



Granted with Amendments

/s/ Kathleen M Miller Nov 14, 2023

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Case No. N20C-01-259 KMM



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

DUSTIN EVANS, Individually And On)
Behalf Of All Other Similarly Situated,)
Plaintiff,)

v.)

MOHAWK INDUSTRIES, INC.,)
JEFFREY S. LORBERBAUM,)
FRANK H. BOYKIN, and WILLIAM)
CHRISTOPHER WELLBORN,)
Defendants.)

C.A. No. N20C-01-259-KMM

**ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT, PRELIMINARILY CERTIFYING A CLASS FOR
SETTLEMENT PURPOSES, APPROVING FORM AND MANNER OF CLASS
NOTICE, PRELIMINARILY APPROVING PLAN OF ALLOCATION AND
SCHEDULING A DATE FOR A FINAL APPROVAL HEARING**

This is a putative securities class action brought by Dustin Evans (“Named Plaintiff”) on behalf of all persons or entities that purchased shares of Mohawk’s common stock in the Mohawk Industries Retirement Plan 1 and/or the Mohawk Industries Retirement Plan 2 (hereinafter, the “Plan”) between April 27, 2017 and July 25, 2019, inclusive (the “Class Period”) pursuant or traceable to Mohawk’s August 11, 2016 Form S-8 registration statement (the “Registration Statement”). The claims asserted herein are alleged against Mohawk Industries, Inc. (“Mohawk”), and Messrs. Jeffrey S. Lorberbaum, Frank H. Boykin, and William Christopher Wellborn (collectively, “Defendants”), and arise under Section 11 and 12 of the Securities Act of 1933 (the “Securities Act”). No class has been certified.

The terms of the Settlement are set out in the Stipulation of Settlement, fully executed as of March 7, 2023, (the “Settlement Agreement”), by counsel on behalf of the Named Plaintiff and Defendants, respectively.

Pursuant to the Named Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, Preliminary Certification of a Class for Settlement Purposes, Approving Form and Manner of Class Notice, Preliminarily Approving Plan of Allocation, and Scheduling a Date for a Final Approval Hearing filed on April 21, 2023, the Court preliminarily considered the Settlement to determine, among other things, whether the Settlement is sufficient to warrant the issuance of notice to members of the proposed Settlement Class. Upon reviewing the Settlement Agreement and the matter having come before the Court at the November 8, 2023 hearing, due notice having been given and the Court having been fully advised in the premises, it is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

1. **Preliminary Certification of the Settlement Class.** In accordance with the Settlement Agreement, and pursuant to Del. Super. Ct. Civ. R. 23(a)(1)-(4), and (b)(1), this Court hereby conditionally certifies the following non-opt out class (the “Class”):

All Persons who purchased or otherwise acquired the publicly traded common stock of Mohawk in the Mohawk Industries Retirement Plan 1 and/or the Mohawk Industries Retirement Plan 2 (hereinafter “the Plan”) during the time period between April 27, 2017 and July 25, 2019, inclusive (the “Class Period”). Excluded from the Class are Defendants and their families, directors, and officers of Mohawk and their families and affiliates.

2. Pursuant to the Settlement Agreement, and for settlement purposes only, the Court preliminarily finds that:

- (a) as required by Del. Super. Ct. Civ. R. 23(a)(1), the Settlement Class is ascertainable from records kept with respect to the Plan and from other objective criteria, and the Class is so numerous that joinder of all members is impracticable.
- (b) as required by Del. Super. Ct. Civ. R. 23 23(a)(2), there are one or more questions of law and/or fact common to the Class.
- (c) as required by Del. Super. Ct. Civ. R. 23 23(a)(3), the claims of the Plaintiff are typical of the claims of the Class that Plaintiff seeks to certify.
- (d) as required by Del. Super. Ct. Civ. R. 23 23(a)(4), that the Plaintiff will fairly and adequately protect the interests of the Class in that: (i) the interests of the Plaintiff and the nature of the alleged claims are consistent with those of the Class Members; and (ii) there appear to be no conflicts between or among the Plaintiff and the Class.

(e) as required by Del. Super. Ct. Civ. R. 23 23(b)(1), the Court finds that the prosecution of separate actions by or against individual members of the class would create a risk of: (A) Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or (B) Adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

3. The Court preliminarily appoints the Named Plaintiff as the class representative for the Settlement Class and Gainey McKenna & Egleston as Class Counsel for the Class.

4. The Court preliminarily approves the proposed Plan of Allocation, finding it is fair, reasonable, and adequate.

5. **Preliminary Approval of Proposed Settlement.** The Settlement Agreement is hereby preliminarily approved as fair, reasonable, and adequate. This Court preliminarily finds that: (a) the proposed Settlement resulted from serious, informed, extensive and arm's-length negotiations between the Parties and their counsel with the assistance of the Settling Mediator; (b) Class Counsel asserts that the Settlement Agreement was executed only after Class Counsel had conducted appropriate investigation and discovery regarding the strengths and weaknesses of Named Plaintiff's claims; (c) Class Counsel represent that they have concluded that the proposed Settlement is fair, reasonable, and adequate; and (d) the proposed Settlement is in the best interest of the Named Plaintiff and the Settlement Class. The Court finds that those whose claims would

be settled, compromised, dismissed, or released pursuant to the Settlement should be given notice and an opportunity to be heard regarding final approval of the Settlement and other matters.

6. **Final Approval Hearing.** A hearing is scheduled in person for **March 21, 2024, at 12 noon**, to make a final determination, concerning among other things:

- Whether the Settlement merits final approval as fair, reasonable, and adequate;
- Whether the Action should be dismissed with prejudice pursuant to the terms of the Settlement;
- Whether the notice method proposed by the Parties: (i) constitutes the best practicable notice; (ii) constitutes notice reasonably calculated, under the circumstances, to apprise members of the Class of the pendency of the litigation, their right to object to the Settlement, and their right to appear at the Final Approval Hearing; (iii) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to notice; and (iv) meets all applicable requirements of the Delaware Superior Court Civil Rules and any other applicable law;
- Whether Class Counsel adequately represented the Class for purposes of entering into and implementing the Settlement;
- Whether the proposed Plan of Allocation should be finally approved; and
- Whether Class Counsel's application(s) for attorneys' fees and expenses and Case Contribution Award to the Named Plaintiff is fair and reasonable, and should be approved.

7. **Class Notice.** The Parties have presented to the Court a proposed form of Detailed Notice, attached hereto as Exhibit A-1 and a summary of the Detailed Notice in the form of a Summary Notice, attached hereto as Exhibit A-2. The Court finds that both such forms of notice

fairly and adequately: (a) describe the terms and effects of the Settlement Agreement, the Settlement, and the Plan of Allocation; (b) notify the Class that Class Counsel will seek attorneys' fees and litigation costs from the Settlement Fund, payment of the costs of administering the Settlement out of the Settlement Fund, and for a Case Contribution Award of up to \$10,000 for the Named Plaintiff for his service in such capacity; (c) give notice to the Class of the time and place of the Final Approval Hearing; and (d) describe how the recipients of the class Notice may object to any of the relief requested. The Parties have proposed the following manner of communicating the notice to members of the Class, and the Court finds that such proposed manner is the best notice practicable under the circumstances. Accordingly, the Court directs that Class Counsel shall:

- By no later than thirty (30) days after the date of this Order, cause the Detailed Notice, with such non-substantive modifications thereto as may be agreed upon by the Parties, to be posted to the dedicated website created by the Claims Administrator to provide details of the Settlement found at **www.mohawkesppplanclassactionsettlement.com**, which dedicated website shall also include the Stipulation of Settlement with all of its supporting exhibits.
- By no later than thirty (30) days after the date of this Order, cause said Detailed Notice to be published via a press release for national distribution in the United States, which press release will also include the ticker symbol for Mohawk publicly traded common stock.
- By no later than thirty (30) days after the date of this Order, cause the Summary Notice to be provided by first-class mail, postage prepaid, to the last known address of each member of the Class who can be identified through reasonable effort.

- By no later than forty-five (45) days before the Final Approval Hearing, proof that the various forms of Notice were distributed as required by this Order shall be filed by counsel for the Plaintiff.

8. **Petition for Attorney’s Fees and Litigation Costs and Case Contribution Awards.** Any petition by Class Counsel for attorney’s fees, litigation costs and Case Contribution Award to the Named Plaintiff, and all briefs in support thereof, shall be filed no later than thirty-five (35) days before the Final Approval Hearing, namely **on or before February 15, 2024** and thereafter promptly posted to the settlement website: **www.mohawkesppplanclassactionsettlement.com**.

9. **Briefs in Support of Final Approval of the Settlement.** Briefs and other documents in support of Final Approval of the Settlement shall be filed no later than thirty-five (35) days before the Final Approval Hearing, namely **on or before February 15, 2024** and thereafter promptly posted to the settlement website: **www.mohawkesppplanclassactionsettlement.com**.

10. **Objections to Settlement.** Any member of the Class may file an objection to the fairness, reasonableness, or adequacy of the Settlement, to any term of the Settlement Agreement, to the Plan of Allocation, to the proposed award of attorneys’ fees and litigation costs, the payment of costs of administering the Settlement out of the Settlement Fund, or to the request for a Case Contribution Award for the Named Plaintiff. An objector must file with the Court a statement of his, her, or its objection(s), specifying the reason(s), if any, for each such objection made, including proof that the objector is either a current or former participant in the Plan and purchased the publicly traded common stock of Mohawk during the Class Period, together with any legal support and/or evidence that the objector wishes to bring to the Court’s attention or introduce in support

of the objection(s) no later than twenty (20) days before the Final Approval Hearing, namely on or before **March 1, 2024**. The objector must also mail copies of the objection(s) and any supporting law and/or evidence to Class Counsel and to counsel for the Defendants no later than twenty (20) days before the Final Approval Hearing, namely on or before **March 1, 2024**. The addresses for filing objections with the Court and serving objections on counsel are as follows:

For Filing:
In The Superior Court Of The State Of Delaware
500 North King Street, Suite 500
WILMINGTON, DELAWARE 19801

Re: *Evans v. Mohawk Industries. et al.*,
C.A. No. N20C-01-259-KMM

To Class Counsel:

Thomas J. McKenna
Gregory E. Egleston
GAINEY MCKENNA & EGLESTON
501 Fifth Avenue, 19th Floor
New York, NY 10017
Telephone: (212) 983-1300
Facsimile: (212) 983-0383

To Defendants' Counsel

Elizabeth Gingold Clark
Alston & Bird LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, GA 30309-3424
Telephone: 404-881-7132
Facsimile: 404-881-7777

If an objector hires an attorney to represent him, her, or it for the purposes of making an objection pursuant to this paragraph, the attorney must also serve a notice of appearance on counsel listed above and mail to the Court no later than twenty (20) days before the Final Approval Hearing, namely on or before **March 1, 2024**. Any member of the Class or other Person who does

not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement, and any untimely objection shall be barred. There shall be no reply briefs by any objector. Defendants' counsel and Class Counsel shall promptly furnish each other with copies of any and all Objections to the Settlement that come into their possession.

11. **Supporting Briefs.** Any additional briefs the Parties may wish to file in support of the Settlement shall be filed no later than ten (10) days before the Final Approval Hearing, namely on or before **March 11, 2024** and thereafter promptly posted to the settlement website: **www.mohawkesppplanclassactionsettlement.com**.

12. **Appearance at Final Approval Hearing.** Any objector who files and serves a timely, written objection in accordance with paragraph 10 above may also appear at the Final Approval Hearing either in person or through qualified counsel retained at the objector's expense. Objectors or their attorneys intending to appear at the Final Approval Hearing must serve a notice of intention to appear (and, if applicable, the name, address, and telephone number of the objector's attorney) on Class Counsel and Defendants' counsel (at the addresses set out above) and file it with the Court by no later than ten (10) days before the Final Approval Hearing namely on or before **March 11, 2024**. Any objector who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall not be permitted to appear at the Final Approval Hearing, except for good cause shown.

13. **Notice Expenses.** The expenses of printing, mailing, and publishing the Detailed Notice and Summary Notice required herein shall be paid exclusively from the Settlement Fund.

14. **Termination of Settlement.** This Order shall become null and void, *ab initio*, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their

respective positions as of March 6, 2023, the day immediately before the Parties reached agreement to settle the Action, if the Settlement is terminated in accordance with the terms of the Settlement Agreement.

15. **Use of Order.** This Order is not admissible as evidence for any purpose against Defendants in any pending or future litigation. This Order shall not be construed or used as an admission, concession, or declaration by or against Defendants of any finding of fault, wrongdoing, breach, omission, violation of law, breach of duty, mistake, or liability. This Order shall not be construed or used as an admission, concession, or declaration by or against the Named Plaintiff or the Class that their claims lack merit, or that the relief requested in the Action is inappropriate, improper, or unavailable. This Order shall not be construed or used as an admission, concession, declaration, or waiver by any Party of any arguments, defenses, or claims he, she, or it may have, including, but not limited to, any objections by Defendants to class certification, in the event that the Settlement Agreement is terminated. Moreover, the Settlement Agreement and any proceedings taken pursuant to the Settlement Agreement are for settlement purposes only. Neither the fact of, nor any provision contained in, the Settlement Agreement or its exhibits, nor any actions taken thereunder, shall be construed as, offered into evidence as, received in evidence as, and/or deemed to be evidence of a presumption, concession, or admission of any kind as to the truth of any fact alleged or validity of any claim or defense that has been, could have been, or in the future might be asserted.

16. **Jurisdiction.** The Court hereby retains jurisdiction for purposes of implementing the Settlement, and reserves the power to enter additional orders to effectuate the fair and orderly administration and consummation of the Settlement as may from time to time be appropriate, and to resolve any and all disputes arising thereunder.

17. **Continuance of Final Approval Hearing.** The Court reserves the right to continue the Final Approval Hearing without further written notice or to hold the Final Approval Hearing via telephone or via remote video appearances.

SO ORDERED this ____ day of _____, 2023

HON. KATHLEEN M. MILLER

This document constitutes a ruling of the court and should be treated as such.

Court Authorizer

Comments:

The hearing date in the box on page 2 of the Notice of Class Action Determination, Proposed Settlement and Hearing Thereon must reflect the correct hearing date - March 21, 2024.