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September 17, 2019

Chairman Vitale
Vice Chair Kick
Ranking Member Denson
Members of the House Energy and Natural Resources Committee

Gentlemen:

In past years Ohio landowners often kept or reserved certain oil and gas rights when they sold their property. Those “severed mineral interests” make it difficult, if not impossible, for future landowners to lease their oil and gas rights. Understandably, oil and gas producers were limited for the same reason.

Much of the oil and gas law I have been practicing for the last 50 years has involved helping Ohio landowners with oil and gas leases and helping them to eliminate these old reserved severed mineral interests in order to reunite their surface acreage with these reserved interests. Over the last 40 or 50 years the Ohio legislature has taken steps to allow Ohio landowners to eliminate these severed interests.

In 1961, the legislature enacted the Marketable Title Act (MTA) to simplify and facilitate land title transactions by extinguishing ancient claims and interests in land that had become stale. In 1973, the MTA was amended to make it clear that it also applied to mineral interests. I and other attorneys used the MTA to eliminate these old reserved mineral interests but there were (and are) some situations where it could not be used.

In 1989, the legislature passed the Dormant Minerals Act (DMA) with the backing and support of the Ohio Farm Bureau. Most oil and gas attorneys (and Appellate Courts) believed that the 89 DMA acted automatically to reunite severed mineral interests with the surface and did not require the giving of notice. Similar legislation in other states were held to be constitutional by the U.S. Supreme Court.

In 2006, the DMA was amended and certain notice requirements were inserted into the Act. This included notice by certified mail or a one-time publication in a newspaper. There has always been a conflict between paragraph B and paragraph H of the 2006 DMA, and for a time attorneys used both the 1989 DMA and the 2006 DMA, often not even attempting to use the MTA.

On September 15, 2016, the Ohio Supreme Court ruled in *Corban v Chesapeake*, contrary to what most oil and gas attorneys believed, that the 89 DMA was not automatic and was not self-executing. The Court also held that any landowner who had used the 89 DMA was required to have filed a quiet title action before 2006. Unless one had a time machine, this, of course, was not possible. No Court that I am aware of had ever thought it necessary to go to Court in order to use the 89 DMA so no one had ever done that—*Corban* rendered the 89 DMA useless as we explained to our clients in the attached October 1, 2016 letter. The Court also held that after 2006 only the 2006 DMA could be used. Until the 2016 *Corban* decision, both landowners and oil and gas producers had relied on the 89 DMA, and lease bonus payments had been made based upon that reliance.

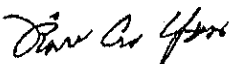
After the *Corban* decision, many attorneys (our firm included) began again to use the MTA since reliance in the 2006 DMA could arguably constitute legal malpractice. This is so for at least two (2) reasons: The Supreme Court's interpretation of paragraph H rendered the 2006 DMA useless. Paragraph B states that, unless one of the savings events described in that paragraph has occurred in the twenty year period before the receipt of the notice of abandonment, the severed mineral interest is abandoned: One of those savings events is the recording of a claim to preserve by the Holder. Paragraph H states that a claim to preserve can be filed after the severed mineral interest holder receives a notice of abandonment. The Supreme Court in *Corban* held that the recording of this Claim stops the process, thereby preventing the landowners from ever having the severed mineral interest declared abandoned. Because of the *Corban* decision, contrary to what the legislature intended, the 2006 DMA is of no use, and attorneys are back to using the MTA which use is limited.

The second 2006 DMA problem deals with the amount of due diligence required to find the heirs of a severed mineral interest holder. With very little guidance from the Supreme Court; oil and gas companies have taken the view that a landowner must search to the "four corners of the earth" to locate these heirs, thereby placing substantial financial burdens on Ohio landowners. HB 100 address this problem as well as the "claim to preserve" problem by addressing the amount of due diligence that is required in order to notify the severed interest hold or his heirs.

Ohio landowners are now left with the situation much as it was before 1989. No one can now go back in time before 2006 and file a quiet title action using the 1989 DMA. The 2006 DMA, as interpreted by the Supreme Court, is useless. While the MTA is still an option, its use is very limited.

House Bill 100 offers the Legislature an opportunity to clear up these issues and to give Ohio landowners and Ohio oil and gas producers a more efficient way for oil and gas rights in Ohio to be developed.

Thank you. If you have any questions, I would be happy to answer them.


Richard A. Yoss

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October 1, 2016

RE: Dormant Minerals Act (*Corban v Chesapeake*)

Dear Client:

The Ohio Supreme Court has recently rendered decisions in approximately fourteen cases involving oil and gas issues. The most important ruling is perhaps the *Corban v Chesapeake* case, and we wanted to make you aware of our reading of that opinion.

In essence, the Supreme Court has "gutted" the Dormant Minerals Act ("DMA") and made it virtually useless in most cases. The Court has held that the 1989 DMA, which was supposed to be "self-executing", could only have been used when a landowner filed a quiet title action. There is nothing in the 1989 DMA that requires this, and I believe this totally misreads the Act itself. The Court has held that since June 30, 2006, the 2006 amended version of the DMA is the only version that can be used. The problem with this is that under the *Corban* case and the *Dodd* case, the Court has held that after getting a notice of abandonment under the 2006 DMA, the mineral holder can then file a preservation notice and this stops the whole process.

This decision is completely contrary to decisions rendered by Courts of Appeals in Ohio and is contrary to the opinions of most oil and gas attorneys who have dealt with this issue. I have enclosed a copy of parts of Judge Pfeiffer's 16 page dissenting opinion in the *Corban* case, and a copy of the Farm Bureau's February 5, 1988 letter to Judge Pfeiffer when he was then the Chairman of the Senate Judiciary Committee. I share his views, but that does not change the majority's decision.

A landowner today has fewer options than a landowner did before these decisions were rendered. A landowner can utilize the 2006 DMA but then stands the risk of having an heir file a preservation notice after he or she receives the notice of abandonment, thus stopping the entire process. Another option still available in some cases is the Marketable Title Act ("MTA") itself. This option is not available in all situations, and it depends upon how the deeds in your chain of title are worded.

Our position is that we should definitely use the MTA if the facts allow that, but this does require the filing of a quiet title action and involves expenses that the landowner should not have to be responsible for. A landowner can still use the 2006 DMA, but he stands the risk of an heir filing a claim to preserve after receiving the notice.

This decision was unexpected, and I believe it reflects the Court's misunderstanding of the purpose of the DMA itself.

Very truly yours,

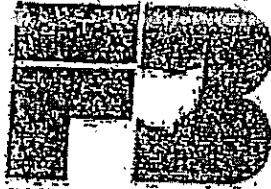
A handwritten signature in cursive script that reads "Richard A. Yoss".
Richard A. Yoss

DISSENTING OPINION OF JUDGE PFEIFFER
(from pages 36, 47, and 49)

{¶ 108} In 2006, hindsight may have provided the General Assembly the vision it wished it had had when it passed the first version of the ODMA in 1988. But regardless of the changes the General Assembly implemented in 2006, former R.C. 5301.56 (“1989 ODMA”) functioned as the law in this state for 17 years, and through its operation created vested rights in certain property owners. Those vested rights cannot be taken away without running afoul of the Ohio Constitution and the Ohio Revised Code.

{¶ 136} Nothing in the 2006 amendment suggests that it applies in situations in which mineral rights had already vested before the effective date of the amendment.

{¶ 140} Applying the 2006 amendment to surface owners whose rights to mineral interests had vested pursuant to the 1989 ODMA constitutes nothing less than a taking. The 1989 ODMA provided that a mineral-rights holder’s interest was considered abandoned by operation of law, having lapsed due to the mineral-right holder’s 20 years of inaction, and was subject to a three-year grace period during which a mineral-rights owner could preserve the interest through a simple filing. In contrast, under the majority’s interpretation of the 2006 amendment, a surface owner whose mineral-rights interest vested by operation of the 1989 ODMA lost those mineral rights immediately on the effective date of the 2006 amendment—without any required period of inactivity by the surface owner and with no opportunity to preserve the property right through satisfying a statutory condition—for no reason other than that the General Assembly wished the rights to revert to someone else. The General Assembly gave no indication that the 2006 amendment should be interpreted that way, and R.C. 1.58 and the Ohio Constitution should prevent it from being interpreted that way.



OHIO FARM BUREAU

35 East Chestnut Street • P.O. Box 479 • Columbus, Ohio 43216 • (614) 249-2400

February 5, 1988

Senator Paul Pfeifer, Chairman
Senate Judiciary Committee
State House
Columbus, Ohio 43215

Dear Paul:

Your support for Senate Bill 223 would go a long way in solving some of the problems that farmers have in trying to clear land titles and resolve their differences with oil and gas producers and to reduce the problems that oil and gas producers have with misunderstandings when the surface owner doesn't own the mineral rights. It reduces the problems that title attorneys and others have when they have no way to provide a clear title and the mineral rights have been separated from the surface and not properly transferred to successors or heirs.

You will recall in testimony last week that Bill Taylor of the Natural Resources Committee of the Bar Association explained the need to have a way of clearing titles and the need to have a companion piece of legislation to go with the marketable titles act. A copy of Taylor's testimony was provided for you. Included was the fact that 15 states have a dormant mineral rights act including Michigan, Indiana, Illinois, Pennsylvania, Virginia, and Tennessee. All but Pennsylvania, Virginia and Tennessee have a marketable titles act. The amendments that were recommended by the Bar Association, we wholeheartedly support with the exception of the amendment that was proposed by Mr. Sider which would have included the lease hold interests. Therefore, we are recommending that the 5 amendments proposed by Mr. Taylor be incorporated in the Bill.

To outline what we are trying to do with this legislation:

- A. Return the mineral rights that have been separated from the surface either by reservation during the sale of a property or by outright purchase of mineral rights sometime in the past to the surface owner providing there has not been any activity and the mineral rights have remained dormant for 20 years.

- B. Any mineral right owner can preserve his right by:
1. Transferring the title of the mineral rights and recording such transfer in the County Recorder's Office;
 2. Having actual production or withdraw of minerals by the holder of the mineral rights;
 3. Being used in underground storage of gas by the holder;
 4. A drilling or mining permit being issued to the holder and recorded in the County Recorder's Office;
 5. A claim to preserve the mineral interest has been filed and recorded in the notice index that is in the Recorder's Office.

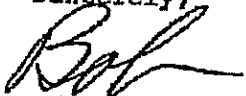
Any of the above will begin a new 20 year period at any time the transaction is recorded.

The 5 amendments that have been proposed by the Ohio Bar Association Natural Resources Committee are to make sure that the action taken by a person to preserve their interest is recorded in the Recorder's Office. This appropriate filing will permit anyone who traces a title to find that record and know the mineral rights are preserved by the mineral rights owner.

While the bill is not easily read, I hope that this summary clarifies any questions that you may have. In the event you have additional questions, please feel free to call either myself at 249-2414, Bill Taylor (614) 454-2591, or Bob Fletcher 221-6983.

We hope that at the next hearing held by the committee that the amendments could be adopted and the bill recommended for passage. Your help in doing this would be very much appreciated.

Sincerely,



Robert E. Bash
Director of Public Affairs, Natural and
Environmental Resources and Utilities

cc: Bill Taylor
Bob Fletcher



The (un)settling of Ohio's Dormant Mineral Act

Feb. 15, 2017

By Alexander McElroy

The Supreme Court of Ohio has settled a key issue regarding Ohio's Dormant Mineral Act, but Ohio's Oil and Gas Industry has been unsettled by the ruling.



Imagine you were the owner of 100 acres of pristine farm land in Belmont County, Ohio in the 1960's. You decided to sell your land and move away, and reserved the mineral estate when you sold. Years later, you've forgotten about your mineral interest on your old farm until you hear about the shale gas boom going on all around southeast Ohio. It's now 2004, and you make a few calls to some old friends and neighbors seeking information on who may be interested in buying or leasing your mineral interest under your old farm. Weeks later, a landman calls you and says he works for a mineral buying company and they would be interested in your mineral interest, subject to a lawyer confirming your mineral ownership. Months later, the landman calls you back and informs you that you no longer own your mineral interest, because the 1989 version of Ohio's Dormant Mineral Act ("1989 Statute") reunited your severed mineral interest with the current surface owner in 1993. Before the landman hangs up, he says, "You have to use it, or you

automatically lose it!" Prior to Sept. 15, 2016, and based upon the authority prior to that time,[1] this landman would have been right. But, after a quarter century since Ohio enacted the 1989 Statute, it turns out that you did not "automatically" lose your mineral interest in and under your old farm.

The Past

Prior to the shale gas revolution in the 2000's, it was rare that a surface owner attempted to obtain a judicial ruling under the 1989 Statute. Only within the past few years did cases appear regarding the self-executing and automatic nature of the 1989 Statute, and in light of a 2006 amendment to the Act, it turned out that there were multiple issues that had to be resolved in addition thereto.[2] As stated above, the majority of Ohio courts have interpreted the 1989 Statute to say that a severed mineral interest automatically reunited with the

surface estate after 20 years of non-use. [3] Yet, after Sept. 15, 2016, in *Corban v. Chesapeake Exploration, L.L.C.*, the Supreme Court of Ohio rejected that interpretation, reversed course, and held that the 1989 Statute was not automatic and self-executing. [4] Suddenly, landowners who thought that they owned the oil and gas estate by virtue of the 1989 Statute no longer owned what they thought they did. Only two groups of people benefit as a result of the Supreme Court of Ohio's decision in *Corban*: (1) Previous severed mineral interest holders who for the last two decades, or so, thought that they lost their mineral interest based on the plain reading of the language in the 1989 Statute, and (2) the lawyers who will be hired by their clients to resolve the new, and unexpected, issues created by the Supreme Court's decision.

As a quick refresher, in 1961, the General Assembly enacted Ohio's Marketable Title Act ("MTA") in order to simplify and facilitate land title transactions by "extinguishing" ancient claims and interests in land that had become stale. [5] Under the MTA, a person who has an unbroken chain of title or record to any interest in land for forty years or more has a marketable record title to such interest, unless certain exceptions apply. [6] Marketable record title "operates to extinguish" all other prior interests, which "are hereby declared to be null and void." [7] Originally, the MTA did not apply to mineral interests, but in 1973, the MTA was amended to allow property owners to clear their titles of disused mineral interests. [8] As a result, the MTA "extinguished" oil and gas rights by operation of law 40 years from the effective date of the root of title, unless a savings event preserving the interest appeared in the record chain of title. [9] The Ohio General Assembly further amended the MTA when it enacted the 1989 Dormant Mineral Act. [10] Effective June 30, 2006, the 1989 Statute was subsequently amended ("2006 Amendment"), [11] and yet again by amendment effective January 30, 2014 ("2014 Amendment"). [12] The 1989 Statute provides that any mineral interest held by any person, other than the surface owner of the lands subject to the interest, "shall be deemed abandoned and vested in the owner of the surface" unless it is a coal interest, or owned by the government, or has been subjected to a "Savings Event" within 20 years known as the look-back period. [13] Under the 2006 Amendment, the oil and gas estate can only be deemed abandoned if a prior 20 year period without a savings event occurs and subsequent notice requirements are met. [14] The notice requirements include notification by certified mail, or newspaper publication, that the surface estate holder intends to have the severed oil and gas estate deemed abandoned. [15] The severed mineral estate holder then has 60 days to respond by filing either 1) A claim to preserve the mineral interest, or 2) An affidavit that describes a "savings event" within the 20 years immediately preceding the date on which notice was served. [16] If 60 days pass without a response, then, under the 2014 Amendment version, the surface owner must file a Notice of Failure to File, and immediately after the notice of failure to file is recorded the mineral estate will vest in the owner of the surface of the lands formerly subject to that interest. [17] The original 2006 Amendment version provided that if 60 days pass without a response, the surface owner shall have the county recorder memorialize the abandonment on record in each applicable county with a notation that "This mineral interest abandoned pursuant to affidavit of abandonment recorded in volume, page" [18] The 2006 Amendment, and 2014 Amendment, are identical in all other respects.

The Present

This summer, the Supreme Court of Ohio had 12 cases pending before it involving the Dormant Mineral Act, but in one fell swoop it decided them all. On September 15, 2016, the Supreme Court of Ohio ruled on all 12 cases, with *Corban v. Chesapeake Exploration, L.L.C.* as the lead case. [19] [20] Based on the *Corban* decision, the Supreme Court provided an analysis for two other cases *Walker v. Shondrick-Nau* [21] and *Albanese v. Batman*, [22] and also affirmed four cases while reversing five cases. [23] The primary issue before the Supreme Court in *Corban*, which was a key issue in all 12 cases, was whether the 1989 Statute, or 2006 Amendment, applied to claims asserted after June 30, 2006, and/or did the previously severed mineral interest automatically vest in the surface owner as a result of "deemed" abandonment under the 1989 Statute? [24] In *Corban*, the North American Coal Corporation conveyed the surface rights to 164.5 acres in Harrison County, Ohio, to Orelen H. Corban and Hans D. Corban, reserving to itself all oil, gas and mineral rights. [25] North American Coal leased its mineral rights twice during the 70's and early 80's, but Corban contended that as the surface owner between May 1985 and May 2006 no savings events had occurred and therefore he

... as the severed mineral interest, between May 1989 and May 2006, no savings clause had occurred and therefore he was automatically vested with the mineral estate as of May 2005.[26] Chesapeake Exploration, *et al.* ("Chesapeake"), successor to North American Coal Corporation, argued that the 1989 Statute did not automatically divest the severed mineral interest holder of their mineral interest. Specifically, Chesapeake argued that the legislature's use of the term "deemed" in the 1989 Statute, as opposed to a term such as "extinguished," or declaring the dormant mineral interests "null and void," meant that the legislature intended the surface owner to take legal action to have the mineral interest declared abandoned and vested in them.[27] The Supreme Court of Ohio ruled in favor of Chesapeake and determined that the 1989 Statute was not self-executing, and did not automatically transfer ownership of dormant mineral rights by operation of law.[28]

The Supreme Court's decision was primarily based upon the interpretation of the words "shall be deemed abandoned" as used in the 1989 Statute. The Supreme Court analyzed those words to determine whether the 1989 Statute was automatic and self-executing. It found that in contrast to the MTA, the 1989 Statute did not use the word "extinguish," nor did it declare dormant mineral interests "null and void," but instead used the term "deemed," which created a "conclusive presumption." [29] A conclusive presumption, according to the Court, is an inference which makes the law so peremptory that it may not be overcome by any contrary proof, however strong, and therefore it is an evidentiary device.[30] As an evidentiary device, it can only be effective when used in litigation.[31] The Court stated that a legislature may decide to use a conclusive presumption in a statute in order to make a cause of action easier (or harder) to bring where dispositive evidence is difficult, or impossible, to find.[32] By enacting the 1989 Statute, the General Assembly intended to remedy the difficulties faced by a surface owner in seeking to prove, through a quiet title action, that the severed mineral interest holder had abandoned, or relinquished, a dormant mineral interest.[33] The General Assembly therefore provided an effective method of terminating abandoned mineral rights, but only through a quiet title action.[34] As a result, the Supreme Court held that a surface holder seeking to merge the oil and gas estate with the surface under the 1989 Statute was required to commence a quiet title action, seeking a decree that the dormant mineral interest was deemed abandoned.[35] Going further, and as of June 30, 2006, if a judicial ruling had not been obtained regarding the oil and gas estate, then a surface holder seeking to claim the dormant mineral rights merged with the surface estate was required to follow the statutory notice and recording procedures under the 2006 Amendment.[36] As of Jan. 30, 2014, a surface estate holder must follow the notice and recording procedures as specified in the 2014 Amendment.[37]

Prior to the Supreme Court's decision in *Corban*, a majority of lower Ohio courts that have addressed the issue, including the Fifth, Seventh and 11th District Courts of Appeal, found the 1989 Statute to be automatic and self-executing.[38] It was this strong legal precedent that oil and gas producers, mineral and royalty buyers, and even various surface owners, used to base their decisions on when leasing or purchasing mineral interests. Although the Supreme Court had not determined whether the 1989 Statute was automatic and self-executing, the aforementioned industry participants did not have the luxury to wait for a decision. After all, it's been almost 30 years since Ohio enacted the 1989 Statute. Prior to the *Corban* decision, if an oil and gas producer examined record title to a tract of land and determined that a severed mineral interest had been "deemed abandoned and vested" in the surface estate under the 1989 Statute, the oil and gas producers had three options if they wanted to lease the tract:

- A) Go with the weight of authority at that time and assume that the 1989 Statute was automatic and self-executing and lease the surface owner (who would claim the oil and gas estate based upon the 1989 Statute), or;
- B) Assume that the 1989 Statute was not automatic and self-executing and lease the severed mineral interest holders, their successors or assigns, or;
- C) Obtain a protective lease by leasing both the surface owner and severed mineral interest owner.

Now, as one applies the *Corban* decision to the fact scenario above, once that landman calls you back about leasing your mineral interest in and under your old farm in Belmont County, the landman must still confirm whether or not the surface owner pursued abandonment under the 2006 Amendment. If the surface owner did, were the 2006 notice provisions and requirements in the 2006 Amendment complied with? Even if the surface owner complied, if you, the mineral interest owner, were not provided notice by certified mail, and notice was instead given by publication in a local newspaper, whether or not you received proper notice is an issue that is ripe for future litigation. What is a producer supposed to do?

In short, if a tract of land has a prior mineral severance, and the surface owner wants to claim the severed mineral interest has been abandoned and vested in them, the surface owner must show that:

- A) There was either a judicial ruling prior to June 30, 2006 granting them, or their predecessors-in-interest, the rights to the mineral estate, or;
- B) They had followed, with due diligence and in good faith, the notice and recording procedures as set forth under the 2006 Amendment (or 2014 Amendment, where applicable), and that 60 days had passed without a response from the severed mineral estate holders.

If neither of the above have been met, the surface owner has no right to the severed mineral interest. Any oil and gas producers that have leased those surface estate holders no longer have a valid lease.

The Future

The Supreme Court of Ohio's decision is already causing problems for landowners, oil and gas producers, and mineral buyers. Any oil and gas producers who leased oil and gas mineral rights based on the assumption that the owners obtained their rights thorough the 1989 Statute's automatic and self-executing nature now have invalid leases. Mineral buyers who purchased mineral rights based on that assumption now suddenly own nothing. They do have one potential saving grace, whereby the surface estate holders can regain the rights to the oil and gas estate by following the 2014 Amendment notice and recording procedures. If 60 days pass without a response from any of the severed mineral interest holders, then the oil and gas estate will vest in the surface estate holders. On the other hand, if at least one severed mineral interest owner responds and files a claim to preserve, or notes a savings event within the preceding 20-year period, then the surface owner cannot claim the mineral interest is abandoned and vested in them. In the case of oil and gas producers, they could possibly now have producing units with one, or more, unleased tracts of land. This may result in potential problems with pooling unitization, trespass, and royalty payment issues for oil and gas producers. Even the surface owner who has been collecting royalties each month from a producing well may be financially burdened when the royalty checks stops. For some mineral buyers, they purchased oil and gas interests that no longer exist based upon the *Corban* decision. They will have to look at their contract language to determine if they have a cause of action for breach of warranty against the seller. These issues, and many others, will lead to a whole new world of expensive litigation, forcing the oil and gas industry, already strapped for cash, to make further painful decisions on where and when to spend their valuable time and limited money. This could mean less production, which means less taxes and royalties, within Ohio. In *Corban*, the Supreme Court of Ohio settled the major issue as to how the 1989 Statute and the 2006 Amendment fit together, but by going against the established prior precedent, it has unsettled the oil and gas industry. The 1989 Statute, 27 years after being enacted, has effectively been "rendered toothless."^[39]

Author bio

Alexander McElroy is a Partner with Lenington, Gratton & Alexander, LLP.

Endnotes

[1] See *Walker v. Shondrick-Nau*, 2014-Ohio-1499, appeal allowed, 140 Ohio St. 3d 1414, 2014-Ohio-3785, 15

N.E.3d 883, and *rev'd* 2016-Ohio-5793; *See also, e.g.,* *Wendt v. Dickerson*, 5th Dist. Tuscawarus No. 2014 AP 01 0003, 2014-Ohio-4615, *appeal allowed*, 142 Ohio St. 3d 1464, 2015-Ohio-1896, 30 N.E.3d 973, and *rev'd*, 2016-Ohio-5822; *Thompson v. Custer*, 2014-Ohio-5711, 26 N.E.3d 278 (11th Dist.), *appeal allowed*, 143 Ohio St. 3d 1416, 2015-Ohio-2911, 34 N.E.3d 929, and *rev'd*, 2016-Ohio-5823.

[2] *See Fenner L. Stewart, When the Shale Gale Hit Ohio: The Failures of the Dormant Mineral Act, Its Heroic Interpretations, and Grave Choices Facing the Supreme Court*, 43 Cap. U. L. Rev. 435 (2015). *See also Alexander McElroy, Ohio's Dormant Mineral Act: Current and Unresolved Issues*, 44 Cap. U. L. Rev. 325 (2016).

[3] *See Wiseman v. Potts*, Morgan County Common Pleas No. 2008CV145, *See also, e.g., Walker v. Shondrick-Nau*, 2014-Ohio-1499, *appeal allowed*, 140 Ohio St. 3d 1414, 2014-Ohio-3785, 15 N.E.3d 883, and *rev'd* 2016-Ohio-5793; *Wendt v. Dickerson*, 5th Dist. Tuscawarus No. 2014 AP 01 0003, 2014-Ohio-4615, *appeal allowed*, 142 Ohio St. 3d 1464, 2015-Ohio-1896, 30 N.E.3d 973, and *rev'd*, 2016-Ohio-5822; *Thompson v. Custer*, 2014-Ohio-5711, 26 N.E.3d 278 (11th Dist.), *appeal allowed*, 143 Ohio St. 3d 1416, 2015-Ohio-2911, 34 N.E.3d 929, and *rev'd*, 2016-Ohio-5823.

[4] No. 2:13-cv-246, 2014 U.S. Dist. LEXIS 182735 (S.D. Ohio May 14, 2014), *certified question answered*, 2016-Ohio-5796.

[5] Ohio Rev. Code Ann. § 5301.50 (West 2014).

[6] *Id.* § 5301.51.

[7] *Corban v. Chesapeake Exploration, L.L.C.*, Slip Opinion No. 2016-Ohio-5796, ¶17.

[8] *Id.* at ¶18.

[9] *Id.*

[10] 1988 Ohio Laws File 314.

[11] 2006 Ohio Laws File 84 (Sub. H.B. 288).

[12] 2013 Ohio Laws File 41 (Sub. H.B. 72).

[13] 1988 Ohio Laws File 314 (B)(I)(a)-(d).

[14] 2006 Ohio Laws File 84 (Sub. H.B. 288).

[15] *Id.* at (E)-(F).

[16] *Id.* at (H).

[17] *Id.*

[18] Sub. H.B. 288, Ohio Laws File 5960 (2006) (amending Ohio Rev. Code Ann. § 5301.56).

[19] Slip Opinion No. 2016-Ohio-5796. In *Corban* the Supreme Court also determined that delay rental payments are not savings events under the Dormant Mineral Act. *Id.* at ¶38.

[20] *Walker v. Shondrick-Nau* was one of the 12 cases, and on December 14, 2016 it was appealed to the United States Supreme Court. No. 16-776, 2016 WL 7336573 (U.S.) (Dec. 14, 2016). The petitioners argued that the Due Process Clause, and Contracts Clause, of the Federal Constitution had been violated by the Supreme Court of Ohio's decision in the DMA cases. On Jan. 17, 2017, the United States Supreme Court denied the petition; thus, the Supreme Court of Ohio's decision is final.

[21] Slip Opinion No. 2016-Ohio-5793. In *Walker*, the Supreme Court cited *Corban* and stated that the 1989 Statute did not apply because Walker, the surface estate holder, asserted his claim to the mineral estate in 2012, after the 2006 Amendment took effect. *Id.* at ¶17. The Court found that although Walker had filed an affidavit of abandonment pursuant to the 2006 Amendment, the severed mineral estate holder, Noon, timely filed an Affidavit and Claim to Preserve Mineral Interests which qualified as a "savings event," thereby precluding Walker from having the mineral rights deemed abandoned. *Id.* at ¶19.

[22] Slip Opinion No. 2016-Ohio-5814. In *Albanese*, the Court applied the *Corban* decision and found that the mineral rights had not been abandoned because the surface owners, Albanese and Lipperman, filed quiet-title actions in 2012, after the 2006 Amendment took effect. *Id.* at ¶¶11, 16. Furthermore, Albanese and Lipperman did not follow the 2006 ODMA's statutory notice and affidavit provisions, therefore, the Court determined that the severed mineral interests never vested with them and remained with the severed mineral interest holders, the Batmans. *Id.* at ¶22.

[23] *See Carney v. Shockley*, Slip Opinion No. 2016-Ohio-5824; *See also e.g., Dahlgren v. Brown Farm Prop. LLC*, Slip Opinion No. 2016-Ohio-5818; *Eisenbarth v. Reusser*, Slip Opinion No. 2016-Ohio-5819; *Farnsworth*

v. Burkhart, Slip Opinion No. 2016-Ohio-5816; Swartz v. Householder, Shannon v. Householder Slip Opinion No. 2016-Ohio-5817; Taylor v. Crosby, Slip Opinion No. 2016-Ohio-5820; Thompson v. Custer, Slip Opinion No. 2016-Ohio-5823; Tribett v. Shepherd, Slip Opinion No. 2016-Ohio-5821; Wendt v. Dickerson, Slip Opinion No. 2016-Ohio-5822.

[24] *Id.* at ¶8.

[25] *Id.* at ¶3.

[26] *Id.* at ¶¶11–12.

[27] *Id.*

[28] *Id.* at ¶28.

[29] *Id.* at ¶¶21–22.

[30] *Id.* at ¶23.

[31] *Id.*

[32] *Id.* at ¶24.

[33] *Id.* at ¶25.

[34] *Id.*

[35] *Id.*

[36] *Id.* at ¶31.

[37] 2013 Ohio Laws File 41 (Sub. H.B. 72).

[38] Walker, *supra* note 1.

[39] Albanese v. Batman, Slip Opinion No. 2016-Ohio-5814 (Pfeifer, J. concurring in judgment only).

