

# PUBLICATION

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## Damages and Penalties Awarded for Failure to Pay Royalties

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**In *Oracle 1031 Exchange, LLC v. Bourque*, 85 So.3d 736 (La. App. 3d Cir. 2012), writ denied, 85 So.3d 1272 (La. 4/20/12), the Court of Appeal upheld a penalty of double the royalties owed and attorney's fees.**

In this case, a concursus proceeding was instituted and royalties were deposited into the district court's registry. This action, however, did not excuse the nonpayment of royalties. The parties responsible for payment had argued that they did not believe the minimal amount of oil produced, which they called "test oil," triggered a need to pay royalties. Noting that another royalty owner had been paid on the minimal production, the Court of Appeal found the argument bordered on disingenuous. The Court of Appeal rejected arguments that the parties responsible for payment did not know who to pay and that there was no signed division order. Notably, the Court of Appeal also permitted the royalty owner to pursue not only the lessee but also non-lessee affiliated companies. The Court of Appeal relied upon an alter ego theory, noting in the factual background that required notices of nonpayment were provided to the lessee and the affiliates.