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**May 18-20, 2008**

**EMLF 29th Annual Institute**

***Make Time for the Magic***  
***Disney's BoardWalk Resort***



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# Program schedule

## Sunday, May 18, 2008

TBA

6:00-8:00 p.m.

**Golf Outing**

**EMLF Registration and Hosted Reception –  
Disney's BoardWalk Resort**



**JEFFERY**

## Monday, May 19, 2008

7:00 a.m.

7:00-8:30 a.m.

8:20 a.m.

**Board of Trustees Breakfast Meeting**

**Registrants' Continental Breakfast Buffet**

**Welcome and Introductions**

**Awards and Presentations, Election Report**



**KAHLE**

8:45 - 9:45 a.m.

**Carbon Capture and Storage: Promising  
Technology, But Many Legal Questions Remain**

Carbon capture and storage (CCS) – the capture of CO<sub>2</sub> emissions from power plants and other industrial sources, followed by injection of that CO<sub>2</sub> into deep geologic formations for long-term storage – is emerging as a promising strategy for continued use of fossil fuels as an energy source in face of stringent controls on CO<sub>2</sub> emissions. This session discusses the significant legal issues raised by CCS, such as ownership of the geologic space that will be used for storage, regulation of CCS activities, provision for long term management of storage-sites, and liability for escaped or migrating CO<sub>2</sub>.

■ Professor Bill Jeffery, *Texas Tech University School of Law*, Lubbock, TX



**SMITH**

9:45 - 10:00 a.m.

**Refreshment Break**

10:00 - 10:50 a.m.

**Class Action Fairness Act of 2005:  
Federal Jurisdiction, Exceptions to the Exercise  
of Jurisdiction, and Burdens of Proof**

This session covers the jurisdictional provisions of the Class Action Fairness Act of 2005 (CAFA), including the prerequisites for removal of class actions to federal district court. The speakers will discuss the local controversy, home state and interests of justice exceptions to the exercise of jurisdiction under CAFA, as well as the allocations of burdens of proof. Emphasis will be on the significance of CAFA jurisdiction to class actions involving energy companies.

■ Karen E. Kahle and Amy M. Smith, *Steptoe & Johnson PLLC*, Wheeling and Clarksburg, WV



**WOODS**

10:50 - 11:50 a.m.

**Punitive Damages Issues**

• ***Are Punitive Damages Available for Willful Trespass Claims?***

There are good arguments that punitive damages are duplicative because “gross value” damages for willful trespass are already harsh and penalizing, and a small handful of jurisdictions have so held. This presentation surveys the scope of damages for willful trespass cases in several states.

■ Jeff A. Woods and Helena E. Racine, *Wyatt, Tarrant & Combs, LLP*, Lexington, KY



**RACINE**

• ***Defending Against Punitive Damage Awards***

In 2007, several West Virginia juries returned substantial punitive damage verdicts under a variety of legal theories. This session focuses on the procedural and tactical issues involved in defending against punitive damage awards – from filing the answer through arguing issues on appeal. Special consideration will be given to the handling of punitive damages in class actions and other mass litigation cases.

■ Al F. Sebok, *Jackson Kelly PLLC*, Charleston, WV



**SEBOK**



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& Eskridge*  
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**Membership Chair**  
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International Coal Group, Inc.  
Scott Depot, WV

11:50 a.m. - Noon

### Refreshment Break

Noon-1:00 p.m.

### Multijurisdictional Practice: Lawyering Here, There and Everywhere

The practice of law for most attorneys in the United States today is truly multijurisdictional, with legal services and their impacts in multiple states. This raises issues of potential unauthorized practice of law and choice of law for ethics rules and disciplinary proceedings. This session will explore current developments in this area, with a focus on the recent amendments to the ABA Model Rules of Professional Conduct on multijurisdictional practice and how various states have dealt with them.

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

1:00 p.m.

### Afternoon open to enjoy yourself

8:30-9:30 p.m.

### Dessert Party and *Illuminations: Reflections of Earth*



RIES



WILLIAMS



SULLIVAN



BROOMES



ABBOTT



BAGNELL



MILLER

## Tuesday, May 20, 2008

### Concurrent Session A – Oil and Gas Track

8:00-8:40 a.m.

#### Federal Taxation of Investors in Oil and Gas Drilling Programs

This presentation will be a primer on how investors in oil and gas drilling programs are taxed for federal income tax purposes and how to structure drilling programs to maximize the tax benefits available to various classes of investors. Particular attention will be given to deductions for intangible drilling and development expenses and how to avoid common problems that jeopardize expected tax benefits to investors.

■ L. Frederick Williams, Jr., *Stephoe & Johnson PLLC*, Charleston, WV

8:40-9:20 a.m.

#### Oil and Gas and Coalbed Methane Update

The annual update of oil, gas and coalbed methane litigation.

■ Benjamin E. Sullivan, *Equitable Production Co.*, Charleston, WV

9:20-9:35 a.m.

### Refreshment Break

9:35-10:25 a.m.

#### Bottomhole Bandits? – Balancing Subsurface Trespass Claims Against the Need for Hydraulic Fracturing in Tight Reservoirs

There was a time when fracturing wells might have been considered a luxury, or at least a discretionary option in many instances. Has the U.S. oil and gas industry matured to the point where most of the good reservoirs are gone? Are we now drilling in poor quality reservoirs with permeabilities so low that fracturing has become a necessity to make wells productive? Recent litigation involving hydraulic fractures that penetrated across lease lines suggests that an essential tool of domestic production may be on a collision course with the common law tort of subsurface trespass. This presentation explores the trespass issue, how the courts avoided the trespass question in similar litigation related to waterfloods, and how the judiciary might respond to a claim of trespass when faced with the modern realities of hydraulic fracturing.

■ John W. Broomes, *Hinkle & Elkouri*, Wichita, KS

10:25-11:15 a.m.

#### Two Important Cases Impacting Pennsylvania Oil and Gas Law

This session covers *Excavation Technologies v. Columbia Gas of Pennsylvania* and the issue: Is a gas company liable for economic losses when it marks its lines? The second case discussed is *Penneco v. Dominion Transmission and Dominion Exploration and Production*, which asks Who owns the right to drill under production and storage leases?

■ Kevin C. Abbott and Nicolle S. Bagnell, *Reed Smith LLP*, Pittsburgh, PA

11:15-12:05 p.m.

#### Plan for the Worst – Hope for the Best

With the increase in drilling activity, pipeline construction and construction activity related thereto, it's inevitable that accidents can happen involving catastrophic injuries, production losses and interruptions of drilling or construction progress. Is your company prepared to deal with and investigate the potential claims, litigation, and OSHA investigations? This session evaluates the coordination of safety personnel, insurance coverage, lease and joint operating agreement language, outside contractors, and outside counsel retention and investigation of accident and injury claims.

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

## Concurrent Session B – Coal Track

8:00-8:40 a.m.

### Coal Law Update 2007-08

The annual update on cases affecting the coal industry.

- Brace R. Mullett, *Dinsmore & Shohl LLP*, Charleston, WV



MULLETT

8:40-9:20 a.m.

### The MINER Act: Keeping Out of Trouble

By now, most coal industry legal counsel have read the MINER Act, pondered new regulatory interpretations and have estimated and projected penalty amounts. The potential for liability, both for the company and for individuals has definitely increased over the past couple of years. The real questions on everyone's mind are, "What do we do now?" "How do we keep out of trouble?" "What citations, orders, and penalties should we challenge?" "What citations and orders can lead to future problems?" This presentation focuses on practical answers to those questions and recommendations in light of the new laws and interpretations facing the industry.

- John M. Williams, *Rajkovich, Williams, Kilpatrick & True PLLC*, Lexington, KY



WILLIAMS

9:20-9:35 a.m.

### Refreshment Break

9:35-10:25 a.m.

### Acquisition and Financing of Coal Reserves

Acquisition and financing of coal reserves involves issues distinct from typical commercial real estate transactions. This discussion focuses on those distinctions and provides a practical guide to seller, buyers and financiers of coal reserves – inactive and those currently being mined. Topics include due diligence, approval and rejection standards, title assurance, credit agreements, and creation and perfection of mortgage liens.

- John E. Rhine, *Rhine Ernest LLP*, Evansville, IN



RHINE

10:25-11:15 a.m.

### Clean Water Act Compliance & Enforcement – EPA Targets the Coal Industry

The recent \$20 million civil enforcement settlement between EPA and Massey is the likely first step in EPA's execution of a nationwide enforcement strategy against the coal industry. Coal operations with NPDES permits should expect to fall in EPA's enforcement sights in the near future, if not already. This talk will provide a roadmap through EPA's enforcement practice, including the limits on EPA's authority, starting with "section 308 requests," and proceeding through administrative orders, complaints, settlements, and, if necessary, referral to the Justice Department. Coal companies should take the opportunity now to assess their Clean Water Act compliance. To that end, this presentation will provide an overview of Clean Water Act auditing practices and EPA's voluntary disclosure policy.

- Kirsten L. Nathanson, *Crowell & Moring LLP*, Washington, DC



NATHANSON

11:15 a.m.-12:05 p.m.

### Section 404 Permits, Valley Fills and In-Stream Ponds – What's Next?

A discussion of the far-reaching impacts of Judge Robert C. Chambers' March and June 2007 rulings in the *Ohio Valley Environmental Coalition (OVEC) v. Army Corps of Engineers* litigation, and a detailed analysis of the impacts of Judge Chambers' ruling regarding the Corps' 404 permitting review and of his June 2007 ruling severely limiting the applicability of the waste treatment exclusion to allow in-stream ponds as treatment for discharges from fills. These rulings from the U. S. District Court, Southern District of West Virginia are currently on appeal to the Fourth Circuit and a ruling is likely prior to the May 2008 Annual Institute.

- Allyn Turner, *Spilman Thomas & Battle, PLLC*, Charleston, WV



TURNER

12:05-1:30 p.m.

### Lunch Break – on your own

## Tuesday Afternoon, May 20, 2008

### General Session Resumes

1:30-2:00 p.m.

#### **Employment Law Update: Maximizing Human Resources**

Survey of important new statutes, regulations and case law decisions that will be most pertinent to energy producers.

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



OSSI

2:00-3:00 p.m.

#### **State and Local Regulation of Oil and Gas Operations:**

##### ***Drilling Through the Maze of Preemption, Severed Mineral Estates, and Surface Owner Rights***

The recent demand to develop and operate oil and gas wells has reignited conflict amongst developers, operators, mineral owners, surface owners and state and local regulators. This session analyzes the roles and rights of coal owners and operators, oil and gas developers, surface owners, municipalities and concerned citizens in oil and gas development, including an overview of state and local regulation of oil and gas operations and recent developments in state preemption challenges to these regulations and ordinances under Kentucky, New York, Ohio, Pennsylvania, Virginia, and West Virginia law.

■ Clifford B. Levine and Shawn N. Gallagher, *Thorp Reed & Armstrong, LLP*, Pittsburgh, PA



LEVINE



GALLAGHER

3:00-3:15 p.m.

#### **Break**

3:15-4:15 p.m.

#### **Professional Ethics: Assault on the Attorney-Client Privilege – Confidential Communications at Risk**

Corporations, law firms and individuals have great incentive to self-report wrongdoing and to cooperate with prosecutorial or regulatory authorities as to the substance underlying investigations, whether begun by self-reporting or otherwise. In that process, assistance of counsel is essential. Over the past years, however, prosecutorial authorities have applied pressure in such settings to waive the confidentiality which would otherwise be present in return for “credit” for cooperating and, in some circumstances, for reduced treatment under sentencing guidelines. This presentation will look at the history and current status of such prosecutorial actions, along with legislative initiatives to curb such prosecutorial conduct. We will also look at the special concerns of in-house counsel for law firms as they assist their members in dealing with professional responsibility and liability issues.

■ John R. Leathers, General Counsel, *Buchanan Ingersoll & Rooney P.C.*, Pittsburgh, PA



LEATHERS

4:15 p.m.

#### **Adjourn**



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*Disney's BoardWalk* Resort harkens back in time to a charming seaside village built around the fun and nostalgia of a waterfront entertainment district. *Disney's BoardWalk* Resort offers exquisitely appointed guest rooms and suites with shingled roofs, private courtyards, and New England-style gardens. Adjacent to the hotel, Disney's BoardWalk entertainment district features award-winning dining, exciting nightclubs and exceptional shopping. And, Disney's Boardwalk Resort is just steps away from Epcot® and Disney's BoardWalk ferry boat to Disney-MGM Studios.

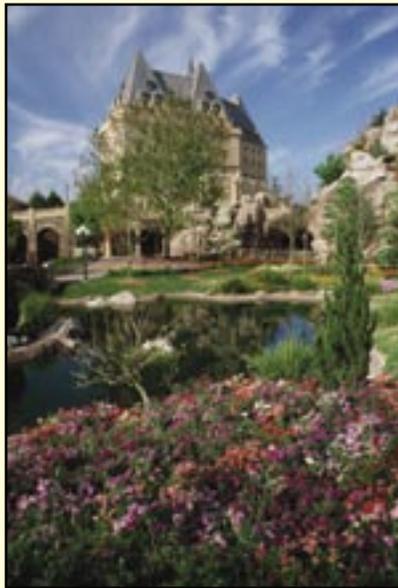
*Special Features:* Health Club; Jacuzzi®, feature pool plus two quiet pools; two lighted tennis courts; business center; wireless Internet (Wi-Fi) access throughout convention center and lobby common areas; in-room high speed internet access; walking distance to Epcot® and Disney's BoardWalk Resort entertainment district; access to five championship golf courses.

*Room Features:* All Guest Rooms have two queen-size or one king-size bed, table and chairs, ceiling fan, and vanity area with two sinks. Some Guest Rooms offer day beds and a private balcony. Guest Room amenities include in-room

wall safe, voice mail, data port on phone, coffee and coffee maker, hair dryer, iron and ironing board, in-room high speed Internet access.

Call 407.934.3372 or make your reservation by going to the EMLF website for the link to reservations. Remember, the same room rates\* you received for your meeting will apply to any nights you add to your visit.

\*Room Rates are subject to change without notice and are based on availability. Group rates may not be combined with any other discounts or offers.



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Go to the e-brochure on the EMLF website for links to making room reservations, purchasing park tickets in advance or learning more about the magic that awaits you.



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Join the Foundation at a reduced rate and register at the Member Rate! 2008 individual membership dues \$425.  
New individual membership and Annual Institute registration \$925 by April 30.



**Yes, I want to attend the 29th Annual Institute May 18-20, 2008  
at Disney's BoardWalk Resort, Orlando, Florida**

Registration fee includes all educational sessions, meeting materials and handbook, Sunday evening reception, Monday continental breakfast buffet, refreshment breaks, evening Dessert Party and *IllumiNations: Reflections of Earth* light show and fireworks viewing at Isle de France at *Epcot*®.

<i>Registration fees</i>	<i>Early Bird (by April 30)</i>	<i>After April 30</i>
Non-member Registration Fee.....	\$790.....	\$890.....
EMLF Member Attorney.....	\$630.....	\$730.....
EMLF Member Landman.....	\$430.....	\$530.....
Young Lawyer (3 years or less).....	\$430.....	\$530.....
Combined dues/ registration.....	\$925.....	\$1,025.....
Board of Trustees Breakfast.....	\$40.....	\$40.....
Guest Registration Fee*.....	\$100.....	\$100.....
Child's Ticket (up to age 18) to <i>Epcot</i> ® Dessert Party and Light Show**.....	\$15.....	\$15.....
Extra Guest Fee (adult) for <i>Epcot</i> ® Dessert Party and Light Show.....	\$50.....	\$50.....

\* Guest registration fee includes Sunday reception at *Disney's BoardWalk* Resort and Monday night Dessert Party and *IllumiNations: Reflections of Earth* viewing at Isle de France at *Epcot*®

\*\* Price per child of any age for subsidized admittance to Monday night Dessert Party and *IllumiNations: Reflections of Earth* viewing at Isle de France at *Epcot*®

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

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

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

Guest name(s) \_\_\_\_\_

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

Fees:

Conference registration \$ \_\_\_\_\_

New Membership/Registration \$ \_\_\_\_\_

Guest registration \$ \_\_\_\_\_

Child's ticket  Number of tickets \$ \_\_\_\_\_

Extra guest ticket  Number of tickets \$ \_\_\_\_\_

Total \$ \_\_\_\_\_

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 620 minutes of instruction, including 120 minutes of professional ethics. Approximately 12.4 CLE hours in 50-minute states and 10.3 hours in 60-minute states will be available. Complete information for reporting your credits will be available at the conference. be required for certain states/organizations.

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

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**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](http://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



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A dessert party Monday night will be the perfect ending to a perfect day at the 29th Annual Institute. The walk-around party at Isle de France, *Epcot*®, *Walt Disney World*® provides a great view of the World Showcase Promenade and fireworks spectacular. Fiery torches, high-energy soundtrack, sky-piercing lasers and thunderous fireworks.

The skies above World Showcase Lagoon transform into a kaleidoscope of colorful pyrotechnic bursts. Comets streak across the sky as video images displayed across a giant sphere tell Earth's incredible tale. The sphere blossoms like a flower exposing a brilliant ball of fire and setting the show's emotional finale.

Website — <http://www.emlf.org> • E-mail — [emlf@aol.com](mailto:emlf@aol.com)

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# 29th Annual Institute

May 18-20, 2008

*Disney's*  
*BoardWalk*  
Resort

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Your  
Dreams!**