



FINANCIAL MANAGEMENT

The Case for More Contingency-Fee Work

Could the billing structure help your firm boost profitability?

BY ERIN BRERETON

November 2024

Contingency fees — which have traditionally been used in certain types of matters, including personal injury cases, mass torts and

business disputes — seem to have become a growing focus for law firms in recent years.

During the initial year of the COVID-19 pandemic, firms saw an increased interest in contingency fee business litigation and commercial matters, according to [Law.com](#); some handled up to 25% more cases.

Richard McCune — a Managing Partner at McCune Law Group, a complex litigation firm whose work centers on contingency fee-based cases — observed the demand uptick first-hand.

“The pandemic put stresses on business in a variety of ways,” McCune says. “There [were] increased needs — cash, or different strains; that’s where that [came] from.”

In a Bloomberg Law [survey](#), more than 40% of law firms said they’d offered a contingency fee — or a success fee, only receiving compensation if the matter was resolved in the client’s favor — in 2023.

In March, the *National Law Journal* [reported](#) a number of Am Law 200 firms had increased the amount of contingency fee-related business they’re handling, with several beefing up their plaintiff-side resources.

Although as of mid-2024, law firm worked rates had consistently risen for years, a recent Thomson Reuters Institute [report](#) suggests clients may be starting to become more vocal about rate costs — which could help escalate the demand for contingency fee options further.



The billing structure won't work in every instance. For example, matters that involve proactively preventing issues, such as creating an estate plan, might not provide quite the same risk-reward appeal. However, if a contingency fee would be an option, lawyers may want to consider it, says Tim McKey, CPA, Chief Executive Officer and owner of Vista Consulting Team, which helps plaintiff law firms optimize operations.

"If [they're] stuck in rate-times-hours because that's all [they've] ever known, they're missing out on a lot of value that they bring," McKey says. "They look at it as there's safety in certainty, but it gives [them] absolutely no upside."

VARIED OPTIONS AND ADVANTAGES

A contingency fee structure offers a clear benefit for clients, who can drastically reduce the upfront investment that would otherwise be required to pursue a matter. In some situations, firms may even cover court filing and other fees.

"Alternative fee structures can help a client get a big case to trial, especially when the client cannot support a traditional hourly rate structure," says Matt Fletcher, a Partner at Tucker Ellis LLP, who works on complex business litigation matters. "Against a well-heeled defendant, a contingency fee can level the playing field."

Law firms may also find aspects of the approach helpful. In hourly fee arrangements, attorneys may not earn much from cases that settle quickly, McCune says. A contingency structure, though, puts lawyers and their clients on the same side of the table.

If [they're] stuck in rate-times-hours because that's all [they've] ever known, they're missing out on a lot of value that they bring. They look at it as there's safety in certainty, but it gives [them] absolutely no upside.

"It's misaligned that the attorney is motivated to keep the case going to collect money," McCune says. "[With] a contingency, we get a percentage, whether it settles now or three years from now, so we're aligned with the client."

Successful plaintiff law firms, McKey says, can actually be more profitable, in regard to percentage of gross income, than billable hour firms.

"When you get 33-and-a-third or 40% of cases, that's a pretty doggone good margin," he says. "Firms can be very profitable on the backs of the young lawyers that are getting paid \$100 an hour, billing \$600 an hour. But clients are waking up to that and saying, 'The value I'm getting is not just your time, it's really your expertise.'"

Law firms may also be able to utilize contingency fees, Fletcher says, to enhance operations and revenue as scheduling allows.

"Contingency fee cases offer training opportunities for younger lawyers — and can be used when hourly fee work is not as active," he says.

Contingency fee amounts can vary; according to the New York City Bar Association- and New York County Lawyers' Association-

sponsored New York City Bar Legal Referral Service, they tend to total **around 33% of the outcome** on average. The majority of Florida Bar members **report** receiving between 33% to 40% — although arrangements can be configured in various ways.

Firms may provide a sliding scale, for instance, where the fee would be 33% if the case doesn't go to trial, and 50% if it does, McKey says.

In a hybrid fee model, a firm might charge an adjusted hourly rate and receive a smaller chunk of the judgment.

"If you're getting a retainer along the way, the contingency percentage may very well go down because you're hedging your bet to an extent," McKey says. "That's why you scope the case and say, 'Look, I'm going to have this much in hard costs, and this is going to take six months and this much effort and opportunity cost — so my retainer is 10 grand a month, and that covers everything.'"

It's misaligned that the attorney is motivated to keep the case going to collect money. [With] a contingency, we get a percentage, whether it settles now or three years from now, so we're aligned with the client.

Passion for a cause, or likable plaintiff with a captivating story, can factor into the decision to accept a case. Fletcher's previous firm provided pro bono representation, with the right to any fee recovery, to a local school district whose students were being exposed to rancid smells, dust and other conditions, he says. The firm eventually garnered a multimillion dollar settlement from a nearby garbage dump.

Fletcher also entered into a contingency fee arrangement, where the client covered any third-party costs, with an Orange County

businessowner who'd been defrauded into selling his company.

"He hired one of the best law firms in town but could not pay their bills," Fletcher says. "We competed against other firms to get the case. Our firm received a multimillion contingency fee — but compensation is only part of the relationship. I got more out of helping this founder get back what was taken from him."

VETTING POSSIBLE CONTINGENCY ENGAGEMENTS

Often, the specific details of a case will determine whether a firm will agree to take it — and what type of contingency fee structure is ultimately used.

While the formula isn't an exact science, Fletcher says, several elements can apply, such as plaintiffs having an exceptionally strong claim for damages in the multimillion range.

"The judgment must be collectable; we want to know if the defendant is solvent or there is insurance coverage," he says. "You want to know how many depositions need to be taken, what expert testimony you need and how long a trial might take — this will help develop a reliable estimate of what the firm is going to invest, so you can compare it to the potential recovery."

To decide if a case aligns with Carter Mario Law Firm's predetermined parameters, the personal injury firm finds calling potential clients helpful.

"Even if they fill out [an online] form, we want to talk to them in person," says attorney Alex Mario. "We ask them what happened; look at the police report, if it's available; if not, see if [we can] do our own canvassing — look for videos, try to get pictures of what happened. It's way more personable; and a lot can get lost in translation in writing."

If a case contains multiple components that indicate a positive outcome could be achieved, law firms will need to have adequate financial resources in place to maintain operational expenses throughout its duration.

Contingency fee cases offer training opportunities for younger lawyers — and can be used when hourly fee work is not as active.

Consumer class action, product liability, catastrophic personal injury and environmental matters have to correlate to McCune Law Group's expertise in the area, McCune says, and be financially viable for the firm to get involved.

"It has to have enough money at issue that if this ends up being a trial four years from now, the case is going to support that," McCune says. "You've got to have a business structure where you can float the cost of your operations. Not too many law firms have the appetite to stomach years of labor, overhead and rent."

After 35 years representing clients, Carter Mario has built up a good-sized war chest that essentially allows the firm to take on any case it wants, Mario says. The firm, however, doesn't enter into contingency agreements heedlessly.

Administrative process-based scenarios have a timeframe in which items need to be filed; from beginning to end, for example, probate can take two years — yet elements can change as personal injury cases progress, making gauging how long they'll last challenging, according to Carter Mario Practice Leader Carla Minniefield.

By utilizing tools such as case management software to track insightful metrics over the years, despite any unknown factors, Minniefield says the firm has been able to ensure ample staffing and other resources are on hand to perform the work.

"A lot of people will just take a case on and not really have a plan," she says. "You need to, if you're going to be successful handling personal injury cases. Putting processes and procedures in place before you start [can help] you actually have forward momentum."



[Erin Brereton](#) is the Owner of Chicago Journalist Media, and a freelance writer, editor and content strategist who has written about the legal industry, business, technology and other topics for 20 years.

[Website](#)

Also in This Issue



HUMAN RESOURCES MANAGEMENT

The Four-Day Work Week: Science Fiction or Inevitable Reality?

The adoption of four-day work weeks remains limited across industries — especially legal. But the potential for the enhanced productivity and increased employee satisfaction are helping to drive it forward.



COMMUNICATIONS AND ORGANIZATIONAL MANAGEMENT

Mentorship for the Hybrid Firm

Technology and workplace environments are changing the way law firms can provide ongoing career development for younger attorneys and staff.



YOUR WELLNESS

3 Ways Leaders Can Dismantle IYKYK Cultures and Unspoken Rules

As managers and leaders at law firms, you can do three key

As managers and readers of law firms, you can do three key things to dismantle if-you-know-you-know cultures and unspoken rules.



Copyright © 2024

The Association of Legal Administrators.

All rights reserved.

8600 W. Bryn Mawr Ave.

Suite 400N

Chicago, IL 60631 USA

Writer Guidelines

Advertising

Contact us

