



Can gaps in production invalidate an oil and gas lease?

WILLIAM BECKLEY | ENERGY INSIGHTS | MAY 18, 2017

Like so many legal issues surrounding Appalachian shale, the determination of whether an oil and gas lease has been held by production remains unclear. Ohio's appellate courts have begun addressing these issues, and we now await further clarification from Ohio's Supreme Court.

On May 4, the Ohio Supreme Court heard oral arguments in one such case – *Schultheiss v. Heinrich Enterprises, Inc.*, Case No. 2016-0623. In *Schultheiss*, the landowner entered into an oil and gas lease that permitted free gas in lieu of a royalty. The landowner asserted that there was a gap in production for four years from 1977 through 1981. In turn, the oil and gas company argued that because the landowner continued to receive free gas throughout the lease, the landowner is estopped from arguing that a gap in production decades ago extinguished the lease. The Fourth District Court of Appeals held that the gap in production caused the lease to expire automatically, and therefore the lease is no longer valid. (*Schultheiss v. Heinrich Enterprises, Inc.*, 4th Dist. Washington No. 15CA20, 2016-Ohio-121.) While this case centers on a very limited set of facts, any clarification from the Supreme Court would be welcomed. Unfortunately, it appears there is a significant chance the case will be dismissed as improvidently accepted based on the estoppel argument not being expressly raised at the lower court level.

Another unresolved issue in Ohio is whether the statute of limitations for written contracts (O.R.C. 2305.06) can serve to bar a claim that a lease has expired by reason of lack of production. Ohio's Fourth District Court of Appeals rejected the statute of limitations argument in the *Schultheiss* case.

In contrast to the Fourth District, the Seventh District Court of Appeals has held that O.R.C. 2305.06 applies to oil and gas production gaps. (*Potts v. Unglaciated Industries, Inc.*, 7th Dist. Monroe No. 15MO00003, 2016-Ohio-8559) Therefore, according to the Seventh District, any argument that a lease expired based on a lack of production is barred by the statute of limitations if the gap occurred more than 15 years prior to the action. Notably, the statute of limitations under O.R.C. 2305.06 was shortened in 2012 from 15 years to eight years with respect to causes of action that occurred after Sept. 28, 2012.

The Fourth District declined to certify a conflict between *Schultheiss* and *Potts* on the basis that *Schultheiss* is not the case that created the conflict, having been decided months before *Potts*. The decision to decline certification has been appealed to the Ohio Supreme Court, which has not yet determined whether the appeal will be accepted. Whether in this case or another, the statute of limitations issue will ultimately be decided by the Supreme Court. Until then, oil and gas companies must consider obtaining ratifications from the current mineral owners, or face the risk of litigation by plaintiffs asserting that century old gaps in production render their invalid.



WILLIAM BECKLEY

[Read More](#)