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Final Order and Judgment Approving Class Settlement and Certification of the Settlement Class (REBECCA CLARK)

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Superior Court of Fulton County

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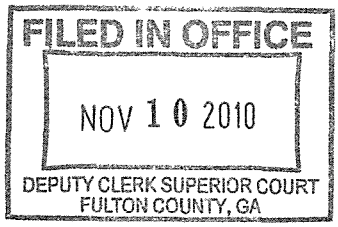
IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

REBECCA CLARK, on Behalf of Herself and All Others Similarly Situated, Plaintiff, vs. BWAY HOLDING COMPANY, KENNETH M. ROESSLER, MICHAEL B. CLAUER, JEAN-PIERRE M. ERGAS, WARREN J. HAYFORD, DAVID I. WAHRHAFTIG, THOMAS R. WALL, IV, DAVID M. RODERICK, LAWRENCE A. MCVICKER, EARL L. MASON, WELLFORD L. SANDERS, JR., MADISON DEARBORN PARTNERS, LLC, PICASSO PARENT COMPANY, INC., and PICASSO MERGER SUB, INC., Defendants.	)	Case No. 2010CV183869



FINAL ORDER AND JUDGMENT APPROVING CLASS SETTLEMENT AND CERTIFICATION OF THE SETTLEMENT CLASS

This matter comes before the Court for final approval of settlement of the above-styled class action, and certification of the Class.[1] In entering this Order, the Court has reviewed and considered, *inter alia*, (i) the Stipulation of Settlement ("Stipulation") between and among Plaintiff Rebecca Clark ("Plaintiff"), on behalf of herself and the Class, and Defendants BWAY Holding Company ("BWAY" or the "Company"), Madison Dearborn Partners, LLC ("MDP"), Picasso Parent Company, Inc., Picasso Merger Sub, Inc., Kenneth M. Roessler, Jean-Pierre M.

[1] Capitalized terms not otherwise defined herein have the meanings set forth in the Stipulation of Settlement.

Ergas, Warren J. Hayford, David I. Wahrhaftig, Thomas R. Wall, IV, David M. Roderick, Lawrence A. McVicker, Earl L. Mason, and Wellford L. Sanders, Jr. (together, "Defendants") (Plaintiff and Defendants collectively are referred to as the "Settling Parties"); (ii) the Notice of Proposed Class Action Settlement (the "Class Notice"); (iii) the parties' pleadings and filings in this case; (iv) the arguments of counsel; and (v) the statements made before the Court at the Fairness Hearing conducted on November 10, 2010.

Having reviewed and considered the foregoing, and being otherwise duly and sufficiently advised, the Court hereby ORDERS, ADJUDGES and DECREES as follows:

A. Incorporation of Other Documents. This Final Order and Judgment specifically incorporates and makes a part hereof:

1. the Stipulation;

2. all of the exhibits to the Stipulation; and

3. the Court's Notice Order, dated August 30, 2010.

B. Adequacy of Lead Counsel and Class Representative.

1. Based on a review of the record, the Court finds that Plaintiff fairly and adequately represents the Class. The Court further finds that there is no conflict of interest between Plaintiff and the rest of the Class. Regarding Plaintiff's counsel —Holzer Holzer & Fistel, LLC, Law Office Of Jonathan M. Stein, PL, and Robbins Geller Rudman & Dowd, LLP — the Court finds that, (a) since the inception of this litigation, Plaintiff's counsel has fairly, reasonably, and adequately represented the interests of the Class, and (b) Plaintiff's counsel in this case is experienced in class litigation, experienced in trials, and adequate to represent the Class. In this regard, the Court has considered, *inter alia*, (i) the work that Plaintiff's counsel has done to date in identifying and investigating the potential claims and claims directly asserted in

this litigation; (ii) Plaintiff's counsel's experience in handling complex litigation, including class actions; (iii) Plaintiff's counsel's knowledge of the applicable law; and (iv) the resources that Plaintiff's counsel committed to representing the Class. Based on the foregoing findings, the Court concludes that Plaintiff and Plaintiff's counsel have fairly and adequately protected the interests of the Class.

C. Settlement Class.

1. The Court finds that the requirements for certification of the Class have been met. In making this finding, the Court has considered the interest of Class Members in individually controlling the prosecution or defense of separate actions, the impracticality or inefficiency of prosecuting or defending separate actions, the extent and nature of any litigation concerning these claims already commenced, the desirability of concentrating the litigation of claims in a particular forum, and the difficulties likely to be encountered in the management of a class action.

2. The Class consists of all record holders and beneficial owners of the common stock of the Company who held such shares at any time between and including March 29, 2010 (the date that the proposed Merger was publicly announced) through and including June 16, 2010 (the effective date of consummation of the Merger), including the legal representatives, heirs, successors in interest, transferees and assigns of all such foregoing holders and/or owners, immediate and remote, excluding the Defendants and any person, trust, corporation or other entity related to or affiliated with any of them and their successors in interest. The Class is ascertainable on the basis of these objective criteria, and the Court finds, that Class Members are so numerous that it is impracticable to bring all Class Members before the Court. Accordingly, the Court also concludes that the requirements of O.C.G.A. § 9-11-23(a)(1) are satisfied.

3. The Court finds that there is a well-defined community of interest among Class Members regarding substantially similar questions of law or fact. These questions of law or fact appear to be common to the Class, and concern, among other things, whether the Defendants breached their fiduciary duties in connection with MDP's acquisition of BWAY. The Court finds that the requirement of commonality under O.C.G.A. § 9-11-23(a)(2) is met.

4. The claims of Plaintiff appear to be typical of the Class, and it appears that Plaintiff will fairly, reasonably, and adequately protect the interests of the Class, in that, (i) the interests of Plaintiff are consistent with those of the Class; (ii) there are no conflicts between or among Plaintiff and the Class Members; (iii) Plaintiff has been and continues to be capable of actively pursuing this litigation and the negotiations to settle the Action; and (iv) Plaintiff and the Class Members are represented by qualified, reputable counsel who is experienced in preparing and litigating complex matters, including class actions. Accordingly, the Court finds that the requirements of typicality and adequacy of representation under O.C.G.A. §§ 9-11-23(a)(3) and 9-11-23(a)(4) are met.

D. Certification of Class, for Settlement Purposes.

Based on, *inter alia*, the foregoing findings, the Court hereby certifies the following Class:

> The Class includes all record holders and beneficial owners of the common stock of the Company who held such shares at any time between and including March 29, 2010 (the date that the proposed Merger was publicly announced) through and including June 16, 2010 (the effective date of consummation of the Merger), including the legal representatives, heirs, successors in interest, transferees and assigns of all such foregoing holders and/or owners, immediate and remote, excluding the Defendants and any person, trust, corporation or other entity related to or affiliated with any of them and their successors in interest.

E. Findings Regarding the Stipulation of Settlement.

The Court finds that the Stipulation resulted from extensive arms' length negotiations, and was concluded only after Plaintiff's counsel had conducted broad discovery (including the review of documents and depositions). The Court finds that the proposed Stipulation is fair, reasonable, and adequate to the Class. The Court finds and concludes that the Settlement is fair, reasonable, and adequate, and in the best interests of the Class, and hereby approves the Settlement and all transactions preliminary or incident thereto.

F. Relief Afforded. The settlement is based on BWAY's agreement to make certain additional disclosures in a supplemental Schedule 14A, which was filed with the SEC on June 1, 2010 in advance of the special meeting where BWAY shareholders voted on the Merger.

G. Adequacy of Class Notice. The Court finds that members of the Class have received adequate notice, which consisted of the Notice being sent via regular mail to all holders of BWAY stock who were mailed the definitive proxy statement. The Court finds that Notice has been provided to the Class consistent with the procedures authorized in the Court's prior orders regarding notice to the class. The Court finds that the Notice provided pursuant to these Court-approved procedures constituted the best notice practicable under the circumstances, and that said Notice fully satisfied the requirements of Georgia Rule of Civil Procedure 23, the requirements of due process, and any other applicable law.

H. Release. As against the Released Persons, the Settled Claims are hereby fully, finally, and forever compromised, settled, extinguished, dismissed, discharged and released with prejudice by the Releasing Parties and their further prosecution of the Settled Claims in this or any other action or proceeding permanently barred and enjoined pursuant to the terms and

conditions herein; provided, however, that the claims to be released shall not include the right of any members of the Class or any of the Defendants to enforce the terms of the Settlement.

I. Injunction. As of the date of this Order, the Releasing Parties are forever enjoined and barred from commencing, asserting, or pursuing in any way, any of the claims that are released under the terms of the Stipulation. Thus, Releasing Parties subject to the settlement may not commence, participate in, or benefit from the pursuit of any causes of action, claims, damages, equitable, legal, or administrative relief, interest, demands, and rights, including, without limitation, claims for mental anguish, whether based on federal, state, or local law, statute, ordinance, regulation, contract, common law, or any other source, that have been, could have been, may be or could be alleged or asserted now or in the future by Plaintiff or any Releasing Party against the Released Parties or any of them in the Action or in any other court action or before any administrative body, tribunal, arbitration panel, or other adjudicatory body, on the basis of, connected with, arising out of, or related to, in whole or in part, the Settled Claims.

J. Consummation of Settlement. The Parties are directed hereby to consummate the Settlement in accordance with the terms and conditions set forth in the Stipulation; and the Clerk of Court is directed to enter and docket this Final Order and Judgment in the Action.

K. Attorneys' Fees. Plaintiff's Counsel is awarded Attorneys' Fees in the amount of $450,000.00, which sum the Court finds to be fair and reasonable. Defendants shall cause such amount to be paid in accordance with, and subject to, the terms of the Stipulation. Plaintiff is awarded $1,000.00 as a service award to be paid by Plaintiff's Counsel out of the Attorney's Fees.

L. Retention of Jurisdiction. The Court has jurisdiction to enter this Final Order and Judgment. Without in any way affecting the finality of this Final Order and Judgment, this Court expressly retains jurisdiction as to all matters relating to the administration, consummation, enforcement and interpretation of the Stipulation and of this Final Order and Judgment, and for any other necessary purpose, including, without limitation: (a) enforcing the terms and conditions of the Stipulation and resolving any disputes, claims or causes of action that, in whole or in part, are related to or arise out of the Stipulation and this Final Order and Judgment (including, without limitation, whether a person or entity is or is not a Class Member; whether claims or causes of action are or are not barred by this Final Order and Judgment, etc.); (b) entering such additional orders as may be necessary or appropriate to protect or effectuate this Final Order and Judgment or to ensure the fair and orderly administration of this settlement; and (c) entering any other necessary or appropriate orders to protect and effectuate this Court's retention of continuing jurisdiction; provided, however, that nothing in this paragraph is intended to restrict the ability of the Parties to exercise their rights under the Stipulation.

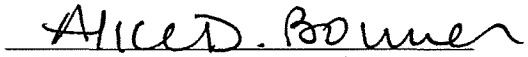
M. No Admissions. Neither this Final Order and Judgment nor the Stipulation (nor any other document referred to herein) nor any action taken to carry out this Final Order and Judgment) is, may be construed as, or may be used as an admission, concession or declaration by or against the Defendants of any fault, wrongdoing, breach or liability. Nor shall the Order be construed or used as an admission, concession or declaration by or against Plaintiff or the Class Members that their claims lack merit or that the relief requested in the Amended Complaint is or was inappropriate, improper or unavailable, or as a waiver by any party of any defenses or claims, he, she or it may have. Entering into or carrying out the Stipulation, and any negotiations or proceedings related to it, shall not in any event be construed as, or deemed evidence of, an

admission or concession as to the Defendants' denials or defenses and shall not be offered or received in evidence in any action or proceeding against any Released Party (as defined in the Stipulation) in any court, administrative agency or other tribunal for any purpose whatsoever, except as evidence of the settlement or to enforce the provisions of this Final Order and Judgment and the Stipulation; provided, however, that this Final Order and Judgment and the Stipulation may be filed in any action against or by the Defendants or other Released Parties to support a defense of *res judicata*, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim.

N. Conduct of Litigation. The Court finds that during the course of the Litigation, the Settling Parties and their respective counsel at all times complied with the requirements of Georgia Rules of Civil Procedure, Uniform Superior Court Rules, and all other applicable rules and statutes.

O. Dismissal on Merits. All of the claims asserted in the Action on behalf of the Class against all Defendants are dismissed on the merits with prejudice against Plaintiff and all Class Members, without costs (except as provided above with respect to Attorneys' Fees).

The above is Hereby Ordered and Entered this 10 day of Nov., 2010.



Hon. Alice D. Bonner, Senior Judge
Superior Court of Fulton County
Atlanta Judicial Circuit