

SUPREME COURT, KINGS COUNTY
SUMMARY JURY TRIAL PROGRAM [SJT]
INFORMATION SHEET

Essential Features:

- A SJT is a binding one day jury trial with relaxed rules of evidence
- Medical evidence can be submitted without live medical testimony
- Hi-Low parameters can be stipulated to, ie. \$0/\$25k , \$50k/\$250k
- No appeal
- No directed verdict
- No motion to set aside the verdict
- A date certain for trial
- Innovative method of case presentation to the jury, including direct submission to jury of medical records, reports, power point presentations, etc.
- Supreme Court Judge presides at trial
- Verdict limited to amount of insurance policy

General Rules:

- Written stipulation by attorneys required to participate
- Signed waiver of right to appeal and waiver of post trial motions
- No Findings of Fact/Conclusions of Law required
- No Judgment entered. Rather, releases and stipulations are exchanged
- Pre-marked exhibits, medical records, reports, photos, diagrams, and other physical evidence presented directly to jury
- All evidence, trial notebook and exhibits must be exchanged in advance of trial or be excluded
- Evidentiary hearing held before trial to resolve objections, redactions and other pre-trial issues, including objections to proposed exhibits
- Medical records which are not certified or affirmed are admissible on consent or by court order
- Video live/pre-recorded testimony permitted

General Procedures:

- Abbreviated jury selection
- 10 minute opening and 10 minute closing for each side
- One hour for case presentation and cross examination by each side
- Modified jury charges
- Record waived if all sides agree

***Full set of rules available at The Brooklyn Bar Association, www.brooklynbar.org,
at the Motion Support Office and the 11th floor Desk Officer***

**THE SUMMARY JURY TRIAL PROCESS:
KINGS COUNTY RULES AND PROCEDURE**

*as proposed by the Administrative Judge,
Supreme Court, Civil Term and approved by the Brooklyn Bar Association*

Introduction: 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. However, a jury decides factual issues and renders a verdict as a jury would in a traditional trial and the parties waive all appeals. In the absence of modifications by counsel and approval by the trial court, the process and rules that follow shall apply.

Rules:

1. Consent of Parties: Attorneys for all parties must sign a Stipulation, (hereinafter referred to as "Transfer Agreement") that they have the authority of their respective clients and/or insurance carriers to enter into the agreement, that the agreement is irrevocably binding upon their respective principals, and that these summary jury trial rules and procedures will be applied.

2. Stipulation: In addition to the above, the Transfer Agreement shall contain provisions relating to the establishment, if agreed upon, of high/low damages parameters; agreement waiving any rights to appeal and such other terms as may be required by the court from time to time. The high and low parameters, if any, shall not be disclosed to the jury in a summary jury trial.

3. No Right to Appeal: The parties shall agree to waive costs and disbursements and to waive the right to appeal from the determination of this matter. Written findings of fact and conclusions of law shall not be required. Following a jury determination, the parties shall not enter judgment but, instead, will exchange general releases and stipulations of discontinuance. Payment of any funds due shall be made in accordance with the relevant provisions of the Civil Practice Laws and Rules and applicable law.

4. Scheduling: The Administrative Judge will establish procedures for the selection of cases for summary jury trials with the understanding that the parties must voluntarily agree to participate. The Administrative Judge will [a] advise the Jury Coordinating Part [J.C.P.] to select cases for summary jury trials from those that are marked to be sent to Civil Court pursuant to CPLR §325(d), [b] set up a mechanism for attorneys to communicate to the court administration that they desire to explore the possibility of having a particular case resolved by the summary jury trial (hereinafter "SJT") process, and [c] create such other administrative rules relating to the selection and assignment of cases to the SJT process as are necessary. The Administrative Judge will assign, on a rotating basis, an appropriate number of judges to the pretrial conferencing and trial of SJT matters.

Summary jury trials will be placed on the calendar for trial at the earliest possible date available in the SJT part. At the first conference date the parties shall discuss settlement and if there is no settlement, discuss evidentiary matters and such other issues as the SJT judge directs. The SJT judge will then direct the parties to appear at a second conference [hereinafter second conference"] at which each party shall supply to the court and exchange

with opposing counsel proposed evidentiary offerings.

The proposed evidentiary offering should preferably be presented in the form of a trial notebook with a table of contents. The court will rule on the admissibility and redaction of each of the items submitted by the parties. Only items approved and so marked by the court will be admissible upon the trial of the matter. At the second conference, the court shall set down a firm and final date for trial. This date may be adjourned for good cause shown. At any time between the second conference and the scheduled trial date, if any party desires to add evidence to the trial notebook or otherwise proposes new evidence for the trial, the parties may so stipulate and provide a copy of the exhibit and stipulation to the court. If the parties can not agree they may request a third conference prior to the trial date limited to the narrow issues concerned. The part clerk will pre-mark each exhibit. The time between the first and second conference should be two to three weeks. The time between the second conference and the trial also should be two to three weeks.

Upon determination of the evidentiary issues at the second conference the transfer agreement will be signed, irrevocably setting the case down for summary jury trial.

5. Pre-trial and Trial Submissions.

a) Any party intending to offer documentary evidence at trial, including but not limited to accident reports, medical records, lost income records and portions of examinations before trial that a party intends to read to the jury as part of its direct case, shall serve copies of such documentary evidence upon all parties not less than five (5) days before the second conference. Lists of proposed trial witnesses shall be similarly served.

b) At this second conference, the SJT judge assigned to the case shall conduct a conference in the nature of an evidentiary hearing at which time objections to such documentary evidence shall be determined and witness lists finalized. Upon the completion of the judge's rulings the parties shall stipulate in writing as to the final exhibits and witness lists. Only evidence so identified and marked at the second conference shall be allowed to be exhibited or mentioned at trial.

c) The requests to charge shall list PJI section numbers. Any request to charge that deviates from the standard Pattern Jury Instructions shall be submitted to the Judge and to all adversaries at least two (2) days prior to trial.

6. Record: A summary jury trial will not be recorded by a court reporter unless requested by all parties. In the latter event, the court reporter will only record testimony.

7. Existing Offer and Demand. The parties may stipulate in the Transfer Agreement that the pre-trial offer and demand remain unaltered throughout the binding summary jury trial. Either party may elect to accept the last settlement proposal of the opponent at any time before the verdict is announced by the jury.

8. Jury Selection: Jury selection shall be conducted by counsel within the time limits agreed to and/or mandated by the judge. If the court conducts the voir dire, each side shall have ten minutes to also question potential jurors. Summary juries shall consist of no less than six jurors and one alternate unless the parties stipulate to fewer jurors. The court shall allow each side two peremptory challenges. It is anticipated that jury selection and trial will be concluded in one day. The parties may agree, or by order be directed to meet on a date

certain before the trial date to select a jury in which case jury selection shall be completed on that day.

9. Time Limits: Each side shall be entitled to a ten minute opening and ten minute closing, and to one hour for presentation of its case. The court may allot more time to a party to insure full exploration of the issues, provided that a compelling reason supports the request for additional time. Unless the judge directs otherwise, the court clerk will advise counsel of the amount of time available at appropriate intervals. Unless the jury has been already selected, the trial shall begin with jury selection as early in the morning as is possible and shall continue without interruption.

10. Case Presentation upon Trial:

- a. Counsel may summarize the evidence, factual allegations, and reasonable inferences for the jury.
- b. All materials to be submitted to the jury as part of the presentation of the case must be exchanged with opposing counsel and provided to the court and marked in accordance with these rules.
- c. No more than two (2) witnesses for each side may be called upon direct and upon cross-examination. On application of a party and good cause shown at the second conference, the court may allow an increase in the number of witnesses. Plaintiff proceeds first. Plaintiff may be granted a ten (10) minute rebuttal following defendant's presentation. Time spent by counsel on direct and cross examinations counts against the party's allotted time unless the court directs otherwise.
- d. In the event that other documentation or witnesses come to light after the second conference but before Jury Selection, counsel may stipulate as to the evidence to be submitted or seek permission from the court as previously indicated.
- e. Jurors shall be allowed to take notes only upon consent of all parties.

11. Rules of Evidence upon Trial:

- 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. The deposition or prior testimony of a party may be offered by any opposing party, however, a party shall not be permitted to offer his/her own deposition or prior testimony except as provided by the CPLR. This section shall apply to video depositions as well.
- c. Past and future lost income may be proven 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.

d. Non-party eyewitness testimony can only be offered by means of the deposition testimony of the non-party witness taken pursuant to the notice requirements of the CPLR or by producing that witness at trial. Affidavits are not admissible.

e. The following shall also be admissible and subject to redaction: police reports, the MV104 accident report 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's reports inclusive of 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. There shall be no requirement that any record referred to in these Rules be certified, affirmed or sworn to.

g. The judge may, where required, issue "so ordered" subpoenas to secure the attendance of witnesses or the production of documents.

12. Jury Verdict: Upon request by the jury, the court where appropriate shall give the jury a written copy of the jury charge for use during deliberations. Five out of six jurors must agree on the verdict unless otherwise agreed to by the parties. The verdict will be binding as rendered or limited by a high/low stipulation.

13. No Prima Facie Motions or Directed Verdicts: Parties agree to waive prima facie motions, motions for directed verdicts and motions to set aside the verdict or any judgment rendered by the jury. The trial court may not set aside any verdict or judgment entered thereon, nor shall it direct that judgment be entered in favor of a party or order a new trial as to any issues. Should the circumstances so warrant, this provision shall not preclude review by the Administrative Judge.

14. Inconsistent Verdicts: In the case of inconsistent verdicts, the trial judge shall question and instruct the jury as appropriate to resolve the inconsistency.

15. Infant Plaintiff: When the plaintiff is an infant, the court must approve any high/low damages parameters prior to trial.

16. Jury Charges: The jury shall be charged with the standard Pattern Jury Instruction Charges. However, the charges may be reduced to their essential elements.

17. High/Low Damage Parameters and Apportionment of Liability: The parties may agree to high/low damage parameter for an award to the plaintiff. In the event that the jury determines that the plaintiff bears a percentage of fault, then any monetary award shall be reduced by such percentage. In the event that such reduction results in an award to the plaintiff below the "low" parameter, the plaintiff shall recover the "low" amount. If the award of the jury is above the "high" parameter, the plaintiff's recovery is limited to that "high" amount. If the reduction of the monetary award by reason 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. For example (a) the jury 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 would be \$30,000; (b) the jury awards \$12,500 and finds the plaintiff 10% liable, then the award is \$11,250. With a \$15,000/\$25,000 “high/low” the plaintiff’s recovery would be \$15,000; (c) the jury awards \$12,500 and finds the plaintiff 10% liable, then the award is \$11,250. With a \$5,000/\$25,000 “high / low” the plaintiff’s recovery would be \$11,250.

18. No Judgment entered. Releases and stipulations exchanged. Regardless of whether the parties have agreed to “high/low” parameters, after the jury 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 judgment rendered shall be treated as a stipulation of settlement and shall not be intended to have res judicata or collateral estoppel effect.