

**COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
FOURTH DIVISION
CIVIL NO. 20-C1-00332
ELECTRONICALLY FILED**

HAYNES PROPERTIES, LLC ET AL.

PLAINTIFFS

**V. JOINT MOTION TO APPROVE SETTLEMENT PROVISIONS
AND ENTER PARTIAL JUDGEMENT**

**BURLEY TOBACCO GROWERS COOPERATIVE
ASSOCIATION, et al.**

DEFENDANTS

* * * * *

NOTICE

All parties and interested persons shall please take notice that the following motion shall come on for hearing before the Court at the Fairness Hearing set for February 24, 2021, to commence at the hour of 9:00 a.m. at the Robert F. Stephens Courthouse, 120 North Limestone, Lexington, Kentucky 40507.

MOTION

Come (i) Named Plaintiffs, Haynes Properties, LLC, Mitch and Scott Haynes dba Alvin Haynes & Sons and S&GF Management, LLC, individually (“Plaintiffs”) and as Settlement Class Representatives on behalf of the proposed Settlement Class, (ii) Defendant, Burley Tobacco Growers Cooperative Association, a Kentucky non-stock agricultural cooperative association pursuant to KRS Chapter 272 (“BTGCA”), and (iii) Defendant, Greg Craddock (“Craddock”) and for the reasons set forth herein respectfully move the Court for approval of the Partial Settlement set forth herein and entry of a final and appealable Partial Judgment for the dissolution and liquidation of the BTGCA and distribution of its net assets to members of the Settlement Class on those terms provided for in the Partial Settlement.

BACKGROUND

In making and agreeing to the Partial Settlement and seeking the approval thereof and entry of a final and appealable Partial Judgment with respect thereto by this Court, Plaintiffs, individually and as Settlement Class Representatives, BTGCA, and Craddock:

1. After diligent review and investigation believed, believe and concluded and conclude that (a) the prosecution of separate actions by individual members of the proposed Settlement Class in the states of Indiana, Kentucky, Missouri, Ohio and/or West Virginia would create a risk of (i) inconsistent or varying adjudications with respect to the individual members of the proposed Settlement Class which would establish incompatible standards of conduct for the BTGCA; and (ii) adjudications with respect to individual members of the proposed Settlement Class would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; and (b) the BTGCA has acted or refused to act on grounds generally applicable to the proposed Settlement Class, thereby making appropriate relief with respect to the proposed Settlement Class as whole.

2. Participated in a mediation over approximately 1 1/2 months before Hon. Bobby Houlihan, which was limited to the claims for the judicial or other dissolution and liquidation of the BTGCA and the distribution of the net proceeds thereof to the entitled members of the BTGCA, which included evaluations and discussions of relevant facts and law and the risk, cost, expense, delay and uncertainty of litigation and appeals therefrom, and which included a mutual desire to make a prompt distribution of funds on the dissolution of the BTGCA, to members of the BTGCA to whom such dissolution distribution would be due.

3. Believed and believe that the proposed Partial Settlement confers substantial benefits upon the proposed Settlement Class, including, but not limited to, a sure and more efficient dissolution of the BTGCA and prompt distribution of equal per capita payments to members entitled thereto (the Settlement Class).

4. Recognized and acknowledged the risk, cost, expense, delay and uncertainty of continued proceedings necessary to prosecute the Action as to the claims between and among the parties, proposed Settlement Class and the BTGCA for the judicial, non-judicial, or other dissolution or liquidation of the BTGCA and the distribution of the net proceeds thereof to BTGCA Grower Members, whomever they might be, through trial, appeal, or vote of the Grower Members.

5. Considered and took into account the risk, cost, expense, delay and uncertainty of any litigation, especially in complex actions such as this lawsuit as to the claims between and among the proposed Settlement Class and the BTGCA for the judicial, non-judicial, or other dissolution or liquidation of the BTGCA and

the distribution of the net proceeds thereof to the members of the BTGCA, as well as the difficulties and delays inherent in pursuing such claims and efforts, and possible defenses related to the claims asserted in the Action as to the claims between and among the parties, proposed Settlement Class and the BTGCA for the judicial, non-judicial, or other dissolution or liquidation of the BTGCA and the distribution of the net proceeds thereof to the members of the BTGCA, and under CR 23.

6. Considered and took into account the need to avoid the BTGCA retaining a large reserve of millions of dollars for defense and indemnification claims of, and liability exposures of the BTGCA for, the BTGCA and its officers, directors, employees, agents and others, so as to maximize the net proceeds on the dissolution and liquidation of the BTGCA and the distribution of the net proceeds thereof to the members of the BTGCA.

7. Determined that this Partial Settlement is in the best interests of, Named Plaintiffs, Named Defendant, and the proposed Settlement Class and fair, reasonable and adequate.

For these reasons Named Plaintiffs, individually and as Settlement Class Representatives on behalf of the proposed Settlement Class, BTGCA, and Craddock respectfully submit to the Court the appropriateness of and request the approval of, by entry of a final and appealable order of the following provisions of the Partial Settlement, as duly and appropriately negotiated, being fair in their entirety and in the best interests of the Settlement Class, and for which notice was given to the Settlement Class in the mailed, long-form notice and on the Settlement Administrator's website.

PARTIAL SETTLEMENT

1.0 In addition to the terms defined at various points herein, the following defined terms apply:

a. "BTGCA Dissolution Committee" means the committee charged with and having the responsibility over and for the dissolution of the BTGCA and liquidation of the BTGCA and the making of distributions thereof, as approved by the Court.

b. "Effective Date" means the date on which the Partial Judgment becomes final and

non-appealable approving the terms of this partial settlement set forth herein and ordering the dissolution of the BTGCA and distribution of its net assets to Settlement Class members in accordance therewith.

c. “Person” means an individual, partnership, limited liability company, corporation, trust, joint venture, or other recognized business entity.

d. “Settlement Class” means a person who was a landowner, operator, landlord, tenant, or sharecropper growing burley tobacco in Indiana, Kentucky, Missouri, Ohio, or West Virginia during one or more of the 2015-20 annual burley tobacco growing seasons¹, as determined by the Court by Order entered September 29, 2020, and Order entered November 10, 2020, as amended by Order entered November 17, 2020.

2.0 Subject to and on the Effective Date, as a matter of law pursuant to KRS 418.040, CR 57, Section VI of the 1922 Articles of Incorporation of BTGCA, applicable provisions of KRS Chapter 272 (specifically including, but without limitation to, KRS 272.325(3)), and KRS 412.070 (the common fund statute), the Settlement Class, exclusive to all other Persons, are the sole and only persons entitled to receive a ratable/per capita share of the BTGCA’s distributable net assets on dissolution and liquidation of the BTGCA’s net assets.

3.0 Subject to and on the Effective Date, the BTGCA shall be judicially dissolved in this Court as of September 30, 2020 and its net assets liquidated and distributed, after costs and expenses as of September 30, 2020 to the Settlement Class, under the auspices of the BTGCA Dissolution Committee; which is charged with and shall have all powers and authorities of a dissolution committee or a board directors of a Kentucky Corporation under Kentucky law, and

¹ “Annual Burley Tobacco Growing Season” means the period which commences on or about March 1 with the tobacco cut, harvested, and hung in barns to close the season prior to September 30 of the same year, such that each growing season falls within a fiscal year of the BTGCA.

shall undertake such actions to wind up and dissolve the BTGCA as the BTGCA Dissolution Committee deems may be reasonable and necessary.

4.0 Subject to and on and as of the Effective Date, the Settlement Class, each on behalf of itself, himself or herself and on behalf of its/his/her respective heirs, assigns, beneficiaries, and successors, shall automatically be deemed to have (i) partially released the BTGCA and partially released the BTGCA's past and present officers, directors, and employees, their personal representatives, heirs and assigns ("Partially Released Parties") from any and all liabilities, rights, claims, actions, causes of action, demands, damages, penalties, costs, attorneys' fees, losses, and remedies, whether known or unknown, existing or putative, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, including those that result from, arise out of, are based upon, or relate to conduct that was alleged or could have been alleged in this action, including direct, joint, or several derivative or other claims of any and all Settlement Class, however they may exist or arise — except and only to the extent of and up to \$5 million in coverage under Cooperative insurance policy # NY 19DOLV03934NV (and renewals and extensions thereof) underwritten by Navigators Insurance Company and any other available insurance coverages for any Partially Released Parties, and (ii) expressly reserved and not released to the extent of and up to \$5 million in coverage under Cooperative insurance policy # NY 19DOLV03934NV (and renewals and extensions thereof) underwritten by Navigators Insurance Company and any other available insurance coverages, the Partially Released Parties of or from any and all other liabilities, rights, claims, actions, causes of action, demands, damages, penalties, costs, attorneys' fees, losses, and remedies, whether known or unknown, existing or putative, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, including those that result from, arise out of, are based upon, or relate to conduct that was alleged

or could have been alleged in this lawsuit, including the Settlement Class's direct, joint or several derivative or other claims, however they may exist or arise, against the Partially Released Parties, Navigators Insurance Company and any other insurance carrier at any time providing insurance coverage(s) for the Partially Released Parties, jointly or severally.

5.0 Subject to and on and as of the Effective Date, and the provisions of Numerical Paragraph 4.0, the Settlement Class members, each on behalf of itself, himself or herself and on behalf of its/his/her respective heirs, assigns, beneficiaries, and successors, shall automatically be deemed to have partially and irrevocably released and forever discharged for all time, the Partially Released Parties of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, penalties, costs, attorneys' fees, losses, and remedies, whether known or unknown, existing or putative, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, for the judicial, non-judicial, or other dissolution or liquidation of the BTGCA.

6.0 Subject to and on and as of the Effective Date, the Settlement Class, each on behalf of itself, himself or herself and on behalf of its/his/her respective heirs, assigns, beneficiaries, and successors, shall automatically be deemed to have covenanted and agreed not to execute judgment on, and to forebear from collection remedies against past and present officers, directors and employees of the BTGCA or their personal and business assets over, above, except and other than to the extent of available insurance coverage under any Insurance Policies, such covenant including an agreement not to record any judgment liens against the BTGCA or BTGCA's past or present officers, directors, or employees, not to report any judgment against them to any credit reporting or similar agencies, and waiving any execution as to any assets (personal, business or otherwise) of BTGCA past and present officers, directors and employees; this covenant shall not

be read, construed or considered to discharge or release any Insurance Carrier from any duty to defend, duty to indemnify or liability upon the claims reserved and not released herein.

7.0 Subject to and on and as of the Effective Date, BTGCA's holding of a Special Meeting of the Members of the BTGCA to address and consider, by vote of BTGCA membership, a non-judicial dissolution and liquidation of the BTGCA shall be unnecessary and obviated by the final approval of the Settlement that is fair, reasonable and adequate.

8.0 Subject to and on the Effective Date, \$1.5 million of the BTGCA's net assets, shall be distributed to a farming-related non-profit entity, existing or to be formed, approved by the BTGCA Board of Directors (herein the "Tobacco Liaison/Advocacy Nonprofit"), whose mission shall include (i) serving and acting as a liaison on behalf of tobacco growers of all types of tobacco with tobacco leaf dealers and tobacco purchasers, (ii) advocacy for producers/growers and land owners involved in the production of all types of tobacco, and (iii) other services and support of education and research beneficial to growers of all types of tobacco.

9.0 Awards of attorneys' fees and costs and expenses, service awards, and settlement administration expenses and costs, in such amounts as approved by the Court, shall be calculated and deducted prior to determining the per capita distribution amount to each Settlement Class Member.

10.0 Subject to and on and as of the Effective Date, any amounts from a distribution payment made to the Settlement Class that remain unclaimed 90 days after distribution of the checks to the Settlement Class shall revert back for re-distribution to the Settlement Class; provided that any unclaimed amounts (residual funds) remaining 90 days after the last round of distribution payment to the Settlement Class Members, shall be distributed (i) 75% to the Tobacco Liaison/Advocacy Nonprofit, and (ii) 25% to the account maintained by the Kentucky IOLTA

Fund Board of Trustees pursuant to Supreme Court Rule 3.830(20), as is required by CR 23.05(6)(b).

Respectfully submitted,

/s/Robert E. Maclin, III

Robert E. Maclin, III (KBA #43025)
Katherine K. Yunker (KBA #79592)
Jaron P. Blandford (KBA #87464)
Jason R. Hollon (KBA #96148)
McBrayer PLLC
201 E. Main Street, Suite 900
Lexington, KY 40507-1361
(859) 231-8780
remaclin@mcbayerfirm.com

Counsel for Plaintiffs and Class Representatives

/s/Kevin G. Henry

Kevin G. Henry, Esq. (Ky Bar # 31255)
Charles D. Cole, Esq.
Sturgill, Turner, Barker & Maloney PLLC
333 West Vine Street, Suite 1500
Lexington, Kentucky 40507
khenry@sturgillturner.com
ccole@sturgillturner.com
*Counsel for Defendant, Burley Tobacco Growers
Cooperative Association*

/s/John N. Billings

John N. Billings, Esq. (Ky Bar # 88354)
Christopher L. Thacker, Esq.
Rich Dieffenbach, Esq.
Billings Law Firm, PLLC
145 Constitution Street
Lexington, Kentucky 40507
nbillings@blfky.com
cthacker@blfky.com
rich.dieffenbach@blfky.com

Counsel for Defendant Greg Craddock

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this filing was served this 17th day of February, 2021 via the Court Net e-filing system, and via electronic mail upon , and upon the following:

Jeremy S. Rogers
Dinsmore & Shohl LLP
101 South Fifth Street, Suite 2500
Louisville, Kentucky 40202
jeremy.rogers@dinsmore.com
*Counsel for Defendant Burley Tobacco Growers
Cooperative Association*

Courtesy Copy To:

Hon. Julie Muth Goodman
c/o Alicia Dean
aliciadean@kycourts.net

Copy to Objectors (U.S. Mail):

Bruce Quarles
Travis Quarles
Steve Quarles
Ben Quarles
Roger Quarles
Wayne Cropper
Jerry Rankin
Dudley Wayne Hatcher
Richard Sparks
J.B. Amburgey
Bill Hall

Kevin G. Henry
Charles D. Cole
Sturgill, Turner, Barker & Maloney PLLC
333 West Vine Street, Suite 1500
Lexington, Kentucky 40507
khenry@sturgillturner.com
ccole@sturgillturner.com
*Counsel for Defendant Burley Tobacco Growers
Cooperative Association*

John N. Billings
Christopher L. Thacker
Richard J. Dieffenbach
Billings Law Firm, PLLC
145 Constitution Street
Lexington, Kentucky 40507
nbillings@blfky.com
cthacker@blfky.com
rich.dieffenbach@blfky.com
Counsel for Defendant Greg Craddock

W. Henry Graddy, IV
Dorothy T. Rush
W. H. Graddy & Associates
137 N. Main Street
Versailles, KY 40383
hgraddy@graddylaw.com
Counsel for Roger Quarles, et al.

/s/Robert E. Maclin, III

Attorney for Plaintiffs