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Stinson Attorneys Obtain Successful Ruling at ND Supreme Court for Multiple North Dakota Oil and Gas Clients

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In a decision involving five separate oil royalty class actions, the North Dakota Supreme Court issued a ruling interpreting the century-old, standard-form oil royalty provision, and holding that it established a valuation point at the well, thereby allowing for the deduction of post-production costs incurred downstream of the well. Stinson LLP attorneys Matt Salzman, Rob Forward and Logan Fancher assisted multiple oil and gas clients obtain this ruling and prevail at the Supreme Court.

There are between 15 to 20 class actions that have been filed in North Dakota challenging the meaning of this oil royalty provision that is contained in virtually every standard-form oil and gas lease in use throughout the United States. Additionally, similar class actions have begun to be filed in certain other states. The North Dakota ruling is expected to largely dispose of all the North Dakota class actions and may well influence the cases pending in other states.

The Stinson team was lead counsel in two of five separate class actions that were filed at approximately the same time in North Dakota federal district court before the Honorable Chief Judge Peter D. Welte. In each case, the lessor-plaintiff argued that the oil royalty provision required royalties to be "free of costs in the pipeline," meaning that it established a valuation point for the crude oil wherever it was delivered into the pipeline, and that all costs incurred before that point were not deductible.

Each of the defendants filed its own motion to dismiss. While they all raised slightly different arguments, they all argued that the in-kind oil royalty clause language–"free of cost, in the pipeline to which Lessee may connect wells on said land"–established a valuation point at the well. Finding that there was no North Dakota authority directly on point, Chief Judge Welte certified a question to the North Dakota Supreme Court concerning the meaning of the royalty provision in the standard form lease, and, specifically, whether it established a valuation point at the well.

Following the separate briefing at the Supreme Court, the five defendants selected three lawyers to present their oral argument. Salzman argued first, followed by two colleagues who represented other defendants. Yesterday, in a 4-to-1 decision, the North Dakota Supreme Court adopted the interpretation of the oil royalty clause Salzman and the Stinson team set forth. Once final, this decision is expected to establish precedent that will dictate how production companies calculate oil royalties in North Dakota, and likely affect how they are calculated in other producing states.

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