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Finally, Some Clarity on Suspended Royalty

Legal Update

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In news welcome to oil and gas operators, the North Dakota Supreme Court issued its decision in *Vic Christensen Mineral Trust v. Enerplus Resources (USA) Corp.*, 2022 ND 8. In *Christensen*, the operator had suspended royalty payments to mineral owners, including the Vic Christensen Mineral Trust (Trust), as a result of a title defect. The title defect was first identified in the operator's drilling title opinion and resulted in litigation between the mineral owners. After the mineral owners resolved their litigation through a stipulation, the Trust sued the operator, claiming it had over-suspended the Trust's royalty payments. The Trust asserted the operator should have suspended only those funds which were in dispute as a result of the title defect and should have paid the Trust its remaining royalty. Based upon its claim of over-suspense, the Trust asserted it was entitled to 18% interest on the over-suspended royalty payments under N.D.C.C. § 47-16-39.1. The operator asserted it was allowed to suspend all the Trust's payments under the safe harbor provision of Section 47-16-39.1, which allows an operator to suspend royalty "in the event of a dispute of title existing that would affect distribution of royalty payments." The district court sided with the Trust on summary judgment and the operator appealed.

Following its review, the Supreme Court issued a decision that is favorable to operators, holding that the safe harbor provision of Section 47-16-39.1 is not limited to only the disputed royalty interests claimed by competing owners of disputed interests. This is best explained in an example: suppose John Smith owns the entire mineral interest in Whiteacre and gives a lease with an 18 percent royalty rate; and suppose 50 percent of the mineral interests are subject to a title dispute while the other 50 percent of the mineral interests are not. Under *Christensen*, the operator can suspend the entire 18 percent royalty owed to John Smith for production from Whiteacre (not just 9 percent or 50 percent of 18 percent).

We caution the Supreme Court did not reach a holding on the question of whether a title dispute has to be a successful title claim to justify suspense of royalty payments. The court found the fact the mineral owners commenced litigation over the matter was clear evidence of a title dispute, but it left unanswered whether the safe harbor provision applies in circumstances where a title opinion claims something is a title dispute—but ultimately it is determined it is not.

Further, the facts presented in the case were limited to a *single tract of land* (described as the W1/2 in the decision). While the decision makes it clear that the operator may suspend royalty payments owed to royalty owners in a tract in which that owner's interests are subject to a title dispute, it is unclear whether the Supreme Court would extend its holding to royalty payments from other tracts owed to those same owners. Accordingly, the conservative approach for operators is to only suspend royalty payments owed on a tract-by-tract basis and to not suspend a royalty owner's interest across an entire unit unless there is a title dispute for that owner's interest in each of the tracts from which that owner is entitled to royalty payments.