



Unanimous Oklahoma Supreme Court Answers: *When does an oil and gas lease expire due to cessation of production?*

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The Oklahoma Supreme Court [recently answered](#) two hotly contested energy issues: when does an oil and gas lease expire due to cessation of production, and how must courts apply a lease's habendum clause?

The unanimous Court explained:

- 1) Cessation of production can be determined only after a **reasonable** period based on all economic circumstances to decide if the well can no longer produce in **paying** quantities;
- 2) Termination is not judged solely by the lease's stated time period; and
- 3) Oklahoma's strong public policy against estate forfeiture provides a grace period for protecting leasehold interests.

In *Tres C, LLC v. Raker Resources, LLC, Continental Resources, Inc., and Dewblaine Energy, LLC*, 2023 OK 13, the Court granted certiorari to decide whether the trial judge erred by holding that a lease expires by its terms due to a cessation of production in paying quantities, based solely on analyzing a three-month period during which the well's production decreased.

Defendant-Petitioners claimed the lease's habendum clause remained in force and maintained the lease until there was a cessation of production in paying quantities for an unreasonable period measured under all the circumstances from the perspective of a reasonable operator. The Supreme Court agreed.

It explained that the trial court erred when it limited its cessation determination to a three-month period without evaluating other factors, such as operational work on the existing well and its small amounts of gas production. In reversing the Court of Civil Appeals and the trial judge, the Court stated:

First, we have repeatedly explained that the cessation-of-production clause is only implicated where production *has already ceased*—i.e., the clause only comes into play *after* a cessation has occurred. . . . [t]he cessation-of-production clause kicks-in after a cessation has occurred that could result in termination of an oil and gas lease under the Habendum Clause and gives the operator an extension of time for preserving the lease through the means specified in the clause. Therefore, the cessation-of-production clause and the 60-day time-period contained therein have no bearing on anything that is done *before* the cessation occurs, including the assessment of whether a cessation has occurred.

See *id.* at ¶ 28 (internal citations omitted) (emphasis in original).

The Court further stated,

[N]either the cessation-of-production clause nor the temporary cessation doctrine have anything to do with the reasonable time-period that governs the pre-cessation assessment of profitability.

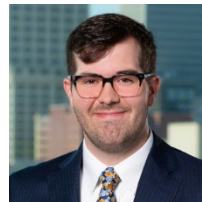
See *id.* at ¶ 33.

Reinforcing Oklahoma’s “strong policy of our statutory law against forfeiture of estates,” *Tres C* will guide judges, lawyers, and litigants in evaluating cases sometimes referred to as “top-lease” litigation. Existing Oklahoma law was affirmed in *Tres C*, which should clarify questions regarding production in paying quantities and possible termination of existing leases.

GableGotwals’ [energy, oil & gas](#) team has extensive experience assisting clients in oil and gas leases as well as royalty litigation. For more information, please contact the authors or any member of the team.



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