

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

	)	
In re:	)	Chapter 11
	)	
EXTRACTION OIL & GAS, INC. <i>et al.</i> , <sup>1</sup>	)	Case No. 20-11548 ( )
	)	
Debtors.	)	(Joint Administration Requested)
	)	

**DEBTORS’ MOTION FOR ENTRY OF  
AN ORDER (I) AUTHORIZING THE DEBTORS  
TO (A) CONTINUE INSURANCE COVERAGE ENTERED INTO  
PREPETITION AND SATISFY PREPETITION OBLIGATIONS RELATED  
THERE TO, (B) RENEW, AMEND, SUPPLEMENT, EXTEND, OR PURCHASE  
AND FINANCE INSURANCE POLICIES, AND (C) CONTINUE AND RENEW  
THEIR SURETY BOND PROGRAM AND (II) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state the following in support of this motion (this “Motion”):

**Relief Requested**

1. The Debtors seek entry of an order (the “Order”), substantially in the form attached hereto as **Exhibit A**: (a) authorizing the Debtors to (i) continue prepetition practices related to the Insurance Policies (as defined herein) and satisfy payment obligations related thereto, (ii) renew, amend, supplement, extend, or purchase and finance insurance coverage in the ordinary course of business, and (iii) continue and renew their surety bond program, and (b) granting related relief.

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Extraction Oil & Gas, Inc. (3923); 7N, LLC (4912); 8 North, LLC (0904); Axis Exploration, LLC (8170); Extraction Finance Corp. (7117); Mountaintop Minerals, LLC (7256); Northwest Corridor Holdings, LLC (9353); Table Mountain Resources, LLC (5070); XOG Services, LLC (6915); and XTR Midstream, LLC (5624). The location of the Debtors’ principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.



### **Jurisdiction and Venue**

2. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012 (the “Amended Standing Order”). The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Local Rules”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105(a) and 363(b) of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rules 6003 and 6004, and Bankruptcy Local Rule 9013-1(m).

5. On June 14, 2020 (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. A detailed description surrounding the facts and circumstances of these chapter 11 cases is set forth in the *Declaration of Matthew R. Owens, Co-Founder, President and Chief Executive Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously with this Motion and incorporated by reference herein.

6. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this Motion, the Debtors have requested procedural consolidation and joint

administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated.

**The Insurance Policies and Related Payment Obligations**

7. In the ordinary course of business, the Debtors maintain approximately 19 insurance policies that are administered by various third-party insurance carriers (collectively, the “Insurance Carriers”). These policies provide coverage for both general commercial business risks and risks specific to the exploration and production industry including, but not limited to, coverage for general liability, directors’ and officers’ liability, excess liability, employment liability, automobile liability, and various control of well policies (each, an “Insurance Policy” and collectively, the “Insurance Policies”). A schedule of the Insurance Policies is attached as **Exhibit 1** to the Order, which is incorporated herein by reference.<sup>2</sup>

8. Continuation and renewal of the Insurance Policies, and entry into new insurance policies and related financing agreements as applicable, is essential to the preservation of the value of the Debtors’ business and operations. Moreover, in many instances, coverage provided by the Insurance Policies is required by the regulations, laws, and contracts that govern the Debtors’ commercial activities, including the requirements of the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) that a debtor maintain adequate coverage given the circumstances of its chapter 11 case. The Debtors request authorization to maintain the existing Insurance Policies, pay any prepetition obligations related thereto, and to renew, supplement, or

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<sup>2</sup> In addition to the Insurance Policies listed on **Exhibit 1** attached hereto, the Debtors maintain numerous insurance policies with respect to, among other things, workers’ compensation, employee health, dental, disability, and life insurance benefits. These programs are described, and relief is requested with respect to such programs, in the *Debtors’ Motion for Entry of an Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs and (II) Granting Related Relief*, filed contemporaneously herewith.

enter into new Insurance Policies in the ordinary course of business on a postpetition basis consistent with past practice.

**I. Premium Payments.**

9. The aggregate annual premium for the Insurance Policies is approximately \$3,260,000, not including applicable taxes and surcharges, deductibles, brokerage and consulting fees, and commissions. The Insurance Policies generally are one year in length (although certain policies may be longer than one year based on market conditions and availability at the time) and renew predominately in May and October of each year.

10. Although the Debtors do not believe there are any amounts outstanding due as of the Petition Date, the Debtors seek authority to continue honoring all payment obligations under the Insurance Policies in the ordinary course of business to ensure uninterrupted coverage thereunder.

**II. Deductibles.**

11. Some of the Insurance Policies require the Debtors to pay a per-incident deductible (collectively, "Deductibles"). Generally, if a claim is made against the Insurance Policies, the Debtors' applicable Insurance Carrier will administer the claim and make payments in connection therewith. The Deductible, if any, is offset against such payments. There is significant variation in the amount of Deductibles, which range up to \$2 million. The Debtors seek authority, but not direction, to continue honoring any Deductible that may exist currently or arise under the Insurance Policies in the ordinary course of business and to ensure uninterrupted coverage under the Insurance Policies.

**The Surety Bond Program**

12. In the ordinary course of business, the Debtors are required to provide surety bonds to certain governmental units or other public agencies to secure the Debtors' payment or

performance of certain obligations (the “Surety Bond Program”). For example, the Debtors may be required to provide surety bonds with respect to reclamation activities in the ordinary course of business.

13. When a governmental unit or other public agency requests a bond and the Debtors determine that they have better operational uses for cash or cash deposits and do not wish to provide the cash and cash equivalents necessary to satisfy such request, the Debtors may post a surety bond. In such situations, sureties provide, upfront, the full amount of the requested cash and cash equivalents to the requesting party on behalf of the Debtors, in exchange for, among other things, a fee from the Debtors to secure the bond issuance on the Debtors’ behalf and, in some cases, cash collateral securing the Debtors’ obligations to reimburse the bonding company in the event of a draw on the surety bond. The issuance of a surety bond shifts the risk of the Debtors’ nonperformance or nonpayment from an obligee to a surety.

14. The Debtors currently maintain 23 continuous surety bonds with Westchester Fire Insurance Company, a division of Chubb, Fidelity, and Deposit Company of Maryland, a Zurich Insurance Group company (each, a “Surety,” and collectively, the “Sureties”) in the aggregate amount of approximately \$6,615,000. Premiums related to the Surety Bond Program are generally determined on an annual basis or per-bond basis and are paid by the Debtors when a particular surety bond is issued or renewed. The Debtors pay approximately \$125,000 annually in premiums on account of the Surety Bond Program. Additionally, prior to the Petition Date, the Debtors provided Chubb with a collateral deposit of \$2.4 million. A schedule of the Sureties maintained by the Debtors as of the Petition Date is attached to the Order as **Exhibit 2**.<sup>3</sup>

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<sup>3</sup> For the avoidance of doubt, the Debtors request authority to, among other things, pay any premiums due in connection with all surety bonds, honor any indemnity obligations related thereto, renew and/or supplement all

15. To continue their business operations during the chapter 11 process, the Debtors must be able to provide financial assurance to governmental authorities. This, in turn, requires the Debtors to maintain the existing Surety Bond Program, including paying bond premiums as they come due, providing collateral, renewing or potentially acquiring additional bonding capacity as needed in the ordinary course of business, paying related fees to third parties, and executing other agreements, as needed, in connection with the Surety Bond Program. Failing to provide, maintain, or timely replace their surety bonds in the ordinary course of business will prevent the Debtors from undertaking essential functions related to their operations. Although the Debtors do not believe there are any amounts outstanding due as of the Petition Date, the Debtors seek authority to honor any amounts owed on account of the Surety Bond Program and continue the Surety Bond Program in the ordinary course of business to ensure that the Surety Bond Program and the Debtors' business operations remain uninterrupted on a postpetition basis.

### **III. The Insurance and Surety Broker.**

16. The Debtors obtain the Insurance Policies and Sureties through their insurance and surety broker, IMA Financial Group, Inc. (the "Broker"). The Broker assists the Debtors in obtaining sureties and insurance coverage for certain of their operations in the most cost-effective manner, negotiating policy terms, provisions, and premiums, assisting the Debtors with claims, and providing ongoing support throughout the applicable policy periods. The Broker collects commission payments for services rendered in addition to or as part of the premiums paid on the Insurance Policies and Sureties (the "Brokerage Fees"). The Debtors pay the Broker annual fees for professional services rendered.

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surety bonds, as applicable, and execute any agreement ancillary to all surety bonds, as may be necessary, notwithstanding any failure of the Debtors to include a particular surety bond on this table.

17. The Debtors believe that continuation of the Broker's services is necessary to assure the Debtors' ability to secure Sureties and Insurance Policies on advantageous terms at competitive rates, facilitate the proper maintenance of the Debtors' Insurance Policies postpetition, administer insurance-related claims on a postpetition basis, and ensure adequate protection of the Debtors' property postpetition. The Debtors request authority to pay any prepetition amounts that become due and owing on account of Broker Fees and to continue paying Broker Fees on a postpetition basis in the ordinary course of business and consistent with past practices.

**Basis for Relief**

**I. Continuation of the Insurance Policies is Required by the Bankruptcy Code and U.S. Trustee Guidelines.**

18. Section 1112(b)(4)(C) of the Bankruptcy Code provides that "failure to maintain appropriate insurance that poses a risk to the estate or to the public" is "cause" for mandatory conversion or dismissal of a chapter 11 case. 11 U.S.C. § 1112(b)(4)(C). In addition, in many instances, the coverage provided under the Insurance Policies is required by the regulations, laws, and contracts that govern the Debtors' commercial activities, including the operating guidelines issued by the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee Guidelines"). Accordingly, the Debtors believe it is essential to their estates, and consistent with the Bankruptcy Code and the U.S. Trustee Guidelines, that they continue to satisfy all obligations related to the Insurance Policies and related financing agreements, and the Surety Bond Program and have the authority to supplement, amend, extend, renew, or replace their Insurance Policies and Surety Bond Program as needed, in their judgment, without further order of the Court.

## **II. Satisfying Obligations Under the Insurance Policies and Related Financing Agreements and the Surety Bond Program in the Ordinary Course of Business Is Warranted.**

19. Section 363 of the Bankruptcy Code provides, in relevant part, that a debtor in possession may enter into transactions, including the use, sale, or lease of property in the ordinary course of business, without notice or a hearing. 11 U.S.C. § 363(c)(1). The Debtors submit that obligations on account of the Insurance Policies and related financing agreements and the Surety Bond Program are within the ordinary course of business and thus may be continued in the Debtors' discretion under section 363(c)(1) of the Bankruptcy Code. In the alternative, "[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Under section 363(b), courts in this jurisdiction require only that the debtor provide some "articulated business justification" for the proposed use of property. *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (requiring only that the debtor "show that a sound business purpose" justifies the proposed use of property); *In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring a "good business reason" for use of property under section 363(b) of the Bankruptcy Code). Moreover, "[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) ("Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.").

20. Section 105(a) of the Bankruptcy Code further provides that a court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code, pursuant to the "doctrine of necessity." 11 U.S.C. § 105(a). The "doctrine of necessity" functions in a chapter 11 case as a mechanism by which the bankruptcy court can

exercise its equitable power to allow payment of prepetition claims not explicitly authorized by the Bankruptcy Code and further supports the relief requested herein. *See In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581–82 (3d Cir. 1981) (holding that a court may authorize payment of prepetition claims if such payment is essential to debtor’s continued operation); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) of the Bankruptcy Code “provides a statutory basis for payment of pre-petition claims” under the doctrine of necessity); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (explaining that the doctrine of necessity is the standard for enabling a court to authorize the payment of prepetition claims prior to confirmation of a reorganization plan). Accordingly, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, this Court may grant the relief requested herein.

21. Satisfying possible outstanding or future obligations related to the Brokerage Fees, Insurance Policies and related financing agreements, and the Surety Bond Program is warranted under section 363(b) of the Bankruptcy Code and the doctrine of necessity. Continuation of the Insurance Policies and related financing agreements is essential to preserving uninterrupted operations and the value of the Debtors’ estates. Failing to maintain the Insurance Policies and the Surety Bond Program would impair—if not altogether halt—the Debtors’ ability to operate, resulting in a material adverse effect on the Debtors’ business and the value of their estates.

22. Courts in this district and in others routinely grant similar relief. *See, e.g., In re Destination Maternity Corporation*, No. 19-12256 (BLS) (Bankr. D. Del. Nov. 12, 2019) (authorizing debtors to pay prepetition insurance policy premiums, enter into new insurance policies in the ordinary course, honor their prepetition insurance financing agreements, enter into new premium financing agreements in the ordinary course, honor their prepetition surety bonds,

and enter into new surety bond agreements in the ordinary course); *In re Forever 21, Inc.*, No. 19-2122 (KG) (Bankr. D. Del. Oct. 24, 2019) (same) *In re PES Holdings, LLC*, No. 19-11626 (KG) (Bankr. D. Del. July 23, 2019) (same); *In re Things Remembered, Inc.*, No. 19-10234 (KG) (Bankr. D. Del. Feb. 26, 2019) (same); *In re Charming Charlie Holdings Inc.*, No. 17-12906 (CSS) (Bankr. D. Del. Jan. 10, 2018) (same).<sup>4</sup>

### **III. The Surety Bonds Are Maintained in the Ordinary Course of the Debtors' Business.**

23. Section 363(c)(1) of the Bankruptcy Code provides that a chapter 11 debtor in possession “may enter into transactions . . . [or] may use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). The Bankruptcy Code does not define “ordinary course of business.” *In re Roth Am., Inc.*, 975 F.2d 949, 952 (3d Cir. 1992). In determining whether a transaction is in the ordinary course of business, the Third Circuit has adopted the two-part “horizontal” dimension and “vertical” dimension test. *Id.* First, the transaction must be analyzed on the horizontal dimension, where the court looks at whether, from an industry-wide perspective, the transaction is of the sort commonly undertaken by companies in that industry. *Id.* at 953. Second, the transaction must be analyzed on the vertical dimension, where the court looks at the transaction from the perspective of a hypothetical creditor and asks whether the transaction subjects such a creditor to different economic risks from those he accepted when he decided to extend credit. *See In re Nellson Nutraceutical, Inc.*, 369 B.R. 787, 797 (Bankr. D. Del. 2007). “In other words, the vertical analysis looks at the ‘debtor’s pre-petition business practices and conduct.’” *In re Blitz U.S.A., Inc.*, 475 B.R. 209, 214 (Bankr. D. Del. 2012) (quoting *Nellson*, 369 B.R. at 797).

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<sup>4</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors’ proposed counsel.

24. The Surety Bond Program is clearly consistent with industry practice. To the Debtors' knowledge, other exploration and production businesses also must have surety programs, as otherwise those competitors would not comply with applicable federal and state law. In other words, the existence and continuation of the Surety Bond Program is something that is common in the oil industry.

25. Here, the Debtors seek only to continue their existing Surety Bond Program and to honor their obligations under the Surety Bond Program in the ordinary course of their prepetition business on a postpetition basis. Such obligations include, among other things, maintaining existing Surety Bonds, renewing the Surety Bonds as they expire, paying applicable Surety Premiums, and honoring any indemnity obligations to the extent they arise. Accordingly, the Debtors believe that the continuation of the Surety Bond Program on a postpetition basis is in the ordinary course of business.

**IV. The Debtors Should Be Authorized to Continue the Surety Bond Program in Accordance with Prepetition Practice Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code.**

26. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business's going-concern value. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 825–26 (D. Del. 1999); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175–76 (Bankr. S.D.N.Y. 1989); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983). In so doing, these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims.

27. Section 363(b) of the Bankruptcy Code permits a bankruptcy court, after notice and a hearing, to authorize a debtor to “use, sell, or lease, other than in the ordinary course of business,

property of the estate.” 11 U.S.C. § 363(b)(1). “In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions.” *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (collecting cases); *see also Armstrong World*, 29 B.R. at 397 (relying on section 363 to allow contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to debtors); *Ionosphere Clubs*, 98 B.R. at 175 (finding that a sound business justification existed to justify payment of certain prepetition wages); *In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring the debtor to show a “good business reason” for a proposed transaction under section 363(b)).

28. Courts also authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code codifies a bankruptcy court’s inherent equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a), courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor’s businesses. *See Just for Feet*, 242 B.R. at 825–26. Specifically, a court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the “necessity of payment” rule (also referred to as the “doctrine of necessity”). *See, e.g., Ionosphere Clubs*, 98 B.R. at 176; *In re Lehigh & New England Railway Co.*, 657 F.2d 570 (3d Cir. 1981) (stating that courts may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); *see also In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (noting that, in the Third Circuit, debtors may pay prepetition claims

that are essential to the continued operation of the business). A bankruptcy court's use of its equitable powers to "authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *Ionosphere Clubs*, 98 B.R. at 175–76 (citing *Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286 (1882)). Indeed, at least one court has recognized that there are instances when a debtor's fiduciary duty can "only be fulfilled by the preplan satisfaction of a prepetition claim." *In re CoServ*, 273 B.R. at 497. 21. As noted above, certain surety bonds are required by state or federal laws, and, in other instances, surety bonds may be required by contract or regulation. The Debtors' failure to provide, maintain, or timely replace the Surety Bonds may, therefore, jeopardize the Debtors' ability to conduct their operations. Moreover, based on the Debtors' current circumstances, it is not likely that the Debtors will be able to replace existing Surety Bonds on terms more favorable than those offered by the Sureties. The process of establishing a new Surety Bond Program would be burdensome to the Debtors, and it is doubtful that the Debtors could replace all of the Surety Bonds in time to avoid defaults or other consequences of the applicable obligations. Continuing the Surety Bond Program is therefore necessary to maintain the Debtors' current business operations, as well as the existing relationship with the Sureties.

29. Based on the foregoing, the Debtors respectfully submit that their participation in the Surety Bond Program, including making additional Surety Premium payments, should be authorized under sections 105(a) and 363(b) of the Bankruptcy Code to the extent such participation is deemed outside the ordinary course of the Debtors' businesses.

**Processing of Checks and Electronic Fund Transfers Should Be Authorized**

30. The Debtors have sufficient funds to pay the amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations

and anticipated access to cash collateral. Under the Debtors' existing cash management system, the Debtors have made arrangements to readily identify checks or wire transfer requests relating to the Brokerage Fees, Insurance Policies, and the Surety Bond Program, as applicable. Accordingly, the Debtors believe that checks or wire transfer requests that are not related to authorized payments will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

**The Requirements of Bankruptcy Rule 6003 Are Satisfied**

31. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the commencement of a chapter 11 case "to the extent that relief is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003. For the reasons discussed above, continuing insurance coverage during these chapter 11 cases and granting the other relief requested herein is integral to the Debtors' ability to transition their operations into these chapter 11 cases smoothly. Failure to receive such authorization and other relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

**Waiver of Bankruptcy Rules 6004(a) and 6004(h)**

32. To implement the foregoing successfully, the Debtors request that the Court enter an Order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

**Reservation of Rights**

33. Nothing contained in this Motion or any actions taken by the Debtors pursuant to any order granting the relief requested by this Motion is intended or should be construed as: (a) an admission as to the validity, priority, or amount of any particular claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors or any other party-in-interest that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Motion are valid and the Debtors and all other parties-in-interest expressly reserve their rights to contest the extent, validity, or perfection, or to seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity, priority, or amount of any particular claim or a waiver of the Debtors' or any other party-in-interest's rights to subsequently dispute such claim.

**Notice**

34. Notice of the hearing on the relief requested in this Motion will be provided by the Debtors in accordance and compliance with Bankruptcy Rules 4001 and 9014, as well as the Bankruptcy Local Rules, and is sufficient under the circumstances. Without limiting the foregoing, due notice will be afforded, whether by facsimile, electronic mail, overnight courier or hand delivery, to parties-in-interest, including: (a) the U.S. Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis);

(c) the administrative agent under the Debtors' prepetition senior credit facility or, in lieu thereof, counsel thereto; (d) the lenders under the Debtors' prepetition senior credit facility or, in lieu thereof, counsel thereto; (e) the lenders under the Debtors' debtor-in-possession financing facilities or, in lieu thereof, counsel thereto; (f) the administrative agent under the Debtors' debtor-in-possession financing facilities or, in lieu thereof, counsel thereto; (g) the indenture trustee for the Debtors' prepetition senior notes or, in lieu thereof, counsel thereto; (h) the holders of the Debtors' prepetition senior notes or, in lieu thereof, counsel thereto; (i) the ad hoc group of holders of the Debtors' preferred equity or, in lieu thereof, counsel thereto; (j) the United States Attorney's Office for the District of Delaware; (k) the Internal Revenue Service; (l) the United States Securities and Exchange Commission; (m) the state attorneys general for states in which the Debtors conduct business; (n) the Brokers; (o) the Insurance Carriers; (p) the Sureties; and (q) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

35. No prior motion for the relief requested herein has been made to this or any other court.

*[Remainder of page intentionally left blank]*

WHEREFORE, the Debtors respectfully request that the Court enter an Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested in this Motion and granting such other and further relief as is appropriate under the circumstances.

Dated: June 15, 2020  
Wilmington, Delaware

*/s/ Richard W. Riley*

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**WHITEFORD, TAYLOR & PRESTON LLC<sup>1</sup>**

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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

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<sup>1</sup> Whiteford, Taylor & Preston LLC operates as Whiteford Taylor & Preston L.L.P. in jurisdictions outside of Delaware.

**Exhibit A**

**Proposed Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
EXTRACTION OIL & GAS, INC. <i>et al.</i> , <sup>1</sup>	)	Case No. 20-11548 ( )
	)	
Debtors.	)	(Joint Administration Requested)
	)	
	)	Re: Docket No. __

**ORDER (I) AUTHORIZING THE DEBTORS  
TO (A) CONTINUE INSURANCE COVERAGE ENTERED INTO  
PREPETITION AND SATISFY PREPETITION OBLIGATIONS RELATED  
THERE TO, (B) RENEW, AMEND, SUPPLEMENT, EXTEND, OR PURCHASE  
AND FINANCE INSURANCE POLICIES, AND (C) CONTINUE AND RENEW  
THEIR SURETY BOND PROGRAM AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”) (a) authorizing the Debtors to (i) continue prepetition practices related to the Insurance Policies and satisfy payment obligations related thereto, (ii) renew, amend, supplement, extend, or purchase and finance insurance coverage in the ordinary course of business, and (iii) continue and renew their surety bond program and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Extraction Oil & Gas, Inc. (3923); 7N, LLC (4912); 8 North, LLC (0904); Axis Exploration, LLC (8170); Extraction Finance Corp. (7117); Mountaintop Minerals, LLC (7256); Northwest Corridor Holdings, LLC (9353); Table Mountain Resources, LLC (5070); XOG Services, LLC (6915); and XTR Midstream, LLC (5624). The location of the Debtors’ principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Debtors are authorized to continue the Insurance Policies and pay and honor any prepetition amounts outstanding under, or postpetition obligations related to, the Insurance Policies and related financing agreements in the ordinary course of business, including any amounts owed on account of Brokerage Fees, and to pay any prepetition amounts due in connection therewith.
3. The Debtors are authorized to renew, amend, supplement, extend, or purchase insurance policies, and to enter into, renew, amend, supplement, or extend premium financing agreements as necessary, to the extent that the Debtors determine that such action is in the best interest of their estates.
4. The Debtors are authorized to continue and renew their Surety Bond Program, including paying bond premiums as they come due, providing collateral, renewing or potentially acquiring additional bonding capacity as needed, paying related Brokerage Fees, and executing other agreements, as needed, in connection with the Surety Bond Program in the ordinary course

of business on a postpetition basis; *provided however*, that the Debtors shall provide the counsel to counsel to the ad hoc group of holders of the Debtors' prepetition senior notes, the counsel to the administrative agent under the Debtors' prepetition senior credit facility and the counsel to the administrative agent under the Debtors' debtor-in-possession financing facilities with at least five (5) business days' notice before either (i) converting a prepetition surety bond into a postpetition obligation, or (ii) collateralizing a prepetition surety bond.

5. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing contained in the Motion or this Order shall constitute, nor is it intended to constitute: (a) an admission as to the validity, priority, or amount of any particular claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors or any other party-in-interest that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Order are valid and the Debtors and all other parties-in-interest expressly reserve their rights to contest the extent, validity, or perfection, or to seek avoidance of all such liens. Any payment made pursuant to this Order should not be construed as an admission as to the validity, priority, or amount of any particular claim or a waiver of the Debtors' or any other party-in-interest's rights to subsequently dispute such claim.

6. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized

to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

7. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

8. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

9. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

10. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

11. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

**Exhibit B**

**Insurance Policies**

<u>Policy Type</u>	<u>Insurance Carrier</u>	<u>Policy #</u>	<u>Policy Term</u>	<u>Total Premium Excluding Taxes &amp; Fees</u>
A-Side Director & Officer	Allied World Insurance Co	0310-3786	10/12/19 - 10/12/20	\$65,000
Control of Well/Operator's Extra Expense	Lloyds of London	GU307850N	10/31/19 - 4/30/21	\$1,297,528
Director & Officer	XL Specialty Insurance Company	ELU16424719	10/12/19 - 10/12/20	\$425,700
Excess A-Side Director & Officer	Ace American Ins. Co	DOXG25602651004	10/12/19 - 10/12/20	\$46,431
Excess A-Side Director & Officer	Continental Casualty Company	652041944	10/12/19 - 10/12/20	\$40,000
Excess Director & Officer	Axis Insurance Company	MLN797590/01/2019	10/12/19 - 10/12/20	\$65,800
Excess Director & Officer	Endurance American Insurance Co	DOX10010022403	10/12/19 - 10/12/20	\$100,000
Excess Director & Officer	Great American Insurance Co	DFX2380907	10/12/19 - 10/12/20	\$276,705
Excess Director & Officer	National Union Fire Ins. Co. of Pitts. PA	02-144-18-03	10/12/19 - 10/12/20	\$79,000
Excess Director & Officer	Old Republic Insurance Co	ORPRO43375	10/12/19 - 10/12/20	\$131,700
Excess Director & Officer	Starr Indemnity & Liability Co	1000057055191	10/12/19 - 10/12/20	\$57,950
Excess Director & Officer	Twin City Fire Insurance Co	34DA029844319	10/12/19 - 10/12/20	\$189,000
Excess Liability	Federal Insurance Company	79884808	5/20/20 - 5/20/21	\$46,100
Excess Liability	Markel International Insurance Co Ltd.	JUMB102016	5/20/20 - 5/20/21	\$156,561
Executive Risk Package	Travelers Casualty and Surety Co of Am	106437240	01/25/20 - 01/25/21	\$40,342
General Liability, Employee Benefits Liability, Hired & Non-Owned Auto	Markel International Insurance Co Ltd.	JCGL102357	5/20/20 - 5/20/21	\$144,495
Property	Hanover Insurance Company	RH4H26511900	5/20/20 - 5/20/21	\$39,158
Workers Compensation (AOS)	Zurich American Insurance Co.	WC918496806	06/01/20 - 06/01/21	\$369
Workers Compensation (CO)	Pinnacol Assurance	4174932	06/01/20 - 06/01/21	\$56,619

**Exhibit C**

**Sureties**

## Surety Bonds

<u>Bond No.</u>	<u>Principal</u>	<u>Surety</u>	<u>Beneficiary</u>	<u>Type of Bond</u>	<u>Expiration</u>	<u>Premium</u>	<u>Bond Amount</u>
LPM9325482	Axis Exploration LLC	Fidelity and Deposit Company of Maryland (a Zurich company)	City of Aurora, CO	Operator Bond	7/11/2020	\$450	\$25,000
LPM9297817	Axis Exploration LLC	Fidelity and Deposit Company of Maryland (a Zurich company)	City of Aurora, CO	Road bond for Jamaso Well Pad Development	8/24/2020	\$45,000	\$2,500,000
LPM9307074	Extraction Oil & Gas, Inc.	Fidelity and Deposit Company of Maryland (a Zurich company)	Town of Windsor, CO	Building permit bond for Greeley Office/Wharehouse	2/14/2021	\$1,253	\$69,611
LPM9329909	Extraction Oil & Gas, Inc.	Fidelity and Deposit Company of Maryland (a Zurich company)	Colorado Oil & Gas Conservation Commission	Excess Inactive Bond	9/6/2020	\$31,680	\$1,760,000
LPM9338007	Extraction Oil & Gas, Inc.	Fidelity and Deposit Company of Maryland (a Zurich company)	Colorado Oil & Gas Conservation Commission	Produced water bond for Merlin/Raindance (aka "Windsor Water System") line	12/4/2020	\$100	\$5,000
K09242818	8 North, LLC	Westchester Fire Insurance Company (a CHUBB company)	CO State Board of Land Commissioners	Blanket Drilling, Plugging or Operating Oil, Gas, Water or Mineral Wells or Leases	7/27/2020	\$2,000	\$100,000
K09242417	8 North, LLC	Westchester Fire Insurance Company (a CHUBB company)	Colorado Oil & Gas Conservation Commission	Plugging Blanket Bond	5/18/2021	\$10,000	\$500,000
K09161429	8 North, LLC	Westchester Fire Insurance Company (a CHUBB company)	United States Department of the Interior Bureau of Land Management	Statewide Federal bond for Colorado	4/27/2021	\$500	\$25,000
K09242405	8 North, LLC	Westchester Fire Insurance Company (a CHUBB company)	Colorado Oil & Gas Conservation Commission	Surface Blanket Bond	5/18/2021	\$500	\$25,000
K09242429	8 North, LLC	Westchester Fire Insurance Company (a CHUBB company)	Wyoming Oil & Gas Conservation Commission	Well Plugging	5/18/2021	\$2,000	\$100,000
K09506202	Axis Exploration LLC	Westchester Fire Insurance Company (a CHUBB company)	Colorado Oil & Gas Conservation Commission	Blanket Plugging Bond	11/22/2020	\$2,800	\$140,000
K09506214	Axis Exploration LLC	Westchester Fire Insurance Company (a CHUBB company)	Colorado Oil & Gas Conservation Commission	Blanket Surface Bond	11/22/2020	\$500	\$25,000
K09506226	Extraction Oil & Gas Inc. dba Bison Exploration, LLC.	Westchester Fire Insurance Company (a CHUBB company)	CO State Board of Land Commissioners	Oil & Gas Blanket Bond	11/22/2020	\$2,000	\$100,000
K08628683	Extraction Oil & Gas, Inc.	Westchester Fire Insurance Company (a CHUBB company)	Colorado Oil & Gas Conservation Commission	Blanket Plugging bond	3/19/2021	\$2,000	\$100,000
K08628695	Extraction Oil & Gas, Inc.	Westchester Fire Insurance Company (a CHUBB company)	Colorado Oil & Gas Conservation Commission	Blanket Surface bond	3/19/2021	\$500	\$25,000
K09242843	Extraction Oil & Gas, Inc.	Westchester Fire Insurance Company (a CHUBB company)	Town of Frederick, CO	Bybee Landscape	8/12/2020	\$579	\$28,974
K09242399	Extraction Oil & Gas, Inc.	Westchester Fire Insurance Company (a CHUBB company)	Colorado Oil & Gas Conservation Commission	Excess inactive wells	5/18/2021	\$19,200	\$960,000
K09242855	Extraction Oil & Gas, Inc.	Westchester Fire Insurance Company (a CHUBB company)	Town of Frederick, CO	Johnson Trust Landscape	8/12/2020	\$1,356	\$67,791
K09506251	Extraction Oil & Gas, Inc.	Westchester Fire Insurance Company (a CHUBB company)	Adams County, CO	Right Of Way - For Street Cut Excavations	1/5/2021	\$100	\$5,000
K09161442	Extraction Oil & Gas, Inc.	Westchester Fire Insurance Company (a CHUBB company)	CO State Board of Land Commissioners	Road Access Permit No. 726	4/29/2021	\$100	\$5,000