

**COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
FOURTH DIVISION
CIVIL ACTION NO. 20-CI-00332
FILED ELECTRONICALLY**

**HAYNES PROPERTIES, LLC,
MITCH AND SCOTT HAYNES DBA
ALVIN HAYNES & SONS AND
S&GF MANAGEMENT, LLC
ON BEHALF OF THEMSELVES AND ALL
OTHERS SIMILARLY SITUATED**

PLAINTIFFS

v.

BTGCA STATUS REPORT TO COURT

**BURLEY TOBACCO GROWERS COOPERATIVE
ASSOCIATION**

DEFENDANT

** ** ** ** ** **

The Burley Tobacco Growers Cooperative Association (“BTGCA”), by counsel, with the advice and consent of the Dissolution Committee, provides the following Status Report to the Court of all winding-up activities since its October 11, 2022 Interim Report was filed.

1. Distributions. A second round of Distributions made to Settlement Class Members will be reported on separately by Class Counsel.

2. Asset Liquidation. All known assets of BTGCA have now been collected and liquidated. Its last piece of tangible personal property, a mechanized floor sweeper located at the Springfield, Kentucky warehouse which BTGCA formerly leased, was sold to John Haydon for \$7,000.00. The large Brighthouse annuity held for investment and income matured on November 22, 2022 and its net surrender proceeds of \$1,462,202.00 was received and deposited into the Traditional Bank fully-insured Partial Distribution ICS account on December 30, 2022. Dividend checks received on MetLife stock have been deposited in the BTGCA regular bank account at

Wells Fargo Bank. The Metlife stock was sold and proceeds of \$6,145.84 were deposited into the Wells Fargo bank account.

All four life insurance policies owned by BTGCA insuring the life of Danny McKinney, its former executive, have been surrendered and cashed out. The three MetLife policies yielded total proceeds of \$447,201.00 and from those monies, \$443,891.53 was used to purchase an Immediate Annuity in the name of Danny McKinney as owner. In consideration for that, Mr. McKinney signed a binding Termination and Satisfaction of Supplemental Retirement Income Plan and Release dated October 12, 2022, wherein he agreed to the termination of his former Supplemental Retirement Income contract with the BTGCA, accepted- the newly purchased Immediate Annuity in full and complete satisfaction of the former retirement income plan obligations, and waived any and all claims, demands and damages of any kind against the BTGCA, its current Dissolution Committee and all former Members of the BTGCA Board of Directors, whether based in law, equity or statute, arising from the mutual termination of the Supplemental Retirement Income Plan. His release extinguished the last and largest contractual liability of the BTGCA. A copy of is Release has been provided to all counsel in this case. The fourth policy from New England Life (now Brighthouse) yielded \$105,604.39, which was deposited into the Traditional Bank Partial Distribution account on October 11, 2022.

3. Tax Returns. The BTGCA is now awaiting year-end reporting forms from MetLife, New England Life Insurance (now Brighthouse), Wells Fargo Securities and other entities which may report income, dividends, taxable gain on sale or deductible expenses needed for the preparation of the BTGCA federal and state income tax returns for its fiscal year 2021-2022 ending September 30 (which return is not yet due). Just today, the Form 1099-R was received on the cash-in of the large Brighthouse investment annuity. It shows "Taxable amount \$764,202." When

all of those reports and tax forms are received, undersigned counsel for the BTGCA will meet with its regular accountant/auditor Chuck Hord, CPA and its tax preparer John Copeland, CPA of Blue & Co. to determine if any portion of the various income sources constitutes taxable, non-exempt income for which any actual cash reserve may be required. The BTGCA has a large net operating loss carry forward that can be used to negate taxable gain on sale of its tobacco stocks and equipment, but we simply do not know yet if the NOL will apply to offset any taxable gain arising from sale of the MetLife stock, surrender of the four life insurance policies, or the Brighthouse annuity sale. There will be other deductions available too. Chuck Hord, CPA has all the business and transaction records for the 2021-22 fiscal year to provide to Blue & Co.

4. Funds on Hand. The bank balance in the BTGCA Wells Fargo regular account on January 6, 2023 was \$136,961.36. That account is fully-insured. The current balance of the fully-insured Traditional Bank Partial Distribution ICS account is \$2,825,716.89.

5. Grant to New Nonprofit. The BTGCA has not yet funded the \$75,000 grant the Court previously approved that is now payable to the new non-profit Burley & Dark Tobacco Producers Association, Inc., BTGCA plans to make that disbursement from its regular Wells Fargo account. In addition, once it can be determined how much the accrued interest was on the Brighthouse totaled from September 1, 2021 annuity until date of sale in late November, 2023, the proper amount of accrued interest can additionally be paid to the Burley & Dark Tobacco non-profit, as the Court previously ordered in its July 28, 2021 Amended Opinion and Order, paragraph 31. That payment should come from the Traditional Bank Partial Distribution account, once approved by the Dissolution Committee.

Since deposit of the large Brighthouse annuity proceeds into the fully-insured Traditional Bank account, counsel for BTGCA has not attempted to invest those proceeds, because of the

expectation that Class Counsel would commence in February the Court-ordered notice and opt-out process of communicating with Settlement Class Members who might wish to claim their per capita share of that sum as an additional distribution. Traditional Bank only pays 0.03% per annum interest on its fully-insured money market account under ICS arrangements. If we know with certainty what the period of time would be before a potential division and distribution of the “reserve for the new non-profit,” it might be possible to purchase a short-term Treasury investment. Otherwise, the benefit to either Settlement Class Members or the new nonprofit would be *de minimis*.

6. Remaining Liabilities. BTGCA has three known small liabilities to pay.

(a) A bill was just received for shipping and handling charges on return of the leased copy machine to Quadrient Leasing for \$371.00, which will be paid out of the Wells Fargo account.

(b) Second is the unpaid portion of legal fee billings of Mr. Jeremy Rogers and Dinsmore LLP who were hired as approved insurance defense counsel for 23 present and former directors of BTGCA. Dinsmore was to be paid by Navigators Insurance. We were not privy to any billing guidelines between Navigators and Dinsmore, but Dinsmore bills and emails the undersigned has seen plainly show that Navigators (or Legal Exchange, its third party billing reviewer) denied one entire month of legal fees on the Invoice dated June 8, 2020 for \$7,804.50, and disallowed sums of \$1,936.70 and \$1,605.62 on other Invoices for a balance due of \$11,346.82. Navigators refuses to pay this balance. The services were when Mr. Rogers was very active in this case. BTGCA paid its \$50,000 self-insured retention to Dinsmore directly. All directors who were sued in this action made written demand to BTGCA for defense and indemnity. Mr. Rogers had each of the twenty-three present and former directors of BTGCA sign a proper

engagement letter advising them that he had been engaged to defend the directors in this case, that Navigators Insurance Company would be paying for his and Dinsmore's legal services subject to the applicable terms of the Navigators' policy of insurance, and "by executing this Engagement Letter, you are entering into the contract that is binding on both the Firm (Dinsmore) and You, pursuant to the Terms and Conditions." There is clear statutory indemnity for directors in KRS 272.345, as well as in the BTGCA Bylaws and a longstanding written Board Policy that afforded the directors the right of indemnity against the BTGCA. Accordingly, although there is no direct contract between the BTGCA and Dinsmore, it is a legal debt of BTGCA to indemnify its directors. We have examined all itemized bills and know that the services were performed in a competent manner, including hours Mr. Rogers spent with the Court acting as liaison counsel. All the services Mr. Rogers performed otherwise would have had to be performed by the undersigned as regular counsel for the BTGCA. His \$235.00 hourly "insurance" rate was very reasonable. There was no duplication of services between Mr. Rogers and the undersigned. It would not be cost efficient to attempt to sue Navigators for this amount. Accordingly, BTGCA plans to pay Dinsmore \$11,346.82, unless someone objects.

For transparency in this record, the undersigned attaches as **Exhibit A** the 2022 Form 1099 received by Sturgill Turner from BTGCA, the total of \$47,172.76 legal fees and expenses paid to Sturgill Turner last year. Sturgill Turner stored over 60 boxes of BTGCA business records in its offices at no charge for 10 months (not its regular case files). Our January 2023 services have not yet been billed.

(c) Chuck Hord, CPA has not yet billed the BTGCA for his ongoing services in late 2022. Mr. Hord is keeping the BTGCA regular Wells Fargo checkbook, updating its monthly QuickBooks records and has obtained and organized all necessary information to present

to BTGCA's tax preparer, John Copeland, CPA. Mr. Hord made sure that the payroll service for BTGCA completed its deposit and yearend reporting for all payroll and occupational license taxes for 2022.

7. Future Expenses. BTGCA proposes a "safe reserve" of \$30,000 for anticipated accounting and legal professional fees to Sturgill Turner, Chuck Hord and Blue & Co. to complete dissolution and tax returns, and for records retention and destruction, to be paid from the Wells Fargo account. As noted, there will be two years of tax returns to be prepared and filed, plus final winding-up and reporting to this Court to be done by the above professionals.

Sturgill Turner obtained a price quote from its outside records storage agent, Vital Records Control on Palumbo Drive, to store BTGCA's 60 or so boxes of business records. The cost for two years storage is \$1,012.00, including destruction. There is an additional fee to retrieve boxes (\$2.75 per box), if needed. This proposed retention period and fee quote has been circulated to all counsel, with no objections. Sturgill Turner will pay VRC's bill in full and then include it as a reimbursable expense on its next Invoice to BTGCA. Chuck Hord, CPA has been consulted and both he and the undersigned believe two years is a safe retention period. We have signed severance agreements and releases from all prior employees, so BTGCA has no exposure to any employment claims that would have a five-year statute of limitations. Careful preparation and BTGCA's large net operating loss make it unlikely that a tax audit would result in any big surprise assessment. It is likely that we would receive any tax notice of assessment or inquiry within two years. Sturgill Turner will continue to receive all BTGCA mail.

WHEREFORE, the BTGCA respectfully prays the Court to accept this Status Report, to confirm that Sturgill Turner, Chuck Hord, CPA and Blue & Co., CPAs may be paid for their respective professional services recently provided and to be provided, out of the BTGCA Wells

Fargo bank account within the overall \$30,000 proposed reserve for professionals, with all such bills to be provided to the Dissolution Committee, Class Counsel, and McBrayer contemporaneously; and to approve the proposed records retention plan.

Dated: January 27, 2023.

Respectfully Submitted,

/s/ Kevin G. Henry

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Have seen:

/s/ Robert E. Maclin, III

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Dissolution Committee Members, Penny
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CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2023, the foregoing document was electronically filed with the Clerk of this Court using the e-filing system and served electronically by the Clerk of this Court upon the following:

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/s/ Kevin G. Henry
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 Growers Cooperative Association and BTGCA
 Dissolution Committee Members, Al Pedigo,
 Donald Mitchell and Eddie Warren*

Courtesy Copies via email to:

Hon. Julie Muth Goodman
 c/o Alicia Dean (aliciadean@kycourts.net)

All Dissolution Committee Members

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EXHIBIT A

VOID CORRECTED

PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no. BURLEY TOBACCO GROWERS COOPERATIVE 1050 MONARCH STREET SUITE 110 LEXINGTON, KY 40513 (859) 278-0112		OMB No. 1545-0116 Form 1099-NEC (Rev. January 2022) For calendar year 2022		Nonemployee Compensation
PAYER'S TIN 61-██████████		RECIPIENT'S TIN ██████████		
RECIPIENT'S name STURGILL, TURNER, BARKER & MALONEY PLLC Street address (including apt. no.) 333 W VINE ST., STE 1500 City or town, state or province, country, and ZIP or foreign postal code LEXINGTON, KY 40507		1 Nonemployee compensation \$ 47172.76		Copy B For Recipient This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.
		2 Payer made direct sales totaling \$5,000 or more of consumer products to recipient for resale <input type="checkbox"/>		
		3 <input type="checkbox"/> 4 Federal income tax withheld \$		
Account number (see instructions)		5 State tax withheld \$	6 State/Payer's state no.	7 State Income \$

Form 1099-NEC (Rev. 1-2022) (keep for your records) www.irs.gov/Form1099NEC Department of the Treasury - Internal Revenue Service

EXHIBIT A