

INSTRUCTION NO. 1

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 as 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 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.

Don't take anything I say in the instructions 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 juror to seek the truth about the facts from the same evidence presented to all the jurors. You must arrive at a verdict by applying the rules of law given in the Court's instructions.

Statements and arguments of counsel are not evidence in the case. The Jury must accept the stipulation and regard these facts as proved and these items as defined. 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

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

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, consider several things: 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, a lapse of memory, or a lie – and that may depend on whether the contradiction has to do with an important fact or only a small detail.

INSTRUCTION NO. 4

An expert witness is a person who has special knowledge, skill, experience, training, or education on a subject to which his or her testimony relates. An expert witness may give an opinion on questions in controversy. You may consider the expert 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 opinion as conclusive, 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. 5

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. 6

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. But 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 only in criminal

cases. It does not apply in civil cases like this one. You should, therefore, put it out of your minds.

INSTRUCTION NO. 7

Certain charts and summaries – called demonstratives – have been shown to you in order to help explain the facts disclosed by the books, records, or other underlying evidence in the case. Those demonstratives are used for convenience. They are not themselves evidence or proof of any facts. If any demonstrative does not correctly reflect the facts shown by the evidence in the case, you should disregard the demonstrative and determine the facts from the books, records, or other underlying evidence.

INSTRUCTION NO. 8

You will remember that other summaries and charts were admitted into evidence. You may use those summaries and charts as evidence, even though the underlying documents and records may or may not be in evidence. It is for you to decide how much weight, if any, you will give these summaries. In making that decision, you should consider all the testimony you heard about the way in which they were prepared and any underlying documents.

INSTRUCTION NO. 9

It is the sworn duty of the lawyer on each side of the case to object when the other side offers testimony or exhibits which that attorney believes are not properly admissible. Only by raising an objection can a lawyer request and obtain a ruling from the Court on the admissibility of that evidence being offered by the other side. You should not be influenced against a lawyer or his client because the lawyer has made objections. Do not attempt, moreover, to interpret my rulings on objections as somehow indicating to you who I think should win or lose the case.

INSTRUCTION NO. 10

All parties to a lawsuit are entitled to the same fair and impartial consideration, whether they are a company, such as BHP, or an individual, such as the property owners.

When I use the term “property owner” in these instructions, I mean each of the four individuals who brought this case – Kenneth Joe May, Mary Ann May, Steve Snowden, and Cindy Snowden.

When I use the term “BHP” in these instructions, I mean BHP Billiton Petroleum (Fayetteville) LLC, who has been sued.

INSTRUCTION NO. 11

The Mays and the Snowdens assert separate claims against BHP. Each couple bears the burden of proving their claim that BHP failed to reasonably develop the land BHP leased from them. You must consider the Mays' and Snowdens' claims separately, and determine whether each has sustained their burden of proof on each lease. Of course, some evidence may relate to more than one claim or lease.

INSTRUCTION NO. 12

The parties agree that the Mays entered into two oil and gas leases dated 10 February 2005 with JRE Investments, Inc. They also agree that the leases were assigned first to Chesapeake Energy Company, and then to BHP.

BHP's implied covenant of reasonable development under the Mays' leases went into effect on 1 January 2011, when BHP took over the leases. This covenant continues to the present day.

INSTRUCTION NO. 13

The parties agree that the Snowdens entered into a lease with Chesapeake Exploration Limited Partnership and that the lease was assigned to BHP.

BHP's implied covenant of reasonable development under the Snowdens' lease went into effect on 5 October 2011, when the lease's primary term ended. This covenant continues to the present day.

INSTRUCTION NO. 14

A failure to do what is required under a lease is called a breach. The parties dispute whether BHP is in breach of these oil and gas leases.

INSTRUCTION NO. 15

There is an implied covenant on the part of BHP in these oil and gas leases to proceed with reasonable diligence in the search for oil and gas. BHP also must continue the search with reasonable diligence so that oil and gas may be produced in paying quantities throughout the whole of the leased premises.

Due deference should be given to the judgment of BHP as operator to determine how many wells should be drilled. But BHP must use sound judgment in the matter and cannot act arbitrarily. BHP must deal with the leased premises so as to promote and protect the interests of the property owners and itself. BHP must not consider its own interest wholly or for the most part. BHP must perform under the lease so as to further the parties' original purpose and intention.

BHP has a duty to drill all wells that a reasonably prudent operator would drill under the same or similar circumstances, with a reasonable expectation of profit.

A “reasonably prudent operator” means an operator of ordinary prudence with ordinary diligence under the same or similar circumstances, having due regard for the interests of both BHP and the property owner – either the Mays or the Snowdens.

INSTRUCTION NO. 16

To prevail on their claim about Section 23, on their claim about Section 26, or on both, the Mays must prove that BHP did not act as a reasonably prudent operator for a particular section. The Mays must prove each of their claims by a preponderance of the evidence. If the Mays do not prove their claim on a particular section, your verdict must be for BHP on that section.

To prevail on their claim about Section 14, the Snowdens must prove that BHP did not act as a reasonably prudent operator for Section 14. The Snowdens must prove their claim by a preponderance of the evidence. If the Snowdens do not prove their claim on Section 14, your verdict must be for BHP on that section.

INSTRUCTION NO. 17

If you find BHP in breach of its implied covenant of reasonable development under either of the Mays' leases, then the measure of damages is the amount of royalties the Mays would have received from the drilling of additional wells on that lease. Calculate any damages under the Section 23 lease, or under the Section 26 lease, separately.

If you find BHP in breach of its implied covenant of reasonable development under the Snowdens' lease, then the measure of damages is the amount of royalties the Snowdens would have received from the drilling of additional wells on their lease in Section 14.

Reduce any damages to present value. Do not add any interest. And do not be concerned about a potential double recovery to the Mays or the Snowdens. BHP will be entitled to a credit against

future royalty payments to the Mays or the Snowdens on their leases for any amount of damages awarded.

INSTRUCTION NO. 18

The fact that I have instructed you on the measure of damages should not be considered by you as suggesting any view of mine on which side of this case is entitled to your verdict. I'm giving instructions on damages for your guidance, as I do in all cases, in the event you for find the Mays or the Snowdens on liability.

The question of damages is entirely distinct and different from the question of liability. You should not consider whether the Mays or the Snowdens have been damaged until you have first considered and decided whether BHP violated its covenant of reasonable development with the Mays or the Snowdens.

INSTRUCTION NO. 19

Finally, the verdicts are simply the written notice of the decisions that you reach in this case. I'll read them now. There is one for each lease. You will take these verdicts to the jury room, and when each of you has agreed on the answers, your foreperson will fill in each verdict that you are called upon to answer to reflect your unanimous decision, sign and date it when you have reached all your verdicts, 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 – and nothing in the verdict forms I've prepared for your convenience – is or was intended to suggest or convey in any way or manner any intimation about what answers I think you should find. How you choose to answer the verdicts 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?