Third Circuit Vacates Cy Pres Settlement in Rule 23(B)(2) Data Privacy Class Action

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Porzio Class Action Update

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In a case of first impression, the Third Circuit Court of Appeals set aside a district court's approval of a nationwide data privacy class action settlement where the only class relief was a *cy pres* award to organizations the defendant approved. The class plaintiffs claimed that Google invaded users' privacy under the California constitution and state tort law by installing tracking cookies on their browsers that operated even if the user configured privacy settings to prevent this. In a Fed. R. Civ. P. 23(b)(2) injunctive relief class settlement, Google agreed to stop using the cookies for Safari browsers and pay $5.5 million for counsel's fees and costs, incentive awards for the named class representatives, and *cy pres* distributions to six data privacy organizations that research and promote browser security and privacy—with no direct compensation to the absent class members. *In re: Google Inc. Cookie Placement Consumer Privacy Litigation,* ---F.3d---, 2019 WL 3559113 *1-3 (3rd Cir. August 6, 2019).

A consumer advocate institute objected to the settlement arguing...