

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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Settlement Class Counsel’s Status Report re  
Dissolution Distributions and Dissolution QSF Remainder

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Settlement Class Counsel, Katherine K. Yunker and Jason R. Hollon, hereby provide the following report about the distribution of net proceeds from the dissolution of the Burley Tobacco Growers Cooperative Association (“Co-op”), the dissolution proceeds held by the Settlement Administrator in its qualifying settlement fund (“the Dissolution QSF”), and the remainder from the Dissolution QSF. The Order for Ending Settlement Administration by Angeion Group LLC that was entered October 2, 2024 (“10/2/24 Order”), authorized and directed certain steps to terminate the QSF and other administration functions by Angeion; a report of compliance with the 10/2/24 Order was filed and served in this case by Class Counsel on November 20, 2021.

Class Counsel will be available at the Court’s regular motion hour on **Friday, December 13, 2024, beginning at 10 A.M.**, to address any questions the Court or the parties may have about this Report.

**Final Dissolution Distribution**

1. As noted in Settlement Class Counsel’s 9/9/24 Status Report re Third (Final) Distribution of Dissolution Proceeds, checks for \$546.00 were issued to 2602 Class Members *en*

*masse* on April 11, 2024.<sup>1</sup> Outstanding uncashed checks from the last distribution were voided on September 30, 2024. According to final statistics about this distribution provided by Angeion:

- 2627 checks were issued (including 25 reissues);
- 2551 checks to Class members were cashed (totaling \$1,392,846); and
- 51 Class members to whom a check was issued did not cash the check (totaling \$27,846).

Class Counsel sent a letter by U.S. mail or otherwise contacted each Class member who had not cashed the \$546 check by the third full week of June 2024. Each of the 25 reissued checks was cashed, a reissuance success rate better than all previous distributions.

2. The 2552 Class members to whom the final distribution was successful represent 98% of the total 2603 qualified Class members.<sup>2</sup> The effort to have the final distribution reach as many Class members as feasible also led to some Class members being successfully reissued a check for the second dissolution distribution or the special Fund distribution.

3. Some of the 51 Class members with uncashed, voided checks expressly informed Class Counsel team members that the \$546 amount was not worth the effort required to obtain a check that could be successfully negotiated (*e.g.*, reopening a probate case). Of the 51 Class members with uncashed, voided final distribution checks, only one had not cashed an earlier-distributed check.<sup>3</sup> The majority of these Class members had Kentucky addresses (42), but there was at least one each from Indiana, Missouri, Ohio, and Tennessee. For 36 of these, the last

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<sup>1</sup> Unlike the two earlier dissolution proceeds distributions, none of the checks issued was offset for TAGS fee debt.

<sup>2</sup> These and other distribution statistics include Farmer X, whose TAGS fee debt exceeded \$11,000, and so his distributions were fully offset for the debt and no check was issued to him. *See* 12/8/23 Settlement Class Counsel's Report re Collection of TAGS Fee Debt through Offsets to Distributions, ¶¶ 5 & 7.

<sup>3</sup> No response was received to communications addressed to this Class member. Investigation suggests that the individual Class member died before 2020, but the W-9 required to be eligible for distributions was submitted in his name and with his tax I.D. number. No inquiry or documentation was received to make the payee his estate or other successor in interest.

known affirmative contact from them was submission in early 2021 of their respective Class membership qualifying/eligibility documentation; for 14, it was their Spring 2023 submission of an election regarding the special Fund.

**Cumulative Dissolution Distributions**

4. Statistics from Angeion-provided data from its check registers for the three dissolution distributions show the effort made and success in getting payments to Class members:

<b>Check Distribution</b>	<b>1st (Dec'21 -Sep'22)</b>	<b>2nd (Nov'22)</b>	<b>3rd (Apr'24)</b>	<b>TOTAL</b>
per Member amt. (\$)	5670.00	3930.00	546.00	\$ 10,146.00
# of Checks				
issued / reissued	2640	2661	2627	7928
cashed	2597	2587	2551	7735
% cashed	98.37%	97.22%	97.11%	97.57%
\$ Amt of Checks				
issued / reissued	14,867,706.88	10,449,809.82	1,434,342.00	\$ 26,751,858.70
cashed	14,634,525.81	10,160,764.55	1,392,846.00	\$ 26,188,136.36
% cashed	98.43%	97.23%	97.11%	97.89%
# Voided Checks	43	74	76	193
Class members				
# sent checks	2600	2602	2602	7804
# cashing checks	2597	2587	2551	7735
% sent, cashed	99.88%	99.42%	98.04%	99.12%

Of the Class members to whom dissolution distribution checks were issued, 65 did not cash the check for one or more of the distributions. The declining percentage of checks cashed from the first to the third distribution reflects the diminishing amount of the checks (reducing the incentive for Class members to negotiate the check promptly or to work for reissuance) and the lesser amount of time available to work out problems for the payee Class member than for an earlier distribution. Note that checks-issued totals for the first and second distributions are not in round-

dollar amounts because each of those distributions included checks issued for amounts against which the respective Class member's TAGS debt had been offset.<sup>4</sup>

5. The per-Class member \$10,146.00 total dissolution distribution was issued to each of the 2603 Class members either in checks or credits to offset TAGS fee debt or a combination of the two. Of the total \$26,436,068.00 dissolution proceeds distributed to Class members, \$26,306,529.47 (99.51%) was actually received by the Class members:

- a. \$ 26,188,136.36 in issued or reissued checks that cleared;
- b. and \$ 118,393.11 in credits offsetting TAGS fee debt owed to the Co-op.

6. There is a difference between the amounts of net Co-op dissolution proceeds distributed to Class members and the amounts paid to Class members from the Dissolution QSF because checks that were not cashed and TAGS fee debt offsets were distributed to the respective Class member, even if no corresponding payment to the respective Class member was made on a cleared check. Amounts retained in the QSF from voided, uncashed checks and TAGS fee debt offsets were used in calculating later distributions, such that the per-Class member amount of the final dissolution proceeds distribution was calculated to exhaust the projected available amount in the Dissolution QSF.

### **QSF Turn-Over**

7. On October 17, 2024, Angeion wired McBrayer \$44,924.13 to close the QSF account, meeting the deadline and instructions in ¶2 of the 10/2/24 Order. Per ¶7 of the 10/2/24 Order, McBrayer has placed the wired funds into its client escrow account, to be distributed or paid in this case in accordance with the Court's orders.

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<sup>4</sup> See, generally, 12/8/23 Settlement Class Counsel's Report re Collection of TAGS Fee Debt through Offsets to Distributions.

8. Angeion received \$26,355,873.78 in net dissolution proceeds and \$863,404.55 from the special Fund, for total receipts into the QSF of \$27,219,278.33. Per 10/2/24 Order ¶13, Angeion has accounted for and reported the following disposition of the total received into the QSF as follows:

a.	Funding received	\$ 27,219,278.33
b.	Payment to Class members	(27,037,818.44)
c.	Variance on uncashed checks	190.00
d.	Attorney Fees paid to McBrayer	(125,547.23)
e.	Admin fees paid to Angeion	(11,163.53)
f.	Bank Fee	(15.00)
g.	<b>Remainder</b>	\$ 44,924.13
h.	Wire to McBrayer to close account	(44,924.13)
i.	BALANCE	\$ 0.00

Class Counsel has reviewed QSF general ledger entries and spreadsheets for checks issued in each distribution that were provided by Angeion as part of its accounting. Class Counsel understands from discussions with Angeion representatives that the \$190.00 variance between Angeion and its bank as to checks issued to Class members (item c. above) is unexplainable by Angeion’s own bookkeeping for checks issued to and cashed (or not) by Class members. However, because the variance increases the QSF remainder from what is otherwise indicated (by an amount which is only 0.0007% of the total funding received),<sup>5</sup> Class Counsel is willing to accept its inclusion in the remainder total of \$44,924.13.

9. Of the \$44,924.13 remainder, \$7,174.82 is residual from the special Fund distribution. See 9/5/24 Order on Special Fund Distribution Report, ¶1(a). This leaves **\$37,749.31** in residual for the Dissolution QSF, comprised of:

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<sup>5</sup> The even-dollar and positive amount of the variance suggests that it is the result of a combination on Angeion’s spreadsheets of unmatched voids and reissues of checks in the three net dissolution distributions. Given that reissues were sometimes due to changes in payee name, tax I.D. #, and address (e.g., when an estate administrator succeeded to the Class membership interest), matches could be hard to identify.

- \$28,024.31 in funds from uncashed checks or otherwise not paid out from the Dissolution QSF amount (\$1,420,694.91) projected to be available for the final distribution;<sup>6</sup> and
- \$ 9,725.00 in funds that had been reserved for Angeion work and expenses associated with the dissolution distributions,<sup>7</sup> but for which Angeion has affirmatively stated that it will not present any further invoice.<sup>8</sup>

### **Dissolution QSF Remainder**

10. There is no known, present demand or obligation burdening the \$37,749.31 remaining from the Dissolution QSF, which was part of the transfer to McBrayer and is held by it in escrow. In particular, Angeion has informed Class Counsel in writing that it will not present any further invoice — for work or expenses incurred or projected costs — related to its settlement administration services in this case.<sup>9</sup> In addition, provision has been made for further Co-op costs (related to its dissolution or this case) to be paid out of “the Co-op Reserve,” funds escrowed in the Sturgill Turner IOLTA account.<sup>10</sup>

11. Paying out the Dissolution QSF remainder by issuing checks to the Class members would be inefficient and impractical. Class Counsel estimate that the cost of making such a distribution would use up more than 50% of the available amount, based on the last full-class distribution estimates provided by Angeion, price increases for postage and other component costs, and probable start-up costs (since the issuer/administrator would be other than Angeion).

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<sup>6</sup> See 3/1/24 Settlement Class Counsel’s Report re Determinations with respect to Final Dissolution Distribution, ¶4.

<sup>7</sup> See 1/24/24 Agreed Order re Final Disposition of Net Dissolution Proceeds ¶¶ 7, 8(d), 9(b); 3/1/24 Settlement Class Counsel’s Report re Determinations with respect to Final Dissolution Distribution, ¶2.

<sup>8</sup> See 11/20/24 Settlement Class Counsel’s Report re Compliance with Order for Ending Settlement Administration by Angeion Group LLC, ¶4.

<sup>9</sup> See *id.*

<sup>10</sup> See 1/24/24 Agreed Order re Final Disposition of Net Dissolution Proceeds ¶ 6.

If the distribution costs consumed exactly half of the Dissolution QSF remainder, the maximum distribution to each Class member would be \$7.25. Furthermore, the third distribution was to be the final dissolution distribution<sup>11</sup> and because Class members were so informed through the website and the check stub on that third distribution, they are not expecting another distribution — which makes it likely that a significant proportion of them would not open and negotiate a small distribution check received in the mail.

12. Per ¶15 of the 1/24/24 Agreed Order re Final Disposition of Net Dissolution Proceeds, the residual amount of the Dissolution QSF at the conclusion of the full, final distribution to Class members is to be (a) disbursed as directed by the Court for functions or facilities relating to the Class previously supplied by Angeion as the Settlement Administrator or (b) paid in accordance with the *cy pres* directives of the 1/24/24 Agreed Order's ¶17. It is also a possibility that the Court will approve or direct other uses of the Dissolution QSF. *See id.* ¶7. The McBrayer firms holds all of the transferred QSF funds in escrow, subject to further orders of the Court.

Respectfully submitted,

/s/ Katherine K. Yunker

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<sup>11</sup> *See* ¶7 of the 1/24/24 Agreed Order re Final Disposition of Net Dissolution Proceeds.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served this 7th day of December 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, and a courtesy copy has been sent to Angeion personnel via email.

/s/ Katherine K. Yunker

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