

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FIRST ALBANY CORPORATION	:	
in its capacity as custodian for the benefit	:	
of EDWARD J. DAGUE;	:	
S.L. TEXTILE SALARIED EMPLOYEES	:	
BENEFIT TRUST; HERBERT	:	
ROSENBERG; ARNOLD E. COHEN;	:	
CAROL HANDELSMAN; and MARION	:	
S. KAPLAN TRUST; on behalf of	:	
themselves and all others similarly situated;	:	
Plaintiffs	:	
	:	
	:	CIVIL ACTION
v.	:	No. 86-7133
	:	
	:	
AMERICAN INTEGRITY	:	
CORPORATION; PAUL GANSKY;	:	
MARLYN GANSKY WOOL; ANTHONY	:	
M. SALVATORE; WAYNE C. KEAYS;	:	
ERNEST IANNUCCI; CHARLES F.	:	
LUDWIG; GRAEME K. HOWARD;	:	
Defendants.	:	

NORMA L. SHAPIRO, J.

DECEMBER 8, 2015

MEMORANDUM

Before the court is Plaintiff's Amended Motion for an Order Directing *Cy Pres* Distribution of Residual Settlement Funds.

The funds remain unclaimed from a settlement agreement entered into between plaintiffs, a nationwide class of American Integrity Corporation ("AIC") shareholders, and defendants, AIC and seven of its executives. Plaintiffs alleged AIC executives committed securities fraud by relying on adverse, nonpublic information to sell their own shares in the corporation. The settlement agreement created a net fund of \$5,350,000 for distribution to claimant shareholders; distributions were made in 1989 and 1996. A total of \$51,844.74 remains in the fund: \$3,296.57

not distributed to claimants and \$48,548.17 from checks distributed to claimants but not cashed.

The settlement agreement states “[i]n the event that all Authorized Claimants receive distributions equal to 100% of their market losses on all AIC shares purchased . . . and a portion of the Net Settlement Fund remains undistributed, Plaintiffs’ Lead Class Counsel shall petition the Court for an alternate plan of distribution of these excess funds.”

A district court has “three principal options for distributing . . . remaining [class-action settlement] funds—reversion to the defendant, escheat to the state, or distribution of the funds *cy pres*.” *In re Baby Prods. Antitrust Litig. (“Baby Products”)*, 708 F.3d 163, 172 (3d Cir. 2013).

This court will not order the funds to revert to the defendant, as “reversion to the defendant risks undermining the deterrent effect of class actions by rewarding defendants for the failure of class members to collect their share of the settlement,” *id.*, and the defendant corporation no longer exists.¹

Escheat to the state is potentially mandated by the Pennsylvania Disposition of Abandoned and Unclaimed Property Act, 72 P.S. § 1301.1 *et seq.* Under the Act, after sums payable on checks have been outstanding for three years,² they are presumed “unclaimed property” and must be reported and delivered to the Commonwealth of Pennsylvania. 72 P.S. §§ 1301.2, 1301.3(3), 1301.11, 1301.13. The State Treasurer must then publish notice in local newspapers within twelve months and, for owners of property worth \$250 or more, mail notice within nine months. 72 P.S. § 1301.12.

The Act applies to intangible property when the owner’s last known address is in

¹ AIC was placed in liquidation in 1993. Liquidation proceedings concluded in 2011.

² Before 2002 amendments, the period was seven years. *See* S.B. 1366, 185th Gen. Assemb., Reg. Sess. (Pa. 2002) (amending the 1982 Act).

Pennsylvania, 72 P.S. § 1301.2(2)(i),³ but the shareholder-claimants come from all over the United States.⁴ Determining whether each claimant’s state has an unclaimed property law, whether the law applies to uncashed checks from class action settlement awards,⁵ and how the law interacts with other states’ unclaimed property laws would be impracticable. Also, over a decade has passed since the funds should have been reported to the state and notice provided to the uncashed check owners. Notice from the Commonwealth would be less effective than it would have been a decade ago. The court will not order the funds distributed by escheat to the state.

To award *cy pres* funds, the recipient must use the funds “for a purpose related to the class injury.” *Baby Prods.*, 708 F.3d at 172.⁶ Plaintiffs’ lead class counsel originally proposed three organizations providing laudable legal representation to low-income clients; those clients

³ There are several other ways in which property could be covered by the Act, but, generally, the Act applies only to physical property in Pennsylvania and the intangible property of Pennsylvania residents and domiciliaries. 72 P.S. § 1301.2(1) & (2)(i)-(iv).

⁴ The named plaintiffs are from New York and New Jersey, and the amended complaint describes the class as “geographically dispersed throughout the United States.”

⁵ State courts and legislatures have provided little guidance on whether their unclaimed property laws require unclaimed class action settlement awards to escheat to the state. At least one state court has held its state’s unclaimed property law does not apply. *Highland Homes Ltd. v. State*, 448 S.W.3d 403 (Tex. 2014).

⁶ The *cy pres* concept originated in trust-and-estates law to preserve testamentary charitable gifts that otherwise would fail. *Baby Prods.*, 708 F.3d at 168 & n.2. The term comes from the Norman French *cy pres comme possible*, meaning “as near as possible.” *Id.* at 168. In the class-action context, the rationale of *cy pres* is to “preserve the deterrent effect, but . . . closely tailor the distribution to the interests of class members.” *Id.* at 172.

The *Baby Products* court also noted that *cy pres* awards in class action are “most appropriate where further individual distributions are economically infeasible” and “should generally represent a small percentage of total settlement funds.” 708 F.3d at 173-74. Because of the modest amount of remaining funds (less than 1% of the net settlement fund), the cost associated with additional notice and claims procedures, and the age of this action, these additional requirements are met.

are rarely security investors.

The court retains broad discretion in issuing orders dealing with procedural matters such as disposing of remaining class-action settlement funds. Fed. R. Civ. P. 23(d); *Van Gemert v. Boeing Co.*, 739 F.3d 730, 737 (2d Cir. 1984). The Settlement Agreement leaves disposition of remaining funds to the court's discretion, though it empowers plaintiffs' lead class counsel to propose a plan.

The court will award half the amount remaining from the net settlement fund to the Taxpayers Against Fraud Education Fund ("TAF"). TAF "work[s] to maintain the integrity and advance the effectiveness of whistleblower reward and private enforcement provisions in federal and state laws." *Who We Are*, TAXPAYERS AGAINST FRAUD EDUCATION FUND, www.taf.org/who-we-are (last visited Dec. 8, 2015). TAF supports whistleblowers reporting "violation[s] of federal securities laws." *SEC Whistleblowers*, TAXPAYERS AGAINST FRAUD EDUCATION FUND, www.taf.org/sec-whistleblowers (last visited Dec. 8, 2015). According to the Securities and Exchange Commission, from 2012 to 2015 hundreds of whistleblowers alleged insider trading and improper corporate disclosures, the same misconduct alleged in this action. *REPORT TO CONGRESS ON THE DODD-FRANK WHISTLEBLOWER PROGRAM*, U.S. SEC. & EXCH. COMM'N, App'x A (2015), www.sec.gov/about/offices/owb/annual-report-2015.pdf. TAF serves a purpose related to the class injury; reporting violations of federal securities law helps protect investors.

The court will award half of the amount remaining from the net settlement fund to the Council of Institutional Investors (CII), a "non-profit, nonpartisan association . . . with a focused policy mission: to be the leading voice for effective corporate governance practices for U.S. companies and strong shareholder rights and protections." *About Us*, COUNCIL OF INSTITUTIONAL

INVESTORS, www.cii.org/about_us (last visited Dec. 8, 2015); *see also Issues & Advocacy*, www.cii.org/issues_advocacy (last visited Dec. 8, 2015) (“Effective corporate governance is a system of checks and balances that fosters transparency, responsibility, accountability and market integrity. . . . [I]t is a bulwark against the risk of fraud, reckless behavior or other abuses.”). The CII’s work relates to the class injury; the organization protects securities investors from fraud and other malfeasance by corporate executives.

An appropriate order follows.

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ERNEST IANNUCCI; CHARLES F.	:	
LUDWIG; and GRAEME K. HOWARD;	:	
Defendants.	:	

ORDER

AND NOW, this 8th day of December, 2015, upon consideration of “Plaintiffs’ Amended Motion for an Order Directing *Cy Pres* Distribution of Residual Settlement Funds” and for the reasons set forth in the accompanying memorandum of today’s date, it is **ORDERED** that plaintiffs’ motion is **GRANTED**:

- a. The remaining funds, \$51,844.74, are to be distributed via *cy pres* to third parties to use the funds for a purpose related to class members’ interests.
- b. Plaintiffs’ lead class counsel shall deposit the remaining funds in the court’s registry.
- c. When the remaining funds have been deposited, the Clerk of Court shall **PREPARE** two checks, each in the amount of half the remaining funds (\$25,922.36), for the two *cy pres* recipients listed in the accompanying memorandum of today’s date:
 1. Taxpayers Against Fraud Education Fund, 1220 19th Street, NW, Suite

501, Washington, D.C. 20036;

2. Council of Institutional Investors, 888 17th Street NW, Suite 500,
Washington, DC 20006.

d. The Clerk of Court shall **DELIVER** these two checks to the court for distribution to the *cy pres* recipients.

/s/ Norma L. Shapiro

J.