

Frequently Asked Questions About The *Cy Pres* Doctrine

Q. What is *cy pres*?

A. *Cy pres* (pronounced "sigh-pray") is a very old legal doctrine dating from the third century allowing the courts to carry out the terms of an agreement as closely as possible. In class actions, it refers to the distribution of unclaimed settlement funds to purposes benefiting society.

Q. Why is there a need for *cy pres*?

A. Class actions usually last for many years before they are concluded. Because of this, some class members have moved, passed away, or are hard to locate. The settlement fund is then not fully distributed. *Cy pres* allows distribution of some or all of those unclaimed monies.

Q. Why not just give the monies back to the defendant?

A. The typical settlement of a class action calls for defendant to make payment of a certain amount to the class members. Giving large amounts of that fund back to the defendant is not consistent with the settlement. As part of the settlement process, plaintiffs' counsel and defense counsel agree on a reasonable portion of the unclaimed funds to be paid to charities.

Q. Some commentators criticize *cy pres* as leading to misconduct such as charities lobbying courts or lawyers.

A. There are very serious ethical rules prohibiting such conduct and they are strictly enforced. The *cy pres* process does not only involve the plaintiff or their attorneys to reach the agreement. The defendant and its attorneys must also agree. Then, the court must carefully review and approve all of the terms. This process is highly and carefully supervised.

Q. Is it proper for a lawyer to include a charity as a proposed *cy pres* recipient if they serve on that board?

A. The question isn't really about the affiliation of a lawyer, judge or party but whether the money is going for an actual beneficial charitable purpose in the community. Also, it is about whether a range of causes and programs are being used. It is common and synergistic that large corporations regularly give major donations to charities for which the corporation's directors volunteer or serve on the charity's board.

Q. How are the charities selected?

A. As explained above, the parties propose a group of diverse and wide-ranging organizations covering many aspects of the community. Broad coverage is important for another reason: The class members who cannot be found are spread through broad sections of the community. Those class members include men and women, young and old, workers, retirees, students, homemakers, professionals, and that list goes on. Selecting just one charity would only touch the lives of a small number of those class members. Selecting a wide range of causes in a broad area likely touches the lives of most of the class members, their friends, or their families. This is very efficient. Each side reviews the proposals of the other and makes suggestions. The proposals are then given to the court. The key is broad distribution to organizations respected in the community for their services.



Q. Should *cy pres* be required in every class action?

A. Every case is unique. The parties propose *cy pres* most often when it is apparent that a significant portion of the settlement funds will not reach class members for a variety of reasons - people having moved, address changes, very small individual recoveries, etc.

Q. How can I help?

A. If you are an individual, suggest a charity you know is doing a great job in the community that could use some help and support. Mention *cy pres* to lawyers, judges, and others you know. Encourage them to use it.

If you are an attorney doing class actions, consider designating **The Employee Rights Advocacy Institute For Law & Policy** as a *cy pres* recipient.

If you have any questions about the *cy pres* doctrine or naming The Institute as a *cy pres* beneficiary, please contact Terisa E. Chaw, Executive Director, at info@employeeightsadvocacy.org. For information on methods which have been successful in reaching settlements which include a *cy pres* provision, contact **Ohio Lawyers Give Back**. Visit the OLGB web site at <http://www.ohiolawyersgiveback.org/>.

More information on the *cy pres* doctrine

- Video: Patrick Perotti - *Cy Pres* Explanation. <http://www.ohiolawyersgiveback.org/index.asp?id=2#mov>
- Website: Ohio Lawyers Give Back. <http://www.ohiolawyersgiveback.org>
- Paper: *The Cy Pres Doctrine* by Donald H. Nichols <http://www.nela.org/NELA/docDownload/14883>

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