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Transaction ID: 89137760  
Case No. 2020-0280-PAF



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. )

**[PROPOSED] SCHEDULING ORDER WITH RESPECT TO NOTICE AND SETTLEMENT HEARING**

WHEREAS, the parties to the above-captioned action (the “Action”) have entered into a Stipulation of Settlement dated February 15, 2023 (the “Stipulation”), which sets forth the terms and conditions for the proposed settlement and dismissal with prejudice of the Action, subject to review and approval by this Court pursuant to Court of Chancery Rules 23(e) and 23.1(c) upon notice to (i) all current record holders Babcock & Wilcox Enterprises, Inc. (“B&W” or the “Company”) as of the Execution Date (the “Current Stockholders”) and (ii) all record holders who held

shares of B&W common stock at any time during the period from April 3, 2019 through and including July 22, 2019;

NOW, upon application of the Settling Parties, after review and consideration of the Stipulation filed with the Court and the exhibits annexed thereto,

IT IS HEREBY ORDERED this \_\_\_\_\_ of \_\_, 2023 that:

1. Except for terms defined herein, the Court adopts and incorporates the definitions in the Stipulation for purposes of this Scheduling Order.

2. Solely for purposes of the Settlement and for no other purpose, and pending the Settlement Hearing, a non-opt-out class is conditionally certified in this action pursuant to Court of Chancery Rules 23(a), 23(b)(1), and/or 23(b)(2), consisting 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.

3. The Court certifies Levi & Korinsky, LLP and Ashby & Geddes, P.A. as Class Counsel.

4. A hearing (the “Settlement Hearing”) shall be held on \_\_\_\_\_, 2023 at \_\_.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.

5. 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.

6. 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 Parties and without further notice to the Class.

7. Further, the Court may render its Order and Final Judgment, and order the payment of Plaintiff's Counsel's Fee & Expense Award and/or an Incentive Award, all without further notice to the Current Stockholders and the Class. The Court retains jurisdiction over this Action to consider further applications arising out of or connected with the proposed Settlement.

8. The Court approves, in form and content, the Notice of Pendency and Proposed Settlement of Class and Derivative Action attached as Exhibit C to the Stipulation and finds that the mailing and distribution of the Notice substantially in the manner and form set forth in this Order meets the requirements of Court of Chancery Rules 23 and 23.1 and due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

a. At least seventy-five (75) days before the Settlement Hearing the Settlement Administrator shall cause a copy of the Notice, substantially in the form annexed as Exhibit C to the Stipulation, to be mailed by first-class mail, or other mail service if mailed outside the U.S., postage pre-paid, to (i) all Current Stockholders and (ii) all record holders who held shares of B&W common stock at any time during the period April 3, 2019 through July 22, 2019, inclusive, at their last-known addresses appearing in the stock transfer records maintained by or on behalf of the Company. 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.

b. All record holders who were not also beneficial owners of any shares of the Company's common stock held by them of record shall be requested to forward the Notice to the beneficial owners of those shares. The Settlement Administrator shall use reasonable efforts to give notice to such beneficial owners by (i) making additional copies of the Notice available to any record holder who, prior to the Settlement Hearing, requests the same for distribution to beneficial owners, or (ii) mailing additional copies of the Notice to beneficial owners as

reasonably requested by record holders who provide names and addresses for such beneficial holders.

c. At least five (5) business days before the Settlement Hearing provided for in Paragraph 4 of this Scheduling Order, the Settlement Administrator shall file an appropriate affidavit attesting to provision of the Notice in accordance with this Order.

9. As set forth in the Notice, any Company stockholder or Class Member who objects to the Settlement, the 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 wishes to be heard ("Objector"), 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:

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10. 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.

11. Plaintiff shall file and serve his opening brief in support of the Settlement, Plaintiff's Counsel's Fee & Expense Award, and an Incentive Award no later than thirty (30) days prior to the Settlement Hearing. At least seven (7) days prior to the Settlement Hearing, the Parties may file with the Court briefs in response to any objections made by an Objector pursuant to Paragraph 10 above, and Plaintiff may file and serve a brief in response to any objections to the Fee & Expense Award application and request for an Incentive Award.

12. If the Court approves the Settlement provided for in the Stipulation following the Settlement Hearing, the Order and Final Judgment shall be entered substantially in the form attached as Exhibit B to the Stipulation.

13. The Stipulation and the Settlement proposed by the Stipulation shall be null and void and of no force and effect, unless otherwise agreed to by the Settling Parties pursuant to the terms of the Stipulation, if (i) the Settlement is terminated pursuant to the terms of the Stipulation; or (ii) the Settlement does not obtain Final Court Approval. If any of the foregoing conditions arise and are not waived by each of the Settling Parties in writing within ten (10) business days following the receipt of such ruling or event, the Stipulation shall not be deemed to prejudice in any way the respective positions of any of the Settling Parties in the Action, and all 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. 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.

14. All proceedings in the Action, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order of this Court. Except as provided in the Stipulation, pending final determination of whether the Stipulation should be approved, all parties to the Action and all Class Members are hereby enjoined against instituting, commencing, prosecuting, continuing, or in any way participating in, whether directly, representatively, individually, derivatively on behalf of the Company, or in any other capacity, any action or other proceeding asserting any Released Claims.

15. The provisions contained 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.

16. 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. 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. Neither 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.

17. The Court may, for good cause shown, extend any of the deadlines set forth in this Order without further notice to anyone other than the parties to the Action or any Objectors.

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Vice Chancellor Paul A. Fioravanti

This document constitutes a ruling of the court and should be treated as such.

**Court:** DE Court of Chancery Civil Action

**Judge:** Paul A Fioravanti Jr

**File & Serve**

**Transaction ID:** 69156594

**Current Date:** Feb 21, 2023

**Case Number:** 2020-0280-PAF

**Case Name:** CONF ORD James E. Parker v. Matthew E. Avril

**Court Authorizer:** Paul A Fioravanti Jr

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**Court Authorizer**

**Comments:**

The settlement hearing will be held on Monday, July 10, 2023 at 11:00 a.m. at the Leonard L. Williams Justice Center

**/s/ Judge Paul A Fioravanti Jr**