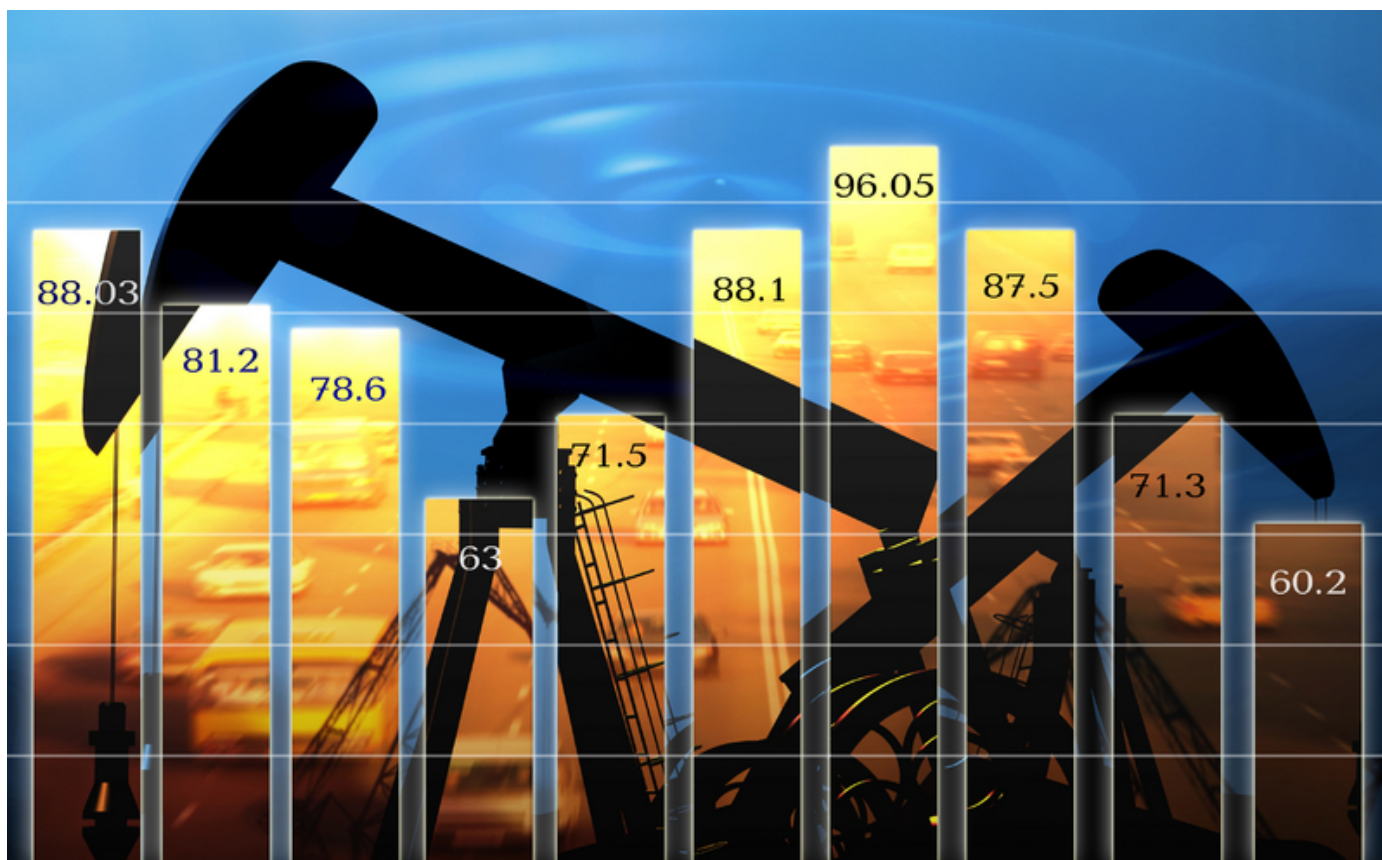

FAULK BARCHUS PLLC

New Oil & Gas Case Update

Executed Division Order Denies Lessor Back Pay on Diluted Royalties from a late filed Unit Designation

Orht v. Union Gas Corp.



On August 31, 2012, the 13th Court of Appeals decided

OHRT ET AL. v. UNION GAS CORPORATION, wherein the Court affirmed that in some circumstances, the Lessee is not obligated to pay back royalties undiluted by unit participation from the time of first production to time of unit creation:

(For ease of reading – the actual parties to the case are referred to as X and Y)

X and Y entered into an oil and gas lease in 1999. The lease provided for 3/16th royalty, and contained a pooling provision limiting any gas units to 320 acres. On July 17, 2000, an amendment to the lease was executed, amending the pooling provision to read “if the unit well is located on Lessor’s property, all of Lessor’s remaining acreage will be included in the unit.”

In August of 2000, Y drilled and completed a well on land wholly owned by X. By the end of September of 2000, first production of gas occurred. At this time, Y exercised its option to pool and formed a 690 acre gas unit. However, the DPU was not filed until January of 2001, leaving a period of about 3 months in which the well was producing, but the unit was not formed.

On January 19, 2001, Y sent division orders to X containing the name and size of the unit and back-dating its effective



date as the date of first production. X executed the division orders and certified their ownership of their fractional unit participation interest in production.

In March 2001, Y started issuing royalty checks with statements of production and calculations of royalty payments. X received and cashed the royalty checks.

X then decided that he was owed the difference between 3/16th of all production from the well located on his land and the unit diluted royalties for the length of time from first production to the formation of the unit by filing the DPU. X filed suit against Y seeking the payment of the back royalties.

On appeal, X argued (1) the pooled unit was formed on the date of filing the DPU, and any royalties on production prior to that should not be diluted by unit participation. The fact that X signed division orders should not change X’s right to receive back royalties, and (2) the pooled unit was formed in violation

of lease restrictions, the July 2000 amendment to the lease notwithstanding.

The Court held on Point 1 that the unit was formed on the date that the DPU was filed and not the date of first production as claimed on the DPU. There was a period of time between first production and creation of the unit by filing a DPU during which X was entitled to the entire 3/16th royalty of all production from the well; however, X had waived that right and ratified the diluted interest in unit production by signing the division orders and cashing royalties checks.

The Court held on Point 2 that the language in the amendment superseded the lease restrictions, and operated to ratify Y's action of including more than 320 acres in the pool.

X was therefore unable to recover any back royalties from Y, despite the fact that there was a period of time where the well on X's property was producing without being in a pooled unit.

Brandon M. Barchus is a Board Certified Attorney in Oil, Gas & Mineral Law by the Texas Board of Legal Specialization. If you wish to sign up for upcoming direct case updates or wish to discuss this case further, he can be reached directly at (713) 239.4000 or via email at bbarchus@faulkbarchus.com

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