

**New York State
Supreme Court
Eighth Judicial District
Summary Jury Trial Program**



Bench Manual

**NEW YORK STATE SUPREME COURT
CHAUTAUQUA COUNTY
EIGHTH JUDICIAL DISTRICT
SUMMARY JURY TRIAL PROGRAM**

BENCH MANUAL

2nd Edition

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May 27, 2004

**New York State Supreme Court
Chautauqua County
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Summary Jury Trial Program**

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TABLE OF CONTENTS

<u>Page</u>	<u>Contents</u>
4	Foreword: Hon. Joseph Gerace
5	Section 1 - Guiding Summary Jury Trial Cases to Resolution
7	Section 2 - Court Clerk/Commissioner of Jurors Guidelines
9	Section 3 - Commencement of Summary Jury Trial, <i>Voir Dire</i> & Jury Selection
22	Section 4 - Preliminary Jury Instructions
33	Section 5 - Final Charge to the Jury
52	Section 6 - Jury Questions During Deliberation, Verdict Presentation, Conclusion of the Trial, Dismissal of the Jury and Post-trial Settlement Conference
59	Section 7 - Sample Forms: Seating Chart Sample Verdict Sheet Supplemental Juror Questionnaire Attorney Questionnaire
69	Acknowledgments

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BENCH MANUAL

FOREWARD

The procedures in the “Summary Jury Trial Program Bench Manual” are intended as a guide for Judges conducting Summary Jury Trials as part of the Eighth Judicial District Alternative Dispute Resolution Program. It can be used as a “step-by-step” guide for Judges whose civil jury trial experience, especially in negligence cases, is limited, or as a checklist for the experience trial judge.

Please utilize the Bench Manual in conjunction with the Summary Jury Trial Program Manual. Both publications were initially compiled as part of the N.Y.S. Supreme Court, Chautauqua County, Summary Jury Trial Project. The Program Manual, now in its 3rd Edition, contains summary jury trial basics, local rules, and forms. Both publications can be found on the Eighth Judicial District website.

Because many long hours of hard work have been involved in the compilation and editing of this Manual, the authors claim a copyright. However, permission to copy all or any portion of this book is hereby given to the New York State Office of Court Administration for any purpose, to any Court or Judge utilizing the work for the expressed purpose of implementing a Summary Jury Trial Program and to any attorney involved in a summary jury trial.

Should the Summary Jury Trial process be adopted by the New York State Office of Court Administration, the authors intend to transfer their copyright to this manual to that office.

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SECTION 1 - GUIDING SUMMARY JURY TRIAL CASES TO RESOLUTION

(As modified May 8, 2004)

The Initial Preliminary Conference

Attorneys should be directed to provide the Court with pretrial statements summarizing the facts, issues, settlement demands and offers. Physicians' reports and police reports should be submitted where appropriate. These statements serve as an aid to the Court at the pretrial conference and as a summary of the contentions of the parties in the charge to the jury.

The Court should determine if such matters as pleadings, discovery, expert reports and independent medical examinations are resolved. Additionally, the Court should determine whether or not there are any legal issues outstanding, such as motions for judgement on the pleadings or summary judgement motions, which require resolution prior to a Summary Jury Trial.

The Court should resolve outstanding issues and set deadlines with a scheduling Order. An additional pretrial conference should be scheduled on or after the date the Court has set for the filing of the Note of Issue to determine the extent of compliance and/or any difficulties which have arisen.

The options of arbitration, Summary Jury Trial or mediation should be explored. If the case is determined to be a proper candidate for a Summary Jury Trial, the parties may then stipulate to dispense with, or limit, discovery to reduce trial costs.

If the attorneys do not immediately stipulate to the Summary Jury Trial because of the need to discuss the process with clients, the Court should require a decision at the next pretrial conference.

The Court should provide copies of the summary trial rules, standard voir dire questions to be asked of the jury panel, and such other information to assist counsel in deciding whether to agree to either a binding or non-binding Summary Jury Trial.

If the parties agree to a Summary Jury Trial, or the Court schedules a non binding summary trial as an ADR process, without objection of the parties, dates for submission of narrative statements, voir dire questions, motions in limine, proposed jury charges and verdict sheets, jury selection, and trial must be set.

The parties may stipulate that the pretrial offer and demand remain unaltered through the Summary Jury Trial and the following settlement conference. Either party may agree to accept the last settlement proposal at any time before the non binding summary

jury trial verdict is announced.

If arbitration or a Summary Jury Trial is not elected as an alternative, the case should be set down for a regular trial.

Post-Trial Settlement Conference

If the Summary Jury Trial was non-binding, then a settlement conference is mandated. This settlement conference should be conducted as close to the Summary Jury Trial date as can reasonably be scheduled. In no event should it be longer than 60 days from the Summary Jury Trial.

At the settlement conference, the Court should be an active player in resolving the case. With the knowledge of the case obtained by presiding over the Summary Jury Trial, the Court can function very much as a “9th” juror, supporting the jury’s verdict generally where indicated, and interposing the Court’s own view as to the likely results before a full jury where the same is appropriate.

This is a powerful opportunity to move the case toward resolution and for the Court to become an activist in the process. If the case does not settle at the conference, then the Judge should list the case for regular trial.

SECTION 2 - COURT CLERK/COMMISSIONER OF JURORS GUIDELINES

(As Modified June 8, 2004)

A. Before Jury Selection Day:

1. Determine availability of the Supreme Court Justice assigned to the case. In the interest of time, SJT can proceed with any available Supreme Court Justice, Acting Justice, or Judicial Hearing Officer. Check with the District Administrative Judge's office in this regard.

If necessary, consideration can be given to the use of volunteer City, Town, or Village Judges/Magistrates. (A list of interested Magistrates was compiled in Chautauqua County for this purpose. This alternative proved to be very successful and was the impetus for the publication of this Bench Manual).

2. Select the number of cases for a particular day after determining:

- Judge availability
- Space availability
- Clerk availability
- Juror availability (In Chautauqua Co., SJTs are stacked behind regular jury selections, often at a rate of 2 SJTs per selection day).

3. Notify Court security.

4. Secure a Court Reporter if necessary (see par. B. 3. below).

B. Jury Selection:

1. Follow orientation procedures as usual (juror check-in, questionnaires completed, movie shown, etc.) From the jury panel available for the case going to regular trial (usually 30 -40), draw approximately 12 names for the Summary Jury Trial. Before the jurors leave for the SJT voir dire, ask if they know the parties, attorneys, judge or have heard anything about the case. If so, replace them before sending them on.

2. Utilize the voir dire outline if the Judge not available.

3. Court reporter will be used if verdict is to be binding, otherwise a tape recorder or video may be used, if necessary. In most cases, no record will be made of non-binding Summary Jury Trials.

C. Trial Procedure:

1. If the Summary Jury Trial is binding, the agreement should be placed on the record outside the presence of the jury.
2. Unless the Judge directs otherwise, the court clerk should keep track of the time and remind counsel of allotted time at appropriate intervals. Unless agreed upon otherwise, time should be as follows:
 - Plaintiff opening - 10 minutes
 - Defendant opening - 10 minutes
 - Plaintiff's Case Presentation & Cross Examination - 60 minutes
 - Defendant's Case Presentation & Cross Examination - 60 minutes
 - Plaintiff's Rebuttal if permitted by Court - 10 minutes
3. As part of the Summary Jury Trial project, the Court should give the jurors a written summary of the jury charge for use during deliberations in addition to the verdict sheet (See Rule #220.11 at page 51).
4. Consider this, if the jury does not begin deliberations until later in the afternoon, it is customary (in Chautauqua Co.), to provide an "energy boosting" snack (coffee, soft drinks, fruit and cookies) to the jurors in the deliberation room.
5. All non-binding SJTs should be scheduled for a settlement conference as soon as possible after the summary jury trial. A date for the regular trial should be assigned as well.

SECTION 3 - COMMENCEMENT OF SUMMARY JURY TRIAL,
VOIR DIRE & JURY SELECTION

(The Justice assumes the bench and announces:)

- This Court will now come to order. Let the record show that this is the New York State Supreme Court, Chautauqua County, New York, and today is the

_____ day of _____, _____,

Judge _____ presiding.

- I call the case of:

_____ -VS- _____

(Ask...)

- Is the Plaintiff ready?
- Is the Defendant ready?

(Use the applicable phrase...)

- A record of this trial will be taken down by a certified Court Reporter

(Or...)

- A tape recorder will be used to keep a record of this trial.

(Use the following ONLY in a “binding” Summary Jury Trial...)

- For the record...Do both parties stipulate to submitting their cases to a Summary Jury Trial and agree to abide by the rules of appeal as set forth under the CPLR rules for arbitration matters?

(The prospective jurors having been previously sworn, continue to say...)

- Members of the prospective jury panel: Welcome to the New York State Supreme Court. I am a sitting Justice in the _____ Court and I will be the presiding Judge in this trial.

JUDGE'S VOIR DIRE & JURY SELECTION
INSTRUCTIONS TO THE JURY POOL

(Spoken instructions..)

- I would like to briefly explain what is about to take place here today. The first order of business will be to select a jury that will hear the evidence and then make a decision as to *(state the nature of case; negligence or fault of the parties & mention that they may award money damages, if any:)* _____

_____.

The prospective jurors will be asked questions regarding their qualifications to serve as one of the jurors who will decide the case. This questioning and qualification procedure is not meant to embarrass you or to pry into your private lives, but it is necessary to determine whether or not you are suited to sit as a juror in this particular case. This qualification procedure is called the "*Voir Dire*." You will be asked a series of questions, which you must answer as honestly and truthfully as you can.

- This is not a Criminal case, it is a Civil Case in which the Plaintiff seeks money damages.

- Jurors will be called upon to determine whether or not the evidence sufficiently establishes the liability and responsibility of the defendant according to the law. To do this, the jury will have to evaluate all the evidence and make a determination as to whether the testimony heard from the witnesses and the evidence presented as exhibits are true, and what all of this evidence means in the context of this case.
- In order to guarantee that the parties are given a fair trial, jurors must be free from any preconceived notions, sympathies, or prejudices that might prevent them from returning a fair and just verdict based solely upon the evidence presented during the trial. To help insure this, our first order of business is to conduct an examination of the prospective jurors.
- Please remember that the purpose of this questioning is to select a jury that will be impartial and free of any experience, feelings, or bias that would lead them to decide the case based upon anything other than the evidence presented.
- The majority of you will not be selected to serve as jurors on this case. Some of you may be excused because there is something in your background that, according to New York State law, prevents you from serving on this jury. If so, you will be excused for what is termed "*cause*".

(If Peremptory Challenges are permitted by the Court, Say...)

- Others may be excused for reasons that are not a matter of law. Each attorney has two (2) "*peremptory challenges*". This means that they have the right to excuse two (2) prospective jurors without giving any reason. If you are excused in this manner, it will have nothing whatsoever to do with your ability to serve as a fair and impartial juror. It may simply indicate that you do not fit into the attorney's concept of what a cross-section of the community should be in this particular case.

(Continue on...)

- I would like to thank, in advance, those of you who are excused for whatever reason. The Court appreciates your willingness to take the time to serve as jurors in this case.
- We will now proceed to draw and select the trial jury.

FOLLOW THE CORRECT PROCEDURE:

A. If NO Peremptory Challenges are permitted, use the following procedure:

- 1. The Court Clerk should shake the box containing the juror slips and draw out eight (8) names, one at a time.***
- 2. Call the names of the jurors and instruct them where to sit, with the first juror called seated in the first seat in the jury box.***
- 3. The Court Clerk should fill in the "Jury Seating Chart" (see chart at Section 7) as each juror is called, questioned, sworn& seated.***

B. If Peremptory Challenges are permitted, use the following procedure:

- 1. Under the Summary Trial Rules, each attorney will be permitted two (2) Peremptory Challenges.***
- 2. Use the above procedure to draw the first lot of prospective jurors. However, the Court Clerk should draw twelve (12) names instead of eight (8).***
- 3. Challenges must be taken outside of the presence of the jurors.***
- 4. Challenges are exercised by the parties starting with the Plaintiff and then alternating to the Defense and then back to the Plaintiff.***
- 5. If any party does not exercise all of their challenges, then there could be 7 or 8 jurors hearing the case.***

Note: The Judge should request a copy of the jury pool sheet with the juror's numbers. This will assist the Judge in filling out the "Jury Seating Chart" during the jury selection process.

VOIR DIRE

(Addressing all of the jurors, but starting with juror #1, ask....)

- Would each of you tell us about yourself; your name, where you live, occupations that you have had, the type of work that you are doing now, your spouse's name and occupation and a little something about your children. Also, tell us how you feel about lawsuits in which the parties are seeking money damages for injuries.

(After listening to each prospective juror, Continue...)

- Some of the questions I am going to ask will concern your backgrounds. This is to determine if your work or personal experience indicates a feeling, or attitude that might prevent you from deciding this case solely on the evidence. Your answers to these questions will not necessarily qualify or disqualify you, but an affirmative answer of "**YES**", or even an answer of "**MAYBE**", will probably mean that you will be asked follow-up questions. If your response is "YES" or you are not sure how you should answer, then please raise your hand as soon as the question has been asked. If you do not understand a question, then please say so. If you do not raise your hand, the attorneys and I will assume that your answer to the question is "**NO**". Also, if you do not wish to answer a question publicly, or if you wish to offer some private information regarding the case, you may ask to see me in chambers.
- We expect that the case will be submitted to the jury by 3:00 or 4:00 o'clock today for a decision. Your deliberations could take you through the dinner hour or into early evening. In that event, we will send you out for dinner or bring in food so that you can eat dinner while you deliberate.
- Do any of you have any pressing family or business obligations that would prevent

you from serving on this jury?

- Do any of you have any health reasons or physical reasons, such as hearing difficulties or back problems, which would make it difficult for you to sit for as long as an hour without a recess?

- This is a law suit brought by _____, the Plaintiff(s), whose residence is in _____.

Do any of you know the Plaintiff(s)?

- The Defendant(s) in this case are _____, located in _____.

Do any of you know the Defendant(s)?

- The attorney representing the Plaintiff(s) is _____, of the law firm of _____, located in _____.

The attorney representing the Defendant(s) is _____, of the law firm of _____, located in _____.

Have any of you had any social or business dealings with either of these attorneys or their law firms?

- The following people **may** be called as witnesses or may be mentioned during the trial: *(List names of potential witnesses, doctors whose reports may be read, etc.)*

- Do any of you know any one of them? If so, how did you come to know them?
- *(Explain the nature of the case: type of action; date or time frame during which the relevant facts occurred; place; brief description of the incident. Use description provided by parties and remind jurors not to make any decisions as to fault based solely on the description)*

- Does anyone on the jury know, or has anyone heard, anything about this case?

(If a negligence case, Ask...)
- Are any of you stockholders, officers, directors or employees of any insurance company, or any agency, which writes or sells liability insurance?
- Do any of you, or does anyone close to you, work for a lawyer or a group principally concerned with the law, either as a paid employee or as a volunteer, or have you done such work in the past ?
- Have any of you, or anyone in your families, been involved in a law suit as a party suing or being sued?
- Has anyone ever made a legal claim for money damages?
- Has anyone of you ever served on a jury in a criminal or civil case before ?
- As jurors, *(use correct number i.e. 5 out of 6)* of you must agree in order to reach

a verdict. You will most likely have to discuss and deliberate your decisions as a group. The Court, and the parties, need jurors who will keep an open mind until they have heard all of the evidence and the law in this case and are willing to participate in the deliberations, express their views based on the evidence and the law, keep an open mind and listen to the views of the other jurors and then do their level best to render a fair and impartial verdict. Is there anyone who would have trouble promising to do that?

- The testimony of a witness must be weighed upon its own merits and every case must be decided solely on the evidence. We recognize that not everyone can do this. Prospective jurors are humans and have prejudices or sympathies, and you may have had unpleasant experiences or negative impressions of law suits which may make it difficult for you to be impartial. But neither prejudice nor sympathy can be allowed to interfere with your deliberations in the jury room. If any of you believe you might have such feelings, favorable or unfavorable, about our system of justice, or any of the witnesses or attorneys, you are bound by your oath to say so now. Do any of you have such feelings?
- It is my function to explain the law to you and it is your function to determine the facts and to apply the law to them and then render a fair and just verdict. If you are selected as jurors, I will explain the law in detail to you at the end of the case. At this stage can you assure the Court and the parties that you will follow the law as I give it to you?
- I will describe a few basic principles that you must adhere to: ***(Use the following in a negligence case. A different question should be used for contract and other tort cases:)***

- Your job in this case will end when you determine whether there is any negligence, or fault, of the parties, and, if you find that the Defendant was legally responsible for the injuries, how much money should be awarded to the Plaintiff. Do any of you feel that you could not render your verdict free from sympathy, and without considering the effect the verdict has on any party?
- It is not essential that you agree with, or like, every one of the principles of law I will explain to you. However, as jurors, you must accept the law as I explain it to you, whether you agree with it or not, and apply it to the facts as you find them. Are there any of you who cannot accept this principle ?
- Have any of you, or any member of your family or close friends, had an injury (or contract, etc.) similar to the one involved in this lawsuit?

(If any of the parties are corporations, ask the following:)

- One of the parties in this case is a corporation. Will you be able to give the corporation the same consideration, as you would any other party?
-
- Have any of you, or any member of your families or close friends, suffered any injuries as the result of an accident?

(Questions on ability to award damages, etc.)

- If, after hearing all the evidence, you decide that the Defendant(s) is/are liable, you are bound by the law to award the Plaintiff(s) a sum of money that would justly and fairly compensate for all losses resulting from the injuries, including conscious pain

and suffering, caused by the Defendant'(s) fault. If, based on the evidence, you and the rest of the jury decide that the Defendant(s) was/were at fault, then the Plaintiff(s) is/are entitled to recover a sum of money which would justly and fairly compensate for any injury and for any pain and suffering caused by the Defendant(s). Do any of you have any fixed opinions that would prevent you from awarding money damages in a fair and just amount in this case for injuries and pain and suffering, if the Plaintiff(s) prove that the Defendant(s) was/were at fault and that an actual injury has resulted from the Defendant'(s) fault?

- If, based on the evidence, you decide that the injuries were not the fault of the Defendant(s), would you have any problem rejecting the claim for money damages, even if you had sympathy for the Plaintiff's injuries?
- If, based on the evidence, you decide that the Defendant(s) was/were at fault, but that fault caused no actual injury to the Plaintiff(s), would you have any problem rejecting the claim, even if you had sympathy for the Plaintiff's injuries?
- Is there any other reason you can think of why any of you would be unable to sit fairly and impartially in this case?

(Insert any additional questions... Always ask attorneys, if present, to present their questions to you at side bar.)

(After the jurors have been selected, have them stand and raise their right hands. Administer the oath as follows:)

"Do you solemnly swear or affirm that you will completely and truly try the issues in this case and a true verdict render, according to the evidence? Please answer 'I DO'".

(It is recommended that a short recess be taken after the jury has been selected. If you recess, you must first admonish the jury as follows:)

- Members of the jury, you are not to discuss this case, or anything about it, either with each other or anyone else, until you retire to the jury room at the end of the case to deliberate your verdict. You are not to read or listen to anything touching this case. If anyone should attempt to talk to you about this case in any way, then you are to promptly bring that fact to the Court's attention. *[If the trial will continue on another day, add: You are not to visit the scene of the accident or any other place mentioned during the trial. Do not try to do any research or make any investigation about this case on your own.]* Finally, do not form any opinions until all the evidence is in. Keep an open mind until you start your deliberations at the end of the case.

(When reconvening after any recess or adjournment to another day always read into the record:

- "The matter before the Court is the continuance of the case of

_____ -v- _____

Let the record indicate that all parties and their attorneys are present.

I will now have the clerk call the jury roll. Please answer "HERE" after your name is called."

PROCEED TO SECTION 4 ; PRELIMINARY JURY INSTRUCTIONS

SECTION 4 - PRELIMINARY JURY INSTRUCTIONS

(The Judge now reads the specified Summary Jury Trial preliminary, or pretrial, instructions, as provided by the Supreme Court Justice's office. The following instructions cover a case involving negligence, automobile accident with serious injuries. [Ref: Chautauqua County Supreme Court; Knavel -v.- Myers, Index # H-11438])

- Members of the Jury, there are certain instructions you should have in order to understand what you will hear and see, and how you should conduct yourself during the trial.

(Parties)

- The party who brings a lawsuit is called a Plaintiff. In this action the Plaintiff is:

_____.

The Plaintiff has sued the Defendant(s) to recover damages, in the form of a money award, for personal injuries which the Plaintiff contends resulted from (*describe briefly, i.e. automobile accident*):

_____.

which occurred on (*give date*) _____, when

(*give brief description of what happened*): _____

_____.

The parties against whom a suit is brought are called Defendant(s). In this action the Defendant(s) claim(s) that they are not responsible for the Plaintiff's injuries.

(Note: Some of the following sub-sections have been set down with extra space available after each section in order to provide space for any additional instructions)

(Liability, Damages)

- The trial has two parts. The first part deals with the fault or liability of the parties.

The second part will deal with damages, if any.

You will hear evidence on the question of liability or fault, and you will hear evidence on damages. You will be asked to decide which of the parties, if any, was negligent and, therefore, responsible for any injuries suffered.

At the end of the case, you will be given a verdict sheet on which you will be asked to answer questions similar to the following:

1. Was/were the Defendant(s) negligent?
2. If you answer “YES”, you will be then be asked: Was that negligence a substantial factor in causing the Plaintiff’s injuries?

(The next two (2) questions should be asked only if the Defendant claims the Plaintiff was negligent.)

If you answer “YES” to both questions, you will then be asked the same questions about the Plaintiff. If you find both parties were negligent, you will be asked to decide the percentage of the negligence of each of the parties.

If you find that the Defendant(s) were negligent, you will then be asked to decide the question of damages, that is, what amount of money will fairly and justly compensate the Plaintiff(s) for all loss resulting from the injuries.

(Openings & Evidence)

- This is a Summary Jury Trial. In a regular trial, as described in your handbook, witnesses would be sworn in, give testimony and be cross-examined. Such trials often take a week or more. The Summary Jury Trial is designed to last only one day, in the hope of saving the parties the expense of a full scale trial, as well as saving time for the jury.

In a Summary Jury Trial, instead of calling witnesses for every detail of the case, each attorney will present to you a summary of the evidence that supports his or her client's case. The attorneys may quote from video tapes and sworn depositions, police reports and medical reports. They may show you photographs and diagrams, if there are any. What they present can be considered as evidence by you.

There will be no live testimony except where credibility can determine major issues. If they do present live testimony, the parties will be limited to no more than two (2) witnesses for each side. The Plaintiff will present first, and may be given a 10 minute rebuttal after the Defendant(s) have presented.

After all the evidence has been presented in the case and arguments have been made, the Court will charge you on the law. You will then be given the verdict sheet and asked to deliberate and make your decision.

The evidence upon which you will base your decision will consist of evidence in the form of testimony of any witnesses in Court, or read to you from transcripts of what we call depositions, or examinations before trial, or in the form of photographs, documents, or other exhibits introduced into evidence.

(Objections, motions & exceptions)

- At any time during the trial, an attorney may object to a question or to the introduction of an exhibit, or may make motions concerning legal questions that apply to this case.

Any ruling I make upon such objections, or motions, will be based solely upon the law and, therefore, you must not conclude from any such ruling or from anything I say during the course of the trial, that I favor any party in this lawsuit.

(Summations - modified)

- In a regular trial, attorneys are given the opportunity to speak to the jury in a closing statement, or summation, after all the evidence on both sides has been presented in the case. In a Summary Jury Trial, the lawyers are given that opportunity during their presentations. They will point out evidence that they believe proves their case, suggest inferences or conclusions that they believe you should draw from the evidence and suggest conclusions that they believe you should reach as to your verdict. What is said by the attorneys in these statements may not be considered as evidence.

(Function of the Court)

- After the case has been presented by the attorneys, I will instruct you as to the rules of law applicable to the case. You will then retire for your deliberations. Your function as jurors is to decide what has, or has not, been proven, and to apply the law as I give it to you to the facts as you find them to be. The decision you reach

will be your verdict. Your decision will be based on the exhibits that will be received in evidence during the trial *(if applicable: and the testimony of any witnesses.)* You are the sole and exclusive judges of the facts and nothing I say or do should be taken by you as any indication of my opinion as to the facts.

- The law does not require you to accept all of the evidence presented in the case. In deciding what evidence you will accept, you must make your own evaluation of any evidence presented, and decide how much weight you choose to give to that evidence. There is no magic formula by which you evaluate evidence. You bring with you to this courtroom all of the experience and background of your lives. In your everyday affairs, you decide for yourselves the reliability or unreliability of things that people tell you. The same tests that you use in your everyday dealings with people are the tests which you should apply in your deliberations.

(Conduct of jurors during recesses)

- The purpose of the rules which I have outlined for you is to make sure that a just result is reached when you decide the case. For the same purpose, you should keep in mind several rules governing your own conduct during any recess.
 1. Please do not discuss the case, either amongst yourselves, or with anyone else, during the course of the trial. In fairness to the parties to this lawsuit, you should keep an open mind throughout the trial, reaching your conclusion only during your final deliberations after all of the evidence is in and you have been given the law. Then, and only then, are you permitted an interchange and discussion of the case with the other members of the jury.

2. Prior to your deliberations, please do not permit any person discuss this case in your presence, and, if anyone does so, despite your telling them not to, then you must report that fact to me as soon as you are able. Also, you should not discuss with any members of your jury, either that fact or any other matter that you feel necessary to bring to my attention.
3. Although it is a normal human tendency to talk to people with whom one comes in contact, please do not, during the time you serve on this jury, talk, whether in or out of the courtroom, with any of the parties or their attorneys or any witnesses. By this I mean not only that you must not talk about the case, but that you should not talk to them at all, even to pass the time of day. In no other way can all the parties be assured of the absolute impartiality that they are entitled to expect from you as jurors.
4. Recesses during the trial are called by the Court. If a juror feels the need for a recess, either for illness or a real need to call home or an employer, or to visit the rest room, do not be bashful. Raise your hand and either I, or a court official, will notice and I will call a recess without the need for you to explain the reason.
5. Sometimes, during the trial, I will ask, or be asked, to speak privately to the attorneys at the end of the bench in what we call a “side bar”. Feel free to stand up and stretch during our discussions, which we hope will be out of your hearing.

•

- Jurors may take notes during the trial, but keep in mind that the only official note taker is our Court reporter. So, if, during your deliberations, you have any questions about the law or what a witness has said, even though one or more of you has taken notes, send a request via the court officer or court clerk, indicating that you would like the Court reporter to read what was said. This is not intended to insult any “note takers,” but to be fair to both parties and to provide you with evidence exactly as it was stated in the record.

(Alternate jurors)

- Under the law, only six (6) jurors will deliberate on this case when it is submitted for consideration. As you may have noticed, we have selected additional jurors. Alternate jurors are selected to serve because a regular juror may be prevented from continuing by some emergency. Alternates have the same responsibility to pay careful attention to the trial as the regular jurors, so that, if needed, they will be fully familiar with the case.

(The following should apply to every case)

- It will be your duty to find from the evidence what the facts are in this case. You, and you alone, are the Judges of the facts. You will have to apply those facts to the law, as the Court will give it to you. You must follow that law whether you agree with it or not.

- But nothing the Court may say or do, during the course of the trial, should be taken by you as indicating what your verdict should be.

- The evidence, from which you will find the facts, will consist of the testimony of witnesses, documents and other things received into the record as exhibits, and any facts the attorneys agree, or stipulate to, or that the Court may instruct you to find.

- Certain things are not evidence. I will cover those for you now: *(With Emphasis)*
 1. Objections to questions are not evidence. Attorneys have an obligation to their clients to make an objection when they believe evidence being offered is improper under the rules of evidence. You should not be influenced by the objection, or by the Court's ruling on it. If the objection is “sustained,” then you will ignore the question. Remember, questions are never evidence, but answers can be. If the objection is “overruled,” then treat the answer like any other.

 2. If you are instructed by me that some item of evidence is received for a limited purpose only, then you must follow that instruction.

 3. Testimony that the Court has excluded, or told you to disregard, is not evidence and must not be considered.

 4. Anything you may have seen or heard outside this court room is not evidence and must be disregarded. You are to decide the case solely on the evidence presented here in this court room.

- During the trial, evidence will probably be presented in the form of testimony, exhibits, and perhaps stipulations. Basically, there are two kinds of evidence: **Direct Evidence and Circumstantial Evidence**. You are entitled to consider both kinds of evidence.

Direct evidence is direct proof of a fact, such as by testimony of an eyewitness.

Circumstantial evidence is proof of a chain of circumstances from which you may infer, or conclude, that a fact exists, even though it has not been proven directly. The word "infer," or the expression "to draw an inference or conclusion," means to find that a fact exists based on proof of another fact. For example, if you see water on the street outside your window, you can infer, or conclude, that it has rained. In other words, the fact that it has rained is an inference that could be drawn from the presence of the water on the street. An inference may be drawn only if it is reasonable and logical, not if it is speculative. Other facts may, however, explain the presence of water without rain. Therefore, in deciding whether to draw an inference, or conclusion, you must look at and consider all the facts in the **light of reason, common sense, and experience**. After you have done that, the question of whether or not to draw a particular inference is for you, the jury, to decide.

- It will be up to you to decide which witnesses to believe, which witnesses not to believe, and how much of any witness's testimony to accept or reject.
- I will also give you detailed instruction on the law at the end of the case and those instructions will control your deliberations and decisions.

(Insert Any Additional Instructions):

- Now another reminder concerning your conduct as jurors:

First, as members of the jury, you are not to discuss this case, or anything about it, with each other or anyone else, until you retire to the jury room at the end of the case to deliberate your verdict.

Second, if anyone should attempt to talk to you about this case in any way outside this court room, then you are to promptly bring that fact to the Court's attention.

Third, we expect the trial to be completed today. If, for any unforeseen reason we need to adjourn it, you are instructed not to visit the scene of the accident or any other place mentioned during the trial.

Fourth, do not try to do any research or make any investigation about this case on your own, and

Finally, do not form any opinions until all the evidence is in. Keep an open mind until you start your deliberations at the end of the case.

- Does either party wish to make any motions at this time ?

(Should counsel present any motions, the Judge may, or may not, want the jury to hear the motion arguments, depending on the type of motion presented. The Judge may request that the jury be removed from the court room while hearing arguments, or hear the arguments at sidebar or in chambers. The Judge may immediately rule on the motions or reserve decision until the case has been concluded, but it is usually most prudent to present rulings at the conclusion of the case and before giving the case to the jury, and you should rule on any pending motions before the jury's verdict is presented.)

(Continue to Say...)

- The trial will now commence;

Mr./Ms. _____ (Plaintiff's Attorney),

you may proceed.

(Parties Present Their Case...)

SECTION 5 - FINAL CHARGE TO THE JURY

Introduction

This section contains the final charge to the jury. A sample verdict sheet can be found in Section 7. The Supreme Court Law Clerk should prepare this section and include any additional specific charges, as well as the verdict sheet that fits the specific case to be tried.

(Complete the following after completion of the trial...)

FINAL CHARGE TO THE JURY BEFORE DELIBERATION

SUPREME COURT : CHAUTAUQUA COUNTY

CHARGE BY THE HONORABLE :

TITLE OF ACTION:

Plaintiff,

-vs-

Index No. _____

Defendant(s)

SUMMARY JURY TRIAL FINAL CHARGE

DATE OF TRIAL: _____

ATTORNEY FOR PLAINTIFF(S): _____

ATTORNEY FOR DEFENDANT(S): _____

VERDICT: _____

-

-

(The Court should provide a copy of the charge to each attorney before the trial commences. Any potential exceptions to the charge should be addressed by the Court and included in the charge before the trial commences.)

(Say To the Jury...)

Members of the jury, thank you for your patience and careful attention that you gave during the presentation of this case.

Your responsibility is now to decide the factual disputes and to apply the law to the facts. My job is to advise you on the law. You must accept the law as I give it to you, even though you may not agree with the law.

Your verdict must not be influenced by sympathy for any of the parties, or whether it will please, or displease, anyone.

The evidence consists of *(only read what is applicable)* testimony that you may have heard from witnesses, the depositions or Examinations Before Trial (EBTs) that were read to you, photographs and other exhibits allowed into evidence, and any stipulations entered into by the attorneys.

You have the responsibility of determining the credibility of the witnesses and the believability of the reports and statements in evidence. You must decide what to believe and whom to believe.

There is no magic formula in deciding the weight you give the testimony of any witness or of statements or reports in evidence. The tests and common sense that you use

in your everyday affairs to determine the reliability of statements made to you, are the same tests that you can use in your deliberation.

(PJI 1:91 - General Instructions - Interested Witnesses - Generally Modified)

As parties to the action, the Plaintiff and the Defendant(s) are considered to be interested parties, because they obviously have an interest in the outcome of the case. That does not mean that they are necessarily less honest than a disinterested witness, or that they have not told the truth. That is for you to decide. In other words, you must decide what part of a party's testimony you deem to be reliable and reject that which you choose to reject.

(PJI 1:22 - Falsus In Uno - Use only If Witnesses Testified)

If you find that any witness has intentionally testified falsely about any material fact, you may disregard all of the testimony of that witness, but you are not required to disregard all of that witness' testimony. You may accept so much of it as you deem true and disregard what you feel is false. Also, just because I must give you this charge, do not take it as though I did not believe any, or part, of any witness' testimony.

(PJI 1:23 - Burden Of Proof - Credible Evidence...)
(PJI 1:60 - Modified)

The Plaintiff has the burden of proving the negligence of the Defendant(s) by a fair preponderance of the credible evidence. The Defendant(s) have/has the responsibility, and the burden, of proving negligence of the Plaintiff by a fair preponderance of the credible evidence.

Credible evidence means the testimony and exhibits that you find worthy of belief. A preponderance means the greater of such evidence.

By that we do not mean beyond a reasonable doubt. A fair preponderance means that you can have some doubt, but, on balance, the conclusion you reach makes the most sense.

The phrase refers to the quality of the evidence, its convincing quality, the weight, and the effect that it has on your minds. It is the quality of the proof that is to be considered, and not its quantity.

Perhaps the burden of proof by preponderance of evidence can best be explained by going through the following exercise:

1. Take all the proof that you accept as believable and assign it to the scales of justice, one side representing the Plaintiff's and the other side the Defendant's.

2. If you find that those scales hang evenly in the balance, 50-50, or tip favorably, even ever so slightly, toward the Defendant(s), then the Plaintiff has not borne the burden of proof as required by law. On the other hand, if the scales tip favorably toward the Plaintiff, even ever so slightly, then the Plaintiff has met the burden of proof.

(Use No.3 Only If Comparative Negligence Is Claimed...)

3. If you find the Plaintiff has met his/her burden of proof, then go through the same exercise to determine whether the Defendant(s) have met their burden of proof by a preponderance of evidence regarding the Plaintiff's negligence; and, if after weighing the Defendant's evidence you then find that those scales hang evenly in the balance, 50-50, or tip favorably toward the Plaintiff, then the Defendant(s) have not borne the burden of proof as required by law. On the other hand, if the scales tip favorably toward the Defendant(s), then they have met their burden of proof as to the Plaintiff's negligence.

(PJI 1:70 - Circumstantial Evidence (Modified))

As I explained to you at the beginning of the trial, there are different types of evidence. Evidence can be DIRECT, CIRCUMSTANTIAL or a combination of the two. You may give circumstantial evidence less weight, more weight, or the same weight as direct evidence.

(PJI 1:90 - Medical Evidence (If Applicable))

In this case, both parties have agreed to submit summaries of medical records to you for your review. This is done so as to avoid the cost of bringing in doctors for live testimony. If actual records or reports are also provided, they should be viewed as equivalent to testimony by the doctors. Doctors who have treated or examined the Plaintiff are considered as experts.

When a case involves a matter of science or art, or requires special knowledge or skill not ordinarily possessed by the average person, then an expert is permitted to give an opinion for the Court and jury. You may accept the opinion if you agree with it. However, you may reject the opinion if, after careful consideration of all of the evidence in the case, expert or other, you disagree with it. Such an opinion is subject to the same rules concerning reliability and is to be considered in the same light as the testimony given by any other witness. It is given to assist you in reaching the proper conclusion, but it is not controlling upon your judgment.

(PJI 2:10 - Common Law Standard Of Care - Negligence Defined, Generally)

Negligence is lack of ordinary care. It is a failure to use that degree of care that a reasonably prudent person would have used under the same circumstances. Negligence may arise from doing an act that a reasonably prudent person would not have done under the same circumstances, or, on the other hand, from failing to do an act that a reasonably prudent person would have done under the same circumstances.

(PJI 2:12 - Common Law Standard of Care - Foreseeability - Generally)

In order for there to have been negligence, there must have been both a foreseeable danger of an accident, or of injury to another, and conduct unreasonable in proportion to the danger. A person is not responsible for the consequences of his or her conduct unless the risk of injury, or accident, was reasonably foreseeable. The exact occurrence, precise injury or accident, need not have been foreseeable, but injury or accident, as a result of negligent conduct, must have been not merely possible, but probable.

A party was not negligent if a reasonably prudent person, in the same situation, could not have foreseen an accident or injury as a result of his or her conduct, or if the party acted reasonably in the light of what could have been foreseen. The question for you to decide is whether the party could reasonably have, or should have, foreseen that an accident could happen based on what they did, or did not do.

(PJI 2:36 - Comparative Negligence - Non-Bifurcated Trial)
(USE ONLY IF DEFENDANT CLAIMS PLAINTIFF WAS NEGLIGENT)

If you find that the Defendant(s) were negligent and that the Defendants' negligence contributed to causing the accident, you must next consider whether the Plaintiff was also negligent and whether the Plaintiff's conduct contributed to causing the accident.

The burden is on the Defendant(s) to prove that the Plaintiff was negligent and that the Plaintiff's negligence contributed to causing the accident.

If you find that the Plaintiff was negligent and that this negligence contributed to causing the accident, you must then decide what percentage of fault is to be assigned to each party.

In your verdict, you will state the percentage that you find. The total of those percentages must equal one hundred percent (100%), unless you find that neither party was negligent.

For example, if you should find that the Defendant(s) and the Plaintiff were equally negligent, you would report that each was 50% responsible. If you decide that one party was more negligent than the other in causing the accident, you would assign a higher percentage to that party and a lower percentage to the other, with the total of the percentages equaling one hundred percent (100%), or 100 percent (100%) to one party and zero percent (0%) to the other.

(PJI 2:70 - Proximate Cause - In General)

If you find any party negligent, then you must decide if that negligence was a substantial factor in causing, or bringing about, the accident.

An act, or omission, is regarded as cause of an accident or injury, if it was a substantial factor in bringing about the accident or injury. That is, if it had such an effect in producing the injury or accident, that reasonable people would regard it as a cause of the accident or injury.

There may be more than one substantial cause of an injury, but to be substantial, it cannot be slight or trivial. You may, however, determine a cause to be substantial even if you assign a relatively small percentage to it, if you find that there are other substantial causes.

**(INSERT THE APPROPRIATE “PJI” INSTRUCTIONS REGARDING
LIABILITY FOR THE SPECIFIC CASE)**

(PJI 2:277 - Damages - General)

My charge to you on the law of damages must not be taken as a suggestion that you should find for the Plaintiff. It is for you to decide on the evidence presented and the rule of law, as I have given it to you, whether the Plaintiff is entitled to recover from the Defendant(s).

If you decide that the Plaintiff is ***not*** entitled to recover from the Defendant(s), you need not consider the amount of the damages. Only if you decide that the Plaintiff is entitled to recover will you consider the measure or the amount of damages.

If you decide that the Plaintiff is entitled to recover from the Defendant(s), then you must render a verdict in a sum of money that will justly and fairly compensate the Plaintiff for all the losses resulting from the injuries sustained.

**(INSERT THE APPROPRIATE “PJI” INSTRUCTIONS
REGARDING DAMAGES FOR THE SPECIFIC CASE)**

(PJI 2:280 & 2:280.1 - Damages - Personal Injury - Injury, Pain & Suffering)

If you decide that the Plaintiff is entitled to recover, you must award a sum of money that will justly and fairly compensate for any injuries and conscious pain and suffering caused by the Defendant(s).

In determining the amount, if any, to be awarded the Plaintiff for pain and suffering, you may take into consideration the effect that the Plaintiff's injuries may have had on the Plaintiff's quality of life, that is the ability to enjoy life. Loss of enjoyment of life involves the loss of the ability to perform daily tasks, to participate in the activities which were a part of the person's life before the injury, and to experience the pleasures of life. [However, a person suffers the loss of enjoyment only if the person is aware, at some level, of the loss that has been suffered.]

If you find that the Plaintiff, as a result of the injuries, suffered some loss of the ability to enjoy life [and that the Plaintiff was aware of that loss], you may take that loss into consideration in determining the amount to award the Plaintiff for pain and suffering to date.

(PJI 2:280.2 - Damages - Personal Injury - Injury, Pain & Suffering - Supplemental Instruction)

If your verdict is in favor of the Plaintiff, Plaintiff will not be required to pay any income taxes on the award and you must not add to, or subtract from the award, any amount on account of income taxes.

(PJI 2:281 - Damages - Personal Injury - Permanence - Life Expectancy Tables)

The Plaintiff has the obligation to prove that the injuries are permanent.

With respect to any of the Plaintiff's injuries or disabilities that you find to be permanent, the Plaintiff is entitled to recover for future pain, suffering and disability, as well as the loss of the ability to enjoy life. In this regard, you should take into consideration the period of time that the Plaintiff can expect to live. Life expectancy Tables indicate that the Plaintiff has a life expectancy of *(insert)* _____ years. Such tables are nothing more than statistical averages. They neither guarantee that the Plaintiff will live an additional *(insert)* _____ years, or mean that the Plaintiff will not live for a longer period. The life expectancy figure that I have given you, is not binding upon you, but may be considered by you together with your own experience and the evidence you have heard concerning the condition of the Plaintiff's health, habits, employment and activities in deciding what the Plaintiff's present life expectancy is.

(PJI 2:301 - Damages - Personal Injury - Collateral Sources - Itemized Verdict (Modified))

If you decide for the Plaintiff on the question of liability, you must include in your verdict an award for past and future pain and suffering. That amount must include the amount for the injury suffered and for the permanent effect of the injury, if any. Based upon the evidence, you may also include an award for items separately divided into amounts intended to compensate the Plaintiff for damages incurred before your verdict, up to the time of these proceedings, and amounts intended to compensate the Plaintiff for damages to be incurred in the future. You will be given a verdict sheet at the end of the case which will list the items that you may consider.

(The Following Is Applicable To All Cases)

These are the rules of law that apply to this case and the processes by which you weigh the evidence and determine the facts.

Before you begin your deliberations, you must elect a Foreperson to preside over your deliberations. The Foreperson has the duty to make sure every juror has the opportunity to express an opinion, but, the Foreperson has no greater voice, or vote, nor should have any greater influence than any other juror. Under our jury system, you are all equal.

When you are in the jury room, listen to each other, discuss the evidence and issues in the case. Each of you has the right and duty to express your opinion

to the other jurors. It is the duty of each of you, as jurors, to consult with one another and to deliberate with a view of reaching an agreement on a verdict and to do so without violating your individual judgement or conscience.

Your function is to reach a fair conclusion within the law and in light of the evidence. This is an important function because the parties, and the Court, are relying upon each of you to give full and conscientious deliberation and consideration to the issues and the evidence in the case. In this way, you will be carrying out the oath you gave at the beginning of the trial, which was to render a fair and true verdict. Remember in your deliberations that the dispute between the parties is a serious one and is no passing matter.

Each of you will now be provided a copy of the verdict sheet with the questions that the jury must consider and answer.

I will now read and explain these questions to you:

(Read The Questions That Are Specific To The Case At Hand)

(After Covering The Questions, Continue To Say...)

You are to take your copy of the jury questions with you into the jury room. You will also be provided with a copy of the pre-trial and post-trial charges that I read to you.

You also will be given a Court exhibit which is the official jury question form or verdict sheet for this case. When five (5) of you have reached agreement on the questions, that agreement will constitute the answer.

Your Foreperson must fill out the answers on the verdict sheet. When you have completed the questions, each of you must sign your name on the last page of the verdict sheet.

If, in the course of your deliberations, your recollection on any part of the testimony should fail, or if you are in doubt concerning my instructions as to the law, then you have the right to return to the courtroom to have whatever you request, read back or explained to you. Just give a note to the Court Officer. You will then be brought back to the courtroom and the court reporter will locate and read back the testimony and/or the law section that you have requested.

You may review any of the exhibits admitted into evidence during your deliberations. If you wish to request any exhibit, your Foreperson should, again, give a note to the Court Officer requesting the exhibit, or exhibits, that you wish to review. The Court Officer will then deliver the requested exhibits to you. During any recess, when the jury is absent from the jury deliberation room, all of the exhibits delivered back to you must remain in the jury room under the protection of the Court Officers. All evidence and documents must be returned at the end of your deliberations.

To assist you in your deliberations, you will be given a copy of the charge that I have just read to you.

Make your deliberation fairly, based on the facts, and based on the law and not on what or who the verdict helps or hurts.

If the time comes when five (5) of you have agreed upon a verdict, and even though one of the six of you may disagree, you may report that verdict, as the verdict of this jury and the Court will accept it as such.

After due deliberations, five (5) of you can not come to an agreement on any of the questions(s) on the verdict sheet, then your Foreperson shall report this fact to the Court Officer, who in turn will report it to me.

(The Court should ask....)

"Do either of the attorneys have any exceptions to the Courts charge or request to charge ?"

(The Court must decide at this time whether to grant such request. If you do, then you must say "I so charge". On the other hand, if you decide not to grant the request then say "I refuse to so charge".)

Note: Now is the time to discharge any alternate jurors...

(Continue To Say...)

As I have stated, the law and your oath require you to render a fair and impartial verdict without fear, favor or sympathy. Now take this case, and in fulfillment of your oath and in accordance with the instructions of the Court,

render a true and impartial verdict. You may now retire to the jury room, however, do not start your deliberations until the Clerk of the Court brings you the official verdict sheet and advises you that you may commence your deliberations. The Court Officer, having previously been sworn, will now escort the jury to the jury deliberation room.

(Jurors can be provided a copy of the “Summary Jury Trial Supplemental Juror Questionnaire” that they can fill out after completing their deliberations and before being brought back to the courtroom. In addition, the attorneys can complete the “Attorney’s Questionnaire” while the jury is deliberating. Both Questionnaires can be found in Section 7.)

INSERT THE CASE SPECIFIC VERDICT SHEET HERE
(Sample Verdict Sheet Is Located In Section 7 of This Manual)

COPY OF JUDGE'S CHARGE TO A CIVIL JURY

Rule #220.11

This rule only applies in Civil Cases with a jury.

If the Court determines, because of the nature of the case, that jury deliberations would be expedited or made easier, it may, on its own motion or the motion of either party, provide the jury with at least one copy of the instructions.

This copy will be given to the jury at the time it retires to deliberate.

If the copy provided is not a transcript of the Court proceedings, the Court must certify the copy as being an exact copy of the instructions given as the judge's charge to the jury.

Upon the conclusion of the deliberations, the Court shall retrieve the copy/copies and file them with the Clerk of the Court. This copy/copies now becomes part of the Court's file on the case and notations should be made that the copy was given to the jury.

Rule #220.11

Section 220.11 Copy of Judge's Charge to Jury

(a) Application. This section shall apply to all civil cases heard by a jury in any court.

(b) Where the court determines that the jury's deliberations may be expedited or assisted by having a copy of the court's instructions available during deliberations, the court, upon its own motion or the motion of a party, may direct that at least one copy of the instructions be furnished to the jury when it retires to consider its verdict. Where the copy thereby furnished is other than a transcript of the minutes of the proceedings, the court shall certify thereon that it is a correct copy of its instructions. Any copy of the instructions provided to the jurors in accordance with this subdivision shall be retrieved from the jury at the close of deliberations, and shall be filed with the clerk of the court.

SECTION 6 - JURY QUESTIONS DURING DELIBERATION, VERDICT PRESENTATION, CONCLUSION OF THE TRIAL, DISMISSAL OF THE JURY AND POST-TRIAL SETTLEMENT CONFERENCE

A. JURY QUESTIONS DURING DELIBERATION

(In its Final Charge, the Court must instruct the jury to send written notes regarding questions, or requests, to the Court via the Court Officer.

1. If a request is for exhibits, instruct the Court Clerk, or Court Officer, to bring the exhibits to the jury. Instruct the Court Reporter to mark any notes relayed by the jury as Court exhibits, and then read the notes into the record in the presence of counsel.

2. If the question, or request, can be answered by a written response from the Court, record the response on the record, have the Court Reporter mark it, and then forward it to the jury.

3. If the Court deems it advisable, have the Court Officer return the jury to the courtroom. After they have been seated, state as follows:)

- Let the record show that the jury has been returned to the court room and that the Plaintiff, the Defendant(s) and the attorneys are all present.

(Instruct the Court Stenographer to mark the sheet containing the jury's questions as Exhibit No. C____.)

- Members of the jury, your note, has been marked as Exhibit #C____, and reads as follows:

(Read the note and return it to the Clerk.)

(Proceed to answer their question, i.e. have the stenographer read back any testimony or statement of counsel. If this can not be done because a tape recorder is being used instead of a Court Reporter, the Court may instruct the jury to do their best to recall the testimony.

Because the jury will have been given a copy of the Final Charge, any questions pertaining to Court instruction will likely involve interpretation or elaboration.)

(Next, re-charge the jury to continue their deliberations and return them to the jury room.)

- As I stated earlier, in order to reach a verdict on each and every question, five (5) out of six (6) members of the jury must agree. Whenever the majority of you are in agreement on the verdict, the Foreperson is to report to the Court Officer that you have, in fact, reached your decision and you will then be brought back into the Court room to report your verdict.
- If you, as a jury, after due deliberations, are not able to reach an agreement on any of the questions under deliberation, then your Foreperson shall report this fact to the Court Officer, who in turn will report it to me.

(Remember to retain their written questions as you would any other exhibit.)

B. Jury's Failure To Agree or Reach a Verdict(s)

(In the event that the jury can not reach a majority decision, have the jurors brought back to the courtroom. After they have been seated, state as follows:)

- Let the record show that the jury has been returned to the Court room and that the Plaintiff, the Defendant(s) and their attorneys are all present.
- Members of the jury, your note has been marked as Exhibit #C____, and reads as follows: ***(Read the note)*** This note indicates that you are having difficulty in returning a verdict. Remember, that to return a true verdict, five (5) out of six (6) of you must agree upon the verdict. The verdict must represent the considered

judgment of at least five (5) jurors. It is your duty to consult with one another and to deliberate together with the common goal of reaching an agreement. Each of you must decide the case for yourself, but do so only after an impartial consideration of all the evidence with your fellow jurors.

- During the course of your deliberations, do not hesitate to re-examine your own views and your opinions if you are convinced to do so by the evidence. But remember: do not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

You are the judges of the facts. Your sole duty is to ascertain the truth from the evidence in this case.

Also, please keep in mind that I am bound by law to hold the jury for a reasonable amount of time in order to give it an opportunity to deliberate and arrive at its verdict, and since I believe that we have.....

(Read the appropriate following section...)

- ...not gone beyond this limit, I am bound to instruct you to continue your deliberations until ____ P.M. If you have not reached a verdict by then, report to the Court.

(Return the jurors to the jury room)

(OR Say...)

- ...reached the bounds of this limit and I do hereby declare this jury deadlocked and that a mistrial be entered into the record.

Even though five (5) of you could not agree, I now direct the Court Clerk to read each question and poll the jury.

(The Court should note the number voting “YES” and “NO” on each question. If the verdict was for NO CAUSE of action and they did not complete the damage portion of the verdict sheet, they should be directed to return to the jury room to complete the questions.)

(MAKE SURE THAT THE COURT RETAINS AND HAS THE ACTUAL VERDICT SHEET USED BY THE JURY IN THEIR DELIBERATIONS MARKED AS A COURT EXHIBIT!)

(Proceed to Subsection D; “Conclusion & Dismissal of the Jury”)

C. Procedure When Jury Returns With A Verdict

(Before the jury is returned say to the Court...)

- The Court has been advised that the jury has reached its verdict and will shortly be brought back to the courtroom. I now admonish all persons in the courtroom, including the spectators, that all are to remain seated during the reporting of the verdict and during any applications or motions addressed to the Court following the reading of the verdict. There shall be no audible reactions or emotional outbursts by anyone to the reporting or recording of the verdict.

(After the jury has been seated Say...)

- Let the record show that the Plaintiff, the Defendant(s), and their attorneys are present in the court room. I will now have the Court Clerk call the roll of the jury.
Please answer "HERE" after your name is called.

(Proceed to have the Court Clerk call the roll from the Jury Seating Chart, Then Say..)

- Let the record show that the jury has returned to the courtroom.

(The Judge or Clerk should make sure that the parties are standing and then ask the following:)

- Would the Foreperson please stand. Mr./Madam Foreperson, has the jury reached a decision on all of the questions; please answer **YES** or **NO** only?

*(The Court Clerk then reads each question and records the answers)
(After all the verdict(s) have been read ask..)*

- *(ASK)* Was your verdict based on at least 5 out of 6 jurors agreeing on each question?
- Does either the Defendant(s) or the Plaintiff request that the jury be polled?

(if YES from either party, then ask...)

- Juror No. 1 is this your verdict?; etc...

(After all the jurors have been polled state...)

- Let the record show that the jury has been polled and that the verdict given complies with the law.

(Proceed to Subsection D; “Conclusion & Dismissal of the Jury”)

D. CONCLUSION & DISMISSAL OF THE JURY

(At the conclusion of the trial, directly address the jury and Say...)

- Members of the trial jury, for your dedicated service as jurors, for the care, concern, attention and obvious concentration that you have given in your deliberation, the Court extends to each of you, its sincerest thanks. Go now with the full knowledge that you have fulfilled your duties, both as responsible citizens and as jurors. You are, herein, dismissed and may step down from the jury box. I wish to remind everyone present that this Court is still in session.

(The Court will remain in session)

After the jurors have left the jury box, you must:

- 1. Dismiss the case if the Defendant is found not at fault; or*
- 2. Summarize the decision for the record; or*
- 3. Adjourn the matter to a specified date and time for Post-Trial Settlement Conference; or*
- 4. Adjourn the matter for: _____; or*
- 5. (Optional) Adjourn to set a new trial date if a mistrial occurred.*

(Adjourn the Court and leave the bench.)

E. POST-TRIAL SETTLEMENT CONFERENCE

If the Summary Jury Trial was non-binding, then a settlement conference is mandated. This settlement conference should be conducted as close to the Summary Jury Trial date as can reasonably be scheduled. In no event should it be longer than 60 days from the Summary Jury Trial. At the settlement conference, the Court should be an active player in resolving the case. Of course, at this point the Court and the law clerk are totally knowledgeable of the issues involved since they heard the Summary Jury Trial as well as the parties. The Court can function very much as a “seventh juror,” supporting the jury’s verdict generally where indicated, and interposing the Court’s own view as to the likely results before a full jury where the same is appropriate. This is a powerful opportunity to move the case forward toward resolution and for the Court to become an activist in the process. If the settlement conference does not settle the case, then the Judge should list the case for trial and refer to the procedures for moving the case through the normal pretrial procedures.

SECTION 7 - SAMPLE FORMS:

<u>Page</u>	<u>Form</u>
60	A. Seating Chart
61	B. Sample Verdict Sheet
66	C. Supplemental Juror Questionnaire*
67	D. Attorney Questionnaire*

* The Supplemental Juror Questionnaire and Attorney Questionnaire are provided for information and optional use only. These Questionnaires were used to gather information during the initial years of the Chautauqua County Summary Jury Trial Project. The responses were incorporated into that Project's annual reports and program manual.

Case: _____ -vs- _____ Trial date: _____

USE TOP CHART WHEN NO PEREMPTORY CHALLENGES ALLOWED¹

	SEAT 1	SEAT 2	SEAT 3	SEAT 4	SEAT 5	SEAT 6	ALT. 1	ALT. 2
1								
2								
3								
4								
5								
6								

INCLUDE THIS SECTION WHEN PEREMPTORY CHALLENGES ARE ALLOWED¹

	SEAT 7	SEAT 8	SEAT 9	SEAT 10	SEAT 11	SEAT 12	
7							
8							
9							
10							
11							
12							

¹ “ * “ Indicates Sworn & Seated

B. Sample Verdict Sheet

(Sample Verdict Sheet - Automobile Accident With Serious Injury)

STATE OF NEW YORK

SUPREME COURT : COUNTY OF CHAUTAUQUA

(Plaintiff)

Index No. _____

-VS-

(Defendant(s))

VERDICT SHEET

EACH ANSWER MUST BE AGREED TO BY AT LEAST 5 OF THE 6 JURORS. IT IS NOT NECESSARY, HOWEVER, THAT THE SAME 5 JURORS AGREE ON THE ANSWER TO EACH QUESTION.

ALL JURORS SHOULD PARTICIPATE IN THE DISCUSSIONS AND DELIBERATIONS NO MATTER HOW THEY HAVE ANSWERED EARLIER QUESTIONS.

1. Was/were the Defendant(s), _____, negligent?

**FIVE (5) JURORS MUST AGREE ON
THE ANSWER TO THIS QUESTION**

ANSWER "YES" OR "NO"

If your answer is "NO", proceed no further and report to the Court.
If your answer is "YES", then proceed to Question #2.

2. Was/were the Defendant(s), _____,
negligence a substantial factor in causing the accident?

**FIVE (5) JURORS MUST AGREE ON
THE ANSWER TO THIS QUESTION**

ANSWER "YES" OR "NO"

If your answer is "NO", proceed no further and report to the Court.
If your answer is "YES", then proceed to Question #3.

3. Was the Plaintiff, _____, negligent?

**FIVE (5) JURORS MUST AGREE ON
THE ANSWER TO THIS QUESTION**

ANSWER "YES" OR "NO"

If your answer is "YES", proceed to Question #4.
If your answer is "NO", then proceed to Question #5.

4. Was the negligence of the Plaintiff, _____,
a substantial factor in causing the accident?

**FIVE (5) JURORS MUST AGREE ON
THE ANSWER TO THIS QUESTION**

ANSWER "YES" OR "NO"

If your answer to Question #4 is "NO", then proceed to Question #6.
If your answer to Question #4 is "YES", then proceed to Question #5.

5. If your answer to Question #4 is "YES", please apportion responsibility for the
occurrence of the (insert date) _____, accident between the
Plaintiff,

_____, and the Defendant(s), _____

Do not assign any percentage of fault to a party unless you have answered "YES" to
both questions involving that party.

**FIVE (5) JURORS MUST AGREE ON
THE ANSWER TO THIS QUESTION**

DEFENDANT(S), _____:
_____ %

PLAINTIFF, _____:
_____ %

Total must equal 100%

Proceed to Question #6

6. As a result of the accident, has the Plaintiff, _____, sustained:

(A.) A permanent loss of use of a body organ, function, or system?

**FIVE (5) JURORS MUST AGREE ON
THE ANSWER TO THIS QUESTION**

ANSWER "YES" OR "NO"

(B.) One or more significant limitations of use of a body organ, function, or system?

**FIVE (5) JURORS MUST AGREE ON
THE ANSWER TO THIS QUESTION**

ANSWER "YES" OR "NO"

(C.) A permanent consequential (significant or important) limitation of use of a body organ, function, or system?

**FIVE (5) JURORS MUST AGREE ON
THE ANSWER TO THIS QUESTION**

ANSWER "YES" OR "NO"

(D.) A medically determined injury, or impairment, of a non-permanent nature which prevented him/her from performing substantially all of the material acts which constituted his/her usual and customary daily activities for not less than 90 days during the first 180 days immediately following the accident?

**FIVE (5) JURORS MUST AGREE ON
THE ANSWER TO THIS QUESTION**

ANSWER "YES" OR "NO"

If your answer is to all of the above questions are "NO", proceed no further and report to the Court.
If your answer is "YES" to any of the Questions #6(A.), (B.), ©.), (D.), then proceed to Question #7.

7. State the amount which fully and fairly compensates the Plaintiff, _____, for all of the injuries he/she sustained as a result of the accident which occurred on _____ (insert date) _____, up to the date of your verdict:
(Do not apply percentages you may have found based on fault.)

**FIVE (5) JURORS MUST AGREE ON
THE ANSWER TO THIS QUESTION**

(A) Pain and suffering: \$_____.

(B) Loss of Earnings for the first 3 years after the accident on
(insert date) _____.
\$_____

©.) Loss of earnings from (insert date) _____, to
the _____ date of your verdict.
\$_____

Proceed to Question #8

8. State the amount which fully and fairly compensates the Plaintiff, _____, for the item(s) of damage, if any, to be incurred in the future as a result of the accident of _____ (insert date) _____:
(Do not apply percentages you may have found based on fault.)

**FIVE (5) JURORS MUST AGREE ON
THE ANSWER TO THIS QUESTION**

(A) Pain and suffering including the permanent effect of the injuries from the time of the verdict to the time that the Plaintiff could expect to live.
\$_____.

(B) Loss of Earnings from the time of the verdict to the time that the Plaintiff could be expected to live.
\$_____.

© Medical Expenses from the time of the verdict to the time that the Plaintiff,

_____, could be expected to live.
\$_____.

Proceed to Question #9

9. If you have made an award for the amount intended to compensate the Plaintiff, _____, for damages to be incurred in the future, then state the period of _____ years over which such amount is intended to provide compensation:

**FIVE (5) JURORS MUST AGREE ON
THE ANSWER TO THIS QUESTION**

(A) Pain and suffering including the permanent effect of the injuries:

(Number of years - Life expectancy)

(B) Loss of Earnings: _____

(Number of years - Work Life expectancy)

© Medical Expenses: _____

(Number of years - Life expectancy)

SIGNATURE OF JURORS:

SUPREME COURT : CHAUTAUQUA COUNTY

SUMMARY JURY TRIAL

SUPPLEMENTAL JUROR QUESTIONNAIRE

CASE: _____ **-v.-** _____

INDEX NO.: _____

DATE: _____

(Please circle your answer)

DO YOU THINK THAT THE SUMMARY JURY TRIAL IS A PRACTICAL WAY TO
RESOLVE DISPUTES? **YES / NO / NO OPINION**

DO YOU FEEL THAT THE INFORMATION YOU RECEIVED WAS ADEQUATE TO
MAKE A DECISION? **YES / NO / NO OPINION**

WOULD IT HAVE BEEN MORE HELPFUL TO HAVE HAD THE WITNESSES AND
DOCTORS TESTIFY IN PERSON ? **YES / NO / NO OPINION**

WERE THE COPIES OF THE CHARGE USEFUL IN YOUR DELIBERATIONS ?

YES / NO / NO OPINION

IF YOUR ANSWER WAS “YES” PLEASE PLACE A “✓” NEXT TO THE
PARAGRAPHS OF THE CHARGE THAT WERE DISCUSSED IN YOUR
DELIBERATIONS.

IF YOU WERE A PARTY TO A LAW SUIT, WOULD YOU CONSIDER A SUMMARY
JURY TRIAL TO RESOLVE THE DISPUTE ? **YES / NO / NO OPINION**

Attorney's Questionnaire

To be completed by the attorneys during jury deliberation and before the verdict is rendered:

1. Were you satisfied with the trial format? Circle: **YES/NO**

If your answer was NO, then list your reasons:

2. What advantages did you see in the Summary Jury Trial as opposed to a full scale trial ?

3. What disadvantages did you see ?

4. Would you consider submitting cases for binding Summary Jury Trial? Circle: **YES/NO**

If your answer was NO, then list your reasons:

5. If you would consider submitting cases for binding Summary Jury Trial, would you also consider including a High/Low settlement amount? Circle: **YES/NO**

If your answer was NO, then list your reasons:

6. If the trial was non-binding, do you think it was a useful approach to possible settlement? Circle: **YES/NO**

If your answer was NO, then list your reasons:

7. What recommendations do you have to improve the format ?

ACKNOWLEDGMENTS

Several people have been instrumental in the development of the program. The Hon. Vincent E. Doyle, former Administrative Judge, gave the project his wholehearted support. It could not have moved forward without his commitment.

His successor, Hon. Sharon Townsend, has been vigorous in her support and expansion of the SJT program in the 8th Judicial District.

Chief Clerk and Jury Commissioner, Kathleen Krauza, deserves kudos for her support in shaping the format and procedures and for her enthusiastic promotion of the program here and statewide. The result is that the program has been recognized by the Office of Court Administration as a viable form of ADR. There is no doubt the program could not have moved forward without her involvement.

The original cast for the 1st edition consisted of Chief Clerk Kathleen Krauza, the Honorable. David J. Narducci, past president of the Chautauqua County Magistrates Association, who assisted in production and editing, the Honorable Judith Claire Chautauqua County Family Court who earlier served as my law clerk, former Deputy Chief Clerk Jan Scorse, current Deputy Chief Clerk Judith Helman, Former Deputy Jury Commissioner Connie Panebianco, Supreme Court Reporter Gerard Linnecki, Robert Martin, Esq. (Retired), Barbara Dodge, Secretary, Court Assistant Laura Haas and Student Volunteer Amy Caruso, then a Senior at S.U.N.Y. Fredonia. They all contributed to the launching of this project.

Thomas Smith, Law Clerk, must be saluted for fine tuning the program, preparing the charges and development of trial books. My secretary, Tina Hodges, has been invaluable in computerizing the program and organization of the trial books. Court Clerk Marjorie Davis has been the model of efficiency in implementing the program in the courtroom. Michael Cerrie, law student, and Alicia Payne, interns, contributed to this Program Manual.

Writer Anne-Marie Thompson, whose November/December 1996 article "Quick Court" in The Pennsylvania Lawyer inspired the Chautauqua County project, the judges she mentions in that article, Judges Hiram Carpenter II, and Jolene Kopriva, Blair County, PA, and, Dale Robbins, Esq., who provided me with The Pennsylvania Lawyer article, deserve honorable mention.

Hon. Thomas Lambros, retired US District Judge, who masterminded and initiated the use of SJTs in 1980 and presided over SJT cases during SJT week in Chautauqua County Supreme Court has been most helpful.

Martin P. Violante, ADR 8th JD, Daniel Weitz, Esq, State ADR Coordinator, Elissa Krauss, Jury Project, who have advanced the concept.

Talmage Boston, Esq., Dallas, Texas, Chair of Litigation section of Texas State Bar, past Chair of Business Litigation Section of Dallas Bar Association, Joseph Coniglio, Esq., Dallas, Texas, co-author The Defense Lawyer's Role in Summary Jury Trials, Russ Meyer, Esq., who

conducted the first SJT in Dallas, Texas, and Samuel Clawson, Esq., a top defense attorney who advanced the summary jury process in Charleston County, So. Carolina recently provided resource material. Geoffrey L. Harrison, Esq., from whose paper, *Settlement Through Summary Jury Trials*, the apt definition of a summary jury trial found in the Program Manual, was borrowed, with slight modification.

Last, and certainly not least, Chief Judge Judith Kaye, Hon. Jonathan Lippman, Chief Administrative Judge, former Deputy Administrative Judge Joseph Traficanti, Jr., First Deputy Administrative Judge Ann Pfau, Hon. Eugene F. Pigott, Jr., Presiding Justice 4th Dept, Hon. John P. Lane, Supervising Judge Civil Courts, Hon. Robert G.M. Keating, Dean of the New York State Judicial Institute, and all the judges whose names appear on the Informal Survey (see Program Manual). Their support of the program reflects their ever-present spirit of creativity and passion to continually improve the judicial system in New York.

Joseph Gerace