

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA

No. _____-cv-_____

_____, Individually and on Behalf of All
Others Similarly Situated,

Plaintiff,

vs.

BABCOCK & WILCOX ENTERPRISES,
INC., E. JAMES FERLAND and JENNY L.
APKER,

Defendants.

) CLASS ACTION

)
) COMPLAINT FOR VIOLATIONS OF THE
) FEDERAL SECURITIES LAWS

)
)
)
) DEMAND FOR JURY TRIAL

Plaintiff ____ (“plaintiff”), by and through plaintiff’s undersigned attorneys, individually and on behalf of all others similarly situated, alleges the following based upon personal knowledge as to plaintiff and plaintiff’s own acts and on information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through plaintiff’s attorneys, which included, among other things, a review of certain of Babcock & Wilcox Enterprises, Inc.’s (“B&W” or the “Company”) public documents, conference calls, announcements, and U.S. Securities and Exchange Commission (“SEC”) filings; wire and press releases published by and regarding the Company; analysts’ reports and advisories about the Company; and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a federal securities class action on behalf of all persons who purchased or otherwise acquired B&W common stock between July 1, 2015 and February 28, 2017, inclusive (the “Class Period”), against B&W and certain of its officers and/or directors for violations of the Securities Exchange Act of 1934 (“1934 Act”). These claims are asserted against B&W and certain of its officers and/or directors who made materially false and misleading statements during the Class Period in press releases, analyst conference calls, and SEC filings.

2. B&W is a technology-based provider of advanced fossil and renewable power generation equipment that includes a suite of boiler products, environmental systems, and services for power and industrial uses. The Company specializes in technology and engineering for power generation and various other initiatives, the related procurement, erection, and specialty manufacturing of equipment, and the provision of related services.

3. The Company operates in three reportable segments: Power, Renewable, and Industrial. Through Power, the Company provides the supply and aftermarket services for steam-generating and auxiliary equipment for power generation and other industrial applications. Through its Renewable segment, B&W supplies steam-generating systems, environmental, and auxiliary equipment for the waste-to-energy and biomass power generation industries. The Company’s

Industrial segment provides custom-engineered environmental solutions, industrial equipment, and aftermarket parts and services through Babcock & Wilcox MEGTEC Holdings, Inc. (“MEGTEC”), and provides custom-engineered comprehensive dry and wet cooling solutions and aftermarket services to the power generation industry, including natural gas-fired and renewable energy power plants, as well as downstream oil and gas, petrochemical, and other industrial end-markets through SPIG S.p.A. (“SPIG”), which B&W acquired on July 1, 2016.

4. On July 1, 2015, B&W began trading independently as a public company after spinning off from The Babcock & Wilcox Company by way of distribution of shares of B&W common stock to holders of the Company’s former parent. The distribution of B&W common stock was made on June 30, 2015, and consisted of one share of B&W common stock for every two shares of the former parent’s common stock as of the record date, June 18, 2015. Cash was paid in lieu of any fractional shares of B&W common stock.

5. Throughout the Class Period, the Company was experiencing significant, undisclosed problems in its Renewable segment.¹ Although defendants disclosed issues with a single project in the Renewable business on June 28, 2016, they failed to disclose that similar problems were significantly and negatively impacting other projects in the Company’s Renewable segment, instead assuring investors during a business update call that the problems were “a single project issue.” In response to this partial disclosure, as well as lowered financial guidance for 2016, the price of B&W stock declined by 21% on June 28, 2016.

6. Then, after the market closed on February 28, 2017, the Company announced its fourth quarter and full year 2016 financial results. Missing earnings expectations by a wide margin, the Company lost \$71.6 million, or (\$1.47) per share, in the fourth quarter on revenue totaling \$380 million. Accounting for one-time gains and losses, the announcement was even worse, with the Company losing an adjusted \$77.7 million, or (\$1.60) per share, on continuing operations – a full \$1.97 per share *lower* than the average analyst’s projection for adjusted earnings per share (“EPS”)

¹ Prior to a corporate reorganization on June 28, 2016, the Company’s Renewable segment was included within the Company’s Global Power segment.

of positive \$0.37. The Company's fourth quarter 2016 results were significantly below its fourth quarter 2015 earnings, when the Company reported adjusted earnings of \$24.8 million, or \$0.47 per share. Among other things, defendants pointed to engineering, productivity, and scheduling issues in the Company's Renewable business, including that B&W would limit bidding on new Renewable projects that involved B&W's European resources for at least the first six months of 2017. The Company also revealed that it took charges in the fourth quarter 2016 resulting from its Renewable business, which reduced margins, and also increased its contingencies for several of its Renewable projects, which also negatively impacted the Company's financial condition.

7. On this news, the price of B&W stock dropped rapidly. After closing at \$16.50 per share on February 28, 2017, the stock opened at \$11.09 on March 1, 2017, and ultimately dropped 37% to close at \$10.33 per share on abnormally high trading volume.

JURISDICTION AND VENUE

8. Jurisdiction is conferred by §27 of the 1934 Act, 15 U.S.C. §78aa. The claims asserted herein arise under §§10(b) and 20(a) of the 1934 Act, 15 U.S.C. §§78j(b) and 78t(a), and SEC Rule 10b-5, 17 C.F.R. §240.10b-5.

9. Venue is proper in this District pursuant to §27 of the 1934 Act. The violations of law complained of herein occurred in part in this District, including the dissemination of materially false and misleading statements complained of herein into this District. B&W's headquarters are located in this District at The Harris Building, 13024 Ballantyne Corporate Place, Suite 700, Charlotte, North Carolina 28277.

10. In connection with the acts alleged in this Complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications, and the facilities of the national securities markets. B&W trades in an efficient market on the New York Stock Exchange ("NYSE").

PARTIES

11. Plaintiff _____ purchased B&W stock as described in the attached certification and suffered damages as a result of the securities fraud alleged herein.

12. Defendant Babcock & Wilcox Enterprises, Inc. is incorporated in Delaware and has its headquarters in this District. Shares of B&W stock trade on the NYSE under the ticker symbol “BW.”

13. Defendant E. James Ferland (“Ferland”) is the Company’s Chairman of the Board of Directors (the “Board”) and Chief Executive Officer.

14. Defendant Jenny L. Apker (“Apker”) is the Company’s Senior Vice President and Chief Financial Officer.

15. Defendants Ferland and Apker (collectively, the “Individual Defendants”), because of their positions with the Company, possessed the power and authority to control the contents of B&W’s quarterly reports, press releases, and presentations to securities analysts, money and portfolio managers, and investors, *i.e.*, the market. They were provided with copies of the Company’s reports and press releases alleged herein to be misleading prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions with the Company and their access to material information available to them but not to the public, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to and were being concealed from the public and that the positive representations being made were then materially false and misleading. The Individual Defendants are liable for the false statements pleaded herein.

FRAUDULENT SCHEME AND COURSE OF BUSINESS

16. Defendants are liable for: (a) making false statements; or (b) failing to disclose adverse facts known to them about B&W. Defendants’ fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of B&W stock was a success, as it: (a) deceived the investing public regarding B&W’s prospects and business; (b) artificially inflated the price of B&W common stock; and (c) caused plaintiff and other members of the Class, as defined below, to purchase B&W stock at inflated prices and suffer economic loss when the revelations set forth herein reached the market.

CLASS ACTION ALLEGATIONS

17. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased or otherwise acquired B&W stock during the Class Period (the “Class”). Excluded from the Class are defendants and their families; the officers and directors of the Company, at all relevant times; members of their immediate families and their legal representatives, heirs, successors, or assigns; and any entity in which defendants have or had a controlling interest.

18. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. B&W trades on the NYSE and has more than 48 million shares outstanding, owned by hundreds, if not thousands, of persons.

19. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to members of the Class which predominate over questions that may affect individual Class members include:

- (a) whether defendants violated the 1934 Act;
- (b) whether defendants omitted and/or misrepresented material facts;
- (c) whether defendants’ statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- (d) whether defendants knew or recklessly disregarded that their statements were false and misleading;
- (e) whether the price of B&W stock was artificially inflated; and
- (f) the extent of damages sustained by Class members and the appropriate measure of damages.

20. Plaintiff’s claims are typical of those of the Class because plaintiff and the other Class members sustained damages from defendants’ wrongful conduct.

21. Plaintiff will adequately protect the interests of the Class and has retained counsel who are experienced in class action securities litigation. Plaintiff has no interests which conflict with those of the Class.

22. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

**DEFENDANTS' FALSE AND MISLEADING STATEMENTS
AND OMISSIONS**

23. On June 30, 2015, B&W filed its final prospectus as part of its spin-off and on July 1, 2015 it began trading as an independent public company (the "Prospectus"). The Prospectus stated, in part:

New B&W will be a leading technology-based provider of advanced fossil and renewable power generation equipment with a broad suite of boiler products and environmental systems. In addition, we will provide one of the most comprehensive platforms of aftermarket services to a large global installed base of power generation facilities. Finally, we will be a leading provider of technology and services in the growing market for industrial environmental systems. Across all our capabilities, we specialize in engineering, manufacturing, procurement, and erection of equipment and technology across a large and global customer base.

New B&W will operate in three reportable segments: Global Power, Global Services and Industrial Environmental. Through our Global Power segment, we engineer, manufacture, procure, construct and commission steam generating and environmental systems and other related equipment. Through our Global Services segment, we provide a comprehensive mix of aftermarket products and services to support peak efficiency and availability of steam generating and associated environmental and auxiliary equipment. Our global installed base represents more than 300,000 MW of equivalent steam-generating capacity in more than 800 facilities in over 90 countries. We also provide aftermarket services for installed units delivered by other original equipment suppliers. Through our Industrial Environmental segment, we design, engineer and manufacture products including oxidizers, solvent and distillation systems, wet and dry electrostatic precipitators, scrubbers and heat recovery systems. This segment is comprised of the operations of MEGTEC Holdings, Inc. and its subsidiaries ("MEGTEC"), which we acquired on June 20, 2014.

* * *

We have a number of competitive strengths that we believe position us for continued success in our markets. They include:

- **Leading Market Position in the Global Power Generation Market:** We are a proven leader and brand in the design, engineering, manufacture, supply, construction and maintenance of steam generating and environmental control systems for power generation providers worldwide.

24. Further describing the Company's Global Power segment, the Prospectus stated, in part:

Our Global Power segment represents our worldwide new build boiler and environmental products businesses. Through this segment, we engineer, manufacture, procure, construct and commission steam generating and environmental systems and other related equipment. Our boilers are designed for utility and industrial applications, fired with fossil and renewable fuels and include advanced supercritical boilers, subcritical boilers, fluidized bed boilers, biomass-fired boilers, waste-to-energy boilers, chemical recovery boilers, industrial power boilers, package boilers, heat recovery steam generators, waste heat boilers and solar thermal power systems. Our environmental systems offer air pollution control products and related equipment for the treatment of nitrogen oxides, sulfur dioxide, fine particulate, mercury, acid gases and other hazardous air emissions and include wet and dry flue gas desulfurization systems, catalytic and non-catalytic nitrogen oxides reduction systems, low nitrogen oxides burners and overfire air systems, fabric filter baghouses, wet and dry electrostatic precipitators, mercury control systems and dry sorbent injection for acid gas mitigation. Our customers consist of a wide range of utilities, independent power producers and industrial companies globally. This segment's activity is dependent on the capital expenditures and operations and maintenance expenditures of global electric power generating companies and other steam-using industries with environmental compliance needs.

We see opportunities for growth in revenues in this segment relating to a variety of factors including the following:

- emerging international markets needing state-of-the-art technology for fossil power generation and environmental systems;
- a global need for renewable and carbon neutral power applications requiring steam generation and environmental control technologies to enable beneficial use of municipal waste and biomass;
- industrial products such as heat recovery and steam generators, and natural gas and oil fired package boilers due to lower fuel prices; and
- increasing environmental regulation.

Globally, efforts to reduce the environmental impact of burning fossil fuels may create opportunities for us as existing generating capacity is replaced with cleaner technologies. We are actively researching, developing and deploying a range of products to serve this opportunity, including lower-carbon technologies that enable clean use of fossil fuels, such as ultra-supercritical boilers; carbon-neutral technologies, such as biomass-fueled boilers and gasifiers; gas-fired package boiler technologies; and select carbon dioxide capture technologies.

For the three months ended March 31, 2015, we generated revenues of \$123.9 million in this segment. Revenues were approximately 12.3% higher than the \$110.3 million generated for the three months ended March 31, 2014 as a result of higher new build steam generation systems revenues primarily related to recently awarded large boiler projects. For the year ended December 31, 2014, we generated revenues of \$471.9 million in this segment. Revenues were substantially lower than the \$712.5 million generated for the year ended December 31, 2013 as projects related to the

previously enacted environmental rules and regulations neared completion. We expect the growth in backlog since December 31, 2014, which relates primarily to recent international coal boiler and renewable bookings, will provide revenue growth in this segment.

25. On August 4, 2015, the Company issued a news release announcing its second quarter 2015 financial results and affirming its 2015 guidance. The news release stated, in part:

Babcock & Wilcox Enterprises, Inc. (B&W) (NYSE:BW) announced today second quarter 2015 revenues of \$437.5 million, an increase of \$110.1 million, or 33.6%, from the second quarter of 2014. GAAP earnings per share from continuing operations for the second quarter of 2015 were \$0.08 compared to \$0.03 in the second quarter of 2014. Adjusted earnings per share, which excludes the impact of impairment, restructuring and spin-related costs for the quarter, were \$0.27 for the three months ended June 30, 2015 compared to \$0.14 in the prior year period.

“As we begin operations as a stand-alone company, B&W continues to deliver on our strategy and build a solid track record of performance,” said Mr. E. James Ferland, Chairman and Chief Executive Officer. “We are pleased that all three business segments ended the quarter at or above target with a significant increase in revenues in Global Power driven by the new international project awards in line with our growth strategy.”

In addition the Board has authorized a share repurchase program of up to \$100 million over the next two years. “The new program will allow opportunistic share repurchases as part of our broader capital allocation strategy,” continued Mr. Ferland.

Results of Operations

Consolidated revenues for the second quarter of 2015 were \$437.5 million, an increase of 33.6%, compared to \$327.4 million for the second quarter of 2014. The Global Power segment had the largest increase with revenues of \$157.4 million in the quarter, which was a 43.5% increase over the \$109.7 million in revenues in the prior year period driven by an increase in new build steam projects. Revenues in the Global Services segment were \$236.7 million in the three months ending June 30, 2015, versus \$214.1 million in the corresponding period in 2014, an increase of \$22.6 million primarily related to increased activity in service projects and construction. The Industrial Environmental segment contributed \$43.4 million in revenue this period compared to \$3.6 million in the second quarter of 2014 due to the acquisition of MEGTEC on June 20, 2014.

GAAP operating income for the second quarter of 2015 increased \$1.7 million to \$4.9 million compared to \$3.2 million in the prior year period primarily due to increased revenues. GAAP operating income for the second quarter of 2015 also included \$9.0 million of non-cash facility and equipment impairments primarily related to the close-out of a carbon capture and storage research program, as well as \$5.3 million of restructuring costs related to margin improvement and \$0.9 million in spin-related costs. Excluding these charges and a \$1.3 million allocation for the discontinued Nuclear Energy operation that was transferred to BWX Technologies as part of the spin, adjusted operating income increased 71% in the second quarter of 2015 to \$21.4 million, compared to adjusted operating income of \$12.5 million in the second quarter of 2014.

Second quarter 2015 gross profit in the Global Power segment increased \$7.2 million from the same period last year to \$26.7 million, attributable to the increased segment revenues. The Global Services segment reported a gross profit of \$46.3 million in the second quarter of 2015, which was \$2.0 million less than the gross profit of \$48.4 million in the prior year second quarter due to the effects of operations and maintenance activities. Gross profit in the Industrial Environmental segment was \$8.9 million in the second quarter of 2015 as a result of the MEGTEC acquisition.

“With the spin behind us, we will increase our focus on execution of our strategy to improve profitability and grow the company,” continued Mr. Ferland. “We will continue to drive margins, expand globally and look for smart acquisitions. We have teams working each of the three elements of our strategy while our day-to-day operations work to exceed customer expectations.”

26. On August 4, 2015, the Company filed with the SEC its quarterly report on Form 10-Q for the period ended June 30, 2015. The quarterly report reiterated the financial results from the August 4, 2015 news release and included Sarbanes-Oxley (“SOX”) certifications signed by Ferland and Apker stating, among other things, that the quarterly report did “not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report.”

27. On November 3, 2015, the Company issued a news release announcing its financial results for the third quarter 2015. The news release stated, in part:

Babcock & Wilcox Enterprises, Inc. (B&W) (NYSE:BW) announced today third quarter 2015 revenues of \$420.0 million, an increase of \$18.0 million, or 4.5%, from the third quarter of 2014. GAAP earnings per share from continuing operations for the third quarter of 2015 were \$0.11 compared to \$0.24 in the third quarter of 2014. Adjusted earnings per share, which excludes the impact of a litigation settlement, spin-related costs and restructuring for the quarter, were \$0.25 for the three months ended September 30, 2015 compared to \$0.33 in the prior year period.

“Third quarter performance met our internal targets, as a strong quarter from Global Power allowed us to overcome a challenging project in Global Services,” said Mr. E. James Ferland, Chairman and Chief Executive Officer. “We continue to expect strong performance in Q4 and we are raising the bottom end of our guidance for adjusted earnings per share by 5 cents to a range of \$1.15 to \$1.30.”

Results of Operations

Consolidated revenues for the third quarter of 2015 were \$420.0 million, an increase of 4.5%, compared to \$402.0 million for the third quarter of 2014. GAAP operating income for the third quarter of 2015 decreased \$15.9 million to \$9.6 million compared to \$25.5 million in the prior year period primarily due to lower profits in Global Services and the inclusion of stand-alone costs. GAAP operating

income for the third quarter of 2015 also included a \$9.6 million charge comprised of \$7.8 million of non-cash revenue reversal plus \$1.8 million of legal costs related to the litigation settlement for Berlin Station, in addition to \$1.6 million in spin-related costs and \$1.1 million of restructuring costs. Adjusted operating income in the third quarter of 2015 was \$21.9 million, a decrease of \$10.4 million compared to adjusted operating income of \$32.3 million in the third quarter of 2014 primarily due to a loss accrual on a construction services project and increased overhead costs due to running a stand-alone company. Adjusted operating income for the nine months ended September 30, 2015, increased 23.5% compared to the prior year period.

Third quarter 2015 revenues for the Global Power segment increased 29.1% to \$160.0 million in the quarter compared to \$123.9 million in revenues in the prior year period driven by an increase in new build steam projects that was partially offset by a decline in new build environmental projects. Gross profit in the Global Power segment was \$25.8 million, compared to \$29.7 million for the same period in 2014. Without the Berlin settlement, gross profit in Global Power was up for the quarter compared to the third quarter 2014.

“Although we remained confident in our case, by settling the Berlin Station litigation, we avoided potential draws on our letters of credit, significant management distraction and the inherent uncertainty of collecting on any favorable court decisions years in the future,” Mr. Ferland said.

* * *

“We continued to execute our strategy to drive shareholder value through revenue growth and margin improvement in the core businesses in the quarter,” Mr. Ferland said. “We are also making progress on our plans to grow the business through value-added acquisitions and the number of M&A opportunities that we are evaluating continues to rise.”

28. On November 3, 2015, the Company filed with the SEC its quarterly report on Form 10-Q for the period ended September 30, 2015. The quarterly report reiterated the financial results from the November 3, 2015 news release and included SOX certifications signed by Ferland and Apker.

29. On February 25, 2016, the Company issued a news release announcing its financial results for the fourth quarter 2015, as well as guidance for 2016. The news release stated, in part:

Babcock & Wilcox Enterprises, Inc. (B&W) (NYSE:BW) announced today fourth quarter 2015 revenues of \$502.7 million, an increase of \$58.1 million, or 13.1%, from the fourth quarter of 2014. GAAP earnings per share for the fourth quarter of 2015 were a loss of \$0.10 compared to a loss of \$0.90 in the fourth quarter of 2014. Adjusted earnings per share were \$0.47 for the three months ended December 31, 2015 compared to \$0.66 in the prior year period. Adjusted earnings per share excludes the impact of non-cash mark-to-market adjustments for pension and other post-retirement benefits, impairments, restructuring and other costs as shown in Exhibit 1.

“B&W ended the year with a strong quarter led by the continued growth in Global Power,” said Mr. E. James Ferland, Chairman and Chief Executive Officer. “Revenue, gross profit, operating income and free cash flow were all improved in the quarter compared to the prior year fourth quarter, providing a strong finish to a solid year.”

* * *

Full Year 2016 Outlook

2016 will be B&W’s first full year as a stand-alone company. Guidance for key financial benchmarks in 2016 includes:

Revenue is expected to increase to \$1.8 billion based on mid-single digit growth in our Global Power and Industrial Environmental business units while Global Services is expected to remain flat;

Full year adjusted EPS in the range of \$1.25 to \$1.45;

Adjusted tax rate for 2016 is expected to be in the range of 31%-33%;

Earnings are expected to start low in the first quarter and improve through the year due to project timing;

EPS estimates exclude any mark-to-market adjustment for pension and post-retirement benefits or restructuring charges;

Free cash flow conversion is expected to be between 75% and 100% of net income; and

This guidance does not include incremental benefit from acquisitions or additional share repurchases beyond our initial share repurchase program that is expected to conclude by the end of the first quarter 2016.

“Through a combination of revenue growth driven by our strong backlog and robust bid pipeline, continued margin improvement and share buybacks through February 2016, we are projecting 12% adjusted EPS growth in 2016, relative to our original adjusted EPS guidance for 2015,” continued Ferland.” This guidance reflects some pressure on merchant utility spending from continued low natural gas prices, foreign exchange headwinds and a challenging global industrial market. We are confident that we will provide meaningful growth to our core business in 2016, while continuing to leverage our strong balance sheet to pursue acquisitions and/or additional share repurchases.”

30. On February 25, 2016, the Company filed with the SEC its annual report on Form 10-K for the year ended December 31, 2015. The annual report reiterated the financial results from the February 25, 2016 news release and included SOX certifications signed by Ferland and Apker.

31. On May 10, 2016, the Company issued a news release announcing its financial results for the first quarter 2016. The news release stated, in part:

Babcock & Wilcox Enterprises, Inc. (B&W) (NYSE:BW) announced today first quarter 2016 revenues of \$404.1 million, an increase of \$7.0 million, or 1.8%, from the first quarter of 2015. GAAP earnings per share for the first quarter of 2016 were \$0.20 compared to \$0.21 in the first quarter of 2015. Adjusted earnings per share, which excludes the impact of spin-off transaction costs and restructuring for the quarter, were \$0.27 for the three months ended March 31, 2016 compared to \$0.26 in the prior year period.

“First quarter performance exceeded our internal projections and provided a solid start to 2016,” said Mr. E. James Ferland, Chairman and Chief Executive Officer. “Strong performance in Global Power is expected to offset challenges in Industrial Environmental throughout the year as the soft climate for U.S. industrial markets persists in the near-term. We are reaffirming our 2016 guidance range of \$1.25 to \$1.45 adjusted EPS.”

Results of Operations

Consolidated revenues for the first quarter of 2016 were \$404.1 million, an increase of 1.8%, compared to \$397.2 million for the first quarter of 2015 due to increased revenues in Global Power and Global Services more than offsetting a decrease in Industrial Environmental revenues. GAAP operating income for the first quarter of 2016 and 2015 was \$17.3 million in both years even with approximately \$3.0 million of additional costs as a stand-alone company in the 2016 period. In the first quarter 2016, strong performance in Global Power and improved equity income from our Asian joint ventures offset an unfavorable revenue mix in Global Services and slower sales in Industrial Environmental. Adjusted operating income in the first quarter of 2016 was \$21.3 million, an increase of \$0.2 million, compared to adjusted operating income of \$21.1 million in the first quarter of 2015.

First quarter 2016 revenues for the Global Power segment increased 5.3% to \$130.5 million in the quarter compared to \$123.9 million in revenues in the prior year period driven by an increase in new build steam projects that was partially offset by a decline in new build environmental projects. Gross profit in the Global Power segment was \$24.4 million, a 19.3% increase compared to \$20.4 million for the same period in 2015 due to increased volume and a higher amount of net project improvements from favorable milestone achievements.

32. On May 10, 2016, the Company filed with the SEC its quarterly report on Form 10-Q for the period ended March 31, 2016. The 10-Q reiterated the financial results in the May 10, 2016 news release and contained SOX certifications signed by Ferland and Apker.

33. On June 28, 2016, the Company issued a news release announcing a restructuring of B&W’s traditional power business, revealing problems with a project in the Company’s European renewable business, and updating the Company’s guidance for 2016. The news release stated, in part:

Babcock & Wilcox Enterprises, Inc. (B&W) (NYSE:BW) today announced actions to proactively restructure its traditional power business in advance of a lower projection for U.S. coal generation and has updated guidance for 2016 to reflect:

- The net impact of the restructuring and decreased coal-related revenue in the second half of 2016.
- A charge to correct an engineering design error on a new build renewable energy plant in Europe. The resulting re-engineering, on-site rework and delivery delay will result in a \$32 million pretax charge in the quarter and a full-year (\$0.51) EPS impact.
- The shift of \$38 million in 2016 expected revenue from a Canadian oil sands project that was delayed due to the impact of the Fort McMurray fires.

Revised earnings guidance for adjusted EPS is now \$0.63 to \$0.83, primarily due to the effects of the renewable energy project and the timing shift of the Canadian oil sands project. The restructuring savings largely offset the impact of expected lower coal-related revenue. Revenue guidance remains unchanged at \$1.8 billion as the incremental revenue from the SPIG acquisition, which is anticipated to close early in Q3, is expected to approximately offset the other revenue impacts. B&W will webcast a discussion of this announcement on Tuesday, June 28, 2016 at 9:00 a.m. ET.

Traditional Power Business Restructuring

B&W is restructuring its traditional power business that serves coal-fired power generation to reduce overhead and improve efficiency in response to projections that coal utilization, particularly in the U.S., will decline faster than previously forecast. The new organizational structure includes a redesign of workflow for its North American-based coal power generation resources to provide an effective, flexible organization that can adapt to the changing market conditions.

As part of these changes, B&W will eliminate over 200 positions in North America immediately and undertake other cost-savings measures across the enterprise. The company also expects additional facility consolidations in the coming year. Severance expenses and other costs over the next 12 months will be approximately \$55 to \$60 million, of which approximately \$30 million are non-cash and include the write-down of B&W's one coal power plant and deferred tax assets related to the India manufacturing joint venture and various state net operating loss carryforwards. These savings are expected to allow the coal business to hold gross margins constant in the coming years despite the expected decline in volume.

B&W is consolidating aftermarket and global new build activities for coal-fired generation into one segment that will be led by Mark Low, Senior Vice President of the new Power segment. All renewable energy projects, including the B&W Vølund subsidiary, will be consolidated into another segment, led by Paul Scavuzzo, Senior Vice President of the new Renewable segment. This new structure will allow for a Power segment focus on efficiency and support for our traditional customer base while the Renewable segment focuses solely on renewable project execution and worldwide growth.

“We have reduced the size of our organization that supports the coal market by roughly 20% and restructured how we support this market,” said E. James Ferland, Chairman and Chief Executive Officer. “These changes will allow us to continue to provide outstanding service to our customers and maintain solid profit margins in our power business despite an expected 15-20% reduction in U.S coal customers’ demand for our parts and services by 2017 or 2018.”

European Renewable Energy Project

During construction, B&W self-discovered a deficiency in the piping design of one of our renewable waste to energy projects. The correction requires engineering and then physical rework. B&W is working closely with our customer to minimize any delays and ensure the delivery of a high-quality facility that meets or exceeds all performance guarantees. “Our B&W Vølund subsidiary has completed 25 projects in the last ten years,” said Ferland. “Of those projects, 23 out of 25 were profitable, and significant project improvements were achieved due to good execution. We believe this is an isolated issue and have performed reviews to ensure this piping design issue is not present in the other projects.”

Overall Strategy

“B&W remains focused on executing our strategy,” continued Ferland. “We are taking early action to ensure the coal-related business remains profitable in a challenging market while we grow our renewable energy business and diversify our portfolio through acquisition. We expect to close the SPIG acquisition early in the third quarter and continue to believe the revenue synergies for our combined businesses will provide significant upside. In addition, we plan to leverage our strong balance sheet and focus on diversification which we believe will provide increased value for our investors.”

34. In response to B&W’s announcement that it was restructuring its traditional power business and encountering engineering errors in a European Renewable energy project, as well as significantly reducing its guidance for 2016, the price of B&W stock dropped rapidly. After closing at \$18.94 per share on June 27, 2016, the price of B&W stock dropped 21% to close at \$14.92 per share on June 28, 2016, on elevated trading volume.

35. On August 9, 2016, the Company issued a news release announcing its financial results for the second quarter 2016. The news release stated, in part:

Babcock & Wilcox Enterprises, Inc. (B&W) (NYSE:BW) announced today second quarter 2016 revenues of \$383.2 million, a decrease of \$54.3 million, or 12%, compared to the second quarter of 2015. The GAAP loss per share for the second quarter of 2016 was \$(1.25) compared to earnings per share of \$0.08 for the second quarter of 2015. Our adjusted loss per share, which excludes non-cash mark-to-market adjustments for pension and other post-retirement benefits as well as the impacts of restructuring activities, acquisition and integration costs, and spin-off transaction costs, was \$(0.20) for the three months ended June 30, 2016 compared to adjusted earnings per share of \$0.27 in the prior year period.

“Although the previously announced isolated issue on a European renewable energy contract is weighing on this quarter’s adjusted results, our recent acquisition, continued focus on international market development, and proactive restructuring of the U.S. power business have set us up for much improved results in 2017,” said Mr. E. James Ferland, Chairman and Chief Executive Officer.

Results of Operations

Consolidated revenues for the second quarter of 2016 were \$383.2 million, a decrease of 12%, compared to \$437.5 million for the second quarter of 2015, due primarily to \$26.4 million lower revenue related to a change in the estimated cost to complete a European renewable energy contract and decreases in volumes in our Global Services and Industrial Environmental segments. The GAAP operating loss for the second quarter of 2016 was \$72.6 million as compared to operating income of \$4.9 million in the second quarter of 2015. The decrease was driven by a \$31.7 million change in the estimated cost to complete a European renewable energy contract, a \$29.9 million non-cash mark-to-market adjustment for pension and other post-retirements benefits and \$31.6 million of restructuring activity and spin-off transaction costs. The adjusted operating loss in the second quarter of 2016 was \$9.1 million, a decrease of \$30.5 million compared to adjusted operating income of \$21.4 million in the second quarter of 2015, which is primarily related to a charge on a European renewable energy contract.

Second quarter 2016 revenues for the Global Power segment decreased 19% to \$127.2 million in the quarter compared to \$157.4 million in revenues in the prior year period. Gross profit (loss) in the Global Power segment was \$(9.1) million, compared to \$26.7 million in the prior year period. Both changes were primarily due to a charge on a European renewable energy contract.

* * *

2016 Outlook

The Company reaffirms its revenue guidance of \$1.8 billion and adjusted EPS guidance of \$0.63 to \$0.83. Adjusted EPS excludes mark-to-market adjustments for pension and other post-retirement benefits as well as the impact of restructuring activities, acquisition and integration costs, and spin-off transaction costs. As more fully described in Exhibit 1, Management is unable to reconcile without unreasonable effort the Company's forecasted range of adjusted EPS for the full year to a comparable GAAP range.

36. On August 9, 2016, the Company filed with the SEC its quarterly report on Form 10-Q for the period ended June 30, 2016. The 10-Q reiterated the financial results in the August 9, 2016 news release and contained SOX certifications signed by Ferland and Apker.

37. On November 2, 2016, the Company issued a news release announcing its third quarter 2016 financial results. The release stated, in part:

Babcock & Wilcox Enterprises, Inc. (B&W) (NYSE:BW) announced today third quarter 2016 revenues of \$411.0 million, a decrease of \$9.0 million, or 2.1%, compared to the third quarter of 2015. The GAAP earnings per share for the third quarter of 2016 was \$0.18 compared to earnings per share of \$0.11 for the third quarter of 2015. Our adjusted earnings per share, which excludes restructuring activities, acquisition and integration costs, non-cash mark-to-market adjustments for pension and other post-retirement benefits, and spin-off transaction costs, was \$0.24 for the three months ended September 30, 2016 compared to adjusted earnings per share of \$0.25 in the prior year period.

“We remain on track to achieve our forecasted results in 2016 despite some reluctance on the part of our power customers to invest, and continue to expect strength moving into 2017 as we remain focused on revenue diversification, margin improvement and excellence in project execution,” said Mr. E. James Ferland, Chairman and Chief Executive Officer.

* * *

Consolidated revenues for the third quarter of 2016 were \$411.0 million, a decrease of \$9.0 million, compared to \$420.0 million for the third quarter of 2015, due primarily to decreased volume in our Power segment partially offset by an increase in revenues from our Renewable segment and contributions from newly acquired B&W SPIG within our Industrial segment. The GAAP operating income for the third quarter of 2016 was \$11.1 million as compared to operating income of \$9.6 million in the third quarter of 2015. The adjusted operating income in the third quarter of 2016 was \$15.0 million, a decrease of \$6.9 million compared to adjusted operating income of \$21.9 million in the third quarter of 2015, due to lower volume in our Power segment and accelerated intangible amortization expense related to the acquisition of B&W SPIG, partially offset by higher gross profit margin in the Power segment and reductions in overhead costs.

Third quarter 2016 revenues for the Power segment decreased 29% to \$209.8 million compared to \$294.2 million in revenues in the prior year period. Revenues decreased as a result of lower oil sands work in Canada and lower power plant retrofit activity. Gross profit in the Power segment in the third quarter 2016 was \$48.9 million, compared to \$47.6 million in the prior year period. Gross profit margin improved year over year as a result of good project performance and benefits from our restructuring activities in the third quarter of 2016, while a litigation settlement and a contract loss impacted the third quarter of 2015.

Revenues in the Renewable segment were \$124.3 million for the third quarter of 2016, versus \$86.9 million in the corresponding period in 2015, an increase of \$37.4 million driven by an increased level of activity on our renewable energy contracts compared to the prior year. The Renewable segment gross profit of \$18.6 million in the third quarter of 2016 was \$1.1 million higher than the \$17.5 million gross profit reported in the prior year third quarter due to the increased volume. “We would normally expect higher gross margin from our Renewable segment, but in the short term we continue to recognize revenue from our challenged European renewable contract at zero gross profit margin,” said Ferland. “During the third quarter, the net estimated costs to complete the project improved by \$1.0 million with site productivity related cost increases more than offset by a probable project related insurance recovery. Ramp down of construction activities on the site is underway, and will continue into early 2017 as we complete key milestones on this project.”

* * *

Revenue guidance for 2016 is reduced from \$1.8 billion to \$1.7 billion due to challenging Industrial and Power markets. The Company reaffirms adjusted EPS guidance of \$0.63 to \$0.83. Adjusted EPS excludes restructuring activities, acquisition and integration costs, non-cash mark-to-market adjustments for pension and other post-retirement benefits, and spin-off transaction costs. As more fully described in Exhibit 1, Management is unable to reconcile without unreasonable

effort the Company's forecasted range of adjusted EPS for the full year to a comparable GAAP range.

38. On November 2, 2016, the Company filed with the SEC its quarterly report on Form 10-Q for the period ended September 30, 2016. The 10-Q reiterated the financial results in the November 2, 2016 news release and contained SOX certifications signed by Ferland and Apker.

39. On February 28, 2017, the Company issued a news release announcing its fourth quarter 2016 financial results and provided guidance for 2017. The release stated, in part:

Babcock & Wilcox Enterprises, Inc. (B&W) (NYSE:BW) announced today fourth quarter 2016 revenues of \$380.0 million, a decrease of \$122.7 million, or 24.4%, compared to the fourth quarter of 2015. GAAP earnings per share for the fourth quarter of 2016 were a loss of \$1.47 compared to a loss per share of \$0.10 for the fourth quarter of 2015. Adjusted earnings per share, which exclude the gain on sale of an equity method investment, non-cash mark-to-market adjustments for pension and other post-retirement benefits, acquisition and integration costs, litigation charges, restructuring activities, and spin-off transaction costs, were a loss of \$1.60 for the three months ended December 31, 2016 compared to adjusted earnings per share of \$0.47 in the prior year period.

“During our 18 months as an independent company, we have made significant progress realigning the business and executing on our strategic goals. In 2016, we focused on enhancing the profitability of our Power business and increasing revenue diversification by driving the growth of our Industrial and Renewable businesses. Through the restructuring of our Power business, we have created a leaner, more flexible organization that is better positioned to compete in the market. In our Industrial segment, we have made key acquisitions to build the business and grow our B&W-wide non-coal revenue to greater than 50% of our total revenues in 2016,” said Mr. E. James Ferland, Chairman and Chief Executive Officer. “Productivity and schedule issues in our Renewable segment, however, significantly impacted our results in the fourth quarter and for the full year. We have taken specific actions to address these issues, and to enhance the resources and infrastructure of the Renewable segment, better enabling it to profitably capture long-term market opportunities. We are confident in our strategy and believe that the Company is well positioned to create long-term value for shareholders.”

Results of Operations

Consolidated revenues for the fourth quarter of 2016 were \$380.0 million, a decrease of \$122.7 million, compared to \$502.7 million for the fourth quarter of 2015, due primarily to decreased volume in the Power segment, in line with revised expectations, and setbacks in Renewable projects, partially offset by an increase in revenues in the Industrial segment. The GAAP operating loss for the fourth quarter of 2016 was \$58.6 million as compared to an operating loss of \$10.0 million in the fourth quarter of 2015. The adjusted operating loss in the fourth quarter of 2016 was \$65.0 million, a decrease of \$104.5 million compared to adjusted operating income of \$39.5 million in the fourth quarter of 2015, due mainly to charges on contracts within our Renewable segment.

Power Segment Results

Fourth quarter 2016 revenues for the Power segment decreased 33.3% to \$218.1 million compared to \$327.1 million in revenues in the prior year period. Revenues decreased as a result of lower activity in retrofits, new build utility and environmental work and industrial steam generation, which was in line with revised expectations and the proactive restructuring plan. Gross profit in the Power segment in the fourth quarter 2016 was \$62.6 million, compared to \$71.4 million in the prior year period. As a result of the restructuring as well as good contract performance, gross profit margin improved year over year.

* * *

Renewable Segment Results

Revenues in the Renewable segment were \$55.6 million for the fourth quarter of 2016, versus \$115.2 million in the corresponding period in 2015, a decrease of \$59.7 million driven by the increased costs to complete and lengthened schedule on several contracts. The Renewable segment has grown significantly over the past two years and resources used to address previously disclosed issues at one project led to productivity and scheduling issues at others. The Company appointed a new management team and is taking actions to address these issues, including investing in enhanced engineering and project management capabilities and infrastructure. The Renewable segment gross loss of \$82.6 million in the fourth quarter of 2016 was \$103.7 million lower than the \$21.1 million gross profit reported in the prior year fourth quarter due to losses on the Renewable contracts.

Liquidity

The Company's cash and cash equivalents balance, net of restricted cash, increased during the fourth quarter to \$95.9 million at the end of 2016, which was mainly driven by strong cash flows from operations in the quarter. The outstanding balances under revolving credit facilities totaled \$24.0 million as of December 31, 2016. Because of the challenges in the Renewable segment, the Company expects to use a significant amount of cash during 2017. The Company recently amended its credit facility to allow for continued access and capacity to meet liquidity and letter of credit needs.

Full Year 2017 Outlook

Revenue is expected to increase from \$1.6 billion in 2016 to \$1.8 billion in 2017.

Full year adjusted EPS is expected to be in the range of \$0.75 to \$0.95. Adjusted EPS excludes intangible asset amortization expense, restructuring expenses, acquisition and integration costs, non-cash mark-to-market adjustments for pension and other post-retirement benefits and spin-off transaction costs. The reduction in the previously discussed EPS guidance range includes approximately \$0.60 of impacts from Renewable projects and related interest expense from credit facility usage.

The adjusted tax rate for 2017 is expected to be in the range of 32% to 34%.

As more fully described in Exhibit 1, management is unable to reconcile without unreasonable effort the Company's forecasted range of adjusted EPS for the full year to a comparable GAAP range.

40. On February 28, 2017, the Company also filed with the SEC its annual report on Form 10-K for the year ended December 31, 2016, which was signed by Ferland and Apker, and contained SOX certifications signed by each of them. The annual report reiterated the financial results stated in the February 28, 2017 news release.

41. The market's reaction to the Company's after-market release on February 28, 2017 was swift and severe. After closing at \$16.50 per share on February 28, 2017, the stock opened at \$11.09 on March 1, 2017 and ultimately dropped 37% to close at \$10.33 per share on abnormally high trading volume of 7.9 million shares traded.

42. Market analysts responded negatively as well. For example:

(a) Credit Suisse lowered its price target for B&W to \$10 from \$16, pointing to the Company's financial results, which were negatively impacted by cost overruns on projects within its Renewable segment;

(b) KeyBanc Capital Markets downgraded B&W to "sector weight" from "overweight";

(c) Sidoti & Company LLC downgraded its recommendation from "buy" to "neutral" and lowered its price target on the Company from \$25 to \$11 per share; and

(d) Alembic Global Advisors downgraded its rating of B&W stock to "[n]eutral" from "[o]verweight."

43. The true facts, which were known by defendants but concealed from the investing public during the Class Period, were as follows:

(a) defendants' Class Period statements omitted disclosure of key aspects of the Company's business, including productivity and scheduling issues in the Company's Renewable business;

(b) the undisclosed problems in the Company's Renewable business were impacting B&W's costs to complete projects, resulting in decreased profit margins and worsening financial performance;

(c) the Company's Renewable business suffered from problematic on-site project management and a lack of resources in engineering and project management groups, which resulted in overly aggressive project bidding, project delays, and engineering errors;

(d) the Company lacked adequate project management processes in its Renewable business, which negatively impacted B&W's performance on key projects from bidding through execution;

(e) as a result of the foregoing, during the Class Period, the Company understated its loss contingencies and costs to complete on projects in its Renewable business, thereby presenting an overly positive view of the Company's financial condition; and

(f) as a result of the foregoing, defendants' statements regarding the Company's outlook and expected financial performance were false and misleading and lacked a reasonable basis when made.

44. As a result of defendants' false statements and material omissions, B&W stock traded at artificially inflated prices during the Class Period. After the above revelations were revealed to the market, however, the price of B&W stock declined significantly as the artificial inflation was removed.

ADDITIONAL SCIENTER ALLEGATIONS

45. As alleged herein, defendants acted with scienter in that they knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading, knew that such statements or documents would be issued or disseminated to the investing public, and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding B&W, their control over and/or receipt and/or modification of allegedly materially misleading misstatements, and/or their associations with the Company, which made them privy to confidential proprietary information concerning B&W, participated in the fraudulent scheme alleged herein.

LOSS CAUSATION/ECONOMIC LOSS

46. During the Class Period, as detailed herein, defendants engaged in a scheme to deceive the market and a course of conduct that artificially inflated the price of B&W stock and operated as a fraud or deceit on Class Period purchasers of B&W stock by failing to disclose and misrepresenting the adverse facts detailed herein. When defendants' prior misrepresentations and fraudulent conduct were disclosed, and the risks concealed by defendants' misrepresentations and omissions materialized and became apparent to the market, the price of B&W stock fell precipitously as the prior artificial inflation came out. As a result of their purchases of B&W stock during the Class Period, plaintiff and the other Class members suffered economic loss, *i.e.*, damages, under the federal securities laws when the truth about B&W was revealed through the disclosures specified herein, which removed the artificial inflation from the price of B&W common stock.

47. By failing to disclose to investors the adverse facts detailed herein, defendants presented a misleading picture of B&W's business and prospects. Defendants' false and misleading statements had the intended effect and caused B&W stock to trade at artificially inflated levels throughout the Class Period.

48. As a direct result of the disclosure and materialization of the risk identified herein, the price of B&W stock fell precipitously. This removed the artificial inflation from the price of B&W stock, causing real economic loss to investors who had purchased B&W stock at artificially inflated prices during the Class Period.

49. The price declines were a direct result of the nature and extent of defendants' fraud being revealed and the risks associated therewith materializing to investors and the market through defendants' disclosures. The timing and magnitude of the price declines in B&W stock negate any inference that the losses suffered by plaintiff and the other Class members were caused by changed market conditions, macroeconomic or industry factors, or Company-specific facts unrelated to defendants' fraudulent conduct. The economic loss, *i.e.*, damages, suffered by plaintiff and the other Class members was a direct result of defendants' fraudulent scheme to artificially inflate the price of B&W stock and the subsequent significant decline in the value of B&W stock when defendants'

prior misrepresentations and other fraudulent conduct were revealed and the risks associated with defendants' fraud materialized.

PRESUMPTION OF RELIANCE

50. At all relevant times, the market for B&W stock was an efficient market for the following reasons, among others:

(a) B&W stock met the requirements for listing and was listed and actively traded on the NYSE, a highly efficient and automated market;

(b) as a regulated issuer, B&W filed periodic public reports with the SEC;

(c) B&W regularly communicated with public investors via established market communication mechanisms, including regular disseminations of press releases on the national circuits of major newswire services and other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

(d) B&W was followed by securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

51. As a result of the foregoing, the market for B&W stock promptly digested current information regarding B&W from all publicly available sources and reflected such information in the price of the stock. Under these circumstances, all purchasers of B&W stock during the Class Period suffered similar injury through their purchase of B&W stock at artificially inflated prices and a presumption of reliance applies under the fraud-on-the-market doctrine.

52. A Class-wide presumption of reliance is also appropriate in this action under the United States Supreme Court's holding in *Affiliated Ute Citizens v. United States*, 406 U.S. 128 (1972), because the Class' claims are grounded on defendants' material omissions. Because this action involves defendants' failure to disclose material adverse information regarding the Company's business operations and financial prospects – information that defendants were obligated to disclose – positive proof of reliance is not a prerequisite to recovery. All that is necessary is that the facts withheld be material in the sense that a reasonable investor might have considered them

important in making investment decisions. Given the importance of defendants' material Class Period omissions, that requirement is satisfied here.

NO SAFE HARBOR

53. The "Safe Harbor" warnings accompanying B&W's reportedly forward-looking statements ("FLS") issued during the Class Period were ineffective to shield those statements from liability. To the extent that projected revenues and earnings were included in the Company's financial reports prepared in accordance with Generally Accepted Accounting Principles, including those filed with the SEC on Form 8-K, they are excluded from the protection of the statutory Safe Harbor. *See* 15 U.S.C. §78u-5(b)(2)(A).

54. Defendants are also liable for any false and misleading FLS pleaded because, at the time each FLS was made, the speaker knew the FLS was false or misleading and the FLS was authorized and/or approved by an executive officer of B&W who knew that the FLS was false. In addition, the FLS were contradicted by existing, undisclosed material facts that were required to be disclosed so that the FLS would not be misleading. Finally, most of the purported Safe Harbor warnings were themselves misleading because they warned of "risks" that had already materialized or failed to provide meaningful disclosures of the relevant risks.

COUNT I

For Violations of §10(b) of the 1934 Act and Rule 10b-5 Against All Defendants

55. Plaintiff incorporates ¶¶1-54 by reference.

56. During the Class Period, defendants disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

57. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

- (a) employed devices, schemes, and artifices to defraud;

(b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) engaged in acts, practices, and a course of business that operated as a fraud or deceit upon plaintiff and the other Class members in connection with their purchases of B&W stock during the Class Period.

58. In addition to the duties of full disclosure imposed on defendants as a result of their affirmative false and misleading statements to the public, defendants had a duty to promptly disseminate truthful information with respect to B&W's operations and performance that would be material to investors in compliance with the integrated disclosure provisions of the SEC, including with respect to the Company's revenue and earnings trends, so that the market price of the Company's stock would be based on truthful, complete, and accurate information. SEC Regulations S-X (17 C.F.R. §210.01, *et seq.*) and S-K (17 C.F.R. §229.10, *et seq.*).

59. As a direct and proximate result of defendants' wrongful conduct, plaintiff and the other Class members have suffered damages in connection with their respective purchases and sales of B&W stock during the Class Period, because, in reliance on the integrity of the market, they paid artificially inflated prices for B&W stock and experienced losses when the artificial inflation was released from B&W stock as a result of the revelations and risk materializations, and the stock price decline detailed herein. Plaintiff and the other Class members would not have purchased B&W stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' misleading statements and omissions.

60. By virtue of the foregoing, B&W and the Individual Defendants have each violated §10(b) of the 1934 Act, and Rule 10b-5 promulgated thereunder.

COUNT II

For Violations of §20(a) of the 1934 Act Against All Defendants

61. Plaintiff incorporates ¶¶1-54 by reference.

62. The Individual Defendants acted as controlling persons of B&W within the meaning of §20(a) of the 1934 Act. By reason of their controlling positions with the Company, and their ownership of B&W common stock, the Individual Defendants had the power and authority to cause B&W to engage in the wrongful conduct complained of herein. B&W controlled the Individual Defendants and all of its employees. By reason of such conduct, the Individual Defendants are liable pursuant to §20(a) of the 1934 Act.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment as follows:

- A. Declaring that this action is a proper class action, designating plaintiff as Lead Plaintiff, certifying plaintiff as a Class representative under Rule 23 of the Federal Rules of Civil Procedure, and designating plaintiff's counsel as Lead Counsel;
- B. Awarding compensatory damages in favor of plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- C. Awarding plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- D. Awarding such equitable, injunctive, or other relief as deemed appropriate by the Court.

JURY DEMAND

Plaintiff demands a trial by jury.