

SUMMARY BENCH TRIAL - QUEENS COUNTY SUPREME COURT
RULES AND PROCEDURES

Introduction: A Summary Bench Trial (SBT) is a one-day trial conducted in an on-line session utilizing the Microsoft Teams platform. SBTs are conducted with relaxed rules of evidence similar to a Summary Jury Trial or arbitration. The Rules and Procedures set forth below will apply unless modifications are permitted upon the consent and approval of the Trial Judge.

1. **Voluntary trials conducted under the Pilot Summary Bench Trial protocol require the written consent of all litigants in the form of a binding stipulation that includes a copy of these Rules and Procedures as an exhibit.** The written stipulation shall contain the following provisions:

- a) **Consent of the Parties:** attorneys for all signatories to the Stipulation must represent that they have the authority of their respective clients and/or insurance carriers to enter into an irrevocable agreement to proceed with a binding Summary Bench Trial according to these Rules and Procedures.
- b) **Any agreed-upon ‘High/Low’ damage perimeters.** The parameters shall not exceed the policy limits. The parties may, upon consent, communicate the policy limits to the Trial Judge and may also communicate the ‘High/Low’ parameters to the Judge upon further stipulation.
- c) **Insurance Policy Information:** the litigants shall provide all relevant insurance policy limits along with the existence of any excess insurance policies if the litigants have agreed on ‘High/Low’ damage perimeters.
- d) **No Right to Appeal:** the parties acknowledge that by consenting to a Summary Bench Trial, they agree to waive the right to appeal the Court’s determination.
- e) **No Motions:** the parties agree that all filed and pending motions shall be withdrawn and agree to waive the right to make any further motions.
- f) **Waiver of Pre-Judgment Interest:** the parties further agree to waive pre-judgment interest, if any. Costs and disbursements shall be deemed included in any damages award.

Any other parameters agreed upon by the litigants with the approval of the Trial Judge.

2. **Scheduling:** The Administrative Judge, or her designee, will conference cases and, if deemed appropriate for a Summary Bench Trial, will refer the matter to the SBT Part for the scheduling of a trial at the earliest possible date.

3. **Applicable Rules of Evidence:**

- a) The parties may offer such evidence as is relevant and material to the dispute, in accordance with these Rules. Compliance with the rules of evidence with respect to the

introduction of exhibits previously marked and redacted shall not be necessary, subject to the provisions relating to documentary evidence as set forth herein.

- b) Examination Before Trial testimony: an opposing party may offer the deposition or prior testimony of a party. A party may not offer his/her prior deposition testimony as except as provided by the CPLR and applicable caselaw. This provision shall also apply to video depositions.
 - c) Lost income may be proven by the submission of documentary evidence from the plaintiffs' employer and personal records, including but not limited to pay stubs, tax returns, W-2 and/or 1099 forms. The court may accept the calculation of past and future lost income calculated through these records, provided that such amounts may be calculated with a reasonable degree of mathematical certainty based solely upon present income and life expectancy. Any claim for future lost earnings premised upon inflation, lost opportunity, promotion, career advancement or similar theory shall only be proved by expert testimony or the report of an expert previously exchanged pursuant to these rules, subject to No Fault Law limitations (Insurance Law 5102).
 - d) Non-party witness testimony: may be introduced by producing a witness at trial. Such testimony can be offered through the use of the non-party deposition testimony of such witness or by affidavit or sworn statement, provided the same is included in the Trial Binder.
 - e) Subject to the discretion of the Trial Judge, the following may also be admissible without the necessity of bringing in a foundational witness, subject to redaction:
 - Police reports [with codes redacted],
 - The MV104 of any party;
 - Medical records including but not limited to hospital records, ambulance records; medical records and/or reports from plaintiff's medical providers,
 - Defendant doctor reports inclusive of IME Reports and/or No-Fault medical exam reports;
 - Diagnostic test results including but not limited to X-rays, MRI, CT scan, and EMG reports
 - Any other graphic, numerical, symbolic, or pictorial representation of medical or diagnostic procedure or test of plaintiff.
 - Any other evidence offered by a party, subject to the discretion of the Trial Judge.
 - f) The Court shall not require any records referred to in these Rules to be certified, affirmed or sworn to by any individual.
 - g) There shall be disclosure pursuant to CPLR 3101(d) for any witness who will provide a medical opinion at trial, including any medical witness present at an IME.
 - h) The Trial Judge may, where required, issue "So Ordered" subpoenas to secure the attendance of witnesses or the production of documents.
4. **Pre-trial and Trial submissions:** Parties shall exchange and submit to the Court verified pleadings and all proposed evidence in a tabbed, three-ring Trial Binder that includes a table of contents, **or** the parties may file a similarly organized single PDF that includes a table of contents **one week prior to trial.**

- a) Any party intending to offer documentary evidence at trial, including but not limited to accident reports, medical reports, lost income records or portions of examination before trial testimony shall include copies of such documentary evidence in the Trial Binder. Lists of proposed trial witnesses shall be similarly included.
 - b) Parties will not be permitted to claim any new injuries or supplement the Bill of Particulars following the signing of the Stipulation.
 - c) With respect to any claim for future special damages, the amount must be specified in the Summary Bench Trial Stipulation and Order. In order to have a viable claim for future special damages, the plaintiff must have asserted this claim with a specific monetary value in a pleading or Bill of Particulars, and must have medical or other documentation supporting such a claim (whether such claim relates to future medical special damages or to other future special damages). The failure to comply with this rule will preclude the allowance of future special damages claims.
5. **On the Day of Trial:** The Trial Judge conduct a pre-trial hearing and will issue any rulings necessary to resolve admissibility and redaction issues when the parties cannot stipulate to the admissibility of proposed evidence.
6. **Record:** The Court will provide a remote court reporter.
7. **Time Limits:** The court shall permit each side a ten (10) minute opening and (10) minute closing statement. The Court shall further grant each side one (1) hour for presentation of their case, exclusive of opening and closing statement time. Cumulative cross examination shall not exceed one hour. The Court may increase time allotments upon good cause to ensure the full exploration of issues. The Court shall provide a two-minute warning.
8. **Case Presentation upon Trial:**
- a) Subject to the discretion of the Trial Judge, parties may use photographs, diagrams, power point presentations, scale models overhead projectors, trial notebooks, or any other innovative method of presentation.
 - b) Each side may call no more than two (2) witnesses. The Court may allow an increase in the number of witnesses upon the application of a party for good cause shown. Plaintiff proceeds first. Plaintiff maybe granted a ten (10) minute rebuttal following defendant's presentation.

The Trial Judge may, within his or her discretion, modify the Rules listed above.

9. **No Prima Facie Motions or Directed Verdicts:** Parties agree to withdraw any filed or pending motion and waive the right to bring any further motions and shall not bring motions to set aside the verdict.
10. **Verdict:** The Trial Judge will issue and written decision or state the decision on the record. The Court shall not require written findings of fact and conclusions of law.

11. **Infant Plaintiff:** In a Summary Bench Trial involving an infant, the Court must approve any High/Low parameters prior to trial.
12. **SUM Coverage:** If Supplemental Uninsured Motorist (SUM) coverage is to be preserved, language to that effect shall be included in the parties' Summary Bench Trial Stipulation. If the verdict exceeds the "High" parameter, plaintiff may seek recovery from the SUM carrier in an amount agreed upon by the parties.
13. **"High/Low" damage parameters and apportionment of liability:** The parties may agree to "High/Low" damage parameters for an award to the plaintiff. When the Court determines a plaintiff bears a percentage of liability for their injuries, and monetary award shall be reduced by such percentage. Where a plaintiff's actions reduce the amount of the award below the "low" parameter, the plaintiff shall recover the "low" amount. If the award is above the "high" parameter, the plaintiff's recovery is limited to the "high" amount. If the reduction of the monetary award because of plaintiff's culpable conduct results in the computation of a recovery between the "low" the "high" amount, then that sum shall be recovered by the plaintiff.
14. **No judgment entered:** releases and stipulations exchanged. Regardless of whether the parties have agreed to "High/Low" parameters, after the verdict, if the plaintiff is entitled to damages, then the plaintiff shall provide to the defendant a general release and stipulation of discontinuance. Any award or settlement amount shall be deemed to include interest, costs and disbursements. Plaintiff shall not enter a judgment until and unless the defendant(s) fail to make payment pursuant to CPLR 5003-a. Any verdict or judgment shall be treated as a stipulation of settlement and shall not be intended to have res judicata or collateral estoppel effect.

(September 2020)