

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	) Chapter 7
	)
BW Industries Inc. <i>et al.</i> , ¹	) Case No. 23-10844-MFW
	)
Debtors.	) (Jointly Administered)

**NOTICE OF JOINT MOTION FOR APPROVAL OF SETTLEMENT PURSUANT TO
FED. R. BANKR. P. 9019 AND RELATED RELIEF**

Jeoffrey L. Burtch, in his capacity as Chapter 7 Trustee for the bankruptcy estates (the “Estates”) of BW Industries Inc. and its affiliated Debtors (the “Trustee”), and Pedro Garza, Rosa Saldana Lemus, Trenton Lively, Victor Carranza, Yaritza Bejarano, Mayra Silva, Jessica Daniels, Neptali Montez, Andre Nunn, Kaila Webb, and Kasandra Jimenez (together, the “Class Representatives”), individually and on behalf of similarly situated former employees and class members, have filed a motion (the “Motion”) seeking approval of a settlement of: (a) the Estates’ claims against certain of the Debtors’ former directors (the “Non-Management Directors”), including, but not limited to, claims based on alleged breaches of fiduciary duty and claims for avoidance of certain transfers; and (b) former employees’ claims against the Estates and the Debtors’ officers and directors under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 *et seq.* (the “WARN Act”) and any other federal, state, and local laws. A summary of the material terms of the proposed settlement is attached to this notice, and a full copy of the Motion will be produced upon request to the undersigned counsel. **Your rights may be affected.** You should read these papers carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.

If you do not want the Court to approve the settlement or you otherwise wish to be heard on any matter related to the settlement, you or your attorney must file a written response with the Bankruptcy Clerk **so that it is received on or before November 13, 2024** at the following address: Bankruptcy Clerk, United States Bankruptcy Court for District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801. Your response must include the case name and number, and state the legal and factual grounds for the objection or response.

If you file a response, you must also mail a copy of the response to the following at the same time as it is filed to: (1) Class Counsel, Raisner Roupinian LLP, Attn. René S. Roupinian, 270 Madison Ave, Suite 1801, New York, NY 10016 (rsr@raisnerroupinian.com); (2) Counsel for the Trustee, Cozen O’Connor, Attn. Mark E. Felger, 1201 N. Market Street, Suite 1001, Wilmington, DE 19801 (mfelger@cozen.com); (3) Counsel for Non-Management Directors Mitchell Kapor and Paula Pretlow, Morrison & Foerster LLP, Attn. Andrew L. Perito, 425

¹ The Debtors in these cases are the following entities (the respective case numbers for each estate follows in parentheses): BW Industries Inc. (23-10844-MFW); Bitwise Industries, Inc. (23-10845-MFW); BWRD, LLC (23-10846-MFW); Alpha Works Technologies, LLC (23-10847-MFW); Bruce’s Bagels, Beverages, and Bites, LLC (23-10848-MFW).

Market Street, San Francisco, CA 94105-2482 (aperito@mofo.com); and (4) Counsel for Non-Management Directors Ollen Douglass and Joseph Proietti, Stinson LLP, Attn. Paul Lackey, 2200 Ross Avenue, Suite 2900, Dallas, TX 75201 (paul.lackey@stinson.com).

A hearing on the motion has been scheduled for **November 20, 2024, at 2:00 p.m.**, at the U.S. Bankruptcy Court, District of Delaware, 824 North Market Street, 5th Floor, Courtroom No. 4, Wilmington, Delaware 19801

SUMMARY OF SETTLEMENT²

The Trustee and the Class Representatives have filed a motion (the “Motion”) with the United States Bankruptcy Court for the District of Delaware seeking approval of a Settlement Agreement and General Release (the “Settlement Agreement”), providing for the final settlement and resolution of: (a) The Trustee’s claims against the Non-Management Directors, including, but not limited to, claims based on alleged breaches of fiduciary duties (the “D&O Claims”) and claims for the avoidance of transfers under chapter 5 of the Bankruptcy Code; and (b) Class Members’ claims against the Estates and the Non-Management Directors under the WARN Act and similar federal, state, and local laws. The essential terms of the Settlement Agreement are as follows:

- a. The Settlement Agreement shall become effective only on the date on which certain enumerated events have occurred, include the Bankruptcy Court’s order approving the Settlement Agreement and orders dismissing all pending actions involving the Class Members’ claims have been entered and the time for taking an appeal has expired or, if an appeal has been taken, on the day the relevant approval order has been affirmed with no further right of appeal (the “Effective Date”).
- b. The Settling Parties shall be released from all of the Estates’ and Class’s claims upon the Effective Date and payment of the sum of Twenty Million and No/100 Dollars (\$20,000,000.00) (the “D&O Settlement Amount”) to the Trustee, with such payment being due within thirty (30) days following the Effective Date.
- c. The order approving the Settlement Agreement shall include findings that the Trustee has sole authority to settle and release any and all claims against the Non-Management Directors that are based on alleged breaches of duties owed to a corporation or generalized harm to creditors.
- d. Within ten (10) business days after the Effective Date, the Trustee shall request dismissal of certain actions against the Non-Management Directors and one of the Debtors’ former officers that are pending in different courts, and if such request is declined, shall take such actions in the Bankruptcy Cases as may be appropriate to seek the stay or dismissal of such claims within thirty (30) days from the date on which the request is declined.

² The summary in not intended to be an exhaustive or complete description of the terms of the Settlement Agreement, and in the event of any inconsistency, the terms of the Settlement Agreement shall control over the summary. Capitalized terms not otherwise defined herein shall have the meanings assigned in the Motion. A complete copy of the Motion will be provided via email or U.S. Mail upon request to the Trustee’s counsel.

- e. Within ten (10) business days after receipt of the D&O Settlement Amount, the Trustee shall distribute the sum of Six Million and No/100 Dollars (\$6,000,000.00) to the Class (the “Initial Class Distribution”).
- f. As soon as practicable after the Effective Date, Class Counsel shall provide the Trustee with their calculation of the amount of the claim that they will file on behalf of the Class in the Bankruptcy Cases (the “Class Priority Claim”), and, in the absence of specific, identifiable errors in such calculation, the Trustee shall stipulate to such amount. The Class Priority Claim shall be entitled to priority pursuant to 11 U.S.C. § 507(a)(4) and shall be calculated on the basis of Class Members’ actual wages, provided that the sum of the Initial Class Distribution and the Class Priority Claim shall in no event exceed the aggregate of Class Members’ individual claims that would be entitled to priority under 11 U.S.C. § 507(a)(4). Subject to the Trustee’s review and approval as provided herein, the Settling Parties shall stipulate and agree that the Class Priority Claim shall have priority over any of the claims of the Non-Management Directors and certain of their affiliates, and the Participating Insurance Carriers, and agree not to contest the Class Priority Claim, or the amounts thereof, in whole or in part in the Bankruptcy Cases or in any other proceeding.
- g. The Trustee will use best efforts to obtain a bar order from the Bankruptcy Court that will protect the Settling Parties and the Participating Insurance Carriers from all outstanding and future claims involving the Debtors or the Non-Management Directors, and all parties expressly agree that any such bar order is integral to the settlement.
- h. With limited exceptions set forth in the Settlement Agreement, mutual general releases of all claims related to or arising out of the Debtors or the Bankruptcy cases shall be exchanged as between Settling Parties, including, but not limited to, the Class Members and the Trustee, acting on behalf of the Estates, and all Settling Parties shall agree to release the Participating Insurance Carriers from any and all coverage obligations, and the Participating Insurance Carriers shall agree to release one another.