

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

IN RE BEHR DAYTON THERMAL : CASE NO. 3:08-cv-00326-WHR  
PRODUCTS, LLC : (Judge Walter H. Rice)  
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**ORDER AND FINAL JUDGMENT APPROVING CLASS-ACTION SETTLEMENT**

WHEREAS, the Parties in the above-captioned class action (the “Action”)—Plaintiffs Deborah Needham and Linda Russell, individually and on behalf of Settlement Class A, and Plaintiffs Terry Martin and Nancy Smith, individually and on behalf of Settlement Class B (collectively hereinafter, “Plaintiffs”); along with Defendants Old Carco, LLC, formerly known as Chrysler, LLC, as nominal defendant; MAHLE Behr Dayton LLC and MAHLE Behr USA, Inc. (collectively “MAHLE Behr Defendants”); and Aramark Uniform & Career Apparel, LLC now known as Vestis Services, LLC (collectively hereinafter, “Defendants”)—entered into a Class Action Settlement Agreement (the “Settlement Agreement”),<sup>1</sup> as of August 28, 2023;

WHEREAS, Plaintiffs and Defendants (collectively “the Parties”) in the Action moved under Federal Rule of Civil Procedure 23(b) for an order certifying the class for settlement purposes, and under Rule 23(e) for an order preliminarily approving the proposed settlement of the Settlement Class Members’ claims in accordance with the Settlement Agreement and approving the form and plan of notice as set forth in the Settlement Agreement (Doc. 477);

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<sup>1</sup> Terms capitalized herein shall have the meanings ascribed to them in the Settlement Agreement unless expressly defined otherwise herein. (Doc. 477-2).

WHEREAS, in its Order entered on October 2, 2023 (the “Preliminary Approval Order”) (Doc. 480), the Court provisionally ordered that this Action may be settled as a class action on behalf of the following settlement classes (collectively the “Settlement Class”):

- a. “Settlement Class A” means Persons who, at any time during the Class Ownership Period, owned or own real property located within the area identified as “Class A” on the attached map. This corresponds to the area geographically depicted by the yellow shaded area on Exhibit 1 to the Third Amended Master Class Action Complaint (Doc. No. 242-1), which is attached as Exhibit F to the Settlement Agreement.
- b. “Settlement Class B” means Persons who, at any time during the Class Ownership Period, owned or own real property located within the area identified as “Class B” on the attached map. This corresponds to the area geographically depicted by the red shaded area on Exhibit 1 to the Third Amended Master Class Action Complaint (Doc. No. 242-1), which is attached as Exhibit F to the Settlement Agreement;

WHEREAS, the Preliminary Approval Order also approved the forms of notice of the Settlement to potential members of the Settlement Classes and directed that appropriate notice of the Settlement be given to potential members of the Settlement Classes;

WHEREAS, consistent with the Settlement Agreement and the Preliminary Approval Order, (1) the Claims Administrator timely caused to be mailed to potential members of the Settlement Classes the Notice of Proposed Class Action Settlement and Your Rights (“Notice”), caused to be published the Notice of Proposed Class Action Settlement (“Publication Notice”), and published a copy of the Notice on a website maintained by the Claims Administrator; (2) a declaration of the Claims Administrator regarding mailing of the notice of proposed settlement and processing of claim and release forms and exclusion requests was filed with the Court prior to the Fairness Hearing; and (3) said Declaration demonstrates compliance with the Preliminary Approval Order with respect to the Notice and the Publication Notice and, further, that the best notice practicable under the circumstances was, in fact, given;

WHEREAS, in accordance with the Settlement Agreement and the Preliminary Approval Order, prior to December 4, 2023, Defendants established and funded an escrow account at a federally chartered bank in the amount of Nine Million Dollars (\$9,000,000.00) as the Settlement Fund;

WHEREAS, the Court has not made any finding that any Defendant is liable for the conduct alleged by Plaintiffs. Each Defendant expressly denies any wrongdoing whatsoever, denies the allegations in the operative Complaint, and denies Plaintiffs' right to prevail on any claims in the operative Complaint. Plaintiffs maintain the allegations of wrongdoing pled in the operative Complaint;

WHEREAS, no Class Member has objected to the Settlement Agreement;

WHEREAS, as set forth on the attached Exhibit 1, only three Persons have elected to exclude themselves from the Settlement Agreement;

WHEREAS, on January 22, 2023, at 1:30 p.m., this Court held a hearing to determine whether the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Class Members (the "Fairness Hearing"); and

WHEREAS, based upon the foregoing, having heard the statements of counsel for the Parties and of such persons as chose to appear at the Fairness Hearing; having considered all of the files, records, and proceedings in the Action, the benefits to the Class Members under the Settlement Agreement, and the risks, complexity, expense, and probable duration of further litigation; and being fully advised in the premises,

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. The Court has subject-matter jurisdiction over the subject matter of the Action, and personal jurisdiction over the Plaintiffs, the Class Members, and Defendants.

2. The Settlement Class Representatives and their counsel fairly and adequately represent the interests of the Class Members in connection with the Settlement Agreement.

3. The Settlement Agreement is the product of good-faith, arm's-length negotiations between the Plaintiffs and their counsel, and Defendants and their counsel, with the assistance of an experienced mediator, and Plaintiffs and Defendants were represented by capable and experienced counsel.

4. The form, content, and method of dissemination of the notice given to potential members of the Settlement Classes, including both published notice and individual notice to all potential members of the Settlement Classes who could be identified through reasonable effort, were adequate and reasonable, and constituted the best notice practicable under the circumstances.

5. The notice to the Settlement Class, as given, met all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and the rules of this Court, and constituted due and sufficient notice of the matters set forth therein.

6. The Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Classes, and is approved in all respects.

7. The Parties are directed to consummate and perform the remaining terms and conditions of the Settlement Agreement.

8. Class Members were permitted to make claims for the benefits described in the Settlement Agreement, subject to the conditions and limitations stated herein.

9. The Court's certification in the Preliminary Approval Order (Doc. 480) of the Settlement Class, under Rules 23(b)(3) and 23(e) of the Federal Rules of Civil Procedure, is hereby confirmed.

10. On the Effective Date, the Plaintiffs and each Settlement Class Member (except for the three Persons or entities who did timely opt out of the Settlement Class and who are identified

on the attached Exhibit 1) and each of their successors, assigns, legatees and heirs, do by Order and Final Judgment of this Court, fully, finally, and forever release, remise, acquit, waive and forever discharge all Defendants and AIG Specialty Insurance Company f/k/a American International Specialty Lines Insurance Company (the relevant insurer of nominal defendant Old Carco LLC) and its agents and affiliates including but not limited to Fortitude P&C Solutions, Inc., as authorized claims administrator for AIG Specialty Insurance Company, of and from any and all Released Claims and shall be forever enjoined from prosecuting any or all Released Claims against Defendants and their insurers. "Released Claims" means any and all manner of actions, causes of action, suits, debts, judgments, rights, demands, damages, compensation, loss of use and enjoyment of property, expenses, attorneys' fees, litigation costs, other costs, rights or claims for reimbursement of attorneys' fees, and claims of any kind or nature whatsoever, against the Defendants and their insurers arising out of the ownership of any property in the Settlement Class A or Settlement Class B areas, including, without limitation, punitive damages, in either law or equity, under any theory of common law or under any federal, state or local law, statute, regulation, ordinance, or executive order, that any Class Member ever had or may have in the future, whether directly or indirectly, that arose from the beginning of time through execution of the Settlement Agreement, whether foreseen or unforeseen, or whether known or unknown to all or any of the Parties, which have arisen or may arise out of any transaction or occurrence described in the Complaint, including but not limited to property damage, remediation costs, diminution of value to property, loss of use and enjoyment of property, fear, anxiety, annoyance, or emotional distress as a result of the alleged contamination. Bodily injury and medical monitoring claims, if any, are not Released Claims.

11. The Persons listed on Exhibit 1 to this Order and Final Judgment are the only Class Members who submitted a timely and valid request to be excluded from the Settlement Agreement and they shall not be affected by this release or any other term of this Order and Final Judgment.

12. All Class Members who have not been properly excluded from the Settlement Agreement are permanently barred and enjoined from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in, any lawsuit or other action against the Defendants in any jurisdiction based on the Released Claims and this Order and Final Judgment shall be res judicata as to all of the Released Claims.

13. Upon the Effective Date, all Settlement Class Members (whether or not they have filed a claim and regardless of whether that claim is ultimately accepted) shall be permanently barred and enjoined from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in, any lawsuit or other action in any jurisdiction based upon the Released Claims and this Order and Final Judgment shall be res judicata as to all of the Released Claims..

14. The expenses of administering the Settlement Agreement shall be paid to the Claims Administrator from the Settlement Fund in the manner set forth in the Settlement Agreement. The Settlement Administrator shall file applications with the Court seeking approval for reimbursement of Claims Administration Expenses.

15. Incentive awards to the Settlement Class Representatives in the following amount are reasonable and are approved for payment from the Settlement Fund in the manner set forth in the Settlement Agreement: \$10,000 each to Plaintiffs Terry Martin, Deborah Needham, Linda Russell, and Nancy Smith.

16. Attorneys' fees for Settlement Class Counsel in the amount of \$3,000,000 are reasonable and are approved for payment from the Settlement Fund in the manner set forth in the Settlement Agreement.

17. Settlement Class Counsel's expenses in the amount of \$2,136,552.07 are reasonable and are approved for reimbursement in full from the Settlement Fund in the manner set forth in the Settlement Agreement.

18. Each Class Member who has submitted a timely and valid Claim Form to the Claims Administrator shall be paid the amount determined by the Claims Administrator to be awarded to that Class Member in accordance with the terms of the Settlement Agreement. The decisions of the Claims Administrator shall be final and shall only be appealable to this Court on the basis that the Claims Administrator incorrectly calculated a settlement payment under the provisions of the Settlement Agreement.

19. Of any Remaining Funds (as defined in the Settlement Agreement), the Court approves the following agreed use for the distribution of Community Funds (as defined in the Settlement Agreement) under Section IV.5.c.2 of the Settlement Agreement: a donation to Kiser Elementary School.


20. The Court hereby reserves its exclusive, general, and continuing jurisdiction over the Parties and all Settlement Class Members, as needed or appropriate to administer, supervise, implement, interpret, or enforce the Settlement Agreement in accordance with its terms, including the investment, conservation, protection of settlement funds prior to distribution, and distribution of settlement funds.

21. The Court hereby reserves its exclusive, general, and continuing jurisdiction over the "qualified settlement fund" as defined in Section 468B(d)(2) of the Internal Revenue Code of 1986, as amended, and Treasury Regulation Section 1.468B-1, created under the Settlement Agreement.

22. This Order and Final Judgment constitutes a final and appealable judgment and the case shall be dismissed with prejudice and with each party to bear its own costs.

Without affecting the finality of this Order and Final Judgment for purposes of appeal, the Court hereby reserves its jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and this Order and Final Judgment, and for any other necessary purpose.

IT IS SO ORDERED,

  
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Honorable Walter H. Rice  
United States District Judge

1-22-2024/2024



**' EXHIBIT 1 TO ORDER AND FINAL JUDGMENT APPROVING CLASS ACTION SETTLEMENT**

*In re Behr Dayton Thermal Products, LLC, No. 3:08-cv-00326-WHR*

<b>Person Excluded from Settlement Agreement</b>	<b>Address of Subject Property/Properties</b>	<b>Mailing Address</b>
Warehouse Investors, LLC	1200 Leo Street Dayton, Ohio 45404	c/o Rookwood Properties Incorporated 8160 Corporate Park Drive, Suite 200 Cincinnati, Ohio 45242
Hohman Plating and Mfg., LLC	Webster Street Parcel ID R72 05704 0126 Dayton, Ohio 45404  813 Leo Street Parcel ID R72 05704 0129 Dayton, Ohio 45404  814 Hillrose Avenue Parcel ID R72 05704 0164 Dayton, Ohio 45404	814 Hillrose Ave. Dayton, Ohio 45404
GDS Property Holdings, LLC (Greater Dayton School)	171 Deeds Park Drive Dayton, Ohio 45404	171 Deeds Park Drive Dayton, Ohio 45404