

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

EXTRACTION OIL & GAS, INC., *et al.*,¹

Debtor.

EXTRACTION OIL & GAS, INC.,

Plaintiff,

v.

ROCKY MOUNTAIN MIDSTREAM LLC,

Defendant.

Chapter 11

Case No. 20-11548 (CSS)

Adv. Proc. No. 20-50840 (CSS)

Related to Docket No. 33

**MOTION OF DEFENDANT ROCKY MOUNTAIN MIDSTREAM, LLC TO SEAL
ITS RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Defendant Rocky Mountain Midstream, LLC ("RMM") hereby submits this motion (the "Motion") to file under seal its response [D.I. 33] (the "Response") and accompanying declarations and exhibits, and requests entry of an order substantially in the form attached hereto as **Exhibit A** (the "Proposed Order") pursuant to section 107(b) of title 11 of the United States Code (the "Bankruptcy Code"), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 9018-1 of the Local Rules of Bankruptcy Practice and Procedure of the United

¹ 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.



States Bankruptcy Court for the District of Delaware (the “Local Rules”). In support of the Motion, RMM respectfully represents as follows:

Local Rule 9013-1(f) Statement

1. Pursuant to Local Rule 9013-1(f), RMM does not consent to the entry of a final order by the Court in connection with this Motion or any other matter or proceeding 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.

Background

2. On November 23, 2020, RMM filed under seal the Response and supporting declarations of Larry Larsen and Ryan Pitts (collectively, the “Declarations”).

3. The Response and Declarations contain confidential commercial information related to RMM’s research, development, pricing structure, and business strategy, including proprietary agreements, invoices, and internal forecasting estimates, as well as confidential emails, books, and records.

4. Contemporaneously herewith, RMM is filing a proposed redacted Response and Declarations.

5. RMM has conferred with the plaintiff, debtor Extraction Oil & Gas, Inc. (the “Plaintiff”), and the parties have agreed to the proposed redactions.

Basis for Relief Requested

6. Section 107(b) of the Bankruptcy Code enables the Court to issue orders that protect parties from the potential harm that could result from disclosing confidential information:

On the request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may . . . protect an entity with respect to a trade secret or confidential research, development, or commercial information

11 U.S.C. § 107(b).

7. Bankruptcy Rule 9018 provides the procedures by which a party may seek relief under section 107(b) of the Bankruptcy Code:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information

Fed. R. Bankr. P. 9018.

8. Local Rule 9018-1(d) additionally provides, in relevant part, that “[a]ny party who seeks to file documents under seal must file a motion to that effect.” Del. Bankr. L.R. 9018-1(d).

9. If the Court finds that an interested party is requesting information covered by section 107(b) of the Bankruptcy Code “the court is required to protect a requesting party and has no discretion to deny the application.” *In re Orion Pictures Corp.*, 21 F.3d 24, 27 (2d. Cir. 1994).

10. Delaware courts have defined “commercial information” as “information which would result in an ‘unfair advantage to competitors by providing them with information as to the commercial operations of the [moving party].’” *In re Alterra Healthcare Corp.*, 353 B.R. 66, 75 (Bankr. D. Del. 2006) (quoting *In re Orion Pictures Corp.*, 21 F.3d 27–28).

11. RMM submits that good cause exists for the Court to enter the Proposed Order to protect RMM’s confidential commercial information. RMM is engaged in the highly-competitive oil and gas industry. If RMM’s confidential research, development, pricing structure, and business strategy information were to be disclosed, RMM’s competitors would gain an unfair advantage and impair RMM’s business operations.

12. Accordingly, RMM believes that it is critically important to prevent the public disclosure of certain confidential commercial information contained in its Response to Plaintiff’s Motion for Summary Judgment and the Declarations attached thereto.

WHEREFORE, Defendant Rocky Mountain Midstream, LLC respectfully requests that the Court enter the Proposed Order, granting the relief requested in the Motion.

Dated: December 10, 2020

By: /s/ Lucian B. Murley

Lucian B. Murley (DE Bar No. 4892)
SAUL EWING ARNSTEIN & LEHR LLP
1201 N. Market Street, Suite 2300
P.O. Box 1266
Wilmington, DE 19899
Telephone No.: (302) 421-6898
Email: luke.murley@saul.com

-and-

Stephen M. Pezanosky (admitted *pro hac vice*)
Charles A. Beckham, Jr. (admitted *pro hac vice*)
David H. Ammons (admitted *pro hac vice*)
HAYNES AND BOONE, LLP
1221 McKinney, Suite 4000
Houston, TX 77010
Telephone No.: (713) 547-2000
Facsimile No.: (713) 547-2600
Email: stephen.pezanosky@haynesboone.com
Email: charles.beckham@haynesboone.com
Email: david.ammons@haynesboone.com

-and-

Steven W. Soulé (admitted *pro hac vice*)
John T. Richer (admitted *pro hac vice*)
**HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.**
320 South Boston Avenue, Suite 200
Tulsa, Oklahoma 74103-3706
Telephone No.: (918) 594-0400
Facsimile No.: (918) 594-0505
Email: ssoule@hallestill.com
Email: jricher@hallestill.com

**ATTORNEYS FOR ROCKY MOUNTAIN
MIDSTREAM LLC**

EXHIBIT A

Proposed Order

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

In re:

EXTRACTION OIL & GAS, INC., *et al.*,

Debtor.

EXTRACTION OIL & GAS, INC.,

Plaintiff,

v.

ROCKY MOUNTAIN MIDSTREAM LLC,

Defendant.

Chapter 11

Case No. 20-11548 (CSS)

Adv. Proc. No. 20-50840 (CSS)

Related to Docket No. __

**ORDER GRANTING MOTION OF DEFENDANT ROCKY MOUNTAIN
MIDSTREAM, LLC TO SEAL ITS RESPONSE TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

Upon consideration of the *Motion of Defendant Rocky Mountain Midstream, LLC to Seal Its Response to Plaintiff's Motion for Summary Judgment* (the "Motion");² and this Court having reviewed the Motion; and due and proper notice of the Motion having been given; and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.

²

Any capitalized term not otherwise defined herein shall have the same meaning as that ascribed to it in the Motion.

2. RMM is authorized to file the Response and Declarations under seal in accordance with the requirements of Local Rule 9018-1(d), and to file as publicly available documents the proposed redacted versions of the Response and Declarations filed along with the Motion.

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

In re:

EXTRACTION OIL & GAS, INC., *et al.*,

Debtor.

EXTRACTION OIL & GAS, INC.,

Plaintiff,

v.

ROCKY MOUNTAIN MIDSTREAM LLC,

Defendant.

Chapter 11

Case No. 20-11548 (CSS)

Adv. Proc. No. 20-50840 (CSS)

CERTIFICATE OF SERVICE

I, Lucian B. Murley, hereby certify that on December 10, 2020, a copy of the foregoing *Motion of Defendant Rocky Mountain Midstream, LLC to Seal Its Response to Plaintiff's Motion for Summary Judgment* was served on the parties on the attached service list in the manner indicated therein.

/s/ Lucian B. Murley

Lucian B. Murley (DE Bar No. 4892)

SAUL EWING ARNSTEIN & LEHR LLP

1201 N. Market Street, Suite 2300

P.O. Box 1266

Wilmington, DE 19899

(302) 421-6898

Dated: December 10, 2020

Service List

Via Electronic Mail:

Marc R. Abrams, Esquire
Richard W. Riley, Esquire
Stephen B. Gerald, Esquire
Whiteford, Taylor & Preston LLC
The Renaissance Centre
405 North King Street, Suite 500
Wilmington, DE 19801
mabrams@wtplaw.com
rriley@wtplaw.com
sgerald@wtplaw.com

Christopher Marcus, P.C.
Allyson Smith Weinhouse, Esquire
Ciara Foster, Esquire
Kirkland & Ellis LLP
Kirkland & Ellis International LLP
601 Lexington Avenue
New York, NY 10022
christopher.marcus@kirkland.com
allyson.smith@kirkland.com
ciara.foster@kirkland.com

Anna Rotman, P.C.
Kenneth Young, Esquire
Kirkland & Ellis LLP
Kirkland & Ellis International LLP
609 Main Street
Houston, TX 77002
anna.rotman@kirkland.com
kenneth.young@kirkland.com