
Cy Pres Awards: Serving the Class and the Public Interest

By F. Paul Bland, Jr. and Arthur H. Bryant*

The TLPJ Foundation, which supports the work of Trial Lawyers for Public Justice, has been the recipient of significant *cy pres* awards from class action settlements that have greatly supported its public interest work. The publicity surrounding these awards has prompted many people to contact us and ask what *cy pres* awards are, and when they are appropriate. This article will attempt to give a brief overview of these important issues.

What is a *cy pres* distribution?

The term *cy pres* is derived from a French phrase meaning “as near as.” In a class action settlement where it is not possible to directly distribute all of the money to the class, a *cy pres* distribution to a non-profit charitable organization whose work indirectly benefits the class members and advances the public interest is often the next best use of the monies. In short, *cy pres* distributions can be a way of solving one of the most vexing problems in class action settlements: how to make sure that the case serves the class and the public interest, not the wrongdoing defendant, when it isn’t possible to directly distribute money to all of the class members.

What kind of *cy pres* distributions are inappropriate? Trial Lawyers for Public Justice strongly takes the position that, when possible, monies paid out to settle class actions should go directly to the class members themselves. In some cases, TLPJ has objected to proposed class action settlements that have abused the *cy pres* mechanism. It is inappropriate for a settlement to pay out all or nearly all of the money in *cy pres* distributions when it is possible to distribute significant sums to the class members themselves. It is also not appropriate for the settling parties to attempt to direct *cy pres* distributions to personal favorite

charities (such as one’s alma mater) that have no relationship to the issues addressed by the underlying lawsuit.

In many class action settlements, however, it is just not possible for the settling parties and the court to directly distribute all or even most of the funds to the class members. In a case involving deceptive statements about some

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modestly priced consumer product, for example, the companies may not have any identifying information about who bought the product. In some cases, many of the class members cannot be found or it may not be economically feasible to distribute the small amount recovered per class member. In still others, a claims process is appropriately created, but many reasonable class members will not want to go through the entire claims process. In all of these cases, proper *cy pres* distributions can serve the class and the public interest.

What kinds of *cy pres* distributions are appropriate? Where it is not possible to directly distribute all

of the money in a settlement to the class members, a *cy pres* distribution to a non-profit organization is often appropriate. The alternative, in some cases, is that parties may enter into settlements that allow all the unclaimed money to simply revert back to the defendant. This has the effect of enormously reducing the benefit that the settlement confers on the class, and it also has the effect of letting a wrongdoing defendant keep the benefit of much (and sometimes nearly all) of the money it wrongfully took from the class. Because the concept of a *cy pres* distribution is that it should be the “next best use” of money on behalf of a class, *cy pres* distributions should relate to the purposes of the case. In a case that challenges predatory lending practices that result in many people losing their homes, for example, it might be appropriate for residual funds to be distributed to organizations that address housing problems. In a class action involving overcharges for pharmaceutical products, however, it would make little sense to distribute funds to such organizations.

One reason that The TLPJ Foundation has been approved as a *cy pres* recipient by a number of courts is the breadth of TLPJ’s work. Because of TLPJ’s precedent-setting litigation and special projects involving such diverse issues as consumer protection, civil rights, and environmental enforcement, we have received *cy pres* awards from courts in class actions involving a wide variety of underlying issues.

If you are interested in more information on designating The TLPJ Foundation as a *cy pres* award recipient, please contact The TLPJ Foundation Development Director Kathryn Mitchell at 202-797-8600 or via email at kmitchell@tlpj.org.

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TLPJ Foundation Acknowledges *Cy Pres* Awards

We are extremely grateful to the following attorneys who, over the last ten years, have obtained court approval for *cy pres* awards in their class actions to be distributed to The TLPJ Foundation, knowing that our work will indirectly, but substantially, serve the class and the public interest:

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