LTPC Offers Alternative Fee Arrangements

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Partnering with Clients Through Alternative Fee Arrangements

LTPC has been entering into alternative fee arrangements (AFAs) with clients for more than 15 years. These arrangements are designed to accommodate clients who are interested in a fee structure other than standard hourly billing. In return for investing some or all of our standard fees in the client's matter, or for taking on unusual fee or collection risk, we earn an agreed-upon fee based on a set of specified criteria. In these arrangements, we share in both fees and outcome risk. We maintain such AFAs in strict confidence, except where required to be disclosed as a prerequisite to recovering attorneys' fees as an element of damages.

What are Alternative Fee Arrangements?

AFAs are agreements between LTPC and a client to provide compensation to LTPC based on a structure other than hourly billing. Such structures can take the form of contingency fees, fixed fees, value- or success-based fees or other alternatives to hourly fees appropriate under the circumstances of a specific matter. Alternative fee arrangements can be hybrids in which LTPC receives a percentage of its hourly rate with the remainder contingent on the outcome of the matter. If there is an unfavorable result, no further fees are paid. If there is a positive outcome, LTPC might receive a multiple of its fees at risk. In addition, special fee arrangements can span more than one case. LTPC is willing to negotiate special fee arrangements that provide a fixed contingency across a group of cases, or to handle a group of defense cases at a discount, in exchange for a contingency on plaintiffs' cases that a client may have.

"Alternative fees work only if they can be structured in a way that makes sense for both sides."

Mike Lynn, Partner
LynnTillotsonPinkerCox

Why Do Clients Seek Alternative Fee Arrangements?

Clients now recognize the inherent benefits in shifting some or all of the legal fee risk to law firms. First and foremost, shifting the fee risk to the law firm aligns the law firm's incentives with the client's and reduces the risk to the client. In addition, clients who lack the financial resources to pursue important but expensive litigation are provided the opportunity to pursue such matters by having their law firm invest in the case alongside the client. In the absence of AFAs, such matters might never be pursued. Clients also value AFAs because they can provide predictable cash flow and budgeting. An AFA with a fixed monthly fee or flat fee as an element is a prime example of a structure that guarantees certainty in legal expenditures. In surveying its clients, LTPC has found that more and more clients are utilizing alternative fee arrangements and looking to firms, like LTPC, that regularly provide such arrangements.

What are the Risk-Sharing Options?

Our AFAs have included pure contingent fee and partial contingent fee litigation matters, fixed fees, "hold backs" and many other combinations of risk/reward structures negotiated on a case-by-case basis with the client. At LTPC, we are prepared to discuss and pursue any reasonable risk-sharing fee structure that balances the relative investment and risk taken by the Firm with the client's objectives for success in the matter. Specific types of AFAs that LTPC has entered into include:

* **Pure Contingency Fee.** A pure contingency fee arrangement is the most traditional alternative fee arrangement in which LTPC receives a fixed or scaled percentage of any recoveries in a lawsuit brought on behalf of the client as a plaintiff. Typically, the contingency is 40% and the client pays the expenses of the litigation. LTPC, however, is also willing to discuss sharing part or all of the

expense risk with clients. Pure contingency fees can be useful structures in some cases where the plaintiff is seeking monetary or monetizable damages. They are often appropriate when the client is an individual, start-up, or corporation with limited resources to finance its litigation. Even large clients, however, appreciate the budget certainty and risk-sharing inherent in a contingent fee arrangement.

* **Partial Contingency Fee.** A partial contingency fee arrangement is when LTPC receives a discounted hourly rate plus a percentage of any recoveries in the lawsuit. A common partial contingency fee is 60% of LTPC's normal hourly rates plus a 20% contingency. Partial contingency fees reduce the out-of-pocket cost of litigation to the client while still aligning LTPC's incentives with the client and sharing the fee risk between LTPC and the client. Partial contingency fees are also most common in plaintiff cases seeking monetary or monetizable damages. Defense cases can also be structured as partial contingency fees with success contingent on agreed-upon results or milestones being achieved.

> "Clients justifiably want value for their legal dollars which can often be better measured by results rather than billable hours."
>
> Eric Pinker, Partner
> LynnTillotsonPinkerCox

* **Fixed Fee.** Fixed fee or flat fee arrangements are typically arrangements whereby LTPC agrees to handle a matter or group of matters for a sum certain or for a certain burn rate per month. Fixed fees can be subject to an overall cap paid up front, or they can be for a fixed amount per month without a cap. The specific nature of any fixed fee arrangement can be tailored to the nature of any given matter. Clients who desire budgeting certainty often find fixed fee arrangements attractive.

* **Holdback/Success Fee.** A holdback/success fee arrangement is similar to a partial contingency fee in that LTPC is paid a portion of its fees up front, but has a portion withheld contingent upon success in the matter. If the matter is concluded successfully, LTPC receives a multiple of the holdback or an agreed upon success fee. This structure is often used in defense cases or when the result sought in the matter is not monetary. LTPC has also used this structure in patent cases where the outcome sought is a finding of validity or invalidity of a patent, or in litigation defense cases where the result sought is summary judgment or limiting damages below a certain quantum.

* **Multiple Matters.** AFAs need not be limited to a single case or corporate matter. LTPC has entered into arrangements with clients that pool groups of plaintiffs' cases on a contingent fee basis, as well as groups of defense cases pooled on a fixed or flat fee basis. In addition, LTPC has negotiated arrangements with clients where it handles a fixed pool of defense cases on a reduced hourly fee basis, in exchange for handling a group of plaintiff contingent fee cases for the client, or for receiving right of first refusal to handle all plaintiff contingent fee cases for the client for a period of time.

* **Appeals.** Appellate matters can also be well-suited to AFAs. LTPC is willing to handle appellate work on a flat fee basis, as well as cases where its compensation rests, in whole or in part, on the success of the appeal.

* **Other Matters.** The examples provided above are not meant to be exhaustive. LTPC is willing to discuss any alternative fee arrangement structure for all different types of matters with clients. As long as the risks are fairly balanced between LTPC and the client, there is no type of matter that cannot be structured as an AFA.

"Ultimately, clients want to pay for results, not time."

Jeff Tillotson, Partner
LynnTillotsonPinkerCox

How Does the Process Work?

The AFA process typically begins with a new client or matter. Clients often initiate the risk-sharing consideration process, but partners at LTPC also may suggest an AFA for a particular matter. Once LTPC and the client decide to pursue a matter for non-hourly treatment and conflicts have been cleared, background information is shared so that the Firm can assess the nature and complexity of the matter, the likelihood of success or difficulty in achieving success, the likely fees to be incurred (or invested by LTPC), and the client's objectives for success in the matter. Once the LTPC partner-in-charge of the matter is familiar with the background facts, he or she will submit a proposal to the Firm's Executive Committee for guidance and approval. The Executive Committee will guide the partner in discussing the AFA with the client or may, if asked, have one or more of its members discuss the proposed AFA with the client directly. The Executive Committee ensures that the proposal fairly balances the risks and rewards to the client and LTPC, and assists in preparing an appropriate agreement with the client.

What Are Examples Of AFAs LTPC Has Handled?

The following are examples of matters we have handled under risk-sharing arrangements:

* The former CEO and CFO retained LTPC on a contingent fee basis to pursue their claims in arbitration for unpaid bonus and separation benefits. Eight months after filing, the arbitrator awarded nearly $3,000,000 to the former executives.

* A client retained LTPC to pursue a multi-million dollar damage claim against a telecommunications joint venture. Under the arrangement, the client paid LTPC 60% of its standard rates and LTPC received a percentage of the value the client recovered.

* Several clients have retained LTPC on a partial or pure contingency fee basis to pursue accounting firms for malpractice relating to negligently performed audits. LTPC has several multi-million dollar victories against audit firms.

* An institutional investor retained LTPC on a contingency fee basis to handle a securities fraud action, paying an up-front, low six figure fee. LTPC then took on all additional fee risk and a percentage of the recoveries from the litigation.

* A client retained LTPC to pursue litigation against numerous former officers and directors for theft of trade secrets. In order to budget litigation costs, the client paid LTPC a monthly flat fee during the litigation and a percentage of the recovery from a successful conclusion.

* A client and LTPC negotiated an agreement whereby LTPC defended a claim against the client and asserted a counterclaim on behalf of the client for a 20% reduction in its normal fees, in exchange for a percentage of the value that the client received on its counterclaim.

* Several clients have retained LTPC to handle individual or groups of commonly litigated claims on a fixed or flat fee basis.

"If you really want to challenge your lawyers to leverage expertise and efficiency, alternative fee arrangements are a must."

Jason Dennis, Partner
LynnTillotsonPinkerCox

Counseling Clients on Risk-Sharing Structures

We have also been asked from time to time to assist clients in evaluating AFA proposals made by other firms. We are glad to provide our input in these situations, often for little or no fee to the client.