

**The Aftermath of *Hysaw v. Dawkins*:
A Fractional Resolution
to the Double Fraction Issue**

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§ 6.01. Introduction.

With the 1/8 royalty no longer the standard, issues have arisen over the interpretation of double-fraction language. Those issues have included questions such as, is a 1/3 of 1/8 interest a fixed (also known as a “fractional”) interest, thereby resulting in a 1/24 interest; or does it mean the parties will receive a floating (also known as a “fraction of”) interest, meaning the parties each receive 1/3 of whatever royalty is negotiated in the lease?

Recently, the Texas Supreme Court examined this issue noting that “[t]he proper construction of instruments containing double-fraction language is a dilemma of increasing concern in the oil and gas industry, as uncertainty abounds, disputes proliferate, and courts have seemingly varied in their approaches to this complicated issue.”¹ On January 29, 2016, the Texas Supreme Court issued its decision in *Hysaw v. Dawkins*. In that decision, the court looked beyond a mechanical approach to interpreting double fractions and instead found that an instrument must be examined as a whole to determine intent.

This chapter is designed to examine the background on the double fraction issue and concepts related to the same, seminal Texas cases leading up to the *Hysaw* decision, the *Hysaw* decision, and how other jurisdictions

¹ *Hysaw v. Dawkins*, 483 S.W.3d 1, 4 (Tex. 2016).

have handled interpreting instruments with double fractions. While this chapter focuses on Texas, it also addresses other jurisdictions.²

§ 6.02. Fixed Royalty vs. Floating Royalty.

Texas courts have had varied opinions on what constitutes a fixed royalty or floating royalty. In *Hysaw v. Dawkins*,³ the court gives instruction on how to interpret a fixed royalty versus a floating royalty. While the decision does not provide a bright-line rule or test, it does state that an instrument's language as a whole must be considered to deduce intent. Specifically, the opinion states that courts must look beyond a mechanical approach to double fractions and examine all references to royalties within the instrument to determine intent.

[1] — Fixed Royalty.

A fixed royalty, which is also known as a “fractional” royalty, is a set fraction. In other words, the owner of the royalty interest is entitled to a fraction of gross production, meaning a fixed amount regardless of the royalty negotiated in the oil and gas lease. For example, a 1/3 of 1/8 royalty would be a 1/24 interest.

A fixed royalty may be created by a variety of conveyancing terms.⁴ Some examples include:

- (1) “a one-fourth royalty in all oil, gas and other minerals in and under and hereafter produced;”
- (2) “a fee royalty of 1/32 of the oil and gas;”
- (3) “an undivided one-sixteenth royalty interest of any oil, gas or minerals that may hereafter be produced;”
- (4) “an undivided 1/24 of all the oil, gas and other minerals produced, saved, and made available for market;”

² Practitioners should review cases in their jurisdiction to ensure consistency of application in their jurisdiction.

³ See *Hysaw*, 483 S.W.3d at 1.

⁴ Patrick H. Martin and Bruce M. Kramer, Williams & Meyers, *Oil and Gas Law* § 327.1 (2015).