The New Jersey Automobile Arbitration Program: Alternative Adjudication?

In recent years, legislators and court officials have become increasingly interested in the use of alternative dispute resolution (ADR) procedures to dispose of civil lawsuits. ADR programs divert certain cases from the regular trial court calendar to some form of arbitration or mediation process. The goals of these procedures are to reduce congestion on trial calendars, speed case disposition, and reduce costs.

In 1983, the state of New Jersey introduced mandatory arbitration of automobile injury lawsuits in Burlington and Union counties as an experimental procedure. The ICJ helped to design the experiment and evaluated the pilot program in 1984.

When the program was adopted statewide the following year, the New Jersey Administrative Office of the Courts asked the ICJ to evaluate the program’s effectiveness. Alternative Adjudication: An Evaluation of the New Jersey Automobile Arbitration Program (R-3676-ICJ), by Robert J. MacCoun, E. Allan Lind, Deborah R. Hensler, David L. Bryant, and Patricia A. Ebener, reveals that the arbitration program is providing a service to disputants involved in auto negligence suits, but a service different from what the program’s designers might have envisioned.

How the program functions

The ICJ evaluation is based on a random sample of more than 1,000 auto negligence cases filed in eight New Jersey courts during two time periods: the second half of 1983—before the program’s inception—and the second half of 1985. The sample from the latter period includes both cases assigned to arbitration and cases that were not. We also surveyed approximately 300 litigants and 400 attorneys immediately after their arbitration hearings to learn how participants evaluate the program.

As Fig. 1 shows, the program captures a significant fraction of auto negligence cases, but relatively few are disposed of by an arbitration award. In our

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**Fig. 1**—Disposition of cases in the postarbitration sample
sample, 68 percent of the cases were assigned to the program, but many of them settled before they reached an arbitration hearing. Slightly more than half of the assigned cases were actually arbitrated, and 38 percent of those were terminated by the arbitration award.

More than half of the arbitration awards were rejected, and a trial de novo requested. But only 10 percent of the arbitrated cases actually went to a trial de novo; this is only 3 percent of all the cases that were assigned to the program. Disputants may request a trial de novo primarily as a bargaining tactic; we found that over 80 percent of the cases in which a trial de novo was requested settled before a trial took place.

Program doesn't appear to reduce court workload

To significantly reduce workload, an arbitration program would have to substantially reduce the number of trials. We found no statistically measurable reduction in trial rates for cases assigned to the New Jersey program. However, trial rates were already less than 5 percent. To detect a 1 or 2 percent reduction in trial rates would have required a much larger sample. In addition, arbitration is not a free good. Courts must take on new duties such as scheduling, preparing for, and participating in arbitration hearings. These functions caused a modest increase in court activity in New Jersey. Thus, on balance, the arbitration program (at least as currently designed and operated) does not seem to be a promising tool for reducing court workload.

Cases assigned to arbitration take longer

The results on timing are also mixed. Cases reach arbitration hearings much sooner than they would reach trial. But for most arbitrated cases, trial was not the alternative: Without arbitration, they would have been settled. And in New Jersey, those settlements occur, on average, sooner than arbitration. As a result, cases assigned to the arbitration program in 1985 actually terminated more slowly on average than they would have without the program. It does appear that the New Jersey courts could dispose of assigned cases more rapidly by scheduling arbitration hearings earlier; the earliest permissible date for a hearing is 160 days after filing, but the median date for hearings in the New Jersey program at the time of our study was 12 months after filing.

Arbitration appears to provide alternative adjudication

But the real story behind the New Jersey data is a more complicated one. The program appears to be meeting a demand for informal adjudication. Disputants want a hearing, an opportunity to present their case before an impartial third party and to receive a judgment based on the merits of the case. They want the hearing to be dignified, respectful, and impartial, and they feel that arbitration hearings in New Jersey meet these criteria. Attorneys do not appear to mind the fact that arbitration hearings are informal, and litigants actually see this informality as a plus. In fact, under the circumstances prevailing in New Jersey, it appears that disputants who might otherwise settle privately are willing to wait a year or more to take their case to arbitration. Thus, the arbitration program is providing an opportunity for more cases to be adjudicated, and it appears to be doing so without adding to private litigation costs.


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