

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY**

In re:)	Chapter 11
)	
Cambrian Holding Company, Inc., <i>et al.</i> , ¹)	Case No. 19-51200 (GRS)
)	
)	(Jointly Administered)
)	
Debtors.)	
)	Honorable Gregory R. Schaaf

**DEBTORS' MOTION TO CONDUCT AN EXAMINATION OF
PRISTINE CLEAN ENERGY LLC AND VIRGIE CLEAN ENERGY LLC
UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 2004**

The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), by and through their undersigned conflicts counsel, hereby move this Court (the “**Motion**”) pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Local Bankruptcy Rule 2004-1, for entry of an order authorizing it to compel production of documents from Pristine Clean Energy LLC (“**Pristine**”) and Virgie Clean Energy LLC (“**Virgie**”) and to compel an examination under oath from corporate representatives of each entity . In support of this Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a) and Local Rule 83.12.
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ The Debtors in these Chapter 11 cases are (with the last four digits of their federal tax identification numbers in parentheses): Cambrian Holding Company, Inc. (8203), Cambrian Coal LLC (3394), Apex Energy, Inc. (3455), C.W. Augering, Inc. (2875), Marshall Resources, Inc. (9735), PLM Holding Company LLC (7427), Bear Branch Coal LLC (0674), Clintwood Elkhorn Mining LLC (6910), Gatliff Coal LLC (5768), Perry County Coal LLC (4382), Ray Coal LLC (0981), Whitaker Coal LLC (8270), Pike-Letcher Land LLC (8952), Premier Elkhorn Coal LLC (8951), Raven Rock Development LLC (1351), Rich Mountain Coal LLC (1974), S.T. & T. Leasing, Inc. (0340), T.C. Leasing, Inc. (7705), and Shelby Resources, LLC (5085).

3. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). In response to the mandate contained in Rule 7008 of the Federal Rules of Bankruptcy Procedure², the Debtors consent to the entry of a final judgment or order with respect to this motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

4. The statutory basis for the relief requested in this motion is section 105(a) of the Bankruptcy Code together with Bankruptcy Rule 2004.

BACKGROUND

5. The Debtors commenced the jointly administered chapter 11 cases (the “**Chapter 11 Cases**”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code on June 16, 2019 (the “**Petition Date**”). Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors are operating their businesses and managing their affairs as debtors-in-possession.

6. The Debtors’ core business was producing and processing metallurgical (or “met”) coal and thermal (or “steam”) coal for use by utility providers and industrial companies located primarily in the eastern United States and Canada. The Debtors began in 1991 and, over time, acquired various mines and mining-related assets from major coal corporations. By and/or through these operations, the Debtors supplied different qualities of coal to their customers.³ Due to the

² Unless otherwise indicated, all section references are to title 11 of the United States Code (the “Bankruptcy Code”). References to the Federal Rules of Civil Procedure will be denoted as “FED. R. CIV. P. XX” or “Rule XX”; references to the Federal Rules of Bankruptcy Procedure will be denoted as “Bankruptcy Rule XXXX”; and all references to the Local Rules for the United States Bankruptcy Court, Western District of Kentucky will be denoted as “LBR xxxx-x”. Any references to “Chapter XX” are to chapter xx of the Bankruptcy Code.

³ Additional information regarding the Debtors’ businesses, capital structure, and the circumstances leading to the Chapter 11 Cases are contained in the *Declaration of J. Mark Campbell in Support of First Day Motions of Debtors and Debtors-in-Possession* (Docket No. 39) (the “**First Day Declaration**”).

challenging regulatory and economic conditions facing coal companies, the Debtors' businesses faced a marked downturn over the past several years.

7. As a result of these economic challenges, and in consultation with its various stakeholders, the Debtors sought and received approval from this Court to sell substantially all of their assets through a marketing process (the "**Sales Process**") and auction (the "**Going Concern Auction**"), subject to the approval of the Court. *See Bid Procedures Order* [Docket No. 339].

8. For multiple days from September 19 through September 23, 2019, the Debtors and their professionals conducted the Going Concern Auction. In accordance with the terms of the approved bid procedures, the Debtors, in their discretion, withdrew certain equipment encumbered by a first lien in favor of Komatsu Financial LP ("**Komatsu Financial**") from the Going Concern Auction (the "**Equipment**").

9. On September, 25, 2019, this Court entered its *Order (I) Approving the Sale of Substantially All of the Debtors' Assets Related Thereto Free and Clear of All Non-Assumed Liens, Claims, Encumbrances and Interests, (II) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and (III) Granting Related Relief* (Docket No. 524) (the "**Sale Order**"). Pursuant to Paragraph 45 of the Sale Order, the Equipment was not sold to any of the successful purchasers during the Going Concern Sales Auction.

10. Under the Sale Order, the Debtors were authorized to sell certain assets and mining generally related to the Debtors' Premier Elkhorn operations to Pristine pursuant to that certain General Assignment and Assumption Agreement and Bill of Sale by and between the Debtors and Pristine. The closing of the sale to Pristine occurred on September 27, 2019.

11. Following closing, some of the Equipment remained in the possession of Pristine and/or Virgie,⁴ including an Atlas DM45LP Drill and an HD785-7 Mechanical Truck (the “**Missing Equipment**”) that are owned by Marshall Resources, Inc. (“**Marshall Resources**”). Recently, the Debtors have learned that that the Missing Equipment may have been transferred without the Debtors’ knowledge or permission, and without Court approval.

RELIEF REQUESTED

12. By this Motion, the Debtors request entry of an order authorizing it to compel the production of documents related to the transfer, sale or other disposition of the Missing Equipment and examination under oath of a corporate representative of Pristine and/or Virgie on the same topic by remote videoconference deposition.

13. Specifically, the Debtors request production of the following documents:

- a. All documents related to the transfer, sale or other disposition of the Missing Equipment;
- b. All documents identifying the person and/or entity that received the Missing Equipment; and
- c. All documents identifying the consideration received by Pristine and/or Virgie in for the Missing Equipment, including the bank account statements where any sale proceeds were deposited.

14. The Debtors require such information in order to determine what, if any, action it should take against Pristine, Virgie, and/or any transferee of the Missing Equipment.

15. If the Motion is granted, the Debtors intends to serve Pristine and Virgie with a Subpoena for Rule 2004 Examination in substantially the form as the subpoena attached hereto as **Exhibit 1** (the “**Subpoena**”).

BASIS FOR RELIEF

⁴ On information and belief, Virgie is a subsidiary of Pristine and its nominee and/or assignee with respect to assets purchased pursuant to the Sale Order.

16. Bankruptcy Rule 2004(a) provides that “[o]n motion of any party in interest, the court may order the examination of any entity.” FED. R. BANKR. P. 2004(a). Bankruptcy Rule 2004(b) clarifies that “[t]he examination of an entity under this rule . . . may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor’s estate or to the debtor’s right to a discharge.” FED. R. BANKR. P. 2004(b).

17. “The purpose of 2004 is to provide a tool to parties to a bankruptcy . . . to obtain information concerning the acts, conduct, or property of the debtor, the liabilities and financial condition of the debtor, any matter which may affect the administration of the debtor’s estate, or to the debtor’s right to a discharge.” *In re DeShetler*, 453 B.R. 295, 301 (Bankr. S.D. Ohio 2011) (internal quotation marks omitted). The scope of an inquiry under Bankruptcy Rule 2004 is very broad. *In re Fearn*, 96 B.R. 135, 137 (Bankr. S.D. Ohio 1989). Great latitude is ordinarily permitted to a party seeking discovery under Bankruptcy Rule 2004, a 2004 examination having been characterized as a “lawful ‘fishing expedition.’” *In re Lufkin*, 255 B.R. 204, 208 (Bankr. E.D. Tenn. 2000).

18. In this case, the Debtors seek information regarding the Missing Equipment, which is owned by Marshall Resources. The Debtors and others have requested information regarding the disposition of the some of the Missing Equipment from counsel for Pristine and Virgie but have not received any such information. Thus, the Debtors have resorted to Rule 2004 to learn what happened to the Missing Equipment.

NOTICE PURSUANT TO LOCAL BANKRUPTCY RULE 2004-1

19. Please take notice that pursuant to Local Bankruptcy Rule 2004-1, the Court may grant this Motion unless an objection is filed within three (3) days after the date of filing.

WHEREFORE, the Debtors respectfully request that the Court enter an order (i) granting the Motion, (ii) authorizing the Debtors to compel Pristine and Virgie to produce documents by **May 25, 2020 at 5:00 p.m. (EST)**, (iii) authorizing the Debtors to compel Pristine and Virgie to appear by remote videoconference for a deposition on **Thursday, May 28, 2020, at 10:00 p.m. (EST)** (iv) authorizing the Debtors to issue the Subpoena requesting information set forth **Exhibit 1**, and (v) granting such further relief as the Court deems just and proper.

Dated: May 18, 2020

Respectfully submitted,

/s/ Christopher A. Jones

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**CONFLICTS COUNSEL FOR
DEBTORS AND DEBTORS- IN-POSSESSION**

CERTIFICATE OF SERVICE

It is hereby certified that on May 18, 2020, a true and correct copy of the foregoing Motion was mailed electronically through the Court's ECF system to all parties receiving notice thereof and served by facsimile and email to the following person:

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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY**

In re:) Chapter 11
)
Cambrian Holding Company, Inc., *et al.*,¹) Case No. 19-51200 (GRS)
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) (Jointly Administered)
)
Debtors.)
) Honorable Gregory R. Schaaf

**EXHIBIT 1 TO SUBPOENA FOR
RULE 2004 EXAMINATION ISSUED TO
PRISTINE CLEAN ENERGY LLC/VIRGIE CLEAN ENERGY LLC**

I. DEFINITIONS

1. “All” shall mean “any” and vice-versa.
2. “And” shall mean “or” and vice-versa.
3. “Communication” means any transmission of information, the information transmitted, and any process by which information is transmitted, and shall include both written communication and oral communication.
4. “Document” means all written, printed, typed, recorded, photographic, electronically transmitted or graphic matter of every type and description, however and by whomever prepared, produced, reproduced, disseminated or made, in any form, including, but not limited to, books, papers, letters, correspondence, memoranda, telegrams, cablegrams, diaries, records, minutes, notes, schedules, tabulations, e-mails, electronically stored information,

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vouchers, accounts, contracts, agreements, change orders, purchase orders, invoices, progress reports, intra- and inter-office communications, calendars, drafts, drawings, microfilm, abstracts, summaries, messages, statements, affidavits, instructions, bulletins, circulars, pamphlets, slides, photographs, sketches, labels, advertisements, charts, graphs, computer data compilations, statistics, speeches, tapes, tape recordings, press releases, public statements, public announcements, public and governmental filings, and other writings and other magnetic, photographic, electronic and sound recordings.

5. “Equipment” means the Atlas DM45LP Drill and HD785-7 Mechanical Truck.

6. “Relating to” means constituting, reflecting, respecting, supporting, contradicting, referring to, stating, describing, recording, noting, embodying, containing, mentioning, studying, analyzing, discussing, evaluating or relevant to.

7. “You,” “Your,” and “Yours” shall refer to the Debtors and its agents or affiliates.

8. The singular shall mean the plural and vice-versa.

II. GENERAL PROVISIONS AND INSTRUCTIONS

1. If any part of this request is deemed to call for the production of any privileged documents or materials and such privilege is asserted, a list is to be furnished identifying each document so withheld together with the following information:

- a. The reason for withholding;
- b. A statement of facts constituting the basis for any claim of privilege, work product or other ground of non-disclosure; and
- c. A brief description of the document, including:
 - i. The date of the document;
 - ii. The name of its author, authors, or preparers and an identification by employment and title of each such person;

- iii. The name of each person who was sent or has had access to, or custody of the document, together with an identification of each such person;
- iv. The paragraph of this request to which the document relates; and
- v. In the case of any document relating in any way to a meeting or conversation, identification of such meeting or conversation.

2. If any documents requested herein have been lost or destroyed, the documents so lost or destroyed shall be identified by author, date and subject matter. In addition, the date of disposal, the manner of disposal, the reason for disposal, the person authorizing disposal and the person disposing of the document shall also be identified.

3. This request shall be deemed continuing so as to require further and supplemental production should the party to whom this request is directed obtain additional documents falling within its scope between the time of initial production and the time of the hearing or trial.

4. All documents shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond to the paragraph of this request to which they are primarily responsive.

5. All documents produced in response to this request shall be produced *in toto*, notwithstanding the fact that portions thereof may contain information not requested, shall include drafts and interim editions, as well as final editions, of a document, and shall include all editions or copies of a document which are not identical (whether due to handwritten notations, revisions or otherwise) to the original or other produced copy of a document.

6. With respect to each request herein, the party to whom this request is directed shall identify and produce all documents (as defined above without limitation) which are known or which can be located or discovered by reasonably diligent effort, regardless of location, including, without limitation, all such documents requested to be produced which are in the files (whether personal, business or any other files), possession, custody or control of attorneys,

accountants, agents, representatives, independent contractors, consultants, professionals or employees of the party to whom this request is directed.

III. TOPICS FOR 2004 EXAMINATION

1. All facts and circumstances related to transfer, sale, or other disposition of the Equipment, including, but not limited to, the identity of any transferee, the consideration received for the Equipment, and the bank account where any sales proceeds were deposited.

IV. DOCUMENTS TO BE PRODUCED

1. All Documents and Communications relating to transfer, sale, or other disposition of the Equipment;

2. All Documents identifying the person and/or entity that received the Equipment and

3. All bank statements and other financial documents relating to any sales proceeds received for the Equipment.