

**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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**Class Counsel's Motion re Fees and Costs**

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**NOTICE**

Please take notice that this Motion will be heard on Friday, August 4, 2023, 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, of the law firm McBrayer PLLC hereby move the Court to determine the amount of attorney's fees and costs for work completed in developing, implementing, and administering the "postcard process" up to and including June 30, 2023. Class Counsel present herewith information to support the Court's determination of such a fee for Class Counsel work. In support of this motion, Class Counsel state as follows:

1. Paragraphs 31-36 (pp. 20-23) of the Amended Opinion and Order Approving Partial Settlement entered July 28, 2021 ("7/28/21 Order") provide for certain payments to the Burley and Dark Tobacco Producer Association, Inc. ("BDTPA"). These provisions reduced, to approximately \$1.325 million, the \$1.5 million amount which is the subject of Paragraphs 22-36

of the 7/28/21 Order (the “Fund”), and then directed a process “allowing qualified class members to directly voice their support for, or to withdraw from, the [BDTPA].” *Id.* ¶ 36 p.23.

2. Specifically, the 7/28/21 Order directs that, “[w]ithin ninety (90) days following the end of Burley and Dark Tobacco’s first full year of operations, Class Counsel shall prepare a mailing to all ‘qualified class members’” which mailing “will provide those class members the option to request and be paid individually their proportionate share of the remainder of the grant fund ... by returning a signed postcard ... stating either that they wish to withdraw their support for the [BDTPA] 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.” *Id.* ¶32 pp. 21-22. Members were given sixty (60) days after the mailing “to return their signed postcard to Class Counsel or Class Counsel’s designee[.]” *Id.* ¶33 p. 22.

3. The 7/28/21 Order further directs Class Counsel and the Settlement Administrator to “verify the returns” and “determine the shares of the grant fund payable,” less costs and expenses, to those “class members who returned the postcard indicating they wish to withdraw and be paid their net share of the grant fund[.]” *Id.* Following a distribution to those class members, the remainder of the Fund is thereafter to be transferred to BDTPA without restrictions. *Id.* ¶34.

4. For their work, the Court ordered that the “McBrayer Firm, as Class Counsel, will receive legal fees and expenses based on time spent working on this portion of the Settlement Agreement, which will follow a lodestar analysis.” *Id.* ¶35 p. 23.

5. Starting in February 2023, and continuing through the filing of this Motion, the Class Counsel team<sup>1</sup> has undertaken significant work in developing, implementing, and administering the postcard process as directed by the Court. Class Counsel sets forth herein a summary of their actions in doing so. To provide greater detail, consistent with prior practice, Class Counsel will separately submit to the Court for *in camera* review an itemized statement for time spent in the period February–June 2023. These are internal records of the McBrayer firm which have not been created for or used for the purpose of collecting payment from any client. They contain information that is confidential under SCR 3.130-1.6 and subject to attorney-client privilege. The records will be submitted to the Court with the understanding that if they are to be filed in the record, such filing shall be made under seal. Such production of otherwise confidential client information is therefore allowed under SCR 3.130-1.6(b)(4) and does not constitute a waiver of any attorney-client privilege with respect to the firm’s clients or the confidentiality of communications with those seeking Class Counsel’s assistance — whether Settlement Class members, those seeking to establish Settlement Class membership, or otherwise.

6. Consistent with the Court’s direction, within ninety (90) days following the end of BDTPA’s first year of operations, Class Counsel drafted and submitted the form and content of a notice and return postcard to be sent to qualified members. The Court approved Class Counsel’s proposed notice and return postcard by order entered March 13, 2023.

7. Thereafter, Class Counsel implemented the postcard process. To increase efficiency and reliability, both in the organization of the returned postcards and in responding to

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<sup>1</sup> As used herein, the “Class Counsel team” refers to attorneys Katherine K. Yunker and Jason R. Hollon, and paralegal Holly Lewis. Class Counsel remained mindful of the Court’s suggestion that staff professionals at McBrayer be used as much as possible in Class Counsel work and therefore implemented protocols for the receipt, initial review, and organization of received postcards by Ms. Lewis, along with other tasks such as following up with Class members on a variety of issues.

class member inquiries, Class Counsel administered the postcard process in-house. To do so, Class Counsel secured a P.O. Box for returned postcards and made arrangements with a printing company to print and mail the notice and return postcards.

8. On March 31, 2023, individualized notice and return postcards were sent via U.S. first-class mail addressed to 2603 qualified Class members, at the most recent (known) postal address, with a deadline of May 31, 2023, to be returned. Class members could return their postcards via first-class mail, by e-mail (to Class Counsel's dedicated e-mail address), or by fax (via Class Counsel's dedicated fax number).

9. Following the March 31, 2023, mailing, the Class Counsel team was bombarded with returned postcards by mail, fax, and e-mail, and received hundreds of calls and e-mails with postcard related questions. The Class Counsel team, largely through the significant efforts of its experienced paralegal, received, reviewed, organized, and tallied each of the numerous postcards each day. As part of this process, the Class Counsel team was required to review each returned postcard to assess the validity of the election made. In the context of non-individual Class members (*i.e.*, business entities, estates, etc.), an assessment was required to determine whether the signatory on said postcard was an appropriate/authorized representative of the Class member.

10. At the same time, the Class Counsel team returned calls, sent letters, responded to e-mails, and otherwise fully responded to the inquiries posed by Class members. The Class Counsel team had individual communications with numerous Class members who contacted the team for information or assistance, or for whom a postcard was received but was incomplete or otherwise invalid. The Class Counsel team worked with Class members to correct any deficiencies that may have been present on the returned postcard to ensure that their election was validly recorded.

11. In addition, the postcard process brought to light other issues for individual Class members of which Class Counsel was previously unaware. Members had moved or had passed away, and business entity members had changes in ownership or management. These issues required significant work to be undertaken by the Class Counsel team, including communications with the Class members and/or their purported representatives, research and factual investigation regarding the specifics of each issue, and review of submitted documentation, to determine if the election on the return postcard was made by an authorized person and/or required a payee change. In the event a payee change was required, Class Counsel engaged in a similar process to that which was required in the administration of the first and second distributions of dissolution proceeds.

12. Prior to the May 31, 2023, deadline, Class Counsel continuously provided information to Class members through updates to the settlement website maintained by the Settlement Administrator regarding the mailing of the notice and return postcards, how to return a complete and valid postcard, and a listing of Notice I.D.s of postcards received.

13. In all, Class Counsel received returned postcards for 1,924 Class members by the deadline or that were postmarked within the deadline (giving the Class member the benefit of any doubt).

14. Following the May 31, 2023, deadline, the Class Counsel team has remained engaged in significant work to further administer the postcard process. The Class Counsel team has continued to review and assess postcards received for validity, followed up with Class members regarding invalid postcards, and continued to work through the various issues presented by the returned postcards including continuation of processing estate and business entity issues.

15. Class Counsel further prepared and provided a list on the website of 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, and a listing of those that were incomplete or invalid.

16. The Class Counsel team has tallied each of the elections received, and assessed methods by which the proportionate shares could be distributed. Class Counsel has directly interacted with the Settlement Administrator and obtained a quote for the cost of the future proportionate share distribution.

17. The time records submitted begin on February 10, 2023, and continue through and include June 30, 2023. Time entries are for three (3) individuals: Katherine K. Yunker (appointed attorney), Jason R. Hollon (appointed attorney), and Holly M. Lewis (paralegal). The entries since February 10 reflect several hundred hours of work in furtherance of the interests of the Settlement Class in the developing, implementing, and administering of the postcard process, and Class Counsel have reviewed the entries and represent that the time shown was reasonable and performed for the benefit of the Settlement Class in conformity with the Court's 7/28/21 Order.

18. The following is a per-person and total summary of the time attributed to the postcard process through June 30, 2023, for the Class Counsel team:

<b><u>Person</u></b>	<b><u>Hours</u></b>	<b><u>Hourly Rate</u></b> <sup>2</sup>	<b><u>Total</u></b>
Hollon, Jason R. (attorney)	45.0	\$300.00	\$13,260.00
Lewis, Holly M. (paralegal)	220.1	\$150.00	\$33,015.00
Yunker, Katherine K. (attorney)	<u>118.9</u>	\$300.00	<u>\$34,110.00</u>
TOTAL	384.0		\$80,385.00

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<sup>2</sup> The \$300 hourly rate for the attorneys is less than their full hourly rates for this matter, and the \$150 hourly rate is less than the paralegal's current full rate. These rates are minimal appropriate rates for a lodestar analysis.

19. Of these hours, 5.2 and 0.8 are designated “No Charge” for attorneys Yunker and Hollon, respectively, and are included in the total hours.<sup>3</sup> These “No Charge” hours are not included, however, in the total dollar amounts.

20. Notably, the time reflected in ¶19 above only includes time recorded for work on the postcard program process and *does not* include any time recorded for work done on matters attendant to other aspects of the settlement and the ongoing dissolution, including much of the work described in ¶ 11 above.

21. In addition to the time reflected in ¶19, Class Counsel incurred costs in the administration of the postcard process in the total amount of \$4,521.26, which is comprised of \$4,433.26 to The UPS Store for preparation and mailing of the notice and return postcards and \$88.00 to the U.S. Postal Service for the P.O. Box dedicated to receiving returned postcards.

22. Consistent with the terms of the 7/28/21 Order, Class Counsel believes that an award based on the hours worked is appropriate for Class Counsel’s work in administering the postcard process through June 30, 2023. Accordingly, Class Counsel respectfully requests that the Court award a total of \$84,906.26, which is comprised of \$80,385.00 in attorney’s fees and \$4,521.26 in costs.

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<sup>3</sup> Class Counsel’s Report relating to Fund Elections, Class Counsel Costs, and Other Matters, filed July 27, 2023, reported that there were 5.3 “No Charge” hours for attorney Yunker. This was a typographical error and the correct “No Charge” figure for attorney Yunker is 5.2.

Respectfully submitted,

*/s/ Katherine K. Yunker*

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Katherine K. Yunker (KBA # 79592)

*/s/ Jason R. Hollon*

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served this 28th 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 e-mailed to D. Gaines Penn, ENGLISH, LUCAS, PRIEST & OWSLEY, LLP, [gpenn@elpolaw.com](mailto:gpenn@elpolaw.com).

*/s/ Jason R. Hollon*

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