

Court Construes Hybrid Retainer Agreement

In *Agusta & Ross v. Trancamp Contracting Corp.*, Queens Cty. Civil Court Judge Markey construed a fee agreement which "has not been discussed by any reported New York state court case."

The fee agreement between plaintiff lawyers and defendant was a mixture of general retainer and specific retainer. A general retainer is an agreement under which the attorney makes himself available for services to the client regardless of time, effort or energy expended. The lawyer is being compensated simply for his promise to be available to the client when needed. A specific retainer is one under which the client hires the lawyer for representation in a specific and identifiable legal matter, action or proceeding.

Here, the agreement provided both that the law firm would make itself generally available to the client and, that, at the same time, it would perform specific services in receivables collection (e.g., phone calls, collection letters and preparation of endorsed complaints.) Consequently, the agreement was a "hybrid" general retainer or a "general-special hybrid agreement." In these arrangements, the parties agree that "part of the general retainer [will] be applied to the bills for services actually performed." The court refused to dismiss defendant's counterclaim for recovery of fees paid to plaintiffs.