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Auto settlement delivers legal-aid windfall -- Uncollected claims, worthy causes connect in 'cy pres'

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A national suit settled here created a \$25,000 bonus for Memphis Area Legal Services, the result of a little known windfall-maker called "cy pres," which lets lawyers and judges in class-action suits direct uncollected claims to worthy causes.

In this case, a 15,000-member class-action case involving horsepower claims against KIA Motors was settled for \$3 million. Judge Robert Childers incorporated the gift into the settlement agreement.

Plaintiffs were represented by B.J. Wade, member of the Memphis firm Glassman, Edwards, Wade & Wyatt, P.C.

"Since it was a Consumer Protection Act case, we thought it would be a good idea if they contributed to Memphis Area Legal Services, which has a consumer fraud protection agency."

The money will be used to extend MALS's reach. Last year, the nonprofit law office advised more than 3,000 clients, who were often heads of households, bringing the total number of people served closer to 8,000 or 9,000, said executive director Harrison McIver III.

"This is the first time we have received cy pres monies," McIver said. "It's because of the efforts of B.J. Wade and the people in his law firm. They were sensitive to our needs and have really stepped up to the plate to be helpful."

Cy pres is a Latin term meaning "as near as possible." It was developed in the area of trust law to consider the deceased's intention, for instance, if a benefiting charity no longer exists when a family trust is being dissolved.

Under the rule in class-action work, unclaimed money can be given to charities approved by the judge and attorneys on both sides.

In the case of Hoffman LaRoche, main defendant in a vitamin-overcharging suit settled in 2002, the payout per plaintiff was so small, it would have been cost-prohibitive to administer the payback.

The \$10.8 million due Tennessee residents in the case was divided among nutrition programs for women and children, Wade said.

The agency's annual budget is \$2.6 million, allowing it to serve 155,000 income-eligible people in Shelby, Lauderdale, Tipton and Fayette counties.

Last year, about 35 percent of its clients were people needing assistance with housing issues, including fighting eviction and unlawful landlord treatment.

About 21 percent needed help protecting income, which included Social Security benefits and food stamps. The remainder were clients with family and consumer issues.

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