IN THE SUPREME COURT OF THE STATE OF OHIO

Benjamin F. **TAYLOR**, et al., *Plaintiffs-Appellees*,	:	On Appeal from the Seventh District Court of Appeals and the Common Pleas Court of Belmont County, Ohio
VS.	:	
	:	Ohio Supreme Ct. Case No. 2014-1886
	:	
	:	Seventh District Case No. 13 BE 32
Donald L. **CROSBY**, et al., *Defendants-Appellants*.	:	

MEMORANDUM IN OPPOSITION TO JURISDICTION OF APPELLEES, BENJAMIN F. TAYLOR, DONALD F. TAYLOR, AND MARY LOU HUTCHINS

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I. RESPONSE IN OPPOSITION TO APPELLANTS' STATEMENT OF JURISDICTION

A. REVIEW OF THIS CASE AT THIS JUNCTURE BY THE OHIO SUPREME COURT WILL NOT SUPPORT PRINCIPLES OF JUDICIAL ECONOMY.

Hearing the issues raised by the Appellants at this juncture does not serve the ends of judicial economy. There remain unresolved in this case several issues regarding matters of first impression which concern the application of the notice provisions contained in the R.C. § 5301.56 (2006) (hereinafter sometimes referred to as "2006 ODMA") . The Courts of this State have unquestionably found a substantial public policy in favor of avoiding unnecessary piecemeal appeals. *See generally, Miller v. First Internatl. Fid. & Trust Bldg., Ltd.,* 113 Ohio St.3d 474, 475-476, 2007-Ohio-2457, 866 N.E.2d 1059 (2007); *Wisintainer v. Elcen Power Strut Co.,* 67 Ohio St.3d 352, 361, 617 N.E.2d 1136 (1993); *Alexander v. Buckeye Pipe Line Co.,* 49 Ohio St.2d 158, 160, 359 N.E.2d 702 (1977); *Pokorny v. Tilby Dev. Co.,* 52 Ohio St.2d 183, 186, 370 N.E.2d 738 (1977). That public policy is offended if the Ohio Supreme Court accepts jurisdiction of this appeal at this time.

The underlying case regards the efforts by the Appellants to seek abandonment of the Appellees' undivided ½ mineral interest under the procedures prescribed by the 2006 ODMA. The underlying record unequivocally demonstrates that the Appellants and their agents failed to attempt to serve the Appellants by certified mail prior to seeking notice by publication. Despite the fact that the Appellants knew the identities of some or all the Appellees or their family members and could have easily found the last known addresses for them, they made no such effort. The Appellees surmise that efforts at service by certified mail, as required by the 2006 ODMA, were intentionally avoided by the Appellants so as not to awaken the "sleeping giant" and invite attempts by the Appellees to preserve their mineral interests. Actual notice likely

would have denied the Appellants the ability to quietly obtain Appellees' property interests without compensation.

Before the Ohio Supreme Court entertains any appeal in this case, the trial court should first be permitted to decide whether the 2006 ODMA requires an individual or entity seeking abandonment of allegedly dormant mineral interests to "[s]erve notice by certified mail, return receipt requested, to each holder or each holder's successors or assignees, at the last known address of each, of the owner's intent to declare the mineral interest abandoned...." prior to seeking notice by publication. R.C. § 5301.56(1) (2006). If the answer is "yes," then the trial court will have to further explore whether notice by certified mail must be provided to a decedent's heirs when those heirs are known by the owners of the surface interests seeking abandonment. Permitting the trial court to resolve these issues below and apply them the factual record will ensure that the appeal reaches this Court with all appealable issues decided and avoid a multiplicity of appeals. The issues surrounding the 2006 ODMA have already been fully briefed and argued before the trial court, and it is reasonably foreseeable that a rapid decision on those issues could be made.

If the instant appeal is accepted prior to the trial court ruling on those outstanding issues, and the judgment of the Seventh District Court of Appeals is upheld, the result will be a piecemeal appellate process. Accepting the instant appeal due to the mere possibility that the Appellant could prevail on appeal to the Ohio Supreme Court is not in the interests of judicial economy. This issue was addressed by the Court in *Miller v. First Internatl. Fid. & Trust Bldg., Ltd.* at ¶ 8, wherein the Court stated as follows:

> {¶ 8} First International Fidelity argues that allowing an appeal before the determination of prejudgment interest will promote judicial economy. We disagree. Judicial economy will be promoted only when the appellant succeeds on appeal. When the appellant fails on appeal, the cause would be remanded for a

> determination of prejudgment interest. That determination would also be subject to appeal, to the same court of appeals. See White, 79 Ohio St.3d at 546, 684 N.E.2d 72 (exception to general rule does not apply when computation of damages is likely to result in second appeal). We conclude that judicial economy would be better served by allowing the trial court to determine whether prejudgment interest should be awarded before an appeal can be filed. Then, on appeal, all appealable issues will be before the court of appeals.

The same result should occur here. By permitting this matter to proceed in the trial court on all remaining issues, a more complete appeal will follow and multiple appeals may be avoided.

It should be further noted that the interests of the Appellants in this appeal are already protected by another case pending before this Court. As the Appellants point out in their statement, the decision from which this appeal is sought held that the 1989 ODMA had a "fixed" rather than "rolling" application premised upon the Seventh District's holding in *Eisenbarth v. Reusser*, 7th Dist. Monroe No. 13MO10, 2014-Ohio-3792. The *Eisenbarth* decision is presently pending before this Court as Supreme Court Case No. 2014-1767.

The pending *Eisenbarth* appeal presents an additional reason why this matter should be remanded to the trial court. The Ohio Supreme Court will already be hearing the issue identified by the Appellants during the *Eisenbarth* appeal, assuming it chooses to exercise jurisdiction over the same. To that extent, this case should be permitted to proceed in the trial court on all outstanding issues. This will promote judicial economy by avoiding multiple appeals and, more importantly, by averting any unnecessary delay in deciding the remaining issues at the trial court level. Thus, declining jurisdiction of this appeal would still provide the Appellants the clarification they seek by way of another decision, and will allow this case to keep moving forward. Such as result causes no harm to the Appellants, while the exercise of jurisdiction over

the appeal may cause harm to the Appellees and the Court by delaying the ultimate resolution of this case and causing multiple appeals.

B. BY DECIDING THAT 1989 ODMA HAS A "FIXED" AS OPPOSED TO "ROLLING" APPLICATION, THE SEVENTH DISTRICT'S DECISION IS NOT OF PUBLIC OR GREAT GENERAL INTEREST.

The issues raised on appeal by the Appellants are not of great public or general interest as they suggest, or at least not to the degree that the Appellants suggest. Certainly, the oil and gas industry is of great importance to the State of Ohio. However, the decision of the Seventh District regarding the application of R.C. § 5301.56 (1989) (hereinafter sometimes referred to as "1989 ODMA") as providing a "fixed" look-back does not substantially and negatively impact the oil and gas industry as a whole, as the Appellants assert. The Appellants make the unsubstantiated contention in their jurisdictional statement that jurisdiction over this appeal must be exercised by this Court since it is alleged that "...there are billions of dollars of oil and gas production at stake, and because so many people will be affected, one way or the other..." The implication raised by the Appellants is that the failure of this Court to overturn the Seventh District's decision will somehow spell doom and gloom for the industry as a whole. However, there is no evidence cited by the Appellants for their contentions regarding the impact that this issue may have on the oil and gas industry in this State.

The Appellees posit that the very existence of the instant case is proof that the Appellants' contentions, regarding the scope of impact of the Seventh District's decision, is incorrect. In fact, the instant case would not exist had surface owners been exclusively relying upon the 1989 ODMA to assert dominion over severed mineral interests alleged to have been abandoned. The Appellants below and/or their agents were engaged in abandonment proceedings clearly brought pursuant to the 2006 ODMA, evincing a lack of reliance upon the

1989 ODMA by the Appellants in this case. It would seem further apparent that, once the 2006 ODMA came to fruition, the oil and gas industry began relying upon it instead of the 1989 ODMA. Otherwise, the Appellants and their agents in the oil and gas industry would have never filed for abandonment in the manner that they did against the Appellees or their predessor-in-interest. Thus, resolving the issue of whether the 20-year look-back contained in the 1989 ODMA applied in a "fixed" or "rolling" manner, while important to this case, is not an issue so critical to the State that this Court must exercise jurisdiction over this appeal in haste prior to the finalization of all outstanding issues at the trial court level. This is especially so considering that the Court in *Eisenbarth* will likely address that issue while this case is pending in the trial court, if jurisdiction is refused.

Accordingly, the Appellees, Benjamin F. Taylor, Donald F. Taylor, and Mary Lou Hutchins, respectfully request that the Court refuse to exercise jurisdiction over this appeal until such time as those issues concerning the 2006 ODMA have been litigated and have be decided. The court of appeals directed this case to be returned to the trial court for the resolution of those issues, and until the trial court has had the opportunity to do so, this appeal is premature.

II. STATEMENT OF THE CASE AND FACTS

The Appellees herein and Plaintiffs hereinbelow, Benjamin F. Taylor, Donald F. Taylor, and Mary Lou Hutchins (hereinafter sometimes referred to as "Appellees"), are the heirs and/or successors-in-interest of the former, Benjamin F. Belt, and are the rightful owners of a ½ mineral interest in the Crosby Appellees' property.

On August 5, 1971, Benjamin F. Belt was the owner of a 108.708 acre parcel of real estate situated in Belmont County, Ohio, and all of the oil and gas underlying the same. On that date, he conveyed the surface interest in this real estate to Eli and Virginia Bell by instrument recorded in Volume 525, Page 716, Belmont County Record of Deeds. The deed given by

Benjamin F. Belt contained a reservation clause regarding the oil and gas interests in the substrata, which contained the following language:

> There is reserved to the Grantor, Benjamin F. Belt, his heirs and assigns, an undivided ½ interest in and to all oil and gas in and underlying the above described property.

On July 10, 1975, Mr. Belt entered into an oil and gas lease with United Petroleum Corporation of his undivided one-half (½) interest, which lease was recorded in Volume 88, Page 683, Belmont County Lease Records. This lease identifies an address for Benjamin F. Belt of "437 E. Main, Barnesville, Ohio 43713." The interest of United Petroleum in said lease was assigned to EOG on in Volume 88, Page 854 Belmont County Lease Records, and then back to United Petroleum in Volume 88, Page 857, Belmont County Lease Records.

On or about July 27, 1979, Eli and Virginia Bell conveyed their interests in the subject 108.708 acre parcel by deed recorded in Volume 587, Page 11, Belmont County Official Records to the Appellants, Donald L. Crosby and Richard J. Crosby,, and which contained the following language:

> There is reserved to the Grantor, Benjamin F. Belt, his heirs and assigns, an undivided ½ interest in and to all oil and gas in and underlying the above described property.

This language was identical to the language of reservation and severance of the oil and gas from the surface contained in the deed given by Benjamin F. Belt in 1971.

On March 22, 1989, Ohio enacted the Dormant Mineral Act, which was contained in former R.C. § 5301.56 (1989).

On January 8, 1993, Benjamin F. Belt died a resident of Belmont County, Ohio, living at his home on 51440 Key Bellaire Road, Bellaire, Ohio 43906, and his death certificate was filed with the Belmont County Health Department on January 19, 1993. His death certificate

identified his last known home address, as well as the identity and address of at least one surviving relative.

On October 29, 2007, after the enactment of R.C. § 5301.56 (2006), the Crosby Appellants, and Defendants hereinbelow, entered into an oil and gas lease of all of the oil and gas under the real estate that they caused to be recorded on January 22, 2008 in Volume 137, Page 862, Belmont County Official Records. Then, on November 6, 2008, a publication of Notice of Abandonment was made in The Times Leader, prepared by Reserve Energy for the Appellants and with their knowledge and consent, and which stated that the "whereabouts of the original holder" [Benjamin F. Belt] "and any subsequent successors and/or assigns" [Plaintiffs] "could not be determined, and are thus unknown." However, at no point prior to issuance did the Appellants ascertain the last known addresses for service upon Mr. Belt, his heirs, successors, and/or assigns, or otherwise attempt to serve them by certified mail prior to publishing the Notice of Abandonment. This is surprising as the Crosbies knew the Belts and their family members.

Despite not doing their due diligence to determine the Appellees' whereabouts, Appellants and Reserve Energy, did, however, cause and permit to be published a legal notice which stated that the whereabouts of the "original holder, and any subsequent successors and/or assigns, could not be determined and are thus unknown", despite there being no evidence that they ever tried determine the same. The Appellants and Reserve Energy, clearly did not want to make direct contact with the Belt heirs and opted for the quieter constructive notice provided by publication, in contravention to the 2006 version of R.C. § 5301.56.

On December 5, 2008, without the knowledge of the Appellees, the Appellants executed an Affidavit of Abandonment, which was recorded on December 19, 2008 in Volume 174, Page 86, Belmont County Official Records. The deed containing the reservation in favor of

"Benjamin F. Belt, his heirs and assigns" was then marginally noted as being abandoned, although there is no recorded document authorizing the recorder to do so.

On May 20, 2011, the last will and testament of Benjamin F. Belt was admitted to probate in the Belmont County Probate Court, and on May 26, 2011, and the reserved one-half (½) interest of the decedent was transferred to the Appellants by Certificate of Transfer recorded in Volume 269, Page 439, Belmont County Official Records. On November 22, 2011, the Appellees filed suit against the Appellants and several oil and gas entities seeking, amongst other things, judgment declaring the Appellants' rights to the subject oil and gas interests, injunctive relief, and damages. On September 16, 2013, the Circuit Court of Belmont County granted summary judgment in favor of the Appellants, finding that the 1989 ODMA applied as a "rolling" 20-year look-back. The Appellees herein timely appealed that decision to the Ohio Court of Appeals for the Seventh District which reversed the trial court's decision by way of Opinion dated September 24, 2014.

III. RESPONSE IN OPPOSITION TO APPELLANT'S ARGUMENTS IN SUPPORT OF PROPOSITION OF LAW

A. A "FIXED" TWENTY-YEAR LOOK-BACK IS CONSISTENT WITH THE PLAIN LANGUAGE OF THE 1989 ODMA.

The Ohio Court of Appeals for the Seventh District was correct in its finding that the 1989 ODMA 20-year look-back applied as a "fixed" look-back as opposed to a "rolling" look-back. Pursuant to the 1989 version of R.C. § 5301.56(B)(1)(emphasis added), "any mineral interest held by any person, other than the owner of the surface of the lands subject to the interest, shall be deemed abandoned and vested in the owner of the surface, if none of the following applies:....(C) within the preceding twenty years, one or more of the following has occurred: (I) the mineral interest has been the subject of a title transaction that has been filed or

recorded in the office of the county recorder of the county in which the lands are located...." R.C. § 5301.56(B)(1) further supplies that "[B](2) a mineral interest shall not be deemed abandoned under division (B)(1) of this section because none of the circumstances described in that division apply, until three years from the effective date of this section...." As the Court may see, R.C. § 5301.56 (1989) provided what was essentially a twenty-three (23) year time frame that stretched from March 22, 1969 to March 22, 1992 within which period the mineral interests of non-surface-holders had to be preserved by virtue of one or more of the events set forth in the statute or those rights were automatically abandoned.

R.C. § 5301.56(B)(1) plainly indicates that its applicability is to "the preceding twenty years[.]" Pursuant to Ohio law, when construing a statute, "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly." R.C. § 1.42 (1972). The word "preceding," as a temporal term, has no meaning unless it refers to a particular point in time. However, there is only one particular reference point set forth in the 1989 version of R.C. § 5301.56 – its effective date of March 22, 1989. Just as important to the construction of this phrase is the use of the term "the" before the word "preceding." The term "the" is also a limiting term for the term "preceding." The nature of the word "the" is to place a limitation or reference point on the temporal term that follows it – "preceding." As such, the phrase "the preceding" refers to a specific twenty (20) year period that can only be the one immediately prior to the statute's effective date – March 22, 1989.

The inclusion of language regarding indefinite preservation of mineral interests is not inconsistent with the Court of Appeal's construction of the statute, as alleged by the Appellants.

See R.C. § 5301.56(D)(1) (1989). In fact, that provision supports the Seventh District's construction in two separate ways. First, as the Court may see, timely preservation of the dormant mineral interest resulted in indefinite preservation of the interest. A "rolling" time frame is inconsistent with the indefinite preservation awarded by the 1989 ODMA to those who timely complied with its dictates. Second, due to the abruptness of the 1989 ODMA's application to existing property rights, the 1989 version of R.C. § 5301.56(D)(1) provided a three-year window to the owners of dormant mineral interests who did not adequately preserve in the twenty (20) years prior to the statute's effective date within which to successively preserve the same.

B. A "ROLLING" TWENTY-YEAR LOOK-BACK PERIOD IS INCONSISTENT WITH THE PLAIN LANGUAGE OF THE STATUTE.

If the Appellants were correct and the Legislature intended the statute to have a "rolling" application, the Legislature would have simply stated such. The Appellants employ a strained reading of the statute to obtain the construction they seek. However, their arguments fail insofar as they ignore the fact that the Legislature could have easily included basic language in the statute that would have made it crystal clear that a "rolling" twenty-year look-back was intended. The absence of this language is a critical omission considering how simple it would have been to convey a "rolling" intent.

Moreover, undersigned counsels' review of the Ohio Revised Code has yet to turn up a single code section that provides for a "rolling" limitations period by using the descriptive phrase "the preceding" without further explanation. Rather, statutes that set forth limitations periods, and that are plainly intended to apply to future events, routinely set forth within the body of the statute language which plainly demonstrates to the reader an intent to create a period of limitation applicable in the future and that is not unclear in its calculation or temporal starting-

point. See generally, R.C. §§ 2305.04, 2305.11, 2305.10, 2305.113, 4513.60, 5553.042. Simply put, if the 1989 Act were intended to have the effect of reaching beyond the initial 20-year look-back, the Legislature would have utilized clear and plain language to indicate such, or at least included some descriptive terminology to adequately define the reference point from which to measure the period of limitations in the future. In fact, had the Legislature simply removed the limiting phrase "the preceding" from the 1989 version, it would have been more suggestive of having a "rolling" application. The Legislature did not, however. The phrase "the preceding" in that subsection renders the statute operative only to mineral interests that expired in the twenty (20) years prior to its effective date.

As a practical matter, the question that should be further asked is - if the 1989 ODMA clearly applied to future 20-year look-backs, as the Appellants suggest, why would the oil and gas industry lobby to replace it with the 2006 ODMA? This is especially so considering that the 1989 ODMA has been found to be self-executing. See *Swartz v. Householder*, 7th Dist. Nos. 13JE24, 13JE25, 2014-Ohio-2359, ¶¶ 27-28. Thus, if the Appellants' position is to be believed, one must also believe that the oil and gas industry desired to abrogate a statute that allegedly automatically divested dormant mineral interest holders of their rights in exchange for the 2006 ODMA, which provided the holders of dormant mineral interests one last chance to preserve their rights after abandonment proceedings were instituted.

C. THE SEVENTH DISTRICT'S CONSTRUCTION OF THE 1989 ODMA DOES NOT INTERPRET THE STATUTE TO BE RETROACTIVE IN ITS OPERATION, AS THE APPELLANTS IMPLY.

The Appellants are incorrect in their unpersuasive assertion that the Seventh District employed a retroactive interpretation of the 1989 ODMA. The Appellants' arguments in this regard improperly conflate the principle of prospective application with notion of endless future

application. This is not what is meant by a prospective application. The 1989 ODMA is clearly prospective in its application even though it employs a "fixed" 20-year look-back. The Legislature included a three-year grace period before interests in the "fixed" look-back would be deemed to be abandoned. This three-year grace period permitted the 1989 ODMA to have prospective application three years into the future. Moreover, the three-year grace period in the 1989 ODMA was necessary to mitigate the constitutionally-questionable impact of retroactively divesting mineral interests. The inclusion of the "preserved indefinitely" and "successive filings" language in the statute simply permitted the owners of minerals interests to preserve indefinitely their interests within the three-year window with a late transaction and gave the statute clear prospective application.

D. THE USE OF THE PHRASES "PRECEDING TWENTY YEARS" AND "THREE YEAR PERIOD FROM THE EFFECTIVE DATE" DO NOT EVINCE A "ROLLING" TWENTY-YEAR LOOK-BACK PERIOD, AS THE APPELLANTS ASSERT.

As previously indicated, the phrases "preceding twenty year" and "three year period from the effective date" do not evince a "rolling" application of the 1989 ODMA, but a "fixed" one. The phrase "the preceding twenty years" is not necessary to create a "rolling" 20-year look-back and the phrase "the preceding" is an unmistakable reference to a single 20-year look-back. Again, the three-year grace period was simply employed to give those individuals whose mineral interests went unpreserved in "the preceding twenty years" (March 22, 1969 to March 22, 1989) one last chance to permanently protect their claims to those rights before the same would be deemed abandoned.

E. THE PLAIN LANGUAGE OF THE STATUTE EVINCES THAT THE GENERAL ASSEMBLY DID NOT INTEND THE 1989 ODMA TO PROVIDE FOR A "ROLLING" LOOK-BACK PERIOD.

The Appellants' assertion that the Legislature did not intend a "fixed" look-back period, and that this is somehow implied by the Legislative history, requires this Court to ignore how easy it would have been for the Legislature to include (or exclude) basic language in the statute to create such law. Again, if the Legislature intended the 1989 ODMA to have a "rolling" application, it simply would have stated such. It could have simply removed the phrase "the preceding" from the statute. The inclusion of this limiting language to the exclusion of other language forecloses on it having a "rolling" effect. The exclusion of other limiting language was not a mistake, but by design.

If the Court were to employ a careful review of the Legislative history, it would see that while the 1989 ODMA was being drafted and laid out, the Legislature knew about and/or looked toward, amongst other statutes, both the Michigan version of the statute as well as the Uniform Dormant Minerals Act for guidance in drafting its own. Both the Michigan version of the statute and the Uniform Dormant Minerals Act contained provisions that clearly and unmistakably rendered their application to time frames of inactivity in the future. For example, the Uniform Dormant Minerals Act provided a clear 20-year look-back period by conceiving a design whereby the applicable 20 years were calculated by looking back 20 years from the date of the commencement of a quiet title action. Meanwhile, the Michigan version found at Michigan Comp. Laws Ann. § 554.291(1) (1970) provided, in relevant part, that oil and gas interests not "sold, leased, mortgaged, or transferred by instrument records in the register of deeds office for the county where that interest in oil or gas is located for a period of 20 years shall . . . . be deemed abandoned, unless the owner thereof shall, within 3 years after September 6, 1963 or within 20 years after the last sale, lease, mortgage, or transfer of record of that interest in oil or gas or within 20 years after the last issuance of a drilling permit as to that interest in oil or gas or

actual production or withdrawal of oil or gas is subject, or from lands pooled, unitized, or included in unit operations therewith, or the use of that interest in oil or gas in underground gas storage operations, whichever is later, record a claim of interest as provided in section 2." Unlike Ohio's 1989 ODMA, the Michigan statute expressly included language that rendered its applicability to both past 20-year time frames and future 20-year time frames. Most notably, however, was the fact that the Ohio Legislature used language similar to the portion of the Michigan provision for transactions in the prior 20 years, while excluding language similar to Michigan's for making the law applicable to future 20-year time frames.

Simply put, despite those exemplars, the Legislative history demonstrates that the Ohio legislature went a different route and drafted a statute that had zero references to its application to future 20-year look-back periods.

F. OHIO PUBLIC POLICY FAVORS A "FIXED" APPLICATION OF THE TWENTY-YEAR LOOK-BACK PERIOD IN THE 1989 ODMA.

Serious public policy concerns would be created herein if this Court were to adopt the Appellants' proposed interpretation of the 1989 ODMA. The Appellants' assertions imply ambiguity in the language of the 1989 ODMA. If there is ambiguity in the application of the 1989 ODMA, the Court should employ a construction of the statute that favors the owners of sub-surface mineral interests and not that divests those owners of their interests. The Seventh District recently stated that the law generally abhors forfeiture. See *Dodd v. Croskey,* 7th Dist. Harrison No. 12HA6, 2013-Ohio-4257 (citing *State ex rel. Falke v. Montgomery Cnty. Residential Dev., Inc.*, 40 Ohio St. 3d 71, 73, 531 N.E.2d 688 (1988)). In that same vein, the courts of this State have reasoned that "...the law requires that we favor individual property rights when interpreting forfeiture statutes." *Id.* (citing *Ohio Dept. of Liquor Control v. Sons of Italy Lodge 0917*, 65 Ohio St. 3d 532, 534, 605 N.E.2d 368 (1992)). To the extent that the 1989

ODMA were to be construed as having a "rolling" application, the owners of dormant mineral interests would be unfairly divested of valuable property interests pursuant to a statute that clearly provides for a "fixed" application, and, at best for the Appellants, is ambiguous in its application. The residents of this State should not be divested of their valuable property interests by a statute that would be grossly ambiguous in its application per the Appellants' interpretation and which would have likewise failed to give them adequate notice to protect those valuable interests. That is the real public policy concern underlying the Seventh District's opinion.

IV. CONCLUSION

The Court should refuse to exercise jurisdiction over the instant appeal. The contentions of the Appellants regarding the application of the 1989 ODMA as having a "rolling" application are without merit. Moreover, irrespective of the merit of those contentions, the instant appeal is premature to the extent that there remain additional legal issues that have not been addressed by the trial court. The Court risks multiple appeals in this case by disallowing the trial court an opportunity to resolve all outstanding issues prior to hearing an appeal in this case. Similarly, interests of judicial economy are promoted by refusing to exercise jurisdiction over this appeal and, at the same time, no prejudice is cause to the Appellants herein.

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CERTIFICATE OF SERVICE

I hereby certify that this 25th day of November, 2014, the foregoing *MEMORANDUM IN OPPOSITION TO JURISDICTION OF APPELLEES, BENJAMIN F. TAYLOR, DONALD F. TAYLOR, AND MARY LOU HUTCHINS* was served upon the following individuals and/or entities by regular U.S. Mail, First-Class Postage Prepaid: Richard W. Myser, Attorney for Crosby Appellants-Defendants, Myser & Davies, 320 Howard Street, Bridgeport, Ohio 43912; and John Keller and Timothy B. McGranor, Attorneys for Defendants hereinbelow, Reserve Energy Exploration and Equity Oil and Gas Funds, Inc., Vorys Sater Seymor & Pease, LLP, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43216-1008.

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