

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF COLORADO**

In re:  SKLAR EXPLORATION COMPANY, LLC, EIN: 72-1417930  Debtor.	Case No. 20-12377-MER  Chapter 11  (Jointly Administered)
SKLARCO LLC, EIN: 72-1425432  Debtor.	Case No. 20-12380-MER

**OBJECTION TO MOTION PURSUANT TO 11 U.S.C. 105(a) AND 1142(a) TO COMPEL  
THE REORGANIZED DEBTORS TO COMPLY WITH THEIR OBLIGATIONS  
UNDER THE SECOND AMENDED AND RESTATED PLAN OF REORGANIZATION  
DATED DECEMBER 18, 2020**

Reorganized Debtors Sklar Exploration Company, LLC (“**SEC**”) and Sklarco LLC (“**Sklarco**”) respectfully submit this Objection to Motion Pursuant to 11 U.S.C. 105(a) and 1142(a) to Compel the Reorganized Debtors to Comply with Their Obligations Under the Second Amended and Restated Plan of Reorganization Dated December 18, 2020 (the “**Motion**”). In support thereof, the Reorganized Debtors state as follows:

**Introduction**

*Background*

1. The Reorganized Debtors are on the verge of closing a refinancing transaction that will preserve their valuable assets and facilitate eventual payment in full to unsecured creditors from cash flow, as the Plan contemplates. A transaction of this nature -- a “Monetizing Event” under the confirmed plan -- has been the central focus of this case since last summer. The Court held a status conference on August 30, 2023, at the request of the Creditor Trustee (Docket No. 1990) joined by Fant Energy LLC (“**Fant**”) (Docket No. 1991). The Reorganized Debtors filed a Status Report in advance of the status conference (Docket No. 1993). The Status Report provided procedural and historical background for these cases.

2. Under the confirmed plan, the EWB Secured Claim<sup>1</sup>, matured September 7, 2023 and the Reorganized Debtors have been working to refinance it, both prior to and after stated maturity. East West Bank, the holder of the EWB Secured Claim extended through February 15, 2024 based upon demonstrated progress and the complexity of working through multiple wells and interests in multiple states. During the interim, the Reorganized Debtors have actively developed several prospective take-out lenders.

3. The Court may recall a disagreement about the amount required for the refinance of the EWB Secured Claim. The Creditor Trust contends that no refinance may occur unless it pays off EWB and funds an additional \$3 million to the Creditor Trust. See Plan § 8.8 (a), (b). The Creditor Trust took this position, as did Fant, which was not only a member of the Creditor Trustee Oversight Committee but also had expressed an interest in buying Sklarco's assets for itself. The Court heard argument from the parties at the status conference and received written arguments (Docket Nos. 1990, 1991, 1993, 2014, 2016, and 2026).

4. The Court gave the parties guidance on this point while denying a Rule 2004 request from Fant for information to use in fashioning a bid for Sklarco's assets. The Court stated that "neither [§ 5.1(d) nor § 8.8 of the Plan] appear to guarantee payment of \$3 million to the Creditor Trust." See Order Granting Motion to Reconsider dated October 23, 2023 (Docket No. 2038). The Court observed that the enforceable right is to ensure that proceeds, to the extent available, are distributed in accordance with the waterfall provisions in section 8.8(a)-(d) of the Plan. *Id.*

5. The Reorganized Debtors continued to develop refinancing options and, at all times, remained open to a larger refinancing facility that would generate proceeds to repay EWB and generate \$3 million for the Creditor Trust. A lender in fact provided a term sheet for a larger facility, which the Reorganized Debtors shared with the Creditor Trust. Nevertheless, a drop in commodity prices and other factors caused the lender to reduce the amount it was willing to lend, and the new loan does not include the \$3 million above and beyond that needed to repay EWB.

#### Current Status and Need for Resolution

6. The refinance transaction was about to close when the Creditor Trustee, without advance warning or discussion, filed the Motion. The Reorganized Debtors have kept the Creditor Trustee informed of projected closing dates and provided a working draft of the refinance credit agreement. See email correspondence between M. Pankow and S Loden attached as **Exhibit A**. The Motion requests an order requiring a sale of assets – *i.e.*, the collateral securing either the EWB Secured Claim or the new loan if and after it closes -- to pay the Creditor Trust \$3 million. The Motion's request unsurprisingly contradicts the terms of the new lending. As a result, the new lender has paused closing of the facility pending determination of the Motion.

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<sup>1</sup> Capitalized Terms not defined in this Objection are as used in the Second Amended and Restated Plan of Reorganization Dated December 18, 2020 (as confirmed, the "**Plan**").

7. As the Reorganized Debtors had predicted at the last status conference, EWB did not immediately pursue foreclosure remedies but instead extended through February 15, 2023. The Motion incorrectly suggests that EWB is currently foreclosing (see Motion ¶ 5); it is not. EWB has been actively working with the Reorganized Debtors and new lender regarding the (substantial) mechanical and logistical steps involved in perfecting liens in multiple properties across several states. However, if the refinance transaction does not promptly close, the Reorganized Debtors do not believe that EWB will forbear any longer. EWB appears ready, willing and able to foreclose immediately. Under Alabama law, where the most valuable assets sit, a foreclosure sale can occur within 3 weeks (subject to a redemption right).

8. Accordingly, the Reorganized Debtors have no alternative but to request an immediate hearing and disposition of the Motion. Although the Motion professes a desire to avoid a foreclosure sale, Motion ¶ 5, the “orderly asset sale process” the Creditor Trustee seeks is not a practical possibility. Either the refinance closes or EWB foreclose – unless EWB elects to forbear still more, which is unlikely. This dynamic could not possibly have been lost on the Creditor Trustee when the timing of the Motion was chosen.

9. The Motion actually presents two distinct disagreements and makes two distinct requests for relief, which can be addressed separately:

a. The gravamen of the Motion is the Creditor Trustee’s renewed assertion that the \$3 million must be paid upon refinance. This assertion, however, has no more merit than the first time it was presented to this Court. At bottom, the Motion seeks to force a sale of Sklarco’s valuable assets – despite Plan terms giving exclusive authority in this regard to the Independent Manager and despite the Creditor Trustee’s recognition that the sale price would only be a fraction of the assets’ inherent value and would not clear all debt. As his request for relief threatens the pending closing, this request presents some urgency.

b. As a (less urgent) corollary, the Creditor Trust also makes misplaced and misleading complaints about an alleged lack of information. These too lack merit, as discussed below, and only highlight the Creditor Trustee’s regrettable refusal to respect the respective roles assigned the respective fiduciaries under the Plan. The Creditor Trustee has not been denied information to which he is entitled under the Plan. Instead he seeks to move into a role like a board of directors, contrary to Plan terms and in derogation of the rights of other stakeholders.

### **The Motion’s Attempt to Force a Sale Exceeds the Creditor Trustee’s Authority under the Plan**

10. While the Motion on its face purports to request enforcement of the Plan, it in actuality seeks a fundamental rewrite of the Plan. The Motion’s overreach can be seen in the core provision of the proposed order submitted with the Motion, as compared to relevant provisions of the governing documents. The Motion requests that the Court order the

Reorganized Debtors to do the following:

ORDERED that the Independent Manager shall, on or before expiration of 14 days following entry of this Order, file with the Court ... a detailed description of the process by which the Reorganized Debtors propose to sell sufficient assets in order to comply with their obligation to repay the EWB Secured Claim and the Creditor Trust EWB Secured Claim Allocation (the “Asset Sale Plan”).

See Proposed Order p. 2.

11. But as the Court noted in its October 23 Order:

- “Neither Fant nor the Creditor Trust have the power to force a sale of assets.” Order, P. 3
- “Nothing in the Plan requires the Reorganized Debtors to consider sale offers once it has made the election to pursue a refinance.” *Id.*

12. The Court’s prior guidance is entirely consistent with the Plan. Section 8.6 of the Plan places authority with the Independent Manager, not the Creditor Trustee, for “[e]ffectuating the terms of the Plan” and “[d]irecting business decisions by the Debtors.” The Plan provides:

- “The Reorganized Debtors shall make an election ... either to pursue a refinancing based upon a commercially reasonable likelihood that a refinancing will occur, or to market and sell the Reorganized Debtors’ assets.” Plan § 5.1(d).
- “The Creditor Trust shall not have the ability or authority to veto the decisions made by the Reorganized Debtors ....” *Id.*

13. The predicate for the Motion, *i.e.*, the obligation that the Creditor Trust seeks to enforce in order to force a sale, is putatively the EWB Secured Claim. The Creditor Trust, however, is not the holder of the EWB Secured Claim and nothing in the Plan gives the Creditor Trust the right to enforce EWB’s claim. To the contrary, the Plan expressly provides that the Creditor Trust “shall not have any authority or right to interfere with EWB’s sole and absolute discretion regarding the collateral securing the EWB Secured Claim as provided in accordance with the EWB Loan and Security Documents under the Plan.” *Id.* Instead, the right conferred in accordance with the Plan is to receive distributions as set forth in the waterfall provided in section 8.8(a)-(d) of the Plan.

14. The Motion uses the defined term “Creditor Trust EWB Secured Claim Allocation.” Motion, ¶21. That defined term appears nowhere in the Plan but is an invented term used in the Motion. To the contrary, section 8.8(a) of the Plan provides that once EWB receives its core \$21 million (as adjusted), the payment is “satisfaction in full of the EWB Secured Claim.” Then, sections 8.8(b)-(d) provide the rest of the waterfall if there are sufficient

proceeds from the Monetizing Event.

15. This, coupled with provision quoted above reserving “sole and absolute discretion” to EWB, makes clear that the Creditor Trust has rights to the \$3 million payment it asserts if and only if proceeds from a Monetizing Event are sufficient to fund the tranche in section 8.8(b) of the Plan. Ability to fund the tranche in section 8.8(b) is no more a condition to completion of a refinance than ability to fund the tranches in section 8.8(c)–(d). And, hypothetically, if it were a condition to refinance, it would also be a condition to sale. EWB did not and would not confer upon the Creditor Trustee such powerful substantive rights over its collateral.

16. As the Court explained in the October 23 Order: “Whether the Reorganized Debtors ultimately honor the waterfall provision in the Plan is an issue for another day. If, at some point in the future, the Creditor Trust believes that the Reorganized Debtors have not honored the waterfall provision, the Creditor Trust may pursue remedies for that breach.” Order, p. 3. Critically, the Motion does not allege failure to honor the waterfall.

17. Accordingly, the Creditor Trustee fails to support his attempt to force a sale through the actual terms of the Plan. The Plan language, quoted and summarized above, establishes that the Creditor Trustee is not entitled to the order or relief he seeks.

18. Unable to establish rights through Plan language, the Creditor Trustee relies upon summaries of the Plan or predictions of outcomes contained in briefs or made from the podium at hearings. These do not supersede the operative language of the Plan.

19. Much of the language quoted and relied upon in Motion highlights why such summaries and predictions cannot be given greater weight than the Plan. For instance, one brief states that “\$3 million will be carved out form the secured claim....” Motion ¶ 17. Certainly EWB did not subordinate its claim to the \$3 million as the above-quoted statement implies. See Plan §§ 8.8(a), (b).

20. Instead, the descriptive statements quoted and relied upon in the Motion fairly comport with the Plan text taking into account that, in fact, EWB conceded \$3 million from what otherwise might have been the face amount of its claim. That was a material concession by the bank and benefit to unsecured creditors. Or, as EWB counsel said to the Court: “[T]he bank is actually giving up quite a lot, the creditors are getting quite a lot.” Motion ¶ 18. This is a true statement and applies to the Plan as written and confirmed (otherwise, EWB might have asserted payment of the full face amount for itself and forced a sale or foreclosure, wiping everyone else out). Statements such as this do not provide a basis to rewrite the Plan.

21. As the Court concluded in its October 23 Order, the Plan confers rights under section 8.8(b) but does not confers the right to force a sale if funds are not otherwise generated for the section 8.8(b) tranche. The Motion’s request for an order directing submission of a “detailed description of the process by which the Reorganized Debtors propose to sell sufficient assets” involves very literally a rewrite of the relevant Plan provisions. Accordingly, the request

in the Motion to force a sale should fail.

**The Plan Does not Confer Upon the Creditor Trustee a Right to an “Accounting” of Available Cash.**

22. The Motion’s overreach is not limited to its attempt to force a sale in contravention to the provisions of the Plan. The proposed Order submitted with the Motion also provides:

“ORDERED that, on or before the expiration of 14 days following entry of this Order, the Independent Manager shall deliver to the Creditor Trustee an accounting for Available Cash, as that term is defined in the Plan, commencing on the Effective Date and continuing through the date of this order.”

Proposed Order, p. 2.

“ORDERED that the Independent Manager shall provide a detailed accounting to the Creditor Trustee for Available Cash on a go-forward basis, with such reporting due to be delivered to the Creditor Trustee no later than the 15 calendar day of each month, reflecting the Independent Manager’s accounting for Available Cash as of the end of the immediately preceding month;”

Proposed Order, P. 3.

23. Two critical points should be noted: (a) The Motion does not allege a failure to actually pay Available Cash to the Creditor Trust. The Creditor Trust has no basis to make such an allegation. (b) The Motion does not allege a failure to provide information or give reports required under the Plan. The requested order directing the Independent Manager to provide an accounting going back two and one half years is not found in the Plan. Moreover, such an obligation would be tremendously onerous and expensive to comply with. The expense of the “accounting” demanded in the Motion would likely cause a covenant default in the refinance facility, which places strict limits on general administrative expenditures.

24. Nowhere does the Plan language impose such a burden on the Reorganized Debtors or Independent Manager, nor does it contemplate duplication of this nature in the duties of the respective fiduciaries. Under Plan terms, the Independent Manager does not report to the Creditor Trustee. The Creditor Trustee asserts a supervisory role from which he was specifically excluded under the Plan, both through the Plan language and structure.

25. As explained in the Reorganized Debtor’s Status Report filed August 23, 2023, the separate and dual roles of the Independent Manager and the Creditor Trustee, each a specific Plan fiduciary under the Plan, were created to address acrimony that arose during the Chapter 11 case.

26. A Creditor Trust was formed for the primary purpose of (1) receiving and pursuing claims and Causes of Action (as defined in the Plan); and (2) receiving funds and

distributing funds in accordance with the Plan and the Creditor Trust Agreement. See Plan § 8.4. Causes of Action includes alleged claims against Howard Sklar and members of the Sklar family alleged by the Creditors Committee during the Chapter 11 case. The Creditor Trust Agreement submitted with the Plan Supplement (Docket No. 1247, starting at p. 10 of 86) enumerates a series of specific duties, each pertaining to “Causes of Action” or trust assets. Creditor Trust Agreement § 5.1. Of course, the assets of the Reorganized Debtor are not trust assets. Further, the Plan provides, “The Creditor Trust shall not conduct business activities other than those associated with or related to the litigation of the Causes of Action and distribution of trust assets.” Plan, § 8.4. The Creditor Trust Agreement has a similar limitation, at section 5.2.

27. The Independent Manager manages the Reorganized Debtor. See Plan § 8.6. The Independent Manager is responsible for, among other things, winding down SEC and

- a) Effectuating the terms of the Plan;
- b) Maintaining control over all bank accounts and funds held and maintained by the Debtors;
- c) Making distributions to creditors, except those distributions to be made by the Creditor Trust and the Howard Sklar Trust;
- d) Maintaining control over expenditures;
- e) Directing business decisions by the Debtors;
- f) Pursuing collections of accounts receivable and other payment obligations.

Plan, § 8.6. Note also that the Independent Manager’s authority on the business side is plenary. The limited liability membership interests were to be placed in escrow pursuant to the Plan. The Independent Manager cannot be removed by equity nor is he answerable to equity. In that same vein, he cannot be removed by the Creditor Trustee nor is he subordinate to the Creditor Trustee. While the Independent Manager may obtain advice from wherever he deems appropriate, he is an independent plan fiduciary.

28. The distinct role and responsibility of each fiduciary is illustrated by who appointed each. The Creditor Trustee, whose primary responsibilities involve litigation, was selected by the Creditors Committee. Plan § 8.4. The Independent Manager, in contrast, was selected by agreement of EWB and the Debtors (with informal input from unsecured creditors). Plan § 8.6.

29. The Plan confers no authority on the Creditor Trustee over operation of the business or disposition of company oil and gas assets. Indeed, the Creditor Trust is generally prohibited from business activities. The Creditor Trustee does not have supervisory authority over business activities. The Creditor Trust is not a statutory creditors committee. Nor is it a board of directors.

30. Moreover, the Plan does not contemplate that the Independent Manager would be an active litigant, except in certain defined matters. The Creditor Trust, by contrast, is explicitly established as a litigation trust. Very few plans would contemplate for post-Effective Date fiduciaries to be litigants against one another. That would be – and is here – a waste of

resources.

31. As to Available Cash specifically, the Plan does provide a reporting mechanism. “The Reorganized Debtors shall continue to provide regular cash budgets to, and in consultation with, EWB.” Plan § 5.1(b). This is logical in that the oil and gas assets are the collateral for the EWB Secured Claim. In fact, the Reorganized Debtors have very frequent and fulsome interaction with EWB regarding operation of the oil and gas assets. Omission of the Creditor Trust from this consultative language is unmistakable.

32. The Motion’s request for a retrospective accounting would create an administrative nightmare and is outside the contemplation of the Plan. The Motion’s request for a “detailed accounting” each month is an explicit rewrite of the Plan. Upon completion of the refinance, the Reorganized Debtors will have a new secured lender and a facility with its own covenants and reporting requirements. The Reorganized Debtors, as an accommodation, had previously agreed to the Creditor Trustee’s request for copies of those reports as they are provided, but this does not appear to satisfy the Creditor Trustee.

33. The Motion does not allege a breach of the obligation to pay Available Cash and the Creditor Trust has no basis to. Instead, the relief it seeks is reporting and an accounting. A requirement of reporting to the Creditor Trustee that parallels – or worse, sets up in competition with – the reporting and covenants on the actual secured lending facility would be uncommercial. Such a requirement is nowhere in the Plan.

#### **The Reorganized Debtors Have Provided and Will Continue to Provide Information Regarding Section 8.4 Properties As it Becomes Available**

34. The Motion also requests accounting for the results of production for the “Non-EWB Lien Properties<sup>2</sup>” and a monthly “detailed accounting” going forward. The language in the proposed order tracks that for Available Cash quoted above.

35. In fact, the Reorganized Debtors have provided production information. The only cash-generating Non-EWB Lien Properties are wells known as the “Graham” and “Doss” wells, which are listed in section 8.4 of the Plan. Attached as **Exhibit B** is an email dated 2/15/24 providing statements (exhibits thereto are omitted due to volume).

36. Information of the specific nature requested by the Creditor Trust is not generated by the Independent Manager. Instead, it is periodically received by the Independent Manager from third parties. Accordingly, the Independent Manager cannot control the frequency or quality of information regarding these properties. Moreover, the request by definition pertains to assets that EWB would have either overlooked or not deemed worth the expense/trouble of perfecting a lien against. These are marginal properties. Because these are marginal properties,

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<sup>2</sup> The use of this defined term is misleading. Section 8.4 of the Plan refers to specific assets in which an interest was conveyed to the Creditor Trust and does not cover all properties in which EWB did not perfect a lien. This is a substantive difference of which the Creditor Trust is very much aware.

the reporting from third parties tends to be sporadic, certainly less than monthly. Indeed, a vast preponderance of the assets appearing on the lists conveyed to the Creditor Trust are expired leases or otherwise have no go-forward economic life. This has been explained to the Creditor Trustee.

**Through Misleading Complaints About Information, the Creditor Trustee Attempts to Form a Reporting Relationship and Authority Contrary to the Plan**

37. Contrary to the suggestions in the Motion, the Independent Manager has provided the Creditor Trust extensive information, including reserve reports, in person meetings, direct access to the Reorganized Debtors' financial advisors. The Creditor Trust, however, is demanding more information than prospective lenders themselves had requested. The Creditor Trust is trying to create reporting relationships (and de facto authority) directly contrary to the terms and structure of the Plan.

38. Subsequent to the filing of the Motion, the Creditor Trustee served on the Reorganized Debtors extensive discovery which eliminates doubt in this regard. The Creditor Trustee served 71 requests for production of documents. A copy is attached as **Exhibit C**. Some of them pertain to the \$3 million issue previously discussed. (For instance, it shockingly seeks communications with the Plan Mediator.) But the demands regarding activities of the Independent Manager are quite telling. Among other things sought are documents covering every single expenditure authorized by the Independent Manager since the Effective Date of the Plan. (Doc. Request No. 61), documents covering all payments to working interest owners from the Effective Date of the Plan (Doc. Request No. 60), and virtually every document relating to refinancing or other decisions including all contracts and payments to financial advisors.

39. The discovery highlights the overreach which unfortunately has become a central feature of this case. The Creditor Trustee's demands amount to creation of a reporting relationship not contemplated by the Plan and, in fact, would not have been supported given the acrimony in the pre-confirmation phase. The Plan, as written, provides a strong mechanism for payment in full to creditors over time and the serious possibility of an eventual return to equity without constant intervention from the Court. And provision of management responsibilities reflects consideration of not only unsecured creditor interests but also those of EWB and the Sklar family trusts, which hold the equity and own interests in the oil and gas interests subject to the Agency Services Agreement which had been a major issue in the case. The Creditor Trustee should not be permitted to rewrite the Plan.

WHEREFORE, the Reorganized Debtors request that the Court deny the Motion and grant such other relief as is just and equitable.

*[Signature page to follow.]*

DATED: March 1, 2024.

**BROWNSTEIN HYATT FARBER  
SCHRECK, LLP**

/s/ Michael J. Pankow

Michael J. Pankow, #21212  
675 15th Street, Suite 2900  
Denver, CO 80202  
Tel: (303) 223-1100  
Fax: (303) 223-1111  
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*Attorneys for Sklarco, LLC*

**KUTNER BRINEN DICKEY RILEY, P.C.**

/s/ Keri L. Riley

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Denver, CO 80264  
Tel: (303) 832-2400  
klr@kutnerlaw.com

*Attorneys for Sklar Exploration Company, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of March, 2024, a true and correct copy of the foregoing **OBJECTION TO MOTION PURSUANT TO 11 U.S.C. 105(a) AND 1142(a) TO COMPEL THE REORGANIZED DEBTORS TO COMPLY WITH THEIR OBLIGATIONS UNDER THE SECOND AMENDED AND RESTATED PLAN OF REORGANIZATION DATED DECEMBER 18, 2020** was transmitted by electronic means on the parties noted in the Court's ECF transmission facilities.

/s/ AJ Ciabattoni

AJ Ciabattoni, Legal Practice Assistant/Paralegal

# **EXHIBIT A**

**From:** Pankow, Michael J.  
**Sent:** Wednesday, February 21, 2024 4:38 AM  
**To:** Steve Loden  
**Subject:** RE: Sklarco

Steve,

Closing is likely to slip back a few days. Informally, the parties are shooting for Monday or Tuesday.

Best,  
Mike

***Michael J. Pankow***  
**Brownstein Hyatt Farber Schreck, LLP**  
675 15th Street, Suite 2900  
Denver, CO 80202  
303.223.1106 tel  
[MPankow@BHFS.com](mailto:MPankow@BHFS.com)

***WE HAVE MOVED: Our new address is: 675 15th Street, Suite 2900, Denver, CO 80202***

**From:** Steve Loden <[SLoden@diamondmccarthy.com](mailto:SLoden@diamondmccarthy.com)>  
**Sent:** Monday, February 19, 2024 5:15 PM  
**To:** Pankow, Michael J. <[MPankow@BHFS.com](mailto:MPankow@BHFS.com)>  
**Subject:** Re: Sklarco

Got it - thanks. If you think it is going to slip would you please let me know?

On Feb 19, 2024, at 17:08, Pankow, Michael J. <[MPankow@bhfs.com](mailto:MPankow@bhfs.com)> wrote:

Yes, that's the goal anyway.

***Michael J. Pankow***  
**Brownstein Hyatt Farber Schreck, LLP**  
675 15th Street, Suite 2900  
Denver, CO 80202  
303.223.1106 tel  
[MPankow@BHFS.com](mailto:MPankow@BHFS.com)

***WE HAVE MOVED: Our new address is: 675 15th Street, Suite 2900, Denver, CO 80202***

**From:** Steve Loden <[SLoden@diamondmccarthy.com](mailto:SLoden@diamondmccarthy.com)>  
**Sent:** Monday, February 19, 2024 5:06 PM  
**To:** Pankow, Michael J. <[MPankow@BHFS.com](mailto:MPankow@BHFS.com)>  
**Subject:** Re: Sklarco

Thanks, Mike.

Are you still shooting for a closing this Thursday?

Steve

On Feb 16, 2024, at 13:32, Pankow, Michael J. <[MPankow@bhfs.com](mailto:MPankow@bhfs.com)> wrote:

Per your request, here's a working draft of the revised credit agreement.

***Michael J. Pankow***

**Brownstein Hyatt Farber Schreck, LLP**

675 15th Street, Suite 2900

Denver, CO 80202

303.223.1106 tel

[MPankow@BHFS.com](mailto:MPankow@BHFS.com)

***WE HAVE MOVED: Our new address is: 675 15th Street, Suite 2900, Denver, CO 80202***

**From:** Steve Loden <[SLoden@diamondmccarthy.com](mailto:SLoden@diamondmccarthy.com)>

**Sent:** Friday, February 16, 2024 1:02 PM

**To:** Pankow, Michael J. <[MPankow@BHFS.com](mailto:MPankow@BHFS.com)>

**Subject:** Sklarco

Mike –

Please share whatever details (updated term sheets, revised deal documents, etc.) you have for the revised ACR deal so we can ensure we are going over the accurate details with the Oversight Committee. Thanks,

Steve

<image001.jpg>

**Steve Loden | Partner**

909 Fannin Street, 37th Floor

Houston, Texas 77010

713-333-5110 direct

713-333-5100 main

713-333-5199 fax

[web](#) | [bio](#) | [vCard](#)

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<ACRSklarco - Credit Agreement-26690134-v4.docx>

# **EXHIBIT B**

**From:** Stuart Morton  
**Sent:** Thursday, February 15, 2024 4:00 PM  
**To:** Anne (O'Donnell) Pichler <[aopichler@r2llc.com](mailto:aopichler@r2llc.com)>  
**Cc:** Brad Walker <[bwalker@riverbendssg.com](mailto:bwalker@riverbendssg.com)>  
**Subject:** Sklar Graham & Doss Distributions

Anne – As discussed, here is the summary and detail of payments Sklar's Creditor Trust has received for distributions related to the Graham and Doss wells. There are a large number of files, so please confirm if you receive this.

**Stuart Morton**  
Stone Tower Group  
M: 903-235-8650  
[smorton@st-cap.com](mailto:smorton@st-cap.com)

# **EXHIBIT C**

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

IN RE:

SKLAR EXPLORATION COMPANY, LLC,  
EIN: 72-1417930

Debtor.

Case No. 20-12377-MER (Main Case)

Chapter 11

SKLARCO, LLC,  
EIN: 72-1425432

Debtor.

Case No. 20-12380-MER

Chapter 11

**FIRST SET OF REQUESTS FOR PRODUCTION TO  
BRAD WALKER, INDEPENDENT MANAGER FOR SKLARCO LLC  
AND SKLAR EXPLORATION COMPANY LLC**

TO: Brad Walker, Independent Manager for Sklarco LLC and Sklar Exploration Company LLC, by and through Keri L. Riley, Kutner Brinen Dickey Riley, P.C., 1660 Lincoln Street, Suite 1720, Denver, CO 80264, counsel for Sklar Exploration Company LLC; and Michael J. Pankow, Brownstein Hyatt Faber Schreck, LLP, 410 17<sup>th</sup> Street, Suite 2200, Denver, CO 80202-4432, counsel for Sklarco LLC.

In connection with the Motion Pursuant to 11 U.S.C. §§ 105 and 1142(a) to Compel the Reorganized Debtors to Comply With Their Obligations Under the Second Amended and Restated Joint Plan of Reorganization Dated December 18, 2020 [Dkt. No. 2045] (the “Motion”), and pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, as incorporated into this contested matter by Rules 9014 and 7034 of the Federal Rules of Bankruptcy Procedure, and pursuant to Rule 7026-2 of the District of Colorado Local Bankruptcy Rules, Thomas M. Kim, in his capacity as the Creditor Trustee of the Sklar Creditor Trust (the “Creditor Trustee”) makes the following requests (the “Requests for Production”) for production of documents and electronically stored information by Brad Walker, Independent Manager for Sklarco LLC and Sklar Exploration Company LLC. The documents and information described herein shall be produced for inspection and copying at the offices of Diamond McCarthy, LLP 909 Fannin, Suite 3700, Houston, Texas

77010, attention Stephen T. Loden, at a time agreed upon by the parties, but in no event any later than as specified in the Federal Rules of Civil Procedure.

Dated: February 28, 2024.

DIAMOND McCARTHY LLP

By: /s/ Stephen T. Loden  
Stephen T. Loden, CO Reg. No. 45592  
909 Fannin St., Ste. 3700  
Houston, TX 77010  
Tel.: (713) 333-5100  
Fax: (713) 333-5155  
steve.loden@diamondmccarthy.com

*Attorneys for Thomas M. Kim, as Creditor  
Trustee of the Sklarco Creditor Trust*

#### CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of February, 2024, I served the foregoing Requests for Production on the following parties by email notification.

Keri L. Riley  
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/s/ Stephen T. Loden  
Stephen T. Loden

## **REQUESTS FOR PRODUCTION**

### **I. DEFINITIONS**

As used herein, unless otherwise indicated:

1. “Motion to Compel” means and refers to the motion entitled “Motion Pursuant to 11 U.S.C. §§ 105 and 1142(a) to Compel the Reorganized Debtors to Comply With Their Obligations Under the Second Amended and Restated Joint Plan of Reorganization Dated December 18, 2020” filed at Docket No. 2045 in the Reorganized Debtors’ jointly administered chapter 11 cases.

2. “Creditors’ Committee” means and refers to the Official Unsecured Creditors’ Committee for Sklar Exploration Company LLC, which was appointed by the United States Trustee in the Reorganized Debtors’ chapter 11 cases on April 16, 2020.

3. “Debtors” and/or “Reorganized Debtors” means and refers to Sklar Exploration Company, LLC and Sklarco, LLC, jointly and severally, in their capacity as debtors and reorganized debtors in these jointly administered chapter 11 cases.

4. “Plan” means and refers to the “Second Amended and Restated Joint Plan of Reorganization dated December 18, 2020” which was filed at Docket No. 1251 in the Reorganized Debtors’ jointly administered chapter 11 cases.

5. “Plan Mediation” means and refers to the mediation that occurred before Sylvia Mayer, mediator, beginning in January 2021, the participants of which included East West Bank, the Creditors’ Committee, and the Debtors.

6. “Available Cash” is used herein as defined in section 1.6 of the Plan.

7. “Creditor Trust” is used herein as defined in section 1.27 of the Plan.

8. “Creditor Trust Allocation” is used herein as defined in section 1.29 of the Plan.

9. “Creditor Trust Payment Obligation” is used herein as defined in section 1.30 of the Plan.

10. “Independent Manager” is used herein as defined in section 1.54 of the Plan.

11. “You” and/or “Your” means (a) the Debtors, (b) the Reorganized Debtors, (c) Brad Walker in his capacity as the Independent Manager for the Reorganized Debtors, and (d) each of the employees, attorneys, agents, brokers, representatives, servants, and any other persons or entities acting or purporting to act directly or indirectly on behalf of or under the control of the Debtors and/or the Reorganized Debtors, including but not limited to attorneys, advisors or consultants.

12. “Howard Sklar” means and refers to, collectively and separately, (a) Howard F. Sklar, Individually; (b) Howard F. Sklar in his capacity as Independent Executor of the Succession of Miriam Mandel Sklar; (c) Howard F. Sklar in his capacity as Trustee for the Howard Trust; (d) Howard F. Sklar in his capacity as Trustee for the Alan Grantor Trust; (e) Howard F. Sklar in his capacity a Trustee for the Jacob Grantor Trust; and (f) each of the employees, attorneys, agents, brokers, representatives, servants, and any other persons or entities acting or purporting to act directly or indirectly on behalf of or under the control of Howard Sklar in any of the capacities referred to in “(a)” through “(e)” above.

13. “Family Trusts” means and refers to, collectively and separately, each of the following: (a) the Succession of Miriam Mandel Sklar; (c) the Howard Trust; (d) the Alan Grantor Trust; (e) the Jacob Grantor Trust; and (f) each of the employees, attorneys, agents, brokers, representatives, servants, and any other persons or entities acting or purporting to act directly or indirectly on behalf of or under the control of Howard Sklar in any of the capacities referred to in “(a)” through “(e)” above.

14. “September 7, 2023 Deadline” means and refers to the date upon which the EWB Secured Claim became due and payable, as set forth in the first sentence of section 5.1(d) of the Plan.

15. “EWB Secured Claim” means and refers to the term “EWB Secured Claim” as defined in section 1.43 of the Plan.

16. “East West Bank” means and refers to the entity that is defined at section 1.40 of the Plan.

17. “Financial Advisors” means and refers to, collectively and separately, each of RedOaks Energy Advisors, LLC and TenOaks Energy Advisors, LLC.

18. “Inquiry Period” means the period starting on January 1, 2023 and ending on the date of your responses to these Requests for Production.

19. “Operators” means and refers to, collectively and separately, each of the following: (a) Pruet Production Co., (b) Brammer Engineering, Inc., and (c) Stroud Petroleum, Inc.

20. “Status Report” means and refers to the Reorganized Debtors’ Status Report which was filed at Docket No. 1993 in the Reorganized Debtors’ jointly administered chapter 11 cases.

21. “Non-EWB Lien Properties” means and refers to the assets identified in fourth full paragraph of section 8.4 of the Plan.

22. “Document” means all originals, drafts and modifications of originals, as well as copies, duplicates, and counterparts of originals, of written, printed, typed, graphic, recorded, and visually or orally reproduced material of any kind, whether or not privileged, and includes, but is not limited to, correspondence, business records, telephone records and notations, diaries, calendars, minutes, contracts, agreements, orders, receipts, invoices, bills, pictures, drawings or sketches, blueprints, designs, notebooks, advertising and commercial literature, promotional

literature of any kind, cables, telexes, telegrams, recordings, patents, lists, charts, pamphlets, appendices, exhibits, summaries, outlines, logs, journals, agreements, work papers, statements, records of inventory, financial and/or accounting records, catalogues, trade journals, and any other documented or recorded information. The term “document” also includes every other manner by which information is recorded or transmitted, including but not limited to, microfilms, punch cards, disks, tapes, computer programs, printouts, all recordings made through data processing techniques, and instructions and directions for use of the data processing equipment to obtain the information recorded by that method. The term “document” refers to copies, duplicates, and/or counterparts only where (i) the copy, duplicate, or counterpart is not exactly identical to the original or (ii) your records only contain a copy, duplicate, or counterpart of the original and not the original itself.

23. “Communication” means any transmittal of information, of any kind, without regard to whether such information was transmitted orally, in writing, electronically, visually, or by any other means, and without regard to whether you were the sender or recipient.

24. “Evidencing” means constituting, mentioning, describing, concerning, referring to, relating to, supplementing, amending, superseding, replacing, modifying, or pertaining to, in whole or in part, the subject matter of the particular requests.

25. “Relating or referring” and/or “relate or refer” means in whole or in part constituting, containing, concerning, embodying, evaluating, reflecting, describing, discussing, demonstrating, evidencing, supporting, analyzing, identifying, stating, referring to or dealing with, or in any way pertaining to including without limitation documents that relate to the preparation of another document, or documents that are attached to or enclosed with another document.

## **II. INSTRUCTIONS**

1. The following document requests are to be responded to fully, by furnishing all information in your possession, custody or control. You having possession, custody, or control of a document includes Your having a right, superior to other parties, to compel the production of such document from a third party, such as your agent, employee, representative, or, unless privileged, attorney.

2. If any document requested herein has been lost, discarded, or destroyed, the document so lost, discarded or destroyed should be identified as completely as possible, including without limitation, the date the document was lost, discarded, or destroyed, the manner in which the document was lost, discarded, or destroyed, the reason(s) the document was lost, discarded, or destroyed, the person who authorized that the document be destroyed or discarded, and the person who lost, discarded, or destroyed the document.

3. If You cannot produce a document because it no longer exists or is no longer in your possession, custody, or control, please identify that document by: (a) its title; (b) its nature (for example, a "letter" or "e-mail"); (c) the date it was created or sent; (d) its author(s) and signator(y/ies); (e) any of its recipient(s); (f) the last place it was known to have been located; (g) the circumstances under which it ceased to exist or passed from your possession, custody, or control; and (h) the identity and last known residence and business address of any person who had knowledge of its existence and location.

4. Produce the original, as well as all non-identical duplicates or copies and/or drafts, of all requested documents in your possession, in the possession of Your agents, attorneys, accountants or employees, or which are otherwise within your custody, control, or access, wherever located. A document with handwritten notes, editing marks, etc., is not identical to one

without such notes or marks and therefore must be produced if within the scope of documents requested.

5. Produce each requested document in its entirety, including all attachments and enclosures, even if only a portion of the document is responsive to the request.

6. If You withhold from production any document (or portion of any document) that is otherwise responsive to a request on the basis of a claim of privilege, work product, or other ground, You must provide sufficient information regarding the withheld document to permit the Court and the parties to evaluate the propriety of your objection. Specifically, You must identify: (a) the name and title of the author(s) of the document; (b) the name and title of each person to whom the document was addressed; (c) the name and title of each person to whom the document was distributed; (d) the name and title of each person to whom the document was disclosed, in whole or in part; (e) the type of document (e.g., “memorandum” or “report”); (f) the subject matter of the document; (g) the purpose(s) of the document; (h) the date on the document and, if different, the date on which the document was created and/or sent; (i) the number of pages of the document; (j) the specific request herein to which the document is responsive; (k) the nature of the privilege(s) asserted as to the document; and (l) a detailed, specific explanation as to why the document is privileged or otherwise immune from discovery, including a presentation of all factual grounds and legal analyses.

7. If any requested document cannot be produced in full, produce it to the extent possible, indicating what is being withheld and the reason it is being withheld.

8. Please produce each specified document either (a) in the original file or organizational system in which it is regularly maintained or organized or (b) designate which documents are being produced in response to which of the numbered specifications below.

Produce the requested documents either in their original file folders or appended to a copy of any writing on the file folders from which the documents are taken.

9. Identify each document produced by the paragraph number of this schedule to which it is responsive. If a document is produced in response to more than one request, it is sufficient to identify only the first request to which the document is responsive.

10. All electronically stored information must be produced in the same form or forms in which it is ordinarily maintained. Specifically, all electronically stored information must be produced in its native format, so that the metadata can be accessed.

11. In responding to the requests below: (a) the disjunctive shall also be read to include the conjunctive and vice versa; (b) “including” shall be read to mean “including without limitation;” (c) the singular shall also be read to include the plural and vice versa; (d) the present shall also be read as if the past tense and vice versa; (e) “any” shall be read to include “all” and vice versa; and (f) “and” shall be read to include “or” and vice versa.

### **III. DOCUMENT REQUESTS**

YOU ARE REQUESTED to produce the documents set forth below:

1. All Documents Evidencing Communications during the Inquiry Period between You and Howard Sklar relating or referring to the September 7, 2023 Plan Deadline.

2. All Documents Evidencing Communications during the Inquiry Period between You and Howard Sklar relating or referring to the EWB Secured Claim.

3. All Documents Evidencing Communications during the Inquiry Period between You and Howard Sklar relating or referring to refinancing the EWB Secured Claim.

4. All Documents Evidencing Communications during the Inquiry Period between You and Howard Sklar relating or referring to selling assets to repay the EWB Secured Claim.

5. All Documents Evidencing Communications during the Inquiry Period between You and Howard Sklar relating or referring to the Creditor Trust Payment Obligation

6. All Documents Evidencing Communications during the Inquiry Period between You and Howard Sklar relating or referring to the Creditor Trust Allocation.

7. All Documents Evidencing Communications during the Inquiry Period between You and Howard Sklar relating or referring to the Creditor Trust.

8. All Documents Evidencing Communications between the You and Howard Sklar relating or referring to the Plan Mediation.

9. All Documents Evidencing Communications during the Inquiry Period between You and the Family Trusts relating or referring to the September 7, 2023 Plan Deadline.

10. All Documents Evidencing Communications during the Inquiry Period between You and the Family Trusts relating or referring to the EWB Secured Claim.

11. All Documents Evidencing Communications during the Inquiry Period between You and the Family Trusts relating or referring to refinancing the EWB Secured Claim.

12. All Documents Evidencing Communications during the Inquiry Period between You and the Family Trusts relating or referring to selling assets to repay the EWB Secured Claim.

13. All Documents Evidencing Communications during the Inquiry Period between You and the Family Trusts relating or referring to the Creditor Trust Payment Obligation

14. All Documents Evidencing Communications during the Inquiry Period between You and the Family Trusts relating or referring to the Creditor Trust Allocation.

15. All Documents Evidencing Communications during the Inquiry Period between You and the Family Trusts relating or referring to the Creditor Trust.

16. All Documents Evidencing Communications between the You and the Family Trusts relating or referring to the Plan Mediation.

17. All Documents Evidencing Communications during the Inquiry Period between You and East West Bank relating or referring to the September 7, 2023 Plan Deadline.

18. All Documents Evidencing Communications during the Inquiry Period between You and East West Bank relating or referring to the EWB Secured Claim.

19. All Documents Evidencing Communications during the Inquiry Period between You and East West Bank relating or referring to refinancing the EWB Secured Claim.

20. All Documents Evidencing Communications during the Inquiry Period between You and East West Bank relating or referring to selling assets to repay the EWB Secured Claim.

21. All Documents Evidencing Communications during the Inquiry Period between You and East West Bank relating or referring to the Creditor Trust Payment Obligation.

22. All Documents Evidencing Communications during the Inquiry Period between You and East West Bank relating or referring to the Creditor Trust Allocation.

23. All Documents Evidencing Communications during the Inquiry Period between You and East West Bank relating or referring to the Creditor Trust.

24. All Documents Evidencing Communications between You and East West Bank relating or referring to the Plan Mediation.

25. All Documents Evidencing Communications during the Inquiry Period between You and the Financial Advisors relating or referring to the September 7, 2023 Plan Deadline.

26. All Documents Evidencing Communications during the Inquiry Period between You and the Financial Advisors relating or referring to the EWB Secured Claim.

27. All Documents Evidencing Communications during the Inquiry Period between You and the Financial Advisors relating or referring to refinancing the EWB Secured Claim.

28. All Documents Evidencing Communications during the Inquiry Period between You and the Financial Advisors relating or referring to selling assets to repay the EWB Secured Claim.

29. All Documents Evidencing Communications during the Inquiry Period between You and the Financial Advisors relating or referring to the Creditor Trust Payment Obligation

30. All Documents Evidencing Communications during the Inquiry Period between You and the Financial Advisors relating or referring to the Creditor Trust Allocation.

31. All Documents Evidencing Communications during the Inquiry Period between You and the Financial Advisors relating or referring to the Creditor Trust.

32. All Documents Evidencing Communications during the Inquiry Period between You and the Operators relating or referring to the September 7, 2023 Plan Deadline.

33. All Documents Evidencing Communications during the Inquiry Period between You and the Operators relating or referring to the EWB Secured Claim.

34. All Documents Evidencing Communications during the Inquiry Period between You and the Operators relating or referring to refinancing the EWB Secured Claim.

35. All Documents Evidencing Communications during the Inquiry Period between You and the Operators relating or referring to selling assets to repay the EWB Secured Claim.

36. All Documents Evidencing Communications during the Inquiry Period between You and the Operators relating or referring to the Creditor Trust Payment Obligation

37. All Documents Evidencing Communications during the Inquiry Period between You and the Operators relating or referring to the Creditor Trust Allocation.

38. All Documents Evidencing Communications during the Inquiry Period between You and the Operators relating or referring to the Creditor Trust.

39. All Documents Evidencing Communications between the You and the Operators relating or referring to the Plan Mediation.

40. All Documents Evidencing Communications during the Inquiry Period between You and any other person or entity relating or referring to the September 7, 2023 Plan Deadline.

41. All Documents Evidencing Communications during the Inquiry Period between You and any other person or entity relating or referring to the EWB Secured Claim.

42. All Documents evidencing Communications during the Inquiry Period between You and any other person or entity relating or referring to refinancing the EWB Secured Claim.

43. All Documents evidencing Communications during the Inquiry Period between You and any other person or entity relating or referring to selling assets to repay the EWB Secured Claim.

44. All Documents Evidencing Communications during the Inquiry Period between You and any other person or entity relating or referring to the Creditor Trust Payment Obligation.

45. All Documents Evidencing Communications during the Inquiry Period between You and any other person or entity relating or referring to the Creditor Trust Allocation.

46. All Documents Evidencing Communications during the Inquiry Period between You and any other person or entity relating or referring to the Creditor Trust.

47. All Documents Evidencing Communications between You and Sylvia Mayer relating or referring to the Plan Mediation.

48. All Documents Evidencing Communications between You and the Creditors' Committee relating or referring to the Plan Mediation.

49. All Documents Evidencing Communications between You and any other person or entity relating or referring to the assertion that “raising the additional \$3 million demanded by the Creditor Trustee would be cost-prohibitive, if achievable at all” as stated in the Status Report.

50. All Documents relating or referring to the assertion that “raising the additional \$3 million demanded by the Creditor Trustee would be cost-prohibitive, if achievable at all” as stated in the Status Report.

51. All Documents evidencing, relating or referring to any analysis You have performed of the costs of “raising the additional \$3 million demanded by the Creditor Trustee”, as set forth in the Status Report.

52. All Documents that were created or prepared as part of any effort to sell assets to repay the EWB Secured Claim including, but not limited to, marketing materials, solicitations, advertisements, press releases, and any other efforts to make the market aware of efforts to sell assets to repay the EWB Secured Claim.

53. All Documents that were created or prepared as part of any effort to refinance the EWB Secured Claim including, but not limited to, marketing materials, solicitations, advertisements, press releases, and any other efforts to make the market aware of efforts to refinance the EWB Secured Claim.

54. All Documents that You provided to East West Bank which evidence, relate, or refer to the Reorganized Debtors’ financial accounting from September 7, 2021 to the date of Your responses to these Requests for Production.

55. All Documents that You prepared from the September 7, 2021 to the date of Your responses to these Requests for Production which evidence, relate, or refer to the Reorganized

Debtors' projected or forecasted future financial performance including, but not limited to, projected or forecasted cash flows.

56. All Documents that evidence Your financial accounting for Available Cash from September 7, 2021 to the date of Your responses to these Requests for Production.

57. All Documents that evidence Your financial accounting for the Creditor Trust Payment Obligation from September 7, 2021 to the date of Your responses to these Requests for Production.

58. All Documents that evidence Your financial accounting for all payments that You have made to the Creditor Trust pursuant to the Creditor Trust Allocation from September 7, 2021 to the date of Your responses to these Requests for Production.

59. All Documents that evidence Your financial accounting for distributions and/or proceeds of the Non-EWB Lien Properties from September 7, 2021 to the date of Your responses to these Requests for Production.

60. Documents sufficient to show payments by You to working interest owners, from September 7, 2021 to the date of Your responses to these Requests for Production.

61. Documents sufficient to summarize all Authorizations for Expenditures that You have prepared from September 7, 2021 to the date of Your responses to these Requests for Production.

62. All Documents that evidence Your financial accounting for all claims asserted by East West Bank, from December 18, 2020 to the date of Your responses to these Requests for Production.

63. All Documents that evidence any contracts between You and the Financial Advisors.

64. Documents sufficient to evidence any payments You have made to the Financial Advisors.

65. All Documents that evidence any contracts between You and the Independent Manager.

66. All Documents that evidence any invoices, billing statements, or other Documents requesting payment for services that You have received from the Independent Manager.

67. Documents sufficient to evidence any payments You have made to the Independent Manager.

68. All Documents that evidence any contracts between You and Howard Sklar.

69. All Documents that evidence any invoices, billing statements, or other Documents requesting payment for services that You have received from Howard Sklar.

70. Documents sufficient to evidence any payments You have made to Howard Sklar.

71. Documents sufficient to show Your calculation of all quarterly fees that You owe to the United States Trustee for the District of Colorado pursuant to 28 U.S.C. § 1930(a)(6).