

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
-Northern Division-**

TFWS, Inc., t/a BELTWAY FINE WINE)	
& SPIRITS,)	
)	
Plaintiff,)	
)	
)	Civil Action No. WDQ 99-2008
)	
PETER FRANCHOT, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

SETTLEMENT AGREEMENT

I. RECITALS:

Whereas, TFWS, Inc., trading as Beltway Fine Wine & Spirits (“Beltway”), filed an action in the United States District Court for the District of Maryland in July, 1999, which challenged the legality of certain aspects of the State’s regulation of wholesale pricing for wine and spirits, contending that the regulatory imposition of a “post and hold” regime for the filing and maintenance of wholesale prices and the regulatory prohibition of volume discounts from wholesalers to retailers were both preempted by the federal antitrust laws, in that they constituted per se violations of § 1 of the Sherman Act, and which sought declaratory and injunctive relief with respect to the continued enforcement of those provisions of state law; and

Whereas, the State of Maryland (“the State”) has defended the state laws and regulations at issue as lawful under both federal antitrust laws and the authority granted

to States in the 21st Amendment to the United States Constitution to regulate the sale and distribution of alcoholic beverages; and

Whereas, this federal court litigation has continued for more than a decade, and has included four decisions by the United States Court of Appeals for the Fourth Circuit and numerous decisions by the District Court, involving the extent to which the provisions challenged by Beltway constitute per se unlawful restraints of trade under the Sherman Act, and the extent to which those provisions might nonetheless be lawful to the extent that they can be shown to serve valid state purposes to promote temperance and other legitimate objectives under the 21st Amendment; and

Whereas, following a trial conducted in December, 2004 and January, 2005, the District Court concluded that the State had not produced sufficient evidence to justify the State's defense of the statutes and regulations under the 21st Amendment, and enjoined continued enforcement of both the "post and hold" requirements of the state laws and the prohibition of any form of volume discounts offered by licensed wholesalers to licensed retailers; and

Whereas, following a remand from the Court of Appeals for the Fourth Circuit, for the consideration of additional evidence concerning the potential temperance effect of the laws in question, the District Court reaffirmed its earlier decision, and on September 27, 2007, entered an order declaring that the post and hold system set out in Maryland Ann. Code, Article 2B, § 12-103 (c), and implementing regulations, is per se unlawful under the Sherman Act, that the prohibition of volume discounts set out in Article 2B, § 12-102 (a), and implementing regulations, is per se unlawful under the Sherman Act, and

that the Office of the Comptroller and other State officials should be enjoined from continuing enforcement of those provisions; and

Whereas, the Court of Appeals for the Fourth Circuit affirmed the decision and order of the District Court in an opinion entered on July 15, 2009, and denied the State's request for rehearing and rehearing en banc in an order entered on August 11, 2009;

Whereas, the State believes it could set forth in a petition for writ of certiorari strong reasons why the Supreme Court of the United States should grant certiorari and reverse the decision of the Court of Appeals for the Fourth Circuit;

Whereas, Beltway has filed an application for an award of attorney's fees and costs pursuant to §16 of the Clayton Act against the State, which application remains pending before the District Court, and which seeks fees and costs in a total amount in excess of \$830,000 through July 31, 2009, exclusive of interest on that award dating from the District Court's order entered in September, 2007; and

Whereas, inasmuch as the State and Beltway have agreed to settle and resolve this litigation, and to determine between themselves an appropriate award of attorney's fees and costs to Beltway, on the terms set forth herein, the parties hereby **AGREE** as follows:

II. SETTLEMENT TERMS:

1. The recitals set forth above constitute material terms of this Agreement.
2. The State agrees that it will not seek further review of the orders of the District Court and of the Court of Appeals for the Fourth Circuit through a petition for writ of certiorari to be filed with the Supreme Court of the United States, or otherwise.

3. Beltway agrees to accept from the State, and the State agrees to reimburse Beltway, for Beltway's attorneys' fees and costs as a prevailing party in this matter, up to the maximum amount of \$200,000, subject to the provisions described in paragraphs 4 to 7 below, including possible approval by the Maryland Board of Public Works ("BPW"). Beltway agrees, however, subject to the provisions of paragraphs 4 to 7 below, that the total amount of attorneys' fees and costs to which it would otherwise be entitled under the Clayton Act and the terms of this Agreement will be contributed instead to a State agency or private charity engaged in efforts to combat the effects of alcohol abuse.

4. For thirty (30) days following the execution of this Agreement, the State and Beltway, working in conjunction with the Office of the Comptroller, will attempt to identify programs within the Comptroller's Office or within another State agency that would be able to utilize the sum of \$200,000, which would otherwise be reimbursed to Beltway as attorneys' fees in this matter, to advance State efforts to address issues of alcohol abuse. It is anticipated that the transfer of funds contemplated herein would be revenue neutral to the State, and would not require BPW approval.

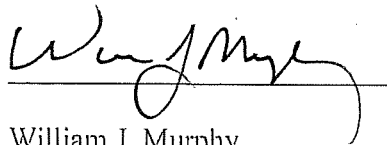
5. If after the thirty (30) day period in paragraph 4, such a transfer of funds is determined by the State to be impracticable for any reason, then the State (through the Office of the Attorney General) will seek approval from the BPW of an award of attorneys' fees and costs to Beltway in the amount of \$200,000, and Beltway agrees to donate that sum to a State program engaged in efforts to combat the effects of alcohol abuse, or if no such State program is available, Beltway agrees to donate that sum to Hope House, a private nonprofit organization which operates an inpatient drug and alcohol rehabilitation and treatment center in Crownsville, Maryland.

6. The Office of the Attorney General commits to using its best efforts to obtain approval by the BPW (if necessary) of the award of attorneys' fees and costs as described in paragraph 5 above, and represents that it believes such approval will be obtained under the terms of this Agreement. If, however, the BPW rejects the proposed award of fees and costs in the amount of \$200,000, but approves an award of some lesser amount, then Beltway agrees to accept that lesser amount as its award of fees and costs, and to donate that lesser sum to the State program or private charity described in paragraph 5 above.

7. In the event that the BPW rejects any award of attorneys' fees and costs in this matter, the parties nonetheless agree to the settlement of the federal court litigation described herein on the terms set forth in paragraphs 2 above and 8 below, with the express condition that in such an event Beltway will not be required to donate any sum of money as contemplated in paragraphs 3 through 6 above. Beltway further agrees to inform the District Court when the processes described in paragraphs 3 through 6 above have been completed that it will withdraw its pending motion for an award of fees and costs, having accepted an agreed amount in full satisfaction of its claim under § 16 of the Clayton Act, or any other claim that it may have for an award of fees and costs.

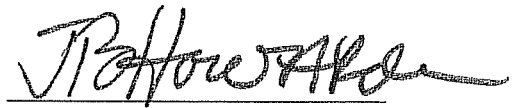
8. When the processes described in paragraphs 3 through 7 above have been completed, the parties will inform the District Court that the file in this matter may be finally marked as closed.

AGREED this 14th day of January, 2010, by the parties, acting through their undersigned counsel. Undersigned counsel hereby affirm and warrant that they are fully authorized to enter into this Settlement Agreement on behalf of their respective clients.



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