

**IN THE SUPREME COURT OF OHIO**

**CLYDE A. HUPP, *et al.*,**

Plaintiffs/Appellants,

vs.

**BECK ENERGY CORPORATION,**

Defendant/Appellee,

and

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

Relator,

vs.

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

Respondents.

CASE NO. 2014-1933

On Appeal from the Monroe County  
Court of Common Pleas, Seventh  
Appellate District

Court of Appeals Case Nos. 12 MO 6  
13 MO 2  
13 MO 3  
13 MO 11

and

Original Action in Prohibition and  
Mandamus

CASE NO. 2014-423

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**APPELLEE/INTERVENING RESPONDENT BECK ENERGY  
CORPORATION'S MOTION TO ENLARGE THE TIME FOR  
ORAL ARGUMENT**

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**CLYDE A. HUPP, et al.,**

Plaintiffs/Appellants,

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**BECK ENERGY CORPORATION,**

Defendant/Appellee,

and

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

Relator,

vs.

**SEVENTH DISTRICT COURT OF  
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## MOTION

Pursuant to S.Ct.Prac.R. 17.05(A)(2), Counsel for Appellee/Intervening Respondent, Beck Energy Corporation, moves this Court to enlarge the time for oral argument. The basis for this motion is set forth in the attached memorandum in support. Relator Claugus Family Farm L.P. and Proposed Intervenor-Appellee XTO Energy Inc. have made similar requests.

Respectfully submitted,

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## MEMORANDUM IN SUPPORT

This consolidated appeal concerns a jurisdictional appeal (*Hupp, et al. v. Beck Energy Corp.*, Case Nos. 12 MO 6, 13 MO 2, 13 MO 3, 13 MO 11) and an original action in mandamus and prohibition (*State of Ohio ex rel. Claugus Family Farm, L.P. v. Seventh District Court of Appeals, et al.*, Case No. 2014-0423). On January 28, 2015, the Court accepted the *Hupp* appeal on Propositions of Law Nos. I and II. In this same Entry, the Court, *sua sponte*, consolidated the *Hupp* appeal with *Claugus Family Farm, L.P.*'s original action.

The two propositions of law to be considered, in the *Hupp* case, present numerous legal issues for the Court to address. These include:

- whether the GT83 Lease's habendum clause is ambiguous requiring application of the maxim of "construction against the drafter";
- whether the GT83 Lease's habendum clause contains a "primary term" that cannot be extended beyond 10 years without development;
- whether "commencement" of operations is sufficient activity to extend a lease into its secondary term;
- whether the words "primary term" and "secondary term" have to appear in the habendum clause to make the lease a term lease;
- whether the phrase "capable of being produced on the premises in paying quantities," in the habendum clause, transforms the GT83 Lease into a perpetual, no-term lease;
- whether "paying quantities" are properly viewed from the lessee's perspective;
- whether the phrase "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" renders the habendum clause illusory;

- whether the “delay rental” provision applies only during the primary term of the GT83 Lease;

- whether the GT83 Lease is void ab initio because it is a no-term, perpetual lease in violation of Ohio’s public policy;

- whether the GT83 Lease is subject to the implied covenant of reasonable development;

- whether the GT83 Lease’s delay rental provision is equivalent to an advance royalty;

and

- whether Paragraphs 17 and 19 of the GT83 Lease conflict rendering the Lease ambiguous and invalidating the disclaimer of implied covenants.

Likewise, *State ex rel. Claugus Family Farm, L.P.* also presents a number of legal issues for the Court’s consideration. These include:

- whether Claugus Family Farm, a member of a Civ.R. 23(B)(2) class, was denied due process when it did not receive notice and an opportunity to opt out of the class action;

- whether the Seventh District Court of Appeals properly issued a tolling order;

- whether notice of the tolling order and an opportunity to opt out would have served any purpose;

- whether notice and an opportunity to opt out is only required in Civ.R. 23(B)(2) classes where the predominant relief sought is monetary damages;

- whether Article 1, § 16 of the Ohio Constitution mandates notice and an opportunity to opt out of Civ.R. 23(B)(2) class actions;

- whether Claugus Family Farm is entitled to a writ of prohibition where the Seventh District Court of Appeals is not “about to exercise judicial or quasi-judicial power.”

- whether the Seventh District Court of Appeals lacked jurisdiction when it extended the tolling order to the Civ.R. 23(B)(2) class members;
- whether Claugus Family Farm lacks adequate remedies at law;
- whether Claugus Family Farm may use a mandamus action to control judicial discretion;
- whether the doctrines of laches and unclean hands bar Claugus Family Farm's requested relief in its Complaint in Prohibition and Mandamus.

In addition to these issues, the Court also has pending before it Beck Energy's Motion to Toll All Terms of the Oil and Gas Leases and XTO Energy, Inc.'s Motion for Further Tolling. The Court may wish to address various issues raised by these tolling motions during oral argument.

The legal issues outlined above are numerous and varied. Due to the large number of issues to be addressed by the Court and the fact that in the original action, Beck Energy is an Intervening Respondent who will split its time with the Ohio Attorney General, fifteen (15) minutes per side for oral argument is not sufficient. Beck Energy respectfully requests that the Court enlarge the time to thirty (30) minutes for each side.

Respectfully submitted,

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### PROOF OF SERVICE

I hereby certify that copies of *Appellee/Intervening Respondent Beck Energy Corporation's Motion to Enlarge Time for Oral Argument* was served by United States mail, pursuant to S.Ct.Prac.R. 3.11(B), this 23rd day of October, 2015 upon:

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