

## Florida Court Rules That Defendant Cannot Be Forced to Pay Settlement Proceeds Into QSF

A Florida state court has ruled that where the plaintiff and a defendant reached a settlement agreement in resolution of the plaintiff's claims, but the defendant did not agree to pay the agreed-upon settlement proceeds to a Qualified Settlement Fund ("QSF") created pursuant to Section 468B of the Internal Revenue Code and related treasury regulations, the court would not force the defendant or its insurer to do so. In *Martinez v. Tampa Bay Academy, et al.*, Case No. 06-CA-007546 (Hillsborough Cir. Ct.), Judge Sam Pendino found that, under such circumstances, an enforceable settlement had been reached for the defendant or its insurer to pay the agreed-upon settlement proceeds to the plaintiff or the trust account of the plaintiff's counsel – but not to a QSF.

S.M. Martinez, a minor ("Martinez"), brought a claim for alleged personal injuries against several defendants, including Youth and Family Centered Services of Florida, Inc., d/b/a Tampa Bay Academy ("TBA"). In August 2010, Martinez reached a settlement agreement with another of the defendants, Dr. Victor Hong. Citing, *inter alia*, a desire to immediately obtain settlement proceeds from Hong while claims against other defendants were litigated, Martinez requested that Hong pay the settlement proceeds into a QSF. Hong agreed, and the court approved the establishment of a QSF in connection with Hong's settlement.

In April 2011, Martinez and TBA reached a separate settlement. In it, Martinez and TBA agreed that TBA would pay the agreed-upon settlement amount "in cash" in exchange for a full written release from all of Martinez's claims. (Martinez also agreed to speak with TBA's insurer to discuss whether some portion of the settlement proceeds would be paid through a structured settlement, but the decision to agree to such a structured settlement was left solely in Martinez's discretion.) Before reaching the settlement agreement, counsel for Martinez had never discussed with counsel for TBA a desire to have the settlement proceeds paid into a QSF. After the settlement agreement had been reached, counsel for TBA requested that counsel for Martinez provide payment instructions. Only then did Martinez request that payment be made into the QSF established in connection with Hong's settlement.

TBA and its insurer refused to agree to pay the settlement proceeds into the QSF, but Martinez insisted, and moved for an order compelling TBA and its insurer to do so. Mar-

tinez argued, *inter alia*, that TBA and its insurer should be required to pay the settlement proceeds into the QSF in order to satisfy Martinez's alleged need for a "safe harbor" for settlement proceeds while Martinez and other interested parties negotiated the allocation of settlement proceeds, and while a special needs trust was established for the benefit of Martinez. TBA and its insurer – represented by Timothy O'Driscoll and John Moore of Drinker Biddle & Reath LLP – opposed the motion, arguing, *inter alia*, that: payment into the QSF was not a term of the settlement agreed upon by Martinez and TBA; TBA and its insurer could not be forced to pay into the particular QSF identified by Martinez because TBA was given neither notice of the establishment of that QSF nor an opportunity to object to same; payment into a QSF in the context of a single plaintiff case could result in adverse tax consequences to Martinez, TBA, and its insurer; and Martinez's purported reasons for wanting a QSF were unpersuasive.

On June 2, 2011, Judge Pendino issued an order denying Martinez's motion, and stated as follows: "The Court agrees with Tampa Bay Academy and finds that the parties entered into an enforceable settlement ... in cash from Tampa Bay Academy, in exchange for a full written release from Plaintiff as to all claims. The settlement amount shall be paid to Plaintiff, or the trust account of Plaintiff's counsel, in exchange for a full written release from Plaintiff as to all claims." Judge Pendino further held as follows: "The Court finds that there was no agreement between Plaintiff and Tampa Bay Academy to pay the settlement amount into any [QSF], and that neither Tampa Bay Academy nor its insurer is obligated to consent to pay the settlement amount into any QSF. Therefore, the Court will not order Tampa Bay Academy or its insurer to pay the settlement into any QSF."

To read a copy of the order, [click here](#). If we can be of any assistance in answering further questions on this topic or resolving other issues, please do not hesitate to contact:

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