

# Qualified Settlement Funds

## What Trial Lawyers Need to Know

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This guide 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

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Litigation and settlement grow increasingly complex, especially cases involving catastrophic injury and/or multiple plaintiffs. But the legal profession is vested in concepts of removing obstacles to settlement and the challenges to collecting a settlement. Those who practice in the legal and settlement planning fields tend to appreciate processes, tools, and solutions that are both simple and efficient.

What is simple and straightforward is the qualified settlement fund (QSF). A QSF is a settlement procedure that allows for proper planning before, during, and after settlement by extending the time available to plan.

With a QSF in place, defendants pay the agreed-upon settlement amount into the fund, thus removing them and their insurers from the decisions that must be made post-settlement. Attorneys then have the time they need to thoughtfully address the myriad of decisions involved in the disbursement of funds for both their clients and themselves. They can choose to take their fees immediately, which could improve cash flow of fees by 30 to 180 days, depending on court approval and any possible issues. Or, they can consider fee deferral options.

QSFs are a solution that benefits plaintiffs' attorneys, defense counsel, and the plaintiffs themselves, and they work for many case types including tort, personal injury, breach of contract, and more.

The 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 extinguishes their liability absolutely.



# Benefits of a Qualified Settlement Fund

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Besides the extra time for attorneys and plaintiffs to plan, there are many benefits to having a qualified settlement fund. A professional administrator can source lien negotiators and assist in the evaluation and possible necessity for government benefits planning. The administrator is an invaluable asset to the litigating parties. They will be well-versed in all aspects of the QSF, including:

- Full accounting of the fund
- Attorney fees
- Attorney tax deferral options
- Settlement planning and tools such as special needs trusts, structured settlements, etc.
- Lien negotiations

Having 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 planning.

If you have a lengthily court approval process due to a wrongful death or multiple-plaintiff litigation, the consolidation of the cases in a single jurisdiction can also be valuable.

## More benefits include:

- Control over recognition of income,
- Tax planning at year end for both plaintiffs and attorneys,
- Attorneys' ability to spread taxable income over many years through fee deferral,
- Potential for tax deferred growth, and
- Ability to earn pre-tax income, or tax-exempt earnings.

Keeping your business and your plaintiff's dealings private is another plus, along with having the flexibility when you face an obstinate opponent.



## Setting Up A Qualified Settlement Fund

To set up a qualified settlement fund, you will 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 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 claims 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. After the defendants pay into the fund, the monies are essentially “parked” in the trust temporarily, allowing the administrator to plan disbursement in an organized manner.

An administrator can work closely with the plaintiffs to determine a comprehensive plan that will ensure their settlement is as beneficial as possible. The administrator manages the funds and ongoing claim resolution.



# 3 Types of Qualified Settlement Funds

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There are three types of QSFs:

**An individually ordered QSF.** This allows payment for a settlement to trigger a defendant's release, thus expediting administration of funds for that case. Individually ordered QSFs can come in the form of a single-claimant QSF or a multiple-claimant QSF.

**A firm QSF.** A law firm can have its own qualified settlement fund established by a single court order. The entire firm can use the fund for all, or some, of its cases. This option is ideal when a firm would like a privately branded fund to use throughout the year.

**A national master QSF.** Seventh Amendment Holdings has a national master qualified settlement fund, which trial lawyers may join without an additional court order. This option is attractive when confidentiality and discretion are advantageous or when time is of the essence.

Our team at Milestone can work with trial lawyers and their clients to establish and/or administer a QSF. Our professional qualified settlement fund administrators ensure all appropriate parties receive their due funds, that the money is disbursed safely and in a timely manner, and that all necessary documentation is in order.



# Possible Challenges

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Aside from the business end of getting a fund administrator, what challenges lie in hiring 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 defendants prefer them.

Cost is another consideration. 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.



# A Tool for Planning Taxes & Income

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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 interests of the lawyer and the client. For example, a lawyer may want to collect his or her fees right away, but the client needs to set up a special needs trust or other planning tool; or, the client wants the funds right away and the lawyer would just as soon wait until the following year for tax planning purposes. All these circumstances can be cured by planning ahead and working with a reliable QSF administrator who understands a plaintiff lawyer's practice.

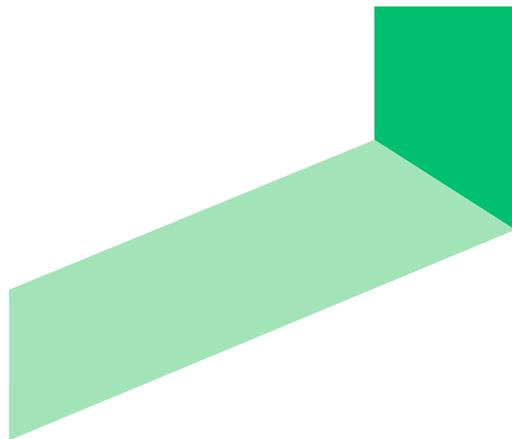
More specifically, a QSF is a tax-qualified trust or account that holds settlement proceeds from litigation. It allows for more simplified and organized administration of the settlement.

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.

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# Getting Professional Help With a Qualified Settlement Fund

At Milestone, 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 each client through the entire decision-making process to help them make the most informed choices possible. Together, we develop the best course of action and guide our clients forward.



# About

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## John Bair, CEO of Milestone



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

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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 of 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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