

**FILED****BUSINESS COURT DIVISION – WEST VIRGINIA SUPREME COURT OF APPEALS  
IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA**

2016 SEP 19 PM 3:20

**PEOPLES BANK, NATIONAL ASSOCIATION****Plaintiff,****Vs.****Civil Action No. 15-C-807****Presiding Judge: Tabit****Resolution Judge: Young**

**APPALACHIAN MINING AND RECLAMATION,  
L.L.C., a Kentucky limited liability company,  
DJWV2, LLC, a West Virginia limited liability company,  
GREEN COAL, LLC, a Kentucky limited liability company,  
JOINT VENTURE DEVELOPMENT, LLC, a Kentucky  
limited liability company,  
PRODUCER'S COAL, INC., a Kentucky corporation  
formerly known as Producer's Dock, Inc.,  
PRODUCER'S LAND, LLC, a Kentucky limited liability  
company,  
REDBUD DOCK, LLC, a Kentucky limited liability  
company,  
SOUTHERN MARINE SERVICES LIMITED  
LIABILITY COMPANY, a Kentucky limited liability  
company,  
SOUTHERN MARINE TERMINAL, LLC, a Kentucky  
limited liability company,  
DENISE DAWN JOHNSON, Trustee of the Denise  
Johnson Real Estate Trust,  
DENNIS JOHNSON, a West Virginia resident, and  
MARK PINSON, a West Virginia resident,**

**Defendants.**

**ORDER DENYING THE MOTION AND SUPPLEMENTAL MOTION  
OF DENNIS JOHNSON AND THE RECEIVERSHIP COMPANIES  
TO VACATE ORDER APPOINTING ZACHARY B. BURKONS  
AS SUCCESSOR SPECIAL RECEIVER**

On August 31, 2016, came the Plaintiff, PEOPLES BANK, NATIONAL ASSOCIATION, by counsel, Kirk B. Burkley; the Defendants APPALACHIAN MINING AND RECLAMATION, DJWV2, LLC, GREEN COAL, LLC, JOINT VENTURE DEVELOPMENT, LLC, PRODUCER'S COAL, INC., PRODUCER'S LAND, LLC, REDBUD DOCK, LLC, and SOUTHERN MARINE SERVICES LIMITED LIABILITY COMPANY, SOUTHERN MARINE TERMINAL, LLC, (hereinafter "the Receivership Companies") by counsel, Stephen S. Burchett; Defendant DENNIS JOHNSON, by counsel,

Christopher S. Smith, Ralph W. Hoyer, and Nicola D. Smith; and SPECIAL RECEIVER, , Zachary B. Burkons, in person (through some of the proceedings), and by counsel, Stephen L. Thompson for hearing on the "Motion of Dennis Ray Johnson, II and the Receivership Companies to Vacate Order Appointing Zachary B. Burkons as Successor Special Receiver and Motion for Expedited Hearing." The previous receiver, DAVID ZATEZALO, appeared, by counsel, Brandon J. Verdream.

Having considered the motion as well as the parties' responses and Mr. Johnson and the Receivership Companies' supplemental motion, the Court heard argument on the Motion to Vacate. In addition to argument on the Motion, counsel for Mr. Burkons advised the Court that in accordance with the authority granted to the Special Receiver in its May 18, 2016, "Order Granting People's Bank, National Association's Motion to Appoint Special Receiver," he filed the necessary documents which placed the six remaining non-Receivership Companies in their own separate Chapter 11 proceedings in the United States Bankruptcy Court for the Southern District of West Virginia and tendered to the Court copies of the voluntary Petitions. In light of these filings, this Court **FINDS** that it is in the best interest of the parties to allow the bankruptcy court to administer these cases.

For the foregoing reasons and those set forth on the record of this proceeding, it is **ORDERED** that the "Motion of Dennis Ray Johnson, II and the Receivership Companies to Vacate Order Appointing Zachary B. Burkons as Successor Special Receiver and Motion for Expedited Hearing" and supplemental motion are **DENIED**. It is further **ORDERED** that this case remain on the docket of this Court.

The objections and exceptions of any party aggrieved by this Order are noted and preserved.

The Circuit Clerk is directed to send certified copies of this Order to all counsel of record whose names and addresses appear below:

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Entered this 16<sup>th</sup> day of September, 2016

*Joanna I. Tabit*  
 JOANNA I. TABIT, JUDGE

STATE OF WEST VIRGINIA  
 COUNTY OF CABELL  
 I, JENNIFER L. HOOD, CLERK OF THE CIRCUIT  
 COURT FOR THE COUNTY OF CABELL, DO HEREBY  
 CERTIFY THAT THE FOREGOING IS A  
 TRUE AND CORRECT COPY OF THE COURT  
 ENTERED IN THE CLERK'S OFFICE  
 THIS 21 DAY OF SEPTEMBER, 2016  
 JENNIFER L. HOOD, CLERK  
 CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA