

## Ohio Supreme Court rules against landowners in Beck Energy lease validity cases

By David J. Wigham | Attorney Published: March 17, 2016 9:57 AM



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On January 21, 2016, the Ohio Supreme Court issued a decision affecting the mineral rights of hundreds of landowners in Ohio who leased with Beck Energy: *State ex rel. Claugus Family Farm, L.P. v. Seventh Dist. Court of Appeals*. The decision actually resolved two cases that the Ohio Supreme Court consolidated on appeal, *Hustack v. Beck Energy Corp.*, an appeal from a decision of the Seventh District Court of Appeals, and *State ex rel. Claugus Family Farm, L.P. v. Seventh Dist. Court of Appeals*, a mandamus action in which the Seventh District Court of Appeals was sued for issuing a tolling order in the *Hustack* case while it was on appeal.

The Court's ruling declared Beck's leases to be valid and binding. To make matters worse, the Court also refused to void the Seventh District's tolling order which extended most undrilled Beck leases for an additional 849 days (nearly two year and four months), thereby affecting the rights of Beck landowners who never even received notice of the tolling order.

As a matter of background, in the mid-2000's, Beck went on a lease-signing spree in southeast Ohio, signing

hundreds of Ohio landowners to oil and gas leases based on the Form G&T (83) lease. These leases generally contained standard lease terms at the time, including a ten-year primary term, a 12.5% royalty, and a delay rental ranging from \$1-\$5 per acre per year.

While these lease terms seemed reasonable at the time, once the Utica Shale boom hit southeast Ohio, landowners soon realized the lease terms were well below fair market value. Watching many of their neighbors enter into new leases with 17%-20% royalties and signing bonus payments of \$5,000-\$7,000 per acre for a five-year primary term, landowners understandably regretted leasing with Beck.

This situation left landowners with two options: Either wait until their Beck lease expired, or try to sue Beck to get out of the lease. Both options carried risk: Landowners deciding to wait faced the possibility that their lands would be developed and then indefinitely held by production in the secondary lease term. Conversely, if a landowner sued Beck and lost, Beck would likely succeed in obtaining a court order tolling (or stopping) the running of the primary term of the landowner's lease for the duration of litigation (effectively extending the primary term for a period of time equal to the duration of the litigation).

Considering the small number of rigs in the field, the large number of landowners with Beck leases, and the relatively low chance of success in suing Beck during the primary term, it was no surprise that most landowners chose to wait out the primary term of the Beck leases. However, a small group of landowners decided to sue Beck in Monroe County Common Pleas Court, seeking to have their leases declared invalid. The next series of events turned this case, eventually captioned *Hustack, et al., v. Beck Energy Corporation*, into a legal nightmare for most landowners holding undrilled Beck leases, through no fault of their own.

To start with, much to everyone's surprise, the plaintiffs who sued Beck obtained a favorable trial court ruling that the Beck leases were no-term leases and therefore invalid. Furthermore, the attorneys for the plaintiffs were successful in obtaining a class certification that included all the landowners, even those who chose not to sue Beck (and who were waiting for their leases with Beck to expire).

As a result of this ruling, all landowners with undrilled Beck leases were bound to the proceedings in *Hustack*, all without their consent and without notice that they were even a party. In effect, these landowners, all of whom chose to wait out the primary term of their Beck leases, were now subject to the risk of having the primary term of their leases tolled from running.

At first, the risk of these landowners facing a judicial lease extension was prospective. First, if the Beck leases were declared invalid on appeal, it would not matter if the primary term of the Beck Leases was extended. Second, the trial court limited its tolling order to apply only to the plaintiff landowners.

Eventually, Beck appealed the trial court's decisions to the Ohio Court of Appeals, Seventh Appellate District. On appeal, not only was Beck able to successfully argue to the Seventh District that the trial court had erred in declaring the Beck leases invalid, but Beck also obtained a modification of the lower court's tolling order to include not only the named plaintiff landowners but all the landowners with undrilled Beck lease who chose not to sue, including those who never even received notice of the lawsuit. As a result, the primary term of all undrilled Beck leases that had not expired as of October 1, 2012 was extended until the Seventh District made its final ruling.

Furthermore, once the Seventh District made its ruling, the parties in that appeal, Beck and the plaintiff landowners, jointly stipulated to an extension of the tolling order of all the Beck leases until the Ohio Supreme Court accepted review of the Seventh District decision. In effect, the plaintiff landowners (who had practically no hope of avoiding their leases being tolled) consented to an order tolling the leases of all the landowners who chose not to sue Beck. While plaintiff landowners appealed the Seventh District's lease validity holding to the Supreme Court of Ohio, no party in *Hustack* appealed the holding that class certification was proper.

Again, this all happened without legal notice to the landowners who chose not to sue, with the exception of at least one landowner, Claugus Family Farms, who had actual notice of the proceedings and the expansion of the trial court's tolling order. As an interested party, Claugus could have attempted to intervene in the appeal before the Seventh District. If granted, this motion to intervene would have provided Claugus with a voice in the appellate proceedings and would have allowed it to seek a modification of the Seventh District's expanded tolling order. It would also have given Claugus the opportunity to appeal the Seven District to the Ohio Supreme Court.

Instead of moving to intervene in the *Hustack* appeal, Claugus decided to file an original action with the Supreme

Court of Ohio, which essentially sued the Seventh District for its modification of the tolling order. In response, the Seventh District filed a motion to dismiss, claiming that an original action was inappropriate since Claugus had an adequate remedy at law -- intervening in the appellate case -- and the Seven District had jurisdiction (or ability) to issue a tolling order affecting the whole class. The Seven District went so far as to point out that, at the time the motion to dismiss was filed, that appeal had not ended and, as a result, Claugus could still intervene in that appeal.