



Vincent DiTommaso '82

CHICAGO-KENT GRATEFULLY ACCEPTED TWO UNEXPECTED MONETARY GIFTS IN 2004. THE DONATIONS AROSE THROUGH THE DOCTRINE OF CY PRES, AS DESCRIBED BELOW BY LITIGATOR VINCENT DITOMMASO '82.

**C***y pres*, which can be described as a form of court-sanctioned philanthropy, is often invoked in class-action judgments when it's not feasible to disperse the settlement funds to the plaintiffs," DiTommaso explains. "*Cy pres* really is a win-win situation, because not only is the 'bad act' that was the subject of the lawsuit rectified, but the settlement is dispersed to organizations that advance the public good and/or protect consumers."

Chicago-Kent benefited when DiTommaso and Peter Lubin, his partner at DiTommaso & Lubin, filed a class-action lawsuit in state court, arguing that hotels in Oakbrook Terrace had illegally inflated the hotel occupancy tax in order to pay for a private security contract. While the court found in favor of the plaintiffs, the wronged hotel occupants didn't enjoy the windfall, per se.

"In class-action settlements, it isn't always possible or economically efficient to reimburse each and every plaintiff," says DiTommaso. "In our cases, the hotels had amassed far more than \$1 million in alleged inflated fees over three years, yet the amount due each plaintiff was only in the \$2 to \$4 range. Because the associated costs would virtually exceed the settlement, the court invoked *cy pres*."

According to DiTommaso, *cy pres* has become more common in the last five years or so. While attorneys are generally invited to recommend awardees, judges are the final arbiters.

“Since the ‘bad act’ was committed in DuPage County, we wanted part of the settlement funds to benefit consumers there,” DiTommaso says. “Peter and I also wanted to support public service organizations affiliated with our alma maters. We recommended that the \$300K available for distribution be split evenly between the DuPage Legal Assistance Foundation, the Mandel Legal Aid Clinic at the University of Chicago Law School, and the Abraham Lincoln Marovitz Public Interest Fund — a Chicago-Kent initiative that offers a stipend to recent graduates who work in public service organizations after law school. The court accepted our recommendations, and the Chicago-Kent fund received \$100,000.”

Invoking *cy pres* in a federal class-action lawsuit works similarly, as demonstrated in a case litigated

by Chicago-Kent adjunct faculty member Clint Krislov and his firm, Krislov & Associates Ltd. In this case, a genetically modified corn variety known as StarLink had been found in certain Kraft Foods products, even though it had not been approved for such use. When Krislov’s firm completed out-of-court negotiations with Kraft, there was \$9 million in settlement funds on the table — with \$6 million slated to be distributed to consumers via coupons automatically redeemed at the grocery checkout line.

“We wanted the settlement to go beyond coupon redemption and become a real benefit to consumers,” Krislov remarks. “So we recommended that all unredeemed coupons after a set period of time be paid out by way of *cy pres* awards.”

The consensus was that the money should largely support food-related nonprofits. Impressed by the Chicago Food Depository’s dual emphasis on food distribution and job training, Krislov recommended a \$200,000 piece of the pie for the organization, then asked its executive director, Michael Mulqueen, to suggest other well-run food banks throughout the United States.

“Becoming involved in the *cy pres* determinations was terrific because I learned about a host of organizations that do wonderful work,” Krislov recalls. “And the timing of the awards was great — right before Thanksgiving. I remember one phone call from a woman who ran a food pantry in Ohio who told me the gift bought its entire inventory of turkeys that year. These organizations greatly benefited from the money; I felt badly that we couldn’t give them twice as much.”

In all, 33 nonprofit organizations benefited from the largesse, with Chicago-Kent receiving \$50,000. Why did Krislov’s firm recommend Chicago-Kent?

“We like Kent graduates,” Krislov says. “They’re energetic go-getters, and they have just the right balance of academic knowledge and real-life experience. In fact, our six-person firm likes to joke that — proportionally — we’re the largest employer of Kent graduates in Chicago!”



**Adjunct Professor Clinton Krislov**