



California's New Expedited Jury Trials Act

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Special Issue By: Steven Werth and Caroline Chen

Starting January 1, 2011, parties in civil actions will have the option of trying their case before a jury trial in an expedited fashion, potentially reaping significant savings in litigation costs. By the passage of AB 2284 also known as the "Expedited Jury Trials Act,"¹ which Governor Schwarzenegger signed into law on September 30, 2010, plaintiffs and defendants if they choose to, may try their case before a jury of eight members, with only three hours for each side to put on their case, and only three peremptory challenges per side for jury selection. The bill was passed unanimously by the state legislature before reaching the Governor's desk. Both the plaintiff and defense bars appear to be wholly supportive of the new trial option.

Though the goal is to conclude the case in one day, there is no restriction on the time needed by the jury to deliberate. A vote of six out of eight jurors is required for a verdict, and the verdict will be binding, subject to any "high/low" agreements.

The "high/low" agreement is probably one of the new law's most significant features. The Expedited Jury Trials Act provides for a written "high/low" agreement entered into by the parties that establishes the minimum amount of damages guaranteed to the plaintiff and the maximum amount of damages recoverable against defendant regardless of the jury's verdict. The jury will not hear about the high/low agreement or of its contents, but their verdict will be subject to it. The purpose of the new law, introduced by Assembly Member Noreen Evans (Santa Rosa), a former insurance defense counsel, is to enable more cost-effective litigation of civil cases for litigants and the courts. Many believe the process is well-suited to smaller civil matters involving \$10,000 - \$30,000 at issue, cases in which the expected exposure or award hardly seems worth the cost to litigate. While this may be true, the new law has no restriction in terms of the size of the case that may use an expedited jury trial.

In other jurisdictions with similar streamlined trial systems in place, higher value cases of up to \$1 million have reportedly been tried in expedited jury trials with verdict results similar to those of cases that have undergone



the regular (longer) jury trial process. New York and South Carolina have had a streamlined trial system in place now for at least five years. California's Expedited Jury Trials Act is reportedly modeled after their systems.

In an expedited jury trial, the rules of evidence will apply. However, the parties may stipulate to the use of relaxed rules of evidence. In no case will such stipulations affect parties and witnesses' rights to applicable privileges and confidentiality. Also, the Act specifically provides that the expedited jury trial shall be approved even where the parties include a self-represented litigant.

To participate in this process, the parties will have to sign a proposed consent order granting an expedited jury trial. The order is binding unless the parties later agree to end it or the court finds good cause not to proceed. The proposed consent order must include a preliminary statement that all parties and responsible insurance carriers are informed of the rules and agree to participate in (or for insurance carriers, do not object to) the expedited jury trial process.

The order also must contain the parties' agreement to each be limited to three hours to put on their case, three peremptory challenges and a jury of eight or fewer members. Additionally, the order must reflect the parties' agreement to waive the right to appeal and the right to move for directed verdict, to set aside the verdict or judgment, for new trial based on inadequate or excessive damages, and the right to file any other post-trial motions, except as provided in the code section. The exceptions include motions relating to costs and attorney's fees, motions to correct a judgment for clerical error, and motions to enforce a judgment. The parties may still bring these latter motions.

The parties may move for new trial and appeal on the following grounds only: (1) judicial misconduct that materially affected the substantial rights of a party; (2) misconduct of the jury; (3) corruption, fraud, or other undue means employed in the proceedings of the court, jury, or adverse party that prevented a party from having a fair trial. By participating in the expedited jury trial process, the parties are barred from moving for new trial or appealing on any other grounds.

The Act requires the Judicial Council to adopt court rules and procedures to effectively implement the



Expedited Trials Act on January 1, 2011. These rules will pertain to additional content of proposed consent orders, pretrial exchanges and conferences, time limits for jury selection and trial, and presentation of evidence and testimony.

Low, Ball & Lynch will be monitoring the implementation of this new law, and will updating our clients on the rules and procedures applicable to an expedited jury trial. In the interim, should you have questions or comments, please contact Steven Werth (SWERTH@LOWBALL.COM) or Caroline Chen (CCHEN@LOWBALL.COM).

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