The Strong Firm P.C. Attorneys

STRONG•POINTS•NEWSLETTER

Summer 2012

Modern Day "Oil Boom" with Technology Advances and Risk Taking

By: Bret L. Strong

Having spent more than 25 years supporting the oil and gas industry, I have seen my share of ups and downs in the business. In an industry that is known for its "characters" and risk takers, not much has changed. The current environment for finding and producing oil and gas still requires the same skills held by those that founded the industry a century ago. Risky technical advances and investment of significant amounts of money are the requirements to play the game of exploring for and producing oil and gas located miles below the surface of the earth. In the past several months, the perfect combination of technological advancement, sustained high oil prices, and timely risks taken by those looking for opportunities to capitalize has created a new oil boom throughout several parts of the country from Pennsylvania to California, including south Texas.

The Center for Community and Business Research at The University of Texas at San Antonio's Institute For Economic Development, in a report released in early May of 2012, documents that during 2011, oil shale development in south Texas created nearly 48,000 jobs and "overnight boom towns" sharing in a $25 billion dollar economic windfall from the liquid-rich Eagle Ford shale production. The Eagle Ford shale "play" has resulted from horizontal hydraulic fracturing which allows oil trapped in rocks to be cost effectively freed, creating a new economic windfall for producers and mineral owners alike. The study estimates the Eagle Ford shale will create 117,000 jobs by 2021 in south Texas. Between 2010 and 2011, oil production increased by more than six times to 28.3 million barrels. Natural gas production more than doubled to 271.8 billion cubic feet of natural gas, and natural gas condensate production tripled to 21 million barrels, the UTSA report said.

And contrary to popular belief in Washington D.C., this new boom is not just making oil companies better off. The San Antonio Express-News reported on April 4, 2012, that in Carrizo Springs "[r]anchers who once scraped by on bony cattle and seasonal deer leases have become millionaires. New motels, restaurants and other businesses are making local entrepreneurs rich." Just a few short years ago, a trip from Houston into south Texas was a lonely drive

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As the founder and managing shareholder of The Strong Firm P.C., Bret's areas of practice include: oil, gas, and energy; commercial real estate; mergers, acquisitions, and sales; and business law and contracts. He earned a Juris Doctorate, cum laude, from South Texas College of Law, and a B.S. in Business Finance from the University of Colorado at Boulder. He is admitted to practice law before The United States Supreme Court. Bret has achieved the AV® Martindale-Hubbell® Peer Review Ratings™ award and has served as a founding board member of The Woodlands Bar Association. .

Inside This Issue

The Strong Firm in the News

May 2012 - The Strong Firm served as a sponsor for the CB&I Triathlon held in The Woodlands on May 5, 2012.

May 2012 - The Strong Firm represented The Montgomery County Hispanic Chamber's ninth annual Fiesta Universal at Waterway Square. Joe Griffin of The Strong Firm and chairman of MCHC participated in its organization and planning and emceed the event.

April 2012 - The Strong Firm sponsored Muddy Trails Bash.

March 2012 - The Strong Firm closed the acquisition of stock of Angus Petroleum from Bankruptcy Trustee.

March 2012 - The Strong Firm represented an independent oil and gas producer in transaction for an urban oil and gas development.

March 2012 - The Strong Firm represented a developer in a $17 million purchase and development of a medical office building.

March 2012 - The Strong Firm represented local bank in the modification of a $3 million rate swap loan.

March 2012 - The Strong Firm was selected to serve as local general counsel for the U.S. subsidiary of one of the largest privately held companies in Europe.

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Joe became an Associate Attorney in 2010 after graduating from the University of Houston Law Center. His areas of practice include: business law and contracts; corporations, LLCs and partnerships; business and investor immigration; real estate; trademarks; and estate planning and probate. Having lived in Argentina, as well as in Mexico City D.F., Joe is fluent in Spanish and conversational in Portuguese.

Warning: Sharks May Be in the Rental Waters

By: D. Joe Griffin

With Summer 2012 already upon us, many of us have already completed months of searching and planning for that perfect family vacation. Often the majority of our research will come in the form of scouring internet websites and comparing condos, townhomes, or luxury homes available for rent by the owner on a nightly or weekly basis. For many individuals and families, the planning and preparation pays off in the form of unforgettable memories and positive stories that last us a lifetime. For others, these memories can be marred by the actions of unscrupulous owners.

The largest danger involved in renting a vacation property from the owner is what is often referred to as damage deposit fraud, a term which is largely self explanatory. In short, you book the property on-line and pay a considerable deposit which the owner then refuses to return to you as a result of alleged repairs or damages which resulted from your stay. One may also find that the beautiful pictures of the property which caused them to choose it over a myriad of others are several years old and grossly misrepresent the property's current condition. Other forms of misrepresentation may include a lack of contracted amenities or an overstatement of the size of the location.

All of these problems leave one in the difficult position of being hundreds, if not thousands, of miles away from home for only a short window of time with limited knowledge or access to legal avenues that are available. Furthermore, even if one fully understands their legal rights and remedies, following through on this in a foreign jurisdiction upon their return poses a large practical challenge to pursuing justice against a deceitful owner.

Today there are a number of ways in which one can help avoid these problems. The first is to always research the property thoroughly and be careful to read all reviews that you can find before making a purchase. These will often reveal issues that others have had and whether most people have had a generally positive experience with the owner. Thus, if the property has no reviews or is posted without the ability to write a review or leave a comment, this should be a huge red flag. You want to not only be able to read reviews but also write one of your own for the whole world to see should the owner not treat you right, allowing you to affect the future rental stream should the owner not deal fairly with you. A second option is to take inventory and document the condition of the property upon your arrival and departure. You should also communicate issues with the property owner throughout your stay and document the cause. By taking these simple steps, you can largely prevent damage deposit fraud and unfair treatment by the owner post departure. Regardless of your circumstances, we hope that everyone enjoys a wonderful vacation this summer and creates lasting memories with those you are closest to; memories that are not mired by the actions of a devious property owner.

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Mariana became an Associate Attorney in 2011 after graduating from South Texas College of Law. Her areas of practice include: international business investment and transactions; business law and contracts; corporations, LLCs and partnerships; and real estate. She holds a BBA in International Studies and Business Administration from the University of St.Thomas. She is fluent in Spanish and conversational in French.

Environmental Concerns Associated with Commercial Real Estate Purchases

By: Mariana Grijalva

In our previous issues we have discussed some of the many different aspects of commercial real estate transactions that are critical issues to review and address throughout the process of purchasing commercial real estate property. In this issue, we will briefly discuss the importance of evaluating the physical and environmental condition of the property prior to closing to ensure that your liability as the buyer will be limited as far as any environmental issues.

As most experienced commercial real estate purchasers know, environmental liability is an important aspect of every transaction as it can ultimately result in costly remediation obligations and it can drastically affect the value of any particular piece of property. Furthermore, due to several state and federal laws and regulations, an owner of the property may be liable for the cost of such remedial measures, even if the environmental damage was caused by a previous owner.

One way to address this issue is to request from the Seller different representations regarding the state of the property and disclose any environmental concerns that the current owner may be aware of as we enter into the transaction.

Additionally, in many cases, it may be advisable to engage the services of an environmental consultant who may conduct an initial and mostly visual inspection of the property (Phase I), which would identify any characteristics of the property that would suggest it was exposed to environmental contamination or liabilities. In the event that the Phase I inspection reveals concerns regarding the existence of contaminants within the property, a Phase II analysis is typically suggested, which will involve a more in-depth investigation which may involve sampling and chemical testing. In cases where environmental issues are revealed early enough during a commercial real estate transaction, your attor-

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Choosing the Right Entity to Shield You from Liability: Limited Partnerships

By: Eric R. Thiergood, Sr.

This article is the final installment in a three-part series discussing methods to protect your business from liability through the formation of a legal entity.

The first two articles in this series focused on the limited liability company (LLC) and the for-profit corporation. In Texas LLCs and for-profit corporations are by far the most common types of entities being formed. This article will focus on a third option – the limited partnership (LP). While the popularity of the LP has decreased substantially since 2007, an LP may still remain a viable entity structure to shield a business owner from liability in narrow situations wherein the business endeavor utilizes truly passive investors.

The Tax Reasons for the Decrease in LP Popularity

Prior to 2007, many Texas businesses where formed and operated as limited partnership as, very generally speaking, partnerships were not subject to Texas franchise tax. A myriad of changes took place in 2007 when the franchise tax was replaced with the "Margin Tax." The Margin Tax is imposed on all businesses except (i) sole proprietorships, (ii) general partnerships "the direct ownership of which is entirely composed of natural persons," and (iii) certain "passive" entities. As such, corporations, limited partnerships, certain general partnerships, LLCs, business trusts, and professional associations are subject to the Margin Tax. With the removal of the favorable tax treatment once enjoyed, many new business owners have determined that an LP as an entity structure is less attractive than an LLC or a corporation especially when considering the additional requirements and costs of an LP.

The Structure of an LP

An LP must contain one or more "general partner(s)" and one or more "limited partner(s)." A general partner of an LP carries unlimited liability for the LP's debts, liabilities, and claims. Though a general partner can be an individual or an entity, since the general partner bears 100% of the liabilities of the LP, it is strongly advised that an individual not serve as the general partner, as this would defeat one of the main reasons for forming an entity, shielding your individual assets from liabilities of the entity. A limited partner, on the other hand, is liable for debts or claims against the LP only in the amount of that limited partner's capital contribution to the LP. Other than the capital contribution to the LP, a limited partner's personal assets are not subject to the liabilities of the LP. It is critical to note, however, that a limited partner can lose this limited liability enjoyed by limited partners if he or she participates in the management of the LP business wherein they may be deemed a general partner (who again is personally liable for all liabilities of the LP). For this reason it is strongly suggested that an LP be considered as a new entity choice only in circumstances where the general partner for the LP is an entity and not a natural person and where the limited partners are truly in the role of passive investors in the LP and do not participate in the management of the LP. Additionally, the filing fees and legal fees associated with forming a limited partnership are often substantially higher than forming an LLC or a corporation.

Conclusion

For the right business structure or investment (one where the general partner is an LLC and the limited partners are genuinely passive partners), an LP may be a suitable entity structure for your new business venture. Due to the additional cost of formation, the structural requirements and the risk that a limited partner could lose their limited partner status, however, a vast majority of new business owners would be better served by picking the flexibility and more certain shield from liability that an LLC or even a corporation would provide. Whatever the entity type chosen for your new business endeavor – a limited liability company, a for-profit corporation, or a limited partnership – it is critical that you utilize the skill and expertise of an experienced Texas law firm to ensure that you stay protected to the fullest extent permitted under the law.

The Strong Firm has helped thousands of clients in choosing and forming the right entity for their new business venture. We would be happy to assist you in such endeavors.

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Eric, Senior Associate Attorney, joined The Strong Firm P.C. in 2005 after graduating from South Texas College of Law. He is licensed to practice law in the State of Texas and in the United States Federal District and Bankruptcy Court for the Southern District of Texas. Having lived in Asturias, Oropesa Del Mar and Madrid, Spain, Eric is fluent in Spanish and uses these skills in his work with some of the firm's international Spanish-speaking clients.

Environmental Concerns Associated with Commercial Real Estate Purchases

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ney can have the opportunity to address the feasibility of moving forward with the transaction, as well as any necessary steps that may be available to protect the parties in order for them to feel comfortable moving forward to a close of the transaction.

At The Strong Firm, P.C., our attorneys have vast experience in the process associated with commercial real estate transactions and, in conjunction with the expertise of qualified environmental consultants, would be able to assist you in the purchase or sale process and address any potential risks that may arise relating to the physical state of the property. It is our experience that the time and expense invested in legal services, along with environmental consulting services in connection with these types of transactions, is a worthwhile investment as it will ensure that the property being acquired does not bring with it unnecessary obligations and liabilities associated with environmental defects.

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We are proud to announce that for the THIRD year in a row (2012, 2011, & 2010), The Strong Firm has been voted in the First Place as the "Best Attorney, Lawyer & Legal Services in The Woodlands" under the Professional Services category by registered users of Woodlands Online at www.WoodlandsOnline.com.

We appreciate your support and we are proud to serve you!

The Strong Firm

From left: **Laura Junek**, paralegal; **Melanie Edleston**, office manager; **Mariana Grijalva**, attorney; **Adam Looney**, of counsel; **Bret L. Strong**, attorney, founder, and managing shareholder; **Eric R. Thiergood, Sr.**, senior associate attorney; **D. Joe Griffin**, associate attorney; **Brian Albert**, law clerk; **Bethany Kovacs**, legal assistant.

We provide legal services in the all of the following areas:

- Business Law and Contracts
- Financing, Trademarks, and General Corporate
- Corporations, Partnerships, and LLCs
- Real Estate
- Business Disputes
- Wills, Probate, Trusts, and Estates
- Mergers, Sales, and Acquisitions of Businesses
- Oil, Gas, and Energy
- International Business Investment

Modern Day "Oil Boom" with Technology Advances and Risk Taking

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through small towns without much going on. Now, these small towns along the Eagle Ford production area are booming with lots of traffic and hotels and other service providers popping up to support the boom. Local businesses are cashing in.

The Strong Firm is busy helping oil companies, oilfield service companies and suppliers, investors, and landowners all navigate this recently created business environment. If we can be of any assistance to you or your company in structuring or understanding the opportunities created by the current oil and gas exploration and production environment, we look forward to receiving your call.