INCREASING FUNDING FOR CIVIL LEGAL AID AND EXPANDING ACCESS TO JUSTICE THROUGH CLASS ACTION *CY PRES* AND OTHER COURT AWARDS

A Toolkit for Lawyers, Judges, and ADR Professionals



MASSACHUSETTS IOLTA
INTEREST ON LAWYERS TRUST ACCOUNTS

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From the IOLTA Committee

Everyone, regardless of their ability to pay for it, should have meaningful access to justice. While there has been real progress towards improving access to the courts and access to legal help, our reality still falls short of the ideal. Many Massachusetts residents cannot afford to hire a private attorney for critical legal issues that impact their basic needs, including child custody, housing, personal safety, access to healthcare, and more. Civil legal aid organizations work hard to provide legal information and representation at no cost to as many people as they can but insufficient funding forces Massachusetts organizations to turn away nearly half of eligible people who seek help.

The IOLTA Committee and the organizations that receive IOLTA funds depend on *cy pres* and other court awards to help close this justice gap. Created by the Supreme Judicial Court of Massachusetts in 1985, the IOLTA Committee works to improve the administration of justice and ensure that legal aid programs have the resources they need to address Massachusetts residents' unmet civil legal needs. ***Cy pres* and other residual court awards are vital sources of funding for the IOLTA Committee, which in turn supports over a hundred organizations across the Commonwealth each year.**

Under Massachusetts Rule of Civil Procedure 23, which controls class actions in state court, **the IOLTA Committee is an appropriate *cy pres* recipient in any class action and must receive notice of the proposed distribution of *cy pres* funds before a class action settlement or judgment is entered.** See *Matthew Ortins v. Lincoln Property Company* (SJC-13777 at p. 18, April 14, 2026). While there is no equivalent rule in federal court, the IOLTA Committee is also an appropriate *cy pres* recipient in many federal class actions.

This guide is designed for judges, ADR professionals, lawyers, and others involved in the Massachusetts legal system. It is intended to share information and best practices about how to increase access to justice by directing class action *cy pres* funds and other court awards to the IOLTA Committee or legal aid organizations. Together we can help Massachusetts uphold the promise of equal justice for all outlined in the Commonwealth's Constitution.

Thank you for your support.

For more information, contact Jenna Miara, Executive Director, Massachusetts IOLTA Committee at 617-723-9093 or jmiara@maiolta.org.

Cy Pres and Other Residual Funds

Cy pres – from the French expression "*cy pres* comme possible," meaning as near as possible – is a legal doctrine that originally referred to using a trust fund for its "next best use" when the trust's original purpose was no longer possible. **Today, *cy pres* commonly refers to residual funds left over from a class action lawsuit but it can also refer to funds from restitutions, settlements, penalties, and other matters such as bankruptcy and probate.** The *cy pres* doctrine allows the court to distribute unclaimed and residual funds to charitable organizations that benefit persons similarly situated to the plaintiffs or that advance access to justice more generally.

Class action lawsuits are often brought on behalf of consumers, workers, people with low incomes, and others with small claims who, acting on their own, would be unable to effectively assert a claim against large, institutional defendants. When class actions are successful, the benefit to each individual may be small but the benefit to the public at large is often significant.

Cy pres and other residual funds are created for many reasons. As the American Bar Association's 2016 resolution on residual awards makes clear, "before class action residual funds are awarded to charitable, nonprofit or other organizations, all reasonable efforts should be made to fully compensate members of the class, or a determination should be made that such payments are not feasible."[1] Despite best efforts, however, sometimes class members cannot be located, class members fail to cash checks, or a court may determine that awards to individual class members would be too small to provide a meaningful benefit to them. **When this happens, the residual funds can be put to their next best use in the form of a *cy pres* award to an organization that the court and the parties agree will serve the interests of the class members "as near as possible."**

Cy pres awards have become an important source of funding for legal aid and access to justice programs. They help organizations weather economic instability because *cy pres* awards are generally not impacted by overall economic conditions and therefore are critical to allowing legal aid programs to maintain services during economic downturns. **Legal aid and access to justice programs are appropriate recipients of *cy pres* awards in class actions because, no matter what the underlying issue is in the case, every class action is about access to justice for a group of litigants who on their own would not realistically be able to obtain the protections of the justice system.**

In Massachusetts, the Supreme Judicial Court has determined that the IOLTA Committee is an appropriate recipient of residual funds in any class action in state court. This determination is codified in Massachusetts Rule of Civil Procedure 23, and was reaffirmed in *Ortins* (SJC-13777, 2026). The IOLTA Committee and legal aid programs are also often appropriate *cy pres* recipients in federal class actions.

1 ls_atj_cypres.pdf (americanbar.org)

The Need in Massachusetts

Although the U.S. and Massachusetts Constitutions guarantee criminal defendants a right to counsel, in most civil cases, people do not have that right. Families in the Commonwealth with low or modest incomes are denied access to justice every day because they cannot afford an attorney to help them navigate the complex civil legal system. In 2022, the Legal Services Corporation released a national study of unmet legal needs, which found that Americans with low incomes living in the Northeast did not receive any or enough legal help for a staggering 88% of their civil legal problems.

The consequences of civil cases can be severe: people can lose their homes, health, safety, family, and financial stability in a civil case without ever having spoken to a lawyer. **Civil legal aid organizations work hard to ensure that all residents of Massachusetts have equal access to justice, which helps make our communities stronger, heathier, and more fair.** They provide free information, advice, and representation to people who otherwise would not receive help with serious civil legal issues related to housing, healthcare, employment, education, family law and domestic violence, disability, consumer protection, and elder abuse. Civil legal aid organizations are a central part of the Commonwealth's social safety net, not only providing direct help to people in crisis but also partnering with social services and government organizations to expand their reach and impact.

But legal aid programs face persistent funding shortages and increasing demand for services. **Due to insufficient funding, legal aid organizations in Massachusetts are forced to turn away nearly half of all eligible people seeking help.** The IOLTA Committee and the organizations that receive IOLTA funds depend on *cy pres* awards to help close that justice gap.

"Justice is not a commodity. It is the heartbeat of civil society. When access to justice is not available to all, we sever the basic tie that binds us: faith in fair and equal treatment under law."

- Supreme Judicial Court Chief Justice Margaret H. Marshall's address at the Massachusetts Bar Association's Annual Meeting on March 25, 2006



The Massachusetts IOLTA Committee – A Deserving Beneficiary

The Massachusetts IOLTA Committee, created by the Supreme Judicial Court in 1985, is one of the largest funding sources for civil legal aid programs in the Commonwealth. **The mission of the IOLTA Committee is to increase access to justice for all residents of the Commonwealth by supporting programs that provide civil legal help to residents with low and moderate incomes and by funding initiatives that improve the administration of justice.** The Massachusetts IOLTA Committee is a leader in the national IOLTA community and has an impeccable reputation among the Massachusetts legal community, including state, local, and affinity bar associations.

The majority of the IOLTA Committee's revenue comes from the interest earned on Massachusetts attorneys' pooled IOLTA accounts, where they hold short-term or modest client funds. The Committee also receives revenue from certain court fees, the voluntary Access to Justice attorney registration fee, *cy pres* and other residual awards, and undistributable IOLTA funds. These revenue sources are combined and distributed to the Massachusetts Legal Assistance Corporation, the Massachusetts Bar Foundation, and the Boston Bar Foundation. These three charities use the IOLTA funds to make grants to over a hundred non-profit organizations that provide legal information, advice, and representation to approximately 100,000 Massachusetts residents each year. Their clients include survivors of domestic violence, homeless families, people denied access to necessary health care services, victims of consumer fraud, and the elderly. **Since 1985, the IOLTA Committee has distributed more than $450 million.**

IOLTA funds are distributed to the following organizations:

MLAC
Massachusetts Legal Assistance Corporation

MASSBAR FOUNDATION

Boston Bar ASSOCIATION

Below is a small sample of the hundreds of regional and statewide programs that have received IOLTA funds. The most up-to-date list of recipients of IOLTA funds can be found in the Committee's annual report, available at www.maiolta.org.

Statewide

- **Massachusetts Advocates for Children**: Removes barriers to educational and life opportunities for children and youth.
- **Massachusetts Law Reform Institute (MLRI)**: Provides statewide advocacy and leadership to advance law and policies that support low-income people and communities.
- Veterans Legal Services: Promotes self-sufficiency, stability, and financial security for veterans in Massachusetts through comprehensive and accessible legal services.

Central/Western Region

- **Community Legal Aid**: Provides free civil legal assistance to residents of Central and Western Massachusetts.
- **Safe Passage**: Provides free legal assistance and emergency shelter to low-income survivors of domestic violence.

Greater Boston

- **De Novo Center for Justice and Healing**: Provides free direct legal services, community legal education, and affordable psychological counseling to people with low incomes.
- **Greater Boston Legal Services** (GBLS): Provides free legal assistance to low-income families and individuals, elders, and people with disabilities.
- **Justice at Work**: Provides legal services and training to workers in low-wage jobs.

Metro West

- **MetroWest Legal Services**: Provides free civil legal help to the poor, elderly, disabled, and other disenfranchised people to assist them in obtaining legal, social, and economic justice.
- **Housing Families, Inc.**: Provides free legal advice to help people with low incomes stay housed.

Northeast

- **Jeanne Geiger Crisis Center**: Provides free and reduced-fee legal services to low-income survivors of domestic violence.
- **Northeast Legal Aid**: Provides free civil legal services to low-income and elderly individuals and families in northeast Massachusetts.

South Coastal

- **CASA of Bristol County**: Recruits, trains, and supervises volunteer Court Appointed Special Advocates to zealously advocate for the best interest of vulnerable, at-risk children in the foster care system.
- **South Coastal Counties Legal Services**: Provides free civil legal services to residents with low incomes throughout Southeastern Massachusetts, Cape Code, and the Islands.

Cy Pres Rules and Case Citations

There is broad national and local support for directing *cy pres* awards to legal aid organizations and access to justice projects, such as those funded by the IOLTA Committee. The Conference of Chief Justices and Conference of State Court Administrators noted in their 2023 Resolution, "directing residual funds to legal aid organizations and related access to justice efforts furthers the purpose of class action lawsuits and the interests of the intended class action beneficiaries, regardless of the substantive legal issues in question, by expanding access to free and affordable legal representation, eliminating barriers that prevent litigants from using the court system to bring or defend legal claims, preparing courts to work more effectively for the self-represented litigants who comprise a growing share nationally of litigants in civil matters, and generally improving the administration of justice."[2]

Like the class action process itself, organizations that receive IOLTA funding strive to make justice a reality for people who otherwise would not be able to obtain it on their own. Because it does not file lawsuits or represent other parties in court, the IOLTA Committee is free from conflicts. In addition, *cy pres* funds directed to the IOLTA Committee will stay in Massachusetts and be shared equitably by organizations around the Commonwealth.

Low-income Americans did not receive any or enough legal help for 92% of their civil legal problems. They are forced to "go it alone" without legal representation in disputes where they risk losing their job, their livelihood, their home, or their children, or seek a restraining order against an abuser.

- Legal Services Corporation's 2022 Justice Gap Study

2 2023-CCJ-MY-Resolution-2_Cy-Pres.pdf

Cy Pres in Massachusetts State Court Class Actions: Mandatory Notice to the IOLTA Committee

Massachusetts Rule of Civil Procedure 23 outlines the requirements for bringing and maintaining a class action lawsuit in state court. Rule 23 contains important and mandatory provisions regarding residual funds. **No Massachusetts state court class action judgment or settlement that may result in residual funds may be entered without notice to the IOLTA Committee.**

The Supreme Judicial Court emphasized in ***Matthew Ortins v. Lincoln Property Company*** (2026):

1: Compliance with the notice requirement of Rule 23(e)(3) is "mandatory"

2: Delayed or missing notice to the Committee may be considered prejudicial

3: Trial courts should expressly confirm compliance with the *cy pres* provisions of Rule 23 before approving a settlement or entering judgment

Rule 23 permits the IOLTA Committee to receive residual funds in any class action and requires timely notice to the Committee.

- Rule 23(c): Before a class action that may create residual funds is dismissed or compromised, "[t]he court shall require notice to the Massachusetts IOLTA Committee for the purpose set forth in subdivision (e)(3) of this rule."
- Rule 23(e)(2): Recognizes the IOLTA Committee as an appropriate beneficiary of residual funds in any class action.
- Rule 23(e)(3): Requires notice and permits the IOLTA Committee to be heard "on whether it ought to be a recipient of any or all residual funds." Notice must be provided at least 30 days before entry of judgment or a settlement approval hearing (including a preliminary approval hearing).
- When notified, the IOLTA Committee will typically file a Notice of Non-Objection or, if necessary, a Request to Receive *Cy Pres* Funds, in advance of the approval hearing.

The required Rule 23 notice should be sent to Jenna Miara, the Executive Director of the IOLTA Committee by email at jmiara@maiolta.org or to her attention at the IOLTA Committee office at 18 Tremont Street, Suite 1010, Boston, MA 02108.

A Rule 23 fact sheet is attached as Appendix A and a sample notice is attached as Appendix B.

Cy Pres in Federal Court Class Actions

While there is no equivalent rule in federal court, Mass R. Civ. P. 23 is persuasive authority that the IOLTA Committee is an appropriate recipient of *cy pres* funds in federal class actions in Massachusetts. Moreover, legal aid and access to justice organizations are always appropriate *cy pres* recipients because their mission is consistent with the purpose of class action lawsuits and Federal Rule of Civil Procedure 23. No matter the underlying issue in the case, every class action is about access to justice for a group of litigants who on their own would not realistically be able to obtain the protections of the justice system.

Federal courts, including in Massachusetts, generally consider several factors when determining the appropriateness of a *cy pres* award[3]:

1. Compensation of class members should always come first, then distribution of remaining funds should be considered.
2. *Cy pres* award recipients should "reasonably approximate" the interests of the class.
3. *Cy pres* distributions should recognize the forum and the geographic make-up of the class.
4. Conflicts of interest and the appearance of impropriety should be avoided.

Applying these factors, Massachusetts federal courts have approved the IOLTA Committee as a recipient of *cy pres* funds in a variety of matters, including:

- ***Davies v. Raymours Furniture Company, Inc.***, No. 19-CV-11669 (wage and hour class action on behalf of employees who alleged they did not receive proper payment for overtime hours or hours worked on Sundays and holidays)
- ***Craw v. Hometown America, LLC***, No. 18-CV-12149 (consumer class action on behalf of residents of a manufactured housing community who alleged improper maintenance and dangerous conditions)
- ***Dexter Main v. Round Hill Investments, et al.***, No. 18-CV-11586 (alleged violations of Worker Adjustment and Retraining Notification Act)
- ***Boyajian v. California Products Corporation***, No. 10-CV-11849 (alleged ERISA violations related to termination and sale of stock of an Employee Stock Ownership Plan)
- ***In re Webloyalty.com Inc. Marketing and Sales Practices Litigation***, MDL No. 07-CV-01820; Lead Case No. 06-CV-11620 (alleged violations of the Electronic Funds Transfer Act, the Electronic Communications Privacy Act, and other consumer protection laws)
- ***In re Allaire Corporate Securities Litigation***, No. 00-CV-11972 (shareholders alleged violations of securities law)
- ***Grabowski v. Bank of Boston***, Nos. 94-CV-11461, 94-CV-12201 (investors alleged violations of the Uniform Commercial Code related to fraudulent withdrawals)

3 For a useful summary, see Boies, Wilber and Keith, Latonia, *Class Action Settlement Residue and Cy Pres Awards: Emerging Problems and Practical Solutions,* 21 VA.J.SOC.POL'Y & L. 267 (2014). The First Circuit addressed the procedural and substantive standards for distribution of *cy pres* funds in *In re Lupron Mktg. & Sales Practices Lit.*, 677 F.3d 21, 33 (1st Cir. 2012). See also *In re Pharmaceutical Industry Average Wholesale Price Litigation*, 588 F.3d 24 (1st Cir. 2009).

Practice Points & Tips for Structuring *Cy Pres* Awards in Judgments and Settlements

How can lawyers help?

- Consider whether there are likely to be residual or other funds that can be made available.
  - Even small amounts of *cy pres* help provide increased access to justice.
  - If all class members are identifiable and likely to receive their settlement funds, the parties can agree to set aside an additional amount or a defined percentage for a *cy pres* award.
  - If a national class action is litigated in federal court in Massachusetts, it may be appropriate to direct at least a portion of the award to the IOLTA Committee or a legal aid organization in Massachusetts.
  - Include monies remaining in a dispute fund – a set amount dedicated to resolving any issues that arise in the settlement administration – in a *cy pres* distribution.

- Raise the issue of *cy pres* or other residual funds early in settlement negotiations or with the court. Certain defendants may find the prospect of paying money to settle a case more palatable if some of the money will benefit a non-profit organization.

- Note that the IOLTA Committee is often an uncontroversial *cy pres* recipient because it does not file lawsuits or represent other parties and is thus free from conflicts and because it distributes funding to organizations all over Massachusetts.

- In class action settlements involving monetary payments, provide for a *cy pres* distribution of settlement funds that cannot be distributed to class members even when counsel is not certain at the time of negotiations whether any residual funds will remain.

- In Massachusetts state court:
  - If there is any question whether the IOLTA Committee may object to the proposed *cy pres* or other residual funds recipient(s), reach out to the Committee before finalizing the settlement agreement.
  - Provide notice to the IOLTA Committee of the proposed *cy pres* recipient as soon as practicable and at least **30 days prior to the preliminary hearing** approving a settlement that may create *cy pres* funds and certify compliance per Mass. R. Civ. P. 23(e) at least 10 days in advance.

- Consider publicizing the *cy pres* award as a way for counsel and the parties to demonstrate their commitment to the public interest.

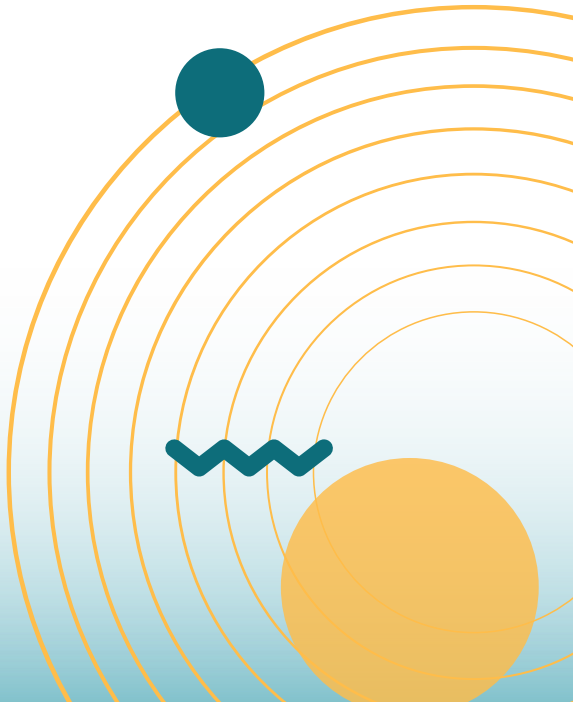
How can judges and ADR professionals help?

- Ensure compliance with Mass. R. Civ. P. 23, including the required notice to the IOLTA Committee in Massachusetts state court actions.
- Encourage parties to provide for a *cy pres* recipient even when it is not certain that any residual funds will remain.
- Look for appropriate opportunities to designate the IOLTA Committee or legal aid programs as recipients of *cy pres* awards or other residuals.
- Talk with others in the legal community about the critical role *cy pres* awards play in supporting civil legal aid and access to justice programs in Massachusetts.

How can legal aid providers help?

- Talk with class action and defense-side lawyers, including local and affinity bar associations, and ask your organization's Board members and pro bono lawyers to help spread the word about the importance of *cy pres* awards.
- Include information about *cy pres* and other residual funds and how they benefit clients in your communications and on your website. Look for opportunities to share *cy pres* information in local and special purpose legal publications.
- Recognize and celebrate the receipt of *cy pres* funds to support your critical work, with permission from counsel and parties.

Every class action is about access to justice for a group of litigants who on their own would not realistically be able to obtain the protections of the justice system.



Rule 23 Class Action Residuals & Mandatory Notice to IOLTA Committee: Expanding Access to Justice with *Cy Pres*

Mass. R. Civ. P. 23 outlines the requirements for class action lawsuits. Such suits often end with funds that cannot be distributed to class members and Rule 23 contains several important and mandatory provisions about these residual or "cy pres" funds. **No Massachusetts state court class action judgment or settlement that may result in residual funds may be entered without notice to the IOLTA Committee.**

The Massachusetts IOLTA Committee funds organizations that provide civil legal help to individuals and families who cannot afford a lawyer and projects that improve the administration of justice across the Commonwealth. Like class actions themselves, organizations that receive IOLTA funding seek to provide broad access to justice. *Cy pres* funds are a critical component of IOLTA funding.

The Supreme Judicial Court emphasized in *Ortins v. Lincoln Property Company* (2026) that the Committee's right to notice and an opportunity to be heard are "integral to the rule" and that **compliance with Rule 23(e)(3) is "mandatory."**

Important Reminders:

- **The IOLTA Committee is an appropriate cy pres recipient in *any* class action** and has standing to be heard on whether it should be the recipient of any or all residual funds. Rule 23(e)(2), (3).
- **Plaintiff must notify the IOLTA Committee at least 30 days before preliminary approval** of a class action settlement that may create residual funds and certify to the court that notice was provided. Rule 23(e)(3), Reporter's Notes (2023).
- When notified, the IOLTA Committee will typically file a Notice of Non-Objection or, if necessary, a Request to Receive *Cy Pres* Funds, in advance of the approval hearing.



Please contact Jenna Miara at the IOLTA Committee with any questions:
jmiara@maiolta.org or **(617) 963-3903**.

updated November 2026

APPENDIX B – SAMPLE NOTICE TO IOLTA COMMITTEE

Law Firm

December 15, 2025

By Email to jmiara@maiolta.org
Jenna Miara, Executive Director
Massachusetts IOLTA Committee
18 Tremont Street, Suite 1010
Boston, MA 02108

Re: Notice of Proposed *Cy Pres* Designee in *Plaintiff v. Defendant*, Suffolk Superior Court, Case No. 1234cv0011

Dear Ms. Miara:

Pursuant to Mass. R. Civ. P. 23, I am writing to notify the Massachusetts IOLTA Committee regarding the designation of a *cy pres* organization in a proposed settlement.

The parties in *Plaintiff v. Defendant*, Suffolk Superior Court, Case No. 1234cv0011, have agreed to resolve the claims Plaintiff asserted in the matter on a class basis. The Parties' agreement requires that the entirety of the net settlement fund be distributed to claiming class members, with no unclaimed funds reverting to the Defendant. Any residual funds remaining after distribution together with any amount remaining in the Dispute Fund will be paid to the Massachusetts IOLTA Committee. A copy of the settlement agreement is attached hereto.

The Court will hold a preliminary settlement approval hearing on January 30, 2026, at 2:00 p.m. Please call with any questions or concerns.

Sincerely,
Attorney

Enclosure

APPENDIX C – SAMPLE *CY PRES* LANGUAGE

*These are merely guides. Each case is unique and courts have broad discretion regarding *cy pres* distributions.

Settlement Agreement Example

- Subject to Court approval [if in state court: and subject to Class Counsel giving notice to the Massachusetts IOLTA Committee pursuant to Mass. R. Civ. P. 23], the Gross Settlement Amount remaining after distribution pursuant to this Agreement due to the failure of class members to negotiate settlement checks or any other reason – i.e., the residual – together with any amount remaining in the Dispute Fund will be turned over to the designated *cy pres* recipient, the Massachusetts IOLTA Committee. Within ten (10) days of expiration of the settlement checks, the Administrator shall wire the residual amount to the Massachusetts IOLTA Committee.

Motion for Preliminary Approval Example

- **No Reversion and *Cy Pres* Distribution**: None of the settlement funds will flow back to Defendant. There will be a Dispute Fund to address any issues that may arise concerning class administration and distribution. *See* Settlement Agreement. Any amounts remaining in the Dispute Fund, together with the funds from any class members who do not cash their check and any other amounts remaining in the settlement fund, will be distributed as a *cy pres* distribution to the Massachusetts IOLTA Committee. [If in state court: As required by Mass. R. Civ. P. 23, notice of the proposed *cy pres* recipients was provided to the Massachusetts IOLTA Committee on X date.]

Approval Order Example *Note: Many orders simply incorporate the entire Settlement Agreement, e.g.: "The Settlement Agreement is incorporated fully herein by reference. The definitions used in the Settlement Agreement are adopted in this Order and shall have the same meaning ascribed in the Settlement Agreement."

- [If in state court: Pursuant to Mass. R. Civ. P. 23, notice of the proposed distribution of residual funds was provided to the Massachusetts IOLTA Committee and the IOLTA Committee filed its Notice of Non-Objection on X date.] The Court approves the parties' recommendation that any class member payments that remain unclaimed after 90 days together with any amount remaining in the Dispute Fund and in the Settlement Fund be paid to the Massachusetts IOLTA Committee as the *cy pres* recipient.