



MALS Corner

by Harrison D. McIver III

MALS & U of M School of Law Receive Cy Pres Awards

B. J. Wade of Glassman Edwards Wade & Wyatt PC, one of the lead attorneys in a class action suit filed in Shelby County Circuit Court involving an antitrust price fixing case, is a champion of the little known *cy pres* doctrine to benefit Memphis Area Legal Services, Inc. and, more recently, his law school alma mater, Cecil C. Humphreys School of Law, University of Memphis. While *cy pres* awards have largely been unnoticed and little used throughout the United States, most especially in Tennessee, that is changing as familiarity with the doctrine grows.

What is *cy pres*? *Cy pres* is a legal doctrine that was originally developed to insure the fair distribution of trust funds. Its original meaning, “as near as possible”, referred to using a trust fund for its “next best use” should its original purpose fail or become obsolete. Today, the *cy pres* doctrine extends to other areas, but is commonly associated with residual funds left over from a class action lawsuit for reasons that may include: some members of a class cannot be located, some fail to submit claims, or the court may determine that awards to individual class members are so small as to provide negligible benefit to those individuals. In recent years, the courts have expanded their discretionary powers beyond the narrow limits of a “next best use” notion, to allow distribution of *cy pres* funds for a wide variety of charitable or justice-related causes, including legal services programs.

While the use of the *cy pres* distribution method has generated some controversy in adjudicated cases, the courts, based upon my review of a number sources, in exercising broad discretion are in general agreement that *cy pres* distributions are proper in connection with a class settlement, subject to court approval. Therefore, it would be preferable if the parties themselves anticipate the possibility of leftover class action funds and provide for distribution of such funds in the settlement agreement, which insures that the funds are distributed consistent with the intent of the parties. While some have argued unsuccessfully that such funds could be returned to defendants, distributions to organizations like civil legal services programs allow defendants to promote a greater societal good.

Recognition of the potential of *cy pres* funds and its benefits to the Memphis, Shelby County Community caught the attention of Glassman Edwards Wade & Wyatt PC (GEW&W). In 2002, GEW&W successfully advocated as a part of a settlement, a \$50,000 award for the National Civil Rights Museum. Circuit Court Judge Rita Stotts was trial judge. In 2005, B. J. Wade was instrumental in MALS receiving a \$25,000 award in the Shelby County Circuit Court with Judge Robert “Butch” Childers presiding. That same commitment was evidenced late last year when Circuit Court Judge Donna Fields, with the agreement of the parties’ counsel, awarded



Pictured above from left to right: attorney B.J. Wade, Dr. Shirley C. Raines, President of the University of Memphis, Dean James Smoot of the U of M School of Law, & Harrison D. McIver.

nearly \$168,000 to MALS and \$240,000 to the University of Memphis Cecil C. Humphreys School of Law as part of a settlement of one of the defendants in the pending class action suit.

Asked why he is an advocate that *cy pres* awards be granted to assist the law school and MALS, B. J. Wade, who is a MALS board member said, “We are committed to justice and fairness in our community and as a law firm have a huge responsibility and unique opportunity to assist and support institutions that advance justice for all members of our society. What better way can we accomplish this lofty goal than to support essential entities in our community like MALS and the University of Memphis.”

We at MALS recognize a huge responsibility to “put to good use” the funds in a way most effective in expanding client services. We are very appreciative of the significant support of B. J. and his firm and its commitment to justice in our community.

According to Dean Jim Smoot, the GEW&W “contribution is part of the on-going support of B.J. and his law firm for the efforts of the law school to move into its magnificent new home in the old Custom House at Front and Madison. His firm has been among the leaders of the Memphis bar to bring this dream to fruition.”

In 2006, the Tennessee General Assembly enacted the Tennessee Voluntary Fund for Indigent Civil Representation Act establishing in the state treasury, a separate account into which unpaid residuals from settlements or awards from class actions, awards from other actions designated by judges, monetary settlements, gifts, etc. may voluntarily be paid.

We encourage other firms, both plaintiff and defense, to keep MALS on their radar should they experience opportunities to contribute to access to justice in a similar manner as GEW&W. ♦