AN OVERVIEW OF ADR PROGRAMS WITHIN THE NEW YORK CITY-BASED COURTS OF THE SECOND CIRCUIT, WITH A FOCUS ON MEDIATION

COMPILATION AND INTRODUCTION BY SIMEON H. BAUM AND HON. BERNARD J. FRIED

When members of the federal bar think of the Second Circuit courts based in the New York City area, large, complex, commercial, or historically groundbreaking litigation is likely the first thing that comes to mind. New York, as an urban melting pot, a booming commercial center, and a city of more than 8 million people, has spawned a mass of civil and criminal litigation over the last two and a half centuries. As a gateway to America and a major port, local federal matters have included major admiralty cases, bankruptcies large and small, and immigration matters. As the heart of the securities industry hosting major financial exchanges, New York has generated a plethora of significant securities matters within the courts of the Second Circuit. The Second Circuit has produced a wide range of decisions and judgments of national consequence on intellectual property, freedom of expression, freedom of the press, terrorism, ship sinking, mob crime, espionage, and more.

Yet, for more than the last quarter century, the federal courts in New York have also been the scene of dispute resolution alternatives to litigation—mediation, arbitration, and early neutral evaluation. Shortly after the issuance of the Civil Justice Reform Act of 1990, both the Southern District of New York (SDNY) and Eastern District of New York (EDNY) district courts developed pilot programs, adding to existing alternative dispute resolution (ADR) efforts, to foster the use of ADR in the courts. ADR programs were already well underway in the Court of Appeals for the Second Circuit, where a case conferencing program had been in place since 1974.

Since the inception of active efforts in the Second Circuit in the mid-1970s and the SDNY and EDNY pilot programs of the early 1990s, tremendous strides have been made within the courts of the Second Circuit in providing litigants with alternatives to litigation as an effective, efficient, and high-quality means of resolving their disputes. The following compilation presents contemporary voices from the federal courts housed in the New York City area on their respective ADR programs. First we hear from Chief Circuit Court Mediator Kathleen Scanlon and Circuit Court Mediator Dean Leslie on the approach they take to mediations that come into the civil appeals management program, affectionately known as CAMP. Next we hear from Chief Judge Colleen McMahon on the ADR programs of the SDNY and its focus on quality. Then Chief Judge Dora Irizarry and Magistrate Judge Robert M. Levy provide us with a variety of insights into the breadth, scope, and uses of the ADR programs in the EDNY. Included in their remarks is appreciation for the ADR panel that mediated more than 1,000 Superstorm Sandy matters in roughly one year. And, finally, an insider's view of the Superstorm Sandy mediation program is offered in a sidebar by Peter Woodin of JAMS, Mediation, Arbitration, and ADR Services, who was actively involved in organizing and providing training for the panel of mediators who served in the Superstorm Sandy effort.

Acknowledgements

Before hearing from these contemporary and authoritative voices, we acknowledge a number of people who were instrumental in the growth and development of the ADR programs in these courts over the last quarter century and then reflect on the value of these processes.

For years, the face of the Second Circuit's CAMP program was Senior Staff Counsel Frank J. Scardilli. While the CAMP program counsel were referred to as "mediators," initially two features distinguished the conference from a full-blown mediation: counsel typically attended without clients, and the mediator was expected to give fairly direct feedback on his or her views of the parties' cases. Scardilli, a Yale Law graduate and Fulbright Scholar with a fascination for logical positivism and international affairs, was a fixture in CAMP conferences for decades. He was later joined by Lisa Greenberg in this role. Today, the CAMP program is fortunate to have experienced mediators Kathleen Scanlon and Dean Leslie available to conduct its conferences.

Commencing in the 1990s, and running for two decades, George O'Malley, the ADR administrator for SNDY, was the face of the court's ADR office. A mediator entering his office would find him dapperly clad in suspenders and bow tie, with jars of candy available on his desk. The chief judges of the SDNY were tremendously supportive of the ADR program, as were Judges Harold Baer and George Daniels, who were responsible for oversight of the court's program for years. As a consequence, the ADR office had further, very able full-time support from

Maria Sclafani, who knew every mediator on the panel, as well as from Phyllis Adamik and Stuart Cohn. Today, the ADR program continues to flourish under the supervision of Mediation Director Rebecca Price, who has a deep knowledge and appreciation of the nuances of the mediation process based on her prior experience as a mediator and mediation trainer.

From the early 1990s, again for over two decades, the EDNY ADR program ran through the tireless efforts of its ADR Administrator Gerald P. Lepp who did whatever it took to move cases into mediation and promote the program and its panel of mediators. He was greatly helped, as well, by the support of the EDNY chief judges and by the oversight of the visionary Magistrate Judge Robert M. Levy. Today, the EDNY ADR program is fortunate to have Robyn Weinstein as ADR administrator. Weinstein came to the EDNY with a background in teaching and training mediators, as well as with deep mediation experience.

Mediation Benefits

Before turning to the contemporary voices from the court, it might be helpful to consider the benefit of mediation. Promoters of mediation tend to observe that it offers parties substantial savings in time and cost of litigation—which are certainly helpful and of concern to the court. Yet there is much more fundamental value offered by the mediation process. Mediation provides a compassionate neutral who can empathize—on everyone's side—while remaining impartial. Mediation is a confidential forum where nothing is irrelevant. Parties have the chance to consider what might happen if the matter does not get resolved (i.e., the risk and cost of litigation). Beyond this, it is fully legitimate to address emotions, values, interparty dynamics, principles, stories and a range of other clusters of meaning. Parties may deepen understanding and engage in deal-making in a forum that gives them ultimate control over the outcome of the process. They may develop deals tailored to meet their needs and capabilities, which account for ambiguities, uncertainties, and the gray areas in their respective senses of fairness and fact. Mediation is a forum for the integration of the norms of justice and harmony—where flexibility and creativity have a place alongside deliberative decision-making, pragmatism, and humanism.

An ideal insight into the value and potential of mediation, even before it hits the courthouse steps, can be gained from former New York Commercial Division Judge Bernard J. Fried, who is now a mediator and arbitrator at JAMS in New York. Here is what Judge Fried has to say:

> There is no need for me to restate the obvious importance and tremendous value of mediation in not only commercial litigation, but in all types of litigation. However, what is often overlooked is its value and importance pre-litigation, especially in commercial cases. As a judge sitting in the Commercial Division, of course, mediation was conducted post-filing, and I came to the opinion, certainly not unique, that the sooner the mediation commenced, usually the better the outcome. This view was not often shared by all counsel; nevertheless, early intervention was the norm in the Commercial Division, and quite often produced a satisfactory outcome.
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> Since my retirement, I have come to realize that brewing commercial disputes, almost always, early on, involve counsel, and usually litigation counsel as well, in a process in which the parties initially try to resolve their differences. And, when success is not attained, at some point complaints are drafted and often presented to the other side. While this of course, may raise hackles, it also presents a golden opportunity for ADR (i.e., mediation). Why not upon the receipt of such draft complaint, suggest that the parties participate in mediation, rather than shutting down the process and saying, "We will meet you in court"? If there are statute of limitations issues, a tolling agreement may be appropriate. Following this path to pre-litigation mediation has multiple advantages: The dispute does not become public, the parties are often less entrenched, expensive and disruption discovery has not begun, the overall attorney's fees and costs will be certainly less, and frequently the dispute is satisfactorily resolved. Finally, while I understand that one side is reluctant to suggest mediation for fear of seeming "weak," in my experience, that is an unnecessary fear and should not be an impediment to seeking resolution of the dispute without a court filing.

With Judge Fried's comments in mind, you are now invited to hear from each of our local federal courts on their ADR programs. ⊙

Simeon H. Baum, litigator and president of Resolve Mediation Services Inc. (mediators.com), is a former member of the FBA board of directors, former chair of the FBA's ADR Section, and former president of the SDNY Chapter. He has conducted over 1,000 mediations since 1992, and has three times been selected as Best Lawyers "Lawyer of the Year for ADR" in New York City. He teaches on the ADR faculty at Benjamin N. Cardozo School of Law and is a frequent speaker and trainer on ADR.

Hon. Bernard J. Fried (Ret.), JAMS mediator and arbitrator, has over 32 distinguished years on the New York state bench, first in the New York City Criminal Court, later in the Bronx County Supreme Court, and most recently in the New York County Supreme Court. In addition to his judicial service, Justice Fried has contributed to a variety of legal education programs, including the Federal Bar Council Winter Meetings, the International Moot Courts in The Hague, and the Asia-Pacific Economic Cooperation Meeting in Singapore.

THE PIONEERING SECOND CIRCUIT'S CIVIL APPELLATE MEDIATION PROGRAM

CHIEF CIRCUIT MEDIATOR KATHLEEN M. SCANLON AND CIRCUIT MEDIATOR DEAN W. M. LESLIE

The Second Circuit's civil appellate mediation program (CAMP) is a long-standing and integral part of the court's appellate process. The predecessor to CAMP—the civil appeals management plan—was established in 1974 as the first federal appellate program to assist litigants in resolving their appeal consensually without the need for a final decision by the court. CAMP and its predecessor have facilitated the resolution of thousands of appeals.

Supreme Court Justice Anthony Kennedy has remarked that "it is very important that we have an adequate, decent and informed civil discourse to protect our heritage." Mediation provides a forum for such discourse among attorneys, their clients, and experienced mediators in exploring appellate issues and other options, including, of course, settlement. Moreover, in consultation with counsel, mediators may assist lawyers to provide candid advice to their client, including nonlegal considerations such as moral, economic, social, and political factors, as set forth in Rule 2.1 of the ABA Model Rules of Professional Conduct.

The CAMP office has two full-time court mediators and a panel of 15 court-appointed mediators on a pilot basis. The parameters of CAMP are set forth in the circuit's Local Rule 33.1, which is based on Federal Rule of Appellate Procedure 33. The CAMP process is mandatory if the court orders it; nonetheless, any result reached in mediation is entered upon the consent of the parties. The vast majority of counseled civil appeals are eligible for mediation. However, CAMP carefully screens all eligible cases to assess whether mediation may be suitable before an order to mediate is issued. Client participation is an important feature of most mediations. If the court does not order mediation, parties may request a CAMP conference themselves.

The screening process was recently refined and now uses a comprehensive multifactor approach that takes numerous factors into consideration, including likelihood in achieving a settlement, the costs and potential outcome on appeal, the relationship between the parties in the dispute, or the type of relief sought. CAMP also assesses the most suitable format of the mediations—in-person, telephonically using a customized conference call system, or a hybrid of those options.

The mediation forum is a unique setting within an adversarial appellate process. It is both informal and confidential, features not otherwise available in litigation. In the process of open and informal discussions, which are confidential under the Second Circuit's Local Rule 33.1, solutions and options may emerge that would otherwise remain undiscovered. Even negotiated outcomes outside the litigation structure may be blocked due to structural and incentive-based barriers. Mediators can overcome many of these barriers that prevent parties from identifying their underlying interests, needs, priorities, and aspirations.

CAMP engages in mediation in a wide variety of disputes—admiralty, bankruptcy, civil rights, consumer protection, contracts, counsel fees, employment, Fair Labor Standards Act, Free Appropriate Public Education, Individuals with Disabilities Education Act, insurance, products liability, trademark, and torts matters. Even if a consensual resolution cannot occur, mediation may often: (1) sharpen issues for briefing, cutting pages and expense; (2) empower parties to settle litigation because they speak for themselves; (3) lay groundwork that improves the chances of resolution in the future; and (4) identify jurisdictional issues that may save the parties time and expense.

In the past two years, under the leadership of Chief Circuit Mediator Kathleen M. Scanlon, and with the addition of Circuit Mediator Dean Leslie, the program has added many new features, including more refined screening, a pilot pro bono mediator panel, co-mediation models, and an annual courthouse mediation colloquy featuring distinguished guests.

For more information about the Second Circuit's Mediation Program, contact *camp_support@ca2.uscourts.gov.* ⊙

Kathleen M. Scanlon is the Chief Circuit Mediator for the Second Circuit and Adjunct Professor at Fordham Law School, where she teaches Professional Responsibility. She previously practiced as a litigator at New York law firms and was Senior Vice President and Director of Public Policy Projects at the CPR International Institute for Conflict Prevention & Resolution, where she authored the Mediator's Deskbook.

Dean W. M. Leslie is a Circuit Mediator for the Second Circuit and an Adjunct Professor at New York Law School, where he teaches both Drafting Contracts and Drafting Corporate Documents. He previously served as a Senior Settlement Coordinator for the New York State Supreme Court, and is admitted as an attorney in New York, and as a solicitor in England and Wales.

ADR IN THE SOUTHERN DISTRICT OF NEW YORK: QUALITY IS KEY

CHIEF JUDGE COLLEEN MCMAHON

The Southern District of New York is very proud of its highly successful mediation program, which has allowed us to resolve 2,506 individual lawsuits over the past five years without putting the parties through the rigors of full discovery and the expense of motion practice and trial.

But we are always eager to make our program even better. So in recent years we focused on assessing and enhancing the quality of our panel mediators.

Why is quality control so important? Well, for many lawyers and parties, their first exposure to mediation may well be through our court, so we have a unique opportunity to educate parties and counsel about the mediation process. We understand that when mediation works, it leaves litigants not only with a settlement, but also with tools that will enable them to approach future disputes in an effective manner short of coming to court. Satisfied consumers of mediation use more mediation; the opposite is also true. So we want the experience of mediation in our court to be a positive one.

Quality control starts at the very beginning, so applicants who wish to join the court's panel participate in a process through which they are educated about mediation in the Southern District. As part of the formal application process, aspiring mediators, regardless of their prior mediation training or experience, must observe a minimum of three mediations conducted by one of our SDNY panel mediators. They then conduct a "mentor mediation" in which they are paired with an experienced co-mediator/mentor who makes a recommendation as to their readiness to mediate independently. We take this much care before adding new members to our panel because no amount of mediation training guarantees that a person will be a competent and effective mediator in this particular forum.

Quality control continues after someone joins the panel. In 2016, SDNY became the first and only federal district court to implement a protocol for ongoing peer-to-peer evaluation of our panel mediators. This protocol enables us to offer real-time suggestions/corrections to mediators, together with remediation and targeted training when necessary. It also allows us to identify mediators whose practice no longer fits with the court's program and to remove them.

When evaluating mediators, we are careful to respect the confidentiality that is the hallmark of mediation because confidentiality is what allows mediation participants to be able to speak freely in order to resolve their disputes. But we also understand that confidentiality can shield the mediator from scrutiny, especially in states like New York that do not have a uniform mechanism for exploring and resolving complaints about mediators. The SDNY mediator evaluation protocol, along with post-mediation surveys, allows us to "check under the hood" periodically, so that we can confidently endorse the mediators on our panel to the litigants who arrive at our courthouse.

In addition to our efforts to asses and enhance practice for individual mediators, we use our mediator evaluation protocol to identify areas where continuing mediator education would be appropriate. We offer periodic training for all panel mediators on substantive areas of law and mediation practice. We also convene mediator practice groups facilitated by mediation program staff. These practice groups are critically important since they give our panel mediators the opportunity to meet and discuss common challenges, to share strategies, and to learn from one another.

Finally, we understand that you can't be a good mediator unless you actually conduct mediations. Since 2011, the SDNY has made it a priority to ensure that all panel mediators have opportunities to mediate. That way, the work is not funneled to any particular individual or group of people. And because we assign panel mediators to cases based on subject-matter expertise, we are able to offer our litigants access to people who really understand their disputes and to ensure our mediators work in areas with which they already have substantive familiarity. This assignment model has implications for mediators' development and promotional opportunities—and, as we have learned, it increases our utilization of women and diverse mediators.

These changes and initiatives are all occurring in a court in which the use of mediation is on the rise. In 2011 the court initiated automatic referrals to mediation for counseled employment cases and some § 1983 police misconduct claims in New York City. In 2016, we expanded automatic referrals of certain police claims to White Plains, N.Y., and added automatic referral of cases filed under the Fair Labor Standards Act that are assigned to seven of the court's judges. Since 2012, referrals to mediation of employment cases filed by pro se parties have doubled, and referrals of nonautomatic cases by individual judges have increased by 157 percent since 2012. Our mediators have been particularly successful in helping parties resolve cases in the areas of contracts, wage and hour, copyright, and personal injury.

The effectiveness of the court's mediation program is only possible because we have invested in the program and in its staffing. None of these initiatives can operate at a consistently high level without ongoing oversight, statistical and program analysis, and support for panel mediators. We are exceedingly fortunate to have Rebecca Price running our program; her professionalism is much remarked on by both mediators and lawyers who are involved in the mediation process, and her unflagging enthusiasm for ADR is the engine that drives the program's success. ⊙

Hon. Colleen McMahon is Chief Judge of the United States District Court for the Southern District of New York, where she has served as chief judge since 2016 after having been nominated by President Bill Clinton in 1998. Prior to joining the court, Judge McMahon was a New York Court of Claims Judge for the New York Supreme Court from 1995 to 1998. She was the first female litigation partner at the distinguished law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP.

ADR IN THE EASTERN DISTRICT OF NEW YORK: CONTINUED GROWTH AND CREATIVITY

CHIEF JUDGE DORA L. IRIZARRY AND HON. ROBERT M. LEVY

The U.S. District Court for the Eastern District of New York is one of the most diverse judicial districts in the country. With a population of 8 million people, it includes Brooklyn, Queens, Staten Island, and all of Long Island. Its 26 district judges and 18 magistrate judges sit in courthouses located in Brooklyn Heights and Central Islip, Long Island.

The EDNY has long been at the forefront of court-annexed dispute resolution. Our mandatory but nonbinding arbitration program was established in 1986 by then Chief Judge Jack B. Weinstein. It was among the first alternative dispute resolution (ADR) programs in the country offered by a federal district court, as was our mediation program that followed in 1992. Since its inception, the goal of the ADR program has been to further the mandate of Rule 1 of the Federal Rules of Civil Procedure by helping parties secure the "just, speedy, and inexpensive determination" of their cases.

Throughout the more than 30 years of dispute resolution in the EDNY, the court has reimagined the way it designs and implements its ADR program, using a tailored approach to address the needs of both litigants and the court. The program offers dispute resolution services through panels of carefully screened, highly qualified neutrals whose work is overseen by the ADR administrator using a quality assurance system. The program strives to be user friendly and allows litigants to select the mediator from our panel who best fits their case.

In May 2014, the ADR department launched the Hurricane Sandy Mediation Program. Because of the high volume of cases filed in the EDNY arising from the super storm, and the urgent needs of litigants whose homes and businesses had been damaged, the court issued its first mandatory ADR order, referring all Hurricane Sandy cases to mediation. More than 1,400 Hurricane Sandy cases were filed in the district, and nearly half of them were mediated. To implement the program, the ADR department worked closely with the magistrate judges overseeing the Sandy cases to craft a process that would meet the needs of the court, ensure fairness and quality of process, and be efficient and appealing to litigants. Working directly with counsel for both plaintiffs and defendants, and with the tireless assistance of EDNY panel mediators Simeon Baum and Peter Woodin, the ADR department created an extensive, substantive training program and developed a cadre of specially trained mediators and arbitrators to serve on the EDNY's Hurricane Sandy mediation and arbitration panels. This approach, designed specifically for the types of storm-related cases filed in the district, proved effective and efficient, with an overall settlement rate of 66 percent and with mediated cases resolved within 380 days.

The district recently adopted a similar approach in designing its Fair Labor Standards Act (FLSA) Mediation Initiative. During the past 10 years, filings of FLSA cases have increased tremendously; however, until recently only 2 percent of the cases filed annually went to court-annexed mediation.

Drawing on its experience with the Hurricane Sandy program, the court recognized that FLSA cases also require special attention, although for different reasons. In early 2016, the EDNY ADR department conducted a series of interviews with judges, attorneys, and mediators to develop best practices for designing and implementing a mediation program for FLSA cases. EDNY ADR Director Robyn Weinstein then conducted an FLSA mediation training at the Brooklyn and the Central Islip courthouses to train EDNY panel mediators in the legal issues involved in wage and hour claims. She also recruited additional experienced mediators knowledgeable in FLSA and New York labor law to serve as mediators on a specially created FLSA mediation panel.

Since the implementation of the FLSA initiative, the number of FLSA cases referred to court-annexed mediation increased substantially, reaching 25 percent in 2017. In 2017, 62 percent of FLSA cases mediated through the EDNY mediation program were resolved. This settlement rate does not reflect those cases that settle shortly after a mediation session concludes, of which there are many. Some EDNY judges now incorporate a referral to mediation into their individual scheduling orders in FLSA matters, and attorneys who regularly participate in the FLSA mediation program routinely request a referral to mediation.

The EDNY Mediation Advocacy Program (MAP) is another newly designed program, which provides pro se litigants in employment discrimination cases with limited scope counsel and offers a pro bono mediation conducted by EDNY mediation panel members. In 2013-2015, the court averaged one MAP referral per year. In order to increase the utilization of MAP, Weinstein now conducts biannual training programs in employment discrimination law and mediation advocacy at each courthouse. During 2016 and 2017, 31 cases were referred to MAP, with an average settlement rate of 50 percent. Currently, MAP maintains a list of 43 advocates, which includes solo practitioners, attorneys at major law firms, and clinical advocacy programs at Brooklyn Law School and Benjamin N. Cardozo School of Law.

The ADR department places a high emphasis on the quality of the neutrals that serve on our panels. It has integrated the neutral evaluation process into the program's case management process and, in doing so, has increased dramatically the number of mediator evaluations received by the ADR department. The ADR department also developed a partnership with

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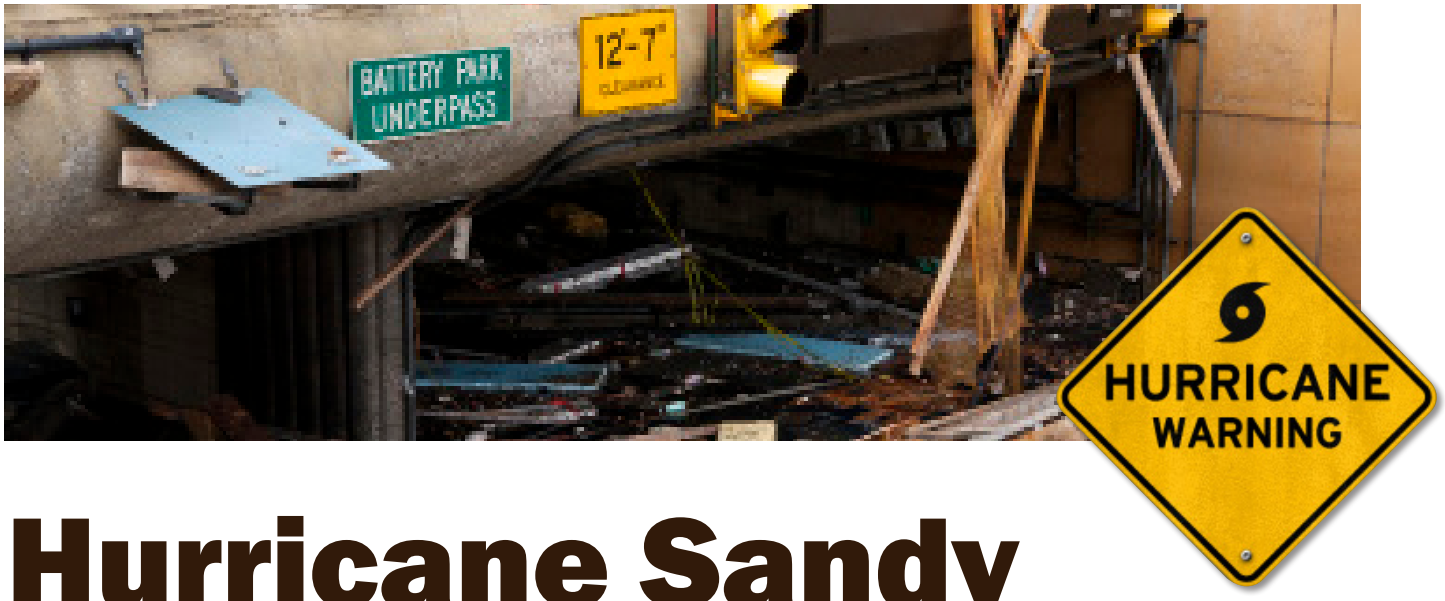

Hurricane Sandy Mediation Program

PETER H. WOODIN, ESQ.

Hurricane Sandy hit New York City on the evening of Oct. 29, 2012. By the time it had moved through the metropolitan area, 43 people had died, some 2 million people were without power, and 51 square miles of New York City had flooded—17 percent of the city's total landmass, with nearly 90,000 buildings comprising some 300,000 homes and more than 23,000 businesses. Some 800 buildings were either destroyed outright or suffered severe structural damage, and tens of thousands of additional buildings sustained damage to electrical, heating, cooling, and other critical mechanical systems. Damages resulting from the storm were estimated to be as high as $19 billion.

As homeowners and businesses began the task of rebuilding, they turned to property and business insurers to cover their losses and provide funds for the recovery effort. The magnitude of loss and the ever-growing numbers of claims began to strain the ability of insurance companies to address them in a timely manner. In addition to the difficulties presented by the sheer number of claims, most homeowners and businesses did not have adequate flood insurance—or any at all—or understand the limitations of the property and business insurance coverage that they did have. As the backlog of claims began to grow, so did the frustration of claimants, with the inevitable result that lawsuits began to be filed in both state and federal courts throughout New York City area.

Much of the most significant damage caused by Sandy occurred within the jurisdictional boundaries of the Eastern District of New York (EDNY), comprising the New York City boroughs of Brooklyn, Queens, and Staten Island along with all of Long Island. As a result, during 2013 and 2014, many of the Sandy-related lawsuits found their way into EDNY federal courts in Brooklyn, Central Islip, and Hauppauge. Ultimately some 1,441 Sandy-related cases were filed in the EDNY, brought mostly by homeowners and businesses asserting claims for property damage and business interruption against their insurance companies.

As the number of Sandy cases in the EDNY grew, the court quickly realized that proactive judicial management of the Sandy docket would be critical to ensure that claims could be resolved as quickly and efficiently as possible. Three EDNY magistrate judges were assigned responsibility for overseeing the Sandy docket: Judges Gary Brown, Cheryl Pollock, and Ramon Reyes. In their first Sandy Case Management Order these judges appointed liaison counsel for both plaintiffs and defendants and directed various additional measures involving coordination of discovery, the groupings of related claims, and expediting the adjudication of some of the key legal issues common to many of the claims. In their order the judges also directed that, upon the conclusion of expedited discovery, all Sandy-related cases would be required to proceed on an alternative dispute resolution track, either arbitration or mediation at the parties' option.

At that time the court had an existing ADR program, with a panel of experienced neutrals available to mediate cases on the court's general docket. However, it was quickly apparent that Sandy cases presented complex issues of insurance coverage and related issues with which many of the neutrals might not be familiar, especially issues involving the requirements and procedures of filing and proving National Flood Insurance Program claims under the administration of Federal Emergency Management Agency (FEMA). If the mediation program were to be successful, the parties would have to be confident that the mediators had sufficient understanding of these issues to serve effectively.

The task of designing the court's Sandy-ADR program fell to Magistrate Judge Robert Levy and the court's then ADR Administrator Gerald Lepp, with input provided by private mediators Simeon Baum of Resolve

Mediation Services and Peter Woodin of JAMS. They quickly concluded that a training program for Sandy neutrals would help ensure that neutrals had the requisite understanding of those issues most likely to be in dispute. They also realized that inviting input from the parties themselves in the design of the training program would help secure the parties' confidence in and commitment to the overall mediation effort.

Liaison counsel were contacted and, in a series of telephone conferences among counsel and Baum and Woodin, a full-day training program for Sandy neutrals was developed, with extensive supporting materials prepared by various program participants. In its final form, presented May 14, 2014, and moderated by Baum and Woodin, the training program included remarks by various members of the EDNY court, with Judge Carol Bagley Amon as EDNY chief judge, welcoming and thanking presenters and participants and emphasizing the importance to the court of the Sandy ADR program, followed by Judges Brown, Pollock, and Reyes with a description and analysis of the Sandy Case Management Order, and then Judge Levy with a description of the Sandy ADR program itself. Following the judges, a senior meteorologist for the National Weather Service gave a presentation on the storm and its impact on the New York metropolitan area, followed by a presentation from a FEMA representative describing and analyzing the FEMA legal compensation scheme. Plaintiffs' liaison counsel and others on plaintiffs' behalf then presented their views of the differing impacts of flood and wind in causing damage and how that played out from the perspective of insurance coverage and related issues, followed by defendants' liaison counsel and others addressing the same issues from the defendants' perspective. The day concluded with a forum among the participating neutrals in which they had the opportunity to engage with each other on various of the procedural and practical aspects of mediating Sandy cases.

Ultimately 142 neutrals went through the training program and became members of the EDNY Sandy panel, either attending the original live presentation or by later viewing a video recording of the program. That video, along with the program agenda and a complete set of the program's written materials, can be found on the EDNY's website at https://www.nyed.uscourts.gov/hurricane-sandymediation-program.

The court's ADR administrators, Lepp followed by Robyn Weinstein, oversaw the admission of neutrals to the Sandy panel; monitored the selection and appointment of neutrals and the scheduling of mediation sessions; and established quality assurance mechanisms, principally through post-mediation survey forms completed by the participating parties and counsel. The Sandy neutrals were compensated by the parties, split 50-50 between plaintiff and defendant, at the standard rate set by the court for the court's already existing ADR panel: $600 for the first four hours of mediation, and $250 for each additional hour.

Over the period 2014-2016 more than half of the cases arising from Hurricane Sandy proceeded to mediation. Many of those cases resolved prior to the mediation session, and in cases where a mediation was conducted the resolution rate was 66 percent. Cases that did not proceed to mediation were resolved through motion practice, judicial settlement conference, or a separate program later established by FEMA for cases involving the National Flood Insurance Program. The average life of the mediated case was 380 days from filing through disposition. While that was just about exactly the same as the average life of non-mediated cases (379 days), in resolving nearly a quarter of the Sandy docket the mediation program significantly eased the burden on the court of addressing the remaining cases.

Judge Reyes recently offered some reflections about the Sandy cases generally and the mediation program in particular. He believed that the role of liaison counsel was crucial in assisting the court in managing the Sandy docket. Additionally, liaison counsel were able to bring to the court's attention various issues that could be addressed by the court to improve the operation of the mediation program. Judge Reyes was particularly struck by the deep sense of crisis on the part of individual plaintiffs who came to court and mediation sessions struggling to restore damaged and destroyed homes and businesses. He wondered therefore whether the Sandy training program might usefully have included a component designed to help the neutrals manage the powerful emotions and deep frustrations that plaintiffs so often brought to the Sandy proceedings.

In the end, the Sandy mediation program had a significant impact in reducing the docket of Sandy-related cases in the EDNY. This enabled the court to move more quickly in addressing those cases that were not settled through the program, with the result that the court was able to provide relief more promptly to both plaintiffs and defendants in the resolution of their disputes. ⊙

Peter H. Woodin, mediator and arbitrator at JAMS, has extensive experience in the negotiation, mediation, arbitration, and settlement of complex, high stakes, multi-party litigation. He has practiced full time as a mediator and arbitrator since 1993 and has served as court-appointed special master, with responsibilities for settlement efforts and/or discovery oversight, in a variety of federal litigations.

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Columbia Law School's Advanced Mediation Clinic, establishing an ethics colloquium that hosts CLE programs designed to reinforce the high level of mediation practice in the district.

Increasing the diversity of our neutral roster to reflect the diversity of our bench and litigants continues to be an important focus for the ADR department. In 2017, the ADR department created an ADR Advisory Council and formed two committees to roll out a series of initiatives focused on diversity in our roster of neutrals. One committee is assessing the current composition of the panel and developing a diversity action plan, while the other is developing a "mediator incubator" where newer members of the profession can get opportunities to observe and eventually co-mediate.

As a court, we continue to explore ways that we can utilize the ADR department to better serve the litigants of our district. It is an exciting time for dispute resolution in the Eastern District of New York as we search for more effective and efficient ways to administer justice fairly.⊙

Hon. Dora L. Irizarry is Chief Judge of the United States District Court for the Eastern District of New York, where she has served as chief judge since 2016, having been nominated to the federal bench by President George W. Bush in 2004. She was appointed a New York City Criminal Court Judge in 1995 and two years later became the first Hispanic woman appointed to the New York State Court of Claims and the first Hispanic woman to sit in Kings County Supreme Court. Thereafter until 2002, she sat in New York County Supreme Court.

Hon. Robert M. Levy is a Magistrate Judge in the Eastern District of New York. Before his appointment in 1995, he was General Counsel at New York Lawyers for the Public Interest and Senior Staff Attorney at the New York Civil Liberties Union, where he specialized in complex civil litigation. Judge Levy is an adjunct professor of law at Columbia University Law School, New York University School of Law and Brooklyn Law School.