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## **It's The Law**

### **Contingent Fee Arrangements**

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Many people are aware that contingent fee arrangements exist occasionally between a client and an attorney. Almost as many don't really understand what is involved in a contingent fee arrangement and when such an arrangement is appropriate and desirable.

A contingent fee arrangement can take a variety of forms, but in all its iterations it involves an element that compensates the attorney, in some measure, based on a percentage of the recovery achieved. The applicable percentage, what it's based on, and whether there is any guaranteed minimum compensation are all negotiable between the client and attorney. The applicable percentage can be set at different levels depending on the point of recovery, i.e., whether that is accomplished by negotiation, by negotiation before or after suit is filed, by trial, or after a successful appeal. In its purest form, the compensation at whatever agreed percentage(s) is based entirely on the amount of collected recovery and, if nothing is recovered, nothing is paid for services. Typically, clients remain liable for out-of-pocket expenses, regardless.

Clients agreeing to a contingent fee do get an attorney very much involved in and motivated by the prospect of the largest recovery possible. The attorney may also be motivated, however, to put in as little effort as possible to that end and will have a greater say in whether and when settlement is appropriate.

Aside from these intangibles, contingent fee arrangements make sense for a client only when three things are true:

- (1) there is pretty obvious liability;
- (2) the amount of damages is very substantial against a defendant capable of paying a judgment; and

(3) despite the first two being true, the client can't afford to hire a competent attorney on an hourly basis.

Any competent attorney willing to accept a contingent fee arrangement has done due diligence regarding items (1) and (2), and concluded that the contingent fee arrangement is very likely to generate more income than straight hourly rates (in order to compensate the attorney for the theoretical risk of low or no recovery).

The bottom line: If there's clear liability of substantial proportions against a defendant capable of paying a judgment, and the client can afford to hire competent counsel on an hourly basis to pursue the claim, the client will likely be money ahead to do that and decline a contingent fee arrangement.

If you have any questions about these requirements or this issue, please contact Jonathan C. Wilson at 515-288-2500 or via e-mail at [JonathanWilson@davisbrownlaw.com](mailto:JonathanWilson@davisbrownlaw.com).

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