

**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 Status Report re
Distribution to Electing Class Members and Associated Costs**

Settlement Class Counsel, Katherine K. Yunker and Jason R. Hollon, hereby provide the following report of the distribution and disposition of the Pay-Me Fund in accordance with the Order re Fund Distribution, entered August 4, 2023 (“8/4/23 Fund Order”), and of the amounts left-over from the Pay-Me Fund. Class Counsel state as follows:

1. The final and appealable 8/4/23 Fund Order directed the disbursement by the Burley Tobacco Growers Cooperative Association (“Co-op”) of the entire amount remaining from the Fund that is the subject of ¶¶ 22-36 and Ordering ¶ 2 of the 7/28/21 Amended Opinion and Order Approving Partial Settlement. The 8/4/23 Fund Order divided the net remaining Fund into two parts, a grant to the Burley and Dark Tobacco Producer Association, Inc. (\$347,289.19) and a Pay-Me Fund (\$904,654.55).

2. The Co-op disbursed the Pay-Me Fund amount as directed in ¶¶ 5 & 6 of the 8/4/23 Fund Order: (a) \$863,404.55 to the Settlement Administrator, held in the qualifying settlement fund related to this case (“QSF”) and (b) \$41,250.00 to McBrayer PLLC, held in the firm’s escrow account.

3. In accordance with ¶6 of the 8/4/23 Fund Order, the Settlement Administrator distributed a \$453.89 share to each qualifying Class member electing to be paid from the Fund; there are, however, amounts distributed that have not been claimed by payee Class members.

According to recent statistics provided by the Settlement Administrator:

- 1913 checks were issued (including reissues);
- 1871 (totaling \$849,228.19) have been cashed;
- one (1) check (reissued to attorney James Lovell as the Public Administrator substituted for the initial administratrix for the estate of a Class member)¹ remains outstanding.

The initial, mass distribution was mailed out on October 26, 2023. Checks were then reissued as needed after receipt of appropriate documentation that the initial check was lost or a change should be made to the Class member address or payee. The latter change was usually due to the intervening death of the Class member or closure of a Class member's estate. The last Fund check reissue was on July 10, 2024.

4. One electing Class member was not issued a check, but instead was credited with a full \$453.89 share as an offset against his remaining TAGS fee debt.² The \$453.89 credited to this Class member has been accounted as remaining in the special Fund portion of the QSF.

5. From the Pay-Me Fund amount, other disbursements — subject to refund — were directed by ¶5 of the 8/4/23 Fund Order:

a. The Settlement Administrator was disbursed \$9,361.00 “for issuing the checks for the individual payments to electing Class members and follow-up thereto” (¶5a). In late June 2024, the Settlement Administrator presented Class Counsel with an invoice for such work and

¹ An earlier reissue to attorney Lovell was returned to the Settlement Administrator and has been recently reissued.

² See, generally, 12/8/23 Settlement Class Counsel's Report re Collection of TAGS Fee Debt through Offsets to Distributions, in which this Class member is referred to as “Grower X”.

expenses, totaling \$6,547.65. The invoiced amount includes filing the QSF 2023 tax return. Class Counsel approved the invoice after checking it for consistency with the June 2023 proposal that provided the basis for the ¶5a allowance and with the known work performed by the Settlement Administrator with respect to the Fund distribution. The Settlement Administrator paid itself in the amount of the invoice (\$6,547.65) out of the QSF on July 31, 2024.

b. The McBrayer firm was disbursed, and holds in escrow, \$11,250.00 to cover “the Class Counsel team’s hours of work relating to the distribution to the Pay-Me Class Members” (¶5b). The total amount has been entirely earned; from September 1, 2023, through July 31, 2024, the team members charged over 90 hours³ to such distribution tasks as preparing the list of payees and current addresses for the Settlement Administrator, fielding inquiries and complaints from Class members, assisting Class members in obtaining check reissues for lost checks, changed addresses, and changed payees, and monitoring the progress of payments effected to as many of the electing Class members as practically feasible. If those hours were all charged at a paralegal rate of \$150/hour, the total exceeds the \$11,250.00 maximum allotted. Although ¶5b of the 8/4/23 Fund Order allows disbursement from escrow as amounts are earned, no disbursements have yet been made.

c. The McBrayer firm was also disbursed, and holds in escrow, \$30,000.00 to pay “Class Counsel fees and expenses as earned and accrued in connection with the appeal taken by Objectors Roger Quarles *et al.*” (¶5c). None of these funds have been taken out of escrow; any amounts taken are to be accounted to the Court (*id.*). Time already spent on the appeal indicates

³ Slightly more than half of the hours entered for special Fund matters during those 11 months were for the attorneys (K. Yunker and J. Hollon); the remainder were for paralegal H. Lewis. During the same period, time records show over 500 hours charged by the same three to general Class Counsel team work (for which no additional compensation is expected).

that the entire amount will be earned and disbursed before the conclusion of proceedings related to the appeal.⁴

6. No amounts are refundable at this time from the \$41,250.00 total disbursed to the McBrayer firm and held by it in escrow. The amount left over from the \$863,404.55 disbursed to the Settlement Administrator and held by it in the QSF is **\$7,174.82**, if attorney Lovell cashes before the void date the check reissued to him as the Public Administrator for the estate of a Class member.⁵ All other uncashed checks issued for the special Fund distribution have been voided. In summary, with references to paragraphs in the 8/4/23 Fund Order:

Category	Co-op Disbursed	Distributed/Paid	Left Over
¶6 Pay-Me shares	853,773.55	849,682.08	4091.47
¶5a Adm'r costs	9,631.00	6547.65	3083.35
¶5b Counsel costs	11,250.00	0.00*	N/A
¶5c Appeal allowance	<u>30,000.00</u>	<u>0.00*</u>	<u>N/A</u>
TOTAL	904,654.55	856,229.73	7,174.82

* None yet; current data indicate that the entire amount is or will be earned and nothing will be left-over.

Respectfully submitted,

/s/ Katherine K. Yunker

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Settlement Class Counsel

⁴ Briefing has concluded and the record has been filed in Court of Appeals Case No. 2023-CA-0767. For the September 2023 – July 2024 period used in ¶5b and fn.3 above, time charges for the same three people total over 200 hours.

⁵ The amount left-over is \$7,628.71 if the check reissued to attorney Lovell is not cashed in time and is voided.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served this 16th day of August 2024, 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

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