



## F. Thomas Rubenstein

Partner

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Tom has more than 37 years of experience as a coal and energy lawyer with both substantial in-house and private practice experience representing public and private operating and land holding companies. He is skilled in all legal and business matters pertaining to the coal industry, including transactions, mergers and acquisitions, corporate record keeping and compliance, coal sales, mine safety and health, including supervisory training, and lease, sublease, operating and contract mining agreements. He is also experienced with oil and gas leasing matters including Marcellus and Utica Shale leasing and project development matters. He is an experienced arbitrator and mediator for coal and commercial disputes. Tom also has significant in-house coal industry experience having served in a corporate counsel role with Carbon Industries/Carbon Fuel Company; and with Westmoreland Coal Company. With Westmoreland he held various positions which included assistant general counsel for the company's West Virginia, Virginia and Kentucky operations; secretary and general counsel for Westmoreland Coal Sales Company; and director of Employee and Media Relations for the West Virginia and Virginia operations.

In recent years, Tom has represented a coal company in a little more than \$750 million of coal operations/properties acquisitions and an oil and gas client in a \$140 million transaction.

### Services

- Mergers & Acquisitions
- Labor
- Mine Safety & Health Administration
- Natural Resources Industry
- Mineral Rights

### Education

- West Virginia University College of Law (J.D., 1981)
  - Order of the Coif
  - Law Review

- West Virginia University (B.A., *magna cum laude*, 1978)
  - Mathematics
  - Pi Mu Epsilon

## Bar Admissions

- West Virginia

## Court Admissions

- U.S. Court of Appeals for the Fourth Circuit
- U.S. District Court for the Northern District of West Virginia
- U.S. District Court for the Southern District of West Virginia

## Affiliations/Memberships

- American Bar Association
- West Virginia State Bar
- WVU Fellowship of Christian Athletes, Board of Directors, vice chairman
- The Foundation for Mon General Hospital, Board of Directors
- Compass Women's Center Ministry, Morgantown Advisory Committee
- Energy and Mineral Law Foundation, past trustee
- West Virginia Coal Association
- Chestnut Ridge Community Church, board member

## Distinctions

- Peer Review Rated AV in *Martindale-Hubbell*
- *Best Lawyers*®(2007 - present)
  - "Lawyer of the Year" in Morgantown for Mining Law (2013)
  - "Lawyer of the Year" in Morgantown for Energy Law (2019)
  - "Lawyer of the Year" in Morgantown for Natural Resources Law (2020)
  - Energy, Mining and Natural Resources Law (2021-2024)
- *Chambers USA*®: *America's Leading Lawyers for Business*, Natural Resources

# Experience

## Arbitration

I am experienced in handling such matters individually as well as the chairman of multi-member panels hearing and deciding private arbitrations involving large publicly traded land holding and operating companies to smaller

privately held companies addressing disputes over coal reserves, leases, contract mining agreements, and sales agreements, with amounts at stake ranging from less than \$1 million to in excess of \$100 million. I am also experienced in handling other, non-coal related, commercial disputes as a former American Arbitration Association commercial panel member.

## **Corporate Reorganization and Membership Unit Sale**

This transaction involved a corporate reorganization of several limited liability companies which collectively owned or controlled certain coal producing and related assets followed by the sale of all of the membership units for approximately \$20,000,000 to a publicly traded company. Our firm's experience in mergers and acquisitions, natural resources and tax matters enabled the client to maximize membership unit value and complete this transaction in an efficient and timely manner.

## **Education Law**

I have represented various county boards of education in employee grievance matters, and have provided preventative advice concerning the hiring, discipline and discharge of employees.

I acted as counsel for the Defendant boards of education in the following West Virginia Supreme Court of Appeals decisions:

*Taylor-Hurley v. Board of Education of the County of Mingo*, 551 S.E.2d 702 (W.Va. 2001). Case involving seniority of central office employees with multi-classifications.

*Hall v. Board of Education of the County of Mingo*, 541 S.E.2d 624 (W.Va. 2000). Case involving seniority of service personnel with administrative errors in employment record.

*Conner v. Board of Education of the County of Barbour*, 489 S.E.2d 787 (W.Va. 1997). Case involving the discharge of a bus driver for jeopardizing safety of students.

## **Expert Witness**

I was retained by a large Pittsburgh law firm to assist its attorneys and to provide testimony as an expert witness in a circuit court proceeding in West Virginia pertaining to asset purchase agreements for coal properties, operations and permits. I was admitted as an expert witness and provided testimony about these matters in the Circuit Court of Greenbrier County that helped achieve a favorable result for the client of the firm which retained me.

## **Health Care**

I have acted as preventative counsel for various hospital and medical practice groups with regard to labor and employment matters, including the review of employee handbooks, policies and advice concerning discipline and discharge of employees.

## **Health Care**

I have provided representation with respect to collection efforts for a large hospital pertaining to patient services for various state agencies such as regional jails and the West Virginia Department of Health and Human Services. Through the initiation of collection suits and negotiations, we have collected in excess of \$500,000 of unpaid charges for a large state-wide hospital group.

### **Long-Term Extension to Coal Supply and Transportation (Rail and Barge Pieces) Agreement for Large East Coast Utility**

This was a changing market conditions driven commercial agreement addressing the purchasing utility's desire to control costs and the selling entity's desire to obtain a solid commitment for base load tons for substantial mining operations. The value of the amended package of coal supply and transportation agreements was in excess of \$75 million.

I served as the client's primary counsel in the negotiation and preparation of definitive agreements to accomplish the client's goal of achieving the extension of the term of an agreement otherwise set to expire on terms and conditions favorable to the client, including pricing and quantity provisions.

### **Marcellus Shale Leasing Transaction**

Ongoing legal services for the sole representative of a large landowners group in a \$126 million leasing transaction of Marcellus Shale oil and gas rights covering approximately 35,000 acres of property located in north central West Virginia, with nearly \$93 million distributed to landowners to date as initial lease bonus payments. The closing of a companion transaction involving approximately 16,500 acres on the same lease terms and conditions, including lease bonus payments, has been postponed and the brokerage company which holds options on the subject leases has engaged litigation counsel to pursue an appropriate remedy, including specific performance. Part of the ongoing services will include monitoring that litigation. Services included drafting the lease agreement used by the landowners group with the group representative, as well as reviewing and assisting with the negotiation and finalization of the respective purchase and sale agreements and related documents.

### **Sale of mixed use/residential condo/retail development**

We represented a multi-generational family trust in connection with the sale of a 205-guest room mixed-use hotel-residential condo-retail development and convention center complex in downtown Morgantown, WV. Our representation included the negotiation and preparation of LOI and subsequent sale and ancillary documents; coordination of due diligence; analysis and resolution of complex issues regarding correlative rights and obligations of hotel and residential condominium units above the hotel. We also handled the negotiations with the City of Morgantown and documentation regarding the assignment of the convention center rights, easements and rights-of-way relating to the entire development; negotiations with adjacent property owners and documentation regarding assignment of crucial parking rights and rights associated with plant equipment; identification and resolution of title issues; and coordination of post-closing obligations.

### **Sales Agreements, Agency, Brokering and Security Agreements for Substantial Coal Brokering Firm**

I represented a substantial Appalachian coal brokering firm with respect to various coal sales and transportation arrangements for both domestic and foreign markets, including applicable security and related agreements pertaining to financing assistance to producers from time to time.

### **Sales and Purchases of Coal Mining Company Assets**

I have represented a large Appalachian coal producer in commercial transactions involving both the sale and purchase of underground and surface mines, preparation plants, sales contracts, mining equipment and permits with values ranging from \$20 million to in excess of \$200 million.

### **Start-Up of Underground Mine at Greenfield Site**

I represented a small Appalachian coal producer in commercial transactions involving the leasing and development of a new underground mine in previously undeveloped coal reserves along with equipment acquisition, and leasing and financing arrangements with both private lenders and traditional banking institutions.

**Substantial Amendment and Restatement of Long-Term Coal Supply and Transportation Agreement**

This was a unique commercial transaction driven by coal producer's financing sources (substantial domestic and foreign banks) requiring a performance guaranty for the production and shipment of in excess of 500,000 tons of coal per year to certain southeastern cogeneration facility customers. The value of the contract at issue was in excess of \$50 million.

I served as the client's primary counsel in the negotiation and preparation of definitive agreements which occurred over several months to accomplish the client's goals of providing its lenders with an acceptable guaranty unique in structure to retain shipping rights under a long-term supply arrangement as well as achieving the client's goal with respect to the consideration for the arrangement with the coal supply subsidiary of a large southern utility company.