

34th Mineral Law Conference

**October 28-30, 2009
Marriott Griffin Gate Resort
Lexington, Kentucky**

**Energy & Mineral
Law Foundation**



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Program Schedule

Wednesday, October 28 — Oil & Gas Track

1:00 p.m. Welcome and Introductions

- C. David Morrison, EMLF President, *Stephoe & Johnson, PLLC*, Clarksburg, WV

1:10-2:00 p.m. Royalty Litigation in Pennsylvania:
Tawney with a Twist

There are over 70 cases pending in Pennsylvania in which lessors are challenging the practice of lessees deducting post-production costs from payments made to lessors. Unlike the *Tawney* case in West Virginia, the lessors are not seeking damages but are seeking to have the leases declared void because the post-production cost deductions reduce the royalty paid below minimum royalty guaranteed under Pennsylvania law. Because such a holding could result in termination of thousands of leases executed since the minimum royalty law passed in 1979, the Pennsylvania Supreme Court has exercised extraordinary jurisdiction to decide the issue. The presentation will cover the arguments made to the court.

- Nicolle Snyder Bagnell and Kevin C. Abbott, *Reed Smith LLP*, Pittsburgh, PA

2:00-2:50 p.m. Permitting and Regulatory Issues with Respect to Marcellus Shale Wells in New York, Pennsylvania, and West Virginia.

Panelists practicing in these States will discuss hot topics in the regulatory and permitting arena with respect to Marcellus Shale natural gas development. Topics to be explored include water acquisition, withdrawal, disposal permits and issues, the well permitting process and obstacles that producers encounter during the permitting process, State hydro-fracturing laws and regulations, preemption issues with respect to local zoning ordinances, and the outlook for the current New York moratorium on Marcellus Shale development.

- Moderator: A. George Mason, *A. George Mason, Jr. PSC*, Lexington, KY
- Robert W. Burns, Jr., *Buchanan Ingersoll & Rooney PC*, Pittsburgh, PA
- Richard L. Gottlieb, *Lewis Glasser Casey & Rollins, PLLC*, Charleston, WV
- Thomas S. West, *The West Law Firm, PLLC*, Albany, NY

2:50-3:05 p.m. Break

3:05-3:55 p.m. The Evolving Eastern Oil and Gas Lease —
Can We Envision a True “Producers 88” for the East?

At the EMLF’s 30th Annual Institute in Hilton Head, a format for an “eastern” oil and gas lease was unveiled and discussed. Building on that effort, this presentation will consider the language and ideas presented at the Annual Institute from the viewpoint of both operators and landowners. The presentation will be a panel discussion of operator interests and landowner interests in selected lease terms. The discussion will seek common ground when possible. Moderator will be Russell L. Schetroma, author of the base lease language.

- Russell L. Schetroma, *Culbertson, Weiss, Schetroma & Schug*, Meadville, PA
- James R. Nicas, Dominion Exploration & Production, Inc., Jane Lew, WV
- Professor Ross H. Pifer, *Dickinson School of Law*, Director of the Agricultural Law Resource and Reference Center, Carlisle, PA

3:55-4:50 p.m. Top Leases in the Appalachian Basin —
Vultures or Eagles?

From the perspective of the existing lessor, the top lease is like a vulture waiting for the base lease to terminate. The top lessor, however, may view the top lease as insurance for the performance of the base lease. This presentation will examine the legal and practical aspects of topleasing, including the property law concepts they implicate, various possible challenges to them, and a review of specific terms used both in top leases and as anti-top lease provisions.

- Karen J. Greenwell, *Wyatt, Tarrant & Combs, LLP*, Lexington, KY



Morrison



Burns



Gottlieb



West



Schetroma



Pifer



Greenwell

4:50-5:40 p.m. Structuring and Documenting Oil and Gas Financing in the Current Market
This session covers basic issues relating to the structure of the loan transaction, proper collateralization of both real property (oil and gas in place) and personal property (equipment and extracted minerals), and comparing and contrasting documents used in oil and gas financing with those used in traditional financing.

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



Seamon

Thursday, October 29 – General Session

8:30-9:20 a.m. Update on Energy and Climate Legislation
Congressional action on energy and climate change (or not) in advance of the Copenhagen climate negotiations will profoundly influence the role for clean energy and energy efficiency. How and at what rate the United States embarks on reducing CO2 emissions and the contribution of new “green jobs” as economic stimulus will influence the continued utilization of fossil fuels.

■ Barry K. Worthington, Executive Director, *U.S. Energy Association*, Washington, DC



Boyd

9:20-10:10 a.m. The Markets for Coal, Natural Gas and Oil – Where Have They Gone/
Where Are They Going?

The presentation will provide an in-depth discussion of the developments in the global energy commodity markets which culminated in the record pricing witnessed in the summer of 2008 and their subsequent retreat in the face of world recession. With global markets beginning to stabilize and the appearance of so-called “green shoots” marking perhaps the return of US economic growth, the realities of today’s energy markets must be assessed:

- What impact will be felt in the US energy markets with gas inventories at record levels?
- With gas hovering around \$3.60/MMBtu, how much coal-fired generation will be displaced?
- How long will gas cut into coal’s share of generation?
- Will LNG make a great impression in the US?
- How long until oil prices return /go beyond \$70/barrel?

These and other key topics will be addressed by John T. Boyd, President and CEO, and Joseph G. Baran, Senior Market Analyst, *John T. Boyd Company*, Canonsburg, PA



Naumann

10:10-10:25 a.m. Break

10:25-11:10 a.m. Staying Ahead of the “Bankruptcy Curve”: Contractual Strategies that
Protect Your Company During Counterparty Bankruptcy

It is now more important than ever to protect your company from the potential insolvency and formal bankruptcy filings within your contractual relationships. This session will discuss proactive contract management strategies used to avoid or minimize financial losses that may result from counterparty bankruptcy.

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



Carman

11:10 a.m.-12:10 p.m. Ethics Session: Attorneys and Clients in Conflict

A panel discussion of ethical obligations arising from conflicts between attorneys and their clients during the course of representation. Based on hypotheticals from *Qualcomm v. Broadcom*, we will explore confidentiality (including the self defense exception), candor to tribunals, reporting misconduct, withdrawal from representation, representing organizations (including reporting up and reporting out) and duties of supervising and subordinate lawyers.

■ Maureen D. Carman, *Attorney at Law*, Versailles, KY

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

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



Leathers



Ries

12:15 p.m. Hosted Luncheon

Thursday Afternoon, October 29 – General Session

1:30-2:20 p.m. State and Federal Alternative Energy Standards

More than half of the states – including Ohio and West Virginia – have now adopted some form of mandatory alternative energy portfolio standard, requiring greater reliance on renewable and alternative energy sources for the generation of electricity. At the same time, various drafts of legislation to create a federal renewable portfolio standard are floating around Congress. This program will review the existing and proposed regulatory schemes and how they are likely to impact consumers and businesses in the coming years.

■ Katerina E. Milenkovski, *Steptoe & Johnson, PLLC*, Columbus, OH



Milenkovski

Save the Dates!

February 4-6, 2010

Winter Workshops
on Energy Law
Captiva Island
Florida

May 9-11, 2010

31st Annual Institute
Amelia Island Plantation
Florida

October 14-15, 2010

35th Mineral Law
Conference
Lexington
Kentucky

2:20-3:10 p.m.

When Worlds Collide: Mineral, Oil and Gas
Development & Municipal Zoning and Land Use
Regulation

This session provides an overview of the recently decided cases in the Pennsylvania Supreme and Commonwealth Courts, *Huntley & Huntley, Inc. v. Borough Council of the Borough of Oakmont* and *Range Resources – Appalachia, LLC v. Salem Township*, and *Hoffman Mining Co. v. Zoning Hearing Bd. of Adams Twp.*, which address the scope of state preemption to municipal land use regulations and ordinances under the Pennsylvania Oil and Gas and Surface Mining Conservation and Reclamation Acts.

■ Shawn N. Gallagher, *Thorpe Reed & Armstrong, LLP*, Pittsburgh, PA



Gallagher

3:10-3:25 p.m.

Break

3:25-4:15 p.m.

“Lien on Me?” – The Impact of Mechanic’s
and Materialmen Liens on Mineral Development

This session provides a survey of various states’ mechanic’s/materialmen lien laws as they impact mineral development. For example, can a mechanic’s lien arising out of work performed for a mineral lessee reach beyond the lessee’s interest in the property and constitute a lien against the lessor’s estate in the property? Does a lease that requires development of the mineral constitute the lessor’s “consent?” Can assertion of a mechanic’s lien against the lessor’s interest constitute slander of title if the contractor worked only for the lessee?

■ Christopher J. Plybon and Erin E. Rich, *Huddleston Bolen*,
Huntington, WV



Plybon



Rich

4:15-5:00 p.m.

The Potential Impact of the Recession on the U.S.
Legal Marketplace

While the legal marketplace as a whole will recover from the current recession, this event has been unique with respect to its short-term challenges and may be equally unique with respect to its long-term impact on the business of law. Please join Mike Short in a discussion on the drivers of change coming from this recession, how law firm leaders are reacting in the short term and planning for the long term, and what a profitable law practice may look like in the future.

■ Michael D. Short, Vice President, *Hildebrandt*, Washington, DC



Short

5:00-5:45 p.m.

Can Witnesses and Lawyers Learn
from Hollywood?

Trial presentation is not like the movies. Or is it? Those familiar with trials often scoff when watching “lawyer” movies and proclaim that the film does not depict reality. While that skepticism is often accurate, witnesses and lawyers can learn many things from the way Hollywood presents lawyer movies. Movie producers seek to entertain and keep the audience’s attention. Trial lawyers seek to convince and keep the audience’s attention in part through presentation of effective witness testimony. This session will use clips from movies with legal themes to demonstrate effective witness preparation and presentation techniques. Being an effective witness, like effective movie presentation, requires many of the same elements. Storytelling, persuasion and style must be packaged to present strong witness testimony and to create a compelling movie. This presentation will reveal that what works well in movies can also work well in the courtroom.

■ James V. Corbelli, *Babst, Calland, Clements & Zomnir, P.C.*,
Pittsburgh, PA

■ Kevin K. Douglass, *Babst, Calland, Clements & Zomnir, P.C.*,
Pittsburgh, PA



Corbelli



Douglass

6:00-8:00 p.m.

Welcome Reception Hosted by EMLF Members
for Conference Registrants, Speakers, Kentucky
Coal Association Members and Guests
Music by “The Corduroy Road” Athens, Georgia

Kentucky Mineral Law Conference

Friday Morning, October 30 — Concurrent Tracks

Climate Change Mitigation

8:00-8:50 a.m. Responding to the Public Policy Debate – Strategies for Developing a Diverse Portfolio for New Age Energy

■ Kathy G. Beckett, *Jackson Kelly PLLC*, Charleston, WV



Beckett

8:50-9:40 a.m. The Appalachian Wind Wars: Legal Obstacles to Capturing Wind Energy from the Appalachian Ridgelines

State renewable energy portfolios, regional carbon reduction agreements and various federal legislative efforts demand that producers utilize more renewable energy resources. Regionally, the ridge lines of the Appalachian Mountains provide one of the more potentially productive in-land sources of wind energy. Yet, attempts to harness that resource in order to meet the growing demand for renewables face both not in my backyard (NIMBY) backlash and increasingly sophisticated legal obstacles. This presentation will consider several such battles that have occurred or are occurring along the Appalachian ridge lines over the last few years. It will also attempt to synthesize the lessons and precedents that have emerged from those battles in order to provide guidance for wind siting attempts in the future.

■ Professor Buzz Belleville, *Appalachian School of Law*, Grundy, VA



Belleville

9:40-10:00 a.m. Break

10:00-10:50 a.m. Overview of a Wind Farm Project

This session will review: 1) considerations for siting; 2) various local and state permits which may need to be obtained; 3) environmental issues unique to wind projects; 4) lease and long-term considerations for the producer / landholder in negotiating a wind lease.

■ M. Howard Petricoff, *Vorys, Sater, Seymour & Pease*, Columbus, OH



Petricoff

10:50-11:30 a.m. Strengthening the Grid: The Role of Mandatory Reliability Standards in Supporting Grid Expansion

Additional transmission capacity is needed to move renewables, but when it comes to justifying investments to strengthen the grid, the key word is reliability. Learn about FERC's mandatory transmission reliability standards, and how projected violations of those standards have underpinned multi-state transmission line projects in PJM. This discussion will also focus on various challenges to the assertion of "need" for grid enhancements.

■ Christopher L. Callas, *Jackson Kelly, PLLC*, Charleston, WV



Callas

11:30 a.m.-12:15 p.m. Conserving Energy: Are Smart Meters and the Smart Grid the "Smart" Way to Reduce Greenhouse Gases?

This session will examine the utility perspective on the potential Smart Meters and Smart Grid have to impact energy consumption and energy demand in today's world. Hear more about how technology, pricing signals and customer behavior change can lead to reductions in usage and demand.

■ Cheryl Bruner, Director, Customer Energy Efficiency, *E.ON U.S. LLC*, Louisville, KY



Bruner

Kentucky Mineral Law Conference, Friday Morning, October 30

— Concurrent Tracks – Coal Track

8:00-8:30 a.m. Coal Law Update

This session will cover recent cases and regulatory issues affecting the coal industry, including an update of EPA standards of performance for coal preparation and processing plants, cumulative hydrologic impact assessment (CHIA) litigation, and coal combustion waste (CCW).

■ Troy N. Nichols, *Wyatt, Tarrant & Combs, LLP*, Lexington, KY



Nichols

8:30-9:00 a.m. Coal Leases: Termination Issues

This session will discuss issues arising at the end of a mineral lease. These issues include the right of a lessee to surrender a lease, the rights and duties on termination of a lease, and selected post-termination rights, such as permanent rights of way granted under a lease. This session will also discuss the interpretation of specific termination provisions and will suggest language that should be used (and avoided) in drafting termination clauses.

■ John H. Henderson, *Stoll Keenon Ogden PLLC*, Henderson, KY



Henderson

9:00-9:30 a.m. Failure to Deliver or Take Coal: Legal Options and Strategies When a Buyer or Seller Fails to Fulfill Its Quantity Requirements Under a Coal Supply Agreement.

This session will discuss reasons a buyer or seller might refuse to perform or be excused from performing its quantity obligations under a coal supply agreement, business and legal strategies to address any such failure to perform, and available remedies under a coal supply agreement and/or at law.

■ Cason P. Carter, Corporate Counsel, *Alliance Coal, LLC*, Tulsa, OK



Carter

9:30 a.m. Break

Members of the Kentucky Coal Association join session

9:45-10:15 a.m. Coal Mining and Valley Fills: Changes in Law and Policy.

This session addresses ongoing and new Clean Water Act (CWA) and National Environmental Policy Act (NEPA) challenges to permitting, and significant developments in agency policy and interpretation relating to Sections 404, 402, and 401 of the CWA. It will focus on the outcome of *Chambers I* decided by the 4th Circuit, subsequent hearings on new permits or enjoined permits, and the ongoing development of EPA objections and comments on CWA Sections 404 and 402 mining and fill permits (such as the claim that discharges from surface mines cause narrative water quality standard violations and down stream impacts). Activities in each Corps of Engineers District will be included.

■ Allyn G. Turner, *Spilman, Thomas & Battle, PLLC*, Charleston, WV



Turner

10:15-11:00 a.m. Hot Topics in Mine Safety Law

This panel examines some of the hottest issues in Mine Safety Law today:

- Mine Shutdown: Under the MINER Act, MSHA can shut down mines for non-payment of assessments. How can you defend against it?
- Significant and Substantial (S&S) classifications continue to be critical on both assessments and Pattern of Violations considerations. What new defenses are developing in recent case law?
- “Flagrant” Violations Under the MINER Act: How can an operator challenge “flagrant” assessments of up to \$220,000? What works and what doesn’t work in litigating assessments?

■ Mark E. Heath, *Spilman, Thomas & Battle, PLLC*, Charleston, WV

■ R. Henry Moore, *Jackson Kelly PLLC*, Pittsburgh, PA

■ Jeffrey K. Phillips, *Steptoe & Johnson PLLC*, Lexington, KY

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



Heath



Moore

11:00-11:30 a.m. Keeping Substance Abuse Out of Coal Mining – Mine Operators and State Agencies Do It Better than the Federal Government Would; Recent Changes under the Family Medical Leave Act.

On September 8, 2008, the U.S. Mine Safety and Health Administration (MSHA) published a Proposed Rule prohibiting the use of alcohol and illegal drugs on mine property. This presentation explores potential problems with the Proposed Rule, the landscape of current state regulations and actions that mine operators either have taken or should consider taking before MSHA issues a Final Rule or a new Proposed Rule on this issue. Recent changes under the Family Medical Leave Act (FMLA) and the interplay between FMLA regulations and employer drug and alcohol policies will also be discussed.

■ Suzan E. Moore, *Alpha Natural Resources*, Abingdon, VA



Phillips

11:30-Noon EPA’s Role and the Issuance of Mining Permits

■ Invited: A. Stanley Meiburg, Acting Regional Administrator, *EPA Region 4*, Atlanta, GA



Williams

12:15 Kentucky Coal Association Luncheon (Separate reservation required)

■ Harold P. Quinn, President, *National Mining Association*, Washington, DC



Quinn



Yes, I want to attend the 34th Mineral Law Conference

First Name _____ M.I. _____ Last Name _____ Nickname _____

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Registration information

Conference Registration

EMLF full Conference registration fee includes meeting materials, refreshment breaks, hosted luncheon Thursday and hosted reception with live entertainment on Thursday evening. Reservation and \$32 payment required for the Kentucky Coal Association luncheon on Friday.

	Through Sept. 25	After Sept. 25
EMLF Member	\$400	\$450
EMLF Landmen	330	380
General Registration fee	550	600
Government/ Law Faculty	350	400
Non-member Landmen	380	430
Young lawyer (3 years or less)	330	380
Law student	100	100
Materials only	100	100

(Written materials will be sent following the conference; UPS shipping charges will be additional)

KCA Friday luncheon 32 32

Accommodations

Marriott Griffin Gate Resort

\$199 per night, single or double plus state and local taxes of 13.42%

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 14 or whenever sell-out occurs. Make your reservations early.

While in Lexington, enjoy racing at Keeneland, October 9-31, post time 1:15, visit the Kentucky Horse Park or tour the Bluegrass horse farms.

Three ways to register

- If registering online, go to <http://www.emlf.org/mineral.aspx>
- If registering by fax, dial 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 14. 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 14 may apply their registration fees, 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 930 minutes of instruction, including 60 minutes of professional ethics. The course is conducted over a 3-day period, providing approximately 18.5 CLE hours for states calculating 50-minute hours, and 15.5 CLE hours for states calculating 60-minutes for a CLE hour. Complete information for reporting your credits will be available at the conference. Attorneys claiming Pennsylvania, Tennessee and Illinois CLE credits are required to pay additional per hour fees.

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