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THE STATUTORY OIL AND GAS LIEN IN OKLAHOMA

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The recent downturn experienced by Oklahoma's petroleum industry has left many drilling and production companies unable to pay for services and supplies that were furnished in the search for oil and gas. As a result, laborers and suppliers are frequently filing liens against producing wells. Messrs. Kinzie and Dancy examine the Oklahoma oil and gas lien and give direction to those who intend to utilize this statutory device to recover payment for services and materials.

I. INTRODUCTION

Federal and state energy policies instituted during the 1970's attempted to stimulate exploration and production of natural gas by prescribing price incentives for producers and altering the regulatory scheme established under the Natural Gas Act of 1938.¹ These policies were implemented to solve the curtailments and shortages experienced in the 1970's,² and were intended to insure an adequate national supply

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1. The Natural Gas Act of 1938, Pub. L. No. 75-688, 52 Stat. 821 (codified as amended at 15 U.S.C. §§ 717-717w (1982)), was passed "in response to reports suggesting that the monopoly power of interstate pipelines was harming consumer welfare." Public Serv. Comm'n v. Mid-Louisiana Gas, 103 S. Ct. 3024, 3029 (1983); see also Note, *Legislative History of the Natural Gas Policy Act: Title I*, 59 TEX. L. REV. 101, 107 (1980) (discussion of the Natural Gas Act of 1938). The purpose of the Act was to "assure an adequate, reliable and reasonably-priced supply of natural gas for the entire nation." Public Serv. Comm'n v. FERC, 610 F.2d 439, 442 (6th Cir. 1979). By the early 1970's, it was apparent that the regulatory structure was not achieving the purposes of the Act. *Mid-Louisiana Gas*, 103 S. Ct. at 3031.

2. The natural gas shortfall appeared to be permanent, and the accepted outlook was expressed in the House Committee Report on the Energy Policy and Conservation Act of 1975: "The fundamental reality is that this nation has entered a new era in which energy resources

of natural gas.³ During the 1980's, however, producers and pipelines have encountered a prolonged downturn in natural gas demand.⁴ Natural gas usage in the United States fell from 20 trillion cubic feet in 1981 to approximately 17 trillion cubic feet in 1983.⁵ It has been estimated that interstate pipelines took only sixty-five percent of the volume under contract in 1983, compared with an average take of eighty-one percent in 1982.⁶ Since approximately ten percent of the total domestic natural gas production originates from Oklahoma's twenty thousand producing gas wells,⁷ the state has been adversely affected by the downturn.⁸ Due to reduced demand⁹ and the contraction of the oil and gas industry in general, many oil and gas drilling and production companies operating in Oklahoma experienced financial difficulties. These economic problems resulted in a substantial increase in the number of mechanics and materialmen's liens filed against producing

previously abundant, will remain in short supply" H.R. REP. NO. 340, 94th Cong., 1st Sess. 1, reprinted in 1975 U.S. CODE CONG. & AD. NEWS 1763, 1763. Similarly, the outlook in 1977 for new natural gas production was not bright: "By 1985, gas from existing reservoirs will be able to satisfy only 55 percent of natural gas demand. It is doubtful that even substantial price increases could do much more than arrest the decline in gas production." EXECUTIVE OFFICE OF THE PRESIDENT, ENERGY POLICY & PLANNING, THE NATIONAL ENERGY PLAN 18 (1977).

3. The Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301-3432 (1982), established a comprehensive pricing scheme for natural gas which included pricing incentives for newly discovered natural gas. See *Mid-Louisiana Gas*, 103 S. Ct. at 3031-32. Price controls on old natural gas prevented unnecessary price increases and protected consumers from excessively high gas prices. See Note, *supra* note 1, at 116.

4. Natural gas consumption peaked in 1972 when 22 million cubic feet were consumed in the United States. ENERGY INFORMATION ADMIN., ANNUAL ENERGY REVIEW 1983, at 149 (1984). Excess natural gas supplies prompted some state agencies to enact specific regulations governing the ratable taking of gas from a given field or formation. See, e.g., Oklahoma Corp. Comm'n Oil & Gas Rule No. 1-305, [1983] OIL-LAW RECORDS CORP. 14A.

5. *Natural Gas Demand Continues to Slide*, ENERGY MGMT. (CCH) No. 577, at 3-4 (Feb. 7, 1984) (reduced consumption attributed to price increases, the recession, and relatively warm winters).

6. *Id.* at 4.

7. See INTERSTATE OIL COMPACT COMM'N, OIL & GAS COMPACT BULL., Dec. 1983, at S-27.

8. The State of Oklahoma receives a seven percent gross production tax on the value of the crude oil or natural gas produced within its borders. OKLA. STAT. tit. 68, § 1001(b) (1981). The state has lost a substantial amount of tax revenue due to the fact that natural gas production in Oklahoma has decreased from 1.9 Tcf in 1982 to 1.7 Tcf in 1983, primarily because many gas wells have been shut in for lack of market. See OKLAHOMA CORP. COMM'N, 1983 REPORT OF OKLAHOMA'S OIL & GAS CONSERVATION ACTIVITIES 2 (1984).

9. Oklahoma utilities have sharply reduced their natural gas consumption. In 1980, Public Service Company of Oklahoma generated eighty percent of its power from gas as opposed to only sixty percent in 1983. PUBLIC SERV. CO. OF OKLA., 1983 ANNUAL REPORT 15 (1984). Similarly, electricity produced by Oklahoma Gas and Electric Company's gas-fired units dropped from one hundred percent in 1976 to sixty percent in 1983. OKLAHOMA GAS & ELEC. CO., 1983 ANNUAL REPORT 10 (1984).

wells. This Article examines the purpose, procedures, and scope of the Oklahoma oil and gas lien.

II. OKLAHOMA MECHANICS AND MATERIALMEN'S LIENS

The general provisions of Oklahoma's lien laws define a lien as "a charge imposed upon specific property, by which it is made security for the performance of an act."¹⁰ Oklahoma courts have stated that mechanics and materialmen's liens¹¹ provide a means of enforcing the valid claims of material suppliers and laborers.¹² Additionally, the liens protect innocent third party purchasers by giving notice of claims against the property.¹³ One court has compared the mechanics and materialmen's lien to a notice of *lis pendens*.¹⁴ Unlike a notice of *lis pendens*, however, the statutory oil and gas lien relates back to the date the material was first furnished or the work was first performed.¹⁵ The lien holder thereby achieves a priority status superior to that of subsequent creditors.¹⁶

Mechanics and materialmen's liens were not recognized at common law or allowed in a court of equity.¹⁷ Because these liens are in derogation of common law, the Oklahoma courts have required that they be strictly construed.¹⁸ The oil and gas lien is created by statute and the language of the statute limits the scope of the lien beyond which it may not be extended.¹⁹ A lien is also a property right and

10. OKLA. STAT. tit. 42, § 1 (1981).

11. *Id.* §§ 141-154 (1981 & Supp. 1984).

12. *See, e.g.,* Riffe Petroleum Co. v. Great Nat'l Corp., 614 P.2d 576, 579 (Okla. 1980) (statute protects those who expend labor); National Gas Co. v. Ada Iron & Metal Co., 185 Okla. 415, 417, 93 P.2d 529, 531 (1939) (purpose of statute is to protect materialmen and laborers); American Tank & Equip. Co. v. T.E. Wiggins, Inc., 170 Okla. 504, 507, 42 P.2d 115, 118 (1934) (notice is given to owner that suppliers and laborers must be paid); Gaddis-Walker Elec. Co. v. Phillips Petroleum Co., 526 P.2d 964, 967 (Okla. Ct. App. 1974) (lien gives secondary protection if primary contractual rights fail).

13. *See In re Mahan & Rowsey, Inc.*, 27 Bankr. 883, 885 (Bankr. W.D. Okla. 1983).

14. *Sawyer v. Schick*, 30 Okla. 353, 355, 120 P. 581, 582 (1911).

15. OKLA. STAT. tit. 42, § 144 (1981) ("[L]ien shall be preferred to all other liens or encumbrances which may attach . . . subsequent to the commencement of or the furnishing or putting up of any such machinery or supplies . . .").

16. *See, e.g.,* Cyclone Drilling Workover v. Woods, 671 P.2d 688, 690 (Okla. Ct. App. 1983) (timely filed lien refers back and applies from the date materials first supplied or labor first performed).

17. *See* 2 L. JONES, A TREATISE ON THE LAW OF LIENS § 1184 (3d ed. 1914).

18. *See, e.g.,* Republic Bank & Trust Co. v. Bohmar Minerals, Inc., 661 P.2d 521, 523 (Okla. 1983); American Tank & Equip. Co. v. Wiggins, 170 Okla. 504, 505, 42 P.2d 115, 117 (1934).

19. *See, e.g.,* Riffe Petroleum Co. v. Great Nat'l Corp., 614 P.2d 576, 579 (Okla. 1980); Martin Coal & Coke Co. v. Brewer, 185 Okla. 169, 170, 90 P.2d 653, 654-55 (1939); American Tank, 170 Okla. at 505, 42 P.2d at 117.

courts are powerless to create liens merely on equitable grounds.²⁰ Once a lien has been properly filed, Oklahoma courts will allow it to be liberally enforced and amended. Before a lien has been established, however, the courts will strictly construe the statute.²¹

The statutory oil and gas lien is related to the mechanics and materialmen's lien.²² The first oil and gas lien statute, which was in effect prior to statehood,²³ was incorporated into the General Statutes of Oklahoma by the first general assembly.²⁴ The current oil and gas lien statute²⁵ has retained much of the original statutory language.²⁶

20. See, e.g., *Taylor v. B.B. & G. Oil Co.*, 207 Okla. 288, 291, 249 P.2d 430, 433 (1952); *Young v. J.A. Young Mach. & Supply*, 203 Okla. 595, 597, 224 P.2d 971, 973 (1950).

21. See, e.g., *Riffe Petroleum*, 614 P.2d at 579; *American Tank*, 170 Okla. at 505, 42 P.2d at 117.

22. The oil and gas lien statute is located under the general heading of Mechanics and Materialmen in title 42. While both types of liens protect laborers and suppliers of material, they differ in that the mechanics and materialmen's lien attaches to the real property while the oil and gas lien attaches to the oil and gas leasehold and its production. Compare OKLA. STAT. tit. 42, § 141 (1981) with OKLA. STAT. tit. 42, § 144 (1981).

23. Act of March 15, 1905, ch. 28, 1905 Okla. Sess. Laws 323.

24. See ELDER, GENERAL STATUTES OF OKLAHOMA 878 (1908).

25. The oil and gas lien reads as follows:

Any person, corporation, or copartnership who shall, under contract, expressed or implied, with the owner of any leasehold for oil and gas purposes, or the owner of any gas pipeline or oil pipeline, or with the trustee or agent of such owner, perform labor or services, including written contracts for the services of a geologist or petroleum engineer, or furnish material, machinery, and oil well supplies used in the digging, drilling, torpedoing, completing, operating, or repairing of any oil or gas well, or who shall furnish any oil or gas well supplies, or perform any labor in constructing or putting together any of the machinery used in drilling, torpedoing, operating, completing, or repairing of any gas well, or perform any labor upon any oil well supplies, tools, and other articles used in digging, drilling, torpedoing, operating, completing, or repairing any oil or gas well, shall have a lien upon the whole of such leasehold or oil pipeline, or gas pipeline, or lease for oil and gas purposes, the buildings and appurtenances, the proceeds from the sale of oil or gas produced therefrom inuring to the working interest, exempting, however, any valid, bona fide reservations of oil or gas payments or overriding royalty interests executed in good faith and payable out of such working interest, and upon the material and supplies so furnished, and upon any oil well supplies, tools, and other articles used in digging, drilling, torpedoing, operating, completing, or repairing any oil or gas well, and upon the oil or gas well for which they were furnished, and upon all the other oil or gas well fixtures and appliances used in the operating for oil and gas purposes upon the leasehold for which said material and supplies were furnished or labor or services performed. Such lien shall be preferred to all other liens or encumbrances which may attach to or upon said leasehold for gas and oil purposes and upon any oil or gas pipeline, or such oil and gas wells and the material and machinery so furnished and the leasehold for oil and gas purposes and the fixtures and appliances thereon subsequent to the commencement of or the furnishing or putting up of any such machinery or supplies; and such lien shall follow said property and each and every part thereof, and be enforceable against the said property wherever the same may be found; and compliance with the provisions of this article shall constitute constructive notice of the lien claimant's lien to all purchasers and encumbrancers of said property or any part thereof, subsequent to the date of the furnishing of the first item of material or the date of the performance of the first labor or services.

OKLA. STAT. tit. 42, § 144 (1981).

III. OIL AND GAS LIEN PROCEDURES

A. *Time to File*

In order to have a valid oil and gas lien, a lien statement must be filed with a county clerk in the manner provided by state statutes.²⁷ If the lien claimant is a contractor, the lien statement must be filed within four months from the date the work was last performed or the goods were last supplied.²⁸ A contractor has been defined as one who undertakes to perform a job or specific work, retaining in himself control of the means, method and manner of accomplishing the desired result, and accountable to his employer only for the result of his work.²⁹ If the claimant is a subcontractor, however, the statute requires the filing of a lien statement against the leasehold estate within ninety days from the date the materials were last supplied or services were last rendered.³⁰ The courts have defined a subcontractor as one who has entered into a contract for the performance of an act with a person who has already contracted for its performance.³¹

As noted above, lien filing requirements are generally strictly construed.³² It should therefore be noted that under a strict construction of the statute, the filing time for contractors would be calculated on a monthly basis while the period for subcontractors is measured in days.

26. The current lien statute increases the lien coverage to include sale proceeds of the produced oil and gas.

27. OKLA. STAT. tit. 42, § 146 (Supp. 1984) (prescribing method of filing under sections 141 through 143.4); *Forry v. Brophy*, 116 Okla. 99, 99-100, 243 P. 506, 506 (1926); *Joe Brown Co. v. Best*, 601 P.2d 755, 757 (Okla. Ct. App. 1979).

28. The notice requirement for oil and gas liens requires that: "Notice of the [oil and gas] lien shall be given and the materialman's statement or the lien of any laborer shall be filed, in the same manner as is provided for in Sections 141 through 143.4 of this title." OKLA. STAT. tit. 42, § 146 (Supp. 1984). Thus the contractor seeking to file an oil and gas lien is referred to section 142 which states: "Such statement shall be filed within *four (4) months* after the date upon which material was last furnished or labor last performed under contract" *Id.* § 142 (1981) (emphasis added).

29. *See Rogers v. Crane Co.*, 180 Okla. 139, 139, 68 P.2d 520, 521 (1937).

30. As discussed *supra* note 28, the oil and gas lien notice requirement uses the notice requirement for mechanics and materialmen's liens. Thus the subcontractor who seeks to file an oil and gas lien is referred to section 143 which states:

Any person who shall furnish any such material or lease or rent equipment used on said land or perform such labor as a subcontractor . . . may obtain a lien . . . by filing with the county clerk of the county in which the land is situated, within *ninety (90) days* after the date upon which material or equipment used on said land was last furnished or labor last performed under such subcontract.

OKLA. STAT. tit. 42, § 143 (1981) (emphasis added).

31. *Welling v. American Roofing & Sheet Metal*, 617 P.2d 206, 208 (Okla. 1980); *Dolase Bros. v. Andreopoulos*, 113 Okla. 18, 18, 237 P. 844, 844 (1925).

32. *See supra* notes 18-21 and accompanying text.

This difference could result in a late filing by a subcontractor if months are used to determine the last possible filing date instead of days.

The different filing periods for contractors and subcontractors may create additional problems in filing the lien because the operator of the well usually owns both a leasehold and a working interest in the well. Although it is arguable that each of the parties contracting with the operator could be considered an original contractor and therefore entitled to a four month filing period, a creditor should file a claim within ninety days to avoid the problems associated with the classification of contractors and subcontractors.³³

B. *The Lien Statement*

A mechanics and materialmen's lien must contain the following information: (1) a statement setting forth the amount claimed and identifying the material or labor supplied; (2) the name of the owner or owners of the property interest against which the lien is claimed; (3) the name of the contractor; (4) the name of the lien claimant; (5) the description of the property subject to the lien; and (6) a verification of the lien by affidavit.³⁴ In many instances, the statement setting forth the amount claimed and the materials supplied is attached to the lien statement as an exhibit which itemizes and identifies the labor or material in detail.

The description of the property on which a lien is claimed will be sufficient if it enables a party familiar with the locality to identify the premises intended to be described to the exclusion of other property.³⁵ Even an incorrect legal description will suffice if it enables a person to identify the premises with reasonable certainty.³⁶ It is not uncommon to find recorded liens which contain an incorrect legal description, yet correctly identify the well by name. Under the liberal enforcement approach, the lien should be enforceable if the well is described with reasonable certainty.

The statute requires the name of the owner against which the lien is filed to be listed on the lien statement.³⁷ It specifically exempts bona

33. The statutory requirements for a subcontractor filing are substantially identical to the requirements for a contractor, except for the time period in which to file. Compare OKLA. STAT. tit. 42, § 142 with OKLA. STAT. tit. 42, § 143.

34. OKLA. STAT. tit. 42, § 142.

35. *Blanshard v. Schwartz*, 7 Okla. 23, 31-32, 54 P. 303, 305 (1898).

36. *Kennedy v. Uhrich*, 178 Okla. 366, 366, 62 P.2d 994, 995 (1936); *Corbitt v. Logan*, 163 Okla. 86, 86, 20 P.2d 894, 894 (1933).

37. OKLA. STAT. tit. 42, § 142.

bona fide royalty interests, production payments, and overriding royalty interests from the scope of the statutory lien if such interests were conveyed in good faith and recorded.³⁸ The fact that the non-cost bearing royalty or overriding royalty must be bona fide and granted in good faith prevents a working interest owner from carving out a non-cost bearing interest solely to evade the statutory lien.³⁹ Therefore the lessor and royalty owners generally should not be named in the lien.⁴⁰ If a production payment or royalty interest is reserved but not recorded, and the creditor does not have actual or constructive notice of the reservation, then the interests will be subject to the statutory oil and gas lien and are not exempt from foreclosure actions.⁴¹ To avoid potential problems, overriding royalty interests should be recorded on a regular basis so that the interests will not be subject to a subsequently filed lien.

The oil and gas lien statute also requires identification of the material or labor supplied.⁴² When a number of wells have been drilled upon the same leasehold under different contracts, a separate lien statement should be filed for each well. In *Exchange National Bank of Tulsa v. Okeya Oil & Gas*,⁴³ four different wells had been drilled under separate contracts, but the contractor attempted to file one lien statement which claimed the total cost and expenses of all four wells.⁴⁴ The court held that the lien statement was null and void because the claimant failed to file separate lien statements under each contract within four months from the date when labor was last supplied under the contract.⁴⁵ Thus a claimant should itemize the services or goods on a well-by-well basis and file on each well separately.

Problems associated with the filing of a lien by a corporation were presented in *Davidson Oil Country Supply v. Pioneer Oil & Gas Equipment*.⁴⁶ A corporate supplier of material had filed an oil and gas lien which complied with the requirements of the Oklahoma oil and gas

38. *Id.* § 144.

39. If no "good faith" provision existed in the statute, a working interest owner in a well could grant an overriding royalty interest in the well to a subsidiary or sister company. The interest would not be subject to the lien, thereby effectively evading the statute.

40. If the royalty or overriding royalty interests are granted for the purpose of evading the statutory lien, or if these interests appear excessive, then the claimant may want to include the royalty or overriding royalty owners in the lien statement.

41. *Zone Oil & Gas Co. v. Dudley & Heath Drilling Co.*, 474 P.2d 395, 399 (Okla. 1970).

42. OKLA. STAT. tit. 42, § 142.

43. 107 Okla. 62, 229 P. 765 (1924).

44. *Id.* at 63, 229 P. at 765.

45. *Id.* at 64-65, 229 P. at 767.

46. No. CIV-82-1889-BT (W.D. Okla. filed Jan. 23, 1982).

lien statute. When the claimant attempted to foreclose, a party objected on the grounds that the lien statement was not attested, nor was the corporate seal affixed. As the lien affected real estate, the party argued that it was invalid for failure to comply with the statutory requirements of corporate execution.⁴⁷ The federal district court certified two questions to the Oklahoma Supreme Court. In answering the questions, the court stated that oil and gas lien statements are not within the recording statutes, and that defects in lien filings can be amended if the perfection requirements are properly met.⁴⁸ Before the court rendered its opinion, the Oklahoma Legislature amended the corporate execution statutes to provide that any officer or agent of a corporation can execute an oil and gas lien or release without meeting the corporate execution requirements of title 16.⁴⁹ While the amendment was not retroactive, the court stated that it clarified and codified the pre-existing legislative intent.⁵⁰

The lien statement must be filed with the county clerk of the county in which the oil and gas well is located.⁵¹ The county clerk will mail notice to the owners of the property that a lien has been filed against their interests.⁵² The lien is not effective against the proceeds from production held by the purchaser until a copy of the lien statement is sent by certified mail to the purchaser.⁵³ The filing of a lien statement does not deprive the owner of a property interest without due process because a lien statement is only a *de minimus* interference with the use and enjoyment of the property.⁵⁴

A lien statement may be amended by leave of court in the further-

47. Every instrument affecting real estate that is executed by a corporation must be subscribed by the president or vice-president, attested by the secretary or assistant secretary, and affixed with the corporate seal. OKLA. STAT. tit. 16, §§ 93-95 (1981).

48. *Davidson Oil Country Supply v. Pioneer Oil & Gas Equip.*, 55 OKLA. B.J. 1984, 1985 (1984).

49. OKLA. STAT. tit. 16, § 96 (Supp. 1984); *id.* tit. 42, § 154.

50. *Davidson*, 55 OKLA. B.J. at 1986.

51. OKLA. STAT. tit. 42, § 146 (Supp. 1984) (referring claimant to sections 142 and 143 of title 42).

52. *See id.* § 143.1. The notice should contain the date of filing, a legal description of the property, the amount claimed, the name and address of the person claiming the lien as well as the person against whom the claim is made, or the owner of the property. If the person against whom the claim is made or the owner of the property cannot be found within thirty days of filing, the claimant may serve a copy of the notice to the occupant of the property or, if unoccupied, may post a copy of the notice conspicuously upon the property. *Id.*

53. *Id.* § 144.1 (1981).

54. The landowner is not deprived of substantive use and enjoyment of the property. Instead the lien statement merely gives notice to all that a claim may be enforced against the land at some future time. *Mobile Components, Inc. v. Layon*, 623 P.2d 591, 596-97 (Okla. 1980), *cert. denied*, 454 U.S. 963 (1981).

ance of justice, except as to the amount claimed.⁵⁵ Oklahoma courts have expressed a liberal philosophy with respect to lien statement amendments once the lien has attached,⁵⁶ and have allowed such changes as correction of the legal description, addition to the lien statement of an itemized list of materials furnished by the claimant, and addition of a verification to the lien statement.⁵⁷

Oklahoma state courts have also allowed a claimant to amend and change the names of parties, or add unnamed parties to a lien statement.⁵⁸ In a recent bankruptcy decision, however, the court construed the Oklahoma lien statutes and held that a party could not amend his lien statement to name additional parties after the time for filing the lien had expired.⁵⁹ The court reasoned that to allow an amendment after the expiration of the filing period would permit the claimant to create and perfect a new lien against these owners, even though the statutory filing period had expired. Thus the claimant would retroactively create a lien when he otherwise would be precluded from asserting a lien.⁶⁰ This decision is in line with the general rule that amendments and the enforcement of a lien will be liberally allowed once a lien is perfected against an owner's interest; however, the lien statutes will be strictly construed prior to perfection of the lien.⁶¹

IV. ENFORCEMENT AGAINST COTENANTS

The Oklahoma Supreme Court in *Uncle Sam Oil Co. v. Richards*⁶² decided that an operator, as a cotenant, cannot file a mechanics and materialmen's lien against a non-operating cotenant in a well; statutory liens are available only when there is a contract between the owner of the lease and another for furnishing labor or material.⁶³ If the well was

55. OKLA. STAT. tit. 42, § 172 (1981).

56. See cases cited *supra* notes 18-21.

57. See, e.g., *In re Rhine*, 213 F. Supp. 527, 534 (D. Colo. 1963); *In re Mahan & Rowsey*, 27 Bankr. 883, 887 (Bankr. W.D. Okla. 1983); *Spurrier Lumber Co. v. Montgomery*, 165 Okla. 67, 67, 24 P.2d 1005, 1005 (1933); *Hemisphere Oil & Gas Co. v. Oil Well Supply*, 104 Okla. 83, 84, 230 P. 245, 246 (1924).

58. See, e.g., *Stan-American Oil Co. v. Archer*, 333 P.2d 527, 528 (Okla. 1958); *Ketcham v. Cunliff*, 77 Okla. 287, 287, 187 P. 1095, 1095 (1920).

59. See *In re Mahan & Rowsey*, 27 Bankr. at 887.

60. *Id.*

61. See *supra* notes 18, 21 and accompanying text.

62. 60 Okla. 63, 158 P. 1187 (1916).

63. *Id.* at 66, 158 P. at 1189-90; cf. *In re George Rodman, Inc.*, No. 83-1070 (Bankr. W.D. Okla. Nov. 23, 1984) (well operator may not perfect a lien against non-operator working interest owners).

drilled under an A.A.P.L. Model Form Operating Agreement,⁶⁴ however, the operator would have a contractual lien against the non-operating cotenants.⁶⁵ As operating agreements are seldom recorded, the lien would be unperfected and subordinate to any perfected or statutory liens. In order to protect the operator's interest, the operating agreement or a memorandum of its terms should be recorded in the county where the well is being drilled to give notice of the operator's lien.

The cotenants in *Uncle Sam* were functioning in a joint venture created by an oral contract.⁶⁶ A joint venture is a relationship that is formed for a specific purpose and a limited time and is governed by partnership law.⁶⁷ Under the modern A.A.P.L. Model Form Operating Agreement used in the drilling of most wells, it is expressly stated that it is not the intent of the parties to form a partnership or joint venture relationship.⁶⁸ The operator, under the Model Operating Agreement, is essentially an independent general contractor responsible for the commencement and the drilling of the well to a given formation or depth, and the operator retains exclusive control over the operations on the property.⁶⁹ Therefore an operator should be entitled to file a statutory lien because the contract, in effect, is between the owners of the leasehold and an independent general contractor for the furnishing of material and the supervision of operations.

64. The A.A.P.L. Model Form Operating Agreement governs the relationship of the operator and non-operating working interest owners. These agreements are widely used in the development and drilling of wells due to the fact that the standardized provisions facilitate negotiations and agreements between the parties. See Wigley, *AAPL FORM 610-1977 MODEL FORM OPERATING AGREEMENT*, 24 ROCKY MTN. MIN. L. INST. 693, 696-97 (1978).

65. The Model Form Operating Agreement provides that: "Each Non-Operator grants to Operator a lien upon its oil and gas rights in the Contract Area, and a security interest in its share of oil and or gas when extracted and its interest in all equipment, to secure payment of its share of expense, together with interest thereon . . ." A.A.P.L. FORM 610-1977 MODEL FORM OPERATING AGREEMENT, art. VII(B). For a discussion of security interests created under this provision, see Note, *Oil and Gas: Security Interests under the A.A.P.L. Form 610-1977 Model Form Operating Agreement*, 36 OKLA. L. REV. 916 (1983).

66. See *Uncle Sam*, 60 Okla. at 66, 158 P. at 1189-90.

67. See 2 H. WILLIAMS & C. MEYERS, *OIL AND GAS LAW* § 437 (1983); 4 W. SUMMERS, *THE LAW OF OIL & GAS* § 721.1 (1962 & Supp. 1984).

68. The Model Form Operating Agreement provides: "It is not the intention of the parties to create, nor shall this agreement be construed as creating a mining or other partnership or association, or to render the parties liable as partners." A.A.P.L. FORM 610-1977 MODEL FORM OPERATING AGREEMENT, art. VII(A) (1977).

69. *Id.* at arts. V-VI.

V. JUDGMENT AND FORECLOSURE

Before a material supplier or laborer can obtain a judgment and foreclose a lien against the owner's property, he must file a lien statement naming each owner against whom judgment is requested.⁷⁰ An action to foreclose an oil and gas lien must be brought within one year from the date that the lien is filed, and should be brought in the district court of the county in which the land is situated.⁷¹ If an owner is not named in the lien statement, the lien is not perfected against that interest. Any judgment of foreclosure entered against the unnamed owner is invalid; however, failure to name an owner does not invalidate the entire lien.⁷²

A number of different theories have been advanced by creditors in attempting to foreclose parties who are unnamed in the lien statements. When one or more parties voluntarily agree to drill a well and appoint an operator to manage and control the activities, the relationship between the parties under Oklahoma law is that of joint venturers unless modified by contract.⁷³ The lien claimant in the case of *In re Mahan & Rowsey*⁷⁴ argued that the well operator was acting as an agent for all of the working interest owners and therefore, an oil and gas lien naming only the operator would be valid against all working interest owners under agency law.⁷⁵ The court held that the parties had signed a 1977 A.A.P.L. Model Form Operating Agreement which expressly negated an agency relationship.⁷⁶ Absent a Model Form Operating Agreement, a court might find that the operator was acting as an agent for the working interest owners; therefore, the naming of the operator would be sufficient to foreclose the interest of the other working interest owners. To avoid such a result, a party voluntarily participating in the development of a lease should specify in the operating agreement or development contract that the parties intend a cotenant relationship rather than a partnership or joint venture.

The Oklahoma Supreme Court has held that the oil and gas lien

70. *See, e.g.*, *Forry v. Brophy*, 116 Okla. 99, 99, 243 P. 506, 506 (1926); *Joe Brown Co. v. Best*, 601 P.2d 755, 757 (Okla. Ct. App. 1979).

71. OKLA. STAT. tit. 42, § 172 (1981).

72. *See, e.g.*, *In re Mahan & Rowsey*, 27 Bankr. 883, 885-86 (Bankr. W.D. Okla. 1983); *Best*, 601 P.2d at 757.

73. *See, e.g.*, *Britton v. Green*, 325 F.2d 377, 383 (10th Cir. 1963); *Bosworth v. Eason Oil Co.*, 202 Okla. 359, 359, 213 P.2d 548, 549-50 (1949).

74. 27 Bankr. 883 (Bankr. W.D. Okla. 1983).

75. *Id.* at 885.

76. *Id.* at 886; *see also supra* note 68 (text of Model Form Operating Agreement).

extends only to the leasehold interest of the debtor, and that no personal judgment may be taken against any of the working interest parties unless they personally contract for or are partners with the party who contracted for the materials.⁷⁷ The oil and gas lien attaches only to the leasehold interest and the equipment thereon;⁷⁸ any judgment in excess of the value of the leasehold or equipment on which the lien has attached must be brought in a separate contract action against the parties to the contract.⁷⁹ The party foreclosing a valid lien is entitled to recover the principal amount under the lien,⁸⁰ interest,⁸¹ and reasonable attorneys' fees.⁸²

A mineral owner may discharge a materialmen's lien by depositing cash or surety bond equal to 125% of the amount claimed with the county clerk.⁸³ If cash is deposited, the county clerk shall immediately show the lien as discharged, and the lien claimant must proceed against the substituted security in the same time and manner as required for the foreclosure of a lien claim.⁸⁴ This procedure enables the mineral owner to immediately release a lien filed against his property prior to the determination of the amount owed under the lien, and avoids suspension of the purchaser's payments to the owner because of the lien. If a bond is deposited, the county clerk will release the lien after ten days if the claimant does not file objections to the bond.⁸⁵

VI. EXTENT OF THE LIEN

The statutory language of the oil and gas lien provides that the lien will attach "upon the whole of such leasehold," and will apply to any labor, supplies, materials, or machinery owned by the developing party and "used in the digging, drilling, torpedoing, completing, operating, or repairing of any oil or gas well."⁸⁶ Thus a lien can be filed against equipment or property which has not become attached to or consumed

77. See *McAnally v. Cochran*, 170 Okla. 368, 371-72, 46 P.2d 955, 959 (1935); *Conservation Oil Co. v. Graper*, 173 Okla. 127, 127, 46 P.2d 441, 441 (1935).

78. OKLA. STAT. tit. 42, § 144.

79. See, e.g., *McAnally*, 170 Okla. at 372, 46 P.2d at 959-60.

80. See *Lesh v. Branch*, 177 Okla. 211, 212-13, 58 P.2d 578, 580 (1936).

81. Interest is recoverable on damages due to a breach of contract if the damages are a sum certain. OKLA. STAT. tit. 23, § 6 (1981).

82. OKLA. STAT. tit. 42, § 176 (1981); see, e.g., *Kizziar v. Dollar*, 268 F.2d 914, 918 (10th Cir.), cert. denied, 361 U.S. 914 (1959); *Sooner Pipe & Supply Corp. v. Rehm*, 447 P.2d 758, 762 (Okla. 1968).

83. OKLA. STAT. tit. 42, § 147.1 (Supp. 1984).

84. *Id.*

85. *Id.*

86. *Id.* § 144 (1981). If the equipment is supplied by an independent contractor who is not a

on the leasehold.⁸⁷ In order for the lien to attach, the equipment must be used or furnished with the intent to further develop the lease, and the lease owner must have an interest in the equipment.⁸⁸ If an independent contractor supplied a drilling rig to develop the property, a lien would not attach to the independent contractor's equipment unless the leasehold owner had an interest in the equipment.⁸⁹ The fact that equipment owned by the developing party was removed from the lease premises before the lien statement was filed does not exclude the equipment from the lien if the equipment was used to develop the lease.⁹⁰

The material or labor supplied must be furnished for the development of a specific lease; a creditor cannot establish a lien where he has supplied materials on an open account which cannot be traced or connected to a specific leasehold.⁹¹ Therefore suppliers and laborers should keep separate invoices and accounting entries for each well so that all material supplied to or labor performed on a given well can be easily traced.

Because the lien by statute applies "upon the whole of such leasehold," it is uncertain as to whether the lien is limited to the leasehold in the drilling and spacing unit, or covers the entire lease. Because the statute requires that the owner of a well be named before his interest is foreclosed,⁹² and the drilling and spacing unit limits who can own and share in production from the well,⁹³ the lien probably should apply only to the drilling and spacing unit. Any other wells drilled on the lease but in other spacing units would be subject to separate liens.

VII. INCREASED DENSITY WELLS

The Oklahoma courts have not decided whether an oil and gas lien covering the initial well in a drilling and spacing unit should apply to subsequently drilled increased density wells on the same leasehold.

joint venturer with the developer, the equipment will not be subject to a statutory lien. *See Kissinger v. G.E. Burgher Oil & Gas Co.*, 174 Okla. 49, 49 P.2d 1049, 1049 (1935).

87. *See, e.g., Nemeroff v. Cornelison Engine Maint.*, 369 P.2d 604, 607 (Okla. 1962); *Cyclone Drilling & Workover v. Woods*, 671 P.2d 688, 690 (Okla. Ct. App. 1983).

88. *See Nemeroff*, 369 P.2d at 607 (lien for labor and material furnished off the leasehold could be asserted because they were supplied with the intent to further develop the lease).

89. *See Kissinger*, 174 Okla. at 50, 49 P.2d at 1050; *supra* note 87 and accompanying text.

90. *See Cyclone Drilling*, 671 P.2d at 690-91.

91. *See Sooner Pipe & Supply v. Rehm*, 447 P.2d 758, 761 (Okla. 1968).

92. OKLA. STAT. tit. 42, § 142 (owner against which the lien is claimed must be named in the lien statement and notified).

93. *See Petroleum Reserve Corp. v. Dierksen*, 623 P.2d 602, 605 (Okla. 1981); *In re American Quasar Petroleum*, 617 P.2d 181, 184 (Okla. 1980).

It can be argued that extending the lien on the initial well to increased density wells may discourage drilling for economic reasons. Thus the correlative rights of the mineral owners may not be protected, and waste may occur.⁹⁴ Additionally the state would not recover any additional tax revenues from the gross production tax if the increased density wells were not drilled.⁹⁵ On the other hand, the initial well in the unit incurs the substantial risk of exploration and the possibility of a dry hole.

The purpose of the materialmen's lien statute is to protect the laborer and supplier and to assure that they are compensated for the improvements and for the increase in value of the property.⁹⁶ Because the initial well, if productive, increases the value of the entire leasehold interest in the spacing unit, the lien should apply to any additional wells subsequently drilled in the spacing unit. In addition the original working interest parties will usually participate in the drilling of increased density wells. Because the working interest parties receive the benefits from the first well drilled, they should not be allowed to avoid a lien on the initial well by drilling increased density development wells. Permitting such an avoidance would frustrate the protection of laborers and suppliers.

While the extent of oil and gas liens has not been determined, support for extending the lien to increased density wells can be found in cases decided under mining law. These cases have held that where two or more mining claims are being operated as a unit, the miner's lien generally extends to the whole of the mining property.⁹⁷ In *Hamilton v. Delhi Mining Co.*,⁹⁸ the court stated that although there were several locations being worked, "the property was being developed as a single mine or claim, and that the improvement and labor thereon, wherever placed, was with the purpose and effect of enhancing the value . . . of each of the several locations embraced therein."⁹⁹ The court therefore recognized that the lien would apply against the entire mine instead of

94. The Oklahoma Corporation Commission has regulatory power to prevent waste and protect correlative rights. See, e.g., OKLA. STAT. tit. 52, §§ 86.3, 87.1, 237, 239 (1981 & Supp. 1984).

95. A seven percent tax on gross production is authorized by OKLA. STAT. tit. 68, § 1001(b) (1981).

96. See *supra* note 12 and accompanying text.

97. See, e.g., *Colorado Gold Dredging Co. v. Stearns-Roger Mfg. Co.*, 60 Colo. 412, 413, 153 P. 765, 766 (1916); *McIntyre v. Montana Gold Mountain Mining Co.*, 41 Mont. 87, 94, 108 P. 353, 356-57 (1910); see also 5 ROCKY MTN. MIN. L. FOUND., AMERICAN LAW OF MINING § 29.15 (1982) (miner's lien attaches to entire mine or mining claim).

98. 118 Cal. 148, 50 P. 378 (1897).

99. *Id.* at 152, 50 P. at 379.

just the specific location, and reasoned that the value of the entire mine was increased by the labor supplied.

VIII. CONCLUSION

The oil and gas lien has been provided to the materialman or laborer by statute, the first of which was enacted prior to statehood. The statute in existence today varies little from the earlier statutes, and grants the creditor a means of recovering its contribution towards developing and increasing the value of the leasehold. Due to the dramatic downturn of the oil and gas industry, the number of filed liens has mushroomed. The volume of litigation involving these statutes should result in the interpretation and determination of many unresolved issues.

APPENDIX

OIL AND GAS LIEN STATEMENT

No. _____

STATE OF OKLAHOMA)
)
COUNTY OF _____) SS:

_____, a corporation doing business in the County of _____ County, State of Oklahoma, has a claim against _____ for the sum of _____ Dollars (\$_____), being the balance due to it, and that the claim is made for and on account of labor, machinery and material furnished in the drilling of a well for oil and gas upon the lands and premises hereinafter described, and that such labor and material was last performed and furnished by it on the _____ day of _____, 19____, according to an itemized statement thereof hereunto attached, marked "Exhibit A", and made part of this statement; that such labor, machinery and material was performed pursuant to a contract with _____, and was performed upon and furnished for and used upon the following described premises:

_____ of Section _____, Township _____, Range _____, _____ County, Oklahoma,

that the said sum is just, due and unpaid, and _____ has and claims an oil and gas lien upon said leasehold, wells, equipment, pipe lines, buildings, and all tools and supplies located thereon or used in connection therewith, above set forth, according to the laws of the State of Oklahoma.

DATED this _____ day of _____, 19____.

By: _____
President

ATTEST:

Secretary

(SEAL)

STATE OF OKLAHOMA)
)
COUNTY OF _____) SS:

_____, of lawful age, being first duly sworn upon oath, says: That he is the President of said claimant corporation mentioned in the foregoing oil and gas lien statement; that he has read this statement and knows the contents thereof; that the name of the owner, the name of the contractor, the name of the claimant, the description of the property upon which

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the lien is claimed, and the items of the account as therein set forth, are just, true, correct and unpaid.

Subscribed and sworn to before me this
_____ day of _____, 19____.

Notary Public

My Commission Expires:

(SEAL)

NOTICE OF FILING OIL AND GAS LIEN

TO: _____

YOU ARE HEREBY NOTIFIED, that the undersigned, _____, of _____, did on the ____ day of _____, 19____, file its claim for an Oil and Gas Lien Statement, No. _____, in the Office of the Clerk of _____ County, State of Oklahoma, upon and against the following described real estate:

_____ of Section ____, Township _____, Range _____, _____ County, Oklahoma,

That the undersigned claimant asserts a lien on said property under Okla. Stat. tit. 42, § 144 and other applicable statutory provisions pursuant to a contract with _____, and this claimant asserts a lien upon said real estate in the sum of _____ Dollars (\$_____) by reason thereof, being the balance due this claimant on said account, and this notice is for the purpose of informing you of the filing of said statement and claim of lien.