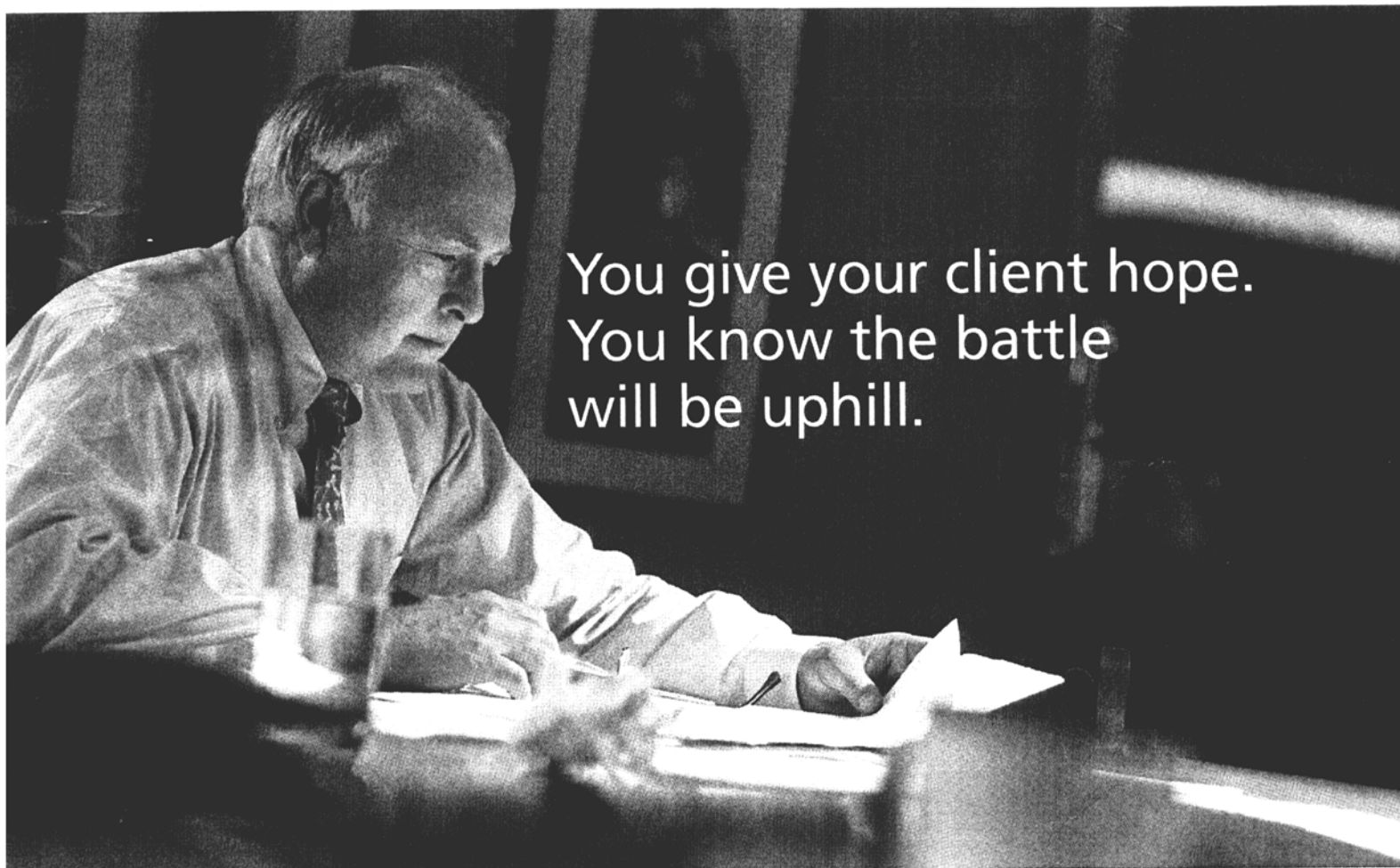
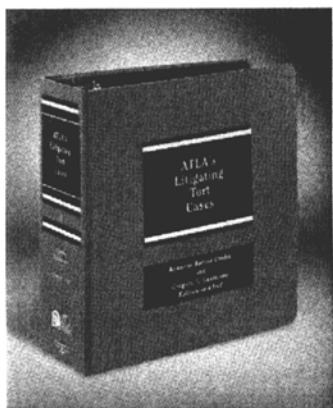


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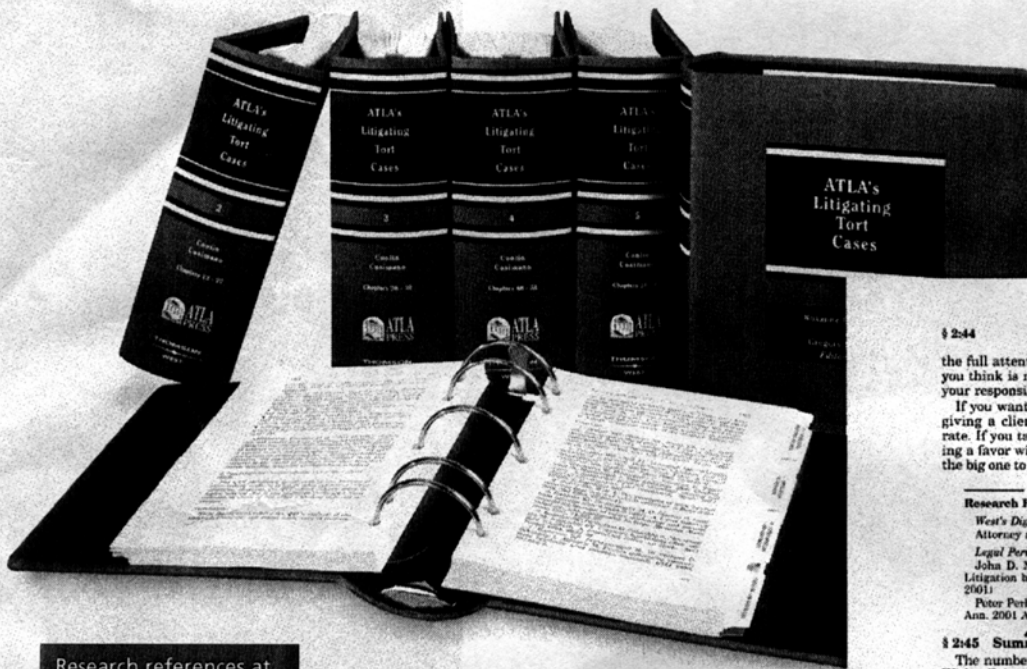
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Summary and practice pointer checklists throughout.

Research references at the section level include relevant Key Numbers and Am Jur® references.

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- 110. Clear affirmative defenses by stipulation
- 111. Motion to strike affirmative defenses
- HOURS SPENT: LAWYER 1, STAFF 2
- M. Bill of Particulars (Interrogatories):
- 112. Review demand for bill of particulars
- 113. Pre-drafting meeting with client*
- 114. Draft bill of particulars
- 115. Review bill of particulars*
- 116. Post bill of particulars settlement call*
- HOURS SPENT: LAWYER 2, STAFF 4

Research References

Trial Strategy References
 Attorney's Negligence in Selecting and Using Expert Medical Consultant, 48 Am. Jur. Proof of Facts 2d 656
 Inadequate Case Investigation, 16 Am. Jur. Proof of Facts 2d 549

§ 2:38 —Stage Three: Post-discovery settlements

While few cases settle just because litigation is commenced, completing discovery should put both sides in a position to properly evaluate the case and make most cases ripe for settlement. Only "hard core" problem cases should have to go beyond this phase. There are many incentives to settle the case at this time. Trials are time consuming and expensive undertakings for both sides. The fees required in many jurisdictions to place the case on the trial calendar are incentive to settle. While a case can reach this phase within a reasonable period of time, trial delays are extensive in many jurisdictions.

Completing discovery will prove to be time consuming. On average, cases in which discovery has been completed and are ready for the trial calendar will have required the expenditure of a total of 26 hours of lawyer time and 38 hours of staff time. Depositions, physical examinations, and conferences require extensive amounts of lawyer time. In New York, for example, a pre-calendar conference to schedule depositions and other discovery is required. Unfortunately, this conference generally does not result in meaningful settlement negotiations but rather requires a court appearance, adding to the lawyer's time spent on a file.

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Text discussion provides thorough explanation with specific examples.

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ATLA's LITIGATING TORT CASES

the full attention that it needs. If you are taking a case that you think is not profitable with the idea of just "winning in" your responsibility, do not take the case.¹

If you want to do a client a favor do not charge him at all, giving a client a discounted rate makes you a discounted rate. If you take small cases, the client for whom you are doing a favor will associate you with small cases and may refer the big one to another lawyer. Keep exceptions to a minimum.

Research References

West's Digest References
 Attorney and Client §130 to 135

Legal Periodicals

John D. McMahon and G. Brent Burks, Perfecting Slip-and-Fall Litigation by Selecting a Strong Case, 37-DEC Trial 40 (December 2001)
 Peter Perlman, The Good, The Bad, and The Ugly-Case Selection, 1 Ann. 2001 ATLA-CLE 989 (2001)

§ 2:45 Summary and practice pointers checklist

The numbers and projections will vary from office to office. With efficient use of computers and document assembly the time values can be cut. Programs are available for case management that allow almost all pleadings and form letters to be created automatically. This will save great amounts of staff time in drafting and will reduce the amount of lawyer time to supervise the drafting.

With the use of well-trained paralegals, the lawyer-to-staff hour ratios can be altered. In some offices with large volume practices, the client rarely sees the attorney. Most tasks prior to taking depositions can be done by non-attorney staff members. This reduces the costs even further.

- ☐ Determine your office plan (See § 2:29)
 - Determine a budget and include how much income you project you realistically hope to earn in the upcoming year. Also list in your budget the salaries of all the people in your office.
- ☐ Calculate the hourly cost of you and your staff (See § 2:31)
 - Once you have estimated everyone's salary, determine

¹For a detailed discussion of attorney negligence, see Ch 64.

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A nationally renowned and respected trial lawyer and pioneer for women's rights, Ms. Conlin served as the first female president of ATLA in 1992, has served as chair of numerous ATLA committees, and in 2002 was named by the *National Law Journal* as one of the 10 most influential women attorneys in the nation.

Gregory S. Cusimano



Mr. Cusimano is one of only five recipients of the ATLA Lifetime Achievement Award. He is a member of the ATLA Board of Governors, has served on the President's

Council, chaired numerous ATLA committees, including ATLA's National College of Advocacy, and is a past president of the Alabama Trial Lawyer's Association.

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