Debtors' and Committee's Objection/Response Deadline: August 27, 2012
Reply and Objection/Response Joinder Deadline: August 31, 2012
Hearing Date: September 11, 2012 at 1:30 p.m. (prevailing Eastern Time)

DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 607-7983
Marshall S. Huebner
Damian S. Schaible
Elliot Moskowitz
James I. McClammy

Counsel to the Debtors
and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	
	Chapter 11
PATRIOT COAL CORPORATION, ***et al.*****,**	**Case No. 12-12900 (SCC)**
	(Jointly Administered)
Debtors.	

DEBTORS' OBJECTION TO (i) MOTION OF THE UNITED MINE WORKERS OF AMERICA TO TRANSFER THE CASE TO THE SOUTHERN DISTRICT OF WEST VIRGINIA, (ii) SURETIES' MOTION TO TRANSFER JOINTLY ADMINISTERED CASES TO SOUTHERN DISTRICT OF WEST VIRGINIA, AND (iii) MOTION OF THE UNITED STATES TRUSTEE TO TRANSFER IN THE INTEREST OF JUSTICE

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES i

PRELIMINARY STATEMENT AND BACKGROUND 2

ARGUMENT 10

POINT I. THERE IS NO DISPUTE THAT VENUE OF THE DEBTORS' CHAPTER 11 CASES IN THE SOUTHERN DISTRICT OF NEW YORK IS PROPER 10

- **A. The Movants Have Conceded that Venue is Proper Under 28 U.S.C. § 1408** 10
- **B. The Debtors' Choice of Forum is Entitled to Substantial Weight and Should Not Be Disturbed** 12

POINT II. TRANSFER OF THE DEBTORS' CHAPTER 11 CASES TO WEST VIRGINIA IS NOT FOR THE CONVENIENCE OF PARTIES 15

- **A. The Debtors' Selected Forum is Highly Accessible to Parties, Retained Professionals, and Other Interested Individuals** 16
  - **1. The Parties in Interest, Including the Debtors and their Creditors, Are Dispersed Nationally and Internationally** 18
  - **2. Professionals Retained in These Chapter 11 Cases by the Debtors, Many Creditors, and the Union Are Located in New York** 22
  - **3. There Will Be Little Need for Live Testimony From the Debtors' Personnel and Remote Access to Proceedings and Information Is Readily Available** 24
- **B. The Location of the Debtors' Assets Does Not Counsel In Favor of a Change of Venue** 27
  - **1. The Debtors' Business is International and Their Assets Are Highly Dispersed** 28
  - **2. The Location of a Debtor's Assets Is Not Important Where a Debtor With Nationwide Operations Seeks To Reorganize** 29
  - **3. The Location of Certain Regulators Does Not Justify Transferring These Cases** 33

C. Transferring of Venue Would Not Promote the Efficient and Economic Administration of the Estate 35

D. There Exist No Concerns Relating to the Ancillary Administration of the Estate 40

E. A Comparison of the Relative Economic Harm to the Debtors and to Other Interested Parties Demonstrates that the Debtors Would Suffer Disproportionate Harm from a Transfer to West Virginia 41

POINT III. THE MOVANTS ADVANCE VARIOUS ALTERNATIVE ARGUMENTS BASED ON THE "INTEREST OF JUSTICE," NONE OF WHICH WEIGH IN FAVOR OF TRANSFER 43

A. The Debtors Have Not Manipulated the Venue Statute But Have Complied With Its Terms....................43

B. The Movants Fail to Satisfy Their Burden When Arguing that the Nature of the Debtors' Business, This Court's Alleged Lack of Familiarity with the Coal Industry, and the West Virginia Economy Support a Transfer 53

POINT IV. THE WEIGHT OF AUTHORITY SUPPORTS RETENTION OF THESE CHAPTER 11 CASES IN THE SOUTHERN DISTRICT OF NEW YORK 57

CONCLUSION 60

TABLE OF AUTHORITIES

PAGE

Abood v. Detroit Bd. of Educ., 431 U.S. 209 (1977) 14

Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy, 548 U.S. 291 (2006) 48

Bavelis v. Doukas (In re Bavelis), 453 B.R. 832 (S.D. Ohio 2011) 55

Bodum U.S.A., Inc. v. Hantover, Inc.,
No. 11 Civ. 8702 (SAS), 2012 U.S. Dist. LEXIS 53165 (S.D.N.Y. Apr. 13, 2012) 39

Caperton v. A.T. Massey Coal Co., Inc., 270 B.R. 654 (S.D.W. Va. 2001) 56

Capitol Motor Courts v. LeBlanc Corp., 201 F.2d 356 (2d Cir. 1953) 49, 50, 51

Capitol Motor Courts v. LeBlanc Corp.,
(district court opinion in appellate record) 49, 50, 51

Capmark Fin. Grp., Inc. v. Goldman Sachs Credit Partners L.P.,
No. 11 Civ. 7511 (RWS), 2012 U.S. Dist. LEXIS 28950 (S.D.N.Y. Mar. 1, 2012) 16

Carcieri v. Salazar, 555 U.S. 379 (2009) 48

Chase Manhattan Bank, N.A. v. Francini,
No. 91 Civ. 2515 (MBM), 1991 U.S. Dist. LEXIS 11381 (S.D.N.Y. Aug. 16, 1991) 39

Doppelt v. Perini Corp.,
No. 01 Civ. 4398 (LMM), 2002 U.S. Dist LEXIS 4128 (S.D.N.Y. Mar. 12, 2002) 55

Durkin v. Shea, 957 F. Supp. 1360 (S.D.N.Y. 1997) 55

Enron Corp. v. Arora (In re Enron Corp.), 317 B.R. 629 (Bankr. S.D.N.Y. 2004) 53, 54, 59

Estate of Stewart v. Comm'r of Internal Revenue, 617 F.3d 148 (2d Cir. 2010) 47

Gulf States Exploration Co. v. Manville Forest Prods. Corp.
(In re Manville Forest Prods. Corp.), 896 F.2d 1384 (2d Cir. 1990) .... passim

In re Asset Resolution LLC,
No. 09-16142 (AJG), 2009 Bankr. LEXIS 3711 (Bankr. S.D.N.Y. Nov. 24, 2009) 46, 54

In re B.L. of Miami, Inc., 294 B.R. 325 (Bankr. D. Nev. 2003) 33

In re Bell Tower Assocs., Ltd., 86 B.R. 795 (S.D.N.Y. 1988) 60

In re Bethlehem Steel Corp.,
No. 01-15288 (BRL), 2004 Bankr. LEXIS 517 (Bankr. S.D.N.Y. Feb. 9, 2004) 55

In re Boca Dev. Assocs., 18 B.R. 648 (Bankr. S.D.N.Y. 1982) 30, 58

In re Christensen, No. 12-10042 (SHL),
2012 Bankr. LEXIS 1619 (Bankr. S.D.N.Y. Apr. 13, 2012) 59

In re Commonwealth Oil Refining Co.,
596 F.2d 1239 (5th Cir. 1979), cert. denied, 444 U.S. 1045 (1980) .... passim

In re Del. & Hudson Ry. Co., 96 B.R. 467 (Bankr. D. Del. 1988) 17, 24, 37, 38

In re Dunmore Homes, Inc., 380 B.R. 663 (Bankr. S.D.N.Y. 2008) 31, 32, 45

In re EB Capital Mgmt., LLC, No. 11-12646 (MG),
2011 Bankr. LEXIS 2764 (Bankr. S.D.N.Y. Jul. 14, 2011) 13, 32, 59

In re Eclair Bakery Ltd., 255 B.R. 121 (Bankr. S.D.N.Y. 2000) 13, 54

In re Enron Corp., 274 B.R. 327 (Bankr. S.D.N.Y. 2002) .... passim

In re Enron Corp., 284 B.R. 376 (Bankr. S.D.N.Y. 2002) .... passim

In re FRG, Inc., 107 B.R. 461 (Bankr. S.D.N.Y. 1989) 10

In re Garden Manor Assocs., L.P., 99 B.R. 551 (Bankr. S.D.N.Y. 1988) 16, 35, 36

In re HME Records, Inc., 62 B.R. 611 (Bankr. M.D. Tenn. 1986) 36, 37

In re Int'l Filter Corp., 33 B.R. 952 (Bankr. S.D.N.Y. 1983) 30, 31, 36

In re Island Club Marina, Ltd., 26 B.R. 505 (Bankr. N.D. Ill. 1983) 30

In re Houghton Mifflin Harcourt Publ'g Co., No. 12-12171 (REG),
2012 Bankr. LEXIS 2868 (Bankr. S.D.N.Y. June 22, 2012) 44

In re Land Stewards, L.C., 293 B.R. 364 (Bankr. E.D. Va. 2002) 30

In re Midland Assocs., 121 B.R. 459 (Bankr. E.D. Pa. 1990) 32

In re N.H. Ave. Assocs., 85 B.R. 298 (Bankr. E.D. Pa. 1988) 32

In re Olga Coal Co., 194 B.R. 741 (Bankr. S.D.N.Y. 1996) 55, 56

In re One-Eighty Invest., Ltd., 18 B.R. 725 (Bankr. N.D. Ill. 1981) 30

In re Pic 'N Pay Stores, Inc.,
No. 96-182 (PJW) (Bankr. D. Del. Mar. 8, 1996) 24, 25

In re PWS Holding Corp., Nos. 98-212-SLR through 98-223-SLR,
1998 Bankr. LEXIS 549 (Bankr. D. Del. Apr. 28, 1998) 12, 28, 41

In re Qualteq, Inc., No. 11-12572,
2012 Bankr. LEXIS 503 (Bankr. D. Del. Feb. 16, 2012) 59

In re Queen, 148 B.R. 256 (S.D.W. Va. 1992) 56

In re Raytech Corp., 222 B.R. 19 (Bankr. D. Conn. 1998)....................13, 14

In re Rehoboth Hospitality, LP, No. 11-12798,
2011 Bankr. LEXIS 3992 (Bankr. D. Del. Oct. 19, 2011) 59, 60

In re Safety-Kleen Corp.,
No. 00-2303 (PJW) (Bankr. D. Del. July 11, 2000) 23, 24

In re Suzanne De Lyon, Inc., 125 B.R. 863 (Bankr. S.D.N.Y. 1991) 12

In re Vienna Park Props., 125 B.R. 84 (S.D.N.Y. 1991) 59

In re Winn-Dixie Stores, Inc., No. 05-11063-rdd (Bankr. S.D.N.Y. Apr. 12, 2005) .... passim

Int'l Union, United Mine Workers of Am. v. Apogee Coal Co.,
330 F.3d 740 (6th Cir. 2003) 42

Int'l Union, United Mine Workers of Am. v. First Big Mt. Coal Co.,
No. 2:90-0054, U.S. Dist. LEXIS 21475 (S.D.W. Va. Jan. 7, 1993)....................56

Microsoft Corp. v. AT&T Corp., 550 U.S. 437 (2007) 47

Morio v. N. Am. Soccer League, 501 F. Supp. 633 (S.D.N.Y.),
aff'd, 632 F.2d 217 (2d Cir. 1980) 14

Official Comm. of Unsecured Creditors v. McConnell (In re Grumman Olson Indus., Inc.),
329 B.R. 411 (Bankr. S.D.N.Y. 2005)....................38

Peabody Holding Co., LLC v. United Mine Workers of Am., Int'l Union,
No. 1:09cv1043 (LMB/IDD), 2010 U.S. Dist. LEXIS 93439 (E.D. Va. Sept. 7, 2010) 42

Peabody Coal Co. v. Dist. 12, United Mine Workers of Am., No. 4:03CV-74-M, 2004
U.S. Dist. LEXIS 11965 (W.D. Ky. May 17, 2004).................... 42

Peabody Holding Co., LLC v. United Mine Workers of Am., Int'l Union, 665 F.3d 96 (4th Cir. 2012) 42

Reliance Ins. Co. v. Six Star, Inc., 155 F. Supp. 2d 49 (S.D.N.Y. 2001) 25

STATUTES & RULES

11 U.S.C. § 101(2) 11

11 U.S.C. § 328(a) 38

11 U.S.C. § 329(a) 38

28 U.S.C. § 1408 .... passim

28 U.S.C. § 1408(1) 10, 15, 45

28 U.S.C. § 1408(2) 10, 11, 45

28 U.S.C. § 1412 .... passim

28 U.S.C. § 1963 .... 56, 57

OTHER AUTHORITIES

AlixPartners, http://www.alixpartners.com/en/WhoWeAre.aspx 22

H.R. 2533, 112th Cong. (2011) 48

Jeffrey G. Hamilton and Kelly Cavazos, The Venue Reform Debate, 9 ABI Committee News (July 2012) 49

N.Y. Dep't of Fin. Servs.: Insurance Company Search, https://myportal.dfs.ny.gov/web/guest-applications/ins.-company-search 15

Restatement (Second) of Judgments § 87 .... 56, 57

Tenn. Dep't of Commerce & Ins.: Company Search Look-up, https://sbs-tn.naic.org/Lion-Web/jsp/sbsreports/CompanySearchLookup.jsp 15

The Library of Congress, http://thomas.loc.gov/ 48

UMWA, Labor Organization Annual Report (Form LM-2) (Apr. 30, 2012) 41

UMWA: Who We Are, http://www.umwa.org/?q=content/who-we-are-where-we-work 41

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
	:	
PATRIOT COAL CORP., et al.,	:	Case No. 12-12900 (SCC)
	:	
Debtors.	:	(Jointly Administered)

DEBTORS' OBJECTION TO (i) MOTION OF THE UNITED MINE WORKERS OF AMERICA TO TRANSFER THE CASE TO THE SOUTHERN DISTRICT OF WEST VIRGINIA, (ii) SURETIES' MOTION TO TRANSFER JOINTLY ADMINISTERED CASES TO SOUTHERN DISTRICT OF WEST VIRGINIA, AND (iii) MOTION OF THE UNITED STATES TRUSTEE TO TRANSFER IN THE INTEREST OF JUSTICE

Patriot Coal Corporation ("**Patriot**") and its affiliated debtors (collectively, the "**Debtors**") respectfully submit this objection to: (i) the Motion of the United Mine Workers of America Pursuant to 28 U.S.C. § 1412 and Rule 1014 to Transfer the Case to the Southern District of West Virginia [Dkt. Nos. 116, 127]; (ii) the Sureties' Motion to Transfer Jointly Administered Cases to Southern District of West Virginia [Dkt. No. 287]; (iii) the United States Trustee's Motion to Transfer Venue of These Cases in the Interest of Justice [Dkt. Nos. 406, 407]; and (iv) three joinders and one notice of support for the transfer of these cases to the Southern District of West Virginia [Dkt. Nos. 178, 390, 392, 423] (together, the "**Motions**").[1]

[1] On July 18, 2012, the United Mine Workers of America (the "**Union**") filed its motion to transfer venue. [Dkt. Nos. 116, 127 ("**Union Mem.**").] On July 25, 2012, by agreement of the Debtors, the Official Committee of Unsecured Creditors ("**Creditors' Committee**"), and the Union, the hearing to consider the Union's motion was adjourned to September 11, 2012. [Dkt. No. 183.] The following day, the Debtors filed a notice setting relevant deadlines. [Dkt. No. 196.] Pursuant to that notice, all joinders to the Union's motion were to be filed by August 20, 2012, all objections to the Union's motion were to be filed by August 24, 2012, and any reply by the Union or joinder to any objection was to be filed by August 29, 2012. (Id.) On August 7, 2012, Argonaut Insurance Company, Indemnity National Insurance Company, US Specialty Insurance, and Westchester Fire Insurance Company (together, the "**Sureties**") filed a separate motion to transfer seeking the same relief. [Dkt. No. 287 ("**Sureties Mem.**").] Thereafter, on August 22, 2012, the United States Trustee ("**U.S. Trustee**") filed a motion to transfer "to a district where venue is proper." [Dkt. Nos. 406, 407 ("**Trustee Mem.**").] The motions have been placed on the same schedule and will be addressed at a single hearing. [Dkt. Nos. 317, 409]

PRELIMINARY STATEMENT AND BACKGROUND

On July 9, 2012, the Debtors, in full compliance with the requirements of 28 U.S.C. § 1408, commenced these cases in the United States Bankruptcy Court for the Southern District of New York. The ninety-nine Debtors, who are incorporated and located in various jurisdictions, selected New York because it is the single most convenient and cost-effective forum for both the parties in interest and the professionals most likely to play major and ongoing roles in the administration of these cases. Given the national and international scope of the Debtors' business, any other forum would have inconvenienced most of the Debtors' domestic and foreign creditors and would have materially increased costs for interested parties and the estates.

With the Debtors having selected a permissible forum for these cases, the Union, the Sureties, and the U.S. Trustee (together, the "**Movants**") must put forth a compelling case to overcome the substantial deference that the law accords to the Debtors' choice. The Motions, however, fall far short. The Union's motion requests that these cases be transferred for the purported convenience of certain employees and retirees, but fails to address the substantial inconvenience and cost that would be imposed on the Debtors, the Debtors' other creditors and their professionals, and the many employees and retirees who do not reside or work in West Virginia. The Union also fails to acknowledge that it cannot speak for nearly sixty percent of the

---

Two joinders were timely filed on or before August 20, 2012: (i) the joinder of American Electric Power, Monongahela Power Company, and Hope Gas, Inc. to the Union's motion [Dkt. No. 178 ("**AEP Joinder**")]; and (ii) the joinder of the West Virginia Attorney General to the Union's motion [Dkt. No. 390 ("**AG Joinder**")]. Additionally, the Commonwealth of Kentucky, Energy and Environmental Cabinet, Department for Natural Resources ("**Kentucky DNR**") filed a notice in which it declined to join the Motions but expressed support for the transfer to the Southern District of West Virginia. [Dkt. No. 392 ("**DNR Notice**").] One joinder was untimely filed on August 27, 2012. See infra at note 3.

By contrast, a substantial number of interested parties have already expressed support for the Debtors' position and the Debtors expect that additional joinders to the Debtors' objection will be filed on or before the joinder deadline. [Dkt. Nos. 179, 199, 419, 420; see also infra at 21-22 & note 10.]

Debtors' current workforce – individuals who are not members of the Union but nevertheless have a strong interest in the successful outcome of the case.

The Sureties' motion is equally flawed. Indeed, rather than focusing on the convenience of the parties or the efficient administration of these estates, much of the Sureties' motion consists of a lengthy – and irrelevant – discussion of various federal environmental regulations applicable to the coal industry. The balance of the Sureties' motion contains numerous factual inaccuracies, places unjustified emphasis on the location of the Debtors' assets, fails to acknowledge the Sureties' own substantial connections to New York, and glosses over the fact that no surety bond has ever been called in Patriot's history. Indeed, although the Sureties query why they have not been identified as "top fifty" unsecured creditors, the answer is clear: the Sureties' interests in the Debtors' estates are, at best, remote and contingent.

While the Union and the Sureties are correct that the majority of the Debtors' mines are located in West Virginia, there is no truth to the assertion that the "majority of the Debtors' business" is in West Virginia. (Sureties Mem. at 2.) Among other things, the Debtors have their corporate headquarters and executive offices in St. Louis, Missouri, their businesses are international in scope, and nearly ninety-five percent of their coal is supplied to customers outside of West Virginia. Given the geographic scope of the Debtors' business and the location of the parties that will be most involved in these cases, the Southern District of New York provides an overwhelmingly more convenient and cost-effective forum.

The U.S. Trustee's twelfth-hour pleading, which is untimely under the schedule set by this Court, fares no better. Like the other Movants, the U.S. Trustee concedes that venue is proper under section 1408 but requests that the cases be transferred to some other location – the U.S. Trustee does not specify where – in the "interest of justice." But it cannot be in the "interest

of justice" to transfer these cases where all parties concede that venue was properly laid, where the costs to the estates and the creditor community would be enormous, and where the U.S. Trustee does not even argue that another forum would be more convenient. While the U.S. Trustee complains of a seeming "loophole" in the Bankruptcy Code's venue provisions, it is the province of Congress, not this Court, to correct any alleged deficiency in the law. Indeed, a few members of Congress have tried – and failed – to make changes to the law by proposing to amend section 1408. The U.S. Trustee relies primarily on a decision that involved radically different circumstances, including the Debtor's consent to the transfer, and that is inconsistent with Second Circuit precedent – facts that the U.S. Trustee knows well because it **opposed** the motion to transfer in that case. The U.S. Trustee's argument cannot outweigh the convenience to all parties and the efficiencies presented by this forum.[2]

As this Court is aware, the Debtors are leading producers and suppliers of coal in the United States, with a diverse base of domestic and international customers in many countries across North America, Europe, South America and Asia, including Belgium, Bosnia and Herzegovina, Brazil, Canada, China, France, Hungary, Italy, Japan, Mexico, South Korea, Spain, Sweden, the Ukraine, and the United Kingdom. In the United States, the Debtors supply coal to customers located in Florida, Georgia, Illinois, Indiana, Kentucky, Maryland, Michigan, New

[2] The U.S. Trustee's Motion is also untimely. Pursuant to the Court's order, any joinders to the Movants' position were due to be filed by 4:00 p.m. on August 20, 2012. [Dkt. No. 196.] On August 15, 2012, the U.S. Trustee contacted Debtors' counsel to request an extension of time to file a pleading in respect of the Motions. Debtors' counsel advised the U.S. Trustee that the Debtors were not the Movants, but that the Debtors would have no objection to the U.S. Trustee filing a pleading by midnight on August 21, 2012. The U.S. Trustee did not file a pleading on either August 20 or August 21, 2012. On August 22, 2012, at 4:07 p.m. and without any prior notice, the U.S. Trustee filed the U.S. Trustee's motion. [Dkt. Nos. 406-08.]

On August 23, 2012, the Court directed the parties to adjust the existing briefing schedule to the following: all objections and responses to the Motions by the Debtors and by the Creditors' Committee are due on August 27, 2012 at 11:59 p.m.; and any reply by the Movants or any joinder to any objection is due on August 31, 2012 at 11:59 p.m. [Dkt. No. 409.]

Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, West Virginia, and Wisconsin. In addition to this diverse customer base, the Debtors own or lease premises in many states, including Illinois, Indiana, Kentucky, Missouri, Ohio, Pennsylvania, and West Virginia. The Debtors' creditors, like their businesses, are also spread out throughout the United States and abroad.

The Union and the Sureties, while on the one hand acknowledging the geographically diverse nature of the Debtors' business and creditors, on the other hand ask that these cases be transferred in "the interest of justice or for the convenience of the parties," pursuant to 28 U.S.C. § 1412, to the Southern District of West Virginia. But a transfer to West Virginia would be more convenient for very few creditors, most of whom will play little or no active role in the court proceedings, and would impose enormous costs and administrative strains on these cases. Indeed, the Union and the Sureties never explain why, in a complex case such as this, which involves operations, financial interests, and creditors across the United States and around the world, the tremendous efficiencies that are gained by proceeding in New York City, a global transportation hub, should be lost in favor of proceeding in West Virginia, where the transportation and other logistical options are vastly more restrictive and costly. Transferring these proceedings would eliminate these efficiencies and undermine the goal of the Bankruptcy Code of maximizing the value of the estates.

As noted above, the Motions are riddled with inaccuracies and omissions. Indeed, the Union's purported factual support consists primarily of a coal brochure attached to its pleading and the Sureties' motion reaches conclusions that are unsupported by the very facts referenced therein. By contrast, an objective examination of the facts demonstrates that it is not in the

interest of justice, nor more convenient for the numerous parties involved, for these cases to be transferred to West Virginia. Among other important facts, none of which can be disputed, are:

> (i) **the Debtors have substantial current and long-established connections with New York** – Virtually all of the Debtors' and other key constituents' retained professionals are located in New York or have substantial offices there; nearly two-thirds of the Debtors' sales contracts are governed by New York law; twenty percent of the Debtors' master equipment leases are governed by New York law, whereas not one is governed by West Virginia law; virtually all of Debtors' pre-petition debt instruments are governed by New York law; and both of the Debtor in Possession ("**DIP**") agreements contain a New York forum selection clause;
>
> (ii) **the parties in interest are geographically diverse** – Although certain of the ninety-nine Debtors have assets and employees in West Virginia, that is not the location of the Debtors' corporate headquarters and executive offices; four of six executive managers reside outside of West Virginia; not one of the members of Patriot's board of directors resides in West Virginia; the vast majority of the Debtors are organized in locations other than West Virginia; and a substantial majority of the retirees work or reside outside of West Virginia; and
>
> (iii) **the Debtors' key creditors are located outside of West Virginia** – While the Union and the Sureties point to ten unsecured creditors based in West Virginia, these creditors account for only some $9.6 million of the more than $507 million in liquidated claims against the Debtors, a mere 1.89 percent of the total amount of liquidated claims against the Debtors; no member of the Creditors' Committee is located in West Virginia; and not one of the Debtors' top five secured creditors is located in West Virginia.

A more extensive catalog of the facts weighing in favor of New York and against a transfer to West Virginia is included in the Declaration of Mark N. Schroeder, dated August 24, 2012 ("**Schroeder Decl.**"), and such facts are also addressed in greater detail below.

In the face of these and other facts, the Union and the Sureties advance three principal arguments: first, in the case of the Union, that certain of the Debtors' unionized employees and retirees are located in West Virginia; second, that the majority of the Debtors' mines are located in West Virginia and that those mines are regulated in West Virginia; and third, that the Debtors

purportedly have limited connections to New York. Each of these assertions, however, is readily rebutted.

First, the Union overstates the importance of the location of employees and retirees. As with most bankruptcy cases, it is not expected that more than a handful of employees or retirees would ever need to be present in this Court. Moreover, unionized employees and retirees will be represented by the Union, which is the exclusive representative of its members and which is based in a Washington, D.C. suburb. To the extent that Union members – or any interested individuals – wish to monitor the proceedings, well-established technology will allow them easily and conveniently to do so. Also, as a factual matter, the Debtors' retirees are located throughout the country – with more retirees in the Illinois Basin coal region than in West Virginia.[3]

Second, it is black letter law that the location of assets – the metric to which the Union and the Sureties devote almost all of their attention – is of little relevance in cases like these, which involve assets in several jurisdictions, and where the goal of the cases is a restructuring. The Sureties' argument concerning the environmental impact of the Debtors' operations and the regulation of the Debtors' business is, at best, a repetition of the argument that the Debtors operate mines in West Virginia. But no matter how the Union and the Sureties couch this

[3] Notably, the United Mine Workers of America 1992 Benefit Plan, the United Mine Workers of America 1993 Benefit Plan, the United Mine Workers of America 1974 Pension Trust and the United Mine Workers of America Combined Benefit Fund (collectively, the "**UMWA Health and Retirement Funds**") filed a joinder (the "**UMWA Funds Joinder**") only to the U.S. Trustee's motion and do not join either the UMWA or Sureties in seeking to transfer these cases to West Virginia. [Dkt. No. 423.] Given that the Union's retirees are the beneficiaries of the UMWA Health and Retirement Funds, the fact that the UMWA Health and Retirement Funds pointedly do not join the Union itself in advocating transfer to West Virginia indicates that West Virginia is an inconvenient venue even for the retirees, who are located around the country. The UMWA Funds Joinder, which was filed on August 27, 2012, is also untimely pursuant to the scheduling orders of this Court. See supra notes 1-2.

argument, they still must recognize that the location of the Debtors' assets is entitled to little weight because this is not a liquidation.

Finally, the Debtors have numerous connections to New York, including a substantial customer base in the state, lenders and material financial creditors located in the state, and professionals located in the state. Notably, many of the Debtors' contracts are governed by New York and not West Virginia law, including virtually all of the Debtors' pre-petition debt instruments, almost two-thirds of their sales contracts, and even the indemnity agreement that governs the relationship between the Debtors and Westchester Fire Insurance Company, one of the Sureties that has moved to transfer.

The propriety of the Debtors' decision to commence these cases in New York is further evidenced by similar filings in this district. Large companies routinely, and appropriately, reorganize in New York, even when their headquarters and assets are primarily located outside the jurisdiction. For example, Lyondell Chemical Company successfully reorganized in this district, even though its parent corporation was headquartered in the Netherlands and most of its chemical processing plants were in Texas. Boston Generating, LLC reorganized here, although it operated power plants that provided wholesale electricity to the Boston area and owned a generation fleet in New England. General Motors Corp. filed for bankruptcy in this district, even though it was headquartered in Detroit and owned and operated a significant number of manufacturing plants outside of New York. Chrysler LLC filed a chapter 11 case here, even though its headquarters was in Auburn Hills, Michigan and its manufacturing and assembly plants were principally located in the Midwest. And Northwest Airlines, which was headquartered in Minnesota, and had assets in all cities in which it operated, including in Detroit, Memphis, Minneapolis, and Tokyo, reorganized in this district.

A principal reason why venue in those cases was appropriate – and why it is appropriate here for the efficient administration of the estate – is that experience has shown that the most frequent attendees at court hearings – by far – are the debtors' professionals, the lenders' professionals, and other material counterparties and their professionals, almost all of whom are located in New York in this case. To be sure, other creditors or stakeholders outside of New York may attend a hearing, but these parties are dispersed throughout the United States and around the world, where it is far easier and less costly to access a court in New York than in West Virginia. Thus, the Union's and the Sureties' argument that, for the convenience of these widely-dispersed parties, the venue of this bankruptcy should be transferred out of New York, which this Court has previously described as "one of the world's most accessible locations," makes little sense.

The Movants' suggestion that the Debtors improperly commenced these cases in New York is similarly unfounded. The Debtors' actions were and are permitted under the statute. Moreover, the Debtors' choice of venue properly was intended to aid creditors, to facilitate the Debtors' successful reorganization, and to maximize the value of the estates. Indeed, numerous creditors have expressed support for the Debtors' position and oppose the motions to transfer – including the Creditors' Committee, the DIP lenders, and many parties from West Virginia itself. Ironically, it is the Union – which is located outside of Washington, D.C. – and the Sureties – not one of which is located in West Virginia – that have acted "strategically" by seeking to transfer these cases to West Virginia, notwithstanding the extraordinary inconvenience, burden, and costs that would result.

For all these reasons, the Motions must be denied.

ARGUMENT

POINT I.

THERE IS NO DISPUTE THAT VENUE OF THE DEBTORS' CHAPTER 11 CASES IN THE SOUTHERN DISTRICT OF NEW YORK IS PROPER

A. The Movants Have Conceded that Venue is Proper Under 28 U.S.C. § 1408

There is no dispute that venue is proper in the Southern District of New York under 28 U.S.C. § 1408. Pursuant to that statute, which governs venue in chapter 11 cases, a debtor may commence an action in any district where it: (1) is domiciled; (2) has its principal place of business; (3) holds its principal assets; or (4) has an affiliate with a pending bankruptcy case. 28 U.S.C. § 1408(1)-(2).[4] A debtor needs to satisfy only one of the four alternatives. See In re FRG, Inc., 107 B.R. 461, 468 (Bankr. S.D.N.Y. 1989). However, to satisfy any of the first three alternatives, the debtor must establish that: (1) the asserted basis for venue existed for 180 days or more; or (2) the asserted basis for venue existed for fewer than 180 days but for longer than in any other district. 28 U.S.C. § 1408(1).

Debtors PCX Enterprises, Inc. ("**PCX**") and Patriot Beaver Dam Holdings, LLC ("**Patriot Beaver Dam**"), New York corporations, are New York domiciliaries and maintain

---

[4] The statute provides, in relevant part, that:

> a case under title 11 may be commenced in the district court for the district -
>
> (1) 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; or
>
> (2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

28 U.S.C. § 1408.

their principal assets in New York. (First Day Declaration of Mark N. Schroeder Pursuant to Local Bankruptcy Rule 1007-2 ("**First Day Decl.**") ¶ 7 & Schedule 7.) Because neither has ever been located outside of New York, both satisfy the requirement of being located in New York for a "longer portion" of the 180 days prior to filing the chapter 11 case. Accordingly, the venue of chapter 11 cases commenced by Debtors PCX and Patriot Beaver Dam Corporation is proper in the Southern District of New York.

Venue is proper for the remaining Debtors under 28 U.S.C. § 1408(2) because they are affiliates of Debtors PCX and Patriot Beaver Dam. Pursuant to Section 101(2) of the Bankruptcy Code, an "affiliate" includes:

> (A) an entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor . . . [and]
>
> (B) a corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by an entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor . . .

11 U.S.C. § 101(2)(A) and (B). Because Patriot is the holding company and owns directly or indirectly the other Debtors, including PCX and Patriot Beaver Dam (First Day Decl. ¶ 16), all of the Debtors are "affiliates" under Section 1408(2) and venue for all of them is proper in this Court.

The Sureties and the U.S. Trustee expressly acknowledge that venue is proper in this district pursuant to Section 1408 and the Union does not challenge venue on this ground. (Sureties Mem. at 14 ("[V]enue of a bankruptcy proceeding is technically proper in a corporate debtors' [sic] state of incorporation. . ."); Trustee Mem. at 2 ("In complex business cases involving multiple affiliated companies, companies frequently select venue based upon the

domicile . . . of a single company.").) Rather, the Movants argue that this Court should exercise its discretion to transfer the cases to the Southern District of West Virginia under Section 1412. For the reasons discussed in detail below, a discretionary transfer to West Virginia would be unprecedented and is unwarranted.

B. The Debtors' Choice of Forum is Entitled to Substantial Weight and Should Not Be Disturbed

As the Sureties acknowledge, the Debtors' selection of a forum is entitled to "great weight." (Sureties Mem. at 17.) Accordingly, the Movants may not disturb the Debtors' choice simply by demonstrating the convenience of another forum for just one of the Debtors' many constituents. See In re Enron Corp., 274 B.R. 327, 342-43 (Bankr. S.D.N.Y. 2002) ("Enron I"). Instead, the Movants must demonstrate by a preponderance of the evidence that a transfer of venue is necessary to achieve the statutory purposes of the Bankruptcy Code. See Gulf States Exploration Co. v. Manville Forest Prods. Corp. (In re Manville Forest Prods. Corp.), 896 F.2d 1384, 1390 (2d Cir. 1990); In re PWS Holding Corp., Nos. 98-212-SLR through 98-223-SLR, 1998 Bankr. LEXIS 549, at *5 (Bankr. D. Del. Apr. 28, 1998) ("Bruno's").

Moreover, where, as here, the venue of a chapter 11 case is proper, a presumption arises in favor of that district and the "debtor's [] choice of forum [will] be accorded substantial weight and deference." Id. at *4; see also Manville, 896 F.2d at 1390-91. Such a presumption is warranted because "transfer is a cumbersome disruption of the Chapter 11 process." In re Suzanne De Lyon, Inc., 125 B.R. 863, 868 (Bankr. S.D.N.Y. 1991); see also In re Commonwealth Oil Refining Co., 596 F.2d 1239, 1241 (5th Cir. 1979) ("[A court] should exercise its power to transfer cautiously."), cert. denied, 444 U.S. 1045 (1980) ("CORCO"); In re

Enron Corp., 284 B.R. 376, 386 (Bankr. S.D.N.Y. 2002) ("Enron II") ("Transferring venue of a bankruptcy case is not to be taken lightly.").

Here, the Movants have failed to carry their heavy evidentiary burden – indeed, they have failed to submit admissible evidence of any kind in support of the Motions. The inquiry should end here. Even more, the Movants compound this evidentiary failure by offering scant – and entirely distinguishable – legal support for their positions. For example, In re EB Capital Management LLC, No. 11-12646 (MG), 2011 Bankr. LEXIS 2764 (Bankr. S.D.N.Y. July 14, 2011), involved a petition filed by an individual who had been convicted of a series of federal crimes, including forging the signature of a judge and making false statements on an application for a bank loan. Id. *2-3 & n.2. That individual – who filed on behalf of his limited liability company – also had a history of "filing bankruptcy cases all over the country" and had been barred from filing new petitions in at least two federal districts. Id. at *7-8 & n.6, *14-15. In granting the motion to transfer to South Dakota, the court reasoned that the majority of the debtor's creditors were located in South Dakota, the debtor's principal assets were in that state, and that there was no "learning curve" because the venue motion was the first issue that required the Court's attention. Id. at *14-15. The Court further reasoned that the debtor – through its member, a convicted felon and whose filings were "rambling" and internally inconsistent – should not be able to "'forum shop' this case in the hopes of getting a more favorable ruling . . ." Id. at *2, 7 n.5, 14-15. In In re Eclair Bakery Ltd., 255 B.R. 121 (Bankr. S.D.N.Y. 2000), the court transferred a case because the debtor had filed for bankruptcy in another district three previous times, was trying to "sidestep the order of [another] federal judge," and was indisputably shopping for a different result. Id. at 132, 138. And in In re Raytech Corp., 222

B.R. 19 (Bankr. D. Conn. 1998), the court granted a motion to transfer because the debtor was an affiliate of other debtors in chapter 11 cases pending in different districts. Id. at 21, 24-25.

The instant case is nothing like these cases because this is the Debtors' first bankruptcy filing and no affiliates previously sought chapter 11 protection in other venues. Other cases in which a court granted a motion to transfer have involved a debtor's failure to satisfy the statutory requirements of Section 1408, which is not at issue here. Indeed, the Debtors are unaware of any major corporate bankruptcy – ever – that was properly commenced in a district pursuant to Section 1408 and later transferred without the debtor's consent to a district where the debtor was not headquartered. Yet this is precisely what the Movants would have this Court do.

The Movants have presented neither fact nor law to justify a transfer to West Virginia. And given the global scope of the Debtors' business, the dispersion of creditors, professionals, and major parties in interest, and the efficiencies associated with a New York forum, the Debtors' decision to commence chapter 11 cases in the Southern District of New York should not be disturbed. The strategic nature of the Motions is yet more apparent in that under labor law, the Union is the exclusive representative authorized to represent its members in bankruptcy court and the Debtors are prohibited from negotiating with individual members. See Abood v. Detroit Bd. of Educ., 431 U.S. 209, 221-23 (1977) (describing union as the "exclusive representative" of its members and detailing legislative rationale for such exclusivity); Morio v. N. Am. Soccer League, 501 F. Supp. 633, 638-39 (S.D.N.Y.) ("The duty to bargain carries with it the obligation on the part of the employer not to undercut the Union by entering into individual contracts with the employees."), aff'd, 632 F.2d 217 (2d Cir. 1980). In light of these clear limitations, the Union's contention that its members will be inconvenienced by the repeated need to come to New York is baseless. Moreover, the Union is headquartered outside of Washington,

D.C., travel between Washington and New York is far less costly and time-consuming than travel between Washington and West Virginia, and the Union's counsel is in New York.

The Sureties' position suffers from similar flaws. Not one of the Sureties is headquartered or incorporated in West Virginia, at least three of the Sureties are authorized to do business in New York, and at least one has entered into an indemnity agreement with the Debtors that is governed by New York law and includes a New York forum selection clause.[5]

Finally, the U.S. Trustee's motion pointedly does not endorse the request of the Union and Sureties to transfer the cases to West Virginia and also fails to meet the "heavy burden" to demonstrate that a transfer to another court is warranted.

For these reasons, the Debtors' discretion should not be disturbed.[6]

POINT II.

TRANSFER OF THE DEBTORS' CHAPTER 11 CASES TO WEST VIRGINIA IS NOT FOR THE CONVENIENCE OF PARTIES

Pursuant to Section 1412 of Title 28, "[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 (emphasis added). Whether to transfer venue

---

[5] According to the New York Department of Financial Services: Argonaut Insurance Company is domiciled in Illinois, operates out of Texas, and is authorized to do business in New York; US Specialty Insurance Company is domiciled in Texas, operates out of Texas, and is authorized to do business in New York; and Westchester Fire Insurance Company is domiciled in Pennsylvania, operates out of Pennsylvania, and is authorized to do business in New York. See N.Y. Dep't of Fin. Servs.: Insurance Company Search, https://myportal.dfs.ny.gov/web/guest-applications/ins.-company-search (last visited Aug. 23, 2012). According to the Tennessee Department of Commerce and Insurance, Indemnity National Insurance Company is domiciled in Mississippi and operates out of Tennessee. See Tenn. Dep't of Commerce & Ins.: Company Search Look-up, https://sbs-tn.naic.org/Lion-Web/jsp/sbsreports/CompanySearchLookup.jsp (last visited Aug. 23, 2012).

[6] The facts here are illustrative of why such deference is warranted. Specifically, under Section 1408(1), the Debtors could have commenced these chapter 11 cases in more than ten federal districts, including bankruptcy courts in Delaware, Indiana, Kentucky, Missouri, New York, Virginia, and West Virginia. Given the broad range of options available to the Debtors, there is certainly no basis to disturb the Debtors' choice of New York over West Virginia, particularly where the convenience factors weigh so heavily in favor of New York.

rests within the sound discretion of the court. Gulf States Exploration Co. v. Manville Forest Prods. Corp. (In re Manville Forest Prods. Corp.), 896 F.2d 1384, 1391 (2d Cir. 1990). The convenience analysis takes into consideration the following six factors:

> (1) the proximity of creditors of every kind to the court; (2) the proximity of the bankrupt (debtor) to the court; (3) the proximity of witnesses necessary to administration of the estate; (4) the location of the assets; (5) the economic administration of the estate; [and] (6) the necessity for ancillary administration . . .

In re Garden Manor Assocs., L.P., 99 B.R. 551, 553 (Bankr. S.D.N.Y. 1988) (internal quotations omitted); see also In re Enron Corp., 274 B.R. 327, 343 (Bankr. S.D.N.Y. 2002) ("Enron I").

Rather than merely comparing the relative convenience of two locations using these factors, courts are mindful that "a heavy burden of proof rests on the moving party to demonstrate that the balance of convenience clearly weighs in [its] favor." Capmark Fin. Grp., Inc. v. Goldman Sachs Credit Partners L.P., No. 11 Civ. 7511 (RWS), 2012 U.S. Dist. LEXIS 28950, at *7 (S.D.N.Y. Mar. 1, 2012) (quotations omitted). Of the six factors, the "economic administration of the estate" is the most important. Enron I, 274 B.R. at 343. By contrast, courts place "little emphasis on the location of the assets" and "discount[] the consideration concerning ancillary administration." See id. at 344 & n.14.

As discussed in detail below, each of the six convenience factors weighs against a transfer to West Virginia.

A. The Debtors' Selected Forum is Highly Accessible to Parties, Retained Professionals, and Other Interested Individuals

The first three convenience factors, which turn on the parties' proximity to the Court, strongly support retaining venue in New York. In analyzing the accessibility of alternative venues, courts consider each venue's transportation options, especially where interested parties

do not all reside in the same place. See, e.g., Enron I, 274 B.R. at 339, 351 (comparing accessibility of New York and Houston, Texas and declining to transfer to Texas); In re Del. & Hudson Ry. Co., 96 B.R. 467, 468-69 (Bankr. D. Del. 1988) (comparing accessibility of Wilmington, Delaware and Albany, New York and declining to transfer to Albany).

Contrary to the assertions of the Union and the Sureties (Union Mem. at ¶¶ 22-26, 29; Sureties Mem. at 17-23), New York plainly is more accessible to virtually all of the relevant parties than West Virginia. Indeed, as this court has recognized:

> New York is one of the world's most accessible locations. New York is served by three airports with international flights, as well as major rail stations making it accessible to parties in interest located worldwide. It is convenient with respect to both the diversity of locations served and the frequency of service provided.

Enron I, 274 B.R. at 339. By contrast, there is just one direct flight each day from New York to West Virginia (on a plane with fewer than forty seats). There are also no direct flights at all to Charleston from many other cities, including from St. Louis, Missouri, where the majority of Patriot's executive management team and its corporate headquarters and executive offices are located, and from many of the cities where other parties in interest, including members of the Creditors' Committee, are located. Moreover, the flights to and from Charleston, West Virginia are often exceedingly expensive, costing many hundreds of dollars (and more than $2,200 at times) for a refundable, round-trip ticket.[7]

[7] The Sureties argue that the Debtors – including the Debtors' management in St. Louis, Missouri – and certain creditors are located closer to West Virginia than to New York and that "shorter distances to travel allow more efficient use of time." (Sureties Mem. at 21.) This position ignores the realities of airplane travel. According to information obtained from counsel's travel agency and confirmed via internet resources such as Kayak.com and American Airlines' website, aa.com, there is one direct flight from New York to Charleston, West Virginia each day on a 37-seat plane.

There are no direct flights from many of the cities where other parties in interest are located, including from: Boston, Massachusetts, where U.S. Bank National Association, a member of the Creditors' Committee, is located; St. Louis, Missouri, where the Debtors' corporate headquarters and executive offices are located;

For these reasons, and as discussed in further detail below, the first, second, and third convenience factors weigh heavily in favor of these cases remaining in the Southern District of New York.

1. The Parties in Interest, Including the Debtors and their Creditors, Are Dispersed Nationally and Internationally

The ninety-nine Debtors have a widespread national and international presence, producing large quantities of coal and supplying it to a diverse base of domestic and international customers. The Debtors' creditors and the other parties in interest are also dispersed widely throughout the United States and the world. The following facts illustrate the Debtors' ties to New York relative to West Virginia, and the broad geographic scope of the Debtors' business, their creditors, and the parties interested in this chapter 11 case:

- No member of the Official Committee of Unsecured Creditors ("Creditors' Committee") is located in West Virginia. (Schroeder Decl. ¶ 43.)
- All of the DIP Agents and Joint Lead Arrangers are based outside of West Virginia, with three of these five lenders headquartered in New York. (Id. at ¶¶ 48-51.)
- Not one of the eight directors on Patriot's board is from West Virginia. The directors reside in Arkansas, Florida, Illinois, Missouri, New Jersey, Oklahoma, and Texas. (Id. at ¶ 13.)
- Of Patriot's approximately fifty-five board meetings, only one was held in West Virginia. Thirty-two of the fifty-five meetings were held in person, including twenty-nine in Missouri, one in West Virginia, one in Texas, and one in Florida. (Id. at ¶ 14.)

Philadelphia, Pennsylvania, the airport closest to where Wilmington Trust Company, a member of the Creditors' Committee, is located; or Ft. Myers, Florida, the airport closest to where Gulf Coast Partners, LLC, a member of the Creditors' Committee is located. To fly to Charleston from these cities, parties in interest would have to fly through Charlotte, Washington Dulles, or Atlanta. The planes arriving in Charleston have either 32 seats, 37 seats, or, for some flights departing from Atlanta, between 50 and 70 seats. While lower cost flights may be available if a non-refundable ticket were booked long in advance or if a Saturday night stay were involved, such options often do not provide the flexibility necessary for business travel.

- The Debtors' corporate headquarters and executive offices are located in St. Louis, Missouri. Many of the Debtors' key corporate functions, including those most related to the Debtors' bankruptcy proceedings, are based in St. Louis. These include the following departments: Accounting, Accounts Payable, Accounts Receivable, Financial Reporting, Treasury, Tax, Internal Audit, Legal, Sales and Market Research, Contract Management, Payroll, Corporate Development, Planning, Information Services, Human Resources, and Benefits.[8] (Id. at ¶ 8.)

- Three members of the executive management team work in St. Louis, Missouri and reside in Missouri or Illinois. This includes the Chief Executive Officer, Irl F. Engelhardt, who is charged by the board of directors with responsibility for managing and executing Patriot's day-to-day business and strategies. A fourth member of the executive management team, Charles A. Ebetino, Jr., Senior Vice President – Global Strategy and Corporate Development, resides in Ohio and has an office in Patriot's corporate headquarters in St. Louis, Missouri as well as an office in Charleston, West Virginia. The two remaining members of the executive management team, Bennett K. Hatfield, President and Chief Operating Officer and Robert W. Bennett, Senior Vice President and Chief Marketing Officer, reside in West Virginia and have offices both in Charleston, West Virginia and in Patriot's corporate headquarters in St. Louis, Missouri. (Id. at ¶¶ 10-11.)

- The retirees covered as primary insureds under benefit plans administered by the Debtors reside in forty-one different states, with a substantial majority living somewhere other than West Virginia. In fact, more retirees reside in the Illinois Basin coal region – which includes Illinois, Indiana, and Kentucky – than in West Virginia. (Id. at ¶ 39.)

- The Debtors' key creditors predominantly are located outside West Virginia. Only ten of the Debtors' fifty largest unsecured creditors are from West Virginia, while the remaining forty are from seventeen other states. More importantly, creditors based in West Virginia account for approximately $9.6 million of the more than $507 million in liquidated claims against the Debtors, a mere 1.89 percent of the total amount of liquidated claims against the Debtors. (Id. at ¶ 45.)

[8] As noted above, the corporate headquarters and executive offices house, among other things: the Legal, Information Services, Accounting, Financial Reporting, and Tax functions, which include the preparation of financial statements, Securities and Exchange Commission filings, and tax returns; the Treasury, Accounts Payable, and Accounts Receivable functions, which manage payroll, cash disbursements, billing, financing activities, and cash receipts; the financial planning function; the Internal Audit function, which reports directly to the Audit Committee of the board; the Sales and Market Research, Contract Management, and Credit functions; the Human Resources function, which administers compensation and benefits; and the Corporate Development function, which is responsible for domestic and international M&A activity. (Id. at ¶ 9.)

- The Debtors' largest unsecured creditor from West Virginia ranks thirteenth on its list of the largest unsecured claims, with an unliquidated claim estimated at less than $3.2 million. By contrast, the Debtors' largest unsecured creditor, Wilmington Trust Company, which is located in Wilmington, Delaware, has a $250 million claim – approximately 80 times larger than the largest West Virginia claim. (Id. at ¶ 46.)

- Based on available data, New York entities hold – by a wide margin – the largest amount of Patriot's Senior Bonds and Convertible Bonds. Notably, New York entities appear to hold $48.4 million worth of Patriot's Senior Bonds, whereas West Virginia entities appear to hold $69,000 worth of the bonds. Similarly, New York entities appear to hold $49.9 million worth of Patriot's Convertible Bonds, whereas West Virginia entities appear to hold a mere $104,000 worth of the bonds. (Id. at ¶¶ 28-31.) Thus, almost $100 million of the Debtors' known pre-petition creditors – ten times the amount in West Virginia – are believed to be in New York.

- Not one of the Debtors' five largest secured creditors is located in West Virginia. These secured creditors are located in California, Illinois, Missouri, New Jersey, and Ohio. Several of these creditors have offices and operations across the country and throughout the world. (Id. at ¶ 41.)

- Only thirty-seven of the ninety-nine Debtor entities were formed in West Virginia; the vast majority – sixty-three percent – were formed in other states, including in Delaware, New York, Kentucky, and Indiana. (Id. at ¶ 7.)

- In 2011, the Debtors sold a total of 31.1 million tons of coal. Nearly ninety-five percent of this coal was sold to customers outside of West Virginia. More coal was sold to customers in each of Kentucky, Ohio, Pennsylvania, and Tennessee than to customers in West Virginia. Additionally, roughly 1 million tons of coal – or approximately 3 percent of total sales volume – was sold to customers in New York and an additional 29 percent of the total sales volume was exported to international customers. (Id. at ¶ 16.)

- The Debtors export coal under various throughput arrangements through ship loading terminals located in: Baltimore, Maryland; Hampton Roads, Virginia; Newport News, Virginia; and New Orleans, Louisiana. (Id. at ¶ 15.)

- New York law governs forty-one of the Debtors' sixty-five sales contracts, almost two-thirds of the total. By contrast, only two of the Debtors' sales contracts are governed by West Virginia law, amounting to just three percent in number and five percent of the Debtors' committed sales volume. (Id. at ¶ 18.)

- The Debtors have entered into a master equipment lease with each of their twenty equipment lessors. The twenty equipment lessors are headquartered in at least a dozen states, including California, Connecticut, Illinois, and New Jersey. None of the equipment lessors is headquartered in West Virginia. Additionally, of the twenty master leases, four are governed by New York law. None is governed by West Virginia law. (Id. at ¶ 19.)

- Virtually all of the Debtors' pre-petition debt instruments, and both of their DIP agreements, which collectively total over $1.25 billion, are governed by New York law or contain a New York forum selection clause. (Id. at ¶¶ 23-33.)

- Although the Debtors operate a number of coal mines in West Virginia, nine of the largest fifteen lessors from whom they lease these properties, measured both by coal reserves and by total payments, are headquartered outside West Virginia, in states such as Tennessee, Virginia, Pennsylvania, and Missouri. (Id. at ¶ 35.)

- The twenty top vendors of the Debtors for the first six months of 2012 have headquarters in twelve different states, with two located in New York. (Id. at ¶ 47.)

- The key business information of Patriot and its subsidiaries has been hosted at a data center located in Rochester, New York since shortly after Patriot's spin-off from Peabody in October 2007. Patriot owns servers at that New York location and contracts with a vendor for related information technology services there. (Id. at ¶ 22.)

That these Debtors, their creditors, and other interested parties are located both in New York and across the country and the world weighs heavily in favor of keeping these proceedings in New York.[9] Indeed, the Debtors anticipate that many creditors and interested parties – several of which are located in West Virginia – will advise the Court of their opposition to the Motions

[9] The Sureties have not been identified as unsecured creditors because no surety bond has ever been called in Patriot's history. Accordingly, the Sureties' interests are, at best, remote and contingent and not relevant to this inquiry. Even if the Court were to consider the location of the Sureties in connection with its Section 1412 analysis, not one of the four Sureties is incorporated in or headquartered in West Virginia. See supra note 5.

and of their desire to remain in this jurisdiction, by way of formal joinder to the Debtors' objection or by otherwise notifying the Court.[10]

2. Professionals Retained in These Chapter 11 Cases by the Debtors, Many Creditors, and the Union Are Located in New York

Like the parties in interest, the professionals retained in these cases are concentrated in New York. Virtually every professional engaged by the major parties in these chapter 11 cases is located or maintains offices in New York, making New York City the more convenient, economical, and desirable forum:

- The Debtors' reorganization counsel, Davis Polk & Wardwell LLP, is located in New York. Davis Polk has also provided legal counsel to Patriot since Patriot's creation in October 2007. (Schroeder Decl. ¶ 56.)

- The Debtors' conflicts counsel, Curtis, Mallet-Prevost, Colt & Mosle LLP, is located in New York. (Id. at ¶ 57.)

- The Debtors' investment banker, the Blackstone Group, is located in New York. (Id. at ¶ 58.)

- The Debtors' financial advisors, AP Services, LLC, have a major office in New York. The team of advisors retained in this case includes individuals from the Chicago, Atlanta, Detroit, Dallas, and St. Louis offices of the company. (Id. at ¶ 59; see also AlixPartners, http://www.alixpartners.com/en/WhoWeAre.aspx (last visited Aug. 24, 2012).)

- Citibank, N.A., the DIP Agent for the First Out Facility, is located in New York and is represented by Weil, Gotshal & Manges LLP of New York. (Id. at ¶ 62.)

---

[10] Four joinders to the Debtors' objection have already been filed: one by Phillips Machine Service, Inc.; one by Potter Grandchildren LLC and Potter Family, LLC; one by Komatsu Financial Limited Partnership; and one by Powell Construction Company, Inc. and Decanter Machine, Inc. [Dkt. Nos. 179, 199, 419, 420.] The Debtors anticipate that other parties in interest will file objections to the Motions or joinders to the Debtors' objection, including the Creditors' Committee and the DIP lenders.

Moreover, the following parties in interest have requested that the Debtors represent to the Court that they oppose the Motion and support these cases remaining in the Southern District of New York: Alley Trucking LLC (Belfry, Kentucky); B & M Repair Inc. (Chapmanville, West Virginia); CAI Industries (Hico, West Virginia); Gauley-Robertson (Hico, West Virginia); Holden Machine and Fabrication (Holden, West Virginia); Longwall Associates Inc. (Chilhowie, Virginia); Tyler Trucking Company LLC (Bloomingrose, West Virginia); W.C. Hydraulics, LLC (Beaver, West Virginia); and West River Conveyors & Machinery Company (Oakwood, Virginia).

- Bank of America, the DIP Agent for the Second Out Facility, has significant offices in New York and is represented by Willkie Farr & Gallagher LLP of New York. (Id. at ¶ 63.)

- Patriot's indenture trustees are located outside West Virginia, and each has retained New York counsel. (Id. at ¶ 61.)

- Even counsel to the Union is located in New York, and the Sureties have retained counsel from Kentucky, not West Virginia. [Dkt. Nos. 61, 287.]

- Morgan, Lewis & Bockius LLP, counsel for the UMWA Health and Retirement Funds, is located in New York. [Dkt. No. 117.]

These professionals are the individuals whose presence is most often necessary or required at court or in business negotiations. For that reason, courts conclude that the professionals' proximity weighs heavily in this context. See, e.g., Enron I, 274 B.R. at 349 (denying motion to transfer from New York because "New York is a more convenient location for those responsible for negotiating and formulating a plan of reorganization . . . Accordingly, New York is the location which would best serve the Debtors' reorganization efforts – the creation and preservation of value."); In re Safety-Kleen Corp., No. 00-2303 (PJW), slip op. at 48 (Bankr. D. Del. July 11, 2000) (denying motion to transfer from Delaware and reasoning that the location of the professionals was important because "[t]he vast majority of activities in this court involve lawyering and only a very, very limited number of principals have to appear on very, very limited occasions for a very limited period of time in this forum in connection with processing a Chapter 11 case").

The value of the Debtors' estate will be needlessly and materially depleted if the professionals administering it, who predominantly are located in New York, are forced to travel to West Virginia for all proceedings. These costs, which will be borne by the estates, will be magnified by the limited number of flights to and from West Virginia (and their cost), which make it impossible to travel to and from hearings in West Virginia in one day. See Point II.C,

infra; Del. & Hudson Ry., 96 B.R. at 468 (refusing to transfer case to forum where transit schedules made travel to and from hearings in one day "virtually impossible").

3. There Will Be Little Need for Live Testimony From the Debtors' Personnel and Remote Access to Proceedings and Information Is Readily Available

The Union and the Sureties argue that potential witnesses – including the Debtors' employees, retirees, and senior management – can travel more easily to West Virginia than to New York. (Union Mem. ¶ 12; Sureties Mem. at 21-23; see also AG Joinder at ¶ 5.) This claim is false and, even if true, would be of little relevance to the Motions. Contrary to this argument, retirees are not principally located in West Virginia. In fact, the retirees covered as primary insureds under benefit plans administered by the Debtors reside in forty-one different states, with a substantial majority living somewhere other than West Virginia.

More importantly, it is not clear that any employees – other than senior management – will have to travel to court. Unionized employees and retirees will not be obligated to travel because they are represented by the Union and its professionals. Non-unionized personnel should have no greater need to travel to court because the need to question lay witnesses in this bankruptcy proceeding will be minimal. See, e.g., In re Enron Corp., 284 B.R. 376, 392-93 (Bankr. S.D.N.Y. 2002) ("Enron II") (holding that "the availability of witnesses is a consideration which focuses on the debtor's employees who must appear in court, not with the employees who are on the production line" and stating that the court must consider the debtor's employees "who are intimately familiar with the financial status of the company") (internal citations and quotations omitted; emphasis added); Safety-Kleen, No. 00-2303 (PJW), slip op. at 48 (noting that "the vast majority of activities in this court involve lawyering" only); In re Pic 'N Pay Stores, Inc., No. 96-182 (PJW), slip op. at 16 (Bankr. D. Del. Mar. 8, 1996) ("[M]y experience suggest[s] that rank and file employees do not participate in a bankruptcy

proceeding. . . . I do not see the rank and file employees as having a role in the administration of this case."). As a result, the location of employees cannot justify the transfer of these cases to the detriment and expense of the Debtors, other creditors, and the professionals who will be most involved in these cases.[11]

To the extent any witness located outside of New York is needed for a particular hearing in New York, subject to court approval, the witness could be videotaped, or attend via teleconference or videoconference. See Enron I, 274 B.R. at 347 ("[A]ppearances required by the officers (or other management) can be addressed by telephonic and video conferencing capabilities."); Reliance Ins. Co. v. Six Star, Inc., 155 F. Supp. 2d 49, 58 (S.D.N.Y. 2001) ("[T]he unavailability of process over third-party witnesses does not compel transfer when the practical alternative of offering videotaped or deposition testimony of a given witness exists.").

Moreover, extensive efforts have been made to ensure that employees, retirees, and other interested individuals can stay apprised of the developments in the cases. The Debtors maintain a website with detailed information about the cases and publish additional information on Patriot's homepage. In addition, the Debtors understand that the Creditors' Committee is developing a website for use by its constituents around the country.[12] And anyone who wishes to monitor the proceedings will be able to do so with ease through the use of teleconferences for

---

[11] The Sureties argue that a host of individuals, including "environmental and engineering consultants, land owners, mineral owners, West Virginia and Kentucky regulatory officials and counsel, appraisers and other experts," as well as counterparties to executory contracts with the Debtors will have to travel to Court to testify. (Sureties Mem. at 21.) The Debtors have no reason to believe that any aspect of these bankruptcy cases will involve testimony from such witnesses. In any event, New York remains the most convenient and centralized location for all potential witnesses and, as discussed above, the need for in-person testimony can be eliminated by the use of available, court-endorsed technology.

[12] See Transcript of Proceedings at 35-40, In re Patriot Coal Corp., No. 12-12900-SCC (Bankr. S.D.N.Y. Aug. 2, 2012) (discussing Creditors' Committee proposal to establish a website). The Debtors also understand that the Union is continually communicating with its members about the status of these cases.

hearings and other technology that is regularly used by the Bankruptcy Court for the Southern District of New York and this Court in particular.[13] Indeed, the Court has arranged for a live video broadcast of the September 11, 2012 hearing on these Motions, which interested parties will be able to view at no cost at the federal courthouse in Charleston, West Virginia. [Dkt. No. 409.] All of these arrangements will allow individuals to stay informed about the progress of the cases, no matter their location.

The location of the Debtors' management and corporate headquarters also militates very strongly against a transfer. As discussed above, none of the eight directors on Patriot's Board of Directors resides in West Virginia. (Schroeder Decl. ¶ 13.) They reside in Arkansas, Florida, Illinois, Missouri, New Jersey, Oklahoma, and Texas, and it is easier to travel to New York City than to Charleston from these locations. (Id.) Only one of Patriot's approximately fifty-five board meetings since its spinoff from Peabody Energy Corporation in October 2007 was held in West Virginia; by contrast, of the thirty-two in-person board meetings, twenty-nine were held in Missouri. (Id. at ¶ 14.) And not one of the executives who has come to Court so far or who is likely to do so during these cases lives or works in West Virginia; rather, they work in the Debtors' corporate headquarters and executive offices in St. Louis, Missouri and reside in Missouri, Illinois, or Ohio. (Id. at ¶¶ 10-11.) In fact, many of the Debtors' key corporate functions – including Accounting, Accounts Payable, Accounts Receivable, Financial Reporting, Treasury, Tax, Internal Audit, Legal, Sales and Market Research, Contract Management, Payroll, Corporate Development, Planning, Information Services, Human

[13] See Transcript of Proceedings at 40-41, In re Patriot Coal Corp., No. 12-12900-SCC (Bankr. S.D.N.Y. July 16, 2012) ("THE COURT: And I just want to put on the record my concern and my expectation that you and the company's other advisors will facilitate the information flow, the dialing into the hearings, and all of those other things.").

Resources, and Benefits – are based in St. Louis, Missouri. (Id. at ¶ 11.) These departments undertake the business functions that are critical to the Debtors' successful reorganization in these cases. (Id.)

Collectively, these facts overwhelmingly demonstrate that potential witnesses, including the Debtors' personnel, would not be advantaged by – and indeed would be materially disadvantaged by – the proposed transfer. Moreover, as noted above, it speaks volumes that the Union and the Sureties have moved to transfer venue to a district where neither they nor the Debtors' headquarters are located. No Court has ever granted such a transfer involving a large corporate debtor under Section 1412.

* * *

In sum, the facts demonstrate that the Debtors and these cases have deep and substantial ties to New York, that the parties in interest are broadly dispersed, and that New York represents the most convenient forum.

B. The Location of the Debtors' Assets Does Not Counsel In Favor of a Change of Venue

The Union and the Sureties contend that nine of the Debtors' twelve mining complexes are located in West Virginia, and that these mines constitute the Debtors' "principal assets." (Union Mem. at ¶¶ 5, 11, 27-28; Surety Mem. at 6, 20.) Reliance on the location of these mining complexes is misplaced for two reasons: first, the Debtors have assets in several jurisdictions; and second, it is well-settled that the location of a debtor's assets is of little relevance where the debtor is reorganizing, rather than liquidating.

Thus, for the reasons discussed in further detail below, the fourth convenience factor counsels in favor of denying the Motions.

1. The Debtors' Business is International and Their Assets Are Highly Dispersed

Although nine of the Debtors' twelve coal mine complexes are indeed in West Virginia, the Debtors' assets are located in other jurisdictions as well. Under such circumstances, courts conclude that the location of a debtor's assets is of limited importance. For example, in Enron I, the court denied a motion to transfer, concluding that Enron's widely dispersed assets counseled against a transfer of venue, despite the fact that – unlike here – the debtors were headquartered in the proposed transfer location. 274 B.R. at 348 (reasoning that the location of the debtors' assets weighed against transfer because "[w]hile the majority of the Debtor entities have their headquarters in Texas, Enron's assets are geographically located throughout the world"). Likewise, in the Bruno's case, the court denied a motion to transfer to Alabama, where – unlike here – the company had its corporate headquarters and where many of the debtors' employees, properties, leasehold interests, real property interests, and equipment were located. See In re PWS Holding Corp., Nos. 98-212-SLR through 98-223-SLR, 1998 Bankr. LEXIS 549, at *7-8, *14-15 (Bankr. D. Del. Apr. 28, 1998) ("Bruno's"). In so ruling, the court rejected the movant's argument that the Delaware venue was improper because only one debtor entity was incorporated in Delaware, reasoning that:

> Whether good or bad, most American businesses (certainly those with assets and liabilities counted in the hundreds of millions of dollars) are truly interstate in practice, national in character. . . . These debtors are no exception. . . . It cannot be said that debtors' business activities, especially when viewed in practical terms of who will be participating in these chapter 11 proceedings, are primarily local in nature; rather, the converse is true.

Id. at *13-14. After finding that "the parties in interest are located throughout the United States," the Bruno's court denied the motion to transfer. Id. at *15.

The facts here weigh much more clearly against transfer than they did in Enron or Bruno's because the Debtors' headquarters and management are not located in the jurisdiction to which transfer is sought. Moreover, as in Enron and Bruno's, the Debtors' business is both interstate and international in character, and the Union's and the Sureties' arguments to the contrary are unfounded. For example, the Debtors supply coal to customers in at least sixteen states and fifteen countries on four continents and export coal through ship loading terminals located in Maryland, Virginia, and Louisiana. (Schroeder Decl. ¶¶ 4, 15.) In addition, the Debtors own or lease real property in multiple states, including in Illinois, Indiana, Kentucky, Missouri, Ohio, and Pennsylvania. (Id. at ¶ 34.) The Debtors also operate multiple mines outside of West Virginia and, even as to the West Virginia mines, nine of the largest fifteen lessors from whom they lease these properties, measured both by coal reserves and by total payments, are headquartered elsewhere, in states such as Tennessee, Virginia, Pennsylvania, and Missouri. (Id. at ¶ 35.)

2. The Location of a Debtor's Assets Is Not Important Where a Debtor With Nationwide Operations Seeks To Reorganize

The emphasis on the physical location of the Debtors' coal mines is misplaced for another reason. Courts have repeatedly held that in a chapter 11 reorganization proceeding, as opposed to a liquidation, the location of the debtor's assets is of limited importance. See, e.g., In re Commonwealth Oil Refining Co., 596 F.2d 1239, 1248 (5th Cir. 1979), cert. denied, 444 U.S. 1045 (1980) ("CORCO") (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 (denying motion to transfer venue and

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"); Enron I, 274 B.R. at 347 (same).[14]

Notably, courts have repeatedly reached this conclusion even where the movant seeks to transfer a case to a forum where the debtor's "principal" or even "sole" assets are located, which is assuredly not the case here. See, e.g., In re Land Stewards, L.C., 293 B.R. 364, 371 (Bankr. E.D. Va. 2002) (denying motion to transfer venue to district where "all of [the debtor's] real property" was located and reasoning that the location of a debtor's assets "is not as important where the ultimate goal is rehabilitation rather than liquidation"); In re Island Club Marina, Ltd., 26 B.R. 505, 507-08 (Bankr. N.D. Ill. 1983) (denying motion to transfer venue to location of debtor's "principal assets" and reasoning that the location of a debtor's assets "is not controlling in reorganization cases"); In re Boca Dev. Assocs., 18 B.R. 648, 654 (Bankr. S.D.N.Y. 1982) (denying motion to transfer venue to location of debtor's "only asset" and reasoning that the location of the asset is outweighed by the need to administrate the case in the forum where "debtor's management and source of financing is located"); In re One-Eighty Invest., Ltd., 18 B.R. 725, 729 (Bankr. N.D. Ill. 1981) (denying motion to transfer venue to location of debtor's "principal asset" and reasoning that "[i]n a reorganization proceeding . . . the location of the assets of the Debtor is not particularly important").

As the court explained in In re International Filter Corp., 33 B.R. 952 (Bankr. S.D.N.Y. 1983), the reason why courts place little reliance on the location of a chapter 11 debtor's assets is a practical one. Id. at 956. Specifically, the primary concern in a chapter 11 case is "the

---

[14] Although the Union and the Sureties fail to acknowledge that the location of a debtor's assets is of limited importance in a chapter 11 reorganization, they repeatedly cite to both CORCO (Sureties Mem. at 15, 17, 20-21), and Enron I (Union Mem. at ¶ 28; Sureties Mem. at 15) – cases that state that proposition in no uncertain terms.

economic administration of the estate," including the need to secure financing. Id. By contrast, in a chapter 7 liquidation, there is "no need to obtain financing," the proceeding requires "greater court supervision over liquidation of the assets," and "it makes no sense to separate the trustee from the assets he is to liquidate." Id.; see also Enron II, 284 B.R. at 392 n.14.

In the instant case, the Debtors expect to reorganize, not to liquidate. See Enron I, 274 B.R. at 347-48 ("Although the Debtors are seeking to sell a portion of their assets to facilitate their financial restructuring, this is not a Chapter 7 liquidation."). Moreover, the argument for denying the Motions is far more persuasive here than in Land Stewards, Island Club or Boca Development because, unlike in those cases, the Debtors' assets and operations are located in multiple jurisdictions.

In advancing the argument that the location of the Debtors' mines is of primary importance, the Union and the Sureties misconstrue cases and rely on precedent that could not be more different from the case at bar. (Union Mem. at ¶ 28; Sureties Mem. at 20.) For example, the Union incorrectly cites In re Dunmore Homes, Inc., 380 B.R. 663, 673 (Bankr. S.D.N.Y. 2008), and Enron I, 274 B.R. at 347-48, for the proposition that "[t]he location of a debtor's assets is most important where those assets constitute the value of the debtor's business." (Union Mem. at ¶ 28.) Not only is this assertion unsupported by the case law, but the court in Enron I expressly ruled that "while a debtor's location and the location of its assets are often important considerations in single asset real estate cases, these factors take on less importance where a debtor has assets in various locations." 274 B.R. at 348 (concluding that the location of Enron's

assets did not weigh in favor of a transfer of venue because its assets were located "throughout the world").[15]

More importantly, the facts in Dunmore Homes – a decision on which the Union and the Sureties rely heavily (Union Mem. at ¶¶ 20, 22, 25, 28, 34; Sureties Mem. at 23-24 & Ex. D) – are radically different from those here. In that case, the court granted a motion to transfer to the Eastern District of California. 380 B.R. at 677. There, however, the debtor's only office and all of its management and employees were located in California. Id. at 672-73. In addition, the debtor's shareholders were based in California, its legal advisors were based in California, its financial and investment advisors were based in California, and its DIP lender was located in California. Moreover, following its re-incorporation in New York, the debtor had no operations in any state. Id. at 673. In short, the court concluded that other than its incorporation, the debtor's only connection to New York was the presence of an indenture trustee in that state. Id.

In In re B.L. of Miami, Inc., 294 B.R. 325 (Bankr. D. Nev. 2003), upon which the Union and the Sureties also rely, the court granted a motion to transfer the case to Southern District of Florida. In that case, the debtor's primary place of business was in Florida, its primary asset – a nightclub – was located in Florida, and all of its employees – except two – were located in Florida. Id. at 331-33. In addition, thirteen of the top twenty unsecured creditors were located in

[15] The Sureties argue that venue should be transferred because the Debtors' "real estate" is located in West Virginia (Sureties Mem. at 20 & n.40), but these bankruptcy cases cannot be characterized as a dispute over a piece of real estate, such as a parcel of land or a house. As discussed above, the Debtors operate a complex international business, with real property in multiple states and customers across the globe. Indeed, the cases cited by the Sureties are plainly distinguishable on that basis, as each involved a small debtor with limited real property interests. See, e.g., In re EB Capital Mgmt., LLC, No. 11-12646 (MG), 2011 Bankr. LEXIS 2764 (Bankr. S.D.N.Y. Jul. 14, 2011) (chapter 11 proceeding involving small debtor whose principal assets were a home in South Dakota and the furnishings therein, including artwork); In re Midland Assocs., 121 B.R. 459, 460 (Bankr. E.D. Pa. 1990) (chapter 11 proceeding involving small debtor whose "major asset" was an office building in Texas and whose remaining assets were bank accounts in Texas and California); In re N.H. Ave. Assocs., 85 B.R. 298, 300 (Bankr. E.D. Pa. 1988) (chapter 11 proceeding involving debtor whose sole asset was an office building in Washington, D.C.). The Debtors' assets and businesses are far different from those of the debtors in the cases upon which the Sureties rely.

Florida and their claims were collectively seven times as large as the creditors located outside of that state. Id. at 330-31.

In short, the cases cited involved small debtors, whose limited assets and operations were confined to a specific jurisdiction, and whose creditors were, in large part, in that same jurisdiction. By contrast, the ninety-nine Debtors in the instant cases are large, complex entities, with highly dispersed assets and operations, with creditors throughout the United States and abroad, and with only a tiny fraction of the claims against them held by creditors in West Virginia. The cases cited by the Union and the Sureties are, accordingly, inapposite and do not justify granting a motion to transfer over the Debtors' objection.

3. The Location of Certain Regulators Does Not Justify Transferring These Cases

In their motion, the Sureties rely on the location of the Debtors' regulators as justification for a transfer to West Virginia. (Sureties Mem. at 7-12, 18-19; see also AG Joinder at ¶ 4.) These contentions lack merit for multiple reasons.

As a threshold matter, this argument is merely a variant of the Union's oft-repeated assertion that nine of the Debtors' twelve mining complexes are located in West Virginia. But for the reasons discussed above, that fact is entitled to little weight where, as here, a debtor has national or international operations and where a debtor is seeking to reorganize.

Additionally, the Sureties have not identified a single case that supports their argument that regulatory regimes are relevant to the transfer inquiry under Section 1412. (See Sureties Mem. at 7-12, 18-19.) And, even assuming that such authority existed, the Sureties' own arguments – and lengthy recitation of environmental statutes and regulations – make clear that the Debtors are subject to regulation by federal regulators such as the United States Department of the Interior's Office of Surface Mining, the United States Department of Labor's Mine Safety

and Health Administration, and the United States Environmental Protection Agency. (Sureties Mem. at 11.) The fact that there may be a "national policy" to regulate coal mining (id.) in no way justifies a transfer of these bankruptcy cases from New York to West Virginia.

Indeed, it is notable that only two regulators – the West Virginia Attorney General and the Kentucky DNR – have expressed support for the Motions, while the other regulators on whose behalf the Sureties purport to speak elected to remain silent. These two filings, one of which does not even join the motion, do nothing to alter the fact that the ninety-nine Debtors are subject to a web of regulation by federal regulators and by state regulators across the country. The filings simply reprise arguments that the Union has raised and, for the reasons set forth above, should be rejected.

The West Virginia Attorney General asserts (without support) that "many of the issues in the cases will be resolved by reference to West Virginia law" and urges transfer for the same purported "accessibility" concerns expressed by the Union. (AG Joinder at ¶ 4.) But as discussed herein, it is New York law that predominates the most relevant contracts and agreements at issue, and New York is by far the most accessible venue for the parties in interest. The Attorney General also asserts (again without support) that the "loss of health care benefits to citizens of the State of West Virginia would have adverse economic repercussions for the State of West Virginia." (Id. at ¶ 5.) The Attorney General provides no explanation for this assertion and, in any event, it is irrelevant to the venue analysis mandated by the statute and case law. For the reasons set forth above, proceeding in New York offers the Debtors the most viable pathway to reorganization, a result that is in the best interest of the employees and retirees of the Debtors located around the country.

The Kentucky DNR's filing contains no substance and simply requests permission to file another pleading that "summarizes the facts of this case in more detail with regard to the Debtors' mining activities in Kentucky." (DNR Notice at ¶ 8.) The Debtors do not believe a supplemental pleading of this sort is timely or necessary and, as discussed above, the location of the Debtors' mines – whether in West Virginia, Kentucky, or elsewhere – is of limited relevance in cases like these, which involve the reorganization of debtors with national and international operations.

C. Transferring of Venue Would Not Promote the Efficient and Economic Administration of the Estate

The single "most important" factor when evaluating the propriety of a motion to transfer venue pursuant to Section 1412 is the fifth convenience factor – whether the transfer will promote the "economic and efficient administration" of the estate. See CORCO, 596 F.2d at 1247; see also Enron II, 284 B.R. at 395; Garden Manor, 99 B.R. at 554. This factor also weighs heavily in favor of denying the Motions.

The Union and the Sureties assert, without any evidentiary support of any kind, that it would be "most economical" for the cases to be transferred to the Southern District of West Virginia because: (1) more creditors are located in West Virginia than in any other state; (2) more Debtor entities are located in West Virginia; (3) the Debtors' principal assets are located in West Virginia; (4) more employee and retiree witnesses are located in West Virginia; and (5) the professionals located outside West Virginia have the "means and ability" to travel to the jurisdiction. (Union Mem. at ¶ 29; see also Sureties Mem. at 21-24.) As detailed above, several of these assertions are completely without basis and, in fact, it is clear that just the opposite is true. Aside from the factual inaccuracies in the Union's argument, there are at least

five reasons why the Southern District of New York – and decidedly not the Southern District of West Virginia – will promote the economic and efficient administration of the estate.

First, remaining in New York will enable the Debtors to best realize the "ultimate purpose" of a chapter 11 case, which is to successfully reorganize. See Enron I, 274 B.R. at 348 (citing Garden Manor, 99 B.R. at 554-55). In fact, when courts assess whether a proposed transfer promotes the "economic and efficient administration" of the estate, they evaluate the pending motion in light of "the need to obtain post-petition financing, the need to obtain financing to fund reorganization, and the location of the sources of such financing and the management personnel in charge of obtaining it." Enron I, 274 B.R. at 348 (citing Int'l Filter, 33 B.R. at 956) (internal quotations omitted); see also CORCO, 596 F.2d at 1247 (efficiency favors the venue where the "people charged with th[e] responsibility [to work up a reorganization plan]" are located); Garden Manor, 99 B.R. at 554-55 (finding that New York was the location most suited to a successful reorganization in a case that hinged on the debtor's ability to access capital markets, to renegotiate financial instruments, to sell its business, or to cram-down its major secured creditor).

The Debtors' efforts to secure financing have occurred and will continue to occur in New York, where most of the legal and financial advisors retained in these cases are located and where the DIP agents and arrangers are either located or have major offices. (Dkt. No. 39; Schroeder Decl. ¶¶ 48-51.) Indeed, not only is New York "a world financial center" that will provide the Debtors' with greater access to capital, Enron II, 284 B.R. at 395, but the existing venue enables the Debtors to take advantage of the relationships that their professionals have with the New York financial community as they seek to secure exit financing. Id.; see also In re

HME Records, Inc., 62 B.R. 611, 614 (Bankr. M.D. Tenn. 1986) (denying motion to transfer in light of the fact that debtor had established relationships with local banks).

Second, remaining in New York will reduce the complexity of travel and the associated costs to the estate. As discussed above, there are a very limited number of direct flights each day to Charleston, West Virginia from major cities – and none from St. Louis, Missouri and many other locations. Because of the limited availability, flights are typically costly. Few active participants in the case would be spared the difficulty and expense of travel to West Virginia: there is but a single direct flight from between Charleston and New York on a small aircraft each day; there are no direct flights between Charleston and the Wilmington, Delaware area, Boston, Massachusetts, or Naples, Florida, where members of the Official Committee of Unsecured Creditors are located; and there are no direct flights between Charleston and St. Louis, Missouri, where many members of the Debtors' management work or reside.

The lack of options for travel to and from West Virginia would make participation in hearings impractical, at best, for the vast majority of the parties and professionals who will be active in the case. See Del. & Hudson Ry., 96 B.R. at 468 (denying motion to transfer venue from Wilmington, Delaware to Albany, New York and noting that "Delaware is in the middle of the northeast rail corridor and within 20 to 30 minutes of an international airport[,] [t]ransportation service in and out of Albany is limited[,]. . . . [and the] transportation schedules in and out of Albany would make one day hearings virtually impossible").

The presence of some employees or retirees in West Virginia does not counsel otherwise, "because the major participant" on behalf of the Debtors' present and former employees "will not be the individuals, but the unions to which those individuals belong." Id. Additionally, the fact that certain interested parties may physically be closer to West Virginia than to New York

misses the point. As this Court noted when denying a motion to transfer to Michigan, in a proceeding where the parties in interest were located in North Carolina and Florida and where the legal professionals were located in Miami, a court must consider more than just the total number of miles to be traveled:

> [Movant] suggests that Miami is approximately 1,400 miles from Kalamazoo and Manhattan, implying that both locales are equally convenient. Counting air miles, important to frequent flyers, is a poor test of convenience, particularly since planes don't always fly as the crow does. But accepting [Movant's] geographical analysis, I still remain unconvinced that Kalamazoo is more convenient than New York to those who must travel from Miami; at the least, [Movant] has failed to show it.

Official Comm. of Unsecured Creditors v. McConnell (In re Grumman Olson Indus., Inc.), 329 B.R. 411, 437 (Bankr. S.D.N.Y. 2005). Accordingly, the Debtors' choice of forum will prove to be less expensive and more convenient than the Union and the Sureties' proposed alternative – especially because New York is "one of the world's most accessible locations." Enron II, 284 B.R. at 384.[16]

Third, and related to the above, because legal and financial professionals are located in New York, critical negotiations will likely take place in New York, not in West Virginia. Indeed, legal professionals for the Debtors, for the Union, and for the two indenture trustees are all located in New York. (Schroeder Decl. ¶¶ 48-51.) The DIP agents and arrangers all have major operations in New York and their legal professionals also are located in New York. (Dkt. No. 39; Schroeder Decl. ¶¶ 62-64.) The reality is that much of the activity in this case that will

[16] The Union's argument that professionals located outside of West Virginia have the "means and ability" to travel is inapposite because the expenses incurred by professionals will deplete the value of the Debtors' estates. See, e.g., 11 U.S.C. § 328(a) (authorizing reimbursement of fees incurred by professionals retained by creditors' committee); id. § 329(a) (authorizing payment of compensation to debtor's attorneys). Similarly, the Union's argument that the employees and the retirees are "least able to bear the expense and inconvenience of travel" lacks merit because these individuals will be represented by the Union and its professionals, and "such representation [will not] represent a direct cost to the individual." Del. & Hudson Ry., 96 B.R. at 468.

occur outside of the courthouse will occur in New York.[17] See Enron I, 274 B.R. at 349 ("[W]hile the Debtors' management and operations are predominantly in Houston, New York is a more convenient location for those responsible for negotiating and formulating a plan of reorganization.").

Fourth, New York law governs many of the Debtors' critical agreements and, although any court can familiarize itself with the law of other jurisdictions, a court in New York has greater familiarity with the law of the state in which it sits. Cf. Bodum U.S.A., Inc. v. Hantover, Inc., No. 11 Civ. 8702 (SAS), 2012 U.S. Dist. LEXIS 53165, at *13-14 (S.D.N.Y. Apr. 13, 2012) (holding that when a court reviews a motion to transfer a civil action pursuant to § 1404(a), it should consider "the forum's familiarity with governing law"); Chase Manhattan Bank, N.A. v. Francini, No. 91 Civ. 2515 (MBM), 1991 U.S. Dist. LEXIS 11381, at *16 (S.D.N.Y. Aug. 16, 1991) (denying motion to transfer pursuant to Section 1404 and reasoning that "the familiarity of New York federal courts with New York substantive law is an appropriate consideration in deciding a motion to transfer").

The Sureties' argument that this Court will be faced with disputes that overwhelmingly involve issues arising under West Virginia law (Sureties Mem. at 4, 12-13) is simply incorrect and without factual support. Forty-one of the Debtors' sixty-five sales contracts – just under two-thirds – are governed by New York law. By contrast, only two of the Debtors' sales contracts specify that West Virginia law applies. (Schroeder Decl. ¶ 18.) The Debtors have entered into approximately twenty master equipment leases; of those twenty leases, four are governed by New York law and not one is governed by West Virginia law. (Id. at ¶ 19.)

[17] Although the Sureties argue that potential lenders will conduct due diligence in West Virginia (Sureties Mem. at 16), the frequency of the diligence will pale in comparison to the frequency of court proceedings or out-of-court negotiations and meetings.

Additionally, the DIP loan agreements include a New York forum selection clause and virtually all of the Debtors' pre-petition debt instruments are governed by New York law. (Id. at ¶¶ 23-33, 52.) Even the indemnity agreement between one of the Sureties and the Debtors is governed by New York law and includes a New York forum selection clause; not one of the other three agreements is governed by West Virginia law. The Sureties simply misstate the facts.[18]

Fifth, and finally, transfer to the Southern District of West Virginia presents a very real risk of disruption and delay. There will be delay associated with the physical transfer of the cases. There will be delay when the Debtors and the various parties in interest interview and seek to retain local counsel. There will be delay as local counsel learns the facts of and prior activity in the cases. And there will be delay when a newly assigned judge familiarizes himself or herself with the cases.

For these reasons, maintaining venue in New York will promote the "economic and efficient administration" of the estate, whereas transferring venue to the Southern District of West Virginia will increase costs to the estate, will frustrate the Debtors' efforts to reorganize, and will result in disruption of and delay to this case.

D. There Exist No Concerns Relating to the Ancillary Administration of the Estate

The final convenience factor is "the need for ancillary administration in the event that liquidation occurs." See CORCO, 596 F.2d at 1248. The Movants do not contend that this factor counsels in their favor and, as such, should play no role in the Court's analysis.

---

[18] Not even the documents that resulted in the formation of Patriot are governed by West Virginia law. On October 31, 2007, Patriot was spun off from Peabody through a dividend of all outstanding shares of Patriot Coal. (Schroeder Decl. at ¶ 5.) The applicable agreements are governed by Delaware law. (Id.) On July 23, 2008, Patriot acquired Magnum Coal Company, which had previously acquired certain assets of Arch Coal, Inc. (Id. at ¶ 6.) The agreements relating to Patriot's acquisition of Magnum Coal Company are governed by Delaware law and the agreements relating to Magnum Coal Company's acquisition of certain assets of Arch Coal, Inc. are governed by New York law. (Id.)

E. A Comparison of the Relative Economic Harm to the Debtors and to Other Interested Parties Demonstrates that the Debtors Would Suffer Disproportionate Harm from a Transfer to West Virginia

A comparison of the relative harm to the Debtors and to the Movants demonstrates that the harm to the Debtors would far exceed the benefit to the Movants. The Union, which had approximately 80,000 members and net assets of $171.9 million as of December 31, 2011, would suffer no harm if the case were to proceed in New York. See UMWA, Labor Organization Annual Report (Form LM-2) (Apr. 30, 2012). The Union has its international headquarters outside of Washington, D.C., and has regional, district, and sub-district offices in Alabama, Colorado, Illinois, Kentucky, Ohio, Pennsylvania, Utah, Virginia, West Virginia, and Canada. And the Union itself represents that it has "a diverse membership that includes coal miners, clean coal technicians, health care workers, truck drivers, manufacturing workers and public employees throughout the United States and Canada." UMWA: Who We Are, http://www.umwa.org/?q=content/who-we-are-where-we-work (last visited August 24, 2012) (emphasis added). Such a diverse, sizable entity should be well-positioned to litigate in New York, which is a short flight or train ride away from its international headquarters. See Bruno's, 1998 Bankr. LEXIS 549, at *11-12 ("Of note is the fact that movants themselves are not necessarily such small, local players that the balance of interests tip in favor of transfer. . .").

Likewise, the Union's members, its professionals, and other non-unionized employees will suffer no harm from proceeding in this venue. The Union's members will benefit if the Debtors' estate is not depleted by the increased expense associated with administering these cases in West Virginia. The Debtors' non-unionized employees, who constitute approximately sixty percent of their current workforce and for whom the Union does not speak, will likewise

benefit from the reduced cost of proceeding in New York. The Union's motion also ignores the fact that fewer than ten of the ninety-nine Debtors are signatories to the collective bargaining agreements. (Schroeder Decl. ¶ 38.) The Union asks the Court to transfer all ninety-nine cases to the Southern District of West Virginia without regard for the scores of Debtors – and the creditors of those Debtors – which have no direct obligation to the Union or to its constituencies. Finally, the Union's legal advisors are located in New York and are well-experienced in representing unions in corporate chapter 11 cases, including in the AMR and General Motors proceedings, further highlighting the absence of harm to the Union.[19]

The Sureties have an attenuated connection to West Virginia and would suffer no harm from proceeding in New York. As discussed above, not one of the Sureties is incorporated in West Virginia or has its headquarters in West Virginia. At least three of the four Sureties are authorized to do business in New York and at least one of the Sureties has entered into an indemnity agreement with the Debtors that is governed by New York law and includes a New York forum selection clause. Not even the Sureties' legal advisor is located in West Virginia.

By contrast, for the reasons discussed in detail above, these estates will incur substantial costs if the Motions were granted.

---

[19] Notably, the Union's retention of national counsel seemingly was not precipitated by the fact that the Debtors commenced these cases in New York. Rather, the Union's main counsel in its ongoing dealings with the Debtors and with other coal companies is the law firm of Mooney Green Saindon Murphy & Welch, which is based in Washington, D.C. Cf., e.g., Peabody Holding Co., LLC v. United Mine Workers of Am., Int'l Union, 665 F.3d 96 (4th Cir. 2012) (noting representation of the Union by Mooney Green); Int'l Union, United Mine Workers of Am. v. Apogee Coal Co., 330 F.3d 740 (6th Cir. 2003) (same); Peabody Coal Co. v. Dist. 12, United Mine Workers of Am., No. 4:03CV-74-M, 2004 U.S. Dist. LEXIS 11965 (W.D. Ky. May 17, 2004) (same).

POINT III.

THE MOVANTS ADVANCE VARIOUS ALTERNATIVE ARGUMENTS BASED ON THE "INTEREST OF JUSTICE," NONE OF WHICH WEIGH IN FAVOR OF TRANSFER

The Movants raise several additional arguments in support of their Motions, contending that each weighs in favor of transferring the case in the interest of justice. "The interest of justice prong is a broad and flexible standard that is applied based on the facts and circumstances of each case," and a court should consider "what will promote the efficient administration of the estate, judicial economy, timeliness and fairness." In re Enron Corp., 284 B.R. 376, 403 (Bankr. S.D.N.Y. 2002) ("Enron II") (citing Gulf States Exploration Co. v. Manville Forest Prods. Corp. (In re Manville Forest Prods. Corp.), 896 F.2d 1384, 1391 (2d Cir. 1990)). In construing the "interest of justice" prong, courts endeavor to "retain[] venue in the location best suited to solve the financial problems of the debtor and to be the least disruptive to the operations of the debtor." Enron II, 284 B.R. at 388 (citing In re Commonwealth Oil Refining Co., 596 F.2d 1239, 1248 (5th Cir. 1979), cert. denied, 444 U.S. 1045 (1980) ("CORCO")).

As discussed below, none of the arguments advanced by the Movants enable them to satisfy their burden.

A. The Debtors Have Not Manipulated the Venue Statute But Have Complied With Its Terms

The Movants contend that because the Debtors took steps prior to the bankruptcy filing to establish venue in New York, the Motions must be granted "in the interest of justice" pursuant to Section 1412. (Union Mem. at ¶¶ 2, 34; Sureties Mem. at 3; Trustee Mem. at ¶ 11.) In fact, this is the sole argument advanced by the U.S. Trustee.

As a threshold matter, the U.S. Trustee's motion is puzzling because in the primary case on which the U.S. Trustee relies, it took a position that is the opposite of the one it takes here. In

In re Winn-Dixie Stores, Inc., No. 05-11063-rdd (Bankr. S.D.N.Y. Apr. 12, 2005) – the focal point of the U.S. Trustee's motion – the U.S. Trustee actually **opposed** the motion to transfer venue, even though the Debtors had consented to transfer of venue to the location of their corporate headquarters. (Winn-Dixie Tr. at 151 ([The Court:] "And what I took away from the U.S. Trustee's remarks is that, generally speaking, although the U.S. Trustee was making more of a policy statement, the U.S. Trustee also would oppose transfer of venue at this stage of the case.").) Now – with no explanation as to why – the U.S. Trustee appears to be taking the exact opposite position on facts it (incorrectly) alleges are similar.[20]

Moreover, just two months ago, in an action Judge Gerber found "perplexing" and lacking in "prosecutiorial discretion," the U.S. Trustee made a motion to transfer venue in the chapter 11 cases of Houghton Mifflin Harcourt Publishing Company, despite the fact that the U.S. Trustee's "motion was opposed by every party in the case with money on the line."[21] In re Houghton Mifflin Harcourt Publ'g Co., No. 12-12171 (REG), 2012 Bankr. LEXIS 2868, at *2-3 (Bankr. S.D.N.Y. June 22, 2012). While Judge Gerber reluctantly found in Houghton Mifflin that the Debtors had failed to comply with the requirements of Section 1408, he noted that the Debtors "would win in a heartbeat if this were a motion under [section] 1412." Id. at *40. The U.S. Trustee's motion here – which is, of course, a motion exclusively under Section 1412 – is similarly "perplexing" in that it fails to consider – or even say a word about – the convenience of the parties or best interest of the creditors. (Compare Trustee Mem. with Winn-Dixie Tr. at 107

[20] As discussed in detail below, the facts of Winn-Dixie are not identical and reflect very different circumstances, including the debtors' consent to transfer.

[21] During oral argument, Judge Gerber repeatedly expressed his dismay that the U.S. Trustee had made the motion to transfer. See, e.g., Transcript of Proceedings at 6, In re Houghton Mifflin Harcourt Publ'g Co., No. 12-12171 (REG) (Bankr. S.D.N.Y. June 18, 2012) ("[W]hy is your office making this motion?"); see also id. at 6-7, 14-15.

("[U.S. Trustee:] My position today is that the Court should undertake a convenience analysis and hear from the parties that are most affected even when there is a Debtors' acquiescence to this transfer.").)

In any event, unlike in Houghton Mifflin, venue here is indisputably proper under Section 1408, a fact the Movants concede. (Sureties Mem. at 14; Trustee Mem. at 2-3.) As set forth in Point I-A above, both PCX and Patriot Beaver Dam were incorporated in New York and have their principal assets in New York, 11 U.S.C. § 1408(1), and the joint administration of the cases of all affiliates is authorized by the statute. Id. § 1408(2). There is simply no question that the Debtors have complied with this statutory requirement.

Turning to Section 1412, the cases upon which the Union and the U.S. Trustee rely (the Sureties cite no cases) are entirely distinguishable. Both the Union and the U.S. Trustee cite to In re Dunmore Homes, Inc., 380 B.R. 663 (Bankr. S.D.N.Y. 2008). (Union Mem. at ¶ 34; Trustee Mem. at ¶ 10.) As described in detail above, the debtors in Dunmore Homes were overwhelmingly connected to California and nowhere else – the debtor was originally incorporated in California, all of its assets and employees were located in California, its California-based management was likely to testify, its professionals were predominantly located in California, its DIP lender was located in California, and its creditors were predominantly located in California. Dunmore Homes, 380 B.R. at 667, 672-75. After concluding that venue was proper under Section 1408 because the debtor had reincorporated in New York, the Court nevertheless granted the motion to transfer on the grounds that the debtor's assets and the parties in interest were centralized in California. Id. at 670, 677. Not only is Dunmore Homes fundamentally different from the instant cases, the U.S. Trustee's assertion that "the court ultimately granted the motion to transfer venue, finding relevant that the debtors' sole New

York-based affiliate had been created . . . just 59 days before the petition date" is a blatant misreading of that case. (Trustee Mem. at ¶ 10.) It is true that the Dunmore Homes court identified numerous facts that counseled in favor of a transfer; what is incorrect is the U.S. Trustee's suggestion that the holding there was driven by the date on which the debtor reincorporated in New York.[22] Other cases upon which the U.S. Trustee relies involved the denial of a pending motion to transfer. (Trustee Mem. at ¶¶ 7-8 (citing Manville, 896 F.2d at 1391 (affirming lower court decision denying motion to transfer); In re Enron Corp., 274 B.R. 327, 349-51 (Bankr. S.D.N.Y. 2002) ("Enron I") (denying motion to transfer)).) Those cases do not support a transfer in the interest of justice here.

Aside from ignoring its own position in Winn-Dixie, the U.S. Trustee also ignores critical distinctions between the circumstances of that case and the facts here. First, the Debtors in Winn-Dixie expressly consented to the motion to transfer. In his bench decision, Judge Drain found this fact to be significant: "I believe that the Debtors' views here are important, and in particular are important with respect to the important factor of the economic and efficient administration of the estate . . . ." (Winn-Dixie Tr. at 157.) Here, in sharp contrast, the Debtors oppose the Motions and (unlike the Movants) have submitted substantial evidence to support their position that transfer to West Virginia would be far more costly and burdensome to the estates. Second, in Winn-Dixie, the debtors' unique connection to Florida was substantially greater than the Debtors' connection to West Virginia here. By way of example, the Winn-Dixie debtors' operations were located entirely in the Southeast United States, and were concentrated in Florida. (Winn-Dixie Tr. at 85.) Here, as set forth above, the Debtors' operations are national

[22] The Trustee also cites to In re Asset Resolution LLC, No. 09-16142 (AJG), 2009 Bankr. LEXIS 3711, at *3 (Bankr. S.D.N.Y. Nov. 24, 2009), which is likewise distinguishable on numerous grounds. See infra note 27.

and international in scope, with customers located around the globe. Similarly, in Winn-Dixie, nineteen of the twenty-five debtors were incorporated in Florida; by contrast, most of the Debtors here are incorporated in Delaware, not in West Virginia. (Schroeder Decl. at ¶ 7.) Finally, the Winn-Dixie debtors' management team and corporate offices were all located in Florida. (Winn-Dixie at 17, 66.) Here, as noted above, virtually every one of the Debtors' key corporate functions, including Accounting, Accounts Payable, Accounts Receivable, Financial Reporting, Treasury, Tax, Internal Audit, Legal, Sales and Market Research, Contract Management, Payroll, Corporate Development, Planning, Information Services, Human Resources, and Benefits, as well as the Debtors' headquarters and corporate offices, are located not in West Virginia but in St. Louis. (Schroeder Decl. at ¶ 8.)

Moreover, even if one were to read Winn-Dixie as standing for the proposition that venue must be transferred every time a debtor takes pre-bankruptcy steps to establish venue – regardless of the circumstances – this Court should decline to adopt such a sweeping proposition. In Winn-Dixie, the court acknowledged that it was acting "to close a loophole in the statute that would otherwise, according to the statute's plain terms, permit venue to be properly established here on the eve of the filing." (Winn-Dixie at 167.) But that conclusion is inconsistent with the dictates of the Supreme Court of the United States and the United States Court of Appeals for the Second Circuit that it is the province of Congress, not the judiciary, to consider whether to amend a statute to close an alleged loophole. See Microsoft Corp. v. AT&T Corp., 550 U.S. 437, 457 (2007) ("The 'loophole,' in our judgment, is properly left for Congress to consider, and to close if it finds such action warranted."); Estate of Stewart v. Comm'r of Internal Revenue, 617 F.3d 148, 170 (2d Cir. 2010) ("It is not the job of this Court, of course, to close loopholes that Congress has left in the tax code."). By contrast, the judiciary is obligated to follow the

plain language of a statute. See, e.g., Carcieri v. Salazar, 555 U.S. 379, 386 (2009) ("This case requires us to apply settled principles of statutory construction under which we must first determine whether the statutory text is plain and unambiguous. If it is, we must apply the statute according to its terms.") (internal citations omitted); Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy, 548 U.S. 291, 296-297 (2006) ("We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.").

Indeed, Congress has considered amendments to remedy the very "loophole" in the venue statute about which the U.S. Trustee complains and has repeatedly declined to make any changes. For example, in July 2011, Representative Lamar Smith introduced H.R. 2533, the "Chapter 11 Bankruptcy Venue Reform Act of 2011." See H.R. 2533, 112th Cong. (2011); see also Library of Congress, http://thomas.loc.gov/ (last visited Aug. 22, 2012). This bill sought to amend Section 1408 by limiting the districts in which a corporation may file for bankruptcy to the district where the corporation's principal place of business or principal assets were located for one year prior to filing or for less than one year but longer than in any other district. H.R. 2533, 112th Cong. (2011). The bill also would have permitted filing based on the location of a corporate affiliate, but only if the affiliate directly or indirectly owns, controls, or holds power to vote more than fifty percent of the outstanding voting securities of the parent corporation. Id. Notably, the bill has never made it out of the committee process in the House of Representatives – and needless to say it has not been enacted. See Library of Congress, http://thomas.loc.gov/ (last visited Aug. 22, 2012). And the fact that H.R. 2533 was introduced six years after Winn-

Dixie demonstrates that Congress is aware of the purported "loophole," has considered and declined to remedy it, and that Congress has had the last word on the subject.[23]

In fact, the only binding precedent is Capitol Motor Courts v. LeBlanc Corp., 201 F.2d 356 (2d Cir. 1953), in which the Second Circuit declined a motion to transfer venue where the debtor took steps prior to filing for bankruptcy to meet the requirements of the venue statute. Capitol Motor involved two entities: a Louisiana corporation, with its "principal office, place of business, and manufactory" in Louisiana; and a Maryland corporation. Id. at 357. The Maryland entity was created forty days prior to the bankruptcy filing to facilitate a sale of the assets of the Louisiana entity to a New York entity. Id. at 357-58. Then, one day prior to bankruptcy, in an apparent attempt to take steps to enable the Louisiana entity to file for bankruptcy in New York, the directors of the Maryland entity (which became a subsidiary of the New York entity as part of the sale process) ratified the purchase of the stock of the Louisiana entity and the directors of the Louisiana entity voted to file for bankruptcy in New York as a subsidiary of the Maryland entity. Id. at 358; see also Transcript of Record at 106-07, Capitol Motor Courts v. LeBlanc Corp., 201 F.2d 356 (2d Cir. 1953) ("Capitol Motor Dist. Ct. Op.").[24]

---

[23] The Sureties cite to "legislative history" from H.R. 2533 to bolster their argument that venue should be transferred. (Sureties Mem. at 3 nn. 2-4.) The Sureties resort to quoting legislative history from proposed legislation, which is yet another concession that the Debtors' choice of venue was proper under current law. Even the American Bankruptcy Institute article cited by the Sureties acknowledges that the filing here is permitted under the existing law and that the above-referenced bill is likely to fail. (Sureties Mem. at 3 n.5 (citing Jeffrey G. Hamilton and Kelly Cavazos, The Venue Reform Debate, 9 ABI Committee News (July 2012), available at http://www.abiworld.org/committees/newsletters/legis/vol9num3/venue.html ("Under the current statutes governing the venue of bankruptcy cases, a corporate debtor may file a chapter 11 case in its place of incorporation, in its place of residence, where it has its principal assets, where it is headquartered or where the case of a corporate affiliate is pending. . . . Congressional reform to the bankruptcy venue provisions was last attempted as recently as 2005 . . . [That] effort[] died in committee, however. . . . [M]ost authors writing on the issue seem to agree that this legislation will have a similar fate.")).)

[24] Presumably, Judge Drain did not have the benefit of the district court's "careful opinion setting forth fully the financial transactions of the debtors" which the Second Circuit merely summarized, stating "[t]here seems no occasion to repeat all of the details here." Capitol Motor, 201 F.2d at 357. The Debtors have obtained that

The movants in Capitol Motor sought to dismiss the cases for lack of jurisdiction, or, alternatively, to transfer venue to Louisiana. 201 F.2d at 356-58. They asserted that the Bankruptcy Act's "legal requirements were not observed" because of the "unseemly haste" with which the debtors' petitions were filed.[25] Id. The Second Circuit rejected this argument, affirming that venue was proper in the Southern District of New York because the Maryland entity had its principal place of business and principal assets in New York. See id. at 358; see also Capitol Motor Dist. Ct. Op., at 106-07. In so ruling, the Second Circuit held that "[i]t is clear that the express statutory requirements were fulfilled; and there is no prohibition against haste, unseemly or otherwise. . . ." 201 F.2d at 358. The court further held that the lower court did not abuse its discretion in refusing to grant the movants' request for discretionary transfer, noting that the location of the business in Louisiana was but one factor to be considered in that analysis "because the troubles of the business were not manufacturing but financial, and the heart – and also body – of that was in New York." Id.

In short, courts in this district are bound by the Circuit's ruling in Capitol Motor, and the Winn-Dixie court should have reached the conclusion that would flow from the Circuit's holding. Indeed, even the Winn-Dixie court understood that it was bound by Capitol Motor, but – with all due respect to Judge Drain – distinguished that case based on an apparent misunderstanding of its facts. There, the Court reasoned that in Capitol Motor the "corporation,

---

opinion (it is not available on Westlaw or Lexis), and it is attached as **Exhibit 1** to this objection. A review of that opinion provides the more complete factual record upon which the Second Circuit opinion was predicated.

[25] The bankruptcy case at issue in Capitol Motor was commenced under the Bankruptcy Act, a predecessor to the Bankruptcy Code. Pursuant to Section 128 of the Bankruptcy Act, a party could file a petition with the court "in whose territorial jurisdiction the corporation has had its principal place of business or its principal assets for the preceding six months or for a longer portion of the preceding six months than in any other jurisdiction." Id. at 359. Pursuant to Section 129 of the Act, "[i]f a corporation be a subsidiary, an original petition by or against it may be filed either as provided in section 128 of this title or in the court which has approved the petition by or against its parent corporation." Id. at 358.

although recently formed, had a separate and valid reason for existing. That is, real buyers, different owners, if you will, purchased the debtor shortly before the filing. They were located in New York and they created the corporation in New York because that is where they were. So I view that as distinguishable." (Winn-Dixie Tr. at 167-68.) That reasoning reveals that the court may have failed to appreciate that the "manufacturing" of venue was not the creation of the Maryland entity in connection with the sale to the New York entity, but was the decision by the Maryland entity to purchase the Louisiana entity's stock one day prior to bankruptcy for no apparent purpose other than to establish venue in New York.[26]

The Winn-Dixie Court also departed from precedent by failing to examine – in its "interest of justice" analysis – which venue would promote the efficient administration of the estate. After concluding that the convenience factors "probably" weighed in favor of "keep[ing] the cases," the Court turned to the interest of justice analysis and concluded transfer was warranted because the New York debtor was formed to "establish venue in New York." (Winn-Dixie at 165-67.) The Court's reliance on this fact – to the exclusion of all other facts, including facts about where the estates would be most efficiently administered – cannot be squared with the law. See, e.g., Manville, 896 F.2d at 1391 (noting that the interest of justice prong "contemplates a consideration of whether transferring venue would promote the efficient administration of the bankruptcy estate, judicial economy, timeliness, and fairness . . ."); CORCO, 596 F.2d at 1248 (noting that the "main concern" of the interest of justice analysis is the location where the debtor is likely to successfully reorganize); Bavelis v. Doukas (In re Bavelis), 453 B.R. 832, 870 (S.D. Ohio 2011) ("[T]he efficient administration of the estate is an

[26] Judge Drain also referred to the Maryland entity as a "New York" corporation. (Winn-Dixie at 168.) In fact, the Maryland entity was a subsidiary of the New York entity but had its principal place of business and principal assets in New York. Capitol Motor, 201 F.2d at 358; Capitol Motor Dist. Ct. Op. at 106-07.

important factor in examining whether transfer of the case would promote the interest of justice."); Enron II, 284 B.R. at 388 (endorsing CORCO and noting that, in addressing the interest of justice prong, the "court retained venue in the location best suited to solve the financial problems of the debtor"); Enron I, 274 B.R. at 349 n.23 (noting that the "interest of justice [prong] seeks to promote the efficient administration of the estate and judicial economy").

Finally, the U.S. Trustee argues that the cases should be transferred because "it is unclear whether PCX and Patriot Beaver Dam," the entities incorporated in New York, "have any employees, operations, creditors, or need for reorganization relief." (Trustee Mem. at ¶ 5.) As an initial matter, as is entirely common in large corporate families such as Patriot's, more than seventy-five of the ninety-nine Debtors are corporate or reserve holding companies without employees. And, as with the other ninety-seven Debtors, PCX and Patriot Beaver Dam have both creditors and a need for reorganization relief, with debts exceeding hundreds of millions of dollars. For example, PCX and Patriot Beaver Dam were guarantors of the Patriot's $427.5 million pre-petition credit facility and, in connection with these secured guarantees, Bank of America, N.A., the administrative agent of the credit facility, secured first priority liens against the assets of PCX and Patriot Beaver Dam. (Schroeder Decl. at ¶¶ 24-26.) In addition, PCX and Patriot Beaver Dam are guarantors of the Debtors' obligations with respect to the $250 million of Senior Bonds. (Id. at ¶¶ 28, 32.) Finally, the DIP agents have been granted superpriority liens on the assets of PCX and Patriot Beaver Dam under the court-approved DIP facilities. (Id. at ¶ 53.) These entities are also jointly and severally liable for hundreds of millions of dollars in certain contingent legacy liabilities, potentially including certain employee and/or environmental liabilities, among others. In short, there is no basis for the U.S. Trustee's speculation (the U.S.

Trustee does not even move on this ground) that these subsidiaries did not have a proper basis to commence their bankruptcy cases.

In considering the U.S. Trustee's Motion under Section 1412, it is instructive to review the U.S. Trustee's closing remarks to the court in the Winn-Dixie matter:

> Movants have the burden of proof on this issue. The Debtors' support of the transfer may not be dispositive since the Committee and what I have calculated to be almost $600 million of debt have objected to the transfer. So the U.S. Trustee encourages the Court to apply the standard under 1412 to allow the true stakeholders in this case to be heard.

(Winn-Dixie Tr. at 107.)

The Debtors agree. Here, where the Movants have failed to meet their burden of proof and the Debtors and nearly all creditors oppose – or do not support – a transfer, the Court should apply the standard under Section 1412 to deny the Motions.

B. The Movants Fail to Satisfy Their Burden When Arguing that the Nature of the Debtors' Business, This Court's Alleged Lack of Familiarity with the Coal Industry, and the West Virginia Economy Support a Transfer

The Movants raise a number additional arguments to support their contention that these cases should be transferred in the interest of justice. For these reasons set forth below, not one of these additional arguments helps the Movants satisfy their heavy burden.

First, the Sureties contend that the Court should exercise its discretion to transfer these cases in the interest of justice. In advancing this generic argument, the Sureties focus on the location of the parties in interest and contend that West Virginia would be a more convenient and economical forum. (Sureties Mem. at 5, 15-17.) For the reasons discussed in detail above, the Sureties' reliance on these facts is misplaced. Additionally, the Sureties' leading case, Enron Corp. v. Arora (In re Enron Corp.), 317 B.R. 629, 641 (Bankr. S.D.N.Y. 2004) ("Enron III"),

involves the denial of a pending motion to transfer and is one of three reported decisions from the Enron bankruptcy in which the court denied a motion to transfer venue from New York. Thus, neither the facts nor the law cited satisfies the Sureties' burden.

Second, the Union contends that the Debtors filed two pre-petition lawsuits in courts in West Virginia, and argues that the "existence of related litigation in a district supports the transfer of a case to that district." (Union Mem. at ¶¶ 14, 30.) In fact, in 2012, two customers defaulted on their contractual obligations to purchase coal from one of the Debtors, Patriot Coal Sales LLC ("**Patriot Coal Sales**"), and Patriot Coal Sales, in turn, filed breach of contract actions against those customers. (First Day Decl. at ¶ 25.) The cases commenced by Patriot Coal Sales are unrelated to the bankruptcy, and the fact that Patriot Coal Sales commenced two pre-petition lawsuits in the Southern District of West Virginia does not weigh in favor of a transfer.[27] And such a conclusion is entirely sensible. It is elementary that a party can only commence a lawsuit in a jurisdiction where there is personal jurisdiction over the defendant. See

[27] The cases invoked by the Union involve facts that are not at issue here. In Asset Resolution, 2009 Bankr. LEXIS 3711, at *3, the bankruptcy court determined that transfer to Nevada was warranted because "significant issues relating to the various parties' rights are currently being litigated in the Nevada District Court, the Nevada Bankruptcy Court, the Nevada State Court, and the Ninth Circuit Court of Appeals . . . The Nevada Litigation involves legal issues that must be resolved before the Debtors can effectively reorganize." Id. at *8-10 (emphasis added). The Court further reasoned that the Nevada litigation would "determine the extent of the Debtors' interest in the assets in dispute and their right to operate a loan servicing business," that a motion to lift the automatic stay would likely be granted and would allow the Nevada Litigation to proceed, and that the debtor's management, professionals, and other witnesses would likely have to be present in Nevada courts. Id. at *9-15. Finally, the Court reasoned that the movants, including certain pro se litigants, would be active participants in both the Nevada litigation and in the bankruptcy case. Id. at *11. Here, the litigation involves discrete, straightforward contract disputes, which do not affect the crux of the Debtors' ability to operate, and which need not be resolved before the Debtors can effectively reorganize.

In In re Eclair Bakery Ltd., 255 B.R. 121, 142 (Bankr. S.D.N.Y. 2000), the court transferred venue, reasoning, "[w]here, as here, a case is filed in one district where virtually all of the events leading up to the case took place in proceedings before a judge in another district; where files and exhibits are likely to be more readily available in the other district; and where a judge in the other district considered matters relevant to this case as recently as four weeks prior to the filing here, principles of judicial efficiency and comity for the first district lead the Court to conclude that it is better for this case too to be heard there, or at least as much of it as practical." Eclair is distinguishable because there, unlike here, the very issues had been litigated before a different judge in a different district.

Doppelt v. Perini Corp., No. 01 Civ. 4398 (LMM), 2002 U.S. Dist LEXIS 4128, at *7-8 (S.D.N.Y. Mar. 12, 2002) ("[T]he Court still must have personal jurisdiction over each and every defendant in order to adjudicate the claims brought against that defendant."); Durkin v. Shea, 957 F. Supp. 1360, 1369 (S.D.N.Y. 1997) ("[I]t is axiomatic that a court must have jurisdiction over both the subject matter and the defendant to have jurisdiction over the cause of action."). Patriot Coal Sales' decision to litigate two cases in West Virginia relates to the need to obtain jurisdiction over the defendants in those actions, not to the Debtor. And, needless to say, the Debtors have been involved in lawsuits in many jurisdictions around the country, and have been named as defendants in cases commenced in Illinois, Indiana, Kentucky, Louisiana, Missouri, New York, North Carolina, and Pennsylvania.[28] (Schroeder Decl. ¶ 21.)

Third, the Union and the Sureties argue that the Southern District of West Virginia has greater familiarity with the coal industry and that this Court has not "had the opportunity to develop a substantial learning curve" in connection with its administration of these cases. (Union Mem. at ¶ 30; Sureties Mem. at 4, 22.) These movants improperly intimate that this Court is not well-positioned to oversee this case. But such a suggestion is demonstrably false, in light of the competence of the United States Bankruptcy Court for the Southern District of New York, its frequent oversight of complex chapter 11 cases in many different industries, and the fact that it has presided over major bankruptcy cases involving coal companies. See, e.g., In re Bethlehem Steel Corp., No. 01-15288 (BRL), 2004 Bankr. LEXIS 517 (Bankr. S.D.N.Y. Feb. 9, 2004) (chapter 11 case involving debtor whose predecessor was in the business of coal mining and who was exposed to Coal Act retiree liability); In re Olga Coal Co., 194 B.R. 741 (Bankr.

[28] The Sureties also argue that West Virginia federal courts oversee consent decrees that were entered in certain environmental litigation. (Sureties Mem. at 19.) Maintaining venue in New York in no way interferes with the ability of the District Court in West Virginia to oversee a previously entered consent decree.

S.D.N.Y. 1996) (chapter 11 case involving coal mining company with operations primarily in West Virginia).[29]

Fourth, the Union and the Sureties argue that this Court should transfer this case because "[t]he people of West Virginia are familiar with and dependent on the coal mining industry," and because mining is that state's "primary economic base activity." (Union Mem. at ¶ 32; Sureties Mem. at 5; see also AG Joinder at ¶ 4 (stating that coal mining is the "primary economic engine" in the state).) However, West Virginia's interests will be best served by the Debtors' efficient, economic, and successful reorganization, which, for the reasons discussed above, is much more likely to occur in New York. See CORCO, 596 F.2d at 1248 ("Without belittling in the least the extent of Puerto Rico's interest in CORCO, that interest is served by maintaining CORCO as a functioning refinery. This can best be accomplished in San Antonio. The troubles of CORCO are financial. The people who can solve those problems for CORCO are in San Antonio.").

Fifth, the Union argues, without any support whatsoever, that "any judgments which may arise" in this case are more likely to be enforceable in West Virginia than in New York. (Union Mem. at ¶ 33.) But it is a bedrock principle of law that a judgment from a federal court is enforceable in any jurisdiction within the United States. See, e.g., Restatement (Second) of Judgments § 87 ("It has long been established that the judgments of the federal courts are to be

[29] In arguing that the Bankruptcy Court for the Southern District of West Virginia has experience administering chapter 11 cases involving coal company debtors, the Union and the Sureties rely on cases that fail to support their argument. (See Union Mem. at ¶ 30 n.3; Sureties Mem. at 4.) For example, at least one case was an adversary proceeding that arose out of a chapter 11 case filed outside the district. See Caperton v. A.T. Massey Coal Co., Inc., 270 B.R. 654 (S.D.W. Va. 2001) (adversary proceeding relating to chapter 11 filing in the Western District of Virginia). Other cases arose out of civil lawsuits that had little to do with the reorganization of a coal company. See In re Queen, 148 B.R. 256, 257-58 (S.D.W. Va. 1992) (civil action relating to whether the chapter 7 case of Bobby Gene Queen discharged Queen's personal tax liability); Int'l Union, United Mine Workers of Am. v. First Big Mt. Coal Co., No. 2:90-0054, 1993 U.S. Dist. LEXIS 21475, at *3 (S.D.W. Va. Jan. 7, 1993) (civil action relating to whether two individuals breached their duties under ERISA by misrepresenting health insurance coverage information to coal company employees). And, of course, there is no indication that any of the cases cited by Union or the Sureties involved an enterprise that is nearly as large or complex as the Debtors.

accorded full faith and credit when a question of their recognition arises in a state court or in another federal court."); see also 28 U.S.C. § 1963 (providing procedures for the registration and enforceability in any district court of bankruptcy court judgments for the recovery of money or property). Thus, as the Sureties concede, "the enforceability of any judgment would not be affected by the transfer of venue" (Sureties Mem. at 16 n.36), and a judgment issued by this Court would be as likely to be enforced as a valid judgment from the United States Bankruptcy Court for the Southern District of West Virginia.

POINT IV.

THE WEIGHT OF AUTHORITY SUPPORTS RETENTION OF THESE CHAPTER 11 CASES IN THE SOUTHERN DISTRICT OF NEW YORK

As set forth above, disturbing a debtor's choice of venue is rare, should be discouraged, and should not occur under these facts. In Enron I, the court denied a motion to transfer the case from New York to the Southern District of Texas. In re Enron Corp., 274 B.R. 327, 351 (Bankr. S.D.N.Y. 2002). In that case, quite unlike here, the debtors had their principal place of business in Texas, most directors and officers lived in Texas, twenty percent of the members of the official committee of unsecured creditors were located in Texas, and their two largest secured creditors were banks that administered loans through their Texas braches. Id. at 334-37. The court in Enron I nonetheless denied the motion to transfer, reasoning that the debtors' officers would not be required to attend court hearings, that court technology would facilitate remote access to court proceedings, that the debtors' professionals were located in New York, and that "members of the financial community that provide access to capital necessary to the [d]ebtors' financial restructuring are located in New York." Id. at 347-49. These cases are, by every measure, a fortiori to Enron I. Lenders and potential lenders that are critical to the Debtors'

restructuring are located in New York, the Debtors' professionals are predominantly located in New York, and unlike in Enron I, no major secured creditor nor any member of the Creditors' Committee – nor the Debtors' principal place of business – is located in West Virginia.

In Enron II, the court rejected a motion to transfer a case involving an Enron subsidiary to the District of Puerto Rico. In re Enron Corp., 284 B.R. 376, 386 (Bankr. S.D.N.Y. 2002). This second motion related to the case of San Juan Gas, a wholly owned subsidiary of Enron Corp., which conducted operations in Puerto Rico, had a monopoly over gas distribution in Puerto Rico, and maintained its books and records in Puerto Rico. Id. at 382. In denying the motion, the court placed little emphasis on the location of the debtor's assets or books and records, and instead relied on the fact that legal and financial advisors were located in New York, New York afforded greater access to capital, New York was more convenient for creditors, and the need for the involvement of Puerto Rico-based employees was minimal. Id. at 390-400. As in Enron I, the presence of the Debtors' advisors, the availability of financing, and the convenience of New York all weigh against granting the Motions.

In In re Boca Development Associates, the court denied a motion to transfer to the Southern District of Florida. 18 B.R. 648, 654 (Bankr. S.D.N.Y. 1982). In that case, the debtor was a limited partnership formed under the laws of the state of New York eighteen months before it filed for bankruptcy protection. Id. at 649. The debtor's principal office, one if its general partners, the principal shareholder of its general partner, and its "sole" asset were all located in Florida. Id. at 649-51. Despite these facts, the court concluded that "[t]he 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." Id. at 654. The facts here are more persuasive than those in Boca Development: the Debtors' principal office is in a

different jurisdiction than the forum to which the Union and the Sureties seek to transfer the case; and, unlike in Boca Development, all of the Debtors' assets are not located in West Virginia.

Additionally, there are numerous examples of large corporate debtors that have filed for chapter 11 protection in the Southern District of New York, despite the fact that their headquarters, employees, and principal assets were located outside of the district. The examples cited above – including Lyondell, Boston Generating, General Motors, Chrysler, and Northwest Airlines – are simply examples of debtors that are similarly situated to the Debtors here. And the fact that these other entities had their headquarters, employees, and principal assets outside of New York did not impede the ability of the court to administer the cases.[30]

The cases cited by the Sureties as analogous to the instant case (Sureties Mem. at 24) are plainly distinguishable because they involved either debtors that had filed multiple bankruptcy petitions in the hopes of securing a more favorable outcome, In re Christensen, No. 12-10042 (SHL), 2012 Bankr. LEXIS 1619 (Bankr. S.D.N.Y. Apr. 13, 2012); In re EB Capital Mgmt. LLC, No. 11-12646 (MG), 2011 Bankr. LEXIS 2764, at *13-15 (Bankr. S.D.N.Y. July 14, 2011); debtors that conceded that the action was commenced in the district to avoid pending litigation in another district, In re Qualteq, Inc., No. 11-12572, 2012 Bankr. LEXIS 503, at *18-19 (Bankr. D. Del. Feb. 16, 2012); courts that misapplied the applicable standard, In re Vienna Park Props., 125 B.R. 84, 87-88 (S.D.N.Y. 1991); or the need for extensive witness involvement, In re Rehoboth Hospitality, LP, No. 11-12798, 2011 Bankr. LEXIS 3992, at *13-14 (Bankr. D.

[30] Contrary to the Sureties' argument, such filings have not "inundated" the courts in this district nor have they interfered with the court's efficient administration of the cases on its docket. (Sureties Mem. at 3.) Indeed, "the higher per judge caseload in the Southern District of New York is not indicative of whether this Court will be able to address the [pending action] in a timely manner." Enron Corp. v. Arora (In re Enron Corp.), 317 B.R. 629, 641 (Bankr. S.D.N.Y. 2004). Consistent with the expertise of the judges in this district and the fact that they frequently preside over complex cases, this Court is well-suited to administer a complex case like this one.

Del. Oct. 19, 2011); In re Bell Tower Assocs., Ltd., 86 B.R. 795, 801 (Bankr. S.D.N.Y. 1988). None of these cases helps the Movants carry their burden, and none suggests that the Court should exercise its discretion to transfer these cases.

For this additional reason, the Motions, which are unsupported by fact or law and do not come close to meeting the Movants' heavy burden, should be denied.

CONCLUSION

For the foregoing reasons, the Motions to transfer venue of these chapter 11 cases should be denied in all respects.[31]

Dated: New York, New York
August 27, 2012

DAVIS POLK & WARDWELL LLP

By: /s/ Elliot Moskowitz
Marshall S. Huebner
Damian S. Schaible
Elliot Moskowitz
James I. McClammy

450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 607-7983

Counsel to the Debtors
and Debtors in Possession

[31]As discussed in footnote 6, supra, the ninety-nine Debtors could have commenced these cases in many jurisdictions, including in the Eastern District of Missouri, where their corporate headquarters and executive offices are located. Although no motion to transfer to the Eastern District of Missouri is before this Court, any such motion should be denied. As set forth at length above, the Debtors' choice of venue is entitled to substantial deference and New York is the most cost effective location for the economic administration of the estates. While the Eastern District of Missouri may be less inconvenient to the Debtors and parties in interest than the Southern District of West Virginia, such a showing will not satisfy a moving party's burden.

EXHIBIT 1

201 F.2d. 2nd 356

United States Court of Appeals

FOR THE SECOND CIRCUIT.

In the Matter

of

THE LeBLANC CORPORATION
(a Maryland Corporation),

and

THE LeBLANC CORPORATION
(a Louisiana Corporation),
Debtors.

CAPITOL MOTOR COURTS, DOWNTOWN REALTY COMPANY, GALVESTON BROADCASTING COMPANY, LAFAYETTE FRUIT COMPANY, L & H BROKERAGE COMPANY, MERCHANTS GROCERY COMPANY, MIDDLE GEORGIA BROADCASTING COMPANY, RADIO AUGUSTA, RADIO COLUMBIA, INC., RADIO COLUMBUS, INC., TERRE HAUTE REALTY COMPANY doing business as Terre Haute House, TEXAS BROADCASTERS, INC., TIMBERLAKE GROCERY CO. (Albany, Georgia), TIMBERLAKE GROCERY CO. (Thomasville, Georgia), TIMBERLAKE GROCERY CO. (Macon, Georgia), TRIBUNE PUBLISHING CO., WAPO BROADCASTING SERVICE, JAUBERT BROS. INC., I. S. McELHINEY doing business as New Orleans Envelope Co., COLUMBIA PAPER CO., and CULLMAN BROADCASTING CORP., Creditors,
Appellants.

THE LeBLANC CORPORATION (a Maryland Corporation), and THE LeBLANC CORPORATION (a Louisiana Corporation), Debtors, MILTON F. ROSENTHAL, Trustee, and ALBERT HAILPARN, NELSON P. RABONE, ALBERT H. AHLERS, FRANK R. ATWELL, RICHARD P. PROWELL, MICHAEL HALPERIN, JOSEPH ECKHAUS and MORRIS W. PRIMOFF, constituting the Creditors' Committee,
Appellees.

TRANSCRIPT OF RECORD

ON APPEAL FROM THE UNITED STATES DISTRICT COURT,
FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE COURT PRESS 130 Cedar St., N. Y. C.

INDEX.

PAGE

Statement Under Rule 15(b) 1
Debtor's Petition 3

Exhibit A, Tentative balance sheet (unaudited) of The LeBlanc Corporation (a Maryland corporation) and The LeBlanc Corporation (a Louisiana corporation), consolidated basis as of September 8, 1951 11

Exhibit B, The LeBlanc Corporation (a Louisiana corporation) statement of profit and loss for the fifteen months' period ended March 31, 1951 prepared by J. K. Lasser & Company, Certified Public Accountants 18

Exhibit C, The LeBlanc Corporation (a Louisiana corporation) statement of profit and loss for the three months' period ended June 30, 1951 prepared by J. K. Lasser & Company, Certified Public Accountants 18

Exhibit D, Resolution of Board of Directors 19

Affidavit of Asher Lans, Sworn to October 2, 1951.... 20
Order Approving Debtor's Petition 27

Schedule A, Notice of hearing 30

Subsidiary Debtor's Petition 31

Exhibit A, Tentative balance sheet (unaudited) of The LeBlanc Corporation (a Maryland corporation) and The LeBlanc Corporation (a Louisiana corporation), consolidated basis as of September 8, 1951, identical with Exhibit A, annexed to Debtor's Petition, printed herein at pages 11 to 17.

PAGE

Exhibit B, The LeBlanc Corporation (a Louisiana corporation) statement of profit and loss for the fifteen months' period ended March 31, 1951 prepared by J. K. Lasser & Company, Certified Public Accountants, identical with Exhibit B, annexed to Debtor's Petition, printed herein at page 18.

Exhibit C, The LeBlanc Corporation (a Louisiana corporation) statement of profit and loss for the three months' period ended June 30, 1951 prepared by J. K. Lasser & Company, Certified Public Accountants, identical with Exhibit C, annexed to Debtor's Petition, printed herein at page 18.

Exhibit D, Resolution of Board of Directors, identical with Exhibit D, annexed to Debtor's Petition, printed herein at page 19.

Affidavit of Asher Lans, Sworn to October 3, 1951.... 39
Order Approving Subsidiary Debtor's Petition 44

Schedule A, Notice of hearing, identical with Schedule A, annexed to Order Approving Debtor's Petition, printed herein at page 30.

Order Appointing Trustee 47
Answer of Creditors Capitol Motor Courts, et al. 53

Schedule A, List of creditors 59

Order to Show Cause 60
Petition of Creditors Capitol Motor Courts, et al. ... 64

Schedule A, List of creditors, identical with Schedule A, annexed to Answer of Creditors Capitol Motor Courts, et al., printed herein at page 59.

Answer of Milton F. Rosenthal, Trustee 73
Agreed Statement of Facts 78

PAGE

Exhibit A, The LeBlanc Corporation balance sheet as at June 30, 1951 (photoprint) 93

Exhibit B-1, Schedule of checks drawn by The LeBlanc Corporation on its Manufacturers Trust Company account 94

Exhibit B-2, Schedule of deposits by The LeBlanc Corporation in its Chase National Bank account, and Schedule of checks drawn by The LeBlanc Corporation on its Chase National Bank account 95

Exhibit C, Sample form of checks used for the Chase account 96

Exhibit D, The LeBlanc Corporation unaudited balances shown in the general ledger cash accounts and in the cash records in the New York bank accounts at certain dates (photoprint) 97

Exhibit E, Letter dated September 27, 1951 98

Exhibit F, Assignment dated September 29, 1951. 99

Exhibit G, Summary of proceedings at meeting of creditors 100

Opinion of Bondy, *D. J.* 105
Order Regarding Jurisdiction 115
Order Continuing Trustee in Office 116
Notice of Appeal 118
Stipulation as to the Omission of Certain Documents. 121
Stipulation as to Contents of Record on Appeal 123
Stipulation as to Record 126
Clerk's Certificate 128

during which creditors asked numer-
the composition, organization, and
or.

made, seconded and unanimously

following be elected as a Creditors'
:ee with full authority to represent
;' interest:

Einson-Freeman Co., Inc.
Hoffmann-LaRoche Inc.
Owens Illinois Glass Co.
rep. Majestic Advertising Co.
American Credit Indemnity Co.
J. T. Baker Chemical Co.
rep. William Morris Agency
rep. Semca Watch Co.
rep. Katz Drug Co.

Committee be given authority to re-
.eemed necessary, counsel, accountant,
y, intervene or file a notice of appear-
this proceeding, and take such other
: may be deemed necessary in the
of creditors.

ı adjourned.

NEW YORK CREDIT MEN'S
ADJUSTMENT BUREAU, INC.
Secretary to Creditors'
Committee
By L. E. EBERHARD

Opinion of Bondy, *D. J.*

313

[SAME TITLE.]

MESSRS. CAHILL, GORDON, ZACHRY & REINDEL,
By Daniel James, Esq. and
Richard H. Kuh, Esq.
For Milton Rosenthal as Trustee.

MESSRS. BERLACK & ISRAELS,
By Carlos L. Israels, Esq.
For Debtors.

314

MESSRS. NEWMAN & BISCO,
By Leonard G. Bisco, Esq.
For Creditors' Committee.

MESSRS. KRAUSE, HIRSCH, LEVIN & HEILPERN,
By George C. Levin, Esq.
For Creditors.

BONDY, *District Judge*:—

On October 3, 1951, The Le Blanc Corporation, existing under the laws of Maryland, filed a petition in this court for reorganization under Chapter X of the Bankruptcy Act. On the same day, after the petition had been approved, The Le Blanc Corporation, existing under the laws of Louisiana, filed its application in the same proceeding as a subsidiary of the Maryland debtor, pursuant to Sec. 129 of the Bankruptcy Act, 11 U. S. C. A. Sec. 529. Both petitions allege that the debtor is unable to pay its debts as they mature. Before the day set for hearing on the petitions, a group of creditors filed an answer denying the jurisdiction of this court over the debtors, and moved to dismiss the petitions and, in the event of the denial of the motion, to change the venue.

315

316 The motion was submitted upon an agreed statement of facts.

The Louisiana debtor is engaged in the manufacture and sale of a dietary supplement known as "Hadacol". It has its principal office and place of business, its manufacturing, packaging and storage facilities and a warehouse under construction in Lafayette, Louisiana. It owns a winery in Claremont, California, not presently in use, and "Hadacol" in about twenty warehouses in different parts of the country.

By written agreements entered into on July 22 and August 23, 1951, Dudley J. Le Blanc and six others agreed 317 to sell all the outstanding capital stock of the Louisiana debtor to the Tobey Maltz Foundation, Inc., a New York corporation having its principal place of business in the Southern District of New York, for $8,205,000., $250,000. thereof to be paid in cash at the time of the transfer of the stock, and the balance in installments.

The agreement contemplated that a new corporation would be organized, that the Foundation would cause the Louisiana debtor to be dissolved and that the Foundation would transfer to the new corporation the assets of the Louisiana debtor other than the trade-mark "Hadacol" 318 and the formula for its manufacture, which were to be licensed to the new corporation, and that the new corporation would assume the obligations of the Louisiana debtor if the assets other than the trade-mark and formula were sold to it.

It was also agreed that in the event the Louisiana debtor was not dissolved prior to December 31, 1951, the stock of that corporation would be pledged to the selling stockholders as security, and that so long as the Foundation was not in default, the selling stockholders would redeliver the stock for the purpose of permitting the Foundation to dissolve the corporation. The stock certificates were to bear the legend: "The shares of stock

319 represented by this certificate shall not be transferred except (1) for the purpose of dissolving The Le Blanc Corporation, or (2) to the trustee of a voting trust and then subject to the first restriction contained in this legend." The Foundation further agreed that immediately upon its acquisition of the stock of the Louisiana debtor and adoption of resolutions providing for the liquidation of the Louisiana debtor, the Foundation would cause to be assigned to the selling stockholders accounts receivable amounting to $850,000.

The Maryland corporation was incorporated August 24, 1951. On the same day it borrowed $250,000. from Francis 320 S. Levien, a subscriber to the stock of the Maryland corporation, and loaned it to the Foundation.

On August 24, 1951, the Foundation acquired all the stock of the Louisiana debtor, giving the $250,000. as part payment therefor to the selling stockholders. The stock certificates were delivered to Asher Lans, counsel for the Foundation and president of the Maryland debtor who kept them in his office in New York City until September 6, when he delivered them to Levien who has continuously held them at his office in New York City as security for the $250,000. loaned by him to the Maryland corporation. 321 On October 2, 1951, Lans delivered to Levien a stock certificate for all the outstanding shares of capital stock of the Louisiana debtor, issued by the Louisiana debtor to the Maryland debtor.

On August 28, the Foundation assigned to the Maryland debtor all the rights the Foundation had as sole stockholder of the Louisiana debtor to the assets distributable on dissolution of the Louisiana debtor, other than the right to receive the accounts receivable, trade-marks, trade names and formulae. On August 30, the Foundation promised the Maryland debtor that it would liquidate the Louisiana debtor as soon as possible and sell to the Maryland debtor all assets except certain trade-marks, formulae and

322 $850,000. accounts receivable of the Louisiana debtor, in return for the assumption by the Maryland debtor of the obligations of the Louisiana debtor. The Foundation, furthermore, granted to the Maryland debtor an exclusive license for the use of the formula and the trade-mark "Hadacol" for seventy-five years and promised to grant it an irrevocable proxy to vote the stock of the Louisiana debtor.

On August 30, all accounts receivable, bank accounts and orders for merchandise of the Louisiana debtor were transferred to the Maryland debtor in consideration of the assumption by the latter of the liabilities of the 323 Louisiana debtor. On August 31, the Maryland debtor entered into a factoring agreement with Standard Factors Corporation of New York City, assigned accounts receivable amounting to $2,000,000. to Standard Factors, and borrowed $150,000. from Standard Factors. Subsequently $600,000. more accounts receivable were assigned to Standard Factors.

The financial information available to the Maryland debtor on August 30 in no way indicated the threatened insolvency of the Louisiana debtor. During September, Louisiana counsel prepared various documents for use in 324 transferring the remaining assets of the Louisiana debtor to the Maryland debtor, but none was executed.

At some time during September, Standard Factors began to suspect that many of the assigned accounts receivable did not represent firm sales but only sales on consignment or "guaranteed sales". On or about September 20, the Collector of Internal Revenue in New Orleans filed a tax lien against the Louisiana debtor, in the amount of $656,151.83. On September 27, Standard Factors Corporation attached the only substantial bank account of the Maryland debtor.

On September 29th, the Foundation assigned the stock of the Louisiana debtor to the Maryland debtor. The

transfer was noted on the books of the Louisiana debtor 325 on October 1.

On October 2, at a meeting at the office of Lans, the directors of the Maryland debtor ratified the purchase of the stock by its president and passed a resolution to file a petition for reorganization under Chapter X in this district, and the directors of the Louisiana debtor passed a resolution to file under Chapter X in this district as a subsidiary of the Maryland debtor, if and when the petition of the Maryland debtor should be approved.

It is contended that these proceedings must be dismissed because the Maryland debtor was not in existence for the greater part of the six months preceding the 326 filing of its petition.

Section 128 of the Bankruptcy Act, 11 U. S. C. A. Sec. 528, provides: "If no bankruptcy proceeding is pending, an original petition may be filed with the court in whose territorial jurisdiction the corporation has had its principal place of business or its principal assets for the preceding six months or for a longer portion of the preceding six months than in any other jurisdiction."

Though the Maryland corporation did business for less than half the six months preceding the filing of the petition, it had its principal place of business and its principal assets in this district for a longer portion of the 327 preceding six months than in any other jurisdiction and therefore properly filed its petition in this jurisdiction. See *Fada of N. Y., Inc.* v. *Organization Service Co., Inc.*, 125 F. (2d) 120; 1 Collier on Bankruptcy par. 2.13 (14th ed. 1947), 6 id. par. 4.02(2); 1 Remington on Bankruptcy Sec. 45 (5th ed. 1950). See also *In re Goodfellow*, 10 Fed. Cas. No. 5536 interpreting similar language in the Bankruptcy Act of 1867.

From the time it was organized to the time when its petition was filed, the Maryland debtor held the meetings of its board of directors and conducted substantially all

328 its business transactions in this district. Herein the corporation borrowed $250,000. from Levien and loaned that sum to the Foundation; accepted an assignment of the accounts receivable of the Louisiana debtor and executed and ratified its various agreements with the Foundation providing for the transfer of assets and the granting of a license for the production of "Hadacol" to it. It here entered into a factoring agreement with Standard Factors Corporation, assigned pursuant thereto accounts receivable amounting to $2,600,000. and borrowed $150,000. It here retained accountants and kept nearly all the corporation's cash assets. The principal and only 329 place of business of the Maryland debtor was the office of its president, Lans, where its records were kept, where the board of directors met and to and from which its correspondence was sent. The principal assets of the Maryland debtor, the stock of the Louisiana debtor, accounts receivable of the Louisiana debtor and nearly all its cash assets, were also kept in this district.

The objecting creditors also urge that the petitions must be dismissed because there is not a sufficient showing that adequate relief can not be obtained under Chapter XI.

In a proceeding under Chapter XI, the Maryland debtor 330 would have been required to propose an arrangement in its petition, and the debtor would have remained in control of its business and its reorganization. Under Chapter X but not under Chapter XI, a disinterested trustee may be appointed and a subsidiary corporation made a party to the proceedings and the rights of secured creditors may be adjusted. See *S. E. C.* v. *United States Realty & Improvement Co.,* 310 U. S. 434, 447-452.

The persons who purchased the stock of the Louisiana debtor and who organized the Maryland debtor were faced upon short notice with the necessity of applying to the courts for reorganization of an enterprise which they had thought to be in good condition. The trustee has found

it necessary to conduct extensive investigations in order 331 to clarify the actual condition of the business and the possibility of its successful continuation. It is clear that the Maryland debtor could not have submitted the terms of a proposed arrangement in its petition as required under Chapter XI. Bankruptcy Act Sec. 323, 11 U. S. C. A. Sec. 723.

The extent of the problems involved, the unfamiliarity of the stockholders of the Maryland debtor with the business of the Louisiana company and the necessity to protect the interests of creditors, makes it desirable that its business should be conducted by a disinterested trustee, 332 who should investigate its affairs and formulate a plan, if possible, for the reorganization of the debtors for the benefit of the creditors and possibly the stockholders thereof. Furthermore, the trustee and creditors are questioning the validity of the assignment of accounts receivable to Standard Factors. Two of the directors and officers of the Maryland debtor are guarantors of the payment of the debt of the corporation to Standard Factors. Litigation of such matters by an independent trustee would best serve the interests of creditors.

The Supreme Court referred to the advantages of reorganizing parent and subsidiary corporations together as 333 a good reason for resorting to Chapter X proceedings. See *S. E. C.* v. *United States Realty & Improvement Co., supra,* p. 452. At the time of the filing of the petitions, a part, but not all, of the agreements between the Foundation and the Maryland debtor had been carried out. Transfer of assets of the Louisiana debtor, whose dissolution was to take place, to the Maryland debtor, which was to conduct the business of the debtors, had begun but had not been completed. The affairs of the two corporations were so closely connected that it became desirable that the same court should have jurisdiction of both debtors.

Moreover, there are secured creditors whose claims

334 could not be adjusted in a proceeding under Chapter XI. It is asserted that Levien's claim of $250,000. is secured by a pledge of the stock of the Louisiana debtor and that the claim of Standard Factors Corporation for about $65,000. is secured by a pledge of accounts receivable. There are a tax lien on property of the Louisiana debtor and warehouseman's liens amounting approximately to $13,000. on "Hadacol" belonging to the Louisiana debtor.

For the foregoing reasons, the court is of the opinion that reorganization under Chapter X is proper and advisable, notwithstanding that the corporate and financial structure of the parent Maryland debtor is relatively 335 simple.

Nor can the contention that the petitions were not filed in good faith be sustained.

The present stockholders of the Maryland debtor paid $250,000. to the selling stockholders of the Louisiana debtor as part of a purchase price of $8,205,000. for all the stock of the Louisiana debtor. It seems clear that they believed at the time that they had purchased the stock of a prosperous corporation. It is also apparent that the Maryland debtor was not incorporated for the purpose of reorganization but to serve as the "new cor-336 poration" contemplated by the agreements between the Foundation and the selling stockholders. The August 28 assignment by the Foundation to the Maryland debtor of the right to receive the assets of the Louisiana debtor and the provisions of the agreement dated August 30 were consistent with the original contract, according to which the Louisiana debtor was to be dissolved and a new corporation was to receive its assets, assume its liabilities and receive a license for the production of "Hadacol". It was not until some time in September that the purchasers of the Louisiana debtor's stock discovered that the corporation was insolvent.

It seems probable that the decision not to dissolve the

Louisiana debtor but to transfer its stock to the Maryland 337 debtor was made for the purpose of reorganizing both corporations under Chapter X in the same court.

The objecting creditors argue that this transfer of stock establishes bad faith because the Foundation was under an obligation to deliver the stock of the Louisiana debtor to the selling stockholders as security and to transfer it only for the purpose of dissolving the Louisiana debtor. The selling stockholders have not appeared in the proceedings and their rights are at present uncertain, with respect to the restrictions on transfer of the stock, the right to receive an assignment of $850,000. of accounts receivable and any possible liability of the selling stock-338 holders for representations as to the condition of the Louisiana debtor. The objecting creditors do not contend that the assignment of the stock of the Louisiana debtor to the Maryland debtor was invalid. See *Matter of Petition of Argus Co.*, 138 N. Y. 557, 571-573.

The prior actions of the purchasers of the Louisiana debtor's stock were in furtherance of the contract with the selling stockholders and when the true condition of the Louisiana debtor was discovered, and reorganization became necessary, the interests of the two debtors were already closely interrelated. The court is of the opinion 339 that no such lack of good faith has been shown as to require the dismissal of the petitions.

The objecting creditors further contend that the court committed error in entertaining jurisdiction of the Louisiana debtor without notice to interested parties.

Section 129 of the Bankruptcy Act, 11 U. S. C. A. Sec. 529, provides: "If a corporation be a subsidiary, an original petition by or against it may be filed either as provided in section 528 of this title or in the court which has approved the petition by or against its parent corporation." The Louisiana corporation was the subsidiary of the Maryland debtor on the date of the filing of the

340 petitions, since all its stock was owned by the Maryland debtor. Bankruptcy Act Sec. 106(13), 11 U. S. C. A. Sec. 506(13).

Section 129 of the Bankruptcy Act does not require a hearing on notice before the approval of the petition of a subsidiary. The objecting creditors contend that it was the Congressional intent that a subsidiary should not be permitted to file its petition in the court in which the proceeding of the parent was pending until the petition of the parent had acquired "a certain amount of permanence." See 6 Collier on Bankruptcy par. 4.12(2). However, the statute clearly authorizes the subsidiary to file its petition at any time after the petition of the parent has been approved. 341

There are approximately 7400 creditors of the Louisiana and Maryland debtors, besides an estimated 33,000 possible creditors for "push money" (commission payments to retail sellers of the product).

The total claims amount to approximately $4,250,000. The creditors objecting to the jurisdiction of the court represent claims aggregating approximately $161,000. The creditors' committee, which represents claims of approximately $3,500,000., urges that this court retain jurisdiction over both debtors in the Chapter X proceedings.

342 The court is of the opinion that these proceedings are properly before it and that there has been no evidence of prejudice to interested parties requiring the transfer of these proceedings to another district, under Bankruptcy Act Sec. 118, 11 U. S. C. A. Sec. 518.

The motion to dismiss the petition or to transfer the proceedings to another district accordingly is denied. March 18, 1952.

WM. BONDY,
United States District Judge.

Order Regarding Jurisdiction. 343

[SAME TITLE.]

This matter having come on to be heard on an order to show cause why the proceedings herein should not be dismissed or transferred, said order having been granted on the petition verified November 7, 1951, of Capitol Motor Courts and other creditors, represented by Krause, Hirsch, Levin and Heilpern, and upon an answer verified 344 November 7, 1951, filed by said creditors to the petitions for reorganization filed on October 3, 1951, by The LeBlanc Corporation (a Maryland corporation) and The LeBlanc Corporation (a Louisiana corporation), the Debtors herein, and due notice of the proceedings herein having been given to all parties entitled thereto in accordance with this Court's order entered October 26, 1951, and upon reading the statement of facts agreed to by the parties to this proceeding, dated December 5, 1951 and the memoranda submitted by counsel, and upon hearing Mr. George Levin in support of the answer and order to show cause and Messrs. Daniel James, Carlos Israels 345 and Leonard Bisco in opposition thereto, and after due deliberation thereon it is

Ordered, adjudged and decreed that:

(1) this Court's opinion herein of March 18, 1952, is hereby adopted as the findings of fact and conclusions of law of the Court; and

(2) the relief sought by Capitol Motor Courts et al. in their position and order to show cause of November 7,