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Troutman Pepper Advises S&M Brands in Multistate Settlement

Case is First of Its Kind to Seek Release of Overpaid Tobacco Escrow Obligations

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RICHMOND, Va. — Troutman Pepper represented S&M Brands in a suit for declaratory and injunctive relief in North Carolina Business Court against the Attorney General and the State of North Carolina. Under North Carolina law, the Attorney General is obligated to release overpaid funds held in escrow according to the 1998 tobacco Master Settlement Agreement (MSA). The Attorney General denied a request made by S&M Brands, which then sought a declaratory judgment that the overpaid funds must be released.

In addition to raising issues of first impression under North Carolina law, this case was the first of its kind to seek the release of overpaid tobacco escrow obligations. The parties conducted a five-day, in-person trial in August 2020.

Although the lawsuit was against the State of North Carolina and its Attorney General, the January 6, 2021 settlement of the matter involved nine states and resulted in an agreed disposition of approximately \$330 million of S&M Brands' escrow payments in those states.

The settlement was the first-ever resolution of state claims against a non-signatory to the MSA. Under the terms of the settlement agreement, S&M Brands was allocated approximately 40 percent of the approximately \$330 million it paid into escrow from 2000 until 2020. S&M Brands had been required by the laws of the various states to make escrow deposits based on its sales in those states. The escrow payments were to serve as a judgment fund for potential state claims against S&M Brands.

A multi-disciplinary Troutman Pepper team advised S&M Brands in the matter, including Tobacco and State Attorneys General Partner [Bryan Haynes](#), Appellate & Supreme Court Partner [Chris Browning](#), and Tobacco and State Attorneys General Associate Robert Claiborne.

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