

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

x-----x

Plaintiff,

-against-

Defendant,

x-----x

Index No.

AFFIRMATION

_____, an attorney duly admitted to practice law before the State of New York ,
hereby affirms the following under penalty of perjury:

1. I am an attorney for the in the above-captioned matter. As such I am fully familiar with all issues pertinent to the instant application.
2. This case is scheduled for a trial on. This Affirmation is submitted in support of a motion seeking an Order of this court directing that this case be tried as a unified trial on both issues, liability and damages, and not as a bifurcated trial where these issues are separately tried. The ground for the motion is that the procedure by which a trial is set down, absent consent of all parties, as a bifurcated trial, separating the trial of the issues of liability and damages, violates the Constitution of the New York State.
3. Attached hereto as Exhibits are the following: **Exhibit "1"** Summons, Verified Complaint, Verified Answer, and Bill of Particulars; etc. .
4. The trial should be a unified trial as plaintiffs do not consent to a bifurcated trial, and absent consent, an order directing a bifurcated trial violates the New York State Constitution.

5. Section 202.42 "Bifurcated trials" is a regulation enacted by order of the Administrative Board of the Courts ("Administrative Board"), comprised of the Presiding Justices of the four Appellate Divisions and the Chief Judge of the Court of Appeals effective February 9, 1987. There is no case in New York which has considered whether this regulation, adopted in 1986 by an administrative board, offends the New York State constitutional guarantee for civil trial by jury or the fundamental rules of due process. Nor does there exist any commentary by the Administrative Board analyzing this issue.

6. Article I, Section 2 of the Constitution of the State of New York ("Section 2") guarantees as "inviolable forever" the right to a jury trial in all civil cases, unless waived. When the New York Constitution was last substantively amended in 1938, the courts had no power to require over objection of the parties that a case be bifurcated. So the question that arises is whether the administrative regulation Section 202.42-by which judges are "encouraged" to order such proceedings, notwithstanding objection by any the parties-offends Section 2. Common sense compels the conclusion that Section 202.42 does so offend.

7. Inherent in the guarantee of a civil trial by jury is the absolute assumption that no juror selected to hear and determine the facts of any civil controversy shall have any personal stake in the outcome of the case. In fact, revelation by any potential juror of such personal stake during *voir dire* requires that such juror be deemed by the court ineligible to hear the case. Yet in every bifurcated case, by virtue of the nature of bifurcation, every juror does have a personal stake-and in many instances-a very substantial and crucial personal stake in the outcome. For if the juror arrives at a verdict in favor the defendant on the issue of liability, that verdict ends the juror's jury service. The juror is free to go home back to his or her normal regular lives and business, free to care for their minor children at home, or deal with important and pressing business and professional

obligations at their office, etc. Yet, the same juror knows, as he must be told at the outset of the proceedings, that if the juror arrives at a verdict in favor of a plaintiff, in a personal injury case particularly, the juror's jury service does not end. But it must continue through a second phase of a the trial-in reality a new separate and complete trial procedure with openings, evidence on both sides, closings, new jury instructions and a whole new period of deliberations-where the juror is required to attend thus being unable to return to his or her normal lives. In short, it is hard to conceive of a more impactful, specific and inarguable personal stake than the ability to walk free of further obligation to serve simply by finding in favor of one party rather than another. Such inarguable personal stake offends Section 2 and thus renders unconstitutional court regulation Section 202.42. In which event, the instant motion ordering a unified trial herein should be granted.

WHEREFORE _____ respectfully moves for a unified trial, along with such other and further relief as to which the court may seem just and proper.

Dated:

Attorneys name

...at the onset of the ...
...proceedings, that if the jury ...
...particularly, the jury's ...
...a the trial in reality a new ...
...sides, changing new jury ...
...required to attend thus being ...
...conceive of a more impartial ...
...of further obligation to ...
...injudicial personal sake ...
...Section 205.42, in which ...
...WHEREFORE, respectfully ...

and further action as to which the court may seem just and proper.

Attorney General

Date: