

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

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

Plaintiff,

v.

Civil Action No. 20-C-282
Presiding Judge: Christopher C. Wilkes
Resolution Judge: James H. Young, Jr.

ERP ENVIRONMENTAL FUND, INC.,

Defendant.

ORDER APPROVING MOTION OF RECEIVER SEEKING LEAVE OF COURT TO
FILE
BANKRUPTCY PETITION FOR CROSSVILLE COAL

Doss Special Receiver, LLC ("Special Receiver"), the Special Receiver for ERP Environmental Fund, Inc. ("ERP"), moved the Court for an order authorizing the Special Receiver to file a bankruptcy petition for Crossville Coal, Inc. (a Nevada corporation with coal assets and permits in Tennessee and wholly outside of West Virginia).

Crossville Coal, Inc. ("Crossville") holds surface mining permits in Tennessee. According to the Special Receiver, Crossville is a Nevada corporation, indirect owned by ERP through a holding company, which is also a Nevada corporation. Crossville's operations and assets are in Tennessee and wholly outside the State of West Virginia.

At the time that Judge Tabit initially appointed the Special Receiver for ERP, neither WVDEP, the Special Receiver, nor the Court were aware that ERP had any subsidiary companies. After initially learning of enforcement action against Crossville by the regulatory authority in Tennessee, the federal Office of Surface Mining ("OSM"), the Special Receiver filed a *Motion Of*

FILED

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CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

159-160

*Receiver For Clarification That Receivership Estate Does Not Include Affiliates Of ERP Environmental Fund, Inc. Located Outside Of The State Of West Virginia*¹ on September 30, 2020.

Since being appointed, in cooperation with OSM and a non-governmental entity, the Clean Streams Foundation, the Special Receiver expended funds for the treatment of water at the Crossville operation in Tennessee and attempted to stimulate cooperation between OSM and Crossville's reclamation bonding surety to minimize adverse environmental impacts from the site. After a preliminary investigation, the Special Receiver learned that Crossville's liabilities significantly exceed its assets. The Special Receiver represents that dealing with Crossville's creditors and the regulatory authority in OSM is diverting the Special Receiver's attention and the estate's resources away from the core responsibility entrusted to it by this Court's December 23, 2020 Preliminary Injunction: to preserve the assets of the estate for the management of ERP's West Virginia reclamation obligations.

The Special Receiver believes the most prudent course of action for all interested parties would be for Crossville to be liquidated. However, the Special Receiver believes that neither ERP nor Crossville, have any remaining officers or employees available to file for bankruptcy on behalf of Crossville. Although the Special Receiver has not exercised control over Crossville's operations since being appointed to oversee the Receivership Estate in March of 2020, it appears that the Special Receiver is the only entity still available with authority to place Crossville into bankruptcy. Accordingly, the Special Receiver moved the Court for an order authorizing the Special Receiver to exercise its powers under Paragraph 26 of the Receivership Order to file a *Voluntary Petition for Non-Individuals Filing for Bankruptcy* pursuant to Chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Middle District of

¹ By separate motion, the Special Receiver moved to voluntarily withdraw the September 30, 2020 motion for clarification regarding Crossville.

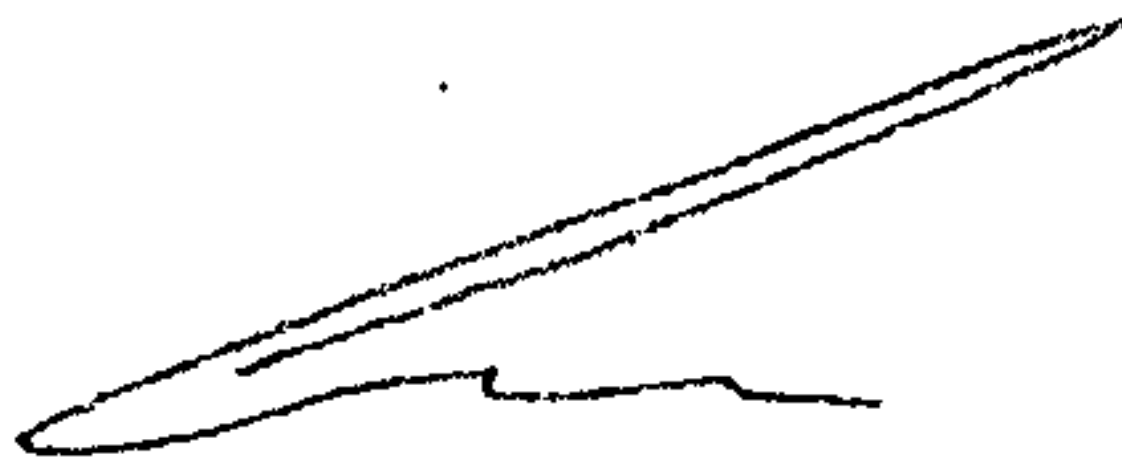
Tennessee, to engage and pay legal fees from the assets of Crossville to Tennessee bankruptcy counsel, to represent Crossville in the Chapter 7 proceeding, and to file such pleadings and documents, and to take such actions on behalf of Crossville as are required in connection with the Chapter 7 proceedings.

Paragraph 26.z. of the Court's December 22, 2020 Receivership Order authorizes the Special Receiver "[t] file a petition in bankruptcy and prosecute a bankruptcy case and any related proceedings for the Defendant...." The Court agrees that the Special Receiver's main responsibility under the Receivership Order is to preserve the assets of the estate for the management of ERP's West Virginia reclamation obligations. Therefore, after hearing no objection from any party noticed on the Special Receiver's motion, the Court hereby GRANTS the *Motion Of Receiver Seeking Leave Of Court To File Bankruptcy Petition For Crossville Coal*.

The Court further FINDS and ORDERS that the Special Receiver is fully subject to the protections set out in the Receivership Order for the minor activities it voluntarily undertook in order to mitigate against environmental noncompliance or impacts at Crossville, including Paragraph 9's provision that the "Special Receiver...shall have no personal liability and shall have no claim asserted...relating to the performance of the Special Receiver's duties under this Order...." The Court further FINDS and ORDERS that neither the Special Receiver's minimal, voluntary actions regarding Crossville, nor its filing of a bankruptcy petition on behalf of Crossville can be used by any individual or governmental entity as proof that the Special Receiver is an agent, owner, operator, or controller of Crossville.

The Clerk shall enter the foregoing and forward attested copies hereof to all counsel, to any *pro se* parties of record, and to the Business Court Central Office at Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

ENTERED this 2nd day of June, 2021.



CHRISTOPHER C. WILKES
Presiding Judge

Date: 6/2/21
Certified copies sent to:
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Deputy Circuit Clerk

C. Hunter
S. Thompson
T. Dixon
B. Bailey
Bus Ct.