

Cy Pres Resources

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Cy Pres Awards, Legal Aid and Access to Justice Key Issues in 2013 and Beyond

[Cy Pres Awards, Legal Aid and Access to Justice: Key Issues in 2013 and Beyond](#), by Bob Graves, Executive Director, Chicago Bar Foundation, and Meredith McBurney, Resource Development Consultant for MIE and the ABA Resource Center for Access to Justice Initiatives, from the MIE Journal, Spring 2013

Appendix to the MIE Journal article:

Articles and cases that make the case for legal aid and access to justice initiatives as proper recipients of cy pres awards:

- [Residual Funds in Class Action Settlements: Using “Cy Pres” Awards to Promote Access to Justice](#), Thomas A. Doyle, Federal Lawyer, July, 2010. Great overview of case law and other authorities linking cy pres awards and access to justice.
- [Cassano v. The Toronto-Dominion Bank \(Ontario, Canada\)](#). Case is from Canada, but has a great discussion on access to justice and cy pres awards.
- [Glen Ellyn Pharmacy v La Roche-Posey \(N.D. Illinois\)](#). Case involving unsolicited faxes regarding sunscreen products and awarded cy pres fund to legal aid organizations. Gives reasons for making each grant.
- [Moira Gilley v Ernie Haire Ford, Inc, Circuit Court \(13th Judicial District, FL\)](#). Motion and Memorandum of Law for Final Distribution of Unclaimed funds. Cy pres awards to five charities, including two FL legal aid programs and two national legal aid entities.
- [Smokeless Tobacco Cases I-IV \(Superior Court of the State of California, City and County of San Francisco, 2009\)](#). Order granted plaintiffs’ motion to distribute cy pres fund to 106 charities, including numerous legal aid organizations.
- [Meyers et. al v State of Texas, et. al](#). Ordered \$9 million in cy pres to organizations serving Texans with disabilities, of which \$2.6 million went to legal aid programs.

Articles and cases making the case for cy pres residuals generally:

- [When the Cup Runneth Over: Cy Pres Distributions in Class Action Settlements](#), BNA Class Action Litigation Report, March 2013
- [In re Baby Products Antitrust Litigation \(3rd Cir. 2012\)](#) – Third Circuit gives good background on cy pres doctrine generally and rejects broad-based challenges to use of cy pres awards, but overturned proposed cy pres award in that case based on settlement providing insufficient funds to class members
- [Lupron Marketing and Sales Practices Litigation \(1st Cir. 2012\)](#). The ruling was the first time the First Circuit addressed “the procedural and substantive standards for distribution” of such funds under the cy pres doctrine. However, the court expressed some unease over the propriety of federal judges making such distribution decisions, rather than approving proposals from the parties in the case.
- [Are Cy Pres Class Settlements Really ‘Faux Settlements’? Analyzing Recent Criticism of Cy Pres Funds in Class Settlements](#), Settlements, Appellate Review, BNA Insights, 2012 (Vol. 13, No 18)
- [What Can a Court Do with Leftover Class Action Funds? Almost Anything!](#) The Judges Journal, summer 1996, p. 20

Recent opinions that discuss limitations on cy pres awards that may impact the ability of legal aid to obtain cy pres residuals in some instances:

- [Nachshin v AOL, LLC, 663 F. 3rd 1034 \(9th Cir. 2011\)](#). Ninth Circuit overturned cy pres award (which included a legal aid

organization as a beneficiary) primarily based on the fact that the distribution did not take into account the broad geographic distribution of the class.

- [Dennis v Kellogg \(9th Cir. 2012\)](#). Ninth Circuit overturned award because settlement did not identify recipients or set forth any limiting restriction on those recipients and because attorneys' fees were excessive.
- [McCall v Facebook \(9th Cir. 2011\)](#). Upholds cy pres award; references Nachsin, which the same court had overturned.
- [Klier v Elf Atochem \(5th Cir. 2011\)](#). Fifth Circuit overturned a cy pres award to charities in favor of additional funds to class members.
- [Plaintiffs v State of Texas \(5th Cir. 2011\)](#). Circuit Court found that the unclaimed funds allocated to Texas plaintiffs are subject to the Texas Unclaimed Property Act.

Articles critical of cy pres awards generally:

- [Cy Pres: A not so charitable contribution to Class Action Practice](#), U.S. Chamber Institute for Legal Reform, October 2010
- [Critics Take Aim at Cy Pres Awards](#), The Blog of Legal Times, June 4, 2012
- [To Cy Pres or Not to Cy Pres?](#) Joshua L. Gayl, For the Defense, November, 2011
- [Cy Pres Relief and the Pathologies of the Modern Class Action: A Normative and Empirical Analysis](#), Redish, Florida Law Review, 2010

Cy Pres Awards in Other Types of Proceedings or Instances:

- Bankruptcy Court
 - [In re Xpedior Inc., 354 B.R. 210 \(N.D. Ill. 2006\)](#). \$707,000 in surplus remaining in bankruptcy case after all claims were paid was distributed to five charities, including three legal aid entities.
 - [Bankruptcy's Spare Change, Wall Street Journal](#).
 - [Rule 2011-1 of Local Rules of U.S. Bankruptcy Court \(S.D. Florida\)](#). Rule sets forth procedure for unclaimed funds in bankruptcy cases.
- Court-ordered Sanctions
 - In 2010, a Cook County (Chicago) Judge ordered one of the parties to pay \$1.1 million as a sanction for violating a previous court ruling to preserve documents in a lawsuit, and used Illinois cy pres statutes as a model for designating recipients of the funds. CARPLS, a Chicago legal aid organization, received half of the funds.
- Awards to legal aid in cases that are not contingent on residuals:
 - [Gordon, et al v. Microsoft Corporation, 2003 WL 23105550 \(Minnesota District Court\)](#) – Settlement of MN antitrust litigation included a payment of \$2.5 million to MN Legal Aid Society.
 - [Comes, et al v. Microsoft Corporation, 646 N.W.2d 440 \(Iowa 2002\)](#) – Similar litigation produced \$1 million to Iowa Legal Aid.
 - [How to Make \\$2.5 Million with One Phone Call](#), by Jerry Lane, 7/23/04, Issues e- newsletter
 - [Logan, et al v. Firststar, No. 3-02-0681\(Tenn. Mid. Dist. Ct.\)](#) - A federal class action filed in TN over discriminatory lending practices produced \$150,000 for the Minneapolis Legal Aid Society, to fund two years of client education on consumer credit financing.
 - [A Creative Flair Rising in Lawsuit Settlements](#), Peter Geier, The National Law Journal, Dec. 19, 2006

Cases that awarded cy pres funds to multiple legal aid entities (examples of methods of distribution):

- [Synthroid Marketing Litigation](#), U.S. District Court for the Northern District of IL, 2011. Cy pres distribution in a national class action lawsuit regarding pharmaceuticals, with mix of local and national legal aid organizations receiving share of award as well as other organizations related to health issues involved in case.
- [Susan Miller, et al. v Royal Maccabees Life Ins. Co](#); Circuit Court of Cook County, IL, 2008. Cy pres distribution in a national class action settlement involving a rate increase on life insurance policies. IL legal aid programs received \$1.8 million; another \$1.8 million was distributed to 111 LSC-funded programs around the country. [Get Appendix](#)

Summary of Legislation and Court Rules Providing for Legal Services to Receive Cy Pres Residuals, compiled by Meredith McBurney for the ABA Resource Center for Access to Justice

Initiatives.

Samples of general informational materials:

- Website Entries
 - Template language for legal aid organization websites, prepared by Chicago Bar Foundation
 - Chicago Bar Foundation - <http://www.chicagobarfoundation.org/cy-pres-awards>
 - Greater Boston Legal Services - <http://www.gbls.org/support-gbls/cy-pres-awards>
 - Legal Aid Foundation of WA (LAW Fund) - <http://c4ej.org/help-us/cy-pres-and-residual-fund-awards.html>
 - National Consumer Law Center - <http://www.nclc.org/about-us/cy-pres-awards.html>
 - Texas Equal Access to Justice Foundation - http://www.teajf.org/donate/cy_pres.aspx
- Hard copy brochures and fact sheets
 - [Chicago Bar Foundation](#)
- Letters
 - [Sample letter](#) recommending Community Legal Services (Philadelphia) as a recipient of a cy pres award
- Press releases
 - [Chicago Bar Foundation](#)
 - [Legal Aid Society of Cleveland](#)
- Acknowledgements
 - Chicago Bar Foundation
- Sample language for final approval orders for class action settlements
 - [Chicago Bar Foundation](#)

Cy pres toolkits and manuals:

- [HI – Expanding Access to Justice through Class Action Residual Funds – A Toolkit](#)
- MA - Expanding Access to Justice through Class Action Residuals and Other Court Awards:
 - [Information for Massachusetts Judges](#)
 - [A Toolkit for Litigators](#)
 - [A Toolkit for Legal Services Providers](#)
- [MN - Equal Access to Justice: A Cy Pres Manual](#)
- [NY - Manual of Cy Pres for Legal Services](#)
- [TX - Impact on Justice through Court Awards – A Toolkit](#)
- [Nat'l - NACA Class Action Guidelines](#)

Examples of projects funded with cy pres funds:

- [Chicago Bar Foundation fact sheet](#)