Qualified Settlement Funds: What Trial Lawyers Need to Know

From a Planning Expert
Since starting in the settlement management industry in 1999, John Bair has guided thousands of plaintiffs and their families through the transition from litigation to the eventual steps towards their future.

His benevolent nature finds John involved in monumental cases, such as representing families of victims who were lost in the crash of Flight 3407. John was responsive to the tragedy of 9/11 and offered pro bono services to the families of the victims.

A passion for consumer protection resulted in John’s involvement with the drafting and creation of federal and state legislation. He frequently advises attorneys on the complexities of closing a settlement, and is licensed in all 50 states.

John has earned multiple accreditations and achievements that speak of his commitment to providing plaintiffs and their families with the best representation.

John is guided by his vision that every client is provided the Milestone safeguard for their legal, financial, and emotional well-being.

Milestone Consulting, LLC is a settlement planning and management company. Our approach is comprehensive, but our focus is simple - your future. We have guided thousands of clients through the settlement process. By taking the time to understand the complexities of each case, assessing the best outcome, and finding the path that enables each client to manage their many needs, we secure your future.

The Seventh Amendment is the pillar of our justice system. Our forefathers enforced the right of the common man to level the playing field against the largest corporations. This belief system is deeply ingrained in the fabric of our firm, and the preservation of this right is something to which we are wholly committed.
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This e-book is brought to you by Milestone Consulting, a full-service settlement planning and management company. Led by John Bair, the Milestone team has helped thousands of families navigate the settlement process with confidence.
Qualified Settlement Funds: The Basics

Litigation continues to be growing increasingly complex, especially catastrophic litigation and cases involving multiple plaintiffs. Those who practice in the legal and settlement planning fields tend to appreciate processes, tools, and solutions that are both simple and efficient.

The legal profession is vested in concepts of removing obstacles to settlement and the challenges to collecting a settlement. Today’s trial lawyer likely feels the need to master and intimately understand government benefits such as Medicare, Medicaid, subrogation of liens, workers compensation offsets, and more. Collecting and distributing settlements has become more complex.

What is simple and straightforward is the qualified settlement fund (QSF). A QSF is a settlement procedure that provides proper client counseling before, during, and after settlement by extending the amount of time available to plan past the release of the defendants from the litigation. This method gives attorneys the time they need to thoughtfully address the myriad of decisions involved in the disbursement of funds.

The most important element of a QSF is that it can remove the defendants and their insurers from decisions that must be made post settlement.

The second most important fact is that while plaintiffs need planning, and many complex issues need resolving after settlement, the QSF allows for the defendants to pay cash to a QSF in exchange for a general release. Here’s the important part for lawyers: he or she can take his or her fees immediately. Doing so can improve cash flow of fees by 30 to 180 days, depending on court approval or other challenging issues.

“Just the simple fact of not having to have the defendant’s involved in any of my Medicare or Medicare Set Aside variables is justification enough”

-Mike Conley of Kenney Conley PC, past president of the Massachusetts Academy of Trial Attorneys
Setting Up a Qualified Settlement Fund

How easy is setting up a QSF? You’ll need an administrator, an escrow agreement, and a court order. Most professional administrators will seek court approval as part of their engagement.

The setup process is relatively simple. The law firm of record establishes an escrow or trust agreement with a professional fund administrator. The agreement sets the stage for the litigating parties to understand their respective roles.

Typically, defendants will need a representation that their payment as a transferor is qualified and therefore deductible, and that they are fully released of all of the claims brought against them, in addition to any claim that may arise out of the creation of the QSF. Then, when the QSF is established, the defendants pay the agreed-upon amount into the fund and their involvement ends there.

Then, an independent trustee or administrator can work closely with the plaintiffs to determine what comprehensive settlement plan will work for them. The trustee or administrator manages the funds and ongoing claim resolution.

QSFs are a solution that benefits plaintiffs attorneys, defense counsel, and claimants, and they work for many case types including tort, personal injury, breach of contract, etc. The legislative history and initial purpose of QSFs was to give defendants their deduction. Therefore, sophisticated general counsel and litigation counsel should generally welcome payment to a QSF over any other method, as the regulations mandate that the order establishing the fund must extinguish their liability absolutely.
There are other benefits to the QSF, and not just the time of payment and fee. You are also hiring a professional administrator to source lien negotiators, and to assist in the evaluation and necessity (or lack thereof) for medicare set-asides. And, if you have a lengthy court approval process due to a wrongful death or multiple plaintiff litigation, the consolidation of the cases in a single jurisdiction can be valuable.

By having a QSF established for year-end inventory of cases that may resolve, plaintiffs and their attorneys can serve a general release on the defendant as soon as the case settles, regardless of liens, holdbacks, Medicare, Medicaid, and other tangible issues.

All the issues that arise can be dealt with once the funds are received by the QSF administrator.

More benefits include:

- Time to plan
- Control over recognition of income
- Tax planning at year end for both plaintiff and attorney
- Ability to spread taxable income over many years
- Potential for tax deferred growth
- Ability to earn pre-tax income, or tax exempt earnings

Another benefit to trial attorneys exists for those wishing to create a tax deferral on their fees. Keeping your business and your plaintiff’s dealings private is another plus,
along with having the flexibility when you face an obstinate opponent.

Lawyers who dedicate their career to mass tort litigation know all too well how complex the settlement process can be. After months or even years of litigation, any process that can help streamline and improve the disbursement of settlement funds should be strongly considered.

Of primary importance, a QSF alleviates a defendant’s participation in the post-settlement disbursement process. Not having to involve defendants in Medicare or Medicare set-aside variables saves time and reduces confusion for plaintiffs’ attorneys. Seasoned defense attorneys appreciate how the laws regulating QSFs terminate their client’s liability and provide a current-year tax deduction.

Moreover, because the litigation process ceases for the defendant once payment is made into the QSF, litigation costs decrease and human capital can be allocated elsewhere.

When utilizing a QSF, plaintiffs’ attorneys can be paid quicker, which is important after lengthy and expensive litigation. Attorneys are able to take their fees almost immediately upon the defendant’s payment to the fund, which generally speeds up payment by 30 to 180 days. In addition to expedited reimbursements, attorneys become eligible for tax deferrals.

Another perk of the QSF is appointing an administrator, who is an invaluable asset to the litigat-
ing parties. An expert administrator will be well-versed in all aspects of the QSF, including:

- Full accounting of the fund,
- Attorney fees,
- Attorney tax deferral options,
- Claimant payouts (including special needs trusts and structured settlements when needed),
- Lien negotiations, and
- Settlement planning.

When defendants make a payment to the fund, the monies are essentially “parked” in the trust temporarily, allowing the administrator to plan disbursement in an organized manner. Allowing for an administrator’s assistance with the daunting number of responsibilities involved in settlement can help take pressure off of attorneys. For one, the lawyers involved do not need to be fluent in the process. An administrator also provides clients with expert-guided planning.

Qualified settlement funds can provide enormous advantages during the settlement process. However, finding the proper administrator is pivotal. Be sure to work with one who has the breadth of experience required to understand the many facets of the settlement process and can therefore be the partner you need.
Possible Challenges

Aside from the business end of getting a fund administrator, what challenges lie in hiding for a lawyer trying to get a case done?

Typically the hurdles come in various forms of unfamiliarity. A claims person or new defense counsel who’s never done one, a judge who doesn’t understand they have jurisdiction or why you’re in court asking for an order when you don’t need one. Streamlining this process and having a discussion early in your negotiations will alleviate most if not all of these objections. Our experience is that defendant’s, especially multinational ones, prefer them.

The costs can range from $10,000 and up for a single case if you rely on a bank or traditional trust company. There are many options to choose from, and the companies that are civil justice minded, and competitive in the space, should be able to deliver a solution in the $200 to $300 per claimant range, or a flat fee of a $1,000 to $3,000 given your circumstances.
As trial lawyers close out another successful year, a QSF can be an excellent tool either to accelerate or defer the receipt of settlement monies. It also separates the business interest between the lawyer and the client.

For example, a lawyer may want fees right away, but the client needs to set up a special needs trust, or a client want the funds right away and the lawyer would just as soon wait until January. All of these circumstances can be cured by planning ahead and working with a reliable QSF administrator who understands a plaintiff lawyer’s practice.

More specifically, a QSF is a tax-qualified trust or account that holds settlement proceeds from litigation. It allows for more simplified and organized administration of the settlement.

With a QSF, plaintiffs have the benefit of time to plan, ability to negotiate liens, and deal with many of the complexities that exist with some settlements.
Getting an Expert Onboard

At Milestone Consulting, our experts are committed to finding the best method to reach client objectives and tackle government compliance. Planning-focused rather than product-oriented, we walk a client through the entire decision-making process to help them make the most informed decisions possible. Together, we develop the best course of action and guide our clients specific to their challenges.

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