



CONTINGENCY RISK MULTIPLIER

FJRI supports CS/CS/SB 236 to extend a provision of 2022 SB 2-A to all litigation and restore attorney fee awards of contingency risk multipliers only in rare and exceptional circumstances.

Issue Background

Normally, each party in an action must pay his or her own attorney's fees and costs, but there is an exception for "fee-shifting" statutes that authorize an award of fees to the prevailing party. Generally, such statutes authorize recovery of a "reasonable fee."

To calculate that award, Florida courts follow the federal Lodestar method, multiplying reasonable hours expended by a reasonable hourly rate. If the court decides this isn't enough, the court may apply a "contingency risk multiplier" from 1.5 to 3.0 based on:

- whether the relevant market requires a multiplier to obtain competent counsel;
- whether the attorney was able to mitigate the risk of nonpayment in any way;
- whether any other certain factors are applicable including the amount involved, the results obtained, and the type of attorney-client fee arrangement.

In contrast, the U.S. Supreme Court strongly disfavors multipliers, finding since 1992 that they should apply only in "rare and exceptional" cases since a case's difficulty is already reflected in Lodestar — either as more hours to overcome the difficulty, or as a higher hourly rate to obtain a more skilled and experienced attorney.

In December, 2022, the Legislature passed SB 2-A, which restored awards of the contingency risk multiplier only to rare and exceptional circumstances for claims arising under homeowners insurance policy.

The Problem

Unfortunately, in the 2017 decision *Joyce v. Federated National*, the Florida Supreme Court rejected the federal standard and reversed the 5th DCA which had held that there were no "esoteric legal issues or complicated factual disputes" or "evidence the Joyces had any difficulty obtaining counsel to handle this matter" in this basic insurance dispute. Instead, the Florida Supreme Court ruled that the multiplier could effectively be applied in almost any case. This decision opened the door to circuit courts commonly awarding multipliers.

The Solution

Restore the award of contingency risk multipliers to only rare and exceptional circumstances for all litigation, not just homeowners insurance disputes.