SUFFOLK ACADEMY OF LAW
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SUMMER LITIGATION SERIES

SUMMARY JURY TRIALS

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One Court Street, Riverhead

SUMMARY JURY TRIAL SEMINAR

Suffolk Academy of Law

Riverhead, NY

August 6, 2014

I) Suffolk County Summary Jury Trial Rules (copy attached)

As the aforesaid rules have not been modified since 2007, we would seek suggestions from the Suffolk Bar in that regard. Several areas we would raise for discussion today (and this list is not all-inclusive) are:

-marked pleadings

-attorneys picking jury without judge and 30 minutes closings (rule #9 and creative credit to Teddy Rosenberg)

-use of the reporter (rule #7) and the procedure followed in Bronx (rules state trial shall be recorded unless waived by all parties and Judge Suarez says the rule is waived in every SJT) and Kings (rule #6 says no record is made unless all parties request it and then, only witness testimony is recorded) Counties. But what if a read-back is requested by the jury?

-alternates (rule #9)

-"So ordered subpoenas" (rule #11[i])

-Summaries of evidence and inferences from discovery (rule 12 [a])

II) Evidentiary Packets

-TOO LARGE (number of pages)

-TOO MUCH MATERIAL for jury to absorb and comprehend

-TOO MUCH MEDICAL TERMINOLOGY

III) Plaintiffs, get written permission from the client-listen to the tales of the high-low and money left on the table

IV) Plaintiffs and rear-end cases especially with a threshold motion by the defendant

V) Judges and attorneys comments

VI) Relevant case law

1) Plaintiff and defendant entered into a stipulation to try liability and damages under SJT rules with a high-low of 10,000-50,000 on the damages. The defendant prevails on the liability SJT and the damages trial is not held. Plaintiff forwarded a general release for $10,000 and the defendant refused to pay. The trial court ruled that based on the high-low agreement that the case was settled. The trials would have determined the amount to be paid, based on the findings as to percentages of negligence and the monetary award. While there was no case law directly on point as to an SJT, see ***Cunha v. Shapiro***, 42 A.D.3d 95 (2nd Dept., 2007) and ***McDonnell v. Tello***, 8 Misc3d 1003(a)(S.Ct., Westchester Co., 2008).

2) Inconsistent verdict v. against the weight of the credible evidence: see, ***Conrad v. Alicea***, 117 A.D.3d 560 (1st Dept., 2014) and McKeon case copy attached

3) ***Griffin v. Yonkers***, 26 Misc3d 917 (S.Ct., Bronx Co., 2009) "A motion pursuant to CPLR 4545 (c), however, addresses the sufficiency and propriety of plaintiff's recovery of damages. (*See e.g.* ***Lowit v Consolidated Edison Co. of N.Y.***, 234 AD2d 2 [1st Dept 1996].) It does not question the validity or weight of the substantive evidence adduced at trial. "Under CPLR 4545 (c), if the court finds that any portion of a personal injury award for economic loss 'was or will, with reasonabl[e] certainty, be replaced or indemnified from any collateral source, it shall reduce the amount of the award by such finding.' " (*Brewster v Prince Apts.*, 264 AD2d 611, 618 [1st Dept 1999], *lv dismissed* 94 NY2d 875 [2000].)". The decision by Judge Suarez also provides a succinct description of the SJT. Also see, ***Bolis v. Fitzpatrick***, 35 A.D.3d 1153 (4th Dept., 2006).

4) ***Bennice v. Randall***, 71 A.D.3d 1454 (4th Dept., 2010) "At the outset, we agree with defendants that this appeal is properly before us. A summary jury trial agreement " 'is an independent contract subject to the principles of contract

interpretation' " (*Grochowski v Fudella*, 70 AD3d 1407, 1408 [2010]),***1455*** and the agreement at issue provides that "[t]he 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 . . . an error of law that occurred during the course of the trial." We conclude that whether the JHO erred in directing a verdict in plaintiff's favor presents a question of law and thus the order is appealable pursuant to the summary jury trial agreement (*see generally* CPLR 4401).". Note that this case is venued in the Eight Judicial District and the SJT rules allow certain motions and appeals.

5) ***Kaiser v. DeGeorge***, 25 Misc3d 1240(a) (S.Ct., Suffolk Co., 2009) A high-low or any stipulation regarding an SJT should cover all contingencies or……. "Both the current motion and the earlier motion - which the Clerk rejected as running afoul of the rule embodied in the stipulation - are violative of that which was agreed to on February 24, 2009, *inter alia*, that no motions would be made. There has been a waiver of the right to make motions. The stipulation is a binding agreement clear on its face. The benefits and limitations of the summary jury trial procedures having been embraced by both parties' entry of the stipulation and the stipulation being valid and subsisting throughout (since entered February 24, 2009), that is, not having been set aside, its unambiguous provision prohibiting any motions is applied and defendants' motion must be and is denied.

In any event, the defendants' contentions in support of its motions are rejected as without merit. The gravamen of the issue is whether the "high" parameter in the stipulation includes the (approximately) $14,000 interest reflected in the judgment actually entered after the summary jury trial (see exhibit "E" to affirmation of Anne Marie Garcia). Herein, the parties' attorneys clearly evinced the intent that interest (from the date liability was determined by interlocutory judgment dated November 5, 2007 (Arthur G. Pitts, J.)) was to be awarded to plaintiff; this intention was expressed in the undisputed, handwritten language added to the form stipulation's printed wording concerning the high and low parameters, in this case $10,000 to $100,000. If the defendants had intended that the total damages (i.e., both the principal plus the interest expressly agreed to) under no circumstance should exceed $100,000 in total they could have expressed that intention; they did not do so and the reason for the failure to do so is not pertinent. As written, the stipulation is clear and unambiguous and resort to extrinsic evidence is not required or permitted (*see*,*Willsey v. Gjuraj*, 65 AD3d 1228 [2nd Dept., 2009]). Moreover, the prohibition on motions contained in the stipulation is not in any way restricted to CPLR §44

motions as defendants contend. The defendants' motions are inconsistent with their obligation under the summary jury trial Rule 4; the Court notes in conjunction with such observation that it is frustrated by the circumstance that a procedure meant, *inter alia*, to dispense with the proliferation of motions which it deals with in other (non summary jury trial) civil cases in its inventory and is also meant to provide expeditious relief to parties who have their trials streamlined has in point of fact been foiled by the defendants' two post-verdict motions herein (the present and prior motions). In order to prevent further abuse of the intended procedure the defendants' attorney is cautioned that any further motions will be considered in view of the provisions of 22 NYCRR Part 130." An excellent decision authored by Judge Rebolini.

Also see, ***White v. Winter***, 28 A.D.3d 1148 (4th Dept., 2008) The making of post-trial motions was not addressed in the stipulation so the court allowed the same. A subsequent appeal was dismissed as the stipulation expressly did not allow appeals. The appellate court noted, however, "With respect to defendant's contention that the court erred on the merits in granting plaintiff's motion, we note that the parties also stipulated to dispense with a transcript of the summary jury trial. Thus, even if defendant's contention were properly before us, we would be unable to review it in the absence of a transcript."

6) ***Conroe v. Barmore-Sellstrom, Inc.***, 12 A.D.3d 1121 (4th Dept., 2004) CPLR 3101(d) lives and is certainly applicable to an SJT. "Motion to set aside damages portion of verdict granted in view of court's error in admitting into evidence certain documents that set forth expert opinion but that were not disclosed by plaintiff to defendant until one day before trial—although parties employed summary jury trial procedure, rules for summary jury trials do not alter parties' rights or obligations of pretrial disclosure; plaintiff did not show "good cause" (CPLR 3101 [d] [1] [i]; 22 NYCRR 202.17 [h]) for soliciting expert opinions such short time before trial, nor for failing to disclose until literal eve of trial such expert materials as were already in her hands; compounding unfairness was fact that belatedly disclosed expert materials set forth claims of injuries not specified in either bill of particulars or those medical records and reports previously furnished to defendant……

"We conclude that the court should have granted the motion inasmuch as it erred in admitting into evidence certain documents that set forth expert opinion but that were not disclosed by plaintiff to defendant until one day before trial. In two instances, the belatedly furnished materials took the form of physician's reports. One was the report of plaintiff's treating physician, while the other was a report of a nontreating, nonexamining radiologist who nonetheless purported to express an opinion as to the nature, extent and cause of plaintiff's injuries. Those

two physicians' reports were prepared four days and one day before trial, respectively. The third item was a videotape and verbatim transcript of an unsworn, ex parte interview of another of plaintiff's treating physicians, conducted by plaintiff's investigator almost three years before disclosure.

Although the parties employed the summary jury trial procedure, the rules for summary jury trials do not alter the parties' rights or obligations of pretrial disclosure. We thus conclude that it was unfair to defendant for the court to admit the expert materials in question under the circumstances of this case.".