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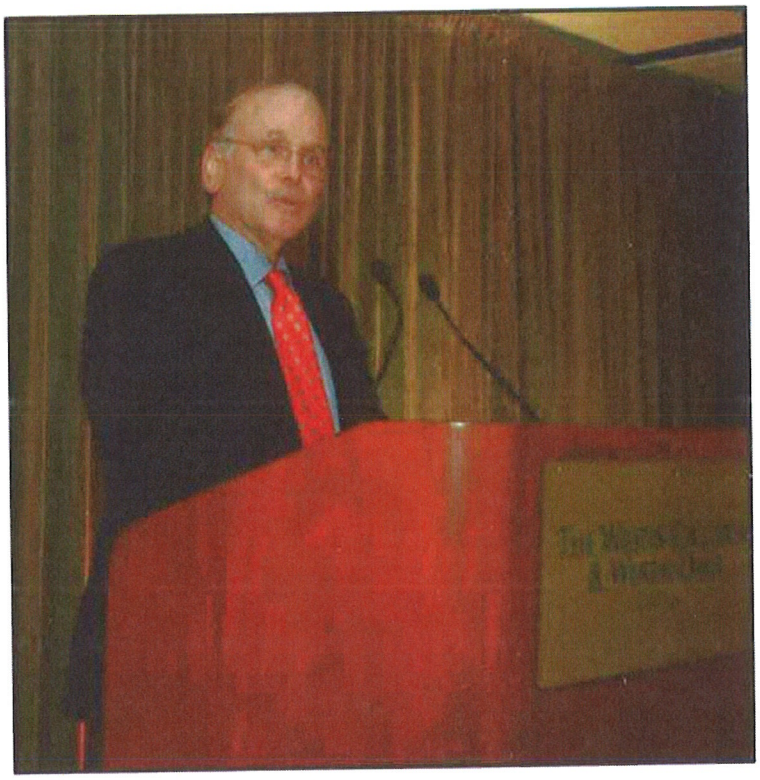

Dr. Daniel Yergin Speaking at the
75th Anniversary Gala of the
Oil, Gas and Energy Resources Law Section

THE AAPL OPERATING AGREEMENT AND THE DEADBEAT NON-OPERATOR [1]

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I. INTRODUCTION

"Mr. Green Leisure Suit," as I will call him, dropped in on me unexpectedly in my Denver office where I was employed as a near entry-level landman by a major oil company (Exxon) in the early 1980s. The passage of time has obscured some details, but I recall most. He entered my office in a pastel green, bell-bottomed leisure suit with a gold puka shell necklace adorning his well-tanned, very hairy chest. His girlfriend was dressed in a tight fitting, memorably scant outfit similar to what might be worn today by a "Zumba" dance fitness instructor in a women's workout studio. Her attire was certainly not business dress, even by business casual dress standards to the extent such standards existed in the early 1980s; but no matter, she was accompanying him for no apparent business reason.

I had been assigned the task of putting a lease play together in Northeastern Colorado, in the same area that today is seeing large scale horizontal drilling and development in the Niobrara formation. But this was long before horizontal fracking had come of age, Exxon wanted to drill vertical test wells, perhaps as many as a dozen, at a drilling and completion cost per well of several million dollars. I had contacted "Mr. Green Leisure Suit" for a farmout of his approximately 10% leasehold position on the prospect. Mr. Green Leisure Suit was the son of a very well known, wealthy, Houston businessman which was a fact that I, having recently moved to Colorado from Texas, was unduly impressed by.

Mr. Green Leisure Suit told me that he was in town to snow ski but wanted to respond to my farmout request in person while he was here. He then told me he wanted to join in the wells, not farmout. I explained to him that even a 10% interest could cost him millions of dollars given how expensive the wells were and the number of them that Exxon planned to drill. I also warned him about Exxon's propensity at the time for significant cost overruns. His response was something like, "Not a problem, I'm ready to run with the big dogs. So let's drill these suckers, where do I sign?"

I then had my secretary prepare a stack of authorities for expenditure (AFEs) and signature pages to a Model Form American Association of Professional Landmen (AAPL) 610 Operating Agreement (probably the 1977 version) all of which Mr. Green Leisure Suit enthusiastically executed. The deal with Mr. Green Leisure Suit having been closed, Exxon commenced its exploration program. We drilled six or seven dry holes in a row before abandoning the play. There were significant cost overruns. Mr. Green Leisure Suit's final share of costs was $2-3 million, a fair amount of money today, even more so in the early 1980s.

A month or so after we shut the program down, I was contacted by our accounting department. As it turned out, Exxon had billed Mr. Green Leisure Suit for his share of costs, but he never paid anything. I was asked to contact him about the overdue bills. I tracked him down to a hotel room in Las Vegas where the phone was answered by a woman, a different one than the first, made obvious by a very thick foreign accent. She explained to me that Mr. Green Leisure Suit was not able to come to

[1] Special thanks to Brooke Sizer, an Associate with Gray Reed & McGraw, for her assistance with the citations and research for this article. Further thanks to Jason Brookner, a Gray Reed & McGraw Member, for his suggestions regarding bankruptcy issues and to Charles Sartain, a Gray Reed Shareholder, for his comments on general matters.

the phone, but he wanted me to know his "check was in the mail."

A month or so later I received a letter in the mail, but no check was enclosed. Instead, I found Mr. Green Leisure Suit's notice of personal bankruptcy filing in federal bankruptcy court in the U.S. Southern District of Texas (Houston). Exxon, as an unsecured creditor, was to stand in line behind scores of secured banks and lending institutions, and ultimately had to write off the $2-3 million. But somehow my career survived, probably because in the early 1980s Exxon was enjoying record gross annual corporate revenues in the billions upon billions of dollars range so a $2-3 million write-off was insignificant; plus my old boss transferred to a new job and my new boss did not connect the dots. So it happened that I had my first encounter with a deadbeat non-operator. It was not to be my last.

II. A BRIEF OVERVIEW OF HISTORY AND USE OF OPERATING AGREEMENTS IN THE UPSTREAM EXPLORATION AND PRODUCTION

It has been said that "history is more or less bunk."[2] Nevertheless, a bit of history may be helpful in putting in perspective the issue of the deadbeat non-operator and how operating agreements have evolved to address the problem.

Let us start with the basic question of what is an operating agreement and why is it needed? In an oil industry context a joint operating agreement (often referred to by its abbreviated form, "JOA") can be defined as an agreement between one or more parties to jointly develop an oil and gas lease.[3]

So why do you need an operating agreement? In a sense you do not, or at least you do not need one in writing. The Statute of Frauds requires that agreements providing for the transfer of land be in writing, but it does not apply to oral agreements providing for the operation of an oil and gas well.[4] In my own practice I regularly observe situations where parties operate oil and gas wells with no written operating agreement. In fact, my perception is that this phenomenon may actually be increasing, which is an unexpected development, given that that the AAPL Form 610 Operating Agreement has been in widespread use for almost sixty years (more on this phenomenon later).

So what do parties do if there is no written operating agreement? By and large, they simply act like one is in place. One of the parties obtains a permit to operate the well or wells, and then it sends joint interests billings (JIBs) to its partners for payment. Courts have found such arrangements legally enforceable.[5]

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[2] Interview by Charles N. Wheeler, Chicago Tribune, with Henry Ford, Ford Motor Company. (May 25, 1916).

[3] "Oil and gas lease" is referred to in a very generic sense without worrying about distinctions between true oil and gas leases (contracts with property rights attached) and mineral fee (property rights only).

[4] However, those portions of a standard operating agreement which relate to sales of interests in real estate would come within the Statute of Frauds. "While no case was found holding an operating agreement to be within the Statute [of Frauds], consider the following attributes of an operating agreement: [followed by list of eleven different provisions including those covering lien rights, preferential rights to purchase, maintenance of uniform interest, waiver of right to partition and other provisions which arguably come within the ambit of the Statute of Frauds]," Michael E. Smith, *Joint Operating Agreements, an Overview*, *in* OIL AND GAS AGREEMENTS: JOINT OPERATIONS 12-3 (Rocky Mt. Min. L. Fdn. ed., 2007).

[5] *See Exchange Oil & Gas Corp. v. Great American Exploration Corp.*, 789 F.2d 1161, 1163–64 (5th Cir. 1986) (applying Louisiana law to find a non-operator liable to an operator when the operator detrimentally relied on representations of the non-operator that it pay its

But operating a well without a written agreement involves risks as well as missed opportunities. First of all, the legal status of the parties under such an oral arrangement might be construed as a common law mining partnership. What is a mining partnership? A mining partnership is created where co-owners unite to operate a property and share in profits earned.[6] Courts have found that a mining partnership exists with or without a written agreement in situations where each party to a mining situation has the requisite "mutual control" or "active participation" in operations.[7] A mining partnership can therefore be imposed by law whether or not the parties have expressly agreed. As Professor Ernest Smith[8] has stated:

> [T]he mining partnership can be described more accurately as a legal concept, rather than a legal arrangement. Unlike the partnership or the tenancy in common, persons rarely knowingly enter in a mining partnership; rather, one party to litigation seeks to have a relationship characterized as a mining partnership so that certain favorable legal consequences will result.[9]

What happens when a mining partnership is imposed by law? First, a new entity has been created for tax purposes which can potentially lead to double or triple taxation. (Once at the partnership level, then again at a corporate level on partnership distributions, and then again when the corporation declares dividends and its shareholders must report the income on their individual returns.)

Second, partnership liability is joint, not several. For this reason practically all form written operating agreements since the 1950s, at least, include a specific disclaimer that a mining partnership is not being created and that liability is several, not joint and collective.

The BP Deepwater Horizon/ Macondo disaster is a reminder why this is important. If BP were to be pulled into bankruptcy and if joint liability was to be found, then BP's partners would still be liable for BP's share of all damages, consequential or otherwise. The theory behind modern, written operating agreements such as the AAPL Model 610

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share in the costs of the well despite there being no written operating agreement); William W. Pugh and Harold J. Flanagan, *Don't Get Stuck with the Dinner Check When It's Not Your Dinner: Indemnity and Insurance Issues Under Joint Operating Agreements*, *in* OIL AND GAS AGREEMENTS: JOINT OPERATIONS, Part I.1(Rocky Mt. Min. L. Fdn. ed., 2007) (citing *Exchange Oil*, 789 F.2d at 1164). *See also Hunt Energy Corp. v. Crosby-Mississippi Resources, Ltd.* 732 F. Supp. 1378, 1384 (S.D. Miss. 1989) (cited by Pugh and Flanagan in the same article and dealing with a situation where there was no signed JOA but the non-operator had signed a written AFE.).

[6] The three essential elements of a mining partnership are: (1) joint ownership; (2) joint operation (or right to participate in management) and (3) an express or implied agreement to share in profits or losses. Andrew Derman and Isabel Amadeo, *The 1989 AAPL Model Form Operating Agreement; Why Are You Not Using It?*, Landman Magazine, March/April 2004, at 33 (citing Fiske, *Mining Partnership*, 26 INST. ON OIL & GAS L. & TAX'N, 187, 193 (1975)).

[7] *Id.* (citing *Dresser Industries, Inc. v. Crystal Exploration and Production Co.*, No. 83-1275-W (D. Okla. Jan 17, 1984), aff'd 1985 U.S. App. Lexis 27084, No. 84-1160 10th Cir. July 12, 1985).

[8] Rex G. Baker Centennial Chair in Natural Resources Law and former Dean at the University of Texas Law School.

[9] Ernest E. Smith, *Duties and Obligations Owed by an Operator to Non-Operator Investors and Other Interest Owners*, 32 ROCKY MT. MIN. L. INST., 12-1, 12-5 (1986) (quoted by Milam Randolph Pharo and Constance L. Rogers, *Liabilities of the Parties to a Model Form Joint Operating Agreement: Who is responsible for what?*, *in* OIL AND GAS AGREEMENTS: JOINT OPERATIONS (Rocky Mt. Min. L. Fdn., 2007)).

Form is that liability is several, not joint; therefore the non-operators are liable only for their proportionate shares.

Given this perspective, it is easier to understand the industry adage that operating agreements exist primarily to rein in the operator. They do this by providing that liability is to be several, not joint; by ensuring that parties have adequate response time to AFEs; by incorporating highly detailed accounting procedures; and by otherwise imposing duties and obligations on the operator for the benefit of the non-operators.

This is why some operators seem indifferent to whether or not a JOA is entered into. They view a JOA as giving up an operator's otherwise near total control over the pace and scope of development.

But in what other industry would millions of dollars be invested in joint ventures with no controlling, written, document? In some oil and gas companies, particularly the majors, drilling a well without an operating agreement violates delegation of authority guidelines and leads to career limiting (or ending) audit exceptions.

Other oil and gas companies have a more casual attitude, particularly in states which, unlike Texas, have adopted comprehensive and frequently-used force pooling laws.[10] If you can force pool another party and enjoy a statutory non-consent penalty (also called a "sole risk" penalty) for doing so, or alternatively, if you can send JIBs and receive payments anyway, why do you need an operating agreement? In shale plays like the Bakken in North Dakota, for example, it is very common place for operators to simply ignore the numerous small working interest owners and corral them under a forced pooling order rather than expend the time and effort required to get all parties to execute an operating agreements.

But, generally speaking, not having a written operating agreement is not a best practice. There are at least five significant advantages to having a written JOA.

First, in Texas and oftentimes in other states forced pooling can be problematic. Without force pooling, and in the absence of a written JOA providing for sole risk penalties, you are at risk of having to carry a non-operator with no assurance of recouping any more than the non-operator's share of well costs which is all that you would be entitled to in the absence of forced pooling or a written JOA.

Second, JIBs are easily ignored and often difficult to collect in the absence of written agreements.[11] Furthermore, in the absence of a written agreement, attorney's fees are generally not recoverable when suing on a debt.

Third, a written operating agreement can establish a contractual operator's lien on the non-operator's share of production in the event that JIBs are not paid. Though as noted above an operating agreement per se

[10] The Texas Mineral Interest Pooling Act (MIPA), found at TEX. NAT. RES. CODE ANN. § 102 (Vernon 2011) has been characterized as an Act to encourage voluntary pooling rather than a true compulsory pooling act. Ernest Smith, *The Texas Compulsory Pooling Act*, 43 TEX. L. REV. 1003, 1009 (1965). In any event it is rarely used, at least in comparison with states such as North Dakota or Oklahoma. *See id.* at 1011–1017 (explaining the requirements to use the Texas statute to pool).

[11] "Operators have generally been unsuccessful in their attempt to collect 'dry hole' drilling costs from a non-operator in the absence of an operating agreement," *Pugh, supra* note 5 (citing *Davis Oil Co. v. Steamboat Petroleum Corp.*, 583 So. 2d 1139 (La. 1991); *Zink v. Chevron USA, Inc.*, No. 89-4923, 1992 WL 300816 (E.D. La Oct. 8, 1992)). But in the same section of the paper the authors also talk about cases supporting the operator collecting against the non-operator in the absence of a written agreement. *Id.*

does not have to be in writing to comply with the Statute of Frauds, the Statute of Frauds would require a written agreement in order to attach a contractual lien on real property.

An operator's lien is the grant of a security interest by a non-operator which gives the operator the right to foreclose on the non-operator's interest for non-payment of expenses due. Such liens in effect collateralize the assets of the non-operators and turn the operator into a secured creditor. Though operator's liens have been known to have deficiencies depending on the form of JOA used,[12] they can provide a useful tool in dealing with defaulting non-operators which is not otherwise available under an oral arrangement. [13]

Fourth, a written operating agreement establishes the right of the operator to ask for an advance (also known as "cash call") on funds needed for next month's operations. Advances under JOAs are typically due within thirty (30) days (more on advance payment requests later).

The fifth big advantage in having a written JOA is that written operating agreements are simply better suited than oral agreements in developing large scale, complicated, capital intensive oil and gas fields which may be operated over long periods of time. Back to my question, in what other industry would millions of dollars be invested in joint ventures with no controlling, written, document?

So, for a myriad of reasons, the oil industry in the United States began using written operating agreements in the early 20th century and by the 1930s and '40s written operating agreements had become very common. But each company tended to use its own form as a starting point in negotiations which was cumbersome and inefficient. So in the early 1950s representatives of oil and gas companies, together with independent landmen and oil and gas lawyers, began meeting to discuss the creation of a model form operating agreement. Early efforts in this regard centered in the Oklahoma oil and gas community. In 1956, the Ross Martin Company of Tulsa, Oklahoma published the Kraftbilt Form 610 JOA. About ten years later the American Association of Professional Landmen took the Kraftbilt 610 Form under its wing and renamed it the AAPL Model Form 610 JOA. About ten years after that, in 1977, the 1956 610 Form was replaced with the 1977 AAPL 610 Form, and five years later with the 1982 AAPL Model 610 Form.

It was one of those forms, the 1977 or the 1982 AAPL Form 610 Agreement that I would have gotten Mr. Green Leisure Suit to sign. My problems with Mr. Green Leisure Suit were not isolated. As oil prices began to slide in the mid-1980s and U.S. Bankruptcy filings for defaulting oil and gas companies occurred on a scale never experienced before, shortcomings in the provisions of the AAPL Model 610 Form

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[12] *See* Gary B. Conine, *Property Provisions of the Joint Operating Agreement*, *in* OIL AND GAS AGREEMENTS: JOINT OPERATIONS (Rocky Mt. Min. L. Fdn., 2007)(discussing some of the most common deficiencies of JOA operator's liens, which include failure to adequately identify collateral, failure to properly perfect, failure to attach the lien to after acquired property, among others).

[13] There could be an exception, however. There is some authority that a statutory mechanic's and materialman's lien could work to the benefit of an operator in a situation where there is no written JOA. For example, an argument could be made that the statutory Texas mechanic's and materialman's lien (TEX. PROP. CODE ANN. § 56.001-56.003 (Vernon 2011)) extends to the operator, because the operator is the person with whom the contract with the mechanic or materialman is made. The statutory lien provisions of Wyoming, Montana, New Mexico and Colorado are similar to what exist in Texas. *See* Andrew B. Derman and Isabel Amadeo, *The 1989 AAPL Model Form Operating Agreement—Why Are You Not Using It?*, *in* OIL AND GAS AGREEMENTS: JOINT OPERATIONS (Rocky Mt. Min. L. Fdn. ed., 2007).

relative to deadbeat non-operators (and operators) became increasingly apparent.[14]

The problem of dealing with deadbeat participants was so severe that the AAPL in the mid-1980s inaugurated still another revision of the AAPL 610 Form which was then released in 1989. The 1989 AAPL 610 agreement contained numerous new provisions designed to better equip the parties in dealing with defaulting participants. These included expanded advance payment ("cash call") provisions, provisions allowing the rights of a defaulting party to be suspended, and provisions deeming a party to be non-consent (and subject to sole risk penalties) in the event of default (more on these subjects later).

At the time this paper is being written, there is another revision of the AAPL Form 610 Agreement underway, the first effort in almost a quarter of a century since the 1989 Form.[15] This time one of the principal drivers is to better adapt the form to horizontal drilling operations. What will likely be called the 2014 or 2015 AAPL Model 610 Form is currently a work in progress.[16]

To close the history lesson, it should be noted that the AAPL Model 610 Form has become the most widely used joint operating agreement form in the domestic USA, onshore, oil and gas industry. Through the years competing forms have been introduced[17] but the AAPL 610 Form has remained the most accepted model form operating agreement for onshore US oil and gas operations (at least during primary recovery phases and for areas outside the Rockies) and it has had a strong influence on offshore operating agreement forms as well, both domestically and internationally.

III. PROBLEMS WITH AAPL FORMS PRIOR TO 1989 IN ENFORCING OPERATOR'S LIEN

As mentioned earlier, the desire to have a contractual lien in place for enforcement against deadbeat non-operators (and operators) was one of the historical drivers for a written operating agreement. The experience of the oil and gas industry in the 1980s, however, revealed that in many cases, the liens provided for in the 1982 and earlier versions of the AAPL 610 Form JOA were not worth the paper they were written on. This was because of the evolution of debtor/creditor laws in the United States which by the 1980s had rendered unrecorded lien and security interests significantly less valuable and harder to enforce than they had been before.

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[14] *See* David E. Pierce, *Transactional Evolution of Operating Agreements in the Oil and Gas Industry*, *in* OIL AND GAS AGREEMENTS: JOINT OPERATIONS (Rocky Mt. Min. L. Fdn., 2007).

[15] The AAPL released a version of the 1989 AAPL 610 JOA with new horizontal modifications in December 2013. But the new version of the AAPL 610 Form due out in 2014 or 2015 will address other issues as well. Jeff Weems, AAPL Operating Agreement revision committee member, address to the Houston Bar Association Oil, Gas and Mineral Law Section Luncheon: Changes Within the AAPL 610-1989 Model Form Operating Agreement—Horizontal Modifications (Including a Discussion of Anticipated Changes) (Sep. 24, 2013).

[16] *Id.*

[17] The Rocky Mountain Mineral Law Foundation introduced its own Form 3 in 1959 and the Canadian Association of Professional Landmen has had various forms available since 1969. Conine & Kramer, *supra* note 12. There are also specialty forms such the Rocky Mountain Mineral Law Foundation Model Form Operating Agreement for Federal Exploratory Units or the American Petroleum Institute Model Form for Fieldwide Units.

Specifically, by the 1980s, the US Bankruptcy Code had embedded within it provisions whereby a trustee (or debtor in possession)[18] was vested with the rights of a bona fide purchaser of real property (BFP) if at the time the bankruptcy case was commenced, a hypothetical purchaser could have obtained BFP status. As a hypothetical BFP, the trustee is deemed to have conducted a title search, paid value for the property, and perfected its interest as holder of legal title as of the date the bankruptcy case commenced. This allowed the trustee to avoid any liens or conveyances that a BFP could avoid.[19] This would include avoiding the operator's lien in an unrecorded AAPL 610 Form Operating Agreement.

Now, this problem had not arisen overnight, and for many years before a small minority of operators routinely recorded joint operating agreements in county and parish courthouses in an effort to perfect their operator's liens. But this was much more the exception than the rule for many reasons, including the per page cost of recording lengthy documents such as a JOA with all its exhibits in multiple counties or even states if the contract area was very large. The number of non-operators going into bankruptcy is perceived to be relatively small whereas the number of operating agreements that would need to be recorded is large. In addition, operating agreements are often not acknowledged and therefore would not qualify for recordation. Rather than hassle with it, most operators just threw the dice and took their chances.

Then, in 1987, the Oklahoma Supreme Court ruled that the filing of a Memorandum of a Joint Operating Agreement would suffice to perfect an operator's lien.[20] Industry reacted immediately and many companies began recording memoranda of JOA.[21] The *Amarex* case was highly influential on the AAPL Committee tasked with revising the 1982 Model Form JOA, and the subsequent 1989 version of the AAPL JOA incorporated for the first time a recording supplement. The recording supplement was designed to comply not only with the real property laws of the states insofar as establishing lien priorities but also with security interest provisions of the Uniform Commercial Code (UCC) which had been first introduced in the United States in the early 1950s and was eventually adopted in one form or the other in all fifty states. The UCC greatly expanded upon the breadth and scope of state lien law and provided for the creation and perfection of security interests through use of financing statements normally filed in the local Secretary of State office or equivalent office.

This raises an issue that is sometimes overlooked by landmen and other industry professionals who work with JOAs. Most landmen recognize that in order to perfect the mineral lien provided for in a

[18] As a technical matter, the concept of a "trustee" in a federal bankruptcy context exists, for the most part, only in a Chapter 7 liquidation. Most of the time, in Chapter 11, the debtor remains "in possession" and in control of the case and its business and its property (hence the term of art, "debtor in possession" or DIP) and the DIP is vested with, among other things, the powers of a trustee to assume or reject contracts (and avoid liens, etc.). On occasion a Chapter 11 trustee is appointed to take over operating the business where there has been fraud, incompetence, etc.

[19] The trustee (or DIP) can exercise the rights of a bona fide purchaser (BFP) regardless of actual knowledge, but the trustee's rights as a BFP do not override state recording statutes or allow avoidance of an interest of which a trustee would have had constructive notice under state law.

[20] *Amarex, Inc. v. El Paso Natural Gas. Co*, 772 P.2d. 905, 906–07 (Okla. 1987).

[21] *See* Andrew B. Derman, *Protecting Oil and Gas Liens and Security Interests: Use of Memorandum of Operating Agreements and Financing Statements*, ABA Natural Resources Law Section Monograph Series (1987) (demonstrating a recording memorandum in the wake of the *Amarex* case).

JOA something must be filed in the real property records of the county in which operations occur. This is because prior to extraction, oil, gas and other minerals are real property.

After extraction, however, oil and gas become goods and are no longer real property. Therefore the mineral lien would no longer apply. This is why Article VII B of the AAPL 610 Operating Agreement establishes both a mineral lien and a security interest in extracted oil and gas. For those unfamiliar with the concept, a "security interest" is a property interest created by agreement or by operation of law over assets to secure the performance of an obligation, usually the payment of a debt. So in this sense it is similar to a mineral lien. It gives the beneficiary of the security interest certain preferential rights in the disposition of secured assets. Such rights vary according to the type of security interest, but in most cases, a holder of the security interest is entitled to seize, and usually sell, the property to discharge the debt that the security interest secures.

A type of security interest which is commonly seen in oil and gas operations is the one provided for by Article 9 of the UCC. A UCC Article 9 security interest is different from a mineral lien in that it is an interest in personal property and fixtures only (i.e. the proceeds of sales of extracted oil and gas and the facilities needed to produce such as well-heads, storage tanks, processing facilities and so forth).

Contractual security interests such as the one provided for in UCC Article 9 are therefore entirely different creatures than mineral liens. Mineral liens are real property interests. A mineral lien can either be contractual (for example, the contractual mineral lien provided for in the AAPL 610 Form JOA), or statutory. An example of a statutory mineral lien would be a mechanic and materialman's lien recorded on the county records by an oil field services provider against an oil and gas well operator who is delinquent on his or her bills.[22]

A statutory mineral lien might create a foreclosable interest in minerals in place but in Texas, at least, arguably does not attach to the proceeds of production.[23] The contractual lien and security interest provided for in the AAPL 610 Operating Agreement in Article VII B (1977, 1982 and 1989 versions) in contrast, creates both a mineral lien and a security interest against the non-operator's share of production which explicitly applies not only to oil and gas rights in the ground but to the proceeds from extracted oil and gas.

Recording the JOA memo in the county may suffice to perfect a mineral lien in oil and gas when it is still in the ground. But in order to perfect a JOA security interest in extracted oil and gas, special steps must be taken under Article 9 of the UCC which go beyond recording the memorandum in the county.

"Perfection" of a security interest is UCC terminology for the process of providing notice to all creditors of security interests in property.[24] Essentially this involves filing a "financing statement" with

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[22] *See e.g.*, TEX. PROP. CODE ANN. § 56.001 (Vernon 2011).

[23] *See* Deborah D. Williamson & Meghan E. Bishop, WHEN GUSHERS GO DRY: THE ESSENTIALS OF OIL AND GAS BANKRUPTCY 117 n.337 (2012). *But see id.* at 116–123 (discussing *Abella v. Knight Oil Tools*, 945 S.W. 2d 847 (Tex. App.—Houston [1st Dist.] 1997, *no writ*) which discusses that even in Texas, mineral lien claimants might have the right under state law to commence a lien foreclosure action and request the appointment of a receiver who could seize and preserve the proceeds of production). *See also, id.* at 121–122 (stating that Oklahoma is a state where mechanic's and materialman's liens by statute explicitly attach to the proceeds from the sale of produced oil and gas); OKLA. STAT. tit. 42, § 144 (2013).

[24] *See Derman*, *supra* note 20, at 10.

the Secretary of State in the jurisdiction where the property is located.[25] The technical requirements of UCC financing statements can vary from state to state and a detailed discussion of what is required to perfect a security interest under UCC Article 9 is beyond the scope of this article. However, the authors of the 1989 AAPL 610 JOA recognized the issue and incorporated the most common UCC financing statement requirements into a Memorandum of Operating Agreement and Financing Statement normally attached to the operating agreement as Exhibit H.[26]

So what happens if you are the operator under an AAPL Model Form 610 JOA and you record the JOA on the county (parish) records, but neglect to file a financing statement with the Secretary of State and the operator fails to pay and/or goes bankrupt? First, it should be noted that lenders financing oil and gas operations usually take both a mortgage (or in Texas, a deed of trust) on the real property and a security interest that attaches to the extracted oil and gas as they become goods. First purchasers such as gatherers, processors, pipeline companies, or marketers likewise might give their lenders a lien and financing statement on extracted oil and gas. So the operator under an AAPL Model Form JOA must be prepared to assert its mineral lien and security interest against a variety of lenders and other lien holders who will invariably have filed both mineral liens and financing statements.

Battles between secured lenders and mineral lien claimants over who is first-in-right to oil and gas leasehold collateral and who has the best claim to proceeds of production can be among the most divisive issues in foreclosure, bankruptcy and other creditor's rights proceedings.[27] Having properly perfected a security interest by filing a financing statement with the Secretary of State may or may not lead an operator to prevail over another secured creditor; but not having properly perfected a security interest by both recording a JOA on the county record and filing a financing statement at the Secretary of State's office seems a near certain path to defeat.[28]

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[25] So an operator's security interest under the AAPL 610 JOA is unperfected unless it is recorded at the Secretary of State's (or equivalent) office. To further emphasize, consider that in 1983 the Texas legislature enacted a non-uniform, Texas specific UCC article which gives a royalty owner a lien on severed oil and gas and proceeds therefrom *without* the necessity of filing a financing statement. The thought was that royalty owners are more apt to be unsophisticated when it comes to compliance with UCC Article 9 financing statement provisions so an exemption was given. No such exemption is provided for, however, for an oil and gas operator. TEX. BUS. & COM. CODE ANN. §9.343 (Vernon 2011).

[26] *See e.g.,* Andrew B. Derman, *The New and Improved 1989 Operating Agreement: A Working Manual*, ABA Natural Resources Law Section Monograph Series (1991).

[27] Williamson and Bishop, *supra* note 21, at 71.

[28] Filing a UCC financing statement should not be looked upon as a one-time occurrence. A UCC financing statement is normally effective for a period of five years after the date of filing and automatically lapses if a continuation statement is not filed/recorded within six months prior to the end of this five-year term. A financing statement's lapse does not terminate the lien. Rather, upon lapse, any security interest that was perfected by the financing statement becomes unperfected. Such loss of perfection renders the collateral clear of the financing lien as against a purchaser of the collateral for value. Therefore in the event a decision is made to perfect a security interest under an AAPL 610 JOA, a "tickler" file should be set up to remind the operator to file a continuation statement after a period of five years. This, of course, requires discipline in today's world where constant churning of personnel and/or overworked staffs tends towards either ineffective follow up and/or or a lack of accountability for failures.

In addition to providing for a better method of perfecting an operator's lien, the 1989 AAPL Form JOA also provided that future acquired personal property be included and required the parties to make representations about lien priorities. There were other revisions as well. Overall, the lien provisions in the 1989 Form are a significant improvement over prior versions.[29]

The 1989 AAPL Form JOA has not been without controversy and despite having had almost a quarter century pass since the 1989 Form was released, some operators either refuse to use it or use it very reluctantly because of the perception that it is more non-operator friendly, particularly when it comes to removal of the operator.[30] I tell clients that if this is their only objection, why not switch out the operator provision and use the rest of the 1989 Form? But irrespective of what a company may think about other parts of the 1989 AAPL JOA Form, not having a recording supplement executed and properly perfected by recording in county records and with the Secretary of State at least in connection with new operating agreements would appear to be a missed opportunity to reduce risk. What bank or other financial institution would not bother to record a mortgage or deed of trust and financing statement to secure an apartment complex or an office building when rents are due and used to secure the loan? Yet, I constantly see situations where sophisticated oil and gas companies simply do not take advantage of the opportunity to record JOA supplements in the county records and/or file financing statements with the Secretary of State and thereby make their lien and security interests in minerals and extracted oil and gas junior to other secured creditors. I would surmise this is primarily for reasons of overworked and understaffed legal, land and accounting staff. This may be an area where either reprioritization or an increase in staff may yield dividends. Outsourcing the task to private counsel, of course, is another option.

IV. UNIQUE FEATURES OF THE 1989 AAPL MODEL FORM JOA IN DEALING WITH DEADBEAT NON-OPERATORS

As mentioned earlier, one of the primary drivers behind the revisions to the 1989 Model Form JOA was to better deal with the problem of the deadbeat non-operator in the fallout of the oil price crash of the mid-1980s. The recording supplement was only one of the new features. Article VII of the 1989 JOA, Expenditures and Liability of Parties, was the most comprehensive re-write of the section of the AAPL Model Form 610 Agreement dealing with defaults in payment since the form first appeared in the mid-1950s.

Three new provisions, in particular, if properly implemented, eliminate or at least severely mitigate the type of gaming of the process that Mr. Green Leisure Suit was so successful with at Exxon's expense. These three provisions, all found in Article VII D, "Defaults and Remedies," are "Advance Payment," "Suspension of Rights," and "Deemed Non-Consent." As usual there is strength in numbers and it is the interplay between these three complimentary sections of the AAPL Form that can provide such a powerful deterrent to deadbeat behavior.

Some might say, why not perform a credit check on the proposed non-operator at the outset and use that data as the basis for a "go" or "no-go" decision before getting in further with a potential deadbeat non-operator? A credit report may be interesting, but as a practical matter, what happens if the report comes back bad? In the case of

[29] *See Derman, supra* note 25.

[30] *See Reeder v. Wood County Energy, LLC*, 395 S.W.3d 789 (Tex. 2012) (discussing differences in operator removal provisions in the 1989 versus the 1982 versions of the AAPL 610 JOA).

Mr. Green Leisure Suit, for example, you would still be stuck with a leaseholder who owns a significant portion of your prospect and who refuses to dilute his interest by farming out. Your remaining alternatives absent proceeding with an agreement with Mr. Green Leisure Suit are: 1) to abandon your prospect; 2) to drill the well and carry him under either common law co-tenancy principles; or 3) if you are in a state with a strong force pooling regime, to attempt to have a forced pooling penalty imposed.

Common law co-tenancy principles do not provide for sole risk penalties so carrying a party under common law co-tenancy rules is not always a viable economic option. As for forced pooling, under practically all forced pooling regimes the party being forced pooled must be given an opportunity to join the well in the first instance. Having to give a party the opportunity to join the well as a precondition to forced pooling puts you back at square one. What if he or she says "yes"?

So consider the other option—holding your nose irrespective of the credit report (or not even bothering with a credit report), and proceeding to have the non-operator execute a 1989 Model Form JOA. Then what happens then if the non-operator proves to be a deadbeat?

A. ADVANCE PAYMENTS

The key to avoiding being taken advantage of by deadbeat non-operators is relatively simple: get your money up front. If the non-operator does not have sufficient funds to pay for operations, find out as early as possible. The vehicle for doing this is a JOA's "Advance Payment" (cash call) provision. This provision allows the operator to demand advance payment for the next succeeding month's estimated expenditures. Such provisions have been incorporated in all versions of the AAPL Model Form beginning with the 1956 Form. They are also incorporated in the model form accounting procedure published by the Council of Petroleum Accountants Society (COPAS) though COPAS provisions and procedures generally reflect and complement advance payment provisions in the AAPL 610 Form.[31]

Recall earlier that in the instance of Mr. Green Leisure Suit, advance payment was sought. The problem in that situation, as well as under the earlier AAPL 610 Forms prior to the 1989 Form, was what happens if the party ignores advance payment requests and the operator drills a dry hole? An operator's lien in that instance is not worth anything. The operator of course can sue the defaulting non-operator and attempt to collect the debt but that can take years and as in the case of Mr. Green Leisure Suit, can be thwarted by a bankruptcy filing. Even if the well is completed as a producer, nothing would have prevented Mr. Green Leisure Suit from taking the wells logs to a bank (or his daddy) and borrowing his share of the drilling costs. He could then pay off any arrearages or operator's liens, and come back into the well as if he had been participating from day one with no penalty.

The earlier versions of the AAPL 610 Agreement provided for such "free rides" for the unscrupulous non-operators with no penalty and or suspension of rights. Perhaps even more galling is that the earlier Form AAPL agreements still entitled the

[31] The most recently published COPAS accounting procedure for onshore operations is the 2005 version, which was a revision of a prior version, released in 1984. There was substantially no difference between the 1984 and 2005 COPAS procedures with regard to Advance Payments. *See* Jonathan D. Baughman and J. Derrick Price, *COPA and the 2005 COPAS Accounting Procedure—Significant Changes for Changing Times*, STATE BAR OF TEXAS OIL, GAS AND ENERGY RESOURCES BULLETIN, SECTION REPORT, Vol. 29, No. 3, at 28 (March 2005) (Appendix—Comparison of Major Provisions in 2005 COPAS Accounting Procedure with 1984 Onshore Accounting Procedure).

defaulting party to receive full well information.

The "Advance Payment" provision, found at Article VII D 4 under the 1989 Form, itself was not conceptually new. What was new about it was that it was tied to a new provision within the same Article VII D 1, "Suspension of Rights." Under the 1989 Form, the initial advance payment may be requested as early as the first day of the month preceding the operation. Once the request for an advance is received, the advance is due within fifteen days.[32] If payment is not received, the operator may then send a 30 day Notice of Default. If the Notice of Default period runs with no response, then under the new Article VII D 4 of the 1989 Form the operator is entitled to send further notice providing for an immediate cash call of any expenses due from the non-operator anywhere in the contract area, and irrespective that they are or are not related to the new operation. In other words, the operator in this situation is not limited to demanding only the next succeeding month's estimated expenses; instead, the operator can cash call for all remaining estimated expenses in the proposed operation or any other operation in the contract area. The expanded cash call is in addition to any other remedies provided for in Article VII, including Suspension of Rights and Deemed Non-Consent.

In addition, though not in the 1989 JOA Form, I recommend that operators attempt to negotiate a special provision under Article XVI, "Other Provisions," which expands on the "Advance Payment" provision in Article VII of the form to give the operator the right to demand all estimated well expenses for a proposed well (not just the next succeeding month's estimated expenses). This not only reduces the operator's risk of being taken advantage of by a defaulting non-operator, but can reduce the administrative burden on all parties to the operation by eliminating multiple billing of thirty day increments within the same operation.[33] If a non-operator was to object to having to prefund such an operation on a time value of money basis, a discount could be factored in. An operator would normally be better off giving a discount in order to get non-operators to pay all estimated costs up front than to run the risk of non-payment for succeeding months after the operation is underway and the operator has committed to its completion.

B. SUSPENSION OF RIGHTS

If the non-operator does not respond within the 30 day Notice of Default Period, then in accordance with Article VII D 1, "all of the rights of the defaulting party granted by this agreement may upon notice be suspended until the default is cured." The rights of the defaulting party that may be suspended include (paraphrased):

1. The right to receive information as to any operation (well logs, production tests, etc.)

2. The right to elect to participate in any operation under the agreement

3. The right to receive production proceeds from any currently producing well (i.e. the right to set off current liabilities against production).

Mr. Green Leisure Suit, therefore, would no longer be getting the well logs to use for loan purposes. Likewise, he forfeits his rights to participate in any existing production and any future operations. The importance of not being able to participate in future operations becomes apparent

[32] Article VII C, 1989 AAPL Form 610 JOA.

[33] *See* OIL AND GAS LAND, A REFERENCE VOLUME CPL AND RPL EXAM STUDY GUIDE 171 (American Association of Professional Landmen eds., 11th ed. 2012).

when new provision VII D 3, "Deemed Non-Consent," is examined.

C. DEEMED NON-CONSENT

The last of the three new features of Article VII D of the 1989 AAPL Form is perhaps the most erosive one of all when he comes to the rights of a deadbeat non-operator. This is the "Deemed Non-Consent" provision found in article VII D 3.

Had a 1989 Form AAPL Agreement been in place for use with Mr. Green Leisure Suit, immediately following the expiration of the 30 day cure period after a Notice of Default, Mr. Green Leisure Suit could have been sent a Notice of Non-Consent Election. At that point, Mr. Green Leisure Suit would have been non-consent subject to sole risk penalties and irrespective of his earlier election to participate. Very significantly, his non-consent status would be irreversible. No more waiting the well down and then taking the well logs to a friendly banker to borrow money to get back into the well.

At this point Mr. Green Leisure Suit would have been much worse off than had he farmed out irrespective of dilution because he would get no overriding royalty during payout as is typical under a farmout and unless the well was extremely good, would be unlikely to see any income for years (if ever), waiting on multiple sole risk payouts to occur prior to his interest reverting. The operator, in other words, has the last laugh.

All three of these provisions taken together—"Advance Payments," "Suspension of Rights," and "Deemed Non-Consent"—permit an operator to in effect "Blitzkrieg" a non-operator with fast moving notices of default, follow up notices of suspension of rights, and deemed non-consent which cumulatively serve to strip the non-operator of practically all right, title and interest in the contract area, at least until the sole risk penalties pay out. As the *coup de gras*, I recommend one more special provision that can be added under Article XVI, "Other Provisions." That would be to say that if "deemed non-consent" provisions are invoked due to a non-operator not paying its bills, that the normal sole risk penalties in the JOA are doubled (or even tripled).[34]

Now, what about the common law rule that liquidated damages must constitute a permissible forecast of damages rather than an impermissible penalty? Would doubling the sole risk penalty in a deemed non-consent situation pass muster with a court?

There is no Texas case directly on point. There is authority in Texas, however, for upholding non-consent penalties in a JOA as permissible forecasts of damages.[35] But a provision in a JOA doubling the normal non-consent penalty in a deemed non-consent situation might be pressing the envelope. It is conceivable that a court could find as a matter of law that such a penalty bears no reasonable relation to actual damages. On the other hand, one could make the argument that such doubling of the penalty is appropriate to compensate not only for actual damages, but for consequential damages as contemplated by the agreement (see discussion which follows). Until an appellate court examines the issue, having additional sole risk penalties in such situations might

[34] In practice this would mean doubling, for example, the 300% drilling non-consent penalty (or whatever the number may be) due by a non-consenting party to 600% if the party originally claimed to be a fully participating operator.

[35] Non-consent penalties have been viewed by at least one court to be permissible as it was held to be a "...mechanism utilized to allow the consenting parties the opportunity to recover their investments and receive defined returns from future operations." *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 664 (Tex. 2005). This removed them from the context of an analysis as a liquidated damages provision. *Id.*

at least cause a potential deadbeat non-operator to think twice.[36]

Something else that many operators forget or at least fail to take action upon when non-operators default is that if a party defaults on its payments to the operator, the remaining, non-defaulting parties may be required by the operator to pay their proportionate shares of the default amounts due operator.[37] In other words, the operator does not have to be the only "banker" for a defaulting non-operator—the other parties to the JOA can be required to bear the burden as well. This is an exception to the normal rule under the JOA that liabilities are several, not joint and collective. If a party refuses to pay their share of the defaulting party's costs, that party can likewise be put on notice of default, suspended, deemed non-consent and so forth.

D. ATTORNEYS' FEES, LATE PAYMENT INTEREST, COURT COSTS, CONSEQUENTIAL DAMAGES

Last, Article VII of the 1989 AAPL Operating Agreement Form expands upon prior versions of the 610 Agreement with regard to suits for damages, attorneys' fees, late payment interest, court costs and consequential damages. These are now all available for recovery against a defaulting non-operator irrespective of whether such damages may already be provided for under state law.

There appears to be no case law dealing with what types of consequential damages might be available for recovery against a non-operator in these situations and given the exhaustive suspension of rights and deemed non-consent provisions that may be used against a defaulting non-operator fact situations calling for consequential damages may not be common. Lost opportunities in losing a lease by not drilling a well might be such a fact situation if the operator could prove that its line of credit was impaired, for example, by having to cover for a deadbeat non-operator leaving it short of funds to either purchase a lease or perpetuate it through drilling. This could theoretically make a defaulting non-operator liable for the reserve value of the lost lease which could conceivably be tens or hundreds of millions of dollars or more in consequential damages. Again, the real power in the consequential damages provision is that it puts another element of risk on the non-operator which in turn might cause it to pause and reflect more before defaulting.

V. CONCLUSION: BEST PRACTICES IN AVOIDING ISSUES WITH DEADBEAT NON-OPERATORS

The drafters of the 1989 AAPL Model Form 610 JOA have done such a good job in addressing situations as the one encountered with Mr. Green Leisure Suit that I wonder if a more modern day Mr. Green Leisure Suit (the older one having obviously been much slyer than I had given him credit for) would ever agree to sign a 1989 AAPL Form 610 JOA? His or her attorney should certainly advise of the potentially draconian consequences of default under the 1989 Form with its Suspension of Rights and Deemed Non-Consent provisions. That in turn might make the non-operator more seriously consider a farmout, which is probably what any rational individual or small non-operator should consider doing before joining a company the

[36] There has been a move to allow liquidated damages to be judged reasonable or not at time of breach, instead of just at the time of contracting. Calamari and Perillo, THE LAW OF CONTRACTS § 14.31 (5th ed. 2003). *See also* Restatement (Second) of Contracts § 356 (1981). This trend might bode well for upping liquidated damages when a party breaches a JOA by non-payment.

[37] Article VII B, 1989 AAPL Form 610 JOA.

size of ExxonMobil in a well and attempting to "run with the big dogs."[38]

The 1989 AAPL JOA Form therefore has the potential of scaring away certain non-operators. It might be speculated that this may be an unintended consequence of the introduction of the 1989 AAPL 610 Form JOA—some non-operators may prefer not to agree to it at all rather than risk being made subject to the new "Suspension of Rights" and "Deemed Non-Consent" provisions. But does an operator really want to do business with a non-operator possessing such an attitude?

Regardless, the following are what the author would consider to be six best practices in avoiding issues with deadbeat non-operators.

1. **Written JOA.** Have a written Joint Operating Agreement, always. Any loss of control by the operator is offset by the advantages of avoiding mining partnership status and rights in dealing with defaulting non operators.

2. **Make Finalization of the JOA a Priority.** Do not delay getting the operating agreement finalized. If you get nothing else out of this article, come away with an appreciation of the importance of getting your money up front by invoking the cash call provisions under the JOA. In order to cash call under a JOA, however, such that suspension of rights and so forth can be a remedy, the signed JOA must be in place. Too often parties postpone the JOA negotiation to a point so late in the process that the well is spudded before cash calls are made. At that point the deadbeat non-operator can wait out the notice of default periods before making a decision to pay or not and thereby avoid taking the risk of a dry hole if the well reaches target depth soon enough.

3. **Cash Call as Early as Possible.** Exercise your rights to "cash call" (call for advances) as early as possible in the drilling cycle. Stay in communication with your company's (or your client's) accounting staff and monitor the response of the non-operators. Even if you are operating under an earlier form JOA, a demand letter can be sent (as a prelude to a suit for damages) and an operator's lien invoked against production should the non-operator ignore the cash call. Also, do not forget that the remaining, non-defaulting parties can be required to cover their share of the amounts defaulting parties owe the operator. This is an area where engagement and fast action by the operator in taking administrative advantage of all the provisions of the JOA can yield large dividends.

4. **Record the JOA Memo and Perfect the Financing Statement.** Timely execute and record a JOA Recording Supplement at least in the county, and preferably with both the county and the Secretary of State (for UCC Article 9 purposes). This is a relatively easy process that can reap dividends if a non-operator becomes insolvent. In addition, create processes that ensure continuation statements are filed after the requisite statutory period (usually 5 years) for the previous financing statement lapses.

5. **Use the Most Recent JOA Form (1989).** Next, if you are not using the 1989 Model Form JOA, switch to it. If the operator removal provision cannot be lived with, then revert to the 1982 Model Form JOA operator

[38] Or if it does join ExxonMobil or any other large oil company in a well, at least propose a cost overrun provision.

removal provision by making a modification to the 1989 Form under Article XVI, "Other Provisions." The rest of the 1989 AAPL Model Form JOA is so superior to prior versions that not using it because of objections to that one provision is likened to throwing the baby out with the bathwater. If a non-operator were to push back on the 1989 JOA Form because of the "Suspension of Rights" and "Deemed Non-Consent" provisions, it begs the question, why the protest and do you really want to do business with them? Furthermore, stay tuned to the AAPL 610 JOA revision which is currently underway and when it comes out, get familiar with it as soon as possible. If history is any example, the new JOA form will be superior to the current JOA forms in use.

6. **Special Provisions.** Last, consider adding special provisions to Article XVI, "Other Provisions," such that 1) an operator can cash call all well costs, not just the succeeding month's estimated expenditures, and 2) to provide that the sole risk penalties in "deemed non-consent" situations are doubled (or tripled). [39]

All of the above of course requires time and effort and today's overworked landmen, company attorneys, and affiliated private counsel or other personnel may question whether the potential benefit outweighs the risk? After all, with current crude oil prices at the time of this article well over $90 a barrel and many observers bullish on the long term demand outlook for crude oil,[40] how can the additional time and expense required to record JOAs and financing statements be justified?

Justification can be found by reflecting on the experience of the oil and gas industry in the United States in the mid-1980s and comparing it with the eerily similar situation that the industry finds itself in at the time this article is being written in late 2013. Crude oil production in the United States is at the highest level since the 1980s.[41] President Obama and his administration are negotiating a lifting of sanctions with Iran which can potentially unleash millions of barrels of crude oil onto world markets.[42] For the short term, at least, Middle Eastern oil supplies together with new US production coming on-stream appear to be more than adequate in filling international oil demand.[43] Is an oil

[39] There are numerous other special provisions that are beyond the scope of this article but which should be considered when negotiating JOAs. For examples, *see Derman*, *supra*, note 25, at article XVI. *See generally*, Mark A. Mathers and Christopher S. Kulander, *Additional Provisions to Form Joint Operating Agreements*, SECTION REPORT, OIL, GAS AND ENERGY SECTION, STATE BAR OF TEXAS, Volume 33, Number 2 (Dec. 2008).

[40] *See* ExxonMobil, *Outlook for Energy: A View to 2040*, CORPORATE.EXXONMOBIL.COM (2013), *available at* http://corporate.exxonmobil.com/en/energy/energy-outlook (giving data on global oil demand).

[41] Zain Shauk, *US Oil Production Reaches Highest Level in 24* year, FUELFIX.COM (Sep. 6, 2013, 7:30 AM), http://fuelfix.com/blog/2013/09/06/u-s-oil-production-at-highest-level-in-24-years/?shared=email&msg=fail.

[42] Ambrose Evans-Pritchard, *Iran sanctions deal to unleash oil supply but Saudi wild card looms,* THE TELEGRAPH (Nov. 24, 2013, 9:00 PM), *available at* http://www.telegraph.co.uk/finance/comment/ambroseevans_pritchard/10471548/Iran-sanctions-deal-to-unleash-oil-supply-but-Saudi-wild-card-looms.html.

[43] Steven Mufson, *OPEC scrambling to keep oil prices stable (and high) as it meets Wednesday*, THE WASHINGTON POST (Dec. 2, 2013), *available at* http://www.washingtonpost.com/business/economy/opec-scrambling-to-keep-oil-prices-stable-and-high-as-it-meets-

price crash similar to what was experienced in the mid-1980s out of the question in the mid-2010s? If such a crash were to re-occur, how many non-operators (and operators for that matter) might find themselves in serious financial trouble? History, unfortunately, tends to repeat itself.

Shakespeare wrote, "[t]o fear the worst often cures the worse,"[44] or in more modern English, planning for a worst case outcome can sometimes prevent the worst case from happening at all. The best practices referenced above seem consistent with prudent planning for both worst and best case oil price scenarios. Insurance always seems expensive until one has a claim. Providing more insurance for clients and oil companies against insolvent non-operators by taking some of the simple steps outlined above may be well worth the effort in dealing with the uncertainties of the future.

There is yet one more "best" practice not listed above but still worth considering. If an individual ever comes in your office wearing a very dated green leisure suit with a gold puka shell necklace and proposes that he partner with your company or your client in an oil and gas well, first, be wary. Second, ask him to give the author a phone call, as there may be some old business to discuss.

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wednesday/2013/12/02/2d5aeef0-5b6c-11e3-a49b-90a0e156254b_story.html.

[44] WILLIAM SHAKESPEARE, TROILUS AND CRESSIDA, act III, sc. ii.