

An Evaluation of the New York State Workers' Compensation Pilot Program for
Alternative Dispute Resolution

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Executive Summary

In 1995, the State of New York enacted legislation authorizing the establishment of a workers' compensation alternative dispute resolution pilot program for the unionized sector of the construction industry.¹ Collective bargaining agreements could establish an alternative dispute resolution process for resolving claims (including but not limited to mediation and arbitration), use of an agreed managed care organization or list of authorized providers for medical treatment that constitutes the exclusive source of all medical and related treatment, supplemental benefits, return-to-work programs, and vocational rehabilitation programs. The legislation also directed the School of Industrial and Labor Relations at Cornell University (ILR) to "evaluate compliance with state and federal due process requirements provided in the collective bargaining agreements authorized by this act, and the use, costs and merits of the alternative dispute resolution system established pursuant to this act."

In response to this legislative mandate, ILR reviewed the research previously conducted on alternative dispute resolution (ADR), generally, and in workers' compensation. This included examining the purported advantages and disadvantages of ADR, the prevalence of ADR, and published statistical or anecdotal evidence regarding the impact of ADR. ILR created a research design for claimant-level and project-level analyses, and developed data collection instruments for these analyses that included an injured worker survey for ADR claimants and claimants in the traditional (statutory) workers' compensation system, an Ombudsman's log, a manual of data elements pertaining to ADR and comparison group claimants, and interview questions for ADR signatories and other officials.

The findings in this report draw upon a comparison of claimant-level, descriptive statistics (averages) for injured workers in the ADR and traditional (statutory) workers' compensation system; the results of more sophisticated, statistical analyses of claimant-level data; and project-level information (including, but not limited to, interviews with ADR signatories and dispute resolution officials).

Caveats

The findings of this report are subject to several major caveats. As such, caution is warranted in generalizing from this study's findings to other jurisdictions, either the results that might be expected in other states, in other industries in New York State or in the nonunion sectors of the economy.

First, because of data access and data availability limitations, this study's comparison group of claimants in the traditional (statutory) workers' compensation system is limited to those workers with injury dates between May 1, 1995 and April 30, 1996. In the intervening years, New York State has implemented regulatory and statutory changes pertaining to the hearing process and other aspects of the workers'

¹ Chapter 491 of the Laws of 1995.

compensation system.² As such, at least some of the findings in this report may not reflect current “reality,” although it is not readily apparent how (if at all) the results would differ if more current non-ADR data were available.

Second, a case study approach had to be used for this analysis. Due to data access and availability limitations, the relatively small size of some claimant groups, and other factors, ILR was only able to utilize a data set pertaining to one large ADR project. (The only other published, empirical analysis of workers’ compensation ADR – an evaluation of California’s system³ – also used a case study approach.)

The comparison group of claimants was similar to the ADR group on nearly all dimensions (e.g., buildings trade, occupation, geographic location, insurer), but had injury dates that preceded those of ADR claimants. This comparison of a before (pre-ADR) and after (post-ADR) group of injuries is very useful, but it leads to some potential problems. It is conceivable that some of the ADR-comparison group differences found in this report are actually due to temporal changes occurring between the period of control group injuries and the period of the injuries that occurred during the ADR program. Furthermore, the comparison group and ADR data pertain to a single entity, for a single buildings trade, for a specific geographic region. To the extent that there are some distinctive characteristics of this organization (such as, perhaps, its approach to claims handling or a low level of disputes in both the ADR and traditional systems, or involvement by a licensed representative) that are not necessarily representative of the construction industry as a whole, then it is not possible to state with absolute certainty that the findings of this report can be generalized to the entire construction sector in New York State.

ILR took into consideration, to the extent possible, administrative or policy changes during the course of the study period that potentially had some bearing on the outcome measures. One such change pertained to the ADR participant from whom claims with injury dates between May 1, 1997 and April 30, 1999 were used for the empirical analysis in this study. The ADR contract that was in effect during this period (May 1997 to April 1999 injury dates) stipulated that ADR claimants had to obtain all non-emergency medical and hospital services from “authorized providers” – that is, a list of health care providers and facilities that had been agreed upon by the signatories to the ADR contract – and that employers were not responsible for covering the cost of unauthorized care.

However, the ADR participant indicated that it did not start to stringently enforce the network-only-use-of-providers provision until approximately January 1, 1998.⁴ As

² These changes include, but are not limited to, administrative determinations, expedited hearings, and Section 32 settlement agreement procedures.

³ David I. Levine et al., “Carve-outs” in *Workers’ Compensation: An Analysis of Experience in the California Construction Industry*. Prepared for the Commission on Health and Safety in Workers’ Compensation (September 1999).

⁴ The implications of this policy change have been noted, in another study, as follows: “Through the end of 1997, EESISIP was lenient with the [only medical care administered by a MagnaComp provider would be reimbursed provision] ..., and in many instances paid for medical care administered by non-MagnaComp

such, ILR took into consideration this policy change by creating two categorical (binary) variables, one of which had a value of “one” for ADR claimants with injury dates between May 1, 1997 and December 31, 1997, and the second of which had a value of “one” for ADR claimants with injury dates between January 1, 1998 and April 30, 1999. That is, ILR could not assume that that impact of ADR was uniform, throughout the entire study period, for this ADR participant.

Lastly, construction groups were not (and could not be) randomly assigned to ADR or the traditional workers’ compensation system for purposes of this evaluation. Instead, trade union and management signatories to an ADR contract voluntarily agree to participate in ADR – that is, there is a “self-selection” process involved. As such, the underlying nature of labor-management relations may thus have some bearing not only on whether ADR is adopted, but also on the outcomes under ADR. As such, caution is warranted in generalizing the findings of this report across all employer settings.

These important caveats must be kept in mind when referring to any of the findings listed below. However, that is not to say that the findings below cannot be generalized under certain circumstances. All studies of public policy are methodologically flawed in some way, some major and some minor. The ILR group has done the best that it could under the circumstances in evaluating the impact of the ADR changes permitted in the 1995 amendments on system expenditures – both costs to employers and insurers and benefits provided to injured workers, the administrative efficiency of the dispute resolution system in comparison to the standard Workers’ Compensation Board procedures, the medical care granted under the ADR system, and the due process provided to injured workers.

Key Findings

Number of Disputes: Injuries that occur under ADR are not more likely, and in some cases are less likely, to lead to a dispute. Six categories of disputes (compensability, medical treatment, weekly benefits, return to work, and the existence or extent of permanent disabilities) were used for this report. Claimants’ self-reports of disputes (survey responses) were the principle means of identifying the existence of disputes, as efforts to substantiate or supplement these self-reports by information from other sources proved less effective.

The survey responses for most dispute categories indicated that between two and five percent of ADR and comparison group claimants had, on average, a dispute. Though the statistical results for most dispute categories suggested that ADR lead to fewer disputes, in only two (of the six) dispute categories was this relationship sufficiently

providers. As a consequence, costs were higher because the fee-per-service for non-MagnaComp providers were not discounted below the New York State fee schedule and MangnaComp had less control over the treatment administered by out-of-network providers...very few treatments were administered by non-MagnaComp providers during 1998” (Borba and Parry, 2000, ii).

strong so as to be deemed statistically significant.⁵ In no instance was there a statistically significant relationship indicating that ADR increased the frequency of disputes.

Dispute Resolution: Injured workers generally rate the ADR system highly and the ADR system concludes cases more quickly. Claimants were asked a series of questions about whom they contacted for information or for assistance in resolving disputes, who actually provided assistance, and how helpful these individuals were. ADR claimants were far less likely to speak to or hire a lawyer than were claimants in the traditional (statutory) workers' compensation system. There were no statistically significant differences with respect to why ADR and comparison group claimants decided to hire a lawyer, nor was there a statistically significant difference in the proportion of those who decided to "do nothing" about their dispute. Furthermore, unlike some other ADR projects in New York State, the ADR contract for the data set used for this analysis did not prohibit attorney participation in any stage of the dispute resolution process.⁶ Most ADR claimants (seventy-five percent or more, for most questions) rated the Ombudsman or mediator as good-to-excellent in answering questions, resolving issues, and affording the claimant an adequate opportunity to express his or her point of view. Most comparison group claimants (seventy percent or more, for most questions) gave good – to – excellent ratings to the administrative law judge. Some seventy-to-eighty percent of ADR and comparison group claimants who hired a lawyer, gave, on average, their lawyer good-to-excellent ratings with respect to the lawyer's ability to answer questions or resolve disputes.⁷

The results of statistical modeling indicated that ADR had a statistically significant impact on how fast claims were closed, as ADR was associated with 137 fewer days between the injury date and date of closing (after taking into consideration other explanatory variables).

Costs: ADR is associated with lower medical costs, but not lower benefits. Medical and indemnity payments transactions files were used to compute medical and indemnity costs that were paid to claimants through three, six, twelve, and eighteen months, respectively.⁸ Simple differences revealed lower indemnity benefits associated with ADR, but when more sophisticated, multivariate techniques were used those differences were found to be associated not with ADR but with part of body or nature of injury. The multivariate empirical results indicated that ADR was associated with lower medical costs at all measured points in time, but for most categories of paid indemnity

⁵ As explained previously in this Executive Summary and further in Chapter 2, two different explanatory variables were used with respect to ADR claimants. The findings summarized here refer to instances in which either ADR variable was statistically significant in the statistical model.

⁶ Though all ADR contracts in New York State stipulated that the claimant and employer could obtain legal representation "at any time," some contracts precluded either party from being represented by legal counsel during mediation sessions.

⁷ The actual number of survey responses for some of these questions was extremely small, as is evident from the tables in Chapter 2.

⁸ Additional data set constraints, described later in the report, were imposed to ensure that payments records for ADR claims with more recent injury dates were comparable to those of earlier ADR and comparison group claims.

benefits ADR did not have a statistically significant impact. That is, after taking into consideration the nature of the injury, the part of body injured, and other explanatory variables, ADR was associated with lower medical treatment costs but was not associated with a diminution or increase in indemnity benefits. Data availability limitations precluded comparisons on other types of costs (i.e., legal, claims processing, dispute resolution, or other administrative costs).

Medical Care: ADR and Control Group workers were generally satisfied with the medical care they received and there were no significant differences between the groups. In lieu of available information on other measures of the quality of medical care, this study relied solely on patient satisfaction responses. Eighty-three percent or more of ADR claimants indicated that they were satisfied or very satisfied with the medical care received during their first office visit, the medical care received during their last office visit, and with their medical care, overall; eighty-seven percent or more of comparison group claimants answered in a similar manner. There were no statistically significant differences between these mean values. These results are comparable to those reported in a study of managed care in workers' compensation. See Report to the Labor-Management Committee. Data Analysis Pilot Program: Management Care in Workers' Compensation, prepared by the New York State School of Industrial and Labor Relations; May 17, 2000.

When claimants were queried about specific characteristics of their first and last office visits, the only statistically significant difference pertained to attention given by the doctor to workplace conditions associated with the workplace injuries – a higher percentage of ADR claimants rated their doctor as good to excellent on this dimension. (The other categories were: amount of time the claimant had with the doctor; attention given by the doctor to what the claimant had to say; and awareness of the doctor about the claimant's workplace duties.)

The findings from the statistical models indicated that, after taking into consideration a variety of explanatory variables, ADR claimants, in comparison to the control group, were less satisfied with their medical care, overall, and were also less satisfied with the number of physicians from which they could choose. Generally, however, satisfaction with medical care was quite high, and by definition ADR allowed fewer physicians from whom claimants could choose.

Eighty percent or more of the ADR claimants rated the nurse advocate as good – to – excellent with respect to the amount of the time the nurse advocate spent answering questions and explaining the medical care, and with respect to the attention given by the nurse advocate to what the claimant had to say. The lowest ratings concerned the awareness of the nurse advocate about the claimant's duties at work (sixty-percent of ADR claimants rated the nurse advocate as good – to – excellent).

Only twenty-six percent of the ADR survey respondents indicated that they were aware of the availability of the nurse advocate when they first sought care for their

medical injury, and only twenty-three percent of the ADR survey respondents indicated that they had contact with the nurse advocate.

Interviews with ADR signatories and other ADR officials – representatives from unions, management, and insurance organizations – are highly supportive of ADR in workers' compensation. During the course of this study, ILR met with or otherwise interacted with officials for various ADR projects, in order to learn more about ADR and the impetus for implementing ADR, review the data collection process, and obtain data. Near the end of this study period, ILR representatives meet with members of the Joint Labor-Management Oversight Committee for one project, and with key stakeholders involved in establishing another ADR project. Phone interviews were also conducted with the Ombudsman and mediator for the latter.

On the whole, a high degree of satisfaction was expressed by all parties regarding the experience to date with ADR (even by those signatories who indicated that they were skeptical of ADR at the onset of the program). The use of a nurse advocate (who was viewed by claimants, unions, and contractors as an advocate for workers rather than as a case manager) and other ADR-specific features were seen as a means by which ADR, compared to the traditional workers' compensation system, furnished better quality care, sooner and in a less disputatious environment, to injured workers. Faster claims closing, more rapid return to work, cost savings, and the resultant competitive advantage – without a diminution in the quality of medical care or any adverse effect on due process – were also cited as other, favorable outcomes of ADR (at least some administrative costs may have risen under ADR, though).

Educating injured workers about the ADR process (including the presence of a nurse advocate) was cited as an area of ongoing, critical importance.

Most, but not all, of those interviewed thought that ADR should be permanently adopted for workers' compensation. There was also support for extending ADR to other industries, though only to employment relationships governed by collective bargaining agreements.

Policy Recommendations

The findings in this report are drawn, in large part, from statistical analyses of ADR and comparison group data pertaining to one labor-management relationship. A greater breadth of ADR experience in New York State would more fully inform all parties – ADR proponents, ADR opponents, and disinterested observers – about the actual strengths and failings of workers' compensation ADR, particularly since there is a dearth of evaluations in most other jurisdictions that authorize collective bargaining agreements for workers' compensation ADR.

We found, in some instances, that ADR claimants were less satisfied with medical care than those in the traditional (statutory) workers' compensation system. We also found that, despite ongoing efforts through various forums and means of communication

to educate workers about ADR, a relatively high proportion of ADR claimants surveyed were unaware of the existence of a nurse advocate. (There was no comparable survey question that probed claimants in the traditional workers' compensation system about their extent of knowledge of that system.) Nonetheless, we consider these to be minor failings, at best. On the principal outcome measures analyzed in this study – information provision, the frequency of disputes, dispute resolution (including due process), costs, and medical care – ADR was either at least as meritorious or more beneficial to claimants than was the traditional workers' compensation system. As such, we would encourage the extension of workers' compensation ADR for the construction industry in New York State beyond its current statutorily specified expiration in 2005, and would also encourage the active consideration of authorizing unions and management the right to collectively bargain workers' compensation ADR agreements in other sectors of the economy.

Introduction

Alternative dispute resolution (ADR) has gained widespread adoption in a variety of workplace settings. A small number of states permit unions and management in the construction industry to establish, through collective bargaining agreements, workers' compensation ADR programs. The legislative authorizations typically allow workers' compensation ADR contracts to establish an ADR procedure for dispute resolution that may include but is not limited to mediation and arbitration, a managed care organization or other agreed upon list of health care providers that will be the exclusive source of medical treatment in non-emergency situations, and other programs (return-to-work, vocational rehabilitation).

To date, there have been very few studies of the impact of workers' compensation ADR on various outcome measures. The New York State legislature requested the School of Industrial and Labor Relations at Cornell University to analyze the workers' compensation ADR pilot program in this state.

This report is organized into three chapters. An overview of ADR, generally, and in workers' compensation is presented in the next chapter, as is a summary of implementation experience across the country with workers' compensation ADR. A review of the salient research literature is also provided. The next chapter discusses the research design, data collection process, data set, and findings. The concluding chapter summarizes the principal findings and makes policy recommendations.

Chapter 1: Workers' Compensation Alternative Dispute Resolution: An Overview of Programs and Related Research

In this chapter, we will discuss the growth in alternative dispute resolution (ADR) across multiple industries and occupations in the United States. We then focus on the application of ADR to workers' compensation, with specific reference to:

- a) the objectives of workers' compensation;
- b) disputes and the traditional approach to dispute resolution;
- c) the growth of ADR (including state agency ADR programs and collectively bargained ADR programs);
- d) the purported advantages and disadvantages of collective bargained ADR programs for workers' compensation;
- e) the evidence of the impact of ADR thus far, from the few evaluations that have been conducted; and,
- f) ADR projects in NYS.

As a precursor of our evaluation of ADR in New York State (NYS), we will also review the empirical literature on topics pertinent to ADR:

- a) disputes and dispute resolution in workers' compensation;
- b) managed care for workers' compensation; and
- c) the determinants of return-to-work by workers' compensation claimants.

The ADR Movement, Generally

Alternative Dispute Resolution (ADR) has been defined as "a range of procedures which serve as alternatives to the adjudicatory [procedure] ... of litigation ... for the resolution of disputes, generally but not necessarily involving the intercession and assistance of a neutral third party who helps to facilitate such resolution" (Brown and Marriott, 1993, p. 9).⁹ It has also been defined more simply as "the use of any form of mediation or arbitration as a substitute for the public judicial or administrative process available to resolve a dispute" (Lipsky and Seeber, 1998, p. 9). Most ADR procedures, regardless of the type of dispute, involve a third-party neutral as the penultimate step in the process.

Though there is not universal agreement about the procedures encompassed by ADR, the following list is fairly comprehensive: 1) "traditional private alternatives to trial," which are forms of ADR that "occur pursuant to private contractual interactions"

⁹ Brown and Marriott state (at page 9) that 1) ADR is also an alternative to the adjudicatory procedure of arbitration, but immediately qualify this by stating that "arbitration was originally an alternative procedure but is now generally viewed as being closer to litigation in its approach" and that 2) they include arbitration in their discussion of ADR principles and practice because of arbitration's "history as part of ADR, ..., and because the practices and procedures of arbitration have influenced the development of many of the ancillary and hybrid processes used in ADR." Most books on ADR – including recently published manuscripts – consider arbitration to be an ADR procedure.

(negotiation, mediation, arbitration, and mini-trial); 2) “court-annexed alternatives,” which are “alternatives to trial [that] occur after a case is filed in court and, in many jurisdictions, are mandatory” (court-annexed mediation, early neutral evaluation, judicial mediation, summary jury trial, court-annexed arbitration, and rent-a-judge or private judging); and 3) administrative agency-annexed alternatives, which “are used by administrative agencies to resolve disputes pending before them” (regulatory negotiation, agency-annexed mediation, agency-annexed arbitration, and agency convening) (Brunet and Craver, 1997, pp. 1-3). Other discussions of the variety of ADR procedures include the ombudsperson, which, as we will document shortly, is typically the first stage in collectively bargained workers’ compensation ADR programs.

ADR has received much attention in recent years as it has been used more and more frequently to resolve all types of disputes, with significant encouragement by various courts and governmental agencies, as well as the presumed economic efficiencies resulting from such procedures. ADR (principally, arbitration) has frequently been used to resolve disputes among owners, contractors, and other parties in the construction industry (see, for example: Cronin-Harris, 1994, p. I-125; Coulson, 1994, p. 7; and Madison, 1996, § 16:1). A recent national survey of corporations further confirmed that ADR usage was particularly high in the construction industry as well as in mining, as 54 percent of firms in the mining/construction sector indicated that they used mediation frequently or very frequently, which was more than double the next highest percentage (23 percentage, in the service industry)¹⁰ (Lipsky and Seeber, 1998, p. 13). ADR was used extensively for employment disputes, as 64 percent to 91 percent of firms across all industries used mediation for this type of dispute; mediation was also nearly universally used for commercial and contract disputes (as was arbitration). There was substantial inter-industry variation in the extent to which mediation or arbitration was used for other types of disputes.¹¹

The increasing use of ADR stems from the perceived advantages of this approach, which include:

Cost effectiveness. The cost most likely will be far less than that of traditional litigation. The need for procedural motions, extensive discovery, etc., will be eliminated or greatly reduced. The process will be far less burdensome than litigation.

Timeliness. An ADR process can be concluded in a fraction of the time required for litigation.

Professionalism. The neutral conducting the process will have been selected by the parties and will possess the qualifications they desire.

¹⁰ Survey results were obtained from 606 of the Fortune 1,000 corporations. Detailed profiles of ADR usage in eleven corporations are provided in Cronin-Harris, 1994b. Eight industry categories were used: mining/construction; durable manufacturing; non-durable manufacturing; transportation, communications, and utilities; trade; finance; insurance; and service.

¹¹ Firms in the eight industries were also surveyed with respect to ADR usage for the following types of disputes: personal injury, construction, product liability, real estate, environment, intellectual property, consumer rights, corporate finance, and financial reorganization.

Informality. ADR is much less formal than litigation. It is also less adversarial in nature.

Confidentiality. Usually, no record is kept of an ADR proceeding. Efforts can be made to protect the confidentiality of data produced in the process. The chances of denying third parties access to such data should be substantially greater than if the data were produced in litigation.

Control over Outcome. If the process is non-binding, the parties retain control over the outcome and may well be able to develop creative, innovative solutions.

Flexibility. While a number of basic types of ADR procedures are commonly used, such as mediation, minitrial and arbitration, each can have as many variations as imaginative lawyers can devise. Especially in multiparty situations, the parties are challenged to develop the procedures which best suits their needs, with the assistance if desired of persons experienced in ADR (Center for Public Resource, Institute for Dispute Resolution, 1994, pp. I-7-I-8).

Survey data indicate that savings of time and money, as well as a desire to obtain greater control over the dispute resolution process, have provided the greatest impetus for corporations' adoption of ADR (Lipsky and Seeber, 1998, p. 19).

The purported advantages of ADR, of course, immediately suggest a variety of measures to use in evaluating ADR programs. For example, an empirical study of mediation and neutral evaluation programs for civil cases in six Civil Justice Reform Act pilot and comparison federal district courts measured the following:

- 1) time to disposition (length of time between case filing and case closing); cost of litigation (lawyer work hours per litigant; litigant hours per case; total money spent per litigant on legal and related costs);
- 2) cost to the court of ADR program administration (including initial and ongoing personnel costs);
- 3) satisfaction with case management (litigant, lawyer, and provider satisfaction);
- 4) perceptions of the fairness of case management (litigant, lawyer, and provider opinions); and
- 5) outcomes (monetary) (Kakalik, et. al., 1996).

There is considerable variation, however, in the extent to which each variation of ADR has been subject to empirical analysis.¹² While there are many studies of the implementation of the process in a variety of settings, very little attention has been devoted to assessing the impact of ADR on the important dimensions of the dispute resolution process itself, as well as the outcome for the parties involved. This has been the case because ADR procedures vary so substantially from case to case, preventing a comparison across jurisdictions or even organizations. At the more micro level, almost

¹² Mediation and arbitration in employment disputes have probably received the greatest scrutiny from academic researchers.

no large data sets have been collected or analyzed which allow a complete investigation of the impact of ADR processes on the processing and outcomes of disputes, particularly in comparison to a control group of cases resolved through traditional judicial or administrative methods. At a more fundamental level, there is also substantial variation in the extent to which disputants, other practitioners, and academics even understand the basic features of different ADR procedures.¹³

This brief overview of ADR provides a general context for a discussion in the next section of workers' compensation and of ADR in workers' compensation. While the same general forces that have led to the rise of ADR throughout the United States are important in the field of workers' compensation, there is also a unique institutional background of the workers' compensation system that has created the impetus to make dispute resolution less costly and more efficient, while at the same not lessening the rights of workers injured on the job.

ADR in Workers' Compensation

Workers' compensation

Workers' compensation provides cash (indemnity) benefits and medical care to workers who sustain work-related injuries or occupational diseases. To qualify for workers' compensation benefits, a worker must (per the typical statutory language) have sustained a "personal injury by accident arising out of and in the course of employment."¹⁴ Before workers' compensation legislation was enacted in the United States in the first half of the 20th century, a worker seeking recompense had to either rely on charity or successfully sue his or her employer by proving that the employer was negligent. Employers had recourse to three common-law defenses, which undercut injured workers' prospects of demonstrating employer negligence.¹⁵ There was thus neither certainty of receiving an award nor consistency in awards for workers with similar injuries;¹⁶ however, the tort system also created uncertainty for employers, who

¹³ For example, in the lead article in a symposium entitled "The Many, Different, and Complex Roles Played by Ombudsmen in Dispute Resolution," Gadlin asserts: "Although the study and practice of negotiation and dispute resolution has grown enormously over the past thirty years, the ombudsman role is arguably the least well understood part of this field. Even within the alternative dispute resolution world, people often have only a vague idea about what ombudsman actually do and how they do it. To some degree, people are uncertain about the ombudsman profession because there are so many variations of the role that now exists in settings and with approaches quite different from its origins in the early 19th century" (Gadlin, 2000, p. 37).

¹⁴ The definition, objectives, and historical overview of workers' compensation presented in this section draw upon: National Commission on State Workmen's Compensation Laws (1972, 1973) and the Alternative Programs Committee (1991).

¹⁵ Sometimes referred to as the "holy trinity," the employers' defenses were: "(1) contributory negligence: the worker whose own negligence had contributed in any degree to his [or her] injury could not recover; (2) the fellow-servant doctrine: the employee could not recover if the injury resulted from the negligence of a fellow worker; and (3) assumption of risk: the injured [worker] ... could not recover if the injury was due to an inherent hazard of which he [or she] had, or should have had, advance knowledge" (National Commission, 1972, p. 34).

¹⁶ "As might be expected from a system that depended on the findings of a jury considering only the case before it, awards varied greatly from case to case. One worker might receive an amount adequate to cover

faced the prospect of substantial awards when the worker prevailed. A confluence of factors, including the increasing frequency of industrial accidents as well as employers' and unions' perceptions of the limitations of a tort-based system, prompted the enactment of state-level workers' compensation legislation. The goals of this initial legislation were as follows:

Workmen's compensation statutes, as an alternative to the common law and employers' liability acts, had many objectives, most of them designed to remedy past deficiencies. The statutes aimed to provide adequate benefits, while limiting the employer's ability strictly to workmen's compensation payments. These payments were to be prompt and predetermined, to relieve both employees and employers of uncertainty, and to eliminate wasteful litigation. Appropriate medical care was to be provided. Most radical of all these objectives was the establishment of a legal principle alien to the common law: liability without fault. The costs of work-related injuries were to be allocated to the employer, not because of any presumption that he was to blame for every individual tragedy, but because of the inherent hazards of industrial employment. Compensation for work-related accidents was therefore accepted as a cost of production.

These objectives were widely applauded. The workmen's compensation program eventually was supported by both the National Association of Manufacturers and the American Federation of Labor (National Commission, 1972, p. 34).

These fundamental principles remain in effect, some ninety years after workers' compensation legislation was first adopted, despite large-scale changes in the interim regarding the nature of the workplace, medical diagnosis, and medical treatment. This continued adherence to the fundamental principles is evidenced, for example, by more recent pronouncements of the objectives of workers' compensation, by public entities,¹⁷ organized labor,¹⁸ and management.¹⁹

his or her losses; another worker, with exactly the same disability, might receive nothing. Reformers continually exposed new evidence that highlighted the capricious results of the court system" (Berkowitz and Berkowitz, 1985, p. 160).

¹⁷ The five principal objectives of a modern workers' compensation program are: "1) broad coverage of employees and work-related injuries and diseases; 2) substantial protection against interruption of income; 3) provision of sufficient medical care and rehabilitation services; 4) encouragement of safety, and 5) a prerequisite for the achievement of the first four objectives: an effective system for delivery of the benefits and services" (National Commission, 1972, p. 35).

¹⁸ "The proposition embodied by the 80-year-old workers' compensation system is fairly simple and straightforward: workers who are injured or diseased as a result of their job should receive quality medical treatment, get adequate wage replacement for cases involving lost time, and be returned to work as soon as possible" (Ellenberger, 1992, p. 246); "It is in the interest of both employers and injured workers to have a workers' compensation system that provides quality medical treatment, encourages safer and healthier workplaces, offers a swifter and guaranteed return to work, provides adequate and fair wage replacement and keeps costs affordable" (New York State AFL-CIO, no date, p. 7).

¹⁹ "Six basic objectives underlie workers' compensation laws: 1. provide sure, prompt and reasonable income and medical benefits to work-accident victims, or income benefits to their dependents, regardless of fault; 2. provide a single remedy and reduce court delays, costs and workloads arising out of personal injury litigation; 3. relieve public and private charities of financial drains – incident to uncompensated industrial

It is beyond the scope of this study of workers' compensation ADR to investigate the extent to which all of these objectives are being met by workers' compensation programs in the United States. We will instead focus on the dispute resolution component of workers' compensation programs in the United States. Specifically, in this section we will address the following questions:

- 1) How contentious would one predict workers' compensation is today, in light of the avowed objective of workers' compensation to be self-administered and – relative to the tort-based system it replaced – free of disputes?
- 2) What data are available on workers' compensation disputes and dispute resolution? What methodological problems arise in comparing available data? (These include: how one defines a dispute, particularly given differences across workers' compensation programs in the ease of identifying the existence of a dispute; and how one "counts" the number of disputes that arise per individual workers' compensation claims.)
- 3) What data are available on the use of lawyers or other representatives (including the frequency of use, costs, and assessments of the quality of such representation)?

What level of disputes might be expected, in light of the avowed objective of workers' compensation to be self-administered and – relative to the tort-based system it replaced – relatively free of disputes?

This is a difficult question to answer for several reasons. First, although economic and psychological theories predict (in the abstract) when disputes are most likely to arise in workers' compensation,²⁰ this research stream focuses in large part on individual, claim-level decisions and thus provides little guidance about system-wide features of workers' compensation administration and dispute resolution that may impact the frequency of disputes. Second, workers' compensation is a dynamic system, whereby legislative revisions are enacted (often, after contentious and protracted debate), systematic consequences (anticipated or unanticipated) result, and subsequent legislative sessions thus produce further reforms (or counter-reforms). That is, changes over time in major features of workers' compensation programs may produce fluctuations in the absolute level of disputes as well as in the relative frequency of parties initiating a

accidents; 4. eliminate payment of fees to lawyers and witnesses as well as time-consuming trials and appeals; 5. encourage maximum employer interest in safety and rehabilitation through appropriate experience-rating mechanisms; and 6. promote frank study of causes of accidents (rather than concealment of fault) – reducing preventable accidents and human suffering" (U.S. Chamber of Commerce, 1997, vi).

²⁰ The economic theory involves the predicted costs and benefits of disputing; the psychological (and related) literature focuses on perceptions of distributive justice (the fairness of outcomes) and of procedural justice (the fairness of the process that produced that outcome). For a discussion of the application of these theories to workers' compensation, as well as a review of the empirical workers' compensation literature that applies these theories, see: Thomason, Hyatt, and Roberts, 1998.

dispute.²¹ Third, even within the same workers' compensation system, there may be large intrastate variations in dispute activity.²² Lastly, interstate variations in workers' compensation programs at any one point in time (as well as temporal changes, nationally) compound the difficulty in measuring the frequency of disputes and in determining the "appropriate" level of disputes (assuming that workers' compensation will never be friction-free).²³ While certain aspects of all workers' compensation programs minimize the prospect of disputes,²⁴ the promise of workers' compensation (relative to the tort-based system) may have been overstated when workers' compensation laws were initially enacted:

...the substitution of workers' compensation laws for the court system drew criticism away from the courts and toward workers' compensation. The rhetoric of reformers to the contrary, that often led to hearings being held on a particular case. Contested cases raised many of the same problems for the new system that litigation had posed for the old. Administrative hearings created a delay while both sides assembled the necessary witnesses to appear on their behalf. The problems of industrial

²¹One major change has been the expansion in the scope of coverage: "The workers' compensation program was primarily designed to deal with one type of disability: the disability that resulted from an injury that was work related. The origin of such a disability is usually readily identifiable: a traumatic event (such as a mine explosion) that produces an injury almost instantaneously. Increasingly over the last 75 years, however, workers' compensation has had to deal with disabilities resulting from causes other than traumatic events.... The emergence of diseases (and injuries related to cumulative exposures) as an important phenomenon in workers' compensation has resulted in a modification of the scope of the program.... These disabilities that result from causes other than traumatic events pose problems for the workers' compensation program because their origins are often unclear.... The workers' compensation program is nonetheless, by the nature of its design, required to separate work-related disabilities from non-work-related disabilities and provide cash benefits and medical care only for the former. The task of separation often involves litigation and delays and sometimes produces arbitrary results" (Burton, 1992, pp. 264-266).

²²Examples include Louisiana (Ballantyne, 1999, p. 75); Michigan (Hunt, 1982, p. 79); and California (Barth and Telles, 1992, p. 99). Though intrastate variations also exist in New York State, there is no distinct "upstate-downstate" (or other, regional) pattern. In the five largest Workers' Compensation Board district offices in New York State, the number of cases controverted in 1998 and 1999, respectively, as a percentage of the number of cases indexed those years are as follows: Albany (17.2% in 1998, 17.3% in 1999), Brooklyn (21.9%, 15.8%), Buffalo (13.4%, 15.4%), Rochester (16.6%, 16.8%) and Syracuse (23.2%, 15.6%). Computation by ILR, using data published in Appendix IV and V of the Board's *1998 Annual Report and 1999 Annual Report*.

²³"Significant interstate differences in adjudicatory systems frequently stymie attempts to compare workers' compensation dispute resolution processes and outcomes. For example, informal administrative dispute processes are used in some states, while other jurisdictions have incorporated more formal procedures such as arbitration. Making meaningful comparisons between different workers' compensation programs requires a great deal of work" (Clayton and Thompson, 1995, pp. I-144-I-145).

²⁴"Many features of workers' compensation programs are designed to avoid disputes. The strict liability standard, which makes employers responsible for benefits regardless of fault, limits issues regarding liability. The determination of benefits is formulaic. Claimants who are totally disabled are paid weekly benefits equal to a given proportion of wages for the period of disability or until well-specified limits on duration or the total amount of benefits are reached. Most jurisdictions base permanent partial disability benefits on statutory schedules that prescribe maximum benefit duration by injury type. These rules are intended to provide objective criteria that limit disagreement over the amount of compensation due" (Thomason, Hyatt, and Roberts, 1998, pp. 270-271).

disability were too subtle for a single set of rules; cases arose in which people disagreed over the relevance or the application of a particular rule. Furthermore, the question of the degree to which a person was disabled yielded no easy answers. It was a matter of opinion whether a person was partially or totally disabled, or whether, for example, he or she had lost the use of a finger. Disagreement meant the possibility of a contested case; a contested case slowed the compensation process. Finally, the insurance companies, whether benevolent or malevolent, remained important to the workers' compensation system. Although the rules of industrial disability may have changed, the agent who compensated the workers stayed the same.

In sum, not all the dissatisfaction over society's approach to industrial disability disappeared upon passage of the new laws. Instead, the target of dissatisfaction shifted from the courts to the workers' compensation program; since the reformers had sold the reform in such absolute terms, the performance of workers' compensation seemed all the more disappointing (Berkowitz and Berkowitz, 1985, p. 162).

It is unlikely that adoption of other, sea-change approaches to providing compensation for industrial disability, such as implementation of a twenty-four-hour coverage system that provides medical treatment and (in some models) disability payments irrespective of whether or not the injury or illness is work-related, would eliminate all disputes; while the "arising in and out of the course of employment" issue would be moot in such a system, conflicts over other aspects of medical treatment would undoubtedly arise.²⁵ Less widespread changes in disability systems, involving revisions to specific aspects of workers' compensation legislation in individual states, may decrease the frequency, intensity, or duration of disputes.²⁶ However, some form of dispute resolution will probably always be required:

Workers' compensation necessitates a mass system in which the overwhelming bulk of the authoritative decisions must be made without resort to formal legal procedures; otherwise the process would take too long and would be too costly. But resort to formal legal procedures seems necessary to

²⁵ Non-incremental changes to the current workers' compensation system include a return to tort law; total absorption of workers' compensation by other public programs; implementation of twenty-four-hour medical coverage; and adoption of twenty-four-hour medical and indemnity coverage. See: Alternative Programs Committee (1991), and Burton (1992).

²⁶ For example, although permanent partial disabilities are not the most frequent type of disability in workers' compensation, they account (in the aggregate) for the largest relative share of workers' compensation benefits. One permanent partial disability study, which compared two litigious workers' compensation systems (Maryland and New Jersey) with two relatively non-litigious systems (Oregon and Wisconsin), concluded that the less litigious systems had the following program characteristics: 1) "rules provide employers and insurers with reasonable certainty about what they owe and provide injured workers with reasonable certainty about what they should expect to receive"; 2) "practices and rules encourage the use of nonpartisan experts in the evaluation process"; 3) "adjudicators do not spilt the difference," and 4) "the workers' compensation agency plays an active role in ensuring that insurers and employers pay PPD benefits in a timely manner. The agency also ensures that workers understand what they can expect" (Boden and Victor, 1994, pp. 473-474).

provide recourse against error by those who make the initial decisions, to enable claimants to obtain their due but also to assure that the system pays only for services and benefits legally due....

A decided peculiarity of workers' compensation is that the initial decisions are made by the insurers, who are interested in the outcome – interested in profits and low, competitive rates, whose customer (if a private concern) is the employer and not the claimant or, in the case of self-insurers, is the employer itself. Moreover, the insurer possesses the advantages of expertise, experienced claims and legal staff, and not least, the initiative in making the first decision and the power (although not the right) to withhold benefits in the interests of achieving a settlement acceptable to itself (Bernstein, 1979, p. 119).

Implications for this study. The research design used for this study avoids several of the aforementioned problems in measuring dispute levels.²⁷ Workers' compensation disputes may not even be comparable between states, due to the unique character of each state's workers' compensation system. Thus, the amount of conflict may only be comparable in an historical sense within a jurisdiction. The research questions thus of interest are: 1) does the level and type of conflict rise or fall over time within a single jurisdiction?, and 2) what factors predict this rise or fall? This study is an attempt to isolate the single effect of the change in the dispute resolution mechanisms available and to evaluate how that impacts conflicts, their resolution, and their outcomes. Furthermore, this study is not affected by methodological problems arising from intrastate variations in workers' compensation dispute frequency, as the principal data set pertains to one geographical region and one homogenous set of claimants.

What data are available on workers' compensation disputes and dispute resolution?

As indicated above, there are major difficulties in attempting to measure and compare, on a comprehensive (national, interstate, or even intrastate) basis, the level of workers' compensation conflict. This thus clouds any potential measurement of an "appropriate" level of conflict. However, in an effort to place New York (and the New York construction industry to which workers' compensation ADR pertains) in a broader context for purposes of this evaluation, data on conflict and types of conflict are presented next.

Relatively little data, from relatively few jurisdictions, are available. As such, the data reported in this section are subject to several caveats, one of which is that comprehensive, national data on disputes, lawyer usage, and, for that matter, many other aspects of workers' compensation programs are not available. Workers' compensation is a state-specific program, administered by state agencies in all fifty states and the District

²⁷ The research design and methodology used for this report are discussed in detail in the next chapter.

of Columbia.²⁸ Because every state legislature enacts its own workers' compensation statute, there is interstate variation with respect to statutory language, regulations, and administrative practices regarding coverage, eligibility, cash benefits, medical treatment, rehabilitation services, and other standard features of workers' compensation programs. This diversity means that workers' compensation legislation reflects the perceived needs of (and political configurations in) each state; furthermore, it allows for a "natural laboratory" of experimentation in which (optimally) the best policies and procedures are thus identified.²⁹ However, this completely decentralized approach also means that there has been no impetus or readily available means to establish a comprehensive, national repository of data on workers' compensation programs.

Furthermore, there is tremendous variation in the information available from individual states, as evidenced by each state workers' compensation agency's annual publications and other on-line resources.³⁰ Furthermore, relatively few state workers' compensation agencies have a research unit that publishes evaluations and other detailed data compilations. As such, available statistics on disputes and lawyer usage, for example, are relatively sparse and are limited to those jurisdictions with published data, or for which academics or other external parties have compiled information.

Defining "disputes." The availability of data on workers' compensation disputes varies in part because the existence of a dispute is easier to flag in some workers' compensation programs (via forms submitted by claimants or insurers) than in others (in which, for example, claims are reviewed by Administrative Law Judges even if no party has a dispute, and in which claimants may verbally raise issues with the Administrative Law Judge at a hearing without otherwise formally signaling the existence of a dispute).³¹

Counting "disputes." Even in workers' compensation programs in which the definition of a dispute is relatively straightforward (that is, the existence of a dispute is readily identifiable by the filing of a claim petition or other form), estimating the frequency of disputes may be problematic. This is illustrated by the following summary of Minnesota's workers' compensation system:

²⁸ The federal government administers workers' compensation programs that pertain to federal employees and maritime workers.

²⁹ Conversely it also means that statutory benefit levels or other aspects of some states' workers' compensation programs may be inadequate, relative to benchmark standards. Furthermore, there may be ongoing pressure to adopt a less generous approach as states concerned about actual or threatened job losses as a result of employer relocations to adjacent jurisdictions implement statutory, regulatory, or other cost containment reforms.

³⁰ For a detailed, and continuously updated, list of state workers' compensation agency websites, see: <http://www.comp.state.nc.us/ncic/pages/all50.htm>. This has been compiled by Robert W. McDowell, web master, North Carolina Industrial Commission. The quality of annual reports (if any) issued by state workers' compensation agencies varies widely, as documented in Berkowitz and Pascale (1995).

³¹ "We found litigiousness extremely difficult to quantify in New York because, under its unique system, not all meetings held actually involve disputes. Cases often are scheduled for one or more informal conferences, even when the parties have not requested one. And a significant (but unknown) number of meetings are held on issues related to nonindemnity claims" (Ballantyne and Telles, 1992, p. 86).

A further complication to reporting of dispute incidence is the fact that a single claim may have more than one dispute either simultaneously or in succession. A single injury may result in a dispute about [the] level of benefits and one or more disputes about medical treatments. These may be filed as separate disputes each on a unique form and each be counted as a dispute. They may be resolved separately or combined together to be settled in a single resolution proceeding” (MacDonald, 2000, p. 11).

Available data on the extent of disputes and on dispute resolution: NCCI data. A National Council on Compensation Insurance (NCCI) study, which used a sample of high-cost, closed claims in ten states,³² found that 6.7 percent of cases had a dispute over medical or rehabilitation, and 51.8 percent involved disputes over medical services.

An agreement between the parties was the most common form of disposition for medical or rehabilitation disputes (55.8 percent of cases). Twenty-two percent of the disputed cases resulted in a formal hearing decision, and 18.1 percent had a formal hearing with no decision. The disputed cases were closed by an award to the employee (24.5 percent of disputed cases), an award for the employer (13.4 percent), or were withdrawn (2.6 percent); the disposition was unknown in 1.6 percent of these cases.³³

Disputes over terminating or reducing indemnity benefits were most common, as 77.7 percent of cases in the sample had this type of dispute. Slightly over one-quarter (26.8 percent) of these cases never entered the judicial (dispute resolution) system. The remaining cases led to an informal conference (10.9 percent), a formal hearing request (7.0 percent), scheduling of a formal hearing (17.8 percent), a formal hearing (28.2 percent), an appeal with a review commission (3 percent), or to further appeals (1.5 percent).

Insurers or employers controverted 7.3 percent of the claims in the sample; the majority of controversions (59.9 percent) were associated with a dispute as to whether the injury arose out of and in the course of employment. Most controverted claims (54.1 percent) were closed by an agreement between the carrier and employee, thirty-five percent by an award for the employee, 5.6 percent by the insurers’ withdrawal of the

³²The samples were drawn from the NCCI’s Detailed Claim Information Call. The sample pertained to carrier-provider claims data that met an indemnity threshold and were closed by the carrier during the 1989-92 period. There were a total of 6,997 claims in the data set, which including claims from Arkansas, Georgia, Kentucky, Missouri, New Hampshire, North Carolina, South Carolina, Tennessee, Virginia, and Wisconsin. Permanent partial disability claims accounted for the largest share of claims in each state’s sample, but use of lump-sum settlements and negotiated awards made it difficult to classify all claims by disability type (Durbin, Kish, and Nichols-Johnson, 1994).

³³Data were not published on the length of time of time it took the carrier to close cases in each of these categories. The length of time to close cases, for the entire sample, ranged from a median of 645 days (South Carolina) to a median of 1,527 days (Wisconsin); on the other hand, the authors also noted that “Wisconsin has the lowest median time elapsed to first benefit (14 days) [among the ten states in the sample]. This may due to the large penalties imposed for failure to initiate payments or report injuries, as well as the active claims monitoring system in Wisconsin” (Durbin, Kish, and Nichols-Johnson, 1994, p. 23).

controversion, 3.8 percent by an award for the employer, and 0.6 percent by the employee's withdrawal of the claim.

Available data on the extent of disputes and on dispute resolution: WCRI studies. Another source of data on disputes and dispute resolution is the Workers Compensation Research Institute (WCRI), which has published a series of qualitative state-specific studies (subtitled "Administrative Inventories" and, more recently, "Compscope"tm benchmark studies). In one of its most recent studies, the WCRI asserted that requests for state workers' compensation agency intervention is one measure of litigiousness, and summarized findings from prior state-specific studies as follows:

"Comparisons of agency intervention among states we have studied are limited because of varying application procedures, different methods of counting agency involvement, and problems equating informal and formal dispute resolution activities. However, previous Administrative Inventories indicate that in North Carolina, 9 percent of indemnity claims involved a hearing request; in Wisconsin, the figure was 10 percent. In Connecticut, about 20 percent of claims had informal and/or formal hearing activity in fiscal year 1996. In Oregon, almost 21 percent of accepted claims involved administrative dispute resolution or one or more formal hearings. In Georgia, 25 percent of indemnity claims involved a request for a hearing. In Virginia, 26 percent of indemnity claims involved an application for adjudication. In Colorado, 29 percent of lost-time claims involved disputes in 1994. In Pennsylvania, an estimated 36 percent of indemnity claims arising in 1994 involved requests for litigation as of mid-1996. In Missouri, 43 percent of paid indemnity claims involved at least one meeting at the agency. In New Jersey, estimates of the fraction of indemnity claims that involve one or more claim petitions ranged from 35 to 55 percent, and we estimate that in Illinois, 68 percent of indemnity claims involved agency intervention."
(Ballantyne, 1999, p. 71. References deleted.)

What data are available on the use of lawyers or other representatives?

Data on the use of lawyers or other representatives are limited, in three ways. First, available data pertain to lawyers as there is little or no data on licensed representatives or other non-lawyers. Second, data on lawyers may pertain solely to claimants' attorneys and exclude defense (employers' and insurers') attorneys. Third, recent cost data are either not available or not reliable, given the need to use claims data of a sufficiently old enough vintage.³⁴

³⁴ Fox and Nelles (1999), for example, report claimant and defense attorney payments for accident year 1994 (average claims maturity of 12 months and of 24 months), accident year 1995 (12 months, 24 months) and accident year 1996 (12 months), but provide (at page 88) the following cautionary note regarding the claimant attorney payments data: "Our estimates of claimant attorney fees understate the actual proportion of claimant attorney involvement because we only count claims in which payments are recorded. Excluded from our estimates are indemnity claims in which litigation is pending and in which payments to the claimant attorney have not yet been made; claims in which a claimant attorney was involved, but the

Available data on lawyer usage and costs: NCCI data. Claimants had attorney representation in 75.9 percent of claims in the NCCI's sample of high-cost, closed claims in ten states. The percentage of cases with attorney representation ranged from 54 percent (in North Carolina) to 88 percent (in Georgia).³⁵ Attorneys were paid, on average, 13.2 percent of the total award; in cases involving a lump-sum award, the average attorney fee was 27.4 percent of the lump-sum award (Durbin, Kish, and Nichols-Johnson, 1994, p. 45).

NCCI detailed claim information (DCI), drawn from a random sample of indemnity claims, are available on lawyer usage for twelve states for the period 1983-95.³⁶ The percentage of indemnity claims with claimant attorney involvement as of eighteen months after the claim was filed ranged, for the entire group of states, from 7.5 percent (in injury year 1984) to 13.9 percent (in injury year 1993).³⁷ The extent of attorney involvement fluctuated over the 1983-95 period, with no sustained upward or downward trends.³⁸

State-specific NCCI DCI data for forty-one states for the period 1992-96 are reported in Table 1.1.³⁹ As indicated there, the percentage of indemnity claims with claimant attorney involvement, across all states, was fairly consistent between 1992 and 1994 (was either 14.7 or 14.8 percent), and then declined slightly (was 13.8 percent in 1995, and 12.8 percent in 1996, respectively). The average, state-specific percentage of indemnity claims with claimant attorney involvement for the entire 1992-96 period was less than 5.0 percent in four states (Alaska, Arizona, Montana, and Utah), between 5.0 and 10.0 percent in thirteen states, and over 20.0 percent in four states (Illinois, Maryland, New Jersey, and Oklahoma). The greatest fluctuations (difference in highest to lowest percentage values, for the individual years 1992 to 1996) occurred in Oklahoma (range of 22.4, highest value of 55.0 percent and lowest value of 32.6 percent), Louisiana

worker did not prevail and so no payments were due; claims in which a data source's coding prevented us from distinguishing payments to claimant attorneys from other types of indemnity payments; and claims that are too recent to reflect all the types of disputes in which an attorney is likely to be involved."

³⁵Distinctive (or unique) features of states' workers' compensation programs sometimes limit the advisability of generalizing across programs. The authors of the NCCI report, for example, note elsewhere in their study: "Because of a unique feature of the Missouri system requiring insurers to be represented by legal counsel in claim settlement discussions, there has been a higher than average level of claimant attorney involvement. In almost 81% of the sampled claims, the claimant retained an attorney" (Durbin, Kish, and Nichols-Johnson, 1994, p. 6).

³⁶NCCI, "Call For Detailed Claim Information." All summaries here of this data source, as well as the actual data, are drawn from: Florida Department of Labor and Employment Security, Division of Workers' Compensation, Bureau of Research and Education, *1998 Dispute Resolution Report*, pp. 45-52.

³⁷These figures refer to averages for eleven states; the only state-specific figures are reported, separately, for Florida.

³⁸The eleven-state averages are as follows: 8.3% (1983), 7.5% (1984), 8.1% (1985), 9.5% (1986), 9.1% (1987), 10.1% (1988), 10.5% (1989), 9.7% (1990), 13.0% (1991), 12.9% (1992), 13.9% (1993), 12.6% (1994), and 11.5% (1995). Florida Department of Labor and Employment Security, *1998 Dispute Resolution Report*, Table 16, p. 47, citing: NCCI, 1997.

³⁹Florida Department of Labor and Employment Security, Division of Workers' Compensation, Bureau of Research and Education, *1999 Dispute Resolution Report*, Table 21, page 51, which reproduces an exhibit in the NCCI's *1999 Workers' Compensation Issues Report*.

(range of 15.9), New York (range of 15.0), the District of Columbia (range of 13.2), and Oregon (range of 13.2).

Assessing the quality of representation. Workers' compensation claimants have rarely been surveyed regarding their assessments of lawyers who they've hired.⁴⁰ Furthermore, relatively little is known about the basis on which claimants select lawyers (or other representatives) – and thus relatively little is known about the claimants' ability to select the most competent representation. There may be asymmetry in the quality of legal representation:

While the defense feels considerable economic pressure to concentrate the handling of compensation claims within a relatively small number of experienced and competent firms, no such pressure is manifest on the claimant's side. Most claimants have but one compensation claim and do not need a continuing relationship with an attorney for this purpose. Also, claimants usually have little basis for judging an attorney's ability to handle a compensation case, although workmen's compensation is a legal specialty that requires a thorough knowledge of the system. As a result, many attorneys with little or no background in the field may handle an occasional claim. Not until after the case is over may the worker realize or suspect that he may not have had the best possible representation....

Where labor is well organized, union members often are in a better position to obtain satisfactory representation. As the result of such factors as union policy, information from fellow members, sources of free legal advice, and sometimes even the use of the equivalent of runners, most compensation claims in a particular union's local jurisdiction go to one attorney or firm. While it is possible that these firms could present the shortcomings already noted, the union holds them responsible for competent and economical representation. If a number of workers feel that they have not been represented properly, the loss of the union's claims cases may follow" (National Commission, 1973, p. 211).

⁴⁰ One exception, as summarized in Bernstein and Coles (1979), is: California Workers' Compensation Institute, "Litigation in Workers' Compensation: A Report to Industry" (1975).

Table 1.1: Lawyer Usage.
Percentage of [Claimant] Attorney Involvement in Lost-Time Cases by State and Year
(1992-1996)

States	1992	1993	1994	1995	1996	1992-96
Alabama	6.1	8.0	9.4	7.8	4.1	7.1
Alaska	4.0	3.2	2.5	3.6	1.6	3.0
Arizona	3.0	4.2	5.5	5.4	3.9	4.3
Arkansas	21.8	16.4	13.2	10.8	11.0	16.0
Colorado	6.4	8.0	10.8	6.7	4.5	7.3
Connecticut	14.3	8.8	7.8	15.1	17.9	12.8
District of Col.	15.3	20.8	15.6	9.1	7.6	14.3
Florida	12.9	16.9	12.3	11.5	11.7	13.3
Georgia	15.3	20.6	21.7	17.3	16.1	18.1
Hawaii	3.1	5.3	6.4	6.6	5.1	5.0
Idaho	11.0	10.2	9.1	8.0	7.3	9.1
Illinois	20.2	21.2	24.5	23.4	18.4	21.2
Indiana	6.6	6.7	5.5	6.3	2.9	6.2
Iowa	7.7	7.6	7.7	5.1	5.2	6.9
Kansas	16.8	14.5	14.0	15.2	10.2	14.4
Kentucky	18.5	14.7	14.2	12.0	8.7	14.4
Louisiana	16.1	10.0	17.4	18.4	25.9	16.4
Maryland	25.2	27.9	23.2	26.6	21.8	25.1
Massachusetts	18.8	22.9	16.1	17.5	13.9	18.2
Michigan	12.3	9.4	9.6	8.0	5.3	9.2
Minnesota	7.4	9.2	9.9	6.2	4.4	7.7
Mississippi	12.7	10.0	15.0	13.6	17.5	13.0
Missouri	17.6	19.1	15.6	22.9	20.9	18.9
Montana	6.8	10.9	5.1	1.8	1.6	4.6
Nebraska	15.4	10.0	8.3	8.2	7.4	10.3
New Hampshire	10.8	14.7	15.3	3.5	4.3	10.3
New Jersey	31.3	29.3	32.4	31.3	24.3	30.0
New Mexico	8.4	9.6	5.4	5.5	2.5	6.9
New York	25.5	11.1	17.7	10.5	12.8	14.1
North Carolina	13.8	13.2	10.8	9.2	9.9	11.8
Oklahoma	32.6	51.9	55.0	49.0	41.9	46.8
Oregon	18.0	19.7	12.8	9.6	6.5	14.0
Pennsylvania	10.9	11.5	8.4	8.6	7.6	9.6
Rhode Island	24.4	22.0	11.8	11.6	17.0	21.1
South Carolina	17.9	19.1	20.4	20.2	24.3	20.1
South Dakota	8.4	3.7	4.7	5.2	2.6	5.1
Tennessee	16.4	11.4	12.8	10.7	12.1	12.8
Utah	4.8	2.3	1.8	1.5	1.3	2.3
Vermont	9.1	11.0	8.2	6.1	5.1	8.2
Virginia	12.8	15.4	11.1	9.5	12.1	12.2
Wisconsin	5.0	6.5	7.6	5.8	10.4	6.9
ALL	14.7	14.8	14.7	13.8	12.8	14.2

Source: Florida Department of Labor and Industry, *1999 Dispute Resolution Report*, Table 21, p. 51, reproducing an exhibit from the NCCI, *1999 Workers' Compensation Issues Report*.

The Growth of ADR in Workers' Compensation

Informal or alternative dispute resolution in workers' compensation programs has taken two forms. The first approach incorporates informal dispute resolution into the existing workers' compensation system. That is, the dispute resolution program is administered by a state workers' compensation agency. The second approach is established by collective bargaining among construction industry employers and unions in those states that have authorized such ADR programs. Though the state workers' compensation agency's approval of the ADR contract may be mandatory, and/or the state agency may specify certain reporting requirements regarding the ADR contracts, the ADR process is administered in large part by the signatories to the ADR contract rather than by the state agency.

Each approach will be summarized in turn.

Workers' Compensation State Agency Informal Dispute Resolution Programs

Workers' compensation informal dispute resolution programs, in contrast to formal dispute resolution programs, have "no or few procedural rules," "no rules governing admissibility of evidence," "no sworn testimony or cross examination of witnesses," and "no transcript or other form of formal hearing record" (Ballantyne, 1998, p. 9). A national survey indicated that, as of 1997, workers' compensation agencies in thirty-eight states permitted multi-issue informal conferences (mediation, non-binding arbitration, or binding arbitration); fourteen jurisdictions mandated this approach for some or all cases (Ballantyne, 1998, p. 33).⁴¹ One of the few evaluations that have been done of the latter group indicate that the legislative intent in creating the informal dispute resolution mechanism has not been met.⁴²

Workers' Compensation Collectively Bargained ADR Programs

Ten states have enacted legislation that permits unions and employers in the construction industry to establish, through collective bargaining, an alternative dispute

⁴¹Multi-issue informal dispute resolution forums involve "conferences or other forums. Conferences include face-to-face meetings or telephone conferences with a public agency representative (hereinafter called a convener) who may be a specialist (nonlawyer), or an adjudicator (lawyer). The usual purpose of informal conferences is to give the parties an opportunity to meet in the presence of a convener, to exchange information, to define issues, and to resolve disputes by voluntary agreement or a decision" (Ballantyne, 1998, p. 9).

⁴²"Disputes are likely to occur when benefits perceived as due are not provided in a timely manner – or not provided at all. The 1993 [Florida] reforms sought to provide a vehicle for informally resolving disputes between injured workers and employers/carriers before attorneys become involved by establishing the Employee Assistance and Ombudsman Office (EAO) within the Division of Workers' Compensation. Rules were promulgated requiring that injured workers, medical providers, employers, or insurance carriers file a Request for Assistance (RFA) with the division to initiate a 30-day mandatory informal dispute resolution period before the formal process can begin.... Contrary to the intent of the legislation, attorneys have been heavily involved in EAO's informal dispute resolution process, submitting well over 90% of RFAs" (Florida Department of Labor and Employment Security, 2000, ii).

resolution program for workers' compensation.⁴³ (See: table, Summary of Workers' Compensation Collective Bargaining ADR Statutes and Regulations). The primary focus of this legislation is on dispute resolution and the delivery of medical benefits. That is, statutes typically permit employer and union representatives to establish, through a collectively bargained agreement:

- a) an alternative dispute resolution system that includes mediation and arbitration;
- b) a mutually agreed upon list of providers of medical treatment who will (save for some exceptions) be the sole source of medical care; and
- c) various return-to-work, vocational rehabilitation or other programs.

Implementation Experience outside of New York State. No workers' compensation ADR collective bargaining agreements have been negotiated thus far in three states whose legislature has authorized the establishment of workers' compensation ADR programs (Maine, Oregon, and Pennsylvania).⁴⁴ In Kentucky, a clothing manufacturer with 1,400 employees (Carhartt, Inc.) signed a workers' compensation ADR agreement in April 1996 with two unions (the National Apparel, Garment & Textile Workers Council, and the United Food and Commercial Workers Union).⁴⁵ The agreement, which went into effect May 1, 1996 and has remained in effect since then, has been the only workers' compensation ADR collective bargaining agreement in Kentucky.⁴⁶ The Maryland Workers' Compensation Commission approved, in the fall of 2000, a workers' compensation ADR agreement between two umbrella organizations (the Maryland State and D.C. Building and Construction Trades Council, and an association of union contractors). Not all employers and unions in these umbrella groups have signed onto ADR, and claims experience to date has been limited.⁴⁷

⁴³ The states are California, Florida, Kentucky, Maine, Maryland, Massachusetts, Minnesota, New York, Oregon, and Pennsylvania.

⁴⁴ Source: phone conversations with workers' compensation state agency officials: Maine (11/16/00), Oregon (11/7/00 and 3/12/01), and Pennsylvania (1/3/01).

⁴⁵ Joe Ward, "Firm, unions to try new system on workers' comp. disputes," *The Courier-Journal* (April 2, 1996), p. 12B; "Union Agrees to First Alternative Dispute Resolution Plan in State," Bureau of National Affairs *Workers' Compensation Report*, Vol. 7, No. 8 (April 15, 1996), p. 183.

⁴⁶ Source: phone conversation with a Kentucky Department of Workers' claims official (3/13/01). The following explanation was offered (at page 298) for the lack of more widespread adoption of workers' compensation ADR in Kentucky: "Zaring P. Robertson, Kentucky's director of ombudsman and workers' compensation specialist services, noted that unions make up less than 20 percent of the state's workforce. Robertson said unions resist carve-outs because they are more comfortable with the familiar litigation process and resist trying anything new. The spread of carve-outs in Kentucky has also been impeded by legislative changes at the end of 1996 that made arbitration a feature of the regular state comp system, an action that removed another motivation for employers and unions to adopt carve-outs, he said." Mindy Yochelson, "Future Growth of Carve-Outs Will Depend on Market, Legislation," Bureau of National Affairs *Construction Labor Report*, Vol. 45, No. 2228 (May 12, 1999), p. 297.

⁴⁷ Source: phone conversation with Maryland WCC Commissioner Lawrence M. Vincent (3/15/01).

Examples of workers' compensation ADR collective bargaining agreements in Massachusetts include the previously mentioned Pioneer Valley project (signatories include the Massachusetts Building and Construction Trades Council and Bechtel Corporation),⁴⁸ a SEMASS trash incinerator project (signatories were Local 877 of the International Union of Operating Engineers and Bechtel Corporation),⁴⁹ and a ten-year modernization project at Logan International Airport (the project labor agreement was between the Boston Building and Construction Trades Council and MASSPORT).⁵⁰ Though all of these projects pertain to construction, Massachusetts' statute does not limit workers' compensation ADR collective bargaining to the construction sector.⁵¹

In Minnesota, there has been one workers' compensation ADR program: the Union Construction Crafts Construction Fund. During 1999, the program covered 4,497 employees (5.8 million person-hours). There were 168 indemnity claims and 309 medical-only claims; \$1.64 million was paid in benefits and other loss adjustment costs, with reserves of \$2.52 million.⁵² Dispute resolution experience has been as follows: 1) 7/1/97-12/31/97: 9 facilitations, 1 mediation, 0 arbitrations; 1/1/98-12/31/98: 18 facilitations, 0 mediations, 0 arbitrations; 3) 1/1/99-12/31/99: 58 facilitations, 7 mediations, 1 arbitration; and 4) 1/1/00-12/31/00: 85 facilitations, 9 mediations, and 2 arbitrations.⁵³

Workers' compensation ADR activity has been heaviest in Florida and California (Yochelson, 1999, p. 297). A statewide ADR agreement went into effect in Florida in

⁴⁸ Construction was with respect to a MASSPOWER cogeneration facility. "Bechtel: Construction Unions and Bechtel Introduce New Workers' Compensation Agreement for Massachusetts Project," *PR Newswire* (December 21, 1992).

⁴⁹ Sue Reinert, "Union at incinerator adopts workers' comp alternative," *The Patriot Ledger* (June 7, 1993).

⁵⁰ Source: phone conversation with Joseph Nigro, Boston Building and Construction Trades Council (3/16/01).

⁵¹ The Massachusetts Department of Industrial Accidents was not able to provide a list of ADR projects in the state, or any other data about implementation experience (2/9/01 phone conversation with, and a 2/12/01 e-mail from, an official in the Massachusetts Department of Industrial Accidents). Other sources, including a 2/8/01 phone conversation with a Massachusetts management representative involved in drafting Massachusetts' ADR legislation and a 3/14/01 phone conversation with a Massachusetts statewide building trades official, suggest that there have been few workers' compensation ADR projects to date in Massachusetts.

⁵² Source: information provided in an e-mail (11/3/00) from an official in the Minnesota Department of Labor and Industry.

⁵³ Source: 1/29/01 fax from the Union Construction Crafts Workers' Compensation Fund. One facilitation may encompass a series of phone calls and meetings to provide information and solve a problem about a claim-specific dispute (or multiple disputes that arise at the same time); all of the mediations and arbitrations to date have pertained to distinct (separate) claims – that is, they do not pertain to disputes for a single claim that may have arisen at different times and thus gone through the ADR system at different times (1/29/01 phone conversation with an official from the Union Construction Crafts Workers' Compensation Fund). The Minnesota claims experience corresponding to the dispute resolution experience is as follows: 1) 7/1/97-12/31/97: 28 medical-only claims, 9 lost-time claims, 1 denied liability, and 38 "total claims"; 2) 1/1/98-12/31/98: 284 medical-only, 63 lost-time, 11 denied liability, and 358 "total claims"; 3) 1/1/99-12/31/99: 309 medical only, 168 lost time, 50 denied liability, and 527 "total claims"; and 4) 1/1/00-12/31/00: claims experience data were not available (1/29/01 fax from the Union Construction Crafts Workers' Compensation Fund).

November 1994; employers can opt in and out of the agreement.⁵⁴ There are currently some 100 employers and some 1,500 employees covered by workers' compensation ADR.⁵⁵ There are, on average, some fifteen calls monthly to the Ombudsman, and over a six-year period some eighty mediation hearings and fifteen arbitrations have been held. The dispute resolution system under Florida ADR considers disputes on an issue-by-issue basis, so (as with Minnesota, for example), a claimant could thus use the dispute resolution system multiple times with respect to a single claim.

As of November 2000, there were thirteen active ADR projects in California (see: table, California ADR Participants). Calendar year data for 1999 (the most recent, detailed annual data from the California Division of Industrial Relations, released in February 2001) reported information on eleven eligible programs that involved 442 California employers and that accounted for 24.8 million person-hours of labor (the equivalent of 12,395 full-time employees, on a 2,000-person-hours per employee-year basis). There were 935 medical-only claims and 509 indemnity claims, with total incurred costs of \$9.3 million. The number of claims per 100 employees across eleven projects ranged from 1.8 to 32.2 (the average was 11.6). Fifty claims (of the 1,444 claims filed in 1999) were resolved at mediation; two were resolved during or after arbitration (Gannon, 2001).

Courts have held workers' compensation ADR statutes to be valid and enforceable, in the three states in which there has been litigation.⁵⁶

Reasons for the Growth of ADR in Workers' Compensation. Though, as will subsequently be noted in greater detail, there have been relatively few evaluations of the impact of ADR in workers' compensation, widely circulated findings from one of the first ADR workers' compensation projects may have provided an impetus for ADR legislation in other states. Massachusetts enacted ADR legislation for workers' compensation in 1991 (See: table, Summary of Workers' Compensation Collective Bargaining ADR Statutes and Regulations); the "Pioneer Valley" program implemented in 1992 was the first workers' compensation ADR program in that state.⁵⁷ The agreement pertained to a construction site in western Massachusetts and applied to Bechtel Construction Company, the Pioneer Valley Building and Construction Trades Council, its union affiliates, and the United Brotherhood of Carpenters and Joiners of America.

⁵⁴ The Negotiated Workers' Compensation Insurance Program, which is overseen by a joint labor-management committee, has remained in effect since 1994. The effective date of the first policy was January 1, 1995. Every construction trades local but one has signed the agreement. Source: phone conversation with Robert D. Edwards, chairman, NWCIP (3/9/01).

⁵⁵ Source: the information on Florida was provided in a phone conversation (11/22/00) with a regional manager of an insurance company that writes policies, in a variety of states, for workers' compensation ADR projects.

⁵⁶ *Costa v. Workers' Compensation Appeals Bd.*, 65 Cal. App. 4th 1177 (July 30, 1998); *Gassner v. Bechtel Construction and Industrial Indemnity*, 702 So. 2d 548 (November 10, 1997); *Pennsylvania State Lodge, Fraternal Order of Police v. Commonwealth of Pennsylvania, and Department of Labor and Industry*, 692 A.2d 609 (April 8, 1997).

⁵⁷ This summary draws from Lewis (1994) and Moscowitz and Van Bourg (1995).

The agreement was implemented eight months prior to the completion of the project, which allegedly makes the results of even greater import.⁵⁸ As indicated by the comparison below, the ADR phase of the construction project was associated with a decrease in the frequency of reported workers' compensation claims, lost work day claims, and litigation; it was also associated with substantially lower incurred costs even though the total hours worked for the two comparison periods were roughly equivalent.

<u>Pioneer Valley Program</u>	<u>Before ADR*</u>	<u>After ADR</u>
Total claims reported	38	22
Lost Work Day Cases	11	2
Litigated Cases	7	0
Total Incurred	\$480,000	\$220,000
Total Hours Worked	246,691	242,639

Notes: *Before ADR pertains to the eight-month period prior to implementation of the ADR program; After ADR pertains to the eight-month period post-program implementation. Data are as of May 1994. (The Bechtel Construction Corporation, as reported in Lewis (1994, p. I-135) and Moscovitz and Van Bourg (1995, p. 22).

Our interviews with some of the key stakeholders involved in negotiating workers' compensation ADR agreements in New York State indicated that they expected results similar to that found in Pioneer Valley. That is, there was an expectation that ADR would lead to less litigation (less uncertainty on the claimant's part regarding claims handling or medical treatment), lower costs (through discounting off of medical fee schedules; by directing claimants, sooner, to specialists which in turn would lead to lower medical costs and a faster return to work; and through lower litigation expenses); and other salutary benefits for claimants, unions, and employers.

For example, faster resolution of disputes was another of the expected advantages of ADR expressed to the authors of this study by key stakeholders who had just negotiated ADR contracts in New York State. Though, as was noted in the caveats section of the executive summary section of this study, numerous reforms have been introduced by the New York State Workers' Compensation Board to expedite claims processing, these reforms are of relatively recent vintage and were not in place when the initial ADR contracts were negotiated in New York State. As such, the following description of the New York State workers' compensation system was still pertinent when ADR programs were first established in New York:

The hearing process can best be described as a fragmented, piecemeal operation spread over an immeasurable period of time. In some respects, this sporadic convening of the parties is a necessity for the proper

⁵⁸ "It is well known that the last days of a construction project can be the most devastating from a workers' compensation standpoint, which makes the [Pioneer Valley] data ... of even greater interest" (Lewis, 1994, p. I-135).

adjudication of the claim, but in all too many instances, the hearings merely 'push papers', with no apparent or tangible benefit to the claimant. A common example of such futility is the situation where a hearing is scheduled for medical testimony, only to be adjourned due to the doctor's non-appearance (Eisenberg, 1986, p. 20).⁵⁹

The Purported Disadvantages and Advantages of Workers' Compensation ADR

As previously noted, ADR advocates cite a variety of alleged advantages of this approach to dispute resolution, including cost effectiveness, timeliness, informality, and greater control over the outcome. Though the statutes authorizing workers' compensation ADR do not contain a statement of legislative intent, other sources indicate that proponents of workers' compensation ADR ascribe to some of the same tenets as do advocates of ADR in general. Workers' compensation ADR is seen as a means of minimizing delays in dispute resolution and, at the threshold level, of decreasing or eliminating disagreements and other problems.⁶⁰ Claimants are still able to hire an attorney at any time, and the attorney will continue to get paid as prescribed by statute for the regular workers' compensation system. Use of a network of health care providers that the union and employer signatories to the ADR contract have established can result in faster provision of high quality medical treatment by occupational medicine or other specialists; this approach can reduce delays in receiving appropriate treatment, improve medical outcomes, and facilitate an earlier return to work.

⁵⁹ However, there was a difference of opinion between Eisenberg and the [NYS] Temporary State Commission to which he submitted this paper regarding the value of using the "Motion Calendar" option in lieu of the hearing process. The Temporary State Commission (at pp. 54-55) described and approved use of the "Motion Calendar" procedure, as follows: "Some of the cases they [law judges] hear are not contested, but require a judge's action to close them. To expedite matters, the [NYS Workers' Compensation] Board attempts to place straightforward, uncontested claims on the 'motion calendar.' A case on [the] motion calendar can, at the claimant's option, be decided (closed) administratively, on papers, rather than at a hearing. (Under this procedure, an assistant claims examiner prepares the proposed final award, which is reviewed and signed by a law judge.) This saves the claimant the time and expense of attending a hearing, and saves the Board the time and expense of holding the hearing. Nevertheless, some claimants may prefer having a hearing, to assure that no errors have been made and no issues overlooked. Cases appropriate for the motion calendar are primarily those which involve temporary disability only. (Sixty percent of all cases fall within this category.) For some of these cases, the motion calendar is not appropriate; in many, however, the injured claimant has lost little compensable time, has received all appropriate medical treatment and indemnity benefits, has returned to work, and has nothing more to ask of, or to receive from, the system. In such cases, motion calendar treatment, if acceptable to the claimant, is appropriate."

However, Eisenberg (as of 1986) was far less sanguine about the relative merits of the "Motion Calendar" approach: "At the outset, it should be clear that such title is a complete misnomer, for neither the claimant nor the carrier has 'moved' to put such case on the calendar for decision. Rather, it is more accurately an administrative mechanism to resolve ostensibly uncontroverted issues. Whatever the conceptual merits of the idea, under current Board processes, the system risks injury to the substantive rights of the parties. ...there is a high frequency of missing or misfiled documents at the Board, and in instances where there has been no in-person contact between the parties and the Board, there is no way for the WCLJ [Workers' Compensation Law Judge] to know whether he or she is truly in a position to bring the case to a final adjudication...." (Eisenberg, 1986, pp. 25-26).

⁶⁰ The purported benefits of workers' compensation ADR that are outlined in this section are drawn (in some cases, inferred) from Lewis, 1994.

Opponents of workers' compensation ADR criticize the dispute resolution and medical provision components of ADR programs.⁶¹ ADR contracts' prohibition of formal legal representation at the Ombudsperson stage (and, in some contracts, at the mediation stage as well), even if claimants still retain the right to consult with lawyers at any stage of the dispute resolution process, is viewed as a denial of due process rights.⁶² Construction unions' and employers' negotiation over an exclusive list of health care providers is viewed as a diminution of benefits for claimants, who are no longer able (in employee choice states) to select their physician.

However, critics of workers' compensation ADR acknowledge that it may be beneficial in certain circumstances,⁶³ and advocates of workers' compensation ADR are cautious both about the positive findings to date and the application of ADR to different workplace settings.⁶⁴ Circumspection is warranted; as will become apparent in the next two sections of this report, though an increasing number of states have authorized ADR programs for workers' compensation there have been very few empirical evaluations of the impact of ADR. As such, there is little evidence to substantiate or refute the theoretical debate to date about the relative merits and limitations of ADR programs for workers' compensation.

⁶¹ See: Moscowitz and Van Bourg (1995) and Ozurovich (1995).

⁶² "While the [California] Legislature is given wide latitude to create or abolish laws related to workers' compensation, it cannot abrogate the authority vested in a state administrative agency to ensure governmental due process rights are observed. In California, due process rights, including the right to counsel in an administrative hearing, are governed by the California Administrative Procedure Act. Under the state Administrative Procedure Act, the right to representation exists at any proceeding before a state agency.... If the injured worker is entitled to have an attorney at any stage of the alternative dispute resolution system, this aspect of the collective bargaining contracts would pass the test of fairness and due process. Without it, the cornerstone of fairness does not exist; the illusion that a worker can 'consult' with a lawyer at his or her own expense and the lawyer cannot legally charge him for it, defies the notion of 'fairness' or due process" (Moscowitz and Van Bourg, pp. 38, 39. Citations deleted).

⁶³ "It is certainly true that if an injured worker can obtain his or her full compensation without having to retain an attorney, that injured worker comes out ahead. For injuries that result in no dispute over causation, earnings, need for medical treatment, extent of medical treatment required, modalities of medical treatment required, period(s) of temporary disability, extent of permanent disability, apportionment, new and further disability or vocational rehabilitation, the injured worker will probably benefit by the expeditious resolution of his or her claim. However, when there are no disputed issues, the current state systems work promptly as well" (Moscowitz and Van Bourg, p. 5).

⁶⁴ "... given the relatively small number of hours involved [in the Pioneer Valley project], these numbers [Pioneer Valley results] do not provide a statistically valid basis for predicting results on other construction projects that have collectively negotiated agreements with respect to workers' compensation. More importantly, it is likely that even years from now, when the results from large numbers of construction projects with a large number of total hours worked are available for analysis and review, it will be wrong to rely on the results as indicative of what will happen should the program be implemented in a totally new environment."

"Workers' compensation results are quite specific to individual employers. Particularly in a collectively negotiated program such as this, anyone considering adopting such a program should closely scrutinize the distinctive characteristics of their own work environment (rather than assuming that the results from other work environments are pertinent)."

"Any direct savings that are experienced will come about as a result of decreases in a few cost factors.... These potential savings have to be balanced by the additional costs that may be incurred, such as ... medical panel and alternative dispute resolution costs...." (Lewis, 1994, p. I-135).

Evidence to Date of the Impact of ADR: Available Evaluations

Only one state (California) has previously evaluated its workers' compensation ADR program for the construction industry (referred to as the "carve-out program" by CA officials).⁶⁵ Evaluations there have taken two forms, each of which will be discussed in turn: 1) a statutorily mandated, annual report to the state legislature by the Administrative Director of the California Division of Workers' Compensation (Young, 1996-1998; Gannon, 1999, 2001)⁶⁶; and 2) an academic evaluation that was commissioned by a public entity, the California Commission on Health and Safety and Workers' Compensation (Levine et al., 1999).

The most recent annual report on ADR released by the Administrative Director of the California Division of Workers' Compensation is *The Construction Carve-Out Program: A Report of Activities in Calendar Year 1999 (Calendar Year 1999)*. All employers in carve-out programs must provide "limited data" to the state; the 1999 report uses data from 442 California employers in eleven carve-out programs and cautions (at page 1):

The reported figures provide a snapshot of the program at a point in time 3 months after the close of the reporting year; because the reporting comes so soon after the experience, it is, by definition, relatively immature data. Current regulations do not provide for receiving subsequent reports on the experience, which are necessary to see if the initial results reported stand up over time.

Thus, as the report further notes, claims administrators must, per current regulations, report cost data and information about the status of individual claims only for the year in which the claims are initially filed. Thus, for many claims (including those involving more severe injuries), there is not complete information on the ultimate costs. Furthermore, complete information on dispute resolution (including the use of mediation and arbitration) is not available for the entire life of the claim. As such, the "ability [of the California Division of Workers' Compensation] to evaluate the carve-out program is limited by the nature of the data collected."⁶⁷

The *Calendar Year 1999* published aggregate data for all carve-outs on various classifications of claims (number of employers, total person hours, total payroll, total incurred costs, and claims frequency: total, medical only, indemnity) and costs (paid and incurred amounts for various categories, including: medical-only, temporary disability,

⁶⁵ For example, phone conversations and e-mails in November 2000 with several Florida Division of Workers' Compensation officials confirmed that no ADR evaluations had been done or are underway in that state. Publications and other sources consulted for this evaluation made no reference to ADR evaluations, aside from California's.

⁶⁶ For ease of exposition, these annual reports will be cited here with respect to their title (i.e., *Calendar Year 1999*).

⁶⁷ *Calendar Year 1999*, p. 14. The report further notes (at page 15) that "future legislative and regulatory changes should consider the reporting of follow-up data for at least 2 years after the initial report..."

permanent disability, life pension, death benefits, vocational rehabilitation, medical, medical-legal, and total indemnity). Program-level data were published with respect to claims frequency (number of claims per 100 employees & per \$1 million payroll, number of indemnity claims per 100 employees & per \$1 million payroll), costs (average incurred costs per claim & per indemnity claim, and comparisons of incurred losses to estimated, expected losses).⁶⁸

In each annual report, summary data were also reported with respect to experience with the dispute resolution system. The California Division of Workers' Compensation concluded, in its *Calendar Year 1998* report (at page 10), that "a very large majority of these [ADR] claims [since 1995] were somehow resolved without any formal dispute."⁶⁹ Dispute resolution activity, on a year-by-year basis, was reported as follows:

- Of the 1,444 claims filed in 1999, 531 or 37% were reportedly resolved before mediation. They were resolved either because there was never any dispute at all between the injured worker and the insurer – or because the ombudsperson successfully handled any issues.... 50 claims in this year were resolved at the stage of mediation; two claims were resolved at or after arbitration. In 1999 one claim was resolved at or after a WCAB [Workers' Compensation Appeals Board] intervention (*Calendar Year 1999* report, p. 13).
- Of the 1,261 claims filed in 1998, approximately one half (628) were reportedly resolved before mediation.... No claims in this year were resolved at the stage of mediation; three claims were resolved at or after arbitration. In 1998 two claims were resolved at or after a WCAB intervention (*Calendar Year 1998* report, p. 10).
- Of the 661 claims filed in 1997, a very large majority (419) were reportedly resolved before mediation.... only four were taken to the stage of mediation; one was resolved at or after mediation; two claims were resolved at or after arbitration. In

⁶⁸ To protect confidentiality, programs were not identified by name. Expected losses and loss adjustment expenses per \$100 of payroll were computed by multiplying the Workers' Compensation Insurance Rating Bureau's "pure premium rate" for each job classification times weighted payroll (the weight consisted of the percentage of the carve-out program's payroll that was accounted for by that particular job classification).

⁶⁹ More specifically, the *Calendar Year 1998* report remarked (at page 10): "In four years of carve-out activity, there have been a total of 3,278 claims that were subject to ADR (519 claims filed in 1995, 837 filed in 1996, 661 in 1997 and 1,261 in 1998). At the time of reporting [per the regulatory reporting requirements for a calendar year] (three months after end of calendar year for prior year), there have been only 8 mediations and 5 arbitrations. A very large majority of these claims were somehow resolved without any formal dispute." The *Calendar Year 1999* report did not include a concluding, summary statement, in the corresponding section of the report.

1997 one claim was resolved at or after a WCAB intervention (*Calendar Year 1997* report, p. 9).

- Of the 837 claims filed in 1996, a very large majority were resolved before mediation.... only four were taken to the stage of mediation – and all four of those were resolved at mediation.... No claims went as far as arbitration (*Calendar Year 1996* report, p. 9).
- ...there were 519 claims filed in 1995. 386 of these claims were ‘resolved’ in 1995.... 385 of the 386 resolved claims were resolved *before* mediation....One claim was resolved at the stage of mediation. No claims went as far as arbitration (*Calendar Year 1995* report, p. 14).⁷⁰

The 1999 *Calendar Year* report reached the following, overall conclusion (at page 15):

As the carve-out program works through its sixth year, it has grown considerably but still continues to be a program of limited size. Total aggregate incurred costs rose commensurate with increases in hours worked and total [sic]. The number of claims per 100 employees in the program decreased over the prior year. The ... numbers of cases going to mediation and arbitration stayed low.

A separate analysis of the California ADR program was commissioned by the California Commission on Health and Safety and Workers’ Compensation (Commission). The Commission contracted with the University of California at Berkeley (Berkeley Survey Research Center, Haas School of Business) and Stanford University (Stanford Center on Conflict and Negotiation) to evaluate California’s carve-out program. This study (hereafter referred to as the Levine study, after its lead author) was asked by the California Commission to do the following:

- Describe the carve-out programs that have been established.
- Determine the acceptability of these programs by unions, employers, program administrators, injured workers, and service providers.
- Describe the socially useful and less useful incentives of carve-outs for each group (e.g., worker, union, management, ombudsperson, lawyers, doctors, insurers).
- Identify the potential costs and benefits of carve-outs regarding the quality of safety programs, medical care, and return-to-work services.

⁷⁰ Emphasis in the original. The *Calendar Year 1995* report also noted (at page 14) that “there was considerable confusion among the parties about the meaning of ‘resolved’ and ‘unresolved’ [explanatory footnote that clarified these terms is deleted from this citation]”; the report also observed (at page 14) that “data-reporting regulations will be revised to eliminate this confusion.”

- Perform detailed case studies of two carve-outs.
- Identify the methods of alternative dispute resolution in California, and assess their efficiency, effectiveness and compliance with legal requirements.
- Develop a methodology for making valid estimates of the impact of carve-outs on injury rates, costs and outcomes.
- Implement the methodology for a preliminary quantitative study.⁷¹

The Levine study used several approaches to evaluating the carve-outs. The collective bargaining agreements of carve-out programs were collectively summarized on several dimensions (trustee or safety committee selection; appointment of administrators, Ombudspersons, mediators, and arbitrators; plan funding; provision of medical care and vocational rehabilitation; alternative dispute resolution steps; information to claimants on their rights; resolution of liens; and safety and health programs). Seven collective bargaining agreements were also summarized, individually, with respect to four principal categories (employer participation; alternative dispute resolution; medical, medical-legal, and vocational rehabilitation; and safety and benefits).⁷²

A total of six ombudspersons at all seven California carve-outs were surveyed regarding their background (educational background, professional affiliations, training, other clients or duties, and ways of keeping current on workers' compensation legal developments), the structure of their employment relationship (the nature of their work relationship, their salaries, their full-time or part-time status, their administrative staffs, and how their independence was maintained), the general functioning of their offices (availability and accessibility to injured workers, when workers were contacted, whether standardized records were kept, when a dispute warranted opening a case file, what kind of information was provided when to workers, and the relative importance to their work of medical and legal knowledge), the nature of matters handled by Ombudsman (their philosophical approaches, and the roles they performed), and their perceptions of various aspects of the relationship between attorneys and the carve-out ADR process.

Two carve-outs were selected for case study analysis:

1) The National Electrical Contractors Association – International Brotherhood of Electrical Workers (the NECA-IBEW) carve-out, which covered 260 of some 500 eligible employers and a single union of approximately 10,000 electricians throughout the state, and

⁷¹ David I. Levine et al., *"Carve-outs" in Workers' Compensation: An Analysis of Experience in the California Construction Industry*. Prepared for the Commission on Health and Safety and Workers' Compensation (September 1999), p. 9.

⁷² Each contract was summarized, in tabular form, as follows: 1) employer participation (employer penetration, contribution of employer, and insurance); 2) alternative dispute resolution (steps of ADR, time frames for ADR, Ombudsperson employer, Ombudsperson involvement, mediation, arbitration, attorney participation, and wrongful termination); 3) medical, medical-legal, and vocational rehabilitation (medical provider list, length of medical control, predesignation of doctor, medical-legal provider list, vocational rehabilitation provider list); and 4) safety and benefits (safety, expanded benefits).

2) The Eastwide Reservoir Project that involved a single owner, over 200 contractors and subcontractors, multiple craft unions, and between 700 and 1,500 workers on site at any time.

Labor representatives, management representatives, and Ombudspersons were interviewed about various aspects of the carve-outs, including their founding and ongoing operations. Claimants who, according to the Ombudsperson, had filed for mediation or arbitration, were also interviewed (five or so claimants, for each carve-out).

Lastly, a quantitative analysis for two years of experience with the NECA-IBEW carve-out was also done. The research hypotheses are reprinted in this report (see: table, Research Hypotheses in California ADR). Cost and injury data were obtained from the Workers' Compensation Insurance Rating Bureau. The evaluation used insurers' data reported at the 3rd report level (42 months are the start of the policy) for policy year 1992 and 1994 claims, and at the 2nd report level (30 months) for policy year 1993 and 1995 claims. Data on litigated claims were obtained from the Workers' Compensation Appeals Board for NECA employees with 1991-1996 injury dates. Principal conclusions (and caveats) regarding the quantitative analysis included the following:

These results are quite preliminary, covering only 180 serious ... injuries within the carve-out. The results may be quite sensitive to differences in injuries leading to claims and in claim maturity, to differences in the speed of closure for costly cases, and to the appearance by chance of a few high-cost claims. Nevertheless, the general pattern is fairly clear.

.....

The evidence for any effect of carve-outs on safety is weak. Claims frequency relative to exposure declined slightly more rapidly among carve-out employers.... However, reduced reporting of claims would give the same result....

There is no evidence to suggest that carve-outs reduced medical or indemnity costs. Incurred costs, insurers' estimates of claims costs paid and future obligations, as a percentage of exposure declined for all subgroups for both medical and indemnity.....

.....

The lack of effect of the NECA-IBEW carve-out on workers' compensation benefits carries implications both favorable and unfavorable. On the favorable side, there is no evidence to suggest that the carve-out reduced benefits to which injured workers were entitled. This result may reduce concerns of organized labor. On the unfavorable side, because benefit payments are the major cost of workers' compensation, there is no evidence to suggest that the carve-out substantially reduced employer costs. This result may reduce the enthusiasm of employers for forming new carve-outs.

Cost reductions were most anticipated in the area of dispute resolution. Though medical and indemnity benefits are only indirectly

affected by carve-out mechanisms, the alternative dispute resolution process directly affects resolution costs. Total legal and medical-legal costs declined for all three subgroups. However, costs did not decline as rapidly for claims by electricians in the carve-outs as for the other subgroups. Increases in defense legal costs offset the advantages of lower medical-legal and applicant legal costs.

Legal costs are to some extent driven by the level of disputes. There is no evidence that dispute frequency has been reduced by the alternative dispute resolution process and ombudsperson. Strong assumptions are required to compare dispute incidence between the alternative dispute resolution process and the statutory system. However, there are no big changes in the frequency with which either of the formal dispute process are used...

... the analysis is hampered by small sample sizes and young claims – data are most often inconclusive. Moreover, these data come from a few years of experience at a single carve-out, and may not represent the experience of other carve-outs. With these caveats in mind, there is no evidence to suggest that carve-outs resulted in big changes that reduced the costs of workers' compensation costs to employers, or that reduced the benefits received by workers.⁷³

A more succinct summary of the results of the quantitative analysis was as follows (at page 144):

The data we collected on the NECA-IBEW carve-out is very preliminary. Nevertheless, two generalizations can be made. First, the most optimistic predictions about carve-outs' effects on increased safety, lower dispute rates, far lower dispute costs, and significantly more rapid return to work have not been realized. Second, the most pessimistic predictions about carve-outs' effects on reduced benefits and access to representation have not appeared. Given the preliminary state of the data and the fact that they are from only a single carve-out, it is possible that one set of predictions will receive further verification.

ADR Projects in New York State

Legislation/regulations. The statutory language of the workers' compensation ADR pilot project in New York State is similar to that enacted in other jurisdictions (See: table, Summary of Workers' Compensation Collective Bargaining ADR Statutes and Regulations). The Workers' Compensation Board has also issued regulations regarding reporting requirements and other aspects of the ADR program (See: table, Summary of Workers' Compensation Collective Bargaining ADR Statutes and Regulations).

⁷³ Levine et al. (1999), pp. 141-142.

The Workers' Compensation Board has approved as of December 31, 2000 six ADR projects in New York State (the pilot program ends in 2005). The projects are as follows:

GINNA Steam Generator Replacement

Employer Group	Bechtel Construction Company
Union(s)	Rochester Building Trades Council
Insurer	Industrial Indemnity and AIG
Status	1/1/96-6/30/96

Eastern Contractors Association

Employer Group	Members of Eastern Contractors Association
Union(s)	Multiple (bricklayers, carpenters, iron workers, laborers, operating engineers, Teamsters)
Insurer	Ulico Casualty Company
Status	7/1/96 - present

IBEW Local 3

Employer Group	New York Electrical Contractors Association, Inc. and Association of Electrical Contractors, Inc.
Union(s)	Local Union No. 3 of IBEW, AFL-CIO
Insurer	Electrical Employers Self Insurance Safety Plan
Status	5/1/96 - present

Hudson Waterfront Associates

Employer Group	Single owner (LLP), contractors and subcontractors
Union(s)	Building and Construction Trades Council of Greater NY, AFL-CIO
Insurer	Ulico Casualty Company
Status	4/1/98 - present

Westchester/Putnam

Employer Group	Construction Industry Council of Westchester and Hudson Valley, Inc.
Union(s)	Building and Construction Trades Council of Westchester and Putnam Counties
Insurer	American Home Assurance Company and Ulico Casualty
Status	5/15/99 - present

I-287 Project Labor Agreement

Employer Group	Hill International, Inc. (Construction Project Manager)
Union(s)	NYS and Westchester and Putnam Counties Building and Construction Trade Councils, AFL-CIO
Insurer	Ulico Casualty and St. Paul Fire and Marine Insurance Companies
Status	10/26/99 - present

Despite the diversity in the nature of the construction projects, the employer and union signatories, and other aspects of the ADR projects, the contracts of the six projects are remarkably similar (See: Table Contract Comparison).

Literature Review

Literature Review: Workers' Compensation Disputes, Dispute Resolution, and Use of Lawyers

There have been relatively few empirical studies, primarily by economists, regarding the probability of workers' compensation disputes or of lawyers being retained

by claimants. Other dispute-related outcomes measures include the length of time to close a case and the size of attorneys' fees. (See: table, Workers' Compensation ADR Evaluation: Literature Review, Table 1, Panels A and B.) Disputes and attorney involvement are positively associated with injury severity, after statistically controlling for a variety of other possible explanatory factors. Proxy measures for injury severity include permanent disability ratings; hospitalization; surgery; and the length of time on temporary total disability. Subjectivity in determining the claimant's award may increase with injury severity (Borba and Appel, 1987, p. 422).⁷⁴ The body part injured (e.g., backs) and the nature of the injury (e.g., fractures) may be associated with relatively greater or less subjectivity (whether such subjectivity takes the form of uncertainty over the final indemnity (cash) award, or of a lack of unanimity regarding the prescribed course of treatment for a certain injury); the body part injured and the nature of the injury are associated with claimants' disputes and with insurers' controversions (Fournier and Morgan, 1996; Roberts, 1992; Thompson, 1994; Hunt, 1992). The length of time to close a claim is also associated with injury severity and body part injured (Fournier and Morgan, 1995; Neuhauser and Koehler, 1996).

Furthermore, procedural justice theory may be useful in analyzing workers' compensation disputes. The theory, and its relevance to workers' compensation, have been explained as follows:

The theory of procedural justice argues that fair processes are expected to increase the probability of a fair outcome and generate greater satisfaction with any given outcome. A procedural justice focus is particularly relevant to workers' compensation, because a claim represents a process rather than a one-time event [in which the parties no longer have an ongoing employment or other relationship] and can become quite complex. Multiple actors are usually involved in determining benefit eligibility, appropriate medical and rehabilitative treatment, and whether an employee returns to work (Gleason and Roberts, 1993, p. 46. Citations deleted).

Indeed, the empirical literature provides support for the assertion that claimants' perceptions of procedural justice (that is, their views of the fairness of the process that produced the award outcome) affect aspects of the dispute resolution process.⁷⁵ Specifically, claimants' perceptions of employers' and insurers' claims handling influence their decision about hiring a lawyer (Borba and Appel, 1987; Mitchell et al., 1995). Lastly, certain demographic characteristics (such as a claimants' age, gender, and income) have been found, in some studies, to be associated with disputes or with lawyer

⁷⁴These findings can also be described in terms of the predicted relationship between award size and dispute probability. See: Thompson, Hyatt, and Roberts, 1998, pp. 276-277.

⁷⁵ Roberts and Gleason assert that "an analysis of procedural rather than distributive justice is more relevant to workers' compensation because the potential awards are limited fairly narrowly by law, but whether, when or how one gets those awards depends on how fairly the process is working for the individual" (Roberts and Gleason, 1994, p. 87).

usage (Borba and Appel, 1987; Mitchell et al., 1995; Fournier and Morgan, 1995; Fournier and Morgan, 1996; Hunt, 1992).

Literature Review: Workers' Compensation Costs: Managed Care

As noted earlier in this section, statutory language authorizing the establishment of workers' compensation alternative dispute resolution programs typically permit the parties to collective bargaining to create health care provider networks. Though slightly over half the states authorize workers' compensation managed care (Tanabe, 1999, pp. 60-63), there have been very few studies (prior to, or subsequent to adoption of such legislation) regarding the impact of managed care in workers' compensation.⁷⁶

Workers' compensation managed care is, in most studies, associated with lower medical costs, lower indemnity costs, greater claimant dissatisfaction, and no differences in the quality of medical care (as proxied by measures of functional limitations.) (See: table, Workers' Compensation ADR Evaluation: Literature Review, Appendix D.)

Literature Review: Workers' Compensation Return to Work and Duration of Disability

The statutory language authorizing workers' compensation ADR programs also permit establishment of light duty or other early-return-to-work programs. (See: table, Summary of Workers' Compensation Collective Bargaining ADR Statutes and Regulations.) Worker' compensation managed care programs also often emphasize an early return to work, if medically appropriate.

Because of this, and also in an interest in pointing out potential, non-medical related factors that may be associated with the existence or duration of disputes (as well as with return-to-work patterns), this report includes a summary of findings from empirical analyses of return to work in workers' compensation. (See: table, Workers' Compensation ADR Evaluation: Literature Review, Appendix D.)

Conclusion

We have included in this chapter of the report a survey of other research on alternative dispute resolution and its impact on workers' compensation. While only some of the studies are directly useful to this evaluation, this review of the available research informed our data collection and the hypotheses we eventually tested.

⁷⁶The impact of managed care in the general health care system has been investigated far more thoroughly. For comprehensive reviews of the earlier studies in this area on a variety of dimensions (including utilization performance; charge, expenditure, and premium performance; and prevention, quality of care, and enrollee satisfaction performance), see: Miller and Luft, 1994; Miller and Luft, 1997.

**California ADR ("Carve-out") Participants
(as of November 2000)**

No.	Type	Union	Company	Expiration Date
1.	(3)	CA Building & Construction Trades Council	Metropolitan Water Dist. of So. Ca. – Eastside Reservoir Project (fka Domenigoni) Parsons now Diamond Valley Lake	11/7/03
2.	(2)	Intnat'l Brthhd Electrical Workers - IBEW	NECA--National Electrical Contractors Assoc.	8/14/01
3.	(2)	So. Ca. Dist. Carpenters & 19 local unions	6 multi-er groups—1000 contractors.	8/14/2001
4.	(2)	So. Ca. Pipe Trades Council 16	Multi er group—Plumbing & Piping Industry Council. ea er, chooses whether to sign carve-out	8/24/2001
5.	(1)	Steamfitters Loc. 250	Cherne—two projects completed in 1996	Completed
6.	(1)	Intern'l Union of Petroleum & Industrial Workers	TIMEC Co., Inc./TIMEC So. CA., Inc.	6/30/03
7.	(3)	Contra Costa Building & Construction Trades Council	Contra Costa Water District—3 proj. labor agreements Los Vaqueros	12/10/98 Project completed
8.	(2)	So. CA Dist. Council of Laborers	4 multi-er groups—Assoc. Gen'l Contractors of CA, Bldg. Industry Assoc. of So. Ca., So CA Contractors' Assoc., Engineering Contractors' Assoc.-- ea er, chooses whether to sign carve-out	7/31/02
9.	(3)	Ca. Bldg. & Construction Trades Council	Metropolitan Water Dist. Of So. Ca. Inland Feeder Parsons	3/11/03
10.	(3)	Bldg. & Construction Trades Council of Alameda County	Parsons Constructors, Inc.—National Ignition Facility—Lawrence Livermore	9/23/03
11.	(2)	Dist. Council of Painters	Los Angeles Painting & Decorating Contractors Assoc.	10/28/03
12.	(1)	Plumbing & Pipefitting Local 342	Cherne Contracting for construction of Chevron Base Oil 2000 project	10/18/00 Job Complete
13.	(3)	Los Angeles Building and Construction Trades Council AFL-CIO	Cherne—ARCO	8/1/98 to 7/31/2001
14.	(2)	Operating Engineers Loc. 12	So. California Contractors' Assoc.	4/1/2002
15.	(2)	Sheet Metal Intern'l Union	Sheet Metal & A/C Contractors National Assoc. (SMACNA)	4/1/2002
16.	(3)	Building & Construction Trades Council of San Diego	San Diego County Water Authority Emergency Storage Project	2/23/03

Notes: Coding for type of participant: 1 = 1 employer, 1 union; 2 = union, multi-employer; 3 = project labor agreement.

Source: Table received by e-mail from the California Department of Industrial Relations, November 7, 2000. Format of the table has been modified but the contents remain the same

Research Hypotheses in California ADR (“Carve-Out”) Evaluation
Selection of Carve-out Employers
<i>Hypothesis 1A:</i> Carve-out employers had better safety records as defined by experience modification before joining the carve-out than the non-carve-out employers.
<i>Hypothesis 1B:</i> Carve-out employers had better safety records as defined by claims frequency before joining the carve-out than the non-carve-out employers.
<i>Hypothesis 1C:</i> Carve-out employers had better safety records as defined by lower premium costs relative to exposure for electricians before joining the carve-out than the non-carve-out employers.
Safety (premiums)
<i>Hypothesis 2A:</i> Carve-out employers’ premiums as a percentage of exposure decline more quickly than the non-carve-out employers’ premiums for class codes covering electricians.
<i>Hypothesis 2B:</i> Within carve-outs, employers’ premiums as a percentage of exposure decline more quickly for electricians than for other class codes.
Safety (reported injury rates)
<i>Hypothesis 2C:</i> Electricians at carve-out employers have a greater rate of reduction in reported injury rates than electricians at non-carve-out employers. This hypothesis is phased in terms of reductions, given the trend to lower claims rate in California during this period.
<i>Hypothesis 2D:</i> Electricians at carve-out firms have a greater reduction in reported injury rates than non-electricians at carve-out firms.
Medical and Indemnity Costs
<i>Hypothesis 3A:</i> Employers within the carve-out experience greater reductions in medical and indemnity costs as a percentage of payroll than employers not in the carve-out.
<i>Hypothesis 3B:</i> Employers within the carve-out experience greater reductions in medical and indemnity costs as a percentage of payroll for electricians than for non-electricians at the same firms.
<i>Hypothesis 3C:</i> Electricians at carve-out firms experience a greater reduction in indemnity benefits per claim than electricians at firms not in the carve-out.
<i>Hypothesis 3D:</i> Electricians at carve-out firms experience a greater reduction in indemnity benefits per claim than non-electricians at carve-out firms.
Return to Work
<i>Hypothesis 4A:</i> Electricians at carve-out firms have a greater rate of reduction in time to return to work than electricians at non-carve-out firms.
<i>Hypothesis 4B:</i> Electricians at carve-out firms have a greater rate of reduction in time to return to work than non-electricians at carve-out firms.
Dispute Resolution Costs
<i>Hypothesis 5A:</i> Claims by electricians at carve-out firms have a greater rate of reduction in dispute resolution costs than claims by electricians at non-carve-out firms.
<i>Hypothesis 5B:</i> Claims by electricians at carve-out firms have a greater rate of reduction in dispute resolution costs than claims by non-electricians at carve-out firms.
<i>Hypothesis 5C:</i> After dropping several outliers, carve-out firms have a greater rate of reduction in dispute resolution costs per claim than the non-carve-out firms.
Dispute Resolution Costs (medical-legal evaluation costs)
<i>Hypothesis 5C [sic]:</i> Carve-out firms have a greater rate of reduction in medical-legal costs per claim than non-carve-out firms.
<i>Hypothesis 5D:</i> Electricians at the carve-out firms have a greater rate of reduction in medical-legal costs per claim than non-electricians at carve-out firms.
Dispute Resolution Costs (legal costs)
<i>Hypothesis 5E:</i> Carve-out firms have a greater rate of reduction in defense and applicant legal costs per claim than non-carve-out firms.
<i>Hypothesis 5F:</i> Electricians at carve-out firms have a greater rate of reduction in defense and applicant legal costs per claim than non-electricians at carve-out firms
Dispute Resolution Frequency
<i>Hypothesis 6A:</i> Electricians at carve-out firms have greater reductions in the frequency of disputes, measured by mediations and arbitrations in the carve-out period, per claim than electricians not at carve-out firms, measured by mandatory settlement conferences and hearings.
<i>Hypothesis 6B:</i> Electricians at carve-out firms have greater reductions in the frequency of disputes per claim than non-electricians at carve-out firms
Source: Levine et al., (1999), pp. 112-117.

Chapter 2: Methodology and Empirical Results

In this chapter, we present the research methodology and the findings of a statistical analysis of the workers' compensation alternative dispute resolution pilot program in New York State.⁷⁷ First, we present the research design and data collection process. Next, we present a general overview of the data set and claimant-group comparisons in tables that report descriptive statistics (averages). Finally, we present hypotheses to be empirically tested, statistical models used for these tests, and the findings from these models. In the last section of this chapter, workers' compensation ADR project-level, qualitative information (which draws in part from interviews with ADR stakeholders and other officials) is presented.⁷⁸

Research Design

Research designs in the social sciences often have to be tempered by the realities of data access and availability. At the outset of this study, it was impossible to predict with absolute certainty: 1) how many ADR projects would be implemented during the course of this evaluation; 2) where they would be located (i.e., in New York City or in a markedly different setting elsewhere in the state); and 3) what the characteristics of each project would be (i.e., one buildings trade or many; one or multiple work sites; the configuration of employers, insurers, third-party administrators, and/or owners; what data could be obtained from whom with respect to what group). Nonetheless, it was hoped that a research design for an evaluation of workers' compensation ADR in New York State could accomplish three goals: 1) facilitate comparisons across all ADR projects (assuming that comparative data were available on all projects); 2) take into consideration and acknowledge the distinctive or unique features of individual ADR projects; and 3) provide some prediction about the future of ADR in workers' compensation.

We thus sought data with respect to two levels of analysis – claims -level data and more aggregated, or project-level data. Claims-level data for two groups were of interest: 1) claimants covered by an ADR contract, and 2) claimants in the traditional workers' compensation system, who were as similar as possible (in terms of building trade, occupation, geographic location, injury date, and other factors) to the ADR claimants. The non-ADR claimants data set was important, in order to provide a “control group” for a statistical analysis of the impact of ADR (if any) on various outcome measures.

The first step in the process was to design a set of data collection instruments. In final form, these instruments reflected the revisions and refinements that were made as a result of suggestions and comments offered during a series of meetings with representatives from the ADR projects, Workers' Compensation Board officials, and other experts.⁷⁹ The

⁷⁷For ease of exposition, workers' compensation alternative dispute resolution is usually referred to, throughout the rest of the chapter, simply as ADR.

⁷⁸ The principal conclusions and policy recommendations that stem from these quantitative and qualitative analyses are set forth in the concluding chapter.

⁷⁹ ILR did not meet with officials from all ADR projects, as one project ended before ILR developed its research design and the Workers' Compensation Board drafted its ADR regulations, and another project was initiated towards the end of ILR's evaluation.

discussion of the data collection instruments is followed by a presentation of more detailed information about the data collection process for ADR projects for which claims-level data were available for this evaluation.

Research Design: Data Collection for Claimant-level analysis

The Dispute Resolution System. Several potential sources of information on the process and outcomes of dispute resolution in ADR and the traditional workers' compensation system were identified. Every ADR contract in New York State mandated that ADR claimants who think that they are "not receiving the workers' compensation benefits to which [they are] ... entitled" should notify the Ombudsman, and the Ombudsman must "maintain a log recording all activity, including the date of each notification and the date of each response."⁸⁰ As such, the log was viewed as an important source of information. A telephone survey of injured workers was developed by the School of Industrial and Labor Relations, Cornell University (ILR). We created a model log for the ombudspersons to fill out for each contact that came through the ADR system. The log is attached as Appendix E2 to this report.

We also thought it essential to survey injured workers themselves regarding their experiences in both the ADR and the traditional workers' compensation system. Questions for ADR and non-ADR claimants addressed their experiences with workers' compensation dispute resolution, and asked the claimants to evaluate, among other things, opportunities to express one's point of view, presentation of important facts pertaining to the claim, and various parties' efforts to resolve the dispute. The surveys are attached as Appendix [E3] to this report.

A data manual, listing desired data elements from an insurer's, third-party-administrator's, or other source's administrative data base, was also designed by ILR. Though this manual was intended in large part to capture the requisite contact information for administering the injured worker survey, it also requested cost and claimant demographic information to be used for statistical analyses. The data manual also asked for claimant-specific information regarding controversies, medical disputes, and the stoppage or modification of payments per forms submitted to the Workers' Compensation Board (and per the equivalent forms or documentation, if any, on the ADR side). The intent here was to supplement and substantiate the claimant's self-report of the existence of a dispute, by a record of insurers' or employers' actions.⁸¹ Lastly, information about the Conciliation Bureau and the hearing process for claimants in the traditional workers' compensation system was requested of the Workers' Compensation Board. This data manual is attached to this report as Appendix [E1].

⁸⁰ References in this report to "Ombudsman" encompass "compensation advisors," "program representatives," "special representatives," or other contractually-specified appellations for the official involved with dispute resolution at the initial stage of the dispute resolution process, and are gender-neutral.

⁸¹ More precisely, there were two reasons for seeking these data: 1) to substantiate the claimant's self-report of the existence of a dispute, particularly if the "dispute" arose in response to an action taken by an insurer or employer, and 2) to obtain as comprehensive information as possible from all parties, particularly since only claimants could initiate the dispute resolution process in ADR and since claimants' survey resources would otherwise be the primary (if not sole) means of flagging disputes.

Costs, Medical Care, and Return to Work. The data manual also requested data on medical payments, indemnity payments, a few aspects of medical treatment, and return to work.

Satisfaction with Medical Care. In an effort to evaluate the quality of care under ADR and the traditional workers' compensation system, ILR also included "satisfaction with medical care" questions on the injured worker survey.⁸²

These three principal sources (the ombudperson's log records, the insurer information by claimant and the injured worker surveys) make up the principal sources of data for the individual-level analysis to follow.

Research Design: Project-level analysis

Several sources of information were also identified with respect to project-level data that would facilitate a summation of experience with the ADR system as a whole in New York State. Regulations promulgated by the Workers' Compensation Board required ADR participants to annually report information on a few items.⁸³ ILR also decided to interview Ombudsman and other officials involved with the dispute resolution process under ADR, as well as union officials, contractors, and other signatories to the ADR contract. The intent was to glean, as late as possible in the study period, these officials' summary assessments of their experience with ADR (including its strengths and weaknesses, generally, and any perceived successes or failures in actually implementing ADR).

Data Collection

Data Collection: The Ombudsman's Log

As previously noted, each of the ADR contracts negotiated in New York State stipulated that the Ombudsman keep a log of contacts with claimants. In response to its legislative mandate to evaluate due process and various other aspects of ADR programs, ILR developed a standardized Ombudsman's log that could be used by every ADR project. The log tracked the dates of an Ombudsman's communication with claimants and other parties; the form of the communication; the issues discussed; the nature of these issues (request for information, or a dispute); and the outcome of the discussions. Information on the log also pertained to mediators' contacts with the parties to a dispute; the date and length of the mediation session; the total time spent by the mediator on the case, the issues at

⁸² Relying solely on "patient satisfaction" responses is not without its problems. ILR had carefully considered the issue of how to measure quality of care in workers' compensation, during the course of an earlier evaluation of the workers' compensation managed care pilot program in New York State. During the course of that evaluation, ILR drew upon the expertise of occupational health physicians on a Peer Review Committee, the comments of officials of the Labor-Management Committee overseeing the evaluation, the relevant academic literature, and the expertise or experience of officials in workers' compensation state agencies across the United States. In that evaluation, as in this ADR evaluation, sole reliance was placed on the injured worker survey as a measure of the quality of medical care.

⁸³ As indicated on the legislative comparison table in the previous chapter, the regulations required that the following information be reported: the number of claims filed; the total amount of lost wage benefits paid within the program; the total amount of medical expenditures paid within the program; and the number of decisions rendered, settlements made, and appeals taken.

dispute; and the outcome of mediation. A comparable set of information could also have been compiled with respect to arbitration.⁸⁴

The log was revised numerous times, in light of suggestions from both the Workers' Compensation Board and one ADR project (whose first Ombudsman had previously developed, on his own initiative, a computer-based tracking system for logging interactions with claimants). ILR wrote a user-friendly software program to allow an ADR official to easily enter (through the use of check boxes and other guides) all of the pertinent information, and distributed the software to the ADR project in effect at the time (for pre-testing of the software) and then to another ADR project that was also established early on. Cumulative information from the log was compiled from one ADR project.⁸⁵

Data Collection: the Injured Worker Survey

Before drafting its survey for the ADR evaluation, ILR compiled surveys from a variety of sources, including surveys used in studies of other states' workers' compensation programs, the "procedural justice" academic literature, and the "patient satisfaction" academic literature. ILR also drew upon its experience in drafting and administering an injured worker survey for its evaluation of the workers' compensation managed care pilot program in New York State.

ILR's injured worker survey was then circulated for review and comment by officials from the Workers' Compensation Board; representatives from three ADR projects; a consulting firm (Milliman and Robertson, Inc.); and Dr. Jay Himmelstein, Assistant Chancellor for Health Policy at the University of Massachusetts Medical Center.⁸⁶ The injured worker survey was further refined, based on the results of a pre-test of the survey.⁸⁷ Three variations of the survey were prepared, in response to the suggestions of the ADR participants who critiqued the survey.⁸⁸

⁸⁴ The entire contents of the log are available in Appendix E2.

⁸⁵ One ADR project ended before ILR's log was developed ("Project Z"), and another ADR project ("Project Y") went into effect towards the end of ILR's evaluation. A third ADR project ("Project X") did not use the software that ILR furnished. ILR contacted the Ombudsman for "Project X," who provided information on the extent and nature of claimant contacts. "Project Z" provided the Workers' Compensation Board with a hard copy of the Ombudsman's log. No information regarding the Ombudsman log was obtained from Project Y, and no information could be obtained from the Ombudsman of the other ADR project that went into effect during ILR's study period.

⁸⁶ Milliman and Robertson, Inc. evaluated a workers' compensation "twenty-four-hour" coverage pilot program, as part of a Robert Wood Johnson Foundation (RWJF) grant. In order to avoid duplication of effort and multiple surveys of the same claimant, Milliman and Robertson contracted with ILR to survey a subset of claimants. The survey for Milliman and Robertson consisted of the same set of questions that were used for ILR's ADR survey, plus some additional sets of questions about functional limitations and satisfaction with medical care. Dr. Jay Himmelstein was Director of RWJF's Workers' Compensation Health Program, and thus he, as well as Milliman and Robertson, reviewed and commented on ILR's survey.

⁸⁷ The names of eighteen randomly selected claimants were provided by an ADR project for use in the pre-test.

⁸⁸ ILR sought to strike a balance between: 1) developing surveys with a sufficient number of items in common (and in the same order of questions in the survey) to allow generalizations across projects, and 2)

The injured worker survey was administered to the two ADR projects from whom permission was obtained to survey workers. Response rates for both projects are reported in Table 2.0: Survey Response Rates. Both projects also granted permission to administer the survey to a “control group” of construction workers whose claims were processed through the traditional workers’ compensation system. (Data on a “control” – or “comparison” – group were sought, for the purpose of doing statistical analyses of the impact of ADR.) As is explained further, later in this chapter, the “control group” for group #1 consisted of claimants for that entity who were injured prior to the entity’s participation in ADR.⁸⁹ The control group for group #2 consisted of claimants for an entity whose employers were not signatories to an ADR contract. Though survey responses were compiled for group #2, the small number of ADR and control group claims and survey responses precluded statistical analyses and thus only the survey responses for group #1 are reported in this evaluation.⁹⁰

Data Collection: Administrative Data Sets

As previously described, ILR developed a data manual that listed claimant-specific data elements regarding survey contact information, claimant demographics, costs, and various disputes (controversion, medical disputes, stoppage or modification of payment – as signified by insurers’ or employers’ submission of forms). The largest ADR project was able to provide, electronically and on a regular basis, data for many of these data elements with respect to ADR and control group claimants. This information was used primarily for survey administration purposes. Towards the end of ILR’s study period, ILR obtained a comprehensive data dump of ADR and control group claimants that was provided by the ADR project.⁹¹ This data dump contained information (such as payments transactions files) that had not been requested on the data manual, and was merged with the injured worker survey responses to create the data set used for this analysis. Survey contact information and selected data elements for two other ADR projects were provided by a third-party administrator. However, the small sample size of one project precluded a statistical analysis and thus the survey and administrative data were not merged and analyzed; permission to survey ADR and control group workers was not obtained for the second project and thus there was insufficient information to evaluate this project.

Data Collection: Summary and Caveats

tailoring the surveys, to reflect the distinctive aspects of each project as well as the suggestions of the stakeholders in each project.

⁸⁹ Though it would have been preferable to have a control group with injury dates that occurred during the same time period as ADR injuries, this was not possible.

⁹⁰ Though a third ADR project reviewed and approved the survey, ILR decided that obtaining all of the appropriate parties’ requisite permission to survey ADR and control group claimants was unlikely.

⁹¹ A comprehensive data dump, using data elements already in the ADR participant’s data bases, was provided jointly to Milliman and Robertson, Inc. (M&R) and to ILR for their respective analyses of two different programs. The data dump included payment-by-payment information for medical and indemnity benefits. ILR and M&R researchers periodically compared notes on the strengths, limitations, and possible uses of this data set.

ILR developed a research design and data collection instruments with the intent of doing the most comprehensive evaluation possible. An Ombudsman's log, an injured worker survey, and a data manual for administrative data were developed, and claimant-level information for ADR and non-ADR injured workers was sought.

Ultimately, because of data access or availability problems, and the relatively small size of some ADR projects, ILR was able to obtain the requisite ADR and control group data with respect to only one entity. As did the Berkeley/Stanford group for its California ADR evaluation (which was summarized in the previous chapter), ILR thus relied upon a case study approach for its statistical analysis of the impact of ADR. The data and ADR-control group comparisons referred to in the rest of this discussion of claimant-level information pertain only to this one entity, and generalizations drawn from these findings must be tempered by this fact.

The Data Set: Data Set Restrictions

The data set resulting from a merge of survey responses and administrative data was not used as is; rather, four restrictions were imposed. First, only claims pertaining to two occupational classifications (apprentice or journeymen) were used; claims information pertaining to office workers and other occupational groups were discarded.⁹² Second, only claims from two distinctive time periods were included in the analysis: 1) "control group" claims, with injury dates from May 1, 1995 to April 30, 1996, and 2) "experimental" group (that is, ADR group) claims, with injury dates from May 1, 1997 to April 30, 1999.⁹³ Third, only non-fatal claims were used, since survey-generated information on disputes, dispute resolution, and satisfaction with medical care were not available on fatal claims. Fourth, only claims with total medical or indemnity payments greater than zero were included. Fifth, to help ensure the completeness of the dispute resolution, cost, and medical care satisfaction data used in this analysis, only closed claims (as defined by the entity providing the ADR and control group claims information) were analyzed.

⁹² The data set thus consisted solely of injured workers in the building trades, which should facilitate intra- or interstate comparisons of the impact of ADR in construction.

⁹³ Though the ADR program for this project went into effect on May 1, 1996, ILR and the data provider mutually decided, prior to surveying or other data collection, to use May 1, 1997 as the first injury date for which ADR data (aside from the Ombudsman's log) would be compiled. April 30, 1999 was used as the injury date cutoff for claims to be used for analysis, in part because this constituted a two-year period for the ADR group and in part because of concerns about incomplete cost data for later claims. Control group data with injury dates concurrent with those of ADR claims were not available, and thus control group information was obtained for the period immediately preceding the start of the ADR program.

Table 2.0: Survey Response Rates¹

Injured Worker Survey Group #1			
<i>Outcome</i>	<i>Total Sample</i>	<i>ADR Group</i>	<i>Control Group</i>
Completed survey	2,576	1,337	1,239
Refusals	869	475	394
Language Problem	37	21	16
Ineligible ²	619	373	246
Bad number	1,504	979	525
Unable to contact ³	229	56	173
Pending	193	163	30
Total	6,027	3,404	2,623
Injured Worker Survey Group #2			
<i>Outcome</i>	<i>Total Sample</i>	<i>ADR Group</i>	<i>Control Group</i>
Completed survey	17	14	3
Refusals	12	10	2
Language Problem	0	0	0
Ineligible ²	3	2	1
Bad number	15	13	2
Unable to contact ³	1	0	1
Pending	0	0	0
Total	48	39	9
Notes: ¹ Categories, footnotes, and data provided by survey facility administering the survey (CAST, ILR School, Cornell University). ² "Cases where either 1) the respondent cannot remember the injury in question 2) the respondent is either too ill to complete survey or 3) the respondent is deceased." ³ "Cases where 30 or more calls had been made to the respondent without contact."			

Claimant-Level Data Analysis

The next section (“Comparison of Mean Values”) provides a general overview of various aspects of ADR and control group claims in this data set. The second section (“Empirical Models”) presents some hypotheses about the impact of ADR on outcome measures and the findings from statistical tests of these hypotheses. The concluding section of this chapter discusses project-level data.

Comparison of Mean Values: ADR and Control (non-ADR) Groups

One statistic often used to summarize and compare data is the average (or mean) value. A statistical test (the “t test”) indicates whether the difference in means between two groups is so large as to be deemed “statistically significant” (not due to chance), in which the case the researcher may conclude, at least from a statistical perspective, that there actually is a “real” difference between the two groups with respect to a particular variable. Though this test indicates the presence of a statistically significant difference in means (and, by inference, indicates that the two groups differ), it does not address causal factors. For example, though a t-test may indicate that there is a statistically significant difference in average costs between two groups of claimants, only a more sophisticated analysis (such as ordinary least squares regression) that statistically “controls” for a variety of causal factors will flag the determinants of workers’ compensation costs.

The presentation of these summary statistics is divided into three general sections: a general overview; detailed information about information provision and dispute resolution; and detailed information about medical treatment.

General Overview

Table 2.1: Demographics of Control and ADR Claimants presents the average values for various measures of claimant demographics, types of claims, types of disability, injury severity, body part injured and the nature of the injury. As indicated by the source notes to the table, some of these measures were obtained from the survey of injured workers. All non-survey measures (for all column categories) were provided from the administrative data base of the ADR participant.

Data are reported with respect to six groups of claimants, the first two of which were explained previously: (1) a control group of pre-ADR claimants (that is, those in the traditional workers’ compensation system, with injury dates between May 1, 1995 and April 30, 1996), (2) ADR claimants (that is, those covered by the collective bargaining contract with respect to workers’ compensation ADR, with injury dates between May 1, 1997 and April 30, 1999). Columns (3) to (6) report data that are subsets of the ADR group data in column (2). Columns (3) and (4) report single-year data, as does the control group data in column (1); “ADR Year 1” refers to claims with injury dates between May 1, 1997 and April 30, 1998, and “ADR Year 2” refers to claims with injury

Table 2.1: Demographics of Control and ADR Claimants^{1,2}

	Control	ADR	ADR Year 1	ADR Year 2	ADR Year 1a	ADR Year 2a
	(1)	(2)	(3)	(4)	(5)	(6)
Claimant Demographics						
Age at Injury	37.3 (1,962)	38.4* (3,419)	38.1* (1,867)	38.9* (1,552)	37.5 (1,251)	39.0* (2,168)
Years in Union	18.5 (1,967)	16.8* (3,328)	16.9* (1,857)	16.8* (1,471)	16.5* (1,245)	17.0* (2,083)
Hours Worked (year prior to injury)	1,520 (1,967)	1,591* (3,328)	1,522 (1,857)	1,677* (1,471)	1,539 (1,245)	1,621* (2,083)
Earnings (year prior to injury) ³	44,270 (1,967)	49,500* (3,328)	46,064* (1,857)	53,838* (1,471)	46,038* (1,245)	51,569* (2,083)
Job classification: apprentice ⁴	27.6% (1,968)	19.9%* (3,420)	21.3%* (1,867)	18.2%* (1,553)	23.2%* (1,251)	18.0%* (2,169)
Type of Claim⁵						
Indemnity	28.5% (1,968)	24.4%* (3,420)	28.9% (1,867)	19.1%* (1,553)	30.4% (1,251)	21.0%* (2,169)
Medical only	71.8% (1,961)	76.3%* (3,388)	71.7% (1,850)	81.7%* (1,538)	70.4% (1,237)	79.6%* (2,151)
Type of Disability⁶						
Did this injury involve a permanent disability?	11.4% (905)	8.5%* (1,167)	8.8% (704)	8.0%* (463)	9.0% (510)	8.1%* (657)
Injury Severity⁶						
Very severe or severe injury	50.9% (464)	45.0%* (1,111)	45.0%* (711)	45.0% (400)	45.1% (514)	44.9% (597)
Non-work activities permanently limited as a result of your work injury?	32.7% (474)	25.1%* (1,129)	25.3%* (720)	24.7%* (409)	25.5%* (522)	24.7%* (607)
Part of Body Injured⁷						
Back	21.8% (1,968)	21.5% (3,420)	21.8% (1,867)	21.3% (1,553)	21.0% (1,251)	21.8% (2,169)
Eyes	10.5% (1,968)	10.9% (3,420)	10.2% (1,867)	11.8% (1,553)	10.6% (1,251)	11.2% (2,169)
Fingers	10.2% (1,968)	10.1% (3,420)	10.6% (1,867)	9.4% (1,553)	10.9% (1,251)	9.6% (2,169)
Hand	7.0% (1,968)	7.1% (3,420)	7.6% (1,867)	6.4% (1,553)	7.3% (1,251)	6.9% (2,169)
Knee	8.8% (1,968)	7.9% (3,420)	8.4% (1,867)	7.3% (1,553)	8.3% (1,251)	7.7% (2,169)
Nature of Injury^{6,7}						
Bruise	40.1% (931)	44.9%* (1,221)	43.6% (737)	46.9%* (484)	44.4% (534)	45.3%* (687)
Fracture or crushing	9.0% (931)	7.4% (1,221)	8.3% (737)	6.0%* (484)	8.4% (534)	6.6% (687)
Cuts or abrasions	25.9% (931)	28.3% (1,221)	28.9% (737)	27.5% (484)	29.6% (534)	27.4% (687)
Back or neck strain	28.0% (931)	26.3% (1,221)	25.5% (737)	27.5% (484)	26.6% (534)	26.1% (687)
Other sprain or strain	33.5% (931)	31.7% (1,221)	32.0% (737)	31.2% (484)	31.8% (534)	31.6% (687)
Other	15.3% (931)	15.1% (1,221)	16.5% (737)	13.4% (484)	15.9% (534)	14.4% (687)

Notes: ¹ Closed claims. Average values for each group and, in parentheses, the total number of observations for each group. Time period for each column is explained in the text. ²Statistically significant difference in means, at the .05 level (two-tailed test), is denoted by *. All columns are compared to column (1). ³Current dollars.

⁴Percentage; other classification is journeyman. ⁵Derived from payments data; derivation is explained in the text.

⁶Survey data. ⁷Not all categories are listed.

dates between May 1, 1998 and April 30, 1999. Columns (5) and (6) categorize the data, per the ADR participant's administrative approach to implementing the "managed health care" component of the ADR collective bargaining contract. The ADR participant indicated that it did not start to stringently enforce the network-only-use-of-providers provision until approximately January 1, 1998. As such, column (6) reports data on ADR claims with injury dates January 1, 1998 or later (until April 30, 1999); column (5) claims pertain to the earlier period for which we have ADR group data and during which the network-provider provision was not enforced (that is, include claims with injury dates between May 1, 1997 and December 31, 1997).

Claimant demographics. The claimant demographics section of Table 2.1 indicates that injured workers in the control group were, relative to the ADR claimants (that is, generally, ADR claimants, per columns (2) to (6)), slightly younger but nonetheless had been in the union longer,⁹⁴ worked fewer hours in the year preceding the injury, and had (consistent with fewer hours, on average) lower earnings in the year preceding the work injury. The control group had a higher percentage of apprentices (apprentices and journeymen were the only job classifications used in this analysis, to facilitate comparisons among different ADR construction projects). As indicated by the asterisks in the table, there was a statistically significant difference in the average values of claimant demographics for control group and ADR group (column 2) claims.⁹⁵

Disability and injury data. The distribution of claims types (i.e., medical-only) were similar among control group and the initial-ADR-period claims (columns (1), (3), and (5)). Injured worker self-reports suggest that a relatively higher percent of control group claimants had permanent disabilities, "very severe" or "severe" injuries, and permanent limitations on functional, non-work activities.⁹⁶ Administrative data indicate that the general pattern regarding the body part injured was similar for ADR and control group claims (i.e., back injuries constituted the most frequent claims).⁹⁷ Furthermore, the

⁹⁴ Given the transient nature of construction work, job tenure data (that is, number of years in the employ of a single employer) were not available. "Years in the union" was the best available proxy measure for work experience.

⁹⁵ The information presented in this table is provided, for the most part, by way of providing a general overview of various aspects of the data set. ADR coverage, or ADR coverage during an "early" or "later" period, is unlikely to have any causal relationship to claimant demographics.

⁹⁶ Administrative data on the type of claim and the type of disability were not available for both control group and ADR groups, and thus the type-of-claim information was derived and the type-of-disability information was determined by the self-report of the injured worker (on the injured worker survey). The indemnity claims binomial variable (coded 1 or 0) was derived by summing payments records in the indemnity benefits transaction data file, and assigning a value of "1" to claims with total indemnity costs greater than \$0. The medical-only binomial variable (also coded 1 or 0) was derived by summing payments records in the medical treatment file, and assigning a value of "1" to claims with medical costs greater than \$0 and indemnity costs of \$0. The sample size differs slightly for the indemnity and medical-only claims, and thus the percentages for these two claims do not round exactly to 100.00%.

⁹⁷ Twenty-eight body part categories were reported in the administrative data set. The results reported here are limited to the body parts that, for the most part, were most frequently injured.

nature of the injury tended to be the same across control and ADR group claimants, with bruises, back or neck strains, and other sprains or strains accounting for most injuries.⁹⁸

Disputes. Injured workers were surveyed as to whether they had disputes with the insurance carrier over compensability, medical treatment, weekly benefits, their readiness to return to work, and the extent or existence of a permanent disability. There are several advantages to relying on injured workers to flag the existence of a dispute, including uniformity in the data source used for claims in the traditional workers' compensation system (control group claims) and ADR claims.⁹⁹ There are also several caveats about this data source. First, survey responses are self-reported data, which rely on injured workers' own assessment of what constitutes a dispute. As such, injured workers' standards as to what constitutes a "dispute" (as opposed, for example, to what constitutes a mere "disagreement") may vary among workers.¹⁰⁰ Second, it was not possible to collaborate, from other sources, the self-reported existence of a dispute.¹⁰¹ These caveats must be kept in mind, when reviewing the findings presented in Table 2.2: Control and ADR Group Averages for Disputes and Costs and elsewhere in this report

As indicated by the data in the first five rows in Table 2.2, there were fewer ADR than control group disputes for all dispute categories (save for controversion); however, there were only a few instances of statistically significant differences between the frequency of ADR and control group disputes.

Dispute resolution. A relatively higher percentage of ADR claimants stated that there was someone who really helped them resolve issues with the insurer, though these averages were not statistically different from the control group averages (see Table 2.1). On

⁹⁸The injured worker survey was the data source because there was insufficient information for both control and ADR group claims from the international classification of diseases (ICD-9) codes provided in the administrative data set.

⁹⁹ According to several workers' compensation experts, identifying (in a comprehensive and uniform manner) the existence of a dispute in the traditional workers' compensation system is problematic, in part because: 1) the "hearing purpose" Workers' Compensation Board documentation did not (and need not) identify all issues at dispute for purposes of scheduling the hearing, 2) the claimant may raise additional issues, verbally, during the course of the hearings, 3) a review of a case folder (including an administrative law judge's hearing notes and decisions, as well as documentation submitted by other parties) would require a large amount of interpretation as to what the "disputes" actually were, and 4) obtaining or interpreting "dispute-related" documentation of claims that went through the Conciliation Bureau (which may resolve issues through a series of phone calls rather than formal meetings) could also be difficult. Identifying the existence of a dispute in the ADR system from sources other than injured workers' self-reports was also problematic; for example, because only the injured worker (and not the insurer or self-insured employer) could initiate the alternative dispute resolution and thus records of the ADR process (including the Ombudsman's log) may reflect this asymmetry.

¹⁰⁰There is no readily apparent, a priori reason for thinking that ADR and control group claimants vary systematically in defining what constitutes a "dispute."

¹⁰¹ For example, several workers' compensation experts indicated that a few Workers' Compensation Board forms (for the traditional workers' compensation system) and the corresponding forms (if any) used within the ADR system may flag the existence of many disputes; possible examples include an insurer's or self-insured employer's decision to controvert a claim, or stop or modify benefits payments. However, documentation as to several of these key forms (i.e., controversion, benefits payments, and medical disputes) were not readily available in either hard copy or electronic format.

average, 4.3 percent of ADR claimants spoke to a lawyer, while 12.9 percent of control group claimants did so. Similarly, 1.6 percent of ADR claimants actually hired a lawyer, while 7.7 percent of control group claimants did so. The ADR-control group differences in means for lawyer usage (speaking to, hiring) were statistically significant for all ADR categories (columns (2) to (6) in Table 2.2: Control and ADR Group). Lastly, the insurer reported that, on average, ADR claims closed over 180 days faster than control group claims.¹⁰² As is evident from the data reported in Table 2.2, ADR claims closed, on average, from 164 to 290 days faster than control group claims.¹⁰³

Costs (total payments). The data in the last three rows in Table 2.2 indicate that the average value for total medical payments, total indemnity payments, and total, combined (medical and indemnity) payments for all categories of ADR claims were less than, and statistically different from, the average value for control group claims. The average value of total medical payments for all ADR claims was \$775 lower than the average value for control claims; the average value of total indemnity payments was \$3,637 lower, and the average value of total (medical and indemnity) payments was \$5,530 lower. However, when other factors are controlled in a multivariate analysis, ADR is significantly associated with lower medical costs only, not with lower indemnity costs (see Tables 2.15 and 2.17 on pp. 83-85).

Costs (paid through). One of the limitations of ADR-control group comparisons for total payments is that control group claims (which have injury dates between May 1, 1995 and April 30, 1996) are more “mature” than ADR group claims (which have injury dates between May 1, 1997 and April 30, 1999) and thus are likely to have more complete information regarding all payments. In order to make costs more comparable, average costs were computed on a “paid through” basis for three-, six-, twelve-, and eighteen-month periods.¹⁰⁴ For all categories of “paid through” medical treatments or indemnity benefits, all ADR claimant groups had lower costs, on average, than control group claimants, and the differences in averages were statistically significant.¹⁰⁵

¹⁰²The number of observations reported for the “Days: injury date to date closed” row in Table 2.2 stem from the fact that date-of-closing data were not available in electronic format on all claims that had closed.

¹⁰³ The average values reported in Table 2.1 suggested that ADR and control group claims, in general, did not differ as to the body part injured or the nature of the injury, but that control group claimants, as a whole, had relatively more indemnity claims and relatively more severe injuries. Statistical analyses later in this chapter will take into consideration a variety of factors, aside from ADR or control group status, that may account for the length of time it takes to close a case.

¹⁰⁴ As indicated in Table 2.2, the “paid through” computations were limited to those claims with paid costs greater than 0 for the relevant period (the relevant period is that in which the injury date to the check date in the payments file is less than or equal to 3 (6, 12, 18) months) and in which there is at least 3 (6, 12, 18) months between the injury date and the date of the most recent check date in the entire data set (to ensure that cost computations for the more recent injury dates in the data set included only those claims for which there could potentially be a full 3, 6, 12, or 18 months of payments transactions).

¹⁰⁵ That is, cost differences existed irrespective of whether the “managed care” use-of-network provider provision of the ADR contract was strictly enforced. As previously noted, the ADR claims (column 2) include injury dates between May 1, 1997 and April 30, 1999; the ADR Year 1 claims (column 3) include injury dates between May 1, 1997 and April 30, 1998; the ADR Year 2 claims (column 4) include injury dates between May 1, 1998 and April 30, 1998; the ADR Year 1a claims (column 5) include injury dates between May 1, 1997 and December 31, 1998; and the ADR Year 2a claims (column 6) include injury

Medical care. Injured workers were asked, as of the time of the claimant survey, how satisfied they were with medical care received during the first clinic or medical office visit, during the last visit, and overall (that is, with the cumulative care during the entire course of their treatment (see Table 2.3: Control and ADR Group Averages for Satisfaction and Information). Eighty percent or more of control group and ADR claimants were “very satisfied” or “satisfied” with their care and, for the most part, there were no statistically significant differences in the average responses for the ADR and control groups.¹⁰⁶ Relatively more ADR claimants indicated that they were fully recovered from their work injury and that their health status now was better, compared to their pre-injury health. There were no statistically significant differences, for the most part, in the continuity and number of treatments (the last two rows of the “medical care” section of Table 2.3).¹⁰⁷ However, for all categories of ADR claimants, satisfaction with the number of physicians to choose from was lower than, and statistically different from, satisfaction among control group claimants.

dates between January 1, 1998 and April 30, 1999. The use-of-network provision of the ADR contract for the claims in this data set was more stringently enforced as of January 1, 1998.

¹⁰⁶For the ADR Year 2 and ADR Year 2a categories, satisfaction levels on average were lower than, and statistically different from, the averages for the control group.

¹⁰⁷ The injured worker survey was the data source for these medical care variables, because of data limitations regarding available, current procedural terminology (CPT) codes.

Table 2.2: Control and ADR Group Averages for Disputes and Costs^{1,2}

	Control	ADR	ADR Year 1	ADR Year 2	ADR Year 1a	ADR Year 2a
	(1)	(2)	(3)	(4)	(5)	(6)
DISPUTES						
Dispute: compensability ³	3.9% (918)	5.0% (1,211)	5.5% (733)	4.4% (478)	4.9% (533)	5.2% (678)
Dispute: medical treatment (more or different) ³	8.7% (911)	8.2% (1,207)	8.4% (730)	8.0% (477)	8.7% (529)	7.8% (678)
Dispute: weekly benefits (amount of) ³	3.3% (792)	2.6% (1,191)	3.3% (721)	1.5%* (470)	3.2% (528)	2.1% (663)
Dispute: readiness to return to work ³	3.2% (851)	1.8% (1,205)	2.3% (730)	1.1%* (475)	3.0% (529)	0.9%* (676)
Dispute: agree not permanently disabled ³	85.4% (799)	87.2% (1,093)	86.0% (665)	89.0% (428)	85.8% (480)	88.3% (613)
DISPUTE RESOLUTION						
Was someone who really helped you to resolve issues with insurer ³	58.8% (245)	66.8% (205)	64.6% (130)	70.7% (75)	66.7% (96)	67.0% (109)
Lawyer: spoke to ³	12.9% (927)	4.3%* (1,220)	5.2%* (736)	3.1%* (484)	5.6%* (533)	3.4%* (687)
Lawyer: hired ³	7.7% (926)	1.6%* (1,221)	2.2%* (737)	0.8%* (484)	2.3%* (534)	1.2%* (687)
Days: injury date to date closed	697 (740)	513* (260)	520* (244)	407* (16)	533* (194)	453* (66)
COSTS (paid through)⁴						
Medical Treatments: Three months	\$566 (1,392)	\$428* (2,039)	\$466* (1,059)	\$388* (980)	\$475* (710)	\$403* (1,329)
Medical Treatments: Six months	\$981 (1,754)	\$688* (2,845)	\$766* (1,576)	\$590* (1,269)	\$807* (1,031)	\$620* (1,814)
Medical Treatments: Twelve months	\$1,333 (1,895)	\$930* (2,517)	\$1,003* (1,790)	\$751* (727)	\$1,081* (1,192)	\$795* (1,325)
Medical Treatments: Eighteen months	\$1,485 (1,933)	\$1,078* (1,586)	\$1,078* (1,586)	-----	\$1,136 (1,220)	\$884* (366)
Indemnity Benefits: Three months	\$3,290 (450)	\$2,935* (741)	\$3,060 (460)	\$2,730* (281)	\$3,103 (323)	\$2,805* (418)
Indemnity Benefits: Six months	\$4,732 (496)	\$3,770* (774)	\$4,123* (483)	\$3,186* (291)	\$4,186* (338)	\$3,449* (436)
Twelve months: Twelve months	\$5,895 (519)	\$4,598* (666)	\$4,879* (495)	\$3,786* (171)	\$5,101* (347)	\$4,051* (319)
Eighteen months: Eighteen months	\$6,651 (528)	\$6,504 (463)	\$6,504 (463)	-----	\$7,013 (367)	\$4,559* (96)
COSTS⁵						
Total Medical Payments	\$1,670 (1,961)	\$895* (3,388)	\$1,108* (1,850)	\$639* (1,538)	\$1,172* (1,237)	\$736* (2,151)
Total Indemnity Payments	\$9,404 (561)	\$5,767* (836)	\$6,950* (540)	\$3,609* (296)	\$7,657* (380)	\$4,193* (456)
Total Medical & Indemnity Payments	\$13,441 (558)	\$7,911* (805)	\$9,416* (523)	\$5,120* (282)	\$10,377* (366)	\$5,855* (439)
<p>Notes: ¹Closed claims. Average values for each group and, in parentheses, the total number of observations for each group. Time period for each column is explained in the text. ²Statistically significant difference in means, at the .05 level (two-tailed test), is denoted by *. Each column (2-6) is compared to column (1). ³Survey data, percentage answering "yes." ⁴In current dollars. Restricted to claims: a) with paid costs > \$0; b) in which the injury date to the check date in the payments file is less than or equal to 3 (6,12, 18) months, etc., and c) in which there is at least 3 (6, 12, 18) months between the injury date and the date of the most recent check date in the entire data set. ⁵In current dollars. Restricted to claims with total payments > \$0.</p>						

Claims administration. Seventy percent or more of control group and ADR injured workers were “very satisfied” or “satisfied” with how their workers’ compensation claim was handled, though satisfaction levels were lower with respect to the length of time to receive the first benefits payment (see Table 2.2).

Information provision. A series of questions about information provision were asked on the injured worker survey, to determine if this varied between control group and ADR claimants and in the event that information provision affected the frequency or intensity of disputes. Over eighty percent of control group and ADR claimants indicated that people were easily accessible to answer questions about the workers’ compensation claim (see Table 2.3). Most control group and ADR claimants – seventy percent or so – knew what to do to get medical treatment, though fewer (43 to 54 percent) knew what to do in order to get workers’ compensation [cash or indemnity] benefits. Relatively more ADR claimants asked someone about obtaining benefits, and the average frequencies were statistically different from the control group frequencies.

Summary of general overview tables. Compared to control group claimants, ADR claimants, on average, had relatively fewer indemnity claims; fewer (self-reported) injuries involving permanent disabilities; fewer (self-reported) severe injuries; and few or no differences regarding the body part injured and the nature of the injury (Table 2.1). There were no statistically significant differences, for the most part, in the frequency of disputes; control group claimants made greater use of lawyers and waited longer for their claim to close. Medical and indemnity costs, on both a “total” and “paid through three-, six-, twelve- and eighteen-month basis,” were lower for ADR claimants (Table 2.2). Satisfaction with medical care and with claims administration tended to be the same for both control group and ADR claimants, with the most notable exception being satisfaction with the number of physicians from which the claimant could choose. The continuity of treatment was similar for both groups, as over eighty percent of control group and ADR claimants reported having seen the same health care provider during the first and most recent medical visit. Satisfaction levels with claims administration, and general patterns regarding information provision, were also similar for both groups, though relatively more ADR claimants inquired about obtaining workers’ compensation benefits (Table 2.3).¹⁰⁸

Information Provision

The organizational structure of the traditional workers’ compensation system and of workers’ compensation ADR differs on certain aspects. For example, the ADR

¹⁰⁸ Appendix to Chapter 2 Tables also provides a general overview of available data, using comparisons for two different groups. Average values for closed claims and open claims, and statistically significant differences in averages for these groups, are reported in Table 2.22: Open and Closed Case Demographics, Table 2.23: Open and Closed Demographics II, and Table 2.24: Open and Closed Demographics III. Average values are also reported for all (open and closed) claims. As previously noted, only closed claims are used for the comparisons and analysis in most of this report. Not surprisingly, far more “open” claims tend to be indemnity claims and involve permanent disabilities. Relative to closed claims, open claims are associated with a greater frequency of disputes (albeit, because of the number of observations, for a much smaller group of claimants), greater usage of lawyers, and higher costs. There were no statistically significant differences in satisfaction for most measures of medical care.

Appendix to Chapter 2 Tables makes similar comparisons, where data are available, between survey respondents and survey non-respondents (Table 2.25: Survey Nonrespondents, Table 2.26: Survey Nonrespondents II).

systems employ a nurse advocate and an Ombudsman to, in part, answer claimants' questions and provide general assistance. Both groups use lawyers and licensed representatives. To determine differences (if any) in information provision to control group and ADR claimants, the injured worker survey asked various questions about how and from whom claimants received information. Table 2.4 indicates that over seventy percent of control group and ADR claimants knew what to do to get medical treatment (these data were also reported in Table 2.3). There were no statistically significant differences regarding to whom the claimant posed questions about medical treatment; both groups placed greatest reliance on their doctor, their foreman, someone from the union hall, or a co-worker.¹⁰⁹

Foremen and co-workers were the primary sources from whom both control group and ADR claimants attempted to obtain information about workers' compensation benefits (Table 2.5: Control and ADR Group Averages for Benefit Information); there were statistically significant differences in the extent of reliance upon lawyers and upon doctors (control group claimants made greater use of them) and in the extent of reliance upon nurses and nurse advocates (ADR claimants used this source more often, though this may be primarily due to the ADR-specific role of nurse advocates). With respect to who actually provided the requisite information concerning workers' compensation benefits, control group and ADR claimants, by far, depended upon someone from the union hall. There were statistically significant differences in information sources for the foremen and the doctor categories (control group claimants reported greater use of these than did ADR claimants), and for the nurse/nurse advocate category (ADR claimants used this source more often, though the differences may be an artifact of the ADR-only nature of the nurse advocate category).

Claimants were also asked, on a dispute-type basis, the information source from which they received information on how to address the issue in question (see Table 2.6: Control and ADR Group Averages for Dispute Information). The union hall constituted the most frequently cited source of information, for all types of disputes, for both control group and ADR claimants. There were few statistically significant differences in the information sources consulted by each group.

¹⁰⁹ As is evident from the number of observations reported in the tables regarding information provision, the sample sizes for these questions are considerably smaller than they were for the "general overview" tables.

Table 2.3: Control and ADR Group Averages for Satisfaction and Information^{1,2}

	Control	ADR	ADR Year 1	ADR Year 2	ADR Year 1a	ADR Year 2a
	(1)	(2)	(3)	(4)	(5)	(6)
MEDICAL CARE						
Satisfied: first office visit ³	89.4% (360)	87.1% (854)	88.3% (549)	84.9% (305)	88.1% (403)	86.3% (451)
Satisfied: last office visit ³	87.0% (299)	86.4% (624)	87.6% (402)	84.2% (222)	87.2% (296)	85.7% (328)
Satisfied: overall ³	86.9% (467)	83.2% (1,125)	84.6% (716)	80.7%* (409)	85.0% (520)	81.7%* (605)
Now fully recovered from work injury ⁴	55.3% (472)	60.7%* (1,131)	61.2%* (719)	60.0% (412)	60.6% (523)	60.9% (608)
Health status, now: somewhat or much worse, compared to pre-injury health	21.2% (471)	16.8%* (1,136)	17.0% (724)	16.5% (412)	17.2% (524)	16.5% (612)
Satisfied: number of physicians could choose from ³	82.0% (451)	71.1%* (1,079)	71.0%* (685)	71.3%* (394)	71.6%* (497)	70.6%* (582)
Treated by same person during first and last clinic/medical office visit ⁴	67.8% (298)	70.8% (624)	72.4% (402)	68.0% (222)	71.6% (296)	70.1% (328)
Had more than 8 clinic or medical office visits ⁵	50.0% (350)	31.5%* (842)	32.8%* (542)	29.0%* (300)	32.8%* (399)	30.3%* (443)
CLAIMS ADMINISTRATION						
Satisfied: length of time to receive first workers' compensation benefits payment ³	69.1% (314)	61.5% (265)	61.1% (175)	62.2% (90)	57.9%* (126)	64.8% (139)
Satisfied: how claim was handled ³	78.2% (885)	73.5% (1,186)	75.2% (726)	70.9%* (460)	74.9% (529)	72.5%* (657)
INFORMATION PROVISION						
People easily accessible to answer questions about claim ⁴	83.0% (448)	86.9% (282)	86.7% (188)	87.2% (94)	88.2% (135)	85.7% (147)
How find out where to go to get medical treatment?						
Knew what to do	74.7% (364)	71.7% (847)	68.8% (544)	76.9% (303)	68.8% (544)	71.7% (847)
Told what to do	15.4% (364)	16.1% (847)	18.4% (544)	11.9% (303)	18.4% (544)	16.1% (847)
Asked someone	9.9% (364)	12.3% (847)	12.9% (544)	11.2% (303)	12.9% (544)	12.3% (847)
How find out what needed to do to get workers' compensation benefits?						
Knew what to do	53.2% (485)	46.5% (284)	42.6%* (190)	54.3% (94)	42.6% (190)	46.5% (284)
Automatically received (did not need to do anything)	10.5% (485)	8.8% (284)	10.0% (190)	6.4% (94)	10.0% (190)	8.8% (284)
Told what to do	16.7% (485)	14.1% (284)	13.7% (190)	14.9% (94)	14.1% (284)	14.1% (284)
Asked someone	19.6% (485)	30.6%* (284)	33.7%* (190)	24.5% (94)	30.6%* (284)	30.6%* (284)

Notes: ¹Closed claims. Average values for each group and, in parentheses, the total number of observations for each group. Time period for each column is explained in the text. Data source for entire table: injured worker survey. ²Statistically significant difference in means, at the .05 level (two-tailed test), is denoted by *. Each column (2-6) is compared to column (1). ³Percentage "very satisfied" or "satisfied." ⁴Percentage answering "yes." ⁵It would be expected then the managed care that accompanied the implementation of the ADR program would be responsible for the significant reduction in office visits.

Dispute Resolution

Another set of survey questions explored various characteristics of those officially or unofficially involved with resolving disputes. Over fifty percent of both control group and ADR claimants thought that there was someone who really helped them to resolve issues with the insurance company (Table 2.7: Control and ADR Group Averages for Conflict Resolution).¹¹⁰ The vast preponderance of claimants who answered in the affirmative to this question relied upon someone from the union hall. Statistically significant differences between control group and ADR claimants occurred with respect to two categories of individuals who provided help in resolving issues with the insurers: lawyers (control group claimants made greater use of lawyers) and nurses/nurse advocates (ADR claimants had a higher percentage response). Nearly 100 percent of both control group and ADR claimants thought that the individuals who provided assistance were very helpful.

Survey responses concerning officials involved only with the ADR system (e.g., Ombudsman and mediators) gave high ratings to the officials' ability to answer questions and resolve issues, albeit with respect to an extremely small number of observations (Table 2.8: ADR Claimant Ombudsperson and Mediator Evaluation). Survey responses with respect to the traditional workers' compensation system indicate that most control group claimants were satisfied that the administrative law judge listened to their point of view and also thought that important facts pertaining to their claim were presented to the judge (Table 2.9: Control Group Claimant Judge Evaluation). Another set of questions had to do with the use of lawyers by both control group and ADR claimants. As previously reported, there were statistically significant differences between control group and ADR claimants, on average, in the frequency with which they spoke to or actually hired a lawyer (control group claimants made greater use of lawyers) (see: Table 2.10: Control and ADR Group Use of Attorneys). Both control group and ADR claimants hired a lawyer, most often, because someone told them that they should hire a lawyer. However, there were no statistically significant differences in the reasons for retaining a lawyer. Lastly, over 75 percent or so of control group and ADR claimants rated their lawyers' ability to answer their questions as good – to – excellent, and nearly 70 percent or more of both control group and ADR claimants rated their lawyers' ability to resolve their issues as good – to – excellent. The ratings of the Ombudsman's and mediator's ability to answer questions and resolve issues, the ratings of judges, and the ratings of lawyers (in both the ADR and traditional system) suggest that claimants thought that both the ADR and traditional workers' compensation system provided due process.

A separate set of questions regarding dispute resolution also identified who the claimant contacted regarding disputes, but took a slightly different tack in that they queried not only who the claimant contacted, but also whether the claimant “did nothing” about the dispute and, if so, why. As indicated by the data presented in Table 2.11: Control and ADR Group Responses to Disputes, the only statistically significant differences between what, on average, the control group and ADR claimants did if they had a dispute concerned contacting an attorney. Control group claimants made greater use of lawyers. Furthermore, as is also evident from Table 2.11, there were no statistically significant differences between the average values for control group and

¹¹⁰Survey results on this question were previously provided in Table 2.3.

ADR claimants as to whether they decided, despite the fact that they had a dispute, to “do nothing.”

Table 2.12: Control and ADR Group Explanations for Lack of Action reports, for the small set of claimants to whom these questions applied, the injured workers’ responses to possible explanations as to why they did nothing, despite the existence of a dispute. There were no statistically significant differences in the responses for control group and ADR claimants and the findings in this table should be viewed as illustrative rather than as definitive, as the small number of responses warrant circumspection in trying to glean much from the percentages in each cell of the table.

Medical Treatment

Only twenty-five percent or so of ADR claimants were aware of the availability of the nurse advocate when they sought medical care after their work-related injury or had contact with the nurse advocate (Table 2.13: ADR Group Use of Nurse Advocate). Approximately seventy percent or more of ADR claimants rated the nurse advocate as good – to – excellent with respect to answering questions and explaining medical care; the attention given to workplace conditions associated with the work-place injury; the attention given to what the claimant had to say; awareness about the claimant’s workplace duties; assistance with return-to-work planning; and resolving issues with the insurer. As a summary assessment, seventy-two percent of ADR claimants were very satisfied or satisfied with the attention that the nurse advocate provided.

Table 2.4: Control and ADR Group Averages for Medical Treatment Information^{1,2}		
	Control Group	ADR Group
After your injury, how did you find out where to go to get your medical treatment?		
Knew what to do	74.7% (364)	71.7% (847)
Told what to do	15.4% (364)	16.1% (847)
Asked someone	9.9% (364)	12.3% (847)
To whom did you direct questions regarding your medical treatment?		
Your supervisor (foreman)	37.2% (94)	36.3% (248)
A co-worker	18.1% (94)	23.5% (247)
Someone from your union hall/union representative	31.9% (94)	41.4% (249)
Ombudsman/Compensation Advisor	-----	19.2% (245)
Someone from the New York State Workers' Compensation Board	7.5% (94)	6.1% (246)
Your lawyer	6.4% (94)	1.6% (249)
A nurse or your nurse advocate	7.5% (94)	10.5% (248)
Your doctor	47.9% (94)	43.0% (249)
Human Resources	0.0% (93)	1.2% (248)
Other	9.6% (94)	12.5% (249)
Who gave you information about where to go for your medical treatment?		
Your supervisor (foreman)	18.3% (93)	18.5% (249)
A co-worker	12.9% (93)	14.1% (249)
Someone from your union hall/union representative	29.0% (93)	37.8% (249)
Ombudsman/Compensation Advisor	-----	15.8% (247)
Someone from the New York State Workers' Compensation Board	5.4% (93)	4.8% (248)
Your lawyer	3.2% (93)	0.0% (249)
A nurse or your nurse advocate	4.3% (93)	8.1% (247)
Your doctor	35.5% (93)	24.5% (249)
Human Resources	0.0% (93)	0.0% (248)
Other	22.6% (93)	17.7% (249)
Notes: ¹ Closed claims. Average values for each group and, in parentheses, the total number of observations for each group. Time period for each column is explained in the text. Data source for entire table: injured worker survey. ² Statistically significant difference in means, at the .05 level (two-tailed test), is denoted by *. Control group vs. ADR group comparisons. ³ Percentage answering in the affirmative.		

Table 2.5: Control and ADR Group Averages for Benefit Information.^{1,2}

	Control Group	ADR Group
After your injury, how did you find out what you needed to do to get your workers' compensation benefits?³		
Knew what to do	53.2% (485)	46.5% (284)
Automatically received benefits (did not need to do anything)	10.5% (485)	8.8% (284)
Someone told you what to do	16.7% (485)	14.1% (284)
Had to ask someone	19.6% (485)	30.6%* (284)
To whom did you direct questions regarding your workers' compensation benefits?³		
Your supervisor (foreman)	19.8% (101)	15.6% (90)
A co-worker	16.0% (100)	15.7% (89)
Someone from your union hall/union representative	8.0% (101)	7.4% (90)
Ombudsman/Compensation Advisor	-----	31.8% (88)
Someone from the New York State Workers' Compensation Board	5.0% (101)	5.6% (89)
Your lawyer	4.0% (101)	0.0%* (90)
A nurse or your nurse advocate	1.0% (101)	9.0%* (89)
Your doctor	12.9% (101)	4.4%* (90)
Human Resources	0.0% (100)	0.0% (90)
Other	4.0% (101)	3.3% (90)
Who gave you information about what you needed to do to get your workers' compensation benefits?³		
Your supervisor (foreman)	20.4% (98)	6.7%* (90)
A co-worker	19.2% (99)	10.0% (90)
Someone from your union hall/union representative	80.8% (99)	78.7% (89)
Ombudsman/Compensation Advisor	-----	29.2% (89)
Someone from the New York State Workers' Compensation Board	4.1% (98)	5.6% (90)
Your lawyer	3.0% (99)	0.0% (90)
A nurse or your nurse advocate	0.0% (99)	10.0%* (90)
Your doctor	13.1% (99)	1.1%* (90)
Human Resources	1.0% (99)	1.1% (90)
Other	3.0% (99)	6.7% (90)

Notes: ¹Closed claims. Average values for each group and, in parentheses, the total number of observations for each group. Time period for each column is explained in the text. Data source for entire table: injured worker survey. ²Statistically significant difference in means, at the .05 level (two-tailed test), is denoted by *. Control group vs. ADR group comparisons. ³Percentage answering in the affirmative.

Table 2.6: Control and ADR Group Averages for Dispute Information^{2,3}

From what source did you receive information on how to address this issue?										
Information Source:	Dispute: Compensability ⁴		Dispute: Medical Treatment ⁴		Dispute: Weekly Benefits ⁴		Dispute: Return to Work ⁴		Dispute: Disability ⁴	
	Control	ADR	Control	ADR	Control	ADR	Control	ADR	Control	ADR
Insurance Fund	11.8% (34)	23.0% (61)	13.2% (76)	24.7% (97)	16.1% (31)	30.8% (26)	23.1% (26)	13.6% (22)	12.8% (117)	14.4% (139)
Union hall/ union representative	29.4% (34)	60.7%* (61)	32.9% (76)	35.7% (98)	46.2% (26)	61.3% (31)	23.1% (26)	42.9% (21)	37.9% (116)	32.4% (139)
Co-worker	11.8% (34)	23.0% (61)	17.1% (76)	12.1% (99)	23.1% (26)	12.9% (31)	11.5% (26)	9.1% (22)	13.8% (116)	15.8% (139)
Ombudsman	-----	7.0% (57)	-----	9.2% (98)	-----	6.5% (31)	-----	14.3% (21)	-----	5.1% (137)
Workers' Compensation Board	8.6% (35)	5.0% (60)	5.3% (76)	2.0% (99)	7.7% (26)	3.3% (30)	7.7% (26)	0.0% (21)	3.5% (116)	2.9% (139)
Your lawyer	14.7% (34)	1.6%* (61)	7.9% (76)	5.1% (99)	23.1% (26)	6.5% (31)	11.5% (26)	0.0% (22)	12.9% (116)	6.5% (139)
Written materials about workers' compensation received from work	11.8% (34)	26.7% (60)	23.7% (76)	25.5% (98)	28.0% (25)	19.4% (31)	23.1% (26)	18.2% (22)	16.2% (117)	19.4% (139)
Other	11.8% (34)	11.5% (61)	16.0% (75)	23.2% (99)	7.7% (26)	9.7% (31)	19.2% (26)	31.8% (22)	12.0% (117)	14.4% (139)

Notes: ¹Closed claims. Average values for each group and, in parentheses, the total number of observations for each group. ²Statistically significant difference in means, at the .05 level (two-tailed test), is denoted by * . Control group vs. ADR group comparisons. ³Survey data, percentage answering in the affirmative. More than one information source may be selected. ⁴Dispute categories are explained in the text.

Table 2.7: Control and ADR Group Averages for Conflict Resolution^{1,2}

	Control Group	ADR Group
Did you feel that there was someone who really helped you to resolve issues with the insurance company? ³	58.8% (245)	66.8% (205)
Who was this person?⁴		
Your supervisor (foreman)	6.3% (144)	8.8% (137)
A co-worker	5.6% (144)	8.8% (137)
Someone from your union hall/union representative	82.5% (143)	78.1% (137)
Ombudsman/Compensation Advisor	-----	30.4% (135)
Someone from the New York State Workers' Compensation Board	6.9% (144)	11.4% (132)
Your lawyer	4.9% (144)	1.0%* (137)
A nurse or your nurse advocate	2.1% (144)	15.4%* (136)
Your doctor	4.9% (144)	8.8% (137)
Human Resources	1.4% (144)	0.0% (135)
Other	5.6% (144)	8.0% (137)
How helpful were they in resolving issues?⁵	99.3% (144)	97.1% (136)

Notes: ¹Closed claims. Average values for each group and, in parentheses, the total number of observations for each group. Time period for each column is explained in the text. Data source for entire table: injured worker survey. ²Statistically significant difference in means, at the .05 level (two-tailed test), is denoted by *. Control group vs. ADR group comparisons. ³Percentage answering "yes." ⁴Percentage answering in the affirmative. ⁵Percentage answering 3-5 on a 1-5 scale, with 5 "very helpful" and 1 "not helpful at all."

Table 2.8: ADR Claimant Ombudsperson and Mediator Evaluation¹

	ADR Group
OMBUDSMAN	
How would you rate the Ombudsman's ability to answer your questions? ²	90.0% (10)
How would you rate the Ombudsman's ability to resolve issues for you? ²	90.9% (11)
Do you feel that you were given adequate opportunity to express your point of view? ³	87.5% (16)
MEDIATOR	
How would you rate the mediator's ability to answer your questions? ²	
Dispute: compensability	100.0% (2)
Dispute: medical treatment (more or different)	75.0% (4)
Dispute: weekly benefits (amount of)	100.0% (1)
Dispute: readiness to return to work	0.0% (1)
Dispute: agree not permanently disabled	66.7% (3)
How would you rate the mediator's ability to resolve issues for you? ²	
Dispute: compensability	100.0% (2)
Dispute: medical treatment (more or different)	75.0% (4)
Dispute: weekly benefits (amount of)	100.0% (1)
Dispute: readiness to return to work	0.0% (1)
Dispute: agree not permanently disabled	66.7% (3)
Notes: ¹ Closed claims. Average values and, in parentheses, the total number of observations. Time period is explained in the text. Data source for entire table: injured worker survey. ² Percentage answering "excellent," "very good," or "good." ³ Percentage answering "yes."	

Table 2.9: Control Group Claimant Judge Evaluation 1

		Control Group
JUDGE		
How satisfied are you that the judge listened to your point of view? ²		
Dispute: compensability		63.6% (44)
Dispute: medical treatment (more or different)		70.0% (30)
Dispute: weekly benefits (amount of)		70.0% (20)
Dispute: readiness to return to work		100.0% (3)
Dispute: agree not permanently disabled		55.7% (61)
Do you feel that important facts pertaining to your claim were presented to the judge? ³		
Dispute: compensability		82.6% (46)
Dispute: medical treatment (more or different)		93.5% (31)
Dispute: weekly benefits (amount of)		95.0% (20)
Dispute: readiness to return to work		100.0% (3)
Dispute: agree not permanently disabled		88.7% (62)
Notes: ¹ Closed claims. Average values and, in parentheses, the total number of observations. Time period is explained in the text. Data source for entire table: injured worker survey. ² Percentage "very satisfied" or "satisfied." ³ Percentage answering "yes."		

Table 2.10: Control and ADR Group Use of Attorneys^{1,2}		
	Control Group	ADR Group
CONTACT WITH LAWYER³		
Lawyer: spoke to ³	12.9% (927)	4.3%* (1,220)
Lawyer: hired ³	7.7% (926)	1.6%* (1,221)
REASON(S) FOR HIRING A LAWYER³		
You didn't understand the workers' compensation system	38.0% (71)	30.0% (20)
Your employer said your injury was not work-related	28.2% (71)	0.0% (20)
You had difficulty in getting medical treatment	9.9% (71)	20.0% (20)
You had difficulty in getting your benefits	14.1% (71)	25.0% (20)
You had problems with the insurance fund over your readiness to return to work	11.3% (71)	5.0% (20)
You had a dispute over permanent partial disability (eligibility for benefits or extent of .ppd)	37.1% (70)	35.0% (20)
The insurance company had a lawyer and you felt that you needed one	36.6% (71)	23.5% (17)
Someone told you that you should hire a lawyer	53.5% (71)	35.0% (20)
Some other reason	38.0% (71)	30.0% (20)
RATING⁴		
How would you rate your lawyer's ability to answer your questions?	74.3% (70)	89.5% (19)
How would you rate your lawyer's ability to resolve issues for you?	68.2% (66)	81.3% (16)
Notes: ¹ Closed claims. Average values for each group and, in parentheses, the total number of observations for each group. Time period for each column is explained in the text. Data source for entire table: injured worker survey. ² Statistically significant difference in means, at the .05 level (two-tailed test), is denoted by *. Control group vs. ADR group comparisons. ³ Percentage answering "yes." ⁴ Percentage answering "excellent," "very good," or "good."		

Table 2.11: Control and ADR Group Responses to Disputes^{1,2,3}

If you had a dispute, what did you do about it?										
What did:	Dispute: Compensability ⁴		Dispute: Medical Treatment ⁴		Dispute: Weekly Benefits ⁴		Dispute: Return to Work ⁴		Dispute: Disability ⁴	
	Control	ADR	Control	ADR	Control	ADR	Control	ADR	Control	ADR
Saw a doctor at your own expense	25.0% (36)	19.7% (61)	34.2% (79)	24.2% (99)	3.9% (26)	9.7% (31)	14.8% (27)	9.1% (22)	11.5% (122)	9.2% (142)
Contacted the Ombudsman	-----	28.1% (57)	-----	24.0% (96)	-----	25.8% (31)	-----	21.1% (19)	-----	10.1% (139)
Contacted the insurance fund representative	27.8% (36)	32.8% (61)	22.8% (79)	33.7% (98)	30.8% (26)	20.0% (30)	22.2% (27)	13.6% (22)	12.6% (119)	10.6% (142)
Contacted the Workers' Compensation Board	25.0% (36)	14.8% (61)	12.7% (79)	19.4% (98)	23.1% (26)	6.7% (30)	3.7% (27)	9.1% (22)	12.5% (120)	10.6% (142)
Contacted an attorney	25.0% (36)	3.3%* (61)	13.9% (79)	6.1% (99)	38.5% (26)	12.9%* (31)	7.4% (27)	0.0% (22)	34.7% (124)	15.4% (143)
Did nothing	16.7% (36)	24.6% (61)	21.5% (79)	19.2% (99)	23.1% (26)	45.2% (31)	40.7% (27)	36.4% (22)	35.2% (122)	31.9% (141)

Notes: ¹Closed claims. Average values for each group and, in parentheses, the total number of observations for each group. ²Statistically significant difference in means, at the .05 level (two-tailed test), is denoted by *. Control group vs. ADR group comparisons. ³Survey data, percentage answering in the affirmative. More than one response category may be selected. ⁴Dispute categories are explained in the text.

Table 2.12: Control and ADR Group Explanations for Lack of Action^{1,2,3}

If you had a dispute, and did nothing, why did you do nothing?										
	Dispute: Compensability ⁴		Dispute: Medical Treatment ⁴		Dispute: Weekly Benefits ⁴		Dispute: Return to Work ⁴		Dispute: Disability ⁴	
	Control	ADR	Control	ADR	Control	ADR	Control	ADR	Control	ADR
(1)	0.0% (5)	13.3% (15)	17.7% (17)	11.8% (17)	33.3% (6)	35.7% (14)	0.0% (10)	25.0% (8)	28.6% (42)	21.4% (42)
(2)	0.0% (5)	6.7% (15)	0.0% (16)	0.0% (17)	0.0% (6)	0.0% (14)	0.0% (10)	0.0% (8)	2.4% (42)	2.3% (43)
(3)	83.3% (6)	46.7% (15)	41.2% (17)	36.8% (19)	33.3% (6)	14.3% (14)	18.2% (11)	57.1% (7)	24.4% (41)	23.8% (42)
(4)	40.0% (5)	0.0% (13)	35.3% (17)	26.3% (19)	16.7% (6)	42.9% (14)	54.6% (11)	25.0% (8)	7.1% (42)	11.4% (44)
(5)	40.0% (5)	6.7% (15)	35.3% (17)	21.1% (19)	16.7% (6)	42.9% (14)	54.6% (11)	12.5% (8)	14.3% (42)	27.3% (44)
(6)	0.0% (5)	6.7% (15)	5.9% (17)	15.8% (19)	0.0% (6)	14.3% (14)	20.0% (10)	0.0% (8)	9.5% (42)	18.2% (44)
(7)	0.0% (5)	0.0% (15)	6.3% (16)	16.7% (18)	0.0% (6)	0.0% (14)	0.0% (10)	0.0% (8)	7.3% (41)	2.4% (41)
(8)	20.0% (5)	40.0% (15)	35.3% (17)	21.1% (19)	33.3% (6)	7.1% (14)	30.0% (10)	62.5% (8)	26.2% (42)	20.5% (44)
(9)	20.0% (5)	40.0% (15)	5.9% (17)	15.8% (19)	16.7% (6)	28.6% (14)	40.0% (10)	37.5% (8)	26.2% (42)	41.3% (46)

Notes: ¹Closed claims. Average values for each group and, in parentheses, the total number of observations for each group. ²Statistically significant difference in means, at the .05 level (two-tailed test), is denoted by *. Control group vs. ADR group comparisons. ³Survey data, percentage answering in the affirmative. More than one response category may be selected. Response categories: (1) decision was explained to your satisfaction; (2) decision was changed to your satisfaction; (3) did not know how to dispute it; (4) thought it would be too costly; (5) thought it would take too much of your time; (6) did not want to jeopardize your job security; (7) the time limit had passed; (8) did not know how you could dispute it; (9) other. ⁴Dispute categories are explained in the text.

Both control group and ADR claimants were asked to rate specific aspects of the their first and last medical office visit (amount of time with the doctor; attention given by the doctor to what the claimant had to say; attention given by the doctor to workplace conditions associated with the workplace injury; awareness of the doctor about the claimants' workplace duties) (see: Table 2.14: Control and ADR Group Satisfaction with Medical Care). Over seventy-five percent of control group claimants and all groups of ADR claimants gave favorable ratings (good – to – excellent) on all of these dimensions, for both the first and last medical office visit. Statistically significant differences in the average responses for control group and ADR claimants existed with respect to one visit characteristics (attention given by the doctor to workplace conditions associated with the injury) for the first visit as well as the last visit. It is also useful to note the occasionally significant differences in provider knowledge of workplace conditions. Presumably, more emphasis has been placed upon this factor under the ADR system.

Empirical models

The average values presented in the previous section, along with the indication of statistically significant differences in the averages between control group and ADR claimants, provide a general overview of claimant characteristics, information provision, disputes, dispute resolution, medical treatment, and costs. However, statistically significant differences in average values for control group and ADR claimants are not necessarily attributable to whether or not the claimant is in the ADR system or the traditional workers' compensation system. To ascertain, to the extent possible, the influence of ADR/control group status on various measures, a more sophisticated statistical analysis has to be done.

Hypotheses concerning the expected impact of ADR/control group status (that is, whether the claimant was covered by the ADR contract or was in the traditional workers' compensation system) are initially presented. The statistical model and empirical results are then discussed, in turn.

Hypotheses

Disputes. It could be argued that the frequency of disputes under ADR may be higher for certain types of disputes (such as medical treatment), because of the “managed care” component of ADR. On the other hand, if the Ombudsman, nurse advocate, or other ADR officials provide more, or provide more expediently, information or other assistance, ADR claimants may have relatively fewer disputes than their counterparts in the traditional workers' compensation system. Lastly, it may be argued that the type of workers' compensation system (that is, ADR or the traditional system) has no bearing on the number of disputes, but rather impacts various aspects of dispute resolution.¹¹¹

¹¹¹While data were available on the frequency of disputes (albeit, per previous caveats about the dispute measure), it was not possible to accurately measure (or develop proxy measures for) the intensity of disputes. The intensity of disputes may have some bearing on the length of time to resolve a dispute, and on who is involved in resolving the dispute.

Dispute Resolution. Optimally, it would be possible to measure the length of time between a standard starting point (such as injury date) and the date that each dispute was resolved (i.e., under the traditional system, the date of a Conciliation Bureau phone call or meeting, or the date of a particular hearing with an administrative law judge, when a dispute was resolved; under the ADR system, the date when a dispute was resolved by a phone call or a meeting with the Ombudsmen, mediator or arbitrator). Optimally, it would also be possible to compare the “level” at which disputes were resolved (i.e., it would be possible to compare dispute resolution at the Ombudsman, mediation, and arbitration levels with comparable organizational levels in the traditional system).¹¹² Optimally, it would also be possible to measure for all claims in the ADR and traditional system the number of interactions during claims processing, the length of time between the injury date and these interactions, and the officials involved in these interactions; “interactions” refers, for example, to phone calls, meetings, hearings, mediations, and arbitrations, and is one potential way of gauging administrative speed and costs in resolving disputes.

Data availability limitations precluded the use of any of these “optimal” measures. Instead, three variables (length of time between the injury date and date the case was closed; whether the claimant spoke to a lawyer; whether the claimant hired a lawyer) were used. ADR may be expected to be associated with faster claims closing, in part because of the contractually stipulated time frame for responding to the claimant.¹¹³

ADR may also be expected to be associated with less usage of lawyers. This is not due to ADR contractual constraints, as all ADR contracts in New York State included language to the effect that “either party to a claim may obtain representation by an attorney or licensed representative at any time.” Though several ADR contracts in New York State stipulate that “neither party” may be “represented by legal counsel at mediation,” this arguably should not preclude claimants from speaking to or hiring a lawyer.¹¹⁴ (One ADR contract in New York precludes only the employer from having

¹¹²The Stanford/Berkeley (Levine et al.) evaluation of the California workers’ compensation ADR system made (at page 113) the “strong and possibly unrealistic assumption” that the mandatory settlement conference and hearing stages of the traditional workers’ compensation system could be compared to the mediation and arbitration stages, respectively, of the workers’ compensation ADR system. The authors elaborated (at page 114) on why this assumption was “quite strong”: “To the extent that one process or the other poses a lower threshold of cost to initiate, workers, employers or attorneys would be more likely to initiate a formal dispute. This would tend to make the more open process appear to have more disputes, holding other factors constant. In addition, the statutory system permits expedited hearings on some issues that do not have mandatory settlement conferences. In contrast, nearly all carve-outs require mediation as the first step. This could raise the frequency of the first stage of dispute resolution, mediation, in the carve-out while lowering the frequency of the second stage, arbitration, relative to the statutory system.”

¹¹³ Labor and management typically agreed, in the ADR contract that they collectively bargained, that mediation must be completed within fourteen calendar days of referral and arbitration must be completed within thirty calendar days of referral.

¹¹⁴ A proponent of workers’ compensation ADR notes that “the most controversial aspect of the mediation step has been the decision to keep lawyers out of the room, so to speak, while it is going on. This does not mean that an injured worker or employer cannot hire a lawyer the minute an injury occurs, but rather that the lawyers cannot participate in the mediation proceedings.... Furthermore, ... the injured worker does not have to respond immediately to the mediator’s recommendation. The employee is free to go home and think about it, or to walk out of the room and call an attorney.” (Lewis, 1994, p. I-133).

legal representation at mediation, and another – the one for which data for this empirical were available – places no restrictions on legal representation during the dispute resolution process.) Rather, ADR claimants may use lawyers less often than claimants in the traditional workers’ compensation system because the ADR system has made explicit provision (by the use of Ombudsman and nurse advocates) for the furnishing of information and other assistance to claimants.¹¹⁵

Costs. ADR contracts include a “managed care” component (claimants must obtain medical care from a list of providers mutually agreed upon by unions and management). However, it is not immediately apparent whether ADR should thus be associated with lower or higher medical costs. For example, managed care may take a “sports medicine” approach, whereby more intensive medical care is provided, relatively sooner in the treatment. Furthermore, the empirical studies cited in the previous chapter provided mixed evidence as to whether workers’ compensation managed care lead to lower medical costs. Lastly, data for this study were not available on the frequency and mix of medical services (CPT codes) and thus it is not possible to use descriptive statistics (an ADR-control group comparison of differences in averages) to glean more information about the actual impact of managed care.¹¹⁶ The academic literature cited in the previous chapter also provided empirical evidence as to whether workers’ compensation managed care was associated with lower indemnity claims. Return-to-work data for this study were not available, and the ADR project had not, at the time of this study, yet instituted an early-return-to-work program. As such, the hypothesized impact of ADR on medical and indemnity costs is ambiguous.

Satisfaction with Medical Care. ADR is expected to be associated with lower levels of claimant satisfaction with medical care, given less (or purportedly less) freedom to choose a health care provider.¹¹⁷ Satisfaction was generally comparable to the results reported in the Report to the Labor-Management Committee. Data Analysis Pilot Program: Managed Care in Workers’ Compensation, prepared by the New York State School of Industrial and Labor Relations, May 17, 2000. This study of managed care in workers’ compensation focused extensively on satisfaction with medical care. While that is a secondary concern here, it is worth noting, particularly in light of the fact that satisfaction was reported higher for the ADR sample than the control group (see Table 2.14). Also, the ADR sample reported a higher level of attention paid to their workplace conditions than the control group.

¹¹⁵Licensed representatives provide a similar function in the traditional workers’ compensation system, but there was no way of documenting how often they were used (instead of lawyers). Licensed representatives could also be used by ADR claimants.

¹¹⁶ Another complicating factor is that the fact that the network of workers’ compensation managed care health care providers agreed to (for the ADR project for which data were available) is the same list of providers as is used for the general health care insurance system. That is, it is an extensive list of providers (in the 1,000s), but it also seemingly places no greater emphasis on occupational health specialists.

¹¹⁷ Though the ADR contract for the ADR project for which data are available stipulated that ADR claimants use, in non-emergency situations, only health care providers on the authorized list, this provision was not enforced until some seventeen months after the ADR contract went into effect.

Table 2.13: ADR Group Use of Nurse Advocate¹	
	ADR Group
Where you aware of the availability of the nurse advocate when you first sought care after your work-related injury? ²	25.6% (1,096)
Did you have contact with the nurse advocate? ³	23.1% (1,058)
How important was it that the nurse advocate be able to provide the following services to you?⁴	
To be available soon after the injury to answer your questions and explain the medical care you were to receive	79.2% (235)
To be available during your treatment period to answer questions and explain the medical care you were receiving	70.9% (227)
To be available to discuss with the doctor or health professional your questions concerning your treatment	70.0% (223)
To be available to discuss the workplace conditions that are associated with your injury	60.3% (224)
To assist in return-to-work planning	59.4% (214)
To assist in resolving issues with the insurance company.	77.8% (216)
How would you rate the following in terms of your experience with the nurse advocate?⁵	
The amount of time the nurse advocate spent answering your questions and explaining the medical care you were to receive	80.7% (228)
Attention given by the nurse advocate to the workplace conditions that are associated with your injury	68.5% (203)
Attention given by the nurse advocate to what you had to say	80.9% (225)
Awareness of the nurse advocate about your duties at work	68.0% (200)
Assistance with return-to-work planning	73.7% (148)
Resolving issues with the insurance company	76.5% (166)
All things considered, how satisfied are you now with the attention you received from the nurse advocate? ⁶	72.1% (240)
Notes: ¹ Closed claims. Average values and, in parentheses, the total number of observations. Time period is explained in the text. Data source for entire table: injured worker survey. ² Percentage answering "yes." ³ Percentage with one or more contacts with the nurse advocate. ⁴ Percentage answering "very important" or "important." ⁵ Percentage answering "excellent," "very good," or "good." ⁶ Percentage "very satisfied" or "satisfied."	

Table 2.14: Control and ADR Group Satisfaction with Medical Care¹

	Control	ADR	ADR Year 1	ADR Year 2	ADR Year 1a	ADR Year 2a
	(1)	(2)	(3)	(4)	(5)	(6)
First clinic or medical office visit: how would you rate the following?³						
Amount of time you had with the doctor or health professional	90.8% (360)	90.4% (853)	91.4% (548)	88.5% (305)	91.0% (402)	89.8% (451)
Attention given by the doctor or health professional to what you had to say	91.9% (360)	91.0% (854)	92.2% (549)	88.9% (305)	92.1% (403)	90.0% (451)
Attention given by the doctor or health professional to the workplace conditions associated with your injury	78.8% (302)	83.7% (710)	85.4%* (459)	80.5% (251)	85.6%* (340)	81.9% (370)
Awareness of the doctor or health professional about your duties at work	81.3% (336)	82.9% (800)	85.2% (513)	78.8% (287)	84.7% (380)	81.2% (420)
Last clinic or medical office visit: how would you rate the following?³						
Amount of time you had with the doctor or health professional	87.6% (298)	90.7% (625)	91.3% (402)	89.7% (223)	90.5% (296)	90.9% (329)
Attention given by the doctor or health professional to what you had to say	88.6% (297)	90.9% (624)	91.8% (401)	89.2% (223)	91.9% (295)	90.0% (329)
Attention given by the doctor or health professional to the workplace conditions associated with your injury	77.0% (248)	83.7%* (527)	85.3%* (340)	80.8% (187)	85.0%* (253)	82.5% (274)
Awareness of the doctor or health professional about your duties at work	82.3% (276)	84.7% (580)	86.3% (373)	81.6% (207)	87.6% (273)	82.1% (307)

Notes: ¹Closed claims. Average values for each group and, in parentheses, the total number of observations for each group. Time period for each column is explained in the text. Data source for entire table: injured worker survey.

²Statistically significant difference in means, at the .05 level (two-tailed test), is denoted by *. All columns are compared to column (1). ³Percentage answering "excellent," "very good," or "good."

OLS Models

The empirical analysis in this section thus seeks to determine whether, on a statistical basis, ADR had any affect on four general measures: 1) the frequency of disputes; 2) various aspects of dispute resolution (lawyer usage, and length of time to close a case); 3) costs; and 4) satisfaction with medical care. These measures are referred to as “dependent variables” in a statistical procedure called ordinary least squares regression analysis (OLS).

In addition to a “dependent variable,” OLS models include “independent variables” (or explanatory variables) that are hypothesized to be associated with (or “cause”) increases or decreases in the size of dependent variable. The intent here is to say that, after statistically “controlling” for other influences (per the inclusion of the other independent variables in an OLS model), a particular independent variable affects the dependent variable. By way of illustration, consider the issue of whether the ADR program has absolutely no effect on medical costs, or instead is associated with higher (or lower) costs. The previous comparison of the average medical costs of control group and ADR claimants indicated that average costs were lower for ADR claimants and that a t-test of the differences in averages revealed that the differences in averages between the control group and ADR claimants were so large (given the number of observations) as to be deemed “statistically significant.” It would be incorrect to conclude from the t-test analysis that ADR caused a decrease in costs, as a t-test does not take into consideration a variety of other factors that may actually cause costs to increase or decrease.¹¹⁸

The selection of explanatory variables to include in an OLS model results from theories (or hypotheses) about what actually affects the dependent variable. This selection is also based on the cumulative experience of findings from previous studies (per the literature review in the last chapter) and on available data.¹¹⁹

Five categories of independent variables were used in this analysis:¹²⁰

ADR status. A categorical (1,0 or “dummy”) variable was used to indicate whether a claimant was covered by an ADR contract, or instead in the traditional workers’ compensation system (that is, the control group). Two categorical variables were used in the OLS analysis: 1) “ADR 1st period,” a dummy variable that took the value of 1 if the claimant had an injury date between the start of the ADR study period (May 1, 1997) and December 31, 1997; and 2) “ADR 2nd period,” a dummy variable that

¹¹⁸ A conclusion that ADR caused costs to decrease would be spurious, if ADR was statistically correlated with other factors (not addressed by t-tests or not included in an OLS model) that actually influenced costs to decline even though ADR (in and of itself) did not affect costs.

¹¹⁹ The data set used for this analysis is distinctive (if not unique), in that it utilizes both administrative data sets and survey responses. However, as is also evident from the data set caveats and limitations discussed thus far, and is the case with much social science research, in the best of all possible worlds some additional variables would have been available, to corroborate or supplement some of the measures used in this analysis.

¹²⁰ Since the ADR variable is the explanatory variable of greatest interest in this evaluation, hypotheses regarding the impact of the other explanatory variables will not be provided in this report.

took the value of 1 if the claimant had an injury date between January 1, 1998 and the end of the ADR study period (April 30, 1999). As previously noted, the ADR data source more stringently enforced, as of January 1, 1998, the use-of-network provider provision in the ADR contract. This change in policy administration may have some bearing on disputes, dispute resolution, costs, and satisfaction with medical care; two separate ADR dummy variables are thus used to try and ascertain whether this is indeed the case.

Claimant characteristics. As was evident from the literature review in the previous chapter, empirical studies of the determinants of various aspects of workers' compensation often include in the statistical model some measures pertaining to claimant characteristics. This may stem from a theory that explicitly hypothesizes that a characteristic or characteristics may influence the dependent variable in some manner, or may result simply from a desire to include, in the model, additional "control variables" that may affect the dependent variable though the hypothesized nature of the relationship is ambiguous or unknown.

The following "claimant characteristic" variables were used in all models in this analysis: gender (categorical variable = 1 if the claimant is a female), age at the time of injury, education (categorical variable = 1 if the claimant has more than a high school education), ethnic status (categorical variable = 1 if the claimant is not Caucasian), household income at the time of the injury (categorical variable = 1 if the claimant's household income is less than or equal to \$40,000), job classification (categorical variable = 1 if the claimant is an apprentice, = 0 if the claimant is a journeyman), previous experience with the workers' compensation system (categorical variable = 1 if the claimant has had another workers' compensation claim in the last three years), and job satisfaction (categorical = 1 if the claimant was "very satisfied" or "satisfied" with his or her pre-injury supervisor).¹²¹

Nature of injury. A categorical variable (= 1 if the injury was a fracture) was included in the OLS model. Treatment of this injury is more straightforward (less discretionary, varied, or disputious) than other types of injuries for which data were collected (such as back sprains).¹²²

Body part injured. Categorical variables for the following were also included in the OLS model: shoulder, back, hand and fingers, eyes, knee, and multiple body parts.¹²³

Injury severity and type of claim. In one set of OLS regression models (those pertaining to whether the claimant spoke to or hired a lawyer), two additional variables were included: 1) a categorical variable of injury severity (= 1 if the injured worker

¹²¹ The age and job classification variables were reported in, or derived from, the administrative data set. The other variables are self-reported data from the injured worker survey.

¹²² Self-reports (injured worker survey data) served as the data source, as ICD-9 codes for both control group and ADR claimants were not available.

¹²³ The administrative data set was the source of these variables; the data set contained twenty-eight body part categories.

reported on the survey that the injury was “very severe” or “severe”); and 2) the type of claim (a categorical variable with a value of 1 for indemnity claims).

OLS Model Results

Since the impact (if any) of ADR on various outcome measures is the primary focus of this statistical analysis, the findings with respect to the ADR variables (reported in Table 2.15: Least Squares Impact of ADR on Dispute Resolution and Workers’ Compensation Costs) will be discussed first. Summaries of the findings with respect to other explanatory variables (Table 2.16: Significant Least Squares ADR Effects on Workers’ Compensation Outcomes and Table 2.17: Significant Least Squares ADR Effects on Medical Costs, Indemnity Benefits and Satisfaction with Medical Care) in the ordinary least squares (OLS) models will then be provided.¹²⁴

OLS Results: The Impact of ADR

Disputes. The first set of OLS results reported in Table 2.15 pertain to dispute measures. A dependent variable indicating the presence or absence of a particular dispute category was used for six OLS models.¹²⁵ For all but one of these models (compensability), the sign of the regression coefficient for at least one ADR explanatory variable suggests that ADR is associated with fewer disputes.

However, in most instances, ADR did not have a “strong” enough impact (statistically) to warrant concluding that ADR actually affected the frequency of disputes.¹²⁶ That is, relative to the traditional workers’ compensation system, ADR could not be said to have increased or decreased the frequency of disputes, after the impact of all other explanatory variables in the OLS model is taken into consideration. There are two exceptions, both of which pertain to the ADR variable with the value of 1 for injury dates between January 1, 1998 and April 30, 1999 (that is, the “ADR Effect: Second Period” column in the table): 1) ADR is associated with fewer return-to-work disputes (compared to the traditional workers’ system), and 2) ADR is also associated with fewer

¹²⁴ Regression diagnostics for all of these ordinary least squares regression models, including variance inflation factors to test for multicollinearity, did not reveal any statistical problems. However, as noted subsequently, an alternative form of analysis (logistic regression) is more appropriate for some types of dependent variables; the logistic regression results are reported later in this chapter.

¹²⁵ Each of the “dispute” dependent variables is a categorical variable, with a value of 1 if the claimant responded on the injury worker survey that he or she had a dispute with the insurer over a particular issue (i.e., medical treatment), and a value of 0 otherwise. As described in greater detail later in this chapter, there are some statistical problems involved with using in OLS analysis a dependent variable that is coded with only 1 and 0 values. A more appropriate statistical technique, logistic regression, was also used and these results are also reported later in this chapter. However, as will become evident after contrasting the OLS and logistic results, the findings from the OLS and logistic runs are similar.

¹²⁶ It is important to keep in mind that the ADR and control group data pertain to a single entity (that is, this is a case study, using data on claimants before and after an ADR contract went into effect). If, for example, there are relatively few disputes because the insurers’ underlying approach to claims handling is similar under ADR and the traditional system, and/or because of the nature of a labor-management relationship that decided to adopt ADR in lieu of the traditional system, caution is warranted in generalizing from these findings.

disputes over permanent disabilities (a relatively higher percentage of claimants in the ADR system agree that they are not permanently disabled, after taking into consideration other variables that potentially also affect disputes frequency). These results are not surprising, insofar that, as previously indicated, the predicted impact of ADR on the frequency of most dispute categories was ambiguous.

Table 2.15: Least Squares Impact of ADR on Dispute Resolution and Workers' Compensation Costs :

	ADR Effect: First Period ^{2,3}	ADR Effect: Second Period ^{2,3}
DISPUTES		
Dispute: compensability ⁴	0.014 (1.15)	0.001 (0.06)
Dispute: medical treatment (more or different) ⁴	-0.001 (0.05)	-0.003 (0.16)
Dispute: weekly benefits (amount of) ⁴	0.002 (0.19)	-0.010 (0.93)
Dispute: readiness to return to work ⁴	0.004 (0.44)	-0.023** (2.39)
Dispute: extent of disability ⁴	-0.015 (0.23)	-0.058 (0.75)
Dispute: agree not permanently disabled ⁴	0.005 (0.24)	0.041*** (1.83)
DISPUTE RESOLUTION		
Lawyer: spoke to ⁴	-0.091* (4.74)	-0.025 (1.42)
Lawyer: hired ⁴	-0.063* (4.39)	-0.012 (0.92)
Days: injury date to date closed Dcldays	-137.303* (2.97)	-74.205 (0.85)
COSTS (paid through)⁵		
Medical Treatments: Three months	-0.333* (4.60)	0.099 (1.28)
Medical Treatments: Six months	-0.334* (4.74)	0.047 (0.63)
Medical Treatments: Twelve months	-0.250* (3.50)	-0.013 (0.16)
Medical Treatments: Eighteen months	-0.268* (3.65)	0.043 (0.33)
Indemnity Benefits: Three months	-0.017 (0.19)	-0.116 (1.10)
Indemnity Benefits: Six months	-0.119 (1.13)	-0.111 (0.94)
Twelve months: Twelve months	-0.206*** (1.86)	0.007 (0.05)
Eighteen months: Eighteen months	0.127 (1.09)	-0.330 (1.49)
MEDICAL CARE		
Satisfied: first office visit ⁶	-0.019 (0.75)	-0.036 (1.48)
Satisfied: last office visit ⁶	0.007 (0.22)	-0.020 (0.68)
Satisfied: overall ⁶	-0.020 (0.79)	-0.045*** (1.94)
Satisfied: number of physicians could choose from ⁶	-0.093* (3.06)	-0.003 (0.11)

Notes: ¹Closed claims. ²The "first" (or initial) period ADR dummy variable has a value of 1 for ADR claims with 5/1/97-12/31/97 injury dates. The "second" (or subsequent) period ADR dummy variable has a value of 1 for ADR claims with 1/1/98-4/31/99 injury dates. The rationale for this classification of ADR coverage time periods is explained in the text. ³Regression coefficients and, in parentheses, the t-statistic, for the ADR dummy variables. Statistically significant coefficient (two-tailed test) at: * .01 level, ** .05 level; *** .10 level. All regressions also include the other independent variables described in the text. Dependent variables are listed in the lefthand column. ⁴Survey data. ⁵In current dollars. Restricted to claims: a) with paid costs > \$0; b) in which the injury date to the check date in the payments file is less than or equal to 3 (6, 12, 18) months, etc., and c) in which there is at least 3 (6, 12, 18) months between the injury date and the date of the most recent check date in the entire data set. ⁶Survey data, percentage "very satisfied" or "satisfied."

Table 2.16: Significant Least Squares ADR Effects on Workers' Compensation Outcomes¹

	<u>Dependent Variables: Disputes</u>						<u>Dependent Variables: Dispute Resolution</u>		
	Compensability	Medical Treatment	Weekly Benefits	Return to Work	Extent of Disability	Agree Not Permanently Disabled	Lawyer: Spoke to	Lawyer: Hired	Days: Injury Date → Date Closed
INDEPENDENT VARIABLES	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
ADR 1 st Period							-0.091	-0.0063	-137.3
ADR 2 nd Period				-0.023					
Gender (female)		0.109							
Age						-0.003			
Education: Post-High School									98.1
Nonwhite		0.044		0.048					
Household Income: <= \$40k									
Apprentice								0.053	
Previous WC Claim (last 3 yrs)							0.039		
Job Satisfaction: with Supervisor	-0.036	-0.050		-0.024					
Nature of Injury: Fracture			0.018			-0.132		0.051	106.6
Part of Body: Shoulder		0.078	0.049			-0.124			
Part of Body: Back						-0.060			
Part of Body: Hand/Fingers		-0.057							
Part of Body: Eyes		-0.057							
Part of Body: Knee		0.069			0.232	-0.095		0.068	136.5
Part of Body: Multiple					1.026				
Injury Severity	-----	-----	-----	-----	-----	-----	0.053	0.027	-----
Indemnity Claim	-----	-----	-----	-----	-----	-----	0.136	0.082	-----
Adjusted R-Squared.	0.000	0.031	0.011	0.022	0.147	0.034	0.117	0.099	0.060
Sample Size	1,802	1,799	1,685	1,741	115	1,609	1,343	1,344	364

Notes: ¹ Ordinary least squares regression coefficients of variables that are statistically significant at the .05 level. Models and variables are explained further in the text.

Table 2.17: Significant Least Squares ADR Effects on Medical Costs, Indemnity Benefits and Satisfaction with Medical Care¹

	DEPENDENT VARIABLES											
	Medical Treatment Costs , Paid through:				Indemnity Benefits, Paid through:				Medical Care: Satisfied			
	Three Months	Six Months	Twelve Months	Eighteen Months	Three Months	Six Months	Twelve Months	Eighteen Months	1 st Office Visit	Last Off. Visit	Overall	No. of Physicians
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	
INDEPENDENT VARIABLES												
ADR 1 st Period	-0.333	-0.334	-0.250	-0.268								-0.093
ADR 2 nd Period												
Gender (female)					0.411	0.471	0.488					-0.190
Age												
Education: Post-High School		-0.151	-0.171	-0.192								
Nonwhite									-0.077		-0.064	
Household Income: <= \$40k	0.216			0.217								
Apprentice	-0.340	-0.221			-0.351	-0.436	-0.408	-0.418				
Previous WC Claim (last 3 yrs)												
Job Satisfaction: with Supervisor										0.121	0.121	0.219
Nature of Injury: Fracture	0.555	0.543	0.570	0.607	0.221							
Part of Body: Shoulder		0.456	0.542	0.722					-0.091			
Part of Body: Back	0.292	0.503	0.593	0.632								
Part of Body: Hand/Fingers	-0.207	-0.366	-0.424	-0.408								
Part of Body: Eyes	-0.697	-0.807	-0.910	-0.862	-1.000	-1.138	-1.224	-1.687			0.073	
Part of Body: Knee	0.243	0.533	0.699	0.933		0.394	0.477	0.696				
Part of Body: Multiple												
Injury Severity	----	----	----	----	----	----	----	----	----	----	----	----
Indemnity Claim	----	----	----	----	----	----	----	----	----	----	----	----
Adjusted R-Squared.	0.116	0.158	0.172	0.186	0.051	0.063	0.058	0.074	0.013	0.008	0.025	0.049
Sample Size	1,234	1,611	1,564	1,318	353	386	370	328	1,036	786	1,358	1,312

Notes: ¹Ordinary least squares regression coefficients of variables that are statistically significant at the .05 level. Models and variables are explained further in the text.

Dispute Resolution. The regression coefficients reported in Table 2.15 indicate that ADR had a statistically significant impact on all three variables pertaining to dispute resolution. ADR claimants with injury dates between May 1, 1996 and December 31, 1998 (that is, “ADR Effect: First Period” claimants) were 9.1 percent less likely to speak with lawyers and 6.3 percent less likely to hire lawyers. The provisions of the ADR contract pertaining to this data set do not provide a ready explanation as to why ADR claimants may have made less use of lawyers; the contract allowed ADR claimants to obtain legal representation at any time and did not prohibit legal representation at any stage of the dispute resolution process. Furthermore, the descriptive statistics reported earlier in this chapter do not help explain why ADR claimants made less use of lawyers: 1) ADR claimants were no more likely to decide that resolving a dispute (by using a lawyer or by other means) was not efficacious, as there were no statistically significant differences in the frequency of ADR and control group claimants who, on average, “did nothing” about a dispute (Table 2.11); 2) there did not appear to be any different impetus for retaining a lawyer, as there were no statistically significant differences as to why, on average, ADR and control group claimants hired a lawyer (Table 2.10); 3) the only statistically significant differences between the frequency of indemnity claims, on average, for control group and ADR claimants was with respect to the “Second Period” ADR claimants (Table 2.1) and yet only the regression coefficient for the “First Period” ADR claimants was significant in the lawyer usage OLS models; and 4) while Ombudsmen and the nurse advocate got high ratings (suggesting that these ADR-specific officials provided useful information and assistance in resolving a dispute, and thus may have lessened the perceived need for lawyers), judges in the traditional system got high ratings as well.¹²⁷

ADR was associated with faster claims closing.¹²⁸ ADR, for the “ADR Effect: First Period” claimants, resulted in claims closing 137 days faster than claims in the traditional workers’ compensation system (after taking into consideration the effect of other explanatory variables). However, due to data availability limitations, date closing information was available on a relatively small number of claims (see Table 2.2). In order to use a larger set of observations in testing the impact of ADR on claims closing, two proxy measures for case closing were computed: 1) a categorical variable with a value of 1 if the length of time between the injury date and the date of last medical payment, plus an additional 120 days, was less than a full year (365 days), and 0 otherwise; and 2) a comparable, categorical variable pertaining to indemnity payments.¹²⁹

¹²⁷Data were not available as to when a claimant hired a lawyer. It is not possible to determine, for example, whether a control group claimant hired a lawyer immediately (prior to appearing at a hearing) because of uncertainty about the hearing process, and instead hired a lawyer only as a result of what transpired further along in the claims handling process.

¹²⁸ The data set for OLS analyses and the descriptive statistics comparisons were limited to those ADR and control group claims that the data provider (insurer) had defined as closed.

¹²⁹The data in medical and in indemnity payments transactions files were used to compute this variable. This calculation excluded last payment dates for transaction file payments voiding earlier payments. The 120-days figure was included to build in a cushion for “inactivity” (that is, no additional payments) or errors in the payment records (that is, there may have actually been another payment) – though, for a

These findings (which due to space limitations are not reported in the OLS tables) confirm that ADR is associated with faster claims closing. In the OLS model using the medical payments records for the “case closed within one year” measure, the “ADR Effect: First Period” regression coefficient was associated with a 7.4 percent higher probability of the case being closed within a year, and the “ADR Effect: Second Period” regression coefficient was associated with a 14.0 percent higher probability of the case being closed within a year. In the OLS model using the indemnity payments records for the “case closed within one year” measure, the “ADR Effect: First Period” regression coefficient was not statistically significant, and the “ADR Effect: Second Period” regression coefficient was associated with a 35.0 percent higher probability of the case being closed within a year. Though all of these claims closing measures are imperfect, the consistency of the findings regarding ADR’s impact bolster the conclusion that ADR does lead to faster claims closing.

Costs. The findings from the OLS models do not reveal a single instance in which ADR was associated with higher costs (on a “paid through” basis). ADR was associated with a medical treatments cost reduction in the \$200-\$300 range (for treatments paid through three, six, twelve, and eighteen months, respectively for the “First Period” ADR claimants, or it had no statistically significant impact on medical costs (per the ADR “Second Period” coefficients). With one exception, ADR had no statistically significant impact on the level of indemnity benefits paid.

Satisfaction with Medical Care. Though ADR was associated with lower medical costs, it was not associated, for the most part, with less satisfaction over the quality of care. Though most of the ADR regression coefficients had a negative sign (suggesting a lower level of satisfaction), in only one instance – satisfaction, “overall” with the medical care (as opposed to satisfaction with the first or most recent visit) – was there a statistically significant relationship. ADR claimants in the first period (but not the second) were also likely to be less satisfied than claimants in the traditional workers’ compensation system with the number of physicians from which one could choose.

OLS Results: The Impact of other Explanatory Variables

Table 2.16 and Table 2.17 report the regression coefficients of all explanatory variables that had a statistically significant impact on a particular dependent variable (e.g., disputes, dispute resolution, costs, or satisfaction with medical care). Greater familiarity with the workers’ compensation system (that is, having previously had another workers’ compensation claim during the preceding three years) had no impact on dispute frequency, dispute resolution (save for a greater propensity to speak to a lawyer), costs, or satisfaction with current medical care. Greater job satisfaction (satisfaction with one’s pre-injury supervisor) was associated with fewer disputes (for three dispute categories) and higher satisfaction with medical treatment. Causation, appropriate treatment approaches, and the determination of extent of disability, among other things, may be contentious for back injuries. Nonetheless, the OLS findings indicate that back injuries

variety of reasons, the payments transactions files were likely to be closed scrutinized by the insurer, and thus accurate.

were not associated, for the most part, with the frequency of disputes, dispute resolution, or satisfaction with medical treatment.¹³⁰

Logit Results

As previously noted, there are statistical problems in using OLS for models in which the dependent variable can take on only the values of 1 or 0.¹³¹

Table 2.18: Logit Analysis ADR Effects on Dispute Resolution and Satisfaction with Medical Care thus reports the findings, when the dependent and explanatory variables in the OLS models are used, but logistic regression rather than OLS is utilized for these models with 1,0 dependent variables. The general pattern reported in the OLS results (Table 2.15) holds here as well: ADR “Second Period” claims are associated with fewer disputes (for two dispute categories); ADR “First Period” claimants are less likely to speak to or hire a lawyer,¹³² ADR “Second Period” claimants are less likely to be satisfied with medical care, overall, and ADR “First Period” claimants are less satisfied with the number of physicians from whom one could choose.

Summary of Claimant-Level Data Results

Project-Level Data

The preceding sections in this chapter used claimant-level data pertaining to one workers’ compensation ADR project. In this concluding section, comparisons will be made (when possible) across various dimensions of several ADR projects in New York State. The sources of information include data that are annually furnished by ADR participants to the Workers’ Compensation Board per its ADR regulations,¹³³ and the comments of various ADR stakeholder groups that were made during various meetings or phone interviews with ILR representatives. In some instances, because of data availability limitations, the data discussed here pertain solely to one ADR participant and a subset of non-ADR claims from the control group.

The annual reports to the WCB provide the broadest overview of implementation experience for all of the ADR projects in New York State (see: table, Project Data). The data are not strictly comparable across projects, in part because they pertain to different policy years or other time periods,¹³⁴ and in part because the projects are not

¹³⁰ The only regression coefficient that was statistically significant was with respect to the “agree not permanently disabled” OLS model; claimants with back injuries were less likely to agree.

¹³¹ Standard textbooks on OLS and logistic regressions explain how use of this type of dependent variable violates some of the conditions (statistical assumptions) pertaining to OLS models. Nonetheless, the empirical results from OLS and logistic models can be quite similar.

¹³² In contrast to the OLS results, ADR “Second Period” claimants are also less likely to speak to a lawyer. There was no statistically significant impact, for this group, in the OLS model.

¹³³ The reporting requirements were listed in the last chapter, in the tables that summarized workers’ compensation statutory and regulatory provisions.

¹³⁴ Multi-year data are reported by one ADR project, and not all construction projects lasted a full year.

homogenous with respect to the building trades covered, the nature of the construction project, geographic location, and other factors.

As was the case with the California ADR program (Gannon, table 2, p. 6, 1999), there is a wide range in the number of claims per 100 employees for each project.¹³⁵ Additional comparisons are hindered by the failure of all ADR participants to report data on all of the requested data elements, or by their possibly combining the data elements into a few summary measures.¹³⁶

Use of the dispute resolution procedure (frequency, by level used). Data were provided to ILR with respect to three ADR projects. The Ombudsman's log for one ADR project indicates that the Ombudsman had contacts with three claimants; there was one contact (log entry) with respect to one claimant, three contacts with a second claimant, and eleven contacts with a third claimant. The log documentation further indicates that one mediation was held for the second claimant and two mediations were held for the third claimant, who retained an attorney.¹³⁷ The Ombudsman for another ADR project has been contacted by at least one claimant, and a claim has gone to mediation in this ADR project.¹³⁸

One ADR project used the log software program developed by ILR and compiled entries over a period of some thirty-five months. ILR's analysis of these log entries indicate that 206 claimants contacted the Ombudsman (regarding 210 claims, as four claimants contacted the Ombudsman about two separate claims). The range of the log entries per claimant ranged from one entry (ninety claimants) to fifty-seven entries (one claimant). ILR determined, based on the information reported on the log about the mediations sessions (i.e., date held), that there were mediations for twenty-seven claims; for seven of these claims, there were two mediation sessions and for three of these claims, there were three mediation sessions. ILR also concluded, from the log entries, that no arbitrations had been held.¹³⁹ ILR asked the Workers' Compensation Board to

¹³⁵ The California Division of Workers' Compensation obtained data on person-hours, which allowed a computation of the number of claims per 100 full-time employees (assuming that 200,000 person hours equals 100 full-time employees). Since no such data are available in New York State, the ratio of the number of claims to the number of employees covered by ADR will not be reported here.

¹³⁶ The meaning of three WCB reporting requirements ("total number of decisions rendered," "total number of settlements made," and "total number of appeals taken") may be interpreted differently by different parties. It is conceivable that an ADR participant's report of "0" for each of these elements means that "the total number of mediations rendered" and "total number of arbitrations" were thus "0," also, and hence the latter two data elements went unreported.

¹³⁷ The Ombudsman's log contains two entries, indicating that an attorney was speaking on behalf of the claimant. The log was sent to the WCB as a supplement to the annually reported data, and forwarded to ILR. The construction project for this ADR program lasted less than one year.

¹³⁸ Source of contact information: phone interview with the Ombudsman, though not at the end of the study period. The Joint Labor-Management Oversight Committee stated at a meeting with ILR near the end of the study period that there had been one mediation. The Ombudsman indicated during a phone conversation, earlier, that one claimant had contacted the Ombudsman. This ADR contract pertained to approximately twelve employers, whose construction projects varied in length and nature.

¹³⁹ There are more references on the log to the mediation and arbitration stage than ILR has reported as actually having been held, but these "additional" references are log entries regarding requests for and/or referrals to mediation or arbitration – without there actually having then been mediation or arbitration

provide dispute-related information, for the previously described “control group” used for this ADR participant.

Most of the claims in the control group used the hearing process, without any involvement by the Conciliation Bureau.¹⁴⁰ There are several, major caveats to the findings reported here with respect to hearing data. First, the control group data obtained from the Workers’ Compensation Board (WCB) are not strictly comparable to ADR data reported on the Ombudsman log, as the control group information provided by the WCB was limited to those (relatively more serious) claims that are indexed by the WCB, and are further limited to those claims for which the WCB could “match” claims in its data sets with the claims identifiers provided by ILR. Furthermore, ILR imposed further restrictions on the control group data set used for these comparisons, thus further limiting its comprehensiveness.¹⁴¹

Nature of the issues at dispute. ILR tabulations of the log entries for one ADR participant indicate that three principal categories accounted, respectively, for twenty to thirty percent of the “objections” raised by ADR claimants: 1) temporary/permanent disability benefits, death benefits; 2) authorization and payment of medical/rehabilitation benefits; and 3) calculation of pre-injury wages, computation of awards (see: table, Log Entries). (Frequencies were computed for the forty-seven subcategories of potential issues, but for ease of comparison, the discussion here is limited to the results for the major aggregated classifications.)

ILR tabulated the frequency of “hearing purpose” codes, for which control group data were available. These codes are not a comprehensive source of information about disputes, in that additional issues at dispute (aside from those listed as the hearing purpose) may be voiced at the hearing, itself, and also because under the New York State workers’ compensation system, hearings may be held even when there is no “dispute.”¹⁴² Unfortunately, other sources of information on disputes were not readily available.¹⁴³ The findings indicate that, not surprisingly (given the type of claims that are indexed by the WCB), the largest single category of hearing purpose codes pertained to questions of

sessions actually held for these claims. Presumably, the disputes were resolved prior to the scheduled mediation or arbitration.

¹⁴⁰ According to the WCB “hearing type” codes, 1.8 percent of the “hearings” for this control group pertained to conciliation meetings, 1.3 percent to pre-hearing conferences, 6.1 percent to special trials, 0.4 percent to preliminary hearings, and 90.4 percent to trials. These results are per computations done by ILR, not the WCB.

¹⁴¹ ILR used only those claims for which the WCB provided “hearing purpose” information, and eliminated any hearings data pertaining to hearings that were not actually held – that is, that had any of the following hearing status codes, per the WCB’s coding scheme: cancelled; deleted; on hold; cancelled with notice; proposed hearing; or unset.

¹⁴² As previously noted, recent statutory and regulatory changes to the hearing process system in New York State have been made, and the control group data thus pertain to a system that has since been modified.

¹⁴³ As previously noted, ILR sought additional documentation (forms submitted by insurers or self-insured employers) to help identify the existence of a dispute. Another option that was considered was an examination of all documentation in the WCB’s case folders; however, the WCB had not yet developed “electronic” case folders and thus this approach to flagging the existence of a dispute was considered to be too labor intensive and not sufficiently comprehensive.

the period and extent of disability. The second largest category (for which information was available) pertained to questions of the rate of compensation and/or the average weekly wage.

The “party of interest” data provided by the WCB revealed that 155 claims in that data set ILR constructed for this control group analysis had a “claimant representative/attorney.”

Interviews with ADR Signatories and other ADR Officials. During the course of this study, ILR met with or otherwise interacted with officials for various ADR projects, in order to learn more about ADR and the impetus for implementing ADR, review the data collection process, and obtain data. Near the end of this study period, ILR representatives meet with members of the Joint Labor-Management Oversight Committee for one project, and with key stakeholders involved in establishing another ADR project. Telephone interviews were also conducted with the Ombudsman and mediator for the latter.

As a whole, a high degree of satisfaction was expressed by all parties regarding experience to date with ADR (even by those signatories were indicated that they were skeptical of ADR at the onset of the program). The use of a nurse advocate (who was viewed by claimants, unions, and contractors as an advocate for workers rather than as a case manager) and other ADR-specific features were seen as a means by which ADR, compared to the traditional workers’ compensation system, furnished better quality care, sooner and in a less disputatious environment, to injured workers. Faster claims closing, more rapid return to work, cost savings, and the resultant competitive advantage – without a diminution in the quality of medical care or any adverse effect on due process -- were also cited as other, favorable outcomes of ADR (at least some administrative costs may have risen under ADR, though).

Educating injured workers about the ADR process (including the presence of a nurse advocate) was cited as area of ongoing, critical importance, and it was suggested that ADR Ombudsman should be licensed (to assure competence and independence, enhance professionalism, and encourage trust).¹⁴⁴ None of the interviews indicated any claimant problems with representation or due process.

Most, but not all, of those interviewed thought that ADR should be permanently adopted for workers’ compensation. There was also support for extending ADR to other industries, though only to employment relationships governed by collective bargaining agreements. Cost savings, if any, from ADR, had apparently not yet been determined.¹⁴⁵

¹⁴⁴ The Levine et al. study of the California ADR system also recommended that Ombudsman standards be set.

¹⁴⁵ As indicated in the table in the previous chapter regarding the provisions of the ADR contracts in New York State, all but one of the ADR contracts stipulates that some of the costs savings from ADR will be distributed to union signatories.

**Table 2.18: Logit Analysis ADR Effects on Dispute Resolution
and Satisfaction with Medical Care¹**

	ADR Effect: First Period ^{2,3}	ADR Effect: Second Period ^{2,3}
DISPUTES		
Dispute: compensability ⁴	0.3406 (1.3304)	0.0233 (0.065)
Dispute: medical treatment (more or different) ⁴	-0.0129 (0.0035)	-0.0358 (0.0237)
Dispute: weekly benefits (amount of) ⁴	0.0817 (0.0591)	-0.3863 (1.0267)
Dispute: readiness to return to work ⁴	0.1900 (0.2743)	-1.2480** (6.2483)
Dispute: extent of disability ⁴	0.1117 (0.0075)	-2.0257 (1.0099)
Dispute: agree not permanently disabled ⁴	0.0447 (0.0599)	0.3705*** (3.4068)
DISPUTE RESOLUTION		
Lawyer: spoke to ⁴	-0.8852* (12.5761)	-0.6475** (4.1162)
Lawyer: hired ⁴	-1.0687* (8.9854)	-0.6414 (1.6900)
MEDICAL CARE		
Satisfied: first office visit ⁵	-0.2021 (0.5826)	-0.3367 (2.0969)
Satisfied: last office visit ⁵	0.0496 (0.0340)	-0.1692 (0.4253)
Satisfied: overall ⁵	-0.1759 (0.6854)	-0.3517*** (3.5928)
Satisfied: number of physicians could choose from ⁵	-0.5707* (10.0656)	-0.0145 (0.0090)

Notes: ¹Closed claims. ²The "first" (or initial) period ADR dummy variable has a value of 1 for ADR claims with 5/1/97-12/31/97 injury dates. The "second" (or subsequent) period ADR dummy variable has a value of 1 for ADR claims with 1/1/98-4/31/99 injury dates. The rationale for this classification of ADR coverage time periods is explained in the text. ³Parameter estimates and, in parentheses, the Wald Chi-Square statistic, for the ADR dummy variables. Statistically significant parameter estimates at: *.01 level, **.05 level; ***.10 level. All regressions also include the other independent variables described in the text. Dependent variables are listed in the lefthand column. ⁴Survey data. ⁵Survey data, percentage "very satisfied" or "satisfied."

Table 2.19: Hearing Purposes for Control Group Claimants

All HP Codes (1)	HP Code per Claim (2)	HP Code (3)	Hearing Purpose (4)
24.3%	26.3%	1	Question of period and extent of disability.
22.5%	15.6%	30	Write in [non-codifiable]
19.5%	21.1%	5	Question of rate of compensation and/or average weekly wage.
8.0%	8.3%	14	Question of permanency.
5.5%	7.0%	3	Question of accident, notice to employer and causal relationship of accident to injury.
3.8%	4.0%	15	Question of lost time.
2.9%	3.2%	51	Question of further causally related disability.
2.0%	1.7%	12	C-8.1 Part B (Issue of disputed medical bills(s).)
2.0%	2.1%	11	C-8.1 Part A (question of treatment).
1.6%	1.3%	53	Question of temporary rates.
1.4%	1.3%	52	Question of periods held in abeyance.
1.1%	1.4%	2	Question of loss of earnings.
0.8%	1.0%	17	Whether or not payments should be suspended or reduced.
0.6%	0.8%	47	Question of authorization for treatment/tests.
0.5%	0.5%	19	Question of reduced earnings.
0.5%	0.4%	29	Question of 15-8 liability.
0.4%	0.5%	13	Question of apportionment.
0.4%	0.5%	33	Testimony of doctor(s).
0.4%	0.5%	50	Degree of disability.
0.3%	0.4%	9	Carrier penalty: Question of timely payment award.
0.3%	0.3%	4	Case reopened and restored to referee calendar for consideration by board decision.
0.3%	0.4%	31	Testimony of Claimant.
0.2%	0.2%	32	Testimony of lay witness(es).
0.2%	0.2%	6	Carrier penalty; question of timely first payments of compensation.
0.2%	0.2%	18	Wages paid - reimbursement requested by employer.
0.1%	0.1%	16	Question of third party action.
0.1%	0.0%	35	Proper employer entity, employer-employee relationship, jurisdiction.
0.1%	0.1%	58	Carrier penalty; question of late filing of Form C-8/8.6.
0.1%	0.1%	56	Question of wage expectancy.
0.1%	0.1%	57	Carrier penalty; question of failure to file a form.
0.0%	0.0%	34	Testimony of Employer.
0.0%	0.0%	40	Testimony of Employer.
0.0%	0.0%	42	Question of coverage.
0.0%	0.0%	54	Question of 25A liability.
0.0%	0.0%	59	Reimbursement for medical/travel expenses paid by the claimant.
0.0%	0.0%	62	To consider agreement pursuant to Section 32 of the Workers' Compensation Law.

Notes: Frequency data pertain to [728] control group claims for which the Workers' Compensation Board (WCB) provided information. All computations were done by ILR.

Column (1): restricted by ILR to claimants whose hearings were actually held (see text for a further explanation) and to claims for which hearing purpose data were reported. May include multiple frequencies of a code or codes, per claim. Hearing purpose frequency for each code ranges from 1 to 872 (3,590 hearing purpose codes, in total).
 Column (2): in addition to column (1) restriction, also limited by ILR to a maximum of one hearing purpose code (for each code) per claim; hearing purpose frequency for each code ranges from 1 to 665 (2,531 hearing purpose codes, in total).

Column (3) hearing codes and Column (4) hearing purpose descriptions were provided by the WCB. Percentage frequency, in descending order, in column (1) determines the alignment in columns (2)-(4).

Table 2.20: ADR Pilot Project Summary^{1,2}

	Project A	Project B	Project C	Project D	Project E
Number of Employees within ADR program	463	524	15,375	40	526,370 hrs worked
Number of Claims filed	8	21	20,604	18	23
Total Indemnity Paid ³	\$35.7 (t)	\$63.3 (t)	\$29.4 (m)	\$36.1 (t)	\$250.4 (t)
Total Medical Paid ³	\$51.8 (t)	\$20.4 (t)	\$17.3 (m)	\$40.0 (t)	\$58.2 (t)
Total Number of Mediations Rendered	--	--	57	--	--
Total Number of Arbitrations	--	--	1	--	--
Total Number of Decisions Rendered	0	0	--	0	--
Total Number of Settlements Made	6	0	--	0	--
Total Number of Appeals Taken	0	0	0	0	--
Number of Employees within ADR program		628		36	
Number of Claims filed		8		3	
Total Indemnity Paid ³		\$16.3 (t)		\$22.0 (t)	
Total Medical Paid ³		\$35.1 (t)		\$10.3 (t)	
Total Number of Mediations Rendered		--		--	
Total Number of Arbitrations		--		--	
Total Section 32 Settlements Made		--		--	
Total Number of Decisions Rendered		0		0	
Total Number of Settlements Made		0		0	
Total Number of Appeals Taken		0		0	
Number of Employees within ADR program		882			
Number of Claims filed		24			
Total Indemnity Paid ³		\$37.4 (t)			
Total Medical Paid ³		\$24.3 (t)			
Total Number of Mediations Rendered		--			
Total Number of Arbitrations		--			
Total Number of Decisions Rendered		0			
Total Number of Settlements Made		0			
Total Number of Appeals Taken		0			
Notes: ¹ Data provided to the New York State Workers' Compensation Board (WCB) in response to the reporting requirements in the WCB's ADR regulations. ² Data pertain to a policy year or multiple policy years; placement of data in the same row across columns does not mean that the data pertain to the same policy year for all projects. ³ Current dollars; t=thousands; m=millions.					

Table 2.21: Ombudsman Log Entries¹

Categories ^{3,4}	Frequency of Log Entries (Restricted): ² Percentage Distribution (frequency of entries in each column)					Frequency of Log Entries (Total Entries): ² Percentage Distribution (frequency of entries in each column)				
	Info.	Obj.	Change	Prior	Ext.	Info.	Obj.	Change	Prior	Ext.
	Accident, Notice, & Causal Relationship	10.3%	7.2%	11.3%	13.6%	0.0%	8.5%	7.2%	12.7%	9.1%
Temp./Permanent Disability Benefits; Death Benefits	10.3%	28.2%	23.2%	23.1%	45.5%	10.2%	27.0%	21.7%	17.4%	57.1%
Authorization & Payment of Medical/Rehab. Benefits	27.2%	23.8%	30.5%	15.4%	0.0%	25.6%	22.6%	27.1%	10.9%	0.0%
Calculation of Pre-injury Wages/ Computation of Awards	9.3%	21.6%	16.6%	15.8%	36.4%	7.9%	21.9%	17.5%	14.3%	28.6%
Request for Info. or Advice	25.6%	1.9%	1.3%	3.2%	0.0%	23.4%	1.0%	1.8%	1.7%	0.0%
Other	17.3%	17.2%	17.2%	29.0%	18.2%	24.4%	20.3%	19.3%	46.6%	14.3%
Column total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Categories ^{3,4}	Frequency of Log Entries (Restricted): ² Percentage Distribution (frequency of entries in each row)					Frequency of Log Entries (Total Entries): ² Percentage Distribution (frequency of entries in each row)				
	Info.	Obj.	Change	Prior	Ext.	Info.	Obj.	Change	Prior	Ext.
	Accident, Notice, & Causal Relationship	42.1%	19.0%	14.0%	24.8%	0.0%	38.6%	21.2%	15.9%	24.2%
Temp./Permanent Disability Benefits; Death Benefits	22.0%	38.8%	15.1%	22.0%	2.2%	22.8%	39.3%	13.5%	22.8%	1.5%
Authorization & Payment of Medical/Rehab. Benefits	46.4%	26.1%	15.8%	11.7%	0.0%	47.2%	27.2%	13.9%	11.7%	0.0%
Calculation of Pre-injury Wages/ Computation of Awards	25.7%	38.5%	14.0%	19.6%	2.2%	22.1%	39.9%	13.6%	23.5%	0.9%
Request for Info. or Advice	89.4%	4.2%	1.4%	4.9%	0.0%	91.5%	2.6%	2.0%	3.9%	0.0%
Other	36.9%	23.6%	11.2%	27.5%	0.9%	34.7%	18.8%	7.6%	38.7%	0.2%
Row totals for each category above:	100.0%					100.0%				

Notes: ¹Includes log entries provided through March 10, 2000, for 210 claims (206 claimants). Data set restrictions used for other tables (i.e., injury date, closed case, job classification of apprentice or journeyman, etc.) are not used here.

²“Restricted” frequency is limited to 1 entry per issue per claimant, irrespective of how often the issue was listed on the log for that claimant. “Total entries” frequency includes an issue each and every time it is listed, even if the issue is listed multiple times per claimant because the claimant had multiple contacts with the Ombudsman regarding this issue. For example, if the Ombudsman’s log included 10 entries for a claimant, and a particular issue was listed on each of these 10 entries, the frequency computation in this table would record this once (for the “restricted” tabulations) or ten times (for the “total entries” tabulations). The latter frequency is obviously skewed, depending upon what issue or issues were raised by claimants with multiple listings on the log.

³The column headings are: information; obj.: party in communication raised an objection; change: issue was resolved with a change in prior decision; prior: issue was resolved without a change in prior decision; and ext.: extension was agreed upon.

⁴The number of subcategories within each major category on the log are as follows: ANCR (5 subcategories); disability/death benefits (11 subcategories); medical/rehabilitation benefits (14 subcategories); calculation/computation (10 subcategories); request for information or advice (4 subcategories); and other (3 subcategories).

Table 2.22: Open and Closed Case Demographics^{1,2}

	All Claims	Closed Claims	Open Claims
	(1)	(2)	(3)
Number of Claims	100.0% (6,258)	86.1% (5,388)	13.9% (870)
Claimant Demographics			
Age at Injury	38.4 (6,249)	38.0 (5,381)	40.8* (868)
Years in Union	17.6 (5,541)	17.5 (5,295)	21.2* (246)
Hours Worked (year prior to injury)	1,556 (5,541)	1,564 (5,295)	1,386* (246)
Earnings (year prior to injury) ³	47,473 (5,541)	47,557 (5,295)	45,668 (246)
Job classification: apprentice ⁴	21.7% (6,258)	22.7% (5,388)	15.6%* (870)
Type of Claim⁵			
Indemnity	35.5% (6,258)	25.9% (5,388)	95.1%* (870)
Medical only	65.2% (6,187)	74.6% (5,349)	5.1%* (838)
Type of Disability⁶			
Did this injury involve a permanent disability?	12.1% (2,165)	9.8% (2,072)	64.5%* (93)
Injury Severity⁶			
Very severe or severe injury	48.6% (1,678)	46.7% (1,575)	77.7%* (103)
Non-work activities permanently limited as a result of your work injury?	30.6% (1,710)	27.3% (1,603)	80.4%* (107)
Part of Body Injured⁷			
Back	22.1% (6,258)	21.6% (5,388)	25.3%* (870)
Eyes	9.4% (6,258)	10.8% (5,388)	0.6%* (870)
Fingers	9.4% (6,258)	10.1% (5,388)	5.4%* (870)
Hand	6.7% (6,258)	7.0% (5,388)	4.9%* (870)
Knee	9.8% (6,258)	8.2% (5,388)	19.5%* (870)
Nature of Injury^{6,7}			
Bruise	43.3% (2,263)	42.8% (2,152)	55.0%* (111)
Fracture or crushing	8.7% (2,263)	8.1% (2,152)	20.7%* (111)
Cuts or abrasions	26.9% (2,263)	27.3% (2,152)	19.8% (111)
Back or neck strain	27.8% (2,263)	27.0% (2,152)	42.3%* (111)
Other sprain or strain	33.3% (2,263)	32.5% (2,152)	50.0%* (111)
Other	15.4% (2,263)	15.2% (2,152)	19.8% (111)

Notes: ¹Average values for each group and, in parentheses, the total number of observations for each group. ²Statistically significant difference in means, at the .05 level (two-tailed test), is denoted by *. Closed vs. open claims comparisons, for all but "no. of claims" variables. Closed and open claims classifications are explained in the text. ³Current dollars. ⁴Percentage; other classification is journeyman. ⁵Derived from payments data; derivation is explained in the text. ⁶Survey data. ⁷Not all categories are listed.

Table 2.23: Open and Closed Demographics II^{1,2}

	All Claims	Closed Claims	Open Claims
	(1)	(2)	(3)
DISPUTES			
Dispute: compensability ²	4.8% (2,239)	4.6% (2,129)	10.0% (110)
Dispute: medical treatment (more or different) ³	9.1% (2,224)	8.4% (2,118)	22.6%* (106)
Dispute: weekly benefits (amount of) ³	3.3% (2,090)	2.9% (1,983)	11.2%* (107)
Dispute: readiness to return to work ³	2.9% (2,167)	2.4% (2,056)	11.7%* (111)
Dispute: agree not permanently disabled ³	85.0% (1,957)	86.4% (1,892)	44.6%* (65)
DISPUTE RESOLUTION			
Was someone who really helped you to resolve issues with insurer ³	62.0% (529)	62.4% (450)	59.5% (79)
Lawyer: spoke to ³	9.7% (2,257)	8.1% (2,147)	40.9%* (110)
Lawyer: hired ³	5.6% (2,256)	4.2% (2,147)	32.1%* (109)
Days: injury date to date closed	649 (1,000)	649 (1,000)	--- ---
COSTS (paid through)⁴			
Medical Treatments: Three months	\$585 (4,096)	\$484 (3,431)	\$1,105* (665)
Medical Treatments: Six months	\$1,032 (5,301)	\$800 (4,599)	\$2,557* (702)
Medical Treatments: Twelve months	\$1,526 (4,903)	\$1,103 (4,412)	\$5,324* (491)
Medical Treatments: Eighteen months	\$1,841 (3,814)	\$1,302 (3,519)	\$8,279* (295)
Indemnity Benefits: Three months	\$3,431 (1,860)	\$3,069 (1,191)	\$4,075* (669)
Indemnity Benefits: Six months	\$5,110 (1,911)	\$4,146 (1,270)	\$7,020* (641)
Twelve months: Twelve months	\$7,163 (1,638)	\$5,166 (1,185)	\$12,388* (453)
Eighteen months: Eighteen months	\$9,254 (1,258)	\$6,582 (991)	\$19,172* (267)
COSTS⁵			
Total Medical Payments	\$1,880 (6,187)	\$1,179 (5,349)	\$6,353* (838)
Total Indemnity Payments	\$10,345 (2,224)	\$7,228 (1,397)	\$15,611* (827)
Total Medical & Indemnity Payments	\$14,774 (2,158)	\$10,175 (1,363)	\$22,659* (795)
Notes: ¹ Average values for each group and, in parentheses, the total number of observations for each group. ² Statistically significant difference in means, at the .05 level (two-tailed test), is denoted by *. Closed vs. open claims comparisons. Closed and open claims classifications are explained in the text. ³ Survey data, percentage answering "yes." ⁴ In current dollars. Restricted to claims: a) with paid costs > \$0; b) in which the injury date to the check date in the payments file is less than or equal to 3 (6, 12, 18) months, etc., and c) in which there is at least 3 (6, 12, 18) months between the injury date and the date of the most recent check date in the entire data set. ⁵ In current dollars. Restricted to claims with total payments > \$0.			

Table 2.24: Open and Closed Demographics III^{1,2}

	All Claims	Closed Claims	Open Claims
	(1)	(2)	(3)
MEDICAL CARE			
Satisfied: first office visit ³	87.1% (1,316)	87.8% (1,214)	78.4%* (102)
Satisfied: last office visit ³	86.6% (1,024)	86.6% (923)	87.1% (101)
Satisfied: overall ³	84.1% (1,701)	84.3% (1,592)	80.7% (109)
Now fully recovered from work injury ⁴	55.6% (1,712)	59.1% (1,603)	3.7%* (109)
Health status, now: somewhat or much worse, compared to pre-injury health	20.5% (1,716)	18.1% (1,607)	56.0%* (109)
Satisfied: number of physicians could choose from ³	74.0% (1,639)	74.3% (1,530)	68.8% (109)
Treated by same person during first and last clinic/medical office visit ⁴	67.9% (1,024)	69.9% (922)	50.0%* (102)
Had more than 8 clinic or medical office visits	40.6% (1,295)	36.9% (1,192)	83.5%* (103)
CLAIMS ADMINISTRATION			
Satisfied: length of time to receive first workers' compensation benefits payment ³	66.0% (682)	65.6% (579)	68.0% (103)
Satisfied: how claim was handled ³	75.2% (2,180)	75.5% (2,071)	69.7% (109)
INFORMATION PROVISION			
People easily accessible to answer questions about claim ⁴	83.9% (833)	84.5% (730)	79.6% (103)
How find out where to go to get medical treatment?			
Knew what to do	72.2% (1,314)	72.6% (1,211)	67.0% (103)
Told what to do	16.3% (1,314)	15.9% (1,211)	21.4% (103)
Asked someone	11.6% (1,314)	11.6% (1,211)	11.7% (103)
How find out what needed to do to get workers' compensation benefits?			
Knew what to do	50.1% (873)	50.7% (769)	45.2% (104)
Automatically received (did not need to do anything)	10.2% (873)	9.9% (769)	12.5% (104)
Told what to do	15.8% (873)	15.7% (769)	16.4% (104)
Asked someone	23.9% (873)	23.7% (769)	26.0% (104)

Notes: ¹ Average values for each group and, in parentheses, the total number of observations for each group. Data source for entire table: injured worker survey. ² Statistically significant difference in means, at the .05 level (two-tailed test), is denoted by *. Closed vs. open claims comparisons. Closed and open claims classifications are explained in the text. ³ Percentage "very satisfied" or "satisfied." ⁴ Percentage answering "yes."

Table 2.25: Survey Nonrespondents^{1,2}

	Survey Non-respondents	Survey Respondents
Status		
Closed/open status ^{3,4}	81.0% (3,995)	95.1%* (2,263)
ADR/control group status ⁵	69.6% (3,236)	56.7%* (2,152)
Claimant Demographics		
Age at Injury	36.5 (3,230)	40.3* (2,151)
Years in Union	15.7 (3,150)	20.0* (2,145)
Hours Worked (year prior to injury)	1,560 (3,150)	1,571 (2,145)
Earnings (year prior to injury) ⁶	45,122 (3,150)	51,133* (2,145)
Job classification: apprentice ⁷	28.5% (3,236)	14.0%* (2,152)
Type of Claim⁸		
Indemnity	27.8% (3,236)	23.2%* (2,152)
Medical only	72.9% (3,206)	77.1%* (2,143)
Body Part Injured⁹		
Back	21.9% (3,236)	21.1% (2,152)
Eyes	11.0% (3,236)	10.5% (2,152)
Fingers	10.3% (3,236)	9.8% (2,152)
Hand	6.7% (3,236)	7.6% (2,152)
Knee	7.8% (3,236)	9.0% (2,152)
Notes: ¹ Closed cases, unless otherwise indicated. Average values for each group and, in parentheses, the total number of observations for each group. ² Statistically significant difference in means, at the .05 level (two-tailed test), is denoted by *. Survey respondent vs. non-survey respondent comparisons. ³ All claims (open and closed). ⁴ Percentage, closed claims. Closed and open claims classifications are explained in the text. ⁵ Percentage, ADR claims. ADR and control group classifications are explained in the text. ⁶ Current dollars. ⁷ Percentage; other classification is journeyman. ⁸ Derived from payments data; derivation is explained in the text. ⁹ Not all categories are listed.		

Table 2.26: Survey Nonrespondents II^{1,2}

	Survey Non-respondents	Survey Respondents
DISPUTE RESOLUTION		
Days: injury date to date closed	671	620*
Dcldays	(569)	(431)
COSTS (paid through)³		
Medical Treatments: Three months	\$472 (1,980)	\$501 (1,451)
Medical Treatments: Six months	\$757 (2,694)	\$860* (1,905)
Medical Treatments: Twelve months	\$1,056 (2,559)	\$1,168 (1,853)
Medical Treatments: Eighteen months	\$1,246 (1,960)	\$1,372 (1,559)
Indemnity Benefits: Three months	\$2,982 (784)	\$3,237* (407)
Indemnity Benefits: Six months	\$4,106 (824)	\$4,220 (446)
Twelve months: Twelve months	\$5,198 (754)	\$5,109 (431)
Eighteen months: Eighteen months	\$6,615 (607)	\$6,531 (384)
COSTS⁴		
Total Medical Payments	\$1,075 (3,206)	\$1,335* (2,143)
Total Indemnity Payments	\$7,005 (898)	\$7,628 (499)
Total Medical & Indemnity Payments	\$9,710 (871)	\$10,999 (492)
<p>Notes: ¹Closed claims. Average values for each group and, in parentheses, the total number of observations for each group. ²Statistically significant difference in means, at the .05 level (two-tailed test), is denoted by *. Survey respondent vs. non-survey respondent comparisons. ³In current dollars. Restricted to claims: a) with paid costs > \$0; b) in which the injury date to the check date in the payments file is less than or equal to 3 (6,12, 18) months, etc., and c) in which there is at least 3 (6, 12, 18) months between the injury date and the date of the most recent check date in the entire data set. ⁴In current dollars. Restricted to claims with total payments > \$0.</p>		

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APPENDIX A1

Chapter 491

CHAPTER 491
S. 5196-C
COLLECTIVE BARGAINING—ALTERNATIVE DISPUTE RESOLUTION

Approved and effective Aug. 2, 1995

AN ACT to amend the workers' compensation law, in relation to permitting the establishment of an alternative dispute resolution system to resolve workers' compensation claims through collective bargaining agreements and providing for the repeal of certain provisions upon expiration thereof

The People of the State of New York, represented in the Senate and Assembly, do enact as follows:

Sec. 1

s 1. Section 25 of the workers' compensation law is amended by adding a new subdivision 2-c to read as follows:

2-c. Collective bargaining; alternative dispute resolution.

(a) For the purposes of employments classified under sections two hundred twenty, two hundred forty and two hundred forty-one of the labor law, an employer and a recognized or certified exclusive bargaining representative of its employees may include within their collective bargaining agreement provisions to establish an alternative dispute resolution system to resolve claims arising under this chapter.

Any collective bargaining agreement or agreement entered into by the employee and an employer which purports to preempt any provision of this chapter or in any way diminishes or changes rights and benefits provided under this chapter, except as expressly provided herein, shall be null, void and unenforceable.

(b) Except as specifically provided in this subdivision, nothing in this section or any collective bargaining agreement providing for an alternative dispute resolution system for the resolution of claims arising under this chapter shall preempt any provision of this chapter or in any way diminish or change any benefits to which an employee, or his or her dependents, or survivors may be entitled pursuant to the provisions of this chapter.

(c) The collective bargaining agreement may establish the following obligations and procedures:

- (i) an alternative dispute resolution process to resolve claims arising under this chapter, which may include but is not limited to mediation or arbitration;
- (ii) the use of an agreed managed care organization as defined in section one hundred twenty-six of this chapter or a list of authorized providers for medical treatment, which may be the exclusive source of all medical and related treatment provided under this chapter;

- (iii) the use of an agreed list of authorized providers for the purpose of providing medical opinions and testimony, which may be the exclusive source of all such medical opinions and testimony under this chapter;
- (iv) benefits for injured workers, their dependents or their survivors supplemental to those provided under this chapter;
- (v) a light duty, modified job, or return to work program;
- (vi) a vocational rehabilitation or retraining program; and
- (vii) worker injury and illness prevention programs and procedures.

(d) The determination of an arbitrator or mediator pursuant to an alternative dispute resolution procedure pertaining to the resolution of claims arising under this chapter shall not be reviewable by the workers' compensation board, and the venue for any appeal shall be to a court of competent jurisdiction in accordance with section twenty-three of this chapter.

(e) (i) Determinations rendered as a result of an alternative dispute resolution procedure shall remain in force during a period in which the employer and a recognized or certified exclusive bargaining representative are renegotiating a collective bargaining agreement.

(ii) Upon the expiration of a collective bargaining agreement which contains a provision for an alternative dispute resolution procedure for workers' compensation claims, the resolution of claims relating to injuries sustained as a result of a work-related accident or occupational disease may, if the collective bargaining agreement so provides, be subject to the terms and conditions set forth in the expired collective bargaining agreement until the employer and a recognized or certified exclusive bargaining representative negotiate a new collective bargaining agreement.

(iii) Upon the termination of a collective bargaining agreement which is not subject to renegotiation, the employer and its employees shall become fully subject to the provisions of this chapter to the same extent as they were prior to the implementation of the collective bargaining agreement provided, however, that when a claim has been adjudicated under the alternative dispute resolution procedure, the claimant or employer to such claim or matter shall be estopped from raising identical issues before the board.

(f) Commencing January first, nineteen hundred ninety-six, and annually thereafter, a copy of the collective bargaining agreement shall be filed with the chair. The employer shall report the number of employees subject to the collective bargaining agreement. The chair or the chair's designee shall review the collective bargaining agreements for compliance with the provisions of this section, shall notify the parties to the agreement if the agreement is not in compliance, and shall recommend appropriate action to bring the agreement into compliance.

Sec. 2

s 2. On or before April 1, 2000, and in coordination with a report required to be prepared in accordance with subdivision 22 of section 126 of the workers' compensation law, the New York state school of industrial and labor relations at Cornell University shall compile an issue a separate report which shall evaluation compliance with state and federal due process requirements provided in the collective bargaining agreements

authorized by this act, and the use, costs and merits of the alternative dispute resolution systems established pursuant to this act. Such report shall be transmitted to the governor, the chair of the workers' compensation board, the speaker of the assembly the temporary president of the senate and the minority leaders of the senate and the assembly.

Sec. 3

s 3. The workers compensation board is hereby authorized to promulgate and issue necessary rules and regulations regarding employer participation in alternative dispute resolution as authorized by sections one and two of this act.

Sec. 4

s 4. This act shall take effect immediately, provided, however, that the provisions of subdivision 2.c of section 25 of the workers' compensation law, as added by section one of this act, shall expire and be deemed repealed on and after December 31, 2000 (December 31, 2005).

APPENDIX A2

New York Rules and Regulations

12 NYCRR PART 314.1

NEW YORK STATE RULES AND REGULATIONS

*THIS DOCUMENT REFLECTS CHANGES RECEIVED THROUGH
JANUARY 19, 2001 *

TITLE 12. DEPARTMENT OF LABOR
CHAPTER V. WORKERS' COMPENSATION
SUBCHAPTER A. THE INDUSTRIAL CODE GENERAL PROVISIONS
PART 314. ALTERNATIVE DISPUTE RESOLUTION OF CLAIMS

12 NYCRR PART 314.1 (2001)

§ 314.1 Applicability of board rules and regulations

All provisions of the workers' compensation law as well as the rules and regulations of the workers' compensation board with respect to the rights, duties and obligations of employers, employees, unions, health care providers and insurance carriers are expressly made applicable to this pilot program, except to the extent that such rules and regulations are inconsistent with Section 25(2-c) of the Workers' Compensation Law or rules and regulations promulgated by the board pursuant to Section 25(2-c).

Section statutory authority: Workers' Compensation Law, § 25

Statutory Authority: Workers' Compensation Law, §§ 117(1), 142, 25(2-c)

§ 314.2 Review process for collective bargaining agreements

(a) When an employer and union enter into a collective bargaining agreement that establishes an alternative dispute resolution system for claims arising under the workers' compensation law as authorized by Section 25 (2-c), the parties shall submit the following to the Office of the Chair at least 30 days prior to the proposed commencement date of such alternative system:

- (1) a copy of the collective bargaining agreement;
- (2) a statement of the approximate number of employees to be covered thereby;
- (3) an affirmation that the business activity covered by the collective bargaining agreement is classified under one or more of sections two hundred twenty, two hundred forty, and two hundred forty-one of the Labor Law;
- 4) evidence that the particular union is a recognized or certified exclusive bargaining representative of the covered employees;

(5) the name, address, and telephone number of a contact person of the employer and the union.

Within 30 days after receiving the proposed agreement, the chair or the chair's designee shall review the agreement for compliance with Section 25(2-c) and these rules and shall notify the parties either that the agreement is not in compliance and recommends appropriate action to bring the agreement into compliance or that the agreement is in compliance.

(b) Subsequent to its original submission, employers must submit to the Office of the Chair a copy of their collective bargaining agreement annually and whenever it is renegotiated.

(c) Employers that contract with an insurance carrier for workers' compensation coverage shall submit a statement signed by their insurance carrier expressing the carrier's consent to the workers' compensation claims provision contained within the collective bargaining agreement. Employers that do not contract with an insurance carrier and that seek the chair's review of a program authorized by Section 25(2-c) shall submit proof of self-insurance on board form SI-12.

(d) The alternative dispute resolution process set forth in collective bargaining agreements for workers' compensation claims shall adhere to the following procedural requirements:

(1) adequate and timely notice of all proceedings must be given to the necessary parties;

(2) the time, place and manner established for mediation and arbitration must be fair and practical for all parties;

(3) the alternative dispute resolution process shall provide a mechanism for the resolution of contested issues, which may include but is not limited to mediation or arbitration;

(4) all mediators and arbitrators must be agreed upon by the employer and the union;

(5) a report of injury shall be submitted to the board on an ADR-1 form by the party designated in the agreement within 30 days after the accident occurs. The board will assign a file number to the claim;

(6) reasonable time periods must be established for the various procedural stages provided in the agreement;

(7) appropriate records shall be maintained for all claims;

(8) at all times, parties are obligated to make a good faith attempt to resolve disputes;

(9) settlement of disputes may occur at any time during process;

(10) all costs associated with the administration of the alternative dispute resolution process, including, but not limited to the services of the arbitrator, shall be the responsibility of the employer.

Section statutory authority: Labor Law, § 220, § 240, § 241; Workers' Compensation Law, § 25

Statutory Authority: Workers' Compensation Law, §§ 117(1), 142, 25(2-c)

HISTORY:

Added 314.2 on 8/14/96.

§ 314.3 Alternative dispute resolution process

(a) Claims not resolved in any prior procedural stages provided in the agreement may be referred to arbitration, which shall be conducted pursuant to the rules established by the agreement and in which the parties shall have the right to be represented by legal counsel. A written record of the arbitration proceeding shall be kept. No offers or recommendations made during prior procedural stages shall be admissible in the arbitration proceeding.

(b) All settlements and decisions resulting from proceedings authorized by Section 25(2-c) shall be filed with the workers' compensation board and shall be final and binding upon the parties. Any appeal must be made within 30 days after notice of the filing of an arbitrator's award or decision. All such appeals shall be made to the appellate division of the Supreme Court, third department as designated in Section 23(2) of the workers' compensation law. There shall be no intermediate review by the workers' compensation board.

Section statutory authority: Workers' Compensation Law, § 23, and § 25

Statutory Authority: Workers' Compensation Law, §§ 117(1), 142, 25(2-c)

HISTORY:

Added 314.3 on 8/14/96.

§ 314.4 Utilization of managed care organizations or authorized provider listing

As expressed in Section 25(2-c)(c)(ii), the parties to a collective bargaining agreement may designate a managed care organization or a list of authorized providers for exclusive medical treatment of covered employees. For purposes of Section 25 (2-c), "authorized providers" are those medical professionals who have been certified by the chair in accordance with Section 13-b and who have been agreed upon by the employer and the union. Review by the chair of collective bargaining agreements, which designate managed care organizations or authorized provider listings for the treatment of covered employees shall be conducted in the manner set forth in Section 314.2 (a), (b) and (c).

Section statutory authority: Workers' Compensation Law, § 13-13, and § 25

Statutory Authority: Workers' Compensation Law, §§ 117(1), 142, 25(2-c)

HISTORY:

Added 314.4 on 8/14/96.

§ 314.5 Utilization of authorized provider listing for provision of medical opinions and testimony

Authorized providers under Section 25(2-c)(c)(iii) are those agreed upon by the employer and the union as the exclusive source of all medical opinions and testimony. Review by the chair of collective bargaining agreements which provide for the utilization of authorized provider listings for medical opinions and testimony shall be conducted in the manner set forth in 314.2 (a), (b) and (c).

Section statutory authority: Workers' Compensation Law, § 25

Statutory Authority: Workers' Compensation Law, §§ 117(1), 142, 25(2-c)

HISTORY:

Added 314.5 on 8/14/96.

§ 314.6 Collective bargaining provisions related to supplemental benefits, light duty, modified job, return to work programs, vocational rehabilitation or retraining and worker injury and illness prevention program

Review by the chair of collective bargaining agreements, which provide for supplemental benefits, light duty, modified job, return to work programs, vocational rehabilitation or retraining and worker injury and illness prevention programs as authorized by Section 25(2-c) (c)(iv), (v), (vi) and (vii) shall be conducted in the manner set forth in 314.2 (a), (b) and (c) of this Part.

Section statutory authority: Workers' Compensation Law, § 25

Statutory Authority: Workers' Compensation Law, §§ 117(1), 142, 25(2-c)

HISTORY:

Added 314.6 on 8/14/96.

§ 314.7 Reporting requirements

(a) Within 30 days of the final disposition or settlement of a workers' compensation claim under the alternative dispute resolution system, the employer shall be responsible for filing a completed ADR-2 form with the workers' compensation board.

(b) At least annually and as otherwise required by the chair, each employer shall submit a report to the chair containing the following information:

- (1) The number of employees within the alternative dispute resolution program;
- (2) The number of claims filed;
- (3) The total amount of lost wage benefits paid within the program;
- (4) The total amount of medical expenditures paid within the program;
- (5) The number of decisions rendered, settlements made, and appeals taken.

(c) In addition to the reporting requirements outlined above, all parties must promptly comply with the data collection requests of the New York State School of Industrial and Labor Relations, which is statutorily mandated to evaluate the alternative dispute resolution pilot program.

Statutory Authority: Workers' Compensation Law, §§ 117(1), 142, 25(2-c)

HISTORY:

Added 314.7 on 8/14/96.

APPENDIX B

Summary of Workers' Compensation Collective Bargaining Dispute Resolution

Appendix B

Summary of Workers' Compensation Collective Bargaining Alternative Dispute Resolution Statutes and Regulations

State	Eligible Participants	Reporting Requirements/Evaluation	Additional Statutory Provisions
<p>California</p> <p>§ 3201.5;</p> <p>CA Code of Regulations, Title 8, Division 1, Chapter 4.5, Subchapter 1.8, "Collective Bargaining Agreements Under Labor Code Section 3201.5," § 10200-10204;</p> <p>Title 8, Division 1, Chapter 4.5, Subchapter 2, "Workers' Compensation Appeals Board - Rules and Practice Procedure," Article 17, "Reconsideration," § 10865</p>	<p>A private employer or groups of employers engaged in construction, construction maintenance, or activities limited to rock, sand, gravel, cement and asphalt operations, heavy-duty mechanics, surveying, and construction inspection and a union that is the recognized or certified exclusive bargaining representative.</p> <p>Employers or employer groups must also meet the following criteria:</p> <ol style="list-style-type: none"> 1. an employer developing or projecting an annual workers' compensation premium, in CA, of \$250,000 or more, or any employer that paid an annual workers' compensation insurance premium, in CA, of \$250,000 in at least one of the previous three years; 2. groups of employers engaged in a workers' compensation safety group, which develops or projects annual workers' compensation insurance premiums of \$2,000,000 or more; 3. employers or groups of employers that are self-insured and that have projected annual workers' compensation costs that meet the requirements of (1) or (2) above; 4. employers covered by an owner or general contractor provided wrap-up insurance policy applicable to a single construction site that develops workers' compensation insurance premiums of \$2,000,000 or more with respect to those employees covered by that wrap-up insurance policy. 	<p>Information that employers or employer groups must annually report to the Department of Industrial Relations includes:</p> <ol style="list-style-type: none"> 1. hours worked by covered employees (reported by trade or craft); 2. payroll (reported by class code); 3. medical-only claims (number of claims filed, total amount of paid costs and total amount of incurred costs); 4. indemnity claims (number of claims filed; total amount of paid costs and total amount of incurred costs in each of the following categories: temporary disability, permanent disability, life pensions, death benefits, vocational rehabilitation, medical services, and medical-legal expenses); 5. number of claims filed that were resolved (ultimate liability has been determined, even though payments may be made beyond the reporting period) and the number that remained unresolved on December 31 of the previous calendar year; 6. of the claims that were filed and resolved: (a) the number that were resolved with a denial of compensability, and (b) the number that were resolved before mediation; at or after mediation, at or after arbitration, at or after the Appeals Board, and at or after the Court of Appeals; 7. the number of injuries and illnesses reported on OSHA Form 200 for covered employees. The same number multiplied by 200,000 and divided by hours worked; 8. the number of covered employees who participated in vocational rehabilitation; and 9. the number of employees who participated in a light-duty program (if there is a light-duty program). <p>The Administrative Director of the Division of Workers' Compensation, Department of Industrial Relations must prepare an annual report using aggregate data that include the following:</p> <ol style="list-style-type: none"> 1) person hours and payroll covered by agreements filed; 2) the number of claims filed; 3) the average cost per claim (reported by cost components whenever practicable); 4) the number of litigated claims, including the number of claims submitted to mediation, the Appeals Board, or the Court of Appeals; 5) the number of contested claims resolved prior to arbitration; 6) the projected incurred costs and actual costs of claims; and 7) safety history, and 8) the number of workers participating in vocational rehabilitation programs and in light-duty programs. 	<p>A collective bargaining agreement may establish any of the following:</p> <ol style="list-style-type: none"> 1. an alternative dispute resolution system governing disputes between employees and employers or their insurers that supplements or replaces all or part of those dispute resolution processes contained in this division, including, but not limited to, mediation and arbitration; 2. the use of an agreed list of providers of medical treatment that may be the exclusive source of all medical treatment; 3. the use of an agreed, limited list of qualified medical evaluators and agreed medical evaluators that may be the exclusive source of qualified medical evaluators and agreed medical evaluators; 4. joint labor-management safety committees; 5. a light-duty, modified job or return-to-work program; and 6. a vocational rehabilitation or retraining program utilizing an agreed list of providers of rehabilitation services that may be the exclusive source of providers of rehabilitation services. <p>Nothing in this section shall allow a collective bargaining agreement that diminishes the entitlement of an employee to compensation payments for total or partial disability, temporary disability, vocational rehabilitation, or medical treatment fully paid by the employer as otherwise provided in this division. The portion of any agreement that violates this subdivision shall be declared null and void.</p>

Appendix B
Summary of Workers' Compensation Collective Bargaining Alternative Dispute Resolution Statutes and Regulations

State	Eligible Participants	Reporting Requirements/Evaluation	Additional Statutory Provisions
<p>Florida</p> <p>Fla. Stat. § 440.211</p>			<p>A provision that is mutually agreed upon in any collective bargaining agreement filed with the Division of Workers' Compensation between an individually self-insured employer or other employer upon consent of the employer's carrier and a recognized or certified exclusive bargaining representative establishing any of the following shall be valid and binding:</p> <ol style="list-style-type: none"> 1. an alternative dispute resolution system to supplement, modify, or replace the provisions of this chapter, which may include, but is not limited to, conciliation, mediation, and arbitration. Arbitration held pursuant to this section shall be binding on the parties; 2. the use of an agreed-upon list of certified health care providers of medical treatment which may be the exclusive source of all medical treatment; 3. the use of a limited list of physicians to conduct independent medical examinations which the parties may agree shall be the exclusive source of independent medical examiners; 4. a light-duty, modified-job, or return-to-work program; and 5. a vocational rehabilitation or retraining program. <p>Nothing in this section shall allow any agreement that diminishes an employee's entitlement to benefits as otherwise set forth in this chapter. Any such agreement in violation of this provision shall be null and void.</p>

Summary of Workers' Compensation Collective Bargaining Alternative Dispute Resolution Statutes and Regulations

State	Eligible Participants	Reporting Requirements/Evaluation	Additional Statutory Provisions
<p>Kentucky</p> <p>KRS §342.277;</p> <p>803 KAR 25:150, "Workers' Compensation Alternative Dispute Resolution Systems"</p>		<p>Annually, each alternative dispute resolution (ADR) plan administrator shall submit a report to the Commissioner of the Department of Workers' Claims (Commissioner) that contains the following information:</p> <ol style="list-style-type: none"> 1. the number of employees within the ADR program; 2. the number of occurrences of work-related injuries or diseases; 3. the breakdown within the ADR program of injuries and diseases treated; 4. the total amount of disability benefits paid within the ADR program; 5. the total medical treatment cost paid within the ADR program; 6. the number of claims filed within the ADR program; and 7. the disposition of all claims. <p>Claims for benefits and settlement agreements shall be filed with the ADR plan administrator and forwarded to the Commissioner. Upon assignment of claims, unless settled, mediators and arbitrators shall render final orders containing essential findings of fact, rulings of law and referring to other matters as pertinent to the questions at issue. The ADR plan administrator shall maintain a record of the proceedings.</p> <p><u>Additional Statutory Provisions (continued)*</u></p> <p>"ADR plan administrator" means the person or entity designated by an employer and the recognized exclusive bargaining representative as the day-to-day administrator of the program for resolution of disputes as to entitlement to workers' compensation benefits and the amount, manner of payment, and duration of benefits for work-related injuries and occupational diseases.</p> <p>No agreement shall be recognized as valid and binding that diminishes the rights of any of the parties under this chapter. Also, no agreement shall be valid and binding unless it is agreed to by the employer's insurance carrier.</p> <p>A party to an ADR proceeding may appeal a final order to the Workers' Compensation Board in the same manner and in the same time frame as prescribed for an appeal from a decision of an administrative law judge. The final order of the mediator or arbitrator shall be affirmed upon review unless the Workers' Compensation Board determines:</p> <p>1) the mediator or arbitrator (MoA) exceeded the authority vested by applicable law; 2) the final order is incomplete, ambiguous or so contradictory as to make implementation impracticable; 3) the MoA was patently biased or partial; 4) the MoA refused to admit reliable material or probative, but not redundant, evidence, which is accepted would tend to change the outcome of the proceeding; or 5) the final order of the MoA was procured by fraud.</p>	<p>A collective bargaining agreement between an employer and a recognized or certified exclusive bargaining representative that contains the following provisions may be recognized as valid and binding:</p> <ol style="list-style-type: none"> 1. an alternative dispute resolution system to supplement, modify, or replace the provisions of this chapter that relate to the resolution of disputes, and which may include but is not limited to mediation and arbitration, the results of which may be binding upon the parties; 2. the use of an agreed list of providers of medical treatment, which may be the exclusive source of all medical and related treatment; 3. the use of a limited list of physicians to conduct independent medical examinations; 4. a light-duty, modified job, or return-to-work program; 5. a vocational rehabilitation or retraining program; and 6. a twenty-four hour health care coverage plan for medical benefits. <p>The application for certification of the ADR program shall demonstrate that:</p> <ol style="list-style-type: none"> 1. the employer and the recognized or certified exclusive bargaining representative have entered into a binding collective bargaining agreement adopting the ADR plan for a period of no less than two years and appointing the ADR plan administrator for no less than a period of one year; 2. contractual agreements have been reached with the employer's workers' compensation carrier, group self-insurance fund, and any excess carriers relating to the ADR plan; 3. procedures have been established by which claims for benefits by employees will be lodged, administered and decided while affording procedural due process; 4. the plan has designated forms upon which claims for benefits shall be made; 5. the system and means by which the employer's obligation to furnish medical services and vocational rehabilitation and retraining benefits shall be fulfilled and providers selected; 6. the method by which mediators or arbitrators are to be selected; 7. the decision of a mediator or arbitrator upon a referred matter shall have the same force and effect as that of an administrative law judge; and 8. income benefits for disability will be no less than those provided by KRS Chapter 342.*

Appendix B
Summary of Workers' Compensation Collective Bargaining Alternative Dispute Resolution Statutes and Regulations

State	Eligible Participants	Reporting Requirements/Evaluation	Additional Statutory Provisions
<p style="text-align: center;">Maine</p> <p style="text-align: center;">39-A M.R.S. § 110</p>			<p>Permitted options. Subject to the limitation [indicated below], the Workers' Compensation Board shall recognize as valid and binding a provision in a collective bargaining agreement between an employer and a recognized bargaining agent establishing any of the following:</p> <ol style="list-style-type: none"> 1. alternative dispute resolution systems that may include, but are not limited to, mediation or binding arbitration or the use of mediation and binding arbitration; 2. preferred provider systems for the delivery of health care services or treatment; 3. the use of a designated or limited list of independent medical examiners; 4. light-duty, modified job or return-to-work programs; 5. vocational rehabilitation or retraining programs; or 6. a 24-hour coverage program. <p>Limitation. An agreement may not diminish an employee's entitlement to benefits guaranteed by the Workers' Compensation Act. Any agreement in violation of this limitation is null and void.</p>

Summary of Workers' Compensation Collective Bargaining Alternative Dispute Resolution Statutes and Regulations

State	Eligible Participants	Reporting Requirements/Evaluation	Additional Statutory Provisions
<p>Maryland</p> <p>Md. Labor and Employment Code Ann. § 9-104 (d)</p>	<p>An employer and a recognized or certified exclusive bargaining representative of employees under the purview of the Building and Construction Trade Council.</p>	<p><u>Additional Statutory Provisions (continued)*</u></p> <p>An agreement shall provide for an appeal mechanism for a covered employee who wishes to use a health care provider who is not on the agreed list of health care providers.</p> <p>Nothing in this subsection requires an insurer to underwrite a program established under this subsection.</p>	<p>An employer and a recognized or certified exclusive bargaining representative may agree to:</p> <ol style="list-style-type: none"> 1. an alternative dispute resolution system that modifies, supplements, or replaces all or part of the dispute prevention and dispute resolution process contained in this title, and that may include but is not limited to mediation and binding arbitration; 2. the use of an agreed list of health care providers of medical treatment and expertise, which may be the source of all medical and related examinations, treatment, and testimony provided under this title 3. the use of an agreed list of health care providers to conduct independent medical exams; 4. a light duty, modified job, or return to work program; and 5. a vocational rehabilitation or retraining program. <p>All settlements and resolutions of claims under an alternative dispute resolution system shall be submitted to the Workers' Compensation Commission (Commission) for approval. All arbitration decisions under an alternative dispute resolution system shall be reviewable in the same manner and under the same procedures as a decision of a commissioner.</p> <p>Once an agreement has been determined to be in compliance with this subsection and this title by the Commission it is binding on the employer and the bargaining unit.</p> <p>An agreement is void if it:</p> <ol style="list-style-type: none"> 1. exempts a covered employee or an employer from a duty of the covered employee or employer under this title; 2. waives or limits a right or benefit of a covered employee or employer under this title, except as otherwise set forth in this subsection; 3. affects the imposition of an assessment on settlements and resolution of claims; or 4. affects claims made under Subtitle 8 or Subtitle 10 of this title or claims made under Title 10, Subtitle 2 of this article. <p>An injured employee whose injury or treatment is related to a medical condition for which the employee is being or has been treated may continue to seek treatment from the health care provider who is treating or has treated the condition.*</p>

Appendix B
Summary of Workers' Compensation Collective Bargaining Alternative Dispute Resolution Statutes and Regulations

State	Eligible Participants	Reporting Requirements/Evaluation	Additional Statutory Provisions
<p>Massachusetts Mass. Ann. Laws Ch. 152, § 10C</p>			<p>Any employer, and the recognized or certified and exclusive representative of its employees may agree by collective bargaining to establish certain binding obligations and procedures relating to workers' compensation, provided, however, that the scope of the agreement shall be limited to:</p> <ol style="list-style-type: none"> 1. benefits supplemental to those provided by statute; 2. an alternative dispute resolution system which may include but is not limited to arbitration, mediation and conciliation; 3. the use of a limited list of providers for medical treatment; 4. the use of a limited list of impartial physicians; 5. the creation of a light duty, modified job or return-to-work program; 6. the adoption of a twenty-four hour health care coverage plan; 7. the establishment of safety committees and safety procedures; and 8. the establishment of vocational rehabilitation or retraining programs.

Summary of Workers' Compensation Collective Bargaining Alternative Dispute Resolution Statutes and Regulations

State	Eligible Participants	Reporting Requirements/Evaluation	Additional Statutory Provisions
<p>Minnesota</p> <p>Minn. Stat. § 176.1812 ;</p> <p>Dept. of Labor and Industry, Administrative Rules Minn. R. § 5229.0010 - § 5229.0060</p>	<p>A qualified employer or qualified group of employers engaged in construction, construction maintenance, and related activities and the certified and exclusive representative of its employees.</p> <p>"Qualified employer" means any self-insured employer, any employer, though itself or any affiliate, who is responsible for the first \$100,000 or more of any claim, or a private employer developing or projecting an annual workers' compensation premium, in Minnesota, of \$250,000 or more.</p> <p>A "qualified group of employers" means a group of private employers engaged in workers' compensation group self-insurance, or a group of private employers who purchase workers' compensation insurance as a group, which develops or projects annual workers' compensation insurance premiums of \$2,000,000 or more.*</p>	<p>Every employer or group of employers participating in a collectively bargained agreement shall annually file a report with the Commissioner of the Department of Labor and Industry (Commissioner) that contains the following data elements:</p> <ol style="list-style-type: none"> 1. the dates during which the collectively bargained agreement was in effect; 2. the total number of person hours covered by the agreement; 3. payroll of covered employees, separated by insurance class code if the employer is not self-insured; 4. the number of claims filed during the year separated into denied claims, medical only claims, and indemnity claims; 5. the total paid and reserved losses or estimated incurred costs of the end of the calendar year, separated into indemnity and medical benefits and other loss adjustment costs, for all claims receiving benefits during the reporting year. Separate totals shall be reported for new claims and for claims incurred during previous years which received benefits during the reporting year. The relevant number of claims for each benefit total shall also be reported; 6. the number of contested claims submitted to, and the number of contested claims resolved prior to, mediation, arbitration, the workers' compensation court of appeals, the office of administrative hearings, the district court, the Minnesota Court of Appeals or the Minnesota Supreme Court; 7. the number of employees in vocational rehabilitation plans during the year; and; 8. the number of employees in light duty programs during the year. <p><u>Eligible Participants (continued)*</u> The Commissioner shall establish a pilot program ending on December 31, 2001. The pilot program is not limited to employers engaged in construction, construction maintenance, and related activities.</p> <p>In selecting parties requesting recognition, the Commissioner shall consider the following limitations: 1) a group of employers may not participate in the pilot program; 2) the pilot program is limited to the first ten private employers and the first ten public employers that obtain a letter of recognition from the Commissioner; and 3) the dollar insurance premiums contained in §176.1812 do not apply to parties requesting recognition under the pilot program.</p>	<p>The collective bargaining agreement must be limited to, but need not include, all of the following:</p> <ol style="list-style-type: none"> 1. an alternative dispute resolution system to supplement, modify, or replace the procedural or dispute resolution provisions of this chapter. The system may include mediation, arbitration, or other dispute resolution proceedings, the results of which may be final and binding upon the parties; 2. an agreed list of providers of medical treatment that may be the exclusive source of all medical and related treatment; 3. the use of a limited list of impartial physicians to conduct independent medical examinations; 4. the creation of a light duty, modified job, or return-to-work program; 5. the use of a limited list of individuals and companies for the establishment of vocational rehabilitation or retraining programs; 6. the establishment of safety committees and safety procedures; or 7. the adoption of a 24-hour health care coverage plan if a 24-hour plan pilot project is authorized by law. <p>A system of arbitration shall provide that the decision of the arbiter is subject to review either by the workers' compensation court of appeals in the same manner as an award or order of a compensation judge or, in lieu of review by the workers' compensation court of appeals, by the office of administrative hearings, by the district court, by the Minnesota Court of Appeals, or by the Supreme Court in the same manner as the workers' compensation court of appeals and may provide that any arbiter's award disapproved by a court be referred back to the arbiter for reconsideration and possible modification.</p> <p>Nothing in this section shall allow any agreement that diminishes an employee's entitlement to benefits as otherwise set forth in this chapter.</p> <p>Within 21 days after the date that the Commissioner has determined that a request for recognition is complete, the Commissioner shall either issue a letter of recognition or issue a letter of the Commissioner's decision refusing recognition.</p>

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Summary of Workers' Compensation Collective Bargaining Alternative Dispute Resolution Statutes and Regulations

State	Eligible Participants	Reporting Requirements/Evaluation	Additional Statutory Provisions
<p>New York</p> <p>Chapter 491 of the Laws of 1995; Chapter 464 of the Laws of 1999</p> <p>Workers' Compensation Board, 12 NYCRR § 314, "Alternative Dispute Resolution of Claims"</p>	<p>An employer and a recognized or certified exclusive bargaining representative of its employees. The business activity must be classified under one or more of sections 220, 240, and 241 [construction, excavation, and demotion work] of the Labor Law.</p> <p>Reporting Requirements/Evaluation (continued) *</p> <p>At least annually and as otherwise required by the Chair of the WCB, each employer shall submit a report to the Chair containing the following information:</p> <ol style="list-style-type: none"> 1. the number of employees within the ADR program; 2. the number of claims filed; 3. the total amount of lost wage benefits paid within the program; 4. the total amount of medical expenditures paid within the program; and 5. the number of decisions rendered, settlements made, and appeals taken. <p>On or before April 1, 2000, the New York State School of Industrial and Labor Relations at Cornell University shall compile and issue a separate report which shall evaluate compliance with state and federal due process requirements provided in the collective bargaining agreements authorized by this act, and the use, costs and merits of the ADR system established pursuant to this act.</p>	<p>Within 30 days of the final disposition or settlement of a workers' compensation claim under the alternative dispute resolution (ADR) system, the employer shall be responsible for filing a completed ADR-2 form with the Workers' Compensation Board (WCB).*</p> <p><u>Additional Statutory Provisions</u> (continued) **</p> <p>Within 30 days after receiving the proposed agreement, the Office of the Chair of the WCB or the Chair's designee shall notify the parties either that the agreement is not in compliance and recommend appropriate action to bring the agreement into compliance or that the agreement is in compliance.</p> <p>Employers that contract with an insurance carrier for workers' compensation coverage shall submit a statement signed by their insurance carrier expressing the carrier's consent to the workers' compensation claims provision contained within the collective bargaining agreement.</p> <p>The ADR process shall adhere to the following procedural requirements:</p> <ol style="list-style-type: none"> 1. adequate and timely notice of all proceedings must be given to the necessary parties; 2. the time, place and manner established for mediation and arbitration must be fair and practical for all parties; 3. the ADR process shall provide a mechanism for the resolution of contested issues, which may include but is not limited to mediation or arbitration; 4. all mediators and arbitrators must be agreed upon by the employer and the union; 5. a report of injury shall be submitted to the WCB on an ADR-1 form by the party designated in the agreement within 30 days after the accident occurs. The WCB will assign a file number to the claim; 6. reasonable time periods must be established for the various procedural stages provided in the agreement; 7. appropriate records shall be maintained for all claims; 8. at all times, parties are obligated to make a good faith attempt to resolve disputes; 9. settlement of disputes may occur at any time during the process; and 10. all costs associated with the administration of the ADR process, including, but not limited to the services of the arbitrator, shall be the responsibility of the employer. <p>The workers' compensation collective bargaining ADR legislation shall expire and be deemed repealed on and after December 31, 2005.</p>	<p>The collective bargaining agreement may establish the following obligations and procedures:</p> <ol style="list-style-type: none"> 1. an ADR process to resolve claims arising under this chapter, which may include but is not limited to mediation or arbitration; 2. the use of an agreed managed care organization or a list of authorized providers for medical treatment, which may be the exclusive source of all medical and related treatment provided under this chapter; 3. the use of an agreed list of authorized providers for the purpose of providing medical opinions and testimony, which may be the exclusive source of all such medical opinions and testimony; 4. supplemental benefits for injured workers, their dependents or their survivors; 5. a light duty, modified job, or return-to-work program; 6. a vocational rehabilitation or retraining program; and 7. worker injury and illness prevention programs and procedures. <p>"Authorized providers" for medical treatment are those medical professionals who have been certified by the Chair and who have been agreed upon by the employer and the union.</p> <p>"Authorized providers" for medical opinions and testimony are those agreed upon the employer and the union as the exclusive source of all medical opinions and testimony.</p> <p>Claims not resolved in any prior procedural stages provided in the agreement may be referred to arbitration which shall be conducted pursuant to the rules established by the agreement and in which the parties shall have the right to be represented by legal counsel. A written record of the arbitration proceeding shall be kept. No offers or recommendations made during prior procedural stages shall be admissible in the arbitration proceeding.</p> <p>All ADR settlements and decisions shall be filed with the WCB and shall be final and binding upon the parties. Any appeal must be made within 30 days after notice of the filing of an arbitrator's award or decision. All such appeals shall be made to the appellate division of the supreme court, third department. There shall be no intermediate review by the WCB. **</p>

Summary of Workers' Compensation Collective Bargaining Alternative Dispute Resolution Statutes and Regulations

State	Eligible Participants	Reporting Requirements/Evaluation	Additional Statutory Provisions
<p>Oregon</p> <p>ORS §656.170, §656.172, §656.174; Oregon Laws 1999, Ch. 841, § 5C; OAR 436-140</p>	<p>A private employer or groups of employers engaged in construction, construction maintenance or activities limited to rock, sand, gravel, cement and asphalt operations, heavy-duty mechanics, surveying or construction inspection, and a union that is recognized or certified exclusive bargaining representative. *</p>	<p>All employers, groups of employers and unions participating in an alternative dispute resolution (ADR) system shall report the status and progress of the system to the Seventy-first Legislative Assembly no later than January 31, 2001.</p> <p><u>Eligible Participants</u> (continued) * Applies only to:</p> <ol style="list-style-type: none"> 1. an employer incurring or projecting an annual workers' compensation insurance premium in OR of at least \$250,000 or an employer that paid an annual workers' compensation insurance premium in OR of at least \$250,000 in one of the three years prior to the year in which the collective bargaining agreement takes effect; 2. an employer who qualifies as a self-insured employer that is incurring or projecting annual workers' compensation costs of at least \$250,000 or who has had annual workers' compensation costs of at least \$250,000 in one of the three years prior to the year in which the collective bargaining agreement takes effect; 3. a group of employers who combine for the purpose of obtaining workers' compensation insurance and incur or project annual workers' compensation premiums of at least \$1 million; 4. a group of employers who qualify as a self-insured employer group and incur or project annual workers' compensation premiums of at least \$1 million; 5. employers covered by a wrap-up insurance policy provided by an owner or general contractor and that requires payment of annual workers' compensation premiums of \$1 million or more for coverage of those employees covered by the wrap-up insurance policy. <p>Notwithstanding §656.170 and §656.172, prior to January 1, 2002, the Director of the Department of Consumer and Business Services (Department) may issue letters of eligibility to only two qualified unions for participation in an ADR system. Letters of eligibility shall be issued in order of the date the original application for eligibility is received by the Department. The Director may not issue letters of eligibility after January 1, 2002.</p>	<p>In a collective bargaining agreement, a provision establishing either of the following is valid and binding:</p> <ol style="list-style-type: none"> 1. an ADR system governing disputes between employees, employers and their insurers that supplements or replaces all or part of the dispute resolution processes of this chapter, including but not limited to provisions: <ul style="list-style-type: none"> • establishing any limitations on the liability of the employer while determinations regarding the compensability of an injury are being made; • describing the method for resolving disputes involving compensability of injuries under the ADR system and the amount of compensation due for a compensable injury and for medical and legal services; • relating to the payment of compensation for injuries incurred when the collective bargaining agreement is terminated or when an injured worker is no longer subject to the agreement; and 2. the use of a list of medical service providers that the parties may agree is the exclusive source of all medical treatment provided under this chapter. <p>Any decision, order or award of compensation issued under an agreed upon ADR system is subject to review in the same manner as provided for the review of an order of an Administrative Law Judge pursuant to the provisions of this chapter.</p> <p>Nothing in this section allows a collective bargaining agreement that diminishes the entitlement of an employee to compensation as provided in this chapter. The portion of an agreement that violates this subsection is void.</p>

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Summary of Workers' Compensation Collective Bargaining Alternative Dispute Resolution Statutes and Regulations

State	Eligible Participants	Reporting Requirements/Evaluation	Additional Statutory Provisions
<p>Pennsylvania</p> <p>77 P.S. § 1000.6; 34 Pa. Code § 123.402</p>		<p>If the employer and the recognized or certified and exclusive representative of its employees agree to establish an alternative dispute resolution system, a copy of the portion of the collective bargaining agreement which establishes the alternative dispute resolution system shall be provided to the Governor's Office of Labor-Management Cooperation in the Department of Labor and Industry (Department).</p> <p>The standard forms and filing requirements of the Workers' Compensation Act which reflect the voluntary action or agreement of the parties remain in effect for parties participating in an alternative dispute resolution system. The forms exclusively pertaining to filings before a workers' compensation judge are inapplicable to parties participating in an alternative dispute resolution system.</p> <p>Final determinations rendered by means of an alternative dispute resolution system shall be documented and a copy of the determination shall be submitted to the parties and to the Department.</p>	<p>Any employer and the recognized or certified and exclusive representative of its employees may agree by collective bargaining to establish certain binding obligations and procedures relating to workers' compensation, provided, however, that the scope of the collective bargaining agreement shall be limited to:</p> <ol style="list-style-type: none"> 1. benefits supplemental to those provided by statute; 2. an alternative dispute resolution system which may include, but is not limited to, arbitration, mediation and conciliation; 3. the use of a limited list of providers for medical treatment for any period of time agreed upon by the parties; 4. the use of a limited list of impartial physicians; 5. the creation of a light duty, modified job or return-to-work program; 6. the adoption of twenty-four-hour medical coverage; 7. the establishment of safety committees; and 8. a vocational rehabilitation or retraining program. <p>Nothing contained in this section shall in any manner affect the rights of an employer or its employees in the event that the parties to a collective bargaining agreement refuse or fail to reach agreement concerning the matters referred to in the above list of 8 items. In the event a municipality and its police or fire employees fail to agree by collective bargaining concerning matters referred to in the above list, nothing in this section shall be binding upon the municipality or its police or fire employees as a result of an arbitration ruling or award.</p> <p>Nothing in this section shall allow any agreement that diminishes an employee's entitlement to benefits as otherwise set forth in this section. Any agreement in violation of this provision shall be null and void.</p>

APPENDIX C

ADR Contract Provisions in New York State

ADR Contract Provisions in New York State (as of January 2000)

DISPUTE RESOLUTION: Panel A1				
	LOCAL UNION NO. 3	ECA	HUDSON WATERFRONT	BECHTEL
Scope	The dispute prevention and resolution program shall be used in place of and to the exclusion of the Workers' Compensation Board [WCB] conciliation, hearing, and review processes.	The dispute prevention and resolution program shall be used in place of and to the exclusion of the NYS Workers' Compensation Board [WCB] conciliation, hearing, and review processes.	The dispute prevention and resolution program shall be used in place of and to the exclusion of the NYS Workers' Compensation Board [WCB] conciliation, hearing, and review processes.	The dispute prevention and resolution program shall be used in place of and to the exclusion of the Workers' Compensation Appeals Board conciliation, hearing, and review processes.
Steps	Compensation Advisor, Mediation, Arbitration	Program Representative [PR], Mediation, Arbitration	Program Representative [PR], Mediation, Arbitration	Bechtel Construction Company [BCC] Special Representative, Mediation, Arbitration
Selection	The Compensation Advisor, Mediator(s), and Arbitrator(s) will be selected by the Parties.	<p>The PR, mediator(s) and the arbitrator(s) will be selected through negotiation among the parties to this agreement.</p> <p>All individuals considered for mediator or arbitrator shall disclose to the Joint Labor-Management Oversight Committee any current or previous employment or affiliation by Ulico Casualty Company (the "Prime Carrier") or any other carrier participating in this agreement.</p> <p>Any parties to a claim may refuse once a mediator or arbitrator named to resolve the claim. The refusal shall be in writing and shall be made within 2 working days of the party receiving the name of the mediator or arbitrator assigned to the claim. A party to the claim may only exercise this option once at the mediation step and once at the arbitration step.</p>	<p>The PR, mediator(s) and the arbitrator(s) will be selected through negotiation among the parties to this agreement.</p> <p>All individuals considered for mediator or arbitrator shall disclose to the Joint Labor-Management Oversight Committee any current or previous employment or affiliation by the Owner, Employer, or the Carrier.</p>	<p>The BCC Special Representative will be selected by BCC. The Mediator and the Arbitrator will be selected through negotiation among the parties to this Agreement.</p> <p>Addendum One: The Rochester Building Trades Council will present to Bechtel Construction Company an acceptable list of plaintiff attorneys who are well experienced in the area of workers' compensation. From this list, Bechtel Construction Company will select two individuals. One will be chosen to act as the mediator and one to act as an alternate.</p>
Compensation for Costs	The Electrical Employers Self Insurance Safety Plan (EESISP) will pay the costs of the Advisor, mediation and arbitration services.	The PR, mediator(s) and the arbitrator(s) will be paid by the Employer, except that the costs for those employers insured by the Prime Carrier will be paid by the Prime Carrier.	The PR, mediator(s) and the arbitrator(s) will be paid by the Owner.	The BCC Special Representative will be paid by BCC. The cost of mediation and arbitration services will be paid by BCC.

DISPUTE RESOLUTION: Panel A1

WESTCHESTER/PUTNAM				
Scope	The Alternative Dispute Resolution Program shall be used in place of and to the exclusion of the Workers' Compensation Board conciliation, hearing, and review processes.			
Steps	Program Representative [PR], Mediation, Arbitration			
Selection	<p>The PR will be selected by the Joint Labor-Management Oversight Committee [JLMOC]. All individuals considered as the PR, Mediator or Arbitrator shall disclose to the JLMOC any current or previous employment or affiliation with American Home Assurance Company (the "Prime Carrier") or any other Carrier, Union, Law firm or any Employer participating in this agreement.</p> <p>Any party to a claim may refuse once a mediator or arbitrator [who] is named to resolve the claim. The refusal shall be in writing and shall be made within 2 working days of the party receiving the name of the mediator or arbitrator assigned to the claim. A party to a claim may only exercise this option once at the mediation step and once at the arbitration step. Once this refusal option is exercised a new mediator or arbitrator will be selected.</p>			
Compensation for Costs	The PR will be paid by the Employer, except that the costs for those Employers insured by the Prime Carrier will be paid by the Prime Carrier.			

DISPUTE RESOLUTION: Panel A2

	LOCAL UNION NO. 3	ECA	HUDSON WATERFRONT	BECHTEL
Role of Compensation Advisor or Personnel Representative	<p>A covered employee who believes that he is not receiving the workers' compensation benefits to which he is entitled, including medical and hospital services, shall first notify the Compensation Advisor [Advisor].</p> <p>The purpose of the Advisor is to amicably resolve issues the covered employee may have. The response of the Advisor to the employee shall be explained in terms which are readily understandable by the Covered Employee.</p> <p>The Advisor will maintain a log recording all activity, including the date of notification and the date of each response.</p> <p>No issue will proceed to mediation without first being presented to the Advisor.</p>	<p>An employee covered by this Agreement who believes that s/he is not receiving workers' compensation benefits to which s/he is entitled, including medical and hospital services, shall notify the Program Representative [PR].</p> <p>The response of the PR to the employee shall be explained in terms which are readily understandable by the employee.</p> <p>The PR will maintain a log recording all activity, including the date of each notification and the date of each response.</p> <p>No issue will proceed to mediation without first being presented to the PR.</p>	<p>An employee covered by this Agreement who believes that s/he is not receiving workers' compensation benefits to which s/he is entitled, including medical and hospital services, shall notify the Program Representative [PR].</p> <p>The response of the PR to the employee shall be explained in terms which are readily understandable by the employee.</p> <p>The PR will maintain a log recording all activity, including the date of each notification and the date of each response.</p> <p>No issue will proceed to mediation without first being presented to the PR.</p>	<p>An employee covered by this Agreement who believes that he is not receiving workers' compensation benefits to which he is entitled, including medical and hospital services, shall promptly notify the notify the BCC Special Representative [SR].</p> <p>The response of the SR to the employee shall be explained in terms which are readily understandable by the employee.</p> <p>The SR will maintain a log recording all activity, including the date of each notification and the date of each response.</p> <p>No issue will proceed to mediation without first being presented to the SR.</p>
Time limit: Advisor or Rep.	<p>The employee may apply for mediation if the issue is not resolved by the Advisor within 5 working days</p>	<p>The employee may apply for mediation if the issue cannot be resolved to the satisfaction of the employee within 5 working days.</p> <p>The parties may extend the 5 working day period by mutual agreement.</p>	<p>The employee may apply for mediation if the issue cannot be resolved to the satisfaction of the employee within 5 working days.</p> <p>The parties may extend the 5 day period by mutual agreement.</p>	<p>The employee may apply for mediation on Form #1, which shall be filed with the Mediator, if the issue cannot be resolved to the satisfaction of the employee within 5 working days.</p> <p>The parties may extend the 5 day period by mutual agreement.</p>
Role of Mediator		<p>The mediator will contact the parties to the dispute, including the Employer insurance carrier, and take whatever steps the mediator deems reasonable to bring the dispute to an agreed conclusion.</p>	<p>The mediator will contact the parties to the dispute, including the Employer insurance carrier, and take whatever steps the mediator deems reasonable to bring the dispute to an agreed conclusion.</p>	<p>The mediator will contact the parties to the dispute, including BCC's insurance carrier and take whatever steps the Mediator deems reasonable to bring the dispute to an agreed conclusion.</p>

DISPUTE RESOLUTION: Panel A2				
	WESTCHESTER/PUTNAM			
Role of Compensation Advisor or Personnel Representative	<p>An Employee covered by this Agreement who believes that s/he is not receiving workers' compensation benefits to which s/he is entitled, including medical and hospital services, shall notify the Program Representative [PR].</p> <p>The response of the PR to the employee shall be explained in terms which are readily understandable by the employee.</p> <p>The PR will maintain a log recording all activity, including the date of each notification and the date of each response.</p> <p>No issue will proceed to mediation without first being presented to the PR.</p>			
Time limit: Advisor or Rep.	<p>If the issue cannot be resolved to the satisfaction of the employee within 5 working days, the employee may apply for mediation.</p> <p>The parties may extend the 5 working day period by mutual agreement.</p>			
Role of Mediator	<p>The mediator will contact the parties to the dispute, including the Employer's insurance carrier, and Program Manager, and take whatever steps the mediator deems reasonable to bring the dispute to an agreed conclusion.</p>			

DISPUTE RESOLUTION: Panel A3

	LOCAL UNION NO. 3	ECA	HUDSON WATERFRONT	BECHTEL
Time limit: Mediation	<p>Application for mediation must be made within 60 days of the Advisor's response. Application shall be immediately assigned to the Mediation Panel.</p> <p>The mediation session will be held within 14 calendar days from the date of referral.</p>	<p>Application for mediation shall be made not more than 60 days after the PR has responded to the employee's notification.</p> <p>Any application for mediation shall immediately be assigned to a mediator selected under this Agreement.</p> <p>Mediation shall be completed in not more than 14 days from the date of referral, except that in no event shall an issue be permitted to proceed beyond mediation until and unless the moving party cooperates with the mediator and the mediation process.</p>	<p>Application for mediation shall be made not more than 60 days after the PR has responded to the employee's notification.</p> <p>Any application for mediation shall immediately be assigned to a mediator selected under this Agreement.</p> <p>Mediation shall be completed in not more than 14 calendar days from the date of referral, except that in no event shall an issue be permitted to proceed beyond mediation until and unless the moving party cooperates with the mediator and the mediation process.</p>	<p>Application for mediation shall be made not more than 60 calendar days after the PR has responded to the employee's notification.</p> <p>Any application for mediation shall immediately be assigned to the Mediator selected under this Agreement.</p> <p>Unless the parties agree otherwise, mediation shall be completed in not more than 14 calendar days from the date of referral, except that in no event shall an issue be permitted to proceed beyond mediation until and unless the moving party cooperates with the Mediator and the mediation process.</p>
Mediation: rules for		The Joint Labor-Management Committee will determine the rules by which the mediations are conducted.	The Joint Labor-Management Oversight Committee will determine the rules by which the mediations are conducted.	

DISPUTE RESOLUTION: Panel A3

WESTCHESTER/PUTNAM				
Time limit: Mediation	<p>Application for mediation shall be made not more than 60 calendar days after the PR has responded to the employee's notification.</p> <p>Any application for mediation shall immediately be assigned to a mediator selected under this Agreement.</p> <p>Mediation shall be completed in not more than 14 calendar days from the date of referral, except that in no event shall an issue be permitted to proceed beyond mediation until and unless the moving party cooperates with the mediator and the mediation process.</p>			
Mediation: rules for	<p>The Joint Labor Management Oversight Committee will determine the rules by which mediations are conducted.</p>			

DISPUTE RESOLUTION: Panel A4

	LOCAL UNION NO. 3	ECA	HUDSON WATERFRONT	BECHTEL
Time limit: Arbitration	<p>Any party not satisfied with the outcome of mediation may file for arbitration within 30 calendar days.</p> <p>Upon receipt of such request, the Mediator shall immediately refer the matter to arbitration.</p> <p>The arbitration date will be set with sufficient advance notice to permit the parties an opportunity to prepare.</p> <p>Unless the parties agree otherwise, proceedings shall be completed within 30 days of referral and the decision rendered within 10 days of the proceeding's completion.</p>	<p>Within 30 calendar days after the completion of the mediation process, any party not satisfied with the outcome may file with the mediator a request that the matter be referred to arbitration.</p> <p>Upon receipt of such a request, the Mediator shall immediately refer the matter to an arbitrator agreed to by the parties.</p> <p>The arbitration date will be set with sufficient advance notice to permit the parties to retain and/or consult with legal counsel.</p> <p>Unless the parties agree otherwise, proceedings shall be completed within 30 calendar days after referral and a decision rendered within 10 calendar days of the proceeding's completion.</p>	<p>Within 30 calendar days after the completion of the mediation process, any party not satisfied with the outcome may file with the mediator a request that the matter be referred to arbitration.</p> <p>Upon receipt of such a request, the mediator shall immediately refer the matter to an arbitrator agreed to by the parties.</p> <p>The arbitration date will be set with sufficient advance notice to permit the parties to retain and/or consult with legal counsel.</p> <p>Unless the parties agree otherwise, proceedings shall be completed within 30 days after referral and a decision rendered within 10 days of the proceeding's completion.</p>	<p>Within 30 calendar days after the completion of the mediation process, any party not satisfied with the outcome may file for arbitration on Form #2, which shall be filed directly with the Arbitrator.</p> <p>Upon receipt of such a request, the Arbitrator shall immediately contact the parties and establish the date on which arbitration will be held.</p> <p>The arbitration date will be set with sufficient advance notice to permit the parties to retain and/or consult with legal counsel.</p> <p>Unless the parties otherwise agree, proceedings shall be completed within 30 days after referral, and a decision rendered within 10 days of the proceeding's completion.</p>
Arbitrator's award	The decision and award of the arbitrator shall be final, except as provided for in paragraph D of subdivision 2-C of Section 25 of the Workers' Compensation Law [WCL].	The decision and award of the arbitrator shall be final, except as provided for in paragraph D of subdivision 2-C of Section 25 of the Workers' Compensation Law [WCL].	The decision and award of the Arbitrator shall be final, except as provided for in paragraph D of subdivision 2-C of Section 26 of the [Workers' Compensation] law.	The decision and award of the Arbitrator shall be final, except as provided for in paragraph D of subdivision 2-c of Section 25 of the [Workers' Compensation] law.
Arbitration: rules for	Arbitration will be conducted pursuant to the rules established by the parties including the assignment of an arbitrator from the ADR Program closed panel established by the parties.	Arbitration shall be conducted pursuant to the rules of the American Arbitration Association.	Arbitration will be conducted pursuant to the rules of the American Arbitration Association.	Arbitration will be conducted pursuant to the applicable labor rules of the American Arbitration Association.
Arbitration: use of mediation	No written or oral offer, finding or recommendation made during the mediation process by any party or Mediator shall be admissible in the arbitration proceedings except by mutual agreement of the parties.	No written or oral offer, finding or recommendation made during the mediation process by any party or mediator shall be admissible in the arbitration proceedings except by mutual agreement of the parties.	No written or oral offer, finding or recommendation made during the mediation process by any party or mediator shall be admissible in the arbitration proceedings except by mutual agreement of the parties.	No written or oral offer, finding or recommendation made during the mediation process by any party or Mediator shall be admissible in the arbitration proceedings except by mutual agreement of the parties.

DISPUTE RESOLUTION: Panel A4

	WESTCHESTER/PUTNAM			
Time limit: Arbitration	<p>Within 30 calendar days after the completion of the mediation process, any party not satisfied with the outcome may file with the mediator a request that the matter be referred to arbitration.</p> <p>Upon receipt of such a request, the mediator shall immediately refer the matter to an arbitrator agreed to by the parties to this Agreement for arbitration.</p> <p>The arbitration date will be set with sufficient advance notice to permit the parties to retain and/or consult with legal counsel.</p> <p>Any party that fails to file for Arbitration within 30 calendar days after the completion of the mediation process, as provided above, shall forfeit its right to arbitrate such issue under the terms of this agreement.</p> <p>Unless the parties to the matter otherwise agree, arbitration proceedings shall be completed within 45 calendar days after the referral, and an arbitration decision rendered within 10 calendar days of the completion of the proceedings.</p>			

DISPUTE RESOLUTION: Panel A4 (WESTCHESTER/PUTNAM: continued)

WESTCHESTER/PUTNAM				
Arbitrator's award	The decision and award of the Arbitrator shall be final, except as provided for in paragraph D of subdivision 2-C of Section 25 of the New York Workers' Compensation Law [Law].			
Arbitration: rules for	<p>Arbitration will be conducted pursuant to the Labor Rules of the American Arbitration Association, as modified by the Oversight Committee, using an arbitrator agreed to by the parties to this Agreement.</p> <p>Any discovery permitted by the Law and/or the rules and regulations of the Worker's Compensation Board may be utilized during Arbitration, subject to modification by the Oversight Committee.</p> <p>Upon request and for good cause shown, and subject to the rules of the Oversight Committee, the Arbitrator may at any time issue subpoenas to assist in discovery, and to compel the attendance of witnesses and the production of documents at arbitration.</p>			
Arbitration: use of mediation	No written or oral offer, finding or recommendation made during the mediation process by any party or mediator shall be admissible in the arbitration proceedings except by mutual agreement of the parties.			

DISPUTE RESOLUTION: Panel A5

	LOCAL UNION NO. 3	ECA	HUDSON WATERFRONT	BECHTEL
Mediation or arbitration: use of health care provider	The Mediator or Arbitrator may, in his or her sole discretion, appoint an authorized health care provider to assist in the resolution of any medical issue.	The mediator or arbitrator may in his or her sole discretion appoint an authorized health care provider to assist in the resolution of any medical issue, the cost to be paid by the Employer.	The mediator or arbitrator may in his or her sole discretion appoint an authorized health care provider to assist in the resolution of any medical issue, the cost to be paid by the Employer.	The Mediator or Arbitrator in his sole discretion appoint an authorized health care provider to assist in the resolution of any medical issue, the cost to be paid by BCC.
Mediation or arbitration: scheduling	All mediations and/or arbitrations must be scheduled to take place at a time and location which is reasonable for all necessary parties.			
Mediation or arbitration: notices	Notices of mediation and/or arbitration must be given in such a manner so as to give all parties timely notice.			
Mediation or arbitration: role of		Approval of agreements and other similar actions required under the WCL to be performed by a referee or a Board member shall be the responsibility of the mediator or arbitrator. The arbitrator shall also have the authority to enforce the penalty provisions contained in Section 25 (2)(a), (2)(c), and (3)(c) of the WCL with regard to only those penalties paid to the employee.	Approval of agreements and other similar actions required under the WCL to be performed by a referee or a Board member shall be the responsibility of the mediator or arbitrator. The arbitrator shall also have the authority to enforce the penalty provisions contained in Section 25 (2)(a), (2)(c), and (3)(c) of the WCL with regard to only those penalties paid to the employee.	Approval of agreements and other similar actions required under the WCL shall be the responsibility of the Mediator or Arbitrator if the matter has reached arbitration, the Arbitrator. The Arbitrator shall also have the authority to enforce the penalty provisions contained in sections twenty-five (1)(e), (2)(a), (2)(c), and (3)(f) of the WCL.
Dispute resolution: employer's role		The Employer agrees to cooperate fully in the dispute resolution process and to provide all relevant documents requested by the employee, the mediator, or the arbitrator.	The Employer agrees to cooperate fully in the dispute resolution process and to provide all relevant documents requested by the employee, the mediator or the arbitrator.	BCC agrees to cooperate fully in the dispute resolution process and to provide all relevant documents requested by the employee, the Mediator or Arbitrator.

DISPUTE RESOLUTION: Panel A5

WESTCHESTER/PUTNAM				
Mediation or arbitration: use of health care provider	The mediator or arbitrator may in his or her sole discretion appoint an authorized health care provider to assist in the resolution of any medical issue, the cost to be paid by the Employer.			
Mediation or arbitration: scheduling				
Mediation or arbitration: notices				
Mediation or arbitration: role of	Approval of agreements and other similar actions required under the Law to be performed by a referee or a Board member shall be the responsibility of the mediator or arbitrator. The arbitrator shall also have the authority to enforce the penalty provisions contained in Section 25 (2)(a), (2)(c), and (3)(c) of the Law with regard to only those penalties paid to the employee.			
Dispute resolution: employer's role	The Employer agrees to cooperate fully in the dispute resolution process and to provide all relevant documents requested by the employee, the mediator or the arbitrator.			

DISPUTE RESOLUTION: Panel A6

Legal or other representation	LOCAL UNION NO. 3	ECA	HUDSON WATERFRONT	BECHTEL
	<p>Either party to a claim may obtain representation by an attorney or licensed representative at any time.</p>	<p>Either party to a claim may obtain representation by an attorney or licensed representative at any time.</p> <p>Neither party will be permitted to be represented by legal counsel at mediation.</p> <p>The fact that the representative of the employee, the Employer or the Employer's workers' compensation insurance carrier has had legal training or is a licensed attorney shall not bar such person from participating in mediation unless he or she seeks to participate on the basis of a lawyer-client relationship. All communication between the mediator and the parties shall be directly with the parties (unless precluded by language or disability) and not through legal counsel.</p>	<p>Either party to a claim may obtain representation by an attorney, licensed representative or union representative at any time.</p> <p>The Employer is not permitted to be represented by legal counsel at mediation. If the employee wishes to have an attorney attend, the attorney's participation, if any, shall be subject to rules adopted by the Labor/Management Oversight Committee.</p> <p>The fact that the representative of the employee, Employer or the Employer's workers' compensation insurance carrier has had legal training or is a licensed attorney shall not bar such person from participating in mediation unless he or she seeks to participate on the basis of a lawyer-client relationship. All communication between the mediator and the parties shall be directly with the parties (unless precluded by language or disability) and not through legal counsel.</p>	<p>Either party to a claim may obtain legal representation at any time.</p> <p>Neither party will be permitted to be represented by legal counsel at mediation sessions.</p> <p>The fact that an employee or BCC's representative or its workers' compensation insurance carrier's representative has had legal training or is a licensed attorney shall not bar such person from participating in mediation unless he or she seeks to participate on the basis of a lawyer-client relationship. All communication between the Mediator and the parties shall be directly with the parties, and not through legal counsel.</p>

DISPUTE RESOLUTION: Panel A6

	WESTCHESTER/PUTNAM			
Legal or other representation	<p>Either party to a claim may obtain representation by an attorney or licensed representative at any time.</p> <p>Neither party will be permitted to be represented by legal counsel at mediation.</p> <p>The fact that the representative of the Employee, the Employer or the Employer's Workers' Compensation Insurance carrier has had legal training or is a licensed attorney shall not bar such person from participating in mediation unless he or she seeks to participate on the basis of a lawyer-client relationship. All communication between the mediator and the parties shall be directly with the parties (unless precluded by language or disability) and not through legal counsel.</p>			

DISPUTE RESOLUTION: Panel A7				
	LOCAL UNION NO. 3	ECA	HUDSON WATERFRONT	BECHTEL
Representation fees	<p>The attorney(s) or licensed representative(s) will be paid under the same circumstances and in the same manner and amounts as provided for under the WCL.</p> <p>Determination and/or approval of attorney's/licensed representative's fees shall be the responsibility of the Mediator or Arbitrator.</p>	<p>The attorney(s) or licensed representative(s) will be paid under the same circumstances and in the same manner and amounts as provided for under the WCL.</p> <p>Determination and/or approval of attorney's/licensed representatives' fees shall be the responsibility of the mediator or arbitrator.</p> <p>In a contested claim if the employee prevails at the arbitration step the Prime Carrier or any other participating carrier shall pay the attorney's/licensed representatives' fees of the employee's attorney in addition to any award made to the employee.</p>	<p>The attorney or attorney(s) will be paid under the same circumstances and in the same manner and amounts as provide[d] for [under] the WCL.</p> <p>Determination and/or approval of attorneys' fees shall be the responsibility of the Mediator or, if the matter has reached arbitration, by the Arbitrator.</p>	

DISPUTE RESOLUTION: Panel A7				
	WESTCHESTER/PUTNAM			
Representation fees	<p>The attorney(s) or licensed representative(s) will be paid under the same circumstances and in the same manner and amounts as provided for under the Law.</p> <p>Determination and/or approval of attorney's/licensed representatives' fees shall be the responsibility of the mediator or arbitrator.</p>			

MEDICAL TREATMENT: Panel B1

	LOCAL UNION NO. 3	ECA	HUDSON WATERFRONT	BECHTEL
Managed Care	The ADR agreement authorizes establishment of a Managed Care System as the exclusive source of all medical care and treatment relating to work-related injuries or occupational diseases			
Medical and Hospital Services	<p>All medical and hospital services required by Covered Employees as a result of a compensable injury or occupational disease shall be furnished through the EESISIP Managed Care Program (MCP).</p> <p>All health care providers and facilities that are part of the MCP are referred to in the ADR contract as "authorized providers."</p>	<p>All medical and hospital services required by employees subject to this Agreement as a result of compensable injury or occupational disease shall be furnished by health care providers and facilities negotiated by the parties to this Agreement, hereinafter referred to as authorized providers.</p> <p>A list of the authorized providers shall be made available to all employees subject to this Agreement. The list can be changed at any time by mutual agreement of the Parties to this Agreement.</p> <p>All authorized providers, other than health care facilities, shall be board certified in their respective specialties.</p> <p>The parties to this Agreement may agree on a case-by-case basis to permit a board eligible health care provider to act as an authorized provider as permitted by the WCB.</p>	<p>All medical and hospital services required by employees subject to this Agreement as the result of compensable injury or occupational disease shall be paid for by the Employer and furnished by health care providers and facilities agreed to by mutual consent of the Oversight Committee, hereinafter referred to as authorized providers.</p> <p>All authorized providers must be both Workers Compensation Board certified and board certified in their respective specialties, where applicable. A list of the authorized providers shall be made available to all employees subject to this Agreement. The list can be changed at any time by mutual agreement of the members of the Oversight Committee. In geographical areas where the network of authorized providers does not extend the employee may seek health care from any board certified provider.</p>	<p>All medical and hospital services required by employees subject to this Agreement as a result of compensable injury, including occupational disease, shall be furnished by health care providers and facilities selected by the employee from a list of health care providers agreed to by the parties to this Agreement, hereafter referred to as authorized providers.</p> <p>A list of the authorized providers shall be made available to all employees subject to this Agreement. The list can be changed at any time by mutual agreement of the parties to this Agreement.</p>

MEDICAL TREATMENT: Panel B1				
	WESTCHESTER/PUTNAM			
Managed Care				
Medical and Hospital Services	<p>All medical and hospital services required by employees subject to this Agreement as the result of compensable injury or occupational disease shall be furnished by health care providers and facilities negotiated by the parties to this Agreement (hereinafter referred to as "Authorized Providers").</p> <p>A list of the Authorized Providers shall be made available to each union and injured worker upon request subject to this Agreement. The list can be changed at any time by mutual agreement of the parties to this agreement and the Medical Director.</p> <p>All Authorized Providers, other than health care facilities, shall be board certified in their respective specialities.</p> <p>The parties to this Agreement and the Medical Director may agree on a case-by-case basis to permit a board eligible health care provider to act as an authorized provider as permitted by the WCB.</p>			

MEDICAL TREATMENT: Panel B2

	LOCAL UNION NO. 3	ECA	HUDSON WATERFRONT	BECHTEL
Emergency Services	<p>The employee may seek treatment from a health care provider or facility outside the MCP.</p> <p>Responsibility for treatment shall be transferred to an authorized provider as soon as possible, consistent with sound medical practices.</p>	<p>In case of emergency when no authorized provider is available, the employee may seek treatment from a health care provider or facility not otherwise authorized by this Agreement, to provide treatment during the emergency.</p> <p>Responsibility for treatment shall be transferred to an authorized provider as soon as possible, consistent with sound medical practices.</p>	<p>In case of emergency the employee may seek treatment from a health care provider or facility not otherwise authorized by this Agreement, to provide treatment during the emergency.</p> <p>Responsibility for treatment shall be transferred to an authorized provider as soon as possible, consistent with sound medical practices.</p>	<p>In case of emergency when no authorized provider is available, the employee may seek treatment from a health care provider or facility not otherwise authorized by this Agreement to provide treatment during the emergency.</p> <p>Responsibility for treatment shall be transferred to an authorized provider as soon as possible, consistent with sound medical practices.</p> <p>Emergency medical care is defined as medical or other health care treatment, services, products or accommodations provided to an injured or ill employee for a sudden onset of a medical condition of such nature that failure to render immediate care would reasonably result in deterioration of the injured employee's medical condition.</p>
Unauthorized Care	<p>The employer shall not be responsible for the cost of medical services not authorized pursuant to the MCP, except for emergency treatment.</p>	<p>Neither the Association, the Employer nor the Union(s) shall be responsible for the cost of medical services furnished by a health care professional or facility not authorized pursuant to this Agreement.</p>	<p>Neither the Employer nor the Union(s) shall be responsible for the cost of medical services furnished by a health care professional or facility not authorized pursuant to this Agreement, except as provided for in [contractual provisions regarding medical and hospitalization services, emergency services, and change in providers].</p>	<p>Neither BCC nor the Unions shall be responsible for the cost of medical services furnished by a health care professional or facility not authorized pursuant to this Agreement.</p>

MEDICAL TREATMENT: Panel B2

WESTCHESTER/PUTNAM				
Emergency Services	<p>In case of emergency when no authorized provider is available, the Employee may seek treatment from a health care provider or facility not otherwise authorized by this Agreement to provide treatment during the emergency.</p> <p>Responsibility for treatment shall be transferred to an authorized provider as soon as possible, consistent with sound medical practices.</p>			
Unauthorized Care	<p>Provided that proper notice of rights and obligations under the ADR program is individually given to Employees covered by this agreement, neither the Association, the Employers, the Union(s), the Program Manager nor the Medical Director shall be responsible for the cost of medical services furnished by a health care professional or facility not authorized pursuant to this Agreement.</p>			

MEDICAL TREATMENT: Panel B3

	LOCAL UNION NO. 3	ECA	HUDSON WATERFRONT	BECHTEL
Choice of Providers		<p>The list of authorized providers shall contain sufficient numbers of providers for each of the specialties which the parties to this Agreement believe are required to respond to the needs of employees subject to this Agreement.</p> <p>In the event that an authorized provider furnishing treatment to an employee determines that consultation or treatment is necessary from a specialty for which no authorized provider has been selected through this Agreement, or in the event that distance makes it impractical for treatment from the authorized provider, the authorized provider shall select the additional specialist or the additional provider who offers treatment at a practical distance for the employee.</p>	<p>The list of authorized providers shall contain sufficient numbers of providers for each of the specialties which the parties to this Agreement believe are required to respond to the needs of employees subject to this Agreement.</p> <p>In the event that an authorized provider furnishing treatment to an employee determines that consultation or treatment is necessary from a specialty for which no authorized provider has been selected through this Agreement, or in the event that distance makes it impractical for treatment from the authorized provider, the authorized provider shall select the additional specialist or the additional provider who offers treatment at a practical distance for the employee.</p>	<p>The mutually agreed upon list of authorized providers shall contain sufficient numbers of providers for each of the specialties which the parties to this Agreement believe are required to respond to the needs of employees subject to this Agreement.</p> <p>In the event that an authorized provider furnishing treatment to an employee determines that consultation or treatment is necessary from a specialty for which no authorized provider has been selected through this Agreement, or in the event that distance makes it impractical for treatment from the authorized provider, the physician advisor and the patient advocate, after consultation with the authorized provider and employee, shall select the additional specialist or the additional provider who offers treatment at a practical distance for the employee.</p>
Change in Providers		<p>After selecting an authorized provider to furnish treatment, an employee may change once to another authorized provider.</p> <p>When referred by the authorized provider to another provider in a particular specialty, the employee may also change once to another authorized provider in such specialty. Additional changes may be made only with the agreement of the Employer.</p>	<p>After selecting an authorized provider to furnish treatment, an employee may change once to another authorized provider.</p> <p>When referred by the authorized provider to another provider in a particular specialty, the employee may also change once to another authorized provider in such specialty. Additional changes will be made only with the agreement of the Insurance Carrier and Employer.</p>	<p>After selecting an authorized provider to furnish treatment, an employee may change once to another authorized provider.</p> <p>When referred by the authorized provider to another provider in a particular specialty, the employee may also change once to another authorized provider in such specialty. Additional changes may be made only with the agreement of the BCC.</p>

MEDICAL TREATMENT: Panel B3

MEDICAL TREATMENT: Panel B3				
	WESTCHESTER/PUTNAM			
Choice of Providers	<p>The list of Authorized Providers shall contain sufficient numbers of providers for each of the specialties which the parties to this Agreement believe are required to respond to the needs of Employees subject to this agreement.</p> <p>In the event that an Authorized Provider furnishing treatment to an employee determines that consultation or treatment is necessary from a specialty for which no Authorized Provider has been selected through this Agreement, or in the event that distance makes it impractical for treatment from the Authorized Provider, the Medical Director, Nurse Case Manager and the Authorized Provider and Claimant shall select the additional specialist or the additional provider who offers treatment at a practical distance for the employee.</p>			
Change in Providers	<p>After selecting an Authorized Provider to furnish treatment, an employee may change once to another Authorized Provider.</p> <p>When referred by the Authorized Provider to another provider in a particular specialty, the employee may also change once to another Authorized Provider in such specialty. Additional changes may be made only with the Agreement of the Employer and Medical Director.</p>			

MEDICAL TREATMENT: Panel B4

	LOCAL UNION NO. 3	ECA	HUDSON WATERFRONT	BECHTEL
Prescription Medicines	All required prescription medicines shall be furnished through the MCP, except when an authorized provider determines that due to time constraints or other valid medical reasons, use of another prescription source is warranted.	All prescription medicines required by employees subject to this Agreement as a result of injury or occupational disease shall be furnished by the Employer through a prescription medicine provider agreed to by the parties to this Agreement. This prescription medicine shall be provided by the prescription medicine provider.	All prescription medicines required by employees subject to this Agreement as a result of injury or occupational disease may be furnished by the Employer through a prescription medicine provider agreed to by the Oversight Committee. This prescription medicine shall be provided by the prescription medicine provider. In the event of emergency or inconvenience regarding access to an authorized prescription medicine provider, the employee is authorized to seek prescription medicine from a provider not otherwise authorized by this Agreement. In the event a prescription medicine provider is not established or agreed to by the parties, the Employer shall be responsible for all costs associated with any prescription medicine required by the employee.	
Fee Schedules (documents and reports)		The parties to this Agreement agree that it is in their mutual best interest to establish a schedule limiting the fees which the authorized providers may charge for providing documents and narrative reports, and will work with providers to establish such a schedule.	The parties to this Agreement agree that it is in their mutual best interest to establish a schedule which the authorized providers may charge for providing documents and narrative reports, and will work with providers to establish such a schedule.	The parties to this Agreement agree that it is in their mutual best interests to establish a schedule limiting the fees which the authorized providers may charge for providing documents and narrative reports, and will work to establish such a schedule with the authorized providers.

MEDICAL TREATMENT: Panel B4				
	WESTCHESTER/PUTNAM			
Prescription Medicines	<p>Once a prescription program is established, all prescription medicines required by Employees subject to this Agreement as a result of injury or occupational disease shall be furnished by the Employer through a prescription medicine provider agreed to by the parties to this Agreement.</p> <p>This prescription medicine shall be provided by the prescription medicine provider.</p>			
Fee Schedules (documents and reports)	<p>The parties to this Agreement agree that it is in their mutual best interest to establish a schedule limiting the fees which the Authorized Providers may charge for providing documents and narrative reports, and will work with the Authorized Providers to establish such a schedule.</p>			

MEDICAL TREATMENT: Panel B5

	LOCAL UNION NO. 3	ECA	HUDSON WATERFRONT	BECHTEL
<p>Additional Opinions; Resolution of Disagreements</p>	<p>In the event of a disagreement with an authorized provider's findings or opinions, the sole recourse shall be to obtain a 2nd (or 3rd) opinion from another authorized provider and to present the opinions through the ADR procedures.</p>	<p>Either the Employer or employee may request a second opinion from an authorized provider regarding diagnosis, treatment, evaluation or related issue.</p> <p>A third opinion may be requested through the mediator or arbitrator if the first two do not agree.</p> <p>Both the Employer and the employee shall be bound by the opinions and recommendations of the authorized providers selected in accordance with this Agreement. In the event of disagreement with an authorized provider's findings or opinions, the sole recourse shall be to obtain a second opinion from another authorized provider and to present the opinions through the dispute prevention and resolution procedures established in this Agreement.</p>	<p>Either the Employer or the employee may request a second opinion from an authorized provider regarding diagnosis, treatment, evaluation or related issue.</p> <p>A third opinion may be agreed to by the parties or requested through the mediator or arbitrator if the first two do not agree.</p> <p>Both the Employer and the employee shall be bound by the opinions and recommendations of the authorized providers selected in accordance with this Agreement. In the event of disagreement with an authorized provider's findings or opinions, the sole recourse shall be to obtain a second opinion from another authorized provider and to present the opinions through the dispute prevention and resolution procedures established in this Agreement.</p>	<p>Either party may request a second opinion from an authorized provider regarding diagnosis, treatment, evaluation or related issue. Only one such second opinion shall be permitted for any issue.</p> <p>Both BCC and the employee shall be bound by the opinions and recommendations of the authorized providers selected in accordance with this Agreement. In the event of disagreement with an authorized provider's findings or opinions, the sole recourse for either party shall be to obtain a second opinion from another authorized provider and to present the second opinion through the dispute prevention and resolution procedures established in this Agreement.</p>
<p>Controversion</p>		<p>If the underlying compensability of a claim is being controverted by the Employer, the employee is not bound by this article [Article III, Authorized Medical Providers] pending the resolution of the controversy. Any issue of compensability shall be resolved under Article IV [Dispute Prevention and Resolution] of this Agreement. If a claim is to be found compensable, the Employer will be responsible for payment of the health care rendered to the employee, at the applicable fee schedule.</p>	<p>If the underlying compensability of a claim is being controverted by the Employer, the employee is not bound by this article [Article III, Authorized Medical Providers] pending the resolution of the controversy. Any issue of compensability shall be resolved under Article IV [Dispute Prevention and Resolution] of this Agreement. If a claim is to be found compensable, the Employer will be responsible for payment of the health care rendered to the employee.</p>	

MEDICAL TREATMENT: Panel B5

	WESTCHESTER/PUTNAM			
Additional Opinions; Resolution of Disagreements	<p>Either the Employer or the employee may request a second opinion from an Authorized Provider regarding diagnosis, treatment, evaluation or related issue.</p> <p>A third opinion may be requested through the mediator or arbitrator if the first two do not agree.</p> <p>Both the Employer and the Employee shall be bound by the opinions and recommendations of the Authorized Providers selected in accordance with this Agreement. In the event of disagreement with an authorized provider's findings or opinions, the sole recourse shall be to obtain a second opinion from another authorized provider and to present the opinions through the dispute prevention and resolution procedures established in this Agreement.</p>			
Controversion	<p>If the underlying compensability of a claim is being controverted by the Employer, the Employee is not bound by this ARTICLE [Article IV, Authorized Medical Providers] pending the resolution of the controversy. Any issue of compensability shall be resolved under ARTICLE VV [Dispute Prevention and Resolution] of this Agreement. If a claim is to be found compensable, the Employer will be responsible for payment of the health care rendered to the employee, at the applicable fee schedule.</p>			

MISCELLANEOUS TOPICS (scope, administration, other): Panel C1

	LOCAL UNION NO. 3	ECA	HUDSON WATERFRONT	BECHTEL
Parties to ADR agreement	<p>NY Electrical Contractors Association, Inc.; Association of Electrical Contractors, Inc.; Local Union No. 3, IBEW, AFL-CIO. Establishing ADR program (ADRP) of the Electrical Employers Self Insurance Safety Plan, Local 3, and the Joint Industry Board of the Electrical Industry</p>	<p>Eastern Contractors Association, Inc. [Association]; Intl Union of Bricklayers and Allied Craftsmen (Local Nos. 2, 8, 11, & 45); United Brotherhood of Carpenters and Joiners of America (Local No. 370); Intl Association of Bridge, Structural and Ornamental Iron Workers (Local No. 12); Laborers' Intl Union of North America (Local Nos. 157 & 190); Intl Union of Operating Engineers (Local No. 294) [Unions]</p>	<p>Hudson Waterfront Associates, LLP (the "Owner"), its contractors and subcontractors engaged on the Riverside South Construction project, and those Unions that have executed this Agreement and/or a Memorandum of Understanding binding a Union to this Agreement</p>	<p>Bechtel Construction Company and the Rochester Building Trades Council and its affiliated Local Unions which are signatory hereto</p>
Purpose	<p>The Alternative Dispute Resolution Program (ADRP) will take the place of the NYS Workers' Compensation Board in dealing with the medical care, medical treatment, monetary compensation, and resolution of workers' compensation (WC) claims of all "covered employees" who suffer work related injuries or occupational diseases as defined by the WC. The ADRP will be the method to resolve all disputes, whether relating to care and medical treatment or the compensation of "covered employees" or disputes regarding such other additional benefits that the parties have negotiated.</p>	<p>The intent of this Agreement is to: provide employees who incur injuries or suffer occupational diseases as defined under Workers' Compensation Law [WCL] with improved access to high quality medical care; reduce the number and severity of disputes; and provide an efficient and effective method for dealing with disputes by establishing a system of medical care delivery and dispute prevention and resolution which will be used by all employees covered by this agreement.</p>	<p>The intent of this Agreement is to: provide employees who incur injuries or suffer occupational diseases as defined under the NY Workers' Compensation Law [WCL] with improved access to high quality medical care; reduce the number and severity of disputes; and provide an efficient and effective method for dealing with disputes by establishing a system of medical care delivery and dispute prevention and resolution which will be used by all employees covered by this Agreement.</p>	<p>The intent of this Agreement is to: provide employees who claim compensable personal injuries and occupational diseases as defined under the NY Workers' Compensation Law [WCL] with improved access to high quality medical care; reduce the number and severity of disputes; and provide an efficient and effective method for dealing with disputes by establishing a system of medical care delivery and dispute prevention and resolution which will be used by all employees covered by this agreement.</p>

MISCELLANEOUS TOPICS (scope, administration, other): Panel C1

WESTCHESTER/PUTNAM				
Parties to ADR agreement	The Construction Industry Council of Westchester and Hudson Valley, Inc. and its successors and assigns, on its own behalf and on behalf of its members, and the Building and Construction Trades Council of Westchester and Putnam Counties, New York, Affiliated with the AFL-CIO on behalf of itself and it's affiliated local union members; and the signatory local unions on behalf of themselves and their members.			
Purpose	<p>It is the intent of this Agreement to:</p> <p>provide employees who incur injuries or suffer occupational diseases as defined under the New York Workers' Compensation Law [Law] with improved access to high quality medical care;</p> <p>reduce the number and severity of disputes; and</p> <p>provide an efficient and effective method for dealing with disputes resulting from such Injuries and diseases by utilizing the provisions of Subdivision 2-C of Section 25 of the Law to establish a system of medical care delivery and dispute prevention and resolution which will be used by all Employees covered by this Agreement.</p>			

MISCELLANEOUS TOPICS (scope, administration, other): Panel C2				
	LOCAL UNION NO. 3	ECA	HUDSON WATERFRONT	BECHTEL
Scope of Agreement (injuries and diseases; injury dates)	Applies only to compensable injuries and occupational diseases, as defined by the WCL, which are initially reported or for which medical care is initially sought by the Covered Employee on or after the effective date of this agreement and for which no proceeding has previously been commenced at the WCB.	Applies only to workers' compensation claims for compensable injuries and occupational diseases, as defined by the WCL, sustained by employees of the Employer covered by this Agreement	Applies only to workers' compensation claims for compensable injuries and occupational diseases, as defined by the WCL, sustained by employees of the Owner and its contractors, on or after the effective date of this Agreement, irrespective of the date of the claim.	Applies only to workers' compensation claims for compensable personal injuries, including occupational diseases, as defined by the NY WCL, sustained by employees of BCC covered by this agreement, during their employment by BCC at the Project, on or after the effective date of this Agreement.

MISCELLANEOUS TOPICS (scope, administration, other): Panel C2				
	WESTCHESTER/PUTNAM			
Scope of Agreement (injuries and diseases; injury dates)	Applies only to Workers' Compensation claims for personal injuries, including occupational diseases, as defined by the Law, sustained by Employees of the Employer covered by this Agreement, during their employment by the Employer, on or after the effective date of this Agreement, irrespective of the date of the claim.			

MISCELLANEOUS TOPICS (scope, administration, other): Panel C3

	LOCAL UNION NO. 3	ECA	HUDSON WATERFRONT	BECHTEL
Scope of Agreement (termination date)	<p>Upon termination, unless the Agreement is being renegotiated, the Employers and the employees shall become fully subject to the provisions of the WCL to the same extent as they were prior to the implementation of this agreement, provided, however, that when a claim has been adjudicated under this Agreement, the Employer and the Covered Employee shall be estopped from raising identical issues before the WCB. On termination of the Agreement, copies of all records related to claims adjudicated under the Agreement shall be transferred to the WCB.</p>	<p>Upon termination of coverage of this Agreement with respect to an individual employee or to all employees of an Employer, unless this Agreement or the underlying collective bargaining agreements are being renegotiated, the Employer and the employee(s) shall become fully subject to the provisions of the WCL to the same extent as they were prior to the implementation of this Agreement, provided, however, that any claim arising from an accident or illness sustained on or before the date of termination of coverage of this Agreement shall continue to be covered by the terms of this Agreement for a period of 2 years, and further provided that when a claim has been adjudicated under this Agreement, the Employer and the claimant shall be estopped from raising identical issues before the WCB. On termination of the Agreement, copies of all records related to claims adjudicated under the Agreement shall be transferred by the responsible carrier to the WCB.</p>	<p>Upon termination of coverage of this Agreement with respect to an individual employee or to all employees of an Employer, unless this Agreement or the underlying collective bargaining agreements are being renegotiated, the Owner and its contractors and the employee(s) shall become fully subject to the provisions of the WCL to the same extent as they were prior to the implementation of this Agreement, provided, however, that any claim arising from an accident or illness sustained on or before the date of termination of coverage of this Agreement shall continue to be covered by the terms of this Agreement provided a claim remaining open more than three years after the conclusion of this Agreement shall revert to the standard statutory program. Further provided that when a claim has been adjudicated under this Agreement, the Employer and the claimant shall be estopped from raising identical issues before the WCB. On termination of the Agreement, copies of all records related to claims adjudicated under the Agreement shall be transferred by the responsible carrier to the WCB.</p>	<p>At the end of the three year period, all pending claims and new claims shall in all respects be dealt with under the Law, without reference to this Agreement. BCC shall take whatever steps are necessary to insure that a BCC representative is available to fulfill BCC's obligations until all claims subject to this Agreement are resolved.</p>

MISCELLANEOUS TOPICS (scope, administration, other): Panel C3

	WESTCHESTER/PUTNAM			
<p>Scope of Agreement (termination date)</p>	<p>Upon termination of coverage of this Agreement with respect to an individual Employee or to all Employees of an Employer, unless this Agreement or the underlying collective bargaining agreements are being re-negotiated, the Employers and the employee(s) shall become fully subject to the provisions of the Law to the same extent as they were prior to the implementation of this Agreement; provided, however, that any claim arising from an accident or illness sustained on or before the date of termination of coverage of this Agreement shall continue to be covered by the terms of this Agreement for a period of 2 years and further, provided that if any aspect of a claim has been adjudicated under this Agreement, the Employer and the claimant shall be estopped from raising identical issues before the Workers' Compensation Board On termination of the Agreement, copies of all records related to claims adjudicated under the Agreement shall be transferred by the responsible carrier to the New York State Worker's Compensation Board.</p>			

MISCELLANEOUS TOPICS (scope, administration, other): Panel C4

	LOCAL UNION NO. 3	ECA	HUDSON WATERFRONT	BECHTEL
Scope of Agreement (statutory)	<p>In any instances of conflict, the provisions of this agreement shall take precedence over the provisions of the WCL, so far as permitted by the provisions of subdivision 2-C of Section 25 of the WCL.</p> <p>The agreement shall not be construed to modify the provisions of the WCL relating to notice, claim filing, first report of injury, notification of controversy, notification of the cessation of benefits, payment of benefits, payment of attorney or licensed representative fees or any other provision of the WCL except as specifically set forth in this agreement.</p>	<p>The Agreement shall not be construed to modify the provisions of Labor law nor shall it in any way modify the claimant's rights to commence action based upon negligence, violations of Labor law, violations of OSHA or otherwise against any third party.</p> <p>In any instance of conflict, the provisions of this Agreement shall take precedence over the provisions of the WCL, so far as permitted by the provisions of subdivision 2-C of Section 25 of the WCL.</p> <p>The agreement shall not be construed to modify the provisions of the WCL related to notice, claim filing, first report of injury, notification of controversy, notification of the cessation of benefits, payment of benefits, payment of attorney or licensed representative fees or any other provision of the WCL or its supporting case law, except as specifically set forth in this agreement.</p>	<p>The Agreement shall not be construed to modify the provisions of Labor Law nor shall it in any way modify the claimant's rights to commence action based upon negligence, violations of Labor Law, violations of OSHA or otherwise against any third party.</p> <p>In any instance of conflict, the provisions of this Agreement shall take precedence over the provisions of the Law, so far as permitted by the provisions of subdivision 2-C of Section 25 of the Law.</p>	<p>The collective bargaining Agreement shall not be construed to modify the provisions of the Law or its supporting case law except as specifically set forth in this document.</p> <p>In any instance of conflict, the provisions of this Agreement shall take precedence over the provisions of the Law, so far as permitted by the provisions of subdivision 2-C of section 25.</p>

MISCELLANEOUS TOPICS (scope, administration, other): Panel C4

WESTCHESTER/PUTNAM

Scope of Agreement (statutory)

This Agreement shall not be construed to modify the provisions of any Federal or State Labor Law nor shall it in any way modify claimant's rights to commence action based upon negligence, violations of Federal or State Labor Laws, violations of OSHA or otherwise against any third party.

In any instance of conflict, the provisions of this Agreement shall take precedence over provisions of the Law, so far as permitted by the provisions of subdivision 2-C of Section 25 of the Law.

This Agreement shall not be construed to modify the provisions of the Law related to notice, claim filing, first report of injury, notification of controversy, notification of the cessation of benefits, payment of benefits, payment of attorney or licensed representative fees or any other provision of the Law or its supporting case law, except as specifically set forth in this Agreement.

MISCELLANEOUS TOPICS (scope, administration, other): Panel C5

	LOCAL UNION NO. 3	ECA	HUDSON WATERFRONT	BECHTEL
Scope of Agreement (coverage: employers)	<p>Applies to all employees of employers who are covered by the previously defined agreement and working rules and who are covered for workers' compensation insurance by EESISIP. Those employees are referred to as "Covered Employees."</p>	<p>Applies only to an Employer that is signatory to at least 1 of the collective bargaining agreements between the Association and the Unions and that chooses to participate in this agreement and to its employees who are covered by such agreements.</p> <p>The Employer shall serve written notification on the Association, the Union representing the Employer's employees and on Ulico Casualty Company (the Primer Carrier) of the Employer's application.</p> <p>Initial and continuing participation shall be subject to the approval of the Joint Labor-Management Oversight Committee and of the Prime Carrier.</p> <p>An Employer insured with a workers' compensation carrier other than the Prime Carrier or a self-insured Employer must demonstrate that it will be able to provide claims management, medical management, and program representative services consistent with this Agreement and satisfactory to the Oversight Committee and the Prime Carrier, and must agree to pay the applicable costs for dispute resolution services, medical network operation, and other related program expenses.</p>	<p>Applies only to the Owner of its project located at the Riverside South Complex, Buildings C & D, and its general contractors and subcontractors, and those Unions which are signatory to this Agreement and/or a Memorandum of Understanding adopting this Agreement. This agreement shall not be extended to any other phase of the project unless expressly so agreed between the parties in a written agreement.</p>	<p>This collective bargaining Agreement shall apply only to BCC and its bargaining unit employees at the Ginna Steam Generator Replacement project, hereafter referred to as "the Project."</p>

MISCELLANEOUS TOPICS (scope, administration, other): Panel C5

WESTCHESTER/PUTNAM				
<p>Scope of Agreement (coverage: employers)</p>	<p>This Agreement shall apply only to an Employer and/or Local Union if the following conditions are met:</p> <ul style="list-style-type: none"> (i) the Employer is a member of the Construction Industry Council of Westchester and Hudson Valley., Inc. (Association); (ii) if not a member of the Association, the Employer is authorized, in writing, by the Association to participate in this Collectively Bargained Workers' Compensation Medical Care and Dispute Prevention & Resolution Program; (iii) the Employer is signatory to a collective bargaining agreement with an affiliate of the Building Trades Council; (iv) the Employer and the Local Union affiliate have both executed a copy of this Agreement; and (v) this Agreement is executed by the Association and the Building Trades Council. 			

MISCELLANEOUS TOPICS (scope, administration, other): Panel C5 (WESTCHESTER/PUTNAM: continued)

	WESTCHESTER/PUTNAM			
<p>Scope of Agreement (coverage: employers)</p>	<p>The Employer shall serve written notification on Allied Safety Management, Inc. (the Program Manager), and the Association, the Union representing the Employees and on the American Home Assurance Company (the "Prime Carrier") of the Employer's application to participate in this Agreement.</p> <p>Initial and continuing participation shall be subject to the approval of the Joint Labor Management Oversight Committee established in ARTICLE VI [Joint Labor Management Oversight Committee] and of the Association.</p> <p>An Employer insured with a Workers' Compensation carrier other than the Prime Carrier or a self-insured Employer must demonstrate that it will be able to provide claims management, medical management and program representative services consistent with this Agreement and satisfactory to the Oversight Committee and the Association and must agree to pay the applicable costs for dispute resolution services, medical network operation and other related program expenses.</p>			

MISCELLANEOUS TOPICS (scope, administration, other): Panel C6				
	LOCAL UNION NO. 3	ECA	HUDSON WATERFRONT	BECHTEL
Scope of Agreement (coverage: employees)		For other than office or clerical employees, no employee not covered under a collective bargaining agreement with at least 1 of the signatory Unions shall be covered under this ADR agreement, nor shall the employee be permitted coverage under the alternative dispute resolution for resolution of claims.		
Administrator of Plan	Electrical Employers Self Insurance Safety Plan (EESISP)	<p>The Association and the Unions establish a Joint Labor-Management Oversight Committee (Committee) to represent their respective interests in the administration of this program.</p> <p>The Committee's Labor Membership shall consist of 1 designated representative for each Union.</p> <p>The Management membership shall consist of an equal number of representatives designated by the Association.</p> <p>The Committee shall designate 6 members, 3 Labor and 3 Management, to serve as a Working Group with authority to act at the direction of the entire Committee. The Prime Carrier shall serve as a non-voting, ex officio member of the Committee and Working Group.</p> <p>The Committee shall operate on a consensus basis.</p>	<p>The Employer and the Unions establish a Joint Labor-Management Oversight Committee (the "Committee") to represent their respective interests in the administration of this program.</p> <p>The Committee's Labor Membership shall consist of 1 designated representative from each of the signatory Unions.</p> <p>The Owner shall designate an equal number of representatives. The Committee shall designate a Program Coordinator which will serve as a liaison between the Committee and the Program Representative, mediator and arbitrator, as well as the parties to this Agreement. The Carrier shall serve as a non-voting, ex officio member of the Committee.</p>	

MISCELLANEOUS TOPICS (scope, administration, other): Panel C6

	WESCHESTER/PUTNAM			
<p>Scope of Agreement (coverage: employees)</p>				
<p>Administrator of Plan</p>	<p>The Association and the Unions agree to the establishment of a Joint Labor-Management Oversight Committee (Committee) to represent their respective interests in the administration of this Program.</p> <p>The Committee's Labor Membership shall consist of 1 designated representative for each of the Unions signatory to this Agreement.</p> <p>The Management membership shall consist of an equal number of representatives designated by the Association including participating Employers.</p> <p>The Committee shall designate 6 members, 3 Labor and 3 Management, to serve as a Working Group with authority to act at the direction of the entire Committee. The Prime Carrier and Program Administrator shall serve as a non-voting, ex officio member of both the Committee and the subsidiary Working Group.</p> <p>The Committee shall operate on a consensus basis.</p>			

MISCELLANEOUS TOPICS (scope, administration, other): Panel C7

	LOCAL UNION NO. 3	ECA	HUDSON WATERFRONT	BECHTEL
<p>Administrator of Plan (continued)</p>		<p>The Committee shall take all actions required to implement the letter and intent of this Agreement, including, but not limited to, the selection of the Program Representative, mediator(s), arbitrator(s), network providers and medical provider(s).</p> <p>Additionally, the Committee shall:</p> <p>receive reports, both in written and oral forms, from the Prime Carrier and any other participating carrier and the Working Group,</p> <p>receive complaints and investigate and respond appropriately, and</p> <p>respond to requests for systemic information whenever practicable.</p>	<p>The Committee shall have the authority to make rules and set policies for the administration of this program. The Committee shall operate on a consensus basis. In the event the Committee deadlocks on any issue before it, such deadlock shall be submitted to the designated arbitrator under this agreement for final and binding resolution.</p>	

MISCELLANEOUS TOPICS (scope, administration, other): Panel C7

	WESTCHESTER/PUTNAM			
<p>Administrator of Plan(continued)</p>	<p>The Working Group shall take all actions required to implement the letter and intent of this Agreement, including, but not limited to, the selection of the Program Representative, mediator(s), arbitrator(s), medical director, network providers and medical providers. The Working Group shall have the authority to set policies and make rules for the administration of the program and the dispute prevention and resolution process established under this agreement, including the expansion of the oversight committee.</p> <p>Additionally, the Committee and Program Manager shall: receive reports, both in written and oral forms, from the Prime Carrier and any other participating carrier and the Working Group; receive complaints and investigate and respond appropriately, and respond to requests for systemic information whenever practicable.</p> <p>Accordingly, the parties hereto consent to the agreements, decisions and other actions taken by the Committee and the Working Group consistent with this Agreement and the exigencies of operating the program for the benefit of the Employees and the Employers.</p>			

MISCELLANEOUS TOPICS (scope, administration, other): Panel C8

	LOCAL UNION NO. 3	ECA	HUDSON WATERFRONT	BECHTEL
<p>Sharing of Cost Savings</p>		<p>The parties agree to review the workers' compensation cost savings obtained by Employers participating in this Agreement with the goal of sharing a portion of those savings after an increase in competitiveness, if any, with the Unions.</p> <p>The threshold for determining increased competitiveness through workers' compensation cost savings shall be the Prime Carrier or any other participating insurer establishing rates, dividends, and premiums equivalent to the most competitive available from a commercial carrier, State Insurance Fund, or Safety Group outside this Agreement.</p> <p>After reaching the threshold for determining increased competitiveness, a portion of those workers' compensation savings will be shared through supplementing the statutory benefits or some other formula as determined by the parties and the Prime Carrier and other participating insurers.</p>	<p>The parties agree to review the workers' compensation cost savings obtained by the Owners participating in this Agreement at the completion of phase "C" with the goal of sharing a portion of those savings, if any, with the Unions on future phases of the project.</p> <p>The threshold for determining cost savings shall be an actuarial study of the compensation costs for the trades employed on this project as compared to the costs for such trades on similar projects not operating under this Agreement.</p> <p>Such savings may be allocated between the Owner and the Unions through supplementing the statutory benefits or some other formula negotiated by the parties to this agreement.</p>	<p>Appendum One:</p> <p>Bechtel Construction Company and the Rochester Building Trades Council will share the savings that result from the Workers' Compensation Collective Bargaining Agreement. Any such savings allocated to the Rochester Building Trades Council will be distributed to all employees who worked on the GINNA project. Determination as to the method employed to distribute these funds to each employee will be documented as an addendum to this Memorandum of Understanding.</p>

MISCELLANEOUS TOPICS (scope, administration, other): Panel C8

	WESTCHESTER/PUTNAM			
Sharing of Cost Savings	<p>The parties agree to review the increased competitiveness through workers' compensation cost savings obtained by Employers participating in this Agreement with the goal of sharing a portion of those savings, if any, with the Unions.</p> <p>The threshold for determining increased competitiveness through workers' compensation cost savings shall be determined by the Prime Carrier in consultation with the Program Manager. This determination shall include factors such as rates, dividend plans and premiums of any other participating insurer, as well as the competitive pricing of premiums, rates, and dividends available from Commercial Carriers, the State Insurance Fund, or Safety Groups outside of this Agreement.</p> <p>After reaching the threshold for determining increased competitiveness through workers' compensation cost savings, a portion of those workers' compensation cost savings will be shared through supplementing the statutory benefits or some other formula as determined by the parties and the Prime Carrier in consultation with the Program Manager and other participating insurers.</p>			

MISCELLANEOUS TOPICS (scope, administration, other): Panel C9				
	LOCAL UNION NO. 3	ECA	HUDSON WATERFRONT	BECHTEL
Safety Programs		The parties agree that safety is of the greatest importance in the prevention of injuries in workers' compensation. The Association and the Prime Carrier and other participating insurers will develop a Safety Recognition Program including Employer and employee awards. The employers and the Unions agree to promote safety and undertake any safety recommendations made by the Prime Carrier and other participating insurers.	The parties agree that safety is of the greatest importance in the prevention of injuries in workers' compensation. The Owner and the Insurance Carrier will develop a Safety Recognition Program including Employer and employee awards. The Owners and the Unions agree to promote safety and undertake any safety recommendations made by the Insurance Carrier and the Oversight Committee.	

MISCELLANEOUS TOPICS (scope, administration, other): Panel C9				
	WESTCHESTER/PUTNAM			
Safety Programs	The parties agree that safety is of the greatest importance in the prevention of injuries in workers' compensation. The Association and the Prime Carrier and the Program Manager and any other approved participating Insurers will develop a Safety Recognition Program including Employer and Employee awards. The Employers and the Unions agree to promote safety and undertake any safety recommendations made by the Prime Carrier, the Association and the Program Manager.			

MISCELLANEOUS TOPICS (scope, administration, other): Panel C10				
	LOCAL UNION NO. 3	ECA	HUDSON WATERFRONT	BECHTEL
Benefit Levels			Temporary Total Disability: \$75 above statutory maximum Permanent Total Disability: \$75 above statutory maximum Partial Disability: Consistent with the statutory scheme for permanent and temporary partial disability, except the percentage shall be increased to 70% of an employees average weekly wage.	

MISCELLANEOUS TOPICS (scope, administration, other): Panel C10				
	WESTCHESTER/PUTNAM			
Benefit Levels				

APPENDIX D

Summary of the Literature

SUMMARY OF THE LITERATURE

Table 1: Disputes, Dispute Resolution, and Use of Lawyers

Table 2: Determinants of Workers' Compensation Medical and Indemnity Costs (Managed Care Analyses)

Table 3 : Determinants of Return to Work or Duration of Disability

Table 1: Disputes, Dispute Resolution, and Use of Lawyers

Table 1, Panel A: Determinants of the Use of Lawyers in Workers' Compensation

Study	Sample, Period Examined	Methodology	Outcome Measure	Determinants	Principal Conclusions
Borba & Appel (1987)	1,060 CA permanent disability claimants, 1975-76 . policy year injury dates	Injured Worker Survey; Probit	Attorney Hired	<u>Injury Severity</u> Permanent disability rating (%) Duration of hospitalization <u>Workers' Compensation Benefit Delivery System</u> Survey: worker satisfied with insurer keeping worker informed Survey: worker satisfied with insurer's overall handling of case Weeks of temporary total disability <u>Worker's Labor Market Characteristics</u> Survey: worker satisfied with employer's dissemination of info. about benefits Pre-injury weekly wage Union member Employed at job < 3 months Part-time job, where injured Receiving disability income from another source Additional family member began work post-injury Number of family members working at time of injury <u>Worker's Demographic Characteristics</u> Age, gender, marital status, race, ethnicity, education	Propensity to hire a lawyer: a) positive association with: injury severity, level of education, union membership, availability of additional income sources b) negative association with: satisfaction with claims handling (employer's and insurer's), age, pre-injury weekly wage

Table 1: Disputes, Dispute Resolution, and Use of Lawyers

Table 1, Panel A: Determinants of the Use of Lawyers in Workers' Compensation

Study	Sample, Period Examined	Methodology	Outcome Measure	Determinants	Principal Conclusions
Mitchell, Zhu, & Lee (1995)	1,200 TX claimants, randomly selected & stratified sample of injured workers with 1/1/91-6/30/94 injury dates and a scheduled TX WC Commission dispute resolution in 1992, 1993, and/or 1994	Injured worker survey; Logit	Attorney hired, injured worker categories: 1a) all workers, 1b) not involved in workers' comp. disputes, 1c) involved in workers' comp. disputes Attorney not hired, injured worker categories: 1a) tried to hire, 1b) not involved in workers' comp. disputes, 1c) involved in workers' comp. disputes	Survey: worker knowledge of workers' comp., when injured, employer helpfulness when injured, satisfaction with TX WC Commission assistance, satisfaction with employer's insurer, satisfaction with job, union member, level of education, whether wages were sole source of household income Pre-injury weekly wage Job tenure Gender Marital status	Attorneys are more likely to be hired if the worker: regards the employer as unhelpful, is dissatisfied with the insurer, has low job tenure, is a female
Boden & Victor (1994)	251 WI back injury claims with permanent partial disability, 1986	Probit	Attorney Representation	Age Hospitalized (no back surgery) Back surgery Temporary disability (in months) Voluntary PPD payment	Voluntary payment is inversely & most strongly associated with attorney representation

Table 1: Disputes, Dispute Resolution, and Use of Lawyers

Table 1, Panel B: Determinants of Workers' Compensation Disputes and other Outcomes

Study	Sample, Period Examined	Methodology	Outcome Measure	Determinants	Principal Conclusions
Fournier & Morgan (1995)	2,686-11,946 FL closed claims, 1983-92 injury dates	OLS	<p>Litigation Intensity: <u>Time to closure</u> (Injury to closure date, in days) <u>Case Frequency</u> (Frequency of judge's orders issued) <u>Attorney Fees</u> (\$ value of carrier's, of claimant's) <u>Sum Awarded</u> (\$ value of final sum awarded)</p>	<p>Disability type (permanent impairment, permanent total, wage loss, death) Part of body (arm, back) Wage (average weekly wage, for 13 weeks before injury) Age Urbanization Private sector Industry type Year</p>	<p>Litigation intensity: a) positive association with: disability type, back injuries, pre-injury wages, age b) negative association with: arm injuries</p>
	516,458 FL claims, 1983-92 injury dates; 50,270 FL claims, 1987 injury date; 56,058 FL claims, 1990 injury date	Probit	<p>Probability of litigation (litigated case: at least one hearing was requested before a judge of compensation claims, and at least one record appears on the judge's orders files)</p>		<p>Litigation: a) positive association with: disability type, back injuries, age, construction industry claims b) negative association with: arm injuries</p>

Table 1: Disputes, Dispute Resolution, and Use of Lawyers

Table 1, Panel B: Determinants of Workers' Compensation Disputes and other Outcomes

Study	Sample, Period Examined	Methodology	Outcome Measure	Determinants	Principal Conclusions
Fournier & Morgan (1996)	515,971 FL claims, 1983-92 injury dates	Probit	Probability of litigation (litigated case: at least one hearing is requested before a judge of comp. claims, and evidence of any litigation activity is found in the judge's orders files)	Disability type (permanent impairment, permanent total, wage loss) Part of body (arm, back, head, multiple) Wage (average weekly wage, for 13 weeks before injury) Injury occurred on a Monday Age Urbanization Private sector Industry type Year	Litigation: a) positive association with: disability type, part of body (back, head, multiple injuries), age, industry type (construction, agriculture) b) negative association with: part of body (arm), pre-injury wage level, industry type (manufacturing, transport, wholesale trade, retail trade, public admin.)
Roberts (1992)	583 MI claims, randomly selected, 4/1/84-3/15/85 injury dates	Logit	Probability of the case being contested (claimant requests a hearing before a workers' comp. magistrate)	<u>Injury Characteristics & Claims Process</u> Injury type (fracture and/or dislocation) Injury severity (hospitalization) No. of weeks of temp. total benefits No. of days between injury date and first benefit payment <u>Claimant's Labor Market Characteristics</u> Occupation Industry type Worked for employer < 39 weeks Employer is self-insured Annual salary at time of injury <u>Personal Characteristics</u> Age, marital status, single head of household	Contesting a claim: a) positive association with: the duration of temporary total benefits, the length of time between the injury date and the first benefit payment, occupation (blue collar, protective service jobs), industry type (government, manufacturing, service or sales) b) negative association with: fractures

Table 1: Disputes, Dispute Resolution, and Use of Lawyers

Table 1, Panel B: Determinants of Workers' Compensation Disputes and other Outcomes

Study	Sample, Period Examined	Methodology	Outcome Measure	Determinants	Principal Conclusions
Thompson (1994)	stratified random sample of 990 NY nonscheduled permanent partial disability claims, 1972 injury dates, initially closed before 1983	Probit; Hazard rate estimates	Probability of controversion Conditional probability of insurers' benefit reductions after liability has been established	<u>Claimant Characteristics</u> age, gender, marital status, speaks English, represented by legal counsel <u>Injury Characteristics</u> arm or leg, multiple body parts, respiratory or circulatory system, back musculature, trauma, sprain or strain, injury occurred on a Monday <u>Liability for Claim</u> apportioned among 2 or more insurers, State Insurance Fund, private-sector self-insured employer, public-sector self-insured employer <u>Other Variables</u> pre-injury wage, weekly workers' comp. benefits, geographic setting (New York City)	Insurers are more likely to convert: claims of single claimants, claimants represented by legal counsel, claims involving circulatory or respiratory problems, claims involving occupational disease or internal injury
Neuhauser & Koehler (1996)	CA permanent disability claims, 1989-92 injury dates	Hazard analysis	Time to Resolve Claim	Injury severity (permanent disability rating, awards for total medical and incurred indemnities) Speciality exams (number, type) Presence of employee legal representation	Longer resolution times are associated with injury severity and the presence of an employee attorney Shorter resolution times are associated with the presence of one or more orthopedic exams

Table 1: Disputes, Dispute Resolution, and Use of Lawyers

Table 1, Panel B: Determinants of Workers' Compensation Disputes and other Outcomes

Study	Sample, Period Examined	Methodology	Outcome Measure	Determinants	Principal Conclusions
Hunt (1982)	2,177 MI closed cases	OLS	Probability of litigation (filing of a formal, written request for a hearing)	Insurer type Nature of injury Part of body Level of indemnity payments Geographic location (Detroit) Gender Age (55 or over)	Litigation: a) positive association with: insurer type (self-insured: big three automaker), nature of injury (multiple injuries), part of body (back injuries, multiple parts, entire body system injuries), level of indemnity payments, geographic location (Detroit), age (55 or over) b) negative association with: insurer type (self-insured: other), nature of injury (burn, cut, fracture)
Hyatt & Kralj (2000)	3,837 Ontario Workers' Comp. Board claims, 1980 or later injury dates, decision rendered 1986-early 1989	Binomial & Multinomial Logit	Probability that worker appeal is: Fully granted, Partially granted, Denied	Worker represented at hearing (by whom) Employer experience-rated Complexity of the appeal (duration of the hearing) Use of an interpreter for the hearing Issue at dispute (13 separate categories) Nature of the injury (back injury, sprains, strains) Worker demographics (age, gender, occupation) Year of the hearing decision	Probability, positive association: <u>Appeal is fully granted:</u> Representation (by Office of Worker Advisor) Non-back sprain or strain <u>Appeal is partially granted:</u> Representation (by politicians/ their staff) Duration of the hearing <u>Appeal is denied:</u> Use of interpreter at hearing Duration of the hearing Issue other than compensability of claim

Table 1: Disputes, Dispute Resolution, and Use of Lawyers

Table 1, Panel B: Determinants of Workers' Compensation Disputes and other Outcomes

Study	Sample, Period Examined	Methodology	Outcome Measure	Determinants	Principal Conclusions
Falaris, Link, & Staten (1995)	DE cases for compensable lost-time injuries: 3,951 cases with 1982 injury dates; 4,328 cases with 1985 injury dates; 5,926 MI compensated cases, closed in 1986	Probit	Probability employer or worker will contest a claim	<p><u>Delaware claims</u> Type of employer/insurer Age, gender, wage at time of injury Location (county of residence) Industry type Part of body injured Nature of injury</p> <p><u>Michigan claims</u> Type of employer/insurer Age Location (SMSA)</p>	<p>Probability that a claim will be contested:</p> <p><u>Delaware claims</u> (1982 and 1985 models) a) positive association: employer is major (self-insured) automaker, age, industry (construction, finance & other, public sector), part of body (back, shoulder, arms, knee, multiple parts), nature of injury (amputation) b) negative association: age squared, male</p> <p><u>Michigan claims</u> a) positive association: location (Ann Arbor-Jackson, Detroit) b) negative association: group-insured private sector, other self-insured private sector, self-insured public sector</p>

Table 2: Determinants of Workers' Compensation Medical and Indemnity Costs (Managed Care Analyses)

Study	Sample, Period Examined	Methodology	Outcome Measure	Determinants	Principal Conclusions
WA State WC Managed Care Pilot Project (1997); Kyes et al. (1999); Cheadle et al. (1999)	Initial sample: Managed Care: 120 firms, 7,041 employees, 1,354 injuries; Control Group: 392 firms, 12,296 employ., 1,708 injuries	Injured worker survey, post-injury: 1) 6 wks, 2) 6 months (for lost-time cases) Employer Survey Chi-Squared & T-tests; OLS	Medical Costs 1) Total Med Costs per claim 2) Inpatient: total hospital costs 3) Outpatient costs: a) Total visit costs; b) Outpatient surgery 4) Other Med Costs: pharmacy, lab, x-ray, physical therapy, other Time-Loss Duration and Disability Costs 1) % on time loss; 2) time-loss payments; 3) time-loss days Injured Worker Survey: 1) Functional outcomes; 2) Patient satisfaction Employer Survey: Satisfaction	For cost analysis: Injury type <u>Demographics</u> Age, Marital Status, No. of Dependents, Monthly Wage Prior to Injury Seasonal Dummies 36% (439) of Managed Care patients had 1 or more out-of-network visits; "it is unclear why managed care patients chose to go out-of-network" (p. viii) Cost analyses were done including and excluding out-of-network costs	Managed Care: 1) reduced total medical costs by 27% to 32% (out-of-networks claims incl., excluded) mainly through lower outpatient surgery costs & lower costs for other outpatient services 2) had no adverse effect on quality of care (functional outcomes were similar in MC & and in fee-for-service) 3) was associated with greater dissatisfaction re: treatment (27% of MC patients, 17% of controls were dissat.); with greater dissatisfaction re: access to care 4) was associated with fewer lost-time claims 5) was associated with greater employer satisfaction re: claims administration & re: the provision of info. to injured workers
	Functional outcome, Patient Sat. Survey Size: 578 MC workers, 735 Controls Cost analysis size: 670 MC workers, 786 controls. Control group firms: selected on 5 criteria for matching. Injury dates: Managed Care: 4/1/95-3/31/96 Control Group: 8/14/95-6/30/96				

Table 2: Determinants of Workers' Compensation Medical and Indemnity Costs (Managed Care Analyses)

Study	Sample, Period Examined	Methodology	Outcome Measure	Determinants	Principal Conclusions
Oregon Dept. of Consumer & Business Services (1999)	<p>9,409 OR workers with disabling claims with injury dates after 7/1/95 & that closed during last 4 months of 1997</p> <p>Disabling claim: qualify for time-loss benefits (lose > 3 days of work); or suffer perm. disability or death</p> <p>Claims excluded from study: medical-only, permanent total, fatalities</p> <p>4,484 workers covered by an MCO contract between the MCO & an insurer; 4,925 workers not covered</p>	<p>Injured worker survey;</p> <p>T-tests; OLS</p>	<p>Medical Costs</p> <p>Number of Medical Services</p> <p>Paid Amounts for 3 Surgery Services</p> <p>Timeloss Payments</p> <p>Timeloss Days</p> <p>PPD Payments</p> <p>Total Claims Cost</p> <p>Injured Worker Survey:</p> <p>Functional Outcomes</p> <p>Patient Satisfaction</p>	<p><u>Demographic</u></p> <p>Age, Work Days, Weekly Wage, Urbanization, Insurer Type</p> <p>Nature of Injury</p> <p>Part of Body</p> <p>Cause of Injury</p> <p>ICD-9 Severity Indices</p> <p><u>Managed Care Coverage</u></p> <p>Covered by MC</p> <p>Covered, not enrolled</p> <p>Covered, enrolled</p>	<p>Managed Care was associated with:</p> <ol style="list-style-type: none"> 1) 12.4 percent lower medical costs; 2) 9.9 percent lower timeloss costs; 3) 17.5 percent lower PPD costs; 4) 12.9 percent lower total claims costs; 5) 6.3 percent fewer medical services; 6) 10.7 percent lower cost of the 3 most expensive surgical procedures <p>Patient Satisfaction:</p> <p>Managed Care workers were less satisfied with:</p> <ul style="list-style-type: none"> the overall ease of obtaining care; the number of doctors could choose from <p>(statistically sign. differences)</p> <p>Functional Outcomes</p> <p>Managed Care workers gave more favorable ratings of the level of physical pain; their current emotional condition</p> <p>(statistically sign. differences)</p>

Table 2: Determinants of Workers' Compensation Medical and Indemnity Costs (Managed Care Analyses)

Study	Sample, Period Examined	Methodology	Outcome Measure	Determinants	Principal Conclusions
Borba, Appel, & Fung (1994)	<p>HMO Study: 1,240 claims of FL state govt. employees in HMO; 1,460 claims of FL state govt. employees in fee-for-service</p> <p>PPO Study: 1,433 claims of private sector employees in PPO;</p> <p>Control groups: 1,164 claims from HMO control group; 1,395 claims from self-insured</p> <p>Injury dates: 6/15/91-3/15/93</p>	<p>Injured worker survey;</p> <p>T-tests; OLS;</p> <p>Decomposition Analysis</p>	<p>Costs</p> <p>Injured Worker Survey: Functional Outcomes Patient Satisfaction</p>	<p><u>Demographic</u></p> <p>Age, Male, Job Tenure with Current Employer, Type of Disability (Med Only) Part of Body ICD-9 Categories Number of dates of treatment Number of treatments by CPT categories Hospital costs (dummy) Length of disability in days</p>	<p>Managed Care (HMO Study) was associated with 54% lower total costs</p> <p>Attributable to:</p> <ol style="list-style-type: none"> 1) lower incidence & shorter duration of indemnity claims (accounts for 6-7% of cost savings); 2) less use of hospital services (8-12%); 3) fewer dates of treatment & fewer physician treatments (0-5%); 4) other factors -- mainly, 15% discount off of the FL fee schedule & less costly mix of services (26-40%) <p>Medical-only claims: Managed Care (HMO study) was associated with 39% lower costs</p> <p>Indemnity claims: Managed Care (HMO study) was associated with 52% lower costs; with a 44% reduction in average duration of disability</p>
				<p>Conclusions (continued): Managed Care (HMO study) workers were less satisfied with care received, the doctor, ability to get appropriate tests, explanations, control over decisions (stat. sign. differ.)</p>	

Table 2: Determinants of Workers' Compensation Medical and Indemnity Costs (Managed Care Analyses)

Study	Sample, Period Examined	Methodology	Outcome Measure	Determinants	Principal Conclusions
NYS School of Industrial & Labor Relations, Cornell University (2000)	542 control group claims & 463 managed care claims, from 1 NY employer; injury dates 10/1/95-10/1/97	Injured worker survey, post-injury: 1) 4 months, 2) 8 months Supervisor survey T-tests; OLS; Probit Analyses; Tobit Analyses	Quality of care: 1) patient satisfaction, 2) self-reported functional limitations Costs: 1) medical cost per case (all cases; back-neck cases), 2) total cost per case Medical treatment: 1) worker indicates "too few" treatments (all cases; back-neck cases), 2) number of treatments received Number of lost workdays	<u>Demographic</u> Gender, Age, Education, Marital Status, Race, Family Income, Tenure with Employer, Full- or Part-time Status, Worker satisfaction with job attributes, Injury severity, Part of body injured, Nature of injury, Supervisor evaluation of employee	Managed Care: 1) was associated with less patient satisfaction, 2) did not lower medical costs, 3) did not reduce the number of days lost

Table 2: Determinants of Workers' Compensation Medical and Indemnity Costs (Managed Care Analyses)

Study	Sample, Period Examined	Methodology	Outcome Measure	Determinants	Principal Conclusions
Johnson, Baldwin, & Marcus (1999)	162,221 CA, CT, & TX closed claims, matched pairs in and out of network, injury dates 8/1/95-6/30/97 (networks: "organizations of health care providers that contract with wc carriers to provide discounted services to workers from insured companies," p. 11)	3 Comparison Groups (per proportion of care received in or out of network) 3 Injury Groups (back; inflammations, lacerations, & contusions; other) Decomposition analysis: total cost differential network-out of network is allocated among 3 effects: medical costs: price effect; quantity effect; provider-service-mix effect indemnity costs: claim-mix effect; installment effect; duration effect	Costs		WC networks were associated with lower medical costs Medical cost differentials for 2 comparison groups were 14-28% for medical-only claims; 33-46% for indemnity claims (p. 112) Medical cost differentials were primarily due to networks' lower per-unit prices & lower quantities of services WC networks were associated with lower indemnity costs & a shorter duration of lost time

Table 3 : Determinants of Return to Work or Duration of Disability

Study	Sample, Period Examined	Methodology	Outcome Measure	Determinants	Principal Conclusions
Cheadle et al. (1994)	28,473 WA State claims filed 1/1/87-12/31/89	Survival analysis (Cox proportional hazard models)	Duration of work-related disability (length of time for which compensation for lost wages was paid)	Gender Age Marital status Dependents Type of injury Injury severity (hospitalized within 28 days of injury) Firm size County unemployment rate County of injury Injury date (year) Industry classification Type of firm ownership (public, private) Retrospective rating program Benefit rate (% of monthly wage)	Longer duration of disability was associated with: female gender, older age, divorced marital status, carpal tunnel or back/neck strain, injury severity, firm size (less than 50 employees), higher county unemployment rates, construction work, agricultural work

Table 3 : Determinants of Return to Work or Duration of Disability

Study	Sample, Period Examined	Methodology	Outcome Measure	Determinants	Principal Conclusions
Butler, Johnson, & Baldwin (1995); Baldwin, Johnson, & Butler (1996)	3,398 Ontario workers with permanent partial impairments, 1974-87 injury dates	Injured worker survey; Logit	Returned to work	<p><u>Injury Type</u> fractures, back sprains or strains, other sprains or strains, occupational illnesses, crushing injuries, other injuries</p> <p><u>Economic Incentives</u> replacement rate (estimated ratio of workers' compensation benefit payments to time-of-injury wages)</p> <p><u>Job Characteristics</u> union member, geographic region, type of industry</p> <p><u>Demographic Characteristics</u> gender, age, marital status, education</p>	<p>Return to work is:</p> <p>a) positively associated with: other sprains or strains, union membership, education</p> <p>b) inversely associated with: age, the replacement rate</p>
		Multinomial Logit	<p>Single Absence, Successful Return</p> <p>Single Absence, Unsuccessful Return</p> <p>Multiple Absences, Successful Return</p> <p>Multiple Absences, Unsuccessful Return</p> <p>[omitted category]</p>	<p>Above, plus:</p> <p><u>Employer accommodations</u> Reduced hours Modified Equipment Light Work</p>	<p>Workers at greatest risk of multiple spells of absence and unsuccessful returns to work are:</p> <p>older, more likely to be women, less educated, more likely to have back conditions, less likely to receive job accommodations from their employers for their functional limitations</p>

Table 3 : Determinants of Return to Work or Duration of Disability

Study	Sample, Period Examined	Methodology	Outcome Measure	Determinants	Principal Conclusions
Barrilleaux & Langer (1996)	13,009 to 13,936 FL claims, pooled random sample, 1990-93 injury dates (entire sample, eight subsets for each of eight disability types)	Probit	Returned to work a) at 80% of pre-injury wages at any time during the 4 quarters following the injury, b) during the 1st quarter following the injury	<u>Injury Severity</u> Permanent impairment rating Type of disability <u>Intensity of Treatment</u> Amount spent on hospitalization Amount spent on medical <u>Employer Characteristics at Time of Injury</u> Type of industry Employer size <u>Characteristics of Area Where Employed</u> County unemployment rate County per capita personal income Metro. Statistical Area dummies <u>Worker Characteristics</u> Age, Gender, Average Wages Pre-injury, Number of Employers Pre-injury Type of injury (back injury) Total amount of benefits received Year dummies	Returned to work at 80% of pre-injury wages, a) positive association: industry (manufacturing), employer size, county unemployment rate, age, gender (male), average wages pre-injury b) negative association: perm. impairment rating, type of disability (permanent impairment, wage loss only, wage loss perm. impairment, perm. total disability), amount spent on hospitalization, industry (construction, food service), number of employers pre-injury, type of injury (back injury), total amount of benefits received

Table 3 : Determinants of Return to Work or Duration of Disability

Study	Sample, Period Examined	Methodology	Outcome Measure	Determinants	Principal Conclusions
Burkhauser et al. (1995)	348 working age men with chronic health conditions who were employed at the start of their work limitation, and who responded to the Social Security Administration's 1978 Survey of Disability and Work (Health Interview Survey frame)	Health Interview Survey; Hazard model	Probability of leaving one's employer following the onset of a work-limiting health condition	Job accommodation (at the onset of the work limitation, the employer provided help to the respondent to remain on the job) Health measures (comorbidity, cardiovascular, musculoskeletal) Job characteristics (white collar) Socio-economic characteristics Age, Marital Status, Race, Education, Job Tenure, Overall Job Experience, Job Tenure, Had Savings, Social Security Disability Insurance replacement rate	The risk of job exit after the onset of a work-limiting condition: a) is reduced by: job accommodation, longer job tenure; b) is increased by: higher replacement rates, greater age at the onset

Table 3 : Determinants of Return to Work or Duration of Disability

Study	Sample, Period Examined	Methodology	Outcome Measure	Determinants	Principal Conclusions
Galizzi & Boden (1996)	118,965 WI lost-time claims, 1989-90 injury dates	Injured worker survey; Weibull duration model	Length of time off work	Economic incentives (preinjury wage, weekly TTD benefit rate, after-tax wage at return to work) Worker characteristics (gender, age, job tenure) Occupation type Industry type Employer characteristics (size, public) Nature of injury Part of body injured Economic conditions (unemployment rate)	For claims involving at least 30 days off of work: a) positive association: Economic incentives (weekly TTD benefit rate), Worker characteristics (intermittent preinjury employment, age 60+, change of employer and job tenure <3 months to 10 years), Occupation type (managerial or professional, skilled blue collar), Industry type (mining and construction, transportation), Employer characteristics (1-50 employees), Nature of injury (subjective) b) negative association: Economic incentives (preinjury wage, after-tax wage at rtw), Worker characteristics (female, job tenure 6.1 months-10+ yrs), Occupation type (service), Industry type (nondurable manufacturing, finance), Employer characteristics (251-1,000 employees), Part of body injured (extremity: upper, lower; other nonback)

Table 3 : Determinants of Return to Work or Duration of Disability

Study	Sample, Period Examined	Methodology	Outcome Measure	Determinants	Principal Conclusions
Ontario Workers' Comp. Board (1994)	4,592 Ontario cases with 12 continuous months of temp. disability benefits & the 24th month first review of future economic loss [FEL] benefits as of 2/28/94, 1990 injury dates	Logit	Probability of employment, at the 24th month first review of future economic loss [FEL] benefits, with: a) any employer; b) the accident employer	Employed at initial FEL determination [D1] Size of accident employer Experience-rated firm Injured worker characteristics (age, marital status, gender, job tenure) Occupation at time of accident Industry sector Geographic region Nature of injury Part of body	<p>Probability of employment, any employer:</p> <p>a) positive association: employed at D1, size of accident employer</p> <p>b) negative association: age, occupation (materials handling), industry (manufacturing, construction)</p> <p>Probability of employment, accident employer:</p> <p>a) positive association: employed at D1, size of accident employer, married</p> <p>b) negative association: occupation (construction trades), industry (manufacturing, construction), part of body (back, knee)</p>

Table 3 : Determinants of Return to Work or Duration of Disability

Study	Sample, Period Examined	Methodology	Outcome Measure	Determinants	Principal Conclusions
MacKenzie et al. (1987)	266 individuals hospitalized for traumatic injury due to falls, assaults, or motor vehicle accidents; who worked full-time pre-injury; & lived in MD, VA, WV, DC, DE, or PA	Survey: 6 & 12 months post-hospital discharge Logit [adjusts for type & severity of injury]	Employed, post-injury: a) at 6 months, b) at 12 months	Age Race Gender Marital status Head of household Education Type of work pre-injury Income Social support (presence of confidants)	Return to work: positive association with: education, income, presence of a social support network

APPENDIX E1

Data Submission Instructions

New York State Workers' Compensation
Alternative Dispute Resolution Pilot Project Evaluation

Data Submission Instructions

Local 3 version
April 13, 1999

This document contains a list of data elements that are needed for the Alternative Dispute Resolution (ADR) Pilot Project Evaluation. The purpose of the project is to evaluate the use of ADR in the construction trades as an alternative to the New York State Worker's Compensation Board's (WCB) traditional claims procedures. Cornell University's New York State School of Industrial and Labor Relations is collecting the data. Cornell will be collecting data not only for injuries covered under an ADR agreement, but also for injuries processed under the traditional worker's compensation system to be used as a 'control' group. If you have any questions, please contact the assistant data manager:

Michael Miles	Phone: (607) 255-9138
Ives Hall	Fax: (607) 255-7774
Cornell University	E-mail: mgm6@cornell.edu
Ithaca, NY 14853	

Sending Data Files

Data files should be sent to the above address. Data submission should be either on 3 ½ diskette(s) or through FTP (File Transfer Protocol).

- 3 ½ Diskette - Please label the diskette with the name of your organization, contact name, phone number, and date files were created.
- FTP - If you want send data files using FTP, please contact the data manager above for details.

File Format

Below is a list of file types that that are recommended. If you would like to send data of a different file type, please contact the data manager above.

- Fixed format ASCII
- DBF
- Excel
- Access

Field Layout

On the back is a list of data elements. Please contact the data manager if you have any questions regarding any of these fields.

Which claims to send

- **Closed claims** - Since an important part of the evaluation is to survey the injured worker *after* he/she has gone through the claims processing procedure, please send data only on claims that have been closed. The determination of 'closed' will depend on the specific ADR agreement for injuries covered under an ADR contract. For traditional claims (non-ADR), closure on indexed cases will be determined by the WCB.
- **Construction trades only** - please send data for injured workers in the construction trades only. Please do not include office workers or other employees who are not in the building trades.

#	FIELD	COL	LEN	NOTES/DESCRIPTION
1	Social Security Number	1	9	999999999
2	Date of Injury	10	6	MMDDYY
3	ADR claim	16	1	1=yes; 2=no (traditional WCB claim)
4	First Name	17	15	
5	Last Name	32	20	
6	Middle Initial	52	2	
7	Date of Birth	54	6	MMDDYY
8	Home Street address (line 1)	60	30	Claimant's residence
9	Home Street address (line 2)	90	30	
10	Home City	120	25	
11	Home State	145	2	
12	Home Zip	147	10	
13	Home Phone (include area code)	157	12	999-999-9999
14	Gender	169	1	
15	Union Name	170	40	
16	Union Trade	210	40	
17	Union Local #	250	10	
18	Work classification at time of injury	260	1	1=journeyman; 2=apprentice; 8=not available; 9=unknown
19	Number of years member of union	261	2	
20	Insurance Carrier Case #	263	20	
21	Workers' Comp. Board Case #	283	8	
22	Part of Body Injured	291	4	ROSH code (internal code or description acceptable if ROSH code not available)
23	Nature of Injury	295	4	ROSH code (internal code or description acceptable if ROSH code not available)
24	Type of Claim	299	2	0=Death Cases;
25	Total Medical Cost Paid To Date	301	8	999999DD (where DD is the decimal portion; e.g. \$784.52 → 78452 and \$235.00 → 23500)
26	Date of Most Recent Medical Payment	309	6	MMDDYY
27	Primary Medical Diagnosis	315	6	ICD-9 code
28	Total Indemnity Benefits Paid To Date	321	8	999999DD (where DD is the decimal portion; e.g. \$784.52 → 78452 and \$235.00 → 23500)
29	Date of First Indemnity Payment	329	6	MMDDYY
30	Date of Most Recent Indemnity Payment	335	6	MMDDYY
31	Have Indemnity Payments Stopped?	341	1	1=yes; 2=no; 9=unknown
32	Lump-Sum Award	342	8	999999DD (where DD is the decimal portion; e.g. \$784.52 → 78452 and \$235.00 → 23500)
33	Permanent Impairment Rating	350	3	Percent
34	Total Earnings Before Injury	353	8	Total earnings in the 52 weeks prior to the date of injury 999999DD (where DD is the decimal portion; e.g. \$784.52 → 78452 and \$235.00 → 23500)
35	Average Weekly Wage - After Injury	361	8	999999DD (where DD is the decimal portion; e.g. \$784.52 → 78452 and \$235.00 → 23500)
36	Total Hours Worked - Before Injury	369	4	Total number of hours worked by claimant in the 52 weeks prior to the date of injury Format: 9999 (no decimal)
37	Weeks of Temporary Disability Benefits	373	5	Total # of weeks. Format: 9999D (where D is the decimal portion; e.g. 21.6 → 216)
38	Insurance Carrier/Self-Insured Dispute: Controversion	378	1	Did the insurance carrier or self-insured controvert the claim (file a C-7 or the equivalent under ADR)? (1=yes; 2=no; 8=not available; 9=unknown)
39	Controversion Date	379	6	Date the claim was controverted (MMDDYY)
40	Controversion Denied	385	1	Was the controversion denied (1=yes; 2=no; 8=not available; 9=unknown)
41	Insurance Carrier/Self-Insured Dispute: Suspend or reduce payments - C-22b filed	386	1	Did the insurance carrier or self-insured file a notice of intention to suspend or reduce the payment of compensation? (1=yes; 2=no; 8=not available; 9=unknown)
42	Date Insurance Carrier filed C-22b	387	6	MMDDYY
43	Insurance Carrier/Self-Insured Dispute: Treatment/Bill - C-8.1 filed	393	1	Did the insurance carrier or self-insured file a notice regarding treatment/disputed bill issues (file a C-8.1 or the equivalent under ADR)? (1=yes; 2=no; 8=not available; 9=unknown)
44	Date Insurance Carrier filed C-8.1	394	6	MMDDYY
45	Date Closed	400	6	Date that the case was closed. For traditional Worker's Comp. Board claims (non-ADR) use the WCB closure date. For ADR use the closed case date or, if not available, the date of the ADR2. Format: MMDDYY
46	Date File Created	406	6	Date that this file was created (MMDDYY)
47	Notes	412	75	Notes from Local 3

New York State Workers' Compensation Alternative Dispute Resolution Log

An ongoing (daily) log is to be kept for each issue, inquiry, or any other usage of the ombudsman step and every other step of the ADR procedure. If there are multiple issues, not all of which may be raised at the same time and resolved at the same step of the ADR procedure, the log will need to document all activity related to that claim.

Cornell University
School of Industrial & Labor Relations
May 5, 1998

Alternative Dispute Resolution Log

Ombudsman (Compensation Advisor, Personal Representative, or equivalent term) Stage

Name of person compiling the log:

Last Name: _____ First Name: _____ Middle: _____

Name of Ombudsman

Last Name: _____ First Name: _____ Middle: _____

Employee Information

SSN: _____ Last Name: _____ First Name: _____ Middle: _____

Date of injury: ____/____/____ Carrier Case Number: _____ WCB Case Number: _____

Home telephone: (____) _____

Date of communication: ____/____/____

How was the communication made

___ phone call ___ face-to-face meeting ___ written correspondence ___ e-mail other: _____

Communication with whom

___ employee

Was this a goodwill call to the employee? ___ Yes ___ No

___ claims adjustor or other insurance representative

___ nurse advocate

___ licensed representative

___ lawyer representing the employee

___ lawyer representing the insurance carrier or employer

___ file

___ other (please specify _____)

Who initiated this communication

___ ombudsman ___ other party to communication

What issues were discussed? See list of issues in appendix A1.

Alternative Dispute Resolution Log

Mediation Stage

Name of person compiling the log

Last Name: _____ First Name: _____ Middle: _____

Which party (or parties) applied for mediation

employee employer

Date the employee applied for mediation

Date the employer applied for mediation

Date of referral to mediation

Date: ____/____/____

Date: ____/____/____

Date: ____/____/____

Employee Information

SSN: _____ Last Name: _____ First Name: _____ Middle: _____

Date of injury: ____/____/____ Carrier Case Number: _____ WCB Case Number: _____

Home telephone: (____) _____

Did any party refuse to use a mediator assigned to the claim? Yes No

If yes, write in the date on which the written refusal was made and the names of the refused mediators:

Party	Date of refusal	Name(s) of refused mediators
Employee		
Union Officials		
Employer		
Insurance Carrier		

Name of the mediators: accepted by all parties; actually used.

Accepted	Used	Last Name	First name	Middle name

Date(s) the mediator contacts each party to the dispute (includes meetings and phone discussions with parties individually)

Party	1 st date	2 nd date	3 rd date	4 th date	5 th date
Employee					
Union Officials					
Employer					
Insurance Carrier					

Date and length (in minutes) of each mediation session (includes meetings and conference calls where more than one party participates)

Session 1		Session 2		Session 3		Session 4		Session 5	
Date	Length	Date	Length	Date	Length	Date	Length	Date	Length

Representation by an attorney during mediation

Employee: ___ Yes ___ No ___ No, representation is not permitted at this stage

Employer: ___ Yes ___ No ___ No, representation is not permitted at this stage

Insurance Carrier: ___ Yes ___ No ___ No, representation is not permitted at this stage

Did the mediator appoint an authorized health care provider to assist in the resolution of any medical issue? ___ Yes ___ No

Date of completion of the mediation process: ___/___/___

Total amount of time that the mediator spent on the case: ___ hours

What issues did mediation involve? See list of issues in appendix A1.

Alternative Dispute Resolution Log

Arbitration Stage

Name of person compiling the log:

Last Name: _____ First Name: _____ Middle: _____

Which party (or parties) filed for arbitration

employee employer

Date the employee filed for arbitration

Date the employer filed for arbitration

Date of referral to arbitration

Date: ____/____/____

Date: ____/____/____

Date: ____/____/____

Employee Information

SSN: _____ Last Name: _____ First Name: _____ Middle: _____

Date of injury: ____/____/____ Carrier Case Number: _____ WCB Case Number: _____

Home telephone: (____) _____

Did any party refuse to use an arbitrator assigned to the claim? Yes No

If yes, write in the date on which the written refusal was made and the names of the refused arbitrators:

Party	Date of refusal	Name(s) of refused arbitrators
Employee		
Union Officials		
Employer		
Insurance Carrier		

Name of the arbitrators: accepted by all parties; actually used.

Accepted	Used	Last Name	First name	Middle name

Date(s) on which the arbitrator contacts each party to establish the date for the arbitration hearing

Party	1 st date	2 nd date	3 rd date	4 th date	5 th date
Employee					
Union Officials					
Employer					
Insurance Carrier					

Date and length (in minutes) of each arbitration hearing?

Hearing 1		Hearing 2		Hearing 3		Hearing 4		Hearing 5	
Date	Length	Date	Length	Date	Length	Date	Length	Date	Length

Representation by an attorney during arbitration

Employee: ___ Yes ___ No

Employer: ___ Yes ___ No

Insurance Carrier: ___ Yes ___ No

Did the arbitrator appoint an authorized health care provider to assist in the resolution of any medical issue? ___ Yes ___ No

Was a written or oral offer, finding or recommendation made during the mediation process by any party or the mediator admitted in the arbitration hearing? ___ Yes ___ No

If yes, by whom was the offer, finding, or recommendation made: _____

Date the arbitration proceeding was completed **Date the arbitration decision was rendered**

Date: ___/___/___

Date: ___/___/___

Total amount of time that the arbitrator spent on the case: _____ hours

What issues did arbitration involve? See list of issues in appendix A1.

Did the arbitrator find it necessary to impose penalties in accordance with sections twenty-five (1)(e), (2)(a), (2)(c), (3)(c), or (3)(f) of the workers' compensation law? ___ Yes ___ No

Please attach a copy of the written record of the arbitration proceedings and a copy of the arbitrator's award/decision.

Appendix A1 - List of issues

Issues (Check all that apply in the appropriate columns)	Party In Communication		How was issue resolved?		Extension
	Asked for information?	Raised an objection?	Change in prior decision	w/o change in prior decision	Agreed upon?
Accident, Notice, and Causal Relationship					
Accident, notice, and causal relationship (ANCR)					
Occupational disease, notice, and causal relationship (ODNCR)					
Additional sites from original report					
Consequential injury					
Aggravation of pre-existing condition					
Temporary/Permanent Disability Benefits; Death Benefits					
Period and extent of disability					
Period of lost time					
Period of actual reduced earnings					
Period of intermittent lost time					
Existence of permanence of injury					
Non-schedulable permanent loss					
Scheduled loss of use					
Permanent facial disfigurement					
Death claim					
Funeral expense					
Death benefit					
Authorization and Payment of Medical/Rehabilitation Benefits					
Change in condition					
Timeliness of medical treatment					
Accessibility of treatment					
Authorization of out of network care					
Continued need for medical treatment					
Need for surgery					
Need for diagnostic testing					
Need for physical therapy					
Need for chiropractic treatment					
Need for other treatment					
Need for rehabilitation					
Light duty or return-to-work program					
Disputed medical bill					
Appropriate medical and transportation expense reimbursement					
Calculation of Pre-injury wages/Computation of Awards					
Average weekly wage					
Proper maximum rate of compensation					
Wage expectancy applicable					
Concurrent employment considerations					
Apportionment to previous [EESISP] claim					
Apportionment to previous [non-EESISP] claim					
Section 15-8 responsibility					
Section 25-A responsibility					
Need to re-open case					
Lump-sum consideration					
Request for information or advice					
How do I file a workers' compensation claim?					
What are my workers' compensation benefits?					
From whom can I receive medical treatment?					
How do I use the alternative dispute resolution procedure?					
Other					
Reimbursement to employers for wages paid					
Reimbursement to disability benefits carrier					
Other (please specify)					

APPENDIX E3

Satisfaction/Awareness and Process Survey

DRAFT

Workers' Compensation Alternative Dispute Resolution Pilot Project: SATISFACTION/AWARENESS AND PROCESS SURVEY

Introduction

We would like to ask a few questions about your experiences as a result of your work related injury or illness. In particular, we would like to ask about your work injury, medical treatment, and the process in general.

1. Our records show that you were injured on [fill DOI], [if POB eq <unknown> **Go to Q1a**] and you injured your **[fill POB]**.

Is this correct?

- 1 Yes [**Go to Q2**]
- 2 No
- 99 Refused/unknown

- 1a. Were any other body parts injured?

- 1 Yes [**Go to Q1b**]
- 2 No
- 99 Refused/unknown

- 1b. What part of your body did you injure? [allow 12][store 1a in POB]

2. What kind of injury did you suffer?

- 1 Bruise
- 2 Fracture (broken bone) or crushing
- 3 Cuts
- 4 Back or neck strain
- 5 Other sprain or strain (hurt muscles or joints)
- 6 Carpal tunnel
- 7 Other (Specify)
- 99 Refused/unknown

- 2a. Did this injury involve a permanent disability?

- 1 Yes
- 2 No [**Go to Q3**]
- 99 Refused/unknown [**Go to Q3**]

2b. Has a final degree of disability been determined?

- 1 Yes [Go to Q3]
- 2 No
- 99 Refused/unknown [Go to Q3]

2c. Do you expect there to be a final determination made?

- 1 Yes (Ask when to set cb) [Go to cb, set callback for date given]
- 2 No [Go to cb, set callback for 2 months]
- 99 Refused/unknown [Go to cb, set callback for 2 months]

If CO neq Eastern Contractors goto Section 1 Q1

3. What is your trade?

4. What is your union?

Section 1: Introduction

1. Please indicate which of the following medical treatments you have had for your work injury:
(Please circle ALL that apply)

- 1 First-aid at the place of injury **Go to S4 Q1**
- 2 Emergency room treatment **Go to S4 Q1**
- 3 Medical care from a doctor or health professional in an office or outpatient clinic
- 4 Hospitalized at least for one night **Go to S4 Q1**
- 5 Medical care from a nurse at the place of injury (other than first-aid) **Go to S4 Q1**
- 6 No medical treatment **Go to S4 Q1**
- 99 Refused/unknown

If CO eq Eastern Contractors go to Section 6 Q1

2. After your injury, how did you find out what where to go to get your first medical treatment?
(Please circle ALL that apply)

- 1 you knew what to do **Go to S2 Q1**
- 2 someone told you what to do
- 3 you asked someone
- 99 Refused/unknown

3. To whom did you direct questions regarding your medical treatment?

(Please circle ALL that apply)

- 1 your supervisor (foreman)
- 2 a co-worker
- 3 someone from your union hall/union representative
- 4 the Ombudsman or Compensation Advisor
- 5 someone from the New York State Workers' Compensation Board
- 6 your lawyer
- 7 a nurse or your nurse advocate
- 8 your doctor
- 9 human resources
- 10 Other (specify)
- 99 Refused/unknown

4. Who gave you information about where to go for your medical treatment?

(Please circle all that apply.)

- 1 your supervisor (foreman)
- 2 a co-worker
- 3 someone from your union hall/union representative
- 4 the Ombudsman or Compensation Advisor
- 5 someone from the New York State Workers' Compensation Board
- 6 your lawyer
- 7 a nurse or your nurse advocate
- 8 your doctor
- 9 human resources
- 10 Other (specify)
- 99 Refused/unknown

Section 2: First Clinic or Medical Office Visit (MR)

The questions in this section ask about the first office or outpatient clinic visit you had with a doctor or another health professional (for example, a physical therapist, but **not** the nurse advocate) for your work-related injury -- do not count any emergency room visits or overnight hospital stays.

1. How much time did it take to travel to the medical office or clinic for your **first** medical visit?

- 1 Less than 15 minutes
- 2 15 minutes to half an hour
- 3 More than half an hour but less than an hour
- 4 About an hour
- 5 More than an hour
- 8 Don't remember
- 99 Refused/unknown

2. How soon after your scheduled appointment time were you seen by the doctor or health professional?

- 1 Less than 15 minutes
- 2 15 minutes to half an hour
- 3 More than half an hour but less than an hour
- 4 About an hour
- 5 More than an hour
- 8 Don't remember
- 99 Refused/unknown

3. How would you rate the following in terms of your first clinic or medical office visit?

a. The amount of time you had with the doctor or health professional.

- 1 excellent
- 2 very good
- 3 good
- 4 fair
- 5 poor
- 8 don't remember
- 99 Refused/unknown

b. Attention given by the doctor or health professional (to what you had to say?)

- 1 excellent
- 2 very good
- 3 good
- 4 fair
- 5 poor
- 8 don't remember
- 99 Refused/unknown

c. Attention given by the doctor or health professional to the workplace conditions associated with your injury

- 1 excellent
- 2 very good
- 3 good
- 4 fair
- 5 poor
- 8 don't remember
- 99 Refused/unknown

d. Awareness of the doctor or health professional about your duties at work

- 1 excellent
- 2 very good
- 3 good
- 4 fair
- 5 poor
- 8 don't remember
- 99 Refused/unknown

4. All things considered, how satisfied **now** are you with the care you received during your first clinic or medical office visit?

- 1 Very satisfied
- 2 Satisfied
- 3 Neither satisfied nor dissatisfied
- 4 Dissatisfied
- 5 Very dissatisfied
- 8 Don't remember
- 99 Refused/unknown

5. How did you select the person who treated you during your first clinic or medical office visit?
(Please select all that apply)

- 1 Person who provides your treatments for nonwork injuries and illnesses
- 2 Received treatments from this person in the past, but not your regular physician
- 3 Recommended by a co-worker, relative, or friend
- 4 Recommended by another doctor or health professional
- 5 Recommend by an attorney
- 6 Referred by Magnacare
- 7 None of the above
- 88 Don't remember
- 99 Refused/unknown

6. Because of your work injury, how many visits to a clinic or medical office have you had with a doctor or other health professional until now?

- 1 **1 Go to S4 Q1**
- 2 2
- 3 3 to 5
- 4 6 to 8
- 5 More than 8
- 99 Refused/unknown

Section 3: Last Clinic or Medical Office Visit (MR)

The questions in this section ask about the last office or outpatient clinic visit you had with a doctor or another health professional (for example, a physical therapist, but **not** the nurse advocate) for your work-related injury -- do not count any emergency room visits or overnight hospital stays.

1. How much time did it take to travel to the medical office or clinic for your **last** medical visit?

- 1 Less than 15 minutes
- 2 15 minutes to half an hour
- 3 More than half an hour but less than an hour
- 4 About an hour
- 5 More than an hour
- 8 Don't remember
- 99 Refused/unknown

2. How soon after your scheduled appointment time were you seen by the doctor or health professional?

- 1 Less than 15 minutes
- 2 15 minutes to half an hour
- 3 More than half an hour but less than an hour
- 4 About an hour
- 5 More than an hour
- 8 Don't remember
- 99 Refused/unknown

3. How would you rate the following in terms of your last clinic or medical office visit?

a. The amount of time you had with the doctor or health professional.

- 1 excellent
- 2 very good
- 3 good
- 4 fair
- 5 poor
- 8 don't remember
- 99 Refused/unknown

b. Attention given by the doctor or health professional (to what you had to say?)

- 1 excellent
- 2 very good
- 3 good
- 4 fair
- 5 poor
- 8 don't remember
- 99 Refused/unknown

c. Attention given by the doctor or health professional to the workplace conditions associated with your injury

- 1 excellent
- 2 very good
- 3 good
- 4 fair
- 5 poor
- 8 don't remember
- 99 Refused/unknown

d. Awareness of the doctor or health professional about your duties at work

- 1 excellent
- 2 very good
- 3 good
- 4 fair
- 5 poor
- 8 don't remember
- 99 Refused/unknown

4. All things considered, how satisfied **now** are you with the care you received during your last clinic or medical office visit?

- 1 Very satisfied
- 2 Satisfied
- 3 Neither satisfied nor dissatisfied
- 4 Dissatisfied
- 5 Very dissatisfied
- 99 Refused/unknown

5. Was the person who treated you during your last clinic or medical office visit the same as the person who treated you during your first clinic or medical office visit?

- 1 Yes **Go to Q7**
- 2 No
- 99 Refused/unknown

6 How did you select the person who treated you during your last clinic or medical office visit?
(Please select all that apply.)

- 1 Person who provides your treatments for nonwork injuries and illnesses
- 2 Received treatments from this person in the past, but not your regular physician
- 3 Recommended by a co-worker, relative, or friend
- 4 Recommended by another doctor or health professional
- 5 Recommend by an attorney
- 6 Referred by Magnacare
- 7 None of the above
- 99 Refused/unknown

Go to Q8

7. Did you change doctors or health professionals during the course of your medical treatment?

- 1 Yes
- 2 No **Go to S4 Q1**
- 99 Refused/unknown

8. What were the reasons for the change (Please circle all that apply.)

- 1 Dissatisfied with the care that was being provided by the doctor or health professional
- 2 Referred to another doctor or health professional by person providing treatment
- 3 Referred to another doctor or health profession by the insurance company
- 4 Initial doctor or health professional was not part of EESISIP network
- 5 Recommended by a co-worker, relative, or friend
- 6 Recommended by an attorney
- 7 Recommended by the nurse advocate
- 8 Other _____ (specify)
- 99 Refused/unknown

IF (DOI < MAY 1, 1996) GO TO S5 Q1 (SKIP SECTION 4 IF NOT IN ADR PILOT)

Section 4: Nurse Advocate/Ombudsman

Q1-6 ONLY LOCAL 3

Under the EESISIP program, you should have had contact with a nurse advocate.

1. Were you aware of the availability of the nurse advocate when you first sought care after your work-related injury?

- 1 Yes
- 2 No
- 99 Refused/unknown

2. How many times did you have contact with the nurse advocate?

- 1 0 **Go to S5 Q7**

- 2 1
- 3 2 to 3
- 4 4 to 5
- 5 More than 5
- 99 Refused/unknown

3. When did you first have contact with the nurse advocate?

- 1 Immediately after the injury and before seeing a doctor
- 2 Within one day after seeing a doctor for the first time
- 3 During the second or third day after seeing a doctor for the first time
- 4 More than 3 days after seeing a doctor for the first time
- 99 Refused/unknown

4. How important was it that the nurse advocate be able to provide the following services to you?

a. To be available soon after the injury to answer your questions and explain the medical care you were to receive

- 1 no opinion
- 2 not important
- 3 slightly important
- 4 important
- 5 very important
- 99 Refused/unknown

b. To be available during your treatment period to answer questions and explain the medical care you were receiving

- 1 no opinion
- 2 not important
- 3 slightly important
- 4 important
- 5 very important
- 99 Refused/unknown

c. To be available to discuss with the doctor or health professional your questions concerning your treatment

- 1 no opinion
- 2 not important
- 3 slightly important
- 4 important
- 5 very important
- 99 Refused/unknown

d. To be available to discuss the workplace conditions that are associated with your injury

- 1 no opinion
- 2 not important
- 3 slightly important
- 4 important
- 5 very important
- 99 Refused/unknown

e. To assist in return-to-work planning

- 1 no opinion
- 2 not important
- 3 slightly important
- 4 important
- 5 very important
- 99 Refused/unknown

f. To assist in resolving issues with the insurance company

- 1 no opinion
- 2 not important
- 3 slightly important
- 4 important
- 5 very important
- 99 Refused/unknown

5. How would you rate the following in terms of your experience with the nurse advocate?

a. The amount of time the nurse advocate spent answering your questions and explaining the medical care you were to receive

- 1 excellent
- 2 very good
- 3 good
- 4 fair
- 5 poor
- 8 NA
- 99 Refused/unknown

b. Attention given by the nurse advocate to the workplace conditions that are associated with your injury.

- 1 excellent
- 2 very good
- 3 good
- 4 fair
- 5 poor
- 8 NA
- 99 Refused/unknown

c. Attention given by the nurse advocate to what you had to say

- 1 excellent
- 2 very good
- 3 good
- 4 fair
- 5 poor
- 8 NA
- 99 Refused/unknown

d. Awareness of the nurse advocate about your duties at work

- 1 excellent
- 2 very good
- 3 good
- 4 fair
- 5 poor
- 8 NA
- 99 Refused/unknown

e. Assistance with return-to-work planning

- 1 excellent
- 2 very good
- 3 good
- 4 fair
- 5 poor
- 8 NA
- 99 Refused/unknown

f. Resolving issues with the insurance company

- 1 excellent
- 2 very good
- 3 good
- 4 fair
- 5 poor
- 8 NA
- 99 Refused/unknown

6. All things considered, how satisfied are you now with the attention you received from the nurse advocate?

- 1 Very satisfied
- 2 Satisfied
- 3 Neither satisfied nor dissatisfied
- 4 Dissatisfied
- 5 Very dissatisfied
- 99 Refused/unknown

This next set of questions refers to the Ombudsman:

7. Did you ever communicate with the Ombudsman regarding anything related to your work injury?

- 1 Yes
- 2 No **Go to S5 Q1**
- 3 Not aware of an Ombudsman at all **Go to S5 Q1**
- 99 Refused/unknown

8. How would you rate the Ombudsman's ability to answer your questions?

- 1 excellent
- 2 very good
- 3 good
- 4 fair
- 5 poor
- 8 NA - no question to be answered
- 99 Refused/unknown

9. How would you rate the Ombudsman's ability to resolve issues for you?

- 1 excellent
- 2 very good
- 3 good
- 4 fair
- 5 poor
- 8 NA - no issues to be resolved
- 99 Refused/unknown

11 Do you feel you were given adequate opportunity to express your point of view?

- 1 Yes
- 2 No
- 8 Not applicable
- 99 Refused/unknown

Section 5: Looking Back

This section asks you to summarize your overall experiences since your injury.

1. Please rate how severe your work injury was at the time the accident occurred.

- 1 Very Mild
- 2 Mild
- 3 Moderate
- 4 Severe
- 5 Very Severe
- 6 Not sure
- 99 Refused/unknown

2. In your opinion, are you now fully recovered from your work injury?

- 1 Yes
- 2 No
- 99 Refused/unknown

3. Compared to **before** you were injured, how would you rate your health now?

- 1 Much better
- 2 Somewhat better
- 3 About the same
- 4 Somewhat worse
- 5 Much worse
- 99 Refused/unknown

4. Have your non-work activities been permanently limited as a result of your work injury?

- 1 Yes
- 2 No
- 99 Refused/unknown

5. The following question lists some activities that most people commonly do. Please circle one number each for your ability to do that activity (a) before the injury, (b) the day after your injury, and (c) now.

(0- Couldn't do it 1 - Very limited 2 - Somewhat limited 3 - Not limited)

you. Lift or carry groceries

a.	Before your injury	0	1	2	3
b.	The day after injury	0	1	2	3
c.	Now	0	1	2	3

ii. Climb stairs

a.	Before your injury	0	1	2	3
b.	The day after injury	0	1	2	3
c.	Now	0	1	2	3

iii. Walk several blocks

a.	Before your injury	0	1	2	3
b.	The day after injury	0	1	2	3
c.	Now	0	1	2	3

iv. Stand up for more than one hour at a time

a.	Before your injury	0	1	2	3
b.	The day after injury	0	1	2	3
c.	Now	0	1	2	3

v. Twist a lid off a jar with either hand

a.	Before your injury	0	1	2	3
b.	The day after injury	0	1	2	3
c.	Now	0	1	2	3

6. All things considered, how satisfied are you **now** with the overall medical care you received for your work injury?

- 1 Very satisfied
- 2 Satisfied
- 3 Neither satisfied nor dissatisfied
- 4 Dissatisfied
- 5 Very dissatisfied
- 99 Refused/unknown

7. All things considered, how satisfied are you with the number of doctors or other health professionals you could choose from for the treatment of your work injury?

- 1 Very satisfied
- 2 Satisfied
- 3 Neither satisfied nor dissatisfied
- 4 Dissatisfied
- 5 Very dissatisfied
- 99 Refused/unknown

8. Considering your medical care for this injury, please indicate which statement applies to you.

- 1 you think you were given too many treatments
- 2 you think you were given the right number of treatments
- 3 you think you were given too few treatments
- 4 Not sure
- 99 Refused/unknown

Section 6: Awareness of Workers' Compensation Process (ADR or Traditional)

This section is about the Workers' Compensation system.

1. About how many full days of work did you lose as a result of your work injury?

_____ Number of full days lost from work

_____ Number of months

If answered < 7, Go to S7 Q1

2. How did you find out about what you needed to do to get your workers' compensation benefits?
(Please circle all that apply.)
- 1 you knew what to do **Go to Q5**
 - 2 benefits came automatically (you didn't need to do anything) **Go to Q5**
 - 3 someone told you what to do **Go to Q5**
 - 4 you had to ask someone
 - 99 Refused/unknown

If CO eq Eastern Contractors Go to 3a

3. To whom did you direct questions regarding your workers' compensation benefits?
(Please circle all that apply.)
- 1 your supervisor (foreman)
 - 2 a co-worker
 - 3 someone from your union hall/union representative
 - 4 the Ombudsman or Compensation Advisor
 - 5 someone from the New York State Workers' Compensation Board
 - 6 your lawyer
 - 7 a nurse or your nurse advocate
 - 8 your doctor
 - 9 human resources
 - 10 insurance company
 - 11 Other (specify)
 - 99 Refused/unknown
4. Who gave you information about what you needed to do to get your workers' compensation benefits?
(Please circle all that apply.)
- 1 your supervisor (foreman)
 - 2 a co-worker
 - 3 someone from your union hall/union representative
 - 4 the Ombudsman or Compensation Advisor
 - 5 someone from the New York State Workers' Compensation Board
 - 6 your lawyer
 - 7 a nurse or your nurse advocate
 - 8 your doctor
 - 9 human resources
 - 10 insurance company
 - 11 Other (specify)
 - 99 Refused/unknown

Go to Q5

3a. To whom did you direct questions regarding your workers' compensation benefits?
(Please circle all that apply.)

- 1 someone from the insurance fund
- 2 someone from your employer
- 3 a co-worker
- 4 someone from your union
- 5 someone from Eastern Contractors Association
- 6 your lawyer
- 7 the union contract
- 8 written materials about workers' compensation
- 9 a program representative
- 10 Workers' Compensation Board
- 11 Other (specify)
- 99 Refused/unknown

4a. Who gave you information about what you needed to do to get your workers' compensation benefits?
(Please circle all that apply.)

- 1 someone from the insurance fund
- 2 someone from your employer
- 3 a co-worker
- 4 someone from your union
- 5 someone from Eastern Contractors Association
- 6 your lawyer
- 7 the union contract
- 8 written materials about workers' compensation
- 9 a program representative
- 10 Workers' Compensation Board
- 11 Other (specify)
- 99 Refused/unknown

5. Please tell me which statement applies to you regarding information you needed about your worker's compensation benefits?

- 1 you got all the information you needed easily
- 2 you got all the information you needed with difficulty
- 3 you didn't get all the information you needed
- 99 Refused/unknown

6. Approximately how much time did it take to receive your first workers' compensation benefits?

_____ Number days (including weekends) from the date of injury

7. How satisfied are you with the length of time it took to receive your first workers' compensation benefits payment?

- 1 Very satisfied
- 2 Satisfied
- 3 Neither satisfied nor dissatisfied
- 4 Dissatisfied
- 5 Very dissatisfied
- 99 Refused/unknown

8. Did you find that there were people easily accessible to you in order to answer questions regarding your workers' compensation claim?

- 1 Yes
- 2 No
- 99 Refused/unknown

9. Did you feel there was someone who really helped you try to resolve issues with the insurance company?

- 1 Yes
- 2 No **Go to S7 Q1**
- 8 NA - no issue to resolve **Go to S7 Q1**
- 99 Refused/unknown **Go to S7 Q1**

9a Who was this person:

- 1 your supervisor (foreman)
- 2 a co-worker
- 3 someone from your union hall/union representative
- 4 the Ombudsman or Compensation Advisor
- 5 someone from the New York State Workers' Compensation Board
- 6 your lawyer
- 7 a nurse or your nurse advocate
- 8 your doctor
- 9 human resources
- 10 Other (specify)
- 99 Refused/unknown

10. On a scale from 1 to 5, one being not helpful at all, and 5 being very helpful, please rate how helpful they were in resolving issues?

Not helpful at all

Very helpfull

1

2

3

4

5

Section 7: Issues arising regarding workers' compensation medical treatment/benefits7

This section asks about any decisions that may have been made by insurance companies or the [fill the Joint Industry Fund or the employer], or any issues you had involving your workers' compensation medical treatment and benefits.

(NOTE: for each question 1 to 4, and 6, 7 respond to questions a - j (according to routing))

1. Did you ever disagree with the insurance fund about whether your injury should have been covered by workers' compensation?

1 Yes **Go to Qa**
2 No **Go to Qd**
99 Refused/unknown **Go to Qd**

2. Was there ever a time that you needed more or different medical treatment (including rehabilitation) than was being covered by the workers' compensation system?

1 Yes **Go to Qa**
2 No **Go to Qd**
99 Refused/unknown **Go to Qd**

3. Did you ever disagree with the insurance fund over the amount of your weekly benefits for work days missed because of your injury?

1 Yes **Go to Qa**
2 No **Go to Qd**
99 Refused/unknown **Go to Qd**

4. Did you ever disagree with the insurance fund over your readiness to return to work?

1 Yes **Go to Qa**
2 No **Go to Qd**
99 Refused/unknown **Go to Qd**

5. Are you eligible for permanent disability benefits? (Only under workers' compensation, not social security)

1 Yes **Go to Q6**
2 No **Go to Q7**
3 Don't Know **Go to Q7**
99 Refused/unknown **Go to Q6**

6. Did you ever disagree with the insurance fund over the extent of your disability?

1 Yes **Go to Qa**
2 No **Go to Qd**
99 Refused/unknown **Go to Q7**

7. Do you agree that you are not permanently disabled?

- 1 Yes **Go to Qd**
- 2 No **Go to Qa**
- 99 Refused/unknown **Go to Qd**

*****this section repeated after each question (1 - 5) above*****

a. What did you do about it (ever)? *(circle all that apply)*

- 1 saw a doctor at your own expense **Go to Qc**
- 2 contacted the Ombudsman or program representative/compensation advisor **Go to Q1d**
(include Local 3 name)
- 3 contacted the insurance fund representative **Go to Qc**
- 4 contacted the workers' compensation board **Go to Qc**
- 5 contacted an attorney **Go to Qc**
- 6 you did nothing **Go to Q6**
- 99 Refused/unknown **Go to Qc**

b. Why did you do nothing? *(circle all that apply)*

- 1 decision was explained to your satisfaction
- 2 decision was changed to your satisfaction
- 3 did not know how to dispute it
- 4 thought it would be too costly
- 5 thought it would take too much of your time
- 6 did not want to jeopardize your job security
- 7 the time limit had passed
- 8 did not know you could dispute it
- 9 Other (specify)
- 99 Refused/unknown

c. From what source did you receive information on how to address this issue? Did you get information from:
(circle all that apply)

- 1 someone from the insurance fund
- 2 someone from the union hall/union representative
- 3 a co-worker
- 4 the Ombudsman/Compensation Advisor
- 5 someone from the New York State Workers' Compensation Board
- 6 your lawyer
- 7 looked at written material about the workers' compensation system that you received from work
- 8 Other (specify)
- 99 Refused/unknown

(for Eastern Contractors categories are:

- 1 someone from the insurance fund
- 2 someone from your employer
- 3 a co-worker
- 4 someone from your union
- 5 someone from Eastern Contractors Association
- 6 your lawyer
- 7 the union contract
- 8 written materials about workers' compensation
- 9 a program representative
- 10 someone from the workers' compensation board
- 11 other (specify)
- 99 Refused/unknown

d Was this issue ever addressed by (circle all that apply):

- 1 speaking with someone over the phone **Go to Q8**
- 2 meeting with an Ombudsman **Go to Q8**
- 3 meeting with a representative of the insurance fund **Go to Q8**
- 4 attending a hearing in front of a judge **Go to Qe**
- 5 mediation **Go to Qg**
- 6 arbitration **Go to Qi**
- 7 other **Go to Q8**
- 99 Refused/unknown **Go to Q8**

(if answered yes to Qd part 4)

e (judge).How satisfied are you that the judge listened to your point of view?

- 1 very satisfied
- 2 satisfied
- 3 neither satisfied nor dissatisfied
- 4 dissatisfied
- 5 very dissatisfied
- 8 NA
- 99 Refused/unknown

f (judge) Do you feel that important facts pertaining to your claim were presented to the judge?

- 1 yes
- 2 no
- 8 NA
- 99 Refused/unknown

(if answered yes to Qd part 5)

g (med) How would you rate the mediator's ability to answer your questions?

- 1 excellent
- 2 very good
- 3 good
- 4 fair
- 5 poor
- 8 NA
- 99 Refused/unknown

h (med). How would you rate the mediator's ability to resolve issues for you?

- 1 excellent
- 2 very good
- 3 good
- 4 fair
- 5 poor
- 8 NA
- 99 Refused/unknown

(if answered yes to Qd part 6)

i (arb). How would you rate the arbitrator's ability to answer your questions?

- 1 excellent
- 2 very good
- 3 good
- 4 fair
- 5 poor
- 8 NA
- 99 Refused/unknown

j (arb). How would you rate the arbitrator's ability to resolve issues for you?

- 1 excellent
- 2 very good
- 3 good
- 4 fair
- 5 poor
- 8 NA
- 99 Refused/unknown

8. Do you feel you were given adequate opportunity to express your point of view?

- 1 Yes
- 2 No
- 8 NA - no need to express point of view
- 99 Refused/unknown

9. Did you get any information that explained whether your claim should be covered by workers' compensation?

- 1 Yes
- 2 No **Go to Q11**
- 99 Refused/unknown

10. Was this information explained to your satisfaction?

- 1 Yes
- 2 No
- 99 Refused/unknown

11. Did you ever speak to a lawyer about your case?

- 1 Yes **Go to Q13**
- 2 No
- 99 Refused/unknown

12. Did you try to hire to help with your case?

- 1 Yes
- 2 No
- 99 Refused/unknown

Go to S8, Q1

13. Why did you decide to hire a lawyer? (*circle all that apply*)

- 1 you didn't understand the workers' compensation system
- 2 your employer said your injury was not work-related
- 3 you had difficulty in getting medical treatment
- 4 you had difficulty in getting your benefits
- 5 you had problems with the insurance fund over your readiness to return to work
- 6 you had a dispute over your eligibility for or extent of permanent partial disability
- 7 the insurance company had a lawyer and you felt that you needed one
- 8 someone told you that you should hire a lawyer
- 9 some other reason (specify _____)
- 99 Refused/unknown

Respect from your coworkers

- 1 Very satisfied
- 2 Satisfied
- 3 Neither satisfied nor dissatisfied
- 4 Dissatisfied
- 5 Very dissatisfied
- 99 Refused/unknown

My job responsibilities

- 1 Very satisfied
- 2 Satisfied
- 3 Neither satisfied nor dissatisfied
- 4 Dissatisfied
- 5 Very dissatisfied
- 99 Refused/unknown

My supervisors

- 1 Very satisfied
- 2 Satisfied
- 3 Neither satisfied nor dissatisfied
- 4 Dissatisfied
- 5 Very dissatisfied
- 99 Refused/unknown

2. Besides yourself, how many people live in your household?
_____ people in household
3. Besides yourself, how many people of working age (over age 18, but not retired) live in your household?
_____ people over 18 in household
4. What was the highest grade you completed in school?
- 1 Elementary school
 - 2 Some high school
 - 3 Graduated from high school
 - 4 Attended some college, Associate's degree, technical or vocational school
 - 5 Graduated from college
 - 6 Attended or completed graduate school or professional studies
 - 99 Refused/unknown
5. Into which ethnic or racial group would you place yourself?
- 1 Caucasian or white
 - 2 African-American or black
 - 3 Hispanic
 - 4 Asian-American or Pacific Islander
 - 5 Aleutian or Eskimo or American Indian
 - 6 Other (please specify.) _____
 - 99 Refused/unknown
6. Which category best describes the income for your household at time of your injury?
- 1 \$20,000 per year or less
 - 2 over \$20,000 to \$30,000
 - 3 over \$30,000 to \$40,000
 - 4 over \$40,000 to \$50,000
 - 5 over \$50,000 to \$60,000
 - 6 over \$60,000 to \$70,000
 - 7 over \$70,000
 - 99 Refused/unknown
7. Gender:
- 1 Male
 - 2 Female
8. Additional comments.

THANK you. (END OF THE SURVEY)