

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

In re:

EXTRACTION OIL & GAS INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 20-11548 (CSS)

Jointly Administered

**Related to Docket Nos. 1505 and 1652
Filing Deadline: February 19, 2021**

**REQUEST FOR ALLOWANCE AND FORTHWITH PAYMENT OF AN
ADMINISTRATIVE EXPENSE CLAIM BY PINNACOL ASSURANCE**

Pinnacol Assurance (“Pinnacol”), by and through its undersigned counsel, hereby respectfully requests (this “Request”) that the Court (a) allow \$11,100 for post-petition workers’ compensation insurance provided to certain Debtors for the policy period from June 1, 2020 to June 1, 2021 as an administrative expense pursuant to 11 U.S.C. § 503(b)(1)(A) (the “Administrative Expense”); and (b) compel forthwith payment of such Administrative Expense.

In support of this Request, Pinnacol states as follows:

BACKGROUND

1. Pinnacol is a political subdivision of the State of Colorado that operates as a domestic mutual insurance company. Colo. Rev. Stat. § 8-45-101(1). Pinnacol’s purpose is to provide workers’ compensation insurance and employers’ liability insurance covering certain liability of Colorado employers on account of personal injuries sustained by, or the death of, any employee. Colo. Rev. Stat. § 8-45-101(5)(f).

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.



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2. Colorado Revised Statutes § 8-44-101(1) requires employers in Colorado to maintain workers' compensation insurance.

3. In furtherance of the above, Pinnacol issued workers' compensation policy no. 4174932 (the "Policy") to and/or for the benefit of the following Debtors:

1. Extraction Oil & Gas, Inc. ("Extraction"); Case No. 20-11548
2. XOG Services, LLC ("XOG"); Case No. 20-11556
3. XTR Midstream, LLC ("XTR"); Case No. 20-11557

The present Policy period runs from June 1, 2020 to June 1, 2021, and the Policy premium is paid in nine consecutive monthly installments starting in June 2020.

4. Though the relevant Debtors owed Pinnacol no liquidated amounts as of the June 14, 2020 petition date, in order to preserve its rights, Pinnacol nonetheless filed proofs of claim in the cases for each of Extraction, XOG, and XTR that include Policy documents and are incorporated herein by reference. *See* Extraction POC No. 2395, XOG POC No. 2394, and XRT POC No. 2393.

5. On December 4, 2020, the Debtors filed a plan supplement [Docket No. 1273] (the "First Plan Supplement") in connection with their third amended plan of reorganization. The First Plan Supplement includes the Policy on the assumption notice as a to-be-assumed executory contract and lists a cure of zero dollars (the "Cure Amount"). *See* item 1692, PDF page 150.

6. On December 11, 2020, Pinnacol filed a limited objection to the Cure Amount (the "Cure Objection") [Docket No. 1309]. There, Pinnacol, among other things, noted that the Cure Amount does not address the outstanding December 2020 installment of \$5,550 and that more could be due as a result of audit additional or additional deductibles.

7. On December 23, 2020, the Court confirmed the Debtors' sixth amended plan of reorganization (the "Confirmed Plan") [Docket Nos. 1505 (plan) and 1509 (confirmation order)].

To address Pinnacol's Cure Objection issues, the Debtors and Pinnacol negotiated paragraph RR to the confirmation order, which generally requires the Debtors' continued timely performance pursuant to the Policy:

In relation to Pinnacol Assurance, notwithstanding anything to the contrary in the Plan, or the Plan Supplement, or and this Order, the Debtors shall continue to timely perform pursuant to, and comply with, any insurance policies with Pinnacol Assurance, including timely paying any valid invoices, insurance policy charges and obligations such as audit additional and deductibles, regardless of whether such charges or obligations arise, are due, or are owing before, on, or after the Effective Date, including in accordance with section 365(b)(1) of the Bankruptcy Code, and nothing in the Plan, or the Plan Supplement, or this Order shall defer, waive, or abate such timely policy performance and compliance.

8. On January 19, 2021, the Debtors filed a third plan supplement [Docket No. 1639], pursuant to which the Debtors formally assumed the Policy. *See* item 1692, PDF page 62.

9. On January 21, 2021, the Debtors noticed the occurrence of the January 20, 2021, effective date of their Confirmed Plan [Docket No. 1652], which set an administrative bar date as 30 days thereafter, which is February 19, 2021. The administrative expense period thus runs from the June 14, 2020 petition date to January 20, 2021.

10. The Debtors have breached the Policy by failing to pay Pinnacol the January 2021 premium installment in the amount of \$5,550 that was due January 1, 2021, and the Debtors have likewise failed to pay the February 2021 installment that was due February 1, 2021 for another \$5,550. Thus, to date, Pinnacol is owed at least \$11,100, half of which is owed during the administrative expense period.² *See* **Exhibit A** hereto (January and February 2021 invoices).

² Pinnacol appreciates that the due date for the February 2021 installment falls outside of the administrative expense period, having arisen post-effective date, yet it seeks its allowance and payment out an abundance-of-caution and to endeavor to address all apparent Policy defaults at once.

11. As a result of the Debtors' default in relation to the January installment, on February 1, 2021, Pinnacol noticed the cancellation of the Policy if that January installment of \$5,550 is not paid on or before February 22, 2021. See Exhibit B hereto (notice of cancellation).

THE ADMINISTRATIVE CLAIM

12. Pinnacol seeks an Order of this Court granting the Request and allowing the Administrative Expense in the amount of \$11,100 as an administrative expense pursuant to 11 U.S.C. § 503(b)(1)(A) and compelling forthwith payment of same.

13. Section 503(b)(1)(A) provides that, after notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including: the actual, necessary costs and expenses of preserving the estate.

14. As noted above, the Debtors are required by law to provide workers' compensation coverage for their employees in order to continue operations. Additionally, as a debtor in possession, the Debtors were required to comply with state law. 28 U.S.C. § 959(b). *Midlantic Nat'l Bank v. New Jersey Dept. of Env'tl. Protection*, 474 U.S. 494 (1986). Failure to do so subjects the Debtors to fines, penalties, and exposure for providing worker's compensation benefits directly – including being responsible for any medical and indemnity costs associated with injuries that occur post-cancellation.

15. The unpaid, post-petition workers' compensation premiums are actual, necessary costs and expenses of preserving the estate(s) and should be allowed as section 503(b) administrative expenses. *In re Thermoview Indus., Inc.*, 05-37123 1 11, 2006 WL 3457396, at *1 (Bankr. W.D. Ky. Nov. 29, 2006) (allowing administrative expense claim in the amount of \$9,802.35 for workers' compensation premiums incurred post-petition during the administration of the debtor's estate); *In re MEI Diversified, Inc.*, 106 F.3d 829, 832 (8th Cir. 1997) ("CNA seeks

administrative priority for its claim for postpetition insurance premiums as an ‘actual, necessary cost[] and expense[] of preserving the [Chapter 11] estate.’ 11 U.S.C. § 503(b)(1)(A). There can be no doubt that continuing workers compensation insurance is essential to preserving the estate of a Chapter 11 debtor in possession.”); *Metro. Life Ins. Co. v. Sharon Steel Corp. (In re Sharon Steel Corp.)*, 161 B.R. 934 (Bankr. W.D. Pa. 1994) (insurance).

16. Pinnacol further asserts that it may be entitled to an administrative expense claim for certain of the currently unliquidated amounts related to claims covered by its policies. Accordingly, Pinnacol specifically reserves the right to amend this Request or otherwise assert an administrative expense claim for such contingent, unliquidated amounts.

RESERVATION OF RIGHTS

17. Pinnacol reserves and preserves the right to: (a) file and seek payment of additional claims for (i) attorneys’ fees and costs, (ii) cure amounts, and (iii) claims that become liquidated; (b) estimate contingent claims and assert additional claims if contingent claims are estimated or liquidated; and (c) assert any other claims Pinnacol may have against any of the Debtors relating to or incidental to the Policy and the documents referenced herein. Pinnacol reserves and preserves all rights to assert any and all defense, setoff and/or recoupment against any of the Debtors. Pinnacol reserves the right to amend and/or further supplement this Request.

18. The filing of this Request is not intended and should not be construed as (a) an election of remedies; (b) a waiver of any past, present, or future default or event of default; (c) a waiver or limitation of Pinnacol’s rights or defenses; (d) a waiver of Pinnacol’s claims against any of the Debtors or any of the Debtors’ subsidiaries or affiliates; (e) a waiver of Pinnacol’s right to draw on any collateral or security; (f) a waiver of Pinnacol’s claims against any other parties liable

to it; (g) a determination as to coverage or entitlements to benefits as to coverage; or (h) a waiver of Pinnacol's rights, including the right to require arbitration.

WHEREFORE, Pinnacol respectfully files this Request, and requests that this Court (a) allow the Request and direct payment thereof, and (b) grant such other relief as the Court deems appropriate.

Dated: February 16, 2021
Wilmington, Delaware

DUANE MORRIS LLP

/s/ Jarret P. Hitchings

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-and-

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Counsel to Pinnacol Assurance

EXHIBIT A

Billing Summary

Policy Number 4174932
Invoice Date 01/04/2021
Invoice Number 20308708

Previous Balance	\$5,550.00
Payment(s) Received - Thank You	-\$5,550.00
Current Activity see back for details	\$5,550.00

Total Due By 01/25/2021 \$5,550.00

XOG Services LLC
370 17th St Ste 5300
Denver, CO 80202

**Thank you for being a Pinnacol Assurance
customer since 2014.**

Contact Information

Your agent is:
IMA, Inc
303-534-4567

Visit Pinnacol.com

To call Pinnacol directly:
800.873.7242

Pinnacol Assurance News

Sign up for Pinnacol's Policyholder Portal, a simple and secure way to manage your policy online. Say goodbye to postage stamps and opt into electronic invoices, make credit card or EFT payments, set up recurring payments, and more. To get started, visit Pinnacol.com and click SIGN IN on the top right side of the page. If you have any questions, call us at 303.361.4840.

Policy Number 4174932
Invoice Number 20308708

Total Due By 01/25/2021 \$5,550.00

Pinnacol Assurance
PO Box 561434
Denver, CO 80256-1434

Go paperless. Access your invoice online 24/7 from the Quick Links section on Pinnacol.com.

417493200006 203087085 202101044 000000 00000000000000

Policy Information

Colorado Premium

Your Colorado estimated premium for the current period is \$56,619.

Colorado Billing Schedule

This is your 8th of 9 installment(s). Your next invoice is scheduled to bill on 02/01/2021 for the estimated amount of \$5,550.

Other States Coverage Premium

Your Other States Coverage estimated premium for the current period is \$369.

Colorado Deductible Program

Your policy currently includes a \$17,000 per claim deductible.

Billing Summary Details

Previous Balance	\$5,550.00
Payment(s) Received - Thank You	-\$5,550.00
Current Activity	
Premium Installment	\$5,550.00
Current Activity Total	\$5,550.00
Total Due By 01/25/2021	\$5,550.00



Moved? Please indicate the type of change when providing the new information below.

☐ Physical Address ☐ Mailing Address ☐ Both

Address _____

City _____ State _____ Zip _____

Business Phone _____ Ext. _____

Email _____

Billing Summary

Policy Number 4174932
Invoice Date 02/01/2021
Invoice Number 20342853

Previous Balance \$5,550.00
Current Activity \$5,550.00
see back for details

Total Due By 02/22/2021 \$11,100.00

XOG Services LLC
370 17th St Ste 5200
Denver, CO 80202

This policy is pending cancellation.

Contact Information

Your agent is:
IMA, Inc
303-534-4567

Visit Pinnacol.com

To call Pinnacol directly:
800.873.7242

Pinnacol Assurance News

Sign up for Pinnacol's Policyholder Portal, a simple and secure way to manage your policy online. Say goodbye to postage stamps and opt into electronic invoices, make credit card or EFT payments, set up recurring payments, and more. To get started, visit Pinnacol.com and click SIGN IN on the top right side of the page. If you have any questions, call us at 303.361.4840.

Policy Number 4174932
Invoice Number 20342853

Total Due By 02/22/2021 \$11,100.00

Pinnacol Assurance
PO Box 561434
Denver, CO 80256-1434

Go paperless. Access your invoice online 24/7 from the Quick Links section on Pinnacol.com.

417493200006 203428537 202102018 000000 0000055500009

Policy Information

Colorado Premium

Your Colorado estimated premium for the current period is \$56,619.

Colorado Billing Schedule

This is your 9th of 9 installment(s).

Other States Coverage Premium

Your Other States Coverage estimated premium for the current period is \$369.

Colorado Deductible Program

Your policy currently includes a \$17,000 per claim deductible.

Billing Summary Details

Previous Balance	\$5,550.00
Current Activity	
Premium Installment	\$5,550.00
Current Activity Total	\$5,550.00
Total Due By 02/22/2021	\$11,100.00



Moved? Please indicate the type of change when providing the new information below.

☐

Physical Address

☐

Mailing Address

☐

Both

Address _____

City _____ State _____ Zip _____

Business Phone _____ Ext. _____

Email _____

EXHIBIT B



7501 E. Lowry Blvd.
Denver, CO 80230-7006
303.361.4000 / 800.873.7242
Pinnacol.com

Date: February 1, 2021
Policy #: 4174932

XOG Services LLC
370 17th St Ste 5200
Denver, CO 80202

IMA, Inc
1705 17th Street
Suite 100
Denver, CO 80202
(303) 534-4567

RE: NOTICE OF CANCELLATION

Dear Policyholder,

According to our records, we have not received the premium due on your policy. If we do not receive the **\$5,550.00** due for your policy on or before **February 22, 2021**, it will be canceled effective at 12:01 a.m., **February 23, 2021** and the Other States Policy 9184968-06 will be cancelled accordingly to the applicable state cancellation provisions.

You are being issued this notice due to the following transactions:

Period	Type	Amount	Outstanding	Invoice	Date
06/01/2020	Premium Installment	\$5,550.00	\$5,550.00	20308708	01/04/2021

To ensure proper credit, all payments must be sent with a coupon to Pinnacol Assurance PO Box 561434 Denver, CO 80256-1434. For faster payment, you may want to use a credit card or electronic funds transfer (EFT), directly from your bank account. Simply call our customer service hotline at 303-361-4000 or 800-873-7242, or your underwriter for more information.

Pinnacol Assurance appreciates your business. If you feel this notice has been sent in error, or if you have questions about your policy balance, please call us at the numbers listed below, or contact your agent.

Sincerely,

Construction and Natural Resources Center of Excellence
Phone (303) 361-4200 / (866) 820-6129
Fax (303) 361-5200 / (888) 329-2216

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

In re:

EXTRACTION OIL & GAS INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 20-11548 (CSS)

Jointly Administered

CERTIFICATE OF SERVICE

I, Jarret P. Hitchings, hereby certify that on February 16, 2021, a true and correct copy of the *Request for Allowance and Forthwith Payment of an Administrative Expense Claim by Pinnacol Assurance* was served on the persons listed below via CM/ECF and First Class Mail:

Whiteford, Taylor & Preston LLC
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Richard W. Riley
Stephen B. Gerald
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Wilmington, Delaware 19801
mabrams@wtplaw.com
rriley@wtplaw.com
sgerald@wtplaw.com

Kirkland & Ellis LLP
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allyson.smith@kirkland.com
ciara.foster@kirkland.com

Dated: February 16, 2021
Wilmington, Delaware

DUANE MORRIS LLP

/s/ Jarret P. Hitchings
Jarret P. Hitchings (DE 5564)

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.