

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

---

Settlement Class Counsel's Response to  
Graddy CR 59.05 Motion re Denial of an Attorney-Fee Award

---

Settlement Class Counsel, Katherine K. Yunker and Jason R. Hollon, hereby respond to the CR 59 Motion filed April 17, 2023, by W.H. Graddy & Associates (“Graddy”), asking this Court to alter, amend, or vacate its final and appealable 4/5/23 Order denying Graddy’s Renewed Motion for an award of attorney’s fees. Class Counsel will appear at and participate in the CR 59 Motion hearing noticed for the Court’s motion hour on April 28, 2023, but note here that they do not agree with all the positions taken or statements made in the CR 59 Motion. Class Counsel also express their position that:

1. Like the Renewed Graddy Motion, the CR 59 Motion does not present any reason for a different result from the Court’s 8/24/21 Order denying the initial Graddy motion for an attorney-fee award.

2. A motion to alter, amend, or vacate a judgment requests an “extraordinary remedy which should be used sparingly.” *Gullion v. Gullion*, 163S.W.3d 888, 893 (Ky. 2005). Graddy does not cite or establish any of the cognizable grounds for CR 59.05 relief.

3. As an alternative to the reiterated assertion that a fee award is “authorized by law” (CR 23.08) Graddy asks for “leave of this Court to attempt to reach an agreement with Class Counsel and the attorneys of record regarding attorney’s fees.” CR 59 Motion pp. 5-6.

a. Court leave has not been required for Graddy “to attempt to reach an agreement” with other parties in this case about payment or reimbursement of attorney fees, yet Class Counsel are unaware that Graddy has attempted or proposed such an agreement. What Graddy apparently seeks is Court leave for a delay in the proceedings or the finality of the 4/5/23 Order. Class Counsel are opposed to any delay in resolution of the Co-op’s dissolution, the disposition of the \$1.5 million Fund, and appropriate distributions to eligible Settlement Class members.

b. Any attempt at such an agreement would be futile. Graddy invokes the CR 23.08 language about “reasonable attorney’s fees that are authorized ... by agreement among the parties” as a (hoped-for) basis for an award; however, even if achieved, an agreement by Graddy “with Class Counsel and the attorneys of record” does not meet that standard. Furthermore, any attorney-fee award to Graddy will be borne by Settlement Class members, whether through a further diminution of Co-op net dissolution proceeds or a charge against proportionate shares of the Fund. Class Counsel will not voluntarily agree to such payment.

WHEREFORE, Settlement Class Counsel respectfully suggest that the Graddy 59 motion be DENIED.

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 25th day of April 2023, upon counsel *via* the e-filing system and electronic mail and upon unrepresented persons *via* first class U.S. Mail, postage prepaid, as shown on the attached Service List.

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

Kevin G. Henry  
Charles D. Cole  
STURGILL, TURNER, BARKER & MALONEY PLLC  
333 West Vine Street, Suite 1500  
Lexington, KY 40507  
khenry@sturgillturner.com  
ccole@sturgillturner.com

W. Henry Graddy, IV  
Dorothy T. Rush  
W.H. GRADDY & ASSOCIATES  
137 N. Main Street  
Versailles, KY 40383  
hgraddy@graddylaw.com  
dtrush2@gmail.com

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

J.B. Amburgey  
P. O. Box 47  
Means, KY 40346

Jennifer Darnell  
248 Gray Lane  
Cynthiana, KY 41031

Jerry Rankin  
4540 Perryville Road  
Danville, KY 40422

David Barnes  
768 Bowman Mill Road  
Berry, KY 41003

Brent Dunaway  
1547 KY Highway 1054 N  
Berry KY 41003

Richard Sparks  
1499 Thatchers Mill  
Paris, KY 40361

Jacob Barnes  
1088 Bowman Mill Road  
Berry, KY 41003

William David Furnish  
1320 Highway 982  
Cynthiana, KY 41031

Jarrod Stephens  
504 Commonwealth Lane  
Cynthiana KY 41031

Robert E. Barton  
Barton Bros. Farm  
4095 Huffman Mill Pike  
Lexington, KY 40511

Michael Furnish  
750 Smith Martin Ln.  
Cynthiana, KY 41031-6997

Bruce Quarles  
Steven Quarles  
Travis Quarles  
10570 Owenton Road  
Frankfort, KY 40601

Ben Clifford  
2459 Ky. Hwy. 1284 E  
Cynthiana, KY 41031

Leonard E. Gilkison  
345 Calloway White Road  
Winchester, KY 40391

Addison Thomson  
2224 Mt. Vernon Park  
Cynthiana, KY 41031

Lincoln Clifford  
Ky Hwy 1284 E  
Cynthiana KY 41031

Bill G. Hall  
P. O. Box 117  
Means, KY 40346

William A. Thomson  
1809 Mt. Vernon Pike  
Cynthiana, KY 40131

Wayne Cropper  
5350 Raymond Road  
Mayslick, KY 41055

Dudley Wayne Hatcher  
648 Hood Rd.  
Morgantown, KY 42261

Danny Townsend  
Judy Townsend  
11620 Main St.  
Jeffersonville, KY 40337

Josh Curtis  
1402 KY Hwy 1940  
Cynthiana, KY 41031

Steve Lang  
703 Gray Lane  
Cynthiana, KY 41031

George M. Darnell  
1593 Grays Run Pike  
Cynthiana, KY 41031

Berkley Marks  
5399 Paris Pike  
Mt. Sterling KY 40353