INSTRUCTION NO. 1 (3.01+3.02—Court's version)

Members of the Jury, the instructions I gave you at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions on the law that applies to this case. You must, of course, continue to follow all the instructions I gave you earlier, as well those I give you now.

The instructions I am about to give you now are in writing and will be available to you in writing in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all my instructions, whether given in writing or spoken from this bench, must be followed.

It is your duty as jurors to follow the law as stated in the instructions, and to apply the given rules of law to the facts as you find them to be from the evidence in this case.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Neither are you to be concerned with the wisdom of any rule of law as stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict

upon any other view of the law other than that given in the instructions of the Court; just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in the case.

Nothing I say in the instructions is to be taken as an indication that I have any opinion about the facts of the case, or what that opinion is. It is not my function to determine the facts. You will determine the facts. During this trial I have occasionally asked questions of witnesses. Do not assume that because I asked questions I hold any opinion on the matters to which my questions related.

Justice through trial by jury must always depend on the willingness of each individual juror to seek the truth about the facts from the same evidence presented to all the jurors; and to arrive at a verdict by applying the same rules of law as given in the Court's instructions.

Statements and arguments of counsel are not evidence in the case. When the lawyers on both sides stipulate or agree on the existence of a fact, however, the Jury must accept the stipulation and regard that fact as proved. The evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may have called them and any documents,

photographs, or other items that are received by the Court, and all facts that may have been admitted or stipulated. Any evidence on which an objection was sustained by the Court—and any witness statement or tangible item that was stricken by the Court—must be entirely disregarded.

Anything you may have seen or heard outside this courtroom is not evidence, and it must be entirely disregarded.

INSTRUCTION NO. 2 (3.06—Court's version)

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you all here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Third, if you need to communicate with me during your deliberations, you may send a note to me, through the court security officer, that is signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should never tell anyone—including me—how your votes stand numerically.

Fourth, your verdict must be based solely on the evidence and on the law that I have given to you in my instructions. The verdict must be unanimous. Again, nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

INSTRUCTION NO. 3 (3.03—Court's version)

You are the sole judges of the credibility of the witnesses and the weight and value to be given to their testimony. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, you may consider the witness's intelligence; the opportunity the witness had to see or hear the things about which he or she testified; the witness's memory; any motives a witness may have for testifying a certain way; the manner and demeanor of the witness while testifying; whether the witness said something different at an earlier time; the general reasonableness or unreasonableness of the testimony; and the extent to which the testimony is consistent with any other evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection, lapse of memory, or an intentional falsehood—and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 4 (Court's version)

In considering the evidence in this case you are not required to set aside your common sense or common knowledge. You have the right to consider all the evidence in light of your own observations and experiences in the affairs of life.

INSTRUCTION NO. 5 (3.04—Court's version)

In these instructions you are told that one or the other party has the burden to prove certain facts. The burden of proving a fact is placed upon the party whose claim or defense depends upon that fact. The party who has the burden of proving a fact must prove it by a preponderance of the evidence. To prove something by the "preponderance of the evidence" is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable.

If, on any issue of fact in the case, the evidence is equally balanced, you cannot find that fact has been proved. The preponderance of the evidence is not necessarily established by the greater number of witnesses or exhibits a party has presented.

You may have heard of the term "proof beyond a reasonable doubt." This is a stricter standard, which applies in criminal cases. It does not apply in civil cases like this one. You should, therefore, put it out of your minds.

INSTRUCTION NO. 6 (AMI 107 – Agreed)

An expert witness is a person who has special knowledge, skill, experience, training, or education on the subject to which his or her testimony relates.

An expert witness may give an opinion on questions in controversy. You may consider the expert's opinion in the light of his or her qualifications and credibility, the reasons given for the opinion, and the facts and other matters upon which the opinion is based.

You are not bound to accept an expert's opinion, but should give it whatever weight you think it should have. You may disregard any opinion testimony if you find it to be unreasonable.

INSTRUCTION NO. 7 (AMI 108 – Agreed)

A fact in dispute may be proved by circumstantial evidence as well as by direct evidence. A fact is established by direct evidence when, for example, it is proved by witnesses who testify to what they saw, heard, or experienced. A fact is established by circumstantial evidence when its existence can reasonably be inferred from other facts proved in the case.

INSTRUCTION NO. 8 (Agreed)

Clinton Parkison and Chesapeake Energy Corporation are both persons in the eyes of the law, and both are entitled to equal justice under the law.

INSTRUCTION NO. 9 (AMI 203 — Agreed)

Clinton Parkison claims damages from Chesapeake and has the burden of proving each of the three following elements:

First, that Parkison sustained damages;

Second, that Chesapeake was negligent; and

Third, that Chesapeake's negligence was a proximate cause of Parkison's damages.

If you find from the evidence in this case that each of these elements has been proved, then your verdict should be for Parkison; but if, on the other hand, you find from the evidence that any of these elements has not been proved, then your verdict should be for Chesapeake.

INSTRUCTION NO. 10 (AMI - 206 Chesapeake proposal)

Chesapeake contends that there was negligence or fault on the part of Clinton Parkison, which was a proximate cause of the injury. Chesapeake has the burden of proving this contention.

INSTRUCTION NO. 11 (AMI 501 — Agreed)

The law frequently uses the expression "proximate cause," with which you may not be familiar. When I use the expression "proximate cause," I mean a cause which, in a natural and continuous sequence, produces damage and without which the damage would not have occurred.

INSTRUCTION NO. 12 (AMI 301& 302 & 603—Agreed)

When I use the word "negligence" in these instructions I mean the failure to do something which a reasonably careful person would do, or the doing of something which a reasonably careful person would not do, under circumstances similar to those shown by the evidence in this case. It is for you to decide how a reasonably careful person would act under those circumstances. To constitute negligence, an act must be one from which a reasonably careful person would foresee an appreciable risk of harm to others as to cause him or her not to do the act, or to do it in a more careful manner. When I use the word "fault" in these instructions, I mean negligence. The fact that an accident occurred is not, of itself, evidence of negligence on the part of anyone.

INSTRUCTION NO. 13 (AMI 1104 & 305A — Agreed in part)

In this case, Clinton Parkison was an invitee on Chesapeake's premises. Chesapeake owed Parkison a duty to use ordinary care to maintain the premises in a reasonably safe condition. The duty Chesapeake owed Parkison was to protect him not only from dangers of which Chesapeake knew, but also against those which, with reasonable care, Chesapeake might discover. No such duty exists, however, if the condition of the premises that creates the danger was known by, or obvious to, Parkison. It was the duty of Parkison, before and at the time of the occurrence, to use ordinary care for his safety.

INSTRUCTION NO. 14 (AMI 303 & 602—Partly agreed)

A failure to exercise ordinary care is negligence. When I use the words "ordinary care," I mean the care a reasonably careful person would use under circumstances similar to those shown by the evidence in this case. It is for you to decide how a reasonably careful person would act under those circumstances. Every person using ordinary care has a right to assume, until the contrary is or reasonably should be apparent, that every other person will use ordinary care. To act on that assumption is not negligence.

INSTRUCTION NO. 15 (AMI 601-Parkison Proposal)

At the time of the occurrence, OSHA regulations were in force in Arkansas. These OSHA regulations provided that:

- fall protection was required for workplace platforms;
- guardrail systems were required for stairways and workplace platforms more than 4 feet high;
- the guardrail was required to have a top rail height of 42 inches; and
- the guardrail was required to be capable of withstanding, without failure, a force of 200 pounds applied within two inches of the top edge, in any outward or downward direction at any point along the top edge.

A violation of one or more of these regulations, although not necessarily negligence, is evidence of negligence to be considered by you along with all of the other facts and circumstances in this case.

INSTRUCTION NO. 16 (AMI 2201-2209-Parkison proposal)

If you decide for Clinton Parkison on the question of liability against Chesapeake, you must then fix the amount of money which will reasonably and fairly compensate Parkison for any of the following elements of damage sustained which you find were proximately caused by the negligence or fault of Chesapeake.

First: the nature, extent, duration, and permanency of any injury.

Second: the reasonable expense of any necessary medical care, treatment and services received, including transportation, board and lodging expenses necessarily incurred in securing this care, treatment, or services and the present value of the expense reasonably certain to be required in the future.

Third*:* any pain and suffering and mental anguish experienced in the past and reasonably certain to be experienced in the future by Parkison.

Fourth: The value of any earnings, profits, salary, or working time lost by Parkison and the present value of any earnings, profits, salary, or working time reasonably certain to be lost in the future by Parkison or the present

value of any loss of ability to earn in the future.

Fifth: Any scars, disfigurement, and visible results of Parkison's injury.

Sixth: The reasonable expense of any necessary help in Parkison's home, which has been required as a result of Parkison's injury and the present value of the expense reasonably certain to be required in the future.

Whether any of these elements of damage have been proved by the evidence is for you to determine.

INSTRUCTION NO. 17 (AMI 2220—Agreed)

I have used the expression "present value" in these instructions with respect to certain elements of damage which you may find that Clinton Parkison will sustain in the future. This simply means that if you find that Parkison is entitled to recover any elements of damage which require you to determine their present value, you must take into consideration the fact that money recovered will earn interest, if invested, until the time in the future when these losses will actually occur. Therefore, you must reduce any award of these damages to compensate for the reasonable earning power of money.

INSTRUCTION NO. 18

This case is submitted to you on Interrogatories or questions. Your answers to these questions will be your verdict in this case. Here are the questions and related instructions.

1: Do you find from a preponderance of the evidence that there was negligence on the part of Chesapeake that was a proximate cause of any damages sustained by Clinton Parkison?

Yes_____ No_____

If you answered Question 1 "No," then your deliberations are done. If you answered Question 1 "Yes," then answer Question 2.

2. Do you find from a preponderance of the evidence that there was negligence on the part of Parkison that was a proximate cause of any damages he may have sustained?

Yes_____ No_____

If you answered Question 2 "No", do not answer Question 3. Instead, go directly to Question 4 and answer it. If you answered Question 2 "Yes," then answer Question 3.

3. What percentage of the fault for the accident should be attributed to Parkison? _____

What percentage of the fault for the accident should be attributed to Chesapeake?_____

The two percentages, when added together, must equal 100 percent. Now answer Question 4.

4. State the total amount of any damages which you find from a preponderance of the evidence were sustained by Parkison as a result of the occurrence.

$_____

INSTRUCTION NO. 19 (Court's version)

You will take these questions to the Jury room, and when each of you has agreed on the answers, your foreperson will fill in the form for each question that you are called upon to answer to reflect your unanimous decision, sign and date it, and then advise the court security officer that you are ready to return to the Courtroom.

I add the caution that nothing said in the instructions—nothing in the form of the verdict forms prepared for your convenience—is or was intended to suggest or convey in any way or manner any intimation as to what answers I think you should find. How you choose to answer the Interrogatories shall be the sole and exclusive responsibility of you, the Jury.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by the court security officer, signed by your foreperson, or by one or more members of the Jury. No member of the Jury should ever attempt to communicate with the Court by any means other than a signed writing; and the Court will never communicate with any member of

the Jury on any subject touching the merits of the case, other than in writing, or orally here in open Court.

You will note from the oath about to be taken by the court security officer to act as bailiff that he, and all other persons, are forbidden to communicate in any way or manner with any member of the Jury on any subject touching the merits of the case. Bear in mind also that you are never to reveal to any person, not even to the Court, how the Jury stands, numerically or otherwise, on the issues presented to you unless or until you reach a unanimous verdict.

Court security officer, do you solemnly swear to keep this Jury together in the jury room, and not to permit any person to speak to or communicate with them, concerning this case, nor to do so yourself unless by order of the Court or to ask whether they have agreed on a verdict, and to return them into the Courtroom when they have so agreed, or when otherwise ordered by the Court, so help you God?

VERDICT FORM

1: Do you find from a preponderance of the evidence that there was negligence on the part of Chesapeake that was a proximate cause of any damages sustained by Clinton Parkison?

Yes_____ No_____

If you answered Question 1 "No," then your deliberations are done. If you answered Question 1 "Yes," then answer Question 2.

2. Do you find from a preponderance of the evidence that there was negligence on the part of Parkison that was a proximate cause of any damages he may have sustained?

Yes_____ No_____

If you answered Question 2 "No", do not answer Question 3. Instead, go directly to Question 4 and answer it. If you answered Question 2 "Yes," then answer Question 3.

3. What percentage of the fault for the accident should be attributed to Parkison? _____

What percentage of the fault for the accident should be attributed to Chesapeake?_____

The two percentages, when added together, must equal 100 percent. Now answer Question 4.

4. State the total amount of any damages which you find from a preponderance of the evidence were sustained by Parkison as a result of the occurrence.

$_____

_____ _____

Foreperson Date and Time