

Oklahoma Law Review

Volume 36 | Number 2

1-1-1983

Oil and Gas: Oklahoma's Oil and Gas Well Lien Statute: Should It Be Extended to Attorneys and Other Professionals?

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Recommended Citation

Michael L. Tinney, *Oil and Gas: Oklahoma's Oil and Gas Well Lien Statute: Should It Be Extended to Attorneys and Other Professionals?*, 36 OKLA. L. REV. 401 (1983),
<https://digitalcommons.law.ou.edu/olr/vol36/iss2/28>

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3. If negotiations succeed:
 - A. Execute a written contract illuminating each and every detail of prospective surface damage; or
4. If negotiations fail:
 - A. Petition for the appointment of appraisers.

Conclusion

Ensuring payment for surface damage is a noble idea indeed. Legislation which is neither warranted nor desired is not.

Oklahoma courts have a long history of dealing with the surface damage problem, and throughout that period the law regarding surface rights developed exceedingly well. The rights and liabilities of surface owners and operators were well defined and fair.

Now, however, those years of development have been forgotten. The Surface Damage Act completely restructures the law relating to surface use. Not only does it destroy the most basic concept of dominant and servient estates, it leaves operators and surface owners so bewildered as to their rights that its purpose is defeated.

Surface owners have always had the opportunity to request payment for surface damage, but now, after seven decades of freely allowing operators the use of a reasonable amount of surface necessary to carry out their operations, the legislature has decided to charge them for it. An executed lease is evidence of consideration paid for surface use; double compensation should not be required.

The Surface Damage Act will be perceived differently by all who are affected by its provisions. Landowners will consider it a measure long overdue while lessees and operators will view it with disgust. Specific sections will evade all attacks upon their validity; others will not. It is, however, a procedure to which everyone in the Oklahoma oil and gas industry must become accustomed.

Gary C. Pierson

Oil and Gas: Oklahoma's Oil and Gas Well Lien Statute: Should It Be Extended to Attorneys and Other Professionals?

Recently, hard times have beset some areas of the oil and gas industry in Oklahoma. Because of falling prices and a decreased demand, the current Oklahoma "oil boom" has ended and a period of leveling off or stabilization is taking place. Many small oil companies and investors have been unable to recover their costs or to pay their bills. As a result, many oil and gas attorneys have turned from filing spacing and pooling applications to filing lawsuits and liens.

Oklahoma's oil and gas well lien statute, section 144 of Title 42, provides a lien on the leasehold for one who furnishes labor, services, or materials used in drilling, completing, or operating a well.¹ Included in this lien are the leasehold interest, oil and gas payments inuring to the working interest, the well itself, oil and gas pipelines, and any buildings, fixtures, tools, and supplies used in completing or operating the well.² Overriding royalties and reserved oil and gas payments, if executed in good faith, are exempt from the lien.³ This lien will follow the property wherever it goes.⁴ Proper filing and recording serves as constructive notice to subsequent owners of the property.⁵

The potential exists that many parties will try to expand the coverage of this statute as they attempt to find a remedy that will secure payment for their services. Such parties may be attorneys, landmen, or investors who contributed services essential to leasehold development.

This note will discuss the possible limits of section 144 and particularly whether certain professional services, such as those rendered by an attorney, come within its provisions. To do so, the note will examine and apply accepted methods of lien statute construction. Further, as developed by case law,⁶ the general principles of mechanics' liens will be considered in construing section 144.

1. 42 OKLA. STAT. § 144 (1981) reads:

Any person, corporation, or copartnership who shall, under contract, expressed or implied, with the owner of any leasehold for oil and gas purposes, or the owner of any gas pipeline or oil pipeline, or with the trustee or agent of such owner, *perform labor or services, including written contracts for the services of a geologist or petroleum engineer*, or furnish material, machinery, and oil well supplies used in the digging, drilling, torpedoing, completing, operating, or repairing of any oil or gas well, or who shall furnish any oil or gas well supplies, or perform any labor in constructing or putting together any of the machinery used in drilling, torpedoing, operating, completing, or repairing of any gas well, or perform any labor upon any oil well supplies, tools, and other articles used in digging, drilling, torpedoing, operating, completing, or repairing any oil or gas well, shall have a lien upon the whole of such leasehold or oil pipeline, or gas pipeline, or lease for oil and gas purposes. . . . (Emphasis added.)

2. *Id.* See *infra* note 16 for a list of tools and equipment liened in an Oklahoma case.

An interesting situation arises when a contractor takes his own drilling equipment onto the lease under a contract with the working interest owner(s). If other parties furnishing materials and supplies are not paid by the interest owner and file a lien on the leasehold, is the contractor's equipment included in the lien? The better view would be that the contractor's equipment is not included in the lien, if the contractor has not contracted with parties claiming a lien and owns no interest in the leasehold. The Oklahoma Supreme Court followed this view in *Kissinger v. G.E. Burgher Oil & Gas Co.*, 174 Okla. 49, 49 P.2d 1049 (1935) and in *Garber & Pulse, Inc. v. Gloyd*, 168 Okla. 88, 31 P.2d 947 (1934). *But see* *International Supply Co. v. Conn*, 119 Okla. 130, 249 P. 900 (1926). Cases that allowed a lien in similar situations can be distinguished in that the liened property was either furnished by the claimant or his employer, or belonged to the leasehold estate. See *Osborn v. Moasco, Inc.*, 181 Okla. 140, 73 P.2d 113 (1937).

3. *Id.* See *supra* note 1.

4. *Id.*

5. *Id.*

6. It should be remembered that state statutes, while similar, may differ in their exact word-

Statutory Construction: Strict Versus Liberal

Mechanics' and materialmen's liens, such as well liens or mining liens, are statutory liens that were unavailable at common law or in equity.⁷ Therefore, in order to obtain a lien one must fit his claim under the statute. Whether a claim comes within the statute depends on the wording of the statute and the construction given to it by the courts.

A crucial factor in applying any type of lien statute is whether a jurisdiction adopts a liberal or a strict construction policy. It is commonly maintained that lien statutes are in derogation of the common law and must be strictly construed.⁸ Several jurisdictions have adopted this view.⁹

However, other jurisdictions have adopted a liberal view, holding that the statute should be broadly applied in order to provide a remedy to those intended.¹⁰ This is based on the notion that the "laborer is worthy of his hire."¹¹ There are examples from both strict and liberal jurisdictions that, despite differences in terminology and approach, call for substantial justice or compliance in applying statutory liens.¹²

Whether a state has adopted a strict or a liberal interpretation of its well lien statute is a major factor in determining what types of activities come within the statutory boundaries. Unfortunately, in Oklahoma this is not particularly clear.

In 1920, in *Harriss v. Parks*,¹³ the Oklahoma Supreme Court stated that "[s]tatutory liens . . . generally will only be extended to cases expressly pro-

ing, and that state court's interpretations may be influenced by methods of construction, local policies, and conditions. G. OSBORNE, G. NELSON & D. WHITMAN, *REAL ESTATE FINANCE LAW* 735 (1979) [hereinafter cited as OSBORNE et al.]. Keeping this in mind, it is still possible to draw sound principles for the application of one's own well lien statute by observing how other states have applied theirs in areas with which the Oklahoma courts have not yet dealt.

7. S. PHILLIPS, *MECHANICS' LIENS* 3 (2d ed. 1883) [hereinafter cited as PHILLIPS]; OSBORNE, et al., *supra* note 6 at 734-35.

8. PHILLIPS, *supra* note 7, at 26.

9. *Harper v. Ford*, 179 N.W.2d 772 (Iowa 1970); *Fender Pipe & Supply, Inc. v. Jenkins*, 5 Kan. App. 2d 101, 612 P.2d 1253 (1980); *Idom v. Moss*, 32 So. 2d 411 (La. Ct. App. 1947); *McClellan v. Haley*, 237 S.W. 627 (Tex. Civ. App. 1922); *Cities Serv. Oil Co. v. Pubco Pet. Corp.*, 497 P.2d 1368 (Wyo. 1972).

10. *United States v. Westmoreland Manganese Corp.*, 134 F. Supp. 898 (E.D. Ark. 1955), *aff'd*, 246 F.2d 351 (8th Cir. 1957), *rev'd on other grounds*, *United States v. Latrobe Constr. Co.*, 246 F.2d 357 (8th Cir. 1957); *Cashman v. Russell*, 33 Ariz. 451, 265 P. 606 (1928); *Nolte v. Smith*, 189 Cal. App. 2d 140, 11 Cal. Rptr. 261 (1961); *White v. Constitution Mining & Milling Co.*, 56 Idaho 403, 55 P.2d 152 (1936); *Caird Eng'g Works v. Seven-Up Gold Mining Co.*, 111 Mont. 471, 111 P.2d 267 (1941).

11. *Luke* 10:7. See PHILLIPS, *supra* note 7, at 28. The idea is that one who works for another deserves to be paid.

12. *United States v. Westmoreland Manganese Corp.*, 134 F. Supp. 898 (E.D. Ark. 1955), *aff'd*, 246 F.2d 351 (8th Cir. 1957), *rev'd on other grounds*, *United States v. Latrobe Constr. Co.*, 246 F.2d 357 (8th Cir. 1957); *Texcalco, Inc. v. McMillian*, 524 S.W.2d 405, 407 (Tex. Civ. App. 1975). Apparently, the judicial construction applied evolves over time to fit circumstances. See also *Nolte v. Smith*, 189 Cal. App. 2d 140, 11 Cal. Rptr. 261 (1961); *Diffenback v. H.H. Mahler Co.*, 167 Okla. 518, 30 P.2d 907 (1934).

13. 77 Okla. 197, 187 P. 470, 471 (1920). In this case a guardian sued for compensation

vided for by the statute, and then only where there has been a strict compliance with all statutory requisites essential to their creation and existence.” However, five years later in *Cleveland v. Hightower*,¹⁴ the court appeared to hedge on this strict construction policy in a case construing the terms “labor” and “machinery” as used in the statute. In *Cleveland*, the court decided that since each lien case was entirely dependent on statute, it was not useful to decide whether the statute was being strictly or liberally construed. The intent of the legislature is controlling and only when that intent is unclear may a court determine what the legislature meant.¹⁵

In 1927, in *Graham Oil & Gas Co. v. Oil Well Supply Co.*,¹⁶ the court allowed a lien for a party who had rented “fishing tools” to be used on a well site. This overruled *Arkansas Fuel Oil Co. v. McDowell*,¹⁷ which had denied a lien under similar circumstances. In *Graham* the court cited *Cleveland* as standing for a liberal construction.¹⁸ It said that the legislature had taken notice of the adage that the laborer is worthy of his hire.¹⁹

Years later, in *Indo Oil Co. v. Bennett*,²⁰ the court allowed a lien on the leasehold for a party who pulled casing and tubing from an abandoned well under an oral contract with the owner of the leasehold. The court cited what it referred to as the rule stated in *Graham*: “Even though it be conceded that in several other jurisdictions lien laws are given a strict construction, this is not the rule in this state, for this court has many times broadly applied the attachment of liens under this and other lien provisions of our law.”²¹ Thus it appeared that the court had moved from strict interpretation to liberal.

The court did, however, set boundaries on this liberal view in *Taylor v.*

due and was unable to obtain a lien on his ward’s real estate. There was no statute that provided a lien under the circumstances.

14. 108 Okla. 84, 234 P. 614 (1925). The court held that the derrick was machinery used in drilling and that hauling casing onto the leasehold was performing labor as required by the statute.

15. *Id.*

16. 128 Okla. 201, 264 P. 591 (1927). Among items liened were: parts for a truck, floor sweepers, snatch block, bailor, wire nails, padlocks, oil cans, machine bolts, flashlights, hatchets, handles, hammer handles, wrench jaws, telegraph cords, hammer, pipe reamer, bit gauge, manila cable, emery paper, files, scissors, flashlight batteries, a spoken-for tractor, cave catcher, water buckets, derrick broom, square, axe-handle, augers, chisels, hand saw, drilling tools, parts for drilling machinery, drill cable, wire rope, bull rope, soft wire line, hand punch, pulling machine, tube catcher, and spudding shoe. *Id.* at 209, 264 P. at 598.

17. 119 Okla. 77, 249 P. 717 (1926).

18. 128 Okla. 201, 209, 264 P. 591, 598 (1927). The court did not elaborate on why it interpreted *Cleveland* as liberal. It simply stated the rule cited in the text accompanying footnote 21. *Commercial Oil Corp. v. Lumpkin*, 113 Okla. 158, 241 P. 137 (1925) also allowed a lien for hauling materials onto the leasehold. The court gave little reasoning and simply followed *Cleveland*. *Graham* also cites this case as holding for liberal construction. 128 Okla. at 209, 264 P. at 598.

19. 128 Okla. at 209, 264 P. at 598.

20. 202 Okla. 300, 213 P.2d 546 (1949).

21. *Id.* at 301, 213 P.2d at 547, citing *Graham Oil & Gas Co. v. Oil Well Supply Co.*, 128 Okla. 201, 264 P. 591 (1927).

*B. B. & G. Oil Co.*²² In *Taylor* the court denied a lien to a subcontractor who had pulled pipe from an old pipeline, holding that the pipeline was not sufficiently connected with an oil and gas leasehold or well to bring it within the confines of the statute. The court said that it would not create a lien merely from a sense of justice.²³

In *Phoenix Mutual Life Insurance Co. v. Harden*,²⁴ a case involving a mortgage foreclosure, the court apparently followed the same reasoning when it stated that lien laws are to be liberally construed, but not so liberally as to create a new lien not defined by law.²⁵

In *Riffe Petroleum Co. v. Great National Corp., Inc.*,²⁶ there interpreting the mining lien statute,²⁷ the court used language associated with strict construction, stating that a statutory lien stands in derogation of the common law and must be strictly confined to the ambit of legislation that gave it birth. A lien not provided by statute cannot be judicially created, even out of fairness.²⁸ However, the court said that within the statute the lien enforcement provisions should be liberally construed.²⁹ This language must mean that the lien claimant must first bring himself within the confines of the statute, and if so, the courts will generously provide a remedy.

Through the years the Oklahoma Supreme Court has used four different, yet not entirely distinct, standards of statutory construction: strict,³⁰ liberal,³¹ the intent of the legislature,³² and strict construction with liberal application or enforcement.³³ Regardless of the standard of construction used, the court must decide whether the legislature meant for the statute to be read narrowly or broadly. The idea of strict construction with liberal enforcement may appear confusing; the critical issue is whether one's services come within the statute. Liberal enforcement provisions are useless to one whose services do not come within the statute in the first instance.

In determining the critical issue of whether certain activities are covered

22. 207 Okla. 288, 249 P.2d 430 (1952). The pipeline was from a gas distributing system, not specifically related to a well or the leasehold.

23. *Id.* at 291, 249 P.2d at 433.

24. 596 P.2d 888 (Okla. 1979).

25. *Id.* at 890. The United States Supreme Court expressed this view long ago in construing a statute concerning a quartz mine in the Montana Territory. It said: "Whilst the statute giving liens to mechanics and laborers for their work and labor is to be liberally construed, so as to afford the security intended, it cannot be too strongly impressed upon them, that they must . . . bring themselves . . . within the provisions of the statute. . . ." *Davis v. Alvord*, 94 U.S. 545, 549 (1876).

26. 614 P.2d 576 (Okla. 1980). The court held that the use of a tippie, which screens and loads coal onto railroad cars, at a place fourteen miles from the mine was not "developing or opening up a mine," or "activity in and about the mine."

27. 42 OKLA. STAT. § 148 (1981).

28. 614 P.2d 576, 579 (Okla. 1980).

29. *Id.*

30. See *supra* note 13.

31. See *supra* notes 16, 20 & 21.

32. See *supra* note 14.

33. See *supra* note 26.

by the statute, the Oklahoma Supreme Court has fluctuated in the criteria used. It is suggested that the court has in reality applied a substantial justice or fairness standard.

The legislative purpose behind a lien statute is justice and fairness for those who furnish labor, services, and materials. Despite the inconsistencies in its interpretations, the court has consistently sought to provide fairness. This desire for substantial justice or fairness may explain why the court has jumped from one method of construction to another.

The "substantial justice" standard should be expressly adopted. This does not mean that liens should be granted simply because justice demands that a party be paid. Rather the test should be: If the services provided come within the spirit of the statute, given a reasonable reading with fairness to the party seeking a lien for his services, then a lien should be allowed.

Principles of Mechanics'-type Lien Statutes

Whatever the method of construction used, the lien claimant must meet basic qualifications for a lien under section 144 or similar statutes. Oklahoma's statute requires a contract between the party who is to furnish labor or materials and the owner of the leasehold against which the lien is claimed.³⁴ This contract may be expressed or implied.³⁵ A subcontractor who furnishes labor or materials to a contractor or fellow subcontractor is entitled to a lien in the same manner as the original contractor if primary liability exists between the original contractor and the owner of the leasehold.³⁶ Thus, if a subcontractor pulls the tubing and casing from a well to which the contractor has lost its rights (e.g., due to abandonment) the subcontractor cannot acquire a lien under section 144.³⁷

Where property is under contract for sale and the prospective purchaser hires someone to drill a well, a lien may be obtained against the equitable interest of the prospective purchaser.³⁸ Where an owner assigns part of his interest during a drilling operation, a lien may be obtained against both the assigned and the retained interest.³⁹ When a good faith trespasser drills a well,

34. *McInnes v. Robinson*, 341 P.2d 577 (Okla. 1959); *Pace v. National Bank of Commerce*, 190 Okla. 503, 125 P.2d 178 (1942); *Oil Well Supply Co. v. Farmers Nat'l Bank*, 112 Okla. 17, 239 P. 585 (1925).

35. *Pace v. National Bank of Commerce*, 190 Okla. 503, 125 P.2d 178 (1942).

36. 42 OKLA. STAT. § 145 (1981); *Conservation Oil Co. v. Graper*, 173 Okla. 127, 46 P.2d 441 (1935); *Murray Tool & Supply Co. v. Bridgeport Mach. Co.*, 164 Okla. 136, 23 P.2d 165 (1933); *Josey Oil Co. v. Ledden*, 162 Okla. 262, 20 P.2d 382 (1933); *Carson v. Waller*, 127 Okla. 186, 260 P. 72 (1927); *Brennan Oil Co. v. Dickason-Goodman Lumber Co.*, 108 Okla. 257, 236 P. 44 (1925).

37. *Haggard v. Sunray Oil Co.*, 176 Okla. 81, 54 P.2d 662 (1936).

38. *Muller v. Campbell*, 97 Okla. 91, 222 P. 980 (1924); *Hoffman v. Continental Supply Co.*, 120 S.W.2d 851 (Tex. Civ. App. 1938). See also *State ex rel. Mothersead v. Continental Supply Co.*, 137 Okla. 24, 278 P. 269 (1929).

39. *Nix v. Brogan*, 118 Okla. 62, 251 P. 753 (1925). In *Uncle Sam Oil Co. v. Richards*,

he cannot claim a lien against the property because there is no contract between the owner and him. He may, however, acquire an equitable lien until his costs are recovered.⁴⁰

Another basic idea behind mechanics'-type liens is that the party desiring a lien must have contributed toward the improvement of the premises upon which the lien is claimed.⁴¹ Although the lien statutes attempt to define these improvements, in cases where the statutory coverage is questionable it is sometimes helpful in interpreting the statute to reverse this process and determine if the work done is in the nature of an improvement. That is, can the work done be considered an attempt to increase the value or usefulness of the property? If so, a lien should be allowed if that work can reasonably be read into the statutory language.

In *Nolte v. Smith*,⁴² the California Supreme Court allowed a mechanics' lien for the mapping and surveying of a building project site, even though the project was never built. The court decided that these services contributed to the scheme of improvement as a whole.

The services provided by a professional that are necessary to the development of an oil and gas leasehold fit into the overall scheme of improvement. Most mechanics' lien statutes have been broadened to where nearly every segment of the construction industry is granted a lien of some nature.⁴³ This principle of the "overall improvement scheme" should be applied to oil and gas well liens under section 144.

Under similar statutes, other states have held that the improvements do not have to increase the value of the real estate.⁴⁴ It is sufficient that the lienor expended effort on the attempted or proposed improvements.⁴⁵ Thus,

60 Okla. 63, 158 P. 1187 (1916), a cotenant who owned 7/8 of the working interest contracted with the other cotenant who agreed to pay his proportionate share of drilling wells and developing the land. When the cotenant with the 1/8 interest refused to pay his share, the other cotenant was not allowed a lien under this statute. The court held that this was not a contract with the owner of an oil and gas lease to drill a well or to furnish materials within the meaning of the statute. The court did not see the issue from the point of view that the cotenant with the 7/8 interest had contracted to drill a well for the other. Rather, the court took the view that the cotenant with the 7/8 interest was primarily improving his own property and the other cotenant had agreed to pay his pro-rata share.

40. *Eagle Oil Corp. v. Cohasset Oil Corp.*, 263 Mich. 371, 248 N.W. 840 (1933).

41. OSBORNE et al., *supra* note 6, at 736.

42. 189 Cal. App. 2d 140, 11 Cal. Rptr. 261 (1961).

43. OSBORNE et al., *supra* note 6, at 736.

44. *Oil Well Supply Co. v. First Nat'l Bank*, 106 F.2d 399 (10th Cir. 1939) (construing what is now KAN. STAT. ANN. § 55-207 (1976)); *Standard Pipe & Supply Co. v. Marvin*, 43 Cal. App. 2d 230, 110 P.2d 476 (1941) (CAL. CIV. CODE § 3110 (West 1974)); *Caird Eng'g Works v. Seven-up Gold Mining Co.*, 111 Mont. 471, 111 P.2d 267 (1941) (construing MONT. REV. CODE § 8339 (1935), which is now MONT. CODE ANN. § 71-3-5d (1979) (Mechanic's Lien Statute) (the well lien statute is § 71-3-1002)); *Eldorado-Rand Mining Co. v. Thompson*, 57 Nev. 407, 65 P.2d 878 (1937) (construing Comp. Laws § 3735, now NEV. REV. STAT. § 108.222 (1979) (Mechanic Lien Statute)).

45. *Nolte v. Smith*, 189 Cal. App. 2d 140, 149, 11 Cal. Rptr. 261, 266 (1961). In allowing a lien the court said that the fact there was no improvement was not the fault of the materialman.

one who is hired by a lessee to drill a well that results in a dry hole may still obtain a lien on the leasehold.⁴⁶

Another principle established by the courts is that the labor or services do not have to be performed on the leasehold premises. Engines and machinery from the drilling rig can be repaired off the premises.⁴⁷ Repairmen have been allowed liens even where the machinery was not put back into operation at the well site.⁴⁸ Courts uniformly allow liens for renting equipment and tools for use on the premises,⁴⁹ and for hauling materials to the premises.⁵⁰ However, courts are divided as to whether the hauling of consumable supplies, such as groceries, entitles one to a lien.⁵¹ A further requirement is that any labor performed, whether on or off the premises, must be connected with improvement of the leasehold. Absent a reasonable connection, the activity does not come within the statute.

In two cases the Oklahoma Supreme Court has said that the labor and material must be applied to improvement of the lease and be in some manner connected with well operation.⁵² Both decisions denied liens for services on gas distribution systems because the systems were in no way connected with an oil and gas well or leasehold.

The Louisiana Supreme Court denied a lien for services on a bouy at an offshore oil terminal facility because it had no connection with the well.⁵³

46. *Oil Well Supply Co. v. First Nat'l Bank*, 106 F.2d 399 (10th Cir. 1939); *Standard Pipe & Supply Co. v. Marvin*, 43 Cal. App. 2d 230, 110 P.2d 476 (1941).

47. *Nemeroff v. Cornellson Engine Maintenance Co.*, 369 P.2d 604 (Okla. 1962); *Gourley v. Iverson Tool Co.*, 186 S.W.2d 726 (Tex. Civ. App. 1945).

48. *Nemeroff v. Cornellson Engine Maintenance Co.*, 369 P.2d 604 (Okla. 1962).

49. *Horton v. Watchman Drilling Co.*, 385 P.2d 802 (Okla. 1963) (lien allowed for loaning drilling equipment and fishing tools); *Graham Oil & Gas Co. v. Oil Well Drilling Co.*, 128 Okla. 201, 282 P. 598 (1927) (allowed lien for renting fishing tools); *Schraeder v. Gormley*, 127 Okla. 65, 259 P. 869 (1927) (lien for furnishing a rig).

50. *Osage Oil & Ref. Co. v. Gormley*, 123 Okla. 186, 252 P. 37 (1927); *Arkansas Fuel Oil Co. v. McDowell*, 119 Okla. 77, 249 P. 717 (1926); *Commercial Oil Corp. v. Lumpkin*, 113 Okla. 158, 241 P. 137 (1925); *Cleveland v. Hightower*, 108 Okla. 84, 234 P. 614 (1925).

51. *Continental Cas. Co. v. Associated Pipe & Supply Co.*, 447 F.2d 1041 (5th Cir. 1971). In Louisiana a crewboat owner who hauled workers and materials used on pipeline construction got a lien on the pipeline, as did a caterer who furnished food and lodging for the crew.

Cashman v. Russell, 33 Ariz. 451, 265 P. 606 (1928). A lien was allowed for hauling groceries and other supplies consumed in mining operations. At 455 the court stated a liberal construction position.

Caird Eng'g Works v. Seven-Up Gold Mining Co., 111 Mont. 471, 111 P.2d 267 (1941). A trucker was allowed a lien for hauling lumber that went into buildings on the premises but no lien for hauling groceries and consumable supplies to the premises.

52. *Taylor v. B.B. & G. Oil Co.*, 207 Okla. 288, 249 P.2d 430 (1952); *McEwen Mfg. Co. v. Anadarko Producer's Gas & Oil Co.*, 115 Okla. 127, 241 P. 493 (1925).

53. *Melyn Indus., Inc. v. Sofer, Inc.*, 392 So. 2d 733 (La. 1980). *See also P.H.A.C. Services v. Seaways Int'l, Inc.*, 403 So. 2d 1199 (La. 1981), where, with regard to work done by subcontractors on a structure which was then transported to an offshore rig, the subcontractors were entitled to no lien because the well was not in the state but on the high seas, so the statute did not apply; *Big Three Welding Equip. Co. v. Crutcher*, 149 Tex. 204, 186 S.W.2d 726 (1950), where no lien was allowed for removal or demolition, as this was not "operating and maintaining" as the statute required; *Bell Oil & Ref. Co. v. Price*, 251 S.W. 559 (Tex. Civ. App. 1923),

In a Kansas case the plaintiff supplied tubing and rod for a well.⁵⁴ The rod was stacked to one side and never used. The Kansas appeals court allowed a lien on the tubing but not on the rod because the rod was never used on the well.

Services performed by one who acquires a lease for another or who furnishes professional or legal advice about acquiring a lease or drilling a well bear a reasonable connection with the development of that leasehold. Consequently, professional services have often been found to come within the provisions of lien statutes.

Liens for Professional Services

Mechanics' liens originated to promote the building industry and to protect laborers and material suppliers. Because their labor and materials were consumed in improving the real estate of another, these persons could not easily reclaim their contributions when not paid.⁵⁵ Over the years these liens have been expanded and now commonly include professional services.⁵⁶

Under the traditional mechanics' lien statute, architects are usually the professionals for whom the issue of a lien for services arises. The general rule is that architects may acquire a lien for their services under statutes expressly so providing, as well as under statutes conferring a lien for work, labor, or services.⁵⁷ However, this may also be influenced by a strict or a liberal construction policy.⁵⁸ Jurisdictions have split on the services of a building superintendent.⁵⁹

The Oklahoma Supreme Court in *Diffenback v. H. H. Mahler Co.*⁶⁰ found that it did not need to rule on the issue of whether an architect might obtain a lien, but it allowed a lien to a contractor who furnished plans and specifications and directed the labor. The court held that the contract was indivisible and that the contractor had furnished personal services (i.e., furnished labor) on the building itself, which would enable the contractor to claim a mechanics' lien. The court also stated that "labor" was not confined to physical or manual labor.⁶¹

Presently, Oklahoma has scant authority for allowing professional service liens on mineral leaseholds. Perhaps the closest is *Colonial Supply Co. v.*

where merely watching a lease while doing other work was not "labor" under the statute.

54. *Fender Pipe & Supply, Inc. v. Jenkins*, 5 Kan. App. 2d 101, 612 P.2d 1253 (1980).

55. *PHILLIPS supra* note 7, at 11-13.

56. *Id.*

57. 36 C.J.S. *Mechanics' Liens* § 37 (1948).

58. *Nolte v. Smith*, 189 Cal. App. 2d 140, 11 Cal. Rptr. 261 (1961) (a lien was allowed for architectural-type services in a liberal jurisdiction); *Foster v. Tierney*, 91 Iowa 235, 59 N.W. 56 (1894) (an architect was not allowed a lien. Iowa is a strict construction state.). See *Harper v. Ford*, 179 N.W.2d 772 (Iowa 1970).

59. 36 C.J.S. *Mechanics' Liens* § 37 (1948).

60. 167 Okla. 518, 30 P.2d 907 (1934). In other words, the contractor got a lien for his labor while working on the building, and the question of whether an architect could acquire a lien for purely professional services was not presented.

61. *Id.* at 519, 30 P.2d at 908.

Smith,⁶² where one who was hired to guard tools on a leasehold obtained a lien on the tools. However, under Oklahoma's mining lien statute⁶³ an employee hired to collect accounts and act as night watchman at an abandoned mine was denied a lien.⁶⁴ The court held this was not related to developing and operating a mine, as required by the statute.

Other states have allowed liens under oil well or mining lien statutes for architectural and engineering services,⁶⁵ ore sampling,⁶⁶ placing special-rate machinery orders,⁶⁷ and guarding⁶⁸ and inspecting mines.⁶⁹ However, courts have denied liens to a mining supervisor⁷⁰ and a pipeline route surveyor.⁷¹ These decisions, of course, were influenced by the construction policy adopted by the respective states.⁷² Today, under all but the strictest views, those who furnish professional services needed for the improvement of the leasehold can acquire liens.

Availability of Other Liens

Before the above principles are focused on section 144, there is another factor to be considered. Are other liens available to secure the payment for services?

As previously mentioned, mechanics' liens provide a security interest to one who has no other protection because his efforts are wrapped up in another's building.⁷³ Because mechanics' liens are intended to provide a remedy where

62. 134 Okla. 40, 272 P. 879 (1928). The plaintiff watched the tools on the leasehold for about ten days then took them home for approximately two months. The court mentioned the well lien but gave a lien under what is now 42 OKLA. STAT. § 91 (1981). This is a lien for labor on personal property, "dependent on possession." The plaintiff got a lien for his wages in watching the tools and for storage, including the time during which he did not have possession of the tools. The court did not use the well lien statute; nevertheless it allowed a lien for watching the tools on the leasehold during the time that the plaintiff did not have possession.

63. 42 OKLA. STAT. § 148 (1981).

64. *Hunt v. Stribling*, 57 Okla. 507, 157 P. 741 (1916).

65. *Caird Eng'g Works v. Seven-Up Gold Mining Co.*, 111 Mont. 471, 111 P.2d 267 (1941) (liberal construction).

66. *Id.*

67. *Id.*

68. *Fremming v. Southeastern Alaska Mining Co.*, 8 Alaska 309, 310 (1931) (substantial justice). The court said: "[A] statute of this kind should not be, perhaps, so strictly construed as statutes in general, certainly not so strictly construed as to deprive the general terms of the statute of any meaning that may be consistent with the purpose of this act." Contrast this with the Alaska court's strict interpretation in an earlier case, at note 70, *infra*.

69. *White v. Construction Mining & Milling Co.*, 56 Idaho 403, 55 P.2d 152 (1936) (liberal construction).

70. *Walbridge v. New York Alaska Gold Dredging Co.*, 8 Alaska 36 (1928), *quoting from* *Pioneer Mining Co. v. Delamotte*, 185 F. 752, 755 (9th Cir. 1901): "[M]iners lien can be acquired only for such labor as is contemplated by the statutes, and only by those persons to whom the statute plainly gives it." The court then stated that: "It does not plainly give a lien to superintendants and general managers." 8 Alaska at 40.

71. *McGee v. Missouri Valley Dredging Co.*, 182 So. 2d 764 (La. Ct. App. 1966). One who surveyed a crossing for a natural gas pipeline route was allowed no lien on the pipeline. Louisiana is a strict construction state. *Idom v. Moss*, 32 So. 2d 411 (La. Ct. App. 1947).

72. See *supra* notes 55-61.

73. See *supra* text accompanying note 46.

there is none, that policy should be extended to those who contribute similarly unprotected, albeit professional, services.

The attorney has the protection of the attorney's lien for his services.⁷⁴ However, in many situations where an attorney performs services involving a leasehold or well, such as negotiating, advising as to title, or representing a client in spacing and pooling proceedings, an attorney's lien is not available.⁷⁵ Usually in these situations, the attorney does not hold personal property of the client upon which he may obtain a possessory lien. Generally, an attorney may claim a charging lien on what he obtains for his client in the way of affirmative relief, but has no lien on the subject matter of the action.⁷⁶

Oklahoma courts have held that services that may protect a client's possession and right to his property are not covered by the attorney's lien law.⁷⁷ Attorneys who have represented the heirs to an estate,⁷⁸ defended title in a quiet title suit,⁷⁹ broken a lease,⁸⁰ or obtained a lease in trust for another⁸¹ have all been denied attorney's liens by the courts. In a Georgia case⁸² an attorney who was not paid for his title examination of a tract was denied an attorney's lien on the tract on the ground that it was not property recovered by the attorney for the client. It appears that in this and similar situations the attorney must look to the well lien statute to secure payment.

A landman or geologist who contracts to find prospective properties must find his protection in the oil and gas well lien statute. Geologists and petroleum engineers are expressly allowed liens under the statute for services provided under a written contract.⁸³ Justice requires that a landman's or other professional's rights be comparable.⁸⁴

The problem remains that a party furnishing services that are not the typical services for which a mechanics' lien is granted, will still need protection. The policy behind the mechanics' lien empowers the courts to grant a lien in these situations.

74. 5 OKLA. STAT. § 6 (1981).

75. See *supra* notes 66-71.

76. Bruce v. Calloway, 173 Okla. 151, 152, 46 P.2d 446, 447 (1935), *citing* Elliot v. Orton, 69 Okla. 233, 236, 171 P. 1110, 1113 (1918).

77. Bruce v. Calloway, 173 Okla. 151, 46 P.2d 446 (1935); Elliot v. Orton, 69 Okla. 233, 171 P. 1110 (1918).

78. Bruce v. Calloway, 173 Okla. 151, 46 P.2d 446 (1935).

79. Elliot v. Orton, 69 Okla. 233, 171 P. 1110 (1918).

80. Adcock v. Bennett, 109 Okla. 114, 235 P. 229 (1925).

81. Elliot v. Nowata Oil & Ref. Co., 37 F.2d 76 (10th Cir. 1929).

82. Woodward v. Lawson, 225 Ga. 261, 167 S.E.2d 660 (1969).

83. See *supra* note 1.

84. An interesting argument could be made on behalf of those who advance money to be used in drilling a well and then do not receive their share of the interest or proceeds. Could money be considered as services or material furnished? That is conceivable under only the most extremely liberal interpretation. In this situation, the proper remedy is an equitable lien and the Oklahoma courts have allowed such in similar circumstances. Phillips Pet. Co. v. Gable, 128 F.2d 943 (10th Cir. 1942). The buyer of oil well casing to be used on a well agreed to pay seller out of the proceeds of ½ the buyer's interest in production. When buyer did not pay the seller received an equitable lien on ½ the buyer's interest. Harwell v. Carolyn Oil Co., 191 Okla. 240, 129 P.2d 81 (1942). Owners who contributed funds to company to drill well, allowed lien on company's interest. McKay v. Kelly, 130 Okla. 62, 264 P. 814 (1928). A mining partner

Application of the Oklahoma Statute

Many professional services will qualify under the basic oil and gas well lien principles. An attorney's drilling title opinion could serve as an example. First, there will be a contract for services between the attorney and the operator, who will own at least a partial working interest. This will satisfy the requirement of a contract between a leasehold interest owner and the party claiming a lien.

Second, the services, although they are performed off the premises, bear a reasonable connection to the well because it is imperative that ownership be determined before the well is drilled. No rational person will spend hundreds of thousands or even millions of dollars drilling a well where ownership of the minerals to be recovered is uncertain.

Third, these services contribute to the improvement of the premises. Again, a title opinion is an indispensable step toward the drilling of a well and the production of oil and gas. A clear title is obviously worth more than one beset with unknown flaws, and it is an essential prerequisite to the beginning of any costly improvements.

Fourth, if the attorney is not paid, the well lien is a logical and fair method of providing the attorney security. Because the attorney has met the above principles of the well lien and will probably have no other security, he should, along with others who furnish labor, services, or materials, be able to claim a security interest in the leasehold.

The remaining issue is whether such professional services come within the statutory language under a "substantial justice" reading of the statute. The key language in the statute pertinent to this issue is "labor or services . . . used in the drilling . . . completing . . . operating . . . of any oil or gas well."⁸⁵

One must decide if an attorney's or other professional's services are the kind contemplated by the word "services" in the statute. That the phrase "or services" was added to follow the term "labor" in a 1963 amendment is significant.⁸⁶ Generally labor is thought of as referring to manual labor,⁸⁷

who advanced more than his share is entitled to a lien on his partner's share.

The reverse of this situation might be closer to being within the statute. If the operator who drills or pays for the drilling of a well is not reimbursed by a working interest owner who has agreed to pay his proportionate share of the costs, then the operator could argue that it had furnished labor and materials used in a well which improved that working interest owner's leasehold. *But see* Uncle Sam Oil Co. v. Richards, 60 Okla. 63, 158 P. 1187 (1916), summarized *supra* in note 39. This case may be distinguishable on its particular fact situation.

Most contracts and operating agreements should provide the operator with a lien on proceeds until it is repaid anyway.

85. See *supra* note 1.

86. 1963 Okla. Sess. Laws, ch. 226.

87. "[L]abor" in legal parlance has a well-defined, understood and accepted meaning.

It implies continued exertion of the more onerous and inferior kind, usually and chiefly consisting in the protracted exertion of muscular force. . . . In legal significance labor implies toil, exertion producing weariness, manual exertion of a serious nature. *Bloom v. Richards*, 2 Ohio St. 387 (1853); *Moore v. American Industrial Co.*, 138 N.C. 304, 50 S.E. 687.

Bell Oil & Ref. Co. v. Price, 251 S.W. 559 (Tex. Civ. App. 1923).

In *Warra v. Golden Turkey Mining Co.*, 60 Ariz. 252, 135 P.2d 149 (1943), a mining engineer

although Oklahoma courts have not so narrowly defined it.⁸⁸ The addition of "or services" is evidence of legislative intent that a lien be allowed for work other than "labor."

In 1963 the legislature also added the words "including written contracts for the services of a geologist or petroleum engineer."⁸⁹ This could indicate that the legislature recognized those who render certain professional services are entitled to a lien.

Reading the statute narrowly, it could be said that if the legislature had intended for other types of professional services to be included, it would have expressly mentioned them. However, that the phrase "or services" is in addition to the words "services of a geologist or petroleum engineer," indicates, even without a liberal construction, that the legislature realized that certain other "services" besides those of geologists and petroleum engineers should be included in the statute.

Another construction issue is whether these professional services are used in the "drilling, completing or operation of a well."⁹⁰ Strictly speaking, these services may not be used in the physical drilling of a well, yet they are essential to the overall drilling program. Under a just and fair reading of the statute, and under the "scheme of improvement" rationale,⁹¹ professional services essential to the drilling program are indeed "used" in drilling and completing that well.

Conclusion

Sound reasoning indicates that an attorney's title opinion and other professional services come within the statute, as well as qualifying under general mechanics' lien principles. A stronger argument can be made for the view that a laborer, no matter what the nature of his services, is worthy of his hire, and deserves a chance of recovering what is due him.

On the other hand, an argument can be made that the primary purpose of the statute is to protect laborers and materialmen, and that their protection may be weakened if more parties are allowed to obtain a security interest in the property. Others may simply feel that allowing liens for certain kinds of professional services is repugnant to the blue-collar nature of a mechanics' lien statute.

There are legitimate grounds for extending section 144 protection to persons who render professional services that enable a lessee to improve his leasehold. The traditional mechanics' lien purpose, modern-day policy, and just and fair statutory construction support this conclusion. A professional who is not paid for his services can no more repossess those services employed

was given a lien for his manual labor performed but not for his professional services, the court holding that "labor" in the statute meant manual labor.

88. *Diffenback v. H.H. Mahler Co.*, 167 Okla. 518, 519, 30 P.2d 907, 908 (1934). See *supra* text accompanying note 51.

89. 1963 Okla. Sess. Laws, ch. 226.

90. See *supra* note 1.

91. See *supra* text accompanying notes 42 & 43.