

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JAMES E. PARKER, Individually and On Behalf of All)
Others Similarly Situated,)

Plaintiffs,)

v.)

MATTHEW E. AVRIL, BRIAN R. KAHN, KENNETH)
YOUNG, VINTAGE CAPITAL MANAGEMENT,)
LLC, and B. RILEY FINANCIAL, INC.,)

C.A. No. 2020-0280-PAF

Defendants,)

and)

BABCOCK & WILCOX ENTERPRISES, INC.,)

Nominal Defendant.)

**NOTICE OF PENDENCY AND PROPOSED
SETTLEMENT OF CLASS AND DERIVATIVE ACTION**

TO: THE “CLASS,” TO BE COMPOSED OF “CLASS MEMBERS,” CONSISTING OF (1) ALL RECORD AND BENEFICIAL HOLDERS OF BABCOCK & WILCOX ENTERPRISES, INC. (“B&W” OR THE “COMPANY”) COMMON STOCK AT ANY TIME DURING THE PERIOD APRIL 3, 2019 THROUGH JULY 22, 2019, INCLUSIVE (THE “CLASS SHARES”) AND (2) ALL PERSONS OR ENTITIES WHO ACQUIRED CLASS SHARES AFTER JULY 22, 2019, IN EACH CASE IN THEIR CAPACITIES AS HOLDERS OF CLASS SHARES, TOGETHER WITH THEIR HEIRS, ASSIGNS, TRANSFEREES, AND SUCCESSORS-IN-INTEREST, REGARDLESS OF WHETHER SUCH PERSONS OR ENTITIES LATER SOLD OR OTHERWISE DISPOSED OF THEIR SHARES. EXCLUDED FROM THE CLASS ARE DEFENDANTS, IMMEDIATE FAMILY MEMBERS OF THE INDIVIDUAL DEFENDANTS AND AFFILIATES OF VINTAGE CAPITAL MANAGEMENT, LLC (“VINTAGE”) AND B. RILEY FINANCIAL, INC. (“B. RILEY” COLLECTIVELY, THE “EXCLUDED HOLDERS”).

BROKERAGE FIRMS, BANKS, AND OTHER PERSONS OR ENTITIES WHO HELD OR HOLD CLASS SHARES OR WHO HELD OR HOLD SHARES OF RECORD WHO ARE NOT ALSO BENEFICIAL OWNERS, ARE DIRECTED TO FORWARD THIS NOTICE PROMPTLY TO THE BENEFICIAL OWNERS OF SUCH SHARES, OR REQUEST THE SETTLEMENT ADMINISTRATOR TO DO SO.

The purpose of this Notice is to inform you of a proposed settlement (the “Settlement”) of the above-captioned action (the “Action”) pending before the Court of Chancery of the State of Delaware (the “Court”) and of a hearing to be held on July 10, 2023, at 11:00 a.m. in the Court of Chancery at the Leonard L. Williams Justice Center, 500 North King Street, Wilmington, DE 19801, or as may be undertaken via a remote proceeding such as Zoom or by telephone (the “Settlement Hearing”), as may be adjourned from time to time. The purpose of the Settlement Hearing is to: (a) determine whether the proposed Settlement, on the terms and conditions provided for in the Stipulation, is fair, reasonable, adequate, and in the best interests of the Company, its stockholders, and the Class; (b) determine whether the Court should finally approve the Stipulation and enter the Order and Final Judgment as provided in the Stipulation, finally certifying the class, dismissing the Action with prejudice and extinguishing and releasing the Released Claims; (c) consider Plaintiff’s Counsel’s application for a Fee & Expense Award (defined below); (d) consider Plaintiff’s application for an Incentive Award to be paid solely out of any Fee & Expense Award; (e) hear and determine any objections to the proposed Settlement, the class action determination, Plaintiff’s request for an Incentive Award or Plaintiff’s Counsel’s request for a Fee & Expense Award; and (f) rule on such other matters as the Court may deem appropriate. Class Members and other Company stockholders should check the Court of Chancery website in advance of the Settlement Hearing to determine whether that hearing will occur in person at the Court of Chancery or via a remote link or teleconference.¹

¹ Unless otherwise defined herein, capitalized terms used in this Notice shall have the meaning assigned to them in the Stipulation. A copy of the Stipulation is available for review at the following website: www.BabcockAndWilcoxStockholderSettlement.com.

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.
YOUR RIGHTS WILL BE AFFECTED BY THE ACTION.**

The Stipulation, dated February 15, 2023 (the “Stipulation”), was entered into between and among Plaintiff James E. Parker (“Plaintiff”); Defendants Vintage and B. Riley; Defendants Matthew E. Avril, Brian R. Kahn, and Kenneth Young (the “Individual Defendants”); dismissed directors Cynthia S. Dubin, Anne R. Pramaggiore, Kenneth Siegel, Thomas A. Christopher, and Henry E. Bartoli (the “Dismissed Defendants,” and together with B. Riley, Vintage, and the Individual Defendants, “Defendants”); and nominal defendant B&W (B&W collectively with Plaintiff and Defendants, the “Settling Parties”), subject to the approval of the Court pursuant to Court of Chancery Rules 23 and 23.1.

The Action was brought as a derivative and class action on behalf of and for the benefit of B&W and a class of stockholders.

BACKGROUND AND DESCRIPTION OF THE ACTION

THE FOLLOWING RECITATION DOES NOT CONSTITUTE FINDINGS OF THE COURT AND SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OF ANY CLAIMS OR DEFENSES BY ANY OF THE PARTIES. IT IS BASED ON STATEMENTS OF THE PARTIES AND IS SENT FOR THE SOLE PURPOSE OF INFORMING YOU OF THE EXISTENCE OF THIS ACTION AND OF A HEARING ON A PROPOSED SETTLEMENT SO THAT YOU MAY MAKE APPROPRIATE DECISIONS AS TO STEPS THAT YOU MAY, OR MAY NOT, WISH TO TAKE IN RELATION TO THIS ACTION.

I. Background

B&W is a leader in energy and environmental technologies and services for the power and industrial markets. It specializes in advanced steam production from fossil and renewable sources for power generation and other industrial and municipal applications, as well as related equipment and aftermarket parts and services.

Vintage is a private equity firm. It first acquired stock in B&W in the summer of 2017. At the time of the 2019 Transactions (defined herein), it held approximately 14.9% of the Company’s stock. B. Riley and its affiliates and subsidiaries provide investment banking, corporate restructuring, lending, and consulting advisory services. B. Riley acquired an ownership interest in the Company when it backstopped B&W’s 2018 Rights Offering (defined herein). At the time of the 2019 Transactions, it held approximately 6.5% of the Company’s stock.

Avril, Kahn, Dubin, Pramaggiore, Siegel, Christopher and Bartoli are current or former directors of B&W. Young is B&W’s Chief Executive Officer (“CEO”), and also served in that role at the time of the 2019 Transactions.

At the time of the 2019 Transactions, B&W’s second largest business segment was its “Volund & Other Renewable” segment, of which its subsidiary Babcock & Wilcox Volund A/S (“Volund”) was a part.

From 2012 through 2015, Volund entered into various contracts related to the construction of waste-to-energy and biomass plants (the “Volund Contracts”) which ultimately generated significant losses and created liquidity concerns for the Company. The Company implemented an array of initiatives to close out and optimize the Volund Contracts, which included trying to reach settlements with customers. However, these settlement discussions with counterparties to close out the Volund Contracts were difficult and slow-moving.

Given an immediate need for liquidity in the first quarter of 2018, the Company decided to raise cash through a rights offering (the “2018 Rights Offering”). Vintage agreed to backstop the 2018 Rights Offering. The 2018 Rights Offering was completed on May 1, 2018, with an 81.2% participation rate. Specifically, 100.9 million shares were subscribed out of a total 124.3 million. Of the remaining 23.4 million shares, 9.4 million were purchased by Vintage pursuant to the backstop agreement and 14 million were purchased by B. Riley pursuant to an agreement between B. Riley and Vintage.

On November 19, 2018, Young was hired to serve as B&W’s CEO pursuant to a Consulting Agreement between B&W and a B. Riley affiliate. Young also served as President of B. Riley and CEO of a B. Riley subsidiary.

The 2018 Rights Offering did not cure B&W’s liquidity concerns, and its bank group pushed for a bankruptcy filing unless capital was raised immediately. In early 2019, the Company’s investment bankers, Ducera Partners LLP (“Ducera”) and B. Riley, conducted a formal financing search process. Ducera and B. Riley contacted thirty-two parties in connection with the process. Twenty-two parties executed non-disclosure agreements, but no party was willing to loan the amount of money needed to resolve the Company’s immediate liquidity concerns.

On March 15, 2019, B. Riley proposed to issue \$90 million in last-out debt and to backstop a rights offering to all stockholders for \$50 million at \$0.30 per share for a total of \$140 million in financing. Further, on March 19, 2019, B. Riley provided \$10 million in bridge financing. When B. Riley made its proposal, B. Riley's role as co-investment banker ceased, and Ducera became the Company's sole remaining investment banker. Ducera and the Company continued to search for additional sources of funding, and B. Riley attempted to syndicate its loan. Both efforts were unsuccessful; no other third party financing source emerged, nor did any party agree to participate in the B. Riley loan.

On April 2, 2019, the Company filed a 10-K announcing that it had settled the final Volund Contract. The 10-K also included a going concern opinion.

On April 3, 2019, the Board approved B. Riley's financing proposal, subject to stockholder approval of the rights offering and certain other components of the transaction. On April 5, 2019, B. Riley and the Company agreed that B. Riley would loan \$150 million to the Company and provide the Company with a \$15 million credit facility. On the same day, the Company entered into a Letter Agreement with Vintage and B. Riley providing for: (1) B. Riley's \$150 million Tranche A-3 Last Out Term Loan and \$15 million credit facility to B&W; (2) the issuance to B. Riley of 16,666,667 warrants at an exercise price of \$0.01 per share; (3) B&W's \$50 million rights offering which allowed all stockholders to subscribe and purchase shares of B&W common stock at \$0.30 per share (the "2019 Rights Offering"); (4) a backstop exchange agreement pursuant to which B. Riley agreed to purchase from B&W all shares of common stock in the 2019 Rights Offering that were not subscribed to by other B&W stockholders or exchange an equal amount of the outstanding principal amount of the Tranche A-2 or A-3 Last Out Term Loans; and (5) an exchange of Vintage's existing Tranche A-1 Last Out Term Loan for shares of common stock at a price of \$0.30 per share (together, the "2019 Transactions").

On July 11, 2019, B&W's Board approved a one-for-ten reverse stock split of the outstanding and treasury shares of the Company's common stock. The reverse stock split was previously approved by a majority of the Company's stockholders at the Company's annual meeting of stockholders held on June 14, 2019. The reverse stock split became effective at 12:01 a.m. on July 24, 2019.

The 2019 Rights Offering expired in accordance with its terms on July 18, 2019. Existing stockholders purchased 125.9 million shares totaling 75.5% of the 166.7 million shares available. Pursuant to a backstop exchange agreement, B. Riley purchased the rest. Following the 2019 Transactions, Vintage held approximately 33.9% and B. Riley held approximately 17.9% of the Company's stock.

In January 2020, the Company's bank lenders again declared the Company in default of the Credit Agreement (defined below). Thus, on January 31, 2020, B. Riley issued the Company another \$30 million in Tranche A-4 last-out financing as well as the availability, if needed, of a new Tranche A-5.

After the 2019 Rights Offering, Vintage reduced its stake in B&W by sales in the open market and on February 8, 2021, Vintage entered into a stock purchase agreement with B. Riley pursuant to which B. Riley agreed to purchase Vintage's remaining shares of B&W common stock. Vintage no longer holds any B&W common stock.

On February 12, 2021, B&W closed an underwritten public offering of 29,487,180 shares of common stock, which included 3,846,154 shares issued in connection with the underwriter's option to purchase additional shares, at a price to the public of \$5.85 per share, for gross proceeds of approximately \$172.5 million. Also on February 12, 2021, the Company closed an underwritten public offering of \$125 million aggregate principal amount of 8.125% senior notes due 2026, which included \$5 million aggregate principal amount of senior notes issued in connection with the underwriters' option to purchase senior notes.

II. Summary of the Action

On September 11, 2019, Plaintiff sent a demand pursuant to 8 *Del. C.* § 220 seeking to inspect certain of B&W's books and records related to the 2019 Transactions (the "Demand"). In response to the Demand, while reserving all rights, B&W produced approximately 4,183 pages of documents.

On April 14, 2020, Plaintiff filed the Verified Stockholder Derivative and Class Action Complaint (the "Original Complaint"), purporting to assert class and derivative claims for breach of fiduciary duty against Defendants primarily relating to the 2019 Transactions.

The Original Complaint asserted that the 2019 Transactions were effectuated pursuant to an unfair process and at an unfair price, that the Company's directors and Mr. Young breached their fiduciary duties in approving the 2019 Transactions, and that Vintage and B. Riley breached their fiduciary duties as alleged controlling stockholders. The Original Complaint also alleged that Mr. Young's compensation package and B. Riley's service payments were excessive.²

Specifically, the Original Complaint alleged that the 2019 Transactions benefitted B&W's alleged controlling stockholders (Vintage and B. Riley) and diluted B&W's other stockholders and also resulted in a change of control giving rise to direct claims on the part of a class of affected stockholders under *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986).

The Original Complaint sought, *inter alia*, entry of an order “[d]eclar[ing] invalid and rescind[ing] the [2019] Transactions and/or award[ing] compensatory damages”; directing Defendants to account to Plaintiff for all damages suffered; reimbursement of costs and attorneys’ and experts’ fees; and any other relief the Court deemed just, equitable, and proper.

On August 14, 2020, Vintage, B. Riley, Avril, Kahn, Young, Bartoli, and the Company answered the Original Complaint.

On August 17, 2020, Christopher, Dubin, Pramaggiore, and Siegel moved pursuant to Court of Chancery Rule 12(b)(6) to dismiss the Complaint on the grounds that it failed to state a non-exculpated claim against them under the Company's certificate of incorporation exculpation provision pursuant to 8 *Del. C.* § 102(b)(7).

On August 31, 2020, pursuant to a Stipulated Order Dismissing the Independent Director Defendants, Christopher, Dubin, Pramaggiore, and Siegel were dismissed from the Action without prejudice.

On March 2, 2021, Plaintiff Parker and former plaintiff Willard R. Schwinn filed a First Amended Verified Stockholder Derivative and Class Action Complaint (the “Amended Complaint”) adding Schwinn as a plaintiff and accounting for the dismissal of Christopher, Dubin, Pramaggiore, and Siegel. The Amended Complaint alleged the same causes of action as the Original Complaint and continued to seek both direct and derivative recoveries.

On April 1, 2021, B. Riley, Vintage, Kahn, Avril, Young, and the Company answered the Amended Complaint, and Bartoli moved pursuant to Court of Chancery Rule 12(b)(6) to dismiss Counts I and II of the Amended Complaint against him on the grounds that it failed to state non-exculpated claims under the Company's certificate of incorporation exculpation provision pursuant to 8 *Del. C.* § 102(b)(7).

On April 29, 2021, pursuant to a Stipulation and Order, former plaintiff Willard R. Schwinn was dismissed as a plaintiff in this Action.

On May 24, 2021, pursuant to a Stipulation and Order, Defendant Bartoli was dismissed from this Action without prejudice.

In July 2020, B. Riley served a demand for indemnification on the Company for all losses, claims, damages, liabilities, fees and expenses incurred by it in connection with this Action pursuant to, among other things, a Backstop Exchange Agreement between B&W and B. Riley, dated April 30, 2019 and an Amended and Restated Credit Agreement by and among B&W, Bank of America, N.A., and certain other lenders, including B. Riley and Vintage, dated May 14, 2020 (the “Credit Agreement”).

On January 25, 2022, Vintage served a demand for indemnification on the Company for all losses, claims, damages, liabilities, and expenses incurred by it in connection with this Action pursuant to the Credit Agreement.

Thereafter, B&W acknowledged the Company's indemnification obligations to B. Riley and Vintage.

On January 31, 2022, the Court of Chancery issued its decision in *KZ Capital General Trading LLC v. Petrossov*, 2022 WL 293011 (Del. Ch. Jan. 31, 2022) which held that although dilution claims “absent more, are exclusively derivative . . . [dilution] claims may become direct . . . when a plaintiff also alleges that the transaction resulted in a change of control from a ‘diversified group of public equity holders to a controlling interest,’ *i.e.*, a *Revlon* claim.” *Id.* at *6. Plaintiff continued to pursue both the direct and derivative theories of recovery asserted in the Complaint and Amended Complaint.

² Counts I (Breach of Fiduciary Duty Against Director Defendants), III (Breach of Fiduciary Duty Claim Against Young), VI (Breach of Fiduciary Duty Against B. Riley and Vintage), and VII (Unjust Enrichment Claim Against B. Riley and Vintage) are asserted derivatively. Counts II (Breach of Fiduciary Duty Against Director Defendants), IV (Breach of Fiduciary Duty Claim Against Young), and V (Breach of Fiduciary Duty Against B. Riley and Vintage) are asserted as direct class claims.

Subsequent to filing the Action, Plaintiff (through his counsel) engaged in extensive discovery concerning his claims. In May 2020, Plaintiff served (1) Plaintiff's First Request For Production of Documents Directed To All Defendants (the "First RFP"), (2) Plaintiff's First Set of Interrogatories Directed to the Individual Defendants (the "First Interrogatories"); and (3) Plaintiff's Second Request For Production of Documents Directed to the Individual Defendants (the "Second RFP"). On August 14, 2020, Bartoli, Young, Avril, and Kahn served their responses and objections to the First RFP, First Interrogatories, and Second RFP. On August 14, 2020, Vintage and B. Riley served their responses and objections to the First RFP. On August 17, 2020, Christopher, Dubin, Pramaggiore, and Siegel served their responses and objections to the First RFP. On August 19, 2020, the Company served its responses and objections to the First RFP.³ Over the following several months, Defendants engaged in rolling document productions.

Plaintiff served subpoenas *duces tecum* on Alvarez & Marsal Holdings, LLC and Ducera Partners LLC in November 2020, and served subpoenas *duces tecum* on Kayne Anderson Capital Advisors, L.P., Steel Partners Holdings L.P., Blue Torch Capital, L.P., Guggenheim Partners, LLC, and Cerberus Capital Management, L.P. in June 2021.

Plaintiff obtained and reviewed over 230,900 pages of documents from the Company and the Defendants and over 98,300 pages of documents produced by third parties in response to subpoenas directed to them.

HOW THE SETTLEMENT WAS REACHED

After substantial completion of document discovery, the parties began discussing the potential for mediation including with the assistance of Bob Meyer, Esq. of JAMS. The parties engaged in extensive arm's-length settlement negotiations. On March 23, 2022, the parties engaged in a full-day mediation with Mr. Meyer. The parties did not reach a resolution, but negotiations continued through Mr. Meyer.

On April 8, 2022, the parties conducted a second full-day mediation. The parties did not reach a resolution after the second day of mediation, but continued to work towards a resolution.

On August 9, 2022, after numerous rounds of post-mediation offers and counter-offers, including supplemental mediation briefing on a number of issues, and with Mr. Meyer's assistance, the parties, as well as the former defendants who had been dismissed without prejudice, entered into a binding memorandum of understanding ("MOU") providing for the settlement of Plaintiff's claims against Defendants.

On August 23, 2022, as part of confirmatory discovery under the MOU, Plaintiff conducted a half-day remote interview of Young. On September 20, 2022, as part of confirmatory discovery under the MOU, Plaintiff conducted a half-day remote interview of Kahn.

The Settlement reflects the results of the Settling Parties' negotiations and was only reached after arm's-length negotiations between the Settling Parties who were all represented by counsel with extensive experience and expertise in stockholder class and derivative litigation.

The Company and its Board of Directors have determined that a settlement pursuant to the terms set forth in the Stipulation is fair and reasonable, and is advisable and in the best interests of the Company and its stockholders.

SETTLEMENT TERMS

In consideration for the full settlement and release of the Defendant Released Claims, and subject to the terms and conditions set forth in the Stipulation, the total settlement consideration to resolve both derivative and direct claims is \$9,500,000 (the "Settlement Amount"). In addition, the Company has agreed to certain governance changes as set forth below.

The Settlement Amount shall be apportioned as follows:

- (a) Derivative Claims.
 - (i) Cash payment. Defendants shall pay, or cause to be paid, \$4.75 million (the "Derivative Settlement Payment") to, and for the benefit of, B&W, to resolve the derivative claims asserted by Plaintiff. No part of this payment shall be paid or indemnified by the Company.

³ Plaintiff also served Plaintiff's Second Set of Interrogatories on Young, Kahn, Avril, Vintage and B. Riley on June 23, 2021 (the "Second Interrogatories"). However, by agreement of the remaining parties to the Action, they were not required to respond to the Second Interrogatories.

- (ii) Governance Reform. Within sixty (60) calendar days after the Effective Date,⁴ B&W shall create and/or otherwise empower a standing “Related Party Transactions Committee” that will consist of all of its independent directors and will be charged with the task of reviewing and approving (or determining not to approve) all proposed related party transactions consistent with the Company’s related party transaction policy. The Settling Parties agree that this governance reform was solely caused as a result of Plaintiff’s prosecution of the Action, and provides material benefits to B&W and its stockholders and forms part of the consideration for the mutual releases and other provisions of the Settlement.

(b) Direct Claims.

- (i) Cash Payment. A payment of \$4.75 million (the “Class Settlement Payment”) shall be paid by B&W, on account of its indemnification obligations to B. Riley and Vintage, to resolve the direct claims asserted by the Class.

The Derivative Settlement Payment and the Class Settlement Payment (collectively, “Settlement Amount”) shall be deposited into an escrow account (the “Account”) within twenty (20) calendar days of the Effective Date (the “Funding Date”). Plaintiff’s Counsel shall serve as the escrow agent. The Account is to be maintained by a settlement administrator chosen by Plaintiff’s Counsel (the “Settlement Administrator”). The Settlement Amount held in the Account shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned pursuant to the terms of the Stipulation and/or further order of the Court. The funds deposited into the Account shall be invested in instruments backed by the full faith and credit of the United States Government or an agency thereof, or if the yield on such instruments is negative, in an account fully insured by the United States Government or an agency thereof. The funds in the Account (consisting of the Settlement Amount plus any interest or other income or investment return earned thereon) shall constitute the “Settlement Fund.”

The Settlement Amount is an “all-in” payment and neither the Defendants nor their insurers shall be required to make any further payments to Plaintiff, the Company, or the Class, or contributions to the Settlement Fund with respect to the Settlement. It is the intent of the Settling Parties that all Administrative Costs, any applicable taxes incurred in connection with the Settlement Fund, any potential Fee & Expense Award to Plaintiff’s Counsel and any potential Incentive Award to Plaintiff shall be paid from the Settlement Fund, and that neither Defendants nor their insurers shall have any financial obligation with respect to the Settlement beyond the amount of the Settlement Amount.

The Company shall pay any and all costs and expenses related to providing the Notice regardless of whether the Court declines to approve the Settlement or the Effective Date otherwise fails to occur. In no event shall Plaintiff, any other B&W stockholder, Defendants (other than the Company), any insurer, or any of their attorneys (including Plaintiff’s Counsel) be responsible for any notice costs.

THIS NOTICE CONTAINS ONLY A SUMMARY OF THE TERMS OF THE SETTLEMENT AND DOES NOT PURPORT TO BE A COMPREHENSIVE DESCRIPTION OF THE SETTLEMENT’S TERMS. THE COMPLETE TERMS AND CONDITIONS OF THE SETTLEMENT ARE SET FORTH IN DETAIL IN THE STIPULATION, WHICH HAS BEEN FILED WITH THE COURT.

DISTRIBUTION OF THE SETTLEMENT FUND

The “Net Settlement Amount” shall be the Settlement Fund minus: (i) Administrative Costs; (ii) the amount of any award by the Court of attorneys’ fees and expenses to Plaintiff’s Counsel; (iii) any incentive award to Plaintiff; and (iv) any taxes owed with respect to the Account. Fifty percent (50%) of the Net Settlement Amount shall constitute the “Class Amount” (representing the Net Settlement Amount net of the Company Amount), and fifty percent (50%) of the Net Settlement Amount shall constitute the “Company Amount” (representing the Net Settlement Amount net of the Class Amount).

The Settlement Administrator shall pay the Company Amount to the Company within ten (10) calendar days (i) after the Funding Date or (ii) after all conditions of Paragraph 13 have been satisfied, whichever occurs later. The Company will provide W-9s and any other information and instructions for payment by check or wire transfer to the Settlement Administrator.

⁴ The “Effective Date” means the first date by which Final Court Approval has been obtained.

If approved by the Court, the Plan of Allocation for the Class Amount will be as follows:

(a) “Authorized Claimants” means all Class Members who beneficially held shares as of the Class Distribution Record Date.

(b) The Settlement Administrator shall pay the Class Amount to the Authorized Claimants⁵ within thirty (30) calendar days after (i) the Funding Date or (ii) after all conditions of Paragraph 13 have been satisfied, whichever occurs later. The Settlement Administrator shall distribute the Class Amount to the Authorized Claimants in the following manner and subject to the following conditions: (i) Each Authorized Claimant shall receive a distribution from the Class Amount equal to the product of the Class Amount and a fraction, the numerator of which is the number of shares of B&W common stock held by such Authorized Claimant as of the Class Distribution Record Date, and the denominator of which is the total number of shares of B&W common stock held by all Authorized Claimants as of the Class Distribution Record Date (the “Class Payment”); (ii) with respect to Authorized Claimants whose B&W common stock is held of record by Cede & Co. (“Cede”), as nominee for DTC, the Class Payment will be paid to the DTC participants (*e.g.*, brokerage firms) identified on the Security Position Report (“DTC Participants”) and it shall be the responsibility of each such DTC Participant to distribute to any beneficial owners who are Authorized Claimants and whose shares of B&W common stock were held of record by Cede through such DTC Participant as of the Class Distribution Record Date the amount such Authorized Claimant is entitled to receive; (iii) with respect to Authorized Claimants whose B&W common stock is not held of record by Cede, as nominee for DTC, (A) the Class Payment shall be paid directly to the record holder of such shares as of the Class Distribution Record Date, and (B) it shall be the responsibility of each such record holder to distribute to any beneficial holders who are Authorized Claimants and whose shares of B&W common stock were held of record by such record holder as of the Class Distribution Record Date the amount such beneficial holder is entitled to receive.

(c) The Defendants relinquished any right to receive, and each of them acknowledged that any and all of the Excluded Holders affiliated with him, her, or it, respectively, shall have no right to receive, any part of the Class Amount, or any additional amount based on any claim relating to the fact that the Class Amount is being received by any other stockholder(s) of B&W, in each case under any theory, including but not limited to contract, application of statutory or judicial law, or equity.

(d) Any failure by the Court to approve the Plan of Allocation of the Class Amount among Class Members shall not affect the validity of the Settlement, affect or delay the enforceability of the Settlement, or provide any of the Settling Parties with the right to terminate the Settlement.

The Class Amount shall be distributed to Authorized Claimants, and the Company Amount shall be paid to the Company, only after Final Court Approval and after: (i) all matters with respect to costs and disbursements have been resolved by the Court, and all appeals therefrom have been resolved or the time therefor has expired; and (ii) the amount of (A) any Fee & Expense Award to Plaintiff’s Counsel, (B) any Incentive Award to Plaintiff, and (C) any taxes owed with respect to the Account, have, in each case, been paid or reserved.

If there is any balance in the Settlement Fund attributable to the Class Amount after six (6) months following the date of the initial payment of the Class Amount, such amounts, if feasible, shall be distributed in an equitable and economic fashion among the Authorized Claimants in the same manner as provided for in Paragraph 11 of the Stipulation. If such further distribution is not economical or feasible, Plaintiff’s Counsel may distribute any balance which still remains in the Account, after provision for all anticipated expenses, in accordance with Delaware’s unclaimed property law. Neither Defendants nor their insurers shall have any reversionary interest in the Account.

Other than as expressly provided in the Stipulation, the Company, the Defendants, each of their respective insurers, and the Defendants’ Released Parties (defined herein) shall have no involvement in, responsibility for, or liability relating to the administration of the Settlement Fund or the distribution of the Class Amount to the Authorized Claimants. In addition, other than as expressly provided in the Stipulation, none of the Company, the Defendants, the Defendants’ Released Parties, or their respective counsel or insurers shall have any responsibility or liability for the acts or omissions of Plaintiff’s Counsel, any of their agents, or the Settlement Administrator in connection with the administration of the Settlement Fund, the distribution of the Class Amount to the Authorized Claimants, or otherwise. Other than as expressly provided in the Stipulation, the Defendants, each of their respective insurers, and the Defendants’ Released Parties shall have no involvement in, responsibility for, or liability relating to the payment of the Company Amount to the Company, nor shall the Defendants, the Defendants’ Released Parties, or their respective counsel or insurers have any responsibility or liability for the acts or omissions of Plaintiff’s Counsel, any of their agents, or the Settlement Administrator in connection with the payment of the Company Amount to the Company. No Class Member shall have any claim against Plaintiff, the Company, any of the Defendants, any of the Defendants’ Released Parties, or any of their respective counsel or insurers, based on the distributions made substantially in accordance with the Settlement and/or orders of the Court.

RECEIPT OF THIS NOTICE DOES NOT NECESSARILY MEAN THAT YOU ARE AN AUTHORIZED CLAIMANT OR THAT YOU ARE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT.

⁵ For the avoidance of doubt, Class Members who are not Authorized Claimants shall receive no distribution.

PAYMENT OF ATTORNEYS' FEES

Before final approval of the proposed Settlement, Plaintiff's Counsel intends to petition the Court for an award of attorneys' fees in an aggregate amount of up to \$2,375,000, plus an award of reasonable expenses incurred in connection with the Action not to exceed \$150,000 (the "Fee & Expense Award"). Any potential Fee & Expense Award or Incentive Award shall be paid from the Settlement Fund. Neither Defendants nor their insurers shall have any financial obligation with respect to the Settlement beyond the amount of the Settlement Amount. Plaintiff further intends to seek an incentive award to be paid to Plaintiff to compensate him for his time, effort and expenditures in furtherance of this litigation, to be paid exclusively from the Fee & Expense Award (the "Incentive Award"). Defendants shall take no position as to Plaintiff's petition for a Fee & Expense Award and/or the request for an Incentive Award.

Any failure by the Court to approve a Fee & Expense Award or Incentive Award in any particular amount, or at all, shall not affect the validity of the Settlement, affect or delay the enforceability of the Settlement, or provide any of the Settling Parties with the right to terminate the Settlement.

REASONS FOR SETTLEMENT

Plaintiff believes that the Complaint and Amended Complaint had merit when filed and continue to have merit. In negotiating and evaluating the terms of the Settlement, Plaintiff and Plaintiff's Counsel considered, among other things: (i) the attendant risks of continued litigation and the uncertainty of the outcome of the Action; (ii) the probability of success on the merits; (iii) the inherent problems of proof associated with, and possible defenses to, the claims asserted in the Action; (iv) the challenges associated with establishing damages in the Action, and the quantum of such damages; (v) the benefits of an immediate and substantial cash recovery for the Company and the Class (as defined *infra*), and the corresponding desirability of permitting the Settlement to be consummated according to its terms; and (vi) the expense and length of continued proceedings necessary to prosecute the Action against Defendants through trial and appeals. Based upon their evaluation, Plaintiff and Plaintiff's Counsel have determined that the Settlement is fair, reasonable and adequate to Plaintiff, the Company, and the Class and that it confers substantial benefits upon the Company and the Class, particularly when compared to the risk, delays, and uncertainties of continued litigation.

Defendants have denied, and continue to deny, that any of them has committed or threatened to commit any violations of law, breaches of duty, or other wrongdoing toward the Company or its stockholders, or anyone else concerning any of the claims or requests for relief set forth in the Complaint or Amended Complaint. Defendants believe that the Complaint and Amended Complaint did not have merit when filed and do not have merit now. Defendants are entering into the Settlement solely because it will eliminate the distraction, burden, expense, risks, and potential delay of further litigation.

The Settlement shall in no event be construed or deemed to be evidence of the factual or legal merit of any of the Released Claims or as an admission, in the Action or any other litigation, whether civil, criminal, or administrative, that the Action has merit.

THE SETTLEMENT HEARING

The Settlement Hearing shall be held on July 10, 2023, at 11:00 a.m., in the Court of Chancery at the Leonard L. Williams Justice Center, 500 North King Street, Wilmington, DE 19801, or as may be undertaken via a remote proceeding such as Zoom or by telephone, to (a) determine whether the proposed Settlement, on the terms and conditions provided for in the Stipulation, is fair, reasonable, adequate, and in the best interests of the Company, its stockholders, and the Class; (b) determine whether the Court should finally approve the Stipulation and enter the Order and Final Judgment as provided in the Stipulation, finally certifying the Class, dismissing the Action with prejudice and extinguishing and releasing the Released Claims; (c) consider Plaintiff's Counsel's application for a Fee & Expense Award; (d) consider Plaintiff's application for an Incentive Award to be paid solely out of any Fee & Expense Award; (e) hear and determine any objections to the proposed Settlement, the class action determination, Plaintiff's request for an Incentive Award or Plaintiff's Counsel's Fee & Expense Award; and (f) rule on such other matters as the Court may deem appropriate. Class Members and other Company stockholders should check the Court of Chancery website in advance of the Settlement Hearing to determine whether that hearing will occur in person at the Court of Chancery or via a remote link or teleconference.

The Court reserves the right to adjourn the Settlement Hearing or any adjournment thereof, including the consideration of the application for a Fee & Expense Award and Incentive Award without further notice of any kind other than oral announcement at the Settlement Hearing or any adjournment thereof.

The Court reserves the right to approve the Stipulation and the Settlement, at or after the Settlement Hearing, with such modifications as may be consented to by the Settling Parties and without further notice to the Class.

The Court reserves the right to hold the Settlement Hearing telephonically or via video conference without further notice.

RIGHT TO APPEAR AND OBJECT

Current record holders of B&W as of the Execution Date (the “Current Stockholders”) or Class Members who object to the Settlement, Class certification, the proposed Order and Final Judgment, Plaintiff’s Counsel’s application for a Fee & Expense Award and an Incentive Award to Plaintiff, or who otherwise wish to be heard, may appear in person (or by telephone or Zoom if the Settlement Hearing is conducted in such manner) or by his, her, or its attorney at the Settlement Hearing and present evidence or argument that may be proper and relevant; provided, however, that no Objector shall be heard or entitled to contest the approval of the terms and conditions of the Settlement, or if approved, the Order and Final Judgment to be entered thereon, Plaintiff’s Counsel’s Fee & Expense Award or the Incentive Award to Plaintiff unless he, she, or it has, no later than twenty-one (21) days before the Settlement Hearing (unless the Court in its discretion shall thereafter otherwise direct, upon application of such person and for good cause shown), filed with the Register in Chancery, Court of Chancery, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801, the following: copies of (a) proof of membership in the Class or current ownership of B&W stock; (b) a written and signed notice of the Objector’s intention to appear and object, stating the name, address and telephone number of the Objector and, if represented, the name, address and telephone number of his, her or its counsel; (c) a detailed statement of the objections to any matter before the Court; and (d) a detailed statement of all the grounds thereon and the reasons for the Objector’s desire to appear and be heard, as well as all documents or writings which the Objector desires the Court to consider. Any such filings with the Court must also be served upon each of the following counsel (i) by hand, first class U.S. mail, or express service, and (ii) by email such that they are received no later than twenty-one (21) days prior to the Settlement Hearing:

Plaintiff’s counsel:

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Unless the Court otherwise directs, no member of the Class or Current Stockholders of the Company shall be entitled to object to the Settlement, Class Certification, or to the Order and Final Judgment to be entered herein, or to the Fee & Expense Award to Plaintiff's Counsel, or to the Incentive Award to Plaintiff, or otherwise to be heard, except by serving and filing written objections as prescribed in the foregoing Paragraph. Any person or entity who fails to object in the manner provided above shall be deemed to have waived such objection (including the right to appeal), unless the Court in its discretion allows such objection to be heard at the Settlement Hearing, and shall forever be barred from raising such objection in this Action or any other action or proceeding or otherwise contesting the Settlement, the Fee & Expense Award, the request for an Incentive Award or any other matter related to the Settlement, in the Action or any other action or proceeding, and will otherwise be bound by the Order and Final Judgment to be entered and the releases to be given.

RELEASES

If the Settlement is approved, the Court will enter an Order and Final Judgment. Pursuant to the Order and Final Judgment, upon the Effective Date of the Settlement, the Action will be dismissed with prejudice and the following Releases will occur:

- (a) Upon the Effective Date, Plaintiff, Defendants, the Company, any stockholder of the Company in his, her, or its capacity as a stockholder, any member of the Class in his, her, or its capacity as a stockholder or former stockholder, and all of their respective successors, successors-in-interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns or transferees, immediate and remote, and any person or entity acting by or on behalf of, or claiming under, any of them, and each of them (collectively, the "Releasing Parties"), shall be deemed to have, and by operation of the Order and Final Judgment approving this Settlement shall have, completely discharged, dismissed with prejudice on the merits, released and settled, to the fullest extent permitted by law, the Released Claims (defined herein) against the Released Parties (defined herein) and shall be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any of the Released Claims against any of the Released Parties.
- (b) "Plaintiff Released Claims" means all claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, debts, expenses, interest, penalties, sanctions, fees, attorneys' fees, actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature, or description whatsoever, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, including unknown claims, whether based on state, local, foreign, federal, statutory, regulatory, common, or other law or rule (including claims within the exclusive jurisdiction of the federal courts, such as, but not limited to, federal securities claims), that are, have been, could have been, could now be, or in the future could, can, or might be asserted in this Action, or in any other court, tribunal, or proceeding by Plaintiff, any other B&W stockholder, or any member of the Class (in their capacities as current or former B&W shareholders), whether individually, derivatively on behalf of B&W, or as a member of the Class directly (in their capacities as current or former B&W stockholders), or otherwise, or by B&W directly, against the Defendants (and, with respect to the direct claims only, as against B&W too) and all other current and former B&W officers, directors and employees and their insurers, attorneys, financial advisors, agents and other standard and customarily released related parties (the "Defendant Released Parties"), which are based upon, arise out of, relate in any way to, or involve, directly or indirectly, any of the actions, transactions, occurrences, statements, representations, misrepresentations, omissions, allegations, facts, practices, events, claims or any other matters, things or causes whatsoever, or any series thereof, that arise out of or relate in any way to this litigation, and the matters raised in the Complaint and Amended Complaint, the 2019 Transactions (including, without limitation, the 2019 Rights Offering, the debt exchange, backstop agreement, warrants, loans and attempts to syndicate such loans, share authorizations and issuances, reverse stock split, amendments and changes to the composition of the B&W board of directors and executive officers), compensation paid to or payments on account of services rendered by Kenneth Young to B&W, the Tranche A-1, A-2 and A-3 term loans, amendments to B&W's credit agreement, the hiring of advisors, the timing of any such transactions and the financial state of B&W at the time of the consideration and implementation of the 2019 Transactions (including any disclosures related thereto), except for (i) any claims relating to the enforcement of the Settlement and (ii) any claims between B&W and/or the Defendants and their respective insurers or any right to indemnification or advancement belonging to any present or former officer or director of B&W or to B. Riley or Vintage.

- (c) “Defendant Released Claims” means all claims, liabilities, sanctions, complaints, or other assertions of wrongdoing, known or unknown, arising out of or relating to this litigation through the date of the Settlement, including, without limitation, all actions taken by Plaintiff and Plaintiff’s Counsel in connection with the initiation, prosecution, litigation, or settlement of this Action through the date of the Settlement.
- (d) “Plaintiff Released Parties” means Plaintiff and Plaintiff’s Counsel, their past, present, or future family members, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employees, fiduciaries, partners, partnerships, general or limited partners or partnerships, joint ventures, limited liability companies, corporations, affiliates, associated entities, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or investment advisors, advisors, consultants, investment bankers, brokers, dealers, experts, lenders, commercial bankers, attorneys (including, but not limited to, Plaintiff’s Counsel), personal or legal representatives, accountants, insurers, co-insurers, reinsurers, and associates.
- (e) “Released Claims” means Defendant Released Claims and Plaintiff Released Claims, collectively or individually.
- (f) “Released Parties” means Defendant Released Parties and Plaintiff Released Parties, collectively or individually.
- (g) The contemplated releases given by the Releasing Parties in the Stipulation of Settlement extend to Released Claims that the Releasing Parties did not know or suspect to exist at the time of the release, which if known, might have affected the decision to enter into the Stipulation or Settlement. With respect to the Released Claims, the Releasing Parties shall be deemed to have waived any and all provisions, rights, and benefits conferred by any law of the United States, any law of any state, or principle of common law which governs or limits a person’s release of unknown claims to the fullest extent permitted by law, and to have relinquished, to the full extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.
- (h) With respect to the Released Claims, the Releasing Parties shall also be deemed to have waived any and all provisions, rights, and benefits conferred by any law of any state of the United States or principle of common law, which is similar, comparable, or equivalent to California Civil Code Section 1542. The Settling Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the Released Claims, but that it is their intention to fully, finally, and forever settle and release any and all Released Claims, known or unknown, suspected or unsuspected, which now exist or heretofore existed, from the beginning of time to the Effective Date, without regard to the subsequent discovery or existence of such additional or different facts, to the fullest extent permitted by law.
- (i) The obligations incurred pursuant to the Stipulation shall be in full and final disposition of the Action and each of the Released Claims. It is the intention of the Settling Parties that the Settlement eliminate all further risk and liability relating to the Released Claims, and that the Settlement shall be a final and complete resolution of all disputes asserted or which could be or could have been asserted with respect to the Released Claims, including without limitation any claims for contribution in accordance with 10 *Del. C.* § 6304 and any similar laws or statutes.
- (j) Except as expressly provided in the Stipulation, the contemplated releases are not intended to release and shall not be deemed to release any rights or obligations of the Settling Parties under the terms of the Stipulation.

INTERIM INJUNCTION

Subject to an Order of the Court, until the earlier of the Effective Date or an order of the Court substantially denying or declining to approve the Settlement in accordance with the Stipulation, the Action will be stayed, and the Releasing Parties, or any individuals, will be barred and enjoined to the maximum extent permitted under law from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action or proceeding asserting any of the Released Claims, either directly, representatively, derivatively or in any other capacity, against any of the Released Parties.

SCOPE OF THIS NOTICE AND ADDITIONAL INFORMATION

This Notice contains only a summary of the terms of the Settlement. For more detailed information about the matters involved in the Action, you may refer to the papers on file in the Action, including the Stipulation, which may be inspected during regular office hours at the Office of the Register in Chancery in the Court of Chancery of the State of Delaware, 500 North King Street, Wilmington, DE 19801. Additionally, copies of the Stipulation and any related orders entered by the Court will be posted at the following website: www.BabcockandWilcoxStockholderSettlement.com.

For more information concerning the Settlement, you may also call or write to Plaintiff's Counsel noted above.

DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF THE REGISTER IN CHANCERY REGARDING THIS NOTICE.

**NOTICE TO PERSON OR ENTITIES HOLDING
RECORD OWNERSHIP ON BEHALF OF OTHERS**

Brokerage firms, banks, and other persons or entities who hold shares of B&W common stock as record owners, but not as beneficial owners, are directed to either (a) promptly request from the Settlement Administrator sufficient copies of this Notice to forward to all such beneficial owners and after receipt of the requested copies promptly forward such Notices to all such beneficial owners; or (b) promptly provide a list of the names and addresses of all such beneficial owners to the Settlement Administrator after which the Settlement Administrator will promptly send copies of the Notice to such beneficial owners. Copies of this Notice may be obtained by contacting the Settlement Administrator at 1-855-933-1744 or by writing to Babcock & Wilcox Stockholder Settlement, c/o Epiq, P.O. Box 2140, Portland, OR 97208-2140.

Dated: April 7, 2023

BY ORDER OF THE COURT OF CHANCERY
OF THE STATE OF DELAWARE

Register in Chancery