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What zones were the subject of a unitization agreement?

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Cases Considered:

Signalta Resources Limited v. Dominion Exploration Canada Limited, 2007 ABQB 636; *Signalta Resources Limited v. Dominion Exploration Canada Limited*, 2008 ABCA 437

I blogged the trial decision of Justice AG Park in this case and now the Court of Appeal has affirmed. Readers wanting a full statement of the facts should review that earlier blog.

There were, as the Court put it, "no grounds for appellate intervention" (at para. 2) and in particular the Court of Appeal agreed with Justice Park that the original inclusion of the Glauconite for the section 8 lands in the schedule to the unitization agreement was a mistake. It was a mistake for two reasons: (1) Dyco (Dominion's predecessor in title) did not have rights to the Glauconite under its farmout with Husky and therefore could not contribute Glauconite rights, and (2) Husky (which did own the Glauconite rights) never contributed them and executed the relevant agreements as a royalty owner and not as a working interest owner.

In the course of its short memorandum of judgement the Court (Justice Clifton O'Brien, Justice Peter Martin and Justice Bryan Mahoney) did comment on several clauses of the standard form unitization agreement, clauses 203, 204 and 1302.

Clause 1302 provides that:

> If a Party owns a Working Interest and a Royalty Interest, its execution of this agreement shall constitute execution in both capacities.

The Court made two points about this clause. First, it could not possibly mean that a party must necessarily be taken to be contributing whatever interest in had in a particular tract. It was always open for a party to signify a contrary intention. Second, evidence of that contrary intention might take the form of an explicit statement or reservation but it might also take the form of extrinsic evidence which would be admissible (at paras 41 - 42).

> …. it is implicit in the wording of clause 1302 that it applies only to the working interests and royalty interests intended to be committed and bound by the agreement. The clause is there as a matter of convenience to alleviate the need for the party holding dual interests to sign the document twice, or more, in such circumstances. Its purpose is not to commit both interests, when it is understood by the parties at the time that only one or the other interest is being committed to the unit …. extrinsic evidence could be admitted to establish that HBOG executed.

> the agreement only in its capacity as a royalty owner, and that it never intended to contribute the Glauconite formation in which it had the working interest.

Clauses 202 and 203 provide as follows:

> 202. Each exhibit shall be deemed conclusively to be correct to the effective time of a revision or correction thereof as herein provided.
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> 203. If any mistake or mechanical error occurs in an exhibit, Unit Operator may, or upon request of the Working Interest Owners shall, prepare a corrected exhibit but the data used in establishing Tract Participation shall not be re-evaluated.

Clause 203 was of central importance since at some point Poco, the then operator, had amended the schedules to exclude the Glauconite. If inclusion of the Glauconite was a mistake then it followed (and this seems to have been assumed by both the trial court and the court of appeal (at para. 35) and this is a significant point) that Poco could rely on cl. 203 and make the amendment and that this amendment was binding on Signalta as the successor operator.

The Court commented on clause 202 as part of its discussion of the dual capacity of execution point. In essence the Court seems to have been saying something like the following:

if the amended schedule does not include the Glauconite then, in light of cl. 202, and given the importance of reading the agreement as a whole (at para 43) how was it possible to argue that Husky must necessarily have executed the agreement in a joint capacity and as such contributed its working interest in the Glauconite? The most that could be said for the argument was that there was an ambiguity (at para 44) which Husky was entitled to resolve by adducing extrinsic evidence