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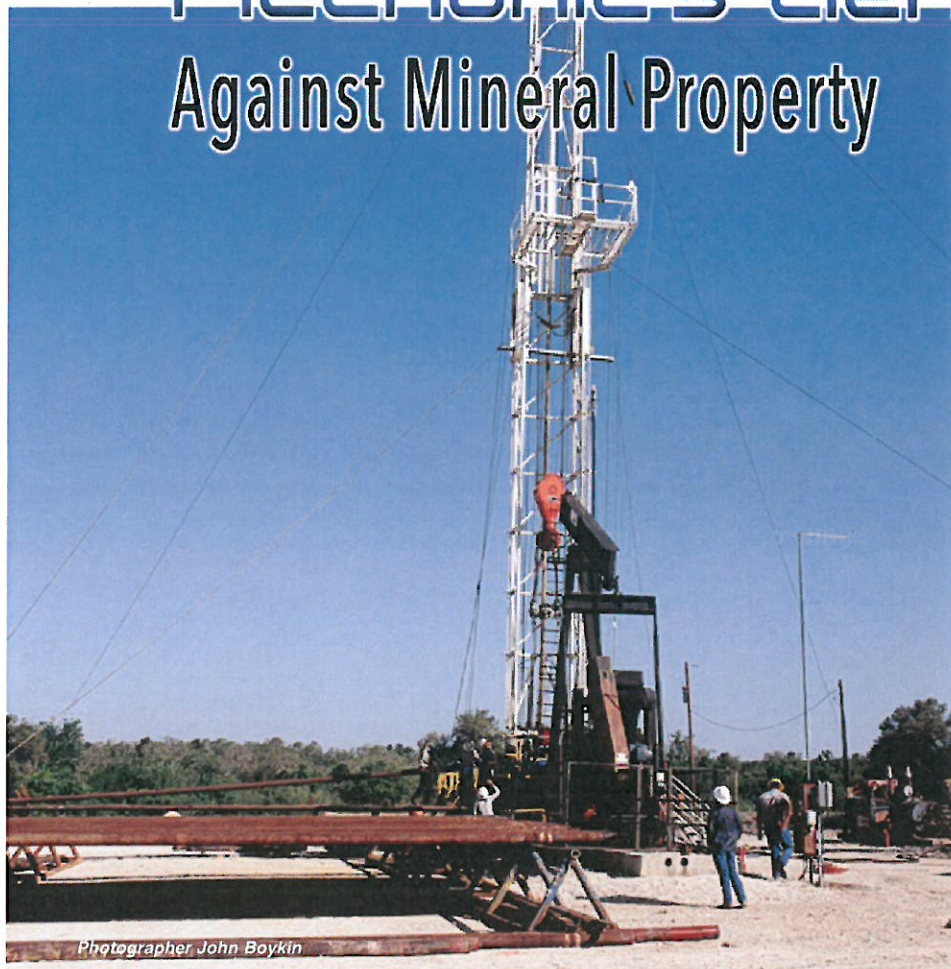
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# Mechanic's Liens Against Mineral Property

A Primer for the  
Soon-to-be-Initiated

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Photographer John Boykin

**W**ith the current downturn in oil prices comes the inevitable rise in lien claim filings against oil and gas properties not seen since the 2008-2012 downturn cycle. Operators will see their decreasing cash-flows leading to increasing unpaid invoices. Oilfield service providers will begin to see their DSO start to climb along with disputes over their invoice charges.

In many states, oilfield service providers have the ability to claim a lien specifically against the well, pipeline, and even the lease and pool/unit for which they performed work. This lien is security for the work performed and the secured property can be foreclosed upon and sold. In some states, an oilfield service provider can even notify a purchaser/gatherer for a producing

well of their claim and have the proceeds suspended pending resolution of the claim. If the downturn in prices steepens or is prolonged, bankruptcies for some operators may also be looming on the horizon.

***In many states, oilfield service providers have the ability to claim a lien specifically against the well, pipeline, and even the lease and pool/unit for which they performed work.***

Operators and oilfield service providers need to familiarize themselves with the procedures for claiming and defending against such liens, as well as assess the

costs/benefits in taking such action. But be warned, filing a lien claim is considered the nuclear option by many operators because it is often a breach of their operating agreement leading to disastrous results for the operator. So, before escalating and going down that path, both the operator and the oilfield service provider should exhaust all other attempts at collection in order to maintain, if possible, a working relationship down the road; your sales personnel will thank you.

Each state has its own peculiar procedures, including different deadlines, notices and remedies, requiring companies that operate or perform work in multiple

jurisdictions to be extra vigilant. For example, in Texas and North Dakota, an oilfield service provider has 6 calendar months from the date of last work to file a lien claim, but the deadline is 180 days in Louisiana and even less in other states.

You may think there is no difference between 6 calendar months and 180 days, but there is, and missing a deadline can be catastrophic for the ability to collect. In addition to filing a lien

claim, many states including Texas, require an oilfield service provider to provide a pre-lien notice to their operator and/or the operator's contractor and all of the working interest owners in the mineral property to be claimed against. The failure to provide the required pre-lien notice will invalidate any timely filed lien claim.

Federal offshore operators and service providers need to know which state laws and rules they have to follow and in which county/parish lien claims must be filed. For example, in the Gulf of Mexico, the

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rules and procedures for filing a lien are generally determined by which state is located directly north of the offshore well location. However, in the coastal bend of Texas, a claimant may need to file their lien in the county located directly north and in the county located directly west. Additionally, claimants need to be wary if the mineral property straddles multiple counties/parishes or multiple states.

The rules and procedures of enforcing and defending liens in bankruptcy, even though under the heavily regulated and codified

bankruptcy statutes and rules, is highly dependent on the laws of the state where the well, pipeline, lease, or unit is located. For example, in Texas, if an oilfield service provider performed work prior to the filing of a bankruptcy, that service provider can still claim and file a lien against the mineral property after the bankruptcy filing. Normally, undertaking any collection activity post-bankruptcy is considered a violation of the automatic stay, a bankruptcy provision which protects debtors. However, Texas law allows a lien to be valid from the first date of work by the claimant and if the date of first work was before the bankruptcy filing, that lien can be filed post-bankruptcy. Other states do not allow a lien to relate back to the date of first work, instead such liens are valid only upon filing. In those states, a filing after the bankruptcy filing is considered a violation of the automatic stay leaving the lien claimant open to sanctions by the bankruptcy court. A lien claim is also useful as a defense against the powerful bankruptcy tool of preference avoidance that a bankruptcy debtor can use to snap-back any payments made to creditors within 90 days of the bankruptcy filing. My experience with bankruptcy has shown that creditors with secured claims are far more likely than unsecured

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creditors to recover something from the bankruptcy debtor.

Here are a few suggestions for oilfield service providers to help prepare for a possible lien claim:

1) Calendar the statutory lien deadline once work has stopped on a well or pipeline. Even though you may still be doing work for the same operator or company on another well or pipeline, or even the same well or pipeline again a few months later, that work may not stop the lien filing deadline clock from ticking away.

2) Obtain detailed information regarding the project location. Field personnel are only concerned on how to get to a project location, so they often do not take care to include in a daily ticket the name of the operator, well or unit, or even the county. Knowing the name of the well, operator and county, can help you locate valuable well

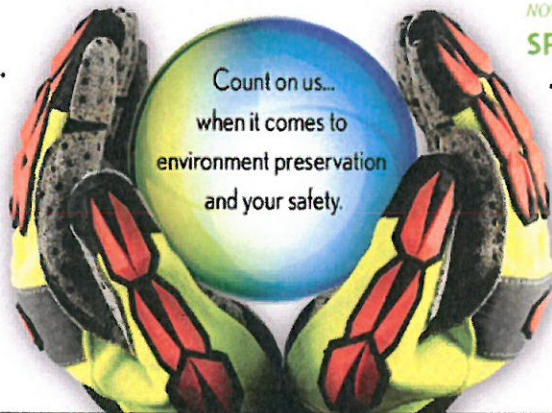


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permitting information from the state regulatory agency overseeing oil and gas activity, which will greatly assist in the preparation of your lien claim. In Texas, a lien claimant can claim not only against a well, but against the entire lease and even unit where the well is located. So, if the well you performed work on is shut-in or a dry hole, your lien claim can extend to other producing wells located on the same property.

3) Get legal counsel or a landman involved at least 45 days prior to your lien deadline. Even though you may have taken care to gather enough information to prepare a rudimentary lien claim, you should have the leasehold title of the property you intend to claim against examined to determine who all of

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the owners of the working interest are in order to provide adequate pre-lien notice to those parties. Often, the company that hired you is not an owner of the working interest, and naming only your contractor/operator in a lien claim in such a case may likely result in an invalid and unenforceable lien claim. It usually takes at least 2 weeks to pull title information and most pre-lien notices must be given

at least 10 days prior to the lien filing deadline.

The effectiveness of a lien claim is usually dependent on the value of the property claimed against. Now is the time to educate your field, credit, finance and legal personnel about lien claims while cash flows are still positive and acquisitions of mineral properties still prevalent. 📢

**ABOUT THE AUTHOR:** Mr. Koel is an Associate Attorney at Jones Gill LLP, Houston, Texas. Prior to becoming licensed to practice law in the State of Texas, he worked as a petroleum landman, conducting title examination in central and east Texas. Mr. Koel's practice includes oil and gas law in a wide variety of matters, including



title examination, division orders, collection and bankruptcy for oilfield services providers, mineral liens, leases, participation agreements, right-of-way and pipeline easement agreements, and surface use agreements. Mr. Koel also has experience with real estate, wind energy, business, estate planning, and probate.

Mr. Koel is admitted to practice law before all State Courts in Texas and Colorado, as well as the Federal and Bankruptcy Courts for the Southern District of Texas and the Fifth Circuit Court of Appeals. Mr. Koel is Board Certified in Oil, Gas, and Mineral Law by the Texas Board of Legal Specialization. He is a member of the State Bar of Texas, including the Oil, Gas and Energy Resources Law section and the Real Estate, Probate, and Trust Law section. Mr. Koel is also a member of the Colorado Bar Association, the College of the State Bar of Texas, the Fort Bend County Bar Association, the Katy Bar Association, the Houston Association for Professional Landmen, and the West Houston Association of Professional Landmen.



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