

# 2023 Structured Settlements Poll

Viewpoints from Employment Plaintiff Attorneys –  
and How Brokers Can Help

## Introduction

Nearly 25,000 employment lawsuits are filed annually in the U.S., with the majority of cases settling out of court before ever going to trial.<sup>1</sup> Both sides in an employment lawsuit prefer to settle for many reasons, including limiting the time and expense of a protracted trial, maintaining confidentiality, protecting their reputations, and ensuring more certainty in the outcome.

When an employment matter is settled out of court and an employee recovers damages for a wrongful termination, discrimination, harassment or other claim, they may have the option to choose whether to receive the money in a lump sum, or with periodic payments known as a structured settlement. Structured settlement annuities for non-physical injury employment litigation (also called “non-qualified settlements”) are like personal physical injury structured settlements. However, the key difference is that non-qualified settlement proceeds are not tax-exempt; structured settlement annuities are tax-free until payment — at which time it becomes taxable.

**“86%** of employment plaintiff attorneys agree that structured settlements can be a good negotiating tool for employment matters to speed up the resolution of a claim and/or make it more likely to settle.”

## About the Poll

For the MetLife 2023 Structured Settlements Poll, an online survey was commissioned of 250 employment plaintiff attorneys who have litigated at least one employment case (e.g., discrimination, wrongful termination, harassment, etc.) in the past year. On average, they practice in a firm with more than 50 attorneys. The Poll assessed their familiarity with structured settlements, their concerns about their clients depleting their awards too quickly if taken as a lump sum, distressing examples of plaintiffs encountering an adverse tax situation due to their employment settlement, and their top reasons for recommending that their clients purchase a structured settlement annuity, among other topics.

This report helps address four key questions:

- How comfortable are employment plaintiff attorneys in recommending structured settlements?
- From which other professionals do these attorneys encourage their clients to seek professional advice about their settlement award?
- How important a role do structured settlement brokers play in positioning the value of structured settlements for employment claims?
- How can brokers and insurers/annuity providers help employment plaintiff attorneys better understand and recommend structured settlements?

<sup>1</sup> Lex Machina, Employment Litigation Report 2022, August 2022

## Key Findings

# Among employment plaintiff attorneys, there is a high level of familiarity about structured settlements

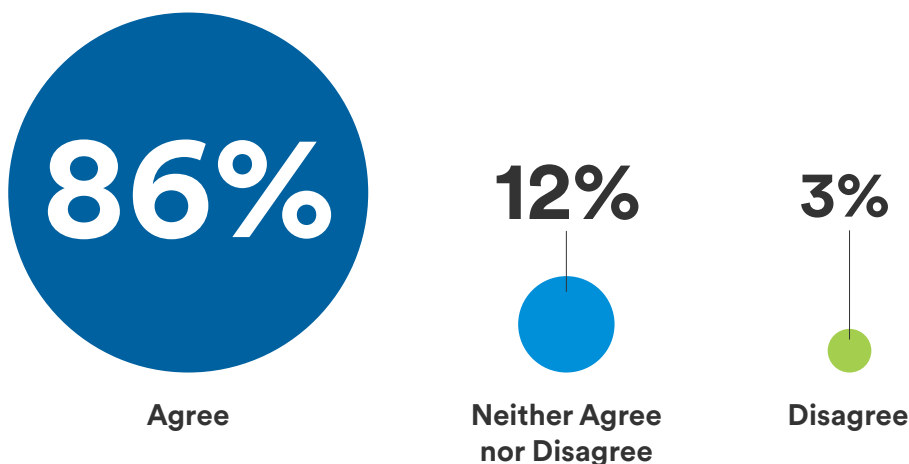
In order to participate in the survey, employment plaintiff attorneys had to have at least some level of familiarity with structured settlements. In fact, 97% of employment plaintiff attorneys are very or somewhat familiar with their clients' ability to take their employment award as a structured settlement, whereas only 3% were not very familiar.

## Structured settlements are viewed as a good negotiating tool

When the defendant and the plaintiff in a lawsuit agree to settle a claim, they reach a mutually agreeable settlement in which they negotiate a cash amount payable by the defendant in exchange for the plaintiff dropping the lawsuit. The money can be distributed as either a lump sum or through a series of payments over time with a structured settlement annuity.

In addition to being a sound distribution option, 86% of attorneys agree that structured settlements can be a good negotiating tool for employment matters to speed up the resolution of a claim and/or make it more likely to settle.

### Whether Structured Settlements are Viewed as a Good Negotiating Tool (n=250)



Note: Percentages do not total 100% due to rounding.

## There are concerns about settlement award depletion, even among financially sophisticated clients

More than half of the employment plaintiff attorneys surveyed (52%) say that the largest jury award or settlement they have ever secured for a client in an employment litigation case was over \$500,000, with the average size being \$640,000. Even though two-thirds of these attorneys (66%) believe their clients are financially savvy, the majority (81%) are concerned that their clients will deplete their settlement award too quickly.

## Employment plaintiff attorneys encourage clients to seek professional advice about their settlement award

Given their concerns about lump sum depletion, it is not surprising that employment plaintiff attorneys always or sometimes encourage their clients to meet with tax attorneys (86%), financial advisors (86%), certified public accountants (80%), and structured settlement brokers (73%) to discuss their settlement award.

### Frequency with Which Employment Plaintiff Attorneys Encourage Clients to Meet with Other Professionals (n=250)

#### Tax Attorney



#### Financial Advisor



#### CPA



#### SS Broker



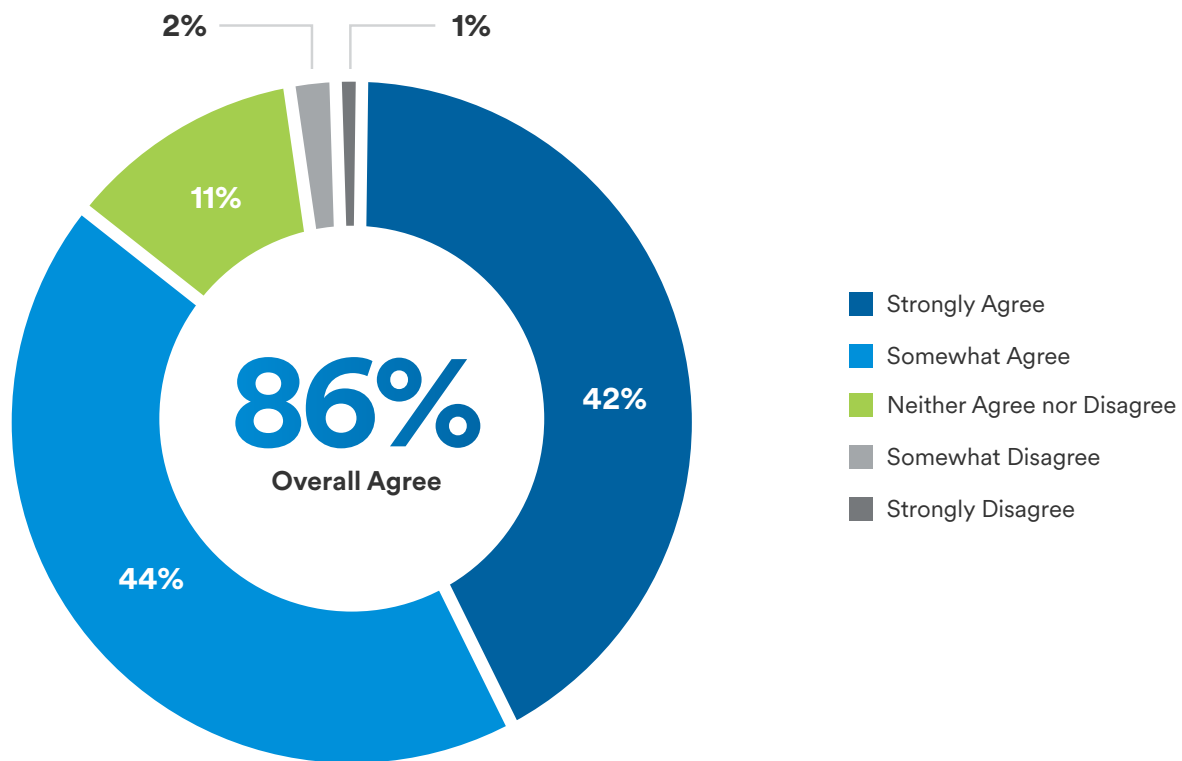
■ Always   
 ■ Sometimes   
 ■ Occasionally   
 ■ Never   
 ■ Unsure/Don't Know

Note: Percentages may not equal totals due to rounding.

## Employment plaintiff attorneys believe they should recommend structured settlements to their clients

Nearly nine in 10 (86%) believe that, as their attorney, they should be the one to recommend that their clients consider a structured settlement when the circumstances are appropriate; this includes 42% of employment attorneys who strongly agree that they should make the recommendation.

**Whether Employment Plaintiff Attorneys Believe They Should Recommend Structured Settlements to Their Clients** (n=250)



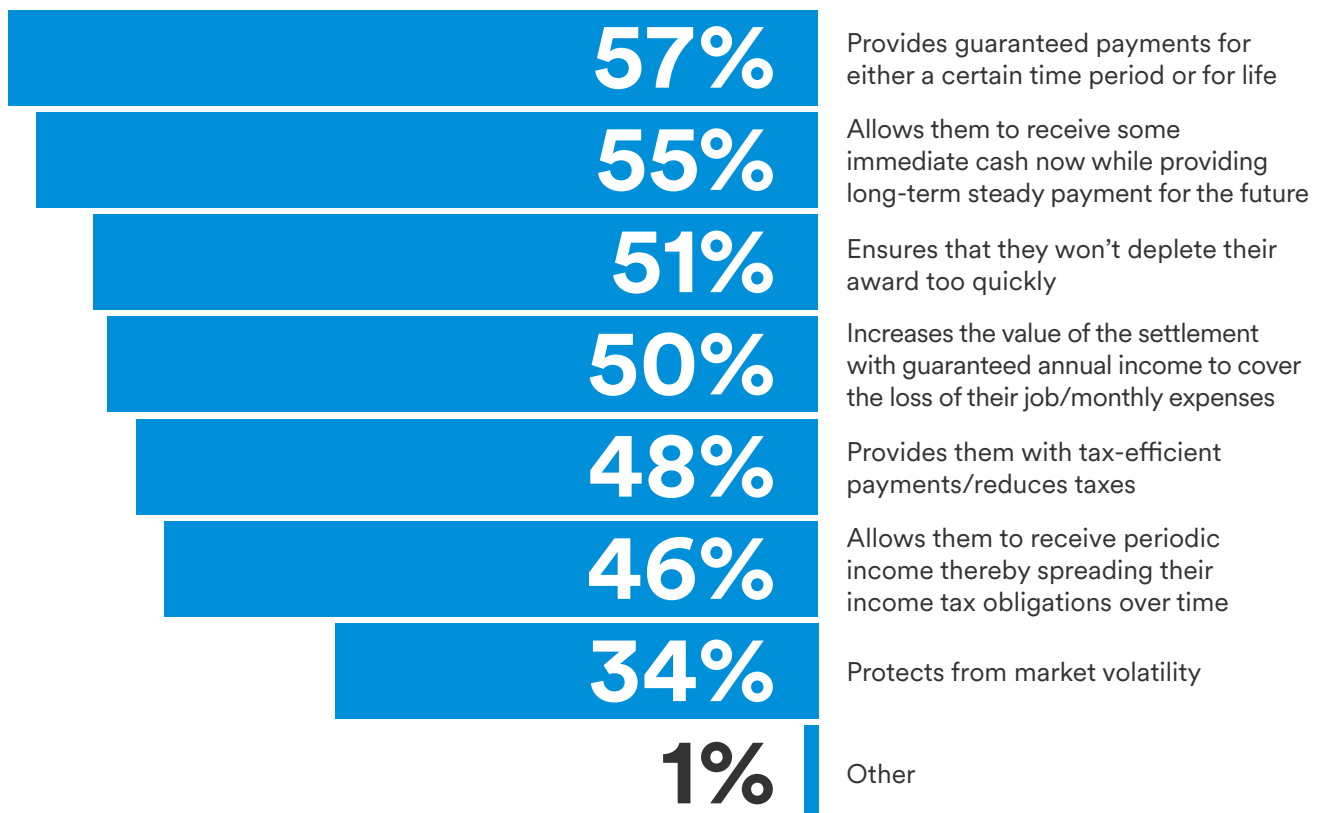
In fact, 96% of employment plaintiff attorneys at least occasionally, if not always, recommend that their clients consider using a structured settlement instead of taking their settlement award as a lump sum. In comparison, plaintiffs inquire about using a structured settlement instead of taking their settlement award as a lump sum either sometimes (47%) or occasionally (28%), while 17% always inquire about them, 7% never do and 1% are unsure how frequently their clients inquire about them.

Among these attorneys who have recommended that their clients consider a structured settlement instead of taking their settlement award as a lump sum, 89% say their clients have structured their award.

## Guaranteed payments top the list of reasons for recommending structured settlements

The main reasons employment plaintiff attorneys recommend that their clients use structured settlements are: provides for guaranteed payments for either a certain time period or for life (57%), allows them to receive some immediate cash now while providing long-term steady payment for the future (55%), ensures that they won't deplete their award too quickly (51%), increases the value of the settlement with guaranteed annual income to cover the loss of their job/monthly expenses (50%), provides them with tax-efficient payments/reduces taxes (48%), allows them to receive periodic income thereby spreading their income tax obligations over time (46%), and protects their award from market volatility (34%).

### Main Reasons Why Structured Settlements are Recommended by Employment Plaintiff Attorneys (n=250)



Among the small percentage of employment plaintiff attorneys who don't suggest structured settlements to their clients, their primary reasons for not recommending them is that they believe the option is difficult for them to explain to their clients and/or the option is too complicated for their clients to understand, and they don't feel comfortable recommending specific tax/financial solutions or strategies to their clients.

## Hypothetical examples of the potential tax benefits for employment settlements increase the likelihood to recommend

Even though the tax benefits don't rank as high as some other product features, 92% of employment plaintiff attorneys say they would be more likely to recommend structured settlements to their clients after seeing a hypothetical example of the potential tax benefits for an employment structured settlement versus a lump sum.

When asked to describe the most disconcerting/distressing example they are aware of where a plaintiff encountered an adverse tax situation due to their employment settlement, comments ranged from "The amount of the settlement is typically taxable as income when an employee gets a cash settlement as part of an employment dispute, such as a wrongful termination or discrimination claim" and "an employee received a large settlement from their employer, only to find that the entire amount was subject to taxation, leaving them with far less money than expected." One attorney noted that "a substantial lump sum settlement moved them into a higher tax band resulting in a huge rise in taxes accruing." Similarly, another mentioned that "due to their [lack of understanding] of the tax laws, the plaintiff was surprised by the large taxes they were required to pay when they got their payout." Finally, perhaps the most disconcerting/distressing example mentioned by an attorney was that they represented "a poor client who had never done taxes..." and then didn't file "any taxes after winning a settlement and [went] to jail for tax evasion."

**92%** of employment plaintiff attorneys say they would be more likely to recommend structured settlements to their clients after seeing a hypothetical example of the potential tax benefits..."

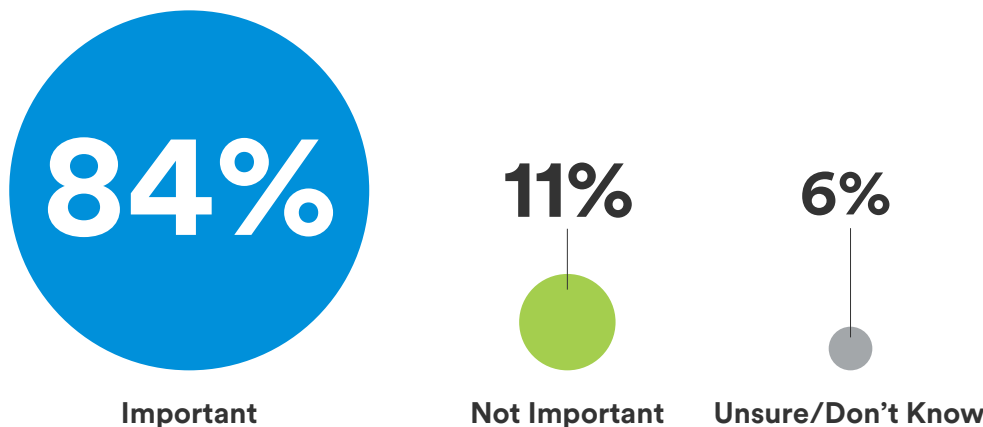
## Employment plaintiff attorneys are split on the impact that the current economic situation has on the decision to structure a settlement

When asked how does the current economic situation impact your clients' likelihood to take advantage of a structured settlement, if at all, sentiments ranged from "due to the economy's uncertainty and instability many individuals are more willing to take advantage of structuring settlements" and "because cost of living prices are rising very fast" in favor of structured settlements at one end of the spectrum to it can "impact the likelihood of taking advantage of a structured settlement as some people may need immediate cash due to financial hardships" at the other end.

# Structured settlement brokers play pivotal role in the structured settlements process for employment claims

84% of employment plaintiff attorneys believe structured settlement brokers play an important role in positioning the value of a structured settlement, including 31% who believe they play a very important role. A structured settlement broker holds an active life insurance license in one or more states; has life insurance company appointments; and provides professional advice and places structured settlement annuities.

## Role Employment Plaintiff Attorneys Believe Structured Settlement Brokers Play in Positioning the Value of a Structured Settlement (n=250)



Note: Percentages do not total 100% due to rounding.

Two thirds of employment plaintiff attorneys (62%) have been approached by a structured settlement broker about structuring their clients' settlement award. This percentage rises to 68% for larger awards (over \$500K). Among those in contact with brokers, nine in 10 (90%) receive a call or email from a structured settlement broker at least once a month, including 61% who hear from brokers 2-3 times per month. In particular, they are seeking brokers to provide more education about the product, including the product benefits and specific examples and case studies.

## Structured settlement brokers encouraged to share best practices and case studies

When asked what structured settlement brokers can do to help employment plaintiff attorneys feel comfortable recommending structured settlements to clients, comments range from “Brokers can provide best practice advice on how to communicate with clients, how to manage risk, and how to select the right insurance company/annuity provider” to “structured settlement brokers should educate employment attorneys on the benefits of structured settlements and provide case studies or examples of successful settlements with previous clients.” They also want “education and training on the benefits of structured settlements and how they can be adjusted to meet the specific needs of their clients.”

Finally, one attorney even noted that “many attorneys are not well versed in complex math. Explaining the benefits without the complexity of present value of future interest formula is helpful.”

## Insurers/annuity providers should establish more trust and credibility for structured settlements

Employment plaintiff attorneys were also asked what insurers/annuity providers should do to help these attorneys feel more comfortable recommending structured settlements to their clients. Suggestions included “building strong relationships with employment plaintiff attorneys can help to establish trust and credibility for structured settlements and make it more likely that they will recommend them to their clients.”

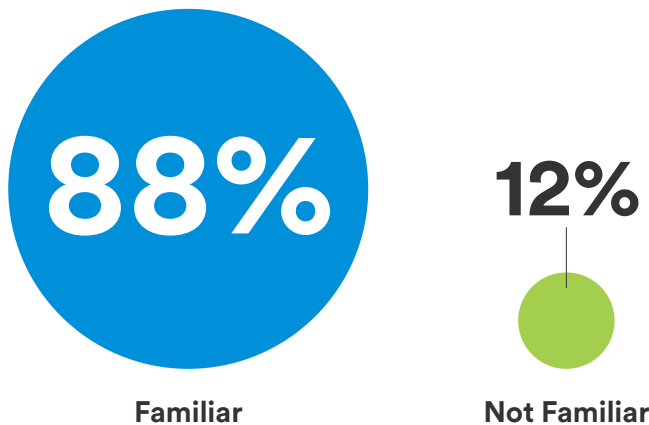
Insurance companies/annuity providers can also provide more support and collaboration, such as working with attorneys to “assist them in moving cases forward and implementing solutions to achieve better win-win results.” They should also “offer more information and training to employment plaintiff attorneys on the benefits and drawbacks of structured settlements for their clients.”

## High awareness about ability to structure attorney fees

If an employee wins their employment discrimination case, then the employer may also have to pay the employee's reasonable attorneys' fees and costs.<sup>2</sup> Attorneys' fee awards in employment discrimination cases can range from a few thousand dollars to well over seven figures.<sup>3</sup>

88% of employment plaintiff attorneys are familiar with the ability to structure their attorney fees, which would enable them to potentially defer taxes, spreading the tax liability out over time as the payments are received. This includes 40% who are very familiar with this concept.

### Employment Plaintiff Attorneys' Familiarity with Ability to Structure Their Fees (n=250)



<sup>2</sup>Title 42 U.S.C. § 2000e-5(k)

<sup>3</sup>Forbes, "[How Much Money Is An Employment Discrimination Case Worth?](#)," April 26, 2022 (last accessed July 7, 2023)

## Conclusion

Deciding whether to take a settlement award as a lump sum or a structured settlement annuity is a critical decision made by employment lawsuit plaintiffs that can have serious, long-term consequences. The employment plaintiff attorneys who represent them, who are familiar with structured settlements, are often the linchpin in this important decision, with other professionals — tax attorneys, certified public accountants, financial advisors, and structured settlement brokers — influencing that decision.

As our Poll findings show, if plaintiffs take their award as a lump sum, there is concern among attorneys that, regardless of their financial sophistication, their clients will quickly deplete it. That's likely a key driver behind why nearly all employment plaintiff attorneys at least occasionally, if not always, recommend that their clients consider using a structured settlement instead of taking their settlement award as a lump sum.

Brokers, who are viewed as playing an important role in positioning the value of a structured settlement, have an opportunity to further strengthen their relationships with employment plaintiff attorneys, and give them even more confidence in recommending them. They can do this through education, real-world examples and customized settlement plans that meet the specific need of their clients, as well as explaining how structured settlements work to the plaintiffs. Insurers/annuity providers can also provide more support to employment attorneys and promote the advantages of this solution — and, in doing so, ultimately build even more trust and credibility for structured settlement annuities.

## Methodology

The MetLife 2023 Structured Settlements Poll was fielded between May 2 and May 15, 2023. MetLife commissioned MMR Research Associates, Inc. to conduct the online survey using a panel of pre-identified attorneys. Survey responses were received from 250 employment plaintiff attorneys who specialize in employment litigation or who litigated an employment case in the previous 12 months.