

OIL AND GAS WELL LIENS

CAPDOA
EDUCATIONAL SEMINAR
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How harmful is an unpaid debt to the P&L?

Assume a business writes off a \$5,000 bad debt

It takes that business \$25,000 in revenue to offset that loss, assuming a 20% margin

It takes that business \$7,692.31 in revenue to offset that loss, assuming a 65% margin

Goals of seminar

- I. Help you spot potential problems
- II. Draft or refine protocols for your company
- III. Decide when to call a lawyer; what's at stake?

What is a lien?

Unpaid charge (encumbrance) on specific property

- Only applies to private property
- Provides advantages to creditors
- Lien claimants must strictly adhere to statutory requirements

Oklahoma Oil and Gas Well Liens

- ⦿ Available to:
 - Operators (may also have a contractual lien)
 - Contractors
 - Subcontractors
 - Materialmen

who performed work, furnished machinery or supplies on a well or pipeline

Rights to lien may be waived, e.g. MSA

42 O.S. § 144 et. sec.

Examples

- Written contracts for the services of a geologist or petroleum engineer are lien-able
- Rendering of title opinion does not constitute “services” that are lien-able
- One that “hauls with team equipment or appliances” is lien-able

What property does the lien attach to?

- Leasehold
- Materials, supplies and tools used in operating the well
- Proceeds
- Does not attach to royalty interest

When must the oil and gas well lien be filed?

- The lien must be filed within one hundred and eighty (180) days after the date that material or supplies were last furnished or labor last performed

42 O.S. § 146

See also In re Cornerstone E&P Company, L.P., 436 B.R. 830

What information is included on the lien statement?

- ⦿ A statement setting forth the amount claimed and identifying the material or labor supplied
- ⦿ The name of the owner or owners of the property interest against which the lien is claimed
- ⦿ The name of the contractor
- ⦿ The name of the lien claimant
- ⦿ The description of the property subject to the lien
- ⦿ A verification of the lien by affidavit

How is the lien enforced?

- Debtors can bond around the lien
- Lien needs to be foreclosed on within one year of the filing of the lien statement
- Among co-lien claimants, those with greatest debt typically take the lead in foreclosure action
- Lien often cleared with the sale of well(s)

Effectiveness of Lien Against Purchaser

- Lien may extend to proceeds of oil or gas produced from lease if:
- Properly filed lien statement delivered to purchaser by registered or certified mail

42 O.S. 144.1

Who has priority?

- Lien claimants stand in equal status to each other
- Oil and gas Lien vs. A Mortgage Lien:
 - Determined from the date of first labor or the material is furnished to lease.
- Oil and gas Lien vs. Factoring Agent

Fixing mistakes on Liens & Extensions of time

- Generally, a lien statement may be amended except for the amount claimed. However, if the time for filing the lien had expired, you are unable to add omitted parties.
- In short, you cannot get extensions of time. There are still other remedies available, such as a breach of contract or an unjust enrichment claim.
- If a lien is fatally flawed, consider releasing that lien and resubmitting corrected statement

Why is a Lien so effective?

- ⦿ Suspension of Production Payments
- ⦿ Constraints on Borrowing
- ⦿ Breach of Trust 42 O.S. § 144.2
- ⦿ Attorneys' Fees to prevailing party

What steps does an attorney take when filing lien?

- **Review the contract (MSA)**
- **Identify the well name and location**
- **Compute filing period (review work orders rather than invoices)**
- **Check Oklahoma Secretary of State**
 - Ensure that client is in good standing
 - Determine debtor's status
- **Check debtor's court records (state, federal and bankruptcy)**
- **Check and double check the claimed amount**
- **Determine whether there is a counterclaim (do we have clean hands?)**
- **Determine whether any other liens filed against leasehold**
- **Determine production volume for oil and gas**
- **Determine purchasers for oil and gas**
- **Make a courtesy call to debtor**
- **Send a pre-lien notice**
- **File lien**
- **Ensure that lien is received by debtor**
- **Provide notice of lien to oil and gas purchasers**
- **Ensure that debtor receives notice of suspended funds**

Texas Mineral Lien

- Not later than six months after the day the indebtedness accrues, the lien must be filed
- A mineral subcontractor must serve a pre-lien notice not later than the 10th day before the lien is filed
- Lien does not extend to proceeds

V.T.C.A., Property Code § 56.021

North Dakota Well or Pipeline Construction Lien

- The lien statement must be filed within six months after the date on which the claimant's labor was last performed or material or services were last furnished
- Lien extends to proceeds

NDCC, 35-24-11

Observations

- Debtors are delaying payments
- On existing loans, Lenders are asking for additional collateral
- Its foreseeable that debtors may negotiate debt with creditors
- Lien rights may be assigned
- Weak competitors will be washed out
- Look for sole source opportunities
- Offerings are being improved
- Great fortunes are made in these times!

Conclusion

- Contact me if you have questions
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- My website has a white paper on the topic