
The Real Truth About Contingency Fee Lawyers

How Contingency Fee
Agreements Actually
Discourage Frivolous Lawsuits

By Michelle Davis



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The Truth about Contingency Fees in Personal Injury Claims

There are three main benefits of contingency or contingent fee arrangements. This paper will explore all three benefits at length.

- *Contingency fee arrangements enable people of limited financial means to obtain quality legal representation.* There are no up-front fees, retainers, or hourly billing. If the attorney cannot successfully negotiate a settlement or jury award, there is no attorney's fee. No win, no fee.
- *Contingency fee arrangements align the interests of lawyer and client.* Both parties will have a direct financial stake in the outcome of the litigation. This risk-sharing component of a contingency arrangement creates an incentive for lawyers to work diligently and obtain the best results possible.
- *Contingency fee arrangements discourage frivolous lawsuits.* By linking an attorney's compensation to the success of the case, the attorney is given incentive to screen cases for both legal foundation and sufficiency of evidence, and thus will only pursue cases that are likely to succeed.

“The purpose of a contingent fee is to allow people with limited financial means to hire an excellent lawyer to represent them in settlement negotiations or legal action.”

Isn't it expensive to hire a good attorney? Are less expensive, alternative arrangements available?

When accident victims decide to hire an attorney to help them pursue their injury claim one of the first questions they often ask is: “How much will it cost for me to hire an attorney?”

Some believe that they will have to pay a hefty, up-front retainer in order to secure the services of a good attorney. Others believe that they will have to pay an attorney a high hourly rate. Many don't even contact a personal injury attorney because they just don't think that they can afford a lawyer. But there are alternative fee arrangements that make it easy for anyone to hire a competent attorney to handle their personal injury claim.

What is a contingency fee? What does contingency fee mean?

What most people don't know is that personal injury attorneys—the kinds of attorneys that handle wrongful death, car accident, medical malpractice, dog bite and other types of injury cases—typically work on a contingency fee basis which requires no up-front fees, no expensive retainers, and no hourly fees.

A contingency fee arrangement is the most traditional type of alternative fee arrangement. In a contingency fee plan the attorney receives a fixed or scaled percentage of any recoveries (money) in a legal claim or lawsuit brought on behalf of the plaintiff (injured party and/or client). Typically, the client pays the case costs or litigation expenses—but these costs are advanced by the attorney during the duration of the case and repaid at the conclusion of the case.

“...when a lawyer is paid a contingent fee the attorney is motivated to act in the client’s best interest and pursue only those cases with a sufficiently high expected return.”

Why would clients want an alternative fee arrangement such as a contingency fee?

Contingency fee arrangements allow people who lack the financial resources the opportunity to pursue important but expensive litigation they might not otherwise be able to afford. Contingency fees also allow a person to pursue the same high-quality legal representation that insurance companies have. This is accomplished by having their attorney/law firm invest in the case and share in the financial risk.

This risk-sharing component of a contingency arrangement creates an incentive for lawyers to work diligently and obtain the best results possible. A joint analysis by professors at Harvard University and Dartmouth College which was published in *The Journal of Law, Economics & Organization* stated that if an attorney is paid an hourly fee, then the lawyer has little financial incentive to tell the client if the case has little or no merit and little chance of a good outcome. An attorney working on an hourly basis might be inclined to lead the plaintiff blindly into litigation regardless of the case’s merit. However, when a lawyer is paid a contingency fee the attorney is motivated to act in the client’s best interest and pursue only those cases with a sufficiently high expected return.

If you do not get a settlement or jury award in your case, there is no attorney’s fee. No win, no fee.

How are contingency fees calculated?

A contingency fee is calculated based on a percentage of the recovery amount (settlement or award). The percentage of the fee can vary, but it usually will be about one-third of the settlement or verdict. It can be as high as one-half, depending on the difficulty of the case. As mentioned before, if there is no recovery then the injury victim owes the lawyer nothing in the way of attorney’s fees.

A contingency fee lawyer may take on considerable risk because the lawyer will not get paid unless he or she produces a recovery for the client. For this reason, the percentage rate of the contingency fee must be high enough to compensate the lawyer for taking on a case where there is a chance that he may not get paid at all. Generally speaking, cases that present the most risk (i.e., difficult to prove, time consuming and/or complex cases) may require a higher contingency fee.

What about ‘case costs’? Who pays the legal fees, expert fees, and other costs?

In order to help prove a case an attorney may need to incur costs. Typical costs include charges for copying medical records, filing fees, investigation, expert witness fees, deposition fees, etc. Personal injury attorneys typically ‘advance’ these costs which means that the attorney will pay the costs on the client’s behalf and wait until the conclusion of the case to get reimbursed out of the settlement or recovery. In some states, the state bar ethics rules require that the client must be responsible for paying all costs associated with the case. These

“A contingent fee arrangement makes it possible for anyone who has a legitimate case to hire a lawyer.”

costs are subtracted from the final recovery amount. Again, the client does not have to pay any upfront, out-of-pocket costs.

Is a contingency fee arrangement good for clients? What are the benefits of a contingency fee?

A contingency fee arrangement makes it possible for anyone who has a legitimate case to hire a lawyer. More importantly, the contingency fee arrangement gives everyone access to the justice system. It assures that people who have been wronged will have equal access to a lawyer and will be able to protect their legal rights when they have been harmed by powerful defendants like negligent individuals, doctors, government entities, businesses/corporations and insurance companies.

Attorneys that work on a contingency fee basis have incentive to get the best possible results for their clients as quickly and as efficiently as possible---the more the attorney can get for the injury victim/client, the larger the attorney's compensation.

A personal injury attorney working for a contingency fee has no incentive to waste time or drive-up needless litigation costs. Instead the contingency lawyer has every incentive to be efficient and, most importantly, to win the case.

Hourly Attorney Fees

In contrast an attorney that works on an hourly basis has no incentive to quickly resolve the claim as his fee is based on the number of hours worked. And since the lawyer does not share in the outcome he has relatively no incentive to make sure that everything possible is done to manage the case.

Why do personal injury claims seem to take so long to resolve?

Personal injury claims can take months or even years to resolve. One important factor to remember is that the defendant's attorneys (the insurance company lawyers) are paid on an hourly basis and are thus incented to work slowly, bury themselves and the plaintiff's lawyer in mountains of paperwork, and drag the case out for as long as possible. The longer it takes, the more the insurance company attorneys get paid.

Contingency fee arrangements discourage frivolous lawsuits.

Many politicians, insurance companies, medical institutions and news media claim that there is an "epidemic" of frivolous lawsuits—ridiculous legal claims that have no foundation. The implication is that ambulance-chasing attorneys encourage frivolous, baseless-claims to make more money for themselves, and that these meritless lawsuits are the primary cause of rising medical and insurance costs. This just isn't true.

Contingency fee arrangements actually reduce the number of frivolous lawsuits and unsupported litigation by discouraging attorneys from presenting claims that have no legal foundation, negative value or otherwise lack merit.

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The contingency fee arrangement ensures that the attorney believes in the case and knows that there is proper legal basis for the claim. An attorney that works on a contingency fee basis wouldn't take on cases that have no legal foundation.

Contingency Fees Benefit Injury Victims

In summary, contingency fee arrangements are good for injury victims because:

- Contingency fee arrangements allow people who lack financial resources to hire an excellent attorney.
- Clients do not owe the lawyer any attorney's fees if there is no settlement or jury award.
- Contingency fee attorneys typically pay the case costs on the client's behalf and wait until the conclusion of the case to get reimbursed out of the settlement or recovery.
- There are no out-of-pocket for any expenses for the injury victim/client.
- The attorney has extra incentive to act in the client's best interest.
- The lawyer is motivated to only accept cases that have real legal foundation and strong evidence.

Protecting the Legal Rights of
Injury Victims & Their Families



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