

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL.
CLAUGUS FAMILY FARM, L.P.,

Relator,

vs.

SEVENTH DISTRICT COURT OF
APPEALS, ET AL.,

Respondents.

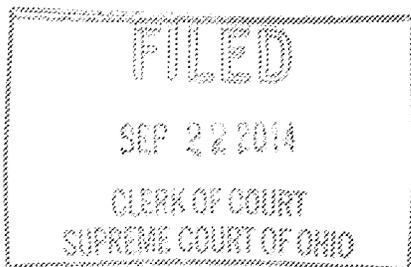
CASE NO. 14-0423

ORIGINAL ACTION IN
PROHIBITION AND MANDAMUS

**INTERVENING RESPONDENT BECK ENERGY CORPORATION'S
EVIDENCE**

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*Attorneys for Intervening Respondent Beck
Energy Corporation*



Michael DeWine (0009181),
Ohio Attorney General
Sarah Pierce (008799),
COUNSEL OF RECORD

Tiffany Carwile (0082522),
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*Counsel for Respondents, The Seventh District
Court of Appeals, Judge Gene Donofrio, Judge
Joseph J. Vukovich and Judge Mary DeGenaro*

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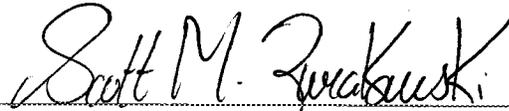
ORIGINAL ACTION IN
PROHIBITION AND MANDAMUS

**INTERVENING RESPONDENT BECK ENERGY CORPORATION'S
EVIDENCE**

Intervening Respondent, Beck Energy Corporation (“Beck Energy”), submits the attached documents in compliance with the Court’s Entry filed September 3, 2014, informing the parties that evidence intended to be presented in this matter was to be filed within 20 days of the Entry. Intervening Respondent Beck Energy specifically submits:

- Exhibit A – Affidavit of Raymond Beck and supporting documents;
- Exhibit B – Affidavit of Scott M. Zurakowski and supporting documents.

Respectfully submitted,



Scott M. Zurakowski (0069040),

COUNSEL OF RECORD,

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Gregory W. Watts (0082127),

Aletha M. Carver (0059157), of

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*Counsel for Intervening Respondent Beck Energy
Corporation*

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served by Ordinary U.S. Mail, this 22nd

day of September 2014 upon:

Daniel H. Plumly, Esq.
Andrew P. Lycans, Esq.
Critchfield, Critchfield & Johnston, Ltd.
225 North Market Street, PO Box 599
Wooster, Ohio 44691
*Attorneys for Relator
Claugus Family Farm, L.P.*

Michael DeWine, Esq.
Ohio Attorney General
Sarah Pierce, Esq.
Tiffany Carwile, Esq.
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30 East Broad Street, 16th Floor
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*Counsel for Respondents,
The Seventh District Court of Appeals
Judge Gene Donofrio, Judge Joseph J.
Vukovich and Judge Mary DeGenaro*



Scott M. Zurakowski (0069040),
COUNSEL OF RECORD,
William G. Williams (0013107),
Gregory W. Watts (0082127),
Aletha M. Carver (0059157), of
KRUGLIAK, WILKINS, GRIFFITHS
& DOUGHERTY CO., L.P.A.
*Counsel for Intervening Respondent Beck Energy
Corporation*

EXHIBIT A

IN THE SUPREME COURT OF OHIO

**STATE OF OHIO EX REL., CLAUGUS
FAMILY FARM, L.P.,**

Relator,

vs.

**SEVENTH DISTRICT COURT OF
APPEALS, ET AL.,**

Respondents.

CASE NO. 14-0423

ORIGINAL ACTION IN
PROHIBITION AND MANDAMUS

AFFIDAVIT OF RAYMOND T. BECK

Affiant, Raymond T. Beck, being duly sworn and cautioned, for his Affidavit,
states as follows:

1. My name is Raymond T. Beck, Affiant, and being first duly sworn, depose
and state as follows:

2. I am over the age of 18 and have personal knowledge of the matters
testified to in this Affidavit.

BECK ENERGY CORPORATION

3. I am the President and Owner of Beck Energy Corporation (hereinafter

“Beck Energy”), an Ohio for-profit corporation engaged in the exploration, drilling, and production of oil and gas throughout the Appalachian Basin, in Ohio.

4. I formed Beck Energy in 1978. Beck Energy has offices located in Ravenna, Ohio, and Woodsfield, Ohio.

5. Since its inception, Beck Energy has completed and drilled three hundred and sixty (360) wells in thirteen (13) counties throughout the State of Ohio.

6. Presently, Beck Energy has fifteen (15) employees, each with families that rely on their income from Beck Energy.

7. Beck Energy has traditionally drilled shallow oil and gas wells in the State of Ohio. Each well, on average, costs approximately three hundred thousand dollars (\$300,000).

8. Typically, Beck Energy does not engage in the exploration, production, and drilling of deep wells (those deeper than eight thousand feet), because of the costs associated with drilling same, which can range anywhere from fifteen (15) to twenty (20) times the cost of drilling a shallow well.

GT83 LEASE

9. Throughout its history, Beck Energy has utilized the GT83 Oil and Gas Lease (hereinafter “GT83 Lease”) as its preferred oil and gas lease form.

10. GT stands for Geiger and Teeple, aka Geiger, Teeple, Smith & Hahn, P.L.L., a well-known and reputable oil and gas law firm located in Alliance, Ohio.

11. The GT83 Lease is a form lease utilized by Beck Energy and countless other producers in Ohio.

12. Affiant estimates that Beck Energy has entered into over seven hundred (700) GT83 Leases since its inception, covering tens of thousands of acres of land throughout the State of Ohio.

JEFFERS LEASE

13. On February 4, 2004, Beck Energy entered into a GT83 Lease with Francis W. Jeffers and Barbara J. Jeffers, husband and wife, (hereinafter “Jeffers Lease”), who resided in Woodsfield, Monroe County, Ohio. Claugus Family Farm, L.P. subsequently acquired the Jeffers Lease. Attached hereto as Exhibit 1 is a true and accurate copy of the Jeffers Lease.

14. The GT83 Jeffers Lease covers sixty-four (64) acres located in Section 9, Green Township, Monroe County, Ohio.

15. The Jeffers Lease contains a ten-year (10) primary term and secondary term so long as oil, gas, and other constituents are produced or capable of being produced.

16. The Jeffers Lease requires the payment of a sixty-four dollar (\$64) per year delay rental, which Beck Energy has paid in full each year since the Lease’s inception.

17. To date, no well has been drilled per the Jeffers Lease, nor has the Jeffers Lease been pooled or unitized with other acreage.

HUPP LITIGATION

18. In *Hupp, et al. v. Beck Energy Corporation*, a declaratory judgment action, Monroe County Case No. 2011-345, the trial court found the GT83 Lease void ab initio and granted summary judgment in favor of the *Hupp* Plaintiffs.

19. After declaring the GT83 Lease void ab initio, and granting the *Hupp* Plaintiffs their requested declaratory relief, the Monroe County Court of Common Pleas certified a class action defining the members of the class as all Ohio lessors who have entered into GT83

Leases with Beck Energy on which no well has been drilled and no pooling or unitizing of the Lease has occurred.

20. The Monroe County Court of Common Pleas denied the *Hupp* Plaintiffs' counsels' request to give notice of the lawsuit to class members.

21. The Jeffers Lease satisfies the class definition and is included in the *Hupp* class action.

22. Beck Energy appealed the trial court's decisions finding the lease void ab initio, certifying the class, and defining the class, to the Seventh District Court of Appeals, in Case Nos. 12 MO 6, 13 MO 3, and 13 MO 11.

IMPACT OF HUPP LITIGATION

23. The *Hupp* decision has been devastating to Beck Energy's business and severely limited its continued exploration, production, and drilling for oil and gas.

24. The *Hupp* decision finding the GT83 Lease, including the Jeffers Lease, void ab initio has placed a cloud on Beck Energy's lease rights.

25. As a result of the *Hupp* decision, if Beck Energy were to drill a well while the *Hupp* litigation is pending, Beck Energy risks losing the financial investment involved with the exploration and drilling for oil and gas, as well as the cost and production if the GT83 Lease is found not to be valid by the Seventh Appellate District..

26. The *Hupp* decision diminishes the time period Beck Energy has to develop the class action GT83 Leases, including the Jeffers Leases, because Beck Energy cannot drill, on the Leases, while the *Hupp* litigation remains pending.

27. The one and only time Beck Energy attempted to drill a well, on leases subject to the *Hupp* decision, Beck Energy was immediately met with a Complaint and Motion

for Temporary Restraining Order filed by landowners represented by Slater & Zurz (counsel for the *Hupp* class action plaintiffs), which was granted by the Monroe County Common Pleas Court in *Donald J. Pniaczek, et al. v. Beck Energy Corp., et al.*, Monroe County Common Pleas Court Case No.2012-274. Attached hereto as Exhibit 2 is a true and accurate copy of the Judgment Entry, from the Monroe County Court of Common Pleas, filed on August 31, 2012, restraining Beck Energy from drilling on the Pniaczeks' property.

27. To maintain the status quo, while the validity of the GT83 Lease is determined, the Seventh Appellate District issued a Tolling Order commencing on October 1, 2012, and continuing during the pendency of all appeals, until the Ohio Supreme Court accepts or declines jurisdiction. At the expiration of the tolling period, if the GT83 Lease is found to be valid, Beck Energy will have as much time to meet any and all of its obligations under the GT83 Leases as it had as of October 1, 2012.

28. To date, without the Tolling Order, a total of eighty-four (84) GT83 Leases would have expired, during the pendency of the *Hupp* litigation. The eighty-four (84) GT83 Leases cover approximately five thousand acres (5,000) of land in Ohio.

HUPP LITIGATION PUBLICITY

29. The publicity and knowledge of the *Hupp* decision and subsequent orders, including the Tolling Order, are well-known by citizens, and oil and gas attorneys, in northeastern and southeastern Ohio.

30. On July 2, 2013, James W. Slater, a partner at the law firm of Slater & Zurz, and counsel for the *Hupp* Plaintiffs, authored an article titled "Ohio Attorneys Get Court to Rule Certain Inactive Oil and Gas Leases are Void," discussing the trial court's granting of summary judgment against Beck Energy in the *Hupp* litigation. The article was published in the

Daily Jeffersonian, a local newspaper of general circulation in southeastern Ohio, including Monroe County. Attached hereto as Exhibit 3 is a true and accurate copy of said article.

31. Further, on October 17, 2013, the Monroe Beacon, a local newspaper of general circulation in Monroe County, Ohio, published a notice of the Tolling Order. Attached hereto as Exhibit 4 is a true and accurate copy of the public notice.

CLAUGUS/GULFPORT LEASE

33. The Clauguses entered into a paid-up oil and gas lease with Gulfport on September 30, 2013 (hereinafter "Clausus/Gulfport Lease"). Attached hereto as Exhibit 5 is a true and accurate copy of the Lease.

34. The primary term of the Jeffers Lease, even without the Tolling Order, would not have expired until February 3, 2014.

35. The Tolling Order, which is at issue in this original action, was issued by the Seventh Appellate District on September 26, 2013.

36. The Tolling Order pre-dated the Clausus/Gulfport Lease.

37. At the time the parties entered into the Clausus/Gulfport Lease, the Jeffers Lease was still in effect.

38. By entering into the Clausus/Gulfport Lease, Clausus breached Paragraph 18 of the Jeffers Lease, which prohibits the lessor from entering into any other oil and gas lease, while the Jeffers Lease is in effect.

SLATER & ZURZ, LLP (CLASS COUNSEL)

39. Slater & Zurz, LLP, a law firm in Akron, Ohio, has served as class counsel since the inception of the *Hupp* litigation.

40. In certifying the class, the Monroe County Court of Common Pleas specifically found Slater & Zurz qualified counsel to represent the class members.

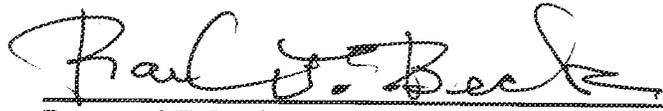
41. Included as a class member is the Claugus Family Farm, L.P.

42. Slater & Zurz did not appeal the trial court's judgment entry and decision determining that no notice was due the *Hupp* class members.

43. Slater & Zurz never appealed the Tolling Order issued by the Seventh Appellate District.

44. Claugus never filed a motion to intervene in the *Hupp* litigation, in either the Monroe County Court of Common Pleas or the Seventh Appellate District.

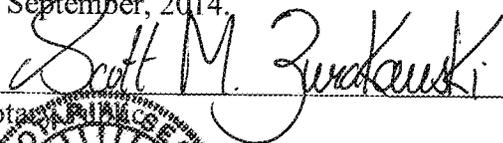
Further, Affiant saith naught.



Raymond T. Beck, President
BECK ENERGY CORPORATION

STATE OF OHIO, COUNTY OF SUMMIT, SS:

Sworn to before me and subscribed in my presence at MUNROE FALLS Ohio,
this 19 day of September, 2014.



Notary Public

Scott M. Zurakowski, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.03 R.C.

EXHIBIT 1

OIL AND GAS LEASE

Form G&T (83)

THIS AGREEMENT, made and entered into this 4 day of FEBRUARY, 2004, by and between

FRANCIS W. JEFFERS AND BARBARA J. JEFFERS (H&W)
43400 SUBARTREE RD.
of WOODSFIELD, OHIO 43793 (Phone) (740) 472-1588

hereinafter called the Lessor, and

BECK ENERGY CORPORATION, Box 1070, Ravenna, OH 44266

hereinafter called the Lessee, WITNESSETH:

1. That the Lessor, for and in consideration of one dollar (\$1.00) and other valuable consideration in hand paid by the Lessee, the receipt of which is hereby acknowledged, and the covenants and agreements hereinafter contained, does hereby lease and let exclusively unto the Lessee, for the purpose of drilling, operation for, producing and removing oil and gas and all the constituents thereof, and of injecting air, gas, brine and other substances from any source and into any subsurface strata, other than potable water strata and workable coal strata, (including but not limited to the right to inject any wells on the leasehold property and to otherwise conduct all such secondary or tertiary operations as may be required in the opinion of the Lessee,) and to transport by pipelines or otherwise across and through said lands oil, gas and their constituents from the subject and other lands, regardless of the source of the gas or the location of the wells, and of placing to transport gas from other properties across the leasehold premises shall survive the term of this lease for so long as the transportation of such gas may be desired by the Lessee, and of piling of tanks, equipment, roads and structures thereon to procure and operate for the said products, together with the right to enter into and upon the leased premises at all times for the aforesaid

purposes, being all that certain tract of land situated in Section/Lot/District No. 9 of GREEN Township MONROE County, Ohio, bounded substantially as follows:

North by lands of CLAUGUS

East by lands of ROTH AND LAUDER

South by lands of SECTION LINE

West by lands of SECTION LINE

being all the property owned by Lessor or to which the Lessor may have any rights in said Section/Lot/District or adjoining Sections/Lots/Districts, containing 64 acres, more or less, and being the property described in Deed Volume _____ Page _____ of the _____ County Record of Deeds.

2. This lease shall continue in force and the rights granted hereunder be quietly enjoyed by the Lessee for a term of ten years and so much longer thereafter as oil or gas or their constituents are produced or are capable of being produced on the premises in paying quantities, in the judgment of the Lessee, or as the premises shall be operated by the Lessee in the search for oil or gas and as provided in Paragraph 7 following.

3. This lease, however, shall become null and void and all rights of either party hereunder shall cease and terminate unless, within -12- months from the date hereof, a well shall be commenced on the premises, or unless the Lessee shall thereafter pay a delay rental of 64.00 Dollars each year, payments to be made quarterly until the commencement of a well. A well shall be deemed commenced when preparations for drilling have been commenced.

4. In consideration of the premises the Lessee covenants and agrees:
(A) To deliver to the credit of the Lessor in tanks or pipelines, as royalty, free of cost, the equal one-eighth (1/8) part of all oil produced and saved from the premises, or at Lessee's option to pay Lessor the market price for such one-eighth (1/8) royalty oil at the published rate for oil of like grade and gravity prevailing on the date such oil is run into tanks or pipelines.
(B) To pay to the Lessee, as royalty for the gas marketed and used off the premises and produced from each well drilled thereon, the sum of one-eighth (1/8) of the price paid to Lessee per thousand cubic feet of such gas so marketed and used, measured in accordance with Boyle's Law for the measurement of gas at varying pressures, on the basis of 10 ounces above 14.73 pounds atmospheric pressure, at a standard base temperature of 60° Fahrenheit and stipulated flowing temperature of 60° Fahrenheit, without allowance for temperature and barometric variations less any charges for transportation or compression paid by Lessee to deliver the gas for sale. Payment of royalty for gas marketed during any calendar month to be on or about the 30th day after receipt of such funds by the Lessee.
(C) Lessee to deduct from payments in (A) and (B) above from receipts of proceeds by Lessee, Lessor's prorate share of any tax imposed by any government body.
(D) In the event Lessee does not sell the gas to others, Lessor shall be paid on the basis of the lowest field market price paid by any public utility in the state at the well head for gas of like kind and quality, and on the same basis that such utility would pay for such gas, including any escalation in price that such utility would pay for such gas as if a contract for the sale of same had been entered into at the time of initial production.

5. All money due under this lease shall be paid or tendered to the Lessor by check made payable to the order of and mailed to FRANCIS W. JEFFERS and the said named person shall continue as Lessor's agent to receive any and all sums payable under this lease regardless of changes in ownership in the premises, or in the oil or gas or their constituents, or in the rentals or royalties accruing hereunder until delivery to the Lessee of notice of change of ownership as hereinafter provided.

6. The Lessor may, at Lessor's sole risk and cost, lay a pipeline to any one gas well on the premises, and take gas produced from said well for domestic use in one dwelling house on the leased premises, at Lessor's own risk, subject to the use and the right of abandonment of the well by the Lessee, and subject to any curtailments or shut-in by any purchaser of the gas. The first two hundred thousand cubic feet of gas taken each year shall be free of cost, but all gas in excess of two hundred thousand cubic feet of gas taken in each year shall be paid for at the best published rates of the gas utility in the town or area nearest to the leased premises or the field market rate, whichever is higher. Lessor to lay and maintain the pipeline and furnish regulators and other necessary equipment at Lessor's expense. Lessor shall also, at the request of Lessee, install a meter to measure said gas. This privilege is upon the condition precedent that the Lessor shall subscribe to and be bound by the reasonable rules and regulations of the Lessee relating to the use of iron gas, and Lessor shall maintain the said pipeline, regulators and equipment in good repair and free of all gas leaks and operate the same so as not to cause waste or unnecessary leaks of gas. If the Lessor shall take excess gas as aforesaid in any year and fail to pay for the same, the Lessee may deduct payment for such excess gas from any rentals or royalties accruing to the Lessor hereunder. Lessor acknowledges that he has been advised as to the risks inherent in the taking of gas in this manner, and Lessor agrees to assume all such risks whether same be caused by Lessor's lines or equipment, or whether same be caused by Lessee's equipment or well operation; and Lessor agrees to hold Lessee and the well operator and all parties in interest in any well on the leasehold premises harmless from any claims of any nature whatsoever which may rise by the usage of gas from any such well by Lessor, his heirs, executors, administrators and assigns. Lessor further agrees that upon the sale or transfer of the leasehold premises wherein someone other than the Lessor is entitled to take the gas under this Paragraph 6, that the gas supply will be terminated by Lessee until the Buyer of the property rights of the gas is not being assignable without the consent of the Lessee.

7. In the event a well drilled hereunder is a dry hole and is plugged according to law, this lease shall become null and void and all rights of either party hereunder shall cease and terminate, unless within twelve (12) months from the date of the completion of the plugging of such well, the Lessee shall commence another well, or unless the Lessee after the termination of said twelve month period resumes the payment of delay rental as hereinabove provided.

8. In the event a well drilled hereunder is a producing well and the Lessee is unable to market the production therefrom, or should production cease from a producing well drilled on the premises, or should the Lessee desire to shut in producing wells, the Lessee agrees to pay the Lessor, commencing on the date one year from the completion of such producing well or the cessation of production, or the shutting in of producing wells, an advance royalty in the amount and under the terms hereinabove provided for delay rental until production is marketed and sold off the premises or such well is plugged and abandoned according to law. In the event no delay rentals are stated, the advance royalty payable hereunder shall be made on the basis of \$1.00 per acre per year.

9. The consideration, land rentals or royalties paid and to be paid, as herein provided, are and will be accepted by the Lessor as adequate and full consideration for all the rights herein granted to the Lessee, and the further right of drilling or not drilling on the leased premises, whether to offset producing wells on adjacent or adjoining lands or otherwise, as the Lessee may elect.

10. The Lessor hereby grants to the Lessee the right at any time to consolidate the leased premises or any part thereof or strata therein with other lands to form an oil and gas development unit of not more than 640 acres, or such larger unit as may be required by state law or regulation for the purpose of drilling a well thereon, but the Lessee shall in no event be required to drill more than one well on such unit. Any well drilled on said development unit whether or not located on the leased premises, shall nevertheless be deemed to be located upon the leased premises within the meaning and for the provisions and covenants of this lease to the same effect as if all the lands comprising said unit were described in and subject to this lease; provided, however, that only the owner of the lands on which such well is located may take gas for use in one dwelling house on such owner's lands in accordance with the provisions of this lease, and consolidated bears to the total number of acres comprising said development unit. The Lessee shall effect such consolidation by executing a declaration of consolidation with the same formally the leased premises are located and by mailing a copy thereof to the Lessor at the address hereinabove set forth unless the Lessee is furnished with another address. If the well on said development unit shall thereafter be shut in, the well rental for shut-in royalty hereinbefore provided for such use shall be payable to the owners of the parcels of land comprising said unit in the proportion that the acreage of each parcel bears to the entire acreage consolidated. Lessee shall have the right to amend, alter or correct any such consolidation of any time in the same manner as herein provided.

11. In case the Lessor owns a less interest in the above described premises than the entire and undivided fee simple therein, then the royalties and rentals herein provided for shall be paid to the Lessor only in the proportion which such interest bears to the whole and undivided fee. If said land is owned by two or more parties, or the ownership of any interest therein should hereafter be transferred by sale, devise or operation of law, said land, nevertheless, may be held, developed and operated as an entirety, and the rentals and royalties shall be divided among and paid to such several owners in the proportion that the acreage owned by each such owner bears to the entire leased acreage.

12. No change of ownership in the leased premises or in the rentals or royalties hereunder shall be binding on the Lessee until after notice to the Lessee by delivery of notice in writing duly signed by the parties to the instrument of conveyance or assignment and delivery of a duly certified copy thereof to the Lessee.

13. The Lessee shall have the right to assign and transfer the within lease in whole or in part, and Lessor waives notice of any assignment or transfer of the within lease. Failure of payment of royalties hereunder. The Lessor further grants to the Lessee, for the protection of the Lessee's interest hereunder, the right to pay and satisfy any claim or lien against the Lessor's interest in of any existing liens on the premises.

14. The Lessee shall bury, when so requested by the Lessor, all pipelines used to conduct oil or gas to, on, through and off the premises and pay all damages to growing crops caused by operations under this lease. Lessee agrees to restore the premises in accordance with state laws. Any damages if not mutually agreed upon, to be ascertained and determined by three disinterested persons, one thereof to be appointed by the Lessor, one by the Lessee, and the third by the two so appointed, and the award of such three persons shall be final and conclusive and binding on all parties. Each party shall pay the cost of their appraiser and shall share the cost of the third appraiser. Arbitration shall be mandatory. No well shall be drilled within 200 feet of any existing barn or dwelling.

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15. The Lessee shall have the privilege of using sufficient oil, gas and water for operating on the premises and the right at any time during or after the expiration of this lease to remove all pipe, well casing, machinery, equipment or fixtures placed on the premises. The Lessee shall have the right to surrender this lease or any portion thereof by written notice to the Lessor describing the portion which it desires to surrender, or by returning the lease to the Lessor with the endorsement of surrender thereof, or by recording the surrender or partial surrender of this lease, any of all parties hereto relating in any way to the portion or all the premises indicated on said surrender, and the land rental hereinbefore set forth shall be reduced in proportion to the acreage surrendered.

16. In the event the Lessee is unable to perform any of the acts to be performed by the Lessee by reason of force majeure, including but not limited to acts of God, strikes, riots, and governmental restrictions including but not limited to restrictions on the use of roads, this lease shall nevertheless remain in full force and effect until the Lessee can perform said act or acts and in no event shall the within lease expire for a period of ninety days after the termination of any force majeure.

17. In the event Lessor considers that Lessee has not complied with any of its obligations hereunder, either express or implied, Lessor shall notify Lessee in writing setting out specifically in what respects Lessee has breached this contract. Lessee shall then have thirty (30) days after receipt of said notice within which to meet or commence to meet all or any part of the breaches alleged by Lessor. The service of said notice shall be precedent to the bringing of any action by Lessor on said lease for any cause, and no such action shall be brought until the lapse of thirty (30) days after service of such notice on Lessee. Neither the service of said notice nor the doing of any acts by Lessee aimed to meet all or any part of the alleged breaches shall be deemed an admission or presumption that Lessee has failed to perform all its obligations hereunder.

18. In consideration of the acceptance of this lease by the Lessee, the Lessor agrees for himself and his heirs, successors and assigns, that no other lease for the minerals covered by this lease shall be granted by the Lessor during the term of this lease or any extension or renewal thereof granted to the Lessee herein.

19. All covenants and conditions of this lease shall extend to their heirs, personal representatives, successors and assigns, and the Lessor hereby warrants and agrees to defend the title to the lands herein described. It is mutually agreed that this instrument contains and expresses all of the agreements and understandings of the parties in regard to the subject matter thereof, and no implied covenant, agreement or obligation shall be read into this agreement or imposed upon the parties or either of them. Lessor further agrees to sign such additional documents as may be reasonably requested by Lessee to perfect Lessee's title to the oil and gas leased herein and such other documents relating to the sale of production as may be required by Lessee or others.

20. THE LESSOR AND LESSEE WILL MUTUALLY AGREE ON LOCATIONS OF ALL WELL LOCATIONS AND INGRESS ROADS.

IN WITNESS WHEREOF the Lessors have hereunto set their hands.

Signed and acknowledged in the presence of:

James M. Beck Francis W. Jeffers Social Security or Tax ID No. _____
 _____ FRANCIS W. JEFFERS _____
 _____ Barbara J. Jeffers _____
 _____ BARBARA J. JEFFERS _____
 _____ _____ _____
 _____ _____ _____

STATE OF OHIO)
 COUNTY OF MONROE) SS: INDIVIDUAL

Before me a Notary Public in and for said county and state personally appeared the above named FRANCIS W. JEFFERS AND BARBARA J. JEFFERS who acknowledged to me that THEY did execute the foregoing instrument and that the same is THEIR free act and deed for the purposes therein set forth.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal at WOODSFIELD, OHIO this 4 day of FEBRUARY, 20 04.

James M. Beck
 Notary Public



21. ALL EXISTING WELLS LOCATED ON THE LEASED PREMISES, AND THE ABOVE GROUND AND BELOW GROUND EQUIPMENT ASSOCIATED THEREWITH, ARE EXPRESSLY EXCLUDED FROM WITHIN THIS LEASE. LESSEE SHALL NOT HAVE ANY LIABILITY OR COST OBLIGATION WITH REGARD TO SAID WELLS.

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This instrument was prepared by: **BECK ENERGY CORPORATION**, Box 1070, Ravenna, OH 44260

Acres _____
 OIL AND GAS LEASE
 From _____
 To 037371
 Post Office _____
 Date _____ 20 ____
 Terms _____ Years _____
 Located _____

MONROE CO. RECORD OF Official
 VOL 118 PAGE 218 Records
 RECEIVED
 04 MAY 11 12:48 P.M.
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May 11, 2004

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EXHIBIT 2

IN THE COURT OF COMMON PLEAS OF MONROE COUNTY, OHIO

DONALD J. PNIACZEK, et al.,

2012 AUG 31 AM 11:42

Case No. 2012-274

Plaintiffs,

vs.

STEPHEN W. WOOD,
CLERK OF COURT.

BECK ENERGY CORPORATION, et al.,

Defendants.

JUDGMENT ENTRY ON PLAINTIFFS' MOTION
FOR TEMPORARY RESTRAINING ORDER AND
MOTION FOR PRELIMINARY INJUNCTION

This matter came before the Court on the 31st day of August, 2012 for hearing on *Plaintiff's Motion for Temporary Restraining Order and Motion for Preliminary Injunction.*

Plaintiffs Donald Pniaczek, Mary Jane Pniaczek, John Pniaczek and Deborah Pniaczek ("Pniaczeks") were present through their counsel, Mark A. Ropchock, Esq. of Slater & Zurz, LLP.

Defendant Beck Energy Corporation ("Beck") was present through its counsel, Scott M. Zurakowski, Esq. and Nathan D. Vaughan, Esq. of Krugliak, Wilkins, Griffiths & Dougherty Co., L.P.A.

The Court finds that a *Certification of Plaintiffs' Counsel* was filed avering that Defendant Exxon Mobil Corporation was advised of said hearing.

Evidence was presented.

Based upon the filing of Pniaczeks, the arguments of counsel and the evidence presented, the Court hereby makes the following Findings and Orders:

Pniaczeks have moved this Court for an immediate Temporary Restraining Order to prevent Beck from including ten (10) acres of the Pniaczeks' property in a twenty (20) acre drilling unit related to an oil and gas well to be drilled on their neighbors' property, the Dannemillers.

This Court, through the Hon. Ed Lane, in *Case No. 2011-345, Clyde A. Hupp, et*

al. v Beck Energy Corporation, ruled in its *Journal Entry* filed on July 31, 2012 that Beck leases were void *ab initio* as perpetual leases, and second, that the leases were void for Beck's failure to timely develop them under the implied covenant to reasonably develop the land, which covenant was impliedly contained in the Beck leases.

Said ruling was appealed on August 28, 2012 and *Defendant Beck Energy Corporation's Motion for Stay* is currently scheduled for hearing before the Hon. Ed Lane.

Beck applied for a permit to drill on Pniaczeks' property after this Court's aforementioned finding and ruling that these purported class members' Beck leases were void.

The Pniaczeks three-year lease with Beck was signed on September 3, 2009 and set to expire on September 3, 2012. To date, no well has been drilled on Pniaczeks' property.

Mary Jane Pniazcek testified that she contacted Beck following the ruling in the *Hupp v Beck* case and advised them of Pniaczeks intention not to renew the lease. Subsequent to that conversation, Pniaczeks received a letter from Beck's counsel, dated August 22, 2012, advising of Beck's intention to consolidate the Pniaczeks' lease with other oil and gas leases to form an oil and gas development unit.

Pniaczeks are purported class members in the above referenced proposed class action, *Hupp v Beck Energy Corporation*.

The Court finds that immediate and irreparable injury, loss and damage will result to Pniaczeks if a temporary restraining order is not issued, by way of: (1) the potential extraction of minerals from Pniaczeks' realty pursuant to an oil and gas lease which has already been declared *void ab initio* by this Court; (2) the elimination of Pniaczeks' ability to participate in a putative class action; and (3) the potential further

encumbrance of Pniaczeks' realty by production under the existing oil and gas lease of Beck.

Accordingly, the Court hereby *grants Plaintiff's Motion for Temporary Restraining Order and Motion for Preliminary Injunction.*

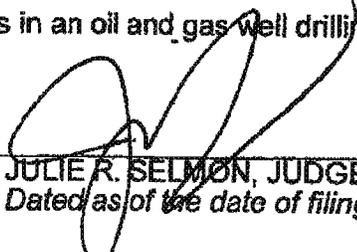
Wherefore, it is hereby Ordered, Adjudged and Decreed that Beck Energy Corporation, and its agent, employees, representatives, and assigns, and all person in active concert and participation with them, be and hereby are restrained from, in any manner, either directly or indirectly:

(1) from entering upon Pniaczeks' realty for the purposes of making any preparations fro the drilling of an oil and gas well;

(2) from conducting any drilling operations on Pniaczeks' realty; and

(3) from including any portion of Pniaczeks in an oil and gas well drilling unit.

IT IS SO ORDERED.



JULIE R. SELMON, JUDGE
Dated as of the date of filing

COPIES SENT THIS DAY TO:

Mark A. Ropchock, Esq. and Richard V. Zurz, Jr., Esq.

Scott M. Zurakowski, Esq., William G. Williams, Esq., ~~Nathan D. Vaughan, Esq.~~

Gregory W. Watts, Esq. and Aletha M. Carver, Esq.

Exxon Mobil Corporation c/o Ronnie Blackwell, Esq., XTO Energy, Inc., 714 Main St., Fort Worth, TX 76102-6290

kss

EXHIBIT 3

Ohio Attorneys Get Court to Rule Certain Inactive Oil and Gas Leases are Void

James W. Slater Published: July 2, 2013 12:11PM

Big energy companies tying up the mineral rights of Ohio landowners with oil and gas leases has been a common practice throughout the state. These leases can be mutually beneficial to both the energy companies and the landowners when the energy companies drill wells on the properties. However, when they don't drill, it can leave landowners upset and frustrated not knowing if the true potential value of the lease will ever be realized.

Ohio landowners who entered into oil and gas leases where the energy company didn't perform are left waiting until the term of the lease expires. At that time, they can regain control of their mineral rights. With many oil and gas leases, that waiting period is years. For Ohio landowners who signed leases with Beck Energy Corporation, the wait is over.

Akron attorneys Rick Zurz and Mark Ropchock of the law firm Slater & Zurz LLP argued that people who leased their property to Beck Energy Corporation under a standard form oil and gas lease, where Beck Energy Corporation neither drilled or has prepared to drill a gas or oil well, should be allowed to get out of the lease. A Monroe County, Ohio Court agreed and ruled that certain types of inactive leases with Beck Energy Corporation are void.

"The court's decision is a very important ruling for Ohio landowners", said Jim Slater, the managing partner at Slater & Zurz LLP. "Ohio landowners are no longer stuck in oil and gas leases where Beck Energy Corporation didn't drill any wells. They once again will have unrestricted access to their mineral rights and options to use these rights as they wish", he added.

The ruling by the Monroe County court is on appeal with The Court of Appeals of Ohio, Seventh District, for Monroe County, Ohio.

Questions about this legal case or inactive oil and gas leases can be directed to Slater & Zurz LLP by calling 1-800-297-9191 or sending a message from the law firm's website at slaterzurz.com.

<http://www.daily-jeff.com/citizen%20news/2013/07/02/ohio-attorneys-get-court-to-rule-certain-inactive-oil-and-gas-leases-are-void>

EXHIBIT 4

Public Notices 10/17/13

Written by Staff
Wednesday, October 16, 2013 8:24 PM

**BECK ENERGY
CORPORATION
ANNOUNCEMENT**

On September 26, 2013, the Seventh Appellate District Court in Ohio issued three important decisions in the Hupp v. Beck Energy Corporation case.

SO, WHAT DOES THIS MEAN FOR BECK ENERGY OIL AND GAS LEASES?

All Beck Energy leases are tolled. This means the primary term of the lease does not continue to run, it is stopped as of October 1, 2012. The tolling period does not end until all appeals are final, including any appeal to the Ohio Supreme Court. Your Beck Energy oil and gas lease will not expire during this litigation.

A copy of the Seventh Appellate District's Judgement Entry is set forth below in full. Should you have any questions regarding your Beck Energy oil and gas lease, please contact your attorney.

IN THE COURT OF APPEALS OF OHIO SEVENTH DISTRICT

STATE OF OHIO

MONROE COUNTY

CLYDE A. HUPP, et al

Plaintiffs-Appellees,

vs.

BECK ENERGY

CORPORATION

Defendant-Appellant

This matter came on for hearing before this Court on September 23, 2013 on three pending motions: 1) Appellant Beck Energy Corporation's August 15, 2013 emergency motion for injunctive relief pursuant to App.R.7; 2) Beck's August 30, 2013 emergency motion to set aside superseded bond; and 3) The individual Landowners' September 12, 2013 motion to dismiss this appeal on the grounds of mootness.

On consideration of the parties' respective filings, the responses thereto and their arguments before this Court it is ORDERED:

1. The trial court's August 16, 2013 stay order is hereby modified and continued. The requirement of posting bond is hereby set aside; no bond is required. This stay of execution applies to the named plaintiffs and proposed defined class members for the following judgements: (1) the July 12, 2012 decision granting summary judgment in the Landowners' favor, including journalization of the trial court's decision on July 31, 2012; (2) the trial court's February 8, 2013 judgment granting class verification; and (3) the trial court's June 10, 2013 judgment defining the class and finding Beck Energy's counterclaims moot and barred by res judicate.

2. The trial court's August 2, 2013, order tolling the lease terms as to the named plaintiffs only is hereby modified and continued. The lease terms are also tolled as to the proposed defined class members. The tolling period for all leases shall commence on October 1, 2012, the date Beck Energy first filed a motion in the trial court to toll the terms of the oil and gas leases. The tolling period shall continue during the pendency of all appeals in this Court, and in the event of a timely notice of appeal to the Ohio Supreme Court, until the Ohio Supreme Court accepts or declines jurisdiction. At the expiration of the tolling period, Beck Energy, and any successors and/or assigns shall have as much time to meet any and all obligations under the oil and gas lease(s) as they had as of October 1, 2012.

3. The Motion to Dismiss is denied.

Consistent with this Court's September 16, 2013 order setting a briefing schedule in these consolidated appeals, oral argument on the merits is tentatively set for November 20, 2013 before this Court.

All until further order of this Court.

Judge Gene Donofrio

Judge Joseph J. Vukovich

Judge Mary DeGenaro

Oct. 17, 2013 Beacon

Oct. 21, 2013 Sentinel

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NOTICE

Judge Julie R. Seimon will be accepting applications for the Veterans Service Commission Board seat expiring January 14, 2014. All applicants must be residents of Monroe County and be honorably discharged or honorably separated veterans. Please call 740-472-0841 for an application. All applications must be received prior to December 13, 2013.

Oct. 17, 24, 2013

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NOTICE

SEALED PROPOSAL

Invitation to Bid (ITB) proposals for the following bid must be submitted to the Monroe County Commissioners, 101 North Main Street, Woodsfield, Ohio 43793 by Thursday, October 31, 2013 at Noon:

ITB-Youth Empowered For Success (YES)-a youth program which will effectively deliver the ten youth elements, as outlined in the Workforce Investment Act (WIA), to Monroe county/SOLSD high school students,

Requests for a copy of the ITB specifications should be directed to Sheila Turner, c/o Monroe County Commissioners, 101 North Main Street, Woodsfield, Ohio 43793. Phone (740) 472-1341 Monday-Friday 9:00 a.m. - 4:30 p.m.

A list of interested parties requesting a Bid packet(s) will be kept on file. Deadline for ITB submission is Thursday, October 31, 2013 by Noon.

Oct. 17, 2013

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NOTICE TO BIDDERS

STATE OF OHIO

DEPARTMENT OF

TRANSPORTATION

Columbus, Ohio

Division of Construction Management

Legal Copy No.

130582

EXHIBIT 5

COPY

**PAID-UP
OIL & GAS LEASE**

This Lease made this 14th day of September 2013, by and between **Clayton Family Farm, L.P.** of 535 Main Street, Apt B 718, New York, NY 10044, hereinafter collectively called "Lessor," and **GULFPORT ENERGY CORPORATION**, a Delaware Corporation with a mailing address of 14018 N. May, Suite 100, Oklahoma City, OK 73134, hereinafter called "Lessee."

WITNESSETH, that for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and of the mutual covenants and agreements hereinafter set forth, the Lessor and Lessee agree as follows:

LEASING CLAUSE. Lessor hereby leases exclusively to Lessee all the oil and gas (including, but not limited to coal seam gas, coalbed methane gas, coalbed gas, methane gas, gas gas, coalbed methane/natural gas and all associated natural gas and other hydrocarbons and non-hydrocarbons contained in, associated with, existing from, or produced/originating within any formation, gas area, mined-out area, coal seams, and all accompanying seams), and their liquid or gaseous constituents, whether hydrocarbon or non-hydrocarbon, underlying the land herein leased, together with such exclusive rights as may be necessary or convenient for Lessee, at its election, to explore for, develop, produce, measure, and market production from the Leasehold, and from adjoining lands, using methods and techniques which are and included to current technology, including the right to conduct extensive geophysical and other exploratory tests; to drill, maintain, operate, cause to operate, plug, abandon, and remove wells; to use or install roads, electric power and telephone facilities, and to construct pipelines with appurtenant facilities, including data acquisition, compression and collection facilities for use in the production and transportation of products from the Leasehold or from neighboring lands across the Leasehold, to use oil, gas, and non-domestic water sources, free of cost, to store gas of any kind underground, regardless of the source thereof, including the injecting of gas therein and removing the same therefrom; to protect stored gas; to operate, maintain, repair, and remove material and equipment.

DESCRIPTION. The Leasehold is located in the Township of Green, in the County of Monroe, in the State of Ohio, and described as follows:

Tract Parcel Identification Number; Twp/Section/Twp No/Range/Ctr:
00-012002.0000; Green/W4/22W & 2W 14

and is bounded hereby or currently as follows:

- On the North by lands of Clayton Family Farm, L.P.;
- On the East by lands of Mark S. Lammeter et al.;
- On the South by lands of Center Twp.;
- On the West by lands of Section Line.

"See Exhibit 'A' attached hereto and made a part hereof for Other Provisions of this lease"

Including lands acquired from BVL, Inc., by virtue of Warranty Deed dated March 25th, 2011, and recorded in Deed Book 262, at Page 769, at the Recorder's office of Monroe County, Ohio, and described for the purposes of this agreement as containing a total of 60.181 acres, whether actually more or less, and including contiguous lands owned by Lessee. This Lease also covers and includes, in addition to that above described, all land, if any, contiguous or adjacent to or adjoining the land above described and (a) owned or claimed by Lessor by prescription, possession, conversion or unrecorded instrument or (b) as to which Lessor has a preference right of acquisition. Lessor agrees to execute any supplemental instrument requested by Lessee for a more complete or accurate description of said land.

LEASE TERM. This Lease shall remain in force for a primary term of **FIVE (5)** years from 12:00 A.M. September 24th, 2013 (effective date) to 11:59 P.M. September 23rd, 2018 (last day of primary term) and shall continue beyond the primary term as to the entirety of the Leasehold if any of the following is satisfied: (i) operations are conducted on the Leasehold or lands pooled/unitized therewith in search of oil, gas, or their constituents, or (ii) a well owned by Lessee to be capable of production is located on the Leasehold or lands pooled/unitized therewith, or (iii) oil or gas, or their constituents, are produced from the Leasehold or lands pooled/unitized therewith, or (iv) if the Leasehold or lands pooled/unitized therewith is used for the underground

Lessor(s) Initials: PKC

storage of gas, or for the protection of stored gas, or (v) if prorated payments are made, or (vi) if Lessee's operations are delayed, postponed or interrupted as a result of any coal, stone or other mining or mining related operation under any existing and effective lease, permit or authorization covering such operations on the leased premises or on other lands affecting the leased premises, such delay will automatically extend the primary or secondary term of this oil and gas lease without additional compensation or performance by Lessee for a period of time equal to any such delay, postponement or interruption.

If there is any dispute concerning the extension of this Lease beyond the primary term by reason of any of the alternative mechanisms specified herein, the payment to the Lessor of the prorated payments provided below shall be conclusive evidence that the Lease has been extended beyond the primary term.

EXTENSION OF PRIMARY TERM. Lessee has the option to extend the primary term of this Lease for one additional term of five (5) years from the expiration of the primary term of this Lease; said extension to be under the same terms and conditions as contained in this Lease. Lessee may exercise this option to extend this Lease if on or before the expiration date of the primary term of this Lease, Lessee pays or tenders to the Lessor or to the Lessor's credit an extension payment of the same consideration as was paid in this lease per Leasehold acre, only lessor as those acres intended to be covered by Lessee. Exercise of this option is at Lessee's sole discretion and may be invoked by Lessee where no other alternative of the Lease Term clause extends this Lease beyond the primary term.

NO AUTOMATIC TERMINATION OR FORFEITURE.

(A) CONSTRUCTION OF LEASE: The language of this Lease (including, but not limited to, the Lease Term and Extension of Term clauses) shall never be read as language of special limitation. This Lease shall be construed against termination, forfeiture, cancellation or expiration and in favor of giving effect to the continuation of this Lease where the circumstances tend to maintain this Lease in effect under any of the alternative mechanisms set forth above. In connection therewith, (i) a well shall be deemed to be capable of production if it has the capacity to produce a profit over operating costs, without regard to any capital costs to drill or equip the well, or to deliver the oil or gas to market, and (ii) the Lessee shall be deemed to be conducting operations in search of oil or gas, or their constituents, if the Lessee is engaged in geological and other exploratory work including, but not limited to, activities to drill an initial well, to drill a new well, or to rework, stimulate, deepen, sidetrack, frack, plug back in the same or different formation or repair a well or equipment on the Leasehold or any lands pooled/unitized therewith (such activities shall include, but not be limited to, performing any preliminary or preparatory work necessary for drilling, conducting internal technical analysis in relation to further developing a well, obtaining permits and approvals associated therewith and may include reasonable gaps in activities provided that there is a continuation of activities showing a good faith effort to develop a well or that the cessation or interruption of activities was beyond the control of Lessee, including interruptions caused by the acts of third parties over whom Lessee has no control or regulatory delays associated with any approval process required for conducting such activities).

(B) LIMITATION OF FORFEITURE: This Lease shall never be subject to a civil action or proceeding to enforce a claim of termination, cancellation, expiration or forfeiture due to any action or inaction by the Lessee, including, but not limited to making any prorated payments authorized under the terms of this Lease, unless the Lessee has received written notice of Lessor's demand and thereafter fails or refuses to satisfy or provide justification responsive to Lessor's demand within 60 days from the receipt of such notice. If Lessee timely responds to Lessor's demand, but in good faith disagrees with Lessor's position and sets forth the reasons therefore, such a response shall be deemed to satisfy this provision, this Lease shall continue in full force and effect and no further damages (or other claims for relief) will accrue to Lessor's favor during the pendency of the dispute, other than claims for payments that may be due under the terms of this Lease.

PAYMENTS TO LESSOR. In addition to the bonus paid by Lessee for the extension hereof, Lessee covenants to pay Lessor, proportionate to Lessor's percentage of ownership, as follows:

(A) DELAY RENTAL: To pay Lessor as Delay Rental, after the first year, at the rate of five dollars (\$5.00) per net acre per year payable in advance. The parties hereto agree that this is a Paid-Up Lease with no further Delay Rental and/or Delay in Marketing payments due to Lessor during the primary term hereof.

(B) ROYALTY: To pay Lessor as Royalty, less all taxes, assessments, and adjustments on production from the Leasehold, as follows:

1. **OIL:** To deliver to the credit of Lessor, free of cost, a Royalty of the equal twenty percent (20.00%) part of all oil and any constituents thereof produced and marketed from the Leasehold.

2. **GAS:** To pay Lessor an amount equal to twenty percent (20.00%) of the revenue realized by Lessee for all gas and the constituents thereof produced and marketed from the Leasehold, less the cost to transport, treat and process the gas and any losses in volume in volume to point of measurement that determines the revenue realized by Lessee. Lessee may withhold Royalty payment until such time as the total withheld exceeds fifty dollars (\$50.00).

(C) DELAY IN MARKETING: In the event that Lessee drills a well on the Leasehold or lands pooled/unitized therewith that is awaiting completion, or that Lessee deems to be capable of production, but does not market producible gas, oil, or their constituents therefrom, and there is no other basis for extending this Lease, Lessee shall pay after the primary term and until such time as marketing is established (or Lessee surrenders the Lease) a Delay in Marketing payment equal in amount and frequency to the annual Delay Rental payment, and this Lease shall remain in full force and effect to the same extent as payment of Royalty.

(D) SHUT-IN: In the event that production of oil, gas, or their constituents is interrupted and not marketed for a period of twelve (12) months, and there is no producing well on the Leasehold or lands pooled/unitized therewith, Lessee shall thereafter, as Royalty for constructive production, pay a Shut-in Royalty equal in amount and frequency to the annual Delay Rental payment until such time as production is re-established (or Lessee surrenders

the Lease) and this Lease shall remain in full force and effect. During this in, Lessee shall have the right to rework, re-stimulate, or deepen any well on the Leasehold or to drill a new well on the Leasehold in an effort to re-establish production, whether from an original producing formation or from a different formation. In the event that the production from the only producing well on the Leasehold is interrupted for a period of less than twelve (12) months, this Lease shall remain in full force and effect without payment of Royalty or Shut-in Royalty.

(8) **DAMAGES:** Lessee will remove unnecessary equipment and materials and restore all disturbed lands at the completion of activities, and Lessee agrees to repair any damaged improvements to the land and pay for the loss of growing crops or reasonable timber.

(9) **MANNER OF PAYMENT:** Lessee shall make or tender all payments due hereunder by check, payable to Lessee, at Lessee's last known address, and Lessee may withhold any payment pending notification by Lessee of a change in address. Payment may be tendered by mail or any acceptable method (e.g., Federal Express), and payment is deemed complete upon mailing or dispatch. Where the due date for any payment specified herein falls on a holiday, Saturday or Sunday, payment tendered (mailed or dispatched) on the next business day is timely.

(10) **CHANGE IN LAND OWNERSHIP:** Lessee shall not be bound by any change in the ownership of the Leasehold until furnished with such documentation as Lessee may reasonably require. Pending the receipt of documentation, Lessee may elect either to continue to make or withhold payments as if such a change had not occurred.

(11) **TITLE:** If Lessee receives evidence that Lessee does not have title to all or any part of the rights herein leased, Lessee may immediately withhold payments that would be otherwise due and payable hereunder to Lessee until the adverse claim is fully resolved.

(12) **LIEENS:** Lessee may at its option pay and discharge any past due taxes, mortgages, judgments, or other liens and encumbrances on or against any land or interest included in the Leasehold; and Lessee shall be entitled to recover from the debtor, with legal interest and costs, by deduction from any future payments to Lessee or by any other lawful means. In the event the leased lands are encumbered by a prior mortgage, then, notwithstanding anything contained herein to the contrary, Lessee shall have the right to suspend the payment of any royalty due hereunder, without liability for interest, until such time as Lessee obtains at its own expense a subordination of the mortgage in a form acceptable to Lessee.

(13) **CHARACTERIZATION OF PAYMENTS:** Payments set forth herein are payments, not special limitations, regardless of the manner in which these payments may be levied. Any failure on the part of the Lessee to timely or otherwise properly tender payment can never result in an automatic termination, expiration, non-continuance, or forfeiture of this Lease. Lessee recognizes and acknowledges that oil and gas lease payments, in the form of rental, bonus and royalty, can vary depending on multiple factors and that this Lease is the product of good faith negotiations. Lessee hereby agrees that the payment terms, as set forth herein, and any bonus payments paid to Lessee constitute full consideration for the Leasehold. Lessee further agrees that such payment terms and bonus payments are final and that Lessee will not seek to amend or modify the lease payments, or seek additional consideration based upon any differing terms which Lessee has or will negotiate with any other interested and gas owner.

(14) **PAYMENT REDUCTIONS:** If Lessee owns a lesser interest in the oil or gas than the entire undivided fee simple estate, then the bonus rental (except for Debez Rental payments as set forth above), royalties and shut-in royalties hereunder shall be paid to Lessee only in the proportion which Lessee's interest bears to the whole and undivided fee.

LIMITATION AND POOLING. Lessee grants Lessee the right to pool, unitize, or combine all or parts of the Leasehold with other lands, whether contiguous or not contiguous, leased or unleased, whether owned by Lessee or by others, at a time before or after drilling to create drilling or production units either by contract right or pursuant to governmental authorization. Pooling or unitizing in one or more instances shall not exhaust Lessee's pooling and unitizing rights hereunder, and Lessee is granted the right to change the size, shape, and conditions of operation or payment of any well created. Lessee agrees to accept and receive out of the production or the proceeds realized from the production of such unit, such proportional share of the Royalty from each unit well as the number of Leasehold acres included in the unit bears to the total number of acres in the unit. Otherwise, as to any part of the well, drilling, operations in preparation for drilling, production, or shut-in production from the well, or payment of Royalty, Shut-in Royalty, Debez in Marketing payment or Debez Rental attributable to any part of the well (including non-Leasehold land) shall have the same effect upon the terms of this Lease as if a well were located on, or the subject activity attributable to, the Leasehold. In the event of conflict or inconsistency between the Leasehold acres ascribed to the Lease, and the local property tax assessment calculation of the lands covered by the Lease, or the decided acreage amount, Lessee may, at its option, rely on the latter as being determinative for the purposes of this paragraph.

FACILITIES. Lessee shall not drill a well on the Leasehold within 500 feet of any structure located on the Leasehold without Lessee's written consent. Lessee shall not erect any building or structure, or place any well within 200 feet of a well or within 25 feet of a pipeline without Lessee's written consent. Lessee shall not improve, modify, degrade, or restrict roads and facilities built by Lessee without Lessee's written consent.

CONVERSION TO STORAGE. Lessee is hereby granted the right to convert the Leasehold or lands pooled/unitized therewith to gas storage. At the time of conversion, Lessee shall pay Lessee's proportionate part for the estimated recoverable gas remaining in any well drilled pursuant to this Lease using methods of calculating gas reserves as are generally accepted by the natural gas industry and, in the event that all wells on the Leasehold and/or lands pooled/unitized therewith have permanently ceased production, Lessee shall be paid a Conversion to Storage payment in an amount equal to Debez Rental for as long thereafter as the Leasehold or lands pooled/unitized therewith before used for gas storage or the production of gas storage; such Conversion to Storage payment shall first become due upon the next crossing Debez Rental anniversary date. The use of any part of the Leasehold or lands

pooled or utilized therewith for the underground storage of gas, or for the protection of stored gas will extend this Lease beyond the primary term as to all rights granted by this Lease, including but not limited to production rights, regardless of whether the production and storage rights are owned together or separately.

TITLE AND INTEREST. Lessor hereby warrants and agrees to defend title to the Leasehold and covenants that Lessee shall have quiet enjoyment hereunder and shall have benefit of the doctrine of after acquired title. Should any person having title to the Leasehold fail to execute this Lease, the Lessee shall nevertheless be binding upon all persons who do execute it as Lessor.

LEASE DEVELOPMENT. There is no implied covenant to drill, prevent drainage, further develop or market production within the primary term or any extension of term of this Lease. There shall be no Leasehold forfeiture, termination, expiration or cancellation for failure to comply with said implied covenants. Provisions herein, including, but not limited to the prescribed payments, constitute full compensation for the privileges herein granted.

COVENANTS. This Lease and its expressed or implied covenants shall not be subject to termination, forfeiture of rights, or damages due to failure to comply with obligations if compliance is effectively prevented by federal, state, or local law, regulation, or decree, or the act of God and/or third parties over whom Lessee has no control.

RIGHT OF FIRST REFUSAL. If at any time within the primary term of this Lease or any continuation or extension thereof, Lessor receives any bona fide offer, acceptable to Lessor, to grant an additional lease ("Top Lease") covering all or part of the Leasehold, Lessee shall have the continuing option by meeting any such offer to acquire a Top Lease on equivalent terms and conditions. Any offer must be in writing and must set forth the proposed Lessee's name, lease considerations and royalty consideration to be paid for such Top Lease, and include a copy of the lease form to be utilized reflecting all pertinent and relevant terms and conditions of the Top Lease. Lessee shall have fifteen (15) days after receipt from Lessor of a complete copy of any such offer to advise Lessor in writing of its election to enter into an oil and gas lease with Lessor on equivalent terms and conditions. If Lessee fails to notify Lessor within the aforesaid fifteen (15) day period of its election to meet any such bona fide offer, Lessor shall have the right to accept said offer. Any Top Lease granted by Lessor in violation of this provision shall be null and void.

ARBITRATION. In the event of a disagreement between Lessor and Lessee concerning this Lease or the associated Order of Payment, performance thereunder, or damages caused by Lessee's operations, the resolution of all such disputes shall be determined by arbitration in accordance with the rules of the American Arbitration Association. Arbitration shall be the exclusive remedy and cover all disputes, including but not limited to, the formation, execution, validity and performance of the Lease and Order of Payment. All fees and costs associated with the arbitration shall be borne equally by Lessor and Lessee.

ENTIRE CONTRACT. The entire agreement between Lessor and Lessee is embodied herein and in the associated Order of Payment (if any). No oral warranties, representations, or promises have been made or relied upon by either party as an inducement to or modification of this Lease.

TITLE CURATIVE. Lessor agrees to execute affidavits, corrections, ratifications, amendments, permits and other instruments as may be necessary to carry out the purposes of this lease.

SURRENDER. Lessee, at any time, and from time to time, may surrender and cancel this Lease as to all or any part of the Leasehold by recording a Surrender of Lease and thereupon this Lease, and the rights and obligations of the parties hereunder, shall terminate as to the part so surrendered; provided, however, that upon each surrender as to any part of the Leasehold, Lessee shall have reasonable and convenient easements for then existing wells, pipelines, pole lines, roadways and other facilities on the lands surrendered.

SUCCESSORS. All rights, duties, and liabilities herein benefit and bind Lessor and Lessee and their heirs, successors, and assigns.

FORCE MAJEURE. All express or implied covenants of this Lease shall be subject to all applicable laws, rules, regulations and orders. When drilling, reworking, production or other operations hereunder, or Lessee's fulfillment of its obligations hereunder are prevented or delayed by such laws, rules, regulations or orders, or by inability to obtain necessary permits, equipment, services, material, water, electricity, fuel, access or easements, or by fire, flood, adverse weather conditions, war, sabotage, rebellion, insurrection, riot, strike or labor disputes, or by inability to obtain a satisfactory market for production or failure of purchasers or inability to take or transport such production, or by any other cause not reasonably within Lessee's control, this Lease shall not terminate, in whole or in part, because of such prevention or delay, and, at Lessee's option, the period of such prevention or delay shall be added to the term hereof. Lessee shall not be liable in damages for breach of any express or implied covenants of this Lease for failure to comply therewith, if compliance is prevented by, or failure is the result of any applicable laws, rules, regulations or orders or operation of force majeure.

SEVERABILITY. This Lease is intended to comply with all applicable laws, rules, regulations, ordinances and governmental orders. If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall survive and continue in full force and effect to the maximum extent allowed by law. If a court of competent jurisdiction holds any provision of this Lease invalid, void, or unenforceable under applicable law, the court shall give the provision the greatest effect possible under the law and modify the provision so as to conform to applicable law if that can be done in a manner which does not frustrate the purpose of this Lease.

CONTINGENT. This Lease may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Lease and all of which, when taken together, will be deemed to constitute one and the same agreement.

EXECUTED this 24th day of September 2013

LESSOR:

Bruce Glasgow
Bruce Glasgow, Managing Partner
Chasco Family Farm, L.P.

PARTNERSHIP INTEREST ACKNOWLEDGMENT

STATE OF OHIO }
COUNTY OF MONROE } ss:

On this, the 23rd day of September 2013, before me Denise E. Flusky, the undersigned officer, personally appeared Bruce Glasgow, L.P., known to me (or otherwise proven) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged that he/she/they executed the same for the purposes therein contained. By Bruce Glasgow, Managing Partner.

IN WITNESS WHEREOF, I have set my hand and official seal.

My Commission Expires: _____

Signature/Notary Public: _____
Name/Notary Public (print): _____
DENISE E. FLUSKY
Notary Public, State of Ohio
My Commission Expires 09/30/15
Denise 141.03 RC

CORPORATE ACKNOWLEDGMENT

STATE OF _____ }
COUNTY OF _____ } ss:

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by _____ of _____ corporation, on behalf of the corporation.

Given under my hand and seal this _____ day of _____, 2013.

My Commission Expires: _____

Signature/Notary Public: _____

Name/Notary Public (print): _____

Recorder Return To & Prepared By:
CURLFOOT ENERGY CORPORATION, 14913 N. Jolly Ave., Suite 100, Oklahoma City, OK 73134

Lessor(s) Initials: *BG*
Initials

EXHIBIT "A"

This Exhibit "A" is attached to and made a part of that certain Oil and Gas Lease dated September 26th, 2013, by and between Clarius Family Farm, L.P., as Lessor, and Gulfport Energy Corporation, as Lessee.

1. **Conflict of Terms:** Notwithstanding anything to the contrary considered in the Oil and Gas Lease to which this Addendum is attached and made a part of, the provisions of this Addendum shall prevail whenever in conflict with the provisions of the Oil and Gas Lease.

2. **Property Description:** Notwithstanding any other provision in the Lease, including that provision being what is commonly known in lease terminology as a "Mother Hubbard Clause", it is understood and agreed that the Lease is valid only as to the specific parcels described and identified in the Lease. Lessor and Lessee intend that only Lessor's property consisting of acres described on Warranty Deed, Volume 202, Page 769, is to be leased and no other property of Lessor is to be affected by this Lease. This Lease does not include parcels adjacent or contiguous to the land described in the Lease that is also owned or claimed by Lessor, which is not specifically described in the Lease. The Lease, to which this Addendum is attached, shall be deemed to cover the lands intended to be covered by and described in this Lease without regard for the correctness of the legal description herein, and without regard for any acreage discrepancies in the parcels listed; however, Lessor agrees to execute an supplemental instrument requested by Lessee for a more complete or accurate description of said land should any discrepancies arise.

3. **Reservations:** Lessor and Lessee hereby agree that Lessor's mineral rights from the surface to the base of the Berea Shale Formation and Lessor's mineral rights as to the Clinton Sandstone Formation are specifically excluded from this lease. To the extent that Lessor owns wells located on its property, this Lease shall not apply to the formation(s) into which such wells are completed.

4. **Oil and Gas Only:** This Lease covers only oil and gas. The term "oil and gas" means oil, gas, and other liquid and gaseous hydrocarbons and their constituents and by-products produced through a well bore. Thus, this Lease does not include and there is hereby excepted and reserved unto Lessor all the sulfur, coal, lignite, uranium and other fissile/able material, geothermal energy, base and precious metals, rock, stone, gravel, and any other mineral substances (excepting those described above) presently owned by Lessor in, under, or upon the Leased Premises, together with right of ingress and egress and use of the Leased Premises by Lessor or its lessees or assignees for the purpose of exploration for and production and marketing of minerals and minerals reserved hereby; provided, however, Lessor's right to develop the reserved minerals shall not interfere with the rights herein granted to Lessee.

5. **Activity:** Lessee shall engage in no other activity on the Leased Premises except those directly related to the drilling and production of oil, gas and related hydrocarbons. Notwithstanding anything herein contained to the contrary, Lessee agrees the herein described Leased Premises shall ~~NOT~~ be used for:

- A) **No Gas Storage.** Notwithstanding anything to the contrary contained in the Lease, Lessee is not granted any right whatsoever to use the Leased Premises, or any portion thereof, for gas, oil, or brine storage purposes except for those surface tanks required for the temporary storage of produced liquids to be timely hauled off the Leased Premises;
- B) **No Disposal.** Lessee is not granted any right whatsoever to use the Leased Premises, or any portion thereof, for construction and/or operation of any disposal well, injection well, or the construction and/or operation of water disposal facilities;
- C) **No Compressor.** This Lease does not grant Lessee the right to construct compression facilities on the Leased Premises;
- D) **No Foreign Pipelines.** Without a separate written agreement, pipelines shall not be constructed over, across, or through the Leased Premises except for those used to transport oil and/or gas from a well(s) drilled on the Leased Premises or lands pooled therewith;
- E) **No Landmark Privileges.** Lessee agrees that the Leased Premises described herein will not be used as a central processing facility or storage area for equipment and materials;
- F) **Hunting.** Lessee agrees that its employees, agents, subcontractors, and independent contractors shall have no right to and are prohibited from firing any firearms, hunting or fishing, on the Leased Premises, without the written

permission of the Lessee; and,

- G) ~~Non-Disturbance.~~ Lessee and its employees and authorized agents shall not disturb, use or travel upon any of the land of Lessor not being used in accordance with this Lease.

6. **Commencement of Operations:** The term "operations" as used in this Lease shall mean only (a) the production of oil, gas, or other liquid hydrocarbons in paying quantities subsequent to drilling or (b) the actual drilling, fracturing, fracking, hydrofracturing, completing, reworking, recompleting, deepening, plugging back or repairing of a well to obtain production of oil or gas, conducted in good faith and with due diligence, whether on the Leased Premises or any lands unitized or contiguously pooled therewith. The term "operations" shall not include conducting seismic or other testing, or the laying of pipeline across the Leased Premises.

7. **Notice of Operations and Answer Actions:** Lessee shall give Lessor advanced written notice of the spud date, commencement and completion of drilling or other well bore completion operations, temporary abandonment, and plugging and final abandonment of any well on the Leased Premises or in a drilling Unit which contains all or a portion of the Leased Premises. Such notice shall be provided or delivered to Lessor no less than thirty (30) business days prior to such an event. Lessor shall give Lessor written notice of any hearings or actions, whether by a governmental agency or a court, affecting the Leased Premises; such notice shall be provided or mailed to Lessor within two (2) business days following the date that Lessee learns the same.

8. **Conduct of Operations:** Lessee shall cooperate with Lessor conducting its operations to minimize any interference with the commercial, agricultural or residential use of the Leased Premises. If Lessee in the course of its operations hereunder interferes with Lessor's ingress and egress routes, Lessee will provide reasonable alternate temporary access to help minimize the disruption. In addition:

- A) Lessee shall not use Lessor's existing roadways without Lessor's written consent. All ditching and grading shall be to the standards as established by the township in which the Leased Premises are located for road construction and maintenance. Any roadway constructed by or for Lessee shall not exceed twenty (20) feet in width for the actually traveled roadbed and following the existing contours of the surrounding surface, together with a reasonable width, not to exceed six (6) feet from either edge of the actually traveled roadbed for ditches, shoulders, and crosses. Lessee shall maintain said roadways to the reasonable satisfaction of Lessor, which maintenance may include shading, ditching, grading, blading, installing, and cleaning culverts, suppressing dust and spraying for noxious weeds. To the degree practicable, operations shall be designed and laid out to be concentrated in a single area so as to avoid unnecessary utilization of surface areas. To the degree practicable, pipelines, and roadways are to be within the same corridor. Lessee shall make every effort to use existing logging and township roads. No roadways shall be permitted on the Leased Premises for wells, or operations not located on the Leased Premises or lands contiguously pooled or unitized therewith.
- B) Lessee shall be responsible for any damages caused by Lessee's operations to above ground and underground utilities, sanitary sewers, storm drains, catch basins, drainage tile, and drainage ditches. Lessee shall promptly and immediately replace any barriers, including, but not limited to, fences and stone walls removed by Lessee during its operations on said land. Lessee shall promptly replace any drain tile removed or damaged by Lessee during its operation on the Leased Premises.
- C) Lessee shall bury all pipelines to a depth not less than thirty-six (36) inches from the surface to the top of the pipelines. All pipelines shall be conspicuously marked by Lessee. If Lessee chooses to lay plastic lines, said lines shall be marked by a tracer wire for purposes of electronically locating such lines. This right may not be assigned to a utility company, pipeline company or anyone else who owns no interest in the Leased Premises or not otherwise contracted or affiliated with Lessee for the purpose of carrying out the rights and obligations under this Lease. No right is granted to piggyback or expand on this term of the Lease to install electric, telephone or data lines. The right to use said pipelines terminates when production from the Leased Premises permanently ceases. After Lessee's right to use a pipeline on the Leased Premises terminates, Lessee shall promptly take all actions necessary or desirable to clean up, mitigate the effects of use, and render the pipeline environmentally safe and fit for abandonment in place. All such clean up and mitigation shall be performed in compliance with all applicable federal, state, and local laws and regulations, including without limitation, environmental laws. Lessee is to allow Lessor unrestricted access to and crossing of the surface by equipment typically utilized in local agricultural and timbering activities,

including but not limited to tractors, plows, combines, harvesters, blowers, loaded trucks and loaded trailers. Lessor may construct livestock fences on the Leased Premises so long as such fences do not interfere with Lessee's operations. Lessee shall "double ditch" all soil disturbances so that all topsoil will be replaced on the surface. The width of the graded pipeline right-of-way shall not exceed thirty (30) feet, with reasonable additional width required for construction, relocation, repair and maintenance purposes. Lessee agrees that the location of any and all pipelines shall be subject to the mutual agreement as provided for elsewhere in this Addendum, and in any case shall be subject to the prior consent of the Lessor. All pipelines on the Leased Premises shall be located in the same thirty (30) foot right of way. Any pipelines constructed pursuant to the terms of this Lease shall be for transporting oil and/or gas from a well(s) drilled on the Leased Premises or lands contingently pooled therewith unless Lessor and Lessee enter into a separate written agreement.

- D) Lessee shall, during the operation of the drilling and afterward, clean the site and all appropriate areas, including areas of ingress and egress, spread the appropriate gravel, road fabric, plastic erivecta, properly maintain all approaches and driveways, maintain all areas in a clean and orderly manner, maintain all tanks and equipment in a clean, painted condition, mow all grass and weeds (as needed) and grade all areas to the reasonable and prudent satisfaction of Lessor. All roads shall be appropriately crowned to insure drainage.
- E) All motors used in the operation of any wells shall be electrical, where practical and economical. Lessee will use its best efforts to minimize noise caused by Lessee's operations on the Leased Premises.
- F) All access roads used by Lessee pursuant to its drilling and production operations on the Leased Premises shall be kept in passable condition, free of significant ruts. Lessee and its employees and authorized agents shall not disturb, use or travel upon any of the land of Lessor not being used due to this Lease.
- G) Prior to use of Lessee's means of ingress or egress, Lessee shall receive all proper permits and post all bonds required by any governmental authority relative to the use of said roadways.
- H) Lessee will consult with Lessor and with the independent power company supplying power to Lessee with respect to the location of overhead power lines prior to construction. Overhead power lines will be constructed so as to cause the least possible interference with Lessor's visual landscape and Lessor's existing and future use of the Leased Premises, and to the maximum extent possible overhead power lines will be constructed along fence lines or property lines. All overhead lines shall not hang lower than fourteen (14) feet above the terrain. All power lines constructed by Lessee downstream of the independent power company's meters shall be buried and all power line trenches shall be fully reclaimed and reseeded to the satisfaction of Lessor. For buried lines, Lessee shall pay Lessor a one-time payment of Twenty-Five Dollars (\$25.00) per rod (16.5 ft.) unless such power line is installed in the same ditch and the same time as the pipelines described herein. Any lines authorized under this paragraph shall be buried to a depth of at least thirty-six (36) inches below grade, and at a location consented to by Lessor, however such consent shall not be unreasonably withheld, conditioned or delayed.
- I) Subject to economic reasonableness, Lessee agrees to plan surface operations in a manner that will reduce or minimize the intrusion to crop fields. Lessee shall compensate Lessor or Lessor's tenant (but not both) for the damage to or loss of growing crops caused by Lessee's operations at the greater of (i) current market value, or (ii) contract price.
- J) Lessee shall promptly: (i) upon written request of Lessor, construct gates on all access roads on the Leased Premises, and provide a key to the gate and allow free use by Lessor or in lieu of gates, install cattle guards; (ii) upon written request of Lessor, fence all producing wells, tank batteries, pits, separators, drip stations, pump engines, and other equipment placed on the Leased Premises, with a fence capable of turning sheep, goats, and cattle; (iii) keep fences constructed by Lessee on the Leased Premises in good repair; and (iv) keep all gates and fences constructed by Lessee closed at all times.
- K) Lessee shall construct or install all well sites, access roads, and pipeline rights-of-way in a manner which would minimize any related soil erosion.

Further, any related reclamation shall be done in a manner which restores said land as nearly to original conditions as reasonably possible.

- L) No well shall be drilled nearer than five hundred (500) feet of any building, water well, spring, pond, or septic system on the Leased Premises without the written consent of Lessor. No pipelines, tanks, or separators shall be constructed nearer than two hundred fifty (250) feet of any building, water well, spring, pond, or septic system on the Leased Premises without the written consent of Lessor. For purpose of this paragraph, the distance restrictions contained herein, as it pertains to well pad, shall be measured from the edge of the well pad nearest to the structure in question, and not from the bore hole.
- M) Lessee and Lessor agree that prior to the removal of any and all timber resulting from Lessee's operations under this Lease, an appraisal shall be constructed by a qualified third party forester, and Lessee shall pay Lessor the said appraisal value prior to harvesting. The independent timber appraisal shall include in the valuation of timber the future value, if any, of trees not yet marketable. Lessee shall notify Lessor prior to the removal of any standing timber in a sufficiently timely manner, and in no event later than thirty (30) calendar days prior to any removal of timber, so as to allow Lessor to obtain an appraisal of such timber. Lessor shall have the option to take payment from Lessee for said timber at the appraised value prior to its removal or to take possession of said timber after its removal by Lessee, or at the option of Lessor, the timber may be harvested by Lessor.

If Lessor opts to take possession after Lessee removes any timber, Lessee shall cut and set aside logs so as to be accessible, considering due care in cutting and handling said timber so as to preserve its market value. Lessee shall remove any uprooted stumps from the Leased Premises at Lessor's request.

- N) Lessee shall not use water from Lessor's wells, ponds, lakes, springs, creeks, reservoirs ("Water") located on the Leased Premises or be permitted to drill any water wells on the Leased Premises, without written consent of the Lessor under a separate agreement. Lessee also agrees to compensate Lessor for water in said separate agreement. In drilling oil and/or gas wells, Lessee shall advise Lessor, upon written request of Lessor, of the depth of any fresh water bearing formations encountered by Lessee during drilling operations in order to assist Lessor in identifying the location of potable water.

Lessee shall have Lessor's current water supply sampled and tested prior to the drilling of any well within 1,000 feet of Lessor's water supply located on the leased premises. Should Lessor experience a material adverse change in the quality of Lessor's water supply as the result of the drilling of any well by Lessee within 1,000 feet of Lessor's water supply located on the leased premises, during or immediately after the completion of Lessee's drilling operations; Lessee shall, within forty-eight (48) hours of Lessor's written request, sample and test Lessor's water supply at Lessee's expense. Should such test reflect a material adverse change as the result of Lessee's drilling operations of any well drilled within 1,000 feet of Lessor's water supply located on the leased premises, Lessee, at Lessee's expense, agrees to provide Lessor with potable water until such time as Lessor's water source has been repaired or replaced with a source of substantially similar quality. The water testing shall be conducted to Ohio HPA standards for potable non-transient use. In the event the Leased Premises are used for agricultural purposes where the quality of water is regulated and Lessee's operations negatively impact the water supply for such operations, Lessee shall immediately provide water meeting such requirements as to quality and within a time period necessary to fully comply with all regulations relating thereto. Lessor agrees that should any pollution or reduction of any water supply after drilling operations commence and for six (6) months thereafter occur on the Leased Premises, Lessee will as soon as reasonably practicable enlist the help of an independent engineer or consultant to remedy the pollution.

- O) Dikes, firewalls or other methods of secondary containment must be constructed and maintained at all times around all tanks, separators and other receptacles so as to contain a volume of liquid equal to at least 1.25 times the total volume of such tanks, separators and other receptacles located within the boundaries of the firewall and comply with State of Ohio regulations. Lessee shall keep all tanks and other equipment at each well location painted, and shall keep the well site and all roads leading thereto free of all excess weeds and debris.
- P) Lessee shall have no right to dig any pits on the Leased Premises except with Lessor's prior written consent; provided, however, that Lessee may, without Lessor's consent, dig and use pits or impoundments for drilling and completion

operations if (i) such pits or impoundments conform to State of Ohio requirements, (ii) such pits are used for water fresh storage only and not for fuel fluid storage, (iii) each pit or impoundment is planned to be deep enough to allow at least thirty-six (36) inches of backfill over the liner after grading to the surrounding pre-drill contours, and (iv) pits or impoundments are drained and all pit liners and pit contents are removed from the Leased Premises and disposed of at Lessee's cost within ninety (90) days (weather permitting) promptly after completion of operations. Lessee shall immediately notify Lessor and the State of Ohio if any pit lining is torn, punctured, or otherwise breached, allowing any fluid contained in or designated to be contained in, a pit or impoundment to seep, leak or overflow through or around the liner. All of the provisions set forth in this Addendum, including the seepage fee and seepage limitation, shall apply to this Paragraph. No pits shall be permitted on the Leased Premises for wells or operations not located on the Leased Premises or lands contiguously pooled or unitized therewith.

- Q) Lessee shall not use, dispose, or release on the Leased Premises or to permit to exist or be used, disposed of or released on the Leased Premises as a result of its operations, any substances (other than those Lessee has been licensed or permitted by applicable public authorities or governmental entities with jurisdiction to use on the Leased Premises) which are defined as a "hazardous material" or "toxic substance" or "solid waste" in applicable federal, state, or local laws, statutes or ordinances. Should any hazardous material, toxic substance, or solid waste be released on the Leased Premises, for any reason, in any quantity, Lessee shall notify all appropriate governmental entities of such an event, and then immediately thereafter notify the Lessor.
- R) All seeding shall be done with suitable grasses selected by Lessor and during a planting period selected by Lessor. Re-seeding shall be performed in a manner to place the Leased Premises in a condition that is as close as possible to its pre-drilling condition. In the absence of direction from the Lessor, no re-seeding (except for borrow pits) will be required on any existing access roads. It shall be the duty of Lessee to insure that a growing ground cover is established upon the disturbed soils and Lessee shall reseed as necessary to accomplish that duty. Lessee shall inspect disturbed areas at such times as Lessor shall reasonably request in order to determine the growth of ground cover and/or noxious weeds, and Lessee shall mow ground cover and control noxious weeds from time to time to the extent necessary to accomplish its obligations hereunder.
- S) Lessor may request in writing to move or relocate Lessee's access road(s) and pipeline(s) to reasonably facilitate Lessor's use of the Leased Premises, provided however that such relocation i.) is approved in writing by Lessee, and ii.) shall be at Lessor's sole cost and expense, and iii.) relocation work is performed by Lessee or Lessee's designated contractor working at the direction of Lessee, and iv.) does not interfere with Lessor's operations on the Leased Premises.
- T) Lessee's operations on said Leased Premises shall comply with all applicable federal, state, and local law and regulations.
- U) Lessee's rights hereunder may include burying or otherwise constructing necessary phone, electric, and data collection lines on the Leased Premises in connection with production from the Leased Premises, but such rights may not be assigned to a utility company, pipeline company, or anyone else who owns no interest in the Leased Premises or is otherwise not contracted or affiliated with Lessee for the purpose of carrying out the rights and obligations under the Lease. The right to use said pipelines terminates when the Lease expires or terminates.

9. Lessor's Use of Lessee's Roads: Upon Lessor's written permission Lessor shall be permitted to utilize any leasing road and/or access road constructed by Lessee upon the Leasehold pursuant to the terms and conditions of this Lease for personal, agricultural, non-commercial, use and enjoyment. Lessor agrees and acknowledges that any such use and enjoyment shall be done at their sole risk and hereby agrees to release Lessee from any and all damages, whether personal or real, suffered as a result of such use and enjoyment. Lessor further agrees and acknowledges that the rights and benefits provided for in this paragraph are intended for the sole and exclusive use and enjoyment of Lessor and their immediate family and in no way creates rights in a third party beneficiary.

10. No Interference with Alternative uses Prior to Lessee: Lessee agrees that any operations conducted pursuant to the terms and conditions of this Lease shall not unreasonably interfere with Lessor's usage of the premises including, but not limited to, raising of livestock, transmission towers, windmills, housing, harvesting timber,

recreation or other alternative use of the Leased Premises for the financial benefit or enjoyment of Lessor. Lessor acknowledges at times there may be temporary inconveniences affecting Lessor's surface usage and the parties shall mutually cooperate to minimize the inconveniences. The parties also agree to provide reasonable notice to each other of any intended change or increase in the use of surface that might affect the other party. Lessee acknowledges all recorded leases upon the premises prior to the date hereof. Lessor may fully and freely use the Leased Premises for any purpose, excepting such parts as are used by Lessee in operation hereunder.

11. **Shut-In Limitation:** Lessee agrees that the shut-in royalty payment provided for in the Lease will be increased to Fifteen Dollars (\$15.00) per acre per year. It is understood and agreed that this lease may not be maintained in force for a continuous period of time longer than thirty-six (36) consecutive months, or sixty (60) cumulative months after the expiration of the primary term hereof solely by the provision of the shut-in royalty clause. The shut-in status of any well shall persist only so long as it is necessary to correct, through the exercise of good faith and due diligence, the condition giving rise to the shut-in of the well.

12. **Lease Term:** The Lease shall continue beyond the primary term for so long thereafter as any well drilled on the Leasehold or lands pooled or unitized therewith ("Well") produces oil, gas, or their constituents in paying quantities. For purposes of this Lease, a Well produces in "paying quantities" when receipts from the sale of Oil and Gas produced from the Well exceeds the Well's total operating expenses (including all overhead, general and administration costs traceable to the expense of operating and marketing production from the Well). Subject to the limitations contained within the Shut-In royalty provisions of the Lease, the term of the Lease shall continue for any period during which Shut-in royalties are being paid. Additionally, Lessee shall have the option to extend the primary term of this Lease according to the extension described on page two of the Oil and Gas Lease.

13. **Royalty and Gas Measurements**

As royalties, Lessee covenants and agrees:

- A) **Oil, Gas and Hydrocarbons.** Lessee shall pay Lessor Twenty Percent (20%) of the gross proceeds of all oil, gas, other liquid hydrocarbons and by-products ("Hydrocarbons") produced from or on the Leased Premises and sold by Lessee in an arms' length transaction. In the event that Lessee sells all or part of the Hydrocarbons produced from the Leased Premises to an Affiliated Entity (as defined herein), the value thereof shall be the higher of (i) the sales price received by Lessee, or (ii) the sales price received on all of the Affiliated Entity's sales of the aggregated production volumes, where such aggregated production volumes include production from the Leased Premises during applicable months of sales. Lessee may withhold royalty payment until such time as the total withheld exceeds Fifty Dollars (\$50.00).
- B) **Market Enhancement Clause.** It is agreed between the Lessor and Lessee that all royalties or other proceeds accruing to the Lessor under this lease or by state law shall be without deduction directly or indirectly, for the cost of producing, gathering, storing, separating, treating, dehydrating, compressing, processing, transporting, and marketing ("Costs") the Hydrocarbons produced hereunder; except that Lessee shall be entitled to deduct from Lessor's royalty a proportionate share of the Costs attributable to converting or processing natural gas liquids or condensates into butane, propane, ethane, pentane, etc. However, in no event shall Lessor receive a price per unit that is less than the price per unit received by Lessee after such conversion or processing based on an arms' length transaction.
- C) For purposes of this Lease, and "Affiliated Entity" is any corporation, firm, or other entity in which the Lessee, or any parent company, subsidiary or affiliate of Lessee, that owns an interest of more than ten percent (10%) whether by stock ownership or otherwise, or over which Lessee or any parent company, or Affiliated Entity exercises any degree of control, directly or indirectly, by ownership, interlocking directorate, or in any other manner; and any corporation, firm or other entity which owns any interest in Lessee, whether by stock ownership or otherwise, or which exercises any degree of control, directly or indirectly, over Lessee, by stock ownership, interlocking directorate or in any other manner. The provision shall apply to all successors and assigns of Lessee.

14. **Governmental Programs, Real Estate Taxes:** Lessee agrees that if any penalty, charge, withdrawal, reimbursement, rollback, or re-capture of tax abatements created or imposed under any governmental program or legislation such as, but not limited to, CAUV, CREP, CRP, and Clean and Green that is levied on Lessor solely as a result of Lessee's operations on Leased Premises, Lessee will reimburse Lessor, upon written request, and Lessor will provide Lessee with a copy of the penalty notice. In the event Lessor's real estate taxes are increased due to Lessee's operation, Lessee agrees to pay yearly to Lessor an amount equal to such increase.

15. **Payments:** Payments of all monies due under this Lease may be made by check, to Claugus Family Farm, L.P., and made payable to 535 Main Street, Apt 8 715, New York, NY 10044, or such other location or person as Lessor may notify Lessee, in writing.

16. **Domestic Wells:** Lessee shall take such commercially reasonable precautions necessary to protect the use and operation of any existing oil and gas wells, the wells operations, tanks, lines and equipment on the Leased Premises, regardless of the drilling date. Lessor reserves all rights to any production from any existing oil and gas well. No domestic well shall be plugged except by prior written agreement of the parties hereto. In the event that any domestic well is damaged by Lessee's operations, Lessee shall pay as damages the value of said domestic well as determined by a qualified, independent appraiser.

17. **Prudent Operator:** Subject to economic reasonableness, Lessee will protect the property from drainage, will develop the property after drilling an initial well which is an established producer, will conduct all operations as a reasonably prudent operator, and will attempt to secure a market for production from a well. Lessee agrees to keep all surface disturbances to the minimum area necessary to conduct its operations.

18. **Surface Damage Fee:** Provided that Lessor is the current surface owner of the affected lands at the time of Lessee's surface operations, Lessee agrees to pay Lessor Twenty-Five Thousand Dollars and 00/100 (\$25,000) as a supplemental surface damage payment for each pad site built on the herein described leased premises with each well pad to be limited to five (5) acres of disturbed land. In addition, the Lessee is to pay Lessor an additional Five Thousand Dollars (\$5,000.00) for each additional disturbed acre beyond five (5) acres, but in no event shall the total disturbed land on the Leased Premises exceed ten (10) acres without the prior written consent of the Lessor. Said compensation does not include damages to Lessor's surface area for loss of crops or timber, or for any catastrophic incidents (i.e., fires, sinkholes, etc.) caused by operations of Lessee, its employees, contractors, subcontractors, agents, or representatives.

19. **Restore Premises to Pre-Drilling Conditions:** Within a reasonable time after completion of all wells to be drilled on any well pad, Lessee shall restore the Leased Premises as nearly as practicable to pre-drilling conditions, remove all debris, equipment, and personal property which Lessee placed on the Leased Premises not needed for the operation of producing wells. In no event, absent extraordinary circumstances, shall such restoration be delayed beyond eighteen (18) months from completion of any well drilled on any well pad. The area containing the wellhead equipment needed for the operation of producing wells (after the drill site location has been restored) shall not be greater than five (5) acres without payment to Lessee of an additional damage amount equal to Five Thousand Dollars (\$5,000.00) per additional acre used. All wellhead equipment shall be removed within six (6) months after a well permanently ceases to produce or when this Lease terminates. When the well site is restored, the subsoil shall be replaced first and the topsoil shall be placed on the top.

20. **Location Approval:** In order to minimize disruption of the Lessor's current or future use of the Leased Premises and to maintain the aesthetic value of the Leased Premises, in the opinion of the Lessor, and before Lessee commences surface disturbing operations, the final location of well pads, access roads, pipelines, fences, telephone and power lines, or other structures, facilities or surface disturbances shall be approved by the Lessor in writing.

Without a separate written agreement between Lessor and Lessee, no roadways, pipelines, tank battery, utilities or other surface disturbances shall be located, constructed or maintained on the Leased Premises unless they are for the sole purpose of producing and transporting produced materials from the Leased Premises or lands contiguously pooled or unitized therewith.

21. **Pooled Production Unit Limited:**

- A) The production of oil or gas under the terms of this Lease will maintain this Lease beyond its primary term including any extensions therein only as to that portion of the Leased Premises that is actually included within a well pad pooled production unit or units that contain a well or wells then producing in paying quantities for so

long as such well(s) are producing in paying quantities. In the absence of well spacing units, a spacing order or other density requirements issued by ODMR's Mineral Resources Management (or other government entity with jurisdiction) for a particular well, Lessee shall designate and file a "well plat production unit", which for the purpose of this Lease, shall contain only the acreage overlying that portion of the target formation or pool under a well that a prudent operator would deem capable of being most efficiently drained by that well while utilizing the best production technology in common use at the time of drilling. Notwithstanding any density rules applicable to any well, however, no production unit or pooled acreage assigned to any well shall exceed the following unit acreage sizes:

- (i) If the well is classified as a vertical oil or gas well, the maximum size of the pooled production unit shall be 40 contiguous acres, without the written consent of Lessor. The well shall be located in the center of the production unit to the extent practical, and such unit shall be of a square or rectangular shape consistent with state regulations.
 - (ii) If the well is classified as a horizontal oil or gas well drilled to any geologic formations containing a horizontal component of the drain hole in the target formation, whether oil or gas, then the maximum size of the pooled production unit shall not exceed 640 contiguous acres, except said pooled production unit may exceed 640 contiguous acres, but in no event larger than 1,000 contiguous acres, if the lateral extent of horizontal bore hole(s) in said formation shall extend beyond the boundary of a 640 contiguous acre unit and such that a reasonably prudent operator would expect that the entire acreage within such larger unit will be effectively and efficiently developed and drained from a central pad site location. The pooled production unit shall, to the extent practical, parallel and be centered on the lateral boreholes to be drilled within the unit, and such unit shall be of a square or rectangular shape consistent with state regulations.
- B) Upon termination of this Lease as to any portion of the Leased Premises, Lessee shall promptly deliver to Lessor a plat showing the designated pooled production unit(s) or well(s), acreage around each well and a partial release containing a satisfactory description of the acreage not retained, suitable for recording.
22. **Declaration of Production Unit:** At the time of the filing of the declaration of consolidation of record Lessee shall furnish to Lessor, a declaration of a production unit of which the Leased Premises shall be part, including a copy of all plats, maps, and exhibits of said unit.
23. **Reasonable Development:** If oil or gas is discovered on the Leased Premises, Lessee shall develop the Leased Premises as a reasonable and prudent operator and exercise due diligence in drilling such additional well or wells as may be necessary to fully develop the Leased Premises. Lessee shall protect the oil and gas in and under the Leased Premises from drainage by wells on adjoining or adjacent tracts or leases, including those held by the Lessee or any Affiliate of Lessee.
24. **Term of Lease:** Provided this Lease is in its secondary term by operation of the provisions of this Lease, at the end of one (1) year past the expiration of the primary term hereof, this lease shall automatically terminate as to 1) all of the leased premises except lands located within the boundaries of a production unit, drilling unit, spacing unit, or pooled unit, as the case may be on which is then located a well producing in paying quantities, whether actually producing or shut-in, or upon which operations are then being conducted in accordance with this lease; and 2) as to all depths deeper than two hundred feet (200') below the stratigraphic equivalent of the deepest formation producing on the Leased Premises or on land pooled therewith.
25. **Liability Insurance**
- A) **Hold Harmless.** Lessee shall indemnify and hold Lessor harmless from any and all liability, losses, demands, judgments, suits, and claims of any kind or character arising out of, in connection with, or relating to Lessee's operations under the terms of this Lease, including, but not limited to, environmental losses, claims for injury to or death of any persons, or damage, loss or destruction of any property, real or personal, under any theory of tort, contract, or strict liability. Lessee further covenants and agrees to defend any suits brought against Lessor on any claims, and to pay any judgment against Lessor resulting from any suit or suits, together with all costs and expenses relating to any claims, including attorney's

fees, arising from Lessee's operations under the terms of this lease. Lessor, if it so elects, shall have the right to participate, at its sole expense, in its defense in any suit or suits in which it may be a party, without relieving Lessee of the obligation to defend Lessor. The terms hereof do survive the expiration or termination of this lease and/or the completion of operations.

- B) **Insurance.** Lessee shall at all times maintain in full force and effect liability insurance in compliance with the requirements set forth under Ohio Revised Code Section 1509.

26. **No Warranty of Title:** This Lease is made without warranty of title express, implied or statutory. Lessee agrees that this Lease is made and accepted subject to all easements, rights-of-way, oil and gas leases, and other mineral leases recorded prior to the recording of this Lease. Lessee further agrees that Lessor Leases to Lessee only the oil and gas rights, as defined herein. Lessor makes no representations as to its right, title or interest in the Leased Premises, and does not warrant title or agree to defend title to the Leased Premises. Lessee will bear all costs and expenses incurred in curing any title defect or defending title to said lands. Any payments of the Lease bonus, royalty and rental are non-refundable.

27. **Bonus Consideration, Title Defects and Cures**

- A) **Bonus Consideration.** Lessee shall pay to the Lessor the sum of Seven Thousand Dollars (\$7,000.00) per net acre of each net acre for which title is confirmed as hereinafter provided. Payment shall be in accordance with that certain Paid-Up Order of Payment and Bonus Agreement executed in conjunction with Lease to which this Addendum is attached. Lessee shall not conduct any operations pursuant to this lease until the Bonus Consideration is paid to Lessor. Any Bonus Consideration paid shall not be refundable for any reason, except in instances of fraud.

- B) **Notice of Defect.** Lessee shall have ninety (90) days from the date of this Lease to review title to the Leased Premises (the "Title Period"). At the end of the Title Period Lessee shall pay Lessor the Bonus Consideration unless Lessor's review of title to the Leased Premises reveals a title Defect or Defects in which case Lessee shall reject the Lease by providing Lessor with a letter specifically identifying the Defect giving rise to the rejection with a copy of all documentary evidence giving rise to such defect(s). Lessee shall not be obligated to pay Bonus Consideration on the Leased Premises if they are deemed defective.

- C) **Definition of Defects.** "Defects" shall mean any lien or encumbrance on the oil and gas rights that render the Lease title other than a good, safe leasehold title for oil and gas purposes. The following liens and encumbrances shall not be a Defect:

- i. Mortgage, liens (excluding tax liens), claims or encumbrances the foreclosure of which would not extinguish Lessor's lease of the oil and gas rights under the provisions of Section 1509.31(D) of the Ohio Revised Code;
- ii. Liens of real estate taxes not yet due and payable;
- iii. Any mortgage, lien, claim or encumbrance filed for record subsequent to Lessor's lease of the oil and gas rights;
- iv. Easements and rights-of-way provided that such easements and rights-of-way do not adversely affect the ability of Lessee to develop the oil and gas estate consistent with the rights and privileges granted in this Lease;
- v. All recorded leases other than oil and gas leases relating to the Leased Premises;
- vi. Any deeds severing coal rights from the Leased Premises;
- vii. Any mortgage, lien, claim or encumbrance on the surface estate where the oil and gas rights have been severed from the surface and the person executing the Lease is not the surface owner;
- viii. Oil and gas leases not released of record for which: a) the primary term of such oil and gas leases have expired by their terms; b) no producing oil and gas wells drilled pursuant to such oil and gas leases exist on the Leased Premises; c) oil and gas leases that have

complied with the Ohio statutory forfeiture procedures;

- ix. Lands which the Lessor is owner of the surface and whose the oil and gas rights have become vested in the Lessor pursuant to the provisions of Ohio Revised Code Section 5301.56.

- D) **Cure Period.** If Lessee rejects title to the Leased Premises and provides Lessor with written notice as required in this section, then Lessor shall have one hundred eighty (180) days from the end of the Title Period in which to take corrective action (the "Cure Period"). If the defect is cured during the Cure Period, Lessee shall accept the Lease and pay the Bonus Consideration. Whether or not Lessor elects to take corrective action shall be in Lessor's sole discretion. Lessor may waive the Cure Period by giving written notice to Lessee at any time during the Cure Period. If at the end of the Cure Period, Lessor gives notice that it is not curing Defects or does not cure Defects to Lessee's satisfaction Lessee shall have three (3) days to accept and pay the bonus for such leases at its sole discretion. Any time utilized by Lessor during the Cure Period shall be added to Primary Term of the Lease.
28. **Right of Purchase.** Lessor shall have the first option to purchase any vertically drilled well located upon the Leased Premises and such well equipment necessary to operate the same at fair market salvage value, less estimated plugging costs, when any well has ceased to produce in Paying Quantities as defined herein. Lessor shall have thirty (30) days, after receiving written notice, to exercise its option to purchase. Should Lessor purchase any well or wells, it shall assume the responsibility of eventually plugging the same and shall execute such documents to this end with the State of Ohio as the State may require to effect proper well transfer.
29. **Right of First Refusal.** Lessee shall not have any right of first refusal with respect to renewing or extending this Lease.
30. **Assignment Notice.** Lessee shall notify Lessor in writing within thirty (30) days if Lessee assigns all or a majority portion of this Lease to a third party or if there is an assignment that affords the control of the Lease: (a) to an affiliate, subsidiary, joint venture or internal partners; (b) in consequence of a merger or amalgamation; or (c) the sale of all or substantially all of its assets of Lessee to a third party.
31. **Partial Release.** Lessee shall have the right at any time during this Lease to release from the lands covered hereby any lands subject to this Lease and thereby may be relieved of all obligations hereafter accruing to the acreage so released, provided that (a) Lessee may not release any portion of the Lease prior to the payment of the Initial Bonus Payment as set forth herein, (b) Lessee may not release any portion of this Lease included in a pooled unit so long as operations are being conducted on such unit, and (c) any such partial release must release all depths in and under the lands so released.
32. **Compliance.** Lessee's operations on said Leased Premises shall comply with all applicable federal and state regulations.
33. **Coal.** Lessee acknowledges that certain rights to mine or extract coal may be applicable to or affect the Leased Premises subject to this Lease. Lessor makes no representation or warranty and provides no assurance that Lessee's ability to extract oil and gas will be unaffected by such coal rights. Lessee shall rely solely on its evaluation of the exploration and extraction rights granted hereby and shall not rely on Lessor regarding such rights. In the event the right to extract coal and/or other mineral is granted or conveyed by Lessor subsequent to the date hereof, Lessee agrees to cooperate with such lessee or grantee in the mining or extraction of such coal or mineral in order to permit Lessor to obtaining the economic benefit of all coal and minerals located on the leased Premises. In any event, this provision shall always adhere and be under and subject to the Force Majeure provisions in this Lease.
34. **Audits.** Lessee further grants to Lessor the right, once in a twelve (12) month period, to examine, audit, or inspect the books, records, and accounts of Lessee pertinent to the purpose of verifying the accuracy of the reports and statements furnished to Lessor, and for checking the amount of payments lawfully due the Lessor under the terms of this Lease. In exercising this right, Lessor shall give written notice to Lessee of the intended audits and such audits shall be conducted during normal business hours at the office of Lessee on a date specified by Lessor.
35. **Force Majeure.** In the event Lessee claims that any duties or obligations of Lessee as contained in the Lease may not be fulfilled as a result of force majeure as defined in the Lease, Lessee shall provide notice to Lessor of the nature of the force majeure, indicate the expected length of delay, and work diligently to remove or resolve the force majeure event. The Lease

shall never be extended longer than twenty-four (24) cumulative months, due to the terms contained in the *Force Majeure* Clause of the Lease.

36. **Notice of Violation:** Except as provided below, in the event that Lessee has not complied with all its obligations hereunder, either express or implied, Lessor shall give Lessee or its assigns written notice thereof describing specifically the respects in which Lessee has breached this Lease. Lessee shall have thirty (30) days after receipt of such notice within which to cure or commence to cure the breaches alleged by Lessor. After the expiration of thirty (30) days if Lessee has not commenced cure, Lessor shall have the right to exercise all rights and remedies granted it by law or equity, including, but not limited to, the filing of an affidavit of foreclosure pursuant to Ohio Revised Code, it being expressly agreed that Lessor may claim a forfeiture of this Lease for the breach of any covenant, express or implied, contained herein. Lessor shall further have the right to pursue any claim for damages it may have in addition to claiming forfeiture, it being agreed that such right of forfeiture or damage shall be cumulative remedies and not exclusive. Lessor shall have no obligation to notify Lessee of a breach of this Lease that relates to the expiration of the terms of the Lease (either primary or secondary).

37. **Surrender:** In the event of the surrender of a portion of the Lease, pipelines, pole lines, roadways, and other facilities on the land surrendered shall be limited to those in existence at the time of surrender and shall not be expanded or enlarged without the prior written consent of Lessor.

38. **Non-Drilling Lease:** In the event that the Leased Premises is less than fifteen (15) acres, then Lessee shall not have the right to use the Leased Premises for drill sites, tank batteries, driveways, or any other surface activity without written permission from the Lessor.

39. **No Arbitration:** The arbitration provision of the Lease is hereby deleted. Jurisdiction and venue of disputes arising under this Lease shall be submitted to the Court of Common Pleas of Monroe County, Ohio.

40. **Memorandum of Lease:** The parties agree that this Lease shall not be recorded, but that the parties will instead record a Memorandum of Lease.

MEMORANDUM OF PAID UP OIL AND GAS LEASE

This Memorandum of Paid Up Oil and Gas Lease made this 23 day of September 2013 but effective the 23 day of September, 2013, by and between Chaugus Family Farms, L.P. of 233 Main Street, Apt # 715, New York, NY 10044, hereinafter called "Lessor(s)", and GULFPORT ENERGY CORPORATION ("Gulfport"), a Delaware Corporation with a mailing address of 14313 N. May Avenue, Suite 100, Oklahoma City, OK 73134, hereinafter called "Lessee."

WITNESSETH, that for and in consideration of the sum of One Dollar (\$1.00) cash in hand paid, and other good and valuable consideration, Lessor did make and execute in favor of Lessee an Oil and Gas Lease dated and effective September 23, 2013, which provides for a five (5) year primary term covering Lessor's interest in the following described lands:

The Parcel Identification Number: Twp/Eastline/Top No/Range/Qty:
09-013002.0000; Green/9/45NW & SW 1/4

and is bounded formerly or currently as follows:

On the North by lands of Chaugus Family Farms, L.P.;
On the East by lands of Mark H. Lander et al;
On the South by lands of Center Trwp;
On the West by lands of Section Line;

Containing 60.181 acres, more or less, and located in the Township of Green, in the County of Monroe, State of Ohio, for the purpose of drilling, operating for, producing and removing oil and gas and all the constituents thereof. Said lands were conveyed to Lessor from HVL, Inc., by virtue of Warranty Deed dated March 25, 2011, and recorded in Deed Book 302, at Page 769, at the Recorder's office of Monroe County, Ohio. This lease may be extended for an additional term of five (5) years upon additional consideration paid to Lessor pursuant to the terms of the Oil and Gas Lease.

This Memorandum of Oil and Gas Lease is being made and filed for the purpose of giving third parties notice of the existence of the Lease described above. The execution, delivery and recording of this Memorandum of Oil and Gas Lease shall have no effect upon and is not intended as an amendment of the terms and conditions of the Lease. It is the intent of the Lessor to lease Lessor's interest in and to the properties described herein, whether or not the tracts recited herein are properly described.

EXECUTED this 23 day of September, 2013.

LESSOR:


Bruce Chaugus, Managing Member Partner,
Chaugus Family Farms, LP

PARTNERSHIP ~~MEMORANDUM~~ ACKNOWLEDGEMENT

STATE OF OHIO)
) SS:
COUNTY OF LACROIX)

On this 22nd day of September, 2013, before me Daniel E. Flisby, the undersigned officer, personally appeared Bruce Claugus, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed the same for the purposes therein contained. Managing partner of Claugus Family Farm, LP,

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires: _____

Signature/Notary Public: _____

Name/Notary Public (print): _____



CORPORATE ACKNOWLEDGEMENT

STATE OF OHIO)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by _____ of _____ corporation, on behalf of the corporation.

Given under my hand and seal this ____ day of _____, 2013.

My Commission Expires: _____

Signature/Notary Public: _____

Name/Notary Public (print): _____

Recorder: Prepared By and Return To:
Goldport Energy Corporation
14313 N. May Ave., Suite 100
Oklahoma City, OK 73134

EXHIBIT B

IN THE SUPREME COURT OF OHIO

**STATE OF OHIO EX REL. CLAUGUS
FAMILY FARM, L.P.,**

Relator,

vs.

**SEVENTH DISTRICT COURT OF
APPEALS, ET AL.,**

Respondents.

CASE NO. 14-0423

ORIGINAL ACTION IN
PROHIBITION AND MANDAMUS

AFFIDAVIT OF SCOTT M. ZURAKOWSKI

Affiant, Scott M. Zurakowski, being duly sworn and cautioned, for his Affidavit,
states as follows:

1. My name is Scott M. Zurakowski, Affiant, and being first duly sworn, depose
and state as follows:

2. I am over the age of 18 and have personal knowledge of the matters testified
to in this Affidavit.

3. I am counsel of record for Intervening Respondent Beck Energy Corporation (“Beck Energy”).

4. Exhibits 1 through 23 attached to this affidavit come from authentic copies of pleadings, judgment entries, and transcripts filed in *Clyde A. Hupp, et al. v. Beck Energy Corporation*, Monroe County Court of Common Pleas, Case No. 2011-345, and the Seventh District Court of Appeals, Case Nos. 12 MO 6, 13 MO 3, and 13 MO 11.

5. The attached documents from these cases, Exhibits 1 through 23, are all true and accurate copies of the pleadings, judgment entries, and transcripts.

6. Attached hereto as Exhibit 1 is the Complaint for Declaratory Judgment and Quiet Title filed on September 14, 2011, in *Clyde A. Hupp, et al. v. Beck Energy Corporation*, Case No. 2011-345.

7. Attached hereto as Exhibit 2 is the Amended Class Action Complaint filed on September 29, 2011, in *Clyde A. Hupp, et al. v. Beck Energy Corporation*, Case No. 2011-345.

8. Attached hereto as Exhibit 3 is the Second Amended Class Action Complaint filed on September 30, 2011, in *Clyde A. Hupp, et al. v. Beck Energy Corporation*, Case No. 2011-345.

9. Attached hereto as Exhibit 4 is a Journal Entry from the Monroe County Court of Common Pleas filed on July 31, 2012, granting Plaintiffs’ Motion for Summary Judgment and denying Defendant’s Motion to Dismiss and Motion to Change Venue.

10. Attached hereto as Exhibit 5 is Plaintiffs’ Motion for Class Action Certification filed on July 19, 2012.

11. Attached hereto as Exhibit 6 is Third Party XTO Energy Inc.'s Motion to Intervene in Proceedings filed on September 7, 2012.
12. Attached hereto as Exhibit 7 is Plaintiffs' Amended Motion for Class Action Certification filed on September 12, 2012.
13. Attached hereto as Exhibit 8 is Defendant Beck Energy Corporation's Memorandum in Opposition to Amended Motion for Class Action Certification filed on September 17, 2012.
14. Attached hereto as Exhibit 9 is Defendant Beck Energy Corporation's Motion to Toll All Terms of the Oil and Gas Leases Entered into Between Plaintiffs and Defendant Beck Energy Corporation filed on October 1, 2012.
15. Attached hereto as Exhibit 10 is a Decision and Order (On Plaintiff's (sic) Motion for Class Action Certification) from the Monroe County Court of Common Pleas filed on February 8, 2013, granting Plaintiffs' Motion for Class Action Certification.
16. Attached hereto as Exhibit 11 is a Decision and Order (On XTO's Motion to Intervene) from the Monroe County Court of Common Pleas filed on February 8, 2013, denying XTO Energy Inc.'s Motion to Intervene.
17. Attached hereto as Exhibit 12 is a Judgment Entry filed by the Seventh District Court of Appeals on April 19, 2013, ordering a limited remand for sixty (60) days to allow the trial court to take further action in aid of the appeal in Case No. 12 MO 06 in order to further define the class and rule on Beck Energy's pending counterclaims.

18. Attached hereto as Exhibit 13 is a Journal Entry filed by the Monroe County Court of Common Pleas on June 10, 2013, further defining class membership and finding Beck Energy Corporation's Answer and Counterclaims moot.

19. Attached hereto as Exhibit 14 is a Motion of Plaintiffs for Approval of Notice to Class and Establishment of Method of Service filed on June 24, 2013.

20. Attached hereto as Exhibit 15 is a Judgment Entry filed by the Seventh District Court of Appeals on July 12, 2013, denying Clyde Hupp, et al.'s Motion to Dismiss and allowing XTO Energy Inc. and the United Association of Plumbers and Pipefitters, HVAC Technicians and Sprinkler Fitters Local Union 396 to file Amicus Curiae Briefs.

21. Attached hereto as Exhibit 16 is Defendant Beck Energy Corporation's Motion to Toll All Terms of the Oil and Gas Leases Entered Into Between the Class Action Plaintiffs and Defendant Beck Energy Corporation filed on July 16, 2013.

22. Attached hereto as Exhibit 17 is a Decision and Entry from the Monroe County Court of Common Pleas filed on August 2, 2013, tolling the leases of the named Plaintiffs.

23. Attached hereto as Exhibit 18 is a Decision and Entry (On Plaintiffs' Motion for Approval of Notice of Class and Establishment of Method of Service) filed on August 8, 2013, denying Plaintiffs' Motion for Approval of Notice to Class and Establishment of Method of Service.

24. Attached hereto as Exhibit 19 is Defendant Beck Energy Corporation's Emergency Motion for Injunctive Relief Pursuant to App.R. 7(A) filed on August 16, 2013.

25. Attached hereto as Exhibit 20 is Defendant Beck Energy Corporation's Emergency Motion to Set Aside Supersedeas Bond filed on August 22, 2013.

26. Attached hereto as Exhibit 21 is a Judgment Entry from the Seventh District Court of Appeals filed on September 26, 2013, modifying the stay order to include the named Plaintiffs and the members of the certified class, and making the stay effective without posting a bond; modifying the tolling order to include the named Plaintiffs and the members of the certified class effective October 1, 2012; and denying Appellees' Motion to Dismiss.

27. Attached hereto as Exhibit 22 is a Judgment Entry from the Seventh District Court of Appeals filed on June 23, 2014, consolidating Case Nos. 12 MO 6, 13 MO 3, and 13 MO 11 for oral argument on July 23, 2014, and extending total oral argument time.

28. Attached hereto as Exhibit 23 is a transcript from the Motions Hearing conducted by the Monroe County Court of Common Pleas on July 23, 2013, in *Clyde A. Hupp, et al. v. Beck Energy Corporation*, Case No. 2011-345, concerning Plaintiffs' request for bond, XTO Energy Inc.'s request to intervene in the lawsuit, Beck Energy's request to toll the terms of the affected leases, and Plaintiffs' request to serve notice upon the class members.

29. At the hearing conducted on July 23, 2013, Plaintiffs' counsel made the following representations to the trial court regarding notice and the ability of class members to enter into new leases:

a. Notice to the class is discretionary because this is a declaratory judgment action. (Tr. Motion Hearing, p. 6)

b. Individual class members can ask to intervene, under Civ.R. 23(D), to protect their individual interests. (*Id.*, p. 7)

c. The notice requirement to the class could be satisfied after the Seventh District Court of Appeals makes its decision on the validity of the GT83 Lease. (*Id.*, p. 11)

d. The stay prohibits any class member from signing a new lease, from selling their mineral rights, or otherwise acting upon their Beck Energy lease. (*Id.*, p. 34)

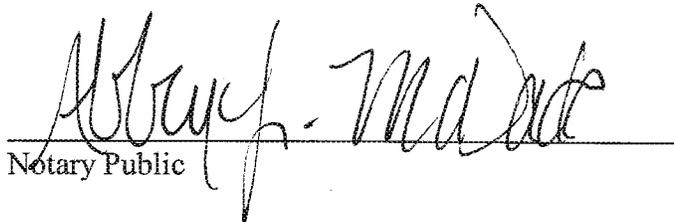
Further, Affiant saith naught.



Scott M. Zurakowski, Affiant

STATE OF OHIO, COUNTY OF STARK, SS:

Sworn to before me and subscribed in my presence at Canton, Ohio, this 19th day of September 2014.



Notary Public



Abbey L. McDade
Notary Public, State of Ohio
My Commission Expires 09-02-2018

EXHIBIT 1

IN THE COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

2011 SEP 14 PM 2:33

Clyde A. Hupp
45595 S.R. 78
Woodsfield, Ohio 43793

Case No. *2011-345* LETH ANN ROSE
CLERK OF COURTS

Judge Julie Seimon

and

COMPLAINT FOR:

Molly A. Hupp
45595 S.R. 78
Woodsfield, Ohio 43793

(a) Declaratory Judgment;

(b) Quiet Title

and

Interrogatories, Requests for Production
of Documents and Requests for Admissions
Attached

Larry A. Hustack
991 Brookpoint Dr.
Macedonia, Ohio 44056

and

Lori Hustack
991 Brookpoint Dr.
Macedonia, Ohio 44056

Plaintiffs

vs.

Beck Energy Corporation
4857 Harding Ave.
Ravenna, Ohio 44266

Defendant

COUNT ONE

Now come the Plaintiffs, Clyde A. Hupp and Molly A. Hupp, by and through their undersigned counsel, and for Count One of their Complaint for declaratory judgment against Defendant, Beck Energy Corporation, state that:

(1) Plaintiffs, Clyde A. Hupp and Molly A. Hupp, are individuals residing in Monroe County, Ohio, are husband and wife, and are the titled owners of and in present

SLATER & ZURZ LLP
ATTORNEYS & COUNSELORS AT LAW
ONE CASCADE PLAZA
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AKRON, OHIO 44308-1135
TELEPHONE (330) 782-0700
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SLATER & ZURZ LLP
ATTORNEYS & COUNSELORS AT LAW
ONE CASCADE PLAZA
SUITE 2810
AKRON, OHIO 44308-1135
TELEPHONE (330) 762-0700
FAX (330) 762-3923

possession of certain realty located in Monroe County, Ohio comprised of approximately three hundred and eight (308) acres (hereinafter referenced as "Hupp Acreage").

(2) Defendant, Beck Energy Corporation, is a corporation duly authorized and existing under and pursuant to the laws of the State of Ohio and, at all times relevant hereto, conducted business in Monroe County, Ohio.

(3) On or about May 4, 2004, Plaintiffs and Defendant entered into a certain Oil and Gas Lease relative to the Hupp Acreage (hereinafter "Hupp Lease"), which was subsequently recorded in Vol. 118 and Page 286 of the records of the Monroe County Recorder. A copy of said Hupp lease is attached hereto as Exhibit 1 and incorporated herein as if fully rewritten.

(4) Since the date of the Hupp Lease and in contravention thereof, Defendant has not prepared to drill a well on the Hupp Acreage, has not drilled a well on the Hupp Acreage, and has not paid any royalties to Plaintiff.

(5) Plaintiffs are entitled to a declaratory judgment that the Hupp Lease is forfeited, cancelled, unenforceable, voided and held for naught, for reasons including, but not limited to, the following:

- (a) Defendant breached express covenants and breached implied covenants which arose by operation of law and Ohio public policy, including but not limited to the covenant to reasonably develop the leasehold, the covenant to drill an exploratory well, and the covenant to conduct all operations that effect Plaintiff's royalty interest with reasonable care and diligence; and

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- (b) Defendant abandoned the Hupp Lease and the leasehold interest;
and
- (c) The terms and conditions of the Hupp Lease as to Plaintiffs are
unconscionable; and
- (d) The terms and conditions of the Hupp Lease are contrary to and
violative of Ohio public policy; and
- (e) There has been a failure of consideration as to Plaintiffs; and
- (f) The equitable remedy of declaring the Hupp Lease to be forfeited,
cancelled, unenforceable, voided and held for naught is appropriate
and required as any legal remedies would be inadequate, as
monetary damages are not ascertainable, as a forfeiture is
necessary to do justice to the parties, and as forfeiture is warranted
to assure development of the land and the protection of Plaintiffs'
interests.

COUNT TWO

Now come the Plaintiffs, Clyde A. Hupp and Molly A. Hupp, by and through the undersigned counsel, and for Count Two of their Complaint to quiet title against Defendant, state:

(6) Reallege and reaver the allegations contained in Count One as if fully rewritten herein;

(7) Plaintiffs are entitled to a judgment, pursuant to Ohio Revised Code 5303.01, quieting their title as to the Hupp Acreage as against Defendant by and through the forfeiture, release and cancellation of the Hupp's Lease as a valid encumbrance of record

and by extinguishing any interest which Defendant has or may claim to have in the Hupp Acreage.

Wherefore, Plaintiffs, Clyde A. Hupp and Molly A. Hupp, request a declaratory judgment as specified in paragraph 5 above; and a judgment quieting title as specified in paragraph 7 above; and for costs and such other and further relief as to which said Plaintiffs may be entitled at law or in equity.

COUNT THREE

Now come the Plaintiffs, Larry A. Hustack and Lori Hustack, by and through their undersigned counsel, and for Count Three of their Complaint for declaratory judgment against Defendant, Beck Energy Corporation, state that:

(8) Plaintiffs, Larry A. Hustack and Lori Hustack, are husband and wife and are the titled owners of and in present possession of certain realty located in Monroe County, Ohio comprised of approximately 89.75 acres (hereinafter referenced as "Hustack Acreage").

(9) Defendant, Beck Energy Corporation, is a corporation duly authorized and existing under and pursuant to the laws of the State of Ohio and, at all times relevant hereto, conducted business in Monroe County, Ohio.

(10) On or about August 14, 2008, Defendant, as lessee, and Alonzo F. Wilson and Sherry S. Wilson, husband and wife, as lessors, entered into a certain Oil and Gas Lease which was subsequently recorded in Vol. 174 Page 229 of the records of the Monroe County Recorder (hereinafter referred to as the "Hustack Lease"). A copy of said Hustack Lease is attached hereto as Exhibit 2 and incorporated herein as if fully rewritten. Plaintiffs' ownership of and title to the Hustack acreage is subject to and encumbered by

SLATER & ZURZ LLP
ATTORNEYS & COUNSELORS AT LAW
ONE CASCADE PLAZA
SUITE 2210
AKRON, OHIO 44308-1135
TELEPHONE (330) 782-0700
FAX (330) 782-3925

SLATER & ZURZ LLP
ATTORNEYS & COUNSELORS AT LAW
ONE CASCADE PLAZA
SUITE 2210
AVON, OHIO 44008-1135
TELEPHONE (330) 782-0700
FAX (330) 782-3923

the Hustack Lease, as Plaintiffs are the successors in interest to the original lessors as delineated in said Hustack Lease pertaining to the 89.75 acres comprising the Hustack Acreage.

(11) Since the date of the Hustack Lease and in contravention thereof, Defendant has not prepared to drill a well on the Hustack Acreage, has not drilled a well on the Hustack Acreage, and has not paid any royalties to Plaintiffs.

(12) Plaintiffs are entitled to a declaratory judgment that the Hustack Lease is forfeited, cancelled, unenforceable, voided and held for naught, for reasons including, but not limited to, the following:

- (a) Defendant breached express covenants and breached implied covenants which arose by operation of law and Ohio public policy, including but not limited to the covenant to reasonably develop the leasehold, the covenant to drill an exploratory well, and the covenant to conduct all operations that effect Plaintiffs' royalty interest with reasonable care and diligence; and
- (b) Defendant abandoned the Hustack Lease and the leasehold interest; and
- (c) The terms and conditions of the Hustack Lease as to Plaintiffs are unconscionable; and
- (d) The terms and conditions of the Hustack Lease are contrary to and violative of Ohio public policy; and
- (e) There has been a failure of consideration as to Plaintiffs; and
- (f) The equitable remedy of declaring the Hustack Lease to be forfeited,

cancelled, unenforceable, voided and held for naught is appropriate and required as any legal remedies would be inadequate, as monetary damages are not ascertainable, as a forfeiture is necessary to do justice to the parties, and as forfeiture is warranted to assure development of the land and the protection of Plaintiffs' interests.

COUNT FOUR

Now come the Plaintiffs, Larry A. Hustack and Lori Hustack, by and through the undersigned counsel, and for Count Four of their Complaint to quiet title against Defendant, state:

(13) Reallege and reaver the allegations contained in Count Three as if fully rewritten herein;

(14) Plaintiffs are entitled to a judgment, pursuant to Ohio Revised Code 5303.01, quieting their title as to the Hustack Acreage as against Defendant by and through the forfeiture, release and cancellation of the Hustack's Lease as a valid encumbrance of record and by extinguishing any interest which Defendant has or may claim to have in the Hustack Acreage.

Wherefore, Plaintiffs, Larry A. Hustack and Lori Hustack, request a declaratory judgment as specified in paragraph 12 above; and a judgment quieting title as specified in paragraph 14 above; and for costs and such other and further relief as to which said Plaintiffs may be entitled at law or in equity.

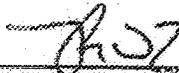
SLATER & ZURZ LLP
ATTORNEYS & COUNSELORS AT LAW
ONE CASCADE PLAZA
SUITE 2810
AKRON, OHIO 44308-1135
TELEPHONE (330) 762-0700
FAX (330) 762-3923

SLATER & ZURZ LLP
ATTORNEYS & COUNSELORS AT LAW
ONE CASCADE PLAZA

SUITE 2210
AKRON, OHIO 44308-1135
TELEPHONE (330) 762-0700
FAX (330) 762-3923

Respectfully Submitted,

SLATER & ZURZ, LLP


RICHARD V. ZURZ, JR. #0007978
Attorney for Plaintiffs
One Cascade Plaza, Suite 2210
Akron, Ohio 44308
330-762-0700
330-762-3923 fax

Peters Law Office Co., LPA


James W. Peters, Esq.
Attorney for Plaintiffs
107 West Court St.
Woodsfield, OH 43793
(740)472-1681

Roetzal & Andress, LPA

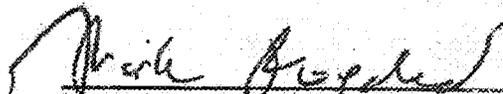

Mark A. Ropchock, Esq.
Attorney for Plaintiffs
222 South Main St.
Akron, OH 44308
(330)376-2700

EXHIBIT 2

COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

FILED

2011 SEP 29 PM 3:26

BETH ANN ROSE
CLERK OF COURTS
IN THE COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

LARRY A. HUSTACK
991 Brookpoint Drive
Macedonia, Ohio 44056

And

LORI HUSTACK
991 Brookpoint Drive
Macedonia, Ohio 44056

And

LAWRENCE HUBBARD
3685 Johnston-Alexandria Road
Alexandria, Ohio 43001

And

MICHELLE HUBBARD
3685 Johnston-Alexandria Road
Alexandria, Ohio 43001

And

DONALD W. YONLEY
P.O. Box 248
New Matamoras, Ohio 45767

And

DAVID MAJORS
48433 Keylor Hill Road
Woodsfield, Ohio 43793

Plaintiffs,

CASE NO. 2011-345

JUDGE: JULIE SELMON

AMENDED CLASS ACTION
COMPLAINT

vs.

BECK ENERGY CORPORATION
4857 Harding Avenue
Ravenna, Ohio 44266

Defendants.

Now come Plaintiffs, Larry and Lori Hustack ("Hustacks"), Lawrence and Michelle Hubbard ("Hubbards"), Donald W. Yonley ("Yonley"), and David Majors ("Majors"), by and through undersigned counsel, and for their Amended Class Action Complaint against Defendant Beck Energy Corporation ("Beck"), allege and aver as follows:

IDENTIFICATION OF PARTIES AND STATEMENT OF JURISDICTION

1. Defendant Beck Energy Corporation is an Ohio corporation with its principal place of business in Portage County, Ohio, and which conducts extensive business in Monroe County, Ohio.
2. The Hustacks, husband and wife, are titled owners of, and in present possession of, certain realty located in Monroe County, Ohio, comprised of approximately 89.75 acres (hereinafter referenced as "Hustack Acreage").
3. The Hubbards, husband and wife, are titled owners of, and in present possession of, certain realty located in Monroe County, Ohio, comprised of approximately 46.846 acres (hereinafter referenced as the "Hubbard Acreage").
4. Donald Yonley, is titled owner of, and in present possession of, certain realty located in Monroe County, Ohio, comprised of approximately 50 acres (hereinafter referenced as "Yonley Acreage").

5. David Majors, is titled owner of, and in present possession of, certain realty located in Monroe County, Ohio, comprised of approximately 54 acres (hereinafter referenced as "Majors Acreage").

6. Over the years, Beck Energy Corporation has entered into oil and gas leases with various land owners of realty located in Monroe County, Ohio, constituting in excess of 21,000 acres of land.

7. Beck entered into a standard form oil and gas lease with not only the Hustacks, Hubbards, Yonley and Majors, but also with approximately 400 landowners in Monroe County. The lease terms at issue in this litigation appear identical.

FACTS COMMON TO ALL CAUSES OF ACTION

8. The Hustacks, along with the Hubbards, Yonley, Majors and approximately 400 additional landowners/Lessors in Monroe County, executed oil and gas leases with Beck, or are successors in interest to said lessors, which are essentially identical to Plaintiffs' Exhibits 1-4.

9. All of the leases contain terms and conditions that are contrary to and violative of Ohio Public Policy as they are, among other things, leases in perpetuity without timely development.

10. For all of the leases, the Defendant breached express covenants and implied covenants which arose by operation of law and Ohio Public Policy, including but not limited to the covenant to reasonably develop the leasehold, the covenant to drill an exploratory well, and the covenant to conduct all operations that affect Plaintiffs' royalty interest with reasonable care and diligence.

COUNT I - DECLARATORY JUDGMENT

11. Plaintiffs, Larry Hustack and Lori Hustack, are husband and wife and are the titled owners of, and in present possession of, certain realty located in Monroe County, Ohio, comprised of approximately 89.75 acres.
12. On or about August 14, 2008, Defendant, as Lessee, and Alonzo F. Wilson and Sherry S. Wilson, husband and wife as Lessors, entered into a certain oil and gas lease with Beck which was subsequently recorded in Vol. 174, pg. 229, of the records of the Monroe County Recorder (hereinafter referred to as the "Hustack Lease"). A copy of Hustack Lease is attached hereto as Exhibit 1 and incorporated herein as if fully rewritten. Plaintiffs' ownership and title to the Hustack Acreage is subject to and encumbered by the Hustack Lease, as Plaintiffs are the successors in interest to the original Lessors as delineated in said Hustack Lease pertaining to the 89.75 acres comprising the Hustack Acreage.
13. Plaintiffs, Lawrence Hubbard and Michelle Hubbard, are husband and wife and are the titled owners of, and in present possession of, certain realty located in Monroe County, Ohio, comprised of approximately 46.846 acres.
14. On or about March 2, 2006, Defendant, as Lessee, and Lawrence and Lieselotte Hubbard, husband and wife as Lessors, entered into a certain oil and gas lease with Beck which was subsequently recorded in Vol. 145, pg. 117, of the records of the Monroe County Recorder (hereinafter referred to as the "Hubbard Lease"). A copy of Hubbard Lease is attached hereto as Exhibit 2 and incorporated herein as if fully rewritten. Plaintiffs' ownership and title to the Hubbard Acreage is subject to and encumbered by the Hubbard Lease, as Plaintiffs are the successors in interest to the original Lessors as delineated in said Hubbard Lease pertaining to the 46.846 acres comprising the Hubbard Acreage.

15. Plaintiff, Donald W. Yonley, is the titled owner of, and in present possession of, certain realty located in Monroe County, Ohio, comprised of approximately 50 acres.

16. On or about January 29, 2003, Defendant, as Lessee, and Donald W. Yonley as Lessor, entered into a certain oil and gas lease with Beck which was subsequently recorded in Vol. 98, pg. 321, of the records of the Monroe County Recorder (hereinafter referred to as the "Yonley Lease"). A copy of Yonley Lease is attached hereto as Exhibit 3 and incorporated herein as if fully rewritten. Plaintiff's ownership and title to the Yonley Acreage is subject to and encumbered by the Yonley Lease.

17. Plaintiff, David Majors, is the titled owner of, and in present possession of, certain realty located in Monroe County, Ohio, comprised of approximately 54.5 acres.

18. On or about October 11, 2005, Defendant, as Lessee, and David Majors as Lessor, entered into a certain oil and gas lease with Beck which was subsequently recorded in Vol. 139, pg. 260, of the records of the Monroe County Recorder (hereinafter referred to as the "Majors Lease"). A copy of Majors Lease is attached hereto as Exhibit 4 and incorporated herein as if fully rewritten. Plaintiff's ownership and title to the Majors Acreage is subject to and encumbered by the Majors Lease.

19. Since the date of the Hustack, Hubbard, Yonley and Majors Leases, and in contravention thereof, Defendant has not prepared to drill a well on the Hustack, Hubbard, Yonley or Majors Acreage, has not drilled a well on the Hustack, Hubbard, Yonley or Majors Acreage, and has not paid any royalties to any of them.

20. Plaintiffs are entitled to a declaratory judgment that the Hustack Lease, the Hubbard Lease, the Yonley Lease and the Majors Lease are therefore forfeited, cancelled,

unenforceable, voided and held for naught, for reasons including, but not limited to, the following:

- (a) Defendant breached express covenants and breached implied covenants which arose by operation of law and Ohio Public Policy, including but not limited to the covenant to reasonably develop the leasehold, the covenant to drill an exploratory well, and the covenant to conduct all operations that affect Plaintiffs' royalty interest with reasonable care and diligence; and
- (b) Defendant abandoned the Hustack, Hubbard, Yonley and Majors Leases and the leasehold interests; and
- (c) The terms and conditions of the Hustack, Hubbard, Yonley and Majors Leases as to Plaintiffs are unconscionable; and
- (d) The terms and conditions of the Hustack, Hubbard, Yonley and Majors Leases are contrary to and violative of Ohio Public Policy; and
- (e) There has been a failure of consideration; and
- (f) The equitable remedy of declaring the Hustack, Hubbard, Yonley and Majors Leases to be forfeited, cancelled, unenforceable, voided and held for naught is appropriate and required as any legal remedies would be inadequate, as monetary damages are not ascertainable, as a forfeiture is necessary to do justice to the parties, and as forfeiture is warranted to assure development of the land and the protection of the Plaintiffs' interest.

COUNT II - QUIET TITLE

21. Now come the Plaintiffs, Larry A. Hustack and Lori Hustack, Lawrence and Michelle Hubbard, Donald Yonley and David Majors, by and through the undersigned counsel, and for Count II of their Complaint, as a quiet title against Defendant, state:

a) Reallege and reaver the allegations contained in Count I as if fully rewritten herein;

b) Plaintiffs are entitled to a judgment, pursuant to Ohio Revised Code §5303.01, quieting their title as to the Hustack Acreage, the Hubbard Acreage, the Yonley Acreage and the Majors Acreage, as against Defendant by and through the forfeiture, release and cancellation of the Hustack, Hubbard, Yonley and Majors' Leases, as valid encumbrances of record, and by extinguishing any interest which Defendant has or may claim to have in the Hustack, Hubbard, Yonley and Majors Acreage.

CLASS ACTION ALLEGATIONS

22. Plaintiffs bring this suit as a Class Action on behalf of themselves and all other similarly situated (the "Class") under the applicable provisions of Rule 23 of the Ohio Rules of Civil Procedure. Plaintiffs seek certification of the Class defined as "all landowners/Lessors of land in Monroe County, Ohio, who are Lessors under, or who are successors in interest of Lessors under, a standard form oil or gas lease with Beck Energy Corporation, where Beck Energy has not drilled a gas/oil well."

23. This case is brought as a Class Action under Rule 23 (A) and (B)(2) and/or (B)(3) of the Ohio Rules of Civil Procedure, for the reasons set forth in the following paragraphs.

24. Numerosity. The members of the Class are so numerous that separate joinder of each member is impracticable. Upon information and belief, and subject to class discovery, the class consists of approximately 400 members who were Lessors, or who are successors in interest to Lessors, under a Beck oil and gas lease.

25. Commonality and Predominance. There are numerous, substantial significant questions of law and fact common to the Class relating to the Beck Lease which control the determination of liability in this litigation, and which predominate over any other issues that

affect only individual Class members. Among the common questions of law and fact are the following:

The terms of the written lease between the Lessors and Beck Energy; whether the lease violates public policy in that it is a lease in perpetuity; whether Beck failed to fulfill the express and implied covenants within the lease; whether the lease terms and provisions are unconscionable; whether there was a failure of consideration; and whether the lease and leasehold interest was abandoned.

26. **Typicality.** The claims of the Hustacks, Hubbards, Yonley and Majors are typical of, if not identical to, the claims of the Class members in that each of the Class members are subject to the same terms of the same lease with Beck.

27. **Adequacy of Representation.** Plaintiffs Hustack, Hubbard, Yonley and Majors are more than adequate representatives of the Class, in that they each have either executed a lease with Beck Energy Corporation for oil and gas exploration, or are the successors in interest under the same lease, as have all of the other Class Members.

28. **Superiority.** Class representation provides a fair and efficient method, if not the only method for adjudicating this controversy. It is superior to other available methods. This Court has jurisdiction over the named Plaintiffs as well as the putative Plaintiffs and the Defendant. The Plaintiffs and putative Plaintiffs all own land in this county. The Defendant conducts business in this county. There are no particular overriding and individual interests of any Class member controlling the prosecution of these claims, and the denial of Class treatment and reliance on individual litigation would produce inefficiency, potentially inconsistent adjudication of common issues, and waste litigants' and judicial resources, while pricing many Class members out of Court.

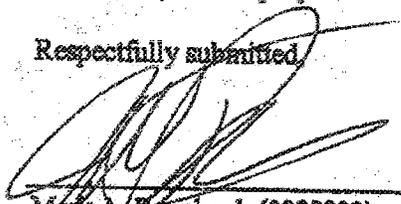
RELIEF SOUGHT

Wherefore, Plaintiffs and the Class Members demand judgment against the Defendant by entering the following orders:

A. Plaintiffs' requested declaratory judgment as specified above, and a judgment quieting title as specified above, and for costs and attorney's fees and other further relief to which said Plaintiffs may be entitled in law or equity.

B. Any and all further relief as this Court deems just and proper.

Respectfully submitted,



Mark A. Ropchock (0029823)
mropchock@ralaw.com
Roetzel & Andress, LPA
222 South Main Street
Akron, OH 44308
Telephone: 330.376.2700
Facsimile: 330.376.4577

and

Richard V. Zurz (0007978)
Slater & Zurz
One Cascade Plaza, Suite 2210
Akron, OH 44308
Telephone: 330.762.0700
Facsimile: 330.762.3923

and

Jim W. Peters (0009360)
Peters Law Offices
107 W. Court Street
Woodsfield, OH 43793
Telephone: 740.472.1681
Facsimile: 740.472.1718

ATTORNEY FOR PLAINTIFFS

1. The Lessee agrees to provide a copy of this lease to the Lessor for its records and to provide a copy of this lease to the Lessor for its records and to provide a copy of this lease to the Lessor for its records.

2. The Lessee agrees to provide a copy of this lease to the Lessor for its records and to provide a copy of this lease to the Lessor for its records and to provide a copy of this lease to the Lessor for its records.

3. The Lessee agrees to provide a copy of this lease to the Lessor for its records and to provide a copy of this lease to the Lessor for its records and to provide a copy of this lease to the Lessor for its records.

4. The Lessee agrees to provide a copy of this lease to the Lessor for its records and to provide a copy of this lease to the Lessor for its records and to provide a copy of this lease to the Lessor for its records.

5. The Lessee agrees to provide a copy of this lease to the Lessor for its records and to provide a copy of this lease to the Lessor for its records and to provide a copy of this lease to the Lessor for its records.

IN WITNESS WHEREOF, the Lessee hereunto sets their hands.

Signed and acknowledged in the presence of:

Witness

Equal Opportunity Act of 1968

Oliver F. Wilson
Ally J. Wilson

STATE OF Ohio
COUNTY OF Monroe

INDIVIDUAL

I, Ally J. Wilson, do hereby certify that the above named person is the owner of the above described premises.

Ally J. Wilson

ESSEX

I, Ally J. Wilson, do hereby certify that the above named person is the owner of the above described premises.

Witness my hand and seal this 14th day of Aug, 2008.

Rebecca Smith
Notary Public
My commission expires Sept 3, 2012

NO 0174 PAGE 30

This instrument was prepared by **BECK ENERGY CORPORATION, 24217N. RAYMOND, OH 44228**

Oil and Gas Lease
850232

MONROE CO. RECORDS OF
VOL. 174 PAGE 229
RECEIVED
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RECORDED HANNAH GIBBE REID
RECORDED FEE \$28.00
Official Records

Monroe Printing Co., Athens, Ohio 45601

Beck Energy Corp

THIS AGREEMENT, made and entered into this

2nd day of March

1974, by and between

Suzanne Hubbard and her husband, James B. Hubbard

at 36947 Kinsbacks Hill Road, Woodbury, NJ 07995

hereinafter called the Lessee, and

BECK ENERGY CORPORATION, No. 1272, Lawrence, NJ 07030

1. That the Lessee, in and to the satisfaction of her order (44-20) and other conditions... and the amount and approximate frequency... of the gas to be supplied...

Wells by lease of... and by lease of...

Wells by lease of... and by lease of...

2. That the Lessee agrees to pay for the gas greater than... of the gas to be supplied...

3. That the Lessee, however, shall remain and not... of the gas to be supplied...

4. That the Lessee, however, shall remain and not... of the gas to be supplied...

5. That the Lessee, however, shall remain and not... of the gas to be supplied...

6. That the Lessee, however, shall remain and not... of the gas to be supplied...

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21. That the Lessee, however, shall remain and not... of the gas to be supplied...

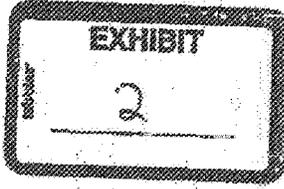
22. That the Lessee, however, shall remain and not... of the gas to be supplied...

23. That the Lessee, however, shall remain and not... of the gas to be supplied...

24. That the Lessee, however, shall remain and not... of the gas to be supplied...

25. That the Lessee, however, shall remain and not... of the gas to be supplied...

26. That the Lessee, however, shall remain and not... of the gas to be supplied...



16. The Lessee shall have the obligation of taking possession of, use and enjoy the premises and the right of any time during or after the expiration of this lease to remove all pipe, well casing, machinery, equipment or fixtures placed on the premises. The Lessee shall have the right to remove this lease or any portion thereof by making notice to the Lessor according to the provisions of this lease. It is understood that the Lessor will be responsible for the removal of all machinery, equipment or fixtures placed on the premises at the time of such removal and shall be responsible for the cost of such removal. The Lessor shall be responsible for the removal of all machinery, equipment or fixtures placed on the premises at the time of such removal and shall be responsible for the cost of such removal.

17. In the event the Lessor is unable to produce any of the title to be perfected by the Lessee by reason of title defects, including tax and interest in title, claims, liens, and governmental encumbrances including but not limited to easements for the use of water, the Lessee shall nevertheless be bound to use and enjoy the premises and the Lessor shall not be bound to defend and defend the title to the premises against the claims of any third party.

18. In the event the Lessor is unable to produce any of the title to be perfected by the Lessee by reason of title defects, including tax and interest in title, claims, liens, and governmental encumbrances including but not limited to easements for the use of water, the Lessee shall nevertheless be bound to use and enjoy the premises and the Lessor shall not be bound to defend and defend the title to the premises against the claims of any third party.

19. In consideration of the completion of this lease by the Lessee, the Lessor agrees to defend and defend the title, easements and encumbrances, that in other lease for the interests covered by this lease shall be provided by the Lessor during the term of this lease or any extension or renewal thereof provided to the Lessee herein.

20. All covenants and conditions contained in this lease shall apply to this lease, personal representatives, successors and assigns, and the Lessor hereby certifies and agrees to defend the title to the premises hereunder. It is further agreed that this lease shall be binding on the Lessor and the Lessee and their heirs, successors and assigns. Lessor further agrees to sign any additional documents in any in reasonably requested by Lessee to perfect Lessee's title to the oil and gas leased herein and any other documents relating to the use of production of any oil produced by Lessee or others.

IN WITNESS WHEREOF, the Lessee has hereunto set their hand.
 Signed and attested to in the presence of:
 Signature: James D. Hubbard
Charlotte M. Hubbard
 Notary Public or Not. P.R.

My commission expires September 3, 2007
 Signature: Charlotte M. Hubbard
 Notary Public

My commission expires Sept 3, 2007
 Signature: Charlotte M. Hubbard
 Notary Public

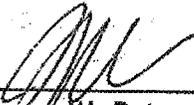
NONROE CO. RECORD OF
 VOL. 145, PAGE 117
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 MARTHA LOUISE REID
 RECORDER FEE \$28.00

Acres	Oil and Gas Lease	Plats	70	Tracts	1	County	Nonroe
Part (Show)							
Term							
Yearly or Other							
Residential							
Other							
Energy Interest							

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Second Amended Class Action Complaint was sent by regular U.S. Mail, postage prepaid, this 30th day of September, 2011, to the following:

Beck Energy Corporation
4857 Harding Avenue
Ravenna OH 44266



James W. Peters
Attorney at Law

EXHIBIT 3

COURT OF COMMON PLEAS
MONROE COUNTY, OHIO
FILED

2011 SEP 30 PM 3:14

LEITH ANN ROSE
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

LARRY A. HUSTACK
991 Brookpoint Drive
Macedonia, Ohio 44056

And

LORI HUSTACK
991 Brookpoint Drive
Macedonia, Ohio 44056

And

LAWRENCE HUBBARD
3685 Johnston-Alexandria Road
Alexandria, Ohio 43001

And

MICHELLE HUBBARD
3685 Johnston-Alexandria Road
Alexandria, Ohio 43001

And

DONALD W. YONLEY
P.O. Box 248
New Matamoras, Ohio 45767

And

DAVID MAJORS
48433 Keylor Hill Road
Woodsfield, Ohio 43793

Plaintiffs,

CASE NO. 2011-345

JUDGE: JULIE SELMON

SECOND AMENDED

CLASS ACTION COMPLAINT

vs.

BECK ENERGY CORPORATION
4857 Harding Avenue
Ravenna, Ohio 44266

Defendant.

Now come Plaintiffs, Larry and Lori Hustack ("Hustacks"), Lawrence and Michelle Hubbard ("Hubbards"), Donald W. Yonley ("Yonley"), and David Majors ("Majors"), by and through undersigned counsel, and for their Second Amended Class Action Complaint against Defendant Beck Energy Corporation ("Beck"), allege and aver as follows:

IDENTIFICATION OF PARTIES AND STATEMENT OF JURISDICTION

1. Defendant Beck Energy Corporation is an Ohio corporation with its principal place of business in Portage County, Ohio, and which conducts extensive business in Monroe County, Ohio.

2. The Hustacks, husband and wife, are titled owners of, and in present possession of, certain realty located in Monroe County, Ohio, comprised of approximately 89.75 acres (hereinafter referenced as "Hustack Acreage").

3. The Hubbards, husband and wife, are titled owners of, and in present possession of, certain realty located in Monroe County, Ohio, comprised of approximately 46.846 acres (hereinafter referenced as the "Hubbard Acreage").

4. Donald Yonley, is titled owner of, and in present possession of, certain realty located in Monroe County, Ohio, comprised of approximately 50 acres (hereinafter referenced as "Yonley Acreage").

5. David Majors, is titled owner of, and in present possession of, certain realty located in Monroe County, Ohio, comprised of approximately 54 acres (hereinafter referenced as "Majors Acreage").

6. Over the years, Beck Energy Corporation has entered into oil and gas leases with various land owners of realty located in Monroe County, Ohio, constituting in excess of 21,000 acres of land.

7. Beck entered into a standard form oil and gas lease with not only the Hustacks, Hubbards, Yonley and Majors, but also with approximately 400 landowners in Monroe County. The lease terms at issue in this litigation appear identical.

FACTS COMMON TO ALL CAUSES OF ACTION

8. The Hustacks, along with the Hubbards, Yonley, Majors and approximately 400 additional landowners/Lessors in Monroe County, executed oil and gas leases with Beck, or are successors in interest to said lessors, which are essentially identical to Plaintiffs' Exhibits 1-4.

9. All of the leases contain terms and conditions that are contrary to and violative of Ohio Public Policy as they are, among other things, leases in perpetuity without timely development.

10. For all of the leases, the Defendant breached express covenants and implied covenants which arose by operation of law and Ohio Public Policy, including but not limited to the covenant to reasonably develop the leasehold, the covenant to drill an exploratory well, and the covenant to conduct all operations that affect Plaintiffs' royalty interest with reasonable care and diligence.

COUNT I - DECLARATORY JUDGMENT

11. Plaintiffs, Larry Hustack and Lori Hustack, are husband and wife and are the titled owners of, and in present possession of, certain realty located in Monroe County, Ohio, comprised of approximately 89.75 acres.

12. On or about August 14, 2008, Defendant, as Lessee, and Alonzo F. Wilson and Sherry S. Wilson, husband and wife as Lessors, entered into a certain oil and gas lease with Beck which was subsequently recorded in Vol. 174, pg. 229, of the records of the Monroe County Recorder (hereinafter referred to as the "Hustack Lease"). A copy of Hustack Lease is attached hereto as Exhibit 1 and incorporated herein as if fully rewritten. Plaintiffs' ownership and title to the Hustack Acreage is subject to and encumbered by the Hustack Lease, as Plaintiffs are the successors in interest to the original Lessors as delineated in said Hustack Lease pertaining to the 89.75 acres comprising the Hustack Acreage.

13. Plaintiffs, Lawrence Hubbard and Michelle Hubbard, are husband and wife and are the titled owners of, and in present possession of, certain realty located in Monroe County, Ohio, comprised of approximately 46.846 acres.

14. On or about March 2, 2006, Defendant, as Lessee, and Lawrence and Lieselotte Hubbard, husband and wife as Lessors, entered into a certain oil and gas lease with Beck which was subsequently recorded in Vol. 145, pg. 117, of the records of the Monroe County Recorder (hereinafter referred to as the "Hubbard Lease"). A copy of Hubbard Lease is attached hereto as Exhibit 2 and incorporated herein as if fully rewritten. Plaintiffs' ownership and title to the Hubbard Acreage is subject to and encumbered by the Hubbard Lease, as Plaintiffs are the successors in interest to the original Lessors as delineated in said Hubbard Lease pertaining to the 46.846 acres comprising the Hubbard Acreage.

15. Plaintiff, Donald W. Yonley, is the titled owner of, and in present possession of, certain realty located in Monroe County, Ohio, comprised of approximately 50 acres.

16. On or about January 29, 2003, Defendant, as Lessee, and Donald W. Yonley as Lessor, entered into a certain oil and gas lease with Beck which was subsequently recorded in Vol. 98, pg. 321, of the records of the Monroe County Recorder (hereinafter referred to as the "Yonley Lease"). A copy of Yonley Lease is attached hereto as Exhibit 3 and incorporated herein as if fully rewritten. Plaintiff's ownership and title to the Yonley Acreage is subject to and encumbered by the Yonley Lease.

17. Plaintiff, David Majors, is the titled owner of, and in present possession of, certain realty located in Monroe County, Ohio, comprised of approximately 54.5 acres.

18. On or about October 11, 2005, Defendant, as Lessee, and David Majors as Lessor, entered into a certain oil and gas lease with Beck which was subsequently recorded in Vol. 139, pg. 260, of the records of the Monroe County Recorder (hereinafter referred to as the "Majors Lease"). A copy of Majors Lease is attached hereto as Exhibit 4 and incorporated herein as if fully rewritten. Plaintiff's ownership and title to the Majors Acreage is subject to and encumbered by the Majors Lease.

19. Since the date of the Hustack, Hubbard, Yonley and Majors Leases, and in contravention thereof, Defendant has not prepared to drill a well on the Hustack, Hubbard, Yonley or Majors Acreage, has not drilled a well on the Hustack, Hubbard, Yonley or Majors Acreage, and has not paid any royalties to any of them.

20. Plaintiffs are entitled to a declaratory judgment that the Hustack Lease, the Hubbard Lease, the Yonley Lease and the Majors Lease are therefore forfeited, cancelled,

unenforceable, voided and held for naught, for reasons including, but not limited to, the following:

- (a) Defendant breached express covenants and breached implied covenants which arose by operation of law and Ohio Public Policy, including but not limited to the covenant to reasonably develop the leasehold, the covenant to drill an exploratory well, and the covenant to conduct all operations that affect Plaintiffs' royalty interest with reasonable care and diligence; and
- (b) Defendant abandoned the Hustack, Hubbard, Yonley and Majors Leases and the leasehold interests; and
- (c) The terms and conditions of the Hustack, Hubbard, Yonley and Majors Leases as to Plaintiffs are unconscionable; and
- (d) The terms and conditions of the Hustack, Hubbard, Yonley and Majors Leases are contrary to and violative of Ohio Public Policy; and
- (e) There has been a failure of consideration; and
- (f) The equitable remedy of declaring the Hustack, Hubbard, Yonley and Majors Leases to be forfeited, cancelled, unenforceable, voided and held for naught is appropriate and required as any legal remedies would be inadequate, as monetary damages are not ascertainable, as a forfeiture is necessary to do justice to the parties, and as forfeiture is warranted to assure development of the land and the protection of the Plaintiffs' interest.

COUNT II - QUIET TITLE

21. Now come the Plaintiffs, Larry A. Hustack and Lori Hustack, Lawrence and Michelle Hubbard, Donald Yonley and David Majors, by and through the undersigned counsel, and for Count II of their Complaint, as a quiet title against Defendant, state:

a) Reallege and reaver the allegations contained in Count I as if fully rewritten herein;

b) Plaintiffs are entitled to a judgment, pursuant to Ohio Revised Code §5303.01, quieting their title as to the Hustack Acreage, the Hubbard Acreage, the Yonley Acreage and the Majors Acreage, as against Defendant by and through the forfeiture, release and cancellation of the Hustack, Hubbard, Yonley and Majors' Leases, as valid encumbrances of record, and by extinguishing any interest which Defendant has or may claim to have in the Hustack, Hubbard, Yonley and Majors Acreage.

CLASS ACTION ALLEGATIONS

22. Plaintiffs bring this suit as a Class Action on behalf of themselves and all other similarly situated (the "Class") under the applicable provisions of Rule 23 of the Ohio Rules of Civil Procedure. Plaintiffs seek certification of the Class defined as "all landowners/Lessors of land in Monroe County, Ohio, who are Lessors under, or who are successors in interest of Lessors, under a standard form oil or gas lease with Beck Energy Corporation, where Beck Energy has neither drilled nor prepared to drill a gas/oil well, nor included the property in a drilling unit, within the time period set forth in paragraph 3 of the lease or thereafter."

23. This case is brought as a Class Action under Rule 23 (A) and (B)(2) and/or (B)(3) of the Ohio Rules of Civil Procedure, for the reasons set forth in the following paragraphs.

24. Numerosity. The members of the Class are so numerous that separate joinder of each member is impracticable. Upon information and belief, and subject to class discovery, the class consists of approximately 400 members who were Lessors, or who are successors in interest to Lessors, under a Beck oil and gas lease.

25. Commonality and Predominance. There are numerous, substantial significant questions of law and fact common to the Class relating to the Beck Lease which control the

determination of liability in this litigation, and which predominate over any other issues that affect only individual Class members. Among the common questions of law and fact are the following:

The terms of the written lease between the Lessors and Beck Energy; whether the lease violates public policy in that it is a lease in perpetuity; whether Beck failed to fulfill the express and implied covenants within the lease; whether the lease terms and provisions are unconscionable; whether there was a failure of consideration; and whether the lease and leasehold interest was abandoned.

26. Typicality. The claims of the Hustacks, Hubbards, Yonley and Majors are typical of, if not identical to, the claims of the Class members in that each of the Class members are subject to the same terms of the same lease with Beck.

27. Adequacy of Representation. Plaintiffs Hustack, Hubbard, Yonley and Majors are more than adequate representatives of the Class, in that they each have either executed a lease with Beck Energy Corporation for oil and gas exploration, or are the successors in interest under the same lease, as have all of the other Class Members.

28. Superiority. Class representation provides a fair and efficient method, if not the only method for adjudicating this controversy. It is superior to other available methods. This Court has jurisdiction over the named Plaintiffs as well as the putative Plaintiffs and the Defendant. The Plaintiffs and putative Plaintiffs all own land in this county. The Defendant conducts business in this county. There are no particular overriding and individual interests of any Class member controlling the prosecution of these claims, and the denial of Class treatment and reliance on individual litigation would produce inefficiency, potentially inconsistent adjudication of common issues, and waste litigants' and judicial resources, while pricing many Class members out of Court.

RELIEF SOUGHT

Wherefore, Plaintiffs and the Class Members demand judgment against the Defendant by entering the following orders:

A. Plaintiffs' requested declaratory judgment as specified above, and a judgment quieting title as specified above, and for costs and attorney's fees and other further relief to which said Plaintiffs may be entitled in law or equity.

B. Any and all further relief as this Court deems just and proper.

Respectfully submitted,

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mropchock@ralaw.com
Roetzel & Andress, LPA
222 South Main Street
Akron, OH 44308
Telephone: 330.376.2700
Facsimile: 330.376.4577

and

Richard V. Zurz (0007978)
Slater & Zurz
One Cascade Plaza, Suite 2210
Akron, OH 44308
Telephone: 330.762.0700
Facsimile: 330.762.3923

and



Jim W. Peters (0009360)
Peters Law Offices
107 W. Court Street
Woodsfield, OH 43793
Telephone: 740.472.1681
Facsimile: 740.472.1718

ATTORNEYS FOR PLAINTIFFS

16. The Lessee shall have the privilege of using sufficient oil, gas and water for operations on the premises and the right of any lease during or after the expiration of this lease to reduce or stop, and to stop, operations, equipment or fixtures placed on the premises. The Lessee shall have the right to surrender this lease or any portion thereof by written notice to the Lessor describing the portion which it wishes to surrender, or by releasing the lease to the Lessor with the endorsement of a competent third party, or by executing the surrender or partial surrender of this lease, any of which shall be a full and legal surrender of this lease as to all of the premises or such portion thereof as the surrender shall indicate and a cancellation of all liabilities under the lease as to such part of the premises herein-mentioned in any way to the portion or all the premises indicated on said surrender, and the land rental hereinafter set forth shall be reduced in proportion to the acreage surrendered.

17. In the event the Lessee is unable to perform any of the acts to be performed by the Lessee by reason of force majeure, including but not limited to acts of God, strikes, riots, and governmental restrictions including but not limited to restrictions on the use of roads, this lease shall nevertheless remain in full force and effect until the Lessee can perform said act or acts and in an event such the within lease expires for a period of ninety days after the termination of any force majeure.

18. In the event force majeure shall occur, the Lessee shall not be released from any of its obligations hereunder, either express or implied, unless the Lessee is advised in writing by the Lessor that the force majeure has been terminated. The Lessee shall have ninety (90) days after receipt of such notice within which to advise or recommit to seek all or any part of the premises affected by Lessee. The Lessee shall not be released from any of its obligations hereunder until the Lessee has received written notice from the Lessor that the force majeure has been terminated and the Lessee has agreed to perform all or any part of the obligations hereunder.

19. In consideration of the acceptance of this lease by the Lessee, the Lessor agrees for himself and his heirs, successors and assigns, that no other lease for the interests covered by this lease shall be granted by the Lessor during the term of this lease or any extension or renewal thereof granted in the Lessee hereon.

20. All covenants and conditions between the parties hereto shall remain in full force, personal representations, warranties and benefits, and the Lessor hereby warrants and agrees to defend, defend and hold harmless, agreement or obligation shall be null and void hereon and inoperative upon the parties or either of them. Lessee further agrees to sign such additional documents as may be reasonably requested by Lessee to perfect Lessee's title to the oil and gas leased herein and such other documents relating to the sale of production as may be required by Lessee or others.

20. LESSOR IS NOT RESPONSIBLE FOR ANY WELLS EXISTING ON LESSOR'S PROPERTY.

IN WITNESS WHEREOF the Lessee has hereunto set their hands.

Accepted and acknowledged to the presence of:
James M. Beck DAVID W. MATARS
 Notary Public Notary Public

STATE OF OHIO INDIVIDUAL
 COUNTY OF MAHON DAVID W. MATARS (SINGLE)

Subscribed and sworn to before me this 11 day of OCTOBER 2005 at WOODSFIELD, OHIO
 I, HE do hereby certify that the foregoing instrument and that the same is HIS has not and does not for the purposes therein set forth.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal at WOODSFIELD, OHIO
 this 11 day of OCTOBER 2005
James M. Beck
 Notary Public



10139 #126

This instrument was prepared by: **BECK ENERGY CORPORATION**, 805 1070, Rossman, OH 44888

James
 OIL AND GAS LEASE
 042062
 Post Office
 Date
 Term

OHIO REC'D
 VOL 139 PAGE 26000 Records
 RECEIVED
 05 NOV 2 AM 11:16
 November 2, 2005
 RECORDED
 MARTHA LOUISE REID
 RECORDER
 FEB 20.00
 Not to be Rec'd
 Records
 Seal

James Beck Co., Mahon, Ohio 44887

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Amended Class Action Complaint* was sent by regular U.S. Mail, postage prepaid, this 29th day of September, 2011, to the following:

BECK ENERGY CORPORATION
4857 Harding Avenue
Ravenna OH 44266

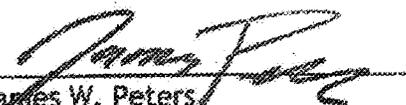

James W. Peters
Attorney at Law

EXHIBIT 4

CLERK OF COURT'S OFFICE

2012 JAN 31 AM 9:41

IN THE COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

CLYDE HUPP, et al.

Plaintiffs,

vs.

BECK ENERGY CORPORATION

Defendant.

CASE NO. 2011-345

JUDGE: ED LANE

JOURNAL ENTRY

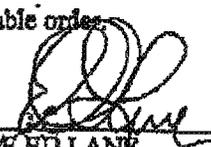
This matter came to be heard upon multiple motions. The Defendant filed a Motion to Dismiss and/or Change Venue on November 30, 2011 with a brief in support. The Plaintiffs filed a Brief in Opposition to the Defendant's Motion on January 5, 2012, and on that same day also filed a Response to the Defendant's Motion to Change Venue. After reviewing said motions, and the relative briefing, the Court finds that Defendant's Motion to Dismiss and Defendant's Motion to Change Venue are not well taken, and therefore, both are denied. However, the Defendant may renew its Motion to Change Venue in the event a jury trial in any remaining matter is appropriate, and, if a jury trial in such remaining matter is demanded by either party.

Further, on February 16, 2012, the Plaintiffs filed a Motion for Summary Judgment with supporting brief. On March 19, 2012, the Plaintiffs filed a Reply Brief in Support of their Motion for Summary Judgment. On that same date, Chief Justice Maureen O'Connor, of the Ohio Supreme Court assigned the case to the undersigned, Judge Norman Edward Lane, Jr. The

Court then issued an order on March 23, 2012 to set a status conference. The purpose of the status conference was to establish a briefing schedule. Said status conference was held telephonically on April 20, 2012 with all counsel in attendance. Pursuant to the status conference and its resulting order, the Defendant filed its brief in opposition to the Plaintiffs' Motion for Summary Judgment on April 30, 2012, and the Plaintiff filed a reply to that brief on May 14, 2012. Additionally, Plaintiff Donald Yonley was voluntarily dismissed on April 12, 2012.

After careful consideration of the motions, briefing and supporting documentation, the Court hereby finds that Plaintiffs' Motion for Summary Judgment is well taken and is therefore granted. The reasoning in support of the granting of the Summary Judgment Motion and denial of the Motion to Change Venue/Dismiss can be found in the Court's Decision on Pending Motions dated July 12, 2012, which is attached hereto and incorporated herein by reference as if fully rewritten.

On July 18, 2012 Plaintiffs filed for leave to file a Third Amended Complaint to include in the proposed class all landowners/lessors in Ohio located outside Monroe County who may be affected by this Court's filing of July 12, 2012. On July 18, 2012 Plaintiffs also filed a Motion for Class Certification. Those two motions are still pending. Accordingly, as this entry does not dispose of all pending matters, this is not a final appealable order.



JUDGE ED LANE

cc: All Parties of Record

COMMON PLEAS COURT
MONROE COUNTY, OHIO

COURT DEPARTMENT 17AS
JULY 12 2012 12:00 PM

2012 JUL 12 AM 10:06

CLERK OF COURT

Clyde A. Hupp, et al.,

Plaintiffs,

vs.

Beck Energy Corporation,

Defendant.

Case No. 2011-345

Judge Ed Lane
Sitting by Assignment

DECISION
(On Pending Motions)

The above styled action is before the Court on the Complaint of the Plaintiff, Clyde A. Hupp and Molly A. Hupp, et al., for declaratory judgment and quiet title. This action was filed on September 14, 2011 and the two subsequent Complaints for Class Action and Amended Class Action were filed on September 29, 2011 and September 30, 2011, respectively. The Defendant, Beck Energy Corporation, has not filed an answer in this action, but has made an appearance. This action has not been certified as a class action as of the date of this decision. The Court is considering the pending motions prior to undertaking the required hearings in regard to class certifications. Clyde A. and Molly Hupp are parties of record in this case and the correct style of the case is as set forth above. For some reason, unknown to this Court, the parties in this case have changed the style of this case. All future filings in this case will be correctly titled or subsequently stricken by Court order.

The Defendant filed a Motion to Dismiss and/or Change Venue on November 30, 2011 with a brief in support. The Plaintiffs filed a Brief in Opposition to the Defendant's Motion to

Dismiss on January 5, 2012. On the same date, the Plaintiffs also filed a response to the Defendant's Motion to change venue. On February 16, 2012 the Plaintiffs filed a Motion for Summary Judgment with a supporting brief. On March 19, 2012 Chief Justice Maureen O'Connor of The Ohio Supreme Court assigned the case to the undersigned, Judge Norman Edward Lane, Jr., Judge of the Washington County Court of Common Pleas. On March 19, 2012 the Plaintiffs filed a Reply Brief in Support of their Motion for Summary Judgment. Thereafter, on March 23, 2012, the Court ordered the matter set for a Status Conference. The purpose of the Status Conference was to establish a briefing schedule for all of the motions that were being filed in this action. All attorneys of record participated in the Status Conference. A Status Conference was held by means of telephone conferencing on April 20, 2012. A Journal Entry was entered on April 25, 2012 establishing a briefing schedule for the pending motions. The briefing schedule required all responses to be filed by April 30, 2012 and replies to responses by April 13, 2012. All motions and replies have been timely filed either pursuant to an extension of time granted by the Court or within the original deadlines. The Defendant filed its Brief in Opposition to the Plaintiff's Motion for Summary Judgment on April 30, 2012 and the Plaintiffs filed a reply to that Brief on May 14, 2012. The matter has been under review by the Court since that date. The Court has reviewed all of the pleadings, all of the motions, memorandums and supporting affidavits provided to this Court and filed in this action. At present there are six named individual plaintiffs in this action. One plaintiff, Donald W. Yonally, was voluntarily dismissed without prejudice on April 12, 2012.

The Court will address all of the issues presented in the parties' various motions in this decision.

FACTUAL BACKGROUND

The Plaintiffs own various tracts of land in Monroe County, Ohio. The Defendant, Beck Energy, is an Ohio oil and gas producer that develops oil and gas interests in Ohio. Beginning in 2003 the Defendant entered into a number of oil and gas leases in Monroe County, Ohio. The Plaintiffs maintain that they have a potential class of 248 lessors. The leases that are involved in this action are leases generated by the Defendant. All leases are identical except as to a few blanks on each of the form leases that were filled in by the Defendant's representatives. These variations are: the date of the lease, the names and addresses of the lessors, and a rough description of the land by township and county. All leases have written in the blank in paragraph three a twelve month primary period/term. The delayed rental payment varies per lease and the name of the lessors varies with each lease. To date, no wells have been drilled in Monroe County pursuant to any of the leases that are involved in this action.

There are certain provisions of the form lease (see Plaintiffs' Exhibit 2 as attached to Plaintiffs' Complaint) that are at issue in this case. The key paragraphs are set forth below:

2. This lease shall continue in force and the rights granted hereunder be quietly enjoyed by the Lessee for a term of ten years and as much longer thereafter as oil or gas or their constituents are produced or are capable of being produced on the premises in paying quantities, in the judgment of the Lessee, or as the premises shall be operated by the Lessee in the search for oil or gas and as provided in Paragraph 7 following.

3. This lease, however, shall become null and void and all rights of either party hereunder shall cease and terminate unless, within -12- months from the date hereof, a well shall be commenced on the premises, or unless the Lessee shall thereafter pay a delay rental of \$108.00 Dollars each year, payments to be made quarterly until the commencement of a well. A well shall be deemed commenced when preparations for drilling have been commenced.

7. In the event a well drilled hereunder is a dry hole and is plugged according to law, this lease shall become null and void and all rights of either party hereunder shall cease and terminate, unless within twelve (12) months from the date of the completion of the plugging of such well, the Lessee shall commence another well, or unless the Lessee after the termination of said twelve month period resumes the payment of delay rental as hereinabove provided.

8. In the event a well drilled hereunder is a producing well and the Lessee is unable to market the production therefrom, or should production cease from a producing well drilled on the premises, or should the Lessee desire to shut in producing wells, the Lessee agrees to pay the Lessor, commencing on the date one year from the completion of such producing well or the cessation of production, or the shutting in of producing wells, an advance royalty in the amount and under the terms hereinabove provided for delay rental until production is marketed and sold off the premises or such well is plugged and abandoned according to law. In the event no delay rentals are started, the advance royalty payable hereunder shall be made on the basis of \$1.00 per acre per year.

9. The consideration, land rentals or royalties paid and to be paid, as herein provided, are and will be accepted by the Lessor as adequate and full consideration for all the rights herein granted to the Lessee, and the further right of drilling or not drilling on the leased premises, whether to offset producing wells on adjacent or adjoining lands or otherwise, as the Lessor may elect.

16. In the event the Lessee is unable to perform any of the acts to be performed by the Lessee by reason of force majeure, including but not limited to acts of God, strikes, riots, and governmental restrictions including but not limited to restrictions on the use of roads, this lease shall nevertheless remain in full force and effect until the Lessee can perform said act or acts and in no event shall the within lease expire for a period of ninety days after the termination of any force majeure.

17. In the event Lessor considers that Lessee has not complied with any of its obligations hereunder, either express or implied, Lessor shall notify Lessee in writing setting out specifically in what respects Lessee has breached this contract. Lessee shall then have 30 days after receipt of said notice within which to meet or commence to meet all or any part of the breaches alleged by Lessor. The service of said notice shall be precedent to the bringing of any action by Lessor on said lease for any cause, and no such action shall be brought until the lapse of 30 days after service of such notice on Lessee. Neither the service of said notice nor the doing of any acts by Lessee aimed to meet all or any part of the alleged breaches

shall be deemed an admission or presumption that Lessee has failed to perform all its obligations hereunder.

19. . . . no implied covenant, agreement or obligation shall be read into this agreement or imposed upon the parties. . . .

MOTION TO CHANGE VENUE

At the present time, no jury demand has been filed in this action. If this matter proceeds as an action to the Court, there has been a de facto change of venue by reason of Judge Salmon recusing herself from this case and The Chief Justice of The Supreme Court of Ohio assigning this case to the undersigned. If a jury demand is timely filed in the future, the Court will revisit the issue of venue should it be brought to the Court's attention in a subsequent motion. The motion to change venue is denied without prejudice.

DEFENDANT'S MOTION TO DISMISS

On November 30, 2011 the Defendant filed a combined Motion to Dismiss and/or Change Venue. Pursuant to Oh. Civ. R. 12(B)(6) the Defendant seeks to have this Court dismiss this action pursuant to the provisions of paragraph 17 of the lease.

The Plaintiffs admit that they have not complied with paragraph 17 of the subject lease.

A motion to dismiss for failure to state a claim upon which relief can be granted is a procedural motion that tests the sufficiency of a complaint. Dowdy v. Jones, 7th Dist. No. 10-CO-21, 2011-Ohio-3168, ¶14. For a trial court to dismiss a complaint pursuant to Civ.R.

12(B)(6), it must appear beyond doubt that the plaintiffs can prove no set of facts that would entitle them to the relief sought. Ohio Bureau of Workers' Comp. v. McKinley, 130 Ohio St.3d 156, 2011-Ohio-4432, ___ N.E.2d ___, ¶12. "The allegations in the complaint must be taken as true, and those allegations and any reasonable inferences drawn from them must be construed in the nonmoving party's favor." *Id.* Moreover, a complaint should not be dismissed for failure to state a claim merely because the allegations do not support the legal theories on which the plaintiffs rely. Fahbulleh v. Strahan, 73 Ohio St.3d 666, 667, 653 N.E.2d 1186 (1995). Instead, the Court must examine the complaint to determine whether the allegations provide for any relief on any possible theory. *Id.*

Defendant's motion to dismiss herein is predicated on a single proposition: that Plaintiffs did not provide thirty days written notice to this Defendant prior to commencing this action. The Plaintiffs maintain that the Leases which form the contractual basis for these parties are void as against public policy and unenforceable, and under any reasonable construction of said Leases, were materially and substantially breached by the Defendant reducing the contractual requirement of a notice to a meaningless act from which no benefit could be derived.

Public policy analysis requires a Court to consider the impact of a contract at issue in a case upon society as a whole. Eagle v. Fred Martin Motor Co., 157 Ohio App.3d 150, 2004-Ohio-829, 809 N.E.2d 1161, ¶63 (9th Dist.).

Public policy is that principle of law which holds that no one can lawfully do that which has a tendency to be injurious to the public or against the public good. Accordingly, contracts which bring about results which the law seeks to prevent are unenforceable as against public policy.

Brown v. Gallagher, 179 Ohio App.3d 577, 2008-Ohio-6270, 902 N.E.2d 1037, ¶10 (4th Dist.).

Courts will reject any effort to enforce a contract that is against public policy, either directly or

indirectly, or to claim benefits thereunder. Taylor Building Corp. v. Benfield, 117 Ohio St.3d 352, 2008-Ohio-938, 884 N.E.2d 12, ¶61; Polk v. Cleveland Railway Co., 20 Ohio App. 317, 320-21, 151 N.E. 808 (8th Dist. 1925); Buoscio v. Lord, 7th Dist. No. 98-C.A.-151, 1999 Ohio App. LEXIS 6204, *4 (Dec. 17, 1999); Conroy Farms, Ltd. v. Ball Resources, 7th Dist. No. 09 CO 36, 2011-Ohio-5472, ¶26.

"[A]ctual injury is never required to be shown; it is the tendency to the prejudice of the public's good which vitiates contractual relations." Eagle at ¶64. Unlike a contract that is merely voidable at the election of one of the parties, a contract is void *ab initio* if it seriously offends public policy. Walsh v. Bolas, 82 Ohio App.3d 588, 593, 612 N.E.2d 1252 (11th Dist. 1992); Dunn v. Bruzese, 172 Ohio App.3d 320, 2007-Ohio-3500, 874 N.E.2d 1221, ¶81 (7th Dist.).

"It is the public policy of the state of Ohio to encourage oil and gas production when the extraction of those resources can be accomplished without undue threat of harm to the health, safety and welfare of the citizens of Ohio." Newbury Township Board of Trustees v. Lomak Petroleum (Ohio), Inc., 62 Ohio St.3d 387, 389, 583 N.E.2d 302 (1992); Northampton Building Co. v. Board of Zoning Appeals, 109 Ohio App.3d 193, 198, 671 N.E.2d 1309 (9th Dist. 1996). See also State v. Baldwin Producing Corp., 10th Dist. No. 76AP-892, 1977 WL 199981, *2 (Mar. 10, 1977). To this end, political subdivisions - entities representing all persons within their territorial boundaries and not simply promoting the private interests of individual contracting parties - are prohibited from enacting ordinances, rules and regulations restricting oil and gas production that are more stringent than state requirements. Newbury Township at 389-90; Northampton Building Co. at 198-99.

Historically, the ultimate duration of oil and gas leases has been the subject of tension

between lessors, lessees and the courts. *Jacobs v. CNG Transmission Corp.*, 332 F.Supp.2d 759, 786 (W.D. Pa. 2004). Because fixed-term leases were disadvantageous to lessees if production was not achieved until the end of the term, the initial term was shortened and supplemented with (1) what became known as an "unless" drilling clause, under which the lessee had the right to postpone development by paying a delay rental, and (2) a surrender clause under which the lessee could terminate his obligations as to unproductive property. *Id.*, n.15 (citing 2 Summers, *The Law of Oil and Gas*, §289). Lessees then devised leases under which the lessee could extend the exploration period for as long as they considered payment of delay rentals worthwhile. *Id.* This was effected by what became known as a "no-term lease," featuring a habendum clause that simply conveyed the premises subject to a list of conditions, one of which was the payment of a rental. *Id.*

However, the no-term lease was not favored by the courts. *Id.* One line of cases held that, because the lease failed to establish a time beyond which the lessee could not delay development and the payment of royalties, it was unfair and unenforceable against the lessor. *Id.* The other line of cases read into the no-term lease an implied condition compelling the lessee to drill within a reasonable time, the breach of which was cause for forfeiture. *Id.*

The Plaintiffs' position in this matter is that their leases with the Defendant are a no-term leases: through the boilerplate embedded in their leases, exemplified by Defendant's failure to commence any drilling on any of the Plaintiffs' lands, the Defendant has the unilateral right to indefinitely postpone development and extend the time in which it may develop the acreage in perpetuity, either by making nominal delay rental payments pursuant to paragraph 3 of the Lease, or by determining in its own judgment that the premises are capable of producing oil or gas in

paying quantities pursuant to paragraph 2.

"[T]he presumption is that a lease is made for the purpose of immediate development, unless the contrary appears in the contract of the parties."*** The implied covenant to develop the leasehold for mineral production with due diligence and for the mutual benefit of both parties grew out of "the public interest which is concerned with the development of the natural resources of the state."

Jacobs, 332 F.Supp.2d at 779. Upon a lessee's failure to develop the leasehold within a reasonable time, "both public and private interests demanded judicial termination of the lease to make possible the use and alienation of the land for oil and gas or for other purposes." *Id.* at 782.

The mineral leases in *Jonno v. Glen-Gery Corp.*, 2 Ohio St.3d 131, 443 N.E.2d 504 (1983), contained no time limitation during which mining operations were to be commenced, but required the lessees to pay advance minimum royalties each year, to be applied against amounts anticipated to become due from future mining operations. In concluding that the lessees had breached their implied obligations under their lease, the Ohio Supreme Court enunciated the policy in Ohio:

The fact that the lessees have continued to make annual payments for a period of over eighteen years does not alter their responsibility to develop the land within a reasonable time. The questions of working diligently and of paying rent or royalties cannot be viewed as a substitute for timely development. To hold otherwise would be to reward mere speculation without development, effort, or expenditure on the part of the lessees. It would allow a lessee to encumber a lessor's property in perpetuity merely by paying an annual sum. *Such long-term leases under which there is no development impede the mining of mineral lands and are thus against public policy.*

This Court must, under the current state of Ohio law, consider the allegations in the Plaintiffs' Complaint as true, and must draw any reasonable inferences from them in favor of the Plaintiffs. When doing so, this Court cannot say beyond doubt that the Plaintiffs can prove no set of facts that would entitle them to the relief sought. Therefore, for all of the reasons set forth

herein above and hereafter, the Defendant's Motion to Dismiss is not well taken and the same shall be denied.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

The Plaintiffs filed their Motion for Summary Judgment in this action on February 16, 2012. The Defendant filed its Brief in Opposition on April 30, 2012. The Plaintiffs further filed a reply to the Defendant's opposition on May 14, 2012 and on March 19, 2012 filed a reply brief in support of their Motion for Summary Judgment.

The Plaintiffs' Motion for Summary Judgment sets forth several distinct issues. First, the Plaintiffs maintain that their lease with the Defendant is a lease in perpetuity and as such is void and unenforceable as against the public policy of The State of Ohio. Secondly, the Plaintiffs maintain that the Defendant breached the implied covenant to reasonably develop their land and by doing so the leases are now null and void. Thirdly, the Plaintiffs maintain that the lease provisions for foregoing development by the payment of delayed rentals has expired because the Defendant failed to commence a well within the required times. The Defendant has countered the Plaintiffs' assertions by stating that it had not received the written notice required from the Plaintiffs setting forth any alleged noncompliance by the Defendant with the lease's terms. Plaintiffs maintain that they do not have to give notice because the leases were void *ab initio*. The Defendant also maintains that the sole remedy that the Plaintiffs are entitled to is damages and not forfeiture of the leases. The Plaintiffs maintain that because the leases are void and unenforceable from the beginning they are entitled to forfeiture of the lease.

A Summary judgment is a procedural vehicle used to terminate legal claims without factual foundation." Gross v. Western-Southern Life Ins. Co., 85 Ohio App.3d 662, 667, 621 N.E.2d 412 (1st Dist. 1993). A Summary judgment is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the [civil rules] as a whole, which are designed to secure the just, speedy and inexpensive determination of every action." Todd Development Co. v. Morgan, 116 Ohio St.3d 461, 2008-Ohio-87, 880 N.E.2d 88, &22. *See also* Civ.R. 1(B).

Civ.R. 56(C) mandates that a court enter summary judgment if the evidence shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Id.* When a motion for summary judgment has been made and properly supported, the burden shifts to the nonmoving party to set forth specific facts showing that there is a genuine issue for trial. *Id.* The parties moving for summary judgment need only prove their own case; the movants do not bear the initial burden of addressing any affirmative defenses the nonmovant may assert. *Id.*, syllabus and &13.

"Summary judgment is appropriate where no genuine issue of material fact remains to be litigated which could establish the existence of an element essential to the nonmoving party's claim or defense." Gross, 85 Ohio App.3d at 667. The mere existence of a factual dispute is insufficient to preclude summary judgment only disputes over material facts that might affect the outcome of the suit under the governing law will properly preclude summary judgment. *Id.*

"The construction of written contracts and instruments of conveyance is a matter of law." Alexander v. Buckeye Pipe Line Co., 553 Ohio St.2d 241, 374 N.E.2d 146 (1978), paragraph one of the syllabus. This Court finds that the instant case involves the construction of written leases

and in light of the Defendant's undisputed failure to commence any development activity pursuant to those leases, the clear public policy of Ohio has been violated. There is no dispute as to any material fact; reasonable minds can reach no conclusion other than one reached herein by this Court that is adverse to the Defendant; and Plaintiffs are entitled to judgment as a matter of law on this issue.

The Plaintiffs also maintain that their leases with the Defendant are perpetual leases under which there has been no development of oil and gas and therefore the leases are void and unenforceable as against public policy. Central to the understanding of this issue are paragraphs two and three of these parties' leases. Paragraph two provides as follows:

"This lease shall continue in force and the rights granted hereunder be quietly enjoyed by the lessee for a term of ten years and as much longer thereafter as oil or gas or their constituents are produced or are capable of being produced on the premises in paying quantities, in the judgment of the lessee, or as the premises shall be operated by the lessee in the search for oil and gas and as provided in paragraph 7 following."

Paragraph 7 of the parties' leases deal with the event that if a well is drilled that is a dry hole. Paragraph number 3 of the parties' lease is also central to an understanding of the issue at hand. Paragraph 3 of the parties' leases provide that:

"This lease, however, shall become null and void and all rights of either party hereunder shall cease and terminate unless, within -12- months from the date hereof, a well shall be commenced on the premises, or unless the Lessee shall thereafter pay a delay rental of _____ Dollars each year, payment to be made quarterly until the commencement of a well. A well shall be deemed commenced when preparations for drilling have been commenced."

The Defense maintains that a reasonable interpretation of these form leases is that they shall drill a well within twelve months or have the right to pay the delayed rental for a period of ten years and drill the well within that period. The Defendant wrote all of the leases involved

herein. If that was their intention then they should have stated it in their leases. That was never their intention or they would have written this language into their leases. It probably only became their intention when they were confronted with this lawsuit and law of Ohio on this issue. The Plaintiffs maintain that this is a lease in perpetuity and violates public policy. The lease by its term requires that a well be drilled within twelve months or that delayed payments be made quarterly to preserve the right to drill at a later date. This Court does not find in either paragraph 2 or 3 any limitation on the number of years that the delayed rental can be paid. Further, paragraph 2 provides that the leases have a term of ten years and as much longer thereafter as oil or gas or their constituents are produced or are capable of being produced on the premises in paying quantities. They have no provision for a well to be drilled. It also leaves the determination of what paying quantities means up to the Defendant. It gives no deadline for the time in which once a well is commenced that it be completed. A well is deemed "commenced" when preparations for drilling have been commenced. There is no deadline for the completion of a well. Some of the cases cited to the Court by the Defendant refer to the term "well" and not "lease". This case is not dealing with a situation where a well has been drilled. No wells have been drilled on any of the Plaintiffs' leases in Monroe County per the allegations of the Plaintiffs in their briefs.

Public policy analysis requires this Court to consider the impact of the contract at issue upon society as a whole. Eagle v. Fred Martin Motor Co., 157 Ohio Spp.3d 150, 2004-Ohio-829, 809 N.E.2d 1161, ¶63 (9th Dist.).

"Public policy is that principle of law which holds that no one can lawfully do that which has a tendency to be injurious to the public or against the public good.

Accordingly, contracts which bring about results which the law seeks to prevent are unenforceable as against public policy."

Brown v. Gallagher, 179 Ohio App.3d 577, 2008-Ohio-6270, 902 N.E.2d 1037, ¶10 (4th Dist.).

Courts will reject any effort to enforce a contract that is against public policy, either directly or indirectly, or to claim benefits thereunder. Taylor Building Corp. v. Benfield, 117 Ohio St.3d 352, 2008-Ohio-938, 884 N.E.2d 12 ¶61; Polk v. Cleveland Railway Co., 20 Ohio App. 317, 320-321, 151 N.E. 808 (3rd Dist. 1925); Buoscio v. Lord, 7th Dist. No. 98-C.A.-151, 1999 Ohio App. LEXIS 6204, *4 (Dec. 17, 1999); Conny Farms, Ltd. v. Ball Resources, 7th Dist. No. 09 CO 36, 2011-Ohio-5472, ¶26.

"[A]ctual injury is never required to be shown; it is the tendency to the prejudice of the public's good which vitiates contractual relations." Eagle at ¶64. Unlike a contract that is merely voidable at the election of one of the parties, a contract is void *ab initio* if it seriously offends public policy. Walsh v. Bolla, 82 Ohio App.3d 588, 593, 612 N.E.2d 1252 (11th Dist. 1992); Dunn v. Bruzzone, 172 Ohio App.3d 320, 2007-Ohio-3500, 874 N.E.2d 1221, ¶81 (7th Dist.).

The Ohio Supreme Court has clearly and unequivocally articulated the public policy of the State of Ohio in regard to the extraction of oil and gas. "It is the public policy of the state of Ohio to encourage oil and gas production when the extraction of those resources can be accomplished without undue threat of harm to the health, safety and welfare of the citizens of Ohio." Newbury Township Board of Trustees v. Lomax Petroleum (Ohio), Inc., 62 Ohio St.3d 387, 389, 583 N.E.2d 302 (1992); Northampton Building Co. v. Board of Zoning Appeals, 109 Ohio App.3d 193, 198, 671 N.E.2d 1309 (9th Dist. 1996). See also State v. Baldwin Producing

Corp., 10th Dist. No. 76AP-892, 1977 WL 199981, *2 (Mar. 10, 1977). To that end, political subdivisions - entities representing all persons within their territorial boundaries and not simply promoting the private interests of individual contracting parties - are prohibited from enacting ordinances, rules and regulations restricting oil and gas production that are more stringent than state requirements. Newbury Township at 389-90; Northampton Building Co at 198-99. It would be inconsistent to permit a private operator to unilaterally ban the development of significant oil and gas resources indefinitely, solely for personal gain and over the objection of its lessors.

The Plaintiffs are entitled to summary judgment in this matter because the leases in question clearly, unequivocally and seriously offend public policy in that they are perpetual leases that, by their terms and the payment of a nominal delayed rental may never have to be put into production. The Plaintiffs are also entitled to summary judgment because of the Defendant's breach of the implied covenant to reasonably develop the land by failing to drill any wells on any of the Plaintiffs' acreage. This provision violates the implied covenant to reasonably develop.

The leases in this case are, in effect, a no-term leases: through the boilerplate prepared by the Defendant and contained in the leases, the Defendant has the unilateral right to indefinitely postpone development and extend the time in which it may develop the Plaintiffs' acreage in perpetuity. Paragraph 2 provides that the leases shall continue in force for a term of ten years "and so much longer thereafter as oil or gas . . . are capable of being produced on the premises in paying quantities, in the judgment of the Lessee . . ." but does not impose a time limitation as to how long this Defendant can extend the duration of the leases by exercising its judgment. Paragraph 3 provides that the leases shall become null and void if a well is not commenced

within twelve (12) months, "...unless lessee shall thereafter pay a delay rental of ___ Dollars each year, ..." but likewise does not impose a limitation as to how long this Defendant can avoid termination by paying delay rentals. Furthermore, pursuant to the language contained in paragraph 13 of the leases ("failure of payment of rental or royalty on any part of this lease shall not void this lease as to any other part"), Defendant could ostensibly cease making the delay rental payments referenced in paragraph 3; but still retain the ability under paragraph 2 to extend the leases indefinitely by exercising its unfettered subjective judgment. Also, only Defendant has the unilateral right to terminate the leases, or any part thereof, by surrender. Lease, paragraph 15.

"[T]he presumption is that a lease is made for the purpose of immediate development, unless the contrary appears in the contract of the parties." *** The implied covenant to develop the leasehold for mineral production with due diligence and for the mutual benefit of both parties grew out of "the public interest which is concerned with the development of the natural resources of the state."

Jacobs, 332 F.Supp.2d at 779. Upon a lessee's failure to develop the leasehold within a reasonable time, "both public and private interests demanded judicial termination of the lease to make possible the use and alienation of the land for oil and gas or for other purposes." *Id.* at 782.

The coal leases in *Irono v. Glen-Gery Corp.*, 2 Ohio St.3d 131, 443 N.E.2d 504 (1983), contained no time limitation within which mining operations were to be commenced, but required the lessees to pay advance minimum royalties each year, to be applied against amounts anticipated to become due from future mining operations. In concluding that the lessees had breached their implied obligations under their lease, the Ohio Supreme Court enunciated the policy in Ohio:

The fact that the lessees have continued to make annual payments for a period of over eighteen years does not alter their responsibility to develop the land within a reasonable time. The questions of working diligently and of paying rent or royalties cannot be viewed as a substitute for timely development. To hold otherwise would be to reward mere speculation without development, effort, or expenditure on the part of the lessees. It would allow a lessee to encumber a lessor's property in perpetuity merely by paying an annual sum. Such long-term leases under which there is no development impede the mining of mineral lands and are thus against public policy.

Id. At 134.

The "long term" lease in *Ionno* and the Beck Leases in this case are no-term leases bestowing upon the lessees the unilateral right to extend in perpetuity the time within which to develop the leased premises. As in *Ionno*, there has been no development of Plaintiffs' acreage over a period of years. Like the lease in *Ionno* under which there had been no development, the leases herein are unenforceable as against public policy.

The Plaintiffs are entitled to summary judgment in this matter because the leases in question seriously offend public policy in that they are perpetual leases. The Plaintiffs are also entitled to Summary judgment because of the Defendant's breach of the implied covenant to reasonably develop the land and by failing to drill any wells on any of the acreage that implied covenant has been violated.

"[T]he only material inducement which influences a lessor to grant a lessee the power to exercise extensive rights upon his land is his expectation of receiving *** royalties based upon the amount of minerals derived from the land." *Ionno*, 2 Ohio St.3d at 133 n.2, 443 N.E.2d 504. "[W]here a lease fails to contain any specific reference to the timeliness of development, the law will infer a duty to operate with reasonable diligence." *Id.* At 133. In *Ionno*, the Ohio Supreme Court found a lease to be subject to the implied covenant to reasonably develop where it set forth

no time period in which mining operations were required to commence, and contained "no express disclaimer of the covenant to develop within a reasonable time." *Id.* At 133.

The leases in this case contain neither a "specific reference to the timeliness of development" nor "a time period in which mining operations were required to commence." Paragraph 3 of the lease provides that the lease shall "terminate" if a well is not commenced within the twelve-month period, the remainder of that paragraph ostensibly permits the Defendant to delay development indefinitely by paying annual delay rentals. Paragraph 2 of the lease also permits the Defendant to delay development indefinitely by determining in its judgment that oil or gas is "capable of being produced on the premises in paying quantities." A lease in which the development period can be delayed into perpetuity at the option of the lessee clearly satisfies the *Jonno* criteria under which an implied covenant will arise.

The implied covenant to develop the land with reasonable diligence serves to allow lessors "to secure the actual consideration for the lease, i.e., the production of minerals and the payment of a royalty on the minerals mined." *Jonno* at 134. To allow lessees to hold land under a mineral lease without making any effort to mine would contravene the nature and spirit of the lease. *Id.*

Ohio courts have recognized a number of implied covenants that arise in oil and gas leases, including both the covenant to drill and initial exploratory well and the covenant of reasonable development, as well as covenants to explore further, to market the product and to conduct all operations that affect the lessor's royalty interest with reasonable care and due diligence. *American Energy Services, Inc. v. Lakan*, 75 Ohio App.3d 205, 215, 598 N.E.2d 1315 (5th Dist. 1992); *Moore v. Adams*, 5th Dist. No. 2007AF090066, 2008-Ohio-5953, ¶32-37.

The United States Supreme Court recognized the implied covenant to reasonably develop in *Sauder v. Mid-Continent Petroleum Corp.*, 292 U.S. 272, 279, 54 S.Ct. 671, 78 L.Ed. 1255 (1934). The court saw no need to resort to the law of the state in which the case arose, stating that the covenant to develop the tract with reasonable diligence "is to be implied from the relation of the parties and the object of the lease." *id.* At 278-79.

The object of the operations being to obtain a benefit or profit for both lessor and lessee, it seems obvious, in the absence of some stipulation to that effect, that neither is made the arbiter of the extent to which or the diligence with which the operations shall proceed, and that both are bound by the standard of what is reasonable.

Id. at 280. The court criticized the lessee's assumption that it could hold its lease indefinitely without commencing any operations to discover or extract the minerals to which its lease applied.

The [lessee's] officers state that they desire to hold this tract because it may contain oil; but they assert that they have no present intention of drilling at any time in the near or remote future. This attitude does comport with the obligation to prosecute development with due regard to the interests of the lessor.

Id. At 281.

The Defendant maintains that its lease clearly disclaims all implied covenants. The lease does contain a general disclaimer of implied covenants. However, the lease also later refers to implied covenants.

In Ohio, as elsewhere, "[a]bsent express provisions to the contrary, an oil and gas lease includes an implied covenant to reasonably develop the land." *Beer v. Griffith*, 61 Ohio St.2d 119, 399 N.E.2d 1227 (1980), paragraph two of the syllabus; *Jonno*, 2 Ohio St.3d at 132, 443 N.E.2d 504. The covenant to reasonably develop arises in the absence of an "express disclaimer of the covenant to develop within a reasonable time." *Jonno* at 133.

Ambiguities in contracts are to be construed against the proponent of the instrument. *Doe v. Roman*, 127 Ohio St.3d 188, 2010-Ohio-5072, 937 N.E.2d 556, ¶49. "Any ambiguities in the document setting forth the rights and responsibilities of each party must be construed against the drafter of the document. Otherwise the nondrafter of the document may ultimately forfeit far more than he or she reasonably contemplated at the time the agreement was signed." *Id.* "In determining whether contractual language is ambiguous, the contract must be construed as a whole *** so as to give reasonable effect to every provision in the agreement." *Savedoff v. Access Group, Inc.*, 524 F.3d 754, 763 (6th Cir. 2008) (applying Ohio law). Where a contract as a whole can be reasonably interpreted to support either party's position regarding the scope of a particular clause, the contract is ambiguous as to that issue, and must be construed against the drafter. *Mead Corp. V. ABB Power Generation, Inc.* 319 F.3d 790, 798 (5th Cir. 2003).

In this case, the parties' lease first provides the lessor with the right to bring an action against the lessee for breach of an implied obligation. Lease, paragraph 17. Two paragraphs later, the lease purports to disclaim any implied covenants. Permitting the lessor to sue based on the breach of an implied obligation cannot be reconciled with a blanket disclaimer of all implied obligations or covenants. Because the lease can reasonably be interpreted to allow or disallow a lessor to maintain an action for breach of an implied obligation, the lease is ambiguous and must be construed against the Defendant, the proponent of the language at issue.

This lease contains contradictory provisions permitting the Plaintiffs to bring legal action against the Defendant for breaching implied obligations while at the same time disclaiming all implied obligations. Moreover, the provisions ostensibly vesting discretion in the Defendant to drill or not to drill either (1) renders the lease illusory unless coupled with an implied covenant to

reasonably develop, or (2) is ambiguous with respect to whether the discretion to drill or not to drill applies only to "further" drilling beyond what is required to produce oil or gas, or (3) is unenforceable as against public policy if construed to indefinitely allow Beck to elect to drill or not to drill for all purposes. Accordingly, in that all of these provisions are ambiguous, all provisions must be construed against the Defendant, rendering the general disclaimer of implied obligations ineffective.

Where general provisions of a contract conflict with specific provisions of the same document, the specific provisions generally control. *Edmondson v. Motorists Mutual Ins. Co.*, 48 Ohio St.2d 52, 53, 356 N.E.2d 722 (1976); *Hoepker v. Zurich American Inc., Co.*, 3d Dist. No. 140318, 2003-Ohio-5138, ¶11; *Monsler v. Cincinnati Cas. Co.*, 74 Ohio App.3d 321, 330, 598 N.E.2d 1203 (10th Dist. 1991). Paragraph 17 of the Beck Lease sets forth specific procedures to be followed in the event a lessor believes Beck to have breached either an express or implied obligation. Paragraph 19 generally disclaims all implied obligations. In that the specific provision in paragraph 17 setting forth a lessor's rights in the event Beck breaches an implied condition controls over the general disclaimer in paragraph 19, the disclaimer is ineffective.

The stated purpose of this lease is "drilling, operation for, producing and removing oil and gas and all the constituents thereof." The lease contains no suggestion that either defendant or lessor had any other objective. The implied covenant to reasonably develop the land effectuates the parties' intent as reflected by the express purpose of the lease.

To give effect to the fundamental purpose of an oil and gas lease as well as to the implied covenant to reasonably develop the land, provisions in the lease bearing on the extent of development may modify or reflect the standard of reasonableness in the implied covenant.

Streck v. Reed, 9th Dist. No. 1221, 1983 WL 4132, *3 (June 8, 1983). The lease must be construed in a manner that will give effect to all the provisions in the lease, both express and implied. *Id.*

The provision in a mineral lease for annual advance payments does not relieve the lessee of its obligation to reasonably develop the land. *Id.*, 2 Ohio St.3d at 134, 443 N.E.2d 504.

The questions of working diligently and of paying rent or royalties are entirely separately matters. An annual advance payment which is credited against future royalties cannot be viewed as a substitute for timely development. To hold otherwise would reward mere speculation without development, effort, or expenditure on the part of the lessees. It would allow a lessee to encumber a lessor's property in perpetuity merely by paying an annual sum.

Paragraph 3 of this lease specifies that the Lease "shall become null and void" and the rights of the parties "shall cease and terminate" unless a well is commenced within twelve months (subject to the effect of paying delay rentals). The parties necessarily determined that twelve months was a reasonable time in which to commence a well. In construing this lease, the Court hereby finds that the implied covenant to reasonably develop the land required the Defendant to commence a well within one year. As the Defendant failed to do so, and in fact, has failed to commence a single well on any portion of any of the Plaintiffs' acreage, even though more than three years have elapsed since the lease covering the Hustacks' property was executed, almost six years have elapsed since the Hubbards executed their lease, nine years have elapsed since Donald Yonley executed his Lease, and more than six years have elapsed since David Majors executed his Lease, it has breached the implied covenant to reasonably develop Plaintiffs' Acreage.

When construing the evidence most strongly in favor of the Defendant as required by the Ohio Rules of Civil Procedure, this Court is convinced that reasonable minds can come to but one conclusion, and that conclusion is adverse to the Defendant. This Defendant's lease clearly and unequivocally breaches the implied covenant to reasonably develop the Plaintiffs' land and violates the public policy of the State of Ohio and the Plaintiffs are entitled to summary judgment on this issue. As stated herein above, the lease involved in this action is a lease in perpetuity. By paying delayed rentals, this land could potentially never be developed by the Defendant's payment of a very minimal payment to the Plaintiffs.

While not controlling, our neighboring state of Pennsylvania has decided the issues presented by this course. It is interesting because Pennsylvania has taken the same position taken by the Ohio Supreme Court on the issues presently before this Court in this matter. *Hite v. Falcon Partners*, 2011 Pa.Supr. 2, 13 A.3d 942 (2011), is in many respects similar to the instant case. The *Hite* lease and this lease are both "unusual" types of no-term leases. 13 A.3d at 947. They do not contain traditional habendum clauses which definitively designate a primary term (the time period in which the lessee has the right to develop the leased premises) and a secondary term (the period following the primary term in which the lessee can reap a long-term return on the efforts and funds expended to develop the premises.) The *Hite* lease and this lease each contain language purporting to enable the lessee to indefinitely extend the primary term at the lessee's option.

The *Hite* lease provided for a one-year primary term that the lessees could extend indefinitely either by continuing operations for production of oil or gas, or by paying annual delay rentals of two dollars per acre. 13 A.3d at 944. The lessees in *Hite* simply paid delay

rentals for years without commencing any drilling, depriving the lessors of the royalties they would have received from the production of their oil or gas.

The court noted that "[r]oyalty-based leases are to be construed in a manner designed to promote the full and diligent development of the leasehold for the mutual benefit of both parties." *Id.* At 945. The court reviewed the history of mineral leases, noting the evolution from a definite term that left the lessee at a disadvantage if minerals were discovered near the end of the term, to a variable term expressed by a habendum clause providing for a fixed period for development, with an option to extend the lease for "as long thereafter" or "so long as" the specified minerals were produced in paying quantities, enabling the lessee to continue to reap a return for the money spent to develop the property. *Id.* At 946.

Even if a written lease did not expressly require the lessee to develop the property in a timely manner or suffer forfeiture, courts recognized an implied obligation to develop the leasehold. *Id.* As a result, leases specifying a fixed primary term with a "thereafter" clause began to incorporate "delayed rental" clauses relieving lessees of the obligation to immediately develop the property. *Id.* "[C]ourts have interpreted delay rentals to be 'limited to the initial term of the lease.'" *Id.* at 947; *Jacobs*, 332 F.Supp.2d at 786.

As noted in Plaintiffs' public policy argument, section II.B., *supra*, lessees began crafting leases permitting the lessee to extend the exploration period for as long as he considered payment of the delay rental worthwhile, giving rise to the "no term lease," which courts rejected under one of two rationales. *Id.* at 947. One rationale was that because the lease did not fix a time beyond which the lessee could not delay actual development and the payment of royalties—the consideration for the lease—the lease was unfair and therefore unenforceable against the lessor. *Id.*

The other rationale was that no-term leases contained an implied condition requiring the lessee to drill within a reasonable time or forfeit the lease. *Id.*

The *Hite* court observed that to a landowner unsophisticated in the legalities of leasing minerals the terms of the lease indicated a one-year term during which the lessee was to commence development. 2011 Pa.Super.2, 13 A.3d at 948. "If the lease could be extended in perpetuity though the payment of \$2.00 per acre per year, there would be little need for the parties to agree on a one-year lease term." *Id.* Rejecting the lessee's contention that the leases enabled it to maintain production rights indefinitely as long as delay rentals were paid, the court opined that delay rentals relieve the lessee of the obligation to develop the land during the primary term only. *Id.* Accordingly, a single two-dollar-per-acre delay rental relieved the lessee of any obligation to develop the leasehold during the one-year primary term. *Id.* Once that primary term expired, the mere payment of delay rentals could not preserve the lessee's drilling rights. *Id.*

Permitting the lessee to pay delay rentals indefinitely, thereby denying the lessors the financial benefits of actual production, would contravene the presumed intention of the parties in executing the leases in the first place, as well as the notion that delay rentals are intended to "spur the lessee toward development." *Id.* Moreover, construing the leases as creating an indefinite term would provide the lessee with vested property rights for the mere payment of a nominal delay rental, a concept at odds with the traditional construction of the property rights conveyed by an oil and gas lease. 13 A.3d at 949. Accordingly, the *Hite* court held that the terms of the leases being construed limited the privilege of foregoing production by paying delay rentals to

the one-year primary term; once the primary term ended and the lessee failed to commence production, the leases expired. *Id.*

Like the *Hite* lease, this lease is a no-term lease which, on its face, purports to enable the Defendant to extend the term indefinitely, without any development, by simply paying nominal delay rentals and/or determining that the leased acreage is capable of producing.

A contract is illusory when, by its terms, the promisor "retains an unlimited right to determine the nature or extent of his performance; the unlimited right in effect destroys his promise and thus makes it merely illusory." *Century 21 v. McIntyre*, 68 Ohio App.2d 126, 129-30, 427 N.E.2d 534 (1st Dist. 1980); *Thomas v. Am. Elec. Power Co.*, 10th Dist. No. 03AP1192, 2005-Ohio-1958, ¶32. Courts generally disfavor interpretations that render contracts illusory, preferring a meaning that gives the contract vitality. *Thomas*, ¶32.

Construing this lease consistently with *Hite*, limiting the Defendant's ability to forego development to the twelve-month primary term set forth in paragraph 3, would prevent the Defendant's promise to drill from being illusory and would promote public policy and the expressed intent of the parties to develop the Acreage.

For all the reasons set forth herein above the Plaintiffs are entitled to summary judgment. The remaining issue is whether or not forfeiture is an appropriate remedy for the Plaintiffs and whether or not the Defendant is entitled to a 30 day notice of cure as provided for in the lease. For the reasons set forth herein after, this Court believes that forfeiture of these leases is the appropriate remedy because they were void *ab initio* and as such the Plaintiffs do not have to give the Defendant the contractual notice to cure notice.

When causes of forfeiture are specified in an oil and gas lease, other causes cannot be implied. *Beer*, 61 Ohio St.2d at 119, 399 N.E.2d 1227, paragraph three of the syllabus. However, "[w]here legal remedies are inadequate, forfeiture or cancellation of an oil and gas lease, in whole or in part, is an appropriate remedy for a lessee's violation of an implied covenant." *Id.*, paragraph four of the syllabus. Forfeiture will be granted when necessary to do justice to the parties, even where specific grounds for forfeiture are set forth in the lease. *Jonno*, 2 Ohio St.3d at 135, 443 N.E.2d 504. Even where the lessee has made minimum rental or royalty payments, a lessor's claim for forfeiture based upon breach of an implied covenant to reasonably develop the land is not precluded, provided the lessor can show that damages are inadequate. *Id.*

"The rationale for allowing forfeiture is the fact that the real consideration for the lease is the expected return derived from the actual mining of the land, not the rental income." *Moore*, 2008-Ohio-5953, ¶48. Where a lessee's failure to drill or mine within a reasonable period of time would allow the lessee to encumber the lessor's property in perpetuity, without any return of income to the lessor arising from drilling or mining operations, breach of the implied covenant to develop the land could result in forfeiture. *Id.* The decision to order a forfeiture of an oil and gas lease is within the trial court's discretion. *Id.*, ¶51.

In *Beer*, the court upheld a partial forfeiture (or cancellation) where the lessee had performed no work on the leased property for over a year, and had financial and operating difficulties. 61 Ohio St.2d at 121-22, 399 N.E.2d 1227. The court stated that even if the lessee had sufficient resources from which to pay damages, forfeiture of the lessee's continued interest in unexploited acreage was warranted to assure the development of the land and the protection of the lessor's interests. *Id.* at 122, 399 N.E.2d 1227. In *Lakay*, the court upheld a forfeiture where

the lessee had limited experience; had drilled but never sold gas from a well on the lessor's property, even though he had placed three wells on other lessors' property into production; and functioned as a "mom and pop" operation without employees. 75 Ohio App.3d at 216-17, 598 N.E.2d 1315.

In the instant case, the parties' lease does not specify any grounds for forfeiture. The Defendant has held leases to Plaintiffs' lands for years without drilling even an initial exploratory well, encumbering Plaintiffs' property for nominal delay rental payments. Forfeiture is warranted to assure the protection of Plaintiffs' interests in their lands. Moreover, even if damages could do justice to the parties, calculating a damage award would be speculative at best because no exploration or drilling has ever taken place. Accordingly, forfeiture is warranted in this case because legal remedies are clearly inadequate.

Plaintiffs did not provide written notice to the Defendant pursuant to paragraph 17 of the lease, "setting out specifically in what respects lessee has breached this contract," and affording the Defendant thirty days to cure any breach. However, the Defendant lacks the means to cure either the defects in or its breaches of the lease. Plaintiffs' compliance with the technical requirement of providing notice prior to commencing this action would serve no purpose.

A lessee's "midnight-hour attempts to save the lease" are insufficient to preserve the lessee's rights under an oil and gas lease that has been breached. *American Energy Services v. Lekom*, 75 Ohio App.3d 205, 214, 598 N.E.2d 1315 (5th Dist. 1992); *Moore v. Adams*, 5th Dist. No. 2007AP090066, 2008-Ohio-5953, ¶50; *Gisinger v. Hart*, 115 Ohio App. 115, 184 N.E.2d 240 (4th Dist. 1961). In *Lekom*, the court found that once the conditions of the lease had ceased to

be met, the lease terminated "by the express terms of the contract *** and by operation of law and re-vest[ed] the leased estate in the lessor." 75 Ohio App.3d at 212, 214.

In *Gisinger*, the lessees made no effort to develop the leasehold until ten days before expiration of the primary term. Finding it improbable that gas or oil would be produced before the end of the term, the court held the effort was "too little too late," and rejected the lessees' claim for an extension of the term. 115 Ohio App. At 117.

Moreover, it is well settled that the law will not require a vain act. E.g., *State ex rel. Marcolin v. Smith*, 105 Ohio St. 570, 603, 138 N.E. 881 (1922); *Gerhold v. Papathanasion*, 130 Ohio St. 342, 346, 199 N.E. 353 (1936); *Coleman v. Portage County Engineer*, 191 Ohio App. 3d 32, 2010-Ohio-6255, 944 N.E.2d 756, ¶38 (11th Dist.). In the instant case, the purpose of the notice requirement in paragraph 17 of the lease is to provide the Defendant with an opportunity to cure any breach. However, the lease is void as against public policy. The Defendant cannot cure its breach in a timely manner. The Plaintiffs are entitled to summary judgment as requested and to the forfeiture of all rights of the Defendant to the oil and gas under the Plaintiff's properties. The Defendant's rights in the subject bases are forfeited. Court costs shall be assessed against the Defendant.

ENTER AS OF DATE OF FILING:

/s/ Ed Lane

Judge Ed Lane

c: Attorney Zurz/Ropchok/Peters
Attorney Banerle/Hirsch

EXHIBIT 5

COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

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CLEAR OF COURTS

IN THE COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

LARRY A. HUPP, et al.

Plaintiffs,

vs.

BECK ENERGY CORPORATION

Defendant.

CASE NO. 2011-345

JUDGE: ED LANE

PLAINTIFFS' MOTION FOR CLASS
ACTION CERTIFICATION

Now come Plaintiffs, Larry and Lori Hustack ("Hustacks"), Lawrence and Michelle Hubbard ("Hubbards"), and David Majors ("Majors") (collectively "Plaintiffs"), by and through the undersigned counsel, and respectively move this Court for an Order that this action be maintained as a Class Action pursuant to Civil Rule 23(B)(2). As is more fully set forth in the Memorandum attached hereto and incorporated herein, it is clear that the prerequisites to a Class Action set forth in Civil Rule 23(A) have been met as have the requirements of Civil Rule 23(B)(2). Accordingly, this Court should certify this case as a class action under Civil Rule 23(B)(2). For the Court's convenience, a proposed Order is attached hereto.

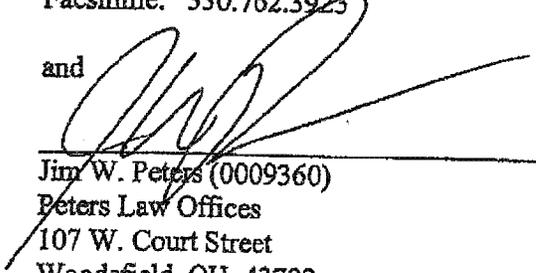
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ATTORNEYS FOR PLAINTIFFS
LARRY AND LORI HUSTACK,
LAWRENCE AND MICHELLE HUBBARD,
AND DAVID MAJORS

I. INTRODUCTION

This case arises out of a form oil and gas lease ("Beck Lease") utilized by the Beck Energy Corporation of Ravenna, Ohio (hereinafter "Beck"), which Beck executed with approximately 415 landowners in Monroe County and approximately 200 to 300 landowners in other South East Ohio counties. These form leases purportedly grant Beck the mineral rights to approximately 32,280 acres in Monroe County. The leases were entered into over the past approximately 21 years. Of this acreage, Beck has not drilled an oil or gas well on approximately 21,000 acres in Monroe County and several thousand acres in other counties, which are the parcels at issue in this case.¹ The Beck leases only paid the non-drilled parcel landowners somewhere between \$1 to \$5 per acre per year in "delay rentals."² Additionally, had wells actually been drilled and produced gas/oil, the leases only provided for a one-eighth (12.5%) royalty to the landowner.³

As this Court is well aware, the recent oil and gas boom in Southeastern Ohio and Monroe County in particular, has resulted in up-front delay rental payments to the landowners of upwards of \$6,000, and possibly beyond, per acre for a five year lease term.⁴ The fact that the landowners in this case executed these form leases with Beck prevents them from leasing their property today to one of the new drillers.

In fact, since the filing of the Complaint in this case, specifically, on December 21st, 2011, Beck Energy purported to assign the leases which are the subject matter of this action to

¹ From Monroe County records.

² See Exhibits A-C, the affidavits and leases of the Hustacks, the Hubbards, and Majors, respectively.

³ Even though Beck drilled no wells on the land at issue in this lawsuit, the 12.5% (1/8th) royalty provision is still a significant term. This is because if Beck assigns the lease to another driller, which he has already attempted to do, the landowner would be locked into the 12.5% royalty rate, instead of what is currently available in the marketplace, 17.5% or more. Thus, in the assignment scenario, Beck could not only keep for himself all of the "up front" money (with the landowner receiving nothing), but also the "spread" on the royalties- between 12.5% and 17.5% or more.

⁴ The Court may take Judicial notice of this figure as it has been reported in various newspapers and public meetings, as well as can be verified by Monroe County records for recently leased lands.

Exxon Mobil Corporation/XTO Energy Inc.⁵ Beck assigned the "deep" drilling rights, but maintained for itself the "shallow" drilling rights. As a result of this assignment, the Lessors/Landowners/Putative Plaintiffs herein will likely receive NONE of the upfront money for the assignment of their mineral rights, and will not receive any increase in royalty above 12.5% and whatever increased royalty Beck negotiated with Exxon.

However, the Beck lease is not merely just a "bad deal" which the landowners made and with which they would otherwise be stuck. The Beck leases are void on their face as has already been held by this Court.⁶ Accordingly, the Plaintiffs are requesting that a class be certified of all landowners in Ohio who executed leases with Beck where Beck did not drill a well on their property. The Plaintiffs herein request a certification from this Court to proceed as a Class Action under Civ. R. 23 (B) (2). The leases of the Plaintiffs herein have already been declared void against public policy, violative of implied covenants and forfeited.

II. FACTS

Beck Energy Corporation is a small family run oil and gas exploration company owned and operated by Raymond Beck, and located in Ravenna, Portage County, Ohio. The ODNR website indicates that over the years, Beck Energy has drilled approximately 347 oil and gas wells, located primarily in the eastern one-third of the state.⁷ However, most of Beck's activities have been centered in Monroe County, Ohio. Between 1980 and the present, Beck Energy drilled approximately 165 wells in the county. From 2002-2007, Beck drilled an average of 15

⁵ A copy of the Assignment, which also includes a list of the landowners, some of which are putative Plaintiffs herein, is attached hereto as Exhibit D.

⁶ See 7/12/12 Decision of Judge Lane attached hereto and incorporated herein by reference as Exhibit E.

⁷ It is believed all of these facts are undisputed. In order to evidence good faith belief, citation is made to the best available evidence under the circumstances, the ODNR website and Monroe County records. Plaintiffs afforded Defendant the opportunity to provide competing information in response to Discovery requests, which were served upon the Defendant months ago. Instead, Defendants chose to object to those requests and provide no meaningful documentation whatsoever. Those evasive responses thus form the basis of a Motion to Compel, filed contemporaneously herewith.

wells per year in Monroe County. At that rate, it would take 27 years for Beck to drill all of the leases he had executed in Monroe County.⁸ Virtually all these wells were, by today's standards, considered "shallow," drilling only down to the Berea Sandstone level, approximately 1,000 feet.⁹

By contrast, the oil and gas exploration which is currently being undertaken in the county involves drilling into the Marcellus shale (approximately 3,500 feet), and the deeper Utica shale (approximately 6,000 feet). These newer Marcellus and Utica wells require "horizontal" boring technology: A single well shaft is drilled and then horizontal borings extend out from the main shaft, which are then filled with high pressure fluids, and, thus, "fractured." Wells of this nature are much more difficult and expensive to drill than the "shallow" wells, but may have incredible yields.

Against this backdrop, Beck Energy, through either the efforts of Mr. Beck himself or his agent, over the years have entered into oil and gas leases with numerous Lessors (landowners) of property located primarily in Monroe, and several of its surrounding counties. From review of the Monroe County records, it appears as though Beck Energy entered into leases for approximately 32,280 acres in the county between the years 1996 and 2011. Between 1996 and 2001, Beck entered into 1, 1, 3, 0, 7 and 7 leases per year, respectively, in Monroe County. Then, in 2002, he entered into 96.¹⁰ Regardless, Beck has tied up over 30,000 acres in the county. For approximately 10,000 of these acres, Beck has not drilled a well, despite having years to do so, and has thus effectively prevented exploration of any of the mineral wealth located beneath this large swath of Monroe County and in areas in Monroe's neighboring

⁸ ODNR website, Public Records.

⁹ ODNR website, Public Records.

¹⁰ Monroe County Records and ODNR Records.

counties. For this acreage, Beck has managed to tie up the property by paying only a trivial amount in delay rentals per year, if he even paid any rentals at all.

In entering into the lease agreements with the Ohio landowners, Beck used a "form" lease. Accordingly, it is believed that all of the leases which Beck recorded in Ohio contain the exact same language and provisions. The only differences in the lease are inconsequential: The name and address of the Lessor (landowner), the amount of the acreage and its location, the amount of the delay rental (which varied with the amount of acreage), and occasionally, the duration of the primary term of the lease.¹¹ Thus, the essential terms of the lease are identical between the Plaintiffs in the case herein. The Hustacks, the Hubbards, and Mr. Majors, all executed the same form lease. These leases are attached to this Motion as Exhibits A, B, and C, respectively.

These leases were all recorded by Beck Energy. Accordingly, the leases grant the mineral rights of the Lessors to Beck Energy. They are thus a cloud upon the title of the property. The Lessor landowners cannot negotiate with new drillers who are offering thousands and thousands of dollars per acre as "signing bonuses" and royalties of approximately 17.5% versus the 12.5% under the old Beck leases. Most importantly, Beck has not drilled wells or attempted to drill wells on any of the parcels at issue in this case.¹² The mineral rights are thus wasting.

As indicated, the leases are identical and contain several relevant provisions which are at issue in this case. The first is paragraph 2, which states as follows:

"This lease shall continue in force and the rights granted hereunder be quietly enjoyed by the Lessee for a term of ten years and as much longer thereafter as oil

¹¹ Virtually all of the Ohio Beck leases counsel has examined contain a primary term of twelve months. A few of them have a shorter time period, such as six months.

¹² See Affidavits of the three Plaintiffs, Exhibits, A, B, and C.

or gas or their constituents are produced or are capable of being produced on the premises in paying quantities, in the judgment of the Lessee, or as the premises shall be operated by the Lessee in the search for oil or gas and as provided in paragraph 7 following.”

Paragraph 3 also states:

“This lease, however, shall become null and void and the rights of either party hereunder shall cease and terminate unless, within ____ (typically 12 months) from the date hereof, a well shall be commenced on the premises, or unless the Lessee shall thereafter pay a delay rental of \$ ____ (typically \$5.00) each year, payments to be made quarterly until the commencement of a well. A well shall be deemed commenced when preparations for drilling have been commenced.”

Paragraph 13 states:

“The Lessee shall have the right to assign and transfer the within lease in whole or in part....Failure of payment of rental or royalty on any part of this lease shall not void this lease as to any other part.”

Paragraph 17 states:

“In the event Lessor considers that Lessee has not complied with any of its obligations hereunder, either express or implied...”

As all of the Parties’ rights and responsibilities, whether by contract or by operation of law, arise from this lease, this case is one almost by definition which should be resolved via class treatment. Additionally, this Court has already found the Beck “form” lease to be violative of public policy, that Beck violated its implied covenants contained in the “form” lease, and that the “form” lease is void *ab initio*. Accordingly, if the lease is void for one landowner, it must be void for all landowners, where Beck has not drilled a well.

More recently, Beck has purported to “assign” all of the deep drilling rights in this acreage to Exxon Mobil Corporation, a New Jersey Corporation, and its affiliate, XTO Energy Inc., of Texas. Beck executed and recorded this purported assignment well after the filing of this lawsuit, on December 21, 2011, thus flaunting the jurisdiction of this Court. The arrogance of

this attempted assignment will become even more apparent to the Court, when viewed through the lens of its Summary Judgment ruling. The assignment includes a list of Lessors (landowners) whose mineral rights Beck has sold to Exxon. For these landowners, they will undoubtedly receive none of the "upfront" money on the lease, nor will they receive any increase in royalty over the base 12.5% in their Beck leases, and whatever new rate Beck negotiated for himself in the assignment, perhaps as much as 17-18% . Thus, Beck may potentially pull \$70-80,000,000 in up front money alone out of Monroe County, while the landowners of the County receive nothing. In any event, the assignment conclusively proves, for class certification purposes, as does the Court's ruling, that all of these cases are identical and thus subject to class treatment.

Accordingly, this Court's ruling on July 12, 2012, that the Beck form lease is void, has resolved the issues in this case on behalf of all non-drilled Beck Lessors. Plaintiffs are confident that for the reasons set forth in the Complaint as well as the Court's ruling on Summary Judgment, that this Court will certify this class, and allow *all* Ohio landowners to negotiate new leases with new drillers for economically competitive rates, and thus to fully explore the mineral wealth of Monroe and its neighboring counties.

III. LAW AND ARGUMENT

A. Civil Rule 23(A) – Class Action Standard.

Plaintiffs satisfy the requirements for class certification as the class is so numerous that joinder is impracticable, there are legal and factual issues common to the class, the claims of the parties are typical of the class and the representative parties will protect the interests of the class.

A motion for class certification is not an occasion for examination of the merits of the case. *Caridad v. Metro-North Commuter R.R.*, 191 F.3d 283, 291 (2nd Cir. 1999). There is "nothing in either the language or history of Rule 23 that gives a court any authority to conduct a preliminary inquiry into the merits of a suit in order to determine whether it may be maintained

as a class action." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177 (1974). Instead, the Court must determine if the plaintiffs have proffered evidence to meet each of the requirements of Rule 23. No weighing of competing evidence is appropriate at this stage of the litigation. *Caridad*, 191 F.3d at 293. See also *Cleveland Board of Education v. Armstrong World Industries, Inc.* (C.P. 1985) 22 Ohio Misc.2d 18. (Holding in ruling on class certification the Court may take the allegations of the complaint as true and the Court should not examine the merits of the case during the certification hearing).

i. Policy Behind Class Actions.

The policy behind class action is to protect members of even a small class from being deprived of their day in Court. See *Blumenthal v. Medina Supply Co.* (2000) 139 Ohio.App.3d. 283 citing *Amchem Prods., Inc. v. Windsor* (1997), 521 U.S. 591, 117 S.Ct. 2231, 138 L.Ed.2d 689; *Marks v. C.P. Chem. Co., Inc.* (1987), 31 Ohio St.3d 200, 31 OBR 398, 509 N.E.2d 1249; 7A Wright, Miller & Kane, Federal Practice and Procedure (2 Ed.1986), Section 1777; 5 Moore's Federal Practice (3 Ed.1997), Section 23.44. See Also Anderson's Ohio Civil Practice § 36.02. "Where resolution of a class action may result in benefits to the large number of class members whose claims are so small that their size does not provide the impetus to bring individual actions" a class action is considered the preferred method of adjudication. See *M. Verenson Co. v. First Faneuil Hall Market Place*, 100 F.R.D. 468, 471 (D. Mass. 1985). Correspondingly, the United States Supreme Court has found that a class action is appropriate to "vindicate the rights of individuals who otherwise might not consider it worth the trouble to embark on litigation in which the optimum result might be more than consumed by the cost." *Guaranty National Bank v. Roper*, 445 U.S. 3326, 338 (1980).

ii. Rule 23(A) Prerequisites for Class Certification.

The Court may exercise its discretion to certify a class when Plaintiff establishes the prerequisites of Ohio Civil Rule 23¹³ by a preponderance of the evidence. See *Cleveland Board of Education v. Armstrong World Industries Inc.*, 22 Ohio Misc 2d 18. Civil Rule 23 provides that one or more members of a class may sue as representative parties only if:

- (1) the class is so numerous the joinder of all members is impracticable,
- (2) there are questions of law or fact common to the class,
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and
- (4) the representative parties will fairly and adequately protect the interest of the class.

a) **Joinder of All Members is Impracticable.**

Joinder of all plaintiffs is impracticable. Impracticability of joinder is left to the trial court judge's discretion based on the particular facts of the case. See *Logsdon v. National City Bank* (1991), 62 Ohio Misc.2d 449; *Grubbs v. Rine* (1974), 39 Ohio Misc. 67. The requirement is that the class be so numerous that joinder of all members is impracticable. "Impracticable" does not mean "impossible." See *Planned Parenthood Association of Cincinnati v. Project Jericho* (1990) 52 Ohio.St.3d 56, 64, citing *Gentry v. C & D Oil Co.* (W.D.Ark.1984), 102 F.R.D. 490, 493

In that regard, there is no "magic number" for determining the number of parties that make joinder impractical. *Schmidt v. Avco Corp.* (1984), 15 Ohio St.3d 310, *Grubbs v. Rine* (1974), 39 Ohio Misc. 67. Federal Courts have ruled that "[g]enerally, the numerosity requirement is satisfied where the class exceeds 100 members. *Fox v. Prudent Resources Trust*,

¹³ Civil Rule 23(F) is the sole distinction between the Federal Rules and Ohio Rules on class actions. Civil Rule 23(F) provides that claims of the class shall be aggregated in determining the jurisdiction of the court. Otherwise, the only difference between Federal Rule of Civil Procedure 23 and Ohio Rule of Civil Procedure 23 are minor stylistic changes.

69 F.R.D. 74, 78 (E.D.Pa.1975); see, also, *Krominick v. State Farm Ins. Co.*, 112 F.R.D. 124, 126 (E.D. Pa. 1986). Ohio Courts have ruled that numerosity can be established with even a much smaller class. For example, in *Grubbs*, four (4) named plaintiffs were former tenants of a landlord. The four (4) named plaintiffs brought a class action against the landlord alleging that security deposits were wrongfully withheld. The landlord owned approximately fifty (50) different properties containing two hundred fifty (250) rental units. The court found the class alleged by plaintiffs was large enough to make joinder impracticable.

In *Bennett v. First Energy Corp.* (2002), 118 Ohio Misc.2d 174, 2002-Ohio-2745, the court found that a proposed class of one hundred twenty-five (125) former employees laid off was so numerous that joinder of all members was impracticable and satisfied numerosity requirements for certification of the class in the action brought by former employees.

The numerosity requirement in the instant action is satisfied. Based upon a review of the public records of the recorder's office, the instant action pertains to approximately 415 Monroe County landowners, who entered into leases with Beck, wherein he did not drill an oil and gas well.¹⁴ A similar review of neighboring counties revealed perhaps 2-300 more. Thus, the number of putative Plaintiffs is so numerous, the numerosity requirement for class action purposes has been satisfied, as the class is so numerous that joinder of all members would be impracticable.

b) Putative Plaintiffs Have Common Questions of Law and Fact.

Plaintiffs also satisfy the requirement that there are questions of law or fact common to the class, as the class consists of Lessors under Beck oil/gas leases on whose property Beck did not drill a well. This Court has already determined that the leases are all void, yet as

¹⁴ See County Records and Affidavits.

encumbrances of record in the Lessors' land title, they prohibit the landowners from re-leasing and exploiting the mineral wealth of their lands.

Wide discretion is afforded trial courts in deciding commonality, *Caruso v. Celsius Insulation Resources, Inc.* (M.D.Pa.1984), 101 F.R.D. 530, 533, but its resolution may be satisfied by the allegations contained in the complaint. *Miles v. N.J. Motors*, supra, 32 Ohio App.2d at 356, 291 N.E.2d 758. The commonality requirement of a class action does not require that all questions of law or fact which are in dispute be common. *Planned Parenthood Assn. of Cincinnati v. Project Jericho* at 64 citing, *Marks v. C.P. Chemical Co.* (1987), 31 Ohio St.3d 200; see, also, *Estate of Reed v. Hadley* (2005), 163 Ohio App.3d 464. The commonality requirement does not require that all questions of law or fact be common to every single member of the class; rather, at least one issue must be common to the claims of all the class members. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998); 5 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* §3.10 at 154 (3d ed. 1992); 7A Wright, Miller & Kane, *Federal Practice and Procedure: Civil 2d*, §1763, at 198 (1986). Courts have not considered commonality a difficult hurdle; the requirement should be "construed permissively." *Hanlon*, 150 F.3d at 1019. Generally courts in Ohio have ruled that the commonality requirement is satisfied when the plaintiffs demonstrate a "common nucleus of operative facts." See *Warner v. Waste Management Inc.* (1988), 36 Ohio St.3d 91.

Ohio courts have found that there is a "common nucleus of facts" surrounding claims against a funeral home by states which sought class action certification, even though the funeral home used different contracts over the class, where the funeral home sold each of the proposed class members the same or similar guaranty, and the funeral home shareholder acknowledged the

same sales practices applied when selling funeral arrangements. See *Estate of Reed v. Hadley* (2005), 163 Ohio App.3d 464.

Federal Courts have ruled:

[B]ecause Rule 23(a) (2) requires only a single issue common to all members of the class, the requirement is easily met. [Citing 1 NEWBERG § 3.10, at 3-50]. The fact that class members must individually demonstrate their right to recovery, or that they may suffer varying degrees of injury, will not bar a class action. [Citing NEWBERG at 3-69]. Nor is a class action precluded by the presence of individual defenses against class plaintiffs. See *id.* Moreover, the court may certify the class initially and then, if appropriate under all the circumstances, decertify the class after an adjudication of liability. Citing NEWBERG at 3-70. *Feret v. Corestates Financial Corp.* 1998 WL 512933 (E.D. Pa. 1998), at *7.

As set forth above, all of the Lessors, putative Plaintiffs, are governed by the same lease/contract, and will be subject to the same Beck defenses. Specifically, Beck leased mineral rights from the Plaintiffs. All of the deep drilling rights under the leases have been assigned to Exxon under one instrument. Thus, Beck himself is treating these leases as a "class." The question common to all Plaintiffs as has already been answered by this Court is: is that lease void? In the instant action, Plaintiffs satisfy the commonality of questions of law and/or fact in that every single member of the class was governed by the same operative lease terms.¹⁵

c) **Typicality of Claims and Defenses.**

The claims of the class members and the representative parties are typical. Similarly, the defenses of the Defendant as to the class members and class representatives are also typical.

"Typical" has been held to mean a "lack of adversity between the class members." *Tober v. Charnita, Inc.*, (M.D.Pa.1973), 58 F.R.D. 74, 80. Ohio courts have held that plaintiffs' claims satisfy the typicality requirement when the claim arises from the same event, practice, or course of conduct from which the claims of other class members arise and if the plaintiffs' claims are

¹⁵ As the Court can see in the leases of the three Plaintiffs herein, the lease terms are identical. Additionally, all of the leases Plaintiffs' counsel have reviewed spanning the years are the same form lease.

based on the same legal theory. *Baughman v. State Farm Mutual Auto Insurance Company* (2000), 88 Ohio St.3d 480. However, the claims or defenses need not be identical in granting class certification. See *Cincinnati Planned Parenthood, Inc. v. Project Jericho* at 64 citing Federal Class Actions, at 204; 7A Wright & Miller, *supra*, Section 1764; see, also, *Twyman v. Rockville Hous. Auth.* (D.C.Md.1983), 99 F.R.D. 314, 321.

In the present matter, the Plaintiffs' claims all arise from the same lease, and the same conduct of Beck in his not drilling a well on the Plaintiffs' property. Correspondingly, Plaintiffs' claims are all based on the same legal theories, which is that the Beck leases are void due to their terms being perpetual, and due to Beck's violation of the implied covenant to drill, and other express and implied covenants. Beck engaged in the same conduct against each of the class members by signing them to perpetual leases and not drilling on their property during the lease's primary term, and in also violating the same express and implied covenants with each of the Plaintiffs. Thus, the class representatives' claims are identical to those of the putative class plaintiffs.

d) Representative Parties Will Fairly and Adequately Protect Class Interests.

The class action Plaintiffs also satisfy the fourth requirement for a class action in that the representative parties will fairly and adequately protect the interests of the class.

Adequacy of representation essentially has two (2) components designed to ensure absent class members' interests are pursued: (1) that the interests of plaintiffs and class members are aligned, and (2) class counsel is qualified to serve the interests of the entire class. See Rule 23(a) (4).

(1) Interests of the Class are Aligned.

First, "the interests of the named plaintiffs must be sufficiently aligned with those of the absentees" *Amchem Products v. Windsor*, 521 U.S. 591, 625 (1997). A class representative is generally considered adequate as long as his interests are not antagonistic to that of the other class members. See *Marks v. C.P. Chemical Company, Inc.* (1987), 31 Ohio St.3d 200, see also *Vinci v. American Can Company* (1984), 9 Ohio St.3d 98.

No conflicts exist between Plaintiffs and the class members in this case. The named Plaintiffs challenge the same unlawful conduct and seek the same relief as the class. The right to relief of the named Plaintiffs, like that of the absent members, depends on demonstrating that Beck executed and recorded void perpetual leases with the landowners, while not drilling a well on their property, and/or by violating any other express or implied duties which arose by the lease/contract, or by operation of law.

In the instant matter, the Hustacks, Hubbards and Mr. Majors are adequate representatives of the class. All of them signed the same Beck lease and did not have wells drilled on their property. The proposed class representatives have taken an active role and control in the litigation to protect the class' interests. Further, the Hustacks, Hubbards and Mr. Majors have participated in selection of counsel, communicated with class members, monitored the litigation and vigorously prosecuted the case on behalf of the class.¹⁶ Additionally, as the Court has already ruled upon the Summary Judgment Motion, this case is essentially concluded.

(2) Counsel is Qualified.

Secondly, class counsel must be qualified to serve the interests of the entire class. Civil Rule 23(a) (4). Ohio courts have held that an attorney is competent to handle a class action if the attorney has experience in handling litigation of the type involved in the case before the class certification is allowed. See *Warner v. Waste Management Inc.* (1988), 36 Ohio St.3d 91, 98.

¹⁶ See Affidavits of the Hustacks, Hubbards and Majors.

Plaintiffs' counsel consists of Attorneys Mark Ropchock, Richard Zurz and James Peters. All three of these attorneys have been previously appointed class counsel by this Court in *John Lucio, et al. v. Safe Auto Insurance Co., et al.*, Monroe Co. Common Pleas Case No.: 2007-09, which resulted in a multi-million dollar recovery for the class members.

Mark Ropchock, has significant trial experience in handling hundreds of cases in multiple states, has tried multi-million dollar cases to verdict and has over twenty five (25) years of practice as a litigator, most recently receiving a three million dollar (\$3,000,000.00) verdict in Portage County, Ohio.

Richard Zurz is a leading personal injury attorney with offices in Akron, Canton and Columbus, Ohio. Richard V. Zurz has thirty (30) years of trial experience and is an active member in good standing with the Akron Bar Association, the Ohio State Bar Association, the American Bar Association, the Ohio Academy of Trial Lawyers, and American Association for Justice. Mr. Zurz practices in business and commercial litigation, personal injury, employer intentional torts and numerous other areas of the law. He has tried many cases.

James W. Peters also represents Plaintiffs. Mr. Peters is an attorney in Woodsfield, Ohio with over thirty (30) years experience practicing law. Mr. Peters is admitted to the Ohio Supreme Court, West Virginia Supreme Court, U.S. Court of Appeals, Fourth Circuit, U.S. Court of Appeals, Sixth Circuit, both of the U.S. District Courts in Ohio, and both U.S. District Courts in West Virginia. Mr. Peters has served as Special Counsel to the Ohio Attorney General and in private practice. Additionally, Mr. Peters is approved counsel for a number of corporations. Mr. Peters currently serves as a Judge in Monroe County Ohio. Mr. Peters has received a verdict of three million five hundred thousand dollars (\$3,500,000.00).

B. Civil Rule 23(B).

In addition to satisfying the prerequisites set forth in Civil Rule 23(A), Plaintiffs also satisfy the requirements set forth in Civil Rule 23(B). Civil Rule 23(B) requires Plaintiffs to satisfy one (1) of the requirements of subdivision (B) (1)-(3) for certification to be deemed appropriate.

1. Rule 23(B) states as follows:

An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied and, in addition, * * * (2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole * * *." This is the exact situation presented in the within action. The party opposing the class herein, Beck Energy, has acted on grounds generally applicable to the entire class, [form lease, no well drilled] and declaratory relief with respect to the class as a whole is appropriate.

As discussed extensively above, all the putative plaintiffs herein are landowners in Monroe and its neighboring counties, whose property is subject to and impaired by an oil and gas mineral lease with Beck Energy. Beck Energy will presumably defend every case in an identical fashion since whatever defenses are available under the lease would be applicable to all of the putative plaintiffs since the same terms would control. Beck has not drilled wells on any of the properties within the lease term. All the putative plaintiffs would find it impossible to lease their land to a new driller with the Beck Energy lease presenting a cloud upon the title of their property.

Likewise, meeting the second requirement of Rule 23(B) (2), the Plaintiffs are requesting declaratory relief from the court in the form of a quiet title action in favor of the landowners against Beck Energy. The Plaintiffs are simply requesting that the court hold the Beck leases

void (which it has already done), and clear the landowners' title to the property, once again vesting in them their full mineral rights. As the Complaint does not even request any form of monetary damages, the second requirement is easily met.

In *Wilson v. Brush Wellman, Inc.*, 103 Ohio St.3d 538, 817 N.E. 2d 59, a 2004 case, the Ohio Supreme Court had the opportunity to address the requirements of class certification under Rule 23(B) (2). The Supreme Court held that certification under the B (2) subdivision of Rule 23 entailed two requirements: (1) The action must seek primarily injunctive relief, and, (2) the class must be cohesive. *Wilson*, at 541, 63.

a. **Injunctive Relief**

As outlined above, Plaintiffs' Complaint consists of two counts. Count I is a request for declaratory judgment stating at paragraph 20, "Plaintiffs are entitled to a declaratory judgment that the Hustack lease, the Hubbard lease and the Majors lease are therefore forfeited, canceled, unenforceable, voided and held for naught, for reasons including but not limited to, the following * * *. Count II is a quiet title action which states in paragraph 21 (b), "Plaintiffs are entitled to a judgment, pursuant to Ohio Revised Code § 5303.01 quieting their title as to the Hustack acreage, the Hubbard acreage and the Majors acreage as against Defendant by and through the forfeiture, release and cancellation of the Hustack, Hubbard and Majors leases as valid encumbrances of record and by extinguishing any interests which Defendant has or may claim to have in the Hustack, Hubbard and Majors acreage."

These allegations clearly meet the first requirement of *Wilson* that the action must seek primarily injunctive relief. As the *Wilson* case and others have generally described, in making this determination, there is oftentimes confusion as to whether the Complaint specifically is requesting injunctive relief or damages. The distinction is often difficult to make. In *Wilson*, for

instance, Plaintiffs sought medical monitoring. This presented a difficult analysis for the Court as to whether future medical monitoring was primarily in the form of damage or injunctive relief.

In the present action, no such dilemma or difficulty in analysis exists. There simply is no claim in the Complaint for any sort of monetary damages whatsoever. The Complaint exclusively requests declaratory and quiet title relief. Accordingly, the first requirement of 23(B) (2) is satisfied.

b. Cohesiveness

The second requirement for 23(B) (2) certification as discussed in the *Wilson* case is that the class must be cohesive. In discussing the cohesiveness standard, the *Wilson* court noted, although this court has not had an opportunity to address the cohesiveness requirement of Civil Rule 23(B) (2) class certification, there are a "myriad federal cases providing us guidance," citing *Barnes v. Am. Tobacco Co.* (C.A. 3, 1998), 161 F.3d 127, 142-143. The federal cases indicate the cohesiveness analysis is essentially the same as a predominance analysis, which is discussed with much more frequency in the case law.

The predominance inquiry pertains to the focus on legal or factual questions that qualify each class member's case as a genuine controversy. See *Hoang v. E*Trade Group Inc.* (2003), 151 Ohio App.3d 363, 2003-Ohio-301.

The predominance test...involves an attempt to achieve a balance between the value of allowing individual actions to be instituted so that each person can protect his own interests and the economy that can be achieved by allowing a multiple party dispute to be resolved...[as] a class action.... *Schmidt v. Avco Corp.* (1984), 15 Ohio App.3d 81.

Plaintiffs must show that common or generalized proof will predominate at trial. See *Lumco Industries, Inc. v. Jeld-Wen, Inc.*, 171 F.R.D. 168 (E.D. Pa 1997). Common questions must be able to be resolved for all members of the class in a single adjudication. *Marks v. C.P. Chemical Co., Inc.* (1987), 31 Ohio St.3d 2000. "While potential dissimilarity in remedy is a

factor to be considered in determining whether individual questions predominate over common questions, that alone does not prevent a court from certifying a cause as a class action." *Vinci v. American Can Company* (1984), 9 Ohio St.3d 98. See also *Lowe v. Sun Refining & Marketing Co.* (1992), 73 Ohio App.3d 563, 572, 597 N.E.2d 1189.

Courts have found that when a common fraud is perpetrated on a group of plaintiffs, those plaintiffs should be able to pursue the claim without focusing on questions affecting individual members. *Cope*, 82 Ohio St.3d at 430, 696 N.E.2d 1001. In this regard, fraud cases that involve a single underlying scheme and common misrepresentations or omissions across the class are particularly subject to common proof. *Id.* at 432, 696 N.E.2d 1001. Once the plaintiff establishes that there are common misrepresentations or omissions affecting all class members, a class action can be certified notwithstanding the need to prove reliance. *Hamilton*, 82 Ohio St.3d at 83-84, 694 N.E.2d 442.

It would be difficult to imagine a case in which the prospective plaintiffs are more cohesive as a class than the within action. As noted, all of these individuals are landowners who are unable to lease their land to new drillers. The court can recognize the fact that these landowners would obviously wish to obtain thousands of dollars per acre for their property in up front money, not to mention potentially hundreds of thousands of dollars in royalties versus the present arrangement with Beck Energy, wherein they are receiving a few dollars per acre per year and no royalties whatsoever. The disparity is obviously egregious. However, that disparity is not alone the reason the group is cohesive.

This group is cohesive to the extent of near identity of interest. Their properties are all encumbered by the same leases with Beck Energy with the same terms that hold their property hostage. As noted, other than the fact that the names are different on the leases and the acreage

and its location are different, the terms of the lease were boilerplate and, thus, since the Court has already found the lease void in one instance, the lease would clearly be void in all. The reverse is also true. There are few individual claims or defenses available in the within action. If certain plaintiffs do have other claims against Beck, those are not part of this lawsuit. Accordingly, the cohesiveness analysis of the present action under the *Wilson* case is easily established.

There are additional reasons why this case is appropriate for class treatment, such as under a Rule 23(b) (1) analysis. Rule 23(b) (1) defines two related types of class actions, both designed to prevent prejudice to the parties arising from multiple potential suits involving the same subject matter. See *Feret v. Corestates Financial Corp.* 1998 WL 512933 (E.D. Pa. 1998), at * 13 citing 1 NEWBERG § 4.03, at 4-10. Rule 23(b) (1) (A) is used to “obviate the actual or virtual dilemma which would ... confront the party opposing the class” if separate lawsuits were decided differently so as to result in “incompatible standards” for that opposing party. See *Feret* at *13, citing *WB Music Corp. v. Rykodisc, Inc.*, 1995 WL 631690, at *3 (E.D.Pa. Oct. 26, 1995) (quoting Fed.R.Civ.P. 23(b) (1) (A) advisory committee notes). Conversely, Rule 23(b) (1) (B) is used when separate actions might lead to adjudications that could be dispositive of nonparty class members' interests or substantially impair their ability to protect their interests. See *Feret* at 13. Certifications under both of these clauses are common in labor relations cases because defendants often provide “unitary treatment to all members of [a] putative class [in this] ... area” and thus the rights of absent “class member[s] [are often] ... implicated by litigation brought by other class members.” *Feret* at *13 citing 5 MOORE'S §§ 23.41[4], 23.42[3] [c].

Correspondingly, Ohio courts have held that there is a risk of inconsistent adjudications when the validity of a lease contract could be found valid in one action and invalid in another,

this would lead to incompatible standards of conduct for the defendant. See, *Warner v. Waste Management*, (1988), 36 Ohio St.3d 91, 95. Footnote 2.

In the instant action, there is a risk that the validity of the Beck lease and course of conduct with the landowners could be valid in one action but invalid in another, thereby leading to inconsistent adjudications. Consequently, conflicting decisions regarding the legality of the Beck lease would affect the interests of all putative Plaintiffs. This is an additional reason why class treatment is needed.

Federal case law is in accord. In the case of *Walls v. Sagamore Ins. Co.*, 274 F.R.D. 243 (2011), the District Court for the Western District of Arkansas had the opportunity to analyze a 23(B) (2) certification motion. In *Walls*, an insured brought an action, on behalf of herself and all other similarly situated, for breach of an insurance contract claiming that the insurer's method of sending notice of cancellation for non-payment of premium was illegal. In certifying the class, the District Court went through a certification analysis. After first reviewing the numerosity, commonality, typicality and adequacy of representation requirements of Rule 23(A), the court next looked at the 23(B) (2) requirements. The court began its analysis by noting that, "The Eighth Circuit has held that Rule 23(B) (2) certification is appropriate when plaintiffs seek injunctive relief from the acts of a [defendant] on (the) grounds generally applicable to the class." *Wells* at 256, quoting *Paxton v. Union National Bank*, 688 Fed.2d 552 (8th Circuit 1982). The court then continued: "there are implicit requirements found in Rule 23(B) (2). These include, first, that the class definition must enable the court to determine objectively who was included in the class and, thus, who was bound by the ruling, and the class representatives must be members of the proposed class." Citing, *Dumas v. Albers Med., Inc.*, WL 2172030 (W.D. MO. September 7, 2005).

In this case, the class is readily ascertainable from the County records. This inquiry has already been undertaken and completed as discussed above. Secondly, the class representatives are clearly members of the proposed class, again, as outlined above. Accordingly, class certification is appropriate.

In a case involving oil and gas leases very similar to the present action, class certification was authorized under Rule 23(B) (3). *See, Schell v. Oxy USA, Inc.* (2009 WL 2355792), (D.Kan.). Accordingly, there can be little doubt that this case is appropriate for 23(B) (2) certification.

IV. CONCLUSION

Based on the above, class action certification is appropriate in the instant action as the four prerequisites to a class action set forth in Civil Rule 23(A) are satisfied and the requirements of Civil Rule 23(b)(2) are also satisfied. In that regard, the Court should grant class certification. Class certification in the instant action will result in the most efficient resolution of the claims of individuals involved in the action, eliminates repetitious litigation and inconsistent adjudications involving common questions, and related events. Therefore, Plaintiffs respectfully move the Court to grant class certification, appoint Mark Ropchock, Richard Zurz and James Peters class counsel, and appoint the Hustacks, the Hubbards and Majors as class representatives.

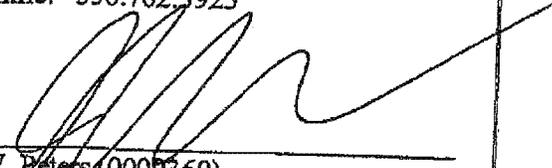
Respectfully submitted,

Mark A. Ropchock (0029823)
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and

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and



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ATTORNEYS FOR PLAINTIFFS
LARRY AND LORI HUSTACK,
LAWRENCE AND MICHELLE HUBBARD
AND DAVID MAJORS

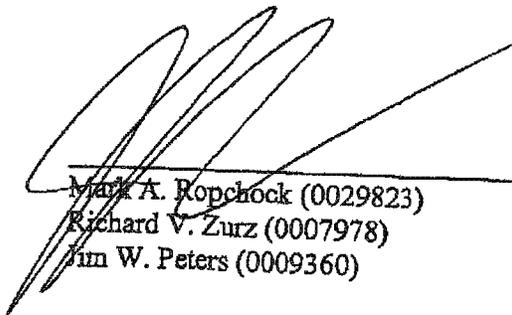
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing has been served upon the following parties via regular U.S. Mail, postage prepaid this 19 day of

July, 2012:

David J. Hirsch, Esq.
James F. Bauerle, Esq.
Keevican Weiss Bauerle & Hirsch, LLC
11th Floor, Federated Investors Tower
1001 Liberty Avenue
Pittsburgh, PA 15222-3724

ATTORNEY FOR DEFENDANT
BECK ENERGY CORPORATION



Mark A. Ropchock (0029823)
Richard V. Zurz (0007978)
Jim W. Peters (0009360)

IN THE COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

LARRY A. HUSTACK, et al.

Plaintiffs

vs.

BECK ENERGY CORPORATION

Defendant

) CASE NO. 2011-345

) JUDGE JULIE SELMON

) AFFIDAVIT OF PLAINTIFF, LARRY A
) HUSTACK

STATE OF OHIO)

MONROE COUNTY)

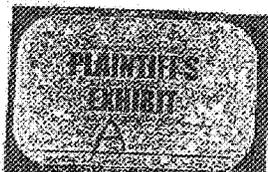
) ss:

Plaintiff Larry A. Hustack, being first duly sworn and cautioned, deposes and states as follows:

1. I am a Plaintiff in the above-captioned action. I am over eighteen years of age, and competent to testify. The statements in this Affidavit are true and accurate, based on my personal knowledge.

2. The Oil and Gas Lease (Lease) attached as Exhibit A1 is a true and accurate copy of a lease which currently encumbers certain real property located at 45429 Bondi Ridge Road, Woodsfield, Ohio (Hustack Acreage). My spouse and I purchased the Hustack Acreage subject to the Lease, which had been executed by our predecessors in title and duly recorded.

3. I have personal knowledge of any and all operations that have been conducted on the Hustack Acreage from the date on which we purchased it to the present date.

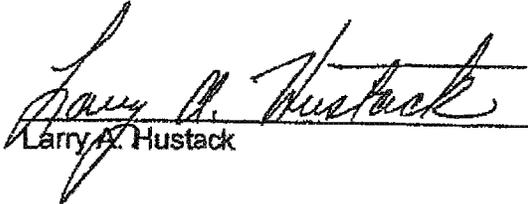


4. At the time we purchased the Hustack Acreage, there was no evidence that Beck Energy Corporation, any representative of Beck Energy Corporation, or any other person acting on behalf of Beck Energy Corporation had drilled a well or prepared to drill a well thereon. There were no wells, and there was no drilling equipment or any sign that such equipment had been situated on the Hustack Acreage.

5. At no time since we purchased the Hustack Acreage has Beck Energy Corporation, any representative of Beck Energy Corporation, or any other person acting on behalf of Beck Energy Corporation, drilled or prepared to drill a well on the Hustack Acreage, or placed equipment on the Hustack Acreage, or conducted any other operations thereon.

6. I telephoned the offices of Beck Energy Corporation in Ravenna, Ohio on three (3) separate occasions in July, 2010, June, 2011 and July, 2011 and inquired as to what their plans were regarding the Hustack Acreage and whether they were going to drill. I was told by the representative of Beck Energy Corporation that "they had no intentions of drilling because there is no pipeline in that part of the county". When I then asked if they would cancel my lease, they told me "No".

7. At no time since we purchased the Hustack Acreage has Beck Energy Corporation, any representative of Beck Energy Corporation, or any other person acting on behalf of Beck Energy Corporation, paid or transmitted any royalty to either me or my spouse.


Larry A. Hustack

SWORN TO before me and subscribed in my presence in this 7 day of
February, 2012.

Loreen J Link
Notary Public

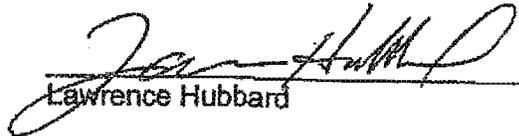


LOREEN J. LINK
NOTARY PUBLIC
STATE OF OHIO
Recorded in
Summit County
My Comm. Exp. 3/21/16

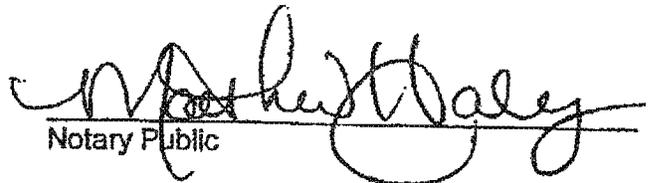
conducted on the Hubbard Acreage from the date on which we executed the Lease to the present date.

4. At no time since we executed the Lease has Beck Energy Corporation, any representative of Beck Energy Corporation, or any other person acting on behalf of Beck Energy Corporation, drilled or prepared to drill a well on the Hubbard Acreage, placed equipment on the Hubbard Acreage, or conducted any operations thereon.

5. At no time since we executed the Lease has Beck Energy Corporation, any representative of Beck Energy Corporation, or any other person acting on behalf of Beck Energy Corporation, paid or transmitted any royalty to either me or my spouse.


Lawrence Hubbard

SWORN TO before me and subscribed in my presence in this 9 day of February, 2012.


Notary Public

MATTHEW HALEY
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 04-14-13

IN THE COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

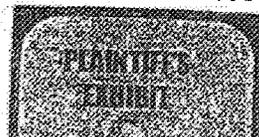
LARRY A. HUSTACK, et al.)	CASE NO. 2011-545
)	
Plaintiff)	JUDGE JULIE SELMON
)	
vs.)	
)	
BECK ENERGY CORPORATION)	<u>AFFIDAVIT OF PLAINTIFF</u>
)	<u>DAVID W. MAJORS</u>
Defendant)	
)	
STATE OF OHIO)	
)	
MONROE COUNTY)	

) ss:

David W. Majors, being first duly sworn and cautioned, deposes and states as follows:

1. I am a Plaintiff in the above-captioned action. I am over eighteen years of age, and competent to testify. The statements in this Affidavit are true and accurate, based on my personal knowledge.

2. The Oil and Gas Lease (Lease) attached as Exhibit D1 is a true and accurate copy of a lease which I executed on October 11, 2005. The Lease currently encumbers certain real property which I own, located at 48433 Keylor Hill Road,



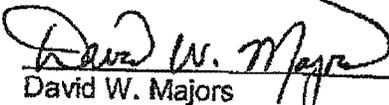
Woodsfield, Ohio (Majors Acreage).

3. I have resided on said Majors Acreage continuously since I executed the Lease, and have personal knowledge of any and all operations that have been conducted on the Majors Acreage from the date on which I executed the Lease to the present date.

4. At no time since I executed the Lease has Beck Energy Corporation, any representative of Beck Energy Corporation, or any other person acting on behalf of Beck Energy Corporation, drilled or prepared to drill a well on the Majors Acreage, placed equipment on the Majors Acreage for the purpose of drilling, or conducted any operations to drill thereon.

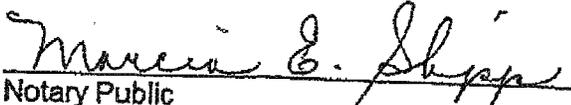
5. In approximately 2006, Beck Energy Corporation placed a pipeline across the Majors acreage to transport gas from other wells. At that time, Beck Energy Corporation promised to drill a well on the Majors Acreage, but never did.

6. At no time since I executed the Lease has Beck Energy Corporation, any representative of Beck Energy Corporation, or any other person acting on behalf of Beck Energy Corporation, paid or transmitted any royalty to me.



David W. Majors

SWORN TO before me and subscribed in my presence in this 9th day of February, 2012.



Notary Public



MARCIA E. SHIPPE
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 12/31/2016

ASSIGNMENT AND BILL OF SALE

THE STATE OF OHIO §
 §
COUNTY OF MONROE §

Beck Energy Corporation, an Ohio corporation, with a mailing address of 4857 Harding Avenue, Ravenna, Ohio 44266 ("Assignor"), for Ten Dollars and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), does hereby GRANT, BARGAIN, SELL, CONVEY, ASSIGN, TRANSFER, SET OVER, and DELIVER Exxon Mobil Corporation, a New Jersey corporation, c/o its affiliate, XTO Energy Inc., whose address is 810 Houston Street, Fort Worth, Texas, 76102, ("Assignee"), all of Assignor's undivided interests (as set forth in Exhibit A) in and to the following described properties, rights and interests:

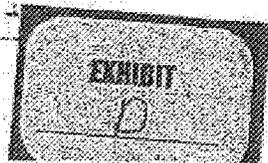
A. The oil and gas leases more fully described in Exhibit A, less and except the shallow rights which are more particularly described below (the "Leases"), subject to the operating agreements, pooling and unitization agreements, declarations of pooling or unitization, pooling orders, farmout and farmin agreements, participation agreements, assignments, oil sales contracts, gas sales, gas processing, gas gathering, and transportation agreements, rights-of-way, easements, permits, licenses, and other instruments and agreements pertaining thereto of record as of the Effective Time or disclosed to Assignee prior to Closing (the "Existing Contracts").

B. Unitization and pooling agreements and rights under pooling orders applicable to the Leases and all rights under the Existing Contracts.

C. Without limiting the foregoing, all other right, title and interest of Assignor of whatever kind or character, whether legal or equitable, vested or contingent, in and to the oil, gas and other minerals in and under or that may be produced from or attributable to the lands covered by the Leases, including oil and gas leases, overriding royalties, production payments, fee mineral interests, fee royalty interests and other interests in such lands whether such lands are specifically described in Exhibit A, and even though Assignor's interest in such oil, gas or other minerals may be incorrectly described in or omitted from Exhibit A.

D. Copies of all files, records and data relating to the items described in subsections A through C above including title records (including abstracts of title, title opinions, title reports and title curative documents), contracts, correspondence, and all related matters in the possession of Assignor.

Customer Requested
No Cross References
By *[Signature]* Date *12/24/11*



The properties, rights and interests identified in subsections A through D above are collectively called the "Assets."

Notwithstanding anything contained in this Assignment and Bill of Sale to the contrary, the Assets do not include, and there is EXCEPTED if owned by third parties and RESERVED unto Assignor if owned by Assignor, and Assignor does not grant, bargain, sell, convey, assign, transfer, set over or deliver to Assignee hereby: (i) all rights, assets, properties, and business of Assignor, including subsurface formations and rights, related to all depths above the stratigraphic equivalent of the top of the Burkett Formation, which occurs at a true vertical depth of 3,860 feet in well number 34121240720000, Seneca Township, Noble County, Ohio, together with any rights, liabilities, or obligations associated therewith, provided, however, Assignee shall have the right to drill through such depths to operate and produce the depths hereby acquired; and (ii) the wellbores of the wells, with the right to continue to produce the depths currently drilled by such wells, listed on Exhibit B; and (iii) an overriding royalty interest in the Leases, on a Lease-by-Lease basis, equal to the positive difference, if any, between 18.75% and existing lease burdens, which shall be proportionately reduced to the extent the applicable Lease covers less than 100 percent of the minerals in the lands covered by the Lease or if the Lease covers less than 100 percent of the working interest in such Lease. Assignee may pool the Overriding Royalty Interest without obtaining the additional consent of Assignor.

TO HAVE AND TO HOLD the Assets unto Assignee, its successors and assigns, forever. Assignor hereby agrees to warrant and defend the title to the Assets hereby assigned unto Assignee against the claims of any party arising by, through, or under Assignor, but not otherwise. Additionally, to the extent transferable, Assignor hereby assigns to Assignee, its successors and assigns, full power and right of substitution and subrogation in and to all covenants and warranties (including warranties of title) by owners in Assignor's chain of title, vendors, or others, given or made with respect to the Assets or any part thereof prior to the Effective Time. This Assignment and Bill of Sale shall be binding upon and inure to the benefit of the Assignor and Assignee, and their respective successors and assigns.

EXCEPT WITH REGARD TO THE SPECIAL WARRANTY OF TITLE FROM ASSIGNOR TO ASSIGNEE SET FORTH ABOVE, THIS ASSIGNMENT AND BILL OF SALE IS MADE WITHOUT WARRANTIES OR COVENANTS, EXPRESSED OR IMPLIED IN FACT OR IN LAW, AS TO TITLE, MERCHANTABILITY, DURABILITY, USE, OPERATION, FITNESS FOR ANY PARTICULAR PURPOSE, CONDITION, SAFETY OF THE PROPERTY, COMPLIANCE WITH REGULATORY AND ENVIRONMENTAL REQUIREMENTS OR OTHERWISE. ASSIGNOR DOES NOT IN ANY WAY REPRESENT OR WARRANT THE ACCURACY OR COMPLETENESS OF ANY INFORMATION, DATA OR OTHER MATERIALS (WRITTEN OR ORAL) FURNISHED TO ASSIGNEE BY OR ON BEHALF OF ASSIGNOR. ASSIGNEE HEREBY AGREES THAT IT HAS INSPECTED OR HAS BEEN GIVEN THE OPPORTUNITY TO

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INSPECT THE ASSETS, INCLUDING THE LEASES AND ASSOCIATED AGREEMENTS, WELLS, PERSONAL PROPERTY, AND EQUIPMENT ASSIGNED AND CONVEYED HEREIN AND THAT IT ACCEPTS THE SAME "AS IS, WHERE IS" AND "WITH ALL FAULTS".

This Assignment shall be effective as of December 20, 2011, at 7:00 a.m. local time where the Assets are located (the "Effective Time") and shall be subject to that certain Purchase and Sale Agreement dated November 9, 2011 by and between Assignor and XTO Energy Inc., an affiliate of Exxon Mobil Corporation.

Assignor and Assignee agree to execute and deliver to each other, from time to time, such other and additional instruments, notices, division orders, transfer orders and other documents, and to do all such other and further acts and things as may be necessary to effectively grant, convey and assign to Assignee the Assets.

IN WITNESS WHEREOF this Assignment and Bill of Sale has been executed on December 20, 2011, but effective for all purposes as of the Effective Time.

ASSIGNOR:

BECK ENERGY CORPORATION

By: 
Raymond T. Beck, President

ASSIGNEE:

EXXON MOBIL CORPORATION

By: 
Name: Edwin S. Ryan, Jr. 
Title: Attorney-in-Fact

STATE OF OHIO §
 §
COUNTY OF PORTAGE §

The foregoing instrument was acknowledged before me on December 20, 2011, by Raymond T. Beck, as President of Beck Energy Corporation, an Ohio corporation, on behalf of the corporation.

Dianna Roberts
Notary Public in and for the State of
Ohio *Dianna Roberts*
My Commission Expires: 5/29/2016

STATE OF OHIO §
 §
COUNTY OF PORTAGE §

The foregoing instrument was acknowledged before me on December 20, 2011, by Edwin S. Ryan, Jr., Attorney - in - Fact, of Exxon Mobil Corporation, a New Jersey corporation, on behalf of the corporation.

Dianna Roberts
Notary Public in and for the State of
Ohio *Dianna Roberts*
My Commission Expires: 5/29/2016

NO 0211 APR 9 03

EXHIBIT "A"

Attached to that Assignment and BRI of Date dated December 28, 2011 between Bask Energy Corporation as Assignor and Exxon Mobil Corporation or its affiliate XTO Energy Inc. as Assignee

County	Township	Section	Lot Name	Dist. No.	Acres	Lease Rate	Block Feet
Belmont	Wagon	20	Landels	Shirley	27.25	1215000	1215000
Belmont	Wagon	22	Chappel	James Lamb	22.88	912000	912000
Belmont	Wagon	26	Subpart of Olds Local School	EBBitt	25.99	912000	912000
Belmont	Wagon	28	John	Lawrence Ford	115.06	4180000	4180000
Belmont	Wagon	22	Ballenbrider	James Ford	25.08	4180000	4180000
Belmont	Wagon		Leone	James Ford	25.22	4180000	4180000

VOL 0211 PAGE 906

EXHIBIT B
THE WELLS

Dave Early #2
Kenny Cisler #1
Harry Cisler #3
Norm Beaver #1
Tuel #1

Marcellus
Marcellus
Marcellus
Marcellus
Marcellus

NOV 21 11 50 AM '07

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VOL. *211* PAGE *900* *Records*
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ANN BLOCH
RECORDER FEE *\$96.00*

ASSIGNMENT AND BILL OF SALE

THE STATE OF OHIO

COUNTY OF MONROE

§
§
§

Beck Energy Corporation, an Ohio corporation, with a mailing address of 4857 Harding Avenue, Ravenna, Ohio 44266 ("Assignor"), for Ten Dollars and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), does hereby GRANT, BARGAIN, SELL, CONVEY, ASSIGN, TRANSFER, SET OVER, and DELIVER Exxon Mobil Corporation, a New Jersey corporation, c/o its affiliate, XTO Energy Inc., whose address is 810 Houston Street, Fort Worth, Texas, 76102, ("Assignee"), all of Assignor's undivided interests (as set forth in Exhibit A) in and to the following described properties, rights and interests:

A. The oil and gas leases more fully described in Exhibit A, less and except the shallow rights which are more particularly described below (the "Leases"), subject to the operating agreements, pooling and unitization agreements, declarations of pooling or unitization, pooling orders, farmout and farmin agreements, participation agreements, assignments, oil sales contracts, gas sales, gas processing, gas gathering, and transportation agreements, rights-of-way, easements, permits, licenses, and other instruments and agreements pertaining thereto of record as of the Effective Time or disclosed to Assignee prior to Closing (the "Existing Contracts").

B. Unitization and pooling agreements and rights under pooling orders applicable to the Leases and all rights under the Existing Contracts.

C. Without limiting the foregoing, all other right, title and interest of Assignor of whatever kind or character, whether legal or equitable, vested or contingent, in and to the oil, gas and other minerals in and under or that may be produced from or attributable to the lands covered by the Leases, including oil and gas leases, overriding royalties, production payments, fee mineral interests, fee royalty interests and other interests in such lands whether such lands are specifically described in Exhibit A, and even though Assignor's interest in such oil, gas or other minerals may be incorrectly described in or omitted from Exhibit A.

D. Copies of all files, records and data relating to the items described in subsections A through C above including title records (including abstracts of title, title opinions, title reports and title curative documents), contracts, correspondence, and all related matters in the possession of Assignor.

MO 021 | ME 903

Customer Requested
No Cross References
By abw Date 12/11/11

The properties, rights and interests identified in subsections A through D above are collectively called the "Assets."

Notwithstanding anything contained in this Assignment and Bill of Sale to the contrary, the Assets do not include, and there is EXCEPTED if owned by third parties and RESERVED unto Assignor if owned by Assignor, and Assignor does not grant, bargain, sell, convey, assign, transfer, set over or deliver to Assignee hereby all rights, assets, properties, and business of Assignor, including subsurface formations and rights, related to all depths above the stratigraphic equivalent of the top of the Burkett Formation, which occurs at a true vertical depth of 3,860 feet in well number 34121240720000, Seneca Township, Noble County, Ohio, together with any rights, liabilities, or obligations associated therewith, provided, however, Assignee shall have the right to drill through such depths to operate and produce the depths hereby acquired.

The overriding royalty interest affecting the Leases which was conveyed in that certain Assignment of Overriding Royalty dated December 20, 2011, from Beck Energy Corporation to TD LLC, and recorded in Volume 211, Page 516 in the Official Public Records of Monroe County, Ohio, shall apply to any extension or renewal of any Lease which is executed no more than ninety (90) days from the expiration of the primary term of such Lease; provided, however, Assignee may pool such overriding royalty interest without obtaining the additional consent of Assignor.

TO HAVE AND TO HOLD the Assets unto Assignee, its successors and assigns, forever. Assignor hereby agrees to warrant and defend the title to the Assets hereby assigned unto Assignee against the claims of any party arising by, through, or under Assignor, but not otherwise. Additionally, to the extent transferable, Assignor hereby assigns to Assignee, its successors and assigns, full power and right of substitution and subrogation in and to all covenants and warranties (including warranties of title) by owners in Assignor's chain of title, vendors, or others, given or made with respect to the Assets or any part thereof prior to the Effective Time. This Assignment and Bill of Sale shall be binding upon and inure to the benefit of the Assignor and Assignee, and their respective successors and assigns.

EXCEPT WITH REGARD TO THE SPECIAL WARRANTY OF TITLE FROM ASSIGNOR TO ASIGNEE SET FORTH ABOVE, THIS ASSIGNMENT AND BILL OF SALE IS MADE WITHOUT WARRANTIES OR COVENANTS, EXPRESSED OR IMPLIED IN FACT OR IN LAW, AS TO TITLE, MERCHANTABILITY, DURABILITY, USE, OPERATION, FITNESS FOR ANY PARTICULAR PURPOSE, CONDITION, SAFETY OF THE PROPERTY, COMPLIANCE WITH REGULATORY AND ENVIRONMENTAL REQUIREMENTS OR OTHERWISE. ASSIGNOR DOES NOT IN ANY WAY REPRESENT OR WARRANT THE ACCURACY OR COMPLETENESS OF ANY INFORMATION, DATA OR OTHER MATERIALS (WRITTEN OR ORAL) FURNISHED TO ASSIGNEE BY OR ON BEHALF OF ASSIGNOR. ASSIGNEE HEREBY

WIL 021 | MAR 9 09

AGREES THAT IT HAS INSPECTED OR HAS BEEN GIVEN THE OPPORTUNITY TO INSPECT THE ASSETS, INCLUDING THE LEASES AND ASSOCIATED AGREEMENTS, WELLS, PERSONAL PROPERTY, AND EQUIPMENT ASSIGNED AND CONVEYED HEREIN AND THAT IT ACCEPTS THE SAME "AS IS, WHERE IS" AND "WITH ALL FAULTS".

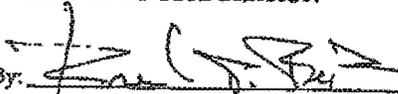
This Assignment shall be effective as of December 20, 2011, at 7:00 a.m. local time where the Assets are located (the "Effective Time") and shall be subject to that certain Purchase and Sale Agreement dated November 9, 2011 by and between Assignor and XTO Energy Inc., an affiliate of Exxon Mobil Corporation.

Assignor and Assignee agree to execute and deliver to each other, from time to time, such other and additional instruments, notices, division orders, transfer orders and other documents, and to do all such other and further acts and things as may be necessary to effectively grant, convey and assign to Assignee the Assets.

IN WITNESS WHEREOF this Assignment and Bill of Sale has been executed on December 20, 2011, but effective for all purposes as of the Effective Time.

ASSIGNOR:

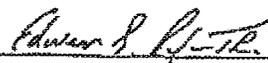
BECK ENERGY CORPORATION

By: 

Raymond T. Beck, President

ASSIGNEE:

EXXON MOBIL CORPORATION

By: 

Name: Edwin S. Ryan, Jr.

Title: Attorney - in - Fact 

11/02/11 11:09:10

2 COPY

STATE OF OHIO §
COUNTY OF PORTAGE §

The foregoing instrument was acknowledged before me on December 20, 2011, by Raymond T. Beck, as President of Beck Energy Corporation, an Ohio corporation, on behalf of the corporation.



Dianna Roberts
Notary Public in and for the State of
Ohio Dianna Roberts
My Commission Expires: 5/29/2016

STATE OF OHIO §
COUNTY OF PORTAGE §

The foregoing instrument was acknowledged before me on December 20, 2011, by Edwin S. Ryan, Jr., Attorney - in - Fact, of Exxon Mobil Corporation, a New Jersey corporation, on behalf of the corporation.



Dianna Roberts
Notary Public in and for the State of
Ohio Dianna Roberts
My Commission Expires: 5/29/2016

021 | REC 9 11

EXHIBIT "A"
 Attached to the Assignment and Bill of Sale dated December 20, 2011 between Beak Energy Corporation as Assignor and Exxon Mobil Corporation c/o its affiliate XTO Energy Inc. as Assignee.

County	Township	Section	Last Name	First Name(s)	Acres	Lease Date	Block/ Page
Monroe	Center	7	Hubbard	Lawrence, Leland	25.06	3/22/2006	145 117
Monroe	Center	18, 3A	Hubbard	Ray, Debra		3/18/2005	145 131
Monroe	Center	18, 3A	Kelley	William, Celia	159.00	10/21/2004	125 403
Monroe	Center	34, 35	Lang	Loretta, Roberta	1.95	2/11/2008	780 477
Monroe	Center	11	Maljers	Michael	20.00	3/14/2005	133 382
Monroe	Center	10	Monroe Co Park Board	Joseph, Tom	63.00	3/13/2005	130 362
Monroe	Center	15	Padon	John, Teresa	4.40	1/18/2007	167 371
Monroe	Center	15	Roberts	John, Teresa	26.00	6/15/2005	731 881
Monroe	Center	13, 14	Stafford	Alvin, Christine	24.00	5/3/2005	138 596
Monroe	Center	25	Stapp	Charles	80.00	6/13/2005	148 431
Monroe	Center	18	Stapp	Jacquelyn, Richard	2.54	3/23/2005	130 615
Monroe	Center	18	Stapp	Barby	6.00	5/21/2005	142 182
Monroe	Center	18	Stapp	William, Rita	24.80	4/22/2005	132 323
Monroe	Center	18	Stapp	Michael	5.70	2/13/2008	168 430
Monroe	Center	18	Stapp	Stewart, Dorothy	2.18	2/11/2008	168 430
Monroe	Center, Adams	13, 5	Stapp	John, Mary	25.00	3/6/2001	171 221
Monroe	Center	8	Stapp	Robert	41.00	8/14/2008	174 227
Monroe	Center	7, 8	Stapp	Leola, Ruth	148.00	1/17/2005	140 876
Monroe	Center	7	Stapp	Charles, Patricia	146.00	2/12/2005	128 863
Monroe	Center	7	Stapp	Daniel, Kenneth	21.00	2/12/2005	128 863
Monroe	Center	3	Stapp	Charles, Kenneth	26.00	2/12/2005	128 863
Monroe	Center	33	Stapp	Clara	40.00	10/5/2004	122 091
Monroe	Center	2	Stapp	Robert, Nellie	25.00	1/10/2005	140 882
Monroe	Center	28	Stapp	James	153.00	3/19/2006	144 456
Monroe	Center	31, 32	Stapp	Verona, Elizabeth	41.40	4/21/2005	122 391
Monroe	Center	32	Stapp	John, James	205.00	10/14/2004	125 471
Monroe	Center	33	Stapp	Walter, Anne	37.00	11/16/2004	125 487
Monroe	Center	31	Stapp	Kenneth, Kenneth	33.00	1/17/2005	127 185
Monroe	Center	11, 14, 19, 24	Stapp	Theresa, Mary Ann	32.00	11/23/2004	126 439
Monroe	Center	24, 25	Stapp	Doris, Emma	280.00	2/16/2005	128 067
Monroe	Center	13, 14	Stapp	Richard, Linda	22.00	3/8/2005	143 596
Monroe	Center	1	Stapp	William, Kathryn	21.50	1/23/2005	743 324
Monroe	Center	30	Stapp	Cheryl	28.00	5/10/2005	133 602
Monroe	Center	24, 31	Stapp	Leola	41.00	8/28/2008	176 382
Monroe	Center	30	Stapp	Glen, Gary	7.96	3/28/2010	186 091
Monroe	Center	24, 34	Stapp	Leola, Margaret	48.00	3/1/2005	143 578
Monroe	Center	15	Stapp	Monroe Resources LLC	3.80	9/28/2010	194 683
Monroe	Center	3	Stapp	Janice, Fox	13.40	6/29/2010	197 780
Monroe	Center	20	Stapp	Gary, Theresa	28.20	7/4/2010	153 583
Monroe	Center	20	Stapp	Mark, Susan	116.00	2/6/2005	121 468

MONROE CO. RECORD OF *Official*
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VOL 021 | PAGE 913

059442

IN THE COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

CLYDE HUPP, et al.

Plaintiffs,

vs.

BECK ENERGY CORPORATION

Defendant.

CASE NO. 2011-345

JUDGE: ED LANE

JOURNAL ENTRY

This matter came to be heard upon multiple motions July 12, 2012. The Defendant filed a Motion to Dismiss and/or Change Venue on November 30, 2011 with a brief in support. The Plaintiffs filed a Brief in Opposition to the Defendant's Motion on January 5, 2012, and on that same day also filed a Response to the Defendant's Motion to Change Venue. After reviewing said motions, and the relative briefing, the Court finds that Defendant's Motion to Dismiss and Defendant's Motion to Change Venue are not well taken, and therefore, both are denied. However, the Defendant may renew its Motion to Change Venue in the event a jury trial in any remaining matter is appropriate, and, if a jury trial in such remaining matter is demanded by either party

Further, on February 16, 2012, the Plaintiffs filed a Motion for Summary Judgment with supporting brief. On March 19, 2012, the Plaintiffs filed a Reply Brief in Support of their Motion for Summary Judgment. On that same date, Chief Justice Maureen O'Connor, of the Ohio Supreme Court assigned the case to the undersigned, Judge Norman Edward Lane, Jr. The



Court then issued an order on March 23, 2012 to set a status conference. The purpose of the status conference was to establish a briefing schedule. Said status conference was held telephonically on April 20, 2012 with all counsel in attendance. Pursuant to the status conference and its resulting order, the Defendant filed its brief in opposition to the Plaintiffs' Motion for Summary Judgment on April 30, 2012, and the Plaintiff filed a reply to that brief on May 14, 2012. Additionally, Plaintiff Donald Yonley was voluntarily dismissed on April 12, 2012.

After careful consideration of the motions, briefing and supporting documentation, the Court hereby finds that Plaintiffs' Motion for Summary Judgment is well taken and is therefore granted. The reasoning in support of the granting of the Summary Judgment Motion and denial of the Motion to Change Venue/Dismiss can be found in the Court's Decision on Pending Motions dated July 12, 2012, which is attached hereto and incorporated herein by reference.

As a result of the Court's finding, the Court hereby further orders the Monroe County Recorder's Office to mark as void and forfeited and strike from the county records the Beck Energy leases of Plaintiffs, Larry and Lori Hustack, Lawrence and Michelle Hubbard and David Majors, as the Court has found, among other things, those leases are void as against public policy.

On July 18, 2012 Plaintiffs filed for leave to file a Third Amended Complaint to include all landowners in Ohio located outside Monroe County who may be affected by this Court's filing of July 12, 2012. On July 18, 2012 Plaintiffs also filed a Motion for Class Certification. Those two motions are still pending. Accordingly, as this entry does not dispose of all pending matters, this is not a final appealable order.

JUDGE ED LANE

cc: All Parties of Record

EXHIBIT 6

COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

2012 SEP -7 AM 10:04

COMMON PLEAS COURT
MONROE COUNTY, OHIO

ANN RUSSELL
CLERK OF COURTS

Clyde A. Hupp, et. al. :
Plaintiffs : Case No. 2011-345
vs. : Judge Ed Lane
Beck Energy Corporation, : (sitting by Assignment)
Defendant :

THIRD PARTY XTO ENERGY INC.'S MOTION TO INTERVENE IN PROCEEDINGS

Third party XTO Energy Inc. ("XTO") seeks leave of court to intervene in these proceedings because it is a necessary and indispensable party to this declaratory action to void oil and gas leases in which it possesses a significant interest of record (the "Leases").

In support of this Motion, XTO states as follows:

BACKGROUND

1. On September 30, 2011, the Plaintiffs filed a Second Amended Complaint, which remains the operative complaint.
2. In the Second Amended Complaint, the Plaintiffs sought a declaration that the Plaintiffs' leases with Defendant Beck Energy Corporation ("Beck") were unenforceable and void because Beck: (1) breached express and implied covenants in the leases; (2) the leases were abandoned; (3) the terms of the leases were unconscionable; (4) the leases violated public policy; and (5) there was a failure of consideration under the leases. See Second Am. Complaint at ¶ 5.

KINCAID, TAYLOR
& GEYER
ATTORNEYS AT LAW

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ZANESVILLE, OHIO 43702-1030
(740) 454-2591
FAX (740) 454-6975

3. Pursuant to the recorded Assignments and Bills of Sale (the "Assignments") that were attached as Exhibit E to the Plaintiffs' Motion for Summary Judgment, dated effective as of December 20, 2011, Beck assigned to XTO certain interests under the Leases to depths greater than 3860 feet. See Exhibit E to Motion for Summary Judgment.

4. By virtue of the recorded Assignments, XTO acquired a present real property interest in the Leases, which included the right to explore for and produce the oil, gas and minerals situated under those lands.

ARGUMENT

5. Under Ohio law, Revised Code ("R.C.") 2712.12 provides that "all persons who have or claim any interest that would be affected by the declaration shall be made parties to the action or proceeding." See R.C. 2721.12(A).

6. The absence of a necessary party is a jurisdictional defect that precludes any declaratory judgment. See *Cincinnati v. Whitman* (1975), 44 Ohio St.2d 58, 73 O.O.2d 283, 337 N.E.2d 773 ("The absence of a necessary party constitutes a jurisdictional defect which precludes a Court of Common Pleas from rendering a declaratory judgment.") (citing *Zanesville v. Zanesville Canal & Mfg. Co.* (1953), 159 Ohio St. 203, 50 O.O. 254, 111 N.E.2d 922.

7. The "failure to join necessary parties renders any declaration by the court void." *Cerio v. Hillrock Condo Unit Assoc.* (8th Dist. 2004), 2004-Ohio-1254, at ¶10 (citing *Bretton Ridge Homeowners Club v. DeAngelis* (1988), 51 Ohio App. 3d 183, 185, 555 N.E.2d 663, 665).

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8. In determining who is a necessary party to a declaratory judgment action under R.C. 2712.12, Ohio courts have adopted the same analysis that is applied under Ohio Civ. Rule 19. See *Young v. Wells* (4th Dist. 2007), 2007-Ohio-4568, at ¶17

9. Pursuant to Rule 19(A), “[t]itled owners of real property, or persons with some purported interest in real property, are necessary and indispensable parties to litigation seeking to divest those owners of their interest therein.” See *Young* (4th Dist. 2007), 2007-Ohio-4568, at ¶20; *Congress Lake Club v. Witte* (5th Dist. 2006), 2006-Ohio-59, at ¶¶29, 34; *Korenko v. Kelleys Island Park Dev. Co.* (6th Dist. 2007), 2007-Ohio-2145, at ¶20.

10. XTO is a necessary party pursuant to Civ. R. 19 and is therefore a necessary party under R.C. 2721.12, because it possesses an interest in the Leases that are the subject matter of this action, as contemplated in Civ. R. 19(A)(2).

11. Further, pursuant to the recorded Assignments, XTO is an assignee of rights to an interest in real property under the Leases that are the subject matter of this action, as contemplated in Civ. R. 19(A)(3).

12. Because the Leases provide XTO with an interest in the properties, they are a necessary party in litigation that seeks to void the Leases, which in turn would invalidate XTO’s interest in real property.

13. Because XTO is a necessary party whose absence from this litigation renders the Court without jurisdiction to enter relief on the Plaintiffs’ declaratory judgment claims to void their Leases, its joinder in this lawsuit is mandatory

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14. To the extent this Court nonetheless determines that the traditional considerations for intervention of right pursuant to Civ. R. 24(A)(2) still apply, intervention is equally supported under this approach.

15. To intervene as of right pursuant to Civ. R. 24(A)(2), the party seeking intervention must establish four prerequisites: (1) claim an interest relating to the property or transaction that is the subject of the action; (2) be so situated that the disposition of the action may, as a practical matter, impair or impede the intervener's ability to protect his or her interest; (3) demonstrate that his or her interest is not adequately represented by the existing parties; and (4) demonstrate that the motion to intervene is timely made." See *McKesson Medical-Surgical Minnesota, Inc. v. Medico Medical Equip. & Supplies, Inc.* (8th Dist. 2005), 2005-Ohio-2325.

16. XTO meets the first requirement for intervention of right because pursuant to the Assignment it has a present interest in the Leases that are the subject matter of the litigation, and pursuant to those Leases, a present interest in the properties, that the Plaintiffs seek to void through their lawsuit. See *Young* (4th Dist. 2007), 2007-Ohio-4568, at ¶23.

17. XTO meets the second requirement because the lawsuit seeks to void Leases in which XTO possesses a present interest and pursuant to which XTO possesses an interest in the oil, gas and minerals underlying the properties.

18. XTO meets the third requirement because Beck has not and cannot adequately protect XTO's interest in the litigation, because Beck has no present interest in

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a significant portion of the value of Leases that it assigned to XTO, including the oil, gas and minerals situated in the Marcellus Shale and Utica formations.

19. XTO's intervention in this lawsuit is timely because the Plaintiffs have moved for leave to file another amended complaint, and there is no prejudice because both parties were aware of XTO's interest no later than the time that the Plaintiffs filed their motion for summary judgment. Moreover, intervention is timely because XTO's presence in this lawsuit is required to cure the jurisdictional defect caused by the absence of a necessary party.

20. As required by Civ. R. 24(C), XTO has attached an Answer to the Second Amended Complaint to this Motion.

WHEREFORE, for the reasons set forth above and explained in detail in the accompanying Memorandum of Law, third party XTO Energy Inc. is a necessary party who should be permitted to intervene in this lawsuit, because absent the joinder of XTO, this Court lacks jurisdiction to enter declaratory relief, and any judgment entered is void.

Respectfully submitted:



William J. Taylor (0015709)

Scott D. Eickelberger (0055217)

David J. Tarbert (0061613)

Ryan H. Linn (0088123)

KINCAID, TAYLOR & GEYER

50 North 4th Street

Zanesville, OH 43701

Tel: (740) 454-2591

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Kevin C. Abbott
PA Bar No. 35734
Nicolle R. Snyder Bagnell
PA Bar No. 87936
REED SMITH LLP
225 Fifth Avenue, Suite 1200
Pittsburgh, PA 15222
Tel: (412) 288-3804
Fax: (412) 288-3063
kabbott@reedsmith.com
nbagnell@reedsmith.com

Admission for Pro-Hac Vice Pending

CERTIFICATE OF SERVICE

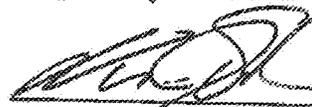
I hereby certify that a copy of the foregoing was served by regular U.S. Mail on the 6th day of September, 2012 on the following:

SLATER & ZURZ, LLP
Richard V. Zurz, Jr
Mark A. Ropchock
One Cascade Plaza, Suite 2210
Akron, Ohio 44308

PETERS LAW OFFICE CO., LPA
James W. Peters
197 West Court Street
Woodsfield, Ohio 43783

KEEVICAN WEISS BURELE & HIRSCH LLC
David J. Hirsch
James Bauerle
11th Floor, Federated Investors Tower
1001 Liberty Avenue
Pittsburgh, PA 15222-3725

Respectfully submitted:



William J. Taylor (0015709)
KINCAID, TAYLOR & GEYER

**KINCAID, TAYLOR
& GEYER**
ATTORNEYS AT LAW

50 NORTH FOURTH STREET
P.O. BOX 1030
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(740) 454-2991
FAX (740) 454-6975

COMMON PLEAS COURT
MONROE COUNTY, OHIO

Clyde A. Hupp, et. al. :
Plaintiffs : Case No. 2011-345
vs. : Judge Ed Lane
Beck Energy Corporation, : (sitting by Assignment)
Defendant :

**MEMORANDUM IN SUPPORT OF THIRD PARTY
XTO ENERGY INC.'S MOTION TO INTERVENE IN PROCEEDINGS**

Third party XTO Energy Inc. ("XTO") seeks leave of court to intervene in these proceedings because it is a necessary and indispensable party to this declaratory action to void oil and gas leases in which it possesses a significant real property interest (the "Leases"). XTO's interest in the Leases is clearly disclosed in the recorded Assignments and Bills of Sale (the "Assignments") which were attached as Exhibit E to the Plaintiffs' Motion for Summary Judgment. Pursuant to the recorded Assignments, Defendant Beck Energy Corporation ("Beck") assigned to XTO all of its present interests under the Leases to depths greater than 3860 feet. Inexplicably, neither the Plaintiffs nor Beck sought to join XTO as a necessary party pursuant to Civ. R. 19. As XTO has a present real property interest in the Leases, it is a necessary and indispensable party to this litigation, as the relief sought, voidance of the Leases, will divest XTO of its real property interest.

Because XTO is a necessary and indispensable party to this declaratory action, this Court presently lacks jurisdiction to render a declaratory judgment, and all judgments that

KINCAID, TAYLOR
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have been entered as to the Leases on the merits to date are void *ab initio* and have no force and effect under Ohio law. Joinder of XTO is necessary for this Court to cure this plain jurisdictional defect and to acquire jurisdiction to render declaratory relief as to all of the parties who are interested in the Leases. Accordingly, XTO seeks leave of Court to intervene as of right in the above-captioned action pursuant to Civ. R. 24(B)(2).

I. BACKGROUND

A. Procedural History

The Plaintiffs filed their original complaint for declaratory judgment and to quiet title on September 14, 2011, in the Court of Common Pleas of Monroe County, Ohio. On September 29, 2011, the Plaintiffs filed an Amended Class Action Complaint, and on September 30, 2011, the Plaintiffs filed a Second Amended Complaint, which remains the operative complaint. In the Second Amended Complaint, the Plaintiffs sought a declaration that the Plaintiffs' leases with Beck were unenforceable and void because Beck: (1) breached express and implied covenants in the leases; (2) the Leases were abandoned; (3) the terms of the leases were unconscionable; (4) the leases violated public policy; and (5) there was a failure of consideration under the leases. See Second Am. Complaint at ¶ 5. The Second Amended Complaint alleged that money damages would be inadequate and that the equitable remedies of forfeiture and cancellation were necessary.

Id.

Beck moved to dismiss the Second Amended Complaint on November 30, 2011. The Plaintiffs moved for Summary Judgment on their claims for declaratory relief and to quiet title on February 16, 2012. On July 12, 2012, the Court entered a Decision denying

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Defendant Beck's Motion to Dismiss and instead granting the Plaintiffs' Motion for Summary Judgment.

In its Decision, the Court found that "the Plaintiffs' are entitled to summary judgment as requested and to forfeiture of all rights of the Defendant to the oil and gas under the Plaintiffs' properties...The Defendant's rights in the subject bases are forfeited." See Decision, p. 29.

On July 19, 2012, the Plaintiffs filed a motion for class action certification, as well as leave to file a Third Amended Complaint.

B. Beck Assigns A Partial Interest in the Leases to XTO

Attached to the Plaintiffs' Motion for Summary Judgment are two recorded Assignments and Bill of Sales, recorded at Volume 0211, Pages 900-918 of the Official Records of Monroe County, Ohio (the "Assignments"). See Exhibit E to Motion for Summary Judgment. The Assignments are dated effective as of December 20, 2011. See *id.* Pursuant to the Assignments, Beck assigned all of its undivided interests in the certain properties, rights and interests to Exxon Mobil Corporation, c/o its affiliate XTO Energy Inc. See *id.* Among the interests assigned to XTO were Beck's interests in certain oil and gas leases described in the attached Exhibit A to each Assignment below 3,860 feet. See *id.* Exhibit A to the Assignments includes leases of the named Plaintiffs, Larry A. Hustack and Lori Hustack, Lawrence Hubbard and Michelle Hubbard, and Donald W. Yonley and David Majors. By virtue of the recorded Assignments, XTO acquired all of Beck's

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interests in the Leases, including, but not limited to, the right to explore, drill for and produce natural gas, in formations below 3860 feet, as of December 20, 2011.¹

As a party to the Assignment, Beck was aware of the assignment of rights of the Leases to XTO. No later than the time the Plaintiffs filed their Motion for Summary Judgment on February 16, 2012, the Plaintiffs were also aware of the Assignments, as they attached the Assignment to their Motion. Nevertheless, XTO was never joined as a party nor did any party raise the issue of a lack of a necessary party to the Court.

LEGAL ARGUMENT

As a result of the Assignments, XTO possesses a present real property interest in the Leases which are the subject matter of this litigation, and is therefore a necessary party to this litigation, which seeks to void the Leases. Absent intervention and joinder of XTO to this lawsuit, the Court lacks jurisdiction to enter a declaratory judgment as to the Leases, and any judgment previously entered as to those Leases by this Court is void for lack of jurisdiction.

A. The Lack of Joinder of Necessary Parties to a Declaratory Judgment Action Deprives the Court of Jurisdiction To Enter Declaratory Relief

Under Ohio law, "R.C. 2712.12 governs the inclusion of parties for declaratory actions." *Cerio v. Hilroc Cond. Unitowners Assn* (8th District 2004), 2004-Ohio-1254, at ¶10; *Gen. Accident Ins. Co. v. Ins. Co. of N. Am.* (1989), 44 Ohio St. 3d 17, 540 N.E.2d 266 (recognizing that "declaratory judgment actions are a special remedy not available at

¹ Although the original caption named Clyde A. Hupp and Molly Hupp as plaintiffs, these parties appear to have been dropped from subsequent pleadings.

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common law or at equity ... [and] jurisdiction to hear this type of relief is dependent on statutory authorization.”). Revised Code (“R.C.”) 2712.12 provides that “all persons who have or claim any interest that would be affected by the declaration shall be made parties to the action or proceeding.” See R.C. 2721.12(A). This statute “governs jurisdiction, which any party may challenge.” See *Cerio*, 2004-Ohio-1254, at ¶13. Enforcement of R.C. 2721.12(A) “ensures that all parties will have their interests protected and there will be no ongoing controversies.” *Bretton Ridge Homeowners Club v. DeAngelis* (8th Dist. 1988), 51 Ohio App.3d 183, 185, 555 N.E.2d 663. The rationale for “requiring joinder is that the issue should be settled now and not piecemeal in numerous cases.” See *id.*

The absence of a necessary party is a jurisdictional defect that precludes any declaratory judgment. See *Cincinnati v. Whitman* (1975), 44 Ohio St.2d 58, 59, 337 N.E.2d 773 (“The absence of a necessary party constitutes a jurisdictional defect which precludes a Court of Common Pleas from rendering a declaratory judgment.”) (citing *Zanesville v. Zanesville Canal & Mfg. Co.* (1953), 159 Ohio St. 203, 111 N.E.2d 922); see also *Cerio*, 2004-Ohio-1254, at ¶10; *Bretton Ridge*, 51 Ohio App. 3d 183 at 185, 555 N.E.2d at 665 (“The absence of a necessary party is a jurisdictional defect and a declaratory judgment is precluded.”). “Thus, failure to join necessary parties renders any declaration by the court void.” *Cerio*, 2004-Ohio-1254, at ¶10 (citing *Bretton Ridge*, 51 Ohio App. 3d at 185). “A judgment entered by a court lacking jurisdiction is void *ab initio* ... Appellate courts have inherent power to vacate a judgment that is void *ab initio*, and the judgment can be challenged at any time.” *Young v. Wells* (4th Dist. 2007), 2007-Ohio-4568, at ¶17 (citing *Patton v. Diemer* (1988), 35 Ohio St. 3d 68, 518 N.E.2d 941)). Where jurisdiction to enter

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the judgment is lacking, "other issues are moot ... including the merits." *Bretton Ridge*, 51 Ohio App. 3d at 185 (citing *Cincinnati*, 44 Ohio St. 2d 58 at 61 and *Jenkins v. Keller* (1966), 6 Ohio St.2d 122, 35 O.O.2d 147, 216 N.E.2d 379). "The defense of failure to join a party in a declaratory judgment action cannot be waived." *Young*, 2007-Ohio-4568, at ¶16 (citing *Plumbers & Steamfitters Local Union 83 v. Union Local School Dist. Bd. of Edn.* (1999), 86 Ohio St.3d 318, 1999-Ohio-109, 715 N.E.2d 127).

B. XTO is a Necessary Party to this Lawsuit And Therefore Should Be Joined

"Whether a nonparty is a necessary party to a declaratory -judgment action depends upon whether that nonparty has a legally protectable interest in rights that are the subject matter of the action." *Rumpke Sanitary Landfill, Inc. v. State* (2010), 128 Ohio St.3d 41, 44, 2010-Ohio-6037, 941 N.E.2d 1161. In determining who is a necessary party to a declaratory judgment action under R.C. 2712.12, Ohio courts have adopted the same analysis that is applied under Ohio Civ. Rule 19. See *Young*, 2007-Ohio-4568, at ¶19 (recognizing that in the context of a declaratory judgment claim, "Ohio Civ. R. 19(A) is instructive on determining who is a necessary party."). Rule 19 provides that "[a] person who is subject to service of process shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (a) as a practical matter impair or impede his ability to protect that interest or (b) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest, or (3) he has an interest relating to the subject of the action as an assignor,

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assignee, subrogor, or subrogee.” *Young*, 2007-Ohio-4568, at ¶19 (quoting Ohio Civ. R. 19(A)).

Pursuant to Rule 19(A), “[t]itled owners of real property, or persons with some purported interest in real property, are necessary and indispensable parties to litigation seeking to divest those owners of their interest therein.” See *Young*, 2007-Ohio-4568, at ¶20; *Congress Lake Club v. Witte* (5th Dist. 2006), 2006-Ohio-59, at ¶¶29, 34; *Korenko v. Kelleys Island Park Dev. Co.* (6th Dist. 2007), 2007-Ohio-2145, at ¶20. In *Young*, the plaintiffs obtained a declaratory judgment finding that an oral contract existed relating to a conveyance of property. See *Young*, 2007-Ohio-4568, at ¶¶2-6. On appeal, the appellate court declared the judgment void based upon the failure of the trial court to join a party who purportedly had been conveyed a partial interest in the property, ruling that the failure to join a party with a purported interest in the property that was the subject of the lawsuit constituted a jurisdictional defect. See *id.* at ¶23. The appellate court remanded with instructions to dismiss the complaint for failure to join an indispensable party. See *id.* Similarly, in *Witte*, the plaintiff had leased property to the defendant, who conveyed an interest to her son. The plaintiff filed a detainer action, but did not join the son. See *id.* The trial court found the son was not a necessary party, but the appellate court reversed, finding that the purported interest in the real property, even if later held to be invalid, made the son a necessary party the action. See *id.* In *Korenko*, the court held that the trial court

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erred in failing to permit intervention by right to a party claiming adverse possession over property whose ownership was in dispute. *See id.*²

XTO is a necessary party pursuant to Civ. R. 19 and is therefore a necessary party under R.C. 2721.12. Pursuant to the recorded Assignments, XTO possesses an real property interest in the Leases that are the subject matter of this action, as contemplated in Civ. R. 19(A)(2). Pursuant to those Leases, XTO possesses a present real property interest to explore for, develop and produce oil, gas and minerals underlying the Plaintiffs' properties. Further, pursuant to the Assignment, XTO is an assignee of rights under the Leases that are the subject matter of this action, as contemplated in Civ. R. 19(A)(3). Because the Leases provide XTO a real property interest in the subject properties, they are a necessary party in litigation which seeks to void the Leases, which in turn would invalidate XTO's interest in real property. Accordingly, XTO is a necessary party to this action and its absence renders the Court without jurisdiction to enter judgment on the Plaintiffs' claim for declaratory relief as to the Leases, and all judgments entered by this

² Because XTO's interest in the Plaintiffs' Leases constitutes an interest in the minerals underlying the leasehold properties, analogy to cases involving real property interests is appropriate. The result is no different if the Leases are treated as ordinary contracts. It is a well-settled rule that all parties to a contract are necessary parties to litigation seeking to invalidate the contract. *See Russian Collections, Ltd. v. Melamid*, 2009 U.S. Dist. LEXIS 113733 (S.D. Ohio Nov. 18, 2009) (citing *Onyx Waste Systems, Inc. v. Mogan* (E.D. Mich. 2002), 203 F. Supp. 2d 777, 787); *Nat. Union Fire Ins. Co. v. Rtte Aid*, 2010 F.3d 246, 252 (4th Cir. 2000). Although these cases are decided under the federal equivalent of Rule 19, Ohio courts have recognized that federal decisions on Rule 19 are instructive in interpreting Civ. R. 19. *See Dublin Transportation Inc. v. Goebel* (10th Dist. 1999), 133 Ohio App. 3d 272, 727 N.E.2d 938 ("Because Civ.R. 19(A) is patterned after *Fed.R.Civ.P. 19* (see Staff Note to *Civ.R. 19*), an analysis of cases interpreting *Fed.R.Civ.P. 19* is appropriate.").

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Court as to the Leases are void due to a lack of jurisdiction. XTO should therefore be granted leave to intervene in this action to cure this jurisdictional deficiency and to enable the Court to enter complete relief as to all interested parties.

C. All the Requirements of Rule 24(A)(2) Have Been Met.

For the reasons stated above, intervention and joinder of XTO in this lawsuit is required because XTO is a necessary party whose absence from this litigation renders the Court without jurisdiction to enter relief on the Plaintiffs' declaratory judgment claims to void their Leases. To the extent this Court nonetheless determines that the traditional considerations for intervention of right pursuant to Civ. R. 24(A)(2) still apply, intervention is equally supported under this approach.

Civ. R. 24(A) governs a motion for intervention by right. It provides that "[u]pon timely application anyone shall be permitted to intervene in an action: ... (2) when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." To intervene as of right pursuant to Civ. R. 24(A)(2), the party seeking intervention must establish four prerequisites: (1) claim an interest relating to the property or transaction that is the subject of the action; (2) be so situated that the disposition of the action may, as a practical matter, impair or impede the intervener's ability to protect his or her interest; (3) demonstrate that his or her interest is not adequately represented by the existing parties; and (4) demonstrate that the motion to

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intervene is timely made.” See *McKesson Medical-Surgical Minnesota, Inc. v. Medico Medical Equip. & Supplies, Inc.* (8th Dist. 2005), 2005-Ohio-2325.

XTO meets the first requirement for intervention of right because pursuant to the Assignment it has a present interest in the Leases that are the subject matter of the litigation, and pursuant to those Leases, a present interest in the subject properties, which the Plaintiffs seek to void through their lawsuit. See *Young* (4th Dist. 2007), 2007-Ohio-4568, at ¶23.

XTO meets the second requirement because the lawsuit seeks to void Leases in which XTO possesses a present interest and pursuant to which XTO possesses an interest in the oil, gas and minerals underlying the subject properties.

XTO meets the third requirement because Beck has not and cannot adequately protect XTO’s interest in the litigation. Beck assigned to XTO a significant interest under the Leases. The interests assigned by Beck include the majority of the value of the Leases – including the minerals situated in the Marcellus Shale and Utica formations. Because Beck has no present interest in that portion of the subject property, it cannot adequately represent XTO’s property interests in this lawsuit. Further, although it was a party to the Assignment, Beck never informed the Court that it had conveyed a significant portion of its interests under the Leases to XTO. Beck also never sought to join XTO as a necessary party pursuant to Civ. R. 19, which mandates XTO’s joinder in this lawsuit because XTO possesses a real property interest in the Leases that are the subject matter of this litigation and has a present interest in real property that would be divested if judgment is entered on the Plaintiffs’ claims as to the Leases. Moreover, Beck never sought to join XTO despite the

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fact that R.C. 2721.12(A) requires XTO's joinder for the Court to acquire jurisdiction over the Plaintiffs' declaratory judgment claims as to the Leases. For these reasons, Beck is incapable of representing XTO's interests in the Leases as it relates to the deep mineral rights, and has not adequately or effectively represented XTO's interests in this litigation.

In analyzing whether a motion for intervention is timely, Ohio courts consider the following factors: "(1) the point to which the suit has progressed; (2) the purpose for which intervention is sought; (3) the length of time preceding the application during which the intervenor knew or reasonably should have known of his interest in the case; (4) the prejudice to the original parties due to the proposed intervenor's failure, after he or she knew or reasonably should have known of his or her interest in the case, to apply promptly for intervention; and (5) the existence of unusual circumstances militating against or in favor of intervention." *Visconsi Royaltion, Ltd. v. City of Strongsville (Cuyahoga Cty. 2008)*, 2008-Ohio-4862, at ¶12. Based on these factors, XTO's motion for intervention is timely. The case is still in the pleading stage, as the Plaintiffs are seeking leave to file an amended Complaint which will necessitate further pleadings (and the currently pending Second Amended Complaint has not been answered). There is no prejudice to any of the parties to the action because both parties knew of the Assignment to XTO prior to moving for summary judgment (the Plaintiffs' attached the Assignment to their Motion) but nonetheless did not seek to join XTO as a necessary party. The purpose for intervention is to cure the jurisdictional defect that now exists due to the lack of joinder of all necessary and interested parties, which deprives the Court of jurisdiction pursuant to R.C. 2721.12

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and renders any judgment issued by the Court void on its face. Accordingly, for all of these reasons, intervention by XTO is timely.

D. Procedural Requirements of Civ. R. 24(C) Are Met

Ohio Civil Rule 24(C) provides that “[a] person desiring to intervene shall serve a motion to intervene upon the parties as provided in Civ.R. 5. The motion and any supporting memorandum shall state the grounds for intervention and shall be accompanied by a pleading, as defined in Civ.R. 7(A), setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of this state gives a right to intervene.” Ohio courts have interpreted this Rule as requiring that the intervening party attach an Answer to its motion to intervene. *See Grove Court Condo. Unit Assoc. v. Hartman* (Cuyahoga Cty. 2011), 2011-Ohio-218, at ¶19 (“Civ.R. 24(C) mandates that the motion to intervene shall be accompanied by a pleading, as defined in Civ.R. 7(A) setting forth the claim or defense for which intervention is sought. Civ.R. 7(A) defines a pleading as a complaint, an answer, a reply to a counterclaim, an answer to a cross-claim, a third-party complaint, or a third-party answer.”).

Consistent with this case law, XTO has attached to its Motion an Answer and Affirmative Defenses to the now-operative Second Amended Complaint.

CONCLUSION

For the reasons stated above, XTO’s motion for intervention should be granted because it is a necessary party to this litigation because it possesses an interest in the Leases that are the subject matter of the litigation. Absent joinder of XTO, this Court lacks

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jurisdiction to enter declaratory relief as to the Leases, and any judgment entered as to the Leases is void.

Respectfully submitted:



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EXHIBIT 7

COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

2012 SEP 12 PM 12: 57

KEITH ANN RUSE
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

LARRY A. HUPP, et al.

Plaintiffs,

vs.

BECK ENERGY CORPORATION

Defendant.

CASE NO. 2011-345

JUDGE: ED LANE

**PLAINTIFFS' AMENDED MOTION
FOR CLASS ACTION
CERTIFICATION**

Now come Plaintiffs, Larry and Lori Hustack ("Hustacks"), Lawrence and Michelle Hubbard ("Hubbards"), and David Majors ("Majors") (collectively "Plaintiffs"), by and through the undersigned counsel, and respectively file this amended request for an Order that this action be maintained as a Class Action pursuant to Civil Rule 23(B)(2). The only reason for the filing of this amended motion is to request the Court certify a class consisting of only *Monroe County* landowners (as was set forth in Plaintiff's Second Amended Complaint), as opposed to a class of *all* Ohio landowners (as was set forth in Plaintiff's Third Amended Complaint, which has now been withdrawn). Plaintiffs are filing this amended motion merely to reconcile their Motion for Class Certification with their *Second* Amended Complaint, since Plaintiffs have recently withdrawn their Motion for Leave to File a *Third* Amended Complaint. Otherwise, Plaintiffs incorporate by reference as if restated herein, the briefing and argument contained in its original Motion for Class Certification.

As was more fully set forth in the Memorandum attached to the original Motion for Class Certification incorporated herein, it is clear that the prerequisites to a Class Action set forth in Civil Rule 23(A) have been met as have the requirements of Civil Rule 23(B)(2). Accordingly, this Court should certify this case as a class action under Civil Rule 23(B) (2). For the Court's convenience, a proposed Order is attached hereto.

Respectfully submitted,

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AND DAVID MAJORS**

PROOF OF SERVICE

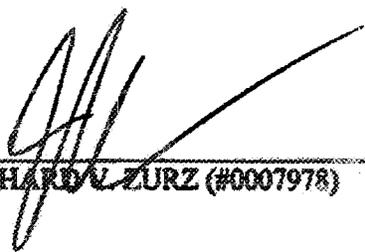
I hereby certify that a copy of the foregoing was sent this 12 day of September, 2012,

postage prepaid, pursuant to Civil Rule (5)(B)(2)(c), to the following:

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IN THE COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

CLYDE HUPP, et al.

Plaintiffs,

vs.

BECK ENERGY CORPORATION

Defendant.

CASE NO. 2011-345

JUDGE: ED LANE

ORDER CERTIFYING CLASS

In accordance with the findings and conclusions contained in the Opinion filed concurrently with this Order, it is, Ordered:

1. *Class Certification.* Civil Action No. 2011-345, styled *Clyde Hupp, et al. v. Beck Energy Corp.* shall be maintained as a class action on behalf of the following class of Plaintiffs:

"Plaintiffs bring this suit as a Class Action on behalf of themselves and all other similarly situated (the "Class") under the applicable provisions of Rule 23 of the Ohio Rules of Civil Procedure. Plaintiffs seek certification of the Class defined as "all landowners/Lessors of land in Monroe County, Ohio, who are Lessors under, or who are successors in interest of Lessors, under a standard form oil and gas lease with Beck Energy Corporation, where Beck Energy has neither drilled nor prepared to drill a gas/oil well, nor included the property in a drilling unit, within the time period set forth in paragraph 3 of the lease or thereafter."

2. *Class Representatives; Class Counsel.* Subject to further Order of the Court, Plaintiffs, Larry and Lori Hustack ("Hustacks"), Lawrence and Michelle Hubbard ("Hubbard"), and David Majors ("Majors"), are designated as Class Representatives, and Slater & Zurz, and Peters Law Offices are designated as counsel for the Class.

3. *Notice.* (a) Class counsel shall by _____ cause to be mailed in the name of the Clerk by first class mail, postage prepaid, to all Monroe County landowners with Beck leases or whose property Beck has not drilled, nor prepared to drill a well, as can be identified through reasonable efforts, a notice of written in plain language and approved by the Court.

4. *Exclusion.* The Notice of Class Members must inform them as to how they may exclude themselves from the Class.

5. *List of Class Members.* Class Counsel will file with the Clerk by _____ an Affidavit identifying the persons to whom Notice has been mailed and who have not timely requested exclusion.

IT IS SO ORDERED on this _____ day of _____, 2012.

JUDGE ED LANE

cc: All Parties of Record

EXHIBIT 8

2012 SEP 17 AM 10:24

2012 SEP 17 AM 10:24

CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

CLYDE A. HUPP, et al.

Plaintiff,

vs.

BECK ENERGY CORPORATION,

Defendant.

CASE NO. 2011-345

JUDGE ED LANE

**DEFENDANT, BECK ENERGY CORPORATION'S MEMORANDUM IN
OPPOSITION TO AMENDED MOTION FOR CLASS ACTION
CERTIFICATION**

Now comes the Defendant, Beck Energy Corporation (hereinafter "Defendant"),
by and through the undersigned counsel, and respectfully submits its Memorandum in
Opposition to Plaintiffs Clyde A. Hupp, et al.'s, (hereinafter "Plaintiffs") Amended Motion for
Class Action Certification.

Scott M. Zurakowski (J.A.Y.)

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William G. Williams (0013107),
Nathan D. Vaughan (0077713),
John A. Burnworth (0077151),
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MEMORANDUM OF LAW

I. FACTS

The following facts are pertinent, for the purpose of this limited remand, by the Seventh District Court of Appeals. On July 12, 2012, the trial court issued a decision granting Plaintiffs Clyde A. Hupp, et al.'s Motion for Summary Judgment on the basis that Defendant's leases violate public policy and are void ab initio. On this same date, the trial court overruled Defendant's Motion to Dismiss and/or Change of Venue.¹ On July 31, 2012, the trial court issued a Journal Entry incorporating the Decision it previously issued on July 12, 2012.

On July 18, 2012, prior to the issuance of the Journal Entry, Plaintiffs moved for leave to file a Third Amended Class Action Complaint to include in the proposed class all landowners/lessors, in Ohio, located outside Monroe County who may be affected by the trial court's Decision filed on July 12, 2012. On this same date, Plaintiffs also filed a Motion for Class Action Certification. In its Journal Entry, the trial court specifically indicated that, "[t]hose two motions are still pending. Accordingly, as this entry does not dispose of all pending matters, this is not a final appealable order." (Journal Entry, July 31, 2012, at p. 2).

Defendant filed a Notice of Appeal, of the trial court's Journal Entry, on August 28, 2012. On September 10, 2012, the Seventh District Court of Appeals issued a Judgment Entry ordering a remand to the trial court to address pending motions. (Judgment Entry, Sept. 10, 2012, at p. 1).

On September 12, 2012, Plaintiffs filed Notice of Withdrawal to File Third Amended Class Action Complaint. Plaintiffs also filed an Amended Motion for Class Action Certification requesting the trial court certify a class consisting only of Monroe County

¹ The trial court indicated it would reconsider Defendant's Motion for Change of Venue in the event a jury trial in any remaining matter is appropriate. (Journal Entry, July 31, 2012, at p. 1).

landowners as opposed to a class of all Ohio landowners. Therefore, the only issue remaining to be determined, on limited remand, is Plaintiffs' Amended Motion for Class Action Certification.

II. SUMMARY OF ARGUMENT

The trial court must deny Plaintiffs' Amended Motion for Class Action Certification and strike Plaintiffs' Amended Class Action Complaint for two reasons. First, a trial court is required to rule on a request for class action certification prior to its decision on the merits of the case so as not to violate the rule against one-way intervention. Second, Plaintiffs may not assert the trial court's favorable ruling, on their Motion for Summary Judgment, as offensive collateral estoppel because the decision only binds the current Plaintiffs and not the putative class (i.e. all landowners/lessors in Monroe County).

III. LAW AND ARGUMENT

A. RULE AGAINST ONE-WAY INTERVENTION

Pursuant to the rule against one-way intervention, Plaintiffs are not permitted to await merit rulings prior to seeking a decision on class action certification. The rule against one-way intervention “* * * refers to a situation in which a potential class member will seek to refrain from participation in a class action until the outcome, whether favorable or unfavorable, appears discernible. If a favorable outcome is likely, the class members will attempt to intervene; if the outcome will be unfavorable, the member will remain on the sidelines to avoid the res judicata effect of the verdict.” 3 *Newberg on Class Actions*, Section 8:10 (4th Ed.2012). See, also, *Gooch v. Life Investors Ins. Co. of Am.*, 672 F.3d 402, 432 (6th Cir.2012) (“The rule against one-way intervention prevents potential plaintiffs from awaiting merits rulings in a class action before deciding whether to intervene in that class action.” *Am. Pipe & Const. Co., v. Utah*, 414 U.S. 538, 546, 94 S.Ct. 756, 38 L.Ed.2d 713 (1974)); *Becherer v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 193 F.3d 415, 430 (6th Cir.1999) (explaining that the rule against

one-way intervention "limited the opportunity of the absent class members to sit on the sidelines without committing to the class.")

In 1966, Fed.R.Civ.P. 23 was amended to prevent one-way intervention. See *Biechele v. Norfolk & Western Railway Co.*, 309 F.Supp. 354, 356 (N.D. Ohio 1969). Ohio Civ.R. 23(C)(1) mirrors the federal rule. The Staff Notes to Ohio Civ.R. 23 indicate Ohio Civ.R. 23 is based upon the present version of Fed.R.Civ.P. 23. However, prior to the amendment, "* * * one-way intervention was possible since the rule did not establish a procedure for certification of the class. The rule permitted potential members of the class to await the determination of the trial court on the merits before submitting themselves to the jurisdiction of the court and gaining the benefits of a favorable ruling, but not the risks of an unfavorable one." *McCornock v. People's Savings Assoc.*, 6th Dist. No. L-80-350, 1981 WL 5741, *3 (Aug. 7, 1981). See, also, Federal Rule Advisory Committee Note re Federal Rule 23 as amended and effective July 1, 1966.

Pursuant to the 1966 amendment, Fed.R.Civ.P. 23(c)(1) provides that the court's class action determination shall be made "[a]s soon as practicable after the commencement of an action brought as a class action." *Bercherer, supra*, at 425. "The 1966 amendments were designed, in part, specifically to mend this perceived defect in the former Rule and to assure that members of the class would be identified before trial on the merits and would be bound by all subsequent orders and judgment." *Am. Pipe & Constr. Co., supra*, at 547. See, also, *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177-178, 94 S.Ct. 2140, 40 L.Ed.2d 732 (1974); *Jiminez v. Weinberger*, 523 F.2d 689, 698 (7th Cir. 1975); *Peritz v. Liberty Loan Corp.*, 523 F.2d 349, 352-353 (7th Cir. 1974).

Ohio Civ.R. 23(C)(1) provides, in pertinent part:

As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

In *Bass v. Ohio Med. Indem. Inc.*, 1st Dist. No. C-76273, 1977 WL 19936, *2 (Aug. 3, 1977), the Ohio court of appeals explained that the language contained in Civ.R. 23(C)(1) imposes a mandatory duty “* * * to make a prompt determination as to the compliance of a purported class action with all of the requirements of Civ.R. 23 and to place on the record an order reflecting its decision in regard thereto, even in the absence of any request to do so by one of the parties to the action.” See *Garrett v. City of Hamtramck*, 503 F.2d 1236, 1243 (6th Cir. 1974). Thus, “* * * certification of a suit as a class action must precede, or, at the very least, accompany the court’s decision on the merits of the action. [Emphasis added.] *Bass*, *supra*, at *2, citing *Am. Pipe and Constr. Co.*, *supra*, at 552; *Larionoff v. U.S.*, 533 F.2d 1167, 1182-1183 (D.C. Cir. 1976); *Peritz*, *supra*, at 353; *Katz v. Carte Blanche Corp.*, 496 F.2d 747, 758 (3rd Cir. 1974); *Glodgett v. Betit*, 368 F.Supp. 211, 214 (D. Vt. 1973).

The court further explained, in *Bass*, that:

* * * [P]ostponement of a certification determination until after a decision on the merits would unduly delay the adjudication of a number of issues - - such as the ability of the representative to adequately protect the interests of the class, and the necessity and form of pre-judgment notice to be served upon members of the purported class -- which are vital to the fair and effective prosecution of a class action, and which thus are more properly resolved prior to the entry of any final judgment therein. [Citation omitted.] Indeed, the language of subparagraph (C)(1) itself effectively precludes its implementation once the merits of an action have been decided; the express permission contained therein to alter or amend a certification order *before a decision on the merits* “plainly implies disapproval of such alteration or amendment thereafter.” [Emphasis *sic*.]

Bass, supra, at *3, citing *Jiminez, supra*, at 697.

Pursuant to the above analysis, the *Bass* court concluded the trial court's failure to enter an order authorizing maintenance of the suit, as a class action, before a judgment on the merits, precluded a class certification determination. *Bass, supra*, at *3. Specifically, the court explained, "[t]he procedure adopted by the trial court thus failed to comply with the requirements of Civ.R. 23 (C)(1) that such a determination be made 'as soon as practicable after the commencement of the action,' and, in our opinion, invited the very procedural deficiencies attending the post-merit certification of a class which that provision of the Rules was designed to prevent." *Id.*²

In the matter currently under consideration, Plaintiffs filed two subsequent Complaints for Class Action Certification and Amended Class Action Certification on September 29, 2011, and September 30, 2011, respectively. Despite the Amended Class Action Certification Complaint pending approximately ten (10) months prior to the trial court's Decision on Plaintiffs' Motion for Summary Judgment, that decided the merits of the case, the trial court did not rule on whether the proposed class should be certified. In fact, Plaintiffs never filed a Motion Requesting Class Certification until July 18, 2012, after the trial court issued its Decision granting Plaintiffs' Motion for Summary Judgment on July 12, 2012.

Plaintiffs' conduct in seeking class certification, after receiving a favorable ruling on their Motion for Summary Judgment, is exactly the type of conduct prohibited by the rule against one-way intervention. The proposed class members have sat on the sidelines, until the trial court issued a favorable ruling for existing Plaintiffs, and six (6) days thereafter sought to take advantage of that favorable ruling by filing a Motion for Class Action Certification. For this

² It should also be noted the court of appeals concluded plaintiff was precluded from raising the class certification issue on appeal because plaintiff either waived the issue for purposes of appeal or invited the error. *Bass, supra*, at *4.

reason, the trial court must deny Plaintiffs' Amended Motion for Class Action Certification and strike Plaintiffs' Amended Complaint for Class Action Certification.

B. THE USE OF COLLATERAL ESTOPPEL

Plaintiffs may not offensively assert collateral estoppel to justify class certification after a favorable ruling on summary judgment. In fact, in a recent law review article, this exact issue was addressed:

As the Federal Judicial Study documented, almost all pre-certification summary judgment motions are filed by defendants. This fact comports with common sense because there would be little or no point for a plaintiff to file a putative class action, and then request a court to determine whether the plaintiff was entitled to summary judgment. Until the court certifies a class action, the litigation remains an individual lawsuit against the defendant. Thus, assuming a court granted a plaintiff's summary judgment prior to class certification, that ruling would only bind the named class representative, but not the putative class (which has not yet been certified).

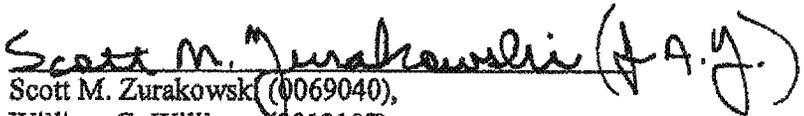
Mullenix, *Dropping the Spear: The Case for Enhanced Summary Judgment Prior to Class Certification*, 43 Akron L.Rev. 1197, 1212-1213 (2010). The article recognized that to allow certification, after a favorable ruling on summary judgment for plaintiff, would violate the rule against one-way intervention. "In theory a plaintiff could attempt, after a positive summary judgment ruling, to assert that ruling as collateral estoppel after class certification. The author knows of no reported decision permitting offensive collateral estoppels of a plaintiff-favoring summary judgment rule prior to class certification, asserted after class certification. [Emphasis added.] *Id.* at fn. 72.

That is the exact factual scenario present in this matter. After having received a favorable ruling on their Motion for Summary Judgment, Plaintiffs now seek to assert the trial court's ruling, as offensive collateral estoppel, in order to certify a class that includes all landowners in Monroe County. For these reasons, the trial court must deny Plaintiff's Amended

Motion for Class Action Certification and Strike Plaintiffs' Amended Complaint for Class Action Certification. Plaintiffs may not use offensive collateral estoppel to certify the proposed class when Plaintiffs failed to timely request certification prior to the trial court's decision on the merits of this case.

IV. CONCLUSION

For the foregoing reasons, Defendant respectfully requests the Court to deny Plaintiffs' Amended Motion for Class Action Certification and strike Plaintiffs' Amended Complaint for Class Action Certification.


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John A. Burnworth (0077151),
Aletha M. Carver (0059157),
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I hereby certify that a copy of the foregoing was sent by Ordinary U.S. Mail this
17th day of September 2012, to:

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EXHIBIT 9

2012 OCT -1 AM 10:52

2012 OCT -1 AM 10:52

CLERK OF COURT

IN THE COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

CLYDE A. HUPP, et al.

Plaintiffs,

vs.

BECK ENERGY CORPORATION,

Defendant.

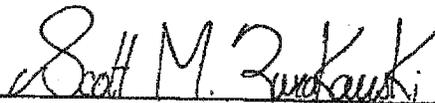
CASE NO. 2011-345

JUDGE ED LANE
(Sitting by Assignment)

**DEFENDANT, BECK ENERGY CORPORATION'S, MOTION TO TOLL
ALL TERMS OF THE OIL AND GAS LEASES ENTERED INTO
BETWEEN PLAINTIFFS AND DEFENDANT, BECK ENERGY
CORPORATION**

Now comes the Defendant, Beck Energy Corporation (hereinafter "Defendant"), by and through the undersigned counsel, and respectfully requests that this Court toll all of the terms of the oil and gas leases entered into between Plaintiffs and Defendant from September 14, 2011, (the date Plaintiffs filed their Complaint) during the pendency of this litigation, as Plaintiffs' claims effectively prevent Defendant from drilling a well, or otherwise exercising its lease rights. A Memorandum in support of Defendant's Motion is attached hereto and incorporated herein by reference.

Respectfully submitted



Scott M. Zurkowski (0069040),
William G. Williams (0013107),
Nathan D. Vaughan (0077713),
John A. Burnworth (0077151),
Gregory W. Watts (0082127),
Aletha M. Carver (0059157), of
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ATTORNEYS FOR DEFENDANT

MEMORANDUM

I. FACTS

On September 14, 2011, Plaintiffs filed their Complaint against Defendant seeking to have this court enter a declaratory judgment that the oil and gas leases (hereinafter "Lease" or "Leases") entered into between Plaintiffs and Defendant be deemed forfeited, cancelled, unenforceable, voided and held for naught due to allegations that Defendant breached express covenants and implied covenants, that Defendant abandoned the leasehold interests, the terms and conditions of the Leases are unconscionable, violative of Ohio public policy, and that there has been a failure of consideration. In addition, Plaintiffs also sought to have the Court quiet title to their real property encumbered by the Leases and to have this court extinguish any interest which Defendant may claim to have in and to the Plaintiffs' real property as a result of the Leases.

Thereafter, on September 29, 2011, the Plaintiffs filed an Amended Class Action Complaint adding additional plaintiffs and making class action allegations, in addition to the Plaintiffs' claims for declaratory judgment and to quiet title. One day later, on September 30, 2011, Plaintiffs filed their Second Amended Class Action Complaint naming additional plaintiffs, without seeking leave from this Court, as expressly required by Ohio Civ. R. 15.

On July 12, 2012, the Trial Court issued a decision granting Plaintiffs', Clyde A. Hupp, et al.'s, Motion for Summary Judgment on the basis the Leases violate public policy and are therefore void *ab initio*. On this same date, the Trial Court overruled Defendant's Motion to Dismiss and/or Change of Venue.¹ On July 31, 2012, the Trial Court issued a Journal Entry incorporating the decision it previously issued on July 12, 2012.

¹ The trial court indicated it would reconsider Defendant's Motion for Change of Venue in the event a jury trial in any remaining matter is appropriate (Journal Entry, July 31, 2012, at p. 1).

On July 18, 2012, prior to the issuance of the Journal Entry, Plaintiffs moved for leave to file a Third Amended Class Action Complaint to include in the proposed class all landowners/lessors in Ohio, located outside Monroe County who may be affected by the Trial Court's decision filed on July 12, 2012. On this same date, Plaintiffs also filed a Motion for Class Action Certification. In its Journal Entry, the Trial Court specifically indicated that, "[T]hose two motions are still pending. Accordingly, as this entry does not dispose of all pending matters, this is not a final appealable order." (Journal Entry, July 31, 2012, at p. 2).

Defendant filed a Notice of Appeal, of the Trial Court's Journal Entry, on August 28, 2012. On September 10, 2012, the Seventh District Court of Appeals issued a Judgment Entry ordering a remand to the Trial Court to address pending motions. (Judgment Entry, September 10, 2012, at p. 1).

On September 12, 2012, Plaintiffs filed Notice of Withdrawal to File Third Amended Class Action Complaint. Plaintiffs also filed an Amended Motion for Class Action Certification requesting the Trial Court certify a class consisting of only Monroe County landowners as opposed to a class of all Ohio landowners. As a result, on September 14, 2012, Defendant immediately filed its Answer and Counterclaim to the Second Amended Class Action Complaint.

On September 17, 2012, Defendant filed a Memorandum in Opposition to Plaintiffs' Amended Motion for Class Action Certification and Plaintiffs filed a Motion to Strike Defendant's Answer and Counterclaims and/or Motion for Default Judgment.

Finally, on Monday, September 17, 2012, this Court held a status conference ordering all parties to file any desired motions, including Defendant's Motion to Toll the Lease Terms.

II. SUMMARY OF ARGUMENT

The Trial Court must grant Defendant's Motion to toll all terms of Leases, during the pendency of the litigation, for three reasons. First, if this Trial Court does not grant Defendant's Motion to Toll, the Leases could terminate during the pendency of this litigation, causing unnecessary and unfair prejudice to Defendant. In other words, Defendant could ultimately win the battle on appeal but lose the war. This is particularly crucial considering the Ohio Supreme Court has determined perpetual leases to be valid and enforceable. See, *Central Ohio Natural Gas & Fuel Co. v. Eckert*, 70 Ohio St. 127, 71 N.E.2d 281 (1904); *Hallock v. Kintzler*, 142 Ohio St. 287, 51 N.E.2d 905 (1943); and *Myers v. East Ohio Gas Co.*, 51 Ohio St.2d 121, 364 N.E.2d 1369 (1977).² Finally, recent case precedent in Monroe County Common Pleas Court has determined it is appropriate to toll an oil and gas lease's term, when the oil and gas lease is being attacked, during the pendency of the litigation.

III. LAW AND ARGUMENT

1. Tolling is an Appropriate Remedy when an Oil and Gas Leases Validity is Attacked.

Tolling is appropriate when "a lessor actively asserts to a lessee that his lease is terminated or subject to cancellation," so that "the obligations of lessee to lessor are suspended during the time such claims of forfeiture are being asserted." *Jicarilla Apache Tribe v. Andrus*, 687 F.2d 1324, 1341 (10th Cir. 1982); *H&G Fossil Fuels Company v. Roach*, 103 N.M. 793, 795-97, 715 P.2d 66 (1986) (reversing lower court's refusal to toll lease in finding that "an extension of the [oil and gas lease] term is an appropriate remedy"); *Chesapeake Exploration, L.L.C. v. Valence Operating Co.*, 2008 WL 4240486, *4-7 (S.D.Tex., 2008) (holding where repudiation by lessee occurred approximately six months prior to end of primary term, lease was

² The parties' Memorandums on Summary Judgment failed to include any mention of these Ohio Supreme Court cases.

tolled so as to put the parties back in their original position and the lessee will be given six months to meet habendum clause obligations).

Tolling is appropriate to prevent a lessor who wrongfully repudiates a lessee's lease from profiting from the wrong. *B.B. Energy L.P. v. Devon Energy Production Co., L.L.P.*, 2008 WL 216583 at *11 (N.D.Tex. May 23, 2008) (citing *Kothmann v. Boley*, 158 Tex. 56, 60-61, 308 S.W.2d 1, 4 (1958)). “[R]epudiation of a lease by a lessor relieves the lessee from any obligation to conduct any operation on the land in order to maintain the lease in force pending a judicial resolution of the controversy between the lessee and lessor over the validity of the lease.” *Cheyenne Resources, Inc. v. Criswell*, 714 S.W.2d 103, 105 (Tex.App.-Eastland 1986, no writ).

In the present matter, there are three Leases at issue, the Hustack Lease; the Hubbard Lease; and the Majors Lease. The primary term of the Hustack Lease will expire on August 13, 2018. The primary term of the Hubbard Lease will expire on March 1, 2016, and the primary term of the Majors Lease will expire on October 10, 2015. Each lease contains essentially the same terms, including a ten (10)-year primary term and a delay rental clause, which Plaintiffs and Defendant paid and bargained for as a part of the Lease. At the end of the primary term, including any extension thereof, if Defendant does not drill a well that produces in paying quantities, the Lease typically terminates.

Defendant believes Plaintiffs' claims are without merit and not supported by Ohio Supreme Court case law. In fact, current Ohio Supreme Court case law supports Defendant's position that the oil and gas leases at issue are valid and enforceable. See, *Central Ohio Natural Gas & Fuel Co. v. Eckert, Id.*; *Hallock v. Kintzler, Id.*; and *Myers v. East Ohio Gas Co., Id.* Yet, this Court has granted Plaintiffs' Motion for Summary Judgment determining the leases at issue to be void *ab initio*. As this Court and all counsel is well aware, once the necessary issues are

resolved, the Defendant will be filing a Notice of Appeal of the Court's summary judgment decision.

By doing so, this Court has put Defendant between a rock and hard place -- or in a position that it could ultimately win the battle on appeal but lose the war as the Leases could terminate, during the pendency of this litigation. For this reason, the Trial Court must grant Defendant's Motion to Toll the Terms of the Leases during the pendency of this litigation.

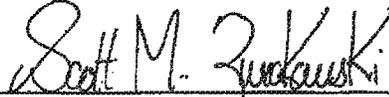
2. Monroe County Court of Common Pleas Case Precedent Supports Defendant's Motion to Toll.

The Monroe County Court of Common Pleas has also recently recognized that tolling of an oil and gas lease is an appropriate remedy, where a landowner, whose property is subject to the lease, has filed a complaint seeking to invalidate the oil and gas lease. *See, Three Waters, LLC v. Northwood Energy Corporation*, Monroe County Court of Common Pleas Case No. CVH2012-042. In the *Northwood Energy Corporation* case, Judge Julie Selmon entered an order denying Three Waters, LLC's motion to stop the tolling, and permitted Northwood Energy Corporation's lease terms to be tolled during the pendency of the litigation. A copy of said Judgment Entry is attached hereto as Exhibit "A". As such, this Court is bound by the Monroe County Court of Common Pleas case precedent, and for this reason this Court should grant Defendant's Motion to toll the terms of the leases pending the outcome of the litigation so as to not prejudice the rights of Defendant.

IV. CONCLUSION

For the foregoing reasons, Defendant, Beck Energy Corporation, respectfully requests that this Court grant Defendant's Motion to Toll the Lease Terms during the pendency of the within litigation.

Respectfully submitted.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by Ordinary U.S. Mail
this 28 day of September, 2012, upon:

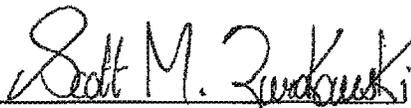
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ATTORNEYS FOR DEFENDANT

COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

IN THE COURT OF COMMON PLEAS OF MONROE COUNTY, OHIO
AUG -9 PM 1:29

WENDY ANN ROSS
CLERK OF COURTS

DOCKET & JOURNAL ENTRY

THREE WATERS, LLC

Plaintiff,

Case No. 2012-042

Vs.

NORTHWOOD ENERGY CORPORATION,

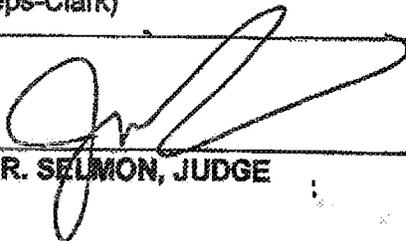
Defendant.

Date of Entry: August 9, 2012

The within matter is before the Court on Plaintiff's *Motion to Stop Tolling Period* and Defendant's *Memorandum in Opposition to Plaintiff's Motion to Stop Tolling Period*. Plaintiff's *Motion* is hereby denied. This Court's prior orders hereby remain unchanged.

(COPIES SENT THIS DAY TO:
Attorney Ethan Vessels, Attorney Flite Freimann, Attorney Gregory D. Russell, Attorney Thomas H. Fusonie, and Attorney Lija K. Kaleps-Clark)

(Approved)



JULIE R. SELMON, JUDGE

Journal _____ Page _____

jd

EXHIBIT A

EXHIBIT 10

COMMON PLEAS COURT
MONROE COUNTY, OHIO

CLERK OF COMMON PLEAS
MONROE COUNTY, OHIO

2013 FEB -6 PM 2:47

CLERK OF COURT

Clyde A. Hupp, et al.,	:	
Plaintiffs,	:	Case No.: 2011-345
-vs-	:	Judge Ed Lane
Beck Energy Corporation,	:	Sitting by Assignment
Defendant.	:	DECISION AND ORDER
	:	(On Plaintiff's Motion for
	:	Class Action Certification)

.....

The above styled action is before the Court on the Motion of Plaintiffs for Class Action Certification. The Plaintiffs filed their motion in this action on July 19, 2012. The Defendant, Beck Energy, filed a Memorandum of Law in Opposition to this motion on August 2, 2012. The Plaintiffs filed a Reply Brief in Support of their motion on August 7, 2012. There are affidavits and exhibits attached to the Plaintiffs' Motion also. The Court has reviewed all matters submitted by the parties in this regard.

This case arises out of a form oil and gas lease ("Beck Lease") utilized by the Beck Energy Corporation of Ravenna, Ohio (hereinafter "Beck"), which Beck executed with approximately 415 landowners in Monroe County and approximately 200 to 300 landowners in other South East Ohio counties. These form leases cover approximately 32,280 acres in Monroe County. The leases were entered into over the past approximately 21 years. Plaintiff alleges that Beck has not drilled an oil or gas well on approximately 21,000 acres in Monroe County and several thousand acres in other counties.

This Court has held in this matter that Beck's leases are void on their face as has already been held by this Court. Accordingly, the Plaintiffs are requesting that a class be certified of landowners in Ohio who executed leases with Beck where Beck did not drill a well on their property. The Plaintiffs herein request a certification from this Court to proceed as a Class Action under Civ.R. 23(B)(2). The leases of the Plaintiffs herein have already been declared void against public policy, violative of implied covenants and forfeited.

In entering into leases in Eastern Ohio Beck used a pre-printed lease that it refers to as "Form G&T (83)." These leases were recorded by the Defendant, Beck Energy.

Beck argues that these leases are not all identical, as some of the leases have certain paragraphs crossed out in its standard form and the amount of delayed rental varies.

The Plaintiffs call the Court's attention to Beck's assignment of the deep drilling rights to XTO. Beck made this assignment after this action was filed and recorded it on December 21, 2011. The assignment includes a list of lessors or landowners whose mineral rights Beck sold to XTO.

The Plaintiffs note that for these landowners, they will undoubtedly receive none of the "upfront" money on the lease, nor will they receive any increase in royalty over the base 12.5% in their Beck leases, and whatever new rate Beck negotiated for himself in the assignment, perhaps as much as 17-18%. Thus, Beck may potentially pull \$70-80,000,000 in up front money out of Monroe County alone, while the landowners of the County receive nothing. In any event, the assignment is evidence for class certification purposes, as that all of these cases are identical and thus subject to class treatment.

The standard for deciding whether to grant class action certification is set forth in Civ.R.

23(A) which provides that:

RULE 23. Class Actions

- (A) Prerequisites to a class action. One or more members of a class may sue or be sued as representative parties on behalf of all only if
- (1) the class is so numerous that joinder of all members is impracticable,
 - (2) there are questions of law or fact common to the class,
 - (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and
 - (4) the representative parties will fairly and adequately protect the interests of the class.
- (B) Class actions maintainable. An action may be maintained as a class action if the prerequisites of subdivision (A) are satisfied, and in addition:
- (1) the prosecution of separate actions by or against individual members of the class would create a risk of
 - (a) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or
 - (b) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or
 - (2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or
 - (3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:
 - (a) the interest of members of the class in individually controlling the prosecution or defense of separate actions;
 - (b) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
 - (c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum;
 - (d) the difficulties likely to be encountered in the management of a class action.

In summary, a Court may exercise its discretion to certify a class when Plaintiff establishes the required prerequisites of Ohio Civil Rule 23 by a preponderance of the evidence.

See *Cleveland Board of Education v. Armstrong World Industries Inc.*, 22 Ohio Misc 2d 18.

Civil Rule 23 provides that one or more members of a class may sue as representative parties

only if:

- (1) the class is so numerous the joinder of all members is impracticable,
- (2) there are questions of law or fact common to the class,
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and
- (4) the representative parties will fairly and adequately protect the interest of the class.

Plaintiffs satisfy the requirements for class certification as the class is so numerous that joinder is impracticable, there are legal and factual issues common to the class, the claims of the parties are typical of the class and the representative parties will protect the interests of the class.

A motion for class certification is not an occasion for examination of the merits of the case. *Caridad v. Metro-North Commuter R.R.*, 191 F.3d 283, 291 (2nd Cir. 1999). There is "nothing in either the language or history of Rule 23 that gives a court any authority to conduct a preliminary inquiry into the merits of a suit in order to determine whether it may be maintained as a class action..." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177 (1974). Instead, the Court must determine if the Plaintiffs have proffered evidence to meet each of the requirements of Rule 23. No weighing of competing evidence is appropriate at this stage of the litigation. *Caridad*, 191 F.3d at 293. See also *Cleveland Board of Education v. Armstrong World Industries, Inc.* (C.P. 1985) 22 Ohio Misc.2d 18. (Holding in ruling on class certification the Court may take the allegations of the complaint as true and the Court should not examine the merits of the case during the certification hearing).

The policy behind class action is to protect members of even a small class from being deprived of their day in Court. See *Blumenthal v. Medina Supply Co.* (2000) 139 Ohio.App.3d 283 citing *Amchem Prods., Inc. v. Windsor* (1997), 521 U.S. 591, 117 S.Ct. 2231, 138, L.Ed.2d 689; *Marks v. C.P. Chem. Co., Inc.* (1987), 31 Ohio St.3d 200 31 OBR 398, 509 N.E.2d 1249;

7A Wright, Miller & Kane, Federal Practice and Procedure (2 Ed. 1986), Section 1777; 5 Moore's Federal Practice (3 Ed 1997), Section 23.44.

Correspondingly, the United States Supreme Court has found that a class action is appropriate to "vindicate the rights of individuals who otherwise might not consider it worth the trouble to embark on litigation in which the optimum result might be more than consumed by the cost." *Guaranty National Bank v. Roper*, 445 U.S. 3326, 338 (1980).

a) Joinder of All Members is Impracticable.

Joinder of all plaintiffs is impracticable. Impracticability of joinder is left to the trial court judge's discretion based on the particular facts of the case. See *Logsdon v. National City Bank* (1991), 62 Ohio Misc.2d 449; *Grubbs v. Rine* (1974), 39 Ohio Misc. 67. The requirement is that the class be so numerous that joinder of all members is impracticable. "Impracticable" does not mean "impossible." See *Planned Parenthood Association of Cincinnati v. Project Jericho* (1990) 52 Ohio St.3d 56, 64, citing *Gentry v. C & D Oil Co.* (W.D.Ark.1984), 102 F.R.D. 490, 493.

In this regard, there is no "magic number" for determining the number of parties that make joinder impractical. *Schmidt v. Avco Corp.* (1984), 15 Ohio St.3d 310, *Grubbs v. Rine* (1974), 39 Ohio Misc. 67. Federal Courts have ruled that "[g]enerally, the numerosity requirement is satisfied where the class exceeds 100 members. *Fox v. Prudent Resources Trust*, 69 F.R.D. 74, 78 (E.D.Pa.1975); see, also, *Krominick v. State Farm Ins. Co.*, 112 F.R.D. 124, 126 (E.D. Pa. 1986).

The numerosity requirement in the instant action is satisfied. Based upon a review of the public records of the recorder's office by the Plaintiffs' attorneys, the instant action pertains to approximately 415 Monroe County landowners, who entered into leases with Beck, wherein

Beck did not drill an oil and gas well. A similar review of neighboring counties revealed perhaps 2-300 more. Thus, the number of putative Plaintiffs is so numerous, the numerosity requirement for class action purposes has been satisfied, as the class is so numerous that joinder of all members would be impracticable.

b) Putative Plaintiffs Have Common Questions of Law and Fact.

Plaintiffs also satisfy the requirement that there are questions of law or fact common to the class, as the class consists of Lessors under Beck oil/gas leases on whose property Beck did not drill a well. This Court has already determined that the leases are all void, yet as encumbrances of record in the Lessors' land title, they prohibit the landowners from re-leasing and exploiting the mineral wealth of their lands.

Wide discretion is afforded trial courts in deciding commonality, *Caruso v. Celsius Insulation Resources, Inc.* (M.D.Pa.1984), 101 F.R.D. 530, 533, but its resolution may be satisfied by the allegations contained in the complaint. *Miles v. N.J. Motors, supra*, 32 Ohio App.2d at 356, 291 N.E.2d 758. The commonality requirement of a class action does not require that all questions of law or fact which are in dispute be common. *Planned Parenthood Assn. of Cincinnati v. Project Jericho* at 64 citing, *Marks v. C.P. Chemical Co.* (1987), 31 Ohio St.3d 200; see, also, *Estate of Reed v. Hadley* (2005), 163 Ohio App.3d 464. The commonality requirement does not require that all questions of law or fact be common to every single member of the class; rather, at least one issue must be common to the claims of all the class members. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998); 5 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* §3.10 at 154 (3d ed. 1992); 7A Wright, Miller & Kane, *Federal Practice and Procedure: Civil 2d*, §1763, at 198 (1986). Courts have not considered

commonality a difficult hurdle; the requirement should be "construed permissively." *Hanlon*, 150 F.3d at 1019. Generally courts in Ohio have ruled that the commonality requirement is satisfied when the plaintiffs demonstrate a "common nucleus of operative facts." See *Warner v. Waste Management Inc.* (1988), 36 Ohio St.3d 91.

c) Typicality of Claims and Defenses.

All of the Lessors, i.e. putative Plaintiffs, are governed by the same lease/contract, and will be subject to the same Beck defenses. Specifically, Beck leased mineral rights from the Plaintiffs. All of the deep drilling rights under the leases have been assigned to Exxon under one instrument. Thus, Mr. Beck himself is treating these leases as a "class." The question common to all Plaintiffs as has already been answered by this Court is: is that lease void? In the instant action, Plaintiffs satisfy the commonality of questions of law and/or fact in that every single member of the class was governed by the same operative lease terms.

The claims of the class members and the representative parties are typical. Similarly, the defenses of the Defendant as to the class members and class representatives are also typical.

"Typical" has been held to mean a "lack of adversity between the class members." *Tober v. Charnita, Inc.*, (M.D.Pa.1973), 58 F.R.D. 74, 80. Ohio courts have held that plaintiffs' claims satisfy the typicality requirement when the claim arises from the same event, practice, or course of conduct from which the claims of other class members arise and if the plaintiffs' claims are based on the same legal theory. *Baughman v. State Farm Mutual Auto Insurance Company* (2000), 88 Ohio St.3d 480. However, the claims or defenses need not be identical in granting class certification. See *Cincinnati Planned Parenthood, Inc. v. Project Jericho* at 64 citing *Federal Class Actions*, at 204; 7A *Wright & Miller, supra*, Section 1764; see, also, *Twyman v.*

Rockville Hous. Auth. (D.C.Md.1983), 99 F.R.D. 314, 321.

In the present matter, the Plaintiffs' claims all arise from the same lease, and the same conduct of Beck in not drilling a well on the Plaintiffs' properties. Correspondingly, Plaintiffs' claims are all based on the same legal theories, which is that the Beck leases are void due to their terms being perpetual, and due to Beck's violation of the implied covenant to drill, and other express and implied covenants. Beck engaged in the same conduct against each of the class members by signing them to perpetual leases and not drilling on their property during the lease's primary term, and in also violating the same express and implied covenants with each of the Plaintiffs. Thus, the class representatives' claims are identical to those of the putative class plaintiffs.

d) Representative Parties Will Fairly and Adequately Protect Class Interests.

In this action Plaintiffs also satisfy the fourth requirement for a class action in that the representative parties will fairly and adequately protect the interests of the class.

Adequacy of representation essentially has two (2) components designed to ensure absent class members' interests are pursued: (1) that the interests of plaintiffs and class members are aligned, and (2) class counsel is qualified to serve the interests of the entire class. See Rule 23(a). They and their counsel have displayed diligence and competence in their handling of this matter to date. Beck's counsel has made a vain attempt to delay these proceedings by the filing of an appeal when no appealable order had been entered by this Court. XTO's counsel attempted to engage in the unauthorized practice of law by appearing at a pretrial without following the proper procedure for admission to the Ohio Bar "pro hoc vice."

(1) Interests of the Class are Aligned.

First, "the interests of the named plaintiffs must be sufficiently aligned with those of the absentees" *Amchem Products v. Windsor*, 521 U.S. 591, 625 (1997). A class representative is generally considered adequate as long as his interests are not antagonistic to that of the other class members. See *Marks v. C.P. Chemical Company, Inc.* (1987), 31 Ohio St.3d 200, see also *Vinci v. American Can Company* (1984), 9 Ohio St.3d 98.

No conflicts exist between Plaintiffs and the class members in this case. The named Plaintiffs challenge the same unlawful conduct and seek the same relief as the class. The right to relief of the named Plaintiffs, like that of the absent members, depends on demonstrating that Beck executed and recorded void perpetual leases with the landowners, while not drilling a well on their property, and/or by violating any other express or implied duties which arose by the lease/contract, or by operation of law.

In the instant matter, the Hustacks, Hubbards and Mr. Majors are adequate representatives of the class. All of them signed the same Beck lease and did not have wells drilled on their property. The proposed class representatives have taken an active role and control in the litigation to protect the class' interests. Further, the Hustacks, Hubbards and Mr. Majors have participated in selection of counsel, communicated with class members, monitored the litigation and vigorously prosecuted the case on behalf of the class.

(2) Counsel is Qualified.

Secondly, class counsel must be qualified to serve the interests of the entire class. Civil Rule 23(a) (4). Ohio courts have held that an attorney is competent to handle a class action if the attorney has experience in handling litigation of the type involved in the case before the class certification is allowed. See *Warner v. Waste Management Inc.* (1988), 36 Ohio St.3d 91, 98.

Plaintiffs' counsel consists of Attorneys Mark Ropchock, Richard Zurz and James Peters. All three of these attorneys have been previously appointed class counsel by this Court in *John Lucio, et al. v. Safe Auto Insurance Co., et al.*, Monroe Co. Common Pleas Case No.: 2007-09, which resulted in a multi-million dollar recovery for the class members.

Mark Ropchock, has significant trial experience in handling hundreds of cases in multiple states, has tried multi-million dollar cases to verdict and has over twenty five (25) years of practice as a litigator, most recently receiving a three million dollar (\$3,000,000.00) verdict in Portage County, Ohio.

Richard Zurz is a leading personal injury attorney with offices in Akron, Canton and Columbus, Ohio. Richard V. Zurz has thirty (30) years of trial experience and is an active member in good standing with the Akron Bar Association, the Ohio State Bar Association, the American Bar Association, the Ohio Academy of Trial Lawyers, and American Association for Justice. Mr. Zurz practices in business and commercial litigation, personal injury, employer intentional torts and numerous other areas of the law. He has tried many cases.

James W. Peters also represents Plaintiffs. Mr. Peters is an attorney in Woodsfield, Ohio with over thirty (30) years experience practicing law. Mr. Peters is admitted to the Ohio Supreme Court, West Virginia Supreme Court, U.S. Court of Appeals, Fourth Circuit, U.S. Court of Appeals, Sixth Circuit, both of the U.S. District Courts in Ohio, and both U.S. District Courts in West Virginia. Mr. Peters has served as Special Counsel to the Ohio Attorney General and in private practice. Additionally, Mr. Peters is approved counsel for a number of corporations. Mr. Peters currently serves as a Judge in Monroe County Ohio. Mr. Peters has received a verdict of three million five hundred thousand dollars (\$3,500,000.00).

In addition to satisfying the prerequisites set forth in Civil Rule 23(A), Plaintiffs also satisfy the requirements set forth in Civil Rule 23(B). Civil Rule 23(B) requires Plaintiffs to satisfy one (1) of the requirements of subdivision (B) (1)-(3) for certification to be deemed appropriate.

Civ.R. 23(B) provides that:

An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied and, in addition, * * * (2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole * * *

This is the exact situation presented in this case. The party opposing the class herein, Beck Energy, has acted on grounds generally applicable to the entire class, [form lease, no well drilled] and declaratory relief with respect to the class as a whole is appropriate.

In this case, all of the putative plaintiffs herein are landowners in Monroe and its neighboring counties, whose property is subject to and impaired by an oil and gas mineral lease with Beck Energy. Beck Energy will presumably defend every case in an identical fashion since whatever defenses are available under the lease would be applicable to all of the putative plaintiffs since the same terms would control. Beck has not drilled wells on any of the properties within the lease term. All the putative plaintiffs would find it impossible to lease their land to a new driller with the Beck Energy lease presenting a cloud upon the title of their property.

Likewise, meeting the second requirement of Rule 23(B) (2), the Plaintiffs are requesting declaratory relief from the court in the form of a quiet title action in favor of the landowners against Beck Energy. The Plaintiffs are simply requesting that the court hold the Beck leases void (which it has already done), and clear the landowners' title to the property, once again

vesting in them their full mineral rights. As the Complaint does not even request any form of monetary damages, the second requirement is easily met.

In *Wilson v. Brush Wellman, Inc.*, 103 Ohio St.3d 538, 817 N.E. 2d 59, a 2004 case, the Ohio Supreme Court had the opportunity to address the requirements of class certification under Rule 23(B) (2). The Supreme Court held that certification under the B (2) subdivision of Rule 23 entailed two requirements: (1) The action must seek primarily injunctive relief, and, (2) the class must be cohesive. *Wilson*, at 541, 63.

a. Injunctive Relief

As outlined above, Plaintiffs' Complaint consists of two counts. Count I is a request for declaratory judgment stating at paragraph 20, "Plaintiffs are entitled to a declaratory judgment that the Hustack lease, the Hubbard lease and the Majors lease are therefore forfeited, canceled, unenforceable, voided and held for naught, for reasons including but not limited to, the following * * *. Count II is a quiet title action which states in paragraph 21 (b), "Plaintiffs are entitled to a judgment, pursuant to Ohio Revised Code § 5303.01 quieting their title as to the Hustack acreage, the Hubbard acreage and the Majors acreage as against Defendant by and through the forfeiture, release and cancellation of the Hustack, Hubbard and Majors leases as valid encumbrances of record and by extinguishing any interests which Defendant has or may claim to have in the Hustack, Hubbard and Majors acreage."

These allegations clearly meet the first requirement of *Wilson* that the action must seek primarily injunctive relief. As the *Wilson* case and others have generally described, in making this determination, there is oftentimes confusion as to whether the Complaint specifically

is requesting injunctive relief or damages. The distinction is often difficult to make. In *Wilson*, for instance, Plaintiffs sought medical monitoring. This presented a difficult analysis for the Court as to whether future medical monitoring was primarily in the form of damage or injunctive relief.

In the present action, no such dilemma or difficulty in analysis exists. There simply is no claim in the Complaint for any sort of monetary damages whatsoever. The Complaint exclusively requests declaratory and quiet title relief. Accordingly, the first requirement of 23(B) (2) is satisfied.

b. Cohesiveness

The second requirement for 23(B) (2) certification as discussed in the *Wilson* case is that the class must be cohesive. In discussing the cohesiveness standard, the *Wilson* court noted, although this court has not had an opportunity to address the cohesiveness requirement of Civil Rule 23(B) (2) class certification, there are a "myriad federal cases providing us guidance," citing *Barnes v. Am. Tobacco Co.* (C.A. 3, 1998), 161 F.3d 127, 142-143. The federal cases indicate the cohesiveness analysis is essentially the same as a predominance analysis, which is discussed with much more frequency in the case law.

The predominance inquiry pertains to the focus on legal or factual questions that qualify each class member's case as a genuine controversy. See *Hoang v. E*Trade Group Inc.* (2003), 151 Ohio App.3d 363, 2003-Ohio-301.

The predominance test...involves an attempt to achieve a balance between the value of allowing individual actions to be instituted so that each person can protect his own interests and the economy that can be achieved by allowing a multiple party dispute to be resolved... [as] a class action.... *Schmidt v. Avca Corp.* (1984), 15 Ohio App.3d 81.

Plaintiffs must show that common or generalized proof will predominate at trial. See *Lumco Industries, Inc. v. Jeld-Wen, Inc.*, 171 F.R.D. 168 (E.D. Pa 1997). Common questions must be able to be resolved for all members of the class in a single adjudication. *Marks v. C.P. Chemical Co., Inc.* (1987), 31 Ohio St.3d 2000. "While potential dissimilarity in remedy is a factor to be considered in determining whether individual questions predominate over common questions, that alone does not prevent a court from certifying a cause as a class action." *Vinci v. American Can Company* (1984), 9 Ohio St.3d 98. See also *Lowe v. Sim Refining & Marketing Co.* (1992), 73 Ohio App_3 d 563, 572, 597 N.E.2d 1189.

It would be difficult to imagine a case in which the prospective plaintiffs are more cohesive as a class than the within action. As noted, all of these individuals are landowners who are unable to lease their land to new drillers. The court cannot imagine why these landowners would not wish to obtain thousands of dollars per acre for their property in up front money, and potentially hundreds of thousands of dollars in royalties versus the present arrangement with Beck Energy, wherein they are receiving a few dollars per acre per year and no royalties whatsoever.

This group is cohesive to the extent of near identity of interest. Their properties are all covered by the same leases with Beck Energy with the same basic terms. As noted, other than the fact that the names are different on the leases and the acreage and its location are different, the terms of the lease were boilerplate and, thus, since the Court has already found the lease void in one instance, the lease would clearly be void in all. The reverse is also true. There are few individual claims or defenses available in the within action. If certain plaintiffs do have other claims against Beck, those are not part of this lawsuit. Accordingly, the cohesiveness analysis of

the present action under the *Wilson* case is easily established.

There are additional reasons why this case is appropriate for class treatment, such as under a Rule 23(b) (1) analysis. Rule 23(b) (1) defines two related types of class actions, both designed to prevent prejudice to the parties arising from multiple potential suits involving the same subject matter. See *Feret v. Corestates Financial Corp.* 1998 WL 512933 (ED. Pa. 1998), at * 13 citing 1 NEWBERG § 4.03, at 4-10. Rule 23(b) (1) (A) is used to "obviate the actual or virtual dilemma which would ... confront the party opposing the class" if separate lawsuits were decided differently so as to result in "incompatible standards" for that opposing party. See *Feret* at *13, citing *WB Music Corp. V. Rykodisc, Inc.*, 1995 WL 631690, at *3 (E.D.Pa. Oct. 26, 1995) (quoting Fed.R.Civ.P. 23(b) (1) (A) advisory committee notes). Conversely, Rule 23(b) (1) (B) is used when separate actions might lead to adjudications that could be dispositive of nonparty class members' interests or substantially impair their ability to protect their interests.

Correspondingly, Ohio courts have held that there is a risk of inconsistent adjudications when the validity of a lease contract could be found valid in one action and invalid in another, this would lead to incompatible standards of conduct for the defendant. See, *Warner v. Waste Management*, (1988), 36 Ohio St.3d 91, 95. Footnote 2.

In the instant action, there is a risk that the validity of the Beck lease and course of conduct with the landowners could be valid in one action but invalid in another, thereby leading to inconsistent adjudications. Consequently, conflicting decisions regarding the legality of the Beck lease would affect the interests of all putative Plaintiffs. This is an additional reason why class treatment is needed.

This is an appropriate case for class action status. Therefore, Plaintiffs' Motion for Class

Certification is hereby granted.

SO ORDERED.

ENTER AS OF DATE OF FILING:



Judge Ed Lane

c: Attorney Ropchock/Zurz
Attorney Zurakowski
Attorney Kincaid
Attorney Abbott

THIS IS A FINAL APPEALABLE ORDER
AND THERE IS NO JUST REASON
FOR DELAY.

EXHIBIT 11

COMMON PLEAS COURT
MONROE COUNTY, OHIO

RECEIVED
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CLERK OF COURT

Clyde A. Hupp, et al., :
 :
 Plaintiffs, : Case No.: 2011-345
 :
 -vs- : Judge Ed Lane
 : Sitting by Assignment
 Beck Energy Corporation, :
 :
 Defendant. :
 : DECISION AND ORDER
 : (On XTO's Motion To Intervene)

The above styled action is before the Court on the Motion of XTO Energy, Inc. (Herein after referred to as "XTO"), filed on September 7, 2012 to intervene in the above styled action. The Plaintiff's Brief in Opposition was filed on September 17, 2012. The Court also heard oral arguments on this motion. Post hearing briefs have also been filed. The Court has also been provided, under seal, a separate copy of the Purchase and Sale Agreement between the Defendant, Beck Energy Corporation (herein after referred to as "Beck"), and XTO. The Court has reviewed all of the materials provided to the Court in this matter.

XTO maintains that this Court does not have jurisdiction of this case and did not have jurisdiction when it granted to the Plaintiffs summary judgment on July 12, 2012. XTO's position is that it was a necessary party at the time the decision was entered by this Court.

The relevant facts in this regard are straight forward. A Complaint to Quiet Title was filed in this action on September 14, 2011. An Amended Class Action Complaint was filed on September 29, 2011. All Complaints that have been filed to date seek the cancellation of various

oil and gas leases between the Plaintiffs and Beck. The Plaintiffs filed a Motion For Summary Judgment on February 16, 2012. The Court entered a briefing schedule on the Plaintiff's Motion for Summary Judgment on April 25, 2012. The final deadline for briefs was May 14, 2012. On July 12, 2012 this Court entered a decision that granted the Plaintiffs' Motion for Summary Judgment that essentially declared the subject leases void.

A key fact in this time line is that on November 9, 2011 the Defendant, Beck, entered into a Purchase and Sale Agreement with the Movant, XTO, for the sale of Beck's rights to XTO for what is commonly referred to as the "Marcellus Oil and Gas" strata on the leases involved in this action and other leases throughout eastern Ohio. At p. 18 of their sale agreement the contracting parties noted this lawsuit under a clause titled: "Pending Litigation, Claims, and Disputes." Their agreement noted the style of this case and the correct case number.

It is clear that XTO knew of this litigation and its potential consequences prior to purchasing the "deep rights" to the Plaintiffs' leases and well in advance of these Plaintiffs' Motion For Summary Judgment. XTO now asserts that this Court was without jurisdiction because it was a necessary party. XTO was not a necessary party at the time this action was filed. To accept XTO's position would subject courts and litigants to endless legal procedures where potentially no final resolution could ever be achieved. Pursuant to O.R.C. 2721.12 this Court had jurisdiction when this case was filed because all parties who had an interest in the subject matter were parties.

R.C. 2721.12 clearly provides that:

"...when declaratory relief is sought under this chapter in an action or proceeding, all persons who have or claim any interest that would be affected by the declaration shall be made parties to the action or proceeding..."

The determination of jurisdiction is made at the time the action is commenced. *Freeport-McMoRan, Inc. v. KN Energy, Inc.*, 498 U.S. 426, 428, 111 S.Ct. 858, 112 L.Ed.2s 951 (1991); *Am. National Bank and Trust Co. v. Bailey*, 750 F.2d 577, 582 (7th Cir. 1984). When the instant action was commenced and the Complaint amended September, 2011, Beck was the only entity with an interest in the subject leases. XTO did not acquire its putative interest by assignment until December 21, 2011. Movant does not dispute that all persons and/or entities with an interest in the Beck Leases were made parties when the Complaint, Amended Complaint, and Second Amended Complaint were filed. This Court acquired jurisdiction herein on September, 2011.

Once a court has jurisdiction over both the subject matter of an action and the parties to it, the right to hear and determine the case has been perfected, and decisions as to every question arising thereafter are simply the exercise of the jurisdiction thus conferred. *Sheldon's Lessee v. Newton*, 3 Ohio St. 494, 499 (1854); *State ex rel. Pizza v. Rayford*, 62 Ohio St.3d 382, 384, 582 N.E.2d 992 (1992); *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992, ¶34.

After a court has acquired jurisdiction over the persons and the subject matter of the litigation, subsequent events will not operate to divest the court of that jurisdiction. *Freeport-McMonRan*, 498 U.S. at 428; *Bailey*, 750 F.2d at 583; *Weinberger v. Weinberger*, 43 Ohio App.2d 129, 131, 334 N.E.2d 514 (9th Dist. 1974); *State ex rel. Vernon Place Extended Care Ctr., Inc. v. State Certificate of Need Review Board*, 10th Dist. No. 82AP-1044, 1983 Ohio App. LEXIS 15646, *7 (Aug. 11, 1983).

Accordingly, Beck's November 9, 2011 sales agreement and December 20, 2011 assignment to XTO of the deep rights under the subject Leases did not divest this Court of

subject matter jurisdiction to decide the declaratory judgment and quiet title claims set forth in Plaintiffs' Second Amended Complaint. Rather, subject matter jurisdiction had already attached, and continued notwithstanding Beck's unilateral assignment of an interest in those leases. Beck's assignment to XTO merely triggered the question as to whether XTO could or should be made a party pursuant to the Civil Rules.

In *Bailey*, the court observed that if jurisdiction were subject to divestiture based on events occurring after jurisdiction had attached, a defendant could indefinitely avoid federal diversity jurisdiction simply by moving to the Plaintiff's state after suit was filed. 750 F.2d at 582. Similarly, if this Court's jurisdiction could be divested every time Beck - or its assignee - assigned some interest in the Leases to a non-party, Beck could avoid any adverse judgment in perpetuity.

Movant's position in this regard is not only unreasonable if adopted by this Court it would have a crippling effect on the orderly resolution of legal disputes.

Further, Civ.R. 25(C) provides that:

(C) Transfer of interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (A) of this rule."

In point of fact in their sale agreement Beck and XTO provided that Beck would defend the title to the subject leases. Beck is contractually obligated to warrant and defend the subject lease and to hold XTO harmless from all claims. Beck has done that. In fact despite knowledge of this litigation for months XTO sat on the sidelines and let Beck fulfill its obligations in this regard. XTO did not seek to intervene in this action until after this Court's decision of July 12,

2012.

Additionally, Civ.R. 57 specifically requires that the procedure for obtaining a declaratory judgment shall be in accordance with the civil rules.

The sale from Beck to XTO was after this Court obtained jurisdiction in this case. The sale was made with the knowledge of these proceedings by both XTO and Beck. Their sales agreement noted the sale and additionally provides that Beck would defend title to these leases. These parties cannot divest a Court of its jurisdiction once it has been obtained. XTO's rights are derivative of Beck's rights.

For all of the reasons set forth herein above XTO's Motion to divest this Court of jurisdiction is not well taken. This Court has already determined that the leases XTO purchased are void. There is no reason for XTO to intervene at this time. They have no interest to protect. For all of the reasons set forth hereinabove, XTO's Motion to Intervene is denied.

SO ORDERED.

ENTER AS OF DATE OF FILING:



Judge Ed Lane

c: Attorney Ropchock/Zurz
Attorney Zurakowski
Attorney Kincaid
Attorney Abbott

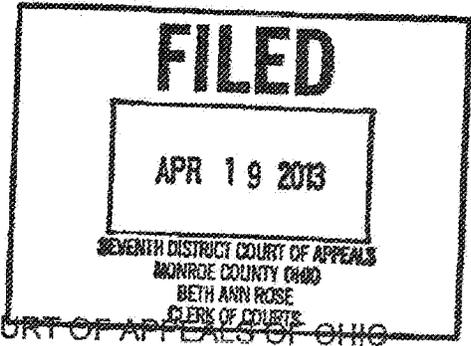
NOTICE TO CLERK'S OFFICE
FINAL APPEALABLE ORDER

THIS IS A FINAL APPEALABLE ORDER
AND THERE IS NO JUST REASON
FOR DELAY.

EXHIBIT 12

Zurakowski

rs



STATE OF OHIO)	IN THE COURT OF APPEALS OF OHIO
)	
MONROE COUNTY)	SS: SEVENTH DISTRICT
)	
CLYDE HUPP, et al.,)	
)	CASE NO. 12 MO 6
PLAINTIFFS-APPELLEES,)	
)	
VS.)	JUDGMENT ENTRY
)	
BECK ENERGY CORPORATION,)	
)	
DEFENDANT-APPELLANT.)	

A series of orders have been entered by the Monroe County Common Pleas Court in underlying civil case number 2011-345. This appeal (12MO6) is from a July 31, 2012 judgment entry granting defendant-appellees summary judgment on a complaint for declaratory judgment and quiet title. The order was entered after the trial court filed a lengthy decision on July 12, 2012 concluding that the lease between the parties was void as against public policy (offend public policy as perpetual leases). And, that appellees were entitled to "forfeiture of all rights of the Defendant to the oil and gas under the Plaintiff's properties." In the July 31, 2012 judgment entry, the trial court acknowledged it was not a final order since motions for class certification and leave to file a third amended complaint had not been ruled on.

On September 10, 2012, this Court noted that the appeal was premature and would not be effective until final judgment was entered. Subsequently, on February 8, 2013, the trial court entered an order denying XTO Energy, Inc.'s (successor in interest in certain rights of Beck Energy Corporation) motion to intervene and granting plaintiffs-appellees' motion or class certification.

XTO Energy, Inc. appealed the separate orders of February 8, 2013, as well as the grant of summary judgment of July 31, 2012 (identified on the notice of appeal by the trial court's decision date of July 12, 2012). That appeal was assigned Appeals Case No. 13MO2. (On March 28, 2013, this Court issued an order in 13MO2 limiting XTO to challenging only the order denying intervention.)

Beck Energy Corporation separately filed an appeal from the February 8, 2013 entry on March 7, 2013. That appeal was assigned Appeals Case No. 13MO3.

Given the above case history, we now address appellant's March 8, 2013 Notice of Potential Non-Final Appealable Orders.

Despite the orders of February 8, 2013 and appellees withdrawal of their motion for leave to file a third amended complaint, appellants contend that the July 31, 2012 judgment entry may not be a final or appealable order. Arguably, the class has not been defined. Second, certain counterclaims filed by Beck Energy remain pending for determination.

Appellant seeks a limited remand to allow the trial court to clearly identify the class membership and include Civ.R. 54(B) language to allow this appeal from the July 31, 2012 judgment entry to proceed.

Based on the record of trial court orders filed to date, a limited remand is ordered for sixty (60) days to allow the trial court to take further action in aid of this appeal, as identified above, should it deem it appropriate to do so at this point in the proceedings.

So Ordered. Copy to counsel and Judge Ed Lane.



JOSEPH J. VUKOVICH,



CHERYL E. WAITE,



MARY DeGENARO JUDGES.

EXHIBIT 13

COMMON PLEAS COURT
MONROE COUNTY, OHIO

COURT OF COMMON PLEAS
MONROE COUNTY, OHIO
CLERK

2013 JUN 10 AM 11:21

BETH ANN ROSE
CLERK OF COURTS

Clyde A. Hupp, et al.,	:	
Plaintiffs,	:	Case No.: 2011-345
-vs-	:	Judge Ed Lane
Beck Energy Corporation,	:	Sitting by Assignment
Defendant.	:	JOURNAL ENTRY

The above styled action is before the Court on remand from The Court of Appeals of Ohio, Seventh District, for Monroe County, Ohio. The Court of Appeals remanded this case by a Judgement Entry filed on April 19, 2013. This remand is limited to two issues. This Court is to clearly define the class and review Defendant's counter claims.

On May 6, 2013 this Court conducted a pre-trial by phone with the attorneys for the respective parties. Thereafter, this Court entered a scheduling order for the filing of briefs. That order has been complied with.

The first issue this Court must address is the definition of the class. The Plaintiffs assert that the class should be defined to include all persons who are lessors of property in the State of Ohio, or who are successors in interest, under the standard form oil and gas lease with the Defendant, Beck Energy Corporation, known as "G&T (83)." The Defendant notes that the Plaintiffs in their amended Motion for Class Certification, only sought to have the class consist of Monroe County landowners.

For a lawsuit to be maintained as a class action under Civ.R. 23, an identifiable class

must exist and the definition of the class must be unambiguous. *Warner v. Waste Mgt., Inc.* (1988), 36 Ohio St.3d 91. A description of a class is sufficiently definite if it is administratively feasible for the Court to determine whether a particular individual is a member. *Hamilton v. Ohio Sav. Bank* (1998), 82 Ohio St.3d 67. A trial court has wide discretion in describing a class and can sua sponte modify a class description requested by a party, as long as the chosen description is unambiguous such that all plaintiffs are sufficiently identifiable. *Ritt v. Billy Blanks Enterprises*, 2003 Ohio 3645 (8th Dist.). (Also, see *Baughman v. State Farm Mutual Automobile Insurance Company* (2000), 88 Ohio St.3d 480, where the Ohio Supreme Court sua sponte modified a class description). In fact, the law in Ohio not only permits but encourages a trial court to modify a class. *Konarzewski v. Ganley, Inc.*, 2009 Ohio 5827 (8th Dist.).

Accordingly, this Court has discretion to describe the certified class in any manner which complies with Civ. R. 23 and the interpretive case law. Therefore, this Court hereby determines that the definition of the class in this action shall be as follows:

“all persons who are lessors of property in the State of Ohio, or who are successors in interest of said lessors, under a standard form oil and gas lease with Beck Energy Corporation, known as (G&T (83)”, where Beck Energy Corporation has neither drilled nor prepared to drill a gas/oil well, nor included the property in a drilling unit, within the time period set forth in paragraph 3 of said Lease or thereafter.”

This decision, this Court’s prior summary judgment, declaratory judgment and quiet title relief applies in this case to all members of the class in existence on September 29, 2011, the date of filing the original class action complaint in this action.

This is the class delineation that best serves the interests of finality, judicial economy and justice. Determination of the members of this class will not be difficult. This is a clear and unambiguous class definition. It will resolve these issues once and for all and prevent years of

numerous and protracted litigation.

The Plaintiffs seek this Court to strike the Defendant Beck Energy Corporation's Answer and Counter Claims for being filed out of rule. The Defendants Memorandum in Opposition to Plaintiff's Motion For a Further Order in Aid of Appeal sets out in detail what this Court finds to be an accurate time line of the relevant dates on this issue. This Court finds that Beck Energy Corporation's Answer and Counter Claims were timely filed. However, this Court specifically finds that the Defendant's Counter Claims for declaratory judgment, permanent injunction, and quiet title are moot and res judicata as all of the issues raised in the Defendant's answer and counter claims have already been decided by this Court in its prior decisions. The Defendant has fully participated and argued its position in regard to these issues. Additionally, Defendant's counter claim for estoppel fails to state a viable claim as the doctrine of estoppel does not create a cause of action, it prevents a party from raising a claim it would otherwise have.

It is hereby ORDERED that:

- (1) The class which was certified in the February 8, 2013 Decision and Order on Plaintiffs' Motion for Class Certification is now defined as follows:

"all persons who are lessors of property in the State of Ohio, or who are successors in interest of said lessors, under a standard form oil and gas lease with Beck Energy Corporation, known as (G&T (83)", where Beck Energy Corporation has neither drilled nor prepared to drill a gas/oil well, nor included the property in a drilling unit, within the time period set forth in paragraph 3 of said Lease or thereafter."

and;

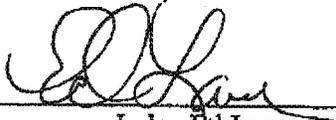
- (2) The Decision On Pending Motion of July 12, 2012, the Journal Entry of July 31,

2012, the Decision And Order on Plaintiffs' motion for Class Action Certification of February 8, 2013, the Decision And Order on XTO's Motion to Intervene of February 8, 2013, and any and all prior Docket and Journal Entries entered herein, including the declaratory, quiet title and other relief granted therein, shall apply to each and every member of the certified class; and

- (3) The Answer and Counterclaims of the Defendant are moot in as much as the issues raised therein are now moot and res judicata; and
- (4) The Journal Entry of July 31, 2012 is a final appealable order and there is no just reason for delay.
- (5) This Journal Entry is a final appealable order and there is no just reason for delay.

ALL OF WHICH IS ORDERED AND ADJUDGED ACCORDINGLY.

ENTER AS OF DATE OF FILING:



Judge Ed Lane

c: Attorney Ropchock/Zurz
Attorney Zurakowski/Reaves
Attorney Kincaid/Taylor
Attorney Abbott
Attorney Peters
Attorney Pollis

EXHIBIT 14

COURT OF COMMON PLEAS
MONROE COUNTY, OHIO
FILED

2013 JUN 24 PM 2: 26

BETH ANN ROSE
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

CLYDE A. HUPP, et al.

Plaintiffs

vs.

BECK ENERGY CORPORATION

Defendant

) CASE NO. 2011-345

) JUDGE ED LANE

) MOTION OF PLAINTIFFS FOR
) APPROVAL OF NOTICE TO CLASS
) AND ESTABLISHMENT OF
) METHOD OF SERVICE

Now come Plaintiffs, by and through counsel, and respectfully move the Court
(1) to approve their proposed Notice to all members of the plaintiff class (hereinafter
"Class") certified herein, and (2) to establish the method by which said Class is to be
provided with notice as to the existence of this lawsuit and their rights and options as
Class members. A copy of the proposed Notice is attached as Exhibit A.

Respectfully submitted,



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MEMORANDUM IN SUPPORT OF MOTION

I. PERTINENT FACTS AND PROCEDURAL BACKGROUND

Plaintiffs brought this action seeking a declaration that certain form oil and gas leases entered between Ohio landowners and Defendant Beck Energy Corporation (Beck) are void, and quiet title relief. On July 31, 2012, the Court granted the plaintiffs' motion for summary judgment. Journal Entry, July 31, 2012.

On February 8, 2013, this Court certified this case as a Civ.R. 23(B)(2) class action. Decision and Order on Plaintiffs' Motion for Class Action Certification at 15-16. The Class includes "landowners in Ohio who executed leases with [Defendant] Beck [Energy Corporation] where Beck did not drill a well on their property." *Id.* at 2. Beck timely appealed that order. By a judgment entry filed on April 19, 2013, the Court of Appeals remanded this case so that this Court could, *inter alia*, clearly define the Class. Journal Entry, Monroe County Court of Common Pleas, June 10, 2013.

By its Journal Entry filed June 10, 2013, the Court defined the Class as follows:

all persons who are lessors of property in the State of Ohio, or who are successors in interest of said lessors, under a standard form oil and gas lease with Beck Energy Corporation, known as ["G&T (83)", where Beck Energy Corporation has neither drilled nor prepared to drill a gas/oil well, nor included the property in a drilling unit, within the time period set forth in paragraph 3 of said Lease or thereafter.

Id. at 2.

The Court further provided that "this decision, this Court's prior summary judgment, declaratory judgment and quiet title relief applies in this case to all members of the class in existence on September 29, 2011, the date of filing the original class action complaint in this action." *Id.* As this Court observed, the determination of class

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members will not be difficult, as the Class has been clearly and unambiguously defined.

Id.

No notice of this lawsuit has been given to the Class. However, in that Beck mails quarterly "delay rental" payments to its lessors on whose land no well has been drilled, the names and addresses of the Class members are readily ascertainable from Beck's records. Plaintiffs now seek approval of their proposed Notice to Class members, and further request that the Court establish the method by which notice is to be delivered.

II. LAW AND ARGUMENT

Notice to class members in a case certified pursuant to Civ.R. 23(B)(2) is not expressly required. See Civ.R. 23(C)(2); *Intl. Union, United Auto., Aerospace, and Agricultural Implement Workers*, 497 F.3d 615, 630 (8th Cir. 2007); *Penland v. Warren County Jail*, 797 F.2d 332, 334 (6th Cir. 1986); *Alexander v. Aero Lodge No. 735, Intl. Assn. of Machinists and Aerospace Workers, AFL-CIO*; 585 F.2d 1364, 1373 (6th Cir. 1977). However, it is within the court's discretion to order that notice be given in a Civ.R. 23(B)(2) case:

In the conduct of actions to which this rule applies, the court may make appropriate orders * * * requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action[.]

Civ.R. 23(D)(2). In *Sweet v. Gen. Tire & Rubber Co.*, 74 F.R.D. 333, 337 n.12, the court observed that while prejudgment notice may not be required, it is within the court's

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discretion "to order the giving of notice at some later time, i.e. if the plaintiffs prevail on the merits."

In non-class action litigation, Civ.R. 58(B) requires that upon signing a judgment, the court order service of notice upon the parties in the manner prescribed by Civ.R. 5(B). Civ.R. 5(B) permits service upon represented parties by serving their counsel. In this case, although the attorneys for both the named plaintiffs and the Class have notice of the judgment and the status of this case, Class counsel cannot readily inform Class members because the names and addresses of the vast majority of Class members are not known.

In class action litigation, the trial court "must act as the guardian of the rights of the absentee class members." *Reliable Money Order, Inc. v. McKnight Sales Co.*, 281 F.R.D. 327, 337 (E.D. Wis. 2012).

Providing adequate class notice is among the "important * * * fiduciary duties shared by counsel and the court" and "ensures that absentee class members have knowledge of proceedings in which a final judgment may directly affect their interests."

Rowe v. E.I. du Pont de Nemours and Co., D. N.J. Nos. 06-1810 (RMB/AMD), 06-3080 (RMB/AMD), 2011 U.S. Dist. LEXIS 96450, *24 (Aug. 26, 2011). See also *Greenfield v. Villager Inds., Inc.*, 483 F.2d 824, 832 (3d Cir. 1973); *Holland v. Goodyear Tire & Rubber Co.*, 75 F.R.D. 743, 747 (N.D. Ohio 1975).

With respect to Civ.R. 23(B)(3) cases, the rule provides for "the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Civ.R. 23(C)(2). Where the names and addresses of class members of the class can be easily ascertained, due process

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dictates that the best notice practicable under the circumstances would be individual notice. *Larson v. AT&T Mobility LLC*, 687 F.3d 109, 126 (3d Cir. 2012). Where class members have an ongoing business relationship with the defendant, it is not uncommon for a mailing list to be compiled from the defendant's records. *E.g.*, *Larson* at 126-30; *Mamula v. Satraloy, Inc.*, 578 F.Supp. 563, 572 (S.D. Ohio 1983).

In the instant case, judgment has been granted in favor of both the named individual plaintiffs and the Class. Without notice of this case, Class members cannot decide whether to exercise their rights under Civ.R. 23(D) nor determine how best to utilize or protect their mineral rights.

Plaintiffs do not know the names and addresses of all members of the Class, or in which counties they reside. In that Beck mails quarterly delay rental payments to every lessor upon whose land no well has been drilled, a list of all Class members should be easily ascertainable from Beck's records. Although this Court has declined to require Beck to produce more extensive discovery as to its lessors, Plaintiffs herein submit that the list Beck uses for the mailing of delay rental payments, containing Class members' names and addresses—and only Class members' names and addresses—would be the most expedient basis for determining the identities of all Class members.

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III. CONCLUSION

It is critical that absentee Class members have knowledge of these proceedings, in which final judgment directly affects their interests. The "best notice practicable under the circumstances" herein would be individual notice, served by mail upon each Class member. Accordingly, Plaintiffs respectfully request that the Court approve the proposed Notice attached as Exhibit A, and establish the procedure by which notice is to be provided to each Class member.

In that only Beck has a readily accessible list of the Class members' names and addresses, Plaintiffs request that Beck be required to make available said list under such terms as the Court deems just and proper.

Respectfully submitted,



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mropchok@slaterzurz.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion and Memorandum In Support was served by ordinary U.S. mail on this 24 day of June, 2013, upon the following:

Scott M. Zurakowski
KRUGLIAK, WILKINS, GRIFFITHS
& DOUGHERTY
4775 Munson St. NW
P.O. Box 36963
Canton OH 44735-6963

Attorney for Defendant



Richard W. Zurz, Jr. #0007978
Attorney for Plaintiffs

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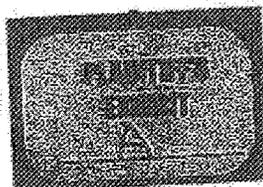
If you own land in Ohio that is subject to an oil and gas lease with Beck Energy Corporation, and if Beck Energy has not drilled a well on your land, a class action lawsuit may affect your rights.

A court authorized this Notice. This is not a solicitation from a lawyer.

- Ohio landowners have sued Beck Energy Corporation, claiming that a certain form lease, designated "Form G&T (83)," violates public policy and is void.
- The Court has allowed the lawsuit to be a class action on behalf of all Ohio landowners:
 - (1) whose land is subject to the "Form G&T (83)" lease with Beck Energy, if
 - (2) Beck Energy has not drilled a well within the time period specified in paragraph 3 of the lease, and
 - (3) the time period specified in paragraph 3 of the lease expired on or before September 29, 2011.
- The Court has ruled that these leases, identified as "Form G&T (83)" leases on the first page just above the date and the lessors' names, are void because these leases can be extended indefinitely even if Beck Energy never drills a well on the landowners' property.
- The Court has also ruled that these leases are forfeited because Beck Energy breached the implied covenant to reasonably develop.
- Beck Energy has appealed the Court's rulings that the leases are void and forfeited, and that this case can be a class action. This means that the Court's rulings could be overturned at some point in the future.
- Class members will be notified of the Court of Appeals' ruling.
- The lawsuit seeks only "equitable" relief—a declaration that the Beck Energy form leases are void, and "quiet title" relief removing the Beck Energy leases as an encumbrance on title to class members' land, thereby enabling class members to enter new leases with Beck Energy or any other company of the class member's choice, or to not enter into a lease.
- No money damages have been requested in the lawsuit, because successful resolution of the lawsuit will enable class members to bargain for new leases that could result in higher up-front payments and higher royalties than what is provided for in the Beck Energy leases.

What you must do:

Contact the attorneys identified below as "class counsel" if there is a better address at which you would prefer to receive notices concerning this lawsuit.



Landowners who fit within the description of the class are automatically included as class members in the lawsuit. You do not have to do anything to remain a member of the class, nor can you "opt out" of the class.

You will automatically receive notice of future court decisions that directly impact on whether the "Form G&T (83)" Beck Energy leases are void or valid.

You will automatically receive notice if a higher court agrees that this case can remain a class action, or whether a higher court decides that this case cannot be a class action.

For further information on the lawsuit or your rights at this stage of the case, please contact the attorneys representing the class ("class counsel"):

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(330) 762-0700 OR (800) 297-9191

EXHIBIT 15

Zurakowski

STATE OF OHIO)
)
 MONROE COUNTY) SS: SEVENTH DISTRICT
 CLYDE HUPP, et al.,)
)
 PLAINTIFFS-APPELLEES,)
)
 VS.)
)
 BECK ENERGY CORP.,)
)
 DEFENDANT-APPELLANT.)

FILED
 CASE NO. 12 MO 0
 JUL 12 2013
 JUDGMENT ENTRY
 SEVENTH DISTRICT COURT OF APPEALS
 MONROE COUNTY OHIO
 BETH ANN ROSE
 CLERK OF COURTS

On June 10, 2013 the trial court entered a further order in compliance with a remand order from this Court. This appeal and companion appeals 13 MO 2 and 13 MO 3 may now proceed to a merit determination.

In view of the final order being entered on June 10, 2013 the following unresolved motions are now being addressed as follows:

1. Appellees September 7, 2012 Motion to Dismiss is overruled;
2. Motion of XTO Energy Inc. for Leave to File an Amicus Curiae Brief is sustained. Leave is granted as of May 1, 2013 to file said brief;
3. The April 11, 2013 motion of United Association of Plumber and Pipefitters HVAC Technicians and Sprinkler Fitters Local Union 396, et al. sustained. Said amicus brief is attached to the April 11, 2013 motion.

We note appellant's opposition to the filing of amicus briefs, but in the interest of providing justice to the parties to the litigation and other stakeholders in the outcome of this Court's ruling; we will consider all briefs filed.

This appeal, 13 MO 2 and 13 MO 3 will be scheduled for oral argument on the same day.

Mary DeGenaro
Joseph W. ...
Clyde Hupp
 JUDGES

EXHIBIT 16

COURT OF COMMON PLEAS
MONROE COUNTY, OHIO
17700

2013 JUL 16 AM 10:11

SETH ANN ROSE
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

CLYDE A. HUPP, et al.,

Plaintiffs,

vs.

BECK ENERGY CORPORATION,

Defendant.

CASE NO. 2011-345

JUDGE ED LANE
(Sitting by Assignment)

**DEFENDANT BECK ENERGY CORPORATION'S MOTION TO TOLL
ALL TERMS OF THE OIL AND GAS LEASES ENTERED INTO
BETWEEN THE CLASS ACTION PLAINTIFFS AND DEFENDANT BECK
ENERGY CORPORATION**

The Defendant, Beck Energy Corporation (hereinafter "Beck Energy"), by and through the undersigned counsel, respectfully requests this Court toll all of the terms of the oil and gas Leases entered into between the class action Plaintiffs (hereinafter collectively "class action Plaintiffs") and Beck Energy Corporation from September 14, 2011, the date the original three (3) named Plaintiffs (hereinafter "named Plaintiffs") filed their Complaint, during the pendency of this litigation. Tolling the Leases' terms is necessary to protect the class action Plaintiffs' and Beck Energy's interests should the Seventh District Court of Appeals find the Leases are not void *ab initio*. A Memorandum in Support is attached hereto and incorporated herein.



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ATTORNEYS FOR DEFENDANT

MEMORANDUM IN SUPPORT

I. INTRODUCTION

The Court must grant Beck Energy's Motion to Toll all terms of the Leases, during the pendency of the litigation, for the following reasons.

(1) Case law supports Beck Energy's request to toll all terms of the oil and gas Leases entered into between Beck Energy and the class action Plaintiffs:

(a) First, if the Court does not grant the Motion to Toll, the Leases could terminate during the pendency of this litigation causing unnecessary and unfair prejudice to Beck Energy if the Seventh District Court of Appeals and/or the Ohio Supreme Court determines Beck Energy's Leases are not void *ab initio* as against public policy.

(b) Second, the failure to toll the Leases exposes the class action Plaintiffs to future litigation by Beck Energy, for lost revenue, if the Seventh District Court of Appeals reverses this Court's decision concluding the Leases are not void *ab initio* and the Leases terminate during the pendency of this litigation.

(2) Recent Monroe County case law precedent finds it appropriate to toll an oil and gas lease's term, during the pendency of litigation, when the validity of the lease is challenged. See *Three Waters, LLC v. Northwood Energy Corp.*, Monroe County Case No.

2012-042 (Aug. 9, 2012) attached as Exhibit A and *Iaina Carter, et al. v. Beck Energy Corp.*,
Monroe County Case No. 2013-092 (May 21, 2013) attached as Exhibit B.

II. FACTS/PROCEDURAL HISTORY

The following procedural history and facts are relevant to Beck Energy's Motion to Toll. The named Plaintiffs filed their original Complaint for Declaratory Judgment and to Quiet Title on September 14, 2011. The named Plaintiffs filed their Amended Class Action Complaint on September 29, 2011. One day later, the named Plaintiffs filed a Second Amended Class Action Complaint. Beck Energy filed a Motion to Dismiss and/or Change of Venue on November 30, 2011. The named Plaintiffs moved for summary judgment on February 16, 2012.

The Court granted the named Plaintiffs' Motion for Summary Judgment and denied Beck Energy's Motion to Dismiss and/or Change Venue on July 12, 2012. The Court journalized its Decision on July 31, 2012, and Beck Energy appealed on August 28, 2012. Shortly after granting summary judgment, the named Plaintiffs moved for leave to file a Third Amended Class Action Complaint on July 19, 2012. The Seventh District Court of Appeals remanded the matter to address pending motions on September 10, 2012. The named Plaintiffs withdrew their Motion to File Third Amended Class Action Complaint on September 12, 2012, and reverted back to their Second Amended Class Action Complaint requesting certification of a class consisting of only Monroe County landowners as opposed to a class of Ohio landowners.

On February 8, 2013, the Court granted the named Plaintiffs' request to certify a class. Beck Energy appealed the Court's decision on March 7, 2013. The Seventh District Court of Appeals issued a limited remand on April 19, 2013, in order for the Court to address the issue of class definition and Beck Energy's pending counterclaims. The Court issued a decision on June 10, 2013, defining the class to include all Ohio landowners, under the G&T 83 Lease, where Beck Energy neither drilled nor prepared to drill a gas/oil well, nor included the property

in a drilling unit, within the time period set forth in Paragraph 3 of the Lease. Beck Energy appealed this decision on July 3, 2013.

Beck Energy previously asked the Court to toll all terms of the oil and gas leases entered into between the named Plaintiffs and Beck Energy by way of a motion filed on October 1, 2012. The named Plaintiffs opposed the motion and the Court scheduled a non-oral hearing on the motion for October 25, 2012. The Court never issued a decision on Beck Energy's motion to toll the leases as to the named Plaintiffs.

On June 10, 2013, the Court impliedly overruled the Motion to Toll when it issued a final appealable order, on limited remand from the court of appeals, wherein the Court defined the class and found Beck Energy's counterclaims moot and barred by *res judicata*. See *Young v. Eich*, 7th Dist. No. 10 MA 191, 2012-Ohio-1687, ¶16 (“[T]he trial court mentioned, but did not explicitly rule on Appellee’s motion to strike when it entered judgment. Under Ohio law, ‘when the trial court enters judgment without expressly determining a pending motion, the motion is * * * impliedly overruled.’ *Portofe v. Portofe*, 153 Ohio App.3d 207, 2003-Ohio-3469, 792 N.E.2d 742, ¶16. Thus, the record reflects that the trial court implicitly did deny Appellee’s motion to strike.”); *Bayus v. Woodland Park Properties, Ltd.*, 7th Dist. No. 05 MA 169, 2007-Ohio-3147, ¶46 (“The trial court judge never explicitly ruled on Appellant’s motion for recusal. However, it is well settled that motions not expressly ruled on are deemed impliedly overruled. *Takacs v. Baldwin* (1995), 106 Ohio App.3d 196, 209, 665 N.E.2d 736; *Kline v. Morgan* (Jan. 3, 2001), 4th Dist. Nos. 00CA2702 & 00CA2712. Further, a trial court’s final decision impliedly denies any outstanding motions. *Seff v. Davis*, 10th Dist. No. 03AP-159, 2003-Ohio-7029, at ¶16, citing *Hayes v. Smith* (1990), 62 Ohio St. 161, 56 N.E. 879. Accordingly, the trial court denied Appellant’s motion.” (Emphasis added.))

On July 10, 2013, Beck Energy appealed, to the Seventh District Court of Appeals, the denial of its Motion to Toll, as it pertains to the named Plaintiffs. Therefore, this Motion to Toll pertains only to the Plaintiffs comprising the class action certified by the Court on June 10, 2013.

III. LAW AND ARGUMENT

A. Tolling is Required When the Validity of an Oil and Gas Lease is Challenged.

Tolling is required when “a lessor actively asserts to a lessee that his lease is terminated or subject to cancellation,” so that “the obligations of lessee to lessor are suspended during the time such claims of forfeiture are being asserted.” *Jicarilla Apache Tribe v. Andrus*, 687 F.2d 1324, 1341 (10th Cir.1982); *H&G Fossil Fuels Co. v. Roach*, 103 N.M. 793, 795-797, 715 P.2d 66 (1986) (reversing lower court’s refusal to toll lease in finding that “an extension of the [oil and gas lease] term is an appropriate remedy”); *Chesapeake Exploration, L.L.C. v. Valence Operating Co.*, 2008 WL 4240486, *4-7 (S.D.Tex.2008) (holding where repudiation by lessee occurred approximately six months prior to end of primary term, lease was tolled so as to put the parties back in their original position and the lessee will be given six months to meet habendum clause obligations).

Tolling is appropriate to prevent a lessor who wrongfully repudiates a lessee’s lease from profiting from the wrong. *B.B. Energy L.P. v. Devon Energy Production Co., L.L.P.*, 2008 WL 216583 at *11 (N.D.Tex. May 23, 2008) (citing *Kothmann v. Boley*, 158 Tex. 56, 60-61, 308 S.W.2d 1, 4 (1958). “[R]epudiation of a lease by a lessor relieves the lessee from any obligation to conduct any operation on the land in order to maintain the lease in force pending a judicial resolution of the controversy between the lessee and lessor over the validity of the lease.” *Cheyenne Resources, Inc. v. Criswell*, 714 S.W.2d 103, 105 (Tex.App.Eastland 1986).

In the present matter, there are hundreds of Leases at issue as a result of the class certification encompassing all landowners, in the State of Ohio, with Beck Energy G&T 83 Leases. All of the Leases have varying expiration dates. Despite these varying expiration dates, each Lease contains essentially the same terms, including a ten (10)-year primary term and a delay rental clause, which the class action Plaintiffs and Beck Energy paid and bargained for as part of the Lease. At the end of the primary term, including any extension thereof, if Beck Energy does not drill a well that produces in paying quantities, the Lease typically terminates.

Beck Energy currently has a total of four appeals pending before the Seventh District Court of Appeals stemming from this Court's decision granting Plaintiff's Motion for Summary Judgment and certifying a class action. Due to the number of pending appeals and the complexity of the issues presented, it is anticipated that a decision will not be rendered within the next year. By not granting Beck Energy's Motion to Toll – the Court puts Beck Energy between a rock and a hard place – it could eventually win the battle on appeal but lose the war as the Leases could terminate during the pendency of the litigation. For this reason, the Court must grant Beck Energy's Motion to Toll the Terms of the Leases.

Further, failure to toll the Leases also exposes the class action Plaintiffs to possible liability. If this Court does not toll the terms of the Leases and the Seventh District Court of Appeals reverses this Court's Decision granting Plaintiffs' summary judgment, Beck Energy may seek compensation for any lost revenue it incurred as a result of the expiration of the Leases during the pendency of the litigation. Therefore, tolling the Lease terms protects both parties and maintains the status quo during the pendency of the litigation.

B. Monroe County Case Law Precedent Favors Tolling Oil and Gas Leases During the Pendency of Litigation.

Monroe County Court of Common Pleas case law precedent supports Beck Energy's Motion to Toll All Terms of the Oil and Gas Leases where a landowner, whose property is subject to an oil and gas lease, has filed a complaint seeking to invalidate the lease. See *Three Waters, LLC, supra.*¹ In *Three Waters, LLC*, Judge Selmon entered an order denying Three Waters, LLC's motion to stop the tolling, and permitted Northwood Energy Corporation's lease terms to be tolled during the pendency of the litigation. More recently, Judge Selmon granted a Motion to Toll All Terms of the Oil and Gas Lease in *Carter, supra.*²

This Court is bound by the precedent established by Judge Selmon in the *Three Waters, LLC* and *Carter* cases. For this reason, the Court should grant Beck Energy's request to toll all terms of the Leases pending the outcome of this litigation so as not to prejudice the rights of either Beck Energy or the class action Plaintiffs.

IV. CONCLUSION

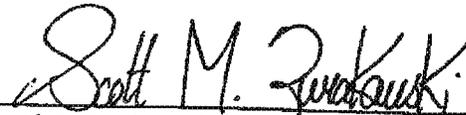
For the foregoing reasons, Beck Energy respectfully requests the Court grant its Motion to Toll All Terms of the Oil and Gas Leases Entered Into Between Class Action Plaintiffs and Defendant Beck Energy Corporation. The tolling period would commence on September 14, 2011, the date the named Plaintiffs filed their Complaint, and continue during the pendency of the litigation, including appeals by either party.

Beck Energy proposes the tolling period expire on the seventh day following the date the time period ends for filing a notice of appeal of the Court's last appealable judgment entry. At the expiration of the tolling period, Beck Energy, and any successor/assigns would

¹ Attached as Exhibit A.

² Attached as Exhibit B.

have as much time to meet any and all obligations under the oil and gas Leases as they had as of September 14, 2011. During the tolling period, Beck Energy would be prohibited from drilling any wells pursuant to the oil and gas Leases tolled.



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& DOUGHERTY CO., L.P.A.
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Phone: (330) 497-0700/Fax: (330) 497-4020
szurakowski@kwgd.com
ATTORNEYS FOR DEFENDANT

PROOF OF SERVICE

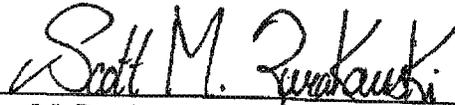
I hereby certify that a copy of the foregoing was sent by Ordinary U.S. Mail,
pursuant to Civ.R. 5(B)(2)(c), this 12 day of July 2013, to:

Mark A. Ropchock, Esq.
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Akron, Ohio 44308

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Attorneys for Plaintiffs

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Pittsburgh, Pennsylvania 15222
Attorneys for XTO Energy, Inc.



Scott M. Zurkowski (0069040), of
KRUGLIAK, WILKINS, GRIFFITHS
& DOUGHERTY CO., L.P.A.
ATTORNEYS FOR DEFENDANT

COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

IN THE COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

AUG -9 PM 1:29
CLERK OF COURTS

DOCKET & JOURNAL ENTRY

THREE WATERS, LLC

Plaintiff,

Case No. 2012-042

Vs.

NORTHWOOD ENERGY CORPORATION,

Defendant.

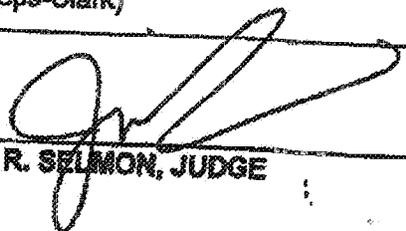
Date of Entry: August 9, 2012

The within matter is before the Court on Plaintiff's Motion to Stop Tolling Period and Defendant's Memorandum in Opposition to Plaintiff's Motion to Stop Tolling Period. Plaintiff's Motion is hereby denied. This Court's prior orders hereby remain unchanged.

(COPIES SENT THIS DAY TO:

Attorney Ethan Vessels, Attorney Flite Freimann, Attorney Gregory D. Russell, Attorney Thomas H. Fusonie, and Attorney Lija K. Kaieps-Clark)

(Approved)



JULIE R. SELMON, JUDGE

Journal _____ Page _____

jd

EXHIBIT A

COURT OF COMMON PLEAS
MONROE COUNTY, OHIO
FILED

2013 MAY 21 PM 2:39

BETH ANN ROSE
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
BELMONT COUNTY, OHIO
MONROE

ILAINA CARTER, et al.

Plaintiffs,

vs.

BECK ENERGY CORPORATION,

Defendant.

CASE NO. 2013-092

JUDGE JULIE SELMON

ORIGINAL

JUDGMENT ENTRY / ORDER

This cause came to be heard upon the filing of Defendant, Beck Energy Corporation's Motion to Toll All the Terms of the Oil and Gas Lease, and the opposition thereto. For good cause, the Court does hereby

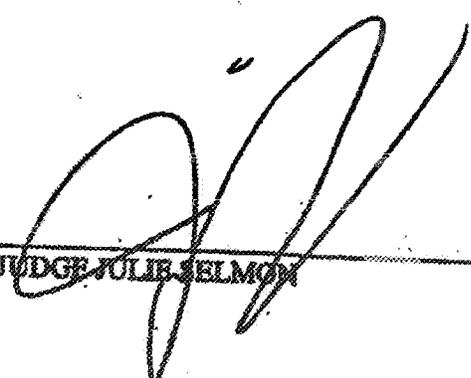
ORDER, ADJUDGE AND DECREE to toll all of the terms of the oil and gas lease, including any amendments and/or ratifications to said oil and gas lease entered into between Plaintiffs, and/or Plaintiffs' predecessors in title, and Beck Energy, including, but not limited to: the oil and gas lease dated April 13, 2004, between Willa Carter and Beck Energy, dated April 14, 2004, and recorded at the Monroe County Official Records at Volume 118, Page 274 on May 11, 2004.

The tolling period shall commence on March 13, 2013 (the date Plaintiff filed her Complaint) and shall continue during the pendency of the litigation, including any appeals by

either party. The tolling period shall expire on the seventh day following the date the time period ends for filing a notice of appeal of the Court's last appealable judgment entry. At the expiration of the tolling period, Beck Energy, and any successors and/or assigns shall have as much time to meet any and all obligations under the oil and gas lease as they had as of March 13, 2013.

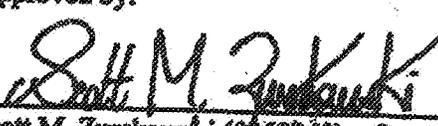
During the tolling period, Beck Energy is prohibited from drilling any wells pursuant to the oil and gas lease tolled.

IT IS SO ORDERED.



JUDGE JULIE SELMON

Approved by:



Scott M. Zurakowski (0069040), of
KRUGLIAK, WILKINS, GRIFFITHS
& DOUGHERTY CO., L.P.A.
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ATTORNEYS FOR DEFENDANT

EXHIBIT 17

**COMMON PLEAS COURT
MONROE COUNTY, OHIO**

COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

2013 AUG -2 PM 1:58

BETH ANN RUSE
CLERK OF COURTS

Clyde A. Hupp, et al.,	:	
Plaintiffs,	:	Case No.: 2011-345
-vs-	:	Judge Ed Lane
Beck Energy Corporation,	:	Sitting by Assignment
Defendant.	:	DECISION AND ENTRY

This matter is before this Court on the Motion of the Defendant, Beck Energy Corporation, to toll the operation of the original Plaintiff's leases pending this appeal. This motion was filed in this Court October 1, 2012, three months after this court's decision granting the Plaintiffs' Summary Judgment. That decision is currently on appeal. The Court of Appeals for Monroe County, Ohio, Seventh Judicial District, recently remanded the case for this Court to decide two very limited issues. This Court has now dealt with the issues presented on remand.

It is this Court's desire that all matters in controversy be presented to the Court of Appeals so that this case be processed as expeditiously as possible. The Plaintiffs note that this Court's failure to toll the provisions of these leases is one of the issues presented to the Court of Appeals by this Defendant.

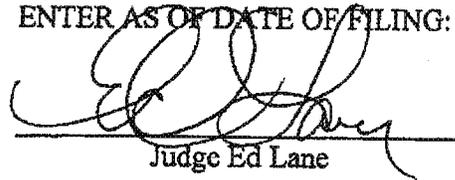
The Defendant notes that the Monroe County Common Pleas Court has recently tolled lease provisions involving leases that may eventually be included in this class if the Plaintiffs prevail and this matter goes forward as a class action. This Court has recently granted a stay in this action, provided the Defendant posts an appellant bond.

ALETHA CARVER

This court believes the leases of the original Plaintiffs in this action should be tolled pending the Defendant's appeal. This is the relief previously requested by the Defendant and not decided by this court. This decision is in keeping with the current line of decisions of the Monroe County Common Pleas Court. If the Defendant desires to have this order expanded it can present that issue to the Court of Appeals.

ALL OF WHICH IS ORDERED, ADJUDGED AND DECREED ACCORDINGLY.

ENTER AS OF DATE OF FILING:



Judge Ed Lane

c: Attorneys of record

NOTICE TO CLERK'S OFFICE
FINAL APPEALABLE ORDER

EXHIBIT 18

COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

AUG -8 AM 10:21

SETH ANN RUGL
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

CLYDE A. HUPP, et al.,
Plaintiffs,

vs.

BECK ENERGY CORPORATION,
Defendant.

CASE NO. 2011-345

JUDGE ED LANE
(Sitting by Assignment)

ORIGINAL

DECISION AND ENTRY (ON PLAINTIFFS' MOTION FOR APPROVAL OF
NOTICE TO CLASS AND ESTABLISHMENT OF METHOD OF SERVICE)

This cause came before this Court on the Motion of the Plaintiffs for Approval of Notice to Class and Establishment of Method of Service. Defendant, Beck Energy Corporation filed a Memorandum in Opposition to Plaintiffs' Motion and the Court heard oral arguments on July 23, 2013.

The Court, having reviewed Plaintiffs' Motion, Defendant's Memorandum in Opposition, and having considered the oral arguments, does not find Plaintiffs' Motion for Approval of Notice to Class and Establishment of Method of Service to be well taken and hereby ORDERS the same DENIED.

IT IS SO ORDERED.

Enter as of date of filing:



JUDGE ED LANE

NOTICE TO CLERK'S OFFICE
FINAL APPEALABLE ORDER

Approved by:

Scott M. Zurakowski / AWC
Scott M. Zurakowski (0069040), of
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ATTORNEYS FOR DEFENDANT,
BECK ENERGY CORPORATION

Mark A. Ropchok / AWC / per email consent
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Richard V. Zurz, Jr. (0007978)
SLATER & ZURZ, LLP
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Akron, Ohio 44308
ATTORNEYS FOR PLAINTIFFS

EXHIBIT 19

COURT OF COM...

FILED
AUG 16 2013
SEVENTH DISTRICT COURT OF APPEALS
MONROE COUNTY OHIO
BETH ANN ROSE
CLERK OF COURTS

**IN THE COURT OF APPEALS OF OHIO
SEVENTH APPELLATE DISTRICT
MONROE COUNTY, OHIO**

CLYDE A. HUPP, et al.,

Plaintiffs/Appellees,

vs.

BECK ENERGY CORPORATION,

Defendant/Appellant.

CASE NOS. 2013-MO-3
2013-MO-11, 2013-MO-12

On Appeal from the Monroe County
Court of Common Pleas
Case No. 2011-345

ORIGINAL

**APPELLANT BECK ENERGY CORPORATION'S EMERGENCY
MOTION FOR INJUNCTIVE RELIEF PURSUANT TO APP.R. 7(A)**

I. INTRODUCTION

At the direction of the Monroe County Court of Common Pleas, Appellant, Beck Energy Corporation ("Beck Energy") moves this Honorable Court, pursuant to App.R. 7(A), for affirmative injunctive relief from the trial court's August 2, 2013 decision and entry,¹ which tolled the leases for the named plaintiffs only, leaving the leases of the entire class subject to termination during the pendency of this ongoing litigation.²

¹ Exhibit A.

² In its entry, the trial court advised, "[i]f the Defendant desires to have this order expanded, it can present that issue

II. BACKGROUND FACTS

On October 1, 2012, Beck Energy filed a motion to toll the terms of the oil and gas leases entered into between the class action plaintiffs and Beck Energy.³ On June 10, 2013, Beck Energy determined the trial court impliedly overruled the motion to toll when it, upon remand from this Honorable Court, failed to address the motion, issued a final appealable order defining the class and overruled as moot all of Beck Energy's counterclaims.⁴ Thereafter, on July 16, 2013, Beck Energy filed another motion to toll the terms of the oil and gas leases as to the class action plaintiffs.⁵

On August 2, 2013, the trial court granted the relief sought only in part: it tolled the leases for the three named plaintiffs, but not for the entire class—i.e., “all persons who are lessors of property in the State of Ohio, or who are successors in interest of said lessors, under a standard form oil and gas lease with Beck Energy Corporation[.]” In other words, Beck Energy could win the battle on appeal but lose the war as only three of the several hundred leases at issue have been tolled. Accordingly, Beck Energy requests this Honorable Court grant affirmative injunctive relief to expand the trial court's order, thereby providing meaningful protection and relief during the pendency of this litigation.⁶

III. LAW AND ARGUMENT

Civ.R. 62(D) provides: “The provisions in this rule [Stay of proceedings to enforce a judgment] do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or *grant an*

to the Court of Appeals.”

³ Exhibit B.

⁴ Exhibit C.

⁵ Exhibit D.

⁶ A transcript of the hearing on the Motion to Toll has been ordered, and Beck Energy will supplement its motion for injunctive relief with the transcript when made available. However, since this motion does not present a factual dispute and concerns only a legal issue, a review of the transcript is not necessary prior to granting the requested injunctive relief.

injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.” (Emphasis added.)

In conjunction with the Civil Rule, App.R. 7(A) provides for application of “an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal * * * made to the court of appeals or to a judge thereof * * *.” While a stay must ordinarily be sought in the first instance in the trial court, App.R. 7(A) imposes no such obligation for requesting injunctive relief. Rather, the rule expressly notes that a stay must first be sought in the trial court “except in cases [as here] of injunction pending appeal * * *.”; *See also Dayton City School Dist. Bd. of Edn. v. Dayton Edn. Assn.*, 80 Ohio App.3d 758 (2d Dist.1992) (noting that under App.R.7(A) and Civ.R. 62(D), an appellate court may order injunctive relief.) Additionally, pursuant to App.R. 7(A), Beck Energy has provided reasonable written notice to all parties of its intent to file the Motion for Injunctive Relief.⁷

This case presents an instance where such relief is wholly appropriate. The trial court clearly recognized the legal merit in tolling the leases; indeed, tolling is required when the validity of an oil and gas lease is challenged. *See Jicarilla Apache Tribe v. Andrus*, 687 F.2d 1324, 1341 (10th Cir.1982); *See Also* Exhibit B, Exhibit D (Beck Energy Motions for Tolling). In fact, Judge Selmon, in the Monroe County Court of Common Pleas, previously granted motions to toll where the validity of leases are being challenged in *Three Waters, LLC v. Northwood Energy Corp.*, Case No. 2012-042, and *Carter v. Beck Energy Corp.*, Case No. 2013-092.⁸ Therefore, the affirmative injunctive relief requested by Beck Energy is recognized as appropriate in order to maintain the status quo until this Court can resolve the matter.

⁷ Exhibit E.

⁸ Copies of these judgment entries are part of Exhibit D.

However, the limited scope of the trial court's order in the present case precludes any meaningful relief for Beck Energy, especially given the sheer volume of the class and the number of affected leases.

IV. CONCLUSION

For these reasons, Beck Energy respectfully requests injunctive relief in the form of an order tolling the oil and gas leases that are the subject of this action from the date of the Complaint in the underlying action (September 14, 2011) until the resolution of these appeals and any further disposition if the case is remanded.

Respectfully submitted,



Scott M. Zurakowski (0069040),
Aletha M. Carver (0059157),
William G. Williams (0013107),
Gregory W. Watts (0082127), and
Ryan W. Reaves (0089629), of
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ATTORNEYS FOR DEFENDANT/APPELLANT

PROOF OF SERVICE

I hereby certify that a copy of the foregoing was sent by Ordinary U.S. Mail, pursuant to App.R. 13(C)(3), this _____ day of August 2013, to:

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Attorneys for Plaintiffs

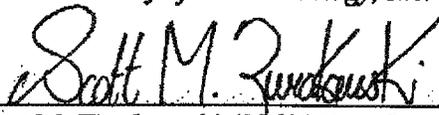
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KRUGLIAK, WILKINS, GRIFFITHS
& DOUGHERTY CO., L.P.A.
ATTORNEYS FOR DEFENDANT/APPELLANT

Exhibit A

**COMMON PLEAS COURT
MONROE COUNTY, OHIO**

COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

2013 AUG -2 PM 1: 58

LEITH ANN RUSSELL
CLERK OF COURTS

Clyde A. Hupp, et al.,

Plaintiffs,

-vs-

Beck Energy Corporation,

Defendant.

Case No.: 2011-345

Judge Ed Lane
Sitting by Assignment

DECISION AND ENTRY

.....

This matter is before this Court on the Motion of the Defendant, Beck Energy Corporation, to toll the operation of the original Plaintiff's leases pending this appeal. This motion was filed in this Court October 1, 2012, three months after this court's decision granting the Plaintiffs' Summary Judgment. That decision is currently on appeal. The Court of Appeals for Monroe County, Ohio, Seventh Judicial District, recently remanded the case for this Court to decide two very limited issues. This Court has now dealt with the issues presented on remand.

It is this Court's desire that all matters in controversy be presented to the Court of Appeals so that this case be processed as expeditiously as possible. The Plaintiffs note that this Court's failure to toll the provisions of these leases is one of the issues presented to the Court of Appeals by this Defendant.

The Defendant notes that the Monroe County Common Pleas Court has recently tolled lease provisions involving leases that may eventually be included in this class if the Plaintiffs prevail and this matter goes forward as a class action. This Court has recently granted a stay in this action, provided the Defendant posts an appellant bond.

This court believes the leases of the original Plaintiffs in this action should be tolled pending the Defendant's appeal. This is the relief previously requested by the Defendant and not decided by this court. This decision is in keeping with the current line of decisions of the Monroe County Common Pleas Court. If the Defendant desires to have this order expanded it can present that issue to the Court of Appeals.

ALL OF WHICH IS ORDERED, ADJUDGED AND DECREED ACCORDINGLY.

ENTER AS OF DATE OF FILING:


Judge Ed Lane

c: Attorneys of record

NOTICE TO CLERK'S OFFICE
FINAL APPEALABLE ORDER

Exhibit B

2011-345

DEPT OF SCU

IN THE COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

CLYDE A. HUPP, et al.

Plaintiffs,

vs.

BECK ENERGY CORPORATION,

Defendant.

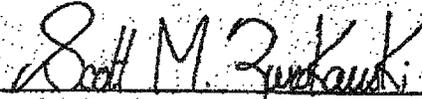
CASE NO. 2011-345

JUDGE ED LANE
(Sitting by Assignment)

**DEFENDANT, BECK ENERGY CORPORATION'S. MOTION TO TOLL
ALL TERMS OF THE OIL AND GAS LEASES ENTERED INTO
BETWEEN PLAINTIFFS AND DEFENDANT, BECK ENERGY
CORPORATION**

Now comes the Defendant, Beck Energy Corporation (hereinafter "Defendant"), by and through the undersigned counsel, and respectfully requests that this Court toll all of the terms of the oil and gas leases entered into between Plaintiffs and Defendant from September 14, 2011, (the date Plaintiffs filed their Complaint) during the pendency of this litigation, as Plaintiffs' claims effectively prevent Defendant from drilling a well, or otherwise exercising its lease rights. A Memorandum in support of Defendant's Motion is attached hereto and incorporated herein by reference.

Respectfully submitted



Scott M. Zurakowski (0069040),
William G. Williams (0013107),
Nathan D. Vaughan (0077713),
John A. Burnworth (0077151),
Gregory W. Watts (0082127),
Aletha M. Carver (0059157), of
KRUGLIAK, WILKINS, GRIFFITHS
& DOUGHERTY CO., L.P.A.
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Canton, Ohio 44735-6963
Phone: (330) 497-0700/Fax: (330) 497-4020
szurakowski@kwgd.com
ATTORNEYS FOR DEFENDANT

MEMORANDUM

I. FACTS

On September 14, 2011, Plaintiffs filed their Complaint against Defendant seeking to have this court enter a declaratory judgment that the oil and gas leases (hereinafter "Lease" or "Leases") entered into between Plaintiffs and Defendant be deemed forfeited, cancelled, unenforceable, voided and held for naught due to allegations that Defendant breached express covenants and implied covenants, that Defendant abandoned the leasehold interests, the terms and conditions of the Leases are unconscionable, violative of Ohio public policy, and that there has been a failure of consideration. In addition, Plaintiffs also sought to have the Court quiet title to their real property encumbered by the Leases and to have this court extinguish any interest which Defendant may claim to have in and to the Plaintiffs' real property as a result of the Leases.

Thereafter, on September 29, 2011, the Plaintiffs filed an Amended Class Action Complaint adding additional plaintiffs and making class action allegations, in addition to the Plaintiffs' claims for declaratory judgment and to quiet title. One day later, on September 30, 2011, Plaintiffs filed their Second Amended Class Action Complaint naming additional plaintiffs, without seeking leave from this Court, as expressly required by Ohio Civ. R. 15.

On July 12, 2012, the Trial Court issued a decision granting Plaintiffs', Clyde A. Hupp, et al.'s, Motion for Summary Judgment on the basis the Leases violate public policy and are therefore void *ab initio*. On this same date, the Trial Court overruled Defendant's Motion to Dismiss and/or Change of Venue.¹ On July 31, 2012, the Trial Court issued a Journal Entry incorporating the decision it previously issued on July 12, 2012.

¹ The trial court indicated it would reconsider Defendant's Motion for Change of Venue in the event a jury trial in any remaining matter is appropriate (Journal Entry, July 31, 2012, at p. 1).

On July 18, 2012, prior to the issuance of the Journal Entry, Plaintiffs moved for leave to file a Third Amended Class Action Complaint to include in the proposed class all landowners/lessors in Ohio, located outside Monroe County who may be affected by the Trial Court's decision filed on July 12, 2012. On this same date, Plaintiffs also filed a Motion for Class Action Certification. In its Journal Entry, the Trial Court specifically indicated that, "[T]hose two motions are still pending. Accordingly, as this entry does not dispose of all pending matters, this is not a final appealable order." (Journal Entry, July 31, 2012, at p. 2).

Defendant filed a Notice of Appeal, of the Trial Court's Journal Entry, on August 28, 2012. On September 10, 2012, the Seventh District Court of Appeals issued a Judgment Entry ordering a remand to the Trial Court to address pending motions. (Judgment Entry, September 10, 2012, at p. 1).

On September 12, 2012, Plaintiffs filed Notice of Withdrawal to File Third Amended Class Action Complaint. Plaintiffs also filed an Amended Motion for Class Action Certification requesting the Trial Court certify a class consisting of only Monroe County landowners as opposed to a class of all Ohio landowners. As a result, on September 14, 2012, Defendant immediately filed its Answer and Counterclaim to the Second Amended Class Action Complaint.

On September 17, 2012, Defendant filed a Memorandum in Opposition to Plaintiffs' Amended Motion for Class Action Certification and Plaintiffs filed a Motion to Strike Defendant's Answer and Counterclaims and/or Motion for Default Judgment.

Finally, on Monday, September 17, 2012, this Court held a status conference ordering all parties to file any desired motions, including Defendant's Motion to Toll the Lease Terms.

II. SUMMARY OF ARGUMENT

The Trial Court must grant Defendant's Motion to toll all terms of Leases, during the pendency of the litigation, for three reasons. First, if this Trial Court does not grant Defendant's Motion to Toll, the Leases could terminate during the pendency of this litigation, causing unnecessary and unfair prejudice to Defendant. In other words, Defendant could ultimately win the battle on appeal but lose the war. This is particularly crucial considering the Ohio Supreme Court has determined perpetual leases to be valid and enforceable. See, *Central Ohio Natural Gas & Fuel Co. v. Eckert*, 70 Ohio St. 127, 71 N.E.2d 281 (1904); *Hallock v. Kintzler*, 142 Ohio St. 287, 51 N.E.2d 905 (1943); and *Myers v. East Ohio Gas Co.*, 51 Ohio St.2d 121, 364 N.E.2d 1369 (1977).² Finally, recent case precedent in Monroe County Common Pleas Court has determined it is appropriate to toll an oil and gas lease's term, when the oil and gas lease is being attacked, during the pendency of the litigation.

III. LAW AND ARGUMENT

1. Tolling is an Appropriate Remedy when an Oil and Gas Leases Validity is Attacked.

Tolling is appropriate when "a lessor actively asserts to a lessee that his lease is terminated or subject to cancellation," so that "the obligations of lessee to lessor are suspended during the time such claims of forfeiture are being asserted." *Jicarilla Apache Tribe v. Andrus*, 687 F.2d 1324, 1341 (10th Cir. 1982); *H&G Fossil Fuels Company v. Roach*, 103 N.M. 793, 795-97, 715 P.2d 66 (1986) (reversing lower court's refusal to toll lease in finding that "an extension of the [oil and gas lease] term is an appropriate remedy"); *Chesapeake Exploration, L.L.C. v. Valence Operating Co.*, 2008 WL 4240486, *4-7 (S.D.Tex., 2008) (holding where repudiation by lessee occurred approximately six months prior to end of primary term, lease was

² The parties' Memorandums on Summary Judgment failed to include any mention of these Ohio Supreme Court cases.

tolled so as to put the parties back in their original position and the lessee will be given six months to meet habendum clause obligations).

Tolling is appropriate to prevent a lessor who wrongfully repudiates a lessee's lease from profiting from the wrong. *B.B. Energy L.P. v. Devon Energy Production Co., L.L.P.*, 2008 WL 216583 at *11 (N.D.Tex. May 23, 2008) (citing *Kothmann v. Boley*, 158 Tex. 56, 60-61, 308 S.W.2d 1, 4 (1958)). "[R]epudiation of a lease by a lessor relieves the lessee from any obligation to conduct any operation on the land in order to maintain the lease in force pending a judicial resolution of the controversy between the lessee and lessor over the validity of the lease." *Cheyenne Resources, Inc. v. Criswell*, 714 S.W.2d 103, 105 (Tex.App.-Eastland 1986, no writ).

In the present matter, there are three Leases at issue, the Hustack Lease; the Hubbard Lease; and the Majors Lease. The primary term of the Hustack Lease will expire on August 13, 2018. The primary term of the Hubbard Lease will expire on March 1, 2016, and the primary term of the Majors Lease will expire on October 10, 2015. Each lease contains essentially the same terms, including a ten (10)-year primary term and a delay rental clause, which Plaintiffs and Defendant paid and bargained for as a part of the Lease. At the end of the primary term, including any extension thereof, if Defendant does not drill a well that produces in paying quantities, the Lease typically terminates.

Defendant believes Plaintiffs' claims are without merit and not supported by Ohio Supreme Court case law. In fact, current Ohio Supreme Court case law supports Defendant's position that the oil and gas leases at issue are valid and enforceable. See, *Central Ohio Natural Gas & Fuel Co. v. Eckert, Id.*; *Hallock v. Kintzler, Id.*; and *Myers v. East Ohio Gas Co., Id.* Yet, this Court has granted Plaintiffs' Motion for Summary Judgment determining the leases at issue to be void *ab initio*. As this Court and all counsel is well aware, once the necessary issues are

resolved, the Defendant will be filing a Notice of Appeal of the Court's summary judgment decision.

By doing so, this Court has put Defendant between a rock and hard place – or in a position that it could ultimately win the battle on appeal but lose the war as the Leases could terminate, during the pendency of this litigation. For this reason, the Trial Court must grant Defendant's Motion to Toll the Terms of the Leases during the pendency of this litigation.

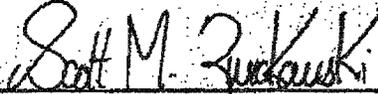
2. Monroe County Court of Common Pleas Case Precedent Supports Defendant's Motion to Toll.

The Monroe County Court of Common Pleas has also recently recognized that tolling of an oil and gas lease is an appropriate remedy, where a landowner, whose property is subject to the lease, has filed a complaint seeking to invalidate the oil and gas lease. *See, Three Waters, LLC v. Northwood Energy Corporation*, Monroe County Court of Common Pleas Case No. CVH2012-042. In the *Northwood Energy Corporation* case, Judge Julie Selmon entered an order denying Three Waters, LLC's motion to stop the tolling, and permitted Northwood Energy Corporation's lease terms to be tolled during the pendency of the litigation. A copy of said Judgment Entry is attached hereto as Exhibit "A". As such, this Court is bound by the Monroe County Court of Common Pleas case precedent, and for this reason this Court should grant Defendant's Motion to toll the terms of the leases pending the outcome of the litigation so as to not prejudice the rights of Defendant.

IV. CONCLUSION

For the foregoing reasons, Defendant, Beck Energy Corporation, respectfully requests that this Court grant Defendant's Motion to Toll the Lease Terms during the pendency of the within litigation.

Respectfully submitted.



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Nathan D. Vaughan (0077713),
John A. Burnworth (0077151),
Gregory W. Watts (0082127),
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by Ordinary U.S. Mail

this 28 day of September, 2012, upon:

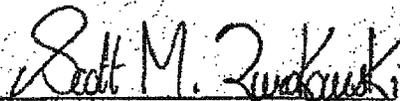
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Scott M. Zurkowski (0069040), of
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ATTORNEYS FOR DEFENDANT

IN THE COURT OF COMMON PLEAS OF
MONROE COUNTY, OHIO

COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

AUG -9 PM 1:29

JULIE R. SELMON
CLERK OF COURTS

DOCKET & JOURNAL ENTRY

THREE WATERS, LLC

Plaintiff,

Case No. 2012-042

Vs.

NORTHWOOD ENERGY CORPORATION,

Defendant.

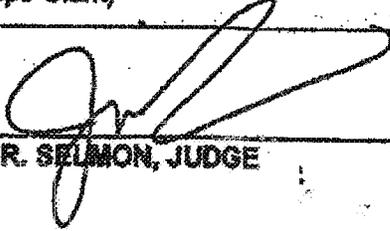
Date of Entry: August 9, 2012

The within matter is before the Court on Plaintiff's Motion to Stop Tolling Period and Defendant's Memorandum in Opposition to Plaintiff's Motion to Stop Tolling Period. Plaintiff's Motion is hereby denied. This Court's prior orders hereby remain unchanged.

(COPIES SENT THIS DAY TO:

Attorney Ethan Vessels, Attorney Flite Freimann, Attorney Gregory D. Russell, Attorney Thomas H. Fusonie, and Attorney Lija K. Kaleps-Clark)

(Approved)



JULIE R. SELMON, JUDGE

Journal _____ Page _____

jd

EXHIBIT A

Exhibit C

**COMMON PLEAS COURT
MONROE COUNTY, OHIO**

**COURT OF COMMON PLEAS
MONROE COUNTY, OHIO**

2013 JUN 10 AM 11:21

**BETH ANN ROSE
CLERK OF COURTS**

Clyde A. Hupp, et al.,

Plaintiffs,

-vs-

Beck Energy Corporation,

Defendant.

Case No.: 2011-345

Judge Ed Lane
Sitting by Assignment

JOURNAL ENTRY

The above styled action is before the Court on remand from The Court of Appeals of Ohio, Seventh District, for Monroe County, Ohio. The Court of Appeals remanded this case by a Judgement Entry filed on April 19, 2013. This remand is limited to two issues. This Court is to clearly define the class and review Defendant's counter claims.

On May 6, 2013 this Court conducted a pre-trial by phone with the attorneys for the respective parties. Thereafter, this Court entered a scheduling order for the filing of briefs. That order has been complied with.

The first issue this Court must address is the definition of the class. The Plaintiffs assert that the class should be defined to include all persons who are lessors of property in the State of Ohio, or who are successors in interest, under the standard form oil and gas lease with the Defendant, Beck Energy Corporation, known as "G&T (83)." The Defendant notes that the Plaintiffs in their amended Motion for Class Certification, only sought to have the class consist of Monroe County landowners.

For a lawsuit to be maintained as a class action under Civ.R. 23, an identifiable class

must exist and the definition of the class must be unambiguous. *Warner v. Waste Mgt., Inc.* (1988), 36 Ohio St.3d 91. A description of a class is sufficiently definite if it is administratively feasible for the Court to determine whether a particular individual is a member. *Hamilton v. Ohio Sav. Bank* (1998), 82 Ohio St.3d 67. A trial court has wide discretion in describing a class and can sua sponte modify a class description requested by a party, as long as the chosen description is unambiguous such that all plaintiffs are sufficiently identifiable. *Ritt v. Billy Blanks Enterprises*, 2003 Ohio 3645 (8th Dist.). (Also, see *Baughman v. State Farm Mutual Automobile Insurance Company* (2000), 88 Ohio St.3d 480, where the Ohio Supreme Court sua sponte modified a class description). In fact, the law in Ohio not only permits but encourages a trial court to modify a class. *Konarzewski v. Ganley, Inc.*, 2009 Ohio 5827 (8th Dist.).

Accordingly, this Court has discretion to describe the certified class in any manner which complies with Civ. R. 23 and the interpretive case law. Therefore, this Court hereby determines that the definition of the class in this action shall be as follows:

“all persons who are lessors of property in the State of Ohio, or who are successors in interest of said lessors, under a standard form oil and gas lease with Beck Energy Corporation, known as (G&T (83)”, where Beck Energy Corporation has neither drilled nor prepared to drill a gas/oil well, nor included the property in a drilling unit, within the time period set forth in paragraph 3 of said Lease or thereafter.”

This decision, this Court's prior summary judgment, declaratory judgment and quiet title relief applies in this case to all members of the class in existence on September 29, 2011, the date of filing the original class action complaint in this action.

This is the class delineation that best serves the interests of finality, judicial economy and justice. Determination of the members of this class will not be difficult. This is a clear and unambiguous class definition. It will resolve these issues once and for all and prevent years of

numerous and protracted litigation.

The Plaintiffs seek this Court to strike the Defendant Beck Energy Corporation's Answer and Counter Claims for being filed out of rule. The Defendants Memorandum in Opposition to Plaintiff's Motion For a Further Order in Aid of Appeal sets out in detail what this Court finds to be an accurate time line of the relevant dates on this issue. This Court finds that Beck Energy Corporation's Answer and Counter Claims were timely filed. However, this Court specifically finds that the Defendant's Counter Claims for declaratory judgment, permanent injunction, and quiet title are moot and res judicata as all of the issues raised in the Defendant's answer and counter claims have already been decided by this Court in its prior decisions. The Defendant has fully participated and argued its position in regard to these issues. Additionally, Defendant's counter claim for estoppel fails to state a viable claim as the doctrine of estoppel does not create a cause of action, it prevents a party from raising a claim it would otherwise have.

It is hereby ORDERED that:

- (1) The class which was certified in the February 8, 2013 Decision and Order on Plaintiffs' Motion for Class Certification is now defined as follows:

"all persons who are lessors of property in the State of Ohio, or who are successors in interest of said lessors, under a standard form oil and gas lease with Beck Energy Corporation, known as (G&T (83)", where Beck Energy Corporation has neither drilled nor prepared to drill a gas/oil well, nor included the property in a drilling unit, within the time period set forth in paragraph 3 of said Lease or thereafter."

and;

- (2) The Decision On Pending Motion of July 12, 2012, the Journal Entry of July 31,

2012, the Decision And Order on Plaintiffs' motion for Class Action Certification of February 8, 2013, the Decision And Order on XTO's Motion to Intervene of February 8, 2013, and any and all prior Docket and Journal Entries entered herein, including the declaratory, quiet title and other relief granted therein, shall apply to each and every member of the certified class; and

- (3) The Answer and Counterclaims of the Defendant are moot in as much as the issues raised therein are now moot and res judicata; and
- (4) The Journal Entry of July 31, 2012 is a final appealable order and there is no just reason for delay.
- (5) This Journal Entry is a final appealable order and there is no just reason for delay.

ALL OF WHICH IS ORDERED AND ADJUDGED ACCORDINGLY.

ENTER AS OF DATE OF FILING:



Judge Ed Lane

c: Attorney Ropchock/Zurz
Attorney Zurakowski/Reaves
Attorney Kincaid/Taylor
Attorney Abbott
Attorney Peters
Attorney Pollis

Exhibit D

COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

2013 JUL 16 AM 10:11

ETHAN ROSE
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

CLYDE A. HUPP, et al.,

Plaintiffs,

vs.

BECK ENERGY CORPORATION,

Defendant.

CASE NO. 2011-345

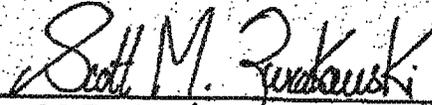
JUDGE ED LANE

(Sitting by Assignment)

**DEFENDANT BECK ENERGY CORPORATION'S MOTION TO TOLL
ALL TERMS OF THE OIL AND GAS LEASES ENTERED INTO
BETWEEN THE CLASS ACTION PLAINTIFFS AND DEFENDANT BECK
ENERGY CORPORATION**

The Defendant, Beck Energy Corporation (hereinafter "Beck Energy"), by and through the undersigned counsel, respectfully requests this Court toll all of the terms of the oil and gas Leases entered into between the class action Plaintiffs (hereinafter collectively "class action Plaintiffs") and Beck Energy Corporation from September 14, 2011, the date the original three (3) named Plaintiffs (hereinafter "named Plaintiffs") filed their Complaint, during the pendency of this litigation. Tolling the Leases' terms is necessary to protect the class action Plaintiffs' and Beck Energy's interests should the Seventh District Court of Appeals find the Leases are not void *ab initio*. A Memorandum in Support is attached hereto and incorporated herein.

EXHIBIT D



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ATTORNEYS FOR DEFENDANT

MEMORANDUM IN SUPPORT

I. INTRODUCTION

The Court must grant Beck Energy's Motion to Toll all terms of the Leases, during the pendency of the litigation, for the following reasons.

(1) Case law supports Beck Energy's request to toll all terms of the oil and gas Leases entered into between Beck Energy and the class action Plaintiffs:

- (a) First, if the Court does not grant the Motion to Toll, the Leases could terminate during the pendency of this litigation causing unnecessary and unfair prejudice to Beck Energy if the Seventh District Court of Appeals and/or the Ohio Supreme Court determines Beck Energy's Leases are not void *ab initio* as against public policy.
- (b) Second, the failure to toll the Leases exposes the class action Plaintiffs to future litigation by Beck Energy, for lost revenue, if the Seventh District Court of Appeals reverses this Court's decision concluding the Leases are not void *ab initio* and the Leases terminate during the pendency of this litigation.

(2) Recent Monroe County case law precedent finds it appropriate to toll an oil and gas lease's term, during the pendency of litigation, when the validity of the lease is challenged. See *Three Waters, LLC v. Northwood Energy Corp.*, Monroe County Case No.

2012-042 (Aug. 9, 2012) attached as Exhibit A and *Haina Carter, et al. v. Beck Energy Corp.*,
Monroe County Case No. 2013-092 (May 21, 2013) attached as Exhibit B.

II. FACTS/PROCEDURAL HISTORY

The following procedural history and facts are relevant to Beck Energy's Motion to Toll. The named Plaintiffs filed their original Compliant for Declaratory Judgment and to Quiet Title on September 14, 2011. The named Plaintiffs filed their Amended Class Action Complaint on September 29, 2011. One day later, the named Plaintiffs filed a Second Amended Class Action Complaint. Beck Energy filed a Motion to Dismiss and/or Change of Venue on November 30, 2011. The named Plaintiffs moved for summary judgment on February 16, 2012.

The Court granted the named Plaintiffs' Motion for Summary Judgment and denied Beck Energy's Motion to Dismiss and/or Change Venue on July 12, 2012. The Court journalized its Decision on July 31, 2012, and Beck Energy appealed on August 28, 2012. Shortly after granting summary judgment, the named Plaintiffs moved for leave to file a Third Amended Class Action Complaint on July 19, 2012. The Seventh District Court of Appeals remanded the matter to address pending motions on September 10, 2012. The named Plaintiffs withdrew their Motion to File Third Amended Class Action Complaint on September 12, 2012, and reverted back to their Second Amended Class Action Complaint requesting certification of a class consisting of only Monroe County landowners as opposed to a class of Ohio landowners.

On February 8, 2013, the Court granted the named Plaintiffs' request to certify a class. Beck Energy appealed the Court's decision on March 7, 2013. The Seventh District Court of Appeals issued a limited remand on April 19, 2013, in order for the Court to address the issue of class definition and Beck Energy's pending counterclaims. The Court issued a decision on June 10, 2013, defining the class to include all Ohio landowners, under the G&T 83 Lease, where Beck Energy neither drilled nor prepared to drill a gas/oil well, nor included the property

in a drilling unit, within the time period set forth in Paragraph 3 of the Lease. Beck Energy appealed this decision on July 3, 2013.

Beck Energy previously asked the Court to toll all terms of the oil and gas leases entered into between the named Plaintiffs and Beck Energy by way of a motion filed on October 1, 2012. The named Plaintiffs opposed the motion and the Court scheduled a non-oral hearing on the motion for October 25, 2012. The Court never issued a decision on Beck Energy's motion to toll the leases as to the named Plaintiffs.

On June 10, 2013, the Court impliedly overruled the Motion to Toll when it issued a final appealable order, on limited remand from the court of appeals, wherein the Court defined the class and found Beck Energy's counterclaims moot and barred by *res judicata*. See *Young v. Eich*, 7th Dist. No. 10 MA 191, 2012-Ohio-1687, ¶16 ("[T]he trial court mentioned, but did not explicitly rule on Appellee's motion to strike when it entered judgment. Under Ohio law, 'when the trial court enters judgment without expressly determining a pending motion, the motion is * * * impliedly overruled.' *Portofe v. Portofe*, 153 Ohio App.3d 207, 2003-Ohio-3469, 792 N.E.2d 742, ¶16. Thus, the record reflects that the trial court implicitly did deny Appellee's motion to strike."); *Bayus v. Woodland Park Properties, Ltd.*, 7th Dist. No. 05 MA 169, 2007-Ohio-3147, ¶46 ("The trial court judge never explicitly ruled on Appellant's motion for recusal. However, it is well settled that motions not expressly ruled on are deemed impliedly overruled. *Takacs v. Baldwin* (1995), 106 Ohio App.3d 196, 209, 665 N.E.2d 736; *Kline v. Morgan* (Jan. 3, 2001), 4th Dist. Nos. 00CA2702 & 00CA2712. Further, a trial court's final decision impliedly denies any outstanding motions. *Seff v. Davis*, 10th Dist. No. 03AP-159, 2003-Ohio-7029, at ¶16, citing *Hayes v. Smith* (1990), 62 Ohio St. 161, 56 N.E. 879. Accordingly, the trial court denied Appellant's motion." (Emphasis added.))

On July 10, 2013, Beck Energy appealed, to the Seventh District Court of Appeals, the denial of its Motion to Toll, as it pertains to the named Plaintiffs. Therefore, this Motion to Toll pertains only to the Plaintiffs comprising the class action certified by the Court on June 10, 2013.

III. LAW AND ARGUMENT

A. Tolling is Required When the Validity of an Oil and Gas Lease is Challenged.

Tolling is required when "a lessor actively asserts to a lessee that his lease is terminated or subject to cancellation," so that "the obligations of lessee to lessor are suspended during the time such claims of forfeiture are being asserted." *Jicarilla Apache Tribe v. Andrus*, 687 F.2d 1324, 1341 (10th Cir.1982); *H&G Fossil Fuels Co. v. Roach*, 103 N.M. 793, 795-797, 715 P.2d 66 (1986) (reversing lower court's refusal to toll lease in finding that "an extension of the [oil and gas lease] term is an appropriate remedy"); *Chesapeake Exploration, L.L.C. v. Valence Operating Co.*, 2008 WL 4240486, *4-7 (S.D.Tex.2008) (holding where repudiation by lessee occurred approximately six months prior to end of primary term, lease was tolled so as to put the parties back in their original position and the lessee will be given six months to meet habendum clause obligations).

Tolling is appropriate to prevent a lessor who wrongfully repudiates a lessee's lease from profiting from the wrong. *B.B. Energy L.P. v. Devon Energy Production Co., L.L.P.*, 2008 WL 216583 at *11 (N.D.Tex. May 23, 2008) (citing *Kothmann v. Boley*, 158 Tex. 56, 60-61, 308 S.W.2d 1, 4 (1958). "[R]epudiation of a lease by a lessor relieves the lessee from any obligation to conduct any operation on the land in order to maintain the lease in force pending a judicial resolution of the controversy between the lessee and lessor over the validity of the lease." *Cheyenne Resources, Inc. v. Criswell*, 714 S.W.2d 103, 105 (Tex.App.Eastland 1986).

In the present matter, there are hundreds of Leases at issue as a result of the class certification encompassing all landowners, in the State of Ohio, with Beck Energy G&T 83 Leases. All of the Leases have varying expiration dates. Despite these varying expiration dates, each Lease contains essentially the same terms, including a ten (10)-year primary term and a delay rental clause, which the class action Plaintiffs and Beck Energy paid and bargained for as part of the Lease. At the end of the primary term, including any extension thereof, if Beck Energy does not drill a well that produces in paying quantities, the Lease typically terminates.

Beck Energy currently has a total of four appeals pending before the Seventh District Court of Appeals stemming from this Court's decision granting Plaintiff's Motion for Summary Judgment and certifying a class action. Due to the number of pending appeals and the complexity of the issues presented, it is anticipated that a decision will not be rendered within the next year. By not granting Beck Energy's Motion to Toll – the Court puts Beck Energy between a rock and a hard place – it could eventually win the battle on appeal but lose the war as the Leases could terminate during the pendency of the litigation. For this reason, the Court must grant Beck Energy's Motion to Toll the Terms of the Leases.

Further, failure to toll the Leases also exposes the class action Plaintiffs to possible liability. If this Court does not toll the terms of the Leases and the Seventh District Court of Appeals reverses this Court's Decision granting Plaintiffs' summary judgment, Beck Energy may seek compensation for any lost revenue it incurred as a result of the expiration of the Leases during the pendency of the litigation. Therefore, tolling the Lease terms protects both parties and maintains the status quo during the pendency of the litigation.

B. Monroe County Case Law Precedent Favors Tolling Oil and Gas Leases During the Pendency of Litigation.

Monroe County Court of Common Pleas case law precedent supports Beck Energy's Motion to Toll All Terms of the Oil and Gas Leases where a landowner, whose property is subject to an oil and gas lease, has filed a complaint seeking to invalidate the lease. See *Three Waters, LLC, supra*.¹ In *Three Waters, LLC*, Judge Selmon entered an order denying *Three Waters, LLC*'s motion to stop the tolling, and permitted Northwood Energy Corporation's lease terms to be tolled during the pendency of the litigation. More recently, Judge Selmon granted a Motion to Toll All Terms of the Oil and Gas Lease in *Carter, supra*.²

This Court is bound by the precedent established by Judge Selmon in the *Three Waters, LLC* and *Carter* cases. For this reason, the Court should grant Beck Energy's request to toll all terms of the Leases pending the outcome of this litigation so as not to prejudice the rights of either Beck Energy or the class action Plaintiffs.

IV. CONCLUSION

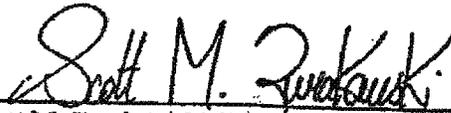
For the foregoing reasons, Beck Energy respectfully requests the Court grant its Motion to Toll All Terms of the Oil and Gas Leases Entered Into Between Class Action Plaintiffs and Defendant Beck Energy Corporation. The tolling period would commence on September 14, 2011, the date the named Plaintiffs filed their Complaint, and continue during the pendency of the litigation, including appeals by either party.

Beck Energy proposes the tolling period expire on the seventh day following the date the time period ends for filing a notice of appeal of the Court's last appealable judgment entry. At the expiration of the tolling period, Beck Energy, and any successor/assigns would

¹ Attached as Exhibit A.

² Attached as Exhibit B.

have as much time to meet any and all obligations under the oil and gas Leases as they had as of September 14, 2011. During the tolling period, Beck Energy would be prohibited from drilling any wells pursuant to the oil and gas Leases tolled.



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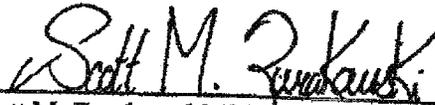
I hereby certify that a copy of the foregoing was sent by Ordinary U.S. Mail,
pursuant to Civ.R. 5(B)(2)(c), this 12 day of July 2013, to:

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& DOUGHERTY CO., L.P.A.
ATTORNEYS FOR DEFENDANT

IN THE COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

CY OF COMMON PLEAS
MONROE COUNTY, OHIO
AUG -9 PM 1:29
JULIE R. SELMON
CLERK OF COURT

DOCKET & JOURNAL ENTRY

THREE WATERS, LLC

Plaintiff,

Case No. 2012-042

Vs.

NORTHWOOD ENERGY CORPORATION,

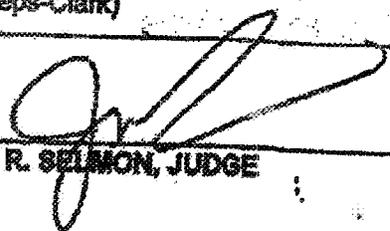
Defendant.

Date of Entry: August 9, 2012

The within matter is before the Court on Plaintiff's Motion to Stop Tolling Period and Defendant's Memorandum in Opposition to Plaintiff's Motion to Stop Tolling Period. Plaintiff's Motion is hereby denied. This Court's prior orders hereby remain unchanged.

(COPIES SENT THIS DAY TO:
Attorney Ethan Vessels, Attorney Flite Freimann, Attorney Gregory D. Russell, Attorney Thomas H. Fusonie, and Attorney Lija K. Kaleps-Clark)

(Approved)



JULIE R. SELMON, JUDGE

Journal _____ Page _____

EXHIBIT A

COURT OF COMMON PLEAS
MONROE COUNTY, OHIO
FILED

2013 MAY 21 PM 2:39

BETH ANN ROSE
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
BELMONT COUNTY, OHIO
MONROE

ILAINA CARTER, et al.

Plaintiffs,

vs.

BECK ENERGY CORPORATION,

Defendant.

CASE NO. 2013-092

JUDGE JULIE SELMON

ORIGINAL

JUDGMENT ENTRY / ORDER

This cause came to be heard upon the filing of Defendant, Beck Energy Corporation's Motion to Toll All the Terms of the Oil and Gas Lease, and the opposition thereto. For good cause, the Court does hereby

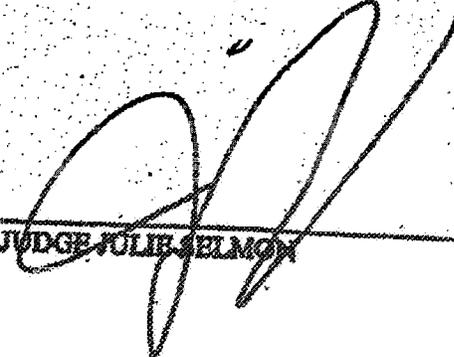
ORDER, ADJUDGE AND DECREE to toll all of the terms of the oil and gas lease, including any amendments and/or ratifications to said oil and gas lease entered into between Plaintiffs, and/or Plaintiffs' predecessors in title, and Beck Energy, including, but not limited to: the oil and gas lease dated April 13, 2004, between Willa Carter and Beck Energy, dated April 14, 2004, and recorded at the Monroe County Official Records at Volume 118, Page 274 on May 11, 2004.

The tolling period shall commence on March 13, 2013 (the date Plaintiff filed her Complaint) and shall continue during the pendency of the litigation, including any appeals by

The tolling period shall expire on the seventh day following the date the time period ends for filing a notice of appeal of the Court's last appealable judgment entry. At the expiration of the tolling period, Beck Energy, and any successors and/or assigns shall have as much time to meet any and all obligations under the oil and gas lease as they had as of March 13, 2013.

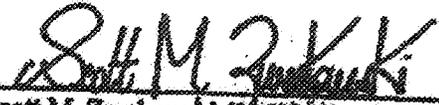
During the tolling period, Beck Energy is prohibited from drilling any wells pursuant to the oil and gas lease tolled.

IT IS SO ORDERED.



JUDGE JULIE SELMON

Approved by:



Scott M. Zarakowski (0069040), of
KRUGLIAK, WILKINS, GRIFFITHS
& DOUGHERTY CO., L.P.A.
4775 Manson Street, N.W./P.O. Box 36963
Canton, Ohio 44735-6963
Phone: (330) 497-0700/Fax: (330) 497-4020
szarakowski@kwgd.com
ATTORNEYS FOR DEFENDANT

Exhibit E

Scott M. Zurakowski
Direct Line: (330) 244-2873
szurakowski@kwgd.com

August 12, 2013

Mark A. Ropchock, Esq.
Slater & Zurz, LLP
One Cascade Plaza
Akron OH 44308

RE: *Hupp, et al. v. Beck Energy Corporation*
Monroe County Court of Common Pleas Case No. 2011-CV-345
Beck Energy Corporation's Intent to File For Injunctive Relief,
Pursuant to Ohio R. App. Procedure 7

Dear Attorney Ropchock:

The purpose of this correspondence is to notify you of Beck Energy Corporation's intent to file a Motion for Injunctive Relief with the Seventh District Court of Appeals as a result of the Monroe County Court of Common Pleas' decision and Entry dated August 2, 2013, regarding Beck Energy Corporation's Motion for Tolling.

Should you have any questions please do not hesitate to contact me.

Very truly yours,

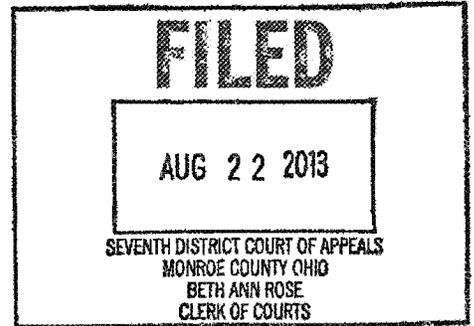
**KRUGLIAK, WILKINS, GRIFFITHS
& DOUGHERTY CO., L.P.A.**

Scott M. Zurakowski

SMZ/vr

cc: Kevin Abbott (*via email*)
Clair Dickenson (*via email*)
Andrew Pollis (*via email*)

EXHIBIT 20



IN THE COURT OF APPEALS OF OHIO
SEVENTH APPELLATE DISTRICT
MONROE COUNTY, OHIO

CLYDE A. HUPP, et al.,

Plaintiffs/Appellees,

vs.

BECK ENERGY CORPORATION,

Defendant/Appellant.

CASE NO. 2013-MO-11

On Appeal from the Monroe County
Court of Common Pleas
Case No. 2011-345

**APPELLANT BECK ENERGY CORPORATION'S EMERGENCY
MOTION TO SET ASIDE SUPERSEDEAS BOND**

I. **INTRODUCTION**

Appellant, Beck Energy Corporation ("Beck Energy") moves this Honorable Court, pursuant to App.R. 7(A), to set aside the trial court's imposition of a fourteen million dollar (\$14,000,000) bond. App. R. 7(A) provides a motion for such relief may be made to the court of appeals, provided the motion illustrates "that the trial court has, by journal entry, denied an application or failed to afford the relief which the applicant requested."

Here, Beck Energy moved the trial court for an order to stay execution of the judgment, specifically without the requirement of posting a supersedeas bond. However, the trial court granted the relief only in part: it issued a stay, but conditioned the stay upon the posting of

a fourteen million dollar (\$14,000,000.00) bond (Exhibit A). Indeed, filing a motion to set aside the bond amount, in the trial court, would be impracticable given that it already considered the request of not imposing a supersedeas bond, but rejected it. Such an application is neither practicable nor contemplated by App.R. 7 or R.C. 2505.09. Accordingly, Beck Energy now comes before this Honorable Court, requesting a modification to reflect the relief originally sought; i.e., no requirement that a supersedeas bond be posted.

II. LAW AND ARGUMENT

A. Under App.R. 7, this Court May Review the Trial Court's Decision Regarding a Stay of Execution.

Civ.R. 62(B) does not mandate a bond before a stay can be granted and “the trial court may exercise its discretion and stay the execution of judgment without requiring the appellant to post a supersedeas bond.” *Whitlatch & Co. v. Stern*, 9th Dist. No. 15345, 1992 WL 205071 (Aug. 19, 1992). Further, this Court explained in *McCarthy v. Lippitt*, 7th Dist. No. 04-MO-1, 2004-Ohio-5367, ¶38, that “[t]he Supreme Court of Ohio specifically adopted App.R. 7 to allow for review of a trial court’s decision denying a motion to stay pending appeal.” In accordance with this power to review, Beck Energy requests that the Court reconsider the trial court’s bond determination.

It is not disputed that the trial court is ordinarily better able to determine whether a bond is necessary to cover the potential losses to appellee if appellant should lose the appeal. However, it is important to recognize the purpose of such a bond is “to secure the appellee’s right to collect on the judgment during the pendency of the appeal.” *Mahoney v. City of Berea*, 33 Ohio App.3d 94, 96, 514 N.E.2d 889 (8th Dist.1986). Significantly, in the present matter, Appellees did not request monetary damages, were not awarded monetary damages and only

sought to have the trial court declare certain oil and gas leases void as against public policy, which the trial court ultimately found.

B. No Bond is Required Under the Facts of this Case.

I. *The Posting of a Bond is Only Required Where a Judgment Has Been Rendered for Monetary Damages.*

A bond only serves its purpose if an appellee has an interest at stake that could be lost or squandered by appellant during the appeal. As noted above, Appellees never requested monetary damages and none were awarded by the trial court. Rather, the trial court improperly awarded declaratory relief, in the summary judgment proceedings, thereby finding Beck Energy's leases void as against public policy.

In addressing the necessity of a supersedeas bond, courts throughout Ohio have consistently concluded that a bond is only required where a judgment has been rendered for monetary damages. See *Boothby v. Twp. Bd. of Zoning Appeals*, 12th Dist. No. CA2000-08-062, 2001 WL 30622 (Jan.8, 2001); *Trademark Homes v. Avon Lake Bd. of Zoning Appeals*, 92 Ohio App.3d 214, 634 N.E.2d 685 (9th Dist.1993); *Mahoney, supra*; *Houghtaling v. Medina Bd. of Zoning Appeals*, 134 Ohio App.3d 541, 731 N.E.2d 733 (9th Dist.1999); *Martin v. City of Bedford Heights*, 8th Dist. No. 73725, 1998 WL 51854 (Aug. 20, 1998).

In *Natl. City Bank Northeast v. Beyer*, 6th Dist. No. H-99-017, 1999 WL 1203742 (Dec. 17, 1999), a case addressing declaratory relief and the need for a supersedeas bond, the court specifically determined that a bond was not required because the underlying action was a declaratory judgment action. The court reasoned:

No judgment for money damages has been rendered in this case. Rather, this court has determined that the Beyers are the rightful owners of their sister's share of the corpus of a trust presently held by National City Bank. Moreover, * * * no purpose would be served in requiring New Jersey to post a bond under the

circumstances of this case. The Beyers have no interest at stake “that could be lost or squandered by” New Jersey while the appeal is pending. *Id.* at *3, 1999 WL 1203742.

Similarly, in the present matter, the judgment rendered by the trial court only involved declaratory relief – not monetary damages. The trial court determined Beck Energy’s leases are void and Beck Energy is challenging that determination on appeal. However, in doing so, Appellees have no interest at stake that could be lost or squandered by Beck Energy while the appeal is pending.¹ Therefore, as in the *Beyer* decision, a supersedeas bond is not required due to the nature of the relief requested and granted by the trial court.

Finally, the language of R.C. 2505.09 also supports the conclusion that a supersedeas bond is only required where monetary damages are awarded. The statute’s language requires a supersedeas bond “in such sum, not less than, if applicable, the amount of the final order, judgment, or decree and interest involved, as is directed by the court that rendered the final order, judgment, or decree that is sought to be superseded or by the court to which the appeal is taken.” (Emphasis added.) The inclusion of the language “if applicable,” in referencing the amount of the bond, indicates the amount should be commensurate with the amount of the final order, judgment or decree. Thus, a bond need only be posted when a sum of money has been awarded as damages by the court.

2. *Even If the Court Concludes a Supersedeas Bond is Required, Appellees Failed to Establish What Damages They May Suffer Pending Appeal.*

There is no evidence establishing what damages Appellees may incur while this appeal is pending and therefore, the trial court’s imposition of a fourteen million dollar (\$14,000,000) bond is not justified. The imposition of this bond amount is merely based upon an

¹ This conclusion is further supported by the argument contained in Section (B)(2) regarding Appellees’ failure to make any showing of damages they may incur while the appeal is pending.

alleged potential injury. In fact, Appellees presented no evidence, to the trial court, in support of their argument that they will be harmed financially because of potential changes in the oil and gas market.² It is pure speculation to conclude that if indeed the leases are found to be void on appeal, the new leases Appellees may enter into would be less lucrative than the leases they could have entered into while the appeal was pending. This speculation on Appellees' part is not the type of evidence a court should consider when determining the amount of bond to be posted.

Absent any evidence regarding potential damages to support their request for a bond, including evidence that Beck Energy is not in a position to pay damages that may accrue during the pendency of the appeal, the trial court erred when it set bond at \$14 million dollars (\$14,000,000). Bond should not be based upon a potential for injury and speculative damages.

3. ***Beck Energy's Business Standing and Ties to the Community Obviate the Need for a Supersedeas Bond.***

When considering the evidence and facts as presented before the trial court, the purpose of a bond in this case is obviated due to Beck Energy's ties to the community and business standing. An Affidavit from Raymond T. Beck, President of Beck Energy, attached to the Motion for Stay in the trial court (Exhibit C), demonstrates Beck Energy's financial solvency: the company has been in business since 1978; it has entered into over one thousand (1,000) oil and gas leases; and it has paid landowners more than twelve million dollars (\$12,000,000) in royalties.

Further, Beck Energy has well-established close-knit ties to the community: it has continuously and properly maintained all permits; it has cooperated with landowners to ensure the safety, protection and environmental quality of its leases and wells; and it maintains

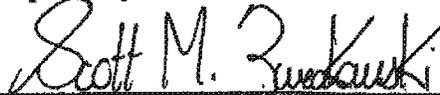
² See Hearing Transcript, July 23, 2013, pp. 15-28, attached as Exhibit B.

offices in Ravenna, Ohio and Woodsfield, Ohio. See *Irvine v. Akron Beacon Journal*, 147 Ohio App.3d 428, 451-452, 770 N.E.2d 1105 (9th Dist.2002) (affirming that no supersedeas bond was required given appellants' solvency and well-established ties to the community.)

III. CONCLUSION

Under App.R. 7, this Court has the authority to review the amount of bond ordered by the trial court. In doing so, the facts of this case support the conclusion that a bond is not required during the pendency of this appeal because: (1) no bond is required for the appeal of a declaratory judgment action; (2) Appellees failed to establish they will be damaged and the amount of the alleged damages; and (3) Beck Energy's business standing and strong ties to the community make the posting of a bond unnecessary. For these reasons, Beck Energy requests that the Court grant its request to set aside the supersedeas bond.

Respectfully submitted,



Scott M. Zurkowski (0069040), of
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& DOUGHERTY CO., L.P.A.
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Phone: (330) 497-0700/Fax: (330) 497-4020
szurakowski@kwgd.com
ATTORNEYS FOR DEFENDANT/APPELLANT

PROOF OF SERVICE

I hereby certify that a copy of the foregoing was sent by Ordinary U.S. Mail,
pursuant to App.R. 13(C)(3), this 21 day of August 2013, to:

Mark A. Ropchock, Esq.
Richard V. Zurz, Jr., Esq.
Slater & Zurz, LLP
One Cascade Plaza, Suite 2210
Akron, Ohio 44308
Attorneys for Plaintiffs

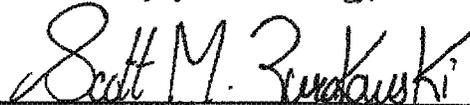
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Kincaid, Taylor & Buyer
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Zanesville, Ohio 43701

James W. Peters, Esq.
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Woodsfield, Ohio 43793
Attorney for Plaintiffs

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Cleveland, Ohio 44121

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Attorneys for XTO Energy, Inc.



Scott M. Zurkowski (0069040), of
KRUGLIAK, WILKINS, GRIFFITHS
& DOUGHERTY CO., L.P.A.
ATTORNEYS FOR DEFENDANT/APPELLANT

Zurakowski

COURT OF COMMON PLEAS
MONROE COUNTY, OHIO
2013 AUG 16 PM 1:17
LEITH ANN ROSE
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

CLYDE A. HUPP, et al,

Plaintiffs,

vs.

BECK ENERGY CORPORATION,

Defendant.

CASE NO. 201 1-345

JUDGE ED LANE
(sitting by assignment)

DECISION AND JUDGMENT ENTRY GRANTING MOTION FOR STAY OF
EXECUTION OF JUDGMENTS PENDING APPEAL

This matter is before the Court upon Defendant Beck Energy Corporation's Motion for Stay of Execution of Judgments Pending Appeal. Plaintiffs filed a Memorandum in Opposition and on July 23, 2013, the Court heard oral arguments from both Beck Energy Corporation and Plaintiffs. The Court finds that Beck Energy Corporation, upon the posting of a supersedeas bond approved by the Court as set forth below, is entitled to a stay of execution of the following judgments:

- Decision granting summary judgment in Plaintiffs' favor on July 12, 2012, including journalization of the Court's decision on July 31, 2012;
- Decision granting class certification on February 8, 2013; and
- Decision defining the class and finding Beck Energy Corporation's counterclaims moot and barred by res judicata on June 10, 2013.

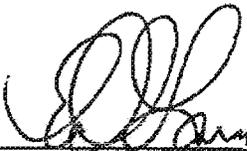
EXHIBIT A

The Court further finds Beck Energy Corporation is required to post a supersedeas bond in the amount of FOURTEEN MILLION DOLLARS NO CENTS (\$14,000,000.00) to be approved by the Court as a condition of the stay of execution being effective.

Therefore, the Court hereby grants Beck Energy Corporation's Motion for Stay of Execution of Judgments Pending Appeal. The Court further orders that Beck Energy Corporation is required to post a supersedeas bond to be approved by the Court in the amount of FOURTEEN MILLION DOLLARS NO CENTS (\$14,000,000.00) as a condition of the stay of execution pending appeal being effective.

IT IS SO ORDERED.

Enter as of date of filing:



JUDGE ED LANE

THIS IS A FINAL APPEALABLE ORDER
AND THERE IS NO JUST REASON
FOR DELAY.

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IN THE COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

* * * * *

CLYDE A. HUPP, et al.,
Plaintiffs,
v.

BECK ENERGY CORPORATION, CASE NO. 2011-345
Defendant. JUDGE LANE

* * * * *

MOTIONS HEARING

Transcript of the proceedings had in the
above-captioned matter held on July 23, 2013 in
Courtroom B, Washington County, Ohio, before THE
HONORABLE ED LANE, Judge, Court of Common Pleas, Monroe
County, Ohio, by assignment.

CHERYL G. MUNSON
Transcriber
REALTIME REPORTERS
713 Lee Street
Charleston, WV 25301
(304) 344-8463

1 Ohio Supreme Court. So, I'm -- the motion is denied.

2 Okay?

3 And I don't think it's necessary for the
4 Court of Appeals' decision. I think it's -- and I think
5 that when it comes back, if I -- if you prevail and if
6 I'm affirmed, there'll have to be a new notice in that.
7 There we go.

8 Okay, the second motion that was filed
9 with the Court, what do you want to address, second one?

10 MR. ZURAKOWSKI: Your Honor, if we could,
11 I think, address our renewed motion for stay?

12 THE COURT: Okay. Attorney Zurakowski?

13 MR. ZURAKOWSKI: Your Honor, Ohio Civil
14 Rule 62(B) permits a trial court to issue a stay of
15 execution of a judgment without requiring any bond.
16 Beck Energy is solvent, having negotiated over a
17 thousand leases in 12 different counties in Ohio. It
18 has close ties to the community, having paid lessors,
19 landowners over 12 million dollars in royalty payments
20 since 1978.

21 The question for this Court is, is Beck
22 Energy entitled to a stay of execution without a bond
23 being required? And we believe the answer to that
24 question is absolutely yes.

1 I think it's clear -- and I think the
2 Hupp Plaintiff's Counsel would agree with me -- that
3 this Court has the discretion to enter a stay order
4 without requiring a bond. And so, I will submit that
5 what we've set forth in our briefs in that matter, is --
6 is enough, and not to waste the Court's time, as --

7 THE COURT: And I've read your briefs,
8 gentlemen, and actually made notes and underlined them,
9 studied them, took them home and read them. I actually
10 read some of these last -- some of the stuff you gave me
11 last year on my Thanksgiving trip to California.

12 Okay, Attorney Zurk (sic)?

13 MR. ZURAKOWSKI: Your -- Your Honor, may
14 I have a few more minutes, please?

15 THE COURT: Zurz. Oh, yeah. Zurz. Okay.

16 MR. ZURAKOWSKI: In determining whether
17 to require --

18 THE COURT: Don't take a breath; I'll --
19 I'll rule.

20 MR. ZURAKOWSKI: -- a bond, the Court
21 must consider two relevant factors.

22 THE COURT: Okay.

23 MR. ZURAKOWSKI: And those are the only
24 two relevant factors to be considered by this Court, and

1 those are Beck Energy's solvency and whether Beck Energy
2 has well established ties to the community.

3 Beck Energy is solvent. It's been in
4 business since 1978. As I said, it's entered into over
5 a thousand oil and gas leases with landowners in the
6 State of Ohio, it's paid those landowners over 12
7 million dollars in royalties.

8 In addition, it has very close knit ties
9 to the community. It has drilled and operates currently
10 over 346 wells, as I said, in 12 different counties.

11 We believe that Civil Rule 62(B) clearly
12 indicates that there are two factors for this Court to
13 consider and two factors only, and that's solvency and
14 ties to the community.

15 In addition to that, I think what you're
16 going to hear from the Hupp Plaintiffs is that they're
17 going to be deprived of some ability to profit or may be
18 subject to future financial loss. But those are not
19 factors to be considered by this Court under 62(B) when
20 determining whether to grant a motion to stay.

21 Plaintiff's arguments that their clients
22 are somehow going to suffer some loss, doesn't withstand
23 logic and it's pure conjecture and speculation when you
24 carry this to its legal conclusion. And as the Court

1 has indicated, it's read the briefs.

2 I will say this: Beck Energy stands to
3 lose a heck of a lot more than the Hupp Plaintiffs. The
4 Plaintiffs have asked that this Court issue a motion for
5 stay on condition that Beck put up a 50 million dollar
6 bond. And the Hupp Plaintiffs have set forth in their
7 briefing a formula, assuming that every one of the Hupp
8 Plaintiffs class members' acreage is worth \$3500 an acre
9 as far as a signing bonus. If we use that formula and
10 you calculate how many acres that Beck Energy has under
11 lease -- which is approximately 40,000 -- when
12 multiplied by \$3500, that's over 140 million dollars.

13 Second of all, one size doesn't fit all.
14 The differing locations of each one of these leases and
15 market forces prohibit any assumptions on value, as the
16 Plaintiffs are trying to get this Court to believe. The
17 amount that a -- a landowner receives for a sign-on
18 bonus -- and for that matter, a royalty -- is dictated
19 by the county in which they're located, the township in
20 which they're located, the range in which they're
21 located, and in some cases, the side of the street that
22 they're situated on.

23 So, to say that all of these Hupp class
24 members who are strewn over 12 different counties in

1 Ohio -- some of whom are situated in the Utica Shale
2 play, others who are not -- just doesn't make sense to
3 use this one size fits all formula.

4 Further, market forces continue to change
5 in the State of Ohio as it relates to these oil and gas
6 leases in the Utica Shale play. I think it's no
7 surprise that Chesapeake is no longer flooding the
8 market with sign-on bonuses and royalty payments.
9 You've got Anadarko, who's decided to pull out of Ohio.
10 You've got Devon Energy, who's decided to pull out of
11 Ohio.

12 Your Honor, finally, we think if this
13 Court is going to issue a stay -- which we think is
14 absolutely necessary in this case while the appeal is
15 pending, without any bond -- the Plaintiffs -- well,
16 there must be language in that order, that precludes the
17 Plaintiffs from entering into new leases while this case
18 is on appeal, because that's what's happening. There
19 are folks out there, that are contacting these
20 Plaintiffs and the Plaintiffs are organizing themselves,
21 and they're entering into new leases.

22 Now, the validity of the Beck lease, GT
23 83 lease, remains an open issue, and I think we can all
24 agree with that. Pending the outcome of what happens in

1 the Seventh Appellate District and what happens possibly
2 at the Ohio Supreme Court, it's an open issue, it's
3 still subject to adjudication, and the Plaintiffs, by
4 entering into these new leases, are subjecting
5 themselves to potential future litigation for
6 interference of the contract, interference of the
7 business relationship, and that's just another reason
8 why this Court needs to grant the motion to stay without
9 requiring any bond.

10 Thank you, Your Honor.

11 THE COURT: Well, you know, I'm not --
12 this case has the -- the largest case I ever had was 44
13 million. And it wasn't appealed; it was a trial to the
14 Court. But this -- these are astronomical figures, it's
15 -- you know, gentlemen. But you say they're sound; I've
16 never seen a Beck financial statement. I mean, I don't
17 know if they -- if they borrowed money to drill, if they
18 -- you know, I don't know what they owe investors, what
19 -- you know, I don't know the whole financial picture.

20 And I don't even know what people are
21 getting for an acre. I mean, you hear everything. And
22 I -- and I mean, I imagine if you stood out on the
23 street, you'd hear 10,000, 20,000, I -- I don't know
24 where it's at.

1 But if this case comes back, two, three,
2 four years from now and the oil market's crashed, what I
3 -- well, bo-- is there -- is there a cause for damages,
4 if the case is affirmed and now all of the sudden, they
5 can't get any money out of these leases? I don't --
6 I've never known that to happen, but I mean, it's a
7 natural, judicial progression, but I'm just wondering.

8 MR. ZURAKOWSKI: That -- that is the risk
9 the Plaintiffs took when they filed this litigation, and
10 that's Beck Energy's position.

11 In addition to that, Your Honor, I think
12 the bigger risk here is, without a motion for stay,
13 these Plaintiffs are subjecting themselves to potential
14 future litigation, if the case goes up and is reversed
15 in some way, shape, or form, and comes back down and
16 have entered into other leases.

17 THE COURT: Well, and I don't want an
18 answer to this question, but I'm going to -- it's -- I'm
19 going to be candid with you. In the back of my mind, I
20 know, because I saw the -- the sealed document, the
21 amount of money --

22 MR. ZURAKOWSKI: Sure.

23 THE COURT: -- that Beck got. I assume,
24 if this is -- if I'm affirmed, they're going to have to

1 pay that money back, but I don't know that. And that
2 would be a big drain.

3 MR. ZURAKOWSKI: Well, if you want me to
4 answer that, I can.

5 THE COURT: If you want to. You don't
6 have to.

7 MR. ZURAKOWSKI: Your Honor, I would -- I
8 would like to -- I'm going to reserve judgment on that.
9 I may or may not --

10 THE COURT: Yeah. I don't care whether
11 you answer it or not, I mean.

12 MR. ZURAKOWSKI: Thank you.

13 THE COURT: But I mean, I -- I've often
14 wondered. I mean, this has serious consequences for
15 both sides. Everybody.

16 Okay. Attorney Zurz?

17 MR. ZURZ: Your Honor, Beck is entitled
18 to a stay, provided that they post the bond and that
19 bond amount is in your discretion and the conditions of
20 that bond, again, are in your discretion.

21 Let's remember what happened earlier in
22 this case. In August of 2012, Beck filed a premature
23 motion to stay, relative to the three named Plaintiffs'
24 leases. In that motion, they indicated that XTO bought

1 the deep rights in those three leases for a million
2 dollars, and Beck was offering to post ten percent bond,
3 or a hundred thousand dollars.

4 Now that you've certified this class --
5 and we learn now that there's what, 35,000 acres in play
6 here -- all the sudden, Beck doesn't want to post any
7 bond.

8 Well, maybe it's speculative as to what
9 the 35,000 acres are worth, but we know what at least
10 7,500 acres in Monroe County are worth, because XTO
11 bought those deep rights from -- from Beck.

12 THE COURT: Mm-hum. And you know that
13 amount, too.

14 MR. ZURZ: I know that amount, Judge.
15 It's 7500 times 3,000, so it's in excess of 20 million
16 dollars, so that's not speculative. At least 7,000
17 acres in Monroe County, the deep rights were purchased
18 by XTO, Beck received those monies. So, we don't have
19 to guess as to -- to what was exchanged. Perhaps the
20 value of the other mineral rights are in dispute, but
21 they have a value, Judge.

22 THE COURT: Now, my question for you,
23 Attorney Zurz, is this: If it's -- if it prevails, and
24 I keep saying if it prevails, I -- but it may not, I

1 mean, you know, I don't know -- I -- I certainly can't
2 think out of the box as much as you gentlemen can; I
3 mean, you have looked at this so many ways, it's amazing
4 to me, and I don't know how you have time to get this
5 stuff to me so quick -- but if it comes back, and you --
6 your clients prevail, you're only seeking to have them
7 vacated, voided, and given their lease back. What's it
8 -- why do you need money for damages? Why do we need a
9 bond for --

10 MR. ZURZ: We have not asked for monetary
11 damages, but Judge, the statutes allow for a bond, even
12 if no money damages were requested.

13 THE COURT: So, what's the bond covering?
14 If you -- it's -- it's -- I mean, what would they need
15 the -- what would you need -- your clients need the 25
16 million for? That's what I'm trying to get my head --
17 head around.

18 MR. ZURZ: Because Beck's asking for the
19 privilege of encumbering these properties on a void
20 lease for probably two more years. There's got to be
21 some security for that privilege.

22 THE COURT: So, if they prevail, they
23 will have lost the potential to sell --

24 MR. ZURZ: Correct.

1 THE COURT: -- to lease their land at the
2 top of the market?

3 MR. ZURZ: Right.

4 THE COURT: They will have lost the
5 potential to get any royalties if the wells had been
6 drilled.

7 MR. ZURZ: Correct, Judge.

8 THE COURT: But there won't be -- even if
9 you -- even if you -- the thing stopped today and you
10 got your leases back, they wouldn't all get a Utica
11 well.

12 MR. ZURZ: No, and they wouldn't all get
13 bonuses of 6,000 an acre.

14 THE COURT: Yeah.

15 MR. ZURZ: I mean, there are -- there's
16 some value there. That value -- I'll admit, the value
17 depends upon where the property's at, what county is it
18 in and what township, what part of the township is it
19 in.

20 So, I -- I can't sit here and tell you
21 that we have a figure today, as to what all the mineral
22 rights of these class members are worth, because I don't
23 even know who's in my class, Judge.

24 THE COURT: Yeah.

1 MR. ZURZ: I don't know where the acreage
2 is.

3 THE COURT: And that's my fault, because
4 I didn't make them serve notice, but -- okay.

5 MR. ZURZ: So, I guess our position is
6 this: For years, Beck has encumbered these properties
7 on a void lease. It failed to develop those leases, and
8 now flip those leases for millions of dollars and it
9 wants, after you declared the leases void, to continue
10 to encumber the properties and not post a bond. That
11 doesn't seem fair, Judge.

12 So, I think the amount and the condition
13 are up to your discretion.

14 THE COURT: I'm prepared to rule on this.
15 Is there -- do you want to say anything else?

16 MR. ZURAKOWSKI: I would, Your Honor.
17 Because Beck Energy is financially solvent and has
18 strong ties to the community, those are the two issues
19 that this Court needs to take into consideration under
20 62(B).

21 And as this Court aptly noted, this is
22 not a case where the Hupp Plaintiffs are seeking
23 damages.

24 THE COURT: Mm-hum.

1 MR. ZURAKOWSKI: As the Hupp Plaintiffs
2 admit, they have no idea what this acreage is worth. As
3 the Hupp Plaintiffs have just said, it's purely
4 speculative what those Hupp Plaintiffs may or may not
5 receive, and how much they may receive in both a signing
6 bonus and a royalty payment.

7 THE COURT: So, you think the only
8 appropriate bond is as -- of course, I've certified the
9 class.

10 MR. ZURAKOWSKI: No question you have.

11 THE COURT: Okay, I'm prepared to rule.
12 Does anybody else want to say anything?

13 I'm going to order a stay and I'm going
14 to order bond at 14 million dollars.

15 MR. ZURAKOWSKI: 14 million, Your Honor?

16 THE COURT: Yeah. And I think that's a
17 reasonable bond. I --

18 MR. ZURAKOWSKI: Your Honor, for
19 clarification purposes, is -- will Beck Energy be able
20 to post a percentage of that, to secure that bond?

21 THE COURT: What's your position on that?

22 MR. ZURZ: Our position, Judge, is you
23 know how much money Beck Energy got from the sale to
24 XTO. The funds are available. It should be the entire

1 14 million.

2 THE COURT: I -- and I think that's a ---
3 I think that's a -- that's a -- I don't want to chastise
4 myself. I think that's a reasonable bond. I'm not
5 going to try to make them cover the worst case scenario
6 or the best case scenario. I'd just as soon the money
7 be posted, rather than a percent. I don't know -- I've
8 never had this. I don't know what other judges do in
9 this. I -- I've never posted this large of an appeal
10 bond, but I think they either post it through a surety
11 or cash. They can do it through a bonding company, or
12 they can do it with cash. And if they go through a
13 bonding company, it won't cost them the whole 14
14 million.

15 Okay? I don't -- I rarely -- I don't
16 think I've even taken a ten percent bond ever in a
17 criminal case.

18 So there you are.

19 Okay, the stay is granted, it's a 14
20 million dollar bond.

21 Okay. We've done motion to notice,
22 motion for bond, motion for stay. Now we have the
23 motion to toll the terms. So, it'll be cash or surety.

24 MR. ZURAKOWSKI: Thank you, Your Honor.

IN THE COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

CLYDE HUPP, et al,
Plaintiffs,
vs.
BECK ENERGY CORPORATION,
Defendant.

CASE NO. 2011-345

JUDGE ED LANE
(sitting by assignment)

AFFIDAVIT

Affiant, Raymond T. Beck, President of Beck Energy Corporation, being duly sworn and cautioned, for his Affidavit, states as follows:

1. My name is Raymond T. Beck (hereinafter "Affiant").
2. I am over the age of 18 and have personal knowledge of the matters testified to in this Affidavit.
3. In 1978, Affiant formed Beck Energy Corporation and has, for the past 35 years, explored, drilled and produced oil and gas throughout the State of Ohio.
4. Beck Energy Corporation maintains offices in Ravenna, Ohio and Woodsfield, Ohio.
5. Beck Energy Corporation has entered into oil and gas lease agreements with thousands of landholders across the State of Ohio and paid more than Twelve Million Dollars (\$12,000,000.00) in royalties and signing bonuses over the past 35 years.
6. Beck Energy Corporation makes royalty payments to over One Thousand (1,000) landowners and provides free natural gas to certain lessors, under the terms of its oil and gas Leases.

7. Beck Energy Corporation is committed to the safety and protection of the environment and has an outstanding record of cooperation with landowners and community commitment.
8. Beck Energy Corporation continues to issue delay rental payments.
9. Beck Energy Corporation maintains outstanding permits from the Ohio Department of National Resources in order to drill and maintain health quality at potential drill sites.
10. Beck Energy Corporation continues to enter into oil and gas Leases with landowners.
11. Beck Energy Corporation currently maintains approximately three hundred and fifty two (352) wells in Ohio, and has drilled in approximately twelve (12) counties, with one hundred sixty-nine (169) wells in Monroe County alone.

Further, Affiant sayeth naught.


Raymond T. Beck

STATE OF OHIO, COUNTY OF PORTAGE; SS:

Sworn to before me and subscribed in my presence at Ravenna, Ohio, this 8th day of July 2013 and Acknowledged by RAYMOND T. BECK before me on the 8th day of July, 2013.



MELISSA L. CARIGLIO
NOTARY PUBLIC

STATE OF OHIO
COUNTY OF TRUMBULL

My Comm. Expires May 20, 2018


Notary Public

EXHIBIT 21

FILED

SEP 26 2013

SEVENTH DISTRICT COURT OF APPEALS
MONROE COUNTY OHIO
BETH ANN ROSE
CLERK OF COURTS

STATE OF OHIO)
)
MONROE COUNTY) SS: SEVENTH DISTRICT

CLYDE A. HUPP, et al.,)
)
 PLAINTIFFS-APPELLEES,)
)
 VS.)
)
 BECK ENERGY CORPORATION,)
)
 DEFENDANT-APPELLANT.)

CASE NOS. 12 MO 6, 13 MO 3
13 MO 11

JUDGMENT ENTRY

This matter came on for hearing before this Court on September 23, 2013 on three pending motions: 1) Appellant Beck Energy Corporation's August 16, 2013 emergency motion for injunctive relief pursuant to App.R. 7; 2) Beck's August 30, 2013 emergency motion to set aside supersedeas bond; and 3) The Individual Landowners' September 12, 2013 motion to dismiss this appeal on the grounds of mootness.

On consideration of the parties' respective filings, the responses thereto and their arguments before this Court it is ORDERED:

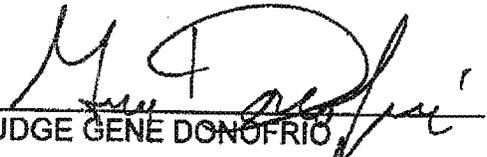
1. The trial court's August 16, 2013 stay order is hereby modified and continued. The requirement of posting bond is hereby set aside; no bond is required. This stay of execution applies to the named plaintiffs and proposed defined class members for the following judgments: (1) the July 12, 2012 decision granting summary judgment in the Landowners' favor, including the journalization of the trial court's decision on July 31, 2012; (2) the trial court's February 8, 2013 judgment granting class certification; and (3) the trial court's June 10, 2013 judgment defining the class and finding Beck Energy's counterclaims moot and barred by res judicata.
2. The trial court's August 2, 2013, order tolling the lease terms as to the named plaintiffs only is hereby modified and continued. The lease terms are also tolled as to the proposed defined class members. The

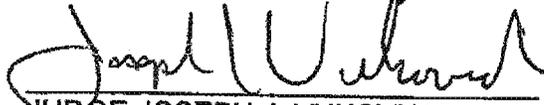
tolling period for all leases shall commence on October 1, 2012, the date Beck Energy first filed a motion in the trial court to toll the terms of the oil and gas leases. The tolling period shall continue during the pendency of all appeals in this Court, and in the event of a timely notice of appeal to the Ohio Supreme Court, until the Ohio Supreme Court accepts or declines jurisdiction. At the expiration of the tolling period, Beck Energy, and any successors and/or assigns shall have as much time to meet any and all obligations under the oil and gas lease(s) as they had as of October 1, 2012.

3. The Motion to Dismiss is denied.

Consistent with this Court's September 16, 2013 order setting a briefing schedule in these consolidated appeals, oral argument on the merits is tentatively set for November 20, 2013 before this Court.

All until further order of this Court.


JUDGE GENE DONOFRIO


JUDGE JOSEPH J. VUKOVICH


JUDGE MARY DeGENARO

EXHIBIT 22

2/14/14 10:17:1

FILED

JUN 23 2014

SEVENTH DISTRICT COURT OF APPEALS
MONROE COUNTY, OHIO
BETH ANN ROSE
CLERK OF COURTS

TS

STATE OF OHIO)
MONROE COUNTY) SS:

IN THE COURT OF APPEALS OF OHIO
SEVENTH DISTRICT

CLYDE HUPP, et al.,)
PLAINTIFFS-APPELLEES,)
VS.)
BECK ENERGY CORPORATION,)
DEFENDANT-APPELLANT.)

CASE NOS. 12 MO 6
13 MO 3
13 MO 11

JUDGMENT ENTRY

These consolidated matters are scheduled for oral argument on July 23, 2014, before this Court. In view of the consolidation order and multiple issues for review, the total oral argument time is extended to forty minutes. Each side is allotted twenty minutes to present its argument.

All until further order of this Court.


GENE DONOFRIO,


JOSEPH J. VUKOVICH,


MARY DeGENARO, JUDGES.

EXHIBIT 23

1 P R O C E E D I N G S

2 (July 23, 2013)

3 BE IT REMEMBERED -- That, this case came
4 on for consideration before the Honorable Ed Lane,
5 Judge of said court:

6 THE BAILIFF: All rise.

7 THE COURT: Okay. You all may be seated.
8 Thanks for standing. I appreciate that. Okay.

9 Okay. This is Case 2011-345. It's a
10 Monroe County case, Clyde A. Hupp versus -- and -- and
11 others, versus Beck Energy Corporation.

12 Note the presence of Attorney Peters on
13 behalf the Plaintiff. And you're Attorney --

14 MR. ZURZ: I'm Attorney Zurz, Your Honor.

15 THE COURT: Okay. And you're Attorney --

16 MR. ZURAKOWSKI: Zurakowski, Your Honor,
17 on behalf of Beck Energy.

18 THE COURT: Mm-hum. And you're --?

19 MR. DICKINSON: Clair Dickinson. I
20 represent the proposed intervener, XTO.

21 THE COURT: Is this your first time here?

22 MR. DICKINSON: Yes, it is.

23 THE COURT: Is it Dickens or Dickinson?

24 MR. DICKINSON: Dickinson.

1 THE COURT: Okay. Thank you.

2 MR. DICKINSON: Thank you.

3 THE COURT: Okay. Now, gentlemen, you've
4 filed several motions and requested an oral hearing. I
5 assume you're going to make oral arguments.

6 I think we noticed the motion -- and the
7 emphasis is, I think -- for stay and motion for bond,
8 but there's also a motion to intervene -- a renewed
9 motion to intervene, a motion to toll terms, and a
10 motion to serve class members. I don't know exactly how
11 -- are you want -- do you want to address all of these?

12 MR. ZURZ: Judge, what I believe is
13 pending right now is Plaintiffs have a motion to serve
14 class members with a notice.

15 THE COURT: Yeah.

16 MR. ZURZ: I think Beck has pending a
17 motion for a stay and a motion to toll the lease terms
18 of the class members.

19 THE COURT: And there's a motion -- well,
20 with the stay, there's also a motion for -- to waive
21 bond or to set one.

22 MR. PETERS: Correct.

23 MR. ZURZ: Correct.

24 THE COURT: Okay.

1 MR. ZURZ: And I know this --- I just got
2 in the mail today, XTO's motion to --

3 THE COURT: You can sit down, gentlemen.
4 I ---

5 MR. ZURZ: -- join in the stay.

6 MR. ZURAKOWSKI: Correct.

7 THE COURT: Unless you want to stand.
8 Some days, you want to -- and well, my question is, are
9 you prepared to address all of these?

10 MR. ZURZ: I am, Your Honor.

11 THE COURT: Are you prepared?

12 MR. ZURAKOWSKI: Yes, we are, Your Honor.

13 THE COURT: Okay.

14 MR. ZURAKOWSKI: With the caveat that we
15 just received the Plaintiff's memorandum in opposition
16 to our motion to toll, so we'd like some additional time
17 to file a reply.

18 THE COURT: You want to come back and
19 argue it?

20 MR. ZURAKOWSKI: No, we don't. We think
21 we can make our arguments today, but I would like to put
22 something in writing as relates to that.

23 THE COURT: What I'd like to do, is to
24 get as much of the argument on all of these as possible.

1 If we get to the end of the end of the day, if you still
2 want to file a response, then renew that. Is that a --
3 can you -- is that acceptable?

4 MR. ZURAKOWSKI: That's acceptable, Your
5 Honor.

6 THE COURT: Thank you. Okay, do you have
7 a preference how we proceed on these? Are we going to
8 do one at a time? Are we going to do them all together?

9 MR. ZURAKOWSKI: It probably would make
10 sense to do them one at a time. I guess, from our
11 standpoint, I think that the first motion that was
12 filed, frankly, was the Plaintiff's motion for notice of
13 the class.

14 THE COURT: Okay, you want to --

15 MR. ZURAKOWSKI: We want to do them in
16 order.

17 THE COURT: Yeah. Go ahead, Attorney.

18 MR. ZURZ: Yes. Your Honor, we did file
19 a motion, asking the Court to send a approved notice of
20 class members.

21 THE COURT: Mm-hum.

22 MR. ZURZ: Because this is a dec action,
23 as a class action, notice to class members now is not
24 mandatory; it is discretionary.

1 Because Beck hasn't responded to
2 discovery, we don't know precisely how many people are
3 in this class, but we estimate it exceeds 200, and we
4 estimate that the acreage in issue is in excess of
5 15,000 acres.

6 Our proposed notice is a one-and-a-
7 quarter page long notice, that simply says that you are
8 a class member, that the Court has ruled these leases
9 void, that that ruling is on appeal, and it could be
10 overturned.

11 We think that it's appropriate to mail
12 that notice for several reasons. First of all, just
13 fundamental fairness. We have 200 people out there, who
14 are not litigants in this lawsuit, who may not know that
15 they're parties to this litigation. These people, I
16 think, have a right to know that they do have individual
17 rights that they could assert. Rule 23(D) indicates
18 that they can individually ask to intervene in this
19 lawsuit and assert claims and defenses. That same rule
20 indicates that they have the right to appear and
21 challenge our representation, both the adequacy and the
22 fairness.

23 So, providing that notice would give them
24 the opportunity to assert those individual rights.

1 Also, Judge, the -- the notice would
2 allow them to realize that they could protect their
3 property interest. This lawsuit is only for declaratory
4 judgment. We have not asked the Court to enjoin Beck
5 from developing these leases while this lawsuit pends.

6 If notice were provided, these landowners
7 would be aware that these leases were void, so if Beck
8 attempted to develop while this case is pending, they
9 would know that they could have the ability to assert
10 individual claims and attempt to stop that development.

11 And that's not just a theory, Judge.
12 That's happened already. Since the summary judgment was
13 issued, Mr. -- or, Beck Energy attempted to include a
14 class member's property in a drilling unit. We filed a
15 lawsuit in Monroe County to obtain an injunction to stop
16 that development. So, there is a risk out there, Judge,
17 that Beck Energy could attempt to develop these leases
18 while this lawsuit's pending, because there is no
19 injunction on it.

20 So, notifying people that these leases
21 are void, would allow them to exercise their individual
22 rights.

23 THE COURT: Now, what -- when you're
24 done, I have several questions.

1 MR. ZURZ: Sure.

2 THE COURT: Are you -- go ahead.

3 MR. ZURZ: Beck objects, first of all, on
4 a jurisdictional issue. Beck indicates that somehow the
5 notice would impair the ability of the Court of Appeals
6 to affirm, reverse, or modify. I don't know how a
7 notice informing people they're parties to a litigation,
8 would impair the -- the ability of the Court of Appeals
9 to do anything.

10 Also, Judge, Beck's going to stand up and
11 they're going to argue that you have jurisdiction to
12 toll these leases. Well, if you have jurisdiction to
13 toll these leases, certainly you have jurisdiction to
14 send out a notice.

15 Beck argues that our notice is confusing.
16 It's not. It's a very straightforward, simple notice.
17 It just says, you're a class member, there's a lawsuit,
18 and that decision is on appeal.

19 And Beck also argues that for some
20 reason, producing the names of class members would be
21 burdensome. Every class member has a lease that's been
22 undeveloped. Every class member receives the
23 (unintelligible) rental payments from Beck Energy. They
24 receive those on a quarterly basis. So, the names and

1 addresses of class members are readily available through
2 Beck Energy. I assume they're on a computer. I assume
3 they could be backed off and that could be provided.

4 The cost of mailing those notices would
5 be paid by the -- the Plaintiffs. I don't see any
6 impediment to mailing the notice out.

7 Judge, it's our position the advantage of
8 notice telling people that they're parties of a lawsuit,
9 greatly outweighs any potential risk of confusion. So,
10 we think a notice is advisable. We filed the motion
11 because, Judge, you appointed us class counsel to
12 represent over 200 people and frankly, we don't know who
13 they are. So, we think we have an obligation to at
14 least ask you to send a notice out, telling them that
15 there's a lawsuit that could affect them and their
16 property.

17 THE COURT: Okay. Now, can I ask him
18 some questions?

19 MR. ZURAKOWSKI: Absolutely.

20 THE COURT: Okay. Just, I don't want to
21 cut you off.

22 If this case -- I have two overriding
23 concerns today. I have, the number one priority I have,
24 is to wrap this up, so it can all go to the Court of

1 Appeals, so once it comes back, however it comes back,
2 we don't have to keep going back to the Court of
3 Appeals. I mean, I don't want this thing to drag out
4 for years and years and years.

5 It comes back from the Court of Appeals,
6 and let's assume I'm correct -- which I think I am, but
7 okay, I made the decision I thought was correct on the
8 law -- you'll have to give notice at that point all
9 over, won't you?

10 MR. ZURZ: I will, Judge.

11 THE COURT: So, this is just simply a
12 notice to say this is pending. It's a kind of unusual
13 request, isn't it? I've never seen one to say, you know
14 -- because we're not serving them.

15 MR. ZURZ: I don't think it's unusual,
16 Judge, in the sense that there are two, 300 people who
17 are litigants who don't know that yet. So, they have
18 individual rights they could exercise. Do I think it's
19 crucial? No, I don't, Judge. I tend to agree with
20 their argument that the notice requirement could be
21 satisfied when the Court of Appeals makes its final
22 decision. But again, I'm in a position where you told
23 me I represent these people --

24 THE COURT: Mm-hum.

1 MR. ZURZ: -- I don't know who they are,
2 they don't know I'm their lawyer, so out of caution, I
3 ask you to perhaps mail a notice out now.

4 THE COURT: Okay. Attorney Zurakowski,
5 you want to address this?

6 MR. ZURAKOWSKI: Thank you, Your Honor.
7 The Seventh Appellate District issued a limited remand
8 order, asking this Court to examine two specific issues:
9 The definition of the class, and of course, Beck's
10 pending counterclaims.

11 This Court then issued a judgment entry
12 on June 10th, adjudicating both issues, and now the Hupp
13 Plaintiffs want this Court to rule on a new issue, this
14 Plaintiff's motion for notice, which was not part of the
15 Seventh Appellate District's limited remand order.

16 THE COURT: Yeah.

17 MR. ZURAKOWSKI: If this Court does find
18 that it has jurisdiction to rule on Plaintiff's motion,
19 then we believe that federal civil rule -- or excuse me,
20 Ohio Civil Rule 23(B)(2) does not require any notice.
21 And I think the Hupp Plaintiffs' Counsel has already
22 admitted that. He's set forth that fact in debriefing.
23 It's not mandatory, under the civil rules.

24 First, we believe that this Court lacks

1 jurisdiction to decide this motion, based on the Court's
2 very limited remand order.

3 In addition to that, Civil Rule 23 does
4 not require notice to the class members. And I think
5 that's important here, because this is a 23(B)(2) class.
6 The Hupp Plaintiffs are seeking injunctive relief.
7 They've sought to have this Court declare the Beck
8 Energy GT 83 oil and gas leases void. Their complaint
9 does not seek monetary damages, and 23(B)(2) is designed
10 for these very types of cases.

11 And it makes sense, because 23(B)(2)
12 classes deal with injunctive relief. There's no
13 decision. And there's no really reason for any notice
14 to be provided to them, because there's no rights of
15 these class members to be exercised. The class members,
16 under a 23(B)(2), cannot opt out of the class. They're
17 in.

18 It's -- it's -- it's simply no different
19 than a class action to invalidate, or an action to
20 invalidate a statute in Ohio. Ohioans can't say, you
21 know what, I didn't like the fact that -- that Judge
22 Lane invalidated that statute, I'm opting out of that
23 class and therefore I'm not a part of -- of that -- of
24 that decision, because I thought that was a -- a good

1 law.

2 In addition -- and I think this is most
3 important -- any decision by this Court at this point to
4 send out any notice, we think would be premature. We
5 think it's an unusual request and it's going to do
6 nothing but cause confusion and -- and we believe,
7 result in unnecessary costs.

8 THE COURT: Okay. I'm prepared to rule.

9 MR. ZURAKOWSKI: And --- and that's -- and
10 that's our position, Your Honor.

11 THE COURT: Okay. Attorney Dickinson,
12 you're not in on this one, so --

13 MR. DICKINSON: That's correct, Your
14 Honor.

15 THE COURT: Thank you. I'm not going to
16 grant this motion. The remand was on very limited
17 issue. Well, if -- if I am correct and I -- I made my
18 decision in good faith on the law, I believe, but if I
19 am correct, there will be notice at the appropriate
20 time. If I'm incorrect, you don't represent these
21 people.

22 I think it's way premature to be giving
23 notices until we know what the Court of Appeals -- and
24 gentlemen, I can see this case going all the way to the

1 Ohio Supreme Court. So, I'm --- the motion is denied.
2 Okay?

3 And I don't think it's necessary for the
4 Court of Appeals' decision. I think it's -- and I think
5 that when it comes back, if I -- if you prevail and if
6 I'm affirmed, there'll have to be a new notice in that.
7 There we go.

8 Okay, the second motion that was filed
9 with the Court, what do you want to address, second one?

10 MR. ZURAKOWSKI: Your Honor, if we could,
11 I think, address our renewed motion for stay?

12 THE COURT: Okay. Attorney Zurakowski?

13 MR. ZURAKOWSKI: Your Honor, Ohio Civil
14 Rule 62(B) permits a trial court to issue a stay of
15 execution of a judgment without requiring any bond.
16 Beck Energy is solvent, having negotiated over a
17 thousand leases in 12 different counties in Ohio. It
18 has close ties to the community, having paid lessors,
19 landowners over 12 million dollars in royalty payments
20 since 1978.

21 The question for this Court is, is Beck
22 Energy entitled to a stay of execution without a bond
23 being required? And we believe the answer to that
24 question is absolutely yes.

1 I think it's clear -- and I think the
2 Hupp Plaintiff's Counsel would agree with me -- that
3 this Court has the discretion to enter a stay order
4 without requiring a bond. And so, I will submit that
5 what we've set forth in our briefs in that matter, is --
6 is enough, and not to waste the Court's time, as --

7 THE COURT: And I've read your briefs,
8 gentlemen, and actually made notes and underlined them,
9 studied them, took them home and read them. I actually
10 read some of these last -- some of the stuff you gave me
11 last year on my Thanksgiving trip to California.

12 Okay, Attorney Zurk (sic)?

13 MR. ZURAKOWSKI: Your -- Your Honor, may
14 I have a few more minutes, please?

15 THE COURT: Zurz. Oh, yeah. Zurz. Okay.

16 MR. ZURAKOWSKI: In determining whether
17 to require --

18 THE COURT: Don't take a breath; I'll --
19 I'll rule.

20 MR. ZURAKOWSKI: -- a bond, the Court
21 must consider two relevant factors.

22 THE COURT: Okay.

23 MR. ZURAKOWSKI: And those are the only
24 two relevant factors to be considered by this Court, and

1 those are Beck Energy's solvency and whether Beck Energy
2 has well established ties to the community.

3 Beck Energy is solvent. It's been in
4 business since 1978. As I said, it's entered into over
5 a thousand oil and gas leases with landowners in the
6 State of Ohio, it's paid those landowners over 12
7 million dollars in royalties.

8 In addition, it has very close knit ties
9 to the community. It has drilled and operates currently
10 over 346 wells, as I said, in 12 different counties.

11 We believe that Civil Rule 62(B) clearly
12 indicates that there are two factors for this Court to
13 consider and two factors only, and that's solvency and
14 ties to the community.

15 In addition to that, I think what you're
16 going to hear from the Hupp Plaintiffs is that they're
17 going to be deprived of some ability to profit or may be
18 subject to future financial loss. But those are not
19 factors to be considered by this Court under 62(B) when
20 determining whether to grant a motion to stay.

21 Plaintiff's arguments that their clients
22 are somehow going to suffer some loss, doesn't withstand
23 logic and it's pure conjecture and speculation when you
24 carry this to its legal conclusion. And as the Court

1 has indicated, it's read the briefs.

2 I will say this: Beck Energy stands to
3 lose a heck of a lot more than the Hupp Plaintiffs. The
4 Plaintiffs have asked that this Court issue a motion for
5 stay on condition that Beck put up a 50 million dollar
6 bond. And the Hupp Plaintiffs have set forth in their
7 briefing a formula, assuming that every one of the Hupp
8 Plaintiffs class members' acreage is worth \$3500 an acre
9 as far as a signing bonus. If we use that formula and
10 you calculate how many acres that Beck Energy has under
11 lease -- which is approximately 40,000 -- when
12 multiplied by \$3500, that's over 140 million dollars.

13 Second of all, one size doesn't fit all.
14 The differing locations of each one of these leases and
15 market forces prohibit any assumptions on value, as the
16 Plaintiffs are trying to get this Court to believe. The
17 amount that a -- a landowner receives for a sign-on
18 bonus -- and for that matter, a royalty -- is dictated
19 by the county in which they're located, the township in
20 which they're located, the range in which they're
21 located, and in some cases, the side of the street that
22 they're situated on.

23 So, to say that all of these Hupp class
24 members who are strewn over 12 different counties in

1 Ohio -- some of whom are situated in the Utica Shale
2 play, others who are not -- just doesn't make sense to
3 use this one size fits all formula.

4 Further, market forces continue to change
5 in the State of Ohio as it relates to these oil and gas
6 leases in the Utica Shale play. I think it's no
7 surprise that Chesapeake is no longer flooding the
8 market with sign-on bonuses and royalty payments.
9 You've got Anadarko, who's decided to pull out of Ohio.
10 You've got Devon Energy, who's decided to pull out of
11 Ohio.

12 Your Honor, finally, we think if this
13 Court is going to issue a stay -- which we think is
14 absolutely necessary in this case while the appeal is
15 pending, without any bond -- the Plaintiffs -- well,
16 there must be language in that order, that precludes the
17 Plaintiffs from entering into new leases while this case
18 is on appeal, because that's what's happening. There
19 are folks out there, that are contacting these
20 Plaintiffs and the Plaintiffs are organizing themselves,
21 and they're entering into new leases.

22 Now, the validity of the Beck lease, GT
23 83 lease, remains an open issue, and I think we can all
24 agree with that. Pending the outcome of what happens in

1 the Seventh Appellate District and what happens possibly
2 at the Ohio Supreme Court, it's an open issue, it's
3 still subject to adjudication, and the Plaintiffs, by
4 entering into these new leases, are subjecting
5 themselves to potential future litigation for
6 interference of the contract, interference of the
7 business relationship, and that's just another reason
8 why this Court needs to grant the motion to stay without
9 requiring any bond.

10 Thank you, Your Honor.

11 THE COURT: Well, you know, I'm not --
12 this case has the -- the largest case I ever had was 44
13 million. And it wasn't appealed; it was a trial to the
14 Court. But this -- these are astronomical figures, it's
15 -- you know, gentlemen. But you say they're sound; I've
16 never seen a Beck financial statement. I mean, I don't
17 know if they -- if they borrowed money to drill, if they
18 -- you know, I don't know what they owe investors, what
19 -- you know, I don't know the whole financial picture.

20 And I don't even know what people are
21 getting for an acre. I mean, you hear everything. And
22 I -- and I mean, I imagine if you stood out on the
23 street, you'd hear 10,000, 20,000, I -- I don't know
24 where it's at.

1 But if this case comes back, two, three,
2 four years from now and the oil market's crashed, what I
3 -- well, bo-- is there -- is there a cause for damages,
4 if the case is affirmed and now all of the sudden, they
5 can't get any money out of these leases? I don't --
6 I've never known that to happen, but I mean, it's a
7 natural, judicial progression, but I'm just wondering.

8 MR. ZURAKOWSKI: That -- that is the risk
9 the Plaintiffs took when they filed this litigation, and
10 that's Beck Energy's position.

11 In addition to that, Your Honor, I think
12 the bigger risk here is, without a motion for stay,
13 these Plaintiffs are subjecting themselves to potential
14 future litigation, if the case goes up and is reversed
15 in some way, shape, or form, and comes back down and
16 have entered into other leases.

17 THE COURT: Well, and I don't want an
18 answer to this question, but I'm going to -- it's -- I'm
19 going to be candid with you. In the back of my mind, I
20 know, because I saw the -- the sealed document, the
21 amount of money --

22 MR. ZURAKOWSKI: Sure.

23 THE COURT: -- that Beck got. I assume,
24 if this is -- if I'm affirmed, they're going to have to

1 pay that money back, but I don't know that. And that
2 would be a big drain.

3 MR. ZURAKOWSKI: Well, if you want me to
4 answer that, I can.

5 THE COURT: If you want to. You don't
6 have to.

7 MR. ZURAKOWSKI: Your Honor, I would -- I
8 would like to -- I'm going to reserve judgment on that.
9 I may or may not --

10 THE COURT: Yeah. I don't care whether
11 you answer it or not, I mean.

12 MR. ZURAKOWSKI: Thank you.

13 THE COURT: But I mean, I -- I've often
14 wondered. I mean, this has serious consequences for
15 both sides. Everybody.

16 Okay. Attorney Zurz?

17 MR. ZURZ: Your Honor, Beck is entitled
18 to a stay, provided that they post the bond and that
19 bond amount is in your discretion and the conditions of
20 that bond, again, are in your discretion.

21 Let's remember what happened earlier in
22 this case. In August of 2012, Beck filed a premature
23 motion to stay, relative to the three named Plaintiffs'
24 leases. In that motion, they indicated that XTO bought

1 the deep rights in those three leases for a million
2 dollars, and Beck was offering to post ten percent bond,
3 or a hundred thousand dollars.

4 Now that you've certified this class --
5 and we learn now that there's what, 35,000 acres in play
6 here -- all the sudden, Beck doesn't want to post any
7 bond.

8 Well, maybe it's speculative as to what
9 the 35,000 acres are worth, but we know what at least
10 7,500 acres in Monroe County are worth, because XTO
11 bought those deep rights from -- from Beck.

12 THE COURT: Mm-hum. And you know that
13 amount, too.

14 MR. ZURZ: I know that amount, Judge.
15 It's 7500 times 3,000, so it's in excess of 20 million
16 dollars, so that's not speculative. At least 7,000
17 acres in Monroe County, the deep rights were purchased
18 by XTO, Beck received those monies. So, we don't have
19 to guess as to -- to what was exchanged. Perhaps the
20 value of the other mineral rights are in dispute, but
21 they have a value, Judge.

22 THE COURT: Now, my question for you,
23 Attorney Zurz, is this: If it's -- if it prevails, and
24 I keep saying if it prevails, I -- but it may not, I

1 mean, you know, I don't know -- I -- I certainly can't
2 think out of the box as much as you gentlemen can; I
3 mean, you have looked at this so many ways, it's amazing
4 to me, and I don't know how you have time to get this
5 stuff to me so quick -- but if it comes back, and you --
6 your clients prevail, you're only seeking to have them
7 vacated, voided, and given their lease back. What's it
8 -- why do you need money for damages? Why do we need a
9 bond for --

10 MR. ZURZ: We have not asked for monetary
11 damages, but Judge, the statutes allow for a bond, even
12 if no money damages were requested.

13 THE COURT: So, what's the bond covering?
14 If you -- it's -- it's -- I mean, what would they need
15 the -- what would you need -- your clients need the 25
16 million for? That's what I'm trying to get my head --
17 head around.

18 MR. ZURZ: Because Beck's asking for the
19 privilege of encumbering these properties on a void
20 lease for probably two more years. There's got to be
21 some security for that privilege.

22 THE COURT: So, if they prevail, they
23 will have lost the potential to sell --

24 MR. ZURZ: Correct.

1 THE COURT: -- to lease their land at the
2 top of the market?

3 MR. ZURZ: Right.

4 THE COURT: They will have lost the
5 potential to get any royalties if the wells had been
6 drilled.

7 MR. ZURZ: Correct, Judge.

8 THE COURT: But there won't be -- even if
9 you -- even if you -- the thing stopped today and you
10 got your leases back, they wouldn't all get a Utica
11 well.

12 MR. ZURZ: No, and they wouldn't all get
13 bonuses of 6,000 an acre.

14 THE COURT: Yeah.

15 MR. ZURZ: I mean, there are -- there's
16 some value there. That value -- I'll admit, the value
17 depends upon where the property's at, what county is it
18 in and what township, what part of the township is it
19 in.

20 So, I -- I can't sit here and tell you
21 that we have a figure today, as to what all the mineral
22 rights of these class members are worth, because I don't
23 even know who's in my class, Judge.

24 THE COURT: Yeah.

1 MR. ZURZ: I don't know where the acreage
2 is.

3 THE COURT: And that's my fault, because
4 I didn't make them serve notice, but -- okay.

5 MR. ZURZ: So, I guess our position is
6 this: For years, Beck has encumbered these properties
7 on a void lease. It failed to develop those leases, and
8 now flip those leases for millions of dollars and it
9 wants, after you declared the leases void, to continue
10 to encumber the properties and not post a bond. That
11 doesn't seem fair, Judge.

12 So, I think the amount and the condition
13 are up to your discretion.

14 THE COURT: I'm prepared to rule on this.
15 Is there -- do you want to say anything else?

16 MR. ZURAKOWSKI: I would, Your Honor.
17 Because Beck Energy is financially solvent and has
18 strong ties to the community, those are the two issues
19 that this Court needs to take into consideration under
20 62(B).

21 And as this Court aptly noted, this is
22 not a case where the Hupp Plaintiffs are seeking
23 damages.

24 THE COURT: Mm-hum.

1 MR. ZURAKOWSKI: As the Hupp Plaintiffs
2 admit, they have no idea what this acreage is worth. As
3 the Hupp Plaintiffs have just said, it's purely
4 speculative what those Hupp Plaintiffs may or may not
5 receive, and how much they may receive in both a signing
6 bonus and a royalty payment.

7 THE COURT: So, you think the only
8 appropriate bond is as -- of course, I've certified the
9 class.

10 MR. ZURAKOWSKI: No question you have.

11 THE COURT: Okay, I'm prepared to rule.
12 Does anybody else want to say anything?

13 I'm going to order a stay and I'm going
14 to order bond at 14 million dollars.

15 MR. ZURAKOWSKI: 14 million, Your Honor?

16 THE COURT: Yeah. And I think that's a
17 reasonable bond. I --

18 MR. ZURAKOWSKI: Your Honor, for
19 clarification purposes, is -- will Beck Energy be able
20 to post a percentage of that, to secure that bond?

21 THE COURT: What's your position on that?

22 MR. ZURZ: Our position, Judge, is you
23 know how much money Beck Energy got from the sale to
24 XTO. The funds are available. It should be the entire

1 14 million.

2 THE COURT: I -- and I think that's a --
3 I think that's a -- that's a -- I don't want to chastise
4 myself. I think that's a reasonable bond. I'm not
5 going to try to make them cover the worst case scenario
6 or the best case scenario. I'd just as soon the money
7 be posted, rather than a percent. I don't know -- I've
8 never had this. I don't know what other judges do in
9 this. I -- I've never posted this large of an appeal
10 bond, but I think they either post it through a surety
11 or cash. They can do it through a bonding company, or
12 they can do it with cash. And if they go through a
13 bonding company, it won't cost them the whole 14
14 million.

15 Okay? I don't -- I rarely -- I don't
16 think I've even taken a ten percent bond ever in a
17 criminal case.

18 So there you are.

19 Okay, the stay is granted, it's a 14
20 million dollar bond.

21 Okay. We've done motion to notice,
22 motion for bond, motion for stay. Now we have the
23 motion to toll the terms. So, it'll be cash or surety.

24 MR. ZURAKOWSKI: Thank you, Your Honor.

1 THE COURT: Do you want to do the motion
2 to toll the terms?

3 MR. ZURAKOWSKI: Yes, Your Honor.

4 THE COURT: Okay.

5 MR. ZURAKOWSKI: If I could.

6 THE COURT: Sure.

7 MR. ZURAKOWSKI: Under Ohio law, Your
8 Honor, including recent decisions from the Monroe County
9 Court of Common Pleas, oil and gas leases must be
10 tolled, pending an appeal when the lessor or landowner
11 is challenging the validity of the lease.

12 The leases could terminate during the
13 pendency of the appeal, depriving Beck Energy of its
14 interests and -- and certainly exposes the Plaintiffs to
15 future litigation for intentional trespass, interference
16 with the contract, interference with the ba-- business
17 relationship.

18 It's on this basis that we think Beck
19 Energy's motion to toll should be granted.

20 Now, there's some procedural history
21 here, Your Honor. If you remember, Beck Energy filed a
22 motion to toll way back on October 1st, 2012 in this
23 case. The Plaintiffs filed a memorandum in opposition
24 on October 25th and thereafter, this Court did not rule

1 on that motion.

2 THE COURT: I don't know how I missed it.
3 You're not going to suggest it. I don't know -- of
4 course, the file's like this, but I'm real disappointed
5 in myself.

6 MR. ZURAKOWSKI: Your Honor, our renewed,
7 truly, motion to toll was as a result of that June 10th,
8 2013 judgment entry that you issued, and in that -- I
9 mean, I know it's on limited remand order, but you
10 didn't address the motion to toll.

11 So, our new motion to toll addressees
12 that June 10th, 2013 judgment entry, and this is
13 different than the original motion to toll, which only
14 at that point dealt with the original named plaintiffs.

15 This Court is well aware of the purposes
16 for tolling. It suspends both parties' obligations, it
17 prevents the landowner-lessor from profiting at this
18 point from any wrong, it maintains the status quo during
19 the pendency of this appeal.

20 Recent but --

21 THE COURT: Can I tailor the motion to
22 toll to say, neither party can renegotiate these leases?

23 MR. ZURAKOWSKI: Yes.

24 THE COURT: They're saying, your client's

1 going to go out and get new leases, if I understood that
2 allegation.

3 MR. ZURZ: Or develop.

4 THE COURT: Or start developing.

5 MR. ZURAKOWSKI: Your Honor, we ---

6 THE COURT: You're going to say, they --
7 what you've already said; they're forming citizens
8 groups and landowners groups, or however you termed it,
9 and they're renegotiating. So, if I toll it, can I say
10 nobody does anything with anything?

11 MR. ZURAKOWSKI: Absolutely.

12 MR. ZURZ: Judge, I think the stay
13 prohibits any class member from renegotiating or signing
14 a new lease now. Now --

15 MR. ZURAKOWSKI: We would disagree with
16 that, Your Honor.

17 THE COURT: Well, I -- then let's make it
18 clear. Let's put it in the tolling, nobody does
19 anything.

20 MR. ZURAKOWSKI: And -- and that's
21 exactly what we would ask for, Your Honor.

22 THE COURT: And that would cover the --
23 the putative class members, too.

24 MR. ZURAKOWSKI: That's exactly right,

1 Your Honor.

2 THE COURT: And on that, we may want to
3 give them notice as to that.

4 MR. ZURAKOWSKI: You may want to. You
5 may want to.

6 THE COURT: So they know that that's
7 happened.

8 What's --- do you have anything else you
9 want to say on this?

10 MR. ZURAKOWSKI: Your Honor, I would
11 submit that there is good and valid case law out of
12 Monroe County and Judge Selmon, one of the cases which I
13 was part of, which Beck Energy sought a motion to toll
14 and Judge Selmon granted that motion to toll, even after
15 the plaintiffs in that case argued, well wait a minute,
16 Judge Lane has already decided that these Beck leases
17 are no good. And we made the argument that that is
18 certainly his decision, that case and all those cases
19 are on appeal, and as a result, the lease -- the leases
20 in that case were tolled.

21 We don't see any difference in this case,
22 Your Honor. We would ask that they be tolled as you
23 indicated.

24 THE COURT: Attorney Zurz?

1 MR. ZURZ: Your Honor, I think it's too
2 late to grant toll at this point. The tolling motion
3 relative to the class members' leases was filed after
4 your final order, voiding all the class members' leases,
5 and after that final order was appealed.

6 THE COURT: And -- and it goes both ways.
7 It came back on limited remand.

8 MR. ZURZ: Correct. And then, on June
9 10th, 2013 you issued an order, which defined the class,
10 which said all of your prior decisions apply to the
11 class, and then they appealed that order and then they
12 filed for tolling.

13 THE COURT: Can the Court of Appeals toll
14 it, while it pends?

15 MR. ZURZ: I think the Court of Appeals
16 could, if it so chose, sure.

17 MR. ZURAKOWSKI: Your Honor, we're not
18 aware of any procedural vehicle to get a motion to toll
19 in front of the Seventh Appellate District Court of
20 Appeals.

21 THE COURT: Yeah, I don't know either.

22 MR. ZURZ: Well, Judge, I -- I would say
23 --

24 THE COURT: But if I --

1 MR. ZURZ: -- once that decision was
2 made, voiding the class members' leases, once that
3 became final, and especially --

4 THE COURT: They were void.

5 MR. ZURZ: They were void. There's
6 nothing left to toll.

7 THE COURT: And that's the law of the
8 case until we --

9 MR. ZURZ: That -- that's our position.
10 Judge, remember, this lawsuit was filed September of
11 2011. I mean, this is two years later. Now they're
12 getting around to asking you to toll the class members'
13 leases.

14 THE COURT: You think I need to go back
15 up and carefully define what this -- what activity this
16 stay prohibits?

17 MR. ZURZ: Well, I can tell you, it's our
18 position that the stay prohibits any class member from
19 signing a new lease, from selling their mineral
20 interests or otherwise acting upon their Beck lease.

21 MR. ZURAKOWSKI: Your Honor, our position
22 is, the motion for stay and the order that this Court
23 would issue on the motion for stay, doesn't toll the
24 terms of the leases. The motion for stay, and the

1 orders --

2 THE COURT: Well, you want it tolled so
3 the leases don't expire.

4 MR. ZURAKOWSKI: Exactly. The motion for
5 stay simply states, hey, we can't execute upon the
6 judgment. And the Plaintiff's counsel is absolutely
7 right. It -- that's exactly what the stay order would
8 do. But it doesn't toll these leases. In other words,
9 Beck Energy could end up, you know, winning the battle,
10 losing the war, so to speak, because its leases are not
11 suspended during the pendency of this appeal, which --

12 THE COURT: What's the disadvantage to
13 the Plaintiffs to -- to -- other than the fact the lease
14 -- the disadvantage is, the lease will expire and they
15 can go re-lease, right?

16 MR. ZURAKOWSKI: The disadvantage to Beck
17 is exactly that. It loses its investment in these
18 leases while it has a good and valid appeal pending.

19 What do the lessor-landowners lose?
20 Nothing, now that this Court has issued a mo-- an order
21 for stay, and assuming Beck Energy posts that 14 million
22 dollar bond.

23 MR. ZURZ: Judge, I -- I agree that the
24 stay doesn't toll the leases. Tolling is an interim

1 appellate remedy that you have to order. I don't think
2 you can order it in this case, because there are no
3 leases left to toll. They chose to file a motion to
4 toll after a final order was issued by you, voiding
5 those leases. Not only that, they chose to file a
6 motion to toll after they appealed that order.

7 So, I don't know what you can toll at
8 this point in the case.

9 THE COURT: So the original tolling
10 motion was as to what, four plaintiffs?

11 MR. ZURZ: As to the three plaintiffs,
12 correct.

13 THE COURT: Three plaintiffs.

14 MR. ZURZ: Now, there's a --

15 THE COURT: Now there's a motion as to
16 the class.

17 MR. ZURZ: Correct. And --

18 MR. ZURAKOWSKI: Which we felt was
19 timely, after this Court defined the class. Not to
20 mention the fact that this Court issues a stay, its
21 decision with regards to whether the leases are
22 (unintelligible) have an issue or not is stayed.

23 So, to sit here and say at this point,
24 after this Court's issued an order on the motion to stay

1 and then say, wait a minute, there are no more leases,
2 this Court stayed that order. And the motion for stay
3 does not toll these leases, Your Honor,

4 MR. ZURZ: Judge, the stay stays
5 execution on the judgment. It doesn't revitalize void
6 leases. The law of this case now is, these leases are
7 void. And they waited until after the leases were void
8 to ask for tolling. There's nothing left to toll.

9 THE COURT: Okay, now this is the one you
10 want to brief further? Is that the one

11 MR. ZURAKOWSKI: Well, I haven't even had
12 a chance to see their reply briefings -- or memorandum
13 in opposition was handed to me as I walked in, Your
14 Honor.

15 THE COURT: And that's the one we started
16 out, you wanted --

17 MR. ZURZ: Judge, I may add, there's --
18 there's a jurisdictional problem out of the tolling.
19 And I think it's important to understand the -- the
20 chronology of the pleadings that were filed in this
21 case.

22 They filed a premature motion to toll the
23 Plaintiffs' leases October of 2012. The case went up on
24 appeal and -- and then it came back. In your June 10th,

1 2013 order, they have taken the position that because
2 you didn't rule on that motion to toll, that that was an
3 implicit denial, so your implicit denial of the motion
4 to toll the three Plaintiffs' leases is now before the
5 Court of Appeals. It's an appeal issue.

6 As we all know, you can't do anything
7 that would impair the Appellate Court's ability to
8 reverse, to affirm, or to modify.

9 The Court of Appeals is going to decide
10 whether your implicit denial of the motion to toll was
11 appropriate. Your decision right now as to whether to
12 toll the class members' leases could indeed conflict
13 with that decision.

14 So, I think because they chose to appeal
15 this implicit denial -- which we disagree with, by the
16 way, but --

17 MR. ZURAKOWSKI: Your Honor ---

18 THE COURT: I'll let you file further
19 brief on it and you can say anything you want to say
20 today, sir.

21 MR. ZURAKOWSKI: Your Honor, if I could,
22 this Court does have jurisdiction. The Beck Energy
23 leases and its motion to toll is a collateral issue.
24 It's one that's not going to impact the merits of this

1 case and the decision that you've made. And pursuant to
2 well settled Seventh Appellate District law, which was
3 set forth in our reply brief, we think that we have an
4 absolute right to have those leases tolled and we think
5 it was absolutely timely.

6 THE COURT: When will you get me that
7 paperwork?

8 MR. ZURAKOWSKI: I can get it to you
9 it is -- today's Tuesday. I can get that to you by
10 Friday.

11 THE COURT: Okay. You going to want a
12 further response?

13 MR. ZURZ: No, Judge.

14 THE COURT: Get me the paperwork by
15 Friday, I'll decide that issue promptly.

16 Are there any other motions left?

17 MR. ZURZ: There is XTO's motion.

18 THE COURT: Oh, have a seat. I'm sorry.
19 You want to intervene, Attorney Dickinson.

20 MR. DICKINSON: Well, and Your Honor, I
21 just joined in the motion to stay, which you've already
22 ruled on the motion to stay, unless you want to
23 reconsider the amount of the bond, in response to me,
24 that --

1 THE COURT: I thought that was a very
2 fair decision, but you both probably are -- if you're
3 both -- if you're all upset, then I know it was fair.

4 So, you don't have anything else to say?

5 MR. DICKINSON: I do not. Thank you,
6 Your Honor.

7 THE COURT: Thank you. So, the motion to
8 intervene --

9 MR. DICKINSON: It was just to -- to join
10 in the motion for stay. But you've already denied our
11 motion to intervene.

12 THE COURT: Okay, good. So, who will do
13 the entry? Who's going to do the docket -- the entry on
14 the ones I've ruled on?

15 MR. ZURAKOWSKI: I can do that, Your
16 Honor. And I can submit that --

17 THE COURT: Okay. I want -- I want both
18 counsel to sign it.

19 MR. ZURAKOWSKI: Rick, I'll -- I'll
20 submit that to you for --

21 THE COURT: If you can't agree, we'll get
22 on the phone and discuss it. Okay?

23 MR. ZURZ: Good.

24 THE COURT: If we have to, we'll have

1 another hearing. Okay. Thank you, gentlemen.

2 MR. ZURAKOWSKI: Very well.

3 MR. ZURZ: Thank you, Judge.

4 MR. ZURAKOWSKI: Thank you, Your Honor.

5 MR. DICKINSON: Thank you.

6 THE COURT: Thanks for coming down.

7 THE BAILIFF: All rise.

8 THE COURT: We're in recess.

9 (Whereupon, the Court was in recess.)

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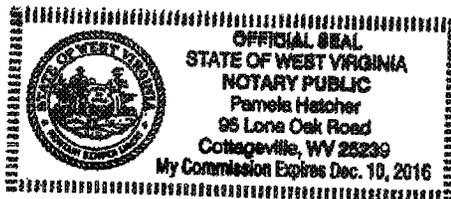
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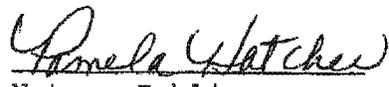
2 I, Cheryl G. Munson, Transcriber for
3 Realtime Reporting, duly appointed therein, do hereby
4 certify that the foregoing is, to the best of my
5 knowledge and ability, a true and accurate transcript as
6 transcribed from an audio electronic recording of the
7 proceedings conducted in said Court, in the case of
8 Clyde A. Hupp, et. al., v. Beck Energy Corporation, Case
9 No. 2011-345, with the Honorable Edward Lane, Judge of
10 said Court, presiding.

11 Given under my hand this 16th day of
12 August, 2013.

13
14 
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22 IN WITNESS WHEREOF, I have hereunto
23 subscribed my hand and affixed my notarial seal on this
24 16th day of August, 2013.




Notary Public