SO ORDERED.

SIGNED this 19th day of April, 2024.

LENA MANSORI JAMES
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

In re:	)	
	)	
Mountainside Coal Company, Inc.,	)	Case No. 24-50161
	)	
Debtor.	)	Chapter 11
	)	
In re:	)	
	)	
Triple 7 Commodities, Inc.,	)	Case No. 24-50162
	)	
Debtor.	)	Chapter 11
	)	

ORDER
GRANTING MOTIONS TO TRANSFER VENUE

THIS MATTER came before the Court on the Amended Motion to Transfer Venue or, Alternatively, Appoint a Chapter 11 Trustee or Convert the Case to Chapter 7 (Case No. 24-50161 Docket No. 48; Case No. 24-50162 Docket No. 41, the "Motions"), filed by the United States Bankruptcy Administrator (the "BA"). The Motions ask the Court to transfer the above-captioned cases[1] to the Eastern District

[1] Although the cases of Mountainside Coal Company, Inc. ("Mountainside") and Triple 7 Commodities, Inc. ("Triple 7") are not jointly administered, the companies have a parent-subsidiary relationship and share common management and counsel. Evidence introduced by the parties confirmed the intertwined relationship between the Debtors. Given this close connection, the identical relief sought by the BA in each motion, and the overlapping factual and legal issues, the

of Kentucky under 28 U.S.C. § 1412 and Federal Rule of Bankruptcy Procedure 1014(a).[2] The Debtors and a group of four unsecured creditors located in North Carolina filed responses in opposition to the BA's Motions and in support of maintaining venue in the Middle District of North Carolina. Creditors BRCPF M&M Mountainside BLKR LLC ("BRCPF") and Binderless Coal Briquetting Company PTY Limited ("Binderless") filed a joint response in support of the BA's Motions as well as separate joint motions requesting transfer of venue under Federal Rule of Bankruptcy Procedure 1014. (Case No. 24-50161, Docket No. 74; Case No. 24-50162 Docket No. 67). The Kentucky Energy and Environment Cabinet (the "Kentucky Cabinet") also filed a response supporting transfer of venue to the Eastern District of Kentucky.

The Court held an evidentiary hearing on April 9, 2024, at which John Paul Hughes Cournoyer appeared in his capacity as BA and Phillip Sasser and David Jorjani appeared on behalf of the Debtors. Charles Baird appeared on behalf of BRCPF, Dale Clemons appeared on behalf of BRCPF and Binderless, Chrisandra Turner appeared by video on behalf of Binderless, and Lance Huffman appeared by video on behalf of the Kentucky Cabinet. Damian

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Court will address both motions, as well as the responses in opposition or support, within this single decision and collectively refer to Mountainside and Triple 7 as the "Debtors."

[2] Alternatively, the BA requests the appointment of a chapter 11 trustee or conversion of the case to chapter 7 based upon the Debtors' purported failures to fulfill obligations as a chapter 11 debtor-in-possession as well as potential fraud and mismanagement. The Court continued the hearing on that portion of the Motions to April 24, 2024.

Caldwell, president and CEO of both Debtors, was present and testified as to the assets and operations of the Debtors.

Based on the pleadings and evidence presented, the facts and circumstances of the Debtors, and for the reasons stated below, the Court will grant the requests to transfer the cases to the Eastern District of Kentucky.

JURISDICTION

The Court has jurisdiction over this contested matter under 28 U.S.C. § 1334. Under 28 U.S.C. § 157(a) and Local Civil Rule 83.11, the United States District Court for the Middle District of North Carolina has referred this proceeding to this Court. The Court has statutory and constitutional authority to enter a final order regarding the venue issues raised the motions. *See* 28 U.S.C. § 157(b)(2)(A); 28 U.S.C. § 1412; *In re Enron Corp.*, 274 B.R. 327, 342 (Bankr. S.D.N.Y. 2002) ("Enron I") (finding that "a motion to transfer venue is a core matter" and the bankruptcy court's authority "stems from the district court's referral of the case to the bankruptcy court pursuant to 28 U.S.C. § 157(a)"); *Walker v. Directory Distrib. Assocs. (In re Directory Distrib. Assocs.)*, 566 B.R. 869, 876 (Bankr. S.D. Tex. 2017) (finding bankruptcy court has constitutional authority to enter a final order on venue, which "is governed solely by federal law – namely two provisions of 28 U.S.C., i.e. §§ 14014(a) and 1412 and judicially-created bankruptcy law interpreting these provisions").

FINDINGS OF FACT

Based on the record in these bankruptcy cases and the evidence presented,

the Court makes the following findings of fact:[3]

1. The Debtors commenced these cases pro se on March 1, 2024, by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. In their petitions, both Debtors listed their principal place of business as 313 Ashford Court, Winston-Salem, North Carolina, located in Forsyth County and within the Middle District of North Carolina.

2. Mountainside, which is incorporated in Tennessee, owns and previously operated a coal-wash plant located in Barbourville, Kentucky and possesses coal mining permits in the surrounding counties of southeastern Kentucky.

3. Mountainside is certified to do business in Kentucky and its filings from 1982 to February 2024 reflected that its principal office was at 5540 Hwy 1809, Barbourville, Kentucky. On February 27, 2024, three days before filing its bankruptcy petition, Mountainside submitted a Statement of Change of Principal Address to the Kentucky Secretary of State, changing its principal office to 313 Ashford Court, Winston-Salem, North Carolina, which is the residential address of Damian Caldwell, the President and CEO of Mountainside. (BA Ex. A).

4. Triple 7, which is incorporated in West Virginia is the 100% owner of Mountainside and owns coal mining permits in West Virginia. (BA Ex. C, E)

5. Triple 7 is also certified to do business in Kentucky and in filings with the Kentucky Secretary of State, changed its principal address in May 2021 from 313 Ashford Court, Winston-Salem, North Carolina to 5540 Hwy 1809, Barbourville, Kentucky. (BA Ex. B).

6. According to its schedules of assets and liabilities, as of the petition date, Mountainside owned (i) the coal-wash plant, valued at $12,000,000, (ii) $1,291,700 in certificates of deposit and bonds, (iii) approximately $705,950 in vehicles, machinery and equipment, (iv) approximately $60,000 in raw coal located in Kentucky, (v) six surface mining permits for properties located within a twenty mile radius of the coal-wash plant, and (vi) four causes of action of unknown value. All tangible assets of Mountainside are in Kentucky. (BA Ex. D).

7. According to its schedule of assets and liabilities, as of the petition date, Triple 7's only assets were (i) a 100% interest in Mountainside, valued at $15,000,000, (ii) mineral rights, permits and bonds in two mines in West Virginia valued at approximately $13,000,000, and (iii) several causes of

[3] The Court reserves for later discussion, as appropriate, the recitation of additional unopposed facts, testimonial evidence, and exhibit excerpts.

action of unknown value. All tangible assets of Triple 7 are in West Virginia or Kentucky. (BA Ex. E).

8. Mountainside's coal-wash plant was in regular operation prior to June 2023, but due to a series of issues, including securing proper insurance, Mountainside halted all activities at the plant until late December 2023. An attempted restart at that time, however, faltered quickly, and Mountainside shut down once again in January 2024 and remains closed. Mountainside also generates revenue by subleasing several of its leases it holds to mine coal.

9. The coal-mining and washing operations of Triple 7 and Mountainside are intensively regulated by both federal-level agencies such as the Mine Safety and Health Administration, as well as state-level agencies and departments, including but not limited to the Kentucky Division of Mine Safety, Division of Water, and Office of Surface Mining Reclamation and Enforcement. Both Debtors are subject to numerous inspections from regulatory entities.

10. Caldwell conceded that he was "sure there are violations" of applicable regulatory and environmental requirements; each Statement of Financial Affairs also list pending and potential environmental proceedings commenced by the West Virginia Department of Environmental Protection and the Kentucky Department of Natural Resources. (BA Ex. D, E). Numerous notices of non-compliance related to Mountainside's mining permits were also introduced into evidence at the hearing. (BRCPF Ex. 2-5).

11. The mining permits held by Mountainside are subject to complex bonding requirements that allow the Debtor to pursue or sublease its mining rights. The bonds are held by the state of Kentucky and, while the Debtor can attempt to reclaim certain of its bonds, it would concomitantly lose its right to develop or sublease the mining rights associated with that bond.

12. Caldwell is head of operations for both Mountainside and Triple 7. According to the Statement of Financial Affairs, Caldwell owns approximately 51% of Triple 7, which in turn owns the entirety of Mountainside. (BA Ex. D, E). As a result, Caldwell, who described his role as "executive over the whole operation," makes the operational and managerial decisions for the Debtors.

13. Neither Triple 7 nor Mountainside have obtained a certificate of authority from the North Carolina Secretary of State, *see* N.C. Gen. Stat. § 55-15-01, and are not authorized to conduct business in North Carolina.

14. Caldwell is the sole decision maker for the Debtors' corporate direction and strategic choices. Caldwell works mainly from his home office in Winston-Salem, North Carolina, but confirmed that when the coal-wash plant was in operation, he travelled regularly to work out of an office in the plant one to two days per week. When production at the coal-wash plant is halted, Caldwell limits his visits to once every two weeks. Caldwell also travels frequently, both domestically and internationally, in the pursuit of new business opportunities.

15. Caldwell is assisted by several officers and managers. Travis Burris, the lead engineer and Caldwell's "right-hand," is based in Greensboro, North Carolina but regularly travelled to the coal-wash plant in Kentucky several days a week when the plant was operating. Tron Turner, who acts as head of logistics, also resides in Greensboro. Robert Christiansen is the CFO for both Debtors and resides in Tampa, Florida. Warren Kelm, the chief engineer for the wash plant, is a resident of Ohio but regularly worked on site when it was operating. Tony Smith is assistant for operations at the coal-wash plant and is based in Kentucky. There are also two executive administrative assistants who assist Caldwell with day-to-day activities from Georgia. Caldwell testified that the team communicated remotely via phone or videoconference but met periodically either onsite at the coal-wash plant or at Caldwell's residence in Winston-Salem.

16. As reflected in the Statements of Financial Affairs (BA Ex. D, E), there are four cases pending against Triple 7, three of which are before federal or state courts in Kentucky. There are five cases pending against Mountainside, four of which are before federal or state courts in Kentucky.

DISCUSSION

I. Venue Under 28 U.S.C. § 1408

The BA, BRCPF, Binderless, and the Kentucky Cabinet assert that venue for these cases is improper under the bankruptcy venue statute, which provides that

> Except as provided in section 1410 of this title, 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.

There are five means by which a non-chapter 15 debtor may establish proper venue: (1) domicile, (2) residence, (3) principal place of business, (4) location of principal assets, or (5) affiliation or partnership with a debtor whose case is pending in the district. *See* 28 U.S.C. § 1408; *In re Houghton Mifflin Harcourt Publ'g Co.*, 474 B.R. 122, 131 (Bankr. S.D.N.Y. 2012).

Mountainside and Triple 7 are not incorporated in North Carolina and their tangible assets are not located within this district, but the Debtors maintain that venue is proper because, as reflected in the petitions, the principal place of business for each is 313 Ashford Court, Winston-Salem, North Carolina. (BA Ex. D, E). A debtor's choice of forum is presumed to be "a proper district for venue purposes and the party challenging a debtor's choice must show by a preponderance of the evidence that the venue is improper." *In re Grayson O Co.*, No. 23-50124, 2023 WL 4876240, at *3 (Bankr. W.D.N.C. July 31, 2023) (quoting *In re Mid Atl. Retail Grp., Inc.*, No. 07-81745, 2008 WL 612287, at *2 (Bankr. M.D.N.C. Jan. 4, 2008)). The BA, BRCPF, Binderless, and the Kentucky Cabinet argue that venue is improper because the Debtors are not incorporated or licensed to do business in North Carolina, do not have their primary operations and physical assets in North Carolina, and have consistently represented in corporate filings that their principal

place of business is not within North Carolina. After careful consideration of the evidence and arguments, the Court finds that the movants have not met the required burden to show improper venue, primarily because they adopt an overly narrow reading of "principal place of business" that is out of step with the Supreme Court's guidance in *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010).

The statutory term "'principal place of business' is best read as referring to the place where a corporation's officers direct, control, and coordinate the corporation's activities" and is sometimes referred to as the "nerve center" of the company, i.e. "the actual center of direction, control, and coordination[.]" *Hertz*, 559 U.S. at 92-93. "The location of the debtor's principal place of business presents a question of fact to be resolved after considering all of the relevant facts and circumstances." *Broady v. Harvey (In re Broady)*, 247 B.R. 470, 473 (8th Cir. B.A.P. 2000) (citing *In re Peachtree Lane Assocs.*, 150 F.3d 788, 793 (7th Cir. 1998)); *see also Grayson*, 2023 WL 4876240, at *3 (collecting cases).

Here, the Court finds the evidentiary record demonstrates that the nerve center for Mountainside and Triple 7 is in the Middle District of North Carolina, where the Debtors' decision maker—President and CEO Damian Caldwell—directs the corporations' strategy and activities. Although much of the management team works remotely and communications are conducted by phone or videoconference, Caldwell has, for a longer period than the 180-day timeframe contemplated by § 1408, coordinated the activities of Mountainside and Triple 7 from his residence in Winston-Salem. The argument that venue is improper because the Debtors'

business operations and assets are located in Kentucky and West Virginia misconstrues *Hertz*, in which the Court "rejected the more general 'business activities test,' which measured the amount of business a corporation conducted in a particular state to determine its principal place of business," *Hoschar v. Appalachian Power Co.*, 739 F.3d 163, 170 (4th Cir. 2014) (citing *Hertz*, 559 U.S. at 93)). Rather, "the focus remains on the location of direction, control and coordination of the corporation's activities." *Hoschar*, 793 F.3d at 174. The Debtors' filings and Caldwell's testimony reflect that, despite the operations occurring primarily in Kentucky, "the direction and control of those operations originate in this district." *In re First Fruits Holdings, LLC*, No. 18-02135-5-DMW, 2018 WL 2759384, at *3 (Bankr. E.D.N.C. June 6, 2018). Accordingly, venue in this district is proper as it is the location of the Debtors' principal place of business.[4]

For similar reasons, the Debtors' lack of registration with the North Carolina Secretary of State to conduct business in North Carolina is not determinative of the Debtors' principal place of business in and of itself. "There is no requirement in 28 U.S.C. § 1408 that a foreign debtor must register to conduct business within a state in order to be eligible to file a bankruptcy petition and to become a bankruptcy

[4] A finding that the Debtors maintain a principal place of business in Winston-Salem while their operations and assets are primarily located in Kentucky may appear "counterintuitive," but the Supreme Court cautioned that such "anomalies" could occur under the *Hertz* test. 559 U.S. at 96. The Court hypothesized that "if the bulk of a company's business activities visible to the public take place in New Jersey, while its top officers direct those activities just across the river in New York, the 'principal place of business' is New York." *Id.*; *see also Cent. W. Va. Energy Co. v. Mt. State Carbon, LLC*, 636 F.3d 101, 106 (4th Cir. 2011) (finding under *Hertz* that a company's day-to-day operations occurred in West Virginia, but its officers directed the company's high-level decisions from the principal place of business in Michigan). Similarly, here, the Debtors' operations and public facing activities take place primarily in Kentucky, but the high-level direction and decision making is made in North Carolina.

debtor in that state by virtue of its principal place of business being within that state." *In re Grand Dakota Partners, LLC*, 573 B.R. 197, 201 (Bankr. W.D.N.C. 2017). Although the lack of such registration may be "non-dispositive evidence regarding the location of a corporation's principal place of business," *id.*, the evidence regarding the Debtors' operational nature and the location of its chief decision maker clearly supports a finding that the Debtors' nerve center is in the Middle District of North Carolina. The fact that the Debtors' corporate filings refer to 5540 Hwy 1809, Barbourville, Kentucky as the principal office is also not decisive for purposes of venue. "[T]here is noting in *Hertz* to suggest that a company cannot refer to one office as its 'headquarters' while maintaining its 'nerve center' in another office." *Hoschar*, 793 F.3d at 173 (finding references to an office as the company's "headquarters" did not reflect where "headquarters-type" decisions were made); *Cent. W. Va. Energy Co.,* 636 F.3d at 105 n.2 (noting that newspaper articles referring to city as corporation's headquarters did not convert it into "the place where the corporation's high level officers direct, control and coordinate the corporation's activities") (quoting *Hertz*, 559 U.S. at 80).

Based on the facts and circumstances of these cases, and the evidentiary record before it, the Court finds that the Debtors' nerve center is at Caldwell's residence in Winston-Salem, North Carolina, which is where the "direction, control, and coordination" of both Mountainside and Triple 7 occurred both during and after the coal-wash plant was in operation. Because both Debtors had their principal place of business located in the Middle District of North Carolina for more than 180

days preceding the commencement of their cases on March 1, 2024, the Court finds that venue is proper in this district.

II. Change of Venue Under 28 U.S.C. § 1412

Alternatively, the movants argue that even if the Debtors properly filed in the Middle District of North Carolina, the case should nevertheless be transferred to the Eastern District of Kentucky "in the interest of justice or for the convenience of the parties." 28 U.S.C. § 1412; *see also* Fed. R. Bankr. P. 1014(a)(1) ("[T]he court…may transfer the case to any other district if the court determines that the transfer is in the interest of justice of for the convenience of the parties.").

The movants bear the burden of showing "by a preponderance of the evidence that the transfer of venue is warranted" and "[t]he decision of whether to transfer venue is within the court's discretion based on an individualized case-by-case analysis of convenience and fairness." *Enron I*, 274 B.R. at 342; *Grand Dakota,* 573 B.R. at 201. Both § 1412 and Rule 1014(a) are "written in the disjunctive," making transfer of venue appropriate either in the interest of justice or for the convenience of the parties. *Grand Dakota*, 573 B.R. at 201 (quoting *In re Patriot Coal Corp.*, 482 B.R. 718, 738-39 (Bankr. S.D.N.Y. 2012)). However, "a debtor's choice of forum is entitled to great weight if venue is proper" and "[t]ransferring venue of a bankruptcy case is not to be taken lightly." *Enron I*, 274 B.R. at 342; *see also In re Bestwall LLC*, 605 B.R. 43, 51 (Bankr. W.D.N.C. 2019) (quoting *In re Land Stewards, L.C.*, 293 B.R. 364, 369 (Bankr. E.D. Va. 2002) ("Where the existing

venue is entirely appropriate, this Court exercises its power to transfer cases cautiously.")).

A. The Convenience of the Parties

When weighing whether to transfer venue "for the convenience of parties" under § 1412, bankruptcy courts across the country, including in North Carolina, have applied the six-criteria test developed by the Fifth Circuit Court of Appeals in *In re Commonwealth Oil Ref. Co.*, 596 F.2d 1239, 1247 (5th Cir. 1979) ("CORCO"). *See Grand Dakota*, 573 B.R. at 201 (collecting cases); *Enron I*, 274 B.R. at 344 (observing that the *CORCO* test is "cited in virtually every opinion … concerning the transfer of a bankruptcy case in its entirety"). The six factors are

> (1) the proximity of creditors of every kind to the court; (2) the proximity of the Debtor to the court; (3) the proximity of the witnesses necessary to the administration of the estate; (4) the location of the assets; (5) the economic administration of the estate; and (6) the necessity for ancillary administration if a liquidation should occur.

CORCO, 596 F.2d at 1247; *Bestwall*, 605 B.R. at 53.

As is the case with many multi-factored tests, however, the elements listed in *CORCO* cannot be applied mechanically or "viewed in an insular manner." *In re Enron Corp.*, 284 B.R. 376, 390 (Bankr. S.D.N.Y. 2002) ("Enron II").[5] Instead, courts are advised to apply the factors "with a broader perspective" and "take a flexible approach … because venue does not easily submit to hard and fast rules." *Id.*

[5] Indeed, many of the factors listed in *CORCO* may be inapplicable based on the circumstances of a case. For instance, the sixth factor – the necessity for ancillary administration if a liquidation should occur – is discounted or discarded completely in cases involving a chapter 11 debtor seeking reorganization because anticipating the failure of that reorganization effort "is an illogical basis upon which to predicate a transfer." *Enron II*, 284 B.R. at 403 (quoting *CORCO*, 596 F.2d at 1248).

(internal citation omitted). After employing this flexible standard and considering the Debtors' unique facts and circumstances, the Court finds the balance of the factors weigh in favor of transfer to the Eastern District of Kentucky.

Initially, the Court observes that nearly all of the Debtors' tangible assets are located in Kentucky, including the coal-wash plant that serves as the centerpiece of their operations, and "[t]here is ample support for the proposition that a Chapter 11 case can, and should, be administered in the bankruptcy court closest to a debtor's major asset." *Grand Dakota*, 573 B.R. at 202 (collecting cases). Some courts have declined to transfer cases to the location of a debtor's major asset where the business is shut down. *See First Fruits Holdings*, 2018 WL 2759384, at *4 (finding debtor's assets in Idaho could be administered from North Carolina where "[b]oth the real property and personal property are secured [and] no longer being used"). However, the Court finds this case more comparable to *Grand Dakota*, a case "involv[ing] a large, income-producing business seeking reorganization within continuing transactions with local creditors." *Id.* at *5. While it is true that the coal-wash plant is currently inoperative and these cases are still in their nascent stages, the testimony of Caldwell as well as the comments of counsel demonstrate that the Debtors' chapter 11 plans will focus on restarting the coal-wash plant, either for reorganization or for sale as a going concern. The Debtors already attempted to restart the plant in December 2023 and intend to do so again. Moreover, the Debtors also plan to generate revenue through the continued subleasing of mining rights in Kentucky and, potentially, the release of bonds held by the state of

Kentucky. For these reasons, the Court finds the location and intended use of the Debtors' assets firmly support transfer of these cases to Kentucky.

The Court also finds that the creditor base in these cases would deem Kentucky a more convenient venue. In considering the proximity of creditors, the Court must consider "the number of creditors as well as the amounts owed." *In re Dunmore Homes, Inc.*, 380 B.R. 663, 676 (Bankr. S.D.N.Y. 2008) (citing *Enron I*, 274 B.R. at 345)). Based on a review of the Debtors' schedules, and the positions taken by creditors appearing in the case, the Court makes the following findings regarding each class of creditors:

- *Secured*: Half of Mountainside's six secured creditors are either based in Kentucky or, in the case of BRCPF, filed a response supporting venue in Kentucky. The same group also represents nearly all of Mountainside's total secured debt.[6] Although there are no Kentucky-based secured creditors scheduled for Triple 7, there are no secured debts held by *any* North Carolina creditors in either case.
- *Priority*: Other than the IRS, the only other priority unsecured creditor scheduled for the Debtors is the Kentucky Department of Revenue, which represents more than half of the total priority debt in these cases.[7]
- *Unsecured*: The unsecured creditors are more diffuse by comparison, but there are disproportionately more Kentucky creditors scheduled in Mountainside, both by number and by claim amount.[8] For Triple 7, North Carolina-based creditors slightly outnumber those based in Kentucky and include the four creditors object to the motions. Still, creditors based in or arguing in favor of venue in Kentucky represent

[6] The three creditors supporting venue in Kentucky represent $13,683,792 of Mountainside's $14,134,190 total secured debt.

[7] Based on the Debtors' schedules, the Kentucky Department of Revenue holds $543,416.83 of the Debtors' collective $1,084,298.02 in priority debt.

[8] Out of the 59 creditors listed by Mountainside, 25—nearly half—reside in Kentucky, who collectively are owed $1,550,298.36. By comparison, there are only four North Carolina creditors holding $983,892.90 in unsecured debts.

> the majority of Triple 7's unsecured debt by claim amount.[9] The Court also observes that the vast majority of trade creditors and vendors, as well as most of the scheduled counterparties to executory contracts, are located in Kentucky and "would likely bear substantial hardship traveling to defend their claims in North Carolina." *Grand Dakota*, 573 B.R. at 202; *see also Dunmore Homes*, 380 B.R. at 676.

Based on the nature, number, and amount of claims in the Debtors' schedules, and having determined that the greater number of creditors in these cases are either based in Kentucky or have argued in favor of venue in Kentucky, the Court determines that this factor also favors transfer.

Though it is a closer call, the proximity of the Debtors and witnesses necessary to the administration of the estate also support transferring venue to Kentucky. Neither Mountainside nor Triple 7 are incorporated in North Carolina and while the Debtors' nerve center, for purposes of 28 U.S.C. § 1408, is in Winston-Salem, their past managerial practices reveal that their activities and assets are and remain intensively focused on Kentucky. Half of the Debtors' shared key managers and officers are based outside of the Middle District, including the chief financial officer, the chief engineer of the coal-wash plant, and the assistant for the plant's operations. Though much of their collective work continues to be conducted remotely, Caldwell's testimony demonstrates that the common denominator among the Debtors' leadership team is the coal-wash plant; when it was operational, the majority of the managers and key employees either worked at or travelled to the

[9] In Triple 7, there are eight North Carolina creditors representing $3,067,083 in debt and five based in Kentucky representing $1,823,892 in debt. When combined with the $11,000,000 unsecured debt held by BRDPF, however, those based in or favoring venue in Kentucky represent $12,823,892 of Triple 7's $21,972,440.67 in general unsecured debt.

coal-wash plant on a regular, weekly basis. Critically, those most responsible for the coal-wash plant's day-to-day operations—chief engineer Warren Kelm and assistant for operations Tony Smith—would likely be the necessary witnesses to provide any testimony regarding the Debtors' efforts to restart the plant's operations and are based much closer to Kentucky than North Carolina. *Grand Dakota*, 573 B.R. at 202-03.

The Debtors maintain that venuing these cases in Kentucky would be less convenient for Caldwell and his chief assistant Travis Burris. However, Caldwell and Burris regularly worked onsite at the coal-wash plant when it was operational. Indeed, Caldwell still visits the plant, even in its current inoperative state, once every two weeks. Given these frequent visits, the Court finds that Caldwell and Burris could likely coordinate their regular travel to the coal-wash plant to coincide with attending bankruptcy court hearings in Kentucky. *See Grand Dakota*, 573 B.R. at 204; *In re Pinehaven Assocs.*, 132 B.R. 982, 989 (Bankr. E.D.N.Y. 1991). Though the Court gives due weight to the fact that the Middle District of North Carolina is home to the Debtors' CEO and President, this finding does not serve as an impediment to transfer given Caldwell's frequent travel and history of onsite work at the coal-wash plant.

Beyond the Debtors' officers and key employees, other potential witnesses would find Kentucky to be a more convenient venue. If there is to be a sale of the coal-wash plant or mining permits, actions the Debtors have already contemplated, any real estate brokers, appraisers, accountants, and auctioneers that will be

employed are likely to be hired from Kentucky. Testimony could be more readily obtained, and in a cost-effective manner, if these cases were venued in Kentucky rather than North Carolina. *See, e.g.*, *Grand Dakota*, 573 B.R. at 203; *Pinehaven*, 132 B.R. at 988-89; *In re Old Delmar Corp.*, 45 B.R. 883, 885 (S.D.N.Y. 1985). And as stated by the Kentucky Cabinet, state regulators, including mine inspectors and bond release specialists, could more fully participate if the cases were in the Eastern District of Kentucky. Specifically, these regulators could provide frequent, pertinent testimony regarding onsite violations of environmental law, estimates to the costs of reclaiming land, and the prerequisites for releasing any bonds held by the state of Kentucky.

In terms of the economic and efficient administration of the estate, which is "given the most weight," *Dunmore Homes*, 380 B.R. at 672 (citing *Enron I*, 274 B.R. at 343)), the Debtors argue that it would be costly and challenging to find replacement bankruptcy counsel in Kentucky; the Debtors, however, offered no evidence to support that position and, in any event, the "location of counsel to a party in interest selected by that party after the filing of the Chapter 11 case has no bearing on venue." *Bestwall*, 605 B.R. at 53. The Court further notes that the Debtors have general counsel in Kentucky, who presumably could assist in locating bankruptcy counsel, and the Debtors do not have a long-standing relationship with their current North Carolina bankruptcy counsel, who was retained post-petition.

In considering the efficient administration of the estate, "it is also necessary to take account of the 'learning curve.'" *Enron II*, 284 B.R. at 404. "The learning

curve analysis involves consideration of the time and effort spent by the current judge and the corresponding effect on the bankruptcy case in transferring venue." *Id.*[10] Here, the BA moved to transfer the cases within a week of the petition date, meaning the learning curve is of little import and does not weigh against transfer. Though this Court has gained some familiarity, the cases are in their initial stages, and the Court has made no determination on any pivotal issues, including the use of cash collateral, the appointment of an examiner, and requests to convert the case or appoint a chapter 11 trustee.

After considering the standard set forth in *CORCO* and applying it in a flexible manner to the unique circumstances of the Debtors, the Court finds the balance of the factors weigh in favor of transfer.

B. The Interest of Justice

Separately, courts may consider transferring venue of a case under 28 U.S.C. § 1412 in "the interest of justice." *See also* Fed. R. Bankr. 1014(a). The interest of justice standard is similarly "broad and flexible" and applied "based on the facts and

[10] Cases that have been pending for an extended time or in which numerous matters have already been decided, particularly those involving complex debtors or litigation, tend to have a higher "learning curve" militating against transfer. *Compare Enron I*, 274 B.R. at 350 (finding transfer "would not promote judicial economy as it would only delay pending matters while a transferee court familiarized itself with the intricacies of these cases") and *In re Rests. Acquisition I, LLC*, No. 15-12406 KG, 2016 Bankr. LEXIS 684 (Bankr. D. Del. Mar. 4, 2016) (finding the learning curve weighed against transfer as the court "has spent a significant amount of time familiarizing itself with the Debtor's business and has granted numerous requests for relief in connection with these proceedings") *with Dunmore Homes*, 380 B.R. at 672 (finding transfer motion "has been made early in the case" and the matters the court already considered "are not likely to be the kinds of issues that will require the most court time in the future") and *In re B.L. of Miami, Inc.*, 294 B.R. 325, 333 (Bankr. D. Nev. 2003) (noting that the court has "questioned venue from the beginning and has dealt only with relatively simple uncontested matters" in a case which "is in its early stages").

circumstances of each case." *Enron II*, 284 B.R. at 403. Courts have developed and considered a variety of factors as part of this analysis, such as whether

> (i) transfer would promote the economic and efficient administration of the bankruptcy estate; (ii) the interests of judicial economy would be served by the transfer; (iii) the parties would be able to receive a fair trial in each of the possible venues; (iv) either forum has an interest in having the controversy decided within its borders; (v) the enforceability of any judgment would be affected by the transfer; and (vi) the plaintiff's original choice of forum should be disturbed.

Bestwall, 605 B.R. at 51 (citing *Brown v. Wells Fargo, N.A.*, 463 B.R. 332, 339 (M.D.N.C. 2011) (cleaned up). "There is significant overlap between the convenience factors and these [interest of justice] factors." *Grayson*, 2023 WL 4876240, at *5. Ultimately, "[i]n evaluating the interest of justice, the Court must consider what will promote the efficient administration of the estate, judicial economy, timeliness and fairness." *Enron II*, 284 B.R. at 403; *Bestwall*, 605 B.R. at 51. "As a practical matter, in most cases, if the convenience of the parties and witnesses will be served by transfer, it usually follows that justice will also be served by transfer." *Grand Dakota*, 573 B.R. at 205 (quoting *Pinehaven*, 132 B.R. at 990)).

After balancing those factors relevant to the Debtors' cases,[11] the Court finds they collectively weigh in favor of transfer to the Eastern District of Kentucky. The Court has already addressed in detail the economic and efficient

[11] The third and fifth factors – the ability to receive a fair trial and the enforceability of any judgment – are neutral or inapplicable to the analysis. No party has raised any arguments regarding these factors and there are no contentions that parties' rights to a fair trial or ability to enforce a judgment will be impacted by transfer. Therefore, the Court concludes these factors are neutral and play no role in the interest of justice analysis under § 1412.

administration of the bankruptcy estate as part of its "convenience of the parties" analysis, finding it favors venue in Kentucky. The Court will not repeat the analysis here but notes that it too favors transfer of the cases in the interest of justice.

Judicial economy also favors transfer of venue to Kentucky. There are already pending civil cases against both Debtors in Kentucky—at the state and federal level—a fact that supports venuing the bankruptcy cases in the same state. *See Dunmore Homes*, 380 B.R. at 674 (finding that, "because cases are already pending in state courts against some of the Debtor's subsidiaries [but stayed as to the Debtor] … judicial economy would be better served if all cases were pending in California"); *In re LTL Mgmt. LLC*, No. 21-30589, 2021 WL 5343945, at *3 (Bankr. W.D.N.C. Nov. 16, 2021) (finding "[s]ubstantial litigation in another district supports the transfer of the case to that district").

Courts also consider the frequency with which interpretation of state and regulatory law are likely to arise; recurring or expected legal questions uniquely within a court's experience or expertise may tilt the balance toward one venue over another. For instance, courts have found support to transfer or retain venue in the interest of judicial economy depending upon which state's law will govern anticipated disputes. *See, e.g.*, *In re Hermitage Inn Real Est. Holding Co., LLC,* No. 19-10214, 2019 WL 2536075, at *15-16 (Bankr. D. Vt. June 19, 2019); *Dunmore Homes*, 380 B.R. at 674; *B.L. of Miami*, 294 B.R. at 332. Although the precise nature of what legal questions will arise in these cases is

not completely clear at this early stage, it is likely that many will be governed by Kentucky law.

It is also a near certainty that the court would be called on to assess and potentially determine legal and operational issues involving the Debtors' coal mining activities, which courts have generally recognized as being "heavily regulated" by numerous federal and state agencies. *See, e.g.*, *Blankenship v. Manchin*, 471 F.3d 523, 530 (4th Cir. 2006); *Appolo Fuels, Inc. v. United States*, 381 F.3d 1338, 1349 (Fed. Cir. 2004). Counsel for the Kentucky Energy and Environment Cabinet similarly stated that coal mining is "highly regulated activity," observing that these cases may require, among other things, testimony from state regulators on the condition of the Debtors' assets, the scope of the Debtors' environmental liability, and the costs of reclaiming leased lands. As one court explained,

> In addition, the oil and gas industry is a highly regulated one, involving serious geological, environmental and reclamation issues of most importance to the state of Wyoming and the local counties and communities where operations have taken place. These regulatory agencies, local government units and general-creditor suppliers must play a crucial role in any bankruptcy case. The Debtor should be able to better coordinate its Wyoming administrative and regulatory matters with a pending bankruptcy case if both are in Wyoming.

In re Condor Expl., LLC, 294 B.R. 370, 379 (Bankr. D. Colo. 2003). The Court concurs with this reasoning, finding that venuing these cases in Kentucky would allow the Debtors to better coordinate with state and federal inspectors, abate

existing environmental violations at their Kentucky-based assets, and satisfy any regulatory obligations going forward.

Given the intensive state regulatory framework and the impact on local communities around the Debtors' coal operations, the Court also finds that Kentucky has a greater interest than North Carolina in having the Debtors' cases determined within its borders. Courts have recognized that there is "a local interest in having localized controversies decided at home." *Oceana v. Bureau of Ocean Energy Mgmt.*, 962 F. Supp. 2d 70, 74 (D.D.C. 2013) (quoting *Am. Dredging Co. v. Miller*, 510 U.S. 443, 448 (1994)). Here, there are two key local considerations—the environmental and economic impacts of the Debtors' coal operations—that favor Kentucky as the forum with the greater interest.

In terms of the environmental interest, counsel for the Kentucky Cabinet argued that "because surface coal mining leaves significant disturbance to the land until a coal mine is fully reclaimed, Kentucky citizens who own land underlying these mines and adjacent Kentucky property owners who are affected by these [environmental] violations at these mines have an interest in being able to fully participate" in these bankruptcy cases. The Court agrees that this compelling state interest weighs in favor of venue in Kentucky. Like the oil and gas industry, the Debtors' coal operations "involv[e] serious geological, environmental and reclamation issues" of most importance to the people of Kentucky and the local communities surrounding the Debtors' assets. *Condor*, 294 B.R. at 379. The Debtors' surface mining plans, as well as the closure and

possible reopening of the coal-wash plant, are also of important interest to the local economies of southeastern Kentucky, particularly in terms of job creation and tax revenue. Moreover, the majority of landowners leasing real property to the Debtors for surface mining are based in Kentucky. (BA Ex. D). In contrast to the impact on Kentucky, the outcome of these chapter 11 cases would have little bearing on the people or local economies of the Middle District of North Carolina. Collectively, therefore, the environmental and economic impacts of the Debtors' coal operations persuade the Court that Kentucky is the forum with the most substantial interest in determining the course of these bankruptcy cases. *See Hermitage Inn*, 2019 WL 2536075, at *16; *Dunmore Homes*, 380 B.R. at 674.

Though "a debtor's choice of forum is entitled to great weight if venue is proper," *Enron I*, 274 B.R. at 342, it "is diminished when the 'choice of forum is not directly related to the operative, underlying facts of the case." *Grand Dakota*, 573 B.R. at 203 (quoting *In re Rehoboth Hosp., LP*, No. 11-12798 KG, 2011 WL 5024267, at *3 (Bankr. D. Del. Oct. 19, 2011)). Here, even granting that many of the Debtors' business activities and strategizing are conducted from within this district, these efforts are designed to further the Debtors' operations of coal-washing and coal mining in Kentucky. The Debtors' connections to their chosen venue in North Carolina simply do not outweigh the many factors favoring Kentucky. *See Dunmore Homes*, 380 B.R. at 675 (finding transfer of venue California appropriate based on "the thin nexus of the Debtor to the Southern District of New York, and the overwhelming contacts between

the Debtor and Eastern District of California"); *Grand Dakota*, 573 B.R. at 203 ("Here to the extent that the presence of the Debtors' executive management in North Carolina might favor retention of venue, such factor is significantly outweighed by consideration of the other factors which heavily favor transfer of these cases to North Dakota.").

Based on these findings, and particularly the local environmental and economic interests pertaining to the Debtors' coal operations, the Court concludes that the interest of justice factors decidedly favor transferring venue of these cases to the Eastern District of Kentucky.

CONCLUSION

For the reasons stated above, the Court finds it appropriate to transfer venue of the above-captioned bankruptcy cases under 28 U.S.C. § 1412 and Federal Rule of Bankruptcy Procedure 1014 to the Eastern District of Kentucky for the convenience of the parties and in the interest of justice. [12]

Accordingly, IT IS HEREBY ORDERED that:

1. The Motions to transfer venue are GRANTED;
2. The Clerk is directed to transfer these two cases, *In re Mountainside Coal Company, Inc.*, ChCase No. 24-50161, and *In re Triple 7 Commodities, Inc.*, Case No. 24-50162, to the Eastern District of Kentucky.

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[12] While the Court is mindful that Triple 7 is incorporated in West Virginia and has a principal place of business in North Carolina, it nevertheless finds venue would be proper in the Eastern District of Kentucky given Triple 7's status as an affiliate of Mountainside. *See* 28 U.S.C. § 1408(2).

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