

## When Next Best Use is Best Possible Use

*CY PRES.* ALTHOUGH dim in memory, you probably recall *cy pres* as a term heard in law school, studied for the bar exam, and unless you are an estates lawyer, promptly forgotten. Or if remembered, you probably recall it as the magic wand waived to transform a gift that a donor made for a specific purpose to another closely related purpose, when the original one can no longer be accomplished.

Well, *cy pres*, derived from the Norman French phrase *cy pres comme possible* – “as near as possible” – has an important meaning outside the trust and estates’ world. In a class action or mass tort settlement, when it becomes impractical, impossible, or inappropriate to directly distribute all of the monies to the class, a *cy pres* distribution of the remainder of the settlement fund to a nonprofit organization whose work advances the public interest and indirectly benefits the class members has been accepted as the next best use of the funds. It also has been used for the entirety of a statutory damage award, when the amount of damages to each class member is too small to warrant distribution.

This *cy pres* meaning is very meaningful to the Bar Foundation and its grantees. With its mission of promoting access to justice for all people in the community and its support of an integrated network of more than 30 public interest legal organizations that provide no-cost or low-cost legal services to various constituencies, the Philadelphia Bar Foundation has been fortunate to be the recipient of *cy pres* awards.

Unclaimed funds from class action suits when contributed to the Bar Foundation make a significant difference. Because of the Bar Foundation’s unique relationships with the private bar and the pro bono providers in Philadelphia, it gains special insights on trends and issues affecting access to justice. Its position allows it to identify new or changing needs and direct funds to appropriate local legal services that support access to justice and fairness in health care, education, children’s rights, housing and services to the elderly and disabled.

Recently, in *In Re Linerboard* antitrust litigation, the court designated the Phila-

By Amy Ginensky



delphia Bar Foundation as the recipient of a *cy pres* award from the remaining settlement funds, remarking:

“The Bar Foundation gives grants to legal service organizations ... that are dedicated to protecting the rights of the poor and indigent in the Philadelphia area. As the Bar Foundation itself

explains, ‘[g]iven the Foundation’s quest to provide equal justice for all, as well as its ability to gauge and respond to local needs by funding beneficial projects...the Foundation can put unclaimed funds to good use.’ The Court agrees and deems the Bar Foundation an appropriate and most deserving recipient of the remaining funds.... [T]he Court concludes that a *cy pres* distribution... to the Philadelphia Bar Foundation furthers the underlying litigation goals of this case and approves such a distribution without any specific allocation.”

Over the years, a number of other *cy pres* awards have been made to the Foundation. We have received awards from our Philadelphia, state and federal courts. Another recent award came through the U.S. District Court of Massachusetts, a class action lawsuit filed against Ibis Technology Corporation and its senior executive officer and chairman charging defendants violated the federal securities laws. The plaintiff’s attorney in the case made a motion for final distribution of the residual settlement funds to go to both the Boston Bar Foundation and the Philadelphia Bar Foundation.

To further the Philadelphia legal community’s understanding about *cy pres* and to advance it beyond what we all learned in law school, the Bar Foundation is offering a CLE program in conjunction with the Drexel University Earle Mack School of Law. On Friday, May 15, this one-hour program will provide an overview of *cy pres* including the history of the development of the *cy pres* doctrine, the legal basis for *cy pres*, a review of the current state of class action funds and a discussion of recent judges’ orders regarding *cy pres* distributions. Call the Bar Foundation at 215-238-6347 for more information or if you would like to attend in the 11th floor Conference Center of Bar Association headquarters at 1101 Market St. The program is free and lunch

### Memorial, Honorary Gifts Recognized

From time to time, the Philadelphia Bar Foundation receives contributions or a fund in memory of someone who has died or, on a happier note, to mark a special occasion or honor an achievement. Philadelphia lawyers are a special breed. We honor them when we make a gift to the Bar Foundation that is then used to assist Philadelphia’s public interest lawyers and the clients to whom they provide legal services.

#### In Memory

Given by **Stradley Ronon Stevens & Young, LLP**, in memory of **David Greenberg**, an educator for more than 40 years and father of **Kenneth L. Greenberg**, of Stradley Ronon Stevens & Young, LLP.

Given by **Amy Ginensky** in memory of **Elliot Herman**, a pharmacist and brother-in-law of **Debbie Gross**, of the Law Offices of Bernard M. Gross, P.C. and a Bar Foundation trustee.

Given by a trustee of the **Philadelphia Bar Foundation** in memory of **Joyce Grobman**, mother of **Richard Grobman of Oppenheimer & Co., Inc.** and a trustee of the Bar Foundation.

#### In Honor

Given by **Mr. and Mrs. Lee Leiber** in honor of **Sayde J. Ladov**, on the occasion of her election as Chancellor of the Philadelphia Bar Association

Given by **Abraham and Sherri Reich** in honor of **John and Monica Leibovitz** on the occasion of their marriage.

Given by **Anita Weinstein** in honor of **Elaine M. Rinaldi** to commemorate her service as president of the Philadelphia Bar Foundation in 2007 and 2008.

Given by **Philadelphia Court of Common Pleas Judge Marlene Fay Lachman** in honor of **Kenneth J. Fleisher, David N. Hofstein, Charles Junod, Suzanne Pritchard** and **Sondra R. Rodrigues** for being recipients of the First Judicial District Pro Bono Publico Award.

Given by **Judge and Mrs. Marvin R. Halbert** in honor of **Herbert R. Weiman** upon receiving Philadelphia VIP’s Justice William J. Brennan Jr. Award.

Given by **Abraham and Sherri Reich** in honor of **Alka Bahal and Brian Fey** on the occasion of their marriage.

will be sponsored by Citizens Bank.

For each *cy pres* award, the Foundation is appreciative to the court, counsel and the parties, who through this award, allow the Foundation to wave a magic wand, and assist our legal community in fulfilling its commitment to provide justice for all. Rest assured that while the funds

may not be able to advance the original purpose of the funds, they surely will be put to the best possible use.

*Amy B. Ginensky, a partner at Pepper Hamilton LLP, is president of the Philadelphia Bar Foundation.*

### Bar Foundation Golf Classic June 22

THE PHILADELPHIA BAR FOUNDATION’S 21st Annual Golf Classic is moving to a new location.

The event will be held Monday, June 22 at Huntington Valley Country Club in Huntington Valley, Pa.

The general fee for players is \$375. Members of the Young Lawyers Division may play at a discounted fee of \$350. Price includes all greens fees, golf cart, lunch, refreshments, dinner and cocktails.

Several levels of sponsorship are available. Tournament Underwriters

(\$15,000) get a banner hung at clubhouse entrance; name on the front cover of the souvenir program as sponsor of the event; distribution of skills competition prizes to winners; eight players plus four additional guests to cocktail reception; and VIP parking for golfers. Other levels include Tournament Cup/Skills Prize Sponsor (\$7,500), Luncheon, Cocktail Buffet, Reception or Putting Contest Sponsor (\$5,000) and Hole Sponsor (\$2,000). For more information, contact Lynne Brown at (215) 238-6347.