

May 25, 2010

**We just helped win a big ruling from the U.S. Court of Appeals for the Fourth Circuit -- often called the most conservative federal appeals court in the nation -- stressing the importance of contingency fees in preserving access to justice.**

*In re Abrams & Abrams* challenged a district court judge's refusal to honor a contingency fee agreement in a personal injury case, even over the rigorous objection of the client. The district court slashed the fee from the 33.33% provided for in the contingency fee agreement to a mere 3%. But, as Public Justice and the American Association for Justice urged in our *amici* brief, the Fourth Circuit overturned the decision.



**The Court wrote that contingency fees "provide access to counsel for individuals who would otherwise have difficulty obtaining representation" and "are an acknowledged feature of our legal landscape, approved by our legislative and judicial bodies alike, that help secure for the impecunious access both to counsel and to the court."**

To read the Fourth Circuit's ruling, [click here](#).

To read our *amici* brief, [click here](#).

The case arose out of an auto accident in a parking lot in North Carolina on New Years Eve, 2005. Mark Pellegrin was struck by a drunk driver and so severely injured that he will be incompetent for the rest of his life. The car was leased by the driver's employer and insured by National Union, which denied coverage and refused to defend the case on the ground that the driver was drunk. Suit was brought against the driver in North Carolina state court by Mark's father as guardian *ad litem*, and an uncontested bench trial resulted in a \$75 million verdict.

Pellegrin then sued National Union, alleging that the insurer was liable under its automobile liability policy and its umbrella policy for up to \$21 million. National Union removed to federal court on the basis of diversity jurisdiction. In mediation, the parties agreed to a settlement of \$18 million. The settlement was then submitted to U.S District Judge Terrence Boyle for approval.

Judge Boyle approved the settlement only after slashing the fee. He did this despite the fact that the plaintiff in the case actively supported his attorney's right to the fee, both as a point of personal honor and in recognition of the manner in which his son's lawyers provided for the lifetime needs of their severely disabled client. Despite the client's enthusiastic endorsement of the fee and the substantial risk of the attorneys recovering nothing for their work, the district judge opined that the fee was unreasonably large and reduced it from \$6 million to \$600,000.

Reversing this decision as an abuse of the court's discretion, the Fourth Circuit repeatedly emphasized the vital importance of the contingency fee in ensuring that victims are able to seek compensation for their injuries. It noted that many people cannot afford to retain counsel at fixed hourly rates and can only obtain representation -- and justice -- by agreeing to pay a portion of any recovery they may receive in return for successful representation. **The Court said, "contingency fees provide access to counsel for individuals who would otherwise have difficulty obtaining representation. Sadly, a plaintiff sometimes has little to offer a lawyer other than his personal plight."**

The Court further noted that, because "contingency fee arrangements transfer a significant portion of the risk of loss to the attorneys taking a case," "[a]ccess to the courts would be difficult to achieve without compensating attorneys for that risk." Upon remand, the Fourth Circuit ruled, the district court's discretion must be guided by "a recognition of the important role played by contingency fees in this type of litigation."

Our *amici* brief was authored by Jeffrey White of the Center for Constitutional Litigation with input and assistance from Public Justice Senior Attorney Leslie Brueckner. Congratulations and thanks to them, to plaintiffs' counsel, and to you for helping make this important victory possible.

Together, we can -- and must -- preserve access to justice for all.

Arthur Bryant  
Executive Director  
Public Justice and the  
Public Justice Foundation

**P.S. Please forward this email to friends and colleagues who'd be interested. (When you do so, delete the information below about unsubscribing, or they could unsubscribe you.) To make a special contribution, renew your membership, or join us, please [click here](#).**

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