

Default Judgment Trial Notices (MAG 11-16)

Purpose of form:

This notice is sent out with all cases which are placed on the default judgment calendar. This notice contains the reasons and case law authority for setting cases on this type calendar.

If the damages sought are fixed, or certain, the court can grant a default judgment without any party being required to come to court for a trial. These fixed or certain damages are called "liquidated damages." Examples of liquidated damages include, a sum due on a promissory note, a sum owed on an open account or a lease. However, even cases which are typically for "liquidated damages" may still be put on a trial calendar if the party did not attach ALL the necessary documents which would enable the judge to look at these documents and determine the judgment without any further testimony.

However, some damages by their very nature are uncertain and always require testimony before a judgment may be entered. Examples of these types of damages include pain and suffering from an automobile accident, property damages as the result of an accident, the fair market value of the cost of a repair.

An analysis of liquidated and unliquidated damages for which a hearing may be required is set forth in the case of T.A.I. Computer vs. CLN Enterprises, Inc., 237 Ga. App. 646, 516 S.E.2d 340.

Other:

If the party seeking damages fails to attend the trial of this case on the issue of damages, the case would be dismissed.

TRIAL CALENDAR – DEFAULT JUDGMENT CASES

The case set forth in the notice of trial, herein enclosed, was scheduled for a default judgment trial because the defendant(s) failed to file a timely answer within the time required by law and the defendant(s) failed to properly open default. This case is ready for a default judgment hearing on the issue of monetary damages, or how much is owed the plaintiff(s).

The Court is required to conduct trials in all cases where: (1) the nature of the damages claimed require a trial, such as an automobile collision, defective construction claims and similar cases; or, (2) the amount of money sought was not properly set forth in the legal manner required to prove “liquidated damages.” See “T.A.I. COMPUTER, INC. vs. CLN ENTERPRISES, INC.”, 237 Ga. App. 646, 516 S.E.2d 340. The plaintiff shall be required to introduce evidence and establish the amount of (monetary) damages with the right of the defendant to introduce evidence as to money owed. The fact of the default alone does not convert the damages into a liquidated claim. OCGA § 9-11-55 (a): Damages are liquidated when they are an amount certain and fixed, either by the act and agreement of the parties, or by operation of law; a sum which cannot be changed by the proof; it is so much or nothing; and that the term does not necessarily refer to a writing.

The failure of the Plaintiff(s) to attach, at the time of filing, ALL the necessary documents to prove plaintiff(s) case, such as contracts, statements, invoices, for the exact amount claimed, requires the court to conduct a default judgment trial. A statement by the plaintiff(s) that a certain amount is owed, by itself, is insufficient to avoid a default judgment trial. Plaintiff(s) seeking to avoid default judgment trials need only to attach ALL the legally required documents to prove their case and serve these documents upon the defendant(s).