

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

JAY-BEE OIL & GAS, INC.,
JAY-BEE PRODUCTION CO.
JB EXPLORATION I, LLC
a/k/a JAY-BEE EXPLORATION I, LLC,

SCA EFiled: Nov 23 2022
01:48PM EST
Transaction ID 68429293

Plaintiffs,

Vs.

Circuit Court of Tyler County
Civil Action No. 20-C-5
Honorable Jeffrey Cramer

PANTHER DRILLING SYSTEMS, LLC,
and JAMES RIVER INSURANCE
COMPANY,

Defendants,

Vs.

PROTOTYPE WELL PLANNING, LLC,

Defendant/Third-Party Plaintiff,

Vs.

LEXINGTON INSURANCE COMPANY,

Third-Party Defendant.

**MOTION OF JAMES RIVER INSURANCE COMPANY TO
REFER THIS MATTER TO THE BUSINESS COURT DIVISION**

COMES NOW the Defendant, James River Insurance Company ("James River"), by counsel, files the following Motion pursuant to Rule 29.06 of the West Virginia Trial Court Rules requesting referral of this matter to the Business Court Division of West Virginia. In support of this Motion, this Defendant states as follows:

FACTUAL AND PROCEDURAL BACKGROUND

THIS DECLARATORY JUDGMENT ACTION ARISES OUT OF ISSUES INVOLVED IN AN UNDERLYING CIVIL ACTION, CIVIL ACTION NO. 15-P-9 FILED IN THE CIRCUIT COURT OF TYLER COUNTY, WEST VIRGINIA.

1. Civil Action No. 15-P-9, currently pending in the Circuit Court of Tyler County, West Virginia, was originally filed as an effort to enforce Panther Drilling System, LLC's mechanic's liens against Jay-Bee Oil & Gas, Inc. et al, in connection with work performed by Panther for Jay-Bee on certain natural gas wells drilled by Panther.
2. Jay-Bee subsequently filed a counterclaim in Case No. 15-P-9 against Panther alleging negligence, breach of contract and fraud claims against Panther. The mechanic's liens issues have been resolved by the parties and the remaining issues in that litigation deal solely with the allegation contained in the counterclaims of Jay-Bee asserted against Panther and Prototype Well Planning, LLC.
3. On January 31, 2020, Jay-Bee Oil & Gas ("Jay-Bee") filed the instant civil action (No. 20-C-5) seeking Declaratory relief on the issue of indemnity between Panther Drilling Systems, LLC ("Panther") and Prototype Well Planning, LLC ("Prototype"), and also named James River Insurance Company as a Defendant for a determination of possible insurance coverage in the underlying action.
4. In May 2020, Panther and its Insurer, James River Insurance Company, filed separate Motions to Dismiss as to (a) Jay-Bee's declaratory action for lack of standing to enforce the contract between two separate entities and to dismiss (b) Prototype's counterclaim seeking indemnity on contractual grounds.

The Court entered a June 23, 2020 Briefing Order specifying that when Responses/Replies were due and noting that the Court would advise the parties if it

required a hearing.

5. On February 16, 2022, Jay-Bee's counsel submitted a letter to Judge Cramer noting that certain Motions were pending for over a year following the June 23, 2020 Briefing Order in the captioned matter. On February 23, 2022, the Court sent an email denying two Motions, including James River's Motion to Dismiss, and granting an unrelated Motion. This email only provided a one-sentence ruling stating whether the Motion was denied or granted without any explanation for its decision and asked that the prevailing party submit Orders concerning its ruling.
6. An Agreed Order was subsequently filed memorializing the Court's one sentence ruling on the two Motions to Dismiss.
7. Answers were filed by various parties to this Declaratory Judgment action in March 2022.
8. On or about October 11, 2022, counsel for Jay-Bee requested a Scheduling Conference with the Court.

BUSINESS COURT REFERRALS

9. West Virginia defines "Business Litigation" as an action pending in circuit court in which:
 - (1) the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities; and
 - (2) the dispute presents commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable; and
 - (3) the principal claim or claims do not involve: consumer litigation, such as products liability, personal injury, wrongful death,

consumer class actions, actions arising under the West Virginia Consumer Credit Act and consumer insurance coverage disputes; non-commercial insurance disputes relating to bad faith, or disputes in which an individual may be covered under a commercial policy, but is involved in the dispute in an individual capacity; employee suits; consumer environmental actions; consumer malpractice actions; consumer and residential real estate, such as landlord-tenant disputes; domestic relations; criminal cases; eminent domain or condemnation; and administrative disputes with government organizations and regulatory agencies, provided, however, that complex tax appeals are eligible to be referred to the Business Court Division.

West Virginia Trial Court Rule 29.04(a).

10. This matter meets the conditions for “business litigation” as defined by TCR 29.04(a).

This matter and the underlying action both involve disputes which Jay-Bee contends may result in damages between \$8,000,000 and \$31,000,000. The dispute also deals with insurance coverage and contractual obligations as between a well planning company, indemnity obligations thereunder and insurance contract interpretations. The Business Court Division is well positioned to navigate these complex and layered issues. There do not appear to be any exceptions under the TCR 29.04(a)(3) which would appear to apply to this matter.

11. As required by Trial Court Rule 29.06(a)(1), the docket sheet is attached and marked as Exhibit A. The Declaratory Judgment Complaint is attached as Exhibit B. The Answers which incorporate the various Answers, the Third Party Complaint and Answers of Third-Party Defendants of the parties filed herein are attached collectively and marked as Exhibit C.


12. Movant does not request an expedited review under Trial Court Rule 29.06(a) and hereby gives notice that all affected parties may file memorandums stating their positions in

accordance with Trial Court Rule No. 29.

13. Movant would also refer the Court to the *Motion to Refer of Panther Drilling Systems, LLC* filed as to this action and also filed as to Civil Action 15-P-9, both claims which are pending in the Circuit Court of Tyler County, West Virginia.

WHEREFORE, for the foregoing reasons, the undersigned parties respectfully request that the Chief Justice of the Supreme Court of Appeals of West Virginia refer this case to the Business Court Division, together with all such other and further relief as the Court may deem appropriate.

Respectfully submitted,
WALKER, FERGUSON & FERGUSON



THOMAS G. FERGUSON, JR., WV State Bar #1183,
OBA #2878
941 East Britton Road
Oklahoma City, Oklahoma 73114
Telephone: (405) 843-8855
Facsimile: (405) 843-8934
Attorneys for James River Insurance Co.

[CERTIFICATE OF SERVICE TO FOLLOW]

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day November, 2022 a true and correct copy of the above and foregoing was mailed with proper postage affixed thereon to:

Charles R. Bailey, Esq. Jason S. Hammond, Esq. Brent D. Benjamin, Esq. BAILEY & WYANT, PLLC P.O. Box 3710 Charleston, WV 25337 <i>Attorneys for Jay-Bee Oil & Gas, Inc.</i>	James R. Christie, Esq. CHRISTIE LAW OFFICE P.O. Box 1133 Bridgeport, WV 26330 <i>Attorney for Prototype Well Planning, LLC</i>
Christopher A. Brumley, Esq. Michael A. Secret, Esq. Evan S. Aldridge, Esq. FLAHERTY SENSABAUGH BONASSO, PLLC P.O. Box 3843 Charleston, WV 25338 <i>Attorneys for Panther Drilling Systems, LLC</i>	Don C. Parker SPILMAN THOMAS & BATTLE, PLLC Post Office Box 273 Charleston, WV 25321-0273 <i>Attorney for Lexington Insurance Co.</i>
Honorable Judge Jeffrey Cramer Joe Rucki, Clerk MARSHALL COUNTY COURTHOUSE 600 7 th Street Moundsville, WV 26041 <i>Presiding Circuit Court Judge</i>	Business Court Division BERKELEY COUNTY JUDICIAL CENTER Ste 2100 380 W. South Street Martinsburg, WV 25401



Thomas G. Ferguson, Jr.

EXHIBIT A

CASE#: 20-C-5

Sub Code:

JUDGE: JEFFREY D. CRAMER

0001/0002

Plaintiff:

JAY-BEE OIL & GAS, INC.

Att: Michael Secret

Defendant:

PANTHER DRILLING SYSTEMS, LLC

Date Opened: 01/31/2020
Date: 11/09/2022
Printed:

Pro Attorney: CHARLES R. BAILEY

Def Attorney: DON PARKER

<u>Page</u>	<u>Date</u>	<u>Memorandum</u>	<u>Account#</u>	<u>Earned</u>	<u>Collected</u>	<u>Balance</u>
1	01/31/2020	F-CIVIL CASE INFORMATION STATEMENT		245.00	245.00	.00
2	01/31/2020	F-COMPLAINT WITH EXHIBITS A THRU O		.00	.00	.00
3	01/31/2020	I-SUMMONSES TO ATTY BAILEY FOR SERVICE ON DEFENDANTS		.00	.00	.00
4	02/10/2020	F-WV SECRETARY OF STATE ACCEPTANCE OF SERVICE ON BEHALF OF PANTHER DRILLING SYSTEMS LLC, PROTOTYPE WELL PLANNING LLC & JAMES RIVER INSURANCE COMPANY DATED 2/6/2020		.00	.00	.00
5	02/10/2020	DRILLING SYSTEMS LLC, PROTOTYPE WELL PLANNING LLC & JAMES RIVER INSURANCE COMPANY DATED 2/6/2020		.00	.00	.00
6	02/10/2020	INSURANCE COMPANY DATED 2/6/2020		.00	.00	.00
7	02/20/2020	EMAILED COPIES OF 3 SUMMONSES TO BAILEY & SLOTNICK ON 2/4/20		.00	.00	.00
8	03/23/2020	F-CIVIL CASE INFORMATION STATEMENT	1012	3.00	3.00	.00
9	03/23/2020	F-ANSWER OF DEFENDANT PROTOTYPE WELL PLANNING, LLC AND THIRD-PARTY COMPLAINT WITH EXHIBITS A THRU Q	2065	.00	.00	.00
10	03/23/2020	I-SUMMONS, ANSWER OF DEFENDANT PROTOTYPE WELL PLANNING, LLC AND THIRD-PARTY COMPLAINT WITH EXHIBITS A THRU Q & PLAINTIFFS' COMPLAINT PREVIOUSLY FILED ON 1/31/20 TO LEXINGTON INSURANCE CO. VIA CM/RD/RRR 3/26/20.	1011	20.00	20.00	.00
11	03/23/2020	F-RETURN-RECEIPT CARD SHOWING SERVICE ON LEXINGTON INSURANCE CARD: SIGNED BY "SMCC-19" ON 3/26/20.		.00	.00	.00
12	03/23/2020	F-MOTION TO DISMISS OF JAMES RIVER INSURANCE COMPANY		.00	.00	.00
13	03/23/2020	F-MOTION TO DISMISS ON BEHALF OF THE DEFENDANT PANTHER DRILLING SYSTEMS, LLC		.00	.00	.00
14	03/23/2020	F-CIVIL CASE INFORMATION STATEMENT		.00	.00	.00
15	03/30/2020	F-ANSWER OF LEXINGTON INSURANCE COMPANY TO THE THIRD PARTY COMPLAINT OF PROTOTYPE WELL PLANNING, LLC		.00	.00	.00
16	03/30/2020	E-BRIEFING ORDER; CC TO BAILEY, CHRISTIE, FERGUSON, BRUMLEY & PARKER		.00	.00	.00
17	05/26/2020	F-OMNIBUS RESPONSE OF PLAINTIFFS, JAY-BEE ENTITIES, TO MOTIONS TO		.00	.00	.00
18	06/01/2020			.00	.00	.00
19	06/01/2020			.00	.00	.00
20	07/08/2020			.00	.00	.00
21	07/08/2020			.00	.00	.00
22	07/08/2020			.00	.00	.00
23	07/14/2020			.00	.00	.00
24	08/14/2020			.00	.00	.00

CASE#: 20-C-5

Sub Code:

JUDGE: JEFFREY D. CRAMER

vs

Plaintiff: JAY-BEE OIL & GAS, INC.

Defendant: PANTHER DRILLING SYSTEMS, LLC

Pro Attorney: CHARLES R. BAILEY

Def Attorney: DON PARKER

Date Opened: 01/31/2020
Date: 11/09/2022
Printed:

<u>Page</u>	<u>Date</u>	<u>Memorandum</u>	<u>Account#</u>	<u>Earned</u>	<u>Collected</u>	<u>Balance</u>
25	08/14/2020	DISMISS OF DEFENDANTS, PANTHER DRILLING SYSTEMS, LLC AND JAMES		.00	.00	.00
26	08/14/2020	RIVER INSURANCE COMPANY WITH EXHIBITS 1 THRU 12		.00	.00	.00
27	08/27/2020	F:REPLY TO THE JAY-BEE ENTITIES OMNIBUS RESPONSE TO JAMES RIVERS		.00	.00	.00
28	08/27/2020	MOTION TO DISMISS		.00	.00	.00
29	03/11/2022	F:ANSWER OF JAMES RIVER INSURANCE COMPANY		.00	.00	.00
30	03/15/2022	F:ANSWER TO COMPLAINT ON BEHALF OF THE DEFENDANT, PANTHER DRILLING		.00	.00	.00
31	03/15/2022	SYSTEMS, LLC		.00	.00	.00
32	06/21/2022	FAXED DOCKET REPORT TO BAILEY & SLOTNICK ON 6/13/2022		.00	.00	.00
33	07/21/2022	E:ORDER DENYING MOTIONS TO DISMISS OF DEFENDANTS, PANTHER DRILLING	1012	4.00	4.00	.00
34	07/21/2022	SYSTEMS, LLC AND JAMES RIVER INSURANCE COMPANY; CC TO BAILEY,		.00	.00	.00
35	07/21/2022	CHRISTIE, FERGUSON, BRUMLEY/SECRET/ALDRIDGE, PARKER & FERGUSON		.00	.00	.00
36	11/01/2022	E:SCHEDULING ORDER; CC TO BAILEY, CHRISTIE, FERGUSON,		.00	.00	.00
37	11/01/2022	BRUMLEY/SECRET/ALDRIDGE & PARKER		.00	.00	.00
Totals				472.00	472.00	.00

EXHIBIT B

00341530 Policy # 0062493
S U M M O N S

IN THE CIRCUIT COURT OF TYLER COUNTY, WEST VIRGINIA

**JAY-BEE OIL & GAS, INC.,
JAY-BEE PRODUCTION CO., and
JB EXPLORATION I, LLC
a/k/a JAY-BEE EXPLORATION I, LLC**

Plaintiffs,

v.

**PANTHER DRILLING SYSTEMS, LLC,
PROTOTYPE WELL PLANNING, LLC,
and JAMES RIVER INSURANCE
COMPANY.**

Defendants.

Civil Action No. 20-C-5

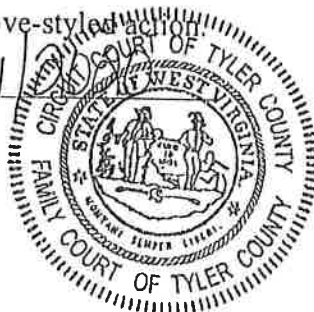
Honorable Jeffrey D. Cramer

To the above-named Defendant:

**JAMES RIVER INSURANCE COMPANY
6641 West Broad Street, Suite 300
Richmond, VA 23230**

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon Charles R. Bailey, whose address is **BAILEY & WYANT, P.L.L.C., P.O. Box 3710, Charleston, West Virginia 25337-3710**, an answer, including any related counterclaim you may have to the Complaint filed against you in the above-styled action, a true copy of which is herewith delivered to you. You are required to serve your answer within thirty (30) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled action.

Dated: 1/31/2020



Candy G. Warner
Clerk of Court

Carmela R. Weekley

IN THE CIRCUIT COURT OF TYLER COUNTY, WEST VIRGINIA

JAY-BEE OIL & GAS, INC.,
JAY-BEE PRODUCTION CO., and
JB EXPLORATION I, LLC
a/k/a JAY-BEE EXPLORATION I, LLC,

Plaintiffs,

v.

PANTHER DRILLING SYSTEMS, LLC,
PROTOTYPE WELL PLANNING, LLC,
and JAMES RIVER INSURANCE
COMPANY,

Defendants.

FILED

JAN 31 2020

Candy L. Warner
Tyler Co. Circuit Clerk

Civil Action No. 20-C-5
Honorable Jeffrey Cramer

COMPLAINT

COMES NOW Plaintiffs, Jay Bee Oil & Gas, Inc., Jay Bee Production Co. and JB Exploration I, LLC a/k/a Jay-Bee Exploration I, LLC [collectively, "Jay-Bee" or "the Jay-Bee companies"], by and through its counsel, Bailey & Wyant PLLC, and Charles R. Bailey, Jason Hammond and Brent Benjamin, who bring this action against the Defendants and each of them, and seek declaratory relief as set forth in the allegations as follows:

PARTIES

1. The Jay-Bee companies are West Virginia corporations and/or West Virginia limited liability companies, with their principal places of business in Union, New Jersey; own several oil and gas wells, leasehold and fee oil and gas interests in Tyler County, West Virginia; and are Respondents and Cross-Claim Plaintiffs, in Civil Action No. 15- P-9 ["underlying action"], currently pending in the Circuit Court of Tyler County, West Virginia, in which the Jay-Bee companies contend, among other things, that two natural gas Marcellus wells, Sneezy 10 and 11,

in Tyler County, West Virginia, were negligently and improperly drilled causing harm to the Jay-Bee companies.

2. Panther Drilling Systems, LLC ["Panther Drilling"] is an Oklahoma limited liability company with its principal place of business in Yukon, Oklahoma; is an oil and gas drilling company that provides well drilling services to customers in West Virginia, including to the Jay-Bee companies; and is a Petitioner, Counter-Respondent, Third-Party Petitioner and Cross-Claim Defendant in Civil Action No. 15- P-9, currently pending in the Circuit Court of Tyler County, West Virginia, in which the Jay-Bee companies contend, among other things, that two natural gas Marcellus wells, Sneezy 10 and 11, in Tyler County, West Virginia, were negligently and improperly drilled by Panther Drilling causing harm to the Jay-Bee companies.
3. Prototype Well Planning, LLC ["Prototype"] is a Texas limited liability company with its principal place of business in Montgomery, Texas; is a company which represents and holds itself out as possessing expertise in providing well-planning, horizontal drilling planning and engineering services to oil and gas companies; was originally a Third-Party Respondent in Civil Action 15-P-9 by way of a Third-Party Action initiated against it by Panther Drilling on or about May 30, 2017, and is a Co-Respondent, Cross-Claim Defendant and Cross-Claim Plaintiff, in the said Civil Action No. 15- P-9, currently pending in the Circuit Court of Tyler County, West Virginia, in which the Jay-Bee companies contend, among other things, that two natural gas Marcellus wells, Sneezy 10 and 11, in Tyler County, West Virginia, were negligently and improperly drilled by Panther Drilling, which utilized the services of Prototype, causing harm to the Jay-Bee companies.
4. James River Insurance Company ["James River"] is an insurance company providing property and casualty insurance services to commercial customers in all fifty states and the District

of Columbia, is incorporated in the State of Ohio, and has its principle place of business in the Commonwealth of Virginia; and which issued insurance coverage to Panther Drilling which is applicable to the claims and allegations related to the actions of Panther Drilling and Prototype in West Virginia as more fully set forth in Civil Action No. 15-P-9, currently pending in the Circuit Court of Tyler County, West Virginia in which the Jay-Bee companies, Panther Drilling and Prototype are parties.

JURISDICTION, VENUE AND AUTHORITY FOR MOTION TO AMEND

5. In Civil Action No. 15-P-9, pending in the Circuit Court of Tyler County, West Virginia, the Jay-Bee companies have asserted claims against Panther Drilling and Prototype, for which James River has issued an applicable commercial liability insurance policy, regarding the negligent and improper design, well-planning and drilling of two natural gas wells, Sneezy 10 and Sneezy 11, through the Marcellus shale from the Sneezy pad in Tyler County, West Virginia.
6. This Court has jurisdiction over the parties pursuant to West Virginia Code 51-2-2, with Panther Drilling and Prototype already being personally subject to the jurisdiction of this Court through their respective appearances in Civil Action No. 15-P-9, pending in the Circuit Court of Tyler County, West Virginia, and James River being the insurer of Panther Drilling and Prototype for their activities in West Virginia.
7. Venue is proper in this Court pursuant to West Virginia Code 52-1-1.
8. This Court is authorized to determine declaratory relief pursuant to West Virginia Code 55-13-1.

NATURE OF ACTION

9. Jay-Bee seeks, pursuant to W.Va. Code 55-13-1 *et seq.* and Rule 57 of the *West Virginia Rules of Civil Procedure*, to determine certain rights of the Jay-Bee companies and Prototype, the

obligations of Panther Drilling and its insurer, James River, under an insurance policy issued to Panther Drilling on or about May 21, 2014 [Exhibit A], to provide insurance coverage for the claims made herein by the Jay-Bee companies against Panther and Prototype. The Jay-Bee companies are seeking a declaration to the effect that Panther Drilling is contractually obligated to, among other things, indemnify and hold harmless Prototype from any and all liability, claims, expenses, attorney fees and damages wheresoever, including those asserted herein by the Jay-Bee companies, that Prototype constitutes an "Additional Insured" for purposes of Panther Drilling's insurance coverage from James River, that Panther Drilling's insurance coverage by James River inures to the benefit of Prototype by way of its written agreement with Prototype, and that James River is obligated to provide liability and/or indemnity insurance coverage in connection with the claims and allegations made by the Jay-Bee companies against Panther Drilling and Prototype herein.

COUNT I

10. Plaintiffs reallege and incorporate by reference all prior allegations.
11. Defendant Panther Drilling is the Policyholder and named insured under the terms and provisions of a commercial liability insurance policy, Policy No. 00062493-0, issued by James River with effective dates May 21, 2014 to May 21, 2015. [Exhibit A.]
12. Panther Drilling's insurance, James River insurance Policy No. 00062493-0, provides for coverage of \$1 million per occurrence, with a policy aggregate limit of \$2 million. By the terms of its coverage, James River is obligated to "pay those sums that the insured becomes legally obligated to pay as damages because of 'bodily injury' or 'property damage'" unless the insurance is not applicable. Damage to property is defined to include:

j. Damage to Property – "Property damage" to:

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; . . .

[Exhibit A.]

13. As pled, the damages claimed in Civil Action No. 15-P-9 by the Jay-Bee companies against Panther Drilling come within the policy definitions for coverage set forth in the James River policy.

14. Panther Drilling's applicable insurance coverage, James River insurance Policy No. 00062493-0, contains an "Insureds Contracts" provision as an endorsement titled "Additional-Insured-Automatic Status." [Exhibit B.] This provision provides that "any person or organization you are required to include as an additional insured on this Policy by written contract or written agreement" with respect to "bodily injury" or "property damages" caused, in whole or in part, by the Insured's acts or omissions or "the acts or omissions of those acting on your[i.e., the Insured's] behalf." *"Endorsement -- Additional Insured -- Automatic Status When Required by Written Contract or Written Agreement"* to James River commercial general liability policy covering Panther produced by Panther in *"Petitioner's [Panther's] Fourth Supplemental Responses to Respondents' [Jay-Bee's] First Set of Requests for Production of Documents,"* served May 2, 2019, [Exhibit C.]

15. The effect of this "Insured Contracts" endorsement is to extend the definition of the term, "Insured," to entities other than the named "Insured," for purposes of applicability of the James River coverage.

16. Prior to June 2014, Panther Drilling was engaged by Jay-Bee to plan, design and drill the Sneezy 10 and Sneezy 11 Marcellus horizontal natural gas wells from the Sneezy well pad, in Tyler County.

17. Pursuant to a written agreement entered into between itself and Panther Drilling on June 23, 2014, Prototype performed planning services on the Sneezy wells. [Exhibit D.]
18. Both Panther Drilling and Prototype produced the same document [Exhibit D] to Jay-Bee as the written agreement between them in discovery responses to Jay-Bee in Civil Action No. 15-P-9, acknowledging the existence and the applicability of the produced June 2014 written agreement to the issues in Civil Action No. 15-P-9. This June 2014 Written Agreement was produced to Jay-Bee by Panther Drilling on April 30, 2018, as Response to Production Request 1 seeking such written agreements. *Petitioner's [Panther's] Answers to Respondents' Second Set of Interrogatories and Third Set of Requests for Production of Documents* (attached as Exhibit E). The same applicable June 2014 Written Agreement was produced to Jay-Bee by Prototype on December 18, 2017, as Response to Production Request 1 seeking such written agreements. *Prototype Well Planning, LLC's Responses to Respondent's [Jay-Bee's] First Set of Requests for the Production of Documents* (attached as Exhibit F).
19. Panther Drilling's *Third-Party Complaint*, filed May 31, 2017 (attached as Exhibit G), establishes the existence and presence of a written agreement between Panther and Prototype:

51. On June 23, 2014, Petitioner [Panther] entered into certain agreements with Prototype whereby Prototype agreed to perform "well planning" services and provide a completed well-plan, maps, plots, reports and other requested information (collectively a "Well Plan") for use by the Petitioner [Panther] in drilling and completing the Sneezy 10 and Sneezy 11 Wells.

20. The June 2014 written agreement between Panther Drilling and Prototype expressly requires Panther Drilling to indemnify Prototype for any liability related to Prototype's work on the Sneezy wells:

RELEASE AND INDEMNITY - CUSTOMER AGREES TO RELEASE PROTOTYPE GROUP FROM ANY AND LIABILITY FOR ANY AND ALL DAMAGES WHATSOEVER TO

PROPERTY OF ANY KIND OWNED BY OR IN THE POSSESSION OF OR LEASED BY CUSTOMER AND THOSE PERSONS AND ENTITLES CUSTOMER HAD THE ABILITY TO BIND BY CONTRACT **CUSTOMER ALSO AGREES TO DEFEND INDEMNIFY AND HOLD PROTOTYPE GROUP HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY CLAIMS EXPENSES ATTORNEY FEES AND DAMAGES WHATSOEVER FOR PERSONAL INJURY, ILLNESS, DEATH, PROPERTY DAMAGE, AND LOSS RESULTING FROM LOSS OF WELL CONTROL SERVICES TO CONTROL A WILD WELL WHETHER UNDERGROUND OR ABOVE THE SURFACE RESERVOIR OF UNDERGOING DAMAGE INCLUDING LOSS OF OIL, GAS OTHER MINERAL SUBSTANCES OR WATER. SURFACE DAMAGE ARISING FROM UNDERGROUND DAMAGE, DAMAGE TO OR LOSS OF THE WELL BORE SUBSURFACE TRESPASS OR ANY ACTION IN THE NATURE THEREOF FIRE EXPLOSION SUBSURFACE PRESSURE RADIOACTIVITY AND POLLUTION AND ITS CLEANUP AND CONTROL CUSTOMER'S RELEASE DEFENSE INDEMNITY AND HOLD HARMLESS OBLIGATIONS WILL APPLY EVEN IF THE LIABILITY AND CLAIMS ARE CAUSED BY THE SOLE CONCURRENT ACTIVE OR PASSIVE NEGLIGENCE FAULT OR STRICT LIABILITY OF ONE OR MORE MEMBERS OF THE PROTOTYPE GROUP THE UNSEAWORTHINESS FAULT OR STRICT LIABILITY OF ONE OR MORE MEMBERS OF THE PROTOTYPE GROUP. THE UNSEAWORTHINESS OF ANY VESSEL OR ANY DEFECT IN THE DATA PRODUCTS SUPPLIES, MATERIALS OR EQUIPMENT FURNISHED BY PROTOTYPE GROUP WHETHER IN THE DESIGN MANUFACTURE MAINTENANCE OR MARKING THEREOF OR FROM A FAILURE TO WARN SUCH DEFECT PROTOTYPE GROUP IS DEFINED AS PROTOTYPE ITS PARENT SUBSIDIARY AND AFFILIATED COMPANIES AND ITS THEIR OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS CUSTOMER RELEASE DEFENSE INDEMNITY AND HOLD HARMLESS OBLIGATIONS APPLY WHETHER THE PERSONAL INJURY, ILLNESS, DEATH, PROPERTY DAMAGE OR LOSS IS SUFFERED BY ONE OR MORE MEMBERS OF THE PROTOTYPE GROUP, CUSTOMER OR ANY OTHER PERSON OR ENTITLE AND THE CUSTOMER WILL SUPPORT SUCH OBLIGATIONS ASSUMED HEREIN WITH LIABILITY INSURANCE TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW.** [Emphasis added.]

[Exhibit D.]

21. This June 2014 written indemnification agreement by Panther Drilling to Prototype constitutes an "Insured Contracts" provision inuring to the benefit of Prototype.
22. On June 5, 2015, Panther Drilling filed suit to enforce alleged mechanics liens and alternatively, to see damages for breach of contract. [Exhibit H.]

23. On July 8, 2015, the Jay-Bee companies filed counter-claims against Panther Drilling for damages, including lost natural gas reserves, caused by Panther Drilling's inaccurate and incorrect drilling of the Sneezy 10 and 11 wells. [Exhibit I.]
24. Nearly two years after initiating Civil Action 15-P-9, Panther Drilling initiated a Third-Party Complaint, on or about May 30, 2017, against Prototype alleging negligence by Prototype in the planning of the Sneezy 11 well. In this action, Panther also sought contribution and indemnity from Prototype for the claims asserted against it by Jay-Bee, contending that the proximate cause for any harm to Jay-Bee was caused by Prototype. [Exhibit G.]
25. With leave of the Court, by Order entered October 1, 2019, on or about October 21, 2019, the Jay-Bee companies filed their cross-claim against Prototype, which Prototype answered on November 5, 2019. [Exhibits J, K and L, respectively.]
26. As pled, the damages claimed in Civil Action No. 15-P-9 by the Jay-Bee companies against Prototype come within the policy definitions for coverage set forth in the James River policy.
27. On or about December 6, 2019, Prototype filed its Motion to Amend Answer to Third-Party Complaint and to File Counterclaim Against Third-Party Petitioner, Panther Drilling Systems, LLC; Arguments in Support Thereof, asserting its right as an "Additional Insured" under the "Insured Contracts" endorsement of the James River Contract, at paragraph 6. [Exhibit M.] In its Motion, Prototype further asserted:

8. The 2014 Master Price List and Terms and Conditions, upon which the contractual relationship of the [sic] Prototype and Panther was based, provides, in part, that Panther agrees to release, defend, indemnify and hold Prototype harmless from any and all liability, claims, expenses, attorney fees and damages wheresoever for personal property injury, illness, death, property damage and loss resulting from the loss of oil, gas or other minerals substances or water, and for damage to or loss of a well bore of the well bore.

EXHIBIT C

IN THE CIRCUIT COURT OF TYLER COUNTY, WEST VIRGINIA

**JAY-BEE OIL & GAS, INC.,
JAY-BEE PRODUCTION, CO., and
JB EXPLORATION I, LLC
a/k/a JAY-BEE EXPLORATION I, LLC,**

Plaintiffs,

v.

**Civil Action No. 20-C-5
Honorable Jeffrey D. Cramer**

**PANTHER DRILLING SYSTEMS, LLC,
And JAMES RIVER INSURANCE
COMPANY,**

Defendants,

v.

PROTOTYPE WELL PLANNING, LLC,

Defendant/Third-Party Plaintiff,

v.

LEXINGTON INSURANCE COMPANY,

Third-Party Defendant.

**ANSWER TO COMPLAINT
ON BEHALF OF THE DEFENDANT, PANTHER DRILLING SYSTEMS, LLC**

COMES NOW, the Defendant, Panther Drilling Systems, LLC (hereinafter "Panther"), by and through its counsel, Christopher A. Brumley, Michael A. Secret, Evan S. Aldridge, and the law firm of Flaherty Sensabaugh Bonasso, PLLC, and files this Answer to the Complaint filed by the Plaintiffs, Jay-Bee Oil & Gas, Inc., Jay Bee Production Co., and JB Exploration I, LLC a/k/a Jay-Bee Exploration 1, LLC (hereinafter collectively "Jay-Bee").

PRELIMINARY STATEMENT

As permitted by the West Virginia Rules of Civil Procedure, defenses to the claims made in Jay-Bee's Complaint against Panther are being asserted alternatively and, in some cases, hypothetically. Defenses are being asserted regardless of their consistency and are based on both legal and equitable grounds. As the facts of this civil action are fully developed through the discovery process, certain defenses may be abandoned, modified, added, or amended as permitted by and consistent with the West Virginia Rules of Civil Procedure.

AFFIRMATIVE DEFENSES

First Affirmative Defense

In response to the specifically-numbered allegations contained within the Complaint, Panther states as follows. Any allegations not specifically admitted herein are hereby denied.

PARTIES

1. Panther admits the allegations contained in Paragraph 1 of Jay-Bee's Complaint insofar as the underlying action is pending in the Circuit Court of Tyler County, West Virginia involving the parties so named. The allegations and pleadings by the parties in the underlying action speak for themselves and require no response by Panther.

2. Panther admits the allegations contained in Paragraph 2 of Jay-Bee's Complaint as to the names of the parties in the underlying action. The allegations and pleadings by the parties in the underlying action speak for themselves and require no response by Panther.

3. Panther admits the allegations contained in Paragraph 3 of Jay-Bee's Complaint as to the names of the parties in the underlying action. The allegations and pleadings by the parties in the underlying action speak for themselves and require no response by Panther.

4. Panther admits the allegations contained in Paragraph 4 of Jay-Bee's Complaint as to the identity of James River. Jay-Bee's allegations regarding insurance coverage for Panther and Jay-Bee constitute legal conclusions to which no response is required. To the extent that Paragraph 4 alleges that Prototype is entitled to indemnity from Panther under the James River policy, Panther denies such allegations and demands strict proof thereof.

JURISDICTION, VENUE

5. Panther admits the allegations contained in Paragraph 5 of Jay-Bee's Complaint insofar as the underlying action is pending in the Circuit Court of Tyler County, West Virginia involving the parties so named. The allegations and pleadings by the parties in the underlying action speak for themselves and require no response by Panther. To the extent that a response may be required, Panther denies that it is liable to Jay-Bee for its hand in the design, well-planning, and drilling of the Sneezy 10 and Sneezy 11 wells and demands strict proof thereof.

6. In regard to the allegations contained in Paragraph 6, Panther denies jurisdiction as Jay-Bee does not have standing to bring this action as more particularly set forth in the Motion to Dismiss heretofore filed by Panther in this matter which is adopted in full as though set forth herein.

7. In regard to the allegations contained in Paragraph 7, Panther denies venue as Jay-Bee does not have standing to bring this action as more particularly set forth in the Motion to Dismiss heretofore filed by Panther in this matter which is adopted in full as though set forth herein.

8. Paragraph 8 of the Complaint contains legal conclusions to which no response is required. To the extent that a response may be required, Panther state that this Court has all

authority granted to it by West Virginia Code § 55-13-1, and denies any allegation inconsistent with applicable law.

NATURE OF ACTION

9. Paragraph 9 of the Complaint contains legal conclusions to which no response is required. To the extent that a response is required, Panther denies the allegation that it is obligated to provide liability and/or indemnity insurance coverage to Prototype and that Prototype is an additional insured under the James River policy in connection with the claims and allegations made by the Jay-Bee companies against Panther. Panther denies all further allegations contained in Paragraph 9.

COUNT I

10. Paragraph 10 does not contain any allegations against Panther and, therefore, no response is required. To the extent that a response may be required, Panther restates its responses to the allegations contained in Paragraphs 1 through 9 above as if fully referenced herein.

11. In regard to the allegations contained in Paragraph 11 of the Complaint, Panther states that the referenced insurance policy attached as Exhibit A is a written instrument which speaks for itself and denies any reading of the insurance policy that is inconsistent with its terms.

12. In regard to the allegations contained in Paragraph 12 of the Complaint, Panther states that the referenced insurance policy is a written instrument which speaks for itself and denies any reading of the insurance policy that is inconsistent with its terms.

13. Paragraph 13 of the Complaint contains legal conclusions to which no response is required. To the extent that a response is required, Panther states that the referenced insurance policy speaks for itself and denies any reading of the insurance policy that is inconsistent with its terms.

14. In regard to the allegations contained in Paragraph 14 of the Complaint, Panther states that the referenced insurance policy speaks for itself and denies any reading of the insurance policy that is inconsistent with its terms.

15. Paragraph 15 contains legal conclusions to which no response is required. To the extent that a response may be required, Panther states that the referenced insurance policy is a written instrument which speaks for itself and denies any reading of the insurance policy that is inconsistent with its plain terms. As a general response, Panther denies the allegations contained in Paragraph 15 and demands strict proof thereof.

16. Panther admits the allegations contained in Paragraph 16 of the Complaint. By way of further response, Jay-Bee was involved in the design and drilling process and ultimately approved the proposed design prior to drilling.

17. Paragraph 17 contains legal conclusions to which no response is required. To the extent that a response may be required, Panther denies such allegations and demands strict proof thereof.

18. In regard to the allegations contained in Paragraph 18, Panther states that its prior discovery responses in the underlying matter speak for themselves. Furthermore, Paragraph 18 contains legal conclusions to which no response is required. To the extent that a response may be required, Panther denies Paragraph 18 and demands strict proof thereof.

19. In regard to the allegations contained in Paragraph 19, Panther states that its pleadings and allegations in the underlying matter speak for themselves. Panther further denies that the June 2014 written agreement constitutes a legally enforceable contract and demands strict proof thereof. By way of further response, "enter[ing] into certain agreements" does not establish the existence or presence of a written agreement.

20. In regard to the allegations contained in Paragraph 20, Panther states that the document referenced by Jay-Bee speaks for itself. Furthermore, Paragraph 20 of the Complaint contains legal conclusions to which no response is required. To the extent that a response may be required, Panther further denies that the June 2014 written agreement constitutes a legally enforceable contract that would require Panther to indemnify Prototype and demands strict proof thereof. By way of further response, Panther and Prototype did not contract based on these terms.

21. Paragraph 21 of the Complaint contains legal conclusions to which no response is required. To the extent that a response may be required, Panther denies such allegations and demands strict proof thereof.

22. Panther admits the allegations contained in Paragraph 22.

23. Panther admits the allegations contained in Paragraph 23 insofar as they describe the pleadings and claims that have been filed in the underlying action. The allegations and pleadings by the parties in the underlying action speak for themselves and require no response by Panther. Furthermore, Panther denies that Jay-Bee is entitled to damages for the drilling of the Sneezy 10 and Sneezy 11 wells and demands strict proof thereof.

24. Panther admits the allegations contained in Paragraph 24 insofar as they describe the pleadings and claims that have been filed in the underlying action. The allegations and pleadings by the parties in the underlying action speak for themselves and require no response by Panther. Panther denies that any harm was suffered by Jay-Bee.

25. Panther admits the allegations contained in Paragraph 25 insofar as they describe the orders, pleadings and claims that have been filed in the underlying action. The orders, allegations and pleadings by the parties and the Court in the underlying action speak for themselves and require no response by Panther.

26. Paragraph 26 of the Complaint contains legal conclusions to which no response is required. To the extent that a response may be required, Panther denies such allegations and demands strict proof thereof.

27. Panther admits the allegations contained in Paragraph 27 insofar as they describe the pleadings and claims that have been filed in the underlying action. The allegations and pleadings by the parties in the underlying action speak for themselves and require no response by Panther.

28. In regard to the allegations contained in Paragraph 28, Panther states that its prior filings in the underlying matter speak for themselves. Additionally, Paragraph 28 contains legal conclusions to which no response is required. To the extent that a response may be required, Panther denies that Prototype is an additional insured, denies any interpretation of the filings that would lead Jay-Bee or any other party to believe that Prototype is an additional insured under the James River policy, and demands strict proof thereof.

29. In regard to the allegations contained in Paragraph 29 of the Complaint, Panther states that the referenced insurance policy speaks for itself and denies any reading of the insurance policy that is inconsistent with its terms. Panther denies entering into a June 2014 written agreement with Prototype as alleged by Jay-Bee.

30. Paragraph 30 of the Complaint contains legal conclusions to which no response is required. To the extent that a response may be required, Panther denies such allegations and demands strict proof thereof.

31. Paragraph 31 of the Complaint contains legal conclusions to which no response is required. To the extent that a response may be required, Panther denies such allegations and demands strict proof thereof.

32. In regard to the allegations contained in Paragraph 32, Panther states that the letters referenced in Paragraph 32 and subsections (a) – (c) speak for themselves and no response is required. To the extent that a response may be required, Panther denies that Prototype is an additional insured, denies any interpretation of the filings that would lead Jay-Bee to believe that Prototype is an additional insured under the James River policy, and demands strict proof thereof.

33. In regard to the allegations contained in Paragraph 33 of the Complaint, Panther does not have knowledge of the entirety of the correspondence that Jay-Bee has received and therefore does not have the knowledge to admit or deny such allegations. To the extent that a response may be required, Panther denies such allegations and demands strict proof thereof. Further still, Jay-Bee lacks any legal interest in the contents of said letter or any interest or standing to send such letters regarding an alleged contract between unaffiliated entities. Panther reasserts that Jay-Bee lacks any standing to bring the present dec action.

34. In regard to the allegations contained in Paragraph 34 of the Complaint, Panther does not have knowledge of the entirety of the correspondence that Prototype has received and therefore does not have the knowledge to admit or deny such allegations. To the extent that a response may be required, Panther denies such allegations and demands strict proof thereof.

35. Paragraph 35 of the Complaint contains no allegations against Panther and therefore no response is required. To the extent that a response may be required, Panther denies such allegations and demands strict proof thereof.

36. Paragraph 36 contains no allegations against Panther and therefore no response is required. To the extent that a response may be required, Panther denies any allegations against it set forth in Paragraph 36 of the Complaint and further denies that it is liable to Jay-Bee for any

damage or determination made therein, including, but not limited to, compensatory damages, attorney's fees, and interest and/or costs incurred in and about the prosecution of this action.

Second Affirmative Defense

Jay-Bee lacks standing under applicable Oklahoma and West Virginia law to bring forth this Complaint and Declaratory Action.

Third Affirmative Defense

Jay-Bee's claims are barred in whole or in part by the terms, conditions, exclusions and other provisions of the James River policy.

Fourth Affirmative Defense

Jay-Bee's claims (or Prototype's claims) may be barred in whole or in part by Prototype's failure to timely report the underlying claims and lawsuits.

Fifth Affirmative Defense

Panther has, at all times relevant hereto, acted in good faith and in compliance with the applicable statutes and regulations of the State of West Virginia and/or the State of Oklahoma, and/or the State of Texas or any other potentially applicable jurisdiction.

Sixth Affirmative Defense

The Complaint fails to state a claim against Panther upon which relief can be granted.

Seventh Affirmative Defense

Panther reserves the right to assert the defense of unclean hands, estoppel, laches, and statutes of limitations.

Eighth Affirmative Defense

Jay-Bee's own actions may have caused or contributed to cause its alleged damages and/or anticipated damages.

Ninth Affirmative Defense

Panther denies that it owes any coverage to Prototype in any capacity whatsoever.

Tenth Affirmative Defense

Jay-Bee has not asserted any claim that would give rise to an entitlement to attorneys' fees, costs, or litigation expenses.

Eleventh Affirmative Defense

Panther reserves the right to assert Statute of Frauds as a defense.

Twelfth Affirmative Defense

Panther denies that it violated any law, statute, or regulation, and further denies that it breached any duty owed to any other party to this matter, whether express or implied and whether contractual or otherwise.

Thirteenth Affirmative Defense

To the extent supported by the facts of this case, Jay-Bee's claims or portions thereof may be barred by claim/issue preclusion.

Fourteenth Affirmative Defense

Jay-Bee is not entitled to obtain its requested remedies because it may have acted unethically, in bad faith, and with unclean hands.

Fifteenth Affirmative Defense

Panther asserts, as if fully reprinted herein, all affirmative defenses put forth by any other defendant or responding party in this suit.

Sixteenth Affirmative Defense

Panther reserves the right to assert such claims, counterclaims, cross-claims, or other claims as investigation and discovery may prove applicable and hereby reserves all of its rights associated with any such claim or potential claim.

Seventeenth Affirmative Defense

Panther reserves the right to assert any other defenses that further discovery or investigation may reveal.

Eighteenth Affirmative Defense

Jay-Bee has not suffered any damages and has no redressable interest in relation to this civil action.

Nineteenth Affirmative Defense

Jay-Bee and/or Prototype has not mitigated any damages attributable to this claim.

Twentieth Defense

Jay-Bee and/or Prototype may have breached the same contract(s) at issue in this matter, if any, and also may have waived any right, interest, or ability to present the claims or defenses made herein.

Twenty-First Defense

Jay-Bee and/or Prototype may have ratified or otherwise approved or accepted any act or omission by Panther complained in this matter.

Twenty-Second Defense

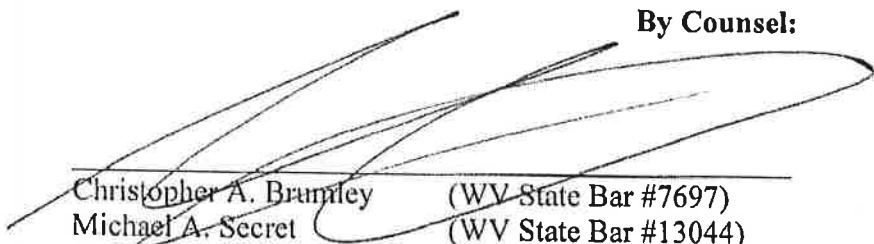
Jay-Bee and/or Prototype's claims or relevant rights may be precluded due to the fraud, misrepresentations, or other misconduct by Prototype, its representatives or principles, or Jay-Bee and its representatives/affiliates.

WHEREFORE, for the foregoing reasons, the Defendant, Panther Drilling Systems, LLC, respectfully requests that this Honorable Court dismiss Complaint filed by the Plaintiffs, Jay-Bee Oil & Gas, Inc., Jay Bee Production Co., and JB Exploration I, LLC a/k/a Jay-Bee Exploration 1, LLC, that it be awarded the costs and fees that it has occurred in defense thereof, and any such other relief that this Honorable Court deems proper and just.

The Defendant,

PANTHER DRILLING SYSTEMS, LLC,

By Counsel:



Christopher A. Brumley (WV State Bar #7697)
Michael A. Secret (WV State Bar #13044)
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IN THE CIRCUIT COURT OF TYLER COUNTY, WEST VIRGINIA

JAY-BEE OIL & GAS, INC.,
JAY-BEE PRODUCTION, CO., and
JB EXPLORATION I, LLC
a/k/a JAY-BEE EXPLORATION I, LLC,

Plaintiffs,

v.

Civil Action No. 20-C-5
Honorable Jeffrey D. Cramer

PANTHER DRILLING SYSTEMS, LLC,
And JAMES RIVER INSURANCE
COMPANY,

Defendants,

v.

PROTOTYPE WELL PLANNING, LLC,

Defendant/Third-Party Plaintiff,

v.

LEXINGTON INSURANCE COMPANY,

Third-Party Defendant.

CERTIFICATE OF SERVICE

I, hereby certify that on this 11th day March, 2022 a true and correct copy of the above and foregoing **Answer to Complaint on Behalf of the Defendant, Panther Drilling Systems, LLC** was mailed with proper postage affixed thereon to:

Charles R. Bailey, Esq.
Jason S. Hammond, Esq.
Bailey & Wyant, PLLC
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P.O. Box 3710
Charleston, WV 25337-3710
Counsel for Respondents

William Crichton, Esq.
Crichton & Crichton, LC
325 9th Street
Parkersburg, WV 26101

Co-Counsel for Plaintiffs

James R. Christie, Esq.
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Bridgeport, WV 26330
Counsel for Prototype Well Planning, LLC

Holly S. Planinsic, Esq.
Chad J. Shepherd, Esq.
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83 Edgington Lane
Wheeling, WV 26003-1541
Co-Counsel for Panther Drilling Systems, LLC



Michael A. Secret (WV State Bar #13044)

IN THE CIRCUIT COURT OF TYLER COUNTY, WEST VIRGINIA

JAY-BEE OIL & GAS, INC.,
JAY-BEE PRODUCTION CO.
JB EXPLORATION I, LLC
a/k/a JAY-BEE EXPLORATION I, LLC,

Plaintiffs,

Vs.

Civil Action No. 20-C-5
Honorable Jeffrey Cramer

PANTHER DRILLING SYSTEMS, LLC,
and JAMES RIVER INSURANCE
COMPANY,

Defendants,

Vs.

PROTOTYPE WELL PLANNING, LLC,

Defendant/Third-Party Plaintiff,

Vs.

LEXINGTON INSURANCE COMPANY,

Third-Party Defendant.

ANSWER OF JAMES RIVER INSURANCE COMPANY

COMES NOW the Defendant, James River Insurance Company ("James River"), and for Answer to the Complaint of the Plaintiffs herein, denies each and every material allegation therein contained, save and except those specifically admitted herein. For further Answer, this Defendant states and alleges as follows:

1. Plaintiff's Complaint fails to state facts sufficient to constitute a claim against this Defendant upon which relief can be granted.
2. In response to Paragraph 1 of the Complaint, it is admitted that there is an action

currently pending in the Circuit Court of Tyler County involving the Plaintiffs. All allegations by the Plaintiffs in this Complaint herein concerning the nature of the “underlying action” (Civil Action No. 15-P-9) are more accurately described by the pleadings in that matter and Defendant refers and adopts those pleadings.

3. In response to Paragraphs 2 and 3 of the Complaint, it is admitted that there is an action currently pending in the Circuit Court of Tyler County involving the Plaintiffs. Any reference concerning the nature of the “underlying action” are as set forth in Civil Action No. 15-P-9 and, to that extent, this Defendant refers to the pleadings filed in that matter as being the more accurate description of the parties and their contentions, however the balance of the allegations in Paragraphs 2 and 3 are denied.
4. It is admitted that James River Insurance Company is an insurance company which provides property and casualty insurance services to certain customers within certain markets and that it maintains its principal place of business in the Commonwealth of Virginia. It is further admitted that James River issued a policy of insurance to Panther Drilling Systems, LLC for the period May 21, 2014 through May 21, 2015 (Policy No. 0062943-0). The balance of the allegations in Paragraph 4 are denied.
5. It is admitted that there is an action currently pending in the Circuit Court of Tyler County involving the Plaintiffs. Any reference concerning the nature of the “underlying action” and/or allegations contained therein are more accurately set forth therein. It is admitted that a policy of insurance has been issued by James River to Panther Drilling Systems, LLC. The balance of the allegations in Paragraph 5 are denied.
6. The allegations contained in Paragraph 6 are denied to the extent they are made as to

James River and it is generally and specifically denied that this Court has jurisdiction over James River as more particularly set forth in the Motion to Dismiss heretofore filed by James River in this matter which is adopted in full as though set forth herein.

7. It is generally and specifically denied that this Court has jurisdiction to grant Declaratory relief as to the matters alleged in Plaintiff's Complaint as the Plaintiffs do not have standing to bring this action and therefore the allegations contained in Paragraph 7 are denied to that extent.
8. It is admitted that, under the appropriate circumstances, the Circuit Court has the power to declare rights, status, and other legal relations as provided in W. VA Code 55-13-1.
9. The allegations contained in Paragraph No. 9 are generally denied except as admitted herein. It is specifically denied that Prototype is an additional Insured under the James River policy.
10. Defendant James River realleges and incorporates by reference all prior allegations and defenses. It is generally and specifically denied that Prototype is as "additional insured" under the policy of insurance issued to Panther.
11. It is admitted that Panther Drilling is a named Insured under the commercial liability policy, Policy No. 0062943-0 issued by James River Insurance Company with effective dates of May 21, 2014 to May 21, 2015.
12. The terms of the insurance policy identified as Exhibit A to Plaintiff's Petition speak for themselves and are as set forth in said policy and to the extent that allegations contained in Paragraph 12 are inconsistent with the terms of said policy, the same are denied.

13. The allegations contained in Paragraph 13 are denied.
14. It is admitted that the policy in question contained an "additional Insured" provision, however the balance of the allegations contained in Paragraph 14 are denied.
15. The allegations contained in Paragraph 15 are denied.
16. This Defendant is without knowledge or information concerning the allegations contained in Paragraph 16 and therefore the same are denied.
17. This Defendant is without knowledge or information concerning the allegations contained in Paragraph 17 and therefore the same are denied. This Defendant denies the existence of a "written agreement" between Panther and Prototype.
18. Upon information and belief, the document attached as Exhibit D to Plaintiff's Petition do not constitute a "written agreement" as alleged in Paragraph 18 of Plaintiff's Petition, and therefore the allegations contained within said Paragraph 18 are denied.
19. This defendant is without knowledge or information sufficient as to form a belief as to the matters alleged in Paragraph 19 of Plaintiff's Complaint and therefore denies the same.
20. The allegations contained in Paragraph 20 of Plaintiff's Complaint are denied.
21. The allegations contained in Paragraph 21 of Plaintiff's Complaint are denied.
22. The allegations contained in Paragraph 22 of Plaintiff's Complaint are admitted.
23. The allegations contained in Paragraph 23, to the extent that they attempt to summarize counterclaims asserted against Panther Drilling by the Jay-Bee companies, are more properly as described in the pleadings filed in Civil Action 15-P-9 and this Defendant therefore denies the allegations contained in this Paragraph.
24. It is admitted that Panther Drilling initiated a third-party Complaint against Prototype

Well Planning, LLC ("Prototype"), as more particularly set forth in Civil Action No. 15-P-9. The allegations contained in Paragraph 24, to the extent that they attempt to summarize claims asserted as between Panther Drilling, the Jay-Bee companies, and Prototype Well Planning are more properly as described in the pleadings filed in Civil Action 15-P-9.

25. It is admitted that on or about October 21, 2019, the Jay-Bee companies filed a cross-claim against Prototype, which was answered by Prototype on or about November 5, 2019, as more particularly set forth in Civil Action 15-P-9. The allegations contained in Paragraph 25, to the extent that they attempt to summarize claims asserted as between Panther Drilling, the Jay-Bee companies, and Prototype, are more properly as described in the pleadings filed in Civil Action 15-P-9.
26. The allegations contained in Paragraph 26 are denied.
27. The allegations contained in Paragraph 27 are denied. The allegations contained in Paragraph 27, to the extent that they attempt to summarize claims asserted as between Panther Drilling, the Jay-Bee companies, and Prototype, are more properly as described in the pleadings filed in Civil Action 15-P-9.
28. The allegations contained in Paragraph 28 are denied. The allegations contained in Paragraph 28, to the extent that they attempt to summarize claims asserted as between Panther Drilling, the Jay-Bee companies, and Prototype, are more properly as described in the pleadings filed in Civil Action 15-P-9.
29. It is admitted that the policy of insurance issued by James River to Panther was in force and effect by the period May 21, 2014 to May 21, 2015. The balance of the allegations contained in paragraph 29 are denied.

30. The allegations contained in Paragraph 30 are denied.
31. The allegations contained in Paragraph 31 are denied.
32. While it admitted that certain correspondence emanated from counsel for the Jay-Bee companies to counsel for James River, the allegations contained in Paragraph 32 are generally denied.
33. The allegations contained in Paragraph 33 are denied.
34. The allegations contained in Paragraph 34 are denied.
35. The allegations contained in Paragraph 35 are denied.
36. The requests contained in Paragraph 36 of Plaintiff's Complaint do not constitute factual allegations and are not subject to Answer, but instead are a prayer for relief and as such are denied.

WHEREFORE having fully Answered, this Defendant prays for Judgment in its favor and for such other and further relief as the Court may deem appropriate.

Respectfully submitted,
WALKER, FERGUSON & FERGUSON

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Telephone: (405) 843-8855
Facsimile: (405) 843-8934
Attorneys for James River Insurance Co.

[CERTIFICATE OF MAILING TO FOLLOW]

CERTIFICATE OF SERVICE

I hereby certify that on this 8/01/22 day March, 2022 a true and correct copy of the above and foregoing was mailed with proper postage affixed thereon to:

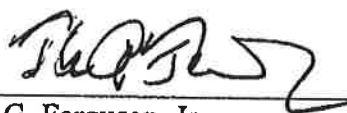
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Thomas G. Ferguson, Jr.

IN THE CIRCUIT COURT OF TYLER COUNTY, WEST VIRGINIA

**JAY-BEE OIL & GAS, INC.
JAY-BEE PRODUCTION CO.
JB EXPLORATION I, LLC
a/k/a JAY-BEE EXPLORATION I, LLC**

Plaintiffs,

Vs.

Civil Action No. 20-C-5
Honorable Jeffrey Cramer

**PANTHER DRILLING SYSTEMS, LLC,
and JAMES RIVER INSURANCE
COMPANY,**

Defendants,

Vs.

PROTOTYPE WELL PLANNING, LLC,
Defendant/Third-Party Plaintiff,

Vs.

LEXINGTON INSURANCE COMPANY,
Third-Party Defendant.

**ANSWER OF DEFENDANT PROTOTYPE WELL PLANNING, LLC
AND THIRD-PARTY COMPLAINT**

Defendant Prototype Well Planning, LLC (hereafter "Defendant Prototype"), by and through the undersigned counsel, and for its answer to the Complaint of Plaintiffs, Jay-Bee Oil & Gas, Inc., Jay-Bee Production Co., JB Exploration I, LLC, aka Jay-Bee Exploration I, LLC (the "Complaint"), respectfully states follows:

1. Defendant Prototype admits that Plaintiffs are the Respondents and Cross-Claim Plaintiffs in the underlying action, Civil Action No. 15-P-9, pending in Tyler County, West Virginia. Defendant Prototype is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and averments of Paragraph No. 1 of the Complaint, and therefore the remaining allegations and averments of Paragraph No. 1 are denied.

2. Defendant Prototype admits that Defendant Drilling Systems, LLC (hereafter "Panther Drilling") is the Petitioner, Counter-Respondent, Third-Party Petitioner and Cross-Claim Defendant in Civil Action No. 15-P-9, pending in Tyler County, West Virginia. Defendant Prototype is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and averments of Paragraph No. 2 of the Complaint, and therefore the remaining allegations and averments of Paragraph No. 2 are denied.

3. Defendant Prototype admits that it is a Texas limited liability company and provides well planning services in the oil and gas industry, but denies the general and broad allegation of Paragraph 3 of the Complaint that it provides engineering services. Defendant Prototype admits that it originally was a Third-Party Respondent in Civil Action No. 15-P-9 and is currently a Co-Respondent, Cross-Claim Defendant and Cross-Claim Plaintiff in Civil Action No. 15-P-9. Defendant Prototype denies the remaining allegations and averments of Paragraph No. 3 of the Complaint. Defendant

4. Defendant Prototype admits the allegations and averments of Paragraph No. 4 of the Complaint.

5. Defendant Prototype admits the allegation and averment of Paragraphs No. 5 of the Complaint, excepting any allegation or inference that it negligently and improperly designed and planned the Sneezy 10 and Sneezy 11 Wells.

6. Defendant Prototype admits the allegation and averment of Paragraph No. 6 of the Complaint.

7. Defendant Prototype admits the allegation and averment of Paragraph No. 7 of the Complaint.

8. Defendant Prototype admits the allegation and averment of Paragraph No. 8 of the Complaint.

9. Paragraph No. 9 of the Complaint sets forth the nature of the action and Complaint, and therefore no answer or response is required.

10. Defendant Prototype restates and incorporates by reference its foregoing answers to Paragraphs No. 1 through 9 above as though fully set forth herein.

11. Defendant Prototype admits the allegation and averment of Paragraph No. 11 of the Complaint.

12. Defendant Prototype admits the allegation and averment of Paragraph No. 12 of the Complaint.

13. Defendant Prototype admits the allegation and averment of Paragraph No. 13 of the Complaint.

14. Defendant Prototype admits the allegation and averment of Paragraph No. 14 of the Complaint.

15. Defendant Prototype admits the allegation and averment of Paragraph No. 15 of the Complaint.

16. Defendant Prototype admits the allegation and averment of Paragraph No. 16 of the Complaint.

17. Defendant Prototype admits the allegation and averment of Paragraph No. 17 of the Complaint.
18. Defendant Prototype admits the allegations and averments of Paragraph No. 18 of the Complaint.
19. Defendant Prototype admits the allegation and averment of Paragraph No. 19 of the Complaint.
20. Defendant Prototype admits the allegation and averment of Paragraph No. 20 of the Complaint.
21. Defendant Prototype admits the allegation and averment of Paragraph No. 21 of the Complaint.
22. Defendant Prototype admits the allegation and averment of Paragraph No. 22 of the Complaint.
23. Defendant Prototype admits the allegation and averment of Paragraph No. 23 of the Complaint.
24. Defendant Prototype admits the allegations and averments of Paragraph No. 24 of the Complaint, excepting any allegation or inference that the services provided to Panther Drilling by Defendant Prototype were the proximate cause for any harm to Plaintiffs.
25. Defendant Prototype admits the allegation and averment of Paragraph No. 25 of the Complaint.
26. Defendant Prototype admits the allegation and averment of Paragraph No. 26 of the Complaint.
27. Defendant Prototype admits the allegation and averment of Paragraph No. 27 of the Complaint.

28. Defendant Prototype admits the allegation and averment of Paragraph No. 28 of the Complaint.

29. Defendant Prototype admits the allegation and averment of Paragraph No. 29 of the Complaint.

30. Defendant Prototype admits the allegation and averment of Paragraph No. 30 of the Complaint.

31. Defendant Prototype admits the allegation and averment of Paragraph No. 31 of the Complaint.

32. Defendant Prototype admits that it received, via counsel, a settlement demand from Plaintiffs' counsel by letter dated November 6, 2019, with duplicate copy of Thomas Ferguson, counsel for Defendant James River. Defendant Prototype is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and averments of Paragraph No. 32 of the Complaint, and therefore the remaining allegations and averments of Paragraph No. 32 are denied.

33. Defendant Prototype is without knowledge or information sufficient to form a belief as to the truth of the allegation and averment of Paragraph No. 33 of the Complaint, and therefore the allegation and averment of Paragraph No. 33 is denied.

34. Defendant Prototype admits the allegation and averment of Paragraph No. 34 of the Complaint.

35. Defendant Prototype is without knowledge or information sufficient to form a belief as to the truth of the allegation and averment of Paragraph No. 35 of the Complaint, and therefore the allegation and averment of Paragraph No. 35 is denied.

PRAYER FOR RELIEF

Defendant Prototype Drilling Systems, LLC prays that:

1. This Court enter a Declaratory Judgment Order declaring that James River Insurance Company is obligated under its policy with Panther Drilling to provide insurance coverage and/or indemnity coverage to Prototype with respect to the claims and allegations asserted in Civil Action No. 15-P-9 in the Circuit Court of Tyler County, West Virginia.

2. This Court declare in its Declaratory Judgment Order that the allegations described in the Complaint are within the scope of the James River Policy, and that James River indemnify Prototype for any liability imposed upon it based upon the claims and allegations asserted in Civil Action No. 15-P-9 in the Circuit Court of Tyler County, West Virginia.

3. This Court declare in its Declaratory Judgment Order that James River defend Prototype in this action, and, to the extent applicable, Civil Action No. 15-P-9 in the Circuit Court of Tyler County, West Virginia.

4. Prototype Drilling Systems, LLC be awarded all of its reasonable attorney's fees, costs and expenses related to this action, and, to the extent applicable, to Civil Action No. 15-P-9 in the Circuit Court of Tyler County, West Virginia.

5. This Court grant such other and further relief as the Court deems necessary and appropriate.

THIRD-PARTY COMPLAINT AND CLAIMS AGAINST THIRD-PARTY DEFENDANT LEXINGTON INSURANCE COMPANY

For its claims against Third-Party Defendant Lexington Insurance Company, a Delaware corporation (hereafter "Lexington"), Third-Party Plaintiff, Prototype Well Planning, LLC (hereafter "Prototype"), states as follows:

PARTIES

1. Plaintiffs, Jay Bee Oil & Gas, Inc., Jay Bee Production Co. and JB Exploration I, LLC a/k/a Jay-Bee Exploration I, LLC [collectively, “Jay-Bee” or “the Jay-Bee companies”], are West Virginia corporations and/or West Virginia limited liability companies, with their principal places of business in Union, New Jersey. The Jay-Bee companies own several oil and gas wells, leasehold and fee oil and gas interests in Tyler County, West Virginia. The Jay-Bee companies are Respondents and Cross-Claim Plaintiffs in Civil Action No. 15-P-9 [sometimes referred to as, the “underlying action”] currently pending in the Circuit Court of Tyler County, West Virginia, in which the Jay-Bee companies contend, among other things, that two natural gas Marcellus wells, Sneezy 10 and 11, in Tyler County, West Virginia, were negligently and improperly drilled causing harm to the Jay-Bee companies.

2. Panther Drilling Systems, LLC [“Panther Drilling”] is an Oklahoma limited liability company, with its principal place of business in Yukon, Oklahoma. Panther Drilling is an oil and gas drilling company that provides well drilling services to customers in West Virginia, including the Jay-Bee companies. Panther Drilling is a Petitioner, Counter-Respondent, Third-Party Petitioner and Cross-Claim Defendant in Civil Action No. 15-P-9 currently pending in the Circuit Court of Tyler County, West Virginia, in which the Jay-Bee companies contend, among other things, that two natural gas Marcellus wells, Sneezy 10 and 11, in Tyler County, West Virginia, were negligently and improperly drilled by Panther Drilling causing harm to the Jay-Bee companies.

3. James River Insurance Company [“James River”] is an insurance company providing property and casualty insurance services to commercial customers in all fifty states and the District of Columbia. James River is incorporated in the State of Ohio, and has its

principal place of business in the Commonwealth of Virginia. James River issued insurance coverage to Panther Drilling that is applicable to the claims and allegations related to the actions of Panther Drilling and Prototype in West Virginia as more fully set forth in Civil Action No. 15-P-9 currently pending in the Circuit Court of Tyler County, West Virginia, in which the Jay-Bee companies, Panther Drilling and Prototype are parties.

4. Prototype is a Texas limited liability company with its principal place of business in Montgomery, Texas. Prototype is a company that provides well-planning and horizontal drilling planning to oil and gas companies. Prototype was originally a Third-Party Respondent in Civil Action 15-P-9 by way of a Third-Party Action initiated against it by Panther Drilling on or about May 30, 2017, and is a Co-Respondent, Cross-Claim Defendant and Cross-Claim Plaintiff in the said Civil Action No. 15-P-9 currently pending in the Circuit Court of Tyler County, West Virginia, in which the Jay-Bee companies contend, among other things, that two natural gas Marcellus wells, Sneezy 10 and 11, in Tyler County, West Virginia, were negligently and improperly drilled by Panther Drilling, causing harm to the Jay-Bee companies.

5. Lexington Insurance Company ["Lexington"] is an insurance company providing property and casualty insurance services to commercial customers in the State of West Virginia and in other states and districts of the United States. Lexington is incorporated in the State of Delaware, and has its principle place of business in the State of Massachusetts. Lexington issued excess liability insurance coverage to Panther Drilling that is applicable to the claims and allegations related to the actions of Panther Drilling and Prototype in West Virginia, as more fully set forth in Civil Action No. 15-P-9 currently pending in the Circuit Court of Tyler County, West Virginia, in which the Jay-Bee companies, Panther Drilling and Prototype are parties.

JURISDICTION AND VENUE

6. In Civil Action No. 15-P-9, pending in the Circuit Court of Tyler County, West Virginia, the Jay-Bee companies have asserted claims against Panther Drilling and Prototype, for which James River and Lexington have issued applicable commercial liability insurance policies, regarding the negligent and improper design, well-planning and drilling of two natural gas wells, Sneezy 10 and Sneezy 11, through the Marcellus shale from the Sneezy pad in Tyler County, West Virginia.

7. This Court has jurisdiction over the parties pursuant to West Virginia Code 51-2-2, with Panther Drilling and Prototype already being personally subject to the jurisdiction of this Court through their respective appearances in Civil Action No. 15-P-9 pending in the Circuit Court of Tyler County, West Virginia, and James River and Lexington being insurers of Panther Drilling and Prototype for their activities in West Virginia.

8. Venue is proper in this Court pursuant to West Virginia Code 52-1-1.

9. This Court is authorized to determine declaratory relief pursuant to West Virginia Code 55-13-1.

NATURE OF ACTION

10. In this Civil Action No. 20-C-5, Jay-Bee is seeking, pursuant to W.Va. Code 55-13-1 *et seq.* and Rule 57 of the *West Virginia Rules of Civil Procedure*, a determination of certain rights of Prototype, and the obligations of Panther Drilling and its insurer, James River, under an insurance policy issued to Panther Drilling on or about May 21, 2014 [Exhibit A], to provide insurance coverage for the claims made herein by the Jay-Bee companies and Panther against Prototype.

11. Prototype is seeking a declaration to the effect that Panther Drilling is contractually obligated to, among other things, indemnify and hold harmless Prototype from any and all liability, claims, expenses, attorney fees and damages wheresoever, including those asserted herein by the Jay-Bee companies and Panther, that Prototype constitutes an "Additional Insured" for purposes of Panther Drilling's insurance coverage from James River, that Panther Drilling's insurance coverage by James River inures to the benefit of Prototype by way of its written agreement with Prototype, that James River is obligated to provide liability and/or indemnity insurance coverage in connection with the claims and allegations made by the Jay-Bee companies and Panther Drilling against Prototype herein and in the underlying action, and that that Lexington as the excess liability insurer of Panther Drilling is obligated to provide excess liability and/or indemnity insurance coverage in connection with the claims and allegations made by the Jay-Bee companies and Panther Drilling against Prototype herein and in the underlying action.

12. Prototype restates, re-alleges and incorporates by reference all prior allegations.

13. Panther Drilling is the Policyholder and named insured under the terms and provisions of a commercial liability insurance policy, Policy No. 00062493-0, issued by James River, with effective dates May 21, 2014 to May 21, 2015 [Exhibit A].

14. The James River insurance Policy No. 00062493-0 provides for coverage of \$1 million per occurrence, with a policy aggregate limit of \$2 million. By the terms of its coverage, James River is obligated to "pay those sums that the insured becomes legally obligated to pay as damages because of 'bodily injury' or 'property damage'" unless the insurance is not applicable. Damage to property is defined to include:

j. Damage to Property – “Property damage” to:

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the “property damage” arises out of those operations; . . . [Exhibit A]

15. Panther Drilling’s applicable insurance coverage with James River, insurance Policy No. 00062493-0, contains an “Insureds Contracts” provision as an endorsement titled, “Additional-Insured-Automatic Status” [Exhibit B]. This provision provides that “any person or organization you are required to include as an additional insured on this Policy by written contract or written agreement” with respect to “bodily injury” or “property damages” caused, in whole or in part, by the Insured’s acts or omissions or “the acts or omissions of those acting on your[i.e., the Insured’s] behalf.” *“Endorsement -- Additional Insured -- Automatic Status When Required by Written Contract or Written Agreement”* to Lexington commercial general liability policy covering Panther produced by Panther in *“Petitioner’s [Panther’s] Fourth Supplemental Responses to Respondents’ [Jay-Bee’s] First Set of Requests for Production of Documents,”* served May 2, 2019 [Exhibit C].

16. The effect of the “Insured Contracts” endorsement in the James River policy is to extend the definition of the term, “Insured,” to entities other than the named “Insured,” for purposes of applicability of the James River coverage.

17. Defendant Panther Drilling is the Policyholder and named insured under the terms and provisions of an Excess Liability Policy, Policy No. 00062493-0, issued by Lexington with effective dates of May 21, 2014 to May 21, 2015 [Exhibit D].

18. As pled, the damages claimed in Civil Action No. 15-P-9 by the Jay-Bee companies against Panther Drilling come within the policy definitions for coverage set forth in the James River policy and the Lexington excess liability policy.

19. Prior to June 2014, Panther Drilling was engaged by Jay-Bee to plan, design and drill the Sneezy 10 and Sneezy 11 Marcellus horizontal natural gas wells from the Sneezy well pad, in Tyler County.

20. Pursuant to an agreement entered into between Prototype and Panther Drilling on June 8, 2014, Prototype performed planning services on the Sneezy wells [Exhibit E].

21. Panther Drilling produced the same document [Exhibit E] to Jay-Bee as the written agreement between Panther Drilling and Prototype in discovery responses to Jay-Bee in Civil Action No. 15-P-9, acknowledging the existence and the applicability of the produced June 2014 written agreement to the issues in Civil Action No. 15-P-9. The June 2014 Written Agreement was produced to Jay-Bee by Panther Drilling on April 30, 2018, as Response to Production Request 1 seeking such written agreements. *Petitioner's [Panther's] Answers to Respondents' Second Set of Interrogatories and Third Set of Requests for Production of Documents* (attached as Exhibit F).

22. Panther Drilling's *Third-Party Complaint* against Prototype, filed May 31, 2017 (attached as Exhibit G), establishes the existence and presence of a written agreement between Panther and Prototype:

51. On June 23, 2014, Petitioner [Panther] entered into certain agreements with Prototype whereby Prototype agreed to perform "well planning" services and provide a completed well-plan, maps, plots, reports and other requested information (collectively a "Well Plan") for use by the Petitioner [Panther] in drilling and completing the Sneezy 10 and Sneezy 11 Wells.

23. The June 2014 written agreement between Panther Drilling and Prototype expressly requires Panther Drilling to indemnify Prototype for any liability related to Prototype's work on the Sneezy wells:

RELEASE AND INDEMNITY - CUSTOMER AGREES TO RELEASE PROTOTYPE GROUP FROM ANY AND LIABILITY FOR ANY AND ALL DAMAGES WHATSOEVER TO PROPERTY OF ANY KIND OWNED BY OR IN THE POSSESSION OF OR LEASED BY CUSTOMER AND THOSE PERSONS AND ENTITLES CUSTOMER HAD THE ABILITY TO BIND BY CONTRACT CUSTOMER ALSO AGREES TO DEFEND INDEMNIFY AND HOLD PROTOTYPE GROUP HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY CLAIMS EXPENSES ATTORNEY FEES AND DAMAGES WHATSOEVER FOR PERSONAL INJURY, ILLNESS, DEATH, PROPERTY DAMAGE, AND LOSS RESULTING FROM LOSS OF WELL CONTROL SERVICES TO CONTROL A WILD WELL WHETHER UNDERGROUND OR ABOVE THE SURFACE RESERVOIR OF UNDERGOING DAMAGE INCLUDING LOSS OF OIL, GAS OTHER MINERAL SUBSTANCES OR WATER. SURFACE DAMAGE ARISING FROM UNDERGROUND DAMAGE, DAMAGE TO OR LOSS OF THE WELL BORE SUBSURFACE TRESPASS OR ANY ACTION IN THE NATURE THEREOF FIRE EXPLOSION SUBSURFACE PRESSURE RADIOACTIVITY AND POLLUTION AND ITS CLEANUP AND CONTROL CUSTOMER'S RELEASE DEFENSE INDEMNITY AND HOLD HARMLESS OBLIGATIONS WILL APPLY EVEN IF THE LIABILITY AND CLAIMS ARE CAUSED BY THE SOLE CONCURRENT ACTIVE OR PASSIVE NEGLIGENCE FAULT OR STRICT LIABILITY OF ONE OR MORE MEMBERS OF THE PROTOTYPE GROUP THE UNSEAWORTHINESS FAULT OR STRICT LIABILITY OF ONE OR MORE MEMBERS OF THE PROTOTYPE GROUP. THE UNSEAWORTHINESS OF ANY VESSEL OR ANY DEFECT IN THE DATA PRODUCTS SUPPLIES, MATERIALS OR EQUIPMENT FURNISHED BY PROTOTYPE GROUP WHETHER IN THE DESIGN MANUFACTURE MAINTENANCE OR MARKING THEREOF OR FROM A FAILURE TO WARN SUCH DEFECT PROTOTYPE GROUP IS DEFINED AS PROTOTYPE ITS PARENT SUBSIDIARY AND AFFILIATED COMPANIES AND ITS THEIR OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS CUSTOMER RELEASE DEFENSE INDEMNITY AND HOLD HARMLESS OBLIGATIONS APPLY WHETHER THE PERSONAL INJURY, ILLNESS, DEATH, PROPERTY DAMAGE OR LOSS IS SUFFERED BY ONE OR MORE MEMBERS OF THE PROTOTYPE GROUP, CUSTOMER OR ANY OTHER PERSON OR ENTITLE AND THE CUSTOMER WILL SUPPORT SUCH OBLIGATIONS ASSUMED HEREIN WITH LIABILITY INSURANCE TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW. [Emphasis added.] [Exhibit E]

24. The June 2014 written indemnification agreement by Panther Drilling to Prototype constitutes an "Insured Contracts" provision inuring to the benefit of Prototype in the James River policy.

25. On June 5, 2015, Panther Drilling filed suit to enforce alleged mechanics liens and alternatively, to see damages for breach of contract [Exhibit H].

26. On July 8, 2015, the Jay-Bee companies filed a counter-claim against Panther Drilling for damages, including lost natural gas reserves, caused by Panther Drilling's inaccurate and incorrect drilling of the Sneezy 10 and 11 wells [Exhibit I].

27. Nearly two years after initiating Civil Action 15-P-9, on or about May 30, 2017, Panther Drilling initiated the Third-Party Complaint against Prototype alleging negligence by Prototype in the planning of the Sneezy 11 well. In this action, Panther also sought contribution and indemnity from Prototype for the claims asserted against it by Jay-Bee, contending that the proximate cause for any harm to Jay-Bee was caused by Prototype [Exhibit G].

28. With leave of the Court, by Order entered October 1, 2019, on or about October 21, 2019, the Jay-Bee companies filed their cross-claim against Prototype, which Prototype answered on November 5, 2019 [Exhibits J, K and L, respectively].

29. As pled, the damages claimed in Civil Action No. 15-P-9 by the Jay-Bee companies against Prototype come within the policy definitions for coverage set forth in the James River policy and, as a result of such coverage of James River, the excess liability coverage set forth in the Lexington policy.

30. On or about December 6, 2019, Prototype filed its Motion to Amend Answer to Third-Party Complaint and to File Counterclaim Against Third-Party Petitioner, Panther Drilling Systems, LLC; Arguments in Support Thereof, asserting its right as an "Additional Insured" under the "Insured Contracts" endorsement of the James River Contract, at paragraph 6 [Exhibit M]. In its Motion, Prototype further asserted:

8. The 2014 Master Price List and Terms and Conditions, upon which the contractual relationship of the [sic] Prototype and Panther was based, provides, in part, that Panther agrees to release, defend, indemnify and hold Prototype harmless from any and all liability, claims, expenses, attorney fees and damages wheresoever for personal property injury, illness, death, property damage and loss resulting from the loss of oil,

gas or other minerals substances or water, and for damage to or loss of a well bore of the well bore.

31. Panther Drilling filed its Response to Prototype's motion on December 19, 2019 [Exhibit N]. In its Response, Panther Drilling tacitly acknowledges the "additional insured" status of Prototype, arguing that Prototype should not be able to assert its contractual claim because it "has been aware of its status as an 'additional insured' since it was brought into this case."

32. Panther Drilling's insurance policy coverage under the James River policy was in effect at the time Panther Drilling entered into its June 2014 written agreement with Prototype and was in effect at the time Prototype performed its well planning services related to the Sneazy wells from June 2014 to August 2014. *Prototype Well Planning, LLC's Responses to Respondent's [Jay-Bee's] First Set of Requests for the Production of Documents* [Exhibit O].

33. Panther Drilling's insurance policy coverage under the Lexington policy was in effect at the time Panther Drilling entered into its June 2014 written agreement with Prototype and was in effect at the time Prototype performed its well planning services related to the Sneazy wells from June 2014 to August 201430.

34. The mutually acknowledged June 2014 contract between Panther Drilling and Prototype expressly requires Panther to defend and indemnify Prototype for claims such as those at issue in in Civil Action No. 15-P-9, and establishes, as a matter of law, that Prototype is an "additional insured" under the James River policy.

35. The "Insured Contracts" provision in Panther Drilling's coverage under the James River policy inures to the benefit of Prototype, and Prototype is an additional insured under the James River policy for purposes of the claims made against it by Jay-Bee. As such, Prototype is

entitled to all applicable coverage benefits under the James River insurance policy and the excess liability coverage benefits under the Lexington insurance policy.

36. Two demand letters have been sent to counsel for Panther Drilling explaining the basis for its duty to Prototype and requesting that it fulfill its obligation to wit: (a) Letter dated July 26, 2019 [Exhibit P], and (b) Letter dated December 6, 2019 [Exhibit Q]. To date, Prototype has not received a response to these letters.

37. Lexington Insurance Company, like James River, and as the excess liability insurer of Panther Drilling, has a duty to defend, indemnify and hold Prototype harmless, pursuant to Section C of the Terms and Conditions of Prototype's Master Price List [Exhibit E], from claims pending against Prototype in case number 15-P-9, Circuit Court of Tyler County.

WHEREFORE, Prototype prays that:

(A) This Court enter a Declaratory Judgment Order declaring that Lexington Insurance Company is obligated under its policy with Panther Drilling to provide insurance coverage and/or indemnity coverage to Prototype with respect to the claims and allegations asserted in Civil Action No. 15-P-9 in the Circuit Court of Tyler County, West Virginia.


(B) This Court declare in its Declaratory Judgment Order that the allegations described in the Complaint are within the scope of the Lexington Policy, and that Lexington indemnify Prototype for any liability imposed upon it based upon the claims and allegations asserted in Civil Action No. 15-P-9 in the Circuit Court of Tyler County, West Virginia.

(C) This Court declare in its Declaratory Judgment Order that Lexington defend Prototype in this action, and, to the extent applicable, Civil Action No. 15-P-9 in the Circuit Court of Tyler County, West Virginia.

(D) Prototype Drilling Systems, LLC be awarded all of its reasonable attorney's fees, costs and expenses related to this action, and, to the extent applicable, to Civil Action No. 15-P-9 in the Circuit Court of Tyler County, West Virginia.

(E) This Court grant such other and further relief as the Court deems necessary and appropriate.

**PROTOTYPE WELL PLANNING, LLC
BY COUNSEL**



JAMES R. CHRISTIE, ESQ., WV Bar #0721
P.O. Box 1133
Bridgeport, WV 26330
304.842.5461

CERTIFICATE OF SERVICE

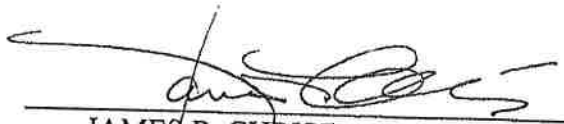
The undersigned, James R. Christie, does hereby certify that the foregoing **"ANSWER OF DEFENDANT PROTOTYPE WELL PLANNING, LLC AND THIRD-PARTY COMPLAINT"** has been served, without exhibits, by mailing a true and actual copy in a properly addressed, stamped envelope, deposited in the United States Mail on this 20th day of March, 2020, to the following:

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JAMES R. CHRISTIE (WV Bar ID# 0721)

IN THE CIRCUIT COURT OF TYLER COUNTY, WEST VIRGINIA

JAY-BEE OIL & GAS, INC.
JAY-BEE PRODUCTION CO.
JB EXPLORATION I, LLC

Plaintiffs,

v.

Civil Action No. 20-C-5
Honorable Jeffrey Cramer

PANTHER DRILLING SYSTEMS, LLC
and JAMES RIVER INSURANCE COMPANY,

Defendants,

v.

PROTOTYPE WELL PLANNING, LLC,

Defendant/Third Party Plaintiff

v.

LEXINGTON INSURANCE COMPANY,

Third Party Defendant.

**ANSWER OF LEXINGTON INSURANCE COMPANY TO THE THIRD
PARTY COMPLAINT OF PROTOTYPE WELL PLANNING, LLC**

Lexington Insurance Company ("Lexington") hereby files its Answer to the Third Party Complaint filed by Prototype Well Planning, LLC ("Prototype") in this matter, and states as follows:

PARTIES

1. Lexington is without sufficient knowledge to admit or deny the allegations contained in the first two sentences of Paragraph 1 of Prototype's Third Party Complaint. Lexington admits the allegations contained in the third sentence of Paragraph 1 of Prototype's Third Party Complaint; however, regarding the precise content of the contentions made by the

Jay Bee Companies in Civil Action No. 15-P-9, Lexington refers to the pleadings themselves in that matter for their full and complete terms. Moreover, Lexington's admission that the Jay Bee Companies make certain contentions in Civil Action No. 15-P-9 is not an admission that any such contentions are true. Lexington is without sufficient knowledge to admit or deny the truth of such contentions made by the Jay Bee Companies in Civil Action No. 15-P-9.

2. Lexington is without sufficient knowledge to admit or deny the allegations contained in the first two sentences of Paragraph 2 of Prototype's Third Party Complaint. Lexington admits the allegations contained in the third sentence of Paragraph 2 of Prototype's Third Party Complaint; however, regarding the precise content of the contentions made by the Jay Bee Companies in Civil Action No. 15-P-9, Lexington refers to the pleadings themselves in that matter for their full and complete terms. Moreover, Lexington's admission that the Jay Bee Companies make certain contentions in Civil Action No. 15-P-9 is not an admission that any such contentions are true. Lexington is without sufficient knowledge to admit or deny the truth of such contentions made by the Jay Bee Companies in Civil Action No. 15-P-9.

3. Lexington admits that James River Insurance Company ("James River") is an insurance company, and that at some point, it issued an insurance policy (specifically, James River Policy Number 00062493-0) to Panther. Lexington denies the allegation contained in Paragraph 3 of Prototype's Third Party Complaint that James River Policy Number 00062493-0 is applicable to the claims and allegations related to the actions of Panther and Prototype that are set out in Civil Action No. 15-P-9. Lexington is without sufficient knowledge to admit or deny the remaining allegations contained in Paragraph 3 of Prototype's Third Party Complaint.

4. Lexington is without sufficient knowledge to admit or deny the allegations contained in the first two sentences of Paragraph 4 of Prototype's Third Party Complaint.

Lexington admits the allegations contained in the third sentence of Paragraph 4 of Prototype's Third Party Complaint; however, regarding the precise content of the contentions made by the Jay Bee Companies in Civil Action No. 15-P-9, Lexington refers to the pleadings themselves in that matter for their full and complete terms. Moreover, Lexington's admission that the Jay Bee Companies make certain contentions in Civil Action No. 15-P-9 is not an admission that any such contentions are true. Lexington is without sufficient knowledge to admit or deny the truth of such contentions made by the Jay Bee Companies in Civil Action No. 15-P-9.

5. Lexington admits the allegations contained in the first two sentences of Paragraph 5 of Prototype's Third Party Complaint, as well as the fact that Lexington issued an insurance policy (specifically, Lexington Policy Number 011320955) to Panther. Lexington denies the allegation contained in Paragraph 5 of Prototype's Third Party Complaint that Lexington Policy Number 011320955 is applicable to the claims and allegations related to the actions of Panther and Prototype that are set out in Civil Action No. 15-P-9. Lexington is without sufficient knowledge to admit or deny any remaining allegations contained in Paragraph 5 of Prototype's Third Party Complaint.

JURISDICTION AND VENUE

6. Lexington admits the allegation contained in Paragraph 6 of Prototype's Third Party Complaint that, in Civil Action No. 15-P-9, the Jay Bee Companies have asserted claims against Panther and Prototype; however, regarding the precise content of the contentions made by the Jay Bee Companies in Civil Action No. 15-P-9, Lexington refers to the pleadings themselves in that matter for their full and complete terms. Moreover, Lexington's admission that the Jay Bee Companies make certain contentions in Civil Action No. 15-P-9 is not an admission that any such contentions are true. Lexington is without sufficient knowledge to

admit or deny the truth of such contentions made by the Jay Bee Companies in Civil Action No. 15-P-9. Lexington denies the allegation contained in Paragraph 6 of Prototype's Third Party Complaint that either James River Policy Number 00062493-0 or Lexington Policy Number 011320955 is applicable to the claims and allegations related to the actions of Panther and Prototype that are set out in Civil Action No. 15-P-9. Lexington is without sufficient knowledge to admit or deny any remaining allegations contained in Paragraph 6 of Prototype's Third Party Complaint.

7. Lexington is without sufficient knowledge to admit or deny the allegations contained in Paragraph 7 of Prototype's Third Party Complaint, and refers to rulings of the Court on such questions of law.

8. Lexington is without sufficient knowledge to admit or deny the allegations contained in Paragraph 8 of Prototype's Third Party Complaint, and refers to rulings of the Court on such questions of law.

9. Lexington admits that this Court has the power to determine declaratory judgment actions, subject to all applicable laws of the State of West Virginia. Lexington is without sufficient knowledge to admit or deny any remaining allegations contained in Paragraph 9 of Prototype's Third Party Complaint.

NATURE OF ACTION

10. Paragraph 10 of Prototype's Third Party Complaint is a characterization of Jay Bee's original Complaint in this matter, Civil Action No. 20-C-5. Rather than admit that such characterization is accurate, Lexington defers to the actual pleading filed by Jay Bee. Therefore, Lexington technically denies the allegations contained in Paragraph 10 of Prototype's Third Party Complaint, and refers to the original Complaint filed by Jay Bee.

11. Paragraph 11 of Prototype's Third Party Complaint is a statement of the relief Prototype seeks in this matter. Lexington denies that Prototype is entitled to any of the relief described in Paragraph 11 of Prototype's Third Party Complaint, and to the extent any aspect of Paragraph 11 of Prototype's Third Party Complaint can be interpreted as allegations of fact or law, Lexington denies all such allegations.

12. In the same manner in which Prototype has restated and re-alleged the allegations set forth in the preceding paragraphs of Prototype's Third Party Complaint, Lexington hereby restates its respective responses to those numbered paragraphs shown above.

13. Lexington admits the allegations contained in Paragraph 13 of Prototype's Third Party Complaint.

14. Lexington admits that the "each occurrence" limit of liability under James River Policy Number 00062493-0 is \$1 million, and that the policy aggregate limit of liability is \$2 million. Lexington admits that the part of Paragraph 14 of Prototype's Third Party Complaint that explicitly quotes a specific section of the insurance policy in question does so accurately. However, the coverages that exist under James River Policy Number 00062493-0 are not defined solely by the quoted portion of the policy. Lexington refers to the actual terms, conditions, limitations and exclusions contained within the insurance policy, which must be examined in its totality in order to fully determine what coverages exist in the policy. Lexington denies the remaining allegations contained in Paragraph 14 of Prototype's Third Party Complaint.

15. Lexington admits that James River Policy Number 00062493-0 contains an endorsement entitled "ADDITIONAL INSURED--AUTOMATIC STATUS WHEN REQUIRED BY WRITTEN CONTRACT OR WRITTEN AGREEMENT." However, the coverages that exist under James River Policy Number 00062493-0 are not defined solely by the

partial quotes contained in Paragraph 15 of Prototype's Third Party Complaint. Lexington refers to the actual terms, conditions, limitations and exclusions contained within the insurance policy, which must be examined in its totality in order to fully determine what coverages exist in the policy. Lexington denies the remaining allegations contained in Paragraph 15 of Prototype's Third Party Complaint.

16. Paragraph 16 of Prototype's Third Party Complaint is a characterization of a portion of James River Policy Number 00062493-0. The coverages that exist under James River Policy Number 00062493-0 are not defined by the characterization contained in Paragraph 16 of Prototype's Third Party Complaint. Lexington refers to the actual terms, conditions, limitations and exclusions contained within the insurance policy, which must be examined in its totality in order to fully determine what coverages exist in the policy. Lexington denies the remaining allegations contained in Paragraph 16 of Prototype's Third Party Complaint.

17. Lexington admits the allegations contained in Paragraph 17 of Prototype's Third Party Complaint, except for the policy number. Lexington denies that the policy number of the Lexington policy is 00062493-0. The Lexington policy number is 011320955. Lexington refers to the policy itself for its true and complete terms.

18. Lexington denies the allegations contained in Paragraph 18 of Prototype's Third Party Complaint.

19. Lexington is without sufficient knowledge to admit or deny the allegations contained in Paragraph 19 of Prototype's Third Party Complaint.

20. Lexington is without sufficient knowledge to admit or deny the allegations contained in Paragraph 20 of Prototype's Third Party Complaint.

21. Lexington is without sufficient knowledge to admit or deny the allegations contained in Paragraph 21 of Prototype's Third Party Complaint.

22. Lexington is without sufficient knowledge to admit or deny the allegations contained in Paragraph 22 of Prototype's Third Party Complaint. Moreover, Lexington refers to the Panther Third Party Complaint itself for its true and complete terms.

23. Lexington denies the allegations contained in Paragraph 23 of Prototype's Third Party Complaint.

24. Lexington denies the allegations contained in Paragraph 24 of Prototype's Third Party Complaint.

25. Lexington admits the allegation contained in Paragraph 25 of Prototype's Third Party Complaint that, on June 5, 2015, Panther filed a lawsuit, which is Civil Action No. 15-P-9. Lexington is without sufficient knowledge to admit or deny the remaining allegations contained in Paragraph 25 of Prototype's Third Party Complaint. Moreover, Lexington refers to Panther's complaint in Civil Action No. 15-P-9 for its true and complete terms.

26. Lexington admits the allegation contained in Paragraph 26 of Prototype's Third Party Complaint that, on July 8, 2015, the Jay Bee Companies filed a counterclaim against Panther in Civil Action No. 15-P-9. Lexington is without sufficient knowledge to admit or deny the remaining allegations contained in Paragraph 26 of Prototype's Third Party Complaint. Moreover, Lexington refers to the Jay Bee Companies' counterclaim in Civil Action No. 15-P-9 for its true and complete terms.

27. Lexington admits the allegation contained in Paragraph 27 of Prototype's Third Party Complaint that, on or about May 30, 2017, Panther filed a third party complaint against Prototype in Civil Action No. 15-P-9. Lexington is without sufficient knowledge to admit or

deny the remaining allegations contained in Paragraph 27 of Prototype's Third Party Complaint. Moreover, Lexington refers to Panther's third party complaint in Civil Action No. 15-P-9 for its true and complete terms.

28. Lexington admits the allegation contained in Paragraph 28 of Prototype's Third Party Complaint that, on or about October 1, 2019, the Jay Bee Companies filed a cross-claim against Prototype in Civil Action No. 15-P-9, and that Prototype answered that cross-claim on or about November 5, 2019. Lexington is without sufficient knowledge to admit or deny the remaining allegations contained in Paragraph 28 of Prototype's Third Party Complaint.

29. Lexington denies the allegations contained in Paragraph 29 of Prototype's Third Party Complaint.

30. Lexington admits the allegation contained in Paragraph 30 of Prototype's Third Party Complaint that, on or about December 6, 2019, Prototype filed a motion in Civil Action No. 15-P-9 to amend its answer and file a counterclaim against Panther. Lexington is without sufficient knowledge to admit or deny the remaining allegations contained in Paragraph 30 of Prototype's Third Party Complaint. Moreover, Lexington refers to Prototype's motion in Civil Action No. 15-P-9 for its true and complete terms.

31. Lexington admits the allegation contained in Paragraph 31 of Prototype's Third Party Complaint that, on or about December 19, 2019, Panther filed a response to Prototype's motion referenced in Paragraph 30 above. Lexington is without sufficient knowledge to admit or deny the remaining allegations contained in Paragraph 31 of Prototype's Third Party Complaint. Moreover, Lexington refers to Panther's response for its true and complete terms.

32. Lexington is without sufficient knowledge to admit or deny the allegations contained in Paragraph 32 of Prototype's Third Party Complaint.

33. Lexington admits that Lexington Policy Number 011320955 was in effect during its policy period which ran from May 21, 2014 to May 21, 2015. Lexington is without sufficient knowledge to admit or deny the remaining allegations contained in Paragraph 33 of Prototype's Third Party Complaint.

34. Lexington denies the allegations contained in Paragraph 34 of Prototype's Third Party Complaint.

35. Lexington denies the allegations contained in Paragraph 35 of Prototype's Third Party Complaint.

36. Lexington is without sufficient knowledge to admit or deny the allegations contained in Paragraph 36 of Prototype's Third Party Complaint. Moreover, Lexington refers to the letters themselves for their true and complete terms.

37. Lexington denies the allegations contained in Paragraph 37 of Prototype's Third Party Complaint.

In further answer to the Amended Complaint, Lexington denies any and all allegations that are not specifically admitted herein, and further denies that Prototype is entitled to any of the specific forms of relief sought in the prayer for relief that follows Paragraph 37 of Prototype's Third Party Complaint.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

Should discovery and investigation reveal a basis for it, Lexington reserves the right to assert that Prototype's Third Party Complaint fails to state a claim upon which relief can be

granted; therefore, Prototype's Third Party Complaint should be dismissed pursuant to West Virginia Rule of Civil Procedure 12(b)(6).

SECOND DEFENSE

Should discovery and investigation reveal a basis for it, Lexington reserves the right to assert that Prototype's Third Party Complaint is barred, in whole or in part, by the applicable statutes of limitation and/or statutes of repose.

THIRD DEFENSE

Should discovery and investigation reveal a basis for it, Lexington reserves the right to assert that Prototype's Third Party Complaint is barred, in whole or in part, by the doctrine of laches, estoppel and/or waiver.

FOURTH DEFENSE

The Lexington insurance policy at issue is an excess liability policy, and is excess to the James River insurance policy at issue. The James River insurance policy limit has not been exhausted, which is a necessary element of the insuring language of the Lexington policy. The Lexington policy is therefore not applicable.

FIFTH DEFENSE

The Lexington insurance policy is a "follow form" excess liability policy, and is excess to the James River insurance policy at issue. To the extent that there is no insurance coverage under the James River policy, there is no coverage under the Lexington policy.

SIXTH DEFENSE

The claims made against Panther and Prototype do not constitute claims that seek damages because of "bodily injury" or "property damage" that takes place during the "policy period" and is caused by an "occurrence", or because of "personal and advertising injury" caused

by an offense during the "policy period". Therefore, there is no coverage for Panther or Prototype under the Lexington policy.

SEVENTH DEFENSE

The claims made against Panther and Prototype are excluded under the James River policy (and therefore also under the Lexington policy) because they seek damages for "property damage" expected or intended from the standpoint of the insured.

EIGHTH DEFENSE

The claims made against Panther and Prototype are excluded under the James River policy (and therefore also under the Lexington policy) because they seek damages for liability assumed in a contract or agreement.

NINTH DEFENSE

The claims made against Panther and Prototype are excluded under the James River policy (and therefore also under the Lexington policy) because they seek damages for "property damage" to property owned, rented or occupied by the insured.

TENTH DEFENSE

The claims made against Panther and Prototype are excluded under the James River policy (and therefore also under the Lexington policy) because they seek damages for "property damage" to "impaired property" or property that has not been physically injured, arising out of either a defect, deficiency, inadequacy or dangerous condition in the product or work of the insured, or a delay or failure by the insured or anyone acting on the insured's behalf to perform a contract or agreement in accordance with its terms.

ELEVENTH DEFENSE

The claims made against Panther and Prototype are excluded under the James River policy (and therefore also under the Lexington policy) because they seek damages for losses, costs, replacement, adjustment, removal or disposal of the insured's product, the insured's work, or impaired property, and such product, work or property was withdrawn or recalled from the market or from use because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

TWELFTH DEFENSE

There is no coverage for Prototype under either the James River policy or the Lexington policy pursuant to the totality of the terms, conditions, limitations and exclusions contained in the two policies, and Lexington reserves the right to assert any and all applicable provisions of either or both policies as such applicability is discovered.

THIRTEENTH DEFENSE

Prototype does not qualify as an insured under the Lexington policy.

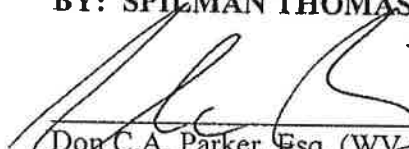
FOURTEENTH DEFENSE

Lexington reserves the right to amend this Answer to assert additional affirmative defenses as their applicability is discovered.

Respectfully submitted,

LEXINGTON INSURANCE COMPANY

BY: SPILMAN THOMAS & BATTLE, PLLC

 #5587
For Don C.A. Parker
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IN THE CIRCUIT COURT OF TYLER COUNTY, WEST VIRGINIA

JAY-BEE OIL & GAS, INC.
JAY-BEE PRODUCTION CO.
JB EXPLORATION I, LLC

Plaintiffs,

v.

Civil Action No. 20-C-5
Honorable Jeffrey Cramer

PANTHER DRILLING SYSTEMS, LLC
and JAMES RIVER INSURANCE COMPANY,

Defendants,

v.

PROTOTYPE WELL PLANNING, LLC,

Defendant/Third Party Plaintiff

v.

LEXINGTON INSURANCE COMPANY,

Third Party Defendant.

CERTIFICATE OF SERVICE

I, Glen A. Murphy hereby certify that service of the foregoing "ANSWER OF LEXINGTON INSURANCE COMPANY TO THE THIRD PARTY COMPLAINT OF PROTOTYPE WELL PLANNING, LLC" has been made upon the following parties of record by placing a true copy thereof in an envelope deposited in the regular course of the United States Mail, with postage prepaid, on this 6th day of July, 2020, addressed as follows:

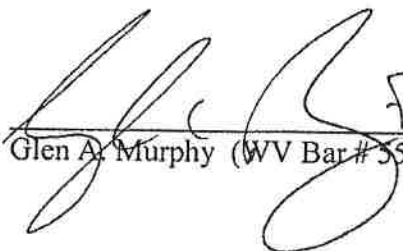
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Glen A. Murphy (WV Bar # 5587) For Dan C. A. Parker

PLAINTIFF: Jay-Bee Oil & Gas, Inc., Jay-Bee Production Co., JB Exploration I, LLC DEFENDANT: Panther Drilling systems, LLC and James River Insurance Company v. Prototype Well Planning, LLC v. Lexington Insurance Company	CASE NUMBER: 20-C-5 Circuit Court of Tyler County, WV
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II. TYPE OF CASE:

TORTS	OTHER CIVIL	
<input type="checkbox"/> Asbestos	<input type="checkbox"/> Adoption	<input type="checkbox"/> Appeal from Magistrate Court
<input type="checkbox"/> Professional Malpractice	<input checked="" type="checkbox"/> Contract	<input type="checkbox"/> Petition for Modification of Magistrate Sentence
<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Real Property	<input type="checkbox"/> Miscellaneous Civil
<input type="checkbox"/> Product Liability	<input type="checkbox"/> Mental Health	<input type="checkbox"/> Other
<input type="checkbox"/> Other Tort	<input type="checkbox"/> Appeal of Administrative Agency	

III. JURY DEMAND ☐ Yes ☒ No
 CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR): 08/2021

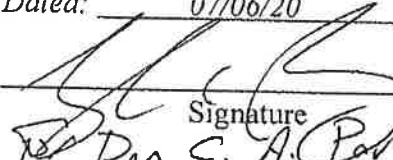
IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? ☐ Yes ☒ No
 IF YES, PLEASE SPECIFY:
☐ Wheelchair accessible hearing room and other facilities
☐ Interpreter or other auxiliary aid for the hearing impaired
☐ Reader or other auxiliary aid for the visually impaired
☐ Spokesperson or other auxiliary aid for the speech impaired
☐ Other: Not at this time

Attorney Name: Don C. A. Parker
 Firm: Spilman Thomas & Battle, PLLC
 Address: P. O. Box 273, Charleston WV 25321
 Telephone: 304/340-3800

Representing:
☒ Third Party Defendant—Lexington Insurance Company
☐ Cross-Complainant ☐ Cross-Defendant

Dated: 07/06/20

☐ Pro Se


 Signature
 Don C. A. Parker #5587