



CENTER FOR JUSTICE & DEMOCRACY
185 WEST BROADWAY
NEW YORK, NY 10013
TEL: 212.431.2882
centerjd@centerjd.org
<http://centerjd.org>

COURTHOUSE CORNERSTONE:

Contingency Fees and Their Importance for Everyday Americans

The contingency fee system ensures that someone with a legitimate injury case, regardless of their financial means, has access to a competent attorney. It is a remarkable system that functioned for centuries without any government interference.

But in the 1980's, lobbyists for big corporations, medical societies, and the insurance industry began to attack and undermine the contingency fee system by pushing for statutory limits on contingency fees, turning a free-market approach to providing legal representation into a botched system of government-imposed wage and price controls, and interfering directly with the contractual arrangements between people and their own attorneys.

Recently, there has been some movement to repeal unfair contingency fee limits, a trend that hopefully will continue.

For centuries, contingency fees have been considered the “key to the courthouse door” for everyday Americans, ensuring access to attorneys and the civil justice system.

- Contingency fee attorneys take cases without charging the victim any money up front. The attorney is paid only if the case is successful and as a percentage of the judgment they obtain.
- Contingency fees are guided by ethical rules that have kept fees from becoming excessive. Research shows that the typical contingency fee ranges from 25% to 33%, and in the majority of cases is 33%.
- The system allows victims to hire not just any attorney, but a competent attorney in a specialized area, just as insurance companies or corporate defendants do.
- Even critics of contingency fees acknowledge their importance in enabling the sick and injured to obtain access to the courts.

Contingency fee attorneys take huge risks since, if they lose a case, they are paid nothing for their time or the expenses they have fronted.

- Even when cases are successful, attorneys still face financial risks depending on how much is ultimately recovered, the timing of any final judgment or settlement, or whether a judgment will even be paid.
- Contingency fees are appropriate in low risk cases and in those that settle early. Winning is never guaranteed, and sometimes early settlements occur precisely *because* of the value a contingency fee attorney brings to a case.

Contingency fees further protect the civil justice system by making attorneys both selective and efficient.

- Because of the financial risks that attorneys take in contingency fee cases, they cannot afford to bring cases that are “frivolous” or without merit.
- This universal “screening” function has been accepted by many conservative analysts and even by the insurance industry.
- Evidence of how well this screening function works is in the statistics.
 - Surveys show attorneys accept a small percentage of cases from potential clients.
 - Personal injury suits are a very small percentage of civil litigation and the rate of case filings has been dropping for years.

The contingency fee system aligns the attorney’s interest with that of their client, while also promoting efficiency of judicial resources.

- Because their payment is linked to the outcome of the case and the attorney is unpaid while working on a case, contingency fee attorneys have a strong interest in working hard for their clients and resolving cases efficiently.
- Defense attorneys, on the other hand, who are paid by the hour, profit from dragging out their cases and delaying settlements and judgment. Insurers themselves also profit the longer payment is delayed.

Half the states in this country have some type of law dealing with contingency fees and most of those block victims’ ability to hire counsel.

- Most states that limit contingency fees use sliding scales, with the most severe limits on the highest award.

- The impact is primarily on victims with the most serious harm or complex cases, where attorneys cannot afford to front high litigation costs knowing the possible recoverable damages are so limited.
- In states where plaintiffs' attorney fees are limited, corporations and insurance companies have no reciprocal limits on what they pay their own high-priced attorneys. That means wrongdoers can continue to hire the best attorneys money can buy while the sick and injured cannot.
- Recently, advocates for contingency fee limits have used manipulative PR efforts to suggest that such laws are pro-consumer – i.e., they allow injured patients to keep more of their recovery -when in reality, they prevent injured patients from obtaining competent counsel.
- There has also been some movement to repeal unfair fee schedules. In January 2013, the Governor of Illinois signed new legislation, which replaces that state's restrictive fee schedule in medical malpractice cases with a standard one-third, and eliminates attorneys' ability to petition a court for higher fees.