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Advent of the use of the Qualified Settlement Fund by Trial Lawyers

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Having practiced in the settlement planning space for 15 years now, I've come to appreciate the things which are both simple and efficient. Litigation, especially catastrophic litigation, or cases involving multiple families seem to be more complex today than ever.

Industries burgeon around the concept of removing obstacles to settlement and the challenges to collecting a settlement. Today's trial lawyer I'm sure feels like one must master the Medicare Secondary Payor Statute, intimately understand subrogation of both private, Erisa and Governmental liens, workers compensation offsets and the like. Few settlements are simple anymore.



What is fairly simple and straightforward is the Qualified Settlement Fund. An escrow account or fund that is an animal of the Internal Revenue Code or Treasury Regulations 1.468B. For you Mass Tort or complex litigation lawyers who are most likely very familiar with QSF's and their uses, this post may not be for you, unless you think they are only for Mass Torts.

The most important element about a QSF is that it removes the defendants and their insurers from every decision that must be made post settlement.

The 2d 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, and here's the important part; the lawyer can take their fees immediately. This can improve cash flow of fees by 30-180 days depending on court approval, or other challenging issues.

Mike Conley, of [Kenney Conley PC](#), past president of the Massachusetts Academy of Trial Attorneys is a fan. "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"

How easy is it to set up a QSF? You'll need an administrator, and escrow agreement and a court order. Preferably with Defense counsel consent, but this issue could be easily brought before a court if they don't understand it. What's amazing, is that the legislative history, and the real purpose behind QSF's was to give defendants Economic Performance for payment to an escrow account. Meaning they get their deduction. So generally, sophisticated general counsel and litigation counsel should welcome payment to a QSF over any other method, as the regulations mandate that the order establishing the fund must extinguish their liability absolutely. See the regulations [here](#).

So aside from the business end of getting an administrator, one of our holding companies Seventh Amendment Holdings frequently serves as 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 discussion very early in your negotiations will alleviate most if

not all of these objections, and 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 200-300 per claimant range, or a flat fee of a \$1000-3000 given your circumstances.

There are benefits to the QSF, not just the time of payment and fee. You are hiring a professional administrator to source lien negotiators, to assist in the evaluation and necessity or lack thereof for Medicare Set Asides, and 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 be a valuable. The ease at which you can finalize the release or Master Settlement Agreement may also be a welcome surprise.

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.

If you need a tax lawyer, Rob Wood, of Wood LLP in San Francisco has authored frequently about these, and it a great resource for any litigator. I've come to know Rob well through the years, and he's great to work with, and he understands the perspectives of all parties, especially from a tax litigation standpoint. See some of his work [here](#).