



PLANO

Professional Landmen's Association of New Orleans

DECEMBER, 2004

www.planoweb.org

PLANO BULLETIN #035

Dec. 09 **PLANO Christmas Social**,
The Napoleon House

Dec. 14 **PLANO Luncheon**, Galatoire's Restaurant

Jan. 10 **PLANO Luncheon**, Muriel's Jackson Square

Feb. 3 **PLANO Seminar** (1/2 day)
N.O. Hilton Riverside

Feb. 3 **PLANO Executive Night**
N.O. Hilton Riverside

Feb. 3 **PLANO Sponsor Balcony Party**,
Royal Sonesta Hotel

Dec. 24 Christmas Eve - Holiday

Dec. 25 Christmas Day - Holiday

Dec. 31 New Year's Eve

Jan. 1 New Year's Day

Jan. 26 NAPE, Houston, TX

Jan. 27 NAPE, Houston, TX

Feb. 8 **MARDI GRAS - Holiday**

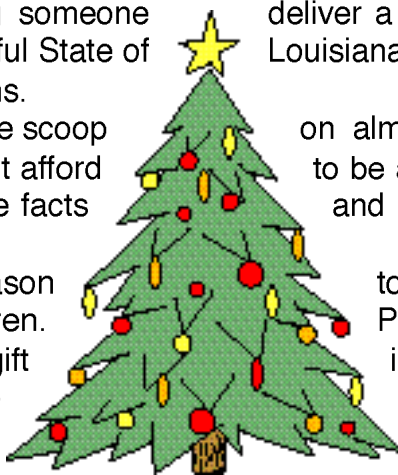
PLANO LUNCHEON GALATOIRE'S RESTAURANT NEW ORLEANS

TUESDAY, DECEMBER 14, 2004, 11:30 A.M. - 2:00 P.M.

Too late if you have not yet made a reservation to attend this luncheon - it is SOLD OUT. Christmas, the season of giving and good spirits is upon us, so in keeping with tradition, PLANO will celebrate Christmas with all of you by reminiscing about the year's activities and plans for the year ahead. Indeed, rather than having someone deliver a formal speech, a mystery visitor will be with us to talk about the wonderful State of Louisiana, where we have been and where we are likely to go in the coming months.

The mystery visitor has the inside scoop on almost everything of any major significance to the community. You cannot afford another opportunity to share in the facts and figures to be discussed at this luncheon.

A reminder to all . . . 'Tis the Season to be Giving, and we hope you will give generously to the needy children. Please bring a gift, suitably wrapped and tagged showing whether the gift is for a boy or girl, with the appropriate age group being prominently displayed on the wrapper. Remember, it is better to give than to receive. Let's make Christmas this year very special for some little boys and girls.



**A VERY MERRY CHRISTMAS AND
HAPPY AND SAFE NEW YEAR TO ALL OF YOU**

MESSAGE FROM THE PLANO PRESIDENT 2004-2005



Well, we've almost made it!

After starting the year with people wondering how "these oil prices" could last, we're now moving into the final ten yards of the year wondering if there will be a significant decrease anytime soon.

December is here and after a few company parties, a holiday celebration, and New Year's Eve, we'll be into 2005. (Remember when 2001 seemed along way off into the future?)

We have two great social events scheduled to close out the year; the Christmas Social on Thursday December 9th at Napoleon House and then the December Luncheon (which has already sold out) at Galatoire's on the 14th. I hope to see each of you at least one of these events. If your year has been anything like mine, you deserve some celebration, so come on out and enjoy the fun.

In the meantime, I wish all of you a joyous and safe holiday season!



Lawrence P. ("Larry") Beron, PLANO President



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PLANO Administrator & Newsletter Editor – Margo Cameron

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PLANO LUNCHES

REMINDER – What’s a ghost? Well, when an event reservation is made but not used, PLANO is left with a “ghost” on the reservation list. Three (3) working days, i.e. 72 hours, prior to events, PLANO is required to guarantee the number of attendees, thus establishing the cost involved. This is a standard procedure in the catering world. Persons who do not show up, or cancel after the guaranteed number has been issued, are regarded as “ghosts” for they cost PLANO just as much as actual attendees. PLANO has to pay, and over the course of a year, this can add up to quite an expense.

So, please help us out. If you’ve made a reservation for an event, that’s great. We look forward to seeing you there. If things get busy and you can’t make it, we’ll miss you, but please make a call as soon as you know and let the event organizer know that you won’t be there. Calling after the guarantee has been issued will only serve to notify us you will not be there, but we will still have to pay, and, in turn, we will have to bill you. Rarely, if ever, can adjustments be made to the orders.

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PLANO 2004-2005 COMMITTEE CHAIRMEN

Effective September 28, 2004, following the appointment of **Lawrence P. ("Larry") Beron** as **PLANO President**, and **Andrew M. Adams**, **Vice President**, Gieger, LaBorde & Laperouse, L.L.C., the following Committee Chairmen were appointed:

Membership Committee/Certification/CPL

Richard F. Price, Jr., ChairmanPrice Energy LLC

Social Committee

John T. Dale, Jr.McMoRan Oil & Gas LLC

Full details of all other Committee appointments will be contained in a subsequent Newsletter.

PLANO NEW MEMBERS

KENNETH KNOTT

Land Manager – Gulf Coast and Permian Region

St. Mary Land & Exploration Company
580 WestLake Park Boulevard, Suite 600
Houston, TX 77079

Tele: 1-281-677-2791 Direct
1-281-677-2800 Main
FAX: 1-281-677-2810
E-mail: kknott@stmaryland.com

Membership applications from the individuals named in the above section were reviewed and approved by the PLANO Board of Directors' at the meeting on Thursday, November 4, 2004. The PLANO Board welcomes these new members to the organization.

J. TODD REEVES

Attorney

Creighton, Richards, Higdon & Reeves, L.L.C.
827 W. 22nd Avenue
Covington, LA 70433

Tele: 1-985-871-8803 Direct
1-985-893-9967 Main
FAX: 1-985-871-8805
E-mail: treeves@crhrlaw.com

THOMAS E. RICHARDS

Attorney

Creighton, Richards, Higdon & Reeves, L.L.C.
827 W. 22nd Avenue
Covington, LA 70433

Tele: 1-985-871-8804 Direct
1-985-893-9967 Main
FAX: 1-985-871-8805
E-mail: trichards@crhrlaw.com

PLANO MEMBERSHIP

The purpose of PLANO is. . . "To promote and advance the art and science of the profession of Petroleum Landman." With that in mind, we urge all of our members to each bring in at least one new member between now and the end of this year. A membership form is available on the PLANO Web Site – www.planoweb.org - so be sure to ask any and all potential new members to join **PLANO NOW**.

Should you wish to obtain additional information, please contact Rick Price at 504-834-5559.

THOUGHT FOR THE DAY

Don't believe all you hear,
spend all you have,
or sleep all you want.

*Submitted by
Margo Cameron, PLANO Administrator &
PLANO Newsletter Editor*



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Kingwood, TX 77339
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jimmyt@suncoastland.com

russellt@suncoastland.com

Beta Land Services, L.L.C.

BRYAN J. HANKS, CPL

401 Audubon, Ste.202-B
Lafayette, LA 70503
Pager 800-249-3640
Mobile: (337) 298-7200
Home: (337) 406-8797

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Lafayette, LA 70505
Office: (337) 261-0276
Fax: (337) 261-0279
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LOUISIANA LEGAL UPDATE

OIL & GAS LAW DEVELOPMENTS

CASES OF INTEREST

Presented by Gordon T. Whitman
The Onebane Law Firm, Lafayette, Louisiana
1-337-237-2660

Louisiana Supreme Court Reverses Billion Dollar Class Action Judgment in Favor of Oyster Fisherman

Oyster fishermen (*the "Lessees"*) holding oyster leases (*the "Leases"*) from the State of Louisiana in the Breton Sound area filed a class action against the State. They claimed that a fresh water diversion project, the Caernarvon Freshwater Diversion Structure (*the "Project"*), destroyed their oyster beds and demanded damages. Suit was filed in State Court by certain named Lessees and a class action was certified covering not just their claims but the claims of all other Lessees similarly situated. The trial court found for the Lessees and award damages totaling **One Billion (\$1,000,000,000.00) Dollars**. The case was appealed to the Fourth Circuit Court of Appeal, and the trial court judgment was affirmed. *Avenal v. State Dept. of Natural Resources*, 858 So.2d 697 (La. App. 4th Cir. 2003). This matter was finally appealed to the Louisiana Supreme Court which reversed and held for the State. *Avenal v. State*, No. 2003-3521, 2004 WL 2365216 (La. decided Oct. 19, 2004).

In Louisiana, the leasing of State-owned water bottoms to private parties for the purpose of oyster farming is governed by statute. La. R.S. 56: 4, and 41: 1225. Leases are granted by the State to private parties for \$2.00 per acre for up to 2,500 acres, and are granted for periods of fifteen years. The Court recited in its opinion that the vast majority of the Leases granted in this case contained "**hold harmless clauses**" which provided that the Lessees were to hold the State harmless from any damages suffered by the operation of the Project. In light of these hold harmless clauses, the Supreme Court held that as to these Lessees, they were not entitled to any

damages whatsoever from the State. As for the remainder of the claims, the Court found that they had prescribed before suit was filed pursuant to La. R.S. 9: 5624

which provides that claims for damages resulting from public projects prescribe two years from the acceptance of the project.

In light of the hold harmless clauses, it is curious that the Lessees prevailed in trial court and in the court of appeal. Based upon the facts recited in the Supreme Court opinion, the reason for this is that the trial court granted the Lessees "motion in limine" which excluded all evidence, testimony and argument of the hold harmless clauses being presented to the Court. The court of appeal upheld the exclusion of this as well. The opinion, however, does not explain why the lower courts ruled as they did on this issue. The interesting thing about the lower courts rulings is that to be entitled to any relief, the Lessees had to introduce into evidence the Leases which contained the hold harmless clauses. It is hard to understand how the Lessees were able to

introduce the Leases but prohibit any mention of the hold harmless language contained in them.

The case is twenty-six pages long and includes a lengthy concurrence by one of the judges. If you would like a copy of this case for your perusal, please let us know and we will send you a copy. A reading of the case convinces the undersigned that the Court was impressed by the public necessity of the Project (and for future projects designed to save the Louisiana coastline) as well as by the economic catastrophe that would have been visited on the State by upholding a Billion Dollar judgment. In light of the holding of this case, it has no bearing on the ongoing battles between oyster fishermen and oil and gas lessees dealing with asserted

About the Author

Gordon T. Whitman: Born New Orleans, Louisiana, January 25, 1955; admitted to Bar, 1981, Louisiana. *Education:* University of Southwestern Louisiana (S., 1977); Louisiana State University (J.D., 1981). Phi Kappa Phi; Phi Delta Phi; Order of the Coif. Member, Louisiana Law Review, 1980-1981. Speaker, 46th Annual Meeting and 2000 International Conference of American Association of Professional Landman; Speaker, 45th Annual Meeting and 1999 International Conference of American Association of Professional Landmen; Speaker, 43rd Annual Meeting and 1997 International Conference of American Association of Professional Landmen. *Member:* Louisiana State Assistant Examiner for Committee on Bar Admissions (1993-2002), and American Bar Association; Lafayette Association of Petroleum Landmen; Professional Landmen's Association of New Orleans; American Association of Professional Landmen; Louisiana Independent Oil and Gas Association; Louisiana Association of Bank Counsel; Advisory Council to Louisiana Mineral Law Institute.

Areas of Practice:
Oil and Gas, Business



damages to their oyster beds by oil and gas operations.

Federal 5th Circuit Court Holds that State of Louisiana Conservation Statutes Preempt City Ordinance Prohibiting Oil and Gas Operations in Vicinity of Lake

The City of Shreveport ("**City**") adopted a regulation which prevented drilling within 1000 feet of Cross Lake (**the "Lake"**) that was the main source of city's water. A mineral lessee ("**Lessee**") obtained a drilling permit from the State of Louisiana, Office of Conservation, authorizing it to drill on a location within the proscribed 1000 feet. The Lessee knew of the City's regulation and attempted to negotiate an agreement with the City allowing them to conduct the aforesaid operations. The City refused to grant any variance. In response, the Lessee filed suit in Federal District Court. The district court held for the City and stated that the City had the right to protect its water supply. The Fifth Circuit Court of Appeal reversed. *Energy Management Corp. v. City of Shreveport*, Nos. 03-30677, 2004 WL 2192376 (Fed. 5th Cir. La. decided October 15, 2004).

The lake at issue is Cross Lake which was conveyed by the State of Louisiana to the City in 1914 pursuant to a statute enacted a few years earlier. It was conveyed specifically to "provide a water supply" to the residents of the City. This was followed by subsequent statutes that granted the City the authority to adopt and enforce all ordinances for the protection of the Lake. Pursuant to these many statutes giving the City such authority, the City enacted the regulation which prohibited drilling within 1000 feet of the Lake. The district court was convinced by the above that the State had given the City the power to enact and enforce this regulation.

The Fifth Circuit recognized the above, but held that the State had enacted a comprehensive statute that granted the Office of Conservation exclusive

authority to regulated drilling and mining in Louisiana. It noted that it expressly provided that "no other agency or political subdivision of the state shall have the authority, and they are hereby expressly forbidden, to prohibit or in any way interfere with the drilling of a well or test well in search of minerals by the holder of such a permit." La. R.S. 30: 28 (F). It therefore held that the State statute preempted the City and its regulations.

The Court cited a number of prior Louisiana Supreme Court decisions which it said controlled this case. *Shreveport v. Curry*, 357 So.2d 1078, 1080 (La. 1978), and *Rollins Environmental Services, Inc., v. Iberville Parish Police Jury*, 371 So.2d 1127, 1131 (La. 1979). In both instances, the local governing body attempted to legislate in an area that was already the subject of extensive state regulations. The Fifth Circuit felt that the *Rollins* case was especially on point. In that case, the state specifically authorized the dumping of hazardous waste in Iberville Parish, and the court was faced with a local Iberville Parish ordinance that specifically prohibited it. In this instance, the court found that the general police power of the parish had been preempted by the state statute.

The above decision is not yet final. Should this decision change upon further appeal, we will report on same.

*Copies of the above case and statute
can be obtained upon request to the writer at
(337) 266-1232 (fax) or
whitmang@onebane.com*

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John W. Kolwe
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LAFAYETTE, LOUISIANA 70501

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PLANO . . . ON THE SOCIAL SIDE

The Royal Sonesta Hotel Bienville Suite was the setting for PLANO's 2nd Annual Wine Tasting on Monday evening, November 15th. Guests were given a warm welcome to the function by John Dale, (Land Manager, McMoRan Oil & Gas LLC), PLANO's Social Director this year.

The wines introduced and discussed by Jennifer Correa of the Robert Mondavi Company were:

Private Selection Fume Blanc

La Famiglia Pinot Grigio

Byron Chardonnay

Private Selection Pinot Noir

Robert Mondavi Napa Cabernet, and

Kirralaa Merlot

(Note: All of these wines may be obtained at Dorignac's

710 Veterans Memorial Boulevard, Metairie, LA)

Guests had an opportunity to sample these wines as well as the delectable hors d'oeuvres and canapés prepared by Royal Sonesta's Chef Philippe Pinor. The spanakopita (spinach and goat cheese wrapped in Phyllo pastry) was quite the best ever tasted.

The Royal Sonesta Hotel donated a bottle of wine as a door prize (Stephen Vincent 2002 Merlot

Sonoma, California Wine, i.e. grapes from the finest vineyard state of the art wine-making in French oak contribute to wines that offer an excellent fruity, toasty oak and mouth-filling richness). Tammy Harris Dupree, Catering Sales Manager at the Royal Sonesta, had the honor to present the prize to the lucky winner – Devin Dixey, Oil Scout, Murphy Exploration & Production Company – USA.

To add to the warmth of the occasion, Judy B. Seghers, celebrated harpist from New Orleans, delivered a dazzling array of music throughout the evening. Towards the end of the evening, Judy very graciously entertained requests for favorite tunes to be played, and for several of our members the evening could have gone on and on. No one wanted to leave.

Warm thanks are due Anne Bailey for obtaining the wines.

This year's Wine Tasting drew a larger crowd than last year which proves that it has the potential to be a "bigger draw" next time around.

Submitted by:

John T. Dale

PLANO's Social Director - 2004-2005

UPCOMING PLANO LUNCH

Muriel's Jackson Square, Chartres at St. Ann Street, New Orleans, LA, is the venue for the PLANO Luncheon to be held on Monday, January 10, 2005. Steve Waddell of MMS is the speaker at this event. Full information on the topic of Steve's speech will be contained in a flyer to be issued in the course of the next week or so.

Should you wish to make an early reservation, please contact Margo Cameron at 504-593-7560.

UPCOMING PLANO EXECUTIVE NIGHT

Congressman-Elect Bobby Jindal, 1st Congressional District of Louisiana, has graciously accepted PLANO's invitation to speak at PLANO's Executive Night on Thursday, February 3, 2005, New Orleans Hilton Riverside. As soon as the topic of his speech is known, full information will be passed on to our membership.

PLANO has a block booking of rooms at both the New Orleans Hilton Riverside and Royal Sonesta Hotels, New Orleans, LA. Please make your hotel reservations now.

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