

**IN THE
SUPREME COURT OF MISSOURI**

No. SC84213

**IN RE ANCILLARY ADVERSARY PROCEEDING QUESTIONS:
STATE TREASURER, NANCY FARMER,**

Appellant,

v.

**SHARON MORGAN, RECEIVER,
DEBORAH CHESHIRE, CIRCUIT CLERK AND THE COUNTY OF
COLE,**

Respondents.

**BRIEF OF AMICI CURIAE LEGAL AID OF WESTERN MISSOURI
LEGAL SERVICES OF SOUTHERN MISSOURI, AND
MID-MISSOURI LEGAL SERVICES¹**

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¹ Pursuant to Rule 84.05(f) of the Rules of the Missouri Supreme Court, all parties to this appeal have consented to the filing of this brief. Amici have prepared a certificate of consent that their counsel has signed, which has been submitted with the certificate of service that accompanies this brief.

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II. INTRODUCTION AND INTEREST OF AMICI

This case involves an important issue of first impression in Missouri: whether Missouri’s Judicial Escheats Act, R.S.Mo. § 470.270 (the “Judicial Escheats Act” or the “Act”) governs the escheat of residual proceeds from utility rate refund cases.

All of the parties, as well as Amici and the circuit court, did not address the Act in their consideration of the case in the lower court and instead focused on the application of the Uniform Disposition of Unclaimed Property Act, R.S. Mo. § 447.500 et seq. (“UDUP”).

As discussed below, Legal Aid of Western Missouri (“LAWMO”), Legal Services of Southern Missouri (“LSSM”) and Mid-Missouri Legal Services (“MMLS”) as amici in this matter (all of which are referred to herein as collectively as “Amici”) , respectfully submit that because the Judicial Escheats Act is narrowly tailored to deal with precisely the circumstances raised by this case and because UDUP is designed to deal with the much broader problem of all abandoned property in public and private control in the state, the Judicial Escheat Act controls.

The distinction is important because the Judicial Escheat Act properly leaves residual funds in the hands of the courts until the state affirmatively brings an action to have those funds transferred to the state. Furthermore, for two years after any transfer of funds to the State under the Act, the court that transferred the funds retains the power to make appropriate distributions of those funds. Under

the Treasurer's reading of UDUP, the courts' jurisdiction over the residual proceeds from litigation is lost automatically five years after the funds are deposited with the Court.

Amici respectfully submit that leaving the circuit courts with jurisdiction is consistent with sound public policy, because the courts are in the best position to decide to whom the funds should be distributed including, under proper circumstances, distributions to cy pres beneficiaries like the legal aid offices of Missouri.

Amici have substantial interest in the outcome of this matter because the circuit court in the underlying litigation has held that all legal services offices in the state of Missouri (the "Legal Aid Offices") are appropriate, non-exclusive, cy pres beneficiaries of the funds at issue in this case. The Legal Aid Offices do a great deal of consumer protection work on behalf of Missouri's low-income citizens. Accordingly, the Legal Aid Offices are appropriate cy pres beneficiaries of the funds.

III. GROUNDS ON WHICH APPELLANT HAS INVOKED THE JURISDICTION OF THIS COURT

The circuit court below held that the Uniform Disposition of Unclaimed Property Act, R.S. Mo. § 447.500 et seq. (“UDUP”) is unconstitutional insofar as it empowers appellant, State Treasurer Nancy Farmer (the “Treasurer”) to pursue an action under UDUP. Legal File (“L.F.”) at 309.

Accordingly, Amici agree that the Treasurer has properly invoked the jurisdiction of the Court under Article V, § 3 of the Missouri Constitution.

IV. STATEMENT OF FACTS

This case comes to the Court with an unusual procedural history. Respondent Sharon Morgan (“Ms. Morgan”) was the Court-appointed receiver of residual proceeds (the “Funds”) in litigation captioned *Southwestern Bell v. Public Service Commission*, CV194-24CC, which was pending before the honorable Thomas J. Brown in the Circuit Court of Cole County, Missouri (the “Underlying Case”). L.F. 63

After being served with an order in a Quo Warranto action, ordering her not to distribute any of the funds in her control from the Underlying Case, L.F. 65, and, after being served with notice from the Missouri Attorney General’s Office that she would be sued and fined if she did not promptly surrender those same funds to the Appellant Treasurer, L.F. 65, 74-75, Ms. Morgan filed a motion in the Underlying Case to determine what her rights and obligations were in regard to the Funds (the “Motion”). L.F. 61.

The Motion was akin to an interpleader action. The Treasurer, in response to the Motion, never sought to have the Funds turned over to her or to the state. She argued, to the contrary, that Ms. Morgan's rights and obligations in regard to the Funds were to be properly determined by other pending litigation.

Ultimately, the circuit court held:

1. Any claim in regard to the Funds must be brought in the Underlying Action;
2. The Treasurer "has no standing or right to assert claims against the funds in Consolidated Case Nos. 28594 and 28604 or against the Receiver with respect to those funds", because such an action would be outside of the Treasurer's powers under the Missouri Constitution; and,
3. The Funds are not required to be disbursed to the Treasurer under the Uniform Disposition of Unclaimed Property Act, R.S. Mo. § 447.500 et seq. ("UDUP").

L.F. 267-68.

The case is made more complicated by the fact that a separate action was brought by the Treasurer against Ms. Morgan, the Honorable Thomas J. Brown ("Judge Brown") and others. That case is also currently pending on appeal before the Court and is captioned, Nancy Farmer, Missouri State Treasurer v. Honorable Byron L. Kinder, and Honorable Thomas J. Brown, III (Case No. SC84328). In that action, the circuit court also held that the Treasurer was not

empowered to bring an action to seize the Funds under UDUP. Judge Brown is the judge in the Underlying Case.

Amici will not attempt to address all the myriad substantive and procedural issues raised by this case, but rather will focus their discussion on the relation between Missouri's Judicial Escheats Act and UDUP.

IV. POINTS RELIED ON

I.

The Trial Court's Decision That The Respondents Are The Proper Holders Of The Funds At Issue Is Correct Because The State Has Not Complied With The Requirements Of The Judicial Escheats Act For Bringing An Action To Gain Custody Of Those Funds, In That The Judicial Escheats Act Governs The Escheat Of Residual Proceeds From Rate Refund Cases To The State And The State Has Not Followed The Procedure Set Forth In That Act.

Greenbriar Hills Country Club v. Director of Revenue, 935 S.W.2d 36 (Mo. banc 1996);

State ex rel. County of St. Charles v. Mehan, 854 S.W.2d 531, 536 n. 7 (Mo. App. 1993);

R.S.Mo. § 470.270;

R.S. Mo. § 447.500 et seq.

VI. ARGUMENT

I.

The Trial Court’s Decision That The Respondents Are The Proper Holders Of The Funds At Issue Is Correct Because The State Has Not Complied With The Requirements Of The Judicial Escheats Act For Bringing An Action To Gain Custody Of Those Funds, In That The Judicial Escheats Act Governs The Escheat Of Residual Proceeds From Rate Refund Cases To The State And The State Has Not Followed The Procedure Set Forth In That Act.

The circuit court based its decision in this matter on UDUP and did not consider the impact that the Judicial Escheats Act had on the case. Amici respectfully submit that the Act, and not UDUP, governs the issues presented by the case. Although Amici believe that the lower court erred in applying UDUP, as discussed below, the court reached the correct result and its decision should be affirmed.

A. To The Extent That The Judicial Escheats Act And UDUP Are In Conflict, The Judicial Escheats Act Controls Because It Is Specifically Tailored To Apply To Unclaimed Funds In Utility Rate Refund Cases.

As the Court held in Greenbriar Hills Country Club v. Director of Revenue, 935 S.W.2d 36 (Mo. banc 1996): “When the same subject matter is addressed in general terms in one statute and in specific terms in another, the more specific controls over the more general.” Id. at 38 (citing Terminal Railroad Association v.

City of Brentwood, 230 S.W.2d 768, 769 (Mo. 1950)). Accord Mispagel v. Missouri Highway and Transportation Commission, 785 S.W.2d 279, 281 (Mo. banc 1990); Bartley v. Special School District, 649 S.W.2d 864, 867 (Mo. banc 1983).

Because UDUP is a broad and general statute and the Judicial Escheats Act is a narrowly tailored statute that applies to the specific issues raised by this case, to the extent that the two statutes conflict, the Act governs.

UDUP is designed to address essentially all abandoned property in the state, including property in the hands of banks, financial organizations, businesses, insurance companies, utilities, fiduciaries and courts. R.S.Mo. §§ 447.505, 447.510, 447.517, 447.532. The section that deals with funds held by courts also addresses funds held by all public corporations, public authorities and political subdivisions of the state. R.S.Mo. § 447.532. The funds covered by § 447.532 are held by a broad array of public entities from cities to transit authorities.

The Judicial Escheats Act, on the other hand, is narrowly tailored and applies only to a relatively small class of cases, specifically:

litigation concerning rates, refunds, refund of premiums, fares or charges collected by any person or corporation in the state of Missouri for any service rendered or to be rendered in said state or for any contract of insurance [or other policy of insurance] to be performed in said state.

R.S.Mo. § 470.270. This case, as well as all of the other related cases that are pending before the Court, all fall within the narrow scope of Missouri’s Judicial Escheats Act.²

The Judicial Escheats Act also sets forth detailed, specific procedures that the State must follow to pursue an escheats claim under the Act. R.S.Mo. §§ 470.290-470.340. Similarly, it sets forth the specific venue for pursuing judicial escheat actions.

UDUP is much more broad and general. The only reference contained in UDUP to the procedure to be followed in pursuing a UDUP claim states in full: “If any person refuses to deliver property to the state as required under sections 447.500 to 447.595, the treasurer shall bring an action in a court of appropriate jurisdiction to enforce such delivery.” R.S.Mo. § 447.575.

² The related pending cases are: In re: Ancillary Proceeding Questions: State Treasurer, Nancy Farmer v. Julie Smith, Receiver, Deborah Cheshire, Circuit Clerk and the County of Cole (Case No. SC84210); In re: Ancillary Proceeding Questions: State Treasurer, Nancy Farmer v. Elaine Healey, Trustee, Deborah Cheshire, Circuit Clerk and the County of Cole (Case No. SC84211); In re: Ancillary Proceeding Questions: State Treasurer, Nancy Farmer v. Sharon Morgan, Receiver, Deborah Cheshire, Circuit Clerk and the County of Cole (Case No. SC84213); and, Nancy Farmer, Missouri State Treasurer v. Honorable Byron L. Kinder, and Honorable Thomas J. Brown, III (Case No. SC84328). All of these cases are referred to herein collectively as the “Related Cases”.

Thus, because the Judicial Escheats Act is narrowly crafted to apply to rate refund cases like the one presented in this matter, to the extent that it conflicts with UDUP, the former should control.

B. Under The Judicial Escheats Act, Unclaimed Funds Are Escheatable And The State Only Gains A Right To Take Custody Over Those Funds By Successfully Pursuing Litigation.

UDUP and the Judicial Escheats Act are in direct conflict on a number of issues. First, under UDUP, property that remains in the possession of a holder for five years must be surrendered to the Treasurer when the holder submits its annual report on unclaimed property. R.S.Mo. §§ 447.539, 447.543.

The Judicial Escheats Act, however, does not require annual reports. Furthermore, there is no requirement that courts surrender residual funds from litigation at any set time. The Act specifically provides that funds retained for more than five years by courts in the litigation to which the Act applies, are “escheatable” and “may be escheated to the state of Missouri in the manner herein provided.” R.S.Mo. § 470.270 (emphasis added).

The conditional nature of the state’s right to obtain custody to residual proceeds of litigation under the Act is highlighted by the fact that the Act formerly provided that funds retained for more than five years “shall be escheated” to the state. In 1990, however, the Act was amended to state that such funds “may be escheated” to the state. See L. 1945 p. 915 § 1, amended by L.1990, H.B. No. 1052, § A. The amendment makes clear the statutory intent that the funds remain

with the court in which the case is filed and only are transferred to state custody if and when the state successfully completes litigation to gain custody of those funds.

Thus, to the extent that the state contends that residual funds from litigation such as the present case should be transferred to the state, the burden is on the state to bring an action, in compliance with the Act, to gain custody of those funds.

Because there is a direct conflict between UDUP and the Act on the issues of reporting and transfer of funds, and because the Act is more specific, the Act controls. See supra at 10-13.

Accordingly, the circuit court was correct in ruling that the Funds remain soundly within the custody and control of the Cole County Circuit Court. The state arguably may be able to bring an action to gain custody of those funds.³ As discussed below, the state has not yet successfully pursued such an action. See infra at 22-25. Thus, the circuit court was correct in granting Respondent's Motion and the judgment below should be affirmed.

UDUP and the Judicial Escheat Act are also at odds over what happens if and when the Funds come under the state's control. Under UDUP, with certain exceptions, any claim to presumptively abandoned property must first be brought

³ As discussed above, Amici have not researched the numerous substantive and procedural obstacles that the state would have to overcome to bring such an action and does not take a position in regard to those issues.

before the Treasurer. R.S.Mo. § 447.562. The Treasurer's decision in regard to a claim may be appealed to the Cole County Circuit Court, but the review of the Treasurer's decision on appeal is limited. Missouri Constitution Article V, Section 18 (providing that administrative decisions are to be reviewed to determine whether they are authorized by law and are supported by substantial and competent evidence).

The Judicial Escheats Act, on the other hand, provides that the circuit court in which the action was originally decided retains jurisdiction to decide claims to residual funds for two years after the funds have been transferred to the state's custody. R.S.Mo. § 470.330. Here, too, the more specific provisions of the Judicial Escheats Act control. See supra at 10-13.⁴

Leaving the Funds in the circuit court's control, under the Act, is appropriate from a policy perspective. It is common for funds created in utility refund cases or similar litigation covered by the Act to have money remaining after payment of all reasonably identifiable claims. See, for example, In Re Motor

⁴ The Treasurer argues that once a judgment becomes final, the circuit court loses all jurisdiction over the case. The Treasurer overlooks the long-established case law that consistently holds that circuit courts retain jurisdiction indefinitely over their cases to administer their judgments. Powell v. Georgia-Pacific Corp., 119 F.3d 703 (8th Cir. 1997). She also overlooks R.S.Mo. § 470.330, which explicitly provides that the Court may make distributions of residual funds from litigation up to two years after the funds have been transferred to the State's custody.

Sports Merchandise Antitrust Litigation, 160 F. Supp.2d 1392, 1393 (N.D. Ga. 2001); Jones v. National Distillers, 56 F. Supp.2d 355, 356 (S.D.N.Y. 1999). Trial courts retain broad equitable jurisdiction to control these funds until all of the funds have been disbursed. See, for example, Jones, 56 F. Supp.2d at 356-57.

As discussed infra at 25-26, one proper means of distributing residual proceeds of complex class action litigation is through cy pres distributions.

The Judicial Escheats Act's deference to the courts' recognized ability to decide who should receive the proceeds of civil cases can hardly be surprising. Judges with their extensive legal experience and training are uniquely well situated to make such decisions.

In the vast majority of instances in which UDUP applies, on the other hand, the party holding the funds is not a court and does not have the expertise or established reputation within the community for fairly resolving claims to property. Thus, for example, under UDUP, it is more appropriate for the Treasurer to decide potential claims to funds than banks or insurance companies.

Where, on the other hand, complex rate cases or insurance company receiverships are involved and potential cy pres distributions are called for, it is more appropriate for a court to retain control of the funds to decide the issue.

The present case is a good example. The court in the Underlying Case has been presented with the claims of legal aid offices throughout the state for cy pres distributions from the Funds. The doctrine of cy pres is a relatively complicated legal concept. Furthermore, application of the cy pres doctrine is an equitable

matter. In order to decide equitable issues, courts must call on their vast experience in litigation to decide what is fair under the laws of equity. The Treasurer has no trial experience that she would be able to refer to in deciding the issue.

Similarly, applying the cy pres doctrine to this case requires knowledge of the specific factual and legal background of the Underlying Case that has yielded the funds at issue. That case is both legally and factually complex. The Court is fortunate that Judge Brown, who is currently presiding over the Underlying Case is the very judge who decided the case originally. Having done so, he has an intimate knowledge of the intricacies of the case. The judge's knowledge of the case points to him as the proper person to decide how the funds at issue should be distributed.

Thus, the Judicial Escheats Act's deference to the decisions of the courts is understandable. If the state determines that it should start the process of escheating residual funds from litigation that have been held for more than five years, and if it believes it can overcome the substantial legal obstacles of bringing such an action under the Act, it may do so. R.S.Mo. § 470.270.

The Treasurer appears to be aware that the Judicial Escheats Act governs this litigation and supports the circuit court's decision below. Indeed, at her behest, H.B. 2146 was introduced in the Missouri Legislature. House Journal, p. 566, March 21, 2002. That bill would revise the Judicial Escheats Act to provide that residual funds that remain unclaimed for a period of more than three years

would be deemed abandoned and transferred to the state of Missouri. *Id.* The bill, however, was never passed out of committee. The applicable language, however, was added to S.B. 1248. That bill was passed by the Missouri legislature on May 17, 2002. That legislation, however, has yet to be signed by the governor and has yet to become law. Indeed, even if it is signed by the governor, there may be questions concerning the S.B. 1248's validity.

Accordingly, the Judicial Escheats Act remains in effect and continues to govern this case. Furthermore, the Act clearly governs the lower court's holding of the funds at all times prior to the effective date of any amendment. Thus, the Act was in full effect as of the time of the circuit court's decision in this case. Therefore, the lower court's decision was correct when made.⁵

C. The Judicial Escheats Act's Reference To UDUP's Procedure For Obtaining A Transfer Of Funds Confirms That The Act Controls.

Another indication of the legislative intent that UDUP be subordinated to the Judicial Escheats Act, in the relatively rare cases in which the Act applies, is

⁵ Given that S.B. 1248 has yet to be signed by the governor, it would be premature for Amici to brief the question of whether it would have retroactive effect or would otherwise be valid. If the bill does become law, Amici may seek to supplement their briefing on those issues.

that the Act refers to UDUP and provides that it may play a limited role in escheats under the Act.

The Judicial Escheat Act states that residual funds from specific types of litigation are escheatable and the state may gain custody of those funds by following the strict procedural rules set forth in the Act. R.S.Mo. § 470.270.

The Act then provides: “The provisions of this section notwithstanding, this state may elect to take custody of such unclaimed property by instituting a proceeding pursuant to section 447.575, R.S.Mo.” Id.

R.S.Mo. § 447.575 is just one of UDUP’s many provisions. It states that an action may be brought by the Treasurer to gain custody of presumptively abandoned property.

The procedures available to the state under UDUP for bringing an action to gain custody of presumptively abandoned property differ from those available under the Act in at least two significant ways. First, the Act requires that any action be brought in the State’s name. R.S.Mo. § 470.290. UDUP, on the other hand, allows the action to be pursued by the Treasurer. R.S.Mo. § 447.575.

Under the Judicial Escheats Act, an action by the state for custody of escheatable funds must be brought in either the circuit in which the court holding those funds is located or in Cole County Circuit Court. R.S. Mo. § 470.280. UDUP allows the Treasurer to bring such an action in any court of “appropriate jurisdiction.” R.S.Mo. § 447.575.

The limited nature of the Act’s reference to UDUP is important. The Missouri courts have long-recognized the rule of statutory construction that “expressio unius est exclusio alterius.” State ex rel. County of St. Charles v. Mehan, 854 S.W.2d 531, 536 n. 7 (Mo. App. 1993) (citing Black’s Law Dictionary 521 (5th ed. 1979)). This means that the express mention of one thing in a statute implies the exclusion of another. Id. at 536 (citing Brown v. Morris, 290 S.W.2d 160, 166 (Mo. 1956)).⁶

The Act only allows the state to use UDUP’s procedures as a means by which it may “take custody” of residual proceeds from litigation that falls within the Judicial Escheats Act’s scope. The limited application of UDUP expressly allowed under the Act, strongly implies that all other provisions and applications of UDUP do not apply to funds that fall within the Judicial Escheats Act’s narrow scope.

Thus, the only application UDUP has to the funds at issue, is that the Treasurer may bring an action to obtain those funds, assuming that she is constitutionally empowered to do so, and the venue for bringing such actions is arguably expanded. All other provisions of the Judicial Escheats Act govern the

⁶ The expression unius est exclusio alterius rule is generally applied by the courts with caution, State ex rel. Birk v. City of Jackson, 907 S.W.2 181, 185 (Mo. App. 1995), and statutes generally must be given a reasonable interpretation. Id. The application of the rule here, however, results in a reasonable interpretation of the Act and its inter-relation with UDUP. Accordingly, application of the doctrine here is appropriate.

disposition of those funds. This includes the circuit court's authority to order distributions of those funds for a two-year period after the funds have been transferred to the state. R.S.Mo. § 470.330.

Accordingly, the Circuit Court's decision should be affirmed. As discussed below, the state has not succeeded in bringing an appropriate action to gain custody of the Funds. See infra at 22-25. Therefore, the Cole County Circuit Court and Ms. Morgan as the court-appointed receiver of the Funds continue to have custody of those funds.

D. The State Has Not Successfully Pursued A Proper Action To Gain Custody Of The Funds At Issue.

As discussed above, the state may use the procedure set forth in either the Judicial Escheats Act or under UDUP to take custody of escheatable funds. As of the date of the lower court's decision, however, the State had not successfully completed an action to gain custody of the Funds. Accordingly, the circuit court correctly held that Ms. Morgan continues to have proper control and custody over the Funds and that the Funds were not to be transferred to the Treasurer under UDUP.

Under the Judicial Escheats Act, the State has an affirmative obligation to bring an action to gain custody of residual proceeds from utility rate refund cases. The Treasurer has not done so in this matter. Indeed, the Treasurer in this matter has not sought any affirmative relief. Accordingly, at least until the state successfully completes litigation to gain custody over the funds at issue in this matter, the circuit court's ruling was clearly correct in entering judgment in Ms. Morgan's favor.

The Treasurer has pursued affirmative relief in the action of Nancy Farmer, Missouri State Treasurer v. Honorable Byron L. Kinder ("Judge Kinder"), and Honorable Thomas J. Brown, III (the "Brown Case"). In that action, the Treasurer seeks the transfer of funds from the Underlying Case and from three other cases. In the Brown Case, the Treasurer has sued Judge Brown and Judge Kinder. Judge Kinder is the presiding judge in two of the underlying cases that are at issue in the

Related Cases. Ms. Morgan and the three other receivers in the related cases are also named as respondents in the Brown Case. The Brown Case is currently pending on appeal before the Court (Case No. SC84328).

The Act requires any action in which the state seeks to gain custody of escheatable funds to be brought in the name of the state. R.S.Mo. § 470.290. The state is not the named plaintiff in the Brown case. Accordingly, to the extent that the state has attempted to bring an action under the procedural requirements of the Act, it has failed.⁷

Assuming that the Treasurer was attempting to utilize the procedures set forth in UDUP, as allowed under the Judicial Escheats Act, that action, to the extent that it was brought against Judge Brown and Judge Kinder, still should fail because the Treasurer has not sued the proper parties.

Under UDUP's procedures, the proper party defendant in an action to gain control of escheatable property is the person who is the holder of the property. R.S.Mo. §§ 447.575, 447.543, 447.539. The Treasurer tacitly acknowledges this by referring to Judge Brown as the "holder" of the Funds in her pleadings and to Judge Kinder as the holder of funds from the other underlying cases. Brown Case

⁷ The Judicial Escheats Act also has specific notice requirements, including service by publication requirements, with which the state has failed to comply. R.S.Mo.

L.F. at 10, 14, 19 (Petition for Unclaimed Property in the Brown Case, filed July 25, 2001).⁸

UDUP defines the holder of property as: “any person in possession of property subject to [UDUP] belonging to another or who is trustee in case of a trust, or is indebted to another on an obligation subject to [UDUP].” R.S.Mo. § 447.503 (5).

Judge Brown is not in possession of the Funds. He clearly has power to make decisions that impact the disposition of those funds, but he is not the owner or the possessor of those funds.

The “holder” of the Funds under UDUP is the Cole County Circuit Court. Judge Brown’s relation to the Funds is no different from that of a Chief Executive Officer to property owned by a corporation. He may have power over the Funds, but he is not the Holder. See State ex rel. Eagleton v. Hall, 389 S.W.2d 798, 800 (Mo. 1965) (where state had inherited property under a will, it was a necessary and indispensable party to an action challenging the disposition of property under the

§§ 470.300, 470.310, 470.320. This failure further demonstrates that the state has not pursued any proper action to gain custody of the Funds under the procedural requirements of the Act.

⁸ Although the contents of the Legal File in the Brown Case are not before the Court in this matter, Amici would ask that the Court take judicial notice of the Petition from that case, as a court filing. See, for example, Johnson v. Raban, 702 S.W.2d 134, 136 (Mo. App. 1985) (court takes judicial notice of pleadings filed in prior litigation).

will). Similarly, Judge Kinder is not the holder of the residual funds from the other underlying cases.

Arguably, an action might be brought by the state against Ms. Morgan to gain custody of the Funds, using UDUP's procedures, as allowed by R.S.Mo. § 470.270 of the Judicial Escheats Act. To pursue such an action, however, the Treasurer would have to overcome the numerous substantive and procedural arguments raised by the respondents in circuit court. Amici have not researched these numerous and complex issues and take no position in regard to them.

The fact remains, however, that as of the time of the circuit court's ruling in this case, the State had not fulfilled its affirmative obligation under the Judicial Escheats Act of successfully completing litigation, filed in compliance with the Act, to obtain custody of the Funds. See supra at 10-13.

Accordingly, as of the time of the circuit court's ruling, the Funds properly remained in the control and custody of the Circuit Court of Cole County and Ms. Morgan was the proper receiver of those funds. Therefore, the circuit court correctly upheld Respondent's motion and the decision below should be affirmed.

E. Legal Aid Offices Throughout Missouri Are Proper

Beneficiaries Of Cy Pres Distributions From The Funds.

Courts throughout the country have long held that where there are residual proceeds from class action litigation, the trial court may distribute those residual proceeds to worthwhile charitable organizations whose mission is consistent with the plaintiffs' position in the litigation. See, for example, Powell v. Georgia-

Pacific Corp., 119 F.3d 703, 706 (8th Cir. 1997). See, also, Newberg on Class Actions (“Newberg”), Third Edition at § 10.17, pp. 10-41 to 10-42.

The Missouri Bar, the National Consumer Law Center and Legal Services of Eastern Missouri have each submitted amicus briefs, which thoroughly address the propriety of making a cy pres distribution in the Underlying Case from the Funds to Legal Aid Offices in Missouri. These other amicus briefs fully discuss the propriety of cy pres distributions of residual funds from class actions and similar litigation. Amici refer the Court to the fine discussion of the issue in those briefs.

For the reasons set forth in those briefs, Amici respectfully submit that Judge Brown’s judgment in the Underlying Case that the Legal Aid Offices are appropriate, non-exclusive, cy pres beneficiaries of the Funds was proper.

VII. CONCLUSION

For the reasons set forth above, the circuit court's decision in this matter should be affirmed in all respects.

If the state is to gain custody of the residual proceeds from the Underlying Case, it must do so in accordance with the requirements of the Judicial Escheats Act. Given that the state had failed to complete such an action as of the time of the circuit court's judgment below, the Funds at that time remained in the proper control of Respondent Jackie Morgan.

Respectfully submitted,

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**VIII. CERTIFICATE OF SERVICE AND COMPLIANCE WITH
SUPREME COURT RULES**

I hereby certify that two true and accurate copies of the foregoing were mailed,
postage pre-paid on May 20, 2002 to:

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The undersigned certifies that the foregoing brief complies with the
limitation contained in Rule 84.06(b) and that the brief contains 5,311 words. The
undersigned further certifies that the labeled disk, simultaneously filed with the
hard copies of this brief has been scanned for viruses and is virus-free.

The undersigned also certifies that he has consulted with counsel for all of
the parties to this appeal and that all parties have consented to the filing of this
amicus brief.

Gregg Lombardi