

Summary Jury Trials

How They Work and How They Can Work for You

By Nino Monea

Alexander Hamilton once wrote, “The friends and adversaries of the [Constitution], if they agree in nothing else, concur at least in the value they set upon the trial by jury.”¹ Two hundred years later, there is still much to love about jury trials. From a public standpoint, they are the ultimate democratic check on our justice system and one of the few ways that average citizens can be meaningfully involved in government. For the parties involved, litigants appreciate being able to tell their stories and lawyers gain unparalleled experience in boiling down complex facts and law into a succinct argument.

Unfortunately, jury trials have been on the decline for years.² This decline has been caused, at least in part, by the high cost of jury trials, the uncertainty of a jury trial compared to a settlement, and a concerted effort by courts to move cases out of the courtroom and into alternative dispute resolution (ADR) programs.³ And lawyers may be wary of risking their clients’ outcomes on an unpredictable jury verdict. As a result, only around 1 percent of cases in Michigan end up before a jury today.⁴ Many cases referred to ADR surely resulted in efficient, agreeable outcomes for both parties. But when 99 percent of cases are resolved that way, one cannot help but think trials are being underused.

A new, more efficient form of trial has the potential to not only reverse this trend, but to do so while lowering court costs; expanding access to justice; and improving satisfaction for lawyers, clients, jurors, and judges alike. It’s the summary jury trial.

What are summary jury trials?

As the name implies, the summary jury trial offers parties a chance to bring their case before a jury, but with some relaxed

rules to expedite the process. The goal is to simplify the trial process without sacrificing key procedural safeguards. Although first conceived in the 1980s for federal courts, summary jury trials have since come to the states. The Michigan Supreme Court experimented with them some 20 years ago, but a pilot program launched a couple of years ago has breathed new life into the idea.⁵

So how exactly are summary trials different from full-scale jury trials?

- First, they are shorter. Full trials can last the better part of a week or more; summary jury trials are typically limited to a single day, with time limits on each component of trial. This necessarily limits the number and length of witnesses and exhibits.
- Second, the juries are smaller. Each party is given two peremptory challenges apiece to whittle ten potential jurors down to the six that will be empaneled.
- Third, the rules of evidence and procedure are relaxed. There is no need to authenticate documents, and parties are encouraged to stipulate to as much evidence as possible and agree to other tweaks to the rules.
- Fourth, although the jury verdicts are binding, both parties must agree to participate in the summary jury trial process.
- Fifth, appellate rights are reduced. The only allowable post-trial motion is for a

new trial, and this may only be granted for irregularity, jury misconduct, an error of law, or fraud.⁶

Even with these changes, the outcomes appear to be fair. A statewide survey in California found summary jury trials favored plaintiffs only 48–55 percent of the time⁷—about as close to 50–50 as we can expect in any justice system. Analysis of New York’s summary jury program also found a nearly 50–50 split.⁸ At the very least, this should indicate that both sides have a reasonable probability of success. For comparison, data shows employment arbitration skews heavily toward defendants, who win roughly 80 percent of the time.⁹

Perhaps even more importantly, lawyers and litigants report high satisfaction with the process. Surveys routinely find that both plaintiff and defense bars are satisfied with summary jury trials.¹⁰ Moreover, judges, jurors, and courtroom staff all report positively on them as well.

Benefits of summary jury trials

This makes perfect sense given the benefits that summary jury trials offer. They are far cheaper than traditional litigation. For example, one study estimated that a summary jury trial can cost parties as little as \$2,000, compared to \$12,000–\$18,000 for a regular trial.¹¹ Part of this is because the trial itself is shorter, but there is more to it

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than that. Fewer hours are billed in preparation and in court, as every part of the trial, from voir dire to closing argument, is condensed. And parties that agree to a summary jury trial do not need to undergo mediation or a case evaluation, saving additional time and resources.¹² This is not to say that summary jury trials must always be used as an alternative to ADR—in fact, they can complement ADR.

A great deal of cost savings results from the reduction of witnesses, particularly experts. Given the time limitations of summary jury trials, parties may be more willing to stipulate to the admissibility of evidence. For example, attorney Steven Galbraith explained that in a dog-bite case he litigated using a summary jury trial, the parties stipulated to the medical evidence, so there was no need to depose a medical expert.¹³ Considering a typical expert can easily bill at hundreds of dollars an hour, this is no small feat.

Additionally, there are great savings to be rendered post-trial. Because of their limited availability in summary jury trials, appeals become the exception rather than the rule, meaning that parties are less likely to keep incurring expenses for years as the case works its way through the appellate process. This limited availability of appeal, in turn, gives both parties the benefit of finality of their claims. Indeed, in some summary jury trials, parties have agreed to forego stenographers because there was no need to create an appellate record, bringing the costs down even more.¹⁴

There are advantages for lawyers apart from those for their clients. In this age of the declining jury trial, summary jury trials give lawyers more chances to argue before a jury. An entire generation of lawyers is growing up in the profession where there are fewer opportunities to go to trial. This opportunity cost is significant, as the less familiar with trial a lawyer is, the less willing he or she will be to go to trial. As Andrew Miller of Thomas, Garvey & Garvey explained, summary jury trials have allowed him, as a young attorney, to try more cases than many more-experienced lawyers.¹⁵

Lawyers willing to participate in a summary jury trial also get greater certainty as to the date of trial.¹⁶ Not only does this help with planning, but it may help keep the case

moving. As anyone with a hard deadline can attest, when you push up against it, it forces you to work harder to meet it. Summary jury trials may also serve as an impetus for settlement—as both sides prepare for trial, they reassess the strengths and weaknesses of their proofs.¹⁷

Some benefits specifically favor defense attorneys and the institutional clients they represent. Occasional jury verdicts help “test the market” and give insurance providers a better idea of a reasonable settlement range for future cases.¹⁸ More data collected in this cost-effective way concerning how juries in certain areas value particular injuries can only strengthen insurance companies’ bargaining position in later negotiations.

Litigants receive value beyond mere cost savings. There is cathartic value to litigants who go to trial as well. People want their day in court to tell their story and be heard. In particularly emotional cases, this desire may be so strong that it prevents parties from settling, even if logic suggests they should be able to. Although harder to measure than time or cost, this benefit cannot be overlooked. Failure to be heard is one of the biggest complaints people have about interactions with the judicial branch. Attorney Stephen Susman has also observed that his clients are much more likely to accept a jury verdict as fair (if not always ideal) than the ruling of a judge.¹⁹

The need for summary jury trials

More broadly, there are numerous benefits beyond those rendered by the parties in any given case. Shorter trials are more efficient for our courts, too. As an example, federal Judge William Bertelsman noted that a summary jury trial helped resolve what was expected to be a 30-day trial in his court.²⁰ The potential for savings to the judicial system is tremendous. Jurors are selected from the normal pool, so there is no need to pay extra for them or create a new system to find them, and their far shorter service results in smaller fees.

Nearly 90 percent of all civil legal problems of low- and moderate-income Americans receive no legal representation; summary jury trials could be an important piece in solving the access-to-justice crisis.²¹ As a cheaper and simpler alternative to a full

trial, summary jury trials have the potential to open up courthouse doors to litigants who currently can’t afford to resolve their differences in court.

For example, in the personal injury context, many people have viable claims for damages, but the cost of a trial is simply too high to justify taking their case through a full trial, forcing many plaintiffs to settle cases for a fraction of their damages or not bring their case at all. Indeed, there is evidence that certain types of plaintiffs are undercompensated and do not file suits they are legally entitled to because of the cost of doing so. Summary jury trials offer litigants a more effective option to have their day in court in front of a jury.

Similarly, summary jury trials are promising alternatives to full trials in business disputes. For example, parties may be able to more cost effectively resolve a contract dispute case through a summary jury trial than a traditional full trial. This is particularly true of small-value breach-of-contract cases where the cost of a full trial may outweigh the damages sought.

Finally, there are civic benefits to be realized. We live in an age of increasing polarization and declining trust in institutions. Many, if not most, Americans feel that government does not work for them.²² Jury duty, while oft pilloried, is the most meaningful way for citizens to have a say in government. For where else in modern life do ordinary people of different races, genders, and ages come together to work through problems of public import? It is unsurprising that so many who show up for jury duty begrudgingly walk away having deeply valued the experience.²³ If anything, summary jury duty would be more enjoyable, as the trial would be streamlined and some of the most somniferous portions eliminated entirely.

Looking ahead

There is no one-size-fits-all method for summary jury trials. Though they should always be shorter and simpler than full-blown trials, parties retain a great deal of flexibility to define the exact parameters. The Michigan Supreme Court administrative order that authorized summary jury trials painted with broad strokes, providing

default rules for parties to use which may be amended by agreement of the parties and the judge.²⁴ Across the country and over the years, many other jurisdictions have tweaked the basic trial framework to make summary jury trials suit local needs. For example, some jurisdictions have made verdicts non-binding while others have done away with witness testimony altogether, instead having attorneys summarize the arguments and testimony.²⁵

Summary jury trials are generally most appropriate for straightforward cases in which the main question is liability or damages. No amount of judicial analysis will ever conclusively determine what makes a “reasonable person,” but a jury can. For example, simple negligence actions like no-fault cases are good candidates for summary jury trials.

Summary jury trials, by design, are flexible, allowing parties to agree to a process that best suits their needs. One common example is agreeing in advance to a high/low verdict constraint. Jurors are not told of the high/low agreement, but if their verdict falls outside the range, it will typically be adjusted to whichever end of the range it is closer to. The low is often set at a few thousand dollars and the high is the insurance policy limit. The worst case for the plaintiff is at least the trial costs are covered. The worst case for the defendant is that the insurance policy limit is reached but not exceeded. Neither side need fear a catastrophic result.

The summary jury trial pilot has been around in Michigan for a couple years, but it appears that few have taken advantage of it. The biggest obstacle has not been opposition to the idea, but rather lack of knowledge and information about the opportunity. Given the wide array of benefits and broad-based support from different stakeholders, lawyers and litigants should seriously consider using summary jury trials. The entire civil justice system may be better off for it.

Those interested in learning more should read Administrative Order No. 2015-1 for a full description of the summary jury trial pilot program in Michigan.²⁶ Lawyers seeking guidance on setting up a summary jury trial may call Doug van Epps, director of the

Office of Dispute Resolution for Michigan Courts, at (517) 373-4839. ■



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ENDNOTES

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