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Alan A. Enke

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# Utah's New Mechanics' Lien Statute: Clarification For The Oil And Gas Industry

*Alan A. Enke\**

## I. INTRODUCTION

“The purpose of the mechanics’ lien act is remedial in nature and seeks to provide protection to laborers and materialmen who have added directly to the value of the property of another by their materials and labor.”<sup>1</sup>

The supplier of steel casing to an oil well may or may not have added to the value of the property, unlike the standard building situation in which the supplier of lumber increases the value<sup>2</sup> of the property after the lumber has been cut and nailed into place. If there is a successful well, sufficient money is generated to pay the vendors and suppliers. If it is a “dry hole,” one could argue that the drilling process has not only failed to increase the value of the property, it has actually ruined the value because there will be no further market for the sale or lease of the mineral rights. The success ratio for the completion of the construction of a residence or office building is much greater than the ratio of oil wells drilled to the number that are completed as commercial producers. The oil and gas industry as a whole shows a profit, but it is the exceptional well that produces enough hydrocarbons to pay back the cost of drilling. In short, most drilling projects fail, and the supplier or laborer should, from the outset, look to something other than production for compensation.

Until recently, laborers and materialmen in the State of Utah, entitled to a lien for materials and labor supplied to a well site, were limited to the provisions of the mechanics’ lien statute designed for

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\* Mr. Enke received his Juris Doctorate from the University of Utah in 1972. He practiced with the firm of Shanley & Fisher in Newark, New Jersey until 1974, when he joined the firm of Ray, Quinney & Nebeker in Salt Lake City, Utah where he is currently a shareholder and director.

1. *Calder Bros. Co. v. Anderson*, 652 P.2d 922, 924 (Utah 1982).

2. The determination of whether value has been added to a particular parcel of land isn't always easy. See *Rotta v. Hawk*, 756 P.2d 713, 715 (Utah App. 1988) (holding that clearing of brush and removal of trees on one parcel to facilitate the removal of dirt therefrom to be used on a different parcel, did not “meet the threshold requirement of an improvement under section 38-1-3”).

traditional building projects.<sup>3</sup> The 1987 Utah Legislature amended the Mechanics' Lien Statute by adding a new chapter<sup>4</sup> designed to deal exclusively with liens arising out of goods and services rendered in connection with the production of oil, gas, and other minerals in the State of Utah. This paper will review the significant changes brought about by the addition of the new chapter to the Utah Mechanics' Lien Statute.

## II. NEED FOR A SPECIALIZED STATUTE

In order to appreciate the need for special treatment of natural resource ventures, it is helpful to understand the typical vehicle employed in the industry in joint operations. For example, an oil or gas well is drilled and completed in accordance with the provisions of a joint operating agreement (JOA), which designates one of the joint interest owners as operator and defines the other joint interest owners as non-operators.<sup>5</sup> Attached to the JOA is an accounting procedure (COPAS), which establishes a uniform method for cash management during drilling, completion, and operation of the well.<sup>6</sup>

The operator of a field will send an authority for expenditure (AFE) to the non-operators, setting forth the anticipated costs to be incurred in the drilling of a particular well. Each joint interest owner has the option to participate in the well by consenting to the AFE and thus agreeing to pay its proportionate share of the drilling, completing and operational costs.<sup>7</sup> Other than its decision to participate in the well, the nonoperator has no significant rights under the JOA to take part in the management of the drilling operations.

Each month the operator will send joint interest billings to the participating joint interest owners, detailing their share of the expenditures in the operation. Typically, the operator will have contracted with various subcontractors for numerous goods and services (i.e. site prepa-

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3. UTAH CODE ANN. §§ 38-1-1 to -26 (1988).

4. *Id.* §§ 38-10-101 to -115.

5. The American Association of Petroleum Landmen (A.A.P.L.) has adopted a uniform operating agreement which has enjoyed industry-wide acceptance in the oil and gas community. Currently, the A.A.P.L., FORM 610-1982 MODEL FORM OPERATING AGREEMENT is used for most operations. A revised form has been drafted by a special committee of the Southwest Legal Foundation and is expected to be adopted in the near future.

6. The standard accounting procedure used in the oil and gas industry is the COPAS, ACCOUNTING PROCEDURE JOINT OPERATIONS (Onshore 1984), which was prepared by the Committee Of Petroleum Accountants.

7. If a joint interest owner declines the offer to participate in the well, it is deemed to be "nonconsent" as to that particular well, and the operator may collect a "nonconsent penalty" (usually 300% under most JOA's) of the proportionate costs of drilling and completing the well until it is obligated to pay the nonconsenting owner its share of production.

ration, surveying, drilling, casing, tool bits, pumping, engineering supervision, drilling mud, testing and completion work, and trucking of water). Most, if not all, of the subcontractors will have no knowledge of the identity of the nonoperating, joint interest owners. Any credit decisions made vis-a-vis the operator are normally based on the reputation and credit of the operator.

Under the JOA, the joint interest billings are supposed to represent *invoices actually paid* so that the nonoperators can assume that by responding to the joint interest billing (JIB), they are reimbursing the operator, not providing it with the necessary capital to pay its bills. The American Association of Petroleum Landmen (AAPL) Form 610-1982 JOA, however, does not require operators to maintain separate accounts. Hence, as the oil prices began to fall in the early 1980's, the danger arose that money sent to the operator in response to a JIB may have been needed to pay the invoice in the first place. As an operator would get further and further behind in its obligations to its vendors and suppliers, its cash flow needs for normal overhead (not to mention the inevitable "dry hole") caused some operators to postpone payments. The postponements often exceeded the eighty-day time period a vendor or subcontractor has in which to file a mechanics' lien under the traditional mechanics' lien statute. Throughout this process, the nonoperator had the right only to make periodic audits of the operator's books in order to determine the status of the accounts payable and other operating data. Because of the complexity of such audits and the time lag involved, many operators got into serious trouble long before the nonoperators learned of the financial difficulties.<sup>8</sup> As can be imagined, there have been some tragic collapses of drilling operators which have taken many innocent, small vendors and suppliers with them.<sup>9</sup>

### III. INADEQUACIES OF THE TRADITIONAL MECHANICS' LIEN STATUTE

Against this background, an analysis of the existing mechanics' lien statute shows how it is ineffective to deal with the special issues raised in the oil and gas industry.

The general Utah mechanics' lien law is found in UTAH CODE

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8. There are certain precautions which can be taken by modifying the A.A.P.L. Form 610-1982 JOA, but those precautions are beyond the scope of this paper. See, e.g., Morgenthaler, *Planning Ahead for a Co-Participant's Bankruptcy: A Stitch in Time*, 32 ROCKY MTN. MIN. L. INST. 13-1 (1986).

9. *In re Utex Oil Co.*, No. 86A-03252 (Bankr. D. Utah filed July 31, 1986) (involving more than 5000 small creditors, many of whom live in Duchesne and Uintah Counties, Utah).

ANN. §§ 38-1-1 to 38-1-26 (1988).<sup>10</sup> While it remains the law insofar as it deals with the building and construction business in the State of Utah, the State Legislature enacted UTAH CODE ANN. §§ 38-10-101 to 38-10-115 (1988), to address the problems peculiar to the mining, oil and gas industries.

The questions "who is an owner" and "what is his liability" have been an area of confusion under the existing mechanics' lien statute prior to the amendment. This is exemplified by a Utah case, *Mud Control Laboratories v. Covey*,<sup>11</sup> which has been widely cited for the proposition that nonoperators under an operating agreement may be construed to be involved in a mining partnership creating joint and several liability among all of the partners. In *Mud Control*, the operator failed to pay for drilling mud supplied by the plaintiff. Mud Control Laboratories sought to obtain payment from the investment partners of the operator. The defendants asserted that there were two elements of a mining partnership missing from the case: (1) joint operation or control and (2) an agreement to share losses. The court found that the defendants had "control" of the operations.<sup>12</sup> It also rejected the theory that an agreement to share losses is required to show the existence of a mining partnership; an agreement to share profits was deemed to be an agreement to share losses.<sup>13</sup>

*Mud Control* was cited in *Blocker Exploration v. Frontier Exploration Co.*,<sup>14</sup> in which the Supreme Court of Colorado found that the existence of a mining partnership is a case by case determination, and that the agreement among the parties did not give the nonoperator sufficient control of the operations to justify joint and several liability. While the *Blocker* case follows a much more enlightened reading of a typical operating agreement, it is not the law of Utah, and *Mud Control* has not been reversed. Moreover, a case by case determination makes it impossible to predict the risks which attach to investors in oil and gas operations, and production ultimately suffers. Therefore, UTAH CODE ANN. section 38-10-108 allows for some predictability by limiting the liability of an owner to the "price or sum agreed by the

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10. This portion of the statute will be referred to hereinafter as the "traditional statute." Even though minor amendments were made in 1987, it remains in effect for traditional construction projects.

11. 269 P.2d 854 (Utah 1954).

12. "The defendants were to have free access to the operation at all reasonable times, and were entitled to copies of various reports of operations, samples, and cuttings of the well and other information concerning the drilling." *Id.* at 858.

13. "[A]n agreement to share losses is not a condition precedent to the existence of a mining partnership. . . . People do not ordinarily enter into partnership for the purpose of incurring losses." *Id.* at 859.

14. 740 P.2d 983 (Colo. 1987).

owner to be paid for his share of the work performed or the materials or equipment furnished."<sup>15</sup>

Irrespective of the liability of the nonoperators for the vendors and suppliers who have not been paid for their efforts, each joint interest owner is obligated to pay its share of the drilling and operating expenses. A lien right to enforce this obligation is available under the 1982 version of the JOA,<sup>16</sup> but it is limited in scope, and exercising it is cumbersome; the entire operating agreement must be recorded to give notice of the lien. The lien arises against operator and nonoperator alike for failure to pay their proportionate share of the expenses. The model form of the JOA is currently being studied and will probably be amended<sup>17</sup> soon. In Utah, however, the nonoperator lien issue is clarified under the new statute in section 38-10-102(3) which provides in part:

The operator shall, however, have the lien granted under Subsection (1) upon the interest of all nonoperating owners for work performed, or materials or equipment furnished by the operator; and the nonoperating owners shall have the lien granted under Subsection (1) upon the interest of the operator for work performed, or materials or equipment furnished by third persons to the extent the nonoperators have paid or advanced funds to the operator for such work, materials, or equipment.<sup>18</sup>

The nonoperating owner has sixty days after having received notice of a third party's mechanics' lien to file his lien against the operator.<sup>19</sup>

Under the traditional statute, a mechanics' lienor had to record the notice of lien within eighty days after the last work had been provided or materials had been furnished if he is a subcontractor, or one hundred days if he is an "original contractor."<sup>20</sup> Also, enforcement or foreclosure of the lien had to be commenced "within twelve months after completion of the original contract, or the suspension of work thereunder for a period of thirty days."<sup>21</sup> There are several problems with this portion of the statute as it relates to operations in the oil field.

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15. UTAH CODE ANN. section 38-10-108 (1988).

16. A.A.P.L., FORM 610-1982 MODEL FORM OPERATING AGREEMENT, ARTICLE VII(B).

17. A panel discussion concerning the new draft and the numerous proposed revisions to the A.A.P.L., FORM 610 OPERATING AGREEMENT was held at the 39th Annual Institute on Oil and Gas Law and Taxation by the Southwestern Legal Foundation, February 25, 1988, in Dallas, Texas.

18. UTAH CODE ANN. § 38-10-102(3) (1988).

19. *Id.* § 38-10-105(2).

20. *Id.* § 38-1-7.

21. *Id.* § 38-1-11.

First, it is difficult to determine when the original contract has been completed. If a supplier has been contracted to supply mud for three wells, one could argue that the original contract is not completed until the third well has been drilled. Also, the decision whether to "complete" a well for production is not made until the drilling is finished, and testing in the bore hole indicates that the completion work (usually 30% or more of the total cost) is justified. Presumably, a thirty-day suspension period could run while the decision is being made whether to complete the well for production. In short, there is confusion concerning the statute of limitations for the filing of the foreclosure action.<sup>22</sup>

Second, the eighty-day or one hundred-day period is not long enough in many instances for suppliers to determine if their accounts are in arrears. It is common, for example, for the operator and many of the larger suppliers to have head offices out of state. Even in the best of situations, more than thirty days pass before invoices are generated and most operators hold them for a minimum of thirty days before processing them for payment.<sup>23</sup>

To solve these problems, the new statute extends the period for filing to within "180 days after the last day work was performed or materials or equipment were furnished by the lien claimant . . . ."<sup>24</sup> In addition, the action to enforce the lien must "be commenced within 180 days after the filing of the notice of lien . . . ."<sup>25</sup>

#### IV. PROCEDURE UNDER THE NEW STATUTE

UTAH CODE ANN. section 38-10-105 outlines the procedure for the filing and perfection of the lien. The notice must be filed in the manner called for under the general mechanics' lien statute in sections 38-1-7(2)<sup>26</sup> and 38-1-8.<sup>27</sup> And, like the traditional statute, there is a

22. Indeed, many vendors and suppliers (not to mention some practitioners) appear to believe that the twelve-month period begins to run with the filing of the notice of lien.

23. In the recent hard times suffered in the oil industry, large operators have been able to negotiate contracts which allow the delay of payment well beyond the one hundred-day limit.

24. UTAH CODE ANN. § 38-10-105(2) (1988).

25. *Id.* § 38-10-106(1).

26. *Id.* § 38-1-7(2), provides:

(2) This notice shall contain a statement setting forth the following information:

- (a) the name of the reputed owner if known or, if not known, the name of the record owner;
- (b) the name of the person by whom he was employed or to whom he furnished the material;
- (c) the time when the first and last labor was performed, or the first and last material was furnished;
- (d) a description of the property, sufficient for identification; and

requirement that notice be served on the owners by certified mail in order to be awarded costs and attorneys' fees in connection with the foreclosure of the lien.<sup>28</sup> However, section 38-10-105 provides a significant, additional benefit to the lienor if he notifies the owner.

Prior to the receipt of the notice, payment by an owner to a contractor or operator of his share of all, or part, of the lien claimant's agreed contract price for work performed, or materials or equipment furnished by the lien claimant at the request of the contractor or operator, shall operate to discharge and satisfy the lien attaching to the interest of such owner by virtue of this chapter to the extent of such payment.<sup>29</sup>

Payments made by a nonoperator in response to a JIB prior to notification of a lien can now be made with confidence by the nonoperator. While no cases have arisen in Utah on this point, the issue was raised in the Texas Court of Appeals in the case of *Energy-Agri Products, Inc. v. Eisenman Chemical Co.*,<sup>30</sup> which involved a similar statute.<sup>31</sup> In *Eisenman*, Energy-Agri, the owner of a leasehold interest, entered into a contract with Key Mud Service for mud work to be supplied in connection with the drilling of a well on the leasehold interest. Key Mud had a contractual relationship with Eisenman Chemical for the furnishing and hauling of the drilling mud and chemicals. Eisenman billed Key which in turn submitted invoices to Energy-Agri for the mud supplied. Energy-Agri paid Key, but Key failed to pay Eisenman; Eisenman then filed an affidavit of lien in the county records. In an action to foreclose the lien, the Court of Appeals reversed the trial court's finding in favor of Eisenman. The court held that:

[T]he owner is liable to a subcontractor only to the extent that he is liable to his contractor; thus, the right to the enforcement of the lien

(e) the signature of the lien claimant or his authorized agent, and the date signed.

27. *Id.* § 38-1-7(2), provides:

Liens against two or more buildings or other improvements owned by the same person may be included in one claim; but in such case the person filing the claim must designate the amount claimed to be due to him on each of such buildings or other improvements.

28. *Id.* § 38-10-105(1).

29. *Id.* § 38-10-105.

30. 717 S.W.2d 651 (Tex. Ct. App. 1986).

31. TEX. PROP. CODE ANN. § 56.045 (Vernon 1984) provides:

A Property owner who is served with a mineral subcontractor's notice may withhold payment to the contractor in the amount claimed until the debt on which the lien is based is settled or determined to be not owed. *The owner is not liable to the subcontractor for more than the amount that the owner owes the original contractor when the notice is received.*

(emphasis added).

depends upon the state of the account between the owner and his contractor, and not upon the condition of the account between the contractor and his subcontractor, when the owner receives notice of the claim. It follows, as a necessary corollary, that if the owner has paid his contractor in full before notice of the subcontractor's claim is received, then the owner is not liable, and his property is not subject to the lien afforded by chapter 56, for payment of the subcontractor's claim.<sup>32</sup>

The result in *Eisenman* is consistent with the policy of section 38-10-105 which is to encourage the nonoperators to pay their share of the drilling and operating costs on time, with confidence that they won't have to pay twice. Also, the supplier must make its credit decision solely on the reputation of the operator and is not required to examine the credit worthiness of every partner in the venture.

#### V. APPLICATION OF THE NEW MECHANICS' LIEN STATUTE

Oil and gas interests are normally leased by the land or mineral interest owner to an oil company. The number of acres included within a drilling unit for one well is determined by the Board of Oil, Gas, and Mining of the State of Utah (BOGM), after taking into consideration the characteristics of the oil or gas formation from which production is anticipated.<sup>33</sup> In the absence of an order from the BOGM, forty acre spacing is implied.<sup>34</sup> When a well is drilled, the acreage to be drained by the well is seldom the same acreage covered by a lease. Hence, logic would cause the mechanics lienor to describe all of the acreage and all of the leases within the well unit. For example, often a parcel of land lies outside of the drilling unit which is included in a lease inside the unit boundary. The question of whether the lien properly extends to the leased lands outside the unit has never been resolved. Under the traditional statute there was no guarantee that failure to include the entire lease was not a fatal procedural mistake; case law does not provide an answer. The traditional statute caused confusion when the language was applied to an oil and gas well.<sup>35</sup> Even the language dealing

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32. 717 S.W.2d at 653.

33. UTAH CODE ANN. § 40-6-6 (1988).

34. UTAH ADMIN. R. 615-3-2 (1987).

35. UTAH CODE ANN. § 38-1-4 (1988), provides:

The liens granted by this chapter shall extend to and cover so much of the land whereon such building, structure, or improvement shall be made as may be necessary for convenient use and occupation of the land. In case any such building shall occupy two or more lots or other subdivisions of land, such lots or subdivisions shall be considered as one for the purposes of this chapter. The liens provided for in this chapter shall attach to all franchises, privileges, appurtenances, and to all machinery and fixtures,

with mining claims (which was deleted with the passage of the new statute)<sup>36</sup> did not give direction to the vendor or supplier who sought payment for goods or services provided to a particular well. By contrast, the new statute defines the scope of a lien insofar as it relates to the amount of the property which can be subject to a lien. In the definition section of the statute, a "Production unit" is defined as being "the drilling unit for a well established by . . . the Board of Oil, Gas, and Mining" of the State of Utah.<sup>37</sup>

Royalty interests probably were improper targets for liens under the traditional statute. Nevertheless, it was common for attorneys to join every royalty interest owner as a defendant in mechanic's lien foreclosure actions.<sup>38</sup> So that there is no question concerning these kinds of interests, the legislature specifically ruled out claims against nonpossessory interests.

If work is performed or materials or equipment are furnished to the owner of less than a fee interest, the lien granted by this chapter does not extend to the underlying fee interest, royalty interest, overriding royalty, net profits interest, production payment, or other nonpossessory interest, unless expressly provided for by contract with the owner of the nonpossessory interest.<sup>39</sup>

The new statute also expresses the policy of not burdening the interests of property owners who farm-out their interests to operators.<sup>40</sup> A significant portion of the oil and gas industry used to be made up of independent drillers and operators who were willing to drill acreage owned by major oil companies who were unwilling or unable to commence drilling operations prior to the termination of the primary term of leases under which the acreage was held. The farmee would offer to drill the well in return for the right to earn interests in the land upon the completion of the project. The oil company would contribute the

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pertaining to or used in connection with any such lands, buildings, structures, or improvements.

36. [W]hen two or more mining claims, mines or valuable deposits, whether owned by the same person or not, shall, with the consent of all, be worked through a common shaft, tunnel, incline, drift or other excavation, then all the mining claims, mines or valuable deposits so worked shall for the purposes of this chapter be deemed one.

UTAH CODE ANN. § 38-1-4 (1988).

37. *Id.* § 38-10-101(4).

38. *See, e.g.,* Target Trucking, Inc. v. Overthrust Oil Royalty Corp., No. 85-CV-119 (Uintah County Ct. Utah, filed Mar. 25, 1985) (including more than seventy defendants and cross-defendants in an action to foreclose various mechanics' liens). Target Trucking is inactive because Overthrust Oil Royalty Corporation has filed for protection under the Federal Bankruptcy Statutes.

39. UTAH CODE ANN. § 38-10-104(1) (1988).

40. *Id.* § 38-10-109.

land and the farmee would contribute the drilling costs. As with the royalty interest owners, the farmor was often an innocent party joined in mechanic's lien foreclosure actions and really had nothing to do with the contracting for goods and services rendered by the lienors. With the danger of being included in such lawsuits<sup>41</sup> and the increasing number of operators filing bankruptcy, farm-out agreements have become somewhat of an historical oddity in the State of Utah.

UTAH CODE ANN. section 38-10-109 now gives the farmor the right to file a written notice of nonresponsibility with the county recorder within ten working days after the latter of, (i) the owner obtaining knowledge of the performance of work or the providing of materials, or, (ii) the execution by the last party of a farm-out agreement, a lease or sublease, an operating agreement, an assignment of less than one hundred percent of his interest, a sales contract, or an option agreement.<sup>42</sup> The supplier, then, if it feels that the operator is not worthy of credit, can make a quick check of the records and determine if the farmor has filed such a notice before deciding to extend credit to the farmee. The farmor can continue to allow the drilling of acreage, which would otherwise not be produced, and the farmee can target certain drilling projects without the expense of buying lease acreage.

Given the inherent frailty of an interest in oil or gas,<sup>43</sup> there will be times when the "owner"<sup>44</sup> of the interest, who ordered the materials and labor, loses title to the lease or fails to earn an interest under a contract right covering acreage on which a mechanics' lien has been filed. Mechanics' liens are creatures of real property. They must be acknowledged;<sup>45</sup> they must be recorded in the county in which any part of the real property is situated;<sup>46</sup> they must contain a description of the real property on which the work or services were rendered;<sup>47</sup> and they can be foreclosed in the same manner as real property mortgages.<sup>48</sup> Even so, there are fixtures and personalty which should come under the lien, especially in an oil and gas context. Metal casing or "tubulars"

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41. See *Target Trucking*, No. 85-CV-119, which also included several farmors in its list of seventy-plus defendants.

42. UTAH CODE ANN. § 38-10-109 (1988).

43. Most oil and gas rights are leased from the mineral interest owner, and not being a fee interest, the lease is subject to divestment for a variety of reasons. Leases issued by the Bureau of Indian Affairs, for example, expire if *production* is not achieved before the expiration of the primary term of the lease. Contract rights, such as those obtained or earned under a farm-out agreement or operating agreement, are even less stable.

44. UTAH CODE ANN. § 38-10-101(3) (1988).

45. *Id.* § 57-3-2.

46. *Id.* § 38-10-105(1), which refers to §§ 38-1-7(2), 38-1-8.

47. *Id.* §§ 38-1-7(d), 57-3-10.

48. *Id.* § 38-10-106(2), which subjects the new law to §§ 38-1-11 through 38-1-16.

are inserted into the drill hole to maintain the opening, and to allow production only from the designated, underground formation. There are "tank batteries" and "pumps", which are attached temporarily to the ground to store crude oil or to enhance production. Lines often run along the surface of the ground from the well location to major pipelines for the treating and distribution of natural gas. The casings can be pulled, and the tanks, pumps and gas lines can be salvaged at such time as the well is plugged and abandoned.

In order to remove any confusion as to the status of such property in the event that the owner has lost its interest in the lands on which the materials were utilized, the legislature included section 38-10-103, which provides for the continuation of the lien as to those "appurtenances and fixtures previously located on the land" and "in appurtenances and fixtures located on the land to which the lien attached prior to the failure [of the owner's title]."<sup>49</sup>

The new statute expands the definition of those entitled to relief by filing a mechanics' lien. In addition, the classification is oriented towards the kinds of services related to the mineral industry. UTAH CODE ANN. section 38-10-102(2) provides:

The lien upon the interest of the owner in property described in Subsections (1)(a) through (c) shall be for the value of the work performed or materials or equipment furnished for:

(a) open pit work, field processing, construction, alteration, digging, drilling, driving, boring, operating, perforating, fracturing, testing, logging, acidizing, cementing, completion, repair, maintenance, prospecting, sampling, exploration, development, preservation, performing geophysical, geochemical, location, or assessment work, or related activities;

(b) work performed or materials or equipment furnished in accordance with a pooling order, or pursuant to an operating agreement, or other agreement governing joint mining, or oil, and gas operations;

(c) title services, designs, plats, plans, maps, specifications, drawings, estimates of cost, surveys, permitting, or regulatory compliance;

(d) foreclosure costs including publication, costs of sale, sheriff's fees, attorney's fees, and other costs of collection; and

(e) transportation and related mileage charges, for any work performed or materials or equipment furnished pursuant to Subsections (2)(a) through (d).<sup>50</sup>

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49. *Id.* § 38-10-103.

50. *Id.* § 38-10-102(2).

Title services supplied by attorneys and abstractors give rise to a lien, although it is not likely that these and other off-site activities would meet the standard of being "conspicuously visible" in the production unit as required by section 38-10-107(3). If the operator should give a security interest in the drill site prior to commencing drilling activities, such liens would only relate back to the commencement of work, and would be inferior to the security interest.<sup>51</sup>

The new mechanics' lien statute has clarified many issues facing operators, investors, vendors, and suppliers who work in the oil fields of Utah. In addition, the statute solves similar problems for members of the mining industry.<sup>52</sup> As with any remedial statute, those seeking relief under the new mechanics' lien statute need to pay close attention to the statutes of limitations and other procedural niceties of the law in order to obtain the relief sought. Failure to adhere closely to the provisions of the statute may have far-reaching implications not immediately apparent in studying the new law. For example, with all of the clarifications and additions over the traditional statute, the new statute does not help the vendor or supplier who fails to exhaust his legal remedies under the statute before relying on a cause of action for *quantum meruit* in a foreclosure complaint.

A recent Utah case, *Knight v. Post*,<sup>53</sup> held that restitution on the theory of *quantum meruit* was not allowed where the plaintiff failed to exhaust its legal remedies first. In *Knight*, the supplier provided services worth \$18,437.13 to a new well site. The operator failed to pay Knight and Knight attempted to file a mechanics' lien. His efforts went awry, however, when he placed an incorrect property description on the notice of lien. The trial court awarded Knight damages on the basis of *quantum meruit*. The Court of Appeals reversed and found that *quantum meruit* was improper because Knight failed to exhaust his legal remedies.

Knight failed to perfect his mechanics' lien against Post because he incorrectly described the affected property, thus not complying with Utah Code Ann. § 38-1-7 (1981). See *Westinghouse Elec[tric] Supply Co. v. W. Seed Prod[uct] Corp.*, 119 Ariz. 377, 580 P.2d 1231,

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51. *Id.* § 38-10-107, provides:

The liens provided for in this chapter shall relate back to, and take effect as of the time of the commencement of work or the furnishing of materials or equipment which are conspicuously visible on the production unit, or as of the filing of the notice of lien, which ever first occurs.

52. Although these issues are not addressed in this paper, the distinctive nature of the mining business also requires legislation different from the traditional statute to clarify special problems unique to that industry.

53. 748 P.2d 1097 (Utah App. 1988).

1233 (App. 1978); *Buehner Block Co. v. Glezos*, 6 Utah 2d 226, 310 P.2d 517, 520-21 (1957).

[T]o prevail under the first branch of *quantum meruit*, contracts implied in law or unjust enrichment, Knight must show the following three elements: (1) Knight conferred a benefit upon Post; (2) Post was aware of the benefit; and (3) Post retained the benefit under such circumstances as to make it inequitable for him to retain the benefit without payment of its value. *Berrett v. Stevens*, 690 P.2d 553, 557 (Utah 1984); *Davies [v. Olson]*, 746 P.2d 264, 269 (Utah App. 1987)].<sup>54</sup>

The result in the *Knight* case seems harsh because the plaintiff loses an equitable cause of action by failing to pursue his legal remedies. And while there have been attempts to remove similar, harsh results from the laws of the state,<sup>55</sup> there is nothing in the new statute which would have changed the result in *Knight* had the court been relying on it instead of the traditional statute.

## VI. CONCLUSION

The new chapter of the Utah Mechanics' Lien Statute is an improvement over the traditional statute. This new statute addresses many of the problems and concerns which have plagued the use of mechanics' liens in the oil, gas and mining industry. However, the new statute has not been interpreted by the courts, and has not been analyzed sufficiently by the oil, gas and mining industry to determine if it solves the major problems in dealing with the traditional statute. One thing is certain, however; the new statute is no substitute for exercising due diligence before entering into a farm-out agreement, an operating agreement, or before agreeing to render services or to supply materials in connection with a drilling project.

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54. *Id.* at 1100.

55. A portion of the acknowledgement statute found in UTAH CODE ANN. §§ 57-4a-1 to -4 (1988), was enacted this past legislative session by House Bill 25 in order to validate recorded documents, even though they may contain technical defects in the acknowledgement section of the instrument.