

A big win for West Virginia

On June 30, 2022, in a case styled *West Virginia, et al., v. Environmental Protection Agency, et al.*, the Supreme Court of the United States gave West Virginia, and the numerous states supporting it, a victory by striking down the Obama-era Clean Power Plan (CPP) that would have radically restructured the generation of electricity in the United States. The Court ruled that EPA was not authorized by Congress to expand its pollution control authority to force a change from fossil fuels to renewable energy sources.

The case involved an interpretation of Section 111(d) of the Clean Air Act, which allows EPA to set limits for certain pollutants based on the "best system of emission reduction" or BSER. During the Obama administration, EPA had proposed regulation of electricity generators under a novel

approach to Section 111 that would have forced generators to move from coal-fired generation to wind and solar, or else purchase credits through a cap-and-trade system. The CPP was stayed by the Supreme Court before it could be implemented, and was later replaced by the Trump administration with the American Clean Energy (ACE) rule. Litigation ensued, followed by the Biden administration's announced intention to withdraw the ACE and re-instate the CPP, leading to a challenge by West Virginia and other plaintiffs.

Big win for WV

Continued on page 14



*David Yaussy
Spilman Thomas
& Battle, PLLC*

Register now for 2022 Sports Weekend fun

Register now to join the fun at the 2022 GO-WV Sports Weekend beginning on Friday, September 16, at Bridgeport Country Club.

Activities begin at 8:00 a.m. with registration and breakfast at Bridgeport Country Club.

The four-person scramble golf tournament features a shotgun start at 9:00 a.m. at the Bridgeport Country Club course. The foursome fee, including registration, is \$700 for members and \$900 for nonmembers. Hole sponsorships are available for \$1,000 and include registration, your foursome, signage at your hole and your logo on gowv.com and in *GO-WV News*.

Sporting clay arrangements have been made at "A Mountain Clays," 1900 Meadowbrook Road, Bridgeport, beginning at 9:00 a.m. Your \$175 per person fee includes registration and 100 rounds of sporting clays. Should you have any questions, please call Lori Miller Smith directly at (304) 344-9867.

Lunch will be served following golf and sporting clays back at the Bridgeport Country Club. Skill prizes will be awarded to the golfers and shooters, plus door prizes galore for all to win!

Come join us on Saturday, September 17, and cheer on the Mountaineers in the game against the Towson University Tigers. GO-WV will not have tickets to the game; you need to make your own arrangements for tickets. The game is currently scheduled to have a 1:00 p.m. kick-off.

GO-WV's Sports Weekend attracts the main players and decision makers in our industry in a setting that allows the participants to mix, mingle and network. As a leader in our industry, you

Sports Weekend

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*Jeff Isner
Vice President
and Program
Chair*

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Take time to recharge at the GO-WV Summer Meeting

Where has the time gone? It's hard to believe we are more than two-thirds of the way through the summer! I hope each of you have been able to carve out time for family, vacation, and pursuits you enjoy outside of work.

Taking time off to recharge and relax is so important, particularly in the non-stop environment in which most of us work. While it's hard to disengage, doing so provides a mental and physical breather that many times allows us to revisit challenges and opportunities with a fresh perspective.

In that vein, GO-WV's Annual Summer Meeting, taking place Aug. 7-9 at the Greenbrier, offers our members the ability to relax with family, friends, and colleagues in one of the finest resort venues in the world.

Program Chair Jeff Isner, with the help of many of our board members, has planned an exceptional event offering the perfect blend of free time, planned recreation, and impactful, business sessions. This format is well suited to sparking curiosity, spurring creativity, and formulating new approaches to current challenges.

With demand for natural gas at an all-time high, challenging federal energy policy, and sky-high inflation, it will take all of our collective insight and wisdom to navigate what's to come.

The business portion of the event will highlight many of these issues and feature political and policy updates from Senators' Manchin and Capito, Congresswoman Carol Miller, Governor Jim Justice, Attorney General Patrick Morrisey and Treasurer JB McCuskey. A host of industry leaders, like EQT's Toby Rice and American Exploration & Production Council's Anne Bradbury, will discuss critical issues facing our industry. Other presenters will discuss communication initiatives, production issues, and much more.

Activities for the whole family are planned throughout the meeting and include golf, tennis, and skeet tournaments and culinary classes. You can also choose to engage in some of the many recreational amenities offered at the property or just lounge by the pool.

Maybe most importantly, the event includes many opportunities to network with colleagues, revive old acquaintances and make new friends. GO-WV is as strong as it is because of the tight bond we all share. This is made possible, in part, by the relationships we develop at events like these.

Without question, the annual summer meeting is sure to invigorate as well as rejuvenate and I hope to see you there.



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Lloyd Jackson, Jackson Management

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2022 Babst Calland Report highlights legal and regulatory issues for the US energy industry

Law firm Babst Calland recently published its 12th annual energy industry report: *The 2022 Babst Calland Report – Legal & Regulatory Perspectives for the U.S. Energy Industry*. Each of our nation’s energy sectors is impacted by local, state and federal policies, many of which are addressed in this inclusive report on legal and regulatory developments for the energy industry in the United States.

The Babst Calland Report represents the timely and insightful perspectives of the firm’s energy attorneys on some of the most critical issues facing the industry, including climate change, cybersecurity, ESG and environmental justice, hydrogen and carbon capture sequestration, pipelines, and renewables.

Joseph K. Reinhart, shareholder and co-chair of Babst Calland’s Energy and Natural Resources Group, said, “The U.S. energy industry, and the U.S. economy as a whole, is reacting to shifting market forces and potential significant new changes in laws and regulations. Importantly,

Russia’s invasion of Ukraine earlier this year and the resulting worldwide shortage of oil and gas has spotlighted the world’s continued reliance on fossil fuels and reinforced the value of America’s relative energy independence even as the nation and the world continue to seek alternative energy sources.”

Report Features Video Commentary from U.S. Senator Joe Manchin

This edition of *The Babst Calland Report* also features commentary from Senator Joe Manchin (D-WV), Chairman of the U.S. Senate Energy and Natural Resources Committee, who spoke with Babst Calland energy clients at a special briefing on May 26, 2022 called “*A Perspective on U.S. Energy Policy with Senator Joe Manchin.*”

To request a copy of *The 2022 Babst Calland Report*, [click here](#).

The Babst Calland Report is provided for informational purposes for our clients and friends and is not intended to constitute legal advice.

Get your GO-WV license plate now!



See page 23 for the application.



From the Burd's Nest: This Board was never bored!

When reflecting back on the last 26 months, it is amazing at how quickly time flies. What started out as a simple phone call in May 2020 informing me that our two great organizations, WVONGA and IOGAWV, were in serious discussions regarding a merger, has in two short years transformed how our industry is viewed in the eyes of so many. And all this came about with a tremendous amount of work being done behind the scenes by individuals who only sought to strengthen our voice, our industry and the Association.

The amount of work to accomplish this was pretty unbelievable: a plan of merger; writing new bylaws; legal filings; determining governance; developing the dues structure; selecting a new and appropriate name; communicating all this with two sets of memberships; and then conducting separate meetings of both memberships to advance all that had been envisioned and worked to achieve. This all came to fruition on December 2, 2020 when both organizations overwhelmingly voted to merge—GO-WV had been born!

As a quote from our initial press release stated, “This merger allows the industry to combine resources and will give it the ability to speak with a strong and unified voice to regulatory agencies and legislators on environmental, regulatory and taxation issues of importance to industry members and more effectively address many of these same matters with West Virginia’s residents.” But that statement only signaled the beginning. The being born, learning to crawl, pulling ourselves up to the coffee table, and then taking that all-important first step were yet to come. But come it did, and by January 1, 2021, we were well on our way to transforming GO-WV.

Needless to say, like any marriage, the logistics of going from two to one is a pretty complex animal. Two of everything merged into one can be quite labor-intensive with many tough decisions to analyze and finalize. And there to make these decisions—some of them quite difficult—were the initial 28 very dedicated Board of Director

members wading into muck month-after-month, slowly reducing the list of action items down to a more workable number. But they did it and did it well. This successful merger really rests on their shoulders, and all credit goes to this group of brave souls who made a conscious decision that there was nothing so complex that it could not be worked out and made doable.

For me, the dynamic of going from a 13-member Board of Directors to one that boasted 28 members was initially pretty darn overwhelming. Having a strong leadership and a committee structure in place made it easier. Officers and committee chairs worked hard and took every aspect of the merger personally. Success was the driving force after previous attempts to merge had been abandoned. This was the time and there was little room for complacency. There was something for all to do. And, over time, your 28 initial Board members navigated through all the potholes and jumped all the hurdles.

Now here we are today, a month after electing our new 15-member Board. They were each highlighted in the July issue of *GO-WV News*, so the remainder of this article will be dedicated to those other Board members who served their term in office and got us here.

From my perspective, I could not have been more blessed to be named the executive director of GO-WV. They told me that early on and I am as honored now as I was then. What I didn't know then is that I would be surrounded by the most dedicated group of individuals who only sought to put their service to the Association above self.

It is really difficult to describe the level of dedication these individuals have given over their short 18-month term governing GO-WV. There was a minimum of 18 Board meetings on top of special Board meetings, numerous committee meetings and sub-committee meetings on a wide variety of issues. To this you can add confer-

Burd's Nest

Continued on page 11

GO-WV Board welcomes eight new members in July



Please join the GO-WV Board of Directors in welcoming these members approved in July:

All State Energy

Kenneth Goodnight
PO Box 29
11619 Smithville Rd.
Smithville, WV 26178
Phone: (304) 477-3371
Cell: (304) 299-3715
oilfield1996@gmail.com

POP

Blue Ridge Risk Partners

Josh Zontek
325 White Oaks Blvd.
Bridgeport, WV 26330
Phone: (304) 848-6475
Cell: (304) 203-8648
josh.zontek@blueridgeriskpartners.com
www.blueridgeriskpartners.com

PRO

GR Energy Services

Charles Hamrick
125 Granville Square Suite 107
Morgantown, WV 26501
Phone: (724) 461-1156
Cell: (724) 991-8888
Charles.hamrick@grenergyservices.com
www.grenergyservices.com

ISP

Highland Machinery Corporation

William McClanahan
PO Box 1190
40 Lamplighter Street
Oak Hill, WV 25901
Phone: (304) 465-3295
Cell: (276) 245-2383
jjb@hmcwv.com
www.hmcwv.com

ISP

Ingevity

Russell Schindler
4920 O'Hear Ave.
Suite 400
North Charleston, SC 29405
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russell.schindler@ingevity.com
www.ingevity.com

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Barry Lay

Barry Lay
943 Mineral Rd.
Glenville, WV 26351
Phone: (304) 462-8572
Cell: (304) 539-3031
barry.lay77@yahoo.com

Pin Oak Operating

Christine Shepard-Desai
388 South Main St.
Suite 401
Akron, OH 44311
Phone: (888) 748-0763, x 702
Cell: (216) 386-1995
christine.shepard-desai@pinoakep.com
www.pinoakep.com

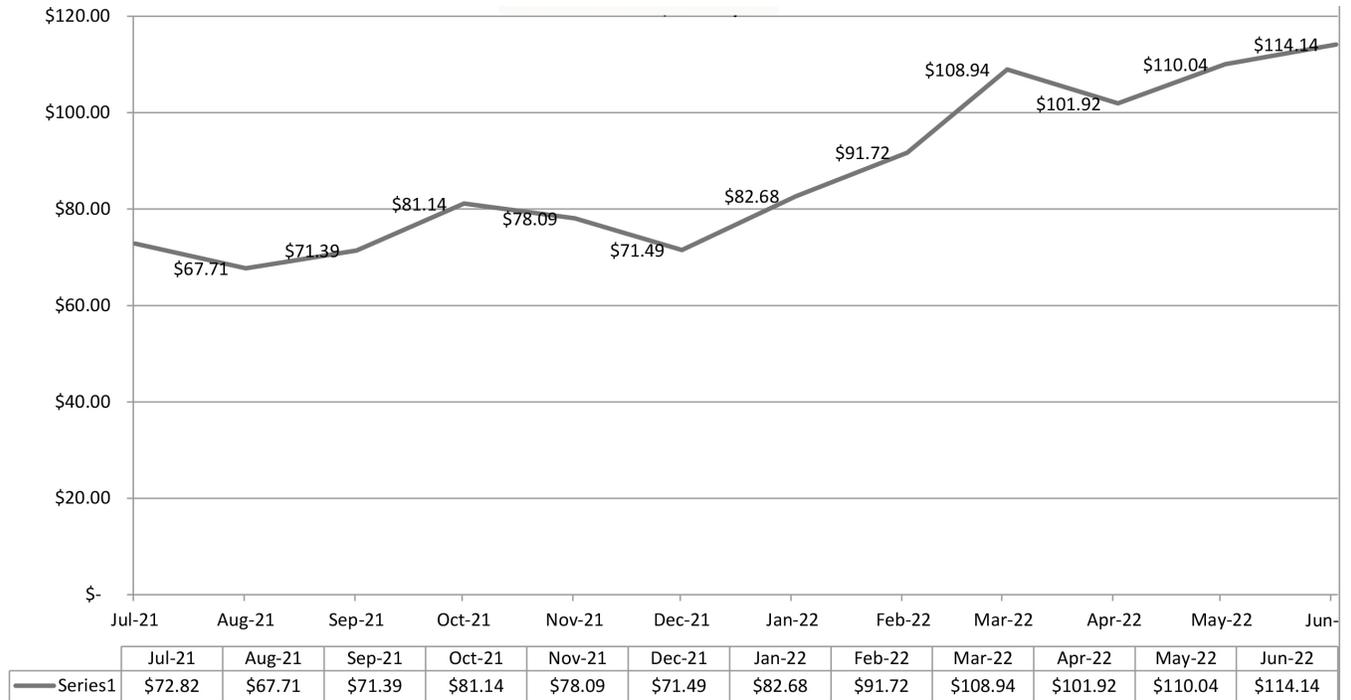
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Seneca Technologies

Will White
310 Stiles Street
Clarksburg, WV 26378
Phone: (304) 622-7985
Cell: (304) 266-1308
will@senecatechnologies.com
www.senecatechnologies.com

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- *12 Caterpillar Telehandler TH514 **08 Caterpillar Telehandler TL943
- *(3) AM Military Truck Flatbed 2.5 Ton
- *600PSI Fill Pump D343 Cat Cylinder Engine Diesel
- *00 KENWORTH Dump Truck *(3) AM Military Road Tractor 5 Ton 6x6
- *80 Mack Water Truck **97 International Model 8200
- *98 International Boom Truck **93 Mack Road Tractor Model RD688S
- *98 GMC Flatbed Truck **04 Chevrolet 2500 HD 4X4
- *92 White GM 10 FT Dump Truck
- *98 International 10ft Dump Truck *(2) 1970 KAISER Military Road Tractor 5 Ton 6x6
- *83 Ford Fire Truck
- *11 Finn Hydro Seeder Trailer, (3) Tri axle Detachable drop deck Trailers *Pole Trailers, Equipment Trailers
- *Goose Neck Trailer
- *15 Oreion Reeper 4X4 *Sullair Compressors
- *Ingersoll-Rand Air Compressors
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- *Farm Gates *Bundles Of Cribbing Block
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Why to take vacation!

Ten years ago, Lynnda and I took our first ocean cruise. Our youngest son, Gregory, invited us to go with him and his family on a 7-day cruise from New York City to the Bahamas. Lynnda was ready to go. I had doubts. My cruising was limited to the Gateway Clipper in Pittsburgh and the P.A. Denny in Charleston. I didn't get seasick on those trips. How would I do on an ocean trip? The cruise was during my life as a corporate manager. My biggest concern back then was being out of email and cell phone contact with my office, team and customers. I always used 100% of my vacation time. On vacation, I still had cell phone and email access.

The cruise would be different. There would be no phone or email once we left port.

The first day at sea was great. I went for a run and swam. Food was awesome. Then the Captain announced we would be going through some storms and expected rough seas. Lynnda and I paid extra to get a large cabin with an outside porch at the rear of the ship. We wanted the view. Big mistake! The rear of the ship is the worst place in rough seas for ups and downs in large waves. I spent most of day two in the cabin in bed with one foot on the floor. Gregory's wife, Mary, also got seasick. Everyone else did fine. When we got to Port Canaveral, Florida, two good things happened. In port, my sea sickness went away and I had cell phone service. The world, my company and my staff had done just fine without me. The next four days without phone and email were the most relaxing I had experienced in years.

Lynnda and I just returned from a trip to Kohler, Wisconsin with our daughter and her husband, enjoying our Christmas present from them, **time together on vacation**. They asked us to join them at one of their favorite places. The flight was great, even on a holiday weekend, with none of the issues or horror stories the news likes to report. After a busy week in Washington, DC at *SelectUSA*, it was good just to "chill" with no pressure, no meetings or phone. Dannielle and I ran in the morning. We played golf, did walking tours, including Kohler's design center, giving us great home ideas and just hung out together. It was exactly what I needed to get ready for the next conference and follow ups with all our contacts from *SelectUSA*. We made fun memories.

Vacation for me is essential to recharge my batteries, raise my energy level and increase my creativity. Steven Covey, in his book *The 7 Habits of Highly Effective People*, says we can't just cut wood. The saw gets dull and becomes ineffective. We need to stop cutting and take time to **sharpen the saw** to increase effectiveness and speed

Take a vacation

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Upcoming events planned for 2022-2023

August 7-9, 2022

GO-WV 2022 Summer Meeting
The Greenbrier, White Sulphur Springs, WV
Info: www.gowv.com

August 18, 2022

Divot Diggers Golf Outing
Tam O'Shanter Golf Club, Hermitage, PA
Info: www.pioga.org

August 26, 2022

SOOGA Fall Golf Outing
Golf Club of WV, Waverly, WV
Info: www.sooga.org

September 15-17, 2022

WV Oil & Gas Festival
Sistersville, WV
Info: www.facebook.com

September 16-17, 2022

GO-WV Sports Weekend
Bridgeport & Morgantown, WV
Info: www.gowv.com

September 19, 2022

BHE GT&S Charity Golf Invitational
Pete Dye Golf Club, Bridgeport, PA
Info: gina.palmer@bhegts.com

September 27-29, 2022

Shale Insight Conference
Bayfront Convention Center, Erie, PA
Info: <https://marcelluscoalition.org/shale-insight/>

September 29, 2022

SOOGA Annual Trade Show
ESB Building, Marietta, OH
Info: www.sooga.org

October 16-18

IOGCC Annual Meeting
*Royal Sonesta Harbor Court
Baltimore, MD*
Info: iogcc.ok.gov/

October 19, 2022

PIOGA Marcellus to Manufacturing Seminar
Seven Springs, Champion, PA
Info: www.pioga.org

October 20, 2022

PIOGA Fall Conference
Seven Springs, Champion, PA
Info: www.pioga.org

October 25-26

Governor's Energy Summit
Stonewall Resort, Roanoke, WV
Info: governor.wv.gov

November 16, 2022

Multi State Tax Seminar
Location TBA

January 18-19, 2023

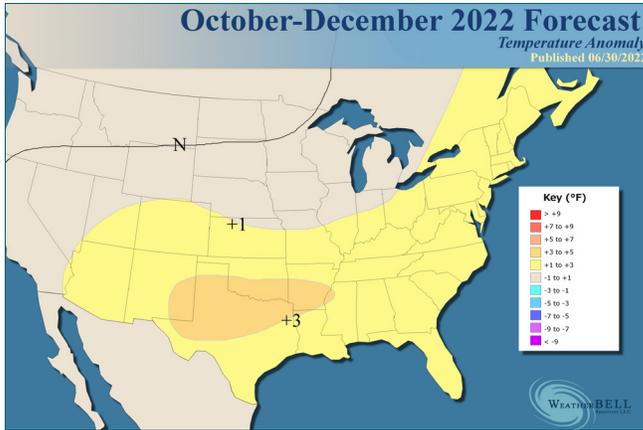
GO-WV Winter Meeting
Marriott Town Center Hotel, Charleston, WV
Info: gowv.com

February 22, 2023

Oil and Gas Day at the Legislature
State Capitol, Charleston, WV
Info: gowv.com



WeatherBELL fall/early winter outlook



Our very early look at the beginning of the heating season is out. It paints a broad-brushing warmer than normal October through December period.

Over the last five years or so, we have had a tendency for colder than normal Novembers and warm Decembers in the eastern U.S. There is no reason to think this trend won't continue based on the persistent global pattern.

Later on in the winter, we are expecting things to get more interesting, but details from this far out are scarce.

For more information about WeatherBELL's services and to get the hot-off-the-press forecast updates, please visit our website www.weatherbell.com or contact us at sales@weatherbell.com.



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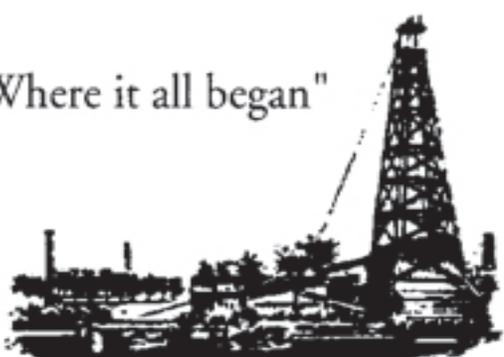


recognize the importance of supporting GO-WV, and the benefits of promoting your company's image. So not only will you want to attend this great event, but you may want to get even more recognition as a sponsor.

We have several levels of sponsorship to meet your goals. Select your sponsorship level and reg-

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ister your team, or select your registration choice if you're not able to sponsor. You can [click here to sponsor and/or register](#).

- Diamond Event Sponsor (\$5,500) includes foursome fee, banner at event, logo on signage, on web site and in GO-WV News. The sponsorship can support one of these options: registration and player gift; breakfast; lunch; snack and beverage cart; door prizes; player awards; or entertainment.
- Hole Sponsor (\$1,000) includes foursome fee, logo on signage at hole, on web site and in GO-WV News. You can request a specific hole number, based on availability.
- Bronze Sponsor (\$500) includes logo on signage, on web site and in GO-WV News.

Non-sponsor registration options include:

- Member registration only (does not include golf) \$100.00
- Nonmember registration fee (does not include golf) \$170.00
- Single member golf (includes registration) \$200.00
- Single nonmember golf (includes registration) \$270.00
- Member golf foursome (includes registration) \$700.00
- Nonmember golf foursome (includes registration) \$900.00

A block of rooms has been reserved at Courtyard by Marriott Bridgeport/Clarksburg for Thursday, Friday and Saturday nights at a rate of \$109 (plus tax) per room per night. To make reservations by Friday, August 26, [click here Book your group rate for GO-WV Golf Tournament](#) or call (304) 933-8051.

[Please register online](#) for the Sports Weekend as an attendee or sponsor no later than Friday, August 26.

Gopac reminds everyone that this is one of two major fundraisers dedicated to support our industry's state legislative lobbying efforts. To that end, you are strongly encouraged to take the opportunity to contribute to Gopac, which funds our legislative outreach. Other than cash, contributions to Gopac must be made by personal check only. Gopac is a separate and distinct entity from GO-WV.

ence calls, media interviews, the responsibility of placing the overall good of the industry and Association above any self-interests. It is this commitment to advancing the industry, in all aspects, that keeps GO-WV at the top of the heap and one of the most respected trade organizations in the country. To a person, this group of outgoing directors have demonstrated that unprecedented level of service.

This said, please allow me to personally thank: Carrie Crumpton, CNX; Ryan Cunningham, Cunningham Energy; Doug Douglass, CSI of WV; Kevin Ellis, Antero Resources; Jon Farmer, Arsenal Resources; Mike Forbes, Greylock Energy; Marc Halbritter, Hydrocarbon Consulting (Blue Racer); David Haney, E&H Manufacturing; Jon Hildreth, R.G. Hildreth & Son; Paul Hunter, Williams; Brittany LaPorta, TC Energy; Rhett Metz, Energy Transfer; Christine Mitchell, Dominion Energy; Mike Poole, Highlands Drilling; Jim Pritt, Union Oil and Gas; Bob Radabaugh, S&R

Gas Ventures; Mollie Schall, Crestwood Midstream; and Mark Veltri, Crestwood Midstream. It is with heartfelt gratitude that I honor you in this article. THANKS!!

However, this is not a goodbye! Many of these individuals will, as you would expect, stay very active in the affairs of the Association in their roll within our committees or simply for their importance in their particular area of knowledge and expertise. Some will likely seek future leadership positions.

The dictionary will tell you that service is simply defined as “the action of helping or doing work for someone.” That “someone” can be an organization—in this case: GO-WV. Each of these outstanding individuals dedicated the time to align their schedules, goals, and personal desires to those of the Association. And through it all, I believe they would confess, they were never bored given the amount of work they faced and the results they achieved.

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up sawing. Vacation sharpens the saw. Now as a business owner I'm available 24/7 to my clients and still need vacation. I don't feel the pressure like in my corporate life, because it is my choice. I believe in the work we do.

Since COVID, vacation is even more important. We missed seeing friends and family in 2020 and 2021. We didn't fly for over a year during COVID. Visiting with family and friends over Zoom is okay, but no substitute for in person visits. Last year we vacationed with family, making up for lost time. Now we do it because it is important. The pandemic taught us to never take quality time with family and friends for granted. We know tomorrow isn't promised to anyone. Life can change in an instant as it did after Lynnda's car accident or my soccer injury putting me in a wheelchair for weeks. To keep up with Dannielle running and to climb in and out of deep sand traps on a golf course was something I couldn't do for almost a year after my injury.

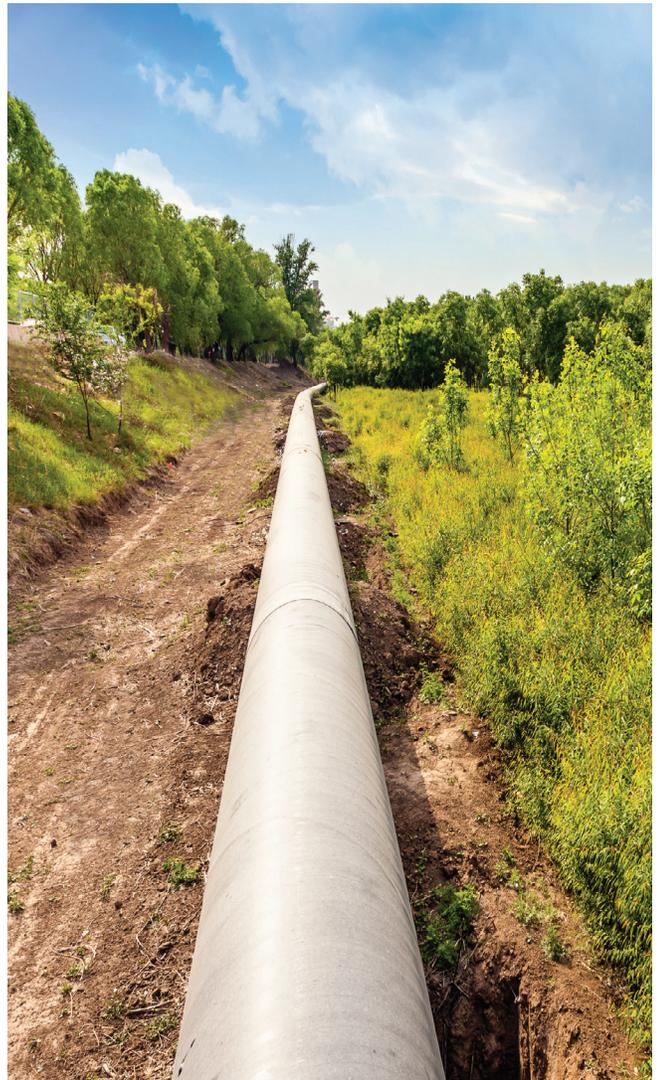
My parents never took a real vacation together after they were married. They couldn't afford one. The bigger issue was taking six boys on vacation anywhere was not a vacation for my parents. Unfortunately, Dad died suddenly before all of my brothers grew up and before he could retire. They never got to enjoy vacations with each other.

Americans are taking vacations this year. Airports and highways are packed again. Disney World is busy now whenever we go. Some days are just less busy. Beaches are packed. I always make hotel reservations ahead because hotels are busy and the nice ones get booked fast. We had to stay in a hotel where the ice machine was broken, the pool full of brown water and the fire exit door had a sign, "Broken. Do Not Use." We had no idea what else was living in the room with us. It was the only vacancy for 200 miles. My bad.

This year, increasing air fares, \$5 gasoline, higher hotel rates, more expensive theme park tickets with \$30 parking and \$5 sodas are not slowing down vacations. People have money to spend because they haven't vacationed for two years. They want to make up for lost family time. I've never heard anyone whose dying regret was to have spent more time at work. There is a travel

Take a vacation

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trailer dealer in the Charleston area who has been closing their commercials for years with, “*The price is going to go up and the kids are going to grow up.*”

I’ve noticed a bigger focus on family vacations since the pandemic. When scheduling a meeting or video conference, people tell us when their vacation or family time is. We schedule around it. Occasionally someone may schedule an early call on vacation while the family is still in bed. People from Europe and the Middle East also work around family. Our European contacts at *SelectU-SA* have been on holiday most of this month. They may know something we don’t.

What about you? Did you take or are you planning to take a vacation this year to spend time with family and friends or just do something

relaxing or reinvigorating for you? A vacation doesn’t need to be a long trip or expensive. There are plenty of things to do right in our region without even being gone over night. Your business should be able to survive a week without you. Your absence can help your people develop their skills. Scheduling vacation early in the year helps to make it happen. Once vacation is set, other things tend to schedule around it. One of Lynnda and my written goals each year is spending quality time with our children and grandchildren. It helps us see opportunities for visits. To be effective at work, the saw needs to be sharp. Vacation helps that to happen. The kids are going to grow up. Take a vacation this year! Recharge and make some great memories.



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After determining that West Virginia had Article 3 standing to challenge a rule that was not yet in effect, the Court considered the merits of EPA's actions. It concluded that EPA had misinterpreted the Clean Air Act in setting BSER to force a move away from coal generation and toward renewables. Congress had not given EPA the clear authority to restructure the entire electricity-generating structure in the U.S. in a manner that, as calculated by EPA, would "entail billions of dollars in compliance costs (to be paid in the form of higher energy prices), require the retirement of dozens of coal-fired plants, and eliminate tens of thousands of jobs across various sectors." The net effect would have been a reduction in GDP by 2040 of over a trillion dollars.

The Court noted that EPA's interpretation of Section 111 was unlike any it had advanced before proposing the CPP and was inconsistent with EPA's admission that it had no particular institutional expertise in the area of electricity transmis-

sion, distribution and storage. Unlike the Mercury Rule, where limits on mercury were set at levels that could have been achieved through controls, there were no controls that could have achieved the limits established by the CPP for coal-powered plants. EPA was undertaking a "fundamental revision of the statute."

Given the breadth of the power that EPA was assuming for itself, the Court was compelled to look for clear Congressional direction to regulate in such a manner. It could find no support for EPA's claim of authority to determine "how much of a switch from coal to natural gas is practically feasible . . . before the grid collapses, and how high energy prices can go as a result before they become 'unreasonably exorbitant.'" Nor could the Court ignore the fact that EPA assumed a power to establish a cap-and-trade system that Congress itself had considered and rejected several times.

Big win for WV

Continued on page 15


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The Court considered other possible justifications for EPA's actions, and found none availing. It concluded that a nationwide rejection of coal as a power source was a decision "of such magnitude and consequence [that it] rests with Congress itself, or an agency acting pursuant to a clear delegation from that representative body."

The ruling dramatically limits the regulatory options for EPA to affect climate change. There is no doubt that other novel approaches to promoting climate change remedies will be proposed by the EPA. But, we now know, thanks to the efforts of West Virginia's Attorney General and others, that the Court is willing to take a critical look at the limits of EPA authority under the law.

In not so good news closer to home, the West Virginia Supreme Court of Appeals, on June 14, 2022, issued its decision in *SWN and Equinor v Kellam* addressing two certified questions from Judge Bailey in the U.S. District Court for the Northern District of West Virginia. The case involves issues of whether royalty payments are subject to post-production costs.

The Court leaned heavily on the doctrine of *stare decisis* to answer the first certified question by reaffirming the 2006 *Tawney* decision as good law. The Court declined to answer the second certified question concerning the level of specificity required to collect post-production costs by declaring "[w]e decline to answer the reformulat-

ed certified question because it presents a question of contract interpretation which may only be answered by referencing the individual lease and applicable principles of law."

The negative potential impact of the Court's decision and Chief Justice Hutchison's concurring opinion is that oil and gas lessors will be encouraged to challenge the right to deduct post-production costs in leases drafted even with the *Wellman* and *Tawney* cases in mind. The Court is leaving the outcome of post-production costs deduction to a case by case determination to be decided by the trial court or the trier of fact/jury.

Obviously, the decision is not the result that the appellants or the industry desired. The language reaffirming *Wellman* and *Tawney* and dismissing the *Leggett* decision language questioning *Tawney* as "mere obiter dicta and of no authoritative value to this Court today" leaves the impression that a reversal of *Tawney* and/or *Wellman* is not likely in the near future.

Having said that, it is worth noting that Justices Armstead and Bunn disqualified themselves from participating in the decision and were replaced by Judges Howard and Alsop by temporary assignment. It is unknown whether those recusals yielded a different result than might have been rendered. If you questions, please contact Dave Yaussy at DYaussy@Spilmanlaw.com or Mark Clark at MClark@Spilmanlaw.com.

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