

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION**

In re:

Cambrian Holding Company, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 19-51200

(Jointly Administered)

**MOTION OF THE LIQUIDATING TRUSTEE FOR AN ORDER AUTHORIZING
THE ABANDONMENT AND DESTRUCTION OF CERTAIN RECORDS**

Ellen Arvin Kennedy, solely in her capacity as the Liquidating Trustee (the “Liquidating Trustee”) of the Cambrian Liquidating Trust (the “Liquidating Trust”), by and through its counsel, and pursuant to section 554(b) of the United States Bankruptcy Code (the “Bankruptcy Code”); Rule 6007 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rule”); and Section 6.08 of the Plan (as defined below), hereby moves the Court (the “Motion”) for entry of an Order authorizing the abandonment and destruction of certain records unnecessary to the administration of the Liquidating Trust. In support of this Motion, the Liquidating Trustee respectfully states as follows:

BACKGROUND

I. General Case Background

1. The Debtors commenced these chapter 11 cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief under title 11 of chapter 11 of the United States Code (on June 16,

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. Auguring, 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).

2019 (the “Petition Date”).

2. On February 16, 2021, the Court entered the *Findings of Fact, Conclusions of Law, and Order Confirming the Third Amended Joint Plan of Orderly Liquidation* [Docket No. 1542] which approved the *Third Amended Joint Plan of Orderly Liquidation of Cambrian Holding Company, Inc. and its Affiliated Debtors under Chapter 11 of the Bankruptcy Code* (Docket No. 1539) (the “Plan”). Pursuant to the Creditors Trust Agreement, which was entered into pursuant to the Plan and Confirmation Order, the Liquidating Trustee has the authority to enforce the Debtors’ rights.

3. On March 3, 2021, the *Notice of: (A) Entry of Order Confirming Plan of Orderly Liquidation, (B) Effective Date of Plan, and (C) Deadline for Filing Certain Claims* [Docket No. 1562] was filed which provided that the Effective Date under the Plan was March 3, 2021.

4. Pursuant to the Plan and Confirmation Order, the Liquidating Trustee must seek Court approval prior to the destruction or abandonment of books and records of the Debtors. [Plan, §6.08].

JURISDICTION AND VENUE

5. The United States Bankruptcy Court for the Eastern District of Kentucky has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and Article X of the Plan. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BASIS FOR RELIEF REQUESTED

6. The Liquidating Trustee respectfully requests that this Court enter an order pursuant to sections 554(b) of the Bankruptcy Code, Rule 6007 of the Bankruptcy Rules, and Section 6.08 of the Plan, authorizing the abandon and destruction of certain records.

7. Pursuant to the Plan, the Trustee has the right to seek authority to destroy or abandon any books or records of the Debtors constituting Liquidating Trust Assets. *See* Plan, §

6.08. Additionally, section 554(b) of the Bankruptcy Code provides that the Trustee “may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.”

8. The documents which the Trustee seeks to abandon and destroy (the “Obsolete Records”) are currently located in a storage unit leased by Debtor Marshall Resources, Inc. in Corbin, Kentucky. The lease has expired and the lessor of the storage unit, Pier Properties, has made a demand to the successor to Marshall Resources, Inc. for the execution of a new lease or abandonment of the unit. Neither the Trustee nor the successors to the Debtors’ business have reason to extend the lease, as explained below.

9. The Trustee has visited the site with a former principal of the Debtors and has previously identified and has taken possession of the records she needs to administer the Liquidating Trust. The Obsolete Records are not needed in the liquidation of the remaining assets of the Trust or in the reconciliation or administration of claims. The Trustee is aware that certain of the Obsolete Records are payroll and employment files and contain sensitive personal information of Debtors’ former employees (the “Employment Records”). Thus, in addition to abandonment and disposal of the Obsolete Records, the Trustee further seeks authority to destroy the Employment Records through the use of a secure shredding service and to incur the cost associated with removing and disposing of the Obsolete Records and having the Employment Records shredded in a manner that keeps their content confidential.

10. WHEREFORE, the Liquidating Trustee respectfully requests that the Court enter an order (a) authorizing the abandonment and destruction of the Obsolete Records and Employment Records as set forth above; and (ii) granting such other and further relief as the Court may deem just and proper.

NOTICE

Please take notice that unless an objection to the foregoing, properly noticed for hearing, is filed within fourteen (14) days of the date of service of this pleading, an Order granting the relief requested may be entered without a hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This document has been electronically filed and served via the Court's ECF System on September 22, 2021

/s/ T. Kent Barber
COUNSEL FOR THE LIQUIDATING TRUSTEE