

**IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF NORTH CAROLINA**  
No. \_\_\_\_\_-cv-\_\_\_\_\_

Daniel Hegeman, Individually and on Behalf of  
All Others Similarly Situated,

Plaintiff,

v.

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

Defendants.

CLASS ACTION

**COMPLAINT FOR VIOLATIONS OF THE  
FEDERAL SECURITIES LAWS**

JURY TRIAL DEMANDED

Plaintiff Daniel Hegeman (“Plaintiff”), individually and on behalf of all other persons similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s Complaint against Defendants (defined below), alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and upon information and belief as to all other matters based on the investigation conducted by and through Plaintiff’s attorneys, which included, among other things, a review of Securities and Exchange Commission (“SEC”) filings by Babcock & Wilcox Enterprises, Inc. (“Babcock & Wilcox”, “B&W”, “BW” or the “Company”), as well as media and analyst reports about the Company. 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 a class consisting of all persons and entities, other than Defendants and their affiliates, who purchased or otherwise acquired the securities of Babcock & Wilcox from July 1, 2015 through February 28, 2017, both dates inclusive (“Class Period”), seeking to recover compensable damages caused by Defendants’ violations of

federal securities laws and pursue remedies under the Securities Exchange Act of 1934 (the “Exchange Act”).

2. Established in 1867, Babcock & Wilcox is a specialized in advanced energy and environmental technologies and services for the power and industrial markets, with operations, subsidiaries and joint ventures worldwide.

3. Throughout the Class Period, Defendants made false and/or misleading statements, and failed to disclose material adverse facts Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (1) the issues with the Company’s European renewable contract, including the issues it caused with productivity and schedule issues in other Renewable segment projects; (2) the effect these issues would have on the Company’s financials and the Company’s ability to meet its guidance; and (3) as a result of the foregoing, the Company’s financial and business prospects were materially false and misleading at all relevant times.

4. As the truth was revealed, the stock price declined from \$16.50 per share of the Company stock on February 28, 2017, to close at \$10.33 per share on March 1, 2017, a drop of \$6.77, or approximately 39%.

5. As a result of Defendants’ wrongful actus and omissions, and the precipitous decline in the market value of the Company’s securities, Plaintiff and other Class members have suffered significant losses and damages.

### **JURISDICTION AND VENUE**

6. The federal law claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

7. This Court has jurisdiction over the subject matter of this action pursuant to

28 U.S.C. § 1331, Section 27 of the Securities Act (15 U.S.C. §78aa.). This Court has jurisdiction over each Defendant named herein because each Defendant is an individual who has sufficient minimum contacts with this District so as to render the exercise of jurisdiction by the District Court permissible under traditional notions of fair play and substantial justice.

8. Venue is proper in this District pursuant to Section 27 of the Exchange Act, and 28 U.S.C. § 1391(b) because certain of the acts alleged herein, including the preparation and dissemination of material false and/or misleading information, occurred in this District.

### **PARTIES**

9. Plaintiff purchased Babcock & Wilcox securities within the Class Period and, as a result, was damaged thereby. Plaintiff's certification evidencing his transactions is attached hereto as Exhibit A.

10. Defendant Babcock & Wilcox is a Delaware corporation that is headquartered at 13024 Ballantyne Corporate Place, Suite 700, Charlotte, NC 28277. Babcock & Wilcox provides energy and environmental technologies and services for the power and industrial markets worldwide. Babcock & Wilcox securities trade on the New York Stock Exchange ("NYSE") under the ticker symbol "BW."

11. Defendant E. James Ferland ("Ferland") has been the Company's Chairman and Chief Executive Officer ("CEO") throughout the Class Period.

12. Defendant Jenny L. Apker ("Apker") has been the Company's Chief Financial Officer and Senior Vice President throughout the Class Period.

13. Defendants in paragraphs 11-12 are collectively referred to herein as the "Individual Defendants."

14. Each of the Individual Defendants:

- (a) directly participated in the management of the Company;
- (b) was directly involved in the day-to-day operations of the Company at the highest levels;
- (c) was directly or indirectly involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein;
- (d) was directly or indirectly involved in the oversight or implementation of the Company's internal controls;
- (e) was aware of or deliberately recklessly disregarded the fact that the false and misleading statements were being issued concerning the Company; and/or
- (f) approved or ratified these statements in violation of the federal securities laws.

15. Because of the Individual Defendants' positions within the Company, they had access to undisclosed information about Babcock & Wilcox's business, operations, operational trends, financial statements, markets and present and future business prospects via access to internal corporate documents (including the Company's operating plans, budgets and forecasts and reports of actual operations and performance), conversations and connections with other corporate officers and employees, attendance at management and Board meetings and committees thereof and via reports and other information provided to them in connection therewith.

16. As officers of a publicly-held company whose securities were, and are, registered with the SEC pursuant to the federal securities laws of the United States, the Individual Defendants each had a duty to disseminate prompt, accurate and truthful information with respect to the

Company's financial condition and performance, growth, operations, financial statements, business, markets, management, earnings and present and future business prospects, and to correct any previously-issued statements that had become materially misleading or untrue, so that the market price of the Company's publicly-traded securities would be based upon truthful and accurate information. The Individual Defendants' misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

17. The Individual Defendants, because of their positions with the Company, possessed the power and authority to control the contents of Babcock & Wilcox's reports to the SEC, press releases, and presentations to securities analysts, money and portfolio managers, and institutional investors, *i.e.*, the market. Each Individual Defendant was 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 and access to material non-public information available to them, each of these 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 which were being made were then materially false and/or misleading. The Individual Defendants are liable for the false statements pleaded herein, as those statements were each "group-published" information, the result of the collective actions of the Individual Defendants.

18. Each of the Individual Defendants are liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Babcock & Wilcox securities by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme: (i) deceived the investing public regarding Babcock & Wilcox's business, operations, management and the intrinsic value of its securities and (ii) caused Plaintiff

and other shareholders to purchase Babcock & Wilcox securities at artificially inflated prices.

## **SUBSTANTIVE ALLEGATIONS**

### **A. Company Background**

19. Babcock & Wilcox was founded in 1867 and provides energy and environmental technologies and services for the power and industrial markets worldwide. On July 1, 2015, B&W began trading independently as a public company after being spun off from The Babcock & Wilcox Company.

20. The Company operates in three reportable segments: Power, Renewable, and Industrial. Prior to a corporate reorganization on June 28, 2016, the Company's Renewable segment was included within the Company's Global Power segment.

21. The Global Power segment engineers, manufactures, procures, constructs, and commissions steam generating and environmental systems, and other related equipment. Its products comprise boilers for utility and industrial applications, including advanced subcritical, fluidized bed, biomass-fired, waste-to-energy, chemical recovery, industrial power, package, and waste heat boilers, as well as heat recovery steam generators. This segment also offers air pollution control systems and related equipment, and 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 migration.

22. The Global Services segment provides a range of aftermarket products and services, such as replacement parts, field technical services, retrofit and upgrade projects, fuel switching and repowering projects, construction and maintenance services, start-up and commissioning,

training programs, and plant operations and maintenance for utilities, independent power producers, and industrial companies.

23. The Industrial Environmental segment designs, engineers, and manufactures oxidizers, solvent and distillation systems, wet and dry electrostatic precipitators, fabric filter baghouses, scrubbers, and heat recovery systems; and specialized industrial process systems, coating lines, and equipment. This segment serves chemical, pharmaceutical, energy storage, packaging, and automotive markets. 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.

**B. Material Misstatements and Omissions during the Class Period**

24. On June 30, 2015, B&W filed its final prospectus as part of its spin-off and on July 1, 2015, the start of the Class Period, 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.

\* \* \*

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 press release also attached as Exhibit 99.1 to a Form 8-K filed with the SEC (“August 4, 2015 Press Release”) announcing its Second Quarter 2015 financial results and affirming its 2015 guidance. The August 4, 2015 Press Release stated the following in relevant part:

CHARLOTTE, N.C.--(BUSINESS WIRE)--August 4, 2015--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.

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 press release also attached as Exhibit 99.1 to a Form 8-K filed with the SEC (“November 3, 2015 Press Release”) announcing its Third Quarter 2015 financial results. The November 3, 2015 Press Release stated the following in relevant part:

(CHARLOTTE, N.C. – November 3, 2015) – 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 \$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.

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“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 press release also attached as Exhibit 99.1 to a Form 8-K filed with the SEC (“February 25, 2016 Press Release”) announcing strong

Fourth Quarter 2015 results as well as providing the Full Year 2016 Outlook. The February 25, 2016 Press Release stated the following with regards to the outlook for 2016:

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.

\* \* \*

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 units while Global Services is expected to remain flat;
- Full year adjusted EPS in the range of \$1.25 to \$1.45;
- Earnings are expected to start low in the first quarter and improve through the year due to project timing

“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. The same day, Babcock & Wilcox filed a Form 10-K with the SEC announcing the Company's financial and operating results for the fiscal year ended December 31, 2015 (“2015 10-K”), which was signed and certified under the Sarbanes Oxley Act of 2002 by the Individual Defendants. Throughout the 2015 10-K the Company reapproved the previous statements.

31. On May 10, 2016, the Company issued a press release also attached as Exhibit 99.1 to a Form 8-K filed with the SEC ("May 10, 2016 Press Release") announcing solid First Quarter 2016 results. The May 10, 2016 Press Release stated the following with regards to the First Quarter 2016 results:

(CHARLOTTE, N.C. – May 10, 2016) – 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. The same day, Babcock & Wilcox filed a Form 10-Q with the SEC announcing the Company's financial and operating results for the first fiscal quarter ended March 31, 2016 ("Q1 2016 10-Q"), which was signed and certified under the Sarbanes Oxley Act of 2002 by the Individual Defendants. Throughout the Q1 2016 10-Q the Company reapproved the previous statements.

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 press release also attached as Exhibit 99.1 to a Form 8-K filed with the SEC (“August 9, 2016 Press Release”) announcing Second Quarter 2016 results. The August 9, 2016 Press Release stated the following regarding the Second Quarter 2016 results:

(CHARLOTTE, N.C. – August 9, 2016) – 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. The same day, Babcock & Wilcox filed a Form 10-Q with the SEC announcing the Company's financial and operating results for the first fiscal quarter ended June 30, 2016 ("Q2 2016 10-Q"), which was signed and certified under the Sarbanes Oxley Act of 2002 by the Individual Defendants. Throughout the Q2 2016 10-Q the Company reapproved the previous statements.

37. On November 2, 2016, the Company issued a press release also attached as Exhibit 99.1 to a Form 8-K filed with the SEC ("November 2, 2016 Press Release") announcing Third

Quarter 2016 results. The November 2, 2016 Press Release stated the following regarding the

Third Quarter 2016 results:

CHARLOTTE, N.C. – November 2, 2016) – 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. The same day, Babcock & Wilcox filed a Form 10-Q with the SEC announcing the Company’s financial and operating results for the first fiscal quarter ended September 30, 2016 (“Q3 2016 10-Q”), which was signed and certified under the Sarbanes Oxley Act of 2002 by the Individual Defendants. Throughout the Q3 2016 10-Q the Company reapproved the previous statements.

39. The statements in paragraphs 24-38 above were materially false and/or misleading because they misrepresented and failed to disclose the following adverse facts pertaining to the Company’s business, operations, and prospects, which were known to Defendants or recklessly disregarded by them. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (1) the issues with the Company’s European renewable contract, including

the issues it caused with productivity and schedule issues in other Renewable segment projects; (2) the effect these issues would have on the Company's financials and the Company's ability to meet its guidance; and (3) as a result of the foregoing, the Company's financial and business prospects were materially false and misleading at all relevant times.

**C. The Truth Emerges**

40. On February 28, 2017, after the market closed, the Company issued a press release also attached as Exhibit 99.1 to a Form 8-K filed with the SEC ("February 28, 2017 Press Release") announcing Fourth Quarter 2016 results and provided fiscal guidance for 2017.

41. The February 28, 2017 Press Release stated the following in pertinent part:

(CHARLOTTE, N.C. – February 28, 2017) – 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.

42. The same day, Babcock & Wilcox filed a Form 10-K with the SEC announcing the Company's financial and operating results for the fiscal year ended December 31, 2016 ("2016 10-K"), which was signed and certified under the Sarbanes Oxley Act of 2002 by the Individual Defendants. Throughout the 2016 10-K the Company reapproved the previous statements.

43. On this news, the stock price declined from \$16.50 per share on February 28, 2017, to close at \$10.33 per share on March 1, 2017, a drop of approximately 39%.

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

45. 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; the Company’s Renewable business suffered from problematic on-site project
- c. 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.

46. 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**

47. 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 Babcock & Wilcox, their control over, and/or receipt and/or modification of Babcock & Wilcox's allegedly materially misleading statements and/or their associations with the Company which made them privy to confidential proprietary information concerning Babcock & Wilcox, participated in the fraudulent scheme alleged herein.

#### **LOSS CAUSATION AND ECONOMIC LOSS**

48. At all relevant times, Defendants' materially false and misleading statements or omissions alleged herein directly or proximately caused the damages suffered by the Plaintiff and

other Class members. Those statements were materially false and misleading through their failure to disclose a true and accurate picture of Babcock & Wilcox's business, operations and financial condition, as alleged herein. Throughout the Class Period, Defendants publicly issued materially false and misleading statements and omitted material facts necessary to make Defendants' statements not false or misleading, causing Babcock & Wilcox's securities to be artificially inflated. Plaintiff and other Class members purchased Babcock & Wilcox's securities at those artificially inflated prices, causing them to suffer the damages complained of herein.

**PRESUMPTION OF RELIANCE; FRAUD-ON-THE-MARKET**

49. At all relevant times, the market for Babcock & Wilcox securities was an efficient market for the following reasons, among others:

- (a) Babcock & Wilcox securities met the requirements for listing, and were listed and actively traded on the NYSE, a highly efficient market;
- (b) During the Class Period, Babcock & Wilcox securities were actively traded, demonstrating a strong presumption of an efficient market;
- (c) As a regulated issuer, Babcock & Wilcox filed with the SEC periodic public reports during the Class Period;
- (d) Babcock & Wilcox regularly communicated with public investors via established market communication mechanisms;
- (e) Babcock & Wilcox was followed by securities analysts employed by major brokerage firms who wrote reports that were distributed to the sales force and certain customers of brokerage firms during the Class Period. Each of these reports was publicly available and entered the public marketplace; and
- (f) Unexpected material news about Babcock & Wilcox was rapidly reflected in

and incorporated into the Company's stock price during the Class Period.

50. As a result of the foregoing, the market for Babcock & Wilcox securities promptly digested current information regarding Babcock & Wilcox from all publicly available sources and reflected such information in Babcock & Wilcox's stock price. Under these circumstances, all purchasers of Babcock & Wilcox securities during the Class Period suffered similar injury through their purchase of Babcock & Wilcox at artificially inflated prices, and a presumption of reliance applies.

51. Alternatively, reliance need not be proven in this action because the action involves omissions and deficient disclosures. Positive proof of reliance is not a prerequisite to recovery pursuant to ruling of the United States Supreme Court in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972). All that is necessary is that the facts withheld be material in the sense that a reasonable investor might have considered the omitted information important in deciding whether to buy or sell the subject security. Here, the facts withheld are material because an investor would have considered the Company's financials and adequacy of internal controls over financial reporting when deciding whether to purchase and/or sell stock in Babcock & Wilcox.

**NO SAFE HARBOR; INAPPLICABILITY OF BESPEAKS CAUTION  
DOCTRINE**

52. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the material misrepresentations and omissions alleged in this Complaint.

53. To the extent certain of the statements alleged to be misleading or inaccurate may be characterized as forward looking, they were not identified as "forward-looking statements" when made and there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking

statements.

54. Defendants are also liable for any false or misleading “forward-looking statements” pleaded because, at the time each “forward-looking statement” was made, the speaker knew the “forward-looking statement” was false or misleading and the “forward-looking statement” was authorized and/or approved by an executive officer of Babcock & Wilcox who knew that the “forward-looking statement” was false. Alternatively, none of the historic or present-tense statements made by the defendants were assumptions underlying or relating to any plan, projection, or statement of future economic performance, as they were not stated to be such assumptions underlying or relating to any projection or statement of future economic performance when made, nor were any of the projections or forecasts made by the defendants expressly related to or stated to be dependent on those historic or present-tense statements when made.

#### **CLASS ACTION ALLEGATIONS**

55. Plaintiff brings this action on behalf of all individuals and entities who purchased or otherwise acquired Babcock & Wilcox securities on the public market during the Class Period, and were damaged, excluding the Company, the defendants and each of their immediate family members, legal representatives, heirs, successors or assigns, and any entity in which any of the defendants have or had a controlling interest (the “Class”).

56. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Babcock & Wilcox securities were actively traded on the NYSE. While the exact number of Class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Babcock & Wilcox or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily

used in securities class actions. As of December 31, 2016, Babcock & Wilcox had more than 48 million outstanding shares of common stock. Upon information and belief, these shares are held by thousands if not millions of individuals located geographically throughout the country and possibly the world. Joinder would be highly impracticable.

57. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by the defendants' respective wrongful conduct in violation of the federal laws complained of herein.

58. Plaintiff has and will continue to fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

59. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) whether the federal securities laws were violated by the defendants' respective acts as alleged herein;
- (b) whether the defendants acted knowingly or with deliberate recklessness in issuing false and misleading financial statements;
- (c) whether the price of Babcock & Wilcox securities during the Class Period was artificially inflated because of the defendants' conduct complained of herein; and
- (d) whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

60. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the

damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

**COUNT I**

**Violation of Section 10(b) and Rule 10b-5 Against All Defendants**

61. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

62. During the Class Period, Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (1) deceive the investing public, including Plaintiff and other Class members, as alleged herein; and (2) cause Plaintiff and other members of the Class to purchase Babcock & Wilcox securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, each of the Defendants took the actions set forth herein.

63. Defendants: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business that operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high market prices for Babcock & Wilcox securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. All Defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

64. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a

continuous course of conduct to conceal adverse material information about the business, operations and future prospects of Babcock & Wilcox as specified herein.

65. These Defendants employed devices, schemes, and artifices to defraud while in possession of material adverse non-public information, and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Babcock & Wilcox's value and performance and continued substantial growth, which included the making of, or participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about Babcock & Wilcox and its business operations and future prospects in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business that operated as a fraud and deceit upon the purchasers of Babcock & Wilcox securities during the Class Period.

66. Individual Defendants' primary liability, and controlling person liability, arises from the following facts: (1) Individual Defendants were high-level executives, directors, and/or agents at the Company during the Class Period and members of the Company's management team or had control thereof; (2) each Individual Defendant, by virtue of his responsibilities and activities as a senior officer and/or director of the Company, was privy to and participated in the creation, development and reporting of the Company's financial condition; (3) each Individual Defendant enjoyed significant personal contact and familiarity with the other Individual Defendant and was advised of and had access to other members of the Company's management team, internal reports and other data and information about the Company's finances, operations, and sales at all relevant times; and (4) each Individual Defendant was aware of the Company's dissemination of

information to the investing public which they knew or recklessly disregarded was materially false and misleading.

67. Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such Defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing Babcock & Wilcox's operating condition and future business prospects from the investing public and supporting the artificially inflated price of its securities. As demonstrated by Defendants' overstatements and misstatements of the Company's financial condition throughout the Class Period, Defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

68. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of Babcock & Wilcox securities was artificially inflated during the Class Period. In ignorance of the fact that market prices of Babcock & Wilcox's publicly-traded securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by Defendants, or upon the integrity of the market in which the securities trades, and/or on the absence of material adverse information that was known to or recklessly disregarded by Defendants but not disclosed in public statements by Defendants during the Class Period, Plaintiff and the other members of the Class acquired Babcock & Wilcox's securities during the Class Period at artificially high prices and were or will be damaged thereby.

69. At the time of said misrepresentations and omissions, Plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff and the other members of the Class and the marketplace known the truth regarding Babcock & Wilcox's financial results, which was not disclosed by Defendants, Plaintiff and other members of the Class would not have purchased or otherwise acquired their Babcock & Wilcox securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices that they paid.

70. By virtue of the foregoing, Defendants have violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

71. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's securities during the Class Period.

72. This action was filed within two years of discovery of the fraud and within five years of each plaintiff's purchases of securities giving rise to the cause of action.

## **COUNT II**

### **The Individual Defendants Violated Section 20(a) of the Exchange Act**

73. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

74. The Individual Defendants acted as controlling persons of Babcock & Wilcox within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, agency, ownership and contractual rights, and participation in and/or awareness of the Company's operations and/or intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, the Individual Defendants had the power to influence and control, and did influence and control, directly or indirectly, the

decision-making of the Company, including the content and dissemination of the various statements that Plaintiff contends are false and misleading. The Individual Defendants provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by Plaintiff to have been misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or to cause the statements to be corrected.

75. In particular, each of these Defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

76. As set forth above, Babcock & Wilcox, the Individual Defendants each violated Section 10(b), and Rule 10b-5 promulgated thereunder, by their acts and omissions as alleged in this Complaint.

77. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

78. This action was filed within two years of discovery of the fraud and within five years of each Plaintiff's purchases of securities giving rise to the cause of action.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief and judgment as follows:

- (a) Determining that this action is a proper class action, certifying Plaintiff as class representative under Federal Rule of Civil Procedure 23 and Plaintiff's

counsel as class counsel;

- (b) Awarding compensatory damages in favor of Plaintiff and the other members of the Class against all Defendants, jointly and severally, for all damages sustained as a result of the 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;
- (d) Granting extraordinary equitable and/or injunctive relief as permitted by law; and
- (e) Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a jury trial.

Dated: March 13, 2017

**S. Ranchor Harris, III**

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