

25th Annual Institute

May 16-18, 2004
The Homestead Resort
Hot Springs, Virginia

**Energy &
Mineral Law
Foundation**



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Program Chairman
NiSource Corporate Services
Charleston, WV

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Coal Committee Chairman
Spilman, Thomas & Battle, PLLC
Charleston, WV

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Web site

<http://www.emlf.org>

E-mail

emlf@aol.com

Program schedule

Sunday, May 16

Optional Events

Golf Outing
10:00 a.m.

Cascades Course
Nick Carter, Coordinator

Tennis Outing
1:00 p.m.

Round Robin Doubles
Sean Cassidy, Coordinator

2:00 - 6:00 p.m.

EMLF Registration Desk Opens

5:00 - 6:00 p.m.

Board of Trustees Annual Meeting

6:00 - 7:30 p.m.

Group Welcome Reception

Hosted by the 25th Annual Institute Patrons

Dinner on Your Own - Reservations Required (Included in Homestead MAP plan)
Dinner and Dancing in The Dining Room or Gourmet in The 1766 Grille

Monday, May 17

8:30 a.m.

Welcome and Introductions

- Thomas E. Meng, Foundation President, *Stites & Harbison*, Lexington, KY
- Mary Sue Schulberg, Program Chairman, *NiSource Corporate Services*, Charleston, WV

8:35 - 9:15 a.m.

Freedom of Information Laws: Protecting Your Company's Proprietary Information Within the Energy & Mineral Industries

The federal Freedom of Information Act or "FOIA" is a public disclosure statute; however, it's well-established that there are legitimate business interests that could be harmed through the release of certain information, such as company trade secrets. States, additionally, have adopted FOIA-like disclosure statutes with a trade secret exemption that mirrors the federal counterpart. This session will cover FOIA basics and the trade secrets/confidential business information disclosure exemption, review an example state FOIA statute, and suggest potential applications to your company's regulatory activities, such as permitting.

- Joseph S. Suich, *LeBoeuf Lamb, Greene & MacRae, L.L.C.*, Albany, NY

9:15 - 9:55 a.m.

Military Leave: What Are the Employer's Obligations?

This session covers the legal obligations of employers to returning service personnel, as governed by the Uniformed Services Employment and Reemployment Rights Act.

- Charles M. (Ken) Surber, Jr., *Jackson Kelly PLLC*, Charleston, WV

9:55 - 10:10 a.m.

Break

10:10 - 11:10 a.m.

Attorneys and Technology: Ethical Considerations and Beyond

The use of technology has seen explosive growth in recent years in businesses and professions, including the practice of law. Technology provides great benefits, but with them come risks which are of particular concern to attorneys because of the duty to protect client confidences. This session will cover these risks and ways of addressing them in light of confidentiality concerns.

- David G. Ries, *Thorp Reed & Armstrong*, Pittsburgh, PA

11:10 - 11:45 a.m. **Sharing a Coconut Cream Pie—Joint Tenancy, Rights to Use the Land and Partition**
Who gets which piece of the pie? Who decides how to cut the pie? What if one piece has more meringue than the others? Can you actually eat the pie or do you just get to look at it? This session looks at ownership rights, some of the conflicts and complications which can arise with multiple owners, and how such issues can be resolved.
■ Jill Morgan Harrison, *Penn Stuart & Eskridge*, Abingdon, VA

11:45 a.m. - 12:30 p.m. **Clean Air Act: Mercury and Interstate Air Quality Rules**
The EPA Administrator projects “the most productive period of air quality improvement in our nation’s history.” The touted air quality improvements are predicated on two recent USEPA proposed rulemakings that target power plants for reductions in mercury, sulfur dioxides and nitrogen oxides emissions. This session will cover these recent regulatory efforts and their impact on the power generation industry.
■ Michael H. Winek, *Babst, Calland, Clements & Zomnir, P.C.*, Pittsburgh, PA

Monday Afternoon, May 17

12:30 - 6:00 p.m. Afternoon open for sports, spa or other leisure activities

6:00 p.m. **Special 25th Anniversary Event**
Reception Honoring EMLF Past Presidents
Dinner and Entertainment: The Bob Noone Show
Hosted by Annual Institute Patrons

Tuesday Morning, May 18 – Coal and Mining Tract

8:00 - 8:40 a.m. **Coal Supply Agreements: Remedies for Breach**
■ Pamela A. McCallum, *Buchanan Ingersoll, P.C.*, Pittsburgh, PA

8:40 - 9:30 a.m. **You Have No Idea: Environmental Regulation of Today’s Coal Industry**
This session provides a comprehensive update on the major environmental programs that apply to mining and processing coal in the United States, including SMCRA, the Clean Water Act, the Clean Air Act, RCRA, EPCRA, and the Endangered Species Act. The title comes from the authors’ observations that much of the public (even in leading coal-producing states) believes that coal mining is subject to little or no regulatory oversight and the laws which apply to this activity are lax at best. The published paper will summarize the applicable requirements under all of these laws and discuss recent developments pertaining to the coal industry.
■ Christopher B. Power and Robert M. Stonestreet, *Dinsmore & Shohl, LLP*, Charleston, WV

9:30 - 10:00 a.m. **What You Need to Know . . . for Now: A Coal Law Update**
This presentation will provide a summary of judicial, regulatory, and legislative developments over the past year on environmental and natural resource issues that are significant to the coal law practitioner.
■ Kirsten L. Nathanson, *Crowell & Moring LLP*, Washington, DC

10:00 a.m. Break

10:15 - 11:00 a.m. **Coal Lease Terminations: Minimizing the Pain of Untying the Knot**
This session will cover coal lease terminations, the consequences for both lessor and lessee, and how they can best protect themselves from potential liabilities attendant to ending their relationship.
■ Richard J. Bolen, *Huddleston Bolen LLP*, Huntington, WV

11:00 a.m. - noon **Coal Supply Contracts in Bankruptcy—Do We Really Need Our Day in Court?**
The presentation will address unilateral adjustment of claims between parties under a coal supply agreement. Discussion will include exploration of additional rights in a bankruptcy case by treatment of the agreements as forward or commodity contracts. Also, recent case law on the relative rights of debtors, sureties and regulatory authorities in coal company bankruptcies are defining jurisdictional and other issues when bankruptcy and environmental laws collide.
■ Maureen D. Carman, *Wyatt, Tarrant & Combs*, Lexington, KY
■ John A. Rollins, *Lewis Glasser Casey & Rollins*, Charleston, WV

Noon - 1:30 p.m. **Membership Luncheon** - separate reservation required

Tuesday Morning, May 18 – Oil and Gas Tract

8:00 - 8:40 a.m. **Oil and Gas Update**

This session covers recent developments in litigation and regulation.

■ Bradley Martineau, *Lambert & Martineau*, Indiana, PA

8:40 - 9:30 a.m. **Compulsory Integration or Forced Pooling**

What costs can be charged against a participating or nonparticipating working interest or royalty owners under a forced pooling or integration order? The topic will explore what nondrilling or marketing expenditures may be charged in a calculation of participating costs or risk penalties.

■ Timothy C. Dowd, *Elias, Books & Brown*, Oklahoma City, OK

9:30 - 10:00 a.m. **What's New from FERC**

FERC has been busy over the last year. FERC has issued several new rules and decisions over the last year affecting creditworthiness, LNG, affiliate and other issues of general interest.

■ Kurt Kreiger, Assistant General Counsel, *Columbia Gas Transmission Corp.*, Charleston, WV

10:00 a.m. Break

10:15 - 11:00 a.m. **Revivor of Oil and Gas Leases/Ratification**

Can a lessee bring a terminated or expired lease back to life? Does a lease extension dated after the expiration date of the lease constitute a revivor? What if the lessor continues to accept royalty or other payments? These and other issues will be addressed.

■ Brian M. Johnson, *Greenebaum Doll & McDonald*, Lexington, KY

11:00 - 11:30 a.m. **Market Value Leases and Market Value Royalties—Yesterday, Today and Tomorrow**

A review of issues concerning market value royalty leases and valuation for royalty payment purposes; market value versus market price; majority view; minority view; validity of the minority view today; the determination of market value; reverse “Vela” scenarios; the impact of gas deregulation; the role of index prices; the interplay with post-production costs; and the impact of the implied marketing covenant.

■ James C.T. Hardwick, *Hall Estill Hardwick Gable Golden & Nelson, P.C.*, Tulsa, OK

11:30 a.m. - noon **Oil & Gas Operations and Deed Restrictions Against Commercial Activity**

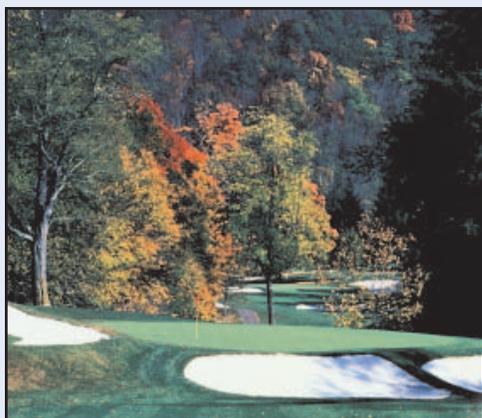
The combination of strong product prices and directional drilling technology has made drilling in urbanized areas more attractive. This session explores the impact of subdivision deed restrictions limiting property use to residential purposes or otherwise restricting commercial activity; how such restrictions have been construed by courts, whether restricted lands can be unitized for spacing, the impact of directional drilling under restricted land with no surface usage, public policy arguments and potential alternate structures to avoid restrictions.

■ John K. Keller, *Vorys, Sater, Seymour & Pease*, Columbus, OH

Noon - 1:30 p.m. **Membership Luncheon**

Program

Separate reservation
required



Tuesday Afternoon, May 18 – General Session Topics

1:30 - 2:30 p.m. **Communicating with a
Government Agency Represented
by Counsel: Where Does the
Ethical Boundary Fall?**

Ethics topic

Many attorneys communicate informally and formally with agency employees. Balancing that communication with the ethical rules for communicating with represented employees within the unique context of governmental entities is a difficult stream to negotiate. This session includes a discussion of the issues arising under the ABA Model Rules and a survey of eastern states' ethics opinions on this topic.

■ Laura E. Beverage, *Jackson Kelly PLLC*, Denver, CO

2:30 - 3:10 p.m. **Who's Going to Pay for This? . . .
I Hope It's Not Me**

This session covers contractual risk management and shifting liability to the responsible party.

■ Michael J. Schessler, *Bowles, Rice, McDavid Graff & Love*, Charleston, WV

3:10 p.m. Break

3:25 - 4:05 p.m. **Emerging Issues in Labor
and Employment Law**

This session addresses the ever changing field of employment law issues, specifically directed to in-house counsel and attorneys in the coal, oil & gas and electric utility industries.

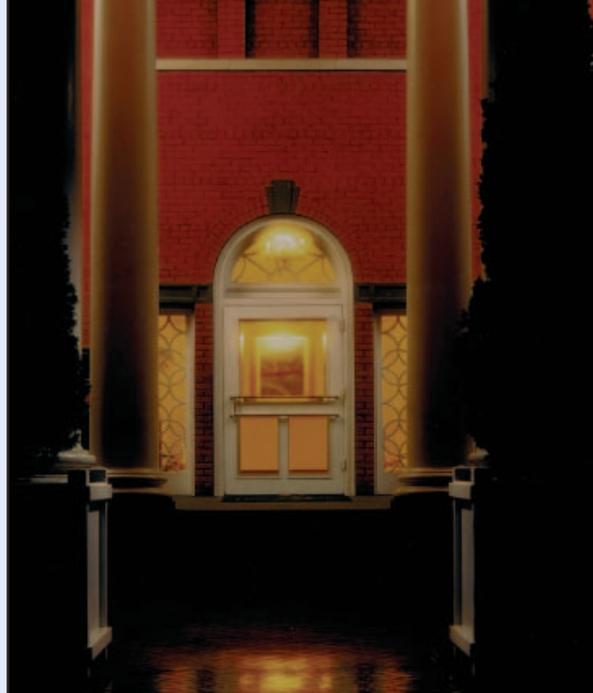
■ Eric Iskra and Kevin Carr, *Spilman, Thomas & Battle*, Charleston, WV

4:05 - 4:45 **A Survey of the Law: When Is an
Employer or Its Corporate
Affiliate Civilly Liable to Its
Employee for Workplace Injury
Despite Worker's Compensation
Immunity?**

This session examines the current status of the law in several mineral producing states on two primary issues – potential tort liability of employers to their employees through exceptions to workers compensation immunity statutes (typically through “intentional harm” allegations), and potential tort liability of the employer's parent company or affiliates under the Good Samaritan Doctrine or similar concepts.

■ Jeff A. Woods and E. Christine Lewis, *Wyatt, Tarrant & Combs*, Lexington, KY

4:45 p.m. Adjourn



Four ways to register

- Online, 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

Cancellation policy

Refunds less a \$75 administrative fee will be given for registration cancellations received by Friday, May 7. No refunds will be given thereafter, but substitutions can be made at any time. NO refunds will be given for the golf or tennis outing on May 16, unless another participant can be substituted. Persons cancelling after May 7 and not entitled to any refund will receive all course materials.

Accommodations

Since 1766, The Homestead has offered visitors an incomparable retreat; an incredibly grand escape, located amidst the beauty of Virginia's Allegheny Mountains. When you visit, you will find luxuriously appointed rooms and suites, superb dining and exquisite shopping, in addition to traditional Southern hospitality in a gracious atmosphere.

The EMLF arrangement with the Homestead for accommodations during the 25th Annual Institute provides for a combined room/full breakfast and dinner plan (MAP plan) with the rate of \$256 for one person per night.

For double occupancy, including breakfast and dinner for both persons, the rate is \$162 per person. Upgrades to suites may be made by adding the following amounts to the nightly package rates: Junior Suite—add \$105; One-bedroom Suite—add \$190; Two-bedroom Suite—add \$220.



**Yes, I want to attend the 25th Annual Institute May 16-18, 2004
at the Homestead Resort, Hot Springs, VA**

Registration fee includes educational sessions and handbook, Sunday evening welcome reception, Monday evening reception, dinner (supplement to MAP plan) and entertainment. Guest registration includes Sunday and Monday evening social events. Separate fee for Tuesday luncheon.

<i>Registration fees</i>	<i>Early Bird (by April 30)</i>	<i>Regular</i>
EMLF member	\$ 400	\$460
General Registration	\$ 700	\$760
Government	\$ 350	\$410
Law Faculty, Young Lawyer, Retiree, Landmen	\$ 300	\$360
Guest registration	\$ 75	\$100

Name _____ Title _____

Organization/firm _____ Daytime phone _____

Address _____ Fax # _____

City, state, zip _____ Email _____

Guest name(s) _____

For planning purposes, mark the events you will be attending, even those which are complimentary or included in the registration fee.

Sunday, May 16

- Golf Outing—Cascades Course \$205 per person (includes cart) Number of participants _____
- Tennis Outing—Round Robin Doubles Tennis \$35 per person Number of participants _____
- Welcome Reception Complementary Number of participants _____

Monday, May 17

- 25th Special Event
Reception, dinner and entertainment Included in registration fee Number of participants _____

Tuesday, May 18

- Luncheon Program \$ 35 per person Number of participants _____

Fees:
Conference registration \$ _____
Guest registration \$ _____
Optional events \$ _____
Total \$ _____

Mandatory CLE and Professional Credit

EMLF programs are presumptively accredited for mandatory CLE credits in most states and by the AAPL. This program has 625 minutes including 120 ethics minutes, excluding keynotes and luncheon speeches. Please indicate state(s) where you are requesting MCLE credits:

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

Card # _____ Expiration date _____

Signature _____

When completed, please fax to 859.257.2884 if paying by credit card or mail if paying by check to Energy & Mineral Law Foundation, University of Kentucky, Room 21, Law Building, Mineral Law Center, Lexington, KY 40506-0048

Don't forget to send in your reservation and deposit for the Homestead; mail-in form on the adjacent page. Reservations must be received by April 12, 2004.

Questions? Call 859.257.7140



Accommodations Reservation Request
Energy & Mineral Law Foundation
 May 15-19, 2004

The following daily rates are per room, per day based on the Modified American Plan (Breakfast and Dinner).

Please circle preferred rate:

ROOM:

Single Occupancy: Double Occupancy
 \$256.00 Per Room: \$324.00 Per Room

Children sharing room with parents:
 0 to 4 years - Complimentary
 13 to 18 years - \$ 68.00

SUITES: (Based on availability)

Junior: Single - \$361.00 Double - \$429.00
 One Bedroom: Single - \$446.00 Double - \$514.00
 Two Bedroom: Available Upon Request

5 to 12 years - \$ 47.00
 Additional Adult - \$115.00 Per Person, Per Day

15% resort service fee and 4.5% sales tax are additional.

Arrival date _____ Departure date _____

Name (please print) _____ No. of adults _____

Room mate (if applicable) _____

Address _____

City _____ State _____ Zip Code _____

Daytime Telephone _____ FAX _____

Email Address: _____

Children's names and ages _____

An advance deposit equal to one night's room rate is required to guarantee your reservation. Early mailing of reservations is highly recommended. Confirmed reservations are based on room availability. Reservations must be received by April 12, 2004 or until the room block has been filled. Deposit may be made with Visa, MasterCard, American Express, Diner's Club, and Discover, which will be charged when reservation request is received. If deposit is by check payment must be received with this reservation request. Deposit is refundable if notice of cancellation is received at least 14 days prior to the scheduled arrival date.

Credit Card No. _____ Expiration date _____

Visa MasterCard American Express Discover Diner's Club CCA Member Card _____

Advance reservations and appointments are suggested for all evening dining and recreation to ensure preferred times. Please call 800-838-1766. Check in time is after 4:00 p.m. Check out time is before 12:00 noon.

Reservations request made by: _____ Date: _____

Dress: During the day, casual attire is preferred. Jeans and bathing suits are discouraged in The Great Hall. In the evening, jacket and tie are required in The Dining Room and jackets elsewhere. Casual attire is welcomed at Sam Snead's Tavern and The Sports Bar.

Mail to: Group Reservations, P.O. Box 2000, Hot Springs, Virginia 24445
 FAX request may be sent to 540-839-7922
 Reservations by fax or mail only, no phone calls please.
 Visit our website at www.thehomestead.com

The Grande Dame of the mountains . . .

Since 1766, The Homestead has offered visitors an incomparable retreat; an incredibly grand escape, located amidst the beauty of Virginia's Allegheny Mountains. When you visit, you will find luxuriously appointed rooms and suites, superb dining and exquisite shopping, in addition to traditional Southern hospitality in a gracious atmosphere.

The Homestead is 15,000 acres of relaxation and recreation for the whole family. Here you may choose to do as little or as much as you desire. There are three premier golf courses— including the acclaimed Cascades Course—as well as the renowned Spa and Spa Salon.

Along with horseback and carriage rides, shooting sports, 100 miles of hiking and biking trails, fly fishing, falconry, bowling, and a year-round children's program.

The guestrooms are exquisitely refurbished, the Spa glistens with the luster of a hundred year heritage perfectly restored, and everything from the Old Course to the Cascades, the tennis courts to the Casino, the Great Hall to the Dining Room, is simply spectacular.

Nothing looks new, mind you, because the restoration the Homestead underwent was done being fully aware of the needs of today's guests, and at the same time fully committed to the best that The Homestead has always been – and continues to be. Perfectly groomed horses trot along the manicured bridle paths so favored by John D. Rockefeller, bearing riders or pulling carriages through some of the most superb mountain scenery in America. More and more families are following in the footsteps of Thomas Edison and Henry Ford, as they make new traditions on the inspiring walking trails.



Taking the Waters in the tradition of Thomas Jefferson at the pools so aptly named in his honor has never been more fully enjoyed, and these important buildings are maintained to their historic charm. The dining room staff artfully serves superb cuisine, always accompanied by the most inviting live dance music. The astonishing array in the Breakfast Buffet has become a new Homestead tradition that even the most dedicated late sleepers find irresistible.

The Presidents Lounge features portraits of the twenty-two Presidents who have all visited The Homestead, together with the portrait of George Washington, whose travels in the area predate even The Homestead, and whose friendship with the founder, Thomas Bullett, are a living part of the Homestead's heritage. It is here that you also find the 1766 Grille, setting an international standard for the finest tableside service, its inspired menu perfectly complemented by an award-winning wine list.

The gentle breezes, tranquil vistas and rocking chairs of the famed front porch beckon you outdoors. After a great game of golf, the historic Indoor Pool invites you into its soothing warm waters, fed by the same continuously flowing, natural mineral spring whose waters have been enjoyed for some nine thousand years.

The history of The Homestead is the story of the world's finest natural mineral springs, surrounded by the beauty of the mountains and valley; the vision and courage of leaders who have shaped their use; and the dedication and commitment of so many, who each gain the greatest pleasure from making certain that the Grande Dame of the mountains is truly your personal home away from home.

Energy & Mineral Law Foundation
University of Kentucky
Room 21, Law Building
Mineral Law Center
Lexington, KY 40506-0048

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The Homestead
Hot Springs, VA

<p>FIRST-CLASS MAIL U. S. Postage PAID Morgantown, WV Permit Number 17</p>
