The Qualified Settlement Fund (QSF) is quickly becoming the most advantageous client counseling tool available. As mentioned by our firm in several previous publications, the QSF uniquely introduces a degree of breathing space after settlement that is valuable for: (1) allocating the settlement proceeds among the claimants; (2) verifying and negotiating liens and/or subrogation claims; (3) determining the appropriate role and underwriting of a structured settlement annuity; (4) evaluating the need to preserve governmental entitlement benefits (e.g., the need for the establishment of a special needs trust); and (5) enabling a host of other decisions to be made without the pressure associated with the litigation itself. It is the intention of this piece to highlight the importance of being able to allocate the settlement proceeds among the claimants to ensure the lien resolution strategy is in line with the true nature of the damages suffered by the injured party(s) and/or their derivatively injured spouse, parents or children.

The ability to allocate a total settlement amongst claimants is becoming a particularly powerful use of a QSF, especially in the context of lien resolution. A recent case out of the Western District of Arkansas, Administrative Committee of The Wal-Mart Stores, Inc. Associates’ Health and Welfare Plan v. Gamboa, has provided some rather powerful precedent in this regard when dealing with ERISA liens. The Gamboa case involved a Wal-Mart employee, Nancy Gamboa, driving a car in which José Gamboa, Wendy Gamboa, Lucas Gamboa, and June Jones were passengers. While driving, Nancy and the passengers were struck by an inebriated driver, killing June Jones and seriously injuring José Gamboa. Nancy was enrolled in the Wal-Mart Stores, Inc. Associates’ Health and Welfare Plan (The Plan). As a result of the accident, the Plan paid $177,136.07 in healthcare benefits on behalf of José Gamboa, Nancy’s spouse and a covered beneficiary under the Plan. In March of 2003, Nancy, José, Wendy, and Lucas filed claims in a dram shop action against the bar that served the alcohol to the offending driver. On December 6, 2004, Nancy, Wendy and Lucas settled their individual claims against the bar for one million dollars. José Gamboa signed a release of liability in consideration of his family receiving the settlement and waiving his own claims against all persons and entities.

Soon after the settlement, the Wal-Mart Plan brought an action to recover the payments made on behalf of Jose Gamboa. In light of José’s waiver, the Plan sought to enforce its lien against the settlements of Nancy and the children, to whom the Plan paid no benefits. While the issue of what documents controlled the Plan’s right to reimbursement was decided earlier on appeal, the district court’s subsequent decision dealt only with whether or not the Plan could recover payments made on José’s behalf from the settlement of another. The Arkansas court relied on the following three part test in order to properly determine whether the Plan could maintain their action as one for “appropriate equitable relief” to enforce their reimbursement provision. Does the plan seek to recover funds (1) that are specifically identifiable, (2) that belong in good conscience to the plan, and (3) that are within the possession and control of the defendant beneficiary? This test arises from both GreatWest Life & Annuity Insurance Co. v. Knudson and Sereboff v. Mid Atlantic Medical Services, Inc.

First, because the parties agreed, pending the outcome of the lawsuit and exhaustion of all appeals that the amount the Plan was seeking would be held in a separate account, the court found that proceeds of the settlement were specifically
identifiable. Second, because the plan paid medical bills on José’s behalf as a result of the accident, “any judgment, settlement or payment made because of the accident” would have belonged, in good conscience, to the Plan.

However, neither José nor his attorney received a portion of the settlement as required by the Plan’s reimbursement language. No one received a settlement or judgment on José’s behalf for the injuries he suffered as a result of the accident. Rather, the money in the account was received on behalf of Nancy, Wendy and Lucas for their injuries and damages. The court found that the Plan was not entitled to funds received by other persons injured in the accident, for it could only recover its lien from the funds received by or on behalf of José. Because he waived his claim and did not receive a portion of the settlement, José was not in possession or control of any settlement proceeds from which the Plan could claim a reimbursement. Therefore, the third prong of the court’s analysis was not met.

As a result, the court found that the Plan was seeking a legal remedy not available under ERISA. José was not in possession and control of any funds subject to the Plan’s right of recovery. Moreover, because the Plan had paid no benefits on behalf of Nancy and the children, it had no right to recover its lien from their settlements. As a result, the lien was found to be entirely unenforceable.

What does all this mean? Well, as mentioned previously, a QSF allows for an allocation of the proceeds among the plaintiffs. Where a case involves separate individual or derivative claims and an ERISA lien, a QSF can be utilized to help properly allocate the funds among all the claimants who possess their own individual or derivative claims under state law. In this manner, an attorney can legitimately limit the amount an ERISA plan can target for reimbursement. By appropriately allocating the funds in this fashion, and further requesting that a waiver be executed as appropriate, an ERISA lien may be minimized and settlement monies may remain in the possession of all those who are injured, rather than the Plan’s bank account.

1  2007 WL 2021966
2  Under the Employee Retirement Income Security Act of 1974, § 502(a)(3), as amended, 29 U.S.C.A. § 1132(a)(3), a fiduciary may bring a civil action “(a) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (b) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan.”
3  534 US 204 (2002)
4  126 S. Ct. 1869 (2006)