

**GATTI, ET AL**  
**v.**  
**STATE OF LOUISIANA, THROUGH THE**  
**OFFICE OF CONSERVATION**



**Presented By:**

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***Robert H. Gatti, et al v. State of Louisiana through the Office of Conservation, et al, 2014-0863 (La. 8/25/14)***

**The Lawsuit:**

On April 8, 2010, plaintiffs, Robert H. Gatti, Sr. *et al* filed their class action petition against the State of Louisiana through the Office of Conservation, James H. Welsh, along with eighteen (18) Operator Defendants.

Plaintiffs' claims were a direct attack on unitization activity in the Haynesville Shale formation in northwest Louisiana. In particular, Plaintiffs claimed that the creation and/or maintenance of 640-acre drilling units by the Commissioner was a violation of La. R.S. 30:9, which provides that "a drilling unit . . . means the maximum area which may be efficiently and economically drained by one well." They sued as the owners of mineral rights (other than mineral leaseholds) in various "fields" in the Haynesville Shale zone and made two claims – one for damages and one for declaratory relief.

**The Damage Claim:** Plaintiffs sued the Operator Defendants for damages suffered "as the result of Defendants' respective individual failure, while serving as unit operator of one or more units in the Fields under appointment by the Commissioner, to provide the Commissioner with geological, engineering and other appropriate information indicating a required change or revision of unit boundaries, in violation of express orders of the Commissioner and the legal duties incumbent on unit operators." Thus, Plaintiffs' Damage Claim put at issue the duties of the defendant unit operators with respect to unitization of the Plaintiffs' lands.

**The Declaratory Judgment Claim:** Plaintiffs sued both the Operator Defendants and the State seeking a declaration that: (1) except for in certain limited situations, the Commissioner lacks the authority to establish a unit having an area in excess of the area drainable by one well, so the creation of a unit having an area in excess of the area drainable by one well is null and void; and (2) the Commissioner lacks the authority to authorize “alternate unit wells.” Thus, Plaintiffs’ Declaratory Judgment Claim put at issue the authority of the Commissioner with respect to unitization of the Plaintiffs’ lands and seeks declarations that would operate both prospectively (insofar as they would address the Commissioner’s authority to create new units and/or permit “alternate unit wells”) and retrospectively (insofar as they would declare existing orders of the Commissioner “null and void”).

**The Proposed Class Members:** Plaintiffs claimed in their Petition that there were approximately 50,000 members of the Plaintiff Class. The two sub-classes were defined as: (a) “Lessor class members owning mineral rights within the drainage area of a well drilled in the productive area of a Haynesville Zone 640-acre unit whose share of production would be substantially greater had the unit been legally established or timely revised”; and (b) “Class members owning mineral rights to lands outside the drainage area had there been a legally established or timely revised cylindrically shaped unit yet within the purported 640-acre unit, whose title is clouded by the apparent maintenance of a lease otherwise expired, in whole or in part, thus precluding the member from realizing the market value of the member’s lease rights.”

The proposed sub-class definitions made it abundantly clear that the ultimate goal of Plaintiffs' Action was to utilize the declaration sought in the Declaratory Judgment Claim to nullify past unit orders with the ultimate goal of obtaining: (1) cancellation of the thousands of mineral leases covering the Haynesville Shale formation that have been held by operations and/or production from the units established by the Commissioner, as well as damages resulting from the alleged "clouded title"; and (2) damages representing the royalties Haynesville Shale mineral owners were allegedly due absent the "dilution" of their percentage interest in the unit wells resulting from the alleged "oversizing" of the units.

### **The Case History:**

The case was filed in April of 2010. The Louisiana Supreme Court issued a decision on August 25, 2014 that reinstated the decision of the trial court, dismissing the case for procedural exceptions. No discovery was ever conducted in the case. Defendants first tried to remove the case to federal court on the basis that it was a class action, but because the State was named a party, the federal court sent the case back to the 19<sup>th</sup> Judicial District Court.

After the removal effort was unsuccessful, the Defendants filed a variety of exceptions, urging the dismissal of all of Plaintiffs' claims on procedural grounds - *i.e.*, grounds that did not involve the core substantive question whether the Commissioner has the statutory authority to issue the orders in dispute. The Trial Court, Judge William Morvant, dismissed Plaintiffs' claims holding that Plaintiffs' claims in their entirety were procedurally invalid. Most importantly, with respect to the Declaratory Judgment Claim

and to the extent the Damages Claim was based on damages suffered as a result of prior unit orders of the Commissioner, the trial court correctly found that La. R.S. 30:12 is the exclusive means of review of the Commissioner's orders and that Plaintiffs' claims were an improper and untimely collateral attack on the orders of the Commissioner. La. R.S. 30:12 sets forth the procedure for appealing any decision of the Commissioner of Conservation and requires that any review of orders issued by the Commissioner of Conservation must be filed within sixty (60) days of the issuance of the order. Plaintiffs' Petition was essentially attacking orders issued by Commissioner relating to the Haynesville Shale that were issued years prior to the filing of the lawsuit.

The Louisiana Court of Appeal, First Circuit reversed the trial court's judgment that dismissed Plaintiffs' action. *Gatti v. State of Louisiana*, 2013-0289 (La.App. 1 Cir. 1/15/14). The Appellate Court, ignoring long standing cases that provide that La. R.S. 30:12 is the only procedural vehicle for appealing decisions of the Commissioner, held that they found nothing in their review of La. R.S. 30:12 that evidenced legislative intent to preclude persons from asserting challenges to the statutory authority of the Commissioner in a declaratory judgment action, specifically finding, "plaintiffs may seek review of the Commissioner's actions under the general provisions of the [Louisiana] Code of Civil Procedure and are not bound by the specific review procedure set forth in La. R.S. 30:12, it follows that they were not required to take any action to preserve the right of judicial review set forth in the Conservation Act, including exhausting administrative remedies or filing the suit within 60 days of the issuance of any unitization orders by the Commissioner." The Appellate Court reversed the trial court's dismissal of the case and remanded it to the trial court.

The Operator Defendants and the State filed writ applications with the Louisiana Supreme Court arguing that the Court of Appeal's decision was contrary to established law and procedure in the state and that the holding that La. R.S. 30:12 was not exclusive means for reviewing orders of the Commissioner would effectively strip administrative orders of any finality, and have serious and wide-ranging consequences with respect to both those regulated by the Commissioner of Conservation and those regulated by other agencies under other administrative judicial review statutes. The Supreme Court granted the writ applications and, without any need for oral argument or additional briefing from the parties, entered a *per curiam* order reversing the decision of the First Circuit and reinstated the decision of the Trial Court dismissing Plaintiffs' claims.

### **Why was this decision such a big deal?**

The Supreme Court's decision was a correct legal result and a major victory for the Oil and Gas Industry in Louisiana. Louisiana's unitization process is legislatively established and administered by the Office of Conservation. This process has been in place for over fifty (50) years. Protecting this process, the authority of the Commissioner, and the finality of the orders of the Commissioner is essential to maintaining stability in the oil and gas industry in the state. La. R.S. 30:12 provides a short and definite period of time in which an aggrieved person can seek judicial review of an order of the Commissioner, thus ensuring that judicial review (including any possible overturning of the order) occurs **before** the order is relied upon and consequences start piling up – *i.e.*, before likely non-recoverable resources are committed by the operator to drilling and marketing, royalties are paid out to the unit interest holders, and non-operators and mineral servitude owners

rely on the unit operator's actions to maintain their own mineral leases. If an order is never final as the court of appeal held and could risk being overturned many years after its issuance, it would be impossible as a practical matter to "unring the bell" and put the parties back into the same position that they enjoyed prior to the issuance of the order. If the unit order is invalidated years after its issuance, how does the unit operator recover its costs of operation, or the royalties it paid to the unit interest holders for all of those years? Do the hundreds of mineral owners who have been paid royalties in reliance on the order have to give back the money they have been paid for all of those years? Do the non-operator lessees lose their mineral leases for lack of sufficient operations even though they were legally prohibited from drilling themselves for the years before the unitization order was overturned? How will mineral title in Louisiana ever be secure enough to be relied upon? Simply stated, if the decision of the First Circuit had not been overturned, the consequences could have been severe and wide-ranging. Therefore, the reinstating of the decision of the Trial Court by the Louisiana Supreme Court affirmed the integrity of the administrative process established by La. R.S. 30:12.