

# News Release

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## **The Ohio Supreme Court Finds Oil and Gas Leases Are Not Void As Against Public Policy**

Krugliak, Wilkins, Griffiths & Dougherty oil and gas attorneys, Scott M. Zurakowski, William G. Williams, Gregory W. Watts, and Aletha M. Carver successfully defended energy company, Beck Energy Corporation, in two significant cases in the Ohio Supreme Court, *Hustack, et al. v. Beck Energy Corp.*,<sup>1</sup> 2016-Ohio-178 and *State ex rel. Claugus Family Farm, L.P. v. Seventh District Court of Appeals, et al.*, 2016-Ohio-178. Ohio's prior oil and gas law stretching back to the 19th Century was being challenged. The validity of almost every oil and gas lease in Ohio was on the line. These decisions impact virtually every oil and gas producer (both local and national) who owns lease rights and/or is drilling in Ohio.

In an unanimous decision from the Ohio Supreme Court (January 21, 2016), the Court affirmed the Seventh District Court of Appeals' decision and concluded that the G&T 83 Oil and Gas Lease form was not a no-term, perpetual lease nor was the lease void ab initio as against public policy. Specifically, the Court held:

- Delay rental payments are limited to the primary term of a lease.
- "Capable of being produced" refers to whether a well and not undeveloped land is capable of producing.
- "Capable of being produced in the judgment of the lessee" does not permit discretion without development and applies to production from a well that has been drilled.
- The dry hole lease provision only applies if drilling has occurred.

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<sup>1</sup> In the courts below, the named plaintiffs were identified as Clyde A. and Molly A. Hupp. However, in its decision, the Ohio Supreme Court recognized the Hupps did not remain parties to the lawsuit and identified the named plaintiffs as Larry A. and Lori Hustack.

- The shut-in payment provision only applies if a well is drilled and stops producing or cannot be marketed.
- Specific lease language disclaiming or waiving implied covenants is contractually valid.

Along with *Hustack*, the Court consolidated an original action that requested a writ of mandamus and prohibition in the Ohio Supreme Court by a member of the *Hustack* class action. Petitioner, Claugus Family Farm, L.P., argued it was denied due process of law when the Seventh District Court of Appeals issued a tolling order, in *Hustack*, without first providing the petitioner with notice and an opportunity to opt out of the class action lawsuit.

In a 5-2 decision, the Court dismissed Claugus Family Farm, L.P.'s original action. The Court concluded Claugus Family Farm, L.P. had an adequate remedy at law by way of intervention in the *Hustack* litigation because counsel for Claugus knew about the tolling order and could have moved to intervene in the appeal before the Seventh District Court of Appeals. The Court also found the court of appeals had jurisdiction to issue a tolling order that stayed the running of the primary term of the oil and gas leases to maintain the status quo during the pendency of the appeal.

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