Ontario Trial Lawyers call for immediate review of the Licence Appeal Tribunal

Eight years of concerning trends, lack of transparency and procedural fairness indicate systemic flaws with the LAT

November 4, 2024

Toronto – The Ontario Trial Lawyers Association (OTLA) calls for an immediate review of the Licence Appeal Tribunal (LAT).

A recent statistical analysis from inHEALTH reveals several disturbing trends at the LAT, with the most serious being the alarming trend of how self-represented claimants fare when they bring a dispute over their injury claim.

“When the LAT was established eight years ago, the aim was to create a more efficient and affordable system for injured individuals to have their disputes heard, reducing frustration, uncertainty and costs,” said Sandev Purewal, President of OTLA. “Unfortunately, the LAT has fallen drastically short of achieving any of these goals.”

The LAT has issued nearly 4,500 decisions regarding disputes between injured accident victims and their insurance companies. Despite the LAT's goal of empowering individuals to challenge their insurance companies, only 217 decisions have involved self-represented individuals. And, in those cases, LAT adjudicators have ruled in favor of insurance companies more than four times more often than they have for self-represented individuals.

“For a system intended to support self-representation, it is alarming that over 8 years only 217 decisions involved individuals representing themselves,” said Purewal. “It’s even more concerning that, out of the 4,500 decisions made by the LAT, self-represented individuals have succeeded only 33 times,” he added. “The LAT as a dispute resolution system has failed to help injured people in their efforts to get the treatment and justice they need following an accident,” he added.

Troubling trends have emerged regarding the success rate for applicants since the establishment of the LAT. In 2017, the success rate for applicants stood at 33%. However, by 2023, this figure had dramatically declined to just 10%.

Overall Decision Outcome % Success Rate			
Year/Decisions	**For Insured Applicant**	**For Insurance Company**	**Split**
2017 (367)	33%	56%	11%
2020 (729)	16%	66%	18%
2023 (1,108)	10%	71%	19%

“Our members have voiced concerns that the LAT's process is overly rigid, is fraught with procedural unfairness, and fails to accommodate requests, even when both parties agree,” noted Purewal. “This also raises important questions about the qualifications and training of LAT adjudicators.”

This report was commissioned after it was revealed that Aviva Insurance (Aviva) hired government adjudicator Thérèse Reilly while she was still employed with the Tribunal. Reilly accepted a position with Aviva in June 2022 but continued working at the LAT until November 2022. During this period, she rendered over ten decisions, all favoring insurance companies, including Aviva.

“The LAT is an arm of our justice system. Injured Ontario citizens should feel confident that they are getting a fair hearing and that justice is being done. Unfortunately, with the recent declining trends in success rates for applicants and the overwhelming success of insurers is raising significant questions for our membership,” added Purewal.

About the Ontario Trial Lawyers Association: Founded in 1991, the Ontario Trial Lawyers Association (OTLA) is an organization of more than 1,300 plaintiff lawyers, law clerks, articling students and law students. www.otla.com.

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For more information, please contact:
Matt Di Maio, OTLA Public Affairs Manager
Tel: 416-805-9125

ONTARIO TRIAL LAWYERS ASSOCIATION

Expanded LAT AB Decision Data
September 20, 2024

PREPARED FOR:
Laurie Tucker, President, Ontario Trial Lawyers Association
John Karapita, CEO at Ontario Trial Lawyers Association

PREPARED BY:
May Gibillini, President
Shajitha Rajavickneswaran, Client Success Manager

EXECUTIVE SUMMARY

What follows is a retrospective and concurrent analysis of the License Appeal Tribunal (LAT) decision success rate on disputed accident benefit claims from April 1, 2016 to December 31, 2023.

The analysis is based on a total of 4,489 decisions on Substantive matters that are stored and indexed within inHEALTH's LAT compendium. In Addition, 751 Reconsiderations and 112 Judicial Appeals/Reviews.

This report includes:

- Overall Decision Outcome
- Overall Decision By Adjudicator based on critical mass
  - Group A (50 or more decisions)
  - Group B (10-49 decisions)
  - Group C (9 or less decisions)
- Success Rates by Issues type
- Issue Specific Success Rates by Adjudicator
  - MIG*
  - IRB*
  - CAT*
  - MED/Rehab (Treatment, Rehab Benefits, Assessments (Including CAT Assessments))
- Self-represented - Overall Success Rate and by Issue(s) type
- Success Rate by Reconsiderations and Judicial Appeals/Reviews
  - Upheld
  - Overturned
  - Varied
  - Rehearing

Success Rates are considered from 3 points of view; For Insured Applicant/ For Insurance Company/Split. The Split decisions measure is where some items listed within the application were awarded.

The trending decision success rates from 2017 based on 367 decisions, show the injured party was fully successful 33% of the time whereas the insurer's were successful 56% with a further split of 11%.

In 2020, where we believe there is a critical mass of decisions rendered, the success rates have shifted with the injured party fully successful 16% of the time. Whereas, the insurers were fully successful 66% with a further split of 18%.

In 2023, based on 1108 decisions, the injured parties were fully successful 10 % of the time whereas the insurer's were successful 71% of the time with a further 19 % resulting in a split decision.

Overall Decision Outcome % Success Rate

Year/Decisions	For Insured Applicant	For Insurance Company	Split
2017 (367)	33%	56%	11%
2020 (729)	16%	66%	18%
2023 (1108)	10%	71%	19%

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EXECUTIVE SUMMARY

An increase from an average of 3 issues in dispute per application at the onset of the LAT in 2016 to an average of 5 currently may account for the increase in split decisions.

There are a total of 132 LAT Adjudicators with decisions between April 2016 and December 2023. A detailed list of the number of decisions for the specific issues types by Adjudicator volume is provided in Appendix 1.

Further analysis by Adjudicator has been provided for those with more than 50 decisions within the scope of the 6 specific issues outlined above. Second, the top 20 Adjudicator's (by volume) success rates for each specific issue.

Lastly, Reconsiderations and Judicial Appeals/Reviews lifetime, have been presented by both volume and success rates. Reconsiderations were further presented by the critical date of February 7, 2019 when reconsiderations can be heard by any member of the Tribunal, including the one who decided the original matter.

The success rates were based on the number/percentage of decisions upheld; remitted back for rehearing; varied; or overturned.

Future analysis on trend development could be undertaken against a chosen baseline, we suggest this should be the year 2020 when there is a critical mass of decisions. Additionally, separating assessments, which have a lower bar than med/rehab benefits would also be a trend to watch. This of course depends on OTLA's needs for a recurring report.

We would be pleased to provide you with any additional detail.

Yours truly,
May Gibillini
President

	Adjudicators	Decisions	% of Total
More than 50 decisions	26	3,051	67.6%
10 to 49 decisions	58	1,252	27.8%
1 to 9 decisions	48	207	4.6%
Total	**132**	**4,510**	

**Some decisions had more than 1 adjudicator listed (observers)*

	Upheld		Rehearing	Varied	Overturned	
Reconsiderations (751)	590	79%	30	76	55	21%
Judicial Appeal/Review (112)	82	73%	15	5	10	27%

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DATA STRUCTURE & OUTCOME MEASURES

inHEALTH created the LAT Compendium in response to the need for a data repository specific to the AABS decisions and the accident benefits industry. Access to LAT decisions is straightforward and assists stakeholders in applying the SABS to their unique situations.

The LAT Compendium operates differently than the FSCO decision database and CanLII. It allows for specific issue-based searches, with organized search filters across multiple variables, to optimize risk assessment and better anticipate outcomes.

Outcomes can be either based on the overall decision or discrete issues/ items. For the purposes of this report the data provided is based on both the overall result and in some instances the discrete issues within dispute as described in the chart below.

Issue	Data Collection Method
MIG	*Overall by Issues in Dispute Splits were added to 'For Applicant' outcome
IRB	*Discrete Items Listed Pre: IRB 104: includes Initial Entitlement, Entitlement, and Continuing Entitlement Post: IRB-Post 104
CAT	*Overall by Issues in Dispute Pre June 1: Tagged CAT-Determination-Pre June 1, 2016 Post June 1: Tagged CAT-Determination-Post June 1, 2016
MED/Rehab	*Overall by Issues in Dispute Includes: MED, Assessments (including CAT Assessments), Rehabilitation Benefits
Self-Represented	Includes: Applicant Counsel with Self-Represented or Not Reported

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APPENDIX 1

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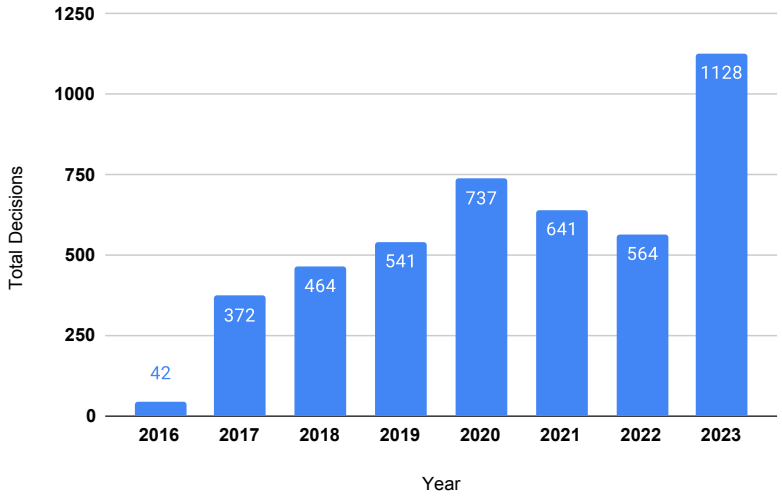
1 OVERALL (SUBSTANTIVE) DECISIONS BY YEAR

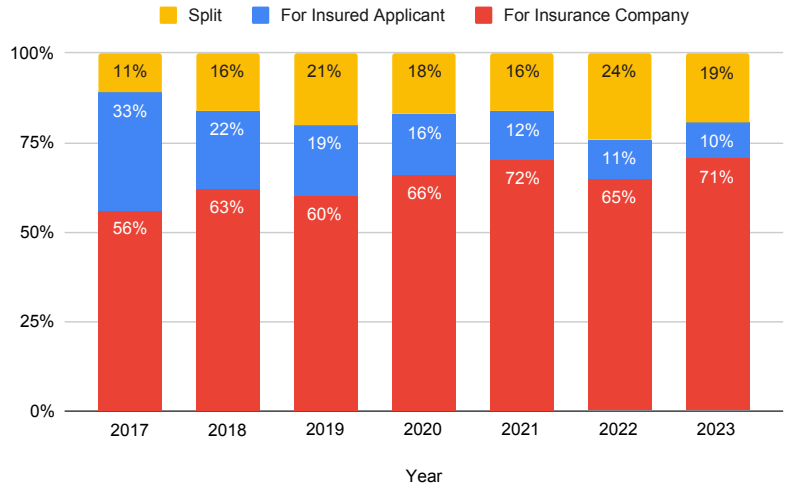
4,489 decisions



100% increase in decisions from 2022 to 2023

2 OVERALL (SUBSTANTIVE) DECISION OUTCOME BY YEAR

4,380 decisions (excludes 2016 & Where Applicant Was Insurer)



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DECISION TOTALS LIFETIME BY 132 ADJUDICATORS

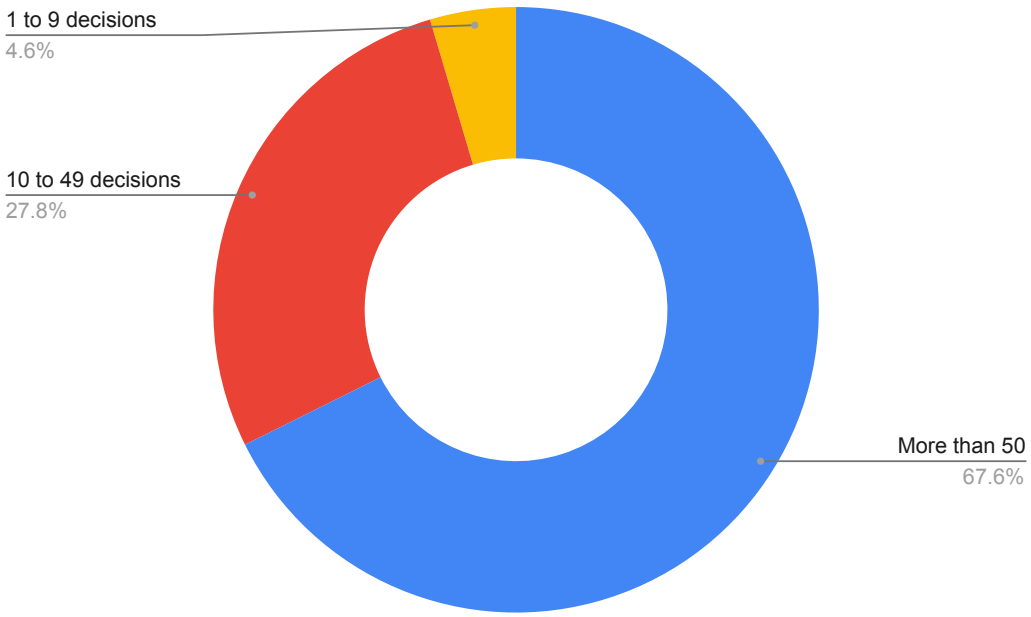
Divided into 3 Groups:

1. Critical Mass - More than 50 decisions (26 Adjudicators)
2. 10 to 49 decisions (58 Adjudicators)
3. 1 to 9 decisions (48 Adjudicators)

	Adjudicators	Decisions	% of Total
More than 50 decisions	26	3,051	67.6%
10 to 49 decisions	58	1,252	27.8%
1 to 9 decisions	48	207	4.6%
Total	**132**	**4,510**	

**Some decisions had more than 1 adjudicator listed (observers)*

3 DECISIONS BY ADJUDICATORS



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4 SPECIFIC ISSUES BY OUTCOME

	For Insured Applicant	For Insurance Company	Split	Total	% For Insured Applicant	% For Insurance Comany	% Split
MIG	277	1,119	0	1,396	20%	80%	0%
IRB – Pre 104	88	340	3	431	20%	79%	1%
IRB – Post 104	38	111	2	151	25%	74%	1%
CAT – Pre June 1, 2016	31	42	0	73	42%	58%	0%
CAT – Post June 1, 2016	8	51	0	59	14%	86%	0%
MED – Rehab	354	1,021	629	2,004	18%	51%	31%

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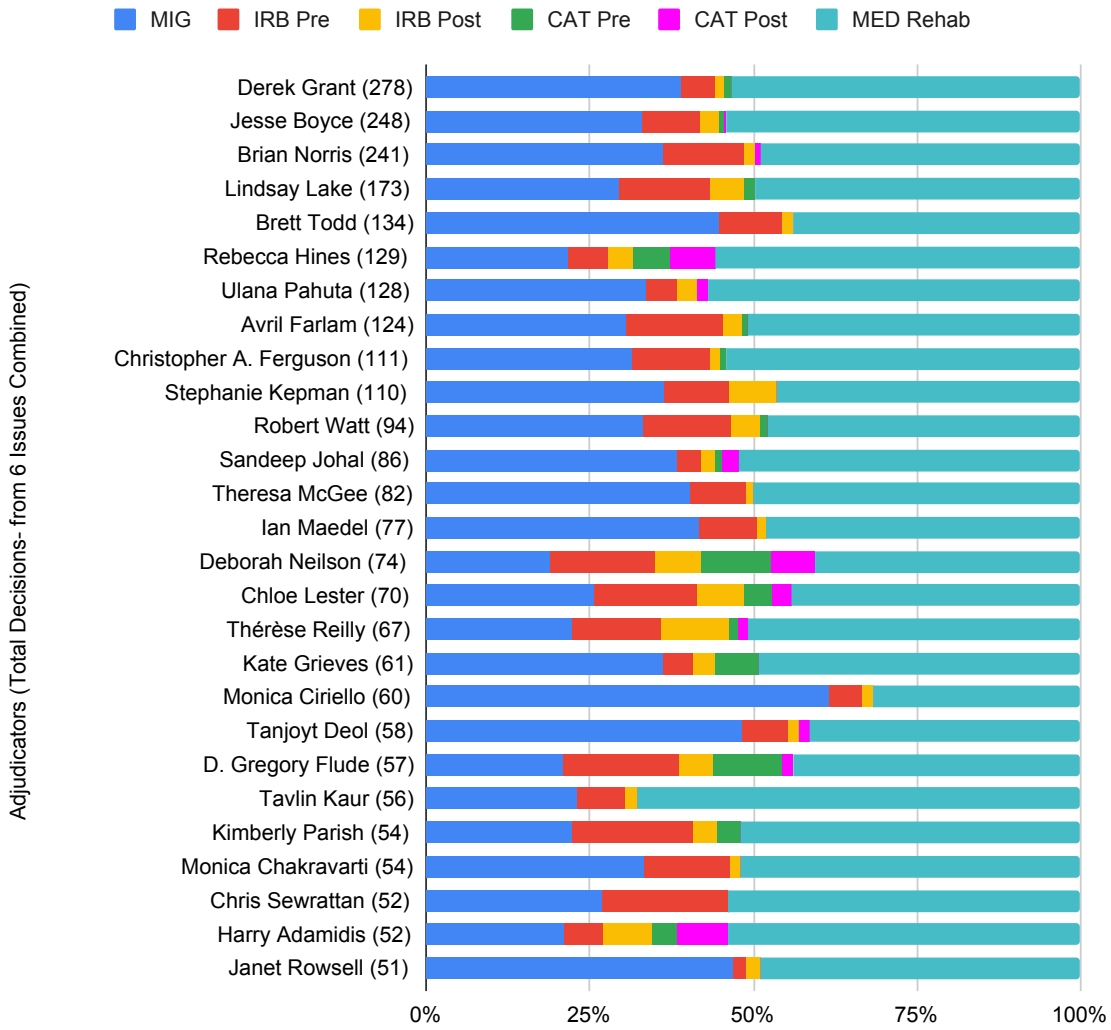
5 SPECIFIC ISSUE BY ADJUDICATOR VOLUME (WITH OVER 50 DECISIONS)



Information above is the sum of each Adjudicator's decisions in each of the 6 issues. Some decisions contain multiple issues.

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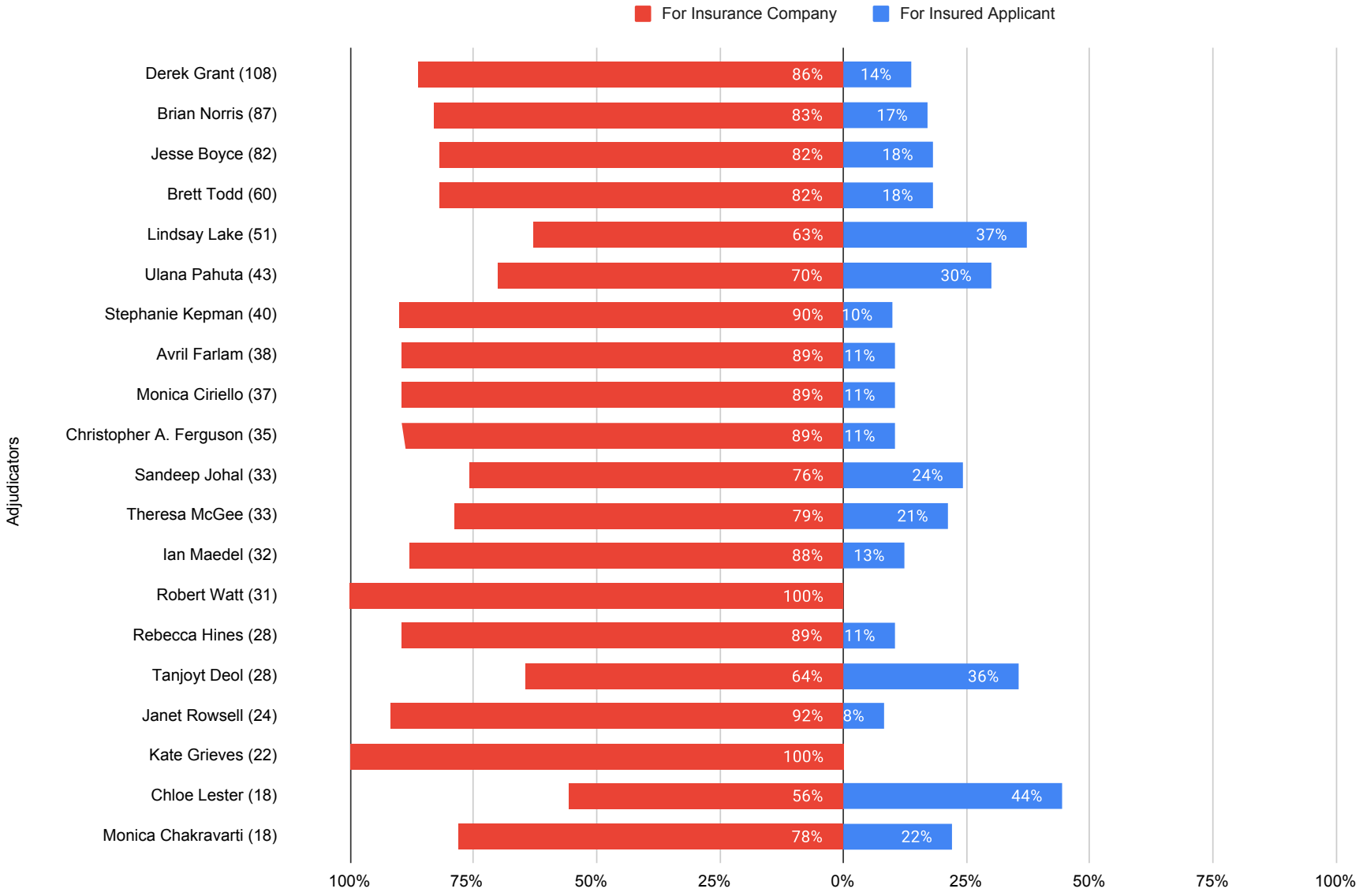
6 MIG – BUSIEST 20 ADJUDICATORS BY VOLUME



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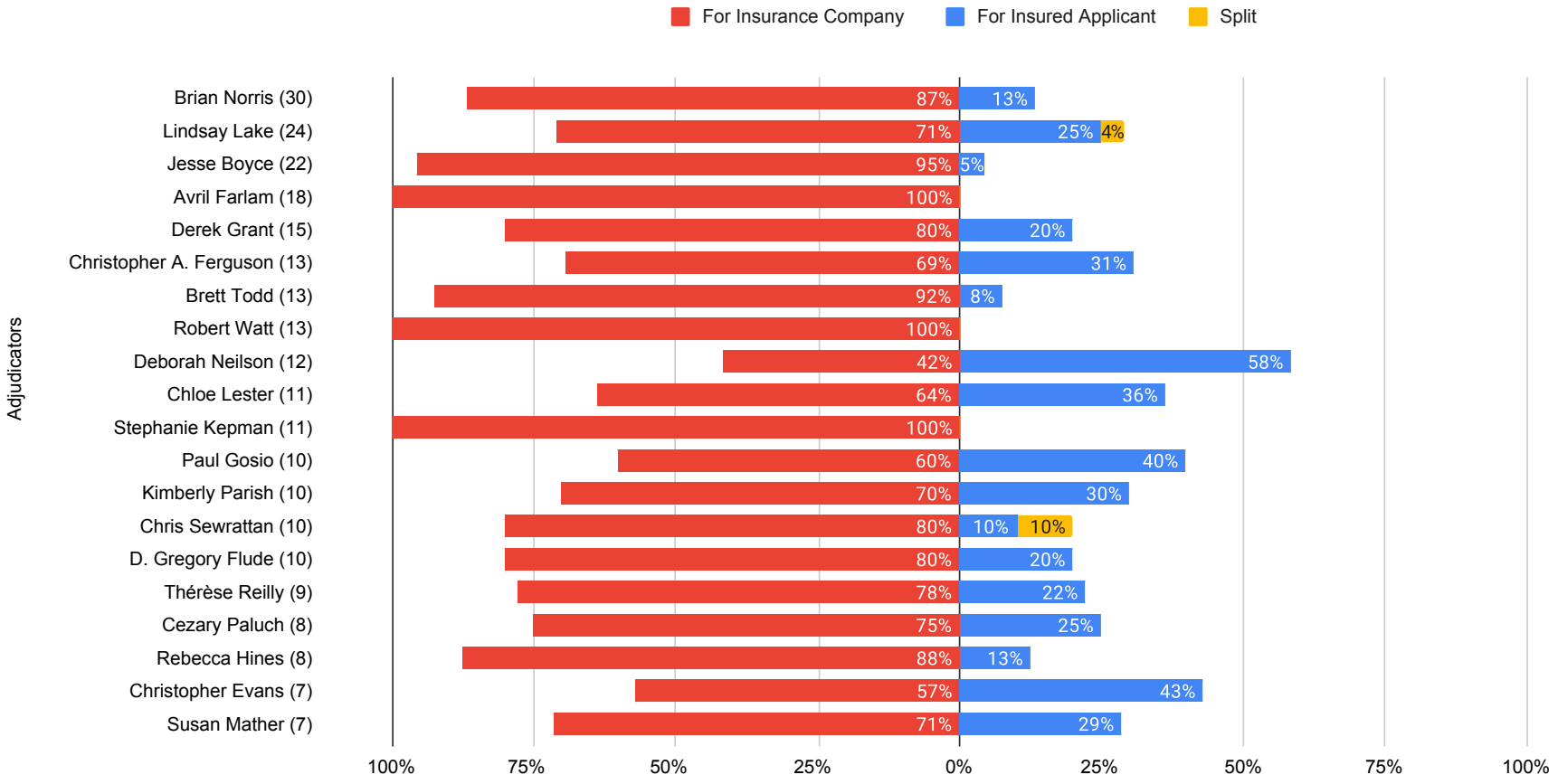
7 IRB PRE 104 – BUSIEST 20 ADJUDICATORS BY VOLUME



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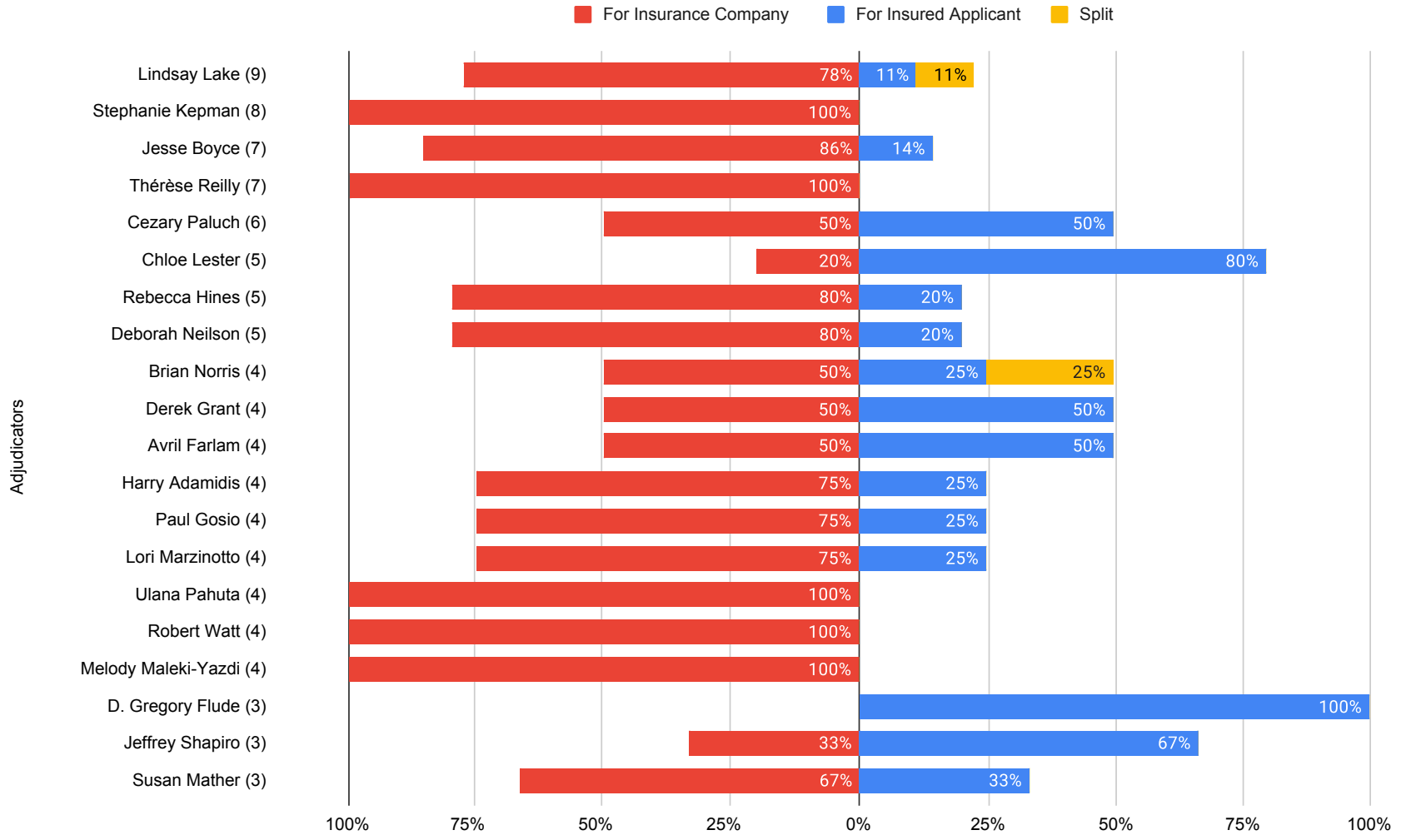
8 IRB POST 104 – BUSIEST 20 ADJUDICATORS BY VOLUME



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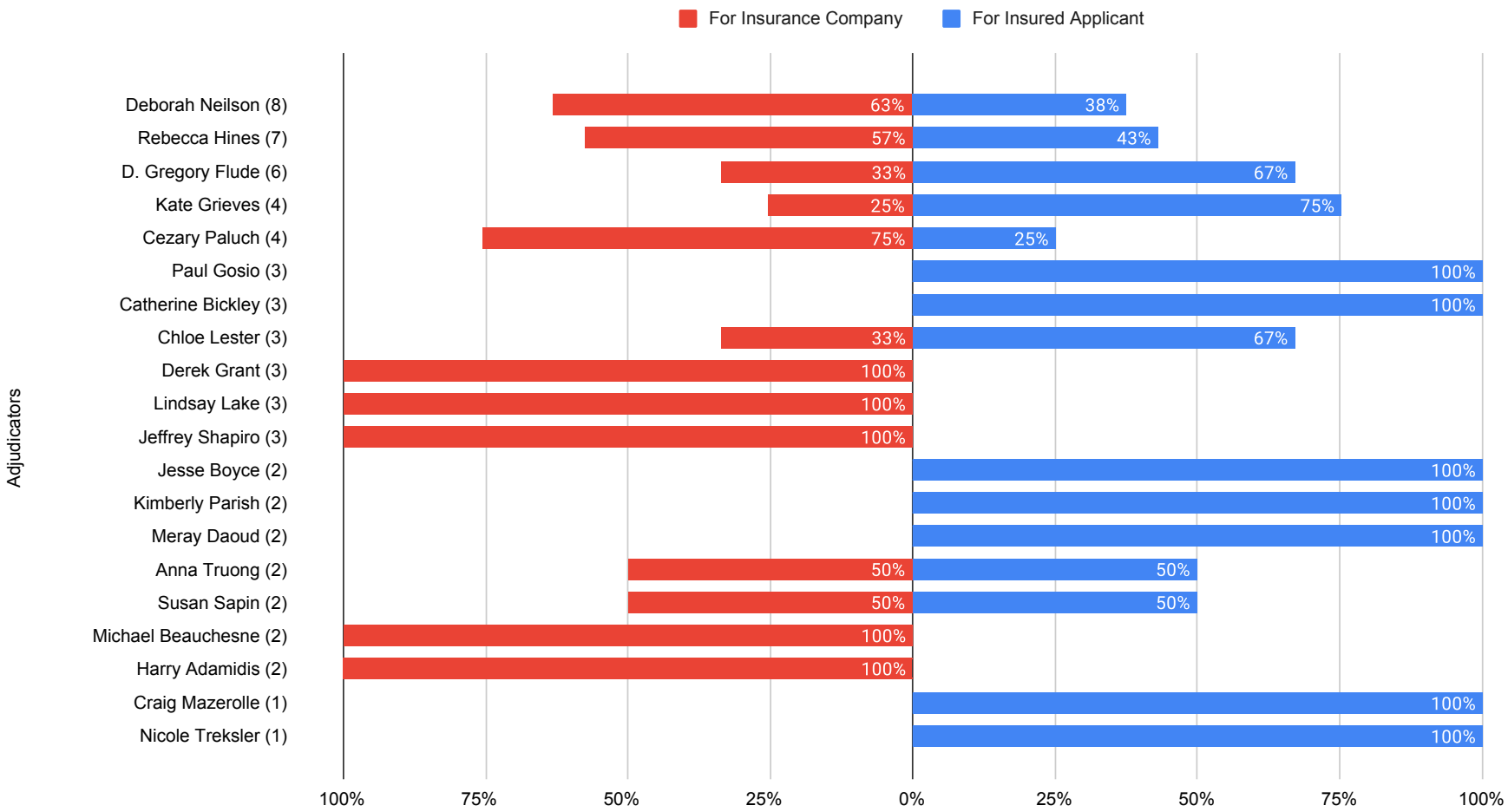
9 CAT – PRE JUNE 1, 2016 – BUSIEST 20 ADJUDICATORS BY VOLUME



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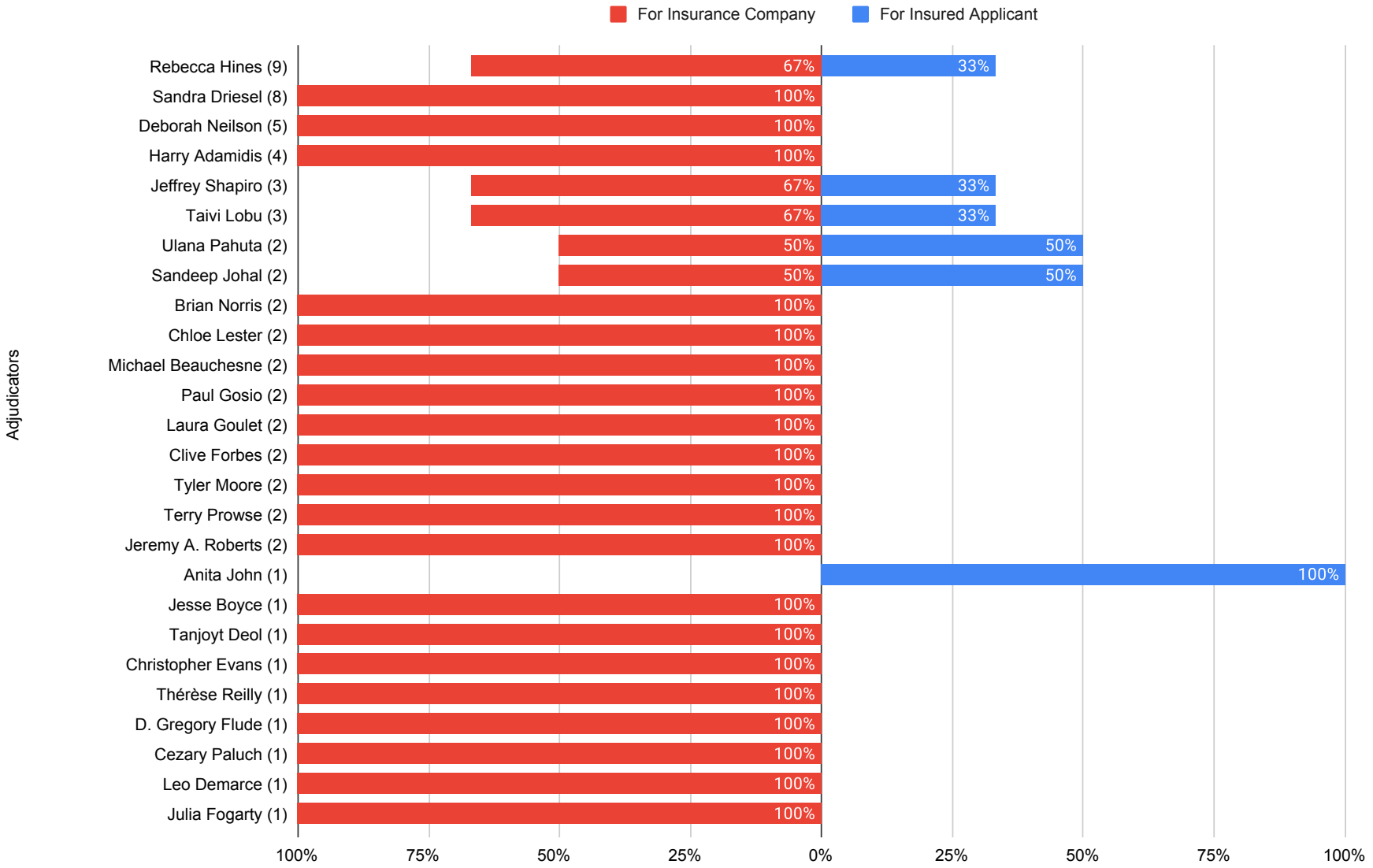
CAT – POST JUNE 1, 2016 – ALL 26 ADJUDICATORS BY VOLUME



*Some decisions had more than 1 adjudicator listed (observers)

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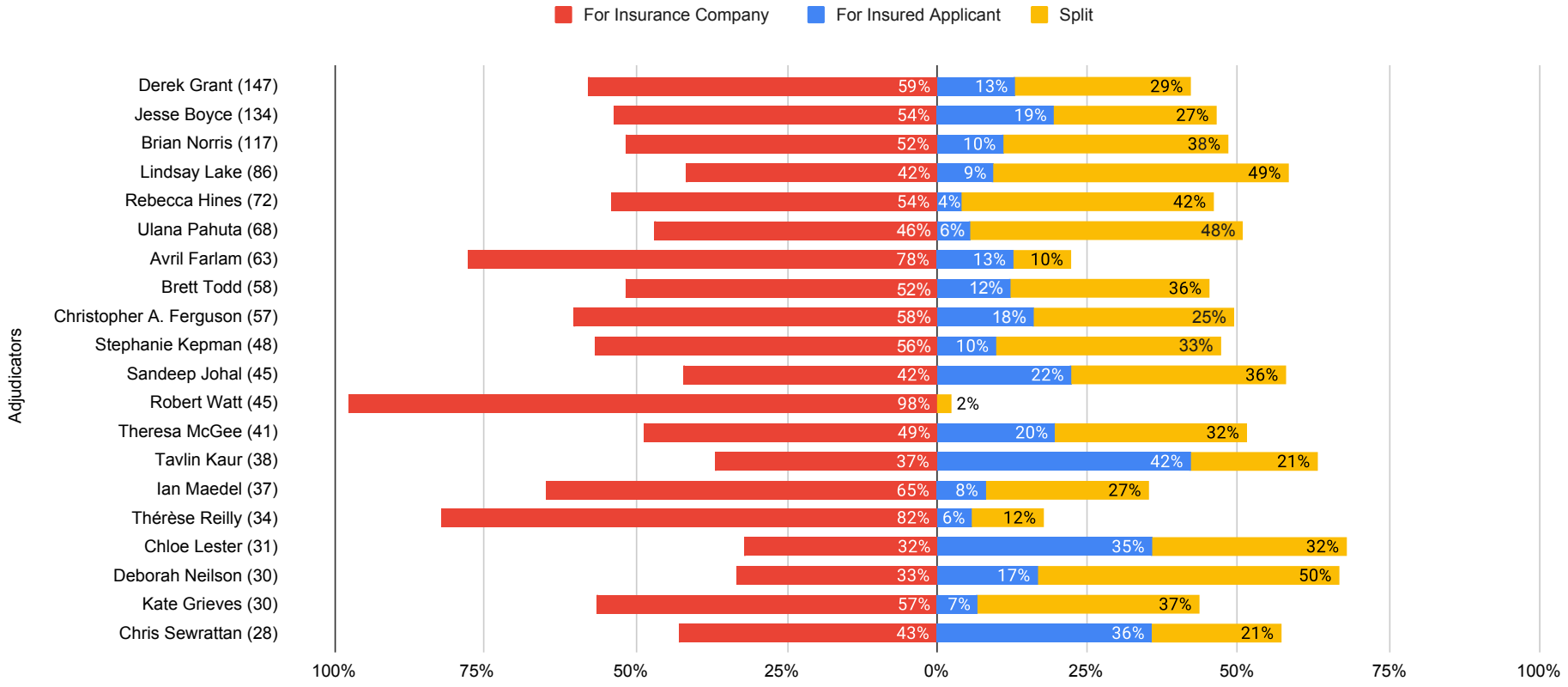
11 MED REHAB – BUSIEST 20 ADJUDICATORS BY VOLUME



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12 SELF REPRESENTED BY OUTCOME

Self Represented	Total Decisions	% of Total
For Insurance Company	157	72%
For Insured Applicant	33	15%
Split	27	12%
Total	**217**	

217 of 4,489 (5%) Decisions are Self-Represented

13 SELF REPRESENTED BY ISSUE OUTCOME

	For Insured Applicant	For Insurance Company	Split	Total	% For Insured Applicant	% For Insurance Company	% Split
MIG	1	40	0	41	2%	98%	0%
IRB – Pre 104	0	22	0	22	0%	100%	0%
IRB – Post 104	0	5	0	5	0%	100%	0%
CAT – Pre June 1, 2016	0	4	0	4	0%	100%	0%
CAT – Post June 1, 2016	0	5	0	5	0%	100%	0%
MED – Rehab	4	43	6	53	8%	81%	11%

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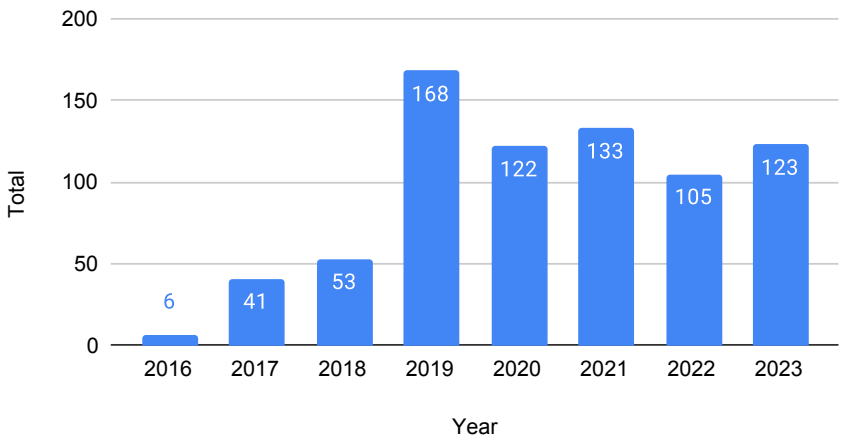
14 RECONSIDERATIONS



Within these decisions the outcome measures can be for specific items within the decision which are recorded as Upheld, Overturned, Varied, or sent back to Rehearing*. 21% of all Reconsiderations resulted in a Rehearing, Varied, or Overturned.

	Initiated By Insured	Initiated By Insurer	Both	Executive Chair	Total
Upheld	454	132	4	0	590
Overturned	32	23	0	0	55
Varied	27	39	10	0	76
Rehearing	14	14	0	2	30
Total	527	208	14	2	751

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15 RECONSIDERATIONS PRIOR TO FEBRUARY 7, 2019

After February 7, 2019, reconsiderations can be heard by any member of the Tribunal, including the one who decided the original matter.

105 Decisions were released before this change.

	Initiated By Insured	Initiated By Insurer	Both	Executive Chair	Total
Upheld	36	25	0	0	61
Overturned	10	7	0	0	17
Varied	3	13	0	0	16
Rehearing	4	5	0	2	11
Total	53	50	0	2	105

16 RECONSIDERATIONS AFTER FEBRUARY 7, 2019

646 Decisions were released after this change.

	Initiated By Insured	Initiated By Insurer	Both	Executive Chair	Total
Upheld	418	107	4	0	529
Overturned	22	16	0	0	38
Varied	24	26	10	0	60
Rehearing	10	9	0	0	19
Total	474	158	14	0	646

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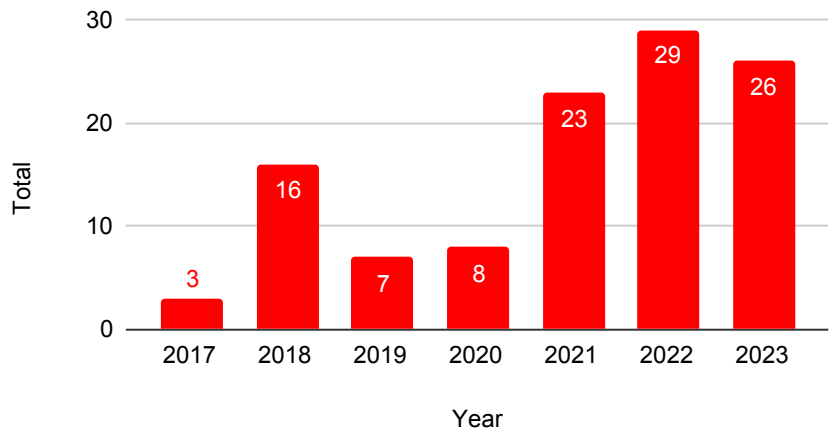
17 OUTCOMES BY ADJUDICATOR - POST FEBRUARY 7, 2019

	Original Adjudicator	Another Member
Upheld	363	166
Overturned	13	25
Varied	36	24
Rehearing	5	14
Total	417	229

18 JUDICIAL APPEAL/REVIEW

The total number of Judicial Appeal/Review decisions lifetime(112).



Within these decisions the outcome measures can be for specific items within the decision which are recorded as Upheld, Overturned, Varied, or sent back to Rehearing*. 27% of all Judicial Appeals/ Reviews resulted in a Rehearing, Varied, or Overturned.

	Total
Upheld	82
Overturned	10
Varied	5
Rehearing	15
Total	112

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APPENDIX 1

Adjudicators	MIG	IRB PRE	IRB Post	CAT Pre	CAT Post	MED Rehab	Issue Total
Derek Grant	108	15	4	3	0	148	**278**
Jesse Boyce	82	22	7	2	1	134	**248**
Brian Norris	87	30	4	0	2	118	**241**
Lindsay Lake	51	24	9	3	0	86	**173**
Brett Todd	60	13	2	0	0	59	**134**
Rebecca Hines	28	8	5	7	9	72	**129**
Ulana Pahuta	43	6	4	0	2	73	**128**
Avril Farlam	38	18	4	1	0	63	**124**
Christopher A. Ferguson	35	13	2	1	0	60	**111**
Stephanie Kepman	40	11	8	0	0	51	**110**
Robert Watt	31	13	4	1	0	45	**94**
Sandeep Johal	33	3	2	1	2	45	**86**
Theresa McGee	33	7	1	0	0	41	**82**
Ian Maedel	32	7	1	0	0	37	**77**
Deborah Neilson	14	12	5	8	5	30	**74**
Chloe Lester	18	11	5	3	2	31	**40**
Thérèse Reilly	15	9	7	1	1	34	**67**
Kate Grieves	22	3	2	4	0	30	**61**
Monica Ciriello	37	3	1	0	0	19	**60**
Tanjoyt Deol	28	4	1	0	1	24	**58**
D. Gregory Flude	12	10	3	6	1	25	**57**
Tavlin Kaur	13	4	1	0	0	38	**56**
Kimberly Parish	12	10	2	2	0	28	**54**
Monica Chakravarti	18	7	1	0	0	28	**54**
Chris Sewrattan	14	10	0	0	0	28	**52**
Harry Adamidis	11	3	4	2	4	28	**52**

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APPENDIX 1

Adjudicators	MIG	IRB PRE	IRB Post	CAT Pre	CAT Post	MED Rehab	Issue Total
Janet Rowsell	24	1	1	0	0	25	**51**
Cezary Paluch	9	8	6	4	1	20	**48**
Craig Mazerolle	15	5	1	1	0	24	**46**
Paul Gosio	9	10	4	3	2	18	**46**
Susan Mather	15	7	3	0	0	20	**45**
Christopher Evans	17	7	2	1	1	17	**45**
Melody Maleki-Yazdi	12	4	4	0	0	20	**40**
Jeffrey Shapiro	10	7	3	3	3	12	**38**
Avvy Go	15	4	2	0	0	16	**37**
Rupinder Hans	13	6	1	0	0	17	**37**
Michael Beauchesne	16	4	2	2	2	11	**37**
Sandra Driesel	8	4	2	1	8	8	**31**
Lyndra Griffith	10	6	2	0	0	13	**31**
Anita Goela	13	0	0	0	0	15	**28**
Rachel Levitsky	9	1	0	0	0	18	**28**
Nicole Treksler	7	4	1	1	0	14	**27**
Claudette Leslie	9	5	0	0	0	13	**27**
Nidhi Punyarthi	7	2	0	0	0	17	**26**
Kevin Lundy	8	5	0	0	0	12	**25**
Julian DiBattista	17	0	0	0	0	7	**24**
Anita John	11	1	2	0	1	8	**23**
Anna Truong	6	2	2	2	0	11	**23**
Nathan Ferguson	6	1	1	1	0	13	**22**
Eleanor White	5	1	0	0	0	16	**22**
Lori Marzinotto	4	4	4	1	0	7	**20**
Jessica Cavdar	8	1	0	0	0	11	**20**

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APPENDIX 1

Adjudicators	MIG	IRB PRE	IRB Post	CAT Pre	CAT Post	MED Rehab	Issue Total
Terry Prowse	3	4	2	0	2	9	**20**
Marisa Victor	6	2	1	0	0	10	**19**
Laura Goulet	5	3	1	0	2	8	**19**
Taivi Lobu	4	1	2	0	3	8	**18**
Amanda Marshall	9	0	0	0	0	9	**18**
Tyler Moore	4	1	0	1	2	9	**17**
Asad Ali Moten	8	0	0	0	0	9	**17**
Amanda Fricot	4	3	1	0	0	8	**16**
Dawn Kershaw	5	2	1	0	0	7	**15**
Catherine Bickley	1	5	1	3	0	5	**15**
Louise Logan	4	2	2	1	0	5	**14**
Clive Forbes	5	1	1	1	2	4	**14**
Beverly Brooks	5	1	1	0	0	7	**14**
Khizer Anwar	4	2	0	0	0	7	**13**
Jeremy A. Roberts	3	2	0	0	2	6	**13**
Samia Makhamra	4	1	0	0	0	7	**12**
Poeme Manigat	5	1	0	1	0	5	**12**
Meray Daoud	1	2	0	2	0	7	**12**
Matthew M. Létourneau	2	4	2	0	0	4	**12**
Billeh Hamud	4	2	0	0	0	6	**12**
Shannon Braun	2	1	0	0	0	8	**11**
Richard Warr	7	1	0	0	0	3	**11**
Nancy Aquilina	6	0	0	0	0	4	**10**
Julia Fogarty	2	1	1	1	1	4	**10**
Jeanie Theoharis	4	1	0	0	0	5	**10**
Daniela Corapi	4	1	0	0	0	4	**9**

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Adjudicators	MIG	IRB PRE	IRB Post	CAT Pre	CAT Post	MED Rehab	Issue Total
Jeffery Campbell	5	2	0	0	0	2	9
Bruce Stanton	4	0	0	0	0	5	9
Raj Sharda	3	0	0	0	0	6	9
Janet Hueglin Hartwick	3	1	0	0	0	4	8
Ruth Gottfried	2	4	1	0	0	1	8
Teresa Walsh	4	0	0	0	0	4	8
Rakesh Sharma	5	1	0	0	0	2	8
Maureen Helt	2	1	0	0	0	4	7
Patricia Conway	2	1	0	0	0	4	7
Gemma Harmison	3	1	0	0	0	3	7
Bernard Trottier	3	1	0	0	0	3	7
Monica Purdy	2	1	0	0	0	4	7
Sancia Pinto	2	0	0	0	0	5	7
Mary H. Thorn	3	0	1	1	0	2	7
Leo Demarce	3	0	0	0	1	2	6
Aggrey Msosa	1	1	0	0	0	4	6
Nishant Nayak	5	0	0	0	0	1	6
Gareth Neilson	3	2	0	0	0	1	6
Cynthia Pay	1	0	0	0	0	4	5
Patricia McQuaid	0	0	0	0	0	5	5
Blaine Baker	1	1	0	0	0	3	5
Susan Sapin	0	1	1	2	0	1	5
Jacqueline Harper	2	0	0	0	0	3	5
Sofia Ahmad	2	0	0	0	0	3	5
J.H. Bass	0	1	1	0	0	3	5
Terry Hunter	1	0	0	0	0	3	4

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APPENDIX 1

Adjudicators	MIG	IRB PRE	IRB Post	CAT Pre	CAT Post	MED Rehab	Issue Total
Karina Kowal	1	0	0	0	0	3	**4**
Robert Markovits	2	0	0	0	0	2	**4**
Lan An	1	2	0	0	0	1	**4**
Heather Trojek	1	0	0	0	0	2	**3**
Matthew Frontini	3	0	0	0	0	0	**3**
Andrea Reid	2	0	0	0	0	1	**3**
J.R. Richards	0	1	0	0	0	2	**3**
Gerard Tillmann	2	0	0	0	0	1	**3**
Gregory Kung	2	0	0	0	0	1	**3**
Louise Belanger-Hardy	2	0	0	0	0	0	**2**
Dominique Setton	2	0	0	0	0	0	**2**
Michael Presta	1	0	0	0	0	1	**2**
Pierre R. Lavigne	1	0	0	0	0	1	**1**
Joseph Nemet	1	0	0	0	0	0	**1**
S. F. Mather	0	0	0	0	0	1	**1**
Neil Levine	1	0	0	0	0	0	**1**
Emily Morton	0	0	0	0	0	1	**1**
George Diplas	0	0	0	0	0	1	**1**
Rita Czarny	0	0	0	0	0	1	**1**
Stephen Scharbach	0	0	0	0	0	1	**1**

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