




**SO ORDERED,**

  
Judge Neil P. Olack  
United States Bankruptcy Judge  
Date Signed: June 25, 2020

**The Order of the Court is set forth below. The docket reflects the date entered.**

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE:**

**CASE NO. 20-01243-NPO**

**CHAPTER 11**

**AMAZING ENERGY MS, LLC,**

***JOINT ADMINISTRATION WITH***

**DEBTORS.**

**CASE NO. 20-01244-NPO**

**CASE NO. 20-01245-NPO**

**MEMORANDUM OPINION AND ORDER: (1) GRANTING  
MOTION TO DISMISS OR TRANSFER VENUE OF CASES AND  
(2) TRANSFERRING VENUE TO THE SHERMAN DIVISION OF THE  
U.S. BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TEXAS**

There came before the Court for a telephonic hearing on June 9, 2020 (the “Hearing”), the Motion to Dismiss or Transfer Venue of Cases (the “Motion”) filed by Arnold Jed Miesner (“Jed Miesner”), Lesa Renee Miesner (“Lesa Miesner”), Petro Pro, Ltd. (“Petro Pro”), and JLM Strategic Investments, LP (“JLM Strategic Investments”) (collectively, the “Miesner Companies”) in the chapter 11 bankruptcy cases of Amazing Energy MS, LLC (the “AEMS Case”) (Case No. 20-01243-NPO) (AEMS Dkt. 28); Amazing Energy, LLC (the “AEL Case”) (Case No. 20-01244-NPO) (AEL Dkt. 28); and Amazing Energy Holdings, LLC (the “AEH Case”) (Case No. 20-01245-NPO) (AEH Dkt. 28) (collectively, the “Amazing Cases”); the Opposition to Motion to Dismiss or Transfer Venue of Cases (the “Response”) filed by Amazing Energy MS, LLC (“AEMS”); Amazing Energy LLC (“AEL”), and Amazing Energy Holdings, LLC (“AEH”)

(collectively, the “Amazing Debtors”) in the Amazing Cases (AEMS Dkt. 88; AEL Dkt. 88; AEH Dkt. 108); the Response in Support of PPF 11 LLC of the Motion to Dismiss or Transfer Venue of Cases [Dkt. #28] (the “PPF Joinder”) filed by PPF 11, LLC (“PPF”) in the Amazing Cases (AEMS Dkt. 90; AEL Dkt. 90; AEH Dkt. 111); the Brief in Support of Corporate Deposition (Rule 7030(b)(6)) (the “Miesner Brief”) filed by the Miesner Companies in the Amazing Cases (AEMS Dkt. 103; AEL Dkt. 103; AEH Dkt. 122); the Joinder in Support of Motion to Dismiss or Transfer Venue of Cases [Docket No. 28] (the “AAPIM Joinder”) filed by AAPIM, LLC (“AAPIM”) in the Amazing Cases (AEMS Dkt. 104; AEL Dkt. 104; AEH Dkt. 123); the Miesner Companies’ Exhibit List filed by the Miesner Companies in the Amazing Cases (AEMS Dkt. 105; AEL Dkt. 105; AEH Dkt. 124); and the Affidavit of Tom W. Thornhill (the “Thornhill Affidavit”) filed by the Amazing Debtors in the Amazing Cases (AEMS Dkt. 107; AEL Dkt. 107; AEH Dkt. 126). A telephonic evidentiary hearing on the Motion, the Response, the PPF Joinder, and the AAPIM Joinder originally was set to take place on Tuesday, May 19, 2020, but the Court converted the hearing to a telephonic status conference because of the filing of the Miesner Brief on Friday, May 15, 2020, the voluminous exhibits delivered to Chambers on Monday, May 18, 2020, the Court’s limited judicial resources, the caseload of the Court, and the COVID-19-related restrictions on the Court’s operations.<sup>1</sup> (AEMS Dkt. 108; AEL Dkt. 108; AEH Dkt. 127). At the status conference on May 19, 2020, the Court reset the date of the Hearing and discussed the logistics of conducting the evidentiary hearing by telephone given the volume of exhibits and the potential need for live testimony. The parties agreed that the Motion could be adjudicated on mostly stipulated facts and

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<sup>1</sup> See *Special Notices, Status of Bankruptcy Court Operations* <https://www.mssb.uscourts.gov/special-notices/court-hearings> (last visited June 22, 2020). Several other courts have announced restrictions on in-person appearances to prevent the spread of COVID-19. See, e.g., General Order 5 COVID-19 (5th Cir. June 2, 2020), <http://www.ca5.uscourts.gov>.

joint exhibits. To that end, the Court entered the Agreed Scheduling Order for Motion to Dismiss or Transfer Venue of Cases (AEMS Dkt. 140; AEL Dkt. 134; AEH Dkt. 160) requiring the parties to submit a joint notice of stipulated facts and exhibits by June 2, 2020. The Court also required the parties to submit a notice regarding any unstipulated matters, including a list and description and supporting documents for each party's position. On May 28, 2020, PPF filed the Notice of Withdrawal of Response in Support of PPF 11 LLC of the Motion to Dismiss or Transfer Venue of Cases (the "Notice of Withdrawal of PPF Joinder") (AEH Dkt. 161) in the AEH Case only. On June 2, 2020, the Miesner Companies, the Amazing Debtors, and AAPIM filed the Joint Stipulation of Facts (the "Joint Stipulation of Facts") (AEMS Dkt. 142),<sup>2</sup> and the Miesner Companies and AAPIM filed the Unstipulated Matters Including a List and Description and Supporting Documents for that Party's Position (AEMS Dkt. 143). On June 4, 2020, the Miesner Companies, the Amazing Debtors, and AAPIM filed the Joint Stipulation Relating to Authenticity and Admissibility of Exhibits (the "Joint Stipulation of Exhibits") (AEMS Dkt. 145), listing thirty-three exhibits, identified as Exhibits 1-20 and 25-37, that the parties agreed may be admitted into evidence at the Hearing. The Joint Stipulation of Exhibits also listed four exhibits, identified as Exhibits 21-24, that the parties agreed as to their authenticity but that the Amazing Debtors did not agree as to their relevance or admissibility.

At the Hearing, Derek A. Henderson and Frederic M. Wolfram represented the Miesner Companies; J. Mitchell Carrington II represented PPF; J. Walter Newman IV represented AAPIM; and David Wheeler and Douglas Scott Draper represented the Amazing Debtors. Because of the

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<sup>2</sup> On May 20, 2020, the Court entered an order pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure directing the joint administration of the Amazing Cases for procedural purposes only and without prejudice to the Motion. (AEMS Dkt. 122; AEL Dkt. 118; AEH Dkt. 143). As a result of the joint administration, only a single docket is maintained in the lead bankruptcy case of AEMS for all matters concerning the Amazing Cases beginning May 20, 2020, with limited exceptions.

Joint Stipulation of Facts and the Joint Stipulation of Exhibits, there was no testimony or cross-examination of any witnesses. At the start of the Hearing, counsel for PPF informed the Court that although PPF filed the Notice of Withdrawal of PPF Joinder in the AEH Case only, it intended to withdraw the PPF Joinder in all of the Amazing Cases as part of a global settlement reached with AEMS and AEL. PPF, therefore, did not participate further in the Hearing. Later that same day, PPF filed the Notice of Withdrawal of Response in Support of PPF 11 LLC of the Motion to Dismiss or Transfer Venue of Cases in the AEMS Case (AEMS Dkt. 147) and in the AEL Case (AEL Case Dkt. 137).

Pursuant to the Joint Stipulation of Exhibits, Exhibits 1-20 and 25-37 were admitted into evidence.<sup>3</sup> Neither the Miesner Companies nor AAPIM attempted to introduce into evidence Exhibits 21-24, and, therefore, were not considered by the Court. At the conclusion of the Hearing, the Court announced its decision from the bench, granting the Motion, and transferring venue of the Amazing Cases to the U.S. Bankruptcy Court for the Eastern District of Texas in Plano, Texas.<sup>4</sup> At the request of the parties, the Court agreed to delay the transfer until after the adjudication of the Debtors' Motion for Authority (A) to Enter into a Settlement Pursuant to Bankruptcy Rule 9019(A); and (B) to Sell the Debtors' Assets Thereunder Pursuant to Section 105 and 363(b) of the Bankruptcy Code [Dkt. 39, 93, 95] (the "Settlement Motions") (AEMS Dkt. 110; AEH Dkt. 129) filed by AEMS and AEH on May 19, 2020. At that time, the deadline to file a written response to the Settlement Motions had not expired. Only David W. Asbach, the acting U.S.

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<sup>3</sup> The exhibits admitted into evidence are cited as "(Jt. Ex. #)".

<sup>4</sup> The Court made it clear at the Hearing that the Amazing Cases would be transferred to the U.S. Bankruptcy Court in Plano, Texas, but there was some confusion at the Hearing about the correct district and division. The website of the U.S. Bankruptcy Court for the Eastern District of Texas indicates that the Sherman Division of the Eastern District sits in Plano, Texas. *See* <https://www.txeb.uscourts.gov/content/plano> (last visited June 22, 2020).

Trustee for Region 5 (the “UST”), filed a response to the Settlement Motions. (AEMS Dkt. 146; AEH Dkt. 163). The UST did not object to the terms of the settlement but asked that certain provisions be included in any order approving the settlement and sale of the assets. On June 15, 2020, the Court entered the Order Authorizing and Approving Settlement and Sale Agreement by and Among the Debtors and PPF 11 LLC Pursuant to Section 105 of the Bankruptcy Code and Bankruptcy Rules 2002 and 9019; and Authorizing and Approving Private Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, and Interests Under Such Settlement and Pursuant to Sections 105 and 363 of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004 (the “Settlement Orders”) (AEMS Dkt. 158; AEH Dkt. 174), which incorporated the UST’s requested changes. Now that the Settlements Orders have been entered, the Court issues this Opinion memorializing and supplementing its earlier bench ruling.

### **Jurisdiction**

The Court has jurisdiction over the parties to and the subject matter of this matter pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157. This is a core proceeding as defined in 28 U.S.C. § 157(b)(2)(A). *See In re Pope Vineyards*, 90 B.R. 252, 254 (Bankr. S.D. Tex. 1988). Notice of the Hearing was proper under the circumstances.

### **Introduction**

The Amazing Debtors filed petitions for relief pursuant to chapter 11 of the Bankruptcy Code here, in the Jackson Division of the U.S. Bankruptcy Court for the Southern District of Mississippi. (AEMS Dkt. 1; AEL Dkt. 1; AEH Dkt. 1). The alleged basis for venue in this Court is by virtue of the AEMS Case, the first of the Amazing Cases to be filed on the Court’s docket. *See* 28 U.S.C. § 1408(1). Domiciled in Mississippi, AEMS is a wholly-owned subsidiary of Amazing Energy Oil & Gas, Co. (“AEOG”), the non-debtor parent company of the Amazing

Debtors. The Amazing Debtors have selected venue in Mississippi for AEL and AEH because of their alleged status as “affiliates” of AEMS. *See* 28 U.S.C. § 1408(2). In the Motion, the Miesner Companies, joined by AAPIM and initially by PPF, argue that venue in Mississippi is improper for the AEL Case and the AEH Case and ask that the Court dismiss their cases. In the alternative, they ask that the Court transfer the Amazing Cases to the Sherman Division of the U.S. Bankruptcy Court for the Eastern District of Texas. *See* 28 U.S.C. § 1412; FED. R. BANKR. P. 1014(a)(1). At the Hearing, counsel for the Miesner Companies focused his arguments solely on the alternative relief requested in the Motion.

### **Facts**

Unless otherwise noted, the facts below are taken from the Joint Stipulation of Facts. On April 6, 2020 (the “Petition Date”), the Amazing Debtors each filed a petition for relief under chapter 11 of the U.S. Bankruptcy Code in this judicial district (the “AEMS Petition”) (AEMS Dkt. 1; Jt. Ex. 25); (the “AEL Petition”) (AEL Dkt. 1; Jt. Ex. 27); (the “AEH Petition”) (AEH Dkt. 1; Jt. Ex. 29). The Amazing Debtors are wholly-owned subsidiaries of AEOG, a company “primarily engaged in the acquisition, exploration and development of oil and gas properties and the productions and sale of oil and natural gas.” (AEMS Dkt. 107 at 14; AEL Dkt. 107 at 14; AEH Dkt. 126 at 14).

#### **A. Non-Debtors**

##### **1. AEOG**

AEOG is a publicly-traded company with approximately 850 shareholders. (Jt. Ex. 18 at 14). Domiciled in Nevada and authorized to transact business in Texas, AEOG previously was known as Gold Crest Mines, Inc. and became known by its present name after a corporate

reorganization involving Amazing Energy, Inc. Jed Miesner formed Amazing Energy, Inc. in 2011 under the laws of Nevada and is currently the largest shareholder of AEOG. (Jt. Ex. 16).

In the 180 days before the Petition Date, from August 1, 2019 to April 6, 2020 (the “Venue Period”), AEOG’s corporate headquarters was located at 5700 West Plano Parkway, Suite 3600 in Plano, Texas (the “Texas Office”). All meetings of the board of directors of AEOG were held there, as were all meetings of its shareholders. All of AEOG’s executive officers worked from the Texas Office where they directed and controlled the Amazing Debtors. In that regard, the Amazing Debtors shared the same Texas Office with AEOG.

On September 11, 2018, Jed Miesner resigned as chairman of AEOG’s board of directors. Less than a year later, he was terminated as AEOG’s acquisition manager and on January 7, 2020 resigned as a member of AEOG’s board of directors. The current chairman of the board of directors of AEOG is Tony Alford (“Alford”), who lives in North Carolina. Tom W. Thornhill (“Thornhill”), who lives in Slidell, Louisiana, is AEOG’s general counsel and a member of its board of directors, positions he attained in April 2019. None of the current board members live in Mississippi.

The officers of AEOG during the Venue Period were Willard McAndrew III (“McAndrew”), chief executive officer; Benjamin Jacobson III, chief financial officer; David Arndt, chief operating officer; and Anna Karlson (“Karlson”), secretary, all of whom resided in or near Plano, Texas. AEOG’s officers also acted as officers of AEOG’s subsidiaries, including the Amazing Debtors. After the Petition Date, all officers resigned, and no new officers have been appointed or elected. (Jt. Ex. 14).

In March 2020, the Texas Office was closed temporarily for several weeks because of COVID-19<sup>5</sup> and sometime after the Petition Date was closed permanently to reduce expenses. (Jt. Ex. 36 at 3). Hard copies of the business records of AEOG and the Amazing Debtors are now in storage in the Dallas metropolitan area. Most of the business records of AEOG and the Amazing Debtors, however, are in electronic form.

On March 17, 2020, AEOG's board of directors formed a crisis committee to address the financial problems of AEOG's subsidiaries. (Jt. Ex. 36 at 2). The members of the crisis committee are Thornhill in Slidell, Louisiana; Bob Manning ("Manning") in Amarillo, Texas; and Alford in North Carolina. (*Id.*). Currently, the members of the crisis committee are managing AEOG and the Amazing Debtors from their respective homes. Those efforts are being coordinated by Thornhill from his residence and law office in Slidell, Louisiana. On May 25, 2020, AEOG and the Amazing Debtors each filed a notice of change of mailing address in the Amazing Cases. (AEMS Dkt. 138, 139; AEL Dkt. 132, 133; AEH Dkt. 158, 159). According to these notices, the current address of AEOG and the Amazing Debtors is the address of the Thornhill Law Firm in Slidell, Louisiana.

## **2. Jilpetco**

Jilpetco, Inc. ("Jilpetco") was incorporated under the laws of Texas on September 19, 2002 by Jed Miesner and is a wholly-owned subsidiary of AEOG. (Jt. Ex. 6). Jilpetco is not authorized to transact business in Mississippi.

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<sup>5</sup> On March 13, 2020, the Governor of Texas issued a disaster proclamation certifying that COVID-19 posed an imminent threat for all counties in Texas and on March 19, 2020, issued an executive order requiring all non-essential businesses to close through April 30, 2020. Office of the Texas Governor, *Coronavirus Resources and Response*, <https://www.gov.texas.gov/news/post/governor-abbott-issues-executive-orders-to-mitigate-spread-of-covid-19-in-texas> (last visited June 22, 2020).



Jilpetco is a non-participating (that is, non-owner) operating company for the lease operations of AEMS in Mississippi (although there are no current operations in Mississippi); AEL in Texas; and AEH in Texas and in New Mexico. On July 1, 2010, Jilpetco and AEL executed a Joint Operating Agreement (Jt. Ex. 9). No written operating agreement exists between Jilpetco and either AEMS or AEH.<sup>6</sup> Nevertheless, Jilpetco collects income from the oil and gas lease operations of all three Amazing Debtors and incurs expenses on behalf of all three Amazing Debtors for those lease operations. Jilpetco, therefore, is a co-debtor on all debts for oil and gas operations for AEMS, AEL, and AEH.

## **B. Debtors**

### **1. AEMS**

AEMS was incorporated under the laws of Mississippi on October 9, 2019 for the purpose of operating oil and gas leases in Mississippi owned by AEH. At that time, AEMS opened an account at Hancock Whitney Bank with a balance of \$500.00. (Jt. Ex. 19 at 27). Before the Petition Date, there was no activity in the account except for the payment of a small service fee. After the Petition Date, that account was closed, and a new debtor-in-possession (“DIP”) account at Hancock Whitney Bank was opened. Since the date of its formation on October 9, 2019, AEMS has had no employees, no current operations, no office in Mississippi, and no gross revenue.

In its bankruptcy schedules, AEMS lists as its assets “Oil [and] Gas assets including 900 acres of leasehold assets in Walthall County, MS” valued at \$6 million and “Oil Field Equipment” valued at \$75,000.00. (AEMS Dkt. 80 at 4).<sup>7</sup> AEMS and AEH thereafter entered into a global

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<sup>6</sup> The enforceability of the unwritten operating agreement between Jilpetco and AEMS and AEL under applicable state law is not before the Court.

<sup>7</sup> In the AEMS Petition and in the AEH Petition, the location of the leasehold assets in Mississippi is both Wilkinson County and Walthall County. (AEMS Dkt. 1; AEH Dkt. 1).

settlement with PPF resulting in the sale of substantially all of their assets to PPF. In return, PPF paid AEMS and AEH \$137,500.00 and assumed certain liabilities. As a result of the settlement, the Amazing Debtors have no remaining assets located in Mississippi.

The twenty (20) largest creditors of AEMS include six (6) Texas-based companies. (Jt. Ex. 26). These debts were incurred in Jilpetco's name and allocated to AEMS in the bankruptcy schedules.

## **2. AEL**

AEL was incorporated under the laws of Texas on December 17, 2008 by Jed Miesner and previously was owned solely by Jed Miesner and Lesa Miesner. AEL is not authorized to transact business in Mississippi.

AEL held a bank account at Chase Bank with a balance of \$425.00 at a branch office in Texas. (AEL Dkt. 80 at 2). That account was closed after the Petition Date, and a new DIP account was opened at Hancock Whitney Bank, which has local branches in both Louisiana and Mississippi.

AEL has no officers, managing members, or employees. AEL has no business operations or assets in Mississippi. AEL's current business operations are in Pecos County, Texas and possibly New Mexico. According to the bankruptcy schedules, AEL's principal assets consist of "75,000 Acres of Oil & Gas Assets in Pecos County, Texas" valued at \$17.5 million and "Tangible Oil Field Equipment" valued at \$300,000.00. (AEL Dkt. 80 at 4).

AEL has incurred no expenses related to Mississippi operations. The twenty largest creditors of AEL include seventeen (17) Texas-based companies. (Jt. Ex. 28). These debts were incurred in Jilpetco's name and allocated to AEL in its bankruptcy schedules. AEL has no Mississippi creditors.

### **3. AEH**

AEH was incorporated under the laws of Texas on April 8, 2019 and became authorized to do business in Mississippi on December 3, 2019. (Jt. Exs. 3-4). AEH has no bank account, no employees, and no office.

In its bankruptcy schedules, AEH lists “Oil and Gas interests in Lea County, New Mexico” valued at \$3 million and “Oil Field Equipment” valued at \$225,000.00.<sup>8</sup> (AEH Dkt. 103 at 4). AEH previously owned oil and gas leases in Mississippi operated by AEMS but as a result of the global settlement with PPF, sold substantially all of those assets to PPF. The parties admit that AEH’s current business operations are in Texas and in New Mexico. The twenty largest creditors of AEH include fifteen (15) Texas-based companies. (Jt. Ex. 30). These are debts incurred in Jilpetco’s name and allocated to AEH in its bankruptcy schedules.

#### **Discussion**

The Miesner Companies, joined by AAPIM, seek the dismissal of the AEL Case and the AEH Case or, in the alternative, the transfer of venue of the Amazing Cases to the Sherman Division of the U.S. Bankruptcy Court for the Eastern District of Texas. The Miesner Companies consist of Jed Miesner, his spouse, Lesa Miesner, and two Texas companies owned by Jed Miesner, Petro Pro and JLM Strategic Investments. (Jt. Exs. 7-8). Jed Miesner and Lesa Miesner live in Amarillo, Texas. (AEMS Dkt. 28 at 7). According to the Miesner Companies, they hold promissory notes from AEL which constitute liens on the oil and gas leases in Pecos County, Texas in the amount of \$4,187,500.00. (AEMS Dkt. 28 at 7-8; AEL Dkt. 28 at 7-8; AEH Dkt. 28 at 7-8). APIM is a Texas limited liability company with its principal place of business in Irving, Texas. (AEMS Dkt. 104 at 2; AEL Dk. 104 at 2; AEH Dkt. 123 at 2). AAPIM asserts that it is a judgment

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<sup>8</sup> In the AEH Petition, AEH lists its assets as oil and gas interests in not only Lea County, New Mexico but also in Wilkinson and Walthall Counties in Mississippi. (AEH Dkt. 1).

creditor of AEL in the amount of \$382,831.52. (AEMS Dkt. 104-1; AEL Dkt. 104-1; AEH Dkt. 123-1).

At the beginning of the Hearing, counsel for the Miesner Companies announced his intent to argue solely the transfer-of-venue issue but expressly declined to abandon the primary issue raised in the Motion that venue in Mississippi is improper under 28 U.S.C. § 1408. Instead, counsel for the Miesner Companies stated that he had no additional arguments to offer in support of the dismissal of the AEL Case and the AEH Case. As a result, counsel for the Miesner Companies did not address the argument of the Amazing Debtors in the Response that venue is proper for the AEL Case and the AEH Case based on the “affiliate rule” of 28 U.S.C. § 1408. The Court addresses the issue under 28 U.S.C. § 1408 only briefly before considering the change-of-venue issue under 28 U.S.C. § 1412.

**A. Venue under 28 U.S.C. § 1408**

Under subsection one of the bankruptcy venue statute, 28 U.S.C. § 1408(1), a chapter 11 case “may be commenced in the district court for the district . . . in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the [debtor] have been located for the one hundred and eighty days immediately preceding such commencement.” 11 U.S.C. § 1408(1). Subsection one thus renders venue proper in any one of the four listed locations. Additionally, under subsection two of the bankruptcy venue statute, 28 U.S.C. § 1408(2), a debtor may file in a fifth location, the district “in which there is pending a case under title 11 concerning such person’s affiliate, general partner, or partnership.” 28 U.S.C. § 1408(2).

## **1. AEMS**

As noted previously, AEMS is a limited liability company organized under the laws of the State of Mississippi. According to the AEMS Petition, the location of its principal place of business is in Ridgeland, Mississippi, which is the address of its registered agent for service of process. The Joint Stipulation of Facts, however, states that the location of its principal place of business during the Venue Period was in Plano, Texas. In the AEMS Petition, AEMS checked the box indicating that it “has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of the petition or for a longer part of such 180 days than in any other district.” (Jt. Ex. 25 at 3).

Because it is undisputed that AEMS was incorporated in Mississippi, and, therefore, is domiciled in Mississippi, the Court finds that Mississippi is a proper venue for AEMS to commence its bankruptcy case under 28 U.S.C. § 1408(1). *In re Segno Commc'ns, Inc.*, 264 B.R. 501, 506 (Bankr. N.D. Ill. 2001) (holding that a corporation’s domicile is generally held to be its state of incorporation). Although the location of its principal place of business was in Texas during the Venue Period and there appears to be a dispute as to whether AEMS owned or merely operated the oil and gas interests in Mississippi, there is no dispute that AEMS is domiciled in Mississippi. For purposes of the bankruptcy venue statute, this undisputed fact renders venue in Mississippi proper for the AEMS Case.

## **2. AEL and AEH**

AEL and AEH are companies organized under the laws of Texas. During the Venue Period, they shared the same Texas Office with their parent company, AEOG. According to the AEL Petition, the location of AEL’s principal assets is Pecos County, Texas. The location of AEH’s principal assets, according to the AEH Petition, is in Lea County, New Mexico and

Wilkinson and Walthall Counties in Mississippi.<sup>9</sup> Both in the AEL Petition and in the AEH Petition, the basis for venue in Mississippi is that “[a] bankruptcy case concerning debtor’s affiliate, general partner, or partnership is pending in this district.” (Jt. Ex. 27 at 3; Jt. Ex. 29 at 3). Thus, AEL and AEH base venue on 28 U.S.C. § 1408(2). This provision, known as the “affiliate rule,” allows venue to be based on the debtor being an “affiliate” of a debtor whose separate bankruptcy case is venued properly in the district. The Miesner Companies argue in the Motion that AEL and AEH are not “affiliates” of AEMS because AEMS does not own, control, or hold the power to vote shares of AEL or AEH. (AEMS Dkt. 28 at 10; AEL Dkt. 28 at 10; AEH Dkt. 28 at 10).

The Bankruptcy Code defines “affiliate” as 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)(B). The second part of the definition of “affiliate,” which the Miesner Companies do not address in the Motion, describes “a horizontal relationship between a debtor and another entity which share a common parent (or parent-like) entity, which accordingly justifies treating the debtor and its ‘sibling’ entity as affiliates.” *In re Reichmann Petroleum Corp.*, 364 B.R. 916, 920 (Bankr. E.D. Tex. 2007). This horizontal relationship exists among AEMS, AEL, and AEH because they share the same parent company, AEOG. As “sibling” entities, therefore, they are affiliates within the meaning of the bankruptcy venue statute. Accordingly, the Court finds that because AEL and AEH are affiliates of AEMS and because venue is proper in the Southern District of Mississippi

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<sup>9</sup> The leasehold assets in Wilkinson and Walthall Counties in Mississippi are also listed in the AEMS Petition. (AEMS Dkt. 1).

for AEMS under 28 U.S.C. § 1408(1), venue is also proper in the Southern District of Mississippi for AEL and AEH under 28 U.S.C. § 1408(2).

**B. Change of Venue under 28 U.S.C. § 1412**

Having found that venue is proper in Mississippi under 28 U.S.C. § 1408, the Court next considers whether the Amazing Cases should be transferred to another bankruptcy court under 28 U.S.C. § 1412.<sup>10</sup> For this analysis, the Court is not limited to the facts in existence during the Venue Period.

Although the Miesner Companies filed the Motion early in the proceedings, many major changes related to AEOG's corporate governance occurred soon after the Petition Date. AEOG's chief executive officer, chief operating officer, and chief financial officer, who also acted as officers of the Amazing Debtors, resigned. They have not been replaced. Sometime in March 2020, AEOG temporarily closed its corporate headquarters because of concerns about the spread of COVID-19 and subsequently closed the Texas Office permanently. All employees of AEOG and the Amazing Debtors in the Texas Office either resigned or were terminated. Now, AEOG and the Amazing Debtors are managed by a crisis committee comprised of three members of AEOG's board of directors who do not live in Mississippi or even in the same state. Additionally, a major change involving AEOG's assets occurred while the Motion was pending. AEMS and AEH sold the Mississippi oil and gas leases and all other Mississippi assets to PPF.

Pursuant to 28 U.S.C. § 1412 and Rule 1014 of the Federal Rules of Bankruptcy Procedure ("Rule 1014"), a properly-filed bankruptcy case may be transferred to another venue "in the interest of justice or for the convenience of the parties." 28 U.S.C. § 1412. Similarly, Rule 1014

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<sup>10</sup> The authority of a bankruptcy court to exercise a district court's power to transfer a case through 28 U.S.C. § 1412 arises from the district court's referral to the bankruptcy court pursuant to 28 U.S.C. § 157(a). *In re Ross*, 312 B.R. 879, 884 (Bankr. W.D. Tenn. 2004).

provides, in pertinent part: “If a petition is filed in the proper district, the court . . . may transfer the case to any other district if the court determines that the transfer is in the interest of justice or for the convenience of the parties.” FED. R. BANKR. P. 1014(a)(1). Section 1412 and Rule 1014 are written in the disjunctive, meaning that each of the two prongs—“in the interest of justice” or “for the convenience of the parties”—constitutes an independent ground for transferring venue. If a debtor’s choice of forum meets the requirements of the bankruptcy venue statute, a presumption arises in favor of that choice, and the party seeking transfer of a bankruptcy case to a different venue has the burden of showing by a preponderance of the evidence that the transfer is warranted either in the interest of justice or for the convenience of the parties. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 315 (5th Cir. 2008). The Fifth Circuit Court of Appeals has cautioned, however, that a debtor’s venue choice should not be given “undue weight.” *Id.* at 309. Finally, the Court notes that “[t]here is no litmus test or set of hard and fast rules that offer precise guidance or transfer of venue, and the bankruptcy courts are left to a case-by-case determination based upon all relevant factors.” *In re New Luxury Motors, LLC*, No. 10-30835, 2010 WL 817204, at \*3 (Bankr. S.D. Tex. Mar. 4, 2010).

The seminal case on whether the transfer of venue of a bankruptcy case is in the interest of justice or for the convenience of the parties is the Fifth Circuit’s decision in *Puerto Rico v. Commonwealth Oil Refining Co. (In re Commonwealth Oil Refining Co.)*, 596 F.2d 1239 (5th Cir. 1979) (“CORCO”). There, the Fifth Circuit affirmed the bankruptcy court’s denial of a motion seeking to transfer the chapter 11 case of Commonwealth Oil Refining Company (“CORCO”) and the cases of its eleven (11) subsidiaries from Texas to Puerto Rico. CORCO’s executive officers were located in Texas; its principal asset, a billion-dollar oil refinery, was located in Puerto Rico as were most of its employees, creditors, and books and records. The Fifth Circuit concluded that



venue in Texas was proper for several reasons, including that the management of CORCO's business was being handled in Texas, CORCO's problems were financial rather than operational, and the people responsible for solving its financial problems and who would appear to testify in court resided in Texas. *CORCO*, 596 F.2d at 1241-48. Guided by *CORCO*, the Court considers first the "interest of justice" prong of the statute.

**1. Interest of Justice**

The Court begins its analysis by noting that "interest of justice" is "an elusive term not easily amenable to definition." *In re Pinehaven Assocs.*, 132 B.R. 982, 990 (Bankr. E.D.N.Y. 1991). It has been described as a broad and flexible standard, applied on a case-by-case basis. *In re Patriot Coal Corp.*, 482 B.R. 718, 739 (Bankr. S.D.N.Y. 2012). Factors generally considered include whether transferring venue would promote the efficient administration of the estate and serve the interests of judicial economy. *Id.* An additional relevant factor is the interest of either forum in having the controversy decided within its boundaries. *Id.* Also relevant, although not always applicable, is the integrity of the bankruptcy court system. *Id.* The Court addresses this last factor first.

**a. Integrity of the Bankruptcy Court System**

The Miesner Companies contend that the Amazing Debtors engaged in impermissible forum-shopping by incorporating AEMS in Mississippi only six months before filing the Amazing Cases and argue that the "interest of justice" dictates the transfer of the Amazing Cases to Texas. As to this argument, the Court finds persuasive the bankruptcy court's analysis in *Patriot Coal*. There, the bankruptcy court rejected the debtors' venue choice in large part because of *how* the debtors achieved literal compliance with the bankruptcy venue statute. *Patriot Coal*, 482 B.R. at 743.

Patriot Coal Corporation (“Patriot”), a Missouri corporation with its principal place of business in Missouri, and ninety-eight (98) of its subsidiaries filed chapter 11 petitions for relief in the U.S. Bankruptcy Court for the Southern District of New York. A few weeks before the bankruptcy filings, Patriot formed two (2) of its subsidiaries under the laws of New York. The newly-formed subsidiaries, which had no employees, business operations, or offices, listed New York as their domicile in their petitions for relief. Patriot and its remaining ninety-six (96) subsidiaries then filed in the U.S. Bankruptcy Court for the Southern District of New York as affiliates of the two New York subsidiaries. Patriot later admitted that it formed the two (2) subsidiaries in New York for the sole purpose of complying with the bankruptcy venue statute. The bankruptcy court ruled that venue in New York was proper under 28 U.S.C. § 1408(2) but that allowing the debtors’ venue choice to stand “would elevate form over substance in a way that would be an affront to the purpose of the bankruptcy venue statute and the integrity of the bankruptcy system.” *Patriot Coal*, 482 B.R. at 744. In reaching its decision, the bankruptcy court in *Patriot Coal* distinguished between debtors “creat[ing] facts to fit the statute” and debtors “taking advantage of the facts as they existed before the [d]ebtors embarked on their path to a chapter 11 filing.” *Id.* at 746. To ignore the former category of debtors “would all but render the venue statute meaningless.” *Id.*

Here, the Miesner Companies contend that the Amazing Debtors began to create facts to fit the bankruptcy venue statute when AEOG formed AEMS under the laws of Mississippi. Unlike the parent company in *Patriot Coal*, however, AEOG disputes that it formed its subsidiary for the purpose of establishing venue. Instead, the Amazing Debtors contend that the timing of the formation of AEMS on October 9, 2019 was dictated by the acquisition of the oil and gas leases in Mississippi on November 22, 2019. (AEMS Dkt. 88-1 at 16). The Miesner Companies argued

at the Hearing that AEOG had no need to form a new subsidiary because Jilpetco could have filled the role of AEMS, but they presented no evidence to support their theory or that would lead the Court otherwise to question the credibility of the Amazing Debtors' explanation. Indeed, the Miesner Companies suggest in the Motion that the Amazing Cases were filed to prevent a foreclosure of AEL's oil and gas interests in Pecos County, Texas scheduled to occur in April of 2020. (AEMS Dkt. 28 at 8 n.5).

The Court thus finds that the Miesner Companies have failed to show by a preponderance of the evidence that AEOG intentionally formed AEMS to create facts to fit the bankruptcy venue statute. The existence of such intent played an important role in the decision reached in *Patriot Coal*. *Patriot Coal*, 482 B.R. at 746. The bankruptcy judge believed that transferring venue was necessary to avoid rewarding the debtors' forum-shopping efforts. The absence of proof of such an intent by AEOG renders it unnecessary under these facts to transfer venue to protect the integrity of the bankruptcy court system. The Court, however, finds that other factors support the transfer of venue in the interest of justice.

**b. Efficient Administration of the Estates**

The majority of the Amazing Debtors' current assets consist of oil and gas leases in Pecos County, Texas, valued in the schedules at \$17.5 million. (AEL Dkt. 80 at 4). In comparison, the oil and gas leases in Lea County, New Mexico, are valued in the schedules at only \$3 million. (AEH Dkt. 103 at 4).

In Texas, oil and gas leases are treated as interests in real property. *Cherokee Water Co. v. Forderhause*, 641 S.W.2d 522, 525 (Tex. 1982). "Where debtors['] assets consist solely of real property, cases have held that transfer of venue is proper because '[m]atters concerning real property have always been of local concern and traditionally are decided at the situs of the

property.’” *In re Enron*, 284 B.R. 376, 392 (Bankr. S.D.N.Y. 2002) (citing *In re Baltimore Food Sys., Inc.*, 71 B.R. 795, 803 (Bankr. D.S.C. 1986)); see *In re Old Delmar Corp.*, 45 B.R. 883, 884 (S.D.N.Y. 1985) (transferring venue to Texas, the location of the debtor’s only asset, an apartment complex). That the principal assets of the Amazing Debtors consist of real property interests in Texas favors venue in Texas in the interest of justice.

Although the Fifth Circuit in *CORCO* found that venue was more appropriate where the financial restructuring of the debtors would occur rather than where the debtors’ physical assets were located, the absence of any “nerve center” of AEOG’s corporate enterprise renders the Amazing Cases distinguishable. In *CORCO*, the business operations of CORCO, an oil refining company, took place in Puerto Rico, while CORCO’s executive officers were located in Texas. The expertise of its management in Texas and the greater availability of financing in Texas were considered by the Fifth Circuit to be more important than the location of the oil refinery in Puerto Rico. *CORCO*, 596 F.2d at 1247-48. Here, the business operations of the Amazing Debtors are being managed by the members of the crisis committee who reside in three different states, not including Mississippi. One of the committee members, Alford, is the current chairman of the board and resides in North Carolina. The second committee member, Manning, lives in Amarillo, Texas, and the third committee member, Thornhill, resides in Louisiana. Therefore, unlike *CORCO*, AEOG is not managing the Amazing Debtors from the same office or even from different offices within the same state.

The Amazing Debtors insist that Thornhill’s law office in Louisiana is the “nerve center” of AEOG’s corporate enterprise given that Alford delegated to Thornhill the duty of coordinating the decisions of the crisis committee. In the Thornhill Affidavit, Thornhill describes in some detail how AEOG currently is managing its corporate enterprise, as follows: the board of directors,

although “scattered across the country,” remains informed and actively participates in operating the Amazing Debtors; the crisis committee decides “critical issues” and directs the payments of bills; Thornhill, as a member of the crisis committee, is “primarily responsible for the day to day operations, subject to the committee oversight and approval of debts to be paid.” (AEMS Dkt. 107 at 2; AEL Dkt. 107 at 2; AEH Dkt. 126 at 2). Thornhill’s authority, based on his own description, is thus greatly circumscribed. The Court finds that although Thornhill may coordinate the decisions of the crisis committee from his office in Louisiana, he does not “direct” or “control” the management of the Amazing Debtors. *See Hertz Corp. v. Friend*, 559 U.S. 77, 80-81 (2010) (holding that a corporation’s principal place of business refers to the place “where the corporation’s high level officers direct, control, and coordinate the corporation’s activities,” metaphorically called the corporation’s “nerve center”).

**c. Judicial Economy**

As to judicial economy, there are at least four cases pending in Texas state courts, a declaratory judgment action regarding the alleged loans owed the Miesner Companies where AEL is the plaintiff; a fraudulent transfer suit where both AEL and AEH are named as defendants; and two collection cases where AEL is named as the defendant in one and Jilpetco is named as the defendant in both, but AEL and/or AEH allegedly owe the debt.<sup>11</sup> Many thorny issues governed by Texas law are likely to be raised in these cases. At the Hearing, counsel for the Amazing Debtors indicated an intent to transfer some of this litigation to Mississippi. Judicial economy

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<sup>11</sup> *Amazing Energy, LLC v. Jed Miesner, Lesa Miesner, JLM Strategic Invs., LP, and Petro Pro, Ltd.*, Cause No. P-12563-112-CV, District Court, Pecos County, Texas; *AAPIM, L.L.C. v. Amazing Energy, LLC, Amazing Energy Oil & Gas Co., Amazing Energy Holdings, LLC, McAndrew, Dobbins, & Arndt*, Cause No. 429-06076-2019, District Court, Collin County, Texas; *Rumson Royalty Co., LLC v. Amazing Energy, LLC, Jilpetco, Inc.*, District Court, Pecos County, Texas; *Basic Energy v. Jilpetco, Inc.* (AEMS Dkt. 81 at 8; AEL Dkt. 81 at 8).

would be served better if these disputes were decided by a Texas bankruptcy judge more familiar with Texas oil and gas law.

**d. Interest of the Transferee Forum**

Among the reasons for filing the Amazing Cases, a major impetus appears to be the dispute between AEL and the Miesner Companies regarding the attempted foreclosure of oil and gas leases in Pecos County, Texas, valued at \$17.5 million, and the validity of the underlying loans held by the Miesner Companies in the total amount of \$4,187,500.00. Texas clearly has a greater interest than Mississippi in the outcome of the parties' dispute involving Texas real property interests and Texas law. *CORCO*, 596 F.2d at 1248. Moreover, a majority of the unsecured creditors in the Amazing Cases are local Texas businesses or Texas individual residents.<sup>12</sup>

In *CORCO*, the Fifth Circuit was not persuaded to transfer venue to Puerto Rico because of its alleged interest in the outcome of the bankruptcy case. It found that maintaining the bankruptcy in close proximity to *CORCO*'s management who were working to provide the debtor with access to capital markets and potential buyers better served Puerto Rico's interest. Maintaining the Amazing Cases in Mississippi rather than in Texas, however, will not bring them closer to AEOG's decision-makers.

**e. Summary**

In the absence of a "nerve center" and with no assets, employees, or offices in Mississippi, the Court finds that the transfer of venue to a bankruptcy court in Texas is in the interest of justice. Simply put, transferring venue to Texas, the location of the principal assets, will enhance the prospects of the Amazing Debtors for a successful reorganization.

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<sup>12</sup> The bankruptcy schedules of the Amazing Debtors reveal a total of 135 unsecured creditors, of which 85, or approximately sixty-three percent (63%), are either Texas local businesses or Texas individual residents. (AEMS Dkt. 149 at 5; AEL Dkt. 139 at 11; AEH Dkt. 165 at 9).

Moreover, because the Motion was filed early in the Amazing Cases, transferring venue to Texas likely will not delay the final resolution of the Amazing Cases. *In re Radmax, Ltd.*, 720 F.3d 285, 289 (5th Cir. 2013) (clarifying that a “garden-variety” delay associated with a transfer of venue is not a relevant consideration). Indeed, there are no pending contested matters in the Amazing Cases at this time. Finally, it does not appear that the interests of the Amazing Debtors will be harmed or that the estates will suffer a diminution in value if venue is transferred. The former executives and employees who may need to testify are located primarily in or near Plano, Texas.

After considering the factors under the interest-of-justice prong—the efficient administration of the estate, judicial economy, and interest of the transferee forum, the Court finds that the Miesner Companies and AAPIM have shown by a preponderance of the evidence that the Amazing Cases should be transferred. Although the satisfaction of the interest-of-justice prong alone is sufficient to support the transfer of venue to Texas, the Court also considers whether such a transfer serves the convenience of the parties.

## **2. Convenience of the Parties**

In *CORCO*, the Fifth Circuit considered the following six factors in determining the convenience of the parties: (1) proximity of creditors to the court; (2) proximity of the debtor to the court; (3) proximity of the witnesses necessary to the administration of the estate; (4) location of the assets; (5) economic administration of the estate; and (6) necessity for ancillary administration if bankruptcy should result. *CORCO*, 596 F.2d at 1247. The most important factor is “whether the requested transfer would promote the economic and efficient administration of the estate.” *Id.* As a preliminary matter, the Court notes that there is much overlap in these factors and those the Court already has considered under the interest-of-justice prong of the venue statute.

**a. Proximity of Creditors to the Court**

After the settlement of PPF's claims against AEL, the only secured creditors remaining in the Amazing Cases are the Miesner Companies and AAPIM, both of whom reside in Texas and both of whom seek the transfer of the Amazing Cases to Texas. The Miesner Companies assert claims totaling \$4,187,500.00 against AEL purportedly secured by deeds of trust on the oil and gas interests located in Pecos County, Texas. AAPIM contends that it obtained a default judgment against AEL in the amount of \$382,831.52 and has a lien on these same assets in Texas.

With respect to unsecured creditors, the number as well as the amounts owed are of equal significance in considering the proximity and convenience of unsecured creditors for venue purposes. *CORCO*, 596 F.2d at 1248. A review of the claims register in each of the Amazing Cases discloses that only two Mississippi creditors, the Mississippi Department of Revenue and Spartan Well Services LLC, have filed proofs of claim. (AEMS Cl. 1, 5; AEL Cl. 1; AEH Cl. 1). Schedule E/F: Creditors Who have Unsecured Claims ("Schedule E") (AEMS Dkt. 149; AEL Dkt. 139; AEH Dkt. 165) filed in each of the Amazing Cases offers a more comprehensive view of the Amazing Debtors' unsecured creditors.

In the AEMS Case, Schedule E, as amended, lists twenty-two (22) unsecured creditors with claims totaling \$282,986.71, by far the least number of unsecured creditors among the Amazing Debtors and the least total amount of unsecured debt. (AEMS Dkt. 149 at 5). In comparison with other states, Mississippi has the most unsecured creditors with a total of eleven (11). The unsecured creditors in Mississippi have combined claims of \$183,042.24. Texas is second with a total of eight (8) unsecured creditors. The unsecured creditors in Texas have combined claims of \$76,380.53. The remaining three unsecured creditors reside in Louisiana (2) and Georgia (1) with a total debt of \$23,563.94.



Schedule E in the AEL Case list sixty-three (63) unsecured creditors with claims totaling \$2,411,297.38. (AEL Dkt. 139 at 11). Texas has the most unsecured creditors with a total of fifty-one (51). The unsecured creditors in Texas have combined claims of \$2,378,825.57. The largest of these is the \$1.9 million claim of Wyatt Petroleum & Wyatt Permian, LLC (the “Wyatt Claim”), which was incurred from the acquisition of the oil and gas interests in New Mexico. (Jt. Ex. 19 at 28-29). The remaining twelve (12) unsecured creditors reside in Oklahoma (3); Illinois (2); Alabama (1); California (1); Colorado (1); Kentucky (1); Mississippi (1); Nevada (1); and Pennsylvania (1) with a total debt of \$32,471.81.

In the AEH Case, Schedule E lists fifty (50) unsecured creditors with a total debt of \$2,590,311.55. (AEH Dkt. 165 at 9). Texas has the most unsecured creditors with a total of twenty-six (26). (AEH Dkt. 165). The unsecured creditors in Texas have combined claims of \$2,468,908.95, including the Wyatt Claim, which also appears in Schedule E in the AEL Case. New Mexico is second with a total of six (6) unsecured creditors. The unsecured creditors in New Mexico have combined claims of \$35,719.31. The remaining eighteen (18) unsecured creditors reside in New York (3); Oklahoma (3); Wisconsin (3); Connecticut (2); North Carolina (2); Arizona (1); California (1); Louisiana (1); Massachusetts (1); and Mississippi (1) with a total debt of \$85,683.29.

Considering the number of creditors and the amounts owed, this factor favors changing venue to Texas. The Miesner Companies and AAPIM, the creditors with the largest secured claims, reside in Texas and have asked the Court to transfer venue to Texas. Among the Amazing Debtors, the largest group of unsecured creditors is located in Texas, and the total amount of unsecured debt owed to creditors in Texas is \$4,924,115.05, which far exceeds the total amount

owed to creditors elsewhere, \$360,480.59. Thus, if venue is transferred to Texas, the majority of creditors would not have to travel as far.

**b. Proximity of the Amazing Debtors to the Court and Proximity of Witnesses Necessary to the Administration of the Estates**

AEOG, a Nevada Company with its principal assets in Pecos County, Texas, owns 100% of the stock of the Amazing Debtors. Jed Miesner, a Texas resident, owns the majority stock of AEOG. He is an important creditor and witness in the AEL Case. Most of the information used to prepare the bankruptcy petitions, schedules, and statements was provided to Thornhill by Karlson, former secretary and business manager of AEOG, as well as other former executives of AEOG, including McAndrew, AEOG's former chief executive officer. (Jt. Ex. 19 at 10-12). Indeed, McAndrew signed the petitions for relief. (Jt. Ex. 25 at 4; Jt. Ex. 27 at 4; Jt. Ex. 29 at 4). Both Karlson and McAndrew reside in Texas. Thornhill, who resides in Louisiana, signed the schedules and statements as a member of the crisis committee.

**c. Location of Assets**

As noted previously, the oil and gas leases in Pecos County, Texas, are the driving considerations in the Amazing Cases. *In re Dunmore Homes, Inc.*, 380 B.R. 663, 673 (Bankr. S.D.N.Y. 2008) (matters concerning real property are of local concern and traditionally are decided at the situs of the property). The oil and gas leases in Lea County, New Mexico, are of considerably lesser value than those in Texas, and there are currently no remaining assets in Mississippi. Although the Fifth Circuit in *CORCO* characterized the location of assets as unimportant, *CORCO* was largely a financial case, where the location of the debtor's physical assets was less significant to the restructuring of the debtors than the nerve center of its business operations. Here, there is no nerve center. The handling of the oil and gas interests in Texas can best be overseen by a Texas bankruptcy court with greater familiarity with such assets. The location of AEOG's books and

records in a storage facility in the Dallas metropolitan area also weighs in favor of a transfer to Texas.

**d. Economic Administration of Estates**

This factor has been discussed to great extent previously in connection with the interest-of-justice prong. In addition to that discussion, the Court notes that according to Thornhill, the Amazing Debtors plan to determine the extent of AEL's liability by litigating the pending Texas state court case filed against the Miesner Companies, obtain interim, post-petition financing, and reorganize the Amazing Debtors as the price of crude oil returns to historical norms. (Jt. Ex. 19 at 21). As to the availability of post-petition financing, the Amazing Debtors have not identified a potential DIP lender, but any such lender likely will not reside in Mississippi where the Amazing Debtors have no offices, employees, or assets.

**e. Necessity for Ancillary Administration**

As in *CORCO*, the Court finds it unnecessary to contemplate the failure of the Amazing Cases at this early stage.

**f. Summary**

As a result of the totality of the circumstances, the Court finds that the Miesner Companies and AAPIM have met their burden of showing that venue of the Amazing Cases should be transferred to Texas for the convenience of parties.

### **3. Transfer to the Sherman Division of the U.S. Bankruptcy Court for the Eastern District of Texas**

The Court finds that the intertwined relationship of the Amazing Debtors requires that the Amazing Cases proceed together in the same district and division.<sup>13</sup> The mission of AEOG's corporate enterprise is "the acquisition, exploration and development of oil and gas properties and the productions and sale of oil and natural gas." (AEMS Dkt. 107; AEL Dkt. 107; AEH Dkt. 126). In serving that mission, Jilpetco acts as the operating company for all the Amazing Debtors and both receives income and incurs debt on their behalf. The allocation of debt among the Amazing Debtors, however, appears to have been an informal and, thus, imprecise process. Also, PPF paid AEMS and AEL \$137,500.00 as part of the settlement of its claims, and at some point, the settlement proceeds will have to be allocated between them, but it is unclear which one of them actually held proper title to the Mississippi oil and gas leases. For these and other reasons, the Amazing Cases should proceed in the same venue in Texas to avoid inconsistent decisions.

The Court further finds that among the venue choices in Texas, the Sherman Division of the Eastern District of Texas in Plano, Texas best serves the convenience of the parties. AEOG's former corporate headquarters are less than seven (7) miles from the bankruptcy courthouse in Plano, Texas.<sup>14</sup> AEOG's former executives and employees lived and worked in or near Plano,

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<sup>13</sup> Indeed, Rule 1014 provides a mechanism for affiliated debtors to proceed in the same court, as follows: "If petitions commencing cases under the Code . . . are filed in different districts by . . . a debtor and an affiliate, on motion filed in the district in which the petition filed first is pending, . . . the court may determine, in the interest of justice or for the convenience of the parties, the district or districts in which the case or cases should proceed." FED. R. BANKR. P. 1014(b).

<sup>14</sup> In this Opinion, the distance between places has been calculated using the addresses provided by the parties and internet-based driving directions. See GOOGLE MAPS, <https://www.google.com/maps> (last visited June 22, 2020). The Court takes judicial notice of these distances. See *Hanes Supply Co. v. Valley Evaporation Co.*, 262 F.3d 29, 33 n.6 (5th Cir. 1958) (taking judicial notice of the distance between Cincinnati and Atlanta); FED. R. EVID. 202(b)(2).

Texas and are within the Eastern District's subpoena power. AEOG's books and records are located in a storage facility in the Dallas metropolitan area. The city of Plano is less than twenty (20) miles from Dallas, a convenient and accessible transportation hub for the members of the board and the crisis committee, the creditors, and other parties in interest.

At the Hearing, counsel for the Miesner Companies conceded that the Amazing Cases could be transferred to the Division and District closest to the oil and gas assets in Pecos County, Texas. The distance between those interests in Pecos County, Texas and the city of Plano, Texas is approximately 430 miles.<sup>15</sup> By choosing to locate its headquarters in Plano, Texas, however, AEOG did not deem it necessary to be any closer to these assets so the Court likewise does not consider their location to be the dispositive factor in determining the Division and District, especially where the assets are located in a geographically remote area of Texas. In that regard, the Court notes that the Texas creditors are geographically dispersed across that vast state with some concentrated in the Dallas and Houston metropolitan areas.

### **Conclusion**

The interest of justice and the convenience of the parties require that the Amazing Cases be transferred to the Sherman Division of the U.S. Bankruptcy Court for the Eastern District of Texas. The only connection between Mississippi and the Amazing Debtors is AEMS' recent formation there. The Fifth Circuit previously has cautioned against retaining venue when the primary factor in denying transfer is the debtor's choice. *In re Radmax, Ltd.*, 720 F.3d at 290. A review of the dockets in the Amazing Cases reveals that there are no pending contested matters at

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<sup>15</sup> In comparison, the distance from the oil and gas leases in Pecos County, Texas to this courthouse in Mississippi is approximately 817 miles.

this time.<sup>16</sup> Moreover, no separate but related adversary proceedings have been filed. A separate judgment will be entered in accordance with Federal Rules of Bankruptcy Procedure 7054, 7058, and 9021.

##END OF OPINION##

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<sup>16</sup> Pursuant to the settlement reached between AEL and PPF, immediately upon expiration of the fourteen-day appeal period following the entry of the Settlement Orders on June 15, 2020, PPF agreed to withdraw as moot the following contested matters filed in the AEL Case: Emergency Motion to Compel Turn Over of Assets That Are Not Property of the Bankruptcy Estate Within the Meaning of Section 541 and to Compel Rejection of Debtor's Executory Contract with PPF 11 LLC, or in the alternative, to Compel a Sale of Assets Under Section 363 (AEL Dkt. 39); Supplemental and Clarified Motion of PPF 11 LLC for Determination of Application of Safe Harbor Provision Under 11 U.S.C. § 541(b)(4)(B) (AEL Dkt. 95); and Motion of PPF 11 LLC for Order Granting Relief from the Automatic Stay (AEL Dkt. 93).