

Chapter 10

Liability of Abstractors and/or Attorneys for Title Claims

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§ 10.01. Introduction.

In conducting oil and gas operations or mining operations, it is essential that the operator verifies the ownership of the lessor and/or grantor conveying or leasing oil and gas or mineral rights to the operator. This is customarily accomplished by obtaining an abstract and attorney's title opinion for the subject property. If operations are conducted without the necessary ownership rights, the operator could incur liability for trespassing upon the rights of the true owner of the oil and gas or mineral rights. Not only does the operator need to verify ownership prior to conducting operations, the operator needs to have legal recourse against the attorney and/or abstractor that provides erroneous information, which results in a trespass.

§ 10.02. Liability of Attorneys for Title Opinions.**[1] — Who May Prepare Title Opinions.**

A title opinion may only be rendered by attorneys. The rendering of opinions on the validity of title by non attorneys is illegal under statutes prohibiting the unauthorized practice of law.¹

A distinction is drawn between the preparation of abstracts and title opinions or title certificates rendered by an attorney. An abstract may be prepared by a layperson but must be limited to setting forth items of record as determined from a title examination. The abstract may not contain any certification, summary, or opinion concerning the ownership or validity of the title to the land and may not express any opinion as to the legal significance of items, which are of record.²

[2] — Liability.

In the event an oil and gas or coal company should experience a loss due to title failure, the attorney rendering the title opinion will be liable for any

¹ Grievance Comm. of Bar of New Haven v. Payne, 22 A.2d. 623 (Conn. 1941); Land Title Abstract & Tr. Company v. Dworken, 193 N.E. 650 (Ohio 1934). For further information concerning title examination activities by title and abstract companies as the illegal practice of law, *see* Annot., 85 A.L.R. 2d 184 (1962).

² State ex rel. Doria v. Ferguson, 60 N.E. 2d 476 (Ohio 1945).