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MYTHBUSTER!

FACTS ABOUT LAWYERS' INCOME AND FEES

LAWYERS' INCOME. According to the Bureau of Labor Statistics, the median income of all lawyers in 2004 was \$94,930, i.e., half of all lawyers made less than that. By comparison, the median income for doctors ranged from \$156,010-\$321,686, depending upon specialty, and \$129,920 for dentists.¹ But if any lawyers are making excessive income on average, it's corporate lawyers, not trial lawyers: 85percent of partners in corporate law firms earned more than \$200,000 in 1995.²

CONTINGENCY FEES

- **The contingency fee system provides injured consumers with access to the courts.** Injured people may be in pain, unable to work, or lack funds to pay next month's mortgage or rent, let alone an hourly attorney's fee. Under a contingency fee arrangement, a lawyer can take a case without expecting any money up front. In return, the lawyer is entitled to a percentage of the amount of money collected if the case is successful – usually one-third. If they are not successful, the attorney receives no fee at all. Without such a system, injured consumers could never find attorneys to fight insurance companies, or to take on large corporations and institutions in the country, like the drug or tobacco industries.
- **A 33 percent contingency fee is most common, contrary to popular myth from "tort reformers" that it is much higher.** In a carefully-designed, systematic study of contingency practices in this country, Professor Herbert M. Kritzer found that figure to apply to 92% of the cases he studied. Five percent of the cases called for fees of 25 percent or less, 2 percent specified fees around 30 percent, and *only 1 percent specified fees exceeding 33 percent.*³
- **The contingency fee system does not encourage frivolous litigation – it deters it.**
 - Lawyers who take cases on a contingency fee take a big risk – if the case is lost, the lawyer is paid nothing. Moreover, contingency fee attorneys must front the costs of litigation themselves. Sometimes, this can amount to thousands, or even millions of dollars. When a trial lawyer takes a case and loses, he/she has essentially been unemployed for the entire time he/she's been working on the case. In other words, contingency-fee attorneys cannot afford to bring baseless or frivolous cases. Capping contingency fees below the standard one-third makes it less likely attorneys could afford to risk bringing many cases, providing practical immunity for many wrongdoers.
 - **In 1986, James Gattuso, then with the conservative Heritage Foundation, wrote an article for the *Wall Street Journal* entitled "Don't Rush to Condemn Contingency Fees."** He stated the truth about contingency fees -- that the contingency fee system both ensures that injured persons who could not otherwise afford

legal representation obtain access to the legal system, and, “rather than encourage baseless lawsuits, the contingent fee actually helps screen them out of the system.” On the other hand, defense lawyers are paid by the hour. They are the ones motivated to increase their hours by conducting unnecessary discovery, filing frivolous motions, or refusing to participate in meaningful settlement negotiations until immediately before trial.⁴

- **British insurance companies are on record supporting contingency fees because they screen out baseless lawsuits.** The British insurance industry has admitted the contingency fee system has real advantages by not only providing access to attorneys for many who could not otherwise afford them, but also screening out baseless lawsuits because contingency fee lawyers only get paid upon winning a case. (It is known in Britain as “no-win, no-fee.”) Moreover, say British insurers, since only the strongest cases make it to court, defense costs are reduced, and companies are encouraged to engage in more loss prevention (safety) in order to reduce claims.⁵

CLASS ACTION LAWSUITS AND ATTORNEYS’ FEES. Some try to argue that class action cases normally result in excessive fees for attorneys. This notion was disputed by an extremely comprehensive study by professors Theodore Eisenberg, Cornell Law School and Geoffrey P. Miller, New York University School of Law, who looked at 370 class action lawsuits that settled between 1993 and 2002.”⁶ Below are some of the major findings of that Report, as compiled in a report by consumer group Public Citizen⁷:

- Median attorneys’ fees were only 21.9 percent of the recovery in the studied cases – less than the typical one-third fee in personal injury cases.
- Attorneys’ fees (as a percentage of recoveries) were higher in federal court than in state court, contrary to claims of critics of the state class action system.
- Only 7 percent of cases in those years resulted in “coupon” settlements to plaintiffs offering them little value.
- Median attorneys’ fees in consumer class action suits, the kind often attacked by “tort reformers,” were only 13 percent.
- Attorneys’ fees have a strong correlation with the risk of pursuing a case.
- Client recovery and fee amount are strongly correlated. But as client recovery increases, the fee percentage for attorneys actually decreases, which provides more money for the clients.

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NOTES

¹ Bureau of Labor Statistics, found at <http://www.bls.gov/oco/ocos053.htm#earnings>; <http://www.bls.gov/oco/ocos074.htm>; <http://www.bls.gov/oco/ocos072.htm>

² See, Asimow, Michael, *Bad Lawyers and the Movies*, 24 *Nova L.Rev.* 533, n. 41 (2000).

³ Kritzer, *The Wages Of Risk: The Returns Of Contingency Fee Legal practice*,” 47 *DePaul L. Rev.* 267 (Winter, 1998)(emphasis added).

⁴ See, e.g., Nader, Smith, *No Contest: Corporate Lawyers and the Perversion of Justice in America* (1996).

⁵ See, e.g., *Business Insurance*, April 20, 1998 and October 27, 1997.

⁶ Theodore Eisenberg, Cornell Law School and Geoffrey P. Miller, New York University School of Law, “Attorney Fees in Class Action Settlements: An Empirical Study,” *Journal of Empirical Legal Studies*, Vol. 1, Issue 1 (March 2004).

⁷ Public Citizen, “Attorneys’ Fees and Plaintiffs’ Recoveries in Class Action Cases: Myths Obscure Facts,” found at <http://209.85.165.104/search?q=cache:sPTJ9NA6COgJ:www.citizen.org/documents/AttorneyFeesinClassActionCases1-28-05.pdf+public+citizen+attorneys+fees+and+plaintiffs+recoveries&hl=en&gl=us&ct=clnk&cd=1&client=firefox-a>