

CONTINGENCY FEE AGREEMENTS

Are They Right for *You*?
—Are They Right for Your *Client*?



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Rome, 11 oct 2013

WHAT is a Contingency Fee Agreement (CFA)?

a contingency fee agreement is an arrangement

—A CONTRACT—

between attorney and client (plaintiff) in which the client does not pay the attorney for services rendered until and unless the attorney wins the case, or when the agreed upon result is achieved.

The Basics of CFAs

- **WHY** are CFAs used?

To make justice available to those who otherwise could not afford it.

- **WHEN** is payment made to the attorney?

The attorney is not paid until the case is resolved in the client's favor.

- **HOW** is payment made?

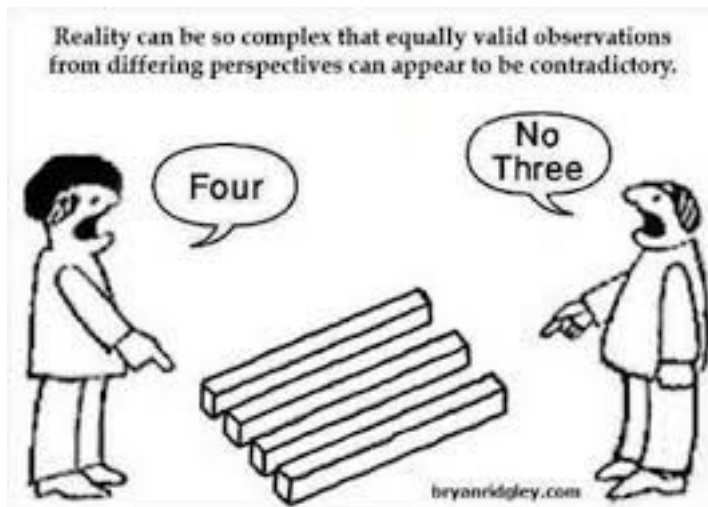
The attorney is paid from the settlement or money paid by the opposing party to the attorney's client.

And now, down to the

**Nitty
Gritty**

HOW MUCH is the attorney paid?

It's all about the money, honey!



... And the answer is...

It all depends!

ITALY



The lawyer's fee is based on a percentage of the amount awarded in the case. If he loses the case, the lawyer does not get a fee, but the client will still have to pay expenses. Contingency fee percentages vary.

—*BUT SEE:*

NEW RULES FOR ITALIAN LAWYERS (AND THEIR CLIENTS...)

On February 2, 2013 a general reform of the legal profession came into force in Italy ...

fees arrangement: traditionally Italian lawyers fees are based on fee scales.

Nowadays, negotiations between lawyers and clients are free and usually have to be drawn up in writing.

Today flat fees, hourly rate fees, percentage fees are all allowed while, differently from most other countries, contingency fees are not (*pactum quota litis*).

USA



Usually a percentage of the total money paid by the opponent. Often this is 33%, but this can vary greatly, depending on the complexity of the case and the procedural stages required. This is the norm in personal injury, not permitted in criminal cases or some family law cases.



ENGLAND and WALES



Lawyers are permitted to recover fees from the damages awarded to their clients. This type of contingency fee agreement was formerly prohibited in the UK, but previously similar arrangements were referred to as *Conditional Fee Agreements*.

SPAIN



Under Competition Law, the Spanish Supreme Court quashed the prohibition against CFAs under the reasoning that it affected competition by restricting the attorney and its client to freely set the price of the legal assistance and, therefore, imposing indirectly a minimum fee.

GERMANY



CFA contracts are permitted—and compare with U.S. where non-lawyers cannot take a contingent investment in a lawsuit. But in Germany, they can. And thus, Germany has companies like Foris to supply the liquidity plaintiffs lack.

FRANCE

CFAs (*pacte de quota litis*) are strictly forbidden by statute and a French attorney may be subject to being disbarred in the event that he were to conclude solely a contingency fee agreement with his client. A written fee agreement with the client which is subject to an uplift in the event of a particularly positive result and of which the calculation is set out in advance is, however, permitted.

HOLLAND INTERNET AD



“It is not surprising that in countries such as the United States, litigation on a contingency basis is very popular : The client only has to pay his attorney if he wins the case. In Holland, it is forbidden for attorneys to work on a contingency fee basis.

Nevertheless, our firm can handle your litigation on such a basis. Our lawyers are not or no longer registered with the Bar, although they are experienced attorneys. They can handle your case, whereby they will instruct registered attorneys for court formalities. These attorneys’ fees will be paid by our firm.

Litigation on a contingency fee basis in Holland may, therefore, be a valid option for you. Please note that we can only take commercial cases with a minimum interest of 100.000 Euros.”




Brief History of CFAs

CFA's, in pure sense, have a relatively short history (post-2000) in the EU.



IN THE EU



-  In ITALY, in 2006, the “Bersani Act”, Law Decree No. 223/2006. In the context of competition law, removed restrictions against previously prohibited forms of CFAs btwn attorneys and clients.
-  In SPAIN, in 2008, Under Competition Law, Spanish Supreme Court quashed prohibition against CFAs under the reasoning that it affected competition by restricting the attorney and its client to freely set the price of the legal assistance thereby indirectly imposing a minimum fee.
-  In GERMANY, In 2007, the German Constitutional Court decided that a law barring contingency fees in all cases was unconstitutional. It held that, under certain narrow circumstances, there was a constitutional right to be able to bring a civil action by means of a contingency fee contract with a lawyer.

Great Britain



Since April 2013 contingency fees have been permitted. Although contingency fees were long barred, one sort of contingency fee arrangement, success fees, has been permitted for the past two decades. Success fees entitle lawyers to an increase in fees, capped at 100%, in the event of a successful outcome, the attorney is paid general hourly wage plus an “uplift” or success fee. This fee can be as high as 100% of the attorney’s hourly rate, depending on the nature of the case.

USA



CFAs have been permitted and
utilized since the 1800's.

WHY?

WILD CARDS

- “Loser pays” vs. costs assessed against both parties;



- is there insurance that pays costs &/or fees?

“PROS AND CONS” –SOME PRACTICAL APPLICATIONS of CFAs

- pros for clients:
 - justice system opens doors to lower income clients
 - may pay less than hrly rate, if substantial time required to pursue
 - pay nothing if you lose (except expenses, in some cases)
 - attorney will work very hard on your case—he is invested in it.
- pros for attorneys:
 - justice system opens doors to lower income clients
 - may earn far more than hourly rate, depending on how much time required

AND . . .

- cons for clients:
 - may end up “paying” much more than if had paid hrly rate, if case resolved quickly;
 - attorneys very selective about taking cases on CFA, so may be difficult to find attorney to accept case
- cons for attorneys:
 - may end up earning far less than hourly rate, if substantial time invested and low recovery amount.

Extract from the Gordon Gekko (Michael Douglas) speech
in “Wall Street”, 1987

“Greed, for lack of a better word, is good. Greed is right, greed works. Greed clarifies, cuts through, and captures the essence of the evolutionary spirit. Greed, in all of its forms; greed for life, for money, for love, knowledge has marked the upward surge of mankind. And greed, you mark my words, will not only save Teldar Paper, but that other malfunctioning corporation called the USA”.

Gekko uses the word “greed”—what word would you use?

So . . .

the answer to the question,

“CONTINGENCY FEE AGREEMENTS
(CFAs): Are They Right for *You*—Are
They Right for Your *Client*?”

is that favorite answer of lawyers
everywhere: “IT DEPENDS!”