Oklahoma Law Review

Volume 65 | Number 1

2012

There's a New Act in Town: How the Oklahoma Oil and Gas Owners' Lien Act of 2010 Strengthens the Position of Oklahoma Interest Owners

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I. Introduction

Oklahoma oil and gas working interest owners and mineral interest owners are not strangers to defeat.[1] During times of economic instability, both groups of interest owners have consistently lost their rights in oil and any proceeds from the sale of oil to secured creditors protected by Article 9 of the Uniform Commercial Code (U.C.C).[2] After years of financial distress on the part of interest owners, the Oklahoma Legislature moved to strengthen the rights of Oklahoma interest owners by repealing the Oil and Gas Owners' Lien Act of 1988 ("1988 Act") and replacing it with the Oil and Gas Owners' Lien Act of 2010 ("Lien Act").[3] Crucial to the legislature's decision to enact a new statutory lien were developments in judicial interpretation of the 1988 Act, which read certain provisions of the Act to the disadvantage of Oklahoma working interest owners and mineral interest owners.[4] The Lien Act strengthens the rights of both groups of Oklahoma interest owners by addressing the inadequacies of the 1988 Act, while at the same time preserving any rights accrued by both parties under the 1988 Act.[5]

The most significant question after the Lien Act is whether the Lien Act will have a broader effect on other Oklahoma liens and secured creditors holding security interests pursuant to Article 9 of the U.C.C. Through the Lien Act, the Oklahoma Legislature guarantees Oklahoma working interest owners and mineral interest owners a lien with superior priority in produced oil; however, the Oklahoma Legislature has previously enacted statutes that guarantee the same priority to other lienholders in produced oil. This note addresses the positive impacts that the Lien Act will have for Oklahoma working interest owners and mineral interest owners but also draws attention to the likelihood that the Lien Act will cause two major priority disputes in the oil and gas industry—one involving the Lien Act and other

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1. *See* Arkla Exploration Co. v. Norwest Bank of Minneapolis, 948 F.2d 656 (10th Cir. 1991); *see also In re* SemCrude, L.P., 407 B.R. 140 (Bankr. D. Del. 2009).
2. *See In re* SemCrude, L.P., 407 B.R. 140. Proceeds refer to collateral that is acquired upon the sale or other distribution of the produced oil. U.C.C. § 9-102 (1972).
3. *See* 52 OKLA. STAT. § 549.1 cmts. 1-3 (2010).
4. *Id.*
5. *Id.*

Oklahoma liens and the other involving the Lien Act and U.C.C. Article 9 secured creditors.

Part II discusses the role that mineral interest owners and working interest owners play in oil and gas production. Part III examines the In re *SemCrude* case in depth, focusing on two major flaws of the 1988 Act that weakened the rights of working interest owners and mineral interest owners: (1) its exception for U.C.C. Article 9 secured parties and (2) its assignment of real property as the governing law.[6] Part IV explains three major ways in which the Lien Act has materially strengthened the rights of Oklahoma interest owners: (1) Oklahoma oil and gas interests are now governed by real property law, which designates the applicable law by the state in which the wellhead is located; (2) Oklahoma interest owners can now obtain a lien that will remain attached until a first purchaser has paid in full the purchase price of produced oil; and (3) the Lien Act explicitly and unbendingly grants superior priority to Oklahoma interest owners above all other lienholders and U.C.C. Article 9 secured creditors. Part V explores the likelihood that the Lien Act will create a conflict with other Oklahoma lienholders and provides four justifications to explain why the Oklahoma Legislature failed to offer guidance if such conflicts arise. Further, Part V discusses how the Lien Act alters the rights of secured creditors holding a security interest pursuant to U.C.C. Article 9. Part VI concludes this note.

II. Parties to the Oil and Gas Industry

The oil and gas industry is a complex and lucrative enterprise that necessitates a wide range of investors to guarantee the successful production of oil and gas. Three investors are relevant to a discussion of the Lien Act: (1) mineral interest owners, (2) working interest owners, and (3) first purchasers.

Mineral rights may be severed from any rights in the land, and thus owned separately.[7] An individual interested in owning rights in oil and gas production may do so by taking an ownership interest solely in the minerals.[8] Individuals who purchase mineral rights are referred to either as mineral interest owners or royalty interest owners.[9] Mineral owners rarely

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6. *Id.* at cmt. 7

7. 58 C.J.S. *Mines and Minerals* § 192 (2010).

8. 53A AM. JUR. 2D *Mines and Minerals* § 159 (2010); 38 AM. JUR. 2D *Gas and Oil* § 58 (2010). A person who owns the minerals in certain land has rights that are incidental ownership.

9. *In re* SemCrude, L.P., No. 08-11525, 2008 WL 8065335, ¶¶ 10-13 (Bankr. D. Del. 2008) (Expert Testimony and Affidavit).

develop the minerals themselves.[10] The technology and business of oil and gas exploration and development is complicated and expensive as is the risk and expense behind maintaining and profiting from an oil and gas well.[11] For these reasons, mineral owners transfer their mineral rights to a producer, typically an oil company through an oil and gas lease.[12] The producer (referred to as a working interest owner) holds a working interest, which includes the right to search for, drill for, and produce minerals from the land.[13] In return, a mineral interest owner receives a cash payment from the producer for granting the lease and retains a percentage share of the oil and gas produced, which is also called a royalty interest.[14]

Following production, oil is sold to a first purchaser who pays the sale price directly to the working interest owner who then pays the mineral interest owner.[15] The sales price is generally paid to the working interest owner without incident.[16] On occasion, however, financial disruptions interfere, such as first purchaser bankruptcy, which can cause a working interest owner and mineral interest owner to go without payment.[17] For these occasions, the legislature has created statutory liens to secure claims of particular classes of creditors and to prevent unjust enrichment arising from enhancement of property through work and materials expended thereon which would otherwise go without payment.[18]

III. The Weaknesses of the Oil and Gas Owners' Lien Act of 1988

The energy industry is one of the largest and most important industries in the United States, and is centered in certain key producing states, including Oklahoma, where much of the nation's oil and gas is located.[19] In the

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10. *Id.* ¶ 10.
11. *Id.*
12. *Id.* ¶¶ 11-13.
13. *Id.* ¶ 13.
14. *Id.*
15. *Id.*
16. *Id.*
17. *See* Arkla Exploration Co. v. Norwest Bank of Minneapolis, 948 F.2d 656 (10th Cir. 1991); *see also In re* SemCrude, L.P., 407 B.R. 140 (Bankr. D. Del. 2009).
18. *See generally* 52 OKLA. STAT. § 549.1 cmts. 1-20 (2010). Liens are created either by statute or by contract. A lien is a charge unpaid upon specific property, "by which it is made security for the performance of an act." The lien gives secondary protection if the primary contractual rights fail. LYNN M. LOPUCKI & ELIZABETH WARREN, SECURED CREDIT 21 (6th ed. 2008).
19. *See* Phillip G. Whalley, *Bankruptcy: Is § 365 of the Bankruptcy Code Applicable to Oklahoma Oil and Gas Leases?*, 40 OKLA. L. REV. 99 (1987) (stating that Oklahoma

1980s, approximately ten percent of the total natural gas production in the United States originated from Oklahoma's twenty thousand producing wells.[20] The economic downturn in the 1980s led to a contraction in the demand for fossil fuel, which adversely affected Oklahoma's economy.[21] Volatile commodity prices and the decline of the oil and gas industry in general left many Oklahoma mineral interest owners and working interest owners in financial turmoil.[22] As a result, Oklahoma interest owners lobbied the Oklahoma Legislature, seeking a means to enforce their claim to produced oil.[23]

In response to the growing pressure from Oklahoma interest owners, the legislature enacted the Oil and Gas Owners' Lien Act of 1988.[24] The 1988 Act was intended to guarantee Oklahoma interest owners a right to payment for oil produced and sold to a first purchaser.[25] However, two major weaknesses in the language of the 1988 Act subordinated the position of Oklahoma interest owners, especially when facing U.C.C. Article 9 secured creditors claiming a security interest in the same oil.[26] First, the 1988 Act expressly carved out an exception for U.C.C. Article 9 secured creditors.[27] As a result, interest owners lost their claims over produced oil to secured creditors who asserted their security interests in the same oil.[28] Second, the 1988 Act designated real property as the choice of law, thus making the debtor's state of incorporation the governing law, rather than the state where the wellhead is located.[29] The weaknesses of the 1988 Act are exemplified by examining a 2010 decision of the Delaware Bankruptcy court, *In re SemCrude.*

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currently ranks fifth nationally in crude oil production and accounts for 3 % of national production).

20. Jack L. Kinzie & Joseph R. Dancy, *The Statutory Oil and Gas Lien in Oklahoma*, 20 TULSA L.J. 179, 180 (1984).

21. *See id.*

22. *Id.*

23. Steven L. Schwarz, *Distorting Legal Principles*, 25 J. CORP. L. 697, 717 (2010).

24. 1998 Okla. Sess. Law 194 (West) (codified as amended at 52 Okla. Stat. § 548 (1998).

25. *See id.*

26. *See* Arkla Exploration Co. v. Norwest Bank of Minneapolis, 948 F.2d 656 (10th Cir. 1991); *see also In re* SemCrude, L.P., 407 B.R. 140 (Bankr. D. Del. 2009).

27. Oil and Gas Owners' Lien Act, ch. 194, 52 Stat. 548 (1988).

28. *See generally Arkla Exploration Co.*, 948 F.2d 656; *see also In re SemCrude, L.P.*, 407 B.R. 140.

29. Oil and Gas Owners' Lien Act, ch. 194, 52 Okla. Stat. 548.5 (1988).

A. Background of In re SemCrude

SemCrude L.P. is a limited partnership incorporated in Delaware.[30] SemGroup, along with several other affiliates (specifically, SemCrude, SemGas, and Eaglwing), is in the business of purchasing, marketing, and distributing oil and gas extracted from wells in Oklahoma.[31] In early 2008, SemCrude entered into agreements with a large number of Oklahoma working interest owners to purchase oil.[32] During the relevant period (from June 1 through July 21, 2008), the Oklahoma working interest owners extracted oil from hundreds of wells situated in Oklahoma that was subsequently purchased by SemCrude.[33] Historically, SemCrude had paid the interest owners the appropriate amount in accordance with a contractual payment schedule.[34] However, this all changed in July 2008 when SemGroup, SemCrude's parent corporationSemCrude, filed its petition for Chapter 11 Bankruptcy.[35]

At the time SemGroup filed for bankruptcy, the Oklahoma interest owners had not received installment payments totaling $127 million from SemCrude.[36] The interest owners, who had already delivered their oil inventory to SemCrude, attempted to assert their claim and priority in the produced oil.[37] Unfortunately, the interest owners discovered that SemGroup held prepetition loans with secured creditors, who asserted a lien in the same oil and gas pursuant to an after-acquired inventory clause.[38] The secured creditors properly perfected their security interests pursuant to Article 9 of the U.C.C. prior to SemCrude purchasing the produced oil from Oklahoma working interest owners.[39] The secured creditors contended that their security interest had priority over any lien asserted by Oklahoma working interest owners in the oil purchased by SemCrude.[40] Consequently, the secured creditors demanded that any proceeds from produced oil be applied to settle their prepetition loans first and then the

30. *In re SemCrude, L.P.*, 407 B.R. 140.
31. *See id.* at 147.
32. *Id.*
33. *Id.*
34. *Id.*
35. *Id.*
36. *Id.* at 148.
37. *Id.* at 147.
38. *Id.* An after-acquired property clause allows a creditor's lien to extend to collateral acquired by the lender after the date the contract comes into force. Both parties to the contract must explicitly agree to an after-acquired property clause. U.C.C. § 9-204 (1972).
39. *In re SemCrude, L.P.*, 407 B.R. at 148.
40. *Id.*

remainder—if any—applied to settle the loans of Oklahoma interest owners.[41]

At the time of the SemCrude litigation, Oklahoma had two applicable statutes meant to provide Oklahoma interest owners with a means of asserting their right to payment for oil produced and sold to first purchasers.[42] Interest owners had rights to a statutory lien under the 1988 Act and interest owners had rights to what arguably was an implied trust under the Oklahoma Production Revenue Standards Act (PRSA).[43] During the SemCrude litigation, Oklahoma interest owners asserted both statutes in order to support their priority lien in oil sold to SemCrude.[44]

As their primary argument, Oklahoma working interest owners contended that the PRSA imposed an implied trust, where the proceeds from the sale of oil and gas are "separate and distinct from all other funds of any person receiving or holding the same until such time as such proceeds are paid" to Oklahoma interest owners.[45] Oklahoma working interest owners asserted their rights to the proceeds from oil and gas produced in Oklahoma and purchased by SemCrude.[46] The court ultimately rejected this argument and held that the "traditional trust language" was not sufficient to prove any intent on the part of the Oklahoma Legislature to create a trust for the benefit of Oklahoma interest owners.[47]

As a secondary argument, the Oklahoma working interest owners contended that the 1988 Act gave them a statutory lien in revenue or proceeds from Oklahoma production.[48] The court rejected this argument as well.[49] The Delaware Bankruptcy court, agreeing with a prior Tenth Circuit opinion, ultimately held that the language of the 1988 Act expressly granted

41. *Id.* at 144.

42. *Id.* at 149, 156.

43. *Id.* The PRSA gives producers a so-called constructive trust on oil and gas sold on credit without the need to file. In the most prominent dispute, a syndicate of banks had extended $3 billion of credit to SemCrude, secured by a contractual lien on SemCrude's oil and gas inventory. The banks perfected that lien by filing financing statements, making them first in time, and thus first in right, under commercial law. Various oil producers thereafter sold oil to SemCrude on credit. When SemCrude filed for bankruptcy, the unpaid oil producers claimed that their then-arising constructive trust had priority over the banks' lien. Schwarz, *supra* note 23, at 717-18.

44. *In re SemCrude, L.P.,* 407 B.R. at 149, 159.

45. *Id.* at 149 (citing Production Revenue Standards Act, 52 Okla. Sat. § 570.10(A)).

46. *Id.*

47. *Id.* at 153, 156 (explaining that the requisite intent to create a trust must be "clear, decisive, and unequivocal," and that the language of the PRSA is ambiguous).

48. *Id.* at 156.

49. *Id.* at 158.

priority to U.C.C. Article 9 secured parties over Oklahoma working interest owners in oil produced by Oklahoma interest owners.[50] Although the Delaware Bankruptcy Court focused on the rights of working interest owners, mineral interest owners were similarly affected because they received their percentage share in the produced oil from working interest owners.

B. Two Major Weaknesses of the 1988 Act

Most of the SemCrude litigation was ultimately settled,[51] but not before exposing two major weaknesses of the 1988 Act: (1) the exception carved out in the language of the 1988 Act that granted U.C.C. Article 9 secured creditors a security interest in produced oil that was senior to any lien asserted by Oklahoma interest owners; and (2) the assignment of real property as the choice of law, which made the debtor's state of incorporation the governing law and not the state where the wellhead was located.

1. The Exception That Subordinated the Rights of Oklahoma Interest Owners

Left to assert certain provisions of the 1988 Act, Oklahoma interest owners contended that the Act granted the interest owners a statutory lien in produced oil that remained attached until a first purchaser paid the interest owner in full.[52] The Delaware Bankruptcy Court accepted the provision as valid in disputes with general unsecured creditors but held that the 1988 Act was not meant to "impair or affect the rights and remedies of any person under the provisions of the Uniform Commercial Code."[53] Ultimately, the court stated that the language of the 1988 Act was clear to grant "a lien in favor of interest owners that is not superior to holders of Article 9 security

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50. *Id.* at 143 (quoting *Arkla Exploration Co. v. Norwest Bank of Minneapolis*). The court in *Norwest Bank of Minneapolis* held:

> By its terms, section 584.4.C of the Lien Act provides interest owners in oil and gas with a security interest and a lien that, upon perfection, relates back to the date on which the minerals were severed. However, under the unambiguous language of section 584.6(C), a lien authorized under the Lien Act shall not 'impair or affect the rights and remedies of any person under the provisions' of the Oklahoma U.C.C.

948 F.2d 656, 658-59 (10th Cir. 1991).

51. *See* Rod Walton, *SemGroup Co-founders Agree on Settlement*, NEWS OK (Feb. 13, 2011), http://www.newsok.com/semgroup-co-founders-agree-on-settlement/article/350474?custom_click=pod_ headline_ business.

52. *In re SemCrude, L.P.*, 407 B.R. at 156 (citing 52 OKLA. STAT. § 548.6.C. (1988)).

53. *Id.*

interests."[54] Consequently, because of the clear exception in the 1988 Act, the secured creditor's asserted interest under Article 9 of the U.C.C. enjoyed priority over any lien in favor of Oklahoma working interest owners.[55]

The 1988 Act was intended to protect the rights of Oklahoma interest owners and elevate their claims to payment over competing interests to produced oil and proceeds from its sale; however, the exception carved out for U.C.C. Article 9 secured creditors weakened the position of Oklahoma interest owners.[56] The exception provided for secured creditors was one of two major weaknesses of the 1988 Act.[57] The second weakness of the 1988 Act was not exposed in midst of SemCrude litigation involving Oklahoma interest owners but in litigation involving Texas and Kansas interest owners.[58]

2. Real Property as the Governing Law

Oklahoma interest owners were amongst several interest owners who filed suit against SemCrude to recover their percentage share in produced oil after SemGroup filed bankruptcy.[59] Similar to Oklahoma interest owners, Texas and Kansas interest owners encountered U.C.C. Article 9 secured creditors who asserted a security interest in the produced oil purchased by SemCrude.

Texas and Kansas interest owners claimed that oil extracted from the earth should be treated "as extracted collateral," and thus governed by real property law.[60] Under real property law, the governing law is the location of the wellhead, in this instance Texas and Kansas. However, the bankruptcy court declined to treat oil that was extracted from the earth as "extracted collateral" under the U.C.C. As a result, the oil and gas was treated as personal property and, pursuant to U.C.C. section 9-307, the law of the jurisdiction where the debtor was located governed perfection and

54. *Id.* at 140, 157.

55. *Id.* at 157.

56. *See In re SemCrude, L.P.*, 407 B.R. at 156. *See generally, e.g.*, Arkla Exploration Co. v. Norwest Bank of Minneapolis, 948 F.2d 656, 658-59 (10th Cir. 1991).

57. *See* 52 OKLA. STAT. §§ 549.1-549.12 (2010).

58. *Id.*

59. *In re SemCrude*, L.P., 407 B.R. at 143.

60. *Id.* Before extraction, oil and gas are treated as real property. "The term 'as extracted collateral' thus refers to oil, gas, or other minerals that are subject to a security interest before extraction from the ground." *Id.* at 145 (citing DEL. CODE tit. 6, § 9-301; 12A OKLA. STAT. § 1-9-102(a)(6)).

priority.[61] Accordingly, Delaware law controlled perfection and priority as the location of the debtor, rather than the law of Texas and Kansas, where the wells and extracted minerals were located.[62] The Texas and Kansas interest owners had not filed or perfected their liens in Delaware.[63] Because Delaware law controlled perfection and priority, these interest owners were treated as general unsecured creditors and accordingly, their interests became subordinate to the U.C.C. Article 9 security interest perfected in Delaware.[64] Although SemCrude litigation involving Oklahoma interest owners was primarily limited to interpretation of the 1988 Act and the PRSA, the bankruptcy court's holding in the Texas and Kansas litigation drew the Oklahoma Legislature's attention to the weaknesses of the 1988 Act, and significantly altered the course of the Oklahoma legislative efforts to clarify and strengthen the position of Oklahoma interest owners.[65]

The decision of the Delaware Bankruptcy Court propelled the Oklahoma Legislature to repeal the 1988 Act and enact the Lien Act.[66] Even prior to the decision of the Delaware Bankruptcy Court, bills were introduced in the 2009 Oklahoma Legislature to address issues in the SemCrude litigation.[67]

IV. Oil and Gas Owners' Lien Act of 2010

While the Lien Act did retain much of the language from the 1988 Act, the legislature made three key changes that strengthened the position of Oklahoma interest owners: (1) it changed choice of law to real property, (2) it imposed express duties on the first purchasers, and (3) it gave Oklahoma oil and gas interest owners superior priority over other Oklahoma lienholders and U.C.C. Article 9 secured creditors.[68] Each of these changes strengthens the rights of Oklahoma interest owners by better ensuring that they are paid in full for oil produced and sold to first purchasers.

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61. *In re SemCrude, L.P.*, 407 B.R. at 145; U.C.C. § 9-307 (1972).
62. *In re SemCrude L.P.*, 407 B.R. at 145; *see* U.C.C. § 9-307 (1972).
63. *In re SemCrude, L.P.*, 407 B.R. 112.
64. *Id.* at 156-58; U.C.C. § 9-102.
65. *See generally In re SemCrude, L.P.*, 407 B.R. 140.
66. *See* Oil and Gas Owners' Lien Act of 2010, 52 OKLA. STAT. § 549.1 cmt. 1 (2010).
67. *Id.* § 549.1 cmt. 18.
68. *See id.* §§ 549.1-549.12.

A. Choice of Law: Choosing Real Property to Govern

Learning from the Texas and Kansas SemCrude litigation, the Lien Act expressly pronounces Oklahoma law as the governing law in oil and gas transactions with Oklahoma interest owners.[69] In the Texas and Kansas litigation, the court determined the rights of parties in accordance with the governing law of the debtor's state of incorporation, Delaware. As a result, interest owners who had not perfected in Delaware were treated as general unsecured creditors and lost their claim in produced oil to secured creditors protected by U.C.C. Article 9.[70] The Lien Act fixes this deficiency by changing the choice of law to real property, which designates the state in which the wellhead is located as the choice of law.

The Oklahoma Legislature did not attempt to implement a new provision that aligned the Lien Act with U.C.C. Article 9, but clearly avoided the application of the U.C.C. by changing the choice of law to real property.[71] Section 549.3.A of the Lien Act states that "[t]he oil and gas lien is granted and exists as part of and *incident* to the ownership of oil and gas rights."[72] As a result, "The interest owner's oil and gas lien created by the Lien Act is not a U.C.C. Article 9 security interest but rather arises as part of a real estate interest of the interest owner in the minerals."[73] In a sense, lienholders who assert rights to produced oil pursuant to the Lien Act are treated similarly to individuals who assert rights to fixtures under U.C.C. section 9-334.[74] U.C.C. section 9-334 recognizes fixtures to be a unique hybrid between real property and personal property, and accordingly makes accommodations to reconcile the rights of parties who assert competing interests under both real property law and personal property law.[75] Similarly, produced oil is recognized by many courts to be a hybrid between real property and personal property.[76] The difference being that U.C.C. Article 9 sets the accommodation rules for fixtures, whereas here

69. *Id.* § 549.3(A), § 549.3 cmt. 2.

70. Arkla Exploration Co. v. Norwest Bank of Minneapolis, 948 F.2d 656, 658-59 (10th Cir. 1991); *In re SemCrude, L.P.*, 407 B.R. at 156.

71. *See Arkla Exploration Co.*, 948 F.2d at 658-59; *see also In re SemCrude, L.P.*, 407 B.R. at 156.

72. 52 OKLA. STAT. § 549.3.

73. *Id.* § 549.3 cmt. 2.

74. U.C.C. § 9-334 (1972).

75. *Id.*

76. Cont'l Supply Co. v. Marshall, 15 F.2d 300, 305 (10th Cir. 1945) ("[I]n Oklahoma, [an oil and gas lease] is really a hybrid estate deriving its legal characteristics from both real and personal property, yet it is actually neither.").

the Lien Act sets the accommodation rules for Oklahoma interest owners.[77] Thus, irrespective of the fact that produced oil is regarded as a hybrid between personal and real property; under the Lien Act, the governing law is the location of the wellhead and, significantly, the state where the interest owners enjoy the most rights.[78] Under the Lien Act, an Oklahoma interest owner does not risk losing rights in produced oil to a secured creditor pursuant to Article 9, because an Oklahoma interest owner obtains rights from the Lien Act, a statute enacted to protect Oklahoma interest owners.[79]

To further strengthen the choice of law provision, the Lien Act prohibits parties from adding a provision in an agreement to sell that would apply the law of another jurisdiction.[80] Thus, courts faced with competing interests in Oklahoma need only reference the plain language of the Act to know that the legislature intended Oklahoma law to govern. The Lien Act controls concepts of perfection and priority for Oklahoma interest owners contracting with first purchasers incorporated in Oklahoma or incorporated in states that view "as extracted collateral" as real property.[81]

The Lien Act, however, does not resolve one major obstacle faced by Oklahoma interest owners in In re *SemCrude*: What happens if an Oklahoma interest owner contracts with a first purchaser incorporated in a state that views "as extracted collateral" as personal property and not real property? If an Oklahoma interest owner were to contract with a first purchaser from Delaware, as done in In re *SemCrude*, nothing in the Lien Act guarantees that the transaction and the rights of all parties to the transaction will be governed by Oklahoma law. Thus, nothing in the Lien Act prevents a court from once again choosing to interpret the rights of all parties in conjunction with the law of state where the debtor was incorporated and not the law of the state where the oil was produced. The likely solution for an Oklahoma interest owner is solely to contract with

77. 52 OKLA. STAT. §§ 549.1-549.12. It should also be noted that the 1998 revisions to the uniform text of U.C.C. Article 9, reflecting the Report of the American Bar Association U.C.C. Committee Task Force on Oil and Gas Law, contemplate the assertion of interest owner claims under real property law, outside U.C.C. Article 9, consistent with the Lien Act. Thus the U.C.C. Article 9 endorses the approach taken in the Lien Act. *See* Alvin C. Harrell, *Oil and Gas Finance Under Revised UCC Article 9*, 33 TEX. TECH. L. REV. 31, 52 (2001) (citing U.C.C. § 9-320 cmt. 7 (2001)); *see also* Alvin C. Harrell & Owen L. Anderson, *Report of the ABA UCC Committee Task Force on Oil and Gas Finance*, 25 TEX. TECH. L. REV. 805, 830-31 (1994).

78. 52 OKLA. STAT. § 549.3.

79. *See id.*

80. *Id.* § 549.9.

81. *See id.* §§ 549.1-549.12.

first purchasers incorporated in states that view "as extracted collateral" as real property. Nevertheless, the Lien Act does strengthen the position of Oklahoma interest owners by clearly asserting the intent of the Oklahoma Legislature, something the 1988 Act failed to do.

B. Duties of First Purchasers

The Lien Act also strengthens the position of Oklahoma interest owners by better enforcing the obligation of a first purchaser to pay the interest owner in full for the produced oil.[82] Although real estate law governs the rights of first purchasers and interest owners to oil and gas before it is extracted, it—as well as Article 9 of the U.C.C—fails sufficiently to enforce the duties of a first purchaser to pay for oil *after* severance.[83] The Lien Act fixes this deficiency.

The Lien Act grants an Oklahoma interest owner a lien in oil and gas rights "[t]o secure the obligations of a first purchaser to pay the sales price."[84] The Act defines oil and gas rights as the following: "title or interest, whether legal or equitable, in and to: (1) oil, (2) gas, (3) proceeds, (4) an oil and gas lease, (5) a pooling order, and (6) an agreement to sell."[85] The Lien Act states that the oil and gas lien attaches immediately to all oil and gas on the effective date of the Lien Act, which is April 19, 2010, and "continues uninterrupted and without lapse (i) in all oil and gas upon and after severance and (ii) in and to all proceeds." Subject to a few limitations, the oil and gas lien exists until the interest owner entitled to the sales price receives it.[86]

Essentially, a lien pursuant to the Lien Act continues in oil from the wellhead until a first purchaser pays full value to an interest owner.[87] Thus, an interest owner's lien extends to oil and gas production and resulting proceeds sold to and held by a first purchaser even after the first purchaser has declared bankruptcy.[88]

82. *See id.* § 549.3.
83. *See* Oil and Gas Owners' Lien Act, ch. 194, 52 Stat. §§ 548, 548.2, 548.6 (1988).
84. 52 OKLA. STAT. § 549.3.
85. *Id.* § 549.2.
86. *Id.* § 549.3.
87. *Id.*
88. *Id.*

C. The Lien Act's Super-Priority over All Other Lienholders and Secured Creditors

In circumstances where an existing perfected security interest predated an interest owner's lien, certain provisions of the 1988 Act created problems for an Oklahoma interest owner attempting to assert priority over a secured creditor holding a security interest pursuant to U.C.C. Article 9.[89] Indeed, while the 1988 Act granted Oklahoma interest owners a lien to secure payment for produced oil, it also explicitly created an exception for U.C.C. Article 9 secured creditors, whereby their security interests were senior to any lien held by an Oklahoma interest owner.[90] The Lien Act repeals this exception, and reinforces the rights of Oklahoma interest owners by guaranteeing these interest owners superior priority over any lien or security interest asserted in produced oil.[91]

A lien held pursuant to the Lien Act is perfected automatically and takes priority over all other Oklahoma liens and Article 9 security interests.[92] The sole exception to this grant of priority is a permitted lien.[93] A "permitted lien" under the Lien Act is essentially a "validly perfected and enforceable lien created by statute, rule, or regulation of a governmental agency for storage or transportation charges . . . . owed by a first purchaser in relation to oil or gas originally purchased under an agreement to sell."[94] Thus, a permitted lien is the only type of lien that may avoid the superior priority guaranteed in the Lien Act.

Moreover, the Oklahoma Legislature added § 549.9, which prohibits any waiver of the Lien Act.[95] This provision reduces the risk that a first purchaser will attempt to exert pressure on an Oklahoma interest owner to waive their rights and superior priority guaranteed to them under the Lien Act. As a result of the Lien Act, an Oklahoma interest owner has a statutory lien with senior priority in the proceeds of oil and gas. Accordingly, a first purchaser must pay the interest owner for the produced oil or face difficulty obtaining loans from lenders who would ordinarily take a security interest in the first purchaser's after-acquired inventory or

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89. *See* Oil and Gas Owners' Lien Act, ch. 194, 52 Stat. §§ 548, 548.2, 548.6 (1988).
90. Arkla Exploration Co. v. Norwest Bank of Minneapolis, 948 F.2d 656, 659 (10th Cir. 1991).
91. 52 OKLA. STAT. § 549.7.
92. *See id.*
93. *Id.*
94. *Id.* § 549.2(11)(b).
95. *Id.* § 549.9.

assets.[96] Consequently, a first purchaser incorporated in Oklahoma has no choice but to assume certain responsibilities when dealing with an Oklahoma interest owner.[97]

There is a slight chance, however, that the strict prohibition on waiver could work to the detriment of Oklahoma interest owners. First purchasers may see the difficulty in obtaining a loan from a secured lender as too great a sacrifice and avoid entering into any transactions with Oklahoma interest owners.

Notwithstanding the risks, once the Lien Act attaches to produced oil, a first purchaser cannot avoid or contract out of the provisions of the Lien Act that guarantee super-priority to Oklahoma interest owners.[98] Consequently, a first purchaser must act in accordance with the provisions of the Lien Act or choose to contract with interest owners from outside the state of Oklahoma.[99]

V. The Likely Conflicts Created by the Lien Act

Through the passage of the Lien Act, the Oklahoma Legislature strengthened the rights of Oklahoma interest owners; however, Oklahoma interest owners are but one faction of investors in the petroleum industry. For more than a century, the Oklahoma Legislature has enacted liens that grant rights in certain collateral to various parties in the oil and gas industry.[100] Prior to the Lien Act, liens ranked in priority according to the date the lien was filed or perfected.[101] With few exceptions, a lienholder that filed or perfected first guaranteed its claim to settle an outstanding debt in the event a debtor declared bankruptcy.[102] In 2010, the Lien Act altered how priority is determined, but only for a specific group—Oklahoma interest owners.[103]

With the exception of "permitted liens," the Lien Act claims automatic super-priority over all other liens in produced oil.[104] For those who hold

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96. *See id.* § 549.7.

97. *See id.*

98. *See id.*

99. *See id.* §§ 549.1-549.12.

100. *See, e.g.*, 42 OKLA. STAT. §141 (1991). Collateral is property that is subject to a security interest or liens, including goods or any proceeds that follow from the sale or disposition of the good. U.C.C. § 9-102 (1972).

101. Schwarz, *supra* note 23, at 717-18; *see also* U.C.C. § 9-301.

102. LOPUCKI & WARREN, *supra* note 18, at 279-83.

103. *See* 52 OKLA. STAT. §§ 549.1-549.12 (2010).

104. *Id.* § 549.7.

permitted liens, such as a Carrier's lien or a Warehouseman's lien, the Lien Act offers clear guidance that resolves any conflict that may arise in the area of priority.[105] These lienholders need only reference the Lien Act to know that their liens rank superior to the liens held pursuant to the Lien Act if both are concurrently asserted against oil, gas, or proceeds thereof.[106]

Several investors in the oil and gas industry hold statutory liens that grant rights in certain collateral related to the production process. While the Lien Act offers clear guidance to holders of permitted liens it fails to provide guidance to other lienholders.[107] Two types of statutory liens may conflict with the Lien Act if either of the statutory liens and the Lien Act are concurrently asserted in produced oil: (1) express liens in produced oil and (2) liens in collateral yet to be defined by Oklahoma courts.

A. Express Liens in Produced Oil

Mechanics' and Materialmen's (M & M) liens are grants under Title 42 to an individual who performs labor or services for oil and gas purposes. Title 42 § 144 grants a lien to "[a]ny person, corporation, or copartnership who shall . . . perform labor or services . . . furnish material . . . furnish any oil or gas well supplies . . . used in drilling, torpedoing, operating, completing, or repairing of any gas well."[108] Section 144 expressly grants a lien over "proceeds from the sale of oil or gas produced."[109] This statute relates to liens for laborers and material furnishers for oil and gas wells and is intended to protect these parties by guaranteeing a right to declare and enforce a lien for their wages earned.[110] When the M & M lien § 144 was enacted, the Oklahoma Legislature guaranteed superior priority above "all other liens or encumbrances" attached to the same collateral.[111] Thus, a lienholder pursuant to this section has a statutory claim to produced oil that

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105. A Warehouseman's lien is a statutory lien given to individuals who store oil before it is sold to a first purchaser. 12A OKLA. STAT. § 7-209 (1991). A Carrier's lien is a statutory lien given to individuals who transport oil to a first purchaser after sale. *Id.* § 7-307.

106. *Id.* §§ 7-307, 7-209.

107. This note focuses on two statutory liens commonly asserted in the oil and gas industry to judge the likelihood the Lien Act will conflict with other Oklahoma liens. This is not to say that other statutory liens do not exist that could conflict with the Lien Act; however, this discussion should provide some guidance when similar conflicts, if any, are encountered.

108. 42 OKLA. STAT. § 144 (1991).

109. *Id.*

110. *Id.*

111. *Id.*

is guaranteed to be superior to all other claims over the same produced oil.[112] As of 2010, however, an M & M lien § 144 is not the only lien passed by the Oklahoma Legislature that guarantees a claim in produced oil that is senior to all other liens.

The Lien Act makes a similar guarantee to Oklahoma interest owners. If a lien is not a permitted lien, the Lien Act asserts superior priority above all other liens.[113] Since both the Lien Act and an M & M lien § 144 grant a lien in produced oil and guarantee priority above all other liens, a conflict is likely to eventuate if both liens are concurrently asserted in the same produced oil. Prior to the Lien Act, U.C.C. § 9-301 could have resolved this priority dispute by granting priority to the lien that filed or perfected prior to the other.[114] However, the Lien Act rejects the U.C.C. and the manner in which the U.C.C. determines priority, without leaving any guidance as to how to resolve priority disputes involving the Lien Act.

There are four possible justifications to explain the Oklahoma Legislature's lack of guidance for M & M lienholders who find themselves in a priority dispute with the Lien Act. First, the lack of guidance could simply be attributable to an oversight brought on by a hasty legislative decision. The Lien Act was passed less than one year after In re *SemCrude* was decided.[115] The Oklahoma Legislature may have felt substantial pressure from Oklahoma interest owners to repair the financial loss suffered after In re *SemCrude*.[116] Such pressure may have outweighed any concern for the effects that the Lien Act could have on other Oklahoma lienholders in the oil and gas industry.

Second, the legislature may have acknowledged the possibility of a conflict and indeed recognized the pronounced effect the Lien Act could have for other Oklahoma lienholders but simply lacked the time or resources to search for every lien that could conflict with the Lien Act. The Oklahoma Legislature may have thought it better to resolve any future conflicts legislatively on a case-by-case basis. In essence, the legislature opted to wait until a conflict arises to pass a tailored statute that addresses specific liens and resolves those conflicts.

Third, the Oklahoma Legislature could have trusted Oklahoma courts to deal with any conflicts judicially on a case-by-case basis. This rationale is especially plausible considering the fact that the Oklahoma Supreme Court

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112. *See id.*
113. 52 OKLA. STAT. § 549.7 (2010).
114. Schwarz, *supra* note 23, at 717; U.C.C. § 9-301 (1972).
115. *See In re* SemCrude, L.P., 407 B.R. 140 (Bankr. D. Del. 2009).
116. *See* Schwarz, *supra* note 23, at 717.

has twice ruled on this exact issue.[117] In 1939 and again in 1968, the Oklahoma Supreme Court held that a lien granted under Title 42 Mechanics' and Materialmen's § 144 did not attach to produced oil or its proceeds.[118] However, the court decided both of these cases in accordance with an older version of § 144 that was in effect when the contracts between the parties were signed.[119] In 1963, the Oklahoma Legislature amended § 144 to insert the phrase "proceeds from the sale of oil or gas produced therefrom."[120] Significantly, when both courts held that § 144 did not grant a lien over oil, gas or proceeds, they made their decisions based on an older version of the statue that did not expressly grant a lien over "proceeds from the sale of oil or gas produced therefrom inuring to the working interest."[121] Thus, Oklahoma courts faced with the current version of § 144 will have to decide a case of first impression. The lack of jurisprudence makes it difficult to predict how an Oklahoma court will define § 144. For this reason, it is helpful to reference a state court decision that interpreted similar language in an Ohio M & M lien similar to § 144 to assess the rights of lienholders in produced oil.

In 1952, in *Moran v. Johnson*, the Ohio Appellate Court considered a statute similar to the Oklahoma version of the M & M lien § 144. The syllabus summarized the court's position that a laborer or material furnisher who provides services or supplies for the improvement of an oil and gas well, and is not paid accordingly, "has a right to perfect and enforce a mechanic's lien, not only upon the well and the equipment therein, but upon the leasehold estate on which the drilling was done, and upon all the proceeds thereof."[122] The court said that the language of the statute made it clear that the lien attached to the oil well and any proceeds produced from such well.[123] It is not outside the realm of possibility that an Oklahoma court could interpret § 144, as did the Ohio Appellate Court, to expressly grant a lien in produced oil. If this were to happen, then a priority dispute would likely occur between a lien held pursuant to M & M § 144 and a lien held pursuant to the Lien Act.

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117. Archer v. Wedderien, 446 P.2d 43 (Okla. 1968); Stanolind Crude Oil Purchasing Co. v. Busey, 90 P.2d 876 (Okla. 1939).

118. *Archer*, 446 P.2d at 45; *Stanolind Crude Oil Purchasing Co.*, 90 P.2d at 880.

119. *Archer*, 446 P.2d at 44; *Stanolind Crude Oil Purchasing Co.*, 90 P.2d at 880.

120. 42 OKLA. STAT. § 144 (1991).

121. *Id.*

122. Moran v. Johnson, 107 N.E.2d 401 (Ohio Ct. App. 1952).

123. *Id.* at 402.

Finally, since the Lien Act is a later and more specific statute, one could assume that the legislature intended for the Lien Act to control over all earlier statues.[124] Explaining congressional intent, the Ninth Circuit stated that it must be assumed that Congress passes new legislation fully aware of legislation that it has previously enacted.[125] If this principle is accepted, then it must be assumed that the Oklahoma Legislature recognized other statutory liens guaranteeing priority to their holders in produced oil and, because of this, inserted unambiguous language granting an Oklahoma interest owner automatic super-priority over all liens, except for permitted liens.[126] Moreover, by carving out an exception for permitted liens, but no other liens, it could be reasoned that the Oklahoma Legislature intended for permitted liens to have superior priority over liens held pursuant to the Lien Act, but no other liens.[127] Applying this justification, the Lien Act should be read to be indicative of the legislature's intent to protect Oklahoma interest owners, regardless of any conflicts that may arise with other lienholders.[128]

Whatever justification is accepted, it does not excuse the reality that the Oklahoma Legislature failed to provide guidance to individuals who hold liens explicitly guaranteeing a superior right to assert a lien in produced oil for wages earned. With this said, it is critical to recognize that these lienholders are only one group of lienholders that may find themselves in a conflict with the Lien Act.

B. Undefined Collateral That Possibly Conflicts with the Lien Act

Generally, a conflict arises between the Lien Act and another lien when both explicitly grant a lien in oil, gas or proceeds thereof. However, for purposes of exploring possible conflicts, it is important to broaden the focus beyond liens that assert a claim in defined collateral to liens that assert a claim in collateral that has yet to be defined by Oklahoma courts. Specifically, Oklahoma courts have yet to define a lien in "the whole or said tract piece of land." This phrase is commonly stated in lien statutes,

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124. *See* Chevron U.S.A., Inc. v. Hammond, 726 F.2d 483, 490 (9th Cir. 1984).

125. *See* Owners-Operators Indep. Drivers Ass'n of Am., Inc. v. Skinner, 931 F.2d 582, 586 (9th Cir. 1991).

126. *See In re* N. Side Lumber Co., 83 B.R. 735 (B.A.P. 9th Cir. 1987).

127. 52 OKLA. STAT. § 549.7 (2010).

128. *See* Cave Springs Pub. Sch. Dist. I. 30 v. Blair, 613 P.2d 1046, 1048 (Okla. 1980) ("Where the language of a statute is plain and unambiguous, and its meaning clear and no occasion exists for the application of rules of construction, the statute will be accorded the meaning as expressed by the language therein employed.").

but not commonly discussed in Oklahoma case law. Because Oklahoma courts have yet to define this phrase, there is no reason to exclude the possibility that this phrase could be read to grant a lien in produced oil.

One instance where such language is found is in Title 42 Mechanics' and Materialmen's (M & M) Liens § 141.[129] This lien relates to laborers and material furnishers who provide services and supplies for the improvement of oil and gas operations.[130] Section 141 grants an M & M lien in the "the whole of said tract or piece of land," in order to secure the rights of laborers and material furnishers to wages earned from improvements made to property related to oil.[131] While Oklahoma courts have yet to define "the whole of said tract or piece of land," the Oklahoma Supreme Court has held that lien statutes are laws in derogation of common law and, accordingly, must be strictly construed and never extended beyond their precise terms.[132]

In *Stanolind Crude Oil Purchasing v. Busey*, the Oklahoma Supreme Court stated that where a lien statute omits mention of granting rights in certain collateral but where there exists another lien statue that expressly grants rights in this collateral, a court may infer that the existence of the other lien statute is evidence that the legislature was aware of the possibility of enacting a lien statue granting rights in that collateral but *consciously* declined to do so.[133] Following the established rule in Oklahoma, if the language of the applicable statute does not expressly assert a lien over specific collateral, then a lien does not exist over that collateral.[134]

Applying this rationale, because an Oklahoma M & M lien § 141 does not specifically assert a lien over produced oil, a lienholder holding a lien pursuant to M & M § 141 cannot claim a lien in produced oil.[135] Nevertheless, no direct authority excludes the possibility that "the whole of said tract or piece of land" could attach to oil, gas, or proceeds thereof. Thus, Oklahoma courts faced with a conflict between a lien held pursuant to M & M lien § 141 and a lien held pursuant to the Lien Act will have to decide a case of first impression. For this reason, it is important to reference the decision of the Arkansas Supreme Court when faced with an M & M lien similar to the Oklahoma's M & M lien § 141 in order to

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129. 42 OKLA. STAT. § 141 (1991).
130. *Id.*
131. *Id.*
132. *Id.*
133. Stanolind Crude Oil Purchasing Co. v. Busey, 90 P.2d 876, 879-80 (Okla. 1939).
134. *See id.* at 88. *See generally* Archer v. Wedderien, 446 P.2d 43 (Okla. 1968).
135. *See* 42 OKLA. STAT. § 141.

measure the likelihood that a conflict will eventuate between the Lien Act and M & M lien § 141.

In 1960, in *Tarheel Drilling Equipment Co. v. Valley Steel Production Co.*, Arkansas interest owners claimed a lien in produced oil pursuant to Arkansas M & M lien § 51-701.[136] Arkansas interest owners argued that this lien guaranteed rights in produced oil by granting a lien in "the whole of such land or leasehold interest therein."[137] The Arkansas Supreme Court recognized that the statute did not expressly grant a lien in produced oil but held that express enumeration was not necessary to reach produced oil or its proceeds.[138] The court stated that the language of the M & M lien was sufficient to cover the minerals under the land, the implication being that the lien would survive production and sale so as to, in effect, give a lien upon produced oil and its proceeds, even though this language was *not expressly* enumerated in the applicable lien statue.[139] The language of the Arkansas M & M lien is remarkably similar to the language of Oklahoma's M & M lien § 141. Both statutes grant a lien in the land and neither statute expressly grants a lien in produced oil. If an Oklahoma court were to agree with the holding of the Arkansas Supreme Court, a conflict would likely arise if a lien held pursuant to M & M lien § 141 and a lien held pursuant to the Lien Act were concurrently asserted in the same produced oil.

Regardless of how an Oklahoma court interprets "the whole or said tract of land," some investors in the oil and gas industry will surely be affected. For one, the first purchaser of oil and gas will be concerned with knowing whether to pay the purchase price thereof directly to the interest owner or whether to withhold payment of the purchase price on the ground that an M & M lienholder has a lien on the proceeds of the sale of oil or gas.[140] Further, an M & M lienholder will want to know if all oil and gas produced subsequent to the filing of an M & M lien is subject to its lien or if an interest owner pursuant to the Lien Act has superior rights to any oil and gas produced and proceeds thereof.[141] Importantly, an Oklahoma interest owner will want to know if a prior perfected M & M lien can be asserted

136. 330 S.W.2d 717, 718 (Ark. 1960).
137. *Id.*
138. *Id.* at 719.
139. *Id.* at 718.
140. Douglas Hale Gross, Annotation, *Assertion of Statutory Mechanic's or Materialmen's Lien Against Oil and Gas Produced or Against Proceeds Attributable to Oil and Gas Sold*, 59 A.L.R. 3d, 281 § 2 (1974).
141. *Id.*

against oil, gas, or proceeds thereof and take priority in payment over the interest owner.[142]

C. How the Lien Act Affects the Rights of U.C.C. Article 9 Secured Creditors

In addition to conflicts arising between interest owners and other statutory liens, the priority given to the Lien Act also affects secured creditors holding security interests pursuant to Article 9 of the U.C.C. In fact, the Lien Act was passed in large part to strengthen the rights of Oklahoma interest owners relative to Article 9 secured creditors.[143]

Conflicts between a secured creditor and an interest owner often arise when a first purchaser obtains a loan from a bank or other lender, and secures the loan in the after-acquired inventory or assets of the first purchaser.[144] Prior to the Lien Act, a security interest secured by an after-acquired inventory clause attached to oil as soon as the first purchaser acquired oil from an interest owner.[145] A secured creditor's interest extended to oil purchased by a first purchaser, even if the first purchaser failed to pay the interest owner for the produced oil.[146] As a result, many Oklahoma interest owners went without payment when first purchasers filed for bankruptcy without paying for the produced oil.

The Lien Act provides a remedy for interest owners faced with competing secured creditors who claim a right to the same produced oil. After the passage of the Lien Act, an interest owner's oil and gas lien enjoys superior priority to any security interest asserted in produced oil.[147] There are no exceptions in the Lien Act for secured creditors as there are for certain "permitted liens."[148] Accordingly, under the Lien Act an interest owner who agrees to sell produced oil to a first purchaser does not have to worry that it will lose a priority battle to a lender of the first purchaser pursuant to the lender's after-acquired inventory clause.

There is a debate however, as to whether the Lien Act strengthens the position of interest owners by weakening the position of U.C.C. Article 9 secured creditors. For proponents of the Lien Act, the Lien Act gives

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142. *Id.*

143. 52 OKLA. STAT. §§ 549.1-549.12 (2010).

144. Arkla Exploration Co. v. Norwest Bank of Minneapolis, 948 F.2d 656, 657 (10th Cir. 1991); *In re* SemCrude, L.P., 407 B.R. 140, 144 (Bankr. D. Del. 2009).

145. *Arkla Exploration Co.*, 948 F.2d at 657; *In re SemCrude, L.P.*, 407 B.R. at 144.

146. *Arkla Exploration Co.*, 948 F.2d at 657; *In re SemCrude, L.P.*, 407 B.R. at 144.

147. 52 OKLA. STAT. § 549.7.

148. *Id.*

Oklahoma interest owners essentially the same priority in inventory produced that they would have under U.C.C. Article 9, minus the burden of filing that is required by Article 9.[149] Proponents also argue that automatic priority, without filing, does not weaken the position of a security interest owner because people in the business of dealing with operators and "first purchasers" are substantially aware of interest owners and their claim to the production.[150] Thus, removing the need for filing does not eliminate the notice component of filing. Another secured party lending on the security of a first purchaser's inventory may be in doubt as to who is owed money by the first purchaser but is seldom in doubt as to how much the first purchaser might owe all persons claiming statutory lien under this section. Therefore, even without filing, a secured party is on notice that a first purchaser has engaged in a transaction with an interest owner.

Regardless of the proponents' arguments, it is clear that the Lien Act weakens the position of Article 9 secured creditors. First, by giving Oklahoma interest owners automatic priority, without the need to file their lien, the act reduces the burden on Oklahoma interest owners in relation to secured creditors pursuant to U.C.C. Article 9, who must file their lien to gain priority under the U.C.C.[151] Further, the Lien Act gives priority to Oklahoma interest owners superior to secured creditors pursuant to U.C.C. Article 9, a right that did not exist prior to the passage of the Lien Act.[152] It could be argued that such grand language alone proves that the Lien Act weakens the position of U.C.C. Article 9 secured creditors, because interest owners holding liens pursuant to the Lien Act will always have priority over a secured creditor if both concurrently assert rights in the same produced oil.[153] A secured creditor no longer has the right to claim a security interest in produced oil pursuant to an after-acquired property clause. Under the Lien Act, oil purchased by a first purchaser is insulated from the secured creditor's after-acquired property clause, until the interest owner has been paid in full. Regardless of which argument one subscribes to, it cannot be argued that the Lien Act's grant of superior priority to Oklahoma interest owners substantially alters the rights of U.C.C. Article 9 secured creditors in the oil and gas industry.

149. Brief of Plaintiff at 4, *In re* SemCrude, No. 08-11525 (Bankr. D. Del. 2009).
150. *Id.*
151. LoPucki & Warren, *supra* note 18, at 279-83.
152. 52 Okla. Stat. § 549.7.
153. *Id.*

VI. Conclusion

Under the 1988 Act, Oklahoma interest owners repeatedly lost their claim in produced oil to U.C.C. Article 9 secured creditors. Weaknesses of the 1988 Act left thousands of Oklahoma interest owners financially depressed and legally vulnerable. In 2010, the Oklahoma Legislature passed the Lien Act and in doing so strengthened the rights of Oklahoma working interest owners and mineral interest owners. The Lien Act designates real property law to govern and by doing so alters the choice of law to the state where the wellhead is located and importantly where the Lien Act protects the rights of Oklahoma interest owners. By securing an interest owner's lien in produced oil, the Lien Act reinforces the responsibilities of first purchasers to pay, in full, the purchase price of oil to an Oklahoma interest owner. Further, the Lien Act secures the claims of Oklahoma interest owners by guaranteeing these interest owners superior priority above all other lienholders and secured creditors asserting a claim in the same produced oil.

While the Lien Act significantly strengthens the rights of Oklahoma interest owners, they are but one group of investors in the oil and gas industry that are negatively affected when a first purchaser fails to pay the purchase price for produced oil. The Lien Act guarantees superior priority to Oklahoma interest owners above all other lienholders and secured creditors but fails to provide guidance to resolve priority disputes if they eventuate between the Lien Act and other Oklahoma liens. Although there are plausible justifications for the lack of guidance, the fact remains that Oklahoma lienholders do not have a means of determining their rights in relation to lienholders pursuant to the Lien Act. The Oklahoma legislature strengthened the rights of Oklahoma interest owners, but not without possibly altering the rights of all investors in the oil and gas industry.

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