

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

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	:		Chapter 11
In re:	:		
	:		Case No. 23-90794 (MI)
BARRETTS MINERALS INC., <i>et al.</i> , ¹	:		
	:		(Jointly Administered)
Debtors.	:		
	:		Re: Docket No. 193
	:		
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**DEBTORS' OBJECTION TO MOTION OF THE
OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO TRANSFER VENUE**

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Barretts Minerals Inc. (8715) and Barretts Ventures Texas LLC (0787). The Debtors' address is 5605 North MacArthur Boulevard, Suite 1000, PMB 139, Irving, Texas 75038.

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The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) hereby file this objection (this “**Objection**”) to the *Motion of the Official Committee of Unsecured Creditors to Transfer Venue* [D.I. 193] (the “**Motion**”) filed by the Official Committee of Unsecured Creditors (the “**Committee**”), the *MRHFM’s Claimants’ Joinder to Motion of the Official Committee of Unsecured Creditors to Transfer Venue* [D.I. 337] (the “**MRHFM Joinder**”), and the *Future Claimants’ Representative’s Limited Joinder to Motion of the Official Committee of Unsecured Creditors to Transfer Venue* [D.I. 338] (the “**FCR Joinder**”).² In support of this Objection, the Debtors have filed the *Declaration of David J. Gordon, Chief Restructuring Officer of the Debtors, in Support of the Debtors’ Objection to Motion of the Official Committee of Unsecured Creditors to Transfer Venue* (the “**Gordon Declaration**”) contemporaneously herewith, and respectfully state as follows:

PRELIMINARY STATEMENT

1. On October 2, 2023 (the “**Petition Date**”), Barretts Minerals Inc. (“**BMI**”) and its wholly-owned subsidiary, Barretts Ventures Texas LLC (“**BVT**”), commenced voluntary cases (the “**Chapter 11 Cases**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the Bankruptcy Court for the Southern District of Texas (the “**Court**”). The Debtors’ decision to file the Chapter 11 Cases in the Southern District of Texas was the result of careful consideration of a number of factors, including the location of certain real property assets and operations in Texas (including BMI’s Bay City, Texas operations, which it has continuously operated for nearly 25 years), the logistics of travel for the Debtors’ executives and professionals,

² The MRHFM Joinder and the FCR Joinder contain unsupported and incorrect allegations similar to those in the Motion, but do not include any independent legal argument. Accordingly, the Debtors’ Objection responds directly to the arguments included in the Motion. To the extent the FCR Joinder is proposing—without any legal support—transfer of these cases to the Southern District of New York, the filing of the Debtors’ cases in that venue would not satisfy the requirements of 28 U.S.C. § 1408, and transfer to that venue is therefore not permitted under 28 U.S.C. § 1412. FCR Joinder ¶ 2 n.2.

and the costs associated with filing in the Southern District of Texas compared to other jurisdictions for which the Debtors meet the criteria for venue set forth in 28 U.S.C. § 1408.

2. The Committee does not dispute that the filing of the Debtors' cases in Houston satisfies the venue requirements of 28 U.S.C. § 1408. Instead, the Committee seeks to delay the progress of these Chapter 11 Cases by painting a fanciful narrative about how the Debtors are the latest incarnation of *LTL* and are using the bankruptcy process for an improper purpose. They are not. The Debtors have limited assets and insufficient operating income to continue to defend against the nearly 600 talc-related claims that have been filed against BMI. No "Texas Two-Step" preceded these cases. The Debtors took appropriate steps in the months leading up to the filing to minimize disruption to their operations and maximize the likelihood that these cases would result in a fair and equitable outcome for all parties. The Committee contends that these actions justify the drastic remedy of transferring the Chapter 11 Cases to the District of Montana, citing inapposite or misleading and incomplete excerpts from case law for support. The Committee fails to carry the heavy burden required for such a transfer.³

3. The evidence offered by the Committee in support of the Motion is woefully inadequate. The Motion is entirely devoid of explanation as to how a change of venue to Montana would reduce costs, which key hearing attendees would benefit from a Montana setting, why the location of the Debtors' non-Texas assets matters (or why it takes full precedence over the location of the Debtors' Texas assets), why Montana has a particular interest in adjudicating the Chapter 11 Cases (given that all of BMI's Montana assets are being sold and tort claims are pending against BMI in jurisdictions throughout the United States—including several in Texas, but none that the

³ See *In re Commonwealth Oil Refining Co.*, 596 F.2d 1239, 1241 (5th Cir. 1979) ("*CORCO*") ("[T]he court should exercise its power to transfer cautiously, and the party moving for the transfer must show by a preponderance of the evidence that the case should be transferred.") (internal citations omitted); *In re Cox Operating, LLC*, 652 B.R. 49 (Bankr. E.D. La. 2023) (same).

Debtors are aware of in Montana), or why this Court is unable to oversee the Chapter 11 Cases in a fair and appropriate manner. Indeed, the Committee does not articulate *any* compelling reason for moving the Chapter 11 Cases to Montana. Instead, the Committee spends nearly half of its Motion tilting at *LTL* windmills and the other half applying cases outside this district and blatantly ignoring the efficiencies that would result from proceeding in the Debtors' chosen forum.

4. Despite the Committee's allegations, these cases were not filed to obtain a prolonged bankruptcy stay. *See* Mot. ¶ 13. Indeed, BMI must move the Chapter 11 Cases expeditiously toward an exit. The Debtors' limited DIP financing includes milestones regarding the progression of the Chapter 11 Cases.⁴ Further, the Debtors appreciate that the longer these cases take, the fewer the assets that will be available for their creditors. The Debtors have remained steadfast in their goal of reaching a consensual plan of reorganization providing an equitable and ratable treatment for current and future tort claimants. Notwithstanding the Debtors' efforts to date, the Committee has objected to all material motions, sought transfer of these cases, and inexplicably refused to engage in negotiations through a formal mediation process or otherwise. Gordon Decl. ¶ 22. Given the Debtors' proper choice of venue and the Committee's failure to present evidence that the interest of justice or convenience of the parties would support disturbing this choice, the Motion should be denied and the Chapter 11 Cases should be allowed to proceed efficiently and in good faith before this Court.

⁴ *See Interim Order (A) Authorizing the Debtors to (I) Obtain Senior Secured Superpriority Postpetition Financing and (II) Use Cash Collateral; (B) Granting Liens and Providing Claims with Superpriority Administrative Expense Status; (C) Modifying the Automatic Stay; (D) Scheduling a Final Hearing; and (E) Granting Related Relief* [D.I. 67] (the "**Interim DIP Order**") at Ex. 1, § 8 ("All DIP Obligations shall be due and payable in full [...] 100 days after the Petition Date (unless extended pursuant to an exercise of the Extension Option), unless the Bankruptcy Court has approved Debtors' entry into a stalking horse purchase agreement reasonably acceptable to the DIP Lender or a sale order providing for Payment in Full of the DIP Obligations").

BACKGROUND

I. General Background

5. On the Petition Date, the Debtors commenced the Chapter 11 Cases and the Court entered an order authorizing the joint administration and procedural consolidation of the Chapter 11 Cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 1015-1 of the Bankruptcy Local Rules for the Southern District of Texas [D.I. 23]. The Debtors are authorized to continue operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On October 20, 2023, the Office of the United States Trustee for the Southern District of Texas (the “**U.S. Trustee**”) appointed the Committee [D.I. 138], which consists of seven talc claimants represented by seven plaintiffs’ law firms. No trustee or examiner has been requested in the Chapter 11 Cases as of the date hereof.

II. The Debtors’ Connections to Texas

7. Both BMI and BVT own real property in Texas. Gordon Decl. ¶ 16. In 1998 and 1999, BMI built a facility in Bay City, Texas (the “**Bay City Facility**”). *Id.* ¶ 8. BMI has maintained operations in Texas since that time—nearly 25 years. *Id.* The Bay City Facility is one of BMI’s two key talc facilities, at which BMI talc is blended with other proprietary materials, stored in silos, and shipped to customers via rail and ground transportation. *Id.* The Opti-Block talc product produced at the Bay City Facility has historically accounted for 5% to 10% of BMI’s annual talc sales. *Id.*

8. As BMI began to consider and prepare for a potential chapter 11 filing, it concluded that the only way to achieve an equitable result for both present and future holders of claims alleging personal injuries caused by exposure to talc allegedly contaminated with asbestos that was mined, beneficiated, processed, and sold by BMI (the “**Talc Claims**”) was to seek confirmation of

a plan that would channel all Talc Claims to a trust created under section 524(g) of the Bankruptcy Code (a “**524(g) Trust**”). Gordon Decl. ¶ 6.

9. In order to obtain the finality possible through a section 524(g) plan, BMI also concluded it would need to cease its talc-generating activities. BMI therefore initiated a robust prepetition marketing process for its talc-related assets and operations.⁵ Gordon Decl. ¶ 10. Because objecting parties in other asbestos bankruptcies have argued that, to comply with section 524(g), a debtor must have “an ongoing business,”⁶ BMI and its advisors determined (in an abundance of caution) to develop a secondary business consisting of stable revenue-producing assets unrelated to BMI’s talc business. *Id.* ¶ 11. Ultimately, BMI decided to develop a real estate business consisting of properties subject to long-term, triple-net leases to quick service restaurant operators. *Id.* Other debtors in section 524(g) cases have pursued similar real estate-related businesses, either where they have sold the operations allegedly giving rise to asbestos claims, or where they otherwise lacked other business operations in advance of confirmation.⁷

⁵ These sale efforts have continued following the Petition Date. On October 13, 2023, the Debtors filed a motion seeking, among other things, approval of bidding procedures and procedures for the selection of one or more stalking horse bidders (the “**Bidding Procedures Motion**”) [D.I. 128]. Under the Debtors’ proposed bidding procedures, indications of interest are due on December 1, 2023. *Id.* ¶ 12.

⁶ *See In re The Flintkote Company and Flintkote Mines Limited*, Case No. 04-11300 (JKF) (Bankr. D. Del. Dec. 21, 2012) [D.I. 7253] (noting that “§ 524(g)(2)(B)(i)(II) ‘implies an ability to make payments into the future – an ‘evergreen’ source of funding – and this is what the Third Circuit in *Combustion Engineering* undoubtedly meant when it referred to an ‘ongoing business’ requirement” and assuming, without deciding, “that ‘§ 524(g)(2)(B)(i)(II) contains an ‘ongoing Business’ requirement””) (citing *In re Quigley Co.*, 437 B.R. 102, 141 (Bankr. S.D.N.Y. 2010) and *In re Combustion Eng’g, Inc.*, 391 F.3d 190, 248 (3d Cir. 2004)) (emphasis added).

⁷ *See, e.g., In re Paddock Enterprises, LLC*, Case No. 20-10028 (LSS) (Bankr. D. Del. May 26, 2022) [D.I. 1406] (confirming plan providing for § 524(g) trust where reorganized debtor’s ongoing business included ownership and management of two commercial properties subject to long-term, triple-net leases with Chick-Fil-A and McDonalds); *In re Maremont Corp.*, Case No. 19-10118 (KJC) (Bankr. D. Del. May 17, 2019) (confirming plan providing for § 524(g) trust where reorganized debtors’ ongoing business included ownership and management of one commercial property subject to a long-term, triple-net lease with Dollar General); *In re The Flintkote Company and Flintkote Mines Limited*, Case No. 04-11300 (JKF) (Bankr. D. Del. Dec. 21, 2012) [D.I. 7253 & 7254] (confirming plan providing for § 524(g) trust where reorganized debtors’ ongoing business included ownership and management of six commercial properties subject to long-term, triple-net leases with quick-service restaurant operators such as McDonald’s USA and Burger King’s largest franchisee).

10. In selecting the locations for its real property investment, BMI considered properties in a number of states. Gordon Decl. ¶ 13. One obvious choice was Texas—a state to which BMI had a longstanding connection. Unlike Montana, the only other state in which BMI already had assets and operations (all of which it is in the process of selling), Texas enjoys dense urban centers and significant population growth. These characteristics, in the judgment of BMI’s Chief Restructuring Officer (who has extensive experience in triple-net lease investments), enhance the value and stability of a potential investment by increasing the likelihood of any lessee performing over the term of its lease and any extensions. In any event, no acceptable Montana properties fitting the Debtors’ acquisition criteria were available for purchase at that time. *Id.* And although locations in other states were likewise considered, two properties in Texas presented conservative investment opportunities with only a modest start-up investment required. Soon after BMI began to focus on these two properties, BMI formed BVT as a Texas limited liability company in order to hold one of BMI’s property acquisitions. *Id.* ¶ 16.

11. In the first half of July 2023, BMI elected to move forward with the purchase of both properties. Gordon Decl. ¶ 14. BMI submitted letters of intent regarding a property located in San Antonio, Texas (the “**San Antonio Property**”), which is subject to a triple-net lease with McDonalds USA LLC, and a property located in San Angelo, Texas (the “**San Angelo Property**”), which is subject to a triple-net lease with Whataburger Restaurants, LLC. The purchases of these properties closed on September 27 and September 28, 2023, respectively.⁸ *Id.* ¶ 15. Consistent with modern business practice, BMI assigned its interests in one of the real properties (the San Angelo Property) to BVT. *Id.* ¶ 16. BMI retained the San Antonio Property so that it would have

⁸ BMI financed the purchase of both the San Antonio Property and the San Angelo Property through a draw on an intercompany note issued by BMI’s indirect parent company, Minerals Technologies, Inc. (“**MTI**”). Gordon Decl. ¶ 15. Accordingly—and contrary to the Committee’s unsupported and incorrect accusations—such purchase had no effect on, and was not undertaken to deplete, the Debtors’ cash reserves. Mot. ¶ 70.

continuing business operations and unquestionably satisfy section 524(g), even after selling its talc operations. *Id.*

OBJECTION

I. Venue Is Proper in the Southern District of Texas.

A. Venue Is Proper for Debtor BVT Pursuant to 28 U.S.C. § 1408(1).

12. Section 1408 of title 28 of the United States Code provides that:

a case under title 11 may be commenced in the district court for the district [...] in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district.

28 U.S.C. § 1408(1).

13. BVT satisfies 28 U.S.C. § 1408(1). *First*, BVT is a limited liability company formed under the laws of and domiciled in Texas. *Second*, BVT's principal assets are located in San Angelo, Texas (*i.e.*, the San Angelo Property). There is no requirement that a debtor's property be located in Houston in order for venue in the Houston Division of the Southern District of Texas to be proper. *See In re ERG Intermediate Holdings, LLC*, 2015 WL 6521607, at *4 (Bankr. N.D. Tex. Oct. 27, 2015) (“[A]n entity that is formed under the laws of a given state is domiciled in the entire state for purposes of section 1408(1) and may file a case under the Bankruptcy Code in any District in that state.”). Nor is there any requirement that a debtor be resident in Texas for each of the 180 days preceding its petition date; rather, per the unambiguous statutory language, the debtor must have been resident “for a longer portion of such one-hundred-and-eighty-day period than the ... residence ... of such person . . . in any other district.” 28 U.S.C. § 1408(1); *see also In re Cole*, 2008 WL 2857118, at *2 (Bankr. N.D. Tex. July 21, 2008)

(“Because the debtor spent the majority of the 180–day period before the filing of the bankruptcy in the state of Texas, the residency test is clearly satisfied and venue is proper.”). Here, BVT was formed on July 24, 2023 and has been resident in Texas since its formation. Accordingly, venue is proper for BVT in this Court.

B. Venue Is Proper for Debtor BMI Pursuant to 28 U.S.C. § 1408(2).

14. Section 1408(2) of title 28 of the United States Code provides that “a case under title 11 may be commenced in the district court for the district [...] in which there is pending a case under title 11 concerning such person’s affiliate.” 28 U.S.C. § 1408(2). BMI and BVT are affiliates as BVT is a wholly-owned subsidiary of BMI. *See* 11 U.S.C. § 101(2). Because BVT has a chapter 11 case pending in this Court, venue is proper for BMI’s case under 28 U.S.C. § 1408(2). In addition, although not relevant under section 1408(2), BMI has numerous other connections to Texas. *First*, BMI has operated the Bay City Facility since 1999. *Second*, BMI owns the San Antonio Property. *Third*, BMI and BVT maintain office space in Irving, Texas. Gordon Decl. ¶ 17. *Fourth*, BMI’s wholly-owned subsidiary, BVT, is a Texas entity. Thus, despite the Committee’s assertions to the contrary, BMI has significant connections to Texas.

15. Venue of both Chapter 11 Cases therefore is proper in the Southern District of Texas under section 1408.

II. Transfer of These Cases to the District of Montana under 28 U.S.C. § 1412 Is Not Warranted or Appropriate.

16. Section 1412 of title 28 of the United State Code provides that:

A district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties.

28 U.S.C. § 1412. The movant seeking such transfer of venue must show that either the interest of justice or the convenience of the parties favors transfer. *See, e.g., In re Directory Distrib.*

Assocs., Inc., 566 B.R. 869, 878 (Bankr. S.D. Tex. 2017) (“[U]nder this section [1412], the movant bears the burden of proof, by a preponderance of the evidence, to show that transfer is ‘in the interest of justice’ or ‘for the convenience of the parties.’”).

17. The movant bears the burden of proof to show why a case should be transferred. *See CORCO*, 596 F.2d at 1241 (“[T]he court should exercise its power to transfer cautiously, and the party moving for the transfer must show by a preponderance of the evidence that the case should be transferred.”) (internal citations omitted); *In re Cox Operating, LLC*, 652 B.R. at 55 (same). The Committee fails to carry its burden, either based on the parties’ convenience or in the interest of justice, to show that a transfer of the Chapter 11 Cases to the District of Montana is appropriate. Instead, the Committee offers unsupported allegations of forum shopping and ignores material facts distinguishing these Chapter 11 Cases from the cases on which it relies.

A. Transfer of Venue to Montana Would Inconvenience the Parties.

18. In considering whether cases should proceed in their original venue or be transferred for the convenience of the parties under 28 U.S.C. § 1412, courts in the Fifth Circuit consider the following factors:

- a. The proximity of creditors of every kind to the Court;
- b. The proximity of the bankrupt (debtor) to the Court;
- c. The proximity of the witnesses necessary to the administration of the estate;
- d. The location of the assets;
- e. The economic administration of the estate; [and]
- f. The necessity for ancillary administration if bankruptcy [*i.e.*, liquidation] should result.

CORCO, 596 F.2d at 1247.⁹ The Committee notes that the Fifth Circuit’s decision in *CORCO* sets forth the relevant standard under the “convenience of the parties” prong, but then ignores most of the factors. This is not surprising given that none of the factors support a conclusion that the District of Montana would be more convenient for the parties. Viewed collectively, the factors instead demonstrate that such a transfer would affirmatively inconvenience the parties.

(i) *The Proximity of Creditors of Every Kind to the Court.*

19. The Committee does not address the first *CORCO* factor, other than to observe that “Montana is where the Debtors’ employees are primarily located.” Mot. ¶ 73. However, the Committee does not explain what interest such employees might have in the bankruptcy proceedings being conducted relatively nearby, particularly given that all employees have been paid in the ordinary course throughout the Chapter 11 Cases and are the subject of additional relief granted pursuant to the Debtors’ first day wage motion (and thus are not creditors of the estates).¹⁰

20. The Committee putatively represents parties with the primary economic interest in these estates: talc claimants. However, individuals holding Talc Claims are scattered across the country, and logic suggests they would be concentrated in the same places as the rest of the American population—major cities. Where tort claimants are dispersed throughout the country, this factor does not support a transfer of venue. *See, e.g., In re Bestwall LLC*, 605 B.R. 43, 53 (Bankr. W.D.N.C. 2019). Further, contrary to the Committee’s assertion that there are lawsuits asserting Talc Claims pending in Montana courts, the Debtors are not aware of any talc cases pending against BMI or its affiliates in Montana. Gordon Decl. ¶ 5. In contrast, there are at least

⁹ *See also In re Crosby Nat’l Golf Club, LLC*, 534 B.R. 888, 892 (Bankr. N.D. Tex. 2015); *In re Cox Operating, LLC*, 652 B.R. 49, 56 (Bankr. E.D. La. 2023).

¹⁰ In addition, these employees (as well as BMI’s employees in Texas) will cease to be employed by BMI following the closing of the contemplated asset sale.

six such lawsuits pending against BMI in Texas. *Id.* If anything, this factor supports retention of the Chapter 11 Cases in Texas.

(ii) *The Proximity of the Bankrupt (Debtor) to the Court.*

21. Although not styled as fitting under a specific *CORCO* factor, the Committee's argument that Dillon, Montana is the "nerve center" of the Debtors' operations could be construed as an argument under the second *CORCO* factor. However, the Committee's assertion mischaracterizes the facts. At present, the Debtors are under the leadership of a Chief Restructuring Officer based in California. Gordon Decl. ¶ 18. BMI's President and Chief Executive Officer is located in New York. *Id.* In fact, none of the Debtors' executives live or work in Montana. *Id.* Therefore, BMI's "nerve center" cannot reasonably be described as located in Montana.

22. There is even less basis to say BVT's nerve center is in Montana, considering that BVT has no assets, employees, or other connection to Montana. Gordon Decl. ¶ 17. Given that BVT is a Texas entity with only Texas assets, and that BMI is a Delaware entity with both Texas and Montana assets, this factor does not favor a transfer to Montana.

(iii) *The Proximity of the Witnesses Necessary to the Administration of the Estate.*

23. The Committee makes no attempt to argue this factor. As noted above, the Debtors' Chief Restructuring Officer is located in California and BMI's Chief Executive Officer is located in New York. Further, the investment banker leading the sale process for BMI's talc assets is also located in New York, as are the professionals providing financial advisory services to the Debtors at M3 Partners. These individuals represent the witnesses most necessary to the administration of the Debtors' estates (and, to date, the only witnesses who have been necessary at all).¹¹ Although

¹¹ The Debtors do not anticipate that BMI's mining and plant employees will be called upon to attend hearings in person. Gordon Decl. ¶ 18.

none of these witnesses is located in Texas, neither are any located in Montana, and flights between Los Angeles and New York, on the one hand, and Houston, on the other, are far more frequent and shorter than flights between such cities and Butte, Montana. Therefore, this factor strongly favors retention of venue in this District.

(iv) The Location of the Assets.

24. The Committee's primary argument centers on the fourth prong, specifically that the majority of BMI's (although not BVT's) assets and operations are located in Montana.¹² Mot. ¶ 72. The Committee's reliance is misplaced.

25. Each of the Debtors has significant assets in Texas. Not only do those assets provide a direct link to Texas, the existence of assets in multiple jurisdictions renders the location of such assets less important for purposes of section 1412. *See, e.g., In re Palmer Lake Plaza, LLC*, 470 B.R. 511, 514 (Bankr. W.D. Wisc. 2012) ("[W]here the debtor's assets are scattered across many jurisdictions, or in a situation in which the 'financial restructuring' of the debtor may take place in a particular forum, the location of the assets is appropriately rendered less important.") (citing *In re Enron Corp.*, 317 B.R. 629, 638 (Bankr. S.D.N.Y. 2004)). Moreover, the Committee ignores the fact that BMI has been actively marketing all of its Montana assets for more than six months and is required under the terms of its debtor-in-possession financing (the "**DIP Financing**") to obtain approval of a stalking horse purchase agreement or entry of a sale order with respect to those assets no later than January 10, 2024. Interim DIP Order at Ex. 1, § 8. And although the Bay City Facility is also included among the assets expected to be sold, such sale would result in Texas being the only state in which the Debtors own tangible assets.

¹² The Committee also argues that venue should be transferred for the convenience of the parties because "Montana is the source of the asbestos-contaminated talc on which most of the asbestos claims at issue here are based." Mot. ¶ 73. However, the Committee does not identify the *CORCO* factor to which this unsupported allegation relates, nor does it explain how the source of BMI's talc renders Montana more convenient to the parties.

26. In any event, the location of assets is relevant only inasmuch as they are the central focus of the case, such as in a liquidation. Where debtors are engaged in a financial restructuring, even if their process involves a sale of assets, courts have found that the locus of the financial restructuring matters more.¹³ Indeed, the *Enron* court rejected a motion to transfer premised on, among other things, the debtor's primary assets being located in Puerto Rico. Although the debtor was seeking to sell those assets, the court observed that the location of the debtor's assets did not favor transfer of venue because (a) the experienced professionals required for such a sale were closer to the debtor's chosen forum; (b) a sale under section 363 is not equivalent to a liquidation under chapter 7 for purposes of venue transfer because of the protections built into the section 363 sale process; (c) the debtor's assets did not consist solely of real estate holdings; and (d) the location of the assets was outweighed by the location of the debtor's professionals, financing, and related cases. *In re Enron Corp.*, 284 B.R. 376, 390-392 (Bankr. S.D.N.Y. 2002) ("*Enron II*") (observing that "this factor is generally not particularly probative of whether the transfer of venue should be granted or denied"). In other words, the location of the Debtors' professionals and professionals for other parties-in-interest supersedes the importance of the location of the Debtors' assets. *See, e.g., CORCO*, 596 F.2d at 1248 ("[The debtor's] assets are in Puerto Rico. This is of little importance in a Chapter XI proceeding where the goal is financial rehabilitation, not liquidation.").¹⁴ This makes particular sense where, as here, the Debtors' preferred venue is

¹³ *See, e.g., CORCO*, 596 F.2d at 1248 (denying motion to transfer venue and reasoning that the location of assets "is of little importance in a Chapter XI proceeding where the goal is financial rehabilitation, not liquidation"); *Enron II*, 284 B.R. at 390 (reasoning that "[t]he location of the assets is not as important when the ultimate goal of the bankruptcy case is rehabilitation rather than liquidation"); *In re Patriot Coal Corp.*, 482 B.R. 718, 753-54 (Bankr. S.D.N.Y. 2012) (noting that "the location of a debtor's assets is not an important venue consideration, particularly when a debtor is reorganizing rather than liquidating").

¹⁴ *See also Matter of Boca Dev. Assoc.*, 18. B.R. 648 (Bankr. S.D.N.Y. 1982) ("The location of the debtor's assets is a factor that is outweighed by the need for administration of the case in this forum, where the debtor's management and source of financing is located."); *In re Red Door Property Management LLC*, 2011 WL 5592910

substantially more convenient to in-person mediation and court proceedings for estate professionals and the Debtors are seeking to divest the assets that link them to the other potential venue. This factor therefore favors retention of venue.

(v) *The Economic Administration of the Estate.*

27. The Committee also fails to address the fifth factor, which (according to the Fifth Circuit) is paramount. “[T]he most important consideration is whether the requested transfer would promote the economic and efficient administration of the estate.” *CORCO*, 596 F.2d at 1247.¹⁵ Economic administration of the estate is akin to “a summary of the previous four [factors],” all of which “affect[] the economy and efficiency of administration.” *In re Pinehaven Assocs.*, 132 B.R. 982, 989 (Bankr. E.D.N.Y. 1991) (quoting *In re Consolidated Pier Deliveries, Inc.*, 34 B.R. 327, 329 (Bankr. E.D.N.Y. 1983)). As such, courts considering this factor typically examine which venue would be most conducive to a successful reorganization. *See, e.g., CORCO*, 596 B.R. at 1247 (declining to transfer venue to locale of debtor’s operations and principal assets because “the heart of a Chapter XI proceeding is working up a financial plan of arrangement acceptable to all relevant parties,” and the “people charged with this responsibility are all located in [the original venue],” and because “the debtor’s estate could be administered more economically in [the original venue]”).¹⁶

at *7 (Bankr. S.D. Miss. Nov. 16, 2011) (“Venue should be retained in the location where the debtor can most successfully reorganize, even if the sole asset is located in another jurisdiction.”).

¹⁵ “Courts weighing [the *CORCO*] factors historically focus[] on the location of the debtors’ and creditors’ professionals and their proximity to the bankruptcy court.” *In re Cox Operating, LLC*, 652 B.R. at 56 (citing *In re Enron Corp.*, 274 B.R. 327, 347 (Bankr. S.D.N.Y. 2002)); *see also In re Amazing Energy MS, LLC*, 2020 WL 4730890, at *11 (Bankr. S.D. Miss. June 25, 2020) (“The most important factor is ‘whether the requested transfer would promote the economic and efficient administration of the estate.’”) (internal citations omitted).

¹⁶ *See also In re Baltimore Food Sys., Inc.*, 71 B.R. 795, 802 (Bankr. D.S.C. 1986) (declining to transfer venue where original venue was more convenient for the executives and professionals working on financial restructuring and would eliminate “extra time, effort, and expense” that would result from a transfer); *Enron II*, 284 B.R. at 392 (“[T]he location of the debtors’ assets is a factor that is outweighed by the need for administration of the case in this forum, where the debtors’ financing, professionals and related cases are located”) (internal citations omitted).

28. As discussed above, the Debtors' leadership are all located within easier reach of Houston than Montana. The same is true for the Debtors' professionals and the professionals for the Committee and the future claimants' representative ("FCR"). The Debtors' principal restructuring professionals are located in Los Angeles, New York, and Washington, D.C. Counsel to the Committee are located in New York and Washington D.C., and counsel for the FCR are located in Wilmington, Delaware. In addition, the FCR's website lists his office location as Dallas, Texas, and none of the counsel representing individual committee members is resident in (or has an office location) in Montana. There are numerous direct flights daily from each of Los Angeles, New York City, Washington, D.C., and Philadelphia (the airport nearest to Wilmington) to Houston's two airports. In contrast, there are no direct flights from these locations to either Butte, MT (the nearest courthouse to BMI's Dillon, MT facilities) or Helena, MT (which is approximately 64 miles from Butte). Gordon Decl. ¶ 18. The average trip time for a one-stop itinerary to Helena ranges from six-and-a-half hours (from Los Angeles) to just over nine hours (from New York City), and the average trip time for a one-stop itinerary to Butte ranges from eight hours (from Los Angeles) to nine-and-a-half hours (from New York City and Philadelphia). Travel to Montana would be extremely inconvenient and burden the Debtors' estates with significant additional expense for travel, lodging, and billable non-working travel time. In contrast, flights to Houston range from three-and-a-half hours (from Los Angeles) to four-and-a-quarter hours (from New York City).

29. In addition, it is the Debtors' understanding that the Bankruptcy Court for the District of Montana typically sits in Butte only once monthly (for all of its Butte-based cases).

This limited availability would pose significant complications if more frequent hearings are required.¹⁷

30. In addition to logistical inconvenience and associated additional expense, a transfer to Montana would force the Debtors to incur additional costs to retain new local counsel and bring such counsel up to speed with the Chapter 11 Cases and the pending sale process.¹⁸ This alone is sufficient to find that a transfer of venue would not enhance the economic administration of the Debtors' estates. *See In re AmeriFirst Financial, LLC*, 2023 WL 7029873, at *5 (Bankr. D. Del. Oct. 25, 2023) (finding that transfer of venue would not promote the economic and efficient administration of the bankruptcy estate because "there would be some measure of increased cost associated with transferring the case, particularly because professionals might be replaced in the new venue, or would be required to associate with and integrate [new local] counsel, and take the time to assist the Court in getting acquainted with the cases").

31. On top of the increase in direct costs, a transfer of venue to Montana (particularly if this Court defers decision on the Debtors' Bidding Procedures Motion) would likely delay the Debtors' sale process itself, resulting in an element of uncertainty that could chill bidding for BMI's assets. This could reduce the amount available for distribution to all the Debtors' stakeholders and potentially result in the Debtors' defaulting under their DIP Financing, which—as noted above—requires that the Debtors obtain approval of a stalking horse purchase agreement

¹⁷ *See* U.S. Bankruptcy Court, District of Montana – 2024 Court Hearings – Judge Benjamin Hursh, https://www.mtb.uscourts.gov/sites/mtb/files/BPH_Hearing_Dates_Jan-Jun-2024.pdf (accessed Nov. 20, 2023) (listing the 7 dates during the first half of 2024 on which the Hon. Benjamin Hursh has scheduled hearings in Butte). To the extent appropriate, the Bankruptcy Court for the District of Montana has scheduled telephonic hearings with the same frequency. *Id.*

¹⁸ U.S. District Court for the District of Montana Local Rules of Procedure 83.1(d) (requiring retention and active participation of local counsel unless modified or waived by the court in "extraordinary circumstances").

or entry of a sale order with respect to those assets no later than January 10, 2024.¹⁹ This factor—the most important—strongly supports retention of the Chapter 11 Cases by this Court.

(vi) *The Necessity for Ancillary Administration If Liquidation Should Result.*

32. The Committee tacitly acknowledges that the final *CORCO* factor does not support its request. “Most cases do not consider liquidation because it is illogical to focus on liquidation contingencies when the goal of the bankruptcy is reorganization.” *In re Dunmore Homes, Inc.*, 663, 672 (Bankr. S.D.N.Y. 2008) (citing *CORCO*, 596 F.2d at 1248; *In re Enron*, 274 B.R. 327, 349 (Bankr. S.D.N.Y. 2002); and *In re B.L. of Miami*, 294 B.R. 325, 333 (Bankr. D. Nev. 2003)). The goal of the Chapter 11 Cases is reorganization. Therefore, this factor is neutral to the transfer inquiry.

B. *Transfer of Venue to Montana Is Not in the Interest of Justice.*

33. Courts in the Fifth Circuit consider the following factors when analyzing whether bankruptcy cases should proceed in their original venue or be transferred in the interest of justice under 28 U.S.C. § 1412:

- a. the venue in which the estate can be most efficiently administered;
- b. the venue that will promote judicial economy and efficiency;
- c. the parties’ ability to receive a more fair trial in one forum versus another; and
- d. a state’s interest in having local controversies decided within its borders.

In re Crosby Nat’l Golf Club, LLC, 534 B.R. 888, 890-91 (Bankr. N.D. Tex. 2015) (citing *Think3 Litig. Trust v. Zuccarello (In re Think3, Inc.)*, 529 B.R. 147, 209 (Bankr. W.D. Tex. 2015) and *In*

¹⁹ Interim DIP Order at Ex. 1, § 8.

re Adkins Supply, 2015 WL 1498856, at *5 (Bankr. N.D. Tex. 2015)); *see also In re Enron Corp.*, 274 B.R. at 349 (citing same factors).²⁰

34. As with the “convenience-of-the-parties” alternative, the Committee bears the burden of demonstrating that a transfer of venue would be in the interest of justice. *See, e.g., In re Directory Distrib. Assocs., Inc.*, 566 B.R. at 878 (Bankr. S.D. Tex. 2017) (“[U]nder this section [1412], the movant bears the burden of proof, by a preponderance of the evidence, to show that transfer is ‘in the interest of justice’ or ‘for the convenience of the parties.’”). Although the interest-of-justice standard is “broad and flexible,”²¹ the Motion discusses only two factors of the interest-of-justice framework: economic administration and judicial economy. Because all four factors support retention of the Chapter 11 Cases by this Court, the Committee has failed to carry its substantial burden.

(i) *The Southern District of Texas Would Most Efficiently Administer the Estates.*

35. As the Committee acknowledges, this first factor is paramount and essentially tracks the same analysis as the economic administration factor most heavily weighted in the convenience of the parties analysis. *See* Mot. ¶ 76; *see also In re Directory Distrib. Assocs. Inc.*,

²⁰ As noted in the Motion, the broad and flexible interest of justice standard means courts occasionally consider additional factors. The Committee specifically named “whether the transfer would affect the enforceability of any judgment rendered” and “whether the debtor’s original choice of forum should be disturbed.” Mot. ¶ 75 (citing *Clear Glass Mobile Service, Inc. v. Old Republic Surety Co.*, 2017 WL 10295924, at *2 (S.D. Tex. Dec. 11, 2017)). However, the Committee failed to address these two factors in its analysis. In any case, neither factor supports transfer of the Chapter 11 Cases. Neither the Debtors nor the Committee contends that this Court or the Montana Bankruptcy Court would have difficulty in enforcing a judgment against any party, to the extent applicable. Therefore, the first of these two factors is neutral. As to the second, there is no other forum in which bankruptcy-adjacent proceedings are pending, to the extent this might be relevant. *See Clear Glass Mobile Svc., Inc.*, 2017 WL 10295924, at *2 (finding that the pre-existence of a related action in the proposed alternative venue did not weigh in favor of transfer). To the extent the Committee intends its forum shopping argument to support this factor, the Debtors address such argument *infra* at ¶¶ 44-57.

²¹ *In re Amazing Energy MS, LLC*, 2020 WL 4730890, at *8 (Bankr. S.D. Miss. June 25, 2020); *see also In re Cox Operating, LLC*, 652 B.R. 49 at 57 (observing that this test “involves balancing more intangible considerations”) (citing *In re Abengoa Bioenergy Biomass of Kan., LLC*, 2016 WL 1703927, at *6 (Bankr. D. Kan. Apr. 25, 2016)).

566 B.R. 869, 879 (Bankr. S.D. Tex. 2017) (citing *CORCO*, 596 F.2d at 1247); *see* discussion *supra* ¶¶ 27-31.

36. Regardless, the Committee pays mere lip service to this factor, saying only that the “Debtors’ operations are headquartered in Dillon, Montana” and “the Debtor’s [*i.e.*, BMI’s] principal operations are based in Montana.” Mot. ¶ 76. The Committee does not attempt to explain how these statements support a finding that Montana would allow for more efficient administration of the Debtors’ estates.

37. As discussed above, the economic administration of the estates overwhelmingly favors retention of the Chapter 11 Cases by this Court. These cases should be adjudicated in the venue that is most convenient to the Debtors’ leadership and restructuring professionals, without the additional expense, delay, and inconvenience that moving the cases to Montana would entail. The Debtors’ chosen venue is also more convenient for the Committee’s and FCR’s professionals (as well as the plaintiffs’ firms representing individual Committee members). Accordingly, the Committee has failed to establish that this Court is not capable of efficiently administering the Chapter 11 Cases.

(ii) *Retention of the Chapter 11 Cases in the Southern District of Texas Will Promote Judicial Economy and Efficiency.*

38. Judicial economy is the only other factor expressly addressed by the Committee in the Motion. The Committee argues that “[e]ven a minimal benefit to the burden on a court’s docket will weigh in favor of a transfer to a different venue.” Mot. ¶ 77. However, the removal of *any* case from a court’s docket definitionally reduces the burden on such court, and, if that alone were sufficient, then any proposed transfer would be seen as in the interest of justice. Indeed, the case that the Committee cites does not actually support this point; rather, in ordering transfer, the court in *In re Buffets Holdings Inc.* relied on “the attenuated relationship between the Debtors’

bankruptcy case and this adversary proceeding [which dealt with matters of Michigan law in connection with a Michigan real property].” 397 B.R. 725, 729 (Bankr. D. Del. 2008). Unlike the circumstances in *Buffets Holdings*, the primary issues to be determined in the Chapter 11 Cases are driven by federal bankruptcy law (and if certain state law issues do come to bear, they are not issues of Montana law). The Committee does not suggest otherwise.

39. In addition, though the Committee speculates whether this Court has the resources to adjudicate the Chapter 11 Cases, the Committee does not address whether the Bankruptcy Court for the District of Montana would be unduly burdened by the transfer of the Chapter 11 Cases. The Debtors are unaware of any cases involving section 524(g) having been filed in Montana. The District of Montana also has a single sitting bankruptcy judge responsible for presiding over cases filed in four separate geographic divisions statewide. As a result, a transfer of venue presumably would require Montana’s sole bankruptcy judge to grapple with what the Committee acknowledges to be a complicated and very active case that may present issues novel to the Montana court. Indeed, the Southern District of Texas created the complex case panel and bespoke procedures for handling complex cases in recognition of the unique needs of such cases. Although the Debtors have no doubt that the Bankruptcy Court for the District of Montana would be fully able to execute its duties if these cases were transferred, there is no question that it would create significant additional work for a court already tasked with handling cases for an entire state.

(iii) The Parties Are Able to Receive a Fair Trial From This Court.

40. The Debtors believe that this Court and the Bankruptcy Court for the District of Montana are equally able to render fair and unbiased decisions, and accordingly view as neutral the factor described as “the parties’ ability to receive a fair trial.” Though the Committee does not directly question this Court’s ability to conduct a fair trial, a party presumably would not seek to escape one venue in favor of another unless it thought the second venue would treat it *more* fairly

or favorably. Regardless, “[t]he fact that a single constituency may prefer a particular venue over the Debtor’s chosen forum is patently insufficient to warrant a transfer of venue in the interest of justice. In fact, a transfer on such facts would be particularly unjust in the face of an impression that the transfer is being made to advantage such party over other stakeholders.” *In re Patriot Coal Corp.*, 482 B.R. at 751. Further, although it is impossible to assess how the Montana Bankruptcy Court would approach the Committee’s and its constituents’ claims in light of their novelty, this Court has a history of treating similarly situated claimants fairly.

(iv) *The Chapter 11 Cases Do Not Involve “Local Controversies” and the District of Montana Has No Particular Interest in Adjudicating the Chapter 11 Cases.*

41. The Committee does not even attempt to argue that Montana has a particular interest in the resolution of the Chapter 11 Cases or any issues contemplated thereby. The laws of Montana are not implicated by the Chapter 11 Cases, but even if they were, this Court is fully capable of applying them. *See, e.g., In re Enron Corp.*, 317 B.R. 629, 645 (Bankr. S.D.N.Y. 2004) (denying transfer of adversary proceeding and observing that “[w]hile Texas law will likely govern the interpretation of issues related to UFTA claims under the Complaint, this Court also noted in *Dynegy* that ‘federal courts routinely apply the law of other jurisdictions’”).

42. Nor do the Chapter 11 Cases or any issues presented thereby center on BMI’s Montana assets or otherwise involve any policy or interest local to Montana. Indeed, BMI’s talc is not sold exclusively within Montana, BMI’s management is not located in Montana, and few—if any—of the individuals asserting claims against BMI appear to be resident in Montana. As such, the Debtors’ “business enterprises affect parties throughout the nation.” *In re Enron Corp.*, 274 B.R. at 346. As in *Enron*, because the focus of these Chapter 11 Cases is on a complex restructuring and the Debtors’ assets and operations are located in multiple jurisdictions, the

capacity of this Court and its convenience for the parties required to successfully navigate such a restructuring weigh in favor of retention of the Chapter 11 Cases.

43. Finally, to the extent Montana ever had any particular interest in the Chapter 11 Cases, such interest will abruptly diminish upon the Debtors' sale of all of its Montana assets. At the same time, the Debtors intend to retain certain of their Texas assets indefinitely, and these assets will help fund the 524(g) Trust.²² Accordingly, it is more appropriate for the Chapter 11 Cases to remain before this Court.

C. No Legitimate Forum Shopping Concerns Justify Transfer.

44. As discussed above, both the clear language of sections 1408 and 1412 of title 28 and the judicial interpretations of such statutes by courts in this district and in the Fifth Circuit confirm that the Chapter 11 Cases were properly filed in this Court and should remain here. Rather than methodically apply the relevant law, the Committee focuses much of its argument for transfer on accusations of forum shopping. *See, e.g.*, Mot. ¶ 53. The Committee's argument falls flat for multiple reasons.

45. The Committee chose not to try to fit its forum shopping argument within section 1412's factor tests, perhaps recognizing that it could never prevail under such frameworks. Instead, the Committee contends that forum shopping is an independent basis to obtain a transfer. However, any court considering transfer is required to apply the plain language of the statute, and the Committee fails to explain how its allegations of forum shopping, even if true (which they are

²² Indeed, due to the Debtors' ties to Texas, that state would seem to have an equal interest in the outcome of these proceedings. *See, e.g., Garlock Sealing Techs., LLC v. Shein*, 2015 WL 1022343, at *2 n.3 (W.D.N.C. Mar. 9, 2015) (denying motion to transfer venue of litigation alleging "claims for common law fraud and civil conspiracy as well as violations of the Racketeer Influenced and Corrupt Organizations Act" against certain personal injury attorneys based on bankruptcy court's findings of misrepresentation and noting that both the original venue and proposed transferee venue had an interest in the outcome of such proceedings).

not), would support a transfer based on the convenience of the parties or the interest of justice. The Debtors therefore address this argument largely to clear waters muddied by the Committee.

46. “[I]mproper forum shopping” is “[t]he forum shopping that is properly decried in cases [...] involv[ing] efforts by debtors who were already in trouble in one forum trying to evade that forum to get a better result somewhere else.” *In re Winn-Dixie Stores, Inc.*, Case No. 05-11063 (RDD) (Bankr. S.D.N.Y. Apr. 12, 2005), Hr’g Tr. at 169:19-170:6. The Debtors are not “in trouble” in Montana or any other particular forum; instead, they selected this venue among multiple authorized venues because it offered established jurisprudence, sophisticated judges, complex case procedures, and geographic convenience, and accordingly, aligned with “[the Debtors’] duty . . . based on [their] analysis of all the facts at hand.” *Id.*, Hr’g Tr. at 170:6-11. These benefits to the estates, and associated efficiencies, also inure to the benefit of creditors. And the various transactions and payments undertaken by the Debtors in anticipation of a potential filing are not evidence of forum shopping or any improper intent—they represent prudent and responsible planning to preserve estate value.²³ Accordingly, the Committee’s allegations of improper forum shopping are misplaced. The cases cited in the Motion to support a finding of forum shopping serve only to highlight the Committee’s desire to paint the Chapter 11 Cases as another *LTL* and obstruct the progress of these Chapter 11 Cases at all cost.

²³ The Committee takes issue with the pre-petition indemnification agreement pursuant to which BMI and MTI memorialized the concept that, as between BMI and its affiliates (and holding aside the Pfizer indemnity obligations), liability, if any, associated with talc-related personal injury claims is attributable to BMI as the entity that mined, beneficiated, processed, and sold talc alleged to have caused personal injury to claimants. As an initial matter, that agreement has no relevance to whether venue is appropriate in this District. In any event, the Committee ignores the substantial benefit BMI received by entering into that agreement, principally the release of BMI’s obligations under MTI’s third-party credit facility and notes indenture. The Committee fails to acknowledge what BMI’s designation as an unrestricted subsidiary means for its estate and its stakeholders, including the Committee’s constituents. BMI’s designation as an unrestricted subsidiary under both the credit facility and the notes indenture eliminated over \$1 billion of debt against BMI’s estate and rendered all of BMI’s assets unencumbered. *Id.* ¶ 21. In other words, without this release, BMI would have had no assets available for distribution to tort claimants. *Id.*

(i) ***The Cases Cited by the Committee Do Not Support a Finding of Forum Shopping Here.***

47. The Committee principally relies on three cases in support of its forum shopping argument: *In re Patriot Coal Corp.*, 482 B.R. 718 (Bankr. S.D.N.Y. 2012) (hereinafter, “**Patriot Coal**”); *In re Winn-Dixie Stores Inc.*, Case No. 05-11063 (RDD) (Bankr. S.D.N.Y.) (hereinafter, “**Winn-Dixie**”); and *In re LTL Mgmt. LLC*, 2021 WL 5343945 (Bankr. W.D.N.C. Nov. 16, 2021) (hereinafter, “**LTL**”).²⁴ None of the cases cited by the Committee is from this district or involves facts that remotely resemble those of the Chapter 11 Cases.

48. **Patriot Coal**. In *Patriot Coal*, the debtors claimed venue in the Southern District of New York through two New York subsidiaries—one incorporated 38 days prior to the bankruptcy filing and the other 23 days prior, with neither having operations, employees, material assets, or any physical presence in New York. The debtors stipulated to the fact that the two New York entities had been formed “to ensure that the provisions of 28 U.S.C. § 1408(1) were satisfied, and for no other purpose.” *Patriot Coal*, 482 B.R. at 728. Despite the debtors’ recent incorporation

²⁴ The Motion cites two other cases without discussing in detail how they support a finding that the Debtors engaged in improper forum shopping. In fact, both of these cases are distinguishable.

In re Reichmann Petroleum Corp., 364 B.R. 916, 922 (Bankr. E.D. Tex. 2007) involved cross-motions to transfer either a voluntary bankruptcy (filed by a parent that could not demonstrate ownership of significant assets or significant operations in its venue of choice) or involuntary bankruptcy (filed against a partially-owned indirect subsidiary of the parent in the district where both the parent and the subsidiary had the majority of their assets) where—as the Committee described it (Mot. ¶ 57)—“it was clear that the debtor ‘acquired a very nominal amount of property in this locale immediately prior to its filing in an attempt to manufacture a not-so-colorable claim for venue.’” In contrast, the Debtors voluntarily filed in the only district in which both have significant assets, with certain of these assets held for decades in connection with historic talc operations and the remainder acquired in connection with BMI’s real property investment business. As noted above, *supra* ¶ 9, BMI’s diversification of its business is intended to support a fair and equitable outcome for both current and future talc claimants by ensuring the reorganized Debtors have ongoing business and an “evergreen” source of funding to support a plan of reorganization pursuant to section 524(g)—issues not at play in *Reichmann*.

In re Abacus Broadcasting Corp., 154 B.R. 682, 684-87 (Bankr. W.D. Tex. 1993) involved a debtor that filed for bankruptcy in Texas to avoid a Utah foreclosure action, even though it had no active bankruptcy counsel and despite its only assets, employees, and largest secured creditor being located in Utah. In contrast, the Debtors carefully chose to file in a venue (a) in which the Debtors maintain significant assets and operations, (b) which has established procedures for complex cases, and (c) in which their management and professionals, as well as the representatives and professionals of their appointed creditor constituencies, can readily appear in person.

in New York, the court found that the debtors did not act in bad faith based on testimony that other jurisdictions would have inconvenienced creditors and materially increased the costs and inefficiency of estate administration. *Id.* at 742. However, the court found that such action complied with the letter but not the meaning of section 1408, because “[c]reating [subsidiaries] **solely for the purpose of establishing venue** is not ‘the thing which the statute intended.’” *Id.* at 744 (emphasis added).

49. *Patriot Coal* is readily distinguishable from the Chapter 11 Cases. *First*, the *Patriot Coal* debtors readily admitted to forum shopping.²⁵ Here, BMI formed BVT in order to hold a separate real estate investment, consistent with accepted business practice, and at the time of BVT’s formation, BMI’s Chief Restructuring Officer was focusing on two Texas properties due to their superior investment profile. Gordon Decl. ¶ 16. Further, as detailed in paragraphs 9 and 14, *supra*, BMI has independent connections to Texas that long predate the filing of the Chapter 11 Cases. This situation contrasts sharply with the *Patriot Coal* debtors, which had no employees or assets in New York and openly admitted that they had no connection whatsoever to New York until they engaged in forum shopping.

50. Winn-Dixie. As in *Patriot Coal*, the debtors in *Winn-Dixie* admitted to incorporating an entity in New York shortly before their bankruptcy filing solely to establish venue and meet the requirements of section 1408. *In re Winn-Dixie Stores, Inc.*, Case No. 05–11063 (RDD) (Bankr. S.D.N.Y. Apr. 12, 2005), Hr’g Tr. at 166. The *Winn-Dixie* court relied solely on this admission in ordering transfer to Florida, where the debtor’s headquarters, management, and operations were centered. *Id.*, Hr’g Tr. at 166-67. Thus, just as with *Patriot Coal*, *Winn-Dixie* is

²⁵ Despite the debtors’ admitted forum shopping, the *Patriot Coal* court still considered the decision to order transfer “a particularly difficult call in light of the overwhelming support the Debtors have received from their stakeholders and the evidence that it would be administratively efficient to conduct the cases in this District.” *Id.* at 747.

distinguishable from the circumstances here because BVT was formed for legitimate business reasons. *See supra*, ¶¶ 10-11. Further, as discussed above, the Debtors' headquarters, management, and operations are not all located in Montana, or in any single venue.

51. *LTL Management*. The Committee attempts throughout the Motion to force the Debtors' facts into an *LTL* framework, including by arguing that the transfer ordered in *LTL*'s case should be implemented here. However, *LTL* (like the cases discussed above) is readily distinguishable. *First*, the original *LTL* court transferred the chapter 11 case in part because it did not believe it had the judicial resources to accommodate another contested Texas Two-Step filing. *See LTL*, 2021 WL 5343945 at *7 ("There are currently five mass tort bankruptcy cases pending in this district, including the four involving the "Texas Two Step." This is a two-judge district with limited resources to devote to these highly complex cases."). *Second*, the *LTL* debtor was formed two days prior to its bankruptcy filing in connection with a "Texas Two-Step" transaction, quickly converted into a North Carolina limited liability company for purposes of obtaining venue, and filed for bankruptcy. *Third*, the debtor's only other tie to North Carolina was membership interests in another North Carolina limited liability company formed just prior to the debtor. *Finally*, both the operations of the *LTL* debtor's parent and thousands of tort claims asserted against *LTL* were pending in a multidistrict litigation proceeding in the same state as the proposed alternative venue. *Id.* at *1.

52. Here, the Debtors' history with, and long-term ownership of real property assets in, Texas cuts against any comparison with *LTL*, where the debtor had no longstanding connection to North Carolina. As discussed above, BMI has historic and significant connections to Texas that are entirely independent of BVT, while BVT's only business and assets are in Texas. Likewise, BMI's decades-long status as an operating talc company—and not, as the Committee baselessly

contends, a shell company— also undercuts any comparison to *LTL*. See Mot. ¶ 13; Gordon Decl. ¶ 8. Thus, *LTL* cannot support transfer of these cases to Montana.

(ii) Other “Forum Shopping” Cases Support Denial of Transfer

53. Other courts have grappled with motions to transfer where debtors relied on recently-created affiliates to satisfy section 1408(2) or faced significant tort litigation. These decisions further illustrate why the Motion should be denied.

54. First, the fact that a company is considering bankruptcy does not render the creation of a subsidiary or affiliate improper. In *In re AmeriFirst Financial, Inc.*, 2023 WL 7029873 (Bankr. D. Del. Oct. 25, 2023), the official committee of unsecured creditors and United States Trustee sought transfer of a Delaware filing to Arizona, arguing that the debtors’ venue was manufactured through a shell entity formed 57 days prior to the bankruptcy filing in order to receive the equity of the operating debtor. In contrast, the operating debtor was an Arizona entity, was headquartered in Arizona, and had employees in Arizona (but not Delaware), and seven of its thirty top creditors had Arizona addresses. The *AmeriFirst* movants attempted to liken the circumstances to those in *Patriot Coal* and *LTL*. The *AmeriFirst* court found the comparison misplaced, holding that the newly-formed entity did “not represent the brazen manipulation of venue seen in *Patriot Coal* and *LTL*” because the parties’ existing ties to Delaware (in this case, the domicile of the prepetition lender that formed the entity to receive the affiliate’s stock) provided a sound basis for choosing to form a Delaware subsidiary. *In re AmeriFirst Financial, Inc.*, 2023 WL 7029873 at *5.

55. Like the *AmeriFirst* debtors, BMI had existing ties to its chosen forum and legitimate business reasons for forming BVT as a Texas entity. The Debtors’ Chief Restructuring Officer had already narrowed the pool of potential property acquisitions to two properties in Texas (the San Angelo Property and San Antonio Property). Gordon Decl. ¶ 16. Given that BMI would

be transferring one of its acquisitions to a new subsidiary, there was a sound basis for forming that subsidiary as a Texas entity.

56. The bankruptcy court presiding over *Bestwall*'s bankruptcy proceedings likewise concluded that pre-filing steps taken by the debtor did not warrant a transfer of venue. *In re Bestwall, LLC*, 605 B.R. at 52. In denying the committee's venue transfer motion, the court cited to (a) the debtor's assets in North Carolina, (b) the fact that the debtor's creditors were spread throughout the country, rendering North Carolina no more or less convenient than the committee's alternative venue, and (c) the proposed venue's distance from the debtor's representatives and potential witnesses.²⁶ *Id.* at 52-53. Thus, the *Bestwall* court relied on the factors typically analyzed by courts under section 1412, despite the debtor's pre-filing Texas Two-Step.

57. Like *Bestwall*, the Debtors have significant assets in their chosen venue, geographically dispersed creditors, and leadership, professionals, and key witnesses in locations far from the Committee's proposed alternative venue. And like the *Bestwall* committee's arguments, the Committee's arguments for transfer here should likewise be rejected.

CONCLUSION

58. Because (a) the factual record demonstrates that the convenience of the parties and the interest of justice favor this Court's retention of the Chapter 11 Cases, and such record further establishes that the Debtors did not engage in improper forum shopping, (b) the cases cited by the Committee do not require that the Chapter 11 Cases be transferred, and (c) other "forum shopping" cases support retention of the Chapter 11 Cases by this Court, the Motion should be denied.

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²⁶ The *Bestwall* court also noted that the lack of employees, customers, and vendors in the alternative venue militated against transfer. *Id.* at 52. Upon closing of BMI's proposed asset sale, BMI will have no employees or vendors in Montana. Gordon Decl. ¶ 10.

WHEREFORE, the Debtors respectfully request that the Court deny the relief requested by the Motion.

Dated: November 27, 2023
Houston, Texas

Respectfully Submitted,
/s/ John F. Higgins

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Counsel for Debtors and Debtors in Possession

CERTIFICATE OF SERVICE

I certify that on November 27, 2023, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices.

/s/ John F. Higgins

John F. Higgins

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

In re:	)	
	)	Chapter 11
BARRETTS MINERALS INC., <i>et al.</i> , ¹	)	Case No. 23-90794 (MI)
Debtors.	)	(Jointly Administered)
	)	

**ORDER DENYING MOTION OF THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS TO TRANSFER VENUE
[Relates to Docket No. 193]**

The Court has considered the *Motion of the Official Committee of Unsecured Creditors to Transfer Venue* (the “Motion”) [Dkt. No. 193], *MRHFM’s Claimants’ Joinder to Motion of the Official Committee of Unsecured Creditors to Transfer Venue* [Dkt. No. 337], the *Future Claimants’ Representative’s Limited Joinder to Motion of the Official Committee of Unsecured Creditors to Transfer Venue* [Dkt. No. 338], and the Debtors’ Objection thereto (the “Objection”), and any reply or other pleading filed by the parties, as well as the arguments of counsel, if any.

IT IS HEREBY ORDERED THAT:

1. The Motion is DENIED.
2. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2023
Houston, Texas

THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Barretts Minerals Inc. (8715) and Barretts Ventures Texas LLC (0787). The Debtors’ address is 5605 North MacArthur Boulevard, Suite 1000, PMB 139, Irving, Texas 75038.