

“HOW TO MANAGE CREDIT AND COLLECT UNPAID BILLS IN THE OIL PATCH”

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From the oilfields in West Texas to the board rooms in Houston and Dallas, everyone has an opinion on when the “rebound” in oil prices will occur. Some speculate, and even gamble, that the price per barrel will return to north of \$80 by December while others predict the recovery will take much longer. With the current conflicts in the Middle East and the ever-present glut of supply, the rebound is difficult to predict by any measure.

This environment poses many challenges for service companies and suppliers. Since October 2014, the oil and gas rig counts have plummeted from all-time highs to surprising lows. Under these circumstances, suppliers and service companies face ever-increasing risks regarding payment. These risks are apparent from the flurry of recent lawsuits filed by service companies and suppliers who claim they are not getting paid. Fortunately, there are many steps you can take to minimize credit risk and maximize leverage in the event it becomes necessary to file a lawsuit to collect payment.

Beginning the Relationship: Dot your I’s and cross your T’s

Understandably, salesmen working for service companies and suppliers are hungry for business. While it is tempting to close the deal with minimal paperwork or worse, a one-sided agreement, it is critical to try to obtain fair terms and conditions from all customers, and for small and mid-size customers to diligently check their credit.

Medium size and large operators typically require service companies and suppliers to sign master service agreements prior to doing any work. Master service agreements often contain clauses that have a profound impact on your ability to collect payment. For example, many agreements contain lien releases which preclude your ability to file a lien or they may impose stringent limitations on your customers’ liability. Additionally, such agreements, when not negotiated, leave you vulnerable to various sources of liability. For example, indemnities and warranties warrant careful review by an attorney to ensure they are fair and equitable. Despite the common fear of “losing the business”, many operators and upstream service companies are willing to negotiate their standard default terms. Either way, it does not hurt to ask.

Of equal importance, with smaller customers, is investigating a customer’s credit. When seeking out new business, salesmen often overlook asking important questions vital to assessing the customer’s creditworthiness which ultimately minimize the risk of not being paid for products and services. Such inquiries include the following:

- (1) Customer/business references;
- (2) Bank information;
- (3) Names of the entities the customer has been associated with in the last five years; and
- (4) Past and current lawsuits.

This information is invaluable when deciding whether or not to extend credit to this new customer. Additionally, it can come in handy when seeking to enforce your rights by filing a mineral lien or a lawsuit. To avoid concerns of losing sales momentum or awkward questions, these questions are best posed in a credit application for the customer to fill out at the beginning of the relationship. In addition to the referenced information, the credit application should include enough information to allow you to run an adequate credit and background check as well as contain basic terms and conditions.

Of particular importance, whether it’s a credit application, purchase order, or master service agreement, make sure the signatory is an officer of the company or otherwise authorized to bind the company.

On the Job

When you receive a customer’s purchase order, there are several steps you can take to protect your interests. First, make sure the order does not contain terms and conditions that vary from the credit application or master service agreement you negotiated on the front end. Otherwise, you will have competing and contradictory terms and conditions – known to attorneys as the “battle of the forms.” Second, make sure you document what well (ideally by API number) your services and/or products are being supplied to. This is critical to lien rights and, for rental companies, to ensuring the safe return of tools and equipment. Third, for suppliers, delivery tickets signed by the customer help avoid disputes over the quantity, quality, and timing of a delivery.

What to Do When Things go Wrong

If a customer fails to pay, there are several options prior to filing suit. Payout agreements secured by an agreed judgment are often a viable option. Alternatively, if the customer needs additional products and services and you are willing to provide them, you may be able to negotiate a personal guaranty or an overriding royalty interest to provide you with additional and potentially more powerful claims.

More commonly, the customer is either unable or unwilling to pay. In those instances, you must protect yourself. If the amount justifies the legal expense, contact an attorney immediately. If you do so, you can take advantage of lien laws, which may give you preference over other types of creditors.

Filing a lien is a powerful tool, but it comes with a price tag: legal counsel is often necessary to follow the proper deadlines and procedures. The following steps must be followed to perfect a mineral lien:

- **Identify the Well Information** - If you did your information gathering homework up front, you should already have this information. If not, your counsel will be able to look up its API number, which is a unique number assigned to oil and natural gas wells.

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• **Send a Demand Letter** - This letter serves two functions: (1) to comply with the requisite notice requirements under Texas law and (2) a demand letter is often the most practical and least expensive way to get paid. For those suppliers and service companies who do not have a direct contract with the mineral owner(s), Texas law requires that the letter be sent to the mineral owner(s) at least ten days prior to recording the lien affidavit.

• **File the Lien Affidavit** - Importantly, this must be recorded with the county clerk within six months after labor or materials were last furnished. Failing to meet this deadline is fatal to the validity of the lien. Additionally, the lien filing must contain various information including the mineral property owner, contractor’s name, dates of performance, and an itemized list of amounts claimed. The information you obtain at the beginning of the relationship will enable you to quickly gather the information necessary for the lien affidavit.

• **File a Lawsuit** - If the demand letter or lien affidavit does not persuade the customer to pay his bills, the final step is to file a lawsuit to foreclose the lien and assert other claims allowed by Texas law. The lawsuit must be filed within two years of filing the lien affidavit. The credit information you obtained on the front end will prove to be invaluable in deciding with your counsel whether or not this particular customer is worth the price of litigation.

Conclusion

Receiving payment is never a sure thing, especially in the current environment. However, following these steps from the beginning of the customer relationship to the end will minimize your credit risk and maximize your collection rights and remedies under Texas law.

EAGLE FORD APP HOPES TO HELP OPERATORS IN SOUTH TEXAS

Labeled as the first of its kind, a new app is being offered on mobile devices to serve the needs of landowners and energy companies working inside the Eagle Ford shale region. The Eagle Ford Mobile Network App features free listings for jobs, equipment for sale and service companies in addition to links for news, energy-related conferences and activities in South Texas.

Creators of the app say their mission is to enhance the lives of people who live, work, and do business in the Eagle Ford Shale by providing relevant, easy to access information and by giving businesses access to the first truly mobile platform built to serve the needs of the Eagle Ford Shale business community. The app is free to download, and is available on Apple’s App Store as well as on Google Play. Learn more at: www.eaglefordmobilenetwork.com.

TEXAS UNEMPLOYMENT RATE DROPS

Texas has achieved its lowest unemployment rate since 2007, which dropped to 4.2 percent in March, according to an announcement by the Texas Workforce Commission. Texas continues to trend well below the national unemployment average of 5.5 percent. And though statewide job creation did stall over the month of March, Texas has added 327,500 jobs throughout the past year for an overall growth rate of 2.9 percent.

Until market conditions rebound, Texas oil and gas companies continue to strategically assess existing workforce needs. “While some workers may be temporarily impacted by statewide reductions in the oil and gas industry, our 28 local workforce boards stand ready to help these and all job seekers identify transferrable skills for other employment opportunities or obtain training that will help them quickly transition to new jobs,” assured TWC Commissioner Representing Labor Ronny Congleton.

“While the state of Texas has achieved enormous success in creating jobs and spurring economic growth, it’s time to renew our focus on promoting smarter tax policies that energize our economy and empower entrepreneurs to reinvest their capital in the Lone Star State,” Texas Governor Greg Abbott said in a statement. “We must do more to keep government small, taxes low and promote reasonable regulations. And by diversifying our state’s economy, Texas can – and will – remain the beacon of economic opportunity for the nation.”



UPCOMING FILM STRIVES TO ADDRESS COMMON MYTHS ON CLIMATE CHANGE

A new documentary, scheduled to be released next year, will strive to uncover the truth behind common global warming misconceptions. “The Green Lie” is a story of the lies surrounding global warming and the global warming industry, film creators say. Presented by Awaken The Giant Films, the 120-minute documentary will address scandals, lies, scams, and pure fabrication regarding global warming and the agenda behind it. The ultimate goal for “The Green Lie” is to hit theaters nationwide in 2016 to effect a pop culture view regarding climate change. To watch the trailer for the film, visit: www.greenliemovie.com.