Arbitrators Fee Award Based on Percentage of Property Value Conveyed in Settlement is Upheld

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In *Cotchett, Pitre & MCarthy v. Universal Paragon Corp.,* 2010 DJDAR 13771 (2010) the California Court Of Appeal for the First Appellate District decided a unique fee case concerning a contingency fee award. The fee claim was based on the value of property received in settlement, as opposed to a cash resolution.

Universal Paragon Corp. (UPC) hired the law firm of Cotchett, Pitre & McCarthy (CP&M) to represent the company in an environmental case. The parties entered into a unique contingency fee retainer agreement. The Agreement stipulated that if UPC received property rather than cash in settlement, CP&M would receive a 16 percent contingency payment, based on the value of the property. The payment was to be based on a combination of the last settlement offer and the value of the property received.

Settlement was ultimately reached in the litigation. The Agreement provided for an award of real property to UPC. CP&M then sent a letter to UPC claiming legal fees of over $19 million. The demand reflected 16 percent of the damages range set forth in the prior settlement statement, which was $86.5 to $155.7 million.

UPC contested the amount of the fee award and the parties agreed to arbitrate the controversy. The arbitrator awarded CP&M $7.5 million in attorney fees and expenses. The trial court confirmed the award, and UPC appealed, contending the fee award was **unconscionable**.

The court of appeal affirmed the grant of fees and that amount of the award. The court of appeal noted that Rule 4-200 of the Rules of Professional Conduct prohibits attorneys from entering into an agreement to charge an illegal or unconscionable fee. The court stated that a contractual term is unconscionable if, due to unequal bargaining power between the parties, the result of the contract is unfair.

The court concluded that the contingency fee arrangement was fair. It specifically found that UPC was a sophisticated party who employed outside counsel to negotiate the fee agreement with CP&M. The court found that UPC's counsel was able to influence and negotiate the terms of the Agreement at arms length.

The Court also found the contingency fee awarded was not substantively unconscionable. The parties negotiated and agreed to base the contingency fee on the fair market value of the property received, which the arbitrator took into consideration in making the award.

The court concluded that the fee did not violate public policy.