



DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

TESTIMONY

DATE: February 16, 2015

TO: Senate Judiciary Committee, Senator Floyd Prozanski

FROM: Ellen F. Rosenblum, Attorney General

SUBJECT: Testimony on HB 2700

Chair Prozanski, members of the committee, my name is Ellen Rosenblum, I'm the Attorney General for the State of Oregon, and I come before you in support of House Bill 2700.

I am glad to be back. I was a strong supporter of the fair distribution to legal aid of residual funds in a class action lawsuit in 2014, when it came before you as House Bill 4143. I return today to reiterate that support, and to urge you again to end the peculiar and unfair practice of returning unclaimed award moneys in a class action lawsuit to the very company or individual who caused the harm. This is a practice not followed by the vast majority of states, and it needs to end here in Oregon as well.

It would not be surprising if most of you have been involved in a class action lawsuit at some point in your lives. If you didn't know about it or didn't pay attention to it, you're in the majority. Often more than half of the victims in a class action lawsuit either do not receive notice of the suit or do not respond. Most of us find out that we are the victims in a class action lawsuit when we receive a letter in the mail letting us know that we may be entitled to compensation – usually a very small amount of compensation – if we fill out the enclosed paperwork and return it. Much of the time, the amount can seem like it's too small to justify the time and effort, so nothing is sent back. It's also business as usual for the notice to go to a bad address, or for no address to be found in your name.

These very small amounts of money may not be enough to motivate every eligible victim to send the paperwork in, but all of these very small amounts can add up to very large awards, and if victims are so hard to find, so much so that in a typical class action lawsuit it is not at all unusual to see over half of the award go unclaimed, the amount left undistributed is very significant. This raises the question for which House Bill 2700 provides an answer: What to do with all of that unclaimed leftover money?

Oregon's current practice is to give the money back to the company or person who caused the harm in the first place. This makes no sense. These awards do not simply represent dollars awarded – they represent the very real harm caused by these defendants. They represent

carcinogens seeping into groundwater, heart disease caused by pharmaceuticals, and unfair fees imposed on consumers. The fact that a victim cannot be found does not undo the harm caused, and so it strikes me as unfair that the award should simply be returned to the person or company that caused it.

HB 2700 corrects this inequity through a legal doctrine known as “*cy près*.” “*Cy près*,” which is a French term meaning “next best,” allows these uncollected funds to go to a charitable purpose in lieu of going back to the culpable defendant. In around a dozen states, including Washington, these funds are routed in whole or in part to legal services for the poor. This practice has been in effect for many years and across multiple substantial awards, and has thus far been found appropriate by courts and legislatures. HB 2700 follows the path established by these states in requiring 50% percent of any residual amount to be deposited in an account dedicated to the funding of legal aid, with up to 50% eligible to be awarded by the judge to any charitable purpose related to the underlying harm. If you can’t find a person harmed by cigarettes, the next best thing is to fund tobacco cessation. If you can’t find a person sickened by an industrial toxin, the next best thing is to provide support for treatment. If a judge does not make such a designation, the proposal permits the entirety of the award to be provided to legal services for the poor at their discretion.

Like HB 4134, attorneys at the Department of Justice were asked at my request to perform an analysis of the legal fitness of HB 2700. And like HB 4134, HB 2700 is legally sound. Firmly modelled after well-established provisions from other states, HB 2700 is not a taking, or a violation of due process, or any other legal provision. I understand that there are many people who wish to speak on this issue, so I will not try to address every argument one could theoretically make except to say that HB 2700 is not unworkable, and it is not unlawful. HB 2700 is fair.

Of course, this bill is not new. Indeed, a bill very similar to this one was introduced by Attorney General Hardy Myers and has been reintroduced several times since then.

I don’t know that anyone here would question that there may be no more worthy cause than providing access to justice for those in need of legal services and who are simply too poor to afford them. You have been given a sense of the extent of the need here in Oregon and how this bill would benefit our citizens: The bottom line is that legal aid needs stability of funding – this bill does not resolve that. But one of the unique features of Oregon’s legal aid programs is that they closely collaborate on funding and service delivery and strive to provide relatively equal access to justice to all Oregonians, regardless of where they live in the state. But, the sheer size of Oregon presents its challenges.

Passage of this bill would go a long way to helping fill the access to justice gap that tarnishes our state and hurts our citizens, who have nowhere else to turn for legal help at critical junctures in their lives. But it is also important that Oregon finally step forward and join our neighbors in taking the equitable step of not returning residual damages to the very person or company that inflicted them. It is time for Oregon to join the larger community of our sister states and make the right decision. I urge you to pass HB 2700.