

## APPENDIX B

### Excerpts of Rules and Statutes

#### **California**

Statute 384 (a) It is the intent of the Legislature in enacting this section to ensure that the unpaid residuals in class action litigation are distributed, to the extent possible, in a manner designed either to further the purposes of the underlying causes of action, or to promote justice for all Californians. The Legislature finds that the use of funds collected by the State Bar pursuant to this section for these purposes is in the public interest, is a proper use of the funds, and is consistent with essential public and governmental purposes (b) Except as provided in subdivision (c), prior to the entry of any judgment in a class action established pursuant to Section 382, the court shall determine the total amount that will be payable to all class members, if all class members are paid the amount to which they are entitled pursuant to the judgment. The court shall also set a date when the parties shall report to the court the total amount that was actually paid to the class members. After the report is received, the court shall amend the judgment to direct the defendant to pay the sum of the unpaid residue, plus interest on that sum at the legal rate of interest from the date of entry of the initial judgment, to nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent. The court shall ensure that the distribution of any unpaid residual derived from multistate or national cases brought under California law shall provide substantial or commensurate benefit to California consumers.

#### **Hawaii**

R.Civ.Pro. Rule 23(f) states: (f) Distribution. Prior to the entry of any judgment under subdivision (c)(3) or the approval of any compromise under subdivision (e), the court shall determine the total amount payable to each class member. The court shall set a date when the parties shall report to the court the total amount actually paid to class members. After the report is received, the court shall direct the defendant, by order entered on the record, to distribute the sum of any unpaid residue after the payment of approved class member claims, expenses, litigation costs, attorneys' fees, and other court-approved disbursements. Unless otherwise required by governing law, it shall be within the discretion of the court to approve the timing and method of distribution of residual funds and to approve the recipient(s) of residual funds, as agreed to by the parties, including nonprofit tax exempt organizations eligible to receive assistance from the indigent legal assistance fund under HRS section 607-5.7 (or any successor provision) or the Hawaii Justice Foundation, for distribution to one or more of such organizations.

## **Indiana**

### **Rule 23 (F) Disposition of Residual Funds.**

(1) "Residual Funds" are funds that remain after the payment of all approved class member claims, expenses, litigation costs, attorneys' fees, and other court-approved disbursements to implement the relief granted. Nothing in this rule is intended to limit the trial court from approving a settlement that does not create residual funds.

(2) Any order entering a judgment or approving a proposed compromise of a class action certified under this rule that establishes a process for identifying and compensating members of the class shall provide for the disbursement of residual funds, unless otherwise agreed. In matters where the claims process has been exhausted and residual funds remain, not less than twenty-five percent (25%) of the residual funds shall be disbursed to the Indiana Bar Foundation to support the activities and programs of the Indiana Pro Bono Commission and its *pro bono* districts. The court may disburse the balance of any residual funds beyond the minimum percentage to the Indiana Bar Foundation or to any other entity for purposes that have a direct or indirect relationship to the objectives of the underlying litigation or otherwise promote the substantive or procedural interests of members of the certified class.

## **Illinois**

### **Sec. 2-807. Residual funds in a common fund created in a class action.**

(a) Definitions. As used in this Section: "Eligible organization" means a not-for-profit organization that: (i) has been in existence for no less than 3 years; (ii) has been tax exempt for no less than 3 years from the payment of federal taxes under Section 501(c)(3) of the Internal Revenue Code; (iii) is in compliance with registration and filing requirements applicable pursuant to the Charitable Trust Act and the Solicitation for Charity Act; and (iv) has a principal purpose of promoting or providing services that would be eligible for funding under the Illinois Equal Justice Act. "Residual funds" means all unclaimed funds, including uncashed checks or other unclaimed payments, that remain in a common fund created in a class action after court-approved payments are made for the following: (i) class member claims; (ii) attorney's fees and costs; and (iii) any reversions to a defendant agreed upon by the parties.

(b) Settlement. An order approving a proposed settlement of a class action that results in the creation of a common fund for the benefit of the class shall, consistent with the other Sections of this Part, establish a process for the administration of the settlement and shall provide for the distribution of any residual funds to one or more eligible organizations, except that up to 50% of the residual funds may be distributed to one or more other nonprofit charitable organizations or other organizations that serve the public good if the court finds there is good cause to approve such a distribution as part of a settlement.

(c) Judgment. A judgment in favor of the plaintiff in a class action that results in the creation of a common fund for the benefit of the class shall provide for the distribution of any residual funds to one or more eligible organizations.

(d) State and its political subdivisions. This Section does not apply to any class action lawsuit against the State of Illinois or any of its political subdivisions.

(e) Application. This Section applies to all actions commenced on or after the effective date of this amendatory Act of the 95th General Assembly and to all actions pending on the effective date of this amendatory Act of the 95th General Assembly for which no court order has been entered preliminarily approving a proposed settlement for a class of plaintiffs.

(Source: P.A. 95-479, eff. 7-1-08.)

## **Louisiana**

### **RULE XLIII. CY PRES AWARD**

Section 1. For purposes of this rule, “Cy Pres Funds” shall refer to all funds that remain after the payment of all approved class member claims, expenses, litigation costs, attorneys’ fees and other court-approved disbursements to implement the relief granted. It shall not refer to any such remaining funds that are otherwise distributed by the parties through class settlement, including funds to be returned to one or more parties.

Section 2. In matters where the claims process has been exhausted and Cy Pres Funds remain, such funds may be disbursed by the trial court to one or more non-profit or governmental entities which support projects that will benefit the class or similarly situated persons consistent with the objectives and purposes of the underlying causes of action on which relief was based, including the Louisiana Bar Foundation for use in its mission to support activities and programs that promote direct access to the justice system.

Section 3. All disbursements of Cy Pres Funds made pursuant to this Rule shall be reported to the Office of the Judicial Administrator of the Louisiana Supreme Court.

[Enacted effective September 27, 2012]

## **Maine**

(f) Payment of Residual funds.

(1) “Residual funds” are those funds, if any, that remain after reasonable efforts to pay approved class member claims and make other approved disbursements, including any return of funds to the settling defendant, called for by a settlement agreement approved under subdivision (e) of this Rule.

(2) The parties may agree that residual funds be paid to an entity whose interests reasonably approximate those being pursued by the class. When it is not clear that there is such a recipient, unless otherwise required by governing law, the settlement agreement should provide that residual fees, if any, be paid to the Maine Bar Foundation to be distributed in the same manner as funds received from interest on lawyers trust accounts pursuant to M. Bar R. 6(a)(2)-(5).

## **Massachusetts**

(e) Disposition of Residual Funds.

(1) "Residual Funds" are funds that remain after the payment of all approved class member claims, expenses, litigation costs, attorneys' fees, and other court-approved disbursements to implement the relief granted. Nothing in this rule is intended to limit the

parties to a class action from suggesting, or the trial court from approving, a settlement that does not create residual funds.

(2) Any order, judgment or approved compromise in a class action certified under this rule that establishes a process for identifying and compensating members of the class may provide for the disbursement of residual funds. In matters where the claims process has been exhausted and residual funds remain, the residual funds shall be disbursed to one or more nonprofit organizations or foundations (which may include nonprofit organizations that provide legal services to low income persons) which support projects that will benefit the class or similarly situated persons consistent with the objectives and purposes of the underlying causes of action on which relief was based, or to the Massachusetts IOLTA Committee to support activities and programs that promote access to the civil justice system for low income residents of the Commonwealth of Massachusetts.

### **New Mexico**

1-023. Class actions.G. Residual funds to named organization.

(1) For purposes of Subparagraph (2) of this paragraph, "residual funds" are

(a) unclaimed funds, including uncashed checks and other unclaimed payments, that remain after payment of all approved class member claims, expenses, litigation costs, attorneys' fees, and other court-approved disbursements or dispositions to implement the relief granted, whether such payments are drawn from a common fund or directly from the judgment debtor's own funds; or

(b) if it is impossible or economically impractical to distribute the common fund to the class at all, the entire common fund after payment of all approved expenses, litigation costs, attorneys' fees, and other court-approved disbursements or dispositions to implement the relief granted, whether such payments are drawn from a common fund or directly from the judgment debtor's own funds.

(2) Either in its order entering a judgment or approving a proposed settlement of a class action certified under this rule that establishes a process for identifying and compensating members of the class or by a subsequent order entered when residual funds are determined to exist, the court shall provide for the disbursement of residual funds, if any, to one or more of the following entities:

(a) nonprofit organizations that support projects that benefit the class or similarly situated persons consistent with the goals of the underlying causes of action on which relief was based;

(b) educational entities that provide training, teaching and legal services that further the goals of the underlying causes of action on which relief was based;

(c) nonprofit organizations that provide legal services to low income persons;

(d) the entity administering the IOLTA fund under Rule 24-109 NMRA, to support activities and programs that promote access to the civil justice system for low income residents of New Mexico; and

(e) the entity administering the pro hac vice fund under Rule 24-106

NMRA, to support activities and programs that promote access to the civil justice system for low income residents of New Mexico.

(3) Nothing in this paragraph is intended to prevent the parties to a class action from proposing, or the trial court from approving, a settlement that does not create residual funds.

[As amended, effective July 1, 1995; December 4, 2000; as amended by Supreme Court Order No. 11-8300-016, effective May 11, 2011.]

## **North Carolina**

Article 26B. Distribution of Unpaid Residuals in Class Action Litigation.

§ 1-267.10. Distribution of unpaid residuals in class action litigation.

(a) It is the intent of the General Assembly to ensure that the unpaid residuals in class action litigation are distributed, to the extent possible, in a manner designed either to further the purposes of the underlying causes of action or to promote justice for all citizens of this State. The General Assembly finds that the use of funds collected by the State courts pursuant to this section for these purposes is in the public interest, is a proper use of the funds, and is consistent with essential public and governmental purposes.

(b) Prior to the entry of any judgment or order approving settlement in a class action established pursuant to Rule 23 of the Rules of Civil Procedure, the court shall determine the total amount that will be payable to all class members, if all class members are paid the amount to which they are entitled pursuant to the judgment or settlement. The court shall also set a date when the parties shall report to the court the total amount that was actually paid to the class members. After the report is received, the court, unless it orders otherwise consistent with its obligations under Rule 23 of the Rules of Civil Procedure, shall direct the defendant to pay the sum of the unpaid residue, to be divided and credited equally, to the Indigent Person's Attorney Fund and to the North Carolina State Bar for the provision of civil legal services for indigents. (2005-420, s. 1.)

## **Pennsylvania**

Title 231. Rules of Civil Procedure Part I. General Chapter 1700. Class Actions

Rule 1701. [Definition] Definitions. Conformity.

(a) As used in this chapter [.] [Class action-Any] “Class action” means any action brought by or against parties as representatives of a class until the court by order refuses to certify it as such or revokes a prior certification under these rules. “Residual funds” are funds that remain after the payment of all approved class members claims, expenses, litigation costs, attorney’s fees, and other court approved disbursements to implement relief granted.

(a) Except as otherwise provided in this chapter, the procedure in a class action shall be in accordance with the rules governing the form of action in which relief is sought.

Rule 1716. Residual funds.

(a) Any order entering a judgment or approving a proposed compromise or settlement of a class action that establishes a process for the identification and compensation of members of the class shall provide for disbursement of residual funds.

(b) Not less than fifty percent (50%) of residual funds in a given class action shall be disbursed to the Pennsylvania Interest on Lawyers Trust Account Board to support activities and programs which promote the delivery of civil legal assistance to the indigent in Pennsylvania by non-profit corporations described in Section 501 (c) (3) of the Internal Revenue code of 1986, as amended. The order may provide for disbursement of the balance of any residual funds in excess of those payable to the Pennsylvania Interest on Lawyers Trust Account Board to the Pennsylvania Interest on Lawyers Trust Account Board, or to another entity for purposes that have a direct or indirect relationship to the objectives of the underlying class action, or which otherwise promote the substantive or procedural interest of the members of the class.

### **South Dakota**

16-2-57. Settlement of class action lawsuit. Any order settling a class action lawsuit that results in the creation of a common fund for the benefit of the class shall provide for the distribution of any residual funds to the Commission on Equal Access to Our Courts. However, up to fifty percent of the residual funds may be distributed to one or more other nonprofit charitable organizations that serve the public good if the court finds there is good cause to approve such a distribution as part of the settlement. For the purposes of this section, residual funds are any funds left over after payment of class member claims, attorney fees and costs, and any reversions to a defendant agreed upon by the parties and approved by the court. This section does not apply to any class action lawsuit against the State of South Dakota or any of its political subdivisions.

**Source:** SL 2008, Ch 104, § 3.

### **Tennessee**

#### **RULE 23 CLASS ACTIONS 218 RULE 23.08: DISPOSITION OF RESIDUAL FUNDS.**

Any order entering a judgment or approving a proposed compromise of a class action certified under this rule may provide for the disbursement of residual funds. Residual funds are funds that remain after the payment of all approved: class member claims, expenses, litigation costs, attorneys' fees, and other court-approved disbursements to implement the relief granted. Nothing in this rule is intended to limit the parties to a class action from suggesting, or the trial court from approving, a settlement or order entering a judgment that does not create residual funds. It shall be within the discretion of the court to approve the timing and method of distribution of residual funds and to approve the recipient(s) of residual funds. A distribution of residual funds to a program or fund which serves the pro bono legal needs of Tennesseans including, but not limited to, the Tennessee Voluntary Fund for Indigent Civil Representation is permissible but not required. Upon motion of any party to a settlement or judgment of a class action certified under this rule or upon the court's own initiative, orders may be entered after an approved settlement or judgment to address the disposition and disbursement of residual funds in a manner consistent with this rule.

## **Washington**

### **RULE CR 23 CLASS ACTIONS (f) Disposition of Residual Funds.**

(1) "Residual Funds" are funds that remain after the payment of all approved class member claims, expenses, litigation costs, attorneys' fees, and other court approved disbursements to implement the relief granted. Nothing in this rule is intended to limit the parties to a class action from suggesting, or the trial court from approving, a settlement that does not create residual funds.

(2) Any order entering a judgment or approving a proposed compromise of a class action certified under this rule that establishes a process for identifying and compensating members of the class shall provide for the disbursement of residual funds. In matters where the claims process has been exhausted and residual funds remain, not less than twenty-five percent (25%) of the residual funds shall be disbursed to the Legal Foundation of Washington to support activities and programs that promote access to the civil justice system for low income residents of Washington State. The court may disburse the balance of any residual funds beyond the minimum percentage to the Legal Foundation of Washington or to any other entity for purposes that have a direct or indirect relationship to the objectives of the underlying litigation or otherwise promote the substantive or procedural interests of members of the certified class.

[Adopted effective July 1, 1967; amended effective January 3, 2006.]