



# Collaborating for Profit in Contingent Fee Cases

A New Opportunity for Contingency Referrals

**quinn emanuel trial lawyers**

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## Collaborating for Profit in Contingent Fee Cases

Collaboration between law firms on contingent fee cases is common in some areas of practice. In the personal injury area, for example, there has long been a network of plaintiffs' law firms that refer large personal injury cases to each other, in exchange for a share in the contingent fee.

Fee-sharing arrangements are much less common in the business litigation arena. Top-tier firms presented with opportunities to represent parties in major contingency cases infrequently take on contingent fee work. They simply are not set up to do it. As a result, it is common for them to decline promising contingent fee opportunities. At best, they may give the prospective client a general referral to a "plaintiffs' firm" that might be more adventuresome, but whose work product may not be up to the standard of the top-tier firm. In most cases, the involvement of the referring firm will end at that point.

We offer a new opportunity for business contingency cases — one with significant potential financial benefits and no downside. For cases referred to us that meet our criteria for contingency work, we will negotiate with the referring firm — in strict accordance with ethical and legal requirements — a share of the contingent fee that fits the circumstances of the case. And we will provide the first rate representation that a top tier firm referring the case would expect.

## Ethical Rules Governing Sharing of Contingent Fees

Sharing fees on contingency cases has long been recognized as ethical under the rules of professional conduct of every state.

For example, California Rule 2-200, entitled “Financing Arrangements Between Lawyers,” provides that sharing of a contingent fee is ethical where (1) the client is informed and consents in writing to the sharing of the fee; (2) the total contingent fee paid by the client is not increased as a result of the fee sharing; and (3) the total fee is reasonable. The California Supreme Court confirmed these criteria in *Chambers v. Kay*, 29 Cal. 4th 142 (2002). See also *Mimk v. Maccabee*, 121 Cal. App. 4th 835 (2nd Dist. 2004); *Moran v. Harris*, 131 Cal. App. 3d 913 (4th Dist. 1982).

Eighteen states have adopted the ABA Model Rules for Professional Conduct pertaining to fee arrangements. For example, New York’s Rule of Professional Conduct DR2-107, which embodies the ABA rule, provides that contingent fee sharing is permissible where (1) the client consents; and (2) the fee division is in proportion to services performed or the referring lawyer has assumed responsibility for the representation as co-counsel. In *Benjamin v. Koepfel*, 85 N.Y.S. 2d 549 (1995), the Court of Appeals — New York’s highest court — held that in evaluating whether this standard had been met, it would *not* inquire into the worth of an attorney’s services, provided that the attorney had performed some work on the case and had not refused to perform more. (In *Benjamin*, the work of the referring attorneys in conducting interviews, holding meetings, and making case evaluations *prior* to the referral was held to have satisfied the Rule).

In any fee sharing arrangement, we will take responsibility for following all procedures necessary to ensure compliance with the relevant ethical rules.

## Why Should You Refer a Contingency Case to Us?

There are a number of reasons why we believe we would be the ideal choice to collaborate with you on a contingent fee matter.

### **We Have the Resources to Try Large, Complicated Business Cases.**

Quinn Emanuel is the largest business litigation firm in the United States. We presently have over 325 lawyers in offices in New York, San Francisco, Los Angeles, Silicon Valley and San Diego, California. We have proven expertise in almost every type of complex business dispute.

### **We Specialize in Trials, Not Just Litigation**

Our partners are experienced trial lawyers. For example, over two dozen of our partners have tried 20 or more cases to conclusion. Twelve have taught advanced trial advocacy. A number have joined us following notable careers as prosecutors with the U.S. Attorneys office. Trial experience, however, extends to all members of our trial teams. We have a goal that all associates will have some trial experience by the end of their second year, and we have various programs in place to help us meet this goal. This combination of talent and training gives us the ability to provide an experienced trial team at all levels.

### **Our Trial Support Staff Is Second to None.**

**Our Associates.** We have the same criteria for hiring associates as the best firms in the U.S. The vast majority of our lawyers achieved academic honors and were law review editors at the country’s top law schools, and/or had top judicial clerkships before joining us. Since we do only business litigation, we tend to get more associates who already have a dedicated interest in becoming trial lawyers when they join us.

**Our Paralegals.** Because of the high number of business cases we try, our paralegal support staff is “trial seasoned” in providing the level of support necessary to organize and present any complex case. In fact, our paralegal trial team members often take the lead in coordinating administrative matters on behalf of all parties to make the process go smoothly.

**Our Electronic Document Management Group.** Our firm has a sophisticated in-house electronic data management group managed by lawyers with high level computer skills, and expert in creating customized, user-friendly electronic database systems for high-volume document cases. Our in-house group provides a

variety of valuable services relating to electronic documents, including (i) overseeing data collection; (ii) setting up a customized database for the case and supervising the loading of documents onto the database; (iii) assisting with preparing and responding to subpoenas and discovery requests for electronic documents; (iv) helping with preparation for depositions of custodians of electronic document systems; and (v) advising on document retention policies. They keep abreast of the latest developments in electronic discovery law. Also, we use software that allows the referring firm and the client to have direct access to the database once it has been established.

**We Take More Business Trials/Arbitrations to Verdict or Award Per Year Than Any Other Firm We Know Of.**

Collectively, our lawyers have tried over 1151 trials and arbitrations to verdict or award. In a recent 18-month period, we tried 34 cases to verdict. We have had as many as six cases in trial at once. We know of no other firm that tries as many businesses cases as we do.

**Our Cumulative Winning Percentage for Trials and Arbitrations is 92.3%.**

We keep statistics on our combined trial record and update them on a yearly basis. We are unaware of any other business litigation specialty firm that has as high a winning percentage.

**We Have as Much Experience Representing Plaintiffs as Defendants.**

We believe this is important. Effective representation of a plaintiff, particularly in a contingency case, requires a different approach than one would take in representing a defendant. Since 2002, we have won more nine-figure verdicts for plaintiffs than any other firm in the United States.

**We Are Experienced in Trying Cases All Over the Country and Arbitrations Virtually All Over the World.**

In a typical year, we try or arbitrate more cases in locations across the United States (and beyond) where we *do not* have offices than where we do. For example, in the recent past we have represented clients in cases venued in:

- Alabama
- Alaska
- Arizona
- Connecticut
- Georgia
- Hawaii
- Nevada
- Oregon
- Florida
- Delaware
- New York
- Massachusetts
- Michigan
- Mississippi
- Missouri
- New Jersey
- Ohio
- Pennsylvania
- Texas
- Virginia
- Washington
- Washington, D.C.

We have arbitrated cases for clients throughout the United States, and in

- Bermuda
- Canada
- Ecuador
- France
- Japan
- Kuwait
- Peru
- Qatar
- Sweden
- Switzerland
- United Kingdom

Our teams are able to set up and maintain the necessary resources to try or arbitrate a case in virtually any venue. For example, last year, with a trial team from Los Angeles, we won a contingency fee case for \$128 million in the federal district court in Boston, Massachusetts — the largest verdict in that state's history.

## Our Track Record in Contingency Cases

In the last five years, lawyers at our firm have obtained settlements and judgments in contingent fee cases totaling over \$1 billion against solvent defendants. For example, in 2004 we represented individual plaintiffs in a business contingent fee case against the German conglomerate, Bertelsmann AG, recovering an award of over \$300 million — the largest jury verdict obtained on behalf of individual plaintiffs in the United States for that year. In 2005, we obtained a jury verdict in a patent case in Boston of \$128 million, the largest verdict in the history of Massachusetts.

Our track record for contingency cases is actually better than our record for all trials and arbitrations as a whole. Statistically, our lawyers have won over 95% of our contingency cases over the last five years. Our successes have included, by way of example, the following:

- Represented General Motors in a trade secrets case against Volkswagen AG. Obtained a \$1.1 billion settlement, one of the largest trade secret recoveries in U.S. history.
- Represented large aerospace manufacture in patent infringement action involving inertial navigation units. Obtained \$1.2 billion jury verdict. Settled for \$440 million.
- Represented UNOVA in patent cases involving the smart batteries used in notebook computers. Obtained judgments against major computer manufacturers. Gross amount of individual settlements exceeded \$200 million
- Obtained a \$170 million jury verdict from St. Louis jury in trade secrets case against large insurance company.
- Obtained a \$137 million settlement in a fraud case against a major healthcare provider.
- On behalf of an individual plaintiff in an unfair competition and fraud class action case against a major insurance company, obtained a settlement valued at approximately \$110 million.
- Represented plaintiffs as co-counsel in federal litigation alleging price fixing conspiracy against manufacturers of sweetener used in soft drinks. Cases settled for multi-hundred millions of dollars.

## We Have a Wealth of Technical Expertise to Draw On for Technical Cases

Fifty of our lawyers have technical degrees in a broad range of scientific and engineering disciplines, including, by way of example, electrical, aerospace, civil and mechanical engineering, computer science and engineering, chemistry, physics, microbiology and molecular biology. This gives us the technical know-how to represent clients in the most complex technical patent, trade secret and commercial cases.

## We Have Credibility

Our achievements in courtrooms and arbitrations are well known. Our opposition knows what we can do. Because of this, we can negotiate settlements that others might not be able to get.

## We Will Actively Seek Your Input Throughout the Case

In our view, obtaining the benefits of your strategic thinking and views on substantial issues as a contingency case proceeds adds greatly to the quality of our representation. For example, on contingency cases we typically conduct one or more mock trials or arbitrations to test the strength of arguments, testimony and written evidence. We conduct these using our own in-house, proprietary mock jury/arbitration program. We will invite you to participate in and critique these exercises. We will also provide — at no cost to you — regular strategic reports to obtain the benefit of your thinking on important matters.

## What Types of Business Cases Can We Try?

We have tried almost all kinds of business cases. Our particular areas of specialty, including areas where we have taken on and obtained large contingency recoveries, are:

- Intellectual property, including patent, trade secret, trademark and copyright litigation;
- Complex commercial litigation;
- Securities litigation;
- Consumer class action litigation;
- Business fraud;
- *Qui tam* litigation;
- Partnership disputes, including corporate opportunity and breach of fiduciary duty claims;
- Complex construction litigation;
- Satellite/aerospace litigation;
- Insurance coverage litigation;
- Government contracts litigation;
- Entertainment disputes.

- Obtained an \$85+ million verdict from a Cleveland jury in a trade secrets case against a Taiwanese company.
- Represented individual against cellular company in patent infringement actions involving modems. Case settled for \$65 million.
- Represented Celeritas Technologies in a case referred to us by another firm involving a patent on the cellular transmission of data. Obtained a verdict of \$54 million and a settlement of \$65 million.
- Represented individual plaintiffs in series of patent infringement actions. Cases settled for a combined amount of over \$50 million.
- Represented individual inventors in a video game case referred by another firm. Obtained verdict of \$33 million and settlements exceeding \$50 million.
- Represented U.S. company in international arbitration against Russian airline. Obtained award of \$21 million, which was successfully enforced in Swedish and U.S. courts.
- Represented Litton in patent infringement/trade secret case against non-U.S. developer of fire control radar. Obtained settlement of \$17 million and discontinuance of defendant's efforts to compete in marketplace.
- Represented Litton in patent infringement/trade secret case against U.S. developer of ring laser gyros. Obtained settlement of \$15 million and discontinuance of defendant's efforts to compete in marketplace.
- Obtained a jury verdict of \$15 million in an eminent domain case on behalf of property owner against San Diego Redevelopment Agency.
- Represented plaintiffs as co-counsel in federal class action arising from alleged defects in tires of major auto and tire manufacturers. Case settled for multi-millions of dollars.

## Our Guarantees

No one can guarantee victory in any case. However, we make four promises for any contingency case we take on a referral:

- 1.** We will make a dedicated effort by a trial team whose experience fits the particular case from the top down — partners, associates, paralegals and document management personnel. We also promise that there will be no turnover of the core trial team, except in situations beyond our control;
- 2.** We will use the full complement of our firm's resources in prosecuting a contingency case, to the same extent as if we were being paid by the hour. We have never adopted the approach — common with contingent fee lawyers — of spending as little time as possible in the hope of obtaining an early, favorable settlement of the case;
- 3.** We will work closely with you throughout the case, seeking your input on issues of importance in order to secure the highest possible quality of representation; and
- 4.** We will not “poach” clients. If you inform us that you have a relationship, or wish to foster a relationship, with a client whom you refer to us, we will honor that request and have no discussions with the client about any future representation.

## Our Criteria and Procedures for Accepting a Contingent Fee Case

Of course, any case you wish to refer to us must be worth our while. Large business cases are complex. They almost invariably involve first-rate lawyers on the other side and clients with significant financial resources to defend a serious claim. Therefore, any case we accept must present the prospect of recovery that justifies the dedicated effort it will take — and that we will give — to win. The necessary characteristics are:

- A significant up-side recovery of real damages;
- A solvent defendant able to pay a judgment or award in the appropriate amount; and
- A high probability of success.

If you refer a contingency case to us, we will proceed as follows:

- We will obtain sufficient information from you about the parties, potential witnesses and facts of the case to make an informed and accurate assessment of conflicts.
- When we have cleared conflicts, we will have more extensive meetings with you, and in-house counsel as appropriate, to obtain all facts of which you are aware and the benefit of your initial strategic thinking on the strengths and weaknesses of the case;
- We will follow up with interviews of the potential client(s) and key witnesses, and review of key documents;
- We will present the results of our investigation and our recommendation to accept the referral to our in-house Contingency Fee Committee; and
- If approved, we will negotiate a written fee-sharing arrangement with you in strict accordance with the applicable laws and rules of professional conduct.

## The Bottom Line: A Win-Win Situation.

In the competitive atmosphere between top law firms for good cases and clients, one seldom sees a “win-win” situation — where those firms can collaborate to obtain a mutual financial benefit from a litigation opportunity that would otherwise be lost to both. We can create such a result by sharing a contingency fee with you in the right case, seeking your strategic input, and launching the full panoply of our resources and trial experience to achieve a victory.

Give us the chance. If you have a contingent matter that you think might qualify, please call any of our offices and we will be happy to explain our program in more detail.

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Quinn Emanuel Urquhart Oliver & Hedges, LLP is a 350+ lawyer business litigation firm — the largest in the United States devoted solely to business litigation. Our lawyers have tried over 1160 cases and won 1066 or 92%. When representing defendants, our trial experience gets us better settlements or defense verdicts. When representing plaintiffs, our lawyers have garnered over \$6.2 billion in judgments and settlements. We are the only firm in the U.S. that has won three nine-figure verdicts in the last five years.\*

For resumes of our individual attorneys, please visit our web site at  
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\*Prior results do not guarantee a similar outcome.