

COMMONWEALTH OF KENTUCKY  
FAYETTE CIRCUIT COURT  
FOURTH DIVISION

Civil Action No. 20-CI-00332

*filed electronically*

HAYNES PROPERTIES, LLC, *et al.*

PLAINTIFFS

v.

BURLEY TOBACCO GROWERS  
COOPERATIVE ASSOCIATION, *et al.*

DEFENDANTS

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Settlement Class Counsel's Motion to Approve  
Form and Content of Notice and Return Postcard

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NOTICE

Please take notice that this Motion will be heard on Friday, February 24, 2022, beginning at the hour of 10:00 a.m. or as soon thereafter as counsel may be heard.

MOTION

Settlement Class Counsel, Katherine K. Yunker and Jason R. Hollon, hereby attach the notice (Exhibit 1) and return postcard (Exhibit 2) they have created in accordance with the directive in ¶32 of the 7/28/21 Amended Opinion and Order Approving Partial Settlement, and request that the Court approve the proposed mailing for sending out to qualified class members. In support of their motion, Class Counsel state as follows:

1. In ¶¶ 22-36 (pp. 15-23) of the Amended Opinion and Order Approving Partial Settlement entered July 28, 2021 ("7/28/21 Order"), the Court discussed the settlement provisions for a \$1.5 million grant by the Co-op to a non-profit tobacco advocacy entity, objections and alternative proposals thereto, and the substance and procedures for what the Court concluded should be approved with respect to the \$1.5 million sum. The Court ordered:

The sum of \$1.5 million from BTGCA’s pre-dissolution assets shall be distributed to the Burley and Dark Tobacco Producers Association, Inc. consistent with the terms of this Opinion and Order and subject to further monitoring by the Court and Class Counsel and further Orders of this Court.

7/28/21 Order, p.23, Ordering ¶ 2. The 7/28/21 Order was final and appealable by the end of August 2021, but was not appealed by the deadline therefor.

2. Paragraphs 31-36 (pp. 20-23) of the 7/28/21 Order detail the implementation of the \$1.5 million grant, including a process “allowing qualified class members to directly voice their support for, or to withdraw from, the nonprofit” (*id.* ¶36 p.23). To initiate that process, Class Counsel are directed to prepare a mailing to all qualified class members, to provide:

**the option** to request and be paid individually their proportionate share of the remainder of the grant fund (less the sum of all approved costs of administration ...) by returning a signed postcard ..., stating either that they wish **to withdraw their support for the nonprofit and be paid their share of the net remainder of the grant fund** or they wish **to leave their share in place as part of the permanent endowment grant to fund the nonprofit**. .... The form and content of such mailing and return postcard shall be created by Class Counsel, with approval from the Court.

7/28/21 Order ¶ 32 (pp. 21-22; emphases added). A “qualified class member” is a settlement class member who has a current, valid W-9 on file with the Settlement Administrator and shares in the primary distribution of the Co-op’s net assets. *Id.* ¶ 32.

3. The mailing to qualified class members is to be prepared within 90 days following the end of the first full year of operation of the Burley and Dark Tobacco Producer Association, Inc. (“BDTPA”). Class Counsel have created the form and content of a notice letter and return postcard, attached hereto as Exhibits 1 and 2 respectively. The notice letter would be enclosed with the return postcard in an envelope addressed and mailed to each qualified class member individually.

4. Preparation of the notice letter and return postcard took 7/28/21 Order ¶¶ 32-34 as the guideline for describing the options and the process for effecting a qualified class member’s

choice, and incorporated Class Counsel’s practical experience with questions and difficulties in establishing the qualified class membership list and the distribution process. In particular, please note:

a. The letter maintains neutrality between the options, and points to publicly-available information, including on the class-action website — [www.btgcasettlement.com](http://www.btgcasettlement.com) — that a member may find useful in deciding between the options. The response deadline is emphasized and repeated, is a date certain, and is a postmark deadline — which the sender knows and controls (as opposed to a “received by” deadline).

b. The return postcard requires only a few bits of information, but would sufficiently identify the qualified class member making the election and the authority of the signer if s/he is not the actual class member. The information required is not confidential and exposure of the information bits on the face of a postcard does not facilitate identity theft or misappropriation of class member benefits. In particular, the Notice ID supports unambiguous identification of the class member, but knowing it is insufficient for a person to be able to change distribution payment information or obtain the member’s tax identification number or distribution payments history.

c. As stated in ¶3 of Class Counsel’s status report filed February 16, 2023, the number of qualified class members stands at 2,602. Deducting only the \$175,000 total payments to the BDTPA per 7/28/21 Order ¶ 32 and nothing for approved costs of administration, the proportionate share in the remaining Fund would be \$509.22. This is the most that a proportionate share could be. Keeping administrative costs as low as possible while still supporting class members’ effective opportunity to elect between options is needed to realize the goals of the settlement as approved and protect class members’ rights and interests.

5. The mailings are “to be sent out no later than eight months into [BDTPA’s] second operating year.” 7/28/21 Order ¶ 32 (p.23). Class Counsel would like to send out the mailings early in that window, so that the process can be completed and distributions of the Fund to qualified class members and BDTPA can be finalized in calendar year 2023. Steps subsequent to the mailing (*id.* ¶ 33) include the 60-day return period, verification of the returns and any needed update to tax documentation, approval of fees and costs for administering the process, determination of the proportionate share, and issuance of checks (*id.* ¶ 33); members issued a proportionate share are also to be allowed a 90-day period before unclaimed amounts revert to the Fund and are subject to a different distribution (*id.* p.27, Ordering ¶ 8).

6. Class Counsel respectfully request that the Court allow them flexibility as to logistics for the process, contact or web information, or incidental features of the proposed mailing — *e.g.*, the letterhead, return address for the postcard, weblinks provided, typeface and spacing — so that they would not need to return to the Court for approval of any changes that may be necessary or efficient.

WHEREFORE, Settlement Class Counsel respectfully request that the Court enter an order approving the form and content of the notice letter and return postcard.

Respectfully submitted,

/s/ Katherine K. Yunker

Katherine K. Yunker (KBA # 79592)

/s/ Jason R. Hollon

Jason R. Hollon (KBA # 96148)

MCBRAYER PLLC  
201 E. Main Street, Suite 900  
Lexington, KY 40507-1361  
(859) 231-8780

*Settlement Class Counsel*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served this 17th day of February 2023, electronically via the e-filing system and via electronic mail upon the following:

Jeremy S. Rogers  
DINSMORE & SHOHL LLP  
101 South Fifth Street, Suite 2500  
Louisville, KY 40202  
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W. Henry Graddy, IV  
Dorothy T. Rush  
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*Courtesy Copy (emailed):*  
D. Gaines Penn  
ENGLISH, LUCAS, PRIEST & OWSLEY, LLP  
1101 College Street; P.O. Box 770  
Bowling Green, KY 42102-0770  
gpenn@elpolaw.com

*Courtesy Copy (emailed):*  
Hon. Julie Muth Goodman  
c/o Alicia Dean  
aliciadean@kycourts.net

and via first-class U.S. Mail, postage prepaid, on unrepresented objectors listed on Schedule A of the Opinion and Order entered June 11, 2021, at addresses given in their respective objections:

J.B. Amburgey	David Barnes	Jacob Barnes
Robert E. Barton	Ben Clifford	Lincoln Clifford
Wayne Cropper	Josh Curtis	George M. Darnell
Jennifer Darnell	Brent Dunaway	Michael Furnish
William David Furnish	Leonard Edwin (Eddie) Gilkison	Bill G. Hall
Dudley Wayne Hatcher	Steve Lang	Berkley Marks
Bruce Quarles	Travis Quarles	Steven Quarles
Danny Townsend	Jerry Rankin	Richard Sparks
Jarrod Stephens	Addison Thomson	William A. Thomson
Judy Townsend		

\_\_\_\_\_  
*/s/ Katherine K. Yunker*  
Settlement Class Counsel

\_\_\_\_\_, 2023  
via first class U.S. Mail

**Notice I.D. xxx####**

*ClassMember\_Name*  
*AddressLine\_1*  
*AddressLine\_2*  
*City, ST ZIP+4*

**NOTICE of OPTION**

DEADLINE: +60 days, 2023 (postmark)

You are being sent this information and enclosed postcard about an option available to you as a qualified member of the settlement class regarding dissolution of the Burley Tobacco Growers Cooperative Association (“Burley Co-op”). The Court order approving the settlement gives to you an option relating to the settlement, which is separate from and does not affect your share in the dissolution proceeds. Please review this letter carefully.

The settlement proposed that, before it dissolved, the Burley Co-op would grant \$1.5 million from its assets to a new non-profit organization that advocates for tobacco farmers. In its 7/28/21 Amended Opinion and Order Approving Partial Settlement, the Court approved setting aside a \$1.5 million fund (“the Fund”) for the non-profit organization, the Burley and Dark Tobacco Producer Association, Inc. (“the Association”) — with the grant subject to certain conditions and procedures. There are to be payouts from the Fund to the Association in its first two years of operation, totaling \$175,000, plus any interest earned on the Fund during those two years. The remainder of the Fund is to be distributed as described below.

**You have the option to request and be paid individually a proportionate share of the Fund** remaining after the payments to the Association for its first two years of operations and any approved costs of administration of this process. **You also have the option to request that the proportionate share be left in place as part of the grant to the Association.** If you do not send in a response to this notice, the proportionate share will be left in place for the Association. Although the exact amount of a proportionate share is unknown, it is certain that it will be less than \$510 per qualified class member.

This option is a one-time, individual choice to either withdraw a proportionate share of the Fund support for the Association or leave that proportionate share in place as part of the grant to fund the Association.

**Instructions**

Use the enclosed pre-addressed postcard to expressly request that a proportionate share of the Fund be paid to you or to the Association. **Your postcard / written request must be postmarked no later than +60 days, 2023.** If no express written request from you is received before the deadline, then you will be treated as opting to have the share left in place for the Association.

In the blanks provided on the postcard, print or otherwise clearly write the name of the qualified class member and the member's Notice ID (see the top of this notice). Choose whether you want the proportionate share of the Fund to be paid to you or the Association. Sign and date your option in the blanks provided. If you are signing on behalf of a qualified class member — for example, the class member is an Estate or LLC, or you have been granted a power of attorney for the class member — print your name and state by what authority or office or in what capacity you are signing for the qualified class member.

If the information is incomplete or we cannot read what you wrote, then you will be treated as if you made no request and the proportionate share will be paid to the Association. If you lose the postcard, you may prepare a written request with all the required information and mail it to BTGCA Settlement Class Counsel; MCBRAYER PLLC; 201 E. Main Street; Suite 900; Lexington, KY 40507. Put sufficient postage on the postcard or envelope for it to be delivered by first-class mail, and have it postmarked no later than +60 days, 2023. Only one class member per postcard or other mailing.

**Other Information Available**

Information and important documents, like the 7/29/21 Amended Opinion and Order and copies of this notice and postcard form, are available on the website maintained for the class. Homepage: <https://www.btgcasettlement.com>

The Burley and Dark Tobacco Producer Association, Inc. is a non-profit incorporated in Kentucky. Its Articles of Incorporation and other corporate filings and information are available from the Kentucky Secretary of State's website, through the business entity search function: <https://web.sos.ky.gov/ftsearch/>

Sincerely,

Settlement Class Counsel

Enclosure

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\_\_\_\_\_

\_\_\_\_\_

Settlement Class Counsel  
McBrayer PLLC  
201 E. Main Street; Suite 900  
Lexington, KY 40507

Qualified Class Member

\_\_\_\_\_  
Name (*print*)

\_\_\_\_\_  
Notice ID

(*choose one*)

I want to withdraw support for the nonprofit and be paid a share of the net remainder of the Fund.

I want to leave a share of the net remainder of the Fund in place as part of a grant to fund the nonprofit.

\_\_\_\_\_, 2023

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

If the qualified class member is an LLC, corporation, Estate, or partnership, or you are otherwise signing as an authorized representative or power of attorney for the qualified class member, print:

\_\_\_\_\_  
Representative's Name

\_\_\_\_\_  
Capacity/Authorization