

**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. )  
\_\_\_\_\_ )

**RESERVATION OF RIGHTS OF CSX TRANSPORTATION, INC. WITH RESPECT  
TO JOINT SALE PROCEDURES MOTION [DOC. NO. 2302] OF THE LIQUIDATING  
TRUSTEE AND CONTINENTAL HERITAGE INSURANCE COMPANY**

NOW COMES CSX Transportation, Inc. (“CSX”), by and through undersigned counsel, who submits this Reservation of Rights (the “Reservation”) with respect to the joint sale procedures motion [Doc. No. 2302] (the “Sale Motion”)<sup>1</sup> filed on July 26, 2023, by the Liquidating Trustee of the Cambrian Liquidating Trust (the “Trustee”) and Continental Heritage Insurance Company (“Continental”, and together with the Trustee, the “Movants”). As further provided below, the Sale proposed in the Sale Motion includes certain assets of Pristine Clean Energy, LLC (“Pristine”) and two of Pristine’s affiliates based on Movants’ applicable collateral interests in such assets. The Sale as described in the Motion does not, however, include the Pristine CSX Agreements (defined below), and on that basis, CSX does not object to the Sale Motion as a general matter. However, following the Sale, it appears that Pristine would be unable or otherwise not intend to perform under the Pristine CSX Agreements. Further, it is unclear whether any buyer would seek to avail itself of the benefits of the Pristine CSX Agreements without Pristine first seeking and obtaining CSX’s consent to the assignment of the Pristine CSX Agreements. Based on that understanding, CSX advises that it reserves all of its rights with respect to any buyer’s subsequent operations to the extent

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<sup>1</sup> Capitalized used herein and not otherwise defined shall have the meaning ascribed to such terms in the Sale Motion.

those operations concern or touch upon the property or subject matter underlying the Pristine CSX Agreements. In support of this Reservation, CSX respectfully submits as follows:

**Background**

*2019 Bankruptcy Sale & CSX Agreements Assigned to Pristine*

1. The Debtors in this case filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”) on June 16, 2019.

2. Pursuant to the 2019 Sale Order, the Debtors sold all, or substantially all, of their assets in three separate asset sales to different buyers, including the sale to Pristine of all, or substantially all, of the assets of Premier Elkhorn Coal LLC (“Premier Elkhorn”) and certain other assets of the Debtors (with respect to such sale, the “2019 Pristine Sale”).

3. The sales approved under the 2019 Sale Order all closed on September 27, 2019 (the “2019 Sale Closing Date”).

4. The 2019 Pristine Sale included the assignment by Premier Elkhorn and Pike-Letcher Land LLC, as applicable, of eight agreements with CSX to Pristine (the “Pristine CSX Agreements”). Doc. No. 608, Exhibit 2, at 161–62.

5. Pristine is currently a non-Debtor counterparty to the Pristine CSX Agreements, and CSX has not otherwise received any request for CSX’s consent to the assignment of such agreements.

*Sale Motion and Proposed Sale*

6. In the Sale Motion, the Movants seek to sell certain property assigned to Pristine in connection with 2019 Pristine Sale, defined in the Motion as the “Pristine-Related Permits and Escrowed Assets,” based on Movants’ applicable collateral interests in the same.

7. The Sale Motion provides that the Pristine-Related Permits and Escrowed Assets are described in Exhibit C to the motion (“Exhibit C”) and include the Pristine-Related Permits, Owned Real Property (which include the Escrow Deeds provided by Pike Elkhorn Land Company, LLC (“Pike Elkhorn”) in favor of Contiental) and Equipment (which includes the Escrow Bill of Sale by Pallas Plant A, LLC (“Pallas”) in favor of Continetal).

8. The Pristine-Related Permits, Owned Real Property and Equipment as defined in the Sale Motion do not appear to refer to the Pristine CSX Agreements.

9. Exhibit C does not describe any of the Pristine CSX Agreements or any other executory contract or lease.

10. The Sale Motion does not otherwise provide for any notice or other procedures with respect to executory contracts or leases.

11. In light of the foregoing, the Sale as described in the Sale Motion does not include the Pristine CSX Agreements.

### **Reservation of Rights**

12. Because the proposed Sale does not include the Pristine CSX Agreements, CSX does not object to the Sale Motion as a general matter.<sup>2</sup> However, following the Sale, it appears that Pristine would be unable or otherwise not intend to perform under the Pristine CSX Agreements. Further, it is unclear whether any buyer would seek to avail itself of the benefits of the Pristine CSX Agreements without Pristine first seeking and obtaining CSX’s consent to the assignment of the Pristine CSX Agreements. Accordingly, CSX reserves all of its rights with regard to the property and subject matter underlying the Pristine CSX

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<sup>2</sup> CSX reserves all of its rights to object to any attempt to assign the Pristine CSX Agreements, which no Debtor is currently party to, under the auspices of the Bankruptcy Code without CSX’s consent and/or the satisfaction of any conditions to such consent.

Agreements. Furthermore, CSX reserves all rights to condition its consent, if any is given, on the execution of appropriate documentation with CSX among other conditions that CSX may require.

13. For the avoidance of doubt, CSX otherwise reserves all rights under the Pristine CSX Agreements and otherwise applicable law with respect to Pristine, including, but not limited to, any amounts due and owing under the Pristine CSX Agreements.

**WHEREFORE**, CSX submits this Reservation and requests such relief as is just, reasonable and proper.

Dated: August 9, 2023.

Respectfully submitted,

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*Counsel for CSX Transportation, Inc.*

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on August 9, 2023, I caused to be served a copy of the foregoing Reservation of CSX via Federal Express on counsel for Movants as indicated below and electronically via the Court's CM/ECF system.

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Dated: August 9, 2023.

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