

**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION**

FILED

2020 OCT 13 PM 3:03

CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

**HAROLD D. WARD, Director, Division of
Mining and Reclamation, West Virginia
Department of Environmental Protection,**

Plaintiff,

v.

ERP ENVIRONMENTAL FUND, INC.,

Defendant.

CIVIL ACTION NO. 20-C-282

Judge Christopher C. Wilkes

**AMENDED TEMPORARY RESTRAINING ORDER AND ORDER
TEMPORARILY APPOINTING A SPECIAL RECEIVER FOR
DEFENDANT'S PROPERTY, ASSETS, AND OPERATIONS**

Upon consideration of (a) the emergency motion of the Plaintiff for entry of a preliminary injunction and order appointing a special receiver of the Defendant's property, assets, and operations and (b) the declaration of the Plaintiff in support thereof; and it appearing that there exist imminent and identifiable threats to the public health and safety that require immediate and ongoing action to prevent such threats and an exigent need for immediate and ongoing funding and competent management to ensure the Defendant's compliance with laws designed to prevent such threats that warrant and require immediate, preliminary relief and upon the hearing held before the undersigned on October 13, 2020, and it appearing that the Plaintiff has given the Defendant notice of its motion and the relief requested herein and that the Defendant has consented to or acquiesced in the relief requested, it is hereby ORDERED that:

1. This Court has personal jurisdiction over the Defendant, which holds mining and water pollution control permits issued by the Plaintiff and operates active coal mining sites within the State of West Virginia.

2. This Court has subject matter jurisdiction and venue over this action pursuant to and in accordance with W. Va. Code § 22-3-17(j).

3. This Court has the power to issue the temporary relief granted hereby pursuant to W. Va. Code § 22-3-17(j) and West Virginia Rule of Civil Procedure 65(a).

4. The Plaintiff's emergency motion, to the extent that it seeks entry of a temporary restraining order and the appointment of a special receiver on a temporary basis, is hereby granted.

Injunctive Relief

5. The Defendant shall be and hereby is enjoined from violating the terms and conditions of its mining and water pollution control permits and the West Virginia Surface Coal Mining and Reclamation Act and the West Virginia Water Pollution Control Act and the rules promulgated thereunder, pending the hearing to consider entry of a preliminary injunction and the preliminary appointment of a special receiver.

Appointment of a Receiver

6. Pending the hearing to consider entry of a preliminary injunction and the preliminary appointment of a special receiver, a Special Receiver is hereby appointed pursuant to W. Va. Code § 53-6-1 on a temporary basis, subject to the Court's oversight, supervision, and further approval, as needed, to (a) assume full operation, management, and control of the Defendant's assets and operations, (b) oversee, manage, and direct the acts, conduct, operations, assets, liabilities, and financial conditions of the Defendant, and (c) in consultation with the applicable environmental regulatory agencies, develop a plan and schedule for compliance with the Defendant's permits and take all necessary and appropriate action to bring the Defendant's operations into compliance with the Defendant's permits, the federal Surface Mining Control and

Reclamation Act and the federal Clean Water Act and the state counterparts thereto and the rules promulgated thereunder, and the orders of the applicable environmental regulatory agencies, all for the protection of the public and the environment and the preservation of the Defendant's business and assets for the benefit of all parties having an interest in the Defendant and its business, assets, and affairs.

7. The Plaintiff and the Special Receiver have advised the Court that (a) due to the number and current status of the permits the Defendant holds, it is impractical to abate all existing violations and commence or maintain reclamation work simultaneously on all of the Defendant's permitted sites and outfalls and (b) the Defendant holds several permits and property interests outside the State of West Virginia. The Special Receiver shall prioritize abatement and reclamation based upon criteria and input of the applicable regulatory authorities and Defendant's reclamation bond sureties taking into consideration such factors as site conditions, the need for public safety, environmental protection, efficient scheduling, cash flow and operational concerns. The Plaintiff and the Special Receiver shall take all reasonable steps necessary or appropriate to secure in states outside the State of West Virginia the same authorities and protections for the Special Receiver as are set forth in this Order.

8. Doss Special Receiver, LLC, a West Virginia limited liability company, is hereby appointed as the Special Receiver for the purposes set forth in the immediately preceding decretal paragraph. Doss Special Receiver, LLC is a wholly owned subsidiary of Doss Engineering, Inc., a West Virginia corporation, and Barry Doss is the sole manager of Doss Special Receiver, LLC. No individual or entity may succeed or replace Doss Special Receiver, LLC, Doss Engineering, Inc., or Barry Doss and no change in control of Doss Special Receiver, LLC may occur, in each case without the express written consent of the Plaintiff and a further

order of this Court. Without limiting the generality of the foregoing, Doss Special Receiver, LLC may retain and compensate Doss Engineering, Inc., either directly or on behalf of the receivership estate, to provide consulting and other services to the receivership estate.

9. The Special Receiver and its owner, manager, employees, agents, attorneys and other professionals hired by it with respect to performing its duties hereunder shall have no personal liability and shall have no claim asserted against them relating to the performance of the Special Receiver's duties under this Order, except for claims for actual damages (and not consequential damages) due to their gross negligence, gross or willful misconduct, malicious acts or the failure to comply with Orders of this Court. In any event, the liability of the Special Receiver or persons acting on its behalf shall be limited to the assets of Defendant's estate.

10. Without limiting the generality of the immediately preceding decretal paragraph, the Special Receiver and its owner, manager, employees, agents, attorneys and other professionals hired by it are not, and shall not be construed as or deemed to be, an agent, owner, operator, or controller of the Defendant or its operations for the purposes of the Surface Mining Control and Reclamation Act and the Clean Water Act and the state counterparts thereto and the rules and regulations thereunder, the applicant violator system, or any other applicable environmental law, solely on account of the performance of the Special Receiver's duties under this Order, and the Plaintiff shall work with federal and other state regulatory authorities as necessary to ensure that the Special Receiver and its owner, manager, employees, agents, attorneys and other professionals hired by it are not either held liable under such laws or rendered ineligible for permits in West Virginia or elsewhere as a result of their actions pursuant to this Order.

11. The Special Receiver shall be compensated on an hourly basis at the hourly rates set forth in Exhibit A hereto, which terms and conditions are hereby approved, and no additional orders or approvals by the Court or any other party shall be necessary with respect to such compensation or the payment thereof to the Special Receiver.

12. On or before April 26, 2020, the Special Receiver shall obtain a surety bond in the amount of \$250,000 pursuant to and in accordance with W. Va. Code § 53-6-1, a copy of which bond shall be filed with the Court.

13. The Special Receiver is hereby authorized to borrow money on the terms and subject to the conditions set forth in Exhibit B hereto, which terms and conditions are hereby approved (as so approved, the "Funding Facility").

Creation of Receivership Estate

14. Immediately upon entry of this Order, a receivership estate shall be deemed created for the Defendant, which estate shall be under the sole and exclusive control, supervision, and management of the Special Receiver.

15. All of the Defendant's real property, personal property, both tangible and intangible and including intellectual property, leases (whether as lessor or lessee) of real or personal property, permits, assets, books, records, fixtures, equipment, inventory, as-extracted assets, reserves, and any other real, personal, tangible, or intangible property of the Defendant of any kind or nature whatsoever, wherever located, shall be deemed immediately transferred to the Defendant's receivership estate under the management, operation, and control of the Special Receiver without any further action on the part of the Defendant or the Special Receiver. Without limiting the generality of the foregoing, the assets transferred shall include all rights of

the Defendant in, to, or under any insurance policy and insurance proceeds, including any policy or proceeds applicable to any of the liabilities transferred to the receivership.

16. All persons, including the Defendant, all of its officers, directors, employees, stock or equity holders, any secured or unsecured creditors of the Defendant, and any other persons, are ordered to turn over to the Special Receiver all cash, keys, documents, deposits, payments received, books and records, equipment, software, and any other property of the Defendant, including water samples and the results of the testing thereof, in their possession, custody, or control or that come into their possession, custody, or control after the entry of this Order.

17. The banks and other financial institutions where the Defendant has account relationships are authorized and directed to comply with all instructions given by the Special Receiver in furtherance of the authority vested in him in this Order and any other Order entered in connection with this action.

18. Any person claiming to own property situated on the Defendant's property or used by the Defendant in connection with the operation of its business or property is enjoined from removing said property absent the actual written consent of the Special Receiver or upon further Order of the Court.

19. All existing claims, liens, and encumbrances against the Defendant or its properties or assets shall be deemed to constitute claims, liens, or encumbrances against the Defendant's receivership estate.

20. The Special Receiver shall have no liability or responsibility for the payment or discharge of any claims, liens, or encumbrances against the Defendant's receivership estate. The Special Receiver shall not be liable for any employee-related liabilities of the Defendant, other

than the amounts the Special Receiver may specifically agree in writing to pay. The Special Receiver, subject to the terms and conditions of this Order, shall be liable for any employee-related liabilities relating to any employees that the Special Receiver may hire.

21. No person shall file suit or take other legal or enforcement action against the Special Receiver without an Order of this Court permitting the suit or action.

22. Notwithstanding anything to the contrary herein, nothing shall (a) empower the Special Receiver or the Defendant to carry on any business or activity which the Defendant is not lawfully entitled to carry on or (b) exempt the Special Receiver or the Defendant from complying with statutory or regulatory provisions relating to the public health and safety or the environment.

23. Any and all costs, expenses, and liabilities of the receivership and the receivership estate created hereby, including, without limitation, the debts and liabilities incurred by the Special Receiver under the Funding Facility, the costs and expenses of the Special Receiver, the fees and expenses of any professionals retained by the Special Receiver, and the costs and expenses of the operation of the Defendant's business, shall constitute claims against the Defendant's receivership estate, shall be paid as a first-priority expense from the net proceeds of the operations or income of the Defendant and the sale of the Defendant's properties and assets; *provided, however*, that the Special Receiver's right to use or apply for such purposes the net proceeds of the sale of any properties and assets that are subject to any valid, enforceable, and unavoidable liens and security interests in any collateral that were properly perfected on or before March 26, 2020, the date of the commencement of this action, shall be subject to the prior satisfaction of such liens and security interests. For the avoidance of doubt, (a) the debts and liabilities under the Funding Facility shall be subordinate to any such valid, enforceable,

unavoidable, and properly perfected liens and security interests, (b) nothing in this action or Order shall make the Plaintiff responsible for the payment of the costs, expenses, and liabilities of the receivership and the receivership estate created hereby, and (c) nothing in this (or any other) paragraph shall affect the Special Receiver's right to payment of his compensation and expenses from the Funding Facility.

24. All persons having oral or written agreements with the Defendant for the supply of goods or services are hereby restrained pending the hearing to consider entry of a preliminary injunction and the preliminary appointment of a special receiver from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Special Receiver.

25. The Special Receiver shall be entitled to the continued use of the Defendant's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order shall be paid by the Special Receiver in accordance with the normal payment practices of the Defendant or such other practices as may be agreed upon by the supplier or service provider and the Special Receiver or as may be ordered by this Court.

Powers of the Receiver

26. The Special Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Defendant's assets, property, business, and affairs and, without in any way limiting the generality of the foregoing, the Special Receiver is hereby expressly empowered and authorized to do any of the following where the Special Receiver considers it necessary, appropriate, or desirable:

- a. To take possession of and exercise control over the Defendant's property and any and all proceeds, receipts and disbursements arising out of or from the Defendant's property;
- b. To receive, preserve and protect the Defendant's property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- c. To manage, operate and carry on the business of the Defendant, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the Defendant's business, or cease to perform any contracts of the Defendant;
- d. To negotiate and enter into financings, incur debt, or grant liens as necessary, desirable, or appropriate in the management of the Defendant's business, assets, or affairs, subject to Court approval;
- e. To retain, hire, or discharge employees on behalf of the receivership estate (none of whom are, or shall be deemed to be, employees of the Court or the Special Receiver) and to establish their wages, salaries, and benefits;
- f. To engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the Special Receiver's powers and duties, including without limitation those conferred by this Order, in each case subject to Court approval; provided, that, no such Court approval shall be required with respect to the Special Receiver's engagement of (1) Doss Engineering, Inc.; (2) accountants, legal counsel or such other persons in the normal and ordinary course of the receivership estate's business or operations, or (3) such other third-party contractors as may be deemed necessary by the Special Receiver to conduct the receivership estate's operations, including but not limited to, with respect to any and all reclamation activities;
- g. To purchase, lease, repair or replace machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Defendant or any part or parts thereof;
- h. To receive and collect all monies and accounts now owed or hereafter owing to the Defendant and to exercise all remedies of the Defendant in collecting such monies, including, without limitation, to enforce any security held by the Defendant;
- i. To settle, extend or compromise any indebtedness owing to or by the Defendant, subject to Court approval;

- j. To execute, assign, issue and endorse documents of whatever nature in respect of any of the Defendant's property, whether in the Special Receiver's name or in the name and on behalf of the Defendant, for any purpose pursuant to this Order;
- k. To undertake environmental or workers' health and safety assessments of the defendant's property and operations; To enter into consent orders, consent decrees, or other agreements with applicable environmental regulatory agencies with respect to the Defendant's environmental obligations, including the Defendant's environmental obligations under this Order;
- l. To cause the Defendant to perform any bonding and reclamation obligations so as to comply with applicable state and federal laws and regulations and effect the release of bonds for the benefit of the Defendant;
- m. To investigate, pursue, make, file, represent, defend against, and enter an appearance in any demand, lawsuit, action, claim, petition, filing, litigation, and proceeding; whether judicial or administrative, against any person for and on behalf of the Defendant, its interests, and its property;
- n. To initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Defendant, the Defendant's property or the Special Receiver, and to settle or compromise any such proceedings subject to Court approval;
- o. To direct the litigation strategy of the Defendant in any lawsuit, proceeding, action, administrative proceeding, or similar proceeding, including, without limitation, acting on behalf of and representing the Defendant's and its interests in any bankruptcy proceeding involving the Defendant;
- p. To market any or all of the Defendant's property, including advertising and soliciting offers in respect of the Defendant's property or any part or parts thereof and negotiating such terms and conditions of sale as the Special Receiver in its discretion may deem appropriate;
- q. To sell, convey, transfer, lease or assign the Defendant's property or any part or parts thereof outside the ordinary course of business,
 - i. Without the approval of this Court in respect of any transaction not exceeding \$50,000 up to an aggregate consideration for all such transactions does not exceed \$500,000; and
 - ii. With the approval of this Court;

provided, however, that any such sale, conveyance, transfer, lease, or assignment shall be subject to any valid, perfected, enforceable, and unavoidable liens and security interests in such property;

- r. To apply for any order or orders necessary to convey the Defendant's property or any part or parts thereof to a purchaser or purchasers thereof free and clear of any liens or encumbrances affecting such property, with all liens and encumbrances affecting such property attaching to the Net Proceeds¹ of sale in the same order of priority then existing with respect thereto;
- s. To report to, meet with, and discuss with such affected persons as the Special Receiver deems appropriate all matters relating to the Defendant's property, assets, operations, and affairs and the receivership, and to share information, subject to such terms as to confidentiality as the Special Receiver deems advisable;
- t. To register a copy of this Order and any other Orders in respect of the Defendant's property against title to any of the Defendant's property;
- u. To apply for any permits, licenses, approvals, or permissions as may be required by any governmental authority and any renewals, modifications, extensions, or releases thereof for and on behalf of and in the name of the Defendant;
- v. To review all the Defendant's insurance policies, including workers' compensation, disability, general liability, and hazard insurance, and to cancel, renew, extend, retain, modify, purchase, or otherwise deal with such insurance, engage the agent of record therefor, and name the receivership estate as an additional insured or loss payee, as the Special Receiver deems appropriate for the Defendant and its properties' preservation and protection;
- w. To exercise any shareholder, partnership, joint venture or other rights which the Defendant may have;
- x. To exercise any and all rights, powers, duties, and privileges of the Defendant, including, without limitation, any attorney-client or other similar privilege;
- y. To file a petition in bankruptcy and prosecute a bankruptcy case and any related proceedings for the Defendant;
- z. To make any and all other significant decisions affecting the Defendant or its business, affairs, or properties in the exercise of its reasonable business judgment; and
- aa. To take any steps reasonably incidental to the exercise of these powers or the performance of its duties;

¹ For purposes of this Order, "Net Proceeds" shall be defined as the gross proceeds of sale less (i) accrued but unpaid real property taxes relating to the property sold, (ii) personal property taxes relating to the property sold to the extent such taxes are required to be paid to convey the property free and clear of liens, and (iii) any costs and expenses directly attributable to the sale of the property, including, without limitation, closing costs, transfer taxes and fees, brokerage commissions and marketing expenses, and attorneys' fees.

And in each case where the Special Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so to the exclusion of all other persons, including the Defendant and its officers, directors, agents, representatives, and employees, and without interference from any other person.

27. With respect to the exercise of the powers specified in the preceding decretal paragraph, the Special Receiver shall be vested, exclusively, with the standing and all authority of the board of directors, shareholders, members, managers and officers of the Defendant and shall exclusively have all the duties, powers, and authority thereof under its certificates or articles of incorporation, operating agreements, bylaws, and any other organizational documents with respect thereto.

28. The Special Receiver may defend against any lawsuit, action, claim, petition, filing, litigation, or proceeding brought against him in its capacity as a Special Receiver or against or pertaining to the Defendant. Any and all costs and expenses, including attorneys' fees, arising from or incurred in connection with such legal actions or suits shall be paid as operating expenses of the receivership estate(s).

29. The Special Receiver shall not be responsible for the preparation and filing of any tax returns for the Defendant or its subsidiaries or affiliates (including any income, personal property, commercial activity, gross receipts, sales and use, or other tax returns) for any tax period ending prior to the date of the Special Receiver's appointment, it being understood that the Special Receiver shall be responsible for the preparation and filing of any tax returns for the Defendant for tax periods ending during the tenure of the Special Receiver.

30. The Special Receiver may recommend to the Court (a) that it be authorized to perform any other duties and responsibilities it reasonably believes may be necessary or

appropriate to further the objectives of the receivership, including but not limited to leasing, selling, assigning, transferring or conveying the Defendant's property or any interest therein or performing any capital improvements thereto, or (b) such other or further relief as it may deem necessary or appropriate to further the objectives of the receivership.

31. The Special Receiver shall prepare and file with the Court on a monthly basis a report of the Special Receiver's actions taken pursuant to this Order and an accurate accounting of all monies collected, disbursements made, and expenses incurred. Copies of such reports and accountings shall be served on all counsel of record and unrepresented parties herein simultaneously with their filing.

32. All actions taken by the Special Receiver pursuant to the authorizations contained in this Order shall be valid, binding, and enforceable acts of the Defendant.

Injunctions Against Interference with Receivership

33. All persons, including but not limited to the Defendant and its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, are enjoined from in any way interfering with the operation of the receivership or in any way disturbing the assets, liabilities, and operations of the receivership, pending the hearing to consider entry of a preliminary injunction and the preliminary appointment of a special receiver.

34. The Defendant is hereby enjoined from taking any action with respect to the operation or management of its properties, assets, business, and affairs, except as requested by the Special Receiver, pending the hearing to consider entry of a preliminary injunction and the preliminary appointment of a special receiver.

35. All officers, directors, employees, attorneys, accountants, and equity interest holders of the Defendant (a) are directed to use their best efforts to ensure a smooth transition of

the operation of the Defendant's business and assets to the Special Receiver, (b) are prohibited from interfering with the Special Receiver in the exercise of its rights, powers, duties, and privileges hereunder or taking any action inconsistent with the terms and provisions of this Order, (c) shall fully cooperate with the Special Receiver in carrying out its rights, privileges, and duties under this Order, including responding promptly to all reasonable requests for information or documentation and execution of documents, and (d) are barred from commencing a case under the Bankruptcy Code or other insolvency proceeding for or on behalf of the Defendant.

36. Any and all existing proceedings against or in respect of the Defendant or its property are hereby stayed and suspended pending the hearing to consider entry of a preliminary injunction and the preliminary appointment of a special receiver, *provided, however*, that nothing in this Order shall (a) prevent any person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph or (b) affect any state or federal regulatory agency's police and regulatory authority in respect of the Defendant and the Defendant's assets and operations, including any action, suit or proceeding that is taken in respect of the Defendant by or before the regulatory agency, other than the enforcement of a payment order by the regulatory agency.

37. No person shall file suit or take other legal or enforcement action against the Defendant or the Defendant's property, including the commencement of an involuntary case under the Bankruptcy Code or other insolvency proceeding against the Defendant or the Defendant's property, except (a) any action taken by a state or federal regulatory agency pursuant to its police and regulatory authority in respect of the Defendant and the Defendant's

assets and operations, including any action, suit or proceeding that is taken in respect of the Defendant by or before the regulatory agency, other than the enforcement of a payment order by the regulatory agency with respect to payment obligations incurred prior to the Special Receiver's appointment, (b) with the written consent of the Special Receiver, or (c) in accordance with an Order of this Court permitting the suit or action.

38. The exercise of all rights and remedies against the Defendant, the Special Receiver, or the Defendant's property, including, without limitation, the exercise of setoff rights and the creation, perfection or enforcement of a lien, are hereby stayed and suspended except with the written consent of the Special Receiver or an Order of this Court permitting the exercise of such rights and remedies, *provided, however*, that Appalachian Headwaters, Inc., is permitted to record with the County Clerks of Muhlenberg and Ohio Counties, Kentucky, notices of its judgment liens against Defendant that result from its March 19, 2020 registration in the United States District Court for the Western District of Kentucky of certain Judgment Orders of the United States District Court for the Southern District of West Virginia. If Appalachian Headwaters, Inc., records such notices, they shall be treated as if they were properly perfected on or before March 26, 2019 for purposes of Paragraph 23 of this Order.

39. Nothing in this Order shall be interpreted to alter, diminish or enlarge the rights or obligations of any person who has issued surety bonds on behalf of the Defendant (a "Surety") or the rights of any beneficiary of surety bonds issued on behalf of the Defendant as to any third party, including any Surety or governmental authority, nor shall anything in this Order be deemed to enjoin any Surety or governmental authority from asserting any rights, claims, or defenses against any third party, including any Surety or governmental authority. For the avoidance of doubt, any Surety and governmental authority shall retain any and all rights

afforded to it under the Surface Mining Coal and Reclamation Act and the Water Pollution Control Act, the state counterparts thereto, and the rules and regulations promulgated thereunder.

40. Notwithstanding anything to the contrary contained herein, nothing herein shall affect the right of the Plaintiffs in *Ohio Valley Environmental Coalition, Inc., et al. v ERP Environmental Fund, Inc.*, Civil Action No. 3:11-cv-00115 (S.D.W.Va.) and *Ohio Valley Environmental Coalition, Inc., et al. v. Hobet Mining, LLC and ERP Environmental Fund, Inc.*, Civil Action No. 3:09-cv-01167 (S.D.W.Va.) to enforce (a) the October 5, 2016 Amended Order entered in Civil Action 3:09-cv-1167 (CM/ECF #262) and (b) the October 7, 2016 Second Modified Consent Decree entered in Civil Action 3:11-cv-0115 (CM/ECF #105), subject to the rights of the Special Receiver, the West Virginia Department of Environmental Protection, and any other party in interest to oppose the enforcement thereof before the court in which such actions are pending (and any appeals thereof).

Termination of Receivership Order

41. The Special Receiver may apply to the Court to terminate this Order in the event that

- a. All or substantially all of the Defendant's mining permits shall have been revoked pursuant to final orders of the regulatory agencies that issued those permits; or
- b. The Special Receiver determines that it lacks the ability to comply with its obligations under this Order, including for a lack of sufficient funding; or
- c. The Special Receiver is unable to reach agreements with appropriate regulatory authorities or any Surety as to the prioritization of reclamation and compliance efforts; or

- d. Is unable to ensure it has the necessary authority and protections to manage or dispose of liabilities, obligations or properties arising from operations or properties outside of West Virginia; or
- e. A case under the Bankruptcy Code or other insolvency proceeding is commenced and has not been dismissed or suspended within sixty days thereafter.

In any of these events, the Special Receiver shall be entitled to an order terminating this Order upon at least ten (10) days' notice to all parties in interest in the receivership. If the Court terminates this Order then the Special Receiver shall cooperate with the Defendant or any successor receiver in an orderly transfer of estate property.

Scope of this Order

42. To the fullest extent permissible by law given this Court's *in rem* jurisdiction over the Defendant's property, assets, operations, and affairs, this Order is intended to and shall (a) apply to all persons without regard to their residence or domicile or contacts within the State of West Virginia and to all federal, state, and local governmental authorities having jurisdiction and power over the Defendant's property, assets, operations, and affairs and (b) be given Full Faith and Credit in accordance with the Constitution of the United States.

Retention of Jurisdiction

43. This Court shall retain jurisdiction with respect to all matters arising from or related to the receivership estate, the Special Receiver, the management and operation of the Defendant's business, properties, and affairs, and the implementation of this Order.

Expiration of Order; Further Proceedings on Plaintiff's Motion for Preliminary Relief

44. This Order, including the injunctions and the appointment of the Special Receiver provided herein, shall supersede this Court's prior Temporary Order dated March 27, 2020, be deemed effective as of that date, and continue in full force and effect pending the closing of the hearing to consider the Plaintiff's motion for entry of a preliminary injunction and the preliminary appointment of a special receiver.

45. The Court shall conduct a video or telephonic hearing to consider the Plaintiff's motion for entry of a preliminary injunction and the preliminary appointment of a special receiver at a date to be determined, in light of the Judicial Emergency and the referral of this matter to Business Court.

46. Counsel for the Plaintiff having previously served a copy of this Court's prior Temporary Order and its motion upon the Defendant and all known creditors, employees, equity interest holders, regulatory agencies, owners and controllers, and other parties interest of the Defendant, service thereof shall constitute adequate notice of the hearing and the relief requested in the Plaintiff's motion, counsel for the Plaintiff is directed to serve a copy of this Order by email only upon all persons on the Email Service List for this action. The costs and expenses associated with such service shall constitute an expense of the receivership estate and be reimbursed, upon the submission of an appropriate invoice therefor, by the Special Receiver.

Dated: October 13, 2020


CHRISTOPHER C. WILKES
JUDGE, WEST VIRGINIA
BUSINESS COURT DIVISION

Date: 10/14/2020
Certified copies sent to:
☒ court record
☐ parties
☐ other (please initialed)
By: [Signature]
☐ certified 1st class mail
☐ fax
☐ hand delivery
☐ interdepartmental
Other directives accomplished:
[Signature]
Deputy Circuit Clerk

B. Bailey
J. Dixon
J. Thompson
R. Mc Lusky

Doss Engineering, Inc.
Professional Engineering Services

RATE & FEE SCHEDULE
As of January 1, 2020

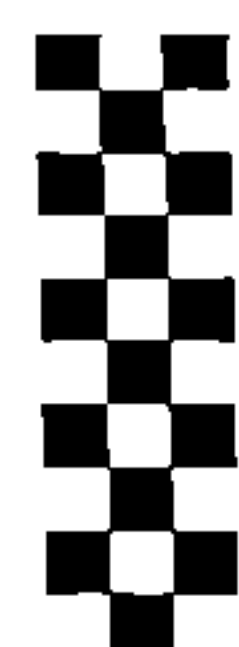
Confidential

Principal / Professional Engineer	\$150.00	/ hour
Litigation & Due Diligence Support	Quoted on Request	
Senior Mining Engineer / Project Manager	\$90.00	/ hour
Senior Geologist	\$85.00	/ hour
Staff Engineer	\$75.00	/ hour
Senior Aquatic Biologist / Taxonomist	\$75.00	/ hour
Staff Geologist	\$65.00	/ hour
Staff Biologist	\$65.00	/ hour
Engineering / Environmental Technician		
Auto-Cad	\$60.00	/ hour
Permitting / Office	\$50.00	/ hour
Field	\$40.00	/ hour
Laboratory	\$30.00	/ hour
Clerical / Administrative	\$37.50	/ hour
2-man Survey Crew	\$85.00	/ hour
2-man GPS Survey Crew	\$120.00	/ hour
UAV / Drone Pilot	\$75.00	/ hour
Mileage	\$0.75	/ mile
Misc. Materials, Other Direct Expenses	Cost + 10%	
Travel	At Cost	
Payment Terms:	Net 30 days	
	from receipt of invoice	

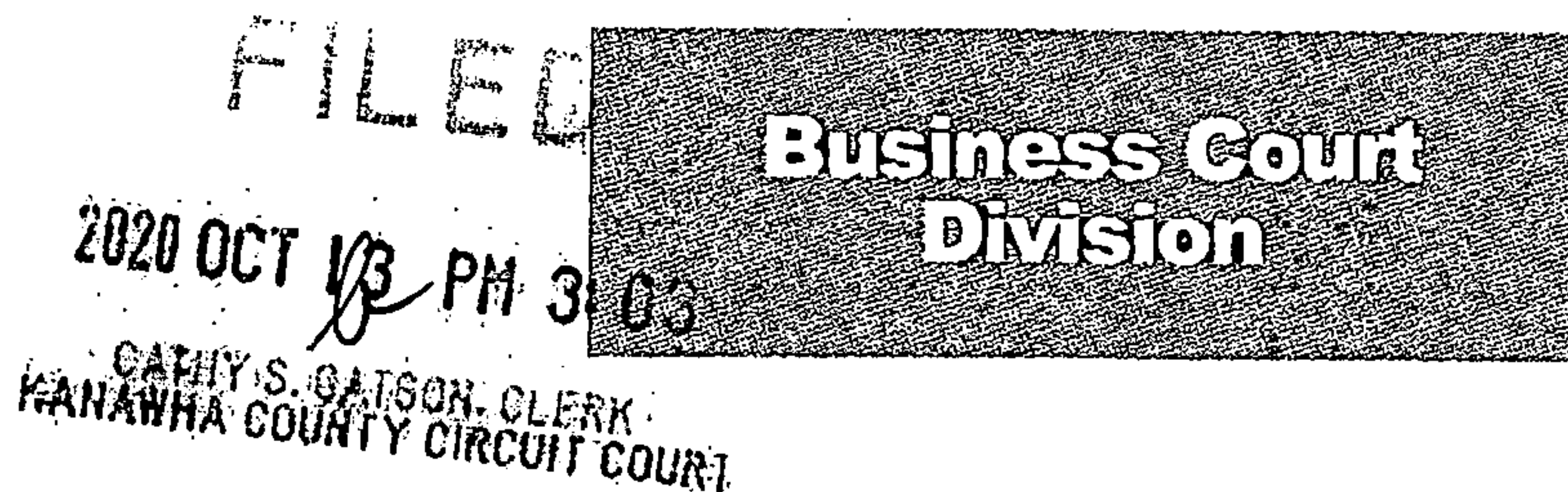
Rates are effective January 1, 2020, but are subject to change without notice.

EXHIBIT A
COMPENSATION OF SPECIAL RECEIVER

- For the work contemplated by the Order, Doss Special Receiver, LLC will bill and be paid on an hourly basis at Mr. Doss' customary rate (less a 15% discount) as shown on the attached rate sheet for Doss Engineering, Inc.:
 - Provided that the Special Receiver shall be paid for a minimum of 60 hours work per month regardless how many hours are expended, but not more than 120 hours per month.
- The Special Receiver shall be entitled to use the services of Doss Engineering, Inc. at the rates in the attached term sheet (less a 10% discount).
- Upon entry of the Order, the Special Receiver shall be entitled to a lump sum payment of \$18,500 to cover the initial costs of professional services (including Mr. Doss') and of procuring additional insurance.
- In the event that the Order is terminated, the Special Receiver withdraws as Receiver or the Surety elects to stop funding the Special Receiver then upon the presentation of a final bill the Surety shall pay the Special Receiver within 10 days.



380 West South Street
Martinsburg, WV 25401
304264-1992
304-264-2163



Fax

To:	Cathy S. Gatson	From:	Tessa Bowers, Law Clerk
Fax:	304-357-0473	Pages:	25 (incl. cover sheet)
Phone:	304-357-0440	Date	10/13/2020
Re:	Business Court Order to be filed	cc:	n/a

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Comments:

This is an Order signed by Judge Christopher Wilkes, Circuit Judge in Berkeley County, who is Presiding Judge in 20-C-282 (Kanawha County) as this case has been referred to the Business Court Division. This Order is to be entered in Kanawha County 20-C-282.

Please file and send attested copies to all counsels of record, as well as to the Business Court Central Office at 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.