

Structuring Your Future

The use of structured settlements in the field of personal injury law is nothing new. Since 1982, structured settlements continue to be used by Plaintiff attorneys to defer payments and provide future medical and income needs for their severely injured and disabled clients and minors. Structured settlements are also used by clients both as an investment tool and a means by which to insure payment of sums certain in the future. Unbeknownst to many in the field of personal injury law, as well as many other fields of law, structured settlements may also be used to structure one's fee or some part thereof. With stock market indexes down almost 50%, interest rates at historic lows and real estate values continuing to plummet, it is no surprise to find more and more attorneys, like their clients, using structures as a means to ensure their financial futures.

Some advantages of structuring your attorney's fees include: (1) deferring fees and income taxes on those fees to a future date when perhaps you are in a lower tax bracket; (2) guaranteeing a steady stream of income in the future that can serve to either supplement your income stream at the time or replace it; (3) leveling off income spikes commonly associated with contingency fee work by managing your cash flow; (4) obtaining a competitive rate of return with low investment risk; and (5) taking care of those "pre-set" future costs such as annual premiums for life, health or disability insurance, college education funds for children, or weddings, annual vacations, or additional home mortgages. (See *Childs v. Commissioner*, 103 T.C. 634 (1994), aff'd

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per curiam, 89 F.3d 856 (11 th Cir. 1996) for a discussion about the technical tax arguments in structuring attorneys fees.)

As is true for clients, structured attorneys fees are funded with a fix rate annuity purchased from a highly rated life insurance company that sells structured settlement annuities (e.g. Pacific Life, Prudential, MetLife, etc.). As a trade-off for all of the tax and financial benefits of the deferred compensation arrangement for attorneys, the payments from those annuities cannot be accelerated, deferred or pledged as security for loans. So, planning in the beginning for the timing and amount of each payment is important...another reason for early contact with your structured settlement consultant.

There is no limit to the amount of income that may be deferred through the use of structured settlements. By comparison, there are statutory limits to the amount one can defer in a qualified retirement plan (e.g. 401(k)) or place into an individual retirement account (IRA). Even if the attorney participates in a qualified retirement plan or purchases an IRA, he or she may still defer additional income, without limi-

tation, through an attorney fee structure. Unlike traditional retirement plans, there is no requirement of annual deferrals. An added bonus is that the attorney fee structure annuity, though not ERISA protected, has enhanced creditor and judgment protection that other investments cannot provide. And an attorney fee structure, like a 401(k) or IRA, allows the attorney investor to designate a beneficiary should he or she pass before some or all of the periodic payments are made.

Newport Beach attorney Mark W. Eisenberg has experienced the benefits of living a "structured life." Before representing the interests of accident victims and their families, Eisenberg spent almost 14 years defending the interests of insurance companies, during which time his adversaries periodically structured their fees. Eisenberg explained that it was through his exposure to structured settlements as a defense attorney that the benefits of structuring one's fees became readily apparent. "I am simply too busy to manage a securities portfolio and am inherently risk adverse," Eisenberg said. Structuring his fees has not only served to fund his eventual retirement, but has also given him the confidence to take on tougher cases with considerably greater down-side risk.

If you are interested in structuring your fees, even if your client does not structure and you want to, remember, you must elect to defer your fees prior to the date on which those fees are earned (i.e. in contingency fee cases, fees are normally earned at the time the settling defendant tenders the settlement funds to you). If you have already received the settlement funds from the defendant, his counsel or insurer, it is probably too late to structure your fees, as that is constructive receipt. Your election to structure your fees (or portion thereof) must be in writing, included in the settle-

Chart #1

Attorney Fee Paid as a Lump Sum vs. Structured Fee

| | Lump Sum | Deferral |
|--------------------------------|------------------|------------------|
| Attorney Fee | \$100,000 | \$100,000 |
| Federal Income Tax (35%) | \$35,000 | \$0 |
| Employment Taxes | \$2,600 | \$0 |
| State Income Tax (6%) | \$6,000 | \$0 |
| Taxes Paid in Year 1 | \$43,600 | \$0 |
| Net to Invest in Year 1 | \$56,400 | \$100,000 |

Attorney will pay taxes on future periodic payments. This tax deferral strategy will greatly enhance the taxable equivalent return.

must be in writing, included in the settlement agreement or release between your client and the defendant or its insurer, and should include a reference to the timing and amount of each future payment to be received by the attorney. Your structured settlement consultant can provide you the requisite language to be included in the settlement agreement or release.

There are two tax advantages when considering an attorney fee structure. The first is the deferment of current earned income and the taxes on that income. The second is the deferment of taxation on the interest earnings prior to distribution. [See Chart #1 above.]

Structured settlements are not confined to personal injury attorneys. They may be an option to any attorney who is trying to reach a settlement between two parties. Utilizing this periodic payment stream could be an essential component to getting your case settled in other area such as employment cases, alimony, child support payments, a company, firm buyout, business equity, etc. Oftentimes "thinking outside the box" will bring the case to settlement and bring more to your client overall.

In summary, a fee structure allows a Plaintiff's attorney to not only defer receipt of (and tax on) his or her fees until he or she receives them, but, he/she can also have the deferred fees invested. The income produced from the deferred fees is taxable over time. Attorneys may want to consider structuring part of their fees as a form of one's own income tax planning, financial

planning, and/or estate planning. A Millennium Settlement Consultant can assist you and your tax planner to decide if a fee structure is appropriate for you.

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