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Expedited / Summary Jury Trials – Are They Good for Carriers, Clients and The Court?

What is an Expedited Trial and is it a New Concept?

A traditional Jury Trial can be very costly in time and expense. As a matter of course, the voir dire, jury selection process can take day or more to select jurors and alternates. Also, most witnesses present live testimony to the jury through direct and cross examination. Furthermore, proofs such as authenticating documents, records, theories and the like, sometimes can take days to explain to a jury. Even a simple motor vehicle or slip and fall accident jury trial take can be 3 days. In most jurisdictions the court dockets are full, criminal cases take precedence, so for civil cases it can take a year or more to get a trial date.

Louisiana State University Law School reports in its Law Science & Public Health Law update that a medical malpractice trial can take a week to six weeks or even years depending upon the complexity and number of parties involved. Also, the costs during trial for each party can be \$2,000 a day and up not including expert testimony. “The most disturbing consequence of trial costs is that they allow a very well-funded party to punish an opponent, irrespective of the merits of the case.”

Summary Jury Trials have been around for decades, in 1984, Judge Thomas D. Lambros of the Northern District of Ohio outlined a summary jury trial procedure, 103 F.R.D. 461 (1984) and set perimeters, guidelines and importantly noted the purpose was for “...cases where the parties are having difficulty reaching settlement because each overestimates the strength of his own case or, equivalently, underestimates the strength of his opponents.”

The goal of an expedited or summary jury trial is to allow more cases- often with simpler fact patterns- to be tried efficiently but with the same legal protections as a full blown trial. Shorter trials means less expense to all involved- parties, courts, insurers and others The National Center for State Courts and a number of national trial organizations have studied the decline in the number of civil jury trials over the last few decades and recommend revisions to the manner in which most civil cases are tried.

While a number of states permit expedited or summary jury trials few have much of a track record of the shortened trial catching on. Only California and Texas have anything close to specific requirements for parties to participate and most states allow the parties to agree or negotiate the rules by which the trial will be conducted. However, several states like Florida have a grass roots growth in certain courts.

The Nineteenth Judicial Circuit Court, St. Lucie County, Florida has established local rules governing Summary Jury Trials pursuant to Rule 1.200 of the Florida Rules of Civil Procedures. This local rule outlines how many jurors, length of trial including certain procedures such as voir dire, appearances, memorandum briefs, and witnesses.

Who Benefits from an Expedited Trial and Why to consider?

Courts are well aware of their bulging and over-scheduled dockets, so being able to utilize a high-bred court resolution to clear their docket is in their best interest. Judges know the value of their time as well as those of jurors. Judges hear and see the sacrifice that jurors make to serve jury duty and with Summary Jury Trials – the time is typically only one to three days not weeks, months or years. Also, there is a certain amount of downtime boredom.

Despite Hollywood’s attempt to duplicate the traditional trial experience to incorporate the administrative delays, recesses, sidebar conferences, bailiff duties, jury selection, motion rulings, etc. that amount of dead air time would never dazzle audiences, so lay persons really believe that a trial might take about an hour from beginning to end. With a Summary Jury Trial – a complete trial is nearly possible in one day. Certainly there are pretrial hearing conferences, evidence stipulations, motion hearings, but all this preparation is at a fraction of a typical trial preparation.

Abbreviated trials also are a win for the insured as well as their insurers. New Jersey's 15th Vicinage State Court, Judge Samuel G. DeSimone's legal memorandum is quick to advise that participation in a Summary Jury Trial program while being totally voluntary decision whether to participate is up to claim's managers, defendant carriers and litigant's attorneys it is quite possibly the best "...cost-efficient way to learn the probably [sic] outcome of an actual jury trial. So, utilizing the Summary Jury Trial is a good equalizer as it provides valuable information and insight for cases to enable better reserve analysis for similar cases in cue.

Moreover, when one looks at the potential benefits and beneficiaries of a shortened trial it is difficult to imagine why this concept is not more widely utilized. Plaintiffs want a resolution sooner than later, and it is common knowledge that the sooner legal claim is resolved, the more time and money is saved. Plaintiff's lawyers typically do not bill their clients hourly so in addition to the time spent on a case they have advanced costs too until the case is adjudicated. The court system benefits in less judicial and court personnel time required for cases.

What Types of Cases are Appropriate for an Expedited or Summary Trial?

When making a determination as to whether a case would benefit from a Summary Jury Trial, there are several factors to consider. First, the factfinder is a jury, so the subject matter should be relatively common or simple to explain, understand such that the members of the jury could comprehend quickly without too much technicality or expertise. Since most jurors drive, a motor vehicle accident is easily understood. Similarly, other plausible accidents such as slip and fall, premises liability, simple malpractice claims, etc.

Second, the facts of the occurrence should be straight forward without too many convoluted details such that several experts would need to be called to opine on the incident. A good fact pattern for a Summary Jury Trial would be one that an incident occurred, but each party has a different probable cause and/or degree of liability so then it is a matter of the jury to weigh the value of the facts and expert opinion proffered to determine the most appropriate verdict.

Third factor to determine what type of case is appropriate for Summary Jury Trial is are the parties truly willing to submit the matter to a jury for which the verdict will not be appealable and could not be accepted by the parties so the entire process of the Summary Jury Trial could be classified as an added litigation expense and not a true dissolution of the case. The whole point of the Summary Jury Trial process is to go through the procedure of a trial but in CliffsNotes® style with highlights and hyper focus to the true matter of the case.

Lastly, another type of case that is frequently effectively tried in Summary Jury Trial fashion is the “test case”. This is a legal matter involving a class, mass or several similar actions where the parties can group similar fact-pattern cases then choose one to sample the likelihood how all of them might be adjudicated by a jury. My company utilized the Summary Jury Trial in several cases related to a mass action filing in the 5th Circuit. While the fact pattern was simplistic, the cause of the alleged injury was more complex such that incident was more complex and the jury had some difficulty understanding the medical toxicology for the alleged causation. However, the Jury was still able to utilize the information provided during the Summary Jury Trial for a verdict.

The types of cases easiest to try with an expedited trial or those with relatively simple fact patterns - two party motor vehicle accidents with minor or moderately severe injuries, premises liability cases such as the traditional slip or trip and fall, as well as cases with one or two concrete issues for a jury to decide after hearing each party’s side of the case. Additionally, cases not requiring expert testimony and “test” cases for manufacturers lend themselves to the streamlined concept.

How does and expedited trial typically work?

A Summary Jury Trial protocol, procedures, and time limits are typically outlined by local rules or by the judge who will be overseeing the trial. See Judge Thomas D. Lambros of the Northern District of Ohio outlined a summary jury trial procedure, 103 F.R.D. 461 (1984). Judge Lambros set out a protocol and time limits for the process. Currently, more jurisdictions impose time limits for each step of the trial and sometimes differing time limits for each party, including but not limited to: voir dire, opening statements, case presentment, witnesses, live testimony and closing arguments. Keeping in mind that this Summary Jury Trial is voluntary, although never required, often parties may enter into a high/low agreement on damages.

Summary

The benefits to Summary Jury Trials are many for the types of cases that could be easily plucked from a typical trial docket and would free the court's time to those cases needing more judicial review and oversight. Also, the parties benefit too by reducing litigation costs and time and impartial jury verdict. Summary Jury Trials are like no other alternative dispute resolution method. The impartial jury verdict that comes from a Summary Jury Trial is literally the next best thing to a traditional trial at a mere fraction of the cost. Summary Jury Trial is a valuable unconventional method for case resolution.