International Federation of Consulting Engineers
The Global Voice of Consulting Engineers

Contingent Legal Fees

FIDIC Briefing Note

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Background

The international engineering federation FIDIC (the International Federation of Consulting Engineers) believes that its member associations and their members should strive to achieve the highest degree of quality and standards.

FIDIC has always had policy statements that it expects its members to follow to ensure high standards of service in the infrastructure industry. These standards are reflected in FIDICs contracts, policy work, events and committees.

Contingent Legal Fees

Issues

There has been a growing tendency towards the concept of contingent legal fees. When a lawyer agrees to represent someone in a dispute with the understanding that the lawyer's fee will be a percentage of his client's recovery, the lawyer is operating under a "contingent fee": the fee is contingent upon the outcome. Accordingly, if the lawyer loses the case and the client recovers nothing, the lawyer receives no fee for the service, although the client is usually responsible for the lawyer's out of pocket expenses (such as filing fees or expert witness fees), incurred in prosecuting the case.

Contingent fees encourage lawsuits that are of questionable merit but might potentially result in the award of large damages. A complaining party is more likely to litigate such claims if it has no personal investment or risk in losing. Such lawsuits frequently add 'deep pocket' parties as defendants, more as a potential source of payment than for wrong they have done.

Contingent fees distort the perceptions and objectivity of both lawyers and juries. A lawyer dependent upon a contingent fee, having a personal financial interest in the outcome, can no longer be objective. For example, a case might be settled for an amount X, which would be reasonable given the client's case. However, the lawyer may believe that a jury might return a verdict of X+10, and may be willing to gamble, having nothing to lose but time, although the client might lose the X potentially available through settlement.

In jurisdictions where contingent fees are a part of legal practice, juries may increase verdicts (particularly in personal injury cases) beyond just compensation, in order to provide the complaining party the means to pay for its lawyer as well.

It is argued that contingent legal fees, in an ordered society, provide access to competent lawyers for people of modest or no means. This may be so, it the system is not abused. The need can, however, be met by other systems, such as legal aid.

Rationale

The concept of contingent legal fees is open to wide abuse. It has been deemed unacceptable by most lawyers for centuries. Its acceptance by some lawyers in recent times has led to serious distortion in the legal process and to the creation of a climate which is not conducive to human progress.

FIDIC recommends:
- Member associations engage on such issues, and where appropriate oppose resist the concept of contingent legal fees

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Endnotes