

# Is There a Better Way to Manage Asbestos Settlement Funds?

*A Commentary by Christopher J. Princis of Brook Hollow Financial in Chicago*

A short time ago, an asbestos litigation firm came to us with an annoying problem — the firm was paying a small army of assistants to track and manage their growing list of asbestos claimants. It wasn't the front-end medical records and depositions that were the problem; it was the back-end, after the settlement had been reached. The assistants were efficient at their jobs, but it never seemed to end. Just when they thought they had reached the end of the case, there were lien resolution nightmares, liability issues, and information falling through the cracks. Additionally, there was always a claimant or family member calling to check on his or her funds or ask for a progress report. There had to be a better way to manage the back-end of the post-settlement process.

The solution was found almost by accident. It was the monumental task surrounding lien resolution that finally forced the law firm — referred to in this article as Firm ASF — to explore an administrative tool, a collection vehicle, as a potential solution to their post-settlement organizational problems. Firm ASF, with the help of Brook Hollow Financial, established a "Master Qualified Settlement Fund," also called a QSF or 468B, to collect all asbestos settlement monies.

It's an easy process. The defendant pays the claim into the fund and is then released completely from liability. The fund holds the settlement monies until liens are resolved and the claimant and attorney decide what to do with their share. Firm ASF established the QSF through a court order, created pursuant to Internal Revenue Code Section 468B and the accompanying regulations.

All settlement money from Firm ASF's asbestos settlements were directed to settle into the QSF, further segregated by the client.

Although not a driving force for Firm ASF, there is an ancillary benefit to claimants that might add to the reasons for structuring a QSF. Historically, claimants haven't been able to engage in meaningful planning with their settlement funds because of their piecemeal delivery and difficulty in applying those funds to a structured settlement. Likewise, attorneys haven't been able to structure or defer their fees. The QSF solves these problems.

***“The QSF process helps claimants efficiently move through the settlement process. Money and resources, previously drained and misused, can now be allocated to adding staff, expanding new case prospects, advertising, etc...”***

The claimants were then contacted through a series of educational letters and/or brief communication with their attorneys and made aware of their option to structure their settlement funds. Claimants that are interested are “flagged” and the attorney introduces their structured settlement partner for further planning and discussions. The “flagged” money stays in the QSF for further planning opportunities.

The funds for claimants who are not interested flow **immediately** through Firm ASF's normal client fund and

### SETTLEMENT FUNDS

Funds for attorneys and claimants interested in structured settlements are “flagged.”



Non-“flagged” funds immediately flow into the normal account.



“Flagged” money remains in the QSF giving participants the opportunity to review their post settlement options: tax deferred attorney fees, structured settlements.

are immediately available for distribution, business as usual. The same process works for the attorney who wants to defer their fee. Attorneys are then covered from any potential future liability of not offering a structured settlement. Believe it or not, attorneys have been sued for not offering structures.

Surprisingly, very few law firms have implemented this easy solution – most likely, because they do not know how it could help their practice. Firm ASF has used it for over \$1 billion in settlement funds. Although it is difficult to quantify the money saved by the firm, it is easy to look at the size of Firm ASF's asbestos practice and its continued growth.

This growth was made possible, in part, by the QSF process. It helped claimants efficiently move through the settlement process. Money and resources, previously drained and misused, can now be allocated to adding staff, expanding new case prospects, advertising, etc. And, with the ability of the firm and its attorneys to tax defer their fees, the firm has a much better cash flow strategy in place while individual attorneys can structure/defer their fees to meet personal risk tolerance and goals.

Simply put, everyone — whether a plaintiff attorney, defense attorney or claimant – can benefit from using a QSF to manage the asbestos litigation settlement process.



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Below are just some of the advantages to adopting the QSF plan:

- Defendants are released from liability.
- Claimants can make educated decisions about their financial choices.
- Attorneys can protect themselves from a potential future liability (*Grillo v. Henry*, 1993).
- Make the lien resolution process simpler.
- Attorneys can defer their tax obligation by structuring their fee.

Why wouldn't every asbestos law firm look at this option? ■