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Michigan's Binding Summary Jury Trial: Reward or Punishment - Farleigh v. Amalgamated Transit Union, Local 1251

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Michigan's Binding Summary Jury Trial: Reward or Punishment?

Farleigh v. Amalgamated Transit Union, Local 1251[1]

I. INTRODUCTION

Ultimately, the purpose of law, lawyers, courts, and judges is to administer justice. As our society becomes increasingly litigious, judges and scholars have begun to realize that justice is not always best served in the traditional courtroom setting.[2] In an effort to bring the legal practice back in line with the quest for justice, courts have set intermediate goals to promote voluntary settlement by parties.[3] The summary jury trial has proved effective as a means to accomplishing such intermediate goals.[4]

In 1988, the Michigan Supreme Court added the summary jury trial to its arsenal of settlement devices available to trial judges.[5] Unfortunately, the summary jury trial employed in *Farleigh v. Amalgamated Transit Union, Local 1251* failed to meet its goal, and no settlement was reached by the parties.[6] Nevertheless, the Michigan Court of Appeals chose to enforce the summary jury verdict,[7] thereby drawing into question not only the ability of the summary jury trial to meet the preliminary goal of promoting settlement, but also the larger goal of the accomplishment of justice.

II. FACTS AND HOLDING

Rachel Farleigh [hereinafter Farleigh] filed suit against Amalgamated Transit Union, Local 1251 [hereinafter Union], alleging that she was denied membership in the union in retaliation for an earlier sexual harassment claim that she filed against a union leader.[8] The parties went through a mediation process in which an evaluation of the denial of membership was made by a neutral third party.[9]

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1. 502 N.W.2d 371 (Mich. Ct. App. 1993).
2. Senator Charles E. Grassley & Charles Pou, Jr., *Congress, The Executive Branch and the Dispute Resolution Process*, 1992 J. DISP. RESOL. 1, 3.
3. *Id.* at 7.
4. Hugh W. Brenneman, Jr. & Edward Wesoloski, *Blueprint for a Summary Jury Trial*, 65 MICH. BAR J. 888, 888 (1986).
5. Michigan Administrative Order # 1988-2, MICH. REPORTS CT. RULES, at A1-33 (1993).
6. *Farleigh*, 502 N.W.2d at 372.
7. *Id.* at 374.
8. *Id.* at 372.
9. *Id.*

Farleigh rejected the $10,000 mediation award in her favor.[10] Subsequently, the parties participated in a summary jury trial, which resulted in an advisory verdict of no cause of action.[11] Based on this finding, the Union moved pursuant to Michigan Court Rule 2.109(A)[12] and requested that the court require Farleigh to post a bond in the amount of $45,000.[13] The Union asserted that the bond would cover their costs if the plaintiff failed to recover at least ten percent more than the mediation award.[14] The trial judge granted the motion, but only required the plaintiff to post a $15,000 bond, an amount reflecting the Union's attorney's fees incurred after the mediation.[15] Subsequently, the court dismissed Farleigh's cause of action based on her failure to post the court ordered bond.[16]

Farleigh appealed, claiming that the trial judge abused his discretion by ordering the bond and dismissing the case.[17] The appellate court affirmed the trial court's ruling, holding that although the discretion of the trial judge generally extends only to matters of law, the discretionary bond and subsequent dismissal were appropriate since the summary jury trial had tested the merits of the case.[18]

III. LEGAL BACKGROUND

A. Michigan's Bond Law

The Michigan Rules of Civil Procedure allow for the filing of a bond "[o]n Motion of a party against whom a claim has been asserted in a civil action, if it appears reasonable and proper. . . ."[19] This rule was adopted in order to minimize the burdens imposed on litigants caused by frivolous claims.[20] The court is empowered to dismiss a lawsuit for failure to pay the security bond.[21] Michigan courts have historically demanded bonds of this nature where: (1) the claim is based on a tenuous legal theory; or (2) the claim is based on groundless

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10. *Id.*
11. *Id.*
12. MICH. CT. R. 2.109(A) provides in pertinent part:
> On Motion of a party against whom a claim has been asserted in a civil action, if it appears reasonable and proper, the court may order the opposing party to file with the court clerk a bond with surety as required by the court in an amount sufficient to cover all costs and other recoverable expenses that may be awarded by the trial court. . . . The court shall determine the amount in its discretion.

Id.
13. *Farleigh*, 502 N.W.2d at 372.
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.* at 373.
19. MICH. CT. R. 2.109(A). *See supra* note 12.
20. Louya v. William Beaumont Hosp., 475 N.W.2d 434, 437 n.4 (Mich. Ct. App. 1991).
21. Hall v. Harmony Hills Recreation, Inc., 463 N.W.2d 254, 258 (Mich. Ct. App. 1990).

allegations.[22] However, the same standards are not applied when a motion to post a bond is based on challenging a party's factual assertions, rather than their legal theories.[23]

A party seeking a bond based on a tenuous theory of liability need only provide the court with a substantial reason showing the necessity of the bond.[24] On the other hand, a motion requesting a bond based on groundless allegations must meet a higher standard, although Michigan courts have not explicitly delineated this standard.[25] Michigan courts have traditionally invoked a strong presumption against requiring the posting of a bond based on the merits of a claim, rather than on the legal theories involved.[26] Courts have also held that this standard is not so stringent as to rise to the level required by a motion for judgment as a matter of law.[27]

In *Wells v. Fruehauf Corp.*,[28] the defendant moved for the posting of a bond based "primarily on the dubious merit of [the] plaintiff's claims."[29] The plaintiff's claim was one of simple negligence resulting from an auto accident, but when pressed to support her case, the plaintiff was unable to produce any evidence.[30] As a result, the trial court ordered that a bond be posted.[31] Subsequently, the appeals court upheld the decision based on an "abuse of discretion" standard of review.[32]

In the past, Michigan courts have addressed acceptable sources for judging the merits of a claim in relation to a motion to post a bond.[33] In *Louya v. William Beaumont Hospital*,[34] the Michigan Court of Appeals, in dicta, found that the trial judge would have erred in requiring the plaintiff to post a bond.[35] In *Louya*, the original counsel for the plaintiff had grown disenchanted with his client's obstetrical malpractice claim.[36] When questioned by the court regarding his reasons for withdrawal, the plaintiff's counsel stated that he thought the plaintiff's cause could not prevail at trial.[37] The appellate court determined that the judge would have exceeded his discretion by relying on the opinion of an

22. *Id.* at 256; Zapalski v. Benton, 444 N.W.2d 171, 174 (Mich. Ct. App. 1989).
23. *Hall*, 463 N.W.2d at 257.
24. Wells v. Fruehauf Corp., 428 N.W.2d 1, 5 (Mich. Ct. App. 1988).
25. *Hall*, 463 N.W.2d at 257; *Wells*, 428 N.W.2d at 6.
26. *Hall*, 463 N.W.2d at 257; *Wells*, 428 N.W.2d at 6.
27. *Hall*, 463 N.W.2d at 256; *Wells*, 428 N.W.2d at 5.
28. 428 N.W.2d 1.
29. *Id.* at 3.
30. *Id.* at 2.
31. *Id.* at 3-4.
32. *Id.* at 6.
33. *Louya*, 475 N.W.2d at 439.
34. 475 N.W.2d 434.
35. *Id.* at 439.
36. *Id.* at 435.
37. *Id.* at 438.

attorney, who was seeking to withdraw from the case, when weighing the merits of the claim.[38]

In *Hall v. Harmony Hills Recreation, Inc.*,[39] the court noted that it was improper to evaluate a motion to post bond based solely on impressions gained during proceedings that were eventually declared a mistrial.[40] In *Hall*, following a mistrial based on jury bias, a "slip-and-fall" plaintiff was ordered to post a bond prior to a second trial.[41] The appellate court determined that the trial judge had not only abused his discretion in considering the previous mistrial, but that the court should have "limited [its inquiry] to the plaintiff's pleading."[42]

B. The Summary Jury Trial

The summary jury trial[43] was originally created by Federal District Judge Thomas D. Lambros in 1980 as a settlement technique to relieve pressure on the court's docket.[44] Since that time, the procedure has gained popularity in many federal district courts because of its promise of decreased court costs and decreased time invested in litigation.[45] As more courts have incorporated the procedure, scholars have begun to consider the value of binding[46] summary jury trials.[47]

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38. *Id.* at 439-40.

39. 463 N.W.2d 254.

40. *Id.* at 256-58.

41. *Id.* at 255.

42. *Id.* at 257.

43. For a detailed discussion of the summary jury trial procedure, *see* Thomas D. Lambros, *The Summary Jury Trial and Other Alternative Methods of Dispute Resolution*, 103 F.R.D. 461, 470-71 (1984).

44. A. Leo Levin & Deirdre Golash, *Alternative Dispute Resolution in Federal District Courts*, 37 U. FLA. L. REV. 29 (1985).

45. Lambros, *supra* note 43, at 475. This sentiment is echoed by numerous other sources: "[Courts] can spend more time on the resolution of civil controversies rather than on the numbing oversight of a process fraught with delay, discord, and even boredom." Barry C. Schneider, *Summary Jury Trials with Ceilings and Floors*, LITIG., Summer 1991, at 3.

46. This Note distinguishes between *binding* summary jury trials, where the parties voluntarily agree to be bound by the jury's decision, and *mandatory* summary jury trials, where judges have compelled participation in the procedure.

47. Thomas B. Metzloff, *Reconfiguring the Summary Jury Trial*, 41 DUKE L.J. 806 *passim* (1992); Schneider, *supra* note 45, at 3. Much of the initial debate on summary jury trials has focused on the courts' authority to compel jurors to serve on summary juries, (*See, e.g.*, United States v. Exum, 744 F. Supp. 803 (N.D. Ohio 1990); Charles W. Hatfield, Note, *The Summary Jury Trial: Who Will Speak for the Jurors?* 1991 J. DISP. RESOL. 151), and the courts' authority to require parties to participate. (*See* Lambros, *supra* note 43, at 469; *but see* Charles F. Webber, *Mandatory Summary Jury Trial: Playing by the Rules?*, 56 U. CHI. L. REV. 1495 (1989)). Although these issues remain unresolved, [*See* Strandell v. Jackson County, 838 F.2d 884 (7th Cir. 1987) (holding that the court *could not* require the summary jury trial); *c.f.* Arabian Am. Oil v. Scarfone, 119 F.R.D. 448 (M.D. Fla. 1988); Federal Reserve Bank of Minneapolis v. Carey-Canada, Inc., 123 F.R.D. 603 (D. Minn. 1988); McKay v. Ashland Oil, Inc., 120 F.R.D. 43 (E.D. Ky. 1988) (holding that the courts *can* require participation in the summary jury trial)], the debate

One key aspect of Judge Lambros' original plan for the summary jury trial was that "[t]he proceeding is not binding and in no way affects the parties' rights to a full trial on the merits."[48] Judge Lambros indicated that "counsel may stipulate that a consensus verdict will be deemed a final determination on the merits and that judgment may be entered by the Court. This, however, is optional."[49] Many courts have determined that altering this aspect of the plan, without the consent of the parties, would adversely affect the procedure.[50]

In *Russell v. PPG Industries, Inc.*,[51] the plaintiff's counsel on appeal sought to bolster his position before the United States Court of Appeals for the Seventh Circuit by citing "information from a summary jury trial in which the parties had participated."[52] The court of appeals took for granted that the proceeding was nonbinding, and that it could not be commented upon because "[t]he potential for risk in this 'no-risk' procedure would increase significantly if . . . information gleaned from the process [could be] used in later proceedings."[53]

The "no-risk" nature of a summary jury trial was also reviewed in *McKay v. Ashland Oil, Inc.*[54] In holding that a trial judge could compel a summary jury trial,[55] the *McKay* court noted that the summary jury trial resembled a nonbinding arbitration where "[n]o presumption of correctness attaches to the verdict of the summary jury, nor is [there] any sanction imposed for failure to accept its advisory verdict."[56] The *McKay* court concluded by questioning whether a mandatory, binding summary jury trial would be authorized under the Federal Rules of Civil Procedure.[57]

The Michigan Supreme Court, in authorizing the use of summary jury trials in Administrative Order Number 1988-2,[58] reiterated their nonbinding effect:

> Unless the parties stipulate otherwise, the verdict is advisory only. The parties may stipulate that a consensus verdict will be deemed a final determination on the merits and that judgment may be entered on the verdict by the Court, or may stipulate to any other use of the verdict that will aid in the resolution of the case.[59]

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over summary jury trials has begun to focus upon the nonbinding nature of the proceeding. *See, e.g.*, Metzloff, *supra*.

48. Lambros, *supra* note 43, at 469.
49. *Id.* at 471.
50. *See, e.g.*, Russell v. PPG Industries, Inc., 953 F.2d 326, 334 (7th Cir. 1992).
51. 953 F.2d 326.
52. *Id.* at 333.
53. *Id.* at 334.
54. 120 F.R.D. 43 (E.D. Ky. 1988).
55. *Id.* at 44.
56. *Id.* at 46.
57. *Id.* (citing Colgrove v. Battin, 413 U.S. 149 (1973)).
58. *See supra* note 5.
59. Mich. Admin. Order # 1988-2 (4). *See supra* note 5.

The basic procedure of the Michigan summary jury trial conforms to the procedure outlined by Judge Lambros,[60] including the suggestion that the parties consider a prior stipulation to a binding summary jury trial.[61]

The summary jury trial is not without its critics, including practitioners.[62] In response to lawyers' complaints that the process is too expensive and that the verdicts are not truly predictive,[63] a growing number of commentators have opined that parties should be encouraged to make the summary jury trial binding[64] by the prior consent of both participants.[65] Judges, including Judge Lambros, have also promoted this notion as a practical matter by trying to steer parties to this new form of dispute resolution.[66]

The binding summary jury trial affords many advantages not realized by the parties under the classic nonbinding method.[67] Parties are not forced to participate in the potentially expensive and unproductive post-trial negotiation required under the original approach.[68] Additionally, the risk of a subsequent full trial is eliminated.[69] Finally, stipulation to a binding proceeding offers even more advantages when combined with other procedural alterations.[70]

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60. Lambros, *supra* note 43, at 471.

61. Mich. Admin. Order # 1988-2. *See supra* note 5. The official interpretation of the order refers to an article discussing traditional, *nonbinding* summary jury trials. *Id. See* Brenneman, *supra* note 4, at 892.

62. *See, e.g.*, Richard A. Posner, *The Summary Jury Trial and Other Methods of Alternative Dispute Resolution: Some Cautionary Observations*, 53 U. CHI. L. REV. 366 (1986); Shirley A. Wiegand, *A New Light Bulb or the Work of the Devil? A Current Assessment of Summary Jury Trials*, 69 OR. L. REV. 87 (1990).

63. Schneider, *supra* note 45, at 3.

64. Negin v. City of Mentor, Ohio, 601 F. Supp. 1502, 1505 (N.D. Ohio 1985); Schneider, *supra* note 45, at 3. "Although at first blush binding [summary jury trials] may seem inconsistent with its purpose and structure, a binding approach overcomes most of the current criticisms of the [summary jury trial]." Metzloff, *supra* note 47, at 807.

65. Metzloff, *supra* note 47, at 859. "[B]ecause parties must voluntarily agree to a binding [summary jury trial], the continuing debate over judicial authority to mandate its use is not an issue." *Id.* at 859 n.192.

66. *See* Associated Pa. Constr. v. Jannetta, 738 F. Supp. 891 (M.D. Pa. 1990); *Negin*, 601 F. Supp. at 1502 (Lambros, J.).

67. *See generally* Metzloff, *supra* note 47.

68. Metzloff, *supra* note 47, at 857.

69. *Id.*

70. The most commonly discussed of these is the pre-negotiated minimum and maximum acceptable summary jury verdict. This serves to minimize each parties' risk by adding a degree of predictability to the proceedings. Schneider, *supra* note 45, at 3-4.

IV. THE INSTANT DECISION

In *Farleigh v. Amalgamated Transit Union, Local 1251*,[71] the Michigan Court of Appeals held that a trial court must have a substantial reason to require a party to post a bond for costs.[72] Substantial reasons may include the assertion of a tenuous legal theory or the belief that the parties' allegations are groundless and unwarranted.[73] The *Farleigh* court determined that the substantial reason for requiring the bond in the instant case was the lack of factual support for the plaintiff's claim.[74] The basis for this finding was the result of a previously held summary jury trial, and more specifically, the speed in which that jury determined that the claim lacked factual support.[75]

The *Farleigh* court first determined that the plaintiff's ability to post a bond should be incorporated into the trial court's decision regarding the bond by balancing the relative ability to pay against the reason for the bond, and then noted that when a trial court considers a plaintiff's financial status, the result is often a reduction in the amount of the bond.[76] In ruling on a defendant's motion to post a bond for failure to state a meritorious claim, the court must consider an indigent plaintiff's interest in free access to the courts to be less if her pleadings state a tenuous legal theory.[77]

The *Farleigh* court reaffirmed that the decision to require the bond rested on the suit's lack of merit as evidenced by the summary jury verdict.[78] The court remarked that this case was unusual because of the opportunity provided by the summary jury trial to test the merits of the claim.[79] The *Farleigh* court noted that this unusual opportunity served to distinguish the case from *Hall*, where the trial court was restricted to consideration of the pleadings because the only other ground for requiring a bond was a mistrial.[80]

The *Farleigh* court concluded by praising the summary jury trial for its ability to both educate the trial judge on the merits of the claim and weed out frivolous suits.[81] Based on these findings, the Michigan Court of Appeals found that the trial court did not abuse its discretion in requiring the plaintiff to post a bond based on the findings of a summary jury trial.[82]

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71. 502 N.W.2d 371.

72. Id. at 372.

73. *Id.* at 372-73 (citing *Wells*, 428 N.W.2d at 1).

74. *Id.* at 373.

75. *Id.* Summary juries are given abbreviated instructions and encouraged to complete their deliberation quickly. Lambros, *supra* note 43, at 471.

76. *Farleigh*, 502 N.W.2d at 373.

77. *Id.* (quoting *Hall*, 463 N.W.2d at 272).

78. *Id.*

79. *Id.*

80. *Id.* at 373 n.4.

81. *Id.* at 374.

82. *Id.* A two sentence concurrence summarizes the position of the court. *Id.* (Murphy, J., concurring).

V. COMMENT

A. Michigan's Bond Law

By requiring Farleigh to post a bond, the trial court effectively eliminated a claim that it believed to be without merit. In affirming this decision, the appellate court reaffirmed that this was consistent with the goals of Michigan's bond requirement.[83] The decision serves to clarify the hazy requirements for posting a bond based on the merits of a case, rather than on legal theory.[84] Prior cases based on allegedly meritless claims had established a quasi-presumption against granting motions to post bond in such cases.[85] As a result, few litigants have rebutted this presumption.[86] *Farleigh* eases this presumption by showing one way in which it can be rebutted. When faced with a motion to post bond, the *Farleigh* decision now allows judges to consider another source in determining whether a claim lacks merit. Where past law had limited trial judges to considerations as narrow as the pleadings,[87] *Farleigh* expands the judge's scope of inquiry. Now, a Michigan trial judge can consider the proceedings of a summary jury trial, a nonbinding settlement technique, to make a decision that is often tantamount to dismissal.

B. Nonbinding Summary Jury Trials

Since the official interpretation of the Michigan rule concerning summary jury trials depicts a nonbinding, voluntary approach to summary jury trials,[88] the *Farleigh* court's reliance on such a proceeding to hinder the plaintiff's progress through the trial court system is anomalous. A summary jury trial is no longer a procedure without impact on subsequent legal proceedings. Unlike many federal district court rules,[89] the Michigan Supreme Court's rule allows only for *voluntary* summary jury trials.[90] After *Farleigh*, it is likely that few Michigan attorneys will be willing to stipulate to this "nonbinding" procedure, since it could subsequently result in either being required to post a bond or in dismissal.[91] If,

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83. *Zapalski*, 444 N.W.2d at 174.

84. *See supra* notes 19-42 and accompanying text.

85. *Hall*, 463 N.W.2d at 257; *Wells*, 428 N.W.2d at 6.

86. *See, e.g., Wells*, 428 N.W.2d 1.

87. *Hall*, 463 N.W.2d at 257.

88. *See supra* note 61.

89. *See, e.g.*, Local Rule 23 of the Joint Local Rules for the United States District Courts of the Eastern and Western Districts of Kentucky (cited in *McKay*, 120 F.R.D. at 44).

90. Mich. Admin. Order # 1988-2 (4). *See supra* note 5.

91. *Russell*, 953 F.2d at 334. "Were we to allow parties to offer information from the summary jury trial . . . its utility as a settlement device would be significantly undermined and parties' willingness to participate in the process substantially decreased." *Id.*

as a result, the procedure goes unused, it seems unlikely that its goal of decreasing the burdens on the judicial system would be achieved.

Assuming that the procedure is of some use, enforcement of the verdict, through requiring the losing party to post a bond, could undermine the traditional nonbinding effect of summary jury trials.[92] If claimants submit to the procedure, as modified by the *Farleigh* court, parties may ask for lengthier presentation times to guard against a later bond requirement. Furthermore, the parties are not actually bound to the summary jury verdict.[93] Parties that are able to post bond, or otherwise avoid the requirement,[94] could still demand a full trial, resulting in even more litigation, time, and expense than a standard jury trial without a previous summary jury trial.

Perhaps the most unusual aspect of the *Farleigh* court's decision is its reliance on the speed with which the summary jury returned its verdict.[95] A universally recognized advantage of the summary jury trial has been its ability to reduce pressure on overburdened court dockets by decreasing the amount of time devoted to the procedure.[96] Summary jury trials are often carefully scheduled for a morning session in order to encourage the jury to complete their deliberations and render a verdict in one day.[97] With this precept in mind, the *Farleigh* court's subsequent reliance upon the length of the jury's deliberations seems misplaced.

C. Binding Summary Jury Trials

Rather than adhering to the traditional, nonbinding approach to summary jury trials, the *Farleigh* court is attempting to steer Michigan courts toward the newer, binding approach to summary jury trials.[98] A binding approach to summary jury trials has been espoused by some commentators as increasing the effectiveness of the summary jury trial, as well as answering many of the criticisms of the classic, nonbinding approach.[99] In a binding summary jury trial, litigants give up the guarantees of full trial procedure[100] in exchange for the reward of a quick settlement at low costs.[101] Under the traditional, nonbinding summary jury trial, courts attempt to promote voluntary settlement through the threat of a full-blown trial.[102] Instead of using either of these positive or negative re-enforcement approaches, the *Farleigh* court instead opted to use aspects of both a binding and

92. Lambros, *supra* note 43, at 463.
93. Mich. Admin. Order # 1988-2 (4). *See supra* note 5.
94. For example, by a showing of indigency. *See* MICH. CT. R. 2.109(C).
95. *Farleigh*, 502 N.W.2d at 373.
96. Lambros, *supra* note 43, at 463; Brenneman, *supra* note 4, at 888.
97. Brenneman, *supra* note 4, at 888.
98. *See supra* notes 62-70 and accompanying text.
99. Metzloff, *supra* note 47, at 807.
100. *Id.* at 860.
101. *Id.* at 857.
102. *Id.* at 858

a nonbinding procedure. In so doing, the court punished Farleigh by denying her a trial, rather than subjecting her to the unpleasant aspects associated with a trial.

Another advantage to binding summary jury trials is that they assure that courts will not be involved in further litigation of the matter.[103] "[O]ne of the primary procedural rights that the parties forego in a binding [summary jury trial] is the right to pursue post-trial remedies, such as the right to file an appeal."[104] As already discussed, the parties in *Farleigh* did not give up this right.[105] A trial was avoided by the motion to post bond, rather than as a direct result of the summary jury trial. Indeed, the question of judicial economy in this case must be considered in light of the appeal as well.

Regardless of whether the *Farleigh* court endorsed the binding or nonbinding approach to summary jury trials, it is inconsistent with the parties' stipulation that the summary jury trial verdict would have no binding effect.[106] Prior to *Farleigh*, "it has never been suggested that the [results from a summary jury trial] should be admissible at a subsequent, conventional trial, or that the court system should impose a penalty on litigants who insist upon a traditional trial."[107] Voluntary submission to the summary jury verdict has always been the primary emphasis of binding summary jury trials.[108] In *Farleigh*, the court chose not only to allow the consideration of the summary jury verdict in subsequent proceedings, but also considered the brevity of the jury's deliberation in a procedure designed to emphasize speed.[109]

VI. CONCLUSION

The nonbinding summary jury trial has to some degree proven to be an effective tool for the promotion of settlements in federal district courts. As more states experiment with the procedure, commentators have begun to question whether the larger goal of speedy and just resolution of disputes is served by promotion of this form of voluntary settlement. Binding summary jury trials have been offered as one method of meeting this goal. However, to this point, only the *Farleigh* decision has given effect to the verdict of a summary jury without the prior consent of the litigants.

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103. *Id.* at 860
104. *Id.*
105. *Farleigh*, 502 N.W.2d at 371.
106. *Id.* at 372.
107. Metzloff, *supra* note 47, at 810 n.11.
108. *Russell*, 953 F.2d at 333.
109. *Farleigh*, 502 N.W.2d at 373.