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One day, one trial

Expedited jury trials – an underutilized tool in minor injury auto cases


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By Miles B. Cooper

The lawyer sat there doing the math. Expert costs, jury fees, and a court reporter for a three- or four-day trial would eat up most of any recovery. But the settlement offer just wasn't fair for the client. If only there was a way – a way the insurance company would accept – to efficiently try the case.

There is. California enacted a process, the expedited jury trial, or EJT, in 2011. You'll find the applicable rules under Code of Civil Procedure sections 630.01-630.12 and California Rules of Court, rules 3.145-3.1552. They are a short read.

But many people have never heard of the EJT. Few people use them. They can be tremendously useful in the right matters, though. If you have a case with limited issues (admitted liability for example), a limited insurance policy, or limited exposure, an EJT could benefit your client. EJTs have been particularly successful for low speed, minor injury, rear-end collision cases.

Decide early

You need to submit your EJT conditional order request to the court at least 30 days before trial. It is a judicial council form, making the submission easy. Courts don't give much latitude for late requests. EJTs require planning to be efficient. This means working out stipulations and ground rules well before the EJT. Absent this, an EJT can be anything but expedited. As a result, expect a day-of-trial EJT request to be denied.

You cannot change your mind

The form requires signatures from the parties and is a binding contract. Once entered into, it is binding absent special circumstances or agreement of all the parties. This raises two issues. First, leave enough time to obtain party signatures before the 30-day deadline. Second, make sure your client understands there is no going back.

A one-day trial

In theory, an EJT is a one-day trial. In application, lawyers find it usually takes two days from selection to verdict. A tight schedule, either way. The court allows 15 minutes per side for jury selection, followed by three hours per side for opening, witnesses, and closing. The three hours can be used in any way a side prefers. But EJTs are not for those with poor time management skills. The limit is strictly enforced. You may find yourself without any time for closing if a witness sidetracks you.

A smaller jury

EJTs have eight jurors instead of twelve. A verdict requires six out of the eight jurors. Each side is limited to three peremptory challenges instead of the usual six.

What about motions for new trial and appeals?

The goal for an EJT is quick and efficient justice. Motions for new trial and appeals are not quick. As a result, post-trial motions and appeals are severely limited. One can appeal on the basis that there was judicial or jury misconduct, or that there was corruption or fraud in the trial. Those in the appellate world call these "why bother" appeals.

The insurer wants a high/low agreement

So far, an EJT sounds like a good system for the right case. Limited costs, efficient process, what's not to like? More important, why would an insurance company agree to one? Because insurance companies also want to keep costs down. And they want to manage risk. If you think you're going to connect on an over-the-policy, bad-faith home run, skip the EJT. Insurance companies typically require a binding high/low agreement as part of the process. Their high? The policy limits. The low is usually zero. But in some cases zero, i.e., not coming after your client for costs, is a good way to reduce risk.

State Farm and GEICO are carriers who are known for taking advantage of the risk reductions afforded by EJTs. Other carriers do so as well. But it will vary from case to case, adjuster to adjuster.

Other strategy considerations

The EJT process allows one to take cases that one might otherwise decline due to cost or limited exposure. If you know the insurance company is going to force a three- or four-day trial on a limited exposure case, you might not take it. But if you can resolve that case in less time, you might reconsider. This means a client who otherwise might have a hard time getting a lawyer (or a hard time getting full value for the case) now stands a fighting chance.

You are also much more likely to get a courtroom for a one-day trial. Judges are still excited about the novelty of EJTs. For clients who want their day in court sooner than the impacted court schedules allow, EJTs are a perfect fit.

We return to our lawyer, who called the defense counsel and suggested an expedited jury trial. A month and a few days later, a jury gave the plaintiff a fair verdict. And because of the limits on post-trial motions and appeals, the plaintiff received a check within a couple weeks of the verdict.

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