

**COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
FOURTH DIVISION**

Civil Action No. 20-CI-00332

HAYNES PROPERTIES, LLC,
et al.

PLAINTIFFS

vs.

**Order re Fund Disposition and
Requested Second Round of Mailings and Notice**

**BURLEY TOBACCO
GROWERS COOPERATIVE
ASSOCIATION, et al.**

DEFENDANTS

This matter came before the Court on June 30, 2023, to hear Settlement Class Counsel's Motion for Order(s) re Fund Disposition ("Fund-Disposition Motion"), and Objectors' Roger Quarles *et al.* Motion to Order a Second Round of Postcard Mailings and Notice ("Quarles Motion"). Present at the hearing were Katherine K. Yunker and Jason R. Hollon (McBrayer PLLC), Kevin G. Henry (Sturgill, Turner, Barker & Maloney PLLC), and W. Henry Graddy, IV (W.H. Graddy and Associates), counsel of record for named parties and objectors to the proposed settlement agreement. No written response having been filed, but the parties having had an opportunity to be heard and making certain representations and agreements in open court, and the Court being duly and sufficiently advised, IT IS HEREBY FOUND, STATED, and ORDERED as follows:

1. The Court notes that Roger Quarles and other objectors represented in this proceeding by W. Henry Graddy, IV of the law firm of W.H. Graddy and Associates, have noticed an appeal from Orders entered August 24, 2021, April 5, 2023, and June 1, 2023, denying motions for an award of attorneys' fees to Mr. Graddy or his firm ("the Fee Appeal"). The Court FINDS that it has continuing jurisdiction to hold proceedings and enter orders in this case despite

the Fee Appeal, which is an interlocutory appeal from a final order collateral to the main proceedings regarding implementation of the Amended Opinion and Order Approving Partial Settlement, entered July 28, 2021 (“the 7/28/21 Approval Order”). *See, e.g., Commonwealth v. Bailey*, 71 S.W.3d 73, 84 (Ky. 2002) (“An interlocutory appeal, however, generally only deprives the trial court of the authority to act further in the matter that is subject of the appeal, and the trial court is not divested of the authority to act in matters unrelated to the appeal.”). Counsel present at the hearing all acknowledged the noticed Fee Appeal and affirmatively agreed that the Court has continuing jurisdiction in this case.

2. The Court DENIES the Quarles Motion’s request that a second mailing be made to the approximately 680 qualified Class members who did not return a postcard-election to Class Counsel and REMANDS the Quarles Motion from the Court’s motion-hearing docket on July 21, 2023.

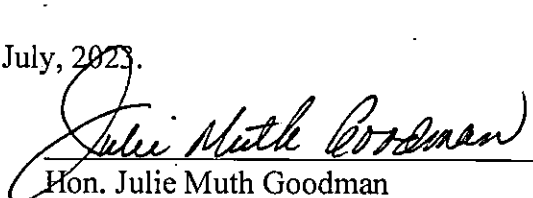
3. Counsel present expressly agreed that the expenses, fees, and other possible costs of the Fee Appeal as well as the possibility of remand on the fee issue must be accounted for in the disposition of the approximately \$1.325 remaining of the \$1.5 million amount (“the Fund”) that is the subject of ¶¶ 22-36 and Ordering ¶ 2 of the 7/28/21 Approval Order and, specifically, that all such amounts relating to the Fee Appeal are to be satisfied from that portion of the Fund that would otherwise be distributed to those who elected to be individually paid a proportionate share of the Fund. The Court FINDS this focus, rather than on the portion that will remain as a grant funding the Burley and Dark Tobacco Producer Association, Inc. (“BDTPA”), is appropriate. In addition, Mr. Graddy represented on behalf of the Fee Appeal appellants, and the Court STATES that it relies on the representation, that the fee sought in the Fee Appeal is no more than the \$99,375.00 (7.5% of \$1.325 million) requested in the Renewed Motion for Award

of Attorney's Fees filed March 17, 2023, and denied by Order entered April 6, 2023. The Court hereby ORDERS that an amount sufficient to cover \$99,375.00 and the costs, fees, and expenses relating to the Fee Appeal be held in escrow or a qualified settlement trust during the pendency of the Fee Appeal.

4. The Court DIRECTS that the interested parties collaborate on an Order which provides for the payments and procedures sought in the Fund-Disposition Motion and discussed at the hearing thereon, including payment of Class Counsel's current and future fees and expenses of the postcard process, Class Counsel's fees and expenses in defending the Fee Appeal, distribution of the appropriate portion of the remaining Fund to BDTPA and costs thereof, one or more distributions to individual Class members so electing and costs thereof, and a supersedeas bond for the Fee Appeal. The Court DIRECTS that Class Counsel prepare and tender the collaborative Order as soon as possible. However, if a collaborative Order cannot be agreed upon, Class Counsel is to re-notice the Fund-Disposition Motion to be heard at a regular motion hour, and all parties shall serve and file their respective proposed provisions for Fund disposition and for a supersedeas bond at least 72 hours prior to the noticed motion hearing.

5. Pursuant to ¶ 31 of the 7/28/21 Approval Order, the remaining Fund is presently being held and administered by the Dissolution Committee. The Court ORDERS that as soon as possible and no later than August 31, 2023, the Dissolution Committee end its holding and administration of the Fund by paying approved costs and expenses, distributing the appropriate portion of the Fund to BDTPA, turning over funds to the Settlement Administrator for later distribution, and/or placing funds into escrow or a qualified settlement trust for future payment and distribution in accordance with the Court's Orders.

Given under my hand this 18th day of July, 2023.



Hon. Julie Muth Goodman
Judge Fayette Circuit Court

PREPARED and ATTESTED BY the undersigned that this proposed Order was circulated on 7/5/23 to counsel for parties present at the hearing pursuant to RFCC 19B, that attorney Kevin G. Henry has given permission to sign that he HAS SEEN and it is in conformity with the rulings made at the 6/30/23 hearing, and that attorney W. Henry Graddy, IV, has stated that he has issues/problems with the proposed Order and has not given permission to sign that he has seen and it is in conformity with the rulings made.

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CLERK'S CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been served on this _____ day of July 2023, via U.S. Mail, first class, to the following counsel and unrepresented objectors to the proposed settlement:

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