

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

Class Counsel's Motion re Fees

NOTICE

Please take notice that this Motion will be heard on Friday, September 30, 2022, 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, hereby move the Court to determine any remaining fee to be paid for Class Counsel work, through the completion of the Co-op's dissolution and the distribution of the net proceeds to the eligible Settlement Class members. Class Counsel present herewith information to support the Court's determination of such a fee for Class Counsel work, and respectfully suggest that the Court consider setting sums certain or caps as to other professional fees for the winding-up process. In support of this motion, Class Counsel state as follows:

1. In the Amended Opinion and Order Approving Partial Settlement entered July 28, 2021 ("Amended Order"), the Court directed that "[b]eginning immediately after the entry of this Opinion and Order, the business of BTGCA shall be concluded, and BTGCA shall be judicially dissolved and its net assets liquidated and distributed ... to the Settlement Class...." Amended

Order p.24, ordering ¶3. “The public interest is best served by expediting the dissolution of BTGCA, the liquidation of its assets, and the prompt distribution of the net assets to its appropriate members sooner rather than later.” *Id.* p.12 (¶14).¹

2. The process of identifying eligible Class members has concluded, and an initial distribution in the base amount of \$5,670 has been made to 2600 persons, totaling \$14,742,000.² The liquidation of Co-op assets is nearly complete, as is the resolution of ongoing obligations and known claims; however, the dissolution process is not expected to be over until 2023 and reserves from existing liquid assets must be kept to pay expenses and meet contingencies going forward. Knowing the amount to be paid for professional fees eliminates the risk of reserving too little and the need to set reserves based on maximum estimates, and thus would allow for the largest possible prudent second distribution to be made to eligible Class members in 2022.

3. In an Order entered December 9, 2021, pp. 1-2 (¶2), the Court awarded \$458,282 to the McBrayer firm for Class Counsel work; this award has been paid. The Court awarded that amount after reviewing *in camera* an itemized statement from Class Counsel for time spent from their appointment through November 12, 2021, and finding that the time was reasonable and performed for the benefit of the Settlement Class. The Court has made statements in open court that a fee award might be made for Class Counsel work after November 12, 2021, but noting that there were limits to what might be further awarded.

4. 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 November 13, 2021 –

¹ Net dissolution assets do not include the \$1.5 million fund relating to the Dark and Burley Tobacco Producers Association, Inc., which the Amended Order (p.23, ordering ¶2) specified is from the Co-op’s pre-dissolution assets.

² An eligible Class member’s share is subject to offset for TAGS fees owed. In the initial distribution, \$107,771.67 in TAGS fees were “collected” through offsets against the initial share amount of \$5670.

August 31, 2022. 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.³

5. The time records to be submitted begin on November 13, 2021, and continue through and including August 31, 2022. Time entries are for five (5) individuals: Katherine K. Yunker (appointed attorney), Jason R. Hollon (appointed attorney), Phillip Pearson (McBrayer estate attorney), Holly M. Lewis (paralegal), and Armon Ghayoumi (law clerk). The entries since November 13, 2021, reflect thousands of hours of work in furtherance of the interests of the Settlement Class. Issues inherent in the structure of the settlement (*e.g.*, its reliance upon a Co-op generated listing for “confirmed” members), issues with the settlement administrator, and the general breadth of the information submitted to establish class membership and payment eligibility, led to such a substantial number of hours expended. Class Counsel have reviewed the entries and represent that the time shown was reasonable and performed for the benefit of the Settlement Class.

6. Class Counsel and other McBrayer professionals found it essential to be directly and significantly involved in the distribution process, including engaging in detailed analysis and review of those to be paid to ensure that no duplicative payments were issued. Both the Co-op generated member listing and the process by which the settlement administrator received and

³ 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 class members or those seeking to establish class membership.

processed documentation created a situation in which there were hundreds of duplicative entries in the class member data, each of which had to be reviewed individually.

7. Further, to assist as many eligible persons as possible to receive a share, Class Counsel and staff engaged in hundreds of hours of communications via telephone, e-mail, and letter with over 500 individual class members and potential class members regarding their status and eligibility for payment.⁴ At times, it was necessary to address, correct, and clarify responses that callers received from the settlement administrator. Class Counsel and staff paid individual attention to class members and applicants and did everything feasible to ensure appropriate processing of their information and submissions.

8. In addition to answering questions regarding class status, these communications included reviewing tax and other records of business entities to ascertain whether they were duly constituted and sufficiently distinct to qualify for their own membership, engaging with beneficiaries and fiduciaries of members who had passed away to ensure payment was correctly issued, working with members regarding deficiencies in tax-number documentation required to receive payment, and tracking down and contacting members who had not cashed distribution checks mailed to them.

9. Moreover, in addition to this work, Class Counsel engaged in close review of documentation received by individuals and entities attempting to establish their membership in the Settlement Class. Class Counsel and staff analyzed, summarized, and organized all documentation received, prepared it for review by the Dissolution Committee, and otherwise facili-

⁴ These communications are in addition to the calls and e-mails that were and continue to be received from members simply checking on the status of the case and dissolution proceeds payments.

tated, recorded, and implemented the Committee's consideration of applications for membership and determinations thereon.

10. Class Counsel organized and implemented an objections process for those individuals the Committee determined did not qualify as members of the Settlement Class or who were otherwise ineligible for payment of a dissolution share. Class Counsel and staff prepared notice of determination letters to those individuals, reviewed objections received, prepared the documentation necessary for the Court's consideration of the objections, assisted objectors in using the opportunities provided for them to present their objections, participated in the hearings on the objections, and performed the follow-up tasks directed by the Court and necessitated by its rulings.

11. Class Counsel are mindful that the Court suggested that they should make more use of staff professionals at the McBrayer firm, and so established protocols for handling inquiries from class members and applicants, maintaining databases of contacts and information, and escalating specific questions and emerging problems for Class Counsel analysis and guidance. Experienced paralegal Holly Lewis became the general manager of the team effort to respond to inquiries and track information, and the response team included law clerk Armon Ghayoumi and other McBrayer personnel who did not charge their time to these Class Counsel projects and so do not appear in the record of time entries.

12. Class Counsel also called upon expertise among McBrayer attorneys as to tax, corporate, estate, ethics, and property matters to assist in sorting out issues that arose with respect to the dissolution and the nature and ownership of the membership share. For the most part, these other attorneys did not charge their time to the Class Counsel projects or their charges were so occasional that they have been omitted from this report. The one exception is attorney

Phillip Pearson, for whom 9.1 hours are reported. Mr. Pearson has provided guidance and analysis about estate matters from December 2021 through June 2022 so that the Class Counsel team could assist Trust-members and families of deceased Class members in establishing eligibility for share payments.

13. The following is a per-person and total summary of time entries for the Class Counsel team:

<u>Person</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Total (\$)</u>
Yunker, K.	597.2	400.00	238,880.00
Hollon, J.	886.6	335.97 ⁵	297,877.50
Pearson, P.	9.1	275.00	2,502.50
Lewis, H.	513.1	150.00	76,965.00
Ghayoumi, A.	206.8	100.00	20,680.00
TOTAL	2212.8	--	636,905.00

Appropos of the Court's previously mentioned suggestion that Class Counsel should make more use of staff professionals at the McBrayer firm, it is helpful to consider that if all the attorneys' hours were charged at Ms. Lewis's paralegal rate (\$150/hour), the \$ totals for attorneys Yunker, Hollon, and Pearson would instead be \$89,580, \$132,990, and \$1,365, respectively, and the team total would be \$321,580.00. This represents a lodestar amount if all the attorney hours reported had instead been worked by McBrayer paralegals.

14. Class Counsel is mindful of the prior award, and that the number of hours spent on this matter exceed the estimates made by Class Counsel in late 2021. Moreover, additional Class Counsel work remains into 2023 to finalize the dissolution process. These tasks will include organizing and supervising the remaining distributions to class members, continuing to

⁵ Jason R. Hollon's hourly rate listed here reflects a weighted average of his hourly rate prior to March 1, 2022, and the subsequent higher rate when he became a member of the McBrayer firm.

engage in frequent communication with class members, preparing for and participating in any further Court hearings, and monitoring the final steps of the Co-op's dissolution. Class Counsel do not intend to request any additional fee for this work,⁶ but the Court may appropriately take into account that further work in determining what amount, if any, to award for post-11/12/21 Class Counsel work with respect the Co-op's dissolution and distribution of the net proceeds.

15. Class Counsel believe that a Court award based on the hours worked would be reasonable and proportional to the dollar amount of the distributions remaining to be made to the Settlement Class. To facilitate the largest possible prudent second distribution to eligible Class members, Class Counsel request the Court enter an order ruling what additional professional fees, if any, will be awarded to them for dissolution matters.

Respectfully submitted,

/s/ Katherine K. Yunker

Katherine K. Yunker (KBA # 79592)

/s/ Jason R. Hollon

Jason R. Hollon (KBA # 96148)

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Settlement Class Counsel

⁶ This does not include any future Class Counsel work required for the Dark and Burley Tobacco Producers Association, Inc. for which the Court has provided a separate attorney's fee process. *See* Amended Order p.23, ¶35 ("The McBrayer Firm, as Class Counsel, will receive legal fees and expenses based on time spent working on [Dark and Burley Tobacco Producers Association, Inc.], which will follow a lodestar analysis").

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served this 22nd day of September 2022, electronically via the e-filing system and/or via electronic mail upon the following:

Jeremy S. Rogers
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and via first-class U.S. Mail, postage prepaid, on the unrepresented objectors listed on Schedule A of the Opinion and Order entered June 11, 2021, at the addresses given in their respective objections:

J.B. Amburgey	David Barnes	Jacob Barnes
Robert E. Barton	Ben Clifford	Lincoln Clifford
Wayne Cropper	Josh Curtis	George M. Darnell
Jennifer Darnell	Brent Dunaway	Michael Furnish
William David Furnish	Leonard Edwin Gilkison	Bill G. Hall
Dudley Wayne Hatcher	Steve Lang	Berkley Marks
Bruce Quarles	Travis Quarles	Steven Quarles
Danny Townsend	Jerry Rankin	Richard Sparks
Jarrod Stephens	Addison Thomson	William A. Thomson
Judy Townsend		

/s/ Katherine K. Yunker
Settlement Class Counsel