

COLUMBUS BUSINESS FIRST®

VOL. 22, NO. 53

THE CENTRAL OHIO BUSINESS AUTHORITY

AUGUST 25, 2006

Nontraditional fee agreements offer alternative payment options

Often described as the key to the courthouse for financially challenged claimants, the contingent fee system has provided people with access to the civil courts in America for more than 100 years.

While the contingent fee is usually identified with plaintiffs who file tort cases, American businesses that wrongfully suffer economic loss have begun to awaken to the sensibility of a contingent fee contract with trial counsel.

Traditionally, lawyers have employed four basic structures to assess legal fees as follows:

- Flat fees are charged based on the lawyer's experience for an assigned task.
- Statutory fees are determined based a formula set by a legislature.
- Asset-based fees are used for such matters as probate estates, calculated by a schedule or a predetermined percentage based on the amount of money at issue.
- Hourly fees are charged using the number of hours devoted to the client's matter multiplied by the lawyer's and support staff's hourly rates.

Often overlooked by lawyers and clients, the contingency fee represents a fifth form of legal fee arrangement.

Simply put, a lawyer who works for a contingent fee agrees to accept a predetermined percentage of any monetary recovery achieved in the case. Rather than charging the sure fee for legal services assessed at an hourly rate, the lawyer employed on contingency understands that if the case fails to yield payment on a settlement or judgment for the client, the lawyer receives no fee.

Made in the U.S.

The contingent fee in civil cases has evolved as a uniquely American arrangement. Only recently, Great Britain first authorized barristers' engagements with civil clients by contingent fee.



BUSINESS OPERATIONS

FRANK A. RAY

Some of the most respected litigators in the history of the American civil justice system have accepted employment on a contingent fee.

In their civil trial practices, Abraham Lincoln and Clarence Darrow regularly worked on a contingency basis for their clients. One might contend that trial lawyers who undertake claims for a contingent fee exemplify the entrepreneurial spirit championed by our nation.

Why would a business or an individual consider hiring civil trial counsel by contingent fee? There are four reasons combine in answer to this question:

- A lawyer who agrees to a contingent fee has a strong incentive to convey unfettered candor to the client in evaluation of a claim and associated defenses. It is axiomatic that an attorney who accepts a case on contingency also undertakes the business risk of payment of fees tied to successfully handling the client's claims.

When lawyers review potential cases on the basis of a prospective contingent fee arrangement, they often serve as gatekeepers for the civil justice system. The competent lawyer who works on contingency refuses frivolous or unjustified lawsuits because the lawyer has no economic motivation to accept such cases.

- When clients engage lawyers on contingency, counsel has the inherent incentive to manage the case efficiently and expeditiously. Lawyers who work for a contingent fee appreciate they must

invest enough of their professional time and resources to win in a court of law. In the mind of the lawyer on contingency, winning the case emerges as the focused priority.

- When a client hires a lawyer on a contingent fee, the client has deflected concerns about cash-flow drains caused by legal fees.

Typically, civil lawsuits have a life expectancy of between one to three years. For businesses or individuals, the cost of civil lawsuits can siphon dollars from the claimant's bottom line. With a contingency fee arrangement, the client's bottom line is affected only at the conclusion of the lawsuit - and only in the happy event that fees are paid to the trial lawyer because the client has prevailed in the case.

- The contingent fee produces a merger of interests of the claimant and the trial lawyer. Legitimately, trial attorneys and their clients become business partners with the united goal of achieving optimum success in a civil lawsuit.

Just as the contingent fee avails individual litigants with access to the courts and produces the opportunity to gain equal footing against insurers or businesses with otherwise superior financial strength, the same applies to businesses challenged by adverse financial effects due to civil wrongs.

If a business finds itself teetering on the brink of insolvency, and if the prospect of insolvency occurs because of others' breaches of contract, violations of the Uniform Commercial Code, or business torts, the economically challenged business can look for a skilled lawyer who will work on a contingent-fee basis.

Frank A. Ray is a partner at Chester Willcox & Saxbe LLP where he practices in the areas of civil trial and appellate litigation. 614-334-6176 |fray@cwslaw.com