

Louisiana Oil Well Lien Act

La. R.S. 9:4861, *et seq.*

Scope and Limitations

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Overview

“The Oil Well Lien Act provides broad and far reaching protection to providers of labor and furnishers of material in conjunction with the drilling of oil wells.”

“[T]he purpose of the Oil Well Lien Act is to protect those . . . who contribute labor, services, and equipment to the drilling of wells from the default of those engage them.”

– *Guichard Drilling Co. v. Alpine Energy Servs.*, 657 So. 2d 1307 (La. 1995)

Specifics of LOWLA

- Who has a LOWLA lien?
- What's encumbered?
- How are LOWLA liens established and preserved against third parties?
- Ranking of LOWLA liens

Who has a LOWLA lien?

La. R.S. 9:4862

Persons are entitled to asserts a LOWLA if they:

(1) Perform services or provides materials in connection with “**operations**”; and

(2) Are the one of the following:

- **Contractor**

- lien secures (1) price of contract for operations or (2) price of contract for providing services or facilities to workers at a well site located in the waters of the state

- **Laborer or employee** of an operator or contractor

- lien secures price of labor performed at the well site

- **Seller** of movables sold **to the operator or contractor** and (1) incorporated in a well or facility located at the well site, or (2) consumed in operations

- lien secures price of movable

- **Lessor** of movables **to the operator or contractor** and used in operations

- lien secures rent of movable that accrues while movable is located at well site

- Person who **transports movables** to well site for an operator or contractor

- lien secures price of transportation

- Person who **transports workers** to **offshore** well site

- lien secures price of transportation

Who has a LOWLA lien?

“[LOWLA] attempts to limit the scope of the privilege to persons who clearly provide work associated with the drilling or production of the well.”

- Patricia H. Chicoine, Lien on LOWLA; It’s a Privilege: Recent Revisions to the Louisiana Oil Well Lien Act, Louisiana Law Review (Summer 1997)

Who has a LOWLA lien?

Key definitions: La. R.S. 9:4861

“Operations”:

- Every activity conducted by or for a lessee **on a well site** for the purpose of:
 - (i) Drilling, completing, testing, producing, reworking, or **abandoning** a well. (effectively any work on or to the well itself, including abandonment)
 - (ii) Saving, treating, or disposing of hydrocarbons or other substances produced from a well. (but again, work must be at the well site)
 - (iii) Injecting substances into the earth to produce or enhance the production of hydrocarbons.

Who has a LOWLA lien?

Key definitions: La. R.S. 9:4861

“Well site”:

(a) The operating interest (the lease).

(b) A unit in which the operating interest participates.

(c) A tract of land or the area covered by a servitude or predial lease of the lessee on which is located a well drilled to, producing from, or injecting substances into the area covered by the operating interest.

Who has a LOWLA lien?

Key definitions: La. R.S. 9:4861

Not “Operations”:

- Activities conducted for the purpose of transporting, handling, processing, treating, or otherwise dealing with:
 - (i) Liquid hydrocarbons produced or separated at the well site after being removed from a leasehold tank and delivered into a truck, barge, pipeline, or other facility **for transportation away from the well site.**
 - (ii) Hydrocarbons produced in gaseous form, or produced in association with those produced in gaseous form and not separated at the well site, after being delivered into a pipeline **for transportation away from the well site or delivered to a plant at the well site for processing or manufacturing.**
 - (iii) Salt water or another waste substance produced in association with hydrocarbons, after it is placed in a truck, rail-car, pipeline, or other means of transportation **for disposal away from the well site.**

Who has a LOWLA lien?

Key definitions: La. R.S. 9:4861

“Contractor”:

- A person **other than a lessee**, who contracts with an operator **to perform the operations** giving rise to the claimant’s privilege or who, by subcontract with a contractor of the operator [or series of subcontracts], contracts **to perform all or part of the operations** contracted for by the operator.

“Operator”

- **A lessee** who is personally bound by contract to the claimant or to a contractor from who the claimant’s activities giving rise to the privilege emanates.



Who has a LOWLA lien?

Other issues

Can “contractors” be “sellers”?

- Contractors generally only have lien rights arising from “operations,” which, by definition, must occur at well site. To avoid this limitation, contractors have tried to call themselves “sellers” under the act.
- LOWLA does not define “sellers,” but cases indicate “contractor” and “seller” are mutually exclusive under LOWLA.
 - *Matte Services Corp. v. ONYX Consulting Engineers*, 2007 WL 1087592 (E.D.La. 2007)
 - *J. Ray McDermott, Inc. v. Berry Contracting*, 2004 WL 224583 (E.D.La. 2004)

Who has a LOWLA lien?

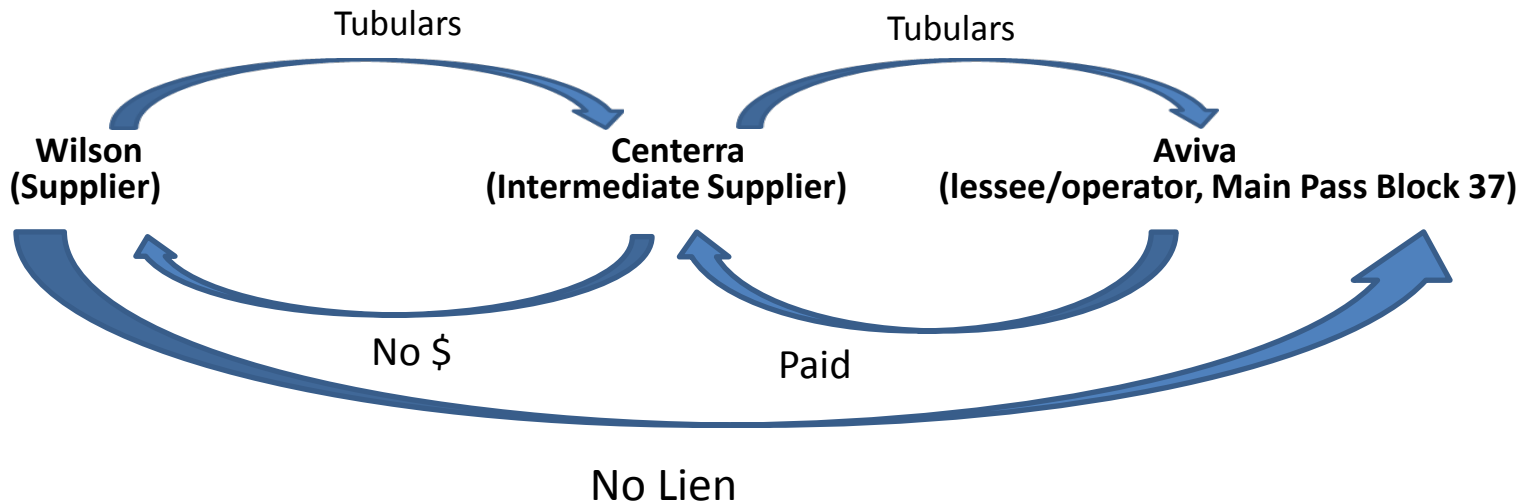
Other issues

Suppliers of suppliers?

- No LOWLA lien exists for suppliers who sell materials to an intermediate supplier who then sells to the operator or contractor.
- Under La. R.S. 9:4862, sellers of movables only have a lien for movables sold **to the operator or contractor**. Selling to an intermediate supplier does not count.

Who has a LOWLA lien?

Wilson Industries, Inc. v. Aviva America, Inc., 185 F.3d 492 (5th Cir. 1999)



- Suppliers only have a lien if they sell movable to an operator or contractor. Cannot sell through an intermediate supplier.
- Although Centerra had a contract with Aviva, court determined that Centerra was not a “contractor” because the contract did not require Centerra to incorporate the materials in the operation.

Who has a LOWLA lien?

No LOWLA lien:

- Lessees and operators (but they do have other inferior lien rights provided in La. R.S. 9:4883-4889).
- Contractors/workers for services associated with pipelines or transportation of hydrocarbons off the well site
- Contractors/workers for services not performed at the well site
 - *Matte Services Corp. v. ONYX Consulting Engineers*, 2007 WL 1087592 (E.D.La. 2007) (no lien for company that constructed tripod deck assembly onshore for use at offshore well site)
- Suppliers of suppliers
 - *Wilson Industries, Inc. v. Aviva America, Inc.*, 185 F.3d 492 (5th Cir. 1999) (supplier of tubulars used at well site did not have lien because tubulars were sold through intermediate supplier and not sold directly to “operator or contractor”)

Specifics of LOWLA

- Who has a LOWLA lien?
- **What's encumbered?**
- How are LOWLA liens established and preserved against third parties?
- Ranking of LOWLA liens

What's encumbered?

La. R.S. 9:4863

Encumbered:

- The **operating interest** under which operations giving rise to the privilege are conducted
- The **lessee's interest in property located at the well site**:
 - (a) well, building, tank, leasehold pipeline, and other construction or facility on the well site
 - (b) movables on the well site used in operations (unless temporarily located at well site for repair, testing, etc.)
 - (c) tracts, servitudes, and leases covering the well site
- **Drilling or other rig** located at the well site of the operating interest if owned by (a) the operator; or (b) a contractor “from whom the activities giving rise to the privilege emanate.”
- The **interest** of the operator and participating lessee **in hydrocarbons produced** from the operating interest and the interest of a non-participating lessee in hydrocarbons produced from that part of his operating interest subject to the privilege.
- Lessee's production **proceeds**

What's encumbered?

Key definitions

“Operating Interest”

- a mineral lease or sublease of a mineral lease, or an interest in a lease or sublease that gives the lessee, either singly or in association with others, the right to conduct the operations giving rise to the claimant's privilege.

Not “operating interest”

- A mineral lease or sublease or an interest in the lease or sublease if owner has divested himself of the right to conduct the operations giving rise to the claimant's privilege by assignment, sublease, or another form of mineral right before the claimant's privilege is established.
- Farmout or farmin contract until the sublease or transfer contemplated in the farmout/farmin contract is made.

“Lessee”

- A person who owns an operating interest.

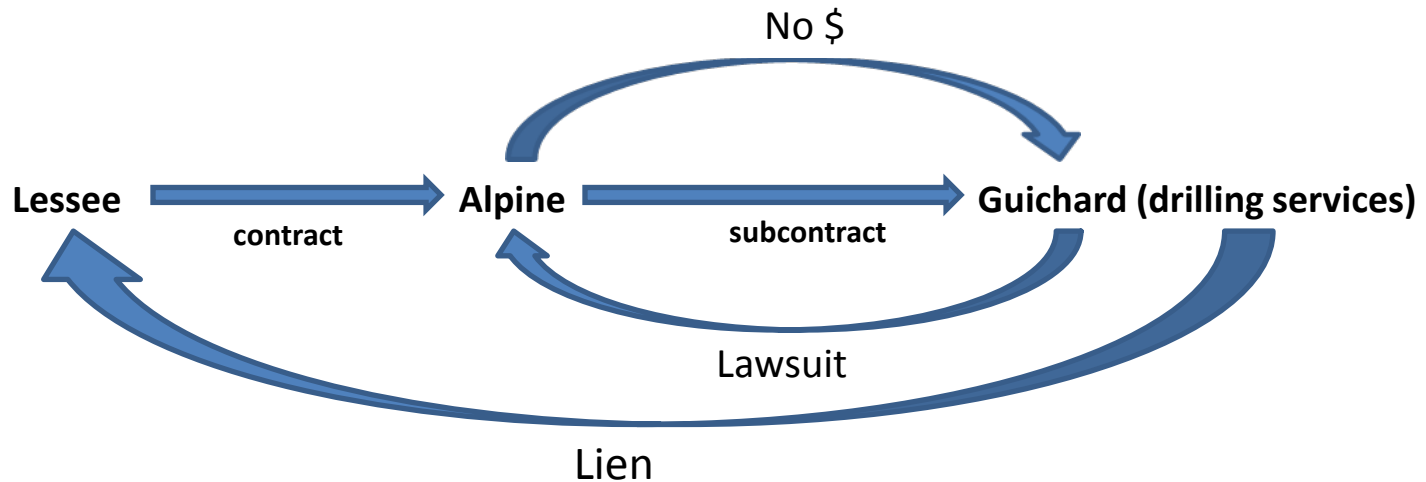
What's encumbered?

“It is well settled under the Oil Well Lien Act that the privilege . . . attached to all property listed in the statute, regardless of ownership, and requires no contractual relationship between the supplier of labor, service, or equipment and owner of the lease or equipment”

– *Guichard Drilling Co. v. Alpine Energy Servs.*, 657 So. 2d 1307 (La. 1995)

What's encumbered?

Guichard Drilling Co. v. Alpine Energy Servs., 657 So. 2d 1307 (La. 1995)



“The legislature has clearly placed the risk of the contractor’s insolvency or failure to pay on those with an interest in the lease. The legislature has made a policy decision that the lease owners are in a far better position to ensure payment for the subcontractor’s services than is the subcontractor, and that the onus should be on the lease owners to ensure that the contractor it hires is solvent and that it actually make payment to the subcontractor.”

What's encumbered?

La. R.S. 9:4863

Not encumbered:

- Property not owned by the lessee (unless it is a drilling or other rig owned by a contractor “whose activities give rise to the privilege”)
- Property not located at the well site (on the lease)
- Produced hydrocarbons owned by someone other than lessee (lessor, overriding royalty owner, etc.) and proceeds payable to such persons
- Equipment moved onto the lease for the purpose of plugging and abandoning wells and closing associated pits in compliance with an order issued by Office of Conservation under La. R.S. 30:1 et seq.

Specifics of LOWLA

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How are LOWLA liens established and preserved?

La. R.S. 9:4864-4866

- La. R.S. 9:4864(A): The privilege in favor of a claimant is established and is effective as to a third person when:
 - (1) The claimant, who is a contractor, laborer, or employee begins rendering services at the well site.
 - (2) Movables sold by the claimant to an operator or contractor are delivered to the well site.
 - (3) The claimant begins transporting movables to, or persons to or from, the well site.
 - (4) Property leased by the claimant to an operator or contractor is placed on the well site for use in operations.
- BUT . . .

How are LOWLA liens established and preserved?

La. R.S. 9:4864-4866

- To preserve LOWLA lien against third parties, **must** take certain additional steps.
- **First**, claimant must file statement of privilege and/or financing statement **within 180 days** of **“last activity or event which gives rise to the privilege.”**
 - La. R.S. 9:4864(A): A privilege ceases to have effect against a third person one hundred-eighty days after the last activity or event which gives rise to the privilege unless:
 - (1) The property subject to the privilege is not a drilling or other rig and the claimant files **a statement of privilege in the mortgage records of the parish where the operating interest subject to the privilege is located**; or
 - (2) The property subject to the privilege is a **drilling or other rig** and the claimant files, in the place specified in R.S. 10:9-501, **a financing statement** conforming to the requirements of R.S. 10:9-502. Notwithstanding R.S. 10:9-509(a), the claimant may file such a financing statement without the debtor's authorization so long as the claimant holds the privilege at the time of filing and the financing statement covers only a rig covered by the claimant's privilege.

How are LOWLA liens established and preserved?

La. R.S. 9:4864-4866

- **Second**, if the claimant does not have a contractual relationship with the operator, claimant must, within the same 180-day period, provide notice to the operator of the statement of privilege. La. R.S. 9:4867.
 - If lien encumbers drilling or other rig, must also provide notice of financing statement to rig owner if there is no contractual relationship.
- **Third**, claimant must “institute an action for the enforcement of the privilege **within one year** after the date of the filing of the statement of privilege or financing statement.” La. R.S. 9:4864(B)
- **Fourth**, for the lien to remain effective as to third parties who are not parties to the action, claimant must file a notice of *lis pendens* (or seize the property) **within 30 days** after institution of the action to enforce the lien. La. R.S. 9:4864(C).
 - Notice of *lis pendens* not necessary if the property at issue is a drilling or other rig.

How are LOWLA liens established and preserved?

La. R.S. 9:4864-4866

- Determining “last activity” for purpose of 180-day filing period:
 - 90-day Rule:
 - La. R.S. 9:4864(C): All obligations owed to a claimant arising from operations on the same operating interest, **without a lapse of more than ninety consecutive days** between an activity or event that establishes the privilege . . . , are **secured by a single privilege** whether or not such activities are performed or events occur at different times and under several contracts with different operators or contractors. **If more than ninety consecutive days elapse between such activities or events, the privileges established before and those established after such time are separate.**
- If more than 90-day gap in work, file your statement of privilege and/or financing statement.

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Ranking of LOWLA liens

- A. The privileges given by this Part are of **equal rank and priority**, except that the privilege of a contractor is inferior to that of a person to whom the contractor is contractually bound or to whom a contractor or subcontractor of such a contractor is bound.
- B. The privileges granted by this Part are superior in rank and priority to all other privileges, security interests, or mortgages against the property they encumber except the following which are of superior rank and priority:
- (1) Privileges for ad valorem taxes against the property subject to the privilege.
 - (2) Mortgages and vendor's privileges on the operating interest and other property affected by such mortgages or privileges that are effective as to a third person **before the privilege is established**.
 - (3) Security interests in collateral subject to the privilege that are **perfected before the privilege is established** or that are perfected by a financing statement covering the collateral filed **before the privilege is established** if there is no period thereafter when there is neither filing nor perfection.
 - (4) The lien and privilege of the commissioner of conservation as provided in R.S. 30:32, 74(A)(3), and 91(B)(2).