Supreme Court of Ohio Clerk of Court - Filed August 08, 2016 - Case No. 2015-0187

IN THE SUPREME COURT OF OHIO

Ronald Bohlen, *et al.*,	:	
	:	Case No. 2015-0187
Plaintiffs-Appellants,	:	
	:	Appeal from the Fourth District Court
v.	:	of Appeals, Washington County
	:	
Anadarko E&P Onshore LLC, *et al.*,	:	Court of Appeals Case No. 14CA000013
	:	
Defendants-Appellees.	:	

BRIEF OF APPELLEE ARTEX ENERGY GROUP, LLC SUCCESSOR IN INTEREST TO ANADARKO E&P ONSHORE LLC

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STATEMENT OF FACTS

I. The Oil and Gas Lease and Addendum

On February 15, 2006, the Bohlens and Alliance executed the Lease, which is comprised of a four-page document entitled "Oil and Gas Lease" and a two-page document entitled "Addendum." (A complete copy of the Lease is included as Appendix 1 hereto.). In September 2011, Alliance partially assigned its interest in the Lease to Anadarko E&P Onshore LLC. In late 2014, Anadarko assigned its interest to Artex Energy Group, LLC.

The Lease contains, *inter alia*, the following provisions:

1. The Grant

Appellants (described in the Lease as "Lessor") granted to Alliance (described in the Lease as "Lessee") the exclusive right to "the following described lands ("subject property/lands," "leased premises," *etc*.) for the purpose of exploring, drilling, operating for, producing and removing oil and gas and all the constituents thereof . . ." (Lease, Section 1). The "subject property/lands," "leased premises," *etc*. is described in Section 1 as:

> Being all that certain tract of land situated in Section No. 7-25-26-31-32 of Lawrence Township, Washington County, Ohio bounded substantially as follows:
>
> > North by lands of fully described in the deeds referenced below
> > East by lands of and Washington County Auditor's tax records
> > South by lands of _____
> > West by lands of _____
>
> Parcels Nos. 18-64896.000, 18-64900.000, 18-63940.005, 18-94704.000, 18-64708.000, 18-64712.000, 18-64716.000, 18-64720.000, 18-64724.000, 18-64904.000, 18-64908.000, and 18-66676.000
>
> Being all the property owned by Lessor or to which Lessor may have any rights in Section/Lot/District or adjoining Sections/Lot/Districts, containing 500 acres, more or less, and being the property described in the following deeds: Deed Volume 552, Page 217; Deed Volume 586, Page 525; Deed Volume 713, Page 140; Deed Volume 713, Page 440; Official Records Volume 276, Page 543; and Official Records Volume 293, Page 658.

(Blanks in original). With the exception of Section 1, no other provisions contained in the Lease refer to the parcels or tracts of land as distinct from one another.

2. Habendum Clause

Page one of the Lease contains a habendum clause, which is comprised of the primary term (fixed term of years) and the secondary term (the period subsequent to the expiration of the primary term). The habendum clause, Section 2 of the Lease, provides:

> This Lease shall continue in force and the rights granted hereunder be quietly enjoyed by the Lessee for a term of <u>One (1)</u> 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 sole 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.

Accordingly, the primary term of the Lease was February 15, 2006, to February 15, 2007—one year.

3. Delay Rental

The Lease, Section 3, also contains a delay rental provision, which states, in part:

> This lease, however, shall become null and void and all rights of either party hereunder shall cease and terminate unless, unless the Lessee shall thereafter pay a delay rental of $5,500.00 Dollars each year, payments to be made yearly, but in no event not less than yearly, for the privilege of deferring the commencement of a well. A well shall be deemed commenced **when drilling operations have commenced on lease premises . . .** (emphasis in Lease).

No other provisions in the Lease address or govern the payment of delay rentals.

4. Additional payment if not reach minimum amount

Page one of the Addendum contains a provision requiring minimum annual payments to Appellants (commonly known as a "minimum royalty provision"). This provision states:

> In the event that during any calendar year the total royalties paid from production of the leased premises, shall be less than the annual rental of $5,500.00, Lessee shall tender to Lessor such sum that will equal to the $5,500.00 annual rental payment. (Lease, Addendum at ¶1).

II. Investment in Drilling and Completing Wells; Production in Paying Quantities

In September 2006, during the primary term of the Lease, Alliance drilled and completed the Bohlen R 1CM Well, API #34-167-2-9603, at a total depth of 7,052 feet. (Affidavit of Dora Silvis, ¶4, attached as an Exhibit to Defendants' Joint Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment (Common Pleas Index No. 25)). The total cost for the drilling and completion of Bohlen R 1CM Well was $361,651.63. (Silvis Aff., Common Pleas Index No. 25, ¶5). The Bohlen R 1CM Well was put into production in January 2007. (*Id.* at ¶6). From January 2008 to February 5, 2014 (the date of the execution of the Affidavit), Alliance invested a total amount of $29,198.91 in the operation of Bohlen R 1CM. (*Id.* at ¶7).

In September 2006, during the primary term of the Lease, Alliance drilled and completed the Bohlen R 2CM Well, API # 34-167-2-9604, at a total depth of 7,150 feet. (*Id.* at ¶8). The total cost to Alliance for the drilling and completion of Bohlen R 2CM was $440,974.80. (*Id.* at ¶9). From October 1, 2006 (the date of completion) to February 5, 2014 (the date of execution of the Affidavit), Alliance invested a total amount of $28,475.61 in the operation of the Bohlen R 2CM Well. (*Id.* at ¶13).

III. Continual, Sustained Production in Paying Quantities; Royalty Payments

The Bohlen R 2CM Well was put into production in April 2007 and has had sustained and continual production of gas from 2007 to present. (*Id.* at ¶¶10-11). The lease is in its "secondary term," because the Bohlen R 2CM Well continues to produce in paying quantities. The production from Bohlen R 2CM Well has been sufficient to yield profits to Alliance on an annual basis since the well began production. (*Id.* at ¶12). Alliance continued to operate the Bohlen R 2 CM Well, which is producing in paying quantities and yielding profits. (*See Id.* at ¶12). During this time, Alliance tendered to Appellants annual royalty payments from the production on Bohlen R 2CM Well. (*Id.* at ¶¶14-19, 22, 24).

From 2007 through 2012, Appellants continually accepted and cashed the royalty checks issued to them by Alliance. (*Id.* at ¶¶14-24; Pl. Responses to Def. Interrogatories, Requests for Admission, Requests for Production of Doc., Ex. WW to Def. Joint Memo in Opp. to Pl. Motion for Summary Judgment, Common Pleas Index No. 23). The following reflects checks Alliance issued to Appellants from February 2006 to present, and whether Appellants have cashed those checks:

	Dollars	**Date**	**Check cashed by Appellants**
Lease date of Feb. 15, 2006	5,500.00	February 2006	Yes
March 7, 2007 the annual royalties paid	5,500.00	March 2007	Yes
January 2008 Royalties	4,284.83	January 2008	Yes
Road Maintenance	908.75	July 2008	Yes
January 2009 Royalties	4,172.47	January 2009	Yes
January 2010 Royalties	4,757.22	January 2010	Yes
January 2011 Royalties	5,448.51	January 2011	Yes
January 2012 Royalties	5,141.84	January 2012	Yes
Unused gas 2006-2011	9,148.00	January 2012	Yes
January 2013 Royalties	5,245.90	January 2013	No
Unused gas	2,564.40	January 2013	No
Annual Royalties	5,500.00	December 2014	No
Unused gas	2,489.40	January 2014	No

SUMMARY

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEALS APPLIED LONGSTANDING PRECEDENT TO THE PLAIN AND UNAMBIGUOUS LANGUAGE OF THE LEASE.

Appellants ask this Court to uphold the fundamental rule of law that a contract be enforced, as written. There is, and can be, no disagreement on that principle. This Court unequivocally recognizes the sanctity of contracts, and enjoins against judicial infringement of freedom to contract without overwhelming concerns. The freedom to contract is a deep-seated right and one not to be lightly disregarded. Landowners in this state have, for decades, enjoyed their freedom to contract with oil and gas producers to enter into oil and gas leases on their land.

Indeed, the Decision and Judgment Entry of the Fourth District Court of Appeals ("Decision") embraced this principle and does not, by any stretch of the imagination, disturb or detract from Ohio's law of contract. The Decision is well within Ohio's jurisprudence. It cited to and applied sound precedent of this court. The Fourth District did precisely what Appellants say it must: the court enforced the "plain language" of the lease as written. *Id.* at ¶23.

From the inception of this litigation, and in order to re-write the contract, Appellants have conflated the following two provisions contained in the oil and gas lease and an addendum thereto (together, the "Lease"): (1) Section 3, which provides for automatic termination of the Lease ***prior to the end of the primary term*** upon the lessee's failure to pay an annual "delay rental" of $5,500.00, *or*, commence a well (the "delay rental provision"); and (2) Paragraph 1 of the Addendum, which requires lessee to pay an amount equal to the "annual rental" of $5,500.00 if the annual royalty from ongoing oil and gas production is less than $5,500.00. Having improperly conflated these provisions, Appellants build upon their error by invoking the automatic lease termination that applies only to the first, but not the second, of the provisions.

By improperly construing the two provisions, Appellants attempt to re-write and re-interpret the contract in order to expand the applicability of the automatic termination provision.

The Fourth District Court of Appeals did not accept this inappropriate interpretation of the Lease. The Court of Appeals rightly found the plain language of the Lease to be unambiguous and determined that the delay rental provision (and related automatic termination provision) applied solely to the primary term of the Lease. Further, the Court of Appeals found that the minimum royalty provision applied solely to the secondary term of the Lease. (Decision, ¶¶ 19, 20). The Fourth District, thus, correctly concluded that automatic termination of the Lease would not result from a failure to pay the amount required in the secondary term under Paragraph 1 of the Addendum. By enforcing the "plain language" of the contract, the Fourth District also upheld over 100 years of Ohio oil and gas law precedent as did this Court in *State ex rel. Claugus Family Farm, L.P. v. Seventh Dist. Court of Appeals*, 145 Ohio St.3d 180, 2016 Ohio-Ohio-178, 47 N.E.3d 836.

Turning to their final and fifth proposition, Appellants argue that the facts of this case are similar to the wholly distinguishable facts found in *Ionno v. Glen-Gery Corp.*, 2 Ohio St. 3d 131, 443 N.E.2d 504 (1983). Unlike *Ionno*, development in fact occurred here within a defined primary term of one year, and production of gas continued. Substantial funds were spent, oil and gas wells were drilled, and production continued in paying quantities. (Decision, at ¶5). The plain language of the Lease here is dissimilar and cannot support an indefinite postponement of development by payment of an annual "rental."

Accordingly, Appellee Artex Energy Group LLC, successor in interest to Anadarko E&P Onshore LLC respectfully requests that this Court affirm the Decision.

LAW AND ARGUMENT

RESPONSE TO PROPOSITION OF LAW NO. 1: THE FOURTH DISTRICT COURT OF APPEALS ENFORCED THE PLAIN LANGUAGE OF THE OIL AND GAS LEASE AND ADDENDUM, AS WRITTEN, ON TERMINATION OF THE LEASE.

Appellee agrees that an oil and gas lease should be enforced as written. That is precisely what the Fourth District Court of Appeals did in its Decision. (¶23) In the first instance, the Court of Appeals reviewed the plain language of the Lease.

A. The Lease has a stated primary term and secondary term of definite durations.

Every typical oil and gas lease—*i.e.*, virtually every oil and gas lease in current use in the State of Ohio, including the Lease—has a habendum clause that establishes the term of the lease:

> The habendum clause in the oil and gas lease is two tiered. The first tier, or primary term, is of definite duration . . . The second tier is of indefinite duration and operates to extend the lessee's rights under the lease so long as the conditions of the secondary term are met. *American Energy Services, Inc. v. Lekan*, 75 Ohio App. 3d 205, 212, 598 N.E.2d 1315 (5th Dist. 1992).

See also Moore v. Adams, 5th Dist. No. 2007AP090066, 2008-Ohio-5953, ¶ 26. Further, as noted by the Ohio Supreme Court in its seminal 1902 decision in *Brown v. Fowler*, 65 Ohio St. 507, 521-522, 63 N.E. 76 (1902) "by the aid given by the habendum clause to the granting clause, the length of ***the term of the lease is settled and definitely fixed***." (emphasis added). The Lease is a fee simple determinable whereby the habendum clause operates to define the period of duration. *Chesapeake Exploration, L.L.C. v. Buell*, 144 Ohio St.3d 490, 2015-Ohio-4551, 45 N.E.3d 185, ¶52.

Like every typical oil and gas lease, section 2 of the Lease provides for the primary term, here a one-year term, a primary term of stated, definite duration, along with a secondary term:

> This Lease shall continue in force and the rights granted hereunder be quietly enjoyed by the Lessee for a term of <u>One (1)</u> 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 sole 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.

The "primary term" is the stated length of time (one year) for a well to be drilled. The "secondary term" is the length of time, after a well has been drilled, that oil and gas is produced in paying quantities. Under paragraph 4, the Lessor agrees to pay a royalty from such production.

In construing a typical oil and gas lease in *Harris v. The Ohio Oil Co.,* 57 Ohio St. 118, 48 N.E. 502 (1897) the Ohio Supreme Court explained how the habendum clause, setting forth a primary and secondary term, operates:

> While the period of five years that the lease was to run has expired, the lease is still in full force, because it provides that it shall continue as much longer as oil and gas are found in paying quantities. ***This provision extends and limits the period of the lease to such time in the future, as oil and gas shall cease to be produced in paying quantities on said lands. When that period shall arrive, whether caused by exhausting the oil and gas, or by the permanent abandonment of production, the lease will cease, and the whole estate in the premises will become the property of the owner of the fee, not by forfeiture, but by virtue of the terms of the lease***. *Harris,* at 130-131 (emphasis added).

The habendum clause in the Lease provides that the term will only continue "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 sole judgment of the Lessee." (Lease, Section 2).

Here, the Court of Appeals confirmed that a well continues to produce. (Decision, ¶15). Thus, the Lease is in the secondary term and has not terminated under the habendum clause.

B. The Lease also includes a delay rental clause.

Often, as does the Lease here, an oil and gas lease also contains a "delay rental" provision, which is concerned with maintaining the lease in effect during the ***primary*** term. *See* 8-D Williams & Meyers, *Oil & Gas Law D,* (2014) (defining "delay rental payment" as "a sum of money payable to the lessor by the lessee for the privilege of deferring the commencement of

drilling operations or the commencement of production during the primary term of the lease."). As to termination, the delay rental provision (often referred to as a "drill or pay clause") operates to terminate the lease before the end of the ***primary*** term, unless the lessee either: (1) pays a stipulated delay rental, or (2) commences a well. Williams & Meyers, Section 606 (Attached to Appellees' Brief as App. 4, Court of Appeals Index 28). Unless an oil and gas lease explicitly provides otherwise, a delay rental provision (and any termination provision tied to the delay rental provision) is not applicable during the secondary term. Consequently, the Court of Appeals held that, under the plain language of the Lease, the termination language within the delay rental provision did not apply to the secondary term. (Decision, ¶24) More on that below.

RESPONSE TO PROPOSITION OF LAW NO. 2: DELAY RENTAL CLAUSES, INCLUDING THE ONE HERE, ARE FOR THE PURPOSE OF COMPENSATING THE LESSOR IF THE LESSEE DEFERS DRILLING DURING THE PRIMARY TERM.

A. A delay rental provision operates to pay lessor during the primary term.

Simply put, the delay rental clause operates to assure that the lessor receives compensation if commencement of drilling is delayed. The delay rental provision contained in the Lease provides:

> This lease, however, shall become null and void and all rights of either party hereunder shall cease and terminate unless, unless the Lessee shall thereafter pay a delay rental of $5,500.00 Dollars each year, payments to be made yearly, but in no event not less than yearly, for the privilege of deferring the commencement of a well. A well shall be deemed commenced ***when drilling operations have commenced on lease premises*** . . . (Section 3, emphasis in original).

Finding the plain language of these provisions to be "unambiguous," the Fourth District Court of Appeals rightly concluded that the delay rental language, including the automatic termination provision, was limited to the right to defer commencement of a well during the ***primary*** term and had nothing to do with the separate and distinct annual payment of a minimum additional amount during the ***secondary*** term if production did not reach $5,500 of royalty. (Decision, ¶24).

In its 1902 decision in *Fowler*, the Ohio Supreme Court also considered the operation of a delay rental provision that read as follows:

> In case no well shall be drilled on said premises within twelve months from the date thereof, this lease shall become null and void, unless the lessee shall pay for the further delay at the rate of one dollar per acre at or before the end of each year thereafter until a well shall be drilled. *Fowler,* 65 Ohio St. at 522, 63 N.E. at 78.

The Court's construction of this provision, which is comparable to the delay rental provision of the Lease, was as clear and unequivocal as its construction of the habendum clause of the lease in question:

> This clause clearly means that the lease may be made to terminate in less time than two years, that is at the end of twelve months, by a failure to drill a well on the premises within the twelve months; but that the lessee may prevent such termination of the lease at the end of twelve months by paying for further delay at the rate of one dollar per acre, at or before the end of each year thereafter, until a well shall be drilled. That is, the payment must be made at or before the end of the second year of the lease, and the further delay cannot be beyond the term of two years fixed as the lifetime of the lease. And the words "until a well shall be drilled," mean until a well shall be drilled within the two years, the term of the lease. ***So that this clause cannot have the effect in any event to extend the lease beyond the two years definitely and certainly fixed in the habendum clause***. *Id.* at 522-523 (emphasis added).

The Ohio Supreme Court, in accordance with well-established rules, construed the delay rental provision in a manner that was both (a) intended by the parties, as clearly expressed in the words they employed, and (b) consistent with the meaning of the habendum clause of the lease.

Hence, the delay rental provision operates to assure that the lessor receive some compensation ***even if*** the commencement of drilling is delayed and establishes a mechanism by which the lease terminates, ***before*** the expiration of the definite ***primary term*** established by the habendum clause, ***unless*** the lessee either commences drilling operations or pays the stipulated delay rental. 3-6 Williams and Meyers, *Oil and Gas Law,* Section 606 (2013) (included as Appendix 4 to Appellees' Brief, Court of Appeals Index No. 28). *see also* Williams & Meyers, *Manual of Oil and Gas Terms* (16th Ed. 2015) ("Delay rental: A sum of money payable to the

lessor by the lessee for the privilege of deferring the commencement of drilling operations or the commencement of production during the primary term of the lease.") (included as Appendix 2 to Appellees' Reply Brief, Court of Appeals Index No. 34)

The delay rental provision of this Lease has a very specific purpose—to terminate the lease ***prior to the end of the primary term***, unless certain conditions are being met. Consequently, the delay rental provision has a limited life. By its terms, the delay rental provision terminates with the end of the primary term.

Further, this court, in *Van Etten v. Kelly,* 66 Ohio St. 605, 64 N.E. 560 (1902) considered a delay rental provision with the following language:

> In case no well is completed within thirty days from this date, then this grant shall become null and void, unless second party shall pay to said first party thirty dollars each and every month in advance while such completion is delayed.

This Court opined:

> The full force and effect of this "unless" clause, taken by itself, is, ***to give the lessee the option by making such payment to continue the lease in force to the end of the term without completing the first well, or upon failure to make such payment, allow the lease to become null and void at the end of the thirty days after the date of the lease***. (Emphasis added). *Id*. at 610, citing *Fowler* at 507.

Claugus is in accord:

B. Appellants seek to apply the termination provision in the secondary term.

Appellants' erroneous interpretation is dependent on flawed construction of Paragraph 1 of the Addendum to the Lease as somehow making the delay rental provision of the Lease operable during the secondary term. Under its habendum clause, the Lease had a primary term of one (1) year, and the payment of the stipulated delay rental could, both pursuant to the unambiguous terms of the lease contract and applicable law, have done nothing more than to allow Alliance to defer the commencement of a well until the end of that one-year primary term. Had Alliance failed either to commence the drilling of a well or to pay the stipulated delay rental,

the Lease would have terminated automatically, by operation of law and the terms of the Lease itself, at the end of the primary term. Likewise, the ***termination provision*** ends with the primary term.

Here, Alliance more than fully satisfied its contractual obligations by ***both*** paying the stipulated delay rental ***and*** drilling two wells. (Decision, ¶¶5, 6) The primary term ended and the secondary term continued due to production.

RESPONSE TO PROPOSITION OF LAW NO. 3: THE MINIMUM ANNUAL PAYMENT OF $5,500.00 SET FORTH IN PARAGRAPH 1 OF THE ADDENDUM WAS NOT A "DELAY RENTAL" BUT RATHER A CONTRACTUALLY AGREED UPON MINIMUM PAYMENT ALSO KNOWN AS A "MINIMUM ROYALTY."

A. The Court of Appeals correctly separated the delay rental provision from the provision for additional annual payments and enforced the plain language of the contract.

The Court of Appeals correctly found that Paragraph 1 of the Addendum is not another delay rental provision. The delay rental provision is found only in Section 3 of the Lease providing for termination of the Lease unless drilling or payment of $5,500.00 within the primary term of one year. Because of this delay rental provision, the Lease could have terminated, ***during the primary term***, if Alliance had failed to: (a) commenced a well; or (b) pay delay rentals. (Lease, Section 3). Termination did not occur during the primary term, because Alliance ***both*** paid a delay rental, and, commenced two wells. (Silvis Aff. ¶4, 8, Common Pleas Index No. 25). The secondary term began on February 15, 2007; but will continue only as long as there is production, or the capability of production, in paying quantities in paying quantities, in the sole judgment of the lessee. (*See* Lease, Section 2).

B. The minimum payment provision has a different purpose; Appellants conflate the provisions to take advantage of the termination provision relating to the primary term.

The Appellants continue to make an erroneous and unsupportable misreading of Paragraph 1 of the Addendum. Paragraph 1 of the Addendum contains no reference to an annual ***delay*** rental. The ***exact*** language of Paragraph 1 of the Addendum provides:

> In the event that during any calendar year the total royalties paid ***from production*** of the leased premises, shall be less than the annual rental of $5,500.00, Lessee shall tender to Lessor such sum that will equal to ***the $5,500.00 annual rental payment***. (emphasis added).

This language does not provide for an extension of the time for ***drilling*** within the ***primary*** term or relate to a basis for termination as a result of failing to ***drill*** within the ***primary*** term. (Decision, ¶20). This language creates an obligation to pay a minimum amount of royalties to the Appellants. *Id.*, Lease, Section 1, Addendum. This is a simple way to make sure that the Lessor is entitled to a certain amount. Such a payment provision is commonly called a "minimum royalty." (Regarding a minimum royalty, *see, New York Coal Co. v. New Pittsburg Coal Co.,* 86 Ohio St. 140, 99 N.E. 198 (1912); Williams & Meyers, *Oil and Gas Law*, Section 644.10 (included as Appendix 3 to Appellees' Reply Brief, Court of Appeals Index No. 34).

Further, the evidence supports that this was the purpose of the annual minimum payment. Appellants both testified during their depositions that they wanted to assure that they would be paid a minimum of $5,500.00 each year, even if the royalties from production were less than $5,500.00. (*See, e.g.*, Deposition of Ronald Bohlen 26:22-28:2, 28:19-29:2, and 69:9-17; and Deposition of Barbara Bohlen 9:8-23, Common Pleas Index Nos. 30, 31). There was no testimony that they believed that the Lease would terminate automatically if that sum were not paid. There is nothing whatsoever in the Lease, and there is no evidence, that in any way suggests that the parties contemplated—or intended—such a result. (Decision, ¶24).

C. Ohio law supports the distinction between the two provisions.

Appellants are critical that the Court of Appeals "seems to have rested its reasoning on the proposition that delay rentals 'generally' apply only during the primary term." (Appellants' Brief, p. 11) The criticism is out of bounds. This Court need look no further than its recent decision in *Claugus*. "Delay-rental provisions have been interpreted to apply only during the primary term of a lease." *Claugus,* at ¶25, citing *Brown v. Fowler*.

Since its Decision preceded *Claugus*, the Court of Appeals did not cite that case, but the Court of Appeals cited strong authority. Among other cites, the Court of Appeals quoted from *Baldwin's Ohio Practice, Ohio Real Estate Law*, Section 47:9 (2015):

> Traditional oil and gas leases in Ohio contain a "drill or pay clause," which is also known as a delay rental provision. This provision allows the lessee to defer drilling a well during the primary term of an oil and gas lease by compensating the lessor for the delay. As recently reiterated in *Hupp v Beck Energy Corp.*, "established case law [provides that] once the primary term of the Lease expires, the delay rental provision is no longer applicable." Therefore, "for the Lease to be continued into the secondary term, 'oil or gas or their constituents [must be] produced or [must be] capable of being produced on the premises in paying quantities, in the judgment of the Lessee.'" (footnotes excluded)

In examining Appellants' position, the Court of Appeals found nothing in law, or the plain language of the Lease, to support Appellants' conflation of the two provisions. (Decision, ¶¶19, 20)

D. The Appellants continue to misconstrue the provisions of the Lease.

Despite the plain language, and longstanding Ohio law, and *Claugus*, Appellants continue to assert that the automatic termination provision in the delay rental provision should also apply during the secondary term of the Lease. (*See* Appellants' Brief, p. 7). "Delay rental" is not only a term of art, it is also specifically defined in section 3 of the Lease as a payment that is made in order to "defer commencement of a well." Once a well is commenced, there was nothing left to defer, and the delay rental provision ceased to have any further effect. (*See also, Oil and Gas*

Law, Manual of Terms (relevant portions included in the Appendix to Appellees' Reply Brief, Court of Appeals Index No. 34). Two wells were commenced on the property within the primary term of the Lease. The primary term ended. Likewise, this termination provision relating to the primary term also ended.

Appellants make too much of the fact that the ***amount*** of the minimum royalty payment built into the Addendum was the same as the dollar amount of the delay rental payment found in Section 3. Yes, the amount is the same. This does not mean that the ***effect of any failure to pay*** was the same. In fact, as to amount, it is not an abnormal occurrence in the industry for a minimum royalty to be the same amount as a delay rental payment. Williams & Meyers, *Oil and Gas Law,* Section 644.10. (Appendix 3 to Appellees' Reply Brief, Court of Appeals Index No. 34). And, as to effect, the effect of the failure to pay the delay rental (and not drill) is forfeiture. The effect of the failure to pay the minimum royalty is a claim for damages. If this Court were to conflate the two and accept Appellants' interpretation (forfeiture upon failure to pay royalties), the secondary term of the habendum clause would essentially be rendered a nullity, since production in paying quantities would not, in and of itself, operate to maintain the Lease beyond its primary term under such a construction.

Appellants failed to provide any legal authority to support the contention that removing language from a contract definitively means that the parties intended the opposite effect of the stricken contractual language. Stating the obvious, the stricken language is simply not part of the Lease. Its absence is no more persuasive of what the parties agreed than that the absence of any other language not found in the document; at best, it is simply evidence of something the parties did ***not*** agree to. If the parties so agreed and intended, Appellants could have inserted language that Alliance forfeited the lease by failing to pay the minimum royalty. Such language does not

appear either. Section 3 of the Lease provides the only circumstances under which the Lease would terminate during the primary term. As the Court of Appeals stated, this termination provision has "limited impact." (Decision, ¶26). For this reason, Appellants have always attempted to bootstrap the allegation that Alliance failed to pay "annual rentals" into an argument that such failure triggered automatic termination in the secondary term under the delay rental provision that applied only during the primary term.

And, the Court of Appeals found no evidence to support the Appellants' position. (Decision ¶¶23, 24)

E. Appellants' cases are distinguishable.

Neither *Price v. K.A. Brown Oil & Gas, L.L.C.,* 7th Dist. No. 13 MO 13, 2014-Ohio-2298 nor *Clay v. K. Petroleum, Inc.* E.D. Ky. No. 07-113-REW, 2008 U.S. Dist. LEXIS 42972 (June 2, 2008), provides any support for Appellants' contention that the terms of the Lease would require forfeiture upon non-payment of the minimum royalties ***in this case***. Appellants acknowledge that *Price* and *Clay* both involved leases with a specific provision requiring termination for failure to comply with the lease terms contained therein. Here, there is no provision in the Lease requiring termination for failure to pay minimum royalties. Indeed the Lease uses the term "rental" in both Section 3 and Paragraph 1, and needless confusion has been generated over this. Regardless of what labels are used to describe the payments required by Section 3 and Paragraph 1 of the Addendum, the fact remains that Section 3 provides the Lease will terminate unless the lessee pays $5,500.00 per annum "for the privilege of deferring the commencement of a well." The $5,500.00 figure of Section 3 applies ***only*** to the ***primary*** term of one year set forth in Section 2—before a well is commenced. Paragraph 1 of the Addendum

providing for a minimum payment of $5,500.00 applies to the ***secondary*** term—once a well has been put into production.

Appellants have relied primarily upon the United States District Court for the Northern District of Ohio's decision in *Beaverkettle Farms, Ltd. v. Chesapeake Appalachia, LLC*, N.D. Ohio No. 4:11CV02631, 2013 U.S. Dist. LEXIS 124509 (Aug. 30, 2013) for the contention that delay rentals may not necessarily apply to the primary term and that the Lease language should be construed in such a way that delay rentals were required to be paid past the primary term. In doing so, Appellants misapply the law.

In *Beaverkettle Farms*, the District Court determined that it could not grant summary judgment on the matter because there was a genuine issue of material fact to be resolved at trial as to the parties' understanding of the term "delay rental" as used in the lease in question and whether such payments were required during the secondary term. *Id.* at *51. The requirement to pay delay rentals was clearly an issue open to interpretation in *Beaverkettle*, as the lease at issue: (1) required a delay rental of $10 per acre be paid for each acre not contained in an approved drilling plat; and (2) provided that lessee would be "entitled to maintain all undrilled acreage under [the] Lease by paying delay rentals . . ." once a well was drilled. *Id.* at *36. In this case, unlike in *Beaverkettle*, there are no terms contained in the Lease that would support any contention that the Lease was intended to be divisible, or that delay rentals were required to be paid after the primary term.

The Lease at issue in this case provided that it would terminate unless lessee paid an annual delay rental of $5,500.00 each year "for the privilege of deferring the commencement of a well." Pursuant to the terms of the Lease, "a well shall be deemed commenced ***when drilling operations have commenced on lease premises*.**" Once Alliance commenced drilling the first

well on the Appellants' property, delay rental payments were no longer required to be paid and the Lease continued into its secondary term. Once in its ***secondary*** term, the "minimum royalty" provision contained in Paragraph 1 of the Addendum applied, and lessee was required to pay $5,500.00 annually to lessors only if the production royalties for that year amounted to less than $5,500.00. The failure to pay that amount, however, does not mean that the parties then look back to the delay rental provision regarding the ***primary*** term in order to determine whether the Lease terminated.

Appellants also claim that the Fourth District Court of Appeals contradicted itself in *Sims v. Anderson*, 2015-Ohio-2727, 38 N.E.3d 1123 (4th Dist.), a decision rendered after the Decision in this case. In *Sims*, the Court of Appeals terminated the lease under a termination provision applicable to the secondary term for the lessee's failure to produce (and pay) the agreed upon amount of "paying quantities." There the lease specifically provided that ". . . the lease will terminate unless the Lessee is then producing oil or gas or their constituents in paying quantities." *Id*. at ¶3. The Lease also provided that the Lessor and Lessee agreed that ". . . the term 'paying quantities' as used in this lease shall mean production sufficient to net the Lessors a minimum of $400.00 royalty per year for oil and gas . . ." *Id*. The lessee failed to pay $400.00, and so failed to produce "paying quantities," and thus the lease terminated by law under the agreed upon termination provision. *Id*. at ¶4, 12, 18. The termination provision applied to the secondary term. The lessee breached by failing to produce "paying quantities" and failing to pay the agreed upon amount of $400.00. In contrast here, the well continued to produce in paying quantities. (Decision, ¶5) The only breach is for non-payment, and no termination provision exists for such a breach. In both *Sims* and its Decision below, the Fourth District Court of

Appeals correctly maintained the distinction between the provisions concerning the primary and secondary terms.

F. The Lease does not provide for a separate primary term for each of the tracts.

The Lease was *not* drafted to ensure the drilling of multiple wells on multiple tracts. The Lease provides lessee the exclusive right to "the following described lands ("subject property/lands," "leased premises," *etc*.) for the purpose of exploring, drilling, operating for, producing and removing oil and gas and all the constituents thereof . . ." The "subject property/lands," "leased premises," *etc*. is described in Section 1 of the Lease altogether. With the exception of Section 1 where the property is described, no other provisions contained in the Lease refer to the parcels or tracts of land as distinct from one another or expressly imposes an obligation to drill more than one well.

There is no hint anywhere of "multiple primary terms" under the Lease. Appellants cite no evidence in support of their argument. (Appellants' Brief, p.10). Just as the Court of Appeals found no evidence for Appellants' conflation (Decision, p. 24), no evidence exists for this creation.

G. Appellants have a claim for damages, not forfeiture by termination.

The Supreme Court generally affirmed its holdings in *Harris* in 1980 in *Beer v. Griffith,* and specifically held that the remedy for a breach of the lease "is damages, and not forfeiture of the lease, in whole or in part." *Beer v. Griffith,* 61 Ohio St. 2d 119, 399 N.E.2d 1227 (1980), at syllabus ¶¶ 2-4 (emphasis added) ("*Beer*"). *Beer* also created an exception to the strict rule of *Harris* by recognizing that total or partial forfeiture is an appropriate remedy for a lessee's violation of an implied covenant ***where legal remedies are inadequate***. *Id*. It did not, however,

alter the *Harris* rule that "certain causes of forfeiture being specified in the lease, others cannot be implied." *Harris,* at syllabus ¶ 2.

The Lease clearly provides, in Section 3, the circumstances under which forfeiture would be appropriate:

> This lease, however, shall become null and void and all rights of either party hereunder shall cease and terminate unless, unless the Lessee shall thereafter pay a delay rental of $5,500.00 Dollars each year, payments to be made yearly, but in no event not less than yearly, for the privilege of deferring the commencement of a well.

Accordingly, under the rule set forth in *Harris,* other causes of forfeiture cannot be implied, including any alleged failure to pay the appropriate amount of minimum royalties.

Further, this Court also stated: *"**inasmuch as forfeiture is an equitable remedy, a strong showing of a violation of a clear right is required before a court will resort to such an extreme measure.***" *Ionno,* 2 Ohio St. 3d at 135, 443 N.E.2d at 508-509 (footnotes omitted; emphasis added). The lessor has the burden to show that there was an inadequacy of damages. *Id.* "***Since no evidence on damages was presented in the lower courts, any finding at this level that a legal remedy is inadequate would be based solely on conjecture and speculation.***" *Id.* (emphasis added).

Thus, under *Beer* and *Ionno,* Appellants have the burden of establishing that damages are inadequate and a violation of a clear right that justifies a declaration of forfeiture. Here, as in *Ionno,* there has been no showing that Appellants have no adequate remedy at law (which they have neither alleged nor can prove). Moreover, Appellants have not established any reason whatsoever why a court may grant so extreme a remedy given the fact that the Lease, in its delay rental provision, has specified grounds for forfeiture, *i.e.*, failure either to commence a well or to pay delay rentals ***during the primary term***. There was no such failure. Consequently, the ***only*** remedy available to Appellants is damages.

RESPONSE TO PROPOSITION OF LAW NO. 5
THE OIL AND GAS LEASE, INCLUDING THE ADDENDUM, DID NOT, AND COULD NOT INDEFINITELY FORESTALL DEVELOPMENT FOR OIL AND GAS BY CONTINUOUS PAYMENT OF RENTALS.

In *State ex rel. Claugus Family Farm, L.P. v. Seventh Dist. Court of Appeals*, 145 Ohio St.3d 180, 2016-Ohio-178, this Court was unanimous in its ruling that the lease in question was not a perpetual issue that must be forfeited. Appellants seek to skirt around this decision by claiming a difference in facts. Appellants state that, in *Claugus*, the lease "***actually did have a ten-year primary term*** in which rentals could be paid." (Appellant's Brief, p. 15). Appellants state that this ten-year term is the "critical factual difference" between *Claugus* and this case where the delay rental provision was "indefinite." *Id*.

Appellants ignore the following facts: (1) paragraph 2 of the Lease ***provides for a primary term of one year***; (2) two wells were drilled during the primary term, and the primary term ended. Appellants' argument is based on a falsity and it necessarily fails. What is "critical" here is that Appellants are leaving critical facts out. There is nothing to support the statement that paragraph 3 of the Lease permits the lessee under the Lease to postpone drilling "forever." (Appellants' Brief, p. 15)

No rehash of the inapposite facts of *Ionno v. Glen-Gery Corp.,* 2 Ohio St. 3d 131, 443 N.E.2d 504 (1983) changes the facts of this case. The facts of this case, and the decision of the Court of Appeals, fall within this Court's holding in *Claugus* on termination of leases. Consequently, there is simply no basis, factual or legal, for Appellants to request that this Court re-visit this Court's decision in *Claugus*.

Finally, there is no rational basis to support Appellants' contention that the lessee under this Lease could hypothetically postpone development in perpetuity. Of course, this is a hypothetical consideration because Alliance did commence drilling within the primary term.

Under its habendum clause, the Lease had a ***primary*** term of one year. By making payment of the stipulated delay rental, Alliance could have deferred commencement of drilling within the ***primary*** term. Had Alliance failed either to commence the drilling of a well or to pay the stipulated delay rental, the Lease would have terminated automatically, by operation of law and the terms of the Lease itself, at the end of the one-year primary term. There is no similarity with *Ionno* where there was no ***primary*** term. (Decision, ¶19)

Had Alliance not drilled and had not production continued in paying quantities, payment of $5,500.00 year after year would not maintain the Lease.

CONCLUSION

For all of the foregoing reasons, Appellee Artex Energy Group, LLC, successor in interest to Anadarko E&P Onshore LLC, hereby respectfully requests that this Court affirm the Decision of the Fourth District Court of Appeals.

Respectfully submitted,

\s\ John P. Brody
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CERTIFICATE OF SERVICE

This certifies that a copy of the foregoing Brief has been served via electronic and U.S. ordinary mail, on this 8th day of August, 2016, upon the following:

Ethan Vessels
Fields, Dehmlow & Vessels
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Marietta, OH 45750
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Ronald and Barbara Bohlen

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Attorney for Appellee
Alliance Petroleum

\s\ John P. Brody
John P. Brody

OIL AND GAS LEASE

THIS AGREEMENT, made and entered into this 15th day of February, 20 06, by and between Ronald G. Bohlen aka Ronald A. Bohlen and Barbara J. Bohlen aka Barbara J. Bohlen, Husband and Wife 360 Cow Run Road, Marietta, OH 45750 (Phone) 740/473-1259, hereinafter called the Lessor, and ALLIANCE PETROLEUM CORPORATION, 4150 Belden Village Ave. NW, Suite 410, Canton, Ohio 44718-2553, (330) 493-0440, 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 the following described lands ("subject property/lands", "leased premises," etc.) for the purpose of exploring, drilling, operating for, producing and removing oil and gas and all the constituents thereof, including the exclusive right to conduct seismic surveys and conduct any and all geophysical operations on the property, free of any fees to the lessee or its representatives and to transport by pipelines or otherwise, oil, gas, and their constituents from, across, under, over and through the subject lands and other lands not covered hereby, and of the placing of tanks, equipment, roads, structures and all other ancillary and necessary buildings and facilities thereon to procure, transport 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. 7-25-26-31-32 of Lawrence Township, Washington County, Ohio bounded substantially as follows:

North by lands of fully described in the deeds referenced below
East by lands of and Washington County Auditor's tax records
South by lands of
West by lands of

Parcel No.: 18-64896.000; 18-64900.000; 18-63940.005; 18-64704.000; 18-64708.000; 18-64712.000; 18-64716.000; 18-64720.000; 18-64724.000; 18-64904.000;18-64908.000;18-66676.000
Being all the property owned by Lessor or to which the Lessor may have any rights in Section/Lot/District or adjoining Sections/Lot/Districts, containing 500 acres, more or less, and being the property described in the following deeds: Deed Volume 552 at Page 217; Deed Volume 586 at Page 525; Deed Volume 713 at Page 140; Deed Volume 713 at Page 440; Official Records Volume 276 at Page 543 and Official Records Volume 293 at Page 658 of the Washington 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 One (1) 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 sole 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 months from the date hereof, a well shall be commenced on the premises, or~~ unless the Lessee shall thereafter pay a delay rental of $5,500.00 Dollars each year, payments to be made yearly ~~or quarterly or as deemed necessary by Lessee,~~ but in no event not less than yearly, for the privilege of deferring the commencement of a well. A well shall be deemed commenced **when drilling operations have commenced on leased premises.** Payment shall be deemed completed when deposited in the US Mail for delivery to Lessor or when tendered in person to the Lessor; refusal of the Lessor to accept such payment shall be irrelevant and of no consequence.

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 (except taxes), 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) oil royalty 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 Lessor, as royalty for the gas marketed and used off the premises, the sum of one-eighth (1/8) of the net proceeds realized by Lessee from the sale thereof. 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. Net proceeds are those proceeds that remain after deducting all costs attributable to the marketing and delivery of the gas to the measuring station of the purchaser **imposed on Lessee and include but are not limited to line loss and transportation, compression, dehydration and Lessor's prorate share of any tax imposed by any government body.** ~~Lessee shall have the option to make such payments on a quarterly basis if such monthly net royalty proceeds are less than $100.00.~~

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 Lessors named above at address as shown above 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,

APPENDIX 1

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 physically located on the premises, and take annually up to 200,000 cubic feet of free gas produced from said well for domestic use in one dwelling house on the leased premises, subject to the use and right of abandonment of the well by the Lessee, subject to any curtailments or shut-in by the Lessee and purchaser of the gas and subject to the terms and provisions of Lessee's standard Free Gas Agreement setting forth the rights and obligations of Lessor and Lessee, the original of which Agreement is hereby incorporated herein by this reference and made a part hereof for all purposes. Execution of such a Free Gas Agreement SHALL BE A CONDITION PRECEDENT to all free gas rights hereunder. Gas used in excess of the aforementioned free allotment shall be paid for by Lessor in the amount and manner as set forth in said standard Free Gas Agreement.

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 herein above 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 on lands consolidated with the leased premises for any reason, or should the Lessee desire to shut in producing wells for any reason, the Lessee may pay the Lessor, commencing on the date one year from the completion of such well or the cessation of production, or the shutting in of said wells as aforesaid, an advance royalty in the amount and under the terms herein above provided for delay rental (See Paragraph 3) until production becomes marketable and/or is resumed. In the event no delay rentals are stated, the advance royalty payable hereunder shall be made on the basis of $11.00 per acre per year. Notwithstanding anything herein to the contrary, this Lease shall continue in full force and effect so long as such advance royalties are paid as aforesaid. Whether or not to pay such advance royalties shall be in the sole option and discretion of Lessee and Lessee shall have no obligation to pay same. Lessee shall be entitled to credit such advance royalty payments to all amounts due Lessor upon resumption of production hereunder of and as an offset to the production royalties under Paragraph 4 hereof.

9. All land rentals, royalties and advance 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 a well or additional wells on the leased premises or wells to offset producing wells on adjacent or adjoining lands or otherwise, as the Lessee may elect. The parties hereto hereby expressly disclaim any and all implied covenants, whether at law or in equity, regarding production, continuing production or future production.

10. The Lessor hereby grants to the Lessee the right at any time to consolidate or unitize 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 160 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; 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 provided further that the Lessor agrees to accept in lieu of the one-eighth oil and gas royalty herein before provided, that proportion of such one-eighth (1/8) royalty which the acreage consolidated bears to the total number of acres comprising said development unit. The Lessee shall effect such consolidation by executing a declaration of consolidation lease setting forth the leases or portions thereof consolidated, the royalty distribution and recording the same in the Recorder's office at the courthouse in the county in which the leased premises are located; provided, however, that the failure to record same shall in no way whatsoever affect the validity of the declaration. If any well on said development until shall thereafter be shut in or production thereunder halted for the reasons (or any reasons) outlined in Paragraph 8 hereof, the advance royalty herein before 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 Lease's contribution to the unit bears to the entire acreage consolidated. Any unit established hereunder may be enlarged or diminished or changed by Lessee at any time and for any reason, either before or after production is obtained in the sole judgment and discretion of Lessee.

11. In case the Lessor owns a less interest in the above described premises than the entire and undivided 100% fee simple therein, then the royalties and rentals and all other payments herein provided shall be paid to the Lessor only in the proportion which said Lessor's 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, shall 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 Lessee or its successors/assigns have been furnished with written notice thereof and a certified copy of any such transfer document (deed, certificate of transfer, judgment entry, etc.). Until such time as those items are furnished, Lessee shall have no obligation, responsibility or liability in regard to any payments made or to be made hereunder to any parties.

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 rental or royalty on any part of this lease shall not void or have any effect on this lease as to any other part.~~ Lessor agrees that when and if the within lease is assigned in whole or in part, the Lessee herein shall have no further obligations 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 the premises as herein leased and thereupon to become subrogated to the rights of such claimant or lien holder, and the right to direct payment of all rentals and royalties due hereunder to the payment of any existing liens on the premises and to recoup any such lien payments made by Lessee.

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. Additionally, Lessee shall pay for all damages to growing crops caused by its operations under this lease. Lessee agrees to restore the premises in accordance with state laws. Any damages for such growing crops or any other damages and claims which Lessor may have against Lessee, if not mutually agreed upon, shall 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 the majority of the three persons shall be final and conclusive and binding on all parties. Each party shall pay the cost of their arbitrator/appraiser and shall share the cost of the third. Arbitration shall be mandatory. No well shall be drilled within 200 feet of any existing barn or dwelling.

15. The Lessee shall have the privilege of using sufficient oil, gas and water for operating on the premises and the right (but not the obligation) 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 elects 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 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 same of each and all parties hereto relating in any way to the portion or all the premises indicated on said surrender, and the land rental herein before set forth shall be reduced in proportion to the acreage surrendered. Lessor recognizes that the Lessee is the owner of all of the seismic and other geophysical data obtained during the term of this lease and is free to utilize the data in any manner the Lessee deems appropriate.

16. In the event the Lessee is unable to perform any of the acts to be performed by reason of force majeure, including but not limited to acts of God, strikes, riots, and governmental restrictions and regulations including but not limited to restrictions on the use of roads, streets or highways, this lease shall nevertheless remain in full force and effect until the Lessee is able to perform said act or acts, and in no event shall the within lease expire until a period of ninety days (90) after the termination of any force majeure.

17. In the event Lessor considers that Lessee has not complied with any of its obligations hereunder, 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 a condition 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 covering the subject premises shall be granted by the Lessor during the term of this lease or any extension or renewal thereof. Likewise, Lessor shall not grant permission or authority to any other party to conduct seismic or geophysical studies/operations on the subject premises during the term of this Lease.

19. All covenants and conditions between the parties hereto shall extend to their heirs, personal representatives, successors and assigns, except that Lessee shall have no further obligations or liabilities hereunder in the event it assigns its entire interest hereunder to others. 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: Additional Provisions: SEE ADDENDUM ATTACHED HERETO AND MADE A PART HEREOF:

LESSOR

Ronald A Bohlen Ronald A Bohlen
Ronald G. Bohlen aka Ronald A. Bohlen

LESSOR

Barbara J Bohlen Barbara Jean Bohlen
Barbara J. Bohlen aka Barbara Jean Bohlen

STATE OF Ohio)
) SS.
COUNTY OF Washington)

The foregoing instrument was acknowledged before me this 15th day of February, 2006, by Ronald G. Bohlen aka Ronald A. Bohlen and Barbara J. Bohlen aka Barbara Jean Bohlen, Husband and Wife

My Commission Expires: 10/10/2006

Carolyn S. Sheets
Notary Public

CAROLYN S. SHEETS
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 10/10/2006

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledge before me this _____ day of _____, _____, by _____

My Commission Expires:

_____
Notary Public

This instrument prepared by: Alliance Petroleum Corporation
4150 Belden Village Ave., NW, Suite 410
Canton, OH 44718-2553

For Recording Information Only:

ADDENDUM

Attached to and made a part of that Oil and Gas Lease dated February 15, 2006, by and between Ronald G. Bohlen aka Ronald A. Bohlen and Barbara J. Bohlen, Husband and Wife, Lessor, and Alliance Petroleum Corporation, Lessee:

All terms contained in this Addendum shall be controlling and any conditions or terms on the printed lease which are inconsistent with these terms shall be void.

1. In the event that during any calendar year the total royalties paid from production of the leased premises, shall be less than the annual rental of $5,500.00, Lessee shall tender to Lessor such sum that will equal to the $5,500.00 annual rental payment.

2. Locations of access road(s), pipeline(s) and tank battery(s) shall be approved by the Lessor, such approval shall not be unreasonably withheld.

   a. During drilling/completion/workover operations access road(s) shall not exceed a width of thirty feet (30'); the operational width of access (s) shall not exceed a width of twenty feet (20') without the expressed written consent of Lessor. There shall be a one road limit per well.

   b. During construction/repair/replacement pipeline right of ways shall not exceed a width of twenty feet (20") without the expressed written consent of Lessor. All pipelines shall be buried a minimum of thirty inches (30") deep.

3. Only pipelines, tanks and equipment servicing wells on the lands covered by this lease shall be installed on above said lands under any provision of this lease.

4. Lessee shall give Lessor a minimum of forty five (45) days advance notice prior to commencing drilling and/or construction for the removal of marketable timber.

5. Lessee shall provide Lessor with necessary materials for the replacement/installation of necessary fencing/gates, installation of same shall be completed by the Lessor at such amount previously agree by Lessee.

6. Reclamation of wellsite(s), tank battery(ies), pipeline(s), access road(s) shall be conducted in such manner to comply with all governmental requirements and Lessor's reasonable approval. It is further agreed that Lessee shall provide necessary materials for seeding the locations named above with like/similar grasses as are existing on such locations prior to Lessee's operations. Lessor shall conduct the reseeding at such amount previously agree by Lessee at such time as Lessee has completed restoration of such locations.

7. Lessee may assign working interest of this lease, however any assignment that causes the operational management responsibility to change must be approved by Lessor in writing, said approval shall not be unreasonably withheld.

8. Subject to the terms provided in the paragraph #6, Lessor may on each well drilled on leased premises, elect in writing not to utilize any free gas, upon such election by Lessor, Lessee agrees to make an annual cash payment of an amount equal to the annual average price per thousand cubic feet received by the Lessee from said well times 200,000 cubic feet reserved to Lessor herein.

9. Prior to the end of the primary term hereof, the lessee shall have the option to renew this lease for an additional period of one (1) year. The lessee may exercise this option by paying to the Lessor the sum of $5,500.00, which payment shall be regarded as an option payment and not as a delay rental. If lessee exercises this option to renew, the lease shall continue under the same terms and conditions.

10. It is further agreed by the parties hereto that drilling operations will be conducted on lease premises between March 30th and November 15th, unless otherwise agreed upon in writing by Lessor.

11. Pursuant to paragraph 10, in the event Lessee desires to drill an exploratory well on leased premises, Lessee may consolidate or unitize said premises with adjacent properties and said well is located on leased premises; Lessor shall receive no less than fifty percent (50%) of royalties

attributed to said well. After Lessor has drilled any developmental wells and desires to fully utilize said premises, consolidation of a developmental well requires the written approval of Lessor, said approval shall not be unreasonably withheld.

12. Lessee shall give sufficient notice (minimum of two (2) weeks) to Lessor prior to commencing drilling operations so that livestock can be moved or agrees to install fencing around drill site.

13. Lessee agrees to pay for any and all damages to crops and marketable timber due to their operations upon the above described lands. Payment shall be made at the then prevailing market rate for crop(s) in question.

14. Lessor may at his expense set a meter for measurement of gas sold from leased premises. Lessor shall have access to information pertaining to the development and operations on the leasehold premises, including books and records pertaining thereto, during regular business hours.

15. Upon the expiration of this lease, Lessee agrees to cancel the same of record forthwith. In the event Lessee fails to cancel this lease upon termination, then Lessor may proceed to clear title as to said lease and shall recover entire cost, including attorney fees incurred in such action. This record shall be canceled within 30 days.

16. Any claims Lessor may have against Lessee, if not mutually agreed upon shall be ascertained and determined by three disinterested persons, one thereof to be appointed by the Grantor, one by the Grantee, and the third by the two so appointed as aforesaid, and the award of such three persons shall be final and conclusive.

Signed for identification:

Ronald G. Bohlen aka Ronald A. Bohlen

2-15-06
Date

Barbara J. Bohlen aka Barbara Jean Bohlen

2-15-06
Date

Alliance Petroleum Corporation: