

Ohio Supreme Court hears cases involving perpetual leases, tolling of undrilled leases in Monroe Co

By David J. Wigham | Attorney Published: January 4, 2016 3:41 PM



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Landowners in Monroe County who signed oil and gas leases with Beck Energy over the last decade should be aware of two potentially significant cases pending before the Ohio Supreme Court: Hupp v. Beck Energy and State of Ohio ex rel. Claugus Family Farm, L.P. v. Seventh District Court of Appeals, et al. (consolidated into one case). The Court heard oral arguments in these cases on Tuesday, December 15, 2015.

The central issue in Hupp is essentially whether Beck Energy leases, called Form G&T (83) leases, are perpetual no-term leases that are therefore void ab initio (or from the beginning) as against public policy. If the Court rules that the lease form is a void, perpetual lease, the holding would invalidate a form of oil and gas lease commonly used across the state and would directly impact all landowners in Monroe County who currently have undrilled Beck Energy leases.

The issue raised in the Claugus Family Farm case involves an order issued by the Ohio Court of Appeals for the Seventh District that tolled all undrilled Beck Energy leases in Monroe County beginning on October 1, 2012 and continuing “during the pendency of all appeals in this Court, in the event of a timely notice of an appeal to the Ohio Supreme Court, until the Ohio Supreme Court accepts or declines jurisdiction” (the “Tolling Order”). The Tolling Order prevents any Form G&T (83) lease anywhere in the state from expiring pursuant to its own terms while the courts determine whether the leases are void.

The Tolling Order did not specifically identify the affected properties, and the Court of Appeals did not arrange for landowners who signed such leases to receive notice, even though it affected the property rights of landowners across the state. The question before the Supreme Court is whether the Tolling Order violated the due process rights of such landowners.

[See also - Ohio Supreme Court rules against landowners in Beck Energy lease validity cases](#)

In Monroe County alone, mineral owners stand to lose millions of dollars if the Tolling Order is allowed to stand. Had the Tolling Order not been issued, absent drilling and the production of oil or gas in paying quantities, the Beck Energy leases in Monroe County would have continued to run in their primary ten-year terms, and many would have already expired, thus freeing up vast amounts of acreage to be leased by the landowners, who would then be entitled to lucrative signing bonuses and royalties from Utica producers.

Even if the Court finds the Form G&T (83) lease is valid and not a perpetual, no-term lease, if Claugus Family Farm prevails and the Supreme Court rules that the Tolling Order was unenforceable as to Claugus, similarly-situated Monroe County landowners with expired or soon-to-expire undrilled Beck Energy leases should be able to file lawsuits seeking a court order declaring that the Tolling Order is unenforceable as to them as well and that the Beck Energy lease expired. This outcome would allow other Monroe County landowners to sign new leases following the expiration of the primary term listed on the face of their individual lease. Since the standard Form G&T (83) lease contains a 10-year primary term, those undrilled leases which would otherwise have expired on or after October 1, 2012 could be ruled no longer in effect.

If you are a landowner in Monroe County who signed an oil and gas lease with Beck Energy that is yet undrilled, it is highly recommended that you contact an experienced oil and gas attorney to advise you as to your due process rights and to monitor the proceedings before the Ohio Supreme Court. Depending on how the Ohio Supreme Court rules, landowners owned undrilled acreage may be able to file suit to have their Beck Energy lease voided.

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