

Cost and Fee Allocation Rules in Korean Civil Procedure*

GyooHo Lee**

Abstract

Korea is one of the most litigation-prone societies on earth. The overall increase of court filings in civil cases in Korea is the result of external costs which are borne by the parties from outside the courts and internal costs which the parties generate as they directly utilize the courts. The external costs may include the increase of the number of disputes resulting from the rapid growth of Korean economy and the increasing weakness of dispute resolution mechanisms such as families, churches, and neighborhoods. The internal costs may include litigation costs. In this regard, this Article will mainly explore costs and fees borne by both parties as an effort to improve Korean civil procedure by eliminating frivolous lawsuits and encouraging meritorious ones.

At the outset, the Article explores the basic rules and their exceptions and modifications as to who pays fees and costs in a lawsuit.

Secondly, the Article explains fee and cost allocation rules which encourage or discourage litigation.

In the third place, the Article delves into the determination of fees and costs incurred by both parties to a lawsuit.

Afterwards, the Article discusses special Issues including success-oriented fees, sale of claims, class actions, and litigation insurance in terms of fee and cost allocation rules.

In Conclusion, I propose that Filing Fees Act in the context of civil procedure be incorporated to the Act on Costs for Civil Procedure, and Filing Fees Rules for civil procedure and Rules regarding Attorney Fees included in Litigation Costs be incorporated to Rules of Costs for Civil Procedure. Afterwards, I make some comments on contingent fee arrangements as follows:

- (i) that contingent fee arrangements should not be permitted in criminal cases in Korea because those cases are related to public interests; and*
- (ii) that contingency fee arrangements for domestic relation cases should not be allowed because it can encourage the dissolution of family relation.*

In addition, the Article points out that pro se actions can encourage a court to heavily rely on

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** Associate Professor, Chung-Ang University School of Law in Seoul, Republic of Korea; J.S.D., Washington University School of Law, St. Louis, MO, USA; LL.M, Yonsei University College of Law, Seoul, Republic of Korea and University of Washington, Seattle, Washington, USA; LL.B, Yonsei University College of Law.

appropriateness in the concrete rather than legal certainty. In other words, appropriateness in the concrete sometimes preempts legal certainty in Korea because applying law by the court is limited by *pro se* litigation. The Article goes on to mention that this problem will be somewhat solved by the legal aid, the increase of the number of attorneys, and legal service insurances.

I. Introduction

Korea is one of the most litigation-prone societies on earth. The following Tables, 1 and 2, show how many filings have been made before the courts in Korea.

Tables 1 and 2 demonstrate that the Korean legal community has witnessed an “epidemic of hair-trigger suing”¹⁾ like America.²⁾ As of year 2002, the number of court filings per 100,000 persons in civil cases in Korea is more than those of the states of California, Illinois, and Texas, but less than that of the state of New York. The statistical data is shown in Table 3.

Table 1. Annual Changes of the Number of Court Filings in Civil Cases

Year	No. of Court Filings	Year	No. of Court Filings	Year	No. of Court Filings	Year	No. of Court Filings
1971	406,858	1981	862,049	1991	1,480,341	2001	2,741,783
1972	475,293	1982	961,076	1992	1,645,988	2002	3,210,247
1973	502,093	1983	1,005,562	1993	1,729,178	2003	4,526,712
1974	483,463	1984	1,291,672	1994	1,653,500	2004	4,141,321
1975	460,629	1985	1,438,929	1995	2,033,452	2005	3,690,739
1976	464,302	1986	1,580,932	1996	2,233,938	2006	3,791,514
1977	445,636	1987	1,560,391	1997	2,663,525	2007	4,000,096
1978	393,503	1988	1,401,233	1998	4,149,462	2008	4,080,033
1979	437,281	1989	1,284,610	1999	3,467,710	2009	4,135,591
1980	634,589	1990	1,338,249	2000	2,737,474		

Source: <http://www.scourt.go.kr/justicesta/JusticestaListAction.work?gubun=10>
(last visited on Dec. 19, 2010)

1) Warren E. Burger, *Isn't There a Better Way?*, 68 A.B.A.J. 274, 275 (1982).

2) Gyooho Lee, *Sainui Jesoyeobugyeoljeong Modelgua Minsasageon Jeunggaui Wonine Daehan Gyeongjehakjeok Bunseok* [A Model as to Whether to Bring or Settle a Lawsuit and and Economic Analysis of Litigation Explosion in Civil Cases] 8 MINSASOSONG [CIVIL PROCEDURE] 11, 12-16 (2004).

Table 2. Number of Court Filings per 100,000 Persons

Year	Population in Korea	No. of Court Filings	No. of Court Filings per 100,000 Persons
1975	34,678,972	460,629	1,328
1980	37,406,815	634,589	1,696
1985	40,419,652	1,438,929	3,600
1990	43,390,374	1,338,249	3,084
1995	44,553,710	2,033,452	4,564
2000	45,985,289	2,737,474	5,953
2005	47,278,951	3,690,739	7,806

Source: <http://www.scourt.go.kr/justicesta/JusticestaListAction.work?gubun=10>
(last visited on Dec. 19, 2010)

Also, the number of civil cases exceeding 100,000,000 Korean won is steadily increasing in Korea and is the main reason for the Korean courts to feel choked by a heavy caseload.³⁾ The increase of court filings in terms of civil cases that exceed 100,000,000 Korean won can be attributed to the rapid growth of the Korean economy.⁴⁾ The overall increase of court filings in civil cases in Korea is the result of external costs which are borne by the parties from outside the courts and internal costs which the parties generate as they directly utilize the courts.⁵⁾ The external costs may include the increase of the number of disputes resulting from the rapid growth of Korean economy and the increasing weakness of dispute resolution mechanisms such as families, churches, and neighborhoods. The internal costs may include litigation costs. In this regard, this Article will mainly explore costs and fees borne by both parties as an effort to improve Korean civil procedure by eliminating frivolous lawsuits and encouraging meritorious ones.

At the outset, the Article explores the basic rules and their exceptions and modifications as to who pays fees and costs in a lawsuit.

Secondly, the Article explains fee and cost allocation rules which

3) Beopwon Haengjeongcheo [The National Court Administration (NCA) of the Supreme Court of Korea] ed., *Future of Civil Procedure*, 1 J. OF KOR. JUDICATURE, 732-33 (2008).

4) *Id.* at 733.

5) Lee, *supra* note 2, at 12.

Table 3. Number of Court Filings per 100,000 Persons in Civil Cases in California, Illinois, New York, Texas, and Republic of Korea in 2002

Country's or State's Name	Total No. of Court Filings	No. of Court Filings per 100,000 Persons
California	1,569,672	4,470
Illinois	712,727	5,656
New York	2,326,378	12,143
Texas	1,022,919	4,697
Republic of Korea	3,210,247	6,981 ⁶⁾

Source: http://ncsconline.org/D_Research/csp/2003_Files/2003_SCCS_Tables9.pdf (last visited on June 8, 2010); Court of Court Administration, Annual Judicial Report for Year 2002, available at <http://www.scourt.go.kr/justicesta/JusticestaListAction.work?gubun=10> (last visited on June 8, 2010)

encourage or discourage litigation.

In the third place, the Article delves into the determination of fees and costs incurred by both parties to a lawsuit.

Afterwards, the Article discusses special Issues including success-oriented fees, sale of claims, class actions, and litigation insurance in terms of fee and cost allocation rules.⁶⁾

In Conclusion, I propose that Filing Fees Act in the context of civil procedure be incorporated to the Act on Costs for Civil Procedure, and Filing Fees Rules for civil procedure and Rules regarding Attorney Fees included in Litigation Costs be incorporated to Rules of Costs for Civil Procedure. Afterwards, I make comments on contingency fee arrangements and pro se litigation.

II. The Basic Rules: Who Pays?

Litigation costs are one of many significant factors that determine

6) The Statistics Korea has surveyed the population of Korea for every 5 years. Hence, the number of court filings per 100,000 persons in 2002 in Korea was calculated at the total number of court filings in 2002 divided by the population of Korea in 2000.

whether a potential litigant brings a suit or settles a case.⁷⁾ Litigation costs refer to costs prescribed by laws and regulations as part of the expenses incurred by parties to an action and the court.⁸⁾ In Korea, litigation costs are mainly governed by Civil Procedure Act (hereinafter referred to “KCPA”), Act on Costs for Civil Procedure, Rules of Costs for Civil Procedure, Act on the Stamps Attached for Civil Procedure, etc. (hereinafter referred to “Filing Fees Act”), Rules on the Stamps Attached for Civil Procedure, etc. (hereinafter referred to “Filing Fees Rules”), Rules regarding Attorney Fees included in Litigation Costs, Securities-related Class Action Act, and Securities-related Class Action Rules.

KCPA prescribes the basic rule, and its exceptions and modifications, as to who pays litigation costs. The Act on Costs for Civil Procedure and the Rules of Costs for Civil Procedure stipulate the general rule as to how to compute all types of the litigation costs. The Filing Fees Act and Filing Fees Rules govern for calculating the court filing fees as part of the litigation costs in civil cases, administrative cases, non-litigation cases, and others. The Securities-related Class Action Act and Securities-related Class Action Rules determine court filing fees with respect to a securities class action. A part of fees paid to lawyers are included in litigation costs as determined by “Rules regarding Attorney Fees included in Litigation Costs.”⁹⁾

The Korean legal system compels the losing party to pay for all litigation costs incurred by both sides in accordance with Article 98 of KCPA. The basic rule in Korea is that the losing parties bear the winning parties’ legal expenses. This rule is not intended to employ fault liability but to follow the principle under which the losing party shall bear the litigation costs incurred by both parties to the action.¹⁰⁾ The losing party is

7) FLEMING JAMES, JR ET AL., CIVIL PROCEDURE § 1.21 (4th ed. 1992).

8) SI YOON LEE, SINMINSASOSONGBEOP [NEW CIVIL PROCEDURE] 600 (2009); Ki Taek Lee, *Sosongbiyong ui Budam [Burden of Litigation Costs]*, in Juseok Sinminsasosongbeop (II) [A COMMENTARY TO NEW CIVIL PROCEDURAL LAW(II)] 61 (Sang Won Kim et al. ed. 2004); DONG YOON CHUNG & BYUNG-HYUN YOO, MINSASOSONGBEOP [CIVIL PROCEDURE] 1015 (2005).

9) Byeonhosabosuui sosongbiyongsanipe gwanhan gyuchik [Rules regarding Attorney Fees included in Litigation Costs] Supreme Court Rules No. 2116, Nov. 28, 2007.

10) Supreme Court [S.Ct.], 95Da12927, June 30,1995; Gyooho Lee, *In Search of the Optimal Tort Litigation System: Reflections on Korea’s Civil Procedure Through Inquiry into American Jurisprudence* 179 (May 15, 1998) (unpublished J.S.D. dissertation, Washington University School of Law).

responsible for all the litigation costs arising from both parties at the time of his/her loss at the action whether he or she intentionally or negligently lost his or her case or whatever causes of his or her loss are. The rationales for the basic rule cannot be found in Korean legal literature.¹¹⁾ I think this basic rule of having the loser pay is judicially fair.

However, the basic rule does not necessarily mean that KCPA follows the English Rule under which the losing party pays for all costs and fees incurred by both parties. Article 109 (1) of KCPA provides as follows:

Fee paid or to be paid by a party to his/her attorney, who institutes a lawsuit on behalf of the party, shall be the cost of lawsuits in the limit of the amount as determined by the Supreme Court Rules.¹²⁾

Therefore, a part of the fee of a winning party's attorney must be directly reimbursed by the losing party. In other words, a part of the fees paid to lawyers are included in litigation costs as determined by "Rules regarding Attorney Fees included in Litigation Costs."¹³⁾ Annexed Chart 3 in accordance with Article 3 of the Rules is as follows:

11) See, e.g., LEE, *supra* note 8, at 602; CHUNG & YOO, *supra* note 8, at 1026 (2009); MOON HYUK HO, MINSASOSONGBEOP [CIVIL PROCEDURE] 574 (2009).

12) The official English version of Civil Procedure Act in Korea, available at <http://elaw.klri.re.kr/> which has been run by the Korea Legislation Research Institute, prescribes as follows:

A fee paid or to be paid by a party to a lawyer who performs a lawsuit on behalf of the party shall be admitted as the costs of lawsuit within the limit of the amounts as prescribed by the Supreme Court Regulations.

However, the term, "Supreme Court Rules," is preferable as compared to the word, "Supreme Court Regulations," because the rules has been enacted and amended by the Supreme Court rather than the Executive branch. Hence, my translation of Article 109(1) of Korean Civil Procedure Act is a little different from that of its official English version.

13) Rules regarding Attorney Fees included in Litigation Costs , Supreme Court Rules No. 2116, Nov. 28, 2007.

Table 4. Annexed Chart 3 in accordance with Article 3 of the Rules regarding Attorney Fees included in Litigation Costs

Amount in Controversy (Unit: Korean won (hereinafter referred to "KW"))	Percentage of Attorney Fees included in Litigation Costs
Up to 10 million KW	8%
Amount exceeding 10 million KW up to 20 million KW [800,000 KW + (amount in controversy - 10 million KW) × 7/100]	7%
Amount exceeding 20 million KW up to 30 million KW [1,5 million KW + (amount in controversy - 20 million KW) × 6/100]	6%
Amount exceeding 30 million KW up to 50 million KW [2.1 million KW + (amount in controversy - 30 million) × 5/100]	5%
Amount exceeding 50 million KW up to 70 million KW [3.1 million + (amount in controversy - 50 million KW) × 4/100]	4%
Amount exceeding 70 million KW up to 100 million KW [3.9 million KW + (amount in controversy - 70 million KW) × 3/100]	3%
Amount exceeding 100 million KW up to 200 million KW [4.8 million KW + (amount in controversy - 100 million) × 2/100]	2%
Amount exceeding 200 million KW up to 500 million [6.8 million + (amount in controversy - 200 million KW) × 1/100]	1%
Amount exceeding 500 million KW [9.8 million + (amount in controversy - 500 million KW) × 0.5/100]	0.5%

Note: Most cases before the Korean district courts are small claim cases whose amount in controversy does not exceed 20 million KW. In those cases, the small portion of the winning party's own attorney fees can be reimbursed from the losing party. For example, the winner before the courts still have to pay 92.5% of the his/her own attorney fees while the loser is responsible for paying 7.5% of them in a case where the amount in controversy is 20 million KW.

After the first enactment of the Rules in 1981, the Korean Supreme Court did not reflect economic growth or the increase of amount in

controversy to the percentage of attorney fees included in litigation costs until 2007.

Finally, the Supreme Court in Korea revised the Rules, modifying the ambit of each section based on the amount in controversy and the percentage of attorney fees included in litigation costs by virtue of each section. The Supreme Court in Korea as of 2007 already looked into American and English Rules, still taking the track of the modified English Rules.¹⁴⁾

The modified English rule was held to be constitutional by the Korean Constitutional Court.¹⁵⁾ In short, a part of the winner's costs and fees are reimbursed by the losing party.

The plaintiff must provide with the filing of the complaint stamp fees in advance. The stamp fees¹⁶⁾ are determined, depending on the amount in controversy. According to Article 2 (1) of the Filing Fees Act, the standard on filing fees is as follows:

- (i) (Amount in controversy multiplied by 50/10,000) in cases where the amount in controversy is less than 10 million Korean won.
- (ii) {(Amount in controversy multiplied by 45/10,000) + 5,000 Korean won} in cases where the amount in controversy is 10 million Korean won or more and less than 100 million Korean won.
- (iii) {(Amount in controversy multiplied by 40/10,000) + 55,000 Korean won} in cases where the amount in controversy is 100 million Korean won or more and less than one billion Korean won.
- (iv) {(Amount in controversy multiplied by 35/10,000) + 555,000 Korean won} in cases where the amount in controversy is one

14) Gyooho Lee, *Sosongdangsajau Sosongbiyongbudame Gwanhan Beokkyeongjehakjeok Bunseok* [An Economic Analysis of Litigation Costs and Fees Incurred by the Parties: Focused on Attorney's Fees], 7 MINSASOSONG [CIV. PROC.] 178, 185-190 (2003).

15) Constitutional Court [Const.Ct.] 2004Hun-Ma384, Dec.26.2004,(2006 DKCC 737-747)

16) Hereinafter, the word, "filing fees," is interchangeably used with the term "stamp fees."

billion Korean won or more.

If the plaintiff prevails, the plaintiff will receive the filing fees back and the defendant will be responsible for paying them.¹⁷⁾

The losing party pays for the taking of evidence including the costs of expert and other witnesses. However, those costs are not considered to be a pivotal factor in the overall costs of litigation. As of 2008, 944,712 out of 1,259,031 civil cases decided on the merits were classified as small claim cases.¹⁸⁾ Also, 90% of small claims cases were brought by a legal entity against an individual in 2005.¹⁹⁾

The filing fees, service fees, and attorney fees included in litigation costs are determined in proportion to the amount in controversy. However, other costs and fees including the fees of taking evidence are dependent upon each specific case even though there are special standards for determining the costs and fees. Accordingly, it is a hard and risky task for me to provide a good faith estimate of the sum total of costs and fees of litigating to final judgment in the first instance a routine private or commercial claim. However, it is easy for me to estimate a significant part of litigation costs incurred by a plaintiff, which consist of filing fees, service fees, and attorney fees included in litigation cost.

If a plaintiff sought a small claim of \$ 1,000, which amounts to 1,156,500 Korean won²⁰⁾, attorney fees, filing fees, and service fees as the litigation costs awarded to the plaintiff are as follows:

- (i) Attorney fees are 92,500 Korean won {1,156,500 Korean won ×

17) Kap-You (Kevin) Kim, *Dispute Resolution in Korea*, available at <http://www.fernuni-hagen.de/JAPANRECHT/Streitbeilegung.pdf> (last visited Sept. 28, 2010).

18) Beopwon Haengjeongcheo [National Court Administration of the Supreme Court of Korea], *Sabeopyeongam* [Annual Judicial Report for Year 2008] (June 8, 2010), available at <http://www.scourt.go.kr/justicesta/JusticestaListAction.work?gubun=10> (last visited June 8, 2010).

19) Du Ol Kim, *Gyeongjeseongjangeul Wihan Sabeopjeok Gibanui Mosaek(I): Minsasosongui Hyeonghwanggwaja Jeongchaekgwaje* [In Search of the Judicial Foundation for Economic Development (I): Current Situation of Civil Procedure and Its Policy Issues], in *Jeongchaekyeonguseries* [POLICY RESEARCH SERIES] 2007-02,22 (KDI ed.,2007).

20) The Korean won traded at 1,156,50 won to the U.S. dollar as of 11:46 am, November 12, 2009.

- 0.08};
- (ii) Filing fees are 5,700 Korean won $\{1,156,500 \text{ Korean won} \times 50/10,000\}$; and
 - (iii) Service fees are 30,200 Korean won $(3,020 \text{ Korean won} \times 10 \text{ times})$.²¹⁾

If a plaintiff sought a small to medium claim of \$ 10,000, which amounts to 11,565,000 Korean won, attorney fees, filing fees, and service fees as the litigation costs awarded to the plaintiff are as follows:

- (i) Attorney fees are 909,550 Korean won $[800,000 \text{ Korean won} + \{(11,565,000 \text{ Korean won} - 10,000,000 \text{ Korean won}) \times 7/100\}]$;
- (ii) Filing fees are 57,000 Korean won $\{(11,565,000 \text{ Korean won} \times 45/10,000) + 5,000 \text{ Korean won}\}$;
- (iii) Service fees are 30,200 Korean won $\{3,020 \text{ Korean won} \times 10 \text{ times}\}$.²²⁾

If a plaintiff sought a medium to large claim of \$ 100,000, which amounts to 115,650,000 Korean won, attorney fees, filing fees, and service fees as the litigation costs awarded to the plaintiff are as follows:

- (i) Attorney fees are 7,093,000 Korean won, which is tantamount to nearly 6,133 dollars $[4,800,000 \text{ Korean won} + \{115,650,000 \text{ Korean won} - 1,000,000 \text{ Korean won}\} \times 2/100]$;
- (ii) Filing fees are 517,600 Korean won $\{(115,650,000 \text{ Korean won} \times 40/10,000) + 55,000 \text{ Korean won}\}$; and

21) http://help.scourt.go.kr/minwon/min_1/min_1_1/min_1_1_1/index.html (last visit on August 30, 2010).

22) Service fees are determined based on the following formula:

- (i) $\{3,020 \text{ Korean won} \times 10 \text{ times} \times \text{the number of parties served}\}$ in small claims cases; and
- (ii) $\{3,020 \text{ Korean won} \times 15 \text{ times} \times \text{the number of parties served}\}$ in single-judge panel cases exceeding 20 million Korean won and three-judge panel cases.

Cf. The Rules on Service Fees and Courts' Manual for Managing Affairs following the Entry into Force of the Rules on Service Fees.

- (iii) Service fees are 45,300 Korean won {3,020 Korean won × 15 times}

If a plaintiff sought a large claim of \$ 1,000,000, which amounts to 1,156,500,000 Korean won, attorney fees, filings fees, and service fees as the litigation costs awarded to the plaintiff are as follows:

- (i) Attorney fees are 13,082,500 Korean won [9,800,000 Korean won + $\{(1,156,000,000 - 500,000,000) \times 0.5/100\}$];
- (ii) Filing fees are 4,602,750 Korean won $\{(1,156,500,000 \times 35/10,000) + 555,000 \text{ Korean won}\}$; and
- (iii) Service fees are 45,300 Korean won {3,020 Korean won × 15 times}.

If a plaintiff won his/her case, he/she would be awarded 17,730,550 Korean won, which amounts to 15,331 dollars, by the judgment for the determination of litigation costs.

If a plaintiff lost a \$ 100,000 claim after litigation and a defendant was represented by an attorney, the plaintiff's cost and fee liability would roughly be at least 6,133 dollars. If a defendant lost a \$ 100,000 claim after litigation and a plaintiff was represented by an attorney, the defendant's cost and fee liability would roughly be at least 6,620 dollars. Again, it should be noted that the amount does not refer only to the fees the loser has to pay the other side but it represents the fees, and a certain portion of the loser's own attorney costs as well.

Next, I discuss how costs and fees are typically allocated if the parties settle their dispute and what percentage of civil suits is typically settled. Article 389 of KCPA prescribes that, "In cases where a compromise has been achieved, the expense thereof shall be borne by each party unless otherwise agreed upon between the parties, and in cases where a compromise has not been achieved, they shall be borne by the applicant." Also, it states that the expenses of compromise shall be made a part of litigation costs in cases where the lawsuit has been instituted.²³⁾ Costs for

23) Minsasosongbeop [Civil Procedure Act], Act No.6626, Jan. 26, 2002, art.389.

Table 5. Single-Judge Cases (Incl. Small Claims Cases)

Total No.	Dismissal by a Presiding Judge's Order	Disposition							Appeal Rate (%)				
		Judgment			Voluntary Dismissal or Recognition of Claims								
		Total	Winning of a Plaintiff (Incl. a Partial Winning)	Loss of a Plaintiff	Dismissal by a Court's Judgment	Others	Mediation	Compromise		Others			
2004	1,135,371 (100.0%)	29,284 (2.6%)	589,040 (51.9%)	567,888 (50.0%)	20,098 (1.8%)	990 (0.1%)	64 (0.0%)	44,172 (3.9%)	20,445 (1.8%)	92,995 (8.2%)	359,435 (31.7%)	23,589	4.0
2005	1,095,810 (100.0%)	20,044 (1.8%)	615,180 (56.1%)	593,058 (54.1%)	21,291 (1.9%)	757 (0.1%)	74 (0.0%)	44,318 (4.0%)	20,706 (1.9%)	99,850 (9.1%)	295,712 (27.0%)	25,280	4.1
2006	1,162,541 (98.7%)	9,629 (0.8%)	719,018 (61.0%)	695,154 (59.0%)	22,813 (1.9%)	941 (0.1%)	110 (0.0%)	38,128 (3.2%)	19,310 (1.6%)	99,436 (8.4%)	277,020 (23.5%)	26,539	3.7
2007	1,177,911 (100.0%)	11,871 (1.0%)	740,898 (62.9%)	715,395 (60.7%)	24,260 (2.1%)	1,107 (0.1%)	136 (0.0%)	42,445 (3.6%)	25,218 (2.1%)	91,086 (7.7%)	266,393 (22.6%)	29,381	4.0
2008	1,235,550 (100.0%)	9,488 (0.8%)	820,840 (66.4%)	796,106 (64.4%)	23,256 (1.9%)	1,272 (0.1%)	206 (0.0%)	46,769 (3.8%)	27,943 (2.3%)	93,651 (7.6%)	236,859 (19.2%)	28,946	3.7
2009	1,049,077 (100.0%)	12,543 (1.2%)	645,714 (61.6%)	617,403 (58.9%)	26,752 (2.6%)	1,408 (0.1%)	151 (0.0%)	46,733 (4.5%)	29,823 (2.8%)	100,800 (9.6%)	213,464 (20.3%)	31,544	4.9

Source: The National Court Administration of the Supreme Court of Korea, Annual Judicial Report for Year 2009, <http://www.scourt.go.kr/justicesta/JusticestaListAction.work?gubun=10> (last visited on Dec. 14, 2010).

Table 6. Three-Judge Panel Cases

Total No.	Dismissal by a Presiding Judge's Order	Disposition										Appeal Rate (%)	
		Judgment					Voluntary Dismissal or Recognition of Claims						
		Total	Winning of a Plaintiff (Incl. a Partial Winning)	Loss of a Plaintiff	Dismissal by the Court's Judgment	Others	Mediation	Compromise	Voluntary Dismissal or Recognition of Claims	Others	Appeal		
2004	35,163 (100.0%)	292 (0.8%)	22,035 (62.7%)	16,521 (47.0%)	5,164 (14.7%)	334 (0.9%)	16 (0.0%)	3,784 (10.8%)	1,560 (4.4%)	6,614 (18.8%)	878 (2.5%)	7,724	35.1%
2005	40,930 (100.0%)	450 (1.1%)	25,669 (62.7%)	19,081 (46.6%)	6,175 (15.1%)	393 (1.0%)	20 (0.0%)	4,239 (10.4%)	1,733 (4.2%)	7,943 (19.4%)	896 (2.2%)	9,697	37.8%
2006	40,633 (100.0%)	269 (0.7%)	25,978 (63.9%)	19,095 (47.0%)	6,398 (15.7%)	465 (1.1%)	20 (0.0%)	3,362 (8.3%)	1,788 (4.4%)	7,922 (19.5%)	1,314 (3.2%)	10,534	40.5%
2007	44,359 (100.0%)	449 (1.0%)	27,580 (62.2%)	19,597 (44.2%)	7,404 (16.7%)	546 (1.2%)	33 (0.1%)	4,449 (10.0%)	2,520 (5.7%)	7,896 (17.8%)	1,465 (3.3%)	11,196	40.6%
2008	48,880 (100.0%)	498 (1.0%)	29,794 (61.0%)	21,115 (43.2%)	8,087 (16.5%)	563 (1.2%)	29 (0.1%)	5,189 (10.6%)	3,517 (7.2%)	8,137 (16.6%)	1,745 (3.6%)	12,305	41.3%
2009	53,387 (100.0%)	959 (1.8%)	33,024 (61.9%)	23,528 (44.1%)	8,785 (16.5%)	690 (1.3%)	21 (0.0%)	5,413 (10.1%)	3,408 (6.4%)	8,798 (16.5%)	1,785 (3.3%)	13,725	41.6%

Source: Office of the National Court Administration of the Supreme Court of Korea, Annual Judicial Report for year 2009, available at <http://www.scourt.go.kr/justicesta/JusticestaListAction.work?gubun=10> (last visited on Dec. 14, 2010).

the appointment of a special representative and those for the procedural acts by a special representative may be ordered to be borne by the applicant by virtue of Article 62(6) of KCPA.²⁴⁾

III. Exceptions and Modifications

There are several exceptions to the basic rule mentioned above. A court may, depending on circumstances, charge the winning party with the whole or part of the costs arising from the acts unnecessary for an extension or defense of his/her rights, or of the costs arising from the acts necessary for an extension or defense of the other party's rights.²⁵⁾ When litigation is delayed due to the failure of either party to produce a means of claim or defense at an appropriate time, or to neglect an observance of the appointed date or period, or due to any other cause attributable to either party, the court may charge the winning party with the whole or part of the litigation costs incurred due to such delay.²⁶⁾

The litigation costs to be borne by the parties in the case of a partial defeat shall be determined by the court.²⁷⁾ Depending on circumstances, the court may charge either of the parties with the whole of the litigation costs.²⁸⁾

As far as joinder of parties is concerned, co-litigants shall bear litigation costs equally. However, the court may have the co-litigants bear the litigation costs jointly or by any other means, depending on circumstances which they face.²⁹⁾ Nonetheless, even in cases where multiple parties are

24) Article 62(1) of Civil Procedure Act defines a special representative, providing that "Any person who intends to conduct procedural acts against a minor, a quasi-incompetent person or an incompetent person who does not have any legal representative or whose legal representative is unable to exercise his right of representation, may file a request with the court of a lawsuit to appoint a special representative, by vindicating that there exists a concern about the damages to be inflicted by a delay in the procedural acts."

25) Civil Procedure Act, art.99.

26) Civil Procedure Act, art.100.

27) Civil Procedure Act, art.101.

28) *Id.*

29) Civil Procedure Act, art.102(1).

involved in an action, the court may cause the party who has undertaken the acts unnecessary for an extension or defense of rights, to bear the litigation costs arising from such acts.³⁰⁾

The basic rule and exceptions, and modifications, to the basic rule shall apply *mutatis mutandis* to the burden of litigation costs arising from intervention between an intervener and the other party, and to the burden of the litigation costs for an objection against intervention between an intervener and the objecting party.³¹⁾

KCPA lacks any mandatory pre-litigation procedures such as mandatory mediation with an impact on cost and fee allocation. Party agreements allocating costs and fees to be incurred due to litigation are not common in Korea because provisions related to litigation costs in KCPA are mandatory. Hence, such an agreement is not enforceable if it is contrary or inconsistent with those provisions.

It is the general rule that parties are allowed to represent themselves. However, there are some exceptions. Korea has a much higher incidence of *pro se* participation than do either the United States or Germany. Even in substantial cases it is common that one or both parties are without a lawyer. In 2005 in fewer than 20% of cases initiated in the District Court or Branch Court were both sides represented by lawyers.³²⁾

When parties are not represented by counsel, judges more often proactively manage procedures and explain relevant legal principles to help parties participated meaningfully in proceedings. Frequently judges must direct the lay parties to the material points in dispute and away from personal attacks on opponents.

Lawsuits for consumer organizations are allowed in Korea.³³⁾ A consumer organization prescribed by law can bring a lawsuit to enjoin or suspend infringement of consumers' interests.³⁴⁾ *Pro se* lawsuits to be instituted by a plaintiff are prohibited in consumer organization lawsuits

30) Civil Procedure Act, art.102(2).

31) Civil Procedure Act, art.103.

32) See Hyun Seok Kim, *Why do We Pursue "Oral Proceedings" in Our Legal System?*, 7 J. KOR. L. 51, 71-73 (2007).

33) Sobijagibonbeop [Framework Act for Consumers] Act No.10170, Mar. 22, 2010, art.70.

34) *Id.*

Table 7. Number of Cases Where a Party or Parties Were Represented by an Attorney before a District Court (or a Branch Court) of Original Jurisdiction in Civil Cases Decided on the Merits in Korea³⁵⁾

	Collegiate Division (Three Judge Panel)				Single Judge Panel				Small Claims Case			
	Number of Disposition	Plaintiff	Defendant	Both Parties	Number of Disposition	Plaintiff	Defendant	Both Parties	Number of Disposition	Plaintiff	Defendant	Both Parties
2004	35,163	10,426 (29.7%)	2,004 (5.7%)	15,269 (43.4%)	218,213	53,262 (24.4%)	8,073 (3.7%)	25,321 (11.6%)	917,158	49,454 (5.4%)	3,371 (0.4%)	1,627 (0.2%)
2005	40,930	11,561 (28.2%)	2,401 (5.9%)	18,186 (44.4%)	212,724	47,787 (22.5%)	8,280 (3.9%)	25,547 (12.0%)	883,066	69,035 (7.8%)	3,617 (0.4%)	1,690 (0.2%)
2006	40,633	11,076 (27.3%)	2,386 (5.9%)	18,539 (45.6%)	259,161	102,397 (39.5%)	8,583 (3.3%)	25,530 (9.9%)	903,380	212,437 (23.5%)	3,876 (0.4%)	1,848 (0.2%)
2007	44,359	11,448 (25.8%)	2,745 (6.2%)	20,687 (46.6%)	264,692	97,548 (36.9%)	9,277 (3.5%)	27,605 (10.4%)	913,219	234,544 (25.7%)	4,038 (0.4%)	2,036 (0.2%)
2008	48,880	12,213 (25.0%)	3,042 (6.2%)	22,991 (47.0%)	283,011	111,414 (39.4%)	10,181 (3.6%)	29,021 (10.3%)	952,539	270,239 (28.4%)	4,110 (0.4%)	2,008 (0.2%)
2009	53,387	13,219 (24.8)	3,357 (6.3%)	23,983 (44.9%)	234,780	54,528 (23.2%)	10,191 (4.3%)	27,602 (11.8%)	814,297	116,714 (14.3%)	4,480 (0.6%)	2,056 (0.3%)

Note: 1. Among the number of civil cases decided on the merits where one party or both parties were represented by an attorney(s), the column, 'plaintiff,' stands for the number of civil cases where only plaintiff were represented by one attorney or more whereas the column, 'defendant,' stands for the number of civil cases where only defendants were represented by one attorney or more. In addition, the column, 'both parties,' stands for the number of civil cases where both parties were represented by one attorney or more (Included where one side or both sides consist of more than one person and only one person among them appointed an attorney or attorneys).

2. The number inside the parentheses is the percentage of the number of cases where an attorney or attorneys were appointed by a party and/or both parties to litigation out of the total number of disposition before district court or branch court of original jurisdiction in civil cases decided on the merits.

Source: The National Court Administration of the Supreme Court of Korea, Annual Judicial Report for Year 2009, <http://www.scourt.go.kr/justicesta/JusticestaListAction.work?gubun=10> (last visited on Dec. 14, 2010).

under Article 72 of the Framework Act for Consumers. Also, consumer organization lawsuits for damages are not permitted. According to the Securities-related Class Action Act, both parties are obliged to retain attorneys.³⁶⁾

IV. The Effect of Cost and Fee Allocation Rules

The statutory provisions governing filing fees in Korea are designed to discourage appeals. The filing fees for the first appeal amount to one and half times as high as the filing fees set by Article 2 of the Filing Fees Act and the filing fees for the final appeal are twice as high as the filing fees to set by Article 2 of the Filing Fees Act.³⁷⁾

Where parties to an action reach a compromise in a court, each party bears his/her own costs for the compromise and other proceedings unless they agree otherwise in accordance with Article 106 of KCPA.³⁸⁾ Article 106 of KCPA is designed to encourage the compromise between a plaintiff and a defendant.

Articles 107 and 108 of KCPA aim at preventing a frivolous lawsuit. In

35) The District Courts (or the Branch Courts) decide in panels of three when the amount in controversy exceeds 100 million Korean won. There is an exception for cases involving the claim for payment of checks or bills, or the claim for repayment of loans, which are presided over by a single judge regardless of the amount in controversy. When the amount in controversy is 100 million Korean won or less, the District Court (or the Branch Court) decides by one judge. In that case, an appeal is to a panel of three judges in the same court to the extent where the amount in controversy does not exceed 80 million Korean won (Article 32(2) of the Korean Court Organization Act(*Beobwon Jojikbeop*) and Article 4 subsection 1 of the Rules Concerning Subject-matter Jurisdiction in Civil or Family Litigation(*Minsa mit gasa sosong eo samul gwanhal e gwanhan gyuchik*). Appeals from a District Court judgment by a three judge panel is to the competent High Court. Small claims cases refer to the cases, where their controversy does not exceed 20 million Korean won, involving a payment of a certain amount of money, other fungibles, or negotiable instruments. Special rules guaranteeing the speedy and expedient disposition of civil cases will be applied to the small claims cases.

36) Jeunggwongwanryeonjipdansosongbeop [Securities-related Class Action Act] Act No.10208, Mar. 31, 2010, art.5(1).

37) Minsasosong Deung Injibeop [Act on the Stamps Attached for Civil Procedure, etc] Act No.9645, May. 8, 2009, art 3.

38) Civil Procedure Act, art.106.

cases where a legal representative,³⁹⁾ an attorney, a junior administrative officer, etc. of a court, or an executive officer causes one party to pay any useless costs intentionally or by gross negligence, the court of a lawsuit may order, either *ex officio* or upon request of the party, the said person to reimburse the costs in accordance with Article 107(1) of KCPA.⁴⁰⁾ Therefore, a junior administrative officer, etc. of a court, or an executive officer themselves may have to reimburse a party for costs wrongfully created but it is doubtful this will ever happen because they work for the courts. In practice, Article 107(1) of KCPA is also applied in cases where the person having conducted procedural acts as a legal representative or an attorney, fails to attest that he has obtained a power of attorney or an authority required for the procedural acts, or to obtain the ratification thereof.⁴¹⁾

Next, I explore whether an up-front payment of litigation costs has a deterrent effect on potential litigants.

With respect to the procedural acts incurring costs, the court may order the party an up-front payment of such costs in accordance with Article 116(1) of KCPA. When the costs have not been prepaid, the court may refuse to do such procedural acts.⁴²⁾ In practice, the court generally has ordered the party to prepay such costs before certain procedural acts result in the costs because the Korean government cannot afford the costs out of the National Treasury.⁴³⁾ The Supreme Court in Korea held that the only proof might not be admitted to the court if the party who would benefit from the proof did not prepay the costs of taking the proof.⁴⁴⁾ Hence, I think the up-front requirements have a deterrent effect on potential litigants in Korea.

The person whom the court may order to prepay the litigation costs in accordance with Article 116(1) of KCPA shall be the party who will benefit from the litigation in accordance with the following criteria:

39) Daegu District Court [Dist. Ct.], 96Na4754, Sept. 4, 1996. (holding that the representative without the power of attorney is responsible for the litigation costs).

40) Civil Procedure Act, art.107(1).

41) Civil Procedure Act, art.108.

42) Civil Procedure Act, art.116(2).

43) LEE, *supra* note 8, at 46.

44) Supreme Court [S.Ct.], 68Da2188, Jan. 21, 1969.

- (i) Service fees shall be borne by a plaintiff (or by an appellant for an appellate instance);
- (ii) Any expenses for stenographing or recording oral hearing shall be borne by the movant. However, if the party who benefits from a stenography or recording is not identified in cases where the stenography or recording is made in the court's initiative, the expenses shall be borne by the plaintiff;
- (iii) Daily allowance, travel expenses or lodging expenses for examination of evidence incurred by witnesses, expert witnesses or interpreters, fees for expert witnesses or interpreters, and travel expenses or lodging expenses for examination of evidence off-court incurred by a judge or other court officials shall be borne by the party who moved for the examination of evidence. However, if the party who benefits from the examination of evidence is not identified in cases where such examination of evidence is made in the court's initiative, the expenses shall be borne by the plaintiff; and
- (iv) The expenses of forwarding the litigation record to the appellate court shall be borne by the appellant.⁴⁵⁾

When the stenography or recording under (ii) mentioned above or the examination of evidence under (iii) mentioned above is made by both parties, or when the appellant under (iv) mentioned above includes both parties, the court shall have both parties prepay the costs equally. However, the court may determine the ratio of the prepayment otherwise, taking into account the circumstances of each specific case.⁴⁶⁾

V. The Determination of Costs and Fees

First, I scrutinize who determines litigation costs. In cases where litigation costs has not been fixed during the pendency of a lawsuit, a court

45) Article 19(1) of KCPR. Minsasosonggyuchik [Civil Procedure Rules], Supreme Court Rules No. 2259, Dec. 3, 2009, art 19(1).

46) Civil Procedure Rules, art 19(2).

of the first instance shall determine such litigation costs by its ruling, upon request of a party, after the judgment of the lawsuit has become final or after the judgment on the burden of litigation costs has come to hold an executive force.⁴⁷⁾ When filing a request for the ruling to determine litigation costs under Article 110(1) of KCPA, the statement of litigation costs and its certified copy, and the documents necessary for vindicating the litigation costs, shall be submitted.⁴⁸⁾ An immediate appeal may be raised against the ruling as referred to in Article 110(1) of KCPA. In cases where a court decides on the litigation costs, the costs to be borne by the parties shall, in principle, be deemed to have been set off against the corresponding amount.⁴⁹⁾ A court shall have the junior administrative officer of the court calculate litigation costs.⁵⁰⁾

Next, how attorney fees are determined is discussed. In order to curtail excessive initiation fees and contingency fees, the Korean Bar Association set up “Rules of Standards on Attorney Fees” as the Korean Bar Association Rules No. 19 on May 21, 1983. However, The Rules were abolished on January 1, 2000 because they violated the unfair competition law in Korea. Even though the Rules were effective from 1983 to 2000, the attorneys were not bound by the Rules. In others words, they were merely standards that the attorneys might take into account if they chose.

Now attorney fees are determined by an agency contract between a client and an attorney. In other words, attorney fee arrangements are set based on the principle of the freedom of contract. The attorney fee arrangement usually consists of initiation fees and contingency fees.

Initiation fee arrangement normally ranges from 2 million to 5 million Korean Won. Initiation fees are not refundable unless an attorney is responsible for the failure to perform his/her duty based on the agency contract between him/her and his/her client. In this regard, it is suspected that a standard term contract that makes the initiation fee arrangement nonrefundable is an unfair trade action and thus a violation of “Regulation of Standardized Contracts Act.” A court finally determines a concrete

47) Civil Procedure Act, art.110(1).

48) Civil Procedure Act, art.110(2).

49) Civil Procedure Act, art.112.

50) Civil Procedure Act, art.115.

amount to be awarded to the parties to an action. A court shall, in final judgment on a case, render *ex officio* a decision on the entire litigation costs in each specific instance. At the time a case is adjudicated on merit, or an interlocutory dispute arises during the pendency of the case on merit, the court may make a ruling on such litigation costs, depending on circumstances.⁵¹⁾ No independent appeal may be filed against a judgment on litigation costs in accordance with Article 391 of KCPA.

VI. Special Issues: Success-Oriented Fees, Sale of Claims, Class Actions, and Litigation Insurance

Contingent fee arrangements are common in Korea.⁵²⁾ Contingency fee arrangements are allowed in civil cases, inclusive of family cases, and even criminal cases. Any criteria on the ceiling of contingency fee arrangements do not exist since the Rules of Standards on Attorney Fees were abolished in 2000. Hence, the arrangements are permitted even in criminal cases unless the arrangements are unfair legal acts. In 2007, a bill for the revision of the Attorney Act was introduced to the Korean National Assembly and reviewed by the Judiciary Subcommittee, many of whom consisted of former judges and public prosecutors. The bill was intended to restrict the contingency fees arrangement in criminal cases. However, several members of the Judiciary Subcommittee opposed the adoption of the bill. In other words, contingency fee arrangements even in criminal cases survived because many of the former judges and public prosecutors wanted to take advantage of their former status even though it is not permitted by law. However, no win-no fee arrangements are not available because attorneys in Korea are usually paid retainer fees in advance before commencing a lawsuit.

Contingency fees are determined on basis of all circumstances including the importance and difficulty of a case in question, such as the amount in controversy, location where the facts of the case occurred and the parties

51) Civil Procedure Act, art.104.

52) Jae Won Kim, *The Ideal and the Reality of the Korean Legal Profession*, 2 *ASIAN-PACIFIC L. & POL'Y J.* 45 (2001).

reside. Normally, they will be set between 5% and 10% of the amount which a party represented by the attorney won or settled for.⁵³⁾ In addition, in many cases where an attorney and his/her client find the case unimportant such as provisional disposition cases and provisional seizure, contingency fees are not paid to the attorney.⁵⁴⁾

A client is allowed to reduce attorney fees via online fee arrangements. For example, a client may sign up the website, <http://www.lawmarket.co.kr>, and propose the amount of attorney fees that he/she wants, and then an attorney can accept his/her offer via Internet auction for attorney fees.⁵⁵⁾ As of June 1, 2009, approximately 2,300 cases were posted by clients on the website auctioned for attorney fees. Normally, online representation contracts on this website is 20 to 50% cheaper than by offline representation contracts between an attorney and a client.⁵⁶⁾

A plaintiff is not permitted to subrogate his claim to an attorney, a law firm, or an entrepreneur who finances the litigation and thus assumes the litigation risk in Korea.⁵⁷⁾

There are special rules for filing fees with regard to securities class actions. The filing fees for securities class actions are 1/2 of the amount calculated by Article 2(1) of the Filing Fees Act. In this regard, the actual filing fees that are less than 1,000 Korean won are considered as 1,000 Korean won and the amount less than 100 Korean won will not be counted when the filing fees exceed 1,000 Korean won.⁵⁸⁾

The public has often called for legal costs insurance but it was introduced in October of 2009 in Korea. Legal costs insurance was first introduced by D.A.S., a subsidiary of Munich Re Group in Germany in the beginning of October, 2009. It covers legal costs, such as lawyer fees, stamp fees, fees for service of process, up to 50 million Korean won.⁵⁹⁾ Also, LIG Insurance Co., Ltd, one of Korea's domestic insurance companies, is selling

53) http://www.oseo.com/people/qna/view3.asp?bd_cd=CM120&sp=1&cp=1&no=5293&s_chk=N (last visited Jun. 15, 2010).

54) *Id.*

55) http://www.lawmarket.co.kr/auction/auction_guide.asp (last visited Jun. 10, 2010).

56) *Id.*

57) LEE, *supra* note 8, at 137.

58) Act on the Stamps Attached for Civil Procedure, etc, art 2(2).

59) See <http://www.das.co.kr/MainServ?cmd=homepage> (last visited Aug. 29, 2010).

legal costs insurance beginning October 19, 2009. Its policy covers attorney fees, filing fees, and the fees for service of process in civil cases except domestic relations cases, especially divorce cases.⁶⁰ If a party who enters into an insurance contract with LIG Insurance Co., Ltd, pays a monthly installment of 20,000 Korean won, he/she will be reimbursed by LIG Insurance Co., Ltd for up to 15 million Korean won for each instance of courts over 3 years, and be reimbursed for filing fees and fees for service of process up to 5 million Korean won for each instance of courts.⁶¹

VII. Legal Aid

The KCPA allows, but does not require, courts to provide civil litigation aid. The civil litigation aid provided is usually in the form of deferment of payment rather than provision of free services.⁶² The court provides, under certain conditions, financial assistance to a person who cannot afford to pay the attorney fees. In other words, a court may grant a litigation aid, either ex officio or upon request of a person who falls short of the solvency to pay the litigation costs, unless he/she will obviously lose the case.⁶³ A motion for the litigation aid shall be in writing in accordance with Article 24(1) of the Civil Procedure Rules (hereinafter referred to "KCPR"). To the motion for the litigation aid shall be attached a statement which contains financial abilities of the movant and his/her cohabitants.⁶⁴

The movant for the litigation aid must vindicate the reason for the litigation aid.⁶⁵ A judgment on the motion for the litigation aid shall be rendered by the court which keeps the record of litigation.⁶⁶ The litigation aid is awarded only for deferment of a payment of litigation costs,

60) http://www.lig.co.kr/product/p_03/p_0303/p_0303_01.shtml (last visited Aug. 29, 2010).

61) http://prlink.yonhapnews.co.kr/YNA/Basic/Article/Press/yibw_showpress.aspx?contents_id=RPR20091019018300353 (last visited Aug. 29, 2010).

62) Civil Procedure Act, art.128 & 129.

63) Civil Procedure Act, art.128(1).

64) Civil Procedure Rules, art 24(2).

65) Civil Procedure Act, art.128(2).

66) Civil Procedure Act, art.128(3).

deferment of a payment of fees and substitute payment for a lawyer and an enforcement officer, exemption of the security for the litigation costs, and deferment or exemption of other expenses as prescribed by the Supreme Court Rules.⁶⁷⁾ However, the court can limit the litigation aid to a part of them if there is a proper reason therefor.⁶⁸⁾ When a person who has been granted a litigation aid is found to have the solvency to pay the litigation costs or when he becomes solvent, the court which keeps the record of litigation may cancel the aid at any time, either ex officio or upon request of an interested person, and order him/her to pay the litigation costs deferred so far. The litigation costs deferred so far for the person who has been granted to a litigation aid, may be collected directly from the other party who has been judged to pay them.⁶⁹⁾

5,155 of the 1,314,833 civil cases filed before the court in 2008 were made for the litigation aid. These numbers were 4,528 out of 1,267,054 in 2007 and 5,762 out of 1,339,090 in 2006.⁷⁰⁾ It is fair to say that the litigation aid is not generally available to the public in need, but available only in cases where a party to an action meets certain requirements mentioned above.

In Korea, such legal aid as there is is largely provided by the Korea Legal Aid Corporation established pursuant to Legal Aid Act enacted in 1987, which, as a public interest organization, is under the supervision of the Ministry of Justice. However, some scholars criticize that governmental support for legal aid by private organizations such as the Korean Legal Aid Center for Family Relations is trivial. In relatively small cases—those where the amount in controversy is less than 50,000,000 Korean won, with permission of the court, parties may choose to be represented by someone who is not qualified to practice law.

Small claims cases brought by a legal entity against an individual account for nearly 90% of total small claims cases. In addition, 96% of small claims cases instituted by a legal entity against an individual are related to claims for indemnification, for payment of loan, for credit card payment,

67) Civil Procedure Act, art.129(1).

68) Civil Procedure Act, art.129(1).

69) Civil Procedure Act, art.132(1).

70) Beopwon Haengjeongcheo, *supra* note 17.

Table 8. The Number of Court Filings in Civil Cases Decided on the Merits depending on the Amount in Controversy

	Up to 10 million KW ⁽⁷⁾	More than 10 million KW		More than 20 million KW		More than 30 million KW		More than 50 million KW		More than 0.1 billion KW		More than 0.5 billion KW		Cases Seeking for Remedies other than Payment
		and up to 20 million KW	and up to 30 million KW	and up to 50 million KW	and up to 1 billion KW	and up to 1 billion KW	and up to 0.5 billion KW	and up to 1 billion KW	and up to 1 billion KW	and up to 1 billion KW	and up to 1 billion KW	and up to 1 billion KW	and up to 1 billion KW	
1999	842,777	489,812	178,855	69,543	44,144	33,168	21,806	2,273	2,005	1,171				
2000	729,743	412,951	156,914	58,943	44,322	31,090	20,528	2,429	1,849	717				
2001	838,473	538,754	140,264	55,141	41,586	31,791	24,888	3,127	2,374	548				
2002	1,015,894	675,034	169,055	61,681	43,338	31,532	28,184	3,779	2,741	550				
2003	1,151,072	757,052	198,398	68,496	47,871	38,285	33,026	4,256	3,062	626				
2004	1,190,231	777,695	211,028	71,033	49,248	37,976	35,102	4,430	3,264	455				
2005	1,121,889	747,908	168,980	68,751	50,910	40,936	35,987	4,492	3,219	706				
2006	1,288,987	815,898	206,553	101,366	78,936	41,566	36,160	4,776	3,290	442				
2007	1,213,805	763,654	197,015	95,718	66,813	40,803	40,410	5,337	3,768	287				
2008	1,259,031	789,581	213,956	96,116	64,080	42,007	42,970	5,774	4,322	225				
2009	1,074,236	681,740	161,874	72,418	53,016	46,086	47,325	6,478	4,924	375				

Source: The National Court Administration of the Supreme Court of Korea, Annual Judicial Report for Year 2009, available at <http://www.scourt.go.kr/justicesta/JusticestaListAction.work?gubun=10> (last visited on Dec. 14, 2010).

Table 9. The Number of Court Filings in Civil Cases Decided on the Merits Dependent on the Types of Plaintiffs and Defendants in 2005

The Number of Court Filings per Plaintiff	Claim for Indemnification	Loan	Non-performance of Credit card Payment	Assignment of Payment	Others	Total
10,000 and more	41,844	141,494	214,383	81,303	19,190	498,214
1,000 to 9,999	14,091	36,190	7,809	30,817	6,752	95,659
100 to 999	3,018	18,474	3,413	5,206	6,689	36,800
10 to 99	413	21,402	2,620	1,478	11,670	37,583
5 to 9	63	2,779	266	228	4,628	7,964
2 to 4	175	1,978	181	220	6,782	9,336
1	155	873	96	170	5,785	7,079
Total	59,759	223,190	228,768	119,422	61,496	692,635

Source: Du OI Kim, *Gyeongjeseongjangeul Wihan Sabeopjeok Gibanui Mosaek(I): Minsasosongui Hyeonghwanggwae Jeongchaekgwaje [In Search of the Judicial Foundation for Economic Development (I): Current Situation of Civil Procedure and Its Policy Issues]*, in Jeongchaekyeonguseries [POLICY RESEARCH SERIES] 2007-02,22 (KDI ed., 2007).

Table 10. Details of Civil Cases Where One of the Parties is a Legal Entity or an Individual (Year 2005)

	Small Claims Cases	Single Judge Cases Exceeding 20 million Korean won	Collegiate Division Cases	Total
Legal Entity vs. Legal Entity	26,374	18,698	8,162	53,234
Legal Entity vs. Individual	692,635	75,784	8,351	776,770
Individual vs. Legal Entity	22,049	26,981	9,757	58,787
Individual vs. Individual	135,384	90,082	16,312	241,778
Total	876,442	211,545	42,582	1,130,569

Source: Du OI Kim, *Gyeongjeseongjangeul Wihan Sabeopjeok Gibanui Mosaek(I): Minsasosongui Hyeonghwanggwae Jeongchaekgwaje [In Search of the Judicial Foundation for Economic Development (I): Current Situation of Civil Procedure and Its Policy Issues]*, in Jeongchaekyeonguseries [POLICY RESEARCH SERIES] 2007-02,22 (KDI ed., 2007).

and about assignment of payment.⁷²⁾ I can infer from those Tables that those legal entities are not vulnerable to litigation costs because they are professional plaintiffs. However, an individual as a plaintiff will be adversely affected by litigation costs. That is why pro se litigation rate is so high in Korea. In other words, he/she saves his/her litigation costs by eliminating attorney fees.

VIII. Conclusion

As mentioned above, litigation costs are mainly governed by KCPA, the Act on Costs for Civil Procedure, the Rules of Costs for Civil Procedure, the Filing Fees Act, the Filing Fees Rules, the Rules regarding Attorney Fees included in Litigation Costs, the Securities Class Action Act, and the Securities Class Action Rules. The complexity and multiplicity of the laws and rules governing litigation costs can hardly have lay persons understand those laws and rules. Hence, I propose that Filing Fees Act in the context of civil procedure be incorporated to the Act on Costs for Civil Procedure, and Filing Fees Rules for civil procedure and Rules regarding Attorney Fees included in Litigation Costs be incorporated to Rules of Costs for Civil Procedure.⁷³⁾ According to my proposal, the Act on Costs for Civil Procedure and the Rules of Costs for Civil Procedure can cover litigation costs including filing fees and a part of attorney fees.

I think contingent fee arrangements should not be permitted in criminal cases in Korea because those cases are related to public interests. Also, contingency fee arrangements for domestic relation cases should not be allowed because it can encourage the dissolution of family relation.

Pro se actions in small claims cases have resulted from the fact that the parties are reluctant to pay attorney fees. Pro se actions can encourage a

71) The abbreviation, "KW," in this Table refers to the unit, "Korean won."

72) Kim, *supra* note 19, at 22.

73) Cf. HANKUK MINSASOSONGBEOP HAKHOI [KOREA ASSOCIATION OF THE LAW OF CIVIL PROCEDURE], MINSASOSONGJEDOUTI JEONGBIBANGAN YEONGU [A STUDY ON THE REFORM OF THE LAWS ON CIVIL LITIGATION COSTS] 286-88 (2009); Byungseo Chon, *Sosonghiyong Jedoui Gaeseone gwanhan Yeongu* [A Suggestion on the Improvement of Civil Litigation Costs], 14-1 MINSASOSONG [CIV. PROC.] 313-25 (2010).

court to heavily rely on appropriateness in the concrete rather than legal certainty. In other words, appropriateness in the concrete⁷⁴⁾ sometimes preempts legal certainty in Korea because applying law by the court is limited by pro se litigation. I hope a potential litigant in small claims cases can be represented by a lawyer. This problem will be somewhat solved by the legal aid, the increase of the number of attorneys,⁷⁵⁾ and legal service insurances.

KEY WORDS: ???????????????

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74) Chaewoong Lim, *A Study on the Target of Avoidance in Korean Bankruptcy Law: When There is No Debtor's Action*, 7(2) J. KOR. L. 333, 344 and n. 24 (2008)(Saying that "The appropriate in the concrete is an important word in legal practice in Korea, especially for the judges. Put it simply, it is the question who must win the case. New comers are taught to consider it when they make a decision. They are told to think of who must win apart from the superficial logic. If the appropriateness in the concrete is not agreed to the superficial logic, for example in the case that the plaintiff would win by the latter, but the defendant should win by the former, they are asked to give it a second thought and to seek a new logic. To understand the Korean judges' behavior on the work, it is necessary to understand the role of the appropriateness in the concrete.")

75) See *infra* Appendix VIII.

Appendices

I. Component Number and Ratio of Cases in 2009

Litigation Cases	6,345,439 (35.4%)
Non-litigation Cases	11,565,289 (64.6%)

II. Component Number and Ratio of Litigation Cases in 2009

Cases decided on the merits	1,594,952 (25.1%)
Cases decided on procedural grounds	4,750,487 (74.9%)

III. Component Number and Ratio of Litigation Cases in 2009

Civil Cases	4,135,591 (65.2%)
Criminal Cases	1,975,236 (31.1 %)
Family Cases	140,328 (2.2%)
Juvenile Cases	57,423 (0.9%)
Administrative Cases	35,060 (0.6%)
Election-related Cases	1 (0.0%)
Patent Cases	1,800 (0.0%)

IV. Component Number and Ratio of Non-litigation⁷⁶⁾ Cases in 2009

Registration (incl. land) Cases	11,009,569 (95.2%)
Family Registration Cases	345,785 (3.0%)
Deposit Cases	209,935 (1.8%)

Note: Registration for legal entities, whether they are for profit or not, and for lands are required in Korea.

76) Non-litigation cases refer to “cases which does not form a legal proceeding, but in which the court assists and engages in the procedure of creation, alteration, or extinguishment of personal rights.” THE NATIONAL COURT ADMINISTRATION, THE SUPREME COURT OF KOREA 81 (2008).

V. Total Number of Filing before Each Level of Courts in 2009

Type of Court	Classification	Total number of court filings	Total number filed	Litigation Cases						
				Civil cases	Family cases	Administrative cases	Patent cases	Election-related cases	Criminal cases	Juvenile cases
Total number filed before courts		17,910,728	6,345,439	4,135,591	140,328	35,060	1,800	1	1,975,236	57,423
Supreme Court		40,309	40,309	13,780	618	2,777	478	-	22,639	20
Total number of cases Filed Before the High Courts		57,867	57,867	25,037	667	7,107	1,322	1	23,733	---
Total number of cases filed before district courts		17,812,552	6,247,263	4,096,774	139,043	25,176	---	---	1,928,867	57,403
Total number of cases filed before district courts as the second instance(appellate level)		104,635	104,635	38,467	2,542	--	--	--	63,359	267
Total number of cases filed before district courts as the first instance		17,707,917	6,142,628	4,058,307	136,501	25,176	--	--	1,865,508	57,136

Note: Civil Detention Cases and Cases Related to a fine for default (Total number: 46,431 cases), Corpus Heabus Cases (34 Cases) are included in Criminal Cases. Family Protection Cases (7,277 cases) are classified as juvenile cases.

VI. Total Number of Court Filing before District Court of Original Jurisdiction in 2009

Classification Court	Total			Civil Cases						
	Total	Cases Decided on merit	Others	Collegiate Division(3 judges)	Single-judge panel	Small Claim cases	Conciliation	Payment order proceedings	Civil Execution Cases	Non-litigation cases
Total	17,707,917	1,434,530	4,708,098	55,168	238,848	780,220	13,608	983,619	699,411	81,455
Seoul Central District Court	1,590,154	318,469	646,156	14,867	50,648	228,975	2,002	226,743	50,137	12,692
Pusan District Court	756,744	86,832	272,401	2,652	15,419	47,139	783	63,512	41,357	2,693

VII. Annual Report on Relation between Population and Total Number of Cases

Classification Year	Population		Total cases filed		Litigation Cases				Non-litigation Cases (Registration, Family cases, deposit)	
	Population	Exponent	Cases filed	Exponent	Cases Decided on the Merits		Cases Decided on Procedural Grounds		Cases filed	Exponent
					Cases filed	Exponent	Cases filed	Exponent		
1999	47,335,000	100.0	16,129,861	100.0	1,212,865	100.0	4,817,717	100.0	10,099,279	100.0
2000	47,732,000	100.8	14,341,951	88.9	1,093,704	90.2	3,941,737	81.8	9,306,510	92.2
2001	48,021,000	101.4	16,633,034	103.1	1,222,078	100.8	4,314,019	89.5	11,096,937	109.9
2002	48,229,000	101.9	18,454,961	114.4	1,405,956	115.9	4,320,888	89.7	12,728,117	126.0
2003	48,386,000	102.2	19,049,082	118.1	1,545,934	127.5	4,908,844	101.9	12,594,304	124.7
2004	48,583,000	102.6	17,900,310	111.0	1,611,528	132.9	4,666,162	96.9	11,622,620	115.1
2005	48,782,000	103.1	18,087,554	112.1	1,520,532	125.4	4,037,371	83.8	12,520,651	124.0
2006	48,991,000	103.5	18,870,971	117.0	1,704,716	140.6	3,928,113	81.5	13,238,082	131.1
2007	49,268,000	104.1	18,317,691	113.6	1,670,475	137.7	4,392,571	91.2	12,254,645	121.3
2008	49,540,000	104.7	18,402,098	114.1	1,753,088	144.5	4,592,473	95.3	12,056,537	119.4
2009	49,773,145	105.2	17,707,917	109.8	1,434,530	118.3	4,708,098	97.7	11,565,289	114.5

Note: 1. Population is based on one registered as Residents in Korea available at the homepage of the Ministry of Statistics (Stat-Korea) (the number of less than 1000 deleted).

2. Registration cases out of non-litigation cases are equal to cases for registration application excluding the number of transcript of registry.

VIII. The number of attorneys in Korea

Year	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009 (As of June 3, 2009)
Nation-wide	4,228	4,618	5,076	5,076	6,299	6,997	7,603	8,265	8,877	10,939

Source: <http://www.seoulbar.or.kr/> (last visited on August 23, 2010); http://www.koreanbar.or.kr/notice/02_08.asp (last visited on June 10, 2009).

