

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF OSWEGO

-vs-

Plaintiff,

RJI No.
Index No.

**SUMMARY JURY TRIAL
ORDER**

Defendant.

PRESENT: Hon. James W. McCarthy, S.C.J.

It is hereby

ORDERED, that a Summary Jury Trial of the Issues of liability and damages is hereby scheduled for jury selection on _____, at 10:00 am, before this Court, and it is further

ORDERED, that unless the Court directs otherwise, the Court and Counsel will apply and follow the Oswego County Court Summary Jury Trial Program Rules of Supreme Court Justice James W. McCarthy attached hereto, in the conduct of the Summary Jury Trial.

ENTER,

Hon. James W. McCarthy
Supreme Court Justice

Dated: _____
at Oswego, New York.

Justice James W. McCarthy
Oswego County Supreme Court
Summary Jury Trial Rules

The following procedures shall apply to all Summary Jury Trials unless otherwise ordered or stipulated:

1. **Attendance of Parties.** Individual parties and an officer or other responsible representative of a corporate party shall attend the [non binding][binding] Summary Jury Trial, unless excused by the Court. Claims adjusters for insurance carriers are also encouraged to attend non binding trials.
2. **Non-Binding Effect.** Summary Jury Trials are for settlement purposes only and are non-binding, unless the parties agree otherwise. Nothing done by counsel, with reference to a non-binding Summary Jury Trial, shall be binding on counsel or the parties or shall constitute a waiver. There will be no official record of testimony by court reporters or tape records, nor will a transcript of a trial be produced. Oral statements made by counsel or testimony by parties at the non binding trial, may not be referred to or quoted to impeach the parties at the regular trial.
3. **Pre-trial submissions.** No later than five business days prior to the jury selection date, all parties shall submit to the Court a list of witnesses that may be called, or mentioned, during trial, for use during jury selection; jury charge requests; and proposed verdict sheets. Charge requests that deviate from the standard Pattern Jury Instructions, as well as standard verdict sheets, should be submitted on computer disk, preferably in WordPerfect format, or by e-mail, to the Court.
4. **Selection of Juries.** Summary juries shall consist of no less than six, nor more than eight jurors. The jury will be selected by counsel, with time limitations of one-half hour for each side.
5. **Peremptory Challenges:** The Court will allow up to two peremptory challenges by each party.
6. **Presentation of the Case by Counsel.** Each side shall be entitled to a ten minute opening and closing and one hour for presentation of its case. The Court may allot more time if counsel presents a compelling reason to do so. Unless the Judge directs otherwise, the court clerk should keep track of the time and remind counsel of allotted time at appropriate intervals.
 - a. Counsel may quote from depositions and may use exhibits, affidavits and video

- tapes. Counsel should not refer to evidence which would not be admissible at trial.
- b. No more than two witnesses for each side may be called for direct and cross-examination.
 - c. Time spent by counsel in direct and cross-examination of witnesses will count against their respective one hour allotted times.
 - d. The plaintiff shall proceed first and may be permitted a ten minute rebuttal, with permission of the court. If the plaintiff has exhausted the one hour presentation time, the court may allow plaintiff to use part, or all, of the rebuttal time for cross-examination, and allow defense the same privilege.
7. **Jury Verdict.** As part of the Summary Jury Trial project, the Court may give the jurors a copy of the jury charge for use during deliberations. A verdict is considered rendered when five out of six jurors agree to the verdict. On a non-binding trial, with consent of counsel, the Court may allow alternates to deliberate, and with consent may allow alternates to vote on the verdict. Agreement by five (5) jurors shall constitute a verdict.
 8. **Length of Deliberations.** If the jury does not reach a verdict within a reasonable time, the Court will consider polling the jurors individually in an attempt to reach a verdict. The court may set a time limit on deliberations, and, if jurors have not reached an agreement, each juror will be polled in the courtroom on each question presented.
 9. **Settlement Conference in Non-binding Summary Jury Trial.** A settlement conference shall be scheduled within thirty days of the Summary Jury Trial. Parties, representatives of corporate parties or claims adjusters with authority to settle the case are required to personally attend the settlement conference.
 10. **Non-release of Summary Verdict to the Media.** The non-binding Summary Jury Trial is an extension of the settlement conference, and as such, the verdict shall not be released to the public or news media.
 11. **Stipulation:** If the parties agree to a binding summary jury trial, a written stipulation shall be signed by the parties and their attorneys reciting any high/low parameters and the agreement to the limited rights of appeal provided in these rules. The binding agreement should be stated on the record at the time of the mini-trial and the agreement of all parties as to their understanding confirmed.
 12. **Infant Plaintiff:** In a binding Summary Jury Trial involving an infant, the Court must approve any high/low parameters prior to trial.

13. **Right of appeal.** The binding summary jury trial provides for limited rights of appeal. The right to move to set aside the verdict, or to appeal, is limited to instances in which the rights of a party were significantly prejudiced by: 1) corruption, fraud or misconduct in procuring the award; 2) a miscalculation of figures or a mistake in the description of any person, thing or property referred to in the award; 3) the award being imperfect in a matter of form, not affecting the merits of the controversy; or 4) an error of law that occurred during the course of the trial. All other rights of appeal are waived.
14. The parties may admit and present any medical records or expert reports to the jury in lieu of the necessity for live medical testimony by any expert witness as will other agreed upon evidence, provided that they are exchanged _____ days before the trial.
15. These rules may be amended by the Court on a case by case basis to suit the circumstances. The guidelines provided in the rules govern absent any other agreement or court order.