



2017 Legal Update

Daniel P. Corcoran
424 Second Street
Marietta, Ohio 45750
740-373-5455

THEISEN & BROCK

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Post-Production Costs

- Lutz v. Chesapeake Appalachia, L.L.C., 2016-Ohio-7549
 - Certified Question: does Ohio follow the “at the well” rule (which permits deductions) or the “marketable product” rule (which does not).
 - Under Ohio law, an oil and gas lease is a contract that is subject to the traditional rules of contract construction. Because the rights and remedies of the parties are controlled by the specific language of their lease agreement, we decline to answer the certified question and dismiss this cause.

Dormant Mineral Act

- Corban v. Chesapeake Exploration, L.L.C., 2016-Ohio-5796
 - The 1989 version of the DMA was not self-executing; it did not automatically transfer ownership of dormant mineral rights to the surface owners of the property by operation of law.
 - The 2006 version of the DMA applies to claims to abandon dormant mineral rights asserted after its effective date (June 30, 2006) and specifies the procedures that a surface owner is required to follow.

Marketable Title Act

- Warner v. Palmer, 2017-Ohio-1080
 - Severed mineral interests may be extinguished under the provision of the Marketable Title Act as an alternative theory to a claim under the Dormant Mineral Act.
 - Interests are extinguished automatically under the Marketable Title Act and cannot be revived after extinguishment.

Statute of Limitations

- Schultheiss v. Heinrich Enters. Inc, 2016 Ohio 121
 - Lease expired for lack of production from 1977 to 1981; no statute of limitations applies.
- Ricketts v. Everflow E., Inc., 2016-Ohio-4807
 - Claim that lessee did not properly form and file consolidation unit was dismissed under the statute of limitations.
- Potts v. Unglaciated Indus., 2016-Ohio-8559
 - Court held that because of the statute of limitations, the lessee was not required to prove production during the entire 112 year secondary term.

Landowner's Burden of Proof

- Burkhart Family Trust v. Antero Res. Corp., 2016-Ohio-4817
 - The lessor has the burden of proving by means of evidence that the wells, which admittedly produced some oil and gas, were not producing in paying quantities.
 - There was some evidence that the lessee was a poor record keeper.
 - Schedule C had no evidentiary value to the issue of production in paying quantities.

Common Metering of Wells

- Lang v. Weiss Drilling Co., 2016-Ohio-8213
 - Just because the practice of common metering is accepted by some oil and gas companies does not mean that the trial court has to accept it in this case as a valid means to measure production for purposes of whether a well is producing paying quantities of gas. It is reasonable for the court to require a more accurate method of measuring gas production.
 - The Court must be able to quantify production from the particular well at issue.

Landowner Interference

- Haverhill Glen, LLC v. Eric Petroleum Corp., 2016-Ohio-8030
 - The property owner's interference with the lessee's access to the property constituted a force majeure event that excused the delay in drilling a well.
- RHDK Oil & Gas LLC v. Dye, 2016-Ohio-4654
 - The landowner physically blocked the lessee's access to the well but the gaps in production had been temporary and the lessee's actions were reasonable.

Implied Covenant to Drill

- Alford v. Collins-McGregor Operating Co., 2016-Ohio-5082
 - Fourth District held that the landowner's attempt to partially forfeit the deep rights under a lease for breach of the implied covenant to develop failed to state a claim and should be dismissed.
 - No duty to further develop as long as gas and oil are being found in paying quantities in the shallow part of the leasehold.
 - Supreme Court has decided to review this decision.

Unitization

- **Burke v. Excalibur Exploration, Inc., 2017-Ohio-999**
 - 20.52 acres were unitized from a 227.7 acre lease, but the court held that the lease continued in the secondary term only as to the 20.52 acres that were included in the unit and not with respect to the balance of the acreage.
 - The lease said that production from any unit, including all or any portion of the leased lands, shall be treated as if such production were from the leased lands.
 - The lease did not include a Pugh Clause.



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