



**Energy & Mineral Law Foundation
Coal Law Short Course**

**August 1-4, 2010
West Virginia University
College of Law
Morgantown, West Virginia**

Who should attend this short course

Has your firm recently hired associates to work on your coal cases? Are you a practitioner new to the field of coal law and want to gain a better understanding of how the laws work together? The EMLF Coal Law Short Course is designed to give lawyers who are new to the practice of coal and energy law the tools to handle issues arising in both litigation and transactional settings. While the lawyer in practice 0-5 years will benefit from this short course, landmen, business people and engineers desiring to gain a better understanding of the laws and regulation of coal will find the program invaluable.

Course Objectives for Attendees:

- Acquire an overall knowledge of the laws and regulations impacting coal mining and transactions involving coal companies
- Understand mineral ownership concepts unique to coal development
- Synthesize environmental, labor, and safety law concepts in the evolving practice of energy law
- Develop a working knowledge of elements necessary to fulfill one's role as a practitioner in coal asset-based transactions

Energy & Mineral Law Foundation
Coal Law Short Course
August 1-4, 2010
Waterfront Place Hotel
and
West Virginia University College of Law
Morgantown, West Virginia

**Sunday, August 1, 2010 – Waterfront Place Hotel,
Morgantown, WV**

5:00-6:30 p.m.
6:00 p.m.

Registration – Waterfront Place Hotel
Welcome Reception and Dinner at
Waterfront Place Hotel

7:30-9:00 p.m.

**Introduction to Coal and Mining,
Waterfront Place Hotel**

- J. Blair McGill, V.P. and General Manager of Federal Operations, *Patriot Coal Corp., Federal No. 2 Mine, Fairview, WV*
- Steven M. Carpenter, Corporate Risk Manager & Director – Carbon & International Business, *Marshall Miller & Associates, Bluefield, VA*

- Formation of Coal and Geology of Coal Deposits; Coal Mining and Related Operations; Extraction Techniques

Monday, August 2, 2010 – WVU College of Law

9:00 a.m.-Noon

**Ownership, Mining Rights and
Subsidence**

- J. Thomas Lane, *Bowles Rice McDavid Graff & Love, PLLC Charleston, WV*

- Concepts of Private Ownership; Ownership Theories: Surface and Hard Minerals; Oil and Gas; Absolute, Qualified and Non-ownership; Significance of Different Ownership Theories; Corporeal v. Incorporeal Distinction; Real Property or Personal Property; Estates in Land and the Concept of Severance Methods of Severance Distinction: Deed, Lease or License
- Ownership Determination and Resolving Ambiguities: “Surface” Conveyances and Implications; “Mineral” Conveyances and Implications; Coalbed Gas: Conflicting Decisions on Ownership; Container Spaces: Ownership and Use Issues; Fractional Interest Conveyances; Interpretation of Instruments, Rules of Construction and Resolving Ambiguities; Slander of Title: When Everything Goes Wrong

10:15-10:30 a.m. Break

- Mining Rights and Easements: Severed Ownership and Correlative Rights; Coal and Hard Mineral Mining Rights: Implied and Express; Reasonable and Necessary Rules; Surface Mining Rights; New Technology — General; Longwall Mining; Use of Container Space; Effect of the Surface Mining Control and Reclamation Act (SMCRA)
- Surface Support and Subsidence: Geology; Common Law on Subsidence; Longwall Mining; Effect of Surface Mining Act; Takings Issues



McGill



Carpenter



Lane

1:00-2:00 p.m. Divided Ownership and Adverse Possession

■ Professor Barlow Burke, *American University, Washington College of Law*, Washington, DC

- Cotenants and Production; Development and Accounting; Concept of Waste; Partition as a Remedy; Successive Owners – Special Rules; Other Statutory Remedies: Missing, Unknown or Abandoning Owners
- Adverse Possession: Statutes and Cases



Burke

2:00-3:30 p.m. Conflicts, Trespass and Damage Claims

■ Richard J. Bolen and Cindy D. McCarty, *Huddleston Bolen LLP*, Huntington, WV

- Conflicts – General Principles; Express and Implied Rights; Correlative Rights; Alternate Means (Accommodation) Doctrine; Coal vs. Surface; Coal vs. Oil and Gas
- Trespass and Damage Claims – Trespass Defined; Waste Defined; Cases on Trespass and Waste; Holdover Tenants and Damages; Nuisance Claims; Negligence and Damage Claims; Liability for Condition of Land
- Statutory Actions and Protections – Protection of Coal Seams; Citizen Suits Under Surface Mining Act; Five-Foot Rule



Bolen

3:30-3:45 Break

3:45-5:30 p.m. The Coal Lease, Post Lease Conveyances and Termination

■ Richard J. Bolen and Cindy D. McCarty, *Huddleston Bolen LLP*, Huntington, WV

- Distinction Between Sale and Lease; Analysis of the Coal Lease: Term Clause; Royalty and Rental Clauses; Implied Covenants: Commence Mining; Prosecute Mining; Remedies for Default; Cure
- Post Lease Conveyances and Termination — Assignment and Sublease; Assignment and Sublease Prohibition Clauses
- Overriding Royalty Agreements: Lease Termination



McCarty

6:30-8:30 p.m. Reception and Dinner at Waterfront Place Hotel

Guest Lecture: “The Global Role of Coal”

■ Professor Frank Clemente, Senior Professor of Social Science and Energy Policy, *Penn State University*, State College, PA



Clemente

Tuesday, August 3, 2010 – WVU College of Law

8-9:00 a.m. Surface Mining Control and Reclamation Act (SMCRA)

■ Christopher B. Power, *Dinsmore & Shohl LLP*, Charleston, WV

- State Primacy and Federal Oversight; Residual Office of Surface Mining (OSM) Authority and OSM’s Primary Role in Federally-Administered States and Federal Land; *WVCA v. Bragg*; *Pa. Federation of Sportsmen v. Hess*; Implications for Federal court subject matter jurisdiction; Inconsistent state law interpretations: *Canestrero*
- The SMCRA Permit and State Discretion: Activities that Require SMCRA Permits; Ownership and Control and the Applicant Violator System (AVS); Right of Entry. Permit Application Requirements; Public Notice and Comments; Reclamation Performance Bonds and Duration of Liability Under SMCRA; Bond Release; SMCRA § 522 and Lands Unsuitable for Mining; Challenging a Permit or its Conditions
- Enforcement: Environmental Protection Performance Standards; Mine Site Reclamation, Surface Water Drainage and Discharges, Groundwater Protection, Blasting & Explosives; Violations, Cessation Orders and Failure-to-Abate, Penalty Assessments and Pattern-of-Violations; Administrative Review of Agency Actions, Petition for Review, Challenging the Fact of the Violation, Challenging the Penalty Assessment, Temporary Relief, Judicial Appeals, Individual Civil Penalties, Bond Forfeiture, and “Permit-Blocking” Under AVS; Dams and Embankment Design and Safety; Notices of Violation; Cessation Orders and associated penalties; Pattern of Violation Determinations; Bond Forfeiture; Injunctive Relief; Imposition of Individual Liability and Associated Penalties (civil and criminal); Citizen Rights; Citizen Participation in Permit Application Process; Citizen Complaint to Agency; Agency Duty to Investigate; Citizen Suits; Challenging Agency Rulemaking



Power

9:00-10:30 a.m. Clean Water Act and Amendments

■ David P. Ross, *Crowell & Moring LLP*, Washington, DC

- Section 402 and the NPDES Program: Technology Based Effluent Limits; Water Quality Based Effluent Limits; Total Maximum Daily Load (TMDL); Anti-Degradation Requirements; Permitting, Monitoring and Reporting; Enforcement and Citizen Suits; Spill Control and Countermeasures Plans
- Section 404 and the Dredge and Fill Program: Jurisdictional Considerations; General vs. Individual Permits and Challenges to Each; Interagency Action Plan for Surface Coal Mining and Enhanced Coordination Process for Pending Permits; Aquatic Life Benchmarks; Emerging Section 404(c) Veto Proceedings and Spruce Mine No.1



Ross

10:30-10:45 a.m. Break

10:45-11:30 a.m. Other Regulatory Programs Affecting Coal Mining

■ David P. Ross, *Crowell & Moring LLP*, Washington, DC

- Natural Resource Considerations: National Environmental Policy Act (NEPA); Endangered Species Act (ESA); National Historic Preservation Act (NHPA); Safe Drinking Water Act (SDWA)
- Wastes and Hazardous Substances: Resource Conservation and Recovery Act (RCRA); Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund); Emergency Planning and Community-Right-to-Know Act (EPCRA); Toxic Substances Control Act (TSCA)

11:30 a.m.-Noon Clean Air Act

■ Christopher B. Power, *Dinsmore & Shohl LLP*, Charleston, WV

- Application to Coal Mining Operations; Major/Minor Sources; New Source Performance Standards for Coal Preparation Plants and Coal Handling Facilities; Fugitive Dust and Ambient Particulate; Blasting



Power

Noon-3:15 p.m. Field Trip to Simulated Underground Mine and Mine Rescue Training Facility— includes lunch

Sessions Resume in Lugar Courtroom — Climate Change and the Future Use of Coal

**3:30-5:30 p.m. Climate Change and the Future Use of Coal
The Science of CO₂ Capture and Geologic Storage**

■ Steven M. Carpenter, *Marshall Miller & Associates*, Bluefield, VA

- This presentation will assess the technology issues presented by development of commercial scale application of carbon capture and geologic storage to the combustion of coal for the generation of electricity.



Carpenter

Carbon Sequestration: From the Ground Down

■ J. Thomas Lane, *Bowles Rice McDavid Graff & Love, PLLC*, Charleston, WV

- This session will describe what a carbon sequestration field in connection with a 500MW power plant will likely look like, the infrastructure and associated property rights which will be necessary, and the ownership issues pertaining to pore spaces and their use for underground storage purposes.



Lane

CCS Regulatory Program Developments

■ David M. Flannery, *Jackson Kelly PLLC*, Charleston WV

- This presentation will assess the state and federal legal issues that are presented in developing a regulatory program for carbon capture and geologic storage and its application to emission reduction for coal-fired generation of electricity.



Flannery

6:30-8:00 p.m. Hosted Reception and Dinner at Waterfront Place Hotel

8:00-10:00 a.m. Mine Safety & Health Law and Black Lung, Workers Compensation

- Laura E. Beverage *Jackson Kelly PLLC*, Denver, CO
- Timothy W. Gresham, *Penn, Stuart & Eskridge*, Abingdon, VA

- Mine Safety & Health Law – Statutory Authority: Mine Safety & Health Act of 1969 and 1977; 2006 MINER Act; Today’s Enforcement Climate; State Mine Safety & Health Regulatory Programs; Jurisdiction: When Does MSHA Jurisdiction Begin and End? Warrantless Inspection Power; Document Inspection; Types of Inspections; Accident Investigations; Enforcement; MSHA Enforcement Tools: Citations and Withdrawal Orders; Significant and Substantial Classifications; Negligence Determinations; Flagrant Penalty Assessments; Pattern of Violations; Litigating MSHA Enforcement Actions & Civil Penalties: Notice of Contests; Contest of Penalty Assessments; Discovery Process; Hearing Procedures; Appeal; Federal Mine Safety & Health Review Commission (FMSHRC); Courts of Appeal Review; Special investigations Under § 110(c) and Criminal Charges: Statutory Provisions – Civil and Criminal; Initiation of Investigations; Exercising Rights During an Investigation; Potential Penalties; Discrimination Cases Under § 105(c); Protected Activity; Requirement for Charge; Defenses; Remedies; MSHA Investigation Process; Hearing; Appeal; Future Issues: Legislative and Regulatory.
- Black Lung (Coal Worker’s Pneumoconiosis) – History of the Black Lung Act and Amendments; Constitutionality – *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976); Transfer Provisions; Regulatory Changes; Financial Liability; Social Security Responsibility; Operator Responsibility – “Responsible Operator,” Successorship, Prior Operator Liability; Insurance vs. Self-Insured; Trust Fund Responsibility; Entitlement; Standard, Definition and Proof of Pneumoconiosis, Causal Relationship. Miner’s Claims – Definition and Proof of Total Disability, Causation; Survivors’ Claims, Who is a Survivor? Causation; Benefits; Indemnity Payments – Amounts, Offsets; Medical Benefits; Fees/ Expenses Incurred in Successfully Pursuing Claim; Procedure; Filing Claim and Initial Processing, Administrative Law Judge (ALJ) Hearing, Appeals; Benefits Review Board, Federal Courts of Appeal; Modification, Subsequent Claims
- State Workers’ Compensation Programs – Overview; What Is Compensated? Functional Loss, Wage Loss, Permanent, Partial Disability, Temporary Total Disability, Death Due to CWP (Coal Workers’ Pneumoconiosis); How Compensated? Number of Weeks, Percentage of Compensation Rate, Medical Benefits; Limitations on Actions for Benefits for CWP; Effect of Award of Federal Black Lung Benefits on Receipt of State Benefits



Beverage



Gresham

10:00-10:15 a.m. Break

10:15 a.m.-12:15 p.m. Labor and Employment: Union Free and Union Operations

- Robert M. Steptoe, Jr., *Steptoe & Johnson PLLC*, Clarksburg, WV
- David J. Laurent, *Buchanan Ingersoll & Rooney, P.C.*, Pittsburgh, PA
- John L. Woodrum, *Ogletree Deakins Nash Smoak & Stewart*, Washington, DC

- General Employment Issues and Statutes – Whistleblower Laws, Including Sarbanes Oxley (SOX); State Wage Payment & Collection Act Issues; Worker Adjustment and Retraining Notification Act (WARN)
- Collective Bargaining in the Coal Industry – The United Mine Workers of America (UMWA) and the Bituminous Coal Operators Association (BCOA); National Bituminous Coal Wage Agreements (NBCWA); Notable Strikes and Corporate Campaigns; Me-Too Agreements; Jobs Memorandum of Understanding (Jobs MOU); Current and Future Organizing; Single Employer Issues
- National Bituminous Coal Wage Agreement (NBCWA) Provisions (other than Article XX) – Article I – Successorship; Article IA and II - Leasing, Licensing and New Operations; Article XVII – Panels; Article XXIII - Grievance and Arbitration
- National Bituminous Coal Wage Agreement NBCWA Article XX Issues: Pension and Health Plans – Employee Retirement Income Security Act (ERISA), Multiemployer Pension Plan Amendments Act (MPPAA), and Coal Industry Retiree Health Benefit Act (CIRHBA) – The Labor Contract vs. Plan Documents; Pension Plan Withdrawal Liability – Multiemployer Pension Plan Amendments Act (MPPAA); Evergreen Clause and Single vs. Multiemployer Bargaining; Statutory Retiree Health Care – Coal Industry Retiree Health Benefit Act (CIRHBA) “Rockefeller” Act and 2006 Amendments; Contractual Retiree Health Care and the UMWA 1993 Benefit Plan; 401(k) Pension Plan and the New Inexperienced Miner Program; Resolution of Disputes (RODs)



Steptoe



Laurent



Woodrum

12:15-1:15 p.m. Lunch at the Law School

1:15-2:45 p.m. The Business of Coal Mining

- F. Thomas Rubenstein, *Dinsmore & Shohl LLP*, Morgantown, WV
- C. Seth Wilson, *Bowles Rice McDavid Graff & Love*, Morgantown, WV

- Organization and Operational Characteristics; Agreements, Contract Mining Agreements; Coal Sales Contracts, NYMEX and the “Spot Market”; Coal-handling, Processing, and “Through-Put” Agreements; Equipment Leasing and Transportation Issues
- Taxes: Federal Black Lung Excise Tax; Abandoned Mined Land (AML) Fees, Severance Taxes, Ad Valorem Property Taxes

2:45-3:00 p.m. Break

3:00-5:00 p.m. Coal Asset-Based Transactions: A Case Study

- Moderator: John T. Boyd II, President and CEO, *John T. Boyd Co.*, Canonsburg, PA
- Warren J. Hoffmann, *Frost Brown Todd LLC*, Lexington, KY
- Timothy L. Lowe, *Penn Stuart Eskridge*, Bristol, TN

- The final session will integrate prior sessions as participants evaluate the parties’ interests and legal requirements of a mock transaction. Through conversations with the Seller’s Representative and the Buyer’s Representative and by question and answer with the class participants, the Moderator will address a series of questions regarding the transaction. Primary Topics – Due Diligence: Confidentiality agreements; Consultants; Verification of Ownership; Evaluation of Reserves, Mine Plan, Contracts; Regulatory Compliance; Applicant Violator System; Value; Finance and Risk; Lenders, Bonding, Insurance; Negotiating Terms: Price, Representations and Warranties, Consents and Authorizations, Contingencies; Conditions Precedent; Documents: Term Sheet and/or Letter of Intent; Purchase and Sale Agreement; Assignments, Consents, and Waivers; Deeds and Bills of Sale; Stock or Membership Purchase; Interim Operating Agreement; Mortgages and Security Agreements; Closing and Post-Closing: Execution and Certificates of Authority; Filings (real property, UCC, etc.); Regulatory Approval: Updating owner/controller records; Transfer of permits

5:00 p.m. Coal Law Short Course Adjourns



Rubenstein



Wilson



Boyd



Hoffmann



Lowe



Yes, I want to attend the Coal Law Short Course August 1-4, 2010

Registration fees include all educational sessions, 2-volume *Coal Law Short Course Handbook*, Kentucky Mining Institute's *Coal Mining Reference Book*, Field Trip to Simulated Underground Coal Mine and Mine Rescue training center, reception and dinner on Sunday, Monday and Tuesday evenings at Waterfront Place Hotel, daily refreshment breaks and box lunches at the WVU College of Law.

<i>Registration fees</i>	<i>Early Bird (by July 9)</i>	<i>After July 9</i>
General Registration Fee*	\$1,050	\$1,150
EMLF Member/RMMLF Member*	\$895	\$995
Law school faculty, landman or government agency, full-time student	\$540	\$640
Written materials only	\$230	\$230

*Additional registrants from the same firm or company may deduct \$100 from the General or Member Registration Fee. No multiple attendee discounts are available for registration rates for law school faculty, landmen, government agency or full time law students. Complete one form for each registrant.

First Name _____ M.I. _____ Last Name _____ Title _____

Organization/firm _____ Daytime phone _____

Address _____ Fax # _____

City, state, zip _____

Email address _____

State(s) for CLE Credits _____

Yes, I will go on the Simulated Underground Coal Mine and Mine Rescue training center tour. No special clothing or safety training required. Transportation and box lunch provided.

Conference accreditation is pending from states with mandatory Continuing Legal Education and with the AAPL. Please indicate on your registration form where you are seeking credit. The program contains 1,215 minutes of instruction. Approximately 24.3 CLE hours in 50-minute states and 20.25 hours in 60-minute states will be available (no ethics). Complete information for reporting your credits will be available at the conference. Additional payment for CLE credits may be required for certain states/organizations.

Payment:

Conference registration \$ _____

You may pay by _____ check or _____ credit card. EMLF accepts MasterCard, VISA or American Express.

Card # _____ Expiration date _____

Signature _____ CVV code (security code) _____

Cancellation policy

Refunds less a \$75 administrative fee will be given for written registration cancellations received by July 9. Substitutions can be made without charge at any time. Persons cancelling after July 9 are not entitled to any refund, but will receive a partial credit of their registration fee towards any future EMLF program.

Three ways to register

- If registering online, go to www.emlf.org
- If registering by fax, call 859.226.0485
- If registering by mail, send form and payment to EMLF, 340 South Broadway, Suite 101, Lexington, KY 40508

Waterfront Place Hotel Rate: \$109 single or double, plus taxes. Cutoff date for room block is Saturday, July 17, 2010. Check-in time is 3:00 p.m. and checkout time is noon. Mention the Energy & Mineral Law Foundation when making a room reservation. Call 304.296.1700 for reservations.

Two Waterfront Place, Morgantown WV 26501

Energy & Mineral Law Foundation
340 South Broadway, Suite 101
Lexington, KY 40508



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Energy & Mineral Law Foundation Coal Law Short Course

August 1-4, 2010

West Virginia University
College of Law
Morgantown, West Virginia

Coal Law Short Course

On August 1-4, 2010, the second Coal Law Short Course will be held in Morgantown, WV, as a cooperative effort of the Energy & Mineral Law Foundation and the West Virginia University College of Law.

The short course was developed to minimize the training time required of law firms and coal companies by providing young lawyers with a comprehensive understanding of the myriad of laws and regulations which affect the mining, production and the sale of coal.

The course begins on Sunday evening at the Waterfront Place Hotel, with an overview of the course and presentations on the geology of coal and the various types of coal mining.

The program moves to the WVU College of Law classrooms on Monday morning for three days of intensive instruction, culminating with a case study of a sale of coal assets, which will integrate the previous three days' materials. Participants will evaluate the parties' interests and legal requirements of a mock transaction, including due diligence, finance and risk, negotiating terms, documents, filings and regulatory approval. Extensive course materials will be provided for the course.

Registration fees include all educational sessions, 2-volume *Coal Law Short Course Handbook*, Kentucky Mining Institute's *Coal Mining Reference Book*, Field Trip to Simulated Underground Coal Mine and Mine Rescue training center, reception and dinner on Sunday, Monday, and Tuesday evening at Waterfront Place Hotel, daily refreshment breaks and box lunches at the WVU College of Law.

October 13-15, 2010

Kentucky Mineral Law Conference

Marriott Griffin Gate Resort
Lexington, KY

December 6-7, 2010

Hot Shale Plays

Pittsburgh, PA
Co-sponsored by the Rocky
Mountain Mineral Law Foundation

February 10-12, 2011

Winter Workshops on Energy Law

Lago Mar Resort
Fort Lauderdale, FL

May 15-17, 2011

32nd Annual Institute Nemacolin Woodlands, PA