ATTORNEY AT LAW
MAGAZINE

Legal Fee Structures For Plaintiff Attorneys

By *Jay Scarola*

As a plaintiff attorney who does contingency work, you face unique pressures and bear many responsibilities. You have, however, access to an enormous tax benefit that nobody else has: the ability to defer an unlimited amount of compensation on your contingency fees and elect to have those funds directed on a pretax basis toward a myriad fixed income or market-based products. In turn, you can choose exactly how and when you wish to receive the resulting income, or periodic payments from such a transaction.

Grossly underutilized by attorneys, fee structures offer two tax distinct advantages: (1) deferment of current earned income and the taxes on that income and (2) deferment of taxation on the interest earnings prior to distribution. Through a legal fee structured settlement you can defer tax liability until the year(s) in which you receive payment, while electing to have those funds directed on a pretax basis toward a number of structured settlement vehicles explained further in this article.

As eminent tax attorney, Robert W. Wood wrote in his article, “Legal Fee Structures Can Hedge the Insecurities Many Lawyers Face” in the Los Angeles Daily Journal, “Stretching out payments over time yields a better tax result…. It can mean a lower overall tax burden.” Legal fee structured settlements offer the best of all worlds to contingency-based plaintiff’s attorneys. You can spread out your tax liability while having the funds managed by an insurance company, trust company or qualified and appropriately licensed professional as you would normally, without the limitations imposed by traditional qualified plans, such as an IRA or a 401(k) plan.

Just as your clients can structure all or a portion of their recoveries, you can structure all or a portion of your fees. You are the architect of how you receive these periodic payments and you decide the deferral period. With most qualified plans, you're subject to penalties for accessing monies before 59 ½ and you have IRS mandated distributions at 70 ½. With a fee structure, you can plan to receive money immediately or much further in the future. You can receive one future lump sum, a series of lump sums or you can take monthly, semiannually or quarterly payments or any combination. You can receive payments for a defined period of time or, when structuring with an annuity from an insurance carrier, it's possible to receive a guaranteed stream of payments for life. You can structure as much money as you'd like in any given year – there are very few limitations on how you defer your compensation and, in turn, flexibility as to the timing of your tax liability.

WHY STRUCTURE YOUR FEES INSTEAD OF TAKING CASH UP FRONT?

In addition to offering tax-deferred growth, a fee structure allows you to create a personalized financial plan that accounts for your specific needs. You can save for retirement, your children's education, or for the years in which you anticipate working less. Maybe most important, given that contingency income can be rather unpredictable, fee structures can help plaintiff attorneys and their law firms to ensure solvency and income regularity from year to year. Also, fee structures have enhanced creditor and judgment protection that other investments cannot provide.

WHEN CAN YOU STRUCTURE FEES?

- Any contingency fee case, not only on physical injury/wrongful death cases.
- Single-event claimant cases, mass torts and class action cases.
- Verdicts in special situations as well as settlements.
- Independently of what your clients, co-counsel and business partners do with their fees.

WHAT ARE MY OPTIONS FOR STRUCTURING FEES?

With each structured settlement fee option, your money grows tax deferred and you're not taxed until the year(s) you receive payments. You will receive a 1099 in only the years in which you receive payments. When you're weighing your fee structure options, bear in mind that you can use different products for different cases and you can even use different products for the same case if the fee is large enough to warrant doing so. Here are the options:

The Structured Settlement Annuity: The fixed interest rate annuity offers security and peace of mind because you know that you will receive guaranteed fixed income in the customized design of your choosing. This option is unique in that it can provide for guaranteed lifetime payments or increased payments over time to account for inflation.

Market-Based Structured Settlement: If you want the potential for a higher rate of return, you should consider directing your pretax dollars in the form of a market-based structure settlement product, such as Fee Structure Plus. With that product, you can direct your fees toward most any equity or bond vehicle (remember that most qualified plans have a limited line-up of mutual funds), and you have the option of having your own financial planner or a trust company manage your money within a fiduciary capacity. With the assistance of a qualified and licensed professional, you can create a diversified portfolio to meet your individual needs and risk profile. For the attorney who commonly receives his or her fees in cash and then invests in the market, it only makes sense that he or she considers directing those fees, on a pretax basis, toward a tax-deferred vehicle. Of course, as with any market-based product, the income stream is not guaranteed or steady, and you incur the same type of risks as you would have with typical investment accounts.

Treasury Funded Structured Settlement: U.S. Treasurys have long been the pinnacle of safety and security around the globe. Through a product such as the Treasury Funded Structured Settlement, you can now enjoy the benefit of U.S. Treasurys for your deferred contingency fees. Again, you can receive tax deferral and enjoy the same or better security than you could with the structured settlement annuity. The rate of return is currently low, though, and fixed for the life of the periodic payments.

HOW DO I MAKE IT HAPPEN?

While you do have a legal right to structure your contingency fees (see Richard A. Childs, et al. v. Commissioner of Internal Revenue Service), there are some necessary pre-emptive steps that you must take to preserve your ability to structure your legal fees. If you or your client would like to best understand your structured settlement options, you should seek the assistance of a structured settlement consultant to provide you with guidance that is necessary prior to mediation and/ or settlement. Bear in mind that, as with all structured settlements, you must secure defense cooperation to facilitate such a transaction. The most important point to remember is that if you want to preserve your client's ability to structure their recovery, or your ability to structure fees, you must not let defense cut a check to you or to your firm's trust account. If that happens, you're considered in constructive receipt of the funds and can no longer enter into a structured settlement. When you have selected a structure plan, it's at that time that your structured settlement company will request payment and give payment instructions to defense. If the appropriate steps are taken, the IRS will not consider you in possession of the funds until you receive payment.

Don't wait until later to take advantage of this unique opportunity. Remember that the longer you defer payments, the more of an opportunity you have to potentially receive a better rate of return on your fees. It behooves you to plan ahead and to consider how the fee structure options could fit into your overall financial plan.

Millennium Settlements, Inc., or its agents or affiliates (MSI), do not provide advice or services related to the purchasing of, selling of or investing in securities or other financial instruments. Any discussion of securities contained herein is not intended or written to be used, and cannot be used, as advice related to the purchasing of, selling of or investing in any particular securities or other financial instruments. MSI does not provide legal advice or legal services, nor does MSI provide tax advice or tax services. Any discussion of legal or tax matters contained herein is not intended or written to be used, and cannot be used, as legal advice or for avoiding any penalties that may be imposed under Federal tax laws. To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein.

For more information visit, www.milleniumsettlements.com