

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

In re:

Cambrian Holding Company, Inc., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 19-51200

(Jointly Administered)

**MOTION OF THE LIQUIDATING TRUSTEE FOR A STATUS CONFERENCE  
REGARDING TRANSFER OF PERMITS AND FOR SHORTENED NOTICE**

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 105(d)1) of the United States Bankruptcy Code (the “Bankruptcy Code”) and paragraph 27(c) of the *Findings of Fact, Conclusions of Law, and Order Confirming the Third Amended Joint Plan of Orderly Liquidation* [Docket No. 1542] (the “Confirmation Order”), hereby moves the Court (the “Motion”) to hold a status conference regarding the transfer of the Debtors’ Purchased Permits<sup>2</sup> and for shortened notice. 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,

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<sup>1</sup> 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).

<sup>2</sup> Terms not otherwise defined herein shall have the same meaning as given in the Confirmation Order.

2019.

2. On February 16, 2021, the Court entered the Confirmation Order, 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”).

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. As of the Effective Date, pursuant to the Plan, the Confirmation Order and the Creditors Trust Agreement, the Liquidating Trustee was appointed to, among other things, administer the assets assigned to the Liquidating Trust for the benefit of the Debtors’ creditors.

4. Pursuant to the Confirmation Order, the contractual rights of a Purchaser to operate on the Debtors’ mining permits pursuant to its respective Permit Operating Agreement expires on December 1, 2021, subject to extension as provided below. Specifically, paragraph 27(c) provides:

(c) Transfer Drop Dead Date/Termination of Use of Debtor’s Permits. Each Purchaser has agreed that **the contractual rights of that Purchaser to operate on the Debtors’ permits pursuant to its respective Permit Operating Agreement (and/or any underlying bill of sale, purchase agreement, and/or any order approving any such instrument) shall terminate on December 1, 2021 (the “Drop Dead Date”)** unless all of that Purchaser’s Purchased Permit applications have been approved by the necessary Governmental Unit and the Purchased Permits are issued in the name of the Purchaser before the Drop Dead Date. Upon such termination, any and all rights of Purchasers to the subject Purchased Permits shall revert to the Debtors, but all other provisions of the subject Permit Operating Agreement remain in full force and effect. The Court retains jurisdiction over the interpretation and/or enforcement of any termination pursuant to this paragraph, but the presumption shall be that such termination is effective as to any Purchaser that has not completed the transfer of all its Purchased Permits as of the Drop Dead Date. **The Drop Dead Date with respect to any Purchaser may only be extended by a writing agreed to by Continental, the Liquidating Trustee and that Purchaser.** Neither the Cabinet nor any other Governmental Unit is bound by this paragraph, or by the Drop Dead Date. Nothing in this paragraph or the Drop Dead Date impairs, delays, or in any way impedes the Cabinet or any other Governmental Unit from enforcing non-bankruptcy laws, including, but not limited to, the federal Surface Mining Control & Reclamation Act of 1977 (“SMCRA”), Kentucky’s surface

coal mining and reclamation laws, KRS Chapters 350 and 224, and any regulations promulgated thereto.

Confirmation Order, ¶ 27(c) (emphasis added).

### **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 hold a status conference on November 18, 2021 at 9:00 am regarding the status of transferring the Purchased Permits to each respective Purchaser. The Liquidating Trustee understands that the parties have made significant progress in ensuring the ultimate transfer of the Purchased Permits. However, it is very likely that one or more of the Purchasers will not have the transfer completed by the December 1, 2021 “Drop Dead Date.”

7. For instance, the Liquidating Trustee believes that Purchaser Clintwood JOD, LLC (“Clintwood JOD”) has submitted all necessary documentation to effectuate a transfer of its Purchased Permits – and that the transfer may occur by December 1, 2021 – but that is not assured. The Liquidating Trustee and Clintwood JOD each agree that an extension of the “Drop Dead Date” is warranted in an abundance of caution.

8. The Liquidating Trustee also believes that the ARC Parties have submitted all necessary documentation to effectuate a transfer of their Purchased Permits, but does not have any visibility as to whether the transfer of all of their Purchased Permits will occur by December 1, 2021. Finally, the Liquidating Trustee understands that bonding issues continue to be worked on by the Pristine Parties and Continental, which means that the transfer of certain of the Pristine Parties’ Purchased Permits will almost certainly not be completed by December 1, 2021.

9. Pursuant to Paragraph 27(c) of the Confirmation Order, the December 1, 2021 deadline to transfer the Purchased Permits may be extended by written agreement between Continental, the Liquidating Trustee, and any Purchaser. The Liquidating Trustee has inquired with the Purchasers and Continental regarding the transfer of the Purchased Permits, but has not received comment from all parties as of the filing of this Motion; thus, the Liquidating Trustee believes that it is in the best interest of all parties and the Liquidating Trust to hold a status conference regarding this issue and address any concerns prior to the Thanksgiving holiday and imminent “Drop Dead Date.”

10. Finally, the Liquidating Trustee requests that the Court schedule the status conference on shortened notice. As basis for such request, the Liquidating Trustee states that the “Drop Dead Date” will occur before the Court’s next regularly scheduled hearing date and given the implications to all parties of this date passing it was important to bring this matter before the Court at the earliest possible time. The Liquidating Trustee did not file this motion sooner as she believed that this matter would have been resolved without the necessity of a status conference.

WHEREFORE, the Liquidating Trustee respectfully requests that the Court enter an order (i) scheduling a status conference on the issues discussed herein for November 18, 2021 at 9:00 a.m.; and (ii) granting such other and further relief as the Court may deem just and proper.

### **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, November 18, 2021, at the hour of 9:00 a.m. Eastern Time (ET), or as soon thereafter as counsel may be heard.

Respectfully submitted,

By: /s/ Geoffrey S. Goodman  
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COUNSEL FOR LIQUIDATING TRUSTEE

**CERTIFICATE OF SERVICE**

This document has been electronically filed and served via the Court's ECF System on November 16, 2021

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