IN THE CIRCUIT COURT OF PLEASANTS COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

BB LAND LLC
and JB EXPLORATION I LLC,

Plaintiffs,

v.

BLACKROCK ENTERPRISES LLC and
MICHAEL L. BENEDUM,

Defendants.

Civil Action No. 18-C-2

Presiding: Hon. Michael D. Lorensen
Resolution: Hon. Christopher C. Wilkes

FINAL JUDGMENT ORDER

This matter came before Court in a jury trial which took place on March 2-12, 2021 ("Phase 1") and again for a bench trial which took place on September 22-23, 2021 ("Phase 2"). Based on the evidence at trial of this matter, the Court makes the following findings of fact.[1] In these findings of fact and in the below conclusions of law:

- "Jay-Bee" means Plaintiffs, BB Land LLC and JB Exploration I LLC.
- "Broda" means Plaintiff, Randy J. Broda.
- "Blackrock" means Defendant, Blackrock Enterprises, LLC.
- "Benedum" means Defendant, Michael L. Benedum.

1. In May of 2013, JB Exploration I, LLC and Blackrock executed a Lease Acquisition Agreement (the "LAA") agreeing to acquire leases and other oil and gas interests in the designated area of mutual interest covering Pleasants County, West Virginia (the "AMI"). Under Paragraph 2 of the LAA, Blackrock, Benedum, or any third party (including any broker or "straw man") acting on any of their behalves acquiring property within the AMI, was obligated to offer the same

[1] These findings of fact and conclusions of law are listed separately in accordance with West Virginia Rule of Civil Procedure 52.

to Jay-Bee.

2. Under the LAA, the parties agreed that: (1) they would both independently acquire leases/interests in the AMI ("AMI Interests"); (2) the acquiring party would offer the non-acquiring party the opportunity to buy-in to any such AMI Interests; (3) the parties would become active, participating working interest owners in the planned drilling and development of the AMI; and (4) to accomplish the plan, the parties would execute a separate joint operating agreement ("JOA") to control the lease development phase. The LAA prescribed that each party would acquire an "Earned Interest" in all the leases that it properly offered, and the LAA also granted Blackrock the right to acquire an "Additional Interest" of up to a total of 25% in each AMI Interest.

3. While Blackrock's right to an Earned Interest had no stated time-limit, Paragraph 11 of the LAA did prescribe a strict 45-day time limit by which Blackrock could elect to obtain an Additional Interest. Failure to: (1) timely notify Jay-Bee in writing that it would not acquire an Additional Interest, and (2) make payment for an acquisition within the prescribed deadline automatically results in a loss of the ability to acquire the Additional Interest.

4. The evidence established during Phase 1 of trial shows that Jay-Bee acquired acreage incident to the LAA at nearly double the pace of Blackrock. Blackrock continually failed to timely and completely provide the requisite lease documentation and information required by the LAA. The more aggressive lease acquisition by Jay-Bee is explained in part by Blackrock's failure to provide the requisite written declination notice discussed in the preceding paragraph and refusal to purchase the Additional Interest in the leases acquired by either party. Blackrock's repeated failure to provide maps and required documentation was a continual source of problems between Jay-Bee and Blackrock, as both parties were simultaneously acquiring leases in the AMI. Thus, Blackrock's failures resulted in duplicated efforts, unnecessary competition, and periodic

bidding wars and excessive costs incident to lease acquisitions in the AMI for Jay-Bee.

5. Despite representations that it wanted to be an active participating working interest owner, Blackrock rarely purchased Additional Interest in the AMI Interests it acquired and likewise rarely purchased Additional Interest in the Jay-Bee acquired AMI Interests. As a result, Jay-Bee paid millions of dollars in lease bonuses and rentals, including, as Mr. Broda testified to in Phase 2, interest on monies borrowed for such purpose at a cost of $3 million a year, and acquired significantly more acreage than Blackrock. The evidence indicates that Blackrock only elected to purchase Additional Interest on four occasions, paying less than $370,000 in acquisition costs, while Jay-Bee expended nearly $70 million in lease bonuses alone.[2]

6. One specific instance of Blackrock's refusal to participate in development of the acreage was referred to by the parties throughout trial as the "Benefiel Offer." This offer was based on the Benefiel property which BB Land offered to Blackrock in December of 2013, with concomitant royalty and leasing rights, as well as surface acreage.[3] The deadline for Blackrock to respond or otherwise acknowledge the Benefiel Offer was February 4, 2014. Under the LAA, Blackrock was required to either accept the offer by timely tendering a check or notifying Jay-Bee in writing that it rejected the offer. The evidence at Phase 1 of this trial conclusively established that Blackrock did not provide any written notice that it would not acquire the Benefiel property, nor did it pay its share of the purchase amount, as required by the LAA. Importantly, the jury specifically found the February 4, 2014 date to be Blackrock's first material breach of the LAA.

7. Following the result of Blackrock's failure to timely send payment, or reject the written notice of the Benefiel Offer, Jay-Bee sent a letter to Blackrock on February 8, 2015 detailing its frustrations with Blackrock's refusal to commit to lease acquisitions and development

[2] *See* P. Exhs. 100 and 101.
[3] *See* P. Exh. 26.

of the acreage. The letter also expressed Jay-Bee's intention to terminate the LAA, since the relationship was "not working", according to both Messrs. Broda and Benedum. Following receipt of this letter, Blackrock shut down its lease acquisition efforts and only attempted one final offering in March of 2015 of leases that Blackrock held which were acquired before February 8, 2015. Jay-Bee rejected the offer, and the parties had no further communications until September of 2015, when Blackrock requested through its lawyer, D. Luke Thomas at Jackson Kelly, that Jay-Bee buy out its interests. Jay-Bee rejected this proposal.

8. Following the February 8, 2015 letter, neither party made any further lease offerings in accordance with the terms of the LAA. After Jay-Bee's February 8, 2015 letter, despite continued promises to assign additional acquired acreage, Blackrock only assigned a total of two tracts to Jay-Bee acquired after that date.

9. Later, in 2017, when Jay-Bee went to drill the acreage, Blackrock still owned interests in the drilling units, principally related to its Earned Interest under the LAA. As a result, Jay-Bee asked Blackrock if it wanted to participate in the planned wells. Blackrock indicated it would participate, but ultimately never paid Jay-Bee for its portion of costs referable to its participation interest. When it came time for payment, Blackrock refused and argued that the parties had failed to execute a suitable JOA. The evidence offered during Phase 1 of trial indicates that during the time frame of 2013-2016, Blackrock was attempting to find a third-party to purchase its AMI Interests. During this sales process unknown to Jay-Bee, Blackrock spoke highly of the ability of Jay-Bee as an operator, specifically stating that "this is truly a once in a life-time opportunity to buy into a land and drilling operation with one of the most efficient companies in the Appalachian Basin."

10. Since 2017 when Jay-Bee inquired as to whether Blackrock would participate in

the planned wells, Jay-Bee has drilled 20 wells, 17 of which are completed and producing. Jay-Bee spent, as Mr. Broda testified in Phase 2, i) approximately $145 million to drill and complete the wells and $5 million in operating expenses, ii) $5 million to install infrastructure to be able to market and sell the hydrocarbons (including a compression and dehydration station for wet gas from the Marcellus formation), and iii) Jay-Bee had to enter into midstream agreements to get dry gas from the Utica formation to market with a minimum volume commitment (MVC) costing $9-10 million in 2021. Blackrock does not dispute that: (1) the operations conducted by Jay-Bee regarding the wells were reasonable, necessary, and proper to drill, produce, sell, and market the hydrocarbons therefrom; (2) the concomitant charges paid for the goods and services provided to Jay-Bee by its affiliates, contractors, and other providers were reasonable, necessary, and proper, and (3) it didn't pay Jay-Bee for any portion of the drilling, completion, operating, or marketing costs associated with these wells. To date, Jay-Bee has invested over $220 million dollars to obtain and develop the AMI Interests.

11. Phase I Trial in this matter commenced with a jury trial on March 2, 2021. On such date, outside the presence of the jury, counsel for Blackrock proposed that the trial be tried in phases, with the fraudulent inducement and breach of contract portions being tried to the jury, while the Court would then determine the issue of whether a mining partnership existed and damages, potentially to include specific performance, based on the jury's determination on the issues of fraudulent inducement and breach of contract.

12. On March 12, 2021, the jury returned a verdict that Blackrock committed the first material breach of the LAA on February 4, 2014. Accordingly, as the first material breacher, Blackrock is not entitled to any monetary damages or affirmative relief from Jay-Bee. Further, the jury also found that Jay-Bee gave reasonable notice of termination of the LAA on December

11, 2017.

13. On May 3, 2021, the Court issued its Order Denying Blackrock's Post-Trial Motion under Rules 49(a) and 50(b) of the West Virginia Rules of Civil Procedure and found that the jury verdict form properly submitted all issues of liability to the jury. Jay-Bee was the prevailing party in the litigation and was entitled to present its contract damages attendant to Jay-Bee's breach of contract claim and the mining partnership, including all available legal and equitable remedies, in Phase 2. The Court also found that sufficient evidence supported the jury's finding that Blackrock committed the first material breach on February 4, 2014 by not providing payment or written notice rejecting the Benefiel Offer.

14. Following such order, both parties submitted pre-trial briefing regarding the issues to be addressed in Phase 2 of the trial on this matter. Phase 2 of trial commenced with a bench trial on September 22, 2021 and concluded on September 23, 2021.

CONCLUSIONS OF LAW

Based on the evidence at trial of this matter, the Court makes the following conclusions of law:

A. Mining Partnership[4]

15. "While co-owners or joint owners of a mining lease, before they operate for oil or gas are tenants in common or joint tenants, when they unite and co-operate in working the lease, they constitute a mining partnership." *Valentine v. Sugar Rock, Inc.* 234 W. Va. 526, 766 S.E.2d 785, 787 (2014); *Manufacturers Light & Heat Co. v. Tenant*, 104 W. Va. 221, 139 S.E. 706 (1927).

16. Under the Revised Uniform Partnership Act ("RUPA"), a partnership is an association of two or more persons to carry on as co-owners a business for profit, whether or not

[4] This section (¶¶ 15-35) includes the Court's findings in its *Order Regarding Mining Partnership Issue,* dated May 13, 2021.

the persons intend to form a partnership. *Valentine*, 766 S.E.2d at 787; W.Va. Code §§47B-1-1(7) [2003] & 47B-2-2(a) [1995].

17. In *Valentine*, the West Virginia Supreme Court evaluated what types of partnerships are subject to the provisions of RUPA, codified at West Virginia Code Chapter 47B. *Valentine,* 766 S.E.2d at 799. The West Virginia Supreme Court found that RUPA governs all types of partnerships, including, in particular, mining partnerships. *Id.*; *see also Sugar Rock, Inc. v. Washburn*, 237 W.Va. 347, 787 S.E.2d 618, 623 (2016) ("[T]he circuit court was correct in its initial observation that the precise nature of the partnership at hand is immaterial given that RUPA provides essential rules that pertain equally to both mining and general partnerships.").

18. The Court has found, and affirms its finding, that Blackrock and Jay-Bee entered into the LAA in order to jointly develop leases and mineral interests within the AMI. This process of engaging to jointly develop acreage, including obtaining, offering interest in, and assigning leases, must be categorized as a mining partnership, under West Virginia mining partnership law.

19. West Virginia law does not require that partners have equal roles or rights of control. Rather, "[t]o constitute a joint adventure the parties must combine their property, money, efforts, skill, or knowledge, in some common undertaking of a special or particular nature, but the contributions of the respective parties need not be equal or of the same character." *Pownall v. Cearfoss*, 129 W.Va. 487, 497-98, 40 S.E.2d 886, 893 (1946); *citing* 30 AmJur., Joint Adventures, Section 10.

20. Here, the mining partnership model best describes the parties and the relief to be given. Under the terms of the LAA, the parties assigned each other oil and gas leases and interests in the AMI. Paragraph 2 of the LAA obligated both Jay-Bee and Blackrock to offer to the other an interest in all leases, land, and minerals owned or leased in the defined AMI. Further, extensive

testimony was heard at trial regarding the fact that Blackrock was to provide certified title under the terms of the LAA.

21. Paragraphs 2-7 of the LAA specified the information and documentation that Blackrock was obligated to provide. As detailed in LAA paragraphs 2, 3, 4, 5, and 7, Blackrock was obligated to provide Jay-Bee with: (1) a "Lease Agreement that is approved by both Blackrock and JB;" (2) "certified title from an attorney...who shall have a title insurance policy with the minimum amount of $4 million coverage and that will apply to each title opinion provided;" (3) a "Lease Packet," including "all of the abstracting, title work, heir-ship documentation;" (4) a properly filed lease, as well as a Memorandum of Lease in the public records, and (5) a "Payment Form" detailing all information necessary for the lease rentals to be paid. Further, Paragraph 1 of the LAA required that Blackrock provide frequently updated maps depicting the tracts that have been abstracted and ready to lease on a weekly basis.

22. Further, Mr. Benedum testified that once there was a certified title, and BB Land paid the lease bonus, under the LAA, Blackrock was given the option then to buy-in for an additional 25% working interest.

23. The Court notes testimony was given at trial specifically on the issue of whether or not a mining partnership existed outside of the presence of the jury on the afternoon of March 9, 2021 after the jury was excused for the day. At this time, Mr. Benedum testified as to a litany of items Blackrock and Jay-Bee did not jointly select, including the drilling contractor, casing supplier, casing cementing company, pumping company for fracking operations, and frack size proppant amount.

24. However, the Court considers Mr. Benedum's testimony that in its assignments, Blackrock gave Jay-Bee "full control" over Blackrock's interests and to conduct operations and

gave to Jay-Bee its consent to market and sell hydrocarbons from the leases it had taken. Further, Mr. Benedum testified that by having a working interest, he (on behalf of his company, Blackrock) agreed to share in the profits and losses with Jay-Bee regarding the sale and marketing of the hydrocarbons from the leases in which Mr. Benedum (on behalf of Blackrock) owned a working interest. With regard to the drilling location strategy, Mr. Benedum testified multiple times at trial that his focus was always to lease the eastern districts in Pleasants County, namely McKim, Lafayette and Union, rather than the western districts in the county.

25. While Mr. Benedum testified that Mr. Broda preferred to lease everywhere in the county by throwing everything at the wall to see what sticks, the Court notes Mr. Benedum appeared free to pursue leasing concentrating in his preferred eastern part of the county, and appeared free to concentrate his efforts to obtain his leases he offered for the common goal by focusing on that area and negotiating with mineral owners in the eastern districts. Testimony at trial evidenced that the weekly maps Blackrock was required to provide were to help ensure Jay-Bee and Blackrock were not overlapping geographically and competing in attempting to lease the same tracts, but it appears Blackrock was free to strategize and decide where it chose within the AMI to concentrate its leasing efforts which would ultimately become drilling locations. In fact, at the time that Mr. Benedum testified they "were going after leases hot and heavy," and he was already concentrating on the eastern districts, Mr. Broda was not actively leasing in Pleasants County yet; rather, he was wrapping up business activities in Tyler County and seemingly leaving the Pleasants County leasing up to Mr. Benedum during this 2013 timeframe, as part of Blackrock's contribution to the common goal of obtaining leases and ultimately producing oil and gas in Pleasants County.

26. The Court finds that each party, Blackrock and Jay-Bee, worked the leases by

contributing its agreed-to area of expertise and ability. Jay-Bee, as operator, was able to do more of the front-line drilling work, including items like selecting the drilling contractor, casing supplier, casing cementing company, pumping company for fracking operations, and frack size proppant amount, as testified at trial. Blackrock, as a more local oil and gas company with title work already done in Pleasants County, was able to provide certified title by working with local abstracting companies, like Abstract West Virginia, to complete this endeavor. As described above, the LAA required Blackrock to provide comprehensive documentation regarding title in order for Jay-Bee, as the operator-partner, to be able to ultimately drill, including a Lease Agreement, "certified title from an attorney...who shall have a title insurance policy with the minimum amount of $4 million coverage and that will apply to each title opinion provided," a "Lease Packet," a properly filed lease, as well as a Memorandum of Lease in the public records, a "Payment Form," and the weekly maps.

27. Mr. Benedum, through Blackrock, also brought something unique to the common goal of leasing and drilling wells in Pleasants County. Mr. Broda testified at trial that he knew Mr. Benedum from being in the same circles in the local oil and gas industry, and was told by Mr. Benedum that he had "piles of abstracts" "ready to go" in Pleasants County, and that Mr. Broda was very interested in getting leases quickly because of this. Particularly, Mr. Broda testified this advantage could help Jay-Bee compete with their larger competitors who were "hot on his tails" following Jay-Bee's oil and gas development activities in Tyler County.

28. In addition to what Jay-Bee and Blackrock each brought to the table, both parties were able to negotiate with Pleasants County mineral owners and get leases signed. For these reasons, the Court finds that both Blackrock and Jay-Bee worked the leases they owned. Both parties were able to use their own unique efforts, skill, and knowledge in the common undertaking

of the "ultimate goal" of drilling and producing oil and gas. *See Pownall v. Cearfoss*, 129 W.Va. 487, 497-98, 40 S.E.2d 886, 893 (1946); *citing* Am.Jur., Joint Adventures, Section 10 (West Virginia law does not require that partners have equal roles or rights of control. Rather, "[t]o constitute a joint adventure the parties must combine their property, money, efforts, skill, or knowledge, in some common undertaking of a special or particular nature, but the contributions of the respective parties need not be equal or of the same character." Accordingly, the Court finds this process of engaging to jointly develop acreage must be categorized as a mining partnership. Because the Court has determined that a *de facto* mining partnership was formed with respect to the drilled AMI Interests, the Court further finds and concludes that under West Virginia law, the rights and remedies of the parties are controlled by RUPA.

29. With regard to the fact that there was no signed and executed joint operating agreement, which would necessarily include a penalty or "risk premium" that would be paid by the party who chose not to expend monies to drill and complete an oil and gas well, the Court finds from the evidence provided, including expert testimony, and Blackrock's judicial admission at page 14, paragraph 15 of its live amended answer (filed August 15, 2018), that such a penalty/premium is standard in the oil and gas industry and varies from 200% to 500% of the expended costs being recouped before that party is entitled to any remuneration related to oil and gas sales. The Court considers Blackrock's contention that no penalty or risk premium applies since no JOA was signed, and concludes that Blackrock cannot escape a JOA by not agreeing to one. As detailed below, Mr. Casto's testimony showed that utilizing *any* of the industry standard risk premiums, Blackrock's interest would amount to zero.

30. If two or more owners of a mine unite in working it without any partnership agreement, the act of working it together creates a mining partnership, and the same is true of two

or more holding interests in a lease of mining property. *Kirchner v. Smith*, 61 W.Va. 434, 58 S.E. 614, 615 (1907); *cited by Valentine*, 766 S.E.2d at 798. Where joint owners of an oil and gas lease unite in operating the premises, without any special agreement as to their relation, they constitute a mining partnership. *Wetzel v. Jones*, 75 W.Va. 271, 84 S.E. 951 (1914).

31. Here, the parties had intended to enter into a joint operating agreement (hereinafter "JOA"), but never signed and executed a JOA because terms were never agreed to. In fact, in Count 10 of its Counterclaim, Blackrock itself sought the imposition of a JOA, although it later argued the absence of one precludes a penalty. Count 10(i) of the Counterclaim asks for a Court declaration and reads as follows: "The appropriate parties must sign the fair operating agreement upon terms established by the Court." Regardless, the parties here still united to work the leases together, and *Kirchner* and *Valentine* direct that "the act of working it together creates a mining partnership." *Kirchner*, 58 S.E. at 615; *cited by Valentine*, 766 S.E.2d at 798. Mr. Benedum testified at trial that the "ultimate goal" was to "drill in these regions and produce oil and gas."

32. The Court also examined Blackrock's argument in its May 3, 2021 briefing that its interest is that of a "cotenant." Under West Virginia law, as with the other oil and gas producing states, a "cotenant" is a party that has an ownership interest in the underlying minerals themselves. See, e.g., 13A M.J. MINES AND MINERALS §§ 33 (2020) (describing "cotenants" in oil and gas leases as owners of the mineral interest); Jack Budig, *The Co-Tenancy Act and the Modernization of West Virginia's Oil and Gas Law*, 122 W. VA. L. REV. 631, 647 (2019) ("Co-tenancy involves situations in which more than one person owns an interest in a property (whether it be in the mineral, surface, or fee simple estate) and can take the form of tenancy in common, joint tenancy, or tenancy by the entirety."); John S. Lowe, OIL AND GAS LAW IN A NUTSHELL (7th ed. 2019) at pp. 95-97 (also noting that concurrent mineral owners are referred to as tenancy in

common, joint tenancy, and tenancy by the entirety). Since a cotenant holds an interest in the minerals themselves, a cotenant typically has the right to develop, lease, and/or sell their mineral interests. *See, e.g.*, Lowe, *supra*, at 45-47. The parties' interest mostly arises by and through the numerous leases acquired by the parties under the LAA, and as such, the interest is properly characterized as a leasehold interest or a working interest. *See* Lowe, supra, at 47-48 ("A *leasehold interest* is the right to the mineral interest granted by an oil and gas lease...The leasehold interest is frequently called the *working interest* and sometimes the *operating interest*, because it is usually the leasehold owner that works or operates the property.") (emphasis in original).

33. Further, where there is more than one party that owns a leasehold interest, as here, the owners are also referred to as "tenants in common" or "joint tenants" of the leasehold interest. *See*, e.g., 13A M.J. MINES AND MINERALS § 84 ("While co-owners or joint owners of a mining lease, before they operate for oil or gas, are tenants in common or joint tenants, when they unite and co-operate in working the lease, they constitute a mining partnership.").

34. For all these reasons, the Court does not find Blackrock's argument that Jay-Bee and Blackrock are cotenants persuasive, and instead finds the parties' relationship constitutes a mining partnership.

35. For all of the foregoing reasons, the Court finds and concludes a *de facto* mining partnership exists as to the parties in the instant civil action as to those jointly-leased, producing leases within the AMI. Accordingly, the parties' rights, remedies and damages as to lease interests that have been developed, drilled, and held by production are controlled by RUPA.

B. Dissociation of Blackrock

36. Given the Court's holding that a *de facto* mining partnership exists between Jay-Bee and Blackrock with respect to the developed AMI Interests, including those interests included

and contained in designated drilling units and held by production ("HBP"), the Court also holds that the rights and remedies of the parties to this case are governed by RUPA. Based on the jury's findings and evidence presented during both Phase 1 and Phase 2 of the trial, this Court finds that dissociation of Blackrock from the mining partnership is proper under RUPA.

37. RUPA provides that when an offending partner has violated duties owed, resulting in harm to the partnership, a non-offending partner is authorized to bring an action "for legal or equitable relief," including specifically: (1) dissociation of the offending partner and (2) a buyout of the offending partner's interests. W.VA. CODE § 47B-4-5. RUPA also allows the Court to compel a dissociation by "judicial determination" if the partner: (1) engaged in wrongful conduct that adversely and materially affected the partnership business, or (2) engaged in conduct relating to the partnership business which made it not reasonably practicable to carry on the business with the partner. W. VA. CODE § 47B-6-1. Based on the evidence presented, the Court determines that Blackrock's disassociation is warranted here and further finds that there currently exists, as testified to by Mr. Broda in Phase 2, a "totally unworkable situation" amongst the partners.

38. As such, a resolution authorizing Jay-Bee to "buyout" Blackrock's developed AMI Interests is proper under RUPA, and the Court is authorized to determine the buyout price. W. VA. CODE § 47B-7-1(a), 47B-7-1(i). Under RUPA, the "buyout price" is the amount that would have been distributable to the dissociated partner and is either the "liquidation value" or the "value based on the sale of the entire business as a going concern." W. VA. CODE § 47B-7-1(b). Additionally, the buyout price must be offset against "amounts owing...from the dissociated partner to the partnership." W. VA. CODE § 47B-7-1(c).

39. The evidence presented at both Phase 1 and Phase 2 of the trial, as well as the jury's findings following the Phase 1 proceedings, demonstrate that dissociation of Blackrock is proper

because Blackrock's prior material breach of the LAA and wrongful refusal to timely pay its proportionate costs in developing the AMI Interests has adversely and materially affected Jay-Bee's ability to develop the AMI Interests, and it is, therefore, not reasonably practicable to continue the mining partnership.

40. Case law interpreting RUPA makes clear that when a partner has engaged in "conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner"—such as a partner's failure to contribute its share of payment towards the sole partnership asset, the court may order dissociation of the partner and permit the other partners to buyout the dissociated partner's interests based upon a hypothetical sale value on the date of dissociation. *Robertson v. Jacobs Cattle Co.*, 830 N.W.2d 191, 197-98 (2013) (allowing dissociation "because the primary purpose of the partnership was to rent land, appellants' delinquency in paying rent materially and adversely affected the partnership business and made it not practicable for the partnership to carry on with appellants as partners").

41. The evidence established that Jay-Bee has spent approximately $150 million to drill and operate the wells within the AMI and is still operating at a loss of -$61 million.[5] Blackrock does not dispute that it has paid nothing with regard to development of the AMI. Further, Blackrock does not dispute the amount of drilling and operating costs incurred by Jay-Bee, nor whether such costs were reasonable, necessary, and proper incident to the development of the acreage. As such, the Court finds that Blackrock's breach and failure to timely pay its proportionate costs in developing the AMI Interests placed Jay-Bee in the untenable position of paying approximately $150 million in drilling and operating expenses to maintain and hold the leases and Jay-Bee alone bore the attendant risks associated with drilling these wells in a geologically unproven area. The

[5] *See* P. Exh. 201.

Court finds that Blackrock's breach of the LAA and failure to meaningfully participate in developing the acreage, including its failure to contribute any payment towards drilling and operating costs, materially and adversely affected the mining partnership business and made it no longer reasonably practicable for the *de facto* mining partnership to continue. *See* W. VA. CODE § 47B-6-1. Therefore, the Court finds that Blackrock must be dissociated from the mining partnership.

C. Determination of buyout price for Blackrock's interest upon dissociation

42. As discussed herein, RUPA authorizes the Court to determine the "buyout price" for a dissociated partner's interest based on the amount that would have been distributable to the dissociated partner and is either the "liquidation value" or the "value based on the sale of the entire business as a going concern." W. VA. CODE § 47B-7-1(b). Additionally, the buyout price must be offset against "amounts owing...from the dissociated partner to the partnership," and this Court's decisions on the terms of the partnership settlement (what is owed—if anything—to the dissociated partner) are to be supplemented by principles of equity. W. VA. CODE §§ 47B-1-4, 47B-7-1(c). Under RUPA, in determining the buyout price for Blackrock's interest upon dissociation, the Court must take into consideration Jay-Bee's capital and operating costs of the wells and any accompanying facilities and contractual obligations, borrowing costs, and any appropriate penalty/risk premium occasioned by Blackrock's failure to join in the geological risk, and the parties' respective efforts, and lack thereof. *See Robertson*, 830 N.W.2d at 197-98; *Forbes v. Becker*, 1 P.2d 721, 726-28 (1931) (finding that the outgoing partner was not entitled to any interest in the underlying leases, even though partnership funds and assets were employed, because the other partner alone bore the costs and risks of drilling for oil and gas).

43. Here, Blackrock does not dispute that it failed to pay Jay-Bee any portion of $150

million in drilling or operating costs and that the balance owed on the wells is approximately -$61 million. According to its Pretrial Memorandum, "Blackrock recognizes that in a Court ordered buyout under RUPA, Jay-Bee may seek a recoupment of Blackrock's proportionate share of drilling and operating costs."[6] Mr. Broda testified that none of the subject wells, as of September 15, 2021, had "paid out" taking Blackrock's interest and its share of outstanding expenses into account.[7]

44. Jay-Bee submitted evidence of Blackrock's working interest in each well. If Blackrock properly paid to participate in the drilling and operating of these wells, then Blackrock would owe a balance of approximately $2.5 million. However, because Blackrock did not contribute any funds for drilling and operating costs, Blackrock must also incur a risk premium/penalty on its working interests in the AMI wells. Given the case law interpreting RUPA and the uncontroverted evidence presented during the Phase 2 trial, the Court finds that the value of Blackrock's interest upon dissociation from the *de facto* mining partnership amounts to zero as a result of Blackrock's continuing failure to participate in the drilling and development of the acreage and its share of any concomitant costs and, importantly, its failure to participate in the geological risk associated with the same.

45. Jay-Bee's expert—Wes Casto—testified as to four independent valuations of Blackrock's working interest in the wells at issue. Each of these valuations was based upon a different penalty amount/risk premium that should be incurred by Blackrock. Mr. Casto also testified as to the industry standard for penalty amounts found in joint operating agreements between operators and their non-participating working interest owners. Mr. Casto also unequivocally testified that to his knowledge, every JOA used in the industry sets out a penalty or

[6] *See* P. Exh. 204
[7] *See* P. Exh. 203

risk premium to be borne by a non-participating working interest owner who fails to contribute to the drilling, completion, and operating expenses of the well. Additionally, Mr. Casto confirmed that he had never seen a JOA that did not call for such a penalty. Finally, Mr. Casto testified that based on his industry knowledge and experience, the average range of penalties in JOAs was 200-500 percent.

46. As such, Mr. Casto testified as to Blackrock's payout estimate assuming a 200% penalty and a 300% penalty. Under both of these assumptions, the value of Blackrock's payout with respect to the wells at issue amounts to zero. RUPA clearly informs that: (1) "partnership assets must first be applied to discharge partnership liabilities to creditors, including partners who are creditors;" (2) "obligations to known creditors must be deducted before a partner distribution can be determined;" and (3) "the buyout price is the net of ***all*** known liabilities." *Warnick v. Warnick*, 133 P.3d 997, 1000 (Wy. 2006) (emphasis added). Given the foregoing, the Court finds that the value of Blackrock's interest in the *de facto* mining partnership upon dissociation is zero as a direct result of Blackrock's persistent failure to participate in the cost and risk of drilling, completion, and development of the acreage. *See Brennan v. Brennan Associates*, 113 A.3d 957, 966 (Conn.2015) ("[a] partner should not be allowed to participate in a partnership when he does not share in the risk that the partnership will lose value.").

47. In opposition to Mr. Casto's valuation, Blackrock's expert—John Morgan—testified at trial that the valuation of Blackrock's interest in the *de facto* mining partnership upon dissociation must take into account the potential future revenue and profitability of the wells at issue. Morgan's proffered testimony as to a "net revenue stream", instead of a calculation of Blackrock's net revenue interest under the subject leases, is of no assistance to the Court. The Court further disagrees and finds that this argument is properly rejected under RUPA, which

informs that the relevant time frame for determining the value of a dissociated partner's interest is on the date of dissociation. W. VA. CODE 47B-7-1(b). The statute provides:

> The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under subsection (b), section 7, article eight of this chapter, if on the date of dissociation, the assets of the partnership were sold at a price equal to or greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership being wound up as of that date

Id. Given this statutorily required timeframe, Blackrock's argument with regard to the valuation of Blackrock's interests based on hypothetical profits from new wells or additional future operations is not persuasive.

48. The author's comments to RUPA are particularly instructive on this issue as such comments plainly state that "fluctuations in the value of partnership assets subsequent to the date of dissociation should not affect the amount of the buyout." DONN, ALLAN, HILLMAN W. ROBERT, AND WEIDNER, DONALD J., "REV. UNIFORM PARTNERSHIP ACT SECTION 701, OCT. 2020 UPDATE" comment 5.

49. Other courts analyzing RUPA have reached a similar result. *See Shoemaker v. Shoemaker*, 745 N.W.2d 299, 315 (Neb. 2008) ("We conclude that Harley was not entitled to profit distributions after the effective date of his withdrawal."); *see also Warnick* 133 P.3d at 1004 ("Warnick cites no authority supporting its proposed deduction of hypothetical sales expenses and does not contend that the deduction is necessary to arrive at fair market value. Regardless, we have expressed disapproval of such a deduction, stating 'hypothetical costs have no relationship to an arms-length sale price which is the value to be established by recognized appraisal techniques when no sale occurs."); *see also Brennan*, 113 A.3d at 966 ("[w]hen a partner is dissociated, that partner no longer shares in the risk of loss to the partnership because his interest in the partnership is valued 'at the date of dissociation' Thus, regardless of what happens to the value of the

partnership's assets after the partner is dissociated, the amount of which the dissociated partner will be bought out remains unchanged.").

50. The Court finds that since the proper date of valuation is the date of dissociation ordered herein, it does not adopt Mr. Morgan's testimony as to future valuation of Blackrock's interest. While the Court does not find that Mr. Morgan's testimony as to future wells or the future valuation of wells is too speculative, inadmissible, and/or irrelevant and does not assist the Court in reaching its conclusions[8], it does finds Mr. Morgan's testimony discredited in this area, and finds it is not as persuasive. Accordingly, the Court gives it less weight. Furthermore, Mr. Morgan's testimony is not competent evidence of a buy-out price under RUPA for the following reasons:

(1) Mr. Morgan assumed that Blackrock does not have any obligation to pay any costs to drill the wells;

(2) Mr. Morgan's calculations did not consider Blackrock's actual working interest or net revenue interest in each well;

(3) Mr. Morgan's calculations did not deduct the payments due to royalty owners, which he admits can be "14, 15 percent, maybe more[;]" and

(4) Mr. Morgan's calculations did not factor the jury's findings at Phase 1 trial and instead assumes that Blackrock would own a 25% interest in all Jay-Bee acquisitions, a claim that the jury rejected at Phase 1 trial.

51. The Court also finds that Mr. Holmes's testimony as to "undeveloped" acreage that is admittedly in existing drilling units that is HBP is misplaced and subsumed in Mr. Morgan's analysis and results in an over estimation of purported value. While the Court declines to find that Mr. Holmes is unqualified, and his testimony as to the valuation of future operations in a specific drilling unit is too speculative, inadmissible, and/or irrelevant, the Court does find that is less

[8] The Court notes that Plaintiffs' counsel lodged a running objection to Mr. Morgan's qualifications and ability to provide competent testimony in this matter.

helpful in helping the Court find the relative value for purposes of dissolution of the mining partnership.

D. Specific Performance.

52. Jay-Bee has sought specific performance with regard to certain property interests, which the evidence shows Benedum individually and/or Blackrock acquired in their names or through their strawman BMB Enterprises, LLC. To invoke the remedy of specific performance, the claimant must prove that the contract is enforceable at law, and the performance must be the specific thing called for by the contract. *Allegheny Country Farms, Inc. v. Huffman*, 787 S.E.2d 626, 631 (2016). "[T]he equitable remedy of specific performance is routinely awarded in contract actions involving real property, on the premise that each parcel of real property is unique[.]" *Id.* "Generally courts of equity will decree specific performance when the contract is in writing, is certain and fair in all its terms, is free of fraud, misapprehension or mistake, is for an adequate consideration, and is capable of being performed." *Brand v. Lowther*, 285 S.E.2d 474, 479 (1981). A party will be entitled to specific performance when it does not "sleep on its rights" and demonstrates that it has either performed its obligations according to the terms of the contract, or was ready, willing and able to perform but was prevented from doing so by the conduct of the other party. *Allegheny*, 237 W. Va. At 362. Specific performance is also an inherent equitable remedy under RUPA to effectuate a dissociation by ordering the conveyance of the mining partnership's interests from the offending partner – Blackrock – to the prevailing partner – Jay-Bee.

53. Here, the Court finds that Blackrock breached the LAA when: (1) its owner, Michael Benedum, acquired AMI Interests individually for the Bunner property located in the P5N unit, and the Tawney property, both of which are currently producing hydrocarbons; (2) it and its

strawman, BMB Enterprises, LLC, acquired AMI Interests for the Shimer property[9], located in developed units and currently producing hydrocarbons; and (3) it acquired AMI Interests in its name for the Grimm and Pethtel properties, located in developed units and currently producing hydrocarbons. Paragraph 2 of the LAA obligated both Jay-Bee and Blackrock to offer to the other an interest in all leases, land, and minerals owned or leased in the defined AMI with "no exceptions".

54. Further, extensive testimony was heard at Phase 1 of this trial regarding the fact that Blackrock was to provide certified title, under the terms of the LAA. The evidence before the Court conclusively establishes that Blackrock failed to offer certain interests to Jay-Bee in accordance with the LAA. Jay-Bee seeks specific performance on those acquisitions, specifically the Bunner property, the Pethtel property, the Tawney property[10] (including 100% of the leasing rights, 50% of the royalty, and 100% of the surface of said tract for which Jay-Bee has already paid the agreed upon compensation and about which Blackrock's counsel acknowledged to the Court at the pre-hearing of this matter [on August 30, 2021] would be done), the Grimm property, and the Shimer property. Importantly, these property interests are included in producing drilling units covered by the AMI and must be addressed by the Court as a part of the mining partnership. As such, the Court has jurisdiction to adjudicate the parties' rights thereto incident to Blackrock's dissociation from the mining partnership.

55. Blackrock argued in its pre-trial briefing that Jay-Bee is not entitled to specific performance because the Court determined that the LAA was no longer in place following Blackrock's February 4, 2014 breach. The Court concludes that this argument is without merit and is properly rejected. Following the Phase 1 trial, the jury found that Blackrock had committed the

[9] *See* P. Exs. 54A (acquired on 7/2/15) and 54B; P. Exs. 80A-C.
[10] *See* P. Ex. 22

first material breach. Given this finding, Blackrock is precluded from receiving any damages or other affirmative relief and is liable for any equitable remedies and damages incurred by Jay-Bee. Specific Performance is such an equitable remedy. West Virginia recognizes the doctrine of first breach and that "material breaches will satisfy the doctrine and permit a nonbreaching party to escape its subsequent performance requirements." *Triple 7 Commodities, Inc. v. High Country Mining, Inc.* 245 W. Va. 63, 857 S.E.2d 403, 414 (2021).

56. Specifically, with respect to the Bunner property, Blackrock claims that Jay-Bee is not entitled to specific performance because the acreage was acquired before the LAA was executed. The trial testimony, however, clearly established that the Bunner property should have been offered to Jay-Bee by Blackrock. Indeed, the evidence indicates that Mr. Benedum instructed Blackrock's admitted agent, Abstract West Virginia, to offer the Bunner property acquisition to Jay-Bee. Additionally, evidence presented regarding the October 2013 "reconciliation meeting" in Cairo, establishes that the parties agreed to exchange all properties that had been acquired as of such date, which necessarily included properties that were acquired before the LAA was executed (*e.g.*, the Shingleton lease acquired on 4/24/13).

57. Regarding the Pethtel interests, the parties disputed whether an offer was proper for this property due to title issues, which were subsequently cleared up by Jay-Bee, who then repeatedly asked for said interests to be assigned, but they never were. During Phase 1, testimony was presented and the jury considered Blackrock's argument that Jay-Bee breached the LAA when it allegedly rejected the offer. The jury, however, rejected this argument and found that Blackrock first materially breached the LAA on February 4, 2014.

58. With regard to the Grimm interest, during Phase 1, testimony was presented that indicated Jay-Bee had paid for the leasing of the Grimm property, but Blackrock failed to assign

the entire lease.

59. With regard to a portion of the Shimer interest, during Phase 1, testimony was presented that indicated Jay-Bee had paid for the leasing of the Shimer property, but Blackrock failed to assign the entire lease.

60. Also with regard to the Shimer property during both Phase 1 and Phase 2, testimony was presented that indicated Blackrock and its owner, Michael Benedum, utilized a strawman company to purchase the Shimer mineral interests and never offered them to Jay-Bee. These interests were purchased during the existence of the *de facto* mining partnership and are included in productive drilling units covered by the AMI and mining partnership.

61. Mr. Broda's Phase 2 testimony also described Jay-Bee's $483,178.50 in lease extension payments[11] to continue leases acquired and previously assigned to Jay-Bee by Blackrock. So as not to cause a cloud on title going forward and incident to Blackrock's dissociation, Blackrock shall convey any right, title or interest (including any Earned or Additional Interest under the LAA) in and to said leases to Jay-Bee. Similarly, the Court finds it would be prudent to cure any title defect post-dissociation and that Blackrock shall provide a quit claim instrument with regard to all other leases and property interests offered by Blackrock under the LAA on which Jay-Bee paid consideration, including rentals.

62. Given the foregoing, as a result of Blackrock's prior material breach of the LAA on February 4, 2014 and incident to dissociation from the mining partnership, Jay-Bee is entitled to specific performance of the LAA and equitable relief under RUPA to carry-out the complete dissociation of the parties from their *de facto* mining partnership with regard to the specific tracts of land referenced above, as well as a general quitclaim of Blackrock's interests in and to all

[11] *See* P. Ex. 202.

properties subject to the LAA and *de facto* mining partnership. Accordingly, Blackrock must convey such interests to Jay-Bee, provide the requisite documentation in recordable form to evidence such conveyances, and provide all requisite information in accordance with the LAA and this dissociation.

63. Additionally, the Court addresses any remaining undeveloped acreage. As the Court has already held in its May 13, 2021 Order Regarding Mining Partnership, as to those undeveloped, or non-producing, leases within the AMI, West Virginia Code Chapter 37 controls the disposition of undeveloped lease interests. The authority of *Valentine v. Sugar Rock, Inc.*, 766 S.E.2d 785, 796 (W. Va. 2014) dictates that RUPA cannot control lease interests that have **not** yet been developed. *See Valentine*, 766 S.E.2d at 798 (requiring "unit[y] in working the [lease] for the purpose of extracting mineral therefrom.").

64. West Virginia Code Chapter 37 allows for a "partition" of interests when parties cannot agree on the property's management. A partition can be done "in kind," or can be "allotted" to a particular party. Where there is a substantial difference of opinion as to the value of the undeveloped interests, Chapter 37 authorizes this Court to appoint three independent commissioners to "fix the value of the whole subject."

65. Why and when partition is allowed in the context of mineral interests was discussed in detail by the West Virginia Supreme Court in the 1978 opinion of *Consol. Gas Supply Co. v. Riley*, 161 W. Va. 782, 247 S.E.2d 712 (1978). Therein, the Court explained the rationale for partition suits:

> One of the principle goals of partition is to promote the alienability of property which has come into divided ownership. The usual problem attendant to divided ownership is that the parties are unable to agree on a common plan for utilization of the property and as a result nothing is done to benefit their interests. Partition also permits those co-owners who wish to obtain present realization of the value

> of their interests to do so. Our cases demonstrate that the right to partition is ultimately determined on the particular facts of each case.

Id. at 717; *see also Laurita v. Estate of Moran*, 216 W. Va. 400, 607 S.E.2d 506, 508-09 (2004) ("Moreover, the east-west division proposed by the appellants would essentially force the Lauritas to partner with the appellants in the development of the coal estate, via the Lauritas' adjacent property. A primary purpose of partition is to divide properties when people cannot agree on the property's management, not to coerce people into joint management of the property.") (emphasis added). "As a result of the 1939 amendment to W. Va Code, 37-4-1, there is a statutory right to have partition in kind considered where mineral interests are involved." *Consolidated Gas*, 247 S.E.2d 712 (1978) at Syl. Pt. 4.

66. It has previously been presented in evidence that there are some leases in which Jay-Bee and Blackrock both hold lease interests, but that have not yet (and may never be) drilled or otherwise developed. Further, it has been proffered that some, if not many, of these leases may have expired. Accordingly, since the Court has determined that RUPA controls the parties' relationship with respect to the lease interests that have been developed, the Court must also resolve the disposition of the jointly owned undeveloped lease interests, if any remain (unexpired). To that end, the Court reaffirms its May 13, 2021 conclusion that, here, West Virginia Code Chapter 37 shall control the disposition of undeveloped lease interests.

67. If the parties differ on valuation, on whether a lease interest can be partitioned-in-kind, or if a sale must occur, then Chapter 37 requires that this Court appoint independent commissioners. By letter to the Court and included in the court file on August 6, 2021, counsel for Blackrock agrees that commissioners would be necessary to determine value.

68. The Court reiterates its finding that Chapter 37 applies to the parties in the instant

litigation as to the undeveloped leases, if any remain. The Court finds that three commissioners are needed to place a value on any undeveloped acreage. The Court hereby appoints the following three qualified and disinterested persons to act as commissioners and fix the value of the undeveloped acreage, and to submit a report to the undersigned within ninety days of the entry of this order: Michael H. Webb, 175 Grape Island, St. Marys, WV 26170; Chris Metz, 802 Third St., St. Marys, WV 26170; and Steve Knight, 914 Fourth Street, St. Marys, WV 26170.

69. Finally, in this Final Order, the Court affirms the cost-shifting in its prior discovery orders. See Order entered March 18, 2019 and October 20, 2020.

The Court directs the Circuit Clerk to distribute attested copies of this order to all counsel of record, and to the Business Court Central Office at West Virginia Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

ENTER: April 25, 2022.

JUDGE MICHAEL D. LORENSEN
JUDGE OF THE WEST VIRGINIA
BUSINESS COURT DIVISION

Prepared by (with changes by the Court):

/s/ Geoffrey H. Bracken
Charles R. Bailey
W. Va. Bar No. 0202
BAILEY & WYANT, PLLC
500 Virginia Street East, Suite 600

P.O. Box 3710
Charleston, West Virginia 25337-3710
T: 304.345.4222 | F: 304.343.3133

Geoffrey Bracken, *pro hac vice*
Texas Bar No. 02809750
Vi T. Tran, *pro hac vice*
Texas Bar No. 24093274
FOLEY & LARDNER LLP
1000 Louisiana, Suite 2000
Houston, Texas 77002-2099
T: 713.276.5739