

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 Report relating to
 Fund Elections, Class Counsel Costs, and Other Matters**

Settlement Class Counsel, Katherine K. Yunker and Jason R. Hollon, hereby provide the following report detailing actions and costs in that part of administration of the Settlement relating to the \$1.5 million amount (“the Fund”) that is the subject of ¶¶ 22-36 (pp. 15-23) and Ordering ¶ 2 (p.23) of the Amended Opinion and Order Approving Partial Settlement entered July 28, 2021 (“7/28/21 Order”). Class Counsel state as follows:

Postcard Process

1. Paragraphs 31-36 (pp. 20-23) of the 7/28/21 Order provide for certain payments to the Burley and Dark Tobacco Producer Association, Inc. (“BDTPA”), bringing the Fund’s remainder to approximately \$1.325 million, and then a process “allowing qualified class members to directly voice their support for, or to withdraw from, the nonprofit” (*id.* ¶ 36 p.23). This “postcard process” is the subject of the Court’s Order entered March 13, 2023, approving the form and content of a notice letter and return postcard with a deadline of May 31, 2023, for the postcards to be returned.

2. On March 31, 2023, individualized notice letters and return postcards were sent via U.S. first-class mail addressed to 2603 qualified Class members,¹ at the most recent (known) postal address. Samples of the notice letter and return postcard are attached hereto as Exhibits 1 and 2, respectively; they have also been available through links in the 4/1/23 update on the settlement website homepage — <https://www.btgcasettlement.com> (last visited July 26, 2023).

3. Class Counsel have provided information through updates to the website maintained by the Settlement Administrator about the mailing with the return postcards, how to return a complete and valid postcard with the Class member's election, and a listing of the Notice I.D.s of postcards received. After the postcard-return deadline (May 31, 2023), Class Counsel also listed for the website the Notice I.D.s of postcards received:

- for which the election was to have the proportionate share remain as a grant to the BDTPA (so that Class members could tell whether their election had been accurately recorded); and
- that were incomplete or invalid, particularly those for which there had been no response to a Class Counsel communication about the problem.

4. Class Counsel have made individual communications to Class members who contacted the team for information or assistance or for whom a timely postcard was incomplete or otherwise invalid (to provide such members with an opportunity to correct the deficiencies). In addition, the postcard process brought to the fore situations in which the designated Class member had moved, changed ownership or management, or was deceased. This often required communication with the Class members or those purporting to act on their behalf to determine if

¹ Settlement Class Counsel's Status Report filed February 16, 2023, in ¶3, noted that 2602 Class members had been issued distributions, *i.e.*, were "qualified class members" within the meaning of 7/28/21 Order ¶32. Since that time, issues with respect to one Class member's eligibility to be paid distributions have finally been cleared up, bringing the total of qualified class members to 2603.

the postcard election was made by an authorized person or signaled that a change regarding payee was required.² Class Counsel continue to work to update records with Angeion to reflect changes regarding the payees for those members electing to be paid an individual, proportionate share.

5. Class Counsel received return postcards from 1932 Class members; giving the benefit of any doubt to the Class member, only eight (8) of these were late and an additional five (5) remain incomplete or otherwise invalid. Of the 1919 timely, valid postcards returned, there were 1881 requesting to be paid individually a proportionate share of the remaining Fund, and 38 requesting that the proportionate share be left in place as part of a grant to fund the BDTPA.

6. Although experience indicates that not all these “pay me” Class members will or will be able to cash the check(s) that they receive for a proportionate share, Class Counsel suggest that the count of 1881 Class members affirmatively electing to be paid the proportionate share be used to determine how much of the remaining Fund is to be attributed to those Class members. Hereinafter, this part of the Fund will be called the Pay-Me Fund and those requesting to be paid individually, the Pay-Me Class members.

7. Per 7/28/21 Order ¶¶ 32-33, a proportionate share will be 1/2603th (or 0.0003842) of the Fund remaining after payment or withholding for allowed costs (hereinafter, “Distributable Fund”). In accordance with 7/28/21 Order ¶ 33, payment of the proportionate share is to be made to a Class member only on receipt by the deadline of a valid electing postcard. Thus, using the counts in ¶ 6 above, amounts to be paid over from the Distributable Fund are:

² This, in turn, has led to work of a type that has engaged the Class Counsel team with respect to the general distributions of the Co-op’s net dissolution proceeds — qualifying an estate, heir, or other successor to become the payee of the respective Class member’s share.

- 72.26% (=1881/2603) to the Settlement Administrator for payments to the 1881 Class members who elected therefor and to cover costs going forward or to be escrowed pending the disposition of the Fee Appeal;³ and,
- 27.74% — the remainder — to the BDTPA.

Costs and Expenses of the Postcard and Distribution Process

8. The Settlement Administrator's costs during the postcard process to date have been charged to the general settlement. Class Counsel have obtained from the Settlement Administrator an estimate for its costs of distributing proportionate shares to individual qualified Class members who elected therefor, on the proviso that there are 1900 or fewer such Pay-Me Class members; the estimated total costs are \$9,631.00 for this distribution. Although prepared before the Fee Appeal was noticed, the estimate provides a basis for determining costs, *e.g.*, of the distribution being split into two checks and of keeping the qualified settlement trust open for an additional year or two.

9. Class Counsel had two principal out-of-pocket expenses, totaling \$4521.40 relating to dissemination of the notice and return postcards and collecting the returned postcards for processing:

- \$4433.26 to The UPS Store (Somerset, KY) for preparation and mailing of the individualized notice letters and return postcards; and
- \$88.00 to rent (for six months) a U.S. Postal Service mailbox dedicated to receiving mailed postcards and other correspondence for the postcard and distribution processes.

³ The term "Fee Appeal" refers to the currently pending appeal filed by Objectors Roger Quarles, et al., in *Roger Quarles, et al. v. Haynes Properties, LLC, et al.*, No. 2023-CA-0767-MR.

Class Counsel estimate that they will not have significant out-of-pocket expenses for the distribution process because such expenses will be borne by the Settlement Administrator (*see* ¶ 8 above).

10. The Class Counsel team members spent appreciable time in February-June 2023 on the postcard process, but have attributed a significant portion of that time to their general Class Counsel work. The following is a per-person and total summary of their time attributed to the postcard process through June 30, 2023, and a per-month average for those hours over the five (5) months:

<u>Person</u>	<u>Hours</u>	<u>Av. per Month</u>
Hollon, Jason R. (attorney)	45.0	9.0
Lewis, Holly M. (paralegal)	220.1	44.0
Yunker, Katherine K. (attorney)	118.9	23.8
TOTAL	384.0	76.8

Of these hours, 5.3 and 0.8 are designated “No Charge” for attorneys Yunker and Hollon, respectively. Class Counsel intend to move for an award of an attorney’s fee and expenses for this past work, and will concurrently submit time records for the hours summarized above to the Court for its *in camera* review.

11. Class Counsel estimate that they will spend approximately 20 hours for a distribution to the Pay-Me Class members, chiefly for establishing the distribution list with the Settlement Administrator and for Class communications and providing information through the website. Paralegal Holly Lewis is projected to spend approximately 50 hours, supporting preparation of the Pay-Me list and then working closely with the Settlement Administrator and Class members regarding undeliverable or returned checks or other payment issues.

12. If there is more than one distribution, each distribution is forecast to take the hours estimated in ¶ 11 above. In addition, if a Fund distribution takes place after the final distribution of Co-op net dissolution proceeds, then the time and other expenses for updating the list for address changes and passing of Class members in the interim must be borne by the remaining Pay-Me Fund.

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 27th day of July 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, and a courtesy copy was emailed to D. Gaines Penn, ENGLISH, LUCAS, PRIEST & OWSLEY, LLP, gpenn@elpolaw.com.

/s/ Katherine K. Yunker

Settlement Class Counsel

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Service List

BTGCA SETTLEMENT CLASS COUNSEL
classcounsel@mcbayerfirm.com
www.mcbayerfirm.com



P.O. Box 2001
LEXINGTON, KY 40522-2001
1-859-551-3622

April 1, 2023
via first class U.S. Mail

Notice I.D NOT0000
Jane Q. Public
Apt. 111
24 Elm Street
Anytown, Ohio 99999

SAMPLE

NOTICE of OPTION
DEADLINE: May 31, 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. 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. The option is about a \$1.5 million fund (“the Fund”) set aside for a non-profit organization, the Burley and Dark Tobacco Producer Association, Inc. (“the Association”). Please review this letter carefully.

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 have the proportionate share of the Fund be paid either to you or left as part of the grant to fund the Association. **The deadline for your choice is May 31, 2023.**

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. Only one class member and choice per postcard.

If not already filled in, 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 choice 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 in

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REP : 000008 of 000010



April 1, 2023
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what capacity you are signing for the qualified class member. If the information is incomplete or we cannot read what you wrote, then the proportionate share will be paid to the Association.

Put sufficient postage on the postcard for it to be delivered by first-class mail, **postmarked no later than May 31, 2023**. You may also make a copy of the filled-out postcard and, **by May 31, 2023**, email that to classcounsel@mcbrayerfirm.com or fax it to 859-534-3677. If you lose the postcard, or need to update your address, contact the Class Counsel team at classcounsel@mcbrayerfirm.com or by calling 1-866-965-9005 (toll free) or 1-859-551-3622.

Class Counsel will keep a running list of the Notice IDs on the postcards received and post it on the website for the class at <https://www.btgcasettlement.com>.

Other Information Available

Information and important documents, like the 7/28/21 Amended Opinion and Order Approving Partial Settlement and copies of this notice and postcard form, are available on the website for the class: <https://www.btgcasettlement.com>_(homepage).

Sincerely,

Settlement Class Counsel

Enclosure

SAMPLE

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REP : 000009 of 000010

SAMPLE (front)



Settlement Class Counsel
McBrayer PLLC
P.O. Box 22001
Lexington, KY 40522-2001

SAMPLE (back)

Qualified Class Member: Jane Q. Public

Notice ID: NOT0000

(choose one):

_____ I request that I be paid individually a proportionate share of the remaining Fund.

_____ I request that the proportionate share be left in place as part of a grant to fund the Burley and Dark Tobacco Producer Association, Inc.

Signature

_____, 2023
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

This postcard may be returned by: (1) first-class mail; (2) email to classcounsel@mcbayerfirm.com; or (3) fax to 859-534-3677. Only one choice and one qualified class member per postcard.

Deadline: May 31, 2023

If you have questions after reading the notice, call Class Counsel at 1-866-965-9005 (toll free) / 1-859-551-3622.