

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
IN AND FOR THE COUNTY OF MULTNOMAH

STEVEN SCHARFSTEIN, individually and  
on behalf of all similarly situated persons,  
Plaintiffs,

Case No. 1112-17046

vs.

**FINDINGS OF  
FACT, CONCLUSIONS OF LAW  
REGARDING *CY PRES*  
DISTRIBUTION OF UNCLAIMED  
DAMAGES**

BP WEST COAST PRODUCTS, LLC, a  
Delaware limited liability company,  
Defendant.

THIS MATTER came before the Court in hearings on multiple days, starting in April, 2015 and culminating in November, 2015. Plaintiff appeared through his attorneys, David Sugerman, Tim Quenelle and Amy Johnson. Defendant appeared through its attorneys, Brad S. Daniels, David Harris and Abby Risner. Based on the argument and presentations by counsel, the testimony of nine witnesses, the pleadings, documents and evidence presented, the Court makes the following findings of fact and conclusions of law.

**I. Findings of Fact**

**A. Background**

1. In this class action lawsuit, filed December 29, 2011, Plaintiff Scharfstein and the Class (hereinafter "the Class") alleged that Defendant BP West Coast Products, LLC ("Defendant" or "BPWCP") violated the Unlawful Trade Practices Act.

2. After a pretrial notice program, that met the requirements of ORCP 32 and due process, this action was tried to a jury from January 14, 2014 to February 4, 2014. The jury

1 returned a verdict of liability for statutory damages under ORS 646.638(1) and ORS  
2 646.638(8)(a) on January 31, 2014 and a verdict in favor of Defendant on punitive damages  
3 under ORS 646.638(8)(b) on February 4, 2014.  
4

5 3. The class consists of 2,048,941 individuals.

6 4. After accounting for co-account holders, opt-outs, and validated claims, 1,716,229  
7 total individuals have made a claim in this case. (Fourth Declaration of Charles Marr GJ 10.)  
8

9 5. After the first and supplemental claims process, 330,271 class members had not  
10 filed a claim or opted out of the lawsuit (2,048,941 total class, less 1,716,229 making a claim,  
11 less 2,441 opt outs).

12 6. The amount of damages awarded to but not claimed by 330, 271 class members in  
13 this case (hereinafter "*cy pres* funds") is \$66,054,200 plus interest, or \$200 for each of the  
14 330,271 class members who did not make a claim.  
15

16 7. On March 4, 2015, legislative amendments to ORCP 32 O took effect. Those  
17 amendments required that at least half of unclaimed class action damages be paid to Oregon  
18 Legal Services and the remainder to "any entity for purposes that the court determines are  
19 directly related to the class action or directly beneficial to the interests of class members." ORCP  
20 32 O.  
21

22 8. Prior to the enactment of ORCP 32 O, defendant was liable to the class for the  
23 entire judgment in this case, or 2,048,941 class members each receiving \$200, worth  
24 \$409,788,200 plus interest. ORCP 32 O did not in any way change the \$409,788,200 plus  
25 interest total liability of defendant.  
26

27 9. ORCP 32 O addresses funds for which liability has been established but which  
28 have not been claimed. Instead of those unclaimed funds being returned to the defendant, ORCP

1 32 O requires that the court award unclaimed funds at least half to legal services in Oregon, and  
2 the remainder to any entity for “purposes directly related to the class action or directly beneficial  
3 to the interests of class members.”  
4

5 10. After extensive briefing and argument, the Court held that the amendments to  
6 ORCP 32 O were constitutional and applicable to this case.

7 11. The Court heard multiple days of testimony presented by Class counsel from state  
8 and national experts regarding the appropriate entity to receive half or less of the *cy pres* funds  
9 for purposes directly related to the class action or directly beneficial to the interests of class.  
10 Those experts include Judith Baker, Director of the Legal Services Programs for the Oregon  
11 State Bar; Justin Baxter, a private-bar Portland consumer lawyer; Curtis Bridgman, Dean of the  
12 Willamette University College of Law; Arthur Bryant, Chair of the national non-profit law firm  
13 Public Justice; Sandy Hansberger, Executive Director of the Oregon Campaign for Equal Justice;  
14 Jennifer Johnson, Dean of the Lewis and Clark Law School; Michael Moffitt, Dean of the  
15 University of Oregon Law School, Will Ogburn, Executive Director of the National Consumer  
16 Law Center; Emily Reiman, Executive Director of the Neighborhood Economic Development  
17 Corporation of Eugene; the Hon. Henry Kantor, Multnomah County Circuit Judge; Max  
18 Williams, President and Chief Executive Office of the Oregon Community Foundation; and  
19 James White, the Executive Director of the Nonprofit Association of Oregon.  
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23 12. One of the Class' witnesses, Mr. Arthur Bryant, chair of the national nonprofit,  
24 Public Justice, testified as a consumer expert and also an expert on *cy pres* awards. *Cy pres*  
25 awards have been a focus of Mr. Bryant's research and litigation. He has spoken nationally about  
26 *cy pres* awards and presented a webinar about them. Arthur Bryant, Tr. 13, 1. 24 - p. 14, 1. 4  
27 (Sept. 21, 2015). His organization Public Justice has received *cy pres* awards, participated in  
28

1 cases recommending the award of *cy pres* funds to other organizations, and objected to *cy pres*  
2 awards. *Id.* at p. 14, n. 7-12. Public Justice has even refused to accept *cy pres* awards when the  
3 organization believed the funds could be distributed to class members. *Id.* at p. 14, 11. 12-19.  
4

5 13. Mr. Bryant explained the purpose of *cy pres* awards is three-fold: “One is to hold  
6 the defendant accountable for whatever it did; two, to deter the defendant and similarly situated  
7 others from violating the law in the future in this way; and third, to compensate, if possible, to  
8 provide relief the class members, if possible.” *Id.* at p. 22, 11. 16-20.  
9

10 14. Mr. Bryant delineated the roles of the parties in a *cy pres* hearing. “The question  
11 is where does the money go. And there it's the plaintiff's counsel who's got to represent class  
12 interests and the Court's job to make sure the plaintiff counsel and the class reps do their jobs.  
13 And the defense counsel of course to make sure the defendants, try to make sure the defendant's  
14 interests are represented appropriately but not in terms of having a say where the money should  
15 go. Because it's not its money. It's now the class members' money. But the class members can't  
16 get the money. So it's how do you best serve the interests of the class members otherwise.” *Id.* at  
17 p. 25, 11.4 -15.  
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### 21 **B. One-half of *Cy Pres* Funds, to the Oregon Legal Services Program**

22 15. As required by ORCP 32 O, one-half of the *cy pres* funds, presently estimated to  
23 be in excess of \$33 million, is awarded to the Oregon State Bar, dedicated for payment to the  
24 Oregon Legal Services Program, established by ORS 9.572. The payment process for these funds  
25 is described in the *Cy Pres* Plan of Distribution (“Plan”) attached to this Order as Exhibit A, and  
26 incorporated herein.  
27  
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1           16.     Although ORCP 32 O allows the court to award more than half the *cy pres* funds  
2 to the Oregon Legal Services Program, David Thornberg, Executive Director of the Oregon Law  
3 Center, declared that providing more than half of the *cy pres* remainder to legal services would  
4 not increase the number of low-income Oregonians eligible for legal services. Dec. of David  
5 Thornberg, p. 4, para. 9, Plaintiffs Motion to Adopt Proposed Allocation of Proposed  
6 Unclaimed Funds, July 8, 2015. Mr. Thornberg concluded that low-income persons “would  
7 benefit from having a large number of entities working on consumer issues in Oregon.” *Id.* at  
8 para. 10.  
9

10  
11           17.     Judith Baker of Oregon Legal Services testified that because the class consisted of  
12 more than those who can receive assistance from legal services, the *cy pres* funds not awarded  
13 for legal services, “would be spent for consumer protection services for those other people who  
14 do not fall into the low-income categories.” Testimony, Judith Baker, Tr. 107,11. 1-3 (Aug. 25,  
15 2015).  
16

17           18.     Ms. Baker testified that Oregon Legal Services would use the *cy pres* funds from  
18 this case to build a “sustainable system” that lasts many years and that would provide more  
19 access to justice for low-income Oregonians. *Id.* at 97-99.  
20

21           19.     Provision of *cy pres* funds to a legal services program has precedent. The largest  
22 comparable award to a northwest legal services entity to date is an \$8,000,000 *cy pres* award in  
23 the state of Washington. *Id.* at 105.

24           **C. One-half of Cy Pres Funds to Advance the Interests of Consumers in Oregon**

25           20.     Class counsel has filed multiple plans and elicited many days of testimony and  
26 evidence, proposing how to effectuate ORCP 32 O.  
27  
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1           21.     ORCP 32 O requires that unclaimed funds be awarded to “any entity” for  
2 purposes that are either “directly related to the class action or directly beneficial to the interests  
3 of class members.” ORCP 32 O.  
4

5           22.     The jury and the Court concluded that class members in this case were unfairly  
6 and illegally charged a debit card fee at Oregon ARCO and *am/pm* gas stations in violation of  
7 Oregon regulations and the Oregon Unfair Trade Practices Act. This case involves consumer  
8 protection and protects consumer interests in Oregon.  
9

10          23.     Class members who have not claimed their funds would benefit from the  
11 expenditure of those unclaimed funds in a way that advances consumer protection in Oregon.  
12 Class members who have not made a claim would benefit from an expenditure of unclaimed  
13 funds for consumer protection including, without limitation, advocacy in all forms (including  
14 state and federal litigation in multiple venues, legislative advocacy and regulatory advocacy),  
15 research (not limited to legal research) and education (including direct consumer education and  
16 legal CLEs) targeted at consumer protection in Oregon. Consumer protection is interpreted to  
17 the fullest extent possible, including without limitations, areas such as securities and investment  
18 fraud, cyber fraud and cybercrime, insurance fraud, antitrust law, and trade regulation.  
19

20          24.     Alternatively, and simultaneously, an award of unclaimed funds as proposed in  
21 the Plan, attached as Exhibit A and incorporated into this Order by reference, also “is directly  
22 related to the class action,” as the funds will allow ongoing private enforcement of the UTPA,  
23 advocacy to prevent future violation of unfair trade practices, education of consumers of their  
24 rights in Oregon, and efforts to strengthen laws and regulations such that unfair practices like  
25 those in this litigation do not occur again.  
26  
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1           **D. No Existing Oregon Nonprofit has the Capacity to Fulfill the Requirement of**  
2           **ORCP 32 O**

3           25.     Mr. James White, the Executive Director of the Nonprofit Association of Oregon,  
4 reviewed the data on Oregon's 17,000 nonprofit organizations, determining first whether they  
5 were registered to work on consumer protection issues and next whether they had the “ability to  
6 actuate the stewardship of those [*cy pres*] funds over time.” James White, Tr. 311, 11. 1-2 (Sept.  
7 22,2015).  
8

9           26.     Mr. White further analyzed whether any nonprofits in Oregon had, “the capacity  
10 to absorb the potential funds that are available.” *Id.* Tr. 308, 11. 17-18. He explained that, “an  
11 organization that has about a million dollars annual revenue would be really stretching their  
12 ability to take on half again of their annual revenue to be able to do that work year after year.” *Id.*  
13 at Tr. 311, 11. 9-12.  
14

15          27.     Mr. White found eight non-profits registered in Oregon that identify consumer  
16 advocacy as part of their mission, of which only one is an Oregon corporation: OSPIRG, Oregon  
17 State Public Interest Research Group. *Id.* at Tr. 312, n. 21-22.  
18

19          28.     OSPIRG's annual budget of \$1.3 million means that its “absorptive capacity,” or  
20 the amount of funds it could effectively use each year, is only \$400,000 to \$500,000 per year.  
21 *Id.* at Tr. 313, 11. 17-23.

22          29.     OSPIRG does not have the capacity to effectively use the *cy pres* funds in this  
23 case for the benefit of the class.  
24

25           **E. Need to Create a Non-Profit Entity to Benefit the Class**

26          30.     Multiple witnesses testified that founding a new nonprofit dedicated to consumer  
27 protection in Oregon would fulfill the requirements of ORCP 32 O.  
28

1           31.     Mr. White supported the use of *cy pres* funds to task an established organization  
2 like the Oregon Community Foundation to, “gradually work ... to build the capacity of an entity  
3 to be able to meet the needs of the class.” *Id.* at Tr. 322, n. 20-23.  
4

5           32.     Will Ogburn, the Executive Director of the National Consumer Law Center,  
6 explained that, “most consumer protections really come at the state level.” Will Ogburn, Tr. 272,  
7 11. 1-2 (Sept. 22, 2015). Mr. Ogburn testified that, “institutionalizing an organization that  
8 focuses [on] consumer protection and consumer laws in a dynamic sense\*\*\*is really very  
9 important.” *Id.* at 11.21-25.  
10

11           33.     Mr. Arthur Bryant, the chair of the national public interest law firm, Public  
12 Justice, concluded, “My view is that the money should be used to create an organization with  
13 guidelines for its activities to advance consumer rights in Oregon or I should say the rights of  
14 consumers in Oregon.” Arthur Bryant, Tr. 37,11. 16-19 (Sept. 21,2015).  
15

16           34.     Mr. Bryant testified that other organizations have been created by the use of *cy*  
17 *pres* awards, including the organization Equal Justice Works, which was created with a \$3.1  
18 million *cy pres* award in 1992. *Id.* at p. 41, 11. 12-18. Equal Justice Works has grown as an  
19 organization and now has an \$18 million annual budget. *Id.* at p. 49, 11. 9-10.  
20

21           35.     In describing the organization he would recommend be created using the *cy pres*  
22 funds in this case, Mr. Bryant explained, “I believe it would be critical or at least ideal for this  
23 organization to be able to advance consumer protection, have a staff to work to advance  
24 consumer protection in Oregon itself, to do investigation in the community, research into what  
25 the problems are, figure out where they want to not only spend the money with others, but what  
26 needs to be done that no one's proposing to do that needs to be done and then hire and pay staff  
27 to do that, to do advocacy both in terms of regulations and legislation, to do litigation, to do  
28



1 public education, to basically do enforcement and to look at what are the real problems that  
2 consumers are facing. What are the holes in the marketplace? Some is being taken care of by the  
3 marketplace, and that we have learned will change over time. But if there are huge problems and  
4 the private bar won't do it because it won't make any money and Legal Aid doesn't cover it  
5 because either they're outside the Legal Aid requirements or Legal Aid doesn't have the  
6 resources, this could fill the gap. But you can only do that if you are actively doing, learning the  
7 facts so you know what needs to be done.  
8

9 “And what, so what I would have in mind is an organization that basically could figure  
10 out really on an ongoing basis, and to me that's critical because everything will change over a  
11 time period, an ongoing basis, what are the real problems that need to be addressed and how do  
12 we use our money to address it? Either by funding others who are proposing to do it – And  
13 believe me, if it's out there, there's money available that, if you build it, it will come. They will  
14 come. But also people who aren't proposing, we know Oregon best, but you know we're going to  
15 end up knowing more about the Oregon consumer protection needs than anybody else in the state  
16 certainly and in the country and we have the ability to make it happen to the extent our resources  
17 allow.  
18

19 “So when I started by saying I would create an organization, that's the kind of  
20 organization I would create.” *Id.* at p. 42, l. 11 - p. 43, l. 24.  
21

22 36. The Court finds the testimony of the witnesses persuasive and concludes that in  
23 order to comply with ORCP 32 O, a new nonprofit organization must be established, and that  
24 nonprofit will be called the Oregon Consumer Protection Center or other appropriate name to be  
25 determined by the Board of Directors of such new nonprofit organization (“OCPC”).  
26  
27  
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1           **F. Use of Oregon Community Foundation to Facilitate the Creation of OCPC**

2           37.     The Oregon Community Foundation was organized in 1973. Merrill (“Max”)  
3 Williams, Tr. 114, 1. 17 (Sept. 21, 2115). President and CEO of OCF, Mr. Williams explained,  
4 “[T]he idea [of OCF] was to create a statewide community foundation, an organization where  
5 individuals and donors could pool their charitable assets in a single location and use those assets  
6 then to improve life in Oregon.” *Id.* at 11. 21-25.

7  
8           38.     OCF currently manages about \$1.6 billion in assets. *Id.* at p. 115, 11.6-7. OCF is  
9 “in the top ten in the nation of community foundations with assets under management.” *Id.* at p.  
10 116, 11. 10-11.

11  
12           39.     OCF has 80 employees in Portland, Salem, Eugene, Medford, Coos Bay and  
13 Bend. *Id.* at p. 115, n. 19-20; and p. 116, 1. 17.

14           40.     Mr. Williams described the organization of OCF, “If you think a little bit about a  
15 community foundation, in some ways it operates a bit like a charitable bank. We have individual  
16 donors or families create funds of the foundation. And we manage those funds and fund account  
17 for those funds separately. So there's all that sort of finance and fund management, the part of  
18 receiving the gifts, acknowledging that gift receipt and managing the investments of those funds  
19 into OCF's broad investment pool and strategy. So there's that administrative side.  
20

21  
22           “We also have a grant-making side of the organization, which again works with  
23 nonprofits around the state and runs both our community grant-making program and probably  
24 about two dozen other specialized grant-making programs that are operated. So there are  
25 program offices and program associates and people who sort of operate that aspect of the  
26 foundation.” *Id.* at p. 116, 1. 19 - p. 117, 1.10.  
27  
28

1           41.     OCF has offered to set up meetings with OCPC's incoming board members to  
2 discuss OCPC's ongoing relationship with OCF. OCF will also foster a relationship between  
3 OCPC and the Nonprofit Association of Oregon, another OCF-funded nonprofit. Plaintiff's Sixth  
4 Status Report to ORCP 32 O Remainder, January 29, 2016 Letter to David Sugerman from OCF  
5 President Max Williams, (Feb 1, 2016) (hereinafter "OCF letter," attached as Exhibit B).

7           42.     OCF has management experience with funds larger than the approximately \$33  
8 million in *cy pres* funds in this case. *Id.* at p. 122, II. 1-3.

10          43.     OCF has experience helping nonprofit organizations develop. Mr. Williams  
11 explained, "I think probably one of the things we're best at and expert at is working with both  
12 capacity building for small nonprofits who are trying to do something new or innovative, but also  
13 using our expertise in grant making to evaluate the strength of the organization and their ability  
14 to actually succeed with what they've sort of bitten off." *Id.* at p. 126, II. 10-16.

16          44.     In particular, OCF has expertise in staging multi-year payouts to nonprofits so  
17 they can succeed and flourish. *Id.* at p. 128.

18          45.     Mr. Williams recommended that a designated-fund be established at OCF to  
19 create and support OCPC. Mr. Williams concluded that such a fund, "was a better administrative  
20 model, a better governance strategy and a less expensive model for overall operations between  
21 the two organizations, which would have to have separate 501(c)(3) statuses." Mr. Merrill, Tr.  
22 22, 11. 6-15 (Oct. 26, 2015).

24          46.     As part of managing the fund, OCF will produce an annual report describing the  
25 value of the fund, investment changes during the year (purchases and sales), earnings, and  
26 distributions to the recipient, OCPC. OCF letter  
27  
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1           47.     As part of managing the fund, once a year, OCF will perform a due-diligence  
2 review of OCPC by asking OCPC to complete a report on how the money distributed to it the  
3 previous year was used. OCF will examine OCPC's annual report and compare it with this Plan  
4 to ensure funds are being used consistent with the Plan. OCF may request additional information  
5 from OCPC if the annual report does not provide sufficient information. OCF will review  
6 OCPC's activities at a mission level. If OCF determines that OCPC's activities fail to comport  
7 with the purposes outlined in the Plan, OCF will report such a deficiency to the Court. OCF letter  
8  
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10           48.     Mr. Bryant likewise suggested that the expertise of the Oregon Community  
11 Foundation be used to manage funds in this situation, so that the OCPC could focus on consumer  
12 issues and not money management. Arthur Bryant, Tr. 40, 11. 3-16 (Sept. 21, 2015).  
13

14           49.     OCF could annually provide funds to OCPC. Distributing funds on an annual  
15 basis saves administrative costs. *Id.* at p. 28, 11. 16-17.

16           50.     To pay for costs of managing and administering the fund, OCF would charge an  
17 annual fee 1.30%. *Id.* at 40, L 3.

18           51.     A 1.30% fee is lower than OCF's rate charged on other such large funds and  
19 would ensure professional management of the fund.  
20

21           52.     OCF has agreed to be bound by the terms of the Plan as evidenced by Exhibit C,  
22 which is attached to these findings and incorporated by reference to these findings.  
23

### 24           **G. The Oregon Consumer Protection Center**

25           53.     In order to use the *cy pres* funds to directly benefit the interests of the class of  
26 consumers, a new Oregon nonprofit must be established. That nonprofit will be named the  
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1 Oregon Consumer Protection Center or other appropriate name to be determined by the Board of  
2 Directors of such new nonprofit organization (“OCPC”).

3         54.     The OCPC shall be dedicated to furthering consumer protection in Oregon  
4 including, without limitation, advocacy in all forms (including state and federal litigation in  
5 multiple venues, legislative advocacy and regulatory advocacy), research (not limited to legal  
6 research) and education (including direct consumer education and legal CLEs) targeted at  
7 consumer protection in Oregon. Consumer protection is interpreted to the fullest extent possible,  
8 including without limitations, areas such as securities and investment fraud, cyber fraud and  
9 cybercrime, insurance fraud, antitrust law, and trade regulation.  
10

11         55.     The University of Oregon School of Law has a program that assists Oregon  
12 organizations in filing their 501(c)(3) papers and draft their by-laws. Michael Moffit, Tr. 102, 11.  
13 4-20 (Oct. 27, 2015). Dean Moffit offered the assistance of the University's program in  
14 establishing OCPC.  
15

16         56.     Class counsel recommended three initial board members of OCPC: the Hon.  
17 Henry Kantor, Multnomah County Circuit Judge, as Chair; Emily Reiman, Executive Director of  
18 the Neighborhood Economic Development Corporation of Eugene; and Justin Baxter, a private  
19 Portland consumer lawyer. All three recommended board members appeared before the court,  
20 and all three have expertise, capacity, professional skills, dedication and interest to be the  
21 founding members of OCPC. All three recommended board members have volunteered their  
22 skills and time to the founding of OCPC. All three recommended board members should be  
23 appointed.  
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## H. Ten Years of Funding for Research at U of O into Oregon Consumer Issues

57. Deans of all three Oregon law schools were invited by the court to propose how they would use *cy pres* funds at their schools to further the interests of the class. Of the three proposals, the one that would best benefit the class was offered by Dean Moffitt of the University of Oregon School of Law. Lewis & Clark Law School and Willamette Law School shall have the opportunity to apply for funding in the future.

58. Dean Moffitt testified that the University of Oregon (U of O) is uniquely situated in the state to provide research into issues affecting Consumers in Oregon. Tr. p. 11, 1. 11 p. 20, 1. 13 (October 27, 2015) Dean Moffitt suggested an interdisciplinary research center be established at the University to benefit the interests of consumers. Dean Moffitt's testimony established a desire by the University to conduct credible academic research that furthers the understanding of the Oregon marketplace consumers must manage.

59. The U of O has the expertise to research issues affecting consumers in Oregon, and such research will benefit the class, particularly if the research is coordinated with the OCFC.

60. Each year for ten years, U of O will receive from OCPC a minimum of \$300,000 to research consumer issues in Oregon. The grant process for these funds is described in the Plan for these funds, Exhibit A.

61. The University of Oregon has agreed to be bound by the terms of the Plan as evidenced by Exhibit D, which is attached to these findings and incorporated by reference to these findings.

## II. Conclusions of Law

Based on the evidence, record, and findings outlined above, the Court makes the following conclusions of law:

1. ORCP 32 O ensures that defendant BP West Coast Products is accountable for all the damages it caused to the entire class in this case.

2. ORCP 32 O deters other parties from knowingly or recklessly violating the Unfair Trade Practices Act, as was done by defendant BP West Coast Products.

3. ORCP 32 O provides that *cy pres* funds be paid to an entity for purposes that the court determines are “directly beneficial to the interests of class members.”

4. Alternatively, ORCP 32 O provides that *cy pres* funds be paid to an entity for purposes that the court determines are “directly related to the class action.”

5. To fulfill the requirements of ORCP 32 O, one-half of the *cy pres* funds, presently estimated to be in excess of \$33 million, is awarded to the Oregon State Bar, dedicated for payment to the Oregon Legal Services Program, established by ORS 9.572.

6. No existing entity in the state of Oregon has the capacity to effectively manage and use the *cy pres* funds provided by this case for purposes directly beneficial to the interests of class members.

7. No existing entity in the state of Oregon has the capacity to effectively manage and use the *cy pres* funds provided by this case for purposes directly related to the class action.

8. To fulfill the requirements of ORCP 32 O, one-half of the *cy pres* funds, presently estimated to be in excess of \$33 million, is awarded to the Oregon Community Foundation to be paid over 25 years to the newly created nonprofit, the Oregon Consumer Protection Center, as described in the Plan, Exhibit A, which is incorporated by reference into this order. To pay for

1 costs of administering and managing the fund, for the benefit of the class, OCF may withdraw  
2 1.30% of the fund annually.

3           9.       In order to directly benefit the interests of the class, the Oregon Consumer  
4 Protection Center shall be created as a 501 (c)(3) nonprofit entity and shall be dedicated to  
5 consumer protection in Oregon including, without limitation, advocacy in all forms (including  
6 state and federal litigation in multiple venues, legislative advocacy and regulatory advocacy),  
7 research (not limited to legal research), education (including direct consumer education and legal  
8 CLEs) targeted at consumer protection in Oregon. Consumer protection is interpreted to the  
9 fullest extent possible, including without limitations, areas such as securities and investment  
10 fraud, cyber fraud and cybercrime, insurance fraud, antitrust law, and trade regulation.

11           10.      The initial board members of the OCPC are hereby appointed and shall be: Hon.  
12 Henry Kantor, Multnomah County Circuit Judge, as Chair; Justin Baxter, an Oregon State Bar  
13 member with extensive experience in consumer protection; and Emily Reiman, Executive  
14 Director of the Neighborhood Economic Development Corporation of Eugene.

15           11.      The purposes for which *cy pres* funds will be used at the Oregon Consumer  
16 Protection Center will directly benefit the interests of the class.

17           12.      The purposes for which *cy pres* funds will be used at the Oregon Consumer  
18 Protection Center are directly related to the class action because they relate to a fair marketplace  
19 in Oregon where unfair trade practices do not occur, the subject matter of this litigation.

20           13.      There is a direct nexus between the purposes of the Plan and a benefit to class  
21 members.

22           14.      Ten years of annual distributions by OCPC of a minimum of \$300,000 in funds to  
23 the University of Oregon to research consumer issues is directly related to the class action



1 because such distribution relates to a fair marketplace in Oregon where unfair trade practices do  
2 not occur, the subject matter of this litigation.

3 15. Ten years of annual distributions by OCPC of a minimum of \$300,000 in funds to  
4 the University of Oregon to research consumer issues will directly benefit the interests of the  
5 class.  
6

7 16. Other courts have approved the creation of a nonprofit entity to fulfill the  
8 purposes of a *cypres* award. *See Lane v. Facebook*, 696 F3d 811,822 (2012).  
9

10 17. The use of the Oregon Community Foundation to finance the Oregon Consumer  
11 Protection Center, with research help from the University of Oregon, is directly beneficial to the  
12 interests of class members as required by ORCP 32 O.

13 18. The use of the Oregon Community Foundation to finance the Oregon Consumer  
14 Protection Center, with research help from the University of Oregon, is directly related to the  
15 class action as required by ORCP 32 O.  
16

17 19. The agreements to be bound by the Oregon Community Foundation and the  
18 University of Oregon, Exhibits C and D, legally bind those institutions to comply with the terms  
19 relevant to them in the Plan  
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21 ***IT IS SO ORDERED.***


Signed: 5/11/2016 02:34 PM

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**Circuit Court Judge Jerome E. LaBarre**

1 Submitted on this 9<sup>th</sup> day of May, 2016.

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3  
4 By:   
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*Attorney for Plaintiffs*

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

STEVEN SCHARFSTEIN, individually and  
on behalf of all other similarly situated  
persons,

Plaintiff,

v.

BP WEST COAST PRODUCTS, LLC, a  
Delaware limited liability company,

Defendant.

Case No. 1112-17046

***Cy Pres Plan***

***Cy Pres Plan***  
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<sup>1</sup>This Table of Contents is for the convenience of the user only and does not add or subtract from the terms of the *Cy Pres* Plan.

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## **ORCP 32 O Plan for Use of Unclaimed Damages**

### **A. Introduction, Goals of *Cy Pres* Plan (“Plan”), and Possible Modifications of Plan**

1. Pursuant to ORCP 32 O, this Plan provides for the distribution of \$66,054,200.00, i.e., damages awarded to but not claimed by 330,271 class members, (hereinafter “*cy pres* funds”), if all appeals are exhausted, and any judgment is affirmed. This figure as used throughout this Plan is the figure without provision made for accumulated interest or potential modification on appeal.
2. If all appeals are exhausted and any judgment affirmed, the Multnomah County Circuit Court shall approve the distribution of funds as provided in the final judgment, or as amended by any appellate court or by the trial court on remand.
3. This Plan discusses the distribution of *cy pres* funds in the final judgment “to any entity for purposes that the court determines are directly related to the class action or directly beneficial to the interests of class members.” Purposes directly related to the class action and directly beneficial to the interests of class members are advocacy (including litigation in multiple venues, legislative and regulatory), research (not limited to legal research), and education (including direct consumer education and legal CLEs) targeted at consumer protection in Oregon. Consumer protection is interpreted to the fullest extent possible, including without limitations, areas such as securities and investment fraud, cyber fraud and cybercrime, insurance fraud, antitrust law, and trade regulation.
4. This Plan does not allow class members who have recovered UTPA damages to seek additional damages.

5. If modifications are needed to the Plan after initial distribution of funds, such modifications shall be determined by the Multnomah County Circuit Court.

**B. Award to Oregon State Bar for the Legal Services Program**

If *cy pres* funds are to be paid, one-half of the funds, i.e., \$33,027,100.00, plus all accumulated interest at the statutory rate until paid, shall be paid by Epiq Systems to the Oregon State Bar, dedicated specifically to the Legal Services Program established under ORS 9.572.

**C. Award and Management of Remaining Funds Unclaimed by Class Members**

**i. The Oregon Community Foundation (OCF) to Manage Funds.**

1. The other half of the *cy pres* funds, i.e., \$33,027,100.00, plus all accumulated interest at the statutory rate until paid, shall be paid by Epiq Systems to the Oregon Community Foundation ("OCF"), to invest, manage and distribute pursuant to the Plan described herein.
2. OCF shall establish, maintain and manage a separate fund, dedicated to funding The Oregon Consumer Protection Center ("OCPC"), a non-profit organization created by this Plan.
3. OCF shall act in a fiduciary capacity. OCF shall invest and manage the class *cy pres* funds consistent with prudent financial standards that allow the entire fund to be exhausted over 25 years.
4. OCF may charge a management and administration fee of no more than 1.30% per year. That management fee will finance the costs of investment, accounting, management, annual reporting to OCPC, and any other matters necessary to manage and award distributions pursuant to this Plan.
5. Within 18 months of judgment, OCF will set up meetings with OCPC's incoming board members to discuss OCPC's ongoing relationship with OCF. OCF will also foster a

relationship between OCPC and the Nonprofit Association of Oregon, another OCF-funded nonprofit.

6. At least once a year, OCF shall distribute a payment to OCPC, as requested by OCPC. That payment should be consistent with a schedule that allows the fund at OCF to be exhausted within 25 years from its inception. The amount paid to OCPC need not be the same amount, annually, over the 25-year period. The amount paid to OCPC shall be used to further the interests of consumer protection in Oregon.
7. OCF shall work with OCPC to determine the appropriate payments each year and to determine a minimum amount that must be distributed to OCPC each year. The amount distributed annually can vary depending on the work undertaken by OCPC on behalf of consumers in Oregon. The Court intends that a minimum annual amount distributed to OCPC be \$500,000 in 2015 dollars, although that amount could be lower in any given year, especially when OCPC begins its operations.
8. OCF shall distribute more than the minimum annual funding to OCPC when:
  - a. OCPC requests additional funds;
  - b. OCPC demonstrates a purpose for additional funds;
  - c. The use of additional funds by OCPC is directly related to the purpose of the class action or will benefit interests of consumers of Oregon; and
  - d. The distribution of the additional funds is consistent with a 25-year life of the fund.
9. Once a year, OCF will perform a due-diligence review of OCPC by asking OCPC to complete a report on how the money distributed to it the previous year was used. OCF will examine OCPC's annual report and compare it with this Plan to ensure funds are being used consistent with the Plan. OCF may request additional information from OCPC if the annual report does



not provide sufficient information. OCF will review OCPC's activities at a mission level. If OCF determines that OCPC's activities fail to comport with the purposes outlined in the Plan, OCF will report such a deficiency to the Court within thirty days of reaching that conclusion.

10. OCF will produce an annual statement describing the value of the fund, investment changes during the year (purchases and sales), earnings, and distributions to the recipient, OCPC.

**ii. Creation of the Oregon Consumer Protection Center (OCPC)**

1. As explained in detail in the Court's Findings of Fact and Conclusions of Law applying ORCP 32 O to this case, currently there is no organization in Oregon with the capacity to use unclaimed class damages or *cy pres* funds for purposes directly related to the class action or directly beneficial to the interests of class members. Multiple experts testified about the need to form such an organization to address ever-changing problems in the marketplace for consumers in Oregon. Needs are expected to shift, and specific strategies to meet those needs will necessarily change over time. For that reason, creation of an organization to deliver consumer protection is expected to fulfill the purpose of the class action and deliver benefits directly beneficial to the to the interests of the class members.
2. Within three months of judgment, class counsel shall cause to be filed the necessary documents to create the Oregon Consumer Protection Center (OCPC).<sup>2</sup> Class counsel shall also ensure that OCPC qualifies as a 501(c)(3). Class counsel will also remind the OCPC Board of Directors of its scheduled obligations under §§(C)(ii)(3), (12), (19) and (22). The documents establishing OCPC shall require OCPC to further consumer protection in Oregon through advocacy (including litigation in multiple venues, legislative and regulatory), research (not limited to legal research) and education (including direct consumer education

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<sup>2</sup> If the name Oregon Consumer Protection Center is not acceptable, the Board of the organization shall select another appropriate, similar name.

- and legal CLEs) targeted at consumer protection in Oregon. Consumer protection is interpreted to the fullest extent possible, including without limitations, areas such as securities and investment fraud, cyber fraud and cybercrime, insurance fraud, antitrust law, and trade regulation. Class counsel may rely on in-kind contributions from the University of Oregon Law School in creating OCPC and obtaining the 501(c)(3) status.
3. Within 24 months of a final judgment, OCPC should, to the fullest extent possible, adopt by-laws and/or procedures related to the following:
    - a. OCPC Board size, selection, and terms;
    - b. Ethics and good governance procedures. *See Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations*, The Nonprofit Association of Oregon (2015 ed.); and
    - c. Guidelines for best management of funds so that expenditures most effectively further the goals of this Plan.
  4. OCPC is created for purposes directly related to the underlying class action, that is, to prevent consumer fraud and to enforce consumer protection laws and statutes, and to directly benefit the interests of members of the class in this litigation. The mission of OCPC is to promote and deliver consumer protection in Oregon through advocacy (including litigation in multiple venues, legislative and regulatory), research (not limited to legal research) and education (including direct consumer education and legal CLEs) targeted at consumer protection in Oregon. Consumer protection is interpreted to the fullest extent possible, including without limitations, areas such as securities and investment fraud, cyber fraud and cybercrime, insurance fraud, antitrust law, and trade regulation.

5. OCPC shall be dedicated to furthering the interests of individual consumers in Oregon in all relevant forums, including the courts, regulatory agencies, legislative bodies, academia and the media. OCPC may educate, litigate, and propose rules and legislation, to the extent allowed by federal and Oregon law.
6. OCPC shall award a minimum of \$300,000 to the University of Oregon annually for each of the first ten years after receipt of the *cy pres* funds for research related to consumer protection in Oregon. OCPC will collaborate with the University of Oregon to develop a streamlined grant awarding and reporting process reasonably similar to other external grant processes at the University of Oregon, which will be aimed at assuring:
  - a. public accountability;
  - b. transparency and efficiency of expenditures;
  - c. academic integrity and freedom in the research;
  - d. compliance with the research objectives; and
  - e. quality of the research.

The University of Oregon will provide an annual report to OCPC on the expenditures and accomplishments of these awards, consistent with these jointly-developed processes.

7. OCPC may award additional funding to the University of Oregon when:
  - a. The University of Oregon requests additional funds in a grant application;
  - b. OCPC determines that awarding additional funds to the University of Oregon is for purposes directly related to the class action or will directly benefit the interests of consumers of Oregon; and
  - c. The distribution of the additional funds is consistent with a 25-year life of the *cy pres* fund.

8. In addition to the specific allocation, OCPC may award grants to or contract with Oregon colleges, law schools, and universities, non-profit entities, private law firms, or any other entities, if such grants or contracts will efficiently and effectively be for purposes directly related to the class action or will directly benefit the interests of consumers of Oregon. OCPC may, for instance, establish a Fellows Program to allow attorneys or other advocates to serve at OCPC to improve their advocacy skills for consumers in Oregon. OCPC may prepare continuing legal education about consumer protection issues for attorneys Oregon. OCPC may also prepare other educational efforts about consumer protection issues for broader consumer groups.
9. Nothing in this Plan limits the ability of OCPC to receiving funding from other sources, including from other *cy pres* awards, grants, loans, attorney's fees awards, donations, or in-kind contributions. If OCPC works with other counsel on litigation in which fees are awarded, any fee-sharing agreement shall apply to the recovery of any relevant attorney's fees.
10. OCPC's expenditures of *cy pres* funds shall be consistent with this Plan, and OCPC's annual report shall demonstrate compliance with this Plan. Compliance with this Plan shall be determined by a showing that the expenditures of *cy pres* funds furthered consumer protection in Oregon through advocacy (including litigation in multiple venues, legislative and regulatory), research (not limited to legal research) and education (including direct consumer education and legal CLEs) targeted at consumer protection in Oregon. Consumer protection is interpreted to the fullest extent possible, including without limitations, areas such as securities and investment fraud, cyber fraud and cybercrime, insurance fraud, antitrust law, and trade regulation-

11. Nothing in this Plan limits the ability of OCPC to take any voluntary actions to begin operations prior to the infusion of *cy pres* funds in this case. At any time, OCPC may hire consultants or staff, work with volunteers, raise funds, seek in kind support, and partner with existing organizations and entities. OCPC may use volunteer facilities or personnel of OCF or the University of Oregon or any other entities. OCPC may use the support of volunteer interns or externs. The Court takes note of the knowledge, expertise and professionalism of Will Ogburn, the Executive Director of the National Consumer Law Center, who intends to retire and has indicated a willingness to consult with OCPC. The Court recommends Mr. Ogburn as an expert to OCPC. Nothing in this Plan requires activities of OCPC to be voluntary and unfunded during the pendency of any appeal. If OCPC obtains funding to begin operations, prior to the receipt of *cy pres* funding, OCPC may use any funds consistent with its by-laws.
12. During the pendency of the appeal, OCPC may undertake activities to benefit the interests of the class. During the first six months of its existence, the OCPC Board of Directors will hold its first organizational meeting. During the first 18 months of its existence, OCPC may begin to compile a list of those interested in consumer protection in Oregon, encourage Continuing Legal Education activities that further knowledge about consumer protection issues in Oregon, consult experts to learn about current issues in consumer protection, partner with other organizations, hire staff, solicit volunteers, and undertake any activities consistent with the organization's mission and purpose.
13. If this case is finally affirmed, within a year of affirmation, at least annually, OCPC shall produce an annual report that summarizes the expenditures for the year and evaluates how the programs and activities of the organization have fulfilled the Plan. If possible, these

provisions should be consistent with generally accepted standards for non-profits. *See Principals of Good Governance and Ethical Practice: A Guide for Charities and Foundations*, the NonProfit Association of Oregon (2015 ed.). The purpose of the evaluation shall be to ensure compliance with the purposes of this Plan and to fulfill any other goals determined by the OCPC Board. So long as OCPC is funded through this Plan, OCPC shall provide a copy of its annual report to OCF and the Oregon Department of Justice Charitable Activities Section.

The OCPC Board may determine whether its annual report required by this Court shall be made publically available or produced regularly to other entities or organizations.

14. Any expenses of OCPC pending appeal shall be borne by OCPC.

15. OCPC shall prudently budget for staff and consultants and should comply with accepted standards in determining appropriate overhead expenses, including whether to allow OCPC Board member compensation depending on whether the circumstances warrant it. *See Principals of Good Governance and Ethical Practice: A Guide for Charities and Foundations*, the NonProfit Association of Oregon (2015 ed.).

16. The initial board members of the OCPC are hereby appointed and shall be: Hon. Henry Kantor, Multnomah County Circuit Judge, as Chair; Justin Baxter, an Oregon State Bar member with extensive experience in consumer protection; and Emily Reiman, Executive Director of the Neighborhood Economic Development Corporation of Eugene.

Notwithstanding the organizational meeting requirements in §C(ii)(12), nothing in this Plan either prevents or requires these OCPC board members to meet or to undertake any duties of OCPC, during any appeal of the judgment in *Scharfstein v. BP West Coast Products, LLP*.

The OCPC Board shall comply with all 501(c)(3) requirements.

17. OCPC Board members shall be dedicated to, interested in, and/or knowledgeable about advancing consumer protection issues in Oregon. The OCPC Board shall establish guidelines and procedures for replacing board members and should consider whether the Board membership should include representational membership. Based on testimony in these proceedings, the Court recommends that the OCPC Board add additional members as it begins operations. The OCPC Board of Directors shall meet with reasonable frequency.
18. In setting priorities and goals, developing a plan for the organization, and choosing grant recipients, the OCPC Board and staff shall make choices that are directly related to the class action and directly beneficial to the interests of class members.
19. If this case is affirmed and this Plan is effectuated, within three months of the Circuit Court order distributing the funds in this case, the OCPC Board shall meet, and within six months, the Board shall adopt a plan for its first annual request of funds to OCF.
20. The OCPC Board shall set the compensation for its executive director. The OCPC Board should consider conducting an annual written assessment of the executive director.
21. An Advisory Board to OCPC is hereby appointed and shall consist of N. Robert Stoll, a former member of the advisory board of the federal Consumer Financial Protection Bureau, Tim Quenelle, class counsel and author of numerous Continuing Legal Education articles in Oregon, and any other members the OCPC Board of Directors determines will help advance the purposes directly related to the class action and directly beneficial to the interests of class members. The Advisory Board has no role in governing OCPC, and no control or authority over OCPC but is created as a resource to advise board members of OCPC on current issues consumer law in Oregon. OCPC has no duty to consult with the Advisory Board but is encouraged to learn about substantive issues affecting consumers in Oregon from the

Advisory Board. The Advisory Board may be dissolved within two years of the funding of OCPC.

22. Within 30 months of a final judgment, the OCPC Board should, to the fullest extent possible, adopt by-laws and/or procedures for the OCPC Advisory Board related to the following:

- a. Board size, selection, and terms; and
- b. Ethics and good governance procedures. See Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations, The Nonprofit Association of Oregon (2015 ed.).

**D. Agreement of OCF, University of Oregon and OCPC to be Bound by Plan**

As a condition of receipt of funds, OCF, the University of Oregon and OCPC agree to be bound by this Plan. The signature of OCF and the University of Oregon to this Plan indicate acceptance of the Plan's terms. The signature of OCPC's Board chair, after formation of OCPC, indicates acceptance of OCPC of the Plan's terms.

**E. Possible Reversion of Funds to OCF**

If for any reason, OCPC ceases to exist or is otherwise unable to use funds for the purposes the court determined to be directly related to the class action or directly beneficial to the interests of class members, any remaining funds shall revert to OCF to distribute annually consistent with the goals of this Plan.

Signed: 5/11/2016 02:35 PM

**IT IS NOW ORDERED:**



**Circuit Court Judge Jerome E. LaBarre**



January 29, 2016

Dear David,

Please find below written responses to your questions related to how The Oregon Community Foundation would administer a fund created for the benefit of the OCPC if the Court decided to move forward with the Plan. Please let me know if you have additional questions or if I may offer additional assistance.

**Q. What support can the Oregon Community Foundation (OCF) provide to the Oregon Consumer Protection Center (OCPC) as it establishes itself as a new non-profit?**

A. OCF's role as a funder limits the extent to which it may get involved in the formation or governance of its grant recipients. Even so, OCF is happy to set up a series of meetings with OCPC's incoming board members to discuss the details of OCPC's ongoing relationship with OCF. Another OCF-funded Oregon nonprofit, Nonprofit Association of Oregon, provides technical support and best-practices assistance to Oregon non-profit entities. OCF will foster an introduction to the Nonprofit Association of Oregon.

**Q. What annual review will OCF undertake of OCPC?**

A. As with all entities that we fund, OCF conducts an annual due-diligence review to ensure that the fund recipient is using funds in a manner that is consistent with the fund agreement or—in this case—court order, by asking the nonprofit to complete a report on how the grant was used. This review involves examination of OCPC's annual report and comparison of that report with the Plan to ensure that funds are being spent as required in the Plan. If the annual report of OCPC is not sufficient to allow a determination of compliance, OCF will request additional information from OCPC. OCF review functions at the mission level. If OCPC activities fail to comport with the purposes of the Plan, OCF would report that failure to the Court.

OCF understands that the Court is concerned about ensuring that OCPC prudently spends the funds and that OCPC avoids excessive overhead so that the money in the fund is devoted to program. While these issues are legitimate concerns, OCF views them as governance issues for the Board of the OCPC. As with any independent corporation, control and leadership must vest with the Board.

**Q. Does OCF produce any annual reports about OCPC?**

A. Yes.

OCF produces an annual report describing the value of the fund, investment changes during the year (purchases and sales), earnings, and distribution of funds to the recipient, OCPC.

Q. Does OCF review the budget of a fund recipient in that annual review? In this case, will OCF review whether OCPC is spending excessively, for instance, on staff and overhead?

A. The budget is reviewed as part of reviewing the annual report, for instance to see if there are funds remaining from the previous year. OCF does not look behind the budget to question individual expenditures. The oversight of a non-profit's budget is the responsibility of the board of a non-profit. OCF's review of OCPC's budget would interfere with the governance structure of OCPC.

Q. The Court has discussed whether OCPC should be given the discretion to terminate its relationship with OCF during the pendency of the 25-year Plan. Do you have an opinion about that?

A. Yes. I have a strong opinion.

Donors come to OCF to establish designated funds so that donors can trust that the funds will be used as intended, assets are protected and wisely invested, and there is responsible planning such that the fund is sustainable for the duration required by the fund agreement or Plan. OCF manages funds with integrity and has a strong track record of insuring that donors' wishes are fulfilled and that the funds are managed such that they produce income for the duration intended. In this instance, the Court requires the fund to survive 25-years.

If the Court allows OCPC to terminate the relationship with OCF, that termination creates a huge risk that the fund will not sustain consumer protection work for 25 years. In that instance, OCF could not ensure the Court that funds would be invested responsibly for the duration or that funds would be disbursed such that the fund sustains for 25 years.

Q. Would OCF be willing to undertake only the administrative review of OCPC for 25 years, with OCPC having full control of investment of the funds for part of that time?

A. No.

The only way that OCF can insure that the funds will support the purposes of the class action for 25 years is to own and manage the investments for the duration of the time.

Having no oversight of the funds would mean that we could not guarantee the Court that the funds would be available for 25 years.

Also, if OCF does not own and manage the investments of the funds, OCF would not have any role in disbursing those funds, which would make any review of annual reports meaningless. The enforcement role OCF has in the Plan is to deny a disbursement to OCPC if it does not comply with the Plan – and to report the situation to the Court.

In other words, if OCPC can control the investment of the funds, then OCPC would be the owner of those funds, and OCF would no longer have a fiduciary duty to manage the funds. There would be no OCF oversight, management or planning of the funds under that model.

**Q. Why is it important for OCF to manage the funds?**

A. Donors come to OCF with money intended for a particular purpose. OCF manages the funds, reviews how those funds are used, and disperses the funds appropriately.

For 42 years, OCF has had an approach and practice that has provided a high level of trust and fiduciary protection, investment opportunity and organizational support to donors, funds and many organizations that have needed the philanthropic platform that OCF offers. Along with those services, OCF provides access to a larger, more diversified investment pool, built on the endowment model, that has protected the purchasing power of funds we manage over the life of those funds. We have developed a strong business model to serve our donors, and in this instance, to protect the monies of the class.

To ask OCF to compromise further our services and fees would disrupt our model and be unfair to the other donors and organizations that we support and that recognize the value that OCF offers at multiple levels.

**Q. OCF has asked to be reimbursed 1.35% for the services it will provide for the duration of the fund. Why 1.35%?**

A. OCF charges all donors 1% as a fee for investment of assets. OCF uses internal and external fund managers and investors and must pay them industry rates. This fee is non-negotiable. OCF also charges an administrative fee for the services provided in ensuring a fund fulfills a donor's purposes, such as reporting how the fee is used, and is expended as required in a donor agreement. The standard fee is 0.95%, which is reduced as a fund gets larger. For a \$20 million fund, the administrative fee is 0.65%.

In this instance, OCF understands the fee could be \$33 million or could grow 9% annually if the case is appealed. So, if the case is appealed and a final decision establishes the fund in five years, then the fund would be worth \$41 million (with the funding generating approximately \$1.65 million in interest annually).

Because the fund is so large, OCF offered to manage this fund for a 0.35% administrative fee.

Q. The Court has asked OCF if it would reduce the 1.35% management fee that it charges. What is your response to the Court?

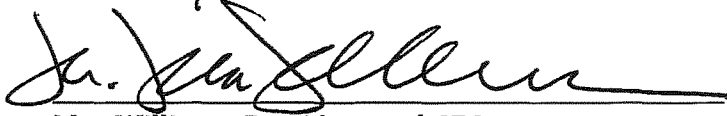
A. In this instance, OCF will reduce its management fee from 1.35% to 1.30%.

THE OREGON COMMUNITY FOUNDATION

By   
Max Williams, President and CEO

The Oregon Community Foundation (OCF) agrees to be bound by the attached cy pres Plan for *Scharfstein v. BP v. West Coast Products, LLC*.

Dated this <sup>13<sup>th</sup></sup> day of April, 2016.

A handwritten signature in black ink, appearing to read "Mr. Max Williams", written over a horizontal line.

Max Williams, President and CEO  
Oregon Community Foundation

The University of Oregon and its Law School agree to be bound by the terms of the attached *cy pres* Plan for *Scharfstein v. BP v. West Coast Products, LLC*.

Dated this 13<sup>th</sup> day of April, 2016.

A handwritten signature in dark ink, appearing to read "Michael Moffitt", written over a horizontal line.

Michael Moffitt, Dean  
University of Oregon School of Law

Dated this \_\_\_ day of April, 2016.

A handwritten signature in dark ink, appearing to read "Michael Schill", written over a horizontal line.

Michael Schill, President  
University of Oregon

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10 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
11 IN AND FOR THE COUNTY OF MULTNOMAH

12 STEVEN SCHARFSTEIN, individually and on  
13 behalf of all other similarly situated persons,

14 Plaintiffs,

15 vs.

16 BP WEST COAST PRODUCTS, LLC, a Delaware  
17 limited liability company;

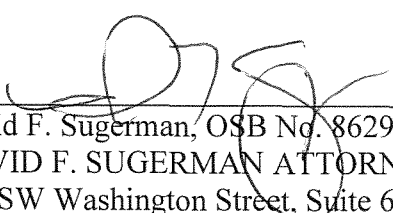
18 Defendant.  
19

Case No. 1112-17046

**CERTIFICATE OF COMPLIANCE  
WITH UTCR 5.100 RE: FINDINGS  
OF FACT, CONCLUSIONS OF LAW  
REGARDING CY PRES  
DISTRUBUTION OF UNCLAIMED  
DAMAGES**

20  
21 Pursuant to UTCR 5. 100(1), on April 6, 2016, Amy Johnson e-mailed a copy of the  
22 findings of fact, conclusions of law regarding *cy pres* distribution of unclaimed damages to  
23 defendant's counsel Brad S. Daniels, Abby Risner and David Harris. Brad Daniels confirmed  
24 via e-mail on April 8, 2016 that defendant does not object to the form of the findings of fact,  
25 conclusions of law regarding *cy pres* distribution of unclaimed damages.  
26

1 Dated this 9<sup>th</sup> day of May, 2016.

2  
3  
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**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW REGARDING CY PRES DISTRUBUTION OF UNCLAIMED DAMAGES and CERTIFICATE OF COMPLIANCE WITH UTCR 5.100** on the following persons on this same day:

☒ by electronic mail and notice of filing using the Cm/ECF system

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