

**COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA**

**Borough of Middletown, Jennifer Miller,
Angela Lloyd, Michael Woodworth,
James E. Myers, Jr., and Kay Wealand**
*On behalf of themselves and all others
similarly situated,*

Plaintiffs

v.

**McNees Wallace & Nurick LLC and
Susquehanna Group Advisors, Inc.,**

Defendants

C.A. No. 2018-CV-03685-CV

CLASS ACTION

**ORDER GRANTING PRELIMINARY SETTLEMENT APPROVAL
AND APPROVING CLASS NOTICE**

THIS MATTER having been opened to the Court upon Class Plaintiffs' Unopposed Motion and Incorporated Memorandum of Law in Support of Certification of Settlement Classes, Preliminary Approval of Class Action Settlement, and Approval of Form and Manner of Notice (the "Motion"), seeking entry of an Order preliminarily approving the Class Settlement Agreement dated July 31, 2023 ("Agreement") in the above matter; and

WHEREAS the Court finds as follows: the Agreement was entered into at arms length, by experienced counsel, using an independent third-party mediator, Jerry Roscoe, Esq. of JAMS, Inc. The Agreement is not the result of collusion. The Agreement bears a reasonable relationship to the claims alleged by the Class Representatives on behalf of the Settlement Class certified herein

and the terms of the Agreement are within the range of reasonableness;

and

WHEREAS this Court has fully considered the record of these proceedings, the representations, argument, and recommendation of counsel for the parties, and the requirements of law; and good cause appearing,

IT IS ON THIS 8th day of August, 2023;

ORDERED as follows:

1. The Court has reviewed the Motion, exhibits to the Motion, Agreement, and exhibits to the Agreement, and preliminarily approves its terms finding the terms of settlement set forth in the Agreement are reasonable, adequate, just and fair, and further finds that Notice to members of the Settlement Class is warranted followed by a full Final Fairness Hearing at which the final approval of the Agreement will be considered.

2. The Court further finds, on a preliminary basis and for settlement purposes only, that all requirements of Pa. R. Civ. P. 1702, 1708, and 1709 have been satisfied. The Court conditionally certifies the following Settlement Class: All Retail Water Customers and Retail Sewer Customers who have paid, or shall pay, the Shortfall Recovery Amount for a Water Sales Test Period during the entire term of the Lease. The Settlement Class excludes: Defendants; any current affiliate, parent, or subsidiary of Defendants; the Borough; any entity in which Defendants currently have a controlling interest; any current officer, director, or employee of Defendants; any successor or assign of Defendants; and any judge to whom this Action is assigned, his or her spouse; and individuals and/or entities who validly and timely opt-out of the settlement by submitting a request for exclusion. Individual members of the Settlement Class shall be referred to as a “Class Member.”

3. The Court approves, as to both form and content, the Notice and the plan for its distribution set forth in the Agreement, concluding it meets the requirements of Pennsylvania law and due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled thereto, and complies fully with the requirements of Pennsylvania law, the Constitution of the United States, and any other applicable law.

4. Kroll Settlement Administration shall be appointed Settlement Administrator. The Settlement Administrator shall mail the Notice to the Settlement Class by U.S. Mail on or before August 25, 2023. The Court reserves the right to amend the forms and notices approved by this Order as may be required to be consistent with the Agreement and any subsequent orders that the Court may enter in connection with the Notice, Opt-Out, and Objection Procedures, Plan of Allocation, or other matters related to the Agreement.

5. The Court understands the data necessary to complete the administration of the Settlement rests exclusively in the possession, custody and control of the Concessionaire who is not a party to this Action or the Settlement Agreement, but is cooperating with Class Counsel and the Settlement Administrator to effectuate the terms of the Settlement Agreement;

6. For the purposes stated and defined in the Agreement, the Court hereby sets the following dates and deadlines:

The Notice shall be mailed as set forth in the Agreement	August 25, 2023
“Bar Date” (deadline for post-marking a request for exclusion or objection)	October 9, 2023
Final Fairness Hearing	November 9, 2023 at 11:00 a.m.

7. At or before the Final Fairness Hearing, the Settlement Administrator, through Class Counsel, shall file with the Court a proof of mailing of the Notice.

8. If the Concessionaire does not provide to Class Counsel the Class Member information described in Section 3.2.2..1 of the Agreement by 15 days prior to the Bar Date, the Parties may mutually seek from the Court at least one extension of the date for the Final Approval hearing, and the Parties will exercise good faith to pursue available remedies to obtain that information necessary to effectuate the Settlement.

9. The Court hereby approves and adopts the procedures, deadlines, forms and manner governing all requests to be excluded from the Class and for objections to the Class as provided for in the Agreement.

10. Without limiting the generality of the foregoing: (A) any Class Member who does not timely and validly request exclusion from the Class shall be included in such class and shall be bound by all the terms of the Agreement, if it is finally approved whether or not such person has objected to the settlement or has made a claim; (B) any Class Members who possess the legal right to do so, and timely and validly elects to opt out shall be excluded from the Agreement and any Release of Claims it provides; (C) Class Members who request to be excluded from the Class and to opt-out are required to file a written opt-out request as instructed in Notice and Agreement, which must be postmarked no later than the Bar Date.

11. Class Members who do not exclude themselves, but who object must provide the following information in writing to the Settlement Administrator, Class Counsel, Defendants' Counsel, and the Court as set forth below, postmarked no later than the Bar Date: (i) the case name and number,

Borough of Middletown, et al. v. McNees Wallace & Nurick, LLC, et al., Civil Action No: 2018-CV-03685 (C.C.P. Dauphin Co.); (ii) the Class Member's full name, current address, and current telephone number; (iii) a statement of the objection(s), including all factual and legal grounds for the position; (iv) copies of any documents the objector wishes to submit in support; (v) the name and address of the attorney(s), if any, who is representing the objecting Class Member in making the objection or who may be entitled to compensation in connection with the objection; (vi) a statement of whether the Class Member objecting intends to appear at the Final Approval Hearing, either with or without counsel; (viii) the identity of all counsel (if any) who will appear on behalf of the Class Member objecting at the Final Approval Hearing and all persons (if any) who will be called to testify in support of the objection; (ix) the signature of the Class Member objecting, in addition to the signature of any attorney representing the Class Member objecting in connection with the objection, (x) identification of any potential conflict of interest with the Settlement Class, such as service, employment or affiliation with the Borough, the Borough's Mayor, or the Borough's Council; and (xi) date the objection. In addition, any Class Member objecting to the Settlement shall provide a list of any other objections submitted by the objector, or the objector's counsel, to any class action settlements submitted in any court in Pennsylvania or the United States in the previous five years. If the Class Member or his or her counsel has not made any such prior objection, the Class Member shall affirmatively so state in the written materials provided with the objection.

The Court of Common Pleas of Dauphin County:

Dauphin County Courthouse
101 Market Street
Harrisburg, PA 17101

Class Counsel:

Simon Paris
**SALTZ, MONGELUZZI
& BENDESKY, P.C.**
120 Gibraltar Road, Ste. 218
Horsham, PA 19103

Defendant's Counsel:

Thomas M. O'Rourke
Cozen O'Connor
One Liberty Place
1650 Market Street, Suite 2800
Philadelphia, PA 19103

Defendant's Counsel:

John P. Morgenstern
Christopher C. Negrete
O'Hagan Meyer
1717 Arch St., Suite 3910
Philadelphia, PA 19103

Settlement Administrator:

Kroll Settlement Administrators
2000 Market St., Ste. 2700
Philadelphia, PA 19103

12. For a Class Member who files an objection, Class Counsel or Defendants' Counsel may seek discovery from the objecting Class Member, limited to: (i) a deposition consistent with the Pennsylvania Rules of Civil Procedure at an agreed-upon location for a period not to exceed 2 hours; (ii) request documentary evidence or other tangible things that are relevant to the objection. This must be completed prior to the Final Approval Hearing, and any failure by an objector to make himself/herself/itself available for a deposition or comply with expedited discovery requests may result in the Court striking the objection and otherwise denying that person the opportunity to be heard.

12. The Final Fairness Hearing will be held to determine whether to finally approve the Agreement and dismiss the Action with prejudice on November 9, 2023 at 11:00 a.m. Any

Class Member who has followed the objection procedures set forth in this Preliminary Approval Order and the Agreement may then and there appear and show cause why the Agreement should or should not be approved as fair, reasonable and adequate, or why the proposed Final Judgment and Order of Dismissal should or should not be entered thereon.

13. All costs incurred in connection with mailing the Notice to the members of the Class, as well as administering the settlement, shall be paid from the Escrow Account as directed in the Agreement. In the event the Agreement is not granted final approval by the Court, or otherwise fails to become effective, Defendants shall pay the Settlement Administrator the costs of providing Notice pursuant to the Agreement.

14. Until further order of the Court, all activity in this Action relating to the Settling Parties shall be and hereby are stayed. The stay of proceedings shall not prevent the filing of any motions, objections, responses, affidavits and other matters necessary to the consideration and approval of the Agreement.

15. The findings and rulings in this Order are made solely for the purposes of settlement and may not be cited or otherwise used to support the certification of any contested class or subclass in this action or any other actions.

16. If there are or arise logistical problems with actually implementing this Order as herein Ordered, then the Parties shall bring them to the attention of this Court for resolution by subsequent order of this Court.

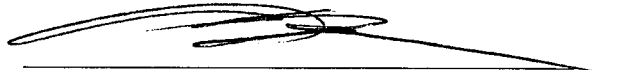
17. Class Counsel is authorized, directed and ordered to sign and date in the name of the Clerk of the Court, the Notice, approved by this Order with such modification as may be authorized by this Order.

18. The Court reserves the right to adjourn the date of the Final Fairness Hearing

without further notice to the Class and retains jurisdiction to consider all further applications arising out of or in connection with the proposed settlement. The Court may approve the settlement, with such modification as may be agreed to by the parties, if appropriate, without further notice.

19. If the settlement is not approved or consummated for any reasons whatsoever, the proposed settlement and all proceedings had in connection therewith shall be null and void and without prejudice to the status quo ante and rights of the other Parties to the action as they existed prior to the date of execution of the Agreement.

BY THE COURT:



Andrew H. Dowling, Judge

Distribution:

The Honorable Andrew H. Dowling

Walter J. Timby, III, Esquire & Paul Fellman, Esquire, GIBSON & PERKINS, PC, Suite 204, 100 West Sixth St., Media, PA 19063 (Counsel for Plaintiff Borough of Middletown)

Simon B. Paris, Esquire, SALTZ, MOGELUZZI & BENDESKY, PC, 120 Gibraltar Road, Suite 218, Horsham, PA 19044 (Counsel for Class Plaintiffs)

Paul C. Troy, Esquire, KANE PUGH KNOELL TROY & KRAMER, LLP, 4 Sentry Parkway East, Suite 100, Blue Bell, PA 19422 (Counsel for Defendant McNees, Wallace & Nurick, LLC)

Thomas O'Rourke, Esquire, COZEN O'CONNOR, 1650 Market Street, Suite 2800, Philadelphia, PA 19103 (Counsel for Defendant McNees, Wallace & Nurick, LLC)

John P. Morgenstern, Esquire, & Christopher C. Negrete, Esquire, O'HAGAN MEYER, 1717 Arch Street, Suite 3910, Philadelphia, PA 19103 (Counsel for Defendant Susquehanna Group Advisors, Inc.)

Sara Shaffer – Deputy Civil Court Administrator

11/13/2023

11/13/2023 10:00 AM

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