ORIGINAL

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SUPREME COURT OF OHIO

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 ADDITIONAL EVIDENCE

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Intervening Respondent, Beck Energy Corporation ("Beck Energy"), submits the attached additional evidence 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 C – Affidavit of Rodney Black.

Respectfully submitted,

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IN THE SUPREME COURT OF OHIO

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AFFIDAVIT OF RODNEY BLACK

Affiant, Rodney Black, being duly sworn and cautioned, for his Affidavit, states as follows:

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

2. I am Regional Land Manager for Ohio for XTO Energy Inc. ("XTO").

EXHIBIT
C

3. In 2011, XTO purchased the right to drill, develop and explore acreage leased by Beck Energy Corporation below certain depths greater than 3,860 feet (hereinafter referred to as the "Deep Rights").

4. Almost every lease that XTO acquired from Beck Energy utilizes the GT83 Oil and Gas Lease form (hereinafter "GT83 Lease"). That form contains a primary term of 10 years, which is the length of time for Beck Energy (and XTO, as its assignee) to develop the property in question; if the land is not developed in that time, the leases expire automatically. The leases also require Beck Energy to pay delay rentals after the first year, and up to the remainder of the primary term, if the leases are not developed.

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

6. I also understand that 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.

7. The class, as defined by the trial court in *Hupp*, encompasses approximately 7,000 acres that XTO purchased from Beck in the 2011 transaction that were not held by production prior to the filing of the *Hupp* litigation (the "Undeveloped Leases").

8. I also understand that Beck Energy has appealed the trial court's decision on both the declaratory judgment and the class certification. XTO has also appealed from the

trial court's denial of its motion to intervene. All of these appeals are currently pending in the Court of Appeals for Monroe County, Seventh Appellate District.

9. XTO has also been concerned that if it were to drill on the Undeveloped Leases while the litigation was pending, it would risk further legal action for doing so.

10. Apart from the instruction from the plaintiffs' counsel, the *Hupp* decision finding the GT83 Lease void ab initio has placed a cloud on XTO's lease rights which has made it economically impractical for XTO to develop the Undeveloped Leases while the litigation is pending. If XTO commenced drilling operations, it would risk losing a substantial financial investment involved with the exploration and drilling for oil and gas, as well as the cost and production, if the Seventh Appellate District were to affirm the trial court's decisions.

11. The *Hupp* decision thus effectively diminishes the 10-year time period provided in the Undeveloped Leases for XTO to develop them. The effect is class-wide, including with respect to Relator's lease.

12. It is my understanding that, 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 Undeveloped Leases are found to be valid, XTO 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 (no more, no less).

13. To date, without the Tolling Order, a total of 84 GT83 Leases would have expired during the pendency of the *Hupp* litigation. These 84 GT83 Leases cover approximately 5,000 acres of land in Ohio.

14. Additionally, without the Tolling Order, approximately 700 additional leased acres are set to expire by the end of 2014.

15. Furthermore, based upon acreage that XTO is developing outside the *Hupp* litigation, it has been XTO's experience in Ohio that it takes approximately nine to twelve months after XTO formulates a plan of development to begin drilling (spudding) a well. Among the numerous tasks which have to be accomplished before drilling a well are: obtaining a title opinion to verify ownership of the property, obtaining the proper permits from various agencies, surveying the location, and building a pad site to facilitate drilling.

16. As such, it is likely that even the approximately 1200 acres that expire between January 2015 and September 2015 would be difficult or impossible for XTO to develop without the Tolling Order.

17. Accordingly, without the Tolling Order, XTO will be unable to develop approximately 90% of the approximately 7,000 acres of undeveloped lease acreage it acquired almost three years ago—potentially more depending upon the timing of the litigation. As noted previously, in the absence of tolling, 5,000 acres of Undeveloped Leases would already have expired due to the pendency of the *Hupp* litigation. Additionally, XTO would not be able to complete the necessary tasks to drill on the remaining 700-2000 acres that are set to expire within the next year without the Tolling Order, due to the amount of uncertainty surrounding the timing of the litigation and the litigation itself.

18. In effect, without the Tolling Order, the mere fact of the litigation—regardless of the ultimate outcome—would have the practical effect of depriving XTO of the rights it acquired with respect to the Undeveloped Leases.

Further, Affiant sayeth naught.

Rodney Black

STATE OF TEXAS)
) ss.
COUNTY OF TARRANT)

Sworn to before me and subscribed in my presence at Fort Worth, Texas, this 19th day of September, 2014.

Notary Public

KAMILLE A. KEMBLE
Notary Public, State of Texas
My Commission Expires
July 26, 2018

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:

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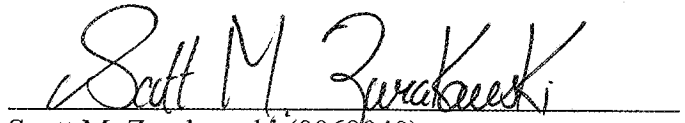

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