

Ohnstad Twichell, P.C., is a full service law firm having a general and trial practice in North Dakota, Minnesota, and federal courts and offering services in the fields of probate, real estate, estate planning, corporate, labor/employment law, family law, elder law, municipal finance and bonding, taxation, personal injury, criminal, negligence, commercial, insurance defense, water rights, oil, gas and wind law, and automobile law.

DRONES: A HOMEGROWN TECHNOLOGY



Tyler J. Leverington works in the West Fargo office and devotes his practice to business/corporate law, real estate law, and civil litigation.

When people think of cutting-edge research and development in the technology industry, they often think of places like Silicon Valley, secret underground government research labs, or the nation’s most prestigious universities. However, when it comes to drones, more formally referred to as unmanned aircraft systems (“UAS”), much of the cutting-edge research shaping this young and developing technology is done right here in the Red River Valley.

In a world that is increasingly dependent on big data and information, UAS technology allows us to have more information at our fingertips with less effort than ever thought possible. The uses for UAS technology seemingly grow every day. Among countless other uses, companies such as Amazon have suggested that UAS may be used to deliver packages; Tesla is considering the use of UAS to monitor traffic and supplement other autonomous driving technology, while the government implements the technology for a variety of military and law enforcement purposes. Of particular interest to those in the Red River Valley is the use of UAS technology in the agriculture sector.

UAS technology has the potential to provide farmers with critical information in real time that will allow them to monitor and respond to crop issues like never before. For example, UAS have been used to fly over fields and take exact measurements of plant height, color, and even surface temperature. Using this technology, farmers have been able to identify even small pockets of their crop whose

surface temperature is as little as a degree or two cooler than the rest of their crop, indicating a host of potential issues. Armed with this information farmers can identify potential problems much earlier than previously possible and respond accordingly – decreasing the amount of crops lost to issues that could have been treated, limiting the spread of issues, and increasing total crop yields.

As with any new technology, rules must be put in place to ensure it is used safely and without violating the rights of others. Because UAS operate in airspace potentially occupied by other aircraft, the Federal Aviation Agency (“FAA”) has taken the lead on developing rules for the private and commercial use of this new technology. Among other issues, the FAA had to determine exactly what constitutes a UAS; asking questions such as whether toy planes and remote control helicopters that have been around for decades should be subject to the same FAA regulations and how to distinguish between the classes of aircraft. Ultimately, the FAA drew the line of distinction at how the aircraft is used, with those aircraft being employed strictly for hobby or recreational use deemed “model aircraft” not subject to FAA regulations relating to UAS. If, however, the same device is used for commercial purposes, it becomes subject to the FAA UAS regulations contained in Part 107 under Title 14 of the Code of Federal Regulations (“Part 107”).

The initial regulations contained in Part 107 were widely criticized as significantly too restrictive, in part because of the requirement that anyone operating a UAS have a pilot’s license. This summer the FAA responded to the wave of criticism that came with its initial regulations and made significant amendments to Part 107. The amendment traded the pilot’s license requirement for a new “remote pilot certificate” which can be obtained by being at least 16 years of age; either

continued on page 2

Table of Contents

Drones: A Homegrown Technology..... 1

Oil and Gas Bankruptcies: The Fallout After the Boom..... 2-3

Ohnstad Twichell Is Pleased to Announce the Hiring of Five Associate Attorneys.. 3-4

News from Ohnstad Twichell4



*A legal
newsletter from
Ohnstad Twichell, P.C.,
with offices in
West Fargo,
Hillsboro,
Casselton,
and Page,
North Dakota,
and Barnesville,
Minnesota.*

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OIL AND GAS BANKRUPTCIES: THE FALLOUT AFTER THE BOOM



Katie J. Bertsch works in the West Fargo office and devotes her practice to civil litigation and bonding law.

Although oil prices may be on the rebound, the uptick comes at a time far too late to save many oil and gas companies. Diminished cash flows as a result of a reduction in production and low oil prices have made it difficult to repay the debt accumulated when oil prices were booming. Since the beginning of 2015, at least eighty-one (81) North American oil and gas producers have filed for bankruptcy. The largest to date, Pacific Exploration & Production Corporation, filed bankruptcy in April 2016 listing over \$6 billion in debt. Samson Resources Corporation, a corporation with many of its primary assets located in North Dakota, is the third largest to date, listing approximately \$4.3 billion in debt. North Dakotans have also been impacted by other large oil and gas bankruptcies, including Magnum Hunter Resources Corporation and Intervention Energy Holdings, LLC. In total, North American oil and gas debtors have listed upwards of \$53 billion in debt on their bankruptcy filings.

Under the United States Code, corporations file for bankruptcy in the state where their principal place of business is located. A corporation's principal place of business is defined by where its officers direct, control, and coordinate its activities, basing the focus more so on the managerial level rather than the production nerve center. Of the eighty-one (81) North American oil and gas producers that filed for bankruptcy in 2015 and so far in 2016, half of those filings have occurred in Texas. Delaware has seen the second most filings with thirteen (13), followed by Canada with eight (8). Those locations are followed by filings in Colorado, Louisiana, New York, Oklahoma, Alaska, Alabama, Massachusetts, and Virginia. Although many of the oil and gas companies have operations in North Dakota, none of them have filed bankruptcy here.

passing an initial aeronautical knowledge test at an FAA-approved testing center or holding a Part 61 pilot certificate (beyond student-pilot status); and passing a Transportation Security Administration background check. In addition to the pilot being properly certified, every UAS used for commercial purposes must also be registered with the FAA.

Beyond certification requirements, UAS pilots must also comply with a number of operating restrictions. To ensure the pilot can identify and avoid collisions with other aircraft and obstructions such as power lines, the UAS must always be within the pilot's visual line of sight, fly no higher than four hundred feet above the ground, fly no faster than one hundred miles per hour, and only fly during daylight hours. In this age of data mining and the collection of personal information derived from online activity, some fear what impact the development and use of UAS by private industry might have on personal privacy. UAS operating under Part 107 may not film, or even operate above, any persons not directly participating in the commercial capacity or purpose for which the UAS is being employed.

As technology evolves, so must the laws that ensure it is used responsibly. When the technology in question is new and changing every day, those laws are likely to lag behind, but in time will also evolve to ensure we can reap the benefits of science and technological advancements while protecting the safety and rights of the general public. Ohnstad Twichell attorneys have closely followed the evolution of UAS regulation and are your local experts in both the creation of UAS-centered business entities and ensuring that our clients' are properly certified to use UAS technology to maximize the results their business produces.

UAS technology has nearly unlimited uses and the potential to make the world a better place for all of us to live. Much of the leading research and development in UAS technology that will undoubtedly change the world as we know it, is happening right here in North Dakota, a fact of which every North Dakotan can and should be proud.

Descriptions of the regulatory scheme devised by the FAA to govern the use of UAS technology is intended to provide readers with a general understanding of the regulatory concepts at work, but should not be taken as a full or complete legal analysis of all of the regulatory requirements. This article is intended for informational uses and should not be considered legal advice.

UAS pilots must also comply with a number of operating restrictions.

The United States Bankruptcy Code authorizes that corporations can enter bankruptcy in one of two ways. The first is a voluntary bankruptcy filing which is initiated by the corporation that will be the debtor. The vast majority of bankruptcy filings occur voluntarily. The second way to enter bankruptcy is through an involuntary bankruptcy filing which occurs when an individual or an entity other than the debtor corporation files for bankruptcy on behalf of the corporation because the corporation is generally not paying its debts as they become due. This determination, and ultimately whether the case moves forward, is made by the bankruptcy court. Although the vast majority of the oil and gas bankruptcy filings have been voluntary, several corporations, including Whistler Energy II, LLC, and Aurora Gas LLC, have been forced into bankruptcy involuntarily.

The substantial majority of the North American oil and gas producers who have filed for bankruptcy have petitioned under either Chapter 7 or Chapter 11 of the U.S. Bankruptcy Code. Under Chapter 7, a corporation stops all operations and a trustee is appointed to liquidate the corporation's assets. Money collected from liquidating assets is then used to repay creditors.

A Chapter 11 bankruptcy allows a corporation to develop a plan for reorganization and to try and become profitable again. Management continues to run the day-to-day business operations, but significant business decisions must be approved by the bankruptcy court. Many of the oil and gas producers that have filed under Chapter 11 negotiated agreements with their creditors prior to filing in an attempt to make the bankruptcy process as streamlined as possible.

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OHNSTAD TWICHELL IS PLEASED TO ANNOUNCE HIRING OF FIVE ASSOCIATE ATTORNEYS



Calley B. Campbell grew up in Lawton, Oklahoma, and graduated from the University of Oklahoma, with distinction, in 2012. She recently graduated from the University of Oklahoma College of Law in Norman, Oklahoma. During her final year of law

school, Calley attended the University of North Dakota School of Law as a visiting student. While at UND Law, Calley was a member of the Law Women's Caucus and the Student Trial Lawyer's Association, and also worked as a research assistant for Professor Julia Ernst. In her free time, Calley enjoys scuba diving, cooking, and watching college football. Calley will be concentrating her practice in the area of general litigation. She is licensed in North Dakota.



Lukas W. Croaker joined Ohnstad Twichell as an associate attorney in September 2016. Lukas grew up on a small farm near Kindred, North Dakota. In 2013, he graduated from North

Dakota State University with a major in political science and a minor in criminal justice. Lukas then attended the University of North Dakota School of Law where he graduated in 2016.

While in law school, Lukas was selected as an extern for the United States Attorney's Office for the District of North Dakota and as a legal intern for the North Dakota Legislature during the 64th Legislative Assembly

Lukas focuses primarily in municipal law in the West Fargo office. He is licensed in North Dakota. Lukas lives on a small farm near Kindred, North Dakota. In his free time, he enjoys hunting, fishing, golfing, and traveling.



Alexander "Bo" Gruchala joined Ohnstad Twichell in October 2015 as a law clerk. Bo grew up in Minto, North Dakota, and graduated from Minto High School in 2007. In 2010, he graduated summa

cum laude with a Bachelor of Arts in History from the University of North Dakota. He then went on to law school at UND, graduating cum laude in 2013. Bo was admitted to the North Dakota Bar in September 2016. He will work primarily in the real estate department but will also maintain a general practice.

Bo lives in West Fargo. He has an athletic lifestyle, enjoying long-distance cycling, cross-country and downhill skiing, and running 5Ks. He is also an avid reader and moviegoer.

continued on page 4

Most oil and gas producers who filed bankruptcy petitioned for either Chapter 7 or Chapter 11 of the U.S. Bankruptcy Code.



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continued from page 3



Stephen R. Hanson II was born in Fargo and grew up in Moorhead. He graduated magna cum laude from Concordia College with a degree in political science. He earned his law degree, summa cum laude, from William Mitchell College of Law in St. Paul, Minnesota. After graduating from law school,

Stephen served as a judicial law clerk to three judges of the Minnesota Court of Appeals. He joined Ohnstad Twichell in September and concentrates his practice in the area of litigation. He is licensed in North Dakota and Minnesota.



Jeffrey "J.R." Strom joined Ohnstad Twichell in August 2016 as an associate attorney working out of the Hillsboro office. His areas of practice include estate planning, probate, real estate, corporate, and municipal law. He is licensed in North Dakota.

J.R. grew up on a farm near Steele, North Dakota, and graduated from Kidder County - Steele High School in 2010. Following high school, he attended the University of North Dakota and graduated summa cum laude with a Bachelor of Science in Psychology. He

then attended law school at UND where he graduated magna cum laude in May 2016. During law school, he served as the Editor in Chief of the North Dakota Law Review.

J.R. lives in Hillsboro and greatly enjoys the small town life. He also enjoys watching movies, reading, and photography.

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NEWS FROM OHNSTAD TWICHELL



John T. Shockley was invited to participate in the US Infrastructure law forum in Washington DC. The US Infrastructure is only open to 44 participants and is limited to the most experienced attorneys, in-house counsel, rating agencies, equity and public partners, working on major US infrastructure projects. The Forum was held September 22

through 23 in Washington DC.

Most of the attorneys that are invited to participate are from the top 10 largest international law firms.

The information provided in this letter is of a general nature and should not be acted upon without prior discussion with your Ohnstad Twichell, P.C., attorney.

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