

State of Ohio ex rel. Claugus Family Farm, )  
 L.P., )  
 )  
 Relator, )  
 )  
 v. )  
 )  
 Seventh District Court of Appeals, et al., )  
 )  
 Respondents. )

Case No. 2014-0423

IN MANDAMUS AND PROHIBITION

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**RELATOR'S RESPONSE TO INTERVENING RESPONDENT BECK ENERGY CORPORATION'S SUPPLEMENTAL MOTION FOR STAY**

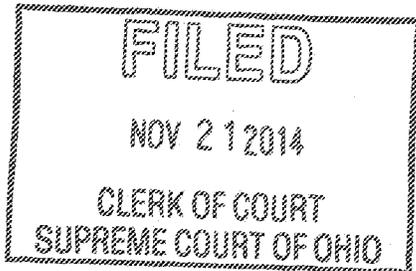
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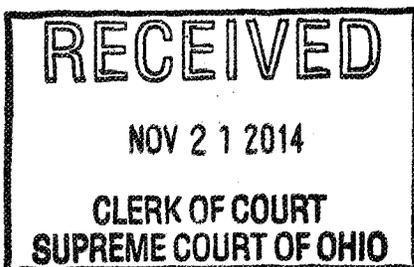
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IN THE SUPREME COURT OF OHIO

State of Ohio ex rel. Claugus Family Farm, )  
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Now comes Relator, by and through undersigned counsel, to respond to *Intervening Respondent Beck Energy Corporation’s Supplemental Motion for Stay*. In its original Motion to Stay and in its Intervenor’s Merit Brief, Beck Energy asserted that class counsel intended to file an appeal in *Hupp v. Beck Energy Corporation* and exhaustively discussed the alleged impact of such an appeal. Despite having previously addressed these issues at length, Beck Energy has interpreted the actual filing of the Notice of Appeal as an invitation to repeat its arguments to this Court once again.<sup>1</sup> Even a cursory review of the *Memorandum in Support of Jurisdiction of Appellants Clyde A. Hupp, et al.*, however, makes it clear that the jurisdictional memorandum undercuts Beck Energy’s arguments rather than supporting them.

Rather than establishing that the appeal and this original action will address the same issues as Beck Energy predicted, the *Hupp* appellants have made it clear that their appeal will not

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<sup>1</sup> At some point, these repetitive filings (such as the five separate appeals Beck Energy filed in the *Hupp* case) have to be interpreted as an attempt to wear down the courts and impose unnecessary costs on opponents. Given its approach to litigation, it is no wonder that Beck Energy claimed it would be prejudiced by having to pay its counsel to intervene and “defend” against this original action.

address the due process issues raised by Relator in this action. Jurisdictional Memo. at 4. This is hardly surprising given that Relator has argued the procedural miscalculations of class counsel were partly responsible for the violation of the absent class members' due process rights. (As Relator correctly predicted, the *Hupp* appellants have not challenged the Seventh District's decision to certify a Rule 23(B)(2) class, despite the fact that any eventual decision would affect the property rights of absent class members, with each class member potentially losing hundreds of thousands or even millions of dollars each.)

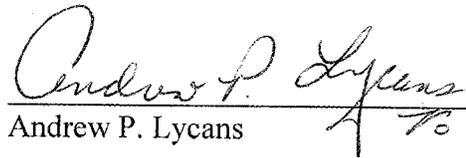
Beck Energy's renewed contention that this action should be stayed to protect against unfairness to its *opponents* in the appeal is the epitome of irony. Although the *Hupp* appellants themselves noted the existence of this action in their jurisdictional memorandum, they did not contend that proceeding with this action would prejudice them in any way. Indeed, they emphasized the differences between their appeal and this original action.

Beck Energy has never been interested in protecting the rights of absent class members, and has done everything in its power to keep them from obtaining notice of the class action lawsuit and an opportunity to protect themselves. It is clear that what Beck Energy actually fears is the effect of this Court holding that Relator's constitutional rights were violated by the issuance of the Tolling Order. Far from granting Relator "special relief," the Court would be sending a clear signal to the lower courts that the Tolling Order cannot be enforced as to any of the absent class members, none of whom were provided with due process of law as required by the Ohio and United States Constitutions. Relator is not claiming that it is special—due process is the constitutional right of all citizens, not just those with the means to seek redress from the courts.

As everyone but Beck Energy has acknowledged, Relator is not seeking the same relief as the *Hupp* appellants, whose primary goal is to have all Form G&T (83) leases declared void as against public policy. In contrast, Relator merely wants to have its constitutional due process rights protected from the Seventh District's overreaching. Determining the interplay between the due process provisions in the Ohio and United States Constitutions and Ohio Rule of Civil Procedure 23(B)(2) will not affect appellants' efforts to have their leases declared void in any way. The Court's decision in this action could benefit all the absent class members. Even if the Court were to rule against Relator, however, the *Hupp* appellants would still be able to pursue the issues they have raised in their appeal. The Motion to Stay should be denied.

Respectfully submitted,

Daniel H. Plumly, Counsel of Record

  
Andrew P. Lycans

COUNSEL FOR RELATOR, CLAUGUS FAMILY  
FARM, L.P.

**CERTIFICATE OF SERVICE**

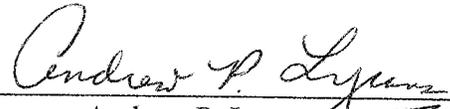
I hereby certify that I served the above *Relator's Response to Intervening Respondent Beck Energy Corporation's Supplemental Motion for Stay* to the following by regular U.S. Mail this 19<sup>th</sup> day of November, 2014:

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