



Using a Qualified Settlement Fund to buy time for your client

By recognizing when and how to utilize QSFs, you'll be adding a valuable resolution tool to your practice.

BY NICK COCCIMIGLIO

Making key financial decisions under the pressures of litigation can lead to delays, missed steps, and missed opportunities for you and your clients. Likewise, a stubborn defendant can get in the way of crafting a settlement in your client's best interest. With this in mind, let's take a closer look at Section 468B of the Internal Revenue Code better known as the Qualified Settlement Fund.

What is a Qualified Settlement Fund?

Often referred to as Qualified Settlement Funds (QSFs), section 468B allows plaintiff attorneys and their clients to release a defendant for a cash-only settlement while having them pay into an account that will act as a temporary trust account. This gives the plaintiffs and/or their attorneys the time they need to consider all available options before making distributions.

Monies inside of a QSF can be used to fund a structured settlement or structured attorney fee, and settle lien or allocation issues between parties. The QSF can also simply hold the funds to prevent constructive receipt and preserve pre-settlement options while decisions are made or other entities are established such as a special needs trust.

QSFs, although originally created for class action and mass tort cases, have been utilized in a wide range of case types

with one or multiple claimants and at almost any stage of the litigation process – even after trial.

Let's explore some reasons for considering the use of the QSF to better serve your most valued clients.

The uncooperative adversary

Every plaintiff's attorney has run into the claim representative or defense attorney that makes things more difficult than they need to be. Maybe there are hard feelings from a past case, a lost motion or an embarrassing result for the defense, but one thing is for sure, they won't be doing you or your clients any favors.

In situations like this, receiving the cooperation necessary to achieve a structured settlement or structured attorney fee is highly unlikely.

The solution – replace the claim representative AND their attorney with a QSF. By paying the funds necessary to resolve the case into a QSF, the defense gets a full and final release without any further obligations. You and your clients, however, have all pre-settlement options available while effectively controlling the funds via an administrator you recommend through a petition and proposed order in a court of your choosing.

The clients that need more time

After negotiating an excellent result for your clients, the pressures of litigation finally come to an end, but it is at this

time that your clients have to make one of the most important financial decisions of their lives: how to receive their settlement and what to do with it.

Should they take cash, a structure, or both? Will they lose their needs-based benefits? Do they require a special needs trust? Can they qualify for a loan? Are they ready to suddenly manage a financial windfall? Do they have a plan before they start spending and giving? All of these questions need to be answered before your clients sign settlement agreements and pick up their checks, but they are not always prepared to answer them when the defense is ready to pay.

The solution – create a holding pattern that we sometimes refer to as a "safe harbor" or "decision free zone" by utilizing a QSF. Your clients will still release the defendant for cash and you can choose to accept your fees immediately (unless you need some time to think too), but in this scenario, the QSF will allow your clients to properly consider all options before committing to a final settlement plan based on recommendations from their trusted advisors. Through the proper utilization of a Qualified Settlement Fund, your clients will have the ability to let things settle down, meet with their trusted advisors, and develop a well thought-out plan. Giving your clients this opportunity will greatly increase their chances of financial success and your reputation as a true advocate.



The lien that's holding everything up

You have the defense right where you want them and they are ready to settle, but there's a big lien standing in your way. A sizeable lien can drastically change your client's settlement options and financial situation. Maybe the lien can be negotiated down from your trust account, but your clients will lose the ability to structure the savings.

Also, prolonging the process exposes you and your clients to significant risks. Risks include the defendant going out of business or their financial situation taking a turn for the worse. There's also a risk that your client's needs could change, new facts may arise or the offer simply goes away.

The solution – remove the defense from the equation and settle the case with a QSF. You will then be able to negotiate the lien with confidence and control without sacrificing any of your client's settlement options. In addition, the funds in the QSF will be earning interest for your clients instead of the insurance company.

The complexity of multiple defendants

Resolving a case against one defendant is difficult enough, so the complexity is compounded when there are multiple defendants. One of the potential obstacles is getting the defendants to cooperate in funding a structured settlement or attorney fee. Without cooperation, you and your client's options may be limited.

The solution – establish a QSF to accept the individual deposits while releasing each defendant from further liability. The QSF, acting as a holding tank, can then make distributions and fund structured arrangements from a single source.

The conflicting interests of multiple claimants

Representing multiple claimants can create conflicts of interest – especially

when it comes to the division of settlement proceeds. Whether the claimants are family, friends or strangers that shared in a loss, each individual's battle for their share of a settlement can get messy and being in the middle of that is not where most trial attorneys want to be.

The solution – have the funds paid into a QSF, release the defense, and allow designated professionals and a judge to be “in the middle.”

How it's done

For such a useful tool, the requirements to establish a QSF are surprisingly few:

- It must be established, or be approved by, a judge and be subject to court supervision
- Its purpose must be to resolve or satisfy claims
- It must qualify as a trust under state law

The process starts by contacting a professional well-versed in the establishment of QSFs and their functionality. A comprehensive settlement planner with experience in your area of law is a great place to start. A qualified professional will help coordinate all efforts to establish a QSF to resolve your case and involve the appropriate parties while managing the process so you don't have to.

Next, a petition accompanied by a proposed order is submitted to a court of your choosing. The court does not have to be the same court presiding over the underlying litigation, in fact, a probate court is often used due to their familiarity with trusts. Once approved, the court takes continuing jurisdiction over the QSF. The order establishes an administrator or trustee and approves the trust agreement which describes the administrator's duties. These duties include obtaining an Employer Identification Number, opening a bank account, filing tax returns and ensuring that the QSF remains in compliance with Section 468B.

The QSF is now ready to accept assets from a transferor and provide the

transferor a complete release of liability. Once funds are deposited, the transferor can claim a tax deduction equivalent to the traditional satisfaction of the claim. Essentially, the transferor has settled their case while the QSF steps into the shoes of the defendant and can now negotiate and resolve pending claims.

Once the claim is resolved for which the QSF was established, your chosen professional will coordinate distributions to claimants and make sure fees, taxes, and any potential structured arrangements are properly funded. Shortly after, the QSF is released by each claimant/recipient and the QSF is closed.

Conclusion

The ultimate recoveries you obtain for your clients are testaments to your hard work and a QSF can help ensure that your clients have every opportunity to create solid settlement plans to maximize those recoveries. By recognizing when and how to utilize Qualified Settlement Funds (Section 468B), you'll be adding a valuable resolution tool to your practice while further protecting your client's best interests.



Coccimiglio

Nick Coccimiglio is a comprehensive settlement planner in San Francisco. He is a Certified Structured Settlement Consultant, a registered investment advisor representative, and a member of the Sudden Money Institute. He is the founding consultant of Millennium Settlement's San Francisco office and specializes in advising the recipients of recoveries in personal injury, employment, and other third-party liability cases. Contact him at ncoccimiglio@msettlements.com or (866) 933-1127.

