

Locals Awarded Cy Pres Funds

Memphis Area Legal Services, the University of Memphis' Cecil C. Humphreys School of Law and the Shelby County Drug Court have been named beneficiaries of a \$305,000 legal settlement.

Circuit Court Judge [Donna Fields](#) recently ruled that unused funds from a class action settlement will be distributed among the three law-related entities.

Of the money awarded, \$205,000 will go the university, \$65,000 will be given to MALS and \$35,000 will go to the drug court. The money falls under a relatively uncommon law doctrine called cy pres.

Cy pres doctrine

Cy pres (pronounced sigh-pray) is a term translated from the old [Norman French](#) that means "as near as possible." It's a legal doctrine that first originated in the area of trust and estate law, but has been applied in the context of class action settlements in the U.S.

In probate law, when the monies from a testator (or deceased person) can't be given to their original designated recipient(s), the courts determine the next best use for that money.

For example, if a testator intends to use the money for a charity that no longer exists at the time of his or her death, the courts have the power to determine the next best use for the money, staying as close to the donor's original intent as possible.

In 1986, the California Supreme Court endorsed the cy pres doctrine for class action settlements, and other U.S. courts followed.

Courts will usually distribute class action settlements to charitable organizations when recovery for class members is impossible or impractical, if class members are difficult to identify or if unclaimed funds remain after all class members have received their portion of the settlement.

B.J. Wade, a partner at Glassman Edwards Wade & Wyatt PC, is the attorney who represented the plaintiffs in this class action suit, which involved [FMC Corp.](#), a Chicago chemical company. The cy pres funds were used in Tennessee because all the class action plaintiffs were Tennessee consumers.

"In the class action world, sometimes you have settlements that fit in two categories," Wade said. "One (is) where there is money left over that's not paid out to class members for whatever reason – and that's not the situation here – or you have a situation where the amount of recovery for the class action members ... is very small."

In such a case, a company could argue that since the amount designated for the class action members is so small, the company should be able to keep the money. Most of the time, however, the courts decide that the money should go to a cy pres beneficiary.

Only a small percentage of class action settlements turn out this way.

"I would say – and my practice is substantially class-action – about 10 percent or less" of class action cases end up with these "leftover" funds, Wade said.

The funds are distributed by the court hearing the case, but the class counsel – Wade, in this case – can make a recommendation to the court as to how the monies should be used. In this case, the court accepted Wade's recommendations.

Next best uses

Wade has been involved in several cy pres awards over the past few years.

“Our total allocation to the U of M law school is about \$1 million, and \$500,000 to MALS,” Wade said.

[Kevin Smith](#), the interim dean at the U of M law school, said the school’s award of \$205,000 will go into its general fund.

“At some point down the road, that money will be used for student scholarships, professorships and programmatic initiatives,” Smith said. “Basically, the student scholarships and professorships will allow us to attract and retain the best and brightest students and professors.”

MALS executive director Harrison McIver spoke very highly of Wade, who over the past four years has contributed to MALS, receiving four separate cy pres awards totaling half a million dollars.

As a result of Wade’s dedication to helping the organization, McIver said about two years ago, MALS established the B.J. Wade Consumer Law Fellowship “to recognize the support and efforts on the part of B.J. in terms of his cy pres advocacy.”

“Most of these cy pres awards relate to the consumer area, and as a result, we felt this was a way to honor the efforts on the part of B.J.,” McIver said.

In addition, MALS has been able to modestly expand its staff and their benefits, as well as improve their technological capacity.

Wade sits on the board of directors for MALS, but told The Daily News, “I would have recommended the money go to MALS even if I wasn’t on the board.”

“I know there is a substantial need for consumers and citizens of our city to have access to legal services,” Wade said in an official statement regarding the awards.

This case represents the first time the Shelby County Drug Court will receive cy pres money.

Angela Parkerson, the drug court’s grant coordinator, said the court has not decided on a use for the funds.

“That money’s going to the Shelby County Drug Court Support Foundation, and we haven’t had a meeting yet, so we haven’t decided exactly what it will be used for,” Parkerson said.

She explained the foundation helps pay a portion of the rent for the court’s clients who live in halfway houses, and also it provides a grant for its Mothers at Risk program, which helps women with children go through drug treatment, parenting classes and a job readiness program.

Cy pres awards have been given to non-law-related groups as well. In September, Wade worked to help The Soulsville Foundation create a scholarship from cy pres funds in the name of Memphis musician Ben F. Cauley. Cauley was the sole survivor of the plane crash that killed his fellow Bar-Kays band members and [Otis Redding](#) in 1967.

The scholarship funds totaled \$100,000 and will be distributed to Stax Music Academy students over the next five years.