

LEGAL FEES IN ACCIDENT CASES

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- Many, if not most personal injury lawyers will agree to represent you on a “contingent fee” basis. What this means is that the lawyer will get paid out of the proceeds from any cash settlement or jury award that is collected in your case. The actual percentage is often negotiable, though it is generally in the range of 33%. Some lawyers, however, insist upon a contingent fee of 40% or higher *if* the case has to proceed to litigation or an actual full trial. Experienced lawyers will tell you this is often justified because preparing for, and actually trying your case to a jury takes a substantial amount of time, and therefore increased risk to both you and the lawyer. If the jury awards nothing, then you walk away with nothing, and the lawyer doesn’t get paid. As a consequence, the lawyers views trial as “higher risk . . . higher reward,” and therefore may want you to agree to a higher percentage if a settlement or jury award is recovered. This is a common practice, and in my opinion there is nothing wrong with it, as long as the percentages are reasonable.
- Let me be clear here. Not all lawyers offer contingent fees, and those who do won’t necessarily insist on the percentages referenced above. But these are common percentages applicable to contingent fees in Virginia, so don’t be surprised if the fee agreement your potential lawyer asks you to sign includes fees at these levels.

WHAT IS THE DIFFERENCE BETWEEN A “COST” AND A “FEE”?

“Costs” and “fees” are not the same thing, and the difference is important for you to understand. Whenever you discuss “fees” and “costs” with your lawyer, you should know that the “contingent fee” does not include out of pocket “costs” incurred for prosecuting your claim. Typically, these costs include:

- out-of-pocket expense paid by the lawyer for court filing fees (if a lawsuit has to be filed);
- deposition transcript fees (the fees charged by court stenographers to take down what people say at their depositions);
- copying charges;
- fees charged by doctors’ offices and hospitals for producing medical records and bills;
- doctors’ fees for providing expert testimony at trial (if necessary) and a number of other things.

It is always a good idea to discuss these charges with your lawyer in advance and find out what they are estimated to be in your case, and when you will be expected to pay them. Quite often, your lawyer may ask you for an initial deposit of money to be placed in a “trust account” for payment of some of these out-of-pocket costs before any work is begun. The amount is normally negotiable.

In a simple accident case involving one or two witnesses, your “costs” may easily run into hundreds of dollars depending on the severity of your injuries and the complexity of your case. In more complex cases involving a lot of witnesses, doctor testimony, physician depositions and travel time, costs can run into tens of thousands of dollars. Be sure to discuss these with your lawyer, as they are NOT part of the “contingent fee” arrangement, and you will likely be responsible for paying them regardless of the outcome of your case.

“You mean my doctor is going to *charge me thousands of dollars* to testify in court about my injuries and treatment?” In most cases, yes. Not only will your doctor charge you anywhere from a few thousand to ten thousand dollars (and up) to testify, but he or she often will do anything possible to avoid having to do it. Doctors *hate* having to testify in court, because it takes precious, valuable away from their busy (and lucrative) practices, so they charge accordingly.

I have the highest respect for treating physicians, and have no problem with them for charging appropriate fees for their time. But it is important for you, the client, to be aware of these significant potential costs should you and your lawyer decide that a case should go to trial. There is no “money back guarantee” that their testimony will produce a winning verdict, and they will expect to be paid regardless – almost always in advance.