

ENTERED

May 20, 2025

Nathan Ochsner, Clerk

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:	§	
	§	CASE NO: 23-90794
BMI OLDSCO INC., et al.,	§	
Debtors.	§	Jointly Administered
	§	CHAPTER 11

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Barretts Minerals Inc. (“BMI”) commenced this case under chapter 11 of the Bankruptcy Code on October 2, 2023. The Official Committee of Unsecured Creditors, talc claimants represented by the Maune Raichle Hartley French & Mudd LLC (“MRHFM”) firm, and the United States Trustee seek dismissal of the case and in the alternative, termination of the Exclusivity Period.

The Court heard testimony and oral arguments on April 14, 2025. The Court orally denied dismissal on April 29, 2025. ECF No. 1438. The Court stated that its findings of fact and conclusions of law would be issued separately. This document constitutes those separate findings and conclusions.

BACKGROUND**I. BMI’S ASBESTOS LIABILITY**

BMI mined, beneficiated,¹ and sold talc from its Barretts, Montana location. BMI was originally an unincorporated division of Pfizer Inc. ECF No. 994. In 1992, Pfizer entered into several restructuring transactions to separate from its minerals

¹ Beneficiating is the processing of preparing raw ore by separating valuable minerals from waste. *Beneficiation*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/beneficiation> (last visited May 20, 2025).

businesses. Case No. 23-03225, ECF No. 1. BMI became an incorporated wholly-owned subsidiary of Pfizer. Minerals Technologies Inc. (“MTI”) was then reorganized from a wholly-owned subsidiary of Pfizer to an independent company. MTI owns Specialty Minerals Inc. (“SMI”). SMI owns BMI. Pfizer transferred its talc assets to BMI, including the Montana mines.

From 1992–2007, a testing service within SMI performed asbestos testing on BMI-mined talc. BMI alleges that asbestos was never detected in any talc that BMI sold.

Before 2018, BMI was named as a defendant in 14 asbestos-related personal injury lawsuits. By the Petition Date in 2023, BMI was named in over 500 asbestos-related personal injury lawsuits. ECF No. 1415 at 99. Since the Petition Date, the number of personal injury claims has increased to 800 across 22 different states. MTI and SMI are also named as defendants based on allegations that they negligently tested the BMI-mined talc for the presence of asbestos.

BMI tried to manage the financial strain of these lawsuits by seeking indemnification from Pfizer. ECF No. 1311 at 16. BMI alleges that Pfizer had a contractual obligation to indemnify BMI and its non-debtor affiliates for pre-spinoff talc liabilities. But a dispute arose between the parties regarding the scope of the indemnification agreements and Pfizer allegedly refused to honor them. ECF No. 1311 at 16.

Facing mounting volumes of litigation and crippling defense costs, BMI filed bankruptcy. In preparation of the filing, BMI, MTI, and SMI, entered into an

indemnity agreement on September 28, 2023. Case No. 23-03225, ECF No. 1. Under the agreement, BMI agreed to indemnify MTI and SMI for any liabilities related to BMI's assets and any conduct related to BMI's products. That indemnification agreement is likely avoidable.

II. THE CHAPTER 11 CASE

BMI and its wholly owned subsidiary, Barretts Ventures Texas LLC ("BVT") filed chapter 11 petitions on October 2, 2023.

The United States Trustee appointed the Official Committee of Unsecured Creditors, consisting of seven asbestos claimants, five of whom were diagnosed with mesothelioma, and two of whom hold wrongful death claims on behalf of mesothelioma victims. ECF No. 138; ECF 714.

The Court approved the selection of Sander L. Esserman as the Future Claimants' Representative on November 11, 20, 2023. ECF No. 307.

On March 25, 2024, the Court entered an Order approving the sale of BMI's talc assets. ECF No. 776. BMI closed the sale of its talc-related assets for \$32 million. In anticipation of the sale and to support confirmation of a plan with a channeling injunction under 11 U.S.C. § 524(g) (*see infra* p. 4), the Debtors allege that they decided to develop a real estate business consisting of properties² subject to long-term, triple net leases. ECF No. 1311 at 17. The Court does not find this allegation to be credible.

² The properties are located in San Angelo and San Antonio, Texas. ECF No. 1311 at 17.

Since January 2024, the Debtors, their non-debtor affiliates, the Committee, and the FCR have been engaged in mediation regarding the resolution of the Debtors' talc liabilities overseen by Ken Feinberg. ECF No. 1311 at 17. Mr. Feinberg is a leading expert on mass tort litigation. After fourteen months, the parties did not reach a settlement.

On April 2, 2024, BMI filed its first Chapter 11 Plan of Reorganization. ECF No. 1353. The Plan provides for two treatment options for talc claimants. Under the first option, the Plan provides for settlement of estate causes of action and establishment of a "Talc Personal Injury Trust" under § 524(g) of the Code.

Section 524(g) was enacted in 1994 to authorize non-debtor releases in mass tort cases where harm was caused by the exposure to asbestos. *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 269 (2024). It authorizes a bankruptcy court to issue an injunction "to enjoin and channel present and future asbestos related claims against a debtor to the trust in connection with confirmation of a chapter 11 plan." *In re Red River Talc LLC*, No. 24-90505, 2025 WL 1029302, at *36 (Bankr. S.D. Tex. Mar. 31, 2025). The channeling injunction may extend protection against talc-related claims directed at the debtor to third parties. § 524(g)(4)(A)(ii); *In re Red River Talc LLC*, 2025 WL 1029302, at *36. To confirm a plan with a § 524(g) injunction, at least 75 percent of voting talc claimants must vote in favor of the plan. § 524(g)(2)(B)(ii)(IV)(bb).

The proposed Trust would be funded primarily by contributions from MTI and other non-debtor affiliates in exchange for protection of the injunction. ECF No. 1353

at 21. On April 17, 2025, MTI publicly announced that it established a reserve of \$215 million to fund the Trust and related asbestos charges. ECF No. 1428 at 2.

If the first option fails to receive the requisite votes, the Debtors will proceed with the confirmation of a “non-section 524(g) plan”, which provides for a discharge of the Debtors’ liabilities. The plan will not offer MTI and other non-debtor affiliates protection of the channeling injunction. ECF No. 1311 at 19. The non-section 524(g) plan will provide for a trust to pay talc personal injury claims but will receive materially less contribution from MTI and the non-debtor affiliates.

The Court held a two-day trial on the Committee’s motion to dismiss this chapter 11 case commencing on April 14, 2025. The hearing was attended by the Debtors, its non-debtor affiliates, the Committee, the United States Trustee, the Future Claims Representative, and the MRHFM claimants.

JURISDICTION

The District Court has jurisdiction over this proceeding under 28 U.S.C. § 1334(a). Venue is proper in this District under 28 U.S.C. § 1409. This is a core proceeding under 28 U.S.C. § 157(b)(2). The case has been referred to the Bankruptcy Court under General Order 2012-6.

DISCUSSION

Section 1112(b)(1) of the Code requires a bankruptcy court to dismiss a case, if it is in the best interests of creditors or the estate, “for cause” unless the court determines that the appointment under § 1104(a) of a trustee or an examiner is in

the best interests of creditors and the estate. Section 1112(b)(4) provides a non-exhaustive list of sixteen examples that constitute “cause” for dismissal purposes.

The Committee argues that dismissal “for cause” is warranted for three reasons: (1) the Debtors’ further prosecution of these cases for the benefit of MTI is a bad faith use of the bankruptcy system; (2) the Debtors cannot effectuate or confirm a plan within a reasonable time; and (3) the Debtors’ estates are suffering a substantial and continuing loss with no reasonable likelihood of rehabilitation. ECF No. 994 at 15–16.

I. GOOD FAITH

The Fifth Circuit imposes a requirement of good faith “for the commencement, prosecution, and confirmation of bankruptcy proceedings.” *In re Little Creek Dev. Co.*, 779 F.2d 1068, 1071 (5th Cir. 1986). This requirement “prevents abuse of the bankruptcy process by debtors whose overriding motive is to delay creditors without benefitting them in any way or to achieve reprehensible purposes.” *Id.* at 1072. In determining whether to dismiss a case for lack of good faith the Court must conduct an “on-the-spot evaluation of the debtor’s financial condition, motives, and the local financial realities.” *See In re Red River Talc LLC*, No. 24-90505, 2025 WL 1029302, at *41 (Bankr. S.D. Tex. Mar. 31, 2025) (quoting *Little Creek*, 779 F.2d at 1072). Any one factor is not dispositive; courts must examine the totality of the circumstances. *In re Ozbelebi*, 639 B.R. 365, 396 (Bankr. S.D. Tex. 2022). Two inquiries are particularly relevant to the question of good faith: (1) whether the petition serves a valid bankruptcy purpose, and (2) whether the petition is filed merely to obtain a

tactical litigation advantage. *In re 15375 Mem'l Corp.*, 589 F.3d 605, 618 n.7 (3d Cir. 2009).

The Committee suggests that BMI filed its chapter 11 case in bad faith, alleging that it filed solely to protect its parent, MTI, from any talc liability. BMI's talc business has now been sold but was in existence on the Petition Date. There were employees, income, and business operations on the Petition Date. Following the sale, BMI no longer had employees and had only nominal income and business operations.

At this stage of the case, BMI's assets are primarily (i) its indemnification claims against Pfizer; and (ii) its Testing Claims against SMI and MTI. Otherwise, BMI has two real estate properties subject to triple net leases of a McDonald's restaurant and a Whataburger restaurant. There is no operating business to rehabilitate. The Committee argues that the Debtors' estate has no value that can be maximized for the benefit of creditors. Except for the allegations concerning the two real estate leases, the Court rejects this analysis.

In *In re Honx, Inc.*, this Court held that filing for bankruptcy to resolve a debtor's current and future asbestos liabilities under § 524(g) is a valid bankruptcy purpose. *See* No. 22-90035, 2022 WL 17984313, at *2. BMI asserts that it filed for bankruptcy to address the overwhelming number of talc lawsuits after it failed to obtain indemnification from Pfizer. ECF No. 1311 at 10. At the time of the petition date, BMI was a named defendant in over 500 talc-related lawsuits. ECF No. 1311 at 7. BMI has liability independent of MTI.

The Court rejects that BMI was ever using the bankruptcy case solely to assist MTI. The Committee in its papers cite to *In re Dunes Hotel Assocs.*, No. 94-75715, 1997 WL 33344253, at *15 (Bankr. S.C. Sept. 26, 1997) where the court found that using bankruptcy solely to reject a valid lease was in bad faith. The *Dunes* holding is inapposite here. There, the debtor's use of the "extraordinary powers" of bankruptcy was improper because it solely benefitted itself and its owner, rather than benefitting its creditors. *Id.* at *15. Here, BMI seeks to settle claims against BMI through a § 524(g) trust. The trust must provide fair compensation to the current and future talc claimants. The mere fact that its owner, MTI could benefit from the Trust in exchange for contribution does not by itself constitute bad faith. There is prospect of a material benefit to current and future talc claimants, who want fair compensation for their injuries.

The *Red River Talc LLC* court also recognized that the liquidation of a debtor's assets and the creation of a trust to benefit creditors can serve a valid bankruptcy purpose, "because not every chapter 11 debtor rehabilitates." 2025 WL 1029302, at *42 (noting that a plan may provide for the sale of all or substantially all of the property of the estate and the distribution of the proceeds of such sale among holders of claims and interests (citing 11 U.S.C. § 1123(b)(4))). BMI does not need to have a "going concern" business to satisfy the good faith requirement. Rehabilitation can include the use of the bankruptcy process to prevent "a complete and total loss of value." *Honx*, 2022 WL 1798413, at *3 (holding that bankruptcy allows the debtor to secure funding from its parent to compensate asbestos claimants). Here, MTI is

offering to fund the § 524(g) Plan to settle talc claims against the Debtors. BMI's estate also has causes of action³ against its parents for negligent testing of asbestos. Any settlement that the Estate receives from its parents on account of the Testing Claims will go towards compensating the talc claimants. Notwithstanding arguments to the contrary, the Estate has not suffered a net loss of value when MTI's large⁴ proposed contribution and the Testing Claims unlock substantial value for the Estate.

The other basis that the Committee offers to support dismissal for bad faith is that BMI filed this case merely to obtain tactical litigation advantage. ECF No. 994 at 19. The Committee asserts that BMI, as an insider of MTI, has no incentive to settle any causes of action it has against MTI for the benefit of the estate and the talc claimants. ECF No. 994 at 19. The Committee believes that its constituency can get a larger recovery through the tort system.

The Committee's sentiments were initially well-founded. The lack of aggression taken by BMI in settling its causes of action against its parents is troubling. In September 2024, BMI employed a Special Committee to "investigate and evaluate estate claims, including causes of action against the Debtor's affiliates."

³ The parties dispute whether Testing Claims are causes of action that belong to the Estate or are direct actions that the claimants can pursue even if a § 524 plan is confirmed. For purposes of this Opinion, the Court is not making a determination as to the status of the Testing Claims. The Debtor can certainly bring claims against its parents for negligent testing. The talc-claimants may be entitled to bring direct actions against the parents under applicable state law regardless of the § 524(g) injunction. *See Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 147 (2009) (noting that the § 524(g) injunction is limited to situations where a third party has derivative liability for claims against the debtor and does not protect third parties against non-derivative claims).

⁴ At \$215 million, the reserve is quite large. The Court does not imply that it is large enough.

ECF No. 1414 at 64. The Special Committee was comprised of Kevin Collins as the sole independent Board member. Mr. Collins had sweeping authority to investigate any claims against MTI and SMI. His position cannot be terminated. ECF No. 1414 at 95. The Special Committee has made little progress. Although it has hired experts, the Committee has not provided any reports, commenced any litigation, and proceeded with estimation. ECF No. 1415 at 9. Instead, the Special Committee has taken the position that there was no asbestos in the talc without any substantiation. ECF No. 1415 at 6. It also appears that BMI's past conduct has lacked independent decision making from MTI's needs and interests.

The Special Committee's inaction and lack of independence would be grounds to find that BMI is engaging in unfair litigation tactics, but unusual circumstances exist here. Section 1112(b)(2)(B) prohibits a court from dismissing a case if it finds:

[U]nusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate, and the debtor or any party in interest establishes that—

(B) the grounds for converting or dismissing the case include an act or omission of the debtor other than under paragraph (4)(A)—

(i) for which there exists a reasonably justification for the act or omission; and

(ii) that will be cured within a reasonable period of time fixed by the court.

The parties have been in active mediation—a process this Court authorized. BMI asserts that it exercised restraint in pursuing actions against MTI while mediation was ongoing. ECF No. 1415 at 9. Only three weeks elapsed between the end of mediation and the hearing on Committee's dismissal motion. Finding cause

for dismissal because BMI failed to make substantial efforts in settling its claims against its parents due to the pending mediation, which this Court authorized, is unpersuasive. The movants could have terminated the mediation earlier if they determined no progress was being made. Instead, the parties continued in their efforts to resolve their differences through mediation. For the mediation to be drawn out this long and for the movants to immediately seek dismissal for lack of good faith is unavailing.

BMI has heeded the concerns of this Court and the Committee. The current path has established substantial independence with respect to decision making in this bankruptcy case. That independence has already resulted in a substantial change of position by MTI. At the April 15 Hearing, MTI announced its desire to move forward with this case, including welcoming BMI to aggressively pursue its causes of action against its non-debtor parents. ECF No. 1415 at 21. On April 17, 2025, MTI announced that it had reserved \$215 million on its balance sheet to fund the Trust and related asbestos expenses. ECF No. 1428 at 2.

BMI also reconstituted the management of its causes of action. It now has a Special Committee comprised entirely of independent members. Notably, one of the three members is a personal injury attorney who was nominated by the Unsecured Creditors Committee. ECF No. 1467.

”Cause” is not established to dismiss this case for lack of good faith.

II. PLAN CONFIRMABILITY

Next, the Committee argues that BMI does not enjoy creditor support to approve the proposed Plan with a § 524(g) channeling injunction. Cause exists for dismissal of a chapter 11 case under § 112(b) where there is no “reasonably possibility of successful reorganization within a reasonable time.” *In re Timbers of Inwood Forest Assocs. Ltd.*, 808 F.2d 363, 571 (5th Cir. 1987).

The objection is premature. The parties have been engaged in a fourteen-month mediation. Despite the efforts by the parties, the mediation failed. The parties have recently resumed moving forward with this case. This Court’s recommendation to the District Court to withdraw the reference and make a factual determination as to whether any of the talc sold by BMI contained sufficient quantity and form of asbestos to cause mesothelioma and other asbestos related diseases will streamline this proceeding. ECF No. 1479. That will include the scheduling of a hearing on whether any proposed plan should be confirmed. As the Committee and the talc claimants concede, if there was no asbestos in BMI-mined talc, their claims, including any testing claims—whether property of the estate or a direct action—have no value. Conversely, a finding that there was asbestos will likely result in higher contribution to the Trust for the benefit of the talc claimants.

BMI’s Plan also offers a fallback option in the event the § 524(g) Plan fails achieve 75 percent creditor support. Only BMI’s liabilities will be discharged and the claimants are free to pursue any actions they have against SMI or MTI.

III. SUBSTANTIAL AND CONTINUING LOSS

Lastly, the Committee contends that cause exists for dismissal because there is “substantial or continuing loss to or diminution of the estate and the absence of the reasonably likelihood of rehabilitation.” 11 U.S.C. § 1112(b)(4)(A). The Committee must establish both prongs for the Court to find that cause exists to dismiss the case. *In re TMT Procurement Corp.*, 534 B.R. 912 (Bankr. S.D. Tex. 2015).

Under the first prong, cause can be shown if the debtor continues to experience negative cash flow **as to materially negatively impact the bankruptcy estate and interest of the creditors**. See *In re Ford Steel, LLC*, 629 B.R. 871, 879 (Bankr. S.D. Tex. 2021) (emphasis added). As the Committee points out, BMI has relinquished its talc business and solely operates two real estate properties with an income of about \$18,833 per month. BMI incurred over \$2 million in professional fees in one month alone for prosecution of this bankruptcy case. ECF No. 994 at 23. Since the Petition Date, BMI has reported losses of about \$105 million . ECF No. 1414 at 118. But the actual figure appears to be substantially lower because the \$105 million accounts for the loss on the sale of the talc assets. That loss was merely a recognition of the overstated value that existed at the commencement of the case. The Committee also neglects to account for the value of MTI’s commitment to a substantial contribution to the Trust and the value of the Estate’s causes of action against its parents and Pfizer. Any loss in cash has been more than offset by the increased value of the Trust and the Estate’s causes of action. There is still material value to be realized by prosecution of this bankruptcy case. The first prong is not met.

With respect to the second prong, the Committee argues that there is no reasonable likelihood of rehabilitation because BMI has no business prospect to reverse its losses. ECF No. 994 at 23. But, as previously discussed, rehabilitation does not impose an ongoing business requirement. *See In re Honx*, No. 22-90035, 2022 WL 17984313, at *3 (“[S]ometimes, a plan of liquidation is better for all parties than attempting to salvage the business as ongoing matter or allowing the provisions of chapter 7 or a race to the courthouse to dictate the liquidation process.”). Rehabilitation is measured by a “debtor’s intention to use the bankruptcy process to prevent a complete and total loss of value.” *Id.* This includes the ability to obtain funding from its parent with which it may be able to pay the asbestos claimants. *Id.*

The Claimants assert that MTI is a wealthy corporation. It is. MTI is committed to reserving \$215 million to fund the Trust and related asbestos expenses. ECF No. 1428 at 2. If the District Court finds presence of asbestos in BMI-mined talc, it would likely unlock a more valuable contribution to the Trust for the benefit of creditors. If this Court were to dismiss this case, there could be hundreds of trials against BMI and its parents, further diminishing any recovery for the claimants.

Importantly, dismissal will almost surely deny any prospect of recovery for future talc-claimants. The hallmark of any asbestos bankruptcy case is to provide for future claimants due to the latency period of asbestos-related diseases. *See In re Honx*, 2022 WL 17984313, at *2 (“Congress wrote § 524(g) to codify what it described as a creative solution to help protect future asbestos claimant.”); *In re Flintkote Co.*, 486 B.R. 99, 127 n.71 (“[T]he purpose of § 524(g) is to protect the due process rights

of future claimants or future demand holders (citing *In re W.R. Grace & Co.*, 446 B.R. 96, 130 n.58 (Bankr. D. Del. 2011))). The Court must consider the interest of the Future Claimants in this case, which is to maintain this case and give the Debtors time to properly prosecute its causes of action against its parents and Pfizer for the benefit of the future creditors. ECF No. 1415 at 123. Dismissing this case and allowing the current claimants to deplete the assets of the Debtors in the tort system will not serve the best interests of the future claimants.

The victims, current and future, want fair compensation for the irreversible harms that they have suffered. The Debtors and its affiliates want finality. Maximizing payments to holders of bona fide claims will honor both goals.

CONCLUSION

The Committee's motion to dismiss BMI's chapter 11 case is denied. Determination of termination of the exclusivity period is abated until the District Court either denies withdrawal of the reference or makes a factual determination as to the central issue.

SIGNED 05/20/2025



Marvin Isgur
United States Bankruptcy Judge