

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE 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

**ORDER AUTHORIZING THE RETENTION
AND EMPLOYMENT OF JEFFERIES LLC AS INVESTMENT
BANKER FOR THE DEBTORS AND DEBTORS IN POSSESSION *NUNC
PRO TUNC* TO THE PETITION DATE, (II) WAIVING CERTAIN
TIME-KEEPING REQUIREMENTS AND (III) GRANTING RELATED RELIEF**

Upon consideration of the Application² of the Debtors for entry of an order (A) authorizing and approving the retention, employment and compensation of Jefferies as investment banker, *nunc pro tunc* to the Petition Date, pursuant to the terms and subject to the conditions of that certain engagement letter, dated as of January 1, 2019, between the Debtors and Jefferies, (ii) waiving certain time-keeping requirements; and (iii) granting related relief, all as more fully described in the Application; and the Court being satisfied, based on the representations made in the Application and the Szlezinger Declaration, that the Debtors' employment of Jefferies is necessary and in the best interest of the estates and their creditors, that Jefferies does not hold or represent any entity having an interest adverse to the interests of the Debtors' estates or of any class of creditors or equity security holders and is a "disinterested person" as that term is defined in section

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).

² Capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Application.

101(14) of the Bankruptcy Code; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Application and opportunity for a hearing on the Application were appropriate under the circumstances and no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Application and the Szlezinger Declaration establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Application is GRANTED.
2. The Debtors are authorized to retain and employ Jefferies as their investment banker in these Chapter 11 Cases, pursuant to the terms and subject to the conditions set forth in the Engagement Letter as modified herein, *nunc pro tunc* to the Petition Date.
3. Except to the extent set forth herein, the Engagement Letter, including, without limitation, the Fee and Expense Structure set forth therein, is approved pursuant to section 328(a) of the Bankruptcy Code, and the Debtors are authorized to pay, reimburse, and indemnify Jefferies in accordance with the terms and conditions of, and at the times specified in, the Engagement Letter.
4. Jefferies shall file applications for allowance of compensation and reimbursement of expenses pursuant to and in accordance with the procedures set forth in sections 330 and 331 of the Bankruptcy Code, such Bankruptcy Rules or Local Rules as may then be applicable, and any other applicable orders and procedures of this Court; *provided, however*, that notwithstanding

anything to the contrary in the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, any applicable procedures and orders of the Court, or any guidelines regarding the submission and approval of fee applications, Jefferies' professionals shall be required only to keep reasonably detailed time records, in half-hour increments, which time records shall indicate the total hours incurred by each professional for each day and provide a brief description of the nature of the work performed.

5. Notwithstanding anything to the contrary in this Order, the Application or the Engagement Letter, the United States Trustee for the Eastern District of Kentucky (the "**U.S. Trustee**") shall have the right to object to Jefferies' requests for compensation and reimbursement based on the reasonableness standard provided in section 330 of the Bankruptcy Code, and not section 328(a) of the Bankruptcy Code. This Order and the record relating to this Court's consideration of the Application shall not prejudice the rights of the U.S. Trustee to challenge the reasonableness of Jefferies' fees under section 330 of the Bankruptcy Code. Accordingly, nothing in this Order or the record relating to this Court's consideration of the Application shall constitute a finding of fact or conclusion of law binding on the U.S. Trustee with respect to the reasonableness of Jefferies' fees. Further, nothing in the Engagement Letter shall affect or modify the standard of review applicable to an objection by the U.S. Trustee under this paragraph.

6. In the event that, during the pendency of these cases, Jefferies requests reimbursement for any attorneys' fees and/or expenses, the invoices and supporting time records from such attorneys shall be included in Jefferies' fee applications, and such invoices and time records shall be in compliance with Local Rule 2016-1 and approval of the Court under the standards of sections 330 and 331 of the Bankruptcy Code, without regard to whether such attorney

has been retained under section 327 of the Bankruptcy Code and without regard to whether such attorney's services satisfy section 330(a)(3)(C) of the Bankruptcy Code.

7. The indemnification and related provisions included in Schedule A to the Engagement Letter are approved, subject during the pendency of these Chapter 11 Cases to the following modifications:

- (a) subject to the provisions of subparagraphs (b) and (c) below, the Debtors are authorized to indemnify the Indemnified Persons in accordance with the Engagement Letter for any claim arising from, related to, or in connection with their performance of the services described in the Engagement Letter; *provided, however*, that the Indemnified Persons shall not be indemnified for any claim arising from services other than the services provided under the Engagement Letter, unless such services and the indemnification, contribution, or reimbursement therefor are approved by this Court;
- (b) notwithstanding anything to the contrary in the Engagement Letter, the Debtors shall have no obligation to indemnify any person or provide contribution or reimbursement to any person for any claim or expense that is either (i) judicially determined (the determination having become final) to have arisen primarily from that person's gross negligence, fraud, willful misconduct or breach of fiduciary duties (if any), (ii) for a contractual dispute in which the Debtors allege breach of Jefferies' obligations under the Engagement Letter unless this Court determines that indemnification, contribution, or reimbursement would be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003), or (iii) settled prior to a judicial determination as to sub-clauses (i) or (ii) above, but determined by this Court, after notice and a hearing, to be a claim or expense for which that person should not receive indemnity, contribution, or reimbursement under the terms of the Engagement Letter as modified by this Order; and
- (c) If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these Chapter 11 Cases (that order having become a final order no longer subject to appeal) and (ii) the entry of an order closing these Chapter 11 Cases, Jefferies believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution or reimbursement obligations under the Engagement Letter (as modified by this Order), including, without limitation, the advancement of defense costs, Jefferies must file an application before this Court and the Debtors may not pay any such amounts before the entry of an order by this Court approving the payment; *provided, however*, that for the avoidance of doubt, this subparagraph (c) is intended only to specify the period of time under which this Court shall have jurisdiction over any request for fees and expenses for

indemnification, contribution, or reimbursement and not a provision limiting the duration of the Debtors' obligation to indemnify Jefferies.

8. Notwithstanding anything to the contrary in the Application or the Engagement Letter:

- (a) For any Sale Transaction in which Richmond Hill, or its designee, is the successful bidder pursuant to a credit bid (which may include a cash component), the Sale Transaction Fee payable to Jefferies on account of such Sale Transaction shall be \$1,350,000; provided, however, if (i) a third party submits a bid for the Debtors' assets in an amount that is sufficient to pay the obligations to Richmond Hill in full and (ii) Richmond Hill, or its designee, submits an overbid in excess of such amount, then the Sale Transaction Fee payable to Jefferies on account of such Sale Transaction shall be calculated pursuant to subparagraph 8(b) below and not this subparagraph 8(a).
- (b) In the event that a Sale Transaction covered by subparagraph (a) above does not occur, the Sale Transaction Fee payable to Jefferies on account of any Sale Transaction shall be (i) \$1,350,000 plus (ii) 2.5% of the first \$60 million of the cash consideration payable on account of such Sale Transaction, (iii) 3% of the portion of Aggregate Sale Consideration greater than \$60 million but less than \$100 million payable on account of such Sale Transaction, (iv) 3.75% of the portion of Aggregate Sale Consideration greater than \$100 million but less than \$150 million payable on account of such Sale Transaction and (v) 4.5% of the portion of Aggregate Sale Consideration greater than \$150 million payable on account of such Sale Transaction.
- (c) If, in addition to a Sale Transaction covered by subparagraph (a) above, the Debtors complete additional asset sales of a mine complex or reserves, or assumption of self-insured liabilities, then, (i) if only one additional asset sale is consummated, Jefferies shall be paid an additional fee equal to the higher of (A) \$300,000 and (B) 2.5% of cash consideration payable in connection with such sale; or (ii) if more than one additional asset sale is consummated, Jefferies shall be paid an additional fee equal to the higher of (A) \$500,000 and (B) 2.5% of the aggregate cash consideration payable in connection with such sales.
- (d) If a party other than Richmond Hill, or their designee, submits a successful credit bid for less than substantially all of the assets of the Debtors, the Sale Transaction Fee payable to Jefferies on account of such Sale Transaction shall be the higher of (i) \$300,000 and (ii) 2.5% of cash consideration payable in connection with such sale.

- (e) For the avoidance of doubt, the Debtors shall have no obligation to pay Jefferies any Financing Fee(s) on account of any Financing issued or placed under Sections 4(c) or (d) of the Engagement Letter, either during or after these Chapter 11 Cases, by any third party including, without limitation, by Richmond Hill or any purchaser of all or some of the Debtors' assets. With the exception of the Financing Fee in the amount of \$150,000 payable to Jefferies under Section 4(c)(i) for the initial DIP financing which has been completed, no further Financing Fee shall be payable to Jefferies for the closing of any Financing provided by Richmond Hill under Section 4 of the Engagement Letter.
- (f) If Jefferies is paid one or more Sale Transaction Fees by the Debtors on account of one or more Sale Transactions involving substantially all of the assets of the Debtors, then Jefferies shall not be paid any Restructuring Fee. For the avoidance of doubt, (i) to the extent Jefferies is paid a Sale Transaction Fee in accordance with subparagraph (a) above, no Restructuring Fee shall be payable to Jefferies and (ii) to the extent Jefferies is paid a Sale Transaction Fee on account of a Sale Transaction involving substantially all of the assets of the Debtors in accordance with subparagraph (b) above, no Restructuring Fee shall be payable to Jefferies.

9. Any Sale Transaction Fee due to Jefferies as a result of the closing of any Sale Transaction shall be paid and/or segregated and escrowed from the proceeds of such Sale Transaction, as an express carve-out from the collateral of the Debtors' pre- and post-petition secured lenders for the exclusive benefit of Jefferies, prior to any other use or distribution of such proceeds. If any Sale Transaction is the result of a successful credit bid without a cash component sufficient to pay any Sale Transaction Fee due to Jefferies in full, then any resulting unpaid portion of the Sale Transaction Fee due to Jefferies shall be immediately paid to Jefferies and/or segregated and escrowed at the closing of such Sale Transaction from the available cash collateral of the applicable credit bidder; provided; however, that if there is not sufficient cash collateral of the applicable credit bidder to pay the unpaid portion of such Sale Transaction Fee in full, or any portion thereof, then the successful bidder shall immediately pay the unpaid portion of such Sale Transaction Fee to Jefferies and/or segregate and escrow such unpaid portion of the Sale Transaction Fee at the closing of such Sale Transaction.

10. To the extent there is any conflict between this Order and the Application, the Engagement Letter or the Szlezinger Declaration, the terms of this Order shall control.

11. The Debtors and Jefferies are authorized and empowered to take all actions necessary to effectuate the relief granted by this Order in accordance with the Application.

12. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

13. Jefferies and the other professionals of the Debtors and the Official Committee of Unsecured Creditors shall coordinate with each other to avoid duplication of services.

14. The Debtors shall comply with the provisions of the interim and final DIP Orders with respect to any expenditures permitted under the relief granted herein.

15. Notwithstanding anything to the contrary in the Application, the Engagement Letter or the Szlezinger Declaration, this Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order and Jefferies' retention in these Chapter 11 Cases.

TENDERED BY:

/s/ Patricia K. Burgess

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-and-

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**PROPOSED ATTORNEYS FOR DEBTORS AND
DEBTORS- IN-POSSESSION**