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The Expedited Jury Trials Act: Enhancing Access, Reducing Costs, and Increasing Efficiency

Jeremy P. Ehrlich

Code Sections Affected

Code of Civil Procedure §§ 630.01, 630.02, 630.03, 630.04, 630.05, 630.06, 630.07, 630.08, 630.09, 630.10, 630.11, 630.12 (new).
AB 2284 (Evans); 2010 STAT. Ch. 674.

I. INTRODUCTION

Picture a beautiful day without a cloud in the sky, and a family driving to the beach, a park, or maybe to catch a ball game—then out of nowhere, another car crashes into them. Just like that, a wonderful day is ruined and the family is left with a few thousand dollars in medical bills and automobile repairs. Yet, the problems are just beginning because no personal injury attorney will take the family's case. The other driver is clearly at fault, but between the cost of trial and the amount at stake, litigating the accident is just too expensive.¹ However, California finally may have provided a solution to the high cost of traditional litigation that prevents people in similar scenarios from accessing the courts.²

By passing Chapter 674, California adopts a procedure for expedited civil jury trials patterned after a South Carolina model.³ An expedited jury trial is a flexible approach to litigation that utilizes a reduced jury size with binding verdicts, relaxed rules of evidence, high/low agreements on the scope of damages,⁴ and limited post-trial motions and appeals with the objective of

1. See Robert Bowman, Jr., *The Expedited Jury Trials Act (AB 2284)*, PERSONAL INJURY BLOG, Sept. 1, 2010, <http://bowmanandassoc.com/the-expedited-jury-trials-act-ab-2284/> (on file with the *McGeorge Law Review*) (providing an analogous hypothetical situation: "Imagine a scenario where a bicyclist is hit by a car and sustains around \$20,000 in medical bills and damages. The bicyclist wants to sue the driver, and although the driver is undoubtedly at fault, it is difficult to find a personal injury attorney to take the case. The cost of litigation is too high for both sides").

2. See Memorandum from the Small Civil Cases Working Group to the Members of the Civil and Small Claims Advisory Comm. 1 (Feb. 19, 2010) [hereinafter *Judicial Council Memorandum*] (on file with the *McGeorge Law Review*) (providing the Judicial Council sub-committee's proposal for the adoption of an expedited jury trial procedure in order to promote access to California courts by limiting costs and increasing efficiency).

3. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 2284, at 1 (June 29, 2010).

4. CAL. CODE CIV. PROC. § 630.01 (enacted by Chapter 674).

"High/low agreement" means a written agreement entered into by the parties that specifies a minimum amount of damages that a plaintiff is guaranteed to receive from the defendant, and a maximum amount of damages that the defendant will be liable for, regardless of the ultimate verdict returned by the jury. Neither the existence of, nor the amounts contained in any high/low agreements, may be disclosed to the jury.

Id. § 630.01(c).

keeping the duration of a trial to just a single day.⁵ Thus, Chapter 674 provides “a new expedited jury trial process as an alternative, streamlined method for handling civil actions to promote the speedy and economical resolution of cases and conserve judicial resources.”⁶

II. LEGAL BACKGROUND

In an unusual attempt to work toward a common goal, the plaintiff and defense bars, courts, insurers, and businesses all came together to support the creation of Chapter 674.⁷ In California, “traditional trials [are] extremely time consuming and expensive for both litigants and courts.”⁸ Access to justice is becoming increasingly difficult, particularly for parties with relatively small claims.⁹ “For many of these litigants, traditional forms of alternative dispute resolution have not proven successful in resolving their cases prior to trial.”¹⁰ As a result, the Expedited Jury Trials Act looks to “establish[] a voluntary, inexpensive, accessible, and binding ‘summary jury trial’ program.”¹¹

Chapter 674 is not the first incarnation of an expedited jury trial system.¹² Modeled after South Carolina’s system,¹³ the Judicial Council of California and a wide-range of stakeholders developed Chapter 674 in response to the “ongoing challenge” regarding access to justice and the expense of litigation.¹⁴

A. *The Beginning: Summary Jury Trials*

In the early 1980s, some courts experimented with a type of alternative dispute resolution called the summary jury trial.¹⁵ The goal of a summary jury

5. Judicial Council Memorandum, *supra* note 2, at 2.

6. *Id.*

7. See Cheryl Miller, *Faster Jury Trials May Get Their Day*, RECORDER (S.F.), Mar. 17, 2010, at 1 (“Trial lawyers, the defense bar and their respective allies don’t usually agree on much. But a collegial bunch of these courtroom adversaries have found common ground in [rules] designed to speed up some civil trials in California.”); ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 2284, at 3 (Mar. 23, 2010) (quoting Miller’s article and pointing out the need for this procedure and its benefits).

8. Judicial Council Memorandum, *supra* note 2, at 1.

9. *Id.*

10. *Id.*

11. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 2284, at 3 (Mar. 23, 2010).

12. See generally Steven Croley, *Summary Jury Trials in Charleston County, South Carolina*, 41 LOY. L.A. L. REV. 1585 (2008) (discussing summary jury trials and South Carolina’s model, the Fast Track Jury Trial system).

13. See generally Steven Croley et al., *South Carolina’s Fast Track Jury Trial: An Inventive and Inexpensive Way to Resolve Cases*, SOUTH CAROLINA LAWYER, July 2009, at 15 (on file with the *McGeorge Law Review*) (discussing summary jury trials and South Carolina’s model, the Fast Track Jury Trial system).

14. Judicial Council Memorandum, *supra* note 2, at 1-2.

15. Croley, *supra* note 12, at 1586. The experimenting-courts allowed, and sometimes required, parties to give a condensed version of their case to a jury. *Id.*

trial was to allow litigants to assess their position and promote settlement after gaining some insight into the merits of their case.¹⁶

Although some variation existed between jurisdictions, summary jury trials originally shared several key features—in particular, the trials were short.¹⁷ Depending on the forum, each litigant was allowed as little as one hour to present his or her case, and more commonly, a single day for the entire trial.¹⁸ The flexibility of a summary jury trial in regard to evidentiary rules made this possible.¹⁹ Summary jury trials permitted an attorney or stand-in witness to read or summarize deposition testimony to the jury.²⁰ Like an ordinary case, a judge oversaw the summary trial, but with a more limited role because of the lenient evidentiary rules.²¹ Another key-feature of summary jury trials was fewer jurors; sometimes, as little as four jurors per case.²² Juries were asked to render separate verdicts on liability and damages in order to provide the parties with as much information as possible.²³ However, because the parties were not required to adopt the jury's findings on liability or damages, these verdicts were purely advisory.²⁴

Consequently, the procedure was unsuccessful because it was non-binding and participants often chose not to adopt the summary jury's verdict as their settlement.²⁵ Thus, despite its potential and proponents' high expectations, the innovative summary jury trial "never took wide root"²⁶ and "failed to win over the majority of trial lawyers and judges."²⁷ The process began to decline in the last fifteen years, and the prospective benefits were never fully realized.²⁸ Yet, a version of the summary jury trial is still widely and successfully used in the Charleston, Dorchester, and Berkeley counties of South Carolina.²⁹

16. *Id.*

17. *Id.* at 1588.

18. *Id.*

19. *Id.*

20. *Id.* at 1588-89. Testimony that could be summarized also included what medical records or doctors said about a particular issue. *Id.* at 1589.

21. *Id.*

22. *Id.*

23. S. Arthur Spiegel, *Judge for the S.D. of Ohio, Summary Jury Trials*, 54 U. CIN. L. REV. 829, 829 (1986).

24. Croley et al., *supra* note 13, at 15.

25. See Croley, *supra* note 12, at 1586 (explaining the procedure's success "depended on participants choosing to adopt the summary jury's verdict as their settlement. [However, participants] did not often do so . . .").

26. Croley et al., *supra* note 13, at 15.

27. Nora Lockwood Toohar, *Summary Jury Trials Save Time and Money*, LAWYERS WEEKLY USA, Apr. 25, 2005 (on file with the *McGeorge Law Review*).

28. Croley et al., *supra* note 13, at 16.

29. *Id.*

B. The Evolution: South Carolina's Model

“Working together, the local plaintiff and defense bars of Charleston County have developed a version of the summary jury trial that not only resolves cases quickly and inexpensively, but also provides a class of civil litigants with access to civil justice they would otherwise lack.”³⁰ For over five years, attorneys in Charleston, Berkeley, and Dorchester counties have successfully used the summary jury trial, also known as the fast track jury trial, in nearly half of all civil trials.³¹

Though similar to the summary jury trial of the 1980s, South Carolina’s fast track jury trials have two fundamental differences.³² First, South Carolina’s model is completely voluntary.³³ “Second, for [litigants] who use it, the fast track jury trial is binding,” and because the parties cannot appeal, the process is final.³⁴

In essence, the parties consent to all the procedures, including the appointment of the special hearing officer or judge.³⁵ Most fast track jury trials finish within one day, but fewer time constraints than the former summary jury trials allow attorneys to call live witnesses or to summarize deposition testimony.³⁶ “[T]he rules of evidence are substantially relaxed,” and because medical hearsay is not barred, neither side is forced to hire medical experts to testify.³⁷ Additionally, a key-component of the fast track jury trial process is the high/low agreement.³⁸

As a result, South Carolina created “an inventive process that other jurisdictions are emulating.”³⁹ In a struggling economy, the rest of the country quickly recognized the fast track jury trial as “an inexpensive way to deliver civil justice while using only minimal court resources.”⁴⁰ The process was praised for “enhancing access to courts, reducing costs for litigants, and increasing court efficiency.”⁴¹ Subsequently, endorsement in California from the courts, insurers, businesses, and especially both the plaintiff and defense bars, prompted

30. Croley, *supra* note 12, at 1595.

31. Croley et al., *supra* note 13, at 16.

32. *Id.*

33. *Id.*

34. *See id.* (clarifying that usually appeals are granted only in cases of fraud).

35. *Id.* (noting that the judge is chosen from an approved list of bar members, “participants tend to know one another, and a fast track jury trial judge in one case could be an attorney in the next”).

36. Croley, *supra* note 12, at 1595-96. “In practice, the ability to read or summarize witness testimony instead of calling live witnesses means that the only live witnesses tend to be the parties themselves.” *Id.* at 1596.

37. *Id.*

38. *Id.* at 13 (“The heart of the fast track jury trial process is the high-low agreement. If the plaintiff prevails, the plaintiff receives whatever amount the jury awards, unless that amount is higher than the ‘high’ or lower than the ‘low.’”).

39. *Id.* at 17.

40. *Id.*

41. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 2284, at 3 (Mar. 23, 2010).

California to adopt its own expedited jury trial process through Chapter 674, the Expedited Jury Trials Act.⁴²

C. *The Result: Bringing Summary Jury Trials to California*

Access to justice and the rising cost of litigation have been contentious issues in California, especially over the last ten years.⁴³ On April 30, 2009, a working group formed under the Judicial Council of California met for the first time to address the lack of access to the courts and the rising cost for litigants in smaller civil cases.⁴⁴ The group was primarily formed to address the high cost of trying cases under existing laws.⁴⁵

The group was to consider “innovative program models, including but not limited to summary jury trial programs, which could be implemented in California to enhance settlements and promote more effective and efficient administration of civil cases.”⁴⁶ An expert from the National Center on State Courts provided in-depth presentations on New York and South Carolina summary jury trial programs.⁴⁷ A subcommittee was then formed to draft rules that could be utilized to meet California’s goals.⁴⁸

III. CHAPTER 674

Chapter 674 establishes the Expedited Jury Trials Act.⁴⁹ It states that parties may agree to participate in a binding,⁵⁰ expedited jury trial by signing a proposed

42. *See id.* (explaining how these different stakeholders came together to support the adoption of an expedited method “[u]sing the South Carolina model as an overlay . . .”).

43. Telephone Interview with Daniel Pone, Senior Attorney, Office of Governmental Affairs, Judicial Council of Cal. (June 4, 2010) (on file with the *McGeorge Law Review*).

44. Judicial Council Memorandum, *supra* note 2, at 2-3 (“[T]he Small Civil Cases Working Group, which is comprised of members of the Small Claims and Limited Cases Subcommittee plus other members of the Civil and Small Claims Advisory Committee, together with members of the plaintiffs’ and defense bars, and with the assistance of representatives from the insurance industry, business groups, and a consumer organization.”).

45. *Id.* at 3.

46. *Id.*

47. *Id.*

The presenters described some of the key features of the model, including voluntary opt in by the parties, reduced size juries with binding verdicts, relaxed rules of evidence, and the use of high-low agreements entered into by the parties. These presentations were well-received by the working group members, who decided to explore the feasibility of adopting a similar summary jury trial program in California.

Id.

48. *Id.*

49. CAL. CODE CIV. PROC. §§ 630.01-630.12 (enacted by Chapter 674) (defining an “expedited jury trial” as a “consensual, binding jury trial before a reduced jury panel and a judicial officer”).

50. *See id.* § 630.03(b) (enacted by Chapter 674) (explaining that participation in the process is binding “unless either of the following occurs: (1) All parties stipulate to end the agreement to participate. (2) The court . . . finds that good cause exists for the action not to proceed . . .”).

consent order.⁵¹ The consent order must provide that all parties are aware of the rules governing expedited jury trials and agree to “all the specific provisions set forth in the consent order.”⁵² Additionally, the parties must agree that the litigants have three hours to present their case,⁵³ in front of a jury composed of eight jurors or less,⁵⁴ with a three peremptory-challenge limit⁵⁵ and waiver of “all rights to appeal . . . or make any post-trial motions.”⁵⁶ Also, though the rules of evidence apply, the parties may stipulate to their own relaxed evidentiary rules.⁵⁷ Finally, while the verdict of an expedited jury trial is binding, any finding is subject to the parties’ high/low agreement or other stipulation regarding awards.⁵⁸

On or before January 1, 2011, the Judicial Council was to adopt its own rules and forms to “establish uniform procedures implementing the provisions of [the Expedited Jury Trials Act].”⁵⁹ The Expedited Jury Trials Act is to remain in effect until January 1, 2016.⁶⁰

IV. ANALYSIS OF CHAPTER 674

Chapter 674 is a “potentially path-breaking development in the state’s civil justice system at a time when court resources are at the breaking point in so many jurisdictions.”⁶¹ The Expedited Jury Trials Act appears to benefit the California

51. *Id.* § 630.03(a) (enacted by Chapter 674). If a litigant is self-represented, a minor, an incompetent person, or represented by an appointed conservator, then all stipulations of the expedited jury trial are to be approved by the court. *Id.* § 630.03(d) (enacted by Chapter 674).

52. *Id.* § 630.03(e)(1) (enacted by Chapter 674).

53. *Id.* § 630.03(e)(2)(B) (enacted by Chapter 674).

54. *Id.* § 630.03(e)(2)(C) (enacted by Chapter 674). No alternate jurors will be selected, but “nothing in [the Expedited Jury Trial Act] is intended to preclude a jury from deliberating as long as needed. *Id.* §§ 630.04(a), 630.05 (enacted by Chapter 674).

55. *Id.* § 630.03(e)(2)(D) (enacted by Chapter 674); *see also id.* § 630.04(b) (enacted by Chapter 674) (“If there are more than two parties in a case and more than two sides . . . the parties may request one additional peremptory challenge each . . . granted by the court as the interest of justice may require.”).

56. *Id.* § 630.03(e)(2)(A) (enacted by Chapter 674). A litigant participating in an expedited jury trial waives the right to a directed verdict, to have the verdict set aside, or to a new trial on the basis of inadequate/excessive damages. *Id.* § 630.08 (enacted by Chapter 674). As well, parties waive the right to make any post-trial motions or to appeal the determination, except in the case of judicial misconduct, jury misconduct, corruption, fraud, or other undue means that prevented a fair trial. *Id.* § 630.09(a) (enacted by Chapter 674). In fact, the only post-trial motions allowed in an expedited jury trial are those relating to costs and attorney’s fees, to correct a clerical error, or to enforce a judgment. *Id.* § 630.09(c) (enacted by Chapter 674).

57. *Id.* § 630.06 (enacted by Chapter 674).

58. *Id.* § 630.07 (enacted by Chapter 674) (explaining that “[a] vote of six of the eight jurors is required for a verdict, unless the parties stipulate otherwise”).

59. *Id.* § 630.11 (enacted by Chapter 674) (providing that the Judicial Council is to make rules for “(a) Additional content of proposed consent orders. (b) Pretrial exchanges and submissions. (c) Pretrial conferences. (d) Time limits for jury selection. (e) Time limits for trial, including presentation of evidence and argument. (f) Presentation of evidence and testimony”).

60. *Id.* § 630.12 (enacted by Chapter 674) (clarifying that Chapter 674 will not be repealed on January 1, 2016 if a “later enacted statute, that is enacted before January 1, 2016, deletes or extends that date”).

61. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 2284, at 3 (Mar. 23, 2010).

court system in a number of ways, and it also attempts to address some initial, potential concerns with the procedure.⁶²

A. *The Good: Benefits of the Expedited Jury Trials Act*

Chapter 674 establishes the “expedited jury trial in California as a voluntary, alternative, streamlined method of handling civil actions.”⁶³ Supporters believe that Chapter 674 will “allow[] parties to get their day in court,” reduce parties’ costs, decrease the backlog of civil cases, “and more efficiently manage jury resources.”⁶⁴ Both plaintiff and defense lawyers are the legislation’s primary sponsors, represented by the Consumer Attorneys of California and the California Defense Counsel, respectively.⁶⁵ This vast support arises from Chapter 674’s potential to “cut litigation costs across the board for plaintiffs, defendants, insurance carriers, and the courts.”⁶⁶ Furthermore, litigants need only participate in the system “on a mutually voluntary basis when it suits the needs of the[ir] case.”⁶⁷ Studies show that similar procedures, such as the fast track jury trials in South Carolina, do not “favor plaintiffs or defendants any more than a traditional trial.”⁶⁸

Proponents believe that a streamlined jury trial process primarily gains its effectiveness from the following four areas:

First, both sides can stipulate to a high and low range on damages, which guarantees that plaintiffs get paid a minimum amount and that defendants can cap their liability. Second, the parties agree to empanel only eight jurors without alternates rather than twelve with alternates. Third, the voir dire process would be further streamlined by using a questionnaire agreed upon by the parties, by limiting the use of peremptory challenges, and by allowing the judge to participate. This fast track voir dire process could help the litigants and the court empanel an impartial jury in a

62. See, e.g., SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 2284, at 6-9 (June 29, 2010) (laying out the reasons that the Expedited Jury Trials Act is needed in California, its promising benefits, the legislation’s possible risks, and the built-in remedies for those risks).

63. *Id.* at 6.

64. *Id.*

65. *Id.* at 2. Chapter 674 is also supported by the Judicial Council of California, the American Insurance Association, the Association of California Insurance Companies, the California Chamber of Commerce, the Civil Justice Association of California, and the Consumers Union. *Id.* at 9 (stating further that there is no known opposition).

66. *Id.* at 7.

67. *Id.*

68. *Id.*; see also Croley, *supra* note 12, at 1618 (stating that there is nothing that “works systematically in favor of plaintiffs or against defendants,” but rather expedited jury trials “provide plaintiffs and defendants the benefit of resolution of their cases by unbiased decision-makers, applying neutral procedural and evidentiary rules of the parties’ own choosing”).

matter of hours. Fourth, the streamlined jury trials would not employ a court reporter unless a party pays that cost.⁶⁹

These features allow the Expedited Jury Trials Act to provide “tremendous savings to all participants in the civil jury trial system by promoting a fast and fair jury trial and allowing courts to clear the backlog of civil cases on their docket.”⁷⁰

B. The Issues: Concerns with the Expedited Jury Trials Act and Their Mitigation

The two main issues with the Expedited Jury Trials Act are whether the participants’ rights are protected and whether the process will actually be successful.⁷¹ “Instead of paying for several days . . . of traditional jury trial costs,” Chapter 674 provides a process where “parties will be able to litigate their cases within one day.”⁷² Thus, the judicial system and legislature must take care to ensure that participating litigants are able to effectively utilize this process, especially since the procedure may be particularly attractive to individuals representing themselves.⁷³

The requirement that both parties consent to an expedited jury trial and submit their agreement to the court for approval is the primary protection for litigants’ rights.⁷⁴ “This judicial review . . . protect[s] all parties to the agreement from unconscionable terms.”⁷⁵ Further, should the judge have grounds or both parties decide to terminate the expedited jury trial agreement, the case reverts back to a traditional trial process.⁷⁶ “This mechanism will protect the unsophisticated litigant and . . . maintain fairness to all parties.”⁷⁷

Still, the other difficult and obvious question is whether Chapter 674 will actually attain its promised potential.⁷⁸ Because Chapter 674 provides a new mechanism for litigants to be heard in court, a five-year sunset provision has been included “[t]o make certain this new system is working effectively, and there are no unintended effects.”⁷⁹ The Judicial Council will provide information

69. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 2284, at 7 (June 29, 2010).

70. *Id.*

71. *Id.* at 7-9.

72. *Id.* at 7.

73. *Id.*

74. *Id.* at 8.

75. *Id.*

76. *Id.*

77. *Id.*

78. *See id.* (detailing the bill’s sunset provision intended to act as a fail-safe against the Expedited Jury Trials Act’s failure or unforeseen consequences); *see also supra* Part II.A (explaining how the original summary jury trials in the 1980s were not widely used and their benefits were never fully realized).

79. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 2284, at 8 (June 29, 2010).

on “how [Chapter 674] is functioning and whether it is having the desired results in decreasing litigant and court costs while allowing litigants and courts to efficiently and expeditiously move actions through the trial court system.”⁸⁰ Accordingly, whether California’s system is as successful as the fast track jury trials of South Carolina or a flop like the summary jury trials of the 1980s can only be determined after Chapter 674 has been fully implemented for some time.⁸¹

V. CONCLUSION

Chapter 674 is an “innovative addition to the civil justice toolkit” and has all of the makings, support, and potential to have a positive impact on the California trial system.⁸² A collaborative effort from the beginning, Chapter 674 “reflects a broad and unusual consensus of key court users supporting a new, voluntary, and innovative process to streamline the handling and resolution of some civil actions.”⁸³ In an attempt to resolve the problems of expensive and time consuming trials, Chapter 674 manages to create greater access to justice, keep trial costs down, and increase the efficient use of judicial resources.⁸⁴ It is still to be seen whether expedited jury trials will be as successful in California as they are in South Carolina, or whether the procedure will fall by the wayside like its predecessors.⁸⁵ Nonetheless, Chapter 674 reflects a ground-breaking development in California’s civil justice system just when it needed it the most.⁸⁶

80. *Id.* at 8-9.

81. *Compare* Croley et al., *supra* note 13, at 16 (pointing out the South Carolina model’s success and other jurisdictions’ implementation of that program) *with* Croley, *supra* note 12, at 1586 (describing the failure and inadequacies of the summary jury trial of the 1980s).

82. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 2284, at 4 (Mar. 23, 2010).

83. *Id.* at 2.

84. *Id.*

85. *See* Croley, *supra* note 12, at 1586 (stating how litigants and attorneys stopped using the summary jury trial of the 1980s).

86. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 2284, at 3 (Mar. 23, 2010).