

SUPREME COURT OF LOUISIANA

No. 96-C-1110

ROBERT T. MEREDITH, ET AL

Versus

THE HONORABLE RICHARD P. IEYOUB, IN HIS CAPACITY AS
ATTORNEY GENERAL FOR THE STATE OF LOUISIANA

CALOGERO, C.J., dissenting.

In my opinion, the majority is incorrect in concluding that the contingency contracts at issue violate the separation of powers doctrine. I do not agree that “[p]aying outside attorneys to prosecute legal claims on behalf of the state is a financial matter” and thus is solely within the power of the legislature to exercise or delegate. While I agree that the legislature has the power of appropriation, I do not agree that the granting of contingency contracts is a matter of appropriation. Rather, the use of contingency contracts for legal representation is merely a vehicle for the Attorney General to exercise his constitutional authority to assert or protect a right or interest of the state. And the use of such a vehicle is not prohibited by the legislature. In fact, in certain instances the legislature actually mandates the use of contingency contracts¹

There is nothing inherently suspect or illegal about the use of contingency contracts. Contingency contracts have long been utilized in Louisiana, both in the private and public sector. They serve an important societal function in ensuring representation is available where a litigant cannot afford legal fees. Likewise, the utility of contingency contracts in the public sector is great, for their usage optimally results in an award to the state without any diminution of state funds and prevents the

¹See, e.g., La. R.S. 41:922 and La. R.S. 46:15.

draining of the public fisc by attorney's fees in the event of an unsuccessful claim.

I also believe the majority interprets La. R.S. 30:2205 too narrowly. The obvious purpose of this statute was to create and fund the Hazardous Waste Site Cleanup Fund to ensure that monies would be available for cleanup of hazardous waste sites.² Therefore, it is in the public interest to interpret this statute broadly to allow the deposit of monies into the Fund whenever possible, especially in this "win-win" situation where monies are deposited into the Fund if the State receives a judgment or settlement, and no money is expended from the Fund or the State fisc in the event the State does not receive a judgment or settlement in a particular action.

The majority bases its conclusion that the contingency contracts are prohibited by statute, in part, upon a very narrow interpretation of the word "recovered". I disagree with that conclusion. The majority's interpretation is contradicted by the fact that there is no express constitutional prohibition on contingency fee contracts, that contingency fee contracts are customarily used and in some instances are mandated, that the Attorney General has broad powers to protect the rights and interests of the State, and that the intent of La. R.S. 30:2205 is to generate funds for environmental protection purposes. Considering these factors, surely the Legislature would have been explicit if it had intended to prohibit the use of contingency contracts by the language of La. R.S. 30:2205. I believe that in this case, a reasonable interpretation of the sum "recovered" by the client, as contemplated by La. R.S. 30:2205, is the amount of the

² Specifically, La. R.S. 30:2205(D) provides in part:

The monies in the Site Cleanup Fund shall be used to defray the cost of investigation, testing, containment, control, and cleanup of hazardous waste sites, to provide money or services as the state share of matching funds for federal grants, to defray the cost of securing and quarantining hazardous waste sites, including the acquisition of rights-of-way, easement, or title when necessary, and to pay the operating expenses of the inactive and abandoned sites divisions. ...

judgment or settlement less the contingency fee, just as the amount of property taxes recovered by a sheriff is the amount collected less the commissions.

There is no express constitutional prohibition against the use of contingency contracts. Article IV, Section 8, La. Const. of 1974 designates the Attorney General as the chief legal officer of the state, and the Attorney General has broad authority to act as necessary "for the assertion or protection of any right or interest of the state".... Certainly, these contingency contracts were entered into in order to assert or protect an interest of the State.

Accordingly, I dissent.