

Ohio Supreme Court Applies 21-Year Statute of Limitations in Oil and Gas Lease Dispute

By David J. Wigham & Emily Anglewicz

In the closely-followed case of *Browne v. Artex Oil Co.*, 2019-Ohio-4809, issued on November 26, 2019, the Supreme Court of Ohio ruled that Ohio's 21-year statute of limitations applies to a landowner's declaratory judgment claim that an oil and gas lease has expired by its own terms due to lack of production in paying quantities.

The *Browne* decision resolves a hotly-contested issue over which Ohio appellate districts had been in conflict: whether a statute of limitations is applicable to limit a landowner's lease termination claim, and if so, which statute applies? For example, in *Rudolph v. Viking Intl. Res. Co.*, 2017-Ohio-7369, the Fourth Appellate District concluded that R.C. 2305.04, Ohio's 21-year statute for real property disputes, applies to these cases. The Seventh District, however, applied the 15-year statute of limitations period (for written contracts accruing prior to 2012) to a similar lease termination case. See *Potts v. Unglaciated Indus. Inc.*, 2016-Ohio-8559. And in *Browne*, the Fifth District Court of Appeals followed the Seventh District and also applied a 15-year statute of limitations to an action brought to declare an oil and gas lease terminated. The Supreme Court's *Browne* decision reverses the Fifth District and resolves this issue, holding that "the 21-year statute of limitations in R.C. 2305.04 applies to a claim for a declaratory judgment that an oil and gas lease has expired by its own terms for lack of production." *Browne*, 2019-Ohio-4809, at ¶ 46.

This ruling is important because it limits the time within which a landowner can bring a claim that an oil and gas lease has expired due to lack of production, using the much longer 21-year statute of limitations for real property claims, as opposed to the 15-year statute of limitations (applicable to contract disputes arising before 2012) or the even shorter eight-year statute (applicable to contract disputes arising after 2012). Had the Court determined that the much shorter limitations period applied, Ohio landowners would have been negatively impacted, as many viable lease termination claims would have been time-barred.

Significantly though, the Court left unanswered the equally important question of when the landowner's claim accrued, or in other words, when the 21-year statute of limitations period would begin to run in a given case. Ohio's appellate districts are in conflict on this issue as well. On the one hand, in the *Rudolph* case, the Fourth District held that the statute of limitations does not begin to run until a "justiciable controversy" exists; on the other hand, in the *Browne* case, the Fifth District ruled that the statute runs from the last date of cessation of production.

Although the Supreme Court agreed in dicta with the landowner's position that, in general, a limitations period does not begin to run until a "justiciable controversy arises," the Court ruled that because the landowner did not raise the issue in the lower courts, the Supreme Court could not decide the issue for the first time on appeal.

Thus, the issue of when the 21-year statute begins to run will have to be decided again by a lower court before the Supreme Court will have the discretion to consider it, or perhaps it will come before the Court pursuant to a certified-conflict case to resolve the conflict between the appellate districts. If the Court

rules that the limitations period begins to run on the last date of cessation of production, then landowners will be required to file suit before the 21st anniversary of that date, which may be difficult to determine, and moreover, is not in accord with existing case law requiring at least two years of non-production before a lease expires. If, however, it is held that the clock begins to run on the date that both sides are aware a controversy exists, then landowners would have another 21 years thereafter to file claims—certainly ample time.

From the landowner's perspective, *Browne* applied a more generous 21-year statute of limitations period for landowners to bring declaratory judgment claims that an oil and gas lease has expired by its own terms for lack of production. And although the issue of when a claim accrues remains governed by the conflicting precedent of various appellate districts, it is possible that the Supreme Court could reject the last-date-of-cessation-of-production benchmark in a future case. From the producer's standpoint, there is now a finite period within which such claims must be brought, and therefore a measure of protection from having to defend claims that are stale. In any event, litigation over valuable shale rights claimed to be held by the often-meager production of older shallow wells close to the end of their production cycles will certainly continue.

If you would like more information on this or other issues relating to oil and gas litigation please contact any of the listed attorneys.

David J. Wigham

330.762.7969 | dwigham@ralaw.com

Emily Anglewicz

330.849.6687 | eanglewicz@ralaw.com

Sara E. Fanning

614.463.9792 | sfanning@ralaw.com

J. Benjamin Fraifogl

330.849.6651 | brfraifogl@ralaw.com

Patrick M. Hanley, Jr.

330.762.7976 | phanley@ralaw.com

Jeremy D. Martin

330.849.6611 | jmartin@ralaw.com

J. Breton McNab

330.762.7775 | jmcnab@ralaw.com

Timothy B. Pettorini

330.762.7968 | tpettorini@ralaw.com