

Publications

It's All About that Basin, Bout Dat Basin...No Trouble (Well Maybe a Little)

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Energy, Utilities, Oil and Gas

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Vorys Partners Greg Russell and Pete Lusenhop authored an article for the *Oil & Gas Monitor* titled "It's All About that Basin, Bout Dat Basin...No Trouble (Well Maybe a Little)." The article highlighted the lessons that can be learned from recent and pending cases in U.S. shale plays. According to the authors, the main lesson is "Proceed with Caution."

The article states:

"The Ohio Supreme Court is also addressing the conflict between state and local regulation of development. In 2004, the Ohio General Assembly confirmed that the State had sole and exclusive authority to regulate exploration and production. In 2011, however, a trial court allowed a small city to enforce its municipal code against Beck Energy Corp., essentially upholding a local ban on drilling. The Court of Appeals reversed, holding that the local code was preempted by state law. The matter is now before the Ohio Supreme Court. State of Ohio ex rel. City of Munroe Falls, Ohio et al. v. Beck Energy Corp. et al. Like similar cases in New York and Pennsylvania, Beck Energy could substantially impact where and how Ohio operators can drill. And, like the New York and Pennsylvania cases before it, Beck Energy will be cited in courts across the country.

Usually, the old rules win out and settled assumptions are confirmed. In Hupp et al. v. Beck Energy Corp. et al., the Ohio Seventh District Court of Appeals affirmed the ongoing viability of several typical oil and gas lease terms. The leases contained an habendum clause that stated that the leases will continue "for a term of ten years and so much longer thereafter as oil and gas or their constituents are produced or are capable of being produced on the premises in paying quantities, in the judgment of the Lessee, or as the premises shall be operated by the Lessee in the search for oil or gas". The landowners challenged the leases alleging that the habendum clause rendered the leases 'no-term'

or 'perpetual' leases that were contrary to public policy and, therefore, void ab initio. The landowners also argued that the leases allowed the lessee to hold the property indefinitely and without production through the payment of minimal delay rentals or by the lessee's assertion that the land was capable of producing oil and gas. The trial court agreed with the landowners. The operator appealed."

To read the entire article, visit the *Oil & Gas Monitor* [website](#).