

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

CHISHOLM OIL AND GAS NOMINEE,
INC.,

Reorganized Debtor.¹

Chapter 11

Case No. 20-11595 (BLS)

Re. D.I. 136

Objection deadline: August 11, 2021 @ 4:00 p.m.

Hearing Date: August 18, 2021 @ 11:00 a.m.

**RESPONSE OF SMART CHEMICAL SERVICES, L.P. TO THE REORGANIZED
DEBTOR'S SIXTH OMNIBUS OBJECTION (SUBSTANTIVE) TO CLAIMS**

Smart Chemical Services, L.P. (the "Claimant" or "Smart Chemical"), by and through its undersigned counsel, hereby responds to the Reorganized Debtor's Sixth Omnibus Objection (Substantive) To Claims (the "Objection") and respectfully states as follows:

I. BACKGROUND

A. Chapter 11 Background

1. On June 17, 2020, the above-captioned reorganized debtor and its affiliates (the "Debtors") each commenced with the Court a voluntary case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors were authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner was appointed in the chapter 11 cases.

2. On September 23, 2020, the Court entered an order confirming the Amended Joint Chapter 11 Plan of Reorganization of Chisholm Oil and Gas Operating, LLC and Its Affiliated

¹ The last four digits of the Reorganized Debtor's federal tax identification number are 1558, and the Reorganized Debtor's mailing address is 1 West Third Street, Suite 1700, Tulsa, OK 74103. The chapter 11 cases of the following affiliates of the Reorganized Debtor were closed effective as of October 21, 2020: Chisholm Oil and Gas Operating, LLC (5382), Chisholm Oil and Gas Operating II, LLC (8730), Cottonmouth SWD, LLC (9849), and Chisholm Oil and Gas Management II, LLC (8174). [See Chapter 11 Case No. 20-11593, Docket No. 373].

Debtors, dated August 3, 2020 [D.I. 232] (the “Plan”). Pursuant to Section 7.3 of the Plan, the Administrator was appointed to serve as the administrator of General Unsecured Claims.

3. On October 21, 2020, the Effective Date of the Plan occurred. See D.I. 371. On the same day, the Court entered an order closing the chapter 11 cases of the Debtors other than the Reorganized Debtor and amending the case caption in connection therewith. See D.I. 373.

B. Smart Chemical’s Claims

4. Beginning in the month of November 2019 and continuing through March 2020, Smart Chemical Solutions, LLC (“Smart Chemical”), performed regular tests on oil and gas wells owned and operated by Chisholm Oil & Gas Operating, LLC (“Chisholm”) and saltwater disposal wells owned by Cottonmouth SWD, LLC (“Cottonmouth”) and perform chemical injections based on the results of those tests (“Services”). During such time period, Chisholm and Cottonmouth incurred \$150,611.90 and \$311,379.35, respectively, in unpaid invoices for such Services.

5. On or about May 21, 2020, Smart Chemical filed various lien statements in Kingfisher, Logan, Garfield, and Major Counties, Oklahoma against numerous oil and gas wells, salt water disposal wells, leasehold estates, and other property interests owned by Chisholm and Cottonmouth.

6. On August 24, 2020, Claimant filed a Proof of Claim No. 562 in the amount of \$478,360.97 (the “Claim”), which amended Proof of Claim No. 305. The Claim was asserted a secured claim in the amount of \$478,285.95 and an unsecured claim in the amount of \$75.02.

7. On July 19, 2021, the Reorganized Debtor filed its Objection, wherein they assert that the Claim should be reclassified as a general unsecured claim as Claimant does not have:

valid liens having priority over the liens granted pursuant to the RBL Credit Agreement and all documents entered into in connection therewith due to failure to comply with the statutory requirements for the creation, filing, perfection and/or enforcement of an M&M Lien, including failure to show that the date of first

performance of services or materials furnished predates the filing of the applicable mortgages of the Debtors' prepetition lenders. Further, 42 OK Stat §144 does not apply to claims related to salt water disposal wells.

Objection, Exhibit C.

8. Claimant disputes the reduced amount, and asserts that the Claim is, and should remain, a secured claim.

II. ARGUMENT

A. Debtors have not Provided Evidence to Rebut the Validity of the Claim

9. The Claim was timely filed and contained documentation in support thereof.

10. Where a proof of claim is executed and filed in accordance with the Bankruptcy Rules, the validity and amount of the claim is thereby established prima facie. *See* Fed. R. Bankr. P. 3001(f). In that regard, the filing of a proof of claim has been likened to the filing of a complaint at the opening of a civil case. *In re Simmons*, 765 F.2d 547, 552 (5th Cir. 1985). In order to challenge successfully the prima facie validity of a proof of claim, an objector must produce evidence negating an essential allegation of the claim. *In re Allegheny International, Inc.*, 954 F.2d 167, 173 (3d Cir. 1992). That evidence must be "equal in force" to the evidence submitted by the claimant. *Id.*, *Simmons*, 765 F.2d at 552 (same).

11. Here, the Reorganized Debtor merely asserts that "based on the Debtors' books and records" Smart Chemical does not have valid liens that have priority over the liens granted pursuant to the RBL Credit Agreement. Objection, Exhibit C.

12. Based on the forgoing, the Objection is insufficient to rebut the Claim. The Reorganized Debtor has produced no evidence negating the essential allegations set forth in the Claim that could be considered equal in force to Claimant's evidence.

B. Chisholm Lien Claims

13. Oklahoma law provides “[a]ny person, corporation, or copartnership who shall, under contract, express or implied, with the owner of any leasehold for oil and gas purposes . . . perform labor or services . . . or furnish material, machinery, and oil well supplies used in the drilling digging, drilling, torpedoing, completing, operating, or repairing of any oil or gas well, or who shall furnish any oil or gas well supplies . . . shall have a lien upon the whole of such leasehold.” *42 Okl. St. § 144*. Notice of the liens permitted under 42 Okl. St. § 144 and the lien statement supporting such liens shall be filed in the manner provided by 42 Okl. St. §§ 141-143.4, except that liens under 42 Okl. St. §144 must be filed within 180 days upon the date which services were last provided, rather than within four months. *42 Okl. St. § 146*. A lien claimant must also cause to be mailed, by certified mail, to the owner of the property to which the lien attaches a notice of the lien within 5 business days after the date of the filing of the lien statement. *42 Okl. St. § 143.1*. Such notice must be mailed by the county clerk of the county in which the property against which the lien is claimed lies. *Id.*

14. Upon the receipt of Work Orders issued pursuant to a Master Service Agreement between the parties, Smart Chemical performed the requested Services on behalf of Chisholm on the oil and gas wells described on the lien statements recorded at Book 3315, Pg. 90 of the records of the County Clerk of Kingfisher County, Oklahoma; Book 2945, Pg. 675 of the records of the County Clerk of Logan County, Oklahoma; Book 2079, Pg. 71 of the records of the County Clerk of Major County, Oklahoma; and Book 2483, Pg. 229 of the records of the County Clerk of Garfield County, Oklahoma. As a result of such Services, Chisholm accumulated unpaid invoices in the amount of \$150,611.90, which remain unpaid. As a result of Smart Chemical’s provision of Services under a contract with Chisholm, Smart Chemical is entitled to a lien against the entirety

of the leasehold by which all of the above-described oil and gas wells are held.

15. Notice of the liens permitted under 42 Okl. St. § 144 and the lien statement supporting such liens shall be filed in the manner provided by 42 Okl. St. §§ 141-143.4, except that liens under 42 Okl. St. §144 must be filed within 180 days upon the date which services were last provided, rather than within four months. *42 Okl. St. § 146*. The last date in which services were provided to Chisholm was March 27, 2020, as evidenced by the recorded lien statements. The lien statements were filed on or about May 21, 2020, well within the 180-day period required by Oklahoma law and contain all of the information required by 42 Okl. St. § 142. Along with the lien statements Smart Chemical provided the county clerk of the relevant county with a check to cover the costs of providing notice to Chisholm. Notice of the claim of lien was sent to Chisholm by Smart Chemical, by certified mail, on May 23, 2020.

16. Because Smart Chemical's lien results from Services performed on oil and gas wells under contract with Chisholm, the lien statements were timely and properly filed, and all notice required by Oklahoma law was timely and properly given, Smart Chemical's lien in the amount of \$150,611.90 for Services provided on behalf of Chisholm was properly perfected under Oklahoma law and should be treated as an allowed secured claim in these proceedings.

C. Cottonmouth Lien Claims

17. Upon the receipt of Work Orders issued pursuant to a Master Service Agreement between the parties, Smart Chemical performed the requested Services on behalf of Cottonmouth on the saltwater disposal wells described on the lien statements recorded at Book 3315, Pg. 255; Book 3315, Pg. 268; Book 3315, Pg. 279; Book 3315, Pg. 303; Book 3315, Pg. 330; Book 3315, Pg. 360; and Book 3315, Pg. 370 of the records of the County Clerk of Kingfisher County. As a result of such Services, Cottonmouth accumulated unpaid invoices in the amount of \$311,379.35,

which remain unpaid. As a result of Smart Chemical's provision of Services under a contract with Cottonmouth, Smart Chemical is entitled to a lien against the above-described saltwater disposal wells.

18. Notice of the liens permitted under 42 Okl. St. § 144 and the lien statement supporting such liens shall be filed in the manner provided by 42 Okl. St. §§ 141-143.4, except that liens under 42 Okl. St. §144 must be filed within 180 days upon the date which services were last provided, rather than within four months. 42 Okl. St. § 146. The last date in which services were provided to Cottonmouth was March 27, 2020, as evidenced by the recorded lien statements. The lien statements were filed on or about May 21, 2020, well within the 180-day period required by Oklahoma law and contain all of the information required by 42 Okl. St. § 142. Along with the lien statements Smart Chemical provided the county clerk of the relevant county with a check to cover the costs of providing notice to Cottonmouth. Notice of the claim of lien was sent to Cottonmouth by Smart Chemical, by certified mail, on May 23, 2020.

I. 42 OKL. ST. § 144 Applicability to Salt Water Disposal Wells

19. To entitle a claimant to a lien under 42 Okl. St. § 144, the claimant must, under contract with the owner of any leasehold for oil and gas purposes, "perform labor or services, including written contracts for the services of a geologist or petroleum engineer, or furnish material, machinery, and oil well supplies used in the digging, drilling, torpedoing, completing, operating, or repairing of any oil or gas well, or who shall furnish any oil or gas well supplies, or perform any labor in constructing or putting together any of the machinery used in drilling, torpedoing, operating, completing, or repairing of any gas well, or perform any labor upon any oil well supplies, tools, and other articles used in digging, drilling, torpedoing, operating, completing, or repairing any oil or gas well." Therefore, for Smart Chemical to have valid mineral liens it must

have 1) contracted, 2) with the owner, 3) of any leasehold for oil and gas purposes,” and 4) for the performance of any act described in 42 Okl. St. § 144.

20. There is no dispute that Smart Chemical agreed to perform regular tests on Cottonmouth Wells and perform injections based on the results from those tests. Therefore, it is clear that Smart Chemical contracted directly with Cottonmouth. Additionally, Cottonmouth clearly owns the saltwater disposal wells subject to Smart Chemical’s claims as a result of Surface Use Agreements between Cottonmouth and the owners of the surface estate. A lease is a “contract by which a rightful possessor of real property conveys the right to use and occupy the property in exchange for consideration” for a term. *See Black’s Law Dictionary* 907 (8th ed. 2004). The Surface Use Agreements, whereby Cottonmouth obtained certain real property interests allowing them to operate salt water disposal wells for a specified term in exchange for monthly royalty payments constitutes a “leases” under Oklahoma law and even refer to the rights granted there in as a “lease” on multiple occasions.

21. The language of 42 Okl. St. § 144 also clearly demonstrates the intent of the Oklahoma legislature that the leasehold against which one may claim a mineral lien includes more than just oil and gas leases. The statute provides that a claimant who performs certain services on an oil and gas lease “shall have a lien upon the whole of such leasehold or oil pipeline, or gas pipeline, or lease for oil and gas purposes.” The inclusion of the “or lease for oil and gas purposes” language within 42 Okl. St. § 144 would be redundant if the leasehold was limited to the mineral estate, which had already been expressly mentioned in the statute. Therefore, the statute must apply to leases on property other than the mineral estate that are operated in furtherance of an oil and gas purpose. The Surface Use Agreements expressly state that the sole purpose of the agreements is to permit Cottonmouth to construct salt water disposal wells “to accommodate its oil and gas

exploration in the area.” As a result, the express purpose of the Surface Use Agreements is to create a leasehold for an oil and gas purpose. Smart Chemical has contracted directly with the owner of such leasehold and therefore, has clearly met the first three elements of a mineral lien claim outlined above.

22. Because the first three elements have been met, Chisholm’s assertion that 42 Okl. St § 144 does not apply to salt water disposal wells must be based upon a belief that services provided on a salt water disposal well cannot meet the requirements of the statute. While a similar holding has been reached when interpreting North Dakota’s Mineral Lien Statute, the Oklahoma Statute and existing precedent would lead to a different result in Oklahoma. North Dakota expressly grants lien rights only to claimants who provide material or services on an oil or gas well or a pipeline. *See Major Drilling Am., Inc. v. Redemption Energy, LLC*, 2013 U.S. Dist. LEXIS 99368, at *18 (D.N.D. 2013). Unlike North Dakota, Oklahoma law does not require labor and services to be performed on an oil and gas well to avail the service provider to a mineral lien.

23. The Oklahoma statute provides lien rights for any claimant that “perform[s] labor or services, including written contracts for the services of a geologist or petroleum engineer, *or* furnish material, machinery, and oil well supplies used in the digging, drilling, torpedoing, completing, operating, or repairing of any oil or gas well, *or* who shall furnish any oil or gas well supplies, *or* perform any labor in constructing or putting together any of the machinery used in drilling, torpedoing, operating, completing, or repairing of any gas well, *or* perform any labor upon any oil well supplies, tools, and other articles used in digging, drilling, torpedoing, operating, completing, or repairing any oil or gas well.” The use of a comma and the word “or” in the statute unambiguously separates the different actions which will entitle a claimant to a lien, permitting liens for claimants who, under contract with the owner of oil and gas leasehold, 1) perform labor

or services, 2) furnish material, machinery, and oil well supplies used on any oil or gas well, 3) furnish oil or gas well supplies, 4) perform labor in constructing any machinery used on an oil or gas well, or 5) perform labor upon oil well supplies, tools, and other articles used on an oil or gas well. Therefore, the repeated use of the “oil or gas well” does not limit the labor and services that avail a contractor to a lien to only those performed on an oil or gas well.” The Oklahoma supreme court has expressed a similar interpretation of 42 Okl. St. § 144, holding that labor preformed must be “connected with or applied to the improvement of the oil and gas lease or connected with the operation of an oil or gas well.” *Taylor v. B. B. & G. Oil Co.*, 249 P.2d 430, 432 (Okla. 1952).

24. 42 Okl. St. § 144 also expressly provides for liens upon “oil pipeline[s], gas pipeline[s], and leasehold[s] for oil and gas purposes.” Interpreting 42 OK Stat § 144 to require all labor and services to be provided upon an oil and gas well would make it impossible for a claimant to obtain a lien upon a pipeline or other leasehold, as the only services which give rise to a lien would have to be performed on an oil and gas lease. If the legislature intended to only permit liens for services provided or materials furnished on oil and gas wells, it would not have provided for lien rights on pipelines or other leaseholds. As a result, the statute must permit liens for labor and services provided on a leasehold for oil and gas purposes, but no on an oil and gas well itself.

25. Because Smart Chemical’s lien results from Services performed on a leasehold for oil and gas purposes pursuant to a contract with Cottonmouth, the lien statements were timely and properly filed, and all notice required by Oklahoma law was timely and properly given, Smart Chemical’s lien in the amount of \$311,379.35 for Services provided on behalf of Chisholm was properly perfected under Oklahoma law and should be treated as an allowed secured claim in these proceedings.

II. Validity of Smart Chemical's Claims under 42 OKL. ST. § 141

26. 42 Okl. St. § 141 provides: “any person who shall, under oral or written contract with the owner of any [real estate], perform labor, furnish material or lease or rent equipment used on said land for the erection, alteration or repair of any building, improvement or structure thereon. . . shall have a lien upon the whole of said tract or piece of land, the buildings and appurtenances in an amount inclusive of all sums owed to the person at the time of the lien filing, including, without limitation, applicable profit and overhead costs.” Further, If the title to the land is not in the person with whom such contract was made, the lien shall be allowed on the buildings and improvements on such land separately from the real estate. *42 Okl. St. § 141*. Section 141 places only two requirements on lien claimants, 1) Perform labor or furnish materials upon real estate, and 2) under contract with the owner of said real estate. Further, 42 Okl. St. § 141 provides that if “title to the land is not in the person with whom such contract was made, the lien shall be allowed on the buildings and improvements on such land separately from the real estate.” Smart Chemical undisputedly preformed labor and furnished material upon Cottonmouth’s salt water disposal wells, pursuant to an ongoing contract with Cottonmouth. Cottonmouth, while not the owner of the surface estate, does own the salt water disposal wells and other rights in the subject tracts granted under the relevant Surface Use Agreements. Therefore, Smart Chemical is entitled to a lien on said wells, and any rights granted under said Surface Use Agreements, pursuant to Oklahoma law.

27. Having established that Smart Chemical was entitled to a lien under Section 141, we now address whether such lien was timely and properly secured. Section 142 requires any lien claimant to file, in the office of the county clerk, “a statement setting forth the amount claimed and the items thereof as nearly as practicable, the names of the owner, the contractor, the claimant, and

a legal description of the property subject to the lien, verified by affidavit”, within four months after the final date of performance under the contract. Smart Chemical’s lien statements reflecting its claims against Cottonmouth, containing a sworn affidavit, were recorded in the Kingfisher County Clerk’s records on May 21, 2021. The earliest date of final performance by Smart Chemical for any particular well was March 23, 2020; therefore, Smart Chemical’s lien statements were timely filed under Section 142.

28. Furthermore, Smart Chemical’s lien statements set forth the amount claimed, the claimant, and contain invoices reflecting the materials provided and labor performed. Additionally, the statements sufficiently describe the saltwater disposal wells against which the lien is claimed by both a description of each well and an accurate legal description of the surface estate where each disposal well is located. The lien statements refer to Cottonmouth as a contractor as opposed to the owner against whom the lien is claimed. This description of the parties on the lien statements directly results from Cottonmouth’s failure to record the Surface Use Agreements in the Kingfisher County Records, causing Smart Chemical to assume that Cottonmouth was acting as a contract operator on behalf of Chisholm, who’s rights were derived from oil and gas leases covering the same properties. Given Smart Chemical’s diligence in attempting to correctly state the relations of the parties, Cottonmouth’s failure to record the Surface Use Agreements, the notice provided to Cottonmouth (described below), the lack of prejudice to Cottonmouth as a result of this error, and Oklahoma law requiring liberal enforcement of attached liens, Smart Chemical believes that such error is not fatal to the perfection of its liens. Furthermore, the title of the recorded lien statements, being “ Oil and Gas Lien Statement,” does not preclude the attachment and perfection of the liens pursuant to 42 Okl. St. § 141.

29. Finally, Smart Chemical provided all required notices to Cottonmouth of its

recorded lien statements. Section 143.1 requires a claimant to provide the county clerk with the mailing address of the property owner against whom the lien is claimed, along with a fee for preparing and mailing the notice to said owner. Such information was provided to the clerk in a letter dated May 22, 2020, and the clerk's notice to Cottonmouth, containing the person claiming the lien, the person against whom the claim is made and the owner of the property, a legal description of the property, and the amount claimed was sent within the 5-day period after May 21, as required by Section 143.1. Because Smart Chemical was the original contractor of Cottonmouth, and not a subcontractor, pre-lien notice is not required pursuant to 42 Okl. St. § 142.6 (A)(1).

30. In the event it is determined that Smart Chemical's lien statements do not attach to Cottonmouth's real property interests under 42 Okl. St. § 144, the lien statements are nonetheless perfected pursuant to Oklahoma's mechanic lien laws set forth in 42 Okl. St. § 141, *et seq.* Smart Chemical's lien results from Services performed on real property under contract with Cottonmouth, the lien statements were timely and properly filed, and all notice required by Oklahoma law was timely and properly given, Smart Chemical's lien in the amount of \$311,379.35 for Services provided on behalf of Cottonmouth was properly perfected under Oklahoma law and should be treated as an allowed secured claim in these proceedings.

III. JOINDER

31. Claimant joins, adopts and incorporates as if fully restated herein, the responses to the Objection filed by other creditors to the extent not inconsistent herewith, subject to the specific facts and circumstances with the Claim

WHEREFORE, Claimant respectfully requests that the Objection be overruled with respect to the reclassification of the Claim to a general unsecured claim.

Date: August 10, 2021

Respectfully submitted,

GELLERT SCALI BUSENKELL & BROWN

/s/ Michael Busenkell

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Counsel to Smart Chemical Services, L.P.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 10, 2021, I caused a true and correct copy of the foregoing *Response of Smart Chemical Services L.P. to the Reorganized Debtor's Sixth Omnibus Objection (Substantive) to Claims* to be filed electronically with the CM/ECF portal and served upon all parties registered to receive electronic notifications in this case, and additionally served upon the parties below via electronic mail:

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Dated: August 10, 2021

/s/ Michael Busenkell
Michael Busenkell (DE 3933)