

Supreme Court
of the
State of New York



HON. DEBORAH A. KAPLAN
ADMINISTRATIVE JUDGE FOR CIVIL MATTERS

DENIS REO, ESQ.
CHIEF CLERK

60 CENTRE ST.
NEW YORK, NY 10007

**SUPREME COURT, NEW YORK COUNTY
PILOT SUMMARY BENCH TRIAL PROGRAM [SBT]
INFORMATION SHEET**

Essential Features:

- A Summary Trial is a binding one-day bench trial with relaxed rules of evidence.
- Litigants may submit medical evidence without live or virtual medical testimony.
- Litigants stipulate to High-Low parameters, i.e., \$0/\$25k, \$50k/\$250k, which cannot exceed the insurance policy limits. The litigants may, upon consent, communicate the insurance policy limits to the justice presiding and may communicate the high low parameters upon further stipulation of the litigants.
- Litigants waive their right to appeal any determination issued by the Court.
- The Court will not entertain a motion to direct a verdict.
- The Court will not entertain a motion to set aside the verdict.
- The litigants and the Court shall set an agreed date for the trial.

- The litigants shall submit bench briefs arguing their points of law and fact, including the submission of stipulated evidence as exhibits consisting of medical records, reports, PowerPoint presentations, etc.
- A Supreme Court Justice presides over the trial.

General Rules:

- Voluntary participation in an SBT requires a written stipulation between the attorneys for each litigant addressing the following issues:
 1. Written consent of the parties
 2. Waiver of the right to appeal
 3. Waiver of the right to make post-trial motions
- The Court will issue a written decision or state said decision on the record,
- The Court does not enter a judgment upon the completion of the SBT, litigants, instead, prepare and exchange releases and stipulations.
- Litigants exchange and submit to the Court pre-marked evidentiary exhibits, including medical records, expert reports, photos, diagrams, and other physical evidence at least one week before the agreed trial date. The Court may consider uncertified medical records or those lacking an affirmation authentication such records either on consent or by court order.
- Lawyers shall exchange documents in advance of their initial conference, including pleadings, prior court orders, bills of particulars, and all proposed evidence in the form of a tabbed three-ring binder, or the digital equivalent in a single PDF file that includes a table of contents.
- The Court shall utilize Skype for Business to take real-time witness testimony and argument by attorneys for the litigants. The Court may also consider pre-recorded video witness testimony and transcripts from examinations before trial upon the further stipulation of the litigants in addition to Skype testimony or in place of real-time witness testimony.
- The Court shall provide a remote court reporter.

- Witnesses shall testify in a room provided at 60 Centre Street under the supervision of a court officer under certain circumstances, if remote testimony is not possible.

General Procedures:

- The Court shall limit each litigants' opening and closing statements to no more than 10 minutes for each of the opening and closing statements.
- The Court shall limit Plaintiff's case in chief to no more than one hour, and cumulative cross-examination shall not exceed one hour.

THE PILOT SUMMARY BENCH TRIAL PROCESS: NEW YORK COUNTY RULES AND PROCEDURES

Introduction: Nature of the Binding Pilot Summary Bench Trial: The Court conducts a Summary Bench Trial ("SBT") during a one-day online session utilizing Skype for Business technology. SBTs relax the rules of evidence similar to Summary Judgment Trials and the arbitration process. The process and rules that follow shall apply. Still, modifications may occur upon the consent and approval by the trial court.

Rules

- 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 as an exhibit.** The written stipulation shall contain the following provisions:
 - a) **Consent of the Parties:** Attorneys for all litigants must represent their respective clients along with any insurance carrier granted them authority to enter into an irrevocable binding agreement to proceed with a binding Summary Bench Trial according to these trial rules and procedures.
 - b) Any agreed-upon high-low damage parameters.
 - 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 agreed on high-low damage parameters.

- d) No Right to Appeal. An acknowledgment that by consenting to a Summary Bench Trial, the litigants waive any right to appeal the Court's determination.
- e) An acknowledgment that by consenting to a Summary Bench Trial, the litigants waive the right to make the following motions: 1) directed verdict, 2) set aside the verdict, and 3) any other post-trial motions.
- f) An acknowledgment by the parties that by proceeding to a Summary Bench Trial, they waive pre-judgment interest, if any, and costs and disbursements.
- g) Any other parameters agreed on between the litigants with the approval of the justice presiding over the trial.

2. Scheduling: The Administrative Judge will conference cases and, if appropriate for a Summary Bench Trial, will refer it to the SBT Part, who will schedule a date for trial after conferring with counsel. The Court shall schedule Summary Bench Trials [SBT] at the earliest possible date.

3. The Court shall not require written findings of fact and conclusions of law.

4. 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 set forth below.
- b) An opposing party may offer the deposition or prior testimony of a party. However, a party may not offer his/her deposition or prior testimony except as provided by the CPLR or applicable caselaw. This section shall apply to video depositions as well.
- c) A plaintiff may prove past and future lost income by submitting documentary evidence from the plaintiff's employer and personal records. The Court may accept the calculation of past and future lost income calculated through these records provided that such amounts are based

solely upon present income and life expectancy within a reasonable degree of mathematical certainty. Documentary evidence may include but is not limited to pay stubs, tax returns, W2, or 1099 forms.

- d) Parties may introduce non-party witness testimony through depositions taken according to the notice requirements of the CPLR, or by producing that witness at trial. Parties may not rely on non-party witness affidavits or unsworn out of court statements unless they satisfy an exception to the hearsay rule.
- e) The following documents shall be admissible and subject to redaction: police reports, the MV- 104 accident report of any party; medical records including but not limited to, hospital records, ambulance records, medical records or reports from plaintiff s medical providers defendant doctor’s reports inclusive of IME reports and/or no-fault insurance medical exam reports; diagnostic test results including but not limited to, X-rays, MRI, CT scan and EMG reports; or any other graphic, numerical, symbolic, or pictorial representation of medical or diagnostic procedure or test of plaintiff. Any other evidence so agreed upon or ordered in accordance with these rules shall also be admitted.
- f) The Court shall not require any records referred to in these Rules to be certified, affirmed, or sworn to by any individual.
- g) The Court may, where required, issue “so ordered” subpoenas to secure the attendance of witnesses or the production of documents.

5. Pre-trial and Trial Submissions: Parties shall submit proposed evidence in a tabbed three-ring binder that includes a table of contents or, the Parties may file a similarly organized single PDF that includes a table of contents. The Court will issue an order resolving admissibility and redaction issues when the parties cannot stipulate to the admissibility of proposed evidence.

- a) Any party intending to offer documentary evidence at trial, including but not limited to accident reports, medical reports, lost income records and portions of examinations before trial that a party intends to read as part of its direct case, shall serve copies of such documentary evidence upon all parties prior to trial. Lists of proposed trial witnesses shall be similarly served.

b) At the close of the evidentiary hearing, the parties shall stipulate, in writing, as to the final exhibits and witness lists incorporating the Court's rulings. The Court shall consider only evidence stipulated or ruled admissible in rendering its decision.

6. Time Limits: The Court shall permit each litigant ten-minute opening and a ten-minute closing statement. The Court shall further grant each litigant one hour, exclusive of opening and closing statement time, to present their case. The Court may increase time allotments upon good cause show to ensure the full exploration of the issues. The Court will provide a two-minute warning.

7. Case Presentation Upon Trial

a) Counsel may summarize the evidence, factual allegations, and reasonable inferences for the Court.

b) Each litigant may call no more than two (2) witnesses. The Court may allow an increase in the number of witnesses on the application of a party and good cause shown. Plaintiff proceeds first. Plaintiff may be granted a ten (10) minute rebuttal following the defendant's presentation. Time spent by counsel on direct and cross-examinations counts against the party's allotted time unless the Court directs otherwise.

c) The presiding judge may, with the consent of the parties, modify the rules listed above.

8. No Prima Facie Motions or Directed Verdicts: Parties agree to waive prima facie motions, motions for a directed verdict, and motions to set aside the verdict or any judgment rendered.

9. Infant Plaintiff: The Court must approve any high-low damage parameters before the trial when the plaintiff is an infant.

10. 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 the liability for their injuries, any monetary award shall be reduced by such percentage. Where a plaintiff's actions reduce 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 the plaintiff's culpable conduct results in the computation of a recovery between the "low" and the "high" parameter then that sum shall be recovered by the plaintiff.¹

11.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.

Dated: August 26, 2020

¹ For example, (a) the award results in the computation of a recovery between the "low" and the "high" parameter then that sum shall be recovered by the plaintiff. For example (a) the Court awards \$75,000 but finds the plaintiff 50% responsible, then the award is \$37,500. With a \$10,000/\$30,000 "high/low" the plaintiff's recovery.