ORIGINAL

IN THE SUPREME COURT OF OHIO

RONALD BOHLEN, *et al.*,	:	
	:	Case No. 2015-0187
Plaintiffs-Appellants,	:	
	:	
v.	:	On Appeal from the Washington County
	:	Court of Appeals, Fourth Appellate District
ANADARKO E&P ONSHORE, LLC, et al.,	:	Case No. 14 CA 13
	:	
Defendants-Appellees.	:	

BRIEF OF AMICUS CURIAE OHIO OIL AND GAS ASSOCIATION IN SUPPORT OF APPELLEES

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STATEMENT OF INTEREST OF AMICUS CURIAE

Amicus curiae Ohio Oil and Gas Association ("OOGA") is a statewide trade association whose 3,300 members are engaged in all aspects of the exploration, development, and production of oil and gas in this state. OOGA's membership includes small independent producers and major energy companies, as well as Ohio contractors, service and supply companies, manufacturers, utilities, accountants, insurers, engineers, and landowners. On behalf of its members, OOGA closely monitors Ohio litigation involving oil and gas law and occasionally participates as an amicus curiae in select cases that address especially important issues, such as the case presented here.

OOGA is participating in this appeal because the propositions of law proposed by Appellants Ronald and Barbara Bohlen threaten to sow confusion in existing Ohio oil and gas jurisprudence by conflating distinct legal concepts. Asking this Court to ignore the differences between the different obligations and effects created by standard delay-rental and minimum-royalty provisions would muddy otherwise clear oil and gas law regarding these concepts and would have adverse consequences in other situations where the difference between the two provisions is critical. Because the Court of Appeals properly analyzed and applied Ohio law to the lease provisions at issue here, OOGA asks that the Court of Appeals' decision be affirmed.

STATEMENT OF FACTS

The oil and gas lease signed by the Bohlens contains three provisions that are of particular relevance: (a) the habendum clause, which sets forth the term of the lease; (b) the delay-rental clause, which sets forth the terms on which the lessee may defer drilling during the primary term of the lease; and (c) paragraph 1 of the addendum, which requires an annual minimum payment to the lessor.

The habendum clause provides:

> 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.

(Lease ¶ 2.)

The delay-rental provision provides:

> 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 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 commencement of a well. A well shall be deemed commenced when drilling operations have commenced on leased premises. . . .

(Lease ¶ 3 (alterations in original).)

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.

(Lease Addendum ¶ 1.) Each of these provisions serves a different function, and must be examined separately.

ARGUMENT

I. Appellants' First Proposition of Law:
An oil and gas lease should be enforced, as written, using the words and phrases employed by the parties, including provisions regarding termination of the lease.

Response of Amicus Curiae: OOGA agrees with this proposition of law, which leads to affirmance of the Court of Appeals' decision.

As this Court held in *Harris v. Ohio Oil Co.*:

> The rights and remedies of the parties to an oil or gas lease, must be determined by the terms of the written instrument, and the law applicable to one form of lease may not be, and generally is not, applicable to another and different form. Such leases are contracts, and the terms of the contract with the law applicable to such terms, must govern the rights and remedies of the parties.

57 Ohio St. 118, 129, 48 N.E. 502 (1897).

Parties are certainly free to craft unique provisions that might operate differently than standard provisions found in oil and gas leasing. But where the parties have utilized language that is functionally similar to that found in existing jurisprudence, that jurisprudence guides the interpretation of the lease. *See, e.g.*, *State ex rel. Claugus Family Farm, L.P. v. Seventh Dist. Court of Appeals*, 145 Ohio St.3d 180, 2016-Ohio-178, 47 N.E.3d 836, ¶ 24 ("While the language in the . . . lease is not identical to leases in the case law, it is similar enough to justify its application here."). As explained below, the lease provisions at issue in the lease here are standard lease provisions. Accordingly, existing jurisprudence should guide the effect of those provisions. Under that jurisprudence, the Court of Appeals' decision should be affirmed, as explained further in the following sections.

II. Appellants' Second Proposition of Law:

"Delay rental" clauses are the functional equivalent of "minimum advance royalty" clauses and will be construed as written, using the language employed by the parties to the agreement.

Response of Amicus Curiae:

Delay-rental and minimum-royalty provisions serve distinct functions under an oil and gas lease and must be separately treated. A delay-rental clause serves to delay the lessee's obligation to commence the drilling of a well during the primary term of a lease; a minimum-royalty provision provides a minimum revenue stream to the landowner once production is obtained and the secondary term begins.

A. The History and Function of Delay-Rental and Minimum-Royalty Provisions

1. Delay-Rental Payments Are Designed to Delay the Lessee's Obligation to Commence Drilling Operations

A modern oil and gas lease typically contains a habendum clause that creates a two-tiered term: a primary term of a fixed duration and a secondary term of indefinite duration. *See, e.g.*, *Claugus*, 145 Ohio St.3d 180, 2016-Ohio-178, 47 N.E.3d 836, ¶ 20, citing *Chesapeake Exploration, L.L.C. v. Buell*, 144 Ohio St.3d 490, 2015-Ohio-4551, 45 N.E.3d 185, ¶ 77.

The modern lease also typically contains a provision that defines when drilling must be commenced or delay rentals paid. The term "delay" rental naturally suggests that something is being delayed by virtue of the payment. It is the implied obligation to commence drilling operations that is being delayed. Early in the development of oil and gas law, oil and gas leases did not generally contain the two-tiered structure familiar today. *See generally*, Williams & Meyers, *Oil and Gas Law* ("Williams & Meyers") § 812. Instead, leases were for either a lengthy, fixed period of time or contained no express period in which to drill. *Id.* To militate against such leases being held in perpetuity without development, courts adopted an implied covenant to drill an initial exploratory well, which the lessee was required to do within a reasonable period of time. *Id.*; *see also* Kuntz, *Law of Oil and Gas* ("Kuntz") § 27.1.

The modern two-tiered lease with a delay-rental provision replaced this vague concept of "reasonableness" with an express, fixed period within which the lessee must commence drilling or pay the rental. Because the period in which to drill is clearly defined in such leases, "It is uniformly held that a covenant to drill an initial well is not implied . . . ." Williams & Meyers § 812 As this Court held in *Claugus*, "We will not impose an implied covenant to develop when the lease requires that development must commence within a certain period . . . ." 145 Ohio St.3d 180, 2016-Ohio-178, 47 N.E.3d 836, ¶ 31–32.

Delay-rental provisions are typically of two general types, an "or"-type provision and an "unless"-type provision. *See* Williams & Meyers § 605; Kuntz § 29.1.[1] The "or"-type lease creates an obligation on the part of the lessee to either pay the specified delay-rental amount or commence to drill a well, and the failure to do one or the other will constitute a breach by the lessee. Williams & Meyers § 605.1; Kuntz, § 29.3. Such leases do not automatically terminate upon the failure to do one or the other, but they create a cause of action by the lessor for breach.

An "unless"-type lease states that the lease will terminate and cease to remain in force and effect, "unless" the lessee pays a delay rental or commences drilling operations. Williams & Meyers § 606; Kuntz § 29.2. Under this type, there is no obligation on the part of the lessee to take affirmative action to pay the delay rental or commence operations; rather, the lease automatically terminates if the lessee opts not to do one or the other. *See, e.g.*, *Brown v. Fowler*, 65 Ohio St. 507, 63 N.E. 76 (1902), paragraphs two and three of the syllabus. Once drilling operations have commenced, however, the delay-rental clause is no longer of any force or effect; rather the lease will be held in the secondary term as a result of operations. *Claugus*, 145 Ohio St.3d 180, 2016-Ohio-178, 47 N.E.3d 836, ¶ 25–26, citing *Brown*, 65 Ohio St. at 522, 63 N.E. 76. The Bohlens' lease is an "unless"-type lease.

2. Minimum-Royalty Provisions Are Designed to Guarantee a Minimum Stream of Income to the Lessor

A minimum-royalty provision serves a different function than a delay-rental provision. While a delay-rental provision is designed to delay the lessee's obligation to commence drilling

[1] Another modern variation is the "paid-up" lease, in which the lessee essentially pre-pays the delay rentals that would be required during the primary term under "or"- or "unless"-type leases.

operations, a minimum-royalty provision is designed to guarantee the lessor a minimum income from operations once a well has been drilled. *See* Williams & Meyers § 644.10. As one leading treatise has described it,

> The primary purpose of such a provision is to require the payment of a minimum royalty, despite the amount of production. Its effect on the habendum clause will, of course, be determined by its specific provisions, but it is not likely to be construed to modify the habendum clause if it does not refer to such clause or otherwise indicate the effect of payment of the minimum royalty on such clause.

Kuntz § 39.1 n.8. The effect of the minimum-royalty provision is to give the landowner certainty as to the minimum amount that will be received each year the lease remains in effect.

A minimum-royalty payment "frequently is equivalent to the annual delay rentals payable prior to the gaining of production." Williams & Meyers § 644.10. But the mere fact that such payments are often tied to the *amount* of the delay-rental payment does not make them *functionally equivalent* to a delay rental. As explained above, the delay-rental payment delays the lessee's obligation to commence an initial exploratory well during the primary term of the lease; the minimum-royalty payment applies once production is achieved. *See, e.g.*, *Morriss v. First Nat'l Bank*, 249 S.W.2d 269, 276 (Tex. Civ. App. 1952). The minimum-royalty provision does not govern the length of the lease. *See, e.g.*, *Morris Exploration, Inc. v. Guerra*, 751 S.W.2d 710, 713 (Tex. Ct. App. 1988). And unlike delay-rental provisions, minimum-royalty provisions do not typically contain a forfeiture clause for failure to make the required payment. *See, e.g.*, *M&C Oil v. Geffert*, 897 P.2d 191, 196–97 (Kan. 1995). Absent a forfeiture clause in the minimum-royalty provision, the breach of the provision gives rise to a cause of action for damages, not forfeiture. *Compare id. with Barker v. Kruckenberg*, 105 P.3d 273, 275–76 (Kan. Ct. App. 2005) (distinguishing *M&C Oil* because minimum-royalty provision contained express language calling for forfeiture).

B. The Bohlens Conflate Delay-Rental and Minimum-Royalty Provisions.

The Bohlens ask this Court to conflate delay-rental payments with minimum royalties, stating that " 'rent' and 'minimum royalties' are interchangeable terms." (Appellants' Br. at 9.[2]) This is an incorrect statement of law. As this Court explicitly explained in *Ionno v. Glen-Gery Corp.*, 2 Ohio St.3d 131, 443 N.E.2d 504 (1983), a delay rental and a minimum advanced royalty operate differently and are subject to different considerations.[3] In *Ionno*, the mining lease in question contained no primary term and allowed the lessee to indefinitely delay mining through payments that were credited against future royalties. *Id.* at 133, 443 N.E.2d 504. This Court distinguished these advanced royalties from a delay-rental provision, stating:

> Clearly, we are not dealing with a contract which exacts a nonrefundable annual payment of rent to the lessor as separate and independent consideration. Rather, because the minimum royalties required under the lease at hand offset production royalties, the real consideration for the lease is the expected return derived from the actual mining of the land.

Id. The Court then concluded that an annual advance payment that must be credited against future royalties does not relieve the lessee of the obligation to reasonably develop the property. *Id.* at 134.

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[2] The fact that a district court in Pennsylvania might have used loose language in dicta in *Jacobs v. CNG Transmission Corp.*, 332 F. Supp.2d 759 (W.D. Pa. 2004), cited by the Bohlens, is no reason for this Court to conflate these distinct legal concepts.

[3] The Bohlens intimate that this Court used the terms "rental" and "royalty" interchangeably in its statement of facts in the *Ionno* opinion. (Appellants' Br. at 9.) But it is clear from the opinion that this Court was merely quoting the language used by the parties in their lease. *See Ionno*, 2 Ohio St.3d at 131, 443 N.E.2d 504. In its analysis, this Court made a clear legal distinction between the two concepts, *id.* at 133, 443 N.E.2d 504, but the Bohlens omit this analysis from their brief.

The importance of determining the precise nature of the particular payments in question was examined in detail in *Morriss*, a case cited by the Bohlens. In *Morriss*, a bank brought an interpleader action to determine the proper payees for payments made by a lessee under an oil and gas lease. Because certain royalty interests had been separated from the other rights under the lease, if the payments in question were "royalties," then the payments were properly paid to one set of recipients; if they were "rentals," they belonged to a different payee. *Morriss*, 249 S.W.2d at 272. The court determined that the delay-rental clause was typical of such a provision, in that it served to delay the lessee's obligation to drill and gave the lessee the option to pay the rental to maintain the lease before drilling operations were commenced. *Id.* at 274. The minimum-royalty provision, in contrast, was a mandatory payment obligation that arose once production had occurred, with the court stating that "production is the fact that terminates the rental clause and commences the operation of the royalty clause." *Id.* The court also explained that rentals and royalties are generally not due under a lease simultaneously. *Id.* at 275. The court concluded that because the payments in question, although designed to ensure that the royalty payment be not less than the delay-rental, were royalties and to be paid accordingly. *Id.* at 280.

As seen in *Morriss*, whether a payment is a "rental" or a "royalty" can be determinative of who receives the payment. The distinction can have other consequences as well. For example, the distinction between a delay-rental and a minimum-royalty obligation can have tax consequences, *see, e.g.*, *Reliant Energy, Inc. v. United States*, 45 Fed. Cl. 302 (Fed. Ct. Cl. 1999) (distinguishing delay-rental payment from advanced-minimum-royalty provisions for purposes of the federal tax code), can determine which of several lessees might be liable for making the payment, *see, e.g.*, *Cherokee Resources, Inc. v. Gold Energy Corp.*, 724 P.2d 695 (Kan. Ct. App.

1986) (examining whether a payment was a minimum-royalty payment or rental payment for purposes of determining whether a party was obligated to contribute to making the payment), or can trigger whether a particular payment is required at all, *see, e.g.*, *Ross v. EnerVest Operating, L.L.C.*, 119 So.3d 943 (La. Ct. App. 2013) (distinguishing delay-rental payments from minimum-royalty payments for purposes of determining whether payment was due).

Thus, failing to maintain the clear distinction between delay-rental payments and minimum-royalty payments would create unnecessary confusion in Ohio oil and gas jurisprudence and inevitably lead to more litigation. As explained in the next section, and as the Court of Appeals correctly recognized, the provisions of the lease here contain distinct provisions calling for delay-rental payments and minimum royalties.

C. The Provisions at Issue Here Are Distinct Delay-Rental and Minimum-Royalty Provisions

The habendum clause of the lease in question here contains typical language creating a primary term and 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.

(Lease ¶ 2.) Indeed, this language is virtually identical to the language contained in this Court's decision in *Claugus*, apart from the length of the primary term and the inclusion of the word "sole" before "judgment of the lessee":

> 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 and 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.

Claugus, 145 Ohio St.3d 180, 2016-Ohio-178, 47 N.E.3d 836, ¶ 23. Under *Claugus*, therefore, the "lease cannot be extended beyond . . . the primary term without development of oil or gas." *Id.* ¶ 30.

The delay-rental provision at issue here is a typical example of an "unless" lease form: "This lease, however, *shall become null and void* and all rights of either party hereunder shall cease and terminate . . . *unless* the Lessee shall thereafter pay a delay rental . . . *for the privilege of deferring commencement of a well*." (Lease ¶ 3 (emphasis added).) As with the habendum clause, this provision is substantially similar to the provision at issue in *Claugus*:

> 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 __ 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.

Claugus, 145 Ohio St.3d 180, 2016-Ohio-178, 47 N.E.3d 836, ¶ 23. The Bohlen lease, in fact, contains language that strengthens the conclusion that the delay-rental payments are indeed for deferring the lessees' drilling obligation, expressly stating that the payments are "for the privilege of deferring commencement of a well." (Lease ¶ 3.) As a result, under this Court's decision in *Claugus*, the ability to pay delay rentals only exists during the primary term of the lease. 145 Ohio St.3d 180, 2016-Ohio-178, 47 N.E.3d 836, ¶ 25–26.

The Bohlens argue that this Court's holding in this regard was mere dicta, claiming "There was no argument made in the *Hupp* or *Claugus* cases to suggest that delay rentals were to be paid at any time other than during the primary term. It was not an issue of the case." (Appellants' Br. at 13.) This is incorrect. The primary argument made by the lessors in *Claugus* was "that after the initial ten years, Beck Energy could extend the lease even if it had not developed for oil and gas, by subjectively determining that oil or gas could be produced in

paying quantities *and then continuing to pay delay rentals*." 145 Ohio St.3d 180, 2016-Ohio-178, 47 N.E.3d 836, ¶ 24 (emphasis added). This Court's holding thus directly addressed (and rejected) the landowners' argument that delay rentals could continue beyond the primary term. That holding applies to the delay-rental clause at issue here as well. Once commencement of a well occurs and the primary term ends, the delay-rental provision ceases to have any function, because the thing that was delayed, commencement of drilling operations, has already occurred. *Morriss*, 249 S.W.2d at 276; *see also* Kuntz § 39.1 ("A further critical factor should be whether or not production has actually been established.").

Claugus relied on this Court's earlier decision in *Brown*, 65 Ohio St. 507, 63 N.E. 76, in which this Court also held that delay rentals could not extend the lease beyond its primary term. The language at issue in the delay-rental provision in *Brown* is substantially identical to the language here, providing that:

> In case no well shall be drilled on said premises within twelve months from the date hereof, this lease shall become null and void, unless the lessee shall pay 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.

Id., paragraph three of the syllabus. *Brown* held that this language could not extend the lease beyond the primary term of the lease. *Id.* While the Bohlens argue that a differently worded delay-rental clause could lead to other conclusions (Appellants' Br. at 13), the language actually selected by the parties in the Bohlens' lease falls squarely within and is governed by this Court's prior holdings.

The lease addendum does not alter this conclusion. Paragraph 1 of the addendum provides that "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 ¶ 1

(emphasis added).) As explained above, it is common for minimum-royalty provisions to tie back to the delay-rental payment to set the amount of the minimum royalty. But that does not convert the payment into a delay royalty. Indeed, Addendum paragraph 1 is very similar to an example minimum-royalty clause found in a leading treatise:

> Anything hereinbefore contained to the contrary, it is expressly provided as follows: (a) *If at any time this lease shall be held by production* and *if the royalties paid* lessor hereunder shall for any year period *be less than the annual delay rental* hereinbefore provided for, *then lessee must pay lessor such additional money* during each such one year period as may be necessary *so that each year during the life of this lease lessor shall receive as delay rental or royalties, or as a combination of the two, the minimum of the annual delay rental hereinbefore provided for*.

Williams & Meyers § 644.10, quoting *Union Oil Co. v. Ogden*, 278 S.W.2d 246, 247–48 (Tex. Ct. App. 1955). Paragraph 1 of the addendum specifically and clearly requires that "production" have occurred before the minimum royalty payment is due.

Paragraph 1 also lacks any language that would render the lease terminated if the payment is not made. When an oil and gas lease contains certain causes of forfeiture, a court cannot imply others into the lease. *Beer v. Griffith*, 61 Ohio St.2d 119, 121–22, 399 N.E.2d 1227 (1980), citing *Harris*, 57 Ohio St. 118, 48 N.E. 502, paragraphs two and three of the syllabus. Because paragraph 1 of the addendum does not contain a clause calling for forfeiture of the lease in the event of breach, the Court of Appeals correctly concluded that paragraph 1 did not provide a separate basis for termination of the lease.

III. Appellants' Third Proposition of Law:

"Delay rental" clauses are not necessarily limited to the primary term of an oil and gas lease, but instead will be applied as written, using the language employed by the parties to the agreement.

Response of Amicus Curiae:

Absent explicit language that would terminate the lease based on the failure to make a post-drilling payment, the failure to make a payment due after drilling is commenced gives rise to a claim for damages, not lease forfeiture.

A. Parties Can Create Unique Provisions Regarding Termination of a Lease.

The Bohlens correctly state that the parties can draft provisions that create unique payment obligations that could result in termination of a lease. (Appellants' Br. at 13.) As noted above, this Court has held that the language employed by the parties controls. *Harris*, 57 Ohio St. 118, 129, 48 N.E. 502. Examples of such unique provisions are found in several cases cited by the Bohlens. *See Sims v. Anderson*, 2015-Ohio-2727, 38 N.E.3d 1123 (4th Dist.); *Price v. K.A. Brown Oil & Gas, LLC*, 7th Dist. Monroe No. 12 MO 13, 2014-Ohio-2298; and *Beaverkettle Farms, Ltd. v. Chesapeake Appalachia, LLC*, No. 4:11CV02631, 2013 U.S. Dist. LEXIS 124509 (N.D. Ohio Aug. 30, 2013). But the unique provisions found in those cases are not found in the parties' lease here.

For example, in *Sims*, the parties drafted a provision that specifically defined for that lease how much production would constitute "paying quantities" sufficient to maintain the lease during the secondary term, stating that the term would "mean production sufficient to net the Lessors a minimum of $400 royalty per year for oil or gas marketed . . . ." *Sims*, 2015-Ohio-2727, 38 N.E.3d 1123, ¶ 3. Lack of production in paying quantities under the lease resulted in termination. When the lessee failed to produce enough oil and gas sufficient to generate royalties sufficient to reach the contractually defined monetary threshold for paying quantities, the court held that the lease terminated, noting that "[t]he fact that the lease contains an express forfeiture clause distinguishes the case from those relied upon by the trial court." *Id.* ¶ 15, 17.

In *Price*, the lease contained specific deadlines to put two previously drilled wells back into production and expressly provided that if the deadlines were not met "then the Lessee shall release said lease back to Lessor or begin paying shut-in royalties." 2014-Ohio-2298, ¶ 5. The court held that the failure to comply with these express terms combined with the forfeiture provision rendered the lease terminated.

In *Beaverkettle*, a case involving a lease covering more than 4,000 acres, the delay-rental provision contained special language requiring the payment of delay-rentals for undrilled acreage:

> 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, Lessee commences the drilling of a well on the premises for production of oil and gas *or unless Lessee shall pay a delay rental of Ten dollars ($10.00) per acre each year commencing on the date of this lease, payments to be made quarterly in advance. Said delay rental shall not be due and payable for each acre which is contained within an approved drilling plat*, provided that once Lessee commences drilling, Lessee proceeds with due diligence to complete such well, and once completed, such well continues to produce and sell oil and gas in paying quantities. . . .
>
> The payment for the first quarter shall be made not later than the date of this Lease. Once a well is drilled on the Lease, said Lease shall be held by production *and Lessee shall be entitled to maintain all undrilled acreage under this Lease by paying delay rentals as provided above*.

Id. at *35–36 (emphasis sic.).

The cases cited by the Bohlens stand for nothing more than the proposition that parties can negotiate an oil and gas lease that expressly terminates upon the occurrence or nonoccurrence of a specified event. The Bohlens' lease contains no similar language in paragraph 1 of the Addendum that would tie the continuing existence of the lease to payments made.

B. Unless a Minimum-Royalty Provision Expressly Requires Lease Termination, a Breach of the Provision Gives Rise to a Claim for Damages, Not Termination.

This Court has held on several occasions that when a lease contains provisions calling for forfeiture upon the occurrence or nonoccurrence of an event, other grounds for forfeiture will not be read into the lease. *Beer*, 61 Ohio St.2d at 121–22, 399 N.E.2d 1227; *Harris*, 57 Ohio St. at 131, 48 N.E. 502. Further, "Absent specific language in the lease, nonpayment of royalties is not

grounds for cancellation of an oil and gas lease." *Armstrong v. Chesapeake Exploration, L.L.C.*, 5th Dist. Tuscarawas No. 2014 AP 12 0056, 2015-Ohio-3310, ¶ 20; *Blausey v. Stein*, 6th Dist. Ottawa No. OT-78-3, 1978 Ohio App. LEXIS 9031, *12 (Dec. 8, 1978), *aff'd*, 61 Ohio St.2d 264 (1980). Instead, the natural remedy for breach of a provision calling for payment of royalties is an action for damages. *Sims*, 2015-Ohio-2727, ¶ 14–15.

As explained above, paragraph 1 of the addendum creates a minimum-royalty obligation. Because it does not include a provision that would terminate the lease for nonpayment of that minimum amount, the Court of Appeals correctly interpreted the lease and applied the law. That decision should be affirmed.

IV. Appellants' Fourth Proposition of Law:

An oil and gas lease may not indefinitely forestall production by payment of rentals.

Response of Amicus Curiae:

Because the lease in question does not indefinitely forestall production by payment of rentals, this proposition of law should be rejected as improvidently granted.

As explained above, none of the lease provisions here would allow the lessee to indefinitely forestall production by simply paying royalties. The lessee disavows such a construction in its brief. (Appellees' Br. at 22.) The Bohlens ask this Court to construe the lease in an unreasonable and unfavorable way in order to then claim that the lease could extend in perpetuity by mere payment, and then they use this unreasonable interpretation as a basis for concluding that the lease should be terminated. But this unfavorable interpretation is not warranted under the terms of the lease. Because the lease does not allow for the interpretation suggested by the Bohlens, this Court should decline to address this proposition of law.

CONCLUSION

The Court of Appeals correctly found that none of the lease provisions in question give the lessee the ability to indefinitely hold the lease by merely making payments. Instead, the Court of Appeals correctly found that production in paying quantities was required. Because the Court of Appeals' decision was correct in its application of law to the facts, that decision should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 15th day of August 2016, a copy of the foregoing was served by email pursuant to S.Ct.Prac.R. 3.11(C)(1) on the following:

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