

Property:

West Virginia: Non-Participating Royalty Interest in Oil and Gas Deemed Real Property Rather than Personal Property

Case No. 23-ICA-351, W.Va. Ct. of App. (10/8/24). The West Virginia Intermediate Court of Appeals (Court) reversed a circuit court’s summary judgment concluding that certain non-participating royalty interests (NPRIs) in oil and gas constitute personal property, holding instead that the NPRIs must be classified as real property under West Virginia law to, among other reasons, “help create certainty as to who owns the NPRI interest based upon the title as shown through the recorded real estate documents.” The Court also reasoned that adoption of this “real property approach” in West Virginia – which “holds the royalty interest to vest upon conveyance instead of production” – prevents violation of the rule against perpetuity and clouding of title. In doing so, the Court noted that there are two general theories in the United States that have been adopted regarding unaccrued royalty interests – with the majority of states holding that NPRIs are a real property interest in the form of an incorporeal hereditament that immediately vests at the time of conveyance, and the minority treating NPRIs as a personal property interest that vests upon production. Please contact us with any questions.

URL: <https://www.courtswv.gov/sites/default/pubfiles/mnt/2024-10/23-ICA-351%20Opinion.pdf>

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