

FILED

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

2022 JUL 23 PM 3:03

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

GRANT S. CHASE, CLERK
KANAWHA COUNTY CIRCUIT COURT

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 GRANTING MOTION OF RECEIVER FOR ENTRY OF ORDER
AUTHORIZING SALE OF CERTAIN REAL ESTATE FREE AND
CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES**

By motion of July 7, 2022, the Special Receiver sought permission of the Court to engage third-party auctioneers in order to market and sell certain tracts of real estate in Boone County and Lincoln County, West Virginia, as well as Ohio County, Muhlenberg County and Henderson County, Kentucky, free and clear of liens, claims, and encumbrances. The Special Receiver listed the tracts proposed to be sold via auction in Exhibit A to its motion and represented that sale via auction is the most efficient means to secure the highest value for Receivership Estate assets. The Special Receiver believes these auction sales will begin on or after September 1, 2022, although the Special Receiver may at its discretion withdraw some, or all, of the tracts from the auction process for reasons described in the motion.

The Special Receiver represents that it has performed a commercially reasonable search for liens and encumbrances on the tracts listed in Exhibit A and that these tracts are potentially subject to liens held by Appalachian Headwaters, Inc. and Indemnity National

SCANNED

240-242


Insurance Company, as well as potentially subject to any statutory tax liens for real property taxes owed to the taxing authorities of the counties in which the real property lies. The Special Receiver advised the Court that it has reached an agreement with Appalachian Headwaters, Inc. and Indemnity National Insurance Company with respect to their claims against the relevant real property and that none of the aforementioned parties objects to the motion. The Special Receiver further represents that it will pay the County Taxing Authorities the balance owed on real property taxes for property held in the name of ERP Environmental Fund, Inc. from the sales proceeds of the relevant tracts at or after closing.

Having reviewed the motion and heard such parties as desired to be heard, the Court hereby GRANTS the motion and FINDS and ORDERS as follows:

As to the tracts of real property listed in Exhibit A of the Special Receiver's motion filed by letter dated July 7, 2022, the Court finds that the Special Receiver has undertaken a commercially reasonable review of liens and encumbrances and has notified all lienholders of the pending Motion. Accordingly, the Special Receiver may sell the real property free and clear of all liens and encumbrances, subject to the Special Receiver's adherence to the aforementioned agreements with Appalachian Headwaters, Inc., and Indemnity National Insurance Co. Furthermore, if the Special Receiver chooses to engage any third-party real estate professionals, the Special Receiver is authorized to execute any documents necessary to effectuate the sale of the listed properties with one or more auctioneers, agents, or brokers, of the Special Receiver's choosing.

ENTERED this 28th day of July, 2022.

Date: 7/28/22
Certified copies sent to:
☒ counsel of record C. H. Hinder
☐ parties S. Thompson
☐ other (please indicate) Business Court
By: C. H. Hinder
☐ certified/1st class mail
☐ fax
☐ hand delivery
☐ interdepartmental
Other provisions accomplished:
C. H. Hinder
Deputy Circuit Clerk


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 28
DAY OF July 2022
C. S. Gatson CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA