

Haynes Boone Secures Take-Nothing Judgment in North Dakota Trial

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PRACTICES Oil and Gas

A Haynes Boone trial team led by Partner Michelle P. Scheffler secured a take-nothing judgment on Oct. 13, 2021, for client Ovintiv (formerly Newfield) against the North Dakota Department of Trust Lands (“Department”) over the Department’s claim that Ovintiv underpaid royalties owed to the State of North Dakota.

The case was filed by Ovintiv in 2018 against the Department seeking an interpretation of the calculation of royalties under the Department’s form oil and gas lease, which has been in use since 1979. After an initial summary judgment decision in the trial court and an appeal to the North Dakota Supreme Court, the case culminated in a second summary judgment decision upholding the constitutionality of legislation enacted by the North Dakota Legislature to fairly limit royalty challenges by the State and then a bench trial before Judge Robin Schmidt in hydrocarbon-rich McKenzie County.

After hearing evidence from both sides, Judge Schmidt ruled in favor of Ovintiv, finding that the Department had failed to establish Ovintiv’s breach of any applicable lease and awarding no damages to the Department.

The case has been closely followed by the North Dakota oil and gas industry, as more than thirty producers—including some of the largest—have faced similar allegations by the Department related to the same lease language; many millions of dollars in alleged underpaid royalties thus potentially hinged on the outcome of the Ovintiv matter. The case has been extensively covered by the media and has been the center of political wrangling between the North Dakota Governor, the North Dakota Legislature, the Attorney General’s office, and the North Dakota Land Board (which manages the Department and State-owned minerals).

In response to the issues created by the Department’s demands against Ovintiv and other producers, the North Dakota legislature passed House Bill 1080 this summer limiting the statute of limitations on Department royalty underpayment claims to seven years, as well as reducing potential non-payment interest and penalties. The Department challenged the constitutionality of that legislation in the Ovintiv suit, but, after vigorous briefing, Judge Schmidt rejected the Department’s challenge and upheld the legislation.

In addition to Scheffler—the co-chair of Haynes Boone’s Oil and Gas Practice Group—who led the effort, the trial team consisted of Haynes Boone Associates [Garrett Martin](#), who second chaired the trial, [Ryan Pitts](#), who provided appellate support throughout, and Lawrence Bender of Fredrickson Byron.

Haynes Boone has one of the Top 12 oil and gas litigation practices in the country, according to the *Chambers USA 2021* directory (Chambers and Partners), which also ranked Scheffler and Partner Craig Stahl among the nation’s best energy litigators. *Chambers USA* ranked Haynes Boone Band 2 nationwide in oil and gas litigation, saying the firm is “recognized for representing large energy

companies in high-stakes litigation” and for “deftly [handling] royalty class actions, breach of contract disputes and other contentious issues arising in the exploration and production sector.”

Haynes Boone is an international corporate law firm with offices in Texas, New York, California, Charlotte, Chicago, Denver, Washington, D.C., London, Mexico City and Shanghai, providing a full spectrum of legal services in energy, technology, financial services and private equity. With 600 lawyers, Haynes Boone is ranked among the largest U.S.-based firms by *The National Law Journal*, *The American Lawyer* and *The Lawyer*. It was recognized for excellence in the BTI Consulting Group’s 2021 “A-Team” report, which identifies the law firms that in-house counsel commend for providing superior client service.