



**Mine Safety
& Health Law
Special Institute**
Wynn Las Vegas Hotel
September 22, 2012
Las Vegas, Nevada

**Sponsored by the
Energy & Mineral Law Foundation
and the**

**Rocky Mountain
Mineral Law Foundation**

*in conjunction with the
National Mining Association's
2012 MINExpo International*

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Program schedule

7:30 a.m. Registration Desk Opens
Refreshments

8:30 - 8:40 a.m. Welcome and Introductions
■ Daniel W. Wolff, Program Chair, *Crowell & Moring LLP*,
Washington, DC

8:40 - 9:45 a.m. *Panel Discussion: Litigation Backlog and
Alternative Dispute Resolution*

As federal mine safety practitioners are well aware, the Federal Mine Safety and Health Review Commission (“Commission”) – the agency responsible for adjudicating enforcement and other disputes arising under the Federal Mine Safety and Health Act of 1977 (“Mine Act”) – has been trying to cope with a significant backlog of cases for the past several years, due to a number of factors, including increased penalties and enforcement that was ratcheted up following several mine accidents in 2006 and passage of the Mine Improvement and New Emergency Response Act of 2006. This panel will bring together representatives of the Commission, the Department of Labor’s Office of the Solicitor, in-house counsel, and private practice to discuss the various steps taken to address the backlog and the effect those steps have had on the practice, including the Commission’s hiring of additional administrative law judges (“ALJs”), the Solicitor Office’s hiring of additional attorneys, and the Mine Safety and Health Administration’s (“MSHA”) decision to reinstate its pre-contest conferencing procedure.

■ Gary D. McCollum, Corporate Counsel, *Alliance Coal, LLC*,
Lexington, KY

■ Jason M. Nutzman, Associate, *Dinsmore & Shohl, LLP*,
Charleston, WV

■ Thomas A. Paige, Deputy Associate Solicitor, Office of the
Solicitor of Labor, *Division of Mine Safety and Health*,
Arlington, VA

■ Michael Young, Commissioner, *Federal Mine Safety &
Health Review Commission*, Washington, DC

9:45 - 10:15 a.m. Criminal Enforcement Update
MSHA is not the only enforcer of the Mine Act. The statute also includes criminal provisions, and this session will cover recent criminal cases and trends.

■ Willa B. Perlmutter, Counsel, *Crowell & Moring LLP*,
Washington, DC

10:15 - 10:30 a.m. Break

10:30 - 11:00 a.m. *Flagrant Violations: An Examination of the
ALJ Decisions Interpreting the Meaning of
“Flagrant”*

The 2006 MINER Act created a new category of violations: flagrant. How MSHA would enforce that provision, and how the Commission would interpret it, has been the source of much speculation. The Commission has not yet interpreted the term, but it has been addressed in several ALJ decisions, some of which are now on appeal to the Commission. This session will review those decisions.

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

11:00 a.m. - Noon *Panel Discussion: Regulatory and Legislative Review*

Mine operators are facing an inundation of new regulations, from financial reporting obligations to a litany of safety and health standards that will dramatically affect operations. This panel of industry attorneys composed of in-house and outside counsel will discuss these regulations and related legislative updates.

- Kelly G. Howard, Partner, *Crowell & Moring LLP*, Washington, DC
- Laura E. Beverage, Member, *Jackson Kelly PLLC*, Denver, CO
- Suzan E. Moore, Vice President and Assistant General Counsel, *Alpha Natural Resources*, Bristol, VA
- Gary Broadbent, Senior Attorney, *Murray Energy Corporation*, Alledonia, OH

Noon - 1:30 p.m. Lunch

Guest Speaker: Aric M. Prior, President, *MATRIX Design Group*, Newburgh, IN, will lead a brief and informative discussion about proximity detectors and their use in underground coal mines.

1:30 - 2:45 p.m. *Panel Discussion: MSHA's Right to Information*

Under the Mine Act, MSHA has seemingly broad authority to inspect mines and investigate accidents and operator compliance with the Mine Act and MSHA's regulations. Yet MSHA lacks the general subpoena power that many other agencies with investigative authority have been granted by Congress. Difficult questions therefore arise in a number of circumstances about MSHA's authority to obtain access to certain documents and information that neither the Mine Act nor any MSHA regulation requires an operator to maintain. This panel will bring together a diversity of viewpoints to discuss the thorny issues and disputes that have arisen in recent years concerning MSHA's authority in this area.

- C. Michelle Mitchell-Bromfman, Senior Counsel, *Peabody Energy Corporation*, St. Louis, MO
- Thomas A. Paige, Deputy Associate Solicitor, *Office of the Solicitor of Labor*, Division of Mine Safety and Health, Arlington, VA
- Alexander Macia, Member, *Spilman Thomas & Battle, PLLC*, Charleston, WV
- Melanie J. Kilpatrick, Member, *Rajkovich, Williams, Kilpatrick & True, PLLC*, Lexington, KY
- M. Shane Harvey, Member, *Jackson Kelly PLLC*, Charleston, WV

2:45 - 3:15 p.m. Discrimination and Temporary Reinstatement

This session will review the latest case developments in the area of discrimination under Mine Act § 105(c) and a miner's right to temporary reinstatement

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

3:15 - 3:30 p.m. Break

3:30 - 4:00 p.m. The State of S&S: A Review of *Cumberland Coal Resources, LP* and Its Implications

In *Cumberland Coal Resources, LP*, the Commission held that for purposes of proving a violation of certain standards was significant and substantial ("S&S") – an allegation that has heightened enforcement and penalty implications for operators – MSHA need not prove that the circumstances surrounding the violation were actually conducive to a hazardous condition, long the linchpin of MSHA's S&S burden of proof. The decision is on appeal at the D.C. Circuit Court of Appeals. This session will discuss the case and its prospective implications.

- R. Henry Moore, Member, *Jackson Kelly PLLC*, Pittsburgh, PA

4:00 - 4:30 p.m. Avoiding Rulemaking: MSHA's Increased Use of Policy Documents for Enforcement Purposes

This session will cover recent efforts by MSHA to take enforcement action based not on duly promulgated standards or regulations, but policy documents nominally published as "guidance" which, as enforced, impose obligations on mine operators.

- Adele L. Abrams, Attorney, *Law Offices of Adele L. Adams P.C.*, Beltsville, MD

4:30 - 5:15 p.m. *Panel Discussion: Other Enforcement Trends*

- William K. Doran, Shareholder, *Ogletree Deakins*, Washington, DC
- Noelle Holladay True, Member, *Rajkovich, Williams, Kilpatrick & True, PLLC*, Lexington, KY
- Jonathan R. Ellis, Associate, *Steptoe & Johnson PLLC*, Lexington, KY



Yes, I want to attend the Mine Safety & Health Law Special Institute

Registration fee includes meeting materials and presentations on CD, continental breakfast and breaks, and luncheon.

<i>Registration fees</i>	<i>Early Bird (by September 8)</i>	<i>After September 8</i>
General Registration Fee.....	\$525	\$625
MINExpo Attendees.....	\$425	\$525
EMLF and RMMLF Members.....	\$425	\$525
Government Employees/Attorneys.....	\$225	\$325

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The program will be accredited for attorneys and contains 395 minutes of Continuing Legal Education (CLE), or approximately 6.5 hours in states which calculate a CLE hour based on 60 minutes, and 7.9 hours of CLE credit in states which calculate a CLE hour based on 50 minutes. Materials for the program will be provided on a CD, and will be available for viewing and downloading on the EMLF website at <http://www.emlf.org> after September 8. If your state bar requires hard copies of the presentations at the time of the program, please download and print the online materials so you will be able to comply with this requirement.

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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

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