

SUMMARY JURY TRIAL PART:
QUEENS COUNTY SUPREME COURT
RULES AND PROCEDURES

Nature of the Binding Summary Jury Trial: A summary jury trial is generally a one-day jury trial with relaxed rules of evidence similar to arbitration except that a jury decides factual issues and renders a verdict as a jury would in a traditional trial. The parties may agree on the mode and method of presentation. However, if practical, and damages are agreed upon by the parties, the trial will determine liability only; or if liability is agreed upon by the parties, the trial will determine damages only. Otherwise, jury selection and trials will be in the course of **one (1) day** In the absence of agreement of counsel and approved by the trial court, the process and rules that follow shall apply.

1. **Consent of Parties:** The signatories to the Stipulation and Order represent that they have the authority of their respective clients and/or insurance carriers to enter into the agreement and such agreement shall be irrevocably binding upon the respective principals.

2. **Stipulation and Order:** If the parties agree to a summary jury trial, a binding written Stipulation and Order shall be signed by the attorneys reciting any High/Low parameters, preserving SUM coverage if so agreed; agreeing to waive any rights to appeal; agreeing to abide by the strict time limitations set forth herein, which abbreviate case presentation, agreeing to withdraw any pending motions, agreeing not to file any written motions or appeals and agreeing not to serve any supplemental Bills of Particulars or claim any new injuries or special damages subsequent to the execution of the written Stipulation and Order. The High/Low parameters for the summary jury trial, if any, shall not be disclosed to the jury.

3. **No Right to Appeal:** The parties agree to waive costs and disbursements and further agree to waive the right to appeal from the determination of the matter.

4. **No Motion Practice:** The parties shall execute a Stipulation and Order agreeing to withdraw any pending motions filed in the case and agreeing not to file any written motions subsequent to the execution of said stipulation.

5. **Scheduling:** Summary jury trials will be placed on the calendar for trial at the earliest possible date available, (preferably within 30 days of the Evidentiary Hearing.) Once said date is assigned, it shall be considered a date certain, and there shall be no adjournments. The parties shall appear for an Evidentiary Hearing prior to the trial date prepared with a complete Trial Packet.

6. **Pre-trial submissions:**

a) Trial Packets - Any party intending to offer documentary evidence at trial, including but not limited to accident reports, medical records and employment records, shall include the

same in a Trial Packet. The parties shall serve a table of contents or exhibit list of the Trial Packet via email to all signatories to the Summary Jury Trial stipulation no later than ***SEVEN (7) DAYS*** prior to the Evidentiary Hearing, with physical delivery of the Trial Packet to be made no later than ***FIVE (5) DAYS*** prior to the date of the Evidentiary Hearing, unless otherwise ordered.

1. In the absence of a stipulation, a complete Trial Packet shall include all evidence to be submitted to the jury in a securely fashioned manner including binding clips, and exhibit tabs:

2. At the conclusion of the Evidentiary Hearing, the trial packet is deemed complete and nothing shall be added unless stipulated to by all parties.

3. On the date of trial, copies of the Trial Packet shall be submitted for the court and all jurors including alternates.

b) A written stipulation regarding evidentiary or other pretrial issues shall be filed and exchanged with all parties to the action in accordance with Rule 6(a) above unless otherwise ordered. Upon any failure to so-comply with the exchange rules, the Trial Judge, Judicial Hearing Officer or Court Attorney-Referee conducting the hearing may issue either an order of preclusion or may deduct time for trial presentation.

c) Witness lists, a joint set of requests to charge and a proposed verdict sheet shall be submitted at the Evidentiary Hearing with the Trial Packet. Reference to PJI sections by number and title shall be sufficient for requests to charge.

d) Parties will not be permitted to supplement the Bill of Particulars or claim any new injury or damages after the date of the Summary Jury Trial stipulation.

7. **Record:** A summary jury trial will be recorded by a court reporter.

8. **Jury Selection:** By counsel with a 30-minute time limit for each party. Summary juries shall consist of no less than six (6) jurors unless the parties stipulate to fewer jurors, plus an option for one (1) alternate. The Court shall allow each side two (2) peremptory challenges.

9. **Time Limits:** Each side shall be entitled to a ten (10) minute opening and closing and one (1) hour for presentation of their case, including cross examination. The Court shall keep track of the time and remind counsel of the status of allotted time at appropriate intervals.

10. **Evidentiary Hearings:** An Evidentiary Hearing shall be held before a Court Attorney-Referee or Judicial Hearing Officer on an assigned date before jury selection. On that date, each party shall submit their Trial Packet to the Referee including prepared and agreed-upon requests to charge and a proposed verdict sheet, and separate legal research and support for any proposed charges or evidentiary objections. (Whether or not a charge is given is within the discretion of the Trial Judge, Judicial Hearing Officer or Court Attorney-Referee). The parties are directed to

prepare and submit the foregoing in accordance with the time frame set forth in Rule 6 (a). The failure to be so-prepared may result in an order of preclusion or a loss of time for trial presentation.

11. Rules of Evidence:

a) The parties may offer such evidence as is relevant and material to the dispute. Strict conformity with the rules of evidence to be relaxed within the discretion of the Court Attorney - Referee, Judicial Hearing Officer or SJT Judge, subject to those provisions relating to documentary evidence set forth below.

b) Examination Before Trial testimony may be included in the Trial Packet. Every attempt should be made to limit the inclusion of testimony to the necessary pages only, and to be 'highlighted' as necessary. This section shall apply to video depositions as well.

c) Lost income may be proved by the submission of documentary evidence from the plaintiffs' employer, including but not limited to pay stubs, tax returns, W-2 and /or 1099 forms provided that such amounts may be calculated with a reasonable degree of mathematical certainty based solely upon present income and life expectancy. Any claim of 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) In the event a party wishes to offer the testimony of a non-party witness, 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 exchanged with the trial packet prior to the Evidentiary Hearing pursuant to Rule 6(a) herein.

e) None of the foregoing shall be construed to prevent a party from calling witnesses upon trial; Skype or web-cam testimony shall be permitted.

f) Subject to the discretion of the Court Attorney Referee, the JHO or the SJT 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 No Fault medical exam reports;
- Diagnostic test results including but not limited to X-rays, MRI, CT scan, and EMG reports;
- Records of prior medical doctor disciplinary proceedings
- Verified pleadings
- Prior and subsequent injury medical records relating to other accident(s) and/or injuries.

- Bills of Particulars from other lawsuits relating to injuries claimed prior to and subsequent to the accident/injury in question.
- Prior trial testimony by a doctor (not pertaining to specific individuals)
- Prior medical records or IMEs of other plaintiffs from other cases (subject to HIPAA rules and with relevant portions ‘highlighted’.)
- Medical bills or estimates (subject to No Fault Law limitations [Insurance Law § 5102]);
- Photographs of automobile damage
- Any other graphic, numerical, symbolic, or pictorial representation of medical or diagnostic procedure or test of plaintiff.
- Certified criminal convictions or any party or witness
- Any stipulated evidence may also be admitted.

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) There shall be no requirement that any record referred to in paragraph “c” or “f” be certified, affirmed, or sworn to with the exception of verified pleadings.

I) The SJT Judge shall, where required, issue “So Ordered” subpoenas to secure the attendance of witnesses or the production of documents as may be requested by any party.

12. **Case Presentation:**

a) Subject to the ruling at the Evidentiary Hearing or within the discretion of the SJT Judge, counsel may use photographs, diagrams, power point presentations, scale models overhead projectors, trial notebooks, all of which can be submitted to the jury, or any other innovative method of presentation.

b) Anything which is to be submitted to the jury as part of the presentation of the case must be exchanged pursuant to Rule 6 (a) herein unless otherwise ordered. Counsel shall not refer to or introduce evidence which would not be admissible at trial other than as previously ruled upon at the Evidentiary Hearing. Counsel are encouraged to stipulate to factual and evidentiary matters to the greatest extent possible.

c) No more than two (2) witnesses for each side may be called for direct and cross-examination. Time spent by counsel on direct and cross examination shall count against their allotted time for presentation of their case unless the court directs otherwise.

d) Subject to the ruling at the Evidentiary Hearing or within the discretion of the SJT Judge, counsel, by written stipulation, may agree upon the evidence to be submitted.

13. **Jury Verdict:** Upon request by the jury, and within the discretion of the trial Judge, a copy of the jury charges may be provided to the jury for use during deliberation. Five (5) out of six (6)

jurors must agree on the verdict. The verdict of the summary jury trial is to be binding as rendered by the jury subject to any high/low limits contained within the SJT stipulation. The jurors may bring into the jury room any trial notebooks, exhibits, presentations, etc. that may have been presented during the trial.

14. **No Directed Verdicts:** Parties agree to waive any motions for directed verdicts as well as any motions to set aside the verdict rendered by said jury. The Court shall not set aside any verdict entered thereon, nor shall it direct the verdict be entered in favor of a party entitled to verdict as a matter of law, nor shall it order a new trial as to any issues where the verdict is alleged to be contrary to the weight of the evidence.

15. **Inconsistent Verdicts and Hung Juries:** In the case of inconsistent verdicts, the SJT Judge shall question and charge the jury as appropriate to resolve any inconsistency in said verdict. In the event the Jury cannot reach a '5 out of 6' verdict, the Court, and the parties by stipulation, may endeavor to allow for an acceptable verdict, rendered by less than five (5) out of six (6) jurors, so as to facilitate a verdict on the same date as the Trial.

16. **Infant Plaintiff:** In a summary jury trial involving an infant, the Court must approve any High/Low parameters prior to trial.

17. **SUM Coverage:** If SUM coverage is to be preserved, language to that effect shall be included in the Stipulation and Order transferring the action to a binding Summary Jury Trial.

18. **Stipulations of settlement or discontinuance,** and all agreements as to the resolution of any liability or damages claims, made subsequent to the conclusion of the Evidentiary Hearing, must be reported to the JHO Clerk immediately.

19. **Settlement:** for any matter settled at the Evidentiary Hearing, the parties shall execute a Stipulation of Settlement before the conclusion of the hearing, with the same to be "So-ordered" and reported to the JHO Clerk.

20. A Summary Jury Trial results in a verdict and not a judgment.

21. **Enforcement of the Verdict:** shall be subject to the CPLR provisions governing settlement.

(June 2016)