

To QSF, Or Not To QSF?

That is the question...

*It has been brought to our attention recently that some structure brokers are offering something “new” and exciting on the settlement scene that promises freedom from defense interference, and time for plaintiffs to figure out their financial plan. I’m writing to you today to clear the air on the topic. It is very important that my clients understand what this tool is and when it can be used properly, **from a structured settlement perspective.***



ABOUT KELLY RAMSDALE & ASSOCIATES, INC.

Kelly Ramsdale is President of Kelly Ramsdale & Associates in Denver, Colorado. She advises plaintiff attorneys and their clients in medical malpractice, wrongful death, products liability, aviation, auto bodily injury, trucking cases, sexual molestation/assault, civil rights and wrongful termination/age discrimination cases. She travels extensively to attend mediations and personally meet with the injured parties and their families all over the United States. She has been involved in the Columbine High School cases, the 9-11 Victims' Compensation Fund and Pan Am Flight 103 (Lockerbie) cases. She works with many highly renowned firms across the country.

Qualified Settlement Funds (QSFs or 468Bs) are not new at all. QSFs were originally created for mass tort cases. It is the opinion of some tax attorneys that the “one or more claims” wording was written to identify one claimant of a mass tort case, to be followed by more. In a mass tort settlement, the QSF streamlines the settlement for everyone: defense can issue the settlement check to the QSF, receive the tax deduction, and close their file, while the plaintiffs can be located, their claims evaluated for value, liens negotiated, attorneys paid, and then the plaintiffs paid.

We have worked on these types of QSFs over the years, such as the 9/11 Victims' Compensation Fund, Columbine, and MSU/Nassar cases, plus others that didn't make the news. In my opinion, they can be a very good tool to use on the right type of case.

Years ago, some structure brokers encouraged the use of QSFs for single-claimant cases (encompassing single plaintiffs, single families, or single estates, which I will refer to as QSFSCs). In my opinion, they were rarely being used as a tool that was in the best interests of the plaintiffs or their families. In those early days, some life companies were writing structures from these QSFSCs. However, as their legal departments reviewed the wording of 468B, they revised their underwriting guidelines to exclude such business because they viewed the use of QSFSCs as the plaintiff possibly having economic benefit of such funds, and that further clarification on the matter was not written or given. It is my understanding that, to date, there still has not been any clarification on the issue.

In light of the recent trend reemerging, we sent the question to the various structured settlement companies (with an AM Best rating of A or better) to ask if their stance had changed regarding writing a structured settlement annuity from a QSFSC. We did not get a favorable answer from any of these companies. Therefore it is our opinion, and our standard, that we would not suggest using a QSFSC to our attorney clients or their plaintiff clients if they would like the option to structure any of the settlement proceeds with an AM Best rated life insurance company that offers structured settlements.

There are situations that will allow for the use of the QSF. As you know, we ask many questions when you contact us so we can help figure out the best approach for you and your clients, which would include suggesting a QSF. We take case details to the AM Best rated life insurance companies so that we are able to give you and your clients the answers you need before establishing a QSF. Then, whether you use a QSF or not, we are still here for your clients. We take the time to get to know them, answer questions, offer suggestions and various structure options, find the best rates with the available AM Best rated companies, and break larger cases among two or more AM Best rated companies for added security.

You have trusted our experience and guidance for over 20 years. This is our livelihood, our world, and we take great pride in helping each and every one of your clients. You have your various experts that you trust, and we are thankful to be one of them.

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