

## EMPOWERING YOUTH ON FOOD & FITNESS

Childhood obesity is a growing U.S. problem, gaining attention from **public health officials**, food companies, and the general public. One important resource for reversing this trend is a visionary program created in 1993 with cy pres settlement funds from a class action lawsuit in California. Today, that program continues its innovation and community focus across the U.S., and is also the first cy pres settlement grantmaking by what became the Public Health Trust program of the Public Health Institute.

Communities-Adolescents-Nutrition-Fitness (**CANFIT**) was created in

1993 as a result of a 1977 lawsuit that involved Kraft General Foods, and a class of plaintiffs represented by the nonprofit law firm Public Advocates. Pre-settlement research by consultants from the University of California, Berkeley School of Public Health and the University of California, San Francisco Division of Adolescent Medicine



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pointed to low-income, multiethnic adolescents as the group within the class most at risk of being affected by defendant's alleged misleading marketing. In the settlement agreement, parties agreed to creation of a non-perpetuating \$2 million trust fund, acknowledged that significant behavioral and environmental changes were needed to

—CANFIT continued on page 4

### Turf Testing Proposals Invited

People of all ages are having fun and improving their health while playing in their local park, or at the playground of their school or daycare facility. If their playing field is made of synthetic turf, then it's important for them to know that potential human health risks of lead exposure from these kinds of fields are low if the fields are new, but higher for turf that is older and weathered, possibly releasing lead into dust that could be inhaled or ingested. A **Request for Proposals (RFP)** recently released by the Public Health Trust addresses lead exposure risks for people, and especially children, using synthetic turf fields in California.



Public Health Trust was selected to design and administer a grants program with funds from settlement of a Proposition 65 lawsuit alleging that specified companies exposed California consumers to lead from synthetic turf without appropriate warning. \$207,000 of settlement funds supporting this RFP comes from three companies:

—Continued on page 5

### CONTENTS

CANFIT—Empowering Youth on Food & Fitness.....	1
Turf Testing Proposals Invited .....	1
Spotlight On Joshua Davis.....	2
Clean and Safe Water Projects Completed .....	3
Cy Pres and Prop 65 Suggestions Converge .....	5
In the next issue .....	6
PHT acknowledges .....	6

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*Public Health Trust is a program of the Public Health Institute*



# SPOTLIGHT ON PHT PARTNERS AND ADVISORS

Joshua P. Davis has partnered with the Public Health Trust to reach out to legal scholars, judges, practicing attorneys, and nonprofit community organizations to improve understanding of cy pres settlement issues. His professional activities first intersected with the Public Health Trust a decade ago when he practiced law at Lieff Cabraser Heimann & Bernstein LLP. There he was involved in an antitrust class action settlement that resulted in the Public Health Trust's administration of millions of dollars of cy pres funding and prescription drug products, for a program to benefit taxpayers by improving uninsured patients' timely access to medications. While that multi-year program unfolded, Mr. Davis joined the faculty of the University of San Francisco School of Law, where he now directs the Center for Law and Ethics, teaches civil procedure, ethics and related classes, and serves as Associate Dean for Faculty Scholarship.

Professor Davis earned his law degree from New York University, served as law clerk for Judge Patrick Higginbotham in the U.S. Court of Appeals for the Fifth Circuit, then taught as a fellow at the Georgetown University Law Center. As a law professor, he specializes in complex litigation, ethics, and the interplay between the two. Davis is active in law reform; he served from 2001 to 2004 as the reporter for the committee that drafted California Supreme Court Rules on multijurisdictional practice, and has testified before the House Judiciary Committee.

In late 2009, Professor Davis and

PHT Director Kathryn Sáenz Duke discussed the growing public interest in cy pres settlement practices, and some related trends, concerns, and questions. Out of that conversation developed a plan to convene other interested attorneys to explore these issues. That convening happened in October 2010, with a symposium bringing together three



*Joshua P. Davis*

different panels of discussants-- judges, attorneys, and cy pres settlement beneficiaries and administrators. Each panel and its moderator presented comments and information to the 130 other participants, responding to questions on a range of topics touching on

current cy pres settlement funding practices, developments in state and federal law, and questions and concerns about future use of cy pres settlements and fluid recovery. Professor Geoffrey Hazard also provided a thought-provoking keynote address. Davis reports, "The conference greatly advanced understanding of best practices for cy pres. I hope we at USF Law School can find ways to collaborate again with Public Health Trust staff and advisory board members on this or similar issues. It was a genuine pleasure working with the Public Health Trust."



# CLEAN AND SAFE WATER PROJECTS COMPLETED

Many Public Health Trust grant-making programs have focused on the toxics referenced in California's Safe Drinking Water and Toxic Enforcement Act of 1986, an important environmental health law usually referred to as Proposition 65. However, PHT recently completed the grantmaking process for a group of projects focused on the other topic referenced in Prop 65: clean and safe drinking water. Final reports on this four-year grant program were sent to the judge who approved the settlement, the California Attorney General, and the settling attorneys.

After completing a publicly announced Request for Proposals and competitive grantee selection process, PHT chose five projects to receive a total of \$225,000 from the 2006 settlement of *Communities for a Better Environment v. Tosco* (consent judgments with ConocoPhillips and Shell), resulting from a Proposition 65 lawsuit involving leaking underground oil storage tanks. By late 2010, all grantees had submitted progress reports and a final report on their use of funds and public health objectives achieved.



■ **Community Clean Water Institute's** Citizen Water Quality Monitoring Program and Expansion of Mark West Creek Water Quality and Instream Flows Monitoring Project used its funds to obtain

additional water monitoring equipment for their work in Sonoma County, California. CCWI used the resulting watershed monitoring data in reports to local water boards during discussions of land use and development proposals for the county.

■ **Community Water Center's** Protecting Groundwater from the Ground Up held numerous community meetings and trainings, working with residents from fifteen different impacted communities in California's southern San Joaquin Valley. The Center's outreach prompted the U.S. Senate Committee that oversees the Environmental Protection Agency to ask federal officials about local parents' concerns regarding suspected health hazards of water in their children's school drinking fountains.

■ **Center on Race Poverty and The Environment's** Don't Waste the Valley Project involved community information and technical assistance activities centered on cleaning up contaminated groundwater and securing safe public drinking water for residents of two towns in California's rural Kern County: Shafter and Arvin.

■ **Klamath Riverkeeper's** Salmon Fishermen and Tribal Empowerment Project provided transportation for local tribe members in Northern California to attend public hearings far from their homes. It also created a team of lawyers, scientific experts, tribal members, and commercial fishermen to ana-



lyze and submit formal comments on the 401 Permit CEQA proceedings involving the Klamath River Total Maximum Daily Load (TMDL) pollution limits.

■ **Clean Water Fund's** Central Valley Water for All Project identified community leaders and empowered several rural communities to improve their drinking water. In Monterey Tract, where the local drinking water is tainted with arsenic and nitrates, CWF's bilingual program director facilitated two bilingual local residents to give testimony before the County Supervisors and then to fill out their applications for open seats on their local water board.

Funds for the grantmaking summarized above was made possible by the following parties connected to the underlying lawsuit and its settlement: Judge: Honorable Richard A. Kramer. Attorneys: J. Scott Kuhn and Adrienne Bloch of Communities for a Better Environment; Laura Baughman of Baron & Budd; Nancy Eichler of Masry & Vititoe; Elissa Warantz of ConocoPhillips Co.; Craig de Recat of Manaath, Phelps & Phillips; Kriston Qualls of USA Petroleum Corp.; Cisselon Nichols of Shell Oil Co.; Michael Leslie of Caldwell, Leslie, Newcombe & Pettit; and John Lyons of Latham & Watkins.

## CANFIT—Continued from page 1

improve the nutrition of the settlement's target population, specified the type of interventions that would be supported by settlement funds, and created an administrative board with expertise in several relevant health topics as well as ethnic and geographic diversity.

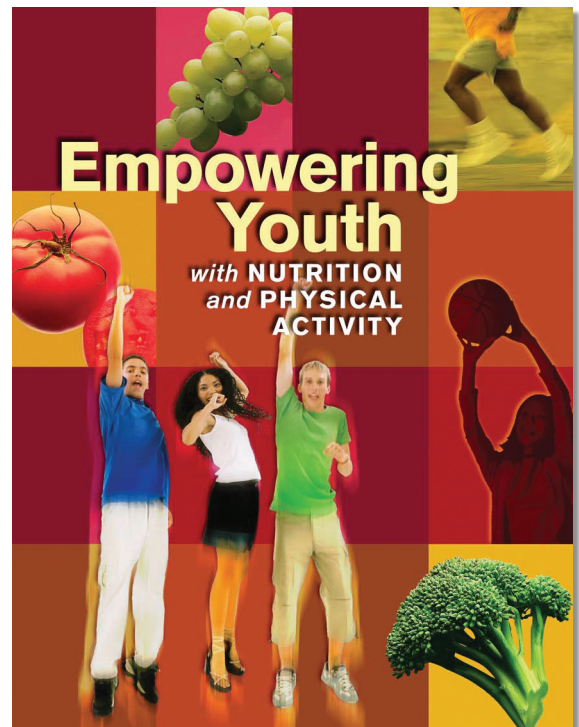
Lois Salisbury was a Public Advocates attorney and a leader in developing the cy pres settlement agreement for *Committee on Children's Television v. General Foods*. "When we started to discuss settling this case, it was difficult to put a price tag on the damages we believed children were experiencing through repeated viewings of General Foods' cereal commercials," recalls Salisbury. "And even with a California Supreme Court ruling quite helpful to our legal efforts, we realized how difficult it would be to craft an injunction that would make a lasting difference in advertising directed at children."

The result was a novel program--CANFIT--developed to address the community context in which adolescents from low-income communities make decisions and find social support for healthy choices about nutrition and fitness. After years of using grantmaking to support and empower youth in California to understand nutri-



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tion and physical activity conditions affecting their own community, CANFIT has developed its own organizational expertise. Now, CANFIT works to bridge the gap between communities and policymakers by directly supporting development of culturally competent policies and practices that resonate with youth and are easy to implement in low-income communities. With funding from well-known philanthropic foundations, U.S. Department of Agriculture, and U.S. Centers for Disease Control & Prevention, CANFIT has developed a number of programs that empower youth and their communities to design, carry out, and evaluate projects such as the MO Project, in which youth make media showing what community health improvement they want more ("MO' ") of, and Promoting Healthy Activities Together (P.H.A.T.),



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which uses hip-hop culture to promote good nutrition and physical activity.

CANFIT's founding and current director Arnell Hinkle is pleased to see growing attention to community-focused efforts to reduce childhood obesity. "It's rewarding to see our experience and strategies finally being accepted as part of the public discourse on ways to improve health of youth and their communities."

Creation of CANFIT was made possible by settlement of *Committee on Children's Television, Inc. v. General Foods Corp.*, which followed a California Supreme Court opinion authored by Justice Broussard, with Justices Mosk, Richardson, Kaus, Reynoso and Grodin concurring, and Chief Justice Bird concurring and dissenting. 35 Cal.3d 197 (1983). Attorneys: Sidney Wolinsky, Lois Salisbury, and Robert Gnaizda of Public Advocates; John Hanson, J. Edd Stepp, Jr., Steven McCracken, and Gail Lees of Gibson, Dunn & Crutcher.



# CANFIT

Communities • Adolescents • Nutrition • Fitness

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## CY PRES AND PROP 65 SUGGESTIONS CONVERGE

Two California events in late 2010 brought public attention to issues regarding use of litigation settlement funds in a cy pres or similar manner. The earlier event was a one-day symposium held in San Francisco: *Litigation, Settlement and the Public Interest: Cy Pres and Fluid Recovery*. This brought together for presentations and discussion a well-known civil procedure law school professor; panels of judges, litigating attorneys, and cy pres settlement beneficiaries and administrators; and an audience of 130 practicing attorneys, law professors and students. Their wide-ranging discussion touched on various perspectives and practices regarding cy pres settlements of class action lawsuits.

The second event was public posting of a **letter** from the California Attorney General raising concerns

about some settlements of actions brought under California's Safe Drinking Water and Toxics Enforcement law (commonly referred to as Proposition 65). This letter was sent to attorneys most involved in bringing Proposition 65 private enforcement actions and negotiating judgments that include payments in lieu of penalties, which in some ways resemble cy pres settlements of class action lawsuits.

The symposium and the AG's announcement of possible Attorney General guideline development were quite separate from each other in their origins, participants, and immediate goals. However, some similar themes emerged from both:

- A preference for settlement fund expenditures with a nexus (e.g., geographic, subject matter) between the underlying legal



action and a cy pres or “payments in lieu of penalty” use of those funds;

- A preference for specificity in the description of goals for settlement-funded-activities, and for public information and transparency in the selection of organizations or projects to pursue those goals;
- A sensitivity toward the potential conflict of interest created by use of cy pres and in lieu of penalty payments as they might affect attorney fee awards.

### Turf RFP—Continued from page 1

FieldTurf, USA; Beaulieu Group, LLC; and AstroTurf, LLC.

Based on guidance from the litigation settlement documents, the RFP invites proposals to (a) test synthetic turf for lead levels upon request of licensed day care centers, schools, public playing fields and other locations throughout California; and (b) promote good maintenance practices for these fields. To the extent funds are available, the grantee(s) will also provide broader public education and outreach about steps turf field owners and users can take to reduce human health risks of exposure to lead in synthetic turf and other consumer products. PHT thanks the following experts for advising in the RFP's development: Charles Vidair, California Office of Environmental Health Hazard Assessment; Dennis Jordan, Alameda County Lead Poisoning Prevention Program.

Applicants may be nonprofit organization(s), governmental agencies, or businesses, possibly in partnership with another organization. They must document their experience in testing products for lead, and

describe how they will communicate what is needed to properly maintain the synthetic turf to reduce users' potential lead exposure. Proposals must be received by March 17, 2011. They will be reviewed and scored by a specially convened, outside review panel, based on criteria specified in the RFP.

This grantmaking is made possible by funds from settlement of *People of the State of California v. Beaulieu Group, LLC et al.* Judge: Honorable Robert B. Freedman. Attorneys: Edmund G. Brown, Jr., California Attorney General; J. Matthew Rodriguez, Ken Alex, Edward Weil, and Dennis Ragen, California Attorney General's Office; Carmen Trutanich, Earl Thomas, Patricia Bilgin, Elise Ruden, and Vaughn Minassian, Los Angeles City Attorney's Office; David Paulson and Criselda Gonzalez, Solano District Attorney's office; Mark Todzo, Lexington Law Group; Joann Williams, AstroTurf; Marie-France Nantel, Fieldturf USA, Inc.; Jeffrey Margulies, Fulbright & Jaworski, LLP; Malcolm Weiss and Catherine Allen, Hunton & Williams LLP; and Peter Farley, Beaulieu Group, LLC.

## In the next issue...

Funds from settlement of a lawsuit against RJR are supporting efforts by organizations, agencies, and college campuses wanting to create an ATTACK plan to counter tobacco industry targeting tactics aimed at young adults.



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## ■ PHT acknowledges...

*...the many people and organizations who have, since the last newsletter, contributed information, wisdom, or financial support to Public Health Trust and projects funded by our grantmaking. In addition to those already mentioned in this newsletter, we thank:*

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### Linking Settlement Funds to Community Needs

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*The Public Health Trust works with private attorneys, government agencies, and public health organizations interested in using litigation settlement funds to improve public health. PHT grantees have addressed marketing of food or tobacco products, exposure to toxic substances, medication access, air and water quality, and other issues affecting public health.*