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From the Editor's Desk

One Simple Solution for Financing Your Law Firm

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My law firm opened its doors for business just over five years ago. Prior to that I was churning the billable hours at the Las Vegas branch of a large California insurance defense firm.

When I made the decision to go out on my own, I did not fully appreciate—and could not have—how much more of an investment of myself it would be to represent plaintiffs on a contingency than to be a paid-by-the-hour defense attorney. And I wasn't just investing my time and money, but also (and forgive the cliché) my sweat, blood, and tears.

Although a lot could (and has) been written about the emotional toll it takes to build a personal injury practice, along with the huge rewards associated with it, in this article I will focus on the financial difficulties of owning a personal injury firm as well as one solution we've found to the problem of keeping a law firm financed.

Zachariah B. Parry
Editor

Personal injury law firm or money pit?

One of the biggest initial hurdles of starting an injury law firm is the fact that money goes out the door every month even if money isn't coming in. And unless you're lucky enough to have a book full of clients the day you open your firm, money is not going to come in for a while. Between the overhead and the case costs, you are likely going to have to figure out how to survive for a time without taking any money home.

Even once you're established and money is flowing in both directions, that business-owner anxiety never completely goes away. As you grow, so does your overhead as you (1) expand offices (or move out of your in-laws' garage), (2) hire staff (or start paying your significant other, who was previously working for free), or (3) get a phone number that includes several of the same number in a row (no self-respecting injury attorney has a phone number without repeating numbers).

And if your employees are like mine, they want to get paid every time payday comes around, irrespective of how good that month has been (it's so hard to find good help these days). The landlord, the power company, internet, phone—they all want to be paid and on time.

That, of course, is just another part of doing business, and it's not unique to our line of work.

Where what we do does differ is in the case costs. Between filing documents, taking depositions, having exhibits made, and hiring experts, we can spend tens of thousands of dollars (and more) on a monthly basis just to move our cases forward. And when you're not getting paid every month, that can be difficult.

Options for financing

A myriad of financing options exists for a personal injury law firm. Small business loans, financing specifically meant for injury firms, and fee-splitting with a firm who teams up with you and splits the costs are all options for making it possible to finance a case when you don't have enough in the coffers. And each of these options has its own benefits and drawbacks, which are probably fairly obvious and in any case beyond the scope of this article.

Our firm was blessed not to ever have to borrow money to finance a case. We always paid the case costs with our own money. But that option also has significant downsides. When you put thousands of dollars into a case, and then you get repaid when the case comes to a conclusion a year or two later (maybe), you have, in effect, given your client an interest-free loan. Not only that, but you've missed out on the earning potential of using that money elsewhere.[1]

Life insurance—what?

I know it sounds unlikely, and perhaps a little funny, but we spoke to a financial advisor and learned a way we could finance our cases using life insurance.

After this idea was introduced to us, we did quite a bit of research and learned about a financial concept called the "Infinite Banking Concept." If you want to learn more about it, you can check out https://infinitebanking.org/about/.

To understand how this works, you have to know a little bit about life insurance. Term life insurance is life insurance in its purest sense: you pay the premiums, and if the insured dies during the term of the insurance, typically 10–30 years, the beneficiary gets the death benefit. Term insurance is cheap because fewer than 1% of term policies pay out. Put another way, more than 99% of insureds outlive the term of their policy.

Whole, or permanent, life insurance is a little different. It consists of a death benefit and a cash value. For every dollar of premium paid, part of that goes into a cash account and part of that goes to pay for a death benefit. The cash value grows at a modest rate (it varies from insurer to insurer, but some will pay guaranteed compounded yearly interest plus non-guaranteed dividends) and is yours. You can access it at any time for any reason without penalty. And since the interest is after-taxes, it is comparable to a much higher interest rate in those investments that are yet subject to a tax burden.

Essentially two aspects of whole life policies differentiate it from term policies: first, whole life insurance comes with a cash value (and therefore has much higher premiums for the same amount of death benefit), and second, whole life insurance policies last until the insured dies (as long as the premiums are paid), which means the payout of the death benefit is almost guaranteed. It's like renting (term) versus buying (whole life) a house. In the short term, renting is cheaper, but when you buy, you're building equity, so you're typically better off in the long run.

Infinite banking is the idea that you can use the cash value of a whole life insurance account to "be your own bank," and instead of taking out a loan from a bank, you can borrow money from the insurance company using your cash account as collateral. So you're borrowing against your policy instead of from it, so you never break the compound interest curve (i.e., the interest you earn exceeds the interest you pay).

This concept capitalizes on the idea that if you buy with credit, you pay interest, and if you buy with cash, you lose interest. But if you're the bank, you get the best of both worlds.

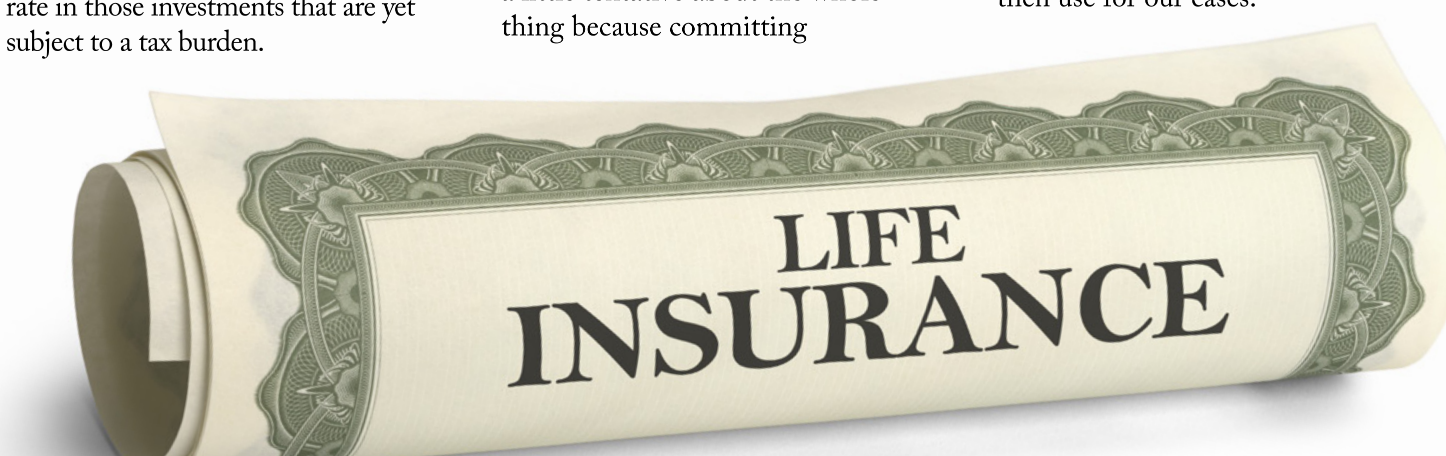
So how does that work? Well, we learned it was pretty simple.

First, we decided how much premium we were going to pay. We were a little tentative about the whole thing because committing to paying premiums for the rest of our adult lives was intimidating, and we ultimately decided that we would start with a policy where we would pay $2,500 for each partner every month. We did set it up so the premiums were "paid up" at retirement age, so no more premiums are due. Additionally, if in the future we desire, it is set up so we can lower the premiums to $1,000 monthly.

We set up the policy differently than other whole life policies. A typical whole life policy is set up for death benefit. But to use it for firm financing and retirement, the idea is to maximize the cash-value-to-death-benefit ratio, so the cash value is maximized and wrapped with the minimum amount of death benefit required to preserve the preferred status of a life insurance account.[2]

Once the life insurance policy was set up (which required medical history information and a physical examination), the cash value started growing with every premium payment.

We continue to pay the smaller day-to-day costs, like filing fees and deposition expenses, using law firm funds. But when we have to make a large payment, like to get a custom animation or to hire an expert, we contact the lending arm of our life insurance company and tell them we would like to take out a loan using the cash value of our policies as collateral. They then direct deposit the funds within about a week, which we then use for our cases.



The loans we are taking out do incur interest. But the interest we are earning on the cash value of our account outpaces the interest we have to pay on the loan, so it is still a net gain.

When we get paid on the case, we then pay back the loan, with interest. In the meantime, the cash value of our account has continued to grow through the guaranteed minimum interest paid to us, plus dividends, plus amounts added through further premium payments.

The real purpose of setting up this account was to leverage the cash value to finance case costs, but since it is a cash account, if needed, we could also use it as a line of credit for other business expenses, so if we have a bad couple of months, we could use it to cover overhead, or we could also rely on it to pay other firm expenses, like computers, software, or expansion.

Ultimately, not only does this allow for case financing, but it creates tax-free income in retirement while keeping cash protected from creditors, predators, and legislators.

After all that, this is still life insurance, so it does have a death benefit, which just felt like a bonus. Not all policies are the same, but with mine,[3] just to give you an idea, with $2,500 monthly, the initial death benefit was $978,725, which death benefit increased with every premium paid. At the end of five years, it will be $1.28M, at the end of ten years, $1.61M, and so on.

If I live exactly as long as government statistics tell me I will live, I will die at age 78, at which point my firm will have paid $667,902 in premiums,[4] the cash value (less whatever I use for retirement) will be at least $1,088,480–1,879,744 (with the lowest number being guaranteed and assuming no dividends and the higher number the projected number based on past performance), and my heirs will receive a death benefit of $2,658,746.

By using life insurance to finance case costs, we can use the same money three times: once to put away for retirement (with a death benefit for heirs as a bonus), once to use as collateral for a loan for case costs, and then a third time when we actually use the retirement income.

It makes sense, and seems smart, but is it ethical?

Because this was a concept that was fairly new to us, we wanted to make sure it was ethical. In our research, we uncovered a Nevada Ethics Opinion exactly on point, Formal Opinion no. 36,[5] which was published on January 7, 2007.

According to the opinion, attorneys can finance litigation costs from third-party lending institutions under certain conditions, which include that the attorney agrees to be responsible for the loan (including principal, interest, and related fees) regardless of the outcome of the litigation; the client must still be responsible for reimbursing the attorney's case costs; and the client must be informed of the terms of the loan and sign off on it in writing.

> **"This concept capitalizes on the idea that if you buy with credit, you pay interest, and if you buy with cash, you lose interest. But if you're the bank, you get the best of both worlds."**

Additionally, if the client is going to be responsible for repaying the attorney for interest associated with financed case costs, the maximum interest charge must be both disclosed in a written agreement with the client and be reasonable.

1. Granted, you were investing it in the case, so it's not like the money was wasted.

2. This also means the commissions are much lower on these types of policies than other whole life policies, so less of your money gets paid out in commissions.

3. I was 37 years old when we started the policy, and was given a preferred, non-tobacco rating.

4. Different policies can be set up in different ways. For example, you can set up a policy so premium payments are not required after a certain age. So if you plan on retiring at age 65, you can set it up so at age 65, you stop paying premiums but your life insurance policy continues on until your death.

5. https://bit.ly/2YCcwsa

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