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Order Preliminarily Approving Settlement, Approving Form and Manner of Notice and Scheduling a Hearing on Fairness, Reasonableness and Adequacy of Settlement (REBECCA CLARK)

Alice D. Bonner
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

FILED IN OFFICE
AUG 30 2010
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

ORDER PRELIMINARILY APPROVING SETTLEMENT, APPROVING FORM AND MANNER OF NOTICE AND SCHEDULING A HEARING ON FAIRNESS, REASONABLENESS AND ADEQUACY OF SETTLEMENT

WHEREAS, the above-captioned action (the "Action") is pending before this Court;

WHEREAS, the parties to the Action have made an application pursuant to O.C.G.A. § 9-11-23 for an order preliminarily approving a settlement of the claims asserted in this action against all of the defendants, in accordance with a Stipulation of Settlement dated August 18, 2010 (the "Stipulation"), which, together with the Exhibits annexed thereto, sets forth the terms and conditions of the proposed settlement (the "Settlement"); and the Court having read and considered the Stipulation and the Exhibits annexed thereto and having found good cause for entering the following Order:

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. All capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to them in the Stipulation.

2. The Court hereby preliminarily approves the terms of the Stipulation, and the Settlement set forth therein, as fair, reasonable, adequate and in the best interest of the Class, subject to further consideration at a hearing as set forth below, and adopts the terms of the Settlement for the purpose of this Order.

3. A hearing (the "Settlement Hearing") shall be held before this Court on November 10th, 2010 at 4:00 p.m. in the Fulton County Courthouse, 136 Pryor St., S.W., Atlanta, GA 30303, to (i) determine whether, for settlement purposes only, to certify the Action as a class action pursuant to O.C.G.A. 9-11-23; (ii) determine whether to define the settlement class as consisting 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"); (iii) determine whether Plaintiff and Plaintiff's counsel have fairly and adequately represented the interests of the Class and whether the terms and conditions of the Settlement are fair, reasonable, adequate and in the best interests of the Class; (iv) determine whether a final judgment should be entered dismissing the Action with prejudice, releasing the Settled Claims as against the Released Persons (as those terms are defined in the Stipulation), and barring and enjoining

prosecution by Plaintiff or the Class of any and all Settled Claims; (v) consider the application of Plaintiff's counsel for an award of attorneys' fees and reimbursement of expenses in accordance with the terms of the Stipulation and an application for a service award to Plaintiff; (vi) hear and determine any objections to the Settlement and the application of Plaintiff's counsel for an award of attorneys' fees and reimbursement of expenses and the application for a service award to Plaintiff; (vii) order such other relief as the Court may deem necessary and appropriate; and (viii) consider any other matters that may properly be brought before the Court in connection with the Settlement.

4. The Court approves, as to form and content, the Notice of Pendency and Settlement of Class Action and Hearing on Proposed Settlement, substantially in the form attached to the Stipulation as Exhibit 4 (the "Notice"), and finds that the mailing of the Notice substantially in the manner and form set forth in Paragraph 5 below constitutes the best notice practicable under the circumstances, meets the requirements of applicable law, is due and sufficient notice to members of the Class of all matters relating to the Settlement, and fully satisfies the requirements of due process and the Georgia Rules of Civil Procedure.

5. The Company is hereby authorized and directed to supervise and administer the giving of notice to members of the Class as follows:

(a) Not later than ten (10) days from the entry of this Order (the "Notice Date"), the Company shall cause a copy of the Notice, substantially in the form annexed as Exhibit 4 to the Stipulation, to be sent via regular mail to all holders of BWAY stock who were mailed the definitive proxy statement.

(b) At least ten (10) days prior to the Settlement Hearing, the Company shall serve on Plaintiff or his counsel and file with the Court proof, by affidavit or

declaration, of such mailing; and

(c) BWAY shall be solely responsible for, and shall cause to be paid, any costs associated with the mailing of the Notice.

6. All members of the Class shall be bound by all determinations and judgments in this Action concerning the Settlement, whether favorable or unfavorable to the Class.

7. Any Class member may enter an appearance in this action, at his, her or its own expense, individually or through counsel of his, her or its own choice. If a Class member does not enter an appearance, he, she or it will be represented by Plaintiff's counsel.

8. Any member of the Class may appear and show cause, if he, she or it has any reason why the Settlement should or should not be approved as fair, reasonable, adequate and in the best interests of the Class, or why the Final Judgment and Order of Dismissal should or should not be entered thereon; provided, however, that no Class member shall be heard or entitled to contest the approval of the terms and conditions of the Settlement or, if approved, the Final Judgment and Order of Dismissal to be entered thereon approving the same unless that person or entity has delivered by hand or sent by first class mail written objections and copies of any papers and briefs, such that they are received on or before fourteen (14) calendar days before the Settlement Hearing by Michael I. Fistel, Jr., Esq., HOLZER HOLZER & FISTEL, LLC, 200 Ashford Center North, Suite 300, Atlanta, Georgia 30338 and Jonathan M. Stein, Esq., LAW OFFICE OF JONATHAN M. STEIN, P.L., 120 E. Palmetto Park Road, Suite 420, Boca Raton, Florida 33432, ROBBINS GELLER RUDMAN & DOWD, LLP, 120 E. Palmetto Park Road, Suite 500, Boca Raton, Florida 33432 and Gary W. Kubek, Esq., DEBEVOISE & PLIMPTON LLP, 919 Third Avenue, New York, NY 10022 and Matthew Solum, Esq., KIRKLAND & ELLIS LLP, 601 Lexington Avenue, New York, NY 10022 and Brian T. Frawley, Esq., SULLIVAN & CROMWELL

LLP, 25 Broad Street, New York, NY 10004, and filed said objections, papers and briefs with the Fulton County Clerk of the Court, Room C-155, 136 Pryor St., S.W., Atlanta, GA 30303, on or before the same date. Any member of the Class who does not make his, her or its objection in the manner provided herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the Settlement as incorporated in the Stipulation unless otherwise ordered by the Court.

9. The parties to the Stipulation may file papers in support of the Settlement and/or in opposition to any objections no later than seven (7) days before the Settlement Hearing. Such papers shall be served on the parties to the Action and on the persons or entities filing objections or, if they are represented by an attorney, their attorney.

10. Pending final determination of whether the Settlement should be approved, the Court stays all proceedings in the Action involving Defendants, other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation.

11. Pending final determination of whether the Settlement should be approved, the Plaintiff, and any member of the Class, and their respective assignees, insurers, and any person or entity claiming through any of them, shall be enjoined from commencing, prosecuting, instigating or in any way participating in the commencement or prosecution of any action or other proceeding, in any forum, asserting any Settled Claims, either directly, representatively, derivatively or in any other capacity.

12. Neither the fact and terms of this Order, nor the fact and terms of the Stipulation, nor any of the Stipulation's terms or provisions, nor any of the negotiations, drafts or proceedings connected with the Stipulation, nor any act performed or documents signed in connection with this Order and the Settlement, shall be construed as an admission or concession

by Defendants or any other Released Persons of the truth of any of the allegations in the Action, or of any liability, fault or wrongdoing of any kind.

13. In the event that the Settlement fails to become effective in accordance with its terms, or if the Final Judgment and Order of Dismissal is not entered or is reversed, vacated or materially modified on appeal (and, in the event of material modification, if any party elects to terminate the Settlement), this Order (except Paragraphs 12 and 13) shall be null and void, the Settlement (except Sections 8 and 10 of the Stipulation) shall be deemed terminated, and the parties shall return to their prior positions, without prejudice in any way, as provided for in the Stipulation.

14. The Court reserves the right to adjourn the date of the Settlement Hearing or modify any of the dates set forth herein without further notice to the members of the Class, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Stipulation and the proposed Settlement. The Court may approve the Stipulation and the Settlement contained therein with such modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to the members of the Class.

IT IS SO ORDERED.

Dated this 30th day of August, 2010.

Alice D. Bonner

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

cc: All Counsel of Record

Copies to:

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