



# 30th Mineral Law Conference



**October 27-28, 2005**  
**Marriott Griffin Gate Resort**  
**Lexington, Kentucky**  
**Energy & Mineral Law Foundation**

# Program schedule

## Thursday, October 27 — General Session

8:05 a.m.

### Welcome and Introductions

David J. Laurent, EMLF President, *Babst, Calland, Clements and Zomnir, P.C.*

8:15

### Energy Policy, Energy Markets

This session profiles the near-term domestic energy industry, highlighting aspects of the proposed national energy legislation that affect the coal, gas and power industries: federal funding for clean coal and other energy technologies; tax credits for renewable energy projects; energy efficiency incentives; mandates for power plant fuel mix. National energy legislation is just part of the picture – state and local initiatives to achieve sustainable development and increased global demand for resources add to the complex mix of issues facing clients which the energy lawyer needs to understand.

■ John T. Boyd, *John T. Boyd Company*, Canonsburg, PA

■ Martin E. Edwards, VP – Legislative Affairs, *Interstate Natural Gas Association of America*, (INGAA), Washington, DC

9:00

### Timber Trespass: Tips for the Uninformed

Paul Bunyan had no idea what was in store when he innocently hooked Babe the Blue Ox to the wagon, took out his axe, and began clearing space for the Mine [the Pipeline, the Well Site]. He knew his property ran down to the Big Sandy River – who cared that Neighbor John disagreed? Besides, the Mine [the Pipeline, the Well Site] had to go in NOW. After cutting and marketing the timber, Paul receives Neighbor John's demand for payment for the timber Paul cut, claiming the timber belongs to him. Is Paul liable to Neighbor John? What are the damages? Did someone say *treble*? The panel discusses the effect timber trespass statutes have on such situations, with special emphasis on the statutes in Kentucky, Virginia, and West Virginia.

■ Wayne F. Collier, *Kinkead & Stilz, PLLC*, Lexington, KY

■ Timothy W. Gresham, *Penn Stuart & Eskridge*, Abingdon, VA

■ Thomas E. Meng, *Stites & Harbison, PLLC*, Lexington, KY

■ Charles M. "Ken" Surber, Jr., *Jackson Kelly, PLLC*, Charleston, WV

9:45

Break

10:00

### More Practice Tips and Pearls of Wisdom

Our roundtable continues its discussion on an array of court rulings and developing issues: the Supreme Court's ruling in *Kelo v. City of New London*; the Federal Court of Claims decision in *Stearns*; claims of water loss resulting from mineral development; Kentucky's Unmined Mineral Tax; and obligations related to employment rights of returning service personnel under USERRA.

■ Wayne F. Collier, *Kinkead & Stilz, PLLC*, Lexington, KY

■ Timothy W. Gresham, *Penn Stuart & Eskridge*, Abingdon, VA

■ Thomas E. Meng, *Stites & Harbison, PLLC*, Lexington, KY,

■ Charles M. "Ken" Surber, Jr., *Jackson Kelly, PLLC*, Charleston, WV

10:45

### Pension and Healthcare Liabilities after *Horizon*

The impact of recent corporate bankruptcies and the courts' decisions related to the debtor's liabilities for employee benefits are discussed, reviewing facts, figures and insights into the UMWA Pension Plans, the UMWA 1993 Employer Benefit Plan, and obligations under the Coal Act. This session will also examine how such employer obligations should be evaluated by the transactional lawyer.

■ Gregory J. Ossi, *Venable LLP*, Vienna, VA

11:45

### Hosted Luncheon & Guest Speaker

■ Jason R. Bentley, Executive Director, *Kentucky Office of Energy Policy*, Frankfort, KY

1:15 p.m.

### Understanding How Electric Power Policy Issues Affect Fuel Suppliers and Impact Customer Costs

Designed to enhance the reliability of the electric power grid, decisions of Independent System Operators (ISOs) and Regional Transmission Organizations (RTOs) control power generators, influence fuel choices, affect fuel suppliers, and impact customer costs. This session explains how the Federal Energy Regulatory Commission (FERC) intended the ISO/RTO plan to work, and looks at Kentucky's experience with the Midwest ISO.

■ Roy M. Palk, President and CEO, *East Kentucky Power Cooperative*, Winchester, KY

1:45

### Changes at the Helm of the FERC and Possible Changes in Policy in the Future

The appointment of a new chairman and commissioners to the Federal Energy Regulatory Commission suggest that changes in that agency's policies on the operation of the transmission grid and wholesale power markets may be forthcoming this year. This session briefly reviews what the new changes at the FERC may suggest for the future.

■ Michael S. Beer, VP – Rates and Regulatory, *LG&E Energy Corp.*, Louisville, KY

2:00 **Clean Air Act Litigation and Regulatory Update**

This session covers current issues and pending changes for coal-fired utilities under the Clean Air Act. Current litigation related to power plant maintenance and what triggers New Source Review (NSR) provisions will be discussed in the context of the recent *Alabama Power* and *Duke Energy* decisions, the D.C. Circuit decision on New Source Review reform rules, and the recently announced final decision on reconsideration reaffirming EPA's equipment replacement provision (ERP) rule. The implications for power plants and coal producers of the Clean Air Interstate Rule (CAIR) and the Clean Air Mercury Rule will also be discussed (CAMR).

■ Makram B. Jaber, *Hunton & Williams, LLP*, Washington, DC

3:00 Break

3:15 **Clean Water Act Update**

This session covers current issues under the Clean Water Act, including the Corps of Engineers jurisdiction over wetlands, wetlands mitigation, and state responses to the litigation over nationwide permits.

■ Donald C. Bluedorn II, *Babst, Calland, Clements and Zomnir, P.C.*, Pittsburgh, PA

3:45 **From the Trenches: Energy, Mineral and Environmental Issues in the Kentucky General Assembly**

This session anticipates and previews controversial issues in the fields of energy and mineral law and environmental protection that may be considered in the 2006 General Assembly Session.

■ Thomas J. FitzGerald, Director, *Kentucky Resources Council*, Frankfort, KY

4:15 **Professional Ethics – Erosion of Client Confidentiality?**

This session covers the ABA Rules of Professional Responsibility as they relate to the attorney-client and attorney work-product privilege, in the context of recent practices and procedures of governmental agencies that may have the effect of eroding this privilege.

■ Robert I. Cusick, *Wyatt, Tarrant & Combs, LLP*, Louisville, KY

5:15 **Sustainable Development for Appalachia**

Despite contention over mountaintop removal as a means of extracting coal, positive results can be achieved by planning for creative post-mining land uses. This session details the process of evaluating, planning, permitting, and ultimately creating post-mining land uses that can add value and provide alternative development opportunities in economically depressed coal regions.

■ J. Stephen Gardner and Paul Sainato, *Engineering Consulting Services, Inc.*, Lexington, KY

6:00 - 7:30 **Welcome Reception Hosted by EMLF Members for Conference Registrants and Kentucky Coal Association Members, Speakers and Guests**

Marriott's Outdoor Tent on the Golf Course

## Friday Morning, October 28 — Concurrent Tracks

### Oil & Gas Track

8:00 a.m. **Oil & Gas Update**

Recent cases and regulatory issues affecting the oil and gas industry will be discussed, focusing on the eastern United States.

■ Kelly B. Kibble, *Spilman, Thomas & Battle, PLLC*, Charleston, WV

8:30 **Like-Kind Exchanges in Mineral Properties Under IRC §1031**

Under Section 1031 of the Internal Revenue Code, no gain or loss is recognized on the exchange of property held for productive use in a trade or business or for investment solely for property of a like kind to be held either for productive use in a trade or business or for investment. This session discusses the requirements for like-kind exchange treatment under Section 1031 and how those requirements are applied to sales and exchanges of various mineral interests and other types of property.

■ John H. Henderson, *Stoll Keenon & Park, LLP*, Henderson, KY

9:15 Break

9:30 **Pipeline Abandonment**

What actions or inactions constitute abandonment? What liabilities remain even after abandonment? What happens to the underlying right of way?

■ Bryan R. Reynolds, *Sullivan Mountjoy Stainback & Miller, PSC*, Owensboro, KY

10:15 **Implied Covenants to Develop Minerals**

This session traces the development of the classical dominant / servient estate analysis, following the cases limiting implied surface rights and those creating the various forms of the "accommodation" doctrine, discusses the increasingly common legislative interventions, and provides an analysis of why the "good law" is being diluted by the courts and legislatures – along with a prophecy for the future of the implied rights.

■ Russell L. Schetroma, *Culbertson, Weiss, Schetroma & Schug*, Meadville, PA

11:15            **Voluntary and Forced Pooling in Coalbed Methane Development**

Voluntary and forced pooling in relation to vertical CBM wells producing from multiple seams owned by more than one owner, and horizontal wells producing from “one” seam but from various tracts will be discussed, along with unitization and pooling issues, production and permitting issues, focusing on development in selected eastern states.

■ Mark A. Swartz, *Swartz & Stump, LC*, Charleston, WV

12:15            Adjourn

**Coal Track**

8:00 a.m.        **Preference Strategies and Other Insolvency Issues for Creditors**

In the context of recent changes to the Federal Bankruptcy Laws (effective October 17, 2005), this session offers strategies for dealing with preference and other avoidance actions and certain other issues impacting creditors dealing with an insolvent or bankrupt debtor. The recently enacted Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 increases the rights of creditors. Changes affecting creditors, including small business bankruptcy provisions, new priority treatment for pre-bankruptcy claims, and amendments to lease assumption and rejection provisions will also be discussed.

■ Maureen D. Carman, *Wyatt, Tarrant & Combs, LLP*, Lexington, KY

■ Robert V. Sartin, *Sawyer & Glancy*, Lexington, KY

■ Gregory R. Schaaf, *Greenebaum Doll & McDonald, PLLC*, Lexington, KY

9:15             Break

9:30             **Purchasing Assets Out of Bankruptcy Free and Clear of Environmental Claims – How Free Is It?**

The recent wave of coal company bankruptcy reorganizations has resulted in the sale of numerous coal assets and transfers of permits. The initial purchaser as well as subsequent purchasers often expect that these sales remove the environmental liabilities of the Debtor from those assets – a “free and clear” sale. A recent decision in the Eastern District of Kentucky provides guidance on how “free and clear” these sales can be, examining the Bankruptcy Courts’ powers under sections 363 and 105(a) of the Bankruptcy Code and their effect on state permitting law.

■ Mary Beth Naumann, *Jackson Kelly PLLC*, Lexington, KY

10:00           **Coal Litigation and Regulatory Update**

This session covers recent cases in the coal industry, including an update on Nationwide permit litigation and the Kentucky coal truck litigation.

■ Noelle Holladay True, *Rajkovich, Williams, Kilpatrick and True, PLLC*, Lexington, KY

10:30           **The Drug-Free Workplace – How to Bring Your Company Closer to the Goal**

This session covers the laws of eastern coal states which touch on drug testing; minimum goals for a good company drug policy, including a model policy for you to take home; discusses the pros and cons of a no-tolerance policy; highlights any oversight by federal and state safety agencies; discusses bargaining obligations if you are unionized and discusses the after-math of the Supreme Court’s 2000 decision in *EACC v. District 17 UMWA*, where the Court upheld an arbitrator who put an employee back to work after the employee flunked a drug test, following a last chance agreement imposed by an earlier arbitrator. This case highlights an issue which needs to be the subject of future BCOA bargaining if union companies are to achieve a drug-free workplace.

■ Anna M. Dailey, *Dinsmore & Shohl, LLP*, Charleston, WV

11:00            Break

11:15            **U.S. Army Corps of Engineers Permitting Issues**

As Assistant Secretary of the Army (Civil Works), John Paul Woodley is responsible for the supervision of the Army’s Civil Works program, including programs for conservation and development of the nation’s water and wetland resources, flood control, navigation, and shore protection. Mr. Woodley will update Corps of Engineers permitting policies as they relate to mineral and resource development.

■ John Paul Woodley, *Assistant Secretary of the Army (Civil Works)*, Washington, DC.

11:45            **Energy Policy and the State of the Coal Industry**

This session looks at the prospects for continued demand for both eastern and western coal, and what factors will influence both price and production.

■ Jerry M. Eyster, *GE Energy Financial Services*, Stamford, CT

12:15            Adjourn

**Kentucky Coal Association Luncheon** (separate reservation required)



## Yes, I want to attend the 30th Mineral Law Conference

Name \_\_\_\_\_ Title \_\_\_\_\_

Organization/firm \_\_\_\_\_ Daytime phone \_\_\_\_\_

Address \_\_\_\_\_ Fax # \_\_\_\_\_

City, state, zip \_\_\_\_\_

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Friday's KCA luncheon (\$25) Total Payment \_\_\_\_\_

State(s) for CLE Credits \_\_\_\_\_

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

Card # \_\_\_\_\_ Expiration date \_\_\_\_\_

Signature \_\_\_\_\_

## Registration information

### Conference Registration

EMLF full Conference registration fee includes meeting materials, refreshment breaks, hosted luncheon Thursday and hosted reception Thursday evening. Reservation and \$25 payment required for the Kentucky Coal Association luncheon on Friday.

	Through Oct. 5	After Oct. 5
General Registration fee	\$430	\$480
EMLF Member fee	330	380
Government/NPO	250	300
Young lawyer	230	280
Law Faculty/Retiree	200	250
Materials only	100	100
<i>Written materials will be sent following the conference; UPS shipping charges will be additional</i>		
KCA Friday luncheon	25	25

### Accommodations

Marriott Griffin Gate Resort

\$156 per night, single, double, triple or quad plus state and local taxes

1800 Newtown Pike, Lexington, KY 40511

Call hotel at 800.228.9290 or 859.231.5100 and ask for EMLF rate; room block closes October 5 or whenever sell-out occurs. Make your reservations early.

While in Lexington, enjoy racing at Keeneland, October 7-29, post time 1:15, visit the Kentucky Horse Park, tour the Bluegrass horse farms, where you can visit "Smarty Jones," the 2004 Derby winner.

### Four ways to register

- If registering online, go to <http://www.emlf.org/mineral.htm>
- If registering by phone, call 859.231.0271
- 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

### Cancellation policy

Full refunds less a \$75 administrative fee will be given for written registration cancellations received by October 5. No registration refunds will be made thereafter but substitutions can be made by calling the Foundation at 859.231.0271. Persons not entitled to any refund will receive a copy of the handbook and meeting materials. EMLF members who cancel their registrations after October 5 may apply their registration fee, less \$75, to any future EMLF program.

### Mandatory CLE and Professional Credit

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 705 minutes of instruction, including 60 minutes of professional ethics. Approximately 14.1 CLE hours in 50-minute states and 11.75 hours in 60-minute states will be available. Complete information for reporting your credits will be available at the conference.

### **Program Planning Committee:**

- R. Eberley Davis, Co-chairman, *Stoll Keenon & Park, LLP*, Lexington, KY
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- John T. Boyd, Jr., *The John T. Boyd Co.*, Canonsburg, PA
- Maureen D. Carman, *Wyatt, Tarrant & Combs, LLP*, Lexington, KY
- William K. Caylor, *Kentucky Coal Association*, Lexington, KY
- Wayne F. Collier, *Kinkead & Stilz, PLLC*, Lexington, KY
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Energy & Mineral Law Foundation  
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Lexington, KY 40508

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and autumn sunlight).*

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