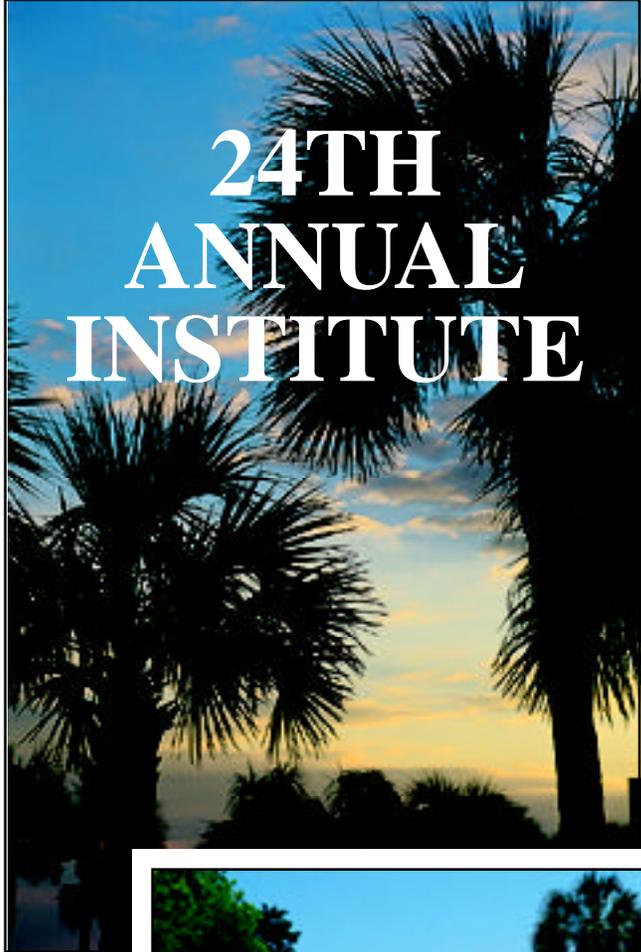
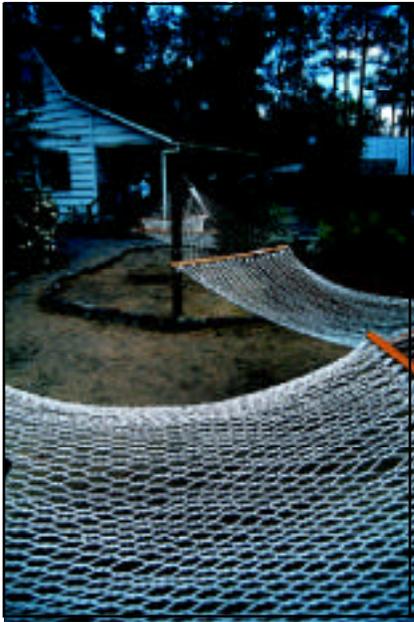




**Energy &  
Mineral Law  
Foundation**

**24TH  
ANNUAL  
INSTITUTE**



**June 1-3, 2003  
Beach Cove Resort  
North Myrtle Beach, SC**

## 24th Annual Institute Planning Committee

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Program Chairman  
*Penn Stuart & Eskridge*  
Abingdon, VA

Thomas E. Meng  
Coal Committee Chairman  
*Stites & Harbison*  
Lexington, KY

J. Thomas Lane  
Oil & Gas and Land  
Committee Chairman  
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### Web site

<http://www.emlf.org>

### E-mail

[emlf@aol.com](mailto:emlf@aol.com)

## Program schedule

### Sunday, June 1

Optional **Golf Tournament,**  
**1:20 p.m. tee-off at Tiger's Eye Golf Course**  
**EMLF Sunday Afternoon Golf Outing**

Prizes will be awarded. Open to all Annual Institute registrants and guests. Seventy-five dollar fee includes 1/2 cart and greens fees for the Tiger's Eye Golf Course, approximately 20 minutes from the Beach Cove Resort in North Myrtle Beach.

Golfers may organize their own foursomes or Nick Carter ([ncarter@wpplp.com](mailto:ncarter@wpplp.com)) will help set up foursomes. Please include payment with your annual institute registration, and provide your email address, your handicap or your average or projected scores, and the names of the members of your preferred foursome.

4:00 – 6:00 **Registration**

5:30 **Executive Committee Meeting**

Group Event: **Welcome Reception and Picnic**  
6:30 – 9:00 **Poolscape at Beach Cove Resort**  
Hosted by the 24th Annual Institute Patrons

### Monday, June 2

7:30 a.m. **Board of Trustees Breakfast Meeting/ Elections**

9:00 a.m. **Welcome/ Introductions**  
Joseph J. Zaluski, EMLF President  
Timothy W. Gresham, Annual Institute Chairman

9:05 – 9:35 **Coal, Gas, Electric Power and the Environment**

■ Jerry M. Eyster, *PA Consulting Group*, Washington, DC

Coal has been the fuel choice for over half the power generation in the U.S., but public policy and environmental regulation is fostering a new emphasis on gas-fired power generation. What's the future role of coal in power generation and what challenges must producers face from environmental regulation and natural gas?

9:35 – 10:05 **Punitive Damages: Reforming a "Ring the Bell" System**

■ A.J. Singleton, *Stoll Keenon & Park*, Lexington, KY

Recent high-profile cases have reminded us just how unpredictable punitive damage awards can be. These cases continue to make it difficult to explain to clients what conduct warrants a punitive damage award and to advise clients on what exposure they may ultimately face. This presentation will identify recent trends in the awarding of punitive damages, explore problems associated with punitive damages, and identify tort reform solutions being proposed and implemented. The presentation will also highlight some Supreme Court cases addressing the constitutionality of awards.

10:05 – 10:20 **Break**

10:20 – 12:20 **Reporting Client Misconduct: Whistle Blowing and Going Up the Corporate Ladder After Enron** (professional ethics)

- David G. Ries, *Thorp Reed & Armstrong*, Pittsburgh, PA
- Judy Z. Mayo, *Duke Energy Corporation*, Charlotte, NC
- Kendrick R. Riggs, *Ogden, Newell & Welch*, Louisville, KY
- Kevin L. Sykes, *Kegler Brown Hill & Ritter*, Columbus, OH

Protection of client confidences has historically been at the foundation of the attorney client relationship. Ethics rules contain limited exceptions when reporting of client wrongdoing may or must trump protection of confidentiality. Recent high profile incidents of corporate misconduct have increased pressures on ethics authorities to expand these exceptions and the SEC has recently published rules under the Sarbanes-Oxley Act for attorney reporting of corporate misconduct. This session will provide an overview of current developments in this area and their implications.

12:30 **Hosted Luncheon and Program**

1:45 – 2:15 **Environmentally Sensitive M&A Transactions**

- Stephen C. Braverman, *Buchanan Ingersoll*, Philadelphia, PA

This session discusses environmentally sensitive merger or acquisition transactions including documentation issues such as representations, warranties, covenants and indemnities.

2:15 – 2:45 **Regulatory Takings**

- Michele Whittington, *Sites & Harbison*, Frankfort, KY

This session covers recent decisions in regulatory takings in the natural resources context, including the recent Stearns Company case in the Court of Claims.

2:45 – 3:30 **Valuation of Minerals in Condemnation Proceedings**

- Joseph Starsick, *Bowles Rice McDavid Graff & Love*, Charleston, WV
- J. Thomas Lane, *Bowles Rice McDavid Graff & Love*, Charleston, WV
- Hans Naumann, *Marshall Miller & Associates*, Lexington, KY

This session covers the valuation of minerals and mineral operations in condemnations, the valuation methodologies which are recognized by federal regulations and a hypothetical application to an operating property which combines an ongoing operation with a reserve area.

3:30 – 3:45 **Break**

3:45 – 5:30 **Legal Implications of Mapping Errors**

- Marco M. Rajkovich, P.E., J.D., *Wyatt, Tarrant & Combs*, Lexington, KY
- Edward Claire, Office of the Solicitor, *U.S. Department of Labor*, Washington, DC
- Hans Naumann, *Marshall Miller & Associates*, Lexington, KY
- John T. Boyd, *John T. Boyd Company*, Canonsburg, PA
- Mark Skiles, *Mine Safety & Health Administration*, Arlington, VA

Recent impoundment failures, the inundation and near-disaster at the Quecreek Mine, and heightened security concerns have raised sensitivity and directed focus on the accuracy and reliability of historic mapping – whether mines, wells, or pipelines are involved. A panel discusses the potential implications: regulatory impacts, liability issues – to landowners, adjacent mineral owners, downstream property owners, miners, and the public at large – as well as practical considerations.

6:30 – 7:30 **Hosted Reception – Poolscape**

7:30 **Optional Dine-Around**

Dutch Treat at area restaurants

## Tuesday, June 3 – Coal and Mining Tract

8:30 – 10:15 Moderator: Timothy Gresham, *Penn Stuart & Eskridge*, Abingdon, VA

### Significant Developments in SMCRA and Clean Water Act Litigation in the East

■ Robert G. McLusky, *Jackson Kelly, PLLC*, Charleston, WV

#### Impact of MSHA’s “Culture Change” on Enforcement Activities

■ Adele L. Abrams, *Attorney*, Beltsville, MD

#### Labor and Employment Update

■ Danielle Smith, *Penn Stuart & Eskridge*, Abingdon, VA

#### Current Litigation in Coal Law: Environmental, Tort and Property Issues

■ Anne Blankenship, *Robinson & McElwee*, Charleston, WV

10:15 – 10:30 **Break**

### 10:30 – 11:15 A Look to the Future: How the Coal Industry Can Prosper Under Emerging Regulatory Initiatives

■ George A. Rusk, *Ecology and Environment*, Lancaster, NY

■ J. Steven Gardner, P.E., L.S., *Engineering Consulting Services*, Lexington, KY

Innovative permitting approaches for coal development projects could become the rule rather than the exception. Drawing from projects performed for coal companies and other industries, this session explores how positive environmental features and other recognized land use planning concepts can be added to a coal project to provide “social benefits” that meet “Haden-type” tests, gain regulatory and public approvals and provide economic value to the project sponsors. Practical considerations will be discussed.

### 11:15 – noon Coal Sales Agreements – Issues Under New Trading Agreements

■ Pamela McCallum, *Buchanan Ingersoll, P.C.*, Pittsburgh, PA

This session examines the recent evolution of the Master Coal Supply Agreement and new terms and conditions in coal supply transactions, reflecting the impact of trading, the NYMEX and OTC on physical supply relationships, and how these changes affect traditional concepts such as force majeure, default and contractual remedies.

Noon – 1:30 **Lunch Break on Your Own**

### 1:30 – 2:00 Debarment and Other Impediments to Doing Business in the Wake of Criminal or Civil Conviction

■ Peter Hoffman, *Jackson Kelly PLLC*, Charleston, WV

Companies that do business with the federal government – such as selling coal to TVA – can find themselves barred from such sales if they plead guilty to or are otherwise convicted of a federal misdemeanor. Felony convictions can also prevent companies from holding licenses for explosives. Companies and their lawyers need to be aware of ways to avoid these pitfalls if they are facing criminal prosecution.

### 2:00 – 2:45 MSHA’s DPM (Diesel Particulate Matter) Rulemaking: What Have We Learned?

■ L. Joseph Ferrara, *Jackson Kelly PLLC*, Denver, CO

■ Edward M. Green, *Crowell & Moring*, Washington, DC

■ Edward Claire, Office of the Solicitor, *USDOL*, Washington, DC

Industry legal challenges to MSHA’s Metal/Nonmetal Diesel Particulate Matter Rule resulted in unique and precedent-setting actions in settlement. Industry and MSHA agreed to conduct a 31-mine sampling study together under a jointly developed sampling protocol to garner information on the feasibility of the final Permissible Exposure Limit (PEL). This unprecedented cooperative effort to find empirical information relevant to finalization of a rule suggests an excellent model for future rulemakings by any agency.

2:45 – 3:00 **Break**

3:00 – 3:30 **Corporate Downsizing**

■ C. David Morrison, *Steptoe & Johnson*, Clarksburg, WV

This session will discuss some of the common pitfalls for employers in the wake of downsizing.

3:30 – 4:00 **Asset Retirement Obligations (ARO) and Coal Mining Facilities**

■ Ethan S. Naftalin, *Hunton & Williams*, Raleigh, NC

The principal asset retirement obligation (ARO) in the mining industry is reclamation. What disclosure is due under the new FASB 143 accounting standard? This session discusses the new regulation and some of the difficulties in defining “components” under the regulation.

4:00 – 4:45 **General Session — Health Related Information and Employment Decisions:  
Is Your ERISA Plan Subject to Employee Privacy Rights Under HIPAA?**

■ Samuel M. Brock III, Counsel, *Spilman, Thomas & Battle, PLLC*, Charleston, WV

Congress set in motion sweeping changes affecting health information in the Health Insurance Portability and Accountability Act of 1996 (HIPAA). HIPAA is designed to facilitate the submission of medical claims and the utilization of electronic medical records while increasing protections for the privacy of health related information. The presentation will address a basic overview of HIPAA and is intended to help employers determine whether they have to comply with HIPAA’s Privacy Standards and what such compliance may require of them.

## Tuesday, June 3 – Coalbed Methane, Oil and Gas

Moderator: A. George Mason, *Mason Energy Consulting, Inc.*, Richmond, VA

8:30 – 8:45 **Update on Coalbed Methane Ownership Cases in the Eastern U.S.**

■ A. George Mason, *Mason Energy Consulting, Inc.*, Richmond, VA

Discussion of the conflicting cases of *EDC v. Nancy Louise Moss and GeoMet, Inc.*, McDowell Circuit Court, WV, which held that the coal estate owned the coalbed methane, and *Ratliff v. Harrison-Wyatt, LLC*, Buchanan Circuit Court, VA, which held that the surface owner, who owned the gas estate, owned the coalbed methane.

8:45 – 9:15 **Environmental Implications for Coalbed Methane**

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

Coalbed methane development very often will create new regulatory challenges for groundwater management and produced water disposal. Aside from the issues created by hydraulic fracturing in fresh water aquifers, CBM wells also require the extraction of large amounts of water in association with the produced gas. Although the produced water may be considered potable, water discharge permits or UIC injection permits may be required for disposal. Several options have been considered for conditioning permits.

9:15 – 10:00 **Coalbed Methane Development Issues**

■ R. Neal Pierce, *Attorney at Law*, Charleston, WV

As coalbed methane production continues to grow, issues beyond the traditional ownership debate complicate development opportunities. This session covers conflicts in concurrent or sequential development of coal, gas and coalbed methane, including surface use for methane operations, pipelines and power lines, roads, and produced waters.

10:00 – 10:15 **Break**

10:15 – 11:00 **Gathering Line Regulation**

■ David Sweet, *Sweet Strategy Group*, Washington, DC

This presentation surveys regulation of pipelines starting with federal regulation of pipelines, a description of lines subject to federal regulation and the scope of federal regulation. The presentation defines where state regulation can begin and how regulation occurs in various states.

## Energy & Mineral Law Foundation Governing Member Organizations

American Bar Association  
— SERL, Illinois State Bar  
Association, Kentucky Bar  
Association, Ohio State  
Bar Association,  
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Association, Tennessee Bar  
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University at Carbondale  
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Professional Landmen,  
Kentucky Coal  
Association, Kentucky Oil  
& Gas Association,  
National Mining  
Association, Ohio Coal  
Association, Ohio Oil &  
Gas Association,  
Pennsylvania Coal  
Association, United States  
Energy Association,  
Virginia Oil and Gas  
Association, West Virginia  
Coal Association, West  
Virginia Oil and Natural  
Gas Association.

### 11:00 – 11:30 **Operator Liability for Gas Service**

■ Richard L. Gottlieb, *Lewis Glasser Casey & Rollins*, Charleston, WV

This session covers various issues relating to the contractual, statutory and regulatory responsibilities of a gas well operator. Among the issues to be explored are 1) liability for injuries or other damages when a gas consumer taps into gathering lines or receives “free gas” under a lease; in that regard, 2) does the liability vary upon the manner in which the consumer obtained gas service? and 3) responsibilities associated with termination of gas service – and the obligation, if any, of the operator to convert the consumer to an alternative fuel.

### 11:30 – Noon **Oil & Gas Update**

■ John W. Woods, III, *Bowles Rice McDavid Graff & Love*, Charleston, WV

The annual update on oil and gas litigation and regulatory developments.

### Noon – 1:30 **Lunch Break on Your Own**

### 1:30 – 2:15 **Encroachments**

■ Traci Rea, *Reed Smith LLP*, Pittsburgh, PA

This session covers options for operators to protect themselves in the event of encroachment on pipeline rights of way or well sites. Options and liabilities of producers if encroacher has built a house over a pipeline (or a garage or other structure they refuse to move). Any protections available to require move or protect producer from liability. The potentials if any for statutory reform on the issue.

### 2:15 – 3:00 **Fiduciary Relationships and the Erosion of the Implied Covenant Theory**

■ David W. Hardymon, *Vorys, Sater, Seymour and Pease, LLP*, Columbus, OH

The session distinguishes between the standard of good faith and fair dealing in the Uniform Commercial Code and the common law of contracts, and the reasonably prudent operator standard under an oil and gas lease. A survey of the origin of each standard and why and how they are different will be included, along with examination of traditional duties between a lessor and lessee, and how they have evolved in recent case law.

### 3:00 – 3:15 **Break**

### 3:15 – 4:00 **Seismic Technology and Law: Are They Partners or Adversaries?**

■ Professor Owen Anderson, *University of Oklahoma College of Law*, Norman, OK

■ Dr. John Pigott, *University of Oklahoma Department of Geology and Geophysics*, Norman, OK

The law often lags behind technology. While this is especially true regarding computer information and medical technologies, this is also true for seismic technology. This session will review the latest seismic technology and discuss how law (particularly the law of “geophysical trespass”) may facilitate or hinder its utility in finding and developing oil and gas.

# The Grand Strand and more . . .

It brought us shag dancing, Vanna White and years of vacation memories. It's Myrtle Beach, South Carolina – one of the most popular vacation destinations, home to well over 100 golf courses, hundreds of restaurants, shops galore, many attractions ranging from amusement parks to beautiful formal gardens.

The 60-mile stretch known as the Grand Strand offers so much to do that you'll want to return to catch all the activities you missed!

There's Broadway at the Beach — an area featuring 19 restaurants including Planet Hollywood, Hard Rock Cafe and Tony Roma's, 100 specialty shops and 10 night spots, IMAX Discovery Theater, Butterfly Pavilion, miniature golf courses and the Pelicans baseball team.

Or Barefoot Landing in North Myrtle Beach where boardwalk shops, factory stores, restaurants await you in addition to the Alabama Theatre, House of

Blues, Alligator Adventure and the Grand Prix Family Thrill Park.

Don't forget all the other activities: miniature golf, amusement parks, sailing, water parks, jet skiing, grandprix racing, lasertag, stock car racing, parasailing and historical tours. Ripley's Sea Aquarium with its shark tank, coral reef and thousands of fish or Dolly Parton's Dixie Stampede for a taste of an authentic rodeo.

And be sure to save time for the miles and miles of beach — one of the many reasons people flock yearly to this vacation paradise!

This year's Annual Institute will be at the Beach Cove Resort which offers unparalleled water fun with an indoor pool, saunas, whirlpool and three outdoor pools, a 350-foot lazy river ride, two whirlpools, kiddie pools and the Atlantic Ocean. The tropical outdoor poolscape has multi-level decks and fountains.

Institute attendees will have oceanfront one bedroom Executive Suites with two queensize beds, efficiency kitchens and a private oceanfront balcony.

You might want to begin your Myrtle Beach adventure Sunday morning with a gospel brunch at the House of Blues, a premier restaurant and entertainment venue located in Barefoot Landing, fashioned in the ambiance of an old southern Delta Juke Joint made of tin and wood shingles.

When you visit, you can take a journey back to the roots of southern culture. The House of Blues art collection presently includes more than 6000 original painting and sculptures, the largest private collection in the nation. The Myrtle Beach venue boasts over 600 pieces of this folk art collection." Call 843.913.3710 for more information or go to [www.hob.com](http://www.hob.com)

## Four ways to register

- Online, [www.emlf.org/register.htm](http://www.emlf.org/register.htm)
- Fax, call 859.257.2884
- Mail, send form and payment to EMLF at return address
- Phone, call 859.257.7140

## Mandatory CLE and Professional Credit

EMLF programs are presumptively accredited for mandatory CLE credits in most states and by the AAPL. Excluding luncheon speeches, the Institute consists of 765 minutes, including 120 minutes of professional ethics. Please indicate state(s) where you are requesting MCLE credits on your registration form.

## Cancellation policy

Refunds less a \$75 administrative fee will be given for written cancellations received by May 23. No refunds will be given thereafter, but substitutions can be made at any time. Persons not entitled to a refund will receive all course materials and handouts.

## Accommodations

Beach Cove Resort, 4800 South Ocean Boulevard, North Myrtle Beach, SC 29582. \$135 per night, single or double, for oceanfront one bedroom Executive Suite with two queensize beds, efficiency kitchen and private oceanfront balcony. Please call 800.331.6533 for reservations; cut-off date for rooms is April 15. Individual cancellations are refunded with a 14-day notice less \$20 administration charge per reservation. All reservation deposits will be forfeited if cancelled 14 days or less prior to arrival date.

## Registration

Institute registration fees include meeting materials, refreshment breaks, poolside reception and picnic Sunday evening, lunch on Monday and hosted reception Monday evening.

	Until May 1	May 1
General Registration fee	\$600	\$650
EMLF Member	380	430
Government Attorney fee	300	350
Others	200	250

Young Lawyer (in practice less than 3 years); Landman; Full Time Law Faculty; or Retired Attorneys

Limited scholarship assistance available; complete form and mail to Sharon Daniels at EMLF.



# Yes, I want to attend the 24th Annual Institute June 1-3, 2003

Name \_\_\_\_\_ Title \_\_\_\_\_  
 Organization/firm \_\_\_\_\_ Daytime phone \_\_\_\_\_  
 Address \_\_\_\_\_ Fax # \_\_\_\_\_  
 City, state, zip \_\_\_\_\_ Email \_\_\_\_\_  
 Guest name(s) \_\_\_\_\_

Yes, I will have guests at the Poolscape Reception and Picnic

	Number attending	Total charge
Adult guest ticket \$30 per person	_____	\$ _____
Children 4-12 \$14 per person	_____	\$ _____
Children under 4 No charge	_____	\$ _____

Yes, count me in for the Golf Tournament Sunday, June 1

\$75 fee includes 1/2 cart and greens fees for the Tiger's Eye Golf Course, approximately 20 minutes from the Beach Cove Resort in North Myrtle Beach. Please include payment with your annual institute registration, and provide your handicap, average or projected scores, and the names of the members of your preferred foursome. For more information contact Nick Carter ncarter@WPPLP.com

Name	Handicap/average	Name	Handicap/average
_____	_____	_____	_____
_____	_____	_____	_____

Yes, please reserve one copy of Volume 24 of the Annual Institute Proceedings to be shipped upon publication at the special rate of \$30; special offer for Annual Institute registrants only

Fees:

Conference registration \$ \_\_\_\_\_  
 Guest tickets \$ \_\_\_\_\_  
 Golf Tournament \$ \_\_\_\_\_  
 Volume 24 \$ \_\_\_\_\_  
 Total \$ \_\_\_\_\_

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\_\_\_\_\_

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

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

Signature \_\_\_\_\_

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