

# SUPREME COURT OF OHIO TAKES UP OIL AND GAS STATUTE OF LIMITATIONS QUESTION



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On September 26, 2018, the Supreme Court of Ohio accepted an appeal from a ruling by the Fifth District Court of Appeals in a case known as *Browne v. Artex Oil Company*, 2018-Ohio-3746. In *Browne*, the Fifth District applied a 15-year statute of limitations to bar claims brought by a landowner in 2014 to terminate an oil and gas lease due to lack of production between 1981 and 1999. In the jurisdictional appeal, the Supreme Court of Ohio accepted one proposition of law:

In an action to declare that an oil and gas lease has terminated under its own terms for lack of production in paying quantities, the applicable statute of limitations is 21 years, per Ohio Revised Code § 2305.04, and does not begin to run until a “justiciable controversy” arises.

The issue of whether a statute of limitations applies to limit or bar landowner claims seeking to terminate an oil and gas lease is one with which Ohio courts have struggled in recent years. For ex-

ample, the Fourth District Court of Appeals applied Ohio’s 21-year statute of limitations applicable to real estate disputes in *Rudolph v. Viking Int’l Res. Co.*, 2017-Ohio-7369. The Seventh District, however, applied a 15-year statute of limitations applicable to contract disputes in *Potts v. Unglaciated Indus. Inc.*, 2016-Ohio-8559 and *Ricketts v. Everflow E., Inc.*, 2016-Ohio-4807. In *Browne*, the Fifth District followed suit and applied a 15-year statute of limitations to actions brought to declare an oil and gas lease terminated. There-

*Statute continued on page 14*



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fore, a conflict of law exists between the Fourth District, and the Fifth Districts.

A second equally important issue to be decided by the Supreme Court is when the applicable statute of limitations will start running. In the *Rudolph* case, the Fourth District held that the statute of limitations does not begin to run until a controversy exists. However, in the *Browne* case, the Fifth District held that the statute runs from the last date of cessation of production.

To understand the significance of this issue, it is important to explain what “paying quantities” is and why it matters under an oil and gas lease. In Ohio, most oil and gas leases contain a primary term and a secondary term. The primary term is a period of years within which the producer must commence drilling operations in search of oil and gas. If, after the end of the primary term, the conditions of the lease are not met, then the oil and gas lease automatically expires by its own terms.

The secondary term of an oil and gas lease is indefinite and extends the lessee’s rights under the lease, typically “for so long as oil and gas are produced in paying quantities,” or words to that effect. In order for an oil and gas lease to extend beyond its primary term, the lessee must discover and produce oil and gas in paying quantities. In other words, there must be actual production that generates a profit over and above operating expenses attributable to the well or wells drilled under the lease. An oil and gas lease in its secondary term automatically expires on the day the well stops producing in paying quantities. Once a lease expires, ownership of the mineral rights reverts back to the landowner. This allows the landowner to enter into a new oil and gas lease. In certain areas of Ohio where the Utica shale formation is being developed, landowners who own their mineral rights

are able to lease those rights to a shale producer for lucrative signing bonuses and higher royalties.

In recent years, there have been a flood of lawsuits filed mostly by landowners seeking to terminate oil and gas leases that are held by wells drilled decades ago, many of which are close to or at the end of their productive life. In some cases, there are gaps in production that are decades old. In response to many landowner lawsuits, producers are asserting various statute of limitation defenses and seeking to bar or limit a landowner’s ability to terminate an oil and gas lease, based on the passage of time between when the well stopped producing and when the landowner filed suit.

In *Browne*, the landowner is taking the position that a longer 21-year statute of limitations applicable to real estate disputes should apply, and that this statute should not begin to run until the parties are aware that there is an actual controversy over ownership of the land. This argument is rooted in the concept that oil and gas leases are based on property law and when a lease is signed, ownership of the mineral rights are transferred to the lessee. Thus, when an oil and gas lease expires due to lack of production, ownership of the minerals are automatically reverted to the landowner. Continuing along this argument, the landowner in *Browne* argues that the statute should not begin to run until the parties are aware that there is a dispute, since reversion of the ownership of the minerals is automatic and the landowner could have owned the minerals for decades. Applying a statute of limitations to bar a landowner from filing suit to protect their own property interests would essentially “divest” the landowner of the mineral interests that would have already reverted to and been owned by the landowner for years.

Conversely, Artex urges the Court to adopt a shorter 15-year

statute of limitations that begins to run on the last date when the well holding the lease stopped producing. Artex argues that lease termination disputes are inherently contractual in nature, and there are more than property rights at issue. Specifically, the lessee stands to lose its financial investment in the lease in addition to ownership of the mineral rights. Also, lease termination disputes are often intensely factual because the profitability of the well is at issue, and the dispute, could turn on the terms of a written contract. Finally, Artex argues that this limitations period should begin to run from the occurrence of the event that leads to the lease termination.

Oral arguments before the Supreme Court in *Browne* are set for June 11, 2019, and the Court will likely issue its decision in late 2019 or early 2020.

The recent litigation over statute of limitations issues in the context of oil and gas leases highlights the importance of diligence when analyzing ownership of mineral rights in the context of the validity of oil and gas leases. Landowners, who would otherwise be entitled to recover, protect, and lease their mineral rights, may be barred from challenging what would be an expired oil and gas lease. It is vital that landowners and mineral owners seek counsel from an experienced oil and gas attorney to advise them as to their rights under an existing oil and gas lease and to carefully review any oil and gas lease or related document before signing.

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