



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JAMES E. PARKER, Individually and)
On Behalf of All Others Similarly)
Situating,)
)
Plaintiffs,)
)
v.)
)
MATTHEW E. AVRIL, BRIAN R.)
KAHN, KENNETH YOUNG,)
VINTAGE CAPITAL)
MANAGEMENT, LLC, and B. RILEY)
FINANCIAL, INC.,)
)
Defendants,)
)
and)
)
BABCOCK & WILCOX)
ENTERPRISES, INC.,)
)
Nominal Defendant.)

C.A. No. 2020-0280-PAF

ORDER AND FINAL JUDGMENT

A hearing having been held before this Court on July 10, 2023 pursuant to this Court's Scheduling Order with Respect to Notice and Settlement Hearing dated February 21, 2023 (the "Scheduling Order"), and upon a Stipulation of Settlement, dated February 15, 2023 (the "Stipulation") outlining a Settlement of the above-captioned action (the "Action"), which is incorporated herein by reference, the parties having appeared by their attorneys of record, the Court having heard and considered the submissions and evidence presented in support of the proposed

Settlement and Plaintiff's Counsel's application for Fee & Expense Award and Plaintiff's application for an Incentive Award in this Action, the opportunity to be heard having been given to all other persons requesting to be heard in accordance with the Scheduling Order, and the Court having determined that Notice was adequate and sufficient, and the entire matter of the proposed Settlement having been heard and considered by the Court

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED this 14th day of July, 2023, that:

1. Unless otherwise defined herein, all capitalized terms shall have the same meaning as set forth in the Stipulation and Scheduling Order.

2. The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement of the Action, as well as personal jurisdiction over all of the Settling Parties and each of the Current Stockholders and Class Members, and it is further determined that Plaintiff, Defendants, the Company, the Class and all Current Stockholders, as well as their transferees, heirs, executors, successors, and assigns, are bound by this Order and Final Judgment.

3. The Notice has been given to all Current Stockholders and all Class Members pursuant to and in the manner prescribed in the Scheduling Order, which was done by first class mail on April 7, 2023, is hereby determined to be the best

notice practicable under the circumstances and in full compliance with Court of Chancery Rules 23 and 23.1, the requirements of due process, and applicable law.

4. With regard to the class action claims, pursuant to Court of Chancery Rules 23(a), 23(b)(1), and/or 23(b)(2):

a. The Court finds that (a) the Class as defined below is so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to the Class sufficient to satisfy Rule 23(a)(2); and (c) the claims of the representative Plaintiff are typical of the claims of absent Class Members in that they all arise from the same allegedly wrongful course of conduct and are based on the same legal theories, satisfying Rule 23(a)(3).

b. The Court finds that Plaintiff and Plaintiff's Counsel have adequately represented the interests of the Class;

c. The Court finds that the requirements of Court of Chancery Rules 23(b)(1) and (2) have been satisfied; and

d. For purposes of settlement only, the Court finally certifies a non-opt-out class comprising of:

(i) all record and beneficial holders of B&W common stock at any time during the period April 3, 2019 through July 22, 2019, inclusive and (ii) 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 and B. Riley.

5. Plaintiff James E. Parker is confirmed as Class Representative.

6. With respect to the derivative claims, the Court finds that Plaintiff has continuously held stock in the Company since the time of the alleged breaches of duty complained of in this Action, has standing to prosecute the Action, and is an adequate representative of all stockholders of B&W. The Court additionally finds that each of the provisions of Court of Chancery Rule 23.1 has been satisfied and the Action has been properly maintained according to Court of Chancery Rule 23.1. Plaintiff and Plaintiff's Counsel have adequately represented the interests of the Company both in litigating the Action and for purposes of entering into and implementing the Settlement.

7. The Settlement of the Action as provided for in the Stipulation is fully and finally approved as fair, reasonable, and adequate, and in the best interests of Plaintiff, the Class, the Company, and its stockholders.

8. The Settling Parties are hereby authorized and directed to consummate the Settlement in accordance with the terms and provisions of the Stipulation, and the Register in Chancery is directed to enter and docket this Order and Final Judgment.

9. The Action is hereby dismissed with prejudice, on the merits, and without costs (except as provided in the Stipulation).

10. Upon the Effective Date, the Releasing Parties shall be deemed to have, and by operation of this 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 against the Released Parties 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.

11. The contemplated releases given by the Releasing Parties in the Stipulation 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. 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 fullest 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.

12. 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.

13. The provisions contained in this Order and Final Judgment or in the Stipulation shall not be deemed a presumption, concession, or admission by any Settling Party of any fault, liability, wrongdoing, or any infirmity or weakness of any claim or defense, as to any facts or claims (including the Released Claims) that have been or might be alleged or asserted in the Action, or any other action or proceeding that has been, will be, or could be brought, and shall not be interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by

any person in the Action, or in any other action or proceeding, whether civil, criminal, or administrative, for any purpose other than as permitted by applicable court rules and rules of evidence.

14. Each Settling Party denies any and all allegations that he, she, or it committed wrongdoing, that the Settling Party has any fault or liability, or that the Settling Party caused damage in the Action. This Order and Final Judgment, the Settlement, and the Stipulation do not constitute a finding or evidence of the validity or invalidity of any claims or defenses in the Action or any wrongdoing by any of the Released Parties. None of this Order and Final Judgment, nor the Stipulation, nor any of the terms and provisions of the Stipulation, nor any of the negotiations or proceedings in connection therewith, nor any of the documents or statements referred to therein, nor the Settlement, nor the Settlement proceedings, nor any statements in connection therewith, (a) shall: (i) be argued to be, used, or construed as, offered, or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any liability, fault, wrongdoing, injury, or damages, or of any wrongful conduct, acts, or omissions on the part of any of the Defendant Released Parties, or of any infirmity of any defense, or of any damage to Plaintiff or to any other person, entity or stockholder; (ii) constitute a concession or evidence in any way that Plaintiff's claims suffered from any infirmity or lacked merit in any regard whatsoever; or (iii) otherwise be used to

create or give rise to any inference or presumption against any of the Released Parties concerning any fact or any purported liability, fault, or wrongdoing of the Released Parties or any injury or damages to any person or entity; or (b) shall otherwise be admissible in any proceeding of any nature, for any purpose whatsoever; provided, however, that the Stipulation may be introduced in any proceeding, whether in the Court or otherwise, as may be necessary to argue and establish that the Stipulation has *res judicata*, collateral estoppel, or other issue or claim preclusion effect or to otherwise consummate or enforce the Settlement or to secure any insurance rights or proceeds of any of the Defendant Released Parties.

15. Plaintiff's Counsel are hereby awarded a Fee & Expense Award in the amount of \$1,035,000.00 in connection with the Action, which sum the Court finds to be fair and reasonable. Such sum shall be paid pursuant to the provisions of the Stipulation.

16. Plaintiff is hereby awarded an Incentive Award in the amount of \$7,000.00 (which shall be paid out of the Fee & Expense Award and pursuant to the provisions of the Stipulation), and which sum the Court finds to be fair and reasonable.

17. If the Effective Date does not occur, this Order and Final Judgment shall be rendered null and void and shall be vacated, and all of the Settling Parties shall be deemed to have reverted to their respective litigation status immediately

prior to the execution of the Stipulation, and the Settling Parties shall proceed in all respects as if the Stipulation had not been executed and the related orders had not been entered, and in that event all of their respective claims and defenses as to any issue shall be preserved without prejudice in any way; provided however, that Paragraphs 4 and 29 of the Stipulation shall remain in full effect. In such event, and consistent with the applicable evidentiary rules, none of the Stipulation or the Stipulation's existence shall be admissible in evidence, nor shall any of the Stipulation or the Stipulation's existence be referred to for any purpose in the Action or in any other proceeding, except in connection with any claim for breach of the Stipulation or as otherwise specifically provided therein.

18. The binding effect of this Order and Final Judgment and the obligations of Plaintiff and Defendants under the Settlement shall not be conditioned upon or subject to the resolution of any appeal from this Order and Final Judgment that relates solely to the issue of Plaintiff's Counsel's application for a Fee & Expense Award or Plaintiff's application for an Incentive Award.

19. All members of the Class shall be and are deemed bound by the Stipulation and this Order and Final Judgment, regardless of whether they received any distributions from the Settlement Fund.

20. Other than as expressly provided in the Stipulation, the Company, the Defendants, each of their respective insurers, and the Defendants' Released Parties


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 herein, 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 herein, 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.

21. Without further order of this Court, the Settling Parties may agree in writing to reasonable extensions of time to carry out any of the provisions of the Stipulation, as well as any amendments or modifications to the Stipulation or any exhibits thereto to effectuate the Settlement that are not materially inconsistent with this Order and Final Judgment.

22. Without affecting the finality of this Order and Final Judgment in any way, this Court reserves jurisdiction over all matters relating to the administration and consummation of the Settlement.

23. There is no just reason to delay the entry of this Order and Final Judgment as a final judgment in this Action. Accordingly, the Register in Chancery is expressly directed to immediately enter this Order and Final Judgment in the Action.

Dated: July 14, 2023


Vice Chancellor Paul A. Fioravanti, Jr.