

Chapter 16

Litigating Procurement Agreement Disputes: Mechanics' Liens and Master Service Agreements

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§ 16.01. Introduction.

It is becoming common for contractors to underbid a project and then seek an eleventh-hour change order or walk off the job on pipeline companies, which often have tight deadlines for in-line dates to meet pre-existing shipping commitments. When there is such a last-minute walk-off, pipeline companies understandably refuse to pay the contractor. In turn, those contractors are not paying their subcontractors, which are then placing liens on wells, the leasehold, and the surface owner's estate, regardless of whether the surface owner owns any interest in the minerals. This chapter focuses on

two legal issues that will inevitably arise under this scenario. First, the law of mechanic's liens is analyzed in the context of what oil and gas interests are subject to mechanic's liens. This analysis focuses on the states of Ohio, West Virginia, and Pennsylvania. This chapter then turns its attention to the litigation of master service agreements in the oil and gas industry. Specifically, issues concerning bid documents, damages, risk allocation, and other practical considerations are discussed.

§ 16.02. **The Law of Mechanic's Liens and Oil and Gas Interests.**

“The purpose of the mechanics’ liens statutes is to protect any person who increases the value of another person’s real property by furnishing labor or materials.”¹ This usually arises in the context of construction. “Oil and gas development, however, introduces complexities to the creation of mechanics’ liens not found in the normal construction setting.”² Since general mechanics’ liens do not fit neatly into the oil and gas development context, state legislatures have taken differing approaches. These differing approaches can be placed in one of three groups.³ First, a state may simply apply its general mechanic’s lien statute to oil and gas development issues — this would include West Virginia and Pennsylvania.⁴ Second, some states have separate mineral lien statutes in addition to their general mechanics’ lien statutes. The states that have adopted this approach are generally Midwest or Western states, like Louisiana, Montana, Illinois, Arkansas, and Michigan.⁵ Finally, other states have incorporated oil and gas specific statutes into their general mechanic’s lien statutes.⁶ Ohio is one such state.

1 Carolina Lumber Co. v. Cunningham, 192 S.E.2d 722, 726 (W. Va. 1972).

2 Kite, Marilyn, et al. *Mechanics’ Liens in the Oil Patch: An Illusory Remedy*, 12 ENERGY MIN. L. FOUND. §15.01 (1991).

3 *Id.*

4 *Id.*

5 *Id.*

6 *Id.*