2019 Annual Conference
March 13 -15 2019
Orlando, FL

**“Tear it Up and Start Over” – The New Generation of Alternative Fee Agreements**

I Simple Fixed Fee Agreements

We will warm up our discussion with a review of some standard Fixed Fee AFA’s. We will review periodic retainer agreements which can be invoiced monthly, quarterly or annually. We will also look at agreements which set a fee on a per case, per phase and portfolio basis. We will discuss the benefits of these agreements to the client, and the risks. We will also discussed the risk and benefits for the law firm.

II. Event Based Agreements

We will then look at Event Based Agreements. These are flat fees which are tied to the type of case or venue. We will explore pricing based upon the type of claim, and also based on a variety of policy lines. A carrier, for example, may enter into an agreement with a firm for different flat fee pricing for personal lines, workers compensation, commercial lines, even professional lines or specialty lines such as environmental toxic torts.

Another Event trigger is the nature of the claim. Agreements can be based upon the maximum recovery available in a particular venue, such as mandatory arbitration in state courts or administrative hearings. Agreements can also be based on exposure, whether it be objectively based, such as the ad damnum in a complaint, or subjective, such as an agreement between the client and the law firm as to the reasonable exposure of a case at the time of referral. Again, we will look at the risks and benefits for both the client and the firm in these various agreements.

III. Collars

We will then address collars. These are agreements to limit the risk to the client and the firm that a portfolio of claims is priced too high or too low. The collars are usually set as a percentage of the overall agreement, and the parties agree that the law firm will return so much of the fee as exceeds the “low” percentage” and that the client will pay so much of the law firm’s fees as exceed the “high” percentage of the agreement. We will discuss the strategies, risks and rewards in negotiating collars. We will also address shadow billing, and true up reconciliation meetings, which are a component of this type of agreement.

IV. Reverse Contingencies

We will then discuss Reverse Contingencies.  These are agreements wherein the law firm can share in a percentage of the "savings" of a single case or portfolio of cases.  The savings are determined by an agreement by the law firm and the client as to the likely defense exposure for the life of the case or portfolio, and the likely indemnity that may be paid in the event of settlement or judgment.  Once these figures are agreed upon, the parties set a percentage reward that the law firm will receive if it comes in under budget for defense or if the case is resolved or won for a figure less than anticipated.   We will address what kinds of litigation are best suited to this kind of agreement.

## V. Success Fees

We will then discuss Success Fees.  These are discretionary bonuses or savings percentage awards which the parties agree will be awarded based upon certain events during the life of a case or portfolio.  It could be based on a dispositive motion win, or a pre-trial motion which is granted and limits or eliminates recovery of damages.  These success fees can be based on percentages, flat fees, or assessed on a per case basis in the event of a portfolio agreement.

## VI. Holdbacks

We will discuss holdbacks.  These are agreed upon percentages of a law firm's total defense costs which are either withheld by the client pending a certain aspect of performance, or held in escrow by the law firm pending a reconciliation at an agreed point in the agreement.  We will discuss how holdbacks can be used by an insurance company litigation manager to reward law firms for their compliance with guidelines or control of legal fees or expenses.  We will address how in a very large inventory of cases, a law firm's behavior can be modified through the use of report cards and to assign the holdback to a certain grade on a firm's performance.

## VII. Applications – Case Studies

We will then solicit input from our attendees on alternative fee agreements which we have not addressed and with which an attendee may have a positive or negative experience.  We will share experiences and see how new and unexplored alternative fees can arise out of combinations of the strategies addressed in the program.

Following these open exchange of ideas, we will go through some case studies.  These case studies will provide opportunities for the attendees to apply components of all of the alternative fee agreements in a variety of scenarios.  These will include large portfolios of high frequency, low severity cases; mixed lines of business; and single cases of varying complexity, from nuisance value litigation through "bet the company" single cases.  We will develop hybrid strategies utilizing different components of different agreements to custom build agreements from the varying standpoints of risk managers, general counsel, litigation mangers, managing attorneys, chief pricing officers and other critical personnel involved in litigation pricing.