

Efficient Settlement of Small Personal Injury Cases

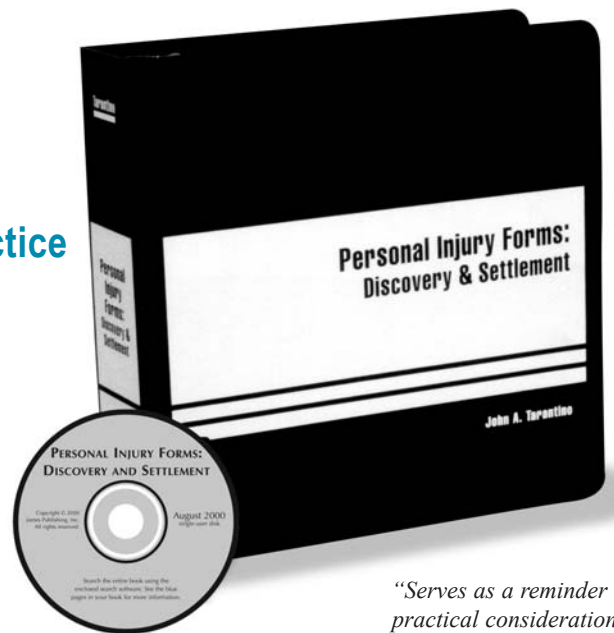
Systems, forms, checklists, strategies, and practice tips for keeping your cases moving forward

Establishing proven routines for processing your tort cases can boost your efficiency and your effectiveness. Tools for systematizing your caseload may be found in John Tarantino's ***Personal Injury Forms: Discovery & Settlement***.

This book-and-CD package offers time-tested forms and advice on how to use them. The first half of the book focuses on tools applicable to all types of personal injury litigation; the second half covers the following types of cases:

- Auto accidents
- Insurance bad faith
- Liquor liability
- Medical malpractice
- Police assault & battery
- Premises security
- Products liability
- Slip & fall

And more



"Serves as a reminder of practical considerations, overlooked issues, and angles of attack."

Stewart Casper

Over 800 pages of practice-proven forms. Only \$99

Interrogatories, requests for production, requests for admissions, and deposition questions. Demands, complaints, motions, and releases. Checklists, letters, memoranda, and questionnaires.

Personal Injury Forms has them all, specific to nine types of cases, and complete with use notes and tactics:

- Damages outlines and checklists for evaluating a case's settlement value. Includes checklists for soft tissue, whiplash, loss of consortium, wrongful death, head injury, fractures, and psychological injuries. *Section 252*

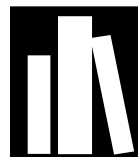
- Draft complaints, with alternate clauses, prevent omissions

of elements of the cause of action. *Section 704*

- Model interrogatories and requests for production of documents and admissions speed your drafting and remind you of additional angles of attack. *Section 710*

List continued inside...

Coverage of experts. A big chapter on expert witnesses includes checklists for deposing and cross-examining doctors, economists, engineers, vocational experts, and more.



30-day Trial Available
(800) 440-4780
www.jamespublishing.com

Table of Contents

1. Initial Client Contact

Initial Client Interview
Information Authorizations
Post-interview Client Contact
Practice Tips

2. Investigation & Evaluation

Investigators
Lay Witnesses
Insurance Adjusters
Medical Experts
Evaluation
Practice Tips

3. Experts

Discovery
The Daubert Standard
Using an Expert
Practice Tips

4. Discovery

Organization
Client
Lay Witnesses
Confidentiality Agreements
Doctors
Motions & Orders
Discovery Objections
Discovery Sanctions
Practice Comments

5. Settlement

Client
Offer of Judgment
Insurance Adjusters
Releases & Payment
Structured Settlements
Uninsured/Underinsured
Motorist Claims
Alternative Dispute Resolution
Planning Tax Results
Practice Tips

6. Slip & Fall

Interview, Investigation
& Evaluation
Interrogatories
Deposition Checklists
Requests for Production
Requests for Admissions
Motions
Practice Tips

7. Products Liability & Toxic Torts

Interview, Investigation
& Evaluation
Interrogatories
Deposition Checklists
Requests for Production
Requests for Admissions
Motions
Toxic Tort Litigation
Practice Tips

8. Medical Malpractice

Interview, Investigation
& Evaluation
Interrogatories
Deposition Checklists
Requests for Production
Requests for Admissions
Motions
Practice Tips

9. Police Assault & Battery

Interview, Investigation
& Evaluation
Interrogatories
Deposition Checklists
Deposing the Expert
Requests for Production
Requests for Admissions
Motions
Practice Tips

10. Automobile Accidents

Interview, Investigation
& Evaluation
Interrogatories
Deposition Checklists
Requests for Production
Requests for Admissions
Motions
Practice Tips

11. Dram Shop/Liquor Liability

Interview, Investigation
& Evaluation
Interrogatories
Deposition Checklists
Requests for Production
Requests for Admissions
Motions
Practice Tips

12. Insurance Bad Faith

Interview, Investigation
& Evaluation
Interrogatories
Requests for Production
Practice Tips

13. Premises Security

Interview, Investigation
& Evaluation
Interrogatories
Deposition Checklists
Requests for Production
Requests for Physical or
Mental Examination
Requests for Admissions
Motions
Practice Tips

Practice-proven forms

Continued from front page

- Client interview forms, specific to type of case, to help you quickly gather needed data. Both short and long forms are provided.

Section 111

- Doctor letters and checklists to help you obtain explicit statements that the medical signs and findings are consistent with your client's impairment.

Section 240

- 10 case evaluation checklists, specific to type of claim, to help you weed out the weak ones.

Section 251

- Deposition checklists and interrogatories for commonly encountered experts — medical, psychological, engineer, ergonomist, forensic safety analyst, life care planner, and vocational rehabilitation.

Section 350

- How to spot clients who are likely to be difficult ... before they cause you problems.

Section 115

- Understanding which cases not to accept.

Section 116

- Discovery motions help you move around common obstacles.

Section 753

- How to refute defense claims of maligering.

Section 118

- Model client letters and attachments, like a “what to expect” letter with a special damages record, improve client communication and encourage client assistance.

Section 133

- How to use the independent medical examination to the plaintiff's advantage.

Section 244

- How to deal with the subsequent treating physician.

Section 245

- Detailed advice on justifying awards for non-economic losses.

Section 252

- Tips for dealing with insurance adjusters, including common hurdles and how to get over them.

Section 230

And much more

About the Author

John A. Tarantino is a partner in the Litigation Group and President of Adler Pollock Sheehan in Providence, Rhode Island. He has been counsel in a number of precedent-setting cases in both the U.S. Supreme Court and numerous federal and circuit courts of appeal.

Mr. Tarantino has served as President of the Rhode Island Bar and is currently President of the New England Bar Association. He has been a faculty member for the National College for Trial Advocacy and the Masters of Scientific Evidence program. He is listed in Best Lawyers in America.

About the Book

Personal Injury Forms contains over 800 letter-sized pages in a sturdy 3-ring linen binder. A free companion CD-ROM contains the book's 300 forms in Word.

The book and its CD cost \$99. The book is updated annually with change pages and a replacement CD. Updates cost \$65. Both the book and its updates are sold on 30-day approval, and the update service may be cancelled at any time.

The book and CD cost \$99, and may be reviewed without obligation for 30 days.

30-day Trial Available

(800) 440-4780

www.jamespublishing.com

especially where courts have determined that whenever the plaintiff puts his or her medical condition in issue, any patient-physician privilege, or other confidential health care privilege, has been waived. See generally, Manning & Halpern, *Small Talk with the Plaintiff's Doctor*, 19 LITIGATION 2 at 25 (Winter 1993) (discusses various jurisdictions, both federal and state, and their approaches to *ex parte* contacts between defense counsel and plaintiff's nonparty treating physicians). See also, Note, *Defendants' Right to Conduct Ex Parte Interviews with Treating Physicians in Drug or Medical Device Cases*, 73 Minn. L. Rev. 1451 (1989).

Plaintiff's counsel must be aware of the legal and ethical arguments that pertain to defense counsel's attempts to have *ex parte* contact with plaintiff's nonparty treating physicians, any limitations that the courts may place on such contact, and any steps that can be taken legally by plaintiff's counsel to ensure that such contact does not occur.

Although in certain jurisdictions courts may permit *ex parte* contacts, the physicians are not required to meet with defense counsel. Generally, a plaintiff cannot be compelled to make his or her treating physician available for an *ex parte* informal meeting with defense counsel. If the plaintiff does not do so, defense counsel must use the normal discovery procedures, and plaintiff's attorney has a right to be present at the meeting.

4-57 Defense Ex Parte Contacts With Treating Physicians

Many times, the defense attorney will prefer to contact the plaintiff's physician informally rather than taking the physician's deposition. The extent to which defense counsel may conduct an *ex parte* interview with the plaintiff's treating physician, or even make a telephone call to determine if the physician remains a patient or if the physician is available for deposition, principally depends on the idiosyncrasies of the law in the jurisdiction in which you practice.

In both federal and state courts, *ex parte* contacts with state law. In certain federal jurisdictions, however, state what circumstances the physician-patient privilege has been deemed waived under state law, the Federal Rules of Rules specifically provide for depositions, some courts in *Weaver v. Moore*, 90 F.R.D. 443 (D.N.D. 1981).

Other federal courts have ruled that state law governs courts turns on a review of state law as it relates to defending physicians. Some jurisdictions prohibit such contacts limited under state rules of procedure. In those jurisdictions, see *Harlan v. Lewis*, 141 F.R.D. 107 (E.D. Ark. 1989).

In certain jurisdictions which permit informal contact, case still inform those physicians that they are not to engage in private interviews with attorneys. Rather, the physicians are free to reject an interview request, absent a subpoena or other court process. The courts have at times also determined that it is futile to compel plaintiffs to authorize *ex parte* interviews because there is no way to compel the physician to consent to the interview. See *Bohrer v. Merrill Dow Pharmaceutical, Inc.*, 122 F.R.D. 217 (D.N.D. 1987).

Certain courts refuse to allow any informal contact between defense counsel and plaintiff's nonparty treating physicians. Those courts rely on a number of reasons for their holdings:

- Protection of the physicians.
- Protection of the confidential physician-patient relationship.
- Concern that if patients fear their physicians might discuss the patients' health with defense lawyers, open patient-physician communication will be inhibited, which in turn will hinder appropriate diagnosis and treatment.
- Concern about the risk of attorney overreaching and misconduct; physicians may be induced to provide information not relevant to the issues in the case and, therefore, open themselves up to tort liability, ethical complaints or other charges of professional misconduct.

● Attorneys may exert improper pressure on physicians to disclose information or to testify in a certain way, particularly if the interviewing attorney represents a medical malpractice insurance carrier, a fellow physician, or a hospital where the treating physician has privileges.

● Unregulated disclosure can lead to an invasion or breach of the patient's privacy. See generally, Manning & Halpern, "Small Talk With Plaintiff's Doctor," 19 LITIGATION 2 at 35, 36 (Winter 1993).

Courts may also be reluctant to permit interviews because virtually all relevant information will be available through the formal discovery process. Discovery can also be the more prudent course for defense counsel. For example, there may be instances where a treating physician is brought in by the defendant as a third-party-defendant. In such cases, if the physician has been interviewed informally and it is then made a third-party-defendant, and his or her trial testimony conflicts with the *ex parte* interview, the defense attorney may be required to testify as the only witness to that conversation. *Id.*

In certain jurisdictions that ordinarily forbid informal interviews, there are certain exceptions. For example, in some jurisdictions defense counsel is prohibited from having *ex parte* contact with plaintiff's treating physician until discovery closes. At that time defense counsel can designate plaintiff's treating physician as a trial witness and then meet with the doctor privately to prepare for trial. See *Levan v. Dinez*, 153 A.D.2d 672 (N.Y.App.2d Dep't 1989). Even where defense counsel is allowed to conduct an *ex parte* interview, most jurisdictions will not require a nonparty treating physician to express an opinion at the interview.

As mentioned, some federal courts permit defense counsel to communicate *ex parte* with plaintiff's treating physicians. Generally, the basis for that permission is that the *ex parte* communications are not expressly prohibited in the Federal Rules of Civil Procedure. Those courts reason that since the *ex parte* contacts are not prohibited by the Rules, they are allowed.

Even among the courts that allow *ex parte* communication, some require authorization by the plaintiff as a pre-condition to the communication. States that do not recognize the physician-patient privilege, however, are likely to allow *ex parte* interviews without authorization by, or even notice to, the plaintiff. See *Kider v. Wyman*, 189 F.R.D. 83 (D.S.C. 1991).

Certain other federal jurisdictions allow defense counsel to meet informally with plaintiff's treating physician's attorney and the plaintiff's attorney must be allowed to be present. 41 F.R.D. 136 (D.Minn. 1992). In theory, this procedure allows the treating physician to discuss the defendant's attorney.

According to the defendant. According to some courts, denying the defendant's treating physician gives plaintiff complete control over an *ex parte* contact. Those courts have determined that there is no "propriety right" to *Eli Lilly & Co., Inc.*, 99 F.R.D. 126, 128 (D.D.C. 1983). Those courts can use the physician-patient privilege at trial as a tactic to prevent the defendant from deposing the physician. In *Levan v. Dinez*, 153 A.D.2d 672 (N.Y.App.2d Dep't 1989), the defendant to do through deposition what the plaintiff can do in private usually allows the plaintiff to confront the defense case, since questions posed at the defense deposition can provide insight into the deposing attorney's legal theories.

In some jurisdictions the physician-patient privilege is codified by statute. Courts in some of those states have ruled that the statutory privilege is qualified, however, and that a plaintiff files a medical malpractice claim or otherwise puts his or her medical condition at issue in a case, the qualified privilege is automatically waived. See *Lewis v. Roderick*, 617 A.2d 119 (R.I. 1992) (construing Rhode Island's Confidentiality of Health Care Information Act). The Rhode Island Supreme Court held that its state's Rules of Civil Procedure do not delineate the only methods of pretrial discovery by which information pertinent to litigation may be obtained, and furthermore that the Rules do not prohibit *ex parte* interviews. Accordingly, the court concluded that personal interviews with the witnesses are permitted, even on an *ex parte* basis, as an informal method of obtaining discovery necessary to litigate. The court held there is no inherent prohibition against allowing defense attorneys to talk to anyone *ex parte*, including the plaintiff's treating physicians, in the course of pretrial discovery.

Troublesome issues are analyzed and case authority is provided

were not received "on account" of personal injuries and, therefore, were not excluded from personal income. Therefore, with the exception of the State of Alabama where all damages in wrongful death are considered "punitive," any punitive damages awarded in a personal injury claim or otherwise (i.e., wrongful death actions) will not be excluded from personal income because they are not "received . . . on account of" personal injury, but rather awarded "on account of" a defendant's reprehensible conduct and the jury's need to punish and deter.

§252.5 Soft Tissue Injury Cases

Soft tissue injury cases are common, but they can also be the most difficult to value, settle and prove in personal injury litigation. This is true because the participants, including counsel, adjusters, physicians, other experts and the client have been conditioned to look for, review and evaluate objective signs of injuries such as fractures and scarring to value cases, and have similarly been conditioned to reject as feigned, nonexistent or unsubstantial, any injury that is basically subjective in nature, such as a soft tissue injury.

Medical and scientific advances such as CAT scans and magnetic resonance imaging have also made it possible to verify the existence of various soft tissue injury claims. See J. TAKAYAMA, *LITIGATING NECK AND BACK INJURIES*, Ch. 3 (2d ed. 1995 and cur. rev.) for a discussion and analysis of a variety of soft tissue injury diagnostic tests in this regard. Despite scientific and medical advancements, however, the soft tissue injury claim is still met with a great deal of skepticism and is often viewed by defense counsel, adjusters, many physicians and the courts as being unworthy of significant settlement dollars. As a result, plaintiff's counsel must be ready and able accurately to quantify the subjective pain, discomfort and suffering endured by the client and to demonstrate to the adjuster during settlement negotiations or to the trier of fact at trial in an objective, easily understandable and convincing manner the damages sought.

Review the following checklist (§252.5.1) to help evaluate the soft tissue injury, and also review §252.2 through §252.4 for further information on the symptoms associated with soft tissue injuries to the neck area known as "whiplash" and forms and checklists related to so-called "whiplash" injuries.

§252.5.1 Checklist on Soft Tissue Injury Evaluation

1. Does the client have a prior existing soft tissue injury which resulted from trauma (prior accident), muscle strain, muscle fatigue or disease?
 - (a) Learn about prior soft tissue injuries to determine whether the injury presently complained of is a new and distinct injury or an aggravation of a pre-existing injury.
 - (b) Remember the defendant must take the plaintiff "as he finds him." This means that the defendant cannot try to lessen his own responsibility for damages by showing the plaintiff had some prior problem.
 - (c) The defendant cannot be held responsible for causing the underlying injury, but can be held responsible for any aggravation or worsening of the condition.
 2. If the plaintiff has a prior injury, consider the following:
 - (a) What part of the body was affected?
 - (b) How was the body part affected?
 - (c) Were the plaintiff's activities limited as a result of the prior injury?
 - (d) Is the new injury a distinct and separate one or is it an aggravation or worsening of the prior existing injury?
 - (e) Has there been any aggravation or worsening of the plaintiff's condition? If so, how has it been manifested?
 - (i) Can you demonstrate that the condition has worsened, destabilized or recurred as a result of the defendant's conduct, thus rendering the defendant liable in damages?
- Note: Carefully document the plaintiff's past medical history. This can help demonstrate stabilization, worsening or recurrence of the prior injury as a result of the defendant's conduct. Additionally, testimony of family members, friends, co-workers, etc. can be used either to prove that the injury is a new one, or that if

Partial List of Forms

1. Initial Client Contact

- Interview Questionnaire
- Medical History Questionnaire
- Injury & Pain Evaluation Questionnaire
- Checklist for Physician's Determination of Pain Post-interview Checklist
- Checklist on Screening Cases
- "What to Expect" Client Letter
- Record of Special Damages & Expenses
- Post-interview Client Questionnaire
- Client Follow-up Letter

2. Investigation & Evaluation

- Instructions to Investigator
- Investigation Report Form
- Lay Witness Investigation Checklist
- Letter to Prospective Lay Witnesses
- Checklist on Dealing with Insurance Adjusters
- Checklist on Recovering Disfigurement Damages
- Checklist of Ways to Use Impartial Medical Expert to Plaintiff's Advantage
- Case Evaluation Checklist

Checklist on Dealing with Subsequent Treating Physician

- Damage Evaluation Checklist
- Checklist on Drafting Effective Complaints
- Special Damages Outline
- Checklists for Loss of Consortium Claims
- Checklist of Compensable Elements of Wrongful Death Damages
- Checklist on Soft Tissue Injury Evaluation
- Checklist on Sources of Pain in Soft Tissue and Whiplash Injuries
- Checklist of Injuries and Symptoms Associated with Whiplash
- Checklist of Fracture Types
- Sample Complaint: Closed Head Injuries & Fractures
- Disc Injury Checklist
- Checklist on Past & Future Losses
- Checklist for Psychological Injuries
- Checklist to Attack Psychological Injury Evidence
- Checklist on Malingering
- Checklist on Post-concussional Disorders

Checklist on Recovering Disfigurement Damages

- Checklist on Mild Neurocognitive Disorders
- Medical Expense Index Form

3. Experts

- Expert Witness Interview Questionnaire
- Checklist on Expert Witness Discovery
- Sample Expert Witness Interrogatories
- Checklist for Using Medical Experts
- Checklist for Cross-examination of a Medical Expert
- Checklist for Examination of a Vocational Rehabilitation Expert
- Interrogatories to Vocational Rehabilitation Expert
- Checklist for Using a Psychological Expert
- Interrogatories to a Psychological Expert
- Checklist of Additional Research Sources
- Checklist for Using an Economist
- Checklist for Examination of an Economist
- Interrogatories to an Economist
- Checklist for Using an Accountant
- Interrogatories to an Accountant

7. Determine classes of places or places that have higher crime rates (environmental criminology). See Kennedy, "Architectural Concerns Regarding Security in Premises Liability," 10 J. OF ARCHITECTURAL PLAN. & RES. 105 (1993); HUNTER & JEFFERY, PREVENTING CONVENIENT STORE ROBBERY THROUGH ENVIRONMENTAL DESIGN AND SITUATIONAL CRIME PREVENTION: SUCCESSFUL CASE STUDIES (R. Clark ed. 1992).

8. Offer opinions on actual notice, constructive notice and foreseeability. See J. Tarantino & M. Dombroff, PREMISES SECURITY: LAW AND PRACTICE (1990).

9. Offer opinions on the relative costs of crime and security, and opinions on public policy issues (re adequate security measures to obviate or lessen crime). *Williams v. Covington Drug Stores, Inc.*, 429 Mich. 495, 418 N.W. 843 (1988) (discussing issues of fairness in economic arguments along with concerns over the public taking on police responsibilities, and determinations of whether costs of security should be borne by the merchant or passed on to patrons).

NOTE: For a good discussion on how to examine the criminologist or other security expert from a plaintiff's perspective, see Everett, *Direct Examination of Security Experts*, 34 TRIAL 3 at 28 (March 1998) (suggesting that attorneys focus on issues of reasonableness of the defendant's security program and the implementation of that program on the day of the crime).

§1401.5 Checklist of Discovery Items in Premises Security Cases

In conducting the discovery in a premises security case, make sure to review, at a minimum, each of the following:

1. Title search to determine the owner of the property, as well as prior owners, to determine information on any prior criminal incidents and security measures.

2. Police reports (including all relevant photographs, videotapes, tapes of 911 calls, and crime scene sketches, as well as witness statements).

3. Interview investigating officers.

4. Complete review of incident reports (learn number of criminal incidents in a given area for a specific period of time; also request police grid report, which is a printout of police calls reported in a particular area and can provide information on the date and address of the incident, as well as the types of crimes reported).

NOTE: Also request a grid report for the site as well as surrounding geographical areas covering a three to five year period. See J. TARANTINO & M. DOMBROFF, PREMISES SECURITY: LAW & PRACTICE (1990).

5. Obtain state and federal crime statistics.

NOTE: Each police department will maintain crime statistics based on the grid information from various police agencies and reports that are filed with these agencies. Generally, these are coordinated with the state's justice department or the attorney general's office. Some jurisdictions also have statistical analysis centers that will publish reports of crime statistics. Again, a copy of the reports issued for a three to five year period before the incident should be obtained.

6. The FBI also publishes a uniform crime report containing a detailed analysis of eight major crime categories for various metropolitan areas as well as rural counties.

7. Review local newspapers to look at articles about crime or crime statistics.

Maximize damages in small cases with John Tarantino's proof checklists

loy-
the
sons

Key liability hurdles are explored in these case-specific assessment checklists

§1403 Investigation and Evaluation Checklists: Premises Security Cases

Review the following checklist when a client comes into the office with a potential premises security case. The checklist covers causation, liability and possible judgment enforcement in a variety of premises security cases.

1. Landlord Liability
 - A. Common law position: no liability exists for injuries caused by criminal acts of third parties.
 - B. Restatement of Tort approach.
 1. Generally follows common law
 2. Excepts certain relationships that give rise to a duty to protect others from unreasonable risk of physical harm, e.g., common carriers, innkeepers, possessors of land.
 3. The duty on the part of the landlord is to use reasonable care under the circumstances.
 - C. Theories of liability
 1. Statutory (statutes which require landlords to provide safe housing or habitable premises)
- NOTE: This approach has met with limited success because most courts have construed these statutes to refer only to safety from structural defects or unsanitary conditions and not to provide a cause of action against a landlord arising out of a criminal attack by a third person.
 2. Contract claims
 - a. Implied warranties: implied warranty of habitability
 - b. Express warranties of security
 - (i) contractual or lease provisions
 - (ii) oral representations or statements
 - (iii) advertisements
 3. Tort bases
 - a. Duty of landlord to protect tenants against foreseeable criminal attacks or acts of third persons
 - b. Prerequisites to liability
 - (i) landlord control
 - (ii) foreseeability of attack and harm
 - D. Standard of care: reasonable care under the facts and circumstances
 - E. Other theories of liability
 1. Liability to invitees of tenant
 2. Duties extended to condominium defendants
 - a. Control of common areas
 - b. Representations as to safety of common areas
 3. Misrepresentation
 - a. Negligence
 - b. Intentional
 4. Fraud
- F. Damages
 1. Compensatory damages
 2. Punitive damages: available where conduct is outrageous or where defendants demonstrate an evil motive or reckless indifference to the rights of tenants
 3. Punitive damages may be supportable where the tenant can prove the landlord was aware of the probable dangerous consequences of lack of repairs or neglected premises and where landlord has the power to control the premises and to make changes.

2. Charitable immunity (school, college or university may be chartered as a charitable institution)
- B. Theories of liability
 1. A special duty or relationship exists between school and student (school must undertake reasonable efforts to protect students from harm)
 2. Breach of statutory duty regarding adequate supervision of students
 3. Negligence in failing to protect students against foreseeable criminal attacks
 4. Negligence in providing adequate security
 5. School as a quasi-landlord: generally involves post-secondary college or university cases where students live in dormitories and where a student can demonstrate representations were made by the school that it would provide a safe place for the student to live on campus.
 6. Negligent or intentional misrepresentation
 7. Fraud with respect to representations of safety
4. Movie Theaters/Amusements
 - A. Generally no special relationship
 - B. Duty imposes reasonable care for safety of patrons; duty may extend to protection from risks of harm from criminal attacks by third person
 - C. Theories of liability
 1. Owner or operator of theatre or amusement failed to take reasonable measures that would have prevented or discouraged the attack
 2. Once attack began, owner or operator of amusement or theatre failed to come to the plaintiff's aid in a timely manner or otherwise to provide adequate assistance
 - D. Legal duty to prevent criminal assault
 1. Generally issue of duty will be question of law for the court.
 2. An amusement or theatre which issues a business invitation may be liable for physical injuries caused by accidental, negligent or intentionally harmful acts of third parties where the owner or occupier knows or reasonably should have known from past experiences of the likelihood of attack that may endanger the safety of patrons.
 3. Duty may arise if the place or character of the business or past experience is such that the owner or occupier should reasonably anticipate criminal conduct on the part of third persons; where the owner or occupier has such knowledge, he may be under a duty to take reasonable precautions against attack or provide reasonable numbers of security staff to afford protection to patrons.
 4. Duties may be imposed where the owner or occupier of the amusement or theatre has knowledge of prior criminal attacks of the same or similar type experienced by plaintiff.
 5. Emerging view is that foreseeability is sufficient to justify imposition of duty based on totality of the circumstances (e.g., plaintiff can show a perpetration of a prior similar criminal act).
- E. Attacks on premises versus attacks off premises
 1. Owner or operator may be liable for failure to provide adequate security on premises.
 2. Owner or operator may be liable if the failure to control the amusement's premises subjects the patrons to risks off premises as well.
- F. Proving foreseeability
 1. Plaintiff must demonstrate that the owner or occupier knew or reasonably should have known of the risk of criminal assaults.
 2. Plaintiff must demonstrate that the owner or occupier's knowledge of different types of criminal activity, based on the totality of the circumstances, was sufficient to establish foreseeability of the kind of attack that occurred.
 3. Nature of amusement may make criminal attack likely and foreseeable
 - (i) theatres where violent films are shown
 - (ii) wrestling or boxing matches
 - (iii) sporting events between intense rivals.

Partial List of Forms (cont.)

Checklist for Using an Ergonomist
 Checklist for Cross-examination of an Ergonomist
 Interrogatories to Ergonomist
 Checklist on Disqualifying Expert Witnesses

4. Discovery

Checklist for Organizing & Indexing Medical Records
 Checklist on Use of Flowsheets
 Checklist for Organizing & Indexing Liability Records
 Discovery & Pleadings Log
 Document Control Form
 Form for Reviewing, Assessing & Cataloging Documents
 Checklist on Computer Records to be Sought in Discovery
 Notice of Deposition of Electronic Recordskeeper
 Sample Discovery Request for Electronic Materials
 Loss of Consortium Interrogatories
 Deposition Instructions
 Checklist for Deposing Lay Witnesses
 Deposition Instructions for Doctors

Checklist for Direct Examination of a Doctor
 Checklist for Cross-examination of a Doctor
 Checklist for Cross-examination of Impartial Medical Expert
 Motion for Compelling More Responsive Answers to Interrogatories

Motions for Protective Orders
 Checklist on Surveillance Evidence
 Motion to Compel Disclosure of Surveillance Evidence
 Checklist on Cross-examining Surveillance Witnesses
 Checklist of Rule 37 Sanctions & Orders
 Checklist of Rule 16(f) Sanctions

5. Settlement

Claim Evaluation Checklist
 Small Case Settlement Letter
 Major Case Settlement Letter
 Magazine-type Brochure Checklist
 Thematic Brochure Checklist
 Checklist for a Day-in-the-life Video
 Checklist for Settlement Video

Checklist of Settlement Considerations
 Checklist on Client's Refusal to Settle
 Insurance Bad Faith Letter
 Checklist of Potential Problems with Structured Settlements
 Checklist on Structuring Attorney's Fee Structured Settlement Agreement

And for auto accidents, insurance bad faith, liquor liability, medical malpractice, police assault & battery, premises security, products liability, and slip & fall...

Client Interview Questionnaire
 Case Evaluation Checklist
 Case Preparation Checklist
 Letter to Investigator
 Letter to Treating Physician
 Model Complaints
 Discovery Checklists
 Pattern Interrogatories
 Deposition Checklists
 Sample Motions
 Requests for Production
 Requests for Admissions

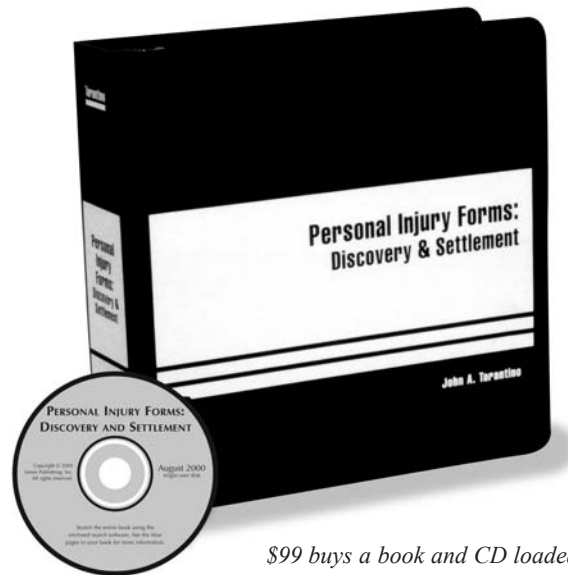
Faster Settlements

In personal injury litigation, mismanagement and inefficiency often plague the early phases of case development.

Carefully selected forms, checklists, questionnaires, complaints, and memoranda, like those in John Tarantino's *Personal Injury Forms: Discovery & Settlement*, will help you organize and economize your personal injury work.

Improve the speed and effectiveness of your intake, investigation, pleading, discovery, and settlement with these practice-proven tools:

- Model interrogatories
- Deposition checklists
- Interview questionnaires
- Case evaluation checklists
- Client, witness and expert letters
- Sample complaints
- Memoranda
- Motions
- Settlement letters



\$99 buys a book and CD loaded with step-by-step procedures and over 300 forms.

Efficient Settlements

JAMES PUBLISHING
P.O. BOX 25202
SANTA ANA, CA • 92799

YES! send me the *Personal Injury Forms: Discovery & Settlement* book and CD. Include an invoice for \$99 plus shipping. I may return the book within 30 days for full credit. Send me annual updates on the same 30-day review basis.

PID6LW

Prepay & Save \$8.98 in Shipping!

- Check is enclosed for \$99.00
(CA residents add \$8.17 sales tax / Make check payable to James Publishing / U.S. funds only)
- Charge \$99.00 to my credit card: VISA MasterCard AMEX

Card #: _____ Exp: _____

Invoice Option

- Bill me \$107.98, shipping included. (CA residents add \$8.17 sales tax)
- Bill firm \$107.98, shipping included. (CA residents add \$8.17 sales tax)

Name: _____

Title/Position: _____

Firm Name: _____

Address: _____ Suite: _____

City: _____ State: _____ ZIP: _____

Telephone: (____) _____ Fax: (____) _____

E-mail: _____ Bar #: _____

Signature (required): **X** _____

4 Easy Ways to Order

1. BY PHONE...
Call us toll free at:
(800) 440-4780

2. BY FAX...
Fax your order form to:
(714) 751-2709

3. BY MAIL... Mail order form to:
James Publishing, Inc.
P.O. Box 25202
Santa Ana, CA 92799

4. BY INTERNET...
www.jamespublishing.com