





FALL NEWSLETTER

NHAPL FALL 2017 11/21/2017

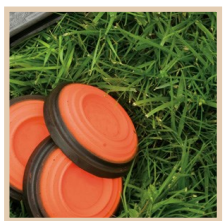
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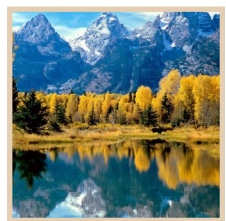
PRESIDENT'S NOTE
Travis Hill, RPL




LOOKING FORWARD
Jason Sebastinas, RPL



CLAY SHOOT
Sam Kneisley, RPL



QUARTERLY MEETING
Andrew Cooper, CPL



MEMBERSHIP
Will Holstien, CPL

● DECEMBER ●

14

CHARITY LUNCHEON

● JANUARY ●

4

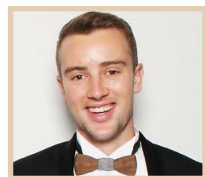
JOINT LUNCHEON

● FEBRUARY ●

22

HALF-DAY SEMINAR

From the President's Desk



I would like to begin my remarks by simply giving thanks.

As the calendar year closes and the holidays come upon us, I feel led to show gratitude for the innumerable gifts I, and we, have been given as a part of such a transcendent industry. I would like to express my thanks to our membership - for your steadfast commitment and perseverance displayed throughout the last several years of trying times. I'm also thankful for the resources afforded to us here at the NHAPL, because of each of you, to be able to give graciously to the AAPL's Harvey Relief Fund, to the Montgomery County Women's Shelter, to Court Appointed Special Advocates (CASA) of Montgomery County, and to multiple young aspiring Landmen working tirelessly on their degrees. And finally, I'm thankful for the NHAPL's hard-working Board of Directors. The Board's willingness to show true leadership and *serve* you and this organization through a time that many would consider difficult, demonstrates their dedication and faith of not only this organization, but this industry.


The Board has been hard at work in an effort to deliver tremendous educational, social, and entertaining events that will provide you, the membership, with the opportunity to step out of your offices and network with industry peers. Our Vice President, Jason Sebastinas, has organized three well-attended luncheons with both unique topics and speakers, including Tom Seng, all the way from the University of Tulsa. Our Philanthropy Chair and Clay Shoot Chairman, Sam Kneisley, did an incredible job with this year's event at Blackwood Gun Club in Conroe, with plenty of food, door prizes, and even a Squares Board dedicated to the AAPL's Hurricane Harvey relief effort. Most recently, Cheryl Schmidt organized our annual social at Crush Wine Lounge, drawing over 60 members and non-members and providing a great medium to network with fellow In-House and Field Landmen, Attorney's, and others from around the north Houston area.

As we step into the holiday season, I encourage each of you to attend our final luncheon of the year, the Charity Luncheon. We'll be giving gifts to multiple philanthropic causes at the luncheon and will be enjoying an off-the-cuff topic in the confines of Repsol's offices. Thank you again to the Board for your time and effort this fall, if you as members, are ever looking to get involved and join our exceptional team of people, please reach out to me personally at thill@swm.com.

From our Board of Directors to you, I wish each of you a Happy Thanksgiving and a Merry Christmas!

Travis Hill, RPL
NHAPL President

Fall Monthly Luncheons | Looking Forward to 2018!



NHAPL kicked off the fall luncheons for 2017 at Jaspers in The Woodlands, TX. The luncheon was very well attended with over 40 guests in attendance to hear Tom Seng of the University of Tulsa. Not only was the food delicious and the venue great but Tom did a great job kicking off the 2017 – 2018 NHAPL year with a discussion regarding "US Hydrocarbon Exports" and giving an update regarding the United States and international oil and gas activity. Our October luncheon was held at Amerigo's Grille in The Woodlands, TX and did not disappoint. As we enjoyed a huge helping of lasagna, Ryan Kirby with Kirby, Mathews & Walrath, PLLC gave a great presentation, "Ratification: Beware!" The discussion centered around how to be careful when dealing with oil and gas lease ratifications. Our November luncheon took place at Landry's Seafood House in The Woodlands where James H. Dupuis, Jr., from Dupuis & Polozola gave a terrific presentation regarding cemetery law for the landman. Our December charity luncheon at Repsol will focus on technical topics that every landman should be aware of and we will be making a holiday season donation to two worthwhile philanthropic causes! Be sure to sign up today!

We are proud to announce our fall 2017 luncheon sponsor, Transglobal Services LLC, which is currently celebrating its 10 year anniversary with expertise in Land, Right-of-Way, Survey, Seismic and GIS. NHAPL would like to say thank you to Transglobal for its support with our fall 2017 luncheons!

As we move into 2018, please be on the lookout for information regarding our spring 2018 luncheons and our upcoming event such as our February, Half-day Seminar and our April, Golf Tournament. We hope to see everyone at these events!

Jason Sebastinas, RPL
NHAPL Vice President

5th Annual Clay Shoot | Blackwood Gun Club



The 2017 NHAPL Sporting Clays Shoot went off without a hitch as members and guests came out for a good time of shooting, comradery, and a chance to take home a nice door prize. All told we had 50 shooters come out to Blackwood Gun Club in Conroe for a day of shooting and eating BBQ provided by Kuntry Katfish Catering. The weather was a bit warm, but we had plenty of cold water and beer to quench the thirst of even our worst shooters! We gave away Five (5) raffle prize guns, One (1) squares gun for Hurricane Harvey relief, and a ton of other prizes. As always, we tried to guarantee that if you came to the Sporting Clays Shoot, you left with at least a little something!

All in all we raised a little over \$5,000.00 in which about \$1,400.00 was donated to the AAPL’s Hurricane Harvey relief efforts. The money we raise in this event helps us to continue to provide great events to members like you. This was all made possible by our great sponsors, who are listed on our webpage, and the group of volunteers who helped us pull everything together. We’re looking forward to next year’s shoot and hope to see you there!

Sam Kneisley, RPL
NHAPL Director & Clay Shoot Chairman

AAPL September Quarterly Board Meeting | Farmington, Pennsylvania



The weather in Pennsylvania was a huge improvement over hot and humid Houston in September, however, it did feel strange leaving a Hurricane Harvey ravaged Houston for a mountainous evergreen paradise. Saturday afternoon I attended the Board Roundtable Meeting, and as you can imagine, Hurricane Harvey was the overwhelming topic of conversation. Discussion centered around AAPL creating an avenue to help AAPL Members affected by natural disasters. The Executive Committee decided that the AAPL Educational Foundation would be the optimal vehicle to help those affected by Hurricane Harvey and future natural disasters.

At Sunday’s Board of Director’s Meeting, the AAPL Board approved the donation of \$500,000.00 to the AAPL Educational Foundation disaster relief fund. The Board also voted to match all donations up to an additional \$500,000.00. Additionally, the AAPL Educational Foundation will match donations up to \$250,000.00. In total, AAPL and the AAPL Educational Foundation have pledged up to \$1.25 million in disaster relief directly to AAPL members affected by natural disasters. I am truly grateful that the Executive Committee was able to create a mechanism to enable landmen to directly help fellow landmen in a time of need. I left the meeting confident that the organization is in great hands this year, and I look forward to my involvement at the remaining quarterly meetings.

Locally, we raised \$1,400 at our 5th Annual NHAPL Sporting Clays Shoot, and those proceeds will be donated to the AAPL disaster relief fund. We also were fortunate to have AAPL President, David Miller, join as at our September Luncheon, at which he was kind of enough to talk to our members about the ongoing disaster relief efforts.

The next AAPL Board Meeting is set for San Antonio on December 2-3rd. I encourage you to reach out to me or anyone on the NHAPL Board to voice any issues or concerns you would like raised at future board meetings.

Andrew Cooper, CPL
AAPL Regional Director

NHAPL Half-Day Seminar | The Woodlands, TX

The NHAPL is pleased to offer our annual Half-Day Seminar! This yearly event draws on average 80-100 Landmen, Attorneys, and other industry professionals for an afternoon of presentations and discussions about topics that affect our industry. Please mark your calendars for the NHAPL Half-Day seminar on Thursday, February 22, 2018. The speakers will be finalized at a later date, and this event is sure to provide an educational experience. Come earn some AAPL credits and stay for the happy hour after!

Luke McCarley, CPL
AAPL Regional Director

Membership Trends



As the industry continues to rebound, the NHAPL membership numbers remain steady. Since July 1, 2016, the Association has added 37 new members. We welcome the following Landmen and other professionals who have joined the NHAPL since July 1, 2017:

Henson Barnes, K3 Oil & Gas	Ryan Hall, Southwestern Energy	Andy Wazir, High Bar Land Company
Katherine Vairin, Noble Energy, Inc.	Ryan Cooper, Oxy	Herbert Melton, RedSky Land LLC
Mark Warren, M&D Exploration LLC	William Gibbs, TEAM	Dustin Nuche, Principle Energy, LLC
Brit Framel, GeoSouthern Energy	Nathan Myers, Dupuis & Polozola	Joshua Wells, Southwestern Enerngy
Ann Latimer, Dupuis & Polozola	Bailey Brougher, Southwestern Energy	Jocelyn Buckley, Buckley & Turner, PLLCRyan

Will Holstein, CPL
Director & Membership Chair



DUPUIS & POLOZOLA

where preparation and expertise meet

Nathan A. Myers

Senior Counsel

namyers@dupuispolozola.com

EDUCATIONAL DEVELOPMENT

NHAPL FALL 2017

Just Put ‘Em in Suspense: Practice Tips for Dealing with Royalty Suspense Issues

The general industry understanding is that an operator is authorized to withhold or suspend royalty payments otherwise due to a royalty owner when that royalty owner’s interest is subject to a title defect. This understanding is accurate and, unbeknownst to some, is actually codified in Section 91.402(b) of the Natural Resources Code. The statute is a little more nuanced, specifically providing that a payor (usually the operator) can withhold proceeds from a payee (royalty owner) when there is either (i) a title dispute, (ii) a reasonable doubt that the payee has clear title to his interest, or (iii) an unsatisfied title opinion requirement that pertains to the payee’s title, identity, or whereabouts. Additionally, effective September 1, 2017, Section 91.402(b)(2) allows a payor to withhold royalties from a payee when the payee’s interest is subject to a child support lien or order of withholding under the Family Code.

What should a payor do when a royalty owner asks questions about its suspended royalties?

First, take the royalty owner’s query seriously. Second, pay over any portion of the royalty owner’s interest that is not affected by, or subject to, a title defect. If the payor does not respond in writing with a reasonable cause for maintaining the royalties in suspense or pay over the undisputed royalties within 30 days of receipt of the royalty owner’s query, the royalty owner can file suit against the payor. While some payors have a high risk tolerance for certain threatened lawsuits, payors might want to give additional consideration to suits alleging improper suspense because under Section 91.406, in addition to the recovery of interest on withheld sums, a royalty owner is entitled to a mandatory award of attorney’s fees in any judgment that is “favorable” to the royalty owner. Importantly, this is not a prevailing party standard – courts interpret this provision broadly to apply to any judgment where the royalty owner ends up in a “better position” than prior to filing suit. *See Headington Oil Co., LP v. White*, 287 S.W.3d 204, 216 (Tex.App.—Houston [14th Dist.] 2009, no pet.).

In practice, this means that payors should exercise caution in summarily withholding *all* of a royalty owner’s interest when only a *portion* of the owner’s interest is affected by a title defect. Even if the payor is right to suspend a portion of the interest, the payor will nevertheless be on the hook for interest on the remaining portion and attorney’s fees if the royalty owner successfully recovers any portion not subject to the title defect. Determining whether a title attorney has separated such interests may require a review of the division-order title opinion and the comments and assumptions contained therein. In some cases, a follow-up with the authoring attorney may be necessary.

What information is a payor required to provide to a royalty owner?

The statute is not very clear. As noted above, the payor must respond to the royalty owner’s inquiry stating a “reasonable” cause for non-payment, which presumably means any of the reasons in Section 91.402(b) set forth above. Therefore, a payor simply needs to explain (in writing) why it is holding the royalty owner’s interest in suspense. In order to comply with the plain words of the statute, if a payor is holding royalties in suspense based upon a title opinion requirement, the payor should also inform the royalty owner of the corresponding curative necessary to remove the interest from suspense. Additionally, best practices might include a specific reference to Section 91.402(b) so that the royalty owner knows the payor has a statutory basis on which to continue withholding royalties.

Many payors are in the habit of including an excerpt from a title opinion with the pertinent discussion, title requirement, and suggested curative. While such a practice is oftentimes both easy for the payor to provide and helpful to the royalty owner, a payor is not obligated to turn over title or other similar materials to a royalty owner (unless the corresponding lease provides otherwise). In many cases, it is likely in the payor’s best interest to not waive attorney-client privilege or unintentionally divulge information that may be used against it later by providing title materials or work product to a royalty owner. At the very least, payors should exercise caution by carefully reviewing the title materials and work product that they are sending to royalty owners.



Does an operator have a duty to proactively contact royalty owners whose interests are in suspense?

Under current law, probably not. However, an argument could be made by a payee that a strict reading of the statute itself creates such an obligation for interests being held in suspense due to a requirement in a title opinion because Section 91.402(b)(3) states that payments may be withheld for title requirements that remain unsatisfied “*after* a reasonable request for curative information has been made by the payor.” This literal reading seems to imply that a payor first has a duty to make a reasonable request for curative from a payee and may only withhold royalties after such request is not fulfilled. Still, no reported case addresses this argument.

Further, it is not farfetched to imagine a court at some point imparting a few of the duties owed to non-executive owners by the executive to payors under the right circumstances. For example, several cases have held that the executive has a duty to notify the non-executives that a lease has been executed in order to give the non-executive an opportunity to ratify the lease and share in production. *See Andretta v. West*, 415 S.W.2d 638 (Tex. 1967). By future extension, it is possible that a payor, as the successor-in-interest to the executive, might have a duty to notify a non-executive owner of its interest and the fact that the payor is holding its interest in suspense due, in part, to the payor’s information advantage and fact that it is holding another’s money. However, courts have thus far been reluctant to go as far as to impose the executive’s duty upon lessees. *See KCM Financial, LLC v. Bradshaw*, 457 S.W.3d 70 (Tex. 2015).

Concluding remarks

The suspense statute was enacted to protect royalty owners against the “deliberate delay” of payors in making royalty payments. By allowing such owners to recover interest on late royalty payments, together with mandatory attorney’s fees in bringing an action against a payor, the statute gives royalty owners a small sword with which to poke payors who are either not paying attention or who intentionally disregard the queries of their royalty owners. A basic understanding of, and compliance with, the provisions of the suspense statute can foreclose potential lawsuits and improve relations with royalty owners.

- Nathan A. Myers
Senior Counsel





AUGUSTA PINES COUNTRY CLUB

MONDAY, APRIL 16, 2018 @ 11:30AM

Prizes For 1st, 2nd, And 3rd Place
Door Prizes Following Dinner & Awards
Drinks, Lunch, Golf, & Dinner Provided

REGISTER or SPONSOR AT: NHAPL.COM or FORM BELOW

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				AWARDS	\$1,000		
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				CLOSEST TO THE PIN	\$500		
				INDIVIDUAL HOLE	\$250/HL		

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***Please make all checks payable to the NHAPL and send to Randy Helms, Tri Energy Asset Management, Inc., 13910 Champion Forest Dr., Ste. 105, Houston, TX 77069



NATIONAL & LOCAL INDUSTRY COVERAGE



Join NHAPL Members and others this summer in Denver for the 64th Annual Meeting of the AAPL. Your registration will include valuable networking with other industry professionals, education sessions covering current industry trends, earning of up to 15 CEUs, a welcoming reception, an educational luncheon, the and a membership luncheon all at one inclusive low price!

★ HAPL DECEMBER LUNCHEON

- Event Details
- Event Files



Join the HAPL for their December luncheon at the Houston Petroleum Club. Check-in starts at 11:30 and lunch will be served at 12:00 followed by a presentation by Ryan Sears and Darin Brooks of Gray Reed on the “Top 10 Texas Oil & Gas Cases of 2017.” We hope to see you there! 1 RPL/CPL credit will be available.

HAPL NHAPL WHAPL January 2018 Joint Luncheon

Join your host association NHAPL for the annual Joint Luncheon at the Houston Petroleum Club on Tuesday, January 4, 2018. Check-in starts at 11:30 and lunch will be served at 12:00 followed by a presentation from David Miller, CPL, President of AAPL. We hope to see you there! 1 RPL/CPL credit will be available.

Upcoming AAPL Educational Events/Seminars

January 16, 2018	Held By Production/Royalty Issues	Houston, Texas
February 6, 2018	Comparative Oil and Gas Law Review	Houston, Texas
February 5—9, 2018	NAPE—SUMMIT	Houston, Texas

*See www.landman.org for further information.

