



**IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA**

**IN RE: GAVIN LANDFILL LITIGATION**

**CIVIL ACTION NO. 16-C-8000**

**THIS DOCUMENT APPLIES TO ALL CASES**

**ORDER SCHEDULING FAIRNESS HEARING**

On April 12, 2018, Lead Resolution Judge Booker T. Stephens, Resolution Judge Alan D. Moats and Resolution Judge Jay M. Hoke conducted mediation of all underlying cases in *In re: Gavin Landfill Litigation*, Civil Action No. 16-C-8000. After engaging in extensive discussion regarding the issues presented in the Gavin Landfill Litigation and the possible terms of settlement, counsel for Plaintiffs and counsel for Defendants American Electric Power Co., Inc., American Power Service Corporation, and Ohio Power Company (collectively “AEP Defendants”) and Defendant Headwaters, Inc. reached agreement to compromise and settle the Gavin Landfill Litigation as a result of the mediation.

The Court is advised the terms of the settlement agreement are confidential. **Any filings regarding the settlement shall be electronically filed under seal and served “only private” via File & ServeXpress.**

Lead Presiding Judge Derek C. Swope, Presiding Judge John A. Hutchison, and Presiding Judge Jack Alsop will conduct a hearing regarding the proposed settlement of the Gavin Landfill Litigation at **1:00 p.m. on June 1, 2018**, in Courtroom Four, also known as the Ceremonial Courtroom, on the Second Floor of the Kanawha County Courthouse, at 409 Virginia Street, East, in Charleston, West Virginia. The purpose of the hearing will be to: (1) review the terms of the proposed settlement; (2) discuss the proposed method for allocation and distribution of settlement proceeds; (3) discuss notice to individual Plaintiffs regarding allocation and

distribution of settlement proceeds; and (4) consider any application for an award of attorneys' fees and expenses.

**No later than May 11, 2018**, Counsel for Plaintiffs is **ORDERED** to provide the following to each individual Plaintiff affected by the proposed settlement: (1) A copy of the proposed settlement agreement; (2) a disclosure of the manner and distribution the individual Plaintiffs will receive under the proposed settlement and distribution plan; and (3) a copy of this Notice of Hearing. Counsel for Plaintiffs shall file and serve an accounting of any and all Notices of Hearing returned to Counsel for Plaintiffs no later than **May 18, 2018**.

The motion to approve the settlement and any exhibits to the motion shall be filed under seal and served "only private" on counsel for Plaintiffs, Counsel for the AEP Defendants and Defendant Headwater, Inc., Lead Presiding Judge Derek C. Swope, Presiding Judge John A. Hutchison, Presiding Judge Jack Alsop, and the Mass Litigation Manager **no later than 12:00 p.m. on May 11, 2018**. Any response to the motion to approve the settlement, including any objection to the settlement, shall be filed under seal and served "only private" **no later than 12:00 p.m. on May 25, 2018**.

The motion to approve the settlement shall provide:

1. A proposed method of allocating and distributing gross settlement proceeds to individual Plaintiffs. The proposed method of allocation and distribution should address the impact of divorce, death, incompetence, claims by minors, and dissolution of business entities or other organizations on allocation and distribution of settlement proceeds; investment of settlement proceeds; and interim distributions and partial payments of fees and expenses.
2. A procedure for handling lost or returned settlement checks, and a proposed method of accounting for and disposition of all undistributed or unclaimed settlement proceeds, including whether the unclaimed settlement proceeds will be returned to the settling Defendant, paid to other Plaintiffs, distributed to a charitable or nonprofit institution, left to the discretion of the Panel for making *cy pres awards*, or any other reasonable distribution proposed by counsel.
3. A proposed report to the Court in spread sheet format regarding allocation and distribution of settlement proceeds to individual Plaintiffs. The proposed report should

include the name of the settling Defendant or Defendants; gross fee percentage; any fee sharing information; allocated gross proceeds; allocated expenses; Plaintiff last name; Plaintiff first name; Plaintiff middle name; claimed damages used for allocation; allocated proceeds; gross fees; allocated expenses; total to the Plaintiff's law firm; and net to the Plaintiff.

4. A detailed accounting of costs, expenses and attorney's fees incurred by Counsel for the Plaintiffs.
5. The name and address of the financial institution where settlement proceeds will be deposited, including the name of the account, the account number and the name of any Trustee or Account manager.
6. Documentation showing each Plaintiff: a) is informed of and agrees to the method of allocation and distribution of settlement proceeds; b) has received an accounting of the individual Plaintiff's settlement allocation and distribution, including any costs, expenses and attorney fees; and c) consents to the proposed settlement allocation and distribution.
7. A proposed order approving the settlement, the method of allocation and distribution, and dismissing the appropriate parties.

Only counsel representing the Plaintiffs, counsel representing the settling Defendants and any self-represented parties affected by the proposed settlement are required to attend the June 1, 2018, hearing. Counsel for Plaintiffs shall advise the Plaintiffs they have the option, but are not required to attend the hearing on June 1, 2018.

It is so **ORDERED**.

**ENTER:** April 30, 2018.

/s/ Derek C. Swope  
Lead Presiding Judge  
Gavin Landfill Litigation