

Chapter 18

Defensible Title: Defining the Standard in Acquisitions and Drilling Title Certifications

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§ 18.01. Introduction.

Technological and engineering developments leading to the economic feasibility of exploration and production of oil and natural gas from tight shale formations have caused a rapid-fire expansion of development in Ohio, Pennsylvania and West Virginia. This expansion has created a marketplace for both divestment and consolidation of oil and gas leasehold interests, and has driven a recent surge in mergers and acquisitions. Between the roles played by traditional exploration and production companies and bolstered interest from investors, deal-making has exploded, with the purchase and sale of oil and gas leasehold interests providing a great deal of work for oil and gas lawyers.

This chapter begins by discussing the importance that understanding the historical context of title plays in any present-day application of title review. Thereafter, it reviews the differences between a title analysis conducted according to the marketable title standard versus the defensible title standard, frequently used within the context of present-day oil and gas development. Finally, this chapter provides an analysis respecting title examination of defects in both the drilling title and purchase and sale agreement context, assisting oil and gas operators and their attorneys in understanding the legitimacy of title issues that may impact their drilling and dealmaking.

§ 18.02. History of Early American Land Title.

The marketability of title discussion necessarily involves questions concerning origin of title. From whence does title to real estate in the Commonwealth of Pennsylvania, State of Ohio and State of West Virginia originate? By conquest and purchase, title to the land that presently comprises these three States has passed through many hands. Prior to European settlement, various Native American tribes, including the Delaware, Iroquois and Shawnee, inhabited the region. The New World first came into the European consciousness following the voyage of Christopher Columbus in 1492, and was claimed by the Spanish under the 1494 Treaty of Tordesillas. Following the defeat of the Spanish Armada in 1588, English colonization of America began in earnest.²

² Frances G. Davenport, *European Treaties Bearing on the History of the United States and its Dependencies to 1648*, Carnegie Institution of Washington (1917).