

COMMONWEALTH OF KENTUCKY  
 FAYETTE CIRCUIT COURT  
 FOURTH DIVISION

Civil Action No. 20-CI-00332

HAYNES PROPERTIES, LLC,  
*et al.*

PLAINTIFFS

vs.

**Agreed Order re  
 Final Disposition of Net Dissolution Proceeds**

BURLEY TOBACCO GROWERS  
 COOPERATIVE ASSOCIATION,  
*et al.*

DEFENDANTS

A motion requesting a final and appealable order for the complete disposition of remaining net dissolution proceeds having been raised by Class Counsel at the noticed motion hearing on January 5, 2023; there being agreement or no objection hereto, through counsel, by Plaintiffs/Settlement Class Representatives, the Burley Tobacco Growers Cooperative Association (“Co-op” or “BTGCA”), members of its Dissolution Committee, and Objectors Roger Quarles *et al.*; and the Court being otherwise duly and sufficiently advised, IT IS HEREBY FOUND and ORDERED:

1. By the Amended Opinion and Order Approving Partial Settlement entered July 28, 2021 (“the 7/28/21 Amended Order”), this Court ordered, *inter alia*, that the Co-op be judicially dissolved under the auspices of the BTGCA Dissolution Committee and the net dissolution proceeds distributed in equal shares to qualified eligible Class members.

2. Through its appointed Dissolution Committee, the Co-op has filed Articles of Dissolution with the Secretary of State, published notice to creditors in accordance with KRS 271B.14-060, transferred the \$1,438,273.78 balance of the “Burley Partial Distribution” account at Traditional Bank to the Settlement Administrator and the \$29,873.67 balance of its Wells

Fargo Bank account to a BTGCA client escrow held in the Sturgill Turner IOLTA account,<sup>1</sup> and otherwise ceased all financial activity. The dissolution process has progressed to the point that provision should be made for remaining fees and expenses through the completion of the winding-up process, a final distribution of net dissolution proceeds to Class members, and a distribution of any residual funds to one or more *cy pres* recipients.

3. There have been prior transfers of net dissolution proceeds to the Settlement Administrator to fund distributions to 2603 qualified, eligible Class members: (a) an initial share of \$5,670.00 each, distributed from December 2021 to September 2022, and (b) a second share of \$3,930.00 each, distributed on November 9, 2022. In accordance with the Order Awarding Service Fees, Attorneys' Fees, and Nontaxable Costs entered June 11, 2021 ("the 6/11/21 Order Awarding"), other disbursements from the pool of net dissolution proceeds have been made to: (a) the Plaintiffs/Settlement Class Representatives as service awards, (b) the Billings Law Firm, PLLC for fees and nontaxable costs, (c) McBrayer PLLC for nontaxable costs, and (d) McBrayer PLLC on an award of attorneys' fees equal to 7.5% of the net distribution proceeds.<sup>2</sup> Each distribution to the Class has been preceded by a payment to McBrayer PLLC of part of the 7.5% fee, approximated and scaled in accordance with each distribution to be made.<sup>3</sup>

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<sup>1</sup> See, respectively, Order for Disbursement of Burley Partial Distribution of Funds entered September 15, 2023, and Order entered September 15, 2023.

<sup>2</sup> The 6/11/21 Order Awarding defines "net distribution proceeds" as "the proceeds that remain after the Co-op has liquidated its assets, paid its debts, and contributed any and all funds to a nonprofit organization in accordance with this Court's order regarding the proposed settlement." *Id.* p.48, ordering ¶3 (footnote omitted).

<sup>3</sup> The Court has directed two other attorneys' fees payments for Class Counsel work, which are separate from the 7.5% fee award to McBrayer PLLC. The last such payment directed was based on work between November 13, 2021, and August 31, 2022, but expressly is also to cover work "through the completion in the future of the Co-op's dissolution and the distribution of the net proceeds to the eligible Settlement Class members." Order entered October 4, 2022, ¶ 2.

4. In accordance with ¶¶ 4.1.c.xii and 4.1.j of the Stipulation and Agreement of Partial Settlement — approved without modification in the 7/28/21 Amended Order — TAGS fee debts identified as owed by a Class member receiving a share in the Co-op’s net dissolution proceeds were offset against one or both distributions, and the respective Class member was issued a distribution check for any positive net amount. In this way, like other BTGCA assets, amounts offset for TAGS fee debt have been added to the net dissolution proceeds and paid out to Class members in the next distribution. Through the end of 2023, TAGS fee debt totaling \$118,301.01 has been collected through offset of distributions to 91 Class members. The TAGS fee debts of 90 of those Class members have been fully offset; the one other Class member still owes \$1,117.02, which exceeds the expected third and final distribution.<sup>4</sup>

5. The remaining net dissolution proceeds of the Co-op consist of (a) the monies held in the Sturgill Turner IOLTA account (hereinafter referred to as “the Co-op Reserve”), and (b) the dissolution proceeds held by the Settlement Administrator in its qualifying settlement fund related to this case (hereinafter referred to as “the Dissolution QSF”). These remaining net dissolution proceeds are separate and distinct from amounts held by the Settlement Administrator and McBrayer PLLC pursuant to the Order re Fund Disposition entered August 4, 2022 (“the Special Fund Order”).<sup>5</sup> The remaining net dissolution proceeds — the Co-op Reserve and the Dissolution QSF — shall be entirely disbursed in accordance with this Order as soon as feasible.

6. The Co-op Reserve shall be used for legal and other professional fees needed to complete this case on behalf of the Co-op, to prepare and file final tax returns, and to pay — if

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<sup>4</sup> For more information about the TAGS fee debt offsets, refer to Settlement Class Counsel’s Report re Collection of TAGS Fee Debt through Offsets to Distributions, filed December 8, 2023.

<sup>5</sup> The special Fund distribution to electing Class members issued on October 26, 2022; amounts have been reserved subject to refund for distribution-related expenses and for fees and expenses earned and accrued in connection with an appeal taken by objectors Roger Quarles *et al.* (“the Fee Appeal”).

properly presented and proven — unknown claims that may be authenticated as debts of the Co-op. Subject to the end-of-process provisions in paragraphs 16 & 17 below, any other use of the Co-op Reserve must be approved by the Court. Invoiced legal fees must be approved by the Court before they are paid from the Co-op Reserve, and if the Co-op Reserve falls to an amount below \$5000.00, the Court may require that any further payment of legal fees will occur at the conclusion of the dissolution process and that approved legal fees then be paid in whole or in part from what remains in the Co-op Reserve.

7. The Dissolution QSF shall be used for paying for Settlement Administrator work expenses (other than those related to the Special Fund Order distribution), paying the final portion of the 7.5% fee award to McBrayer PLLC, and a third and final distribution of dissolution proceeds to Class members. Subject to the appeal contingency in paragraph 11 and end-of-process provisions in paragraphs 15 & 17 below, any other use of the Dissolution QSF must be approved by the Court.

8. Within 14 days of the entry of this Order, the Settlement Administrator shall provide to Class Counsel accurate, reliable data about: (a) the current level of funds in the Dissolution QSF; (b) the outstanding dissolution distribution checks, including when and to whom issued, (c) any claimed amounts owed to the Settlement Administrator for work or expenses (other than those related to the Special Fund distribution), and (d) any credit remaining to be applied to Settlement Administrator work or expenses.

9. In consultation as needed or prudent with the Co-op, its Dissolution Committee members, and the Settlement Administrator, the Class Counsel shall then determine:

a. the amount to be paid from the Dissolution QSF to the Settlement Administrator for past work and expenses;

b. a specific amount of the Dissolution QSF, not to exceed \$15,000, to be reserved for use in paying the Settlement Administrator as approved (i) for any past work and expenses outstanding after the payments pursuant subparagraph 9.a above and (ii) for work and expenses relating to the final dissolution distribution or otherwise completing its settlement administration tasks;

c. a final payment to McBrayer PLLC on the 7.5% fee award, with the total sum paid to McBrayer PLLC on that award not to exceed 7.5% of the “net distribution proceeds,” as defined in the ordering ¶ 3 (p.48) of the 6/11/21 Order Awarding (see also footnote 2 above); and,

d. the residual amount of the Dissolution QSF available for the final distribution to Class members and a calculation of the share per Class member, rounded down to the nearest penny.

10. No fewer than 14 days before issuance of the final dissolution distribution checks and any disbursement of the final payment to McBrayer PLLC on the 7.5% fee award, Class Counsel shall file in the case and serve on the named parties, objectors Roger Quarles *et al.*, and the unrepresented objectors to the Settlement Agreement, a report of the determinations required by paragraph 9 above, including the amount of the final dissolution distribution share to Class members. Any objection to one or more of the determinations must be filed and served in the case within 10 days of the report’s service and filing and noticed to be heard at the Court’s regular motion hour on the date specified in the report. The final distribution of net dissolution proceeds should issue to the qualified, eligible Class members as soon as feasible after (a) the deadline passes without any objection or (b) the Court enters an order on any timely objection(s).

11. If a timely notice of appeal is filed seeking review of this final and appealable Order, then:

a. The Settlement Administrator shall disburse to McBrayer PLLC the amount of \$30,000.00 to be held by the firm in escrow for payment of Class Counsel fees and expenses as earned and accrued in connection with the appeal taken. The residual amount of the Dissolution QSF otherwise available for the final distribution to Class members will be reduced by this \$30,000.00 amount and the calculation of the per-Class member share pursuant to subparagraph 9.d above shall be accordingly reduced.

b. The McBrayer firm shall account to the Court for amounts taken out of escrow for earned and accrued fees and expenses at the conclusion of the appeal and any remand therefrom or the exhaustion of the \$30,000.00 amount, whichever occurs first. If the escrowed amount is not entirely earned, any refundable amount shall be paid in accordance with the provision in paragraph 17 below at the conclusion of the appeal and any remand therefrom.

c. Unless the appellant(s) present a bond complying with RAP 63 to stay all of the disbursements directed in this Order, then enforcement of this Order will proceed — on the tenth day after this Order reaches finality — as to any disbursement provision(s) not bonded by the appellant(s) in compliance with RAP 63. In particular, unless the costs of staying the distribution to Class members (in whole or in part) are sufficiently bonded, then distribution of a full share to each Class member shall proceed as ordered in paragraphs 5 & 7-10 above.

12. In accordance with Ordering ¶¶ 2 and 8 of the 7/28/21 Amended Order, amounts from the final distribution unclaimed by Class members after 90 days will revert to the Dissolution QSF. After 90 days have passed from issuance of checks to Class members, the Settlement Administrator shall cause any checks uncashed at that time to be voided and then report to Class Counsel the payees on such checks and the amount of residual funds therefrom. The 90 days shall be counted from the date that checks were issued to the qualified, eligible Class members as

a group; however, the Settlement Administrator and Class Counsel are given discretion to make allowance of additional time to those Class members who have contacted Class Counsel and have been reissued checks or are in the process of having checks reissued to them within the general 90-day window.

13. In accordance with the position of Class Counsel,<sup>6</sup> it is found and adjudicated that the 91 Class members identified as owing TAGS fee debts and whose dissolution distributions have been offset for TAGS fee debt each have fully satisfied their respective TAGS fee debts and they are hereby RELEASED from any further liability for TAGS fees. To the extent that the Co-op has the right to collect or be paid any TAGS fee debt not herein released, the Co-op is permitted to abandon the same.

14. No part of the amount reserved per subparagraph 9.b above shall be disbursed to the Settlement Administrator before (a) completion of the third and final dissolution distribution process and (b) approval of the Court of an application therefor filed by Class Counsel or by the Settlement Administrator directly.

15. After the conclusion of the full, final distribution to Class members, any party, Class Counsel, or the Settlement Administrator may move for the discharge of the Settlement Administrator from further duties to the Class or otherwise in this proceeding. The residual amount in the Dissolution QSF shall be determined and (a) paid in accordance with paragraph 17 below or (b) disbursed as directed by the Court as a reserve for functions or facilities relating to the Class previously supplied by the Settlement Administrator that the Court determines should continue and with any eventual residual to be paid in accordance with paragraph 17 below.

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<sup>6</sup> See ¶¶ 11-12 of Settlement Class Counsel's Report re Collection of TAGS Fee Debt through Offsets to Distributions, filed December 8, 2023.

16. After the conclusion of the dissolution process, the Co-op and its Dissolution Committee members may move for their discharge from any further duties to the Class or obligation in this matter and for the dismissal of the Co-op as a party to the case. At that time, the residual amount in the Co-op Reserve shall be determined and paid in accordance with paragraph 17 below or disbursed as directed by the Court to be held subject to further order.

17. It is hereby ordered that any *cy pres* payments of residual amounts from the Dissolution QSF or the Co-op Reserve or from amounts (if any) disbursed in accordance with paragraph 11 above that remain in escrow held by McBrayer PLLC after the conclusion of any appeal and any remand therefrom shall be allocated as follows:

a. in accordance with CR 23.05(6)(b), 25% to the Civil Rule 23 Account maintained by the Kentucky IOLTA Fund Board of Trustees pursuant to Supreme Court Rule 3.830(20); and

b. in accordance with KRS 272.325(3), 25% each to (i) the Hutson School of Agriculture at Murray State University, (ii) the Department of Agriculture and Food Science at Western Kentucky University, and (iii) the Department of Agricultural Sciences at Morehead State University.

Payment may be ordered in a single lump sum at the closing of this case, or partial payments may be ordered as the respective residual from the Dissolution QSF, the Co-op Reserve, or amounts escrowed for any appeal can be finally determined.

18. This Order, providing for the full disposition of the entire remaining net dissolution proceeds and there being no just cause for delay, is final and appealable pursuant to CR 54.02 and other applicable law. The Court retains jurisdiction over the administration and enforcement of the matters adjudicated herein.



Given under my hand this \_\_\_ day of January, 2024.



Hon. Julie Muth Goodman  
Judge Fayette Circuit Court

AGREE to tender and ENTRY of this ORDER:

/s/ Robert E. Maclin, III

Robert E. Maclin, III (KBA # 43025)

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NO OBJECTION to tender and ENTRY of  
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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 January, 2024, via U.S. Mail, first class, to the following counsel and unrepresented objectors to the proposed settlement:

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Clerk, Fayette Circuit Court

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