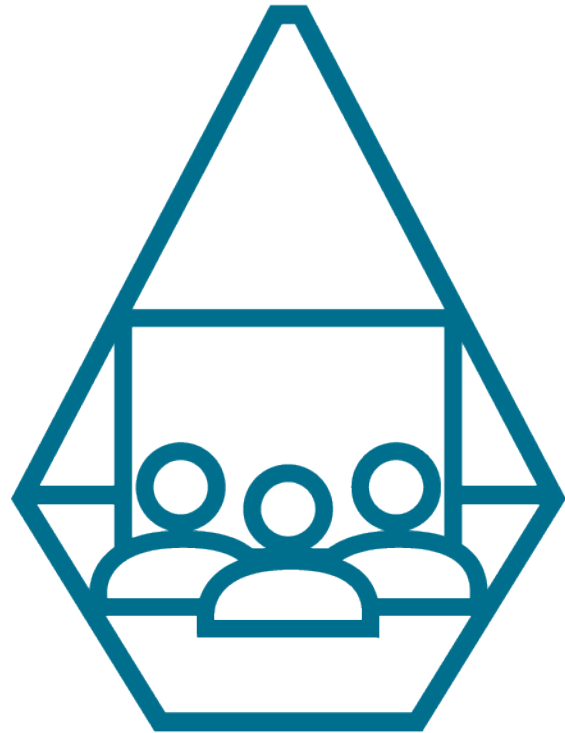




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A Title Opinion Presentation

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A Title Opinion Presentation

- Scope
- Analysis
- Title defects beyond the title opinion

Scope

What would unlimited scope look like?

- Chain of title searched back to patent, with every interest accounted for:
 - Every estate in the tract of land, *e.g.*, surface, coal seams, OG formations, other minerals (salt, clay, etc.), timber, water, pore space
 - Every easement run to present
 - Every judgment, lien, mortgage or deed of trust, both released and unreleased
 - Every leasehold, both released and unreleased
 - And so forth...
- What if you don't want to know this much about Blackacre?

Balancing risks and costs

- The price of known unknowns and unknown unknowns
- What's so special about August 27, 1859?
- What's so special about a 60-year search?
- What about the 40-year period in the Marketable Title Act, ORC 5301.47 et seq.?
- Will a narrow interest in Blackacre today become a broader interest in Blackacre tomorrow?

Analysis

Common title opinion elements

- Statement of certification period
- Description of lands
- Materials examined
- Ownership
- Leases
- Encumbrances
- Taxes
- Comments and requirements
- Limitations

Oil and gas title opinions



Photo: www.forbes.com/sites/judeclemente/2016/10/02/utica-and-marcellus-natural-gas-production-defying-the-skeptics

Coal title opinions

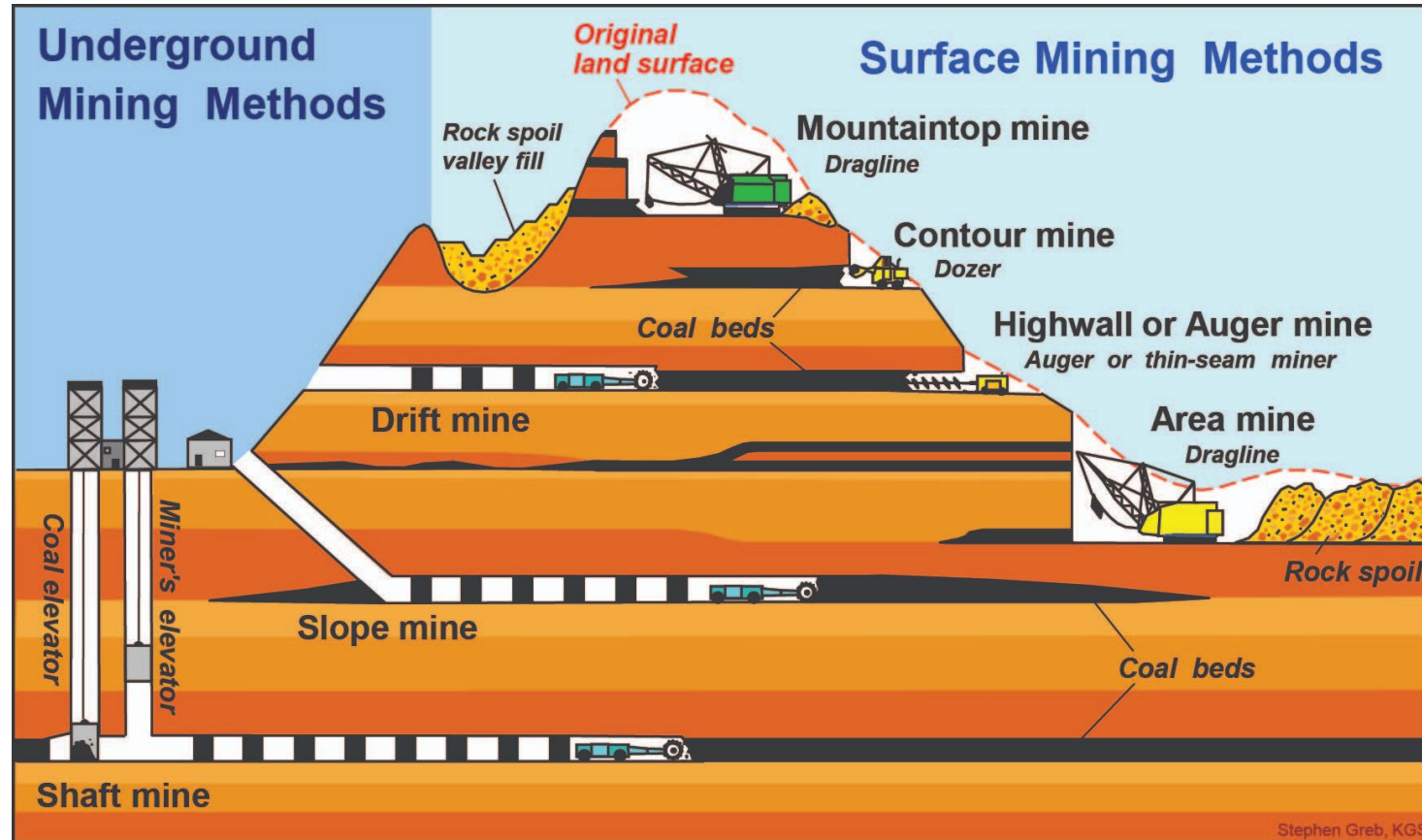


Image: www.uky.edu/KGS/coal/coal-mining.php

Surface title opinions



Photo: Wolfpoint - Own work, CC BY-SA 4.0,
<https://commons.wikimedia.org/w/index.php?curid=117008617>



Photo: U.S. Department of Agriculture, Lance Cheung. - 20110420-RD-LSC-0880, Public Domain,
<https://commons.wikimedia.org/w/index.php?curid=17800604>

Are these the most common defects?

- Patent reservations
- Expired leases/delay rental payments/held by production
- Unleased minerals/no interest of record
- Superior mortgages
- Powers of attorney
- Acknowledgments
- Execution of instruments
- Name variances
- Life estates
- Taxation
- Ambiguous conveyances/mineral-royalty distinction/mineral acres/declining conveyances
- The *Duhig* Rule
- Missing probates
- Errors in legal descriptions
- Spousal rights
- Merger of interests
- Proportionate reduction clauses
- Disclaimers
- Attempted testamentary dispositions
- Tax sales and foreclosures
- Possession

From George Morgenthaler, OIL AND GAS TITLE EXAMINATION (Mockingbird Books 2012), pp. 89-106



Title defects beyond the title opinion

Hic sunt dracones (or leones)

- Lost, missing, or mis-indexed instruments
- Description errors
- Possession
 - Do you have a duty to take a view?
- Forgery
- Fraud
- Duress
- Incapacity
- *Ultra vires* acts

Further reading

Further reading

- George J. Morgenthaler, OIL AND GAS TITLE EXAMINATION (Mockingbird Books 2012)
- Paul Yale, “A Model Form Title Opinion: Time for a Revisit?,” 1 Oil & Gas, Nat. Res. & Energy J. 381 (2016)
- Paul Upsons, “Title Opinions: Types, Basis, Format, and Intended Audience,” Nuts and Bolts of Mineral Title Examinations, Paper 5 (Rocky Mtn. Min. L. Found. 2015)
- George Snell, “A Model Form Title Opinion Format – Is it Possible? Is it Practical?,” 25 State Bar of Tex. Oil, Gas & Mineral Law Sec. Report 2 (Dec. 2000)
- John W. Fisher II, “The Scope of Title Examination in West Virginia: Can Reasonable Minds Differ,” 98 W. Va. L.R. 449 (1996)

Questions?

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