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# THE FUNDAMENTALS OF OIL AND GAS MECHANICS' LIENS

Robert L. Schmid\*

## I. INTRODUCTION

Although one could probably find a more esoteric subject combination than mechanics' liens and oil and gas interests, even this topic has its subtle shades and intriguing nuances which make it fascinating. It is even more captivating when one realizes the often substantial amount at stake and the identity of the parties playing the game before the legislature or the courts.

A few preliminary comments regarding the nature of mechanics' liens are necessary. Often denominated mechanics' and materialmen's liens,<sup>1</sup> this legal device is a child of the legislature or the state constitutional process; it is not of common law origin.<sup>2</sup> One justification for this statutory remedy is that when real property is improved through the efforts of a laborer or through goods furnished by a materialman, the laborer and the materialman should be paid and the realty owner should not profit at their expense.<sup>3</sup>

Since mechanics' and materialmen's liens are legislative products, it is essential to read relevant state statutes to determine the details of this

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1. Often referred to as simply "mechanics' liens" herein.

2. *Permian Corp. v. Arco Steel Corp.*, 508 F.2d 68, 75 (10th Cir. 1974) (oil and gas liens are creatures of statute); *DaMac Drilling, Inc. v. Shoemaker*, 11 Kan. App. 2d 38, \_\_\_, 713 P.2d 480, 483 (1986) ("entirely statutory device"); *Continental Casualty Co. v. Associated Pipe & Supply Co.*, 279 F. Supp. 490 (E.D. La. 1967) (referring to Louisiana law); *Riffe Petroleum Co. v. Great National Corp.*, 614 P.2d 576 (Okla. 1980) (by implication); *Crutcher, Rolfs, Cummings, Inc. v. Big Three Welding Equipment Co.*, 224 S.W.2d 884, 888 (Tex. Civ. App. 1949) (finding that mechanics' and materialmen's liens, unknown at common law, were either constitutional or statutory), *rev'd*, 229 S.W.2d 600 (Tex. 1950); *Cities Serv. Oil Co. v. Pubco Petroleum Corp.*, 497 P.2d 1368, 1371-72 (Wyo. 1972) (oil and gas lien laws held to be purely statutory).

3. *Cashman v. Russell*, 33 Ariz. 451, \_\_\_, 265 P. 606, 607 (1928) (holding that "[t]he object of our lien statute is to prevent the owner of mines or mining claims from obtaining the labor of miners, laborers and others who may labor in the improvement of such mining property, or in extracting ores therefrom, without paying for such labor").

legal device. For example, some lien statutes give these liens priority dating from the first labor or the first furnishing of material for the project, even though a specific lien claimant may not have done his work or furnished his materials until a later time.<sup>4</sup> Similarly, these statutes often place laborers in a preferred class.<sup>5</sup>

In addition to examining relevant statutory law, it is necessary to research judicial precedents to discern the true meaning of the lien legislation. Judicial interpretation is tempered by the basic attitude of courts toward legislative disturbance of the common law. On the one hand, some courts are committed to a strict construction of their state's mechanics' and materialmen's lien statutes on the ground that such statutes are in derogation of the common law.<sup>6</sup> On the other hand, other courts construe the statutes liberally because they are remedial in nature.<sup>7</sup> Finally, a few courts espouse an intermediate approach, that the statute should be strictly construed in determining whether a claimant is entitled to the benefits of the statute, but if the claimant is entitled, then the statute is to be liberally construed in the claimant's favor.<sup>8</sup>

The extractive industries, and particularly the oil and gas industry,

4. See, e.g., CAL. CIV. PROC. CODE § 1203.56 (Deering 1981) ("[l]ien . . . arises on the date of the furnishing of the first item of material or services or the date of performance of the first labor for which a lien is claimed"); OKLA. STAT. tit. 42, § 144 (1981) (similar import).

5. E.g., CAL. CIV. PROC. CODE § 1203.57 (Deering 1981). The 1987 Utah "Oil, Gas and Mining Liens" statute places all lien claimants on the same footing, although the Utah general lien statute gives priority to laborers. UTAH CODE ANN. § 38-10-107 (1987) provides for equal priority for all liens under the 1987 "Oil, Gas and Mining Liens" statute. Under the general lien statute, UTAH CODE ANN. § 38-1-14 (1974), subcontractors who are laborers or mechanics, working by the day or piece without furnishing materials, get paid first, as a class. Other subcontractors and materialmen come next, and then the original contractors.

6. See, e.g., *Eagle Star Ins. Co. v. Parker*, 261 F. Supp. 257 (W.D. La. 1965) (Louisiana law governing privileges "stricti juris," and no attachment of debtor's property other than drilling rig and its appurtenances); *Calvert W. Exploration v. Shamrock*, 234 Kan. 699, 675 P.2d 871 (1984) (strict construction because lien laws confer special privileges); *McClellan v. Haley*, 237 S.W. 627 (Tex. Civ. App. 1922) (lien on drilling rig denied as statute allowed only lien on land or leasehold interest, pipeline, right of way, or the buildings or appurtenances).

7. E.g., *Southeastern Alaska Mining Corp. v. Zavodsky*, 60 F.2d 24 (9th Cir. 1932) (Alaska was a territory at the time); *Cashman v. Russell*, 33 Ariz. 451, —, 265 P.2d 606, 607 (1928) (remedial because "[t]he object of our lien statute is to prevent the owner of mines or mining claims from obtaining the labor of miners, laborers and others who may labor in the improvement of such mining property, or in extracting ores therefrom, without paying for such labor"); *Cal-Cut Pipe & Supply Inc. v. Haradine Petroleum, Inc.*, 35 Cal. App. 3d 359, 110 Cal. Rptr. 666 (1973) (liberal construction required by statute).

8. E.g., *Bridgeport Mach. Co. v. McKnab*, 136 Kan. 781, 18 P.2d 186 (1933) (strict in determining lien, liberal in enforcing lien); *Davidson Oil Country Supply Co. v. Pioneer Oil & Gas Equip. Co.*, 689 P.2d 1279, 1281 (Okla. 1984) (liberality in enforcing lien once it has attached, not in determining whether lien exists); *In re Rodman, Inc.*, 38 Bankr. 822, 823-24 (Bankr. W.D. Okla. 1984) (strict construction to determine if statutory requirements met, but liberal construction once perfected, construing Oklahoma law).

introduce unusual problems into the area of mechanics' and materialmen's liens.<sup>9</sup> Oil and gas mechanics' and materialmen's liens may differ significantly from typical mechanics' and materialmen's liens on construction or repair of a residential or commercial structure on realty. Many states have specific statutes concerning mechanics' liens for the oil and gas industry,<sup>10</sup> which are the subject of this article. Because the drafting of these statutes is often ambiguous, it is difficult to interpret both the scope of this legislation and the meaning of many of the terms therein. The following discussion will concentrate on several areas covered by oil and gas lien statutes which present interpretive problems for the practitioner.

In general, oil and gas mechanics' and materialmen's lien legislation covers at least four substantive areas. The first area concerns those persons or entities entitled to a lien. The second area of concern is what kind of performance creates the right to impose a lien. The third area covers persons or entities subject to the imposition of such liens. Finally, the fourth area concerns the property upon which mechanics' and materialmen's liens operate.

A discussion of the persons entitled to a lien necessitates a discussion of those services that create the right to impose a lien. Persons entitled to a lien usually include "laborers" who perform work, "materialmen," and "suppliers" or "furnishers" of materials. However, the interpretation of these statutory terms becomes problematic when determining which services these persons must perform to be entitled to a lien. For example, it is unclear whether "laborer" is restricted to only those persons who perform manual labor, or whether this term also includes those who engage in more sophisticated, managerial labor. Likewise, the terms "suppliers" and "furnishers" present interpretation problems. These bare terms do not indicate whether materials furnished must be actually consumed in the project, whether those who furnish

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9. A limited number of states have specific legislation for traditional mining enterprises. *See, e.g.*, ALASKA STAT. §§ 34.35.125-.170 (1985) (although the statute covers oil, gas, and other wells, it is primarily aimed at traditional mining); ARIZ. REV. STAT. ANN. §§ 33-989 to -990 (1974) (mines and mining claims in traditional sense); IDAHO CODE §§ 45-501 to -517 (1977) (traditional mining and mining claims and other usual mechanics' lien coverage); MICH. COMP. LAWS ANN. § 570.194 (West 1967) (MICH. STAT. ANN. § 26.410 (Callaghan 1982)) (concerns "mining, smelting or manufacturing iron, copper, silver, or other ores or minerals, in the upper peninsula of this state"). Until modified in 1987, the general Utah mechanics' lien statute covered mines and mining claims and oil and gas. UTAH CODE ANN. § 38-1-3 (1986) ("mining claim, mine, quarry, oil or gas well, or deposit").

10. *See infra* notes 12-31.

materials on a rental basis are included, or whether those hauling or transporting the materials are covered.

In addition to the interrelationship between those entitled to a lien and the services they perform, there exists a relationship between persons entitled to claim a lien and the persons subject to its imposition, usually the "owners." Several questions arise concerning this latter relationship. One question is whether or not a contract is required. Additional questions arise when a subcontractor and those who work for and supply materials to the subcontractor are involved. A further consideration is whether the term "owner" refers to the owner of the property, or to the one for whom the work is done or the supplies are furnished. It must be established what constitutes ownership and what property is "owned." For example, a conflict may arise when labor is performed or materials are provided on behalf of an owner whose interest in the land or lease is only fractional.

The next general area of mechanics' and materialmen's liens deals with the "property" upon which the lien may be imposed. Several questions relevant to this area include whether "property" is limited to an interest actually owned by the owner and whether a lien may be imposed on the property of the owner of a defeasible interest. Additional questions arise when the lien claimant is the owner of a fractional mineral interest but seeks to impose a lien upon other fractional mineral interests in the same land.

The above paragraphs present fundamental questions inherent in the interpretation of most oil and gas mechanics' and materialmen's lien statutes.<sup>11</sup> Although the four areas presented above are separate areas of inquiry, their lines of demarcation are not always clear in reality. Thus, there may be overlaps and repetition in the following sections which discuss these areas separately. As a springboard for discussion, the statutes and case law from the following jurisdictions are examined: Alaska,<sup>12</sup>

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11. Although there is a myriad of other issues which may arise in connection with interpreting lien laws, these issues will not be treated in this article. These issues include: which steps are necessary to effect such liens, when these steps must be taken, when a lien claimant has priority vis à vis other lien claimants, what effects bankruptcy proceedings have on priority, and finally, whether liability can be avoided by a "no lien notice." An example of a "no lien notice" is found in the 1987 Utah "Oil, Gas and Mining Liens" statute, UTAH CODE ANN. § 38-10-109 (1987), which has a provision purporting to establish a procedure whereby one owner of an interest can avoid a lien on his interest arising from activities of another interest owner.

12. ALASKA STAT. §§ 34.35.125-.170 (1985) (covers mines and oil and gas wells).

Arizona,<sup>13</sup> Arkansas,<sup>14</sup> California,<sup>15</sup> Colorado,<sup>16</sup> Idaho,<sup>17</sup> Illinois,<sup>18</sup> Iowa,<sup>19</sup> Kansas,<sup>20</sup> Kentucky,<sup>21</sup> Louisiana,<sup>22</sup> Michigan,<sup>23</sup> Missouri,<sup>24</sup> Montana,<sup>25</sup> New Mexico,<sup>26</sup> Oklahoma,<sup>27</sup> Texas,<sup>28</sup> Utah,<sup>29</sup> and Wyoming.<sup>30</sup> The examination of case law and statutes from various jurisdictions illustrates the similarities and differences among jurisdictions, while conveying the fundamental principles of oil and gas mechanics' and materialmen's liens.

## II. PERSONS OR ENTITIES ENTITLED TO A LIEN

In defining who is entitled to a lien, statutory language ranges from a "person"<sup>31</sup> through more expansive declarations, such as "any person, corporation, firm, association, partnership, materialman, artisan, laborer,

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13. ARIZ. REV. STAT. ANN. §§ 33-989 to -990 (1974) (covers mines and mining claims).

14. ARK. STAT. ANN. §§ 18-44-201 to -211, and §§ 18-44-301 to -305 (1987) (covers "wells, mines, and quarries — trucking and teaming contractors").

15. CAL. CIV. PROC. CODE §§ 1203.50-.66 (Deering 1981) (oil and gas liens).

16. COLO. REV. STAT. §§ 38-24-101 to -111 (1982) (liens on wells and equipment).

17. IDAHO CODE §§ 45-501 to -517 (1977 & Supp. 1987) (general statute covers mines and mining claims).

18. ILL. ANN. STAT. ch. 82, §§ 71-95 (Smith-Hurd 1987) (oil and gas lien act).

19. IOWA CODE § 84-25 (1984) (section brings oil and gas wells and pipelines under the basic mechanics' lien statute).

20. KAN. STAT. ANN. §§ 55-207 to -210, -212 to -215 (1983) (oil and gas leases and pipelines; and transporters of oil-field equipment).

21. KY. REV. STAT. ANN. §§ 376.140-.160 (Michie/Bobbs-Merrill 1972).

22. LA. REV. STAT. ANN. § 9:4861-4867 (West 1983 & Supp. 1987) (privilege for labor, services, and hauling).

23. MICH. COMP. LAWS ANN. § 570.194 (West 1967) (MICH. STAT. ANN. § 26.140 (Callaghan 1982)) (iron and copper mining lien); MICH. COMP. LAWS ANN. §§ 570.251-.264 (West 1967) (MICH. STAT. ANN. §§ 26.423(1)-.423(16) (Callaghan 1982)).

24. MO. ANN. STAT. §§ 259.110, 259.130 (Vernon Supp. 1988) (spacing unit lien).

25. MONT. CODE ANN. §§ 71-3-1001 to -1012 (1987) (laborers' and materialmen's liens on oil and gas wells and pipelines).

26. N.M. STAT. ANN. §§ 70-4-1 to -15 (1987) (liens for labor, materials, and hauling for oil and gas wells and pipelines).

27. OKLA. STAT. tit. 42, §§ 144-146 (1981 & Supp. 1987) (oil and gas well liens).

28. TEX. PROP. CODE ANN. § 56.001-.045 (Vernon 1984) (liens against mineral property).

29. UTAH CODE ANN. §§ 38-10-101 to -115 (Supp. 1987). Although previously this statute had contained no specific oil and gas provisions, mining, mining claims, quarries, and oil and gas wells *had* been included in §§ 38-1-1 to -26.

30. WYO. STAT. §§ 29-3-101 to -111 (1981 & Supp. 1987) (mines, quarries, oil, gas, and other wells).

31. The Alaska statute is a model of simplicity, stating that "[a] person who, at the instance of the owner" shall be entitled to a lien. ALASKA STAT. § 34.35.125 (1975). The Kentucky statute similarly refers simply to "any person." KY. REV. STAT. ANN. § 376.140 (Michie/Bobbs-Merrill 1972). Louisiana, which has managed to spawn some of the more esoteric litigation in the oil and gas and pipeline mechanics' lien field, uses only "any person." LA. REV. STAT. ANN. § 9:4681 (West 1983 & Supp. 1987).

or mechanic."<sup>32</sup> The Texas statute defines the expression "mineral contractor" as "a person who performs labor or furnishes or hauls material, machinery or supplies used in mineral activities . . . ."<sup>33</sup> In its definition section, the recently enacted Utah "Oil, Gas and Mining Liens" statute defines a lien claimant as "contractors, subcontractors, or any person who claims a lien under this chapter."<sup>34</sup> The Utah statute then abandons the expression "lien claimant" and uses the more conclusory phrase "contractors, subcontractors, and all persons performing work upon, or furnishing materials or equipment" as the definition of those entitled to a lien under the statute.<sup>35</sup>

Mechanics' lien statutes differ with regard to the requirements claimants must meet in order to be entitled to a lien. For example, whereas most of the statutes specify that the claimant must have had a contractual<sup>36</sup> relationship with the owner and some indicate that the contract may be express or implied,<sup>37</sup> the Louisiana statute does not require a contractual relationship.<sup>38</sup> Furthermore, while most of the statutes provide a lien for one who provides materials or supplies, only California and Montana expressly cover one who provides equipment on a rental basis.<sup>39</sup> In addition, some states even provide for haulers to obtain liens.<sup>40</sup>

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32. ARK. STAT. ANN. § 18-44-202 (1987).

33. TEX. PROP. CODE ANN. § 56.001(2) (Vernon 1984).

34. UTAH CODE ANN. § 38-10-101(1) (Supp. 1987).

35. UTAH CODE ANN. § 38-10-102(1) (Supp. 1987).

36. *E.g.*, UTAH CODE ANN. § 38-10-102(1) (1987) ("under contract with").

37. *See, e.g.*, CAL. CIV. PROC. CODE § 1203.51(c) (Deering 1981) (" 'contracts' means a contract, written or oral, express or implied, or partly express and partly implied, or executory or executed, or partly executory and partly executed"); ILL. ANN. STAT. ch. 82, § 71 § 1(d) (Smith-Hurd 1987) (identical language); MICH. COMP. LAWS ANN. § 570.251 (West 1967) (MICH. STAT. ANN. § 26-423(1) (Callaghan 1982)) (similar language); MONT. CODE ANN. § 71-3-1002(1) (1987) (similar language); N.M. STAT. ANN. § 70-4-1 (1987) (similar); OKLA. STAT. tit. 42, § 144 (1981 & Supp. 1987) (similar); TEX. PROP. CODE ANN. § 56.001(2) (Vernon 1984) (for a mineral contractor, an express or implied contract is needed); WYO. STAT. ANN. § 29-3-103 (Michie 1981 & Supp. 1987) (contract).

38. LA. REV. STAT. ANN. § 9:4861 (West 1983 & Supp. 1988).

39. *See, e.g.*, CAL. CIV. PROC. CODE § 1203.51(9) (Deering 1981). MONT. CODE ANN. § 71-3-1001(1) (1987) defines "furnish" as sell or rent. Some cases have held that a lessor of equipment is not entitled to a lien. *E.g.*, *Wilkinson v. Pacific Mid-West Oil Co.*, 152 Kan. 712, 107 P.2d 726 (1940).

40. *E.g.*, ARK. STAT. ANN. §§ 18-44-301 to -305 (1987); *see also* CAL. CIV. PROC. CODE § 1203.51(f) (Deering 1981) (defines "services" to include hauling of material); KAN. STAT. ANN. §§ 55-212 to -215 (1983); LA. REV. STAT. ANN. § 9:4861 (West 1983 & Supp. 1988); N.M. STAT. ANN. § 70-4-1 (1987); TEX. PROP. CODE ANN. § 56.001(2) (Vernon 1984) (includes one who hauls material within the definition of mineral contractor).

### A. *What Services Claimants Must Perform*

State statutes also differ with regard to what kinds of services persons must perform to be entitled to a lien. Although most state statutes do not expressly provide a lien for professional services, such as that of a lawyer, geologist, or petroleum engineer, there are some exceptions to this general rule. For example, the new Utah statute is an exception, authorizing a lien for "title services, designs, plats, plans, maps, specifications, drawings, estimates of cost, surveys, permitting, or regulatory compliance."<sup>41</sup> Oklahoma specifically provides a lien for the services of a geologist or a petroleum engineer.<sup>42</sup> In addition, the Kansas Court of Appeals has recently construed the Kansas statute to include a professional geologist's services, indicating that the distinction between manual labor and more sophisticated services was not controlling.<sup>43</sup>

Some cases have construed the class of recipients of lien privileges to include those who have performed manual labor,<sup>44</sup> but not to include those who have provided services of a more professional nature, such as the rendering of a division order title opinion,<sup>45</sup> or the services of a professional surveyor.<sup>46</sup> In a very early case, the Texas Court of Appeals said that "watching" a lease while doing work for others was not the

41. UTAH CODE ANN. § 38-10-102(2)(c) (1987).

42. OKLA. STAT. tit. 42, § 144 (1981 & Supp. 1987).

43. DaMac Drilling, Inc. v. Shoemake, 11 Kan. App. 2d 38, \_\_\_, 713 P.2d 480, 486 (1986). The court adopted the following definition of labor: "[w]ork performed in the on-site advancement of the construction, repair or operation of an oil or gas well such that the leasehold owner would be unjustly enriched if not burdened by a lien shall constitute lienable labor under K.S.A. 55-207 regardless of whether it involves manual or mental toil." *Id.*

44. This has included a watchman or caretaker in Alaska, *Freeming v. Southeastern Alaska Mining Co.*, 8 Alaska 309 (1931), and the manual labor performed by one who also served part of the time in a professional capacity, *Waara v. Golden Turkey Mining Co.*, 60 Ariz. 252, 135 P.2d 149 (1943).

45. The court denied a lien under the Oklahoma statute to an attorney for rendering a division order title opinion. *In re Bunker Exploration Co.*, 48 Bankr. 708 (Bankr. W.D. Okla. 1985). The court said that the case was a matter of first impression in Oklahoma. A law firm rendered a division order title opinion, and when payment was not forthcoming, the firm filed an oil and gas lien against the well. Subsequently, the client filed for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 1101-1146 (1982). The court rejected the law firm's argument that the division title opinion was "services rendered in the operating and completing of an oil and gas well and therefore entitled to" a lien under OKLA. STAT. tit. 42, § 144 (1981). The court said that the statute must be strictly construed, citing *Riffe Petroleum Co. v. Great Nat'l Corp.*, 614 P.2d 576 (Okla. 1980), that the legislature did not include title opinions when the statute was amended in 1963 to include the services of geologists and petroleum engineers, because attorneys are "better equipped to protect themselves than were laborers and materialmen." *In re Bunker Exploration Co.*, 48 Bankr. 708, 710 (Bankr. W.D. Okla. 1985).

46. *In McGee v. Missouri Valley Dredging Co.*, 182 So. 2d 764 (La. Ct. App. 1966), a surveyor for pipeline crossings was denied a lien on the pipeline at the crossing.



kind of labor contemplated by the statute; the statute meant manual labor.<sup>47</sup> Recently, a bankruptcy court in Colorado held that the creation of business plans for pipelines, securing a market for the gas from the pipelines, and similar activities did not constitute "labor" for lien purposes under the Texas lien statute.<sup>48</sup> In addition, not all labor is entitled to a lien, particularly if the type of undertaking does not comport with the statute's requirements. Thus, in *Big Three Welding Equipment Co. v. Crutcher, Rolfs, Cummings*,<sup>49</sup> dismantling of a pipeline did not suffice.

#### B. *Suits Between Co-owners of Property*

Another intriguing issue of recent judicial and legislative interest is whether one fractional interest owner can obtain a lien on the interests of other fractional interest owners when they do not "pay up" to the operating owner. Although a few earlier cases indicated that mechanics' liens were not an available remedy for one co-owner against another,<sup>50</sup> more recent cases permit a working interest co-owner to obtain a statutory lien on the interest of defaulting nonoperating co-owners.

In *Kenmore Oil Co. v. Delacroix*,<sup>51</sup> the Louisiana Court of Appeals held that the operating working interest owner was entitled to a privilege<sup>52</sup> against the working interest of other nonoperating co-owners who had not contributed their share of the costs of the operation. The operator came within the scope of the Louisiana statute which authorizes a privilege for "[a]ny person . . . who performs any labor or service in the operation or in connection with the operation of any oil, gas, or water well or wells. . . ."<sup>53</sup> According to the court, this provision was for the benefit of those who procured the services necessary to operate a well, as was done by the operator in this instance, and also for those who actually

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47. *Bell Oil & Ref. Co. v. Price*, 251 S.W. 559 (Tex. Civ. App. 1922) (construing TEX. REV. CIV. STAT. arts. 5622, 5636, 5639 (Vernon Supp. 1918)). In *Basinger v. Mount Vernon Oil & Gas Co.*, 176 La. 489, 146 So. 32 (1932), one of the claimants was a laborer and the boss.

48. *In re Anderson Resources Corp.*, 61 Bankr. 583 (Bankr. D. Colo. 1986). The court applied Texas law to the case. Finding no definition of the term "labor" in TEX. PROP. CODE ANN. § 56.001(2) (Vernon 1984), the court said it should resort to the case law of Texas, and then cited *Bloom v. Richards*, 2 Ohio St. 387 (1853), and *Moore v. American Industrial Co.*, 138 N.C. 304, 50 S.E. 687 (1905) for the view that "labor" has a well defined meaning: "continued exertion of the more onerous and inferior kind usually and chiefly consisting in the protracted exertion of muscular force . . ." 61 Bankr. at 585.

49. 149 Tex. 204, 229 S.W.2d 600 (1950).

50. *Kinne v. Duncan*, 315 Ill. App. 577, 43 N.E.2d 425 (1942); *Gaudreau v. Smith*, 137 Kan. 644, 21 P.2d 330 (1933); *Uncle Sam Oil Co. v. Richards*, 60 Okla. 63, 158 P. 1187 (1916).

51. 316 So. 2d 468 (La. Ct. App. 1975).

52. Louisiana jurisprudence often uses the word "privilege" where common law jurisdictions would use the word "lien."

53. *Kenmore Oil Co.*, 316 So. 2d at 469 (citing LA. REV. STAT. ANN. § 9:4861 (West 1983)).

did the work or furnished the materials. The court of appeals rejected the argument that since the statute spoke in terms of a privilege against the entire working interest, it could not be exercised against a fractional interest.<sup>54</sup> The court concluded that, “[w]e can see no reason, either under the terms of R.S. 9:4861 or as a matter of policy, why the operator should not enjoy the privilege or why he might not exercise it against less than all of the working interest.”<sup>55</sup>

The Illinois Court of Appeals in *John Carey Oil Co. v. W.C.P. Investments*,<sup>56</sup> and the Oklahoma Supreme Court in *Amarex, Inc. v. El Paso Natural Gas Co.*,<sup>57</sup> have recently come to the same conclusion as the Louisiana Court of Appeals. These courts have held that a working interest operator may obtain a lien under the respective state’s oil and gas mechanics’ lien law against a nonoperating co-owner.

In *John Carey Oil Co.*, the Illinois court held that a fractional interest co-owner operator could impose a statutory lien on the fractional interest of a nonoperating co-owner. In so doing, the court expressly abandoned an earlier appellate court case which had held that “an oil and gas lien may not attach to a co-owner’s interest in an oil and gas leasehold to secure payment of monies expended by another co-owner in developing the same leasehold . . . .”<sup>58</sup> Often, a co-owner of an oil and gas lease is only an investor who plays no role in the day to day operations conducted on the leasehold, but does agree to pay its share of the expenses in return for its share of the profits.<sup>59</sup> The court found that permitting the operating co-owner to have a lien on the working interest of a nonoperating co-owner was consistent with modern authority,<sup>60</sup> and with the theory underlying mechanics’ liens, that owners of property benefitted by improvements should pay the improvements where such are induced or encouraged by their acts. The court held that in this case, the interests of all of the defendants in the oil leases at issue were possibly enriched by the services and materials which were supplied.<sup>61</sup>

The court considered the argument that permitting a co-owner to

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54. *Id.* (citing *Blasingame v. Anderson*, 236 La. 505, 108 So. 2d 105 (1959) for the view that a “privilege was extended to an owner-operator, against the holder of a fractional working interest”).

55. *Id.*

56. 159 Ill. App. 3d 333, 511 N.E.2d 727 (1987) (abandoning *Kinne v. Duncan*, 315 Ill. App. 577, 43 N.E.2d 425 (1942)).

57. 58 OKLA. B.J. 1565 (1987) (1987 WESTLAW 415).

58. *John Carey Oil Co.*, 159 Ill. App. 3d 333, —, 511 N.E.2d 727, 730 (1987).

59. *Id.* at —, 511 N.E.2d at 731.

60. *Id.* (citing *Blasingame v. Anderson*, 236 La. 505, 108 So. 2d 105 (1959), and *Kenmore Oil Co. v. Delacroix*, 316 So. 2d 468 (La. Ct. App. 1975)).

61. *Id.* at —, 511 N.E.2d at 732.

impose a lien on another co-owner's interest might permit the lien improperly to take priority over third-party creditors. In response, the court held that even though a co-owner might claim a lien against another co-owner's interest in the same oil leasehold, those parties who might be adversely affected by such a lien could put forth evidence that the lien was not premised on expenditures benefitting the interest in the leasehold against which the lien was asserted. If a third-party creditor could establish that any portion of the amount of such a lien did not represent expenditures benefitting the interest claimed by the lien, the third-party creditor's claim would be given priority over the co-owner's lien.<sup>62</sup>

In *Amarex, Inc. v. El Paso Natural Gas Co.*,<sup>63</sup> the Oklahoma Supreme Court responded to the certified question of whether the operator of an oil and gas lease could perfect its contractual operator's lien against the interest of another working interest owner by filing a lien in the form of a mechanic's and materialman's lien statement, or instead, whether the operator had to perfect its interest within the recording statutes as an instrument affecting real estate.<sup>64</sup> The court held that the operator had not perfected<sup>65</sup> its contractual lien<sup>66</sup> as to third parties because it had not complied with the requirements of the state recording law. However, the court held that the requirements for effecting a contractual lien and the requirements for effecting a statutory mechanics' lien were not the same. Therefore, the claimant could perfect the statutory lien based upon its compliance with the terms and meaning of the oil and gas mechanics' lien statute.<sup>67</sup>

In reaching its holding, the court was confronted with conflicting

62. *Id.*

63. 58 OKLA. B.J. 1565 (1987) (1987 WESTLAW 415).

64. *Id.* (citation omitted).

65. Although this is bankruptcy language, it seems to be working its way into the lien field.

66. The transaction involved the A.A.P.L. Form 610-1977 Model Form Operating Agreement which purports to create a contractual lien in favor of the operator against the interests of nonoperating working interests. The court quoted the relevant portion of the agreement:

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. . . . In addition, upon default by any non-operator in the payment of its share of expenses, operator shall have the right, without prejudice to other rights or remedies, to collect from the purchaser the proceeds from the sale of such non-operator's share of oil and/or gas until the amount owed by such non-operator, plus interest, has been paid.

*Amarex*, 58 OKLA. B.J. at 1565. The court said that liens could be created by contract or by operation of law and that the instant contractual lien would be valid between the parties to the operating agreement even though it would not be valid as to third parties because of failure to have recorded a recordable document concerning the contractual lien. *Id.* at 1566.

67. OKLA. STAT. tit. 42, §§ 144-46 (1981).

precedent. Although an earlier Oklahoma case had permitted an operator to have a statutory lien on a co-owner's interest,<sup>68</sup> a more recent bankruptcy court decision had held that an operator was not entitled to a statutory lien on the interest of a non-operating co-owner's working interest.<sup>69</sup> That latter decision was based on a 1916 Oklahoma opinion which had held that "a statutory oil and gas lien was not available when the underlying contract was for the development of common property."<sup>70</sup> In discussing the 1916 case, the court said that it saw no significant distinction between an operator who owns an interest in the lease and one who does not. Further, the lien statute's language, "[a]ny person, corporation or copartnership," which describes who may be entitled to a lien, carries no indication that it also means "any person except an owner." The court overruled the 1916 opinion to the extent it was inconsistent with the *Amarex* opinion.<sup>71</sup>

In addition to its holding and analysis above, the court discussed the types of services performed by an operator and found that the managerial functions of the operator qualified as "labor" under the statute. Referring to the statute's inclusion of the services of a geologist or petroleum engineer as being eligible for a lien, the court found no difference between the quality of benefits from a geologist or petroleum engineer and the "managerial and administrative functions of the operator under the Model Form Operating Agreement."<sup>72</sup> In addition, as the operator is bound to pay for the labor and services provided under contracts to develop the lease, and although the operator usually has a contractual lien, the court found no reason for its not being able to assert the statutory lien.

Utah, like Oklahoma, has recognized the operator's rights to a lien, but has done so statutorily, not by common law. The "Oil, Gas and Mining Liens" statute, recently enacted in Utah, attempts to expressly

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68. *Cleary v. Sewell*, 299 P.2d 524 (Okla. 1956). Although the case involved a written operating agreement, the final determination of the trial court was that the operator had a statutory lien. This was affirmed by the Oklahoma Supreme Court without much serious discussion about the propriety of such a lien.

69. *In re George Rodman, Inc.*, 38 Bankr. 826 (Bankr. W.D. Okla. 1984).

70. *Amarex, Inc. v. El Paso Natural Gas Co.*, 58 OKLA. B.J. 1565, 1567 (1987) (referring to holding of *Uncle Sam Oil Co. v. Richards*, 60 Okla. 63, 158 P. 1187 (1916)).

71. *Id.* at 1568.

72. *Id.* The court also said that many commentators agreed, and referred to Kinzie & Dancy, *The Statutory Oil and Gas Lien in Oklahoma*, 20 TULSA L.J. 179 (1984); 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); Haas & Wickes, *Oil and Gas Liens*, 31 ROCKY MTN. MIN. L. INST. 18-1 (1980); Note, *Oil and Gas: Operator's Liens in Bankruptcy—The Model Form Operating Agreement Versus the Trustee in Bankruptcy's Avoiding Powers*, 37 OKLA. L. REV. 141 (1984).

authorize a lien in favor of an operator against interests of nonoperating co-owners.<sup>73</sup> The first part of the statute states that the operator under a joint operating agreement, unit operating agreement, or other operating agreement granting one owner control of operations shall not be considered to be the agent or contractor of nonconsenting, nonoperating owners. The second portion of the statute purports to give the operator a lien on "the interest of all nonoperating owners for work performed, or materials or equipment furnished by the operator . . . ." Presumably this means work performed and materials or equipment furnished by the operator, and only to the extent that the nonoperator has failed to pay its share of the costs of the project. If it also means that the operator shall have a lien on the interest of nonconsenting, nonoperating owners, it would seem to be inconsistent with the rights of co-owners generally. Usually, absent agreement otherwise, a nondeveloping co-owner is not personally liable for expenses incurred by the developing co-owner. However, the developing co-owner may recoup its expenses apportionable to the interest of the nondeveloping co-owner from the nondeveloping co-owner's share of production.<sup>74</sup>

### III. SERVICES WHICH ENTITLE THE PERFORMER TO A LIEN

Although there is no general rule as to which services entitle the person rendering them to a lien, the issue will likely be resolved in favor of one who performed the services as long as the services rendered reasonably come within the ambit of the governing statute. The following have been held to be "lienable" activities: cleaning out a well,<sup>75</sup> working tailings,<sup>76</sup> operating rigs,<sup>77</sup> working as a miner,<sup>78</sup> reworking a well,<sup>79</sup> capping and sealing a well,<sup>80</sup> providing professional geologists' services,<sup>81</sup>

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73. UTAH CODE ANN. § 38-10-102(3) (1987). The statute reads:

(3) For purposes of this section, the operator under a joint operating agreement, unit operating agreement, or other agreement granting one owner control of operations on the production unit shall not be considered to be the agent or contractor of the nonconsenting, nonoperating owners. The operator shall, however, have the lien granted under Subsection (1) upon the interest of all nonoperating owners for work performed, or materials or equipment furnished by the operator; and the nonoperating owners shall have the lien granted under Subsection (1) upon the interest of the operator for work performed, or materials or equipment furnished by third persons to the extent the nonoperating owners have paid or advanced funds to the operator for such work, materials, or equipment.

74. *Prairie Oil & Gas Co. v. Allen*, 2 F.2d 566 (8th Cir. 1924).

75. *Altom v. Mount Vernon Oil & Gas Co.*, 174 La. 775, 141 So. 457 (1932).

76. *Baker v. Waite*, 158 Cal. App. 2d 379, 322 P.2d 512 (1958).

77. *Basinger v. Mount Vernon Oil & Gas Co.*, 176 La. 489, 146 So. 32 (1932).

78. *Bell v. Wright*, 25 Ariz. 97, 213 P. 575 (1923) (under mining lien statute).

79. *Coiled Tubing, Inc. v. Morris*, 420 So. 2d 1267 (La. Ct. App. 1982).

80. *Craig H. Hisaw, Inc. v. Bishop*, 95 Idaho 145, 504 P.2d 818 (1972) (water well).

performing emergency repairs of a drilling rig,<sup>82</sup> furnishing gasoline, oil, and other materials to a driller,<sup>83</sup> repairing a drilling rig engine,<sup>84</sup> and crushing rock in connection with a quarry.<sup>85</sup>

In contrast with those recognized activities above, other activities have been questioned or denied status as "lienable" activities. For example, dismantling of a pipeline was held not to justify a lien.<sup>86</sup> As noted earlier, an attorney's title opinion has been found insufficient to enable the performer to assert a lien on this service.<sup>87</sup> The issue of whether or not hauling and/or transporting should be "lienable" activities is obfuscated by inconsistent case law.<sup>88</sup> Although several states have specific provisions for a transporter's lien,<sup>89</sup> even these statutes may be strictly construed.<sup>90</sup>

#### IV. AGAINST WHOM THE LIEN OPERATES

Although the specific language differs among the various jurisdictions, in order for a lien to be imposed on property, the claimant usually must show that the work was performed or the material or equipment

81. DaMac Drilling, Inc. v. Shoemaker, 11 Kan. App. 2d 38, 713 P.2d 480 (1986). However, not all professional services fare so well. In Waara v. Golden Turkey Mining Co., 60 Ariz. 252, 135 P.2d 149 (1943), the professional services of an engineer were not within the ambit of the statute although his manual labor would have been, had the two not been commingled.

82. Ideco Div. of Dresser Indus., Inc. v. Chance Drilling Co., 309 F. Supp. 305 (S.D. Tex. 1968), *aff'd*, 422 F.2d 165 (5th Cir. 1970).

83. Idom v. Moss, 32 So. 2d 411 (La. Ct. App. 1947).

84. Nemeroff v. Cornelison Engine Maintenance Co., 369 P.2d 604 (Okla. 1962) (even though the repair was done off the leasehold and the engine, although returned, was not thereafter used).

85. O.O., Inc. v. Cape Mountain Rock Products, Inc., 77 Or. App. 159, 712 P.2d 159 (1985) (rock crushing held to be "working or operation of a mine" for lien purposes).

86. Big Three Welding Equip. Co. v. Crutcher, Rolfs, Cummings, 149 Tex. 204, 229 S.W.2d 600 (1950) (on the ground that dismantling did not constitute "operating, completing, maintaining or repairing"). A similar result was obtained in Taylor v. B.B. & G. Oil Co., 207 Okla. 288, 249 P.2d 430 (1952) (removal of pipe from an abandoned pipeline was not within the statute).

87. *In re Bunker Exploration Co.*, 48 Bankr. 708 (Bankr. W.D. Okla. 1985).

88. In an early case, the Arizona Supreme Court held hauling mining supplies and materials to the mines to be within the statute. Cashman v. Russell, 33 Ariz. 451, 265 P. 606 (1928). Also, in Vincent v. Cooper, 24 So. 2d 503 (La. Ct. App. 1946), trucking of a rig to a well was held to be within the statute. However, in Stanton Transp. Co. v. Davis, 9 Utah 2d 184, 341 P.2d 207 (1959), the court did not allow a lien for the cost of transporting a rig. It is not clear that the 1987 Utah "Oil, Gas and Mining Liens" statute would permit a lien simply for the transporting of equipment. See UTAH CODE ANN. § 38-10-102 (1987).

89. *E.g.*, KAN. STAT. ANN. §§ 55-212 to -215 (1983).

90. In Calvert W. Exploration Co. v. Shamrock, 234 Kan. 699, 675 P.2d 871 (1984), the Kansas statute was strictly construed. No lien was allowed under the general oil and gas mechanics' lien statute because transporting was not encompassed in "digging, drilling, etc.," and the specific transportation lien statute was also unavailing because that statute gives a lien only to the extent of the interest in the equipment possessed by the owner or operator with whom the transporter has contracted. Since, the transporter in *Calvert* had contracted with someone other than the owner or operator, he had no lien.

furnished at the "instance"<sup>91</sup> of the owner.<sup>92</sup> The statutes differ with regard to who is an "owner" for purposes of determining whether or not the claimant is entitled to a lien. For example, some statutes use language like "the owner of the mining claim, or his contractor."<sup>93</sup> Other statutes elaborate more fully by using language such as "owner or lessee . . . or with the trustee, agent, or receiver of any such owner. . . ."<sup>94</sup> California's statute is inclusive in one sense, but restrictive in another. While California's definition of "owner" includes a person holding any interest in the legal and/or equitable title, it is restricted to the owner of any leasehold for oil or gas purposes, or his agent. However, the definition also includes purchasers under an executory contract, receivers, and trustees.<sup>95</sup> In contrast with California, the Colorado statutes include both owner and lessee.<sup>96</sup> The statutes of other states, for example, Illinois and Oklahoma, stretch "owner" to include the owner of a pipeline.<sup>97</sup> Louisiana, on the other hand, seems to have had an effective lien (privilege) law for quite some time without an express definition of "owner."<sup>98</sup> At least one statute permits a lien where the owner has knowingly authorized or permitted another to contract on his behalf.<sup>99</sup> The Texas definition includes an owner of land, an oil, gas, or other mineral leasehold, an oil or gas pipeline, or an oil or gas pipeline right-of-way.<sup>100</sup>

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91. The expression "at the instance of," although antiquated, is still meaningful. READER'S DIGEST GREAT ENCYCLOPEDIA DICTIONARY, (10th ed. 1975), containing FUNK & WAGNALLS STANDARD COLLEGE DICTIONARY, defines "at the instance of" as "at the request or urging of."

92. See, e.g., ALASKA STAT. § 34.35.125 (1975) ("[a] person who, at the instance of the owner, performs"); IDAHO CODE § 45.501 (1977) (also refers to "at the instance of the owner of the building or other improvement or his agent").

93. E.g., ARIZ. REV. STAT. ANN. § 33-989(B) (1) (1974).

94. E.g., ARK. STAT. ANN. § 18-44-202 (1987).

95. CAL. CIV. PROC. CODE § 1203.51(b) (West 1982). According to the statute, "[o]wner" means a person holding any interest in the legal or equitable title or both to any leasehold for oil or gas purposes, or his agent and shall include purchasers under executory contract, receivers, and trustees."

96. COLO. REV. STAT. § 38-24-101 (1982) states that "owner or lessee of any interest in real estate or with the trustee, agent, or receiver of any such owner, part owner, or lessee shall have a lien. . . ."

97. The Illinois definition is like California's, except that it includes those who own "any pipe line or right-of-way therefor." ILL. ANN. STAT. ch. 82, § 71 § 1(b) (Smith-Hurd 1987). Oklahoma includes owners of pipe lines. OKLA. STAT. tit. 42, § 144 (1981 & Supp. 1988).

98. LA. REV. STAT. ANN. § 9:4861 (West 1983). *But c.f.* Willis v. Mills Tooke Properties, Inc., 42 So. 2d 548 (La. Ct. App. 1949) (must be a contract with someone in order to enforce a lien or privilege).

99. MICH. COMP. LAWS ANN. § 570.251 (West 1967) (MICH. STAT. ANN. § 26.423(1) (Callaghan 1982)). New Mexico also incorporates the "authorized or knowingly permitted" language. N.M. STAT. ANN. § 70-4-1 (1987).

100. TEX. PROP. CODE ANN. § 56.001(3) (Vernon 1984).

Under the new Utah statute, "owner" means "a person holding any operating right, working interest, or interest in the legal or equitable title, to any real property, mine, oil lease, gas lease, well, or any combination of these, unless otherwise provided in this chapter."<sup>101</sup>

As noted above, California, Kentucky, and Montana seem to limit their oil and gas liens to instances where the claimant has dealt with a lessee. Kansas, Michigan, and Oklahoma broaden this category to include those who have dealt not only with lessees, but also with owners of pipelines. The rest of the states examined appear not to restrict the definition of "owner" to a mineral lessee or pipeline owner, but to include owners of any mineral interest.<sup>102</sup>

## V. INTERESTS ON WHICH THE LIENS MAY OPERATE

The notion of "owner" is inextricably involved in two additional interrelated areas. The first area is determining the "extent" of the lien. The second concern is whether the lien can attach to defeasible interests of the owner or even attach to interests not owned by the owner. When the lien does attach to the owner's interests, additional issues may arise. In particular is the problem of determining which of many property interests may be attached by a mechanic's lien.

### A. *Determining the Extent of the Lien*

Once a claimant has been successful in attaching the lien, he must determine the extent of the interest upon which the lien may attach. Most lien provisions purport to define the interests upon which the lien may attach. Generally, a lien is not likely to attach to those particular interests outside the reasonable scope of the statute's definition of interests subject to a lien.<sup>103</sup>

With remarkably few exceptions, the lien provided by oil and gas lien statutes is permitted to attach to the entire leasehold interest, if the "owner" is a lessee. This leasehold interest often encompasses not only the well or wells worked on, but also all wells on the lease, including the

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101. UTAH CODE ANN. 38-10-101(3) (1987).

102. These states include Alaska, Arizona, Arkansas, Colorado, Idaho, Illinois, Louisiana, New Mexico, Texas, Utah, and Wyoming.

103. Thus, in *Eagle Star Ins. Co. v. Parker*, 261 F. Supp. 257 (W.D. La. 1965), the court, applying Louisiana law, held that a lien would not extend to the insurance proceeds payable for wind damage suffered by a drilling rig, although under the statute, the lien could have attached to the drilling rig, equipment, and appurtenances.



drilling rig, other rigs, equipment, supplies, tools, fixtures, and appurtenances to the extent of the owner's interest, and often the pipelines and rights-of-way related to the lease.<sup>104</sup> However, a few of the statutes provide that the lien will not automatically attach to the underlying fee if the owner is a lessee.<sup>105</sup> Often, the lien will attach to the production or proceeds from production.<sup>106</sup> Some statutes specifically provide that the lien shall not attach to previously created non-working interests such as royalty, overriding royalty, and production payments.<sup>107</sup> Some of the statutes appear to preclude the possibility of a lien where a lessee is not involved.<sup>108</sup> In several instances, the statutes specifically authorize liens

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104. *See, e.g.*, ALASKA STAT. § 34.35.125 (1975) (simply says "a lien on the mine or mining claim, oil, gas or other claim or well"); ARIZ. REV. STAT. ANN. § 33-989 (1974) ("to the mine or mining claim"); ARK. STAT. ANN. § 18-44-202 (1987) (covers both owners and lessees; attaches to whole of land or leasehold and the other types of property discussed in the text, but not to the fee if done at a lessee's instance); CAL. CIV. PROC. CODE § 1203.52 (West 1982) (includes the leasehold, while excluding royalty interests; covers all wells, materials and fixtures owned by the owner and used or to be used for drilling or operating the lease; covers proceeds, but excludes royalty interests, etc.); COLO. REV. STAT. § 38-24-101 (1982) (owners' and lessees' interests subject to lien and also includes wells, machinery, materials, and supplies); IDAHO CODE § 45-505 (1977 & Supp. 1987) (land and convenient space about the same; in effect, a general statute, although includes mining claims); ILL. ANN. STAT. ch. 82, ¶ 73 (Smith-Hurd 1987) (land or leasehold, wells, materials, equipment, pipeline, production and proceeds; not the fee or royalty interests if done at the instance of a lessee or holder of an estate less than a fee unless express contract therefor); IOWA CODE § 84.25 (1984) (lease, wells, buildings, appurtenances, and pipelines); KAN. STAT. ANN. § 55-207 (1983) (leasehold, pipeline, buildings and appurtenances, wells, fixtures and appliances); KY. REV. STAT. ANN. § 376.140 (1) (Baldwin 1972) (leasehold, to lessee's extent; wells, machinery, equipment); LA. REV. STAT. ANN. § 9:4681 (West 1983 & Supp. 1988) (production, proceeds, wells, lease, rigs, machinery, pipelines, etc.); MICH. COMP. LAWS ANN. § 570.251 (West 1967) (MICH. STAT. ANN. § 26.423(1) (Callaghan 1982)) (leasehold, production, wells, derricks, and the fee where it is the fee owner who develops); MONT. CODE ANN. § 71-3-1002 (1987) (leasehold, wells, production, etc., but not previously created royalty interests, etc.); N.M. STAT. ANN. § 70-4-1 (1987) (land, permit, lease, wells, pipeline, buildings, equipment, fixtures, proceeds; but only to the fee or royalty interest by express contract); OKLA. STAT. tit. 42, § 144 (1981) (leasehold, pipeline, buildings, appurtenances, wells, proceeds, but not previously created bona fide interests payable out of the working interest); TEX. PROP. CODE ANN. § 56.003 (Vernon 1984) (land, leasehold, wells, material, machinery, pipeline, buildings, appurtenances, but if at the instance of a lessee, not on the fee); WYO. STAT. § 29-3-103 (1981 & Supp. 1987) (land or leasehold, production, proceeds from production, wells, derricks, tanks, pipelines, materials; if pooled or unitized, the lien extends to the "lands, leases or interests so pooled or unitized").

105. States in this category include Arkansas, California, Illinois, Iowa, Kansas, Kentucky, Louisiana, Michigan, Montana, New Mexico, Oklahoma, Texas, Utah, and Wyoming. This list includes states whose statute provides for a lien on fee as well as leasehold interests, but does not automatically impose a lien on the fee where a lessee is the one at whose instance work is done, materials are furnished, etc.

106. N.M. STAT. ANN. § 70-4-1 (1987); OKLA. STAT. tit. 42, § 144 (1981); WYO. STAT. § 29-3-105 (1981 & Supp. 1987).

107. This list includes California (by a document recorded before the inception of the lien), Illinois, Montana, New Mexico, Oklahoma, Utah, and Wyoming.

108. These statutes include California, Iowa, Kansas, Kentucky, Louisiana, Montana, and Oklahoma.

on pipelines, related rights-of-way, and associated items.<sup>109</sup>

### B. *Defeasible Interests*

A few of the statutes specifically treat the situation where the owner's interest is subject to forfeiture, defeasance, or a condition subsequent. For example, the Kentucky statute appears to provide that a lien will survive the termination of a lease or the rescission of an executory contract under which a lessee claims.<sup>110</sup> In California, Montana, Texas, and Wyoming, the lien statutes indicate that a lien will survive this type of termination to the extent that the lien has attached to material, appurtenances, fixtures, or the like.<sup>111</sup>

The new Utah statute treats this topic in a manner similar to the treatment of the four latter states above but adds one phrase which does little to clarify the meaning of the provision: the lien is not impaired "*as to the owner's continuing interest, if any, in appurtenances and fixtures . . .*"<sup>112</sup> It is unclear what "continuing interest, if any," means in this context. One possible meaning, that the lien only survives as to any interests of the owner in appurtenances and fixtures which survive the termination, may render such a lien relatively useless.

The lien coverage of the new Utah statute also differs considerably from the other oil and gas lien statutes. Under this statute, a lien is limited to a "production unit," which is defined as:

(a) the drilling unit for a well established by lawful order or rule of the Board of Oil, Gas, and Mining in which the well is located; or if not applicable, 40 acres comprising the quarter-quarter section, or equivalent legal subdivision, in which the well is located; or (b) a mine,

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109. ARK. STAT. ANN. § 18-44-202 (1987); COLO. REV. STAT. § 38-24-101 (1982); ILL. ANN. STAT. ch. 82, § 72 (Smith-Hurd 1987); IOWA CODE § 84.25 (1984); KAN. STAT. ANN. § 55-207 (1983); LA. REV. STAT. § 9:4861 (West 1983 & Supp. 1987) ("owned by the producer, operator or contract operator of the well"); MICH. STAT. ANN. § 26.423(1) (Callaghan 1982); MONT. CODE ANN. § 71-3-1002 (1987); N.M. STAT. ANN. § 70-4-1 (1987); OKLA. STAT. tit. 42, § 144 (1981); TEX. PROP. CODE ANN. § 56.001 (Vernon 1984).

110. KY. REV. STAT. ANN. § 376.140 (Baldwin 1972).

111. CAL. CIV. PROC. CODE § 1203.55 (West 1984); MONT. CODE ANN. § 71-3-1-12 (1987); TEX. PROP. CODE ANN. § 56.044, 56.045 (Vernon 1984); WYO. STAT. § 29-3-103 (1981).

112. UTAH CODE ANN. § 38-10-103 (1987) (emphasis added). The statute reads:

If a lien attaches to an interest in land: (1) which is less than the fee interest, including the interest of an optionee or farmouttee, termination of the interest in the land does not impair any lien which attaches prior to termination as to the owner's continuing interest, if any, in appurtenances and fixtures previously located on the land; or (2) which interest is contingent upon the happening of a condition subsequent, failure of the interest to ripen into legal title, or failure of the occurrence of the condition subsequent does not impair any lien as to the owner's continuing interest, if any, in appurtenances and fixtures located on the land to which the lien attached prior to the failure.

*Id.*

and if work is performed upon or materials or equipment furnished to any part of the mine from which two or more mines are worked, the production unit shall extend to the owner's interest in the mines so worked.<sup>113</sup>

The lien is further limited to the interest of the owner in the production unit, but will include appurtenant access rights, pipelines, including rights-of-way, buildings, wells, oil tanks, and appurtenances located on the land or leasehold within the production unit. The lien also covers the ore and minerals in the ground or in storage on the production unit "which are attributable to the interest subject to the lien as the interest existed on the date work was first performed or materials or equipment were first furnished."<sup>114</sup>

### C. *Attachment to Property Not Actually Owned*

It was intimated earlier in this article that there might be an issue as to whether the lien could attach to more than the interest of the owner, possibly to property not owned by the owner, or to an extent exceeding whatever interest the owner might have in the subject property. Under most of the statutes discussed here, the statute expressly or impliedly limits the lien to whatever interest the owner might have, or might subsequently acquire, in the property involved. There are, however, exceptions to this rule.

Louisiana is the primary exception. Although Louisiana cases repeatedly state that its lien law is "stricti juris,"<sup>115</sup> Louisiana jurisprudence liberally construes its lien statute to permit the lien to attach to property described in generic terms in the statute, regardless of actual ownership.<sup>116</sup> In *Sargent v. Freeman*,<sup>117</sup> the Louisiana Supreme Court

113. UTAH CODE ANN. § 38-10-101(4) (1987).

114. UTAH CODE ANN. § 38-10-102(1) (1987). This seems to be considerably more restrictive than the other oil and gas lien statutes. This writer has not undertaken, at this point, to determine whether this statutory policy will foster development or tend to deter it. It may depend upon whether potential lien claimants are familiar with the statute before committing their labor or materials. There are many unanswered questions prompted by this section, such as: What effect will size limitation on federal lease assignments have? How will this section be correlated with the express provision giving an operator a lien on defaulting co-owners?

115. *P & A Well Serv. Inc. v. Blackie's Power Swivels Inc.*, 507 So. 2d 280 (La. Ct. App. 1987); *Frank's Casing Crew & Rental Tools Inc. v. Carthay Land Co.*, 212 So. 2d 161 (La. Ct. App. 1968); *McGee v. Missouri Valley Dredging Co.*, 182 So. 2d 764 (La. Ct. App. 1966); *Tracy v. Hewitt*, 92 So. 2d 757 (La. Ct. App. 1957); *Willis v. Mills Tooke Properties Inc.*, 42 So. 2d 548 (La. Ct. App. 1949); *Idom v. Moss*, 32 So. 2d 411 (La. Ct. App. 1947).

116. *E.g.*, *Fred E. Cooper, Inc. v. Farr*, 165 So. 2d 605 (La. Ct. App. 1964) (lien on rig and equipment prevailed, notwithstanding they were owned by a third party who had a title retaining conditional sales contract); *Dia-Log Co. v. Anderson*, 165 So. 2d 610 (La. Ct. App. 1964) (loaned equipment); *Sargent v. Freeman*, 204 La. 997, 16 So. 2d 737 (1943) (statute giving a lien on property

responded to the argument that this violated the due process clauses of the federal and state constitutions by stating that permitting a lien on property of third persons is the clear intent of the statute. Otherwise, the court stated, the "statutory language can have no practical effect."<sup>118</sup> The legislation was valid, it created a pure action in rem without any suggestion of a personal judgment, and it was within the power of the legislature. It had been the law for many years that mechanics' liens could affect drilling equipment which a third person had allowed others to use on leased premises. In the case at bar, the owners of the rig and equipment permitted them to be placed on the leased premises and to be used in drilling the oil well. Further, none of the parties had demonstrated that the law resulted in a denial of due process or equal protection. "In these circumstances," the court concluded, "we fail to see wherein appellants have been deprived of any of their fundamental rights."<sup>119</sup>

## VI. CONCLUSION

As evidenced in the above discussion, the meaning and scope of the areas treated by oil and gas mechanics' lien statutes vary greatly among the jurisdictions which have enacted such statutes. There are both significant similarities and differences among the various legislative and court treatments of oil and gas mechanics' liens. The purpose of this article is not to present an exhaustive survey, but rather to illustrate the variety of approaches and interpretations of these lien laws, and to provide a better understanding of mechanics' liens on oil and gas interests for practitioners concerned with more than one jurisdiction.

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owned by persons other than the driller clearly valid); *Ogden Oil Co. v. Venture Oil Corp.*, 490 So. 2d 725 (La. Ct. App. 1986), *writ denied*, 494 So. 2d 328 (La. 1986) (sequestration of rig owned by third party for lien of service provider at well valid, not a taking nor denial of equal protection); *Ogden Oil Co. v. Servco Inc.*, 611 F. Supp. 572 (M.D. La. 1985) (attaches regardless of ownership); *JHJ Ltd. I v. Chevron U.S.A., Inc.*, 580 F. Supp. 6 (M.D. La. 1983) (attaches to statutorily listed property regardless of ownership).

117. 204 La. 997, 16 So. 2d 737 (1943).

118. 204 La. at \_\_\_, 16 So.2d at 738.

119. *Id.* at \_\_\_, 16 So. 2d at 739. It is not the purpose of this writing to analyze the validity of statutes which permit a mechanics' lien on an interest of a third party or a stranger to the transaction. The author believes that permitting liens on such property raises serious questions under both state and federal constitutions. *See, e.g.*, *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982); *Missouri Pac. Ry. Co. v. Nebraska*, 164 U.S. 403 (1896). Neither of these cases is a lien case, but each expresses a continuing view that the taking of one person's property for the benefit of another should be closely scrutinized.

