

Party Evaluation of Arbitrators:  
An Analysis of Data Collected from NASD  
Regulation Arbitrations

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\*\* The views expressed herein are those of the authors and do not purport to reflect the position of the United States Military Academy, the Department of the Army, or the Department of Defense.

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## I Executive Summary and Findings

The NASD Regulation, Inc., Office of Dispute Resolution (ODR) is the largest securities arbitration forum in the country. Approximately 5000 securities related arbitration cases were filed at ODR in 1998 and 6,000 cases were filed in 1997. Over 90% of the securities arbitration cases in the United States are handled by ODR, which has over 6,700 arbitrators on its roster. ODR administers arbitration hearings in 46 cities in the United States and has administrative offices in six cities.

Our research involved analyzing the results of a 15-month study designed to measure how parties to ODR arbitrations evaluate arbitrators assigned to their case, and the fairness of the ODR forum. Specifically, we collected data provided by parties to ODR cases that were closed by hearing between December 1, 1997, and April 1, 1999. This data was collected by encouraging all parties to ODR arbitrations to respond voluntarily to a 21 question survey instrument. This survey represents the most comprehensive, independent analysis of the NASD Arbitration Forum.

### Findings: NASD Arbitration is Fair

Based upon the analysis of the data collected, we are able to conclude that participants to ODR sponsored arbitrations believe their case was handled fairly and without bias. The data we have analyzed shows the parties to ODR arbitrations are overwhelmingly satisfied with the fairness of the forum. For example, at the conclusion of their arbitration case, 93.49% of those responding indicated that their case "appears to have been handled fairly and without bias."

The same strong and overwhelmingly positive results were found when parties evaluated the arbitrators who heard their case. For example, of those who responded, the following chart reflects the percentage of favorable responses (excellent, or good, as opposed to fair or poor) arbitrators received for each skill or trait arbitrators are expected to exhibit.

Arbitrator Skills or Traits Evaluated	Percentages of responses that were excellent or good
Displayed Professionalism	92.62%
Listened Attentively	94.71%
Used Clear Impartial or Unbiased Language	92.51%
Ability to Understand Material Presented	91.52%
Displayed Sensitivity to Gender, Ethnicity & Culture	96.50%
Displayed Sensitivity to the Parties	92.96%
Displayed Knowledge of NASD Rules and Regulations	89.91%
Displayed Ability to Analyze Problem/Identified Key Issues	89.66%
Displayed Fairness and Appearance of Fairness	91.67%
Displayed Knowledge of the Securities Industry	89.46%

Using the Chi-Square test<sup>1</sup>, we found a statistically significant difference in the responses of claimants and respondents to nine of the 17 survey questions that involved measurement of the perceived equity of the ODR arbitration process. The p-value<sup>2</sup> of less than or equal to .05 was considered significant for the purposes of this study.

The usable survey responses represent a response rate of between 10 - 20% of the 2,037 ODR cases that were closed after a hearing during this 15-month period. These responses also provided 1,032 individual arbitrator evaluations which represent approximately 15% of the ODR arbitrator roster.

Of the parties who responded to the survey, 54% identified themselves as the claimant or as representing the claimant,

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<sup>1</sup> The purpose of the chi-square test is to determine if a relationship exists between two categorical variables, based upon mathematical properties of the normal curve and the probability of statistical differences between observed and expected outcomes. See, Kachigan, *Statistics and Analysis*, Radius Press, 1986, Chapter 13.

<sup>2</sup> The p-value is the probability that you reject the null hypothesis, given the null hypothesis is correct. The null hypothesis is that there is no association (FE=FO) between your status as a claimant (or representing a claimant) and your status as a respondent (or representing a respondent) and your answer to the survey question.

while 46% of those responding indicated they were the respondent or they represented the respondent.

ODR will continue to survey ODR forum participants and their evaluation of ODR arbitrators and of the ODR forum.

## II Background

Although arbitration and mediation have existed as dispute resolution mechanisms for over 200 years,<sup>3</sup> it was not until the decision of the Supreme Court in Shearson/American Express v. McMahon,<sup>4</sup> that arbitration became the most widely used means of resolving disputes in the securities industry.

In McMahon,<sup>5</sup> the Court held that customers who sign predispute arbitration agreements with their brokers could be compelled to arbitrate claims arising under the Securities Exchange Act. As a result, McMahon transformed securities arbitration from a voluntary alternative to civil litigation, to the principal means of resolving securities disputes between investors and broker-dealers. Several subsequent court decisions favorable to the use of arbitration acted to further increase the use of arbitration.<sup>6</sup>

The principal benefit of arbitration is that it provides a prompt, inexpensive alternative to litigation in the courts. Generally, arbitration is final and binding, and is subject to review by a court only on a very limited basis.<sup>7</sup>

The NASD Regulation Office of Dispute Resolution<sup>8</sup> has become the largest securities arbitration forum in the country. In addition to arbitrating disputes between investors and broker-dealers, arbitration is also used to resolve disputes between broker-dealers and their employees as well as disputes between member firms.

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<sup>3</sup> Arbitration at the New York Stock Exchange was first offered in 1872 and the NASD first adopted its Code of Arbitration Procedure in 1968. See, P. Hoblin, Securities Arbitration Procedures, Strategies, Cases 1-2 (1988). The most recent NASD Code of Arbitration Procedure was published in May 1999.

<sup>4</sup> 482 U.S. 220 (1987), reh'g denied, 483 US 1056 (1987).

<sup>5</sup> Id.

<sup>6</sup> In 1989, the Court applied the reasoning of McMahon to compel arbitration of claims arising under the Securities Act of 1933. Rodriguez de Quijas v. Shearson/American Express, Inc., 490 U.S. 477 (1989). See also, Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20 (1991).

<sup>7</sup> See Friedman, G., "Securities Arbitration Still Effective as the Millenium Dawns," World Arbitration and Mediation Report, Vol. 10, No. 5, May 1999, pp 133-136.

<sup>8</sup> The NASD is the largest securities-industry self-regulatory organization in the world. It is the parent organization of the Nasdaq-Amex Market Group, Inc., which operates Nasdaq and the American Stock Exchange (AMEX) together under one corporate umbrella. The NASD oversees the activities of the U.S. broker/dealer profession and regulates Nasdaq, Amex, and the over-the-counter securities markets.

Of the forums that offer arbitration, ODR receives by far the largest number of cases and handles approximately 90% of all securities arbitrations in the United States. The charts below show a 19 year history of cases filed at the NASD Office of Dispute Resolution.

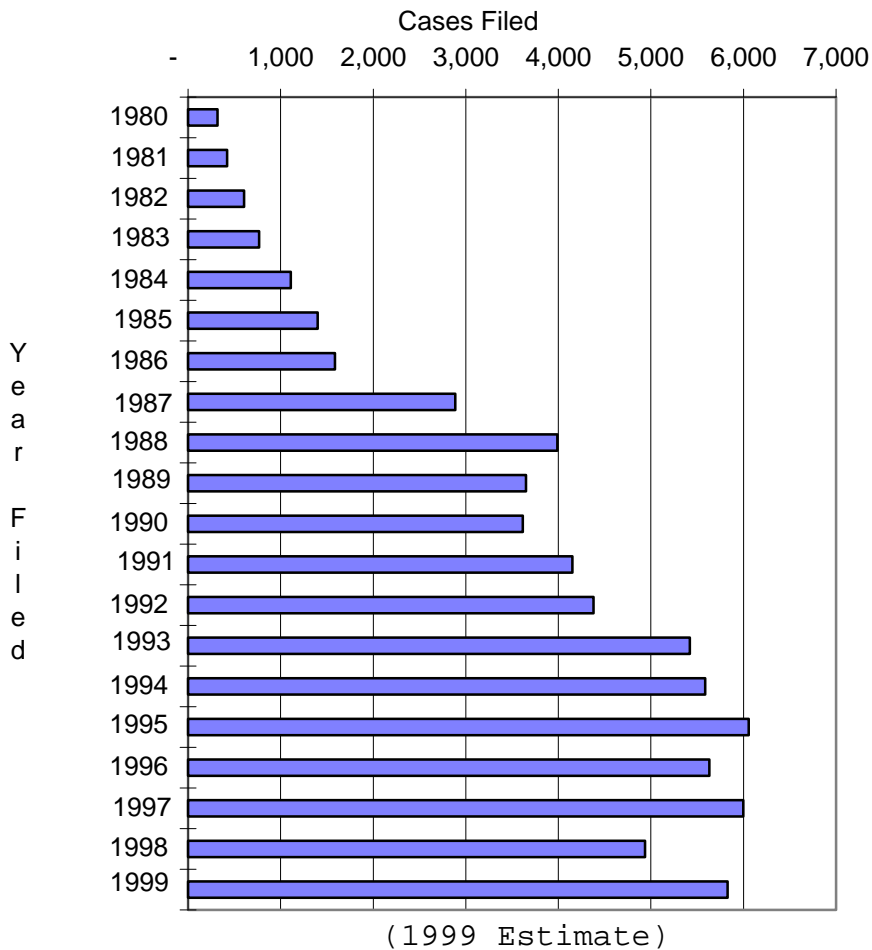
**Arbitration Cases Filed by Year <sup>9</sup>**

<p><b>NASD Regulation, Inc.</b>  <b>Arbitration Cases Filed by Year</b></p>
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Year	Cases
1980	318
1981	422
1982	606
1983	768
1984	1,108
1985	1,400
1986	1,587
1987	2,886
1988	3,990
1989	3,651
1990	3,617
1991	4,150
1992	4,379
1993	5,421
1994	5,586
1995	6,058
1996	5,631
1997	5,997
1998	4,938
Est. * 1999	5,828
2000	-
2001	-

<sup>9</sup> Statistical data provided on July 19, 1999 by ODR.

### Yearly Volume Comparison



With the increased use of arbitration as a means of resolving securities disputes also came an increased scrutiny of the process, and a number of newspaper and other articles that were critical of the arbitration process.<sup>10</sup>

The number of articles critical of securities arbitration has decreased over the last two years, and the use of arbitration as a means of resolving disputes continues to grow.

<sup>10</sup> For example see, "Wall Street's Stingiest Judges", Money, November 1996, pp 100-117

### III Development of the Survey

As part of its oversight responsibility for arbitration, the National Arbitration and Mediation Committee<sup>11</sup> (NAMC), developed a survey instrument titled "Party Evaluation of Arbitrators." The previous survey instrument used by ODR elicited an extremely low response rate.

The purpose of this new instrument was to obtain evaluations from ODR forum participants regarding their perceptions of case processing and of arbitrator performance.

One of the primary objectives of the party evaluation of arbitrators survey was to comply with the Arbitration Policy Task Force recommendation to take innovative steps to encourage a greater number of evaluations from parties.<sup>12</sup>

Specifically, the Task Force stated:

"Evaluations of arbitrators by participants in the arbitration process are a vital source of information. They are used by the NASD staff to develop training programs, counsel arbitrators about deficiencies or problems, and to determine if certain arbitrators should continue to be selected. Unfortunately, getting participants to provide evaluations has proven extremely difficult. Nonetheless, a greater effort must be made to obtain candid and complete evaluations from parties, their counsel, and from other arbitrators."<sup>13</sup>

Consequently, the "Party Evaluation of Arbitrators" survey was developed and approved by the NAMC and was implemented on December 1, 1997. Copies of the survey instrument are given to the arbitrators on each case to distribute to parties at the arbitration. The Chairperson of the

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<sup>11</sup> The National Arbitration and Mediation Committee advises the NASD Board of Governors on development and maintenance of an equitable and efficient system of dispute resolution that will equally serve the needs of public investors and NASD members.

<sup>12</sup> The Arbitration Policy Task Force was a high-level group appointed in September 1994 by the Board of Governors of the NASD, and was chaired by former Securities and Exchange Commission (SEC) Chairman David S. Ruder. In January 1996, the Task Force issued more than 70 recommendations representing the most comprehensive revamping of securities industry arbitration since it was established to resolve investor disputes more than a century ago.

<sup>13</sup> "Securities Arbitration Reform" Report of the Arbitration Policy Task Force to the Board of Governors National Association of Securities Dealers, Inc., January 1996, p. 101.

arbitration panel advises all parties at the first hearing of the arbitration as follows:

"Party Evaluations: As part of NASD Regulation's efforts continually to improve the arbitration process, each party or representative(s) will be asked voluntarily to participate in completing a questionnaire concerning this arbitration. You will be provided with an opportunity to complete the questionnaire at the conclusion of the final hearing."<sup>14</sup>

At the conclusion of the hearing, the Chairperson again requests that each party or representative complete the survey and mail their responses to a designated independent educational institution. To facilitate return of the survey, a self-addressed postage paid envelope is provided to the participants.

The parties are given the party evaluation of arbitrators survey at the conclusion of their hearing. While the parties are encouraged to complete the survey before receiving the award, there is no deadline for submitting the evaluation. Therefore some parties may know the arbitrators' decision before they submit their evaluation.

The initial tabulation of data was completed by Gary Tidwell while he was a member of the roster faculty at the College of Charleston.<sup>15</sup> The data analysis was eventually transferred to Majors Kevin Foster and Michael Hummel, both of whom are Assistant Professors in the Department of Social Sciences at the United States Military Academy, West Point. Majors Foster and Hummel received all of the data at West Point and were responsible for tabulating and analyzing all the results.

ODR continues to use the survey allowing all parties to ODR arbitrations to evaluate the arbitrators and the forum.

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<sup>14</sup> Office of Dispute Resolution Hearing Script.

<sup>15</sup> On July 13, 1998, Gary Tidwell became Director of Neutral Training and Development, Office of Dispute Resolution.

#### IV Detailed Findings and Methodology

From December 1, 1997 through April 1, 1999, the authors received 415 completed "Party Evaluation of Arbitrators" surveys. The objective responses to the surveys were transferred to answer sheets that enable the objective data to be scanned by optical scanning machines. The data were converted into a computer statistics package which allowed for data analysis.

The 415 responses represent a response rate of approximately 10 - 20% of the ODR cases that were closed after a hearing.<sup>16</sup> Each party evaluation of arbitrators survey allowed the parties to evaluate all arbitrators assigned to the party's case. Usually, there are three arbitrators assigned to a case. Consequently, there were 1,032 arbitrators evaluated with some arbitrators receiving multiple evaluations. We estimate that approximately 15% of the ODR roster of arbitrators were evaluated.<sup>17</sup>

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<sup>16</sup> During the applicable time period of December 1, 1997 to April 1, 1999, a total of 2,037 ODR arbitration cases that were closed after a hearing. If a party evaluation of arbitrator survey was received from one of the parties to a case, this would represent a return rate of 20% for all cases closed after a hearing. If, however, two surveys were returned from a case that was closed after a hearing, this would represent a response rate of 10% for all cases closed after a hearing. Therefore, we estimate that we received a 10 - 20 % response rate based on the 2,037 cases that were closed after a hearing during the relevant time period.

<sup>17</sup> ODR has approximately 6,700 available arbitrators. Therefore, 1,032 arbitrators evaluated reflects approximately 15% of the available arbitrator roster.

## Findings

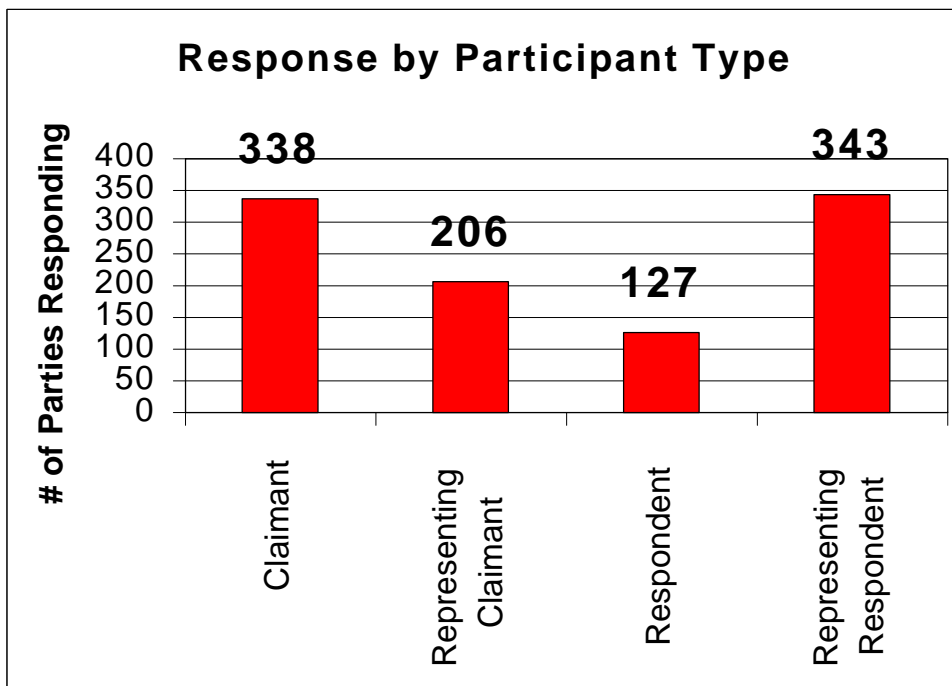
The following table shows the total number of responses received for each question on the survey instrument.

Responses		
Question #	Summary	Responses
1	Claimant or Respondent	1015
2	Case handled fairly and without bias	999
3	Displayed professionalism	1016
4	Listened attentively	1020
5	Used clear impartial or unbiased language	1001
6	Displayed ability to understand material presented	1002
7	Displayed sensitivity to gender, ethnicity, cultural differences	858
8	Displayed sensitivity to parties	995
9	Displayed knowledge of NASD rules and procedures	951
10	Displayed ability to analyze problems/identify key issues	967
11	Displayed fairness and appearance of fairness	1009
12	Displayed knowledge of securities industry terminology and practices	958
13	Decided discovery and other prehearing motions in a timely manner	738
14	Decided discovery and other hearing motions in a timely manner	790
15	Commenced all prehearing sessions on time	707
16	Commenced all hearing sessions on time	961
17	Conducted efficient prehearing sessions	680
18	Conducted efficient hearing sessions	955
19	Gender	959
20	Race	982
21	Age	1004

In evaluating the data, we first tested the reliability of the data for selection bias and also examined the demographics of those who responded to the survey.

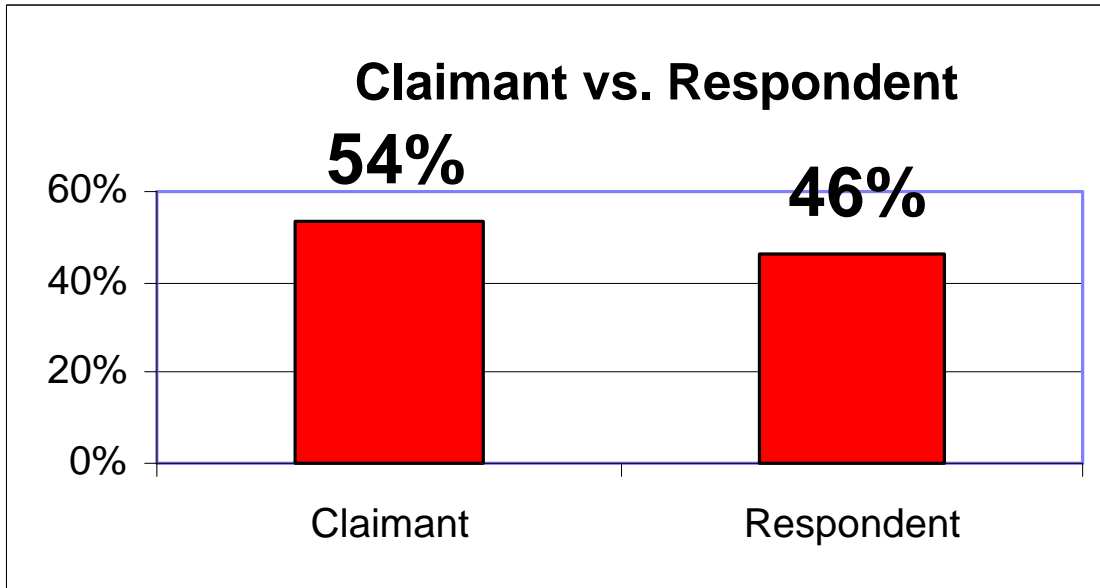
Question one of the survey asks the party participant if, in this particular case, they were: claimant; representing a claimant; respondent; or, representing a respondent. As the charts below reflect, 54% of those responding identified themselves as a claimant or representing a claimant, while 46% of those responding identified themselves as a respondent or representing a respondent.

## ***Party evaluation data: Reliability***



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*Party evaluation data: Reliability*



Questions 19 through 21 examine the demographics of those responding to the survey instrument. The results are as follows:

## *Party evaluation data: Demographics*

- Gender
  - 14% women
  - 86% men
  - Only 959/1032 valid responses
- Race
  - 4 African-American
  - 2 Native American
  - 50 Hispanic
  - 914 White
  - 50 No response

## *Party evaluation data: : Demographics*

<i>Age</i>	<i>Number</i>
<b>35 and under</b>	198
<b>36-45</b>	326
<b>46-55</b>	297
<b>56-65</b>	121
<b>Over 65</b>	62

Discussions with ODR staff verifies that the demographics of the data received are consistent with what the staff believes are the demographics of participants in the ODR arbitration forum.

Questions 2 through 18 examine the parties' evaluation of the ODR process and their evaluation of the arbitrators who heard their case.

The following pages provide data analysis for each of these remaining questions. In addition, the charts below show the responses of those individuals who identified themselves as the respondent or representing the respondent, and those individuals who identified themselves as the claimant or representing the claimant.

Question two of this survey evaluates survey participants' views not only of the ODR forum, but also of the fundamental and critically important component of any arbitration: having your case handled fairly and without bias. The responses indicate 93.49% of those who responded believed their case had been handled fairly and without bias. While 53% of the respondents, or those who represented respondents strongly agreed that their case had been handled fairly without bias, an even higher percentage (61%) of the claimants strongly agreed with that statement.

Also of significance is the chi-square analysis of this and other survey questions. The low p-value of the chi-square test of .003 reflects that there is clearly a statistically significant difference between the way claimants and respondents answered question two.

This chi-square analysis with any p-value equal to or less than .05 (95% confidence level) represents a statistically significant difference in the way that claimants responded to a particular survey question versus the way respondents responded to the same survey question.

We found this statistically significant difference between respondents and claimants responses existed not only in the responses to question number two, but also in the responses given to the following survey questions:

Survey Question Number	Question/Topic	Chi-Square P-Value
3	Display professionalism	.05
6	Displayed ability to understand material presented	.029
7	Displayed sensitivity to gender, ethnicity, cultural differences	.000
9	Displayed knowledge of NASD Regulation, rules, and procedures	.019
10	Displayed ability to analyze problems/identify key issues	.003
12	Displayed knowledge of securities industry terminology and practices	.018
16	Commence all hearing sessions on time	.018
17	Conducted efficient prehearing sessions	.003

Also of significance, in each of the survey questions, the claimants had significantly more intense positive responses than the respondents. For survey questions 2 through 18, the claimants were more in agreement with a positive evaluation than were the respondents. While all parties had an overwhelmingly positive evaluation of the arbitrators and of the ODR forum, the data shows the claimants were more positive than the respondents.

The finding of a stronger favorable response from the claimants as opposed to the respondents may contradict some of the literature relating to securities arbitrations (See footnote 10).

## Survey Question Analysis

The following pages provide detailed analysis for each of the 17 survey questions that measure the parties' perceived equity of the ODR arbitration process and of the ODR arbitrators who heard their case. Following each survey question is a table that provides the frequency, percent frequency, and cumulative response for that question.

A second table groups the responses of those who responded as being the respondent or representing the respondent, and those who responded as being the claimant or representing the claimant.

This tabular analysis for each question is followed by a chart that depicts for each question the total responses, and then the percentage responses for all respondents and for all claimants.

2. At this point, my case appears to have been handled fairly and without bias:

- Strongly Agree
- Agree
- Disagree
- Strongly disagree

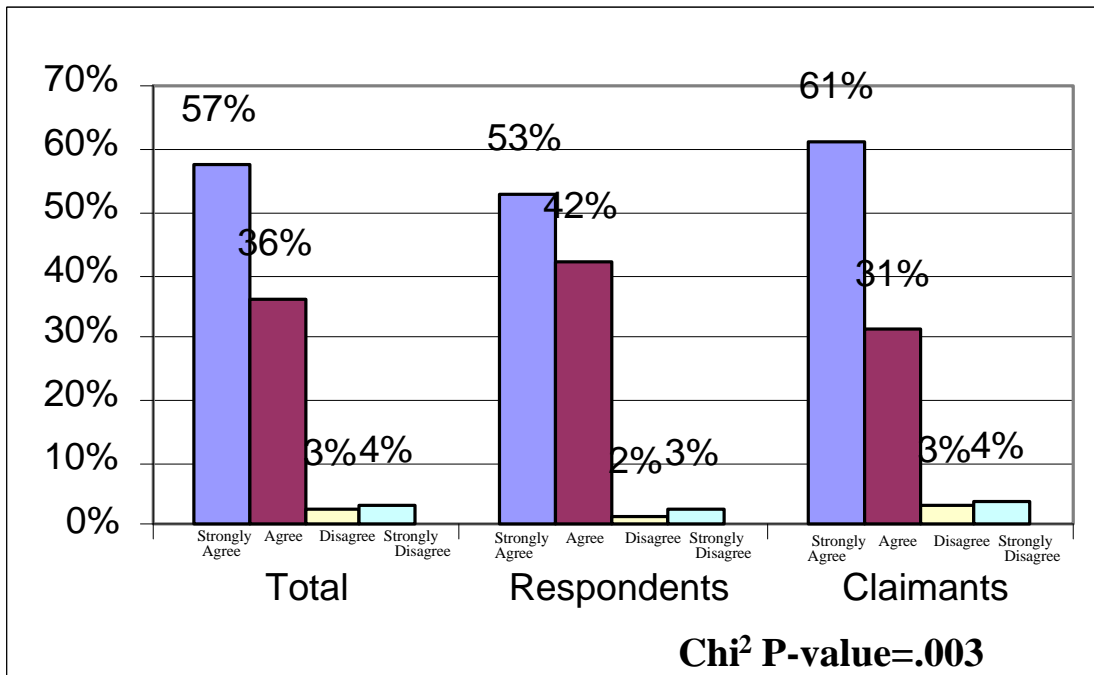
**Analysis**

Case handled fairly	Freq.	Percent	Cum.
Strongly Agree	573	57.36	57.36
Agree	361	36.14	93.49
Disagree	27	2.70	96.20
Strongly Disagree	38	3.80	100.00
Total	999	100.00	

claim	Case handled fairly				Total
	Strongly Agree	Agree	Disagree	Strongly Disagree	
Respondent	245 52.92	196 42.33	9 1.94	13 2.81	463 100.00
Claimant	321 61.03	165 31.37	18 3.42	22 4.18	526 100.00
Total	566 57.23	361 36.50	27 2.73	35 3.54	989 100.00

Pearson chi2(3) = 14.2259 Pr = 0.003

*At this point, my case appears to have been handled fairly and without bias.*



### 3. Displayed Professionalism

- a) Excellent
- b) Good
- c) Fair
- d) Poor

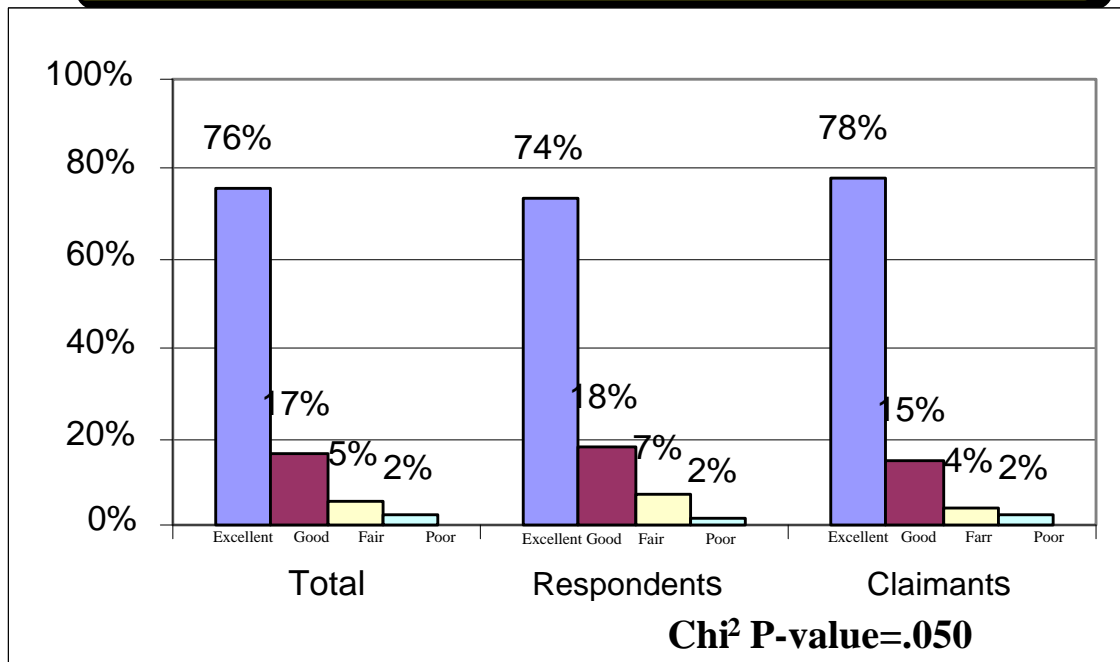
### Analysis

Displayed Professionalism			
	Freq.	Percent	Cum.
Excellent	772	75.98	75.98
Good	169	16.63	92.62
Fair	54	5.31	97.93
Poor	21	2.07	100.00
Total	1016	100.00	

claim	Displayed Professionalism				Total
	Excellent	Good	Fair	Poor	
Respondent	344 73.50	84 17.95	33 7.05	7 1.50	468 100.00
Claimant	415 78.30	82 15.47	20 3.77	13 2.45	530 100.00
Total	759 76.05	166 16.63	53 5.31	20 2.00	998 100.00

Pearson chi2(3) = 7.8329 Pr = 0.050

## Displayed Professionalism



#### 4. Listened Attentively

- a) Excellent
- b) Good
- c) Fair
- d) Poor

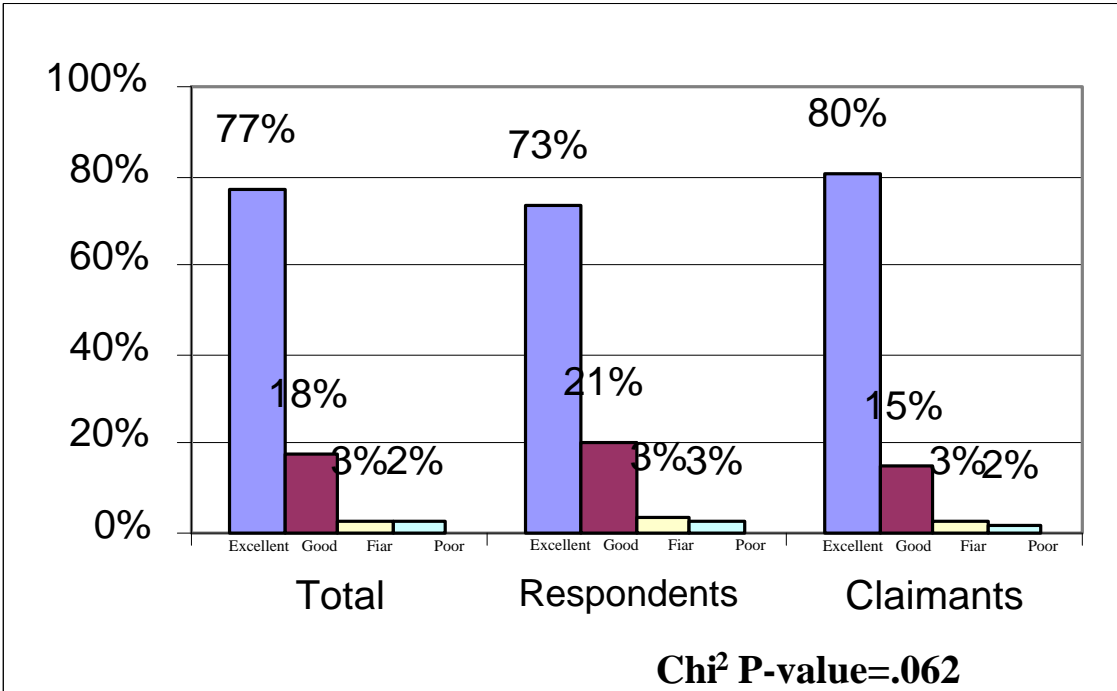
### Analysis

Listened Attentively	Freq.	Percent	Cum.
Excellent	786	77.06	77.06
Good	180	17.65	94.71
Fair	31	3.04	97.75
Poor	23	2.25	100.00
Total	1020	100.00	

claim	Listened Attentively				Total
	Excellent	Good	Fair	Poor	
Respondent	341 73.02	97 20.77	16 3.43	13 2.78	467 100.00
Claimant	429 80.19	81 15.14	15 2.80	10 1.87	535 100.00
Total	770 76.85	178 17.76	31 3.09	23 2.30	1002 100.00

Pearson chi2(3) = 7.3379 Pr = 0.062

***Listened Attentively***



5. Used Clear Impartial or Unbiased Language

- a) Excellent
- b) Good
- c) Fair
- d) Poor

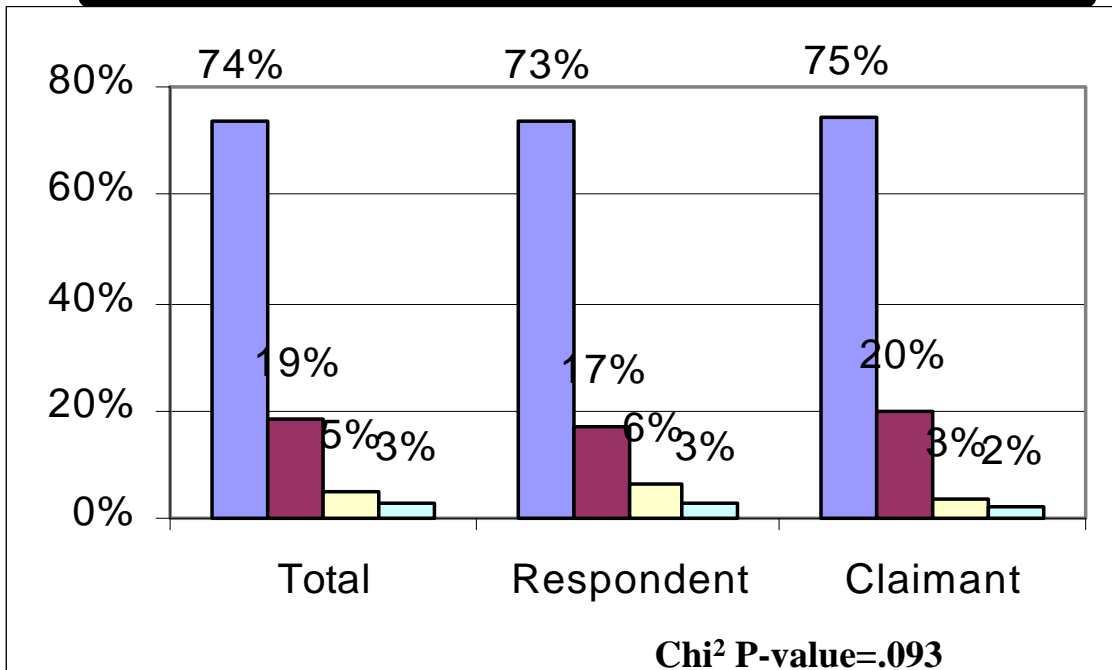
**Analysis**

Used clear unbiased or impartial language	Freq.	Percent	Cum.
Excellent	739	73.83	73.83
Good	187	18.68	92.51
Fair	48	4.80	97.30
Poor	27	2.70	100.00
Total	1001	100.00	

claim	Used clear and impartial language				Total
	Excellent	Good	Fair	Poor	
Respondent	330 73.33	77 17.11	29 6.44	14 3.11	450 100.00
Claimant	398 74.67	105 19.70	18 3.38	12 2.25	533 100.00
Total	728 74.06	182 18.51	47 4.78	26 2.64	983 100.00

Pearson chi2(3) = 6.4253 Pr = 0.093

***Used clear impartial or unbiased language***



6. Displayed Ability to Understand Material Presented

a) Excellent  
b) Good  
c) Fair  
d) Poor

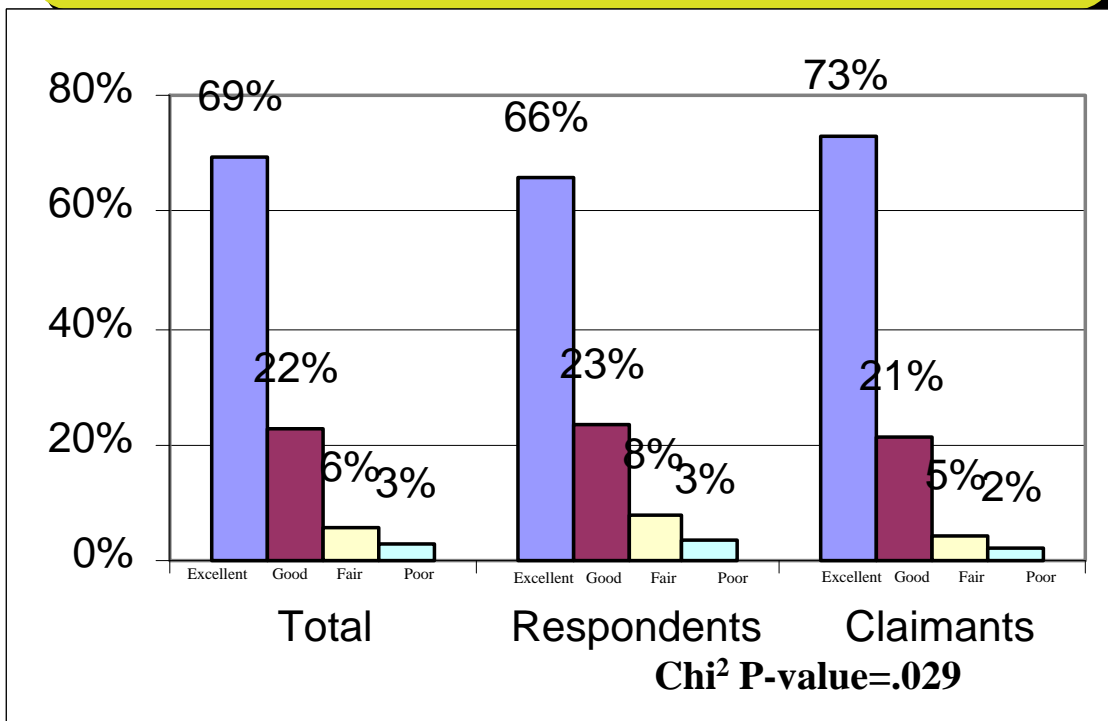
**Analysis**

Displayed ability to understand material presented	Freq.	Percent	Cum.
Excellent	693	69.16	69.16
Good	224	22.36	91.52
Fair	60	5.99	97.50
Poor	25	2.50	100.00
Total	1002	100.00	

claim	Displayed ability to understand material presented				Total
	Excellent	Good	Fair	Poor	
Respondent	297 65.56	105 23.18	36 7.95	15 3.31	453 100.00
Claimant	386 72.69	111 20.90	24 4.52	10 1.88	531 100.00
Total	683 69.41	216 21.95	60 6.10	25 2.54	984 100.00

Pearson chi2(3) = 9.0379 Pr = 0.029

***Displayed ability to understand material presented***



7. Displayed Sensitivity to Gender, Ethnicity, Cultural Difference

- a) Excellent
- b) Good
- c) Fair
- d) Poor

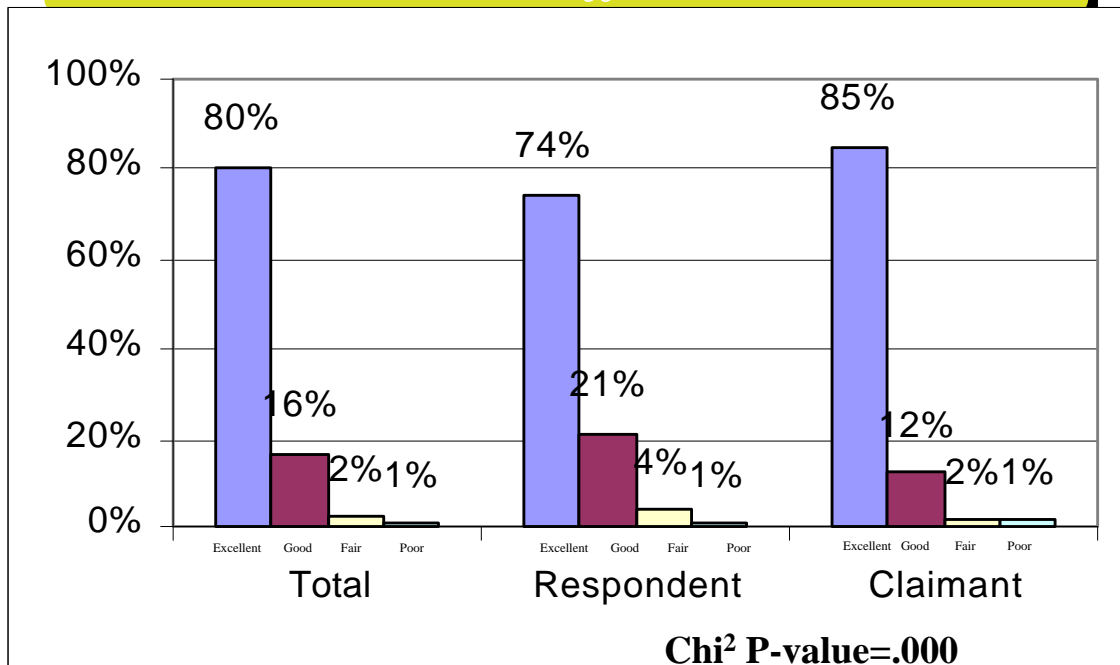
**Analysis**

Displayed sensitivity to gender, ethnicity, culture	Freq.	Percent	Cum.
Excellent	687	80.07	80.07
Good	141	16.43	96.50
Fair	21	2.45	98.95
Poor	9	1.05	100.00
Total	858	100.00	

claim	Displayed sensitivity to gender, ethnicity, culture				Total
	Excellent	Good	Fair	Poor	
Respondent	283 74.08	82 21.47	14 3.66	3 0.79	382 100.00
Claimant	392 85.03	56 12.15	7 1.52	6 1.30	461 100.00
Total	675 80.07	138 16.37	21 2.49	9 1.07	843 100.00

Pearson chi2(3) = 18.5933 Pr = 0.000

*Displayed sensitivity to gender, ethnicity,  
cultural difference*



8. Displayed Sensitivity to the Parties

- a) Excellent
- b) Good
- c) Fair
- d) Poor

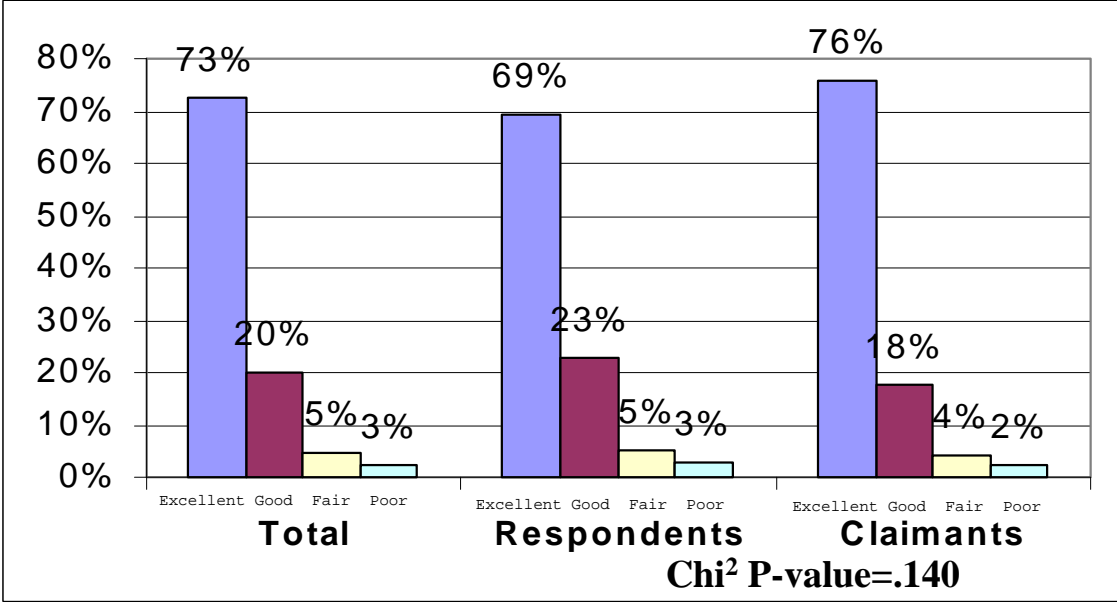
**Analysis**

Displayed sensitivity to parties	Freq.	Percent	Cum.
Excellent	724	72.76	72.76
Good	201	20.20	92.96
Fair	45	4.52	97.49
Poor	25	2.51	100.00
Total	995	100.00	

claim	Displayed sensitivity to parties				Total
	Excellent	Good	Fair	Poor	
Respondent	311 69.27	103 22.94	22 4.90	13 2.90	449 100.00
Claimant	403 75.89	94 17.70	22 4.14	12 2.26	531 100.00
Total	714 72.86	197 20.10	44 4.49	25 2.55	980 100.00

Pearson chi2(3) = 5.4827 Pr = 0.140

***Displayed sensitivity to the parties***



9. Displayed Knowledge of NASD Regulation rules and procedures

a) Excellent  
 b) Good  
 c) Fair  
 d) Poor

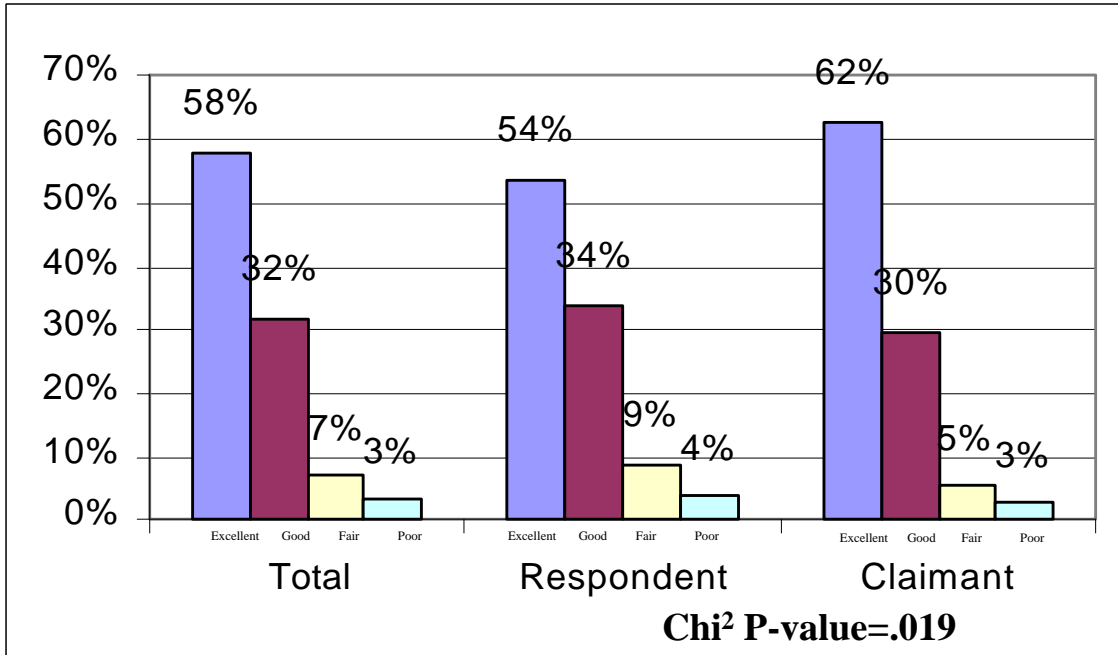
**Analysis**

Displayed knowledge of NASD rules and regs	Freq.	Percent	Cum.
Excellent	551	57.94	57.94
Good	304	31.97	89.91
Fair	67	7.05	96.95
Poor	29	3.05	100.00
Total	951	100.00	

claim	Displayed knowledge of NASD rules and procedures				Total
	Excellent	Good	Fair	Poor	
Respondent	232 53.58	146 33.72	39 9.01	16 3.70	433 100.00
Claimant	312 62.40	149 29.80	26 5.20	13 2.60	500 100.00
Total	544 58.31	295 31.62	65 6.97	29 3.11	933 100.00

Pearson chi2(3) = 9.9455 Pr = 0.019

*Displayed knowledge of NASD Regulation, rules, and procedures*



10. Displayed Ability to Analyze Problems/Identify Key Issues

- a) Excellent
- b) Good
- c) Fair
- d) Poor

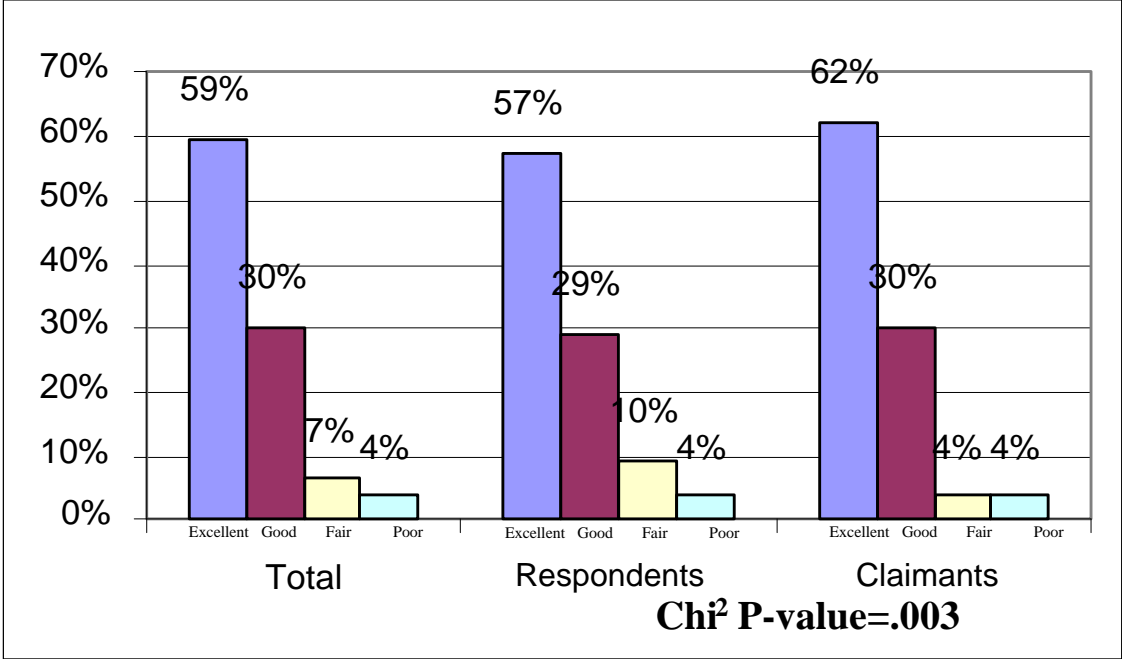
**Analysis**

Displayed ability to analyze problems/ID issues	Freq.	Percent	Cum.
Excellent	575	59.46	59.46
Good	292	30.20	89.66
Fair	63	6.51	96.17
Poor	37	3.83	100.00
Total	967	100.00	

claim	Displayed ability to analyze problems/ID issues				Total
	Excellent	Good	Fair	Poor	
Respondent	254 57.34	129 29.12	43 9.71	17 3.84	443 100.00
Claimant	314 62.06	153 30.24	19 3.75	20 3.95	506 100.00
Total	568 59.85	282 29.72	62 6.53	37 3.90	949 100.00

Pearson chi2(3) = 13.7926 Pr = 0.003

***Displayed ability to analyze problems /identify key issues***



11. Displayed Fairness and Appearance of Fairness

- a) Excellent
- b) Good
- c) Fair
- d) Poor

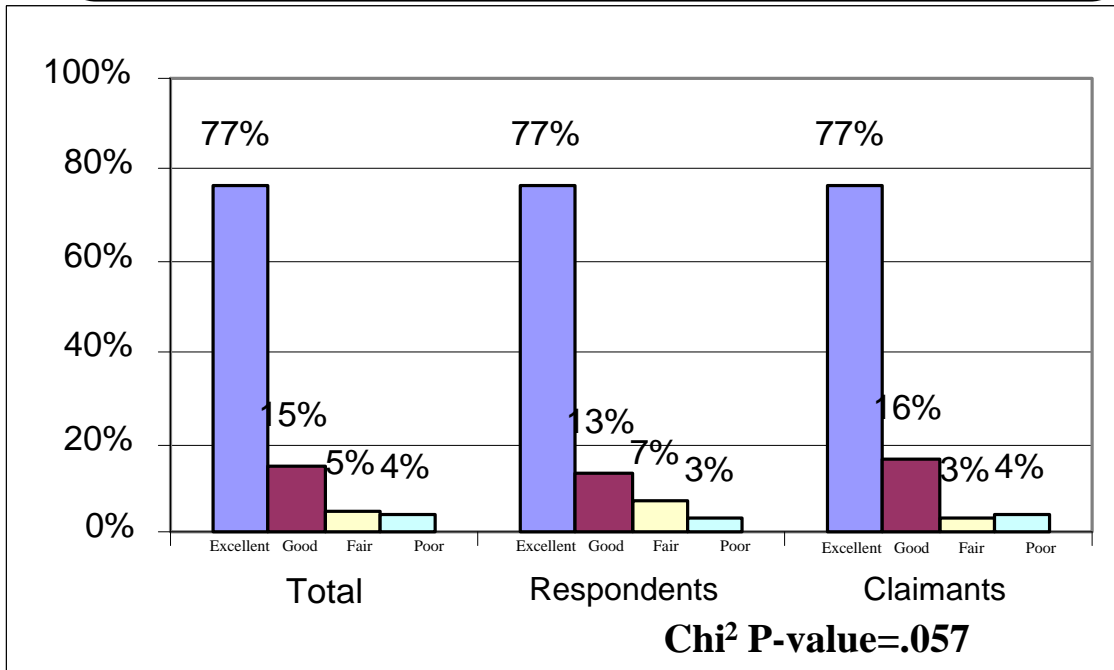
**Analysis**

Displayed Fairness and appearance of fairness	Freq.	Percent	Cum.
Excellent	774	76.71	76.71
Good	151	14.97	91.67
Fair	48	4.76	96.43
Poor	36	3.57	100.00
Total	1009	100.00	

claim	Displayed Fairness and appearance of fairness				Total
	Excellent	Good	Fair	Poor	
Respondent	352 76.86	61 13.32	30 6.55	15 3.28	458 100.00
Claimant	409 76.74	87 16.32	17 3.19	20 3.75	533 100.00
Total	761 76.79	148 14.93	47 4.74	35 3.53	991 100.00

Pearson chi2(3) = 7.5139 Pr = 0.057

*Displayed fairness and the appearance of fairness*



12. Displayed Knowledge of Securities Industry Terminology and Practices

- a) Excellent
- b) Good
- c) Fair
- d) Poor

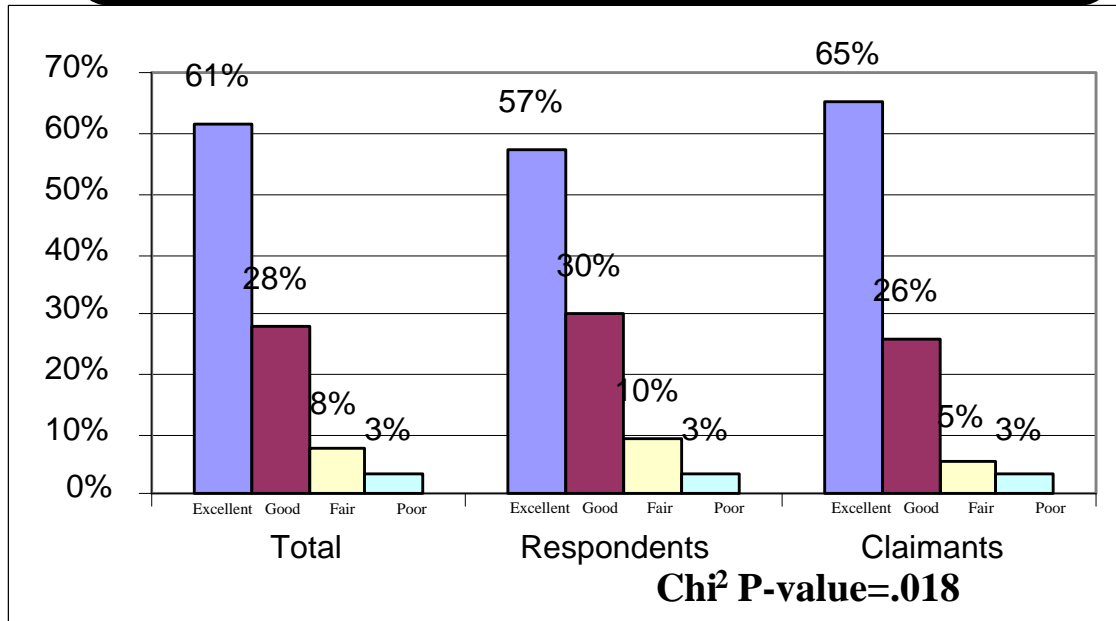
**Analysis**

Displayed knowledge of securities industry	Freq.	Percent	Cum.
Excellent	589	61.48	61.48
Good	268	27.97	89.46
Fair	73	7.62	97.08
Poor	28	2.92	100.00
Total	958	100.00	

claim	Displayed knowledge of securities industry				Total
	Excellent	Good	Fair	Poor	
Respondent	251 57.05	133 30.23	43 9.77	13 2.95	440 100.00
Claimant	327 65.40	131 26.20	27 5.40	15 3.00	500 100.00
Total	578 61.49	264 28.09	70 7.45	28 2.98	940 100.00

Pearson chi2(3) = 10.0193 Pr = 0.018

*Displayed knowledge of securities industry terminology and practices*



13. Decided Discovery and Other Prehearing Motions in a Timely Manner

Excellent  
 Good  
 Fair  
 Poor

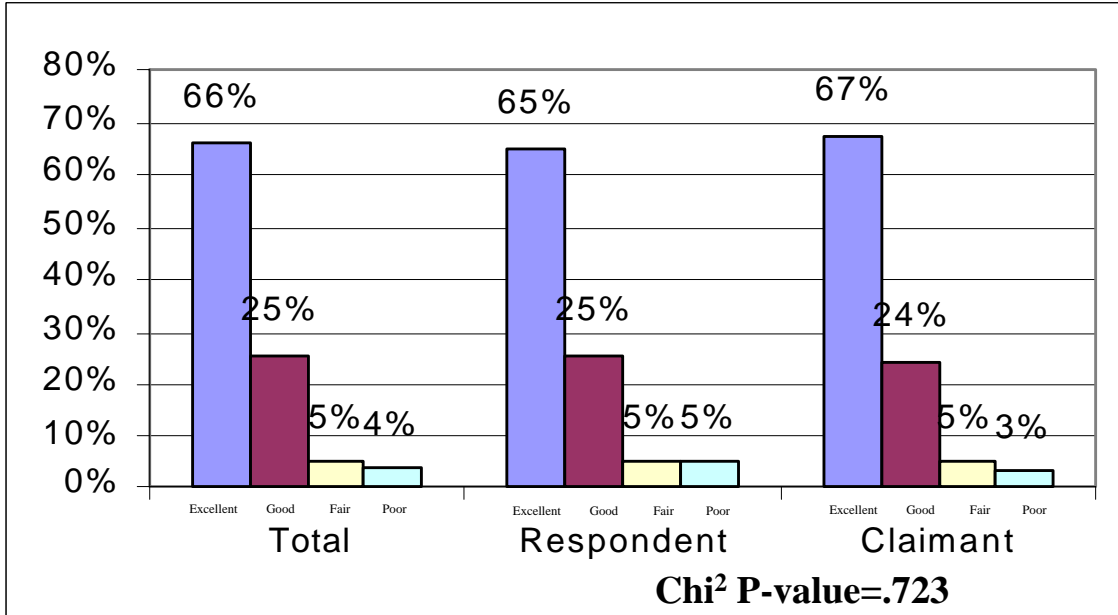
**Analysis**

Prehearing motions in a timely manner	Freq.	Percent	Cum.
Excellent	488	66.12	66.12
Good	186	25.20	91.33
Fair	37	5.01	96.34
Poor	27	3.66	100.00
Total	738	100.00	

claim	Prehearing motions in a timely manner				Total
	Excellent	Good	Fair	Poor	
Respondent	214 64.85	84 25.45	17 5.15	15 4.55	330 100.00
Claimant	265 67.43	96 24.43	20 5.09	12 3.05	393 100.00
Total	479 66.25	180 24.90	37 5.12	27 3.73	723 100.00

Pearson chi2(3) = 1.3271 Pr = 0.723

*Decided discovery and other prehearing motions in a timely matter*



14. Decided Discovery and Other Hearing Motions in a Timely Manner

- a) Excellent
- b) Good
- c) Fair
- d) Poor

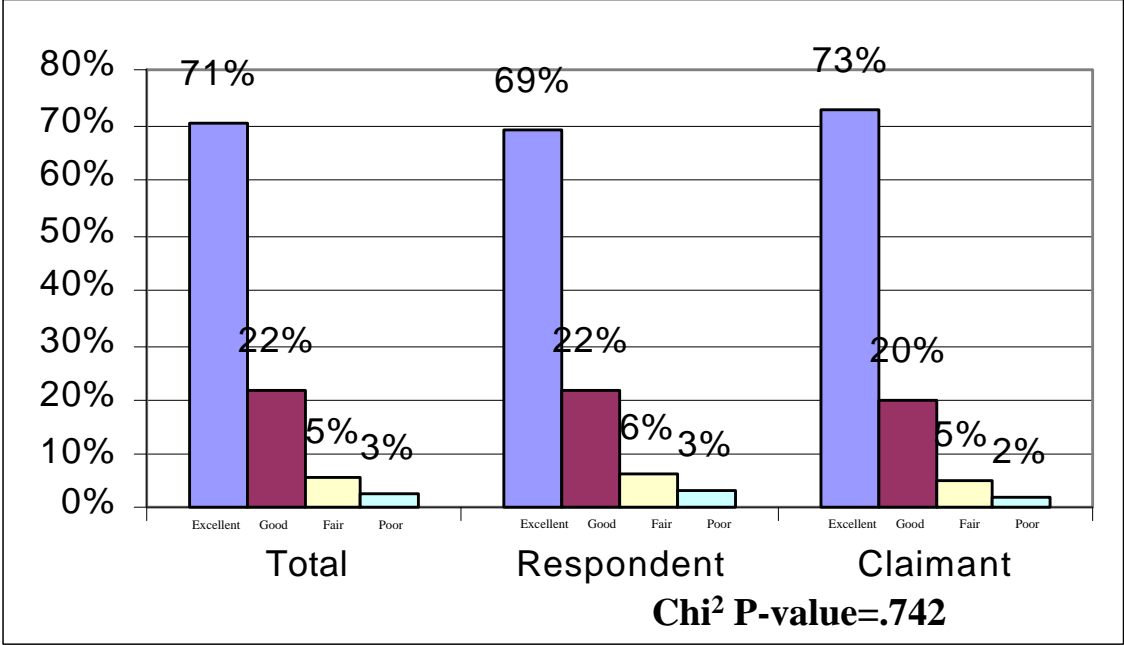
**Analysis**

Decided discovery in a timely manner	Freq.	Percent	Cum.
Excellent	557	70.51	70.51
Good	171	21.65	92.15
Fair	42	5.32	97.47
Poor	20	2.53	100.00
Total	790	100.00	

claim	Decided discovery in a timely manner				Total
	Excellent	Good	Fair	Poor	
Respondent	251 69.15	80 22.04	22 6.06	10 2.75	363 100.00
Claimant	297 72.62	82 20.05	20 4.89	10 2.44	409 100.00
Total	548 70.98	162 20.98	42 5.44	20 2.59	772 100.00

Pearson chi2(3) = 1.2447 Pr = 0.742

***Decided discovery and other hearing motions in a timely manner***



15. Commenced all Prehearing Session on Time

a) Excellent  
b) Good  
c) Fair  
d) Poor

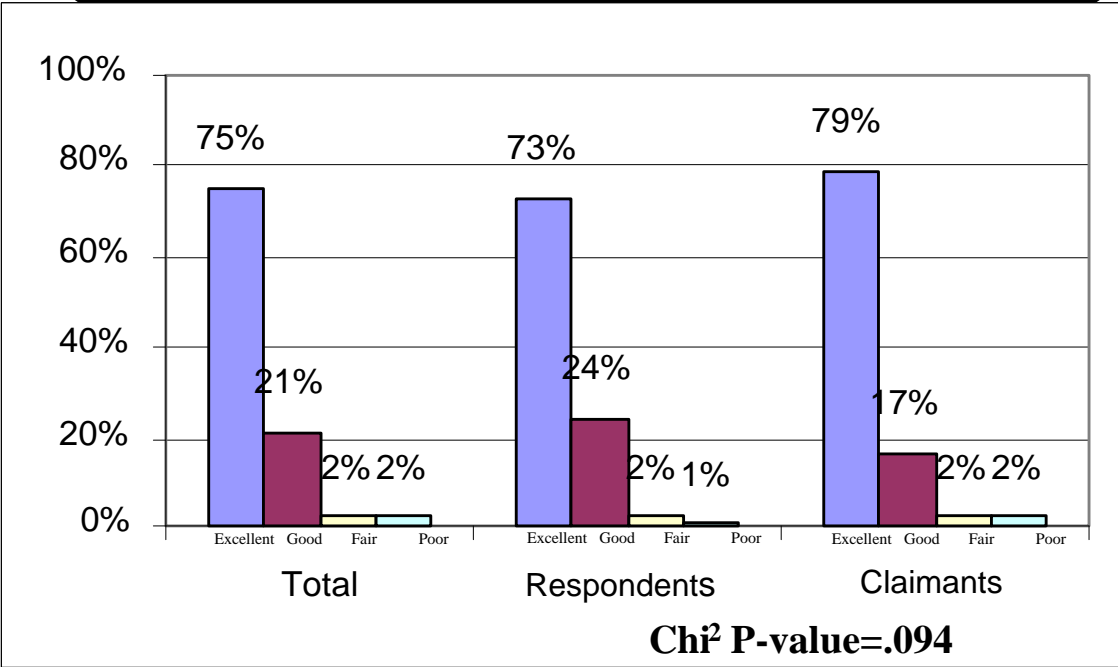
**Analysis**

Commenced prehearing sessions on time	Freq.	Percent	Cum.
Excellent	532	75.25	75.25
Good	150	21.22	96.46
Fair	14	1.98	98.44
Poor	11	1.56	100.00
Total	707	100.00	

claim	Commenced prehearing sessions on time				Total
	Excellent	Good	Fair	Poor	
Respondent	234 72.90	76 23.68	8 2.49	3 0.93	321 100.00
Claimant	290 78.80	64 17.39	6 1.63	8 2.17	368 100.00
Total	524 76.05	140 20.32	14 2.03	11 1.60	689 100.00

Pearson chi2(3) = 6.3954 Pr = 0.094

***Commenced all prehearing sessions on time***



16. Commenced All Hearing Sessions on Time

a) Excellent  
 b) Good  
 c) Fair  
 d) Poor

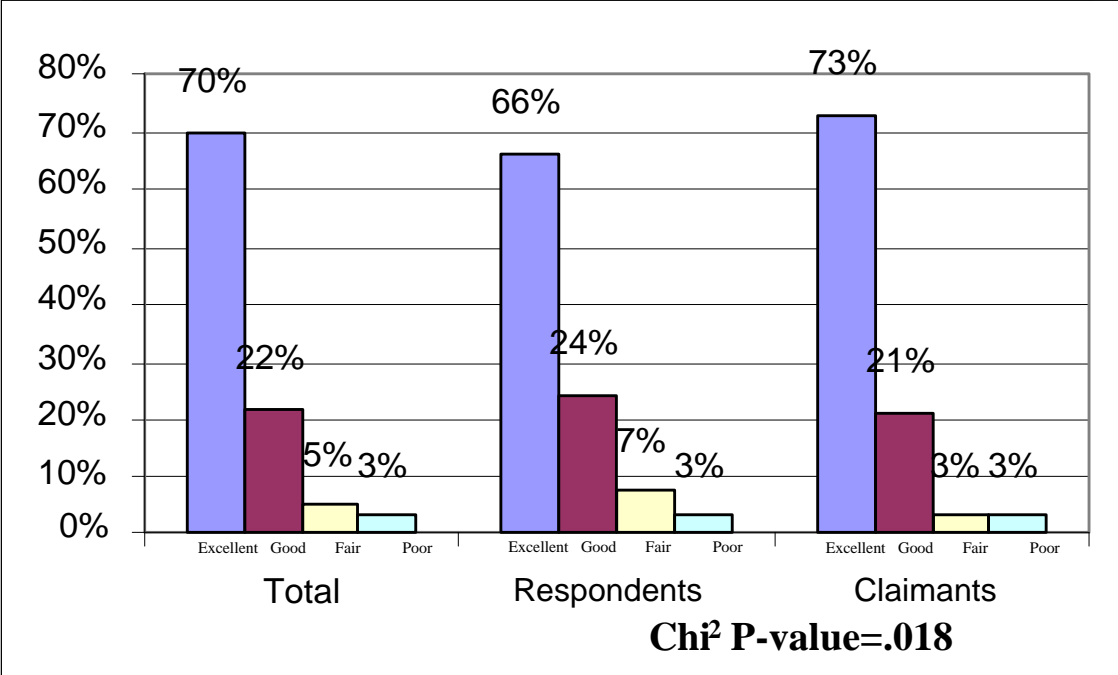
**Analysis**

Commenced hearing sessions on time	Freq.	Percent	Cum.
Excellent	668	69.51	69.51
Good	215	22.37	91.88
Fair	50	5.20	97.09
Poor	28	2.91	100.00
Total	961	100.00	

claim	Commenced hearing sessions on time				Total
	Excellent	Good	Fair	Poor	
Respondent	290 65.91	104 23.64	33 7.50	13 2.95	440 100.00
Claimant	367 72.96	104 20.68	17 3.38	15 2.98	503 100.00
Total	657 69.67	208 22.06	50 5.30	28 2.97	943 100.00

Pearson chi2(3) = 10.1235 Pr = 0.018

***Commenced all hearing sessions on time***



17. Conducted Efficient Prehearing Sessions

- a) Excellent
- b) Good
- c) Fair
- d) Poor

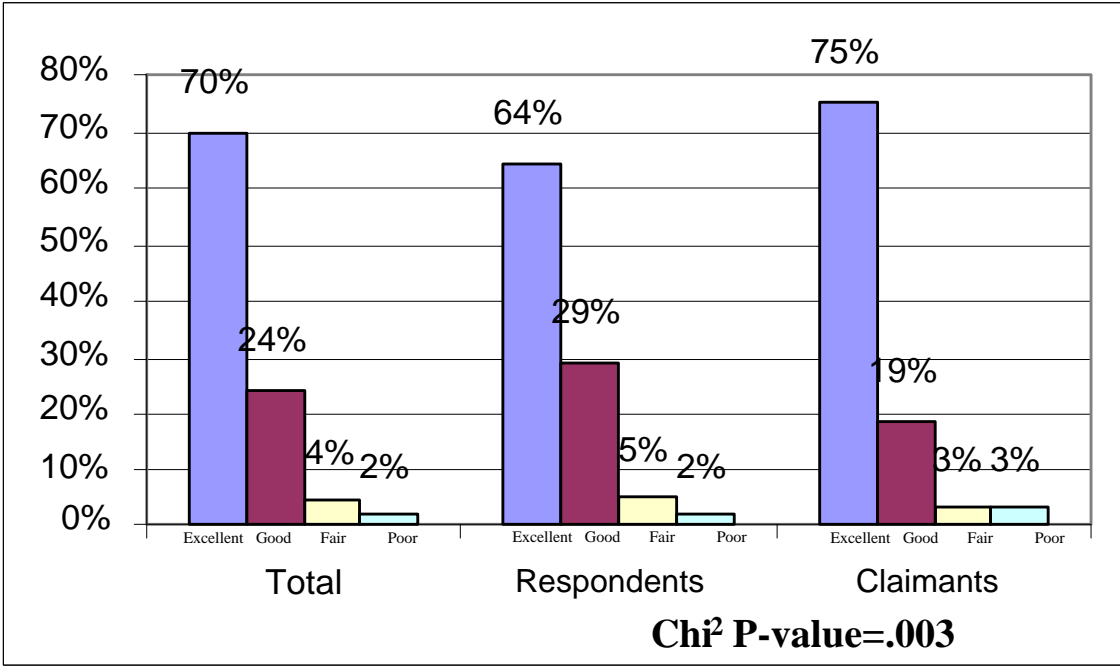
**Analysis**

Conducted efficient prehearing sessions	Freq.	Percent	Cum.
Excellent	475	69.85	69.85
Good	160	23.53	93.38
Fair	26	3.82	97.21
Poor	18	2.65	99.85
Total	679	99.85	

claim	Conducted efficient prehearing sessions				Total
	Excellent	Good	Fair	Poor	
Respondent	194 63.61	90 29.51	14 4.59	6 1.97	304 100.00
Claimant	271 75.49	67 18.66	9 2.51	12 3.34	358 100.00
Total	465 70.03	157 23.64	23 3.46	18 2.71	663 100.00

Pearson chi2(4) = 15.9207 Pr = 0.003

***Conducted efficient prehearing sessions***



18. Conducted Efficient Hearing Sessions

a) Excellent  
b) Good  
c) Fair  
d) Poor

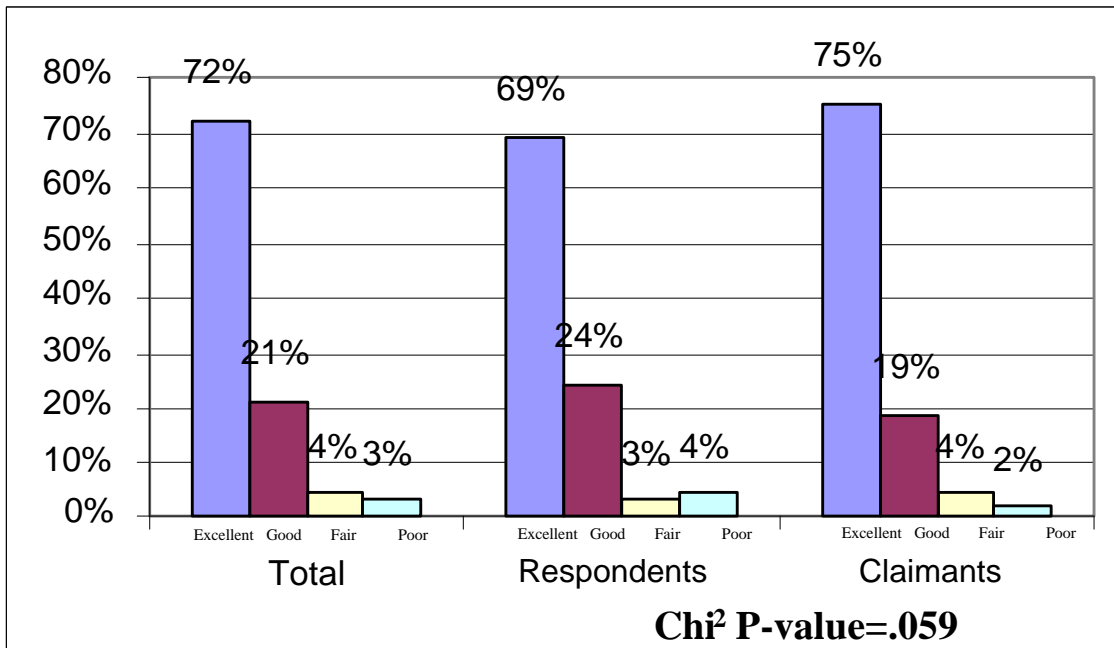
**Analysis**

Conducted efficient hearing sessions	Freq.	Percent	Cum.
Excellent	689	72.15	72.15
Good	204	21.36	93.51
Fair	36	3.77	97.28
Poor	26	2.72	100.00
Total	955	100.00	

claim	Conducted efficient hearing sessions				Total
	Excellent	Good	Fair	Poor	
Respondent	299 68.74	104 23.91	15 3.45	17 3.91	435 100.00
Claimant	378 75.30	97 19.32	18 3.59	9 1.79	502 100.00
Total	677 72.25	201 21.45	33 3.52	26 2.77	937 100.00

Pearson chi2(3) = 7.4439 Pr = 0.059

## Conducted efficient hearing sessions



## V Conclusion and Future Studies

Based on our analysis of the data, the over 93% of the parties to ODR arbitrations found their cases had been handled fairly and without bias. The parties also overwhelmingly believed that arbitrators:

- displayed professionalism;
- listened attentively;
- used clear impartial or unbiased language;
- displayed the ability to understand the material presented;
- displayed sensitivity to gender ethnicity and cultural differences;
- displayed sensitivity to the parties;
- displayed knowledge of NASD Regulation Rules and Procedures;
- displayed ability to analyze problems/identify key issues;
- displayed fairness and the appearance of fairness;
- and displayed knowledge of security industry terminology and practices;
- decided motions in a timely manner;
- commenced hearing sessions on time; and
- conducted efficient hearings.

Our data reflects the parties' overwhelming approval of the arbitrators who heard their case. As noted earlier, these extremely strong favorable responses, especially from the claimants or those who represented the claimants, seem to contradict previously written articles critical of ODR arbitrators and of the ODR process.

The authors plan to do additional analysis of this data to further evaluate the statistical significance of our findings. In addition, ODR is in the process of revamping its party evaluation of arbitrators survey instrument.

Continued evaluation of this and other data are essential to properly monitor the parties' evaluation of ODR arbitrators and the parties' belief that they were treated fairly and in an unbiased manner.