



**Kentucky
Mineral
Law
Conference
Energy &
Mineral
Law
Foundation**

**October
24-26
2012
Hyatt
Regency
Lexington
Kentucky**



Program schedule

Wednesday, October 24

9:00-9:10 a.m. **Welcome and Introductions**

- Timothy M. Miller, EMLF President, *Robinson & McElwee*, Charleston, WV
- Erin E. Magee, Coal Chair, *Jackson Kelly PLLC*, Charleston, WV
- Joseph A. Tarantelli, Oil & Gas Chair, *Chesapeake Energy Corp.*, Oklahoma City, OK

9:10-10:00 a.m. **Oil & Gas Law Update**

This session will provide the annual update on cases and regulations impacting the oil and gas industry.

- Clay K. Keller, *Babst Calland*, Akron, OH

10:00-10:15 a.m. **Break**

10:15-11:05 a.m. **Lessors' Remorse: Fighting the Rising Tide of Lease Bustin'**

This presentation looks at the current trend of lease busting lawsuits and posturing approaches in Pennsylvania, Ohio and West Virginia, as mineral owners look for their piece of the Marcellus and Utica pie. In each of these cases there are elements of fraud, fraudulent inducement, and misrepresentation, combined with the usual arguments of equity and notice. This session will review the current case law, identify trends, and discuss best practices for defending these cases.

- Kevin L. Colosimo, *Burleson LLP*, Canonsburg, PA

11:05-11:55 a.m. **Affidavits of Non-Production, Dormant Mineral Acts, and Other Statutory Remedies in the Marcellus and Utica Shale Plays**

The presentation will address the use of affidavits of non-production both for and against your planned oil and gas operations in the Marcellus and Utica Shale plays. The presentation will discuss the process of filing and disputing an affidavit of non-production and curative steps from a title perspective. Finally, the presentation will compare the use of Dormant Mineral Acts and other statutory remedies to affidavits of non-production.

- Thomas A. Wilson, *Jackson Kelly PLLC*, Canton, Ohio

11:55 a.m.-1:20 p.m. **Lunch Break – On Your Own**

1:20-2:10 p.m. **Pooling Leasehold in the Marcellus and Utica Shale Formations for the Purpose of Horizontal Well Development**

This presentation will cover issues which may arise when forming drilling units within the Marcellus and Utica shale formations for the purpose of horizontal well development. The discussion will include how and why existing leases may need to be amended; how to unitize if the tracts have been divided out after a lease has been executed; and sample provisions to include in the lease.

- Daniel T. Sweeney, *Chesapeake Energy Corp., Eastern Division*, Oklahoma City, OK

2:10-3:00 p.m. **Revising the Joint Operating Agreement for Horizontal Drilling**

The widely used AAPL Joint Operating Agreement (JOA) form was developed for vertical drilling situations. When used for horizontal wells, numerous changes to both definitions and substantive provisions should be considered to avoid problems among the operator and non operating interests. This presentation will discuss the revisions and the rationales for changing the JOA.

- J. Kevin West, *Steptoe & Johnson PLLC*, Columbus, OH

3:00-3:15 p.m. **Break**

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Magee



Tarantelli



Keller



Colosimo



Wilson



Sweeney



West

3:15-4:05 p.m. **Pipeline Easements in Oil and Gas Leases**

The articulation, scope and interpretation of the pipeline rights contained in oil and gas leases continue to trip up unwary lessees, and can have disastrous consequences for both the lessee and its oil and gas operation. This presentation reviews some common lease terms relating to pipeline easements, their judicial interpretations and the issues they present. It will also suggest some drafting solutions for those problems.

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



Greenwell

4:05-4:55 p.m. **Shale Operations: Evolving Air Regulations**

With so much media attention on the water impacts associated with shale activity – ranging from questions of drinking-water impacts to the relationship between underground injection and earthquakes – it’s easy to overlook that the air impacts associated with shale drilling are also under increasing regulatory scrutiny. This presentation will focus on recent federal and state initiatives addressing air impacts associated with oil and gas activities, including U.S. EPA’s recent New Source Performance Standards and National Emissions Standards for Hazardous Air Pollutants for oil and gas activities; ozone nonattainment determinations and their relationship to oil and gas activities; recent developments regarding the ever-murky aggregation of sources; and a sampling of existing and proposed air regulations in states experiencing Utica and Marcellus drilling activity.

■ Mary Ann Poirier, Of Counsel, *Dinsmore & Shohl LLP*, Dayton, OH



Poirier



McLusky

5:30-6:30 p.m. Reception

Thursday, October 25 – General Session

8:30-9:20 a.m. **Beyond the Sierra Club – What the Oil and Gas Industry Can Learn from the Coal Industry**

For more than a decade, environmental groups have launched legal challenges to coal mining operations with varying degrees of success. Now that the Sierra Club has added “Beyond Oil” and “Beyond Natural Gas” to its targeted industries, this session will address what the oil and natural gas industry can learn from coal’s experiences to meet the coming legal campaigns that will be mounted against them.

■ Robert G. McLusky, *Jackson Kelly PLLC*, Charleston, WV



McLusky

9:20-10:10 a.m. **White Stallion v. EPA – Utility MACT Rule**

For critics of the Obama Administration, this rule is at the heart of EPA’s “War on Coal.” EPA acknowledges that it is the most expensive rule ever issued under the Clean Air Act, but argues that the public health benefits of the rule are much greater than its costs. All sides agree that, if it remains in place, the rule will force a number of coal-fired power plants to shut down and increase the demand for natural gas. Mr. Holmstead, a former EPA official under the Bush Administration, will discuss the rule and the lawsuits that have been filed to challenge it. He will also discuss the future of the rule and how it will likely be implemented under a second Obama Administration or perhaps revised under a Romney Administration.

■ Jeffrey R. Holmstead, *Bracewell & Giuliani*, Washington, DC



Holmstead



Meisburg

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

10:25-11:15 a.m. **NLRB Efforts to Empower Employees In Non-Union Settings**

The National Labor Relations Board is seeking to establish through administrative rulemaking and case decisions some of what organized labor was unable to obtain in Congress with the Employee Free Choice Act. Much of the NLRB’s activity has focused on enhancing the power of non-union employees – sometimes aided by organized labor and its allies – to engage in concerted activity involving the workplace. These include increased property access, limits on class action waivers and more liberal union organizing rules. This presentation will discuss recent NLRB activism, analyze the potential impact of those efforts on both union and non-union employers, and address what they can do now to put themselves in the best position to deal with the changes. It will also focus on how the upcoming national elections may affect the NLRB and its agenda.

■ Ronald E. Meisburg, *Proskauer Rose LLP*, Washington, DC



Prunty



Meisburg

11:15 a.m.-Noon **Citizens United and American Political Campaigns**

The Supreme Court’s decision in the *Citizens United* case has been the subject of conversation and controversy from the day it was issued. Interest and misconceptions have grown regarding this case and campaign financing during this presidential election year. This presentation will discuss the *Citizens United* decision and related cases, peel away the mystery of Super PACs and other campaign finance arrangements, and provide some thoughts regarding what the future may hold for federal and state campaign finance laws.

■ Allen R. Prunty, *Robinson & McElwee PLLC*, Charleston, WV



Prunty



Mathiascheck

Save the Dates!

■ September 22, 2012

Mine Safety & Health Law
Wynn Las Vegas Hotel
Las Vegas
Nevada

■ October 22-26, 2012

RMMLF Oil and Gas Law
Short Course
Houston
Texas

■ February 10-12, 1023

Winter Workshops
on Energy Law
Lago Mar Resort and Club
Fort Lauderdale
Florida

■ June 16-18, 2013

EMLF 34th Annual Institute
Renaissance Baltimore
Harborplace Hotel
Baltimore
Maryland

12:15 p.m.

Luncheon – separate registration required

Coal Track

1:30-2:20 p.m. **Coal Law Update**

This presentation will provide an update on significant cases and legislation affecting the coal industry.

■ Matthew P. Heiskell, *Spilman, Thomas & Battle PLLC*, Morgantown, WV

2:20-3:10 p.m. **Recent Clean Water Act Consent Decrees**

In recent years a number of Eastern coal operators and others have entered into consent decrees with the federal government and environmental groups that stem from Clean Water Act enforcement actions and citizen suits. Aside from penalty payments, these consent decrees frequently provide for broad injunctive relief such as implementation of compliance management systems and construction of treatment systems to address pollutants like selenium, creating extensive, ongoing operational and management obligations. This presentation will discuss common characteristics of these consent decrees and highlight potential issues of interest to operators.

■ Susan M. Mathiascheck, *Crowell & Moring LLP*, Washington, DC

3:10-3:30 p.m. Break

3:30-4:20 p.m. **Coal Contract Disputes**

A combination of factors recently resulted in mounting coal stockpiles across the United States. This presentation will discuss some of the common areas of contractual disputes between parties to coal supply agreements when the buyer refuses to take coal, the business and legal strategies to address any such failure to perform, and the available remedies under a coal supply agreement and/or at law.

■ Tyson Schwerdtfeger, Corporate Counsel, *Alliance Coal, LLC*, Tulsa, OK

4:20-5:30 p.m. **Methods of Financing Coal Transactions**

This panel will explore the forms of financing that are available to coal companies and many other natural resource companies: equity, debt, and financing from a third party Master Limited Partnership. The criteria, cost, documentation, advantages and disadvantages of each will be explored, compared and maybe even debated.

■ Wyatt Hogan, Moderator, General Counsel, *Natural Resource Partners L.P.*, Houston, TX

■ Nick Carter, President and COO, *Natural Resource Partners L.P.*, Huntington, WV

■ L. Blair DeVan, Vice President and Commercial Officer, *Fifth Third Bank*, Charleston, WV

■ Brennan Smith, Managing Director, Global Metals and Mining, *Citigroup*, Chicago, IL

6:00-7:30 p.m. Hosted Reception

Oil & Gas Track

1:30-5:30 p.m. **Shale State Regulatory and Legislative Update**

This panel will provide an in-depth analysis of the regulatory programs that have developed in key Eastern states focusing on both regulatory and legislative developments in those states. Key regulatory issues will be analyzed on a comparative basis to demonstrate how each state has tackled those issues.

■ Moderator: A. George Mason, *Attorney at Law*, Lexington, KY

■ New York: Thomas S. West, *The West Firm, PLLC*, Albany, NY

■ Ohio: W. Jonathan Airey, *Vorys, Sater, Seymour & Pease*, Columbus, OH

■ Pennsylvania: Craig P. Wilson, *K&L Gates*, Harrisburg, PA

■ West Virginia: Richard L. Gottlieb, *Lewis, Glasser, Casey & Rollins*, Charleston, WV



Schwerdtfeger



Hogan



Carter



DeVan



Mason



West



Airey



Wilson



Gottlieb

6:00-7:30 p.m. Hosted Reception

Friday Morning, October 26 — General Session

8:30-9:30 a.m. **Some Ethics Questions to Ponder**

Questions like “who is the client,” “can the other side talk with my people,” and “when can I get rid of these documents” may seem relatively simple and straightforward when asked. However, in the realm of legal ethics, the answers to these questions can be complex. This ethics CLE lecture will help to answer some of these questions – for the benefit of both the practicing attorney and the business person who retains counsel – and provide practical tips along the way to help you steer clear of some of the pitfalls these issues pose.

■ A.J. Singleton, Deputy General Counsel, *Stoll Keenon Ogden PLLC*, Lexington, KY

9:30-9:45 a.m. Break

9:45-11:00 a.m. **General Counsel Roundtable**

This panel discussion will address the issues facing energy producers, from the perspective of in-house counsel. The panelists are uniquely positioned at a point where the worlds of business and law intersect and will provide valuable insight as to the issues most important to their clients. The discussion will focus on the practices and tools necessary for in-house counsel to advise their clients effectively, including a robust discussion of the importance of the relationship between in-house counsel and outside counsel. Outside counsel will receive valuable advice on how to effectively assist their in-house counterparts as they help their clients navigate through the often complex issues facing energy producers today.

■ M. Shane Harvey, Moderator, *Jackson Kelly PLLC*, Charleston, WV

■ Jo Ellen Diehl Yeary, Vice President and General Counsel, *Northeast Natural Energy*, Charleston, WV

■ Stephen W. Johnson, Senior Vice President and General Counsel, *CONSOL Energy Inc.*, Canonsburg, PA

■ Charles A. Compton, General Counsel, *White Oak Resources LLC*, McLeansboro, IL

■ Mark D. McCormick, General Counsel and Vice President of Human Resources, *United Coal Co. LLC*, Blountville, TN

■ David P. Poole, Senior Vice President, General Counsel & Corporate Secretary, *Range Resources Corporation*, Fort Worth, TX

11:00 a.m. Adjourn



Singleton



Harvey



Yeary



Compton



McCormick



Poole



Accommodations for the conference are at the Hyatt Regency Lexington, 401 West High Street, Lexington, KY 40507. The room rate is \$179 plus tax, currently at 13.4 percent, for reservations made through October 2 or sell out.

Call 1.800.233.1234 and ask for the EMLF Group rate. Check-in time is 3 p.m. and check-out time is noon. Cancellations must be made by 3 p.m. the day prior to arrival. Failure to cancel a guaranteed reservation prior to 3 p.m. on the day prior to arrival will result in a no-show charge.

Located in the heart of downtown Lexington, the Hyatt Regency Lexington is within easy walking distance to many of Lexington’s lively downtown shopping, dining and entertainment destinations. Adjacent to Rupp Arena (home court of the Kentucky Wildcats), the Hyatt offers easy access to The Shops at Lexington Center with a variety of casual dining choices and an array of fine gift and specialty shops.

Parking is provided in the Lexington Convention Center parking lot directly across the street from the Hyatt Hotel. Parking is complimentary for overnight guests of the hotel only and meeting attendees at the Hyatt, based on availability.

Airport shuttle: The Hyatt Regency Lexington offers complimentary shuttle transportation to and from Lexington Bluegrass Airport on a first come, first serve basis. Airport transportation is not guaranteed.

If you have special needs addressed by the Americans with Disabilities Act, please let us know at the time of registration. Also, please advise us if you have special dietary needs.



Located at the heart of Central Kentucky's famed scenic Bluegrass Region, Lexington is known around the world for its role in producing champion racehorses and fine bourbon.

Lexington is the center of the world's Thoroughbred horse industry and is where the top racehorses are bred, born, trained, officially registered, bought and sold, retired to stud and buried. Countless opportunities exist for a close encounter with Lexington's beloved Thoroughbred.

In the Bluegrass, you can meet previous Derby champions — or perhaps catch a glimpse of a future winner on the world's most famous horse farms. Keeneland Race Course, a beautiful park reminiscent of those in England, holds race meets annually in April and October. The season this October runs from October 5 through 27.

In addition, Keeneland is home to Thoroughbred auctions that draw International buyers and price tags that often exceed the million-dollar mark.

The Kentucky Horse Park, a 1,200 acre park dedicated to all breeds of horse, offers visitors a chance to interact with horses. It is the site of the only four-star level equestrian competition in the U.S., the annual Rolex Kentucky Three-Day Event.

Visit the home of true Kentucky bourbon in Lexington's Bluegrass Region. The time-honored methods developed in the early 19th century are still used in our distilleries today. Woodford Reserve, Buffalo Trace, Wild Turkey and Four Roses offer tours that unlock the mysteries and heritage of the United States only native spirit.

Nearly 100 percent of the world's bourbon is produced in Kentucky; there must be something in the water! The limestone shelf that underlies our lush pastures serves as a natural filter providing the pure water necessary for our premium bourbons and a rich source of minerals for the growing bones of thoroughbred yearlings.

History comes to life in Lexington and the Bluegrass Region. Once only an outpost on the fringes of our ancestor's westward expansion, Lexington quickly grew into a thriving community filled with opportunities for education, culture, business and recreation. On the western edge of downtown, visit McConnell Springs, the birthplace of Lexington. Explore life during the early 1800s by touring one of Lexington's four historic homes. Continue the trek through Lexington's history at attractions including: Gratz Park historic district, the campus of Transylvania University, Civil War sites and Shaker Village of Pleasant Hill, a national treasure with 34 restored buildings.

Getting to Lexington is easy! Centrally located at the junction of Interstates 75 and 64, Lexington is the perfect driving destination. By air, arriving in Lexington is accessible and economical. Thirteen cities with large hub airports and six airlines maintain daily flights into and out of Lexington.

Once in Lexington, our central location makes an ideal base from which to explore the entire Bluegrass Region. Within a short drive you'll find pioneer forts, outdoor theatres, crafts fairs, historic railways, scenic byways and much more!



Photos by Jeff Rogers and Lee Thomas, courtesy of the Lexington Convention and Visitors Bureau.

Enjoy Lexington

At right, there are more than 200 antique shops in the Bluegrass ranging from large multi-dealer malls to small specialty stores, ready to tempt you with old Kentucky cabinetry, quilts, imported furniture, Shaker items, Depression glass, and collectibles. At top, spectators gather to watch the thoroughbreds as they circle the walking rings before being saddled for a race at Keeneland Race Course. Middle of the page, costumed interpreters participate in a prayer service at Shaker Village of Pleasant Hill.





Yes, I want to attend the Kentucky Mineral Law Conference

The full conference registration includes both a 3-ring notebook and a CD with meeting materials, continental breakfasts, refreshment breaks and hosted receptions on Wednesday and Thursday. Payments are required for the Thursday luncheon at the Hyatt and the Friday Kentucky Coal Association luncheon at the Hilton.

Registration fees	Conference through Oct. 1	Conference After Oct. 1
Non-member Registration Fee.....	\$590	\$650
EMLF Member	\$440	\$490
Young Lawyer (3 years or less)	\$340	\$390
Law Student	\$50*	\$50
EMLF Thursday Luncheon (Hyatt)	\$32	\$32
KCA Friday Luncheon (Hilton)	\$32	\$32

*Registration fee is waived for the first 5 law students that register from an EMLF member law school. Luncheon is a separate fee.

First Name _____ M.I. ____ Last Name _____ Badge Name _____

Organization/Firm _____ Title _____

Address _____

City, State, Zip _____

Daytime Phone _____ Fax # _____

Email Address _____

State(s) for CLE Credits _____ Do you need AAPL Credit? _____

Fees:

Conference Registration \$ _____

EMLF Thursday Luncheon \$ _____

KCA Friday Luncheon \$ _____

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. Application will be made for 905 minutes of continuing education, including 60 minutes of ethics. If the General Counsel Roundtable is not accredited by some states, there will be 830 minutes of available CLE credit. In states which calculate 50 minutes as a CLE hour, this will be 16.6-18.1 hours of CLE. In states which calculate 60 minutes for a CLE hour, this will be 13.8-15 hours of CLE credit. Complete information for reporting your credits will be available at the conference. Additional fees may be required for certain states/organizations.

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

Card # _____ Expiration date _____

Signature _____ CVV code (security code) _____

Cancellation policy

Full refunds less a \$75 administrative fee will be given for written registration cancellations received by October 1. 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 meeting materials. EMLF members who cancel their registrations after October 1 receive materials and a \$100 credit toward a future program.

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

Look for information about the conference hotel elsewhere in this brochure



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