

**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 (CSS)
	)	
Reorganized Debtors.	)	(Jointly Administered)
	)	
	)	<b>Obj. Deadline: August 2, 2021 at 5:00 p.m. (ET)</b>
	)	<b>Hearing Date: August 9, 2021 at 11:00 a.m. (ET)</b>
	)	

**MOTION FOR AN ORDER PURSUANT TO SECTION 105(a) OF THE  
 BANKRUPTCY CODE, BANKRUPTCY RULE 2004, AND BANKRUPTCY  
 LOCAL RULE 2004-1 AUTHORIZING AND DIRECTING THE  
 EXAMINATIONS OF BANK OF AMERICA N.A. AND MERRILL LYNCH &  
 CO. f/k/a MERRILL LYNCH, PIERCE, FENNER & SMITH INC.**

The XOG Litigation Trust (the “Trust”), established in the above-captioned cases of the reorganized debtors and debtors in possession (collectively, the “Reorganized Debtors”) hereby submits this motion (the “Motion”) pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 2004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Local Rules”), for entry of an order substantially in the form annexed hereto as **Exhibit A** (the “Order”), authorizing and directing discovery from Bank of America, N.A. (“Bank of America”) and Merrill Lynch & Co. f/k/a Merrill Lynch, Pierce, Fenner & Smith, Inc. (“Merrill”). In support of the Motion, the Trust respectfully represents as follows:

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<sup>1</sup> The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized Debtors’ 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 Reorganized Debtors’ principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.



**PRELIMINARY STATEMENT**

1. In November 2018, Extraction Oil & Gas, Inc. (“XOG”) announced that its Board of Directors approved a stock repurchase program (“SRP”) under which the company was authorized to repurchase up to \$100 million of outstanding common stock in the open market. The SRP was later extended and increased in April 2019. The Reorganized Debtors’ former Chief Financial Officer, Russell Kelley, Jr. (“Kelley”), was instrumental in executing the SRP. By July 2, 2019, the company had repurchased 38.2 million shares of common stock at a price of \$163.2 million. During the SRP, Kelley failed to inform the Board of material information regarding the impact of the program on the Reorganized Debtors’ operations and loan agreements, and further engaged in personal transactions connected to the Reorganized Debtors’ stock.

2. After the Reorganized Debtors experienced liquidity concerns, and prior to the Petition Date, the Board of Directors of the Reorganized Debtors formed an Investigation Special Committee for the purpose of investigating and assessing any potential claims that may exist arising from approval or implementation of the SRP. Claims against Kelley were assigned to the Trust pursuant to the confirmation of the Reorganized Debtors’ plan of reorganization. In connection with the Trust’s investigation of the claims, information sought in this Motion is desired by the Trustee to further assess and analyze those claims.

**JURISDICTION AND VENUE**

3. 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 Trust confirms its consent, pursuant to rule Bankruptcy Rule 7008 and Bankruptcy Local Rule 9013-1(f) 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.

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

5. The statutory bases for the relief requested herein are section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), Bankruptcy Rule 2004, and Bankruptcy Local Rule 2004-1.

## **BACKGROUND**

### **A. Case Background**

6. 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* [Docket No. 18] (the “First Day Declaration”), incorporated by reference herein.

7. These chapter 11 cases have been consolidated for procedural purposes only and are jointly administered pursuant to Bankruptcy Rule 1015(b) [Docket No. 79]. On June 30, 2020, the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the “Committee”) [Docket No. 155].

8. On December 23, 2020, the Reorganized Debtors filed the *Sixth Amended Joint Plan of Reorganization of Extraction Oil & Gas, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of Bankruptcy Code* [Docket No. 1505] (the “Plan”), which was confirmed on December 23, 2020 [Docket No. 1509].

**B. The Relationship of the Parties**

9. As mentioned, Kelley is the Reorganized Debtors' former Chief Financial Officer. His employment with the Reorganized Debtors ended on September 15, 2019. Kelley, as CFO, was responsible for informing the Board about the SRP, executing the SRP, including directing the volume and dates of the repurchases under the SRP, and addressing financial matters related to the execution and completion of the SRP.

10. A review of the facts relating to the SRP reveals that Kelley failed to disclose certain material information regarding the impact of the SRP on the Reorganized Debtors' operations and covenants under their loan agreements to the Board. In addition, during the course of the SRP, Kelley maintained various financial accounts, and transferred shares of the Reorganized Debtors' stock owned by him. Subsequently, Kelley requested that Barclays put together a large block of the Company's shares for sale on the market, which led to more than \$65 million of shares repurchased in an approximate two-week period to exhaust the SRP. This purchase amount and timeframe was not revealed to the Board until after the transactions closed, even though a Board meeting took place at which Kelley was present just days prior. After the repurchases, the Company required a waiver and amendment of the credit facility agreement as a result of the outlay of cash and borrowing for the SRP—exactly what Kelley had been warned about by internal staff.

11. Prior to this repurchase in June 2019, Kelley had been denied a waiver by the Board of a corporate policy prohibiting the pledging of shares owned by him for a loan. Immediately thereafter, Kelley, along with Merrill, met to devise a workaround that would allow him to borrow funds using his shares of the Reorganized Debtors' stock indirectly to backstop the financial instrument. Merrill representatives were involved in advising him regarding a structure.

12. Given these personal interests of Kelley in the stock price and its relatedness to his personal accounts and the SRP, the Trust has determined that documents and communications regarding Kelley's accounts, sell orders, stock plans, loans, and other related information will assist it in evaluating the claims against Kelley.

**RELIEF REQUESTED**

13. The Trust seeks to determine the nature and extent of any causes of action it has been assigned by the Reorganized Debtors against Kelley arising from breaches of fiduciary duties, including with respect to the SRP.

14. By this Motion, the Trust seeks entry of an order directing Bank of America and Merrill to produce documents responsive to the requests set forth in **Exhibit B** (the "Document Requests") attached to this Motion. The Trust further requests that responses to the Document Requests be delivered to Kevin G. Hroblak, Whiteford, Taylor & Preston L.L.P., 7 Saint Paul Street, Baltimore, Maryland 21202 within ten (10) days after entry of an order granting this Motion or at such other place and time as may be agreed upon by the parties. Finally, the Trust seeks authority to examine Bank of America and/or Merrill under oath, if the Trust determines it to be appropriate following the receipt of documents responsive to the Document Requests. The topics for such examination pursuant to Rule 2004 are set forth in **Exhibit C**.

**BASIS FOR RELIEF**

15. Bankruptcy Rule 2004 provides that the Court may order the examination and the production of documentary evidence of "any entity" concerning any matter that relates "to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or ... any matter relevant to the case or the formulation of a plan." Fed. R. Bankr. P. 2004(b); *see also Harrow v. Street (In re Fruehauf Trailer Corp.)*, 369 B.R. 817, 827-28 (Bankr. D. Del. 2007) (noting the "extensive document discovery" that occurred

pursuant to a subpoena issued under Fed. R. Bankr. P. 2004). The term “entity” includes individuals, partnerships and corporations. *See* 11 U.S.C. §§ 101(15) and (41).

16. The scope of a Rule 2004 examination is “unfettered and broad,” as the plain language of the rule indicates. *See In re Countrywide Home Loans, Inc.*, 384 B.R. 373, 400 (Bankr. W.D. Pa. 2008). Indeed, Bankruptcy Rule 2004 affords parties-in-interest an extremely broad right of discovery and “is even broader than that of discovery permitted under [the Federal Rules of Civil Procedure], which themselves contemplate broad, easy access to discovery,” *In re Valley Forge Plaza Assoc.*, 109 B.R. 669, 674 (Bankr. E.D. Pa. 1990) (citations omitted). *See also In re Teleglobe Communications Corp.*, 493 F.3d 345, 354 n. 6 (3d Cir. 2007) (Rule 2004 allows parties with an interest in the bankruptcy estate to conduct discovery into matters affecting the estate); *In re Washington Mutual*, 408 B.R. 45, 50 (Bankr. D. Del. 2009) (a “Rule 2004 [examination] is commonly recognized as more in the nature of a ‘fishing expedition’”) (Citations omitted).

17. Plainly, the broad access afforded by Bankruptcy Rule 2004 extends to third parties such as Bank of America and Merrill. *See, e.g., In re Wilcher*, 56 B.R. 428, 433 (Bankr. N.D. Ill. 1985) (Bankruptcy Rule 2004 examination “may extend to creditors and third parties who have had dealings with the debtor”). This is because “[t]he clear intent of Rule 2004 ... is to give parties in interest an opportunity to examine individuals having knowledge of the financial affairs of the debtor in order to preserve the rights of creditors.” *In re GHR Cos., Inc.*, 41 B.R. 655, 660 (Bankr. D. Mass. 1984).

18. In this case, an Order pursuant to Bankruptcy Rule 2004 is both appropriate and necessary. As mentioned, the Trust seeks discovery from Bank of America and Merrill to evaluate whether the Trust has viable causes of action against Kelley. This inquiry falls squarely within the permissible scope of discovery under Bankruptcy Rule 2004.

19. The Trust is entitled to investigate actions taken by Kelley, including whether such actions were for his personal interests, and whether the Trust has viable claims against him.

20. As the financial institutions for Kelley's accounts that were connected to his holdings in XOG, whether directly or indirectly, Bank of America and Merrill will have information and/or documents relevant to whether the Trust has claims against Kelley.

**CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 2004-1**

21. Attached hereto as **Exhibit D** is a certification of Stephen B. Gerald, counsel to the Trust, demonstrating compliance with Bankruptcy Local Rule 2004-1, and stating that prior to the filing of this Motion, he attempted to confer with Bank of America and Merrill with respect to the subject matter of this Motion and no agreement was reached.

**NOTICE**

22. Notice of the hearing on the relief requested in this Motion will be provided by the Trust 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) Bank of America and Merrill or, in lieu thereof, counsel thereto; (b) the U.S. Trustee for the District of Delaware; (c) counsel to the Consenting Senior Noteholders (as defined under the Plan); (d) counsel to the Majority Lenders (as defined under the Plan); and (d) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Trust submits that, in light of the nature of the relief requested, no other or further notice need be given.

**NO PRIOR REQUEST**

23. No prior motion for the relief requested herein has been made to this Court.

WHEREFORE, the Trust respectfully requests that the Court enter the Order authorizing and directing discovery from Bank of America and Merrill, and granting such other and granting such other and further relief as is appropriate under the circumstances.

Dated: July 19, 2021  
Wilmington, Delaware

*/s/ Stephen B. Gerald*

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**WHITEFORD, TAYLOR & PRESTON LLC<sup>2</sup>**

Marc R. Abrams (DE No. 955)  
Richard W. Riley (DE No. 4052)  
Stephen B. Gerald (DE No. 5857)  
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- and -

Kevin G. Hroblak (admitted *pro hac vice*)  
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Baltimore, Maryland 21202  
Telephone: (410) 347-8700  
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Email: khroblak@wtplaw.com

*Counsel to the XOG Litigation Trust*

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<sup>2</sup> Whiteford, Taylor & Preston LLC operates as Whiteford Taylor & Preston L.L.P. in jurisdictions outside of Delaware.



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

	)				
In re:	)		Chapter 11		
	)				
EXTRACTION OIL & GAS, INC., <sup>1</sup>	)		Case No. 20-11548 (CSS)		
	)				
Reorganized Debtors.	)		(Jointly Administered)		
	)				
	)		Hearing Date: August 9, 2021 @ 11:00 a.m. (ET)		
	)		Objection Deadline: August 2, 2021 @ 5:00 p.m. (ET)		

**NOTICE OF MOTION FOR AN ORDER PURSUANT TO  
SECTION 105(a) OF THE BANKRUPTCY CODE,  
BANKRUPTCY RULE 2004, AND BANKRUPTCY LOCAL RULE  
2004-1 AUTHORIZING AND DIRECTING THE EXAMINATIONS  
OF BANK OF AMERICA N.A. AND MERRILL LYNCH & CO.  
f/k/a MERRILL LYNCH, PIERCE, FENNER & SMITH INC.**

**PLEASE TAKE NOTICE** that the Reorganized Debtors have filed the **Motion For An Order Pursuant To Section 105(a) Of The Bankruptcy Code, Bankruptcy Rule 2004, And Bankruptcy Local Rule 2004-1 Authorizing And Directing The Examinations Of Bank Of America N.A. And Merrill Lynch & Co. f/k/a Merrill Lynch, Pierce, Fenner & Smith Inc.** (the “Rule 2004 Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

**PLEASE TAKE FURTHER NOTICE** that you are required to file an objection to the Rule 2004 Motion on or before **AUGUST 2, 2021 AT 5:00 P.M. (ET)** with the Clerk of the Bankruptcy Court for the District of Delaware, 824 Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801. At the same time, you must also serve a copy of the objection upon the undersigned counsel for the Reorganized Debtors.

**PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED BY THE RULE 2004 MOTION WITHOUT FURTHER NOTICE OR HEARING.**

**PLEASE TAKE FURTHER NOTICE, IF AN OBJECTION IS FILED, A HEARING (THE “HEARING”) ON THE OBJECTION WILL BE HELD ON AUGUST 9, 2021 AT 11:00 A.M. (ET) BEFORE THE HONORABLE CHRISTOPHER S. SONTCHI, UNITED STATES**

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<sup>1</sup> The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized Debtors’ 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 Reorganized Debtors’ principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.

BANKRUPTCY JUDGE, UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 5<sup>TH</sup> FLOOR, COURTROOM NO. 6, WILMINGTON, DELAWARE 19801.

**PLEASE TAKE FURTHER NOTICE THAT IF YOU FILE AN OBJECTION TO THE RULE 2004 MOTION, YOU SHOULD BE PREPARED TO ARGUE THAT RESPONSE AT THE HEARING. YOU NEED NOT APPEAR AT THE HEARING IF YOU DO NOT OBJECT TO THE RELIEF REQUESTED.**

**PLEASE TAKE FURTHER NOTICE THAT THE HEARING MAY BE CONTINUED FROM TIME TO TIME UPON WRITTEN NOTICE TO YOU OR AS DECLARED ORALLY AT THE HEARING.**

Dated: July 19, 2021  
Wilmington, Delaware

*/s/ Stephen B. Gerald*

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**WHITEFORD, TAYLOR & PRESTON LLC<sup>2</sup>**

Marc R. Abrams (DE No. 955)  
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- and -

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*Counsel to the XOG Litigation Trust*

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<sup>2</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 (CSS)
	)	
Reorganized Debtors.	)	(Jointly Administered)
	)	
	)	<b>Re: Docket No. ____</b>
	)	
	)	

**ORDER DIRECTING EXAMINATION OF BANK OF AMERICA N.A.  
AND MERRILL LYNCH & CO. f/k/a MERRILL LYNCH, PIERCE,  
FENNER & SMITH INC. PURSUANT TO BANKRUPTCY RULE 2004**

Upon the motion (the “Motion”)<sup>2</sup> of the XOG Litigation Trust (the “Trust”) for entry of an order (this “Order”), pursuant to section 105(a) of the Bankruptcy Code, Bankruptcy Rule 2004 and Bankruptcy Local Rule 2004-1, seeking the entry of an order directing the examination of Bank of America N.A. (“Bank of America”) and Merrill Lynch & Co. (“Merrill”); 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 this Court having found that the Trust’s 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

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<sup>1</sup> The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized Debtors’ 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 Reorganized Debtors’ principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.

<sup>2</sup> Capitalized terms used but not defined herein have the meanings given to such terms in the Motion.

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.
2. Bank of America and Merrill are directed to produce all documents responsive to the Trust’s Document Requests attached as **Exhibit B** to the Motion and deliver such documents or other responses to the attention of Kevin G. Hroblak, at Whiteford, Taylor & Preston L.L.P., 7 Saint Paul Street, Baltimore, Maryland 21202 within ten (10) days after entry of this Order or at such other place and time as may be agreed upon by the parties.
3. Bank of America and Merrill shall appear for oral examination regarding the topics set forth in **Exhibit C** to the Motion, such examination to take place at the offices of Whiteford Taylor & Preston LLC, 405 North King Street, Suite 500, Wilmington, Delaware 19801, or such other location on a date set by the Trust’s counsel.
4. The Trust’s rights are reserved to request additional discovery and/or examinations in connection with this matter, including, without limitation, requests based on any information that may be revealed as a result of the examination authorized pursuant to this Order.
5. The Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the implementation of this Order.

**EXHIBIT B**

**(Document Requests)**

## DEFINITIONS

1. “Communication(s)” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise, either orally or in writing), including but not limited to correspondence, packages, conversations, meetings, discussions, telephone calls, telegrams, telexes, telecopies, seminars, conferences, text messages (whether by SMS, applications such as “WhatsApp,” or otherwise), messages, notes, e-mails and memoranda. The transmission of documents or things by mail, courier, or electronic service or otherwise is included, without limitation, in the definition of “Communication(s).”

2. “Concerning” means relating to, referring to, in connection with, in respect of, describing, evidencing, or constituting.

3. “Document(s)” shall include electronically stored information (“ESI”) and is used in its customary broad sense. It shall not be limited in any way with respect to the process by which any Document was created, generated, or reproduced, or with respect to the medium in which the Document is embodied; and shall include, by way of example and without any limitation, all “documents,” “electronically stored information,” or “tangible things” as referenced in Rule 34 of the Federal Rules of Civil Procedure, as well as all “writings,” “recordings,” and “photographs” as defined by Rule 1001 of the Federal Rules of Evidence, and any kind of tangible material in any medium of any type, upon which intelligence or information is recorded; or from which intelligence or information can be perceived, whether in writing, recorded, stored, microfilmed, microfiched, photographed, computerized, reduced to electronic or magnetic impulse, or otherwise preserved or rendered. Documents further include, without limitation, materials maintained in electronic, magnetic or other storage media, including those maintained in

computers, electronic or magnetic tapes or diskettes, and any on-site or off-site backup or so-called “erased” or “deleted” computer information that may be susceptible to retrieval.

4. “Person” means any individual, corporation, partnership, joint venture, association, limited liability company, governmental agency, or other entity.

5. “You” or “Your” means Bank of America N.A. and Merrill Lynch & Co.

6. “Kelley” means Russell T. Kelley, Jr. as well as RTK Family, LLC and any other affiliated entities, trusts, or beneficial interests.

7. For all purposes herein, spelling, grammar, syntax, abbreviations, idioms, and proper nouns shall be construed and interpreted according to their context to give proper meaning and consistency to the Requests for Production set forth herein (the “Request” or “Requests”).

### **INSTRUCTIONS**

Rules 26 through 37 of the Federal Rules of Civil Procedure, made applicable to this proceeding pursuant to Rules 7026 through 7037 of the Federal Rules of Bankruptcy Procedure, are hereby incorporated by reference and apply to each of the following instructions:

1. All Documents shall be identified by the Request(s) to which they are primarily responsive or be produced as they are maintained in the usual course of business.

2. Produce all Documents and all other materials described below in Your actual or constructive possession, custody, or control, including in the possession, custody, or control of a current or former agent or financial institution, that were created during or that relate or refer to the period September 25, 2017 through and including September 30, 2019, wherever those Documents and materials are maintained, including on personal computers, PDAs, wireless devices, or web-based email systems such as Gmail, Yahoo, etc.



3. You must produce all Documents in Your possession, custody, or control, whether maintained in electronic or paper form and whether located on hardware owned and maintained by You or hardware owned and/or maintained by a third party that stores data on Your behalf. You must produce all such Documents even if they were deleted or are in draft form. Without limitation, hardware where such data may be stored (and from which such data must be retrieved) includes: servers, desktop, laptop, or tablet computers; cell and smart phones; PDA devices; scanners, fax machines, and copying machines; and mobile storage devices, such as thumb or external hard drives. Electronically stored Documents include any computerized data or content stored on electromagnetic media. Without limitation, types of electronically stored Documents include email, voicemail, instant messages, text messages (whether by SMS, applications such as “WhatsApp,” or otherwise), intranet and internet system data, telephone and cellular telephone calling records, data compilations, spreadsheets, word processing files, images, databases, digital photocopier memory, and any other information stored in memory storage devices.

4. Produce the original or duplicate, as such terms are defined by Rule 1001 of the Federal Rules of Evidence, of each Document requested together with all non-identical copies and drafts of that Document. If a duplicate is produced, it should be legible and bound or stapled in the same manner as the original.

5. Documents not otherwise responsive to these Requests should be produced: (i) if such Documents mention, discuss, refer to, explain, or concern one or more Documents that are called for by these Requests; (ii) if such Documents are attached to, enclosed with, or accompany Documents called for by these Requests; or (iii) if such Documents constitute routing slips, transmittal memoranda or letters, comments, evaluations, or similar materials.

6. Documents attached to each other should not be separated; separate Documents should not be attached to each other.

7. Documents should include all exhibits, appendices, linked Documents, or otherwise appended Documents that are referenced in, attached to, included with, or are a part of the requested Documents.

8. If any Document, or any part thereof, is not produced based on a claim of attorney-client privilege, work-product protection, or any other privilege, then the in answer to such Request or part thereof, for each such Document, You must:

- a. Identify the type, title and subject matter of the Document;
- b. State the place, date, and manner of preparation of the Document;
- c. Identify all authors, addressees, and recipients of the Document, including information about such Persons to assess the privilege asserted; and
- d. Identify the legal privilege(s) and the factual basis for the claim with sufficient particularity to enable an assessment of the claim.

9. Documents should not contain redactions unless such redactions are made to protect information subject to the attorney-client privilege and/or work product doctrine. In the event any Documents are produced with redactions, a log setting forth the information requested in Instruction 8 above must be provided.

10. To the extent a Document sought herein was at one time, but is no longer, in your actual or constructive possession, custody, or control, state whether it (i) is missing or lost; (ii) has been destroyed; (iii) has been transferred to others; and/or (iv) has been otherwise disposed of. In each instance, Identify the Document, state the time period during which it was maintained, state the circumstance and date surrounding authorization for such disposition, Identify each Person

having knowledge of the circumstances of the disposition, and Identify each Person who had possession, custody, or control of the Document. Documents prepared prior to, but which relate or refer to, the time period covered by these Requests are to be identified and produced.

**MANNER OF PRODUCTION**

1. All Documents produced shall be provided in either native file (“native”) or single-page 300 dpi-resolution group IV TIF format (“tiff”) format as specified below, along with appropriately formatted industry-standard database load files, and accompanied by true and correct copies or representations of unaltered attendant metadata. Where Documents are produced in tiff format, each Document shall be produced along with multi-page, Document-level searchable text file (“searchable text”) as rendered by an industry-standard text extraction program in the case of electronic originals, or by an industry-standard Optical Character Recognition (“ocr”) program in the case of scanned paper Documents. Searchable text of Documents shall not be produced as fielded data within the “.dat file” as described below.

2. Database load files shall consist of: (i) a comma-delimited values (.dat) file containing: production Document identifier information, data designed to preserve “parent and child” relationships within Document “families,” reasonably accessible and properly preserved metadata (or bibliographic coding in the case of paper Documents), custodian or Document source information; and (ii) an Opticon (.opt) file to facilitate the loading of tiff images. Load files should be provided in a root-level folder named “Data,” images shall be provided within a root level “Images” folder containing reasonably structured subfolders, and searchable text files shall be provided in a single root-level “Text” folder. If any of the Documents produced in response to these Requests are designated as confidential pursuant to a Protective Order or Confidentiality Agreement, in addition to marking the Documents with the brand “CONFIDENTIAL” or branding

the media with the word “CONFIDENTIAL,” also include a confidential field within the load file, with a “yes” or “no” indicating whether the Document has been designated as confidential, as well as native file loading/linking information (where applicable).

3. Documents and other responsive data or materials created, stored, or displayed on electronic or electro-magnetic media shall be produced in the order in which the Documents are or were stored in the ordinary course of business, including all reasonably accessible metadata, custodian or Document source information, and searchable text as to allow, through a reasonable and modest effort, the fair, accurate, and complete access, search, display, comprehension, and assessment of the Documents’ true and original content.

4. All Documents and accompanying metadata created and/or stored in the ordinary course of business within commercial, off-the-shelf email systems including but not limited to Microsoft Exchange™, Lotus Notes™, or Novell Groupwise™ shall be produced in tiff format, accompanying metadata, and searchable text files or, alternately, in a format that fairly, accurately, and completely represents each Document in such a manner as to make the Document(s) reasonably useable, manageable, and comprehensible.

5. With the exclusion of email and email account-related Documents and data, all Documents and accompanying metadata created and/or stored in structured electronic databases or files shall be produced in a format that enables the reasonable management and importation of those Documents into a useable, coherent database. Documents must be accompanied by reasonably detailed documentation explaining the Documents’ content and format including but not limited to data dictionaries and diagrams. Some acceptable formats, if and only if provided with definitive file(s), table(s), and field level schemas include:

- a. XML format file(s);

- b. Microsoft SQL database(s);
- c. Access database(s); and/or
- d. fixed or variable length ASCII delimited files.

6. All Documents generated or stored in software such as Microsoft Excel or other commercially available spreadsheet programs, as well as any multimedia files such as audio or video, shall be produced in their native format, along with an accompanying placeholder image in tiff format indicating a native file has been produced. A “Nativelink” entry shall be included in the .dat load file indicating the relative file path to each native file on the production media. To the extent You have other file types that do not readily or easily and accurately convert to tiff and searchable text, You may elect to produce those files in native format subject to the other requirements listed herein. Native files may be produced within a separate root-level folder structure on deliverable media entitled “Natives.”

7. All other Documents and accompanying metadata and embedded data created or stored in unstructured files generated by commercially available software systems (excluding emails, structured electronic databases, spreadsheets, or multimedia) such as, but not limited to, word processing files (such as Microsoft Word), image files (such as Adobe .pdf files and other formats), and text files shall be produced in tiff and searchable text format in the order the files are or were stored in the ordinary course of business.

8. Documents originally created or stored on paper shall be produced in tiff format. Relationships between Documents shall be identified within the Relativity .dat file utilizing document identifier numbers to express parent document/child attachment boundaries, folder boundaries, and other groupings. In addition, the searchable text of each Document shall be provided as a multi- page text file as provided for by these Requests.

**REQUESTS FOR PRODUCTION**

1. Documents relating to any Communications with or about Kelley regarding accounts held by Kelley or RTK Family LLC, or proposals to provide Kelley with credit or liquidity.
2. Documents relating to any Communications with or about Kelley, regarding fees, interest, or the repayment of principal associated with an account, loan, or credit line (secured or unsecured), other than consumer credit card accounts.
3. Documents related to Kelley regarding the use of shares of stock in Extraction Oil & Gas, Inc. to obtain a loan or borrow funds, regardless of whether such use occurred.
4. Documents related to any margin account, loan, credit line (secured or unsecured), liquidity access line, loan management account, fluctuating credit line, or other account or agreement for the borrowing or lending of money held by Kelley (other than credit card accounts).
5. Monthly statements regarding such accounts identified in or related to request number 4 above.
6. Documents relating to the opening of any account held by Kelley (including RTK Family, LLC as Kelley is defined) between October 1, 2017 through June 30, 2019.
7. Documents relating to any agreement between Kelley and You.
8. Documents relating to transactions regarding collateral amounts, margin calls, or repayment obligations associated with the accounts referenced in request 4 above, including but not limited to client agreements, lending agreements, collateral agreements, loan management agreements, security agreements (including any amendments or modifications to any of the foregoing), transaction requests (including relating to the purchase of any real estate), opening applications, and balances.
9. Documents relating to certificated and/or reissued shares of XOG stock, the transfer of such shares, the holding of such shares, and any agreements associated with or related to the certificated shares.
10. Documents relating to any transactions involving RTK Family, LLC or other entities affiliated with Kelley.
11. Documents related to Kelley's Rule 10b5-1 plan, including Communications surrounding sell orders and the schedule for transactions.
12. Documents relating to Communications with Kelley regarding XOG stock or stock price.
13. Documents relating to Communications between Bank of America and Merrill regarding Kelley or RTK Family LLC.

**EXHIBIT C**

**(Deposition Topics)**

1. The establishment of accounts by Kelley with You between October 1, 2017 and June 30, 2019.
2. Communications with Kelley, regarding a margin account, loan management account, credit line (secured or unsecured), loan, liquidity access line, fluctuating credit line, or other account or agreement for the borrowing or lending of money.
3. Communications with Kelley, regarding fees or interest associated with an account or credit line (secured or unsecured).
4. Transactions regarding Kelley's Loan Agreement with Bank of America.
5. Communications regarding discussions of collateral, guarantees, margin calls, or repayment obligations associated with accounts referenced in 2 above.
6. Communications regarding pricing, interest, collateral, guarantees, or fees for Kelley's loan with Bank of America.
7. Communications between Bank of America and Merrill regarding Kelley.
8. Communications with Kelley regarding XOG's stock price.
9. Communications regarding Extraction Oil & Gas, Inc.'s denial of Kelley's request to pledge his shares of stock.
10. Certificated and/or reissued shares of XOG stock, the transfer of such shares, the holding of such shares, and any agreements associated with or related to the certificated shares.
11. Shares of XOG stock, the repurchase of such shares, and any directions or instructions from Kelley regarding the same.

**EXHIBIT D**

**(Compliance Certificate)**



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

In re:	)	
	)	Chapter 11
EXTRACTION OIL & GAS, INC. <i>et al.</i> ,	)	Case No. 20-11548 (CSS)
	)	
Reorganized Debtors.	)	(Jointly Administered)
	)	
	)	
	)	

**CERTIFICATION OF COMPLIANCE WITH BANKRUPTCY LOCAL RULE 2004-1 IN CONNECTION WITH MOTION FOR AN ORDER, PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE, BANKRUPTCY RULE 2004, AND BANKRUPTCY LOCAL RULE 2004-1, AUTHORIZING AND DIRECTING THE EXAMINATION OF BANK OF AMERICA, N.A. AND MERRILL LYNCH & CO.**

I Stephen B. Gerald hereby certify as follows:

1. I submit this certification as counsel to the XOG Litigation Trust (the “Trust”) in accordance with rule 2004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Local Rules”) in connection with the above-captioned motion (the “Motion”).

2. Prior to the filing of the Motion, on July 15, 2021, Kevin Hroblak of Whiteford Taylor & Preston (“WTP”) conferred with counsel for Bank of America and Merrill Lynch as to whether they would agree to voluntarily produce documents consistent with the Motion. Counsel for Bank of America and Merrill Lynch advised that they will work with WTP on the production of documents but that they require an order before producing documents.

3. Accordingly, the Trust filed the Motion to obtain the requested materials.

Dated: July 19, 2021

By: /s/ Stephen B. Gerald  
Stephen B. Gerald