

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF PUERTO RICO

3  
4 IN RE:

5 SAN JUAN DUPONT PLAZA HOTEL  
6 FIRE LITIGATION

MASTER FILE

MDL-721  
Civil No. 87-0006 (RLA)

7  
8 **ORDER NO. 749**  
9 **IN THE MATTER OF FINAL DISPOSITION OF UNCLAIMED FUNDS**

10 After twenty years since the final distribution was effected in  
11 these proceedings, the time has come for the Court to dispose of the  
12 settlement funds that have gone unclaimed in this litigation. These  
13 funds are derived from several prior settlement fund distributions  
14 carried out by the Court during the past 18 years,<sup>1</sup> which have  
15 remained unclaimed despite numerous efforts by the Court and counsel  
16 to identify corresponding plaintiff recipients.<sup>2</sup>

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20 <sup>1</sup> See, e.g., Order No. 346, In the Matter of the First  
21 Distribution of the Settlement Award (docket No. 17022); Order No.  
22 348, In the Matter of Clarification of Order No. 346 (docket No.  
23 17046); Order No. 364, Approving Distribution Reports and Ordering  
24 Distribution of Plaintiffs' Awards... (docket No. 17178); Order No.  
25 685, Approving PSC Report of Reserve Accounts and Order for Final  
26 Distribution (docket No. 19414).

<sup>2</sup> See Order No. 743 Authorizing Publication of Notice Regarding  
Unclaimed Funds (docket No. 19512). See also, Order No. 680, In the  
Matter of Missing Plaintiffs (docket No. 19409); Order No. 671, In  
the Matter of Newspaper Ads to Locate Missing Plaintiffs (docket No.  
19388), Order No. 647 In the Matter of Settlement Distribution  
Confirmation Forms (docket No. 19323).

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3 It is not uncommon at the conclusion of a mass tort litigation  
4 action to have funds leftover, which, for a number of reasons, cannot  
5 be distributed to the parties entitled to them because these  
6 plaintiffs or their heirs simply cannot be located. In such  
7 instances, the responsibility falls on the Court to direct the  
8 disposition of these funds.

9 In ordering distribution of unclaimed funds, the courts rely on  
10 their general equity power or on what is commonly referred to as the  
11 *cy pres* doctrine.

12 "The *cy pres* doctrine originated in the common law as a method  
13 of fairly distributing a trust fund, the original purpose of which  
14 failed in some respect. The term *cy pres* derived from the Norman  
15 French term '*cy pres comme possible*' which means 'as near as  
16 possible.' Under the *cy pres* doctrine, once a trust fund's original  
17 purpose fails, the fund is to be distributed to the 'next best' use."  
18 Kevin M. Forde, *What Can a Court Do With Leftover Class Action Funds?*  
19 *Almost Anything!* 35 No. 3 Judges' J.19 (1996) (internal citations  
20 omitted).

21 Courts have claimed broad discretion in determining how to  
22 satisfy the "next best" use criteria. *Id.* Indeed, federal and state  
23 courts have distributed unclaimed funds to educational institutions  
24 or charities, legal assistance foundations, law schools, law

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3 libraries, as well as public awareness and environmental law  
4 programs.<sup>3</sup>

5 Although the prospect of undistributed funds raises the  
6 possibility that these monies should "escheat" to the federal  
7 government as unclaimed property, some courts, faced with analogous  
8 situations, have found escheat laws inapposite, and concluded that  
9 courts of equity may dispose of funds in a fair manner without being  
10 compelled to utilize the federal statutes. See, e.g. Van Gemert v.  
11 Boeing Co., 739 F.2d 730, 735 (2d Cir. 1984). The *Van Gemert* court  
12 explained:

13 We hold that [28 U.S.C.] § 2041 does not limit the  
14 discretion of the district court to control the unclaimed  
15 portion of a class action judgment fund. Whether the money  
16 has been paid into the court or whether an alternative  
17 method of administering payment is used, the money held is  
18 within this court's jurisdiction and subject to the court's  
19 order... The statutes referred to do not control when a  
20 court fashions a plan for distributing unclaimed funds.

21 The *Van Gemert* court further noted that "the critical  
22 determining factor... is that trial courts are given broad  
23 discretionary powers in shaping equitable decrees. Equitable remedies  
24 are a special blend of what is necessary, what is fair, and what is  
25 workable."

26 *Id.* at 737 (Citations, quotation marks and brackets omitted).

Another *cy pres* method of distributing excess funds calls for  
their disposition by judicial resolution, after application and

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<sup>3</sup> A comprehensive list of the various and mixed disposition of  
unclaimed trust funds can be found in Forde, *supra* at 21 to 23.

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2 suggestions to the court by interested persons or parties, allowing  
3 thereby for the creation of a flexible, equitable remedy. This method  
4 allows the court to avoid the high costs associated with  
5 administering and distributing the trust funds once it is clear that  
6 the original purposes of the fund cannot be realistically achieved.  
7 This is what we propose to do today.  
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9 It is perfectly plain to the Court that since the Dupont fire  
10 took place in 1987, it would be impossible, as a practical matter,  
11 to track down all the plaintiffs and attempt to make some sort of *pro*  
12 *rata* distribution of the excess funds, since the costs entailed  
13 would consume a substantial quantity of the monies. On the other  
14 hand, providing disbursement of the residual monies to established  
15 charitable organizations, including those devoted to improvements in  
16 the administration of justice, provides a flexible, equitable remedy.

17 Thus, we conclude that, while use of funds for purposes closely  
18 related to their origin might be the best application, the *cy pres*  
19 doctrine and the courts' broad equitable powers now permit use of  
20 these funds for other public interest purposes by either educational,  
21 charitable, or other public service organizations, both for current  
22 programs or to constitute an endowment and source of future income  
23 for long-range programs. The court is fully aware of the advantages  
24 of having endowment income to supplement current contributions to  
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3 finance charitable operations.<sup>4</sup> We have before us a submission and  
4 application from such an organization, the Animal Legal Defense  
5 Fund.<sup>5</sup>

6 Because the Court believes the monies could be used for a truly  
7 worthy cause rather than continue to lie fallow, the Court hereby  
8 APPROVES a *cy pres* distribution of the funds remaining unclaimed as  
9 of date to the Animal Legal Defense Fund, a charitable organization,  
10 to continue its work of protecting the lives and advancing the  
11 interests of animals through the legal system by focusing on the  
12 following organizational goals:

- 13 • providing pro bono assistance to prosecutors and law  
14 enforcement handling cruelty cases;
- 15 • working to strengthen anti-cruelty laws at the federal,  
16 state, territorial and local level;
- 17 • providing public education through seminars, workshops,  
18 resources, and other outreach efforts;
- 19 • promoting and encouraging the future of animal law through  
20 student animal law chapters, and coordinating scholarships,  
21 clerking and internship and grant opportunities for law  
22 students and legal professionals alike;

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24 <sup>4</sup> See Superior Beverage Co. V. Owens-Illinois, Inc., 827 F.Supp.  
25 477, 479-80 (N.D. Ill. 1993).

26 <sup>5</sup> See letter dated August 13, 2009, attached hereto as Exhibit  
A.

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- 3 • filing groundbreaking lawsuits to stop animal abuse and  
4 expand the boundaries of animal law.

5 Based on the foregoing, and since the parties to this action  
6 have received proper notice through Order No. 743, issued on July 28,  
7 2009 (docket No. 19512), the Clerk of the Court is hereby directed  
8 to issue a check in the amount of **\$126,977.49**, corresponding to the  
9 total of the unclaimed funds in this case, to the Animal Legal  
10 Defense Fund and mail it to their address: 170 East Cotati Avenue,  
11 Cotati, California 94931, accompanied with a copy of this Order and  
12 a written acknowledgment to be signed by its Chairperson or Executive  
13 Director. The duly signed written acknowledgment is to be returned  
14 and filed with the Court no later than **February 10, 2010**. Acceptance  
15 of the distribution shall constitute an undertaking by the Animal  
16 Legal Defense Fund to use the funds in the manner proposed to the  
17 Court and summarized in this Order.<sup>6</sup>

18 IT IS SO ORDERED.

19 San Juan, Puerto Rico, this 31<sup>st</sup> day of December, 2009.

20  
21 S/Raymond L. Acosta  
22 RAYMOND L. ACOSTA  
23 United States District Judge

24 <sup>6</sup> See generally, In re: Motorsports Merch. Antitrust Litig. 161  
25 F.Supp.2d 1329 (N.D. Ga. 2000) (cy pres distribution of excess funds  
26 made to several charities, including Make-a-Wish Foundation; the Red  
Cross; the Lawyers' Foundation of Georgia; Kids' Chance; and the  
Susan G. Komen Breast Cancer Foundation, among others).