Clarks’ Oil and Gas Financing Under the UCC

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Preface

An Important Era for Oil and Gas Financing under the UCC

Even though highly cyclical oil prices have plummeted in recent months, publication of this e-book coincides with an unprecedented surge in oil and gas development in the United States. New horizontal drilling technology and well stimulation processes have made it feasible for producers to extract hydrocarbons from vast formations that less than a decade ago were economically inaccessible. As a result of this domestic oil and gas renaissance, a massive market for financing oil and gas projects and related service industries has arisen. While working interest owners often rely on venture capital to finance drilling projects, commercial banks regularly make secured loans on the basis of proven reserves. Mineral estate owners, pipeline operators, and contractors in the oil and gas industry also frequently receive financing from a bank secured by oil and gas collateral or other personal property used in connection with oil and gas operations. As a result of the current boom, Article 9’s oil and gas provisions have never been more important or relevant. To the extent that sudden declines in oil prices leave some producers over-leveraged, the perfection of lenders’ security interests will be tested in the bankruptcy courts.

Oil and gas collateral is a unique creature. Prior to extraction, oil and gas is realty subject to encumbrance under real property rules. Upon extraction, however, oil and gas become personalty, subject to Article 9 security interests. While Article 9 has always included special rules to deal with the dual realty-personalty nature of oil and gas collateral, the last five years have been a very dynamic time for the development of oil and gas secured transaction law. In particular, one of the country’s largest bankruptcies in recent years concerned the SemGroup family of companies that were involved in the large-scale transportation, storage, and resale of oil and gas in a number of states. Lawsuits related to the bankruptcy resulted in a series of important decisions addressing the take-free rights granted to buyers for value without knowledge and buyers in the ordinary course of business. Court rulings also exposed flaws in a number of nonuniform amendments to Article 9 designed to secure mineral interest owners’ rights to payment from companies who purchase oil and gas at the wellhead, which has led to new legislation designed to correct shortcomings in prior enactments.
Who Can Benefit from this e-book?

This publication aims to help anyone who deals with security interests or liens in oil and gas collateral. This includes lenders, mineral estate owners, operators, contractors, and the attorneys who represent them in connection with oil and gas projects or litigation concerning oil and gas security interests or liens. This e-book also provides general analysis and practical advice concerning the fundamentals of oil and gas law, issues raised by fracing technology, the interrelation between Article 9 security interests and specialized statutory liens, the adoption of tribal commercial codes governing transactions in Indian Country, and the basics of a secured lender’s rights on a borrower’s default including the rules governing the conduct of UCC foreclosure sales.

How the e-book Is Organized

This e-book is a reprint of Chapter 13 of *The Law of Secured Transactions Under the Uniform Commercial Code* (written by Barkley Clark and Barbara Clark), and it is divided into twelve subsections. It begins with an overview of oil and gas finance and an analysis of the array of fractional interests in unextracted oil and gas commonly encountered. It then discusses the core rules applicable to security interests in extracted oil and gas and proceeds from the sale of hydrocarbons such as accounts receivable. The fourth subsection considers security interests in equipment, fixtures, and vehicles used in connection with oil and gas operations, as well as enforcement of security interests by a creditor. Subsections five and six consider special rules applicable to pipeline companies and leases on federal lands.

The next three subsections address the threats to a creditor’s security interests posed by the trustee in bankruptcy, federal tax liens, and specialized statutory lien acts designed to protect everyone from companies who provide services to oil and gas well operators to mineral rights owners to states that lease their lands for oil and gas development.

The e-book next considers the hot topic of fracing—the technology that has enabled the recent expansion of domestic production and promises enormous economic and even national security benefits but also presents a series of risks to the environment, property owners, and communities near fracing operations. Uncertainty regarding how these opposing interests will be balanced by legislators and regulators creates risk for secured lenders and those seeking financing alike.
Subsection eleven explores secured financing of oil and gas projects on Indian Country. Tribes collectively own one of the largest accumulations of mineral rights in the country; however, development of those resources can be complicated by everything from intricate government approval processes to a low rate of adoption of commercial codes by tribes.

The e-book concludes with a concise summary of the filing and perfection requirements applicable to personal property collateral used as security in oil and gas projects. Especially at a time of falling oil and gas prices, secured lenders need to audit their documentation under the UCC and other relevant statutes. This e-book also includes an appendix containing a glossary of specialized terms encountered in oil and gas secured transactions.

We hope you find this e-book useful.

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