

# Lowcountry Injury Law

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## Contingent Fees in Personal Injury Litigation

Personal injury litigation is one of the few areas of the law where every person, regardless of their financial resources, have equal access to justice. The reason for this is the contingent fee agreement – where the fee a client will pay is a percentage of the total amount of any recovery in their claim, whether by settlement, jury verdict or some other alternative dispute resolution procedure. The "contingent" aspect of the fee means that if there is no recovery, there is no attorney fee. The purpose of a contingent fee is to shift the risks of litigation and costs for legal fees from the client to the attorney and to thereby reward attorneys for assuming such risk and for their proficiency and diligence in prosecuting disputed and litigated claims.

In other words, personal injury lawyers take all the risks in order to share in the rewards at the end of the case. This works to the benefit of both clients and their attorneys. The more attorneys win for clients, the more they get to keep for themselves. Litigating personal injury claims is very time-intensive. Even in cases involving simple liability issues, such as automobile accident cases, depending upon the nature of the injuries and damages involved, personal injury lawyers can put in hundreds of hours of work and incur thousands of dollars in costs to prepare a case for trial. If they don't win, they don't get paid; or if the recovery is relatively low, they get paid very little in relation to the amount of time and resources committed and expended.

In taking on a case for a contingent fee, the attorney is committing his time and firm's resources to take the case all the way through a jury trial, if necessary, to obtain the best possible recovery for his client. The attorney rarely knows in advance whether the case will get settled before filing suit, after filing suit, or whether a full-blown jury trial will be necessary. Sometimes clients want their day in court no matter what settlement is offered before trial; often times insurance companies will not offer reasonable amounts for a settlement, forcing a trial where one was not originally anticipated; and many times issues unknown when taking the case come to light during litigation that affects the settlement value or makes the case more complicated or challenging than originally anticipated. The personal injury attorney assumes the risks in all these circumstances.

### Factors Involved in Contingent Fees.

In some cases, the attorney is able to obtain a favorable recovery for his client within a shorter period of time or without consuming a significant amount of his time and resources than could otherwise have been necessary. The resulting fee may appear to the client as a windfall to the attorney, but the client should consider the following:

- The attorney is contractually bound to take the case all the way to a jury trial if the client does not accept the defendant/insurance company's best offer of settlement;

- The attorney's prior years of experience and record of prior successful jury trial outcomes most probably contributed to his or her ability to obtain an early successful outcome in the case (a real threat of a jury trial motivates insurance companies to settle);
- Most personal injury lawyers experience occasional losses or less than favorable or expected outcomes in some cases and relies upon other cases with more successful outcomes to make up for these no-pay or low-paying cases;
- Most personal injury cases do not involve large sums of money and the ultimate recovery and fees earned often do not adequately compensate the lawyer commensurate with the risks taken and for the time and resources committed to handling the cases; but such cases are offset by other cases involving larger settlements and verdicts that have a higher ratio of time/resources spent versus fees earned; and
- The attorney's compensation should reflect the risk factors inherent in contingent fee agreements.

In contingent fee litigation, the attorney has chosen to offer as their stock in trade something other than their time and advice. Additionally, the lawyer offers their firm's resources. The contingent fee lawyer agrees to provide all attorney attention and firm funds available as the lawyer believes is necessary and appropriate to achieve a financial recovery that is satisfactory to the client.

Personal injury litigation is very time consuming and expensive – if a lawsuit is filed, the estimated time an attorney may spend in case investigation, legal research, discovery, depositions, handling experts, document preparation, motion hearings, trial and other litigation work, can easily reach 100-200 hours in cases that don't even involve complex matters or substantial damages. In more complex cases, such as premises liability cases (slip & fall), the time necessary to devote to the case all the way through a trial can easily reach 500 hours or more over a 2-3 year period. Using an average hourly billing rate of an experienced attorney of \$300.00 (to cover his/her time and office overhead), the amount of resources the contingent fee attorney is investing in his/her client's case is comparable to an investment that could range from \$30,000 to \$150,000 or more, depending upon the complexity of the case. And there is no guarantee that the attorney will receive any compensation for his/her investment or that a settlement or award will adequately cover all the time and resources committed and invested in the case, much less the risk that was taken by the attorney.

The person or organization that caused a victim's injuries and their insurance company are responsible, or liable, for compensating the client. Of course, the insurance company wants to pay the injured party as little as possible. A personal injury attorney's job is to see that his client receives maximum compensation for the full extent of the damages.

A primary advantage of the contingent fee agreement is the *motivation* it provides to the attorney to maximize the client's recovery. In other types of litigation where clients pay the attorney by the hour for their time, it makes little economic difference to the attorney whether the client has a successful outcome to the litigation. In contingent fee cases the attorney's own recovery is tied to the result obtained for the client, so it is important to the attorney to put in the time and effort necessary to bring about the greatest recovery in the case.

The percentage to be charged on a contingent fee case, to a large extent, depends on the type of case. In automobile accident cases a contingent fee of 1/3 of the recovery is common. In medical malpractice, product liability, premises liability cases and other more complex and high-risk personal injury litigation, the fees can go to 40-45% because they involve more risks and frequently consume substantially greater amounts of attorney time and resources.

## **Choosing a Law Firm.**

The law firm you choose to represent you should have the experience and financial resources required to pursue your claim. Because you are not paying by the hour, it does not cost any more to retain an experienced law firm with a long record of success.

Most personal injury law firms also offer a free consultation to discuss your case. This is a good time to ask about costs and fees. Also ask whether they have handled similar cases, what kinds of results they have achieved, and whether the lawyers have taken similar cases to trial. If the opposition knows the lawyer will take the case to trial, they may be more likely to offer a settlement outside the courtroom.

## **Summary - Advantages of Contingent Legal Fees.**

When you agree to pay a lawyer on contingency, the fee is set at a prearranged percentage of whatever the awarded amount might be. This can sometimes add up to much more than the normal fee the lawyer would have earned if paid by the hour, however there are many advantages to paying on contingency:

- If you lose the claim you don't pay the lawyer at all.
- Paying on contingency will not only get you an attorney, but you can get a very expensive, competent and experienced attorney, that many could not otherwise afford.
- Your attorney will arguably work harder for you if paid on contingency because his or her fee is at stake and your attorney will be highly motivated. You have the security of knowing that your attorney has cast his/her fate along side that of his client.
- Since your lawyer will not be getting paid by the hour, you can have more interaction without being worried about "watching the clock."
- If paying by the hour the defense could employ delay tactics to exhaust your funds.
- If paying by the hour some attorneys might take your case whether or not it could be won or settled for an amount that justifies payment of high hourly fees.
- A lawyer who agrees to payment on contingency believes your case is winnable and has a settlement value that will not only compensate the client for damages incurred, but will compensate the attorney for the risks taken and the commitment of his or her time and firm's resources.