three arbitrators each assemble in each of these hearing rooms. Arbitration cases are called and assigned numbers in the daily queue of cases awaiting hearing. The panels then begin hearing the first set of cases. As soon as a panel completes hearing and deliberating on a case, a new case is sent in to that hearing room, in the order of the assigned numbers. Because the length of time required for hearings varies, this system results in a more or less random assignment of arbitrators to cases. (If a case is likely to take a longer than average time to hear, or if the attorneys or their clients have other pressing business, the administrative staff may assign it to a hearing room out of order.) The parties themselves play no role in choosing the arbitrators, nor do they have a formal opportunity to object to their assignment. This "rough and ready" procedure for random assignment contrasts sharply with the more elaborate and often time-consuming procedures for randomly assigning arbitrators that many jurisdictions use to guard against arbitrator bias.5

The Pennsylvania Supreme Court rules require that arbitrators be "active" members of the bar and that the chairman of each panel have

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4This streamlined procedure for filing and scheduling arbitration cases contrasts sharply with the procedure in California courts and other jurisdictions in which arbitration cases are not initially separated from the remainder of the civil caseload. All civil cases filed in the California trial courts are expected to proceed through the same pretrial process, whether they are arbitration- or trial-bound. A pro se litigant seeking to bring a case in arbitration needs considerable knowledge to maneuver successfully through this pretrial process.

5In California, for example, according to the Judicial Council rules, within 15 days after a case is ordered to arbitration by a judge, the program administrator must randomly select the names of three candidates from the arbitrator pool. These names are sent to the parties, each of whom has 10 days to respond by "striking" one name from the list. After these responses are received, the administrator notifies the person remaining on the list that he or she has been appointed to arbitrate the case. Some jurisdictions have established procedures for parties to waive these requirements and expedite arbitrator selection, by local court rule. But if the parties do not waive their rights to the more elaborate procedure, they must wait their turn in the queue for an arbitrator. If the demands on the staff of the arbitration administrator's office are great, the waiting time until an arbitrator is selected may exceed the prescribed interval by several weeks or even months.
a minimum of three years of experience in practice. In addition, no
more than one member of a law firm may sit on a panel, and arbitrators
must disqualify themselves from any case in which they are
presented with a conflict of interest that would disqualify a judge un-
der the Pennsylvania Code of Judicial Conduct.

The list of attorneys who have volunteered as arbitrators is main-
tained in the arbitration director's office, with separate designations
for those qualifying as panel chairmen. Some counties use a computer
to randomize arbitrator assignment, but in Pittsburgh the arbitration
director uses a manual, less standardized procedure to choose panel
members. Wherever possible he seeks a balance between plaintiff and
defense attorneys. The chairman is seen as the linchpin; and if there
is a solid, experienced person in this spot, the other two members may
be an attorney only a few months out of law school and an unknown
quantity summoned for the first time.

The arbitrators selected to serve on a given day receive 30 days’
notice of their assignment. If they fail to appear, the director may be
forced to “fill in” their spots on short notice, either by telephoning
other attorneys whose cards are in the arbitrator file or by selecting a
volunteer from a group of attorneys who show up in court early every
morning in the hopes of receiving a last minute assignment.

Appointing some arbitrators on the day of the hearing is not
thought to affect the performance of arbitration panels, for arbitrators
are not expected to do any advance preparation for hearings. Their
task is simply to listen to both sides present their case and then to
make an on-the-spot decision on the dispute. Hearings generally last
30-45 minutes. After each hearing, the arbitrators deliberate briefly
and record their decision. Each panel sits for several hours, hearing
cases in order, until all of the scheduled cases have been heard. Arbi-
trators are paid $100 a day, and they generally hear four or five cases
during the time they sit. The average expenditure for arbitrators’
fees, for each case heard, is about $60.6

The arbitrators' decision is transmitted by mail that day to the
parties. Any party wishing to appeal the award must request a trial
de novo within 30 days and accompany the appeal with a payment
reimbursing the court for the cost of arbitrating his suit.

**The Culture of Arbitration**

Viewed elsewhere as a novel, and hence somewhat suspect, ap-
proach to resolving civil disputes, in Pittsburgh arbitration is a part

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6Because the court is reimbursed for arbitrators' fees in cases that are appealed, the
net cost to the court for arbitrators is about $40 per case heard.
of the litigation landscape, accepted by lawyers and litigants alike as an integral component of the court system. The program has its critics among both groups, but it is difficult to find a court administrator or an attorney who can imagine the court doing without it or a litigant who believes it is in any way unusual for a court to offer such a means of resolving disputes.

The institutionalization of arbitration colors every aspect of the arbitration process. It is evidenced by the attorneys who appear in the Arbitration Center every day, often to present several cases for different clients; by the rapport between these attorneys and the arbitration program staff, which helps resolve any schedule or other procedural problems that may arise during the day; and by the ease with which the staff manages the hearing process, accommodating both the quickly heard, quickly decided routine dispute between two parties and the occasional no-holds-barred case that occupies a single hearing room for the entire day.

The court recruits volunteer arbitrators with apparent ease. The list of arbitrators currently numbers around 2500, more than half of the total number of attorneys practicing in Pittsburgh. Anyone admitted to the bar in Allegheny County may volunteer to serve as an arbitrator by filling in a form indicating the nature of his practice and areas of expertise, defining the extent of his availability as either "ready" or "infrequent," and by appearing briefly for an interview with a judge. The task of recruiting arbitrators is made easier by the ready availability of young, newly trained lawyers for whom a $100 honorarium apparently represents an acceptable fee for four to five hours of work.

Pittsburgh is a major corporate and banking headquarters city, so corporate attorneys, trust officers, and tax attorneys constitute an unusually large portion of the local bar. But a brief examination of the background of attorneys serving on the boards during a typical week at the Center indicates that most come from practices very similar to those of the lawyers who appear most frequently for clients in arbitration: sole practitioners who handle a general mix of simple contract, tort, and real estate work; partners in two- or three-person firms specializing in insurance or collection cases; and young attorneys either struggling to establish sole practices or working as associates in the larger firms, which see arbitration practice as good litigation experience for their most junior associates. In effect, the arbitration program is serviced by volunteers whose practice depends, to a greater or lesser extent, upon its existence.

Arbitrators, program administrative staff, and attorneys who practice in arbitration share an ethos of delivering rough justice that is expressed in their comments about the process. One arbitrator described the "ideal" arbitration suit to us as follows:
It's a case with no more than two simple issues, requiring no more than a 15-20 minute presentation from each side. There's a minimum of detail, and no repetition, by well-prepared attorneys who don't want to make a federal case out of it. No rhetoric, emotion, or grandstanding. You can just move it on out!

Another attorney, who specializes in "volume" collection work, said:

I wouldn't say we go into hearings empty-handed. But we're not exactly prepared to the hilt either. You soon get an idea of what's likely to be important, and just try to cover that. It's impossible, in this line of work, to do more.

Attorneys who practice in arbitration say that arbitrators are "after a kind of rough, basic, fairness." Reflecting this view, one arbitrator commented:

Occasionally I've been on a board and heard a case where the equities were clearly all on one side, but not necessarily the law. Then we might say "Let's be fair here! If anyone wants to appeal, the judge can be legal."

Another arbitrator put it this way:

If you are looking to do justice, you must sometimes bend the rules a little for these people. Public perceptions of justice are much more important than adherence to legal niceties.

The pace of operations at the Arbitration Center, the methods of selecting and assigning arbitrators to panels, the rules for scheduling cases for hearing, and the obvious involvement of the program administrative staff in the daily routine of hearing and disposing of cases all reflect a commitment to delivering this sort of rough justice in an efficient fashion.

Critical Components of the Pittsburgh Approach to Arbitration

By permitting plaintiffs to value their own cases, the Pittsburgh court has eliminated the need for judges to assess eligibility of the entire civil caseload, which in some courts increases the costs associated with arbitration and can contribute to delay. Freed from the necessity of considering judicial schedules, the arbitration administrators have been able to streamline the process of registering arbitration claims and scheduling hearings. But the Pittsburgh approach to
determining case eligibility for arbitration also leaves plaintiffs initially free to decide whether they wish to arbitrate, a freedom that is not permitted them in courts where judges determine eligibility soon after filing. What is, formally, a compulsory program, on closer look emerges as a quasi-voluntary program in which plaintiffs may choose to avoid arbitration up until the time they finally meet with the judge to discuss the case, shortly before the scheduled trial date.

The Pittsburgh court is able to control the speed at which cases move through the arbitration process with a modest investment of court administrative resources by centralizing administration of its arbitration program. Achieving comparable control of the more typical, decentralized arbitration program, in which schedules are set by individual arbitrators working out of their own offices, requires a much greater investment of court resources. A court that views arbitration as a means of lightening its workload may be understandably reluctant to take on this task.

The "calendar call" approach to scheduling hearings makes maximum use of Pittsburgh arbitrators' time. As a result, although three arbitrators are required to hear each case, the court is able to hear an average of 25 cases per day, for a cost in arbitrator fees alone of about $60 per case heard.7 The "calendar call" approach, however, requires that litigants appear in the downtown court building during the regular business day. Thus the Pittsburgh approach sacrifices an objective of many arbitration programs, that litigants should be able to meet to resolve their disputes in a noncourt setting, outside of normal working hours. The short time accorded hearings in Pittsburgh, compared with the two to three hour sessions reported in California, suggests another consequence of the calendar call approach: Arbitrators may press the parties to present their cases very rapidly and minimize their own time for deliberation in an effort to keep up with the pace set by the court administrative staff.

Establishing minimum requirements for arbitrator appointment and adopting a pragmatic approach to assembling arbitrator panels ensure that an adequate supply of arbitrators will always be available to hear cases. But the lack of more stringent standards for arbitrator service may influence plaintiffs' lawyers decisions on whether to file a case immediately in arbitration or file in the regular trial division and await a judicial assessment of its value.

Finally, the shared belief among program administrators, arbitrators, and attorneys that the purpose of arbitration is to deliver rough

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7In California, in contrast, a single arbitrator hears each case and is paid a $150 honorarium for his time. The Pittsburgh cost is further reduced by appellants' reimbursement of arbitrators' fees, so that the net cost of arbitrators is about $40 per case.
justice provides a rationale for emphasizing efficiency in disposing of civil disputes while doing away with many of the legal niceties that are associated with the traditional adversarial process.

CASELOAD COMPOSITION

What kinds of cases are attracted to and disposed of by the sort of arbitration program operated in Pittsburgh? Is the program used primarily by businesses to collect bad debts, as has been the case with some small claims courts, or does it have a diversity of "clients"? Does the simplicity of program procedures encourage pro se or unrepresented litigation? What differences are there between cases filed directly in arbitration by plaintiffs and cases ordered to arbitration by judges? To answer these questions, we analyzed court record data for a random sample of 544 cases that had been filed in the arbitration program in 1980-1981.8

Not all of the cases that are filed in arbitration actually reach arbitration hearings. Cases in which defendants fail to answer complaints result in default judgments in favor of the plaintiff. Cases that are dropped by the plaintiff or that are settled privately between the parties before the day of the hearing are dismissed by the court.9 Within our sample of arbitration filings, about half of all cases were resolved without hearing, most frequently by default judgment or by dismissal, least often by settlement. The remainder proceeded to hearing. In our analysis of caseload composition we paid particular attention to these latter cases, which produce the outcomes discussed

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8We randomly selected a 3 percent sample of all cases filed either directly in arbitration, or on appeal from the district justices' courts. To ensure that we would have enough cases that were originally filed in the trial division to compare with these, we selected a 10 percent sample of trial division cases. When reporting statistics for the total arbitration caseload, we use differential weights to correct for the differences in sampling probabilities, which reduces the effective sample size to 470. The expected accuracy of statistics (e.g., means, proportions) for a sample of this size is approximately ±5 percent.

9When a case is dropped or settled before hearing, the plaintiff is required to file a form to that effect and to pay a fee of $5 to the court clerk. The requirement is frequently ignored. The court discovers that the parties do not intend to pursue the case when they fail to appear as scheduled on the day of the hearing, and the case is simply marked dismissed. When the parties do formally notify the court of a settlement, the case is recorded as settled and dismissed. The fee for recording satisfaction of an award is $36. Cases in which the parties desire to formalize their settlement agreements result in "consent judgments," which are signed by the parties in the presence of the court clerk and are enforceable as judgments of the court.
in Sec. III, and whose protagonists are the litigants whose attitudes we describe in Sec. IV.

**Characteristics of Cases Filed and Heard**

Table 1 summarizes the results of our descriptive analysis. The first column of the table shows the distribution of arbitration filings by case type, amount claimed, and configuration of parties. The second column shows the distribution, along the same dimensions, of the subset of those cases that went to hearing. The typical case filed in arbitration is a collection suit originating in the arbitration division and involving an amount less than $3000; it is brought by an organization (usually a business) against an individual or organizational defendant. The typical case reaching hearing also originates in the arbitration division, but it involves somewhat more money and is more likely to be brought by an individual.\(^{10}\)

**Type of Complaint.** Within our sample, about half of all filings were attempts to collect on bad debts. Most involved attempts by vendors to collect on bills for home improvements, automobile or appliance sales or repairs, or professional services: a small fraction (less than 10 percent) involved landlord-tenant disputes. Only half of the collection filings fit the stereotype of such claims, however, involving businesses suing individuals. Most of the remainder involved one business suing another; a handful involved individuals suing other individuals or businesses.

Collection claims accounted for a smaller percentage of all cases actually reaching arbitration hearing. Most of these were disputes between either two businesses or two individuals. Our interviews suggest that when collection cases go to hearing, it is because the defendant disputes the plaintiff’s claim that the goods delivered or the services performed were satisfactory. Rather than terming these collection cases, it may be more accurate to describe them as consumer disputes.\(^{11}\)

About one-third of the cases filed in arbitration were tort cases: most of these were disputes arising from motor vehicle accidents, and most involved property damage only. Less than 10 percent of the total filings involved any kind of personal injury. In most tort cases the nominal plaintiff and defendant were both individuals.

\(^{10}\)Differences between cases that terminated before hearing and cases that reached hearing, with regard to type of complaint, amount in dispute, configuration of parties, and legal representation are statistically significant at the .001 level.

\(^{11}\)For a discussion of arbitration’s role as a consumer dispute resolution mechanism, see Hensler, Adler, and Rest, 1983.
Table 1

**CHARACTERISTICS OF CASES**

(Percent)

<table>
<thead>
<tr>
<th></th>
<th>CasesFiled</th>
<th>CasesHeard</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Type</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tort</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Motor vehicle</td>
<td>25</td>
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<tr>
<td>Other</td>
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<td></td>
</tr>
<tr>
<td>Collection</td>
<td>12</td>
<td>30</td>
</tr>
<tr>
<td>Breach</td>
<td>9</td>
<td>12</td>
</tr>
<tr>
<td>Other</td>
<td>7</td>
<td>6</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td><strong>Amount Claimed</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Under $1,000</td>
<td>38</td>
<td>35</td>
</tr>
<tr>
<td>$1,000-$2,999</td>
<td>30</td>
<td>24</td>
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<td>$3,000-$7,499</td>
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<td>$7,500-$9,999</td>
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<td>4</td>
</tr>
<tr>
<td>$10,000+</td>
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<td>4</td>
</tr>
<tr>
<td>&lt; $10,000, unspecified</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td><strong>(Average Claim Amount)</strong></td>
<td>($2,487)</td>
<td>($2,722)</td>
</tr>
<tr>
<td><strong>Configuration of Parties</strong></td>
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<td></td>
</tr>
<tr>
<td>Individual v. individual</td>
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<td>36</td>
</tr>
<tr>
<td>Individual v. organization</td>
<td>18</td>
<td>25</td>
</tr>
<tr>
<td>Organization v. individual</td>
<td>29</td>
<td>15</td>
</tr>
<tr>
<td>Organization v. organization</td>
<td>27</td>
<td>24</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td><strong>(Total Number of Cases)</strong></td>
<td>(470)</td>
<td>(174)$^d$</td>
</tr>
</tbody>
</table>

**SOURCE:** Court record data, weighted sample of cases filed in arbitration, 1980-81.

$^d$Of the total weighted sample of 470 cases, 340 cases (72 percent) had been disposed of by the time of our study. Cases that reached hearing accounted for 51 percent of these cases; the remaining 49 percent were dismissed, settled, or resulted in a default or other summary judgment.
Tort cases accounted for a large proportion of the cases that reached hearing. About half of all cases heard involved tort claims, three-quarters of which arose out of motor vehicle accidents. Personal injury claims were involved in 20 percent of the tort cases heard. Although their role is not indicated in the court files, our interviews suggest that insurance companies are involved as the real party of interest on one or both sides of the majority of tort claims that reach hearing.

The smallest category of arbitration cases was suits for breach of contract. These accounted for about 9 percent of all filings and about 12 percent of all cases heard. A miscellany of other types of claims rounded out the arbitration caseload.

**Amount Claimed.** Most of the cases filed in arbitration involved very small amounts of money. The average amount claimed was about $2500, barely above the $2000 jurisdictional limit of the lower-level district justices' courts. About half of the claims were for amounts less than $1800; more than one-third were seeking amounts less than $1000.

More than half of the claims for amounts less than $3000 were collection cases, but about one-third were property damage suits. Collection cases predominated as well among modest sized claims ($3000-$7499), but these also included substantial numbers of property damage suits and breach of contract cases. Tort cases appeared in large numbers only among claims for $7500 or more; about 60 percent of these were tort cases, three-quarters of which involved personal injury.

The size of the average claim and the small percentage of personal injury suits filed in arbitration are somewhat surprising in a program that has a jurisdictional limit of $10,000. Previous research suggested that a typical metropolitan court caseload should include a much larger proportion of tort cases valued at $10,000 or less (Peterson and Priest, 1982). In Pittsburgh, we expected to find these cases in the arbitration caseload. Why isn't this the case?

According to attorneys and other close observers of the court whom we interviewed, most plaintiff attorneys in Pittsburgh regularly seek jury trial in personal injury cases where any element of the claim is for pain and suffering. In so doing, they leave their options open, should damages increase after the complaint has been filed, and they allow themselves extended time for preparation and discovery while the case waits on the trial division docket for a judge to become available for a conciliation or settlement conference. Filing in the trial division may also give plaintiffs a tactical advantage, because it impresses upon their opponents the seriousness of their intention to litigate should attempts to negotiate a private settlement fail. During the average 16-month wait for the conciliation conference, most such cases apparently do settle. A small fraction come before a judge, are
deemed eligible for arbitration, and appear on the arbitration hearing calendar.

Although disputes over small amounts of money are somewhat more likely than higher value cases to terminate without being heard in arbitration, the average amount of money involved in sample cases that went to hearing was still quite modest—about $2700. Half of the cases heard involved amounts less than $2300; about one-third involved amounts under $1000. Tort claims predominated at both the lower and upper ends of the monetary distribution, but tort cases under $3000 almost always involved property damage alone, and torts over $7500 more often than not involved personal injury. Collection cases predominated only in the mid-range of the distribution, among claims for $3000-$7499.

**Configuration of Parties.** Among the arbitration filings that we sampled, there was a roughly even distribution between individual and organizational (primarily business) plaintiffs, with the latter having a slight edge. Because many of the cases involving organizational plaintiffs were collection suits that terminated without hearing, the hearing caseload included only a small fraction of suits by businesses against individuals. Close to two-thirds of the cases heard involved individuals as the named plaintiffs. Among cases heard, there was a roughly even distribution between individual and organizational defendants; the latter included insurance companies, small businesses, and public agencies.

**Pattern of Legal Representation**

One of the more distinctive characteristics of the Pittsburgh arbitration program is its high proportion of unrepresented litigants. Because of the policy interest in arbitration as a mechanism for citizens to resolve their disputes without legal counsel, we examined the patterns of *pro se* representation in some detail, within both our sample of filings and the subset of cases that actually went to hearing. Table 2 presents the results of our descriptive analysis.

**Cases Filed.** About 60 percent of the sampled filings involved unrepresented litigants on one or both sides. Such a large proportion of *pro se* litigants could indicate that individuals find the court process simple to understand and easy to maneuver within. It could also indicate that many litigants cannot afford to retain legal counsel or do not believe that it would be worthwhile to do so. The first interpretation would seem particularly compelling if *pro se* litigants were roughly equally distributed on the plaintiff and defense sides, the second if they appeared primarily on the defense side. Within our sample of
Table 2

PATTERN OF LEGAL REPRESENTATION
(Percent)

<table>
<thead>
<tr>
<th>CASES FILED</th>
<th>Plaintiff pro se</th>
<th>Defendant pro se</th>
<th>Both Parties pro se</th>
<th>Both Parties Represented</th>
<th>Total Number of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>5</td>
<td>52</td>
<td>3</td>
<td>40</td>
<td>470</td>
</tr>
</tbody>
</table>

Type

Tort

- Motor vehicle: 5, 54, 2, 40, 111
- Other: 4, 13, 4, 80, 81

Contract

- Collection: 3, 64, 3, 31, 236
- Breach: 10, 25, 8, 58, 40

Amount Claimed

- Under $3000: 8, 62, 7, 22, 301
- $3000-$9999: 0, 25, 0, 75, 100
- $10,000+: 0, 14, 7, 78, 12

Configuration

- Individual v. individual: 7, 50, 6, 37, 125
- Individual v. organization: 12, 17, 7, 65, 83
- Organization v. individual: 1, 72, 3, 24, 126
- Organization v. organization: 0, 54, 2, 47, 126

CASES HEARD

Type

Tort

- Motor vehicle: 8, 40, 2, 51, 58
- Other: 0, 8, 8, 84, 17

Contract

- Collection: 4, 29, 2, 65, 61
- Breach: 10, 16, 0, 74, 20

Amount Claimed

- Under $3000: 0, 39, 5, 56, 48
- $3000-$9999: 0, 0, 0, 100, 47
- $10,000+: 0, 0, 0, 100, 7

Configuration of Parties

- Individual v. individual: 7, 44, 4, 45, 64
- Individual v. organization: 11, 9, 1, 77, 43
- Organization v. individual: 4, 27, 0, 69, 28
- Organization v. organization: 3, 26, 0, 71, 41

Source: Court record data, weighted sample of cases filed in arbitration, 1980-81.

*Of the total weighted sample of 470 cases, 340 cases (72 percent) had been disposed of by the time of our study. Cases that reached bearing accounted for 51 percent of these cases; the remaining 49 percent were dismissed, settled, or resulted in a default or other summary judgment.

Arbitration filings, about 8 percent of all cases involved unrepresented plaintiffs and 52 percent involved unrepresented defendants.

Business and public agency plaintiffs were almost never unrepresented. Individual plaintiffs brought suit pro se about 15 percent of the time, most frequently in landlord-tenant disputes and property damage cases not involving motor vehicle accidents.
Although both individual and business defendants frequently did not retain legal counsel, individuals were considerably more likely than businesses to be unrepresented. Defendants were most frequently unrepresented in collection cases and motor vehicle property damage suits; they were least frequently unrepresented in personal injury suits, probably because of insurance company involvement in such cases. Individuals appearing as defendants in collection cases were particularly likely to be unrepresented (75 percent); about half of the business defendants in such cases were unrepresented.

**Cases Heard.** A plaintiff may not obtain legal counsel when a case is filed in arbitration because he is not certain that he will pursue the case, and a defendant may not obtain an attorney because he thinks the case is not worth contesting. A pro se litigant whose case goes to hearing, however, is in a quite different position: He must be prepared to identify and submit relevant evidence, present the case to the arbitrators, and cross-examine his opponent. More often than not, he 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 was lower among arbitration hearing cases than among filings generally. About one-third of all cases that were heard involved pro se litigants on one or both sides. In 25 percent of the cases heard (three-quarters of all pro se cases) an unrepresented defendant faced a represented plaintiff;\(^{12}\) 6 percent involved unrepresented plaintiffs suing represented defendants; and only 2 percent involved pro se litigants on both sides.

In motor vehicle tort cases, pro se defendants, of whom there were many, were probably uninsured motorists. Their presence was also reflected in the rate of pro se defendants in suits involving individuals as the named parties on both sides. Pro se defendants also appeared in fairly large numbers in collection cases, and in suits for amounts under $3000.

Plaintiffs were generally represented at hearings. Individual plaintiffs were somewhat more likely than organizational plaintiffs to appear pro se, particularly when suing organizations. The highest rate of plaintiffs appearing pro se occurred among cases that were appealed (most likely by the defendant) from the magistrate's court.

Within our sample of cases that went to hearing in only two types did none of the parties appear pro se: cases valued at $10,000 or more and, consequently, cases referred from the trial division.

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\(^{12}\) Some unknown percent of these cases were probably decided at ex parte hearings, at which defendants were not actually present.
Differences Between Cases Filed Directly in Arbitration and Cases Ordered to Arbitration

More than three-quarters of the filings we sampled originated in the arbitration program—that is, they were assigned to arbitration on the basis of the monetary value indicated in the complaint. About one-fifth were cases appealed from the district justices' court. Under 5 percent were filed originally in the trial division by plaintiffs who claimed more than $10,000 in damages. Table 3 shows the characteristics of cases originating in each part of the court system.

Cases Filed. Cases filed originally in arbitration and cases appealed from the minor judiciary had quite similar characteristics: About half of each were collection cases, and about one-third were tort cases. About two-thirds of each were disputes involving amounts less than $3000. The average amount claimed in original arbitration cases was about $2500; the average amount claimed in the district justices' courts appeals was considerably lower, about $1000, as might be expected, given the courts' jurisdictional limit. District justices' court appeals were more likely than original complaints to have unrepresented parties on both sides, and a greater proportion of the district court appeals cases were originally brought by individuals. The court records that we examined did not consistently indicate which party filed the appeal. However, our interviews with participants suggest that many business defendants, as a matter of policy, do not contest cases at the district court level, preferring to appeal verdicts against them and present their cases to the arbitrators.

The small number of cases transferred from the trial division differed sharply from the others. Only one-quarter of the referrals were collection cases. More than half were tort cases, three-quarters of which involved personal injury. In about half of the referred cases, plaintiffs originally asked for amounts greater than $10,000; in the remainder, the complaint specified a smaller amount, sometimes considerably under $10,000. According to court staff, many of the latter were probably cases that plaintiffs filed initially in the trial division because they believed damages would increase after filing; when this did not occur, the plaintiffs stipulated to a transfer to arbitration. Few of the trial division cases involved either pro se plaintiffs or pro se defendants. Two-thirds of the cases involved three or more parties. Among cases filed originally in arbitration, less than half involved three or more parties; among district court appeals, only one-third had this many parties.

Cases Heard. The distribution of the arbitration hearing caseload by origin did not differ considerably from that of the total caseload, but differences in case characteristics by source were sharper. Cases
### Table 3

**CHARACTERISTICS OF CASES BY ORIGIN**

(Percent)

<table>
<thead>
<tr>
<th>CASES FILED</th>
<th>Filed in Arbitration</th>
<th>Filed in Total Division</th>
<th>Filed in Judges' Court</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Type</strong></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Test</td>
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<tr>
<td>Motor vehicle</td>
<td>25</td>
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<td>25</td>
</tr>
<tr>
<td>Other</td>
<td>1</td>
<td>2</td>
<td>9</td>
</tr>
<tr>
<td>Contract</td>
<td>53</td>
<td>24</td>
<td>48</td>
</tr>
<tr>
<td>Collection</td>
<td>7</td>
<td>23</td>
<td>16</td>
</tr>
<tr>
<td>Breach</td>
<td>8</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td><strong>Amount Claimed</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Under $3,000</td>
<td>65</td>
<td>10</td>
<td>14</td>
</tr>
<tr>
<td>$3,000-$9,999</td>
<td>25</td>
<td>31</td>
<td>3</td>
</tr>
<tr>
<td>$10,000+</td>
<td>4</td>
<td>44</td>
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<tr>
<td>Under $10,000 unspecified</td>
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<td><strong>Configuration</strong></td>
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<tr>
<td>Individual v. individual</td>
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<tr>
<td>Individual v. organization</td>
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<td>47</td>
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<tr>
<td>Organization v. individual</td>
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<td>24</td>
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<tr>
<td>Organization v. organization</td>
<td>20</td>
<td>20</td>
<td>15</td>
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<tr>
<td><strong>Representation</strong></td>
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<tr>
<td>Plaintiff, pro se</td>
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<td>Defendant, pro se</td>
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<td>25</td>
</tr>
<tr>
<td>Both pro se</td>
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<td>0</td>
<td>25</td>
</tr>
<tr>
<td>Both represented</td>
<td>37</td>
<td>97</td>
<td>39</td>
</tr>
<tr>
<td><strong>TOTAL NUMBER OF CASES</strong></td>
<td>373</td>
<td>89</td>
<td>79</td>
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</tbody>
</table>

### CASES HEARD

| **Type** |                      |                         |                       |
|----------|----------------------|-------------------------|                       |
| Test     |                      |                         |                       |
| Motor vehicle | 37                | 24                      | 31                    |
| Other    | 10                   | 76                      | 9                     |
| Contract |                      |                         |                       |
| Collection | 35                | 23                      | 43                    |
| Breach   | 11                   | 23                      | 13                    |
| Other    | 6                    | 6                       | 6                     |
| **Amount Claimed** |                |                         |                       |
| Under $3,000 | 52                | 3                       | 87                    |
| $3,000-$9,999 | 53                | 32                      | 5                     |
| $10,000+   | 5                    | 47                      | 5                     |
| Under $10,000 unspecified | 101            | 73                      | 20                   |
| **Configuration** |                |                         |                       |
| Individual v. individual | 35                | 36                      | 43                    |
| Individual v. organization | 25                | 47                      | 16                    |
| Organization v. individual | 15                | 6                       | 16                    |
| Organization v. organization | 35                | 13                      | 24                    |
| **Representation** |                |                         |                       |
| Plaintiff, pro se | 3                 | 0                       | 10                    |
| Defendant, pro se | 29                | 0                       | 22                    |
| Both pro se   | 2                    | 0                       | 25                    |
| Both represented | 67                | 100                     | 57                    |
| **TOTAL NUMBER** | 124            | 41                      | 36                    |

**Source:** Court record data, cases heard in arbitration, 1980-81. The sample sizes reported in this table are raw, unweighted totals.
originating in the arbitration program and cases appealed from the district justices' court were divided about evenly among motor vehicle property damage claims, collection cases, and others. In contrast, among the referrals from the trial division, personal injury and breach of contract claims predominated within our sample, and there were no collection cases. The average amount claimed in district justices' court appeals was about $1300 and in complaints originating in arbitration about $2800; the average amount claimed in cases referred from the general docket was about $7900.13

INDIVIDUAL LITIGANTS' CHARACTERISTICS

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? What motivates them to pursue their disputes through arbitration, rather than settling or dropping them? Our interviews with individual litigants, although not conclusive, suggest some answers to these questions.

Demographic Characteristics

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. Retired or unemployed persons made up 20 percent of the respondents.14

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 2 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

13In computing this average, we treated all complaints for more than $10,000 that did not specify an actual amount as equal to $10,000, because the judge would not have ordered the case to arbitration if it exceeded this amount.

14At the time we conducted the interviews in March 1982, the Census Bureau was reporting a 9.8 percent unemployment rate for Allegheny County.
educational attainment was somewhat higher than that of the average adult residing in the Pittsburgh metropolitan area; this may reflect a greater tendency among better educated individuals to pursue litigation or may simply reflect sampling error.\textsuperscript{15}

More than half of the litigants reported that 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. These incidence levels are comparable to those reported in surveys of the national population (National Center for State Courts, 1978). Collectively, then, those we interviewed were neither particularly naive regarding litigation nor particularly litigious.

Litigants' Objectives

There is a tendency among some professional litigators and court officials to discount the importance of disputes over small amounts of money. Why, these observers ask (either explicitly or implicitly), do individuals litigate disputes over modest sums, rather than simply drop them and accept a loss? The simplest answer, of course, is that modest amounts of money make a difference to individuals of modest means. Among the litigants we interviewed, many viewed arbitration simply as a mechanism for collecting necessary compensation for damages. The woman who claimed her $800 draperies were "ruined" by the dry-cleaners said she was not in a position to replace them now. The young man who was suing for $1200 to pay for repairs to his car needed a vehicle to commute to work and could not afford to pay for the repairs himself. The contractor who was suing to collect on a $650 bill to repair a heating system needed the funds to pay his employees.

But individual disputants may also be motivated by nonmonetary concerns. In our interviews, we found that about 25 percent of the litigants were motivated by pursuit of some principle or by a private

\textsuperscript{15}According to the Census of Population and Housing the median age of the Allegheny County resident in 1980 was about 35. (The median age of the population of adults 18 years or older was about 45.) About 58 percent of employed persons 16 years or older were in managerial, professional, technical, sales or administrative occupations; 30 percent of the population 18 years or older reported that they had at least some college education. The median family income in Allegheny County in 1980 was $21,643. About one-third of all households reported incomes of $25,000 or more. About 10 percent of the population was Black; about 1 percent were of "Spanish origin."
grudge rather than, or in addition to, a desire for monetary compensation. Individuals in such cases indicated that they might not have pursued their claim if they had been treated more "courteously" or more "fairly" by their opponent. They frequently commented that it was "the principle of the thing" rather than the amount at stake that motivated their bringing the case to arbitration.

Litigants usually did not translate nonmonetary objectives into monetary terms. Although many of those we interviewed had strong feelings about their disputes and, particularly, about their opponents, only one had actually submitted a claim for nonmonetary damages; 90 percent said they had not even considered doing such a thing, nor had their attorneys suggested making such claims.

Financial need and the desire to right a wrong may explain why some individuals refuse to drop claims over modest amounts of money, but what accounts for the parties' failure to arrive at some compromise, some way of settling their dispute without litigation? When we asked individual litigants about their attempts to settle disputes, over half reported that they had made no such efforts; 18 percent had tried to initiate compromise negotiations, and another 9 percent reported actually responding to such overtures. Many respondents understood the word "settlement" to mean payment of the amount at issue, replying, for example, that they had made numerous attempts to settle their dispute but that the other side had simply refused to pay the amount claimed. When we substituted the word "compromise" for "settlement" in our interview questions, respondents often expressed a strong belief that only those with weak cases had any reason to compromise. For most of these unsophisticated plaintiffs, the decision to litigate had obviously not been taken lightly. Once they were on course for adjudication, settlement perhaps became less likely than it might have been before. Attorneys representing such individuals may have had little incentive to spend time in struggling to reach a settlement when a decision could be had from the arbitrators within a few weeks, after a brief expenditure of the attorney's time and effort at hearing.

By the time a case actually arrives at hearing, both plaintiffs and defendants may have developed objectives that go beyond mere financial compensation. Of the 24 plaintiffs who completed a pre-hearing questionnaire for us just before entering their hearing room, about one-quarter said that their primary objective at that moment was not winning compensation but rather getting a chance to tell their side of the story, to inform someone in authority of how they had been harmed by the defendant, or to prove that their opponent was not telling the truth.
INSTITUTIONAL USERS

Court records do not provide much descriptive detail on organizations that bring cases to hearing, but our interviews suggest that many of these organizational litigants are large institutions having frequent, long-term experience with the program. Among these are banks, insurance companies, and large retailers. City and county public agencies, which are identifiable in court records, appeared as defendants in about 3 percent of our sample of arbitration filings and in about 4 percent of cases heard.

The representatives of financial institutions whom we interviewed saw arbitration as a collection tool of last resort. They valued the speed with which the system operates, because it allows them to obtain judgments and liens on the property of defendants who might otherwise become judgment proof if the process moved more slowly. They viewed arbitration as more expensive than using their own institutionalized collection procedures, however.

Insurance companies also saw arbitration as a dispute resolution procedure of last resort. Although we estimated that insurance companies were the real parties of interest in about one-third of the cases heard in arbitration, none of the representatives whom we interviewed viewed their own companies as major users of the system. Most of the property damage cases they were involved in were either settled or resolved at inter-company arbitration forums outside the court. They estimated that perhaps five times as many disputes were settled in these forums as in the arbitration program.

Insurance cases filed in court involved property damage claims against other companies who were not signatories to the industry arbitration agreements, claims against uninsured motorists, or claims involving personal injury. One insurance company representative commented that, among these, the larger claims that were filed in the trial division were often easier to settle than the smaller ones, because the plaintiffs’ attorneys in the former were usually more experienced, both in valuing and negotiating, and because the amount at stake allowed room for compromise and made prolonged settlement attempts worthwhile. When insurance suits reached arbitration, he said, it was because negotiation had failed and the parties had decided that it would be quicker and easier to let the arbitrators decide.

Representatives of public agencies, which most often appear in arbitration as defendants, may see arbitration as a critical component of their effort to protect the public purse against plaintiffs in search of a “deep pocket” target. Rather than viewing arbitration as a mechanism for resolving disputes, some observers suggested, these government attorneys may habitually use the arbitration hearing as an
inexpensive means of discovering the nature of the plaintiff's claim, frequently offering only a "bare bones" defense.

THE USES OF ARBITRATION

Our analysis of caseload composition and litigant characteristics indicates that the Pittsburgh arbitration program serves a variety of uses and users. As plaintiffs, businesses file cases in arbitration to collect on bad debts and to resolve contract disputes. As defendants, individual and business consumers contest collection claims when they feel they have obtained inferior goods or inadequate services. Automobile drivers sue other drivers for damage incurred in accidents. Landlords and tenants sue each other over rental agreements and proper maintenance of property. The resulting mix of arbitration litigants includes large and small businesses, public agencies, and individuals representing a cross-section of the Pittsburgh population.

The amounts at stake in arbitration cases are modest—on average less than $3000, and rarely more than $5000. But to the typical individual litigant they represent considerable financial losses. Individual litigants who bring cases to arbitration are generally oriented toward compensation for these losses rather than toward some nonmonetary objective. But they do not seem capable of negotiating a settlement of their claims on their own, perhaps because the amounts at stake are so small that they limit the parties' room to maneuver.

Arbitration does not attract all those cases that are formally eligible for the program. In particular, attorneys for plaintiffs with personal injury claims apparently prefer to file their cases in the regular trial division of the court, thus buying additional time for case preparation and, perhaps, a tactical advantage in dealing with their opponents. Institutional litigants, such as banks and insurance companies, prefer to resolve their disputes with customers and claimants within their own corporate or industrial structure, reserving arbitration as a "court of last resort."

Does the existence of the arbitration program in Pittsburgh attract cases to court that would elsewhere be dropped or resolved privately by the parties? Unfortunately, we cannot answer this question directly. The overall level of litigation in Pittsburgh, measured by the per capita number of civil suits filed in the Court of Common Pleas (including both the arbitration and regular trial divisions), is not substantially higher than the number in other similar urban trial court
jurisdictions that do not have arbitration programs. A large proportion of cases filed in the arbitration division terminate without hearing, suggesting that the availability of arbitration does not unduly encourage litigants who have no basis for contesting claims, or who are able to settle their disputes on their own, to further involve the court in adjudication.

16In Allegheny County the rate of filings per capita is about .011 (1 case per hundred population). In comparable trial courts of general jurisdiction in Toledo, Minneapolis, Milwaukee, and Baltimore, at a time when none had an arbitration program, the rate varied from .006 to .025.
III. OUTCOMES OF ARBITRATION

One of the questions that is asked most frequently about court-administered arbitration programs is, "How does arbitration affect case results?" There is an important policy issue underlying this question: By substituting arbitration for the combination of settlement and trial that prevails in most civil courts, legislators and court managers may be changing the distribution of litigation outcomes. A complete investigation of this issue requires a comparison of the pattern of outcomes for similar cases in courts that provide compulsory arbitration and courts that do not. The investigation would compare both the distribution of award dollars and plaintiffs' and defendants' costs to litigate, for only then can we obtain an accurate picture of the objective outcomes of the dispute resolution process. Because our study of the Pittsburgh arbitration program is limited to a single court, and a single dispute resolution procedure within that court, it did not yield such comparative data. But it does provide a detailed picture of the outcomes of a particular court arbitration program, thereby laying the groundwork for future comparative analyses.

Our analysis of the outcomes of arbitration in Pittsburgh examines four questions:

1. **What is the pattern of arbitration awards?** Using court record data for the sample of cases that reached arbitration hearings in 1980-1981, we examine the distribution of wins and losses and the amounts awarded to different types of cases and parties.

2. **How much does it cost plaintiffs to pursue, and defendants to contest, claims in arbitration?** Using data drawn from our interviews with individual and institutional litigants, and with attorneys who practice in arbitration, we estimate the costs of the arbitration process to litigants and consider whether it is cost effective for them to bring their disputes to arbitration.

3. **What are the outcomes of the arbitration appeal process?** For litigants who reject arbitration awards and file for trial *de novo*, the outcomes of litigation are determined by the results obtained through the appeal process and the total costs to litigate, including the cost of both arbitration and resolving the dispute after appeal. Using a sample of cases in which appeals were filed in 1979-1981, we analyze the distribution of appeals and compare the outcomes of appeals, for
different types of cases and for different modes of disposition after appeal. Using data drawn from our interviews with litigants and attorneys, we estimate the costs of appealing an arbitration outcome under different conditions and consider what the litigants in our appeals sample gained by rejecting the arbitrators' award and proceeding to settlement or trial.

4. How are pro se litigants served by the arbitration process? One of the characteristics of the Pittsburgh court arbitration program that distinguishes it from programs elsewhere is the fairly large proportion of litigants who present or defend against claims without the assistance of attorneys. In our analyses of the pattern of arbitration awards, litigants' costs to arbitrate, and the distribution of appeals, we give special attention to how pro se litigants fare in the arbitration process.

THE PATTERN OF ARBITRATION AWARDS

Table 4 shows the distribution of arbitrators' awards, for the total sample of cases reaching hearing, and for subsets of cases with different characteristics. The first column shows the fraction of cases in which the plaintiffs received no award. Only 20 percent of the cases in our arbitration hearing sample resulted in such verdicts. Defense verdicts occurred most frequently in suits alleging breach of contract, in claims for damage or personal injury not resulting from motor vehicle accidents, and when the defendant was represented but the plaintiff was not. Plaintiffs won most frequently when the stakes were modest, when an organization sued an individual defendant, when the plaintiff was represented but the defendant was not, and when both parties appeared pro se.

The division of outcomes between defense and plaintiff verdicts tells only part of the story about arbitration awards. The fact that a plaintiff wins an award does not mean that he has gotten what he asked for. Among the sample of cases heard in 1980-1981, plaintiffs won the amount claimed or more 45 percent of the time. In 35 percent of the cases, the amount awarded was less than the amount claimed.1

---

1In this and ensuing analyses, we use "amount claimed" as a measure of the true monetary stakes in the case. Traditionally, in many jurisdictions, plaintiffs and their attorneys have inflated their claims as a matter of negotiation strategy. But our review of court case files and our interviews with attorneys and litigants suggest that most claims filed directly in arbitration in Pittsburgh accurately depict the amount in controversy. Arbitration cases that originate in the trial division, however, must often involve inflated claims, for the judge would not have ordered them to arbitration unless
### Table 4

**Distribution of Arbitration Awards**

(Percent)

<table>
<thead>
<tr>
<th>Award to Plaintiff</th>
<th>Defense Verdict</th>
<th>Less than 50% of Amount Claimed</th>
<th>50%-99% of Amount Claimed</th>
<th>Equal to Amount Claimed</th>
<th>Greater than Amount Claimed</th>
<th>Expected Award Ratio</th>
<th>Number of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total Sample*</td>
<td>20</td>
<td>16</td>
<td>19</td>
<td>37</td>
<td>8</td>
<td>.65</td>
</tr>
<tr>
<td><strong>Case Type</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tort</td>
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<td></td>
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<td></td>
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<tr>
<td>Motor vehicle</td>
<td></td>
<td>16</td>
<td>11</td>
<td>19</td>
<td>47</td>
<td>6</td>
<td>.71</td>
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<tr>
<td>Other</td>
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<td>28</td>
<td>36</td>
<td>13</td>
<td>25</td>
<td>0</td>
<td>.40</td>
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<td>Contract</td>
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<td></td>
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<td></td>
<td></td>
<td></td>
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<tr>
<td>Collection</td>
<td></td>
<td>15</td>
<td>10</td>
<td>24</td>
<td>40</td>
<td>11</td>
<td>.76</td>
</tr>
<tr>
<td>Breach</td>
<td></td>
<td>36</td>
<td>29</td>
<td>20</td>
<td>17</td>
<td>6</td>
<td>.63</td>
</tr>
<tr>
<td><strong>Amount Claimed</strong></td>
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<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
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<td>12</td>
<td>19</td>
<td>39</td>
<td>9</td>
<td>.69</td>
</tr>
<tr>
<td>$10,000+</td>
<td></td>
<td>26</td>
<td>48</td>
<td>17</td>
<td>9</td>
<td>0</td>
<td>.26</td>
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<tr>
<td><strong>Configuration of Parties</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Individual v. individual</td>
<td></td>
<td>20</td>
<td>12</td>
<td>21</td>
<td>39</td>
<td>7</td>
<td>.68</td>
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<tr>
<td>Individual v. organization</td>
<td></td>
<td>27</td>
<td>27</td>
<td>15</td>
<td>28</td>
<td>3</td>
<td>.48</td>
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<tr>
<td>Organization v. individual</td>
<td></td>
<td>16</td>
<td>14</td>
<td>17</td>
<td>34</td>
<td>21</td>
<td>.74</td>
</tr>
<tr>
<td>Organization v. organization</td>
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<td>18</td>
<td>10</td>
<td>22</td>
<td>44</td>
<td>7</td>
<td>.71</td>
</tr>
<tr>
<td><strong>Representation</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Both sides pro se</td>
<td></td>
<td>0</td>
<td>0</td>
<td>100</td>
<td>0</td>
<td>0</td>
<td>.65</td>
</tr>
<tr>
<td>Plaintiff represented, defendant pro se</td>
<td></td>
<td>6</td>
<td>9</td>
<td>20</td>
<td>54</td>
<td>11</td>
<td>.86</td>
</tr>
<tr>
<td>Plaintiff pro se, defendant represented</td>
<td></td>
<td>50</td>
<td>20</td>
<td>20</td>
<td>40</td>
<td>10</td>
<td>.27</td>
</tr>
<tr>
<td>Both sides pro se</td>
<td></td>
<td>21</td>
<td>18</td>
<td>16</td>
<td>34</td>
<td>9</td>
<td>.62</td>
</tr>
</tbody>
</table>

**SOURCE:** Court record data, weighted sample of cases heard in arbitration, 1980-81.

*Excludes 26 cases for which amount of award or claim could not be determined from court records.
Taking into account both the chance of losing entirely and the average amount awarded, a plaintiff bringing a claim to an arbitration hearing, during this period, could expect to win about two-thirds (.65) of the amount claimed. We call this the "expected award ratio," because it is the average ratio between the amount awarded to the plaintiff and the amount claimed. The expected award ratio was highest for collection and motor vehicle tort cases, cases in which the amount claimed was less than $10,000, and cases in which represented plaintiffs faced pro se defendants; it was lowest for property damage not involving a motor vehicle and breach of contract suits, claims for $10,000 or more, cases in which individuals sued organizations, and cases in which plaintiffs appeared pro se at hearings against represented defendants.

We used multiple regression analysis, a multivariate statistical procedure, to estimate the separate (independent) effects of these different case characteristics on the expected award ratio. The results of this procedure show that the type of claim (the basis on which it is brought), the pattern of attorney representation, and the number of parties involved all had statistically significant effects on the expected award ratio. With the effects of these variables held constant, the value of the claim had no significant independent effect on the expected award ratio.2

The statistical procedure also enables us to estimate the level of plaintiff success under different conditions, so that we can predict the probable effect of changing one aspect of the dispute situation—for example, the pattern of legal representation—while all other aspects remain the same. The results of the estimating procedure are summarized in Table 5. The constant, .65, is the proportion of the claim that the plaintiff could expect to win in a typical property damage case, which involves a claim for less than $10,000 and in which both parties are represented by attorneys. The regression coefficients indicate the amount of change in the expected award ratio that we would predict under each of the conditions listed; the sign of the coefficient indicates whether the change would increase or decrease the plaintiff's expected award ratio. For example, if a case involved a claim for personal injury, we would predict that the plaintiff would obtain about one-quarter of the amount (.65-.50) that he would obtain if the claim were for property damage, regardless of the value of the claim, the pattern of

he thought they were worth less than the amount originally claimed. In our analyses we arbitrarily set the value of claims for "more than $10,000" at $10,000.

2Using the data available from court records and an ordinary least squares approach, we investigated the results of using other variables, including various transformations and interaction terms, in the regression equation. The model shown in Table 5 provided the best estimate and had the best error characteristics.
### Table 5

**REGRESSION OF EXPECTED AWARD RATIO ON CASE CHARACTERISTICS**

<table>
<thead>
<tr>
<th>Variables</th>
<th>Regression Coefficient</th>
<th>Standard Error</th>
<th>T-Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Dependent Variable</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Award/claim ratio .65 (constant)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Independent Variables</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Collection suit</td>
<td>-.03</td>
<td>.07</td>
<td>-.39b</td>
</tr>
<tr>
<td>Personal injury suit</td>
<td>-.50</td>
<td>.12</td>
<td>-1.98b</td>
</tr>
<tr>
<td>Breach of contract suit</td>
<td>-.30</td>
<td>.10</td>
<td>-3.00b</td>
</tr>
<tr>
<td>Plaintiff represented, defendant pro se</td>
<td>.17</td>
<td>.07</td>
<td>2.29b</td>
</tr>
<tr>
<td>Plaintiff pro se, defendant represented</td>
<td>-.41</td>
<td>.13</td>
<td>-3.24b</td>
</tr>
<tr>
<td>Both sides pro se</td>
<td>-.05</td>
<td>.07</td>
<td>-.74</td>
</tr>
<tr>
<td>Claim value $\leq 10,000$</td>
<td>-.10</td>
<td>.14</td>
<td>.70</td>
</tr>
<tr>
<td>Two or more defendants</td>
<td>.17</td>
<td>.06</td>
<td>2.78b</td>
</tr>
<tr>
<td>Originated in trial division</td>
<td>.02</td>
<td>.14</td>
<td>-1.14</td>
</tr>
<tr>
<td>Originated in district justices' court</td>
<td>.03</td>
<td>.07</td>
<td>.65</td>
</tr>
</tbody>
</table>

$R^2 = .29$

F-ratio = 6.79

Number of Cases = 158<sup>c</sup>

**SOURCE:** Court record data, sample of cases heard in 1980-81.

- The constant is expected award ratio for a property damage case, with both parties represented, a claim amount $\leq 10,000$, and one defendant, originally filed in arbitration.
- Statistically significant, < .05.
- Excludes cases with missing values on independent or dependent variables.

Legal representation, and the number of parties involved. We would predict that a represented plaintiff facing an unrepresented defendant would obtain .17 more than if both parties were represented, regardless of other case characteristics.

By summing the estimates of the independent effects of the different case characteristics on the expected award ratio, we can calculate the expected award ratio under different scenarios.<sup>3</sup>

<sup>3</sup>Our calculations consider only those variables that the model indicates have statistically significant effects; the estimates derived for the effects of other variables are not sufficiently reliable to permit generalization.
Table 6 presents the results of these calculations. They indicate that the plaintiff's expected award ratio varies considerably within our sample, depending on the circumstances of the case. For example, a plaintiff suing for breach of contract, in a case where both parties were represented, could expect to obtain, on average, about 35 percent of the amount claimed. But a represented plaintiff, suing an unrepresented defendant to collect on an unpaid bill, could expect to obtain, on average, about 82 percent of the amount claimed.

Table 6

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Expected Award Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property damage suit, claim &lt; $10,000, both sides represented, one defendant (.65)</td>
<td>.65</td>
</tr>
<tr>
<td>Breach of contract case, claim &gt; $10,000, both sides represented, one defendant (.65 - .30)</td>
<td>.35</td>
</tr>
<tr>
<td>Personal injury case, claim &gt; $10,000, both sides represented, two defendants (.65 - .50 + .17)</td>
<td>.72</td>
</tr>
<tr>
<td>Collection case, claim &lt; $10,000, represented plaintiff v. pro se defendant, one defendant (.65 + .17)</td>
<td>.82</td>
</tr>
</tbody>
</table>

Several caveats are in order. First, the case characteristics included in our analysis explain only a modest amount of the variation in the expected award ratio. This means that the predicted ratios under different circumstances have a considerable margin of error. In any specific case situation, then, a plaintiff might obtain a considerably greater or smaller proportion of the amount claimed than we have predicted. Furthermore, the model applies to the pattern of awards observed during the period 1980-1981. If, for some reason, there were a change in the way arbitrators responded to different case factors, then the predictions would not hold up over time. Finally, the statisti-
cal model does not explain why certain relationships obtain. For example, the apparent negative effect of pro se representation could have several different explanations. It may reflect the difficulties that an amateur encounters when he confronts an attorney in an adversary process. Or pro se representation could indicate that the unrepresented party has a particularly weak case and therefore did not want to invest in, or could not obtain, legal counsel. The pro se effect might reflect a tendency of arbitrators to award represented plaintiffs an amount large enough to cover their attorneys' fees, and to exclude this factor from awards to pro se parties. Or the data might be viewed as supporting the suggestion of one attorney whom we interviewed, that the arbitrators disapprove of litigants who represent themselves and unconsciously penalize them for this. The available data do not provide a basis for choosing among these or any other explanations of the observed relationship.

LITIGANTS' COSTS TO ARBITRATE CASES

When plaintiffs consider whether to bring cases to arbitration hearings, and when defendants consider whether to contest cases at hearing or to pay what the plaintiff is demanding, they should logically take into account the amount of money that is in dispute, the likelihood that they will win or lose, and the amount of time and money that they will have to invest to have their cases heard. Taking attorneys' fees, court costs, and the value of litigants' time into account, we estimate that the typical litigant who retains an attorney on a flat fee or hourly basis spends between $400 and $600 on arbitration. Plaintiffs who have a contingent fee arrangement with their attorney may spend considerably more if they are successful at arbitration, and certainly spend considerably less if they are unsuccessful.

Attorneys' Fees

For most litigants, the major cost of arbitrating the case was the amount paid in attorneys' fees. About 90 percent of plaintiffs and about 75 percent of defendants whose cases were heard in 1980-1981 obtained legal counsel to represent them at the arbitration hearings. Our interview data suggest that the typical represented litigant paid about $200-$300 in attorneys' fees. Plaintiffs with a contingent fee arrangement, of course, paid the attorney nothing if the case was lost and one-third of the amount awarded by the arbitrators if it was won.
One-third of the plaintiffs we interviewed and 40 percent of the defendants were represented by attorneys for their insurance companies. These litigants had no out-of-pocket cost for legal counsel, the costs of which were borne by the companies. Among those litigants who did pay their own legal fees, there were various arrangements. About two-thirds of these plaintiffs had a contingent fee agreement with their attorney, requiring them to pay one-third of the award amount. Another 20 percent had agreed to pay the attorney a flat fee for representing them at the hearing. Over half the defendants had also entered into flat fee arrangements with their attorneys. Most of the other defendants, and a small percent of plaintiffs as well, were paying their attorneys on an hourly rate basis.

The flat fee charged for taking a case from filing to arbitration hearing was generally $250. The total fees charged by attorneys on hourly rates varied considerably from case to case. One litigant reported that he paid a total of $1200 in attorney fees; several others said they paid about $200. Based on our interviews with attorneys, it seems that the average hourly rate charged by attorneys in Pittsburgh who have large arbitration practices is $40-$50. One attorney told us that he thought it required eight hours, including talking with the client, preparation, waiting for and appearing at the hearing, to properly handle an arbitration case. Our interviews with other attorneys suggest that this is the upper boundary on attorney time spent in arbitration. The total attorney fees for an attorney who charged $50 per hour and invested eight hours per case would be $400.

Other Legal Costs

Typically, litigants paid no more than $50 in other legal costs. The court charges a fee of $36.50 to file a case in arbitration. Because the arbitration procedure relaxes the rules of evidence, litigants generally are not required to call expert witnesses. Only three of the 66 individual litigants whom we interviewed reported that they had any costs associated with witnesses; each of these estimated the costs at around $100. Only six of the litigants reported any costs other than legal fees.

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4We attempted to collect information about insurance companies' costs to arbitrate cases from officials of companies that were reputed to have many cases processed in arbitration. Generally, however, these administrators did not have precise information about costs. Arbitration cases were viewed as a trivial aspect of their claims processing and were handled by outside counsel on a retainer basis. Assigning small claims to outside attorneys, rather than in-house counsel, is apparently more common in Pittsburgh, where attorneys' fees are low, than in other major metropolitan areas. One insurance company representative did give us an estimate of about $200 to take a case to hearing.
or witness fees; the estimates of these additional costs ranged between $15 and $60, and averaged about $30.

Litigants’ Time Investments

Litigants invest two sorts of time in arbitration. First, there is the period of waiting until the court is ready to hear the case, when a plaintiff may experience financial or other problems if he cannot repair damaged or lost property, cannot pay expenses that were incurred in performing a service that has not been paid for, or does not have the wherewithal to respond to an investment opportunity. Second, there is the time that the litigants must take away from other paid or unpaid activities in order to deal with the case: to locate and talk with an attorney, to prepare materials relevant to the case, to appear in court for the hearing, etc.

Waiting Time to Hearing. In our sample of cases filed in 1979-1980, about three-quarters of the cases reached hearing within four months of the filing date. Another 16 percent were heard within six months of the filing date. Most of the cases that took more than six months to reach hearings originated in the regular trial division of the court. These were the cases in which the plaintiff and his attorney had elected to wait for a judicial hearing and the possibility of going to trial, rather than going directly to arbitration. Table 7 shows the distribution of time from complaint to hearing for all of the hearing sample cases, and the differences in the distribution for cases originating in arbitration, in the trial division, and in the lower-level magistrate’s court.5

Of course, cases are not necessarily filed in court immediately after the dispute arises. Lengthy waiting times between the time of the incident that led to the dispute and the time when the case is filed, are not attributable to court activities, but they may cause problems for litigants on one side or the other. As Table 7 indicates, when we take the interval before filing into account, the time to hearing is six months or more for most cases and more than a year for many, no matter what division of the court they originated in. Nevertheless, among the litigants we interviewed, almost all of whose cases went to hearing within three months of filing, only a handful felt that they had suffered financially, or otherwise, while waiting for their cases to be resolved. For example, one young man whose car had been severely

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5We used multiple regression analysis to estimate the time to hearing. Taking the effects of other case characteristics into account—for example, the type of case, the amount of money in dispute, and the pattern of legal representation—the effect of filing initially in the trial division, rather than in arbitration, was to add roughly 500 days to the estimated total time to hearing.
damaged said that he had lost his job as a result: He could not afford to repair or replace his car until he had been compensated and he could not commute to work without it. Another individual litigant said he had to be hospitalized for ulcers resulting from the stress he suffered while waiting for his case to be resolved.

**Time Spent on Litigation.** The typical litigant spent about 1 ½ days on arbitration litigation. Generally litigants were unable to estimate the value of this time, because they attended to their cases after work hours or took paid vacation for this purpose. For an individual employed at a salary of $15,000 the estimated value of the time would be about $100.

About one-fifth of the litigants we interviewed said they spent about 3-4 hours pursuing their claims through arbitration; half said they spent one day or less. One-third reported spending 2-3 days in all on their cases. A small minority of the litigants reported spending considerably more time. Several *pro se* plaintiffs reported spending considerable time seeking information on how to file and prepare their cases. Some litigants who were represented by insurance company attorneys at their hearings said they spent time securing witnesses and police reports, taking photographs of damage, and generally assisting their attorneys in preparing their case. A few litigants said that they spent a good deal of time in consultation with their private attorneys, either because their case was complicated or because they had a high degree of personal involvement in the case. The individual who reported spending the most time on his litigation, two full weeks, was a tax protester who was immersed in constitutional law issues.

Litigants typically lost a half day from work on account of attending the arbitration hearing. About half said that they received paid time off from employers or took vacation time; a quarter reported they lost some amount in wages, ranging from less than $50 to more than $400 in one case. Self-employed litigants said they might have lost business as a result of attending the hearing. For most litigants, however, the monetary value of the time involved in litigation seemed so trivial that they had not given it much previous thought.

**Is It Cost Effective for Individuals To Arbitrate?**

By combining the information on costs obtained from our litigant interviews, with the results of the multivariate statistical analysis that estimated expected award ratios under different conditions (see Tables 5-6), we can estimate the net outcomes that litigants can expect to obtain through arbitration. For plaintiffs, the net outcome is
defined as the expected award less litigation costs. For defendants, the net outcome equals the expected award plus litigation costs. Because attorneys' fees account for most of the litigants' costs, we would expect the latter to vary considerably depending on whether litigants obtain legal counsel, and on the fee arrangement between represented litigants and their attorneys. We have therefore estimated expected net outcomes under different attorney fee arrangements and compared these with the expected net outcomes if legal counsel were not retained. In each case, we have assumed that litigants, on average, invest the equivalent of about $100 of their own time and an additional $50 in legal fees other than payments to attorneys.\(^6\)

Table 8 presents our estimates of the expected net outcomes to plaintiffs and defendants for hypothetical disputes involving claims of $3000, $5000, and $7500.\(^7\) Generally, our estimates suggest that, if plaintiffs cannot obtain any compensation from defendants without litigation, it is cost effective for them to bring cases to arbitration, because they can, on average, expect to obtain a large fraction of their damages over and above the cost of the litigation. Defendants, however, can expect their total payout to be less than the amount originally sought by the plaintiffs, taking into account both the size of the expected award and their litigation costs.\(^8\) Moreover, taking into account the amount they spend on legal fees, represented litigants can expect to obtain better net outcomes, on average, than litigants who appear pro se. According to our estimates, plaintiffs who retain legal counsel, whether on a 33 percent contingent fee arrangement or for a flat fee of $250, on average can expect to obtain larger net outcomes than pro se plaintiffs. Defendants who retain legal counsel, whether they pay a flat fee of $250 or a higher hourly rate fee totalling $400, can expect to pay out less to plaintiffs, on average, than defendants who appear pro se.\(^9\)

These estimates of expected net outcomes provide a rough basis for considering how cost effective it is for plaintiffs and defendants to arbitrate under different conditions. They do not take into account differences in litigant or attorney ability to present cases, or possible

---

\(^6\) We attempted, without success, to have litigants estimate their opportunity costs associated with litigation. For most litigants, it seems, the cost of arbitration is simply the cost of paying an attorney and the court fees; as indicated above, the typical litigant does not even place a monetary value on his own time spent in litigation.

\(^7\) Appendix C describes the estimating procedure used to derive these estimates.

\(^8\) The data also suggest that both parties might, on average, be better off if they could negotiate a settlement. Section II discussed some of the factors that may impede settlements of disputes such as these.

\(^9\) The calculations of expected net outcomes for pro se plaintiffs and defendants take into account the differential probabilities of their opponent appearing either pro se or with counsel. See Appendix C.
### Table 7

**Distribution of Time to Hearing, for Cases Originating in Different Court Divisions**  
(Percent)

<table>
<thead>
<tr>
<th>Time to Hearing</th>
<th>&lt; 2 Months</th>
<th>2-4 Months</th>
<th>4-6 Months</th>
<th>6-12 Months</th>
<th>1-2 Years</th>
<th>&gt; 2 Years</th>
<th>Total Number of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>From Complaint</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Sample⁴</td>
<td>20</td>
<td>52</td>
<td>15</td>
<td>7</td>
<td>3</td>
<td>3</td>
<td>164</td>
</tr>
<tr>
<td>Filed in arbitration</td>
<td>17</td>
<td>55</td>
<td>19</td>
<td>7</td>
<td>3</td>
<td>0</td>
<td>118</td>
</tr>
<tr>
<td>Filed in trial division</td>
<td>0</td>
<td>8</td>
<td>2</td>
<td>26</td>
<td>17</td>
<td>47</td>
<td>11</td>
</tr>
<tr>
<td>Appealed from district justices' court</td>
<td>34</td>
<td>57</td>
<td>9</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>35</td>
</tr>
<tr>
<td><strong>From Incident</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Sample⁵</td>
<td>1</td>
<td>4</td>
<td>12</td>
<td>34</td>
<td>30</td>
<td>20</td>
<td>138</td>
</tr>
<tr>
<td>Filed in arbitration</td>
<td>1</td>
<td>3</td>
<td>11</td>
<td>31</td>
<td>34</td>
<td>20</td>
<td>103</td>
</tr>
<tr>
<td>Filed in trial division</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>19</td>
<td>81</td>
<td>5</td>
</tr>
<tr>
<td>Appealed from district justices' court</td>
<td>0</td>
<td>7</td>
<td>17</td>
<td>50</td>
<td>20</td>
<td>7</td>
<td>30</td>
</tr>
</tbody>
</table>

**Source:** Court record data, weighted sample of cases heard in arbitration, 1980-81.

⁴Excludes 10 cases for which time to hearing could not be determined from court records.

⁵Excludes 36 cases for which time of incident could not be determined from court records.
Table 8
EXPECTED NET OUTCOMES OF ARBITRATION HEARINGS
IN PROPERTY DAMAGE OR COLLECTION CASES*

<table>
<thead>
<tr>
<th>Hypothetical Case</th>
<th>Amount Claimed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$3000</td>
</tr>
<tr>
<td><strong>Plaintiff (net compensation)</strong></td>
<td></td>
</tr>
<tr>
<td>No attorney</td>
<td>1050</td>
</tr>
<tr>
<td>Attorney, $250 flat fee</td>
<td>1850</td>
</tr>
<tr>
<td>Attorney, 33% contingent fee</td>
<td>1390</td>
</tr>
<tr>
<td><strong>Defendant (total payout)</strong></td>
<td></td>
</tr>
<tr>
<td>No attorney</td>
<td>2400</td>
</tr>
<tr>
<td>Attorney, $250 flat fee</td>
<td>2110</td>
</tr>
<tr>
<td>Attorney, $400 hourly rate fee</td>
<td>2260</td>
</tr>
</tbody>
</table>

*Source: Extrapolation from regression results reported in Table 5 and attorney fee information obtained from interviews with litigants and attorneys. See Appendix C for a description of the estimating procedure used to derive these estimates.

*Estimates assume plaintiffs and defendants spend an average of $150 in time and legal costs, in addition to the attorney fees indicated. See text for data supporting this assumption.

relationships between the strength of a case and the availability of legal representation. In addition, the estimates for hourly rate attorneys assume that attorneys spend the same amount of time (and hence charge the same fee) for cases valued at $3000, $5000, and $7500. In any particular situation, a litigant might well achieve a better net outcome without an attorney, or with an attorney paid under a specific fee arrangement, than we have estimated. For example, an unrepresented plaintiff who has a strong case might win the total amount that he is seeking in arbitration; because he does not have to pay legal fees, his net compensation would be very little less than his total damages. Alternatively, a defendant whose attorney wins a defense verdict could avoid paying several thousands of dollars at a cost of only a few hundred dollars.
OUTCOMES OF APPEALS

Not all litigants are satisfied with the net outcomes they obtain through the arbitration hearing process. About 26 percent of the arbitration verdicts in the cases we sampled from 1980-1981 were rejected by one of the parties to the case, who filed a request for trial de novo.\textsuperscript{10} This rate is substantially lower than the rates reported for the federal district court arbitration experiment and for the California arbitration program, but it is somewhat higher than the rates seen in the program in previous years.\textsuperscript{11} Because appeals generate about one-quarter of the outcomes delivered by the arbitration hearing process in Pittsburgh, we cannot complete our picture of how litigants fare in the program without considering who appeals, how their cases are disposed of after the appeal is filed, what case results they are likely to obtain, and how much it costs to get these results. To analyze the outcomes of appeals, we drew a special sample of 157 arbitration cases in which appeals were filed during 1979-1981, from court records.\textsuperscript{12}

Pattern of Appeal

As shown in Table 9, within our sample appeals were filed most frequently in tort cases not arising from motor vehicle accidents, in suits for amounts over $3000, and in suits that originated in the trial division of the court. The trial division case appeal rate of 40 percent approached the rates found in California and the federal courts. Appeals were filed least frequently when one or both parties appeared \textit{pro se} at the arbitration hearing.

The division of appeals between plaintiffs and defendants generally followed the pattern of arbitration awards. Not surprisingly, given that pattern, about 60 percent of all appeals were filed by defendants. Defendants were responsible for the majority of appeals in almost all

\textsuperscript{10}In an additional small fraction of the cases parties appeal to have rejected the award, but then settled without filing a request for trial de novo. We calculated the appeal rate for all cases in which the verdict had been announced and the appeal period had elapsed. About 5 percent of the cases were still pending appeal or acceptance at the time we collected the data.

\textsuperscript{11}The appeal rate in the federal program, during the evaluation period, was about 60 percent (Lind and Shepard, 1981); in California, in 1980-1981, it was about 46 percent (California Judicial Council, 1982).

\textsuperscript{12}These cases constitute roughly 10 percent of all appeals filed during this period. We included appealed cases from 1979 in this sample to ensure that we would have an adequate number of cases that had reached final disposition for our analysis. The expected accuracy of our sample estimates from the appeals data is ±8 percent.
<table>
<thead>
<tr>
<th>Case Type</th>
<th>Cases Appealed</th>
<th>Total Appeals Filed by Defendant</th>
<th>Number of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Sample(^a)</td>
<td>26</td>
<td>61</td>
<td>174</td>
</tr>
<tr>
<td><strong>Tort</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Motor vehicle</td>
<td>20</td>
<td>53</td>
<td>58</td>
</tr>
<tr>
<td>Other</td>
<td>45</td>
<td>67</td>
<td>17</td>
</tr>
<tr>
<td><strong>Contract</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Collection</td>
<td>27</td>
<td>74</td>
<td>61</td>
</tr>
<tr>
<td>Breach</td>
<td>26</td>
<td>52</td>
<td>20</td>
</tr>
<tr>
<td><strong>Amount Claimed</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Under $3000</td>
<td>11</td>
<td>100</td>
<td>98</td>
</tr>
<tr>
<td>$3000-$9999</td>
<td>63</td>
<td>67</td>
<td>47</td>
</tr>
<tr>
<td>$10,000+</td>
<td>35</td>
<td>50</td>
<td>7</td>
</tr>
<tr>
<td><strong>Configuration</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Individual v. individual</td>
<td>23</td>
<td>54</td>
<td>64</td>
</tr>
<tr>
<td>Individual v. organization</td>
<td>31</td>
<td>61</td>
<td>43</td>
</tr>
<tr>
<td>Organization v. individual</td>
<td>13</td>
<td>67</td>
<td>26</td>
</tr>
<tr>
<td>Organization v. organization</td>
<td>31</td>
<td>60</td>
<td>41</td>
</tr>
<tr>
<td><strong>Representation</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Both parties represented</td>
<td>30</td>
<td>58</td>
<td>110</td>
</tr>
<tr>
<td>Plaintiff represented, defendant pro se</td>
<td>5</td>
<td>100</td>
<td>44</td>
</tr>
<tr>
<td>Plaintiff pro se, defendant represented</td>
<td>10</td>
<td>100</td>
<td>11</td>
</tr>
<tr>
<td>Both sides pro se</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td><strong>Arbitration Outcome</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defense verdict</td>
<td>23</td>
<td>0</td>
<td>26</td>
</tr>
<tr>
<td>Less than 50% of amount claimed</td>
<td>33</td>
<td>66</td>
<td>20</td>
</tr>
<tr>
<td>50%-99% of amount claimed</td>
<td>30</td>
<td>82</td>
<td>24</td>
</tr>
<tr>
<td>Equal to amount claimed</td>
<td>19</td>
<td>90</td>
<td>47</td>
</tr>
<tr>
<td>Greater than amount claimed</td>
<td>32</td>
<td>52</td>
<td>11</td>
</tr>
<tr>
<td><strong>Origin of Case</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Filed in arbitration</td>
<td>26</td>
<td>55</td>
<td>126</td>
</tr>
<tr>
<td>Filed in trial division</td>
<td>40</td>
<td>71</td>
<td>11</td>
</tr>
<tr>
<td>Appeal from district justices' court</td>
<td>20</td>
<td>83</td>
<td>37</td>
</tr>
</tbody>
</table>

**SOURCE:** Court record data, weighted sample of cases heard in arbitration, 1980-81.

\(^a\)Excludes some cases for which appeal status could not be determined from court records.
categories of cases that we examined. Of course, appeals from defense verdicts were filed only by plaintiffs.

Mode of Disposition After Appeal

Most cases that were appealed did not go on to trial. As shown in Table 10, close to three-quarters of the appeals we sampled were ultimately settled or dropped. The remainder were tried to verdict, usually by a judge rather than by a jury. Tort cases arising out of motor vehicle accidents and cases involving individuals on both sides went to trial more frequently than other cases. We suspect that a large proportion of this group involved insurance companies as the real party of interest on one or both sides. Tort cases not arising out of motor vehicle accidents and cases in which organizations sued individuals were more likely than others to go to jury trial. Plaintiffs who appealed settled more frequently than defendants who appealed.

Results of Appeals

Most appellants improved their position by appealing. Within our sample, about three-quarters of the appellants were able to reverse or modify the arbitrators' verdict in their own favor. Table 11 shows the distribution of outcomes on appeal, and the relationship between appeal outcome and appellant identity (plaintiff or defendant), arbitration award, and mode of disposition after appeal. Across the entire appeals sample, including appeals by both defendants and plaintiffs, the defendant's position improved 58 percent of the time, the plaintiff's improved 32 percent of the time, and there was no change about 10 percent of the time. But when we take a closer look at the pattern of appeals, separating those by defendants and those by plaintiffs, we see that defendants and plaintiffs who appealed were equally successful. The apparent advantage of defendants is simply that defendants filed more of the appeals than plaintiffs.

Among the cases sampled, defendants improved their position on appeal 74 percent of the time; in another 9 percent of these cases there was no change in case outcome. Among the much smaller number of sampled cases in which plaintiffs appealed, they were able to improve their position 76 percent of the time, most frequently by gaining a reversal of a defense verdict.

Defendants most frequently improved their position on appeal when the arbitrators' award was equal to half or more of what the plaintiff originally demanded. In most of these cases, the outcome on appeal reduced but did not eliminate the plaintiff's compensation. Complete
Table 10

MODE OF DISPOSITION AFTER APPEAL
(Percent)

<table>
<thead>
<tr>
<th></th>
<th>Settled or Dropped</th>
<th>Bench Trial</th>
<th>Jury Trial</th>
<th>Number of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Sample</td>
<td></td>
<td></td>
<td></td>
<td>157&lt;sup&gt;a&lt;/sup&gt;</td>
</tr>
<tr>
<td><strong>Case Type</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Tort</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Motor vehicle</td>
<td>54</td>
<td>42</td>
<td>4</td>
<td>24</td>
</tr>
<tr>
<td>Other</td>
<td>83</td>
<td>3</td>
<td>14</td>
<td>29</td>
</tr>
<tr>
<td>Contract&lt;sup&gt;b&lt;/sup&gt;</td>
<td>69</td>
<td>29</td>
<td>2</td>
<td>89</td>
</tr>
<tr>
<td><strong>Amount Claimed</strong></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Under $3000</td>
<td>62</td>
<td>37</td>
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<td>86</td>
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<tr>
<td>$3000-$9999</td>
<td>75</td>
<td>16</td>
<td>9</td>
<td>44</td>
</tr>
<tr>
<td>$10,000+</td>
<td>92</td>
<td>8</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td><strong>Configuration of Parties</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Individual v. individual</td>
<td>47</td>
<td>53</td>
<td>0</td>
<td>34</td>
</tr>
<tr>
<td>Individual v. organization</td>
<td>80</td>
<td>13</td>
<td>7</td>
<td>56</td>
</tr>
<tr>
<td>Organization v. individual</td>
<td>84</td>
<td>8</td>
<td>8</td>
<td>25</td>
</tr>
<tr>
<td>Organization v. organization</td>
<td>71</td>
<td>29</td>
<td>0</td>
<td>42</td>
</tr>
<tr>
<td><strong>Representation (at hearing)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Both parties represented</td>
<td>72</td>
<td>23</td>
<td>5</td>
<td>148</td>
</tr>
<tr>
<td>Plaintiff represented</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>pro se</td>
<td>42</td>
<td>58</td>
<td>0</td>
<td>7</td>
</tr>
<tr>
<td>Plaintiff pro se, defendant</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>represented</td>
<td>50</td>
<td>50</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Both sides pro se</td>
<td></td>
<td></td>
<td></td>
<td>0</td>
</tr>
<tr>
<td><strong>Arbitration Outcome</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defense verdict</td>
<td>70</td>
<td>30</td>
<td>0</td>
<td>23</td>
</tr>
<tr>
<td>Less than 50% of amount claimed</td>
<td>50</td>
<td>30</td>
<td>11</td>
<td>18</td>
</tr>
<tr>
<td>50%-99% of amount claimed</td>
<td>69</td>
<td>29</td>
<td>3</td>
<td>35</td>
</tr>
<tr>
<td>Equal to amount claimed</td>
<td>67</td>
<td>30</td>
<td>2</td>
<td>43</td>
</tr>
<tr>
<td>Greater than amount claimed</td>
<td>73</td>
<td>18</td>
<td>9</td>
<td>11</td>
</tr>
<tr>
<td><strong>Appellant</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Plaintiff</td>
<td>80</td>
<td>18</td>
<td>2</td>
<td>45</td>
</tr>
<tr>
<td>Defendant</td>
<td>68</td>
<td>27</td>
<td>5</td>
<td>111</td>
</tr>
</tbody>
</table>

*SOURCE:* Court record data, sample of appeals filed 1979-81.

<sup>a</sup>Excludes some cases for which mode of disposition after appeal could not be determined from court records.

*The appeals coding form did not differentiate breach of contract and collection cases.*
Table 11

OUTCOMES OF APPEAL
(Percent)

<table>
<thead>
<tr>
<th>Defendant Improved Position</th>
<th>Plaintiff Improved Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plaintiff Verdict Reversed</td>
<td>Plaintiff Award Reduced</td>
</tr>
<tr>
<td></td>
<td>Plaintiff Award Increased</td>
</tr>
<tr>
<td></td>
<td>Defendant Verdict Reversed</td>
</tr>
<tr>
<td></td>
<td>No Change</td>
</tr>
<tr>
<td></td>
<td>Number of Cases</td>
</tr>
<tr>
<td>Total Sample*</td>
<td>13</td>
</tr>
<tr>
<td>Appellant</td>
<td>16</td>
</tr>
<tr>
<td>Defendant</td>
<td>3</td>
</tr>
<tr>
<td>Plaintiff</td>
<td>13</td>
</tr>
<tr>
<td>Arbitration Outcome</td>
<td></td>
</tr>
<tr>
<td>Defense verdict</td>
<td>0</td>
</tr>
<tr>
<td>Less than 50% of amount</td>
<td>43</td>
</tr>
<tr>
<td>claimed</td>
<td>15</td>
</tr>
<tr>
<td>50%-99% of amount claimed</td>
<td>6</td>
</tr>
<tr>
<td>Equal to amount claimed</td>
<td>13</td>
</tr>
<tr>
<td>Greater than amount</td>
<td></td>
</tr>
<tr>
<td>claimed</td>
<td></td>
</tr>
<tr>
<td>Mode of Disposition</td>
<td></td>
</tr>
<tr>
<td>Settled/dropped after</td>
<td></td>
</tr>
<tr>
<td>appeal filed</td>
<td>1</td>
</tr>
<tr>
<td>Bench verdict</td>
<td>24</td>
</tr>
<tr>
<td>Jury verdict</td>
<td>83</td>
</tr>
</tbody>
</table>

SOURCE: Court record data, sample of appeals filed 1979-81.

*Excludes 41 cases for which appeal outcome or arbitration verdict could not be determined from court records.
reversals of plaintiff awards were infrequent; they occurred most frequently when the arbitrators had granted the plaintiff less than half of what he or she had asked for. We suspect that many of these were suits in which the plaintiff did not have a strong case with regard to liability, but the arbitrators nevertheless made an award on the grounds of "fairness" or "equity." When the parties agreed to settle after arbitration rather than pursue their case to trial, the most frequent result was a reduction in the amount of plaintiff compensation.

Within our sample, appellants generally obtained better outcomes when they went to trial than when they settled; however, because of the few cases in each disposition category, this finding should be interpreted cautiously.\textsuperscript{13} Table 12 shows the median change in outcome on appeal for different categories of appeal. On average, when defendants appealed, they obtained a reduction in the arbitrators' award of about 40 percent. Defendants who settled obtained somewhat smaller average reductions in awards, and defendants who went to bench trials received somewhat larger reductions. The five cases that defendants took to jury trials and for which we have complete data resulted in verdicts for the defense.

In the six complete cases in which plaintiffs challenged defense verdicts and settled, they obtained, on average, about 40 percent of the amount they had originally claimed. The few cases in our sample that plaintiffs took to bench trial resulted in verdicts equal to the amounts of the original plaintiff claims. In a few complete cases in which plaintiffs appealed arbitration awards for amounts less than what they had originally claimed and settled, they obtained, on average, twice the amount awarded by the arbitrators.

The pattern of appeal outcomes evidenced in these court data suggests that most appeals are not filed frivolously. Judging by the results, both plaintiffs and defendants seemed to appeal in situations where there was a reasonable basis for believing that the arbitration award would be modified. Whether these cases were decided "on the merits" or whether judges consciously attempted to mollify appellants by "splitting the difference" cannot be determined from these data.

Although the majority of appeals improved the position of the appellant, the net effect of the appeals process on the distribution of arbitration outcomes was slight. Table 13 shows the distribution of final arbitration outcomes (arbitrator awards, trial verdicts, and settlement amounts) for all cases in our sample that reached hearing and

\textsuperscript{13}We were able to determine arbitration, mode of disposition, and outcome on appeal for only 102 cases or 65 percent of the total appeals sample. We found complete data for about 75 percent of the defendant appellants but for only 40 percent of the plaintiff appellants. Cases that settled after appeal were most likely to have incomplete data, because parties frequently do not record settlement amount with the court.
Table 12

RELATIONSHIP BETWEEN APPEAL OUTCOME AND MODE OF DISPOSITION
AFTER APPEAL, FOR DEFENDANT AND PLAINTIFF APPELLANTS*

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Arbitration Outcome</th>
<th>Mode of Disposition After Appeal</th>
<th>Median Loss/Gain on Appeal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Defendant (N=50)</td>
<td>Award &gt; 0</td>
<td>Settled</td>
<td>34% reduction in payment to plaintiff</td>
</tr>
<tr>
<td>Defendant (N=22)</td>
<td>Award &gt; 0</td>
<td>Bench trial</td>
<td>44% reduction in payment to plaintiff</td>
</tr>
<tr>
<td>Defendant (N=35)</td>
<td>Award &gt; 0</td>
<td>Jury trial</td>
<td>100% reduction</td>
</tr>
<tr>
<td>Plaintiff (N=6)</td>
<td>Defense verdict</td>
<td>Settled</td>
<td>90% of claim amount</td>
</tr>
<tr>
<td>Plaintiff (N=5)</td>
<td>Defense verdict</td>
<td>Bench trial</td>
<td>100% of claim amount</td>
</tr>
<tr>
<td>Plaintiff (N=7)</td>
<td>Award &gt; 0</td>
<td>Settled</td>
<td>100% increase in amount received</td>
</tr>
</tbody>
</table>

SOURCE: Court record data, sample of cases that filed appeals from arbitration, 1979-81.

*Excludes cases for which appeal outcome, arbitration verdict, or mode of disposition was not available.

award. The distribution differs very little from the distribution of arbitrators' awards shown in Table 4. Taken together, our findings on the results of individual appeals and the distribution of final arbitration outcomes suggest that the appeal mechanism serves its intended function as a corrective device for individual arbitrator errors or misjudgments while preserving the overall pattern of outcomes.

Costs of Appealing

Although all court arbitration programs provide a mechanism for appealing the arbitrators' verdict, most impose some sort of monetary penalty on the appellant. The size of such penalties and the conditions under which they will be imposed have been the subject of considerable litigation and political debate in jurisdictions that have established or are considering the establishment of court arbitration
<table>
<thead>
<tr>
<th>Case Type</th>
<th>Total Sample</th>
<th>No Compensation (%)</th>
<th>Less than 50% of Amount Claimed (%)</th>
<th>50%-99% of Amount Claimed (%)</th>
<th>Equal to Amount Claimed (%)</th>
<th>Greater than Amount Claimed (%)</th>
<th>Expected Compensation Ratio</th>
<th>Total Number of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tort</td>
<td></td>
<td>20</td>
<td>14</td>
<td>17</td>
<td>40</td>
<td>9</td>
<td>.67</td>
<td>137</td>
</tr>
<tr>
<td>Motor vehicle</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contract</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Collection</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Breach</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amount Claimed</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Under $5000</td>
<td></td>
<td>11</td>
<td>19</td>
<td>15</td>
<td>36</td>
<td>19</td>
<td>.75</td>
<td>20</td>
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<tr>
<td>$5000-$9999</td>
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<td>28</td>
<td>12</td>
<td>17</td>
<td>37</td>
<td>6</td>
<td>.60</td>
<td>10</td>
</tr>
<tr>
<td>$10,000+</td>
<td></td>
<td>33</td>
<td>56</td>
<td>8</td>
<td>3</td>
<td>0</td>
<td>.18</td>
<td>7</td>
</tr>
<tr>
<td>Under $10,000, unspecified</td>
<td></td>
<td>20</td>
<td>11</td>
<td>18</td>
<td>44</td>
<td>7</td>
<td>.70</td>
<td>94</td>
</tr>
<tr>
<td>Configuration of Parties</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Individual v. individual</td>
<td></td>
<td>17</td>
<td>14</td>
<td>18</td>
<td>42</td>
<td>10</td>
<td>.71</td>
<td>52</td>
</tr>
<tr>
<td>Individual v. organization</td>
<td></td>
<td>29</td>
<td>25</td>
<td>15</td>
<td>28</td>
<td>1</td>
<td>.48</td>
<td>33</td>
</tr>
<tr>
<td>Organization v. individual</td>
<td></td>
<td>14</td>
<td>15</td>
<td>13</td>
<td>40</td>
<td>18</td>
<td>.73</td>
<td>22</td>
</tr>
<tr>
<td>Organization v. organization</td>
<td></td>
<td>21</td>
<td>4</td>
<td>20</td>
<td>49</td>
<td>7</td>
<td>.74</td>
<td>30</td>
</tr>
<tr>
<td>Representation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Both sides represented</td>
<td>23</td>
<td>17</td>
<td>14</td>
<td>38</td>
<td>8</td>
<td>.63</td>
<td>89</td>
<td></td>
</tr>
<tr>
<td>Plaintiff represented, defendant</td>
<td>6</td>
<td>9</td>
<td>17</td>
<td>54</td>
<td>14</td>
<td>.87</td>
<td>35</td>
<td></td>
</tr>
<tr>
<td>Plaintiff pro se, defendant represented</td>
<td>50</td>
<td>20</td>
<td>20</td>
<td>10</td>
<td>0</td>
<td>.27</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Both sides pro se</td>
<td></td>
<td>0</td>
<td>0</td>
<td>100</td>
<td>0</td>
<td>0</td>
<td>.65</td>
<td>3</td>
</tr>
</tbody>
</table>

Source: Court record data, weighted sample of cases heard in arbitration, 1980-81.

*Final arbitration outcome = arbitrators' award, if accepted, or outcome of appeal.

*Excludes 37 cases for which monetary outcome or claim amount was not available.
programs. Although policymakers obviously believe that litigants' decisions to appeal are sensitive to the costs associated with the process, there has been no systematic empirical research on the relationship between appeal penalties and the rate of appeal, and eventual trial.

Because many of the litigants and attorneys whom we surveyed won their cases, our interviews yielded only limited information on the costs of the appeal process. Drawing upon these data, in Table 14 we have estimated the total costs of appealing an arbitration verdict in Pittsburgh for cases that settle and for cases that go on to judge or jury trial.

The costs of appealing an arbitration verdict, like the costs of taking a case to arbitration, are a function of the amount of time the litigant spends waiting for his case to be resolved and preparing for and participating in the dispute resolution process; the value of the litigant's own time; and his out-of-pocket costs for court fees, attorney fees, and other legal costs. Attorney fees depend, in part, on the nature of the fee agreement between the litigant and his attorney: flat fee, contingent fee arrangement, or hourly billing at a set rate. Time spent in litigation and out-of-pocket costs also vary depending on how

### Table 14

**Estimated Cost to Appeal an Arbitration Verdict**

<table>
<thead>
<tr>
<th>Cost Items</th>
<th>Mode of Disposition after Appeal</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Settlement</td>
</tr>
<tr>
<td>Attorneys' Fees</td>
<td></td>
</tr>
<tr>
<td>Flat fee arrangement</td>
<td>$350</td>
</tr>
<tr>
<td>or</td>
<td></td>
</tr>
<tr>
<td>Hourly rate arrangement</td>
<td>400</td>
</tr>
<tr>
<td>or</td>
<td></td>
</tr>
<tr>
<td>Contingent fee (plaintiffs)</td>
<td></td>
</tr>
<tr>
<td>Court Costs</td>
<td></td>
</tr>
<tr>
<td>Arbitrator reimbursement</td>
<td>80</td>
</tr>
<tr>
<td>Filing fee for trial</td>
<td>--</td>
</tr>
<tr>
<td>Other Legal Fees</td>
<td>--</td>
</tr>
<tr>
<td>Time spent on litigation</td>
<td>50</td>
</tr>
<tr>
<td>Total estimated costs</td>
<td>$460-$510</td>
</tr>
<tr>
<td>(+ other legal costs)</td>
<td></td>
</tr>
</tbody>
</table>
the case is finally disposed. Taking these factors into account, we estimate that in Pittsburgh the total cost to appeal ranges from about $500 if a case settles after appeal, to about $2000 if it goes to jury trial. Because our data are fragmentary, there is considerable uncertainty about the estimates. The true costs of appealing an arbitration verdict under different scenarios are probably not considerably smaller than our estimates, but they may be substantially larger.

**Attorney Fees.** The amount paid to attorneys will vary depending on the mode of disposition after appeal and on the nature of the agreement between litigant and counsel. Plaintiffs in personal injury or property damage cases would usually pay their attorney on a contingent fee basis; their legal fees would probably total 33 percent of the amount obtained on appeal (whether the case was settled or went to trial). Other litigants, however, would be more likely to pay attorneys on an hourly rate or flat fee basis.

One attorney who handles a large number of arbitration cases yearly told us that he charges a flat fee of $350 to take an appeal to bench trial and $750 to take an appeal to jury trial. These fees apply only to cases that the attorney previously prepared and presented at arbitration. Our interviews with other attorneys suggest that these charges are at the lower end of the attorney fee continuum and that attorneys working on an hourly rate basis might charge considerably more. Based on information about the length of trials and the average hourly rates charged by attorneys in arbitration, we estimate that a typical hourly rate attorney would charge about $400 to take a previously arbitrated case to bench trial and about $1600 to take such a case to jury trial. We did not obtain any information from litigants or attorneys about what attorneys charge to settle cases, but we assume that this amount would not normally exceed the fee to take a case to bench trial.

**Court Costs.** Litigants who appeal must reimburse the court for the cost of the arbitrators’ fees. Because the court prorates the fees across all cases heard on a given day, the amount of reimbursement varies. Usually, the charge is about $60. When they appeal the award,

---

14Our estimates do not include the opportunity costs associated with appealing.
15The typical bench trial for an arbitration appeal was reported to last about 1/2 day, and the typical jury trial about two days. As indicated earlier, hourly rates for attorneys who practice in arbitration seem to run in the neighborhood of $40-$50. Assuming that each day or part of a day spent in trial requires an equal amount of preparation of the previously arbitrated case, the total fee for an attorney charging on an hourly rate basis would average about $400 (eight hours at $50 per hour) for a bench trial and about $1600 (32 hours at $50 per hour) for a jury trial.
litigants must also pay a filing fee for requesting trial; this fee is $36 for a bench trial and $86 for a jury trial.

**Other Legal Costs.** Introduction of evidence at trial requires witnesses, whose fees must be paid by the litigants. In addition, litigants may be charged for costs associated with preparation of evidence for trial (photocopying, photography, etc.). We did not obtain estimates of these costs, which may total several hundred dollars.

**Time Spent on Litigation.** We interviewed litigants immediately after they had filed appeals, so they could not yet report on their time spent in post-hearing litigation, but we can estimate the minimum amount of time that would be required, based on our information about the arbitration process. We can assume that litigants spend at least as much time preparing for and attending trial as they did preparing for and attending hearings. Bench trials are not too different from arbitration, so the typical litigant probably does not spend more than 1½ days on that process. For an individual employed at a salary of $15,000, the estimated value of this time is about $100. Jury trials, which tend to last longer than bench trials, may require considerably more time, depending on the litigant’s degree of involvement in the process. If a litigant spent two or three days preparing for and participating in a jury trial, the estimated value of this time, for an individual employed at a salary of $15,000, would be about $200. However, the large proportion of cases that settle after appeal probably do not require very much time of litigants, because they would not usually participate in settlement negotiations. A typical litigant would probably spend no more than $50 of his or her own time on the settlement process.

**Waiting Time to Disposition.** As shown in Table 15, the median total time to disposition for cases that appealed the arbitration verdict was about 10 months longer than the median total time to disposition for cases that accepted arbitration awards. The median time between filing the appeal and disposition was about seven months. The average time from appeal to formal disposition was roughly the same for cases that settled after appeal and cases that went to trial.16

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16We used multiple regression analysis to estimate time to disposition for cases that went to hearing. Taking the effects of other case characteristics and litigation factors into account—for example, where the case originated, the amount of money in dispute, and the pattern of legal representation—the effect of appealing an arbitration verdict was to add roughly 200 days to the estimated total time to disposition. The regression coefficients for the independent variables representing mode of disposition after appeal were not significantly different.
Table 15

MEDIAN TIME TO DISPOSITION, FOR CASES ACCEPTING AND REJECTING ARBITRATION AWARDS
(Median number of months)

<table>
<thead>
<tr>
<th></th>
<th>Cases Accepting Arbitration Award</th>
<th>Cases Rejecting Arbitration Award</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time from complaint to hearing</td>
<td>3.5 (104 days)</td>
<td>3.5 (108 days)</td>
</tr>
<tr>
<td>Time from hearing to award</td>
<td></td>
<td>.7 (21 days)</td>
</tr>
<tr>
<td>and appeal</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Time from appeal to</td>
<td>7.2 (216 days)</td>
<td></td>
</tr>
<tr>
<td>disposition</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total time to disposition a</td>
<td>3.5 (104 days)</td>
<td>13.2 (393 days)</td>
</tr>
<tr>
<td>Total Number of Cases b</td>
<td>135</td>
<td>137</td>
</tr>
</tbody>
</table>

SOURCE: Court record data, weighted sample of cases that accepted arbitration awards (1980-81), and sample of cases that filed appeals from arbitration (1979-81).

aBecause of the way in which median statistics are calculated, the median times for separate phases of the arbitration process do not sum to the overall median time to disposition.

bExcludes some cases for which award dates were not available.

Is It Cost Effective To Appeal?

By combining our estimates of the costs of appeal with our findings on the results obtained by appellants in the cases we sampled from court records, we can examine the net outcomes that litigants obtain from appealing. The net outcome of appeal is the difference that remains between the arbitrators’ award and the appeal outcome, after we take the cost of appealing into account. Plaintiffs gain from appeal when they increase their compensation by an amount greater than their costs; defendants gain when they decrease their payout to the plaintiff by an amount greater than their costs. In our computations, we have assumed that plaintiff appellants paid their attorneys 33 percent of the final amount received from defendants and that defendant
appellants paid their attorneys $400 for settlement or bench trial and $1600 for jury trial (see Table 14).\footnote{The algorithm for computing the net gain or loss from appealing the arbitration award took the following form:}

Table 16 presents the results of our computations. It shows the distribution of estimated net gains and losses by mode of disposition for the total sample of appellants and for plaintiff and defendant appellants separately.

Across the entire sample, if our cost estimates are correct, less than half of the appellants experienced net gains of more than $100. A small percent experienced changes in their net economic position that were less than or equal to $100. About half worsened their net position by appealing.

The distribution of estimated net gains and losses differed, depending on whether the appellant was a plaintiff or defendant. Among plaintiff appellants, according to our estimates, 62 percent improved their net economic position by more than $100; another 14 percent saw little positive or negative change in position. According to our estimates, only one-quarter of the plaintiff appellants suffered net losses of more than $100 as a result of appeal. Defendants do not seem to have benefited as frequently from appeals. According to our estimates, about 40 percent of the defendant appellants improved their economic position by more than $100; 50 percent saw their positions worsened by $100 or more. The difference between the distributions of estimated net gains and losses among plaintiff and defendant appellants is statistically significant.\footnote{X-square = 6.14, with 2 degrees of freedom; p < .05.}

The explanation for the apparent plaintiff advantage is probably quite simple: Our computations assume that plaintiffs' legal fees, which constitute the bulk of appeal costs, are paid on a contingent basis. Plaintiffs who are unsuccessful on appeal, therefore, are not
Table 16

DISTRIBUTION OF ESTIMATED NET GAINS AND LOSSES
BY MODE OF DISPOSITION

(Percent)

<table>
<thead>
<tr>
<th></th>
<th>All</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Settled/</td>
<td></td>
<td>Bench</td>
<td>Jury</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Dismissed</td>
<td></td>
<td>Trial</td>
<td>Trial</td>
</tr>
<tr>
<td>Net Gain &gt; $100</td>
<td>53</td>
<td>40</td>
<td>13</td>
<td>53</td>
<td></td>
</tr>
<tr>
<td>Change ≤ $100</td>
<td>8</td>
<td>11</td>
<td>0</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>Net Loss &gt; $100</td>
<td>39</td>
<td>49</td>
<td>67</td>
<td>48</td>
<td></td>
</tr>
<tr>
<td>Total Number of Cases</td>
<td>72</td>
<td>37</td>
<td>6</td>
<td>115</td>
<td></td>
</tr>
</tbody>
</table>

Plaintiffs b

<p>| | | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Settled/</td>
<td></td>
<td>Bench</td>
<td>Jury</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Dismissed</td>
<td></td>
<td>Trial</td>
<td>Trial</td>
</tr>
<tr>
<td>Net Gain &gt; $100</td>
<td>62</td>
<td>71</td>
<td>0</td>
<td>62</td>
<td></td>
</tr>
<tr>
<td>Change ≤ $100</td>
<td>14</td>
<td>14</td>
<td>0</td>
<td>14</td>
<td></td>
</tr>
<tr>
<td>Net Loss &gt; $100</td>
<td>24</td>
<td>14</td>
<td>100</td>
<td>24</td>
<td></td>
</tr>
<tr>
<td>Total Number of Cases</td>
<td>21</td>
<td>7</td>
<td>1</td>
<td>29</td>
<td></td>
</tr>
</tbody>
</table>

Defendants b

<p>| | | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Settled/</td>
<td></td>
<td>Bench</td>
<td>Jury</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Dismissed</td>
<td></td>
<td>Trial</td>
<td>Trial</td>
</tr>
<tr>
<td>Net Gain &gt; $100</td>
<td>49</td>
<td>73</td>
<td>40</td>
<td>49</td>
<td></td>
</tr>
<tr>
<td>Change ≤ $100</td>
<td>6</td>
<td>10</td>
<td>0</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>Net Loss &gt; $100</td>
<td>45</td>
<td>57</td>
<td>60</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>Total Number of Cases</td>
<td>71</td>
<td>10</td>
<td>5</td>
<td>86</td>
<td></td>
</tr>
</tbody>
</table>

SOURCE: Court record data, sample of cases that filed appeals from arbitration, 1979-81, and estimates of costs derived from interviews with litigants and attorneys.

a Excludes 42 cases for which appeal outcome or arbitration verdict was not available.

b Differences in the distributions of estimated gains and losses for plaintiff and defendant appellants are significant at the .05 level. $\chi^2 = 6.14$, with 2 degrees of freedom.

likely to see much change in their net economic position. In addition, plaintiffs' attorneys are most likely to recommend appeal when they feel the potential for a large increase in compensation is great. In such situations, both plaintiffs and their attorneys should improve their net economic position considerably. However, we assume that defendants pay their legal fees regardless of whether the appeal is successful. Defendants can therefore improve their net economic position only when the amount by which an award is reduced is greater than their costs. Because many claims are for fairly small amounts, the percentage reduction in award must be considerable if defendants are to see an improvement in their net economic position.

The data shown in Table 16 also suggest that defendants more frequently improve their net economic positions when they appeal and
then settle than when they proceed to trial. The differences are not statistically significant but they are in the expected direction. 19

Generally, our analysis suggests that the improvements in case outcome obtained by appellants are, in a large proportion of cases, not worth the cost of invoking the appeal mechanism.

WINNERS AND LOSERS

Who wins and loses as a result of arbitration? At first, the answer to this question seems simple: Judging by the pattern of awards, plaintiffs win and defendants lose. But the percent of awards to plaintiffs tells only part of the story about arbitration outcomes. During the period we studied, though plaintiffs frequently won some amount at arbitration, they won as much as (or more than) they had asked for less than half of the time. And their success depended to some degree on whether they retained legal counsel. When they did, according to our estimates, they could expect to obtain as net compensation for their damages about 50-60 percent of the amount they had originally asked for. If plaintiffs were dissatisfied with the amount they obtained at arbitration, they could file an appeal and pursue their case to a bench or jury trial. But doing so required retaining an attorney who believed that appeal was worthwhile. During the period we studied, plaintiff appeals were rare. Plaintiffs who did appeal were, however, quite successful in improving the case outcome and, according to our estimates, in many cases the cost of appealing was outweighed by the increase in compensation obtained.

Although defendants frequently lost at arbitration during this period, the amount awarded to the plaintiff by the arbitrators was often less than what the plaintiff had demanded before the hearing. Even after we take into account the cost of legal counsel, defendants seem to have benefited from contesting the case at arbitration, rather than accepting the plaintiff’s original demand. And plaintiffs only rarely appealed the arbitrators’ lesser valuation of their cases. When the arbitrators returned a judgment that seemed to the defendant to be grossly inconsistent with the facts or proven damages, defendants were quite successful in overturning the arbitrators’ decision or at least reducing the award to the plaintiff, through the appeals process. But many defendants may have found that the cost of appealing

19 \chi^2 = 2.5, with 4 degrees of freedom; p < .64.
equalled or exceeded the amount by which the payout to the plaintiff was reduced.

On close look, then, neither plaintiffs nor defendants emerge as clear "winners" or "losers" in the arbitration process. If there are any true losers in the arbitration system, perhaps, it is the pro se litigants. True, arbitration affords them an opportunity to have their case heard, an opportunity that probably would not be available in a court that did not offer such a simplified, inexpensive dispute resolution procedure. But the pattern of arbitration awards suggests that the average pro se litigant is at a disadvantage when he faces a represented opponent. Pro se litigation itself does not appear to be the culprit: When both parties are unrepresented, the pattern of arbitration awards is not much different than when both parties are represented. Rather, the data suggest that it is the imbalance of expertise, experience, and so forth that occurs when a pro se litigant faces an attorney for the opposing side that produces less successful outcomes for the unrepresented party. For the pro se litigant who is unsuccessful, the appeals process holds out little hope of changing the arbitration outcome: To the individual who could not afford the modest expense of retaining an attorney for the hearing, the larger investment required to bring a case to trial must generally be insupportable. Within our sample of arbitration cases, there were no examples of appeals by litigants who had appeared pro se at the hearing.

The distribution of objective arbitration outcomes is an important product of the arbitration program. But another aspect of winning and losing must be considered in any evaluation of arbitration's effects: the feelings of the litigants themselves. If arbitration satisfies litigants' desires to have their disputes heard, they may feel that they have been served in a positive fashion by the civil justice system, regardless of the arbitrators' verdict or the outcome of an appeal.
IV. LITIGANTS' VIEWS OF ARBITRATION

Ultimately, the success of court-administered arbitration depends on its ability to satisfy court personnel, attorneys, and litigants. In Pittsburgh, as we have seen, arbitration is highly valued by court administrators, who view it as an efficient and cost-effective mechanism for delivering "rough justice" to a large and diverse population of users. And the apparent ready availability of attorneys who will take small cases to arbitration for modest fees suggests that the program also satisfies an important component of the local bar. But what about the litigants whose cases are adjudicated in arbitration? Do they believe that they are well-served by the speedy, inexpensive, stripped-down procedures of arbitration, or are they affronted by this "no frills" approach to dispute resolution? Do individual litigants with small cases believe that they have been unfairly singled out for arbitration, and unjustly deprived of the panoply of judge, jury, and courtroom procedures? Do institutional litigants who depend on the arbitration program for routine resolution of large numbers of "small stakes" disputes believe that they are well-served by part-time, volunteer adjudicators? This section addresses these issues, drawing upon our interviews with 66 individual litigants whose cases were heard in April 1982, and with 29 representatives of institutions (primarily insurance companies and financial corporations) that have made extensive use of the Pittsburgh program.

Our analysis of litigants' views of arbitration examines five questions:

1. How satisfied are litigants with arbitration? Does satisfaction depend simply on whether one wins or loses one's case, or does the program generally satisfy winners and losers alike?
2. What standards do individual litigants use to evaluate the arbitration program? Do unsophisticated litigants with little previous court experience compare the arbitration process with a stereotypical judge and jury trial and find it wanting? Or do they have some other model of a fair dispute resolution process in mind?
3. What special problems, if any, do pro se litigants perceive regarding arbitration?
4. What standards do institutional litigants use to evaluate arbitration? Are these litigants, who have extensive experience
with the traditional adversarial process and sophisticated notions of the protections it affords them, concerned with the effects of arbitration's informality on outcomes?

5. Are there particular aspects of the way Pittsburgh operates its program that are not inherent to court arbitration per se and that contribute to litigant satisfaction or dissatisfaction?

LEVEL OF SATISFACTION

Most individual litigants whom we interviewed were quite satisfied with the program. Not surprisingly, winners were more satisfied than partial winners, who were, in turn, more satisfied than losers.\(^1\) Table 17 shows the distribution of individual litigants' responses to the question:

Thinking over everything having to do with your case from the time it was filed in court until now—including the way the hearing was conducted and the award—overall how do you feel about the way the court handled your case?\(^2\)

Almost half of all respondents replied that they were "very satisfied"; another one-quarter said they were "somewhat satisfied." Levels of satisfaction were considerably different among winning and losing litigants.\(^3\) All of the respondents who won their cases, and two-thirds of those who were partial winners or losers, said they were "very" or "somewhat satisfied." Losing respondents were likely to be at least somewhat dissatisfied, but even among this group close to half expressed satisfaction.

These expressions of satisfaction are consistent with attorneys' reports of client satisfaction with arbitration in other jurisdictions (Hensler, Lipson, and Rolph, 1981; Weller, Ruhnka, and Martin, 1981). But the high level of satisfaction expressed by individual litigants is particularly striking, given their frame of mind at the time of the interview, when the experience of litigation was still fresh. Many spoke almost as survivors, even those who had won their entire claims.

\(^1\)Plaintiffs who received awards equal to their claim and defendants who won defense verdicts were defined as "winners." Plaintiffs who won some but not all of the amount claimed were defined as "partial winners"; their opponents were defined as "partial losers." Plaintiffs whose cases resulted in defense verdicts and defendants whose opponents were awarded the full amount claimed were defined as "losers."

\(^2\)Respondents whose cases were appealed from the magistrate's court or transferred from the regular trial division were asked to think about the time since their case was "assigned to arbitration."

\(^3\)X-square = 27.4, df = 6, p < .001.
Table 17

LEVEL OF SATISFACTION AMONG INDIVIDUAL LITIGANTS,
BY ARBITRATION AWARD
(Percent)

<table>
<thead>
<tr>
<th>Level</th>
<th>Won</th>
<th>Partial Win/Loss</th>
<th>Lost b</th>
<th>All Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very satisfied</td>
<td>78</td>
<td>37</td>
<td>6</td>
<td>44</td>
</tr>
<tr>
<td>Somewhat satisfied</td>
<td>22</td>
<td>30</td>
<td>38</td>
<td>29</td>
</tr>
<tr>
<td>Somewhat dissatisfied</td>
<td>0</td>
<td>18</td>
<td>12</td>
<td>11</td>
</tr>
<tr>
<td>Very dissatisfied</td>
<td>0</td>
<td>15</td>
<td>44</td>
<td>17</td>
</tr>
<tr>
<td>Total Number of Cases</td>
<td>23</td>
<td>27</td>
<td>16</td>
<td>66</td>
</tr>
</tbody>
</table>

SOURCE: Institute for Civil Justice survey of litigants whose cases were heard in April 1982.

a Plaintiffs are considered to have won when the award equalled the claim and to have lost when a defense verdict was returned. Defendants are considered to have won when a defense verdict was returned and to have lost when the award equalled the claim. Both plaintiffs and defendants are considered to be partial winners/losers when the award is greater than zero and less than the claim.

b Differences among winners, partial winners/losers, and losers are statistically significant. \( \chi^2 = 27.4; \ df = 6; \ p < .001. \)

displaying no elation at victory. Losers rarely conceded that they had had losing cases but remained angry and affronted that the decision had gone against them. The arbitration process itself seemed to have had no effect on their level of hostility and aggression. Although the dispute had been disposed of and decided, it had clearly not been resolved in the minds of many respondents. But few transferred their feelings of frustration to the arbitration program.

Representatives of institutions that make extensive use of arbitration were similarly satisfied with the program. The great majority of attorneys and business representatives whom we interviewed reported that it served their diverse purposes well. A claims officer with a major insurance company evaluated the Pittsburgh program as follows:

We find court arbitration to be quick, expedient, and extremely cost effective. Costs per case in arbitration are approximately one-tenth of
what they would be on the general docket. Time frames for disposition have been consistently around 90 days in recent years. The results are generally fair, and the outcomes what we expect with each case.

HOW INDIVIDUAL LITIGANTS EVALUATE ARBITRATION

We found little evidence that individual litigants have in their minds a paradigm of judge and jury trial against which they measure the arbitration process and find it wanting. Instead, most individual litigants whom we interviewed had a very simple model of what constitutes a fair hearing of a dispute. Satisfaction with the arbitration program depended on perceived fairness, measured by this “fair hearing” standard, and on the objective outcome of the case.

The Trial Paradigm

Both the lay public and serious legal scholars share a model of the American adversarial system that includes a black-robed judge, conducting a public trial before a jury, in a formal courtroom environment. The private, informal arbitration procedure, conducted by three ordinary attorneys in business suits, sitting without a jury around a table in a small hearing room, clearly does not fit this model. But our interviews suggest that most individual litigants whose cases are brought to arbitration do not miss the formal attributes of the traditional adversarial process.

The Missing Judge and Jury. Only six out of the 66 individual litigants interviewed said they would have preferred to have a judge hear their case; another three wanted a jury, and two would have been happier with either a judge or jury. But the majority of litigants were pleased by the provision of three adjudicators to hear their case, with 25 percent of respondents volunteering to the interviewer that “three heads are better than one.” Many individual litigants seemed to regard the three-member panel more as a kind of professional mini-jury than as a judge-substitute. Several respondents expressed a preference for attorneys, rather than a judge, to hear their case, on the grounds that the former had more contact with “ordinary people” and a greater understanding of their concerns.

Formality. Overall, respondents appeared to have been comfortable with the style of their hearings. The level of formality at hearings by all accounts varies widely and is set to a great extent by board
chairmen, often in response to the manner adopted by attorneys appearing before them. About two-thirds of respondents described their hearings as "informal," and 90 percent said they did not think that any greater formality would be desirable. In opting for informality, many respondents stated that they found it much easier to express themselves when procedure was somewhat relaxed. Some of the less sophisticated litigants, including several pro se parties, clearly found any pronounced degree of formality intimidating and confusing and were inclined to believe that where it was used it must work to their detriment. The minority of respondents who favored formality either asserted that it was warranted by the seriousness of their cases or valued it as a means of structuring and controlling both the hearing and their own emotional reactions.

Privacy. About 70 percent of respondents favored holding hearings in private, and some were particularly relieved to find that their disputes would not be heard in open court. Privacy was strongly desired and, by many, seen almost as a right. These litigants did not perceive their cases, brought for decision to a public dispute resolution process, as in any sense public business, nor did they express any desire for a public, open hearing as affording a guarantee of fair process.

Setting. Although some court officials, arbitrators, and attorneys told us they would like more spacious and dignified surroundings for the arbitration proceedings, litigants were not critical of the utilitarian furnishings and small size of the hearing rooms. The officials and attorneys believed that a more formal setting might give litigants a greater sense of having had their "day in court." One judge spoke of special drapes, a dais perhaps, and "Henry the Eighth type chairs" for the arbitrators. But respondents shared no such concern for decor, with one remarking that she simply wanted her case decided, and "wouldn't care if it were heard in a closet."

Finality. Another aspect of the formal courtroom procedure is that it usually produces a final outcome. Appeals may be taken only for cause and occur rarely, usually when the stakes are large. Arbitration, in contrast, provides an unlimited right of appeal, which is invoked in many cases, including those with modest monetary stakes. Although some individual litigants expressed frustration with opponents who chose to prolong their dispute by appeal, about half of all respondents said that they believed arbitration outcomes should not be final. Another 20 percent said that finality was "not too important" or only "somewhat" important. Only one-third believed that it is "very important" for arbitration outcomes to be final.
The Fair Hearing Paradigm

In place of the trial paradigm, most litigants used a very simple standard for evaluating arbitration: They wanted an opportunity to have their case heard and decided by an impartial third party. When this requirement was met, they reported that the arbitration process had been "fair." When asked why they had come to this conclusion, they were unlikely to offer elaborate rationales. "They heard us both out, listened the same to both sides," or "We got an equal chance to tell our stories," were typical responses.

Hypothetical questions from the interviewers, implying that suits elsewhere are frequently resolved by attorneys and adjudicators without the appearance of the parties, seemed puzzling to many respondents, who assumed that the only fair way to decide their case was the process that they had experienced. A few attorneys made comparative comments about arbitration, noting that some of their clients’ cases would have received shorter shrift and rougher justice in other jurisdictions. But individual litigants themselves made no reference to such alternatives, taking it for granted that they had a right to appear in person, to be heard fully, and to be treated even-handedly. Where this right had been recognized, essentially nothing more was demanded. Even the identity and qualifications of the arbitrators were unimportant, so long as neutrality was assured.

More than 80 percent of the individual litigants whom we interviewed found their hearings "fair" according to this simple standard. Table 18 shows the distribution of responses to the question:

Now thinking about the arbitration hearing itself—do you think the way it was conducted was very fair, somewhat fair, somewhat unfair, or very unfair?

Differences in perceptions of fairness by outcome of the case, although in the expected direction, were not statistically significant.* Almost all of the respondents who won their cases thought that the hearing was fair, but even among losers two-thirds said that the hearing was at least "somewhat" fair.

Litigants who believed that their hearings were less than fair complained that the arbitrators had not given them an adequate opportunity to present their case, that the arbitrators were biased against them, or both. But among the majority of litigants who believed that hearings had been conducted fairly, there was little concern about the qualifications of the arbitrators who were chosen to hear their case.

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*X-square = 7.2, df = 4, p < .124.
Table 18

**INDIVIDUAL LITIGANTS’ PERCEPTIONS OF FAIRNESS, BY ARBITRATION AWARD**

(Percent)

<table>
<thead>
<tr>
<th>Perception</th>
<th>Won</th>
<th>Partial Win/Loss</th>
<th>Lost</th>
<th>All Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very fair</td>
<td>87</td>
<td>63</td>
<td>50</td>
<td>68</td>
</tr>
<tr>
<td>Somewhat fair</td>
<td>9</td>
<td>18</td>
<td>19</td>
<td>15</td>
</tr>
<tr>
<td>Somewhat or very unfair</td>
<td>4</td>
<td>18</td>
<td>31</td>
<td>17</td>
</tr>
<tr>
<td>Total Number of Cases</td>
<td>23</td>
<td>27</td>
<td>16</td>
<td>66</td>
</tr>
</tbody>
</table>

**SOURCE:** Institute for Civil Justice survey of litigants whose cases were heard in April 1982.

a. Plaintiffs are considered to have won when the award equaled the claim, and to have lost when a defense verdict was returned. Defendants are considered to have won when a defense verdict was returned and to have lost when the award equaled the claim. Both plaintiffs and defendants are considered to be partial winners/losers when the award is greater than zero and less than the claim.

b. Differences among winners, partial winners/losers, and losers are not statistically significant. $X^2 = 7.2; df = 4; p < .124$.

**Inadequate Opportunity To Present Case.** Of 21 respondents who believed their hearings had been less than very fair, 11 particularly asserted that their arbitrators had denied them a chance to present their cases fully. Some simply commented on arbitrators who ostentatiously consulted their watches, or rushed through the proceedings during the last hearings of the morning. (Some litigants who felt the process was “fair” also complained of being hurried through their hearings.) Others’ comments suggested that they had not been allowed to “vent” or indulge in time-consuming reiterations of minute detail, or had been prevented from using the hearing as an arena for personal recriminations. Only a few were able to cite particular instances where they had actually been deprived of an opportunity to introduce important evidence.

Litigants unfortunate enough to be at the end of the schedule were likely to have waited for four or more hours, with plenty of time to study the demeanor of their opponents and mentally rehearse every
element of their claim or defense. By the time they got into their hearings these individuals may well have been both sensitive to any sign of impatience in their arbitrators and determined to have their say.

One effect of the speed of the Pittsburgh arbitration program is that litigants are likely to arrive at their hearings while the emotional context of their dispute is still vivid. Attorney contact is often too limited for more excitable parties to be successfully "cooled out" in advance. Many litigants, it appeared, had initially expected an opportunity for vigorous debate at the hearing and were disappointed when this did not occur.

Only two respondents, both of whom had lost and demanded trial de novo, were able to be specific about evidence they believed to be important but that they had not been allowed to present because of their arbitrators' concern for brevity.

** Arbitrator Bias.** The second element in the simple paradigm of fairness shared by all individual litigants is that of impartiality. The arbitrators should not only listen but should do so with neutrality. No respondents expressed any wish to choose their own adjudicators, and no questions were raised about any possible predispositions in the arbitrators provided by the court. But three respondents alleged that their arbitrators had shown bias during the conduct of their hearings. Although we do not have any information about these allegations one way or the other, each points to an aspect of the arbitration process that makes it vulnerable to such complaints.

One litigant believed that her case had been assigned to a particular panel of arbitrators whose members were known to her opponent's attorney, rather than simply being assigned to a hearing room in its proper numerical order. Whether or not there is a substantive basis for this complaint, the "rough and ready" procedure for random assignment of arbitrators to cases and the administrative staff's willingness to assign some cases out of order to accommodate attorneys' schedules may lead some litigants to infer that arbitrators have been assigned to their case for some particular reason.

A second litigant believed that one of his arbitrators was biased against him because the town in which the litigant lived owed the arbitrator a large sum of money for some previous unrelated litigation. He referred to this as a "geographical bias." The substantive basis for this allegation is unknown. Arbitrators who are aware of a conflict of interest are expected to excuse themselves from hearing the case, which will then be assigned to another one of the panels sitting that day. But this type of allegation of arbitrator bias indicates how an attempt to demystify the dispute resolution process can lead to perceptions of unfair treatment. Lacking the black robes that clothe
the judge in authority and the dais that sets him above ordinary citizens, the arbitrator may more readily become the object of litigants' suppositions about his motives in deciding cases for or against them.

A third allegation of bias was of a type quite common even among litigants who found their hearings very fair. Some small business litigants believe that the arbitrators, as a group, are biased against home improvement contractors and in favor of homeowners. One representative contractor said:

Any time a homeowner goes against a business like mine, the homeowner always wins some amount, even if it's just a token award.

Assertions of this sort are not supported by our sample data but rather incorporate local courtroom folklore about probable outcomes for different categories of litigants—e.g., "All landlords always lose, but most tenants mostly win." These allegations were often made quite casually by respondents apparently in search of a comforting explanation for defeat.

Litigants' Perceptions of Arbitrators' Qualifications. Except for those respondents who felt that the arbitrators were uninterested in or biased against them, most individual litigants appeared to have given little thought or attention to the qualifications of the arbitrators who heard their case. A few were complimentary in passing, remarking that the panel had been "congenial," "courteous," or "concerned," but to most their arbitrators appear to have been shadowy figures exciting little interest or curiosity.

In an attempt to probe the extent and reason for this unexpected litigant indifference, we asked respondents whose reactions were of most concern to them during the hearing. About half replied that their attention had been directed toward the other side, several adding that they had decided that their opponent's attorney particularly bored watching as "the enemy." Some said that they had been most concerned with their own attorney's performance, and others claimed that they had watched "everyone." Little more than 10 percent said that they paid most attention to the reactions of the three individuals who would decide their case.

All but two respondents knew that their arbitrators were attorneys, yet many seemed to believe that they were full-time court appointees rather than occasional volunteers. All accepted their arbitrators without question as a "given" feature of the process, showing no curiosity about either their identity or qualifications. Some respondents could not even remember what their arbitrators had looked like.

Asked what they believed would be desirable qualifications for an arbitrator, many respondents mulled over this open-ended question
for several moments, evidently not having given the matter any previous thought. "Knowledge of the law" ought to be a prerequisite according to 40 percent, and one-third believed that arbitrators should be experienced lawyers; 20 percent mentioned personal qualities such as common sense, fairness, and an understanding of the problems of "ordinary people." Only a few of the more sophisticated respondents appeared aware that the fairness of their hearing in such matters as evidentiary rulings and the justice of their award as this reflected interpretation of law must depend on the experience and skill of their arbitrators.

Relationships Among Satisfaction, Perceptions of Fairness, Outcome, and Appeal

Individual litigants' satisfaction with the arbitration program seems to have been associated both with their perception of the fairness of their hearing and with the objective outcome of their case. Among both partial winners and losers the rate of appeal to trial de novo was understandably higher for those who were dissatisfied than for those who were satisfied.

Table 19 shows the mean "satisfaction score" (ranging from "1" for "very dissatisfied" to "4" for "very satisfied") by perception of fairness and outcome of the case. Across the entire sample, the mean satisfaction score was "3," equivalent to "somewhat satisfied." Average satisfaction scores were higher than this only among winners (regardless of perceived fairness) and among partial winners/losers who thought the hearing process had been "very fair." Among both partial winners/losers and complete losers, mean satisfaction scores were highest when litigants felt that the hearing had been "very fair."

In general, litigants appeared to be able to distinguish between the fairness of the hearing process and the outcome in their specific case. The single most popular explanation for defeat, adopted by one-third of the losing respondents, was that arbitrators had got an entirely inaccurate impression of the dispute in question as a result of an opponent's perjury. Respondents were never specific about the nature

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5One possibility that we were interested in exploring in our analysis was that respondents who initially decided that they were satisfied and that they had been treated fairly became dissatisfied after hearing that they had lost, and then came to the conclusion that their hearings must have been unfair. Among the litigants we interviewed after they had been notified of the award were 69 who had also been interviewed immediately after their hearings, before their assessments of fairness and their level of satisfaction could be contaminated by knowledge of the result of their hearing. Of this group, only three respondents who at first thought their hearings had been fair, and who seemed reasonably well satisfied, later gave less positive evaluations.
Table 19

MEAN SATISFACTION SCORES<sup>a</sup> AMONG INDIVIDUAL LITIGANTS, BY ARBITRATION AWARD AND PERCEPTIONS OF FAIRNESS<sup>b</sup>
(Percent)

<table>
<thead>
<tr>
<th>Perception</th>
<th>Partial Win/Loss</th>
<th>Lost</th>
<th>All Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very fair</td>
<td>3.8</td>
<td>2.9</td>
<td>3.5</td>
</tr>
<tr>
<td>Somewhat fair</td>
<td>3.5</td>
<td>3.8</td>
<td>2.8</td>
</tr>
<tr>
<td>Somewhat or very unfair</td>
<td>4.0</td>
<td>1.4</td>
<td>1.3</td>
</tr>
<tr>
<td>All respondents</td>
<td>3.8</td>
<td>2.8</td>
<td>3.0</td>
</tr>
</tbody>
</table>

Total Number of Cases 23 27 16 66

SOURCE: Institute for Civil Justice survey of litigants whose cases were heard in April 1982.

<sup>a</sup>Mean score on satisfaction item scale, where 4 = "very satisfied"; and 1 = "very dissatisfied."

<sup>b</sup>Plaintiffs are considered to have won when the award equalled the claim, and to have lost when a defense verdict was returned. Defendants are considered to have won when a defense verdict was returned and to have lost when the award equalled the claim. Both plaintiffs and defendants are considered to be partial winners/losers when the award is greater than zero and less than the claim.

of the falsification, and their comments about an opponent's "lie" often suggested that the word "disagreement" would have been more exact. Evidently disagreements about totally unimportant facts sometimes provoke angry exchanges in the hearing rooms and become converted, in the mind of one or other of the parties, into a larger contest between truth and falsehood.

One arbitrator told us:

Some parties just become very upset to discover that there is another version, and their first reaction is that someone has to be lying.

Some partial winners/losers attributed the outcome to arbitrators' disposition toward "compromise" awards. One of two reasons was usually advanced for the making of such awards: that the arbitrators had been unable to agree and had split the difference between them rather
than return a dissenting decision, or that the award had been carefully calibrated to make an appeal unattractive to either side on a cost-benefit basis.

Individual dissatisfaction with arbitration seems to have a practical consequence. Those litigants who were dissatisfied with arbitration, whether because they felt they had been treated unfairly, because they lost, or both, were more likely to appeal than those who were satisfied. Table 20 shows the appeal rate among our respondents, by level of satisfaction and case outcome. About one-fifth of those who lost their cases, either partly or completely, filed appeals. The rate was higher among those who suffered complete losses than among those who won something. But within each group, the appeal rate was substantially higher for dissatisfied litigants.

PERCEPTIONS AND PROBLEMS OF THE PRO SE LITIGANT

Our analysis of case outcomes, presented in Sec. III, indicates that pro se litigants are, on average, at a disadvantage when they face

Table 20

<table>
<thead>
<tr>
<th>Level of Satisfaction</th>
<th>Partial Win/Loss</th>
<th>Lost</th>
<th>All Non-Winners</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very or somewhat satisfied</td>
<td>6</td>
<td>28</td>
<td>12</td>
</tr>
<tr>
<td>Very or somewhat dissatisfied</td>
<td>22</td>
<td>44</td>
<td>33</td>
</tr>
<tr>
<td>All non-winners</td>
<td>11</td>
<td>38</td>
<td>21</td>
</tr>
<tr>
<td>Total Number of Cases</td>
<td>27</td>
<td>16</td>
<td>43</td>
</tr>
</tbody>
</table>

SOURCE: Institute for Civil Justice survey of litigants whose cases were heard in April 1982.

*Plaintiffs are considered to have won when the award equalled the claim, and to have lost when a defense verdict was returned. Defendants are considered to have won when a defense verdict was returned and to have lost when the award equalled the claim. Both plaintiffs and defendants are considered to be partial winners/losers when the award is greater than zero and less than the claim.
represented opponents at arbitration hearings. Among the individual litigants we interviewed were 15 pro se parties. In our conversations with them, we examined specific problems that they had encountered because they lacked attorneys. In related interviews with attorneys who had served as arbitrators, we explored their views on the special problems of pro se litigants who appeared before them.

We found that patterns of satisfaction and perceptions of fairness among pro se litigants differed considerably from those found among other individual litigants whom we interviewed. Pro se respondents were less successful overall than their represented counterparts, more likely than represented litigants to believe that they had been treated unfairly, and more likely to be dissatisfied. They were also more likely than represented litigants to believe that the arbitrators’ decision was "unjust," to perceive the arbitrators themselves as biased, and to report difficulty in gathering or submitting evidence related to their case. Table 21 compares levels of success, perceived fairness, and satisfaction among the two groups. The differences between the two litigant samples are not large enough to be statistically significant. Nevertheless, the generally negative shift in the distribution of pro se litigants' attitudes is a disturbing note.

It was clear during interviews with unrepresented litigants, both at the Arbitration Center and subsequently by telephone, that some had had major problems at their hearings. Lacking information on procedure from an attorney, or timely warnings about restraint, they had had difficulty in understanding what was expected of them and in avoiding behavior likely to try the patience of their arbitrators. Complaints made by those who perceived unfairness were often emphatic, and those litigants tended to be the most disgruntled respondents.

One pro se plaintiff, who described her hearing as very unfair, and who had evidently planned a combative case presentation, made the following complaint:

I wanted to hash it out with the other side, have a regular conversation and just say what I wanted. But the arbitrators said, "We don't want any arguments here!" How could we do it without an argument? The reason we were there was because we couldn't agree!

Another unrepresented plaintiff was annoyed to discover that the arbitrators had no intention of discussing the virtues of his claim with him, that the only expression of support he might or might not get from them would be found in their award.

Even those without major complaints had experienced varying degrees of difficulty in preparing and presenting their cases, and particularly in determining what evidence was relevant and what would be
Table 21

PATTERNS OF SATISFACTION, PERCEIVED FAIRNESS, AND AWARDS
AMONG REPRESENTED AND PRO SE LITIGANTS
(Percent)

<table>
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<tr>
<th></th>
<th>Represented Litigants</th>
<th>Pro Se Litigants</th>
<th>All Respondents</th>
</tr>
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<tbody>
<tr>
<td>Arbitration Award¹</td>
<td></td>
<td></td>
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<tr>
<td>Won</td>
<td>39</td>
<td>20</td>
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<tr>
<td>Partial win/loss</td>
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<tr>
<td>Lost</td>
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<tr>
<td>Perceived Fairness</td>
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<tr>
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<tr>
<td>Somewhat fair</td>
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<tr>
<td>Somewhat or very unfair</td>
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<td>Satisfaction</td>
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<td>Those Saying Arbitrators Were Biased</td>
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<td>Those Reporting Difficulty</td>
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<td>Total Number of Cases</td>
<td>51</td>
<td>15</td>
<td>66</td>
</tr>
</tbody>
</table>

SOURCE: Institute for Civil Justice survey of litigants whose cases were heard in April 1982.

¹Plaintiffs are considered to have won when the award equalled the claim, and to have lost when a defense verdict was returned. Defendants are considered to have won when a defense verdict was returned and to have lost when the award equalled the claim. Both plaintiffs and defendants are considered to be partial winners/losers when the award is greater than zero and less than the claim.
admitted by the arbitrators. Nevertheless, among those who managed adequately in this respect and who described their hearings as very fair were several who had plainly found the experience of being outmaneuvered and confused by their opponent's attorney disturbing, and even humiliating. How pro se litigants perceive fairness at their hearings appears to depend on how much help from the arbitrators they expect or feel entitled to and what kind of panel they actually appear before. Some who had expected to go it alone, but received some minimal assistance, found their hearings fairer than others, who evidently had been helped considerably by their arbitrators but had hoped to depend on them almost entirely.

The Center does not formally help with preparation, although clerks at the Prothonotary's office may offer some pointers on procedure if they have time. Court personnel are likely to advise a would-be pro se litigant who asks numerous questions in a case where the amount at stake is above a few hundred dollars to get an attorney. All seven pro se respondents who found their hearings less than very fair were plaintiffs. Four of these had claims of less than $700, and for them the employment of an attorney would obviously have been uneconomic. Three of them had cases filed in arbitration as a result of appeals entered by losing defendants at district justices' courts, where the plaintiffs had also appeared without attorneys. One had filed his claim under the mistaken impression that he would be appearing before a judge in the equivalent of a small claims court.

Of the remaining two, one was a tax protestor in search of constitutional remedies for the unfairness of life in general. The other had had a $2000 counterclaim awarded against him, and bitterly regretted his decision neither to hire a lawyer nor to seek any legal advice whatsoever. "Business was slow," he said, "so I decided to save the money. I thought I had a good case. Now I'm 95 percent sure I would have won if I'd had a lawyer." He believed that the arbitrators had simply paid more attention to his opponent's arguments than to his because he was unrepresented. He suspected that by not hiring an attorney, despite the fairly large sums at stake, he had somehow devalued his own claim in the eyes of his three attorney-arbitrators. As a businessman, he ought not to have made such an economy. He had appealed the award against him, and was about to hire an attorney, commenting that he had "learned a lesson."

The arbitrators whom we interviewed echoed the pro se litigants' frustrations with the arbitration hearing process, as they gave us the view from the other side of the hearing table. The proper management of pro se litigants was mentioned again and again by these arbitrators as being problematic. "Instructions to the Arbitrators," set out each
day in the hearing rooms by Center staff, state clearly that arbitra-
tors are not to try litigants' cases for them, whether or not the parties
are represented. Nevertheless, a majority of arbitrators we talked to
believed that pro se litigants should be helped to get their stories out
by means of judicious questioning, and that rules of procedure and
evidence should be relaxed as far as possible to facilitate this without
putting represented parties at a disadvantage. It was in determining
the appropriate degree of relaxation that arbitrators frequently found
themselves walking a fine line.

A minority of arbitrators, not categorizable except perhaps by tem-
perament, believed that unrepresented litigants should be left to
"sink or swim" and some believed that their presence in the hearing
rooms was, in itself, inappropriate. A name partner in one of Pitts-
burgh's largest law firms remarked, "If the policy decision were mine.
I would discourage them." A younger attorney remarked that people
whose claims were so small that hiring a lawyer was uneconomic
should either "Forget it, or go to a Magistrate's court." More prin-
cipled was the objection of a personal injury defense attorney who
asserted,

The appearance of unrepresented parties subverts the whole adver-
sary system, which requires question and answer. How can they ask
themselves the questions an attorney would ask to bring out their
cases? How can they properly cross-examine their opponents?

Most arbitrators saw both the right and propriety of pro se litiga-
tion as uncontestable, and focused on the question of how to deal most
fairly with these anomalous litigants in a system not designed for
amateur participation. One arbitrator said he had seen manifest un-
fairness in cases where pro se parties had lost simply because they
had failed to send a piece of documentary evidence to the other side
before the hearing, and had no other evidence to present once the
unmailed item had been declared inadmissible. "They must have left
the court with a sour taste in their mouths," he said.

Unrepresented litigants did not invariably excite sympathy in their
adjudicators, some of whom spoke strongly of "the bad standard of pro
se behavior" at the Arbitration Center. "Often it is truly terrible to
hear these people," said one. "They frequently have very poor cases,
and are simply mad. They interrupt, argue, editorialize, and have no
concern whatever for procedure." In general, older and more experi-
enced arbitrators had fewest complaints of this sort to make. They
stressed the need to manage pro se parties closely, while giving them
"a sense of permission" and allowing them, initially at least, to state
their case to the board as simply as they might to a lawyer sitting in
his office. One described his approach as follows:
With those who are not familiar with procedure, I always explain this carefully to them before we begin the hearing. When it’s time for cross-examination, I say to them, “Now is your chance to ask questions of this witness.” Otherwise they’re likely to miss out by going into a prepared statement of some sort that just doesn’t address the issues. Sometimes they do that anyway, and I can’t help them then. I won’t try their case for them. They must bring out the vital points themselves.

This arbitrator was unusual in that he frequently suggested a kind of pre-hearing conference to litigants, to clarify exactly which issues were in dispute, and which could be disposed of in advance as irrelevant. He would also offer to mediate in any case where the parties showed signs of being amenable to such a resolution. “I’ll say, ‘We will decide this dispute for you, but one or both of you is going to be very unhappy. Can’t we find some middle ground here?’” Two other arbitrators reported attempts to mediate, and perhaps half a dozen in all remarked that such an alternative approach might be preferable to any adversary procedure, however relaxed, in dealing with many of the disputes brought before them, and in particular those involving unrepresented disputants.

None of the majority of arbitrators who were aware of real problems in attempting to deal fairly with pro se individuals had any other solutions to offer, with the exception of one who suggested that the court might appoint some of the young attorneys who appeared each morning, hoping for assignment to a panel, as counsel to unrepresented parties also present. This respondent had served as an arbitrator from the beginning of the program in Pittsburgh, initially sitting without any fee. For the past 15 years he had served as chairman about three times a year. He believed that even the briefest session of advice and explanation of procedure offered to unrepresented litigants before they entered the hearing rooms would not only be very helpful to these parties, and make the work of the arbitrators easier, but would also be beneficial to the court and legal community.

**HOW INSTITUTIONAL LITIGANTS EVALUATE ARBITRATION**

Like individual litigants, representatives of institutions that make extensive use of arbitration do not generally compare the arbitration procedure to trial. Unlike the unsophisticated individual litigants, however, institutional litigants appear to care little about qualitative aspects of the hearing process. They are somewhat concerned that
relaxing the rules of evidence may, in some cases, result in an "inaccurate" decision. But in the absence (in most circumstances) of doctors, police officers, etc., prohibitions against discovery in cases worth less than $3000 and the necessity to prepare and present cases rapidly are all seen as acceptable—often even laudable—attributes of the arbitration process.

In their evaluations of arbitration, institutional litigants primarily emphasize the pattern of arbitration awards. Because most of them believe awards fall within a predictable, acceptable range, they are generally satisfied with the program. Unexpected outcomes, awards described as “way out of line,” are attributed to poorly qualified arbitrators. They are appealed, often as a matter of course, even when such a course is not cost effective, in an effort to “keep the system honest.”

**Arbitrators’ Qualifications**

Five complaints about arbitrators’ qualifications were voiced frequently by institutional litigants. These were

1. There are not enough experienced trial attorneys available to serve as chairmen;
2. The defense bar is inadequately represented on arbitrator lists;
3. There are too many volunteers from “esoteric” branches of the law, such as trust officers and patent attorneys;
4. There are excessive numbers of novice attorneys occupying second and third chairs on panels; and
5. As a result of some or all of the above, inadequate legal expertise is brought to bear in many cases.

But each complaint was contradicted so many times, often by the respondent who first voiced it, that we were led to speculate that rather than pointing to real problems with arbitrator selection, they may simply be a part of the “culture” of arbitration.

**Not Enough Trial Attorneys.** Several critics commented that the best way to improve the quality of the arbitration boards might be to make service compulsory for all members of the Allegheny bar and so increase the number of experienced attorneys and trial lawyers available in the pool. But such suggestions were not advanced with much enthusiasm and were countered by other institutional litigants, who noted that trial attorneys are not necessarily the best candidates for arbitrators. For example, one attorney remarked:
I think these lawyers may in fact be least suited to the role of chairman. They often have a tendency to dominate the proceedings, and they may attempt to try both sides of the case at once. By asking too many questions to reveal a weakness in an argument, they sometimes create at least the appearance of bias. I think they may find it particularly difficult to abandon an adversary stance.

**Not Enough Defense Attorneys.** The lack of defense attorneys on arbitration boards is generally presumed to be advantageous to plaintiffs in what is already held by many to be "a plaintiff's proceeding." But some defense attorneys who have served as arbitrators noted that their participation did not automatically gain the defendant a sympathetic ear. Said one young attorney:

> The first time I served I thought I would have to guard against what I supposed would be my natural defense orientation. But I was really surprised to find how sympathetic I felt toward plaintiffs. Most of them have good cases. They don't bring suits for these smaller amounts unless they really have been hurt financially. I think they'd have an above average chance of winning in any system. So the arbitrators probably will be plaintiff oriented, even with a preponderance of defense attorneys on the boards.

**Attorneys from Esoteric Fields.** The supposition about attorney-arbitrators from "esoteric" branches of the profession is that these practitioners are likely to have a somewhat lapsed familiarity with basic tort and contract law, and with rules of evidence and procedure. But only one respondent offered an exemplary tale of detrimental consequences:

> I once planned a defense around a scheme to exclude a certain category of clearly inadmissible evidence. But a trust officer chairman let everything in. So I lost the case and looked dumb into the bargain.

Another commented:

> So what if one man on the board has never heard a replevin case? You explain it to him. That's the safeguard of the three-man system!

**Too Many Young Attorneys.** The use of new admittees on boards was a matter of concern to a substantial minority of respondents. Arbitrators do not introduce themselves, or give their affiliations, at the beginning of hearings. So litigants and their attorneys will not necessarily be aware of the fact that the members of their panel may have no experience in the specific area of the law with which they are concerned. But youth is unconcealable, and a few litigants did comment adversely on this characteristic in one or more of their arbitrators.
Service on arbitration panels is, however, regarded as useful experience for young practitioners, and some experienced arbitration attorneys noted approvingly that young arbitrators may be more willing to hear litigants out than are the older practitioners for whom the proceedings have no novelty.

**Lack of Specialization.** The extent of specialized legal expertise required to decide the typical arbitration case was also a source of disagreement among institutional litigants. Many respondents commented that detailed legal knowledge was rarely required of arbitrators. One, referring to the hearing as "a lie detector test," remarked that the issue was most frequently one of credibility:

You listen to both sides. Your inescapable conclusion most likely will be "One of these guys is lying!" Your job is then to decide which one.

However, a few attorneys did mention a need for more specialized legal background in board members than was usually available. Government defense lawyers, for example, hoped for some acquaintance with statutes defining governmental immunity to tort claims. Some attorneys attempt to deal with the problem of lack of specialization by presenting brief memoranda to the arbitrators.

**Use of the Appeals Process**

When arbitrators deliver unacceptable outcomes, institutional litigants are usually ready to appeal. The easy availability of appeal from an arbitration award is an important feature of the arbitration program for institutional litigants, for it provides them with a mechanism for "policing" awards. In deciding whether to appeal, the amount at issue in a particular case is not of paramount importance. Because they are involved in a large number of cases, institutional litigants can adopt a general strategy of appealing unacceptable outcomes even when the cost-benefit ratio of appeal is unfavorable for a particular case.

Insurance companies whose representatives we interviewed appeared to be especially willing to make appeals of this kind, perhaps because they believe they are particularly able to measure the "quality" of arbitrator awards. Many property damage claims are resolved by insurance companies through their own inter-company insurance arbitration forums. The decisions handed down in these forums are used as a yardstick for assessing the outcomes of court arbitration. One insurance claims superintendent commented:

Overall, decisions from inter-company arbitration are generally better than those available [from the court program]. The arbitrators at
the forums are claims people, who are very knowledgeable about losses, expert in damages, and more familiar with the specific laws involved than is sometimes true of the court arbitrators.

Through the appeals process, companies may attempt to bring the outcomes of the court arbitration procedure more into line with these decisions.

ASPECTS OF THE PITTSBURGH PROGRAM CONTRIBUTING TO DISSATISFACTION

Our interviews with individual and institutional litigants identified two aspects of the way Pittsburgh operates its arbitration program that are not inherent to arbitration but are a source of some dissatisfaction. The first affects individual and institutional litigants alike—the "calendar call" approach to setting the schedule for each hearing day. The second poses problems only for individual litigants (in particular, those who appear pro se)—the use of arbitration as an appeal mechanism for the district justices' court.

The Hearing Day Schedule

By using a "calendar call" approach to setting the hearing day schedule, program administrators assure that arbitrators' time is used with maximum efficiency. But for litigants, this approach to scheduling requires spending the better part of a day waiting in court for the arbitrators to become available to hear their cases. All litigants must appear at 9:30 a.m. (or 10:00 a.m. for the "late call"), and the arbitrators meet through the morning and into the early part of the afternoon, calling for new cases approximately every 45 minutes. Therefore, the amount of time most litigants must wait considerably exceeds the amount of hearing time accorded to them. Litigants understandably view this as wasted time; for many who have taken time away from work, it represents lost pay or leave time. Many litigants are further frustrated because it is difficult to determine approximately when their case will be heard during the day. Although litigants know what number in the queue their case has been assigned, the Center has no system for posting the numbers of the cases that are in the process of being heard.

Of all individual litigants who expressed any dissatisfaction with the arbitration program 23 percent objected, sometimes emphatically, to the length of time they had to wait for hearing. Some litigants
inferred, from this experience, that program administrators were insensitive to their needs. Other litigants worried that the waiting time lessened their chances of a fair hearing, because all of the participants, including the arbitrators, would be exhausted by the time of the hearing. Dissatisfaction with waiting was thus often linked to anxieties about the likelihood of receiving an equitable hearing and a just outcome.

Arbitrators’ comments suggest that concern about the effect of the schedule on the quality of hearings is not entirely unfounded. Half of the arbitrators we interviewed commented about the “scheduling problem.” But many assumed that their lack of stamina put them in a small minority. “I know most of the guys prefer just to go on until we’re finished, but when it gets past one o’clock I stop enjoying it.” was one typical response. Anotherarbitaltor described himself as “exhausted, weak, hungry, and with a headache” during the last few hearings of a session, hastening to add that such deterioration had no effect on his judgment. One particularly candid respondent said that after lunchtime had come and gone she was “ready to give anybody anything just to get rid of them, and inclined to give nothing to anyone who did anything at all to prolong a hearing.”

Other arbitrators commented that it was difficult to pace either themselves or the proceedings when they had no clear idea of how many more cases waited outside for hearing, or what progress was being made in adjoining rooms. Several remarked that the clerks did attempt to place first those cases likely to require longer hearings, but that that was not always possible.

Only two or three arbitrators actually said that they liked the scheduling status quo at the Center, that they could more easily afford to miss a lunch than forgo an entire day of their own work. No respondent suggested any change as radical as separately scheduled pre- and post-lunch sessions. Arbitration administrative staff whom we talked with believe that such a move would be highly unpopular with arbitrators. But other courts have adopted such split-day schedules, apparently with some success.

Arbitration on Appeal from District Justices’ Court

As is true elsewhere, the Court of Common Pleas (the trial court of general jurisdiction) serves as an appellate court for cases initiated in the lower court. In Pittsburgh, this means that cases appealed from the district justices' courts arrive in the arbitration division. Among the most dissatisfied of our respondents were those who had initially filed claims at the lower court level—22 of the individual litigants we
interviewed had arrived at arbitration through this route. Only one-quarter were entirely satisfied with their experience in arbitration.

To understand the dissatisfaction expressed by these litigants it is necessary to know something about the kind of forum they had planned to appear in, compared with the one they eventually got. District justices, formerly known as magistrates, aldermen, or squires in Pennsylvania, are elected officials who need not be lawyers.6 Lawyers only occasionally appear in these courts, and the proceedings may be sufficiently informal for a district justice to examine a plaintiff's vehicle, for claimed damage, in a nearby parking lot. Costs and time to disposition vary widely across the county, with some district justices' courts being slower and more expensive than the Arbitration Center. Whatever their shortcomings, in 1982 some 22,000 litigants filed suit in these familiar local courts rather than bring their claims downtown to the Arbitration Center, whose existence is generally less well-known to Pittsburgh residents.

Although the district justices' court may be the forum of choice for minor local disputes and for neighborhood businesses seeking an attorney-free method of collecting unpaid bills, our interviews indicate that as a matter of policy, many institutional defendants do not appear in these courts. Reportedly they have learned by experience that they are very rarely successful defending against plaintiffs appearing before their own elected district justice. Their usual practice is to allow the plaintiff to take a default judgment, which they then appeal to arbitration within 30 days for a fee of $36.50. An inexperienced litigant who files claim at a local district justices' court against an institutional defendant, without seeking the advice of an attorney, is likely to be surprised by the failure of the opposition to appear. Many respondents, arriving at the district justice's office fully rehearsed and ready to present their case, described their frustration and anger against the absent opponent quite vividly. Some, on learning next that the defendant had appealed their award, clearly began to feel vengeful. Injury had now been added to insult, in the form of an expensive excursion to the downtown Arbitration Center, with consequent attorney fees and lost work time. A manageable dispute to be decided on home turf had been transformed to an alarmingly unpredictable game away from home.

Disputants whose default judgments from district justices' court had been appealed were dissatisfied by the time they got to the Arbitration Center and were likely to remain so throughout the proceedings. Their opponents, who may have filed the appeal simply because

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6Those who are not lawyers yet are required to complete a special course of study directed by the Administration Office of Pennsylvania courts.
they believed it essential to get a fair hearing, were as likely to be discontented. In cases where there was no institutional party to the dispute, respondents often seemed embarrassed that a suit with many of the characteristics of a neighborhood grudge match or an old-fashioned family fight, should have been exposed, however briefly, to the professional scrutiny of five attorneys. A frequent comment was that it was "ridiculous that it ever got this far." These litigants, who had been unable or unwilling to settle their claims before the date of hearing, apparently became the recipients of considerably more litigation, process, and argument than they had anticipated.

AN ACCEPTABLE FORM OF JUSTICE

Critics of court arbitration have worried that it may deliver "second-class" justice to citizens with small claims and modest resources for litigation. Their standard of "first-class" justice includes the full panoply of judge-and-jury trial and due process safeguards that are provided by our traditional adversarial process. Our interviews indicate that litigants whose cases were heard in the Pittsburgh arbitration program share neither the critics' concern that the quality of justice is denigrated by arbitration, nor their standards for evaluating quality.

Individual litigants who bring cases to arbitration in Pittsburgh have very simple requirements: They want a speedy, inexpensive procedure that provides a full hearing of their dispute before an impartial third party, and an opportunity to challenge if the outcome proves unacceptable. They are generally indifferent to the qualifications of the third-party adjudicators as long as they are neutral, and to the setting in which the hearing is held. But they appreciate the informality and privacy of the arbitration process. Most of those we interviewed found that their requirements were met.

Institutional litigants who depend upon the arbitration program for routine resolution of large numbers of civil suits also have rather simple requirements. They too want a speedy, inexpensive procedure, but they are less sensitive than individual litigants to the qualitative aspects of the hearing process. They judge arbitration primarily on the basis of the outcomes it delivers. They attribute unfavorable outcomes to the judgment of the arbitrators, not to the lack of opportunity for discovery or for cross-examining witnesses, or to the absence of other attributes of the trial process. Most institutional litigants whom we
interviewed find that arbitration awards are generally within a predictable, acceptable range. They deal with the occasional unsatisfactory award through the appeals process, which they view as an essential "fail-safe" feature of the arbitration program.

Our interview data suggest that arbitration's informal procedures may lead some litigants to infer that they were treated unfairly. A "rough and ready" procedure for assigning arbitrators to cases, administered in a flexible fashion so as to accommodate parties and attorneys' schedules, may in some circumstances lead litigants to believe that their case has been matched with arbitrators who are predisposed in favor of one of the disputants. The use of volunteer attorneys as adjudicators may give rise to speculations about the influence of personal motivations on the decisionmaking process that might not occur to the litigant if the adjudicator were a black-robed judge. Allowing the arbitrators broad discretion in determining the pace of the hearing may lead litigants to wonder whether they have been granted a proper opportunity to present their cases.

Pro se litigants, probably because they are aware of their already disadvantageous position with regard to their opponents, are particularly prone to such inferences of unfair treatment. Unrepresented individual litigants were most likely to believe they had been treated unfairly and to attribute unsatisfactory case outcomes to flaws in the arbitration process. But a careful review of their experiences suggests that at least some of the problems that pro se litigants encounter are attributable to their lack of information about the arbitration process.

The position of pro se litigants might be bolstered, and their concerns about unfair treatment ameliorated, if the court were to provide them with more information about program requirements. A brochure explaining in simple terms each step involved in filing or answering a claim, in choosing and organizing evidence for the hearing, and in presenting a case to the arbitrators would meet the needs of most pro se parties. The Allegheny County Bar Association, which provides a recorded telephone service for free legal information, could add a tape cassette directed at pro se parties. Or the court might consider producing a "demonstration" videotape of a specially scripted arbitration hearing, with voice-over commentary on typical procedural features and evidentiary questions. Versions of the same tape, with different commentaries, might also be used for arbitrator training programs.5

Most of the decisions the Pittsburgh court has made regarding the operations of arbitration seem to serve its users well. The simplified filing procedure, immediate setting of a hearing date, and centralized

5Some courts do provide special assistance like this to pro se litigants. See Halberstadt (1982).
hearing process are the ingredients that enable the program to deliver speedy, inexpensive dispute resolution. But the single-session "calendar call" approach to scheduling each day's hearings is a source of considerable dissatisfaction among litigants. Modifying this approach, perhaps by splitting the day into two sessions, each with its own calendar call, would reduce waiting time, attorneys' fees, and frustration levels for many litigants. It might also provide arbitrators with a welcome respite from the hearing process, during which they could rest and prepare themselves for further deliberations.

Another major source of dissatisfaction with arbitration, its use as an appeal mechanism for the lower court, is probably beyond the purview of the program's administrative staff, but it may be worthy of further consideration by the bench and bar. In the current system many plaintiffs bring their cases to the district justices' courts expecting resolution and finding instead that the defendant has defaulted with the intention of filing an appeal and forcing the plaintiff to arbitration. That is bound to lead to some dissatisfaction with the court process.

Nevertheless, most litigants whom we interviewed believe that the arbitration procedure is an acceptable way of resolving disputes. Litigants do not generally attempt to rate the arbitration process on an abstract scale ranging from "first-class" to "second-class" justice. Instead, individual litigants ask, "Did my dispute receive an appropriate amount of attention from the courts? Did I have a reasonable chance to present my case? Was I treated fairly?" Institutional litigants ask, "Can I depend on arbitration to deliver outcomes within an acceptable range?" For most of those we talked to, the answer to these questions is "Yes."
V. USES AND LIMITATIONS

The idea of a simple court procedure for disposing of cases quickly, inexpensively, and equitably has long attracted public and private decisionmakers. Small claims courts were an early expression of the desire for simple justice; court arbitration programs are a more recent manifestation. But in many parts of the country the goal of simple justice remains elusive. In California, for example, we found that it was difficult for most courts to deliver quick disposition of disputes through arbitration without adding new administrative burdens to the court. Litigants who sought a simple form of dispute resolution in arbitration could not, as a practical matter, maneuver their way through the pretrial process without specialized expertise. In seminars and professional meetings that have debated the wisdom of extending court arbitration programs to other jurisdictions, attorneys have expressed concern about the accuracy of decisions obtained through an informal process that omits certain due process safeguards. Public decisionmakers have wondered aloud whether their constituents are being offered a "second-class" form of justice.

In Pittsburgh, the Allegheny County Court of Common Pleas has for many years operated an arbitration program that seems to have gone quite far toward meeting the goal of simple justice. The program does not fully satisfy all those who come in contact with it, but it does seem to provide an acceptable form of resolution for a broad range of disputes without great cost to either the taxpayers or the litigants. Our study of how litigants fare in the Pittsburgh arbitration program provides some insight into what arbitration can and cannot offer to those who seek a simple but equitable form of dispute resolution.

WHAT COURT-ADMINISTERED ARBITRATION CAN DO

Speedy Disposition of Civil Suits, Without Great Expense to the Taxpayers

Our previous research on court-administered arbitration programs operating in California found that in many courts the program was unable to speed disposition of civil suits. Speedy arbitration seemed to require an additional investment of scarce resources, rather than the diminution of court attention to these cases that program supporters
had projected. Some readers of that study inferred from this that court-administered arbitration is not an attractive approach to expediting civil case processing. However, our study of the Pittsburgh program demonstrates that court-administered arbitration can produce extraordinarily rapid disposition of civil claims, without great expense to the taxpayers.

To produce speedy disposition, the court must exert tight control over the scheduling of arbitration hearings. The Allegheny Court of Common Pleas has achieved this control by centralizing program administration. When the responsibility for scheduling arbitration hearings is in the hands of individual attorney-arbitrators, the court must either accept the fact that the attorneys will tend to continue cases in order to accommodate their own and their colleagues' schedules, or it must allocate staff time to “riding herd” on the arbitrators. When the full responsibility for scheduling cases is in the court’s hands, the court can set the pace at which arbitration hearings will be held.

Setting a fast pace for arbitration hearings depends on having an adequate supply of arbitrators available, using a simple arbitrator assignment policy, and making efficient use of the arbitrators' time while they are volunteering to serve. The Allegheny Court ensures an adequate supply of arbitrators by setting minimal requirements for arbitrator appointment. Arbitrators need only be “active” members of the bar and their experience need not be in fields related to the areas of law associated with most arbitration cases. The arbitration panel chairman must have at least three years of experience, however. As a matter of informal policy, the responsibility for chairing an arbitration panel is generally assigned to an attorney who has had a substantial amount of court arbitration experience.

By adopting a “calendar call” system for assigning cases to arbitration hearing panels, the court ensures that the arbitrators will have a steady flow of cases through their hearing rooms on the day they have volunteered to serve. Litigants and their attorneys must appear early in the morning to receive their number in the queue of cases awaiting arbitration and wait “on call” until it is their turn to go into the hearing room. Such a system assigns a high priority to the efficient use of arbitrator time and discounts the attendant inefficiencies in the use of litigant and attorney time. The court can thus use three arbitrators, paid at the rate of $100 per day, to hear each case, for an overall cost in arbitrator fees of about $60 per case heard. Because a portion of the arbitrators' fees is reimbursed by appellants, the net cost is further reduced to about $40 per case. In contrast, the single California arbitrator, by statute paid at the rate of $150 per day, in practice charges about $150 per case.
The "calendar call" approach to scheduling also produces, almost as a matter of course, a simple method for assigning arbitrators to cases. Litigants and their attorneys have no opportunity to participate in the arbitrator selection process, but they are assured of a more or less random assignment of arbitrators to their cases, without having to go through the elaborate and time-consuming selection procedure that is mandated by some arbitration programs. The initial assignment of a number in the queue is a quasi-random process, which depends on the case's docket number and the time when the parties arrive at the Arbitration Center (for the regular or "late" call). The actual assignment of a specific case to a specific panel of arbitrators is also random, because in most cases it depends on the order in which panels finish the first cases they have been assigned and are ready to move on to the next.

Finally, speedy disposition of arbitration cases without substantial increases in court expenditures requires that the responsibility for valuing cases to determine their eligibility for arbitration be assigned, initially, to litigants and their attorneys. Court assessment of case value requires additional expenditure of court resources; where judges are required to value cases, as in the California program, this constitutes a further drain on the courts' scarcest and most expensive resource and is likely to delay the scheduling of cases for arbitration hearings.

When the responsibility for valuing a case is placed in the parties' hands, compulsory arbitration, despite its name, becomes a voluntary program. The cases that arrive at the arbitration hearing rooms have been "self-selected" by the plaintiffs as appropriate for such a program. Plaintiffs' attorneys who believe their cases are not susceptible to arbitration or who, for other reasons, choose to avoid expeditious resolution are free, in the short run, to declare that their cases are worth more than the jurisdictional limit of the program and not eligible to be filed in arbitration. Our analysis of caseload statistics for the Pittsburgh arbitration program strongly suggests that many personal injury cases that are worth less than $10,000 are initially filed by plaintiffs' attorneys in the regular trial division. Such cases are heard in arbitration only if they remain active for over a year and eventually are scheduled for pretrial settlement hearings with a judge. At that time, if the parties fail to arrive at a settlement, the judge will order the case "down" to arbitration. The judge's authority to order the case to arbitration is the basis for calling the program "compulsory."

By not allocating resources for assessing the value of all cases at an early stage of the pretrial process, the court gives up the opportunity to expedite all "arbitration-eligible" disputes. In a sense, the court says to the plaintiffs in such suits.
If you want a quick resolution of a dispute over a modest amount, we will provide it. If not, we will let you adopt your own schedule for settling the dispute up until the point when judicial resources are available for dealing with it. But we will not let you spend the most expensive of court resources, trial time, on such a dispute unless you first attempt to resolve it through arbitration.

The record indicates that few of the arbitration-eligible cases that are filed in the trial division fail to settle, either on their own or with a judge's assistance. Whether allowing such cases to linger on the court calendar until the time of the settlement hearing places a large administrative burden on the court, and whether the plaintiffs in such cases are party to attorneys' decisions to delay resolution, are subjects for further exploration.

Access to the Court for Diverse Users

The small claims movement foundered, in part, because the courts acquired a reputation for serving as an inexpensive collection agency for big business interests, rather than as a dispute resolution forum for ordinary citizens. Our study of the Pittsburgh arbitration program indicates that resolving disputes over bad debts is also a function of court arbitration. But our analysis of court caseload statistics and our interviews with litigants demonstrate that the Pittsburgh program provides access to the courts for diverse users pursuing various civil complaints.

Individual litigants in Pittsburgh can use the courts for resolving disputes over modest amounts of money because the cost of arbitration is quite modest. The program has few enough prerequisites and the arbitration procedure is understandable enough to make pro se representation feasible. But individual plaintiffs appear to have little difficulty in obtaining attorney representation. Arbitrating cases is financially attractive for certain components of the plaintiffs' bar because it generally yields positive outcomes without requiring a substantial investment of attorney time; defense attorneys can afford to charge modest fees for the amount of their time required to represent defendants at arbitration. As a result, attorneys' fees for representing clients at arbitration have a reasonable relationship to the monetary stakes involved in all but the smallest claims.

In addition, the costs associated with preparing for and participating in the arbitration process are minimal for the typical litigant, and the emotional stress associated with appearing at a hearing is not untoward for most individual litigants. The elapsed time to disposition of, on average, 90 days does not cause many financial or other problems for most litigants.
Increasing the ability of ordinary citizens to gain access to the civil court, moreover, does not result in a flood of frivolous litigation. The level of litigation in Pittsburgh, measured by the number of civil suits filed in the trial court of general jurisdiction per capita is no higher than in similar urban trial court jurisdictions that do not have an arbitration program.

Approximately one-half of all suits filed in the arbitration division of the Allegheny Court of Common Pleas are dismissed, settled, or disposed of by court judgment without the necessity for a hearing. The availability of arbitration does not seem to encourage frivolous contention of claims by individual defendants who know that the plaintiff's claim is justified. The pattern of arbitrator awards suggests that most plaintiffs' claims are not wholly frivolous, although the amounts requested may, in the opinion of the arbitrators, be somewhat inflated. Finally, our interviews with litigants suggest that, as a group, those who bring cases to arbitration are no more litigious than Americans in general.

Final Outcomes that Are Acceptable to Diverse Users

An important question about the usefulness of adopting a court arbitration program is whether it can provide acceptable and final outcomes. Finality is required because, without it, arbitration simply adds to the burden litigation imposes on both the courts and the litigants. Because court arbitration awards are not binding, many observers fear the program cannot meet this requirement.

Practitioners have suggested various measures of the acceptability of outcomes: the rate of appeal from arbitration awards, the division of appeals between plaintiffs and defendants, the actual rate of de novo trials, the relationship between arbitrator awards and de novo trial verdicts. If the appeal rate or the de novo trial rate is low, if the division of appeals between plaintiffs and defendants is roughly equal, and if the arbitrator awards and the trial verdicts do not differ considerably, then, according to the conventional wisdom, arbitration is delivering both final and acceptable outcomes. Our analysis of the pattern of arbitration awards and dispositions on appeal in Pittsburgh suggests that the program delivers "acceptable" final outcomes to most users. It also suggests, however, that the conventional wisdom on how to interpret the various measures of acceptability is overly simplistic.

Most of the arbitration awards handed down in the Pittsburgh program are accepted by the parties on both sides. About one-quarter of
the awards are rejected; of these, about three-quarters are settled without trial. The appeal rate is considerably lower than the rates registered in both the California program and in the federal district court arbitration experiments, which have been in the neighborhood of 50 percent.

The appeals in the Pittsburgh program are not equally divided between plaintiffs and defendants. Rather, they follow the pattern of arbitration awards: Because defendants "lose" more frequently than plaintiffs, they also appeal more frequently. Arbitration awards and outcomes on appeal do differ considerably for many cases, suggesting both that appeals are not filed frivolously and that the appeal process is serving its intended function of correcting "mistakes" in the arbitration process. Outcomes of appeals vary considerably with case characteristics, but the variations do not suggest that there are any major biases in the pattern of awards or the pattern of trial verdicts. Although individual case outcomes may be affected considerably by appeal, the pattern of arbitration outcomes is not very much affected by the appeals process.

Our study also sheds some light on the factors that determine "acceptability" for both individual and institutional litigants. Our interviews with litigants strongly suggest that an important component of acceptability for the ordinary citizen who only rarely interacts with the court system is the hearing process itself. Satisfaction with the arbitration program requires that the individual perceive that he has been treated fairly. Simply winning his case does not ensure that the litigant will believe he has been treated fairly, nor does losing necessarily lead to a perception of unfairness. Rather, perceptions are based on the litigant's view of how the hearing was conducted.

Our interviews suggest further that the average citizen's notion of "fairness" does not incorporate the judicial robes, formal procedures, or the various components of due process that are the hallmark of trial. But his notion of fairness is not simply cheap, quick dispute resolution. Rather, the average individual seems to believe that a "fair" dispute resolution procedure is one that provides an opportunity for a hearing of the facts of the case before a neutral third-party adjudicator. Our data suggest that ability to appeal the arbitration award contributes to individuals' perceptions that the process is fair. We find no evidence in our interview data that the typical individual litigant envisions a model of "first-class" justice against which the arbitration process is judged and found wanting. Rather, individual litigants appear to believe that it is appropriate to tailor dispute resolution procedures to the nature of the disputes and, perhaps, that it is acceptable to invest smaller amounts of resources on resolving simple disputes than might be required to dispose of more complicated cases.
Attorneys who make frequent use of the arbitration program clearly assess acceptability on different grounds. They are more likely to measure the arbitration process against trial court procedures and arbitrators against judges, and they sometimes find the program wanting on both grounds. Institutional litigants, however, compare the court arbitration program to other mechanisms for disposing of civil claims with which they are familiar: for insurance companies, inter-company arbitration; for banks, institutional collection procedures. But the predictability of outcomes is probably the institutional litigants' most important criterion for assessing the arbitration program. An institutional litigant judging that an award is outside the expected range is likely to appeal. The availability of a quick and inexpensive appeal process may therefore be an essential aspect of arbitration's acceptability to these litigants.

WHAT COURT-ADMINISTERED ARBITRATION PROGRAMS CANNOT DO

Court-administered arbitration is not a perfect mechanism for resolving civil disputes. There are tradeoffs to be considered in designing any court arbitration program, decisions that require balancing concerns for efficiency and equity. To maximize efficient use of arbitrator time, the court may have to discount efficient use of litigant and attorney time. To ensure an adequate supply of arbitrators, the court may have to assign attorneys to hear cases that are not in their area of expertise. Whatever the particular arrangement of program features that the court decides on, most parties affected by the program will be dissatisfied with some aspect of its design or implementation.

Our study of the Pittsburgh program indicates the effects of choosing a particular set of design features. But our investigation of arbitration program operations and outcomes, and the reactions of program users, also suggests that there are some objectives that we cannot reasonably expect arbitration programs, however designed, to satisfy.

Not a People's Court

Some proponents of alternative dispute resolution hope to create "people's courts" whose purpose will be to serve, and whose operations will reflect, the values of the ordinary citizen. They are unlikely to achieve this goal.
American court systems are the creatures of their creators, all or most of whom are attorneys. For the typical citizen, the court is an institution that is little understood and rarely visited. Attorneys, especially litigators, spend much of their time in court. They influence the development of court procedures, they routinely exercise court rules, and they interact daily with court personnel, including administrators and judges. As judges or arbitrators, attorneys adjudicate cases brought before them by other attorneys. The individual who ventures into any part of this system, even if it is informal, intelligible, and accessible, has little chance of influencing its operations. Ultimately, an arbitration program exists to serve litigants; but to ensure that its daily operations will run smoothly, the program administrators must see to it that it serves the attorneys first.

Court-administered arbitration programs do not do away with the need for legal representation. Our study of the California program indicated that it would be difficult, if not impossible, for the average individual to bring a case in arbitration without legal assistance. In Pittsburgh, a substantial proportion of litigants do appear at arbitration hearings without benefit of counsel, but a pro se litigant is evidently at a considerable disadvantage against a represented opponent.

The pro se litigant's disadvantageous position is probably an inevitable result of the adversarial approach to resolving disputes. Success in the adversarial process depends on having a particular set of social skills—articulateness, assertiveness, etc.—that characterize most litigators but are not necessarily shared by others. Further, even when the adversarial procedure is greatly simplified (by comparison with trial) previous experience with and knowledge about the procedure is useful. Attorneys who routinely litigate in the Pittsburgh arbitration program know its formal and informal rules; they understand what kinds of evidence may be submitted, and they know what sorts of arguments are likely to persuade arbitrators. Pro se litigants are at a disadvantage on both points.

It is not clear what can or should be done to improve the pro se litigant's position. Prohibiting representation on both sides (an approach adopted by 11 out of 52 small claims programs nationwide (Warner, 1980)) does not necessarily equalize the parties' positions, if one party, although not a lawyer, represents an institution that litigates frequently. The Allegheny Court of Common Pleas could improve the instructions it provides to litigants on how to prepare for and present a case in arbitration. It could provide additional training materials for arbitrators and systematize the arbitrators' approach to a hearing involving pro se litigants; it could also socialize arbitrators to accept pro se litigation as appropriate when the litigant chooses to
adopt it. Despite such efforts, however, pro se litigants will probably continue to suffer a disadvantage when they try to take on the American legal system without a lawyer.

**Imperfect Appeal Mechanism**

Among arbitrators and some institutional litigators in Pittsburgh we found a tendency to discount the possibility that the program may on some occasions deliver unjust or incorrect outcomes by noting that the litigant can always appeal an unsatisfactory award. Over time, this can become an excuse for not attempting to improve imperfect procedures. For example, the belief that an appeal is readily available to the litigant may lead arbitrators to be less deliberate in their consideration of a case than they should be, or it may lead program administrators to be less careful in their selection of arbitrators than they should be. But the *de novo* appeal mechanism is itself imperfect.

Since 1981, there has been no explicit statutory provision in Pennsylvania for setting aside an award for arbitrator corruption or misbehavior. Although the court has inherent power to punish an arbitrator for misbehavior, and may report such an arbitrator to the State Supreme Court Disciplining Board for action, the most practical recourse for an individual litigant who feels there was such misbehavior in his case is to appeal for trial *de novo* (*Penn. Rules of Civil Procedure*, Rule 1308, Explanatory Comment). The cost of such an appeal, although fairly modest, is still more than many lititgants feel they can invest. Individual lititgants may be at a particular disadvantage relative to institutional litigants, because they find it more difficult to assume the economic risks associated with an appeal. Plaintiffs and defendants alike may therefore accept arbitrator decisions that a judge or jury would deem inappropriate, because they choose not to invest in appeal. Over time, this may drive an arbitration program toward delivering "reasonably acceptable" rather than "just" decisions.

**Not Appropriate for All Civil Disputes**

No matter how well designed and implemented, court-administered arbitration programs are not appropriate for disposing of all civil cases. Some litigants would be better served by a court program that attempts to assist them in settling their case, rather than carrying it all the way to hearing. As experienced adjudicators know well, the decision handed down in a particular case is likely to disappoint both
parties. In some cases, if the litigants could arrive at a compromise between their positions, they would both be happier with the outcome.

Our interviews with litigants suggest that, once they are caught up in a dispute, many individuals are unable to negotiate a compromise on their own. In response to our questions about settlement attempts, such individuals could only tell us about their repeated requests that their opponent provide compensation for injury or damage, or their repeated denials of such compensation as unwarranted. Easy access to the court-administered arbitration program may discourage settlement of such cases. Our own research in California, as well as research conducted on the Rochester, New York arbitration program (Weller, Ruhnka, and Martin, 1981), found that a high proportion of suits involving small sums, many of which would otherwise have been settled on their own without judicial intervention, were not settled before arbitration hearings.

To meet the needs of litigants who would be better served by settlement than by adjudication, a court might consider sponsoring a mediation program, as an adjunct to arbitration. The utility of such programs for certain kinds of disputes has been demonstrated by Neighborhood Justice Centers and, more recently, by such programs as the Atlanta Community Mediation Program. Where such programs already exist, the court might operate as a referral agency, informing potential litigants of their availability at the time of filing. The concept of the court as an agency for identifying and referring cases to various forms of alternative dispute resolution is currently being explored by the "Multi-Door Courthouse Project," sponsored by the American Bar Association.

Finally, some cases may truly require trial by judge or jury, rather than settlement or arbitration. Our study of the Pittsburgh arbitration program suggests that cases involving complicated issues of law or fact may not be appropriate for arbitration. For example, the lack of an official record of the arbitration hearing (court reporters are available on request, but rarely used) impedes the ability of the arbitrators to arrive at a correct decision when the facts of the case are complex. Arbitrators who have no opportunity to prepare for a hearing, and little time to deliberate after its conclusion, cannot give proper attention to complicated legal issues. Complexity of facts or law is not necessarily associated with monetary stakes. Some arbitrators believe that they could easily adjudicate simple cases involving amounts greater than $10,000 but report considerable difficulty deciding lower value cases that are factually or legally complex.

In a legal context in which it is deemed appropriate for a jury to decide upon the amount of compensation due plaintiffs for emotional
injury, it may be unreasonable to expect plaintiffs to accept adjudication by arbitrators of cases where such damages are unclear, regardless of case value. Our Pittsburgh study suggests that many plaintiffs' attorneys who are representing clients in such cases elect to file in the trial division, rather than in arbitration, even when the general damages (medical costs, time away from work, etc.) are less than $10,000. In such cases, attorneys may give plaintiffs the notion that "first-class" justice requires a full-blown jury trial; requiring these litigants to go to arbitration inevitably leaves them frustrated and dissatisfied with the civil justice system.

How courts might better determine, before assigning a case to arbitration, that it is simple enough to arbitrate and amenable to final disposition through arbitration is a subject that merits further research. The answer to this question may control how much of a court's caseload can be disposed of by arbitration in courts facing serious problems of congestion and delay.

Constrained by Local Legal Culture

The way arbitration works and its effectiveness in achieving the goals of reducing congestion, delay, and costs are constrained by the local legal culture. Where parties are litigious and the bar highly combative, these characteristics will probably be reflected in the arbitrator selection process, in the style in which arbitration hearings are conducted, and in the use of the appeals process. The success of arbitration in Pittsburgh, we suspect, reflects a general agreement within the legal community that smaller disputes should be moved expeditiously toward resolution. Attorneys are willing to take on small cases for modest fees, and a large component of the bar contribute their services to the program. Because the legal community in Pittsburgh is fairly small by comparison with other major metropolitan areas, it may also have been easier to establish a consensus regarding the need for and proper design of an arbitration program and, over time, to modify the program to meet users' requirements. Whether more recently established court arbitration programs will prove as acceptable to their local communities and as responsive to their users' needs remains to be seen.
Appendix A

SAMPLE REPRESENTATIVENESS,
INTERVIEW METHODS, AND DATA
COLLECTION FORMS

SAMPLE REPRESENTATIVENESS

The individual litigant sample was drawn from the group of litigants who appeared in the Arbitration Center in the spring of 1982, during the week that we visited the Pittsburgh Court. We selected litigants for interviews on an ad hoc basis. Those we interviewed therefore do not constitute a true random sample of the litigant population. Because those who agreed to be interviewed were a "self-selected" group, who represented a single week of arbitration cases, they may differ from the rest of the population. To investigate this possibility, we compared the characteristics of the cases for which we obtained litigant interviews with the characteristics of the total population of cases heard during the survey week, and with the characteristics of our total sample of arbitration cases drawn from court files for 1980-1981. Table A.1 presents this comparison. It shows the distribution of cases in the three samples by case type, origin, mode of disposition, amount claimed, configuration of parties, legal representation, and outcome.

Using X-square goodness-of-fit tests, we found that interview sample cases did not differ significantly from the general sample cases with regard to mode of disposition, amount claimed, configuration of parties, or legal representation. The two samples did differ significantly (X-square significance level = .025 or higher) with regard to case type and outcome. Compared with the general sample, the interview sample has a lower proportion of collection cases, a higher proportion of breach of contract cases, and a higher proportion of unsuccessful or partially unsuccessful plaintiffs. The interview sample did not differ significantly from the survey week sample in this regard. Differences between the interview sample and the general sample are attributable to the fact that the cases heard during the week of our visit are somewhat unrepresentative of the total sample of cases heard, not to our having interviewed an unrepresentative sample of that week's cases.
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<tr>
<td>Total Number of Cases</td>
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<td>97</td>
<td>174</td>
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</table>

**SOURCE:** Court record data.

- The 60 individual litigants interviewed represented 55 different cases.
- All cases heard during the week in which litigants were selected for interview.
- Weighted sample of cases that went to arbitration hearing, 1980-1981.
INTERVIEW METHODS

On three separate occasions we collected information from individual litigants whose cases were arbitrated. In spring 1982, we spent a week in Pittsburgh observing the arbitration process. Each morning during this week, the Court Administrator appeared in the Arbitration Center to introduce us to litigants and their attorneys, explain the purpose of our study, and solicit their cooperation with it. We asked litigants, while they were waiting for their cases to be heard by arbitrators, to fill out a brief questionnaire that asked about their expectations regarding the hearing. We attached to the questionnaire a form describing the study, and the Institute for Civil Justice. (See Forms A and B.)

The questionnaire was completed by 104 individual litigants, about two-thirds of those present in the Arbitration Center on these days. Some litigants chose not to fill out the form; others, who arrived late, did not receive it. Some of those who completed the form did not identify themselves, so that we could not link their responses to later interviews with them.

Immediately after each hearing was concluded (when the parties still did not know the outcome of their case) we attempted to conduct separate brief interviews with both the plaintiff and the defendant. Our aim in these interviews was to get the individual's first reaction to the arbitration process. We used an interview guide or protocol to direct these conversations, but all of the interviewers were free to pursue any issues that seemed to be on their respondents' minds as they arose. We used different versions of the guide for individual litigants who had not been in arbitration previously, and for attorneys and institutional representatives who had extensive experience with the program. (See Forms C and D.)

Because four or five hearings were going on simultaneously and hearings frequently concluded at the same time and there were only three researchers, we could not interview all of the parties. But during the week, we managed to talk with 67 litigants, of whom 15 were representatives, employees, or attorneys for businesses or public agencies. In most cases, we spoke with the litigant alone or in the presence of their friends and relatives; in some cases, the litigant's attorney was present at his or at the party's request. The interviews averaged about 10 to 15 minutes. Only once did an attorney ask that we not "bother" the client, and only once did a litigant specifically not want to talk with us. Each time we interviewed a litigant we asked for permission to telephone him at a later time to discuss the case and his experiences at greater length. In addition, when we were unable
to interview litigants on the spot, we were frequently able to obtain
their permission (and telephone numbers) to call them later.

The objective of our third and lengthiest contact with the litigants
was to gather more detailed information about the nature of their
dispute, their previous litigation experiences, their experiences seek-
ing legal assistance, and the outcome of their case. We were particu-
larly interested in hearing their views on the arbitration process after
they had learned about the outcome, and in discussing the decision to
accept or appeal the verdict with the losers. We also wanted to obtain
data on their litigation costs, including legal fees and their own time
to pursue the case, and on the effect of the case, if any, on their eco-

nomic status or other aspects of their personal lives. For this inter-
view we used a standardized questionnaire modified several times
during the survey period. Form E shows the final version of the ques-
tionnaire, which was administered to 56 of the 66 individual litigants
surveyed.

During the two to three months following our visit to the Pitts-
burough court, we conducted interviews with 66 individual litigants. Of
these, 44 had completed the pre-hearing questionnaire, and we had
interviewed 39 immediately after hearing.

We were able to complete telephone interviews with 75 percent of
those we attempted to contact. Most nonresponses were due to failures
to find people at home, broken appointments, moves, and the like.
Only three of the 69 people we actually contacted refused outright to
talk with us.

We talked with arbitrators on two separate occasions. Early in the
study we discussed program rules and operations with a small num-
ber of arbitrators to whom the court staff referred us. After our visit to
the Pittsburgh court, we attempted a more systematic survey of the
arbitrators who conducted hearings during our week of observation.
In all, we interviewed 32 arbitrators, including about 25 percent of
those who conducted hearings during our week of observation.

Finally, we interviewed 29 attorneys and institutional litigants
(representatives of insurance companies, financial institutions, and
public agencies) whom we viewed as "repeat players" in the court
system. Interviews with arbitrators and institutional representatives
were unstructured and were conducted without a formal protocol.
DATA COLLECTION FORMS

INSTITUTE FOR CIVIL JUSTICE
Arbitration Study

FORM A

CHECK ONE

Plaintiff     Defendant

Original Party
Third Party
Attorney
Other (Please Write In):

YOUR NAME: _________________________________________

NAME OF CASE: _________________________________________

vs.

____________________________________

1. What are you hoping to get out of the arbitration hearing?
   (CIRCLE ALL THAT APPLY TO YOU)

   Chance to tell my side of the story................................. 01

   A neutral opinion on what would be a fair amount to end this case..... 02

   Chance to prove that the other side is not telling the truth............. 03

   Want to get this case over once and for all.......................... 04

   Chance to tell someone in authority about how I have been
   mistreated by the other side........................................... 05

   Chance to defend my reputation....................................... 06

   Want to collect what I'm owed under law................................ 07

   Help in reaching a compromise with the other side..................... 08

   Just doing this because the court is making me do it
   before they will let me get on with a trial.......................... 09

   Want to get the other side off my back................................ 10

   Other: ____________________________________________________

   __________________________________________________________

2. Which of these is most important to you? PLEASE WRITE THE # BELOW:

   #

3. What do you think are your chances of getting an award or decision that you
will be satisfied with?

   VERY GOOD (Almost Certain)................................. 1
   PRETTY GOOD (Better than 50/50)........................... 2
   COULD GO EITHER WAY (50/50).............................. 3
   PRETTY BAD (Worse than 50/50)............................ 4
   VERY BAD (Almost No Chance)............................. 5
THE
INSTITUTE FOR
CIVIL JUSTICE
THE RAND CORPORATION, 1720 Main Street, Santa Monica, California 90406 (213) 393-0411

A NOTE TO PLAINTIFFS AND DEFENDANTS

We would like you to spend about ten minutes of your time today to help us in our research study of Pittsburgh's arbitration program.

Understanding arbitration is important because many people believe it is one of the best ways to help solve problems of court delay and litigation costs in courts throughout the U.S. The arbitration program you have here in Pittsburgh is one of the oldest and most well-established in the nation. It is also regarded by many as one of the quickest and most efficient. Yet we do not know how the people most directly affected—the plaintiffs and defendants in each case—feel about it.

Our goal today is to learn how you feel about your experience in arbitration. Our purpose is to help inform other communities who wish to consider similar approaches. This is the first time, as far as we know, that such a close look will be taken at the views of plaintiffs and defendants regarding arbitration.

There are two things we would like you to do for us today:

First, before you go into your hearing, please complete the attached one-page form, insert it in the envelope provided, and return the sealed envelope to the desk at the front of the room.

Second, after your hearing, please spend about ten-minutes with one of us to discuss your reactions so far to your experience with arbitration.

We will not ask you to talk about the details of your case—just about your arbitration experience. We will interview as many parties as we can in the time available. If we do not have time for everyone today, we may wish to telephone you later.

We very much want to talk directly with you about your own views. Although it is not necessary, if you wish, your attorney may be present during our conversation. Of course, if an attorney is the only person present on behalf of a party, we would like to talk with him or her.

Your help is critical to the success of our work. We will be glad to answer any questions you have today. Or, you may write or telephone us, using the address and telephone number indicated above.

Thank you very much for your help.

Charles Nelson
Jane Adler
Deborah Hensler
BACKGROUND INFORMATION

WHAT IS THE INSTITUTE FOR CIVIL JUSTICE?

The Institute for Civil Justice is part of The Rand Corporation and conducts research on the American civil justice system. Much of its work focuses on the way the courts work. The Rand Corporation is a private nonprofit institution which does research in the public interest.

HOW IS THE INSTITUTE FUNDED?

The Institute receives contributions and grants from private corporations and foundations and from public agencies.

WHAT HAPPENS TO THE INFORMATION?

Information collected in this survey will be combined with information collected from others who participate in Pittsburgh’s arbitration program to produce a report evaluating the reactions of litigants to the program. No reports will identify any of you by name. The final report will be produced for the information of public officials, community leaders, and members of the general public.

PARTICIPATION IS VOLUNTARY

We would like you to participate in this survey because we think it is an important study, but of course your participation is voluntary.
FORM C—LITIGANTS
INSTITUTE FOR CIVIL JUSTICE — ARBITRATION STUDY

NAME: ________________________________
NAME OF CASE: __________________________
Represented at Hearing: Yes No

CHECK ONE

Original Party Plaintiff Defendant
Third Party ___________ ___________
Attorney ___________ ___________
Other (Please Write In): ___________

1. How do you feel about the hearing — were you generally satisfied with the way it went or do you feel dissatisfied?

IF GENERALLY SATISFIED: What in particular made you feel good about it? Was there anything you didn’t like?

IF GENERALLY DISSATISFIED: What didn’t you like about it? Was there anything you did like?

7. How did it compare with what you expected? What did you think it would be like? How was it different? Do you think the differences are important? Why? Do you think [whatever was different] might affect your chances of getting a satisfactory resolution of the case or do you think it probably won’t affect your chances? Did [whatever was different] make you feel positive/negative about the process?

3. Do you think you got a good chance to have your case presented, or not?

IF GOOD CHANCE: Was there anything in particular that helped in presenting your case? Was there anything that made it difficult?

IF BAD CHANCE: Why didn’t you get a good chance to have your case presented? Was there anything about the hearing that helped in presenting your case?

IF NECESSARY, PROBE: Did you get enough time to present your side of the case? Was there an opportunity to question the other side? Did you think this helped/hurt your case or didn’t really affect it?

4. Do you think you got the same kind of treatment as your opponent or did the two of you get treated differently?

IF SAME TREATMENT: What was a good example of that?

IF DIFFERENT: How was the treatment different? Why do you think that happened?

5. ASK LITIGANTS ONLY: Do you think you were well prepared for the hearing or do you wish you had been better prepared? Did you understand the procedure pretty well or was it difficult to follow what was going on? Did you feel pretty relaxed or were you kind of nervous about the whole thing?

6. What do you think are your chances of getting an award or decision that you will be satisfied with? Do you feel better about your chances than you did before the hearing or do you feel worse? Do you think the panel will try to decide who’s telling the truth and make an award in their favor, or do you think they will try to arrive at a compromise?

We’d like to call you sometime in the next couple of weeks and talk some more about the case.

PHONE #: ______-______ PARTICULARLY GOOD TIMES TO CALL: ___________
FORM D—ATTORNEYS AND INSTITUTIONAL REPRESENTATIVES
INSTITUTE FOR CIVIL JUSTICE - ARBITRATION STUDY

Name: __________________________

Name of Case: ____________________

CHECK ONE

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<thead>
<tr>
<th>Original Party</th>
<th>Plaintiff</th>
<th>Defendant</th>
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<td>Third Party</td>
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<td>Other</td>
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1. How often have you appeared at arbitration hearings?
2. How do you think this hearing went? Was there anything particularly good about it? Was there anything particularly bad?
3. How does it compare with your previous experience at hearings? Or, how does it compare with your expectation?
4. Were you given a full opportunity to present your case? Did you have enough time? Did the arbitrators rule against you on any evidentiary questions? Did you have any problems, in general, with the rules of evidence?
5. Did your opponent raise any issues you had not anticipated? Did you do any discovery for this case?
6. Did you call any witnesses or subpoena your opponent's witnesses? How do you decide whether or not to call witnesses?
7. If your opponent was pro se - how do you feel about arguing against unrepresented litigants? Does it make any difference to procedure at the hearing? To the way you conduct your argument?
8. Did you have enough time to prepare fully for this case?
9. What did you think of the arbitrators?
10. Did you detect any bias in their attitude? Have you met any of them before? Do you know anything about their professional background?
11. Do you have any sense of how their decision will go?
12. Do you think their award will be made entirely on the merits, or do you think there may be an element of compromise?

PHONE #: ______ - ______

PARTICULARLY GOOD TIMES TO CALL: ______________________
FORM F--INDIVIDUAL LITIGANT QUESTIONS

Section A Case Outcome and Plans

1. First, would you give me a brief summary of the facts of your case, just to make sure that I have it straight, before we begin to talk in more detail.

2. When did the [EVENT OR SOURCE OF DISPUTE] happen? (MONTH AND YEAR)
   
   MONTH: _______ YEAR: _______

3. Before this case began, had you ever had any other experience dealing with the court -- in a regular trial court, in arbitration, or in magistrate’s court, as a party to a suit, a witness, or juror, or any other kind of experience?
   
   YES...ASK A & B..............1
   NO......GO TO Q.4..............2

A. Could you tell me about this?

B. When was this?
4. Now, can you tell me what was the outcome of your case?

SINGLE COMPLAINT CASES:

$ AWARD to PLAINTiFF..........................1

How much? $___________________________

NON-MONETARY REMEDY TO PLAINTiFF..............2

Specify:_____________________________________

DEFENDANT WON: NO AWARD TO PLAINtiFF..............3

CASES WITH CROSS COMPLAINT OR COUNTER SUIT: (CIRCLE ALL THAT APPLY)

AWARD TO PLAINtiFF ON ORIGINAL COMPLAINT..............4

Describe:_____________________________________

AWARD TO DEFENDANT AS PLAINtiFF ON CROSS - COMPLAINT....5

Describe:_____________________________________

5. Were (you/your company) the real (plaintiff/defendant) in the case or was the case actually (brought by/being defended by) an insurance company?

RESPONDENT WAS CONTROLLING CASE..............1
INSURANCE COMPANY WAS CONTROLLING CASE..............2
6. What had (PLAINTIFF: you/your company/the insurance company) (DEFENDANT: the (original) plaintiff) asked for? PROBE FOR $ AMOUNT OR NON-MONETARY REMEDY.

   PLAINFT GOT AMOUNT/REMEDY ASKED FOR .................. 1
   PLAINFT DID NOT ASK FOR SPECIFIC AMOUNT ............. 2
   PLAINFT ASKED FOR $ ........................................ 3
   PLAINFT ASKED FOR NON-MONETARY REMEDY ............ 4
   SPECIFY: ................................................................

   FOR DEFENDANT WHO WAS ALSO PLAINTIFF IN CROSS-COMPLAINT OR COUNTER-SUIT:

   And what did (you/your company/ the insurance company) ask for in (your/its) cross-complaint or counter suit?

   GOT AMOUNT/REMEDY ASKED FOR ...................... 1
   DID NOT ASK FOR SPECIFIC AMOUNT ................. 2
   ASKED FOR $ ................................................. 3
   ASKED FOR NON-MONETARY REMEDY ................. 4
   SPECIFY: ............................................................

7. Before the hearing was held, what did you expect to be the outcome? (PROBE FOR WHICH SIDE WOULD WIN AND AMOUNT WIN)

8. CHECK Q. 4 - 7.

   OUTCOME JUST AS EXPECTED...GO TO Q.10............ 1
   OUTCOME DIFFERENT FROM EXPECTED ............ 2
   NO EXPECTATION...GO TO Q.10...................... 3

9. Why do you think you did [better/worse] than you expected?)
10. CHECK Q. 4 - n:

R IS PLAINTIFF:

GOT AMOUNT/REMEDY ASKED FOR...GO TO Q. 14...1
GOT LESS THAN ASKED FOR/LOST CASE..................2

R IS DEFENDANT:

WON: NO AWARD TO PLAINTIFF...GO TO Q. 14....1
LOST: PLAINTIFF WON SOME AMOUNT/REMEDY.........2

11. What do you think it was about the other side's case that convinced
the arbitrators that (IF PLAINTIFF: they shouldn't have to pay
what you asked for) (IF DEFENDANT: they should get something)?

12. Do you think there was anything you (or your lawyer) might have said,
or not said, that would have changed the outcome?

13. Since the hearing, have you discussed the outcome with your attorney?

14. Since the hearing, have you [or your lawyer] contacted the other side
or been contacted by them?

YES .............................................1
NO...GO TO Q. 22.............................2

15. Who called whom?

PLAINTIFF CALLED DEFENDANT.................1
DEFENDANT CALLED PLAINTIFF...............2
DON'T KNOW.................................8
16. What was this call about?

17. Have you, or has the other side, tried to make an agreement to settle the case on terms other than those given in the arbitrators' award?

18. HAS CASE BEEN SETTLED?

   YES.................................1
   NO........GO TO Q.22...............2

19. Had either you or the other side filed an appeal for trial de novo before you agreed to settle?

   YES.................................1
   NO........GO TO NEXT SECTION........2

20. Who filed the appeal?

   RESPONDENT.............................1
   OTHER SIDE................................2

21. (Why did you appeal? Why do you think they appealed?)

   *** GO TO NEXT SECTION ***

22. CHECK Q. 10:

   R IS PLAINTIFF:
   . GOT AMOUNT/REMEDY ASKED FOR...GO TO Q.26 ...1
   . GOT LESS THAN ASKED FOR/LOST CASE.........2

   R IS DEFENDANT:
   . WON NO AWARD TO PLAINTIFF....GO TO Q.26....1
   . LOST: PLAINTIFF WON SOME AMOUNT/REMEDY....2
23. Have you filed an appeal for trial de novo? If yes: Did you ask for a judge trial or a jury trial?

   DID NOT FILE ............................. 1
   TRIAL DE NOVO: JUDGE ........... GO TO Q.25 ................. 2
   TRIAL DE NOVO: JURY ........... GO TO Q.25 ................... 3
   TRIAL DE NOVO: DK WHICH ........... GO TO Q.25 ............. 4

24. Did you consider appealing the award and going on to trial?  
(If represented: Did you discuss this with your lawyer?)

   YES & DISCUSSED WITH LAWYER ....... ASK A .................. 1
   YES, BUT DID NOT DISCUSS WITH LAWYER ....... ASK A .......... 2
   NO ..................................... ASK B ..................... 3

   A. Why did you decide not to appeal?

   *** GO TO NEXT SECTION ***

   B. Why didn't you consider appealing?

   *** GO TO NEXT SECTION ***

25. Why did you decide to appeal? What was your lawyer's advice?  
(If pro se: Will you try to hire a lawyer? Why?/Why not?)

   *** GO TO NEXT SECTION ***

26. Has the other side appealed?

   NO ......... GO TO NEXT SECTION ............. 1
   YES ......... JUDGE TRIAL ............... 2
   YES ......... JURY TRIAL .................. 3
   YES ......... DON'T KNOW WHICH ........... 4
27. Why do you think the other side appealed?
   (If REPRESENTED: Have you discussed this with your lawyer?)

28. What will you do now?
   (If PRO SE: Will you try to hire a lawyer? Why? Why not?)
Section B
Recap of process evaluation

1. Now thinking about the arbitration hearing itself -- do you think the way it was conducted was:

   very fair, ....... ASK A ............. 1
   somewhat fair, ASK A & B ........... 2
   somewhat unfair, or .... ASK B ............ 3
   very unfair? ......... ASK B ............ 4

A. What made it fair?
   (IF REPRESENTED: Did you talk about this with your lawyer?)

B. What made it seem fair, or unfair?
2. How accurate a picture of what really happened between you and your opponent do you think the arbitrators got, as a result of the hearing --

- very accurate............ ASK A & B.............. 1
- somewhat accurate ...... ASK A & B.............. 2
- somewhat inaccurate..... ASK A & B.............. 3
- very inaccurate?......... ASK A & B.............. 4

A. Why do you feel that way?
   (IF REPRESENTED: Did you talk about this with your lawyer?)

B. Was there anything about your opponent’s description of (his/her) side of the dispute that surprised you? Did (he/she) bring up anything new about the dispute -- new evidence or witnesses or new claims that had been made to you before?

3. When you took the oath, did you feel it was pretty much of a formality or did it make you feel you had to be particularly careful to make accurate statements?

4. Do you think the arbitrators should put more emphasis on this part of the hearing? Or do you think there was enough emphasis on it?
5. People have different ideas about the way the courts should handle cases like yours. When someone brings a case like yours to court, or has to defend against a case like yours, how important do you think it is...

For a party to explain his side of the story in person to whoever is going to make the decision?

Would you say this is:

- very important ......................................... 1
- somewhat important ................................ 2
- not very important .................................. 3
- unnecessary ........................................... 4

6. How important is it for a party to hear the way his opponent presents his side of the story?

- very important ......................................... 1
- somewhat important ................................ 2
- not very important .................................. 3
- unnecessary ........................................... 4

7. How important is it for a party to be able to question or cross-examine the other side and their witnesses?

- very important ......................................... 1
- somewhat important ................................ 2
- not very important .................................. 3
- unnecessary ........................................... 4

8. How important is it that the decision be made final?

- very important ......................................... 1
- somewhat important ................................ 2
- not very important .................................. 3
- shouldn't be final ..................................... 4

9. How important is it that the case be heard in private with only those involved in the case present?

- very important ......................................... 1
- somewhat important ................................ 2
- not very important .................................. 3
- shouldn't be final ..................................... 4

10. In a case like yours, do you think the main purpose should be for a neutral person to hear all the facts and decide what the truth of the matter is or do you think the main purpose should be to let each side present their views, and have a neutral person decide what would be a fair way to end the dispute?

- truth-finding .......................................... 1
- fairness ................................................... 2
11. What do you think was the main purpose of the arbitrators in your case?

12. In a case like yours, do you think the hearing should be formal with both sides following strict rules of procedure or do you think it should be informal, with rules adapted to suit the circumstances of each case? Why?

   informal........................1
   formal........................2

A. Some jurisdictions hold arbitration hearings in courtrooms, with the arbitrators on a platform, and all testimony given from a witness stand. Do you think this would be better or worse than sitting face-to-face across a table? Why?

13. What difference do you think it makes having arbitrators hear and decide a case like yours, instead of having a regular judge and jury trial?

14. What qualifications do you think an arbitrator should have?
15. During the hearing, could you say whose reactions and comments you paid most attention to: the other side, their attorney, your attorney, the arbitrators?

16. Now, thinking over everything having to do with your case
   (IF FILED IN ARBITRATION: from the time it was filed in court)
   (IF TRANSFERRED FROM GENERAL DOCKET OR APPEALED FROM MAGISTRATE'S COURT: from the time it was assigned to arbitration)

   until now -- including the way the hearing was conducted and the award -- overall how do you feel about the way the court handled your case -- would you say you feel:

   very satisfied............ASK A......1
   somewhat satisfied.......ASK B......2
   somewhat dissatisfied ASK B......3
   very dissatisfied ASK B......4

   A. Was there anything that you were not satisfied with? (What?)
      (IF REPRESENTED: Did you talk about this with your lawyer?)

   B. What were you dissatisfied with?
      (IF REPRESENTED: Did you talk about this with your lawyer?)
17. How satisfied were you with the way you were treated by personnel
   A. at the prothonotary's office?

   B. How about the arbitration office staff?
Section C
History of the Case, Relationship Between Parties, Legal Representation, Prior Knowledge of Arbitration

Now, I'd like to talk a little more about your case and how it got to court.

1. First.
   IF ACCIDENT CARE: Had you known [OPPOSING PARTY] before?
   ALL OTHER CASES: Before this all happened, did you have any sort of personal relationship with [the defendant/the plaintiff] anybody in that company? Or was it strictly a business relationship?
   YES, KNEW PERSON BEFORE/SOME PERSONAL RELATIONSHIP.......1
   STRICTLY BUSINESS RELATIONSHIP...GO TO Q.6................2
   DID NOT KNOW PERSONALY, NOT BUSINESS...GO TO Q.5.......3

2. How well did you know (him/her)?

3. What do you think will happen to your relationship [now that the case is resolved/after the case is finally resolved]?

   *** GO TO Q. 5 ***

4. Do you expect that you will continue to do business with this (firm/person)?

5. Right after [the incident occurred/this problem developed] did you or the other side try to come to some sort of agreement without getting lawyers involved or going to court?

   YES.................................1
   NO...GO TO Q.8......................2

6. What sort of agreement did you discuss?
7. Why couldn't you come to an agreement on settling the case?

8. R WAS:
   PRO SE........................................1
   REPRESENTED...GO TO Q.10................2

9. Did you ever talk to a lawyer about this dispute?
   YES ..........................................1
   NO ..................GO TO Q.23...........2

10. How soon after the dispute began did you first consult a lawyer?
     MD:________ YEAR:________

11. Was this a private lawyer, was it a Legal Aid service, or was it some other type of arrangement?
   PRIVATE....................................GO TO Q.18....1
   LEGAL AID..................................GO TO Q.18....2
   FRIEND/ACQUAINTANCE/COWORKER........GO TO Q.18....3
   OTHER, SPECIFY.........................GO TO Q.18....4
   INSURANCE LAWYER..........................1

12. What is the name of your insurance company, (and your agent there, if possible)?

13. How much time did your insurance company's lawyer spend talking with you about your case?

14. How long before the hearing did you first talk with him?

15. Did you have any financial interest in the outcome of this case?
   NO...........................................GO TO Q.17....1
   YES.........................................2
16. What was this interest?

- premium increase: 1
- payment of deductible: 2
- payment of uninsured expenses: 3
- other: specify: 4

17. Did you have any other non-financial interest in the outcome of the case?

*** GO TO Q.34 ***

18. Had you used (this lawyer/legal aid/other) before on other matters or did you see (him/them) for the first time on this case?

- USED BEFORE: GO TO Q.20: 1
- FIRST TIME: 2

19. Did you have any difficulty finding a lawyer? (Why?)

20. R IS:

- PLAINTIFF: 1
- DEFENDANT: GO TO Q.23: 2

21. Did this lawyer or any other lawyer you talked to ever advise you not to file this case in court?

- YES: 1
- NO: GO TO Q.23: 2

22. Did he or she say that if you decided to go ahead (he/she) would be able to help you, or would not be able to help you?

- ABLE TO HELP: 1
- NOT ABLE TO HELP: 2

23. When did you first hear about the arbitration program? CIRCUMSTANCES AND APPROXIMATE TIME
24. What did you hear or find out about it at that time?

25. R IS:

PRO SE ............... GO TO Q. 27 ............... 1
REPRESENTED ............ 2

26. Did you know at that time that you were not required to have a lawyer represent you at the arbitration hearing?

YES ............... ASK A ............... 1
NO ............... GO TO Q. 31 ............... 2

A. Why did you decide that you would hire a lawyer?

   GO TO Q. 31

27. Why did you (finally) decide not to hire a lawyer?

28. Do you think that you had any particular problems taking your case to arbitration because you did not have a lawyer -- for example,

Did you have any problems preparing your case -- collecting evidence, filling out forms, etc.? 

Yes  No

Did you have any problems presenting your case at the hearing? 

Yes  No

Any problems deciding whether or not to appeal? 

Yes  No

Any other problems? What? 

Yes  No
29. Did you try to get any help from someone at the court? IF YES:
   Was this at the prothonotary's office, the arbitration center, or some
   other court official? CIRCLE ALL THAT APPLY

   NO: ............................. 1
   PROTHONOTARY'S OFFICE: .......... 2
   ARBITRATION OFFICE: .............. 3
   OTHER: SPECIFY: .................. 4

30. Would you have liked (more) help? IF YES: What kind of help
    would you have liked?

   HELP WITH PROCEDURE (PROBE FOR WRITTEN OR VERBAL)

   WRITTEN INSTRUCTIONS: ........... 1
   VERBAL INSTRUCTIONS: ............. 2
   LEGAL ADVICE: SPECIFY: ........... 3

31. If you had to do it over again, would you hire a lawyer or not?

   YES, HIRE: .......................... 1
   NO: .................... 2

32. [PLAINTIFF: (IF REPRESENTED: After you hired the lawyer but) Before
    you finally filed the case did you]

   [DEFENDANT: Before he/she/they filed the case did the plaintiff]

   make any (further) attempt to reach an agreement and avoid going
   to court?

   YES: ................................. 1
   NO: .GO TO Q.34 .................. 2

33. Why couldn't you come to an agreement on settling the case?

34. CHECK SOURCE OF CASE & VALUE:

   CASE IS OR TRANSFER: .................. 1
   MAGISTRATE'S COURT: .GO TO Q.44 .... 2
   ARBITRATION, LESS THAN $2000: .GO TO Q.34 .... 3
   ARBITRATION, MORE THAN $2000 OR NO INFO: .GO TO Q.58 .4
35. R IS:

PLAINTIFF ....................... 1
DEFENDANT ........... GO TO Q. 41 ........ 2

36. Why did you file your case in civil court, instead of filing directly in arbitration?

37. How long was your case in the civil court before it was referred to arbitration? (APPROXIMATE NUMBER OF MONTHS)

38. During this time, were there any expenses related to your suit that you could not pay because the case was still not settled? Did you have any other problems or anxieties connected to the case? Please don’t count legal fees or court costs.

IF YES: Could you tell me about these? What did you do about these expenses?

39. If you had it to do over again, would you file the case in the civil court or would you go directly to arbitration? Why?

CIVIL COURT ...................... 1
ARBITRATION ...................... 2

40. How sure are you about that -- are you very sure that’s what you would do or not that sure?

**GO TO Q. 58**
41. Did you [or your lawyer] ever ask for the case to be transferred to arbitration?

YES...........ASK A, B & C........1
NO.............ASK D................2

A. Why did you ask for a transfer?

B. When was this?

MONTH:_________ YEAR:_________

C. What happened?

D. Why not?

42. How long was your case in the civil court before it was transferred to arbitration? (APPROXIMATE NUMBER OF MONTHS)

43. During this time, were there any financial losses that you suffered because of the fact that the case was still not settled? Did you have any other non-financial problems or anxieties related to the case? Please don't count legal fees or court costs.

IF YES: Could you tell me about these?

*** GO TO Q. 58***
44. What was the result of the case in magistrate's court?

45. Who filed the appeal?

    PLAINTIFF..............................1
    DEFENDANT............................2

46. Did you or the other side make any attempt to negotiate an agreement or compromise in this case before the appeal was filed?

    YES......................................1
    NO.GOTO Q.48............................2

47. Why couldn't you come to an agreement on settling the case?

48. About how many months was it between the time the case was filed in magistrate’s court and the time the appeal was filed?

49. R IS:

    PLAINTIFF..............................1
    DEFENDANT.GOTO Q.53.................2

50. During this time, were there any expenses related to your suit that you could not pay because the case was not settled? Did you have any other non-financial problems or anxieties related to the case? Please don't count legal fees or court costs.

    IF YES: Could you tell me about these? What did you do about these?

51. If you had it to do over again, would you file the case in magistrate's court or would you go directly to arbitration? Why?

    MAGISTRATE’S COURT...............1
    ARBITRATION.........................2
52. How sure are you about that -- are you very sure that's what you would do or not that sure?

GO TO Q. 58

53. During this time, were there any financial losses that you suffered because of the fact that the case was still not settled? Did you have any other non-financial problems or anxieties related to the case? Please don't count legal fees or court costs.

IF YES: Could you tell me about these?

GO TO Q. 58

54. R IS:

PLAINTIFF........................................1
DEFENDANT.....................................2

55. Why didn't you file your case in magistrate's court?

Did not know about it....................1
Did not trust it.............................2
Knew opponent would not appear..........3

56. If you had it to do over again, would you file the case in magistrate's court or would you go directly to arbitration? Why?

MAGISTRATE'S COURT..........................1
ARBITRATION.................................2

57. How sure are you about that -- are you very sure that's what you would do or not that sure?
58. While your case was in arbitration, were there any expenses related to your suit that you could not pay because the case was still not settled? Any other kinds of problems? Please don't count legal fees or court costs.

IF YES: Could you tell me about these? What did you do about these expenses?

** GO TO Q. 61 **

*** NO QUESTION 59 OR 60 ***

61. CHECK SOURCE OF CASE

GD TRANSFER...GO TO NEXT SECTION. .........................1

ARBITRATION
R IS PLAINTIFF. .................................2
R IS DEFENDANT...GO TO NEXT SECTION. ................3

MAGISTRATE'S...CHECK Q. 45:
RESPONDENT APPEALED......................................4
OPPONENT APPEALED...GO TO NEXT SECTION..............5

62. Suppose there were no arbitration program available. Do you think you would have decided to (file your case anyway/ file an appeal anyway) or would you have done something else? Why?

SETTLE..........................1 What type of settlement?
DROP..........................2
FILE IN CIVIL COURT...3
OTHER: SPECIFY ..............4

63. How sure are you about that—-are you very sure you would have decided [to go ahead/to do something else] or not very sure?
Section D
Amount of loss, basis for amount of claim, and litigation costs.

1. R IS:
   DEFENDANT. ................. GO TO Q.31. ................. 1
   PLAINTIFF. .................. 2

Now I'd like to ask a little more about your losses due to [ACCIDENT/INCIDENT/
OTHER SITUATION] that led to this case, and the money it has
cost you to bring this case.

2. CHECK Q.81: DID CASE INVOLVE PROPERTY DAMAGE?
   YES. ...................... 1
   NO. ......................... 2

3. Was the [PROPERTY] totally destroyed or was it partially damaged?
   DESTROYED. ...................... 1
   DAMAGED. ......................... 2

4. What was its approximate total value at the time it was (destroyed/
damaged)? Please tell me what it was worth at the time of the incident.

   $__________

5. Now what did or would it have cost to [replace it with a new
PROPERTY/repair it?]

   $__________

6. Were you insured for any of the damage?
   YES. ......................... 1
   NO. ......................... 2

A. Could you have been insured against this loss?
   YES. ......................... 1
   NO. ......................... 2

   Why not? _______________
7. Were you actually paid by the insurance company?
   YES........ASK A.......................1
   NO........ASK B.......................2

   A. Altogether, how much did you get from insurance?
   $

   B. Why not?

8. CHECK Q. B1: DOES THIS CASE INVOLVE PERSONAL INJURY?
   YES........GO TO Q.11............ 1
   NO...............................2

9. How did you decide on the amount of money that you would ask for in
   court?  (IF REPRESENTED: Did you discuss this with your lawyer?
   What was (his/her) advice?)  (PROBE: Did you take into account the
   amount of trouble and hassle that you were caused?  Did you
   include an amount to punish the defendant for what (he/she) had done?)

   WH GO TO Q.31 **

10. CHECK Q. B. 1: DID THIS CASE INVOLVE PERSONAL INJURY?

    YES.................................1
    NO...GO TO Q.20....................2

11. Now you (also) had some injuries as a result of this [accident/incident].
    What have been your total medical expenses up until this time,
    including hospitals, doctor charges, x-rays, drugs, etc., due to these
    injuries?
    $

12. Did you have insurance that covered some or all of these expenses,
    were they covered by some health plan or agency, or did you have
    to pay for everything out of your own pocket?

    SOME OR ALL COVERED ................1
    ALL OUT OF POCKET...GO TO Q.14 ......2
13. What has been the total amount of medical expenses, including hospitals, doctor charges, x-rays, drugs, etc., up until now, that you have had to pay out of your own pocket?

$_____________________

14. Do you expect to have any additional medical expenses in the future due to these injuries?
IF YES: What do you think these will be? How much of that will not be covered by insurance, a health plan or some other agency?

$_____________________

15. Did you have any time away from work due to these injuries? Please don’t count time you had to spend in court or talking with lawyers or insurance claimmen.

YES.........................1
NO...GO TO Q.19........2

16. How many days did you miss from work?

#_____________________

17. Did you lose any pay because of this or were they covered by sick leave?

YES, LOST PAY................1
NO............................2

18. How much pay (did you lose/would you have lost) if they were not covered by sick leave?

$_____________________

19. How did you decide on the amount of money that you would ask for in court? IF REPRESENTED: Did you discuss this with your lawyer?
What was (his/her) advice? (PROBE: Did you take into account the amount of pain and suffering that you had or might continue to have in the future? Did you try to account for the trouble and hassle that you were caused? Did you include an amount to punish the defendant for what (he/she) had done?)

**GO TO Q.28**
20. DID THIS CASE INVOLVE SOME LOSS OTHER THAN PROPERTY, INJURY OR COLLECTION?

YES

NO...GO TO Q.28

21. What was the total amount of financial loss that you had as a result of this [situation that caused dispute]?

$__________

22. Did you have any insurance or any other way to cover some or all of these losses?

YES

NO...GO TO Q.24

23. What was the total amount of the loss that was not covered by insurance or taken care of in any other way?

$__________

24. Did the suit have any other financial effects on your business?
   Please don't include any of your lawyer fees or court costs, or the time you have spent on the suit yourself.

   IF YES: Could you tell me about these?

25. Did you have any insurance or any other way to cover some or all of these losses?

YES

NO...GO TO Q 27

26. What was the total amount of these losses that was not covered by insurance or taken care of in any other way?

$__________

27. How did you decide on the amount of money that you would ask for in court? (IF REPRESENTED: Did you discuss this with your lawyer? What was (his/her) advice?)
28. IS THIS A COLLECTION CASE?

YES..............................1
NO....................GO TO Q.31.......2

29. What was the amount owed to you?

$ __________

30. Did you ask for interest/attorney fees?

A. Has this debt caused problems in your business?

31. Now, I'd like to ask you some questions about what it cost you to (bring your case/defend yourself against this case).

First, how much of your own time have you had to spend on this case so far, including time spent filing papers or appearing in court, (IF REPRESENTED: and time spent meeting or talking with your lawyer) (IF PRO SE: and time spent preparing your case)?

# of Hours __________
OR
# of Days __________

32. CHECK CASE SOURCE:

GD TRANSFER......................1
MAGISTRATE'S.....................2
ARBITRATION...........GO TO Q.34....3

33. And how much of this was time spent after the case was (transferred to arbitration/appealed from magistrate's court)?

# of Hours __________
OR
# of Days __________
34. Did you lose any pay or did you have any business losses because of the time that you had to spend on the case? IF YES: About how much money did you lose? (PROBE: Could you estimate the value of the time/business you lost?)

YES:

NO:

35. R IS:

PHO SE...GO TO Q.45.....1
REPRESENTED.................2

36. What kind of fee arrangement have you had with your lawyer -- did you pay (him/her) an hourly rate, a flat rate for each thing (he/she) did for you, like attend a hearing, (IF PLAINTIFF: a contingent fee based on the amount (he/she) won (or you,)) or what?

HOURLY RATE.................1
FLAT RATE BY JOB............GO TO Q.40.2
CONTINGENT FEE.............GO TO Q.44.3
OTHER......................GO TO Q.40.4
INSURANCE LAWYER.........GO TO Q.47.5

37. What is the total amount of fees (he/she) has billed you for so far?

$

A. Do you expect to pay any additional fees? IF YES: How much?

$

38. CHECK CASE SOURCE:

GD TRANSFER..................1
MAGISTRATE'S.................2
ARBITRATION............GO TO Q.45...3

39. And how much of what was charged (to date) has been for time spent on your case since it was (transferred to arbitration/appealed from magistrate's court)?

$

*** GO TO Q.45 ****
40. Could you explain this arrangement to me?

41. What is the total amount of fees (he/she) has billed you so far?

$ __________

A. Do you expect to pay any additional fees? IF YES: How much?

$ __________

42. CHECK CASE SOURCE:

GD TRANSFER .................. 1
MAGISTRATE'S .................. 2
ARBITRATION...........GO TO Q.45..... 3

43. And how much of this has been for what (he/she) has done on your case since it was (transferred to arbitration/appealed from magistrate's court)?

$ __________

*** GO TO Q.45 ***

44. What was the contingent fee arrangement? (PROBE FOR DIFFERENT PERCENTS OF OUTCOME DEPENDING ON STAGE RESOLVED)

45. (In addition to what you have paid the lawyer), have you had to pay any other costs for bringing this case -- filing fees to the court, witnesses expenses, or anything else? IF YES: What was that for? How much was that?

NO......................... 1

$ __________ for __________

$ __________ for __________

$ __________ for __________

$ __________ for __________
46. R IS:

PRO SE........GO TO NEXT SECTION........1
REPRESENT.........................2

47. How satisfied were you with what the lawyer did for you on this case as adviser and counsel:

very satisfied.................1
somewhat satisfied...........2
somewhat dissatisfied........3
very dissatisfied.............4

At the hearing itself:

very satisfied.................1
somewhat satisfied...........2
somewhat dissatisfied........3
very dissatisfied.............4
Section E
Demographic Characteristics

Now I'd like to ask a few final questions about your background. This information will help us compare the opinions of different kinds of people.

1. How old were you on your last birthday?
   ENTER AGE:

2. What is your current marital status?
   MARRIED..........................1
   NOT MARRIED.....................2

3. What is the highest grade or year of regular school or college you ever finished and got credit for? (IF MARRIED: And what about your wife/husband?)
   R'S GRADE:______ SPOUSE'S GRADE______
   IF R COMPLETED GRADE 8 OR MORE, ASK: What is the highest diploma or degree you have?
   R'S DEGREE SPOUSE'S DEGREE
   NONE .........................1 ........1
   HIGH SCHOOL DIPLOMA ......2 ........2
   ASSOCIATE (e.g. AA) ........3 ........3
   BA, BS .......................4 ........4
   MA, MS, MPA, etc. ..........5 ........5
   MD, LLB, PhD, JD ..........6 .........6
   OTHER: SPECIFY .............8 .........8

4. Are you currently employed either part-time or full time? (IF MARRIED: And what about your spouse?)
   R'S EMPLOYMENT STATUS SPOUSE'S EMPLOYMENT STATUS
   EMPLOYED, FULL-TIME ........1 ..........1
   EMPLOYED, PART-TIME ..........2 ..........2
   NOT EMPLOYED ...............3 ..........3
   IF R EMPLOYED: What is your occupation and job title?
   IF R UNEMPLOYED: What was your occupation?
   IF SPOUSE EMPLOYED: What is your (wife/husband)'s occupation and job title?
5. Including all the different sources of income of all the people living in your household now, was your household's total income before taxes in 1981 under $15,000 or over $15,000?

UNDER $15,000 ASK A .........1
OVER $15,000 ASK B ........2
$15,000 GO TO Q.6 ........3

A. Was it under $10,000 or over $10,000?

UNDER $10,000 GO TO Q. 8 .........1
OVER $10,000 GO TO Q. 8 .........2
$10,000 GO TO Q. 8 ........3

B. Was it under $25,000 or over $25,000?

UNDER $25,000 .........1
OVER $25,000 ........2
$25,000 ........3

6. What do you consider to be your racial or ethnic background?

BLACK .................1
HISPANIC ..............2
WHITE .................3
OTHER: SPECIFY .........8

7. If you ever have another dispute like this how hard would you try to settle it yourself so as to avoid having it resolved in arbitration? Would you:

make more attempts to settle than in this case ..........1
make fewer attempts, or ..  ..........2
make about the same? ......3

Why?
8. If you were talking to a friend about your experience in court on this case, how would you describe your feelings about the whole experience?

Thank you very much. We really appreciate all the time you have spent with us. We will be writing up the results of the study in the next few months. If you would like a description of the results, we would be happy to send it to you. If YES: I need to have your full name and address so that we can send the description.

NAME: ______________
ADDRESS: ___________
Appendix B

RULES OF CIVIL PROCEDURE

COMPULSORY ARBITRATION

Adopted March 16, 1981

Rule 1301. Scope

These rules apply to actions which are submitted to compulsory arbitration pursuant to local rule under Section 7361 of the Judicial Code, 42 Pa.C.S. 7361.

Rule 1302. List of Arbitrators. Appointment to Board.

Oath

(a) A list of available arbitrators shall be prepared in the manner prescribed by local rule. The list shall consist of a sufficient number of members of the bar actively engaged in the practice of law primarily in the judicial district in which the court is situated so as to be fairly representative thereof.

(b) The board of arbitrators shall consist of three members of the bar appointed from the list of available arbitrators as prescribed by local rule.

(c) The board shall be chaired by a member of the bar admitted to the practice of law for at least three years.

(d) Not more than one member or associate of a firm or association of attorneys shall be appointed to the same board.

(e) A member of a board who would be disqualified for any reason that would disqualify a judge under the Code of Judicial Conduct shall immediately withdraw as an arbitrator.

(f) Each arbitrator shall take an oath of office in conformity with Section 3151 of the Judicial Code.
Rule 1303. Hearing. Notice

(a) The procedure for fixing the date, time and place of hearing before a board of arbitrators shall be prescribed by local rule, provided that not less than thirty days' notice in writing shall be given to the parties or their attorneys of record.

(b) When the board is convened for hearing, if one party is ready and the other is not the case shall proceed and the arbitrators shall make an award unless the court orders a continuance.

Rule 1304. Conduct of Hearing. Generally

(a) Except as otherwise prescribed by these rules, the board of arbitrators shall conduct the hearing in conformity with Rule 1038(a). A voluntary nonsuit may be taken by a plaintiff as permitted by Rule 230. If the plaintiff fails to appear or if, at the conclusion of the plaintiff's case, the board deems the evidence insufficient to support an award in favor of the plaintiff, it shall enter an award in favor of the defendant. If the board does not do so, the defendant may proceed to offer evidence.

(b) The board shall have the power to administer oaths or affirmations to witnesses and to adjourn an uncompleted hearing from day to day.

(c) A stenographic record or a recording of the hearing shall not be made unless a party does so at his own expense. If a party has a stenographic record or a recording made, he shall upon request furnish a copy to any other party upon payment of a proportionate share of the total cost of making the record or recording.

Rule 1305. Conduct of Hearing. Evidence

(a) Except as prescribed by this rule, the rules of evidence shall be followed in all hearings before arbitrators. Rulings on objections to evidence or on other issues which arise during the hearing shall be made by a majority of the board.

(b) If at least twenty days' written notice of the intention to
offer the following documents in evidence was given to every other party accompanied by a copy of the document, a party may offer in evidence, without further proof,

(1) bills, records and reports of hospitals, doctors, dentists, registered nurses, licensed practical nurses and physical therapists, or other licensed health care providers,
(2) bills for drugs, medical appliances and prostheses,
(3) bills for or written estimates of value, damage to, cost or repair of or loss of property, and
(4) a report of rate of earnings and time lost from work or lost compensation prepared by an employer.

Any other party may subpoena the person whose testimony is waived by this rule to appear at the hearing and any adverse party may cross-examine him as to the document as if he were a witness for the party offering the document.

(c) A written estimate of value, damage to, cost of repair of or loss of property shall be accompanied by a statement of the party offering it whether the property was repaired and, if it was, whether the repairs were made in full or in part and by whom, together with the bill therefor.

(d) A party may offer in evidence, without the certification required by Sections 5328 and 5103 of the Judicial Code, an official weather or traffic signal report or a standard United States Government life expectancy table. A party may also offer any other official record kept within the Commonwealth without such certification if the provisions of subdivision (b) are followed.

Rule 1306. Award

The board shall make an award promptly upon termination of the hearing. The award shall dispose of all claims for relief and shall be substantially in the form set forth in Rule 1312. If damages for delay are awarded under Rule 238, the amount shall be separately stated. The award shall be signed by the arbitrators or a majority of them. A
dissenting vote without further comment may be noted therein. The award shall be filed with the prothonotary immediately after it is signed.


(a) The prothonotary shall

(1) enter the award of record upon the proper docket and in the judgment index;

(2) immediately send by ordinary mail a copy of the award, with notice of the date and time of its entry on the docket and the amount of arbitrators' compensation to be paid upon appeal, to each party's attorney of record, or to the party if he has no attorney of record; and

(3) note in the docket the date of mailing the notice.

(b) The award when entered shall be a lien upon the party's real estate, which shall continue during the pendency of an appeal or until extinguished according to law.

(c) If no appeal is taken within thirty days after the entry of the award on the docket, the prothonotary on præcipe shall enter judgment on the award.

(d) Where the record and the award disclose an obvious and unambiguous error in the award in mathematics or language, the court, on application of a party within the thirty-day period allowed for appeal, may mold the award to the same extent and with the same effect as the court may mold the verdict of a jury. The filing of such an application shall stay all proceedings including the running of the thirty-day period for appeal until disposition of the application by the court. Any party may file a notice of appeal within the thirty-day appeal period prescribed by subdivision (a) or within ten days after disposition of the application, whichever is later.
Rule 1308. Appeal Arbitrators’ Compensation. Notice

(a) An appeal from an award shall be taken by

(1) filing a notice of appeal in the form provided by Rule 1313 with the prothonotary of the court in which the action is pending not later than thirty days after the entry of the award on the docket, and

(2) payment to the prothonotary of the compensation of the arbitrators not exceeding fifty percent of the amount in controversy, which shall not be taxed as costs or be recoverable in any proceeding;

provided that the court, in an appropriate case, upon petition may permit the appellant to proceed in forma pauperis.

(b) The appellant shall provide the prothonotary with the required notice for mailing and properly stamped and addressed envelopes. The prothonotary shall give notice to each other party of the taking of the appeal. Failure to give the notice shall not invalidate the appeal.

(c) The appellant shall not be required to post any bond, recognizance or other security or to pay any record costs which have accrued in the action. All record costs shall abide the event.

Note: This rule changes the prior practice with respect to a bond or recognizance and the payment of record costs.

Rule 1309. Parties to Appeal

An appeal by any party shall be deemed an appeal by all parties as to all issues unless otherwise stipulated in writing by all parties.

Rule 1310. Discontinuance

No appeal may be discontinued except by leave of court after notice to all parties or upon the filing of the written consent of all parties.
Rule 1311. Procedure on Appeal

(a) The trial shall be de novo.

Note: The provisions of Rule 1305 governing conduct of hearing shall not apply on appeal.

(b) An arbitrator may not be called to testify as to what transpired before the arbitrators.
Rule 1312. Form of Oath, Award and Notice of Entry of Award

The oath, award of arbitrators and notice of entry shall be in substantially the following form:

(Caption)

OATH

We do solemnly swear (or affirm) that we will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and that we will discharge the duties of our office with fidelity.

Chairman

AWARD

We, the undersigned arbitrators, having been duly appointed and sworn (or affirmed), make the following award:

(Note: If damages for delay are awarded, they shall be separately stated.)

Arbitrator, dissents. (Insert name if applicable.)

Date of Hearing: Chairman

Date of Award:
NOTICE OF ENTRY OF AWARD

Now, the _______day of ______, 19____, at _______M., the above award was entered upon the docket and notice thereof given by mail to the parties or their attorneys.

Arbitrators' compensation to be paid upon appeal:

__________________________
Prothonotary

$ __________________________

By: ________________________
Rule 1313. Form of Notice of Appeal

(a) The notice of appeal shall be in substantially the following form:

(Caption)
NOTICE OF APPEAL
FROM AWARD OF BOARD OF ARBITRATORS

TO THE PROTHONOTARY:

Notice is given that __________ appeals from the award of the board of arbitrators entered in this case on __________.

A jury trial is demanded ___. (Check box if a jury trial is demanded. Otherwise jury trial is waived.)

I hereby certify that

(1) the compensation of the arbitrators has been paid, or
(2) application has been made for permission to proceed in forma pauperis. (Strike out the inapplicable clause.)

(b) No affidavit or verification is required.


After the effective date of these rules,

(a) all Acts or parts of Acts of Assembly inconsistent with these rules are suspended to the extent of such inconsistency; and

(b) the practice and procedure provided in all former Acts of Assembly governing compulsory arbitration, which have been repealed by the Judiciary Act Repealer Act (JARA), Act of April 28, 1978, No. 53, and which are now part of the common law of the Commonwealth by virtue of Section 3(b) of JARA, are hereby abolished and shall not continue as part of the common law of the Commonwealth.
Appendix C

CALCULATION OF EXPECTED NET OUTCOMES FROM ARBITRATION

To calculate the estimated net outcome for hypothetical arbitration cases, we multiplied the amount claimed by the expected award ratio (a fraction), and subtracted the costs of arbitration. The estimates of costs under different attorney fee arrangements are shown in Table 8.

In estimating the expected award ratio for litigants we needed to take into account both their own situation (represented or pro se) and their opponent's. To compute this ratio, we calculated the average of two separate ratios: the first estimated the litigant's outcome if his opponent was represented; the second estimated his outcome if his opponent was unrepresented. We estimated the probability that the opponent would appear either represented or unrepresented, based on the frequency with which each occurs in our sample of hearing cases. Defendants were represented in about 75 percent of these cases; plaintiffs were represented in about 90 percent of the cases heard. Our estimates of the effects of different patterns of representation were derived from the regression results: When both parties appear with attorneys, the expected award ratio is equal to the constant (.65). When plaintiffs appear pro se against represented defendants the expected award ratio is decreased by .41; when defendants appear pro se against represented plaintiffs, the expected award ratio is increased by .17. When both parties appear pro se there is no measurable effect. The formulas for calculating expected award ratios are therefore as follows:

For represented plaintiffs:

\[
\text{Expected award ratio} = .75 (.65 - .41) + .25 (.65)
\]

For unrepresented plaintiffs:

\[
\text{Expected award ratio} = .75 (.65) + .25 (.65 + .17)
\]

For represented defendants:

\[
\text{Expected award ratio} = .90 (.65 + .17) + .10 (.65)
\]

For unrepresented defendants:

\[
\text{Expected award ratio} = .90 (.65) + .10 (.65 - .41).
\]
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