

Marty to the Supremes? Ohio's Seventh District Rules on Royalty Recoupment

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In *Marty v. ODMA Resources*,[1] Ohio's Seventh District Court of Appeals directly addressed, for the first time, the question of whether a lessee's recoupment of past royalty overpayments from future royalties under the same lease constitutes a breach of lease. The decision adds another chapter to the Seventh District's fixed-versus-floating royalty interest saga.

Backstory

In 1916, F.H. Ward and H.L. Ward owned, as tenants in common (so each with an undivided one-half interest), 197.81 acres in Adams Township, Monroe County. By a 1921 warranty deed, F.H. Ward and his wife conveyed their one-half interest to H.L. Ward but reserved the following (the "Ward Reservation"):[2]

> The grantors for themselves, their heirs and assigns, reserves and except from this conveyance all the one-half part of all the royalty in oil and gas in and underlying all the premises above described. Said royalty interest reserved to be the one-sixteenth part of all the oil produced and saved from said premises, and the one-half part of any and all moneys received as rental for gas from gas wells drilled thereon; and the one-half part of any and all moneys received from sale of gasoline derived therefrom.[3]

The appellants (Marty et al.) own the surface of about 98.062 of those acres subject to the Ward Reservation, as well as part of the royalty. In 2012, they leased to Eclipse Resources I, L.P. (later SWN, now Expand Energy) at a 20% royalty rather than the standard 1/8, the property was pooled into three producing units, and royalties were paid. On May 24, 2022, SWN informed the appellants that, after reinterpreting the Ward Reservation as a floating one-half royalty instead of a fixed 1/16th, it had overpaid them and would

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deduct the overpayments from future royalties.[4]

The appellants sued 49 defendants, including the Ward heirs, ODMA (which acquired part of the Ward interest in 2016), and SWN. Among other relief, they sought a declaration that the Ward Reservation was a fixed 1/16 and not a floating one-half interest, as well as a ruling barring SWN from obtaining "refunds" of royalties already paid.[5]

Ruling on summary judgment, the trial court held that the Ward Reservation is a floating one-half royalty and that SWN's treatment of past royalty overpayments as advances on future royalties did not breach the lease.[6] The appellants appealed to the Seventh District.

"Non-Refundable" Does Not Mean "No Recoupment"

The Seventh District first tackled a question that Ohio courts had not directly addressed before: *whether recoupment of past overpaid royalties from future royalties is permissible where the lease provides that royalties are non-refundable*.[7] In answering yes, the Seventh District made two key findings.

First, it observed that its decision in *Cardinal Minerals*[8] — a case the appellants relied on for the argument that recoupment was not permissible — did not offer support because its discussion of recoupment was dicta:

> It [is] unclear how the words "recoup" or "recoupment" first entered the discussion in *Cardinal Minerals*, because that word in [sic] not found in the lease provisions under review (just as the idea of recoupment is not under review in this case). What is absolutely clear is that an appellate court's discussion of a trial court's dicta is also dicta.[9]

Next, the court agreed with the appellees that the common definition of "refund" is "to give back, send back, put back, or bring back to a former proper place."[10] And because SWN never asked the appellants to pay any royalties back, SWN never sought a refund, and never breached the prohibition on refunds:

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> Appellants urge us to project meaning into the word "refund" that is not part of its common definition. Appellants have not cited to anything in the leases preventing SWN from accounting for the royalties it is paying, balancing its books, or even recouping overpayments, as long as they do not seek a refund. * * * A non-refundable deposit, payment, or advance simply means the payor of the funds cannot demand that the payee reach into its own funds and directly return the money. A refund is the act of the payee returning funds. That did not happen here, and SWN did not ask or demand for Appellants to return funds from their own accounts.[11]

Fixed or Floating?

Adding to its existing jurisprudence on fixed-versus-floating royalty interests, the Seventh District also addressed the relatively complex Ward Reservation

The appellants argued that the Ward Reservation described a fixed one-sixteenth royalty interest because of the second sentence. The appellees, on the other hand, argued floating because the first sentence applies "one-half" to "all" the royalty in oil and gas.[12]

The Seventh District agreed with the appellees. In particular, the court noted that the appellants' reasoning would nullify the lead sentence, which clearly intended that the reservation was one-half, and the three sentences that followed it each described specific subjects, as opposed to qualifying the lead sentence. These, the Seventh District noted, were different in the nature to what a non-participating royalty owner would normally receive (e.g. oil produced and saved; moneys received as rental; moneys received from the sale of gasoline) and therefore properly classified as being additional to the one-half royalty interest set forth in the lead sentence.[13]

Marty is most significant because it is the first Ohio case to directly address the viability of recoupment of royalty overpayments, and the fact that the lease at issue expressly provided that the royalties were non-refundable adds to this significance.[14] That being said, *Marty* will almost certainly be appealed (to the Ohio Supremes) and, given the novelty of this issue, it may be one that the Ohio Supreme

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Court decides to review.

As for the floating-versus-fixed interpretation, *Marty* is by no means seminal but is an important addition to Ohio's evolving jurisprudence because it deals with a relatively complex reservation. [15]

For more information about this decision and its implications for your business, please contact the author or any member of FBT Gibbons' Oil, Gas & Minerals team.

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[1] *Marty v. ODMA Res., LLC*, No. 26 MO 0001, 2026-Ohio-4273, 2026 WL 3257542, ¶¶ 1-2 (Ohio Ct. App. Oct. 27, 2026).

[2] *Marty*, 2026-Ohio-4273, ¶ 4.

[3] *Id.* ¶ 4.

[4] *Id.* ¶¶ 5–7, 15.

[5] *Id.* ¶¶ 8–9.

[6] *Id.* ¶¶ 14–15.

[7] *Id.* ¶¶ 23, 29–30 (noting the lease provided that all royalty payments "are non-refundable" and that the court was "now directly confronted" with whether deducting overpaid royalties from future royalties constitutes a refund).

[8] *Cardinal Minerals, LLC v. Blatt*, 2025-Ohio-1159, ¶¶ 96–97 (Ohio Ct. App.) (stating, while addressing a trial court's dicta, that an identical non-refundable lease provision did not authorize the lessee "to recoup or recover a refund of lease payments already made," but finding any error "of no consequence" because the lessee asserted no refund or recoupment claim); see *Marty*, 2026-Ohio-4273, ¶¶ 23, 26–27, 29.

[9] *Marty*, 2026-Ohio-4273, ¶ 28.

[10] *Id.* ¶¶ 25, 32 (citing Black's Law Dictionary (12th ed. 2024) and Merriam-Webster, https://merriam-webster.com/dictionary/return); *see also Beverage Holdings, L.L.C. v. 5701 Lombardo, L.L.C.*, 2019-Ohio-4716, ¶ 13 (holding that common, undefined contract words are given their ordinary meaning unless manifest absurdity results).

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[11] *Id.* ¶ 32.

[12] *Id.* ¶¶ 44, 48–49.

[13] *Id.* ¶¶ 48–51, 55–59, 61; *see also Church of God v. Glann*, 93 Ohio App. 337, 340 (1952) (holding each part of a deed must be considered in relation to every other part and no portion may be disregarded as surplusage).

[14] *Marty*, 2026-Ohio-4273, ¶¶ 29–30, 32.

[15] *See Moore Fam. Tr. v. Jeffers*, 2023-Ohio-3653, ¶¶ 27, 37–39 (Ohio Ct. App.) (construing an 1896 assignment as conveying both a fixed 1/16 royalty under an existing 1894 lease and a floating one-half royalty under future leases, because the 1/16 fraction was shorthand for one-half of the then-"ubiquitous" 1/8 royalty); *Crum v. Mooney*, 2023-Ohio-4451, ¶¶ 22–25, 35 (Ohio Ct. App.) (holding that an 1898 assignment of "the one-half (1/2) part of his royalty Being 1/16 part of all the oil and gas" conveyed a fixed 1/16 interest, because it referred to a specific ("his") interest, did not reach future interests, and gave the 1/16 clause equal weight); *1803 Res., LLC v. Lineback*, 2025-Ohio-3271, ¶¶ 139, 146–150 (Ohio Ct. App.) (recognizing that the lead clause of a royalty reservation may be independent and grant broader rights than the clauses that follow); *Mineral Dev., Inc. v. SWN Prod. (Ohio), LLC*, 2023-Ohio-4749, ¶¶ 30–31 (Ohio Ct. App.) (construing an instrument to harmonize all of its provisions rather than produce conflict); cf. *U.S. Shale Energy II, LLC v. Laborde Props., L.P.*, 551 S.W.3d 148 (Tex. 2018) (holding that a reservation described as both an undivided one-half interest and a 1/16 interest created a floating interest); see also *Marty*, 2026-Ohio-4273, ¶¶ 45–47, 52–54, 60–61 (discussing each).

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