

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

**Motion by Settlement Class Counsel
for Authorization of Payment to McBrayer and
re Completion of Directives in the 8/4/23 Order re Fund Distribution**

NOTICE

Please take notice that this Motion will be brought on for hearing at the Court's regular motion hour on Friday, August 29, 2025, at 10 A.M., or as soon thereafter as counsel may be heard.

MOTION

Settlement Class Counsel, Katherine K. Yunker and Jason R. Hollon, hereby request an order or orders from this Court (i) authorizing the payment of \$30,000 held in escrow by the McBrayer firm for Class Counsel fees and expenses earned and accrued in connection with the appeal taken by Objectors Roger Quarles *et al.* ("the Appeal"), (ii) finding that \$7,174.82 is the total residual amount from the special distribution Fund subject to the *cy pres* directives in ¶9 of the 8/4/23 Order re Fund Distribution ("8/4/23 Fund Order"), and (iii) confirming that there are no remaining tasks or steps to be taken with respect to the special distribution Fund. In support of these requests, Class Counsel state as follows:

Background

1. The Amended Opinion and Order Approving Partial Settlement entered July 28, 2021, ¶¶ 22-36 and Ordering ¶ 2, provided *inter alia* for a Fund and for distributions approximately two years later relating to \$1.325 million expected to be left then in the Fund.

2. The Appeal, Ky. App. No. 2023-CA-0767-MR, was initiated by notice of Objectors Roger Quarles *et al.* filed on June 26, 2023, seeking review of this Court’s orders denying requests by the Appellant-Objectors’ attorneys for an award of attorney fees relating to the Fund.

3. On August 4, 2023, this Court entered the final and appealable Order re Fund Disposition (“the 8/4/23 Fund Order”), providing for the disbursement as soon as feasible of the entire \$1.325 remaining from the Fund. No appeal was taken from the 8/4/23 Fund Order.

4. Among other mandates, the 8/4/23 Fund Order, in ¶ 5c, provides for disbursement of \$30,000.00 to be held by the McBrayer firm in escrow “for payment of Class Counsel fees and expenses as earned and accrued in connection with the [A]ppeal,” and for an accounting of amounts taken out of escrow 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 left-over amount is to be added to other Fund residuals for a distribution to four (4) designated *cy pres* recipients (*see id.* ¶9).

5. Settlement Class Counsel’s Status Report re Distribution to Electing Class Members and Associated Costs (“8/16/24 Status Report”), reported *inter alia* that the \$30,000 amount had been distributed to and escrowed by the McBrayer firm (¶¶ 2, 5c). As of the 8/16/24 Status Report filing date, none of the \$30,000 had been taken out of escrow; however, it was estimated that the entire \$30,000 would be earned before the conclusion of the Appeal proceedings, based

on a preliminary review of time entries related to the appeal. *See esp.* 8/16/24 Status Report ¶¶ 5c & 6 and fn. 4.

6. This Court’s Order on Special Distribution Status Report, entered September 5, 2025 (“9/5/25 Order”), specifically rules in ¶1.b that “Class Counsel’s remaining reporting obligations under the 8/4/23 Fund Order are only those per ¶5[c] and ¶9(ii) [residual amounts to be included in the *cy pres* distribution], relating to the escrowed \$30,000.”

7. In the Appeal, the appellee Co-op and the appellee plaintiffs-Class representatives filed motions to dismiss the appeal, in July and August 2023, respectively; by Order entered October 5, 2025, the Court of Appeals denied those motions, but noted that decision could be reviewed when the full panel considered the case. Merits briefs for the Appeal were filed in February, May, and June 2024. On August 30, 2024, the Court of Appeals issued a notice that no oral argument would be held for the Appeal.

8. On December 13, 2024, the Court of Appeals entered an Opinion and Order Dismissing the appeal. Among the grounds presented for dismissal of the appeal or affirmance of the appealed orders denying an award of attorney fees, the Court of Appeals determined that the issue whether an award should have been made was moot because none of the \$1.5 million special Fund remained; thus no attorney-fee award could be paid pursuant to KRS 412.070 from a common fund before its distribution. 12/13/24 Order and Opinion Dismissing, pp. 6-7 & n.7.

9. The time for requesting rehearing by the Court of Appeals or discretionary review by the Kentucky Supreme Court has passed. Finality was reached on February 5, 2025, and the record returned to the Fayette Circuit Court (receipted on February 10, 2025). The Appeal was only of the Quarles objectors’ attorney fees issue, and proceedings continued in this Court throughout; no remand to this Court was necessary upon the dismissal of the Appeal.

10. None of the escrowed \$30,000 has been paid out or otherwise distributed.

Appellate Work and Expenses

11. As shown herein, the entire amount allowed by ¶5c of the 8/4/23 Fund Order (\$30,000) has been earned by Class Counsel’s work in the Appeal.

12. Out-pocket expenses attributed to the Appeal total \$42.00:

Amount	Date	Description
\$25.00	11/16/23	Fayette Circuit Court Clerk CD of hearings listed on the Designation of Record
\$17.00	11/29/23	copy Record filings not available electronically or served on counsel

13. Class Counsel here provide calculations that would support a fee award greater than \$30,000 and reasons that the calculations understate the work performed and appropriate fee therefor. These calculations use the hourly rates found reasonable in the Order re Class Counsel Fees and Costs entered August 4, 2023 (“the 8/4/23 Fee Order”), awarding \$68,535.00 as a reasonable fee for developing, implementing, and administering the “postcard process” through June 30, 2023. The 8/4/23 Fee Order (¶1) found that the hours reported were compensable at rates of **\$300/hour** for **attorney** time and **\$150/hour** for **paralegal** time.

14. From mid-July 2023¹ through the end of December 2023, *i.e.*, for filings and procedures prior to merits briefing, the Class Counsel team members charged over 80 hours² for work including the Co-op’s and Class representatives’ motions to dismiss the Appeal and the designation of record. From the beginning of 2024 through to the end of January 2025 (and finality

¹ Time attributable to the Appeal before 7/15/23 was charged to general Class Counsel matters, as had been proceedings relating to the underlying requests for award of attorneys’ fees and denials thereof.

² Time records show 79.2 Class Counsel hours, and 8.6 paralegal hours.

of the Appeal), the Class Counsel team members charged over 180 hours,³ primarily for briefing tasks such as assessing the appellants’ arguments, research, and drafting.

15. Combining the preliminaries and briefing hours, rounding down the total hours to 255,⁴ and using the hourly rates found to be reasonable in the 8/4/23 Fee Order yields a “lode-star” total of \$65,250:

	Hours	Hourly Rate	Fee
Class Counsel (attorneys) K. Yunker and J. Hollon	180	\$300	\$ 54,000
Paralegal H. Lewis	<u>75</u>	\$150	<u>\$ 11,250</u>
TOTAL	255		\$ 65,250

If all hours are charged at the paralegal rate of \$150/hour, the “lodestar” total is \$38,200.

16. The calculated amounts shown in ¶15 above understate the “lodestar” for work performed for the Appeal, not only because hours have been rounded down, but also because:
- a. hours charged in the first three weeks of the Appeal (6/26/23–7/16/23) and for a research project by a law clerk are not included;
 - b. hours during July, August, and September 2023 were sometimes split between the Appeal and the special Fund distribution proceedings, particularly as to *super-sedeas* bond issues; and,
 - c. Class Counsel and paralegal H. Lewis made an effort to “stretch” the \$30,000 allowed, by charging to more general matters some work arising from the Appeal

³ Time records show 112.0 Class Counsel hours, and 70.0 paralegal hours.

⁴ If needed to establish that the \$30,000 allowed has been (more than) entirely earned, Class Counsel can submit an itemized statement of hours charged for the Court’s *in camera* review.

that had applicability to or benefit for the net dissolution distributions or other Class Counsel tasks.⁵

17. As noted in ¶11 above, no payments for Class Counsel team work relating to the Appeal have been made from the escrowed funds. The 8/4/23 Fund Order (¶5c) does not require Court authorization or approval before the McBrayer firm pays itself for work relating to the Appeal, but only an accounting to the Court for amounts taken out for earned and accrued fees and expenses. However, Class Counsel prefer that payment occur after Court approval or at least notice to represented and unrepresented persons and an opportunity to be heard about the \$30,000 to be paid.

18. Class Counsel ask that this Court authorize or approve the payment to the McBrayer firm of the entire \$30,000 amount allowed in ¶5c of the 8/4/23 Fund Order.

Fund Residual Amount

19. Having accounted for the entire \$30,000 held in escrow for payment of Class Counsel fees and expenses as earned and accrued in connection with the Appeal, Class Counsel now report that there will be no residual amount from the ¶5c allowance subject to ¶9 of the 8/4/23 Fund Order.

20. Upon payment to McBrayer of the \$30,000 for the Appeal, the residual amount of the Fund subject to ¶9 of the 8/4/23 Fund Order is only the left-over amount from the Fund distribution. As confirmed in the 9/5/24 Order (¶1a), that amount is **\$7,174.82**.

⁵ During the same 5.5-month Appeal “preliminaries” period (July 16, 2023 – December 31, 2023) over 300 hours were charged by the same three people to general matters; in the 13-month Appeal “briefing” period (January 1, 2024 – January 31, 2025), over 530 hours. No compensation is expected for that work beyond the 7.5% fee awarded to the McBrayer firm in the 6/11/21 Opinion and Order Awarding Service Fees and Attorneys’ Fees and Nontaxable Costs.

21. The Order for Ending Settlement Administration by Angeion Group LLC, entered October 24, 2024, in ¶¶ 3 and 7, directed the turn-over to a McBrayer firm escrow account by the Settlement Administrator of funds remaining in its QSF for this matter and that the transferred funds be held in escrow “awaiting further order of this Court, including with respect to *cy pres* payments of residual funds. The turn-over by the Settlement Administrator included the \$7,174.82 residual from the special Fund distribution.⁶

22. The 9/5/24 Order (¶3) permitted residual amounts from the Fund to “be combined with residual amounts from the net dissolution proceeds for the *cy pres* payments directed in ¶9 of the 8/4/23 Fund Order.” The Fund residual amounts have been combined with Co-op net dissolution residuals⁷ in the McBrayer firm escrow account.

23. Class Counsel have thus completed their remaining reporting obligations under the 8/4/23 Fund Order and there is no distinction required between residuals from the special Fund distribution or from the Co-op’s net distribution proceeds. Class Counsel request that this Court find and declare that all steps and matters under the 8/4/23 Fund Order and with respect to the special distribution Fund have been concluded.

WHEREFORE, Settlement Class Counsel request entry of the order or orders requested herein.

Respectfully submitted,

/s/ Katherine K. Yunker

Katherine K. Yunker (KBA # 79592)

Jason R. Hollon (KBA # 96148)

MCBRAYER PLLC

⁶ See ¶9 of the 12/7/24 Settlement Class Counsel’s Status Report re Dissolution Distributions and Dissolution QSF Remainder (“12/07/24 Status Report”).

⁷ This includes the dissolution QSF residual of \$37,749.31 turned over by the Settlement Administrator (see 12/7/24 Status Report ¶10), and the recent transfer to the McBrayer firm escrow of \$104,000 from sale proceeds of MetLife stock in the Co-op’s dissolution (see 7/3/25 Notice of Collection of Final Funds from MetLife).

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 19th day of August 2025, 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

Settlement Class Counsel

Kevin G. Henry
Charles D. Cole
STURGILL, TURNER, BARKER & MALONEY PLLC
333 West Vine Street, Suite 1500
Lexington, KY 40507
khenry@sturgillturner.com
ccole@sturgillturner.com

Courtesy Copy (emailed):
Hon. Julie Muth Goodman
c/o Joseph Guthrie
josephguthrie@kycourts.net

W. Henry Graddy, IV
Dorothy T. Rush
W.H. GRADDY & ASSOCIATES
137 N. Main Street
Versailles, KY 40383
hgraddy@graddylaw.com
dtrush2@gmail.com

Robert E. Maclin, III
WHITEFORD, TAYLOR & PRESTON LLP
250 W. Main Street, Suite 1800
Lexington, KY 40507
rmaclin@whitefordlaw.com

J.B. Amburgey
P. O. Box 47
Means, KY 40346

David Barnes
768 Bowman Mill Road
Berry, KY 41003

Jacob Barnes
1088 Bowman Mill Road
Berry, KY 41003

Robert E. Barton
Barton Bros. Farm
4095 Huffman Mill Pike
Lexington, KY 40511

Ben Clifford
2459 Ky. Hwy. 1284 E
Cynthiana, KY 41031

Lincoln Clifford
Ky Hwy 1284 E
Cynthiana KY 41031

Wayne Cropper
5350 Raymond Road
Mayslick, KY 41055

Josh Curtis
1402 KY Hwy 1940
Cynthiana, KY 41031

George M. Darnell
1593 Grays Run Pike
Cynthiana, KY 41031

Jennifer Darnell
248 Gray Lane
Cynthiana, KY 41031

Brent Dunaway
1547 KY Highway 1054 N
Berry KY 41003

William David Furnish
1320 Highway 982
Cynthiana, KY 41031

Leonard E. Gilkison
345 Calloway White Road
Winchester, KY 40391

Bill G. Hall
P. O. Box 117
Means, KY 40346

Dudley Wayne Hatcher
648 Hood Rd.
Morgantown, KY 42261

Steve Lang
703 Gray Lane
Cynthiana, KY 41031

Berkley Marks
5399 Paris Pike
Mt. Sterling KY 40353

Bruce Quarles, Steven
Quarles, Travis Quarles
10570 Owenton Road
Frankfort, KY 40601

Jerry Rankin
4540 Perryville Road
Danville, KY 40422

Richard Sparks
1499 Thatchers Mill
Paris, KY 40361

Jarrold Stephens
504 Commonwealth Lane
Cynthiana KY 41031

Addison Thomson
2224 Mt. Vernon Park
Cynthiana, KY 41031

William A. Thomson
1809 Mt. Vernon Pike
Cynthiana, KY 41031

Danny Townsend
Judy Townsend
11620 Main St.
Jeffersonville, KY 40337

Service List

Fayette Cir. 20-CI-00332

page 1 of 1