

Lone Star Review

2015 Conference Planning

The 102nd Annual Texas Circulation Management Association will convene on April 9, 2015, at the Omni Southpark Hotel in Austin, Texas. This hotel has become an Association favorite with the location in Austin, Texas, the capitol of Texas. This will be our tenth conference at the Omni Southpark Hotel.

The 2015 Conference will kick off in just four short months. Planning has already begun. For many years the sitting President has planned the conference and that is the responsibility of the President. Due to personnel changes this position on our Board is vacant at the moment. But we carry on

The Board of Directors is seeking your input for possible speakers/presenters at the conference. Perhaps you have heard or have seen a presentation that would be beneficial to our group. Here is your opportunity to make a suggestion! To make it simple, send an email to our Secretary/Treasurer with the name and contact information for your person. Include a short note of how they could contribute to our Association. We are looking for presenters who can share ideas that have had benefited their newspaper. These type of presentations always leave take-a-way value for our members.

To make this process fun, every TCMA member submitting a potential speaker or presenter for our conference will have their name entered into a drawing of the submitters for their 2015 conference fee to be paid by the Association. The winner must be a current member of TCMA and must attend the 2015 conference in Austin if selected in the drawing.

The deadline for submissions is **Monday, January 5, 2015**. Send your suggestions to tcma@texascma.org or click [here](#) to open your email application.

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On behalf of the TCMA Board of Directors, may you and your family enjoy a Merry Christmas, and a joyous Holiday Season. I hope to see you in April 2015, in Austin, Texas.

— J W Smith

2015 J W Smith Carrier of the Year Finalists

The 2015 J W Smith Carrier of the Year (COTY) Award nomination process is complete. Finalists were selected from the nominations received. The finalists' newspapers have been notified of the next step in the award process. Each newspaper will prepare a short 5 minute video of their nomination that will be used in the final judging by the Board of Directors. The winners will be announced at a luncheon at the 2015 Conference. Each Carrier of the Year Winner will be presented a certificate signed by the Governor of Texas as well as a check for their achievement. The finalists for 2015 are as follows:



Newspaper Carrier Under 325 Route Size Category

Carrier	Newspaper
Ronald Curry	San Angelo Standard-Times
Faustino Pena	Galveston Daily News

Newspaper Carrier Over 325 Route Size Category

Carrier	Newspaper
Stacy Smead	Lubbock Avalanche-Journal
Matthew Churchill	San Angelo Standard-Times

Single Copy Category

Carrier	Newspaper
Robert Collins	Corpus Christi Caller-Times

Newspaper District Manager/Contractor Category

District Manager/Contractor	No Entries for 2015
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2015 Membership

TCMA By-Laws require the Secretary to mail membership renewal notices each November for the following year.

Membership renewal notices were mailed November 10, 2014.

Your membership fee enables the Association to provide you with a quarterly newsletter as well as supporting the Carrier of the Year Competition.

A special offer will be made to our Vendor members this year to cover membership, a newsletter ad and buyer's guide ad with one payment. Look for the Vendor packets to arrive in early **January 2015**. Access for the Buyer's Guide online order form will be available when the packets are mailed.

PayPal has a new feature allowing TCMA to send you a customized invoice with a link to the TCMA PayPal site to pay your invoice. If you are interested and would like a special invoice please let our Secretary know at tcma@texascma.org

Don't forget! You can **renew online** and use your credit card to pay for your membership and other services provided by TCMA.



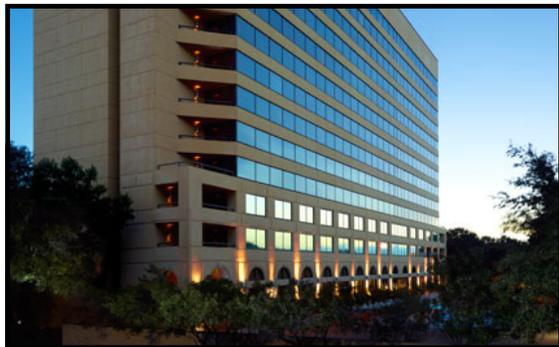
2014 TCMA 102nd Conference

April 9-10, 2015

**Omni Austin Hotel at Southpark
4140 Governor's Row
Austin, Texas 78744
512 448 2222**

**Hotel Registration will be included
in your conference registration**

**Contact our Secretary/Treasurer for
a special invoice if you would like
to expense your conference fee in
this calendar year. The 2015 Con-
ference fee **INCLUDING** hotel for a
single occupancy will be **\$362.95**.
Additional nights are available.**



Advertising Space Available

To renew or add your business card
ad on the back page or within the
Lone Star Review with a link to your
company web site for 2015, send your
request for an invoice to:

J W Smith — tcma@texascma.org



Zinsergram a/k/a Legal Update

By L. Michael Zinser

The Zinser Law Firm, P.C.

In the litigation of whether a newspaper distributor is an employee or an independent contractor, the “contracting process” is often examined very closely. The reason for this examination is that the court or agency wants to be sure that *both* parties entered into the Agreement with the *intention* to create an independent contractor relationship. What occurs during the contracting process can help evidence independent contractor status.



Contractor Recruitment – Give care to the drafting of print advertisements you place in your newspaper to recruit newspaper distributors. The ad should be titled “Business Opportunity.” It should note that the opportunity is to deliver newspapers as an independent contractor. Avoid terminology such as “part-time job.” This is not a job, it is an contract. If you feel the need to discuss contract compensation, speak in terms of “potential profits.” Whatever you do, do not use the standard language placed in employment ads, stating, “We are an equal opportunity employer.” Remember: this is not employment.

Review of the Written Contract – It is important that the Company representative and the prospective contractor spend time reviewing the entire written Agreement. Explain to the individual that he or she will be an independent contractor – and **not** an employee. As each page is reviewed, allow the contractor to ask questions. Have the contractor initial the bottom corner of each page as it is reviewed. This will help cement the contractor’s intention to become an independent contractor. I recommend that the contract be drafted with the text, “I have read and understand this page,” along with a line for the contractor’s initials, printed on the corner of each page.

Start the process with a “blank slate.” Rates, for example, should be left blank at the start of the meeting. Starting the contracting process with rates already typed in creates the impression that the rates are not negotiable. Negotiation of rates is very important in today’s litigation environment. Do not be afraid of negotiations.

Allow the contractor the option to have the contract reviewed by legal counsel or his or her accountant. Explain to the contractor that he or she will not be eligible for Workers’ Compensation or Unemployment Compensation. Explain to the contractor that he or she will have the right to determine the sequence of newspaper delivery on the route.

Assure yourself that the contractor understands and reads the English language. If there is a language barrier, you should consider having the contract translated into the contractor’s native language. There are reported newspaper cases wherein a newspaper distributor has been found to be an employee because it was later proven that he could not read English and did not understand

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spoken English. The court held that there was no way this individual could have entered into this agreement with the intention of being an independent contractor.

It is critical that your representative be very familiar with the written contract you are using. Only if your representative understands your contract will he or she be able to answer the prospective contractor's questions in a thorough and meaningful way.

Be sure to give the contractor a copy of the final, signed Independent Contractor Agreement.

Complete IRS Form W-9 – At the time of contracting the newspaper distributor, have the individual also complete IRS Form W-9. When the contractor signs the W-9, it documents independent contractor status. The contractor must check a box on the form, selecting his or her form of business organization – be it sole proprietor, partnership, or corporation. This helps you later prove that the contractor owns his or her own business. Use this execution of this document to explain to the contractor that he or she will be responsible for paying all federal, state, and local taxes, and that the newspaper will be withholding no taxes from contract compensation.

Independent Contractor Carrier Accident Insurance – It is common for the newspaper to make the contractor aware of Carrier Accident Insurance. It is important that the Company's representative understand this product very well. If properly explained to the contractor, he or she will opt to purchase this coverage. This is also another opportunity to document independent contractor evidence. If the contractor rejects the coverage, have the contractor sign the rejection card and keep it with the contract. This is evidence that the contractor is making a business decision not to incur that expense. If the contractor purchases the insurance, be sure to give the contractor a copy of the policy. Explain that he or she will pay the entire premium.

Driver's License and Insurance – It is common to obtain a copy of the prospective contractor's driver's license and vehicle insurance information. Make a photocopy of these items and keep them with the contract file.

Sample Invoice – Review with the contractor a sample of the type of invoice he or she will receive. Go over the frequency of invoicing and the information contained in the invoice.

Computer Generated Bundle Top – With the pickup of his or her daily newspapers, the contractor will also receive a computer generated bundle top information sheet. Review with the contractor that this sheet will list starts, stops, and delivery complaints received from subscribers.

Multiple Contract Documents – If the contractor is going to be delivering more than one route, have the contractor execute a separate Agreement for each one. This is evidence that the contractor has the right to contract for more than one area. It is stronger evidence of independent contractor status.

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No Newspaper Delivery without Written Contract – Whatever you do, do not allow an individual to begin delivery of the newspaper prior to signing the written Independent Contractor Agreement. Just imagine the confusion and finger pointing if the independent contractor newspaper carrier had a serious automobile accident while delivering newspapers without a contract. The contractor would be in a position to deny independent contractor status and claim employee status to try to shift liability to the Company.

CONCLUSION

The contracting process is a very important ingredient in proving independent contractor status. Train your team to do this effectively and you will be well positioned to prove independent contractor status in litigation.

We take pleasure in answering thus prominently the communication below, expressing at the same time our great gratification that its faithful author is numbered among the friends of The Sun:

Dear Editor--- I am 8 years old. Some of my little friends say there is no Santa Claus. Papa says, "If you see it in The Sun, it's so." Please tell me the truth, is there a Santa Claus? Virginia O'Hanlon

Virginia, your little friends are wrong. They have been affected by the skepticism of a skeptical age. They do not believe except they see. They think that nothing can be which is not comprehensible by their little minds. All minds, Virginia, whether they be men's or children's, are little. In this great universe of ours, man is a mere insect, an ant, in his intellect as compared with the boundless world about him, as measured by the intelligence capable of grasping the whole of truth and knowledge. Yes, Virginia, there is a Santa Claus. He exists as certainly as love and generosity and devotion exist, and you know that they abound and give to your life its highest beauty and joy. Alas! how dreary would be the world if there were no Santa Claus! It would be as dreary as if there were no Virginias. There would be no childlike faith then, no poetry, no romance to make tolerable this existence. We should have no enjoyment, except in sense and sight. The external light with which childhood fills the world would be extinguished. Not believe in Santa Claus! You might as well not believe in fairies. You might get your papa to hire men to watch in all the chimneys on Christmas eve to catch Santa Claus, but even if you did not see Santa Claus coming down, what would that prove? Nobody sees Santa Claus, but that is no sign that there is no Santa Claus. The most real things in the world are those that neither children nor men can see. Did you ever see fairies dancing on the lawn? Of course not, but that's no proof that they are not there. Nobody can conceive or imagine all the wonders there are unseen and unseeable in the world. You tear apart the baby's rattle and see what makes the noise inside, but there is a veil covering the unseen world which not the strongest man, nor even the united strength of all the strongest men that ever lived could tear apart. Only faith, poetry, love, romance, can push aside that curtain and view and picture the supernal beauty and glory beyond. Is it all real? Ah, Virginia, in all this world there is nothing else real and abiding. No Santa Claus! Thank God! He lives and lives forever. A thousand years from now, Virginia, nay 10 times 10,000 years from now, he will continue to make glad the heart of childhood.



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