Todd Staples is the President of the Texas Oil & Gas Association, the state’s oldest and largest trade association representing every facet of the oil and gas industry, including small independents, major producers, pipelines and refineries. Staples was twice elected statewide to serve as the Texas Agriculture Commissioner and is the author of Broken Borders, Broken Promises, a book that details our nation’s border and immigration challenges and provides a bold path forward. He served with distinction as a member of the Texas Senate and House and began his elected service on the city council in his hometown of Palestine. As a successful businessman and rancher, he was deeply involved in volunteer service for his local church, community and state. Today, Staples continues his passion to help make the Lone Star State the best place to do business and raise a family.

Topic: “Energy Issues in the 85th Legislative Session”

Register online at http://www.hapl.org/events/634/
### 2016-2017 HAPL OFFICERS

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AAPL JOA SEMINAR

Format: Workshop
Location: Houston, TX
Date: February 2, 2017
Time: 8:00 AM - 4:15 PM
Credits: 7.00 CEU
Speaker: Dorsey T. Roach, CPL

The AAPL Model Form Operating Agreement is one of the most essential contracts employed by the oil and gas industry. Every oil and gas professional involved in the drilling of wells needs to have a basic understanding of the AAPL Model Form Operating Agreement, especially the rights, duties and obligations of the operator, as well as those of the non-operators.

CLICK HERE FOR MORE INFO!

AAPL FIELD LANDMAN SEMINAR

Location: Southwestern Energy Company
Date: February 9, 2017
Time: 1:00 PM - 5:00 PM
Credits: 2.00 CEU
Speaker: Jim R. Dewbre, CPL & Chris Pettigrew

The AAPL invites you to attend a FREE Field Landman Seminar.

CLICK HERE TO REGISTER ONLINE

HAPL MARCH LUNCHEON

The next HAPL luncheon will be held on Tuesday, March 7th, 2017, at the Houston Petroleum Club from 11:30am to 1:00pm. Check-in starts at 11:30 and lunch will be served at 12:00 followed by a presentation. We hope to see you there! You can register online at http://www.hapl.org/events/635/. The last day to register is Monday, March 6th by 1:00pm. Please register on time since we are required to guarantee a certain number of seats with the Petroleum Club in advance.

For more industry events, check out the HAPL calendar at http://www.hapl.org/events/month/
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❖ NEW AIPN SEMINAR
hosted by NAPE; presented by the Association of International Petroleum Negotiators

❖ NAPE CHARITIES LUNCHEON
featuring General Colin L. Powell, USA (Ret.)

❖ NEW OIL & GAS OVERVIEW COURSE
hosted and presented by IPAA; sponsored by NAPE
Fellow HAPL Members:

The last few years have been a challenge to all of us in the land industry. For some, this is the first downturn and for others, this may be the second or third. Regardless of the number of downturns we have been through, they never seem to get any easier.

We all know a person or persons that have been affected by the recent changes in our industry. Unfortunately for those affected, they have had to make difficult decisions regarding their lives. Hopefully, they can take from their past experiences to better their future.

Albert Einstein once said, “Learn from yesterday, live for today, hope for tomorrow.” This year, our HAPL President, Justin Matthews, has chosen “Tomorrow hopes we’ve learned something from Yesterday” as our newsletter theme. I believe both lines of thought are great ways in which we can model our lives. We can learn from our past experiences and hope for a better tomorrow.

As we have seen in the past, things will get better. We have all been through a couple of very challenging years but I believe these challenges will make all of us better in the long run. I encourage everyone to take this time to reflect on your past experiences, build on them and hope for better times tomorrow.

Respectfully,

Wade Edington, CPL
HAPL Assistant Treasurer
On Wednesday, March 29, 2017, the Houston Association of Professional Landmen ("HAPL") will be hosting its annual South Texas Social from 5:00 p.m. to 8:00 p.m. For the eleventh year in a row, the Social will be held at "Goode’s Armadillo Palace” on 5015 Kirby, which has been a terrific venue for the South Texas Social. We are excited to announce that we will be in their new dancehall.

We are requesting sponsor commitments in advance in order to reserve the exciting venue! A financial contribution by you or your company will ensure the success of this very special event. All sponsoring companies will be recognized at the event with the company name and level of sponsorship prominently displayed. In addition, the sponsor information will appear in the HAPL newsletter and possibly other publications. The following sponsorship levels are available:

- **PLATINUM LEVEL** $1,000 or above
- **GOLD LEVEL** $500-$999
- **SILVER LEVEL** $250-$499
- **BRONZE LEVEL** $249 or less

In appreciation for sponsorship, this year we will raffle off a two day dove hunt for four people and a one day duck hunt for four people. **This raffle is for sponsors only!** See below on how to participate. Don’t miss out on this opportunity to win this hunt!

**How to participate:**
1) Sponsor check must be received before 3/01/17
2) Must be present to win
3) Enter one company business card per $250 sponsorship

Example: For a: $1,000 sponsorship, enter 4 business cards.
$500 sponsorship, enter 2 business cards.
$250 sponsorship, enter 1 business card.

2017 HAPL South Texas Social sponsor checks can be made payable to "HAPL" and sent to:

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THIS IS AN ADVERTISEMENT
With the beginning of a new year, there are several oil cases pending in the Texas Supreme Court relevant to the oil and gas industry. We'll be following these cases throughout the year. Sign up as a subscriber to oilandgaslawdigest.com to receive updates on these and other cases.

Here are ten cases that we will be watching:

**Argued Cases**

The Supreme Court has granted a petition for review in each of the following cases and oral argument has already occurred.

1. **Production in Paying Quantities**: *BP Production Company v. Laddex, Ltd.* – A top lessee seeks a determination that a prior lease terminated for failing to produce in paying quantities. This will be one of the first Supreme Court cases to analyze the law related to production in paying quantities in quite a while.

2. **Liability for Surface Damages**: *ExxonMobil Corp. v. Lazy R Ranch, et al.* – A surface owner seeks an injunction against a lessee which would require the lessee to remediate damage to the property. The lessee contends that the cost to remediate the property would exceed the property’s value, thus the relief would run afoul of longstanding Texas law which limits recovery in property damage cases to the value of the property.

3. **Parties Necessary for Royalty Litigation**: *Richard D. Crawford v. XTO Energy, Inc.* – The Supreme Court will determine whether a royalty owner who claims to have been underpaid must join any third-parties that may have received royalties which should have been paid to the plaintiff royalty owner. The royalty owner in this case claims that such a procedural requirement would place an undue burden on small royalty owners.

**Petition Granted**

The Supreme Court has granted a petition for review in the following cases, but oral argument has not yet occurred.

4. **Fiduciary Duties**: *Longview Energy Company v. The Huff Energy Fund, LP, et al.* – This case analyzes the duties owed by board members to a company. The trial court judgment, valued by some to be just under $1 Billion (based largely on the value of mineral interests at the time), but the appellate court held that there was insufficient evidence to support a claim for breach of fiduciary duty by usurping a business opportunity.

5. **Shut-In Wells**: *BP America Production Company v. Red Deer Resources, LLC* – Another lease termination case, the parties dispute whether a well shut-in by BP America could perpetuate the lease. At issue, among other things, is whether a well was capable of producing in paying quantities when shut-in and whether a reasonably prudent operator would continue to operate the lease.

(Continued on next page)
6. **Indemnity:** Noble Energy, Inc. v. ConocoPhillips Company – A purchaser of assets out of a bankruptcy estate took the assets “free and clear” of all “claims,” but an appellate court found a duty of defense and indemnity existed in connection with a $60 million liability arising 10 years after the assets were purchased. This case should be followed by any company acquiring assets out of bankruptcy proceedings.

7. **Pooling:** Samson Exploration, LLC v. T.S. Reed Properties, Inc., et al. – This dispute involves several questions related to the nature of pooling and the corresponding lease obligations. Among others, this case concerns the legal effect of two overlapping units designated by Samson as well as the interpretation of lease language controlling how royalty payments are computed.¹

**Briefing on the Merits Requested**

The Supreme Court has requested full briefing on the merits, but has not yet determined whether to grant a petition for review. If the petition for review is denied, the proceeding at the Texas Supreme Court will likely be over. If it is granted, then the case will likely be set for oral argument.

8. **Offset Obligations:** Murphy Exploration & Production Company – USA v. Shirley Adams, et al. – The dispute concerns the obligations placed on a lessee to protect a lease from drainage. The trial court held that the lessee complied with the requirements of the lease’s offset obligations clause, but the appellate court reversed based on its holding that the lessee did not prove that an offset well drilled to comply with the lease did in fact protect the lease from drainage.

9. **Retained Acreage Clauses:** XOG Operating, LLC, et al. v. Chesapeake Exploration Limited Partnership, et al. – At issue is the interpretation and application of a retained acreage clause. The dispute focuses, in large part, on whether the lessee is permitted to retain all acreage it could have included in a proration unit or only the acreage which it actually included in the proration unit for each well.

10. **Post-Production Costs:** The General Land Office of the State of Texas, et al. v. Sandridge Energy, Inc., et al. – Recently reinstated by the Supreme Court, this is another “post-production costs” dispute concerning whether a royalty clause requiring payment of royalty based on the “greater of” the market price where produced or the gross price paid to the lessee. The appellate court held that royalty should be determined net of costs, but the GLO contends this conflicts with the express terms of the leases.

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¹ In the interest of disclosure, I am an attorney of record in this case. The description of this case is not intended to be a comment on the merits.
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Goldberg Tower BBQ and Bingo – Wednesday, February 22, 2017 – We will be serving BBQ to the residents of Goldberg Tower and then after dinner assist them in playing bingo. It is a fun evening and there will be the need for food servers, helping hands and bingo spotters. We start serving at 6:00pm and usually conclude the evening by 8:00pm. This is a great opportunity for your child or grandchild to get service hours.

Brookwood Community Softball Game – Saturday, April 8, 2017. We will gather starting at 9:30am to set up the field and then play ball. It is a really fun event to show your athletic prowess or lack thereof, however, there is no judgment in softball. The more landmen in attendance; the more Brookwood residents get to play. Everyone that plays needs a partner. After the game, stay around and indulge yourself with a James Coney Island lunch.

Mark your calendar for both events and be watching in future issues of the Newsletter for more details. If you have any questions at this time, please email either Mimi McGehee at mrm1915@aol.com or Erica Adkins at Erica.Adkins@conocophillips.com.

(Continued on the next page)
If you attended the HAPL Golf Tournament in November and bought a raffle ticket on one of the sponsored holes for the Big Green Egg, both the Service Committee and the Scholarship Committee say thank you so much for your generosity. T. S. Dudley Land Company, one of our sponsor’s, split the profits from the raffle with the two committees. Dudley earmarked the Service Committee portion to be donated to Sailing Angels Foundation.

Sailing Angels Foundation provides the education and recreational therapy in the form of sailing to disabled, chronically ill and “At-Risk” children as well as wounded warriors, their families and bereaved families. This is a free service which is provided to the Greater Houston Community. This agency has only a 4% administrative overhead. During 2016, the program had 1,693 participants and over 11,000 individuals have been served over the nine years they have been operating out of the marinas in the Clear Lake area. Captain Dave, the Founder and Director has told Service Committee members the story of one child who was extremely autistic who spoke for the first time while sailing. He was about nine years old and it was the first time his mother had ever heard her son speak. The Service Committee is very happy to support such an outstanding agency.

Other agencies funded by the outreach allocation out of the general funds budget of the HAPL are:

- **Children’s’ Prison Art Project** - This agency works with incarcerated minors teaching them to express their frustrations by writing poetry, drawing and theater arts. There is a 65% no return rate for the children who participate in this program. HAPL is shown as a funding agency on all their publications.
- **Christian Community Service Center** - In August, HAPL funded forty-five (45) children with school supplies and uniform vouchers. HAPL is shown as a major organization funder on the agency’s publications.
- **Workshop Houston** – This agency offers after school activities to youth in the Third Ward of Houston. HAPL is shown as a “Partner” on their website.
- **Goldberg Towers** – A HUD housing facility in South west Houston. The committee provides a catered BBQ dinner and hosts Bingo with the residents. Mark your calendar for Wednesday, February 22 if you would like to help. This is a very uplifting evening for all landmen who attend. There will be a sign-up list at the HAPL NAPE booth later this month.
- **Brookwood Committee** – HAPL has been playing softball at Brookwood for over 15 years. It is a wonderful event and you can sign up to play at the HAPL NAPE booth. The game will take place on Saturday, April 8.

So when you are grilling out this spring on your old, rusty Weber Grill because you did not win the raffle, know that someone with special needs is having an amazing time sailing and one of your fellow landmen’s children is thrilled to have been given a college scholarship through the HAPL Scholarship Committee.
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(Please contact Amanda Van Deusen, Committee Chairman at amanda.vandeusen@haynesboone.com)

The event will be approved for 7 CPL/RPL credits, including 1 ethics credit.

**Potential Topics (Topics Subject to Change):**
- Oil Capital – History of American Oil, Wildcatters and Their Bankers
- Multi-State Case Law Update
- Primer on the New AAPL JOA Form 610-2015
- Ethics for the In-House and Field Landman
- Remaining Topics & Speakers TBD

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<tr>
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<th>Title</th>
<th>Company</th>
<th>Address</th>
<th>City, State</th>
<th>Phone</th>
<th>Email</th>
</tr>
</thead>
<tbody>
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The second quarterly AAPL Board Meeting for the fiscal year was held December 11, 2016 in Williamsburg, Virginia. AAPL President, Pamela Feist, called the meeting to order and seated our new Directors, John Gerrish of North Houston Association of Professional Landmen and Substitute Director Rajan Ahuja of the Corpus Christi Association of Professional Landmen. After approving the minutes of the prior meeting we had the Treasurer’s Report.

Financials

AAPL Treasurer, Jim Bourbeau reported that for the period ending September 30, 2016, total assets have decreased from $30,713,741.00 to $30,411,521.00, a change of $302,220.00 or 0.98%. Total liabilities as compared to September 30, 2015 have decreased from $3,067,022.00 to $1,806,390.00, a change of $1,260,632.00 or 41.10%. This was primarily due to the repayment of $1,000,000.00 building note payable, as well as a $244,401.00 decrease in unearned long term three and five year dues. Revenues (exclusive of investment revenue) compared to 09/30/2015 have decreased 7.59% from $598,033.00 to $552,651.00. The decrease in revenue is due to a reduction in publications revenue of 58.54% from $82,900.00, to $34,371.00. This is due to eliminating the Landman 2 magazine. Expenses have decreased 22.19% from $1,819,050.00 to $1,415,395.00. Most of this decrease was due to the reduction of costs relating to publications, i.e. ceasing Landman 2, (69.68% reduction from $134,484.00 to $40,774.00), educational seminars (40.43% reduction from $175,868.00 to $104,762.00) Board of Director Meetings (68.77% reduction from $96,611.00 to $30,168.00) and general and administrative expenses (29.62% from $478,443 to $336,742.00). Investments as of September 30, 2016 are $23,972,640.00 a decrease of $255,990.00 or 1.06%. This decrease has been a result of transfers of cash of $1,000,000.00 to the AAPL operating account however this has been partially offset due to the unrealized and realized gains in the AAPL investment account of $776,131.00.

The total assets in the AAPL Education Foundation, Inc. is $3,414,398.00 as of 9/30/2016, an increase of $57,235.00. Educational grants of $16,100.00 were given as of 9/30/2016. The Landman’s Scholarship Trust had total assets of $6,380,555.00 as of 9/30/2016 an increase of $476,066.00 over 9/30/2015. Scholarships of $82,250.00 were given for the three months ending 9/30/2016 vs. $51,500, 0.00 as of 9/30/2015.

Staff Reports

Melanie Bell, Executive Vice President, stated our current staff headcount is 28 plus one long term contractor. There are six vacancies-Certification Coordinator, Sr. Accountant, Personify Database Administrator, Electronics Media Administrator, Business Development Manager and Publications/Marketing Manager. 2016 staff milestones include Jodi Gallegos, Dondria Roozee, Stephanie Rickels - five years, Mariah Martin -ten years and Le Ann Callihan – twenty-five years. All Leadership training and development are now being done in-house to keep costs down. The City of Ft. Worth has agreed to build the pedestrian walkway adjacent to the AAPL headquarters building retaining the Live Oaks and preserving the property value. There will be eight educational events held at the AAPL facility this year.

Marketing

Phase I has begun in refreshing the AAPL website and marketing materials such as brochures, email blasts, ads, etc. New advertising opportunities (inserts, banner ads, website ads, etc.) have brought in $14,000.00 in web advertising and $12,500.00 in insert revenue. Media/PR coverage for the AAPL has been impactful with coverage in the San Antonio Business Journal, The Oklahoman, EnergyWire, Denver Business Journal, Pittsburgh Business Times, Oil & Gas Investor, KOSA-CBS among others. New marketing brochures have been developed for Membership, Advocacy (Govt./Reg.), Certification and Contract Center. Landman magazine cost vs. revenue continues to operate on a breakeven budget. Publications for the Educational Foundation Estate Planning have been developed for the Educational Foundation Board. New brochures to help promote AAPL membership and its services have been created and will be rolled out shortly.

(Continued on next page)
NAPE

Summer NAPE partner gross income was $743,687.00 (AAPL distribution is $375,562.00 and management fee of $141,351.00). Attendance exceeded expectations given the external market. Financial results were still strong, partly due to reduction in costs. Denver NAPE sponsorships and attendance were weaker than expected. Financials are not yet available. Early numbers for NAPE Summit 2017 are encouraging. New branding marks for Land, International and OCS has been developed for NAPE Summit. An AIPN workshop has been added. As of the Board Meeting 1,414 attendees have registered, with 394 Exhibitors and over $1.5 million in sponsorships. Expanded NAPE week events include IPAA, AIPN, and OCS Advisory coordinated events. There are a number of new sponsors.

Annual Meeting

Marketing and final plans for the Seattle 2017 Annual Meeting are well under way with a series of email blasts, ads, postcard and brochure inserts. Hot Play Happy Hours are proving to be a great sponsorship marketing opportunity and interest among members is building. Early registration is advised to secure a room in the host hotel as the maximum reservations for AAPL guests in the host hotel is 300. The 2018 Annual Meeting will be held in Denver and the host hotel contract for 2018 has been secured. The keynote speaker has been moved to opening ceremonies and the Landman’s Bash moved to Friday evening.

Membership

Membership as of November 14, 2016 stood at 14,691 members just shy of our goal of 15,000 which we hope to achieve by January or February. Total Certification applications processed since the September Board Meeting total 35 with 11 CPLs, 1 Retired CPL, 15 RPLs and 8 RLs. Current designations include 2,853 (52% of eligible membership) CPLs, 2,201 (40% of eligible membership) RPLs, 440 (8% of eligible membership) RLs and 29 (1% of eligible membership) Retired CPLs.

Education

AAPL’s new Contract Center was launched in October 2016 after successful completion of the quality assurance center. Upon the launch of AAPL Contract Center, Forms-on-a-Disk has ceased new sales. Access to all AAPL forms will be provided exclusively through subscription to AAPL’s Contract Center. The new CEU registration process and application is currently in place for organizations outside of the AAPL (excludes local associations) seeking Recertification Credits. AAPL recorded the two day workshop on the New Model Form Operating Agreement that was held in Houston in November. The recording is currently available to members for $400.00 and for non-members $525.00. For the 2017-18 Education Program, regionalized education content and speakers will be customized to hone in on the nuances of a particular subject matter as it relates to a specific region, basin and/or state. Likewise, AAPL will recruit subject matter experts in a given region to be volunteer speakers at educational seminars and institutes. Since the September Board meeting, 13 seminars have been given with 623 attending registrants.

Governmental Affairs

Russell Cohen, our Governmental Affairs Director reported the AAPL has developed an Independent Contractor Workshop to educate and bring awareness to the potential pitfalls members face when either working as an independent landman or hiring them as a broker or company. This workshop will be offered in the first quarter of 2017 with additional offerings via webcast, as well as archived for post use after the live session. Member Outreach included a call-to-action regarding possible adverse member impacts on state mineral claims pursued by North Dakota, provided an AAPL affidavit for legal case authenticating multiple AAPL Joint Operating Agreements, provided an original AAPL position statement letter for use by the Tax Committee, regarding the industry practices of independent landmen and drafted the subject matter for the marketing brochures on legal, regulatory and tax areas to be used for the new brochures.

(Continued on the next page)
Committee Reports

Six currently accredited university undergraduate level programs will expire in June 2017, and one currently accredited undergraduate program will expire in November 2017. All programs seeking reaccreditation except the University of Louisiana at Lafayette (ULALA) have submitted their applications with ULALA expected to be received shortly. The 2018 Annual Meeting is set for June in downtown Denver. All nominations for the AAPL awards should have been submitted by mid-January. The Educational Foundation has developed a new process for distribution of awards from the Elizabeth Brand and Mary Blankenship Memorial Funds. A new subcommittee has been formed to develop new ways to set up fund raising donations to the Foundation. The Ethics Committee reviewed ten cases and three were set for hearings, three were sent to investigative committees, two were found to be complaints against those that were not current members of the AAPL and one has been closed. The goals of the Field Landman Committee are (1) outreach, (2) networking and (3) education for Field Landmen. There are eight locations planned for Field Landman Seminars this year by adding Tyler, Texas, Midland, Texas and a 2nd Houston seminar to the current locations. The Finance Committee met in November at the AAPL headquarters to review projections, cash flow, budget and capital budget requests, and to work on the proposed 2016-2017 AAPL budget for 2017-18. Income for 2016-17 are running below projections due primarily to reduced attendance at educational seminars. Expenditures for 2016-17 are also running below budget projections. Under the direction of the Finance Committee, the staff is working on preparing a balanced budget for the 2017-18 year and hopes to have it ready early in 2017 and completed shortly after NAPE Summit. The AAPL Contract Room opened its doors in October 2016. The 1982, 1989, 1989 Horizontal, 1989 JOA Recording Supplement and the 2015 JOA’s have already been added along with the Gas Balancing Agreement and three Confidentiality Agreements. The Investment Advisory Committee reports for the third quarter of 2016, that the AAPL Operating Account is up 3.7%, with equities up 4.9%, the AAPL Educational Foundation is up 3.6% overall and the Landman’s Scholarship Trust is up 3.7% overall. For year to date, the AAPL Operating Cash Account is up 7.7% overall.

The next AAPL Board Meeting is scheduled for March 11-12 in Santa Barbara, California. It is the duty of your AAPL Director to represent the views and positions of the HAPL. If you have any issues with the AAPL or concerns that you wish to discuss in greater detail, please feel free to contact me or any HAPL Board Member.

Respectfully submitted by:

Joel Loshak
AAPL Director, District IV
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The HPAC Holiday Event “A Victoria Tea” was held at the elegantly decorated St. Regis Hotel. In addition to the hotel being decked in holiday sparkle, luncheon attendees were also decked in holiday sparkle and spirit. First VP, Donna Parish, with assistance from luncheon committee members Jacqueline Yee, Shirley Gordon, Beverley Smolenski, Wanda Shaw & Mickey Murrell, created a warm and quite lovely atmosphere in which to have fellowship and share holiday greetings and wishes. The “Tea” included Kir Royale. After being seated, we were served a variety of tea sandwiches, a selection of teas, scones, pastries, English trifle and a gift box of macaroons. As if that were not enough a harpist played in the background. Prior to conclusion of the luncheon Donna Parish awarded Door Prizes, one being Tea for Two at the St. Regis.
HPAC’s two (2) remaining functions for 2016-17:

Tuesday, February 21, 2017 – “Shakespeare Celebration – “Shakespeare Cross Examination: the Authorship Perspective” by Bonner Cutting – 10:30 AM until 1:30 PM – Norris Center – 816 Town & Country Blvd., Houston, TX

Tuesday – 5/2/17 – Spring Musicale – “New Faze” – Karen Nightengale & Vlad Morakhovsky, a renowned singing duo – Hess Club – 5130 Westheimer, Houston, TX

**********ATTENTION HAPL MEMBERS**********

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Dues are $20.00 annually. For other information or to be a guest at one of our upcoming luncheons please contact HPAC Liaison to HAPL, Sheri McQuinn @ 281-492-0744 or @ mcquinnmichael@att.net.
LANDMEN AS INDEPENDENT CONTRACTORS: IS THE GOVERNMENT’S VOLUNTARY SETTLEMENT PROGRAM TOO GOOD TO PASS UP?

BY: MICHAEL KELSHEIMER & CHARLES SARTAIN
(ORIGINALLY PUBLISHED IN LANDMAN MAGAZINE)

The days of the lone landman driving around the back roads taking leases and visiting courthouses are becoming a thing of the past. Though there are still a few independent landmen who fit this mold, clients have demanded change and consolidation. Now there are brokerage firms and other combinations of landmen. It is not a bad thing. It is just different.

The fly in the ointment is that the government views landmen who work for these companies as employees and not independent contractors.

Why Should You Care?

Because the government cares. It might come as a shock, but independent contractors often do not report all of their income on their tax returns. This deprives the government of not only income tax revenue, but FICA and FUTA taxes as well. Unable to raise taxes or reduce the national debt, the Internal Revenue Service and Department of Labor are looking to squeeze tax dollars from any place they can find money. The “misclassification” of independent contractors is one place they are truly focused.

Hundreds of new investigators have been hired. Fines in this area are up 500 percent. The IRS has started using sophisticated new software programs that monitor businesses that fit a profile for misclassification. Among other things, the software analyzes businesses that have large numbers of IRS Form 1099-type payments to individuals over threshold amounts and 1099 payments to the same individuals year after year. And, to make matters worse, government agencies have started cooperating and sharing data on potential violators — making them easier to catch.

This means the IRS is looking for brokerage firms that are treating landmen as contractors when they should be employees. This means landmen who should be treated as employees by their brokerage firms may have a claim against the brokerage.

Now we have your attention, but you’re still not convinced. After all...

How Bad Could it Be?

In an IRS audit, the employer could be assessed half of back payroll taxes, penalties, interest and possibly the “contractor’s” half of back payroll taxes and the amount that “contractor” should have withheld for income tax purposes. In some cases, this number approaches 40 percent of the amount paid to each “contractor” over the last three years. If you are a brokerage firm with 10 landmen treated as contractors and you pay $75,000 per year, this could mean $900,000 in back taxes.

Of course, it probably will not end with the IRS. Because the agencies are sharing information, the IRS may now hand you off to the DOL, which will then come in and ask for two to three years of timesheets for those “contractors” who are now employees. Because you treated them as contractors, you will not have any timesheets, so the DOL will interview the landmen and ask how many hours of overtime they worked in the last three years. With a free pass to answer and no time records to dispute, the landmen can tell the DOL just about anything, and the DOL, in turn, will assess you for that overtime. Assuming those same 10 landmen say they worked two hours a week of overtime over the last three years, the DOL might assess you with as much as $182,799.60 in back overtime before penalties.

(Continued on next page)
But it does not end there. The Texas Workforce Commission may then audit for unemployment benefits for terminated “contractors” who should have been treated as employees. And, once bitten by the IRS and DOL themselves, your competitors may decide that the best way to stay competitive is to turn in all of the other companies using the same approach. For this, they will receive up to 15 percent of the government’s recovery in addition to leveling the playing field. While there may be honor among oilmen in the patch, the opportunity to level the playing field and make some money may prove too tempting to pass up.

Now that we firmly have your attention, you might ask:

**What is the Test to Determine Whether Someone Should be Treated as an Employee?**

As is often the case in the law, the answer is complicated. The IRS, DOL and TWC each have their own test. Thankfully, however, the general ideas are similar. The following questions assess the fundamental issues of the tests and should give you an idea of whether this may be a problem for your business:

1. Do you provide training — either initially or along the way — for your landmen?
2. Do you have set hours you expect your landmen to be working?
3. Do you instruct the landmen on the sequence in which they should perform tasks or do you leave it to them to figure out completely how to bring you a finished product?
4. Do your landmen work in your offices?
5. Have you taken away per diem payments because they just don’t make sense anymore?
6. Do you provide office supplies and\or computers to the landmen to perform their work?
7. Do you provide access to title information through a company system?
8. Do you pay landmen based on the hours worked or a set rate per day?
9. Do you not charge back your landmen for bad work if your client rejects their work or requires it to be redone?
10. Do your landmen get paid for all their time on a project rather than having the responsibility to complete a project in a certain time for a certain price?
11. Do you not have a written contract with your landmen setting out their relationship?
12. Do you not require landmen to work for you through an entity that they create and own?
13. Do your landmen work for you over a long period of time — or for years?
14. Do your landmen not work for any other companies or handle landmen services for other clients?
15. Do you expect the landman you assigned the work to complete it himself rather than hand it off to an assistant he might hire?
16. Do you provide health insurance or other benefits to one or more of your landmen?

If you answered “yes” or “correct” to any of the questions above, you could be a candidate for investigation. There is not a minimum number of positive answers to be at risk, but the more affirmative answers you gave, the more risk you have of being audited and your landmen being reclassified as employees.

**What Should You Do?**

For those of you who answered “yes” enough to become concerned, there are basically two options: (1) take steps to reduce or eliminate the “yes” answers and hold onto the Section 530 Safe Harbor defense; and (2) take advantage of the very favorable settlement program now offered by the government to reduce your liability by as much as 95 percent and re-characterize the contractors as employees moving forward.

(Continued on next page)
How you approach minimizing these risk factors will be different for every business, but you should start with these thoughts:
1. Put the landmen on a written contract that maximizes support for independent contractor status.
2. Require landmen to form entities that then contract with your business.
3. Provide no training or hire someone outside to train the landmen before they come to work for you.
4. Switch landmen to a project-based pay schedule that they invoice you for and move away from daily, weekly or hourly rates.
5. Create risk of loss for the landmen in each project. If they don’t do good work, reduce the amount they are paid.
6. Make the landmen responsible for their own place to work and their own supplies.
7. Work to reduce other risk factors from “yes” to “no” in the context of your business style and systems.

Though you may hate the thought of paying an attorney, the money you could ultimately save by engaging an attorney could be significant. For that reason, it makes sense to work with employment law counsel to help with this process to ensure the least possible risk moving forward.

What is the Section 530 Safe Harbor Defense?

Some landmen and brokerage firms are holding onto the idea that they can defeat the IRS misclassification argument using the Section 530 Safe Harbor defense, which relates to Section 530 of the Revenue Act of 1978. The idea behind the defense is that if everyone is doing the same thing, the IRS cannot declare a misclassification. While this may be true, it only has the potential to be successful against the IRS. Claiming Section 530 before the DOL or the TWC will fall on deaf ears because they are not subject to it.

What is the Settlement Program and Why is it Such a Good Deal?

Even with its new investigators, the government cannot catch all the violators. With that in mind, the IRS has offered a settlement that is primarily aimed to bring violators into the fold so that the government gets that tax revenue on a go-forward basis. In the example presented earlier where the employer could be exposed to as much as $900,000 in back taxes, their new liability could be less than $10,000.

To qualify, an employer must: (1) agree to treat contractors as employees going forward; (2) have timely filed all 1099s for contractors in years past; (3) be in compliance with all past audits; and (4) not be under audit presently. We do not know how long this program will be offered. It could be withdrawn next month, so there is significant risk associated with waiting to enter the program. Check with a lawyer specializing in employment law for more information.
HAPL 22ND ANNUAL SALTWATER FISHING TOURNAMENT

Date: Saturday, June 10, 2017
Time: 5:00 A.M. - 2:00 P.M. - No Check-In Required
Cost: $75.00 per person for H.A.P.L. Members; $125.00 for Non- H.A.P.L. Members; $75.00 per person if 18 years and younger (HAPL Member or not) - Lunch included with your Entry Fee (starting around 1:00 p.m.)
Prizes: Cash Prizes for Trout, Slot Redfish, Tagged Bull Redfish and Big Fish; plus Door Prizes
Questions: Call Jerry Niekamp at 713-252-1457 or Katie Eisterhold at 713-305-0516
Place: West End Marina in the Sea Isle Subdivision, Galveston, Texas.

Rules and Regulations:

1. All local, state and federal, coast guard and Texas Parks and Wildlife Department regulations and laws apply at all times during the tournament.
2. Professional fishing guide(s), commercial and professional fishermen and anyone who has guided for compensation during the last twelve (12) months are not eligible to compete in the tournament. You may hire a guide, but the guide’s catch is not allowed and there is no swapping or trading of fish between contestants and/or guide.
3. The tournament format shall be as follows:
   a. Only speckled trout and redfish and “Big Fish” (defined below) will be accepted for weigh-in. The format includes a “Trout Category” (only 3 legal speckled trout per entrant), a “Bull Redfish” Category, (which is one bull red which must be ‘tagged’), “Slot Redfish” Category (maximum of 2 legal slot redfish between 20” - 28”), and a “Big Fish” Category, which can be any legal fish, except speckled trout or redfish.
   b. Tournament fishing hours are from 5:00 a.m. (no check-in required) to 2 p.m. Saturday, June 10, 2017. Legal Fish may be weighed-in on Saturday until 2:00 p.m. No weigh-ins will be accepted after 2:00 p.m. (unless you are in the weigh-in line at 2 p.m.). Each contestant may weigh-in a total of 3 Speckled Trout, 2 Slot Redfish, 1 Bull Redfish (tag must be properly attached) and 1 "Big Fish" caught during the tournament. In the event of a tie, the earliest weighed-in wins, so make sure you have the weighmaster indicate weigh-in time. Guides may be hired but the guide’s catch is not allowed. There is no trading or swapping of fish by any Entrant. Fish cannot be culled once they are weighed in. The tournament is based on an individual’s catch, not on a team. Weigh-in is at the Sea Isle Bait Camp at the Marina in Sea Isle. The cash purse shall be split equally between the four categories, (being the Trout category, the Slot Redfish category, the Bull Redfish category and Big Fish category), and will be divided as follows for each category:

<table>
<thead>
<tr>
<th></th>
<th>TROUT</th>
<th>SLOT REDFISH</th>
<th>BULL REDFISH</th>
<th>BIG FISH</th>
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</table>

4. Contestants must fill out, sign and return the RELEASE AND INDEMNITY AGREEMENT furnished with these rules in order to be eligible to participate in the tournament and such agreement shall be considered the Tournament Entry Form.

5. **ENTRIES MUST BE RECEIVED BY MAY 19, 2017. LATE ENTRIES WILL NOT BE ACCEPTED THIS YEAR-PERIOD!!!**
6. The official weigh-in station is at Sea Isle Bait Camp at the West End Marina in the Sea Isle Subdivision. Tournament Officials (Katie and Jerry) have the final say as to compliance/weigh-ins/winners. Failure to follow the rules results in disqualification. In the event a Category is not “fully placed” (i.e.-for instance only 2 places are weighed in for that Category), the monies as to that Category will be split equally between the existing winners in that Category.

7. **All contestants assume any and all risks to their safety throughout the tournament. NO REFUNDS FOR ANY REASON!!!** This Tournament benefits the HAPL to help support the HAPL. Should a hurricane occur, the tournament date will be moved.

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Fill out the entry form below and mail it along with a check payable to the HAPL. Mail to the attention of Jerry Niekamp at 777 Post Oak Blvd., Suite 950, Houston, TX 77056.

**ENTRY FORM AND RELEASE AND INDEMNITY AGREEMENT FOR THE HAPL TRUCHA DEL MAR INVITATIONAL SALTWATER TOURNAMENT**

The undersigned hereby releases, holds harmless and forever discharges the HAPL Invitational Saltwater Fishing Tournament (“Tournament”), its officials, hosts or any other person, association, firm or corporation associated therewith in any way or manner from any and all damages, claims, causes of action or injuries, including but not limited to death and/or dismemberment, of whatever kind or character arising from, associated with or caused by participation in the Tournament, regardless of actions of gross negligence, contributory negligence, joint negligence or concurrent negligence by any person or entity associated with the Tournament. Entrant stipulates, acknowledges and agrees that no legal action or suit may be brought against the Tournament or any party associated therewith for any reason.

Dated this _____ day of __________________, 2017.

NAME (PRINT): ____________________________________________

ADDRESS: __________________________________________________

E-MAIL: ____________________________________________________

PHONE: ______________________ FAX: _______________________

SIGNATURE: _______________________________________________

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**WE NEED SPONSORS!!! IF YOU CAN SPONSOR THIS EVENT, PLEASE SEND A CHECK PAYABLE TO THE H.A.P.L. TO J. NIEKAMP AT 777 POST OAK BLVD., SUITE 950, HOUSTON, TEXAS 77056**
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