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Have you ever been faced with Mission: Impossible? The challenge of trying to value something out-of-the-ordinary, with limited coverage in the professional literature or relevant case law, can be significant. In the context of litigation, when one side claims that the valuation cannot be done at all, the challenge can be overwhelming. This case study describes the approach one valuator used in attempting to find the value of his Impossible Mission, a contingent fee law practice. The case has a happy ending, as the parties were able to agree on a mediated settlement after months of advocating radically divergent views of the value of the practice.

Contingent fee cases[1] are a special kind of intangible asset. The realization of any amount at all, let alone a profitable recovery for attorney and client, is dependent not only on the skill and experience of the attorney, but the facts of the case, the applicable case law, the jurisdiction in which the case will be tried, the relative negotiating strength of the plaintiff's representatives and the defendants and their insurers, the solvency of the defendant, the attractiveness of the plaintiff's personality, the investments made in developing proof of the case, and even the case's proximity to other notorious cases featured in the news. Yet many attorneys seem to make a decent living by investing their efforts and resources into contingent fee cases.

There is little market data available on the sale of law practices, including contingent fee law practices. Traditional valuation methods, like the capitalization of normalized earnings or the excess earnings method, rely on the existence of a base year which is assumed to provide a reasonable basis for estimates of the future. For a contingent fee law firm, a single unusual recovery can distort expectations on the high side. Many firms have experienced the disappointment of investing months or years of effort into an attractive case only to have the case destroyed by subsequent events. Unless the firm's portfolio of cases is sufficiently large and repetitive to suggest replicability, estimating likely future values by projecting historical results will prove difficult.

Key issues

1. Can the "speculative and conjectural" barrier be overcome to establish any value for a contingent fee law firm?
2. Can estimates of case value on unresolved cases be tested sufficiently to prove their validity?
3. What costs need to be considered in estimating net case outcomes?
4. What are likely restrictions on access to information relevant to the value of unresolved cases?

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[1] Contingent fee cases are cases accepted by a lawyer or law firm for compensation that is contingent upon the case settling favorably or winning damages at trial. The division of any recovery between lawyer and client is established by agreement at the beginning of the case. If the case does not generate a monetary settlement, the lawyer does not get paid, and the client receives no compensation for their claimed injury.