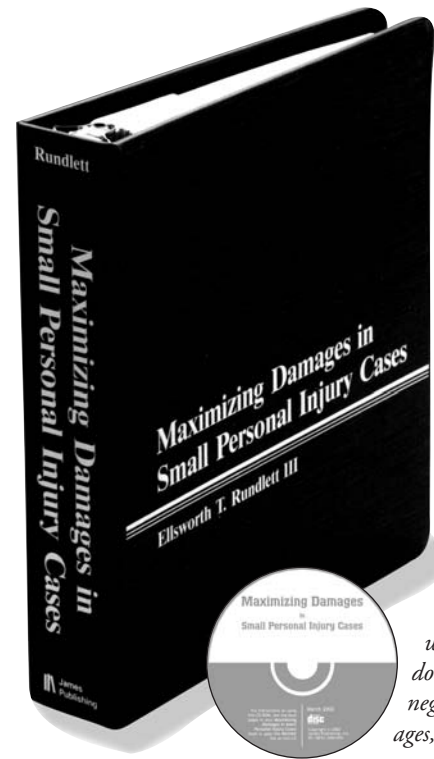


TOP DOLLAR FOR SMALL CASES

How to maximize efficiency and settlements in small cases. Only \$99

Making a decent return on small cases is getting harder. The cost to process them keeps rising, while insurers and jurors are reducing settlements and awards.

Here is help. *Maximizing Damages in Small Personal Injury Cases* delivers guidelines, techniques, checklists, and forms to help you screen, document, negotiate, and settle or litigate your smaller cases:



These time-saving, damage-enhancing techniques, checklists, and forms will help you with screening, documentation, negotiation, damages, and litigation

SCREENING

- ▼ Auto vs. pedestrian claims are not clear liability cases. Review these 20 considerations before accepting them. §131.1
- ▼ Factors to consider before accepting 7 other types of auto cases: rear-end, intersection, parking lot, failure to yield, passenger, road defect, and center line. §131.1
- ▼ Types and sources of small cases to be wary of. §130
- ▼ 5 clues to difficult clients who should be avoided. §280.2
- ▼ 18 steps for avoiding client fee grievances and bar complaints. §280.3
- ▼ Red flags in medical negligence cases. §135
- ▼ 9 common mistakes plaintiff's attorneys make in the first telephone conference. §203
- ▼ Checklist of instructions to give to the small-case client (a) before the first appointment, and (b) at the first meeting. §221

DOCUMENTATION

- ▼ 8 techniques for tackling the challenging task of obtaining all medical bills, with client instruction letter. §342.3
- ▼ 10 remedies for excessive medical information charges, with model letters. §341.3

- ▼ How to substantiate loss of income in two difficult areas: self-employment and future income. §§354, 422
- ▼ How to inexpensively obtain persuasive lay witness testimony. §312.3
- ▼ 24 techniques for documenting and proving damages in soft tissue cases. §346.8
- ▼ How to eliminate discoverability of your client's diary. §260
- ▼ 7 ways to demonstrate the evidence and duration of real pain. §423

SETTLEMENT

- ▼ A handy timetable and case management checklist to encourage expedient processing. §370
- ▼ 7 ethical problems in small cases and how to handle them. §373
- ▼ 13 major case preparation tasks to delegate to your paralegal without compromising your case. §380
- ▼ Dealing with insurer and juror bias against soft tissue injuries. §346.7
- ▼ How to deal with a client who will not accept a reasonable settlement offer. §432.1
- ▼ 10 reasons why adjusters offer low settlements to elderly plaintiffs, and a model response to each. §424.1
- ▼ How to deal with client statements obtained by the insurance carrier. §458.3
- ▼ How to handle unreasonable insurance adjusters and carriers. §490.2

DAMAGES

- ▼ The 12 most important damage items in a small case. §420
- ▼ Don't overlook the spouse's relinquishment of his or her claim for loss of consortium. §425
- ▼ Insurance companies are generally unimpressed by pain in small cases. Here are 7 ways to hurdle that bias. §423
- ▼ A special valuation approach for small cases. §431
- ▼ How to minimize the impact of independent medical examinations. §458.4

LITIGATION

- ▼ Major case weaknesses to evaluate before filing suit. §512
- ▼ Defense tactics to consider before filing. §513
- ▼ Techniques to limit discovery abuse by defense attorneys. §521
- ▼ 6 ways to conduct discovery that are both time and cost effective for small cases. §522
- ▼ The 30 most common objections in small cases. §664.1
- ▼ How to maximize damages in small cases during closing argument. §681

SAMPLE PAGES AND TABLES OF FORMS AND CONTENTS INSIDE

Over 100 CHECKLISTS AND FORMS

Most published forms are overkill for small cases. Short and simple forms save time and dollars, both of which are limited in smaller matters.

Author Derry Rundlett has custom-drafted dozens of pattern-specific forms specifically tailored for small cases: liability checklists, interrogatories, deposition checklists, adjuster letters, motions, trial preparation checklists, and even public relations letters. For example:

Screening

- ◆ 11 liability checklists for common small non-auto cases: falls, falling objects, animal attacks, dram shop, inadequate security, intentional torts, medical negligence, pharmacy negligence, and school negligence. §131

- ◆ Minimize the time-consuming task of dealing with clients' questions and concerns by distributing the author's original 20-page information booklet for small-case clients. §251

Investigation

- ◆ Checklist of 13 items to tell the new small-case client before he or she comes to the first meeting. §202
- ◆ A handy three-page list of abbreviations and symbols commonly found in medical records. §344.1

Simple, direct

- ◆ letters to doctors that request only the essential information. §340
- ◆ A letter to the employer requesting lost wage data that avoids many of the common information shortfalls. §352

Negotiation

- ◆ Small-case negotiation checklist. §410
- ◆ Model paragraphs for demand letters. §421
- ◆ Pattern written responses to unsatisfactory settlement offers for specific types of small cases. §463

Discovery

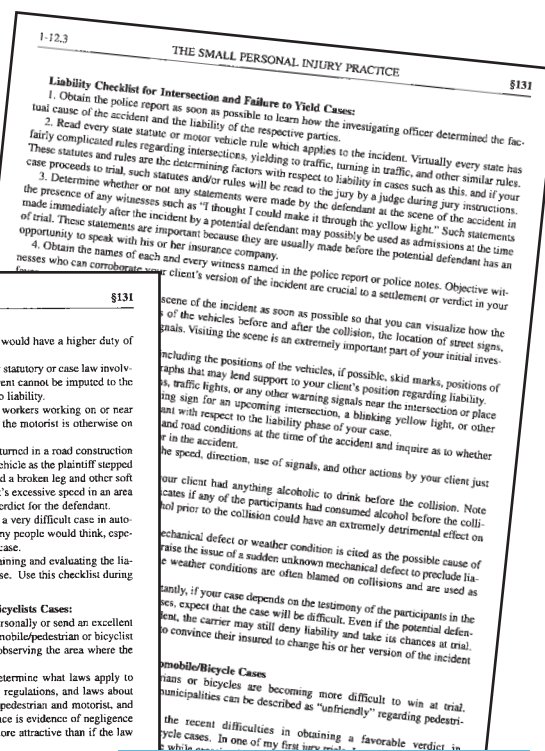
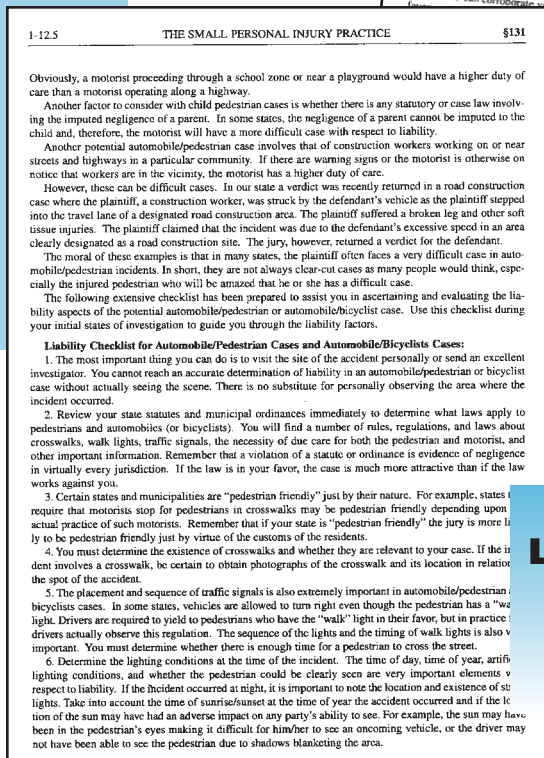
- ◆ Pattern responses for abusive deposition tactics. §521

- ◆ Litigation cost-containment checklist. §511.3

- ◆ Motion for protective order from extensive interrogatories. §521.1

- ◆ Pattern language for handling abusive deposition tactics. §521.4
- ◆ Checklist of maximum discovery techniques for minimal cost and time. §522

- ◆ Model interrogatories, deposition checklists, and requests for admissions for the key types of small cases. §§523-26

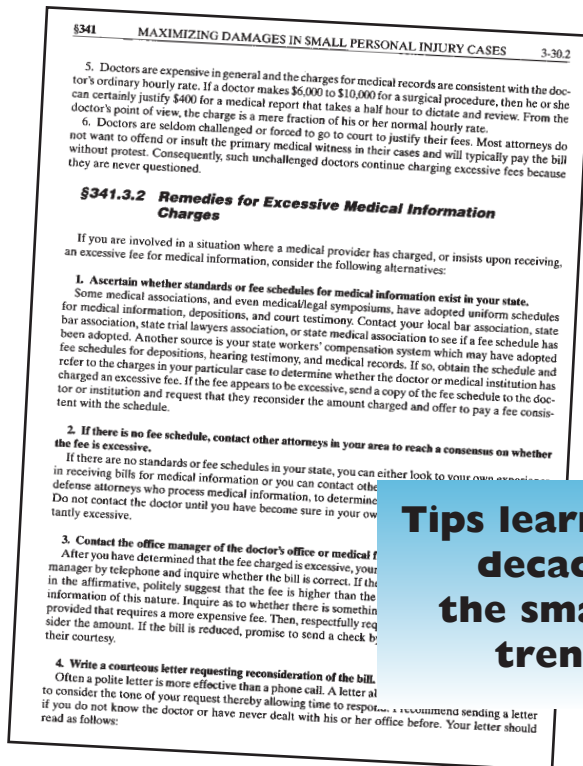
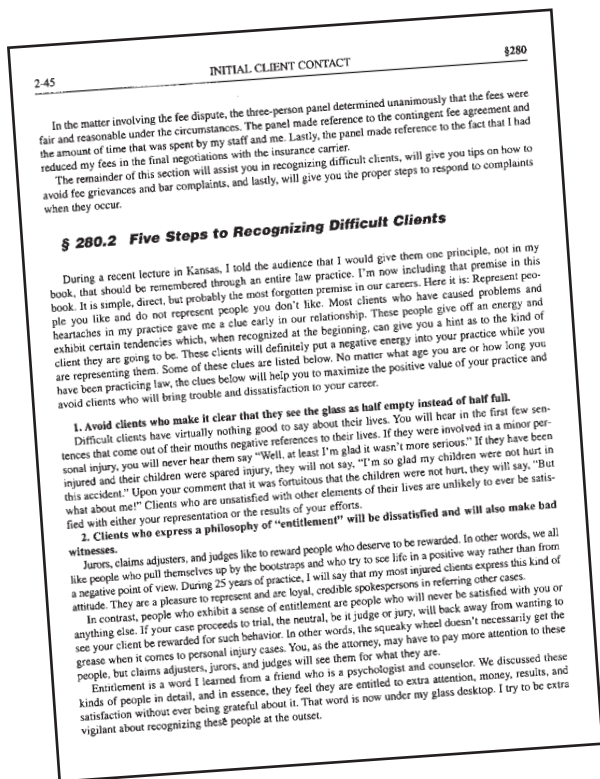


Liability checklists for 11 common fact patterns

- ◆ Timetable and accompanying task checklist for avoiding stale files. §372

Litigation

- ◆ Checklist for building small-case trial notebooks. §621
- ◆ Sample direct examinations of plaintiff's physician, occurrence witness, before-and-after witness, and employer or co-worker. §§653-56
- ◆ Foundation checklists for medical charts and models, medical and business records, and maps and charts. §674



Tips learned from decades in the small-case trenches

ABBREVIATED CONTENTS

1. The Small Personal Injury Practice

Four Guiding Principles, Necessary Qualities of the Personal Injury Trial Attorney, Factors to Consider in Accepting Small Personal Injury Cases, Factors to Consider in Rejecting Cases

2. Initial Client Contact

First Telephone Contact, First Client Interview, Interview Checklists for Small Personal Injury Cases, Insurance Coverage, Contingent Fee Agreement, Instruction List to Client, Contents of Client Diary, Authorization Forms for Small Cases

3. Investigation and Preparation of the Case

Investigating the Claim, Initial Client Contact with Defendant, Initial Contact with Insurance Company, Obtaining Medical Information, Obtaining Employment Information, File Organization, Processing Small Personal Injury Claims

4. Settlement Negotiations

15 Key Points to Remember Before Negotiating a Small Personal Injury Claim, The Demand Letter: Checklist of Damages, Evaluating and Establishing a Demand Figure

in Small Cases, Settlement Negotiations, Insurance Carrier Negotiation Tactics and How to Deal with Them, Consideration of the Offer and Appropriate Response, Alternate Dispute Resolution, Releases: Problems and Pitfalls

5. When Settlement Fails—Commencing the Lawsuit

Filing Suit, Discovery, Settlement During Suit, Tort Reform and Its Impact on Small to Medium Cases

6. The Trial

Five Principles of a Trial, Trial Notebook and Pretrial Procedures, Selecting the Jury, Opening Statements, Direct Examination, Cross-Examination, Objections, Redirect Examination, Demonstrative Evidence and Exhibits, Closing Argument, Jury Instructions

7. After the Verdict

Settlement After Verdict for Plaintiff, Settlement After Verdict for Defendant, To Appeal or Not to Appeal, Checklist of Compensation, Costs, and Disbursements of Settlement Proceeds

ABOUT THE AUTHOR

§512 MAXIMIZING DAMAGES IN SMALL PERSONAL INJURY CASES 5-6.10

using a cane
turning lights on and off
winding a watch

§512 Nine Major Case Weaknesses to Consider Before Filing Suit

When you and the insurance company have significantly different opinions of the settlement value of the case, it is wise to reconsider the major weaknesses of your case before filing suit. Some of these weaknesses can be alleviated before filing or can be minimized during the pretrial period. Your goal is to either eliminate the problem, lessen its potential effect at trial, or recognize that the problem may have a substantial impact on the ultimate settlement value or jury verdict. In any event, these weaknesses should be discussed in detail with your client before filing suit.

§512.1 Pre-Existing Injuries

In my opinion the most significant weakness or problem in a small to medium valued case is a pre-existing injury involving the same area of the body. If your client's injury pre-existed the subject incident, you have the difficult burden of establishing the extent of any aggravation and its causal relationship to the incident. In twenty years of practice in personal injury law, I find this to be the most often used attack by insurance adjusters.

On the other hand, if your client had a pre-existing injury and recovered from that injury, you must establish that a whole new injury took place and that it was caused by the subject incident. Again, the burden is quite difficult. Let me cite some examples.

EXAMPLE ONE: Our client injured her back in a prior automobile collision in 1989. The injury required physical therapy, two visits to a neurologist, and a number of visits to an osteopathic physician. The client settled with the appropriate insurance carrier and two years later was involved in the subject accident. In the second collision, she sustained an injury to her back once again, and treated with the same osteopathic physician and neurologist. The neurologist felt that our client had a herniated disc, but concluded that the condition was not caused by the subsequent collision. Despite this finding, the client put a significant value on her case due to her ongoing complaints and the substantial number of physical therapy and osteopathic treatments. Her demand was in excess of \$100,000. The insurance carrier, one of the more conservative in the country, offered \$20,000 and indicated the possibility of going to binding arbitration with a high of \$35,000 and a low of \$10,000. It was the carrier's opinion that the pre-existing injury minimized the value of the client's subsequent injuries.

When we recommended that the client go to arbitration, hoping that we could convince the carrier to agree to a high of \$45,000, the client took her case to another law firm. She was unwilling to accept the significance of her pre-existing condition.

EXAMPLE TWO: A woman in her early 30's had experienced prior back problems for several years and had consulted with an osteopathic physician, a chiropractor, an orthopedic specialist, and a neurologist. All of the medical procedures confirmed the presence of a chronic back problem including a "facet syndrome" at one of the vertebral levels. In May 1992, she re-injured her back while at work. She thereafter received workers' compensation benefits, including payment of medical bills, for approximately six weeks. She also received physical therapy treatments and her primary doctor released her to return to work in late June 1992.

Approximately one month later, she was rear-ended at low speed while stopped in traffic. She was seen at least 15 times, underwent exten-

§521 MAXIMIZING DAMAGES IN SMALL PERSONAL INJURY CASES 5-8

§521.1.1 Sample: Plaintiff's Motion for Protective Order

NOW COMES the Plaintiff, by and through counsel, who moves for a Protective Order propounded by the Defendant and Requests for Production of Documents. Plaintiff's Motion is based upon the following grounds:

1. On or about September 10, 199... the Plaintiff sustained personal injuries as a result of a rear end collision with the Defendant.
 2. Counsel for the Plaintiff communicated with the insurance carrier for the Defendant between the date of the automobile collision and the date on which suit was filed in this case, to wit: October 20, 199... As a result of communication between Plaintiff's counsel and the insurance carrier, substantial information was forwarded to representatives of the Defendant.
 3. By date of November 23, 199... the Defendant has propounded 84 interrogatories with numerous subparts containing as many as a dozen additional questions within the numbered interrogatories. The cost and effort to retype the 26 pages of single-spaced questions would be an enormous and pointless clerical exercise for the Plaintiff's representative to endure.
 4. In lieu of responding to said interrogatories the Plaintiffs have served affidavits on the Defendant which summarize in detail the nature and extent of their injuries, and the circumstances of the rear end collision, together with information concerning employment and medical history. Defense counsel was also provided with the entire medical report and medical bill package of the Plaintiff with a medical authorization form allowing the Defendant to obtain whatever information deemed necessary in this relatively minor case.
 5. The interrogatories propounded to the Plaintiff were obviously issued from a word processor and were not drafted to conform to the particular facts of the within case. The effort necessary to copy said questions and answer them would constitute an extraordinary burden out of proportion to the nature and extent of the claims asserted in this action.
 6. For obvious reasons, the Plaintiff objects to answering such interrogatories on the grounds that they are overly broad, oppressive, unduly burdensome, and expensive relevancy and the information sought is not reasonably calculated to lead to the discovery of admissible evidence.
 7. This motion is based upon the provisions of Rule 26(c) of the State Rules of Civil Procedure and upon the affidavits which have been filed in this case.
- WHEREFORE, the Plaintiff prays for a Protective Order that the Defendant's Interrogatories of November 23, 199... be quashed or in the alternative limited by this Honorable Court, that the affidavits under oath be allowed as substitution for answers to such interrogatories and for such other and further relief as this Honorable Court deems just and proper.

**Litigation tactics
and forms designed
for small cases**

Ellsworth T. Rundlett III is a personal injury trial lawyer with 25 years of experience. He is the former president of the largest county bar organization in the State of Maine, and a former member of the Board of Governors of the Maine State Bar Association.

Mr. Rundlett is President of the Maine Trial Lawyers Association and a state delegate of the Association of Trial Lawyers of America. He is a diplomat of the National College of Advocacy, has been certified as a civil trial specialist by the National Board of Trial Advocacy since 1991, and is a member of the American Board of Trial Advocates.

A frequent lecturer, Mr. Rundlett has spoken on the topics of "Achieving Optimal Recovery in Personal Injury Cases," "Winning in Court," and "Settling Cases." His articles have appeared in ATLA's TRIAL magazine and various state lawyer publications.

He practices with Childs, Rundlett, Fifield, Shumway & Altshuler in Portland, Maine.

Book Review Excerpt from *Lawyers Weekly USA*

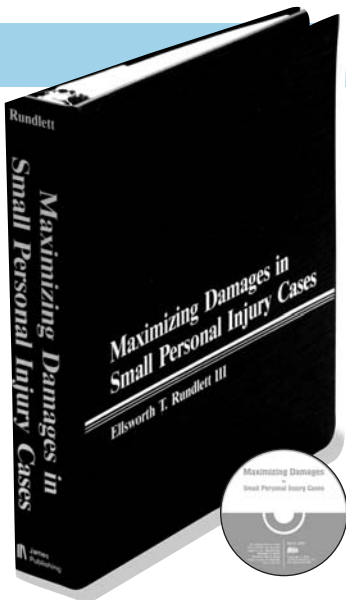
"This book is almost a Do-It-Yourself Kit for personal injury cases, and is the latest example of the superb job that James Publishing is doing in providing lawyers with one-stop practice aids.

"Approximately one-half of the book is dedicated to the period of time prior to the commencement of suit, which can be the most critical interval for achieving a good result. Perhaps the most popular section will be "Factors to Consider in Accepting Small Personal Injury Cases," which provides the ultimate bottom-line analysis to fit every prospective case that might walk through your door (and with checklists for every conceivable area of personal injury liability).

"It is the fear of nearly every small firm that, once suit is filed, you will immediately be barraged with discovery requests from the defense, which is usually a big firm or an in-house legal department of a giant corporation. Rundlett rides to the rescue by providing us with a lengthy section chock-full of techniques to limit discovery abuse by defense attorneys.

"Other lawyers will feign insult over the spoon-feeding approach of the author (and James Publishing in general). But others will rejoice in it. In this reviewer's opinion, all the forms, checklists, and sample correspondence are much appreciated. They aren't replacements for original legal work, but are very valuable as templates that provide a well-researched starting place that can be tailored to reflect the exigencies of the particular case."

SETTLE SMALL CASES FOR MORE



Over 75 checklists for: damages, liability, interview, investigation, evaluation, deposition, settlement, and witness examination. Plus discovery and trial motions, interrogatories, requests for admission and production, motions in limine, settlement letters and more.

Maximizing Damages in Small Personal Injury Cases will teach you dozens of proven techniques for obtaining top dollar in small cases. For example:

SETTLEMENT

- ▼ 14 negotiating techniques that really work. \$445
- ▼ Insurance carrier negotiating tactics and how to deal with them. \$450
- ▼ How to minimize the impact of independent medical examinations. \$458.4
- ▼ 18 steps to evaluation of a small personal injury case. \$466
- ▼ 16 mediation preparation tips guaranteed to lead to settlement. \$474.1
- ▼ How to deal with unreasonable insurance adjusters and carriers. \$490.2

COMMENCING SUIT

- ▼ 9 major case weaknesses to consider before filing suit. \$512
- ▼ 14 defense tactics you need to know about before filing. \$513

- ▼ How to deal with nominal property damage impacts. \$512.7
- ▼ 23 tips on how to deal with large chain store cases. \$131.3
- ▼ Strategies for maximum discovery at minimal cost. \$522

TRIAL

- ▼ The 30 most common objections in small-case trials. \$664.1
- ▼ Techniques to avoid in openings and closings. \$643, 684
- ▼ Topics that are prohibited in closing argument and how to get around them. \$682
- ▼ 37 trial tips from jurors. \$685

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