



**33rd  
Mineral  
Law  
Conference**

**October 16-17, 2008  
Marriott Griffin Gate Resort  
Lexington, Kentucky**

**Energy and Mineral  
Law Foundation**



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## Program schedule

### Thursday, October 16 — General Session

#### **8:20-8:30 a.m. Welcome and Introductions**

■ Maureen D. Carman, Foundation President

■ Karen J. Greenwell, Program Chair

#### **8:30-9:00 a.m. From the Highest Courts**

Review of significant cases from the United States Supreme Court

■ Kirsten L. Nathanson, *Crowell & Moring LLP*, Washington, DC

#### **9:00 a.m.-noon Conflicts in Multiple Mineral Development**

Concurrent mineral development on the same property inevitably creates conflicts among the various parties using or contemplating the use of the same property. Plans are drawn up, permits are in place, the surface owners are cooperative, and operations are finally underway – then the phone rings, and everything changes. This 3-hour mini-track covers the legal issues and the regulatory requirements governing the development of different minerals, points out requirements unique to the development of coal or of oil and gas which may form the basis for a disagreement, and through a series of scenarios examines the practical, legal and technical aspects of development conflicts and possible resolutions to consider before resorting to litigation.

■ Moderator: Michael O. Conley, *Kentucky River Properties*, Hazard, KY

#### **9:00-10:15 a.m. Oil and Gas vs. Coal – Nuts and Bolts**

This session explores “on the ground” conflicts that occur when oil and gas and coal are developed from the same properties, such as deep mining in the vicinity of wellbores, plugging of methane wells in advance of mining, locating and protecting pipelines, joint use of roads and other facilities, overlapping permit areas, and siting of wells – permit blocking by coal operators.

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

■ Nicholas S. Preservati, *Preservati Law Offices, PLLC*, Charleston, WV

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

#### **10:30-11:15 a.m. Regulatory Conflicts and Solutions**

This session addresses the regulatory conflicts that arise when coal and oil and gas development are planned for the same property, and the road blocks which may require a legislative solution.

■ Gregory D. Russell, *Vorys, Sater, Seymour & Pease*, Columbus, OH

#### **11:15 a.m.-Noon Interstate Pipelines vs. Longwall Mining**

This session covers the various statutory, regulatory and common law principles that may apply when longwall mining is proposed in the vicinity of pipelines, or when pipelines are planned in the vicinity of existing longwall mining.

■ Scott Helmholz, *Brown, Hay & Stephens LLP*, Springfield, IL

#### **Commentators:**

■ William G. Barr, III, Vice President, *NGAS Resources, Inc.*, Lexington, KY

■ G. Lynn Colley, Assistant General Counsel, *James River Coal Co.*,  
Lexington, KY

■ Larry W. George, *Law Office of Larry W. George, PLLC*, Charleston, WV

■ Robert C. Orndorff, Managing Director of Government Affairs, *Dominion Resources*, Clarksburg, WV



**NATHANSON**



**CONLEY**



**HENDERSON**



**RUSSELL**



**HELMHOLZ**



**BARR**



**COLLEY**



**GEORGE**



**ORNDORFF**

## Noon Hosted Luncheon

■ Speaker: Dr. T. Pearse Lyons, President and CEO, *Alltech, Inc.*, Nicholasville, KY

### 1:30-2:15 p.m. “Climate Change” Is Changing Business

Aside from any specific carbon regulation, “Climate Change” (or the perception of it) is affecting many aspects of the day-to-day activities of businesses both in and out of the mineral and energy industries. Banks and other lenders have adopted lending protocols for fossil fuel projects that can impact the capitalization of a wide variety of projects. Publicly-Traded companies may face new disclosure requirements relating to Climate Change, and must contend with “green shareholders” and their proposals as companies are participating in greenhouse gas inventory and reduction programs sponsored by government agencies and others. Novel legal theories are being tested by plaintiffs in court. Utilities have new considerations in fuel choices, plant construction and design, and fuel contracting terms. Companies are positioning themselves to benefit from current and projected carbon trading programs.

■ Seth A. Rice, *Babst, Calland, Clements and Zomnir, P.C.*, Pittsburgh, PA

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

### 2:15-3:00 p.m. Contracting for Fuel Supplies in a Regulated World

This collaborative presentation looks at utility regulations in West Virginia and Kentucky and their implication on purchases by utilities of fuel supplies. Specific emphasis will be on specific terms of fuel supply contracts. It will also address issues such as purchases from affiliated entities, local versus out-of state suppliers, and overall ability for a regulated utility to recover costs in an era of rapidly rising fuel costs.

■ Timothy W. Dowdy, Senior Corporate Attorney, *E.ON U.S. LLC*, Louisville, KY

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

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

### 3:15-4:15 p.m. In-House Counsel: What Are Lawyers Doing Right (or Wrong) in Working for Their Corporate Clients?

How good is the working relationship among corporate clients, their in-house attorneys, and the outside counsel hired to do work for them? A recent survey of Chief Legal Officers (CLOs) indicates that nearly a quarter expect to decrease the use of outside counsel in the coming year, and half plan to hire additional in-house staff to control costs. Half of CLOs surveyed have either fired or are considering firing one or more law firms in the year ahead – not good news for law firms. Listen in as a panel of corporate counsel share their perspectives on what makes a successful working relationship and what missteps to avoid.

■ Moderator: Dan Stickler, *Jackson Kelly PLLC*, Charleston, WV

■ M. Shane Harvey, General Counsel, *Massey Energy Co.*, Charleston, WV

■ Dorothy E. O’Brien, VP and Deputy General Counsel, *E.ON U.S. LLC*, Louisville, KY

■ Barkley J. Sturgill, Assistant General Counsel, *Arch Coal, Inc.*, St. Louis, MO

■ Brian D. Sullivan, General Counsel, *United Coal Co. LLC*, Bristol, VA

■ John Kevin West, General Counsel, *Equitable Production Co.*, Charleston, WV

### 4:15-4:45 p.m. Contracts Between “Friendlys”: Covering the Risk and Protecting the Business Relationship Through Indemnification and Insuring Agreements

This session focuses on contractual relationships and how to ensure that a contract provides the proper amount of protection to all parties. With particular emphasis on the law of West Virginia, Virginia, Kentucky, Maryland and Ohio, focus will be on these issues: 1) indemnity agreements, including what indemnity agreements can and should cover, particular state law regarding the legality of indemnity agreements, drafting indemnity agreements for the maximum amount of protection; 2) insuring agreements, including coordinating insuring agreements with indemnity agreements to provide the greatest amount of protection to both parties, including parties as additional insureds, proof of insurance, types of insurance coverage, obtaining the proper coverage, ensuring that the party obtaining coverage has obtained the coverage required by the contract, and the effects of failure to provide proper coverage; 3) enforcing the contract in the event of an accident; and 4) general discussion on enforcing insurance coverage in the event of an accident.

■ Jaclyn A. Bryk, *Flaherty, Sensabaugh & Bonasso PLLC*, Charleston, WV

■ Jeffrey M. Wakefield, *Flaherty, Sensabaugh & Bonasso PLLC*, Charleston, WV

### 4:45 p.m.-4:50 p.m. Break

### 4:50-5:50 p.m. Recent Developments in Ethics

This session focuses on ethics for environmental lawyers under the Model Rules of Professional Conduct, with special discussion of ethical problems in complex litigation.

■ Professor Richard H. Underwood, *University of Kentucky College of Law*, Lexington, KY



LYONS



RICE



DOUGLASS



DOWDY



GOTTLIEB



STICKLER



O'BRIEN



STURGILL



BRYK

## Young Lawyers Gathering

Lexington's young lawyers in the EMLF invite other young lawyers attending the Kentucky Mineral Law Conference to join them at the Horse & Barrel Bar for an informal evening starting at 6:00 p.m. on Wednesday, October 15. The Horse & Barrel is located adjacent to DeSha's Restaurant at Victorian Square, 110 N. Broadway, in downtown Lexington. For directions or questions, contact Brian Wells at [bwells@wyattfirm.com](mailto:bwells@wyattfirm.com).

## Save the Dates!

- **September 20, 2008**  
Mine Safety  
& Health Law  
Las Vegas Hilton  
Las Vegas  
Nevada
- **February 5-7, 2009**  
Winter Workshops  
on Energy Law  
Pink Shell Beach Resort  
& Spa  
Fort Myers Beach  
Florida
- **May 17-19, 2009**  
30th Annual Institute  
Hilton Oceanfront Resort  
Hilton Head Island  
South Carolina

**6:00-7:30 p.m.**

**Welcome Reception Hosted by EMLF Members**  
for Conference Registrants and Kentucky Coal  
Association Members, Speakers and Guests

## Friday Morning — Concurrent Tracks

### Track A / Oil, Gas and Renewable Energy

**8:00-8:45 a.m.**

#### **Renewable and Alternative Energy Resources: Prospects for the Appalachian Basin**

Carbon regulation (*i.e.*, limitation) is coming. While some states (California) and regions (New England) have already committed to carbon reduction, many Appalachian states and regions have the great majority of their energy portfolios in coal. What directives can we expect from federal regulations with respect to the coal-using (and coal-producing) states, and what options may be available to the Appalachian Basin to meet whatever carbon reduction goals may be imposed?

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

**8:45-9:15 a.m.**

#### **Royalty Deductions**

Class action royalty litigation continues to proliferate. Recent cases in the Appalachian Basin have produced multi-million dollar verdicts and settlements. The law regarding royalty payment practices continues to evolve and it appears that Kentucky may be the next battleground where traditional and well-established concepts of lease interpretation is subject to attack. The speaker will provide an update on the status of royalty cases recently settled or on appeal in West Virginia, as well as an update on the status of a class action royalty case pending in Kentucky.

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

**9:15-9:30 a.m.**

#### **Break**

**9:30-10:00 a.m.**

#### **Marcellus Shale Gas Play in the Appalachian Basin**

The Marcellus Shale gas play in Pennsylvania has recently attracted much industry attention and is currently one of the most competitive leasing environments in the United States. Several companies have drilled and tested both horizontal and vertical Marcellus Shale wells within the region and have reported very encouraging initial production rate tests. However, extended production data have not been publicly released by these companies and the production data reported to the Pennsylvania Department of Conservation and Natural Resources is held confidential for a period of five years. In addition, the play faces other obstacles including completion water supply, water disposal, natural gas processing, pipeline capacity, and services and materials shortages. The presentation will address the geological characteristics and scope of the play, the key operators, drilling and completion practices, potential gas reserves, and obstacles to large-scale development.

- James Matthew Conrad, Senior Vice President, Oil & Gas Division, *Marshall Miller & Associates, Inc.*, Kingsport, TN

**10:00-10:45 a.m.**

#### **Oil and Gas Lease Clauses – You Want What??**

Company management and landowners are requiring fundamental changes to the language in traditional oil and gas leases. These changes are often made without consideration of the attendant legal risks and ramifications. This presentation will consider several “modern” lease terms being demanded by landowners (such as expanded “free” gas rights, access to logs, seismic data, drilling commitments), and new terms being created daily by oil and gas companies (such as creative leasing and royalty clauses, post-production cost deductions, extended post-lease rights, automatic lease extensions, non-apportionment, anti-top lease clauses, payments in lieu of free gas). Consideration will be given to special lease considerations arising from Marcellus Shale activities. Alas, is the “standard” lease form truly dead? Should it be? Did it ever exist?

- Russell L. Schetroma, *Culbertson Weiss Schetroma & Schug*, Meadville, PA



WAKEFIELD



UNDERWOOD



BELLEVILLE



MILLER



CONRAD



SCHETROMA

**10:45-11:30 a.m. Marcellus Shale and Water Resources: Use, Regulation and Unintended Consequences**

The presentation will provide an overview of the implications of Marcellus Shale exploration on water use and treatment. The presentation will further highlight new practical challenges to the industry which are a result of Marcellus Shale exploration, including third party advocacy and new legislative initiatives which may impact the oil and gas industry.

■ Armando F. Benincasa, *Steptoe & Johnson PLLC*, Charleston, WV



**BENINCASA**

**11:30 – Noon Coalbed Methane Operations**

EPA is soliciting information about water discharges from coalbed methane wells, preparatory to developing Effluent Limitation Guidelines for coalbed methane drilling operations. EPA will be considering whether new effluent guidelines are appropriate, and whether changes to the current zero discharge limitation for onshore oil and gas facilities should apply to discharges from coalbed methane operations. This presentation addresses the general restrictions that apply to oil and gas discharges, with a focus on what is happening with regulation of water discharges from coalbed methane operations, both nationally and in various states.

■ David L. Yaussy, *Robinson & McElwee*, Charleston, WV



**YAUSSY**



**WELLS**

**Noon Adjourn**

## Track B / Coal Track

**8:00-8:30 a.m. Contract Mining Agreements – What You Do and Don't Want**

Coal prices are soaring and operators are considering various alternatives to achieve a high rate of production, including contract mining arrangements. This session looks at specific provisions of contract mining agreements in today's marketplace, and suggests language that lawyers should promote or avoid. Potential pitfalls and advantages of contract mining agreements as an economic alternative in producing coal will be analyzed.

■ G. Brian Wells, *Wyatt, Tarrant & Combs, LLP*, Lexington, KY



**GARDNER**

**8:30-9:00 a.m. Valley Fills: Round WHAT? The Continuing Litigation in West Virginia and Kentucky**

This session provides the latest developments in the ongoing litigation related to mountain top mining in the Appalachian Basin.

■ Blair M. Gardner, *Jackson Kelly PLLC*, Charleston, WV



**STRICKLIN**

**9:00-9:15 a.m. Break**

**9:15-9:45 a.m. The Climate Challenge and America's Coal**

This session looks at the activities of the American Coalition for Clean Coal Electricity (ACCCE), which supports energy policies that balance coal's ability to provide affordable and reliable electricity with the need to protect the environment. ACCCE advocates the development of advanced clean coal technologies to produce electricity, and investment in the technologies needed for carbon capture and sequestration and other low-carbon technologies.

■ Joe Lucas, Vice President-Communications, *American Coalition for Clean Coal Electricity*, Alexandria, VA

**9:45-10:15 a.m. Climate Change Initiatives and Legislative Prospects**

This session compares Congressional initiatives to enact some form of legislation to control greenhouse gas emissions, distinguishes the key concepts in each bill, how each would impact the coal industry and what legislation is likely to succeed.

■ Glenn Kelly, VP – Government Affairs, *National Mining Association*, Washington, DC

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

**10:30-11:00 a.m. Update from the Mine Safety & Health Administration**

This session covers policy and enforcement activities of MSHA, following passage of the Mine Improvement and New Emergency Response ("MINER") Act of 2006, which included provisions covering emergency response plans, self-contained self rescuers, mine rescue teams, use of improved technology, sealing abandoned areas, increased civil and criminal penalties, and new penalties for failure to timely report mine accidents.

■ Kevin G. Stricklin, Administrator for Coal Mine Safety and Health, Mine Safety and Health Administration, *U.S. Department of Labor*, Arlington, VA

**11:00-11:30 a.m. U.S. Coal Supply and Demand**

Despite the availability of the world’s largest coal reserves, a growing global demand for coal, and rising market prices, the U.S. coal industry still must contend with regulatory uncertainty that limits its potential to move forward with projects and clean coal technology to fully utilize the resource and help ease a looming energy crisis. This session looks at the current state of the domestic coal industry and the issues that must be resolved.

■ Joseph W. Craft, III, J.D., President and CEO, *Alliance Resource Partners, L.P.*, Tulsa, OK



**CRAFT**

**11:30 a.m.-Noon Kentucky’s Energy Future**

It is critical that our policy makers enact laws and regulations governing the prudent and efficient production and use of energy in our Commonwealth and our country. From the CEO of Kentucky’s largest coal fired utility, we will hear his views on the many challenges facing the existing coal fired generation industry, as well as the importance of enacting government policies that are both economically and environmentally sound.

■ Victor A. Staffieri, Chairman and CEO, *E.ON U.S. LLC*, Louisville, KY



**STAFFIERI**

**Noon Adjourn**

**12:30 p.m. Kentucky Coal Association Luncheon**

*Separate reservation and payment required*

Guest speaker – Senator Mitch McConnell (R-KY)

*EMLF Book Donation Project – How You Can Help*

The EMLF is sponsoring a children’s book donation project to benefit the Carnegie Center for Literacy and Learning <[www.carnegieliteracy.org/index.htm](http://www.carnegieliteracy.org/index.htm)>, whose mission is to create and support programs that foster literacy and learning as a lifelong process for all citizens.

Through the gift of books, EMLF will encourage childhood literacy in the Central Kentucky area. Please bring new or gently used books for young or older children to the registration desk at the Kentucky Mineral Law Conference. Checks will also be accepted, made payable to “The Carnegie Center for Literacy and Learning” or to “EMLF.”

A year ago at the EMLF Annual Institute, we collected over 200 books for a children’s reading program in Charleston, South Carolina. We invite you to assist in another successful partnership to enhance community literacy.

Thank you for your support.

Maureen D. Carman  
*President*





## Yes, I want to attend the 33rd Mineral Law Conference

First Name \_\_\_\_\_ M.I. \_\_\_\_\_ Last Name \_\_\_\_\_ Title \_\_\_\_\_

Organization/firm \_\_\_\_\_ Daytime phone \_\_\_\_\_

Address \_\_\_\_\_ Fax # \_\_\_\_\_

City, state, zip \_\_\_\_\_

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Friday's KCA luncheon (\$30) Total Payment \_\_\_\_\_

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

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## Registration information

### Conference Registration

EMLF full Conference registration fee includes meeting materials, refreshment breaks, hosted luncheon Thursday and hosted reception Thursday evening. Reservation and \$30 payment required for the Kentucky Coal Association luncheon on Friday.

	Through Sept. 19	After Sept. 19
EMLF Member	\$370	\$420
EMLF Landmen	300	350
General Registration fee	480	530
Government/NPO/Landman	320	370
Law Faculty/Retiree	320	370
Young lawyer (3 years or less)	300	350
Law student	75	75
Materials only	100	100
<i>(Written materials will be sent following the conference; UPS shipping charges will be additional)</i>		
KCA Friday luncheon	30	30

### Accommodations

Marriott Griffin Gate Resort

\$179 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 September 17 or whenever sell-out occurs. Make your reservations early.

While in Lexington, enjoy racing at Keeneland, October 3-25, 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 September 30. 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 30 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 660 minutes of instruction, including 60 minutes of professional ethics. Approximately 13.2 CLE hours in 50-minute states including 1.2 hours of ethics and 11 hours in 60-minute states including 1 hour of ethics will be available. Complete information for reporting your credits will be available at the conference.

## Program Committee

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- Maureen D. Carman, *Wyatt, Tarrant & Combs, LLP*, Lexington, KY
- William K. Caylor, *Kentucky Coal Association*, Lexington, KY
- Michael O. Conley, *KRCC Oil & Gas*, Hazard, KY
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