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### Ohio Appellate Court Holds Lease Acreage Limitations Do Not Prohibit Statutory Unitization

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In a significant win for Ohio producers, the Fifth District Court of Appeals recently ruled that a unit acreage limitation in an oil and gas lease did not prohibit the lessee from seeking a statutory unitization order for a larger unit under R.C. 1509.28. *Chervenak Family Trust v. Ascent Resources - Utica, LLC*, 2026-Ohio-886.

The dispute involved a 1972 oil and gas lease covering 115 acres in Guernsey County, Ohio. The lease granted the lessee the right “to consolidate the leased premises with other lands to form an oil and gas development unit of not more than one hundred sixty (160) acres.” Ascent applied to the Chief of the Division of Oil and Gas Resources Management to include portions of the lease in three statutory units under R.C. 1509.28, each containing more than 160 acres. After the Chief issued the unitization orders, the lessor sued, alleging that the lease prohibited including the lease in any unit that exceeded 160 acres. The trial court granted summary judgment in favor of Ascent, finding that the lease addressed only voluntary unitization and did not prohibit including the lease in statutory units larger than 160 acres.

The court of appeals affirmed. It rejected the lessor’s argument that the consolidation clause limited all forms of development. Instead, the court found that the acreage limitation pertained only to voluntary unitization. By contrast, the lease was silent regarding the state’s police power to order statutory unitization under R.C. 1509.28 and therefore did not prohibit Ascent from seeking a statutory order for a unit exceeding 160 acres.

Notably, the *Chervenak* court distanced itself from its earlier decision in *Am. Energy - Utica, LLC v. Fuller*, 2018-Ohio-3250 (5th Dist.). In *Fuller*, the lease’s unitization clause was crossed out and, in its place, the parties included a handwritten notation that read “UNITIZATION BY WRITTEN AGREEMENT ONLY.” *Fuller* held that R.C. 1509.28 permitted unitization of the lease despite the handwritten provision, but that doing so without the lessor’s written permission retroactively impaired the lease

in violation of Section 28, Article I of the Ohio Constitution. *Chervenak* observed that *Fuller* rested on “a potentially faulty legal basis” because the lease in that case, like the appellant’s lease here, was executed *after* the effective date of R.C. 1509.28. The court therefore acknowledged that its holding, which was premised on a retroactive application of the statute, was factually incorrect. The court also distinguished *Fuller*’s handwritten limitation, which it found could be construed to limit all forms of unitization, from the common form of consolidation clause at issue here.

The Fifth District’s ruling provides valuable clarity to producers operating under legacy leases in Ohio. It confirms that acreage limitations on voluntary consolidation do not limit the formation of statutory units under R.C. 1509.28, helping to stem the confusion created by the court’s earlier, controversial *Fuller* decision.