

# PUBLICATION

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## Judicial Ascertainment Clause in Mineral Lease Upheld

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**The Second Circuit Court of Appeal has upheld a "judicial ascertainment" clause in a 1971 mineral lease, *B.A. Kelly Land Co., LLC v. Questar Exploration & Prod. Co.*, 2012 WL 5503665 (Nov. 14, 2012).**

The lessors filed suit in 2009 claiming that the lease automatically terminated because there was a failure to produce in 1988 and 1989. The lease, however, had a judicial ascertainment clause which essentially required a court to determine that a breach had occurred and an opportunity to cure the breach before the lease could be terminated. The Second Circuit enforced the judicial ascertainment clause, reasoning that the lease is the law between the parties and the judicial ascertainment clause did not violate any law or public policy. The Second Circuit then granted leave to plaintiffs to amend their petition to add a claim for judicial ascertainment. In light of the judicial ascertainment clause, if the court determines that the lessees did not comply with an obligation to produce in the 1980s, the lessees should then be afforded an opportunity to cure such default before the lease can be terminated.