

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

In re:) Chapter 11
)
Cambrian Holding Company, Inc., *et al.*,) Case No. 19-51200
)
Debtors.)

MOTION TO FIND PRISTINE CLEAN ENERGY, LLC AND VIRGIE CLEAN MINING, LLC IN CONTEMPT OF COURT FOR VIOLATION OF THIS COURT’S ORDERS AND FOR THE ISSUANCE OF SANCTIONS AS A RESULT OF NONCOMPLIANCE

Continental Heritage Insurance Company (“Continental”) through counsel, hereby moves for an order determining and imposing sanctions upon Pristine Clean Energy, LLC (“Pristine”) and Virgie Clean Mining, LLC (“Virgie,” and together with Pristine, the “Pristine Parties”) for violating the Court’s *Amended Agreed Order Regarding Mediated Issues Among The Debtors, The Official Committee of Unsecured Creditors, Continental Heritage Insurance Company, Pristine Clean Energy, LLC, Virgie Clean Mining, LLC, American Resources Corporation and Perry County Resources* (D.N. 1480, the “Mediation Agreed Order”). In support, Continental states as follows:

1. On June 16, 2019, the Debtors commenced these cases by filing voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. Continental is the Debtors surety, having providing surety bonds to support the Debtors’ mining operations.

2. On September 25, 2019, the 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* (D.N. 534, the “Sale Order”).

3. Among other things, pursuant to the Sale Order, the Pristine Parties acquired certain assets generally related to the Debtors' Premier Elkhorn operations. The Sale Order required the Pristine Parties to obtain replacement bonding to allow for the transfer of the Premier Elkhorn permits from the Debtors to the Pristine Parties.

4. The closing of the Pristine sale occurred on September 27, 2019. In connection with closing, Pristine and the Debtors executed a Permit Operating Agreement (Dkt. No. 1169-1). Pursuant to that Agreement, the Debtors were to (and did) leave Continental's bonds in place with respect to the permits that the Pristine Parties purchased until such bonds were replaced. Pursuant to that Permit Operating Agreement, Pristine was obligated to pay all post-closing costs, including bond premiums, associated with the bonds left in place.

5. Pristine quickly failed to comply with the requirement to pay Continental's bond premiums. As of December 31, 2020, the Pristine Parties were in default on \$1,402,546.92 in unpaid bond premiums owed to Continental. This issue is one of many that led the major constituents in this case, including Continental and the Pristine Parties, to participate in an extensive, multi-day mediation process in December 2020 supervised by Judge Wise.

6. The mediation resulted in the Mediation Agreed Order, in which the Court ordered the Pristine Parties to undertake several obligations to Continental. These obligations included, but are not limited to, the Pristine Parties making specified payments to Continental pursuant to an agreed payment plan with a balloon payment due on June 30, 2021:

IT IS HEREBY ORDERED that:

1. The Pristine Parties' Obligations to Continental. The Pristine Parties shall satisfy the following obligations, which are either to Continental and/or necessary to allow bonding by Continental as set forth below:

c. \$250,000 Cash Payment. On or before December 31, 2020, the Pristine Parties shall transfer \$250,000 in cash to Continental (the "\$250,000 Payment") on account of the unpaid bond premiums they owe to Continental, which equal \$1,402,546.92 as of December 31, 2020 (the "Unpaid Bond Premiums"). The Unpaid Bond Premiums, and the payment arrangements set forth herein, do not include premiums due for renewals occurring after the December 31, 2020, which the Pristine Parties are separately obligated to pay to Continental. The Unpaid Bond Premiums are subject to ordinary adjustment to account for bond releases, replacement and/or permitting actions.

d. Weekly Payments of Unpaid Bond Premiums. Beginning on January 8, 2021 and continuing through March 26, 2021, the Pristine Parties shall pay \$20,000 a week to Continental on account of the Unpaid Bond Premiums. Beginning on April 2, 2021 and continuing through June 30, 2021, the

Pristine Parties shall pay \$35,000 a week to Continental on account of the Unpaid Bond Premiums.

e. Balloon Payment on Unpaid Bond Premiums. The Pristine Parties shall pay the remainder of the Unpaid Bond Premiums (net of the payments above and the Estate Bond Premium Payment, as defined below) to Continental via a balloon payment due on June 30, 2021; provided, however, that nothing herein shall prevent the Pristine Parties from prepaying all of the Unpaid Bond Premiums without penalty.

7. Additionally, the Mediation Agreed Order required the Pristine Parties to grant mortgages and security interests to Continental in certain assets they acquired from the Debtors in connection with the sale, including the Premier Elkhorn Preparation Plant and their coal reserves. See Mediation Agreed Order at § 1(f).

8. Continental has made numerous requests/demands that the Pristine Parties comply with their obligations under the Mediation Agreed Order, but they have failed to do so, necessitating the filing of this Motion. The specific violations by the Pristine Parties include:

a. Failing to timely pay the required weekly payments and balloon payment to Continental under the Mediation Agreed Order. The Pristine Parties made

certain payments in early 2021, but the Pristine Parties failed to make the required **\$372,546.92** balloon payment due on June 30, 2021.¹

- b. Failing to convey the required security interests and mortgages pursuant to the Mediation Agreed Order. While the Pristine Parties have taken some initial steps regarding the Premier Elkhorn Preparation Plant, they have failed to make progress conveying the required security interests in the acquired coal reserves.

9. Continental has endeavored to rectify the violations of the Pristine Parties without Court intervention, but these efforts have not prompted payment or completion of the grant of the required security interests and mortgages.²

10. This Court may impose sanctions under § 105(a). *Law v. Siegel*, 571 U.S. 415, 420 (2014) (“A bankruptcy court has statutory authority to ‘issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of’ the Bankruptcy Code”) (quoting 11 U.S.C. § 105(a)). Further, federal courts have the inherent power to sanction to maintain order in their own cases. *Knowles Bldg. Co. v. Zinni (In re Zinni)*, 261 B.R. 196, 203 (B.A.P. 6th Cir. 2001) (“federal courts, including the bankruptcy court, have the inherent power to impose sanctions on a scope broader than that of Bankruptcy Rule 9011, including monetary sanctions”) (citation omitted); *see also Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) (recognizing the inherent power of the federal courts to sanction). A fundamental precept to our judicial system is that “all orders and judgements of courts must be complied with promptly.” *In re Brown*, 2013 WL

¹ These overdue amounts are solely for those due pursuant to the Mediation Agreed Order as of December 31, 2020. The Pristine Parties also remain obligated for bond premiums accruing *after* that date pursuant to the Permit Operating Agreement, which total an **additional \$1,092,305.99** (“Unpaid 2021 Premiums”). Continental reserves all rights with respect to the Unpaid 2021 Premiums.

² To the extent the Pristine Parties are unable or unwilling to complete the grant of the required security interests and mortgages, Continental expressly reserves the right to seek relief to impose and enforce an equitable lien by agreement, in its favor, against the subject assets.

5493213, at *3 (Bankr. E.D. Ky. Oct. 2, 2013) *quoting Gnesys, Inc. v. Greene*, 437 F.3d 482, 493 (6th Cir. 2005).

11. The Pristine Parties have a pattern of violating the orders of this Court, and they are presently in open, unpurged contempt of their obligations to the Estates in the Mediation Agreed Order. *See* Dkt. No. 1835, *Contempt Order* (“The Pristine Parties have a long history of ignoring their obligations to the Debtors Estates and disregarding this Court’s Orders.”)

WHEREFORE, Continental respectfully requests that the Court enter an Order (a) holding the Pristine Parties in contempt for the above violations of the Mediation Agreed Order; (b) granting additional sanctions upon the Pristine Parties for contempt to be established at a hearing; and (c) for such other and further relief as is equitable and just.

NOTICE

Notice is hereby given that the foregoing shall be brought on for hearing before the United States Bankruptcy Court for the Eastern District of Kentucky, 100 East Vine Street, Second Floor, Lexington, Kentucky, on Thursday, October 21, 2021 at the hour of 9:00 a.m. Eastern Time, or as soon thereafter as counsel may be heard.

Respectfully submitted,

KAPLAN JOHNSON ABATE & BIRD, LLP

/s/ Brian H. Meldrum

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Counsel for Continental Heritage Insurance Company

CERTIFICATE OF SERVICE

This document has been electronically filed and served via the Court's ECF system on October 4, 2021.

/s/ Brian H. Meldrum

Brian H. Meldrum