

Take a trip back in time
28th Annual Institute

May 13-15, 2007

Charleston, South Carolina

**Energy
& Mineral
Law
Foundation**

Program schedule

Sunday, May 13

Golf Outing (John T. Boyd II, coordinator)

4:00 - 6:00 p.m. Registration

6:00 - 8:00 p.m. Welcome Reception – Doubletree Guest Suites Hotel

Monday, May 14

7:00 a.m. EMLF Board of Trustees Breakfast Meeting

8:25 - 8:30 a.m. Welcome Remarks

■ Mary Sue Schulberg, EMLF President, *NiSource Corporate Services*, Charleston, WV

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

8:30 - 9:10 a.m. Climate Change – Prospects for a Change in Policy?

With the change in control of Congress, a landmark case on the issue pending before the U.S. Supreme Court, State initiatives multiplying, and business leaders increasingly calling for mandatory control to reduce greenhouse gas emissions, the stage is set for the United States to change course and develop a comprehensive framework to address climate change. It is no longer a question of “if,” but rather “when” and “how.” This presentation will discuss the state of play in the climate change debate and the elements of a legislative package that would be needed to prevail in today’s political climate.

■ Ann R. Klee, *Crowell & Moring LLP*, Washington, DC

9:10 - 9:45 a.m. Competition for New Energy Projects – Incentives Offered by Various States

The continued call for energy independence coupled with increasing demands for energy is creating new interest in the development of energy projects. Adding to the complexity of this effort is the potential for new global climate change programs that will reduce greenhouse gas emissions and redefine the next generation of energy projects. This session discusses the forces driving new energy projects, highlights the types of new projects being advanced, and reviews the incentives offered by states seeking to attract such projects, which include not only financial incentives and tax credits, but also cost recovery, regulatory waivers, and limitations on liability.

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

9:45 - 10:00 a.m. Break

10:00 - 10:15 a.m. Scholarships and Awards Presentation and Election Results

10:15 - 11:15 a.m. Managing the Crisis Situation

In 2006 the country witnessed how quickly tragedy can strike in the coal industry, and the industry learned how important a controlled, coordinated public response is to mitigating miscommunication that often accompanies chaotic events. The panelists all have worked closely with companies during crisis situations and will share their expertise on how to best manage all aspects of communication when your company is in the spotlight.

■ Joe Gollehon, President, Public Relations, and Matthew Shepherd, VP/

Director of Spokesperson Training, *Charles Ryan Associates*, Charleston, WV

■ Shane M. Harvey, *Massey Energy Co.*, Charleston, WV

■ Thomas F. Hoffman, VP, External Affairs, *CONSOL Energy*, Pittsburgh, PA

11:15 - 11:50 a.m. Energy ADR Forum

This session explains the workings of the Energy ADR Forum, a broad-based coalition of suppliers, customers, regulators, policymakers, law firms, dispute resolution service providers, energy companies and others involved with energy production, transmission, distribution, and regulatory activities, and how the Forum can be used to resolve conflicts in the multibillion dollar energy arena.

■ Robert S. Fleishman, *Covington & Burling LLP*, Washington, DC and Energy ADR Forum Co-chair and Project Director

11:50 a.m. - 12:30 p.m. Employers’ Immunity Under Workers’ Compensation Statutes: Deal or No Deal?

In the face of state and national push for tort reform, and with increased scrutiny on the safety practices of all industry, employee suits are on the rise in many states. This session examines emerging nationwide trends and issues in employee suits filed under exceptions to the immunity granted by workers’ compensation statutes. It explores just how “immune” a participant in a state’s workers’ compensation system actually is, compares and contrasts the nature of employee suits around the nation, and provides insight on how to successfully litigate these cases.

■ Christopher Brumley and Thomas V. Flaherty, *Flaherty, Sensabaugh & Bonasso, PLLC*, Charleston, WV

12:30 p.m. Afternoon free to enjoy Charleston

6:30 - 7:30 p.m. Hosted Reception followed by Dine Around Charleston

Continuing the tradition at the EMLF Annual Institutes, plan to join a group on Monday evening for a “Dine Around” dinner at one of Charleston’s restaurants with others attending the Annual Institute. This is a nice opportunity to meet some new people and get better acquainted with some of the folks you already know. EMLF selects the restaurants and makes the reservations in advance so all you need to do is select the restaurant or the group that appeals to you. You can sign up at the Welcome Reception or at the EMLF registration desk during the Institute.

Tuesday, May 15—Concurrent Sessions

Session A — Oil and Gas

8:00 - 8:35 a.m. Oil & Gas Update

This presentation will review the major court decisions, legislative initiatives, and regulatory actions impacting oil and gas operations in the past year and identify trends that operators will want to track in the coming year. While the focus will be on legal developments in the eastern United States, the presentation will also cover significant federal actions and noteworthy oil and gas law decisions from across the nation.

■ Andrew B. McCallister, *Spilman Thomas & Battle, PLLC*, Charleston, WV

8:35 - 9:10 a.m. Uniform Environmental Covenants Act and Deed Restrictions

Discussion of the basic provisions of the Uniform Environmental Covenants Act, its potential impact on real property transactions in the oil and natural gas industry and the status of continued adoption across the United States. Coupled with statutory deed restrictions, the UECA may help convert the “No Man’s Land” of brownfields or similarly afflicted real property into a company asset again, valuable for transfer with less exposure to future liability for use. This topic is intended more for discussion of use in real property marketing and purchase and sale transactions in the industry (*i.e.* disclosures, negotiations, transfers and minimization of long-term liability) than an environmental dissertation.

■ Beth L. Minear, *NiSource Corporate Services*, Charleston, WV

9:10 - 9:45 a.m. Master Limited Partnership – Will It Work for You?

This session provides an overview of the MLP structure and discusses some of the nuts and bolts of creating and using the structure in the context of mineral transactions.

■ Patrick W. Mattingly, *Wyatt, Tarrant & Combs, LLP*, Louisville, KY

9:45 - 10:00 a.m. Break

10:00 - 10:35 a.m. Horrors of the Record Room

This presentation will be highly practical, setting out anecdotes from others relating to mineral title examination, and structured by citing a specific record room problem and the means for overcoming it.

■ Davin L. Seamon, *Stephoe & Johnson PLLC*, Clarksburg, WV

10:35 - 11:10 a.m. *Tawney v. CNR*: Post-mortem and Appeal

Two of the trial counsel for the landmark case of *Tawney v. Columbia Natural Resources* will outline some of the significant legal issues involved and the status of review and appeal of a West Virginia jury verdict which awarded a class of 8,000+ royalty owners approximately \$130 million in compensatory damages, and \$270 million in punitive damages. Tom Lane, one of the counsel for the royalty owners, and Tim Miller, one of the counsel for defendant Chesapeake/CNR, will discuss issues of concern and interest to the industry. This case, and the issues expected to arise on appeal, will have significant impact on how royalties are calculated and paid, gas sales practices, and royalty accounting practices.

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

■ Timothy M. Miller, *Robinson & McElwee*, Charleston, WV

11:10 - 11:45 a.m. Issues in the Law of Co-Tenancy

This session covers the legal differences and practical distinctions between leases from the co-tenants of surface estates and leases from co-tenants of mineral/oil and gas estates. The law treats the co-owners of the two estates differently. Consequently, issues arise when one or many of the co-tenants desire to have the property mined, and one or more of the co-tenants attempt to block mining operations. If mining occurs, one of the most important issues becomes what is owed to non-signing co-tenants, and who owes it? This presentation also highlights what constitutes waste in each of the estates and the appropriate measure of damages. Also addressed will be whether the law in the Appalachian States requires a lessee to obtain a lease from all of the co-tenants of both estates in order to mine the property.

■ G. Brian Wells, *Wyatt, Tarrant & Combs*, Lexington, KY

11:45 a.m. - 12:30 p.m. Horizontal Wells—Technical and Legal Issues

This presentation will discuss legal and technical issues surrounding horizontal wells and the use and benefits of the dual well system with an enlarged cavity that is part of the patented Z-Pinnate® Technology System versus vertical fracing techniques in both conventional oil and gas and unconventional coal bed methane reservoirs. The paper will also include the application of traditional oil and gas law to horizontal well drilling and production.

■ Arthur J. Wright, Senior Vice President and General Counsel, *CDX Gas LLC*, Dallas, TX

■ Ronald P. McGlade, Manager, *CDX Gas LLC*, Canonsburg, PA

Session B – Coal and Mining

8:00 - 8:45 a.m. Contract Clauses in the Sale of Coal

The advent of coal trading through NYMEX and other platforms has brought with it a new era in the realm of coal supply contracting. Participants in these new markets typically utilize commodity-style trading terms that represent a significant departure from more traditional coal supply agreements. These trading-style terms largely eschew reliance on the UCC and go to great lengths to specify “events of default,” the calculation of damages for non-delivery or non-receipt, termination damages based on “gains” and “losses” as calculated by the non-defaulting party, and the right to demand financial assurance. Frequently taking the form of lengthy master agreements with transaction confirmations, these instruments are replete with provisions dealing with bankruptcy risk, including “representations” by the parties that the transactions are “forward contracts.” This presentation will explore potential pitfalls associated with these trading-style terms and conditions, particularly when used in the context of a more traditional supply contract. The presentation also will examine the calculation of damages under UCC Article 2 and address arguable gaps in the Code’s treatment of such matters, and will consider whether and to what extent the typical trading-style coal transaction document clears up any such ambiguities.

■ Frank B. Harrington, *Foundation Coal Corp.*, Linthicum Heights, MD

8:45 - 9:30 a.m. Recent Developments Affecting Legacy Liability for Retiree Health Benefits in the Coal Industry

Open-ended promises to provide post-employment benefits can bankrupt companies and alter the structure of an entire industry in the absence of a mechanism for funding the benefits or modifying the nature of the promise. This presentation will examine how recent legislative, litigation, and labor contract developments have impacted the daunting and sometimes controversial task of providing health benefits to more than one hundred thousand UMWA retirees and dependents. It will also review the critical differences between managing legacy liability for unionized and non-unionized workforces.

■ John R. Woodrum, *Ogletree, Deakins, Nash, Smoak & Stewart*, Washington, DC

9:30 - 9:45 a.m. Break

9:45 - 10:20 a.m. Coal Law Update

The annual update of cases and regulations impacting the coal industry.

■ Daniel W. Wolff, *Crowell & Moring LLP*, Washington, DC

10:20 - 11:00 a.m. Slurry and Coal Refuse Disposal

Underground disposal of slurry and coal refuse in mine voids. Does the coal owner/lessee have the legal right to dispose of slurry and coal refuse in the mine voids? What are the risks?

■ Stanton D. Ernest, *Rhine, Ernest & Vargo*, Evansville, IN

11:00 - 11:45 a.m. Rivers, Streams and Swales, and the Jurisdictional Reach of the Clean Water Act
after *Rapanos v. United States*

In June 2006 the U.S. Supreme Court abruptly signaled that federal authority to regulate all streams and channels in which water occasionally might flow is limited. Four members of the Court have indicated how that boundary should be drawn, but a majority has yet to embrace the definition. Notwithstanding the disagreement, it seems clear that federal regulatory agencies need to reassess their jurisdiction over, and landowners their legal rights in, such features. In addition to exploring the Constitutional and common law dimensions of this issue, the topic will suggest a more legally defensible basis by which states can assert authority over such streams and avoid the Constitutional problems identified by the *Rapanos* decision.

■ Blair M. Gardner and Michael J. Pattwell, *Jackson Kelly PLLC*, Charleston, WV

11:45 a.m. - 12:30 p.m. Liability for Contractors in Connection with Mining:
To Plus To May Not Equal For

For many years coal operators have carefully tried to utilize contractors so as to maximize operational efficiency and obtain required expertise on an as needed basis. The use of contractors for mining, trucking, shaft sinking and even filling out the thinning ranks of miners and supervisors has continued to grow notwithstanding ongoing legal assaults on the concept of limited liability for independent contractors. Typical efforts to obtain protection from vicarious liability have included the utilization of well crafted agreements, indemnity and insurance requirements and the pre-qualification of contractors. These efforts have helped to manage, but have never eliminated, the risks of using contractors. Developments in the law have further complicated this area, by seemingly creating duties which historically have been held to cross the mine into control. Moreover, with advancements in technology, new sources of “imputed” information may raise the potential for liability even higher. This presentation will look at some of the historical means used to limit liability, review changes in the law which may impact the effectiveness of those means and examine whether some fine-tuning might help better manage the risks in the future.

■ Steven P. McGowan, *Steptoe & Johnson PLLC*, Charleston, WV

12:30 - 2:00 p.m. Lunch Break on your own

Afternoon General Session

2:00 - 2:40 p.m. Best Practices in Electronic Discovery and Document Retention

Appropriate, reasonable and defensible management of your electronic data is critical, particularly in light of the new federal electronic discovery rules. This session will discuss how to design and implement an effective document retention plan and the use of best practices for managing electronic discovery in complex litigation, including guidelines about the preservation and production of Electronically Stored Information.

■ Jeffrey J. Bresch, *Reed Smith LLP*, Pittsburgh, PA

2:45 - 4:45 p.m. Professional Ethics

This session provides an update on several current topics in legal ethics under the ABA Model Rules of Professional Conduct, including:

- ethics issues in conflicts of interest regarding: (1) current clients; (2) direct adversity; (3) lawyer interests and (4) informed consent (ABA Rules of Professional Conduct 1.7),
- ethics issues in conflicts of interest regarding: (1) former clients; (2) lawyer movement among firms; (3) “substantially related” matters; (4) ethical walls and (5) informed consent (ABA Rules of Professional Conduct 1.9 and 1.10 and differing state approaches), and
- ethics issues in fairness to opposing parties regarding suppression of documents (ABA Rules of Professional Conduct 3.4)
- ethics issues in withdrawal from representation (ABA Rules of Professional Conduct 1.16)
- ethics issues in confidentiality regarding joint representations (ABA Rules of Professional Conduct 1.6)
- ethics issues in public statements regarding litigation (ABA Rules of Professional Conduct 3.6 and differing state approaches).

■ John R. Leathers, *Buchanan Ingersoll & Rooney*, Pittsburgh, PA

■ Sarena Burch, *SCANA Corp.*, Columbia, SC

■ Professor John Freeman, *University of South Carolina College of Law*, Columbia, SC

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

4:45 p.m. Adjourn

Annual Institute Accommodations

The host hotel for the Annual Institute is the Doubletree Guest Suites Hotel—Historic Charleston, SC. The hotel is conveniently located at 181 Church Street in the heart of historic Charleston, just across the street from the outdoor market, within walking distance or carriage ride to “Rainbow Row” on Battery Street with its beautiful antebellum homes. There are many other area attractions and restaurants within walking distance of the hotel and we have arranged the program schedules so that Monday afternoon is open to enjoy historic Charleston. The room block for EMLF has sold out but there may still be rooms available at the prevailing rate. Call 843.577.2644 to inquire. Check in is 4:00 p.m. and check-out time is noon. Guest amenities include breakfast on site at the Lighthouse Cafe, Hank’s Seafood Restaurant—voted as Charleston’s Best Seafood Restaurant five years running, room service (dinner only, from Hank’s), high speed Internet access in all rooms, remote guest printing services, and wireless Internet access in hotel public areas, fitness center, gift shop, sightseeing tours.

You may want to check the links below for alternate accommodations in the area.

<http://www.charminginns.com>

<http://www.bedandbreakfast.com/charleston-south-carolina.html>

Join the Foundation at a reduced rate and register at the Member Rate! 2007 individual membership dues \$425. Combined individual membership dues and Annual Institute registration \$850 by April 11, \$920 after April 11.



**Yes, I want to attend the 28th Annual Institute May 13-15, 2007
at Doubletree Guest Suites Hotel, Charleston, South Carolina**

Registration fee includes all educational sessions, meeting materials and handbook, breaks and Sunday and Monday evening receptions. Guest registration includes Sunday and Monday evening receptions.

<i>Registration fees</i>	<i>Early Bird (by April 11)</i>	<i>Regular</i>
EMLF member.....	\$550	\$620
New membership/Annual Institute registration	\$850	\$920
General Registration	\$770	\$840
Government.....	\$350	\$420
Law Faculty, Young Lawyer, Retiree, Landman.....	\$350	\$420
Guest registration.....	\$50	\$50

Additional events

Please email me with more details about the golf outing. _____

Board of Trustees breakfast meeting.....\$30 I will attend _____ Monday, May 14

Name _____ Title _____

Organization/firm _____ Daytime phone _____

Address _____ Fax # _____

City, state, zip _____ Email _____

Guest name(s) _____

Fees:

Conference registration \$ _____

New Membership/Registration \$ _____

Guest registration \$ _____

Additional events \$ _____

Total \$ _____

Mandatory CLE and Professional Credit: EMLF programs are presumptively accredited for mandatory Continuing Legal Education credits in most states and by the AAPL. This program has 500 minutes, including 120 ethics minutes. Full attendance of the program provides a total of 10 hours of CLE in states which calculate 50-minute hours and 8.33 hours of CLE in states which calculate 60-minute hours. Use the space below to indicate states where you are requesting MCLE credits and/or other organizations where you are requesting professional education credits. Reimbursement of application fees may be required for certain states/organizations.

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

Card # _____ Expiration date _____

Signature _____

Cancellation policy

Refunds less a \$75 administrative fee will be given for written registration cancellations received by May 1. No registration refunds will be made thereafter, but substitutions can be made without charge. Persons cancelling after May 1 are not entitled to any refund but will receive the handbook and all course materials.

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