Effectively and Efficiently Handling Small Dollar Cases

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Introduction

One aspect of being a younger attorney, whether in terms of number of years in practice or number of years in a particular area of practice, is that multi-million-dollar, nuclear verdict-type cases are generally not dropped in your lap to handle on your own. For larger cases, you will be partnered up with seasoned litigators and given assigned tasks to complete and report back to the partner. However, law firms, insurers, and clients are all interested in building up the next generation of attorneys. For that reason, small dollar cases do often land on younger attorneys' desks to allow them to "cut their teeth" in the profession. Knowing how to effectively and efficiently handle smaller cases is critical to the success of the case, your clients' attitudes towards your efforts, and your overall progress in becoming a great attorney.

But the skill of expertly handling a smaller legal matter is not confined to less-experienced lawyers. Even seasoned attorneys can find an important niche practice in being able to effectively and efficiently handle cases that some lawyers (but not clients) consider a smaller case.

Although there is no good definition of a "small case". It is up to the individual attorney to define what a small case is. In the transportation/casualty arena, a case with a top exposure of around $250,000 might be defined as a smaller case. In cargo or freight collections, $250,000 may be considered a large case.

Regardless of the actual definition of a small case, here are tips from the trenches to keep in mind when handling smaller cases.

The Engagement Letter

One of the first tasks in any matter, but especially in a smaller case, is the preparation of an engagement letter. The engagement letter should have standard language about fees, billing, and retainers. But the engagement letter in a smaller case should be carefully drafted to describe the scope of the prosecution or defense of the representation The engagement letter should repeatedly inform the client that there are no guarantees on prevailing and stress that amount of fees could approach, or exceed, the amount in controversy. If attorney's fees are recoverable, the engagement letter should so state and set out the standards for recovery of attorney's fees by either party.

Some jurisdictions permit "Limited Scope Representation." This refers to the concept of a lawyer agreeing with a client to handle only some part(s) of the client's legal matter. The term "unbundling" is sometimes used to refer to this method of client service. Limited Scope Representation can mean that the client will handle other aspects of their case not handled by the lawyer. Limited Scope Representation should be addressed on a state-by-state basis, and the

American Bar Association's resources on this topic are very helpful: https://www.americanbar.org/groups/delivery_legal_services/resources/pro_se_unbundling_resource_center/pro_se_resources_by_state/

Insurance Coverage and the Claim Representative

One of the most important things an attorney can do in small case representation is investigate every possible source of insurance coverage. Legal fees can quickly exceed the amount in controversy, so the existence of insurance coverage, and the duty to defend provided by the insurance policy is important to identify very early in the representation. Insurance coverage available to your client is important, but identifying insurance available to the opposing party is often equally important. If you are prosecuting a claim for damages, whether the defendant has sufficient assets to justify proceeding with the case is information that must be provided to the client as early as possible.

Care should be taken to determine the policy limits, duty to defend in the policy, whether the defense costs paid reduce the amount of the indemnity limits, and of course, whether there are any reservations of rights made by the insurers after the claim is submitted. Counsel should consider putting excess or umbrella carriers on notice depending on the size of the primary coverage indemnity limits.

If a defendant has low limits or no coverage, counsel should expeditiously try to identify other parties who might be liable and have coverage that could apply to the claim.

If counsel is defending a damage claim, and counsel determines that insurance coverage is denied or limited, counsel should inform the client, ideally in writing, of the possibility of a judgment in excess of any available coverage. In that event, counsel should inform the opposing party of the reduced limits, or lack of coverage, and possibly engage in settlement discussions as early as feasible.

In addition to determining sources of coverage for your client, keep in mind that claim representatives are great resources for determining strategy and evaluating claims. If your client is insured, drink from the fountain of knowledge. Many insurance claim representatives are handling a few hundred cases at a time. They have handled, monitored, and resolved thousands of claims in their careers already, picking up their own tips and tricks over the years. They also learn from their colleagues who are also handling hundreds of claims. And they pick up litigation tactics from other attorneys they are working with. Be open to this excellent source of experience.

Likewise, it is perfectly acceptable to be a "backup singer" in a small dollar case. Consider the pros and cons of having your insurance claim representative or independent adjuster work directly with a claimant instead of inserting yourself. Some claimants can get nervous that you – an attorney – are involved and that they do not have their own attorney. Having the claim representative be the primary contact keeps things on a more level playing field. You can still

provide legal advice to your client and insurance carrier related to local rules, local practice, and regional law, but there may be times where you want the claim representative to be the lead singer.

Factual Investigation

Once representation commences, counsel should meet with the client and interview witnesses as soon as possible. Positive witness statements should be taken while facts are still fresh in the witness' mind. Whether facts are favorable or unfavorable, early development of facts will determine what the case strategy should be, and the facts should dictate what information is disclosed, sought in discovery, or developed from third party witnesses.

Early development of the facts also helps counsel determine whether an expert witness will be needed, and if so, counsel can search for an expert and advise the client of those costs as early as possible.

Utilize Resources in Your Firm

Maximize the use of paralegals. In small dollar cases, you want to be cognizant of fees and costs associated with the handling of the litigation. Paralegals can be excellent resources for obtaining information, summarizing that information, and preparing drafts of routine pleadings, discovery answers and responses, and reports to clients. While you will ultimately oversee all of the work being performed, get used to working with paralegals to make your work more efficient. Meet with them. Discover their strengths. Pick their brains.

Find your mentor. Roundtable the cases assigned to you with a mentor. Often. Mentoring with a senior attorney on a regular basis will help you see things in ways that sometimes only experienced attorneys can see. Early in your career you might meet with your mentor weekly, then every other week, then once a month. Work with several attorneys and get input from different perspectives. Soon enough, you will settle in on the way you want to practice and how you want to interact with opposing counsel, mediators and arbitrators, and the court.

Working with the Client.

Consult with the client at the very outset of the claim about their thoughts on how they want to handle the dispute. Some clients take hard stances toward litigation and will want to defend the claim vigorously. Some clients will want a little more information before making any decisions and will approve performing some limited discovery. Yet other clients will be open to "business decision" resolutions to get a matter closed and off the books. Counseling with the client early will help determine the tack you take on a small dollar case. Your role is to offer counsel on each approach and then follow the direction the client wants to take.

One of your responsibilities is to help clients see the future of the litigation, which requires all of us to try to see into the future of the case. Questions you will want to help your client answer are: What allegations are most likely to be asserted and what are the strengths and weaknesses of

those claims? How long will this litigation likely last? Who is most likely to be deposed? What documents will the client be required to produce? What treatment will the plaintiff likely undergo and what resulting damages will the plaintiff board at trial? What is a jury likely going to do with liability, contributory negligence, and/or damages? These questions, and many more, are part of your initial evaluation that you provide to a client, helping them weigh the tack they will want to take towards the claim.

Give advice on fees and costs. Your client will need to know your best cost estimate of litigating the matter to conclusion, whether that is to mediation or through trial. Knowing whether litigation costs will be well under, come close to, or exceed the amount in controversy helps the client make the decision about how to handle the matter. You will also want to discuss other "costs" of litigation like the time the client will need to dedicate to the litigation and the emotional toll litigation may take on those involved.

Set your client's expectations early. Most clients new to litigation are surprised to learn that 98% of all claims filed end up resolving outside of court and that a small percentage of those are because a claimant walked away from their claim or because you were successful in motions practice. Your client may be concerned that they will have to pay anything at all. Have the discussion about the possibility of resolving a claim with an early settlement to avoid potentially protracted litigation or the trial itself.

Determine early on whether liability is disputed. If liability is not going to be disputed, even if only for purposes of mediation, you can focus your efforts on damages. Similarly, if the injuries are such that you are not likely to put up a significant challenge to them, you can focus your efforts on liability and not waste time and resources elsewhere.

Don't be afraid to put all your cards on the table. Make sure your client knows their weaknesses as well as their strengths, especially with the smaller cases. Bad facts for your client in smaller cases tend to stand out more sharply. Be open with your client about the pitfalls in the case. Hiding bad information does not help resolve the matter and will only cause problems later for you and/or your client. The worst place for your client to find out about bad facts is at their deposition or at trial. While there may be some creative defenses to some bad facts, the simple truth is that not every bad fact has a response. Concede what you must and defend the rest.

Discovery Strategy

Once the facts are preliminarily developed, counsel can put together an efficient discovery strategy. Questions to be addressed include:

- What do I have/need to prove my client's claim/defense if trial was tomorrow?
- What "typical" discovery can I forego (given the size of the case/resources of the client), without jeopardizing proof of the client's case?
- Given the elements of my client's case/defense, what essential facts need to be developed to address those elements/defenses.

- What facts can I prove through well-crafted requests for admission rather than depositions?

Consider an early meeting or conference with your opposing counsel. Propose early exchange of documents. Evaluate opposing counsel's expertise, familiarity with applicable law and case-specific facts. Tell the opposing counsel what you need from discovery and ask the opponent what it needs. Fighting over basic discovery will only increase the cost of the case. Try to get counsel to agree to limit discovery to certain issues. Get in front of the court and try to get the court's assistance in narrowing issues. This tactic often works and wins points with the judge. Consider stipulating facts that you know counsel will likely be able to prove. To the extent it relies on you, develop a relationship with opposing counsel—consider the case as a problem to be solved rather than a confrontation on every issue.

Settlement

Evaluate the value of an early mediation. If you have a handle on the facts, your witnesses, and the law, you have enough to consider a mediation. Work with your firm's colleagues and other lawyers in your jurisdiction to find out which mediators are effective at half-day mediations. Consider asking the court to appoint a magistrate or other judicial officer to conduct a settlement conference. Of course, counsel needs to have the hard conversations with the client to explain the weaknesses in the client's case.

Pick the right mediator. If your case needs a mediator, recognize that your favorite mediator may not be the best for all cases. There is no "one size fits all" mediator. One mediator may handle head injury claims best. Another may connect well with a widow. Another may connect better with your client to help them move off from an unreasonable position. Another may be strong in getting a matter resolved in a half day with the right clients at the table. Put some thought into which mediator is right for your case, particularly if you have a difficult claimant or a difficult client (or both).

Another option in a smaller case is having the clients meet by zoom, with lawyers on the call, to try to work out a settlement.

If insurance is involved, make sure you advise your client in writing whether a settlement will involve a deductible or self-insured retention amount. By all means, don't spring this on the client at a mediation or settlement conference.

Some cases resolve more efficiently through early, creative gestures. While there are cases that will require somewhat protracted discovery, with the right circumstances you can still move the matter towards an efficient resolution by thinking creatively. Does the claimant need to replace their car right away and cannot wait for a settlement a year down the road? In a clear liability case, consider offering a significant downpayment on their car. Does the claimant need to replace lost income right away? Consider a modest cash advance towards the settlement. Does the injury claimant need help with the yardwork or snow removal while they recover? Consider retaining a

landscaping / snow removal company for the season. Often, these early gestures reap dividends down the road when it comes time to discuss final resolution.

Working with Opposing Counsel

Be cautious not to "over lawyer" smaller cases. The same strategy that you use in multi-million-dollar cases simply cannot work in a smaller case. Gather as much information as you *need*, foregoing the scorched-earth interrogatories, document requests, depositions, subpoenas, etc. Be thorough, but do not overdo it.

Be willing to share. Just as you are interested in getting as much relevant information from the other side as early as possible or without contentious discovery, the other side will want certain information from your client, as well. Smaller cases require greater efficiency from both parties. If your client or the claimant is playing hardball it will drag things out and increase costs unnecessarily. Share information and respond to discovery without the endless form objections.

Avoid being a keyboard warrior. Pick up the phone to talk with opposing counsel. Have real conversations with them. You will likely run into them again at least once or twice in your career. If you practice in close proximity to each other, meet for lunch. You have to eat anyway! Being professional with opposing counsel on the smaller cases builds rapport and trust, which will help you on the bigger cases down the road.

Trial

Get proficient at courtroom graphics from your laptop or tablet. Every juror today requires visual evidence, and if you are not using courtroom photos, document enlargements, and summary slides, your client is starting out behind at the outset. Pick your witnesses strategically and keep your examinations simple. Don't be repetitious with your exhibits.

If your jurisdiction has a magistrate/associate judge system, consider agreeing to trial with the magistrate/associate judge. Referral to such a judge can often result in a quicker trial date, and perhaps more importantly, a more certain trial date. A magistrate/associate judge may be more focused on the case, despite the size of the matter.

Ethics

Lawyers have to inform their clients. About everything. Costs. The length of time the case will take to be resolved. The uncertainty of scheduling and the uncertainty of outcome. A surprised client is an angry and often litigious client.

If you are defending a relatively small damages case, but your client is insured, you have to remember that the client is the client, not the insurer. This duty raises two fundamental ethical rules. Lawyers have an ethical duty to zealously represent their clients. Model Rule 1.2, Comment:

A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf.

Even if you are handling a relatively small case, the lawyer must act with commitment and dedication and with zeal for the client's interest.

And lawyers must avoid conflicts of interest.

> American Bar Association Model Rule 1.7, Conflicts of Interest: (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
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> (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

If the client is insured, the insurer cannot prevent the client's insurance-retained counsel from taking all reasonable steps to advocate for the insured client. The attorney cannot allow the insurer to dictate defense of the case to the detriment of the insured client.

Artificial Intelligence

Consider using AI, well reviewed and edited, to cut down on drafting discovery and documents, as well as producing summaries.

Budgets and bills

Make sure there are budgets in place that correspond to the size of the case. The budget should be realistic. No matter how many times you tell the client that the budget is an estimate, the client will be holding you to the budget you provide. As soon as you see that costs are going to significantly exceed the budget, call the client. Explain what has happened and why the costs are going to go over the budget.

Review your bills to the client carefully. Your bills can be an excellent tool to educate your client on the status of the litigation and show the client that you are earning the fees that you are charging.

Conclusion

"Well done! You're a sound, reliable servant. You've been trustworthy over smaller matters, now I'm going to put you in charge of much more." Matthew 25:23

Transportation companies, carriers, brokers, and insurers are always looking for a lawyer who can effectively and efficiently handle their litigation. If you can learn to handle smaller matters, very quickly you will be put in charge of many more.

Considerations from the Perspective of an Ontario-Based Junior Lawyer

Introduction

In Ontario, smaller cases will typically fall into two different streams being (1) Small Claims Court and (2) Simplified Procedure. These two streams are governed by their own rules and procedures tailored to different types of cases in the Ontario provincial court system. Each process serves specific case types and ensures proportionality in terms of cost, time, and effort. As a junior lawyer, effectively managing cases under these two streams in Ontario requires understanding the specific rules and tailoring your approach to meet the distinct requirements of each process, while at the same time ensuring that you understand your client's needs and manage their expectations.

Key Differences Between the Two Streams

Aspect	Small Claims Court	Simplified Procedure
Monetary Limits	Up to $35,000	Up to $200,000
Court	Small Claims Court	Superior Court of Justice
Complexity	Less formal, simpler procedures	More formal but streamlined procedures
Representation	Often self-represented parties	Legal representation more common and mandatory for corporations
Costs Recovery	Minimal	Limited but higher than Small Claims Court - $50,000 for legal fees and $25,000 for disbursements,
Discovery	Not mandatory but parties should be enclosing all documentary evidence to either their claim or defence	Limited oral and document discovery – each side can examine the other party for a maximum of 3 hours
Mediation	Not mandatory	Mandatory in certain Ontario jurisdictions including Toronto, Ottawa, and Windsor

Determining the Appropriate Stream

Oftentimes, junior lawyers may find themselves in a situation where the monetary amount of a particular claim falls somewhere in between $35,000 and $200,000. In these situations, junior lawyers will have to carefully weigh a number of factors in determining what the most appropriate forum is.

In Small Claims Court, claims exceeding $35,000 can only be brought if the plaintiff agrees to waive the excess amount. This approach may be best utilized in straightforward cases, especially if the waived amount is minimal or unlikely to justify higher litigation costs. Junior lawyers should consider having a conversation with their clients from the outset to ensure that they understand the trade-offs of potentially waiving the excess amount. A Small Claims Court matter would undoubtedly lead to a quicker resolution and lower costs versus pursuing the full amount under Simplified Procedure. This approach would be ideal for clients prioritizing quick resolution over recovering the full claim amount. However, if recovering the full claim amount seems critical to your client, it may be worth pursuing the claim under the Simplified Procedure keeping in mind the rules/procedures surrounding documentary disclosure, oral examinations, and mediation in Simplified Procedure.

Practical Tips for Junior Lawyers When Determining Whether to Bring a Claim in Small Claims Court or Under the Simplified Procedure

1. Evaluate the Claim Thoroughly and Educate the Client:
    - Calculate damages precisely and determine whether waiving part of the claim is acceptable to the client. Explain the benefits and risks of each option to your client, including the potential financial and procedural implications.
    - Avoid Small Claims Court for cases requiring extensive discovery or expert evidence but consider it for cases with straightforward facts, limited legal issues, and minimal documentation.
    - Consider Simplified Procedure for complex matters involving multiple parties, detailed documentation, or expert witnesses. Simplified Procedure allows limited discovery, making it suitable for moderately complex disputes.
    - In Small Claims Court, costs are limited, generally capped at 15% of the claim amount but judges have wide discretion and costs are usually very minimal. Under Simplified Procedure, costs recovery can reach up to $50,000 for legal fees and $25,000 for disbursements, providing more financial incentives if successful. For cost-sensitive clients willing to compromise for efficiency, Small Claims Court may be the better choice.
2. Prepare for Settlement:
    - Focus on early resolution through negotiation or mediation to avoid the time and expense of trial in either forum. It's also important to build rapport with opposing counsel early on to determine if an early resolution is possible.
    - In both forums, most cases settle before trial. However, the settlement dynamic differs:

- Small Claims Court emphasizes informal negotiations. There is a mandatory settlement conference that takes place before a deputy judge but this occurs only once and is informal.

- Simplified Procedure allows for structured settlement conferences with judicial involvement and certain jurisdictions require that mandatory mediation take place prior to the matter being set down for trial. Moreover, the discovery and mediation stages may add time but they offer more opportunities for settlement discussions to take place prior to trial.

3. Adapt Your Strategy:

    - For Small Claims Court, simplify arguments and focus on key facts. Trials are informal and brief, typically lasting a few hours. Rules surrounding evidence, including hearsay evidence, are relaxed in Small Claims Court.

    - For Simplified Procedure, adopt a structured approach with greater attention to legal strategy and discovery. For document discovery, focus on gathering key evidence that supports your case. For oral examinations, be strategic about the questions you ask, focusing on critical admissions or clarifications. Trials are capped at 5 days and require more formal preparation, including strict adherence to evidentiary rules and pre-trial procedures.

4. Seek Mentorship:

    - Consult senior lawyers for guidance on complex procedural issues or settlement strategies.