



31st Mineral Law Conference

Pre-Conference Program on Mineral Titles October 4

October 5-6, 2006 • Marriott Griffin Gate Resort • Lexington, Kentucky

Energy & Mineral Law Foundation



31st Annual Mineral Law Conference

Program schedule

Thursday, October 5 — General Session

8:15 a.m.

Welcome and Introduction

8:30 - 9:00 a.m.

From the Highest Courts

This session highlights cases selected from decisions from the United States Supreme Court and state supreme courts, including *Rapanos v. United States* (Clean Water Act), *BNSF v. White* (EEO), the West Virginia flood litigation, and the decision on royalty deductions in *Estate of Garrison Tawney v. Columbia Natural Resources*.

- Timothy M. Miller, *Robinson & McElwee PLLC*, Charleston, WV
- Kirsten L. Nathanson, *Crowell & Moring LLP*, Washington, DC

9:00 - 10:00 a.m.

General Counsel Roundtable

A national survey revealed a level of dissatisfaction by General Counsel in the service provided by their law firms that might surprise the lawyers hired to do their work. What do GC really think about conflict waiver requests? Alternative billing? The 90-10 rule? What attitude do GC want their lawyer to take with the regulatory agency? Listen in as a panel of General Counsel talk about what lawyers are doing right and doing wrong in dealing with and representing their corporate clients.

- Moderator: Dan L. Stickler, *Jackson Kelly PLLC*, Charleston, WV
- Thomas J. Dostart, General Counsel, *Massey Energy Co.*, Charleston, WV
- Vaughn R. Groves, General Counsel, *Alpha Natural Resources*, Abingdon, VA
- Dale W. Henley, General Counsel, *East Kentucky Power Cooperative*, Winchester, KY
- James T. Ketron, General Counsel, *James River Coal Co.*, Lexington, KY
- Charles W. Kite, General Counsel, *National Coal Corp.*, Knoxville, TN
- Roger L. Nicholson, General Counsel, *International Coal Group*, Ashland, KY
- P. Jerome Richey, General Counsel, *CONSOL Energy Inc.*, Pittsburgh, PA

10:00 a.m.

Break

10:15 a.m. - 12:15 p.m.

Mineral Transactions: From Due Diligence to Closing

An exploration of the significant aspects of mineral transactions, including critical issues in due diligence, regulatory obstacles and requirements, structuring the transaction, and creating the documentation to accomplish the buyer's and seller's intent.

- Moderator: R. Eberley Davis, *Stoll Keenon Ogden PLLC*, Lexington, KY
- Stephen G. Allen, *Stites & Harbison, PLLC*, Lexington, KY
- Jeremiah G. Garvey, *Buchanan Ingersoll & Rooney PC*, Pittsburgh, PA
- Patrick W. Mattingly, *Wyatt, Tarrant & Combs, LLP*, Louisville, KY
- Thomas E. Meng, *Stites & Harbison, PLLC*, Lexington, KY
- Richard D. Rose, *Buchanan Ingersoll & Rooney PC*, Pittsburgh, PA
- John A. Thomason, *Stoll Keenon Ogden PLLC*, Henderson, KY

12:30 - 1: 45 p.m.

Hosted Luncheon & Guest Speaker

The FutureGen Project – Prospects for Emission-Free Power Generation

- Mark David Goss, Chairman, *Kentucky Public Service Commission*, Frankfort, KY

*You
decide—
Register
for all
three days
October 4-6.
Or just the
Mineral
Titles
Track
October 4.
Or just the
Mineral
Law
Conference
October 5-6*

1:45 - 3:15 p.m.

Electric Power Industry Issues

What issues are power generators facing as they plan for increased demand in electric power supply? This session covers the developing technology in power generation, what generating facilities are being built, what transmission lines will be needed, and the environmental and archeological aspects of both generation and transmission projects.

- Moderator: Kendrick R. Riggs, *Stoll Keenon Ogden PLLC*, Louisville, KY
- Michael Beer, *E.ON U.S. LLC*, Louisville, KY
- Roy M. Palk, President and CEO, *East Kentucky Power Cooperative*, Winchester, KY
- Christopher P. Wathen, Principal, *Kenvirons, Inc.*, Frankfort, KY

3:15 p.m.

Break

3:30 - 4:30 p.m.

Conflicts in Operations – SMCRA and Oil & Gas and Timber Operations

Concurrent development of coal, oil and gas, and timber resources often creates conflicts among the owners of development rights: Can wells be permitted on SMCRA-permitted or bonded areas? Can permitted or bonded roads be used by oil and gas operators and timber companies for access to locations? Is mine safety training required if working on or crossing SMCRA-permitted areas? Which agency or tribunal has authority to resolve disputes, and who has standing to seek a determination or relief?

- William M. Herlihy, *Spilman, Thomas & Battle, PLLC*, Charleston, WV
- George A. Patterson, III, *Bowles Rice McDavid Graff & Love, LLP*, Charleston, WV
- George L. Shukis, *Plum Creek Timber Company*, Atlanta, GA

4:30 p.m.

Break

4:40 - 5:40 p.m.

The New Federal E-Discovery Rules – Professional Responsibility Issues (Ethics)

New Federal E-Discovery rules are expected to take effect in December, 2006. These rules raise ethics issues including competence, confidentiality, fairness to opponents and candor to tribunals. They also raise malpractice risks. This session will explore the new rules in light of these professional responsibility issues.

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

6:00 - 7:30 p.m.

Welcome Reception Hosted by EMLF Members for Conference Registrants and Kentucky Coal Association Members, Speakers and Guests
Marriott's Outdoor Tent on the Golf Course

Friday Morning, October 6 — Concurrent Tracks

Oil & Gas Track

8:00 - 8:30 a.m.

Oil & Gas Update

Recent cases and regulatory issues affecting the oil and gas industry will be discussed.

- Benjamin Sullivan, *Lewis, Glasser, Casey & Rollins, PLLC*, Charleston, WV

8:30 - 9:15 a.m.

**Update on West Virginia's Royalty Litigation:
*Estate of Garrison Tawney v. Columbia Natural Resources***

Now that the West Virginia Supreme Court has issued its long-awaited ruling on permissible deductions from royalty payments, what clauses or modifications are needed for the oil and gas lease?

- Timothy M. Miller, *Robinson & McElwee PLLC*, Charleston, WV

9:15 a.m.

Break

9:30 - 10:15 a.m.

Natural Gas Market Supply and Demand

This session provides a look at the intricacies of the supply and demand issues of the natural gas industry – the impact of imports, LNG, decline in domestic production, coalbed-methane, gas-fired power generation, the environmental issues impacting exploration and production, and the environmental benefits driving the use of natural gas.

- W. Jonathan Airey and Gregory D. Russell, *Vorys, Sater, Seymour and Pease LLP*, Columbus, OH

10:15 - 11:15 a.m.

Risk Shifting in Drilling Contracts

Negotiating the risk shifting/indemnity provisions in oil and gas drilling contracts: who has liability for what on specific areas of operations? Professor Anderson wrote the book on drilling contracts, and his presentation reviews the form drilling contracts in use today, the indemnity provisions in each, and compares the resulting liability when the parties make changes to the document.

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

11:15 a.m. - Noon **AAPL Form Operating Agreement – What’s Not to Like?**

Selected provisions of the Joint Operating Agreement are examined, with commentary provided on why and how you should consider modifying particular sections of the form agreement.

- Sharon O. Flanery, *Stephoe & Johnson, PLLC*, Charleston, WV

Coal Track

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

Recent cases and regulatory issues affecting the coal industry will be discussed

- Robert M. Stonestreet, *Dinsmore & Shohl LLP*, Charleston, WV

8:30 - 9:15 a.m. **Mine Safety and Health Law Update**

This session will highlight recent cases and state regulatory issues in health and safety.

- Julia K. Shreve, *Jackson Kelly PLLC*, Charleston, WV

9:15 a.m. **Break**

9:30 - 10:10 a.m. **The MINER Act**

The signing of the Mine Improvement and New Emergency Response Act of 2006 (MINER Act) mobilized the effort to “improve accident preparedness and response at each mine,” in order to increase survival rates following an underground mine accident. This session updates MSHA’s role in implementing the MINER Act in the weeks and months since its passage.

- Ray McKinney, Administrator, Coal Mine Safety & Health, *USDOL /MSHA*, Arlington, VA

10:10 - 10:45 a.m. **Underground Mine Rescue Equipment and Technology**

The new federal MINER Act mandates a written emergency response plan by each underground coal mine operator, periodically reviewed and updated to reflect advances in technology. What’s the latest in breathing apparatus, rescue chambers, self-contained self-rescuers, underground communications and tracking systems?

- Jeffery Kohler, *National Institute of Occupational Safety & Health*, Pittsburgh, PA

10:45 a.m. **Break**

11:00 - 11:30 a.m. **U.S. Army Corps of Engineers Permitting Issues**

As Assistant Secretary of the Army (Civil Works), John Paul Woodley is responsible for the supervision of the Army’s Civil Works program, including programs for conservation and development of the nation’s water and wetland resources, flood control, navigation, and shore protection. Mr. Woodley will update Corps of Engineers permitting policies as they relate to mineral and resource development in light of recent litigation.

- John Paul Woodley, *Assistant Secretary of the Army (Civil Works)*, Washington, DC.

11:30 a.m. - 12:15 p.m. **U.S. Energy Policy and Department of Energy Projects**

This session will address DOE initiatives related to the use of coal, such as coal-to-liquids fuel technology, coal gasification, and clean coal technology such as the near zero emissions power generation technology envisioned in the FutureGen project.

- Invited: The Hon. Jeffrey Jarrett, Assistant Secretary for Fossil Fuels, *USDOE*, Washington, DC

12:15 p.m. **Kentucky Coal Association Luncheon (separate reservation required)**

Mineral Titles Examination

Sponsored by the Energy & Mineral Law Foundation
October 4, 2006 • Marriott Griffin Gate Resort • Lexington, Kentucky

11:00 a.m. Registration

Noon - 1 p.m. Overview: Types and Purposes of Mineral Title Opinions

This session explains the different types of title opinions used in the mineral industry, and how the purpose for the title opinion will affect the title search. Included are stand-up and takeoff titles, lease acquisition, drilling title opinions (including variations for conventional shallow well, coalbed methane well, and deep well), division order title opinions, and security, financing or mortgage opinion.

- Timothy Lowe, *Penn Stuart & Eskridge*, Bristol, TN
- William H. Smith, *Steptoe & Johnson, PLLC*, Charleston, WV

1:00 - 1:45 p.m. Formatting the Opinion – Drafting Considerations

This session will explain how the title opinion should be drafted so that the recipient will have the type of document that will be useful. Examples and explanation of what the typical opinion contains: lands covered, materials examined, ownership, leases and assignment, liens and encumbrances, exceptions (matters which may affect title but are not disclosed by materials examined – railroad rights of way, survey discrepancies, zoning), comments and requirements, and lease exhibits.

- John E. Rhine, *Rhine Ernest & Vargo*, Evansville, IN

1:45 - 2:30 p.m. Practical Aspects of Extracting Title Data from the Records and Organizing the Information into a Useful Format

Where do you look and what do you look for? This session covers information you look for in the County Clerk's office and the County Treasurer's office; the data that must be noted from each instrument; the use of computer data in title searches and the potential for error; the validity of disclaimers in computer searches.

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

2:30 p.m. Break

2:45 - 3:30 p.m. Non-record Title Considerations

This session covers unrecorded documents such as farmouts, joint operating agreements, pooling orders, unitization plans, well-spacing, zoning, environmental considerations, plus quirks, customs and other aberrations that may affect intended operations.

- Sean Cassidy, *Cassidy, Kotjarapoglus & Pohland*, Greensburg, PA

3:30 - 4:15 p.m. Suggestions for Drafting Title Opinions and Title Requirements

This session discusses the rationale behind title requirements; the relative impact of title defect on the proposed use, and offers alternatives

- Jim Kaiser and Tony Wilhoit, *Wilhoit & Kaiser*, Kingsport, TN and Charleston, WV

4:15 - 5:15 p.m. Curing Title Defects Pursuant to Title Opinions

The closing session pulls together the title lawyer who writes the opinion, the curative experts who must fix the problems, and the business person with the corporate perspective: how much do we have to spend on this? Included will be the concept of marketable title, title standards, the use of quitclaim deeds and corrective instruments, and making the business decision to assume the risk and waive certain requirements.

- Natalie L. Anderson, *Equitable Production*, Charleston, WV
- William G. Barr, III, Vice President, *NGAS Resources*, Lexington, KY
- Leslie Miller-Stover, *Equitable Production*, Charleston, WV
- Russell L. Schetroma, *Culbertson, Weiss, Schetroma & Schug*, Meadville, PA

5:15 - 6:30 p.m. Hosted Reception for Registrants and Speakers

Tailor the conference for your needs

Register for all three days—October 4-6.

Or *just* the Mineral Titles Track October 4.

Or *just* the 31st Mineral Law Conference October 5-6.

Registration information

Conference Registration

Mineral Law Conference registration fee includes meeting materials, refreshment breaks, hosted luncheon Thursday and hosted reception Thursday evening. There is a separate registration fee for the pre-conference Mineral Titles Track scheduled for Wednesday, which includes breaks, a Mineral Titles handbook and reception.

	Through Sept. 8	After Sept. 8
General Registration fee	\$430	\$480
EMLF Member fee	330	380
Government/NPO	250	300
Young lawyer/landman	230	280
Law Faculty/Retiree	200	250
Materials only, Mineral Law Conference	100	100
Materials only, Mineral Titles Track	100	100
<i>Written materials will be sent following the conference; UPS shipping charges will be additional</i>		
KCA Friday luncheon (October 6)	30	30
Mineral Titles Track (October 4)	100	100

Accommodations

Marriott Griffin Gate Resort

\$161 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 September 13 or whenever sell-out occurs. Make your reservations early.

Four ways to register

- If registering online, go to <http://www.emlf.org/mineral.aspx>
- If registering by phone, call 859.231.0271
- 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 September 8. 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 September 8 may apply their registration fee, 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 Mineral Law program contains 645 minutes of instruction, including 60 minutes of professional ethics. Approximately 12.9 CLE hours in 50-minute states and 10.75 hours in 60-minute states will be available. The Mineral Titles program contains 300 minutes of instruction, approximately 6 hours of CLE in 50-minute states and 5 hours in 60-minute states. Complete information for reporting your credits will be available at the conference.

**Remember: You can attend the entire conference, or
just the Mineral Titles Track on Wednesday, or
just the 31st Mineral Law Conference Thursday and Friday.**

Yes, I want to attend the conference; see my choices below.

Name _____ Title _____

Organization/firm _____ Daytime phone _____

Address _____

City, state, zip _____

Email address _____

Please check your registration category, and also indicate if you are attending the Mineral Titles Track or the KCA luncheon.

General Registration

EMLF Member Registration

Government/NPO Registration

Young lawyer/Landman Registration

Law Faculty/Retiree Registration

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KCA Friday luncheon (October 6)

Mineral Titles Track (October 4), *no EMLF member discount*

Total Payment \$ _____

State(s) for CLE Credits _____

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

Card # _____ Expiration date _____

Signature _____

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

31st Mineral Law Conference Program Committee

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- Mark E. Heath, Co-chairman, *Spilman, Thomas & Battle, PLLC*, Charleston, WV
- Stephen G. Allen, *Stites & Harbison, PLLC*, Lexington, KY
- A. Dale Anderson, *Anderson & Associates Mineral Land Service*, Mt. Vernon, IL
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- William G. Barr, III, *NGAS Resources, Inc.*, Lexington, KY
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- Brian Wells, *Wyatt, Tarrant & Combs, LLP*, Lexington, KY
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Lexington, KY 40508

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With pre-conference program
October 4, 2006

**Marriott
Griffin Gate Resort
Lexington, KY**

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