

Fixed Royalty or Floating Royalty: Depends on How the Courts Interpret It

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In June 2018, the Texas Supreme Court decided *U.S. Shale Energy II, L.L.C. v. Laborde Props., L.P.*, 551 S.W.3d 148 (Tex. 2018), and once again was asked to decide whether a royalty interest was an unchanging fraction of total production (a “fixed” royalty) or a fraction of the royalty provided for under a mineral lease (a “floating” royalty). The reservation at issue reserved: “an undivided one-half (1/2) interest in and to the [Royalty]” and “the same being equal to one-sixteenth (1/16) of production.”

The majority found that the first phrase, read independently, was a floating royalty interest because there was no indication a lease was in existence at the time the reservation was made and that the second clause supported this interpretation because it clarified what the fraction would be using the then-standard 1/8 royalty that was commonly provided for in oil and gas leases. The dissent argued that the fraction in the first phrase could be either fixed or floating, citing *Brown v. Havard*, 593 S.W.2d 939 (Tex. 1980), and that the second phrase, read together with the first, supported that the intent was to be a fixed royalty.

Both the majority and the dissent followed the *Hysaw v. Dawkins*, 483 S.W.3d 1 (Tex. 2016), holistic approach to interpret the contract, which shows that courts could come to different conclusions when using the same approach to interpret a provision.