

## Attorneys find ways to cope with contingency

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When Jeff Kimmel worked for a medical malpractice defense firm in Manhattan, he would always forget who to bill for what and when.

He would then frantically try to remember everyone he talked to, corresponded with and all the cases he worked on each day while he read the paper on the train ride home.

He doesn't worry about any of that anymore. Instead, Kimmel, a partner at Salenger, Sack, Schwartz & Kimmel in Woodbury, works on contingency.

"The good thing about it that I like and that my clients like is that there are no bills," Kimmel said. "Lawyers who do contractual work and have hourly fees, they send out monthly or quarterly bills. That takes time to do."

Plus, he said, his clients are not constantly getting his bills in the mail, reminding them of

how much it costs to have a lawyer and leading to fights about clients being billed for an hour while a phone call only lasted 10 minutes and other such minutiae.

In his current practice on the other side of the medical malpractice aisle – representing plaintiffs – Kimmel only gets paid when his clients do.

"It keeps our interests and goals aligned with our clients," he said. "The harder we work and the more we work for them, the more we get for us. We're all on the same page."

For personal injury and medical malpractice firms most clients don't have the means to pay them for fees that would otherwise fall in the \$35,000 to \$100,000 range, making contingency work a risky business model.

Attorneys minimize that risk in a number of ways.

One of those ways is by being selective. Kimmel said it costs anywhere between \$50,000 and \$100,000 to try a medical malpractice suit and he turns down 29 of 30 potential clients that come to him thinking they have a case.

He said it is hard turning down that many, knowing that they are real people who have heart-breaking stories about how they have been injured, but it's just the nature of the business.

"Whenever we interview new clients, we want to feel reasonably certain we can get a claim," said Michael Gluck, a personal injury partner at Rosenberg & Gluck in Holtsville.

And since it's especially risky if a case goes to trial, attorneys try to reach a settlement.

For instance, Gluck said he represented a client who was injured in a car accident while he was working. He said his client didn't know how serious his injuries were after the accident, but the

medical records showed he had a serious injury.

The client was willing to take \$50,000 to settle the case, but the insurance company disputed the seriousness of the injury and the case went to trial.

Gluck's client won \$2.3 million from the jury with Gluck receiving one-third of that.

He happened to get lucky on that particular case. "That is quite a wide swing," he said. "You never know when you go before a jury."

That's why most cases are settled before going that far.

It's also that uncertainty that leads attorneys such as Scott Middleton to play both sides. [Middleton, a partner at Campolo Middleton & Associates](#) in Bohemia, said his practice used to mostly handle personal injury plaintiff cases, but circumstances have caused him to take on more defense work.

"It just happened a few years ago," Middleton said. "I had a couple of defense clients drop into my lap."

His practice is now about three-quarters defense clients who do not pay on contingency.

He still handles plaintiff cases on contingency, but makes sure there are no conflicts between clients, he said.

"All the defense firms also do plaintiff work," Middleton said. "They don't like to talk about it, but they do it."

Attorneys also hedge their bets is by partnering with attorneys who specialize in more stable practice areas.

That is the case at Doniger & Engstrand, a small husband-wife firm in Northport Village. Dan Engstrand handles medical malpractice, personal injury and commercial litigation cases while his wife Wende Doniger handles matrimonial law cases.

Engstrand said the firm used to do 80 percent contingency work but has since expanded its matrimonial practice so much that it is more like 50-50.

"That makes it nice," he said. "If you do 100 percent contingency that is very risky. If you don't win, you don't get paid."