HOUSE DOCKET, NO. 3397 FILED ON: 1/18/2013

HOUSE . . . . . No. 1271

The Commonwealth of Massachusetts

PRESENTED BY:

Thomas P. Conroy

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to the disposition of class action residual funds.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Thomas P. Conroy	*13th Middlesex*

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HOUSE . . . . . No. 1271

By Mr. Conroy of Wayland, a petition (accompanied by bill, House, No. 1271) of Thomas P. Conroy relative to the disposition of class action unclaimed funds or property. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *1290* OF 2011-2012.]

The Commonwealth of Massachusetts

An Act relative to the disposition of class action residual funds.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Chapter 200A of the General Laws, is hereby amended by inserting after section 16 the following section:-

Section 16A. As used in this section the following terms shall have the following meanings:-

"Class" all of the class members in a class action.

"Class action" any civil action subject to rule 23 of the Massachusetts rules of civil procedure. Class action shall also include a de facto class action.

"Class members" the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action.

"De facto class action" an action that has not been certified by the court but includes identical consideration as provided in the Massachusetts rules of civil procedure rule 23 such as common questions of law or fact, claims or defenses of the representative parties are typical of the claims or defenses of nonparties and, as a practical matter, the disposition of the interest of the class or other members not parties to the adjudications would substantially impair or impede their ability to protect their interest.

"Judgment" a judgment in favor of any plaintiff in a class action that results in the creation of a common fund for the benefit of the class.

"Person" shall include, where applicable, natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

"Proposed settlement" an agreement regarding a class action that is subject to court

21 approval and that, if approved, would be binding on some or all class members.
22 “Residual funds” all unclaimed funds or other property, including uncashed checks or
23 other unclaimed payments, that remain in a common fund created in a class action after court-
24 approved payments are made for the following:-
25 (i) Class member claims;
26 (ii) Attorney’s fees and costs;
27 Residual funds shall also include any intangible property payable or distributable to a member
28 of or participant in a class action, either one allowed by the court to be maintained as such or 1
29 essentially handed as a class action and remaining unclaimed for more than 6 months after the
30 time for the final payment or distribution.
31 “Settlement” an order approving a proposal settlement of a class action that results in the
32 creation of a common fund.
33 Residual funds shall be deemed abandoned property, unless the apparent owner has claimed in
34 writing an interest in any of the residual funds in the form and manner and within the time
35 directed by the court.
36 Prior to the entry of any judgment or order approving a settlement under rule 23 of the rules of
37 civil procedure, the court shall determine the total amount that will be payable to all class
38 members, if all class members are paid the amount to which they are entitled pursuant to the
39 judgment or settlement. The court shall also set a date when the parties shall report to the court
40 the total amount actually y paid to class members. After the report is received, the court, unless
41 it orders otherwise consistent with rule 23 of the rules of civil procedure, shall direct the
42 defendant to pay the residual funds to the treasurer of the commonwealth for deposit in the
43 General Fund.
44 If residual funds are abandoned under this section, they shall escheat and vest absolutely in the
45 commonwealth.
46 The attorney general shall investigate violations of this section. If the attorney general finds a
47 violation of this section, he shall bring a civil action in the superior court to recover funds due to
48 the commonwealth.