



29th Mineral Law Conference

October 14-15, 2004

Marriott Griffin Gate Resort

Lexington, Kentucky

Energy & Mineral Law Foundation

Program schedule

Thursday, October 14, 2004

8:45 a.m. **Welcome / Remarks**

9:00 **The Right to Develop Minerals**

A look at the evolving issue of what mineral and surface interests are required for a company to conduct various exploration and development activities.

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

9:45 **Expert Witnesses**

Legal and practical implications of retaining experts; expert v. consultant; testifying expert v. non-testifying expert; why and who should retain the expert; privilege, document and disclosure issues; improving the advocacy of experts; expert testimony traps.

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

10:30 **Break**

10:45 **Chevron Deference – 20 Years Later**

Chevron deference is 20-years-old this year. This session examines the current state of the case law applying and interpreting *Chevron U.S.A. v. Natural Resources Defense Council*, and which agency interpretations of law are entitled to judicial deference under this landmark Supreme Court decision.

■ Thomas C. Means and Bridget E. Littlefield, *Crowell & Moring LLP*, Washington, DC

11:30 **Environmental Policy Issues and Mineral Law:**

An Update from the Trenches

This session highlights current activities and some of the initiatives that will be on the agenda of the Kentucky Resources Council.

■ Thomas J. FitzGerald, Director, *Kentucky Resources Council*, Frankfort, KY

11:45 **Coal Law Update: Floods, Silica, Dust . . . Is a Plague of Locusts Next?**

The basis and status of litigation against the coal industry over flooding and silica exposure, plus significant litigation and decisions from the Eastern Coal States will be presented.

■ James S. Crockett, Jr., *Spilman, Thomas & Battle, PLLC*, Charleston, WV

Noon **Oil and Gas Update**

This session updates the status of royalty and other litigation, including mass tort cases and their possible impact on the oil and gas industry.

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

12:15 **Hosted Luncheon in the Marriott tent**

Thursday afternoon, October 14 – Breakout Sessions

Coalbed Methane – 1:30 - 4:30 – Session A

Electric Power Issues – 1:30 - 2:45 – Session B

Labor and Employment – 3:00 - 4:30 – Session B

Breakout Session A – Coalbed Methane

1:30 - 2:30 **Coalbed Methane Development Issues**

The panel discussion will illustrate the practical application of legislative and regulatory provisions in developing coalbed methane.

Moderator: Richard C. Ward, *Wyatt, Tarrant & Combs*, Lexington, KY

- Warren J. Hoffmann, *Frost Brown Todd LLC*, Lexington, KY
- Collon C. Kennedy, *Peabody Natural Gas, LLC*, Golden, CO
- A. George Mason, Jr., *Mason Energy Consultants, Inc.*, Richmond, VA
- William C. Barr, III, *NGAS*, Lexington, KY
- Rick Bender, Director, *Kentucky Division of Oil & Gas*, Frankfort, KY

2:30 - 2:50 **Riparian Issues in Coal Bed Methane Development: Whose Water Is It, Anyway?**

This discussion covers the right to produce water out of CBM wells, and the obligation to replace water supply.

■ R. Neal Pierce, *Robinson & McElwee*, Charleston, WV

3:05 - 3:30 **Utilizing On-Site CBM to Power Mining Operations**

■ Hans Naumann, *Marshall Miller & Associates*, Lexington, KY

3:30 - 4:00 **Alphabet Soup: Finding the Best Acronym for Disposal of CBM H₂O**

This presentation will discuss disposal options for produced CBM water east of the Mississippi, including direct discharges to surface water, sub-surface injection, and the possibility of other options.

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

4:00 - 4:30 **What's Left in Pandora's Box?**

Unanswered questions an Operator should consider in CBM development – who to lease, what to escrow, when to frac, where to vent and why it matters.

- Jill Harrison, *Penn Stuart & Eskridge*, Bristol, TN

Thursday afternoon, October 14 – Breakout Session B

Electric Power Issues

1:30 - 2:45 **The Brave New World: Real Time Energy Markets**

Regional Transmission Operators (RTOs) like the Midwest Independent System Operator and PJM Interconnection aspire to create single, seamless power markets in the midwest and northeast. Under these markets, transmission congestion is managed with market competition, and participants can trade financial transmission rights on a forward basis. Both RTOs have members in Kentucky. The panel will discuss the status and future of these new wholesale power markets from the viewpoints of the members, operators and electric cooperatives who are not members.

Moderator: Kendrick R. Riggs, *Ogden, Newell & Welch, PLLC*, Louisville, KY

- Michael J. Beer, Vice President Regulation, *LG&E Energy LLC*, Louisville, KY
- Representative, *American Electric Power*, Columbus, OH (invited)
- Ronald R. McNamara, Vice President of Regulatory Affairs and Chief Economist, *Midwest Independent System Operator, Inc.*, Carmel, IN
- Representative, *ACES Power Marketing*, Indianapolis, IN

Labor and Employment Issues

3:00 - 4:00 **To Be or Not To Be . . . Exempt: The Department of Labor's New Fair Labor Standards Act Part 541 Overtime Regulations for "White Collar" Employees**

For the first time in over 50 years the Department of Labor has undertaken a comprehensive revision of regulations which implement the Fair Labor Standards Act's exempt/non-exempt employee classifications which govern overtime pay eligibility for salaried, executive, administrative, professional and outside sales employees. These rules affect virtually every employer because they clarify the job requirements for the "white collar" exemption, and in some cases create new overtime pay obligations. The Labor Department has announced that it will "aggressively enforce" compliance, so all employers need to review their existing pay practices to ensure compliance, and to institute the new "safe harbor" policy which will serve as a defense against liability.

- Alfred B. Robinson, Acting Wage-Hour Administrator, *USDOL*, Washington, DC
- Harold P. Coxson, *Ogletree, Deakins, Nash, Smoak & Stewart, P.C.*, Washington, DC

4:00 **Update on Activities at the National Labor Relations Board (NLRB)**

The National Labor Relations Act guarantees the rights of tens of millions of American workers to choose whether or not to be represented by a labor union or engage in other protected concerted activities. The NLRB oversees thousands of representational elections and unfair labor practice proceedings annually, and will issue decisions in over six hundred appeals arising out of those elections and cases this year. This presentation will address recent landmark decisions, as well as major issues currently pending before the Board.

- Ronald E. Meisburg, Member, *National Labor Relations Board*, Washington, DC

4:30 **Break**

General Session Resumes – Professional Responsibility

4:45 **Records Management and Destruction – Professional Responsibility Considerations**

Records management, including destruction of obsolete paper and electronic records, has been a major issue for businesses and organizations for years. Recent high profile incidents and sanctions have created a new climate in which the sometimes fine line between legitimate destruction and spoliation will be judged. This session presents an overview of current professional responsibility considerations in this area for attorneys, with a focus on the relevant Rules of Professional Conduct.

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

6:00 p.m. **Reception for Kentucky Mineral Law Conference Attendees and Kentucky Coal Association Registrants and Guests**

Hosted by Energy & Mineral Law Foundation Member Law Firms and Companies

Friday Morning, October 15 – Coal Tract

8:00 - 8:45 **Coal Supply Contracts: Impossibility, Commercial Impracticability, and Failure of Purpose**

In times of sharply rising or falling coal prices, parties to coal supply agreements frequently seek ways out. This session reviews the theory and application of the doctrines of impossibility, commercial impracticability, and failure of purpose under the UCC and other applicable contract law in the context of coal supply agreements, including a discussion of "firm agreements," where there are no force majeure clauses or any other options out of the contract.

- Stephen G. Allen, *Stites & Harbison*, Lexington, KY
- Bruce E. Cryder, *Greenebaum Doll & McDonald*, Lexington, KY

8:45 **Picking Up the Pieces After a Coal Company Files Bankruptcy**

This session will focus on a bankruptcy's impact on creditors, individuals, survivors, buyers of assets and interests, and other affected parties. Panelists address creditors' committees, status of contracts, purchasing assets out of bankruptcy, individual liability for civil penalties and reclamation obligations, and bonding issues.

Moderator, William T. Gorton, III, *Stites & Harbison*, Lexington, KY

- Maureen D. Carman, *Wyatt, Tarrant & Combs*, Frankfort, KY
- John A. Rollins, *Lewis Glasser Casey & Rollins, PLLC*, Charleston, WV
- Ethan D. Fogel, *Dechert LLP*, Philadelphia, PA
- Gregory R. Schaaf, *Greenbaum Doll & McDonald*, Lexington, KY

10:15 **Break**

10:30 **Corps of Engineers Permitting Issues**

- John Paul Woodley, Assistant Secretary of the Army (Civil Works), Washington, DC
- Marcus P. McGraw, *Greenebaum Doll & McDonald*, Lexington, KY

11:15 **The 2004 Coal Boom – East and West**

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

11:45 **General Session Resumes**
Records Management in Today's Electronic Workplace

Management of records, including creation, retention and discarding and destruction has always been a challenge for businesses and organizations. The importance of effective records management has increased with the exponential growth in volumes of business records, particularly electronic records. This session reviews legal and business considerations in this area.

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

12:15 **Adjourn – Optional Kentucky Coal Association Luncheon**

Friday morning, October 15, Oil & Gas Tract

8:00 a.m. **Market Access – Gas Gathering Pipeline Capacity Issues**

This presentation will address whether requirements similar to the open access requirements applicable to gas transmission pipelines apply or should apply to gas gathering pipelines.

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

8:45 **Tweaking the Joint Operating Agreement**

This session covers some of the problems created when using the 1989 form JOA, the case law which has developed, and suggests modifications to avoid disputes and litigation.

- Arthur J. Wright, *Thompson & Knight LLP*, Dallas, TX

9:30 **Break**

9:45 **Statutes of Limitation Issues for Energy Lawyers**

Statutes of limitation vary in different mineral law disputes: Is it a tort statute – trespass? Is it a contract statute – lease or joint venture agreement issue? Does the UCC limit actions? Is it a continuing tort? This presentation provides an overview of the various statutes to consider in the mineral law arena.

- Sharon O. Flanery, *Steptoe & Johnson*, Charleston, WV

10:30 **Drafting Oil and Gas Royalty Clauses in Today's Market**

Litigation continues over the method of valuing gas for royalty purposes, and what post-production costs can be charged against a royalty interest. Professor Anderson will analyze some of the royalty clauses which have been the subject of litigation, and explore modifications of traditional clauses to avoid future problems.

- Professor Owen L. Anderson, *University of Oklahoma College of Law*, Norman, OK

11:30 **Break**

General Session Resumes

11:45 **Records Management in Today's Electronic Workplace**

Management of records, including creation, retention and discarding and destruction has always been a challenge for businesses and organizations. The importance of effective records management has increased with the exponential growth in volumes of business records, particularly electronic records. This session reviews legal and business consideration in this area.

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

12:15: **Adjourn – Optional Luncheon with Kentucky Coal Association**
(Separate reservation and payment required)



Yes, I want to attend the 29th Mineral Law Conference

Name _____ Title _____

Organization/firm _____ Daytime phone _____

Address _____ Fax # _____

City, state, zip _____

Email address _____

Friday's KCA luncheon (\$25) Total Payment _____

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

Card # _____ Expiration date _____

Signature _____

Registration information

Conference Registration

EMLF full Conference registration fee includes meeting materials, refreshment breaks, hosted luncheon Thursday and hosted reception Thursday evening. Reservation and \$25 payment required for the Kentucky Coal Association luncheon Friday.

	Through Sept. 24	After Sept. 24
General Registration fee	\$400	\$450
EMLF Member fee	290	340
Government/NPO	220	250
Young lawyer	200	230
KCA Friday luncheon	25	25

Accommodations

Marriott Griffin Gate Resort

\$146 per night, single, double, triple or quad plus state and local taxes

1800 Newtown Pike, Lexington, KY 40511

Call hotel at 800.228.9290 or 859.231.5100 and ask for EMLF rate; room block closes Sept. 24.

Four ways to register

- If registering online, go to <http://www.emlf.org/mineral.htm>
- If registering by phone, call 859.231.0271
- 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
- If registering by on line, go to www.emlf.org

Cancellation policy

Refunds less a \$75 administrative fee will be given for written registration cancellations received by October 6. No registration refunds will be made after October 6, but substitutions can be made without charge.

Mandatory CLE and Professional Credit

Conference accreditation is pending from states with mandatory Continuing Legal Education. Conference consists of 645 minutes, including 60 ethics minutes. Registrants may be required to reimburse EMLF for MCLE filing fees for certain states. Please list the states or organization where you will be seeking professional education credits:

EMLF Surplus Book Sale

October 14-15 at the Marriott!

We've moved our offices and brought everything out of storage—Eastern Mineral Law Foundation special institutes, hardbacks and newer soft-bound volumes of the Annual Institute proceedings, starting with volumes from the mid-1980s through Volume 23 (2002 edition). All surplus special institute handbooks and all surplus annual institute volumes will be available for \$5 per book—first come, first served during the Kentucky Mineral Law Conference at the Marriott. Now's the time to start your collection, pick up missing volumes in the Annual Institute series, or pick up that hard to find coalbed methane special institute handbook from 1989.

Sorry, no mail orders until after October 15, but you can stop by the offices at 340 South Broadway in Lexington to look through what's available.



Energy & Mineral Law Foundation
340 South Broadway, Suite 101
Lexington, KY 40508

**FIRST-CLASS
MAIL**

U. S. Postage

PAID

Morgantown, WV
Permit Number 17

29th Mineral Law Conference

October 14-15, 2004

**Marriott
Griffin Gate
Resort
Lexington, KY**