

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

IN RE:	)	Chapter 11
	)	
8 North, LLC,	)	Case No. 20-11550 (MFW)
	)	
Reorganized Debtors.	)	(Formerly Jointly Administered
	)	under Lead Case: Extraction Oil &
	)	Gas, Inc., Case No. 20-11548)
	)	
	)	Hearing Date: July 12, 2022 at 2:00 p.m. ET
	)	Objection Deadline: July 1, 2022 at 4:00 p.m. ET

**MOTION TO COMPEL IMPLEMENTATION OF THE CONFIRMED PLAN**

Now comes creditor LW Survey Company (hereafter “LW”), by and through its attorneys, and requests that this Honorable Court order debtor XTR Midstream, LLC (hereafter “XTR”) to pay LW’s claim as required by the confirmed Plan of Reorganization. In support thereof, it states as follows:

**Jurisdiction and Venue**

1. This Court has jurisdiction to consider the Motion under 28 U.S.C. §§ 157 and 1334, the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012, Article XI of the Plan, and paragraph 154 of the Confirmation Order.

2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A).

4. Pursuant to 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”), LW consents 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 consistent with Article III of the United States Constitution.

5. The statutory and rule predicates for the relief sought herein are 11 U.S.C. §1142 and Federal Rule of Bankruptcy Procedure 3021.

### **Background**

6. On June 14, 2020, Extraction Oil & Gas, Inc. and its affiliated debtors (the “*Debtors*,” and after the Effective date of Chapter 11 Plan, the “*Reorganized Debtors*”) filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

7. On August 1, 2020, LW timely filed claim number 178 under the XTR Midstream, LLC case number 20-11557 in the amount of \$371,133.51 with all outstanding invoices supporting the claim attached to it (hereafter “*LW Claim 178*”). The claim was filed as a general unsecured claim.

8. No objection has ever been filed to LW Claim 178. No motion to estimate the claim LW Claim 178 for purpose of voting was ever filed.

9. Pursuant to the various plans of reorganization filed by the Debtors, LW Claim 178 claim should be treated as a general unsecured claim.

10. Specifically, in the Sixth Amended Joint Plan of Reorganization of Extraction Oil & Gas, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code [Docket No. 1505] (as may be amended, supplemented, or modified from time to time, and including all exhibits and supplements thereto, hereafter the “*Plan*”), treatment of LW Claim 178 claim should fall under Class 6.

11. As a Class 6 claimant, LW would have a right to equity in the reorganized debtor or a cash out for a portion of its claim. *See*, Plan [Docket No. 1505] at p. 28. Also, since Class 6 was impaired, LW had the right to vote. *Id.* at p. 29.

12. Despite the fact that LW was a known creditor, it never received any notices regarding any of the disclosure statements or plans in this case, and was never sent a voting packet. LW was not listed on Exhibit E to the certificate of service for the voting packet and ballots sent out [Docket No. 1175] (which is where it should have been listed as being sent those documents). Rather LW was listed in two other places on the exhibits to the certificate of service. First, at “**Exhibit H** Non-Voting Claims – Unimpaired Deemed to Accept” for which paragraph 16 of the certificate of service states that creditors on that exhibit were mailed the Non-Voting Packet. Second, at “**Exhibit M** Creditor Matrix” for which paragraph 20 of the certificate of service states that creditors on that exhibit were sent the Confirmation Hearing Notice.

13. On December 23, 2020, the United States Bankruptcy Court for the District of Delaware (the “*Bankruptcy Court*”), entered an order [Docket No. 1509] (the “*Confirmation Order*”) approving and confirming the Plan.

14. On January 21, 2021, the Reorganized Debtors filed the Notice of (A) Entry of Findings of Fact, Conclusions of Law, and Order Confirming the Sixth Amended Joint Plan of Reorganization of Extraction Oil & Gas, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code, and (B) Occurrence Of Effective Date [Docket No. 1652], pursuant to which, among other things, the Reorganized Debtors declared that the Effective Date of the Plan occurred on January 20, 2021.

15. Only a few days later, Reorganized Debtors distributed payments to the cure-claim creditors whose executory contracts were being assumed (*See*, p. 41 of the Plan). LW had filed a \$790.00 claim against Extraction Oil and Gas, Inc. (hereafter “*Extraction*”) and, having that claim treated in the Plan as a Cure-Claim, it received its \$790.00 payment on its cure claim.

16. Concerned that LW had not received payment of its larger claim, and seeing the “full payment and satisfaction” language in Extraction’s cover letter sent with the check, LW retained bankruptcy counsel in Chicago to see if counsel could parse out what had happened to payment of the claim LW filed against XRT. Bankruptcy counsel who reviewed the relevant documents on the docket assured LW that payment of its Cure Claim against Extraction had no effect upon its filed claim against XTR.

17. LW’s counsel further discovered that LW had been ignored in the voting process. Despite having been ignored in the process, LW was not interested in fighting that issue, and was willing to accept the cash distribution on its claim as provided for Class 6 creditors under the Plan.

18. Beginning in April of 2021, LW’s bankruptcy counsel made several attempts by telephone to contact all counsel for the Reorganized Debtors that LW’s counsel could find on the filings in the bankruptcy case. LW’s counsel wanted to know why LW Claim 178 had not been treated properly, to advise of LW’s option to take the cash payment, and to find out when LW’s claim was expected to be paid. Counsel was unable to reach any attorney for the Reorganized Debtors and left messages for them all. Counsel contacted the claims administrator company to see if it could discover which attorney was their primary contact so that LW’s counsel could reach out to that person. The claims administrator company

representative did speak with LW's counsel and advised that she could not say the person who was their primary contact, but she said she would send a message to Reorganized Debtor's attorney. No response calls were received from any of the counsel.

19. On June 24, 2021, an email was sent to six attorneys who were listed on various case documents on the docket—four at Kirkland & Ellis LLP/Kirkland & Ellis International LLP and two from Whiteford, Taylor & Preston LLC. No response was received from any of the counsel.

20. Only after the pro hac vice appearances for LW's Chicago attorneys were filed, at the very end of July 2021, did local counsel, Ms. Sawczuk, receive a call inquiring why out of jurisdiction counsel were seeking to be admitted.

21. Thereafter, a conference call was scheduled, promising attention and follow up regarding the issue after debtor's counsel could investigate.

22. Some subsequent calls and emails have occurred, but there has never been an explanation as to why LW was not properly included in the voting packages under the plan.

23. Instead, the calls have revolved around conveying LW's desire to have a cash payout (not stock).

24. The calls also have revolved around allegations by a non-debtor entity to whom XRT delegated its duties under XRT's contract with LW (the "*Delegated Party*") who claimed to have objections to the services performed by LW. The conversations further claimed that the Delegated Party thought it had a claim against LW for monies Delegated Party expended for what it claims it had to fix due to the supposed defect in LW's services. LW denies that its services were defective. The Delegated Party never sought recovery from XRT for those monies, and so even if LW's services had been defective, any monies it might be found to owe

would have no effect on Debtor's estate.

25. No offer to pay any portion of LW Claim 178 has been made. In fact, the demand has been that LW pay the Delegated Party (a non-debtor) six figures and that LW waive its claim.

**Applicable Law and Request for Relief**

26. Pursuant to 11 U.S.C. §1142(a) a debtor is to carry out the plan. Pursuant to 11 U.S.C. §1142(b) the court may direct the debtor and any other necessary party to perform any other act that is necessary for consummation of the plan.

27. Pursuant to Federal Rule of Bankruptcy Procedure 3021, after a plan is confirmed, distribution is to be made to creditors whose claims have been allowed at the time of commencement of distribution, unless a different time is fixed by the plan or the order confirming the plan.

28. As no objection has been made to LW Claim 178, it is an allowed claim.

29. The Plan provides for payment of Class 6 general unsecured claims.

30. Distribution under the plan began about 18 months ago, within just days after confirmation of the Plan.

31. Since LW was ignored in the balloting process, it has not had an opportunity to elect stock or a financial distribution. LW's election for the financial distribution on claim number 178 should be made of record.

32. Since LW has elected the financial distribution, since its claim is allowed, and since distribution under the Plan has commenced, Debtor should issue a distribution of the amount designated for Class 6 creditors of the Plan, without further delay.

WHEREFORE, LW, a general unsecured creditor, asks this Honorable Court to:

- a. Acknowledge of record that LW has elected to receive a financial distribution, and not stock, as Class 6 of the Plan provides,
- b. Order the Debtor to make payment on LW Survey Company's claim number 178 within 21 days, and
- c. Grant such other and further relief as is just and equitable.

**RESPECTFULLY SUBMITTED,**

/s/ Maria Aprile Sawczuk

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*Counsel for LW Survey Company*

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IN RE:	)	Chapter 11
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8 North, LLC,	)	Case No. 20-11550 (MFW)
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Reorganized Debtors.	)	(Formerly Jointly Administered
	)	under Lead Case: Extraction Oil &
	)	Gas, Inc., Case No. 20-11548)
	)	
	)	Related to Docket No. _____

**ORDER COMPELLING DEBTORS TO IMPLEMENT THE CONFIRMED PLAN**

Upon the *Motion to Compel Implementation of the Confirmed Plan* filed by LW Survey Company (the “*Motion*”);<sup>1</sup> and the Court having 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 as of February 29, 2012; and the Court having found this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court may enter an order consistent with Article III of the United States Constitution; and the 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 the Court having considered the Motion, and any objections thereto; and it appearing that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation thereon and sufficient cause appearing therefor;

**IT IS HEREBY ORDERED, THAT:**

- A. The Motion is granted as set forth herein;
- B. LW Survey Company is hereby deemed to have elected to receive a financial distribution, and not stock, as Class 6 of the Plan provides;

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<sup>1</sup> All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

C. The Debtors are hereby ordered to make a cash payment on LW Survey Company's claim, Claim Number 178, as provided by the Plan, within 21 days of the date of this Order; and

D. This Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.

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Reorganized Debtors.	)	(Formerly Jointly Administered
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	)	Hearing Date: July 12, 2022 at 2:00 p.m. ET
	)	Objection Deadline: July 1, 2022 at 4:00 p.m. ET

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that on June 16, 2022, LW Survey Company filed the attached *Motion to Compel Implementation of the Confirmed Plan* (the “*Motion*”), with the United States Bankruptcy Court for the District of Delaware (the “*Bankruptcy Court*”).

PLEASE TAKE FURTHER NOTICE that the Motion shall be considered at the hearing scheduled in the above-captioned case for **July 12, 2022 at 2:00 p.m. (Eastern Time)** at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Courtroom 4, Wilmington, Delaware 19801 before the Honorable Mary F. Walrath.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be filed in writing with the Bankruptcy Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, and served upon and received by counsel for LW Survey Company on or before **July 1, 2022 at 4:00 p.m. (Eastern Time)**.

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: June 16, 2022

**GOLDSTEIN & MCCLINTOCK, LLLP**

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