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 SETTLEMENT AGREEMENT BETWEEN SPECIAL RECEIVER AND PILLSBURY WINTHROP SHAW PITTMAN LLP

By motion dated February 16, 2022 (the "Joint Motion"), Doss Special Receiver, LLC (the "Receiver") and the law firm of Pillsbury Winthrop Shaw Pittman LLP ("Pillsbury," and with the Receiver, the "Parties")) jointly sought permission of the Court to enter into and perform under the Settlement Agreement between the Parties dated February 14, 2022 attached hereto as **Exhibit 1** (the "Settlement Agreement"), and for Court approval of the same, which settlement will resolve all debts and resolve all claims of the Parties as set forth in the Settlement Agreement.

The proposed Settlement Agreement will settle and compromise, among other things, certain debts (the "Pillsbury Debt") claimed by Pillsbury that are secured by assets owned by ERP Environmental Fund ("ERPEF"). The Receiver has informally asserted that potential grounds may exist for it to challenge the amount of the Pillsbury Debt, the validity of Pillsbury's liens, and Pillsbury's receipt of proceeds received from the sale of a dragline. Conversely, Pillsbury has informally asserted that the Receiver's claims lack merit, that the Pillsbury Debt is valid, Pillsbury's liens are unavoidable, and that assets transferred to ERPEF by virtue of its 2019 merger

with ERP Mineral Reserves are avoidable. The Parties have submitted declarations with the Joint Motion, which the Court has considered and accepted for purposes of approving the Settlement Agreement.

In order to resolve the disputes between Pillsbury and the Receiver, Pillsbury has agreed to release all remaining liens and encumbrances on ERPEF's real and personal property that secured the Pillsbury Debt, and to provide releases to the Receiver and ERPEF receivership estate (the "Pillsbury Consideration"). For its part, the Receiver has (for itself and the ERPEF receivership estate) agreed to provide Pillsbury with instruments releasing any potential claims it has against Pillsbury (the "Receiver Consideration," and with the Pillsbury Consideration, the "Mutual Consideration").

Having reviewed and considered the Joint Motion, as well as the Settlement Agreement and Declarations attached to the Joint Motion, and having heard such parties as desired to be heard, the Court hereby GRANTS the motion and FINDS and ORDERS as follows:

(1) The terms of the Settlement Agreement are fair, reasonable and appropriate, and are therefore approved, and the Parties are authorized to perform under and pursuant to the terms of the Settlement Agreement;

(2) The Mutual Consideration is fair (and represents fair consideration) to each of the Parties, respectively, and each of the Parties is receiving reasonably equivalent value in exchange for the consideration it is providing under the Settlement Agreement

ENTERED this 3 day of March, 2022.

Date: 3/4/2022
Certified copies sent to:
✓ counsel of record
___ parties
___ other ___ (please indicate)
By:
✓ certified/1st class mail
___ fax
___ hand delivery
___ interdepartmental
Other directives accomplished:
Deputy Circuit Clerk

B. Daley
J. Thompson
C. Hunter

CHRISTOPHER WILKES
Presiding Judge

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 4th DAY OF March 2022
CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

4859-1879-3743.v1

EXHIBIT 1

EXECUTION VERSION

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this "**Agreement**") is made and entered into effective as of February 14, 2022, by and among (1) Pillsbury Winthrop Shaw Pittman LLP ("**Pillsbury**"), (2) ERP Environmental Fund, Inc. ("**ERPEF**"), and (3) Doss Special Receiver, LLC, solely in its capacity as special receiver for ERPEF ("**Receiver**," and with Pillsbury and ERPEF, the "**Parties**").

RECITALS

WHEREAS, Receiver serves as special receiver for ERPEF in the case of *Harold Ward v. ERP Environmental Fun, Inc.*, CIVIL ACTION NO. 20-C-282 (Cir. Ct. Kanawha County, WV) (the "**Case**," and the presiding court is the "**Court**");

WHEREAS, Pillsbury contends that it is owed more than $1 million (the actual amount owed is the "**Subject Debt**") as of the date hereof by certain individuals and entities other than ERPEF and the Receiver; and that the Subject Debt is secured solely by (a) a Deed of Trust encumbering certain real property located in West Virginia, and recorded at Book-Page 378-656 et al. in the Office of the Clerk of the County Commission of Boone County, West Virginia (the "**West Virginia Property**"); (b) Mortgages encumbering certain real property located in Kentucky, and recorded (i) at M706 PG 1842 et al. in the Office of the Muhlenberg County Clerk, Kentucky, dated February 27, 2019, and (ii) at M556 PG 643 et al. in the Office of the Ohio County Clerk, Kentucky, dated February 26, 2019 (the "**Kentucky Property**" and with the West Virginia Property, the "**Real Property**," and the Deed of Trust and Mortgages are the "**Instruments**");

WHEREAS, prior to the date hereof, the Subject Debt was secured by a first-priority lien (the "**Dragline Lien**"), encumbering a certain piece of mining equipment commonly referred to as a dragline and known as "Big John" (the "**Dragline**"), and upon disposition of the Dragline by its record owner Merida Natural Resources, LLC ("**Merida**"), Pillsbury received a portion of the proceeds from the purchaser in exchange for the release of its security interest in the Dragline;

WHEREAS, prior to the date hereof (1) the Receiver contended that it may have claims against Pillsbury relating to various matters, including but not limited to claims relating to the Subject Debt, the Real Property, and the Dragline (as well as the proceeds thereof received by Pillsbury from the sale of the Dragline, and the sale agreement and transactions pursuant to which Merida sold the Dragline to OCP S.A. ("**OCP**")), and (2) Pillsbury contended that it may have claims against the Receiver, including claims relating to the same matters;

WHEREAS, the Parties have assessed, among other things, the risk of loss versus the benefits of any recovery from litigating any potential claims against one another, and have agreed that in order to avoid such litigation, (1) Pillsbury will agree to release any and all instruments (including the Instruments) that encumber the Real Property and any other property securing the Subject Debt and (2) the Parties will provide full releases to one another, all as set forth (and on the terms and conditions) herein; and

EXHIBIT 1

EXECUTION VERSION

WHEREAS, the Parties have negotiated over the course of several months and reached this Agreement at arms' length and in good faith; without any coercion or undue influence; and with the benefit of their respective independent legal counsel.

THE AGREEMENT

NOW, THEREFORE, in consideration of the mutual releases set forth herein and other good, valuable fair and reasonably equivalent value and consideration, which the Parties agree is good and valuable consideration for the various covenants and understandings set forth in this Agreement, the Parties hereby agree as follows:

1. Court Approval.

   a. The Parties acknowledge that this Agreement requires approval by the Court. Within five (5) calendar days after full execution of this Agreement by the Parties, the Parties shall file a joint motion with the Court seeking entry of a final order approving this Agreement (the "**Settlement Order**"), which shall expressly (i) approve the terms and conditions of this Agreement in all respects; and (ii) authorize and direct the Parties to take actions appropriate to consummate the transactions set forth in this Agreement.

   b. The Parties agree to present evidence to the Court (at least in the form of declarations, and by proffer or otherwise if the Court conducts a hearing) that supports approval of this Agreement, including a finding that the consideration received by each Party under this Agreement represents reasonably equivalent value (and otherwise fair consideration) for that which such Party is transferring or otherwise parting with under this Agreement, and that neither Party has or will be engaging in a fraudulent transfer or fraudulent conveyance by full performance by the Parties under this Agreement.

2. Release of Encumbrances.

   a. Within five (5) calendar days after entry of the Settlement Order in a form reasonably acceptable to the Parties, and in the absence of any stay, reversal, amendment, reconsideration request, appeal (or similar occurrence) of the Settlement Order, Pillsbury shall deliver to the Receiver customary documentation that effectuates a release by Pillsbury of the Instruments that encumber the Real Property (the "**Release Instruments**"). The Release Instruments will be prepared by the Receiver, with the Parties bearing their own respective fees and costs. The Release Instruments shall be held in escrow by Receiver's counsel pursuant to the terms hereof.

   b. Upon the passage of 91 days from entry of the Settlement Order, and in the absence of any stay, reversal, amendment, reconsideration request, appeal (or similar occurrence), of the Settlement Order, the Release Instruments shall be released from escrow and may be recorded and otherwise used by the Receiver as the Receiver deems fit.

3. Mutual Releases. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the releases set forth herein shall become immediately effective upon entry of the Settlement Order. The Parties understand and agree that the following mutual releases are given by each of them on behalf and for the benefit of themselves and, to the extent applicable, their respective directors, officers, employees, agents, attorneys, affiliates, successors and assigns, as well as on behalf of any subsidiary or affiliated company, firm or partner of any of them and, in the case of the Receiver, on behalf of the Receiver, ERPEF and the ERPEF receivership estate. The scope of the releases set forth below includes claims and matters that are or, if commenced, would be, in any way shape for form related to Pillsbury, the Subject Debt, the Real Property, Instruments, the Dragline and Dragline Lien (as well as the proceeds thereof received by Pillsbury from the sale of the Dragline, and the sale agreement and transactions pursuant to which Merida sold the Dragline to OCP), and all matters that were or could have been raised or asserted between the Parties (or otherwise in connection with the discussions leading to the settlement reflected in this Agreement). It is the intention of the Parties to release one another from all claims. Expressly excluded from the scope of the releases are the obligations of each Party to comply with the terms of this Agreement and the rights of each Party to enforce the terms of this Agreement.

   a. To the fullest extent permitted by law, Pillsbury hereby releases and forever discharges (1) the Receiver and its successors and predecessors-in-interest, affiliates, partners, parent entities, agents and assigns, and each of their officers, directors, employees, agents, trustees, employees, legal counsel, accountants and representatives of any kind (the "**Receiver Released Parties**"), from each and every right, claim, debt and cause of action, whether asserted or unasserted, known or unknown, arising out of or relating to any claims that Pillsbury has, had, or may have against the Receiver Released Parties and (2) ERPEF (and its receivership estate), including its successors and predecessors-in-interest, affiliates, partners, parent entities, agents and assigns, and each of their officers, directors, employees, agents, trustees, employees, legal counsel, accountants and representatives of any kind (the "**ERPEF Released Parties**"), from each and every right, claim, debt and cause of action, whether asserted or unasserted, known or unknown, arising out of or relating to any claims that Pillsbury has, had, or may have against the ERPEF Released Parties.

   b. To the fullest extent permitted by law, the Receiver (on behalf of itself, and on behalf of ERPEF and the ERPEF receivership estate) hereby releases and forever discharges Pillsbury, and its successors and predecessors-in-interest, affiliates, partners, parent entities, agents and assigns, and each of their officers, directors, employees, agents, trustees, employees, legal counsel, accountants and representatives of any kind (the "**Pillsbury Released Parties**"), from each and every right, claim, debt and cause of action, whether asserted or unasserted, known or unknown, arising out of or relating to any claims that the Receiver,

ERPEF, and the ERPEF receivership estate had, has, or may have against Pillsbury.

4. Limited Representations and Warranties. The representations of the Parties are limited to the following, each subject to the terms of this Agreement, including Court approval as provided in Section 1 hereof: (a) neither Party has assigned, transferred, or conveyed any rights or claims it may have against the other Party to any other person or entity; (b) each of the Parties has full power and authority to enter into and perform this Agreement without the consent of or duty to notify any other person, entity, or regulatory authority (save the Court approval required in Section 1); (c) each person signing this Agreement is duly authorized and has legal capacity to execute and deliver this Agreement; and (d) the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. For the avoidance of doubt, the Receiver's authority to bind its respective executors, heirs, successors and assigns, and any subsequently appointed bankruptcy trustee is effective only upon entry of the Settlement Order.

5. No Other Representations or Warranties. The only representations and warranties of the Parties are those set forth in the immediately preceding paragraph. It is agreed that Pillsbury and the Receiver are completely familiar with all relevant matters related to their relationships (and to the extent they may not be so familiar, such lack of familiarity shall have no bearing on this settlement, this Agreement, or the releases provided for herein), have read this Agreement and have consulted legal counsel, or knowingly chose not to consult legal counsel, before executing same; they have relied upon their own due diligence (or lack thereof) and judgment and/or that of their respective legal counsel in executing this Agreement and have not relied on or been induced by any representation (save the representations in Section 4 of this Agreement), statement or act by any other party. Each Party enters into the Agreement voluntarily, with full knowledge of its significance. The Agreement is in all respects complete and final (subject only to Court approval as set forth above).

6. Legal Fees and Costs. Each Party shall pay its own respective costs and attorneys' fees incurred with respect to this Agreement.

7. Non-Compliance. In the event a Party fails to comply with the terms of this Agreement, then the Party failing to comply with the terms of this Agreement agrees and promises to pay all of the legal fees and expense of the Party who complied with the Agreement and had to enforce its rights under the Agreement.

8. Entire Agreement. This Agreement constitutes the entire agreement with respect to the subject matter addressed herein and supersedes any prior written and/or verbal agreements between the Parties.

9. Amendments. This Agreement may not be orally modified altered, amended, or vacated without written consent of the Parties.

10. Headings. All headings and captions in this Agreement are for convenience only and shall not be interpreted to enlarge or restrict the provisions of this Agreement.

11. Waiver and Modification. The failure of the Parties to insist, in any or more instances, upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall not be construed as a waiver, or a relinquishment for the future of such covenants or option, but the same shall continue and remain in full force and effect.

12. Jurisdiction and Choice of Law. By this Agreement, each of the Parties submits to the jurisdiction of the Court for any action to enforce or interpret this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia as to all matters (regardless of the laws that might otherwise govern under applicable conflict of laws principles). The Parties waive all rights to alternative dispute resolution. The Parties waive any rights to a jury trial.

13. Counterparts and Electronic Signatures. This Agreement may be executed in counterparts and all such counterparts when so executed shall together constitute the final Agreement as if one document had been signed by all of the Parties. This Agreement may be executed by an electronic or facsimile copy and each signature thereto shall be and constitute an original signature, as if all Parties had executed a single original document.

14. Language Construed as Jointly Drafted by the Parties. The Parties hereby acknowledge that each of them has had a full opportunity to participate in the drafting of this Agreement and, accordingly, any claimed ambiguity shall be construed neither for nor against any of the Parties.

15. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and (as applicable) their respective executors, heirs, successors and assigns, and, any subsequently appointed Chapter 7 Trustee (or any other bankruptcy trustee). Notwithstanding anything to contrary herein, nothing in this Agreement shall prejudice the rights of persons not party to this Agreement.

[*signature page follows*]

EXHIBIT 1

EXECUTION VERSION

IN WITNESS HEREOF, the Parties hereto have executed this Agreement under seal on the day and year set forth above.

PILLSBURY WINTHROP SHAW PITTMAN LLP

By Patrick J. Potter PC, Partner

By: _____
Name: Patrick J. Potter
Title: President

DOSS SPECIAL RECEIVER, LLC

By: _____
Name: R. B. (Barry) Doss, Mgr, Doss Special Receiver LLC
Title: On Behalf of ERPEF and its Receivership Estate and as Special Receiver for ERPEF